

Implementing Kimberley: Stopping the blood diamond trade to Europe

Report of the European Union Expert Meeting, March
7, 2002

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Netherlands Institute for Southern Africa (NiZA)
Fatal Transactions**

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1 Programme

Oxfam International, Netherlands Institute for Southern Africa (NiZA) and Fatal Transactions

Thursday March 7 - 11.00-15.00 European Parliament, Brussels

**EU Expert meeting:
Implementing Kimberley: Stopping the blood diamond trade to Europe**

Chair: Mr Max van den Berg, *vice chair of the party of European Socialists, vice-chair of the development Committee*

Agenda

Welcoming speech by Max van den Berg

- **Diamonds and conflict, the scale of the problem**

Dr Philippe Le Billion, The International Institute for Strategic Studies

- **From Twickenham to Botswana to Brussels: key features of the forthcoming regime for the control of diamond imports into Europe**

Mr Anthonius de Vries, Economic and Financial Sanctions Co-ordinator, DG Relex

- **Discussion**

- **The role of the European diamond industry in the implementation of Kimberley**

Mr Rory More O'Ferral, World Diamond Council

- **Kimberley: critical outstanding issues**

Presentations by the four Kimberley Working groups of the key features and main obstacles of their work:

- WTO Compliance: Mr Nell Philippe, Swiss State Secretariat for economic affairs/WTO Division
- Statistics: European Commission: Mr Anthonius de Vries, DG Relex
- Participant Measures (monitoring): Alex Yearsley, Global Witness
- Administrative support: David Earnshaw, Oxfam International

- **The other half of the Picture: capacity building in Africa**

Mr Vincent Dowd, European Commission, DG Development, Desk officer SADC

- **Discussion: Does Europe need to improve on Kimberley?**

2 Introduction

The expert meeting on the implementation of the Kimberley process in the European Unions was purposely scheduled a week before the renewed UN resolution (A/56/263) and 10 days before the meeting of the participants of the Kimberley process in Ottawa, Canada, (March 18-20 2002).

It was not scheduled after the death of Jonas Savimbi in Angola. His death offered hope that a negotiated settlement might now be possible. However, the existence of a chance for peace in Angola, as in Sierra Leone and possibly in the Democratic Republic of Congo does unfortunately, not mean that this meeting, and the struggle against conflict diamonds in general, has become abundant. Wars are not over. Diamond trafficking remains a lucrative source of revenue for rebels in Angola, Sierra Leone, Liberia and the DR Congo. The threat of flaring up of conflict will remain as long as easy diamonds are available. Only an effective global certification system for all rough diamonds can help to end this. More than ever implementation of the Kimberley Process is needed.

The Ottawa meeting has shed some light on the agenda for the world-wide implementation of certificates. Still a certification scheme should be in place on December 31 2002, but change that front runners will start at July 1 2002 is down to zero.

The issue of the WTO compliance – is Kimberley a trade barrier? - seems to be settled with the conclusion that Kimberley is open to every country and can therefore not be a barrier for trade. Yes, Kimberley is open for everyone, but still no one checks if countries claiming to work through Kimberley lines will actually do so. A proposal for periodic reviews was blocked. NGOs demands for an independent monitoring system – and to be perfectly clear, not carried out by NGOs but appointed by governments - were again denied.

On the issue of statistics – who is exporting what to whom and where does it go from there? – Ottawa reached a breakthrough. Governments agreed to produce quarterly trade statistics and semi-annual; production statistics, that will be made public after two months ending that period. Definitions for these figures still have to be found and we risk ending up with the incomparable data per country.

To set in place a good functioning global certification scheme one needs a co-ordinating bureau. This continues to be a no-go area for some countries, as they fear heavy bureaucracy and an endless system. The European Commission, that chaired the Kimberley process working group on the secretariat, proposed a compromise showing that such a body only has to be equipped with one employee (214 working days year) and its various tasks can therefore be spread among various Kimberley participants. This neither fish nor flesh proposal lacks ambition. The Council of Ministers should equip the commission with an inspiring mandate to carry this process forward and show Europe's dedication. The European Union should also take responsibility for capacity building in African countries, enabling them to implement an effective control system. After all, the first few 100 meters from the diamond mine to the local trader are the most crucial ones. The EU-SADC meeting scheduled for November 2002 in Copenhagen creates a momentum to discuss co-operation on the export of diamonds. The Commission has, during our expert meeting, agreed that this can be part of the agenda when SADC countries indicate the need.

In Europe, where the Commission claimed it could have a scheme up and running in July 2002, we are awaiting the final proposals. In June these will be sent to the council of ministers and the European Parliament and in autumn a conclusion should be reached on a regulation. The implementation of the global certification system is, again, scheduled to be launched in Switzerland in November 2002.

In the meantime a serious dispute has set between the European commission and Belgium. A dispute that made Belgium decide not to participate in an expert meeting organised by NGOs. Belgium fears that the procedure being set up by the Commission depends too much on the industry chain of warranties without proper governmental control. This is a true fright and is shared by the NGOs. However denying that the European Commission has the right of initiative in this matter and claiming an opt-out will not bring us a quick and watertight certification of rough – conflict- diamonds.

The report ‘conflict diamonds: crossing European borders’ shows serious obscurities in national statistics, import and export figures within the union.¹ Those create loopholes in the control system. A European system should tackle these obscurities. A European wide system should focus on the main entry ports for rough diamonds, Belgium and the UK, and profit from the knowledge these countries have gathered. Its due time that the European Commission puts its proposal for a regulation in writing. Let us continue discussions from that onwards.

April 9, 2002, Amsterdam / Brussels.

Judith Sargentini, Fatal Transactions
Kirsten Hund, Netherlands Institute for Southern Africa
David Earnshaw, Oxfam International

¹ Conflict diamonds: crossing European borders? A case study of Belgium, the United Kingdom and the Netherlands, by SOMO (institute for multinational research) dedicated by NiZA/ Fatal Transactions. <http://www.niza.nl/fataltransactions/index.html> click on ‘open letters, press statements and briefings.’

3 Welcoming speech

by Max van den Berg

The chairman opens the EU expert meeting and welcomes every participant involved in stopping the blood diamond trade into Europe.

The chairman states that it is very difficult to recognise conflict diamonds, because conflict diamonds enter Europe as legal diamonds. Many conflict diamonds that are brought into Europe are produced in Sierra Leone and Angola (both countries are sanctioned by the United Nations), but are transported via other countries on which the UN has no supervision. This way it seems that there is a trade in legal diamonds, but in fact the diamonds are illegal.

In September, during or previous meeting, we discussed the basic principles and problems of various EU member states in controlling their imports. This meeting is a follow up during which we hope to discuss more concretely how to implement the Kimberley Process on a European level.

To solve the problem of the continuing trade in conflict diamonds, immediate action is necessary. A more open database on the trade of diamonds is needed to locate the diamonds back to its source. Besides developing a database, independent monitoring of the certificates of origin is of great importance. The EU as a whole can play an important role in this. There is no need to elaborate on the complex discussion about the internal market. The emphasis should not be on how to stop the trade of conflict diamonds between the different European countries but on how to prevent that the conflict diamonds come into Europe in the first place. European countries should support each other in order to get a system as effective as possible. In this light, I would like to express my disappointment in the Belgian government, who has not thought it useful to show up today and discuss openly its disagreements with the European Commission.

There remain a number of problems regarding this system of certificates of origin.

- At the moment there is no independent control system that every certificate is according to the demands.
- There is still is no agreement regarding an international secretariat.
- The certificates of origin are not binding but only voluntarily.
- There is no clear developed system for a statistic database.
- There is no agreement on the several definitions, for instance “participants”

These points mentioned above are of major importance for the future of the trade in diamonds.

It is time for the European Union, including all its member states, to take constructive action in the battle against the terror that makes millions of Africans suffer.

4 Diamonds and conflict, the scale of the problem.

Mr. Philippe Le Billion

Diamonds are a problem. Political instability is an important factor concerning the development of- and trade in conflict diamonds. Out of 19 countries that produce diamonds, 6 of them have faced civil wars, 4 of them are political unstable. Recently, there have been rumours about diamonds being used to finance armed groups outside Africa. Between 5 and 20% of world diamonds are estimated to be conflict related.

There are three major cases concerning conflict diamonds

Angola: has a long history of diamond smuggling. Diamonds have financed UNITA since the early 1980's. It is not sure whether the UN sanctions did have a positive effect on the outcomes of the war, since it took so long for them to be decided upon. The success of Ascorp, the Angolan Selling Corporation, in monopolising the diamond trade is not a convincing solution for the Angolan population. It remains to be seen what the consequences of the death of Jonas Savimbi will be. The country has been fragmented for so long, and the communication between the fractions has been limited for such a long time, where exactly lies the power.

Congo: The rebel movement RCD has been financed by Rwanda and Uganda since 1998, merely with the goal of controlling the natural resources in the region.

Sierra Leone/ Liberia - Guinea: The peace process is unsure. The UN peacekeeping forces won't last for long. The risk of the inflammation of violence after the elections is real.

The countries mentioned above all depend on the trade in conflict diamonds, are all political unstable and there is such a big difference between poverty and wealth that it contributes to the trade in conflict diamonds.

The 'resource curse'; the dependence of these countries on national resources is fuelled by three aspects of this trade:

- The lootability of natural resources and the commercialisation of war create an opportunity for violence. Diamonds have a high value, low weight and are internationally tradable.
- The conflictuality of natural resources extraction and political economy create a risk of conflict and violence. Who 'owns' a diamond field, what about the revenue distribution?
- And the resources dependence creates distortionary effects, political and economic, on societies and governance, which make a country vulnerable to conflict. Mineral resources make a country vulnerable to economic crisis, political corruption and deligitimation of authorities.

Are conflict-affected countries an exception? Do prosperity diamonds exist?

Even in a country like Botswana, that is so dependent on the export of diamonds and where 60% of the population is very poor, the question can be asked who profits from the diamonds trade. What happens to the profits of Debswana?

Diamonds are not the only cause of conflicts, but not a logical source of prosperity either.

What does the future hold for those countries that are involved in the trade of conflict diamonds?

- Violence and criminality
- Corruption, political accountability, governance
- A stronger role for the informal sectors; avoiding marginalisation but preventing violence.

5 From Twickenham to Botswana to Brussels:

Mr. Anthonius de Vries. (European Commission, DG Relex)

Mr De Vries stated that someone who would take a rather pessimistic approach to the results so far of the Kimberley Process may come to the conclusion that these results are unsatisfactory.

The provisions on monitoring and statistical surveillance, the threshold for new participants, the dispute settlements procedures and the lack of sanctions for non-compliance are indeed weak. Maybe such a person would score the results less than 6 out of 10 points.

But one can also take a more positive attitude and appreciate the considerable progress that has been made notably since the road-map was agreed in February 2001. As things stand now, it is most probable that the Commission will recommend to the Council that the Community should become a founding member of the Certification Scheme for rough diamonds.

At the next meeting of the Kimberley Process in March in Ottawa only a few more or less technical matters will still have to be resolved.

From then on the Commission will do its utmost to come up as soon as possible with a proposal for a Council Regulation that will ensure the effective implementation of the Certification scheme for the whole of the European Community.

The EC Regulation will have to deal with three main elements :

1. the effective control of imports
2. the effective control of exports
3. the effective link between legal imports and legal exports.

The leading principle for the Commission will be that the import and export controls that will exist at the Community level after the entering into force of the Certification Scheme have to be at least as good and preferably better than what exists today at the Community level.

On the import side this will be rather easy to realise. The big difference that the Certification Scheme will make with the present situation is that under the Certification Scheme no imports can take place legally without a valid Kimberley Process Certificate issued or validated by the competent exporting authority of the exporting participant. It will mean an end to the lawfulness of declarations of provenance for imports of rough diamonds, that under the GATT system of free trade, enables illicit and conflict diamonds the easiest way for entering the legal trade.

As long as under the present circumstances only Angola and Sierra Leone have to ensure the certification (of origin) of their exports of rough diamonds, there is a valid argument to make for strict controls at the import side of all imports of rough diamonds. However, such strict imports find their limits in several international treaties, such the GATT and the EC Treaty.

After the entry into force of the Certification Scheme the control of imports should reflect the new, certified status of all exported diamonds.

But where presently exports from the Community are free from export controls, they will not longer be so under the Certification Scheme. The competent authorities within the Community will have to ensure that all diamonds that will be exported from the Community shall be accompanied by a valid Kimberley Process Certificate. The conditions for issuing or validating such certificates in the Community shall be laid down in the Community legislation.

Because the Certification Scheme will ensure a more effective control at the import side than exists at present, there is a real chance that as a result the efforts to smuggle diamonds into the Community will increase. Indeed, where the present system presents enough possibilities to legalise imports of illegally exported rough diamonds, there is less need for smuggling such diamonds into the Community. But, paradoxically, the Certification scheme will necessitate a more effective fight against smuggling rough diamonds into the Community. As recognised already by the industry itself, this fight, almost by definition, cannot be fought at the external or internal borders of the Community, but will need controls in the market place within the Community. And it is on the shaping of these controls that the Commission will continue its discussions with the private sector on how a system of self-regulation, including an effective chain of warrantees, can result in an effective control system, while respecting the particularities of the rough diamond trade and minimising the interference of government agencies.

As to the timeframe : it is the intention that a Commission proposal for the Community legislation shall be submitted to the Council by 1 June. This would give the Council enough time to adopt the legislation before the summer recess that starts at 1 August. Other technical implementing measures, such as the printing of the Certificates could than start on 1 September. In this way the Community would certainly be ready for the simultaneous entry into force of the Certification Scheme, planned to take place before the end of this year.

6 The Role of the European diamond industry in the implementation of Kimberley

Mr. Rory More O'Ferrall, World Diamond Council

The World Diamond Council supports without reservation the call by civil society for the Kimberley Process to be strengthened in the key areas of WTO compliance, statistics, co-ordination and monitoring. The original mandate from the General Assembly called for an effective, pragmatic and transparent system with appropriate measures to ensure compliance. That is what we want too.

In the industry it is believed, that it is essential that the Kimberley Process be given the teeth it needs to ensure compliance by both nations and individuals. We recognise, however, that even with the best, united efforts of civil society and industry to press for this, governments may prove unable or unwilling to comply fully. In this regard, the WDC believes that the most effective mechanism would be to elevate the Kimberley Process provisions to the status of a United Nations Security Council resolution. In our conversations with governments we have pressed for such a move. This would be binding on both nations and individuals and, as an added benefit, would transcend the WTO and GATT considerations cited so often as insurmountable hurdles. Alternatively, if Security Council status cannot be achieved, we feel strongly that the international security and humanitarian priorities should override any trade concerns and that the Kimberley Process should have the courage to challenge any country to object.

To this date nobody has been caught, nobody has been expelled from the Bourse, and nobody subjected to the sanctions that the industry threatened to impose. Why is this? It is precisely because it is not a criminal offence - in any jurisdiction - to deal in conflict diamonds. Any trade association, bourse or diamond exchange expelling, excluding or even just 'naming and shaming' an individual merchant or company on the basis of unsubstantiated rumour, media report or so-called market intelligence, and without the same weight of evidence as required in a court of law, would find itself embroiled in lengthy and expensive - and unsuccessful - legal action on grounds of defamation and restraint of trade. This is why we want legislation, and we would ask the NGOs to support us in this call.

The WDC proposed the 'System of Warranties' at the Moscow meetings in May of last year. This was an entirely voluntary offer from the industry to create a way in which the international certificate of origin scheme could be carried forward into the rough diamond pipeline and demonstrate to governments, NGOs and, most importantly, consumers that the sources of rough supply could be secured from contamination by tainted, conflict diamonds.

Every rough diamond transaction must be accompanied by a statement, a guarantee, a warranty, in writing on the invoice, that the diamond or diamonds offered for sale have been purchased from a source or sources known to be free of conflict as determined by the United Nations and that the transaction complies fully with the Kimberley Process provisions as mandated by the United Nations General Assembly or by Security Council Resolution.

This system or chain of warranties will start from the first import of rough diamonds into a processing country and will then be compulsory at every subsequent point of sale. It is our

intention that this system of warranties is introduced without delay, regardless of the pace of implementation of the Kimberley Process itself, but there will of course need to be a given period within which companies must comply. We will discuss this in Milan next week, during the meeting of the World diamond Council.

Eventually, this system will allow manufacturers, sourcing their diamonds only from this clean stream, to declare that the polished diamonds emanating from this rough are also conflict free. Downstream diamantaires, wholesalers, jewellers, banks and retailers, whose integrity and reputation will be at stake, will thus be able to give the consumer the reassurance that many NGOs have called for. The international diamond industry is made up of many disparate and commercially competing organisations, companies and individuals.

The formation of the WDC from this wide spectrum of the industry was, in its way, a small miracle - a miracle which owes much to the efforts of civil society, but which depends for its continued success on the focussed involvement and commitment of the leaders of our business. They now have to convince the rank and file of the industry that the measures put forward in Milan must be universally adopted. We can see clearly that this is essential from both the moral and commercial imperative, but some individuals within the business, far from the debate, are perhaps less ready to grasp the reality.

One final remark: There is no hard evidence that links the diamond trade and terrorism. It is understandable though highly irresponsible to tell consumers scary stories about diamonds and terrorism, especially towards the American consumer. It is recognised that it is not impossible that some diamantaire somewhere may have done business sometime - inadvertently or knowingly - with someone who may have or had connections with one of the conflicted groups in the Middle East. That is probably true of very many products, industries and companies, but it is a far cry from a formal link with al-Qaeda. There has never been found any piece of hard evidence, that diamonds are linked with terrorism. Yet, there are some suspicions that there is a connection. Therefore it is stressed, that buying diamonds from unknown sources can be dangerous. Sources need to be known and identified.

6.1 Questions:

- Senator Martens, Belgian Great Lakes investigation committee raises the point that the certification system gives smugglers the possibility to legitimise their diamonds. It helps cleansing the conscience on the field level, while not changing anything. How does the council consider the idea of limited entry points within the European Union for the import of diamonds?
- Alex Yearsley, Global Witness: We are very dependent of African controls in this. In South Africa, for example, diamond inspectors haven't been in certain mines for years. So how can they know what they export? African countries need to be convinced and supported to participate as actively as possible in the Kimberley Process.
- Laura Ribeiro, Global Witness asks the WDC: How does the independent auditing system/ chain of warranties work? Who is going to control the controllers?
- Ongoing discussion about this topic. The market needs to be transparent, bigger and smaller traders should be able to give clear information about what they've sold and how much they have in stock. The Kimberley Process can help creating a transparent market.

- David Earnshaw, Oxfam international: In auditing, you need very clear criteria about what you're auditing. You need operational criteria. How far is the WDC? Already at an operational level?
- WDC: There is a draft text, but not official yet, will be discussed in Milan.
- Mr Martyn Marriot, consultant: We should not forget there is clearly a market for conflict diamonds. People buy them, verified or not. Certification provides opportunities for laundering. In Angola Unita diamonds get laundered through Ascorp, or smuggled out of Angola via the DRC. Most Sierra Leonean conflict diamonds get smuggled out of the country, same in Guinea. These diamonds are not certified, but sold like that. Congolese diamonds are being exported through Congo Brazzaville.

7 Kimberley: critical outstanding issues

7.1 WTO Compliance

Mr. Nell Phillippe, Swiss State Secretariat for economic affairs/WTO division.

Starting point: the Kimberley certification system

UN General Assembly resolution 55/56 (2000) on the role of the trade in conflict diamonds in fuelling armed conflict called on the international community “to give urgent and careful consideration to devising effective and pragmatic measures to address the problem of conflict diamonds” which would include “the creation and implementation of a simple and workable international certification scheme for rough diamonds”.

The key provision with regard to the question of WTO conformity contained in the Kimberley Process Working Document nr 9/2001 (Section III) is:

“Each Participant should: (...) (c) ensure that no shipment of rough diamonds is imported from or exported to a non-Participant; (...)”.

WTO relevance: the implementing measures

The question of WTO conformity will arise at the level of national implementation. In this context, it is necessary to consider measures to implement the certification scheme itself as well as to enforce it through trade restrictions such as an import or export ban.

Basic WTO rules referring to the certification system

Article I prescribes the general and fundamental most-favoured-nation principle.

Article XI: 1 prescribes that restrictions have to be in the form of “duties, taxes or other charges”. Article XI bans other forms of import and export restraints.

An import and export ban on rough diamonds with regard to WTO members not participating to the certification scheme would constitute a trade restriction prohibited by this provision.

Article XIII: 1 establishes the more specific obligation of non-discrimination with regard to the application of prohibitions and quantitative restrictions.

Exceptions to WTO basic rules: Article XXI GATT

Article XXI(b)

Article XXI(b) contains a general exception for certain measures taken by a member.

It is limited to “*essential security interests*”.

Paragraph (ii) covers any action relating to the traffic of goods carried on “directly or indirectly for the purpose of supplying a military establishment”.

Paragraph (iii) covers action „taken in time of war or other emergency in international relations“.

Article XXI(c)

The exception in Article XXI(c) covers actions in pursuance of the obligations “under the UN Charter for the maintenance of international peace and security”.

Exceptions to WTO basic rules: Article XX GATT

Introductory Clause of Article XX:

According to the introductory clause, measures must not be applied “in a manner that would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail”.

Article XX(a) covers measures necessary to protect “public morals”.

Article XX(b) covers:

Measures designed to protect human life or health;
Measures necessary, that means there is no alternative measure consistent, or less inconsistent, with the GATT (test of necessity).

Article XX(d) refers to the point that:

The laws or regulations with which compliance is being secured are themselves not inconsistent with the GATT.

Other WTO Aspects: Article VIII GATT and Agreement on Import Licensing Procedures

According to **Article VIII.1(c) GATT**, the formalities and documentation requirements for imports and exports should be kept to a minimum in order to facilitate trade.

The **Agreement on Import Licensing Procedures** lays down rules for adopting and implementing national procedures for issuing import licences.

Other WTO Aspects: Agreement on Technical Barriers to Trade (TBT)

Applicability of the TBT Agreement

Since the **TBT Agreement** applies only to “*technical regulations*”, the key question is whether the Kimberley Process certification scheme is such a technical regulation.

Art.1.2 of the TBT Agreement provides that the term “*technical regulation*” has to be interpreted according to the definition in Annex 1.

Obligations under the TBT Agreement

If the TBT Agreement is applicable, participants will have to ensure that national laws or regulations implementing the certification scheme will be drafted in conformity with the relevant provisions. (**Art. 2 of the TBT Agreement**).

Art. 2.2 includes a list of legitimate objectives covered by this provision such as national security requirements, prevention of deceptive practices and protection of human health or safety, animal or plant life or health. These objectives correspond basically to the objectives of the general exceptions of Articles XX and XXI.

Notification Requirements

Art. X GATT imposes requirements relating to the **publication** of trade regulations. According to Article X: 1, trade measures shall be published “*promptly in such a manner as to enable governments and traders to become acquainted with them*”.

The Agreement on Import Licensing Procedures (Art. 5) and the Agreement on Technical Barriers to Trade (Art. 2.9 and 2.10) contain specific notification requirements for trade measures falling within their scope.

Request for a Waiver under Article IX of the WTO Agreement

According to Article IX: 3 of the WTO Agreement, in exceptional circumstances WTO members may decide to waive an obligation imposed on a member by the WTO Agreements, provided that the following requirements are met:

- The decision must in general be taken by three fourths of the members (IX:3);
 - The decision granting a waiver shall state the exceptional circumstances justifying the decision and the date on which the waiver will terminate (IX:4); and
 - Any waiver granted for a period of more than one year shall be reviewed annually until the waiver terminates (IX:4).
-
- Question by Judith Sargentini, Fatal Transactions: What kind of a conclusion can we draw from this presentation? Where do we stand today?
 - No clear answer was given, but the following could be concluded: There is no need to ask the WTO for a waiver, as the Kimberley Process does not create trade barriers.

7.2 Statistics: European Commission:

Mr. Anthonius de Vries, European Commission, DG Relex

There are a number of problems regarding statistics of rough diamonds:

- First of all, there are hardly any statistics available regarding rough diamonds;
- Second, the statistics that are available are unreliable and contain a high level of confusion.

But are statistics necessary?

Yes. Statistics are very necessary because:

- Statistics can show a clear indication about where rough diamonds are going
- Statistics can show a clear indication about where rough diamonds are coming from;
- Statistics can take away the misclassifications;
- With statistics irregularities might be detected.

At this moment there are only unanswered questions on the table. There are no answers regarding collection of statistics,

- A proposal by Alex Yearsley, Global Witness:

As for statistics the problem is not to get them, the problem is timing. There should be:

- Monthly import/export numbers;
- Quarterly production numbers;
- Stock numbers every six months, but are almost impossible to collect.

7.3 Participant Measures (monitoring):

Alex Yearsley, Global Witness

There are three points of main importance regarding this subject:

- Why Monitoring is important in the Kimberley Process?

- The Membership of measurements
- What can monitoring constitute within the Kimberley Process?

First of all, nobody likes to be monitored. There are very good and legitimate reasons for that. In the market people are dealing with highly confidential and commercial sensitive information. In monitoring, confidence in the system is needed, by the industry and governments as well as consumers. If monitoring turns out to be unreliable, consumers lose confidence and a big problem occurs. Russia and China still have problems with the idea of monitoring. This might be a cultural thing.

Global Witness has spent the last 4 years monitoring the diamond industry. Members of Global Witness visit diamond mines all over the world. It is however not the purpose that the NGO's also are going to do the monitoring within the Kimberley Process.

But monitoring in every step from the mine to retailer and further is necessary. We have noticed the mixing of parcels in for example South Africa, where Angolan diamonds are being mixed with the South African production. Every country needs its own system. The far reaching Angolan controls and the Ascorp monopoly seem to work in Angola, but are not necessarily an option for the DRC.

We are discussing the monitoring in countries where rough diamonds are produced, but little is said about the countries where the diamonds occur on the markets, like London and Antwerp. Monitoring has to take place during the whole process from production to consumption by the end-user. This kind of monitoring will be very difficult. Capacity building in various countries is needed.

7.4 Administrative support

David Earnshaw, Oxfam International

As a result of lobbying by certain governments, the word “secretariat” does not appear in the current text under discussion in the Kimberley Process (KP). However, a secretariat will be fundamental to the successful operation of the certification scheme established by the KP. Institutions matter: they create permanence and credibility.

As convener of the “administrative support” working group, the European Commission has set out the administrative and secretariat functions which need to be undertaken in future, drawing from the latest Kimberley Process text. These can be summarised as:

- Acting as a channel of communication, information sharing and consultation
- Collecting and disseminating implementing provisions and statistics;
- The preparation of documents and administrative support; (These ‘administrative support tasks’ actually go to the heart of the KP – they are not secondary issues. Included are: certificate design, designated authorities, non-compliance procedures, statistical information, reporting, law enforcement co-operation, etc.)
- Undertaking additional responsibilities as instructed by the KP plenary

It is difficult to see how these tasks could be envisaged without a secretariat or co-ordinating function of some kind.

The Commission's suggestion that these tasks could be divided between the KP chair, the WDC, the WTO, etc., and an advisory committee, runs the risk of being a recipe for disaster. It might result in practice in the KP being denuded of effective implementation mechanisms

Those remaining opposed to a secretariat should argue why one is unnecessary, rather than assuming that there will not be one. Given the scale and nature of the tasks that are required to be performed, we believe that it would cast doubt on the credibility of the KP itself should it proceed without a Secretariat.

In summary, we believe that a permanent secretariat is necessary:

- Because of the nature and the scale of the tasks to be undertaken
- To ensure that such tasks are performed in a consistent and independent manner

We propose therefore:

- That the creation of a dedicated secretariat is a precondition for the KP to be judged successful.
- Specific financial resources to be attributed to the KP secretariat as its 'own resources'. It is possible to envisage that a small levy be raised, for example, on certificates issued, thereby making the secretariat self financing and not a drain on national resources.
- That the idea of a rotating division of labour, co-ordinated around and assisting the KP Chair, would not be satisfactory for the provision of administrative support. Experience elsewhere demonstrates how inadequate the rotation of functions among member states becomes. As Javier Solana commented about the EU presidency, its rotation becomes "a source of disequilibrium and permanent discontinuity".
- At an absolute acceptable minimum it is possible to envisage, say, a five-year duration chairmanship undertaking all KP administrative and secretariat functions. This could rotate between producer countries and importing countries, first South Africa, say, for five years, followed by the European Union. However, such a solution must have the ability to identify problems and propose action and/or solutions.
- Among tasks that it is vital that the Secretariat performs are: a role to analyse statistics – not just gather them – and to assist (and channel resources even) towards members needing support and capacity building.

7.5 Questions

- The Ambassador of Botswana in Brussels, H.E., Mr. S. George: Botswana has problems with the fact that when a secretariat is called into life, stock figures have to be presented. These figures could be used against the country on the trading market of diamonds. In general, the ambassador agrees with the fact that a secretariat might be necessary but there should be more information about what and how beforehand.

Mr. Anthonius de Vries proposes: The World diamond Council to function as a **secretariat in respect of a number of functions that do not imply discretionary power.**

8 The other half of the picture: capacity building in Africa

Mr. Vincent Dowd, European Commission, DG Development, Desk officer SADC

Regarding the subject of conflict diamonds there are two main points:

- World trade of diamonds
- Transport of diamonds

The majority of the SADC member states are in one way or another involved in the diamond trade. To battle the trade in conflict diamonds these countries need to strengthen their capacities. The European Commission, and DG development in particular, could play a role in this. However, we should not forget that the funds belong to the developing countries. It is them who decide what they want to use the money for.

If members of the South African Development Community propose to the European Union to put the issue of conflict diamonds on the agenda the EU is more than willing to discuss this topic. This could be EU –SADC meeting in Copenhagen in November 2002.

9 Does Europe need to improve on Kimberley?

Chairman Max van den Berg: Concluding: If countries want to get involved in the Kimberley system they are most welcome. More countries should become part of the process. If they need our support to enlarge their capacity, Europe should be there to support them. Countries should make use of the European role.

We need a trustworthy control system within a very short period of time, to maintain public support. Without public support, political goals almost impossible to accomplish. We need the people of Europe and Africa to make Kimberley happen.

A thanks goes out to OXFAM, NiZA, Fatal Transactions, all speakers and participants.

Unfortunately there was too little time left to elaborate on this issue. Further discussion is needed though. The EU, being the largest importer of rough diamonds, has a clear and specific interest in an effective, trustworthy control system. To end the traffic in blood diamonds, we need effective monitoring from mines to retailers. This means the EU has to act on various levels.

African countries *need* the support of the EU to strengthen their capacity. Too often the African side of the problem tends to be forgotten when dealing with this issue. However, without effective action on the conflict side, any measures taken within EU borders are useless. African countries need the support of the EU to strengthen their capacity. Without strong monitoring provisions within Africa itself, the EU will not be able to assure European citizens that conflict diamonds that have contributed to finance brutal wars in Africa are *not* entering Europe.

And, without strong and independent monitoring provisions, the EU will not be able to assure European citizens that conflict diamonds are *not* entering Europe. Only with the full support of all those that attended the meeting, and the many others that are somehow involved in the diamond trade, conflict resolution, development, trade- and foreign policymaking and the struggle against terror, we can break the link between the trade in conflict diamonds and the perpetuation of violent conflicts. Europe, its industry and all its member states need to show that their interest is peace and security, not their own economic and trade interests. This will demand a lot work on the practical level and considerable political will.

In the upcoming months till the Switzerland Kimberley meeting we hope to hear a clear, unified European voice that pushes for controlled world-wide regulation of conflict diamonds. In the meantime we will keep the debate alive and watch closely what happens, so that the Kimberley Process becomes, in the end, a watchdog that really bites.

10 Annex I The participants

- Mr Max van den Berg, MEP, vice chair of the party of European Socialists, vice-chair of the Development Committee
www.maxvandenbergnl.nl
- Dr Philippe Le Billion, Research associate, The International Institute for Strategic Studies, UK
www.iiss.org
- Mr Anthonius de Vries, European Commission, Economic and Financial Sanctions Co-ordinator, Directorate General external relations
www.europa.eu.int
- Mr Rory More O’Ferral, World Diamond Council, Director Corporate affairs, De Beers, UK
www.worlddiamondcouncil.com
www.debeersgroup.com
- Mr Philippe Nell, Swiss State Secretariat for economic affairs/WTO Division
www.seco.admin.ch
www.wto.org
- Mr Alex Yearsley, campaigner Global Witness, UK
www.globalwitness.org
- Mr David Earnshaw, Oxfam International, head of EU advocacy office, Brussels
www.oxfaminternational.org
- Mr Vincent Dowd, European Commission, DG Development, Desk officer SADC
europa.eu.int/comm/dgs/development/mission_en.htm

For further information:

www.niza.nl/fataltransactions

www.kimberleyprocess.com

11 Annex II Participants List

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|-----|------------------------------|--|
| 1. | Mr. R. van der Linden | NiZA |
| 2. | Ms. K. Hund | NiZA, Fatal Transactions |
| 1. | Ms. J. Sargentini | Fatal Transactions |
| 1. | Ms S. Villa Hopkins | Oxfam international |
| 2. | Mr. D. Earnshaw | Oxfam international |
| 3. | Mr. A. Yearsley | Global Witness, UK |
| 4. | Ms. L. Ribeiro | Global Witness, UK |
| 5. | Ms N. Pauwels | ISIS, B |
| 6. | Mr. M. Weima | Novib, NL |
| 7. | Ms. Marleen van Ruyven, | Amnesty International, NL. |
| 8. | Ms. A. Jung | Medico, D |
| 9. | Mr. G. Speckmann | Medico, D |
| 10. | Ms. A. Wameyo | Action Aid, UK |
| 11. | Mr. A. Tybjerg | IBIS, DK |
| 12. | Ms. A. Bookstein | Oxfam , UK |
| 13. | Mr. P. Le Billon | International Institute for Strategic Studies,
UK |
| 14. | Ms. J. Hawley | Amnesty International, UK |
| 15. | Mr. M. Marriot | UK, diamond councillor |
| 16. | Mr. M.Herman | Broederlijk Delen, B |
| 17. | Mr. A.W. de Vries | Economic and Financial Sanctions Co-
ordinator, DG External relations |
| 18. | Ms Jette Egelund | DG External relations |
| 19. | Mr. D. Daeycart | Ministry of Economic Affairs, Economic
Relations Dept., B |
| 20. | Anja WAEM, | Ministry of Economic Affairs, B |
| 21. | Mr. C. Wright | Foreign and Commonwealth Office, GB |
| 22. | Ms. F. Juilland | State Secretariat for Economic Affairs, Sw |
| 23. | Mr. P. Nell | State Secretariat for Economic Affairs, Sw |
| 24. | Mr. K. Somqueza | Embassy of South Africa and mission to the
EU |
| 25. | Ms. A. Veldkamp | Ministry of Foreign Affairs, NL |
| 26. | H. E. Mr. S. C. George | Embassy of the republic of Botswana |
| 27. | Mr. M. K. J. Masisi | Embassy of the republic of Botswana |
| 28. | Mr. M. Damas Nunes | Embassy of Portugal |
| 29. | Mr J. Larsen | Embassy of Australia |
| 30. | Mr. M. van den Berg | MEP- PES |
| 31. | Ms. M. Hutjes | Assistant Max van den Berg |
| 32. | Ms. L. Moreno de Porras-Isla | Assistant Fernando Fernandez Martin-MEP |
| 33. | Mr G. Kramer | MEP-PES |
| 34. | Ms. C. Randzio-Plath | MEP – PES |
| 35. | Mr. M. Maertens | Belgian Senate |
| 36. | Mr. Christiaan DE BEULE | Belgian Senate |
| 37. | Mr. J. van Hecke | MEP – EPP |
| 38. | Ms. A. Thors | MEP – ELDR |

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|-----|-----------------------|--------------------------------------|
| 39. | Mr. V. Dowd | DG Development |
| 40. | Mr. R. J.C. Manguera | MRE-Angola |
| 41. | Mr. J. Zimmerman | Ascorp S.A.R.L. – Angola, Israel |
| 42. | Mr. W. Heiler | Rapaport Belgium |
| 43. | Mr C.Philip | HRD, B |
| 44. | Mr R. More O'Ferrall | WDC, De Beers Group, UK |
| 45. | Mr. T. Siepelmeyer | Fair Trade Diamonds and Jewellery, D |
| 46. | Mr. G. Hörnlein | Fair Trade Diamonds and Jewellery, D |
| 47. | Ms Zuluaga Zilbermann | Hill and Knowlton |
| 48. | Mr. M Limon | Hill and Knowlton |
| 49. | Ms. S. Casino Díaz | Weber Shandwick, Adamson |

12 Annex III Resolution UNGA A/56/263

THE ROLE OF DIAMONDS IN FUELLING CONFLICT

13 March 2002

Breaking the link between the illicit transaction of rough diamonds and armed conflict as a contribution to prevention and settlement of conflicts

PP1 RECOGNISING that the trade in conflict diamonds is a matter of serious international concern, which can be directly linked to the fuelling of armed conflict, the activities of rebel movements aimed at undermining or overthrowing legitimate governments, and the illicit traffic in, and proliferation of armaments, especially small arms and light weapons;

PP2 FURTHER RECOGNISING the devastating impact of conflicts fuelled by the trade in conflict diamonds on the peace, safety and security of people in affected countries and the systematic and gross human rights violations that have been perpetrated in such conflicts;

PP3 NOTING the negative impact of such conflicts on regional stability and the obligations placed upon states by the United Nations Charter regarding the maintenance of international peace and security;

PP4 RECOGNISING therefore that urgent action to curb the trade in conflict diamonds is imperative;

PP5 RECOGNISING the positive benefits of the legitimate diamond trade to producing countries, and underlining the need for urgent international action to prevent the problem of conflict diamonds from negatively affecting the trade in legitimate diamonds, which makes a critical contribution to the economies of many of the producing, exporting and importing states, especially developing states;

PP6 NOTING that the vast majority of rough diamonds produced in the world are from legitimate sources;

PP7 RECALLING all the relevant resolutions related to conflict diamonds of the United Nations Security Council under Chapter VII of the United Nations Charter and determined to contribute to and support the implementation of the measures provided for in these resolutions;

PP8 RECALLING United Nations General Assembly Resolution 55/56 (2000) calling on the international community to develop detailed proposals for a simple and workable international certification scheme for rough diamonds based primarily on national certification schemes and on internationally agreed minimum standards;

PP9 BELIEVING that the opportunity for conflict diamonds to play a role in fuelling armed conflict can be substantially reduced by introducing an international certification scheme for rough diamonds and that such a scheme would help protect the legitimate trade and ensure the effective implementation of the relevant resolutions of the United Nations Security Council containing sanctions on the trade in conflict diamonds;

Implementing Kimberley: Stopping the blood diamond trade to Europe

PP10 EMPHASISING that the envisaged international certification scheme for rough diamonds should be simple, effective and pragmatic, should not impede the present legitimate trade in diamonds or impose an undue burden on Governments or industry, particularly smaller producers, and should not hinder the development of the diamond industry;

PP11 ACKNOWLEDGING the important initiatives already taken to address the problem of conflict diamonds, in particular by the governments of Angola, the Democratic Republic of Congo, Guinea and Sierra Leone and by other key producing, exporting and importing countries and encouraging those governments to continue the initiatives;

PP12 ACKNOWLEDGING also the continued efforts of regional organisations and other groups of countries to curb the conflict diamonds;

PP13 WELCOMING the important contribution made by the diamond industry, in particular the World Diamond Council, as well as civil society, to assist international efforts to stop the trade in conflict diamonds;

PP14 WELCOMING voluntary self-regulation initiatives for the diamond industry announced by the World Diamond Council and recognising that a system of such voluntary self-regulation will contribute to ensuring the effectiveness of national systems of internal controls for rough diamonds;

PP15 RECOGNISING that an international certification scheme for rough diamonds will only be credible if all participants have established internal systems of control designed to eliminate the presence of conflict diamonds in the chain of producing, exporting and importing rough diamonds within their own territories, while taking into account that differences in production methods and trading practices as well as differences in institutional controls thereof may require different approaches to meet minimum standards;

PP16 WELCOMING the important contribution made by the Kimberley Process, which was initiated by African producing countries toward developing proposals for the envisaged international certification scheme;

PP17 NOTING with appreciation that the Kimberley Process has pursued its deliberations on an inclusive basis, involving concerned stake-holders including producing, exporting and importing states, the diamond industry and civil society;

PP18 RECOGNISING that state sovereignty should be fully respected and the principles of equality, mutual benefits and consensus should be adhered to.

OP1. NOTES with appreciation the report by the Chair of the Kimberley Process submitted pursuant to Resolution 55/56 and congratulates the Kimberley Process participants on their achievements thus far;

OP2. RECOGNISES that the proposed international certification scheme for rough diamonds will also help to ensure the effective implementation of relevant resolutions of the United Nations Security Council containing sanctions on the trade in conflict diamonds and calls for full implementation of existing Security Council measures targeting the illicit trade in rough diamonds that play a role in fuelling conflict;

- OP3. WELCOMES the detailed proposals for an international certification scheme for rough diamonds developed in the Kimberley Process and presented in the form of Kimberley Process Working Document 9/2001 (as amended) “Essential Elements of an International Scheme of Certification for Rough Diamonds, with a view to breaking the link between armed conflict and the trade in rough diamonds”, dated 29 November 2001, which provides a good basis for the proposed certification scheme;
- OP4. ENCOURAGES the Kimberley Process to resolve outstanding issues;
- OP5. EMPHASISES the importance of ensuring that the measures taken to implement the international certification scheme for rough diamonds be consistent with international law governing international trade;
- OP6. URGES the finalisation of the international certification scheme, and its subsequent implementation, as soon as possible, recognising the urgency of the situation from a humanitarian and security standpoint;
- OP7. UNDERLINES the need, as an essential tool for the successful implementation of the proposed international certification scheme, for the collation and dissemination of relevant statistical data on the production of, and international trade in, rough diamonds;
- OP8. SUPPORTS the extension of the work of the Kimberley Process until such time as an international certification scheme is adopted and its simultaneous implementation by participants begins;
- OP9. URGES Member States to participate actively in the proposed international certification scheme, and stresses that the widest possible participation in the proposed international certification scheme is essential and should be encouraged and facilitated;
- OP10. WELCOMES the offer by the Government of Canada to host the next meeting of the Kimberley Process in Ottawa, in order to achieve further progress;
- OP11. REQUESTS the countries participating in the Kimberley Process to present to the General Assembly, no later than its 57th session, a report on progress made;
- OP12. DECIDES to include in the provisional agenda of its 57th session the item entitled "The role of diamonds in fuelling conflict".