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INTERNATIONAL COURT OF JUSTICE

**CASE CONCERNING *AHMADOU SADIO DIALLO*
(*REPUBLIC OF GUINEA v. DEMOCRATIC REPUBLIC OF THE CONGO*)**

MEMORIAL OF THE REPUBLIC OF GUINEA

BOOK II

ANNEXES

23 March 2001

[Translation by the Registry]

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19	9 July 1984	Letter from Africontainers AFC/DF/BS/3784 to Gécamines BP 450 Lubumbashi for the attention of Mr. Rousseau, Director of Transport, concerning the immobilization of containers in the Gécamines depots
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22	6 September 1984	Internal letter of Gécamines on the immobilization of Africontainers containers
24	22 October 1984	Internal letter of Gécamines following an internal check of Africontainers containers not in use - Annex to letter GES/MAG No. 265/84
25	7 May 1985	Africontainers letter to Gécamines DIE BP 450 Lubumbashi for the attention of the Director (DIE) concerning the immobilization of containers
26	20 June 1985	[Not translated]
29	18 May 1986	[Not translated]
30	18 June 1986	[Not translated]
31	18 June 1986	[Not translated]
32	26 June 1986	[Not translated]
34	19 July 1986	Correspondence from the Republic of Zaire, Department of Finance and the Budget, to the Managing Director of Africom-Zaire in Kinshasa

35	2 August 1986	Letter No. 40297/TRP/DIE from Gécamines to Africontainers for the transport of containers to Matadi by Onatra
36	22 October 1986	Letter from the Commissioner for Finance, the Budget and Investment to the Chairman and Managing Director of RENAPI concerning the Africom Order
37	17 January 1987	Letter from Mr. Diallo to the Commissioner for Finance on the subject of the payment of orders
43	29 July 1987	Telegram from Co-ordination Director Port/Matadi concerning recall of Africontainers containers
44	31 August 1987	Letter No. 056/87 from Africontainers to Gécamines Department of Transport on the immobilization of AFC containers in Luilu Depot
46	13 November 1987	[Not translated]
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48	13 November 1987	[Not translated]
49	13 November 1987	[Not translated]
50	13 November 1987	[Not translated]
51	22 December 1987	Letter to the Governor of the Bank of Zaire, from Assistant State Commissioner Republic of Zaire Department of Finance
52	31 December 1987	Investment Committee Interdepartmental Order No. CAB./PLAN/0144/87
53	14 January 1988	Letter from the First Commissioner of Zaire to the Commissioner for Finance
55	20 February 1989	Letter 122/30/01/3.01 from Ports Department to Co-Ordination Directorate of Port Matadi, t.c.m. Sub-directorate, concerning prolonged immobilization of local containers in Matadi, response to letter No. 663/TCM/X10 KW/VLL/87
57	27 July 1989	Letter from the Director of the Bureau of the President of Zaire to the First Commissioner
61	17 March 1990	Letter from Africontainers to Gécamines concerning the prolonged immobilization and non-use of containers in Matadi
62	5 April 1990	Letter from Gécamines to Africontainers concerning the prolonged immobilization and non-use of containers in Matadi
63	16 April 1990	Letter from Gécamines to Onatra concerning complaints on the prolonged immobilization and non-use of containers in Matadi
66	12 May 1990	Letter afc/90 to the cabinet of Maître Panzu, Appeal Court Attorney in Kinshasa/Gombe concerning transmission of the complete file on the dispute with Onatra
67	12 May 1990	Letter from Africontainers to the Guinean Ambassador to Zaire
68	23 May 1990	Letter from the National Business Association of Zaire (ANEZA) to Uamba Kyamitala, Chairman and Managing Director of Onatra concerning settlement of Africontainers dispute
69	6 June 1990	Memorandum of Agreement for settlement of dispute between Onatra and Africontainers
70	6 June 1990	Letter from Onatra to Africontainers concerning settlement of dispute

71	3 August 1990	Letter from the Ministry of Finance to the Chairman and Managing Director of the Office for the Management of the Public Debt (OGEDEP) for settlement of the Africom-Zaire dispute
72	12 October 1990	Letter from Africontainers to Onatra repudiating the Memorandum of Agreement of 6/6/90
82	16 March 1991	[Not translated]
84	6 April 1991	Letter from Gécamines to Onatra concerning the immobilization of an Africontainers container
85	20 May 1991	Letter from Gécamines to Africontainers on eight damaged containers
87	26 June 1991	Letter from Africontainers to Gécamines holding Gécamines liable for the damaged containers
88	3 July 1991	Debit note concerning the immobilization of africontainers containers for 3 million zaires
90	16 July 1991	Letter from Gécamines to Africontainers on the subject of eight damaged containers
91	18 July 1991	Letter from Attorney Francis Mayar to the Chairman of Onatra
93	16 August 1991	Report on the visit by Africontainers to Lubumbashi
95	9 September 1991	Letter from Mr. Diallo to Gécamines denouncing the breach of the exclusivity of contractual relations between Africontainers and Gécamines and setting out the cause of the damage to the containers
98	7 January 1992	Letter from Gécamines to Africontainers concerning refusal to pay debit note 007/AFC/DG/91
99	24 January 1992	Letter from Gécamines to Africontainers on the development of the situation concerning the damaged containers
100	11 February 1992	Letter from Africontainers to Gécamines on 22 containers for which Gécamines is still responsible
115	19 October 1992	Letter from Mr. Diallo's lawyer, Maître Francis Mayar Akon, to the Paris branch of Citybank
116	19 October 1992	Letter from Zaire Shell to Africontainers on the review of prices for container transport
121	10 December 1992	[Not translated]
122	9 March 1993	Letter from Maître Francis Mayer Akon to Gécamines Exploitation (Legal Division) concerning claims of Africontainers
130	24 August 1993	Judgment of the Kinshasa/Gombe <i>Tribunal de Grande Instance</i> RH 25.587 / RC 61.320
142	20 May 1994	[Not translated]
146	11 January 1995	Submissions of the <i>Ministère Public</i> (Public Prosecutor) in the appeal on points of law against appeal court judgment RCA 17244
149	20 April 1995	Submissions of the <i>Ministère Public</i> (Public Prosecutor) in the appeal on points of law against appeal court judgment RCA 17 229 of 24 February 1994
150	29 May 1995	Letter from Gécamines to all its forwarding agents and parties to the Tripartite Contract
151	8 June 1995	Minutes of the meeting held on 1 June 1995 between Gécamines and Africontainers on the use by Gécamines of Africontainers' containers under the Tripartite Contract
153	3 July 1995	Judgment of the Kinshasa/Gombe <i>Tribunal de Grande Instance</i> RCA 63824 RH 26767

166	29 August 1995	Letter from Zaire Shell to the Minister of Justice of Zaire concerning the request for a stay of execution on judgments
167	29 August 1995	Notice and Order RH26853 in respect of Judgment RCA18307
169	5 September 1995	Report with a view to obtaining approval for execution of Judgment RC 63824 in the <i>Africontainers v. Zaire Shell</i> case
170	13 September 1995	Letter No. 0247/CAB PP/CAKG/AG/95 from the Office of the First President, Kinshasa Appeal Court, to the Enforcement Department of the Kinshasa <i>Tribunal de Grande Instance</i> under cover of a letter to the President of the Kinshasa <i>Tribunal de Grande Instance</i> concerning the <i>Zaire Shell v. Africontainers</i> case — RCA 18307
171	13 September 1995	Bailiff's report in execution of Order RH26853 (<i>Africontainers v. Zaire Shell</i>)
177	28 September 1995	Letter No. 850/CAB/MIN/RIJ & GS/95 from the Minister of Justice, Joseph N'Singa Uduu, to the First President of Kinshasa/Gombé Court of Appeal
178	29 September 1995	Letter from Africontainers forwarding debit note No. 064/AFC/DG/95 for settlement of invoices addressed to Zaire Shell from 1982 to 1990
179	6 October 1995	Attachment of goods (notice RH26853) against Zaire Shell
182	2 November 1995	Letter from Africontainers 076/AFC/DG/95 forwarding debit note No. 068/95/AFC/DG/95 of 20/10/95 to Zaire Fina
183	2 November 1995	Letter from Africontainers 078/AFC/DG/95 forwarding debit note No. 069/95/AFC/DG/95 of 20/10/95 to Zaire Mobil Oil
187	30 November 1995	Letter from Africontainers to the Prime Minister of the Republic of Zaire concerning the transmission of files on debts owed to Africontainers by Gécamines, Zaire Shell, Zaire Fina and Zaire Mobil Oil
188	30 November 1995	Letter from Africontainers to the Minister of Finance of the Republic of Zaire concerning the transmission of files on debts owed to Africontainers by Gécamines, Zaire Shell, Zaire Fina and Zaire Mobil Oil
189	30 November 1995	Letter from Africontainers to the Minister of Planning of the Republic of Zaire concerning the transmission of files on debts owed to Africontainers by Gécamines, Zaire Shell, Zaire Fina and Zaire Mobil Oil
190	13 December 1995	Letter from the Chairman of <i>Avocats sans Frontières</i> , Maître Bontshi, to the Prime Minister of Zaire, Kinshasa/Gombé
191	15 December 1995	[Not translated]
192	21 December 1995	Letter from the Ambassador of Guinea in Kinshasa to the Guinean Minister for Foreign Affairs and to the President of the Republic of Guinea
193	4 January 1996	"Flagrant violation of human rights in Zaire", in <i>Kinshasa Business and News</i> , No. 22
194	10 January 1996	Release document for Mr. Diallo
196	31 January 1996	[Not translated]
197	31 January 1996	Refusal-of-entry notice (<i>Procès verbal de refoulement</i>) concerning Mr. Diallo
198	5 February 1996	Formal demand for payment (<i>Sommation</i>) served by bailiff on Gécamines
199	9 February 1996	[Not translated]
200	12 February 1996	[Not translated]

201	12 February 1996	Letter from the chambers of Mayor Akon BNK/MNM/D.3394 SF 10 to Africontainers, forwarding demand for payment
203	April 1996	Letter from the Minister for Foreign Affairs of Guinea to the Secretary General of the Presidency of the Republic of Guinea, Conakry
205	12 July 1996	Letter from the Minister of Justice to the Inspector-General of Courts allowing a request for the stay of execution of Judgment RCA 17244 RH 25919
206	6 August 1996	"A Guinean thorn in the side for Zaire", in <i>Horoya</i> No. 4443
208	November 1996	Diallo-Cravates declined to drink the poison draught
210	4 december 1996	Letter from Gécamines to freight forwarders proposing meeting for 9/12/96, together with agenda for a meeting
212	11 December 1996	Letter from the Guinean Minister of Justice to the Guinean Minister for Foreign Affairs enclosing a report on the expulsion of Diallo and on the possibility of exercising diplomatic protection
213	9 January 1997	Letter from Africontainers to the Guinean Ambassador in the DRC forwarding to him the minutes of the meeting of 9/12/96
216	11 February 1997	Letter from the Guinean Minister for Foreign Affairs to the Guinean Ambassador to Zaire, following up the Diallo case
217	24 February 1997	Letter of support from the Secretary General of the Guinean National Assembly to Mr. Amadou S. Diallo
219	13 March 1997	Letter from Mr. Amadou S. Diallo to Zairean Ministers claiming loss on investment in respect of an Africontainers vessel
222	26 June 1997	Letter from Gécamines to Africontainers inviting the latter to a working meeting
223	1 July 1997	Letter from the Guinean Ambassador to Zaire to the Guinean Minister for Foreign Affairs
224	2 July 1997	Minutes of the working meeting of 2/7/97 between Africontainers and Gécamines
226	7 July 1997	Minutes of the working meeting of 7/7/97 between Africontainers and Gécamines
245	4 February 1998	Letter No. 24/AOD/JK/2/98 from Maître Alpha Oumar Diallo to the President of the Democratic Republic of the Congo for information in the case <i>Ahmadou Sadio Diallo v. the DRC</i> (former Zaire)
246	4 February 1998	Letter No. 25/A.O.D./JK/2/98 from Maître Alpha Oumar Diallo to the Minister of Justice of the DRC for information in the case <i>Ahmadou Sadio Diallo v. DRC</i> (former Zaire)
248	16 March 1998	Letter No. 48/AOD/JK/3/98 from Maître Alpha Oumar Diallo to the President of the DRC concerning the dispute between Ahmadou Sadio Diallo and the DRC (former Zaire)
249	16 March 1998	Letter No. 49/A.O.D./JK/3/98 from Maître Alpha O. Diallo to the Minister of Justice of the DRC concerning the dispute Ahmadou Sadio Diallo v. the DRC (former Zaire)

ANNEX 1

18 SEPTEMBER 1979

ARTICLES OF ASSOCIATION OF AFRICONTAINERS AND NOTARIAL ACT

Africontainers Zaire, Private Limited Company (*Société Privée à Responsabilité Limitée*)
Registered Office: Kinshasa

Memorandum and Articles of Association

By and between the undersigned:

1. Mr. Kibeti Zala, a Zairean national, born in Mbanza-Ngunga (Bas-Zaire) on 11 March 1931, residing in Kinshasa at 5 avenue de la Maternité, Djelo-Binza, Ngaliema District.

2. The Private Limited Company (SPRL) Africom-Zaire, registered at the Companies Registry of Kinshasa under number 80.427, having its registered office in that city at CCIZ Building, 16th floor, B 50, Gombe District, represented by its Managing Director (*gérant*), Mr. Diallo Amadou, a Guinean national, adopting the said address for the purposes hereof.

3. Mrs. Colette Dewast, a French national, born in Lille (France) on 23 October 1952, residing in Kinshasa at 3572 Allée verte, Ngaliema District.

It has been decided and agreed as follows:

Section I. Name — Registered Office — Corporate Purpose — Division of Capital — Management:

Article 1: A private limited company, governed by the laws of Zaire, is hereby established by and between the above-mentioned parties, under the name "Africontainers Zaire".

Article 2: The registered office shall be located in Kinshasa, at the offices of the company Africom-Zaire, on the 16th floor of the International Trade Centre Building. It may be relocated to any other place in the Republic by resolution of the general meeting of shareholders, passed in compliance with the formalities and conditions governing amendments to the articles of association.

Article 3: The corporate purpose shall be to carry on commercial activities in the broadest sense, in particular buying and selling, import and export, the carriage of goods, construction, commission and brokerage transactions and all other acts or transactions in accordance with Article 16.

The corporate purpose may be amended by a resolution of the general meeting, passed under the conditions provided for in Articles 21 *et seq.*

Article 4: The registered capital shall be fixed at 100,000 zaires, divided into 100 shares with a par value of 1,000 zaires each. The shares have been subscribed as follows:

1. Kibeti Zala: 40 shares (40,000 zaires),
2. Africom-Zaire: 30 shares (30,000 zaires),

3. Colette Dewast: 30 shares (30,000 zaires).

Each share has been fully paid up in cash, such that the company has a sum of 100,000 zaires at its disposal.

Article 5: The company shall be managed by a managing director (*gérant*) whose powers are set out in Articles 15 *et seq.*

Mr. Alain David, a French national, born in Lille (France) on 22 May 1948, residing in Kinshasa, is hereby appointed as initial managing director (*gérant*).

Section II. Duration — Capital — Shares:

Article 6: The company may at any time be converted into a Zairean public company limited by shares (*Société par Actions à Responsabilité Limitée*) without establishing a new legal entity.

The company is hereby incorporated for an indefinite period with effect from the execution of the present instrument.

Article 7: The liability of each member in respect of corporate obligations shall be limited to the amount of his/her shareholding in the company.

Article 8: The registered capital may be increased by resolution of the general meeting; the members agree to subscribe to any capital increases that may be required to implement any programmes drawn up by the management.

Any subscribed shares not fully paid up shall be paid up in full in response to a call by the management.

Failure to respond to such a call shall result in the dismissal of the defaulting member and the public sale of his/her shares in accordance with the procedure provided for in Articles 62 and 63 of the Decree of 23 June 1960 on commercial companies.

Any reduction in capital shall be carried out in compliance with the conditions laid down by the laws of Zaire.

Article 9: Each share shall confer an equal right to any distribution of profits and of the proceeds of liquidation.

Article 10: Heirs of individual members may not, for any reason whatsoever, require corporate seals to be placed on assets, securities or documents of the company, demand its partition or sale by auction, or interfere in any way in its administration. In order to exercise their rights, they shall refer to the corporate accounts and statements of assets and liabilities and shall abide by decisions of the general meeting; they shall not be entitled to demand any extraordinary documents, certificates or statements of assets and liabilities.

Article 11: Shares shall not be validly assigned *inter vivos* or transferred in the event of death, save with the approval of at least one half of the members holding at least three-quarters of the capital remaining after deducting the rights proposed for assignment, in accordance with the procedure laid down in Articles 58 and 59 of the Decree of 23 June 1960 supplementing the legislation on commercial companies.

However, such approval shall not be required where shares are assigned or transferred to:

1. another member;
2. the spouse of the assignor or testator;
3. any natural or legal persons designated by the founding members in the event of the company being converted to a public company limited by shares or in the event of an increase in capital.

Article 12: Shares may not be represented by a registered or bearer security or by a security payable to order; each member's rights shall derive from the present instrument or from any subsequent instruments of amendment and from any shares assigned in the lawful manner.

Shares which may, under domestic law, be numbered, shall be entered in the register of members, which shall be held at the registered office and contain:

1. the exact designation of each member;
2. the number of shares belonging to each member;
3. record of any payments made;
4. assignments of shares *inter vivos* indicating the date of assignment, signed and dated by the assignor and the assignee or their agents;
5. transfers in the event of death and allotments of shares indicating the date thereof, signed and dated by the management and the beneficiary or their agents;
6. allocations of life interests or pledges.

Article 13: Assignments *inter vivos*, transfers in the event of death, allotments in the event of partition and dispositions subsequent to a public auction shall be binding on the company only from the date on which they are recorded in the register of members.

This shall further apply to third parties, who may nevertheless rely thereon.

Section III. Governance — Supervision:

Article 14: The company shall be managed by one or more managers (*gérants*), who may or may not be members, appointed by the general meeting.

Where more than one manager is appointed, the general meeting shall decide whether they shall exercise their powers separately or jointly.

A manager may resign by giving three months' notice.

Article 15: The management shall be fully entitled to act in the name and on behalf of the company.

Its powers of representation outside the company shall be limited only by those reserved by law for the general meeting of shareholders.

Its managerial powers within the company shall be limited only by law and, if appropriate, by the present articles of association.

Article 16: The management shall be entitled to establish administrative bases in the Republic of Zaire and branches, offices, agencies, depots or trading outlets in any location whatsoever, whether in the Republic of Zaire or abroad.

The company's purposes shall further include any financial, industrial, civil, commercial, movable or immovable acts or transactions directly or indirectly related to its principal corporate purpose or capable of promoting the development or facilitating the fulfilment of such purpose in the territory of the Republic of Zaire or abroad; the company's interest may also be furthered by means of asset transfer, merger, subscription, financial or any other manner of intervention in any companies or undertakings whose purpose is similar or connected, in whole or in part, to its own or of such a nature as to facilitate the fulfilment of its corporate purpose.

The foregoing list constitutes a general statement and is not exhaustive.

In all acts engaging the company's liability, the signature of the manager (*gérant*) or managers must be preceded by the company name or be followed immediately by an indication of the capacity in which the signatory is acting.

Article 17: The management may delegate to one of the members or to third parties or confer on one of its managers any powers necessary for the performance of daily managerial duties. It shall determine the powers to be conferred and, where necessary, the remuneration of such agents; delegated powers may be revoked at any time.

Article 18: The manager(s) shall not undertake any personal obligation that may entail commitments on behalf of the company. The management shall be entitled, irrespective of travel and representation expenses or any other costs deemed necessary for the performance of their duties, to compensation fixed by the general meeting and charged to administrative expenses.

Article 19: Each of the members shall exercise supervision over the company. Should the company consist of more than five members, supervision shall be exercised by at least one auditor appointed by the general meeting, which shall fix his/her term of office and remuneration.

Section IV. General meetings of shareholders

Article 20: An ordinary general meeting shall be held every year on the second Tuesday of March or, if that day is a public holiday, on the first subsequent working day, at the registered office or at any other location to be determined by the management. Such meeting shall be held for the first time on the second Tuesday in March following the closure of the first financial year.

Notices of all general meetings shall contain an agenda and shall be communicated to each of the members by registered letter despatched no less than 20 days before the meeting. Should the agenda comprise amendments to the articles of association, the object of the proposed amendments must be specified in the notice of meeting.

Should the proposed amendment concern the corporate purpose, a special management report on that amendment, containing a recent statement and summary of the company's assets and liabilities, shall be attached to the notice. Where the amendment concerns a reduction or increase in capital or in the number of shares, the notice must indicate the manner in which such reduction or increase is to be effected.

Where the reduction is to be effected by reimbursing members, such reimbursement may be effected only six months after publication of that resolution. In any event, capital reduction may not prejudice the rights of third parties.

Article 21:

- (a) Resolutions of the general meeting shall be passed by a majority of three-quarters of the votes irrespective of the number of shares owned by the members present or represented at the meeting.
- (b) Where amendments to the articles of association are involved, the members present or represented at the meeting must hold at least three-quarters of the total number of shares. If that condition is not fulfilled, an official report to such effect shall be drawn up, a new meeting shall be held and the resolution of the second general meeting shall be valid, irrespective of the number of shares held by the members present or represented at that meeting.

Amendments may be adopted only by a majority of the votes cast and the majority required for any amendment concerning the purpose or nationality of the company shall be four-fifths of the votes cast.

Article 22: Each share shall confer one vote and all members shall have the right to vote at general meetings.

Partners may arrange to be represented by an agent chosen from amongst the members or by another representative.

Owners of undivided interests or life interests, remaindermen, creditors and pledgee debtors must arrange to be represented by one and the same person, otherwise the voting rights attaching to their shares shall be suspended.

The minutes shall be signed by the chairman, designated from amongst the members or their representatives, and the management shall be responsible for circulating such minutes.

Article 23: At the annual general meeting the management report shall be read out and a vote shall be taken on the balance sheet and the profit and loss account; finally, a decision shall be taken on the appropriation of profits.

The annual general meeting shall then, by a special vote, declare the discharge of the serving manager(s) or the auditor(s), if any, for the performance of their duties.

Section V. Statement of assets and liabilities — Balance sheet:

Article 24: The financial year shall commence on 1 January and shall terminate on 31 December each year.

Exceptionally, the first financial year shall commence on the day the present instrument is signed and shall expire on 31 December following the first 12 months of the company's existence.

Article 25: The management, at the end of each financial year, shall close the accounts and draw up a statement of the company's movable and immovable assets and all corporate payables and receivables. Notes to the statement shall contain a summary of all liabilities, particularly guarantees and warranties and the payables and receivables of each member, manager and auditor vis-à-vis the company.

Each year the management shall draw up a report on the fulfilment of its remit and on the company's transactions during the financial year. That report must comment on the balance sheet and the profit and loss account and make proposals for the appropriation of any profits.

The management must provide members, at least 40 days before the general meeting, with the statement of assets and liabilities, balance sheet, profit and loss account and management report, together with supporting documentation. The auditor shall, within 15 days at the latest following the management report, draw up a report on the fulfilment of his/her terms of reference, on the keeping of the accounts and on the documents forwarded to him/her by the management. That report must contain observations and proposals.

Article 26: The balance sheet, the profit and loss account and the reports shall be annexed to notices of meeting.

Article 27: Any balance sheet surplus, after deduction of charges, general administrative expenses and necessary amortization allowances, shall constitute the company's net profit. It shall be divided between the partners in proportion to their respective shares, each share conferring an equal right.

The general meeting may however decide that all or part of the profits shall be used to set up a special reserve fund or share amortization fund, or be carried forward. Dividends shall be payable each year on the dates and in the manner fixed by the general meeting.

Section VI. Winding-up — Liquidation:

Article 28: The company may, subject to compliance with the prescribed formalities for amendments to the articles of association, be wound up at any time.

In the event of the loss of one half of the company's capital, the management shall submit to the general meeting, deliberating in the manner prescribed for amendments to the articles of association, the question of the winding-up of the company.

Should the loss reach three-quarters of the company's capital, members in possession of one quarter of the shares may take a decision to wind up the company.

Article 29: In the event of the company being wound up, the general meeting shall have the broadest rights to appoint the liquidator(s), to determine the powers and remuneration thereof and decide on the method of liquidation; where liquidators are not appointed, the management shall be deemed to act as liquidator vis-à-vis third parties.

Any assets remaining after liquidation shall be divided between members according to the number of their respective shares, each share conferring an equal right.

Section VII. Miscellaneous

Article 30: Any member domiciled or resident outside the Republic of Zaire shall be deemed to have adopted the address of the company's registered office for the service of all notifications, summonses, writs or other notices.

Managers, auditors and liquidators residing outside the Republic of Zaire shall be deemed, throughout the period of their duties, to have adopted the address of the company's registered office for the service of all writs and notices concerning company matters and their management or supervision duties.

Article 31: Any disputes arising between members or between the company and its members during the company's existence or during its liquidation shall fall under the jurisdiction (of the courts of Kinshasa) [of an arbitration tribunal consisting of three members; the three arbitrators shall be appointed by mutual agreement between the parties to the dispute or

appointed by the President of the Kinshasa *Tribunal de grande instance*. The arbitrators shall render their awards in the first and last instance with powers to act as *amiables compositeurs*].

Article 32: Any clauses of the present articles of association that may prove to be contrary to mandatory provisions of law shall be deemed null and void *ab initio*.

All mandatory provisions of law not included in the present articles shall be deemed to form an integral part hereof.

Done in Kinshasa on the date of the notarial act.

Notarial Act

On 18 September 1979, I the undersigned, N'Siku Makaya ne M'Panzu, Notary of the City of Kinshasa, hereby certify that the instrument appended hereinabove has been presented to me today in Kinshasa by

1. Mr. Kibeti Zala, a Zairean national, born in Mbanza-Ngungu (Lower Zaire) on 11 March 1931, residing in Kinshasa at 5 Avenue de la Maternité in Djelo-Binza, Ngaliema;
2. Mr. Diallo Amadou, company manager, a Guinean national, residing in Kinshasa;
3. Mrs. Colette Dewast, a French national, born in Lille (France) on 23 October 1952, residing in Kinshasa at 3572 Allée verte, Ngaliema;

Appearing in person in the presence of Masambombo Ngandu and Kabuya Nkole, government employees, both residing in Kinshasa, lawful witnesses for the purposes hereof in accordance with the statutory conditions;

Having read the contents of the said instrument to the above-mentioned parties and witnesses;

The above-mentioned parties have declared in my presence and in the presence of the witnesses that the said instrument, as presented, constitutes a clear expression of their wishes.

In witness whereof, this act has been signed by me, the Notary, by the above-mentioned parties and by the witnesses, under seal of the Notarial Office of the City of Kinshasa.

ANNEX 2

13 NOVEMBER 1979

REGISTRATION OF AFRICONTAINERS IN NEW REGISTER OF BUSINESSES, KINSHASA

Date of Registration: 13.11.1979

Official Name of Business: Africontainers Zaire SPRL

Corporate Purpose (as defined by company statutes): All commercial activities, including purchase and sales, import and export, transport, construction, agency and brokerage.

Total Capital: 100,000 zaires

Total Number of Shares: 100

Value of each Share: 1,000 zaires

Address of Registered Office: Centre de Commerce International, 16ème étage, Gombe/Kinshasa

ANNEX 3

18 APRIL 1980

MINUTES OF EXTRAORDINARY GENERAL MEETING OF AFRICONTAINERS

[EXTRACTS]

AFRICONTAINERS-ZAIRE
SOCIÉTÉ PRIVÉE À RESPONSABILITÉ LIMITÉE (PRIVATE LIMITED COMPANY)
REGISTERED OFFICE: KINSHASA

.....
Shareholders present: SPRL Africom-Zaire, represented by its Managing Director (*gérant*) Mr. Diallo Amadou, and Madame Colette Dewast, together accounting for the entire shareholding making up the capital of the company.

.....
Madame Dewast informed the General Meeting that, subject to its agreement, she wished to assign all of her 40 shares to Mr. Diallo Amadou. With the approval of the General Meeting, Mr. Diallo Amadou was invited to attend and take part in General Meetings in a personal capacity in the place of Madame Colette Dewast.

.....
Second resolution: The members of the private limited company "Africontainers-Zaire" shall be the SPRL "Africom-Zaire" and Mr. Diallo Amadou, who together hold the totality of the company's shares.

Third resolution: The capital of the company shall henceforth be divided as follows:

- Africom-Zaire: 60 shares.
- Diallo Amadou: 40 shares.

Fourth resolution: The member Diallo Amadou is appointed Managing Director (*gérant*) for an indefinite period.

.....

ANNEX 4

18 APRIL 1980

[Not translated]

ANNEX 6

1 OCTOBER 1980

CONTRACT OF CARRIAGE BETWEEN ZAIRE MOBIL OIL AND AFRICONTAINERS

Whereas Africontainers is specialized in container transport and possesses the required equipment;

Whereas Zaire Mobil Oil has a clientele in certain regions of the Republic of Zaire to whom it regularly supplies petroleum products and derivatives thereof, in particular lubricants;

Whereas Zaire Mobil Oil wishes to entrust Africontainers with the carriage and delivery of its products to its customers in the interior of the country, mainly in Shaba.

[SUMMARY OF TERMS OF CONTRACT]

Under the agreement, Africontainers ("the Carrier") would ensure the transport of lubricants in containers from Mobil's Kingabwa depot to customers and Mobil facilities in Shaba. The Carrier undertook to ensure the carriage of a minimum quantity of 300 tonnes of goods, i.e., 20 containers per month, in the first two months. The parties agreed that the minimum quantity, after such period, would be raised to 400 tonnes, i.e., 30 containers per month. The average delivery time would be 45 days. If Zaire Mobil Oil had to use another carrier, because of any default by Africontainers, the latter would be charged for the additional expenses thereof. If Zaire Mobil Oil, for a reason other than force majeure, could not ensure the minimum quantity of 20 containers per month, it undertook to compensate the Carrier for the immobilization of the containers at a rate of 2,000 zaires per unused container. The agreement was entered into for an initial term of one year, to be extended automatically for further one-year periods unless terminated by the giving of 90 days' notice. Zaire Mobil Oil could terminate the agreement with ten days notice in the event of any failure to perform on the part of the Carrier. The Carrier would remain liable for the goods until the time of delivery. The agreement would be governed by the laws of Zaire and the parties agreed to refer any disputes to the courts of Kinshasa.

ANNEX 7

14 APRIL 1981

[Not translated]

ANNEX 8

24 JULY 1981

CONTRACT OF CARRIAGE BETWEEN ZAIRE-SHELL AND AFRICONTAINERS

[Summary of clauses not contained in contract at Annex 6]

The parties agreed that exclusivity for the carriage of Zaire-Shell's products by container would be granted to Africontainers, but Zaire-Shell reserved the right to use its own small containers for its products. The Carrier undertook to deliver goods within 45 days of collection from the Zaire-Shell depot. The Carrier would inform Zaire-Shell regularly of the position of the containers during the transport. In the event of non-delivery within 135 days, the goods would be considered as lost and the Carrier would be charged for the cost thereof. The agreement would be governed by the laws of Zaire and the parties agreed to refer any disputes to the courts of Kinshasa.

ANNEX 9

5 AUGUST 1981

[Not translated]

ANNEX 10

5 AUGUST 1981

**INTERDEPARTMENTAL ORDER NO. CAB/CGP/5537/81 GRANTING APPROVAL FOR
THE INVESTMENT PROJECT OF AFRICONTAINERS, SIGNED BY THE SECRETARY OF
STATE FOR FINANCE AND THE BUDGET AND BY THE GENERAL
COMMISSIONER FOR PLANNING**

[Extracts]

Article 1:

The investment project of the company Africontainers-Zaire in Kinshasa, concerning the acquisition by the end of 1982 of 600 containers for the carriage of goods, is hereby approved.

Article 2:

Since the investment project involves new business creation within the meaning of the Investments Code, the company Africontainers-Zaire will benefit from the following tax exemptions . . .

Article 3:

The company Africontainers-Zaire shall fulfil the following undertakings:

1. The completion of the investment programme for which this order is issued, *inter alia*
 - (a) the acquisition before the end of 1982 of 600 containers for the carriage of goods
 - (b) the amount of the investment is 19,880,695 zaires . . .

Article 4:

The time-limit for the completion of the investment shall be two years as from the execution of the present approval order.

Article 5:

In the event of assignment or liquidation, the Executive Board shall guarantee that foreign investors granted benefits under the present Code may transfer, in proportion to their initial interest, the value acquired by the undertaking, and previously verified by a committee of experts appointed by the State Planning Commissioner (Article 29 of the Code).

The State shall guarantee that foreign investors may transfer their earnings, in proportion to their initial investment, in foreign currency or in goods and equipment duly valued in the appropriate currency (Article 30 of the Code).

The State shall guarantee that the capital, interest and related charges to be paid by a Zairean undertaking covered by the general régime or the conventional régime, may be transferred for the purpose of servicing debt contracted abroad with a view to additional investment financing.

Any sums due to a foreigner in compensation for expropriation, as stipulated in Article 4 above (Article 32 of the Code), shall also be transferable, subject to Article 30 above.

Article 6:

Any dispute that may arise in connection with the interpretation or application of the present order shall be settled by arbitration according to the procedure laid down in Articles 159-174 of the Code of Civil Procedure.

Article 7:

In the event of any failure by the company Africontainers-Zaire to fulfil its undertakings, the penalties and procedure provided for in Articles 11, 12 and 13 of the Investment Code shall be applicable.

Article 8:

The present order shall enter into force upon the execution thereof.

[List of equipment authorized for import]

ANNEX 12

29 JUNE 1982

LEASING AGREEMENT BETWEEN GÉCAMINES AND AFRICONTAINERS

[SUMMARY]

Africontainers (the Lessor) leased its containers to Gécamines (the Lessee) for the purpose of transporting goods from Shaba to Kinshasa or Matadi. The agreement entered into force on 15 July 1982 for a period of one year to be renewed automatically unless terminated by the giving of three months' notice. The total price of the lease was 5,870 zaires per container. If appropriate, containers were to be sent back from Matadi to Kinshasa within ten days after the unloading of the container at the port of Matadi. In the event of failure to meet the time-limits the Lessee undertook to pay the Lessor compensation of 100 zaires per extra day. The Lessee was to inform the Lessor's representative in Lubumashi of any movements of the containers by the quickest means of communication. The Lessee was prohibited from assigning all or part of the agreement or from sub-leasing the containers or from using them on behalf of third parties without the written authorization of the Lessor. Any dispute arising between the parties as to the interpretation, performance or non-performance of the agreement, failing amicable settlement, would be referred to the *Tribunal de grande instance* of Lubumbashi.

ANNEX 13

13 JULY 1983

**CONTRACT OF CARRIAGE BETWEEN ZAIRE FINA, ZAIRE MOBIL OIL,
GÉCAMINES AND AFRICONTAINERS
(the Tripartite Contract)**

[Summary]

Africontainers SPRL specialized in container transport. Zaire Fina and Zaire Mobil were suppliers of Gécamines for petroleum products and derivatives, in particular lubricants, and wished to entrust Africontainers SPRL with the organization of the transport and the delivery of part of their production to Gécamines, by means of container transport and according to the schedule provided at the beginning of each month. Gécamines agreed to receive the lubricants in containers and would lease such containers for the transport of ores from Shaba to Kinshasa. Africontainers would inform Zaire Fina, Zaire Mobil and Gécamines each month, for the following month, of the number of empty containers available at its depot in Kinshasa that could be made available for Zaire Fina and Zaire Mobil.

Zaire Fina and Zaire Mobil Oil entrusted the freight forwarder (Africontainers) with the container transport of lubricants. Under the agreement, the organization of the outward transport included: the loading of containers with products of Zaire Fina and Zaire Mobil Oil at their own depots by the freight forwarder; the relocation of the containers to the public port of Onatra in Kinshasa or any other private or public port that Zaire Fina and Zaire Mobil Oil may indicate. The freight forwarder's empty containers would be loaded for the return journey with Gécamines' ores intended for export. The freight forwarder undertook to maintain a sufficient stock of containers.

On the return journey from the various Gécamines locations, the loading of the products would be carried out by Gécamines at its depots within 15 days as from the receipt of the empty container. As far as possible, empty containers having transported lubricants to Lubumbashi would be reloaded at Lubumbashi. Those destined for Likasi, Kambove, Kolwezi and Komoto would be taken to Luilu to be reloaded.

In the event of containers having to be returned empty due to damage, costs would be borne by the freight forwarder if the damage occurred prior to their reception by Gécamines, or by Gécamines if they were damaged in Gécamines' facilities.

The freight forwarder would endeavour to meet the normal delivery time estimated at one and a half months between the loading of the products by the freight forwarder at the Zaire Fina or Zaire Mobil depots and the delivery to Gécamines.

The agreement was entered into for a period of one year, automatically renewable for further one-year periods unless terminated by the giving of 90 days' notice. The parties agree to renegotiate prices in the event of any change in the zaire's parity of exchange. In the event of any failure by the freight forwarder to comply with provisions of the agreement, either due to insufficient equipment leading to delays in delivery or due to any obvious negligence by its personnel incurring a risk for safety or for the brand image or commercial policy of Zaire Fina, Zaire Mobil and Gécamines, those parties were entitled to terminate the agreement by ten days' written notice, without any compensation being due.

Zaire Fina and Zaire Mobil Oil were to pay the freight forwarder's invoices (for the Kinshasa-Shaba transport) within 24 hours after presentation.

Gécamines was to pay its invoices (for the return of the containers loaded with Gécamines' products) within 30 working days after receipt.

The agreement was to be governed by the laws of Zaire and jurisdiction was granted solely to the courts of Kinshasa.

ANNEX 14

1 AUGUST 1983

**SUPPLEMENTARY AGREEMENT NO. 1 TO CONTRACT OF CARRIAGE OF 13 JULY 1983 BETWEEN
AFRICONTAINERS, ZAIRE-FINA, ZAIRE-MOBIL AND GÉCAMINES**

The parties have jointly agreed as follows:

Art. 1: To add as party to the above-mentioned contract Zaire-Shell S.A.R.L., whose registered office is at Kinshasa, 1513 Boulevard du 30 Juin, BP 2799 . . .

Art.2: Zaire-Shell has taken cognisance of the terms of the Contract of Carriage signed on 13 July 1983 by the above-named undertakings.

The obligations entered into in that contract by Zaire-Fina and Zaire-Mobil Oil in relation to Gécamines and to Africontainers, and vice versa, shall apply also in respect of Zaire-Shell.

Done at Kinshasa, 1 August 1983

Signed on behalf of Africontainers, Zaire-Fina, Zaire-Mobil, Zaire-Shell, Gécamines

ANNEX 15

13 SEPTEMBER 1983

[Not translated]

ANNEX 16

24 SEPTEMBER 1983

[Not translated]

ANNEX 17

19 DECEMBER 1983

[Not translated]

ANNEX 18

16 FEBRUARY 1984

**Article “Amadou Sadio Diallo” in the feature *Réussite* published in
Jeune Afrique Economie No. 33**

He is known all over Kinshasa as “Diallo-Cravates”. For in the land of the *abacost*, the attire of Amadou Sadio Diallo seems out of place: his three-piece suit and his tie make him look more like a diplomat on assignment than the director of a well-established business.

.....

A brilliant idea

The story goes back to 1960, when Guinea had been independent for just two years and Amadou Sadio Diallo was 14: he was already one of those “travellers” who go backwards and forwards across West-African borders to “do business”. Both because of his youth and his fighting spirit, he was nicknamed by his peers as “Little Sadio Gawal”. “I used to buy watches wholesale and sell them to retailers” is how he describes his former trade.

Amadou Sadio Diallo settled in Kinshasa in December 1965 because a year earlier the then highly socialist régime in Guinea had confiscated no less than 2,000 crates of whisky from his stock (even though he never drinks a single drop of alcohol, being a devout Muslim — he still prays five times a day in his office). Little Sadio thus emigrated but not without a substantial sum in pocket money: 500,000 dollars “clubbed together by the family”. He started by doing what he knew best and set up an import-export company called Africom. Business was good but nothing special. In other words, the company managed to survive in spite of the economic crisis that hit Zaire in the late 1970s. Africom suffered too and is still feeling the effects today: it is located in the CCIZ building (Zaire’s World Trade Centre) where the offices are uninhabitable — the air-conditioning in this prestigious tower-block stopped working ages ago.

Diallo’s brilliant idea came to him in 1979. Importing and exporting was all well and good but the transporting of goods in conditions of total security would be even better. He thus purchased containers (he has 600 of them today) and set up Africontainers, his second Zairean company. Pragmatically, he set up shop on more humble premises in downtown Kinshasa . . .

Amadou Sadio Diallo is now a prosperous man: “My investments come to a total of 180 million zaires. And I’m not going to stop there!” This time business has been buoyant for the past two years. From 2,090 tonnes in 1980, the goods carried by Africontainers rose to 4,162 tonnes in 1981 and the following year to 5,020 tonnes, only to double — at least — in 1983, soaring up to 10,215 tonnes. His secret is quite simple. He may look like he never gets his hands dirty, but Diallo-Cravates secured a colossal market: the container transport of copper from the wealthy Gécamines which produces Zaire’s cobalt and copper.

Serving Africa . . .

Chairman and Chief Executive of two companies, the former “Little Sadio Gawal” leads a team of 120 including nine executives, “all Zaireans” as he never tires of saying. All that is except his gorgeous West Indian secretary and a Guinean, Balde, whose strategic role is to tone down the

“extravagances” of the boss from time to time. For the boss has fits of inspiration. He states with conviction that he is not out to make more money: “I want to serve Africa. I want no more than to be an African businessman. I am a member of ANEZA (Association nationale des entrepreneurs du Zaïre). I provide employment in Zaïre. I am going to buy a vessel capable of carrying 500 containers. I am proud to work in Africa, to pay taxes to the State.”

Yet he is sincere and his everyday life matches the man. He invites his guests to the best restaurants in Kinshasa and offers them the finest champagne, without touching a drop himself. His apartment, in an elegant tower on the Boulevard du 30-Juin, is like his suits: clean and plain. It is tastefully furnished, with no gadgets and nothing flashy. The only surprises for the visitor are two huge short-wave radio sets: “I often listen to the radio. I keep abreast of things.” Diallo-Cravates has nevertheless allowed himself one luxury: a splendid Citroen CX. But like many cars in Kinshasa it has no brake pads or exhaust pipe.

Amadou Sadio Diallo lives alone with his cook, Moussa, whose misadventure led to his boss spending a month in prison in the last quarter of 1983. A native of Upper-Volta (Burkina-Faso), Moussa had been arrested on illegal immigration charges. He was then imprisoned before being notified of his deportation. Diallo-Cravates intended to buy him a plane ticket for Ouagadougou by signing a cheque for 10,000 zaires at the request of the Zaïrean prison warden, but then he too found himself behind bars “for attempted bribery of an official”.

Since his release, with the apologies of the security services, Diallo has been complaining of the insult to his honour and points the finger: “The officer who arrested me was in league with the Guineans in Kinshasa who were plotting against me. They are jealous of my success. I myself have never been involved in politics, neither on one side nor on the other. But I knew that some of them engaged in trafficking. They didn’t want me to talk.”

True or false? We will never know. The fact is that certain well-placed Guineans in Kinshasa were involved in diamond trafficking that came to light in 1983 at Ngobila beach, by the river port. It is also true that a high-ranking official of the Zaïrean security services, commenting on Amadou Sadio Diallo’s short stay in prison, told us: “We released him because we had no case against him. It was a purely Guinean affair.”

... from Guinean to Zaïrean

Although out of prison, Diallo-Cravates is still not totally free. The Guinean Embassy in Kinshasa confiscated his passport and since then he has been pulling out all the stops to obtain Zaïrean nationality: “I have always been Guinean but Guinea no longer wants me. I want to carry on working, that’s all I want. But this time as a Zaïrean national.”

ANNEX 19

9 JULY 1984

**LETTER FROM AFRICONTAINERS AFC/DF/BS/3784 TO GÉCAMINES BP 450 LUBUMBASHI FOR
THE ATTENTION OF MR. ROUSSEAU, DIRECTOR OF TRANSPORT, CONCERNING THE
IMMOBILIZATION OF CONTAINERS IN THE GÉCAMINES DEPOTS**

Received: 13 July 1984

Dear Sirs,

We should like to draw your attention to some irregularities that contravene the letter of the contract signed by Gécamines, the oil companies and ourselves for the transportation of lubricants destined for Gécamines, and of copper on the return journey.

- It has been brought to our attention that two containers that arrived at the Kolwesi lubricant depot in February 1984 but were destined for Gécamines-Kipushi were not redespached until the end of June 1984. Meanwhile, the two containers (526 428 and 526 403) lay “forgotten” in Luilu for almost four months.
- For almost three months, the Kolwesi lubricant depot used 12 of our containers to store empty barrels.
- GCM used at least 35 of our containers to transport empty barrels from Kolwezi to Likasi without our permission or payment of the rental price between January and June 1984.

The result of the above has been a delay in the return of the containers to Kinshasa to be reused and, it must be stressed, a very significant loss of earnings for ourselves.

We would be grateful if you would kindly instruct your staff to respect the 15-day time-limit agreed for the unpacking of containers after their arrival in your various depots. While we understand that containers sometimes need to be transferred between those depots, we consider that a 30-day delay cannot but be damaging for all the parties concerned.

Yours faithfully,

(Signed) Sambwe KITOBANYA.
Chief, Finance Department

(Signed) M. M. BALDE.
Manager

ANNEX 20

21 AUGUST 1984

**LETTER FROM AFRICONTAINERS TO GÉCAMINES CONCERNING THE IMMOBILIZATION
OF 50 AFRICONTAINERS CONTAINERS IN LUILU**

Dear Sir,

We have the honour to inform you that, further to letter No. AFC/DF/BS/237/84, dated 9 July 1984, for the attention of Mr. Rousseau, a copy of which is attached, during our visit to Kolwezi to inspect our containers from 14 to 18 August 1984 we noted that 50 of our containers, 29 of them empty and 21 loaded with cathodes, were lying immobilized in Luilu, some waiting to be loaded on wagons, the remainder waiting to be packed.

We take this opportunity to inform you that, in addition to these containers, 16 other containers belonging to us were immobilized at the Panda Central Store in Likasi as of 12 August 1984, when we were engaged in the mission to inspect our containers, and that we have reason to believe they are still there at the time of writing.

We also wish to draw your attention to the fact that many of these containers have been immobilized in your various facilities in Shaba since the beginning of this year.

We are therefore calling upon you to authorize an immediate solution to this situation, which is in danger of paralysing our activities, since we may be obliged to halt packing operations for lack of containers.

In view of the above and the importance of the problem, we venture to believe that you will give this matter your earliest attention, notwithstanding the fact that consignments by national rail have recently been somewhat hampered by the low water level in the Kasai River.

Yours faithfully,

(Signed) N'KANZA-NE-KONGO.
Chief, Lubumbashi Agency

cc.: Africontainers Finance Department.

ANNEX 22

6 SEPTEMBER 1984

INTERNAL LETTER OF GÉCAMINES ON THE IMMOBILIZATION OF AFRICONTAINERS
CONTAINERS

We have just received two letters in which Africontainers draws our attention to some regrettable irregularities in the use of the containers.

According to Africontainers, two containers that arrived in the Kolwezi oil depot in February 1984 but were destined for Gécamines-Kipushi were not re-despatched until the end of June 1984. Meanwhile those two containers, 526 428 and 526 403, lay forgotten in Luilu for almost four months.

Other irregularities: for almost three months the Kolwezi lubricant depot used 12 Africontainers containers to store empty barrels. Gécamines used at least 35 containers to transport empty barrels from Kolwezi to Likasi without the authorization of the company that owns the containers and without paying the cost of rental, from January to June 1984.

Moreover, 16 other containers are alleged to have lain idle in the Panda Central Store until 12 August 1984, the date on which the Africontainers Agency Chief visited Likasi on an inspection mission.

I need not remind you that a very lengthy immobilization of the containers beyond the agreed time-limit is harmful not only to Africontainers, owing to the delay in return of the containers to Kinshasa for reuse and the substantial loss of earnings occasioned thereby; but also to Gécamines, which may have to pay substantial immobilization charges as a result.

Furthermore, Africontainers has just informed us that henceforth Gécamines will pay the costs of immobilization for any container retained in its facilities for more than 15 days after its receipt. Management of that company has already requested its officials in Shaba to invoice the immobilization of all containers used without their knowledge to forward empty barrels from the Kolwezi lubricant depot to Likasi.

In view of the above, we hope that you will issue your staff in the Groups with the necessary instructions to ensure harmonious management of the containers.

Thank you for your co-operation.

(Signed) Esanga ey'Issola BASSUKU.
Director, Import/Export Division

ANNEX 24

22 OCTOBER 1984

INTERNAL LETTER OF GÉCAMINES FOLLOWING AN INTERNAL
CHECK OF AFRICONTAINERS CONTAINERS NOT IN USE

No.: GES/MAG 265/84

Re: Immobilization of containers in Gécamines facilities

We acknowledge receipt of your letter under reference. Please refer to the information annexed to this letter.

Best wishes,

DIRECTORATE OF SUPPLY, STOCK MANAGEMENT DIVISION.

(Signed) F. BUSE.
Deputy Director, Stores Management

(Signed) P. OGER.
Director

Annex to letter GES/MAG No. 265/84

On 2 March 1984, four Africontainers containers entered 51 MCK lubricant depot and left on the same day, without intermediate handling, at the request of 51 MCK, for forwarding to stores 13 KHI (containers Nos. 526 428 and 526 403) and 11 MCL (containers Nos. 526 887 and 527 678).

TRF/O placed the wagons transporting these containers in the cobalt thermic treatment depot at Luilu, overlooking the destinations mentioned on the consignment notes. A rapid check with TRF/O would have enabled you to get to the bottom of this problem.

Following a fire at TRF/O, some damaged barrels of fuel oil intended for KZC were placed in a padlocked container for about three months, because of the recent increase in thefts of diesel oil. In future, the stores will request authorization from DIE before retaining containers for a lengthy period.

It is true that 35 containers were used to transport empty barrels from Kolwezi to Likasi. Operations of this type will not be carried out in the future unless authorized by DIE.

As a result of the towing difficulties experienced by CNCZ/Likasi between May and July 1984, there was a build-up of containers awaiting re-despatch on the platform at 21 MCP. The number of containers on the platform at 21 MPC at end-month was as follows: April — 20; May — 51; June — 67; July — 57; August — 23.

This situation was resolved following an initiative by MAG/Centre, which requested and obtained use of a locomotive from US, after waiting in vain for TRF/Centre to solve the problem.

ANNEX 25

7 MAY 1985

**AFRICONTAINERS LETTER TO GÉCAMINES DIE BP 450 LUBUMBASHI FOR THE ATTENTION
OF THE DIRECTOR (DIE) CONCERNING THE IMMOBILIZATION OF CONTAINERS**

Dear Sirs,

During your visit to Kinshasa in April, we had the pleasure of discussing with you the question of the immobilization of our containers in Gécamines facilities.

You assured us that you would do everything possible to ensure that this situation would not recur. Unfortunately, two months later you noted the presence of an increasing number of containers whose owners were no longer known to Gécamines. This situation arose because of the total blockage of our containers, either at Likasi, Kolwezi or Luilu. In our own case, 180 out of a total of 200 containers were to be found in your depots in Shaba.

Given that our company's livelihood depends on container traffic, we have experienced extremely serious difficulties vis-à-vis our creditors, as well as extremely serious cash-flow problems. In view of this situation, we are obliged to transmit to you the attached table, from which we have discounted one month's immobilization charges to Gécamines, without adhering strictly to the provisions of the contract.

We trust that you will understand our concern, and are confident that concrete measures will be taken to end the blockage of the containers, thereby improving their turnaround time.

Yours faithfully,

(Signed) Tshaba MALANGU.
Chief, Operations Department

(Signed) Gutu Kia ZINI.
Assistant Director

ANNEX 26

20 JUNE 1985

[Not translated]

ANNEX 29

18 MAY 1986

[Not translated]

ANNEX 30

18 JUNE 1986

[Not translated]

ANNEX 31

18 JUNE 1986

[Not translated]

ANNEX 32

26 JUNE 1986

[Not translated]

ANNEX 34

CORRESPONDENCE FROM THE REPUBLIC OF ZAIRE, DEPARTMENT OF FINANCE AND THE BUDGET, TO THE MANAGING DIRECTOR OF AFRICOM-ZAIRE IN KINSHASA

REPUBLIC OF ZAIRE
Department of Finance and the Budget
Office of the State Commissioner

Kinshasa, 19 July 1986

Re: payment for order for computer listing paper

To: the Chairman and Managing Director, Africom-Zaire, Kinshasa

Dear Sir,

I acknowledge receipt of your letter ref. AFC/DAS/IN/015/86 of 30 April 1986, on a matter of particular interest to me.

I admit having ordered listing paper for my Department's Computer Service, by decision No. 82/CAB/FIN&BUDG/83 of 16 December 1983 with no call for tenders.

However, I must point out that the order for my department amounted to Z26,505,000, not to Z38,522,000 as you claim in your letter; the difference of Z11,771,950 was introduced unilaterally.

As regards payment for the order, this was made in two instalments of Z5,000,000 and Z21,505,000 respectively in June 1985 and March 1986.

In your letter you refer to alleged damage suffered as a result of the delay in paying these invoices and you therefore request a revaluation of the amounts owed.

I accept the principle of revaluation to take account of fluctuations in the rate of exchange of the zaire between December 1983 and March 1986, but the way in which you have calculated this amount seems to me to be unacceptable.

Although the consumer price index should unquestionably be used in such cases, the period to be taken into consideration differs according to whether the amount in question is Z. 5,000,000 or Z21,505,000.

I therefore take the view that the revaluation should be calculated as follows:

The staggered payments duly proposed by Africom-Zaire and accepted by us will be made according to the timetable below, to a total for this contract of Z28,382,872.70:

— 31 October 1986	Z5,000,000
— 30 November 1986	Z5,000,000
— 31 December 1986	Z5,000,000
— 31 January 1987	Z5,000,000

— 28 February 1987 Z5,000,000

— 31 March 1987 Z3,382,872.7

I also add that I reject the condition of a 20 per cent increase per month of delay in payment proposed by the supplier.

I await your statement of receipt of these goods.

Yours faithfully,

(Signed) DJAMBOLEKA LOMA OKITONGONO.
State Commissioner for Finance, the Budget and Investment

ANNEX 35

2 AUGUST 1986

LETTER NO. 40297/TRP/DIE FROM GÉCAMINES TO AFRICONTAINERS FOR THE TRANSPORT OF
CONTAINERS TO MATADI BY ONATRA

Your ref.: AFC/DE/112/86, July 7 1986

Dear Sirs,

We acknowledge receipt today, on 23 July 1986, of your letter under reference, the contents of which have received our full attention.

The decision to transfer local container unpacking operations from Kinshasa to Matadi was taken at the meeting between CNCZ, Onatra, Gécamines/Commerciale and Gécamines/Exploitation held in Kinshasa on 26 June 1986.

The chief purpose of that meeting was to optimise the total tonnage of ores "in the pipeline".

In examining the situation on the national network, the participants noted that the Port of Kinshasa was experiencing enormous handling difficulties: unpacking operations were seriously affected. Consequently, local containers would be left for several days or even months in the dockyard or on the island before being unpacked.

This situation was harmful not only to Gécamines but also to the freight forwarders, for whom immobilization of the containers results in a loss of earnings. The four companies unanimously decided to transfer unpacking of local containers from Kinshasa to Matadi until completion of the reconstruction work in the Port of Kinshasa towards the end of 1986.

Conscious of its contractual obligations to its freight forwarders, Gécamines/Exploitation invited the forwarders to visit Lubumbashi on 5 July 1986 to inform them of that decision. Your company was represented by Mr. Lumana Shamba. Please find attached a copy of the Memorandum approving that meeting. The meeting that you propose is thus no longer necessary.

We believe that we have acted in the best interests of all the companies affected by the transport of our mineral ores and thank you in advance for your understanding.

Yours faithfully,

GÉCAMINES/EXPLOITATION. DEPARTMENT OF TRANSPORT

(Signed) MUKALAY MANDE K.
Director, Import/Export Division

(Signed) J. DASSAS.
Director

ANNEX 36

**LETTER FROM THE COMMISSIONER FOR FINANCE, THE BUDGET AND INVESTMENT TO THE
CHAIRMAN AND MANAGING DIRECTOR OF RENAPI CONCERNING THE AFRICOM ORDER**

Re:: AFRICOM-ZAIRE

Dear Sir,

I acknowledge receipt of your letter No. 0273/PDG/RENAPI/86 of 17 June 1986 relating to the above.

I note from this correspondence that "Africom-Zaire's goods are there in Kinshasa, that the company is willing to sell them to RENAPI at the same price as that submitted in the tender and that you agree to take delivery of them at your warehouses as goods delivered in advance, as part of the order to be placed in the second half of 1986 after complete performance of the current order 001/RENAPI/86".

On that basis, having regard to the content of letters No. AFC/DAS/IN/016/86 of 30 April 1986 and AFC/DAS/IN/018/86 of 19 July 1986, also considering the public services' real need for these goods and in the light of the advantages that accrue from this contract with Africom-Zaire through the immediate availability of the goods, the stability of the prices and the staggering of the payments relating thereto, I have endorsed this order and have signed the order forms, which are annexed to this letter.

The staggered payments duly proposed by Africom-Zaire and accepted by us will be made according to the timetable below, to a total for this contract of Z28,382,872.70:

— 31 October 1986	Z5,000,000
— 30 November 1986	Z5,000,000
— 31 December 1986	Z5,000,000
— 31 January 1987	Z5,000,000
— 28 February 1987	Z5,000,000
— 31 March 1987	Z3,382,872.7

I also add that I reject the condition of a 20 per cent increase per month of delay in payment proposed by the supplier.

I await your statement of receipt of these goods.

Yours faithfully,
(Signed) Djamboleka LOMA OKITONGONO.
State Commissioner for Finance, the Budget and Investment

ANNEX 37

17 JANUARY 1987

LETTER FROM MR. DIALLO TO THE COMMISSIONER FOR FINANCE ON THE SUBJECT
OF THE PAYMENT OF ORDERS

17 January 1987

AFRC/DAS/IN/002/87

Dear Sir,

We wish to thank you for granting our Chairman and Managing Director a hearing on 15 January about the debts that are making it difficult for our company to run smoothly.

We have obtained a promise that the sums due to us will be paid on 3 February next, which would take into account the values as adopted at the due dates set by your predecessors and which have not been honoured.

Those who have lent us money (banks and private individuals) needed to trust us because of the reputation of the previous Commissioner . . .

Since the payments scheduled for the various due dates have not been made, we have lost credibility in the eyes of those who have lent to us, with the additional interest that this entails.

We remind you that the total value of the articles delivered is in accordance with our prices applicable in 1983. Because of this we are widely penalized for not meeting the commitments that make difficulties for us with our creditors.

We also wish to remind you that orders No. 103 and 104 RENAPI/86, for which we are seeking payment, were placed by way of a call for tenders, followed by all the stages and formalities as required in the State supplies market.

We think it worth pointing out that the provisions in calls for tenders state in special contract specifications No. 40/3412/002/CA/84, more particularly in its second part in the special conditions for performance, Article 13 (2), that the amount of the contract shall be corrected in the event of currency fluctuations affecting the zaire.

That is why we feel obliged to make a correction to allow for the fluctuation in the rate of exchange of the zaire by applying a flat rate of 20 per cent per month of delay in paying a sum that has fallen due.

Since the payment will be made on 3 February next and having regard to the due dates fixed by your predecessors, the readjustment computation is as follows:

Due date	Period	Months	20 per cent	Principal	Total
31/10/86	1/11/86-31/1/87	3	3,000,000	5,000,000	8,000,000
30/11/86	1/12/86-31/1/87	2	2,000,000	5,000,000	7,000,000
30/12/86	1/01/87-31/1/87	1	1,000,000	5,000,000	6,000,000

31/01/87	—	—	—	5,000,000	5,000,000
28/02/87	—	—	—	5,000,000	5,000,000
31/03/87	—	—		3,382,873	3,382,873
(I)			6,000,000	28,382,873	34,382,873
(II) 19/07/86	1/08/86-31/1/87	6	<u>21,472,560</u>	<u>17,893,800</u>	<u>39,366,360</u>
<u>Totals:</u>			27,472,560	46,276,673	73,749,233

The rates in line (I) affects the values relating to orders No. 0103 and 0104 RENAPI/1986, the rate in line (II) is the supplement due to inflation: reference letter No. 1467/... FIN & BUDG/86 of 19 July 1986.

We are relying on your sense of justice, and look forward to receiving this payment.

Yours faithfully,

(Signed) DIALLO Amadou Sadio
Chairman and Managing Director

ANNEX 43

29 JULY 1987

**TELEGRAM FROM CO-ORDINATION DIRECTOR PORT/MATADI CONCERNING RECALL OF
AFRICONTAINERS CONTAINERS**

HEREBY INFORM YOU THAT AFRICONTAINERS RECALLING MORE THAN 200 CONTAINERS
BELONGING TO ITS COMPANY, IMMOBILIZED IN THE MATADI PORT FACILITIES.

AS A RESULT OF THIS SITUATION AFRICONTAINERS CLAIMING PAYMENT FROM US IN A
TOTAL AMOUNT Z 2,050,000.00; 0 [sic] IN RESPECT OF THEIR PROLONGED IMMOBILIZATION.

REQUEST YOU RAPIDLY PROGRAMME REMOVAL OF ANY LOCAL CONTAINERS STILL
IMMOBILIZED AT MATADI.

IN RE AFRICONTAINERS, REQUEST YOU FULLY EXAMINE DOSSIER RELATING TO ITS CLAIM.

AWAITING YOUR COMMENTS ON THIS MATTER.

(Signed) [Illegible]
Departmental Director

ANNEX 44

31 AUGUST 1987

**LETTER NO. 056/87 FROM AFRICONTAINERS TO GÉCAMINES DEPARTMENT OF TRANSPORT ON
THE IMMOBILIZATION OF AFC CONTAINERS IN LUILU DEPOT**

Dear Sirs,

We should like to draw your attention to some irregularities noted during our mission to Luilu from 6 to 12 August 1987 to trace our containers.

Thus, for instance, 39 of our containers in working order have lain idle at the Luilu container depot for more than two months. Contrary to the provisions of the contract between Gécamines and the freight forwarders, ten of those containers are being used by Gécamines to warehouse pallets and empty barrels.

Please find attached a list itemizing the serial numbers of these containers and their dates of arrival at the Luilu packing plants.

Moreover, container No. 525 600, which arrived at Luilu on 31 August 1986, was used by store No. 63 one month later, on 30 September 1986, to transport material from Luilu to Likasi without our permission or payment of the cost of rental. That container was not returned to Kinshasa until five months later.

The result of the foregoing has been a delay in the return of containers to Kinshasa for reuse and, it must be stressed, a very substantial loss of earnings for ourselves.

We would be grateful if you would kindly instruct your staff to respect the 30-day time limit agreed on for the return of containers after their arrival in your packing depots.

Yours faithfully,

(Signed) NKANZA NEKONGO.
Agency Chief

ANNEX 46

13 NOVEMBER 1987

[Not translated]

ANNEX 47

13 NOVEMBER 1987

[Not translated]

ANNEX 48

13 NOVEMBER 1987

[Not translated]

ANNEX 49

13 NOVEMBER 1987

[Not translated]

ANNEX 50

13 NOVEMBER 1987

[Not translated]

ANNEX 51

**REPUBLIC OF ZAIRE
DEPARTMENT OF FINANCE**

**ASSISTANT STATE COMMISSIONER
22 DECEMBER 1987**

To the Governor of the Bank of Zaire, Kinshasa/Gombe

Re: Bills of exchange in favour of Africom SPRL

Dear Sir,

I have the honour to inform you that, in payment of the debts due to the company Africom from the Public Treasury, I have, on 13 November 1987, accepted five bills of exchange, particulars of which are set out below, namely:

No.	Due date	Amount (in Zaires)
019/87	13.01.1988	17,800,000.-
020/87	13.02.1988	28,400,000.-
021/87	13.02.1988	32,500,000.-
022/87	13.02.1988	50,000,000.-
023/87	13.02.1988	50,000,000.-
	Total:	<u>178,700,000.-</u>

Would you kindly pay these bills on the dates indicated by debiting the General Treasury Account.

(Signed) Prof. Kinzonzi MVUTUKIDI NGINDU K.

ANNEX 52

31 DECEMBER 1987

**INVESTMENT COMMITTEE INTERDEPARTMENTAL ORDER
NO. CAB./PLAN/0144/87**

Interdepartmental Order No. CAB./Plan/0144/87 of 31 December 1987 granting approval for the investment project of "Africontainers-Zaire" company at Kinshasa-Gombe

The Deputy Secretary of State for Finance

and

The Deputy Commissioner for Planning,

Having regard to the Constitution, in particular its Articles 97 and 98 (1),

Having regard to legislative Order No. 86-028 of 5 April 1986 establishing the Investment Code;

Having regard to the minutes of the meetings of the Investments Commission on 30 October and 20 November 1987;

DECREE:

Article 1

The investment project of the company Africontainers-Zaire concerning the acquisition of a motorized container barge capable of taking a total of 56 containers, shall hereby be approved.

Article 2

As the project is for an extension-diversification investment within the meaning of the Investment Code, the company Africontainers-Zaire shall enjoy the benefits laid down by the following general procedure:

1. Exoneration from the business tax on remuneration paid to workers falling within the general classification of jobs for one year dating from the entry into production of the investment.
2. Exoneration from all indirect and special taxes for purchases of capital equipment or industrial input produced in Zaire and necessary for completion of the investment project.
3. Exoneration from import taxes and levies, with the exclusion of administrative fees, for new machinery, new spare parts and industrial inputs necessary for implementation of an investment for extension or modernization.

It shall only be granted for imported capital equipment if it cannot be manufactured in Zaire and if the price of the national product exclusive of tax is more than ten per cent greater than the factory delivered price of the identical imported product and if the nomenclature is annexed to this Order.

Article 3

The company Africontainers-Zaire shall give the following undertakings:

- (1) To implement the investment programme at the origin of this Order, which lays down *inter alia*:
 - (a) the purchase of a motorized container barge capable of taking a total of 56 containers;
 - (b) an investment amounting to Z528,086,000, with EqZ410,279,000 (78 per cent) of this representing the total value of goods to be imported CIF Port of Matadi, and Z117,807,000 (22 per cent) representing the amount of local expenditure;
 - (c) funding as follows:
 - (a) SOFIDE credit : Z316,852,000
 - (b) Associated advances : Z211,234,000
 - (d) the creation of 15 jobs, all for nationals, as follows: one supervisor, three highly-skilled, four skilled, two semi-skilled, one specialized labourer and four ordinary labourers.
- (2) To comply in all respects with economic, social and fiscal legislation, as well as with currency regulations.

The company Africontainers-Zaire shall undertake, *inter alia*:

- (a) in the service branch, to be in all respects a pilot company as regards the standardization of services provided, personnel training, quality and pricing;
- (b) to submit to all the controls of the Zairean Control Office (O.Za.C) for all imports;
- (c) to keep regular accounts in the legally prescribed forms;
- (d) to cover the transport costs of personnel from the company's own funds;
- (e) to accept all controls and monitoring by the competent administration, and to reply, within the time-limit laid down, to all questionnaires and statistical enquiries;
- (f) to train staff;
- (g) to take all necessary measures for the protection of the environment. The programme required for this purpose must be approved by the Department responsible for the environment and the conservation of nature.

Article 4

The time-limit for completing the investment is 24 months, with effect from the signing of the Approval Order.

Article 5

In the event of assignment or liquidation, the Executive Board shall guarantee that foreign investors granted benefits from the advantages of the Investments Code transfer, in proportion to

their initial interest, the value acquired by the undertaking, and previously verified by a committee of experts appointed by the Deputy Planning Commissioner.

The State shall guarantee that the capital, interest and related charges payable by a Zairean undertaking covered by the general régime or the conventional régime, may be transferred for the purpose of servicing debt contracted abroad with a view to additional investment funding.

The State shall guarantee that foreign investors may transfer their earnings in proportion to their initial investment, in foreign currency or in goods and equipment duly valued in the appropriate currency.

Any compulsory purchase indemnity owed to a non-national shall also be transferable, as stipulated in Article 5 of the said Code.

Article 6

Any dispute that may arise in connection with the interpretation or application of this Order shall be settled by arbitration according to the procedure laid down in Articles 159 to 174 of the Code of Civil Procedure.

Article 7

In the event of any failure by the company Africontainers-Zaire to fulfil its undertakings, the penalties and procedure laid down in Articles 44 to 44 of the investment shall apply.

Article 8

This Order shall enter into force upon the execution thereof.

Done at Kinshasa, 31 December 1987

For the Deputy Secretary of State

Deputy Commissioner for Planning
(Signed) Prof. MULUMBA LUKOJI

Deputy Secretary of State for Finance
(Signed) Prof. Kinzonzi MVUTUKIDI NGINDU.

**ANNEX TO INTERDEPARTMENTAL ORDER NO. CAB./PLAN/0144/87 OF 31 DECEMBER 1987
FOR APPROVAL OF THE AFRICONTAINERS-ZAIRE INVESTMENT PROJECT AT
KINSHASA/GOMBE**

**Names of machinery, tools and equipment authorized for importation free of
import duties and turnover tax**

A. Equipment for import

1. Production equipment

Done at Kinshasa, 31 December 1987

FOR THE DEPUTY SECRETARY OF STATE

Deputy Commissioner for Planning
(Signed) Prof. MULUMBA LUKOJI.

Deputy Commissioner for Finance
(Signed) Prof. Kinzonzi MVUTUKIDI NGINDU.

ANNEX 53

14 JANUARY 1988

LETTER FROM THE FIRST COMMISSIONER OF ZAIRE TO THE COMMISSIONER FOR FINANCE

**Re: Bills of exchange in favour of SPRL Africom
Sotraf file**

Dear Sir,

I refer to your letter No. 2663 CAB/CD/FIN/87 of 22 December 1987 to the Governor of the Bank of Zaire informing him that you have accepted bills of exchange in favour of SPRL Africom to the value of Z178,700,000 (one hundred and seventy-eight million seven hundred thousand zaires) payable in 1988. Kindly send me the complete file relating to this payment, including in particular the nature of the goods ordered and delivered.

During the same month you have ordered the payment by the same method of Z170,000,000 (one hundred and seventy million zaires) to Sotraf.

I would be glad to know the reason for paying Sotraf in priority as a matter of urgency when other construction firms in the same situation are waiting and no solution is proposed in respect of them.

I draw your attention to the fact that such substantial disbursements in favour of only two creditors, Africom and SOTRAF, are already disrupting implementation of the 1998 budget, having regard to the funds available.

You must be aware that there are substantial commitments that we must meet in the immediate future. I need mention only the local elections, expenditure on which is estimated to be over half a billion zaires, and the Summit Conference of the ECCAS, not forgetting transfers to our Embassies abroad, which are nearly two months late.

I ask you to treat this letter as urgent.

Yours faithfully,

(Signed) Prof. MABI MULUMBA.
Member of the Central Committee

ANNEX 55

20 FEBRUARY 1989

**LETTER 122/30/01/3.01 FROM PORTS DEPARTMENT TO CO-ORDINATION DIRECTORATE OF
PORT MATADI, T.C.M. SUB-DIRECTORATE, CONCERNING PROLONGED IMMOBILIZATION OF
LOCAL CONTAINERS IN MATADI, RESPONSE TO LETTER No. 663/TCM/X10 KW/VLL/87
OF 27 AUGUST 1987**

The prolonged immobilization of local containers in Port Matadi has resulted in Africontainers invoicing our office for a very substantial sum.

This clearly indicates negligence on the part of officials of T.C.1, who have failed to respect the 35-day time limit provided for by Gécamines and its partners.

For example, containers S/P 526 343, S/P 526 426 and S/P 526 424 were immobilized in the Port for 143, 144 and 153 days respectively (see letter referred to above and annex thereto).

Faced with this highly regrettable situation, we await your explanation at your earliest convenience to enable us to reply to the customer's claim.

(Signed) [illegible]
Sub-Director Central Planning

(Signed) [illegible]
Departmental Director

ANNEX 57

27 JULY 1989

**LETTER FROM THE DIRECTOR OF THE BUREAU OF THE PRESIDENT OF ZAIRE TO
THE FIRST COMMISSIONER**

Kinshasa, 27 July 1989

Re: Transmission of request by Africom-Zaire

Dear Sir,

I enclose as an annex to this letter, for expert consideration and appropriate action, the request submitted by Mr. Diallo Amadou Sadio to the President and Founder of the Popular Revolutionary Movement, the President of the Republic.

The person concerned seeks payment by the Executive Council of 178,700,000 zaires, the purchase price of listing paper and office supplies delivered by his company to the Executive Council.

Yours faithfully,

(Signed) Maître PHANZU NIANGA-di-MAZANZA.
Deputy Director for the Director of the Bureau

ANNEX 61

17 MARCH 1990

LETTER FROM AFRICONTAINERS TO GÉCAMINES CONCERNING THE PROLONGED
IMMOBILIZATION AND NON-USE OF CONTAINERS IN MATADI

Your Ref: AFC/019/90

Mr. Mbuyi
National Track Supervisor
Gécamines/Exploitation
Kinshasa

Dear Sir,

Please find attached a copy of a letter previously addressed to our partner Onatra.

Onatra now wishes to pass on to Gécamines/Exploitation the civil liability for the injury caused to our firm as a result of the decision taken in Kinshasa on 26 June 1986, by the Chairmen and Chief Executives of Gécamines/Exploitation, Gécamines/Commerciale, Onatra and SNCZ.

The reason given is that, according to the report of the meeting held at Lubumbashi on 5 July 1986 between Gécamines/Exploitation and the local freight forwarders, your company was to entrust "its Matadi unit with the task of monitoring these containers in order to secure their return to Kinshasa" [*sic*]. We also attach a copy of that report.

We are most anxious to ascertain whether your company was indeed entrusted with tasks properly falling to Onatra, the manager of the ports of Kinshasa and Matadi. We would therefore be pleased to obtain a copy of the famous decision taken by the aforementioned Chairmen and Chief Executives on 26 June 1986, to enable us better to assess its content and the legal scope of the terms used.

We would be grateful for your early attention to this matter.

Yours faithfully,
(Signed) Amadou Sadio DIALLO.
Chairman and Chief Executive

Attachments: 2

[Handwritten annotation]

12/03/90 *[sic]*

Dear Mbuyi,

Could you look into this problem for Mr. Dialo *(sic)*, as it falls within your sphere of competence.

Thanks.

(Signed) [Illegible]

ANNEX 62

5 APRIL 1990

LETTER FROM GÉCAMINES TO AFRICONTAINERS CONCERNING THE PROLONGED
IMMOBILIZATION AND NON-USE OF CONTAINERS IN MATADI

Mr. Amadou Sadio Diallo
Chairman & Chief Executive
Africontainers

Our Ref: DIE/SVN/017/90

Your Ref: AFC/019/90

Dear Sir,

We have received your letter under reference and given its contents our closest attention.

Having considered it, we should like to make the following comments:

- The purpose of the meeting of Chairmen and Managing Directors on 26 June 1986, to which you refer in your letter, was to consider ways and means of restoring the tonnage “in the pipeline” on the national network at any one time to an acceptable minimum level and speeding up consignments so as to release quantities immediately available for sale. On that occasion, because of the work under way to redevelop the Port of Kinshasa, Onatra proposed transferring the national containers unpacking operation from Kinshasa to Matadi until the reconstruction work was completed. The cost of returning the containers empty was borne by Onatra. In its letter No. 40.287/TRP/DIE of 2 August 1986, our management explained this problem to you in some detail.
- The purpose of the meeting between Gécamines/Exploitation and the local freight forwarders, held in Lubumbashi on 5 July 1986, was to inform the forwarders of those new measures. Even if a promise was made to instruct our DIE Matadi unit to monitor the local containers so as to secure their return to Kinshasa, that wish expressed by Gécamines (which was simply intended to help the freight forwarders to recover their material rapidly) cannot in any circumstances be used by Onatra to absolve itself of its obligations, which were inherent in its decision and consisted of avoiding the prolonged retention of the containers at the Port of Matadi. As Onatra remains solely responsible for handling operations in its port facilities (loading, storage, unpacking, etc.), and for organizing transfers to its network, we hold it solely responsible for the immobilization of your containers.
- Nevertheless, given the close relations between ourselves and your company, we are proposing to write to Onatra to inform it of your complaints.

Yours faithfully,

(Signed) Mbuyi TUMAYI.
National Network Supervisor

(Signed) Kalasa MUNONGO.
Bureau Director and Representative
of the *Délégation Générale*

ANNEX 63

16 APRIL 1990

LETTER FROM GÉCAMINES TO ONATRA CONCERNING COMPLAINTS ON THE PROLONGED
IMMOBILIZATION AND NON-USE OF CONTAINERS IN MATADI

Our Ref: DIE/SVN/020/90

Dear Sirs,

In March 1990 we received complaints from the freight forwarder Africontainers... concerning the prolonged immobilization and non-use of its containers in the Port of Matadi between March 1986 and July 1987.

Having registered the complaints and studied the dossier submitted by Africontainers, we have noted two essential facts:

1. The period during which, according to Africontainers, its containers were immobilized coincides with the period of construction work in the Port of Kinshasa, for the duration of which Onatra proposed transferring the unpacking of national containers from Kinshasa to Matadi. Furthermore, the costs of returning the empty containers were to be borne by Onatra.
2. We have noted that, in a previous exchange of correspondence between Africontainers and Onatra, your company acknowledged receipt of the freight forwarder's letter (078/AFC/89 of 6 September 1989) and that, being fully apprised of the problem, it promised, in its letter No. 678/60-04/T10.06 of 13 September 1989, to give the matter its prompt attention. Apparently, no such action has yet been taken, judging from the content of Africontainers' letter No. 017/AFC/90 of 14 March 1990 and its current complaints.

In the light of the above, would you please give our freight forwarder's claims your particular attention and take appropriate action.

Counting on your customary promptness and co-operation, we remain,

Yours faithfully,

(Signed) Mbuyi TUMAYI.
National Network Supervisor

(Signed) Kalasa MUNONGO.
Bureau Director and Representative
of the *Délégation Générale*

ANNEX 66

12 MAY 1990

**LETTER AFC/90 TO THE CABINET OF MAÎTRE PANZU, APPEAL COURT ATTORNEY IN
KINSHASA/GOMBE CONCERNING TRANSMISSION OF THE COMPLETE FILE
ON THE DISPUTE WITH ONATRA**

We have the honour to transmit herewith the complete file relating to our dispute with Onatra concerning the immobilization and fraudulent use of our containers in the Onatra port at Matadi.

Would you be so good as to write to the Commercial Directorate of Onatra, with a copy to the Chairman and Managing Director, requesting an amicable settlement of this dispute within the very reasonable time-limit, thereby obviating the need for recourse to other channels that remain open to us.

Thanking you in advance, we remain,

Yours faithfully,

(Signed) Amadou Sadio DIALLO.
Chairman and Chief Executive

ANNEX 67

12 MAY 1990

LETTER FROM AFRICONTAINERS TO THE GUINEAN AMBASSADOR TO ZAIRE

Sir,

I have the honour respectfully to transmit to Your Excellency a file relating to a dispute between our company, Africontainers (AFC) and the *Office national des transports* (Onatra).

I avail myself of this opportunity to inform you that this matter is currently the subject of discussions between the two parties, Onatra and ourselves, aimed at reaching an amicable solution.

I hereby inform you that, in the event of a negotiated solution not being achieved, I have decided to have recourse to the competent authority in the matter.

In that event, I should be grateful, Sir, for your invaluable and indispensable assistance.

I should be grateful if you would be so good as to forward to me the advice that I need.

Accept, Sir, the assurances of my highest consideration.

(Signed) Amadou Sadio DIALLO.

ANNEX 68

23 MAY 1990

**LETTER FROM THE NATIONAL BUSINESS ASSOCIATION OF ZAIRE (ANEZA) TO
UMBA KYAMITALA, CHAIRMAN AND MANAGING DIRECTOR OF ONATRA
CONCERNING SETTLEMENT OF AFRICONTAINERS DISPUTE**

Sir,

We have the honour to inform you that we have received from the Africontainers company a copy of the file that it submitted for your particular attention by its letter under reference 027/A.F.C./90, addressed to you on 26 April 1990.

It refers to that company's claim in an amount of Z6,980,254,068 in compensation for the immobilization of containers allegedly attributable to Onatra and for the use by Onatra of 210 Africontainers containers unpacked at Matadi in 1986 and 1987.

A judicial solution to this problem — if indeed that were possible — does not seem to us to be in Onatra's best interests, as this case would be too clear-cut for the courts, and a source of additional and avoidable expenditure.

We are not acquainted with Onatra's views on this matter. However, we would advise you to bear in mind the advantages of an amicable settlement of this dispute, and would request you to keep us informed of your subsequent dealings with Africontainers.

Accept, Sir, the assurances of our highest consideration.

(Signed) LUBOYA DIYOKA.

cc: Africontainers

ANNEX 69

6 JUNE 1990

MEMORANDUM OF AGREEMENT FOR SETTLEMENT OF DISPUTE BETWEEN ONATRA AND AFRICONTAINERS

On 6 June 1990 Africontainers and Onatra, represented respectively by the Chairman and Chief Executive Mr. Diallo and citizen Kanza, Administrative Director, of the one party,

And citizen Umba Kyamitala, Chairman and Chief Executive, citizen Asse, Administrative Director, Finance, citizen Tambwe, Director, Ports Department, citizen Mbilo, Commercial Director, and citizen Buzangu, Legal Sub-Director, of the other party,

Met in the Onatra conference room on the 7th floor at 10.00 a.m. to examine the file concerning the dispute as set out in Africontainers' letter No. 027/AFC/90 of 26 April 1990.

After studying all the contents of the file, the parties agreed that, by way of settlement of this dispute, Onatra is ready to pay, in full settlement, a total and final amount of Z150,000,000.

The modalities of payment are as follows:

1. Z120,000,000, payable in 3 monthly instalments of Z40,000,000. In case of failure to pay by the due date, this amount shall bear interest to the benefit of Africontainers, in accordance with the bank rate applied on the Zairean inter-bank market.
2. The balance of Z30,000,000 shall constitute a credit to Africontainers as security for the opening of a transport account with Onatra. This amount shall bear no interest. It is agreed that Africontainers will take steps to complete the formalities required for the opening of the transport account.

This agreement shall take effect on 30 June 1990.

Done at Kinshasa, 6 June 1990

For Africontainers
(Signed) Mr. DIALLO.
Chairman & Chief Executive

(Signed) Citizen KANZA.
Administrative Director

For Onatra
(Signed) Umba KYAMITALA.
Chairman & Managing Director

(Signed) Asse MINDRE.
Administrative Director, Finance

ANNEX 70

6 JUNE 1990

LETTER FROM ONATRA TO AFRICONTAINERS CONCERNING SETTLEMENT OF DISPUTE

Mr. Amadou Sadio Diallo
Chairman and Chief Executive
Africontainers

Subject: Settlement of dispute between Africontainers and Onatra

Dear Sir,

I acknowledge receipt of your letter No. [illegible] of 2 June 1990, concerning the above matter, for which I thank you.

To enable us to consider your proposals for settlement of this dispute, I hereby invite you to take part in the meeting that I shall be chairing for this purpose on Wednesday, 6 June 1990, in the Onatra conference room, 7th floor, at 10.00 a.m. prompt.

Yours faithfully

(Signed) UMBA KYAMITALA.
Chairman & Managing Director

ANNEX 71

3 AUGUST 1990

**LETTER FROM THE MINISTRY OF FINANCE TO THE CHAIRMAN AND MANAGING DIRECTOR
OF THE OFFICE FOR THE MANAGEMENT OF THE PUBLIC DEBT (OGEDEP) FOR
SETTLEMENT OF THE AFRICOM-ZAIRE DISPUTE**

3 August 1990

Re: Settlement of the Africom-Zaire dispute

Dear Sir,

I enclose letter No. DAS/019/90 relating to the above matter for consideration and action.

Yours faithfully,

(Signed) BOMBITO BOTOMBA LOMPIO.
Minister of Finance

ANNEX 72

12 OCTOBER 1990

**LETTER FROM AFRICONTAINERS TO ONATRA REPUDIATING THE MEMORANDUM
OF AGREEMENT OF 6/6/90**

Sir,

We have the honour to inform you that, as a result of the agreement reached on 6 June 1990, the dispute between our company Africontainers and Onatra was on the point of being settled amicably.

Unfortunately, when taking stock of the situation, we came into possession of documents that demonstrate that, at the level of Onatra, there has been forgery and use of forged documents which oblige us to repudiate the agreement of 6 June 1990.

We herewith place at your disposal the important documentation relating to this dispute, comprising the forged consignment notes and also the genuine consignment notes relating to the movements of our containers.

You will readily understand why, during our discussions on 6 June, we were claiming compensation for the immobilisation of 211 containers, while you were speaking of 400 . . .

Consequently, the payments already made by Onatra on the basis of the agreement dated 6 June now constitute merely down-payments on our current claims, which comprise the normal invoicing at the rate of Z900,000 per day, default interest at a rate of 15 per cent and lump-sum compensation in respect of jeopardization of our company's investment project, a total amount of Z42,544,281,250.00.

We greatly regret that your partners did not tell us the truth, thereby falsifying your assessment.

Consequently, we would request you to find, within 20 days of this letter, an amicable arrangement for the final settlement of the dispute.

We do not wish to see such a clear-cut case, one that might discredit Onatra, go before the courts. However, should this time-limit pass without any response from yourselves, we would be reluctantly obliged to take steps to that effect.

Awaiting your reply, I remain, Sir,

Yours faithfully,

(Signed) Amadou Sadio DIALLO.
Chairman & Chief Executive

ANNEX 82

16 MARCH 1991

[Not translated]

ANNEX 84

6 APRIL 1991

LETTER FROM GÉCAMINES TO ONATRA CONCERNING THE IMMOBILIZATION OF
AN AFRICONTAINERS CONTAINER

Re: Immobilization of Africontainers container No. 525 738

Ref: 1. 84/13 – 21/T/2110/KW of 21 February 1991
2. Tripartite meeting of 2 April 1991 at Kinshasa

Dear Sirs,

Reverting to the more specific problem (Ref. 1) raised by our representative at the last tripartite meeting (Ref. 2), we hereby confirm our position, namely, that we decline any liability for the immobilization of the containers in question.

The agreements with the owners of the containers used for local traffic provide for demurrage charges to be borne by us when the containers are immobilized in our Shaba facilities.

In the case with which we are concerned, the container had already been handed over to the carrier, so that we were unable to take any action whatsoever.

Furthermore, you will recall that we had agreed to the costs of unpacking national containers being invoiced directly to us by Onatra, from 1 November 1987 onwards (see our note 23014 DIE/DIR of 12 November 1987 addressed to Zaire Fina and to all the freight forwarders).

Accordingly, the delay in unpacking cannot be attributed to ourselves.

Yours faithfully,

DEPARTMENT OF TRANSPORT

(Signed) Mukalay MANDE K.
Director, Import/Export Division

(Signed) J. DASSAS.
Director

ANNEX 85

20 MAY 1991

LETTER FROM GÉCAMINES TO AFRICONTAINERS ON EIGHT DAMAGED CONTAINERS

Dear Sirs,

Please find attached a list of your damaged containers found in our Luilu depot that we are unable to use for export.

To avoid a prolonged immobilization in our facilities, we propose the following:

- the return of the empty containers to your Kinshasa address, freight collect;
- recovery or removal of these containers by your representatives in Shaba;
- downgrading or abandonment of these containers by your company.

The first of these proposals is somewhat impracticable, given the very limited supply of wagons.

We would like to receive your decision on this question as soon as possible.

If we have not heard from you by 30 June 1991, we shall take it that you have opted for the third alternative, namely, downgrading or abandonment of your containers. This downgrading will take effect on the date of arrival of the damaged container in our facilities (cf. attached list).

Yours faithfully,

(Signed) Mukalay MANDE.
Director, Import/Export Division

(Signed) J. DASSAS.
Director

[Attached list not translated]

ANNEX 87

26 JUNE 1991

LETTER FROM AFRICONTAINERS TO GÉCAMINES HOLDING GÉCAMINES LIABLE FOR THE
DAMAGED CONTAINERS

Our ref: AFC/DG/90/91

Re: Damaged national containers

Dear Sirs,

We have the honour to acknowledge receipt of your letter No. DIE/DIR/33211/91 of 20 May 1991, concerning the above matter.

In reply, we wish to remind you that the contract of carriage signed with Gécamines/Exploitation makes express provision regarding containers rendered unusable in your facilities.

Gécamines/Exploitation can only refer to those provisions in order to provide a rapid and equitable solution to the problem you are causing us.

To the best of our knowledge, the containers to which you refer were sent to you, and arrived, in excellent condition, including their contents.

If they had been in a damaged state when they left Kinshasa, OZAC and Onatra would not have approved and accepted them for transportation.

Furthermore, if, on their arrival in your Kolwezi (lubricant depot), Likasi or Lubumbashi facilities, there had been any irregularity regarding either the containers or their contents, your staff responsible for transit would, on receiving them, have drawn up factual reports countersigned by CNCZ and OZAC. And you would have been able to attach these reports to your letter as evidence.

The absence of such reports provides ample evidence of the fact that these containers reached your facilities in perfect condition.

If they have now been found to be damaged in your Luilu depot, Gécamines/Exploitation can only assume full liability for this problem and will thus have to take all necessary measures to ensure that the containers are repaired so that they may be reused.

In the event that it is impossible to repair them, Gécamines/Exploitation should pay compensation for the loss in an amount of approximately US\$ 17,000 per container.

Gécamines/Exploitation will also be invoiced for costs in connection with loss of earnings resulting from the immobilization of these containers in your depot. A debit note in that connection will follow.

Yours faithfully,

(Signed) Amadou Sadio DIALLO.
Chairman & Chief Executive

ANNEX 88

3 JULY 1991

DEBIT NOTE CONCERNING THE IMMOBILIZATION OF AFRICONTAINERS CONTANERS FOR
3 MILLION ZAIRES

Debit note No. 005/AFC/DG/91

Debit note in respect of immobilisation of Africontainers containers in your Lulu depot.
Rate applied: US\$ 250 at Z 5000 = US\$1 = Z 1,250,000. Share of Gécamines-Exploitation
Z 937,500

Container	Entry Date	Exit Date	Batch	Days Immobilized	Amount in Zaires
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[Table not reproduced]

TOTAL: Z 3,054,375,000

(Signed) Amadou Sadio DIALLO.
Chairman & Chief Executive

ANNEX 90

16 JULY 1991

**LETTER FROM GÉCAMINES TO AFRICONTAINERS ON THE SUBJECT OF
EIGHT DAMAGED CONTAINERS**

Dear Sir,

Your letter AFC/DG/90/91 of 26 June 1991 has received our full attention.

Our services are in the process of looking into its contents.

May we be allowed, however, to point out an error in your assessment of the value of a container in US dollars.

The value of a new container is approximately US\$ 3,000, and a second-hand container is worth approximately US\$ 1,200. These figures were communicated to us by our shipper in Antwerp, DMF, in response to an enquiry by ourselves, as we were intending to equip ourselves with containers.

The figure of US\$ 17,000 given in your letter is thus hugely exaggerated. Be that as it may, the outcome of our services' investigations will be communicated to you by letter shortly.

Yours faithfully,

(Signed) Mukalay MANDE K.
Director, Import/Export Division

(Signed) J. DASSAS.
Director

ANNEX 91

18 JULY 1991

LETTER FROM ATTORNEY FRANCIS MAYAR TO THE CHAIRMAN OF ONATRA

Dear Sir,

I am the attorney who usually acts for Africontainers.

My client has transmitted to me your letter No. 166/HOLDING/91 of 10 July 1991 and has asked me to reply to it.

My client's position is as follows:

Initially, my client was claiming compensation for the immobilization of his 211 containers.

During the negotiations that took place at Onatra's offices on 6 June 1990, it emerged that Onatra was talking of 400 containers, on the basis of the containers' movements, and of the consignment notes held by Onatra.

It was on that basis that Onatra succeeded in persuading my client to accept the settlement agreed on 6 June 1990.

Subsequently, Africontainers launched an investigation into the movements of the containers.

It was then that it managed to obtain possession of the consignment notes, and to discover that, whereas Onatra had led it to believe that its 211 containers were empty, and thus not in use, those containers were in fact loaded with goods, a state of affairs that had enabled Onatra to enrich itself at the expense of my client, as Onatra was being paid for the use of those containers.

As you know, each of Onatra's partners receives a copy of the consignment note accompanying a container.

However, the copies of the consignment notes that Onatra transmitted officially to my client state that the containers were empty, whereas the copies of the other consignment notes state that my client's containers were loaded with goods.

By this trick, Onatra concealed the truth from my client, a clear instance of deliberate misrepresentation on the part of Onatra.

Perusing the memorandum of agreement relating to the settlement of 6 June 1990, I note that there is no mention therein of Africontainers having been compensated for *immobilization and fraudulent use* of its containers.

In law, the settlement of 6 June 1990 is null and void, for the following reasons:

1. There has been deliberate misrepresentation on the part of Onatra, which concealed from my client the fact that his containers had been used (Art. 592 of the Civil Code, Book III).
2. The settlement was reached on the basis of documentation which has since been acknowledged to be false, thereby rendering it null and void (Art. 594 of the Code).

3. The consignment notes that served as the basis for the settlement of 6 June 1990 and that concealed from my client the fact that his containers had been used were unknown to Africontainers and had been retained by Onatra (Art. 596 of the Code).
4. There was an error in the calculation of the amount of the compensation due to my client, as no account had been taken of the use of his containers, an error that must be rectified (Art. 597 of the Code).

In consequence of the above, my client's claim is entirely founded.

Accordingly, my client wishes to secure an amicable settlement with Onatra, given the close business relations that the two undertakings have always enjoyed.

It goes without saying that if Onatra persists in its position, notwithstanding the explanations given above, my client will have no alternative other than to have recourse to the law.

In the hope that your high authority will apprise my client, through myself, of its final position, I remain, Sir,

Yours faithfully,

Maître Francis MAYAR AKON.
Attorney.

ANNEX 93

16 AUGUST 1991

REPORT ON THE VISIT BY AFRICONTAINERS TO LUBUMBASHI

**Report on the visit to Lubumbashi by Mr. Nkanza Nekongo
from 21 July to 1 August 1991**

Purpose of the visit

By mission order No. 100/AFC/DG/KIN/91 of 18 July 1991, the Chairman and Chief Executive of Africontainers entrusted us with the task of visiting Lubumbashi in order to discuss, with the authorities of Gécamines/Exploitation, matters relating to the immobilization of and damage to AFC containers in the Gécamines/Exploitation facilities.

Departure

On 21 July 1991 we left Kinshasa at 8.20 a.m. on the Air Zaire scheduled flight, and arrived at Lubumbashi at 11.20 a.m., local time.

Start of the mission proper

On Monday 22 July 1991 we announced our arrival to Mr. Mukalay Kimuni and Mr. Kasongo, officials of the Gécamines/Exploitation Department of Transport. That same day, we presented them with invoice No. 011 dated 11 July 1991, which we had prepared in Kinshasa, in an amount of Z 415,213.

Tuesday 22 July 1991

We had our first working meeting with Mr. Kimuni and Mr. Kasongo. The latter gave us a copy of letter No. TRP/DIR/30402/91 addressed to Africontainers before our arrival in Lubumbashi in response to Africontainers' letter No. AFC/DG/90/91. After that meeting, we agreed to meet again on Friday 26 July 1991 at 2 p.m.

Wednesday 24 July 1991

With a view to gathering additional information, at 9 a.m. we took the bus to Gécamines/Exploitation's Panda depot at Likasi. The purpose of our journey to Panda was to visit the container depot in order to confirm the exact number of Africontainers containers at the depot and, where possible, the date of each container's arrival.

At the end of our visit to Panda, we had identified the following nine containers:

Serial No.	Entry date	Exit date	Destination
525736	11.10.90	-	-
526307	05.01.90	12.04.91	Luilu

525587	14.11.88	23.02.90	Luilu
525769	09.06.90	15.06.90	Luilu
526340	21.04.90	07.09.90	Luilu
526423	07.05.90		
526405	27.04.90		
525612	09.10.90		
526319	07.05.90		
525628	untraced		GCM L'shi
525591	" " "		GCM Kolwezi
525744	" " "		GCM Kamoto
527699	" " "		GCM Kamoto
526310	" " "		GCM L'shi

That same day, we left Panda at 4 p.m. and reached Lubumbashi at about 6 p.m.

Thursday, 25 July 1991

We went to Gécamines to follow up the invoice deposited on 22 July and to collect the new rental rates for national containers.

Friday, 26 July 1991

Review of all the dossiers and preparation of substantiating arguments. At 2 p.m. we went to the meeting, as scheduled. The discussion began at 3 p.m. After discussing the facts, Mr. Mukalay acknowledged:

1. The merits of the claim by Africontainers;
2. The loss suffered by Africontainers as a result of the immobilization of its containers in the Gécamines depots for reasons beyond the control of Gécamines/Exploitation;
3. Gécamines/Exploitation's liability for the AFC containers damaged in Gécamines/Exploitation's Luilu depot in Kolwezi.

(A) With regard to the immobilization of the national containers in the Gécamines/Exploitation depot, the director of DIE stressed that that deplorable state of affairs was attributable to the shortage of SNCZ wagons. Consequently, Africontainers was entitled to invoice Gécamines/Exploitation for penalty charges in respect of the immobilization of its containers, subject to compliance with the clauses of the contract concluded between Gécamines/Exploitation and Africontainers. Admittedly, he added, the rate agreed on in 1985 was very much out of date, but Africontainers could in principle update it to take account of present-day monetary conditions in Zaire. In that case, negotiation between Gécamines/Exploitation and Africontainers was possible. But as the rate in US\$ fixed by Africontainers was non-contractual, he promised to forward the dossier relating to immobilization of the containers to the Contract Management Division for an opinion and a reply to be transmitted to Africontainers. Mr. Mukalay promised to keep a copy of that correspondence for our attention.

However, he undertook, in spite of the shortage of available wagons, to arrange for the return of all the containers lying idle in the Gécamines/Exploitation depots as soon as possible.

(B) With regard to the damaged containers, he said that Gécamines accepts full liability, either for paying the exchange value of these containers, or for the costs of their repair.

But Gécamines/Exploitation rejected the first alternative, for the simple reason that it considers that, in requesting payment of US\$17,000 per container, Africontainers inflated their value, since the price of a new container in Antwerp is US\$3,000 and a second-hand container costs US\$1,200.

We reacted to this specific point by stressing that the figure of US\$1,200 takes account of only one factor, namely the purchase price. No account has been taken of costs of transportation, customs duties and other charges, whereas the figure of US\$17,000 takes account of all the factors involved in putting a local container into circulation. Gécamines/Exploitation's reaction was that, irrespective of all those factors, the figure of US\$17,000 remained exorbitant. Consequently, Gécamines/Exploitation prefers the option of repairing the damaged containers.

With regard to container 515 738, which is immobilized in the Onatra port in Kinshasa, Gécamines/Exploitation holds Onatra liable for failing to unpack the container in time. Gécamines promised to write to Onatra setting out its position on this matter. A copy of that correspondence will also be kept for our attention.

We would note in passing that not all the dossiers sent to Gécamines by mail reached Lubumbashi in time for our visit. In order to begin these negotiations we had to prepare other dossiers on the basis of the copies in our possession.

Before terminating our discussion, DIE/DIR promised to respond in writing to all Africontainers' claims pending the study to be undertaken by the Contract Management Division.

Saturday, 27 July 1991

Follow-up on the invoice submitted to Gécamines/Exploitation, and visit to the Gécamines/Exploitation container depot.

Monday, 29 July 1991

Visit to STVD/SNCZ, where we found Africontainers container No. 526 408. However, as SNCZ was on strike, we were unable to obtain the consignment note under cover of which this container was sent to Lubumbashi.

Wednesday, 31 July 1991

In the morning and afternoon we visited Gécamines for our final contacts with officials of Gécamines/Exploitation.

Thursday, 1 August 1991

At 3 a.m. we left Lubumbashi, again on the Air Zaire scheduled flight, and arrived at Kinshasa at 4 a.m. local time.

(Signed) NKANZA NEKONGO.

ANNEX 95

9 SEPTEMBER 1991

**LETTER FROM MR. DIALLO TO GÉCAMINES DENOUNCING THE BREACH OF THE EXCLUSIVITY
OF CONTRACTUAL RELATIONS BETWEEN AFRICONTAINERS AND GÉCAMINES AND
SETTING OUT THE CAUSE OF THE DAMAGE TO THE CONTAINERS**

Thank you for your letter ref. DIE/DIR/33.536/91 of 26 August 1991.

We wish to inform you that we do not agree with the second paragraph of your letter which contradicts the terms of your letter No. DIE/DIR.33.211/91 of 20 May 1991, enclosing the list of your damaged containers at your Luilu depot that you could not use for export, according to that letter.

The original boards in our containers are special, oiled boards, designed specially in Europe. Once those boards have become damaged the containers can no longer be used and must be replaced.

With its original boards, each container has a guarantee of 18 years during which the boards are not renewable. This explains why numerous European investors put their money into the container industry.

Moreover, we have evidence to show that our containers have never remained idle at your depots. On the contrary, they have frequently been used for various purposes in your facilities. For example these containers have been used for the transport of ores and closed-circuit lubricants. This explains their rapid deterioration. Especially as, instead of rapidly unloading the lubricants, they were kept for several years in the converted containers at the depot. That is contrary to the agreements signed between our two companies which provided for the return of this equipment three weeks after its despatch from Kinshasa.

As regards the contracts entered into between us, we would remind you that prior to 1982 none of the managers of Gécamines had thought of overcoming the difficulty left by the closure of the Benguela railway, due to the war in Angola, by suggesting the use of containers to take your copper production out of the country. It was the chairman and chief executive of our company who was the first to make that proposal, which was immediately adopted. However, you will recall that it was not easy at that time for an African to persuade your company to adopt such an idea. Fortunately, a number of Zairean executives quickly saw the opportunity of accepting our plan which was then implemented to the great satisfaction of your company.

We need not point out that this solution allowed you to make substantial savings. We would remind you that the senior management of your company subsequently invited us to acquire very costly equipment (lifting equipment, trailers, a sufficient quantity of containers, etc.), adequate premises and qualified personnel, and asked us to open up branches in Lubumbashi and Ilebo. Those were the conditions precedent to the contract between us.

We secured foreign financing to carry out these investments on which we hoped for some return thanks to the agreement between our two companies. Similarly, in agreement with your company, we entered into contracts with oil companies for the carriage of their goods to Shaba on behalf of your company.

However, in 1985/1986 you signed other contracts with those oil companies, thus causing prejudice to our company as you had obliged us to make very costly investments for nothing. By that very action, you breached the clauses of our agreement.

The consequences are considerable for us: Gécamines Exploitation and the oil companies stopped using our services, thus obliging us to put our 182 employees on paid unemployment. We would thus draw your attention to the fact that we do not agree with your assertion that we are bound to Gécamines Exploitation by "the same contract as the other oil companies and national freight forwarders".

Only the chairman and chief executive of Africontainers is empowered to sign contracts with third parties. We do not know which contracts you are referring to. Since 1985, we do not recall our chairman and chief executive signing any agreements whatsoever with Gécamines Exploitation; unless you can produce supplementary agreements duly signed and sealed by our chairman and chief executive in respect of the years 1986, 1987, 1988, 1989, 1990 and 1991.

As regards the demurrage fees of US\$250 per day and per container that we are claiming, we would draw your attention to the fact that by detaining our containers in your depots, you prevented us from implementing our project to transport goods from Matadi to Kinshasa and from Kinshasa to Matadi. Each journey was to bring us 5 million zaires every 24 hours until the recent devaluation.

You will thus understand the advantage of settling this dispute out of court, by paying us the demurrage fees as well as the costs in respect of those eight containers, amounting to US\$17,000 per container. For if we were to go to court, the amounts that Gécamines would have to pay us would be even higher.

Please note that a total of 22 containers are currently in your depots, including eight that are damaged, to use your own words, and five of which we have no record. We would be grateful if you would inform us what you have done with those other five containers . . .

If after one week we have still not received any information as to the whereabouts of those five containers and of the nine others that are not damaged, we will be obliged to charge you for them under the above-mentioned conditions.

ANNEX 98

7 JANUARY 1992

LETTER FROM GÉCAMINES TO AFRICONTAINERS CONCERNING
REFUSAL TO PAY DEBIT NOTE 007/AFC/DG/91

Dear Sirs,

We regret to inform you that we cannot accept your debit note 007/AFC/DG/91 for payment, and that we are returning it herewith.

In our letter DIE/DIR/33.536/91 we promised to repair your eight damaged containers and to return them to Kinshasa as a priority despatch. Unfortunately, as a result of various events affecting our company, the programme of priority work in our workshops and a shortage of available staff mean that we are no longer able to repair these containers.

In the light of this specific situation, and of your position regarding the question (viz., refusal to take back these containers), we are prepared to pay the residual value of the eight containers that we are no longer intending to repair.

Accordingly, as a token of our goodwill and our desire to settle this dispute rapidly, and given that the contract is silent on the question of determination of the residual value, we have referred, first, to information received from our European partners, and, secondly, to our recent experience with a Zairean container owner. We have also taken account of the value of each of these containers declared by yourself when requesting approval from the carriers.

We have looked into the value declared by yourself for each of the containers concerned. That figure is US\$1,400.

We are proposing that you take this amount as the residual value of a second-hand container, in spite of the fact that these containers have undergone wear and tear resulting from and proportional to the duration of their use from the date of the request for approval to the present time.

To justify our estimate, we would ask you to refer to our letter TRP/DIR/30.402/91 of 16 July 1991, in which we informed you that the price of a new container is US\$3,000.00 and that of a second-hand container US\$1,200.00.

In the event of our proposal being acceptable to you, we would be pleased to receive your invoice as soon as possible, based on a residual value of US\$1,400.00 per container, to be converted into zaires at the rate applied by the Bank of Zaire.

Yours faithfully,

DEPARTMENT OF TRANSPORT

(Signed) MUKALAY MANDE K.
Director, Import/Export Division

(Signed) J. DASSAS.
Director

ANNEX 99

24 JANUARY 1992

**LETTER FROM GÉCAMINES TO AFRICONTAINERS ON THE DEVELOPMENT OF
THE SITUATION CONCERNING THE DAMAGED CONTAINERS**

Dear Sirs,

We refer to our letter DIE/DIR/21.271/92, and wish to inform you of the latest developments in the situation concerning your damaged containers.

According to information received from our Luilu headquarters, containers 525 584 (packed with mineral ores) and 526 299 (empty) were loaded onto wagons 52.627.469 and 15565/1 respectively in November 1991 and despatched to Kinshasa so as to be returned to Africontainers. It is our understanding that these two containers were repaired before being re-despatched.

The other six remaining containers will be kept indefinitely in our facilities, in accordance with the spirit of our letter DIE/DIR/21.271/92, and in the hope that you will quickly send us an invoice enabling us to pay their exchange value to your company.

Awaiting your reply, we remain,

Yours faithfully,

(Signed) NGOY YA MBULI
Director *ad interim*.

(Signed) J. DASSAS
Director.

ANNEX 100

11 FEBRUARY 1992

**LETTER FROM AFRICONTAINERS TO GÉCAMINES ON 22 CONTAINERS
FOR WHICH GÉCAMINES IS STILL RESPONSIBLE**

Dear Sirs,

We acknowledge receipt today, Monday 10 February 1992, at 10 a.m., of the copies of the following letters from yourselves:

1. DIE/DIR/33.616/91 of 20 September 1991,
2. DIE/DIR/33.617/91 of 20 September 1991,
3. DIE/DIR/33.832/91 of 10 December 1991,
4. DIE/DIR/21.271/92 of 7 January 1992,
5. DIE/DIR/21.314/92 of 24 January 1992,
6. DIE/DIR/21.314/92 of 5 February 1992,

forwarded to us by your DIE representative at Kinshasa. We regret to inform you, however, that we never received the originals of these letters.

We note your refusal to honour our debit notes Nos. 005/AFC/DG/91, 006/AFC/DG/91 and 007/AFC/DG/91.

We should like, however, to draw your attention to the fact that 22 of our containers continue to be your responsibility. The containers in question are:

- (a) the eight containers that you declared damaged: 525 764, 525 584, 526 299, 525 758, 525 596, 526 312, 525 767 and 525 572.
- (b) the nine containers seen by our representative at Luilu: 525 736, 526 307, 525 587, 525 769, 526 340, 526 423, 526 405, 525 612 and 526 319.
- (c) the five containers received by Gécamines that our representative failed to locate: 525 628, 525 591, 525 744, 525 699 and 525 310.

We would also inform you that we are compiling a complete dossier, which we will forward to you in the very near future, with a view to settling all the disputes that have arisen between our companies.

Yours faithfully,

(Signed) Amadou Sadio DIALLO.
Chairman and Chief Executive.

ANNEX 115

19 OCTOBER 1992

LETTER FROM MR. DIALLO'S LAWYER, MAÎTRE FRANCIS MAYAR AKON,
TO THE PARIS BRANCH OF CITYBANK

Formal notice

I am acting for Mr. Diallo Amadou Sadio.

On 8 October 1990, my client opened a demand account No. 48087401791 with your bank.

On opening the account, my client paid in the sum of US\$1,000 in cash.

On the same day, he also paid in travellers cheques for a total of US\$8,000.

When my client asked his bank in Kinshasa, the Citybank-Zaire, to finance his purchase of tyres using the funds in his account as security, you informed Citybank-Zaire that my client's account only had a balance of US\$990. To make matters worse, it was the person who had opened the account, Mr. Yves Lewi, who signed the message.

After numerous reminders sent to Citybank-Zaire you finally acknowledged, on 29 September 1992, that my client had deposited the US\$8,000.

Your conduct caused serious prejudice, both pecuniary and non-pecuniary, to my client.

In pecuniary terms, my client was unable to purchase the tyres that he needed. In non-pecuniary terms, my client suffered serious damage to his credibility with respect to the financial establishment from whom he had sought financing for the purchase of tyres.

Lastly, my client is no longer taken seriously at the school which his children attend in France, because my client was obliged to spend time finding alternative funds to pay his children's school fees, whereas if his account had been credited at the right time he would have paid the school using those funds.

In compensation for all the prejudice thus suffered, my client is claiming from you the sum of US\$23,166,800.

You have a period of one month to inform my client of your intentions as to the payment of the said amount.

(Signed) Maître Francis MAYAR AKON.

ANNEX 116

19 OCTOBER 1992

**LETTER FROM ZAIRE SHELL TO AFRICONTAINERS ON THE
REVIEW OF PRICES FOR CONTAINER TRANSPORT**

Dear Sirs,

Re: Your invoice 015/AFC/DG/KIN/92

With reference to your letter 055/AFC/DG/92 of 10 September 1992, please find enclosed the container transport rates at 15 August 1992.

We would remind you that in March 1991 a supplementary agreement to the tripartite contract of carriage was concluded, fixing the parameters for automatic revision of the rates on the basis of the conditions accepted by Gécamines. It was agreed that the rates would be automatically reviewed by the oil companies following a variation in the parameters involving a price variation of more than 10 per cent.

Yours faithfully,

FOR ZAIRE SHELL

(Signed) ZUMBI NDONA MASUKA.
Director of Personnel.

(Signed) E. CORREIA.
Director of Operations.

ANNEX 121

10 DECEMBER 1992

[Not translated]

ANNEX 122

9 MARCH 1993

**LETTER FROM MAÎTRE FRANCIS MAYER AKON TO GÉCAMINES EXPLOITATION
(LEGAL DIVISION) CONCERNING CLAIMS OF AFRICONTAINERS**

Dear Sirs,

I have received your letter of 19 February 1993, together with the copy of your letter No. JUR/4840/TN of 28 December 1992.

I hereby confirm that I am ready to meet you on 17 March 1993 in your Kinshasa offices, at 3 p.m., to discuss with you the dispute between Gécamines and Africontainers.

Yours faithfully,

(Signed) Maître Francis MAYER AKON.
Attorney

ANNEX 130

24 AUGUST 1993

JUDGMENT OF THE KINSHASA/GOMBE *TRIBUNAL DE GRANDE INSTANCE*
RH 25.587 / RC 61.320

[Summary]

Judgment given at public hearing of 24 August 1993 in civil and commercial matters by the Kinshasa/Gombé *Tribunal de Grande Instance*

Claimant:

The company PLZ (private limited company), having its head offices at 16, Avenue Lukusa, Gombé district, Kinshasa, the proceedings being instituted by its managing director Mr. Jean Alfonsi.

Defendant:

The company Africom (private limited company), having its head offices at Coin des Avenues Sénégalais et Bas-Zaïre, Gombe district, Kinshasa, in the person of its Chairman and chief executive Mr. Amadou Sadio Diallo, residing at No. 20 Building "Losonia", Gombé district, Kinshasa.

Written pleadings of claimant

The defendant company leased accommodation at 20 Building "Losonia", Boulevard du 30 juin, being the property of the claimant, for its Chairman and chief executive. The defendant had ceased to pay the rent for some time and claimant had thus refused to renew the last lease, which had expired on 30 April 1992. The rent arrears stood at 20,964 dollars as of 30 May 1992. Despite various orders served on defendant, it had refused to pay (although acknowledged its debt) or to vacate the premises. By late November 1992 the debt stood at 32,964 dollars. The claimant sought preventive attachment, which was performed on 15 December 1992. It called upon the Court to confirm that attachment and order actual execution against goods for the payment of rent etc., together with five billion zaires damages and vacation of the premises.

The parties presented their respective claims and submissions at a hearing of 23 June 1993:

Oral submissions of claimant

That the Court should:

- find its action admissible and well-founded
- order the defendant to vacate the premises
- order the payment of nine hundred billion zaires in arrears etc.

- order the payment of five billion zaires for unlawful occupation of premises
- award costs, etc.

Oral submissions of defendant

That the Court should:

- as to the procedure, find the action by PLZ inadmissible for lack of capacity
- as to the merits, find the action by the claimant admissible but unfounded
- find its counter-claim admissible and well-founded
- find the attachment unlawful and award the defendant damages
- order the setting-off of debts, with the balance to be paid by the claimant to the defendant
- award costs, etc.

Prosecutor's submissions

That the Court should:

- find the action by PLZ inadmissible for lack of capacity of its managing director
- find the counterclaim by Africom admissible as to the procedure
- on the merits, to instruct PLZ to take proceedings in the proper court
- find the counterclaim by Africom admissible as to the merits
- order PLZ to pay damages and costs.

Judgment

Reasoning:

The defendant did not dispute that it occupied the accommodation as lessee. The first lease agreement was signed on 1 November 1975 and was renewed several times, each time with the payment of a new security deposit without previous deposits being refunded. The rent was raised to the same amount as for furnished accommodation. Instead of settling the issue of deposits, the claimant had obtained an attachment and brought action for payment.

The defendant pleaded that:

- the action was inadmissible, due to non-compliance with company law concerning the statutory representative in legal action
- the preventive attachment had been withdrawn

- the defendant had fulfilled its obligations until June 1991 but a dispute arose because it had been paying the rent applicable to furnished accommodation and because its deposits had not been refunded

The Court rejected the objection that the claimant's managing director lacked statutory capacity.

The Court rejected the first claim that the preventive attachment should be confirmed, as it had been withdrawn.

The Court found that the defendant had fulfilled its contractual obligations (paid its rent) from 1975 until 1991 and had paid a new deposit on each contract renewal, which the claimant in bad faith had not acknowledged. It further found that the claimant had unjustifiably raised the rent to the furnished rate, even though the accommodation was unfurnished. It was thus equitable for the defendant to obtain the setting-off of debts and to remain on the premises. In any event, the lease agreement could only be unilaterally terminated through judicial proceedings and the claimant had not brought such proceedings.

Concerning the counterclaim for damages, the Court found that the preventive attachment had been improper, as most of the alleged debt owed by Africom could be set off against the excess rent and deposits paid by the latter. Africom had suffered prejudice as a result of the preventive attachment and was justified in seeking compensation, for an amount of US\$90,000, in addition to the reimbursement of the sums it had unduly paid (minus the rent arrears it owed to the claimant).

Operative provisions:

The Court:

- admits the action by PLZ but finds it unfounded
- finds the counterclaim by Africom admissible and well-founded
- orders PLZ to pay the defendant US\$90,000 for improper attachment
- orders the setting-off of debts between the parties
- orders PLZ to pay the defendant the balance, provisionally fixed at US\$32,364,225.50, after deduction of US\$16,784.00 in rent arrears owed by defendant
- awards costs against claimant.

Order of 10 September 1993

The Kinshasa/Gombé *Tribunal de Grande Instance* authorized Mr. Amadou Sadio Diallo to obtain the execution copy of the foregoing judgment notwithstanding his inability to pay in full, as attested by a certificate of insolvency of 3 September 1993. Mr. Diallo would be required to pay the remainder after execution.

ANNEX 142

20 MAY 1994

[Not translated]

ANNEX 146

11 JANUARY 1995

SUBMISSIONS OF THE *MINISTÈRE PUBLIC* (PUBLIC PROSECUTOR) IN THE APPEAL ON
POINTS OF LAW AGAINST APPEAL COURT JUDGMENT RCA 17244

[Summary]

Appeal on points of law (*pourvoi en cassation*) against the adversarial judgment RCA 17.244 of 9 March 1994, rendered by the Kinshasa/Gombe Appeal Court

Appellant

The company Africom-Zaire

Respondent

The company Plantation Lever Au Zaire (PLZ)

Prosecutor's submissions

I — FACTS

The parties entered into the first lease agreement in respect of accommodation at 20 Residence "Losonia" on 1 November 1975 and the most recent was signed on 12 March 1991, with a new deposit being paid on each renewal. PLZ brought proceedings for non-payment of rent, damages for unlawful occupation and eviction, whilst Africom submitted a counterclaim for the reimbursement of the excess it had paid and for damages. On 24 August 1993 the Kinshasa/Gombe *Tribunal de Grande Instance* ruled in favour of Africom. The parties both appealed and on 9 March 1994 the Kinshasa/Gombe Appeal Court vacated the judgment of the Court below and ruled in favour of PLZ. Africom is now appealing to the Supreme Court.

II — ADMISSIBILITY OF APPEAL

In its pleadings in reply, the Respondent raised five objections as to admissibility, but they are all dismissed by the Prosecutor.

III — EXAMINATION OF GROUNDS OF APPEAL

1. Wrong identification of party on appeal

The impugned appeal proceedings had been brought against the person of Mr. Sadio Diallo, whereas he had not been a party to the first-instance proceedings (when the defendant was the company Africom). The appeal court had improperly relied on a copy of the original judgment to which Mr. Diallo was not a party and thus ignored the discrepancy between that copy and the notice of appeal. This ground is well-founded.

2. Lack of capacity of Mr. Jean Alphonsi (managing director of PLZ)

Africom claimed that the document (of a purely private nature) produced by PLZ in support of Alphonsi's capacity to act as statutory representative was null and void. This ground is

inadmissible because it is a question of fact. However, the said document had been accepted by the appeal court without prior certification of authenticity and was not thus enforceable against third parties. This ground is well-founded. The appointment of Mr. Alphonsi constituted an amendment of the company's articles of association, but the proper procedure for such purpose (namely, presidential authorization) had not been followed. By admitting an appeal brought by an unauthorized company representative, the appeal court had breached the statutory provisions and the ground is well-founded.

3. Failure to examine validity of Mr. Alphonsi's appointment

The appeal court had accepted that Mr. Alphonsi's appointment had been validly registered by the companies registrar, without considering its purely private nature, which rendered it binding on the parties but not enforceable against third parties. This ground is well-founded.

4. Improper finding that Africom's lawyer lacked power of attorney

The appeal court had found Africom's appeal inadmissible on the ground that its lawyer had not been given due power of attorney by the company's manager. However, such a power of attorney had actually been provided to the court. This ground is well-founded.

5. Evidence as to excess payment of deposits and rents

The appeal court had wrongfully found to be insufficient the evidence submitted by Africom (in the form of receipts or bank statements) in support of its claim to the reimbursement of deposits. The court had incorrectly applied the law but its reasoning in dismissing the evidence was sufficient. Concerning the excess rent paid at the furnished rate, the appeal court had accepted the lessor's interpretation of events and had not accepted Africom's contention that the rent was excessive. This ground is inadmissible inasmuch as it challenges the sovereign discretion of the court below.

6. The denial of damages for improper preventive attachment

The appeal court had denied Africom damages, finding that the preventive attachment by PLZ had been justified. Africom had contended, however, that the attachment had been withdrawn for lack of statutory basis and that it had suffered prejudice as a result of the attachment. The court wrongfully based this finding purely on its previous finding that PLZ was justified in claiming the payment of arrears. This ground is well-founded.

SUBMISSIONS

That the appeal court judgment should be quashed:

- without referring it back: for the first ground and for part of the second ground (the admission of an appeal brought by an unauthorized company representative); and
- referring it back: for the fourth and sixth ground of appeal.

ANNEX 149

20 APRIL 1995

**SUBMISSIONS OF THE *MINISTÈRE PUBLIC* (PUBLIC PROSECUTOR) IN THE APPEAL ON POINTS OF
LAW AGAINST APPEAL COURT JUDGMENT RCA 17 229 OF 24 FEBRUARY 1994**

[Summary]

Appeal on points of law (*pourvoi en cassation*) against judgment RCA 17.229 of 24 February 1994, rendered by the Kinshasa/Gombe Appeal Court

Appellant

The company Africontainers S.P.R.L.

Respondent

The company Zaire-Fina S.A.R.L.

Prosecutor's submissions

I. Facts

The Parties entered into a contract of carriage dated 13 July 1983, whereby Africontainers leased two containers to Zaire-Fina. Africontainers loaded the containers and conveyed them to the river port, but after they had been entrusted to a carrier for river transport, the containers were lost in the Zaire River. Africontainers sought compensation by bringing proceedings before the Kinshasa/Gombe *Tribunal de Grande Instance*, which partially upheld its claim on 12 August 1993. However, Zaire-Fina appealed and the appeal was upheld by the Kinshasa/Gombe appeal court on 24 February 1994. Africontainers' cross-appeal was found to be inadmissible. Africontainers, represented by its managing director Mr. Diallo, then lodged an appeal with the supreme court.

II. Admissibility of appeal

The Prosecutor finds this appeal admissible.

III. Examination of grounds of appeal

1. Mr. Diallo's capacity to act

The appeal court had found Mr. Diallo to be lacking in capacity to act on behalf of the company Africontainers. The latter had however produced all the corporate documents to show that Mr. Diallo was the managing director and could validly represent the company. After examining the certification of the documents, this ground appears well-founded.

Concerning the minutes of an extraordinary general meeting, produced as evidence of Mr. Diallo's appointment as manager, the appellant disagreed with the court's finding as to when those minutes were actually certified as authentic by a *notaire*, but the Prosecutor dismisses this ground because the court below had exercised its sovereign discretion. However, whilst the appeal court had refused to accept a certified photocopy of that document concerning Mr. Diallo's appointment, it had by contrast accepted an uncertified document as evidence of the appointment of

Mr. Leferink as manager of the respondent company. Considering that parties should be afforded equal treatment, this ground is well-founded.

2. Legal representation of Zaire-Fina

Africontainers sought to challenge Mr. Leferink's capacity to represent his company before the appeal court, contending that the power of attorney was invalid, but the Prosecutor dismisses this ground. However, the Prosecutor agrees with the appellant that Mr. Leferink was lacking in capacity on the ground that the amendment of the articles of association, from which he derived his authority, had not obtained the proper presidential authorization.

The appellant pointed out that another document used to justify Mr. Leferink's capacity actually said that he was dismissed from the board of directors on 5 September 1991. This ground is well-founded, because the subsequent minutes recording his re-appointment on 2 June 1993 could not be taken into consideration as the photocopy had not been certified by a *notaire*.

A further ground concerning certain discrepancies between the minutes and the power of attorney is deemed unfounded, because it would entail an inquiry into factual matters.

Submissions

That the appeal court judgment should be quashed and referred back for a ruling on Africontainers' cross-appeal, having regard to those of the foregoing grounds that are well-founded.

ANNEX 150

29 MAY 1995

**LETTER FROM GÉCAMINES TO ALL ITS FORWARDING AGENTS AND PARTIES
TO THE TRIPARTITE CONTRACT**

Dear Sirs,

We hereby invite you to a meeting convened by Gécamines in order to continue the work begun in November 1994 on the use of national containers. This meeting will be held on Thursday, 1 June 1995 at 9 a.m., in the Gécamines office at the TCPK (door No. 11), adjacent to Ngobila beach.

Please bring copies of the Tripartite Contract with Gécamines and of the updated list of containers delayed in Gécamines facilities.

Yours faithfully,

(Signed) MBUYI TUMAYI.
National Track Supervisor

(Signed) Bono KWIBABWA MA SOGBEA.
Representative of the Chairman
and Managing Director

ANNEX 151

8 JUNE 1995

**MINUTES OF THE MEETING HELD ON 1 JUNE 1995 BETWEEN GÉCAMINES
AND AFRICONTAINERS ON THE USE BY GÉCAMINES OF
AFRICONTAINERS' CONTAINERS UNDER
THE TRIPARTITE CONTRACT**

At the invitation of Gécamines, a meeting was held on 1 June 1995 in the Containers Management Office at the Onatra port in Kinshasa.

Participants

Gécamines

Mr. Ngoy Yambull:	Director a.i. of the Import/Export Division
Mr. Mbuyi Tumayi:	National Track Supervisor
Mr. Pierre Lumuna:	Chief, Containers Management Office

Africontainers

Mr. Amadou Diallo:	Chairman and Chief Executive
Maître Bizimana:	Attorney for Africontainers

Agenda

- Harmonization of statistics on containers delayed in Gécamines facilities
- Solution to the problem of containers delayed in Gécamines facilities

A. Harmonization of statistics on containers

Africontainers produced a list of 32 containers delayed in Gécamines facilities. This list was drawn up jointly with the Containers Management Office after the meeting held on 1 December 1994, at which the principle of an amicable settlement had been adopted. Africontainers affirmed that in addition to the 32 containers, others had not been invoiced. To the list of 32 containers should be added two containers immobilized in the TCPK. These are containers that Gécamines was proposing to return, whereas they had already been invoiced by Africontainers.

B. Recommended solution

Gécamines wished to be informed of Africontainers' position concerning the containers delayed in its facilities.

Africontainers expressed surprise that Gécamines had taken no action with respect to the file submitted by it as long ago as 1992, even though at the time the Chairman and Managing Director of Gécamines had given instructions that the dispute should be dealt with as a matter of urgency.

In response to a question by Gécamines, Africontainers said that it regarded the 32 containers delayed in Gécamines facilities and the two others immobilized in the TCPK as the property of Gécamines. At that stage, negotiations were already at an advanced stage; as the monetary amount disputed had been known to both parties since the most recent negotiations, Africontainers made the following stipulations:

- Given that the financial claim by Africontainers has not been challenged by Gécamines, Africontainers considers that the sum of US\$ 30,667,681.57 claimed by itself in 1992 is acknowledged as correct by Gécamines.
- Programming of the payment: in view of the difficulties that Gécamines is experiencing, Africontainers is ready to accept payment by instalments.
- Africontainers reminded Gécamines that, in addition to payment in respect of immobilization of the 32 containers, the invoice addressed to Gécamines includes non-contractual use of several containers in traffic between the various Gécamines facilities, and fraudulent use and loss of earnings in connection with the 480 containers used between 1985 and 1989 on the Kinshasa-Matadi route without the owner's knowledge.
- Africontainers gave Gécamines ten days in which to inform it of its position. Upon expiry of that time-limit, it will take the matter to the courts and will be obliged to adjust the amount of compensation to take account of the fact that the company's future has been jeopardized by Gécamines's infringement of the terms of the contract in promoting the interests of the oil companies and freight forwarders that are Africontainers' competitors.
- Given that Africontainers has undertaken enormous investment at the request of Gécamines (see the bilateral contract, and in particular the so-called Tripartite Contract), it proposes, in the event that the dispute is not settled amicably, to recover the bank interest from Gécamines, as it was constituted on the basis of loans granted following commitments by Gécamines. To this interest must be added the cost of immobilization in its depot of more than 300 containers acquired at the request of Gécamines (see 1982 Memorandum). Furthermore, the investment includes premises constructed, enclosed and equipped, the value of which is US\$ 2 million, an investment also made at the request of Gécamines.

After discussion of all the points raised by Africontainers, the two parties agreed on the following:

- Gécamines will review the entire dossier submitted to it by Africontainers, on the basis of its contractual obligations;
- Africontainers will be apprised of Gécamines's position within one month of the date of this meeting, held on 1 June 1995.

Kinshasa, 8 June 1995.

For Africontainers
(Signed) Amadou DIALLO.

For Gécamines
(Signed) NGOY YAMBULL.

ANNEX 153

3 JULY 1995

**JUDGMENT OF THE KINSHASA/GOMBE *TRIBUNAL DE GRANDE INSTANCE*
RCA 63824 RH 26767**

[Summary]

Judgment given at public hearing of 3 July 1995 in civil and commercial matters by the Kinshasa/Gombe *Tribunal de Grande Instance*

Claimant:

The company Africontainers SPRL (private limited company), having its head offices at Coin des Avenues Sénégalais et Bas-Zaïre

Defendant:

The company Zaire-Shell SPRL (private limited company), having its head offices at 1515 Boulevard du 30 juin, Gombe district, Kinshasa

Written pleadings of claimant

That the Court should:

- find the claimant's action admissible and well-founded;
- award the claimant an amount corresponding to the outstanding debt of US\$13,106,704.39;
- award the claimant US\$10 million in damages and interest on all amounts;
- award costs;
- etc.

These pleadings were maintained in the oral submissions.

Judgment

Reasoning:

The claimant alone appeared at the public hearing of 26 April 1995 and the defendant was not represented. The defendant did file written pleadings the next day for the reopening of the proceedings but they were dismissed. The Court found that the defendant had breached its exclusivity agreement with the claimant and had committed an act of unfair competition by purchasing its own containers and entrusting the transport of its products to third parties. This was established by the case file. The debt was substantiated and undisputed. Damages should be awarded but fixed at US\$50,000 rather than the excessive amount claimed.

Operative provisions:

The Court:

- finds the claimant's action admissible and well-founded;
 - orders Zaire Shell to pay its debt of US\$13,106,704.39;
 - orders it also to pay US\$50,000 in damages;
 - awards costs against the defendant;
 - orders the immediate enforcement of the judgment (in respect of the principal debt).
-

ANNEX 166

29 AUGUST 1995

LETTER FROM ZAIRE SHELL TO THE MINISTER OF JUSTICE OF ZAIRE CONCERNING
THE REQUEST FOR A STAY OF EXECUTION ON JUDGMENTS

To His Excellency The Minister of Justice and Keeper of the Seals

KINSHASA/GOMBE

N/ref. ZS/DP/BLL/601/c.i/95.-

Re: Request for a stay of execution on Judgments RTA 6128, 6190, 3585, 6286, 6175, 3199, 3129, 3199, rc 63824, RCA 16988, RTA 3128, RTA 3130

Your Excellency,

It is my honour to write to you again about the particularly worrying situation in which our Company repeatedly finds itself following a whole series of judgments delivered by the Tribunal de Grande Instance and by the Court of Appeal of Kinshasa/Gombe in cases between Zaire Shell and its former employees.

All the officials whose names are listed in Annex have been dismissed for economic and operational reasons internal to the Company in the wake of the serious economic crisis affecting our country, Zaire.

Despite respecting the procedure laid down by law in this area, our Company has found itself sentenced to pay large fines when expressed in US\$, first in the judgments delivered by the Tribunal de Grande Instance and then by the Court of Appeal.

In my view, all these unjust and deliberate [*délibérées*] sentences cast doubt on the equity and common sense which should guide the courts in their assessment of the damages to be assigned to the Applicants.

May I also take the liberty asking you to make a decision which will save our Company.

Hoping that you will look favourably on my request, please accept, Sir, the assurances of my highest consideration.

FOR ZAIRE SHELL

(Signed) P. KATENDE-MUKINAYI.
Deputy Administrative President

Annex: List

Cc.: The General Inspector of Judicial Services in Kinshasa/Gombe.
First President of the Court of Appeal in Kinshasa/Gombe.

Judgments delivered by the Tribunal de Grande Instance and the Court of Appeal of Kinshasa/Gombe between ZAIRE SHELL and its employees.

1. RTA 6128 — Meno Manzambi
2. RTA 6190 — Pembele Kembo
3. RTA 3585 — Welo Onya
4. RTA 6286 — Nkubeke Nzo Emfaki
5. RTA 6175 — Massoko ma Bodi
6. RH 26834 — Ntoya Sambu
7. RTA 3129 — Mbilo Bongemba
8. RTA 3199 — Bangamba Is'Impunge
9. RTA 63824 — Africontainer
10. RTA 16988 — Kakule
11. RTA 3128 — Ntinu Kundieko
12. RTA 3130 — Landu Mikembo
13. RTA 31201 — Kalenga Mujangi

Done in Kinshasa, 29 August 1995.

ANNEX 167

29 AUGUST 1995

NOTICE AND ORDER RH26853 IN RESPECT OF JUDGMENT RCA18307

On the application of the company Africontainers SPRL (private limited company), having its head offices at Coin des Avenues Sénégalais et Bas-Zaire, Gombe district, Kinshasa;

the undersigned bailiff has served notice on the company Zaire-Shell, having its head offices at Boulevard du 30 juin, Gombe district, Kinshasa,

of a Judgment rendered by the Kinshasa/Gombe appeal court in civil and commercial matters, dated 24 August 1995, ref. RCA18307.

...

The addressee is ordered to pay a total of 54,000 NZ to cover the costs of the present process.

Served in person.

ANNEX 169

5 SEPTEMBER 1995

**REPORT WITH A VIEW TO OBTAINING APPROVAL FOR EXECUTION OF
JUDGMENT RC 63824 IN THE *AFRICA CONTAINERS V. ZAIRE SHELL* CASE**

For breach of its exclusivity agreement in respect of the supply of containers and, in addition, for engaging in an act of competition in breach of fair business practice, inasmuch as the Zaire Shell company purchased its own containers and consigned its products for transport to third parties, this Court, by Judgment R.C. 63.824 of 3 July 1995 based on Article 19 of the Code of Civil Procedure, sentenced the Zaire Shell company to pay to the plaintiff Africontainers the equivalent in new zaires of US\$ 13,106,704.39, immediately enforceable, and the equivalent of US\$ 50,000 by way of liquidated damages.

Pursuant to Order No. 0455/D.15/95 of 17 July 1995, the plaintiff obtained copies of the documents for service of a payment order, to be effected on 21 July 1995 by the bailiff Noël Roland Manzambi. Upon service thereof, the defendant, Zaire Shell, immediately filed an appeal.

By decision RCA 18.307, the Court of Appeal handed down Judgment after hearing both parties, dismissing the defence on the ground of failure to produce an authenticated copy in respect of the appeal.

The plaintiff obtained an authenticated copy of this decision and a copy thereof in return for receipt No. 0111902/0256 of 28 August 1995 and the Judgment was notified to Zaire Shell by the Bailiff Sasa Nianga on 29 August 1995.

The same bailiff served the final notice to pay on 31 August instant and the plaintiff requests approval for execution of the Order for payment of the principal.

As the regular procedure was followed in this regard, we considered that approval should be granted.

ANNEX 170

13 SEPTEMBER 1995

**LETTER NO. 0247/CAB PP/CAKG/AG/95 FROM THE OFFICE OF THE FIRST PRESIDENT,
KINSHASA APPEAL COURT, TO THE ENFORCEMENT DEPARTMENT OF
THE KINSHASA *TRIBUNAL DE GRANDE INSTANCE* UNDER COVER OF A LETTER TO
THE PRESIDENT OF THE KINSHASA *TRIBUNAL DE GRANDE INSTANCE*
CONCERNING THE *ZAIRE SHELL V. AFRICONTAINERS* CASE — RCA 18307**

Sir,

In the *Zaire Shell v. Africontainers* case, registered as RCA 18.307, this Court, ruling on the appeal filed by the defendant, the Zaire Shell company, declared, on 24 August 1995, that the appeal was unfounded and dismissed it on the ground of failure to produce an authenticated copy in respect of the appeal or the served or certified copy of the judgment handed down.

Pending the Court's decision on the fresh appeal filed by the same company, Zaire Shell, against the same Judgment, the Court's decision rendered on 24 August 1995 remains enforceable.

ANNEX 171

13 SEPTEMBER 1995

BAILIFF'S REPORT IN EXECUTION OF ORDER RH26853 (AFRICONTAINERS V. ZAIRE SHELL)

Execution report

Africontainers v. Zaire Shell

During the execution against property and in the presence of Mr. Brini, Legal Counsel to Zaire-Shell, the Vice-Minister of Justice and Garde des Sceaux Mr. Kikadi, on the cell-phone of Zaire-Shell, gave me the order that things be left as they were.

As regards my observation that I had just seized certain printers and machines, he responded that things should be left as they were.

It was at that point that I discontinued the execution.

Done at Kinshasa, 13 September 1995

signed by a witness and by the bailiff

ANNEX 177

28 SEPTEMBER 1995

**LETTER NO. 850/CAB/MIN/RIJ & GS/95 FROM THE MINISTER OF JUSTICE, JOSEPH N'SINGA
UDJUU, TO THE FIRST PRESIDENT OF KINSHASA/GOMBÉ COURT OF APPEAL**

cc: Inspector-General of Courts at Kinshasa/Gombé, Africontainers, Zaire Shell

Re: Decision RCA 18.307 Court of Appeal /Gombé

The review of decision RCA 18.307 of 24 August 1995, rendered by the Court of Appeal of Kinshasa/Gombe, has ruled out any manifest error of judgment.

I would ask you to make the necessary arrangements for the enforcement of the said Decision.

ANNEX 178

29 SEPTEMBER 1995

**LETTER FROM AFRICONTAINERS FORWARDING DEBIT NOTE NO. 064/AFC/DG/95 FOR
SETTLEMENT OF INVOICES ADDRESSED TO ZAIRE SHELL
FROM 1982 TO 1990**

Careful scrutiny of all the invoices addressed to you since 1982 reveals that the various container rental rates were, for the most part, lower than the rate initially agreed in the contract still in force that was signed by you on 24 July 1981.

Thus, before 15 May 1982 the cost of renting containers from Kinshasa to Shaba was Z 4,680 per container, the equivalent of US\$815.33 (US\$ 1= Z 5.74, source: Bank of Zaire) and Z 5,870 or US\$1,022.64 for return of a container loaded with Gécamines ores.

We have recently noted that the oil companies tasked with studying and proposing to Gécamines and Africontainers a new rate to be applied in the event of a change in rates deliberately refrained from taking account of fluctuations of the zaire against foreign currencies, principally the United States dollar.

Failure to take account of that parameter, which we regard as crucial in any revision of prices in zaires, has resulted in Africontainers working at a loss for some eight years. With each invoicing, substantial sums of money remained in the hands of the oil companies and Gécamines, and the rental rate was eroded with the passing of time, eventually falling to about US\$200 for both the outward and the return route.

For this reason, Africontainers, on the basis of the container rental rates applicable in July 1981, and referring to all the invoices addressed to you, has calculated a difference in the order of US\$277,158.06 plus bank interest and default interest, amounting to a total of US\$1,866,447,473.40 that Shell still owes to Africontainers.

However, we remain open to dialogue and are ready to provide any additional information you may wish to request from us with a view to achieving an amicable settlement of this dispute.

Please note that bank interest and default interest continue to apply until the amount has been paid in full.

In the hope of obtaining payment within 30 days, we remain,

Yours faithfully,

(Signed) Amadou Sadio DIALLO
Chairman and Chief Executive.

cc: Minister of Justice
Embassy of Guinea to Zaire
Legal Advisor

[Attached debit note (28 pages) not translated.]

ANNEX 179

6 OCTOBER 1995

ATTACHMENT OF GOODS (NOTICE RH26853) AGAINST ZAIRE SHELL

On the application of the company Africontainers,

by virtue of a Judgment of the Kinshasa/Gombe *Tribunal de Grande Instance* dated 3 June 1995, ref. RCA 63824,

and in view of the failure by the company Zaire Shell to pay the amounts enumerated in the Order of 3 June 1995,

the undersigned bailiff hereby proceeds with the seizure of the following goods:

[3 Fiat vans and miscellaneous office equipment]

In the event of continued failure to pay, the said goods will be sold by auction on 22 October 1995.

...

A copy of this notice has been served in person.

[illegible]

ANNEX 182

2 NOVEMBER 1995

**LETTER FROM AFRICONTAINERS 076/AFC/DG/95 FORWARDING DEBIT NOTE
No. 068/95/AFC/DG/95 OF 20/10/95 TO ZAIRE FINA**

We have the honour to transmit to you herewith, for your attention and payment, the attached debit note.

As you will see, the debit note and the annexes thereto set out the various sums of money that have remained in your possession since 1983, at each billing date.

Having scrutinized and checked the invoices addressed to you between 1983 and 1990, we have noted the following:

1. The various container rental prices applied during the period were lower than the original prices.
2. The studies on price revisions that your company undertook on behalf of the other signatories to the Tripartite Contract did not take account of one of the indispensable parameters justifying a price revision, namely, the fluctuation of the exchange rate for the zaire against the main foreign currencies, particularly the US dollar.
3. For example, when the contract was signed in 1981, the rental price of a container on the outward journey was Z 4,680.02, or US\$ 815.33; for the return journey loaded with Gécamines ores, the price was Z 5,870.00, or US\$ 1,022.64.
4. The cheating began with the signature of the Tripartite Contract in July 1983. Not only were prices revised downwards without good reason, but, in addition, no account was taken of the rate of exchange for the zaire against the US dollar. In consequence, the container rental price gradually fell from US\$ 815.33 to about US\$ 370 for the outward journey and from US\$ 1,022.64 to about US\$ 250 for the return leg.
5. Unauthorized or unqualified persons (e.g., ATAF, Trans-Aspa, Kincontainers, Trans-Tshikem, Afredeza) participated unlawfully in the discussions on revision of prices.
6. The supplementary agreements setting out the revised prices were signed by persons who were not signatories to the Tripartite Contract. In consequence, all those supplementary agreements are null and void.
7. Funds belonging to us but held by yourselves were used to purchase your own containers. In consequence, you no longer needed Africontainers to despatch your lubricants to Gécamines, so that Africontainers equipment lay idle.

In short, in the light of the above, Africontainers considers itself entitled to claim a sum amounting, with the addition of default interest and bank interest, to US\$ 2,604,479,706.56.

The bank interest rates are those applied by Zairean commercial banks, including BZCE. The source for the rate of exchange of the zaire against the US dollar is the Bank of Zaire.

Nonetheless, we remain open to dialogue with a view to achieving an amicable settlement of this dispute.

In the absence of a reply from you within 48 hours, we shall consider the present claim as accepted.

Yours faithfully,

(Signed) Amadou Sadio DIALLO.
Chairman & Chief Executive
Africontainers.

[Attached debit note (11 pages) not translated]

ANNEX 183

2 NOVEMBER 1995

**LETTER FROM AFRICONTAINERS 078/AFC/DG/95 FORWARDING DEBIT NOTE
NO. 069/95/AFC/DG/95 OF 20/10/95 TO ZAIRE MOBIL OIL**

We have the honour to transmit to you herewith, for your attention and payment, the attached debit note.

As you will see, the debit note and the annexes thereto set out the various sums of money that have remained in your possession since 1983, at each billing date.

Having scrutinized and checked the invoices addressed to you between 1983 and 1990, we have noted the following:

1. The various container rental prices applied during the period were lower than the original prices.
2. The studies on price revisions that the oil companies undertook on behalf of the other signatories to the Tripartite Contract did not take account of one of the indispensable parameters justifying a price revision, namely, the fluctuation of the exchange rate for the zaire against the main foreign currencies, particularly the US dollar.
3. For example, when the contract was signed in 1981, the rental price of a container on the outward journey was Z 5,880.00, or US\$ 1,024.39; for the return journey loaded with Gécamines ores, the price was Z 5,870.00, or US\$ 1,022.64.
4. The cheating began with the signature of the Tripartite Contract in July 1983. Not only were prices revised downwards without good reason, but, in addition, no account was taken of the rate of exchange for the zaire against the US dollar. In consequence, the container rental price gradually fell from US\$ 1,024.39 to about US\$ 370 for the outward journey and from US\$ 1,022.64 to about US\$ 250 for the return leg.
5. Unauthorized or unqualified persons (e.g., ATAF, Trans-Aspa, Kincontainers, Trans-Tshikem, Afredeza) participated unlawfully in the discussions on revision of prices.
6. The supplementary agreements setting out the revised prices were signed by persons who were not signatories to the Tripartite Contract. In consequence, all those supplementary agreements are null and void.
7. Funds belonging to us but held by yourselves were used to purchase your own containers. In consequence, you no longer needed Africontainers to despatch your lubricants to Gécamines, so that Africontainers equipment lay idle.

In short, in the light of the above, Africontainers considers itself entitled to claim a sum amounting, with the addition of default interest and bank interest, to US\$ 1,680,626,994.67.

The bank interest rates are those applied by Zairean commercial banks, including BZCE. The source for the rate of exchange of the zaire against the US dollar is the Bank of Zaire.

Nonetheless, we remain open to dialogue with a view to achieving an amicable settlement of this dispute.

In the absence of a reply from you within 48 hours, we shall consider the present claim as accepted.

Yours faithfully,

(Signed) Amadou Sadio DIALLO.
Chairman & Chief Executive
Africontainers.

[Attached debit note (8 pages) not translated]

ANNEX 187

30 NOVEMBER 1995

**LETTER FROM AFRICONTAINERS TO THE PRIME MINISTER OF THE REPUBLIC OF ZAIRE
CONCERNING THE TRANSMISSION OF FILES ON DEBTS OWED TO AFRICONTAINERS BY
GÉCAMINES, ZAIRE SHELL, ZAIRE FINA AND ZAIRE MOBIL OIL**

We have the honour to transmit to you, for information and for action to be taken if necessary, the files concerning the disputes between our company Africontainers and the above-mentioned companies, to which we attach certain relevant documents.

I. Debit notes and invoices

.....

II. Documents

.....

In order to give you a better understanding of all these matters, we would also like to present to you, Prime Minister, the chronology of our business relations with those companies.

Gécamines Exploitation uses significant quantities of lubricants for its numerous facilities. Those lubricants are obtained from oil companies based in Kinshasa (Mobil Oil, Fina and Shell) and brought from Kinshasa.

The said lubricants were generally despatched in loose drums loaded onto Onatra barges then onto SNCZ goods trains. That method of transport had a number of disadvantages, mainly theft, leakage and handling difficulties.

In 1980, the company Africontainers offered to provide the company Zaire Mobil Shell with more secure packaging for its drums of lubricants, i.e., in the form of containers.

This offer was then accepted by the oil companies Zaire Fina and Zaire Shell which, in turn, submitted it to Gécamines. The latter agreed to the proposal and in 1980, the oil companies began to entrust their goods to Africontainers as their sole freight forwarder under contracts (two per company). That was the origin of the business relations between Africontainers, the oil companies and Gécamines Exploitation.

In order to meet the growing needs of the oil companies, Africontainers acquired the equipment necessary to provide for the transport of those lubricants: a sufficient number of containers, tractors and trailers, lifting equipment, etc. It also then opened branches in Ilebo and Lubumbashi.

We can state that Africontainers properly performed its task, to the great satisfaction of its partners. Those business relations, after an initial probation period, were thus continued by all parties and improved. Africontainers detected a number of operational weaknesses that could be corrected to the benefit of Gécamines Exploitation.

After unloading, the container was to return empty to Kinshasa. In 1981, for example, the return of an empty container cost 5,870 zaires — about US\$1,000 in 1981 — for Gécamines. During that time, Gécamines was despatching its copper in loose bars.

Such loose transport exposed the copper to theft and to the elements. The intermediate handling operations were arduous.

In January 1982, Africontainers made an offer to Gécamines to transport the copper in its containers which were returning empty to Kinshasa (see our letter AFC No. MZM/BMM/IN/023/82 of 10 January 1982). A box filled with goods is considered as ordinary packaging and its carriage is not invoiced by the SNCZ and Onatra. The solution proposed by Africontainers would thus ensure considerable savings for Gécamines.

That offer was enthusiastically accepted by the senior management of Gécamines which on 29 June 1982 signed an agreement for the lease of the containers of Africontainers. Gécamines however demanded the following conditions precedent:

- that Africontainers should open offices in Ilebo and Lubumbashi;
- that Africontainers should be a respectable company with its own facilities and a sufficient number of containers;
- that Africontainers should employ competent managers capable of discussing with the management of Gécamines.

Encouraged by this contract, Africontainers undertook to increase its stock of containers and its vehicle fleet. A financing agreement was secured with the SOFIDE, which was prepared to release the necessary funds.

To facilitate the import of such equipment into Zaire, Africontainers made representations to the Minister for Planning to obtain certain benefits under the Investments Code. Those benefits were granted to it by the Interdepartmental Order No. CAB/CGP/0037/81 of 5 August 1981.

On the expiration of the 1982 contract, another contract was signed on 13 July 1983, this time involving the oil companies Zaire Mobile Oil, Zaire Fina and Zaire Shell (the Tripartite Contract).

The future prospects for business relations would have been excellent if the oil companies had not chosen, at that precise time, to succumb to the temptation of purchasing containers for themselves, in order to transport their own lubricants and thus engage in significant unfair competition to the detriment of our company, notwithstanding the 1983 loyalty agreement which was still in force.

In order to increase even more the number of containers in their respective fleets and to bypass the services of Africontainers, they also signed container lease agreements with other freight forwarders such as Ataf, Atraza, Afredeza, Flucoza, Kincontainers, Trans Aspa, Transcore, Transtshikem, etc. Those forwarding companies even went as far, with the complicity of the oil companies, as to sign various supplementary agreements stemming from the Tripartite Contract without being parties to the latter. It should be pointed out here that the said contract had been stolen by our partners, after being signed on 13 July 1983, and was only returned to us on 24 February 1992.

Our partners thus committed acts of falsification by associating unauthorized persons, without our knowledge, in the negotiating and signing of supplementary agreements relating to price reviews.

This situation was extremely detrimental to the company Africontainers, which not only suffered from the immobilization of the equipment in which it had invested a lot of money, with the unemployment of 300 employees and managers, but also from a reduction in the revenue from the

services rendered to oil companies and to Gécamines because of the deceit of the oil companies and due to the review of prices for container leasing. The invoices of Africontainers were then being underpaid on the basis of falsified supplementary agreements.

After December 1984, the 1983 Tripartite Contract became increasingly obsolete because the lubricants to be transported were no longer entrusted regularly to Africontainers as in the past. The following figures show this decline:

- In 1983: 306 TCS, in 1984: 276 TCS, in 1985: 200 TCS
- In 1986: 220 TCS, in 1987: 151 TCS, in 1988: 58 TCS
- In 1989: 79 TCS, in 1990: 29 TCS, in 1991: 0 etc.

In conclusion, as our company was granted the benefits provided for by the Investments Code, we are convinced that all the debts now owed to it by the oil companies are and will remain guaranteed by that Code. Thus, we are looking to your high authority with a view to recovering all our debts. This will also enable us to make repayment in foreign currency of the loans we received for the financing of our business.

Please find annexed hereto the various agreements signed between Africontainers and the oil companies, together with the forged supplementary agreements to which we have referred.

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ANNEX 188

30 NOVEMBER 1995

**LETTER FROM AFRICONTAINERS TO THE MINISTER OF FINANCE OF THE REPUBLIC OF ZAIRE
CONCERNING THE TRANSMISSION OF FILES ON DEBTS OWED TO AFRICONTAINERS BY
GÉCAMINES, ZAIRE SHELL, ZAIRE FINA AND ZAIRE MOBIL OIL**

We have the honour to transmit to you, for information and for action to be taken if necessary, the files concerning the disputes between our company Africontainers and the above-mentioned companies, to which we attach certain relevant documents.

I. Debit notes and invoices

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The said lubricants were generally despatched in loose drums loaded onto Onatra barges then onto SNCZ goods trains. That method of transport had a number of disadvantages, mainly theft, leakage and handling difficulties.

In 1980, the company Africontainers offered to provide the company Zaire Mobil Shell with more secure packaging for its drums of lubricants, i.e., in the form of containers.

This offer was then accepted by the oil companies Zaire Fina and Zaire Shell which, in turn, submitted it to Gécamines. The latter agreed to the proposal and in 1980, the oil companies began to entrust their goods to Africontainers as their sole freight forwarder under contracts (two per company). That was the origin of the business relations between Africontainers, the oil companies and Gécamines Exploitation.

In order to meet the growing needs of the oil companies, Africontainers acquired the equipment necessary to provide for the transport of those lubricants: a sufficient number of containers, tractors and trailers, lifting equipment, etc. It also then opened branches in Ilebo and Lubumbashi.

We can state that Africontainers properly performed its task, to the great satisfaction of its partners. Those business relations, after an initial probation period, were thus continued by all parties and improved. Africontainers detected a number of operational weaknesses that could be corrected to the benefit of Gécamines Exploitation.

After unloading, the container was to return empty to Kinshasa. In 1981, for example, the return of an empty container cost 5,870 zaires — about US\$ 1,000 in 1981 — for Gécamines. During that time, Gécamines was despatching its copper in loose bars.

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That offer was enthusiastically accepted by the senior management of Gécamines which on 29 June 1982 signed an agreement for the lease of the containers of Africontainers. Gécamines however demanded the following conditions precedent:

- that Africontainers should open offices in Ilebo and Lubumbashi;
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Encouraged by this contract, Africontainers undertook to increase its stock of containers and its vehicle fleet. A financing agreement was secured with the SOFIDE, which was prepared to release the necessary funds.

To facilitate the import of such equipment into Zaire, Africontainers made representations to the Minister for Planning to obtain certain benefits under the Investments Code. Those benefits were granted to it by the Interdepartmental Order No. CAB/CGP/0037/81 of 5 August 1981.

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In order to increase even more the number of containers in their respective fleets and to bypass the services of Africontainers, they also signed container lease agreements with other freight forwarders such as Ataf, Atraza, Afredeza, Flucoza, Kincontainers, Trans Aspa, Transcore, Transtshikem, etc. Those forwarding companies even went as far, with the complicity of the oil companies, as to sign various supplementary agreements stemming from the Tripartite Contract without being parties to the latter. It should be pointed out here that the said contract had been stolen by our partners, after being signed on 13 July 1983, and was only returned to us on 24 February 1992.

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ANNEX 189

30 NOVEMBER 1995

**LETTER FROM AFRICONTAINERS TO THE MINISTER OF PLANNING OF THE REPUBLIC OF ZAIRE
CONCERNING THE TRANSMISSION OF FILES ON DEBTS OWED TO AFRICONTAINERS BY
GÉCAMINES, ZAIRE SHELL, ZAIRE FINA AND ZAIRE MOBIL OIL**

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Please find annexed hereto the various agreements signed between Africontainers and the oil companies, together with the forged supplementary agreements to which we have referred.

.....

ANNEX 190

13 DECEMBER 1995

**LETTER FROM THE CHAIRMAN OF *AVOCATS SANS FRONTIÈRES*, MAÎTRE BONTSHI, TO THE
PRIME MINISTER OF ZAIRE, KINSHASA/GOMBÉ**

Avocats sans Frontières (ASF), an organization for the defence and protection of human rights, has the honour to request to be heard by His Excellency the Prime Minister of the Republic of Zaire, with the suspension of all proceedings, for the purpose of discussing with him the matter of the discriminatory violation of human rights suffered by the Guinean businessman and investor Diallo Amadou Sadio, alias Diallo Cravate, who has been imprisoned since 5 November 1995 in the SNIP lock-up at Place Kin-Mazière, Kinshasa/Gombé, and whose immediate and unconditional release *Avocats sans Frontières* wishes to obtain from His Excellency the Prime Minister.

Avocats sans Frontières thanks His Excellency the Prime Minister in advance for any action he may take in response to the present request.

ANNEX 191

15 DECEMBER 1995

[Not translated]

ANNEX 192

21 DECEMBER 1995

LETTER FROM THE AMBASSADOR OF GUINEA IN KINSHASA TO THE
GUINEAN MINISTER FOR FOREIGN AFFAIRS AND TO THE
PRESIDENT OF THE REPUBLIC OF GUINEA

[first paragraph illegible]

I have the honour to bring the following facts to your attention:

The above-mentioned case, involving a dispute between our compatriot and, on the one hand, other private businessmen and, on the other, a Zairian State institution, has really begun to assume major proportions.

On 15 and 16 December 1995, the Zairian daily *ELIMA*, in its issue No. 75, featured on its front page an article entitled "Kengo's Phobia on Public Display".

And on 17 December 1995, the same article was broadcast verbatim on *Radio Internationale AFRICA* No. 1.

The gist of the story is that *Avocats Sans Frontières* have protested against the arbitrary arrest of a Guinean investor, who has been resident in Zaire for 31 years: Diallo Amadou Sadio, a victim of discrimination.

Avocats Sans Frontières denounce and call for the annulment of the Expulsion Decree issued against Mr. Diallo and urge all human rights associations and, in particular, Guinea to show solidarity with a view to securing his immediate and unconditional release --- End of quote.

One may gather from the media coverage of the story, as reported in the *ELIMA* newspaper, that there is a foreseeable risk of diverse interpretations, both favourable and unfavourable.

In any case, the Embassy, for its part, will proceed with the cautious and measured diplomatic action that it has already initiated at all levels to ensure a felicitous outcome to the case.

I am attaching hereto a number of press clippings on the case.

ANNEX 193

4 JANUARY 1996

**“FLAGRANT VIOLATION OF HUMAN RIGHTS IN ZAIRE”, IN
KINSHASA BUSINESS AND NEWS, NO. 22**

The human rights organization *Avocats sans Frontières (ASF)* accuses Prime Minister Kengo of flagrant violation of human rights, abuse of power and xenophobia towards Mr. Diallo Amadou Sadio, Guinean businessman and investor, who has been imprisoned for 60 days and is to be deported from Zaire by order of the Prime Minister to prevent him collecting his debts from oil companies based in Zaire, namely: Zaire Shell, Zaire Mobil and Zaire Fina; reason given: dishonourable conduct.

Flagrant violation of human rights in Zaire

Zaire is often accused of violating human rights, a reputation which does not speak well for the honour of our country and even less so for the dignity of our leaders, at a time when most African countries are moving towards greater justice and equity with the democratic reawakening. The latest case concerns Mr. Diallo Amadou Sadio, known as “Diallo Cravate”, a Guinean national who has lived in Zaire for 32 years and who has been imprisoned since 5 November 1995 on the artificial charge of dishonourable conduct. He is currently awaiting deportation in the immigration department’s lock-up near Kin-Mazière.

Mr. Diallo Cravate is none other than the chairman and chief executive of Africontainers, a private limited company in the service sector, having recently won a major court case against the company Zaire Shell, which was ordered to pay it an amount of US\$13,156,704.89. Between the outcome of that trial and the deportation order issued against the investor, who has no criminal record in our country, there is a simple, direct and obvious connection. It is an effective way of preventing him from asserting his rights.

.....

Being obliged to collect its debts from its customers, in 1992 Africontainers made representations *inter alia* to the company Zaire Shell, which by a letter of confirmation of 28 February 1994 acknowledged, through its accountants “Coopers and Lybrand”, the existence of a due and payable debt to Africontainers which was evaluated, in respect of the outstanding invoices, at US\$13,156,704.39.

After failing to settle out of court, Africontainers referred the case to the *Tribunal de grande instance* of Kinshasa/Gombe which ordered the company Zaire Shell to pay the said due and payable debt, together with a fine of US\$50,000.

The company Zaire Shell, being unhappy with the verdict, appealed to the Kinshasa Court of Appeal, which after examining judgment RC 63.824 of 3 July 1995 by the Gombe TGI, returned its own verdict in the last instance under No. RCA 18.307, on 24 August 1995, confirming the award against the company Zaire Shell for the payment of its due and payable debt, as acknowledged by the company itself, together with US\$50,000 by way of liquidated damages.

Being unpleasantly surprised, the company Zaire Shell took steps to have the judgment set aside. But in vain. It nevertheless obtained a stay on the seizure of its property that the bailiff had already undertaken. Following an insistent request by Zaire Shell to the Government, the Prime Minister had the case reviewed by members of the Government, after the Minister of Justice Mr. Nsinga Udjuu had withdrawn the voluminous case file from the bailiff. The Government then

deigned to acknowledge the existence of the due and payable debt by Zaire Shell, through the proper channel, i.e., that of the Minister of Justice, who in his letter No. 850/CAB/MRI J & G.S. of 28 September 1995 to the Inspector General for courts, wrote: "The review of Decision ACA 18.307 of 24 August 1995, rendered by the Kinshasa Appeal Court, has ruled out any manifest error of judgment. I would ask you to make the necessary arrangements for the enforcement of the said Decision". That was the end of the story — there was no further news of Mr. Diallo Cravate.

Diallo thus disappeared from view, but the human rights NGO *Avocats sans Frontières* has now located him in the Immigration Department's lock-up near the Kin-Mazière building. He has been held there since Sunday 5 November 1995, without any hope of release to date. He has thus been unlawfully locked up for 50 days without seeing his lawyers or members of the Guinean Embassy.

This flagrant violation of human rights on the part of Prime Minister Kengo wa Dondo has prompted a strong reaction from *Avocats sans Frontières*, which has published a press release demanding the immediate and unconditional release of the investor Mr. Diallo Sadio, alias Diallo Cravate. Violations of human rights thus do not only affect poor Zaireans but anyone living in this country, regardless of nationality.

Zaire should be upholding the rule of law instead of approving such settling of scores. As Bâtonnier Mario Stasi of Paris has said, "for human rights there is no distinction and for defence counsel there are no borders" — this has become the leitmotif of *Avocats sans Frontières* (Lawyers without Borders).

Postscriptum

Just before going to press we learned that the request for a hearing submitted by *Avocats sans Frontières* to the Prime Minister has not been granted. This confirms the manifest intention to deprive Diallo Cravate of his rights.

PRESS RELEASE OF *AVOCATS SANS FRONTIÈRES*

***Avocats sans Frontières* protests against arbitrary arrest of Guinean investor**

Avocats sans Frontières, an organization for the protection and defence of human rights, has just discovered that Mr. Diallo Amadou Sadio, a Guinean businessman and investor, who settled in Zaire 31 years ago, has been imprisoned since 5 November 1995 in the Immigration Department's lock-up in Place Kin-Mazière on the false ground of dishonourable conduct, as part of the phased execution of an expulsion order signed by Prime Minister Kengo wa Dondo.

Avocats sans Frontières calls the attention of the Zairean authorities to Article 2.2 of the International Covenant on Economic, Social and Cultural Rights, which requires the Member States of the United Nations to guarantee that economic, social and cultural rights are exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Avocats sans Frontières contends that the diligence displayed by the ill-fated Diallo Amadou Sadio, alias Diallo Cravate, in seeking the enforcement against a joint Zairean-Dutch company of judgment RC 63.824 of 3 July 1995, as upheld by the Court of Appeal of Kinshasa/Gombe in its judgment RCA 18.307 of 24 August 1995, involves nothing dishonourable to the human race. It also notes that the Prime Minister's order has a discriminatory basis which could discourage foreign investors who wish to create employment in Zaire.

Avocats sans Frontières demands that Prime Minister Kengo wa Dondo revoke the said expulsion order against the Guinean investor, to prevent any obstruction to the enforcement of a judicial decision. Failing that, *Avocats sans Frontières* will seize the High Council of the republic, Transitional Parliament, of this malfeasance by the Prime Minister, who is interfering at will with matters reserved for the judiciary. Lastly, *Avocats sans Frontières* is calling upon all associations for the defence of human rights and all African States, especially Guinea, to show their solidarity with this righteous son of Africa, who has not invested in the West like certain *compradores* among the bourgeoisie, with a view to securing his immediate and unconditional release.

ANNEX 194

10 JANUARY 1996

RELEASE DOCUMENT FOR MR. DIALLO

By Order of the Administrator-Director-General *ad interim* of the SNIP, Mr. Amadou Sadio Diallo is hereby released for enquiries.

Kinshasa, 10 January 1996

For the Administrator-Director-General *ad interim* of SNIP
His Legal Counsel
(Signed) [Illegible].

ANNEX 196

31 JANUARY 1996

[Not translated]

ANNEX 197

31 JANUARY 1996

REFUSAL-OF-ENTRY NOTICE (*PROCÈS VERBAL DE REFOULEMENT*) CONCERNING MR. DIALLO

On 31 January 1996, I the undersigned, Djuambe Tegi, Administrator-Director and Immigration Officer at the Port of Entry of N'jili.

Acting pursuant to Article 13 of Law No. 83/033 of 12 September 1983 pertaining to immigration control.

Being present in my offices at: Airport of N'jili.

Have personally notified: Mr. Diallo Amadou.

Nationality: Guinean.

Born in: Guinea on: 3 January 1947.

Arriving from: Kinshasa.

By (means of transport): aircraft of the airline Camair.

That he is not entitled to immigrate to and remain on the territory of the Republic of Zaire from which he is denied entry on account of the following charges against him:

— Illegal residence [*séjour irrégulier*]¹

The individual concerned is therefore to be immediately removed from Zaire by the Immigration Department, destination: Abidjan via Douala.

Following the itinerary: Kinshasa-Douala-Abidjan.

In witness whereof the present notice has been drawn up and, after being read out, has been signed by the individual concerned and by the Immigration Officer.

DIALLO Amadou [no signature]

(Signed) DJUAMBE Tegi

¹Handwritten indication, with the printed indications of "Immigration without visa" and "Immigration without vaccination record" being crossed out.

ANNEX 198

5 FEBRUARY 1996

FORMAL DEMAND FOR PAYMENT (*SOMMATION*) SERVED BY BAILIFF ON GÉCAMINES

Claimant

The company Africontainers SPRL, registered at the Kinshasa New Registry of Companies under number 844, having its registered office at Coin des Avenues des Sénégalais et du Bas-Zaire, Gombe District, Kinshasa, the present proceedings being instituted by its Managing Director Mr. Amadou Diallo, of the said address:

Served by Kolela Dilenga, Bailiff of Kinshasa

Statement of claim

The claimant is a company specializing in the container transport of goods.

In view of its performance, in the early 1980s a number of Zairean companies entrusted it with the transport of their goods.

In those circumstances it signed bilateral agreements with certain oil companies for the transport of their lubricants to the mining region of Shaba.

Similarly, Gécamines entrusted it with the transport of its ores intended for export, after the route via Angola became highly risky as a result of the civil war.

On 13 July 1983, to consolidate their business relations, the three partners, namely Gécamines, the oil companies and the claimant, signed an agreement known as the "Tripartite Contract".

Gécamines was bound by certain undertakings under that agreement, in particular:

- to load its copper bars into the said containers at Lubumbashi for their return to Kinshasa, and thus to prevent the containers returning empty;
- to avoid a prolonged turnaround time of more than 30 days, by ensuring the rapid return of the containers to Kinshasa.

At the outset, the business relations appeared to be of mutual benefit.

On the basis of the hopes raised by such a promising start, the claimant made a significant investment for the purchase of a large number of containers and other valuable equipment, as well as for the opening and equipping of new branch offices in Ilebo and Lubumbashi.

The investment was submitted to the Investments Committee and was subsequently approved by two Ministerial Orders of 1981 and 1987.

However, Gécamines was then to act in bad faith by curiously engaging in the promotion of the oil companies, to which it entrusted the transport of its products in containers recently purchased by those companies, which thus became freight forwarders themselves; this was contrary not only to the spirit and letter of the contractual provisions but also to those companies' very corporate purpose.

Gécamines and the oil companies thus began to do business directly and ignored the claimant, which had nevertheless conceived and started the container transport system in Zaire.

The volume of goods entrusted to the claimant to organize the container transport gradually dwindled from one year to the next, before stopping totally in 1991.

To make matters worse, Gécamines detained some of the claimant's containers in its facilities for months or even years.

Other containers were even rendered unusable or lost by Gécamines.

Lastly, in an intentional breach of the contract between the parties, Gécamines even went as far as using AFC containers on the Kinshasa-Matadi route without informing their owner and still less obtaining the latter's authorization.

Seeking to settle the dispute out of court, the claimant has formally referred the matter to Gécamines.

A number of letters have been exchanged and joint meetings have been held.

Nevertheless, without disputing the legitimacy of the claims by Africontainers or the means of settlement chosen thereby, Gécamines has excelled in making promises of arrangements that have never been fulfilled after four years of talks, even though the initial proposals by Africontainers were significantly limited in relation to the actual extent of the dispute and of the loss suffered.

The total debt owed to Africontainers by Gécamines amounts to US\$14,643,965,306.45 today.

Gécamines has already been notified of the said amount for the past few months.

The present Formal Demand is served on:

The Company Gécamines, B.P. 450, Lubumbashi, whose offices are located in the ex-SOZACOM building, Boulevard du 30 Juin, Gombe district, Kinshasa,
summoning the said company

- (1) To give clear confirmation to the claimant, within one week, that it accepts the out-of-court settlement of the above-mentioned dispute.
- (2) Within the same time-period, to submit any realistic counter-proposals it may have to make in response to the claimant's claims.
- (3) Lastly, within the same time-period, to propose a date for a meeting between the two parties with a view to drafting and harmonizing the clauses of a settlement agreement.

Should it fail to respond positively to the present demands within the time-limit indicated, all legal means of constraint may be used for the protection of the claimant's legitimate rights and interests.

Served at the registered office of Gécamines, which gave the following response:

"We agree to settle this dispute amicably, subject to negotiations to be held between the legal division and Africontainers."

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ANNEX 199

9 FEBRUARY 1996

[Not translated]

ANNEX 200

12 FEBRUARY 1996

[Not translated]

ANNEX 201

12 FEBRUARY 1996

**LETTER FROM THE CHAMBERS OF MAYAR AKON BNK/MNM/D.3394 SF 10
TO AFRICONTAINERS, FORWARDING DEMAND FOR PAYMENT**

For the attention of Mr. Kanza, Manager

Dear Sirs,

Please find attached a copy of the formal demand served on Gécamines by the bailiff,
Mr. Kolela Dilenga.

Yours faithfully,

(Signed) Maître BIZIMANA NSORO KYOYA.
Attorney

FORMAL DEMAND

This fifth day of February, nineteen ninety-six,

At the request of:

Africontainers SPRL, a company registered in the Kinshasa New Commercial Register under the number 844, having its headquarters at Kinshasa, on the corner of Avenue des Sénégalais and Avenue du Bas-Zaire, Zone de la Gombe, at the suit of its Chief Executive, Mr. Amadou Diallo, residing at the company's headquarters;

I, the undersigned Kolela Dilenga, Bailiff residing in Kinshasa;

Whereas:

The plaintiff is a company specializing in the transport of containerized goods;

In view of its efficiency, in the early 1980s several Zairean companies entrusted it with the carriage of their goods;

In that connection, it signed bilateral agreements with certain oil companies for the transport of their lubricants to the Shaba mining region;

Gécamines, too, entrusted it with the transport of its ores intended for export, as the Congolese network had become extremely hazardous as a result of the civil war;

On 13 July 1983, to finalize their business relations, the three partners, namely Gécamines, the oil companies and the plaintiff, signed a so-called Tripartite Contract;

Under the terms of this contract, Gécamines has certain obligations, *inter alia*:

- to load the containers for return from Lubumbashi to Kinshasa with bars of copper so as to avoid returning them empty;
- to avoid prolonged immobilization of the containers for more than 30 days by ensuring their rapid return to Kinshasa;

Initially, there was every indication that this co-operation would be mutually beneficial;

Because of the hopes raised by this promising beginning, the plaintiff agreed to a substantial investment to purchase a number of containers and other valuable plant and to open and equip branch offices at Ilebo and Lubumbashi;

The investment proposal was submitted to the Investments Commission and subsequently approved by two departmental orders in 1981 and 1987;

This did not allow for the bad faith of Gécamines, which, strangely enough, went on to invest in promoting the oil companies, to which it entrusted the transport of its products in containers newly purchased by those companies, which transformed themselves into freight forwarding companies, thereby betraying not only the spirit and the letter of the contract but also their fundamental social purpose;

In this way, Gécamines and the oil companies began to deal directly with one another, ignoring the plaintiff, who, notwithstanding, had invented the system of containerized transport and introduced it to Zaire;

The quantity of products handed over to the plaintiff for containerized transport diminished over the years, and dried up totally in 1991;

Worse still, Gécamines immobilized the plaintiff's containers in its facilities for months or even years on end;

Other containers were even damaged or lost by Gécamines;

Finally, Gécamines permitted itself, in deliberate breach of the contract binding the parties, to use Africontainers' containers on the Kinshasa-Matadi route, without informing the owner, still less obtaining its authorization;

Anxious to settle the dispute amicably, the plaintiff officially notified Gécamines of that intention;

Several letters were exchanged and joint meetings held;

Nevertheless, without disputing the merits of the claims by Africontainers or its proposal for an amicable settlement, Gécamines was conspicuous for making promises to come to an arrangement, promises that came to nothing during four years of negotiations. Nevertheless, the proposals initially put forward by Africontainers were very modest, given the true scope of the dispute and the enormous extent of the injury and loss suffered;

The total claim on Gécamines by Africontainers now amounts to US\$ 14,643,965,306.45;

The debtor was notified of this amount some months ago;

Now, therefore,

I, the above-named and undersigned bailiff,

Hereby give formal notice to:

— the Gécamines company, BP 450 Lubumbashi, with offices situated in Kinshasa, in the former Sozacom building, Boulevard du 30 Juin, Zone de la Gombe:

1. To confirm unequivocally to the plaintiff, within one week, the option of an amicable settlement of the aforementioned dispute;
2. To make, within the same time-limit, any specific counter-proposals it may have to the plaintiff's claims;
3. Lastly, within the same time-limit, to propose a date for a meeting between the two parties to draft and harmonize the provisions of the instrument of settlement to be adopted;

Notifying it that, in the event of its failure to reply positively to the purpose of this demand within the time-limit indicated, the plaintiff will have recourse to all means of enforcement available to it to safeguard its legitimate rights and interests;

And, lest the debtor plead ignorance of this demand, I have, for its attention,

At its registered office;

And having spoken to: Mr. Kibambe, representing the Legal Department;

Deposited a copy of this demand for payment, which has received the following response:

[handwritten text]

We agree to settle this dispute amicably, subject to negotiations to be held between the Legal Division (GCM/L'shi) and Africontainers.

Received: 5 February 1996

(Signed) KIBAMBE.
Legal Division

(Signed) KOLELA DILENGA.
Bailiff

ANNEX 203

APRIL 1996

LETTER FROM THE MINISTER FOR FOREIGN AFFAIRS OF GUINEA TO THE SECRETARY
GENERAL OF THE PRESIDENCY OF THE REPUBLIC OF GUINEA, CONAKRY

Re: The case of our compatriot Mr. Diallo Cravate, recently expelled from Zaire

I have the honour to submit to you the case concerning the situation of our compatriot Mr. Amadou Sadio Diallo, alias Diallo Cravate, who has recently been expelled by the Zairean authorities.

Mr. Diallo Cravate emigrated to Zaire at the age of 17 and spent 31 years in that country, during which time he succeeded in founding a prosperous trading company specializing in the dispatch to Gécamines of petroleum products in metal packaging.

This compatriot of ours, who is very well known in Zairean business circles on account of his results, signed certain agreements in the early 1980s between his company, Africontainers, and a number of oil and mining companies, especially Gécamines, which entrusted it with the transport of ores intended for export after it became impossible to use the Angolan route.

At the time he was expelled, these companies still owed Africontainers an aggregate debt of some 21 billion dollars, of which 14 billion was owed by Gécamines alone.

These amounts may appear exaggerated at first sight, but one only needs to refer to the authentic documents, *inter alia* the decisions of Zairean courts, to see that they do reflect the reality. When the dispute was referred to the competent courts of Zaire, they upheld the arguments of Mr. Diallo Cravate and quite rightly ordered the debtor companies to pay the above-mentioned amounts together with other penalties.

Unfortunately, instead of seeing these judgments properly enforced, Mr. Diallo Cravate was quite simply arrested and expelled from Zaire, in an unceremonious manner and in patent violation of all procedures in such matters.

Foreign Press Agencies such as *Africa No. 1*, *Jeune Afrique* and other Zairean newspapers have reported extensively on this denial of justice of which Mr. Diallo Cravate is the victim.

In any event, Mr. Diallo is currently living in Conakry without any income and can only count on the State of Guinea to see his rights upheld.

Suggestions

According to Mr. Diallo Cravate, an Action by the High Authorities of Guinea would be capable of helping our compatriot to recover his assets, after the patent spoliation and arbitrary abuses he has suffered.

The following measures could thus be envisaged:

- (1) The granting of special authority to the new Ambassador for the purpose of addressing this matter with a view to representations at a very high level.
- (2) The seeking of collaboration with Interpol to obtain the assistance of police co-operation in the compiling of a sound case file to support our action.

(Signed) Kozo ZOUMANIGUI.

ANNEX 205

12 JULY 1996

**LETTER FROM THE MINISTER OF JUSTICE TO THE INSPECTOR-GENERAL OF COURTS
ALLOWING A REQUEST FOR THE STAY OF EXECUTION OF JUDGMENT RCA 17244 RH 25919**

Sir,

I have been seised of the complaints by the Africom-Zaire company, and of your report on the request for stay of execution of the above judgment.

I accept the value of this report, and hereby allow the request by Africom-Zaire.

Accept, Sir, the assurances of my highest consideration.

(Signed) Joseph N'SINGA UDJUU.

ANNEX 206

“A GUINEAN THORN IN THE SIDE FOR ZAIRE”, IN *HOROYA* NO. 4443

“DIALLO CRAVATE”

A GUINEAN THORN IN THE SIDE FOR ZAIRE

6 August 1996

An emigrant to Zaire at 17 years of age, our compatriot, Amadou Sadio Diallo, nicknamed “Diallo the Tie” (Diallo Cravate) by the Zaireans because he always looks so smooth, is no longer flavour of the month in his adopted country. The reasons for this fall from grace lie (paradoxically!) in Mr. Diallo’s business success.

Now deported from Zaire on the orders of the authorities, Mr. Diallo, from his arrival in this country where he has lived for the past 32 years, went into business and was rather successful, setting up a company specializing in shipping oil products for Gécamines in metal containers.

The company, Africontainers, signed agreements with a number of oil and mining companies in Zaire, which, according to Mr. Diallo, who has provided documentary evidence to back this up, today owe his company US\$21 billion in accumulated debts, 14 billion alone in the case of Gécamines.

These sums initially seem excessive, yet one has only to refer to the documents in the possession of “Diallo Cravate”, including the judgments of the Zairean courts, to see that they are no figment of the imagination.

Since his totally irregular deportation, Mr. Diallo has been in Guinea for some months. He is now being backed by the authorities with a view to finding a favourable solution to this case about which so much has been written. A letter to this effect has been sent by the Ministry of Foreign Affairs to the President of the Republic.

Meanwhile, this to say the least disturbing story is going the rounds of the Zairean press.

In its issue of 31 January 1996, *L’Ouragan*, a weekly containing news, opinion and analysis, asserts that Prime Minister Léon Kengo Wa Dondo ordered this “arbitrary deportation to prevent the company Shell Zaire from spending the US\$13 million belonging to Diallo Cravate”.

It should be recalled that, prior to his deportation, Mr. Diallo was placed in detention by SNIP agents.

Which all goes to show that an expatriate’s wealth can prejudice his moral and physical integrity.

Mr. Diallo’s case, which the Guinean Government has already taken up, is not a very inspiring example. For, apart from all these companies which owe him mind-boggling sums, the Zairean Ministry of Finance, to whom he has delivered a sizeable consignment of computing equipment, itself owes him 80 million dollars.

According to Mr. Diallo, the Ministry of Finance handed him a rubber cheque in settlement of its US\$ 80 million debt.

This litany of misfortunes means that "Diallo Cravate" now stands on the edge of the abyss. Our summarily deported compatriot is in urgent need of help.

F. CAMARA.

ANNEX 208

NOVEMBER 1996

DIALLO-CRAVATES DECLINED TO DRINK THE POISON DRAUGHT

“Glory is not to be had cheaply. Endure your woes, my friend, you will be great one day; your pain is the price of your immortality”, said Stendhal. Glory and immortality seem to be a waste of time for Diallo-Cravates. So many lost illusions.

His story is astounding, incredible even. Listen to this! This fifty-year old Guinean, a confirmed bachelor, left his native country for Zaire. Because in his own country, citizens were not allowed to engage in trade. He shone like a comet in Zaire, which, incidentally, he considers his second country. Work was his obsession, his overriding passion. He became a billionaire and the director of his two companies, which are still doing very well. These are Africom-Zaire (trade) and Africontainers-Zaire (container transport).

Diallo-Cravates has lived in the lap of luxury for 32 years and during these 32 years, enjoyed perfect health. Not even a cold! When he told us of his life of luxury in Kinshasa and certain European capitals it was without any conceit or self-importance. Today, however, he seems to be on the scrounge. Yet throughout his time in Kinshasa, he was not at peace with himself. In other words glory and social success did not give him inner satisfaction but caused him problems, bringing down on his head the wrath of the political system of the revolution from Kinshasa. So according to him it is not only the Guineans of the interior who have suffered from Sekou Touré’s régime; those outside have suffered deeply too. And the evidence of this has not been heard before. Amadou Sadio Diallo, known as Petit Sadio Gawal to his compatriots, or as Diallo-Cravates to Zaireans, has long been hounded, hunted down like a hare pursued by a pack of dogs.

In 1978, he narrowly escaped poisoning at Kinshasa. Killers armed with revolvers let him give them the slip. Commandos once swore to bump him off. Now they can delight in his misfortune. He was deported from his second country like a pariah for no apparent reason in January 1996. He arrived at Conakry utterly broke, just with the clothes he stood up in. Yesterday rich, today poor. But this does not mean that he has lost his reason. He has just been given a leg up by Mr. Alpha Amadou Diallo, who bought him a car, thus enabling him to get about in Conakry. He remains a man of faith and conviction, firmly believing he will regain possession of his fortune (22 billion dollars) with the backing of the Government of Guinea.

Diallo-Cravates has not invested in his own country, Guinea, a fact many of his compatriots held against him after his deportation; this was because the Embassy of Guinea in Kinshasa, by dragging his name through the mud, implicitly made him deny his own nationality and would not leave him alone, constantly causing him problems, often unfairly. This is why Senen Andriamirado, in *Jeune Afrique* No. 33 of 16 February, referring to Diallo-Cravates, added the subtitle: “As a Guinean or Zairean”, in his article on him, adding: “Is Diallo-Cravates free? Not completely . . .” The Embassy of Guinea in Kinshasa has withdrawn his passport. Since which he has been doing his damndest to obtain Zairean nationality; “I have always been Guinean, but Guinea wants nothing more to do with me. I want to carry on working -- just that. But as a Zairean this time.”

In the first quarter of 1983, Diallo-Cravates was imprisoned for a month. He had actually tried to get his chef Moussa released when taken in for questioning because his papers were not in order. The mother hen was finally set free, if we are to believe Senen Andriamirado’s sources, with apologies from the security services. Our colleague reported Diallo-Cravates’ comment as follows: “the police officer who arrested me was in cahoots with Guineans in Kinshasa who were plotting against me. They are jealous of my success, as personally, I have never been involved in

politics, on either side . . .” Further on, Senen reports the following remarks by a very highly-placed official in the Zairean security services, apparently confirming what Diallo-Cravates says: “we released him because we had nothing on him. This is a matter between Guineans.” We must read between the lines here for the key to the mystery of all the hassle and harassment to which Diallo-Cravates was subjected from 1978 to his deportation from Zaire. In an exclusive, he tells us of his problems with Madame Fatou Diarra, Ambassador of Guinea in Kinshasa, who allegedly offered him poisoned orange juice in her residence.

SANKARELA.

ANNEX 210

4 DECEMBER 1996

**LETTER FROM GÉCAMINES TO FREIGHT FORWARDERS PROPOSING MEETING FOR 9/12/96,
TOGETHER WITH AGENDA FOR A MEETING**

Dear Sirs,

We hereby invite you to a meeting convened by Gécamines with a view to finding a solution to the dispute concerning containers under the Tripartite Contract.

This meeting will be held on 9 December 1996, at 10 a.m. in the Gécamines meeting room on the 9th floor of the Gécamines building.

Yours faithfully,

(Signed) MADIKANO MUKANIRE.
Director, Freightage and Document
Collection Division

(Signed) MBAYA KAKASU.
Director, Export Department

ANNEX 212

11 DECEMBER 1996

**LETTER FROM THE GUINEAN MINISTER OF JUSTICE TO THE GUINEAN MINISTER FOR
FOREIGN AFFAIRS ENCLOSING A REPORT ON THE EXPULSION OF DIALLO AND ON
THE POSSIBILITY OF EXERCISING DIPLOMATIC PROTECTION**

I have the honour to transmit herewith a report on the expulsion from Zaire of the Guinean businessman Diallo Ahmadou Sadio, alias Diallo Cravate.

The contents of the report call for an examination of whether it would be expedient to exercise diplomatic protection on his behalf.

The Minister of Justice remains at your disposal to follow up the case. In addition, I will ask Maître Diallo Alpha Oumar, counsel for Mr. Diallo Ahmadou Sadio, to confer with the Ministry of Foreign Affairs on this matter.

(Signed) Pr. Maurice Zgbelemou TOGBA.
Minister

AFRICOM-ZAIRE, AFRICONTAINERS-ZAIRE, AHMADOU SADIO DIALLO
v.
GÉCAMINES ZAIRE, ZAIRE FINA, ZAIRE-MOBIL OIL, ZAIRE SHELL, REPUBLIC OF ZAIRE

Report

The case of Diallo Ahmadou Sadio, alias Diallo Cravante, a Guinea businessman and investor who has recently been expelled from Zaire after residing there for more than 30 years, raises the issue of protection, both of his person and of his property.

I. Facts and procedure

The facts of the case according to the particulars submitted are as follows:

When he was only about 17, Diallo Ahmadou Sadio left Guinea in 1965 to settle in Zaire, where he set up first, with a capital of US\$500,000, a trading company called Africom-Zaire, then as his business prospered, a new company called Africontainers-Zaire.

These two flourishing undertakings enjoyed business relations for over a decade with the State of Zaire and with various Zairean mining and oil companies.

As a result of these various business relations, the companies Africom-Zaire and Africontainers-Zaire were owed various sums of money by the Zairean State and by the mining and oil companies.

Africom-Zaire v. State of Zaire

In the course of those relations, the company Africom-Zaire delivered office supplies and listing paper to the Zairean State.

The value of the supplies amounted to 178,700,00 zaires (1986 value).

Having made representations to the Zairean Ministry of Finance in vain, the Chairman of Africom finally addressed his claim to the First Citizen of Zaire, the President of the Republic.

After being passed on from one ministry to another, the claim has remained pending in the office of Mr Kengo wa Dondo, Prime Minister of Zaire.

It should be noted that the receivable of 178,700,000 zaires is established by bills of exchange approved by the Ministry of Finance, drawn on the Bank of Zaire and payable in regular instalments of which the last expired on 13 May 1988, for 50 million.

However, non of the instalments has yet been paid and the capital remains due, together with default interest.

Moreover, the Republic of Zaire has never denied the existence of this debt.

Africontainers-Zaire v. Gécamines

On 13 July 1983 Africontainers signed with Gécamines, Zaire Fina and Zaire Mobil Oil, an agreement for the provision of services as an independent contractor, namely the organization of the container transport and delivery of petroleum products supplied to Gécamines.

Under that contract, Africontainers was to organize and provide for the container transport of Gécamines' mineral products from Shaba to Kinshasa. The contract provided for the organization of the transport of petroleum and mineral products, the liability of the carrier, the remuneration of the outward and return transport, the terms of invoicing and payment, and the term of contract and conditions of termination, etc.

In order to fulfil the very strict obligations arising from this contract, Africontainers made a huge investment for the acquisition of 600 new containers, as well as for tractor trucks, cranes and the setting up of a container depot and offices. All of these investments were approved for benefits under the Investment Code, further to two Interdepartmental Orders issued by the Zairean authorities.

The third contract, which entered into force on the date of its execution, was performed in good faith by Africontainers. By contrast, during the performance of the contract and without giving any notice of termination, Gécamines began to encourage the oil companies to acquire their own containers for the carriage of their products.

This diverting operation, in flagrant breach of the 13 July 1983 contract, extended to the carriage of Gécamines mineral products from the Shaba to Kinshasa.

As time went by, Africontainers saw a continual decrease in container orders from Gécamines.

To make matters worse, a number of Africontainers' containers were used by Gécamines behind their owner's back, whilst others were damaged and lost. After a number of amicable representations and complaints, Africontainers informed Gécamines that it had breached the 13 July 1983 contract and sought to recover its debt by issuing a debit note.

Gécamines, after some prevarication, invited Africontainers to a meeting in Kinshasa on 1 June 1995.

After that meeting, Gécamines undertook, in a signed statement, to review the AFC Dossier and the sum of US\$30,670,681.57 was then fixed for one of the debts concerning 32 containers immobilized by Gécamines and two lost containers — a debt that has not been disputed. However, in the absence of any follow-up from that meeting, Africontainers sent the Chairman and Chief Executive of Gécamines several debit notes concerning the difference in parity between the Zaire and the US dollar, as well as for interest and bank charges.

Africontainers also stated the value of the fixed assets, the damages due for the non-use and damage of certain containers, the loss of profit, interest and bank charges.

These various calculations showed that Gécamines owed Africontainers, as of 5 February 1996, the total sum of US\$14,643,965,306.45.

This was the sum demanded by Africontainers by notice served on Gécamines.

In the light of the reply received from Gécamines' legal department, it would appear that the debt claimed was not disputed and that Gécamines simply called for a negotiation in order to establish the terms of payment on an amicable basis.

Africontainers Zaire v. ZaireShell

In supplement No. 1 to the contract of carriage signed on 13 July 1983, the company Zaire Shell was included as a contracting party on the same basis as the others, with same undertakings as Zaire Fina and Zaire Mobile Oil with respect to Gécamines and Africontainers, and vice versa.

That supplement No. 1 was signed by all the contracting parties on 4 August 1983.

The performance of that contract was, unfortunately, vitiated by unfair competition because Zaire Shell, in breach of its contract with Africontainers, was purchasing its own containers and transporting its products using intermediaries and containers other than those of Africontainers.

This was brought to the attention of Africontainers, which after a number of warnings and complaints in vain, was obliged to resort to legal action in order to seek the payment of its debt and compensation for the prejudice suffered.

By a final Court decision, Zaire Shell was sentenced to pay Africontainers the sums of:

- US\$13,106,704.39 in capital
- US\$50,000.00 in damages
- Amounting to a total of US\$13,156,704.39.

As regards the debt of Zaire Shell, Africontainers is claiming the sum of US\$2,726,832,443.75, divided as follows:

- US\$76,447,729 in net capital
- US\$2,650,384,714.75 in interest for late payment.

This sum, excessive as it may seem, is a result of a mathematical calculation taking into account the sums fixed in the 13 July 1993 contract for the use of a container or for its non-use, immobilization and loss.

This calculation shows that Zaire Shell, on the basis of the container quota provided for in the contract, caused a loss of profit for Africontainers amounting to US\$76,447,729 for the period from 1982 to 1995.

Africontainers, in accordance with the Zairean banking regulations, applied the applicable interest rates to that sum.

A detailed calculation appended to the debt collection note, year by year, gives a total of US\$2,650,384,714.75.

Although this sum has not been claimed through any a legal action, it could be verified and certified by an expert before being referred to negotiation or legal proceedings.

Africontainers Zaire v. Zaire Mobile Oil

On 1 October 1980 Africontainers signed a contract of carriage for the container transport of petroleum products with Zaire Mobile Oil. That contract stipulated that Africontainers would have exclusivity for the transport and delivery of Zaire Mobile Oil's petroleum products (lubricants) throughout Zaire, on the basis of 20 containers per month for the first two months and

30 containers per months subsequently. The contract was automatically renewable for further one-year periods unless terminated with 90 days' notice.

To date, that contract has not been terminated, to our knowledge, despite the execution on 13 July 1983 of the "tripartite" contract to which Zaire Mobile is also a party.

Africontainers, remaining confident that the 1 October 1980 contract would be renewed and extended to other parties under the same terms and conditions, acquired the necessary facilities.

Having observed the breach by Zaire Mobile Oil of the 1 October 1980 contract and of the 13 July 1983 contract, Africontainers claimed from it the following sums, in accordance with the terms of those contracts:

— US\$74,806,214 in net capital

— US\$2,290,625,322.62 in interest for late payment, making a total of US\$2,365.431.536,62.

These are the results of a mathematical calculation based on the number of containers provided for under the contracts, subtracting the number of containers actually used, multiplied by the agreed price per container for outward and return journeys, and multiplying the total by the agreed number of rotations.

From this sum, the net capital, the default interest due was calculated by applying the statutory bank interest rate in Zaire. The sum may be verified and certified by a neutral expert before any decision as to its liquidated, certain and legally payable nature.

Africontainers Zaire v. Zaire Fina

As in the two previous cases a contract of carriage and delivery by container was signed on 13 July 1993 by Africontainers and Zaire Fina.

Zaire Fina also breached the contract in question and acquired its own containers for the transportation of its products, thus engaging in unfair competition with Africontainers. In addition, during the performance of that contract, Zaire Fina assumed responsibility for having entrusted to another company two containers that were declared lost in transit.

Africontainers accordingly served a writ on Zaire Fina, claiming various sums of money for a total of some US\$38 million.

After an award in the first instance, albeit set aside on appeal, the appeal by Africontainers to the higher court of cassation has every chance of success.

The debt owed by Zaire Fina has been evaluated, as per debit note No. 0665/95 of 20/10/95 at the amount of US\$2,604,479.706.

In order to give a comprehensive idea of Diallo Cravatte's assets still to be claimed in Zaire, it is necessary to list his other private claims and the inventory of non-evaluated assets.

1. Other private claims:

[List of claims against Unilever, City Bank Zaire, City Bank Paris, Banque BCZ of Kinshasa, Onatra, SNCZ, and Immeuble CCIZ]

.....

2. Inventory of non-evaluated assets

[List of equipment, real estate and investments]

.....

Diallo Cravatte's determination to obtain the enforcement of the decisions given in his favour triggered certain ill-feeling amongst Zairian authorities including Prime Minister Kengo Wa Dondo and led to his deportation pursuant to a decree issued by the latter.

Diallo Ahmadou Sadio was deported after being arrested on 5 November 1995 and imprisoned in the immigration service lockup, at Place Kin-Mazière, for some 60 days.

II. The legal context of the case

The measure of deportation against Diallo Cravatte was taken without regard for the normative action of the United Nations which, with its concern to ensure the effective application of human rights throughout the world, enshrined in 1996 the moral norms of the 1948 Universal Declaration on Human Rights into international covenants: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Those Covenants were adopted by resolution 2200 (XXI) of the United Nations General Assembly and were opened for signature by Member States.

They entered into force as regards the State of Zaire on 2 February 1977 after the filing of its instruments of ratification; this created an obligation for Zaire, undertaken by virtue of the Covenants, to comply with the provisions of those Covenants on the basis of the customary rule *pacta sunt servanda*.

Among the circumstances of the case, it is easy to identify certain unlawful acts which have caused undeniable prejudice to Diallo Cravatte; for example, his arrest and imprisonment in the immigration service lockup, and his deportation to Guinea in order to prevent him from continuing to defend his case before the courts of Zaire.

In the event of any failure by parties to comply with or perform any one of their treaty obligations, it is established by doctrine and jurisprudence that the responsibility of the defaulting legal subject may be incurred.

III. Analysis of problem

The issue to be settled in the present case can be divided into two parts. It first needs to be established how the State of Zaire can be rendered responsible, in order to ensure that Diallo Cravatte obtains reparation for the major prejudice he has suffered; secondly, it may perhaps be possible for Diallo Cravatte to bring legal action against his Zairian partners before an international body.

Certain answers to that last question may be found by examining the practice under treaties between States which enable foreign investors to have recourse to arbitration; some significant initiatives have been taken in this field, the most important of which is probably the Washington Convention of 1965, providing for the creation, under the auspices of the World Bank, of the International Centre for the Settlement of Investment Disputes (ICSID). Another convention in the same vein, albeit slightly less significant, is the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. By way of further information, one should also mention the 1976 International Rules of Arbitration drawn up by the United Nations Commission

for International Trade Law (UNCITRAL), and the arbitral institutions of the International Chamber of Commerce.

The Washington Convention, which is the basic instrument in this field, was ratified by the Republic of Guinea on 4 November 1968 and by Zaire on 29 April 1970. It entered into force with respect to Guinea on the date of its ratification by our country and with respect to [Zaire] on the date of its ratification by that State, 29 May 1970.

Article 1, paragraph 2, under Section 1, Chapter 1, of that Convention provides:

“the purpose of the Centre [the International Centre for Settlement of Investment Disputes] shall be to provide facilities for conciliation and arbitration of investment disputes between Contracting States and nationals of other Contracting States in accordance with the provisions of this Convention”.

This text appears to us to grant a “right of direct action” before the ICSID to a private person to whom prejudice has been caused by a State in committing a breach of international law.

It thus seems perfectly conceivable for Diallo Cravate to use this means in order to obtain reparation.

The second solution which would, quite naturally, be called for, is a political solution to the dispute. This has an advantage over the first, if successful, by avoiding judicial action and the corresponding costs, but also by virtue of the well-known principle that a poor arrangement is better than a good trial, which is not totally groundless.

IV. The exercise of diplomatic protection by Guinea on behalf of Diallo Ahmadou Sadio, alias Diallo Cravate

The conditions for the exercise of diplomatic protection on behalf of Diallo Cravate are met in the present case. The first condition concerns the nationality of the victim, the second his conduct.

Protection must be exercised with respect to someone who genuinely has Guinean nationality, which means nationality of origin rather than acquired nationality. The relationship of nationality between the Guinean State and Diallo Ahmadou Sadio concerns both himself, as an individual, and the companies that he has set up, as legal entities.

Concerning Mr. Diallo’s own private status, it should be pointed out, in particular, that he has never been declared stateless and has never acquired dual nationality, or in any event it has not been shown that he had both Guinean nationality and that of the State which caused him prejudice.

The condition relating to the conduct of Diallo Cravate, throughout these proceedings, in order to benefit from diplomatic protection, appears to me to have been met.

He cannot be accused of any conduct of a culpable nature capable of attenuating the responsibility of the Zairean State. Throughout this case, he has adhered perfectly to the principle of “clean hands”.

Moreover, he was concerned about exhausting domestic remedies, both amicable and contentious, before seeking the diplomatic protection of his own State. However, he was prevented from following through the domestic remedy procedures because of his sudden expulsion.

V. Appeal to an international body: international arbitration

Remaining in the context of the ICSID Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States, in order to seek such remedy, it is necessary to establish briefly the main points.

This is the first and only international agreement in this field with a universal vocation (at the time of writing, at least 111 States have signed and ratified this Convention).

This Convention provides for a right of individual petition to an international body by private investors against States, as indicated above. Even though the mechanism is supervised by individual States, private individuals still enjoy direct rights that they are entitled to assert within the international legal order.

This referral to arbitration, as provided for by the ICSID Convention, otherwise known as the Washington Convention, is extremely important in practice because States often refer to it in bilateral investment agreements.

The ICSID Convention introduces, first of all, an International Centre for Settlement of Investment Disputes.

The Convention provides that this Centre will have jurisdiction over legal disputes between, on the one hand, a State or public authority which is a party to the Convention and, on the other, a national of another State which is also a party to the Convention.

Referral to the Centre is only possible once the injured party has exhausted domestic remedies. This is a customary rule in the law of international responsibility.

Moreover, referral to the Centre precludes any recourse to the diplomatic protection of the individual by his State of origin.

[Procedure before the ICSID . . .]

.....

Report drafted by Mohamed LKAMINE FOFANA, 14 October 1996

ANNEX 213

9 JANUARY 1997

LETTER FROM AFRICONTAINERS TO THE GUINEAN AMBASSADOR IN THE DRC FORWARDING TO HIM THE MINUTES OF THE MEETING OF 9/12/96

Sir,

We have the honour to inform you that, in its letter No. DCM/EXP/GES/O155/96 of 4 December 1996, Gécamines took the initiative of inviting Africontainers and the other freight forwarders to a meeting on 9 December 1996, with a view to settling the disputes between them.

During this meeting the two parties agreed to open negotiations in February 1997, to try to determine the exact amount that Gécamines owes each freight forwarder.

A timetable of work was drawn up, and 24 February 1997 was fixed as the date for the start of the negotiations between Gécamines and Africontainers.

Please find attached:

- a copy of the invitation from Gécamines;
- a letter from the Deputy Managing Director of Gécamines;
- the minutes of the meeting held on 9 December 1996.

Accept, Sir, the assurance of our highest consideration.

(Signed) IBRAHIM DIALLO.

For Africontainers
(Signed) N'KANZA NEKONGO

**LETTER FROM GÉCAMINES TO FREIGHT FORWARDERS PROPOSING MEETING FOR 9/12/96,
TOGETHER WITH AGENDA FOR A MEETING**

Dear Sirs,

We hereby invite you to a meeting convened by Gécamines with a view to finding a solution to the dispute concerning containers under the Tripartite Contract.

This meeting will be held on 9 December 1996, at 10 a.m. in the Gécamines meeting room on the 9th floor of the Gécamines building.

Yours faithfully,

(Signed) MADIKANO MUKANIRE.
Director, Freightage and Document
Collection Division

(Signed) MBAYA KAKASU.
Director, Export Department

Lubumbashi, 18 November 1996

To: The Chairman & Chief Executive

Africontainers

Subject: Suspension of invoicing of demurrage charges for disputed containers

Sir,

It is our pleasure to inform you that, following the investigations conducted by our staff in the two Kasai provinces and on the Sizarail network, Gécamines now has reliable data at its disposal concerning the disputed containers.

Accordingly, on the basis of these data, we would ask you to suspend the invoicing of demurrage charges provided for under the Tripartite Contract, for the containers not yet returned as of today's date.

In consequence, we would ask you to contact the Directorate of Trade and Marketing in Kinshasa with a view to undertaking a comprehensive study of the situation regarding the containers rented to our company by your undertaking.

Yours faithfully,

(Signed) YAWILI NYI ZONGIA.
Deputy Managing Director

MINUTES OF THE CONTACT MEETING WITH FREIGHT FORWARDERS UNDER THE TRIPARTITE CONTRACT, HELD IN KINSHASA ON 9 DECEMBER 1996

At the request of Gécamines, a contact meeting with the freight forwarders was held on Monday, 9 December 1996, in the Gécamines Export Department at Kinshasa.

This meeting, the purpose of which was to inform the freight forwarders of Gécamines' position concerning the national containers dispute, was attended by:

Freight forwarders:

Africontainers: Mr. Kanza, Director of Operations

Mr. Ibrahim, Cashier

ATAF: Mr. Sabi, Chief, Trade and Travel Department

Flucoza: Mr. Etaka, Head of Personnel

Kincontainers: Mr. Tumba, Representative of the Administrator/Director-General

Gécamines: Mr. Mbaya K, Director of the Export Department

Mr. Lumuna

Observers: Mr. Muanza Mande, Manager, TTC/Tshikem.

1. Introduction

After welcoming participants, the Director of the Export Department, chairing the meeting, spoke of the concern of Gécamines, in its new incarnation, to find a solution to the dispute between itself and the freight forwarders under the Tripartite Contract.

After reading the letter addressed to the freight forwarders on 18 November 1996 by the Board of Directors, in which the forwarders were requested to discontinue the invoicing of demurrage charges, the Chairman informed those present that, following investigations in the two Kasai provinces and on the Sizarail network, Gécamines had gathered reliable information enabling it to consider the disputes in a responsible manner.

Notwithstanding the amicable settlement agreed on, Gécamines requested the freight forwarders to take account of its current difficulties, which did not enable it to give an immediate and satisfactory response to all the concerns raised. They were thus requested to show flexibility and understanding with regard to the solutions proposed.

After mentioning some past attempts by certain forwarders to have recourse to the courts, the Chairman invited them to co-operate in the search for solutions. In so doing, he acknowledged the delays and abuses for which those to whom the dossiers had been entrusted had been responsible in the past. In November 1996, responsibility for the dossiers had passed to a different department, and he thus urged the freight forwarders to place their confidence in him. In conclusion, he summed up Gécamines' position as follows:

- (a) Gécamines acknowledges its debt to the freight forwarders for the national containers rented and not yet returned;
- (b) Gécamines accepts the principle of payment of the costs owed to the freight forwarders. However, the modalities of payment will be agreed on after consideration of each dossier and having regard to the company's financial position.

2. Draft agenda

After the Chairman's statement, the following agenda was proposed, to which participants were invited to add any additional items thought to be necessary.

Agenda of work with the freight forwarders

1. Containers to be regarded as disputed

- 1.1. Containers under the Tripartite Contract.
- 1.2. Containers to be eliminated from the lists submitted by the freight forwarders.
- 1.3. Determination of the number of days' demurrage charges.
- 1.4. Rate to be applied to the disputed containers.
- 1.5. Discontinuation of invoicing.

2. Residual value of the damaged containers

- 2.1. Acquisition value declared at time of approval.
- 2.2. Life span of a new container.
- 2.3. Life span of a second-hand container.
- 2.4. Determination of residual value.

3. Use of containers on the Kinshasa-Matadi route

- 3.1. Causes
- 3.2. Number of containers despatched to Matadi.
- 3.3. Cases time-barred.
- 3.4. Rate to be applied for claims recognized as valid.

4. Determination of the amount to be paid

After considering the framework proposed by Gécamines within which to determine the amount to be paid, the freight forwarders adopted the agenda for the working meetings.

3. Cases of *force majeure* preventing performance of the contract

Gécamines considered that the fall in production from 470,000 to 50,000 tonnes per annum, and the complete halting of traffic on the national network from January 1993 until the advent of Sizarail, constituted an "Act of God" that had prevented proper performance of the contract. The case of *force majeure*, provided for in Article 9.01 of the Tripartite Contract, was an act beyond the control of the parties thereto. Participants were invited to take account of that factor, as, in the same situation, they had been unable to remove their containers from Lubumbashi.

4. Statements by the freight forwarders

After the statement by the Chairman, the floor was given to the freight forwarders, who spoke in the following order:

ATAF: The representative of ATAF complained of the abnormally long time taken by Gécamines to gather the relevant information and to convene the meeting. He went on to protest against the priority accorded by Gécamines to payment of rental costs of international containers owned by foreigners, payments made at the expense of the local freight forwarders.

While accepting the validity of the comment by ATAF, Gécamines stressed the contentiousness of the cases under consideration. Time had been needed to conduct investigations in order to clarify the situation. The fact that the dossiers had been transmitted to the Trade Directorate at Kinshasa was a demonstration of good faith on the part of General Management, which had thereby saved the freight forwarders the expense of travelling to Lubumbashi.

Flucoza: The representative of Flucoza was of the view that there had been manifest bad faith on the part of Gécamines, which for two years had taken no action in response to the freight forwarders' invoices and claims.

Gécamines referred to the internal problems that had prevented it from dealing with the question of the disputed containers. Now that that dossier had become the responsibility of a different department, participants could rest assured that it would be dealt with at the earliest opportunity.

Africontainers: The head of the Africontainers delegation urged participants to adhere to the agenda proposed by Gécamines.

After an exchange of views, the parties agreed on the following timetable:

— Week of 3 to 9 February 1997:

Working meeting with ATAF from 2 p.m. to 4.30 p.m.

— Week of 10 to 16 February 1997:

Working meeting with Kincontainers from 2 p.m. to 4.30 p.m.

— Week of 17 to 23 February 1997:

Working meeting with Flucoza from 2 p.m. to 4.30 p.m.

— From 24 February 1997:

Working meeting with Africontainers from 2 p.m. to 4 p.m.

The meeting, called to order at 10.25 a.m., rose at 11.25 a.m.

Kinshasa, 11 December 1996.

(Signed) Lumuna MABUNGU.
Rapporteur

ANNEX 216

11 FEBRUARY 1997

**LETTER FROM THE GUINEAN MINISTER FOR FOREIGN AFFAIRS TO THE GUINEAN
AMBASSADOR TO ZAIRE, FOLLOWING UP THE DIALLO CASE**

I have the honour to acknowledge receipt of your letter under reference 20/AGZ/97 and dated 10 January 1997 concerning the case of Mr. Amadou Sadio Diallo alias Diallo Cravate.

I am glad to see that this dispute is moving towards final settlement and I urge you to spare no effort to help our countryman recover what is owed him because our Government attaches particular importance to this.

I would nevertheless draw your attention to the fact that Mr. Diallo, being prohibited from entering Zaire, will not be able to attend the negotiations of 24 February 1997 unless that prohibition is officially lifted.

Accordingly, while asking that you keep me regularly informed of developments in the matter, I would be grateful to you for taking all appropriate measures needed for monitoring the negotiations and defending the interests of our countryman.

I have taken note of your concerns and I will not fail to invite Mr. Diallo to abide by all of your recommendations.

(Signed) Lamine KAMARA.

ANNEX 217

24 FEBRUARY 1997

**LETTER OF SUPPORT FROM THE SECRETARY GENERAL OF THE GUINEAN NATIONAL
ASSEMBLY TO MR. AMADOU S. DIALLO**

The President of the National Assembly has read with great attention the letter of 17 February that you sent to him and in which you sought his assistance in connection with the recovery of your "assets left behind in Zaire".

Being very sensitive to this most unfortunate and deplorable situation, the President of the National Assembly assures you of his support and has already foreseen taking certain measures at Government level with a view to ensuring better protection of our citizens abroad.

(Signed) Maitre Boubacar Kassory BANGOURA.

ANNEX 219

13 MARCH 1997

**LETTER FROM MR. AMADOU S. DIALLO TO ZAIREAN MINISTERS CLAIMING LOSS ON
INVESTMENT IN RESPECT OF AN AFRICONTAINERS VESSEL**

**For the attention of the Minister of Finance and the Planning Minister of the Republic of
Zaire**

Re: Forwarding of document for information.

I have the honour to transmit to you the enclosed document describing the income and investments which I have lost through the fault of the State of Zaire.

For the purpose of increasing the results of my company Africontainers I undertook to acquire a container vessel with a load capacity of 56 containers.

That investment of extension-diversification for a total amount of 528,086,000 zaires was approved by Interdepartmental Order No. CAB/PLAN/0144 dated 31 December 1987.

Article 5 of that Order stipulates that the State of Zaire guarantees the possibility for foreign investors to export their income and provides for compensation in the event of expropriation; that statutory provision thus obliges Zaire to restitute to me the income and investments of which it deprived me as a result of my deportation.

Concerning the investment project for the container vessel, it was to be financed under the following terms:

- loan from SOFIDE: 316,852,000 zaires
- self-financing by Africontainers: 211,234,000 zaires.

As that amount of self-financing was not raised in full, SOFIDE required a schedule of payments by the State of Zaire in respect of its outstanding debts to Africontainers, as a condition for the release by SOFIDE of its share in the investment.

Under those circumstances we succeeded in obtaining from the State of Zaire an undertaking for the repayment of its debts to Africontainers in five instalments, from 13 January 1988 to 13 April 1998. That undertaking, signed by the Commissioner for Finance, was never fulfilled.

That unlawful conduct by the State of Zaire prevented me from taking possession of what was due to me and seriously interfered with my business by causing the failure of my plan to invest in a container vessel.

As a sign of their indignation about this legal and financial scandal, the Zairean executives of Africontainers have evaluated in a document the revenue that the company would have generated between 1990 and 1998 if the project had gone ahead.

I am transmitting that document to you in order to show you the extent of the damage that I have suffered; the study, based on the Zairean Investment Code, estimates the prejudice at US\$12,322,052,951.15.

In referring this information to you, I am appealing to your sense of justice in order to facilitate the granting of reparation for the prejudice caused to me by your State.

(Signed) Amadou Sadio DIALLO.
Chairman and Chief Executive of Africontainers SPRL

ANNEX 222

26 JUNE 1997

**LETTER FROM GÉCAMINES TO AFRICONTAINERS INVITING THE LATTER TO A WORKING
MEETING**

Dear Sirs,

We hereby inform you that a commission responsible for examining the containers disputes has been set up within Gécamines.

As regards your company, we hereby invite you to a working meeting, to be held on 2 and 3 July 1997 at 9 a.m. in the DGA office on the fifth floor of the Gécamines building, Boulevard du 30 Juin.

We would request you to bring with you all the relevant documentation.

Yours faithfully,

(Signed) KAKONGE SAKALA.
Chairman of the Containers
Disputes Commission

(Signed) BONOKWIBABWA MA SOGBEA.
Representative of the Chairman
and Managing Director

ANNEX 223

1 JULY 1997

**LETTER FROM THE GUINEAN AMBASSADOR TO ZAIRE TO THE
GUINEAN MINISTER FOR FOREIGN AFFAIRS**

Sir,

I have the honour to transmit to you herewith the invitation that the Gécamines Containers Disputes Commission has addressed to Mr. Alpha *[sic]* Sadio Diallo's Africontainers company, to a working meeting to be held on 2 and 3 July, to examine that company's claims concerning unpaid debts.

The Embassy has recommended Mr. Diallo's representatives to attend the meeting, to listen to the proceedings, to gather as much information as possible on Gécamines' intentions, and to bring it to the attention of Mr. Diallo. Mr. Toure, First Secretary for Financial and Consular Affairs, will accompany them discreetly.

In the hope that this announcement will be in Mr. Diallo's interests, I would ask you to accept, Sir, the assurances of my highest consideration.

(Signed) Mohamed SAMPIL.
Ambassador

Attachment: letter from Gécamines *[see Annex 222]*.

ANNEX 224

2 JULY 1997

MINUTES OF THE WORKING MEETING OF 2/7/97 BETWEEN AFRICONTAINERS AND GÉCAMINES

At the request of the Containers Disputes Commission, a meeting between the representatives of Gécamines and the Africontainers company was held on 2 July 1997 at the office of the Gécamines representation in Kinshasa.

Present

Africontainers

- Mr. Kanza Ne Kongo
- Mr. Ibrahim Diallo
- Maître Musangu
- Maître Kabasele

Gécamines

- Mr. Kakange Sakala
- Maître Kienge Dyashi
- Mr. Pierre Lumuna

Agenda

- Consideration of Debit Note No. 0063/AFC/DG/95 concerning the 20 containers damaged in Gécamines facilities;
- Consideration of Debit Note No. 0062/AFC/DG/95 concerning immobilization of 28 containers in Gécamines facilities

1. Introduction

Before embarking on consideration of the legal and financial aspects of the Africontainers debit notes, the Containers Disputes Commission proposed to the other party that they should deal first with harmonization of the lists of disputed containers. That work had been done on the basis of the investigations carried out by the Commission in the two Kasai provinces, on the national network and in Katanga. Africontainers agreed to the procedure suggested by Gécamines.

2. Consideration of Debit Note No. 0063/95 concerning 20 damaged containers

2.1. Gécamines' position

Gécamines informed Africontainers that under the terms of the Tripartite Contract only seven of the 20 claims made relating to containers had been accepted as valid by the Commission.

Those were the containers that had been used to transport local purchases to Katanga on behalf of Gécamines and that had not yet been returned to Kinshasa.

Gécamines drew attention to seven containers declared damaged on the September 1995 Africontainers invoice, which had already been returned before that date.

The six remaining containers had been despatched to third parties who had subsequently incorporated them in the Gécamines circuit to facilitate their return to Kinshasa. That fraudulent practice, which was harmful to Gécamines and to which several freight forwarders had had recourse, had been detected by the Commission during its investigations.

2.2 Africontainers' point of view

Africontainers acknowledged there and then the return by Gécamines of seven containers listed on its Debit Note No 0063/AFC/DG/95. Those containers would appear to have been invoiced on the basis of information provided by the Gécamines services in Katanga, to the effect that those containers were in Luilu. Africontainers had discounted the costs of depreciation of those containers. However, account would be taken of their immobilization in Gécamines facilities.

With regard to the six containers considered by Gécamines as destined for third parties, Africontainers took due note of that comment, but undertook to make inquiries, with a view to producing consignment notes providing evidence to the contrary at the next meeting.

3. Consideration of Debit Note 0062/95 concerning the immobilization of 28 containers

3.1. Statement by Gécamines

As in the case of the damaged containers, Gécamines had eliminated the non-contractual containers from the list. A total of 12 containers listed on the Africontainers debit note had been excluded by Gécamines. Those were the containers previously used by third parties and incorporated in the Gécamines circuit, for which Gécamines was entitled to claim storage, handling and transport costs for the Katanga-Kinshasa leg from those responsible (the freight forwarder involved).

3.2. Africontainers' position

Africontainers noted the comment by Gécamines and promised to look into the matter.

4. Other business

4.1. Reference document

Africontainers expressed surprise that Gécamines had taken account of the ex-Kinshasa consignment notes in considering the disputes whereas DIE had always used the factory batch number as the basis for approval of invoices.

Gécamines informed Africontainers that the procedure referred to was highly anomalous, and had caused Gécamines considerable loss of earnings. As explained in section 2.1. above, the freight forwarders had incorporated several non-contractual containers in the Gécamines circuit. That practice had resulted in:

- Unjustified invoicing of Gécamines for the packed freight;
- Transport of the container to Kinshasa free of charge;
- Costs of packing and unpacking being borne by Gécamines.

Gécamines was looking into all those anomalies and would consider the possibility of billing the freight forwarders for those costs (Cf. Art. 257 of the Congolese Civil Code, Book III).

For Africontainers

(Signed) KANZA NE KONGO.

(Signed) Maître MUSANGU.

(Signed) Maître KABASELE.

(Signed) Ibrahim DIALLO.

For Gécamines

KAKONDE SAKALA.

(Signed) Maître KIENGE DYASHI.

(Signed) Pierre LUMUNA.

ANNEX 226

7 JULY 1997

MINUTES OF THE WORKING MEETING OF 7/7/97 BETWEEN AFRICONTAINERS AND GÉCAMINES

Present

Africontainers

- Mr. Kanza Ne Kongo
- Maître Kabasele
- Mr. Ibrahim Diallo

Gécamines

- Maître Kienge Dyashi
- Mr. Matanda Mubanga

Agenda

Consideration of legal aspects of Debit Note No. 0063/AFC/DG/95 of 13 September 1995.

1. Introduction

Given that some members of the Containers Disputes Commission, including Mr. Lumuna, had been prevented from attending, Gécamines proposed to the representatives of Africontainers that the meeting should consider the legal aspects of the dispute. The technical (statistical) aspects would be dealt with when the other members were present. The Africontainers delegation accepted the proposal, after protesting vigorously at the postponement of the technical issue. Accordingly, the agenda with regard to the legal aspects of the question was sub-divided as follows:

- Loss of earnings (10 per cent of the value invoiced);
- Default interest
- Bank interest.

2. Loss of earnings

2.1. Miscalculation

The Gécamines Commission drew the attention of the Africontainers delegation to the fact that the ten per cent loss of earnings and the demurrage charges invoiced to Gécamines as a separate item were a duplication: the loss of earnings was covered by the payment of demurrage charges.

Africontainers said that there was no duplication, inasmuch as the loss of earnings in fact constituted what the parties had agreed to call demurrage charges.

2.2 The rate to be invoiced

The Commission pointed out that initially the rate at which the immobilization was to be invoiced had been Z 25 per container/day. The contract provided that the contracting parties should meet to update that rate in the event of a depreciation of the zaire. It had been some years since the parties had last met for that purpose. In its latest invoicing, Africontainers had raised the rate to US\$ 178 per container/day unilaterally.

After consultations, the Commission proposed that the updated invoicing rates should be calculated by converting the Z 25 per container/day rate into United States dollars and adjusting for inflation. Those figures could be obtained from the Bank of the Congo.

2.3. Counter-proposal by Africontainers

The Africontainers delegation requested the Gécamines Commission to make “concrete” and “immediate” counter-proposals to its debit notes, bearing in mind that their claims on Gécamines were of very long standing. That counter-proposal must above all deal with the rates for invoicing and the amounts to be paid.

The Gécamines Commission took note of that request and promised to refer it to Gécamines’s decision makers.

Both parties stressed the urgency of meeting again to conclude their business in the week of 21 to 27 July 1997. However, consideration of the technical aspects would continue with the assistance of Mr. Lumuna.

For Africontainers

(Signed) KANZA NE KONGO.
(Signed) Maître KABASELE.
(Signed) Ibrahim DIALLO.

For Gécamines

(Signed) Maître KIENGE DYASHI.
(Signed) MATANDA MUBANGA.

ANNEX 245

4 FEBRUARY 1998

**LETTER NO. 24/AOD/JK/2/98 FROM MAÎTRE ALPHA OUMAR DIALLO TO THE PRESIDENT OF
THE DEMOCRATIC REPUBLIC OF THE CONGO FOR INFORMATION IN THE CASE
*AHMADOU SADIO DIALLO V. THE DRC (FORMER ZAIRE)***

I hereby respectfully draw your attention to the filing of the enclosed application against the Democratic Republic of the Congo with the International Centre for Settlement of Investment Disputes (ICSID).

Mr. Ahmadou Sadio Diallo, a Guinean businessman who lived in the Democratic Republic of the Congo for 32 years, was despoiled of all his property, imprisoned for two months and 15 days, then deported without trial from your country on 2 February 1997.

He left behind him two flourishing companies which he set up, together with liquidated, certain and legally payable debts against the State, state-owned corporations (Gécamines, Onatra) and oil companies (Zaire Shell, Zaire Fina, Zaire Mobil Oil) for a total amount of US\$31,334,685,888.45.

Those assets, which were largely established by final decisions of Congolese courts, are guaranteed under the Investment Code of your country.

On his return to Guinea, Mr. Ahmadou Sadio Diallo attempted to make a number of amicable representations in spite of the gradual decline in his financial situation, but they all proved fruitless.

In a showing of vexatious disregard for diplomatic courtesy, no response has been forthcoming to any of the letters sent by the Minister for Foreign Affairs of the Republic of Guinea to the Congolese authorities.

My client thus had no choice other than to refer the matter to the competent international bodies in order to seek vindication. This does not mean, however, that he is closing the door to any negotiation that may be capable of leading to a diligent settlement of the dispute between him and the Democratic Republic of the Congo.

Mr. President, I am thus seeking an explicit response from the Democratic Republic of the Congo concerning this matter, within one month as from the despatch of the present letter.

In view of the excellent and long-standing relations between the Republic of Guinea and the Democratic Republic of the Congo, I am appealing to your conciliatory and equitable authority in order to avoid further litigation.

(Signed) Maître Alpha O. DIALLO.
Attorney at the Bar of
the Republic of Guinea

ANNEX 246

4 FEBRUARY 1998

LETTER NO. 25/A.O.D./JK/2/98 FROM MAÎTRE ALPHA OUMAR DIALLO TO
THE MINISTER OF JUSTICE OF THE DRC FOR INFORMATION IN THE CASE
AHMADOU SADIO DIALLO v. DRC (FORMER ZAIRE)

Conakry, 4 February 1998

No. 25/A.O.D./JK/2/98

Case: Ahmadou Sadio Diallo v. Democratic Republic of the Congo (former Zaire)

Re: Information

Sir,

I hereby respectfully draw your attention to the filing, with the International Centre for the Settlement of Investment Disputes (CIRDI), of the attached Application against the Democratic Republic of the Congo.

The fact is that Mr. Ahmadou Sadio Diallo, a Guinean businessman who had lived in the Democratic Republic of the Congo for thirty-two (32) years, was robbed of all his property, detained for two (2) months and fifteen (15) days, then deported from your country without trial on 2 February 1997.

He left behind two (2) highly prosperous companies which he had set up himself and debts due and owing vis-à-vis the State, State-owned organizations (Gécamines, Onatra) and oil companies (Zaire Shell, Zaire Fina, Zaire Mobil Oil) and amounting to US\$31,334,685,888.45

This fortune, much of which results from final decisions by the courts of the Democratic Republic of the Congo, is guaranteed by your national Investment Code.

On his return to Guinea, Mr. Ahmadou Sadio Diallo made various amicable overtures despite his steadily deteriorating economic situation, yet all proved vain.

None of the letters sent by the Minister for Foreign Affairs of the Republic of Guinea to the Congolese authorities received a reply, which is a failure of diplomatic courtesy.

My client therefore had no choice but to bring the matter before the competent international bodies in order to obtain justice. This does not mean, however, that he is closing the door to any negotiation which might produce a prompt settlement of the dispute between himself and the Democratic Republic of the Congo.

I therefore continue to hope for an explicit reply from the Democratic Republic of the Congo on this matter within one (1) month of the sending of this letter.

Meanwhile, I know I can count on your feeling for equity and conciliation to ensure that this dispute is not taken to the bitter end, in view of the excellent long-standing relations between the Republic of Guinea and the Democratic Republic of the Congo.

Please accept, Sir, the assurances of my highest consideration.

(Signed) Maître Alpha Oumar DIALLO.
Judge at the Bar of the Republic of Guinea

ANNEX 248

16 MARCH 1998

**LETTER NO. 48/AOD/JK/3/98 FROM MAÎTRE ALPHA OUMAR DIALLO TO THE PRESIDENT OF
THE DRC CONCERNING THE DISPUTE BETWEEN AHMADOU SADIO DIALLO AND
THE DRC (FORMER ZAIRE)**

I hereby respectfully draw your kind attention to the reaction of the International Centre for Settlement of Investment Disputes (ICSID) to the application of which a copy was previously transmitted to you.

Pursuant to Article 25 (1) of the Convention instituting the ICSID, the Secretary-General of that institution, before recording the application, requires written consent by both parties to the submission of the present dispute to the arbitration of the Centre.

Article 6 of the Interdepartmental Order No. CAB/CGP/0037/81 of 5 August 1981 granting approval to the company Africontainers-Zaire stipulates:

“Any dispute that may arise in connection with the interpretation or application of the present order shall be settled by arbitration according to the procedure laid down in Articles 159 to 174 of the code of civil procedure (Article 35 of the Investment Code).”

The Chairman and chief executive of Africontainers, who has been expropriated and deported from your country after two months and 15 days of detention without trial, now has no other alternative than to urge the Democratic Republic of the Congo to agree to international arbitration.

I thus have the honour to ask you, Mr. President, to transmit to us the written consent of your country to the arbitration of the ICSID pursuant to the Convention of 14 October 1966 that the Democratic Republic of the Congo signed on 29 October 1968 and ratified on 29 April 1970.

Failing such consent, my client and I await your proposal for the swift settlement of the dispute.

Pending that, I wish to inform you of our willingness to resolve the dispute on an amicable basis or before any other international institution of your choosing.

(Signed) Maître Alpha O. DIALLO.
Attorney

ANNEX 249

16 MARCH 1998

LETTER NO. 49/A.O.D./JK/3/98 FROM MAÎTRE ALPHA OUMAR DIALLO TO
THE MINISTER OF JUSTICE OF THE DRC CONCERNING THE DISPUTE
AHMADOU SADIO DIALLO V. THE DRC (FORMER ZAIRE)

Conakry, 16 March 1998

No. 49/AOD/JK/3/98

Re: The dispute Ahmadou Sadio Diallo v. the Democratic Republic of the Congo

Sir,

I respectfully enclose herewith the reaction of the International Centre for the Settlement of Investment Disputes (CIRDI) to the application previously sent to you.

Under Article 25 (1) of the agreement setting up the CIRDI, before the Application could be registered, the Secretary-General of that institution required the written consent of the two parties to the submission of this dispute to arbitration by the Centre.

Article 6 of Interdepartmental Order No. CAB/CGP/0037/81 of 5 August 1981 granting approval of the company Africontainers-Zaire, lays down that: "*any disputes that may arise in connection with the interpretation or application of the present Order shall be settled by arbitration according to the procedure laid down in Articles 159 to 174 of the Code of Civil Procedure (Art. 35 of the Investment Code)*".

The President of the now expropriated Africontainers, who has been deported from your country after two (2) months and fifteen (15) days' detention without trial, has no alternative but to invite the Democratic Republic of the Congo to put the matter to international arbitration.

I therefore have the honour to request you to send us your country's written consent to arbitration by the CIRDI pursuant to the Agreement of 14 October 1966, signed by the Democratic Republic of the Congo on 29 October 1968 and ratified on 29 April 1970.

Failing this, my client and I continue to hope, at your earliest convenience, for a proposal from you for settlement of the dispute.

Meanwhile, we are prepared to settle the dispute amicably or before any other international institution of your choosing.

Please accept, Sir, the assurance of my highest consideration.

(Signed) Maître Alpha Oumar DIALLO.
Avocat à la Cour