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INTERNATIONAL COURT OF JUSTICE

AHMADOU SADIO DIALLO

(REPUBLIC OF GUINEA *v.*
DEMOCRATIC REPUBLIC OF THE CONGO)

PRELIMINARY OBJECTIONS

PRESENTED BY

THE DEMOCRATIC REPUBLIC OF THE CONGO

VOLUME II

ANNEXES

4 OCTOBER 2002

[Translation by the Registry]

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ANNEX POC 1

[NOT TRANSLATED]

ANNEX POC 2

JUDGMENT OF THE *TRIBUNAL DE GRANDE INSTANCE* OF KINSHASA/GOMBE, 3 APRIL 2000, CASE CONCERNING ABDOUL KARIM, RC 72-792

Claimant: Mr. Abdoul Karim

Defendants: Democratic Republic of the Congo and City of Kinshasa

Submissions of Claimant

May it please the Court

To adjudge and declare that:

1. The present action is admissible and well-founded, as the defendants have not fulfilled their contractual obligation as laid down by the officially recorded act of sale of 13 January 1981;

2. Consequently, to order the Democratic Republic of the Congo and the City of Kinshasa, jointly and severally, to pay Mr. Abdoul Karim the following sums:

(a) Z30,266,490 at the 1982 rate, or the present equivalent in CF of 53,069,600 according to the official exchange rate on 2 April 1982, representing reimbursement of the cost of building work on the Circo building carried out by the Claimant;

(b) CF72,217,465 of the payment representing annual commercial interest of 8 per cent for 17 years (from 1982 to 1999) calculated on the total cost of the building work;

(c) 8 per cent of the annual commercial interest on the principal claim with effect from the serving of the writ to payment in full;

(d) CF50,000,000 in damages for all the harm suffered;

3. All these sums are subject to judicial interest of 20 per cent per annum dating from the serving of the writ to payment in full;

4. Legitimate legal costs and expenses;

. . . . . .

— The case being registered under No. R.C.72.792, was fixed and introduced at the public hearing on 28 April 1999;

— When the case was called at that hearing, the parties were represented by their counsel, Maître Mpiana for the Claimant, Maître Shamamba for the Republic and Maître Mabiala for the City Hall, all three of them lawyers in Kinshasa;

— At their request, and by common consent, the Court referred the case for public hearings on 26 May, then 16 June, then 7 July 1999;

— By writ dated 17 June 1999, issued by Gilbert Beya, Registrar of this Court, the Claimant summoned the defendants to appear at the public hearing of 7 July 1999;

— When the case was called at that hearing, the parties were represented by their respective counsel, Maître Mpiana and Kabeya jointly for the Claimant, Maître Bakomba for the Republic and Maître Mabiala for the City of Kinshasa, all of them lawyers at the Bar of Kinshasa;

— At the request of the Court, the parties pleaded their cases and filed their evidence;

Written submissions of Maître Mpiana for the Claimant;

May it please the Court

To adjudge and declare that:

1. The present proceedings are admissible and justified as the defendants have not fulfilled their contractual obligation laid down by the officially recorded act of sale of 13 January 1981;

2. Consequently, to order the Democratic Republic of the Congo and the City of Kinshasa, jointly and severally, to pay Mr. Abdoul Karim the following sums:

(a) Z 30,266,490 at the 1982 rate, or the present equivalent in CF of 53,069,600 according to the official exchange rate on 2 April 1982, pursuant to the decision of the CSJ;

(b) CF 72,217,465 representing annual commercial interest of 8 per cent for 17 years (from 1982 to 1999) calculated on the total cost of the building work;

(c) 8 per cent of the annual commercial interest on the principal claim with effect from the serving of the writ to payment in full;

(d) CF 50,000,000 in damages for all the harm suffered;

3. All these sums are subject to judicial interest of 20 per cent per annum dating from the serving of the writ to payment in full;

4. Legitimate legal costs and expenses;

Justice will be done.

Further Submissions

May it please the Court

— To uphold all our initial submissions which we have sought to reproduce verbatim here, as supplemented by these further submissions;

— To award legitimate legal costs and expenses.

And justice will be done.

Written submissions of Maître Mabiala for the City of Kinshasa

May it please the Court:

— to declare the Claimant's action inadmissible on the grounds of misdirection and *obscuri libelli*;

— to find the Claimant's action unfounded for wilful negligence and lack of evidence;

— to award legal costs and expenses against the Claimant;

And justice will be done.

The State Counsel, represented by Mrs. Masiala, Assistant Public Prosecutor, requested the file with a view to a written opinion;

When the case was called at the public hearing of 7 December 1999, the Public Prosecutor, represented by Nsuli, Assistant Public Prosecutor, read out the opinion of his colleague Fallu, filed in the case, the operative part of which is as follows:

For These Reasons,

May it please the Court to:

— declare the Claimant's action admissible and well-founded;

— confirm the act of sale signed between the parties on 13 January 1981;

— order the Defendants jointly and severally to reimburse the cost of construction work on the CIRCO building and to pay the damages decided by the Court;

— award legitimate costs and expenses.

Justice will be done.

State Counsel
Sé Fallu MWAYUMA.

Whereupon, the Court declared the proceedings closed, submitted the case for deliberation and, at the hearing on 3 February 2000, publicly delivered the following Judgment:

JUDGMENT

Whereas the Claimant, Abdoul Karim, brought the present action against the Democratic Republic of the Congo and the City of Kinshasa claiming that they should be jointly and severally ordered to pay him the following sums:

— the current value of Z 30,266,490 at the official rate [illegible] as of 2.4.82, representing reimbursement of the cost of construction work on the CIRCO building carried out by the Claimant;

— CF72,217,465 representing annual commercial interest of 8 per cent for 17 years (from 1982 to 1999) calculated on the total cost of the building work;

— 8 per cent of the annual commercial interest on the principal claim with effect from the serving of the writ to payment in full;

— CF50,000,000 in damages for all the harm suffered;

— All these sums are subject to judicial interest of 20 per annum per year dating from the serving of the writ to payment in full;

Whereas at the public hearing on 7 July 1999, when the case was communicated to the Public Prosecutor's Office for opinion, the parties were represented by their respective counsel, Maître Mpiana and Maître Kabeya for the Claimant, Maître Bakomba for the Democratic Republic of the Congo and Maître Mabiala for the City of Kinshasa, following an adjournment agreed to by all Parties at the hearing on 16 June 1999 and a request for submissions to be filed by the Claimant;

The facts:

Whereas the Claimant, on 13 January 1981, entered into a contract for the sale of the building with the Democratic Republic of the Congo and the City of Kinshasa;

Whereas, under the terms of that contract of sale, the Defendants allegedly undertook to sell to the Claimant a building complex for commercial use, registered under No. 4222 on the law-survey map of the municipality of Gombe in Kinshasa;

Whereas, in return, the Claimant undertook to build, within 16 months with effect from the fifteenth day after the signing of the contract of sale, another building complex on a site intended to house the departments of the national police *(gendarmerie nationale)*, in particular the headquarters of the military district of the city of Kinshasa.

Whereas for a total cost put at Z30,266,490 in 1982, equivalent to US$5,306,960, the Claimant complied by erecting the building structures, which were handed over on 31 July 1982 at an official ceremony presided over by the General Chief of Staff of the Armed Forces in the presence of a number of authorities of the Republic;

Whereas, for their part, the Defendants refrained from handing over the property bearing number 4220 to their partner in the contract, although this was clearly stipulated by the contract;

Whereas all steps taken to gain possession of this building complex proved futile, which caused the Claimant genuine harm, for which he seeks compensation;

Whereas the City of Kinshasa objects to the admissibility of the action on ground of misdirection as the Claimant took possession of the building placed at his disposal by the City of Kinshasa, so that failure to enter into possession cannot be attributed to the City of Kinshasa, whose bad faith has not been proven;

Whereas the City of Kinshasa further objects to the admissibility of the action on ground of *obscuri libelli,* as the Claimant has not demonstrated that the City has failed to implement the agreement;

Whereas, in the alternative, the action is not founded by virtue of the fact that the Claimant cannot prove the bad faith of the City of Kinshasa, or the ground used by it in order to prevent it from entering into possession of the said property;

Whereas also, it is inconceivable that he erected the building complex when nothing compelled him to do so and that, consequently, the Claimant is guilty of wilful negligence;

Whereas counsel of the Republic, Maître Bakambo, merely requested an adjournment in order to reply to the submissions of the opposing party;

Whereas, by its letter of 30.12.1999, the law firm Yoko requested a reopening of deliberations in this case on the ground that it had just been consulted by the City of Kinshasa with a view to addressing that request to the Tribunal to enable that party to present its evidence, as the case was decided against its client in absentia;

Whereas, finally, the Public Prosecutor's Office which delivered the opinion on this case ruled that it was admissible and that the action to request the Court to confirm the act of sale signed between the parties and the ordering of the Defendants jointly and severally to reimbursement of the construction costs and to payment of the damages was justified;

In law:

Whereas the case was adjourned with the consent of both parties for hearing on 7 July 1999; but in order to compel the Defendants to communicate their grounds of defence, the Claimant served an ordinary writ for submissions to be filed, which has still to take effect;

Whereas consequently, not only was the City of Kinshasa represented by Maître Mabiala, but above all, once a writ for submissions to be filed has been served, a request for the reopening of deliberations can only be made by the Defendant for whom the writ for the filing of submissions has been a coercive measure with respect to the case ready for hearing;

Whereas it follows from the above that the Court cannot uphold either the request for the reopening of deliberations made by the City of Kinshasa, or the application submitted by the Democratic Republic of the Congo requesting an adjournment in order to reply to the evidence put forward by its opponents;

Regarding the objection to the admissibility of the action on ground of misdirection

Whereas the wording of one article in the contract expresses the common desire of all the parties and calls upon them to comply therewith each in its own respect, without constituting proof of such compliance;

Whereas Article 2 of the agreement between the parties cannot therefore denote performance by the City of Kinshasa of its obligation to deliver the property registered under No. 4222 in the cadastral plan of the municipality of Gombe in Kinshasa, but rather defines the obligation of that Defendant, the City of Kinshasa;

Whereas consequently, there is no misdirection, and the objection raised will therefore be declared unfounded and set aside;

Regarding the objection to the admissibility of the action on ground of obscuri libelli*;*

Whereas the City of Kinshasa asserts that the Claimant has not demonstrated in what respect he has not complied with the agreement;

Whereas this non-compliance is precisely what the Defendants are accused of: they have had the benefit of the building complex erected by the Claimant without being able to comply with their side of the agreement in return;

Whereas it is rather for the Defendants to prove their compliance, not to claim innocence in order to oblige the Claimant to prove this non-compliance in another way;

Whereas therefore there is no *obscuri libelli* but rather an obligation on the Defendants to prove their good faith or their disengagement by effective compliance with their obligation;

Whereas finally, the objection is unfounded and the Claimant's action will be admitted for consideration as to whether it is founded;

Regarding the merits

Whereas the bill of sale for the building complex did indeed relate to the cession, by the Democratic Republic of the Congo and the City of Kinshasa, to the Claimant, Abdoul Kharla, of plot No. 4222 in the cadastral plan of the municipality of Gombe;

Whereas even if Article 2 states that the buyer does know the site well, Article 5 makes the substitution of the buyer for the rights and duties of the seller conditional on full and complete compliance with the condition of erecting a building for the other parties to the contract and respecting the deadline given him by which to complete the work and hand over the keys to the sellers;

Whereas, even more, the Article 5 in question states that the seller will authorize the preparation of a new registration certificate in respect of the buyer;

Whereas the Democratic Republic of the Congo and the City of Kinshasa have not shown that they have facilitated the preparation of this new title for the Claimant, it must be concluded that they have failed to comply, the completion of the work having been celebrated by the parties and the Claimants having allowed over 17 years to elapse without embarking on the formalities for changing the titles relating to the building sold;

Whereas there are thus grounds for sentencing them to reimbursement of the cost of the work carried out for the Defendants;

Whereas the work ended on 2 April 1982 and cost Z30,266,490, there are grounds for sentencing the Defendants to reimbursement of this claim which, in view of the seller's failure to perform his obligation, makes them beneficiaries of unjust enrichment;

Whereas also therefore, this sum of Z30,266,490 was equivalent at the time to US$5,306,960, which is today equivalent to CF47,762,640;

Whereas the Claimant is seeking to obtain, in addition to the requested reimbursement, commercial interest of 8 per cent per annum, for 17 years, calculated on the total cost of the building work;

Whereas the agreement concluded between the parties in fact made the Defendants responsible for seeing to the drawing up of the registration certificate and the titles to be issued to the purchaser (Article 5);

Whereas this substitution for the seller's rights and duties was only possible subject to the full and complete compliance with the above-mentioned conditions, viz. the carrying out of the work by the other party to the contract over a period of 16 clear calendar months;

Whereas, regarding a contractual obligation which has remained unperformed for such a protracted time notwithstanding the demands made by the Claimant to enter into possession of his rights, the 8 per cent interest requested to cover the harm suffered seems satisfactory because it entails compensating the loss suffered after the Defendants entered into full enjoyment of the buildings without giving anything in return;

Whereas six per cent of US$5,306,960 being US$424,596.8, the total sum for the period of 17 years will thus be US$424,556.8 X 17 = US$7,217,465.6 or CF64,957,190.4;

Whereas the Claimant also requests the same rate of 8 per cent commercial interest per annum on the principal claim with the effect from the time of the serving of the writ to payment in full;

Whereas under Article 5 of CCL3, the Court will uphold this request, as the Defendants upon whom the writ has been served are seeking to avoid their obligation, while the other party to the contract committed his own funds for the erection of the buildings of which they are already in possession;

Whereas the delay in recovering these funds justifies the allocation of the 8 per cent interest as stated;

Whereas after claiming this commercial interest, the Claimant is seeking damages for all the harm suffered;

Whereas it is true that the sum committed for the construction work was the Claimant's own funds, and whereas the buildings erected have been delivered to the Defendants who have taken possession of them and already installed their police headquarters there;

Whereas the awards for payment of commercial interest of 8 per cent per annum cannot cover all the harm suffered, for which reason the Court will uphold this claim;

However, the sum of CF50,000,000 seems exorbitant and the Court will reduce it, taking account of the cost of the articles on the market, to the sum of CF30,000,000 covering all the harm suffered;

Whereas the Claimant is requesting that all these sums should be subject to judicial interest of 20 per cent per annum dating from the serving of the writ until payment in full;

Whereas, where the sums of money are concerned, the Court notes that this claim constitutes a duplication of the claims relating to payment of the commercial interest, as Article 51 of CCL3 stipulates: "In the obligations confined to the payment of a certain sum, the damages resulting from a delay in performance shall only ever consist in a sentence to pay interest, whose rate shall be fixed by the court. These damages shall be payable without the creditor being bound to prove any loss. They shall only be payable with effect from the day the claim is made . . ."

Whereas, therefore, the Court, which has already granted interest on the principal claim, cannot indefinitely favour the Claimant, and will therefore set aside this claim;

For these Reasons

The Court ruling in public and in the presence of both parties with respect to the Claimant and the two Defendants:

— Having regard to the code of judicial organization and jurisdiction, in particular its Article 9 (1);

— Having regard to Articles 2, 3, 4, 5, 15, 19, 20 and 23 of the Code of Civil Procedure;

— Having regard to Articles 33 and 258 of Book 3 of the Civil Code;

— Having heard the submissions of the Public Prosecutor,

— Finds admissible the request for the reopening of deliberations submitted by the City of Kinshasa, but declares it unfounded and sets it aside;

— Finds admissible the objections to the admissibility of the action for misdirection and for *obscuri libelli* raised by the City of Kinshasa but deems them unfounded and sets them aside;

— Finds admissible the action instituted by the Claimant, Abdoul Karim, and deems it founded in part;

Accordingly,

— Sentences the Democratic Republic of the Congo, and the City of Kinshasa to reimburse the sum of CF47,762,640 representing the cost of the building work carried out by the Claimant (forty-seven million seven hundred and sixty-two thousand six hundred and forty Congolese francs) and to pay him commercial interest of 8 per cent per annum for the period of 17 years with effect from completion of the work to the serving of the writ, viz. CF64,957,190.4 (sixty-four million nine hundred and fifty-seven thousand one hundred and ninety Congolese francs and forty centimes);

— Declares that the principal claim shall incur commercial interest of 8 per cent per annum with effect from the serving of the writ to payment in full;

— Orders the Defendants to pay the Claimant the sum of CF30,000,000 (thirty million Congolese francs) in damages for all the harm suffered;

— Declares that these fines are to be paid by the Defendants jointly and severally;

— Declares unfounded the claim relating to the payment of judicial interest calculated at 20 per cent per annum and sets it aside;

— Orders the parties to pay legal costs on the basis of 5/8ths by the City of Kinshasa, 2/8ths by the Democratic Republic of the Congo and 1/8th by the Claimant;

— As determined by the *Tribunal de grande instance* of Kinshasa/Gombe, sitting in civil and commercial matters, at its public hearing of 3 February 2000, presided over by Judge Yumbu Mumbanda, assisted by Ngalamulume, Officer, Public Prosecutor's Office, and Baluti Mondo, Registrar.

Registrar
BALUTI MONDO.

Judge
YUMBU MUMBANDA.

[Official stamp]

ANNEX POC 3

MINUTES OF THE MEETING HELD ON 1 JUNE 1995 BETWEEN GÉCAMINES AND AFRICONTAINERS

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 POC 4

MINUTES OF THE WORKING MEETING HELD ON 2 JULY 1997 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 POC 5

TIMETABLE OF WORK OF THE CONTAINERS DISPUTES COMMISSION FROM 26 SEPTEMBER TO 14 OCTOBER 1997 (GÉCAMINES)

Dates	Work Scheduled
26/09/1997	Meeting of the Containers Disputes Commission for discussion and amendment of timetable of work.
From 29/09 to 03/10/97	**Working meeting with Africontainers**
	— Establishment of rate for demurrage charges on containers acknowledged by both parties at the meetings on 02/03 and 07/07/1997.
	— Determination of residual value of damaged containers.
	— Consideration of Debit Note No. 060/AFC/DG/95.
	— Consideration of Debit Note No. 061/AFC/DG/95.
	— Consideration of Debit Note No. 059/AFC/DG/95.
	— Consideration of Debit Note No. 064/AFC/DG/95.
	— Consideration of Debit Note No. 077/AFC/DG/95.
06/10/1997	**Working meeting with Flucoza**
	— Establishment of rate for demurrage charges on containers acknowledged by both parties.
	— Consideration of question of containers used on the Kinshasa/Matadi/Kinshasa route.
	Working meeting with Kincontainers
	— Establishment of rate for demurrage charges on containers acknowledged by both parties.
	— Consideration of question of containers used on the Kinshasa/Matadi route.
07/10/1997	**Working meeting with Congo Fina**
	— Consideration of question of use of containers on the Kinshasa/Matadi/Kinshasa route.
07/10/1997	**Working meeting with ATAF**
	— Establishment of rate for demurrage charges on containers acknowledged by both parties.

	acknowledged by both parties.
	— Consideration of question of 63 international containers, costs of repairing which were invoiced to ATAF.
08/10/1997	**Working meeting with Onatra**
	— Consideration of question of containers returned empty from Matadi to Kinshasa, costs relating to which were invoiced to Gécamines.
	— Developments regarding injury and loss arising from containers missing in Onatra facilities.
	— Release of container CMZU 208.222/0 held in TC PK (Kinshasa Container Depot).
	Working meeting with Transfluza
	— Consideration of the question of use by Transfluza of containers rented to Gécamines.
09/10/1997	**Working meeting with the Zaire Mobil Oil, Zaire Shell and Congo Fina**
	— Consideration of the question of the 25 per cent of the demurrage charge to be borne by the oil companies under the terms of the contract.
	— Consideration of the 25 per cent of the costs of transport between facilities to be borne by the oil companies.
	Working meeting with Compagnie Maritime du Congo (CMC)
	— Finalization of the "at ship's convenience" file.
10/10/1997	**Working meeting with SNCC**
	— Consideration of the question of disputed containers operated jointly on the national track.
13/10/1997	**Preparation of final report and closure of the file on disputed national containers.**
14/10/1997	**End of work programmed for Kinshasa and departure for Antwerp.**

ANNEX POC 6

NOTE DATED 16 SEPTEMBER 1997 ON THE TIMETABLE OF WORK OF THE CONTAINERS DISPUTES COMMISSION (GÉCAMINES)

To: DAT/DIR a.i.

Subject: Transmission of Memorandum on the timetable of work

Following its meeting on 15 September 1997, the Containers Disputes Commission transmits herewith for your approval the timetable of work intended to settle all the containers disputes.

For the Commission

(Signed) KAKONGE SAKALA.

Note to DAT/DIR

Subject: Timetable of work of the Commission

With a view to achieving a final settlement of the containers disputes, and after investigations and contacts with persons concerned, the Commission recently forwarded to you a summary of the preparatory work it has already accomplished and concrete proposals for a comprehensive settlement of these disputes, proposals that you welcomed.

Accordingly, with a view to finalizing the amicable settlement with our various partners concerning this weighty dossier, the Commission submits for your approval the following timetable for the continuation of its work.

1. Mission to Kinshasa: from 22 September to 11 October 1997.

1.1. Tasks

1.1.1 Establishment of the rate of the demurrage charge applicable on the Kinshasa/Matadi route.

1.1.2. Establishment of the container rental rate on the Kinshasa/Matadi route.

1.1.3. Consideration of the wrongful invoicing for conveyance of containers on the Kinshasa/Matadi route by Onatra (± US$1,000,000).

1.2. Working meetings with:

1.2.1. AFC: from 23 to 29 September 1997.

— Loss of earnings due to unfair competition. Debit Note No. 059: US$7,708,642,033.82

— Fraudulent use of 473 containers on the Kinshasa/Matadi route. Debit Note No. 060: US$3,588,487,281.00

— Return of 63 containers empty. Debit Note No. 061: US$273,186,530.57

— Demurrage charges on 28 containers immobilized in Gécamines facilities. Debit Note No. 062: US$ 786,387.20

— Loss of 20 containers. Debit Note No. 063: US$ 523,852,769.65

— Rectification of invoices. Debit Note No. 064: US$2,549,965,784.29

— Six invoices for services not paid. Debit Note No. 065: US$ 44,520.00

— Total claim US$14,632,497,816.53

1.2.2. ATAF

— Demurrage charges: five containers.

— Repair of containers at Antwerp: FB 2,500,000.

1.2.3. Flucoza

— Demurrage charges: five containers.

— Rental: 166 containers.

— Payment of residual value: five containers.

1.2.4. Kincontainers

— Demurrage charges: four containers from Katanga.

— Demurrage charges: 72 containers from Matadi.

1.2.5. TTC

— Rental/demurrage charges Kinshasa/Matadi.

— Implementation of the settlement of November 1996.

1.2.6. Onatra

— Release of container CMZU 208222/0 held at TCPK.

— Containers missing in its installations.

— Invoicing of costs of transport of containers from Matadi to Kinshasa.

1.2.7. Transfluza

— Use of Gécamines containers on the Ilebo-Mwene Ditu route.

1.2.8. CMC

— Contact to finalize "at ship's convenience" file.

2. Mission to Antwerp

2.1. Dates: from 14 October to 4 November 1997.

2.2. Objectives

2.2.1. Recovery of the "ship's convenience" claim for ± FB 40,000,000 for containers packed between 1986 and 1992.

— CMBT: consideration of the invoice for 1,068 containers.

— CMC: consideration of the invoice for 925 containers.

— DAFRA: consideration of the invoice for 95 containers.

2.2.2. Consideration with DMF of the question of 500 ex-rental/sale containers, transfer of ownership to Gécamines.

2.2.3. Consideration with CMC/Antwerp of the containers held at Antwerp since 1993.

We remain at your disposal for any additional information you may require.

(Signed) KAKONGE SAKALA.
Chairman, Containers Disputes Commission.

ANNEX POC 7

LETTER CLC 049/97 OF 26 SEPTEMBER 1997 FROM GÉCAMINES TO AFRICONTAINERS

Dear Sirs,

The Containers Disputes Commission responsible for looking into the disputes between your company and Gécamines has the pleasure of inviting you to a second round of meetings.

These will take place from Monday 29 September to Friday 3 October 1997 at the offices of the Gécamines Representation, on Boulevard du 30 Juin, at the following times:

— Morning: from 9 a.m. to 12.30 p.m.

— Afternoon: from 2 p.m. to 4.30 p.m.

Please find attached the provisional agenda for these meetings.

Yours faithfully,

(Signed) KAKANGE SAKALA.
Chairman of the Containers Disputes Commission.

(Signed) BONOKWIBABWA ma SOGBEA.
Representative of the Chairman and Managing Director.

ANNEX POC 8

LETTER DAT/DIR/54.137/97 DATED 17 SEPTEMBER 1997 FROM GÉCAMINES TO THE CHAIRMAN AND CHIEF EXECUTIVE OF AFRICONTAINERS

Subject: Non-contractual containers incorporated in the Gécamines circuit

Dear Sir,

The Tripartite Contract between ourselves, other parties and your company which has been in force since 1983 authorized the packing of mineral ores in containers previously used for the conveyance of lubricants, in order to facilitate their return to Kinshasa.

As you know, that procedure involved considerable costs, including those of packing, handling at the plants, unpacking and carriage and maintenance at Kinshasa. Under the terms of the contract, those costs were debited to Gécamines.

Unfortunately, we have discovered that our staff used this as an opportunity to introduce into the return leg of the circuit several non-contractual containers that had been sent to Katanga for the benefit of other customers. These containers, which would have cost you about US$1,000 if returned empty to Kinshasa, were fraudulently introduced into our facilities during the 1980s. An initial count by our services, which we transmit to you herewith for confirmation, relates to 186 containers. Investigations are continuing, and we shall be sending you a debit note for all the costs resulting from the packing of non-contractual containers.

Yours faithfully,

(Signed) MAKONGA MABENZE.
Assistant Director of Supply and Transport.

MBAKA KAWAYA SUANA.
Chairman and Managing Director.

(Signed) YUMBA MONGA.
Deputy Managing Director.

[List of non-contractual containers (four pages) not translated.]

ANNEX POC 9

GÉCAMINES — INTERIM REPORT NO. 1
CONCERNING NATIONAL CONTAINERS, DECEMBER 1997

GÉCAMINES
DIRECTORATE OF SUPPLY AND TRANSPORT (DAT)
COMMISSION ON CONTAINERS DISPUTES

INTERIM REPORT NO. 1

National Containers
Kinshasa
December 1997

INTRODUCTION

1. Establishment, purpose and mandate of the Commission

In its Note DAT/DIR/45008/1997 of 17 January 1997, addressed to DCI, JUR and DMC, the Directorate of Supply and Transport (DAT/DIR) requested the establishment of a mixed commission entrusted with the tasks of finalizing the files relating to the disputes and proposing appropriate solutions.

In that Note, the Commission was mandated with the following six tasks:

(a) Preparation of an inventory of the containers in Gécamines facilities;

(b) Study of claims concerning demurrage charges on national containers;

(c) Consideration of the question of non-contractual use of containers on the Kinshasa/Matadi/Kinshasa route;

(d) Payment of the residual value of damaged or missing containers;

(e) Consideration of and specific proposals regarding each of the various freight forwarders' files, including the cases of the CMBT and CMC shipping companies;

(f) meeting with the firms concerned in accordance with the timetable to be established by the Commission.

2. Choice of members

At the outset, the Commission was constituted with the following five members, chosen by their line managers:

— JUR: Mr. Kienge Dyashi, Legal Attaché to the Legal Division (JUR);

— DCI: Mr. Kakonge Sakala, Director of the Methods Division in the Directorate of Internal Control (DCI);

— DMC: Mr. Matanda Mubanga, Director, Chief of the Africa Transit Department;

— DAT: Mr. Pierre Lumuna Mabundu Mwelej, Chief, Containers Management Office, TIE/KIN.

— Mr. Kasongo Sakakweji, Chief, TIE/STI Office.

At the contact meeting held on 28 February 1997 at TIE/Lubumbashi, Mr. Kakonge Sakala was appointed chairman of the Containers Disputes Commission (CLC) by acclamation.

In July 1997, for internal administrative reasons, Mr. Kasongo Sakakweji of TIE/STI ceased to participate in the work of the Commission.

3. Difficulties encountered

It should have been possible for the Commission, which began its work on 2 March 1997, to have completed its task in August 1997. The abnormally long time it took the Commission to terminate the disputes is attributable to the following factors:

— Lack of logistical resources

Because of the difficulties the undertaking is currently experiencing, no budget was allocated to the Commission, which had to make do with the means at its disposal. Each Directorate that had delegated a representative had to contribute to the success of the work by taking financial responsibility for its delegate. Consequently, various difficulties arose, particularly the following:

— Administrative

Since it had no secretary, the Commission had to rely on the DCI, JUR and CGK typing pools, which were already overloaded with work. For this reason, even as this report is being prepared, some minutes and records are still not available.

— Availability of members

Throughout its work, members of the Commission were occasionally required by their departments for urgent tasks, resulting in the cancellation or postponement of some meetings.

— Lack of transportation

As the Commission is based at the Directorate of Internal Control, the fact that no means of transport were provided prevented the Commission from meeting at the times scheduled. This was the case in Kinshasa, Likasi and Kolwezi, where Commission members' movements were hampered and their work disrupted by the lack of any means of transport.

— The internal situation

The Commission was compelled to suspend its work as a result of the events of April and May 1997. Work in Kinshasa was also disturbed by the fighting in Brazzaville. Some meetings were cancelled because the freight forwarders who had been invited did not attend because of the risk of shell attacks.

CHAPTER I: STUDY OF THE FILES

Before beginning its work, the Commission scrutinized the files relating to the containers disputes. Thereafter, the Commission gathered the following information:

1.1. Contacts with managers

1.2. Examination of contracts and documents

1.3. Site visits

1.1. Contacts with Gécamines officials responsible for management of the containers

Conscious of the sensitivity of its mandate, given the complexity of the containers disputes, particularly with regard to their origins, the Commission began its work with a series of contacts with the various Gécamines officials directly or indirectly involved in management of the containers. The aim was twofold:

— to draw attention to the existence and mandate of the Commission;

— to obtain information from each official concerning the part his staff usually play in the routing of containers within Gécamines, and the organizational structure applicable.

These visits enabled the Commission, having interviewed the officials of the major directorates and of the three Gécamines Groups, to embark on a study of the containers disputes files in full knowledge of the facts.

1.2. Contact with TIE/DIR (see minutes of the meeting with TIE/DIR held on 28 February 1997)

In its capacity as the main manager of the containers rented out by Gécamines, TIE/DIR explained to the Commission, in addition to the key role played by its division in tracking the containers and computerizing information on their management, the temporal and spatial evolution of the contractual relations between Gécamines and its partners who rented containers. TIE/DIR is the main repository of the information on containers that the Commission needs.

1.3. Contact with TRF/DIR (see minutes of the meeting with TRF/DIR held on 17 March 1997)

As TIE, the main manager of the containers, is not represented in the three Gécamines Groups, TRF and its staff are responsible for

— taking charge of the containers routed to Gécamines by the carrier;

— towing the container wagons in the Gécamines facilities;

— establishing consignment notes for any movement of containers;

— transfers of containers between workings;

— withdrawal of empty containers from storage and routing them to the place where they are to be packed.

TRF/DIR confirmed that TIE plays the key role in this management.

1.4. Contact with DAT/DIR (see minutes of the meeting with DAT/DIR held on 6 March 1997)

After introducing its members, the Commission requested DAT/DIR to provide the logistical resources necessary for its functioning. In its reply, DAT/DIR stressed the current difficulties facing the company, which meant that it was not in a position to comply with the Commission's request.

With regard to management of the containers, DAT/DIR stressed:

— that it plays no part in their daily management, although it is concerned about the situation regarding the containers;

— that the Commission is to have a free hand in deciding on the scope of its action;

— its concern at the problem of the cost of renting the disputed containers that often arises during performance of the contract;

— that it recommends the Commission to ensure that the discussions and documentation remain confidential.

1.5. Contact with TRP/DIR

After the Chairman had introduced the members of the Commission, TRP/DIR took the same view as TIE/DIR and TRF/DIR, insisting chiefly on the spirit underlying the container rental contracts concluded between Gécamines and its partners.

It drew attention to anomalies such as the packing of third parties' containers by Gécamines at a time when, with a boom in metals production, the number of contractual containers received from the freight forwarders was insufficient. That unorganized incorporation of non-contractual containers into the Gécamines circuit is one of the main causes of disputes, along with the fraudulent use of Gécamines containers by third parties.

1.6. Contact with DMC/A (see minutes of the meeting with DCM/A held on 7 March 1997)

After introducing the members of the Commission, the chairman informed DCM/A of the Commission's aims pursuant to its mandate.

DCM/A advised the Commission to:

— Suspend consideration of dossiers pending Gécamines' conclusions;

— transmit the final report of the Commission's work to the Directorate General, which has already been notified of the steps taken in the overall context of dispute settlement;

— request an advance on which the Commission can draw when travelling to Groups where catering facilities are often closed;

— consult the DCM files on container management and associated problems, observing due discretion.

1.7. Contact with officials of the Centre Group

1.8. TRF/C:

Informed the Commission that it does not deal with management of containers in this Group. Its role is restricted to receiving wagons loaded with containers and arranging for them to be routed to the stores where they will be unpacked. Claims that it manages only the wagons and their movements.

1.9. CMG/C:

Declares that it is the main manager of the containers at the Centre Group level. Its staff receive the containers on arrival, check them in, unpack them and route them to the factories where they are to be packed with Gécamines products intended for export. It works in close association with TIE and the factories on monitoring the containers received in its Group.

1.1.0. Contacts with officials of the Western Group (see minutes of the meeting held on 12 March 1997)

1.1.1. TRF/O:

— deals only with containers arriving in Kolwezi by rail, not with those arriving by road;

— arranges for them to be towed, first to the stores named in the consignment note, then to the factories where they will be packed;

— every Tuesday, provides TIE with information on the movement of the containers and their monitoring;

— has no knowledge of fraudulent movements of containers, especially if the container is moved by road.

1.1.2. GES/O:

According to GES/O, its role in the management of containers is:

— to receive from TRF/O the containers packed with articles intended for the stores, and to monitor them;

— after unpacking, to notify TRF/O, to enable it to remove the empty containers and send them to the factories to be packed with ores;

— to follow a similar procedure with containers that have arrived in Kolwezi by road;

— to keep daily track of the containers for which it is responsible and trace their movements in case of need.

1.1.3. TRF/Luilu:

— takes charge of the wagons loaded with containers at the SNCC railway station;

— after unpacking, the empty containers are made available to it by the stores. After packing, they are again made available to it, to be passed on to the carrier;

— also receives empty containers used in local traffic, and routes them to the copper depot;

— TRF/Luilu has no control over containers arriving by road.

All these contacts passed off smoothly and were helpful to the Commission.

1.1.5. Site visits

This stage of the Commission's work is closely linked with the stage of visits to certain officials of the operation involved in various capacities in the problems concerning containers. In addition to the explanations received, the members of the Commission also had to familiarise themselves with the premises where the containers are received, unpacked, packed and towed.

1.1.6

In the Centre Group, they visited the TRF Centre site from which the wagons loaded with containers are routed to the stores. They visited GES/C/DIR, where they had an opportunity to see the park in which the containers are stored before being routed to the Shituru factories to be packed with mineral ores intended for export. Lastly, they visited the Shituru factories at the FUCO, where they were able to see for themselves the conditions in which the containers were used by the operators.

In summary, the circuit followed by the containers is as follows:

— TRF/C receives the wagons loaded with containers and transmits them to the destination store without recording any information concerning the containers themselves;

— the GEC/C staff receive the containers, check them in, then unpack them and route them to the factories. Sometimes unpacking is delayed and the container becomes a secure place in which articles of value are stored safely for a lengthy period;

— the factories pack the products into the containers received from GES/C or taken from the park without any written formalities and contacts TIE (for containers sent by road) or TRF (for containers sent by rail) regarding the despatch formalities.

1.1.7.

In the Western Group, the members of the Commission visited TRF/O and the stores (GES/C and the TRF Luilu factories) to inspect the premises in which the containers are received, unpacked, packed or stored. The procedure and the circuit used in the Western Group are practically identical to those used in the Centre Group.

1.2. Legal Considerations

1.2.1. Examination of the contracts and documents

1.2.3. Analysis of the contracts

With a view to establishing each party's liability in the dispute between Gécamines and the freight forwarders and carriers, including the oil companies, the members of the Commission embarked on a study of the various contracts governing business relations between the above-mentioned firms.

It should, however, be noted at the outset that the first contract signed between Gécamines and Africontainers in 1982 was rescinded by the Tripartite Contract concluded in 1983 between the oil companies, the freight forwarders and our undertaking. The Tripartite Contract, which remains in force until the publication of this report, concerns the transportation of lubricants from Kinshasa and of Gécamines mineral ores for export from Lubumbashi.

The rates and modalities of payment set forth in Article 10 I and II break down as follows:

(a) For transportation from Kinshasa to Katanga, the costs (Z6,000.00) are to be borne entirely (100 per cent) by Gécamines;

(b) For transportation from Katanga to Kinshasa the costs (Z5,800.00) are to be shared between Gécamines (75 per cent) and the oil companies (25 per cent).

Similarly, all costs of transportation of containers between the various Gécamines workings are regulated by the above provisions.

At the practical level, an initial difficulty was noted concerning the retention of the containers by Gécamines. This revealed lacunae in the contract, which made no provision for penalties in connection with idle time of the containers (demurrage charges). Thus, a supplementary agreement (No. 3) dated 16 August 1985 allowed for the fixing of the demurrage rate by Gécamines, the freight forwarders and the oil companies, as follows:

Mobil Oil, Fina, Shell, Flucoza, ATAF and Africontainers.

Paragraph 3 of the supplementary agreement provides that any penalty charges shall be shared between Gécamines (75 per cent) and the oil companies (25 per cent).

This supplementary agreement has never been reviewed, even as regards the penalty rate (US$0.49).

With regard to liability in the event of damage to the containers, Article 2, paragraph 2 *(e)* and *(f)*, provides that in the event of a container being found to be damaged on arrival or of its being damaged in the Gécamines depots, Gécamines shall notify the representative of the freight forwarder or of the oil company, who will have to visit the site in order to draw up a report in the presence of both parties.

So as not to cause injury and loss to the owners of the containers, the parties agreed that, as far as possible, the damaged container will be repaired immediately so that it can be restored to use. It is understood that the costs of repairing damaged containers will be borne by Gécamines if, and only if, Gécamines is found liable for the damage.

In the performance of the parties' obligations under a contract, sudden, unforeseen and inevitable events often hinder the parties' performance of the contract. In order to circumvent this problem, Article 8 exonerates the parties from liability in the event of performance being halted or

entirely or partially hindered for reasons such as compliance with regulations, requirement of or control by a governmental or military authority, force majeure, strikes or other disturbances, non-availability or shortage of basic lubricants or any other reasons or causes beyond the control of the parties.

It should however be noted that, in order for this clause to be enforceable, the interested party whose capacity to fulfil its obligations is affected by any of these unforeseen circumstances must immediately notify the other party in writing, specifying the cause and the estimated duration of the problem.

Lastly, the Tripartite Contract, concluded for a duration of one year and renewable by tacit consent, may be annulled at any time in the event of one of the parties not complying with its stipulations, either owing to a shortage of resources or through negligence of its staff. Such an annulment would take effect through simple notification in writing ten days beforehand, and would entail no compensation on the part of the more diligent party.

1.1.2. Disputes arising as a result of failure by Gécamines staff to comply with the provisions of the contract

A number of freight forwarders, including Africontainers, transmitted to Gécamines a debit note, No. 061/AFC/DG/95 of 24 July 1995, concerning the return of empty containers to Kinshasa in a damaged state, in an amount of US$273,186,530.57.

Africontainers, relying on Article 1, paragraphs 3 and 2 *(c)* and *(f)*, of the Tripartite Contract of carriage, considers itself entitled to claim this amount from us.

It has been established that Gécamines staff deliberately contravened the aforementioned Article 1, thereby giving Africontainers grounds for transmitting the debit note to us.

Although well-founded, Africontainers' claim was rejected by the Commission, which, on the basis of Article 27, Section II, of the Congolese Commercial Code, considers that the claim is time-barred.

Article 27, paragraph 2, stipulates that for acts arising out of the contract of carriage of goods, the time-bar runs, in the event of total loss or of postponement of the day when the carriage should have taken place or in the event of partial loss or damage, from the day on which the merchandise (goods) was delivered. In this case, as the damaged containers were returned to Africontainers between 1985 and 1992, the claim should have been made by 1994 at the latest, not in 1995.

Continuing its analysis of the 1983 Tripartite Contract, the Commission discovered that pursuant to Article 10, paragraph II *(b)* and Article 2, paragraph 3, of supplementary agreement No. 3 of 15 August 1983, Gécamines was to pass on 25 per cent of the costs to the oil companies. To the best of our knowledge, no debit note has yet been addressed to them. The Commission is endeavouring to remedy that omission.

Accordingly, the Commission, having examined the dossier, summoned the oil companies on 7 October 1997 to inform them of the need to comply with the provisions of the contract. At the end of this meeting, the two parties agreed that the oil companies are obliged to bear 25 per cent of the costs of demurrage and transportation between facilities. However, the Commission also promised to provide them with figures for invoicing as soon as possible, figures which depend on the outcome of the work that the Commission has requested DIE/FAC to undertake. For this purpose, it is planned to hold meetings at the end of November to make a final determination of the amounts owed by the oil companies.

Furthermore, the Commission also found that, outside the framework of the Tripartite Contract, several containers destined for third parties in Katanga were routed to our plants without our knowledge, and over a period of several years.

In such a case, Article 252, Volume III, of the Congolese Civil Code provides that anyone who receives in error or knowingly a thing which is not due to him shall be obliged to restore it to the person from whom he has received it in error.

In addition to the fact that not all the disputed containers have been returned, the Commission noted, during its visits to Likasi, Kolwezi and Pompi, that some of the containers have been rendered unusable through negligence on the part of Gécamines.

In such cases, Article 255 of the Civil Code provides that "if the thing received in error is an immovable or a corporeal movable, whoever has received it is obliged to return it in kind, if it exists, or its value if it is destroyed or damaged through his negligence . . .".

In this regard, the Commission rejected the notion of unjust enrichment put forward by the freight forwarders, on the grounds that, in order to bring an action *in rem*, the petitioner must be able to prove his impoverishment and the enrichment of the other party. That requirement was not fulfilled.

On the other hand, the Commission rightly relied on Article 257 of the Civil Code, which confirms our position by providing that the person to whom the item of property is restored must take account, even in the case of unlawful possession, of all the necessary and valid expenditure incurred for the conservation of said item.

It goes without saying that Gécamines is entitled to debit the forwarders of non-contractual containers for all these costs of conservation.

Furthermore, following the plundering in 1991 and 1992, the appreciable fall in production and the shortage of wagons and locomotives on the former OCZ network, several containers were not returned to their owners within the 90-day time-limit, thereby resulting in enormous costs in the form of demurrage charges over a period of about five years.

This situation, which is very damaging to our undertaking and to the oil companies, which, pursuant to the Tripartite Contract, bear 25 per cent of those costs, could have been avoided, had our staff referred to Article 8, paragraph 2, of the contract, which obliges the party invoking force majeure immediately to notify the other party in writing, specifying the cause and estimated duration. No such action was taken.

All this indicates that the Gécamines departments responsible for management of the containers caused, through their manifest negligence, enormous damage to the undertaking.

On the question of the oil companies assuming 25 per cent of the demurrage charges, the Commission did however note that in the case under consideration, their retention is principally attributable to the negligence of the services using them and that, accordingly, the oil companies can invoke the principle of *nemo auditur turpitudinem suam allegans* (no one may plead his own wrongdoing). This argument was indeed raised by the oil companies at the meetings held in October 1997.

In this regard, the Commission recalled that the law of the parties *in specie* remains the contract, and that as the contract did not provide for penalties in that connection, it was inappropriate for the oil companies to avoid their share of liability.

1.2.4. Consideration of other documents

1. In its investigations, the Commission came into possession of a letter from the Zatra/CMMZ undertaking dated 17 January 1997, in which it requests our undertaking to return 11 of its containers which have been held in its depots for several years.

As a result, at the invitation of the Commission, a certain Mrs. Mulumba Katatshikand, allegedly an official of Zatra, came before the Commission, accompanied by her eldest son, on 25 March 1997.

After the interview, the Commission drew the following conclusions:

— the woman in question is in possession of no document providing evidence of the presence of her containers in the Gécamines depots;

— furthermore, she was unable to establish that she was in fact an official of Zatra/CMMZ with capacity validly to represent that company.

The Commission therefore decided to adjourn consideration of the matter, even though it had in fact established that some of the containers in question appear in the Gécamines inventories.

2. Article 10 of Section II of the Congolese Commercial Code stipulates that the contract of carriage shall be established by all legal means, including, with respect to the merchandise, the loading list (consignment note). This note is a special form of proof introduced by the legislature with a view to avoiding disputes arising out of the contract of carriage of goods. Accordingly, wishing to comply with the above-mentioned provision, the Commission did its utmost to gather together all the consignment notes relating to the disputed containers. This painstaking task entailed visits to Matadi and Kinshasa by the members of the Commission.

3. On 26 June 1986, at a meeting in Kinshasa between SNCC, Onatra and the Gécamines Group, it had been decided to transfer the unpacking operations for containers loaded with Gécamines products from Kinshasa to Matadi, while the Port of Kinshasa was being renovated.

This situation, which the parties did not foresee when the Tripartite Contract was signed, had the effect of slowing down the national transport of ores.

Given that Gécamines was bound by certain obligations under the Tripartite Contract, including the obligation to unpack the containers at Kinshasa, it should have informed its partners of that situation on 5 July 1986.

That operation was due to terminate at the end of 1986. Gécamines had assured the freight forwarders that their containers would not be subjected to an extended turnaround time at Matadi. (See report of the meeting between Gécamines and the forwarders, held on 5 July 1986.)

While agreeing to this in principle, the forwarders nevertheless gave due warning that they would be obliged to invoice only the turnaround time of the containers at Matadi if Onatra did not return them promptly.

It is thus clearly established that, apart from the demurrage charges, the freight forwarders cannot fall back on specious arguments to the effect that their containers have been used fraudulently on the Kinshasa/Matadi route in order to claim the rental costs from us. This is corroborated by the fact that, in his letter No. AFC/DE/IN/048/87 of 27 July 1987 addressed to Gécamines, the Chairman and Chief Executive of Africontainers recognized that arrangement, stating: "Indeed, we have noted that our containers are not redespatched as rapidly as possible after

unpacking at Matadi, remaining there for several months, even longer than the 35 days for which provision is made". Further on, Africontainers concludes: "Consequently, having listed those of our containers *that have remained for a long time* at Matadi, we herewith transmit to you the relevant debit note . . .".

Nowhere is any mention made of fraudulent use, or of rental.

Accordingly, the Commission rejected any claim by the forwarders relating to the rental of the containers on the Kinshasa/Matadi route.

4. Settlement between Gécamines and Fina Congo (Trans-Tshikem)

The Commission recognized the validity of the settlement concluded between Fina Congo (Trans-Tshikem) and our undertaking on 8 November 1996, relating to an amount of US$387,183, on the grounds that lawfully concluded agreements have the status of law for those who have concluded them and must be performed in good faith (Congolese Civil Code, Article 33, Volume III).

Furthermore, settlements between the parties constitute *res judicata* at last instance. They cannot be challenged on the grounds of a mistake of law or of loss caused to one of the parties.

We noted that, regrettably, no lawyer was present at the negotiations on 23 October 1997.

All things considered, the Commission is of the opinion that, through their negligent failure to comply with the 1983 Tripartite Contract, the Gécamines staff responsible for management of the containers caused enormous financial damage to the undertaking. Given the resulting confusion, the Commission has been unable to feel at ease with the freight forwarders regarding certain matters (e.g., return of empty containers, failure to notify cases of force majeure, excessive time taken to consider the dossiers).

However, though sometimes gaining access to the law only via the back door, the Commission has respected the DAT/DIR guidelines to the best of its ability.

CHAPTER II: INVENTORY AND NATURE OF THE DISPUTES

On completion of its study of the cases submitted to it for consideration, the Commission classified and listed the disputes submitted to it by DAT as follows:

2.1. Demurrage charges on returned and non-returned containers

The contract provided that the containers should have been packed with copper and redespatched to Kinshasa within 15 days of their arrival at the Gécamines copper depot. As that clause was not complied with, the freight forwarders filed claims against Gécamines for payment of the costs of idle time.

2.2. Residual value of the damaged containers

A large number of containers used to transport lubricants to the Gécamines facilities disappeared or were irreparably damaged. The damaged containers remained immobilized in our facilities and the owners were not informed of the fact. Pursuant to the Congolese Civil Code, Article 258, Book III, the owners consider that, in addition to the demurrage charges, Gécamines is obliged to pay the value of the containers damaged by the staff of its facilities.

2.3. Rental/demurrage charges: containers on the Kinshasa/Matadi route

As a result of the works to enlarge the port of Kinshasa undertaken in 1986, on 26 June 1986 a tripartite meeting of Gécamines, SNCZ and Onatra including its chairmen and chief executives decided to transfer unpacking operations from Kinshasa to Matadi.

That decision, taken with a view to optimizing the total tonnage of ores in the pipeline and making the national traffic more flexible resulted in:

— the prolonged retention of the freight forwarders' containers at Matadi, entailing a loss of earnings for the forwarders;

— failure to comply with the clause in the contract specifying the place to which the containers must be returned.

The forwarders who suffered loss as a result of that decision consider that their containers have been used fraudulently on the Kinshasa/Matadi/Kinshasa route. They also consider the following to be applicable:

(a) **Unpaid rental:**

On the containers that have made the journey from Kinshasa to Matadi and back, after their return to Kinshasa, the place of return under the terms of the contract;

(b) **Demurrage charges:**

On the containers delayed for several months in Matadi before being returned to Kinshasa.

2.4. Containers used by SNCC without the agreement of Gécamines

Consideration of the documents submitted to the Commission revealed the presence on the SNCC network of the disputed containers sought by Gécamines. These are containers rented to Gécamines but being used by SNCC without the agreement of the lessee.

2.4.1. Containers used instead of box wagons

Because of a shortage of box wagons, the carrier used several Gécamines containers to remove cement and other sensitive goods that cannot be loaded into ordinary wagons. According to the consignment notes gathered together by the Commission, instances of this were recorded for goods originating in Lubudi, Ilebo and Mwene Ditu stations. It goes without saying that SNCC profited greatly from the use of these containers. Indeed, without them it would not have transported the freight entrusted to it by its customers. Apart from the removal of the freight, some containers were used by SNCC staff to transport equipment or personal effects when changing their place of work or residence. After being put to this use, the containers were often abandoned in SNCC stations, making it impossible to keep track of them.

2.4.2. Containers despatched to SNCC by Gécamines but not returned

The Commission noted that some containers made available to SNCC to convey Gécamines materials to its workings were never returned. These are containers for which the company continues to pay monthly rental charges.

2.5. Containers used by Cimenkat

As in the previous case, the Commission obtained documents certifying that containers leased to Gécamines had been packed by Cimenkat. In some cases, containers packed with bags of cement were despatched to its customers in Mwene Ditu and Kolwezi. Some of these containers were never returned to the Gécamines depots. Most were international CMB and CMZ containers.

2.6. Containers lost in Onatra depots

The Commission inspected documents certifying the disappearance from Onatra depots of containers managed by Gécamines. These were leased containers in transit on the Onatra network.

2.7. Unreturned CMDC containers

The Commission took up the case of international containers belonging to the *Compagnie Maritime du Congo* (CMDC, formerly CMZ) shipping company. It ascertained that 61 containers belonging to that company were never returned to Antwerp as stipulated in the contract. Some of those containers' whereabouts have been unknown for several years. However, the undertaking continues to receive debit notes issued each month by CMDC.

These are containers covered by the round trip clause, for which the undertaking is obliged to pay US$5 a day, or US$1, 825 per annum, until the day of their return to Antwerp.

2.8. "At ship's convenience" containers

The "at ship's convenience" dossier concerns the cost of packing containers of the CEWAL conference shipping companies, managed by the Amiza maritime agency.

In the 1980s, the CEWAL shipping companies had obtained Gécamines' agreement to pack "at ship's convenience" empty containers immobilized at the Kinshasa containers terminal, because of a lack of export freight.

Gécamines' agreement was made subject to certain conditions, including assumption by the shipping companies of the container stuffing costs arising from these operations. The shipping companies bore those costs until 1986, after which the costs were wrongly charged to Gécamines, which, unfortunately, paid them.

After summary consideration of this file and contacts with CMDC, DMF and the Ami Congo and Agetraf maritime agencies, the Commission decided to treat the ship's convenience file separately. That file will be the subject of a report prepared on completion of the Commission's mission to Antwerp to visit the shipping companies that have accepted the ship's convenience clause.

2.9. The Merzario dossier

The Merzario carrier is also involved in the disputes concerning containers leased to Gécamines. The Commission noted the following cases. With regard to this carrier, *297 Merzario containers leased to Gécamines* and containers made available to Gécamines for free use over a three-month period were not returned at the end of that period. The result is a de facto leasing for which Merzario is claiming payment.

Case of a Gécamines container despatched to MIBA by Merzario:

Merzario spirited away a Gécamines-owned container from the Gécamines depots, which it handed over to MIBA as compensation for a MIBA container lost by its staff.

Case of 19 Gécamines containers removed from Dar-es-Salaam by Merzario:

According to information provided to the Commission by Amita, 19 ex-copper containers unpacked at Dar-es-Salaam were removed by Merzario in 1993. The Commission estimated the loss to Gécamines resulting from Merzario's use of the rented containers at US$175,000.

After considering the facts, the Commission decided to treat separately the case of the 19 containers removed from Dar-es-Salaam by Merzario. Because of differences of opinion between Amita and Merzario, the Commission requested DAT to authorise it to visit the site in order to gather evidence of the removal of the 19 containers by Merzario. The amount in dispute is approximately US$175,000 in favour of our undertaking.

CHAPTER III: VERIFICATION OF THE LISTS OF CONTAINERS SUBMITTED BY THE FREIGHT FORWARDERS

On the basis of the information provided to the Commission by TIE/KIN, the Commission verified the containers invoiced by the forwarders. The following results were obtained:

3.1. Demurrage charges on containers not returned

Of a total of 190 claims submitted by the forwarders relating to containers, the Commission rejected 114 after verification. These claims were dismissed for the following reasons:

3.1.1. Containers already returned

It was found that the forwarders were claiming for containers that had already been returned to them. Those anomalies were revealed following reference to the TIE/KIN mineral ores audit book and to the TIE/CIM printouts. The total number of containers in this category was 52 (see Annexes for details).

3.1.2. Non-contractual containers

Fifty-five containers were sent to Katanga on behalf of third parties, but were introduced into the Gécamines circuit to facilitate their return to Kinshasa. The Commission considered that Gécamines had no liability with regard to the return of those containers, and that their presence in our depots resulted in storage and maintenance costs that should have been debited to the forwarders.

3.2. Rental and demurrage charges: Kinshasa/Matadi/Kinshasa

As explained in section 2.3., a number of containers were re-used on the Kinshasa/Matadi link outside the framework of the Tripartite Contract. Verification of the lists prepared by the forwarders revealed the following anomalies:

3.2.1. Containers unpacked at Kinshasa

The forwarders included in their counts 202 containers unpacked at Kinshasa which were not routed to Matadi. The Commission eliminated those containers from the list of disputed containers.

3.2.2. Containers invoiced twice

Thirty-one containers in this category were eliminated from the lists submitted by the forwarders.

3.2.3. Non-contractual containers

As in the case of demurrage charges, the Commission found that the non-contractual containers introduced into the Gécamines circuit to facilitate their return to Kinshasa should not be treated in the same way as containers covered by the Tripartite Contract. Accordingly, 116 containers in this category invoiced by Africontainers on the grounds of fraudulent use on the Kinshasa/Matadi segment were eliminated from the list of disputed containers.

CHAPTER IV: INVENTORY OF DISPUTED CONTAINERS

4.1. General inventory and contact with DCI/DIR

Pursuant to its mandate, the Commission was required to carry out a physical inventory of all the containers located in the Gécamines facilities. The purpose of the inventory was twofold:

— to ascertain the whereabouts of the disputed containers and their physical condition;

— to trace the containers not found in the workings and stores for which they were destined.

However, the inventory was not carried out as recommended, for the following reasons:

(a) When the Commission was set up, the Directorate of Internal Control (DCI) was in the process of carrying out an audit of the management of containers. The DCI teams had made a general inventory of the containers stockpiled in the various workings.

(b) DCI/DIR thus convened the Commission with a view to clarifying the two bodies' respective mandates. Following discussions, the two parties agreed on the following points:

— so as to avoid duplication of work, DCI/DIR proposed that, in its work, the Commission should consult the inventories prepared by DCI/FIN;

— DCI/DIR invited its staff to provide the Commission with any information it required for the performance of its task;

— the Commission reserved the right to physically inspect the damaged containers and to visit the workings in order to locate the containers not listed in the DCI/FIN inventories.

4.2. Physical inspection

The Commission visited the Gécamines workings and stores in order to ascertain the presence and physical state of the disputed containers invoiced by the freight forwarders. Upon completion of this task, the following statistics were obtained:

4.2.1. Containers located

Forwarder	Containers in good condition	Damaged containers	Total
TTC	1	10	11
Africontainers	-	4	4
Kincontainers	-	3	3
Flucoco	1	-	1
TOTAL	2	17	19

4.2.2. Containers traced

Forwarder	Number of Containers
TTC	8
Africontainers	2
Kincontainers	1
ATAF	1
TOTAL	12

From the above tables, the Commission drew the following conclusions:

— there is no correspondence between the number of containers located (20) and the large number of disputed containers;

— twelve ex-lubricant containers were moved by the stores after unpacking. In four of these cases the containers were returned to Kinshasa.

4.3. Unlocated containers

With the exception of the 114 containers invoiced in error by the forwarders (see sections 3.1.1. and 3.1.2.), the Commission confirmed that all the disputed ex-lubricant containers were received by the freight forwarders in the Gécamines central stores.

CHAPTER V: HARMONIZATION OF STATISTICS ON DISPUTED CONTAINERS IN COLLABORATION WITH THE FORWARDERS

With a view to harmonizing the statistics on disputed containers with the forwarders, on 25 June 1997 the Commission convened meetings with the Tripartite Contract freight forwarders in Kinshasa. The outcome of those meetings was as follows.

5.1. ATAF

Of a total of 48 containers invoiced by ATAF (14 national and 34 international containers), the two parties agreed to recognize only the following as valid claims, since the Commission had found no evidence of their onward despatch to the Gécamines central stores and workings.

Serial No. of Container	Date of despatch from Kinshasa	Destination
ATAF 527.675	06/08/87	Likasi
ATAF 527.997	27/08/87	Kolwezi
SCXU 293.362/7	10/04/87	Likasi
SCXU 601.269/9	07/02/86	Likasi
SCPU 218.560/5	24/12/85	Lubumbashi

5.2. Flucoco

The Commission informed Flucoza of the reasons for not counting the 15 containers invoiced by Flucoco. After discussions, the two parties agreed on the following containers:

Serial No. of Container	Date of despatch from Kinshasa	Destination
526.6241	06/11/89	Lubumbashi
526.631	25/05/91	Likasi
526.658	20/09/89	Lubumbashi
526.667	03/03/89	Kolwezi
528.059	03/03/89	Kolwezi

In addition to the demurrage charges dossiers, the Commission and Flucoco also studied the lists of containers invoiced for non-contractual use on the Kinshasa/Matadi/Kinshasa route. Following a joint mission to Matadi, the two parties agreed to a figure of 166 out of the 185 containers invoiced by Flucoza.

5.3. Kincontainers

Kincontainers invoiced for demurrage charges on nine containers not returned. The Commission informed Kincontainers of the results of investigations conducted at TIE and in the workings:

— two containers invoiced by Kincontainers had been returned;

— three containers invoiced by Kincontainers are non-contractual.

Following joint verification, the two parties agreed on the following containers:

Serial No. of container	Date of despatch	Destination
525.397	09/02/89	Lubumbashi
525.995	29/09/89	Kolwezi
526.009	27/10/89	Likasi
526.010	22/07/88	Kolwezi

With regard to the containers used on the Kinshasa/Matadi route, the two parties agreed on the number of containers decided on jointly during the mission to Matadi, namely, 72 containers.

5.4. Africontainers

5.4.1. Demurrage charges on containers not returned

According to Africontainers, 20 containers used for transporting lubricants to Gécamines facilities have not yet been returned. Furthermore, these containers are alleged to have been damaged, and Africontainers debited Gécamines for their residual value. The verification conducted with the Africontainers representatives revealed that eight of the containers had already been returned, and that three are non-contractual containers. Following this inspection, the parties agreed on a figure of nine containers.

5.5.1. Demurrage charges on returned containers

Africontainers estimates that 28 containers that have now been returned stood idle in the Gécamines facilities for a period longer than that provided for in the contract. After verification, the parties agreed to reduce the number to 16 containers.

5.5.2. Use of containers on the Kinshasa/Matadi/Kinshasa route

A major disagreement arose between the two parties during consideration of the issue of allegedly "fraudulent" use of containers on the Kinshasa/Matadi/Kinshasa route.

According to the Africontainers list, 473 containers were used on the Kinshasa/Matadi/Kinshasa route between 1986 and 1990 (see section 2.3). Because of the extent of the differences of opinion, the two parties agreed to visit Matadi on 31 August 1997, in order to conduct a joint verification with the assistance of Onatra. As the Africontainers representatives did not make the journey to Matadi, for reasons unexplained, Gécamines gathered the following information from Onatra's Matadi and Kinshasa archives.

Of a total of 473 containers invoiced:

— 127 had been unpacked at Kinshasa and their contents despatched loose to Matadi. These containers thus never arrived at Matadi;

— 116 containers, although redespatched to Matadi, are not covered by the contract. These were containers wrongly introduced into the Gécamines circuit to facilitate their return to Kinshasa. The rental for return to Kinshasa and unpacking costs were paid by Gécamines. The Commission considers that these containers should not be treated in the same way as the contractual containers;

— 18 containers were invoiced twice by Africontainers, which subsequently acknowledged the mistake. In the light of the above considerations, the Commission retained 212 containers in the "fraudulent use" file.

5.6. Synoptic table of harmonized statistics

5.6.1. Demurrage charges on containers not returned

Forwarder	Containers invoiced	Containers eliminated	containers agreed on
ATAF	48	- 43	5
Kincontainers	9	- 5	4

Flucoco	11	- 6	5
TTC	41	- 17	24
Africontainers	20	- 11	9
Total	129	- 82	47

5.6.2. Demurrage charges on containers returned

Forwarder	Containers invoiced	Containers eliminated	Containers agreed on
Africontainers	28	- 12	16

5.6.3. Non-contractual use of containers on the Kinshasa/Matadi/Kinshasa route

Forwarder	Containers invoiced	Containers eliminated	Containers agreed on
Kincontainers	125	- 53	72
Flucoco	185	- 19	166
TTC	204	- 16	188
Africontainers	473	- 261	212
Total	987	- 349	638

Chapter VI: Consultation with DAT and harmonization of views

After the first contacts between Gécamines and DAT/DIR staff concerning the organization of the Gécamines containers circuit, other meetings took place between the Commission and DAT/DIR to harmonize views regarding the problem of the divergent and sometimes fanciful rates used by the containers' owners to invoice Gécamines for the costs of renting containers and penalties.

6.1. Rate of the demurrage charge to be applied to disputed containers

The basic principle is that the demurrage charge, which constitutes a penalty, should be higher than the rental rate normally applied in international practice. With a view to ending the containers disputes, the Commission, in its meetings with DAT, based itself on the following rates proposed or already applied by other operators (freight forwarders and maritime agencies).

6.1.1. Other than Gécamines

Full transit	invoice	US$17.5 per container/day.
Onatra	invoice	US$9.86 per container/day.
Merzario	invoice	US$5.00 per container/day.

6.1.2. Gécamines, on the basis of known previous practice

The 1982 contract with Africontainers provided for Z100 per container/day (US$16).

Supplementary agreement No. 3 to the 1985 contract provided for Z25 per container/day (US$0.49).

The TRP/DIR study proposed US$0.49 and/or US$5 per container/day.

DIE/DIR proposed a demurrage charge at the normal rental rate of US$5 per container/day.

Lastly, DCM/EXP: DIR proposed, like DIE/DIR, US$5 per container/day.

6.1.3. View of the Commission, agreed with DAT

The Commission found that Gécamines, negligent in the matter of the containers standing idle, must pay a demurrage charge at a rate equal to or lower than the normal rental rate, namely, US$5 per container/day. The negotiating rate should range from US$0.49 (updated) to US$5 per container/day.

The applicable rates agreed after negotiation with our partners fall within this range.

6.2. Rate to be applied to containers used on the Kinshasa/Matadi link

As the freight forwarders who own the containers were not invited to attend the meeting between GCM/E, GCM/C, SNCZ and Onatra at which it was decided to unpack the containers at Matadi instead of Kinshasa, because of the work under way to upgrade the Port of Kinshasa, they deemed themselves to be injured parties and invoiced Gécamines for rental and demurrage charges at very high rates.

6.2.1. Rates invoiced by the freight forwarders

The penalties charged per container varied as follows:

— Trans-Tschikem: US$600 per container

— Flucoza: US$1,800 per container

— Kincontainers: US$1,960 per container

— Africontainers: US$13,097 per container

Most of these rates are excessively high.

6.2.2. Gécamines' position agreed with DAT

By reference to the normal container rental rate of US $5 per container/day, the rates invoiced above (see section 6.2.1.) can be expressed in terms of duration of the rental, as follows:

Trans-Tshikem $\frac{\text{US \$600 per container}}{\text{US\$5 per day}}$ = 120 days = 4 months' rental

Flucoza $\frac{\text{US\$1,800 per container}}{\text{US\$5 per day}}$ = 360 days = 12 months' rental

Kincontainers	US$1960 per container / US$5 per day	= 392 days =	13 months' rental
Africontainers	US$13,097 per container / US$5 per day	= 2,619 days =	87 months' rental

Following the joint mission to Matadi, the Commission found that the average duration of idle time for the containers unpacked at Matadi was 170 days.

The rate applied by Trans-Tshikem namely, US$600 per container, was acceptable, and the negotiations aimed at a rate ranging between US$600 and US$1,000 per container, a target that was achieved with most of our partners in the last stages of negotiations.

6.3. Residual value of containers damaged or lost in our facilities

With regard to management of the containers, a container new when acquired has a lifespan of 15 years. Second-hand containers have a lifespan of 5 years. Most of the containers used by Gécamines have already depreciated and thus have only a relative commercial value.

For all containers damaged or lost through the negligence of Gécamines, the Commission and DAT/DIR proposed as follows:

— calculation of the residual value will be based on the acquisition value declared to the carriers, after application of the depreciation rate;

— the Commission already has in its possession lists obtained from the carriers concerning the value of the containers declared by the freight forwarder.

Chapter VII: Contact with the carriers Onatra and SNCC

By virtue of their mandate, the carriers Onatra and SNCC are involved in the disputes concerning the use of the containers. The Commission held meetings with representatives of both these carriers.

7.1. Onatra

The following cases were discussed with Onatra representatives in Kinshasa.

7.1.1. National containers unpacked at Matadi between 1986 and 1990

Because of the work to upgrade the Port of Kinshasa begun by Onatra in 1986, it had decided to transfer the unpacking operations from Kinshasa to Matadi.

That decision resulted in:

— the lengthy immobilization of the national containers at Matadi;

— failure to return the containers rented by Gécamines within the time-limit stipulated in the contract.

Furthermore, some containers were used by Onatra to unload its customers' freight from Matadi, owing to a shortage of box wagons. The Commission found that that practice was at the

root of the dispute between the carriers that own the containers and Gécamines. For that reason, the Commission requested Onatra, which had initiated the decision to transfer unpacking operations to Matadi, to accept liability for the injury and loss caused to the carriers under the Tripartite Contract.

Reacting to the demand by Gécamines, Onatra gave a different version of events. According to Onatra, the decision to unpack the containers at Matadi was not a unilateral measure on the part of Onatra, but a tripartite decision taken by Gécamines, SNCC and Onatra in the interests of all the parties. The aim was to keep freight moving freely on the national track and to reduce transit time.

The decision to pack ex-copper containers with freight belonging to Onatra's customers was dictated by technical constraints, as derailments occur frequently when sets of wagons are towed unladen.

Onatra bore the full cost of routing the empty containers unpacked at Matadi.

With regard to the disputes concerning carriage, Onatra, as a carrier, is subject to the law on the matter, which provides that any dispute arising with regard to carriage shall be the subject of an official complaint within two years of the events. Furthermore, Onatra affirms that it is not affected by the contractual obligations undertaken by Gécamines vis-à-vis the freight forwarders.

Onatra also informed the Commission of the act of settlement signed by itself and Africontainers regarding 211 ex-copper containers used by itself on the Matadi/Kinshasa route.

7.1.2. Gécamines containers to be traced in Onatra facilities

The Commission submitted the case of containers CMZU 208.214/3 and INBU 262.542/3, which could not be located at the Kinshasa Containers Terminal after their arrival, to Onatra, which informed the Commission that those containers had been despatched to Amiza in error. As for container CMZU 208.22/0, which had been impounded in the Port of Kinshasa pending payment of transport and storage costs, it could be released without payment of those costs, provided that Gécamines notified the relevant services of the containers rented to it.

7.1.3. Invoicing of costs of carriage of containers from Matadi to Kinshasa

Contrary to Onatra's undertaking to transport the empty ex-copper containers from Matadi to Kinshasa at its own expense, the Commission noted that some of the costs were charged to Gécamines. At the meeting held on 15 October 1997, the Commission submitted this dispute to Onatra and proposed that the costs paid in error should be reinvoiced to Onatra.

The Onatra delegation requested that the meeting should be postponed until 16 October 1997, but did not appear before the Commission again during the remainder of the latter's work in Kinshasa. The Commission took note of that absence. It will evaluate the amount of the damages to be passed on to Onatra.

7.2. SNCC

The Commission invited representatives of SNCC to a meeting, during which the following points were put to it.

7.2.1. National containers rented to Gécamines and used by SNCC

The national railways missions conducted by Gécamines reveal the presence on the SNCC network of containers belonging to Trans-Tshikem, Flucoza, Kincontainers, ZFI, Africontainers and other companies, and rented to Gécamines. These are containers missing from the Gécamines facilities.

SNCC despatched a mission to make an inventory of containers on its network. That inventory will be transmitted to the Commission for verification.

7.2.2. International CMDC containers in use on the national network

The Commission produced consignment notes providing evidence that since December 1990 SNCC had used at least four CMDC containers rented to Gécamines. These containers bear the serial numbers CMZU 208.036/0, CMZU 208.214/3, CMZU 208.222/0 and CMZU 208.300/0. The Commission notified SNCC of the debit note that will be forwarded to it by Gécamines in respect of costs occasioned by the user of those four containers. SNCC duly noted the comment by Gécamines, and is awaiting receipt of the debit notes before taking stock of the situation.

7.2.3. Containers lying derelict following derailment

The Commission drew the SNCC delegation's attention to four containers lying derelict near Pompi station following the derailment in April 1995. A joint Gécamines/SNCC Likasi mission found that these containers were unusable, as their lateral plates had been cut up by persons unknown. As in the previous case, Gécamines is proposing to debit SNCC for the rental costs paid to the owners of the four containers since 1995. The residual value of each of the containers will be added to those costs.

SNCC also took note of this claim by Gécamines.

Chapter VIII: Contacts with the oil companies

On 7 October 1997 the Commission organized a meeting with the Shell RDC, Fina Congo and Mobil Congo oil companies to examine the disputes arising in connection with performance of the Tripartite Contract.

The following agenda items were discussed at the meeting.

8.1. Question of the 25 per cent of the demurrage charge to be borne by the oil companies

The container rental contract between Gécamines, the oil companies and the freight forwarders stipulates, in its supplementary agreement No. 3 signed in 1985, that the oil companies will bear 25 per cent of the demurrage charges in the event of the containers standing idle in the Gécamines facilities.

The Commission informed the oil companies' representatives of the dispute concerning the non-return of the containers to Kinshasa for reasons beyond Gécamines' control. Verifications carried out in the Onatra, SNCC and Gécamines facilities resulted in a substantial reduction in the number of containers claimed. The table below was submitted to the oil companies.

Forwarder	Containers claimed	Containers eliminated	Containers agreed on
TTC	41	- 17	24
Africontainers	48	- 23	25
ATAF	48	- 43	5
Kincontainers	9	- 5	4
Flucoco	11	- 6	5
Total	157	- 94	63

The oil companies accepted the principle of bearing 25 per cent of the demurrage charges provided for under the contract. They promised to refer to the matter to their hierarchical superiors before giving a final reply.

The Commission informed the oil companies of the work under way at Gécamines to establish each oil company's share of the costs. Lists containing all the forwarding references will be sent to each of the parties concerned for verification.

8.2. Consideration of the question of costs of carriage between the workings to be borne by the oil companies

As in the case of demurrage charges, the Tripartite Contract in force since 1984 provides, in its Article 10, II *(b)*, for 25 per cent of the costs of carriage between the workings to be borne by the oil companies. The Commission informed the participants that the carrier SNCC had systematically debited 100 per cent of those costs to Gécamines.

The Commission promised to provide each oil company with a list of costs relating to the transfer of containers between the various facilities in the near future.

The representatives of the oil companies noted that information, and are awaiting information from Gécamines regarding the precise amount due from each, together with the forwarding references of the containers in question.

CONCLUSION

Conclusion of the Containers dispute and negotiations with the freight forwarders

1. Kincontainers

On 3, 7 and 2 *[sic]* October 1997, the Commission received the Kincontainers delegation at the office of the Gécamines representation in Kinshasa with a view to harmonizing each party's views on the dispute.

The Kincontainers delegation consisted of its Chief Administrator, Mr. Tshilumba Mayanda, legal counsel for the firm.

The claims made by Kincontainers in its 11 invoices and debit notes can be summarized under five headings, as follows:

— Setting the rate for demurrage charges;

— Payment of demurrage charges on nine non-returned containers in an amount of US$117, 675;

— Payment of demurrage charges for 50 containers between Kinshasa and Matadi: US$100,810;

— Payment of rental costs for 75 containers on the Kinshasa/Matadi/Kinshasa route;

— Return of nine containers to Kinshasa.

The total amount of the claim is US$365,485.

At the first meeting, after the Chairman of the Commission had briefly explained to the representatives of Kincontainers the Commission's intention, namely, final settlement of the dispute between the two companies, Kincontainers requested, as a prerequisite to the resumption of discussions, agreement by Gécamines to make a down-payment on the claim due to it. Kincontainers considers that the recognition by Gécamines of the immobilization of its containers amply justifies a demonstration of good faith on the part of Gécamines.

Furthermore, Kincontainers points out that a number of letters, invoices and promises were not acted upon over a period of years, a state of affairs that could justify a further claim with respect to payment of interest.

The Commission, having duly noted the precondition requested by Kincontainers, explained that the apparent delay by Gécamines in responding to the claims was due to the importance of the dispute, which had called for investigations in Katanga and the two Kasaï provinces. The Commission also stressed that Gécamines attaches great importance to the rapid and amicable settlement of the affair, to the extent that it had set up a five-member Commission to look into the matter.

The Commission also pointed out to Kincontainers that in any settlement, each of the parties agrees to forgo something in order to reach a final solution. It goes without saying that neither Kincontainers nor Gécamines can continue to hold out for settlement of their respective claims in their entirety.

Accordingly, after debates and discussions, the two parties agreed on the following points:

— Gécamines accepts, and has paid, the sum of US$30,000 to Kincontainers, which, for its part, forgoes the US$147,000 relating to rental of the containers on the Kinshasa/Matadi segment;

— The applicable rate for demurrage charges is established at US$5 per container/day, as, first, Kincontainers was not a signatory to the 1985 supplement agreement No. 3, and, secondly, the Commission took account of the remarkable concession on the part of Kincontainers;

— It should be noted that the rate agreed upon for demurrage charges falls within the range established by DAT/DIR/AI;

Following the on-site investigations by the two parties, the number of containers agreed on was as follows:

— Four out of the nine containers on the Kinshasa/Katanga route;

— 72 containers for the Kinshasa/Matadi route, a total of 76 containers.

Number of days demurrage charges agreed as of 31 August 1997:

— Kinshasa/Katanga route: 12,274 days;

— Kinshasa/Matadi route: 11,592 days.

Calculation of the demurrage charge agreed on:

— Kinshasa/Katanga: US$5 x 12,274 days = US$61,370;

— Kinshasa/Matadi: US$5 x 11,592 days = US$57,960 (a total of US$119,330).

— Residual value of the four containers retained: 4 x US$80 = US$320.

— The claim agreed on for Kincontainers is set at (US$119,330 + US$320) – (US$30,000, down-payment + US$400, immobilization at Matadi) = US$89,250.

— This amount does not include the subsistence costs incurred by Kincontainers lawyer, Mr. Ngoie Kalala, during his stay at Lubumbashi.

— Thus, of the US$365,485 claimed, the parties agreed on a figure of US$89,250, subject to deductions. This dispute is thus terminated.

2. ATAF

On 3 October 1997 the Commission received Mr. Sangwa Muteme, Chairman and Managing Director of ATAF, with a view to terminating the dispute concerning the claim for US$900,605.00, representing demurrage charges for 48 containers and 1,555,000 Belgian francs as the balance for the repair of 63 damaged international containers unpacked in error at Antwerp.

On the basis of the results of the on-site investigations, the parties agreed to retain five out of the 48 claims, three of them international and two national.

As for the number of days in respect of which demurrage charges would apply as of 31 December 1996, following a joint verification the parties agreed on a figure of 18,323 days.

The applicable rate for the demurrage charge is US$3 rather than US$0.49, because ATAF waived its claim concerning rental and demurrage charges on its containers on the Kinshasa/Matadi route (about 173 containers).

Consequently, taking account of the new parameters for calculation agreed by the Commission and ATAF, this firm's claim in respect of demurrage charges amounts to US$3 per container x 18,323 days = US$54,969.

The dispute concerning the 63 international containers the repair costs for which were invoiced to ATAF comes under the dossier of the containers that should have been routed to Ghemar in Kinshasa, but which the Gécamines officials packed and sent to Antwerp in error. The 63 containers arrived in Antwerp, where the cost of their repair was borne by ATAF, which passed the amount on to Gécamines. After consultation and following some concessions, the two parties agreed that Gécamines is willing to pay ATAF an amount of BF 500,000 out of a balance of BF 1,555,000. Thus, of the US$900,605.00 claimed, Gécamines will pay only US$54,969 and BF 500,000 out of a total of BF 1,555,000.

The dispute between ATAF and Gécamines concerning the rental of containers is thus closed.

3. Flucoco

At the request of Gécamines, Flucoco sent Mr. Etaka, Head of Administrative Services, to represent it at the meetings intended to end the dispute concerning:

— Payment of demurrage charges on 11 containers;

— Payment of the residual value of two damaged containers;

— Use of 185 containers on the Kinshasa/Matadi route;

— Return of 11 containers to Kinshasa.

The Commission informed Flucoco that, following its investigations, of the 11 containers invoiced, five had been retained on the list. The six others invoiced were eliminated, as they were not covered by the Tripartite Contract. These were containers intended for third parties but introduced into the Gécamines circuit. The references to the allegations by Gécamines were provided by Flucoco.

As for the discrepancy between the demurrage charge invoices submitted by Flucoco/Kinshasa and those submitted by its Lubumbashi agency, the parties agreed to take into consideration only the invoices recognized by the Directorate General of Flucoco/Kinshasa.

Moreover, the Commission notified Flucoco that of a total of 185 claims, 31 had been rejected. These related to the containers unpacked at Kinshasa.

At the meeting on 2 October 1997, the parties terminated the dispute in the following manner:

(a) establishment of the applicable rate for demurrage charges on the five containers: US$2.5 x 12,927 days = US$32,317.50;

(b) consideration of the question of the 166 containers on the Kinshasa/Matadi/Kinshasa route.

The Commission requested Flucoco to review the rate of US$1,800 applied to these containers, given that the parties are engaged in amicable negotiations. After deploring the loss of earnings caused by the prolonged retention of its containers at Matadi for almost six months, Flucoco found itself unable to reduce the rate to less than US$1,500 per container, as not only demurrage but also rental charges were applicable.

After discussion, the two parties agreed on a rate of US$1,200 per container, a rate that falls within the range fixed by DAT/DIR *ad interim*.

Thus, the costs to be paid for the 166 containers amount to US$1,200 x 166 = US$199,200.

ANNEX POC 10

[NOT TRANSLATED]

ANNEX POC 11

[NOT TRANSLATED]

ANNEX POC 12

INTERNAL GÉCAMINES LETTER DIE/DIR/22.123/92 DATED 20 OCTOBER 1992, CONCERNING THE AFRICONTAINERS DISPUTE

From: DIE/DIR

To: JUR/DIR

In its letter No. 038/AFC/DG/92 of 11 May 1992, Africontainers transmitted to us the complete file relating to its claims. Annex 1, attached, contains a copy of that letter and of the annexes thereto.

Below are set out our opinions and reflections on each point raised by the freight forwarder in his file.

1. Copyright (Invoice No. 021/AFC/DG/92 for US$897,657)

Containerized transport is a very longstanding practice which Africontainers cannot claim to have invented. It is true that Africontainers was the first company to propose the use of national containers previously used to carry lubricants for the transport of ores to Kinshasa. But the container rental contract concluded in 1982 was profitable to each of the signatory undertakings, and it should be borne in mind that the principal purpose of a commercial company is to make profits.

We consider that the sums paid to Africontainers at the time in respect of rental of the containers for the return leg constitute sufficient remuneration and represent the profit to which the freight forwarder was entitled under the contract.

Consequently, Africontainers should not use an alleged saving by our company as a justification for claiming copyright.

2. Containers declared irreparable (Invoice No. 022/AFC/DG/92 for US$240,000)

Africontainers is claiming the exchange value of the 20 containers declared irreparably damaged in our facilities.

The situation is as follows:

— Containers damaged and written off: Nos. 525764, 525758, 525596, 525312, 525572 and 525767. We had already informed Africontainers of our willingness to pay the residual value, estimated at US$1,400 per container instead of the US$17,000 per container requested in invoice No. 007/AFC/DG/91 dated 4 July 1991, annexed, which, in the current invoice, has become US$12,000.

— Seven containers were returned empty to Kinshasa:

- — 526423 on 23/09/1991
- — 525612 on 09/12/1992
- — 525736 on 09/12/1991
- — 526405 on 23/09/1991
- — 526319 on 23/11/1991
- — 525591 on 09/12/1991

— 526299 on 23/11/1991

These containers must not be included in the list of containers declared irreparable.

— One container, No. 527695, was redespatched to Kinshasa on 22 January 1991 loaded with copper cathodes (batch No. 0025) and reached Kinshasa on 17 May 1991 and Matadi on 2 June 1991. We assume that the container has already been returned to Africontainers.

— One container No. 525744, is still in our Luilu depot, and undamaged.

— The whereabouts of five containers, Nos. 526340, 525310, 525628, 525587 and 525769, are still unknown.

We would point out that the price of US$12,000 per container claimed by Africontainers is excessively high, as the market price of a second-hand container is between US$1,000 and US$1,500. Furthermore, the prices declared to Onatra by Africontainers for certification of its containers are as follows:

525572 (1981)	= Z12,000	or US$2,091
525584 (1979)	= FF3,100	or US$741
525596 (1979)	= FF3,100	or US$741
525758 (1980)	= FF5,000	or US$1,178
525764 (1980)	= FF5,000	or US$1,178
525767 (1980)	= FF5,000	or US$1,178
526299 (1981)	= Z11,000	or US$1,996
526312 (1981)	= Z11,000	or US$1,996

The above values, declared when the containers were first used in Zaire, must be revised downwards to take account of depreciation after more than five years' use.

In conclusion, the price of US$1,400 per container proposed by Gécamines/Exploitation in its letter DIE/DIR/21271/92 of 7 January 1992 (Annex 2) demonstrates our good faith in seeking a rapid and amicable settlement of the dispute relating to the containers damaged and written off in our facilities.

3. Use of containers in our facilities (Invoice No. 023/AFC/DG/92 for US$2,193,750)

These are charges relating to containers immobilized in our facilities for longer than the 30-day exempted period. The principle of payment of penalties in the event of immobilization is provided for in the contract (supplementary agreement No. 3 of 15 August 1985).

In accordance with the provisions of the contract, Africontainers had already invoiced us for costs of immobilization during the period before 1990 (Annex 4), that is, for 75 per cent of the total amount calculated at a daily rate of Z25.

We are not prepared to pay these costs at a rate not agreed (US$150 per day), particularly in a currency not provided for in the contract (cf. your note No. JUR/108650/SKAL of 21 November 1991).

4. Containers returned empty to Kinshasa (Invoice No. 024/AFC/DG/92 for US$16,463)

The containers returned empty to Kinshasa were not in a fit state to be loaded with ores. In the absence of an inspection carried out in the presence of both parties on arrival in our facilities, Africontainers is not in a position to demonstrate that Gécamines/Exploitation acted in bad faith in returning undamaged containers empty instead of loading them with ores.

Pursuant to Article 2.II *(f)*, we returned the containers empty and bore the costs of carriage to Kinshasa.

We would also point out that the contract makes no provision for payment of a penalty in the event that the containers are returned empty.

5. Rectification of invoices (Debit Note No. 025/AFC/DG/92 for US$1,235,224.57)

The invoices to be rectified were approved and paid at the time, in accordance with the contract. They relate to immobilization charges calculated at the rate agreed in supplementary agreement No. 3 of 15 August 1985.

We are astonished to learn that three years after the final settlement of these debit notes, Africontainers unilaterally decided to change the rate for immobilization charges from Z25 per container/day to US$150 per container/day. This claim thus has no basis.

6. Use of containers (Invoice No. 026/AFC/DG/92 for US$659,850)

We dispute the rate of US$150 per day used by Africontainers to calculate the immobilization charges. Given the fall in the value of the zaire, we would be prepared to discuss an updated rate with this freight forwarder.

In that regard, we envisage two possibilities:

1. Updating the Z25 per day rate to take account of devaluation;

2. Applying the US$5 per day rate used by competitors.

7. Use of containers on the Kinshasa/Matadi segment (Invoice No. 027/AFC/DG/92 for US$5,441,100)

The position of Gécamines/Exploitation is set out in our letters No. 40297/TRP/DIE of 2 August 1986 and DIE/SVN/017/90 of 5 April 1990 (Annex 5).

The conveyance of containers to Matadi and back to Kinshasa was an operation for which Onatra was solely responsible.

Accordingly, we must not become involved in the settlement of this dispute.

8. Liquidated damages (Invoice No. 028/AFC/DG/92 for US$20,000,000)

The contract signed in 1983 makes no provision for exclusive loyalty to Africontainers. That contract associates Africontainers with the Zaire Fina, Zaire Mobil Oil and Zaire Shell oil companies, which subsequently chose to purchase their own containers. Furthermore, we would point out that Africontainers did not acquire this equipment exclusively for the benefit of Gécamines/Exploitation. Consequently, Gécamines/Exploitation cannot be held liable for the reduction in that freight forwarder's activities.

Account must also be taken of the constant and progressive deterioration of the national track, and of the operating conditions of Onatra and SNCZ, as a crucial factor in the decline in container traffic on the Matadi route.

9. 1982 and 1983 contracts

In the interest of completeness, we also transmit copies of the contracts signed in 1982 and 1983 (Annexes 6 and 7).

CONCLUSIONS

In our view, only two claims are well-founded:

1. The exchange value of the containers written off.

   We must come to an agreement with Africontainers as to the amount (see section 2 above);

2. Immobilization of containers in our facilities.

   We must also come to an agreement on the rate for calculation of the immobilization charges (see section 6).

In the light of the above, we would ask you to take action in response to the letter from Africontainers' lawyer dated 2 July 1992.

We remain at your disposal, should you require any additional information.

Import/Export Division

(Signed) Mukalay MANDE.
Director

ANNEX POC 13

MINUTES OF THE MEETING HELD ON 5 JULY 1986 BETWEEN GÉCAMINES AND ITS LOCAL FREIGHT FORWARDERS

1. Present:

Gécamines/Exploitation:

Mr. Mukalay Mande:	Director, Import/Export Division
Mr. Kimuni Shiko:	Head of Service, Import/Export Division
Mr. Lombet:	Director, Freight Management Division.

Local Freight Forwarders

Mr. Tshilumba Makanda:	Chairman and Chief Executive of Kincontainers
Mr. Kasongo Tshiyekele:	Agency Chief, ATAF, Lubumbashi
Mr. Ilunga Kasongo:	Head of Operations, ATAF, Lubumbashi
Mr. Lumana Shamba:	Africontainers, Lubumbashi
Mr. Massaya Mongongu:	Flucoza, Lubumbashi
Mr. Mukadi wa Tshipata:	Zaire Mobil Oil.

II. Absent

Zaire Fina, Zaire Shell.

III. Purpose of the meeting

Transfer of local container unpacking operations from the Port of Kinshasa to the port of Matadi.

After welcoming and thanking the freight forwarders, Mr. Mukalay said that the purpose of the meeting called by Gécamines/Exploitation was to inform the owners of the containers of the decision taken at Kinshasa by the Chairmen and Managing Directors of Gécamines/Exploitation, Gécamines/Commerciale, Onatra and SNCZ to transfer container unpacking operations to Matadi. In consequence:

— Local containers not yet unpacked and still in Kinshasa on 27 June 1986 were being or would be transferred to Matadi for unpacking;

— Local containers "in the pipeline" would be re-despatched to Matadi;

— Future consignements in local containers would be sent to Matadi.

Onatra undertook to return the empty containers from Matadi to Kinshasa promptly and at its own expense. Mr. Mukalay informed the freight forwarders that the General Management of Gécamines/Exploitation was currently concerned at the particularly difficult situation facing the company as a result of the constant fall in the prices of metals and the slump in the market for cobalt, which had resulted in a budget deficit of about US$35 million at end-May 1986. One measure that might improve Gécamines/Exploitation's cash position in the short term — and consequently that of the Republic and the service-providing companies (including the freight forwarders) — was a reduction in the amount of freight "in the pipeline" on the network as a whole. Thus, Gécamines/Exploitation and the freight forwarders set themselves the objective of reducing the transit time from the workings to Matadi to 35 days, with a total of 28,000 tonnes in the pipeline. That objective could not be attained while the work on modernizing the port and the lack of handling resources slowed down the unpacking operations. The interests of all the parties were at stake: the State, the carriers, and the freight forwarders; for if Gécamines had no money, no one would be paid.

The freight forwarders took due note of the decision to transfer container unpacking operations to Matadi, but expressed their concern at the prospect of an extended turnaround time in Matadi. They indicated that they would be obliged to invoice the immobilization of the containers in Matadi in the event that Onatra did not return them promptly. In that regard, Gécamines/Exploitation pointed out that the operation should result in a saving of time: instead of remaining in Kinshasa for several days or even months before being unpacked, the containers would be routed directly to Matadi, where Onatra had more extensive unpacking facilities. As the journey from Kinshasa to Matadi or from Matadi to Kinshasa took only two to three days, the containers could be returned to the freight forwarders more quickly. Furthermore, Gécamines/Exploitation would instruct its Matadi office to keep track of those containers so as to ensure their prompt return to Kinshasa.

The participants gave themselves three months in which to monitor events, and agreed to meet at the end of that period in order to take stock of the situation. Mr. Mukalay thanked the participants for their understanding, and pointed out that the operation was an *ad hoc* measure and would come to an end upon the completion of work to modernize the Port of Kinshasa (i.e., at the end of 1986).

(Signed) KIMUNI SHIKU.
Rapporteur.

cc: All freight forwarders
All oil companies

ANNEX POC 14

LETTER NO. 40297/TRP/DIE FROM GÉCAMINES TO AFRICONTAINERS DATED 2 AUGUST 1986

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

Dear Sirs,

We acknowledge receipt today, 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" on the national network.

In examining the situation on the national network, the participants noted that the Port of Kinshasa is 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 POC 15

REPORT ON THE MISSION BY THE ONATRA DISPUTES SUB-PANEL IN MATADI FROM 23 TO 28 OCTOBER 1989 AND FROM 6 TO 22 NOVEMBER 1989

Africontainers case

1.0 Statement of facts

1-1. On 05/07/86 GCM/Operations had chaired a meeting in Lubumbashi attended by the local forwarding agents: Kin-Container, Ataf, Africontainers, Flucoza and Zaire Mobil.

1-2. In the course of this meeting the agents were informed that, due to the handling problems that Onatra was experiencing as a consequence of development work at the port, the discharging of local containers was transferred from the port of Kinshasa to the port of Matadi.

1-3. This decision had just been taken unanimously in Kinshasa on 26/06/86, following a meeting attended by the chairmen of GCM/Commercial Operations, Onatra and SNCZ.

1-4. The forwarding agents in their turn had taken due note of this decision, but nonetheless were worried about the length of time their containers would spend in Matadi (downtime), for which they would be compelled to invoice Onatra unless the latter returned them quickly (Cf. minutes of meeting of Gécamines/Operations and Forwarding Agents, Ann. 1-4).

1-5. One year after the start of the operation, of all the forwarding agents referred to in paragraph 1-1 only Africontainers had carried out this threat, asking Onatra for money and lots of it. As at 04/09/89 the amount was 248,752,480 Z. How did it come to this?

2.0 Origin of the case

2-1. Letter No. AFC/DE/IN/044/87 of 09/07/87 to the Ports Department.

This is a statement showing 205 containers sent to Matadi from 01/05/86 to 09/07/87. In debit note No. 038/AFC/87 that accompanied it, Africontainers claimed *hire charges for its containers* on the Kinshasa/Matadi section from the Office (Onatra) amounting in total to 2,050,000 zaires at the rate of 10,000 per container (Ann. 2-1).

2-2. Letter No. AFC/DE/IN/049/87 of 27/07/87 to the Ports Department. Africontainers invoiced the Office *for downtime and prolonged holdups of 133 containers sent to Matadi for discharge* (it did not specify the period) and which it claimed had spent several months in the port of Matadi, thus exceeding the 35 days prescribed at the meeting on 26/06/86 attended by the chairmen of GCM/Commercial Operations, Onatra and SNCZ.

2-3. For this it took care to note the date of departure and return to Kinshasa for each container. It added up the number of days for which the journey lasted, for which it invoiced Onatra each time at the rate of *1,000 Z per day per container*. Amount payable: 13,726,000 Z promptly (sic), and which it reserved the right to amend in the event of devaluation of the zaire (Ann. 2-3).

2-4. Letter No. AFC/DE/IN/054/87 of 05/08/87, this time to the Commercial Department. This is a statement showing 58 containers sent to Matadi in 1987. Four were taken out unilaterally because they had spent less time (7-10 days) in the Kinshasa/Matadi/Kinshasa section, and the

remainder (54 containers) were invoiced for *travelling time*, employing the same approach as that used above, at the rate of *2,200 Z per day per container.*

Amount payable: 7,541,600 Z within 15 days. He stated that should this time-limit be exceeded he would be compelled to invoice us for bank interest at the rate of 20 per cent per month and to amend the amount in the event of fluctuations in the zaire (Ann. 2-4).

2-5. Letter No. AFC/DE/IN/055/87 of 06/08/87 to the Commercial Department. This is a statement showing 78 containers said to have been sent to Matadi from 01/01/87 to 06/08/87. Mr. Diallo states in debit note No. 44/AFC/87 that accompanies it that he is invoicing the Office for *hire charges* at the rate of *10,000 Z per container.* Amount payable: 780,000 Z (Ann. 2-5).

2-6. Letter No. 076/89/AFC of 29/08/89 to the Commercial Department. He informed that department that, following their discussion, in the course of which they had arrived at a common position, he was reconsidering the first invoice. That is to say, he wrote, instead of invoicing us for bank interest at the rate of 20 per cent per month he was invoicing at 20 per cent on the global amount of *21,267,600 Z* (13,726,000 + 7,541,600 Z). Total amount payable: *25,521,120 Z.*

We noted that here he had not taken into account the 2,050,000 Z and 780,000 Z in hire charges for which he had invoiced us in the first and the last claim (Ann. 2-6).

2-7. Letter No. 78/AFC/89 of 06/09/89 to the Ports Department. After carefully checking the file which is the subject of the dispute between the Office and Africontainers and referring to the contract of 05/07/86, Mr. Diallo wrote that he was compelled to apply *the rate of 10,000 Z* per day because his containers suffered a long period of waiting time, being *deliberately held up by the port staff* in Matadi (sic). In order to comply with the contract with his partners he had applied to the banks, who lent him money at too high a rate of interest. He had used this money to hire containers in order to meet his commitments.

2-8. He asked Onatra to check the calculation; it came to 168,076,000 Z, an amount which rose to 248,752,480 Z after applying the interest rate of 20 per cent per month. These threats were contained in his letter of 05/08/87 and he simply carried them out (Ann. 2-8).

3.0 Conclusions

3-1. The outcome, after analysing all the material collected in the course of our investigations, which proved to be arduous having regard to the large amount of information to be dealt with and especially the age of the dispute (3 years), is as follows:

3-2. The transfer of discharging operations for local containers carrying copper to Matadi was decided upon by GCM/Commercial Operations, Onatra and SNCZ for reasons that we mentioned in paragraph 2-3.

3-3. Those who took this decision also set themselves a target: to bring the Factory/Matadi journey time down to 35 days. Onatra for its part had undertaken to return empty containers from Matadi to Kinshasa without delay and at its expense.

3-4. This decision was communicated to the forwarding agents by GCM/Operations on 05/07/86, and all had agreed to abide by it.

3-5. At the time the forwarding agents had *warned* Onatra of the consequences of its failing to return empty containers *within an acceptable time.*

3-6. We noted that on this occasion *no time allowance* had been granted and subsequently accepted by Onatra; exceeding a time-limit should involve the payment of costs, and at a well-defined rate (cf. Minutes of the meeting, Ann. 1-4).

3-7. This lacuna was a godsend to Onatra and enabled us once convinced to avoid confronting all the forwarding agents affected by this operation. However, this did not stop Mr. Diallo, the Chairman of Africontainers, who is accustomed to these complex and confused situations.

3-8. One year after the start of the operation he went into battle, and he most certainly used *all possible means* to achieve his ends.

3-9. At the meeting of 5/07/86 that had been attended by GCM/Operations and the local forwarding agents, Africontainers was represented by Lumana Shako, who immediately afterwards had reported to his boss the decision that had just been taken regarding the transfer of discharging operations to Matadi.

3-10. As a sensible man, he spotted the lacuna straightaway and immediately reacted by way of letter No. AFC/DELIN/112/86 of 07/7/86, in which he sought a second meeting, with the obvious aim of being able to fill the gap.

3-11. Gécamines/Operations, certainly sensing what his intentions were and recognising the consequences of these for the carriers, politely showed him the door, pointing out to him (after repeating that this decision was a valid one) that another meeting was no longer necessary, and sent him the minutes of the meeting of 05/07/86 (Ann. 3-11) to refresh his memory.

3-12. Without waiting for the answer to his letter, on 27/07/86 he went over to the attack, claiming from Onatra hire charges for 205 containers full of copper that had been sent to Matadi for discharge: 2,050,000 Z at the rate of 10,000 Z per container.

3-13. Feeling that he had made a mistake because no relevant contract between Onatra and the forwarding agents had been signed, 18 days after the first invoice submission he tried again, with a change of tactics this time, no longer referring in the wording to the hiring of containers but to prolonged holdups and downtime. This is a vague concept, and in order to mislead he adopted a time allowance of 35 days, which he declared to be the time-limit set by the chairmen.

3-14. We repeat that no such time allowance had been granted to Onatra, and that here we are faced with an erroneous (and intentionally erroneous) interpretation of the target that the Chairmen had set themselves and to which we referred in paragraph 3-3.

3-15. In addition, we noted that when invoicing for what he called prolonged holdups and downtime he had not taken his own time allowance into account, because we find on his list containers which, according to his calculations, have spent less than 35 days on the Matadi/Kinshasa railway and in the port.

3-16. Being a crafty customer, he changed the rate from 10,000 Z per container to 1,000 Z per day and per container. Result: 13,726,000 Z payable.

3-17. As we pursued our investigations, we found first that the number of containers was not 133 but 131, because he had included container 525621 three times with the same L.T.O. number.

Secondly, 122 of the 131 already appeared in the first claim with the same L.T.O. numbers (Ann. 3-17).

3-18. On 05/08/87, seven days after the second invoicing, he tried again with a list of 58 containers. He used the same procedure as that described above to add up the total number of

days to be invoiced, but the new feature here is the time allowance. He no longer speaks of 35 days, but of 7 to 10 days. Thus he eliminates 4 and is left with 54, which are invoiced to us for the Kinshasa/Matadi/Kinshasa transit time at the rate of 2,200 Z per day and per container.

Result: 7,541,600 Z to be paid to him within a time-limit that he imposes upon us (10 days), failing which we would be obliged to pay him that amount with interest at 20 per cent per month.

3-19. Here we also found that 26 containers already appeared with the same L.T.O. numbers in the first invoice (Ann. 3-19).

3-20. On 06/08/87, one day after the third invoice, he brings his campaign to an end with a list of 78 containers, in respect of which he invoices us for hire charges at the rate of 10,000 Z per container. On sorting them, we observed the following:

— all 58 containers in respect of which we had been invoiced for "prolonged holdups and downtime", the subject of the letter of 05/08/87, were included in the 78, and 26 of these were already included, with the same L.T.O. numbers, in the first and third invoices.

3-21. After this survey, his invoicing up to that point can be summarised as follows: 474 containers form the framework of his claim, but we have counted only 267 that made the trip to Matadi. He arrived at this figure of 474 by a juggling technique that we described in detail above, and in this confusion we are left with the following for reference:

— 121 containers have been included twice with the same L.T.O. numbers (cf. first and second invoicing, Ann. 3-17);

— 26 containers have been included three times with the same L.T.O. numbers (cf. first, third and fourth invoicing, Ann. 3-19);

— 32 containers have been included twice with the same L.T.O. numbers (cf. third and fourth invoicing, Ann. 3-21);

— 1 container has been included three times with the same L.T.O. number in one and the same claim (cf. container 525621, third invoicing);

— 86 containers have been included once only (57 in the first, 9 in the second and 20 in the fourth claim);

— hire charges only have been levied on 77 containers;

— prolonged holdup charges only have been levied on 9 containers;

— hire, prolonged holdup and downtime charges have been levied on 180 containers.

3-22. After all these stunts, Mr. Diallo came back on 29 August, striking off the 2,830,000 Z (2,050,000 + 780,000 Z) of hire charges. He retained the 21,267,600 Z (13,726,000 + 7,541,600 Z) "prolonged holdups and downtime" charges, which he increased by 20 per cent, giving 25,521,120 Z, before reopening everything on 05/09/88.

And so he went from 25,521,100 Z to 168,076,000 Z, which increased to 248,752,480 Z after the unilateral application of 20 per cent interest per month.

3-23. Up to that point we had been able to follow him through his laborious workings; with regard to the last invoicing, he having failed to specify the extent to which the new rate of 10,000 Z per day was to apply, we could not see how he arrived at the figure of 168,076,000 Z.

3-24. We have just shown that we are dealing with a crafty man who is dishonest in business. Onatra owes him no contractual duty that should require us to compensate him within well-defined limits. This lacuna is to Onatra's advantage, and until the contrary is proved Onatra should not pay Mr. Diallo anything.

3-25. Has there or has there not been any prolonged holdup of Africontainers' boxes in Matadi, the situation that gave rise to this dispute and encouraged Mr. Diallo to seek to turn it to his advantage?

3-26. We say that in fact there was a prolonged holdup of Africontainers' boxes at the port of Matadi, and Onatra had undertaken to return them without delay and at its expense.

3-27. It is true that Onatra had done so at its expense, but many of them had been help up for a long time, even too long, at the port of Matadi (T.C.M.), as shown by the lists at annex (Ann. 3-27).

3-28. We have noted that at the time the Port Department had applied to the Matadi T.C.M. deputy manager in order to find out the reasons for this situation and possibly who was responsible for it (Ann. 3-?).

3-29. It is still not known what the answers were, if any. We in our turn also wanted to know, with a view to informing the Authority. We were unable to do this because the present T.C.M. management team was not there when this dispute originated. Only Mr. Kanku, the former manager of T.C.M., at present transferred to Kinshasa, will be able to give you precise information.

FOR THE DISPUTES SUB-PANEL.

*(Signed)*Usa NTAMBWE.	*(Signed)* NGOMA.	*(Signed)* ZUANZI.
D.C.I. Auditor	Ports Dept.	Commercial Mgt.

ANNEX POC 16

LETTER AFC/DE/IN/044/87 DATED 9 JULY 1987 FROM AFRICONTAINERS TO ONATRA

Onatra
Ports Department
Kinshasa/Gombe

Gentlemen,

Re: Invoicing for our containers sent from Kinshasa to Matadi

We enclose, as an annex to this list, Debit Note No. 038/AFC/87 relating to our 205 containers filled with copper sent to Matadi for discharge from 01 May 1986 to date. Their numbers are listed below.

[Translator's note: numbers not reproduced]

AFRICONTAINERS s.p.r.l.

Kinshasa, 09/07/87

Onatra
Ports Department
Kinshasa/Gombe

Debit Note 038/AFC/87

We are debiting your account as follows:	Amount
Hire charges for our 205 containers on the Kinshasa/Matadi section	
from 01 May 1986 to date: 10,000 Z x 205 containers	2,050,000 Z
GRAND TOTAL	2,050,000 Z

AMOUNT IN WORDS: TWO MILLION AND FIFTY THOUSAND ZAIRES

(Signed) A. S. DIALLO.

ANNEX POC 17

LETTER AFC/DE/IN/049/87 DATED 27 JULY 1987 FROM AFRICONTAINERS TO ONATRA

Re: Immobilization and extended turnaround of our containers sent to Matadi for discharge

Gentlemen,

We write to advise you that it was decided at the meeting held in Kinshasa on 26 June 1986 attended by SNCZ, Onatra, Gécamines/Trading and Gécamines/Operations that all loaded containers from the East should be sent to Matadi for discharge until completion of the redevelopment of the port of Kinshasa, scheduled for about the end of 1986.

We have observed that our containers are not returned as quickly as possible after discharge at Matadi, remaining there for several months, exceeding the planned 35 days.

You must be aware that the container is a basic productive tool, and if it is immobilized the result is a loss of profit for us forwarding agents.

Therefore, after making a list of our containers that have spent a long time in Matadi we are sending you the Debit Note relating thereto as an annex to this letter, coupled with a request for prompt payment.

Of course, in the event of fluctuation in the value of the zaire or its devaluation we will be compelled to amend the amount.

Yours faithfully,

(Signed) DIALLO Amadou Sadio.
Chairman

ANNEX POC 18

LETTER AFC/DE/IN/054/87 DATED 5 AUGUST 1987 FROM AFRICONTAINERS TO ONATRA

Re: Downtime of our containers sent to Matadi for discharge 1987

Gentlemen,

We write to advise you that, pursuant to the minutes of the meeting attended by SNCZ, Onatra, Gécamines/Trading and Gécamines/Operations, it was decided that all containers loaded with copper from the East should be sent to Matadi for discharge until completion of the redevelopment of the port of Kinshasa, scheduled for about the end of 1986.

We have observed that our containers are still assigned to Matadi, remaining there for several months and exceeding the time-limit agreed at the said meeting on 26 June 1987.

You must be aware that the container is a basic productive tool, and if it is immobilized the result is a loss of profit for us forwarding agents.

Therefore, after making a list of our 78 containers sent to Matadi in 1987 we have taken off 24 containers that have spent less time, i.e., seven to ten days, in the Matadi/Kinshasa section; 54 exceed the maximum time-limit, and in respect of these we are sending you the Debit Note relating thereto as an annex to this letter, coupled with a request for payment of the sums due within 15 days.

Should this period be exceeded we will be compelled to invoice you for bank interest at the rate of 20 per cent per month, and we will amend the amount in the event of fluctuations in the value of the zaire.

Yours faithfully,

(Signed) DIALLO Amadou Sadio.
Chairman

SUMMARY OF DOWNSTIME TABLE

List of containers sent to Matadi in 1987

The list consists of 58 containers, four of which have no days of downtime attributed to them. The 54 remaining are shown as having days of downtime ranging from 11 to 164, charged at a daily rate of 2200 Z. Thus the maximum downtime charge is 360,800 Z for the 164 days, the minimum is 24,200 Z for the 11 days.

The total payment requested for downtime for the 54 containers is 7,541,600 Z.

ANNEX POC 19

LETTER C27/AFC/90 DATED 26 APRIL 1990 FROM AFRICONTAINERS TO ONATRA

Re: Enclosure of debit note No. C20/90 relating to downtime and misuse of 210 Africontainers containers discharged in MATADI

Gentlemen,

I refer to our discussion of the 24th inst. regarding downtime of our containers in your Matadi port installations during the period from 27 February 1986 to 29 June 1987, and enclose herewith the abovementioned debit note, accompanied by a Table listing the following:

— the number of containers immobilized in the Onatra port at Matadi;

— the daily rate invoiced;

— the starting date for invoicing;

— the loadings of 20 per cent per month.

The overall total of this debit note is [illegible] Z excluding the loadings, and amounts to 6,980,254,068 Z with loadings of 20 per cent per month.

It should be noted that we will be compelled to continue invoicing you at the rate of 20 per cent per month until the latter amount is paid, and we will also amend it in the event of fluctuation in the value of the zaire or its devaluation.

We draw your attention to the fact that this letter and its annexes cancel and replace previous letters relating to this matter.

Thank you in advance for your promptness in dealing with this letter.

On behalf of the Board of Africontainers,

(Signed) DIALLO Amadou Bella.
Chairman

ANNEX POC 20

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 POC 21

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 POC 22

LETTER 447/H/C1 DATED 26 SEPTEMBER 1991 FROM ONATRA TO MAÎTRE MAYAR AKON, AFRICONTAINERS' COUNSEL

Dear Maître,

Re: Dispute between Africontainers and Onatra

I refer to your letter, reference No. 3394 dated 18 July 1991, relating to the above.

In reply I confirm, as I have already had to do to ANEZA, to which this dispute has also been referred, that it has been finally settled in full, and that Africontainers has no grounds whatever for seeking to challenge the solution reached.

The Office National des Transports (Onatra) is a Public Undertaking governed by precise legal provisions and regulations well known to all its partners and to its many clients.

In this connection our constant concern is to comply in all respects with the rules for transparency in its management of current business and in its decisions, which it reports to the Competent Authority, the State, to which it is answerable.

I consider it worth stressing for your benefit that the negotiations on the amount of compensation payable to your client for downtime and misuse of its containers by the services of this Office have been conducted entirely honestly, freely and with full knowledge of the facts.

These negotiations culminated in an agreement by the parties to a final compromise solution to the dispute, recorded in the document duly signed by Onatra and Africontainers dated 6 June 1990.

It is regrettable that your client, after signing the compromise document without reservation and receiving the full amount agreed, thinks that he can challenge the signed agreement on the basis of an argument founded on a factor clearly taken into account in the compromise agreement.

There are no "true" and "false" waybills, as your client maintains, because he regards slips that track the movement of containers at the Matadi Container Terminal as waybills. These slips have no legal validity as documents of carriage; they are internal documents that cannot be invoked against third parties, which have come into your client's possession in some unauthorized way.

Nevertheless the transaction took this aspect of the dispute into account, because it was expressly referred to in letter No. 027/AFC/91 dated 26 April 1990 from your client.

That letter states that "Debit Note" No. 020/90 "relates to *immobilization* and *improper use*" of containers. A copy of that letter is annexed.

I therefore take the view that there is no reason for Onatra to return to this dispute, the subject of a final *bona fide* settlement by the two parties, and confirm the position stated in letter No. 148/CDG/91 dated 4 February 1991, a copy of which is enclosed.

Yours faithfully,

(Signed) Prof. Kalongo MBIKAYI.
Chairman, Onatra Holding Company

ANNEX POC 23

LETTER 006/AFC/91 DATED 14 FEBRUARY 1991 FROM AFRICONTAINERS TO ONATRA

To: Mr. Umba Kyamitala
Managing Director
Onatra

Re: Payment for loss of containers Nos. 525763 and 526397

Dear Sir,

I write to inform you that we had referred to the Office's commercial department by letter No. 031/AFC/90 dated 10 May 1990 to claim compensation for Africontainers for the loss of the two containers whose identification numbers are shown above, the loss being attributable to the Office (a copy of the letter is annexed).

There is no need to refer back to the history of this dispute, but we remind you that our claims up to 31 January 1991 amount to two billion one hundred and eighty-seven million two hundred and seventy-eight thousand zaires, for:

— the value of the two containers (US$17,000 each);

— compensation for downtime, assessed at 900,000 Z per day per container as from 1.12.1988;

— trade interest estimated at 75 per cent per year, downtime compensation being an interest-bearing debt as far as we are concerned.

It goes without saying that we are disappointed by the Office's failure to reply, not even deigning to acknowledge receipt of our first claim, and that this letter cancels and replaces all previous proposals made to the Office in our previous letters.

We are anxious that every effort should be made to find an amicable solution as soon as possible, in the best interests of both parties.

Obviously, if a reply is long in coming, we will take account of the updating and amendments dictated by changes in the value of the zaire and the extra days since 1 February in order to put a final value on the claim.

Yours faithfully,

(Signed) DIALLO Amadou Sadio.
Chairman

ANNEX POC 24

MINUTES OF THE MEETING BETWEEN AFRICONTAINERS AND ONATRA ON 31 MARCH 1991

Dispute relating to the loss of two containers

Present:

(a) Africontainers

— Mr. Diallo Amadou	Chairman
— Mr. Kanza Nekongo	Director
— Mr. Katambwe N'Okembe	Head of Operations
— Mr. Diallo Saifulay	Accountant

(b) Onatra

— Mr. Buzangu Muyumba	Legal Department
— Mr. Engo Bolawanga	Commercial Department

As suggested by the Board of Onatra, Africontainers, represented by its Chairman, and Onatra, represented by the Commercial Department and the Legal Department, met on 11 and 13 March 1991 for the purpose of finding a compromise solution to the dispute relating to the loss of two containers belonging to Africontainers.

For the record, Africontainers' claim for settlement of the dispute amounted to Z2,187,278,000 (Cf. its invoice No. 007/AFC/91 annexed to its letter No. 006/AFC/91 of 11 February 1991).

With a view to settling this dispute, Onatra made the following compromise proposal to Africontainers:

— the offer of two containers in good condition to replace those lost;

— payment of Z18,900,000 by way of compensation for damage suffered.

Africontainers stands by its invoice, Z2,187,278,000, having regard to the extent of the damage suffered.

Done in Kinshasa, 13 March 1991

For Africontainers	For Onatra
(Signed) DIALLO Amadou Sadio.	*(Signed)*Engo BOLAWANGA. *(Signed)*Buzangu MUYUMBA.

ANNEX POC 25

LETTER 0276/1L/50 DATED 26 MARCH 1991 FROM ONATRA TO AFRICONTAINERS

Gentlemen,

Re: Compromise proposal for settlement of the dispute over the loss of two containers

We have noted your position as recorded in the Minutes of the meeting of 13 March 1991 dealing with the above matter.

With the aim of arriving at a commercial solution acceptable to our two companies, such as that put to you in the negotiations, we think it useful to confirm, once more, the proposal by the Office, based and formulated on the settlement principles and procedures currently applicable in such cases.

A survey of the market relating to the hiring of commercial containers will make you realise how reasonable and realistic our proposal is when one considers the prices on offer on this market.

This proposal includes the highly acceptable provisions set out below for a final compromise settlement of the dispute between us, namely:

(1) The handover to your company, after checking to ensure that they are in good condition, of two 20' containers;

(2) The payment to your company, according to the procedure to be agreed, of Z18,900,000 as compensation for the damage suffered as a consequence of the loss of the said containers, i.e., 60 per cent of the cost of hiring two containers, assessed at Z31,500,000 by applying a mean rate of Z1,750,000 per round trip and at the rate of four round trips per year, a total of nine round trips since the dispute arose.

We would go so far as to believe that you will not fail to appreciate this Office's efforts to find a final solution to this dispute.

Yours faithfully,

(Signed) Ngoie DONDA.
Legal Director

(Signed) Umba KYAMITALA.
Managing Director

ANNEX POC 26

LETTER 165/HOLDING/91 DATED 10 JULY 1991 FROM ONATRA TO AFRICONTAINERS

The Chairman
Africontainers

Dear Sir,

Re: Dispute over the loss of two containers

I refer to the outstanding dispute between Onatra and your company regarding the loss of two of your containers in transit.

I have read the complete file on this dispute and have noted that Onatra and your company, Africontainers, have both shown themselves willing to find an amicable solution in this matter.

In order to speed the final settlement of this dispute, I accept and confirm Onatra's proposal to hand over to you, after expert examination, two containers in good condition and subsequently to negotiate the amount of compensation for damage suffered, on a commercial basis.

The office's Commercial Department is responsible for taking over and finalizing this transaction.

Yours sincerely,

(Signed) Prof. KALONGO MBIKAYI.
Chairman of Onatra

ANNEX POC 27

LETTER 53AFC/91 DATED 16 MAY 1991 FROM AFRICONTAINERS TO ONATRA

The Managing Director of Onatra

Dear Sir,

Re: Payment of the value of containers 525763 and 525397

We beg to draw your attention to the terms of our letter No. 006/AFC/91 dated 11.2.91 on this matter.

In that letter our Company claimed payment of the amount due to us, in the following terms:

— the value of two containers, No. 525763 and No. 526397, estimated at US$17,000 each, which were tipped into the river on 1/12/88 due to carelessness in the course of unloading from barges 0523 and 0507;

— compensation for downtime set at Z900,000 per day and per container from 1/12/1988;

— trade interest estimated at 75 per cent of the total of our claim.

According to our Debit Note No. 007/AFC/91 of 11.02.91, the balance in our favour amounts to Z2,187,278,000, which we reserve the right to update and amend by degrees at the current daily rate for the zaire.

We ask you once more to order the settlement of this claim, say in the form of four monthly payments.

This procedure will save Onatra unnecessary expenditure, because the longer the dispute lasts, the greater the debt becomes. We are sure that you understand the position.

Yours faithfully,

(Signed) DIALLO Amadou Sadio.
Chairman

ANNEX POC 28

LETTER 112/AFC/91 OF 31 JULY 1991 FROM AFRICONTAINERS TO ONATRA

To the Managing Director of Onatra

Re: Dispute concerning the loss of two containers

Sir,

I have the honour to acknowledge receipt of your letter of 10 July, the references and subject matter of which are cited above.

Having read its content, I wish to inform you that I have accepted the proposal for a friendly settlement of the dispute.

With regard to the delivery to my company of two containers in good condition, my acceptance depends on confirmation of their condition by an expert opinion. I thus reserve the right to refuse acceptance of containers whose condition does not match that of the containers lost by the Office and to demand payment of the value thereof, i.e. the equivalent in zaires, at the market exchange rate, of US $34,000 (i.e. US$17,000 x 2).

The amount of compensation for damages incurred is assessed at 17,520,534,111 zaires, a breakdown of which is annexed hereto.

[Paragraph illegible.]

It would be appreciated if the Office would take the necessary steps to finalize, settle and close this case, which has dragged on for too long. We further wish to point out that the total sum owed to us must be updated and adjusted to take account of the market rate for the zaire, which is a fluctuating currency.

Yours faithfully,
(*Signed*) DIALLO Amadou Sadio
Chairman

ASSESSMENT OF COMPENSATION FOR DAMAGES

I. Loss of earnings due to loss of containers 525763 and 526397

This is calculated on the basis of the new rates applied by Onatra for the Kinshasa/Matadi route.

(N.B. This loss of earnings could have been based on the rates applicable at the time, updated to take account of inflation. The total would then have been greater!)

Year	No. of days	Daily rate	No. of containers	Amount
1988	31	5,237,880	2	324,748,560
1989	365	idem	2	3,823,652,400
1990	365	idem	2	3,823,652,400
1991	212	idem	2	2,220,861,120
TOTAL:	973 x	5,237,880 x	2	10.192,914,480

II. Commercial interest

Loss of earnings is a commercial claim on which interest accrues. The interest has been calculated on the basis of the average commercial bank debtor rate, i.e. 75% per annum.

Total interest amounts to:

[1988 figures illegible]

Sum owed for 1989 (577 days)

$$Z\ \frac{3,823,652,400 \times 75 \times 577}{365 \times 100} = Z\ 4,533,395,140.00$$

Sum owed for 1990 (212 days)

$$Z\ \frac{3,823,652,400 \times 75 \times 212}{365 \times 100} = Z\ 1,665,645,840.00$$

Total commercial interest: Z 6,827,619,631.00

III. Moral damages

Lump sum of Z 500,000,000.00

Total compensation

1. Loss of earnings	=	10,192,914,480.00 Z
2. Commercial interest	=	6.827,619,631.00 Z
3. Damages	=	500,000,000.00 Z
		17,520,534,111.00 Z

Done at Kinshasa on 31 July 1991.

ANNEX POC 29

LETTER 051/AFC/DG/92 OF 31 JULY 1992 FROM AFRICONTAINERS TO ONATRA

Mr. Chairman,

Re: Idle time of our empty containers in the Onatra port

We write to inform you that recently we have seen our containers from the interior of the country being returned regularly.

However, as you know, our production equipment has been grossly misused by your Office from 1986 to 1989, namely:

(1) 475 containers have spent an abnormally long time in Matadi and have been used fraudulently on their return to Kinshasa for the carriage of your clients' goods. Others have even been converted into wagons for the carriage of goods between Matadi and Kinshasa without payment for the loss suffered by our company.

(2) two containers supposedly dropped into the water, in respect of which Mr. Kalongo Mbikayi, the former Chairman of the Holding Company, asked the Commercial Department by letter No. 165/HOLDING/91 dated 10/07/91 to compensate us for our loss. No action has been taken to date.

(3) two containers kept in Kisangani for over two years, in respect of which your office should compensate us for wrongful use.

Moreover, our counsel has written to you twice on this matter, with no response on your part.

As you can see, this gross misuse is preventing us from meeting our commitments, particularly as we are the pioneers of local container transport in Zaire, and Onatra should pay us a royalty on account of the advantages provided by that means of transport and of the profit you have gained from it.

Given this situation, we appeal to your sense of responsibility to ensure that we are no longer invoiced for the warehousing of our containers in Kinshasa, until our claims are settled in full.

We are willing to negotiate with you, on a commercial basis, on the amount of our claims for all the damage suffered and on the procedure for their payment, in order to spare your organization legal costs in cases as open and shut as these.

Otherwise we will be compelled to bring this case to the attention of the *Conférence Nationale Souveraine* for decision.

Meanwhile we beg you to make haste in dealing with the disputes between us, for the sake of our trading relations, particularly as your own regulations severely punish all cases of fraud detected, multiplying the rate applicable by 10.

I hope that you will give this reminder your particular attention.

Yours faithfully,

(Signed) DIALLO Amadou Sadio.
Chairman

ANNEX POC 30

LETTER 083/AFC/91 DATED 14 JUNE 1991 FROM AFRICONTAINERS TO ONATRA

The Managing Director of Onatra
Kinshasa/Gombe

Dear Sir,

RE: AFC CLAIMS IN YOUR BOOKS

We are writing to you once more to call your attention to our numerous claims in your books.

Since 1987 Onatra has been diverting our production equipment for its benefit, thereby impeding the activities of our validly and properly established company.

We remind you that our company has rendered considerable services to Onatra and to mankind thanks to the genius of its chairman and chief executive Mr. Diallo, of Guinean nationality but who has been established in Zaire since 1964.

To refresh your memory, we ask you to look back into the past to see that before 1979 Onatra was shipping all its clients' goods in bulk: this was a source of delays, thefts, losses and damage, etc., compelling Onatra to spend billions of zaires to compensate clients for damage.

At that time neither the staff of Onatra nor the overseas staff and advisers from the World Bank, in fact no-one, came up with the idea of organizing a transport system to put an end to this disastrous situation, which was wearing down and ruining Onatra.

We had to wait for the brilliant idea to come from Mr. Diallo, the Chairman of Africontainers, who was the first to concern himself with this appalling situation and gave the matter serious thought for three months, in researches that culminated in the creation of the Africontainers Company for the carriage of goods by container throughout the National Territory.

In fact no-one before ME, not the Agetraf Company, not the Agence Maritime Zaïroise (AMIZA) and not the DEMAS Shipping Company, had the idea of organizing the carriage of goods by container in the National Territory.

Similarly, although today Onatra carries copper, lubricants and various other goods to or from Gécamines, it is thanks to that same initiative by Mr. Diallo who, like it or not, is the first known pioneer of carrying goods by container in complete safety.

Onatra, like all the beneficiaries of his genius, owes a debt of sincere gratitude to Mr. Diallo.

Given the difficult socio-economic circumstances in the country today, what would the situation be if Onatra were still shipping its clients' goods in bulk, and what would be the number of disputes generated by the many cases of theft and damage to goods consigned to it by its clients, for which it would be compelled to spend billions of zaires to compensate them for damage.

Moreover, it is also thanks to that same genius that today several small companies carrying goods by container have grown up, encouraged for the most part by Mr. Diallo; all in all these small companies have earned Onatra billions of zaires.

But instead of thanking and encouraging us, Onatra has diverted our production equipment, as was the case with our 211 containers sent to Matadi and used fraudulently for three years, on

round trips for the benefit of private clients on the Kinshasa/Matadi/Kinshasa section, an operation which earned Onatra many billions.

Our company has benefited from the Investment Code. On this basis we have sought and obtained foreign credits which we are bound to repay in dollars, solely by virtue of efficient use of our production equipment.

Onatra owes our company Z 42,500,000,000 for wrongful and fraudulent use of our 211 containers for three years.

This amount, illegally earned over a period of three years to the detriment of our company, is ours by right, and will be updated in dollars from the date on which our claim originated until the matter is settled amicably in full.

We are giving you ten days with effect from receipt of this letter to settle this claim, failing which our company will be compelled, with much regret, to pass this file to our counsel in Zaire and abroad in order to seek settlement in the courts, in this case demanding payment to our company of compensation for damage suffered and interest for late payment on this claim.

I look forward to hearing your views on this matter.

Yours faithfully,

(Signed) DIALLO Amadou Sadio.
Chairman

ANNEX POC 31

LETTER DATED 10 MAY 1990 FROM AFRICONTAINERS TO ONATRA

Gentlemen,

Re: Payment of the value of containers 525763 and 525397

I write to inform you that, due to a handling error by your crane operator on crane 40-60 T during the unloading of barges 0523 and 0507 on 1 December 1988, two of our containers, No. 525763 and No. 526397 coming from Ilebo, LTO numbers 7003928 and 7003929, were tipped into the river.

The reports No. 153237 and 1532321 enclosed with this letter were prepared for this purpose by members of your staff, who vouch for the loss of the above two containers.

We claimed the value of these two containers from your Office by our letter No. 0024/PDG/AFC/89 dated 27 March 1989 through the Ports Department, referring to the loss of earnings that this unfortunate incident has caused the company. In spite of this claim, no action has been taken to date to meet it.

Thus we are asking Onatra once again, this time through your Department, to put an end to this long-standing dispute by paying us, within a reasonable time, the value of these containers, which we estimate at $17,000 per container having regard to their condition, which was still as new. To this should be added downtime charges estimated at Z20,000 per day from the day on which Africontainers was deprived of their use. The debit note is annexed.

Minutes of the meeting of the Invoicing Disputes Panel on 8 March 1990

[In so far as it affects Africontainers]

1. Africontainers

1.1. Problem

Referring to paragraph 1.1 of the minutes of the meeting of 18/10/1989 whereby Africontainers claimed compensation for the excessive time spent by its containers in the port of Matadi, the Sub-Panel produced the detailed information enabling the Panel to give a ruling.

1.2. Decision

It became apparent on considering this case that this problem has to be dealt with by judicial decision, because there has never been a contract between the parties requiring the Office to abide by any time-limit whatever for time spent by this client's containers in its installations.

In view of the fact cited above, the Panel decided to refer the case to the Legal Department for an opinion.

ANNEX POC 32

CORRESPONDENCE DATED 28 DECEMBER 1992 FROM THE DISPUTES DEPARTMENT TO AFRICONTAINERS

[Summary: text largely illegible]

Gentlemen,

With reference to your letter, I write to inform you that we have set up a credit of Z5,965,130,534 in your favour.

Having regard to the commercial relationships between our companies, the management of the Office has granted you this amount as compensation for the loss of earnings over the life of the dispute.

We ask you to contact our financial services in order to decide on the procedure for the payment of this amount.

As regards the defective state of the two containers, we invite you by way of compensation for these shortcomings to choose two similar containers from our excess stock in our port installations in Kinshasa.

Yours faithfully,

(Signed) [illegible]

ANNEX POC 33

[NOT TRANSLATED]

ANNEX POC 34

[NOT TRANSLATED]

ANNEX POC 35

[NOT TRANSLATED]

ANNEX POC 36

[NOT TRANSLATED]

ANNEX POC 37

[NOT TRANSLATED]

ANNEX POC 38

[NOT TRANSLATED]

ANNEX POC 39

[NOT TRANSLATED]

ANNEX POC 40

LETTER 033/AFC/DG/92 OF 24 APRIL 1992 FROM AFRICONTAINERS TO ZAIRE MOBIL OIL

The Managing Director
Zaire Mobil Oil

Dear Sir,

As promised in our letter No. 024/AFC/DG/92 of 31 March last, we enclose three debit notes relating respectively to:

— penalties provided for in the contract of 1 October 1980;

— penalties for failure to abide by the contract of 13 July 1983;

— damages.

Article 4.04 of the 1980 contract, which was terminated in 1983, provided for penalties in the event of failure by Zaire Mobil to send products to Africontainers sufficient for 20 containers per month (October and November 1980), and for 30 containers per month as from December 1980.

We regard 30 containers as your monthly requirement for shipment of your products in containers. We are applying this clause in the contract in debit note No. 016/AFC/DG/92.

In debit note No. 017/AFC/DG/92 we are invoicing you for the containers that have been shipped by you instead of by Africontainers from 1985 to December 1991, because the contract between us was not terminated. This unfair competition was contrary to the spirit of the contract of 13 July 1983 and was aimed at destroying Africontainers in the medium term. For this claim we have used the rates that were applicable at that time, i.e., 6,000 Z for the outward journey and 5,800 Z for the return, and the dollar rate at the same period, i.e., 1$ US = 18.47 zaires.

The third debit note, No. 018/AFC/DG/92, shows the amount of damages that we claim from you for the following reasons.

That the long-term aim of Zaire Mobil Oil, by competing with Africontainers on the market for containerised transportation of lubricants, was to destroy our company by depriving it of products for carriage.

This has entailed the redundancy of several persons, to whom Africontainers was obliged to pay indemnities for loss of job.

The building of our offices, the creation of a fleet of containers and the purchase of equipment for this work, namely containers, tractors, trailers, hoists, machines and tools, etc., were brought to a standstill, given the fact that our investment policy was based on this contract.

In addition, at your request agencies were opened in Ilebo and Lubumbashi for the secondary monitoring of your products. Up to now we have been meeting the staffing and operating costs of these agencies.

Meanwhile the loans to Africontainers to equip itself have continued to give rise to debit interest.

Also, instead of paying Africontainers' invoices for your occasional orders within the times specified in Article 10 of the contract you preferred to wait for months, thereby aggravating our

company's cash flow problems. You were told of this situation in our letters No. AFC/DAS/IN/218/85 of 21 November 1985 and No. 0051/AFC/89 of 17 May 1989.

Lastly, the idea of shipping your lubricants in containers and of loading them with copper to avoid the cost of returning them empty definitely originated with Africontainers, an idea from which you have always benefited. In addition, in 1980 our company suggested the system of containerised tanks in order to save you the enormous cost of manufacturing 200-litre barrels. You did not accept the proposal, but in the end you did adopt it.

For all these reasons, and many others, we are claiming damages from you of US$10,000,000 (ten million American dollars).

However, we remain open to negotiation and discussion, in order to find ways and means of resolving this matter amicably together.

Yours faithfully,

(Signed) DIALLO Amadou Sadio.
Chairman and Managing Director

Debit Note No. 016/AFC/DG/92

Penalties pursuant to Article 4.04 of the contract of 1 October 1980.

Total claimed: US$2,577,744 (two million five hundred and seventy-seven thousand seven hundred and forty-four American dollars).

Debit Note No. 017/AFC/DG/92

Compensation due to Africontainers for containers sent by Zaire Mobil Oil instead of Africontainers, contract of 13 July 1983.

Total claimed: US$673,373 (six hundred and seventy-three thousand three hundred and seventy-three American dollars).

ANNEX POC 41

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 Lubumashi. 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 POC 42

LETTER OF 12 MAY 1992 FROM ZAIRE MOBIL OIL TO AFRICONTAINERS

For the attention of Mr. Diallo Amadou Sadio

TRANSPORT CONTRACT OF 13 JULY 1983 — TERMINATION

Gentlemen,

We have just received, to our great surprise, your debit notes Nos. 016, 017 and 018 amounting in total to US$13,251,117 by way of damages for wrongful termination of the transport contract of 13 July 1983.

We wish to point out that all these claims are both exorbitant and without foundation.

It is strange that you feel able to reproach our company for wrongful termination of the transport contract of 13 July 1983 while maintaining in your letter No. 020/AFC/DG/92 of 31 March 1992 that this contract had never been terminated!

In January 1991 we sent you a Quality Commitment Letter, asking you to involve yourself, like other service providers, in achieving the quality objective that our company has set itself as a priority. If I am not mistaken, you never replied to this appeal by our company (annex).

Moreover, we had already demonstrated to you that the non-performance of the contract was attributable to your services seizing up, not to our company (see our letter No. JUR/107/1000 of 16 April 1992).

Having regard to the above, we give you notice of termination of the contract of 13 July 1983, and in accordance with the provisions of Article 6 the ten-day period of notice starts to run as from receipt of this letter.

Yours faithfully,
(Signed) A. CORNIL.
Managing Director

AB/BE JUR/124/1000

Annexes: 1

ANNEX POC 43

CORRESPONDENCE DATED 29 MAY 1992 FROM AFRICONTAINERS TO ZAIRE MOBIL OIL

Debit Note No. 032/AFC/DG/92

Compensation due to Africontainers for containers sent by Zaire Mobil Oil instead of Africontainers, contract of 13 July 1983

Total claimed: US$2,083,283 (two million eighty-three thousand two hundred and eighty-three American dollars)

NB: this debit note No. 032 cancels and replaces debit note N0. 017/AFC/DG/92 of 24 April 1992

Debit Note No. 033/AFC/DG/92

Re: trade interest

Method of calculation: capitalization of interest

1980 debt	US$16,432
1981 debt	US$130,828
1982 debt	US$111,793
1983 debt	US$516,119
1984 debt	US$286,294
1985 debt	US$811,367
1986 debt	US$601,329
1987 debt	US$542,830
1988 debt	US$360,092
1989 debt	US$228,932
1990 debt	US$44,211
1991 debt	US$139,725
Total interest:	US$3,789,952

(three million seven hundred and eighty-nine thousand nine hundred and fifty-two American dollars)

Calculation of interest

The method used is capitalization of interest.

The variations in the mean annual debit interest rate are as follows:

1981 = 20 per cent; 1982 = 24 per cent; 1983 = 30 per cent; 1984 = 30 per cent;

1985 = 35 per cent; 1986 = 40 per cent; 1987 = 40 per cent; 1988 = 51.7 per cent;

1989 = 70.6 per cent; 1990 = 72.91 per cent; 1991 = 135 per cent; 1992 = 240 per cent.

The mean annual exchange rates of the zaire against the dollar from 1980 to 1992 are:

1980 = 2.85; 1981 = 4.35; 1982 = 5.76; 1983 = 14.07;

1984 = 36.1; 1985 = 50.57; 1986 = 60.91; 1987 = 114.37;

1988 = 188.29; 1989 = 383.65; 1990 = 772.25; 1991 = 17872.7;

first half of 1992 = 133408.64.

ANNEX POC 44

LETTER DATED 23 NOVEMBER 1995 FROM ZAIRE MOBIL OIL TO AFRICONTAINERS

For the attention of Mr. Diallo Amadou Sadio
Chairman and Managing Director

Re: Your letter No. 078/AFC/DG/95 of 2/11/1995

Gentlemen,

We are in receipt of your letter No. 078/AFC/DG/95 of 2/11/1995 and regret that we are unable to come to an agreement thereon.

According to the Debit Note No. 069/AFC/DG/95 of 20/10/95 annexed to your letter, our company allegedly owes you US$1,680,626,994.67 by way of adjustment of the amounts invoiced to us between 1983 and 1990.

We wish to draw your attention to the fact that the Transport Contract of 13 July 1983 has been terminated, since 12 May 1992. Moreover, there was no provision in this Contract when in force for adjustment of invoices already paid.

Consequently your allegations as to the existence of a debt of US$1,680,626,994.67 due from our company are inadmissible.

Yours faithfully,

Zaire Mobil Oil
(Signed) Gerard LASMOLES.
Managing Director

ANNEX POC 45

MEMORANDUM DATED 28 JUNE 1999 FROM MOBIL OIL CONGO TO THE *FÉDÉRATION DES ENTREPRISES DU CONGO*

MEMORANDUM

From: Mobil Oil Congo

To: *Fédération des Entreprises du Congo*

Re: Application to the International Court of Justice by the Republic of Guinea for payment to Mr. Diallo Amadou Sadio

By his letter 033/AFC/DG/92 of 24 April 1992 (Annex 1) Mr. Diallo Amadou Sadio, the Chairman and Managing Director of Africontainers SPRL, sent Mobil Oil Congo three debit notes (Annex 2) amounting in total to US$10,000,000 (ten million dollars). Two other debit notes (Annex 3) amounting in total to US$5,873,235 (five million eight hundred and seventy-three thousand two hundred and thirty-five dollars) were sent to Mobil Oil Congo on 29 May 1992, accompanied by a computation of interest (Annex 4) totalling US$3,789,950 (three million seven hundred and eighty-nine thousand nine hundred and fifty dollars).

A. Claims by Africontainers SPRL

According to Mr. Diallo Amadou Sadio, the amounts claimed from Mobil Oil Congo are justified on three grounds:

(1) The contract entered into on 10 October 1980 prescribed a number of containers (20 or 30 per month) that Mobil Oil undertook to entrust to Africontainers SPRL for shipment.

(2) Mobil Oil Congo was guilty of unfair competition by sending out containers itself instead of through Africontainers SPRL.

(3) Mobil Oil Congo was liable in damages to Africontainers SPRL for losses resulting from:

(a) unfair competition by Mobil Oil Congo, causing the redundancy of Africontainers SPRL's staff involving payment by Africontainers SPRL of compensation for loss of job;

(b) the locking up of its equipment;

(c) debit interest on loan contracts allegedly entered into by Africontainers SPRL;

(d) improper use by Mobil Oil Congo of Africontainers SPRL's original idea of shipping lubricants in containers.

B. Lack of grounds for Africontainers SPRL's claims

1. Contract of 10 October 1980, Mobil Oil Congo's obligation to entrust 20/30 containers per month to Africontainers SPRL.

Mr. Diallo Amadou Sadio himself admits that this contract, of which we have found no copy, was terminated in 1983 (cf. Africontainers SPRL letter of 24 April 1992 in Annex 1, paragraph 2).

Thus Mr. Diallo Amadou Sadio cannot rely in law on agreements that have ceased to bind the parties, nine years after their termination. As from 1983 Mobil Oil Congo was no longer under any obligation to entrust a minimum monthly number of containers to Africontainers. Mr. Diallo Amadou Sadio's claim under this heading is therefore without substance.

2. Unfair competition by Mobil Oil Congo

It emerges clearly from paragraph 4, in the preamble to the contract dated 13 July 1983 (Annex 5) with Africontainers SPRL that Mobil Oil Congo never wanted to grant Africontainers SPRL an exclusive right to carry its products, and on the contrary intended to keep its freedom to choose the carrier for its products, *a fortiori* with the right to ship its lubricants using its own facilities.

The documents issued to Mobil Oil Congo by the authorities allowing it to use containers consist of approval by the Office Congolais de Contrôle and authorization by Onatra. We will send you these documents as soon as we have traced them in our archives.

The endorsement in Annex 6 and Endorsement No. 2 of 31 December 1984 in Annex 7 to which three other forwarding agents, in addition to Africontainers SPRL, are parties support the fact that Africontainers SPRL was exposed to economic competition with other forwarding agents and consequently its complaint that it has been the victim of some kind of unfair competition is unfounded.

3. Damages

(a) Mobil Oil Congo cannot be held responsible for dismissal of Africontainers SPRL staff. It is for the head of any company to ensure that it runs smoothly and, if he thinks fit, to dismiss staff, taking responsibility for the financial consequences of such dismissals.

(b) As regards the locking up of equipment, the creation of Africontainers SPRL, in which Mobil Oil Congo played no part, implied that those who formed the company had all the necessary resources beforehand for the shipment of products in containers whenever a customer asked for it, in the hope of making profits and taking the risk of losses in the event of bad deals. Therefore there is no reason for Mobil Oil Congo to take on the risks of the investment programme planned and implemented with complete autonomy and independently by Africontainers SPRL.

(c) With regard to the debit interest on loans that Africontainers SPRL may have taken out, Mobil Oil Congo has not signed any security or endorsement or any guarantee whatsoever to cover the insolvency of Africontainers SPRL. Consequently Mobil Oil Congo cannot be compelled on any grounds to pay debts incurred by Africontainers SPRL.

(d) Mr. Diallo Amadou Sadio's claim regarding improper use of his original idea of shipping lubricants in containers is contradicted by the history of advances in transport facilities, which proves that this idea was not arrived at first by Africontainers SPRL.

In accordance with the wishes of the Ministry for Foreign Affairs, please find attached Mobil's reply dated 12 May 1992 to Mr. Diallo's comments (Annex 8) whereby he was informed of the termination of the transport contract of 13 July 1983. Mr. Diallo's letter to Mobil and the debit note No. 069/AFC/DG95 enclosed therewith are in Annex 9. Mobil Oil Congo's reply to this correspondence is in Annex 10.

Except for these exchanges of correspondence, the disputes with Mobil Oil Congo initiated by Mr. Diallo have never been properly formulated. In accordance with the contract entered into on 13 July 1983 with Africontainers SPRL, which confers jurisdiction on the tribunals of Kinshasa

alone, we encourage Mr. Diallo to prove that he has the capacity to act on behalf of Africontainers SPRL, and if he can produce this evidence, to bring the matter before the Courts and tribunals of Kinshasa.

(Signed) Jean MUKENDI.
Head of the Legal Department.

ANNEX POC 46

[NOT TRANSLATED]

ANNEX POC 47

EXCHANGE OF LETTERS BETWEEN THE TSHIBANGU ET ASSOCIÉS LAW OFFICE AND THE CHIEF REGISTRAR OF THE SUPREME COURT OF JUSTICE, KINSHASA/GOMBE, AUGUST 2002

(Case concerning *Africom-Zaire* v. *PLZ*)

The Chief Registrar
Supreme Court of Justice
Kinshasa/Gombe

Our ref: CT/AJ/CTA/0824/2002

Dear Sir,

Re: Case RC 1903: appeal on 26 August 1994 by Africom-Zaire against the decision on 9 March 1994 under RCA 17244 by the Court of Appeal of Kinshasa/Gombe in the case concerning *Africom-Zaire* v. *PLZ*

I am writing to ask you to advise me of the status of the proceedings in the above case.

I wish to know whether the Supreme Court of Justice has already delivered a judgment or whether the case is still under consideration.

Yours faithfully,

(Signed) Maître TSHIBANGU KALALA.

DEMOCRATIC REPUBLIC OF THE CONGO

Secretariat of the Chief Registrar
Maître Tshibangu Kalala
Counsel to the Court of Appeal

Kinshasa, 30 August 2002

Our ref.: 139/D.7/Grechef/NNM/2002

Re: Status of case RC 1903 concerning Africontainers *v.* PLZ

Dear Maître,

I acknowledge receipt of your letter reference CT/AJ/CTA/0824/2002 of 29 August regarding the status of the abovementioned case, and write to inform you that the Supreme Court of Justice has not yet delivered a judgment and that the proceedings are following their normal course.

Yours faithfully,

(Signed) Hubert NGOIE-MUTUNDA WA KYULU.
Chief Registrar

ANNEX POC 48

LETTER REFERENCE BNK/FNK/D.3394 S.F. 8 OF 26 JANUARY 1993 FROM COUNSEL FOR AFRICONTAINERS TO ZAIRE FINA

Formal notice

Gentlemen,

I write to inform you that I am counsel for the Africontainers-Zaire Company, to which you are linked pursuant to the transport contract signed on 13 July 1983.

It is clear, from reading the documents submitted to me by my client, that you have unilaterally suspended performance of your obligations under the above-mentioned contract. Even worse, you have opted for acts of unfair competition deliberately aimed at my client.

That is why I am sending you this formal notice calling for payment within 48 hours of the amounts still due from you, estimated at 31 December 1992 to be the equivalent in zaires of:

(a) loss of earnings	US$	2,777,820
(b) trade interest	US$	1,832,375
(c) compensation for unfair competition	US$	239,112
(d) damages	US$	10,000,000
Total	US$	14,849,307

Kindly note that should this period, which begins to run on receipt of this letter, be exceeded I will immediately issue a summons against you to appear before the competent tribunal, with all the distressing consequences that this will entail for you.

Yours faithfully,

(Signed) Maître BIZIMANA NSORO KYOYA.

ANNEX POC 49

LETTER SG/SEC.052/93/LUB/DS DATED 9 FEBRUARY 1993 FROM FINA TO MAÎTRE BIZIMANA NSORO KYOYA, COUNSEL TO THE COURT OF APPEAL IN KINSHASA/GOMBE

Dear Maître,

Re: Formal Notice

We acknowledge receipt of your letter BNK/FNK/D. 3394 S.F. 8 of 26.01.1993 relating to the above, which reached us this Monday, 08.02.1993.

Your client, Africontainers, had already brought this issue to our attention by letter No. 25/AFC/DG/92 of 31 March 1992, a photocopy of which is annexed.

By our letters SJ/SEC.174/92/LUB/MND and SG/SEC.201/92/LUB/MND of 14 April 1992 and 15 May 1992 respectively, photocopies of which are also annexed, we maintained, and continue to maintain, that the contract of 13 July 1983 never gave Africontainers the monopoly of carriage.

In addition, the suspension of performance of the contract was due to Africontainers, and for which it alone is responsible.

We hope that this letter has cleared up any misunderstanding regarding the abovementioned transport contract.

Yours faithfully,

ZAIRE — FINA

(Signed) LUVUEZO-LU-BILA.
Assistant Manager, General Secretariat

(Signed) J. DAMSEAUX.
Administrator-General Manager

Annexes: 3

ANNEX POC 50

LETTER SG/SEC/201/92/LUB/MND DATED 15 MAY 1992 FROM FINA TO AFRICONTAINERS

Gentlemen,

Re: Compliance with our contract of 13 July 1983

We acknowledge receipt of your letter No. 034/AFC/DG/92 of 24/04/1992 and its annexes relating to the above, which we have read with care.

You will recall that, by our letter SJ/SEC.174/92/LUB/MND of 14 April 1992, we maintained that the abovementioned contract did not give your company the monopoly of carriage of lubricants in containers.

We are therefore sending for your edification the documents listed below, all of which are subsequent to the contract of 13/07/1983, as confirmation of our unequivocal position.

These are:

1. A photocopy of the minutes of the meeting of 7/12/1984 prepared by the Zaire Fina Secretariat and sent to our Managing Director's office on 26/12/1984.

   These minutes state that six (6) forwarding agents had attended this meeting and your company, Africontainers, was represented at this meeting by a delegation of three, namely Messrs. Balde, Sambwe and Ngarobe.

   We beg you to note that no Africontainers representative raised the issue of monopoly rights under the transport contract of 13/07/1983.

   In addition, the competitive element had even been emphasized by implication by one of your delegates, Mr. Balde, by referring to the only elevator to be used by each forwarding agent (see page 2 of the minutes).

2. A photocopy of the letter SAT/964/84/RH/NL of 07/11/1984 sent to you by Zaire Fina. Referring to the defective condition of Africontainers containers, we observed at that time that the allocation of the container quota to *our forwarding agents* would take this factor into account.

   Does this not state clearly that Africontainers did not have the monopoly of carriage?

3. A photocopy of the report drawn up on 11/02/1985 by the Zaire Fina General Inspectorate.

   This report not only highlights the allocation of containers, it also shows the *number of Zaire Fina's forwarding agent partners.*

4. A photocopy of the letter SAT/225/85/RH/WM of 6 March 1985.

   Regarding the increase in the rates, Zaire Fina had observed at the time that the new rates would apply only after signature of an endorsement by, Gécamines, *the forwarding agents concerned* and ourselves.

   This letter expressly states the number of partners involved in shipping our lubricants in containers.

5. A photocopy of our letter of 31/08/1988 from the Operations Department of Zaire Fina to *all forwarding agents*.

   You will agree with us that Africontainers had competitors for the shipment of lubricants in containers.

These four *(sic)* documents confirm without fear of contradiction that Africontainers did not have and does not have a monopoly for the carriage of our products.

We are entitled on the basis of the above simply to reject your claims in respect of any loss that you may have suffered as a result of our allegedly wrongful takeover of the lubricant shipment market and failure to abide by the contract, wrongly described by you as a contract of fidelity.

We therefore ask you to cancel your debit notes No. 019/AFC/DG/92 and No. 20/AFC/DG/92, both dated 24/04/1992, because in our view they are without foundation.

Yours faithfully,

LUVUEZO-LU-BILA.
Assistant Manager

J. DAMSEAUX.
Administrator-General Manager

ANNEX POC 51

LETTER SJ/SEC.174/92/LUB/MND DATED 14 APRIL 1992 FROM FINA TO AFRICONTAINERS

Gentlemen,

Re: Compliance with our contract of 13 July 1983

We acknowledge receipt of your letter No. 025/AFC/DG/92 of 31/03/1992 relating to the above, for which we thank you.

Nevertheless we wish to point out that the abovementioned contract does not confer a monopoly in the carriage of lubricants in containers on one forwarding agent alone, Africontainers, given the existence of other contracts with other forwarding agents, in this instance Aflucoza, Transtshikem, etc.

This amounts to saying that Article 1 of the contract gives the oil companies a free hand to use their own facilities or the facilities of third parties, for a tonnage that is left to their discretion.

Moreover, it is important to note that performance of the said contract was not suspended at our initiative, but was the result of difficulties encountered by Africontainers at a particular time.

That is why, if you think that you are now in a position to resume your activities, we are asking you to get in touch with us to consider the possibility of resuming our relationship in accordance with the terms of the transport contract of 13 July 1983.

Yours faithfully,

LUVUEZO-LU-BILA..
Assistant Manager

Yours faithfully,

J. DAMSEAUX.
Administrator-General Manager

ANNEX POC 52

LETTER 109/KM/95/IK DATED 16 NOVEMBER 1995 FROM FINA TO AFRICONTAINERS

Gentlemen,

Re: *Zaire Fina* v. *Africontainers*

Your ref: 076/AFC/DC/95 dated 2.11.1995

I have been consulted by the Zaire Fina Company, which has sent me your letter 076/AFC/DG/95 dated 2.11.1995 and the Annexes thereto for consideration and action. It emerges from an analysis of the exhibits in my possession that on 13 July 1983 you had entered into a transport contract with my client; Article 5 (3) of that contract stated: "In the event of variation in the parity of exchange of the Zaire, *the parties agree to meet to negotiate a rate.*"

Contrary to the express wording of this contractual term and five years after all business relationships between the parties have ended with no amounts outstanding, you dare to make the arbitrary assertion that the rates fixed by Article 10 of the contract should have been index-linked to the value of the American dollar and automatically revised whenever there was a change of parity between that currency and the Zaire.

This opportunistic and belated interpretation is contradicted both by Article 5 (3) as emphasized above and by the way in which the parties have implemented their agreement.

It is clear that, pursuant to their contract, the parties met several times to discuss rate revisions (points 2, 5 and 6 in your letter).

It is also clear that the rate revisions decided upon during these discussions were approved by you because you applied them systematically in all your invoicing (see table at annex).

Consequently my client regards itself as completely free of any obligation to you, having honoured in time each of the invoices issued you according to the rates fixed by mutual agreement between the parties.

Since you seem to be completely obsessed and encouraged by the judgment somehow obtained against the Zaire Shell Company, it is as well for you to note that my client has no intention of offering itself to you as a sacrificial lamb.

You may consider yourself warned.

(Signed) Katshungu NUKENGE.
Counsel

ANNEX POC 53

12 AUGUST 1993

JUDGMENT OF THE KINSHASA/GOMBE *TRIBUNAL DE GRANDE INSTANCE* RC 61.538

[SUMMARY]

Judgment given at a public hearing of 12 August 1993 in civil and commercial matters at the Kinshasa/Gombe *Tribunal de grande instance*

Claimant:

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

Defendant:

The company Zaire Fina (private limited company), having its head offices at 652, Avenue Lukusa, Gombe district, Kinshasa

Procedural history

Claimant served a writ on defendant for appearance before the *TGI* of Kinshasa/Gombe on 24 March 1993. The hearing was adjourned several times until 16 June 1993.

Statement of Claim

— In early 1987, Defendant leased two containers for the transport of lubricants to the Shaba region.

— Instead of entrusting them to Onatra it shipped them on a vessel that sank in the Zaire River.

— There is no doubt that Defendant should pay compensation for the lost containers.

— Defendant claims that the containers were covered by an insurance policy, but Claimant does not consider the insurance cover to be of a sufficient amount.

— A conciliation procedure having failed, Claimant requests an award in compensation (with interest) of US$33,411,118.50 plus judicial interest accruing since the writ, together with costs and expenses.

Oral submissions of Defendant

That the Court should:

— find the action by Africontainers admissible but unfounded, on the ground that the loss of the containers on 14 March 1987 was an unforeseen accident under Article 9 of the contract between the two parties signed on 13 July 1983;

— find that Africontainers was negligent and breached Article 8 of the contract, for entrusting Zaire Fina with uninsured containers;

— award Zaire Fina the sum of US$10,500 and court fees.

State counsel's submissions

That the Court should:

— find the claim by Africontainers admissible as to procedure

— on the merits, declare it well-founded

— order Zaire Fina to pay damages in respect of the entire loss, plus fees and costs.

Judgment

Facts and arguments:

Under the "contract of carriage" signed on 13 July 1983 between Africontainers, Zaire Fina, Zaire Mobil Oil and Gécamines the Defendant leased two containers for the transport of lubricants to the Shaba region. Defendant entrusted them to the company Bikari and they were lost with their contents in the Zaire River. On 16 April 1991, Zaire Fina paid Africontainers 684,310.00 zaires, being part of the insurance settlement. However, Africontainers considered that this amount did not cover the entire loss and brought the case before the court, alleging negligence and breach of contract on the part of the Defendant. Moreover, although five out of seven containers had been recovered, their whereabouts remained unknown.

In response, Zaire Fina filed a counterclaim for the amount of compensation that it had already paid, in restitution of money paid without legal cause. Defendant further claimed that in respect of contracts of carriage, actions are time-barred after two years. It also rebutted the allegation that it had used an unauthorized carrier, arguing that Onatra has no such monopoly in Zaire. It denied any liability for the wreck or for the alleged poor condition of the vessel. However, it considered that the Claimant had been negligent in not insuring the containers itself. It complained of the combination of contractual and tortious liability that the Claimant was seeking to impute. In the alternative, the Defendant submitted that an expert should be appointed to determine the actual value of the loss and further pointed out that the Claimant had not substantiated its claim of damages by proper evaluation.

Reasoning:

I. Time-bar and nature of contract

Although the contract was entitled "Contract of Carriage", it was a contract for services rendered by the freight forwarder Africontainers, which had agreed to organize the transport and delivery of certain products of Zaire Fina and Zaire Mobil Oil to Gécamines. The services included the loading and forwarding of containers of those products as far as the river port for further carriage by an inland waterway carrier. As the contract was not strictly limited to carriage, the ordinary law of obligations should apply, whereby actions are time-barred after 30 years.

II. Liability of Zaire Fina

Zaire Fina clearly rendered itself liable by acting outside the terms of contract. It had carried out certain contractual operations by itself, without the Claimant's knowledge. It could not invoke force majeure, ignorance of the condition of the vessel or the lack of prior insurance. The Defendant had fraudulently taken care of operations that it was supposed to leave to Africontainers.

III. Recovery of US$10,500

The Claimant considered that the sum already paid constituted partial repayment of the debt owed by Zaire Fina in view of its liability.

IV. Amount of loss

The Court found sufficient the evaluation previously submitted for the purposes of the conciliation procedure. It enumerated the value of the two containers, the loss of income and the commercial interest.

Operative provisions:

The Court admits the action by the Claimant and finds it well-founded, thus ordering the Defendant to pay the Claimant:

— FF52,500 for the two lost containers;

— 1,670,400,000 zaires plus 480,000,000 zaires per year from 1991 until full performance, in respect of the loss of revenue;

— 192,616,000 from 1987 to 1990, plus 73,000,000 per year since 1990 until full performance, in commercial interest;

— subject to setting off the 684,310 zaires already paid from the total sum;

The Court further awards costs against Defendant.

ANNEX POC 54

24 FEBRUARY 1994

JUDGMENT OF THE KINSHASA/GOMBE *COUR D'APPEL* RCA 17.229

[SUMMARY]

Judgment given at a public hearing of 24 February 1994 in civil and commercial matters at the Kinshasa/Gombe *Cour d'Appel*

Appellant:

The company Zaire Fina (private limited company), having its head offices at 652, Avenue Colonel Lukusa, Gombe district, Kinshasa

Respondent:

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

Procedural history

On 18 September 1993, Appellant lodged an appeal against the Judgment of the TGI of Kinshasa/Gombe delivered on 12 August 1993 [see Annex 53]. The hearing was adjourned several times until 29 December 1993.

Submissions of Appellant

That the Court should:

— find the claim by Zaire Fina admissible and well-founded;

— and accordingly, vacate the judgment appealed against on grounds of invalidity and unlawfulness;

— in the alternative, find unfounded the action of the original claimant, now the Respondent, on the basis of the Appellant's present submissions.

State Counsel's submissions

That the Court should set aside the Judgment of the court below, with respect to the award of damages and the pecuniary or non-pecuniary loss incurred.

Judgment

Admissibility of principal appeal

The Respondent raised an objection to the admissibility of the appeal, first alleging that the lawyer filing the appeal did not have special power of attorney. It argued that the power of attorney was general and abstract in nature, granting broad rather than specific powers. The Court did not agree, finding that the power of attorney conferred specific powers for the purposes of the appeal. The Respondent also disputed the validity of the company's articles of association and of the photocopy used by the Court. It further argued that the proper formalities had not been complied with for the appointment of the vice-president. The Court rejected these arguments and found the appeal admissible.

Admissibility of cross-appeal

With regard to the incidental appeal lodged by the Respondent, the Court found it to be inadmissible. It agreed with the Appellant that, since the certified copy of the minutes indicating Mr. Diallo's appointment as Managing Director of Africontainers had not been signed by a *notaire*, that did not constitute a valid instrument and Mr. Diallo thus lacked the capacity to give power of attorney for the purposes of the incidental appeal.

Annulment of judgment appealed against

The Appellant requested the appeal court to set aside the judgment of the court below, on grounds of unlawful composition of the bench and violation of procedural security. The first of these grounds was rejected as unfounded in law. The Court, however, found that the court below had not given sufficient reasoning in support of its judgment. More precisely, it had failed to explain the reason for its evaluation of damage in French francs rather than US dollars. The impugned judgment should thus be set aside in its entirety and, under Article 79 of the Code of Civil Procedure, the appeal court is entitled to decide on the merits after it has decided an appeal on a point of procedure.

Objection to admissibility of original action

As stated above, the Court found that Mr. Diallo lacked capacity to represent Africontainers before the court below. It thus regarded the objection to admissibility as well-founded.

Operative provisions

The Court of Appeal of Kinshasa/Gombe

— finds inadmissible the cross-appeal of Africontainers for lack of capacity;

— finds admissible and well-founded the appeal lodged by Zaire Fina;

— sets aside the judgment of the court below in its entirety;

then in a new ruling, being entitled to decide on the merits after it has decided an appeal on a point of procedure;

— finds inadmissible the original action of Africontainers for lack of capacity;

— awards costs against Africontainers.

ANNEX POC 55

EXCHANGE OF LETTERS BETWEEN THE TSHIBANGU ET ASSOCIÉS LAW OFFICE AND THE CHIEF REGISTRAR OF THE SUPREME COURT OF JUSTICE, KINSHASA/GOMBE, AUGUST 2002

(Case concerning *Africontainers* v. *Zaire Fina*)

The Chief Registrar
Supreme Court of Justice
Kinshasa/Gombe

Our ref: CT/AJ/CTA/0823/2002

Dear Sir,

Re: Case reference RC 1950: appeal on 23 February 1995 by Africontainers against the decision on 24 February 1994 under reference RCA 18229 by the Court of Appeal of Kinshasa/Gombe in the case concerning *Africontainers* v. *Zaire Fina*

I am writing to ask you to advise me of the status of the proceedings in the above case.

I wish to know whether the Supreme Court of Justice has already delivered a judgment or whether the case is still under consideration.

Yours faithfully,

(Signed) Maître Tshibangu KALALA.

DEMOCRATIC REPUBLIC OF THE CONGO

Secretariat of the Chief Registrar
Maître TSHIBANGU KALALA
Avocat près la Cour d'Appel

Kinshasa, 30 August 2002

Our ref.: 140/D.7/Grechef/NNM/2002

Re: Status of case RC 1950 concerning *Africontainers* v. *Zaire Fina*

Dear Maître,

I acknowledge receipt of your letter reference CT/AJ/CTA/0823/2002 of 29 August regarding the status of the abovementioned case, and write to inform you that the Supreme Court of Justice has not yet delivered a judgment and that the proceedings are following their normal course.

Yours faithfully,

(Signed) Hubert NGOIE-MUTUNDA WA KYULU.
Chief Registrar

ANNEX POC 56

LETTER DS/DJ/HMK/LN//F.1285/99 OF 7 JULY 1999 FROM THE *FÉDÉRATION DES ENTREPRISES DU CONGO* TO THE DEPUTY MINISTER FOR FOREIGN AFFAIRS IN KINSHASA/GOMBE

For the attention of Mr. David M'Bwankiem

DEPUTY MINISTER FOR FOREIGN AFFAIRS IN KINSHASA/GOMBE

Re: Cases concerning *Africom* and *Africontainers* v.:

— *Fina Congo*;

— *Mobil Oil Congo*;

— *Shell RDC*;

— *PHC (MARSAVCO)*.

Your Excellency,

We refer to your memo of 7 June 1999 on the subject above, for which we thank you.

At your request we have held a working meeting with the companies concerned, which clarified the issues.

In order to assist you in reaching an opinion regarding the alleged debts claimed by the Republic of Guinea/Conakry on behalf of Mr. Diallo, we enclose at annex the opinions and views of the companies concerned on a case-by-case basis.

We beg to remain, Your Excellency, your obedient servants.

(Signed) Athanase MATENDA KYELU.

SG/SEC.182/99/LUBMIND

Kinshasa, 28 June 1999

Gentlemen,

Re: The *Fina-Congo/Africontainers* case

Further to our discussions this Wednesday 23 June 1999 at your office, we give herewith our opinions and views regarding the debts claimed by Mr. Ahmadou Sadio Diallo.

In its Application entitled "Application for purposes of diplomatic protection", the Republic of Guinea has just seised the International Court of Justice of a request for a finding that the Democratic Republic of the Congo be held to account for non-payment of the sums due from the RDC, Gécamines, Shell, Mobil Oil, Fina-Congo PLC and Onatra, amounting to US$31,334,685,888.45, to its national, Mr. Ahmadou Sadio Diallo. According to the Republic of Guinea, some of these claims arise out of judicial decisions that have the force of *res judicata* and others relate to services rendered by Mr. Diallo's two companies, namely Africom-Zaire for trading and Africontainers-Zaire for the containerized carriage of lubricants and copper.

More specifically with regard to our company, Fina-Congo, the Application refers to two claims:

— US$38,000,000 arising out of a judicial decision;

— US$2,604,479,706.54 on a debit note.

1. As to the claim arising out of a judicial decision

In order to ship our petroleum products to Shaba at the time, Zaire Fina was forced to turn to forwarding agents, Trans-Tshikem and Africontainers, for the hire of five containers from the former and two containers from the latter respectively.

Most regrettably, the Bikari, the boat that Zaire Fina had chosen for the carriage of the containerized products, had been wrecked on the River ZAIRE on 14/03/1987.

As a result of this accident the entire cargo and the boat itself were irrecoverable.

This accident was the subject of a declaration at the proper time by Zaire Fina to Sonas under the RC/Operation policy.

Thus, after representations, Sonas finally paid compensation for all seven containers (five for Trans-Tshikem and two for Africontainers). This payment therefore covered the value of all the containers lost in the river.

Trans-Tshikem accepted the amount coming to it by way of compensation.

However, Africontainers thought that the amount offered to it, 684,310.00 Z on 13/06/1990, was insufficient, which is why it finally instituted proceedings against Zaire Fina before the Aneza arbitration board, having obtained no satisfaction from us.

Since the proceedings at this level were abortive, Zaire Fina lodged a cheque for 684,310.00 Z with the Registry of the Tribunal de Grande Instance in Gombe by way of tender and payment into court.

Although Africontainers accepted this payment on 16/04/91 it still instituted proceedings against Zaire Fina before the Tribunal de Grande Instance in Gombe under reference RC 61538 seeking an order for payment by Fina for two containers lost in the River Zaire as well as damages.

Decision of the Tribunal: see photocopy of judgment R.C. 61538 at annex. Not content with this decision, Fina appealed against this judgment to the Court of Appeal of Kinshasa under reference RCA 17229.

Decision of the Court: see photocopy of the ruling, RCA 17229, at annex.

Africontainers considered that its rights had been infringed by this decision by the Court of Appeal, and on 13/02/1995 it lodged an appeal to the Supreme Court of Justice (see application at annex, registered under reference RC 1950).

No decision has been given to date, although the case has been under consideration since 23/06/96.

In the light of the above Diallo is quite wrong to claim that Fina-Congo has been ordered to pay Africontainers the sum of US$38,000,000 pursuant to a decision with the force of *res judicata*.

2. As to the claim arising out of a debit note

By his letter No. 076/AFC/DG/95 of 2 November 1995, a photocopy of which is at annex, Mr. Diallo Ahmadou Sadio, the Chairman of Africontainers, had sent our company debit note No. 068/AFC/DG/95 of 20 October 1995 for consideration and payment.

He claimed that this debit note and its annexes listed the various sums that had allegedly remained in Fina's hands at each invoice submission since 1983. He maintained that studying and checking the invoices sent to Fina from 1983 to 1990 had led him to the findings summarized in seven points and concluded that Africontainers considered itself entitled to claim its alleged debt, augmented by interest for late payment and bank interest, of the order of US$2,604,479,706.56.

On the first point

Mr. Diallo claims that the various container leasing prices applied during the period from 1983 to 1990 were below the starting prices. In our view it is important to stress that the leasing prices to which Mr. Diallo refers were invoiced by the forwarding agent, Africontainers, in accordance with Article 10 (1) of the transport contract concluded on 13 July 1983 between Africontainers on the one hand and Fina, Mobil and Gécamines on the other (see photocopy at annex).

Under Article 5 of this contract, the rates are fixed for the duration of the contract.

Fina regularly paid all the invoices sent to it by Africontainers, during the current period, which the forwarding agent does not dispute.

If these prices were below the starting prices, Africontainers has only itself to blame, not Fina.

We cite against him the legal maxim *"Nemo auditur turpitudinem suam allegans"*: no one can rely on his own wrongdoing as a defence.

On the second and third points

Mr. Diallo asserts that the studies relating to rate revisions that Fina allegedly undertook on behalf of the other signatories to the tripartite contract took no account of fluctuations in the value of the zaire relative to the American dollar.

Our view is that Mr. Diallo adduces no evidence of his allegations, which we regard as entirely without foundation. As noted above, Article 5 (3) of the tripartite contract stipulates that the parties shall meet in order to renegotiate the rate in the event of a change in the parity of the zaire.

The decisions taken at these meetings are binding on all the parties, whether present or not.

Once again we cite the same maxim against Diallo as on the first point.

On the fourth point

Mr. Diallo's claims are irrelevant, since the price review decision was taken as part of the rate negotiations among the parties, who met following a change in the parity of the zaire in accordance with the will of the parties as expressed in the tripartite contract.

On the fifth and sixth points

We take the view that if the forwarding agents cited by Mr. Diallo were not entitled to sign the endorsements embodying the rate reviews it was for Africontainers to object to them at the time, through its representative. Since the latter did not do so, the conclusion is that the disputed persons were entitled to attend the various discussions and to sign the various endorsements that were to give effect to the decisions reached.

On the seventh point

As far as we are concerned, Mr. Diallo's assertions are completely without foundation, since no evidence is adduced regarding Africontainers' money claimed to be still in Fina's hands and helping it to purchase its own containers.

In view of what has been said above about the seven points raised by Mr. Diallo, the conclusion that the debt of US$2,604,479,706.56 claimed by Africontainers is completely fictitious is inescapable.

Fina-Congo rejects it out of hand.

Yours faithfully,

(Signed) LUVUEZO-LU-BILA.
Assistant Manager, General Secretariat.

ANNEX POC 57

[NOT TRANSLATED]

ANNEX POC 58

24 JULY 1981

CONTRACT OF CARRIAGE BETWEEN ZAIRE SHELL AND AFRICONTAINERS

[Summary of clauses not contained in contract at Annex MG 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 POC 59

LETTER 041/AFC/DG/92 OF 25 MAY 1992 FROM AFRICONTAINERS TO ZAIRE SHELL

To the Managing Director of Zaire Shell

Re: Unlawful breach of Shell/Africontainers carriage contracts of 24 July 1001 and 13 July 1983

Sir,

We wish to remind you once again of the carriage contract dated 24 July 1981 signed with your company.

Pursuant to the terms of the contract, your company undertook to grant us exclusivity for the carriage by container of Zaire products to your regional offices and your customers in the interior of the country, mainly in Shaba.

To ensure due fulfilment of our obligations, our company placed at your disposal a large consignment of containers and qualified staff to perform this service.

Our relations in this regard evolved until 27 June 1990, following which we received no further orders.

Operating on the basis of mutual trust, it never occurred to us that this break in relations was due to any ground other than those foreseen in the contract, namely:

1. With respect to the carrier:

(a) non-performance

(b) insufficient equipment

(c) staff negligence

2. With respect to the beneficiary of the service, i.e. Zaire Shell:

(a) lack of stock oil

(b) lack of additives used in manufacturing

(c) machinery breakdowns due to unforeseeable circumstances

Following a painstaking investigation by our staff, we cannot but infer that, in a breach of trust, you approached other carriers to obtain the same service as had been entrusted to us, thus breaching Article 3.02 of our contract of 24 July 1981.

We are therefore forwarding two debit notes concerning, respectively, the loss incurred by our company following the wrongful takeover of the market for container carriage of lubricants by your company and other forwarding agents, and the damages we claim for breach of the contracts of 13 July 1983 (see our letter 028/AFC/DG/92 of 10 April 1992) and 24 July 1981.

Although the 1981 contract stipulates in Article 3.02 that exclusivity for the carriage of Zaire Shell products shall be granted to Africontainers, we discovered through investigations conducted by our staff that you had been using other carriers since 1984 to perform the same service.

It follows that the possession by Zaire Shell of 69 containers of 20' approved for the transport of its lubricants represents competition for Africontainers and deprives our company of a market to which it is entitled pursuant to the contracts of 24 July 1981 and 13 July 1983.

Debit note No. 029/AFC/DG/92 thus invoices you for the containers shipped in lieu of those of Africontainers from 1984 to 1992. We have assumed that you required a minimum of 20 containers per month for shipping your products by container. This minimum of 20 containers is obtained by dividing your 69 approved containers by 3.5 (3.5 being the number of months required for turnaround of a container), which gives 20 containers per month. The calculation is based on the sum of 6,000 zaires for one-way leasing of a container, the rate applied under the contract of 13 July 1983, i.e. the equivalent of US$1,005 at the rate of 5.97 zaires for 1 US dollar.

Debit note No. 030/AFC/DG/92 invoices you for damages on the following grounds:

1. Zaire Shell, by depriving Africontainers of products to be shipped, by competing with it or by consigning the products to other carriers, sought to destroy Africontainers;

2. As a result of this destruction, a number of our staff had to be laid off and awarded severance pay;

3. Our investment, that is to say:

   Construction of our premises, laying-out of a parking area for containers; the operating equipment purchased, i.e. a sufficient number of containers, tractors, trailers, elevators, machinery and tools, etc., have stood idle owing to the lack of orders from your side. Moreover, our whole investment policy was based on those contracts. In addition, branches were opened, at your request, in Ilebo and Lubumbashi to ensure administrative and parallel monitoring of your products. We continue to bear the staff and operating costs of those offices.

4. As a result of this destruction, we were unable to achieve the turnover budgeted for under the said contracts.

5. We were also unable to repay the loans we had contracted to purchase equipment or the interest that fell due. Instead of paying our invoices in respect of your orders within the time-limits laid down in the contract, you preferred to wait for months, thereby exacerbating our company's cash-flow difficulties. It should be noted that your were informed of these circumstances in our letters No. AFC/DAS/IN/217/85 of 21 November 1985, No. AFC/DAS/IN/061/[illegible] of 8 September 1987 and No. 0050/AFC/89 of 17 May 1989.

6. Lastly, the idea of carrying your lubricants in containers and of loading them with copper to avoid incurring the cost of returning them empty was quite clearly an Africontainers invention, of which you continue to enjoy the benefit.

Hence, the question arises of your responsibility in this regard, and this naturally gives rise to the question of reparations for the prejudice suffered.

For all the foregoing reasons and many others, we demand the sum of 10,000,000 United States dollars in damages.

Our company is prepared to raise all these questions with whomever it may concern, but we wish to approach you first to obtain elucidation of the grounds for the unlawful breach of these contracts and to be apprised of the measures you propose to take to repair the damage.

We look forward to a very rapid response from you in this regard.

(*Signed*) DIALLO Amadou Sadio.
Chairman

Debit note No. 029/AFC/DG/92 concerning:

Containers shipped in place of Africontainers from 1984 to 1992

Year	Annual total shipped	Containers loaded by AFC	Shortfall	Dollar rate on 13/7/83	Total in US dollars
1984	240	57	183	1,005 $	183,915
1985	240	50	190	1,005 $	190,950
1986	240	88	152	1,005 $	152,760
1987	240	106	134	1,005 $	134,670
1988	240	32	208	1,005 $	209,040
1989	240	61	179	1,005 $	179,895
1990	240	16	224	1,005 $	225,120
1991	240	—	240	1,005 $	241,200
1992	240	—	240	1,005 $	241,200
TOTAL	2,160	410	1,750	1,005 $	1,758,750

Total: One million seven hundred and fifty-eight thousand seven hundred and fifty United States dollars

(*Signed*) DIALLO Amadou Sadio.
Chairman

Debit note No. 030/AFC/DG/92 concerning:

Damages in respect of the unlawful breach of the contracts of 24 July 1981 and 13 July 1983

Our claim from you: 10,000,000 United States dollars.

(*Signed*) DIALLO Amadou Sadio.
Chairman

ANNEX POC 60

RESPONSE OF ZAIRE SHELL DATED 17 JULY 1992 TO LETTER 041/AFC/DG/92 FROM AFRICONTAINERS

Gentlemen,

Re: Your letter No. 041/AFC/DG/92 of 25 May 1992

The Zaire Shell company, for which I am acting as Counsel, has asked me to reply to your above-cited letter. A critical examination of this letter gives rise to the following observations:

1. The exclusivity referred to in your letter in respect of the July 1981 contract is partial exclusivity, which leaves Zaire Shell free to carry its products in its own containers. The fact that Zaire Shell carried its products in its own containers from 27 June 1990 without using Africontainers cannot be characterized as a breach of contract.

2. The contract of 24 July 1981, on which your claims are based, is a contract concluded for a period of one year, renewable by tacit consent. It is therefore incorrect to make allegations of breaches of the contract, which was performed without any apparent ground for complaint inasmuch as you state in your above-cited letter that your relations evolved until 27 June 1990, from which date you longer received any orders from Zaire Shell. It may be inferred from this statement that your relations evolved during that period without hindrance, that is to say normally. And if your relations with Zaire Shell were normal during those years, how can you now allege that the aforementioned contract was breached during the same years? What has just been said about the 1981 contract is also applicable to the 1983 contract.

3. According to the preamble to the two contracts binding the parties, Africontainers was already, that is to say prior to the signing of the contract, specialized in containerized carriage and possessed the requisite equipment. If that was true of Africontainers, namely that it was a specialized company with appropriate equipment, how are we to account for your statements to the effect that the conclusion of the contracts concerned with Zaire Shell were the reason for the construction of your premises, the laying-out of a parking area for containers and the purchase of operating equipment? And why blame Zaire Shell for your company's inability to repay the loans incurred for equipment for Africontainers?

4. Pursuant to the terms of the two contracts concluded between the parties, termination of the contract is sanctioned by written notice from one party to the other at least 90 days prior to its expiry. In the absence of such written notice to Africontainers from Zaire Shell, what justification have you for stating that there has been an unlawful breach of contract and for claiming damages?

5. The two contracts refer to fortuitous circumstances that are not attributable to the contracting parties. Do you not think that the deterioration in Zaire's economic and financial situation following the sad events that shook the country in September and October 1991 constitute a fortuitous circumstance that could have had a bearing on the decline in orders for your containers?

6. You demand payment from Zaire Shell of ten million US dollars without justifying your demand by any real or concrete evidence. In the light of all the foregoing observations, can you in all honesty, Gentlemen, formulate such a claim? In any case, a claim expressed in foreign currency for transactions or services conducted entirely within Zaire is certainly unlawful since it is contrary to the spirit of Legislative Order No. 66/584 of 14 October 1966 concerning the regime governing transactions in Zairian currency. Pursuant to that Legislative Order, all transactions expressed in foreign currency and conducted within the territory of the Republic of Zaire are prohibited and offenders are liable to a fine of Z 100,000 to 10,000,000 and/or 15 days to 6 months imprisonment.

A trader or businessman has various ways of seeking to make money, but the way chosen by your company in the present case is contrary to the most elementary rules governing business transactions.

It therefore goes without saying that my client's relations with your company have been blameless and that the millions of dollars you are claiming are not due since they are not justified.

(*Signed*) Maître LUKUSA-MUTOBOLA.
Barrister at the Supreme Court of Justice

Kinshasa, 22 July 1992

From DP to AGL

Re: Africontainers case

I. Introduction

Zaire Shell concluded a contract on 24 July 1981 with the Africontainers company for carriage of its lubricants by container into the interior of the country.

The contract granted exclusivity of carriage to Africontainers subject to the reservation that Zaire Shell could use its own small-scale containers.

In 1983, pursuant to a supplementary agreement of 13 July, Zaire Shell acceded to the containerization contract previously signed between Mobil, Fina, Gécamines and Africontainers, in which, it should be noted, Africontainers did not enjoy exclusivity.

The performance of these two contracts never gave rise to any problem until 25 May 1992, when Africontainers sent a letter to Zaire Shell complaining of an unlawful breach of the Shell/Africontainers contract of 24 July 1981 and the Mobil, Fina, Gécamines/Africontainers contract of 13 July 1983.

Africontainers claims damages from Zaire Shell of US$10,000,000 and a sum of US$1,758,750 in respect of containers shipped in place of Africontainers from 1984 to 1992.

II. Zaire Shell's reply

In response to the application, Zaire Shell notes that:

— No carriage contract concluded with Africontainers was ever breached;

— The exclusivity mentioned in Article 3.2 of the contract of 24 July 1981 binding Zaire Shell and Africontainers is partial since it is subject to the reservation that Zaire Shell is entitled to use small-scale containers;

— The contract was never breached since it was performed without objection until 27 June 1990, as indicated in the letter from Africontainers dated 25 May 1992;

— As, according to the preambles to the two contracts of 1981 and 1983, Africontainers is specialized in the carriage business, it is incorrect to assert that premises were built, a parking area laid out and operating equipment purchased at the express request of Zaire Shell;

— The claim from Africontainers for payment by Zaire Shell of US$10,000,000 is unfounded (justification);

— Shell is convinced that the deterioration in the country's economic and financial situation following the unfortunate events of September and October constitute a fortuitous event that had a bearing on the decline in orders for containers from Africontainers.

The response of our Counsel is annexed hereto.

(*Signed*) ZUMBI NDONA MASUKA.

ANNEX POC 61

LETTER OF 28 FEBRUARY 1994 FROM ZAIRE SHELL TO ITS SUPPLIERS AND SERVICE PROVIDERS

To: Africontainers

Gentlemen,

Re: Confirmation of balance of supplier No. 4000036

At the request of our auditors, Coopers & Lybrand, MIDEMA, Avenue Mongala No. 13, third and fourth floors, B.BP 10.279 Kinshasa 1, we hereby request you to confirm the balance of our account in your books as at 31 December 1993.

We should be grateful if you would forward to our auditors a detailed breakdown of the balance and/or a photocopy of our account in your books as at that date.

Thank you for your collaboration.

For Zaire Shell
(*Signed*) ZUMBI NDONA MASUKA.
Acting Financial Director

*

Confirmation of the balance of supplier No. . . .

We hereby confirm that the balance as at 31 December 1993 due to/by* stands at Z . . . according to our books.

* Delete as appropriate

Name of supplier

Signature and stamp

ANNEX POC 62

LETTER OF 28 FEBRUARY 1994 FROM AFRICONTAINERS TO ZAIRE SHELL

To: Africontainers

Gentlemen,

Re: Confirmation of balance of supplier No. 4000036

At the request of our auditors, Coopers & Lybrand, MIDEMA, Avenue Mongala No. 13, third and fourth floors, B.BP 10.279 Kinshasa 1, we hereby request you to confirm the balance of our account in your books as at 31 December 1993.

We should be grateful if you would forward to our auditors a detailed breakdown of the balance and/or a photocopy of our account in your books as at that date.

Thank you for your collaboration.

For Zaire Shell
(*Signed*) ZUMBI NDONA MASUKA.
Acting Financial Director

*

Confirmation of the balance of supplier No. . . .

We hereby confirm that the balance as at 31 December 1993 due to/by* stands at Z 13,106,704.39 $ according to our books.

(Payable at the market rate for the NZ.)

* Delete as appropriate

Name of supplier

Signature and stamp

(*Signed*) [illegible]
Africontainers

To: Coopers & Lybrand

Total amount due from Zaire Shell to Africontainers Ltd.

1. Debit note	014/AFC/SH/90 of 21/12/90	Z 204,278.75	$ 100
2. Invoice	012/AFC/SH/90 of 28/12/90	Z 138,404.25	$ 68.38
3. Invoice	001/AFC/91 of 21/03/91	Z 276,808.50	$ 79.08
4. Invoice	015/AFC/DG/KIN/92 10/07/92		$ 392.93
5. Debit note	024/AFC/DG/92 of 18/09/92		$ 175,895.00
6. Debit note	029/AFC/DG/92 of 25/05/92		$ 1,758,750.00
7. Debit note	034/AFC/DG/92 of 08/06/92		$ 1,171,419.00
8. Debit note	030/AFC/DG/92 of 08/06/92		$ 10,000,000.00
		TOTAL	$ 13,106,704.39

Total: Thirteen million one hundred and six thousand seven hundred and four dollars thirty-nine cents

Done at Kinshasa, 15 March 1994

(*Signed*) DIALLO Amadou Sadio.
Chairman

ANNEX 63

NOTICE OF APPEAL AGAINST THE JUDGMENT GIVEN ON 3 JULY 1995 BY THE KINSHASA/GOMBE *TRIBUNAL DE GRANDE INSTANCE*, ZAIRE SHELL *v.* AFRICONTAINERS

[SUMMARY]

Appeal lodged on 24 July 1995 with the Kinshasa/Gombe Court of Appeal (RCA 18.307) against the judgment given on 3 July 1995 by the Kinshasa/Gombe *Tribunal de Grande Instance* (RC 63.824)

Zaire Shell *v.* Africontainers

Grounds of appeal: Error of judgment, breach of statutory provisions and unsubstantiated award.

Special power of attorney for the purposes of filing the appeal, given by Zaire Shell to its counsel on 24 July 1995.

ANNEX POC 64

JUDGMENT DATED 20 JUNE 2002 OF THE KINSHASA/GOMBE *COUR D'APPEL* (RCA 18.307)

[SUMMARY]

Judgment given at a public hearing of 20 June 2002 in civil and commercial matters at the Kinshasa/Gombe *Cour d'Appel*

Appellant:

The company Zaire Shell (private limited company), having its registered offices at 1513 Boulevard du 30 juin, Gombe district, Kinshasa

Respondent:

The company Africontainers (private limited company), having its registered offices at Coin des Avenues Sénégalais et Bas-Zaïre, Gombe district, Kinshasa; currently without known address in DRC.

Procedural history

On 24 July 1995, Appellant lodged an appeal against the Judgment of the TGI of Kinshasa/Gombe delivered on 3 July 1995, between the parties, of which the operative provisions were as follows:

"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 and expenses against the defendant

— orders the immediate enforcement of the judgment (in respect of the principal debt)."

On 24 August 1995 the Appeal Court dismissed an application by Zaire Shell for a stay of execution.

The hearing of the appeal was postponed several times because of procedural technicalities. Finally, on 14 November 2001, the case was heard in the absence of the Respondent. The addresses of Africontainers and of its manager Mr. Diallo Amadou were unknown, but due notification had been given by public advertisement. The Respondent was thus accountable for its failure to appear.

Submissions of Appellant

That the Court should:

— find the appeal admissible and well-founded;

— find the original action inadmissible;

— in the alternative, set aside all the provisions of the impugned judgment.

Submissions of State Counsel

That the Court should find the appeal by Zaire Shell, now Shell/R.D.C., admissible and well-founded.

Judgment

The appeal was deemed admissible and the Court proceeded to examine the facts of the case as follows:

On 24 July 1981 the company Zaire Shell entered into a contract of carriage with the company Africontainers for the transportation of petroleum products, and by supplementary agreements of 13 July and 8 August 1983 the parties agreed to extend their contract to other companies.

On 25 February 1994 the company Zaire Shell asked its supplier Africontainers to confirm the amount of its outstanding debt but did not agree with the amount stated in response. Africontainers took its claim to the *Tribunal de grande instance* of Kinshasa/Gombe, which handed down the decision appealed against.

The Appellant, in its pleadings, began by arguing that the original action before the court below should have been deemed inadmissible, because the claim had been evaluated in dollars and not in local currency, contrary to the Zairean Legislative Order of 14 October 1966.

On the merits, the Appellant challenged the amount of the claim as confirmed by the court below. It rebutted the allegation of unfair competition, stating that it was entitled under the contract to use its own containers for transporting the products. It further pointed out that the contract of carriage had been extended to include a number of other partners. It observed that the document entitled "Confirmation of bills payable", on which the Respondent had based its claim, could not constitute an acknowledgement of debt, since it was purely a common form sent to its partners in order to obtain information intended for the auditors. According to the Appellant, the auditors found that the amount in question was not a fixed and payable debt. Only three invoices for a total of US$540.39 were accepted as such and the Appellant regarded all the debit notes as unfounded. The amounts it denied had been fixed unilaterally by the Respondent, without judicial intervention, and could not therefore constitute a valid debt. The court below had accepted those amounts as fixed and payable, thus unjustly enriching the Respondent, and its award should be annulled.

The Court found that the objection to the admissibility of the original action was unfounded. The first reason was that, according to the contract of carriage and supplementary agreements, the parties had not expressly precluded any reference to amounts in dollars; the only obligation was that payments should be made in the national currency. The contractual documents were in fact governed by a Legislative Order of 23 June 1967, under which the amounts of transactions could be stated in foreign currency.

On the merits, the Court found that the judgment of the court below should be set aside on the ground of insufficient reasoning. The court below had misapplied the provision of the Code of Civil Procedure, by granting the submissions of the Claimant, in the absence of the Defendant, even though they were insufficiently substantiated. Those submissions, namely that the Appellant had breached the exclusivity agreement and had committed acts of unfair competition by purchasing its own containers and entrusting transport operations to third parties, were contradicted by the facts of the case, in particular by the terms of the contract. On entering into the contract, the Appellant had reserved the right to use its own containers, and the supplementary agreements had superseded the initial monopoly granted to Africontainers. The Respondent had thus wrongly relied upon a provision of the contract.

The court below had simply accepted the claims of the Respondent, in particular its claim to contractual exclusivity, and had thus disregarded the terms of the contractual documents. The Court found that all those claims were unsubstantiated and that the civil liability of the Appellant had not been established. The Appellant had been wrongly ordered to pay the debt fixed at US$13,106,704.39 and damages at US$50,000 in the absence of due justification or reasoning. The Respondent had failed in its burden of proof and the Appellant had never acknowledged the validity of the credit notes. The court below had simply relied on the document "Confirmation of bills payable" without establishing the legal nature of the document or the intentions of the contracting parties. The court is obliged to look at the agreement between the parties. The said document, by contrast, was simply made up of two unilateral and declaratory instruments: a request by Zaire Shell to Africontainers for information on bills outstanding as at 31 December 1993 and the indication by Mr. Diallo of the amount as recorded in the accounts of Africontainers. It would be inappropriate to consider the debtor liable for that amount simply on the basis of unilateral information from the creditor. Moreover, the debtor had never acknowledged the debt and, on the contrary, had disputed the amount as unfounded.

Furthermore, the Respondent had never produced the proper commercial documents in support of its debt. Under Annex 1 of the contract of carriage, in particular Article 1 concerning terms of payment, payment is only due to the carrier when the actual carriage of goods has been recorded by the production of delivery notes. Also under the contract, any payment has to be made by mutual agreement between the parties, or according to legislation in force, or by order of the Courts of Kinshasa. By contrast, the debt claimed by the Respondent, except for the three invoices mentioned above, had been fixed unilaterally based on subjective criteria and not in compliance with the contractual terms.

The Appellant only acknowledged the validity of three invoices for a total of US$540.39 and regarded all the debit notes as unfounded. In the absence of evidence and in view of the lack of reasoning by the court below in fixing damages, the Court had to reject all the credit notes and set aside the judgment. It only recognized the debt arising from the said three invoices and reduced the amount of damages to US$1,000.

Operative provisions:

The Court of Appeal of Kinshasa/Gombe

ruling in open court and after hearing Zaire Shell, Africontainers having failed to appear,

having regard to the submissions of the State Counsel

finds the appeal by Zaire Shell admissible and well-founded

sets aside the judgment of the court below

and in a new ruling, orders Zaire Shell to pay Africontainers the principal debt of US$540.39 plus US$1,000 damages; procedural expenses being awarded at 1/3 against the Appellant and 2/3 against the Respondent.

ANNEX POC 65

JUDGMENT DATED 24 AUGUST 1995 OF THE KINSHASA/GOMBE *COUR D'APPEL*

[SUMMARY]

Notice of judgment and order to pay dated 29 August 1995, served on Zaire Shell upon the application of Africontainers, for the payment of 54,000 NZ in total, in respect of the judgment dated 24 August 1995 of the Kinshasa/Gombe *Cour d'Appel* (RCA 18.307).

* *

Notice of judgment and order to pay dated 21 July 1995, served on Zaire Shell upon the application of Africontainers, for the payment of 100,583,009,800.00 NZ in total, in respect of the judgment dated 3 June 1995 of the Kinshasa/Gombe *Tribunal de grande instance* (RCA 63.824).

* *

Judgment given at public hearing of 24 August 1995 in civil and commercial matters at the Kinshasa/Gombe *Cour d'Appel* (RCA 18.307).

Appellant:

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

Respondent:

The company Africontainers (private limited company), having its registered offices at Coin des Avenues Sénégalais et Bas-Zaïre, Gombe district, Kinshasa.

Procedural history

The company Zaire Shell lodged an appeal against the judgment dated 3 July 1995 of the Kinshasa/Gombe *Tribunal de grande instance* (RCA 63.824) and obtained leave to bring urgent proceedings against Africontainers for a stay of execution. The case was heard on 28 July 1995.

Submissions of Appellant

That the Court should find the Appellant's action admissible and well-founded, order the stay of execution requested and annul the immediate enforcement ordered by the court below, until the final judgment of the appeal court on the merits; cost should be awarded against the Respondent.

Submissions of Respondent

That the Court should rule on the admissibility of the Appellant's action according to the law, but find it unfounded and uphold the immediate enforcement ordered by the court below.

Judgment

Zaire Shell appealed against the judgment of the court below, by which it had been ordered to pay Africontainers a debt fixed at US$13,106,704.39 with immediate enforcement.

In view of the procedure followed by the Applicant, the appeal was found to be lawful and thus admissible.

In support of its appeal, the Appellant pleaded the nullity of the debt on the ground that it was stated in a foreign currency, in contravention of a legislative order. In ordering provisional enforcement, the court below had based its decision on a declaration entitled "Confirmation of bills payable" and a statement for US$13,106,704.39 including three invoices and five debit notes. Zaire Shell contended that the said declaration was simply a request for information sent to its supplier for auditing purposes and that it did not constitute an acknowledgement of debt. The sum of US$13,106,704.39 had been fixed unilaterally by Africontainers without its agreement. The documents on which the order of immediate enforcement was based were thus invalid. The Appellant requested the Court to grant it a stay of execution.

In response, the Respondent argued that it was on the basis of a valid acknowledgement of debt that the enforcement had been ordered. As to the alleged nullity of the debt, it contended that Zairean law prohibited payments in foreign currency, not the indication of foreign currency amounts.

After examining the documents produced, the Court found that neither party had presented an office copy for purposes of appeal or a certified copy of the judgment, to allow it to verify whether the court below had complied with the law. In the absence of such a copy, the Court could not grant the appeal.

The Court thus dismissed the appeal and awarded costs against the Appellant.

ANNEX POC 66

WRIT OF SUMMONS FOR A STAY OF EXECUTION, FILED BY ZAIRE SHELL ON 29 AUGUST 1995

[SUMMARY]

On 29 August 1995, the company Zaire Shell (private limited company), having its registered offices at Boulevard du 30 juin, Gombe district, Kinshasa, served a writ of summons on the company Africontainers, having its registered offices at Coin des Avenues Sénégalais et Bas-Zaïre, Gombe district, Kinshasa, for appearance before the Court of Appeal of Kinshasa/Gombe on 29 September 1995.

Statement of claim:

By judgment RC 63.824 dated 3 July 1995 of the *Tribunal de grande instance* of Gombe, the Claimant was ordered to pay a total of over 100 billion New Zaires. The court ordered immediate enforcement, even though the statutory conditions were not met. The Claimant thus seeks a stay of execution until the appeal court has ruled on the merits.

The Court is requested to:

— find the Claimant's action admissible and well-founded

— stay the execution of the said judgment until it has ruled on the merits

— award costs and expenses against the respondent.

* *

Application of 24 August 1995 (page 2 only)

The Claimant requests the President of the Court of Appeal to grant leave to serve summons on Africontainers for urgent proceedings concerning the stay of execution of judgment RC 63.824, handed down by the *Tribunal de grande instance* of Kinshasa/Gombe on 3 July 1995.

* *

Order No. 10354/95 of the President of the Court of Appeal of Kinshasa/Gombe, granting leave to serve summons for urgent proceedings

Order dated 29 August 1995, having regard to the application of Zaire Shell (see above), with respect to the judgment handed down by the *Tribunal de grande instance* of Kinshasa/Gombe on 3 July 1995, subject of an appeal on 24 July 1995 (RCA 18.307).

Whereas it can be seen from the application that the matter is urgent and whereas it is appropriate to grant the application.

Having regard to the urgency and to the provisions of the Code of Civil Procedure, the Applicant is hereby authorised to serve summons for proceedings to be held on 29 September 1995 for the Court to hear the application for a stay of execution.

ANNEX POC 67

APPEAL BEFORE THE COURT OF CASSATION, FILED ON 18 SEPTEMBER 1995, IN THE CASE ZAIRE SHELL *V.* AFRICONTAINERS, AGAINST THE APPEAL COURT DECISION REFUSING TO GRANT A STAY OF EXECUTION

[SUMMARY]

Filing of appeal acknowledged by receipt delivered on 18 September 1995

Appellant:

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

Respondent:

The company Africontainers, having its registered offices at Coin des Avenues Sénégalais et Bas-Zaïre, Gombe district, Kinshasa.

The company Zaire Shell lodged an appeal against the judgment dated 24 August 1995 of the Kinshasa/Gombe Court of Appeal.

Statement of facts

On 24 July 1981 the company Zaire Shell entered into a contract of carriage with the company Africontainers, which later brought proceedings against it for breach of contract, seeking the payment of US$13,106,704.39. This amount was based on a statement amounting to a total of US$13,106,704.39 including three invoices and five debit notes.

In support of its claim, Africontainers produced a document entitled "Confirmation of bills payable", a form sent by Shell every year to its suppliers requesting information. The first part of the form is made up of the request and the second part is the response from the supplier with an indication of the balance outstanding.

Grounds of appeal (one page missing)

First ground: the judgment appealed against was vitiated by a lack of reasoning in support of its operative provisions.

Second ground: violation of the *ultra petita* rule; the court had ruled on the admissibility of an appeal by Zaire Shell, dismissing it for failure to produce a copy of the judgment, whereas Zaire Shell had filed an application for a stay of execution, an act that is distinct from an appeal as such.

Third ground: the court below misapplied statute law by requiring an office copy of the judgment for the purposes of appeal, as there is no such requirement for an application to stay execution.

Fourth ground: violation of Article 14 of the Constitutional Act by the said finding.

Discussion

Zaire Shell's application to the Court of Appeal had been dismissed as if that court was called upon to rule on the merits, whereas it was in a position to review the stay of execution.

The Appellant's case file clearly shows that the declaration entitled "Confirmation of bills payable", on which the court below had based its order of enforcement, was not a valid acknowledgement of debt, such that the immediate enforcement of the judgment was ordered improperly.

Operative submissions of Appellant

The Court is requested to:

— quash all the provisions of the judgment appealed against;

— refer the case back to the Appeal Court of Kinshasa/Gombe;

— state the law in that the application for a stay of execution is distinct from an appeal on the merits;

— order that a reference be made to the present decision in the margin of the judgment appealed against;

— award costs against the Respondent.

Annex: list of exhibits appended to the pleadings.

ANNEX POC 68

DECREE NO. 0010 DATED 16 MARCH 1996 CANCELLING THE DESIGNATION OF MR. GAUTHIER DE VILLERS AS AN UNDESIRABLE ALIEN IN THE REPUBLIC OF ZAIRE

The Prime Minister,

Having regard to the Constitutional Act of Transition, as amended to date, in particular Articles 61 and 80, (2) and (3);

Having regard to Order No. 94-061 of 18 October 1994 relating to the organization and functioning of the government and establishing the practical procedures for permanent collaboration and consultation between the President of the Republic and the government, in particular Article 10;

Having regard to the appeal by Mr. Gauthier de Villers, a Belgian national, against his designation since 6 February 1989 as an undesirable alien in the Republic of Zaire;

Whereas the National Immigration Board has made a favourable recommendation;

With the agreement of the Council of Ministers;

Decrees:

Article 1: The designation on 6 February 1989 of Mr. Gauthier de Villers, a Belgian national, as an undesirable alien in the Republic of Zaire is cancelled.

Article 2: The Minister of the Interior and the Minister for National Defence are each responsible, insofar as it affects them, for the implementation of this Decree, which takes effect at the date on which it is signed.

Done in Kinshasa, 16 March 1996

(Signed) KENGO WA DONDO
Prime Minister

(Signed) Maître Gérard KAMANDA WA KAMANDA.
Minister for the Interior

ANNEX POC 69

EXCHANGE OF LETTERS RELATING TO THE CANCELLATION OF THE EXPULSION ORDER AGAINST ROLAND ALFRED YAGHI, HIS WIFE AND CHILD

Republic of Zaire
National Intelligence and Protection Service

The Director-General

Expulsion Order

In the year one thousand nine hundred and ninety-five, on the sixth day of March;

We, Goga Lingo Wa Dondo, Acting Director-General of the SNIP;

Being the Officer responsible for immigration, have informed the person described below directly in Kinshasa, in accordance with Articles 15, 16, 17 and 20 of Ordinance No. 83-033 of 12 September 1983 relating to the Control of Aliens, as amended and supplemented to date, and pursuant to Decree No. 0006 of 27 February 1995 on the expulsion of foreigners, that he can no longer reside in the national territory of the Republic of Zaire:

Roland Alfred Yaghi, son of Alfred and Mariam, born in Lebanon on 22 November 1962 resident at 7477 Oua, Ngaliema area, nationality Lebanese, civil status: married to Julie Abou Arraj.

The person concerned is thereby requested to leave Zairean territory within 24 hours by the route prescribed.

This expulsion order has been brought to the notice of the subject, and we have both signed it.

SUBJECT	OFFICER RESPONSIBLE FOR IMMIGRATION
(Signed) Roland YAGHI. Without prejudice	*(Signed)* Goga LINGO WA DONDO. Officer of the National Order of the Leopard

REPUBLIC OF ZAIRE

GOVERNMENT

MINISTRY OF THE INTERIOR

Deputy Prime Minister

Kinshasa, 25 April 1996

No. 25/CAB/VPM/MININTER/0396/96

To: Mr. Roland Alfred Yaghi

Re: Your appeal to the National Immigration Board

Dear Sir,

I write to inform you that the National Immigration Board has considered the appeal that you have lodged following the expulsion order served on you.

In order to enable the Board to make a final ruling in your case, it authorises you to return to Zaire to give it additional information; you will be informed of the content of the information required on the spot.

Also, the Immigration Service has been instructed to grant you an entry visa on your presenting yourself within a month of the date of this letter at the N'Djili and Beach Ngobila frontiers only.

Yours faithfully,

(Signed) Gérard KAMANDA WA KAMANDA.
Chairman of the Immigration Board

REPUBLIC OF ZAIRE

GOVERNMENT

MINISTRY OF THE INTERIOR

Deputy Prime Minister

Kinshasa, 25 August 1996

No. 25/CAB/VPM/MININTER/1079/96

To the Director-General of the SNIP

Re: Cancellation of expulsion order

Dear Sir,

In accordance with the letter from the Chairman of the National Immigration Board No. 25/CAB/VPM/MININTER/0396/96 of 25 April 1996, I write to inform you that the expulsion order affecting Mr. Roland Alfred Yaghi has been cancelled.

This decision also extends to Mrs. Julie Joseph Abou Arraj, his wife, and to Miss Candy Roland Yaghi, his daughter.

I therefore ask you to amend the files relating to their residence in Zaire accordingly.

Yours faithfully,

(Signed) Gérard KAMANDA WA KAMANDA.
Chairman of the Immigration Board

DECREE NO. 0006 DATED 27/02/95 RELATING TO THE EXPULSION OF ALIENS

THE PRIME MINISTER

Having regard to the Constitutional Act of Transition, in particular Articles 61 and 80 (2);

Having regard to Ordinance No. 83-033 of 12 September 1983, as amended and supplemented to date, relating to the Control of Aliens, in particular Articles 1, 15, 16, 17 and 20;

Having regard to Order No. 94-061 of 18 October 1994 relating to the organisation and functioning of the government and establishing the practical procedures for permanent collaboration and consultation between the President of the Republic and the government, in particular Articles 10 and 73 (1);

Having regard to Order No. 94-039 of 16 June 1994 relating to the investiture of the Prime Minister;

Having regard to the personal files of the persons identified in Article 1 below, whose presence and conduct have jeopardised Zairean law and order, especially in the economic, financial and monetary areas, and continue to do so;

Having regard to the favourable recommendation by the National Immigration Board;

Having regard to the decision by the Council of Ministers at its meeting on 22 February 1995;

DECREES:

Article 1: The aliens named below shall be expelled from the territory of the Republic of Zaire:

NAME	VISA TYPE	VISA NO.	VISA DATE
01. AHMAD Ali Ahmad	OV	011948	25.02.92
02. AHMAD Imad Moussa	OV	012307	27.03.92
03. AHMAD Moussa Ahmad	OV	012306	27.03.92
04. AHMAD Imad Suluman	SV	001509	02.09.94
05. AVZRADEL Joe			
06. AMIR Ajani		Resident in Goma	
07. AMISSE Nemer Zaïdan			
08. BASTOGNE Frederic		Resident in Kinshasa	
09. BEYS Cornelis			
10. BROENS Eric		Resident in Kinshasa	
11. ELIANI Armand			
12. ELIANI Elie			
13. FERNANDEZ David		Resident in Kinshasa	
14. FONSECA Dany		Resident in Kinshasa	
15. GOLAN Ramy			

16. HAJI Safir		Resident in Kinshasa	
17. HADJI Alhadji Abbasse		Resident in Kinshasa	
18. HAMAD Hassan Said			
19. HASSON Isaac			
20. HEMRAJ Fiduhusein		Resident in Kinshasa	
21. ISRAEL Albert		Resident in Kinshasa	
22. ISRAEL Nissim		Resident in Kinshasa	
23. JAAFAR Jawad	OV	016314	13.05.93
24. JAFFER Amin		Resident in Lubumbashi	
25. JAFFER Anil		Resident in Beni	
26. KABOBO Dada		Resident in Kinshasa	
27. KAHAN Benny		Resident in Kinshasa	
28. KHALIFE Abbas Fadl	OV	017496	23.09.93
29.KAHLIFE Ali			
30. KARAKO Jacob		Resident in Kinshasa	
31. KHANAFER Ali Moustapha	OV	017015	17.07.93
32. KHANAFER Ghaleb			
33. KHANAFER Kamel		Resident in Kinshasa	
34. KHANAFER Mohamed Abed Khazal			
35. LALWANI Moti		Resident in Kinshasa	
36. MAKKY Abbas	OV	012631	15.04.92
37.MANGARAM Harry		Resident in Kinshasa	
38. MERALI Babu			
39. MOHAMED Ibrahim			
40. MOURAD Akram Reda	OV	017018	17.07.93
41. MOURAD Ali Mohamed Elzen			
42. MOURAD Ali Moussa	OV	014689	10.11.92
43. MOURAD Hassan Mohamed Hussein			
44. MOURAD Mohamed Ali Mohamed			
45. MOURAD Moustapha Moussa	OV	015355	13.01.92
46. MOURAD Suleiman Mohamed			
47. MOUSSA Abbas			
48. MOUSSA Adel			
49. MOUSSA Adel Samir	OV	012721	15.04.92
50. MOUSSA Taissir Ahmed			
51. MOUSSA Yasser			

52. NASHAR Hussein			
53. NASSOUR Assadallah Hussein	OV	018666	09.03.94
54. NASSOUR Azed			
55. NASSOUR Jawdat			
56. NASSOUR Khalil			
57. NEHME Jean Said	PV	000761	23.08.94
58. SAYANI Shokat		Resident in Kinshasa	
59. SHAMJI Abdul		Resident in Kinshasa	
60. SHARNA Bhaskar		Resident in Kinshasa	
61. SHPITSER Jacky		Resident in Kinshasa	
62. SHUKLA Deepak			
63. SHUKLA Kamlesh		Resident in Kinshasa	
64. SULEIMAN Ali	OV	014077	01.09.92
65. TZANETIDIS Kostandinos		Resident in Kinshasa	
66. VERSI Zaïre		Resident in Kinshasa	
67. VINOD Arora		Resident in Kinshasa	
68. VISANI Mukesh Kumar		Resident in Kinshasa	
69. WAZNI Abdallah	OV	011853	20.02.92
70. WAZNI Abdallah Hassan	OV	017127	05.08.93
71. WAZNI Abdallah Talal	OV	001133	20.02.92
72. WAZNI Fahdi			
73. WAZNI Hassan			
74. WAZNI Razanne Fayçal	OV	017062	29.07.93
75. WAZNI Marlene			
76. WEBER Simon		Resident in Kinshasa	
77. WEHBI Ali Youssef	SV	000821	10.07.90
78. YAGHI Julie Roland	PV	000745	13.08.94
79. YAGHI Roland Alfred	PV	000744	13.08.94
80. YAGHI Romeo Alfred	PV	000746	13.08.94
81. YATIM Ghazi			
82. ZAIDAN Neimer Salah			
83. ZAIDAN Nemr	SV	001133	17.04.93
84. ZAIDAN Salah			

PV = permanent visa
SV = special visa
OV = ordinary visa

ANNEX POC 70

LETTER DATED 13 SEPTEMBER 1995 FROM VICE-MINISTER KIKADI GAPONGOLO TO THE FIRST PRESIDENT OF THE COURT OF APPEAL OF KINSHASA/GOMBE

Sir,

Execution of the Judgment of the Court of Appeal has been deferred pending delivery of the opinion and report of the Office of the Inspector General in this case.

For the Minister

(*Signed*) Maître Kikadi GAPONGOLO.
Vice-Minister

ANNEX POC 71

28 SEPTEMBER 1995

LETTER NO. 850/CAB/MIN/RI.J & 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 POC 72

SUMMARY RECORD RH 26.853 OF 11 OCTOBER 1995
CONCERNING THE *ZAIRE SHELL* V. *AFRICONTAINERS* CASE

Acting on a recommendation from the Executive Board, represented by two Ministries, namely the Ministry of Justice and the Ministry of Energy, the Inspector General of Services, Office of the Inspector General of Courts, received the parties Zaire Shell and Africontainers, represented, respectively, by Mr. Katende Mukinayi and Mr. Diallo Amadou, who were assisted by Counsel, namely Maître Lukusa Mutobola and Maître Nicolas A. Mabeka ne Niku for Zaire Shell and Maître Bizimana Kyoya for Africontainers.

The meeting began at 11 a.m. in the offices of Mr. Nsampolu, Inspector General.

Before each of the parties made statements on the question of the method of payment of the sum of US$13,156,704 (thirteen million one hundred and fifty-six thousand seven hundred and four United States dollars) by Zaire Shell, the Inspector General gave the floor to Mr. Katende.

Before addressing that question, the latter raised a preliminary question, as follows:

Zaire Shell demanded:

1. That the seizure of its accounts be lifted to enable it to pay its suppliers, chiefly Chevron, for products supplied and to secure delivery from the Zaire S.E.P. company of products to its stations and to consumers (industrial enterprises, bakeries, etc. throughout the city of Kinshasa), and that the vehicles seized be restored since they were of vital importance for the running of the company.

   It should be stressed that a request to that effect had already been made the previous day by the Minister of Energy at the meeting held at the Private Office of the Minister of Justice.

2. That the stay of execution of the judgment be maintained.

Following the raising of the preliminary question, and before giving the floor to each of the parties to make statements on the method of execution of the judgment, the Inspector General said that the preliminary issue raised no problem inasmuch as he had received directives to the effect that the parties themselves should settle the dispute rapidly with his assistance.

This having been said, the parties were given the floor.

View of Zaire Shell

The claim has not been established, its amount has not been assessed and it is not payable, i.e. there is no unpaid invoice from Africontainers in our books.

Notwithstanding the fact that Zaire Shell disputes the existence of the Africontainers company's claim, and taking account of the correspondence with the latter since 1992, Zaire Shell's accounting department sent a letter of confirmation of the balance of the account, as is the practice each year, to the Africontainers company in February 1994, a copy of which is annexed hereto.

The letter sent to Africontainers was dated 28 February 1994. The following formula stood at the foot of the letter:

"Confirmation of the balance of supplier No. . . .

We hereby confirm that the balance as at 31 December 1993 due to/by stands at Z . . . according to our books." (See Annex.)

Oddly enough, Mr. Diallo Amadou filled out the coupon at the foot of the letter as follows "We hereby confirm that the balance as at 31 December 1993 due to/by* stands at Z 13,106,704.39 $ according to our books." (See Annex.)

It will be noted that there are two signs before and after the figures, the signs Z and $.

In other words, the letter of 28 February 1994 that Zaire Shell has just described was composed of two parts.

We draw attention to the fact that Mr. Diallo had annexed to the letter of 28 February 1994 a breakdown established by Africontainers which shows three invoices for the service offered to Zaire Shell totalling US$540.39.

The rest of the breakdown is thus composed of five debit notes totalling US$13,106,164.00.

It may be noted in passing that the above-mentioned debit notes relate to interest due for non-payment of the three above-mentioned invoices.

To sum up, Mr. Diallo sent the letter of confirmation of supplier's balance dated 28 February 1994 to Coopers & Lybrand with an annex giving its breakdown of the sum of US$13,106,704.39.

View of Africontainers

There is a contract signed on 24 July 1981 with supplementary agreements.

There is the judgment plus the decision on the defence case to be executed, confirming execution of the said judgment.

According to Africontainers, it is absolutely essential to proceed with execution of the judgment.

Discussion

Following the statements, the Inspector General noted the existence of a serious disagreement between the parties and accepted Zaire Shell's proposal to call in its auditor, Coopers & Lybrand, to whom the reply confirming the balance on the supplier's account was addressed.

The representative of Coopers & Lybrand then joined the meeting to shed light on the discussion by stating that the claim had not been established, its amount had not been assessed and it was still less payable.

Following the statement by Coopers & Lybrand, Zaire Shell, to show its good faith and its concern not to obstruct the decisions of the courts, made the following proposals:

1. To appoint an expert to reconcile the accounts of the two companies;

2. To deposit a reserve with the Office of the Inspector General equivalent to the three invoices representing a sum of US$540.39;

3. To vacate the seisin of the Court in respect of the merits.

The response of Africontainers is as follows:

Zaire Shell must execute the judgment by paying 50 per cent of the sum of US$13,156,704, that is to say US$6,578,352.

*

* *

The meeting rose at 5 p.m.

Summary

It should be stressed that the Inspector General noted that the delivery of the execution copy and certified copy to Africontainers had been authorized notwithstanding the instructions of the Ministry of Justice (circular letter from Minister of Justice Maman Nkulu Muyabo) and invoked a precedent (*Kingu* v. *Bralima* case). In that precedent, the order authorizing the acquisition by Mr. Kingu of the execution copy and certified copy was declared void for breaching the terms of the circular letter.

*

* *

Zaire Shell requests the Ministry of Justice to invoke the circular letter and the above-cited precedent to annul the order authorizing delivery of the execution copy and certified copy to the Africontainers company.

Done at Kinshasa on 11 October 1995

(*Signed*) [illegible]

ANNEX POC 73

LEGISLATIVE ORDER NO. 83-033 OF 12 SEPTEMBER 1983 CONCERNING IMMIGRATION CONTROL (FROM THE *OFFICIAL GAZETTE* OF THE REPUBLIC OF ZAIRE, NO. 18, 15 SEPTEMBER 1983)

Legislative Order No. 83-033 of 12 September 1983 concerning immigration control

The President and Founder of the *Mouvement Populaire de la Révolution*, President of the Republic;

Having regard to the Constitution, in particular Articles 31 and 43;

Having regard to the Decision of State by the Central Committee No. 16/CC/81 of 30 September concerning immigration control;

Having regard to the urgency of the situation;

On the initiative of the State Commissioner for the Administration of the Territory;

Having heard the Executive Council;

ORDERS:

CHAPTER I
GENERAL PROVISIONS

Article 1. Any individual not of Zairean nationality, whether of foreign nationality or without nationality, shall be deemed to be an alien within the meaning of this Legislative Order.

Article 2. As regards entering and residing in Zaire, aliens shall be subject to the provisions of this Legislative Order, unless any international agreements or laws provide otherwise.

Article 3. In order to enter Zaire, aliens must be in possession of the documents and visas prescribed by the President of the *Mouvement Populaire de la Révolution*, President of the Republic.

Carriers shall be liable towards the Republic of Zaire for the repatriation and if necessary the maintenance in Zaire of aliens whom they have brought into the country, if those aliens are unable to prove at the outset that they are in possession of the documents and visas required.

Article 4. Any alien leaving Zaire must be in possession of the documents prescribed by the President of the *Mouvement Populaire de la Révolution*, President of the Republic.

Article 5. In order to acquire refugee status, aliens must be in possession of a certificate of recognition issued, after recommendation by the National Immigration Board for which provision is made in Article 18, by the State Commissioner for the Administration of the Territory, to whom application must be made, or of documents issued pursuant to international agreements to which Zaire is a party.

The application must be made within 21 days of entering the territory.

When an alien who does not have refugee status but who declares himself to be a refugee has entered the territory in contravention of the provisions of the first paragraph of Article 3, a ruling on his request for the issuance of a residence permit shall be held in abeyance pending a ruling on his application for recognition of refugee status. He shall be placed under house arrest at the address designated by the territorial government until notification of the decision.

CHAPTER II
RESIDENCE OF ALIENS IN ZAIRE AND THE RESIDENCE PERMIT

Article 6. An alien may reside in Zaire on the strength of his visa alone whilst it remains valid, and in any event up to the end of the maximum period of validity of six months. When the validity of the visa lasts for less than six months it may be extended one or more times up to a maximum period of six months.

An alien who resides in Zaire for a period in excess of six months must be in possession of a *residence permit* issued in accordance with the conditions of this Legislative Order.

An alien born in Zaire must be in possession of a residence permit at the end of a 30-day period.

Article 7. The residence permit shall have a maximum validity of two years with effect from the date of issue. It may be extended or renewed.

The President of the MPR, President of the Republic, shall determine the formalities and conditions for the delivery of the residence permit; he may waive the provisions of Article 10, paragraph 2.

Article 8. In order to obtain a residence permit the applicant must prove that he entered and resides in Zaire lawfully, and must provide evidence that he has sufficient means of subsistence.

For the delivery or extension of a visa the applicant is required to provide evidence that he has sufficient means of subsistence.

Article 9. A residence permit shall be withdrawn automatically in the event of deportation, removal or final departure.

Article 10. The issuance or extension of an entry visa shall be subject to the payment of a tax, the amount of which shall be set by the State Commissioner for Foreign Affairs and International Co-operation.

The issuance, extension or renewal of a residence permit shall be subject to the payment of a tax, the amount of which shall be set by the State Commissioner for the Administration of the Territory.

Article 11. Aliens may reside and travel freely in the National Territory, provided that they observe the laws and regulations of the Republic of Zaire. However, they are obliged to produce the papers and documents by virtue of which they are authorized to reside in Zaire whenever asked to do so by government officials.

Article 12. When an alien is under special surveillance because of his conduct or past history, the State Commissioner for the Administration of the Territory may prohibit him from residing in one or more Regions.

In cases provided for by the President of the Republic, the Regional Chairman of the MPR and Regional Governor may reduce the territorial validity of an alien's residence permit or document in lieu thereof, to one or more districts of his choosing within the region in question.

The said decision shall be entered on the residence permit of the person concerned.

Aliens referred to in the previous paragraph may not travel outside the area of validity of their residence permits without a safe-conduct issued by the authority that imposed the prohibition.

CHAPTER III
REFUSAL OF ENTRY, REMOVAL AND DEPORTATION

Section I: Refusal of entry

Article 13. Subject to the application of the Article 5, paragraphs 3 and 4, an alien who arrives at a frontier post in order to enter Zaire without being in possession of the documents prescribed in Article 3 shall be refused entry by the immigration officer. Such refusal of entry shall not be subject to appeal, and the alien shall immediately be taken back to the other side of the frontier for repatriation, any costs being met by the carrier.

This measure shall be recorded in an undesirable alien report drawn up by an immigration officer, of which the person concerned shall be notified.

Within 24 hours from the date of notification the alien may lodge an appeal with the Regional Administrator of the CNRI *[Centre National de Recherches et Investigation]*.

The time-limit for appeal shall not take account of fractions. Until the Administrator makes his decision, the alien shall be placed under house arrest at the address designated by the territorial government. The Administrator's decision will be sent as soon as possible to an immigration officer, who will inform the person concerned. A person finally designated as an undesirable alien shall be taken to the frontier post of his choosing.

Section III. Deportation

Article 15. The President of the *Mouvement Populaire de la Révolution*, President of the Republic may, by a duly reasoned Order, deport from Zaire any alien who, by his presence or conduct, breaches or threatens to breach the peace or public order.

An alien against whom deportation proceedings have been initiated and who is likely to evade implementation of this measure may be imprisoned by the General Administrator of the CNRI or his representative for a period of 48 hours. In cases of absolute necessity this period may be extended by 48 hours at a time, but shall not exceed eight days.

Article 16. A deportation order shall only be issued against an alien holding a residence permit or against a refugee after a recommendation by the National Immigration Board. The deportation order shall mention the fact that the Board was consulted.

Article 17. Notice of deportation orders shall be given by any official or staff member of the CNRI administration or of the customs service or by any police officer.

If the alien is detained, he shall be notified by a prison officer. If an alien leaves the Territory before receiving notice of the deportation order, such notification can be given by the appropriate diplomatic or consular authority.

A copy of the deportation order shall be sent to the National Immigration Board and to the Department for Foreign Affairs and International Co-operation.

CHAPTER IV
THE NATIONAL IMMIGRATION BOARD

Article 18. A National Immigration Board shall be formed, with responsibility for:

1. ensuring that the policy decided upon by the Executive Council on Immigration is applied;

2. making recommendations in the cases provided for in Articles 5 and 16;

3. supervising the updating of the list of undesirables prepared by the security services and kept in the chanceries of the Embassies of Zaire.

The Board shall be chaired by the State Commissioner for the Administration of the Territory or his representative.

Article 19. The Board shall consist of seven members, representing the following Departments and Services:

1. Administration of the Territory;

2. Foreign Affairs and International Co-operation

3. Justice;

4. Economy, Industry and Commerce;

5. Employment and Social Insurance;

6. CNRI;

7. SNI [National Immigration Service]

CHAPTER V
THE LIST OF UNDESIRABLES

Article 20. A list of undesirables shall be kept by the security services, under the supervision of the National Immigration Board. Aliens who are the subject of special legal provisions or are deported from Zaire pursuant to the provisions of Articles 15 to 17 of this Ordinance shall automatically be placed on this list.

CHAPTER VI
PENALTIES

Article 21. Any alien who evades the implementation of a deportation order or who, once deported from Zaire, enters the country again without special authorization by the President of the *Mouvement Populaire de la Révolution*, President of the Republic, shall be punished by penal servitude for one to six months and a fine of 5,000 to 10,000 zaires or by one of these punishments only. At the end of his sentence he will be removed from the territory.

An alien subject to a deportation order and who can prove that it is impossible for him to leave Zairean territory may, until he is in a position to do so, be compelled by Decree of the State

Commissioner for the Administration of the Territory to reside in a specific place; he must report periodically to the police.

An alien who has not taken up the residence assigned to him within the time prescribed or who has subsequently . . . [text incomplete]

ADDENDUM

It has been noted that text has been omitted from Legislative Order No. 83-033 of 12 September 1983 concerning immigration control, published in Official Gazette No. 18, 15 September 1983, page 15.

This omission relates to "Section II: Removal" on page 17, which should read as follows:

Section II: Removal

Article 14. Subject to the provisions of Article 5, paragraphs 3 and 4, any alien who has entered Zaire without being in possession of the documents referred to in Article 3, or who has remained in the territory without a valid excuse when his authorization to reside has expired, shall be liable to removal.

The said measure shall be recorded in an undesirable alien report drawn up by an immigration officer, of which the person concerned shall be notified.

Within 24 hours of the date of notification the alien may lodge an appeal with the Regional Administrator of the CNRI.

The time-limit for appeal shall not take account of fractions. Until the Administrator makes his decision, the alien shall be placed under house arrest at the address designated by the territorial government. The Administrator's decision will be sent as soon as possible to an immigration officer, who will inform the person concerned.

A person finally designated as an undesirable alien will be taken to the frontier post of his choosing.

ANNEX POC 74

JOINT LETTER FROM MOBIL AND FINA TO THE AUTHORITIES IN ZAIRE DATED 15 NOVEMBER 1995

To: His Excellency the Prime Minister
Kinshasa/Gombe

Copies to:
His Excellency the Minister of Justice
His Excellency the Minister for the National Economy and Industry
His Excellency the Minister for Energy
The President of the Investment Board

Attempted fraud and destabilization of oil companies by Diallo Amadou Sadio

Your Excellency,

We respectfully draw your attention to the fact that in June 1995 Mr. Diallo Amadou Sadio, a Guinean subject, sued Zaire Shell and was awarded US$13,000,000.

Encouraged by his success in these proceedings, Mr. Diallo is now threatening Zaire Mobil Oil and Zaire Fina with claims for payment of US$1,680,626,994.67 and of US$2,604,479,706.56 respectively.

Both these claims are fictitious and out of all proportion.

Zaire Mobil Oil and Zaire Fina fear that Diallo's greed may imperil their very existence, by endangering their commercial activities and the job security of their employees.

That is why we seek government intervention to warn the courts and tribunals of Mr. Diallo Amadou Sadio's activities in his campaign to destabilise trading companies.

We beg to remain, Your Excellency, your obedient servants.

(Signed) H. LEFERINK.
Managing Director
Zaire Fina

(Signed) G. LASMOLES.
Managing Director
Zaire Mobil Oil

ANNEX POC 75

DECREE NO. 0043 DATED 31 OCTOBER 1995 EXPELLING MR. DIALLO FROM THE TERRITORY OF THE REPUBLIC OF ZAIRE

Decree No. 0043 dated 31 October 1995 relating to the deportation of an alien

The Prime Minister,

Having regard to the Constitutional Act of Transition, in particular Articles 61 and 80 (2) and (3);

Having regard to Legislative Order No. 83-033 of 12 September 1983, as amended and supplemented to date, relating to Immigration Control, in particular Articles 1, 15, 16, 17 and 20;

Having regard to Order No. 94-061 of 18 October 1994 relating to the organization and functioning of the government and establishing the practical procedures for permanent collaboration and consultation between the President of the Republic and the Government, in particular Articles 10 and 73 (1);

Having regard to Order No. 94-039 of 16 June 1994 relating to the appointment of the Prime Minister;

Having regard to the personal file of the person identified in Article 1 below, whose presence and conduct have breached Zairean law and order, especially in the economic, financial and monetary areas, and continue to do so;

DECREES:

Article 1: The alien named below shall be deported from the territory of the Republic of Zaire:

Diallo Amadou Sadio, alias Diallo Cravate

Article 2: The name of the person cited in the preceding Article shall automatically be added to the list of undesirables in the Republic of Zaire

Article 3: The Ministers with portfolios for the Interior, National Defence, Justice and Foreign Affairs are each responsible, according to their respective attributions, for the implementation of this decree, which takes effect on the date of its execution.

Done in Kinshasa, 31 October 1995

(Signed) KENGO WA DONDO.
Prime Minister

(Signed) NSINGA UDJUU.
Minister for Institutional Reforms
and Justice

(Signed) Gustave MALUMBA MBANGULA.
Deputy Prime Minister,
Minister of the Interior

ANNEX POC 76

DECREES PROVIDING FOR THE DEPORTATION OF ALIENS

Decree No. 0004 dated 22 February 1995 relating to the deportation of aliens

The Prime Minister,

Having regard to the Constitutional Act of Transition, in particular Articles 61 and 80 (2);

Having regard to Ordinance No. 83-033 of 12 September 1983, as amended and supplemented to date, relating to Immigration Control, in particular Articles 1, 15, 16, 17 and 20;

Having regard to Order No. 94-061 of 18 October 1994 relating to the organization and functioning of the government and establishing the practical procedures for permanent collaboration and consultation between the President of the Republic and the government, in particular Articles 10 and 73 (1);

Having regard to Order No. 94-039 of 16 June 1994 relating to the appointment of the Prime Minister;

Having regard to the personal files of the persons identified in Article 1 below, whose presence and conduct have breached Zairean law and order, especially in the economic, financial and monetary areas, and continue to do so;

Having regard to the favourable recommendation by the National Immigration Board;

Having regard to the decision by the Council of Ministers at its meeting on 22 February 1995;

Decrees:

Article 1: The aliens named below shall be deported from the territory of the Republic of Zaire: [list of names not reproduced] the persons referred to must leave the national territory within 24 hours;

Article 2: The persons listed in the preceding article shall be automatically entered in the list of undesirables in the Republic of Zaire. The same shall apply to Mr. de Freitas Viegas, of Brazilian nationality, and to Mr. Luppi, of Argentinian nationality;

Article 3: The ministers with portfolios for the interior, national defence, justice and foreign affairs shall be responsible, according to their respective attributions, for the implementation of the present decree, which shall take effect on the date of its execution.

Done at Kinshasa, 22 February 1995

(Signed) KENGO WA DONDO.
Prime Minister

(Signed) Admiral MAVUA MUDIMA.
Deputy Prime Minister,
Minister for National Defence

*(Signed)*Gustave MALUMBA MBANGULA.
Deputy Prime Minister,
Minister of the Interior