

AVIENT Ltd

Rights and Accountability in Development (RAID) and its Congolese partners, ACIDH, NDS and CENADEP hereby submit a formal request to the UK National Contact Point for the OECD Guidelines for Multinational Enterprises to open a specific instance in relation to alleged breaches of the OECD Guidelines by Avient.

The submission is divided into the following sections: a) **Compliance with the Guidelines** which sets out the relevant provisions of the Guidelines; b) **Limitations of the UK NCP's Parallel Process**, provides the reasons for making the submission under the specific instance procedure; c) **Avient Ltd provided military services to both the Congolese and Zimbabwean Armed Forces**, presents the facts of the case; and d) **Compatibility with the Guidelines**, which argues that Avient's conduct during the period breached the OECD Guidelines.

Avient Aviation (Pvt) Ltd is based in Harare, Zimbabwe.¹ It has a sister company, **Avient Ltd.**, which is registered in the UK.² The Panel refers to '**Avient Air**' in its October 2002 report and lists it in Annex III. In Mr. Smith's reply to the Panel, he responds on behalf of 'Avient' and the letterhead refers simply to 'Avient'. Avient is run by a former British Army captain, Andrew Smith, operating out of Brighmerston, Wiltshire.³ In discussions with the UK NCP, Andrew Smith denied ever being incorporated as Avient Air.

Compliance with the Guidelines

It is alleged that Avient Ltd's operations in the DRC were not in conformity with the following provisions of the OECD Guidelines:

- i. *Respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments (II, 2)*
- ii. *Contribute to the economic, social and environmental progress with a view to achieving sustainable development. [II, 1]*
- iii. *Encourage where practicable, business partners, including suppliers and sub-contractors, to apply principles of corporate conduct compatible with the Guidelines (II, 10)*
- iv. *Abstain from any improper involvement in local political activities (II, 11)*

The area of most concern under the *Guidelines* relates to the Panel's allegations that Avient Ltd contracted to organise bombing raids and brokered the sale of military hardware: at issue is whether these activities, as alleged by the Panel, can be reconciled with the provision to respect human rights. Avient was listed by the Panel in its October 2003 report under Category III as unresolved and requiring further investigation by the UK NCP. Avient Ltd expressed its intention to adhere to the *Guidelines*.⁴ On 8 September 2004, the UK NCP issued a Statement finding the UN Panel's allegation that Avient Ltd had brokered the sale of six military helicopters to the DRC Government unsubstantiated adding:

The DRC and surrounding area is a difficult business environment. During the period under consideration there was a lack of regulation coupled with lawlessness and poor governance. With this in mind, although difficult it is important for companies to act in a way, which would support the development of the region.

The NCP accepts Avient Ltd's contention that they were working within a contractual arrangement with the officially recognized governments in the area.

In future Avient Ltd. should carefully consider the recommendations of the Guidelines particularly, but not exclusively, Chapter 2 before entering into contracts with Governments and businesses in the area.⁵

¹ Avient Aviation (Pvt) Ltd, Harare, is listed under Zimbabwean cargo agents/freight forwarders in an online directory: see <<http://www.azfreight.com/azworld/az28505.htm>> (visited 17 February 2004).

² *UN Panel Report*, 16 October 2002, op. cit., paragraph 55.

³ Antony Barnett and Paul Harris, 'How a perfect English gent in a rural idyll profits from a bloody African war,' *The Observer*, 24 November 2002.

⁴ Reaction No. 35, written response from Avient to the Panel, reproduced in UN Panel, Addendum, 20 June 2003, op. cit..

⁵ <http://www.dti.gov.uk/ewt/statements.htm>

Limitations with the UK NCP's 'Parallel Process'

RAID and its Congolese partners are filing the submission against Avient Ltd because we do not believe that the process adopted by the UK NCP has conformed with the specific instance procedure set out in the Procedural Guidance for NCPs and as a result the concerns about Avient Ltd's activities during the second Congolese war (1998-2001) have not been adequately addressed. Issues such as the compatibility of some of the activities of private military companies with the OECD Guidelines for Multinational Enterprises need to be clarified.

DTI has explained that at the inter-ministerial meeting of April 2004, it was decided to adopt 'a twin-track approach' to the DRC related cases. It was felt that the terms on which the UN Department of Legal Affairs provided 'additional restricted but non-confidential material' on category III companies precluded following the normal specific instance procedures of the OECD Guidelines' implementation procedures. It was agreed therefore that the NCP should examine the material and reach a resolution of the case solely through dialogue with the companies or their representatives. It was felt that by admitting RAID or others into the dialogue – despite the fact that it would be part of a confidential procedure – would breach the conditions under which the UN agreed to release the documents.

RAID accepts that the Government is not obliged to disclose information provided in confidence by the United Nations. However, that does not exclude the RAID complaint from progressing in parallel. But the procedures adopted by the UK NCP undermine confidence in the fairness of the process. Issuing unilateral statements in the absence of a complainant, are inevitably perceived as being biased in the companies' favour and in our view undermine the integrity of the Guidelines' implementation procedure. But the reason for deviating from the usual procedure was not necessary, given that RAID was accepted as a complainant in July 2004.

It should have been possible to reach an agreement whereby the UK NCP considered the UN Panel material and RAID's complaint in tandem and for the NCP to issue a single statement at the conclusion of this process. From the text of the Guidelines it is clear that the specific instance procedure presupposes a complainant. On receipt of a complaint, it is expected that an NCP will consult with business, employee representatives, NGOs, experts and NCPs from other countries. The NCP can offer conciliation and mediation to deal with the issue provided all parties are in agreement. Where there is a failure to reach an agreement the NCP releases a statement and makes recommendations on the implementation of the Guidelines in relation to the facts of the case in question. The specific instance process with its emphasis on an exchange of views between the parties is clearly an essential element in the resolution of the cases and to the development of Guidelines. While we welcome the UK NCP's initiative to collect further documentation from the UN archive, this does not overcome the obstacle of the absence of an active complainant able to respond to matters of fact and interpretation. Once the decision was taken to disband the UN Panel, the prospect of it acting as a complainant ended.

We have decided to proceed with this complaint because DTI has given an undertaking that the existence of a prior NCP Statement does not preclude NGOs from requesting the matters to be reconsidered under the specific instance procedures.⁶

Avient provided military supplies to both the Congolese Army (FAC) and the Zimbabwean Defence Force (ZDF)

It is not clear from the Statement whether Avient's contracts were scrutinised by the NCP. In them, there is ample evidence to show that Avient Ltd was engaged in the recruitment and provision of air crews from the CIS; in the training of military aircrews; in the provision of attack helicopter crews; and, the supply of spare parts for military aircraft. The NCP Statement only notes that

The FAC (Congolese Armed Forces) became disillusioned with the methodology employed by the Company and the contractual arrangements were dissolved after 8 months. This is supported by UN documentation. [NCP Statement]

On 21 September 1999, Andrew Smith, signed a contract on behalf of Avient Ltd with Joseph Kabila, President of the Democratic Republic of Congo to provide crew to operate aircraft owned by the Congolese Air Force.⁷ The Crew were '**to operate on behalf of the Military on Operational Missions**' and they were to be advised that

⁶ Summary of Meeting held at DTI on 11 January 2004

⁷ Crewing Agreement between the Government of the Democratic Republic of the Congo and Avient Ltd, 21 September 1999

'they are operating along and behind enemy lines in support of Ground Troops and against the invading forces'. The contract also specified that **'the aircraft will operate on a military callsign'.**

A few months later, a new contract was drawn up between Andrew Smith on behalf of Avient Ltd and the Air Force Commander of the Kinshasa based Government. Under this contract Avient Ltd (the Contractor) was explicitly charged with:

- a) The extraction of ALL DHC5D Buffalo spares from Kinshasa to Bulawayo for cleaning, sorting and listing for sale on behalf of the Congolise airforce, with an initial CREDIT of US\$ 375,000.00 applied to the existing Account and monies realized thereafter being applied to same Account with a 25% fee realized for the Contractor plus all costs incurred to CERTIFY same spares for realization of maximum value.
- b) Assistance both with Training, Planning and Logistics support to put C130 (Hercules) aircraft S/N 4416 into flying condition as well as Logistics and Planning for continued operation. Assistance to retrieve the three (3) C130 aircraft in France and numerous Power Plants and Propellers in Singapore as well as complete Inventory evaluation of present Spares with a view to liquidate those not required and acquisition of those required for day to day operations'.⁸

The contract also specified that Avient Ltd would provide 'MIG23 Crew and Maintenance Training as well as Logistics Support and Planning to insure continuous operations of the existing Fleet requirements'.

Avient Ltd denies 'supplying equipment to the ZDF and FAC, but concede supplying services (carriage, re-supply and movement of personnel and equipment) to the ZDF'. According to Avient this was not 'a tactical or military role but a supply function'. Avient Ltd described their major support function as 'aidropping of food and supplies to DRC Government forces who were cut off in places by rebel forces.' [NCP Statement]

Avient Ltd has admitted in discussions with the NCP to carrying out the following activities:

- i. Carrying cargo and supplies 'under a commercial arrangement with the Government of the DRC using their Antonov aircraft'.
- ii. Providing crew for a MIG 23 jet fighter to train DRC crews to fly and maintain the aircraft.
- iii. Providing crew for an MI 24 helicopter, which were involved in the relief of isolated places. [NCP Statement]

In view of the forgoing, the complainants disagree with the NCP's conclusion that 'Avient Ltd is not a military company' for the reasons set out in the following section. Furthermore, reputable sources like MONUC and the International Crisis Group, that closely monitored the war, reported that Antonov planes and helicopters were used by the Congoles Armed Forces (FAC) and their allies in bombarding areas.

Compatibility with the OECD Guidelines

In order to assess the compatibility of Avient Ltd's activities with the OECD Guidelines, a number of issues need to be addressed. The first is whether Avient Ltd acted as a private military company; the second, whether by entering into contracts to provide military services, including the training of MIG 23 Jet fighter pilots and the supply of a crew for MI 24 attack helicopters, during a conflict *per se* constitutes a breach of the human rights provision of the Guidelines; and thirdly, does the fact that these contracts were entered into with the 'legally recognised governments of the region' absolve the company from any responsibility.

A serious omission in the NCP Statement is the absence of any guidance either about the current UK Government's position on private military companies, or about the emerging international consensus on what constitutes a private military company. In a response to a parliamentary question put by Norman Lamb MP, Douglas Alexander confirmed that 'the statement made by the National Contact Point for OECD guidelines is consistent with the policy of HMG towards Private Military and Security Companies'.⁹

⁸ C130 is capable of operating from rough, dirt strips and is the prime transport for air dropping troops and equipment into hostile areas. The C130 can accommodate a wide variety of oversized cargo including helicopters and six wheel armoured vehicles and military personnel.

⁹ DTI PG No: 2004/128 response to Norman Lamb MP 19 January 2005

Were the military services provided compatible with the OECD Guidelines?

The UK Government is currently considering proposals for introducing legislation to regulate the activities of private military companies. In 2002 it presented a Green Paper, which sets out the Government's view about the provision of such services in the context of a war:

The distinction between combat and non-combat operations is often artificial. The people who fly soldiers and equipment to the battlefield are as much a part of the military operation as those who do the shooting. At one remove the same applies to those who help with maintenance, training, intelligence, planning and organisation – each of these can make a vital contribution to war fighting capability.¹⁰

The Green Paper sets out the difficulties of distinguishing between mercenaries, private military companies and private security companies adding that for the purposes of regulation, "It may be desirable to distinguish between reputable and disreputable private sector operators". The paper then describes the activities of private military companies (PMCs), 'At one extreme they may provide forces for combat' but more usually the range of services includes 'advice', 'training' 'logistic support'. [Paragraphs 9 and 10] Avient Ltd's activities in the DRC - on their own admission - clearly fell within this latter category.

Did Avient Ltd recruit mercenaries?

There is evidence that Avient Ltd recruited crew to participate in active combat, which would bring its activities within some definitions of mercenary activity. The 1977 Additional Protocol 1 to Article 47 of the Geneva Convention (1949) defines a mercenary as someone who cumulatively meets the following six criteria:

- a) is specially recruited locally or abroad in order to fight in an armed conflict;
- b) does in fact, take part in the hostilities;
- c) is motivated to take part in hostilities essentially for the desire of private gain;
- d) is neither a national of a party to the conflict nor a resident of a territory controlled by a party to the conflict;
- e) is not a member of the armed forces of a party to the conflict;
- f) has not been sent by a state which is not a Party to the conflict on official duty as a member of its armed forces.

The complainants contend that Avient, by providing crews from the CIS to operate '**along and behind the enemy lines in support of ground troops and against invading forces**' in return for payment and other benefits, was recruiting mercenaries. The contract guaranteed a minimum monthly payment of US \$ 30, 000 to Avient Ltd which was to be paid to a NATWEST Offshore Account in Jersey.¹¹

There is growing disquiet on the African continent about the activities of private military companies. In South Africa the Regulation of Foreign Military Assistance Act (FMA), which entered into force in September 1998, addresses the issues of mercenaries, private military companies and conventional arms control. It provides that no person within South Africa or elsewhere may recruit, use or train persons for, or finance or engage in mercenary activity. Mercenary activity is defined as 'direct participation as a combatant in armed conflict for private gain'. If the South African FMA is taken to reflect a growing international consensus about the types of activities by private military companies that needs to be curbed or regulated then it is clear that Avient Ltd's activities in the DRC were a legitimate matter of international concern.

The relevance of the EU arms embargo to the specific instance?

In April 1993 EU Member States agreed to impose an arms embargo on Zaire (later called the Democratic Republic of the Congo), which was in force throughout the period Avient Ltd was operating there. The complainants are not claiming that Avient Ltd necessarily broke the letter of the EU arms embargo (the UK's

¹⁰ Private Military Companies: Options for Regulation 2001- 02, Foreign and Commonwealth Office 12 February 2002, para 11

¹¹ Crewing Agreement between the Government of the Democratic Republic of the Congo and Avient Ltd 2 September 1999

Export Control Act does not include trafficking and brokering by British nationals or residents when abroad) but Mr Smith, as a British national, would appear to have contravened its spirit.¹²

In his public response, reported in *The Observer*, Smith states: 'I am not denying that we carried military equipment for the end-user governments, which is a perfectly legal operation to do. ...I did check everything with the British High Commissioner at the time. We have never been involved in the sale of goods at all, nor have we carried any military hardware out of the EC, so we have not broken any UN or EU embargoes.'

Subsequent EU arms embargoes prohibit the supply or sale of arms 'and related materials' by nationals of Member States:

The supply or sale of arms and related material of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment and spare parts for the aforementioned into the Democratic Republic of Congo by nationals of Member States or from the territories of Member States shall be prohibited whether originating or not in their territories.¹³

Avient Ltd's Alleged Relations with Leonid Minin

The Statement asserts that the "UN did not supply further details nor evidence of any specific actions undertaken by Avient crews" when the reports of the Panel of Experts does make (i) a specific allegation of bombing raids; and, (ii) an allegation of dealings with the arms smuggler, Leonid Minin. There is no explanation why these very serious allegations were not discussed by the NCP.

The Panel referred to bank records showing several transactions between Avient and the Ukrainian arms dealer Leonid Minin.¹⁴ Smith has publicly denied any relationship with Minin, stating: 'I have never met the guy, spoken to him or communicated with him.'¹⁵

But The Observer reported that it had obtained bank records found in Minin's briefcase which detail payments made by one of Minin's associate companies. These documents reveal that on 22 June 1999 Avient received a \$100,500 payment from Engineering & Technical, a British Virgin Islands firm run by Minin's business associate Valery Cherny.¹⁶

Working with legally recognized governments

The NCP accepted without further comment Avient's contention that 'they were working within a contractual arrangement with the officially recognised governments in the area'. This is unfortunate because as the Government in its Green Paper notes activities by British companies abroad may reflect on Britain's reputation "as there are always likely to be people who will assume that if a British company is involved, then it has some degree of approval from the Government".¹⁷ The NCP's failure to give public consideration to the appropriateness of Avient Ltd's actions in terms of UK Government's policy does indeed suggest that Avient Ltd had official backing. An impression that is reinforced by the numerous social and other contacts Andrew Smith had with the staff, including the Defence Attaché, of the British High Commission in Harare. [See Annex 2]

International Alert made the following observations about the dangers of working with internationally recognised governments as a justification for entering into such contracts:

Serious questions should be asked about the legitimacy of private security companies who become involved in the security matters of foreign states . . . Private security companies claim that they have

¹² The Export Control Act 2002 contains a new general power allowing controls to be imposed on trafficking and brokering in arms and other sensitive equipment. Controls may be imposed under the Act in relation to trafficking and brokering activities carried out by persons in the UK or by any UK Person overseas. These new controls were expected to come into force during the second half of 2003.

¹³ Council Common Position of 21 October 2002 on the supply of certain equipment into the Democratic Republic of Congo, Article 1 Official Journal L 285, 23/10/2002 p. 0001- 0002

¹⁴ *UN Panel Report*, 16 October 2002, op. cit., paragraph 55; also paragraph 29. In a separate development, *The Observer* newspaper (ibid.) refers to bank records it obtained detailing a \$100,500 payment made by one of Minin's associate companies, the British Virgin Islands registered Engineering & Technical, to Avient on 22 June 1999.

¹⁵ 'How a perfect English gent,' op. cit..

¹⁶ Antony Barnett and Paul Harris, 'How a perfect English Gent in a rural idyll profits from a bloody African war', *The Observer*, 24 November 2002

¹⁷ Private Military Companies: Options for Regulation 2001- 02, Foreign and Commonwealth Office 12 February 2002, para 63

careful screening processes so that they only work with legitimate, or at least internationally recognised governments. However, the contestation over the legitimacy of a government in questions is often the reason for the companies' presence in a country in the first place; the government may not be seen as legitimate by a large proportion of a given society. In short, it is not for a private security company to judge or pick who is the legitimate side in a conflict.¹⁸

The Green Paper supports the role that private security companies sometimes play in a defensive capacity where states are weak and so it does not support an outright ban on all military activity abroad by private military companies: 'PMCs may have a legitimate role in helping weak governments to secure revenue streams, for example by protecting border points and highways'. However, the Government seems to favour imposing a ban on all recruitment by PMCs for combat operations by United Kingdom citizens by overseas-based or offshore PMCs.¹⁹

The fact that Avient Ltd had a contract with the recognised governments of the DRC and Zimbabwe does not mean that its actions are necessarily beyond reproach. If it helped those governments in military operations that broke the agreed cease-fire or which violated international law or human rights norms or enabled ill-disciplined troops to perpetrate massacres or inflict harm on the civilians, then it would clearly be in breach of the OECD Guidelines' provision on human rights which states:

[Enterprises should] respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments. (II, 2)

Human Rights considerations

In order to be compliant with the OECD Guidelines' human rights provision, Avient would have to show that it had taken steps to ensure that the Congolese Armed Forces (FAC) and the Zimbabwean Defence Forces (ZDF) acted in accordance with human rights principles and international humanitarian law. The UK Government notes that during the consultation on the Green Paper, many respondents emphasized the importance of 'addressing concerns about the transparency, probity and attitude to human rights of PMCs'. The Government also considered 'that it would in any case be in the interests of reputable private military companies to draw up a voluntary code of conduct. Adherence to this code could become a factor in any decisions taken under a regulatory regime'.²⁰ There is no indication, that prior to the UN Panel's intervention, that Avient Ltd had drawn up its own code of conduct or had decided to adhere to the OECD Guidelines. Although it had a number of meetings with UK officials in Harare (see p.q.s) Avient only refers to advice being sought and given in relation to EU sanctions and makes no mention of any discussion of the ethical and human rights dimensions of its involvement in the DRC. [see pq response to Avebury]

Avient Ltd does not appear to have taken into consideration before entering into its contractual arrangement the reports of the UN Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo or other experts such as Amnesty International and the International Crisis Group. All repeatedly expressed grave concern about violations of human rights and international humanitarian law by all parties to the conflict, including the forces supporting the Kinshasa based government.

Immediately prior to the signing of the contract with the DRC government, there were numerous public warnings about the nature of the conflict and the grave human rights violations being perpetrated by the Congolese Armed Forces and their allies which Avient Ltd clearly failed to consider. In August 1998 the UN's Committee for the Eradication of Racism and all Forms of Discrimination (CERD) warned 'the human rights situation in the DRC has deteriorated and human rights are being committed by both parties to the conflict'.²¹ In April 1999, Roberto Garreton, the Special Rapporteur presented his report to the United Nations Commission on Human Rights and stated "human rights violations are committed by government forces and their allies, the rebel movement and

¹⁸ Damian Lilly, 'From Mercenaries to Private security Companies: Options for Future Policy Research', International Alert, November 1998

¹⁹ Ninth Report of the Foreign Affairs Committee, Private Military Companies, Session 2001 – 2002, Response of the Secretary of State for Foreign and Commonwealth Affairs October 2002,

²⁰ Ninth Report of the Foreign Affairs Committee, Private Military Companies, Session 2001 – 2002, Response of the Secretary of State for Foreign and Commonwealth Affairs October 2002

²¹ CERD, UN Press Release 14 August 1998,

'foreign rebel forces'.²² The International Committee of the Red Cross refers to the impact on civilians of aerial bombardments in the east:

Clashes between government and opposition forces in the east and south-east prompted ever more population displacements, with many people flocking over the border into neighbouring Tanzania. Goma, Uvira and Kalémié were all hit by aerial bombardments in May, causing numerous civilian casualties.²³

Amnesty International reported its concerns about the bombing raids being in violation of humanitarian law:

Since the start of 1999 hundreds of unarmed civilians have been killed as a result of direct or indiscriminate attacks by forces loyal to President Kabila in clear violation of Common Article 3 of the Geneva Conventions. The killings also violate international human rights treaties such as the International Covenant on Civil and Political Rights and the African Charter on Human and People's Rights (African Charter).

In other cases, many civilians were reportedly killed when government aircraft indiscriminately bombed areas in which there were high concentrations of unarmed civilians. In January and May 1999, dozens of unarmed civilians were reportedly killed when the air forces of the DRC Government, Zimbabwe, and reportedly Sudan, bombed the towns of Goma, Uvira and Kisangani. Human Rights groups based in Kisangani, the capital of Orientale province, have reported that many of the targets in the city bombed on 10 January 1999 in Kisangani were military positions and buildings inhabited by soldiers. The groups said that many of the civilians appeared to have been killed by anti-aircraft fire from guns of Ugandan and other forces in the city. More than 30 civilians were reportedly killed when on 11 May government aircraft bombed civilian residential areas in Goma.²⁴

A reputable private military company would have sought information about the DRC Government's attitude to human rights and whether its armed forces acted in accordance with international humanitarian law. Failure to do so must be seen as non-compliance with the human rights provision of the OECD Guidelines.

In such circumstances, by deciding to support to the FAC and the ZDF, whose indiscriminate bombing of civilian target had been widely denounced, Avient Ltd must accept a degree of complicity for their actions. But even more worrying is the evidence that Avient aircrew were directly implicated in bombing raids. First of all, the type of aircraft specifically referred to the Avient contract – AN 12 – was used in bombing raids in August 1999. Jean Pierre Bemba (formerly the leader of MLC and now a Vice President of the Transitional Government) accused the Sudanese of breaking a cease-fire agreement by conducting bombing raids in the northwest of DRC. "He specified that an Antonov type aircraft, specifically an AN-12 dropped eighteen 100kg (220 lb) bombs; the targets were Makanza and Bogbonga, two fishing villages on the Congo River, on opposite sides of the Congo river from each other; the death toll is 524; most of the dead are civilians".²⁵

The UN's Office for the Coordination of Humanitarian Affairs carried reports about the use of Antonov planes in bombing raids during the period covered by Avient Ltd's contract:

A Congolese military plane exploded on the runway in the western government-held town of Mbandaka last week, killing 12 people and injuring the DRC air force chief General Faustin Munene, news organisations reported. They cited aviation sources and military officials as saying the incident occurred last Thursday as the plane, an Antonov 12, was being prepared for a bombing raid. No further details were immediately available, although Reuters cited an aviation source as saying the Antonov was one of five planes recently bought by the DRC government to convert into bombers.²⁶

²² IRINCEA-14 09 April 1999

²³ ICRC Annual Report 1999 31-08-2000

<http://www.icrc.org/web/eng/siteengO.nsf/iwplList171/9AD18094B75BC099C1256B6...> visited 24/01/2005

²⁴ Extract from Democratic Republic of Congo: Killing Human Decency http://www.amnestyusa.org/arms_trade/document.do?id+D27E51772D0D1BD08025 VISITED 10/01/2005

²⁵ Marek Enterprises 'Marek News Briefs: DR Congo' 05 Aug 1999;

[http://www.reliefweb.int/rw/rwb.nsf/AllDocsByUNIDd/7242ecc\)*f&\(£1bc12567c50...](http://www.reliefweb.int/rw/rwb.nsf/AllDocsByUNIDd/7242ecc)*f&(£1bc12567c50...) visited 24/01/2005

²⁶ IRIN-CEA Update 803[19991117] <http://www.africa.upenn.edu/Hornet/irin803.html> visited 24/01/2005

Roberto Garreton, the Special Rapporteur appointed by the UN Commission on Human Rights to monitor the situation in the Democratic Republic of the Congo voiced concern about aerial bombardments:

The most serious acts have been the bombing of civilian populations by the Congolese Armed Forces and its Zimbabwean and Chadian allies (Kisangani, Genema, Zongo, Libuye, Goma, Bunga).²⁷

Another report from the respected International Crisis Group describes a clash when Rwandan and RCD rebel forces had encircled several thousand Zimbabwean, Namibian and FAC troops in the town of Ikela in Southern Equateur.

In late November 1999 a relief force attempted to break through, supported by air and river gunboats, from Bukungu 64 km to the northeast. "There was a massive attack by Kabila with three boats, four helicopters and many, many Antonov bombers" rebel RCD-Goma spokesman Kin Kiey Muluba told journalists.²⁸

From these and other reports it would appear highly probable that Avient Ltd crews contracted to man Antonov aircraft and attack helicopters were directly engaged in armed combat. The UK NCP should request Avient Ltd to provide the crew's flight logs (as part of the contract they were obliged to log their flights every month) for the relevant periods.²⁹ In a reply to a parliamentary questions, Douglas Alexander, stated that

Avient have admitted they supplied, but did not task, a helicopter crew for the recognized government of the Democratic Republic of the Congo to support military operations. Avient were informed later that the crew were used in the relief of Kigali [chk do they mean Kisangani?] from rebel forces.³⁰

Avient Ltd claims its staff respected all cease- fire agreements

Given Avient Ltd's silence about the flights and operations that its crew were involved in there is no compelling reason to accept this statement at face value. Avient Ltd has made clear that it did not 'task' the crew' so how can it be sure that its crew were not involved in the many violations of the cease fires that were reported by the UN Observer Mission in the DRC (MONUC) and the Institute for Security Studies (ISS) Africa Early Warning Programme during 1999.

A ceasefire was signed in July 1999 at a meeting in Lusaka. However, it was soon apparent that the signatory parties were not respecting the cease-fire.

There were continuous claims and counterclaims of ceasefire violations from and by all sides. These infringements allegedly included tank and artillery attacks, ground attacks with support from helicopter gunships, aerial bombing raids, attacks on civilians, territorial advances, troop deployments, blockades and reinforcements within and across borders. The alleged ceasefire violations took place along and behind the frontlines and were geographically widespread, including the provinces of Shaba, Kasai Occidental, Kasai Oriental, Equateur, and North and South Kivu.³¹

The ISS reported a number of alleged ceasefire violations by the Congolese Forces and their allies involving aircraft see Annex below during the period in which Avient's contract was in force. The contract includes a clause specifying that Avient is acting as 'an Intermediary to facilitate the supply of said crew and cannot be held accountable for the individual performance of crew members'. While this is to protect Avient from any liability for the poor performance of the crew, it might also be construed as an attempt to protect itself from any accountability for acts carried out by them in a conflict zone that were contrary to internationally recognized human rights norms. There is no indication that Avient made sure that the crew it recruited received training in human rights and international humanitarian law. Failure to do so, constitutes non-compliance with the OECD Guidelines' provision on supply chain responsibility which states that:

²⁷ E/CN.4/2000/42 Commission on Human Rights 'Report on the situation of human rights in the Democratic Republic of the Congo, submitted by the Special Rapporteur, Mr. Roberto Garreton, in accordance with Commission on Human Rights resolution 1999/56, para 119.

²⁸ International Crisis Group 'Scramble for the Congo: Anatomy of an Ugly War', Africa Report No 26 20 December 2000

²⁹ Crewing Agreement between the Government of the Democratic Republic of the Congo and Avient Ltd 2 September 1999

³⁰ DTI PQ No: 2004/130 response to Norman Lamb MP 19 January 2005

³¹ MONUC Peacekeeping in the DRC, MONUC and the Road to Peace, Monograph No 66, October 2001 <http://www.iss.co.za/Pubs/Monographs/No66/Chapter4.html>

[Enterprises should] *Encourage where practicable, business partners, including suppliers and sub-contractors, to apply principles of corporate conduct compatible with the Guidelines (II, 10)*

Avient's Relations with Oryx Natural Resources

The Panel described a 'close working relationship' between Oryx and Avient, providing details of payments from the former to the latter.³² **Oryx Natural Resources Ltd** is a private mining company incorporated in the Cayman Islands.³³ It is a member of the **Oryx Group**, registered in Oman. Oryx Natural Resources was listed in annex III of the Panel's October 2002 report. It also appeared in annex I of the same report, as a company on which the Panel recommended the placing of financial restrictions. Oryx does not deny that it had a business relationship with Avient, but states that 'Avient is the only commercial company that operates into Mbuji-Maji that is large enough to transport mining equipment.'³⁴ Avient Ltd confirmed to the NCP that the company carried commercial cargo from Zimbabwe and South Africa to the DRC (Mbuji- Mai) for Oryx and had done so for a number of years.

Avient and Oryx had close links to the Zimbabwean military who had vested interests in the Sengamines diamond mine concession in Mbuji Mai.

[Enterprises should] contribute to the economic, social and environmental progress with a view to achieving sustainable development. [II, 1]

³² The Panel indicates that it has a record of a payment of \$35,000 from Oryx's account at Bank Belgoise to Avient Ltd in UK (*UN Panel Report*, 16 October 2002, op. cit., paragraph 55).

³³ <<http://oryxnaturalresources.com/company/>> (visited 17 December 2003).

³⁴ <<http://www.oryxnaturalresources.com/UNissues/>>.

**Alleged Cease-Fire Violations Carried out by DRC (pro Kinshasa) Government Forces
October 1999 – February 2000**

Date Of report	Accuser	Alleged Violater	Nature of Alleged Violation
21/10/99	RCD	DRC Forces	Accuses Kabila's forces of launching a tank and artillery attack on positions at Munyenga, near Kabinda, in the biggest attack since the signing of the cease-fire accord. Earlier reports spoke also of renewed fighting at Bulukutu, near Bokungu. Rebels claim they were attacked by FAC forces backed by Zimbabweans and Interhamwe.
21/11/99	RCD	DRC	Ondekane makes a generalized statement blaming Kabila for heightened tensions in Kasai and for constantly preparing forces and flying in reinforcements.
21/11/99	MLC	FAC	Accuses FAC of seizing Libanda on 15/10/99, and of continued air raids on MLC positions.
7/11/99	MLC	FAC	Bemba accuses FAC of attacking MLC positions at Dongo with 3000 troops on 4 and 5/11/99, says cease-fire is null and void. Attacks near Bokungu said to have left 100 civilians dead.
10/11/99	RCD	DRC	Five days of fighting at Bekeli, 80 km from Bokungu, Equateur province.
13/11/99	RCD	DRC govt	General accusation that Kabila's forces have opened a new front line in the Equateur province.
17/11/99	News agencies	FAC	An Antonov exploded at Mbandaka as it was being prepared for a bombing raid, according to civil aviation and military sources.
25/11/99	RCD	FAC	Accuses FAC of attacking rebel positions around Ikela with helicopter gunships in support of ground forces.
2/12/99	RCD	FAC	Accuses government forces of trying to break through rebel lines north of Bokungu to reach garrison at Ikela. Following day announces that Bokungu has fallen to Kabila's forces following heavy fighting, only to be retaken by rebels two days later, and lost again a day later.
17/12/99	JMC	All parties	The Joint Military Commission lists a number of violations by all parties to the cease-fire.
3/2/00	Major Emmanuel Ndahiro (Rwanda)	FAC	Accused FAC of air dropping arms to the Mayi-Mayi and Interhamwe militias.
4/2/00	RCD	FAC	Government soldiers attacked RCD positions at Idumbe and Kole, south of Ikela, but were repulsed. FAC wanted to link up with their frontline troops in Kananga and Mbuji Mayi.

Key to abbreviations

DRC: Democratic Republic of Congo
FAC: Congolese Armed Forces
JMC: Joint Military Commission

MLC: Mouvement for the Liberation of Congo
RCD: Rally for Congolese Democracy

³⁵ Mark Malan, The UN 'Month of Africa' A push for actual peace efforts or a fig leaf in the DRC?, Institute for Security Studies, Occasional Paper No 44 February 2000; www.iss.co.za/Pubs/Papers...24/01/2005

Annex 2

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FOREIGN AND COMMONWEALTH AFFAIRS

Africa

Avient Air

Norman Lamb: To ask the Secretary of State for Foreign and Commonwealth Affairs pursuant to his answer of 19 November 2002, *Official Report*, columns 44–50W, whether discussions have taken place in the last two years between British Government officials and (a) Andrew Smith and (b) other representatives of Avient Air in Zimbabwe on matters other than the sale of military equipment. [82998]

Mr. Rammell [*holding answer 25 November 2002*]: Further investigation has revealed that there have been a number of discussions in the last two years between Andrew Smith and British Government officials in London and Freetown concerning Mr. Smith's interest in a civil aviation contract in Sierra Leone. Mr. Smith has also made representations to officials following the publication of the UN Panel Report on the DRC.

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In addition, further investigation has revealed that the previous Political Counsellor at the British High Commission in Harare met Mr. Smith on a number of occasions in the last two years, and that our Defence Attaché in Zimbabwe had a meeting with Mr. Smith in October 2001. The Defence Attaché also met him informally at several social events in that year.

I have instructed officials to continue investigations into contacts between Mr. Smith and Government officials and I will write if I have any further information.

Norman Lamb: To ask the Secretary of State for Foreign and Commonwealth Affairs what discussions took place in (a) 1998, (b) 1999 and (c) 2000 between British Government officials and (i) Mr. Andrew Smith and (ii) other representatives of Avient Air in (A) Zimbabwe and (B) the UK with regard to (1) sales of military equipment, (2) military operations in the Democratic Republic of Congo and (3) other matters. [83034]

Mr. Rammell [*holding answer 25 November 2002*]: British High Commission officials in Zimbabwe had contact with Mr. Smith on a number of occasions between 1998 and 2000, including at social events. British officials did not at any time encourage, support or promote Mr. Smith's activities in the DRC.

I have instructed officials to continue investigations into contacts between Mr. Smith and Government officials and I will write if I have any further information.

Avient Limited

Lord Avebury asked Her Majesty's Government:

What response they have made to the allegations against a United Kingdom-based company, Avient Limited, in Annex 3 of the initial United Nations Expert Panel report on the Illegal Exploitation of Natural Resources and Other Forms of Wealth in the Democratic Republic of the Congo, published in October 2002. [HL4881]

Baroness Symons of Vernham Dean: Her Majesty's Government's response to the allegations against Avient Ltd made in the reports of the UN Expert Panel on the Illegal Exploitation of Natural Resources and Other Forms of Wealth in the

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Democratic Republic of Congo is contained in the statement of 8 September 2004 by the National Contact Point on the Organisation for Economic Co-operation and Development Guidelines for Multi-National Enterprises. This statement is available at www.dti.gov.uk_ewt_statements.htm. I also refer the noble Lord to the reply I gave to my noble friend the Lord Alli on 5 January 2004 (*Official Report*, cols. WA 8–9).

Lord Avebury asked Her Majesty's Government:

Whether they had prior knowledge of contracts between the United Kingdom-based company, Avient Limited, and the governments of Zimbabwe and the Democratic Republic of Congo to supply military services, as claimed by Mr Andrew Smith, a director of the Company. [HL4882]

Baroness Symons of Vernham Dean: Government officials met Mr Andrew Smith on a number of occasions from 1998 to 2002. In those contacts officials were assured by Mr Smith that he would not breach the EU's arms embargo on the Democratic Republic of Congo (DRC). At no time have the Government encouraged, supported, or promoted Mr Smith's activities in Zimbabwe or the DRC.

Lord Avebury asked Her Majesty's Government:

Whether they will give the dates and subjects of discussions between representatives of the United Kingdom-based company Avient Limited and the United Kingdom High Commission in Harare. [HL4883]

Baroness Symons of Vernham Dean: British High Commission officials had contact with Mr Andrew Smith, a director of Avient Limited, on a number of occasions, between 1998 and 2002 concerning his business activities in Africa.