MIR

NEW STATUS OF MISSION AGREEMENT

(SOMA)

9 OCT - 23 JAN 1995

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UNAMIR

P/1/21 1996 JAN 23 P 7:27

CRN 024

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MOST IMMEDIATE

TO: KITTANI/GOULDING/HANSEN, UNATIONS, NEW YORK

INFO: GHAREKHAN, UNATIONS, NEW YORK

FROM: For SHAHARYAR M. KHAN, UNAMIR, KIGALI

DATE: 23 January 1995

NO.: MIR 193

NO. OF PAGES: 21

SUBJECT: Government's request to re-negotiate the SOMA

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1. As you are aware, the Government has been insisting since October that negotiations on the SOMA be conducted on the basis of a proposal for a modified SOMA presented by the Government. Please refer to our MIR-3576 of 13 October 1995 and MIR-3715 of 30 October 1995. Please find attached an analysis of the differences between the current SOMA and the Government's proposal.

2. UNAMIR has consistently conveyed to the Government Headquarters views on this matter, which is that the amendments proposed by the Government of Rwanda do not constitute a basis on which negotiations could proceed towards a revised SOMA given the fundamental departures of the Government's proposal from the model SOFA approved by the General Assembly.

3. In recent weeks, the Government has insisted that negotiations on their proposal be conducted expeditiously. Today, during the first working meeting of Messrs. Ssekandi and Kulov and UNAMIR officials with Government representatives, the latter raised again the issue of re-negotiation of the SOMA, wanting to start negotiations immediately. We conveyed to the Government that negotiations on the SOMA were not within the terms of reference of the team

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that had arrived from New York. This is an urgent matter to the Government. The Government representatives at the meeting requested that you be informed that they are ready for negotiations to start immediately.

4. Despite the fact that there have been a number of exploratory, informal discussions which have led to an exchange of views between UNAMIR and Headquarters on the one hand and between UNAMIR and the Government on the other hand, the Government has as yet not modified the proposal it initially submitted. It is our view however that this stalemate cannot continue and constructive discussions should start as soon as possible with the Government, whether in Kigali or in New York. Please be informed that the Government considers that the United Nations is using "delaying tactics" and has requested that our position as to whether or not a dialogue on this issue will start and when be conveyed to them tomorrow by 10 a.m. Your urgent response will therefore be appreciated.

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COMMENTS ON THE PROPOSALS BY THE GOVERNMENT OF RWANDA FOR A NEW STATUS OF MISSION AGREEMENT (SOMA) WITH UNAMIR

12 October 1995

I. Introduction

1. The Rwandan Government has proposed substantial modifications to the current SOMA without giving any explanations or reasons.

2. These proposals have been examined in the light of International Law, the UN Charter which binds Rwanda as a member State (since 18 September 1962), the Convention on Privileges and Immunities to which Rwanda acceded without reservations, customary principles and practices applicable to UN peace-keeping operations, and the "Model Agreement" put forward by the General Assembly in document A/45/594 of 9 October 1993.

3. The proposals by the Government depart completely from what is normally acceptable content for Status of Mission Agreements in all UN Missions throughout the world.

II. Government Proposals negate Rwanda's Ratification of the Convention

4. Paragraph 3

The Government has proposed the deletion of the words "as well as those provided for in the Convention to which Rwanda is a party." They have added "as defined in Section fourteen of this Agreement".

(a) The words "as well as those provided for in the Convention to which Rwanda is a party," in the old Agreement held Rwanda to its obligations, and clearly stated that Rwanda was a party to the Convention.

Under Section 14 of their proposed Agreement the privileges and immunities are narrowed only to those in Article II of the Convention. UNAMIR is exempt from paying tolls or charges for the use of roads, bridges, canals and other waters, port facilities, and airfields.

(b) **Effect**: The effect of the deletion is to make it seem as if Rwanda was not a party to the Convention. There is an underlying intention to avoid surrendering to UNAMIR the fullness of the rights under the Convention. They are creating a fiction under which they would like it to appear that Rwanda has limited obligations under the Convention.

The effect of the addition is to allow Rwanda to pick and choose what aspects of the Convention it will implement.

(c) **Comment**: Rwanda ratified the Convention without any reservations. Consequently, it cannot pick and choose the aspects of the Convention it wants to implement.

III. STATUS OF UNAMIR

5. Paragraph 5

The Government proposes adding the word "provisions" in the first sentence. It is also adding the phrase "as stipulated in article 46 of this Agreement" to the second sentence.

(a) The Government appears to believe that it is not enough to be bound only by the "spirit" of the Agreement. It wants the parties to be bound also by the "provisions" of the Agreement.

Secondly, the requirement that UNAMIR members respect all local laws and regulations "as stipulated in Article 46" of the Government's draft Agreement appears to be misplaced as the said article contains only the procedure for settling disputes and not substantive local laws.

(b) **Effect**: The addition of the word "provisions" is a sound proposal, the effect of which is to strengthen the obligations of the parties.

The addition of the words "as stipulated in Article 46", although out of place, appears to underline one main aim of the Government, namely, to try and bring as much as possible UNAMIR members under local laws.

(c) **Comment**: The second addition ought not to be part of this provision. In the context, it says nothing and only adds confusion.

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6. **Paragraph 6**

The Government has proposed the deletion in paragraph 6 of the existing Agreement of the words: "respect the exclusively international nature of UNAMIR".

(a) Effect: UNAMIR would be seen and treated as a Non-Governmental Organisation, without any immunities. UNAMIR would be required to submit to the jurisdiction of Rwandan Courts, and its assets could be seized in consequence to any judgements made against it.

(b) **Comment**: UNAMIR was established by the UN Security Council with the agreement of Rwanda. Therefore, UNAMIR's international character cannot be impugned.

IV. **UN FLAG AND VEHICLE MARKINGS**

8. **Paragraph 8**

The Government proposes to delete the following: "other premises, vehicles, vessels and otherwise as decided by the Special Representative. Other flags or pennants may be displayed only in exceptional cases. In these cases, UNAMIR shall give sympathetic consideration to observations or requests of the Government". The Government however adds the following: "The vehicles of the Special Representative and Force Commander may carry flags".

(a) Effect: The changes reduce the security of each individual UNAMIR member who would otherwise be protected by the insignia and flag on the vehicle. The spirit and intent of the provision in paragraph 8 of the old Agreement is negated.

(b) **Comment**: The whole objective, it would appear, is to reduce the international character of the mission by trying to bring the employees of UNAMIR under the control of local security forces.

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V. COMMUNICATIONS

9. Paragraph 11

The Government's proposed amendments in paragraph 11, 11(a) and 11(b) effectively require that UNAMIR install any communications systems

(a) only after Government approval, and in conformity with national laws on registration of the equipment;

(b) as long as the frequencies are "decided upon by the Government"; and

(c) as long as UNAMIR pays "in accordance with existing national tariffs" for any connections to the local system of telegraphs, telex and telephones and masts.

(a) Effect: Government will effectively hold a veto, direct or indirect, on whether a particular communications systems shall be installed, where and when.

UNAMIR would be required to register all communications equipment utilized by the Mission. This would take not less than six months to complete. We are still awaiting a response from the Government on the VSAT Satellite network since February 1995.

Delays may result about which UNAMIR can do nothing.

The tariffs at the existing rates could amount to a significant budgetary outlay, far beyond what is now provided for in the budget under this head of expenditure.

(b) Comment: Article III of the Convention (to which Rwanda acceded) intones Member States to give on their territories favourable rates to the UN. The Draft Model SOMA/SOFA referred to above also calls on Member States to grant the UN favourable rates.

VI. TRAVEL AND TRANSPORT

10. Paragraph 12

The Government has proposed an amendment to the first sentence of paragraph 12 of the old Agreement by adding at the end the words "in the exercise of its mandate".

In the same paragraph, the Government now wants to control not only "large movements of personnel" as in the old Agreement, but any movement of personnel.

The original provision in the old second sentence of paragraph 12 required that the freedom of movement be "coordinated with the Government". However, the Government's amendment proposes that it be "coordinated by the Government of Rwanda." Furthermore, the third sentence in the old paragraph 12 is deleted completely.

(a) Effects: The addition of the words "in the exercise of its mandate" may be used in conjunction with the proposed control of not just the "large movements of personnel" but of any personnel. In other words, the movement of any UNAMIR personnel, vehicles, vessels, aircraft, etc. not thought to be for the "exercise of [the] mandate" may be prevented or limited.

There would be endless delays in carrying out any tasks while clearance was sought as to whether the movement is in the exercise of the mandate or not.

The Government would take over directly the coordination of the movement of UNAMIR's personnel, stores and vehicles in Rwanda.

The removal of the obligation on the part of the Government "to supply UNAMIR ... with maps and other information, including location of minefields and other dangers and impediments..." will expose UNAMIR personnel, vehicles and other equipment to likely injury, death or destruction.

(b) Comment: The changes cast the net of Government control too wide. Who is to determine the purpose of movement any movement? It would appear that in order to apply the

proposed amendments any tasking of persons, vehicles, aircraft, etc., will have to be approved by the Government.

The last deletion puts the Government in violation of international humanitarian law which requires governments to inform members of the public of minefields and other dangers.

In our view, these intended restrictions violate Article 104 of the UN Charter which stipulates that the UN shall enjoy on the territory of Member States such legal capacity as is necessary to fulfil its purposes. On the other hand, the abdication by the Government of its responsibility for the security of persons against mines and other dangers on its territory violates international humanitarian law.

11. **Paragraph 13**

The Government has proposed that "all UNAMIR vehicles shall be registered in accordance with national law covering registration of vehicles". The old Agreement specifically says that they shall not be subject to registration.

(a) Effect: UNAMIR would have to pay registration fees for each of its vehicles. This could be a considerable amount on a fleet of about 1400 vehicles.

(b) Comment: The proposal is in violation of Section 7(a) of Article II of the Convention on Privileges and Immunities which exempts UN assets or other property "from all direct taxes". The vehicle registration fee is, in nature, a tax.

12. **Paragraph 14**

The Government has deleted paragraph 14 of the old Agreement which permitted UNAMIR to use roads, bridges, canals, airfields, etc., "without the payment of dues, tolls or charges, including wharfage charges".

(a) Effect: The effect of the deletion is to make UNAMIR liable to pay for the use of these facilities.

Payment for the use of roads, bridges, canals, airfields and other facilities would be a drain on the UNAMIR budget.

(b) **Comment**: The deletion of paragraph 14 of the old Agreement is in violation of Article 105 of the Charter of the UN which provides that "the Organisation shall enjoy in the territory of each of its members such privileges and immunities as are necessary for the fulfilment of its purposes".

UNAMIR would not be paying for a service rendered, but rather a tax for using the facilities. Such a tax would be in violation of Article II, Section 7(a) of the Convention on Privileges and Immunities.

VII. PRIVILEGES AND IMMUNITIES

Paragraph 14(a)

The Government has added the following words to 15(a) of the old Agreement: "provided that UNAMIR members shall only enjoy duty free benefits similar to the benefits accorded to members of diplomatic missions accredited to Rwanda of equal rank or status".

(a) **Effects**: One effect is to introduce an element of uncertainty as to the items over which duty free "benefits" may be granted. The second effect is to apply the distinctions in Article IV, Section 11 and Article V, Section 17 of the Convention which deal with the rank of personnel, to matters in Article II, Section 7(b) dealing with imports of items duty free for the exclusive use of the UN. In other words, if an UNAMIR member is not a diplomat in terms of Articles IV and V, then he may not enjoy duty free benefits. Commissaries would be open only to those carrying red Laissez Passers.

(b) **Comment**: It would appear the proposed amendment violates, if not the letter at least the spirit, of Article II, Section 7(b) of the Convention which exempts the UN "from customs duties and prohibitions and restrictions on imports in respect of articles imported or exported by the United Nations for its official use."

Moreover, the amendment also goes against usage over the years in various peace-keeping missions in which the practice in accordance with paragraph 15(b) of the General

Assembly's Model of Status of Forces Agreement for Peace-Keeping Operations referred to above has been not to exclude any member of the peace-keeping mission from importing articles duty free or having access to duty free commissaries.

14. **Paragraph 14(b)**

The Government proposes to delete the word "resale" from paragraph 15(b) of the old Agreement. The sentence now reads: "The Special Representative shall take all necessary measures to prevent abuse of such commissaries and the sale of such goods to persons other than members of UNAMIR and shall give sympathetic consideration to observations or requests of the Government concerning the operation of commissaries".

(a) **Effect**: The deletion of the word "resale" does not change the intent of the provision. There should be no adverse consequence to UNAMIR.

(b) **Comment**: If the observations in paragraph 15(a) above are sound, the concerns of the Government in paragraph 15(b) would be over a very small number of UNAMIR personnel who would still qualify to purchase goods from commissaries.

15. **Paragraph 14(c)**

The Government has deleted the word "provisions" in paragraph 15(c) of the old Agreement from the list of goods that can be cleared ex-customs and excise warehouse, free of duty or other restrictions.

(a) **Effect**: If by "provisions" is meant food and drinks (presumably obtainable from the local market), the commissaries may be required to stop bringing in such food and drinks or they will have to pay tax on them. The Contractors would naturally have to pass the tax burden on to the UNAMIR personnel.

(b) **Comment**: Should the patrons of the commissaries be only diplomats as per the effect of the proposed Government amendments in paragraph 15(a) above, then the tax will be passed on to diplomats. But

since they are exempt from paying tax the Contractor will refuse to absorb the tax.

Since the bulk of goods in the commissaries is constituted by "provisions", it will become unworthwhile for the particular contractors to continue running the commissaries. The exclusion of "provisions" in paragraph 15(c) will have the indirect effect of prohibiting UNAMIR from importing food and drinks to be used exclusively by UNAMIR Military and Civilian personnel. As pointed out earlier, this is in violation of Article II, Section 7(b) of the Convention to which Rwanda acceded.

VIII FACILITIES FOR UNAMIR

16. Paragraph 15

The Government proposes to amend Paragraph 16 of the old Agreement so that it is not required to provide UNAMIR with facilities, but only to "assist" it in acquiring such facilities. Furthermore, instead of the facilities being provided free, UNAMIR will pay rent at market prices, and be responsible for the maintenance and up-keep.

No co-location of military troops is envisaged. The Government has thus deleted the last sentence of paragraph 16.

(a) **Effect**: The Government will not provide UNAMIR with free premises.

The budget for rentals will go up considerably.

(b) **Comment**: Requests to Member States to provide free facilities (at least the headquarters of peace-keeping missions) comes from long standing practice and as recommended by the General Assembly in Model SOFA/SOMA (see above).

17. Paragraph 16

The Government proposes to replace the word "competent" in Paragraph 17 of the old Agreement with the word "appropriate" authority with respect to payment for utilities.

(a) **Effect**: This does not change anything from an operational standpoint.

(b) **Comment**: The term "competent" is actually more precise than "appropriate".

18. **Paragraph 19 of the old Agreement**

The Government has omitted paragraph 19 of the old Agreement which made the premises of UNAMIR inviolable by reserving the right of entry only to UNAMIR members, except those given express permission.

(a) **Effect**: The Government's proposed silence on this important diplomatic privilege and immunity exposes UNAMIR premises to violation by any person, armed or otherwise, contrary to Section 3 of Article II of the Convention which states that "[t]he premises of the United Nations shall be inviolable".

The proposal if adopted puts the Government in breach of its own Code Civile which incorporated the Convention on Privileges and Immunities.

(b) **Comment**: It is absolutely essential that the UN insist on the retention of the paragraph 19 in the old Agreement for security reasons and in accordance with diplomatic practice.

IX. PROVISIONS, SUPPLIES, SERVICES AND SANITARY ARRANGEMENTS

19. **Paragraph 20 of the old Agreement**

The Government proposes to delete the entire paragraph 20.

(a) **Effect**: No assistance from Government to UNAMIR to obtain local services and equipment.

UNAMIR will have to pay general sales taxes in respect of all official local purchases, in violation of Article II, Section 7(a) of the Convention.

(b) **Comment**: If UNAMIR is unable to obtain local services, equipment and supplies it cannot carry out its mandate. Failure to assist UNAMIR to carry out its mandate is in violation of Paragraph 7 of Security Council Resolution 997 (1995) of 9 June 1995. It is an indirect rejection by Government of the Mandate.

The deletion of paragraph 20 indirectly removes the application of Article II Section 7(a) of the Convention which exempts the UN from all direct taxes.

X. RECRUITMENT OF LOCAL PERSONNEL

20. Paragraph 19

By deleting the last sentence in paragraph 22 of the old Agreement, Government proposes not to assist UNAMIR in recruiting qualified personnel.

(a) **Effect**: There should be no effect at all on the hiring of personnel by UNAMIR.

(b) **Comment**: It is understandable that Government should want to keep qualified personnel for its own operations.

In the limited context of UNAMIR's operations, the amendment could be allowed to stand.

21. Paragraph 20

The Government proposes the replacement of the old paragraph 23 with a new text which states that UNAMIR "shall conform to the existing national monetary laws and exchange mechanism and conduct its commercial operations through the banking system".

(a) **Effect**: UNAMIR has to pay commercial rates for local currency and absorb whatever fluctuations of the Rwandese franc may occur.

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The proposals are vague enough so that it is not clear whether the amendment is intended to affect the rights of the UN under Article II, Section 5. The Section states that the UN shall not be "restricted by financial controls, regulations or moratoria of any kind." And under Section 5(a), the UN "may hold funds, gold or currency of any kind and operate accounts in any currency." Section 5(b) specifically states that the UN "shall be free to transfer its funds, gold or currency from one country to another or within any country and to convert any currency held by it into any other currency."

(b) **Comment**: UNAMIR is already conforming to the existing national monetary laws and exchange mechanisms as understood by UNAMIR and in line with Government's recent directives on currency exchange.

XI. STATUS OF THE MEMBERS OF UNAMIR

Privileges and Immunities

22. **Paragraph 21**

The Government has proposed that the Police Commissioner should be deleted from the officers who will enjoy privileges and immunities specified in Sections 19 and 22 of the Convention.

(a) **Effect**: This will probably not affect the operations of UNAMIR in Rwanda, except that it takes away the dignity of this important office which the SRSG has seen fit to designate as diplomatic.

(b) **Comment**: Since the issue of who is to enjoy the status specified in Sections 19 and 27 of the Convention is to be agreed upon with the Government, the UN should insist on the designation.

23. **Paragraph 26**

The Government has deleted the following words from paragraph 29 of the old Agreement: "They shall also be exempt from all other direct taxes....."

(a) **Effect**: It makes UNAMIR members liable for direct taxes, and all registration fees and other charges.

(b) **Comment**: Logically, under the Government proposal on the old paragraph 15(a) above (see comment thereunder), UNAMIR members become liable for all taxes because they are not diplomats.

The crux of the matter is whether a concession will be made, against past practice in other missions and the General Assembly's recommendation, to turn the entire UNAMIR staff, with the exception of a handful, into an army of taxpayers?

XII. ENTRY, RESIDENCE AND DEPARTURE

24. **Paragraph 29**

The Government proposes the following change in Paragraph 32 of the old Agreement: "Subject to the express consent of the Government", the Special Representative and members of UNAMIR shall have the right to enter into, reside in and depart from Rwanda.

Paragraph 30

The Government also proposes to delete from paragraph 33 of the old Agreement the words: "For that purpose, the SRSG and members of UNAMIR shall be exempt from passport and visa regulations and immigration inspection and restriction in entering into or departing from Rwanda. They shall also be exempt from any regulations governing the residence of aliens in Rwanda, including registration but shall not be considered as acquiring any right to permanent residence or domicile in Rwanda".

(a) **Effects**: (1) Movement of UNAMIR personnel, including the SRSG, will be "subject to the express consent of the Government". Freedom of movement in and out of Rwanda by the Special Representative and members of UNAMIR will be taken away. UNAMIR

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personnel could be detained at will by the Government.

(2) UNAMIR members will have to pay for entry visas and be registered as any other foreigner residing in Rwanda.

(b) **Comment**: It is maintained here that the rest of UNAMIR staff who do not have diplomatic status should be accorded the privileges and immunities given to experts on missions under Section 22 of Article VI of the Convention.

25. **Paragraph 31**

The Government proposes to replace provisions in paragraph 34 "For the purpose of such entry and departure, members of UNAMIR shall be required to have valid passports and individual or collective movement orders issued by or under the authority of a participating state."

(a) **Effect**: Passports will now be required where they were not before. Bureaucratic requirements will take longer to complete upon entry or departure.

(b) **Comment**: UNAMIR has already given in on this Governmental proposal. Perhaps we should just continue as at present.

XIII **IDENTIFICATION**

26. **Paragraph 32**

Paragraph 35 of the old Agreement is amended by deleting the words: "Except as provided for in paragraph 34 of the present Agreement, such identity card shall be the only document required of a member of UNAMIR". Paragraph 34 deals with immigration.

(a) **Effect**: An identity card issued by UNAMIR is no longer adequate identification as it was under the old Agreement. Government will now demand other documents of UNAMIR members and if they do not possess them, they may be refused entry into Rwanda.

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(b) **Comment**: Under normal circumstances the amendment should not pose any great difficulty to UNAMIR civilian personnel who always travel on either their national passports or UN Laissez Passers. The problem arises with respect to the Military who traditionally travel on Collective Movement Orders.

As a Member State, Rwanda should accommodate the needs of UNAMIR in this respect and accept, at least, the Collective Movement Order for entry and exit purposes.

27. **Paragraph 33**

The Government is proposing an amendment to paragraph 36 of the old Agreement by replacing the word "shall" with "may" where it appears.

(a) **Effect**: No adverse effect on UNAMIR's interests.

(b) **Comment**: It is, on the whole, a silly amendment because it neither confers nor takes away the right of the Government under the old paragraph.

XIV. UNIFORMS AND ARMS

28. **Paragraph 34**

The Government has deleted the second, third and fourth sentences of the old paragraph 37. The Government has instead proposed the following: "UN Security Officers designated by the Special Representative may possess and carry arms while on duty in accordance with their orders".

(a) **Effect**: Civilian Security Officers and UN Filed Service personnel are prohibited to wear their internationally recognized uniforms, which are not military uniforms.

UNAMIR military are effectively disarmed at all times.

(b) **Comment**: Apparently the Government does not know that UNAMIR Civilian Police do not carry arms since they are observers.

They would be no point in having military contingents in the mission.

XV. MILITARY POLICE, ARREST AND TRANSFER OF CUSTODY AND MUTUAL ASSISTANCE

29. Paragraph 37

The Government proposes the phrase "apprehend any other person on the premises of UNAMIR" to replace "take into custody any other person on the premises of UNAMIR" in Paragraph 40 of the old Agreement.

(a) **Effect**: The amendment does not change the intent of the provision.

(b) **Comment**: However, the Government may be implying that it is the only one that can take persons into "custody" if the word is misread to refer to "taking to prison" or imprisonment.

30. Paragraph 41

The Government has added the words "arrested with the officer" to the sentence "The handing over of any such items may be made subject to their return within the terms specified by the authority delivering them" in the old paragraph 44.

(a) **Effect**: No adverse effect to UNAMIR.

(b) **Comment**: It is difficult to understand the significance of the words "arrested with the officer"

XVI. JURISDICTION

31. Paragraph 46 of the old Agreement

The Government has deleted the existing paragraph 46, thus taking away the immunity of UNAMIR and locally recruited personnel "from legal process in respect of words spoken or written and all acts performed by them in their official capacity...", etc.

(a) **Effect**: Members of UNAMIR can be arrested and prosecuted for words spoken or written and for any acts performed by them, even if such were performed in their official capacity.

Immunity from arrest in its qualified form in paragraph 42 of the old Agreement would no longer exist.

All UNAMIR members would be subject to the jurisdiction of local courts.

(b) **Comment**: Article IV, Section 12, Article V, Section 18(a), and Article VI, Section 22 of the Convention, secure for both the "officials" and "experts" in the UN and its subsidiary organs, complete freedom of speech and independence in the discharge of their duties; the immunity from personal arrest and detention; and immunity from legal process in respect of words spoken or written and all acts done by them in the discharge of their duties.
The deleted paragraph 46 of the old SOMA protected the rights herein.

32. **Paragraph 43(c)**

The Government proposes a new paragraph 43(c) which states: "In either case the Government reserves the right to deport any member of UNAMIR, civilian or military, for trial in his home country".

(a) **Effect**: The immunities for both the officials and ordinary members of UNAMIR are removed and all such persons can be arrested, detained or deported by the Government.

(b) **Comment**: (See comment on paragraph 46 above).

33. **Paragraph 44(a) and (b)**

Paragraph 48 and 48(a) of the old Agreement have been deleted by the Government. The Government proposes to replace 48 and 48(a) with the following: "Civil proceedings may be instituted against a member of UNAMIR for non official acts. Whether an act should be considered official or not will be determined by a Rwandan Court of competent jurisdiction".

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Also deleted in the Government's proposal is the following: "Property of a member of UNAMIR that is certified by the Special Representative to be needed by the defendant for the fulfilment of his official duties shall be free from seizure for the satisfaction of a judgement, decision or order. The personal liberty of a member of UNAMIR shall no be restricted in a civil proceeding, whether to enforce a judgement, decision or order, to compel an oath or for any other reason".

(a) **Effect**: (1) The Special Representative's Authority to decide on whether the actions of a UNAMIR member are related to official duties or not have been removed. That authority is now given to the Rwandan Courts.

(2) The authority of the SRSG will inevitably be held up to ridicule.

(3) UNAMIR members exposed to the laws and jurisdiction of Rwandan Courts may have their property seized in fulfilment of Court judgements.

(b) **Comment**: It is not conceivable how local courts could competently interpret what constitutes an official act, unless they hauled before them the SRSG or other high ranking peace-keeping officials to give oral evidence or to present depositions.

The status of UNAMIR would be much lower than that of some NGOs in some Member States.

XVII MISCELLANEOUS PROVISIONS

34. Paragraph 52

The Government, by adding the words "whenever possible" in the text of the old paragraph 56, is qualifying its compliance with the Convention.

(a) **Effect**: The Government will pick and choose which international laws or elements thereof it will enforce.

(b) **Comment**: The Government acceded to the Convention and incorporated the same into her Civil Code without any qualifications or reservations whatsoever. It

cannot make the reservations now except by recourse to its own Parliament or to the UN Security Council. Until such time, the international community holds the State of Rwanda to its treaties.

35. **Paragraph 53**

The words in the present paragraph 57 are replaced by the words: "The present Agreement shall remain in force until the current mandate of UNAMIR expires or such other date as the Government and the UN may mutually agree".

(a) **Effect**: The change removes the certainty and specificity of the previous provisions as to what will happen next.

(b) **Comment**: The amendment discloses no vision of what problems may arise in closing down a mission.

36. **AN ADDITIONAL PARAGRAPH - 54**

The Government also wants the following added to any renegotiated SOMA: "UNAMIR shall give a full list of all its members and their work to the Government".

(a) **Effect**: To expose individuals to bearing unwarranted criticism for things that might go wrong.

(b) **Comment**: There is no value to having the names of members and jobs performed by them. The provision could be abused.

Mtshana M. Ncube
UNAMIR Legal Officer

Elvis Bazawule
Legal Officer

UNAMIR, Kigali

RECEIVED
18 NOV 1995
OFFICE OF THE SRSG
UNAMIR

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UNAMIR
1995 NOV 18 A 7:00

TO: KHAN, UNAMIR, KIGALI
FROM: KITTANI, UNATIONS, NEW YORK
DATE: 17 November 1995
NUMBER: 3595
SUBJECT: Meeting with the Ambassador of Rwanda

Pl. show these cc's to FC/ED

1. On 17 November, the Ambassador of Rwanda came to see us at our request. Our intention in arranging this meeting was to dispel any misunderstanding which might have arisen between the Rwandese authorities in Kigali and UNations on the subject of the disposition of UNAMIR equipment upon the termination of the mission, as well as the question of SOFA.

2. As regards the issue of equipment, we felt that the Ambassador may have misunderstood some of the points that we had made during our 18 October meeting with him. We disabused the Ambassador of the notion that we had given the SRSG full authority to decide on the disposition of the equipment in question. We explained that we had simply asked the SRSG to provide UNations Headquarters with lists of equipment falling into the three relevant categories foreseen by existing rules and regulations. The SRSG had done so, but the decision belonged to DPKO and other Departments concerned, as well as the appropriate UNations legislative bodies. The Ambassador pleaded guilty and assumed full responsibility for the misunderstanding. He undertook to clarify this matter promptly for the benefit of his authorities in Kigali.

3. As regards the SOFA, we confirmed that, in consultation with OLA, we had sent the necessary instructions to you. However, to our surprise, you had been informed that the Rwandese authorities preferred to have this issue dealt with in New York. The Permanent Representative expressed his personal preference for

Reçu le 18 NOV. 1995

having this question handled in Kigali since, in his view, the outstanding issues concerned the implementation rather than the substance of the SOFA. We explained that we differed on this point since, in our opinion, the proposed changes in the SOFA touched upon an established body of practice which had been developed over the past 40 years in the administration of peace-keeping operations. We stressed, in this connection, that most of the proposed changes to the SOFA were unacceptable to this Headquarters.

4. We hope that the above clarifications will be useful for your forthcoming meeting with the Rwandese authorities next Monday.

Best regards.

UNITED NATIONS NATIONS UNIES
ASSISTANCE MISSION FOR RWANDA MISSION POUR L'ASSISTANCE AU RWANDA
UNAMIR (UNAMIR - MINUAR)

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1995 OCT 30 P 2:42

OUTGOING CODE CABLE

UNAMIR
1995 OCT 30 P 3:09

Chron-371 1/17

TO: ANNAN/GOULDING/CORELL, UNATIONS, NEW YORK

INFO: ZACKLIN, UNATIONS, NEW YORK

FROM: SHAHARYAR M. KHAN, UNAMIR, KIGALI Shaharyar M. Khan

DATE: 30 OCTOBER 1995

NO.: MIR-3715

NO. OF PAGES: 17

SUBJECT: SOFA

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1. Reference your code cable no.3353 dated 24 October through which OLA's views on the SOFA have been conveyed to us.

2. While I fully concur with OLA's assessment that many of the amendments proposed by the Government of Rwanda constitute a fundamental departure from the customary practices and principles applicable to United Nations peace-keeping operations, my main difference of view is that to reject discussion out of hand could be perceived by the Government as being a dismissive attitude. The United Nations could, instead, engage in negotiations aimed at considering those few amendments proposed by the Government which the United Nations could accept and at sounding the Government's disposition to review their proposal so as to bring it in accordance with the customary practices and principles applicable to peace-keeping operations.

3. To this effect, our Legal Office has prepared a detailed paper analysing the changes proposed by the Government of Rwanda in its revised draft on the SOFA. For the purpose of their analysis, the changes proposed by the Government have been placed under five sections, according to their rationale. In section I are changes that run counter the application of the

provisions of the Convention on the Privileges and Immunities of the United Nations, in section II are changes that affect the necessary independence of UNAMIR, in section III are changes that reduce the extent of the Government's assistance to UNAMIR, in section IV are changes that put a greater financial burden on UNAMIR's presence in Rwanda and in section V are minor changes such as changes in language.

4. I believe that the changes proposed can be placed under the following broad headings as regards their acceptability:

A. **Totally unacceptable changes:**

-In section I: Paragraphs 3, 11(b), orig.19, orig.46, 52.

-In section II: Paragraphs 7(b), 12, 29, 34, 44, 53.

B. **Changes that should not be accepted:**

-In section II: Paragraphs 6, 8, 14, 15, 21, 32, 34, 43(c).

-In section V: Paragraphs 5, 14(c), 23, 38, 41, 43(a), 53.

C. **Changes that should not be accepted as they stand now, though some of the Government's concerns could be addressed differently:**

-In section II: Paragraphs 11, 13, 14, 30, 31.

D. **Changes subject to negotiation:**

-In section II: Paragraph 1(a).

-In section III: Paragraphs 12, 15, orig.20, 19.

-In section IV: Paragraphs 14(a), 15, orig.20, 20, 26.

-In section V: Paragraph 11(b).

E. **Changes that could be accepted as they stand now or with minor modifications:**

-In section II: Paragraph 54.

-In section V: Paragraphs 5, 7(b), 14(b), 16, 33, 37, 38.

5. I agree with the view that the changes under sections A, B and C should be rejected. Amendments proposed under section D could be negotiated while those under section E are either innocuous or even benefit our position. I, therefore, maintain that it would be desirable to

engage in negotiations with the Government of Rwanda on the SOFA and to maintain the positions of principle as stated in para 2 of Mr. Zacklin's note which are contained in sections A-C above, while negotiating the amendments under section E and to some extent under sections D. I do not, for instance, feel that the Rwandese desire for UNAMIR to seek government approval for installing our communications on Rwanda's sovereign territory, or the Government of Rwanda's effort to introduce a visa system or its desire to ensure that no black-marketing of currency takes place, is unreasonable. For the UN to adopt a dismissive attitude to such efforts would not be politically expedient.

6. Moreover, if we do not engage in negotiations, how would it be possible to introduce the amendments on our contractors suggested in Mr. Zacklin's note? In any case, these amendments are not likely to be accepted by the Government of Rwanda.

7. I would, therefore, recommend that the detailed paper that is attached be examined by OLA. I find the recommendations contained in it to be reasonable and in consonance with the principles stated in para 2 of Mr. Zacklin's note.

Best regards.

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ANNEX A

COMMENTS ON THE MODIFICATIONS TO THE SOMA FOR UNAMIR PROPOSED BY THE GOVERNMENT OF RWANDA

- References in the text are made to the paragraphs of the Government of Rwanda (GoR) proposal. Whenever a reference is made to paragraphs of the original SOMA, this is clearly indicated.

- The comments on the changes proposed by the GoR have been grouped into five sections:

I. **Changes that affect the application of the provisions of the Convention on the Privileges and Immunities of the United Nations (CPI), to which Rwanda is a party;**

II. **Changes that affect the necessary independence of UNAMIR;**

III. **Changes that reduce the extent of the Government's cooperation with UNAMIR;**

IV. **Changes which main effect is to impose a greater financial burden on UNAMIR's presence in Rwanda;**

V. **Minor changes such as changes in language, etc...**

- In each of these sections, proposed changes have been listed following the order in which they appear in the text.

- Though it was felt that it was useful to create such categories for the purposes of negotiation, some of the proposed changes fall under more than one of the above categories, in which case this has been indicated.

- Finally, an initial assessment of the acceptability or not of the proposed changes from a legal point of view has been given in each case under the heading "recommendations". With respect to changes proposed under section III and IV, no assessments have been given since it was felt that it is both a political and an administrative decision to determine to what extent does the United Nation want to abide by the Government's demands for substantially increased payments.

I. **Changes that affect the application of the provisions of the Convention on the Privileges and Immunities of the United Nations (CPI), to which Rwanda is a party.**

-Paragraph 3: In this paragraph, which is under the heading "Application of the Convention", the proposal omits any direct reference to the privileges and immunities referred to in the CPI. It states that "UNAMIR, its members, property, funds and assets shall enjoy the privileges and immunities specified in the present agreement *as defined in section fourteen of this Agreement*". In section 14 it is stated, as it was in the original text, that "*UNAMIR, as a subsidiary organ of the United Nations, enjoys the status, privileges and immunities of the United Nations in accordance with the convention*".

The proposed change has therefore no real legal effect. The CPI applies to UNAMIR, which comprises its members, property, funds and assets. This is so first and foremost because Rwanda is a party to the CPI and also because its applicability is expressly recognized in paragraph 3 through its reference to paragraph 14.

However, the fact that under the heading "Application of the Convention" no direct reference is made to such application is odd, departs from past practice and casts a doubt over the good faith of the authors of this proposed change.

Recommendation: The change is unnecessary, creates confusion and should therefore not be accepted.

-Paragraph 11 (b): Original paragraph 11 (b) has been modified in its last part, now reading "it is understood that connections with the local system of telegraphs, telex, telephones and masts [sic] will be charged *in accordance with existing national tariffs*", instead, as in the original text, "at the most favourable rate".

Although the aim pursued by GoR with this amendment is merely economic, it runs counter section 9 of the CPI, which establishes that the treatment as respects communications tariffs shall be "...not less favourable than that accorded by the Government of that Member to any other Government including its diplomatic mission...".

Recommendation: This modification should be considered along with all the others which aim at having the UN pay more. However, the change should not be accepted because it runs counter section 9 of the CPI, although the extent to which privileges and immunities of the UN are here negated is not crucial.

-Original paragraph 19: The following provision: "The United Nations alone may consent to the entry of any government officials or of any other person not member of UNAMIR to such premises" has been deleted from the GoR proposal.

It should be noted that inviolability of the UN premises is granted in article II, section 3 of the CPI. Such inviolability is anyway recognized in the modified SOMA in the third sentence of paragraph 15: "...Without prejudice to the fact that all such premises

remain Rwandese territory, *they shall be inviolable and subject to the exclusive control and authority of the United Nations...*". Therefore, it is not clear what the deletion of original paragraph 19 aims at.

Recommendation: This omission has no legal effect, but the mere fact that it has been proposed brings some confusion as to the motives of the GoR. It should not be accepted.

-Original paragraph 46: The following paragraph has been omitted: "All members of UNAMIR including locally recruited personnel shall be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity. Such immunity shall continue even after they cease to be members of or employed by UNAMIR and after the expiration of the other provisions of the present Agreement".

It should be noted that such immunity is anyway recognized for the SRSG and the FC in paragraph 21 (applicability of the status specified in sections 19 and 27 of the CPI), for other United Nations officials assigned to the civilian component of UNAMIR in paragraph 22 (applicability of articles V and VII of the CPI), for military observers, civilian police personnel and other experts in mission in paragraph 23 (applicability of article VI of the CPI) and for locally recruited staff in paragraph 25.

The modification leaves without immunity the military personnel (see paragraph 24), though they are still granted immunity from criminal jurisdiction in paragraph 43 (b).

This omission casts a doubt over the GoR intentions as regards the granting of such immunity. It should also be noted that the provision which ensures that immunity for such acts is granted even after the expiration of the Agreement has been eliminated, which is even more significant considering that the proposed paragraph 53 establishes that the Agreement will only be in force "until the current mandate of UNAMIR expires...".

Recommendation: This omission is not acceptable. It leads to confusion, it leaves unprotected certain categories of personnel, and it does not ensure the applicability of this immunity beyond the end of the mandate of UNAMIR.

-Paragraph 44: Comments on the modifications proposed in this paragraph (original paragraph 48) will be offered in part II. Although these modifications do not directly run counter any provision of the CPI, their effect could be, as far as civil proceedings are concerned, to significantly reduce the applicability of the immunity from legal process in respect of words spoken or written and all acts performed by staff members in their official capacity, contained in section 18 (a) of the CPI.

-Paragraph 52: Under the new paragraph, the Government has qualified its responsibilities with regard to the granting of privileges and immunities to UNAMIR by adding "*whenever possible*" to the following text: "...the Government shall *whenever possible* have the ultimate responsibility for the implementation and fulfilment of such privileges, immunities, rights and facilities by the appropriate Rwandese authorities".

This addition is a mockery. It is tantamount to say that all the obligations of the Government under the Agreement are dependent on its capability (or will) to implement them. If this provision were to be applied, none of what is agreed with the GoR would be binding upon it, since the GoR would only be responsible for its implementation "*whenever possible*".

Recommendation: The modification is totally unacceptable.

II. Changes that affect the necessary independence of UNAMIR

-Paragraph 1 (a):

Recommendation: Although it has not been proposed by the Government, the list of resolutions that establish UNAMIR's mandate which is quoted in paragraph 1 (a) should be updated.

-Paragraph 6: The proposed text omits the phrase: "The Government shall respect the exclusively international nature of UNAMIR...".

This is a soft-law provision with no direct legal effects. The international nature of UNAMIR, as a subsidiary organ of an international organization, is in itself an obvious fact. It is because of its international nature that UNAMIR is granted certain privileges and immunities that are not granted to other entities. The "*international status*" of UNAMIR is recognized anyway by the GoR in paragraph 7.

But precisely because it is an obvious fact which recognition imposes no specific obligations on the Government, it is not well understood why the Government wants to delete this provision.

Recommendation: It should be maintained that there is no reason to delete this provision.

-Paragraph 7 (b): The Government undertakes "to treat (but not "*at all times*") military personnel of UNAMIR in accordance with (not "*with full respect for*") the principles and spirit of the general international conventions applicable to the treatment of military personnel".

Whereas the second modification proposed is not satisfactory but has no far-reaching effects, the deletion of the words "*at all times*" cannot be accepted. It would amount to recognize that the application of humanitarian law with respect to UNAMIR military personnel could be temporarily excluded. This runs completely counter the very spirit of humanitarian law provisions, which are precisely intended to be applied *at all times*.

Recommendation: The deletion of "*at all times*" is unacceptable. The change in language proposed, "*in accordance with*" instead of "with full respect for" is not

very satisfactory but could be accepted.

-Paragraph 8: The GoR only recognises the right of UNAMIR to display within Rwanda the United Nations flag on its headquarters and camps and on the vehicles of the Special-Representative and the Force Commander, not on "other premises, vehicles, vessels and otherwise as decided by the Special-Representative". It also omits the phrase: "other flags and pennants may be displayed only in exceptional cases. In these cases, UNAMIR shall give sympathetic consideration to observations or requests of the Government".

Regarding the display of the UN flag, such display is important for identification purposes on vehicles other than those of the Special-Representative and the Force Commander. Regarding the display of other flags, the concerns of the Government could be addressed.

Recommendation: The right of the Special-Representative to decide if circumstances warrant the display of the UN flag on vehicles should be insisted upon. Regarding other flags, the Government suggestion could be accepted.

-Paragraph 11: The communications facilities that UNAMIR may enjoy in Rwandese territory are only granted "*after Government approval and [in] conformity with national laws on registration of communications equipment*". With regard to telecommunications services, although the original paragraph 10 (a) stated that frequencies for such stations "shall be decided upon in co-operation with the Government", the modified text proposed by the GoR states that these frequencies shall be decided upon "*by the Government in co-operation with UNAMIR*".

The double aim sought by GoR is to have better control on communications that take place from its territory and, in all likelihood, to impose fees on registration of communications equipment. Registration of all communications equipment would be extremely cumbersome. It could be argued that registration fees for the equipment are in fact direct taxes imposed on the United Nations, whereas the Organization is exempt from all direct taxes, except those which are in fact no more than charges for public utility services (Article II, section 7 CPI).

Recommendation: The UN could offer information on its activities and abide by national technical specifications aimed at regulating the flow of communications from Rwanda. However, the UN should not accept to go through registration of its equipment and payment of fees thereof.

-Paragraph 12: Freedom of movement of UNAMIR and its members throughout the territory is only granted "*in exercise of its mandate*".

This is a major restriction that amounts to giving to GoR the right to determine what activities undertaken by UNAMIR are within or not its mandate.

Recommendation: The modification is totally unacceptable.

-Paragraph 12: Regarding freedom of movement, whereas the original agreement

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stated "that freedom shall, with respect to *large* movements of personnel, stores or vehicles through airports or on railways or roads used for general traffic within Rwanda, be co-ordonated *with* the Government", the proposal of the GoR now states that co-ordination will be done *by* the Government and it no longer applies to "large movements" but to any "*movement*".

This restriction, if thoroughly applied by the GoR, would amount to a paralysation of any movement of UNAMIR personnel, stores and vehicles unless authorized by the GoR.

Recommendation: The modification is unacceptable as it stands now. The legitimate desire of the GoR to be informed of such movements could be addressed on other terms.

-Paragraph 13: Whereas the original paragraph 13 stated that vehicles, vessels and aircraft of UNAMIR shall not be subject to registration or licensing by the Government, the proposed paragraph 13 states that: "*All UNAMIR vehicles shall be registered in accordance with national law governing registration of vehicles...*".

As in the case of communications equipment, this is again a modification introduced with the aim to have a better knowledge of UNAMIR activities and, above all, to have UNAMIR pay registration fees for its vehicles. It could again here be argued that such registration fees do not differ from a direct tax, whereas the UN is exempt from payment of all direct taxes.

The proposal departs enormously from past practice. If the UN is required to register all its vehicles in Rwanda, it would impose a considerable burden on its operations, which would be effectively held hostage to Rwandan bureaucracy, not to mention the enormous economic cost that the registration of all vehicles would imply.

Recommendation: The UN could offer to provide information to the Government on the vehicles it operates in Rwanda, but should not agree to registration of these vehicles.

-Original paragraph 14: The following provision: "UNAMIR may use roads, bridges, canals and other waters, port facilities and airfields without the payment of dues, tolls or charges, including wharfage charges. However, UNAMIR will not claim exemption from charges which are in fact charges for services rendered" has been deleted from the GoR proposal.

Although the aim pursued by deleting this provision is clearly economic, i.e. to make UNAMIR pay for such use of facilities, not to include such provision could have the effect of hampering UNAMIR's freedom of movement.

Recommendation: It ultimately boils down to a decision on how much is the UN ready to pay. However, the UN should insist on having a general provision that allows UNAMIR to use roads, bridges, etc. for its operations.

-Paragraph 15: The last sentence of original paragraph 16 has been deleted: "...Where United Nations troops are co-located with military personnel of the host country, a permanent, direct and immediate access by UNAMIR to those premises should be guaranteed".

The fact is that there are no UNAMIR troops co-located with Rwandese military personnel. However, as a matter of principle, if UN troops are co-located with other troops an independent access for UN troops exclusive use is the only way to guarantee that access to the UN premises will not be impeded by the host country, apart from obvious safety considerations.

Recommendation: The principle should be maintained, although it has no practical implications in view of the actual deployment of UNAMIR.

-Paragraph 21: The proposed text excludes the Police Commissioner from the list of officials granted the status specified in sections 19 and 27 of the Convention.

The reason for such exclusion, which only affects one individual, is not well understood. The Police Commissioner is anyway granted the privileges and immunities of article VI of the CPI, by virtue of the application of paragraph 23.

Recommendation: The modification proposed is not a fundamental one. However, the original text should preferably be maintained.

-Paragraph 29: The GoR wants to subject the entry to, residence in and departure from Rwanda of the Special Representative and members of UNAMIR "*to the express consent of the Government*".

This modification is linked to the proposed modifications in paragraphs 30 and 31:

-Paragraph 30: The GoR still "undertakes to facilitate the entry into and departure from Rwanda of the Special Representative and members of UNAMIR and shall be kept informed of such movement". However, all reference to exemptions from passport and visa regulations, immigration inspections and restrictions and regulations governing the residence of aliens in Rwanda has been eliminated;

-Paragraph 31: Similarly, in connection with the entry and departure of members of UNAMIR, whereas the original agreement referred to the need to have an individual or collective movement order and a personal identity card from the mission (see original paragraph 34), the GoR proposal now requires members of UNAMIR "*to have valid passports and individual or collective movement orders issued by or under the authority of a participating state*".

The purpose of these modifications is clearly to subject UNAMIR members to visa requirements, both in order to charge visa fees and to gain better information on the identity of individuals working for UNAMIR. This latter aim is also served by the new paragraph 54, which states that "UNAMIR shall give a full list of all its members and their work to the Government".

These proposed changes are certainly cumbersome on UNAMIR but would seem acceptable in principle. What is not acceptable is that the Government might be allowed to restrict UNAMIR's operativity through the issuance of visas. Particularly, the assertion at the beginning of paragraph 29 ("*Subject to the express consent of the Government...*") might contribute to this impression. This provision would also allow the Government to unilaterally deport at any time any member of UNAMIR. In addition there is an inconsistency between paragraphs 29 and 30: if the Government has to expressly consent to the entry, residence and departure of personnel (para 29), it is redundant to say that the Government "*shall be kept informed of such movement*".

Recommendation: It should be clarified with the Government if its sole intention is to require visas. If so, the language of paragraph 29 should be softened accordingly and the redundancy with paragraph 30 eliminated.

-Paragraph 32: The GoR proposal eliminates the last sentence of the original paragraph 35: "Except as provided for in paragraph 34 of the present Agreement [first entry to Rwanda], such identity card shall be the only document required of a member of UNAMIR".

This modification falls probably in line with the proposal to eliminate visa exemptions and to require passports. However, these issues should not be necessarily linked. Passports and visas might be required for the entry into and departure from Rwanda, but for the purpose of identification of members of UNAMIR within the territory of Rwanda the UN-issued identification card should suffice. On the other hand, this is implicitly recognized in paragraph 33, where it appears that "members of UNAMIR ... may be required to present ... their *UNAMIR identity cards*": there is no reference to any other document there.

Recommendation: Although this is not a fundamental issue, the UN-issued ID card should be sufficient for the purposes of identification within Rwanda.

-Paragraph 34: According to its last sentence only "United Nations Security officers designated by the Special Representative may possess and carry arms while on duty in accordance with their orders", whereas the original paragraph 37 included also "Military members and civilian police of UNAMIR" among those who could carry arms.

This is a major modification that implies, for example, that United Nations troops would no longer be authorized to carry arms.

Recommendation: The modification is totally unacceptable.

-Paragraph 34: The following provision contained in original paragraph 37: "United Nations Security Officers and Field Service Officers may wear the United Nations uniform. The wearing of civilian dress by the above-mentioned members of UNAMIR [military members, United Nations civilian police, United Nations Security Officers and Field Service Officers] may be authorized by the Special Representative at other times [when not performing official duties]" has been deleted.

The rationale for this change is not very clear and seems to be contradictory. Whether the Government does not want to see uniforms around (this is what transpires from the modification to the use of the UN uniform, linked also to the issue of display of the UN flag), whether it does not want to see people who normally wear uniforms in civilian clothing (implied in the second modification referred to above).

In any case, regarding the United Nations uniform worn by Security Officers and Field Service Officers, for purposes of identification its use should be maintained. The right of the Special Representative to authorize certain members of UNAMIR to wear civilian dress when out of duty should also be maintained.

Recommendation: These matters should be left to the UN to decide upon; the changes should not be accepted.

-Paragraph 43 (c): The GoR has added the following provision to the text of the original paragraph 47: "*In either case, the Government reserves the right to deport any member of UNAMIR, civilian or military, for trial in his home country*".

The capacity of the Government to deport members of UNAMIR is already implied in paragraph 29, which subjects the entry into, residence in and departure from Rwanda "to the express consent of the Government". However, to link unilateral deportation to the issue of the exercise of criminal jurisdiction is not acceptable because paragraphs 43 (a) and (b) establish the procedure to deal with criminal offenses allegedly committed by civilian personnel and military personnel. To allow the Government to, these provisions notwithstanding, deport anyone it suspects to have committed a crime in Rwanda is to negate the effectiveness of the agreed procedures.

Recommendation: The proposed addition to paragraph 43 should not be agreed upon.

-Paragraph 44: The whole system of jurisdiction related to civil proceedings has been substantially modified. The decision whether the proceeding is related to the official duties of the staff member does not any longer belong to the Special Representative but to "*a Rwandan court of competent jurisdiction*". There is no longer any obligation to notify the Special Representative that civil proceedings have been instituted against a member of UNAMIR before any court of Rwanda. Property of a member of UNAMIR that is certified by the Special Representative to be needed by the defendant for the fulfilment of his official duties is no longer free from seizure for the satisfaction of a judgement, decision or order. Finally and most important, the final sentence of original paragraph 48: "The personal liberty of a member of UNAMIR shall not be restricted in a civil proceeding, whether to enforce a judgement, decision or order, to compel an oath or for any other reason" has been deleted.

Following the GoR proposal, a staff member who is a defendant in a civil suit could be brought to trial, his case reviewed by a court that could decide that the acts committed by the defendant were not official acts, his property seized and even his personal liberty restricted to enforce the judgement rendered by the court, all this without even notifying the Special Representative.

The effect of the modifications is to significantly reduce the applicability of the immunity from legal process granted by the CPI and the SOMA itself with respect to civil proceedings.

Recommendation: The modification is totally unacceptable.

-Paragraph 53: Whereas the original text stated that "the present Agreement shall remain in force until the departure of the final element of UNAMIR from Rwanda...", the proposed text maintains that the Agreement shall remain in force "*until the current mandate of UNAMIR expires or such other date as the Government and the United Nations may mutually agree*".

Considering that the withdrawal of the mission may go well beyond the expiration of the mandate, this means that, unless there is agreement to the contrary with the Government, all the privileges and immunities granted by the Agreement will not apply to the United Nations during the withdrawal period.

Recommendation: The modification is totally unacceptable.

-Paragraph 54: The GoR adds a totally new paragraph: "*UNAMIR shall give a full list of all its members and their work to the Government*".

This list would satisfy some of the concerns of the Government concerning information about the mission. There is no reason for the United Nations not to comply with this demand.

Recommendation: The proposal may be accepted.

III. Changes that reduce the extent of the Government's cooperation with UNAMIR

-Paragraph 12: The GoR no longer agrees "to supply UNAMIR, where necessary, with maps and other information, including locations of mine fields and other dangers and impediments, which may be useful in facilitating its movements".

-Paragraph 15: The GoR no longer agrees "to the extent possible, [to] provide UNAMIR such areas for headquarters, camps or other premises as may be necessary for the conduct of the operational and administrative activities of UNAMIR and for the accommodation of the members of UNAMIR". It now merely proposes, to the extent possible, "*to assist*" UNAMIR "*in locating such areas*", which do not any longer include "premises for the accommodation of the members of UNAMIR".

-Original paragraph 20: The obligation of the GoR to assist UNAMIR with its local purchases has been deleted.

-Paragraph 19: Although UNAMIR may still recruit locally such personnel as it

requires, the GoR has eliminated the following text: "Upon the request of the Special Representative, the Government undertakes to facilitate the recruitment of qualified local staff by UNAMIR and to accelerate the process of such recruitment".

IV. Changes which main effect is to impose a greater financial burden on UNAMIR's presence in Rwanda

- As already indicated, the proposed changes in paragraphs 11, 13, 14 and 29 to 31 will have, apart from an effect on the independent conduct of UNAMIR's operations, serious economic consequences for the presence of UNAMIR in Rwanda. The proposed changes commented in section III, which aim at reducing the scope of the Government's collaboration with UNAMIR, could also have economic consequences for UNAMIR.

-Paragraph 14 (a): Regarding the sale of goods in the commissaries, the GoR proposes to add the following: "*...provided that UNAMIR members shall only enjoy duty free benefits similar to the benefits accorded to members or staff of diplomatic missions accredited to Rwanda of equal rank or status*".

Access to the UN commissary is already restricted to United Nations international staff; no access is allowed to locally-recruited staff. Considering the actual size of the UNAMIR commissary at Trafipro, the limitation sought by the Government is rather petty.

-Paragraph 15: Whereas premises were originally, to the extent possible, to be provided by the GoR, the proposed paragraph 15 now reads: "*Payment shall be made by UNAMIR on terms to be agreed with the competent authority*". It is also added that "*UNAMIR shall be responsible for the maintenance and upkeep of such areas so provided*".

-Original paragraph 20: This whole paragraph has been deleted in the GoR proposal. Of particular relevance is the last sentence: "The Government shall exempt UNAMIR from general sales taxes in respect of all official local purchases".

The deletion of this provision will have the effect to subject UNAMIR to the payment of sales tax on all local purchases.

-Paragraph 20: The GoR no longer undertakes to make available to UNAMIR Rwandese francs at the rate of exchange most favourable to UNAMIR, as original paragraph 23 provided for. Instead, "*UNAMIR shall conform to the existing national monetary laws and exchange mechanism and conduct its commercial operation through the banking system*".

-Paragraph 26: Though still exempt from taxation on the pay and emoluments received from the United Nations or from a participating state and any income received outside Rwanda, members of UNAMIR are no longer exempt from all other direct taxes and from all registration fees and charges. The GoR proposes that "*...They shall however*

not be exempt from municipal rates for services enjoyed and from all registration fees and charges".

UNAMIR has never claimed exemption from "municipal rates for services enjoyed". However, the proposed changes make UNAMIR members also liable for "all other direct taxes" and for "all registration fees and charges".

V. Minor changes such as changes in language, etc...

-Paragraph 5: The GoR proposes to add "*provisions and*" in the sentence: "UNAMIR and its members shall refrain from any action or activity incompatible with the impartial and international nature of their duties or inconsistent with the *provisions and* spirit of the present arrangements...".

Recommendation: The addition could be accepted.

-Paragraph 5: The GoR proposes to add "*as stipulated in article 46 of this Agreement*" to the following sentence: "UNAMIR and its members shall respect all local laws and regulations *as stipulated in article 46 of this Agreement*".

The reference to "article" 46 does not make sense; paragraph 46 refers to the procedure for the settlement of disputes, it says nothing about ensuring greater respect to local laws and regulations.

Recommendation: This modification should not be accepted as it stands now.

-Paragraph 7 (b): Refer to comments made on this paragraph in section II.

-Paragraph 11 (b): The reference to "*masts*" needs to be rephrased. As it stands now, "*...connections with the local system of...masts...*" does not make sense.

Recommendation: Clarification should be sought from the GoR.

-Paragraph 14 (b): In the paragraph requiring the Special Representative to "take all necessary measures to prevent abuse of such commissaries and the sale *or resale* of such goods to persons other than UNAMIR", the proposal omits the reference to "*or resale*". It also deletes "*sympathetic*" from "and he shall give *sympathetic* consideration to observations or requests of the Government concerning the operation of commissaries".

Recommendation: Both omissions actually benefit UNAMIR.

-Paragraph 14 (c): The word "*provisions*" has been omitted from the list of articles that may be cleared ex customs and excise warehouse, free of duty by UNAMIR.

This is in all likelihood an unwilling omission from the GoR part, since the word "*provisions*" appears in paragraph 14 (a) with respect to the categories of articles which

may be imported free of duty by UNAMIR. Reference to "*provisions*" is also made in paragraph 14 (d) regarding re-exportation of provisions "cleared ex customs and excise warehouse".

Recommendation: The deletion of the term "*provisions*" should not be accepted.

-Paragraph 16: Payment for water, electricity and other necessary facilities shall no longer be made to the "competent authority" but to the "*appropriate authority*".

Recommendation: No problem with that, except that it is not very consistent with the modification proposed by GoR in paragraph 15, which speaks of "the competent authority".

-Paragraph 23: The word "*Other*" has been added at the beginning of the sentence.

This addition probably seeks to maintain the parallelism with paragraph 22 and exclude from the granting of the status of experts in mission those officials already referred to in paragraph 21, who are granted the status specified in sections 19 and 27 of the Convention.

Recommendation: The proposed modification adds confusion and is not necessary.

-Paragraph 33: The word "shall" has been replaced by "*may*" in "Members of UNAMIR as well as locally recruited personnel *may* be required to present, but not to surrender, their UNAMIR identity cards upon demand by an appropriate official of the Government".

Recommendation: The change in language actually benefits UNAMIR.

-Paragraph 37: The GoR has added "*other*" to the phrase: "To this end, personnel designated by the Special Representative shall police the premises of UNAMIR and such *other* areas where its members are deployed".

Recommendation: The proposed change may be accepted.

-Paragraph 38: Personnel designated by the Special Representative to police the premises of UNAMIR may under the proposed text "*apprehend* any other person on the premises of UNAMIR", whereas the original paragraph 41 read that they may "*take into custody* any other person on the premises of UNAMIR".

Considering that following the arrest of such person, he/she shall be delivered immediately to the nearest appropriate official of the Government, the proposed change in language might actually be welcomed. The "apprehension" gives a better idea of the temporary nature of the measure than "to take into custody".

Recommendation: The proposed change may be accepted.

-Paragraph 38: Following the GoR proposal, military personnel placed under arrest outside their own contingent areas are to be transferred to "*their contingent command*", instead of, as in the original paragraph 41, to "their contingent Commander".

This is likely to be an unwilling mistake from the part of the GoR.

Recommendation: The proposed change should not be accepted.

-Paragraph 41: The first and second sentences have been linked and the description of the items to be handed over as being "connected with an offence" has been deleted.

As it stands now, the sentence makes little sense. This is probably an unwilling mistake from the part of the GoR.

Recommendation: The proposed change should not be accepted.

-Paragraph 43 (a): Under the original agreement, members of the civilian component and civilian members of the military component are given the same treatment as regards the procedure to be followed should a criminal offense be committed by them. The GoR proposal eliminates the phrase "*or a civilian member of the military component*".

However, paragraph 43 (b) has not been changed accordingly, and only refers to "military members of the military component". Therefore, the proposed modification adds unnecessary confusion by leaving unanswered the question of the treatment to be given to civilian members of the military component.

Recommendation: The proposed change should not be accepted.

-Paragraph 53: The deletion of the words "except that" before sub-paragraphs (a) and (b) eliminates the link between the chapeau and the sub-paragraphs and makes no sense.

Recommendation: The proposed change should not be accepted.

OUTGOING CODE CABLE

TO: KHAN, UNAMIR, KIGALI

FROM: ANNAN, UNATIONS, NEW YORK

DATE: 24 October 1995

NUMBER: 3353

SUBJECT: PROPOSED AMENDMENTS BY THE GOVERNMENT OF RWANDA TO THE SOFA

With reference to your MIR-3576 of 13 October 1995, we have received from the Office of Legal Affairs the attached memorandum dated 20 October. We thought it would be best to send it to you in its entirety. In view of the difficulties encountered by United Nations contractors in Rwanda, you may wish to note the recommendations in para. 4 of Mr. Zacklin's memo. Please also note that the 26 July memorandum mentioned in para. 4 included a very thick document entitled 'Draft Model Status of Forces Agreement between the UN and host countries', which is still under review.

Best regards.

ROUTING SLIP **FICHE DE TRANSMISSION**

TO: A: Ms. Matthew

FROM: DE: Wilfrid de Souza WS

Room No. – No de bureau	Extension – Poste	Date
		26/10/95

FOR ACTION		POUR SUITE A DONNER
FOR APPROVAL		POUR APPROBATION
FOR SIGNATURE		POUR SIGNATURE
FOR COMMENTS		POUR OBSERVATIONS
MAY WE DISCUSS?		POURRIONS-NOUS EN PARLER ?
YOUR ATTENTION		VOTRE ATTENTION
AS DISCUSSED	X	COMME CONVENU
AS REQUESTED		SUITE A VOTRE DEMANDE
NOTE AND RETURN		NOTER ET RETOURNER
FOR INFORMATION		POUR INFORMATION

CNR 306 P 1/4

OUTGOING CODE CABLE

FC
ED
CA
26.10.95

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RECEIVED
26 OCT 1995
OFFICE OF THE SRSG
UNAMIR

Reçu le 25 OCT 1995

United Nations Nations Unies CNR-306 P2/4

INTEROFFICE MEMORANDUM MEMORANDUM INTERIEUR

TO: A: Mr. Kofi Annan
Under-Secretary-General for
Peace-Keeping Operations

DATE: 20 October 1995

REFERENCE:

THROUGH: S/C DE:

FROM: DE: Ralph Zacklin, Director and Deputy to the
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2. We regret that we are unable to share Mr. Khan's views. In reviewing the proposed amendments, we found that most of them constitute fundamental departures from the customary practices and principles applicable to United Nations peace-keeping operations as codified in the Model SOFA (A/45/594) on the basis of which the SOFA was concluded with Rwanda on 5 November 1993. Such amendments relate to essential privileges and immunities, rights and facilities of UNAMIR and its members and include:

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3. The amendments proposed by the Government of Rwanda do not, in our view, constitute a basis on which we consider that negotiations could proceed towards a revised draft SOFA. It should be made clear to the Government that any amendment to the SOFA will have to be considered in light of the fundamental principles of the Convention and the customary principles and practices of United Nations peace-keeping or similar operations contained in the model SOFA.

4. In this respect, it should be recalled that the version of the model SOFA which includes provisions concerning facilities necessary for contractors to carry out their tasks in the context of UN peace-keeping operations was forwarded to Mr. I. Riza by my

memorandum dated 26 July 1995. Taking into consideration the difficulties encountered by UN contractors, including in Rwanda, any changes to the existing SOFA should also include the provisions of the above-mentioned version of the model SOFA. In the absence of any agreed amendment, the existing SOFA will continue to regulate the status of UNAMIR.

CNR 306 P 1/4

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UNAMIR

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United Nations Nations Unies CNR-306 P2/4

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memorandum dated 26 July 1995. Taking into consideration the difficulties encountered by UN contractors, including in Rwanda, any changes to the existing SOFA should also include the provisions of the above-mentioned version of the model SOFA. In the absence of any agreed amendment, the existing SOFA will continue to regulate the status of UNAMIR.

UNITED NATIONS NATIONS UNIES
ASSISTANCE MISSION FOR RWANDA MISSION POUR L'ASSISTANCE AU RWANDA

UNAMIR - MINUAR

OUTGOING CODE CABLE Crd-357 1/35

MOST IMMEDIATE

TO: CORREL/ANNAN/GOULDING/HANSEN, UNATIONS, NEW YORK

FROM: SHAHARYAR M. KHAN, UNAMIR, KIGALI Shaharyar M. Khan

DATE: 13 OCTOBER 1995

NO.: MIR -3576

Important Please keep on hand. 17-10-95 WS

NO. OF PAGES: 35

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2. I appointed a committee consisting of all the components of UNAMIR (political, military and administrative) to examine the Rwandese Government's proposal. After holding formal consultations on the matter, they have unanimously concluded that the proposed modifications sought by the Government were to the detriment of UNAMIR and would undermine our position as a United Nations peace-keeping mission. Furthermore, some of the proposals are contrary to the 1946 Convention on the Privileges and Immunities of the United Nations, as well as standard provisions at other United Nations peace-keeping missions operating in other areas of the world. The committee was of the unanimous view that the proposed text was unacceptable.

3. While I respect the committee's unanimous view, I feel that the Rwandese proposals need to be placed in their political context. The following broad guiding factors need to be borne in mind before assessing and responding to their proposals:

i) This government is new, completely untutored and inexperienced in complex international law issues. Their desire to assert their sovereign right needs to be taken into account.

SRSG

chr-357

ii) In the past year we have moved from a situation of complete lawlessness, lack of law and order to a government that has full sovereignty and control over its territory. It follows that the government expects UN, like everyone else including diplomatic missions, to pay for telephone, fax, radio communication links established through its national system. The government is also understandably keen to reduce UN Flags flying from every car - something that would be desirable in a war torn country but not in Rwanda today, and to reduce their use to two senior officers (SRSG and FC).

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CNR 306 P 1/4

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ASSISTANCE MISSION FOR RWANDA MISSION POUR L'ASSISTANCE AU RWANDA

UNAMIR - MINUAR

OUTGOING CODE CABLE Rwd-357 1/35

MOST IMMEDIATE

TO: CORREL/ANNAN/GOULDING/HANSEN, UNATIONS, NEW YORK

FROM: SHAHARYAR M. KHAN, UNAMIR, KIGALI Shaharyar M. Khan

DATE: 13 OCTOBER 1995

NO.: MIR -3576

NO. OF PAGES: 35

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(SRSG)

ch-357

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ASSISTANCE MISSION FOR RWANDA MISSION POUR L'ASSISTANCE AU RWANDA

UNAMIR - MINUAR

INTEROFFICE MEMORANDUM

Date: 9 October 1995

To: Col. Shiva Kumar
Ms. Susan Matthew
Mr. Mamady Lamine Condé
Mr. Mtshana Ncube
Mr. Paul Ischlika
Ms. Ladan Rafii

From: Wilfrid de Souza
Executive Director

Subject: Status of Mission Agreement

1. As a follow-up to our meeting of this afternoon, please find attached the draft cable we have prepared to convey our views to New York on the proposed new SOMA.

2. I would appreciate receiving your suggestions, if any, by tomorrow noon.

3. Thank you for your cooperation.

UNITED NATIONS
ASSISTANCE MISSION FOR RWANDA

NATIONS UNIES
MISSION POUR L'ASSISTANCE AU RWANDA

UNAMIR - MINUAR

OUT-GOING CODE CABLE

TO: ANNAN/GOULDING/CORELL, UNATIONS, NEW YORK

INFO: KITTANI/GHAREKHAN, UNATIONS, NEW YORK

FROM: SHAHARYAR M. KHAN, UNAMIR, KIGALI

DATE: 9 October 1995

NO: MIR _____

NO. OF PAGES: 33

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10/10

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Executive Director

Subject: Status of Mission Agreement

1. As a follow-up to our meeting of this afternoon, please find attached the draft cable we have prepared to convey our views to New York on the proposed new SOMA.

2. I would appreciate receiving your suggestions, if any, by tomorrow noon.

3. Thank you for your cooperation.

I endorse the draft on my colleagues' behalf

UNITED NATIONS
ASSISTANCE MISSION FOR RWANDA

NATIONS UNIES
MISSION POUR L'ASSISTANCE AU RWANDA

UNAMIR - MINUAR

OUT-GOING CODE CABLE

TO: ANNAN/GOULDING/CORELL, UNATIONS, NEW YORK

INFO: KITTANI/GHAREKHAN, UNATIONS, NEW YORK

FROM: SHAHARYAR M. KHAN, UNAMIR, KIGALI

DATE: 9 October 1995

NO: MIR _____

NO. OF PAGES: 33

SUBJECT: **MODIFICATIONS TO THE STATUS OF MISSION AGREEMENT PROPOSED BY THE GOVERNMENT OF RWANDA**

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1. We attach for your information an analysis of the text of the new Status of Mission Agreement (SOMA) recently proposed by the Rwandese Government. A copy of the original SOMA, as well as the Government's new version of the Agreement incorporating their proposed changes which we received from the Office of the President are also attached for your reference.

2. All the components of UNAMIR (political, military and administrative), after holding formal consultations on the matter today, have unanimously concluded that the proposed modifications sought by the Government were all to the detriment of UNAMIR and would undermine our position as a United Nations peace-keeping mission. Furthermore, some of the proposals are contrary to the 1946 Convention on the Privileges and Immunities of the United Nations, as well as standard provisions at other United Nations peace-keeping missions operating in other areas of the world. The committee was of the unanimous view that the proposed text is totally unacceptable. However, we are submitting it for your consideration and legal opinion, as well as any action you may deem appropriate.

3. We look forward to receiving your comments on the proposed modifications to the SOMA on an early basis as the Rwandese Government has indicated its expectations of a quick response on our part.

4. Best regards.