UNAMIR MISSION AGREEMENT 11 NOV 1993 – 25 MAR 1996

[4 CONFIDENTIAL]

EL/WG APR 2009

PLEASE RETAIN ORIGINAL ORDER

CNR 092 P2/3

FRONT PATRIOTIQUE RWANDAIS
RWANDESE PATRIOTIC FRONT

9, Avenue de l'Observatoire, Bte 8
1180 Bruxelles, BELGIQUE
Tél. 32-2-374-8898
Fax 32-2-374-4484

Mulindi, 21 novembre 1993

Monsieur S. Iqbal Riza
Sous-Secrétaire Général aux
Opérations de Maintien de la Paix
NEW YORK 10017

Monsieur le Sous-Secrétaire Général,

Je vous remercie de votre correspondance du 11 novembre 1993 par laquelle vous nous transmettez le document de l'Accord du 5 novembre 1993 entre les Nations Unies et le Gouvernement Rwandais sur le statut de la MINUAR et de son personnel.

Nous accusons donc réception de votre lettre en promettant de coopérer pleinement à la mise en oeuvre des dispositions pertinentes de l'Accord.

Veuillez agréer, Monsieur le Sous-Secrétaire Général, l'expression de ma haute considération.

Col. Alexis KANYARENGWE
PRESIDENT DU FRONT PATRIOTIQUE RWANDAIS

ANNEX 'B'

Sample of incidents constituting violations of the Status of Mission Agreement (re: UNAMIR) and the Convention on the Privileges and Immunities of the United Nations

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5.1 **Searches of UNAMIR property and privileged personnel**

The most recent examples include incidents documented by UNAMIR Military Observers (MILOBs) on 2 February 1995 (Kigali airport), 2 and 16 March 1995 (Ruhengeri), 13 March 1995 (Kigali-Gisenyi road), 23 March 1995 (Gitarama-Kigali road); by UNAMIR Air Operations staff (a catalogue of incidents reported on 7 and 12 February 1995); by UNICEF (2, 4, 10, 12 and 14 March 1995); and by UNHCR (search of diplomatic bag on 1 March 1995); among many others.

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The incidents include the detention of 40 United Nations vehicles at Gatuna border post since 27 February 1995 in demand for the payment of customs duties; the detention of UNAMIR communications equipment at Kigali airport since 20 February 1995, and similarly of UNDP communications equipment since January 1995; the detention of other UNAMIR imports normally handled by UNAMIR's contractors (recurrent incidents); among several others. The continued detention of UNAMIR's communications equipment is also in violation of section 9 of the Convention and paragraphs 10 and 11 of the Agreement, on UNAMIR's right to install and operate communications facilities. This violation currently poses the threat of a complete breakdown of UNAMIR's communications network, with potentially serious repercussions for the security and safety of UNAMIR personnel in the field.

5.3 **Movement restrictions**

One example here was the restriction and eventual prohibition of UNAMIR's use of a barge on Lake Kivu to transport equipment and supplies to our troops in the Kibuye area, which had been arranged in view of the difficulties of land transportation by heavy trucks in that area. That restriction severely curtailed the operational flexibility and freedom of movement of UNAMIR.

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5.5 **Passport restrictions (see letter)**

5.6 **Seizure/Impoundment of UNAMIR vehicles**

There have been about 10 such seizures over the past several months; vehicles are released only after protracted negotiations with the National Gendarmerie, sometimes after the summary imposition of fines against the United Nations personnel involved. In this connection, we have always offered our cooperation in regard to joint investigations of such cases, as required under paragraph 44 of the Agreement. In addition, we have issued instructions and we take disciplinary measures against UNAMIR personnel and troops in respect of violations of local traffic regulations.

5.7 **Arrests/detention of local staff**

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5.8 **Harassment/intimidation of Rwandese nationals in contact with UNAMIR**

These acts of intimidation or harassment impede the effective implementation of the mandates of UNAMIR and other United Nations agencies, and are consequently in violation of paragraph 4 of Security Council resolution 965 (1994), among other resolutions. Among the numerous examples of such incidents, one of the most serious occurred on 5 February 1995, in Kigali, when Human Rights personnel investigating the attempted murder of a prominent journalist were surrounded by armed RPA soldiers, who prevented them from interviewing local residents. The acts of intimidation by the RPA troops also greatly influenced the willingness of witnesses to come forward with information.

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current demands for UNAMIR to vacate the former UNICEF premises, part of the Military Academy in Kigali, and Tunbatt base in Sector 5).

5.5 Passport restrictions (see letter)

5.6 Seizure/Impoundment of UNAMIR vehicles

There have been about 10 such seizures over the past several months; vehicles are released only after protracted negotiations with the National Gendarmerie, sometimes after the summary imposition of fines against the United Nations personnel involved. In this connection, we have always offered our cooperation in regard to joint investigations of such cases, as required under paragraph 44 of the Agreement. In addition, we have issued instructions and we take disciplinary measures against UNAMIR personnel and troops in respect of violations of local traffic regulations.

5.7 Arrests/detention of local staff

We do not here question legitimate law-enforcement actions by Government agents. However, these need not be accompanied by forcible entry into United Nations premises -- which violates section 3 of the Convention and paragraphs 16 and 19 of the Agreement. The manner in which the arrests are carried out is also often in violation of fundamental principles of human rights on the notification of reasons and the existence of evidence for an arrest. If the reasons for an arrest -- which are usually not revealed until after persistent enquiries subsequent to the arrest -- were to relate to the staff member's employment with the United Nations, such arrest would be in violation of Section 18 (a) of the Convention and paragraphs 28 and 46 of the Agreement.

5.8 **Harassment/intimidation of Rwandese nationals in contact with UNAMIR**

These acts of intimidation or harassment impede the effective implementation of the mandates of UNAMIR and other United Nations agencies, and are consequently in violation of paragraph 4 of Security Council resolution 965 (1994), among other resolutions. Among the numerous examples of such incidents, one of the most serious occurred on 5 February 1995, in Kigali, when Human Rights personnel investigating the attempted murder of a prominent journalist were surrounded by armed RPA soldiers, who prevented them from interviewing local residents. The acts of intimidation by the RPA troops also greatly influenced the willingness of witnesses to come forward with information.

Sample of incidents constituting violations of the Status of Mission Agreement (re: UNAMIR) and the Convention on the Privileges and Immunities of the United Nations

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5.1 **Searches of UNAMIR property and privileged personnel**

The most recent examples include incidents documented by UNAMIR Military Observers (MILOBs) on 2 February 1995 (Kigali airport), 2 and 16 March 1995 (Ruhengeri), 13 March 1995 (Kigali-Gisenyi road), 23 March 1995 (Gitarama-Kigali road); by UNAMIR Air Operations staff (a catalogue of incidents reported on 7 and 12 February 1995); by UNICEF (2, 4, 10, 12 and 14 March 1995); and by UNHCR (search of diplomatic bag on 1 March 1995); among many others.

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

UNAMIR - MINUAR

NOTE FOR THE FILE

On 28 March 1996 a meeting was convened at UNDP headquarters in Kigali to discuss the issue of taxation of United Nations agencies and non-governmental organizations (NGOs) operating in Rwanda. Attendees included representatives from the agencies, NGOs, as well as the diplomatic community. The meeting was chaired by Mr. Sukehiro Hasagawa (UNDP Resident Representative).

In his introduction, Mr. Hasegawa stated that the World Bank and the International Monetary Fund had made several proposals to the Rwandese Government in order to raise revenue, among them being a proposal to strictly limit tax exemption on imports into the country. Not only would this serve as a means of revenue generation, but it would also assist in the protection of domestic industry. He proposed that equipment which could be subject to tax exemption could be classified into the following categories:

a) personal use (such as vehicles, televisions and other items imported for personal consumption);
b) official use (items used by United Nations agencies and NGOs for the performance of their official duties); and
c) use by the host country - either in terms of emergency humanitarian assistance or development assistance.

In his opinion, resolution of the issue would depend upon the source of funding for each category. He further added that instead of importing equipment into Rwanda, efforts should be made to promote local industry by obtaining goods and services from within the country.

In response to his comments, the head of UNICEF (Mr. Daniel Toole) stated that UNICEF had plenty of documentary evidence demonstrating its efforts to obtain goods from local Rwandese suppliers. He stated that in most cases their attempts had proved to be futile, because they could not obtain the quantity or quality of goods desired within the required time-frame.

With regard to the issue of eliminating tax exemptions, representatives from the agencies and NGOs were unanimous in their opposition to the imposition of such a measure. It was pointed out that taxation of imported goods would be a contravention of the 1946 Convention on the Privileges and Immunities of the United Nations, as well as bilateral and trilateral accords undertaken between the present Government and United Nations agencies and/or NGOs operating in Rwanda. Also mentioned was the fact that the effect of imposing taxation on imported equipment would lead to a considerable increase in the cost of their assistance programmes. They further questioned whether donor countries would be amenable to such a measure, since most equipment was primarily being imported for purposes of assisting the host country.

The representatives of agencies and NGOs unanimously agreed that if the Rwandese Government was willing to violate its international and contractual obligations, then they had no alternative but to terminate their assistance programmes and leave the country.

The meeting ended with a decision being made to adopt a two-pronged approach vis-à-vis the Government, with NGOs and the agencies expressing their opposition to the proposed measures separately. Position papers would be drafted and discussed among the participants at a follow-up meeting.

Ladan M. Rafii
Political/Legal Officer
29 March 1996

cc: SRSG
ED
CAO

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

NOTE TO SRSG

As requested, I have attached a revised version of the draft Agreement between the United Nations and the Government of Rwanda on the status of the United Nations Office in Rwanda (UNOR). Among the modifications made, provisions regarding the following have been eliminated as they appeared to be no longer applicable:

- military component
- commissary (it does not seem feasible under the present circumstances)
- aircraft and vessels (as they will not be a part of UNOR)
- exemption from passport and visa regulations and immigration inspection and restrictions (since we have already been complying with these measures for a long time)
- Government's undertaking to supply locations of minefields and dangerous impediments
- exemption from vehicle registration and licensing (other UN agencies in Rwanda use diplomatic or transit licence plates)
- separate arrangements for the processing and transport of private mail addressed to or emanating from UNOR (not necessary)

The provisions in bold which have been added mostly pertain to the status of contractors where additional privileges are most needed. The relevant sections of the document dealing with communications issues do not conflict with the recent agreements reached between United Nations agencies and the Rwandese Government regarding the use of communications facilities in Rwanda. I have not eliminated other sections which exempt UNOR from providing revenue to the Government as this would be in contravention of the Convention on Privileges and Immunities and/or current practice in other countries.

Personally, I believe a simpler agreement would be more appropriate for UNOR, since it will not be operating as a peace-keeping operation. It may be preferable to obtain more precise details on the nature of the envisaged political office before finalizing this matter.

Ladan M. Rafii
Political/Legal Officer
22 March 1996

Agreement between the United Nations and the Government of the Republic of Rwanda on the status of the United Nations Office in Rwanda

I. DEFINITIONS

1. For the purpose of the present Agreement the following definitions shall apply:

(a) "UNOR" means the United Nations Office in Rwanda established by the Secretary-General of the United Nations pursuant to the recommendation in Security Council resolution 1050 of 8 March 1996. For the purposes of this Agreement UNOR shall consist of:

(i) the "Special Representative" appointed by the Secretary-General. Any reference to the Special Representative in this Agreement shall, except in paragraph 22, include any member of UNOR to whom he delegates a specific function or authority;

(ii) a "civilian component" consisting of United Nations officials and of other persons assigned by the Secretary-General to assist the Special Representative or made available by participating States to serve as part of UNOR;

(b) a "member of UNOR" means any member of the civilian component but unless specifically stated otherwise does not include locally recruited personnel;

(c) "participating State" means a state contributing personnel to any of the above-mentioned component of UNOR;

(d) "The Government" means the Government of the Republic of Rwanda;

(e) "The territory" means the Government of the Republic of Rwanda;

(f) "The Convention" means the Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly of the United Nations on 13 February 1946.

II. APPLICATION OF THE PRESENT AGREEMENT

2. Unless specifically provided otherwise, the provisions of the present Agreement and any obligation undertaken by the Government or any privilege, immunity, facility or concession granted to UNOR or any member thereof apply throughout the territory.

III. APPLICATION OF THE CONVENTION

3. UNOR, its members, property, funds and assets, shall enjoy the privileges and immunities specified in the present Agreement as well as those provided for in the Convention, to which Rwanda is a Party.

IV. STATUS OF UNOR

4. UNOR and its members shall refrain from any action or activity incompatible with the impartial and international nature of their duties or inconsistent with the spirit of the present arrangements. UNOR and its members shall respect all local laws and regulations. The Special Representative shall take all appropriate measures to ensure the observance of those obligations.

5. The Government shall respect the exclusively international nature of UNOR and ensure that appropriate steps are taken to ensure the security and safety of UNOR and personnel engaged in the Mission.

United Nations flag and vehicle markings

6. The Government recognizes the right of UNOR to display within Rwanda the United Nations flag on its headquarters, camps or 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, UNOR shall give sympathetic consideration to observations or requests of the Government.

7. Vehicles, vessels and aircraft of UNOR shall carry a distinctive United Nations identification, which shall be notified to the Government.

Communications

8. UNOR shall enjoy the facilities in respect to communications provided in article III of the Convention and shall, in co-ordination with the government, use such facilities as may be required for the performance of its task. Issues with respect to communications which may arise and which are not specifically provided for in the present Agreement shall be dealt with pursuant to the relevant provisions of the Convention.

9. Subject to the provisions of paragraph 8:

(a) UNOR shall have authority to install and operate radio sending and receiving stations as well as satellite systems to connect appropriate points within the territory with each other and with United Nations offices in other countries, and to exchange traffic with the United Nations global telecommunications network. The telecommunication services shall be operated in accordance with the International Telecommunication Convention and Regulations and the frequencies on which any such station may be operated shall be decided upon in co-operation with the Government and shall be communicated by the United Nations to the International Frequency Registration Board;

(b) UNOR shall enjoy, within the territory, the right to unrestricted communication by radio (including satellite, mobile and hand-held radio), telephone, telegraph, facsimile or any other means, and of establishing the necessary facilities for maintaining such communications within and between premises of UNOR, including the laying of cables and land lines and the establishment of fixed and mobile radio sending, receiving and repeater stations. The frequencies on which the radio will operate shall be decided upon in co-operation with the Government. It is understood that connections with the local system of telegraphs, telex and telephones may be made only after consultation and in accordance with arrangements with the Government, it being further understood that the use of the local system of telegraphs, telex and telephones will be charged at the most favourable rate;

(c) UNOR may make arrangements through its own facilities for the processing and transport of private mail addressed to or emanating from members of UNOR. The Government shall be informed of the nature of such arrangements and shall not interfere with or apply censorship to the mail of UNOR or its members. In the event that postal arrangements applying to private mail of members of UNOR are extended to transfer of currency or the transport of packages and parcels, the conditions under which such operations are conducted shall be agreed with the Government.

Travel and transport

10. UNOR and its members shall enjoy, together with its vehicles, vessels, aircraft and equipment, freedom of movement throughout the territory. 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-ordinated with the Government. ~~The Government undertakes to supply UNOR, 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.~~

11. Vehicles, vessels and aircraft of UNOR shall not be subject to registration or licensing by the Government provided that all such vehicles shall carry the third party insurance requirement by relevant legislation.

12. UNOR may use roads, bridges, ~~canals~~ and other waters, ~~port facilities~~ and airfields without the payment of dues, tolls or charges, ~~including wharfage charges~~. However, UNOR will not claim exemption from charges which are in fact charges for services rendered.

Privileges and immunities of UNOR

13. UNOR, as a subsidiary organ of the United Nations, enjoys the status, privileges and immunities of the United Nations in accordance with the Convention. The Government recognizes the right of UNOR in particular:

(a) To import, free of duty or other restrictions, equipment, provisions, supplies and other goods which are for the exclusive and official use of UNOR ~~or for resale in the commissaries provided for hereinafter;~~

(b) To establish, maintain and operate commissaries at its headquarters, camps and posts for the benefit of the members of UNOR, but not of locally recruited personnel. Such commissaries may provide goods of a consumable nature and other articles to be specified in advance. The Special Representative shall take all necessary measures to prevent abuse of such commissaries and the sale or resale of such goods to persons other than members of UNOR, and he shall give sympathetic consideration to observations or requests of the Government concerning the operation of the commissaries;

(c) To clear ex customs and excise warehouse, free of duty or other restrictions, equipment, provisions, supplies and other goods which are for the exclusive and official use of UNOR or for resale in the commissaries provided for above;

(d) To re-export or otherwise dispose of such equipment, as far as it is still usable, all unconsumed provisions, supplies and other goods so imported or cleared ex customs and excise warehouse which are not transferred, or otherwise disposed of, on terms and conditions to be agreed upon, to the competent local authorities of Rwanda or to an entity nominated by them.

To the end that such importation, clearances, transfer or exportation may be effected with the least possible delay, a mutually satisfactory procedure, including documentation, shall be agreed between UNOR and the Government at the earliest possible date.

V. FACILITIES FOR UNOR

Premises required for conducting the operational and administrative activities of UNOR and for accommodating members of UNOR

14. The Government of Rwanda shall, to the extent possible, provide UNOR such areas for headquarters, camps or other premises as may be necessary for the conduct of the operational and administrative activities of UNOR and for the accommodation of the members of UNOR. 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.

15. The Government undertakes to assist UNOR as far as possible in obtaining water, electricity and other necessary facilities, and, in the case of interruption or threatened interruption of service, to give as far as is within its powers the same priority to the needs of UNOR as to essential government services. Payment shall be made by UNOR on terms to be agreed with the competent authority. UNOR shall be responsible for the maintenance and upkeep of facilities so provided.

16. UNOR shall have the right, where necessary, to generate, within its premises, electricity for its use and to transmit and distribute such electricity.

17. The United Nations alone may consent to the entry of any government officials or of any other person not member of UNOR to such premises.

Provisions, supplies and services, and sanitary arrangements

18. The Government undertakes to assist UNOR as far as possible in obtaining equipment, provisions, supplies and other goods and services from local sources required for its subsistence and operations. In making purchases on the local market, UNOR shall, on the basis of observations made and information provided by the Government in that respect, avoid any adverse effect on the local economy. The Government shall exempt UNOR from general sales taxes in respect of all official local purchases.

19. UNOR and the Government shall co-operate with respect to sanitary services and shall extend to each other the fullest co-operation in matters concerning health, particularly with respect to the control of communicable diseases, in accordance with international conventions.

Recruitment of local personnel

20. UNOR may recruit locally such personnel as it requires. Upon the request of the Special Representative, the Government undertakes to facilitate the recruitment of qualified local staff by UNOR and to accelerate the process of such recruitment.

Currency

21. The Government undertakes to make available to UNOR, against reimbursement in mutually acceptable currency, Rwandese franc currency required for the use of UNOR, including the pay of its members, at the rate of exchange most favourable to UNOR.

VI. STATUS OF THE MEMBERS OF UNOR

Privileges and immunities

22. The Special Representative shall have the status specified in sections 19 and 27 of the Convention, provided that the privileges and immunities therein referred to shall be those accorded to diplomatic envoys by international law.

23. Other United Nations officials assigned to the civilian component to serve with UNOR remain officials of the United Nations entitled to the privileges and immunities of articles V and VII of the Convention.

24. Unless otherwise specified in the present Agreement, locally recruited members of UNOR shall enjoy the immunities concerning official acts and exemption from taxation and national service obligations provided for in sections 18 (a), (b) and (c) of the Convention.

25. Members of UNOR shall be exempt from taxation on the pay and emoluments received from the United Nations or from a participating State and any income received from outside Rwanda. They shall also be exempt from all other direct taxes, except municipal rates for services enjoyed, and from all registration fees and charges.

26. Members of UNOR shall have the right to import free of duty their personal effects in connection with their arrival in Rwanda. They shall be subject to the laws and regulations of Rwanda governing customs and foreign exchange with respect to personal property not required by them by reason of their presence in Rwanda with UNOR. Special facilities will

be granted by the Government for the speedy processing of entry and exit formalities for all members of UNOR upon prior written notification. On departure from Rwanda, members of UNOR may, notwithstanding the above-mentioned exchange regulations, take with them such funds as the Special Representative certifies were received in pay and emoluments from the United Nations or from a participating State and are a reasonable residue thereof. Special arrangements shall be made for the implementation of the present provisions in the interests of the Government and the members of UNOR.

27. The Special Representative shall co-operate with the Government and shall render all assistance within his power in ensuring the observance of the customs and fiscal laws and regulations of Rwanda by the members of UNOR, in accordance with the present Agreement.

Entry, residence and departure

28. The Special Representative and members of UNOR shall, whenever so required by the Special Representative, have the right to enter into, reside in and depart from Rwanda.

29. The Government undertakes to facilitate the entry into and departure from Rwanda of the Special Representative and members of UNOR and shall be kept informed of such movement. For that purpose, the Special Representative and members of UNOR shall be exempt from passport and visa regulations and immigration inspection and restrictions on 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.

Identification

30. The Special Representative shall issue to each member of UNOR before or as soon as possible after such member's first entry into Rwanda, as well as to all locally recruited personnel, a numbered identity card, which shall show full name, date of birth, title or rank, service (if appropriate) and photograph. Such identity card shall be the only document required of a member of UNOR.

31. Members of UNOR as well as locally recruited personnel shall be required to present, but not to surrender, their UNOR identity cards upon demand of an appropriate official of the Government.

Uniform and arms

32. 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 UNOR may be authorized by the Special Representative at other times. United Nations Security Officers designated by the Special Representative may possess and carry arms while on duty in accordance with their orders.

Permits and licences

33. The Government agrees to accept as valid, without tax or fee, a permit or licence issued by the Special Representative for the operation by any member of UNOR, including locally recruited personnel, of any UNOR transport or communication equipment and for the practice of any profession or occupation in connection with the functioning of UNOR, provided that no licence to drive a vehicle or pilot an aircraft shall be issued to any person who is not already in possession of an appropriate and valid licence.

34. Without prejudice to the provisions of paragraph 32, the Government further agrees to accept as valid, without tax or fee, a permit or licence issued by the Special Representative to a member of UNOR for the carrying or use of firearms or ammunition in connection with the functioning of UNOR.

Arrest and transfer of custody, and mutual assistance

35. The Special Representative shall take all appropriate measures to ensure the maintenance of discipline and good order among members of UNOR, as well as locally recruited personnel. To this end personnel designated by the Special Representative shall police the premises of UNOR and such areas where its members are deployed. Elsewhere such personnel shall be employed only subject to arrangements with the Government and in liaison with it in so far as such employment is necessary to maintain discipline and order among members of UNOR.

36. The personnel mentioned in paragraph 35 above may take into custody any person on the premises of UNOR. Such person shall be delivered immediately to the nearest appropriate official of the Government for the purpose of dealing with any offence or disturbance on such premises.

37. Subject to the provisions of paragraph 22, officials of the Government may take into custody any member of UNOR:

(a) When so requested by the Special Representative; or

(b) When such a member of UNOR is apprehended in the commission or attempted commission of a criminal offence. Such person shall be delivered immediately, together with any weapons or other item seized, to the nearest appropriate representative of UNOR, whereafter the provisions of paragraph 42 shall apply mutatis mutandis.

38. When a person is taken into custody under paragraph 36 or paragraph 37 (b), UNOR or the Government, as the case may be, may make a preliminary interrogation but may not delay the transfer of custody. Following such transfer, the person concerned shall be made available upon request to the arresting authority for further interrogation.

39. UNOR and the Government shall assist each other in carrying out all necessary investigations into offenses in respect of which either or both have an interest, in the production of witnesses and in the collection and production of evidence, including the seizure of and, if appropriate, the handing over of items connected with an offence. The handing over of any such items may be made subject to their return within the terms specified by the authority delivering them. Each shall notify the other of the disposition of any case

in the outcome of which the other may have an interest or in which there has been a transfer of custody under the provisions of paragraphs 36-38.

40. The Government shall ensure the prosecution of persons subject to its criminal jurisdiction who are accused of acts in relation to UNOR or its members which, if committed in relation to the forces of the Government, would have rendered such acts liable to prosecution.

Jurisdiction

41. All members of UNOR 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 UNOR and after the expiration of the other provisions of the present Agreement.

42. Should the Government consider that any member of UNOR has committed a criminal offense, it shall promptly inform the Special Representative and present to him any evidence available to it. Subject to the provisions of paragraph 22, if the accused person is a member of the civilian component, the Special Representative shall conduct any necessary supplementary inquiry and then agree with the Government whether or not criminal proceedings should be instituted. Failing such agreement, the question shall be resolved as provided in paragraph 47 of the present Agreement.

43. If any civil proceeding is instituted against a member of UNOR before any court of Rwanda, the Special Representative shall be notified immediately, and he shall certify to the court whether or not the proceeding is related to the official duties of such member:

(a) If the Special Representative certifies that the proceeding is related to official duties, such proceeding shall be discontinued and the provisions of paragraph 45 of the present Agreement shall apply.

(b) If the Special Representative certifies that the proceeding is not related to official duties, the proceeding may continue. If the Special Representative certifies that a member of UNOR is unable because of official duties or authorized absence to protect his interests in the proceeding, the court shall at the defendant's request suspend the proceeding until the elimination of the disability, but for not more than ninety days. Property of a member of UNOR that is certified by the Special Representative to be needed by the defendant for the fulfillment 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 UNOR 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.

Deceased members

44. The Special Representative shall have the right to take charge of and dispose of the body of a member of UNOR who died in Rwanda, as well as that member's personal property located within Rwanda, in accordance with United Nations procedures.

VII. SETTLEMENT OF DISPUTES

45. Except as provided in paragraph 47, any dispute or claim of a private law character to which UNOR or any member thereof is a party and over which the courts of Rwanda do not have jurisdiction because of any provision of the present Agreement, shall be settled by a standing claims commission to be established for that purpose. One member of the commission shall be appointed by the Secretary-General of the United Nations, one member by the Government and a chairman jointly by the Secretary-General and the Government. If no agreement as to the chairman is reached within thirty days of the appointment of the first member of the commission, the President of the International Court of Justice may, at the request of either the Secretary-General of the United Nations or the Government, appoint the chairman. Any vacancy on the commission shall be filled by the same method prescribed for the original appointment, provided that the thirty-day period there prescribed shall start as soon as there is a vacancy in the chairmanship. The commission shall determine its own procedures, provided that any two members shall constitute a quorum for all purposes (except for a period of thirty days after the creation of a vacancy) and all decisions shall require the approval of any two members. The awards of the commission shall be final and binding, unless the Secretary-General of the United Nations and the Government permit an appeal to a tribunal established in accordance with paragraph 47. The awards of the commission shall be notified to the parties and, if against a member of UNOR, the Special Representative or the Secretary-General of the United Nations shall use his best endeavours to ensure compliance.

46. Disputes concerning the terms of employment and conditions of service of locally recruited personnel shall be settled by the administrative procedures to be established by the Special Representative.

47. Any other dispute between UNOR and the Government, and any appeal that both of them agree to allow from the award of the claims commission established pursuant to paragraph 45 shall, unless otherwise agreed by the parties, be submitted to a tribunal of three arbitrators. The provisions relating to the establishment and procedures of the claims commission shall apply, mutatis mutandis, to the establishment and procedures of the tribunal. The decisions of the tribunal shall be final and binding on both parties.

48. All differences between the United Nations and the Government arising out of the interpretation or application of the present arrangements which involve a question of principle concerning the Convention shall be dealt with in accordance with the procedure of section 30 of the Convention.

VIII. SUPPLEMENTAL ARRANGEMENTS

49. The Special Representative and the Government may conclude supplemental arrangements to the present Agreement.

IX. LIAISON

50. The Special Representative and the Government shall take appropriate measures to ensure close and reciprocal liaison at every appropriate level.

X. MISCELLANEOUS PROVISIONS

51. Wherever the present Agreement refers to the privileges, immunities and rights of UNOR and to the facilities provided to UNOR, the Government shall have the ultimate responsibility for the implementation and fulfillment of such privileges, immunities, rights and facilities by the appropriate local Rwandese authorities.

52. The present Agreement shall remain in force until the departure of the final element of UNOR from Rwanda except that:

(a) The provisions of paragraphs 41, 47 and 48 shall remain in force;

(b) The provisions of paragraph 45 shall remain in force until all claims have been settled that arose prior to the termination of the present Agreement and were submitted prior to or within three months of such termination.

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

MODIFICATIONS TO THE STATUS OF MISSION AGREEMENT (SOMA) PROPOSED BY THE RWANDESE GOVERNMENT

1. The following is a compilation of the modifications sought by the Rwandese Government to the provisions of the Agreement between the United Nations and the Government of the Republic of Rwanda on the Status of the United Nations Assistance Mission for Rwanda (UNAMIR). (References to paragraphs are to the original, not modified, text of the SOMA).

I. DEFINITIONS

2. There are no substantive changes proposed for this section of the Agreement.

II. APPLICATION OF THE PRESENT AGREEMENT

3. No modifications have been sought with regard to this paragraph.

III. APPLICATION OF THE CONVENTION

4. The Government has restricted the scope of UNAMIR's privileges and immunities specified in the Agreement by omitting the provision extending the scope of the Agreement to include the privileges and immunities described in the 1946 Convention on the Privileges and Immunities of the United Nations. It does, however, recognise the application of article II of the Convention to members of UNAMIR, as well as to the property, funds and assets of UNAMIR and its participating States. (paragraphs 3 and 4)

IV. STATUS OF UNAMIR

5. The Government proposes that "UNAMIR and its members shall refrain from any action or activity incompatible...or inconsistent with the **provisions and** (added) spirit of the present arrangements." (paragraph 5)

6. The Government has omitted its obligation to "respect the exclusively international nature of UNAMIR." (paragraph 6)

7. 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." (paragraph 7 (b))

United Nations flag and vehicle markings

8. The Government only recognises the right of UNAMIR to display within Rwanda the United Nations flag on its headquarters and camps, not on "other premises, vehicles, vessels and otherwise as decided by the Special Representative." It only specifies that "[t]he vehicles of the Special Representative and Force Commander may carry flags" and omits the provision "[o]ther flags or pennants may be displayed only in exceptional cases." (paragraph 8)

Communications

9. Although the Government acknowledges the applicability of article III of the Convention with regard to communications facilities, nevertheless it significantly modifies UNAMIR's communications privileges by inserting the phrase "**after Government approval and [in] conformity with national laws on registration of communications equipment**" before describing the communications facilities UNAMIR may enjoy on Rwandese territory. With regard to telecommunications services, although the Agreement states that the frequencies for such stations "shall be decided upon in co-operation with the Government", the Government's proposed text states that they "shall be decided upon **by the Government in co-operation with UNAMIR**". (paragraph 10 (a))

10. Under the existing Agreement, "connections with the local system of telegraphs, telex and telephones may be made only after consultation and in accordance with arrangements with the Government, it being further understood that the use of the local system of telegraph, telex and telephones will be charged at the most favourable rate". The Government proposes the following to replace the above: "connections with the local system of telegraphs, telex, telephones **and masts will be charged in accordance with existing national tariffs.**" (paragraph 10 (b))

Travel and transport

11. Freedom of movement throughout the territory to UNAMIR and its members is only granted "**in exercise of its mandate.**" Furthermore, the Government states that "freedom of movement of personnel, stores or vehicles through airports or on railways or roads used for general traffic within Rwanda shall be co-ordinated by the Government of Rwanda." Whereas the Agreement specifies "[t]hat freedom shall, **with respect to large movements of personnel**, stores or vehicles...be co-ordinated **with the Government.**" Also, the Government 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 12)

12. The current Agreement specifies that "[v]ehicles, including all military vehicles, vessels and aircraft of UNAMIR shall not be subject to registration or licensing by the

Government provided that all such vehicles shall carry the third party insurance required by relevant legislation." However, the Government now proposes that "[a]ll UNAMIR vehicles shall be registered in accordance with national law governing registration of vehicles provided that all such vehicles shall carry Third Party Insurance requested by relevant national legislation." (paragraph 13)

13. The Government has eliminated the following provision of the Agreement: "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." (paragraph 14)

Privileges and immunities of UNAMIR

14. UNAMIR's right to "import, free of duty or other restriction, equipment, provisions, supplies and other goods which are for the exclusive and official use of UNAMIR or for resale in commissaries provided for hereinafter" is now qualified by 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."** (subparagraph 15 (a))

15. In the paragraph requiring the SRSG to "take all necesssary measures to prevent abuse of...commissaries and the sale or resale of such goods to persons other than UNAMIR," the Government 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 the commissaries". (subparagraph 15 (b))

16. The word "provisions" is deleted from subparagraph 15 (c).

V. FACILITIES FOR UNAMIR

Premises required for conducting the operational and administrative activities of UNAMIR and for accommodating members of UNAMIR

17. Instead of agreeing to "provide" UNAMIR, to the extent possible, premises necessary for "the operational and administrative activities of UNAMIR and for the accommodation of the members of UNAMIR", the Government now proposes only to **"assist"** UNAMIR. Additionally, it now requires: **"Payment shall be made by UNAMIR on terms to be agreed with the competent authority."** They also add that **"UNAMIR shall be responsible for the maintenance and upkeep of such areas so provided."** The Government has eliminated the following provision: "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 shall be guaranteed." (paragraph 16)

18. Payment by UNAMIR for water, electricity and other necessary facilities to the "competent" authority has been replaced with "appropriate" authority. (paragraph 17)

19. The Government has omitted the following important paragraph:

> The United Nations alone may consent to the entry of any government officials or of any other person not [a] member of UNAMIR to such premises. (paragraph 19)

Provisions, supplies and services, and sanitary arrangements

20. Also omitted is the following provision:

> The Government agrees to assist UNAMIR as far as possible in obtaining equipment, provisions, supplies and other goods and services from local sources required for its subsistence and operations. In making purchases on the local market, UNAMIR shall, on the basis of observations made and information provided by the Government in that respect, avoid any adverse effect on the local economy. The Government shall exempt UNAMIR from general sales taxes in respect of all official local purchases. (paragraph 20)

Recruitment of local personnel

21. Although UNAMIR is still allowed to recruit locally such personnel as it requires, the Government 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." (paragraph 22)

Currency

22. The following has been omitted by the Government:

> The Government undertakes to make available to UNAMIR, against reimbursement in mutually acceptable currency, Rwandese franc currency required for the use of UNAMIR, including the pay of its members, at the rate of exchange most favourable to UNAMIR.

23. Instead, the Government has inserted the following provision: **"UNAMIR shall conform to the existing national monetary laws and exchange mechanism and conduct its commercial operations through the banking system."**

VI. STATUS OF THE MEMBERS OF UNAMIR

Privileges and immunities

24. The Police Commissioner of the United Nations civilian police is not entitled to diplomatic immunity according to the Government's proposed modifications. (paragraph 24)

25. Members of UNAMIR are still entitled to exemption from "taxation on the pay and emoluments received from the United Nations or from a participating State and any income received from outside Rwanda." However, as proposed by the Government, they are no longer "exempt from all other direct taxes, except municipal rates for services enjoyed, and from all registration fees and charges." According to the Government, members of UNAMIR shall "not be exempt from municipal rates for services enjoyed and from all registration fees and charges." (paragraph 29)

Entry, residence and departure

26. Under the existing Agreement:

> The Special Representative and members of UNAMIR shall, whenever so required by the Special Representative, have the right to enter into, reside in and depart from Rwanda. (paragraph 32)

However, the Government now proposes:

> 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.

27. Although the Government 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", it has eliminated the following:

> For that purpose, the Special Representative and members of UNAMIR shall be exempt from passport and visa regulations and immigration inspection and restriction on entering into or departing from Rwanda. They shall also be exempt from any regulations governing the resident of aliens in Rwanda, including registration, but shall not be considered as acquiring any right to permanent residence or domicile in Rwanda. (paragraph 33)

28. The Government has significantly modified the following provision of the Agreement:

> For the purpose of such entry or departure, members of UNAMIR shall only be required to have: (a) an individual or collective movement order issued by or under the authority of the Special Representative or any appropriate authority of a participating State; and (b) a personal identity card issued in accordance with paragraph 35 of the present Agreement, except in the case of first entry, when the personal identity card issued by the appropriate authorities of a participating State shall be accepted in lieu of the said identity card. (paragraph 34)

The following has been substituted for the above: "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."

Identification

29. With respect to UNAMIR identity cards, the Government has omitted the following:

> 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 35)

Also, the word "shall" has been replaced by "may" in "[m]embers of UNAMIR as well as locally recruited personnel shall be required to present, but not to surrender, their UNAMIR identity cards upon demand of an appropriate official of the Government." (paragraph 36)

Uniform and arms

30. The following provision has been deleted by the Government:

> United Nations Security Officers and Field Service Officers may wear the United Nations uniform. The wearing of civilian dress by [members of UNAMIR's military contingent and civilian police component] may be authorized by the Special Representative at other times. Military members and civilian police of UNAMIR and United Nations Security Officers designated by the Special Representative may possess and carry arms while on duty in accordance with their orders. (paragraph 37)

Instead, the Government only specifies that "United Nations Security officers designated by the Special Representative may possess and carry arms while on duty in accordance with their orders."

Permits and licences

31. There are no substantive changes under this heading.

Military police, arrest and transfer of custody, and mutual assistance

32. Under the existing Agreement, "personnel [designated by the Special Representative] may take into custody any other person on the premises of UNAMIR." (paragraph 41) However, the Government has modified the text to read "personnel [designated by the Special Representative] **may apprehend** any other person on the premises of UNAMIR."

33. Under paragraph 44, "UNAMIR and the Government shall assist each other in carrying out all necessary investigations into offenses in respect of which either or both have an interest...and, if appropriate, the handing over of items connected with an offence." In the text proposed by the Government, the phrase "connected with an offence" has been omitted.

Jurisdiction

34. One of the most crucial modifications to the Agreement made by the Government is the deletion of the following paragraph regarding immunity from legal process:

> 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.
> (paragraph 46)

35. With regard to the procedures to be followed should a member of UNAMIR commit a criminal offense, under the present Agreement, "a member of the civilian component or a civilian member of the military component" is treated under a separate category. The Government has, however, eliminated the phrase "or a civilian member of the military component". (subparagraph 46 (a))

36. The Government has added the following provision: **"In either case, the Government reserves the right to deport any member of UNAMIR, civilian or military, for trial in his home country."**

37. Applicable sections of the Agreement dealing with the institution of civil proceedings against members of UNAMIR have been considerably modified. The following important addition has been made by the Government: "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."**

38. The following sections of the Agreement under paragraph 48 have been deleted:

> If any civil proceeding is instituted against a member of UNAMIR before any court of Rwanda, the Special Representative shall be notified immediately, and he shall certify to the court whether or not the proceeding is related to the official duties of such member:
>
> (a) If the Special Representative certifies that the proceeding is related to official duties, such proceeding shall be discontinued and the provisions of paragraph 50 of the present Agreement shall apply.
>
> (b) If the Special Representative certifies that the proceeding is not related to official duties, the proceeding may continue. 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 not be restricted in a civil proceeding, whether to enforce a judgement, decision or order, to compel an oath or for any other reason.

Deceased members

39. No changes have been made to this section.

VII. SETTLEMENT OF DISPUTES

40. No modifications made.

VIII. SUPPLEMENTAL ARRANGEMENTS

41. Original text maintained.

IX. LIAISON

42. Paragraph remains unchanged.

X. MISCELLANEOUS PROVISIONS

43. Under paragraph 56, the Government has qualified its responsibilities 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 local Rwandese authorities."

44. They have also made the following significant change to paragraph 57: under the existing Agreement "[t]he present Agreement shall remain in force until the departure of the final element of UNAMIR from Rwanda except that...." The Government now proposes the following: "The present 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."

45. As a final addition, the Government seeks the following: "UNAMIR shall give a full list of all its members and their work to the Government."

Ladan M. Rafii
Political/Legal Officer
27 September 1995

cc: SRSG, FC, ED, CAO

MODIFICATIONS TO THE STATUS OF MISSION AGREEMENT (SOMA) PROPOSED BY THE RWANDESE GOVERNMENT

1. The following is a compilation of the modifications sought by the Rwandese Government to the provisions of the Agreement between the United Nations and the Government of the Republic of Rwanda on the Status of the United Nations Assistance Mission for Rwanda (UNAMIR). (References to paragraphs are to the original, not modified, text of the SOMA).

I. DEFINITIONS

2. There are no substantive changes proposed for this section of the Agreement.

II. APPLICATION OF THE PRESENT AGREEMENT

3. No modifications have been sought with regard to this paragraph.

III. APPLICATION OF THE CONVENTION

4. The Government has restricted the scope of UNAMIR's privileges and immunities specified in the Agreement by omitting the provision extending the scope of the Agreement to include the privileges and immunities described in the 1946 Convention on the Privileges and Immunities of the United Nations. It does, however, recognise the application of article II of the Convention to members of UNAMIR, as well as to the property, funds and assets of UNAMIR and its participating States. (paragraphs 3 and 4)

IV. STATUS OF UNAMIR

5. The Government proposes that "UNAMIR and its members shall refrain from any action or activity incompatible...or inconsistent with the **provisions and** (added) spirit of the present arrangements." (paragraph 5)

6. The Government has omitted its obligation to "respect the exclusively international nature of UNAMIR." (paragraph 6)

7. 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." (paragraph 7 (b))

United Nations flag and vehicle markings

8. The Government only recognises the right of UNAMIR to display within Rwanda the United Nations flag on its headquarters and camps, not on "other premises, vehicles, vessels and otherwise as decided by the Special Representative." It only specifies that "[t]he vehicles of the Special Representative and Force Commander may carry flags" and omits the provision "[o]ther flags or pennants may be displayed only in exceptional cases." (paragraph 8)

Communications

9. Although the Government acknowledges the applicability of article III of the Convention with regard to communications facilities, nevertheless it significantly modifies UNAMIR's communications privileges by inserting the phrase "**after Government approval and [in] conformity with national laws on registration of communications equipment**" before describing the communications facilities UNAMIR may enjoy on Rwandese territory. With regard to telecommunications services, although the Agreement states that the frequencies for such stations "shall be decided upon in co-operation with the Government", the Government's proposed text states that they "shall be decided upon **by the Government in co-operation with UNAMIR**". (paragraph 10 (a))

10. Under the existing Agreement, "connections with the local system of telegraphs, telex and telephones may be made only after consultation and in accordance with arrangements with the Government, it being further understood that the use of the local system of telegraph, telex and telephones will be charged at the most favourable rate". The Government proposes the following to replace the above: "connections with the local system of telegraphs, telex, telephones **and masts will be charged in accordance with existing national tariffs**." (paragraph 10 (b))

Travel and transport

11. Freedom of movement throughout the territory to UNAMIR and its members is only granted "**in exercise of its mandate.**" Furthermore, the Government states that "freedom of movement of personnel, stores or vehicles through airports or on railways or roads used for general traffic within Rwanda shall be co-ordinated **by** the Government of Rwanda." Whereas the Agreement specifies "[t]hat freedom shall, **with respect to large movements of** personnel, stores or vehicles...be co-ordinated **with** the Government." Also, the Government 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 12)

12. The current Agreement specifies that "[v]ehicles, including all military vehicles, vessels and aircraft of UNAMIR shall not be subject to registration or licensing by the

Government provided that all such vehicles shall carry the third party insurance required by relevant legislation." However, the Government now proposes that "[a]ll UNAMIR vehicles shall be registered in accordance with national law governing registration of vehicles provided that all such vehicles shall carry Third Party Insurance requested by relevant national legislation." (paragraph 13)

13. The Government has eliminated the following provision of the Agreement: "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." (paragraph 14)

Privileges and immunities of UNAMIR

14. UNAMIR's right to "import, free of duty or other restriction, equipment, provisions, supplies and other goods which are for the exclusive and official use of UNAMIR or for resale in commissaries provided for hereinafter" is now qualified by 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."** (subparagraph 15 (a))

15. In the paragraph requiring the SRSG to "take all necesssary measures to prevent abuse of...commissaries and the sale or resale of such goods to persons other than UNAMIR," the Government 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 the commissaries". (subparagraph 15 (b))

16. The word "provisions" is deleted from subparagraph 15 (c).

V. FACILITIES FOR UNAMIR

Premises required for conducting the operational and administrative activities of UNAMIR and for accommodating members of UNAMIR

17. Instead of agreeing to "provide" UNAMIR, to the extent possible, premises necessary for "the operational and administrative activities of UNAMIR and for the accommodation of the members of UNAMIR", the Government now proposes only to **"assist"** UNAMIR. Additionally, it now requires: **"Payment shall be made by UNAMIR on terms to be agreed with the competent authority."** They also add that **"UNAMIR shall be responsible for the maintenance and upkeep of such areas so provided."** The Government has eliminated the following provision: "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 shall be guaranteed." (paragraph 16)

18. Payment by UNAMIR for water, electricity and other necessary facilities to the "competent" authority has been replaced with "appropriate" authority. (paragraph 17)

19. The Government has omitted the following important paragraph:

> The United Nations alone may consent to the entry of any government officials or of any other person not [a] member of UNAMIR to such premises. (paragraph 19)

Provisions, supplies and services, and sanitary arrangements

20. Also omitted is the following provision:

> The Government agrees to assist UNAMIR as far as possible in obtaining equipment, provisions, supplies and other goods and services from local sources required for its subsistence and operations. In making purchases on the local market, UNAMIR shall, on the basis of observations made and information provided by the Government in that respect, avoid any adverse effect on the local economy. The Government shall exempt UNAMIR from general sales taxes in respect of all official local purchases. (paragraph 20)

Recruitment of local personnel

21. Although UNAMIR is still allowed to recruit locally such personnel as it requires, the Government 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." (paragraph 22)

Currency

22. The following has been omitted by the Government:

> The Government undertakes to make available to UNAMIR, against reimbursement in mutually acceptable currency, Rwandese franc currency required for the use of UNAMIR, including the pay of its members, at the rate of exchange most favourable to UNAMIR.

23. Instead, the Government has inserted the following provision: **"UNAMIR shall conform to the existing national monetary laws and exchange mechanism and conduct its commercial operations through the banking system."**

VI. STATUS OF THE MEMBERS OF UNAMIR

Privileges and immunities

24. The Police Commissioner of the United Nations civilian police is not entitled to diplomatic immunity according to the Government's proposed modifications. (paragraph 24)

25. Members of UNAMIR are still entitled to exemption from "taxation on the pay and emoluments received from the United Nations or from a participating State and any income received from outside Rwanda." However, as proposed by the Government, they are no longer "exempt from all other direct taxes, except municipal rates for services enjoyed, and from all registration fees and charges." According to the Government, members of UNAMIR shall **"not be exempt from municipal rates for services enjoyed and from all registration fees and charges."** (paragraph 29)

Entry, residence and departure

26. Under the existing Agreement:

> The Special Representative and members of UNAMIR shall, whenever so required by the Special Representative, have the right to enter into, reside in and depart from Rwanda. (paragraph 32)

However, the Government now proposes:

> **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.

27. Although the Government 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", it has eliminated the following:

> For that purpose, the Special Representative and members of UNAMIR shall be exempt from passport and visa regulations and immigration inspection and restriction on entering into or departing from Rwanda. They shall also be exempt from any regulations governing the resident of aliens in Rwanda, including registration, but shall not be considered as acquiring any right to permanent residence or domicile in Rwanda. (paragraph 33)

28. The Government has significantly modified the following provision of the Agreement:

> For the purpose of such entry or departure, members of UNAMIR shall only be required to have: (a) an individual or collective movement order issued by or under the authority of the Special Representative or any appropriate authority of a participating State; and (b) a personal identity card issued in accordance with paragraph 35 of the present Agreement, except in the case of first entry, when the personal identity card issued by the appropriate authorities of a participating State shall be accepted in lieu of the said identity card. (paragraph 34)

The following has been substituted for the above: "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."

Identification

29. With respect to UNAMIR identity cards, the Government has omitted the following:

> 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 35)

Also, the word "shall" has been replaced by "may" in "[m]embers of UNAMIR as well as locally recruited personnel shall be required to present, but not to surrender, their UNAMIR identity cards upon demand of an appropriate official of the Government." (paragraph 36)

Uniform and arms

30. The following provision has been deleted by the Government:

> United Nations Security Officers and Field Service Officers may wear the United Nations uniform. The wearing of civilian dress by [members of UNAMIR's military contingent and civilian police component] may be authorized by the Special Representative at other times. Military members and civilian police of UNAMIR and United Nations Security Officers designated by the Special Representative may possess and carry arms while on duty in accordance with their orders. (paragraph 37)

Instead, the Government only specifies that "United Nations Security officers designated by the Special Representative may possess and carry arms while on duty in accordance with their orders."

Permits and licences

31. There are no substantive changes under this heading.

Military police, arrest and transfer of custody, and mutual assistance

32. Under the existing Agreement, "personnel [designated by the Special Representative] may take into custody any other person on the premises of UNAMIR." (paragraph 41) However, the Government has modified the text to read "personnel [designated by the Special Representative] **may apprehend** any other person on the premises of UNAMIR."

33. Under paragraph 44, "UNAMIR and the Government shall assist each other in carrying out all necessary investigations into offenses in respect of which either or both have an interest...and, if appropriate, the handing over of items connected with an offence." In the text proposed by the Government, the phrase "connected with an offence" has been omitted.

Jurisdiction

34. One of the most crucial modifications to the Agreement made by the Government is the deletion of the following paragraph regarding immunity from legal process:

> 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. (paragraph 46)

35. With regard to the procedures to be followed should a member of UNAMIR commit a criminal offense, under the present Agreement, "a member of the civilian component or a civilian member of the military component" is treated under a separate category. The Government has, however, eliminated the phrase "or a civilian member of the military component". (subparagraph 46 (a))

36. The Government has added the following provision: **"In either case, the Government reserves the right to deport any member of UNAMIR, civilian or military, for trial in his home country."**

37. Applicable sections of the Agreement dealing with the institution of civil proceedings against members of UNAMIR have been considerably modified. The following important addition has been made by the Government: "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."**

38. The following sections of the Agreement under paragraph 48 have been deleted:

> If any civil proceeding is instituted against a member of UNAMIR before any court of Rwanda, the Special Representative shall be notified immediately, and he shall certify to the court whether or not the proceeding is related to the official duties of such member:
>
> (a) If the Special Representative certifies that the proceeding is related to official duties, such proceeding shall be discontinued and the provisions of paragraph 50 of the present Agreement shall apply.
>
> (b) If the Special Representative certifies that the proceeding is not related to official duties, the proceeding may continue...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 not be restricted in a civil proceeding, whether to enforce a judgement, decision or order, to compel an oath or for any other reason.

Deceased members

39. No changes have been made to this section.

VII. SETTLEMENT OF DISPUTES

40. No modifications made.

VIII. SUPPLEMENTAL ARRANGEMENTS

41. Original text maintained.

IX. LIAISON

42. Paragraph remains unchanged.

X. MISCELLANEOUS PROVISIONS

43. Under paragraph 56, the Government has qualified its responsibilities 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 local Rwandese authorities."

44. They have also made the following significant change to paragraph 57: under the existing Agreement "[t]he present Agreement shall remain in force until the departure of the final element of UNAMIR from Rwanda except that...." The Government now proposes the following: **"The present 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."**

45. As a final addition, the Government seeks the following: **"UNAMIR shall give a full list of all its members and their work to the Government."**

Ladan M. Rafii
Political/Legal Officer
27 September 1995

cc: SRSG, FC, ED, CAO

Note to the SRSG

Opinion on the modifications to the SOFA for UNAMIR proposed by the Government of Rwanda

1. On 23 October, you requested that an opinion analyzing the changes to the current SOFA for UNAMIR proposed by the Government of Rwanda be prepared.

2. On 26 October, we received copy of a memorandum on the proposed changes from Mr. Zacklin addressed to Mr. Annan (attached as "annex B"). The OLA's opinion as reflected in paragraph 3 is basically that "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".

3. My own comments to the changes proposed are attached as "annex A". In my opinion, the Government's proposal departs too widely on fundamental issues from what would be the bare minimum acceptable. My impression is that the Government's attitude as reflected by their proposal does not take at all into account the basic principle that the United Nations is here to assist Rwanda and should be treated accordingly.

4. With respect to OLA's opinion that any changes to the existing SOFA should include the provision of facilities for contractors, this is in my opinion a non-starter in light of the Government's attitude. However, should a thorough negotiation on the SOFA be conducted, then the UN should certainly attempt to include provisions to this effect.

5. As you will see from the attached comments, the Government's proposed changes have been classified into five sections, according to their relevance. These sections are the following:

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...

6. Many of the proposed changes are totally unacceptable because they run counter the provisions of the CPI or because they attempt to subject UNAMIR's operations to the Government's control (sections I and II). Some changes should not be accepted as a matter of principle, though their effect on UNAMIR's operations might not be fundamental. Other changes (particularly in section II) should not be accepted as they stand now, though some of the Government's concerns could be addressed differently. The proposed changes which have been grouped in sections III and IV, i.e., changes aimed at reducing the scope of the Government's cooperation with UNAMIR or at imposing a greater financial burden on UNAMIR's presence in Rwanda, could be in

principle negotiated. It should however be made clear to the Government that the proposed provisions depart enormously from past practice, as reflected in the draft model SOFA approved by the General Assembly. Most of the proposed changes which are acceptable as they stand or with minor modifications are minor changes such as changes in language.

6. For ease of reference, the following are the summarized results on the acceptability or not of the proposed changes. For an extensive comment, please refer to the relevant parts of the "Comments..." in annex A.

(Reference to paragraphs refer to paragraphs of the Government's proposal. Whenever a reference is made to paragraphs of the original SOFA this is clearly indicated by adding "orig." before the paragraph number)

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.

7. Thank you.

Diego Zorrilla
27 October 1995

EQUIPMENT ON LOAN TO THE RWANDESE GOVERNMENT

SECTIONS	ACQUISITION COST	DEPRECIATED VALUE
COMMUNICATIONS	57,467.00	32,134.72
EDP	9,431.78	2,724.90
GENERATORS	66,965.40	55,734.00
TRANSPORT	140,454.71	53,846.84
GRAND TOTAL	**274,318.89**	**144,440.46**

EQUIPMENT ISSUED TO GOVERNMENT OF RWANDA
AND OTHER GOVERNMENTAL AGENCIES

Wednesday, October 18, 1995

ARDEC KIGALI

DESCRIPTION	SERIAL #	DECAL #	QTY	MAKE	MODEL	COST OF AQUISITION	DEPRECIATED VALUE
PHOTOCOPIER	2483020044	BR-900/435	1	NASHUA	3115	$1,700.00	$680.00

TOTAL COST OF AQUISITION) : $1,700.00

TOTAL DEPRECIATED VALUE) : $680.00

GITARAMA PRISON

DESCRIPTION	SERIAL #	DECAL #	QTY	MAKE	MODEL	COST OF AQUISITION	DEPRECIATED VALUE
PHOTOCOPIER	PCG02252	BR-900/398	1	CANON	NP3050	$4,105.00	$205.25

TOTAL COST OF AQUISITION) : $4,105.00

TOTAL DEPRECIATED VALUE) : $205.25

RPA

DESCRIPTION	SERIAL #	DECAL #	QTY	MAKE	MODEL	COST OF AQUISITION	DEPRECIATED VALUE
REPEATER	388CSQ0502	N/A	1	MOTOROLA	MSF5000	$8,500.00	$3,717.05

TOTAL COST OF AQUISITION) : $8,500.00

TOTAL DEPRECIATED VALUE) : $3,717.05

RPA LIASON OFFICER

DESCRIPTION	SERIAL #	DECAL #	QTY	MAKE	MODEL	COST OF AQUISITION	DEPRECIATED VALUE
RADIO	1741TEC248	N/A	1	MOTOROLA	GP300	$500.00	$306.10
RADIO	1741TEC584	N/A	1	MOTOROLA	GP300	$500.00	$306.10

TOTAL COST OF AQUISITION) : $1,000.00

TOTAL DEPRECIATED VALUE) : $612.20

RWANDATEL

DESCRIPTION	SERIAL #	DECAL #	QTY	MAKE	MODEL	COST OF AQUISITION	DEPRECIATED VALUE
SOLAR PANEL	00237	N/A	1	SIEMENS	M55	$200.00	$200.00
SOLAR PANEL	00238	N/A	1	SIEMENS	M55	$200.00	$200.00
SOLAR PANEL	00239	N/A	1	SIEMENS	M55	$200.00	$200.00
SOLAR PANEL	00241	N/A	1	SIEMENS	M55	$200.00	$200.00
SOLAR PANEL	00250	N/A	1	SIEMENS	M55	$200.00	$200.00
SOLAR PANEL	00251	N/A	1	SIEMENS	M55	$200.00	$200.00
SOLAR PANEL	00261	N/A	1	SIEMENS	M55	$200.00	$200.00
SOLAR PANEL	00262	N/A	1	SIEMENS	M55	$200.00	$200.00
SOLAR PANEL	00264	N/A	1	SIEMENS	M55	$200.00	$200.00
SOLAR PANEL	00265	N/A	1	SIEMENS	M55	$200.00	$200.00
SOLAR PANEL	00267	N/A	1	SIEMENS	M55	$200.00	$200.00
SOLAR PANEL	00275	N/A	1	SIEMENS	M55	$200.00	$200.00
SOLAR PANEL	00841	N/A	1	SIEMENS	M55	$200.00	$200.00
SOLAR PANEL	00842	N/A	1	SIEMENS	M55	$200.00	$200.00
SOLAR PANEL	00843	N/A	1	SIEMENS	M55	$200.00	$200.00
SOLAR PANEL	00849	N/A	1	SIEMENS	M55	$200.00	$200.00
SOLAR PANEL	01141	N/A	1	SIEMENS	M55	$200.00	$200.00
SOLAR PANEL	01144	N/A	1	SIEMENS	M55	$200.00	$200.00
SOLAR PANEL	01325	N/A	1	SIEMENS	M55	$200.00	$200.00

RWANDATEL

DESCRIPTION	SERIAL #	DECAL #	QTY	MAKE	MODEL	COST OF AQUISITION	DEPRECIATED VALUE
SOLAR PANEL	01331	N/A	1	SIEMENS		$200.00	$200.00
SOLAR PANEL	01332	N/A	1	SIEMENS		$200.00	$200.00
SOLAR PANEL	01378	N/A	1	SIEMENS		$200.00	$200.00
SOLAR PANEL	01381	N/A	1	SIEMENS		$200.00	$200.00
SOLAR PANEL	01409	N/A	1	SIEMENS		$200.00	$200.00
SOLAR PANEL	01441	N/A	1	SIEMENS		$200.00	$200.00
SOLAR PANEL	01442	N/A	1	SIEMENS		$200.00	$200.00
SOLAR PANEL	01466	N/A	1	SIEMENS		$200.00	$200.00
SOLAR PANEL	01468	N/A	1	SIEMENS		$200.00	$200.00
SOLAR PANEL	01469	N/A	1	SIEMENS		$200.00	$200.00
SOLAR PANEL	01496	N/A	1	SIEMENS		$200.00	$200.00
SOLAR PANEL	03793	N/A	1	SIEMENS	M55	$200.00	$200.00
SOLAR PANEL	03794	N/A	1	SIEMENS	M55	$200.00	$200.00
SOLAR PANEL	03795	N/A	1	SIEMENS	M55	$200.00	$200.00
SOLAR PANEL	03796	N/A	1	SIEMENS	M55	$200.00	$200.00
RADIO TX	159TTJ7211	N/A	1	MOTOROLA	GM300		
RADIO RX	159TTJ7511	N/A	1	MOTOROLA	GM300		
RADIO RX	159TUS6839	N/A	1	MOTOROLA	GM300		
RADIO TX	159TUS6840	N/A	1	MOTOROLA	GM300		
RURAL TELEPHONE LIN	227617	BT-7250/034	1	EXICOM		$3,126.50	$1,367.22
RURAL TELEPHONE LIN	232185	BT-7250/033	1	EXICOM		$3,126.50	$1,367.22
RURAL TELEPHONE LIN	232458	BT-7250/047	1	EXICOM		$3,126.50	$1,367.22
RURAL TELEPHONE LIN	243232	BT-7250/027	1	EXICOM		$3,126.50	$1,367.22
PABX	5BIG002980	N/A	1	PANASONIC	KX-T123210BE	$1,775.00	$1,775.00
PABX	5BIG002999	N/A	1	PANASONIC	KX-T123210BE	$1,775.00	$1,775.00
SOLAR PANEL	674095	N/A	1	SIEMENS	M55	$200.00	$200.00
SOLAR PANEL	690942	N/A	1	SIEMENS	M55	$200.00	$200.00
SOLAR PANEL	699650	N/A	1	SIEMENS	M55	$200.00	$200.00
SOLAR PANEL	699782	N/A	1	SIEMENS		$200.00	$200.00

RWANDATEL

DESCRIPTION	SERIAL #	DECAL #	QTY	MAKE	MODEL	COST OF AQUISITION	DEPRECIATED VALUE
SOLAR PANEL	699783	N/A	1	SIEMENS		$200.00	$200.00
SOLAR PANEL	699784	N/A	1	SIEMENS		$200.00	$200.00
SOLAR PANEL	699785	N/A	1	SIEMENS		$200.00	$200.00
SOLAR PANEL	699788	N/A	1	SIEMENS	M55	$200.00	$200.00
SOLAR PANEL	839705	N/A	1	SIEMENS	M55	$200.00	$200.00
SOLAR PANEL	839716	N/A	1	SIEMENS	M55	$200.00	$200.00
SOLAR PANEL	839741	N/A	1	SIEMENS	M55	$200.00	$200.00
SOLAR PANEL	839771	N/A	1	SIEMENS	M55	$200.00	$200.00
SUBSCRIBER UNIT	N/A	BT-7250/001	1	EXICOM		$3,126.50	$1,367.22
EXCHANGE UNIT (RWA	N/A	BT-7250/009	1	EXICOM		$3,126.50	$1,367.22
SUBSCIBER UNIT (KIBU	N/A	BT-7250/017	1	EXICOM		$3,126.50	$1,367.22
EXCHANGE UNIT	N/A	BT-7250/028	1	EXICOM		$3,126.50	$1,367.22
REPEATER	N/A	BT-9230/002	1	MOTOROLA	GR300	$2,200.00	$1,885.62
REPEATER	N/A	BT-9240/016	1	MOTOROLA	GR300	$2,200.00	$1,346.84
RURAL TELEPHONE LIN	N/A	N/A	1	EXICOM	SR210		
RURAL TELEPHONE LIN	N/A	N/A	1	EXICOM	SR210		
SOLAR PANELS	N/A	N/A	8	SEIMENS			

TOTAL COST OF AQUISITION) : **$42,162.00**

TOTAL DEPRECIATED VALUE) : **$26,920.22**

ExDecal	Serial Number	Description	Make	Model	Cost of Acquisition	Date of Acquisition	Depreciated Value	Coeff. of Shipment	Cost of Shipment
	N/A	CPU	SIREX	486	2,265.00	1.7.92	594.56	0.0028	15.63
	DX9344409	CPU-486	SIREX	486	1,380.00	1.7.92	362.25	0.0028	15.63
	DX9356520	CPU-486	SIREX	486	2,265.00	1.7.92	594.56	0.0028	15.63
	N/A	MODEM	TELEBIT	T-3000	150.00	1.7.92	76.25	0.0011	3.26
	1T34726334	MONITOR	AOC		325.00	1.7.92	85.31	0.0020	15.63
	HS0842415	MONITOR	AOC		325.00	1.7.92	85.31	0.0020	15.63
	N/A	MONITOR	AOC		325.00	22.11.93	162.50	0.0020	15.63
	N/A	PRINTER	HEWLETT PACKARD	DESKJET 500	299.78	1.7.92	78.69	0.0020	10.97
	N/A	PRINTER	HEWLETT PACKARD	DESKJET 500	339.00	1.7.92	88.99	0.0020	15.63
	N/A	PRINTER	HEWLETT PACKARD	DESKJET 500	339.00	1.7.92	88.99	0.0020	15.63
	N/A	PRINTER	HEWLETT PACKARD	DESKJET 500	339.00	1.7.92	88.99	0.0020	15.63
	93050478125	UPS	APC	SMART 600I	360.00	1.7.92	94.50	0.0004	2.22
	N/A	UPS	APC	SMART 600I	360.00	1.6.93	162.00	0.0004	2.22
Total Values	14				$ 9,431.78		$ 2,724.50		

UNITED NATIONS
ASSISTANCE MISSION FOR RWANDA

NATIONS U. IES
MISSION POUR L'ASSISTANCE AU RWANDA

UNAMIR - MINUAR

GENERATORS ON LOAN TO THE RWANDESE GOVERNMENT

Oct-95

)CK / DECAL	DESCRIPTION / SERIAL No	QTY	RECEIVED FROM PURCHASE ORDER	YEAR OF ACQUISITION	COST OF ACQUISITION	DEP VALUE	REMARKS
H MAINTENANCE AND GARAGE EQUIPMENT							
- 3080/ 242	GENERATOR ALT 2003888	1	UNOSOM		9,342.00	7,785.00	RPA DETENTION CENTER
I- 3080/ 262	GENERATOR ALT 2003881	1	UNOSOM		9,342.00	7,785.00	RPA DETENTION CENTER
M- 3080/ 425	GENERATOR ENG 3369245	1	UNOSOM		9,504.00	7,920.00	RWANDATEL
M- 3080/ 427	GENERATOR ENG 3369640	1	UNOSOM		9,504.00	7,920.00	RWANDATEL
HM- 3080/ 1121	GENERATOR	1	UNPROFOR		9,342.00	7,785.00	RPA DETENTION CENTER
BM- 3080/ 1122	GENERATOR	1	UNPROFOR		9,342.00	7,785.00	RPA DETENTION CENTER

TOCK / DECAL	DESCRIPTION / SERIAL No	QTY	RECEIVED FROM PURCHASE ORDER	YEAR OF ACQUISITION	COST OF ACQUISITION	DEP VALUE	REMARKS
BM MAINTENANCE AND GARAGE EQUIPMENT							
BM- 3080/ 2208	GENERATOR	1	UNOSOM		1,514.70	1,377.00	RWANDATEL
BM- 3080/ 2353	GENERATOR	1	UNOSOM		1,514.70	1,377.00	RPA KIGALI
BM- 3080/ D-154	GENERATOR PLANT SO205319/0	1	UNAVEM		7,200.00	6,000.00	T.V STUDIO KIGALI
GRAND TOTAL OF THE GENERATORS ON LOAN TO THE RWANDESE GOVERNMENT DEP/VAL . 55,734.00 US DOLLARS.							
GRAND TOTAL OF ITEMS	9.						

VEHICLES ON LOAN TO RWANDA GOVERNMENT

GOVTTPT2.WQ1

S/N	MAKE/TYPE	VEHICLE NUMBER	DATE TRANSFERED	ORIGINAL VALUE US $	RESIDUAL VALUE US$
1	TOYOTA 4 RUNNER 4X4 JEEP	UNAMIR 1182	17/03/95	$12,360.52	$5,562.45
2	TOYOTA 4 RUNNER 4X4 JEEP	UNAMIR 1193	17/03/95	$12,360.52	$5,562.45
3	TOYOTA 4 RUNNER 4X4 JEEP	UNAMIR 1167	24/02/95	$12,360.52	$5,562.45
4	TOYOTA LANDCRUISER 4X4 JEEP	UNAMIR 802	01 01 95	$16,079.03	$4,182.00
5	TOYOTA LANDCRUISER 4X4 PICK-UP	UNAMIR 3016	10/02 95	$31,253.00	$7,758.50
6	MITSUBISHI. MINI BUS 12 PASSENGER	UNAMIR 226	5/7/95	$8,790.70	$3,955.82
7	MITSUBISHI. MINI BUS 12 PASSENGER	UNAMIR 207	5/7/95	$8,790.70	$3,955.82
8	TOYOTA 4 RUNNER 4X4 JEEP	UNAMIR 1085	02/12/94	$12,360.52	$5,562.45
9	TOYOTA HILUX PICK-UP DOUBLE CABIN	UNAMIR 836	06/06/95	$12,360.52	$5,562.45
	TOTAL			**$126,716.03**	**$47,664.39**

VEHICLE ON LOAN TO RPA LAISON OFFICER

S/N	MAKE/TYPE	VEHICLE NUMBER	ORIGINAL VALUE US $	RESIDUAL VALUE US$
1	TOYOTA 4 RUNNER 4X4 JEEP	UNAMIR 1039	$12.360.52	$5.562.45
	TOTAL		**$12,360.52**	**$5,562.45**

VEHICLE ON LOAN TO FOSSY GORILLA MOVEMENT

S/N	MAKE/TYPE	VEHICLE NUMBER	ORIGINAL VALUE US $	RESIDUAL VALUE
1	HONDA MOTOR CYCLE	155 M	$1.378.16	$620.00
	TOTAL		**$1,378.16**	**$620.00**

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

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.

"ANNEX B"

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
Under-Secretary-General
Office of the Legal Counsel

SUBJECT / OBJET: UNAMIR - Proposed amendments by the Government of Rwanda to the SOFA

1. This is with reference to Mr. Khan's cable dated 13 October 1995 (MIR-3576) forwarding for our review an amended version of the SOFA as proposed by the Government of Rwanda. The proposed amendments have already been reviewed by a Committee appointed by Mr. Khan within the Field Office which unanimously reached the conclusion that such amendments were unacceptable. In taking into consideration the conclusion of the Committee, Mr. Khan is of the view that the proposed amendments "need to be placed in their political context". To that end, he suggested that certain factors be taken into account such as the desire of the new Government of Rwanda to assert itself and the understandable position of the Government to reduce the visibility of UNAMIR. Furthermore, according to Mr. Khan, some proposals which are expressed in an inappropriate language would, otherwise, be reasonable.

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:

- denying the applicability of all the provisions of the Convention on Privileges and Immunities of the United Nations (the Convention) to which Rwanda acceded without any reservation;

- subjecting the status of members of UNAMIR to the authority of the Government;

- reducing the privileges and immunities of UNAMIR and its members;

- minimizing to a great extent the facilities and assistance usually provided by governments to United Nations peace-keeping operations;

- restricting and exercising control over the facilities in respect of communications and the freedom of movement;

- denying access to roads, port facilities and airfields without the payment of dues, tolls or charges.

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.

UNITED NATIONS

A

General Assembly

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A/45/594
9 October 1990

ORIGINAL: ENGLISH

Forty-fifth session
Agenda item 76

COMPREHENSIVE REVIEW OF THE WHOLE QUESTION OF PEACE-KEEPING OPERATIONS IN ALL THEIR ASPECTS

Model status-of-forces agreement for peace-keeping operations

Report of the Secretary-General

1. In paragraph 11 of its resolution 44/49 of 8 December 1989, the General Assembly requested the Secretary-General to prepare a model status-of-forces agreement between the United Nations and host countries and to make that model available to Member States. Basing itself upon established practice and drawing extensively upon earlier and current agreements, the Secretariat has prepared the model status-of-forces agreement annexed to the present report. The model is intended to serve as a basis for the drafting of individual agreements to be concluded between the United Nations and countries on whose territory peace-keeping operations are deployed. As such it is subject to modifications that may be agreed upon between the parties in each case.

2. The attached model, mutatis mutandis, will also serve as the basis for an agreement with a host country in operations where no United Nations military personnel are deployed.

ANNEX

Draft model status-of-forces agreement between the United Nations and host countries a/

I. DEFINITIONS

1. For the purpose of the present Agreement the following definitions shall apply: b/

II. APPLICATION OF THE PRESENT AGREEMENT

2. Unless specifically provided otherwise, the provisions of the present Agreement and any obligation undertaken by [Government] c/ or any privilege, immunity, facility or concession granted to the United Nations peace-keeping operation or any member thereof apply in [the area of operations/territory] only.

III. APPLICATION OF THE CONVENTION

3. The Convention on the Privileges and Immunities of the United Nations of 13 February 1946 shall apply to the United Nations peace-keeping operation subject to the provisions specified in the present Agreement. d/

or

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a/ This title corresponds to the terminology used in paragraph 11 of General Assembly resolution 44/49 dated 8 December 1989. While it has been used for working purposes, the precise character of the agreement of course will vary according to the type of United Nations peace-keeping operation concerned.

b/ This section will contain definitions of the main terms used in the agreement such as:

"Participating State" means a State contributing personnel to the military and/or civilian components of the United Nations peace-keeping operation.

"Convention" means the Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly of the United Nations on 13 February 1946.

c/ The term Government as used in the present Agreement will be defined to mean the Government of the host country or Administration having de facto authority over the territory and/or area of operations in question.

d/ As a general rule, the basic privileges and immunities of a United Nations peace-keeping operation consist of provisions that flow from the Convention on the Privileges and Immunities of the United Nations adopted by the General

4. The United Nations peace-keeping operation, its property, funds and assets, and its members, including the Special Representative/Commander, shall enjoy the privileges and immunities specified in the present Agreement as well as those provided for in the Convention, to which [host country] is a Party. g/

5. Article II of the Convention, which applies to the United Nations peace-keeping operation, shall also apply to the property, funds and assets of participating States used in connection with the United Nations peace-keeping operation.

IV. STATUS OF THE PEACE-KEEPING OPERATION

6. The United Nations peace-keeping operation and its members shall refrain from any action or activity incompatible with the impartial and international nature of their duties or inconsistent with the spirit of the present arrangements. The United Nations peace-keeping operation and its members shall respect all local laws and regulations. The Special Representative/Commander shall take all appropriate measures to ensure the observance of those obligations.

7. The Government undertakes to respect the exclusively international nature of the United Nations peace-keeping operation.

United Nations flag and vehicle markings

8. The Government recognizes the right of the United Nations peace-keeping operation to display within [host country/territory] the United Nations flag on its headquarters, camps or other premises, vehicles, vessels and otherwise as decided by the Special Representative/Commander. Other flags or pennants may be displayed only in exceptional cases. In these cases, the United Nations peace-keeping operation shall give sympathetic consideration to observations or requests of the Government of [host country].

9. Vehicles, vessels and aircraft of the United Nations peace-keeping operation shall carry a distinctive United Nations identification, which shall be notified to the Government.

(continued)

Assembly on 13 February 1946. However, while the Convention is in force with respect to 124 Member States, there are a number of States that are not a party to it and there may also be United Nations operations involving relations with entities other than States. Thus, in such cases, the Status Agreement itself must provide specifically for the application of the Convention.

g/ Provision to be used where the host country is a party to the said Convention.

Communications

10. The United Nations peace-keeping operation shall enjoy the facilities in respect to communications provided in article III of the Convention and shall, in co-ordination with the Government, use such facilities as may be required for the performance of its task. Issues with respect to communications which may arise and which are not specifically provided for in the present Agreement shall be dealt with pursuant to the relevant provisions of the Convention.

11. Subject to the provisions of paragraph 10:

(a) The United Nations peace-keeping operation shall have authority to install and operate radio sending and receiving stations as well as satellite systems to connect appropriate points within the territory of [host country/territory] with each other and with United Nations offices in other countries, and to exchange traffic with the United Nations global telecommunications network. The telecommunication services shall be operated in accordance with the International Telecommunication Convention and Regulations and the frequencies on which any such station may be operated shall be decided upon in co-operation with the Government and shall be communicated by the United Nations to the International Frequency Registration Board.

(b) The United Nations peace-keeping operation shall enjoy, within the territory of [host country/territory], the right to unrestricted communication by radio (including satellite, mobile and hand-held radio), telephone, telegraph, facsimile or any other means, and of establishing the necessary facilities for maintaining such communications within and between premises of the United Nations peace-keeping operation, including the laying of cables and land lines and the establishment of fixed and mobile radio sending, receiving and repeater stations. The frequencies on which the radio will operate shall be decided upon in co-operation with the Government. It is understood that connections with the local system of telegraphs, telex and telephones may be made only after consultation and in accordance with arrangements with the Government, it being further understood that the use of the local system of telegraphs, telex and telephones will be charged at the most favourable rate.

(c) The United Nations peace-keeping operation may make arrangements through its own facilities for the processing and transport of private mail addressed to or emanating from members of the United Nations peace-keeping operation. The Government shall be informed of the nature of such arrangements and shall not interfere with or apply censorship to the mail of the United Nations peace-keeping operation or its members. In the event that postal arrangements applying to private mail of members of the United Nations peace-keeping operation are extended to transfer of currency or the transport of packages and parcels, the conditions under which such operations are conducted shall be agreed with the Government.

Travel and transport

12. The United Nations peace-keeping operation and its members shall enjoy, together with its vehicles, vessels, aircraft and equipment, freedom of movement throughout the [host country/territory]. 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 the [host country/territory], be co-ordinated with the Government. The Government undertakes to supply the United Nations peace-keeping operation, 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.

13. Vehicles, including all military vehicles, vessels and aircraft of the United Nations peace-keeping operation shall not be subject to registration or licensing by the Government provided that all such vehicles shall carry the third party insurance required by relevant legislation.

14. The United Nations peace-keeping operation may use roads, bridges, canals and other waters, port facilities and airfields without the payment of dues, tolls or charges, including wharfage charges. However, the United Nations peace-keeping operation will not claim exemption from charges which are in fact charges for services rendered.

Privileges and immunities of the United Nations peace-keeping operation

15. The United Nations peace-keeping operation, as a subsidiary organ of the United Nations, enjoys the status, privileges and immunities of the United Nations [as provided for in the present Agreement] f/ [in accordance with the Convention]. g/ The provision of article II of the Convention which applies to the United Nations peace-keeping operation shall also apply to the property, funds and assets of participating States used in [host country/territory] in connection with the national contingents serving in the United Nations peace-keeping operation, as provided for in paragraph 5 of the present Agreement. The Government recognizes the right of the United Nations peace-keeping operation in particular:

(a) To import, free of duty or other restrictions, equipment, provisions, supplies and other goods which are for the exclusive and official use of the United Nations peace-keeping operation or for resale in the commissaries provided for hereinafter;

(b) To establish, maintain and operate commissaries at its headquarters, camps and posts for the benefit of the members of the United Nations peace-keeping operation, but not of locally recruited personnel. Such commissaries may provide goods of a consumable nature and other articles to be specified in advance. The

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f/ In case the other party is not party to the Convention.

g/ In case the other party is a party to the Convention.

Special Representative/Commander shall take all necessary measures to prevent abuse of such commissaries and the sale or resale of such goods to persons other than members of the United Nations peace-keeping operation, and he shall give sympathetic consideration to observations or requests of the Government concerning the operation of the commissaries;

(c) To clear ex customs and excise warehouse, free of duty or other restrictions, equipment, provisions, supplies and other goods which are for the exclusive and official use of the United Nations peace-keeping operation or for resale in the commissaries provided for above;

(d) To re-export or otherwise dispose of such equipment, as far as it is still usable, all unconsumed provisions, supplies and other goods so imported or cleared ex customs and excise warehouse which are not transferred, or otherwise disposed of, on terms and conditions to be agreed upon, to the competent local authorities of the [host country/territory] or to an entity nominated by them.

To the end that such importation, clearances, transfer or exportation may be effected with the least possible delay, a mutually satisfactory procedure, including documentation, shall be agreed between the United Nations peace-keeping operation and the Government at the earliest possible date.

V. FACILITIES FOR THE UNITED NATIONS PEACE-KEEPING OPERATION

Premises required for conducting the operational and administrative activities of the United Nations peace-keeping operation and for accommodating members of the peace-keeping operation

16. The Government of [host country] shall provide without cost to the United Nations peace-keeping operation and in agreement with the Special Representative/Commander such areas for headquarters, camps or other premises as may be necessary for the conduct of the operational and administrative activities of the United Nations peace-keeping operation and for the accommodation of the members of the United Nations peace-keeping operation. Without prejudice to the fact that all such premises remain [host country] territory, they shall be inviolable and subject to the exclusive control and authority of the United Nations. Where United Nations troops are co-located with military personnel of the host country, a permanent, direct and immediate access by the United Nations peace-keeping operation to these premises shall be guaranteed.

17. The Government undertakes to assist the United Nations peace-keeping operation as far as possible in obtaining and making available, where applicable, water, electricity and other facilities free of charge, or, where this is not possible, at the most favourable rate, and in the case of interruption or threatened interruption of service, to give as far as is within its powers the same priority to the needs of the United Nations peace-keeping operation as to essential government services. Where such utilities or facilities are not provided free of charge, payment shall be made by the United Nations peace-keeping operation on

terms to be agreed with the competent authority. The United Nations peace-keeping operation shall be responsible for the maintenance and upkeep of facilities so provided.

18. The United Nations peace-keeping operation shall have the right, where necessary, to generate, within its premises, electricity for its use and to transmit and distribute such electricity.

19. The United Nations alone may consent to the entry of any government officials or of any other person not member of the United Nations peace-keeping operation to such premises.

Provisions, supplies and services, and sanitary arrangements

20. The Government undertakes to assist the United Nations peace-keeping operation as far as possible in obtaining equipment, provisions, supplies and other goods and services from local sources required for its subsistence and operations. In making purchases on the local market, the United Nations peace-keeping operation shall, on the basis of observations made and information provided by the Government in that respect, avoid any adverse effect on the local economy. The Government shall exempt the United Nations peace-keeping operation from general sales taxes in respect of all official local purchases.

21. The United Nations peace-keeping operation and the Government shall co-operate with respect to sanitary services and shall extend to each other the fullest co-operation in matters concerning health, particularly with respect to the control of communicable diseases, in accordance with international conventions.

Recruitment of local personnel

22. The United Nations peace-keeping operation may recruit locally such personnel as it requires. Upon the request of the Special Representative/Commander, the Government undertakes to facilitate the recruitment of qualified local staff by the United Nations peace-keeping operation and to accelerate the process of such recruitment.

Currency

23. The Government undertakes to make available to the United Nations peace-keeping operation, against reimbursement in mutually acceptable currency, [local] currency required for the use of the United Nations peace-keeping operation, including the pay of its members, at the rate of exchange most favourable to the United Nations peace-keeping operation.

VI. STATUS OF THE MEMBERS OF THE UNITED NATIONS PEACE-KEEPING OPERATION

Privileges and immunities

24. The Special Representative, the Commander of the military component of the United Nations peace-keeping operation, the head of the United Nations civilian police, and such high-ranking members of the Special Representative/Commander's staff as may be agreed upon with the Government shall have the status specified in sections 19 and 27 of the Convention, provided that the privileges and immunities therein referred to shall be those accorded to diplomatic envoys by [national or international] law.

25. Members of the United Nations Secretariat assigned to the civilian component to serve with the United Nations peace-keeping operation remain officials of the United Nations entitled to the privileges and immunities of articles V and VII of the Convention.

26. Military observers, United Nations civilian police and civilian personnel other than United Nations officials whose names are for the purpose notified to the Government by the Special Representative/Commander shall be considered as experts on mission within the meaning of article VI of the Convention.

27. Military personnel of national contingents assigned to the military component of the United Nations peace-keeping operation shall have the privileges and immunities specifically provided for in the present Agreement.

28. Unless otherwise specified in the present Agreement, locally recruited members of the United Nations peace-keeping operation shall enjoy the immunities concerning official acts and exemption from taxation and national service obligations provided for in sections 18 (a), (b) and (c) of the Convention.

29. Members of the United Nations peace-keeping operation shall be exempt from taxation on the pay and emoluments received from the United Nations or from a participating State and any income received from outside [host country/territory]. They shall also be exempt from all other direct taxes, except municipal rates for services enjoyed, and from all registration fees and charges.

30. Members of the United Nations peace-keeping operation shall have the right to import free of duty their personal effects in connection with their arrival in [host country/territory]. They shall be subject to the laws and regulations of [host country/territory] governing customs and foreign exchange with respect to personal property not required by them by reason of their presence in [host country/territory] with the United Nations peace-keeping operation. Special facilities will be granted by the Government for the speedy processing of entry and exit formalities for all members of the United Nations peace-keeping operation, including the military component, upon prior written notification. On departure from [host country/territory], members of the United Nations peace-keeping operation may, notwithstanding the above-mentioned exchange regulations, take with them such funds as the Special Representative/Commander certifies were received in

pay and emoluments from the United Nations or from a participating State and are a reasonable residue thereof. Special arrangements shall be made for the implementation of the present provisions in the interests of the Government and the members of the United Nations peace-keeping operation.

31. The Special Representative/Commander shall co-operate with the Government and shall render all assistance within his power in ensuring the observance of the customs and fiscal laws and regulations of [host country territory] by the members of the United Nations peace-keeping operation, in accordance with the present Agreement.

Entry, residence and departure

32. The Special Representative/Commander and members of the United Nations peace-keeping operation shall, whenever so required by the Special Representative/Commander, have the right to enter into, reside in and depart from [host country/territory].

33. The Government of [host country/territory] undertakes to facilitate the entry into and departure from [host country/territory] of the Special Representative/Commander and members of the United Nations peace-keeping operation and shall be kept informed of such movement. For that purpose, the Special [illegible]ative/Commander and members of the United Nations peace-keeping operation [illegible] exempt from passport and visa regulations and immigration inspection and [illegible]strictions on entering into or departing from [host country/territory]. They shall also be exempt from any regulations governing the residence of aliens in [host country/territory], including registration, but shall not be considered as acquiring any right to permanent residence or domicile in [host country/territory].

34. For the purpose of such entry or departure, members of the United Nations peace-keeping operation shall only be required to have: (a) an individual or collective movement order issued by or under the authority of the Special Representative/Commander or any appropriate authority of a participating State; and (b) a personal identity card issued in accordance with paragraph 35 of the present Agreement, except in the case of first entry, when the personal identity card issued by the appropriate authorities of a participating State shall be accepted in lieu of the said identity card.

Identification

35. The Special Representative/Commander shall issue to each member of the United Nations peace-keeping operation before or as soon as possible after such member's first entry into [host country/territory], as well as to all locally recruited personnel, a numbered identity card, which shall show full name, date of birth, title or rank, service (if appropriate) and photograph. Except as provided for in paragraph 34 of the present Agreement, such identity card shall be the only document required of a member of the United Nations peace-keeping operation.

36. Members of the United Nations peace-keeping operation as well as locally recruited personnel shall be required to present, but not to surrender, their [United Nations peace-keeping operation] identity cards upon demand of an appropriate official of the Government.

Uniform and arms

37. Military members and the United Nations civilian police of the United Nations peace-keeping operation shall wear, while performing official duties, the national military or police uniform of their respective States with standard United Nations accoutrements. 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 the United Nations peace-keeping operation may be authorized by the Special Representative/Commander at other times. Military members and civilian police of the United Nations peace-keeping operation and United Nations Security Officers designated by the Special Representative/Commander may possess and carry arms while on duty in accordance with their orders.

Permits and licences

38. The Government agrees to accept as valid, without tax or fee, a permit or licence issued by the Special Representative/Commander for the operation by any member of the United Nations peace-keeping operation, including locally recruited personnel, of any [United Nations peace-keeping operation] transport or communication equipment and for the practice of any profession or occupation in connection with the functioning of the United Nations peace-keeping operation, provided that no licence to drive a vehicle or pilot an aircraft shall be issued to any person who is not already in possession of an appropriate and valid licence.

39. Without prejudice to the provisions of paragraph 37, the Government further agrees to accept as valid, without tax or fee, a permit or licence issued by the Special Representative/Commander to a member of the United Nations peace-keeping operation for the carrying or use of firearms or ammunition in connection with the functioning of the United Nations peace-keeping operation.

Military police, arrest and transfer of custody, and mutual assistance

40. The Special Representative shall take all appropriate measures to ensure the maintenance of discipline and good order among members of the United Nations peace-keeping operation, as well as locally recruited personnel. To this end personnel designated by the Special Representative/Commander shall police the premises of the United Nations peace-keeping operation and such areas where its members are deployed. Elsewhere such personnel shall be employed only subject to arrangements with the Government and in liaison with it in so far as such employment is necessary to maintain discipline and order among members of the United Nations peace-keeping operation.

41. The military police of the United Nations peace-keeping operation shall have the power of arrest over the military members of the United Nations peace-keeping operation. Military personnel placed under arrest outside their own contingent

areas shall be transferred to their contingent Commander for appropriate disciplinary action. The personnel mentioned in paragraph 40 above may take into custody any other person on the premises of the United Nations peace-keeping operation. Such other person shall be delivered immediately to the nearest appropriate official of the Government for the purpose of dealing with any offence or disturbance on such premises.

42. Subject to the provisions of paragraphs 24 and 26, officials of the Government may take into custody any member of the United Nations peace-keeping operation:

(a) When so requested by the Special Representative/Commander; or

(b) When such a member of the United Nations peace-keeping operation is apprehended in the commission or attempted commission of a criminal offence. Such person shall be delivered immediately, together with any weapons or other item seized, to the nearest appropriate representative of the United Nations peace-keeping operation, whereafter the provisions of paragraph 47 shall apply mutatis mutandis.

43. When a person is taken into custody under paragraph 41 or paragraph 42 (b), the United Nations peace-keeping operation or the Government, as the case may be, may make a preliminary interrogation but may not delay the transfer of custody. Following such transfer, the person concerned shall be made available upon request to the arresting authority for further interrogation.

44. The United Nations peace-keeping operation and the Government shall assist each other in carrying out all necessary investigations into offences in respect of which either or both have an interest, in the production of witnesses and in the collection and production of evidence, including the seizure of and, if appropriate, the handing over of items connected with an offence. The handing over of any such items may be made subject to their return within the terms specified by the authority delivering them. Each shall notify the other of the disposition of any case in the outcome of which the other may have an interest or in which there has been a transfer of custody under the provisions of paragraphs 41-43.

45. The Government shall ensure the prosecution of persons subject to its criminal jurisdiction who are accused of acts in relation to the United Nations peace-keeping operation or its members which, if committed in relation to the forces of the Government, would have rendered such acts liable to prosecution.

Jurisdiction

46. All members of the United Nations peace-keeping operation 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 the United Nations peace-keeping operation and after the expiration of the other provisions of the present Agreement.

/...

47. Should the Government consider that any member of the United Nations peace-keeping operation has committed a criminal offence, it shall promptly inform the Special Representative/Commander and present to him any evidence available to it. Subject to the provisions of paragraph 24:

(a) If the accused person is a member of the civilian component or a civilian member of the military component, the Special Representative/Commander shall conduct any necessary supplementary inquiry and then agree with the Government whether or not criminal proceedings should be instituted. Failing such agreement, the question shall be resolved as provided in paragraph 53 of the present Agreement.

(b) Military members of the military component of the United Nations peace-keeping operation shall be subject to the exclusive jurisdiction of their respective participating States in respect of any criminal offences which may be committed by them in [host country/territory].

48. The Secretary-General of the United Nations will obtain assurances from Governments of participating States that they will be prepared to exercise jurisdiction with respect to crimes or offences which may be committed by members of their national contingents serving with the peace-keeping operation. h/

49. If any civil proceeding is instituted against a member of the United Nations peace-keeping operation before any court of [host country/territory], the Special Representative/Commander shall be notified immediately, and he shall certify to the court whether or not the proceeding is related to the official duties of such member:

(a) If the Special Representative/Commander certifies that the proceeding is related to official duties, such proceeding shall be discontinued and the provisions of paragraph 51 of the present Agreement shall apply.

(b) If the Special Representative certifies that the proceeding is not related to official duties, the proceeding may continue. If the Special Representative/Commander certifies that a member of the United Nations peace-keeping operation is unable because of official duties or authorized absence to protect his interests in the proceeding, the court shall at the defendant's request suspend the proceeding until the elimination of the disability, but for not more than ninety days. Property of a member of the United Nations peace-keeping operation that is certified by the Special Representative/Commander 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 the United Nations peace-keeping operation shall not be restricted in a

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h/ This provision has been inserted in the model agreement in order that all issues pertaining to this section be covered. Upon conclusion of a specific agreement, the provision in question could instead be inserted in a memorandum of understanding where further clarifications on the terms of an agreement are usually provided.

civil proceeding, whether to enforce a judgement, decision or order, to compel an oath or for any other reason.

Deceased members

50. The Special Representative/Commander shall have the right to take charge of and dispose of the body of a member of the United Nations peace-keeping operation who dies in [host country/territory], as well as that member's personal property located within [host country/territory], in accordance with United Nations procedures.

VII. SETTLEMENT OF DISPUTES

51. Except as provided in paragraph 53, any dispute or claim of a private law character to which the United Nations peace-keeping operation or any member thereof is a party and over which the courts of [host country/territory] do not have jurisdiction because of any provision of the present Agreement, shall be settled by a standing claims commission to be established for that purpose. One member of the commission shall be appointed by the Secretary-General of the United Nations, one member by the Government and a chairman jointly by the Secretary-General and the Government. If no agreement as to the chairman is reached within thirty days of the appointment of the first member of the commission, the President of the International Court of Justice may, at the request of either the Secretary-General of the United Nations or the Government, appoint the chairman. Any vacancy on the commission shall be filled by the same method prescribed for the original appointment, provided that the thirty-day period there prescribed shall start as soon as there is a vacancy in the chairmanship. The commission shall determine its own procedures, provided that any two members shall constitute a quorum for all purposes (except for a period of thirty days after the creation of a vacancy) and all decisions shall require the approval of any two members. The awards of the commission shall be final and binding, unless the Secretary-General of the United Nations and the Government permit an appeal to a tribunal established in accordance with paragraph 53. The awards of the commission shall be notified to the parties and, if against a member of the United Nations peace-keeping operation, the Special Representative/Commander or the Secretary-General of the United Nations shall use his best endeavours to ensure compliance.

52. Disputes concerning the terms of employment and conditions of service of locally recruited personnel shall be settled by the administrative procedures to be established by the Special Representative/Commander.

53. Any other dispute between the United Nations peace-keeping operation and the Government, and any appeal that both of them agree to allow from the award of the claims commission established pursuant to paragraph 51 shall, unless otherwise agreed by the parties, be submitted to a tribunal of three arbitrators. The provisions relating to the establishment and procedures of the claims commission shall apply, mutatis mutandis, to the establishment and procedures of the tribunal. The decisions of the tribunal shall be final and binding on both parties.

54. All differences between the United Nations and the Government of [host country/territory] arising out of the interpretation or application of the present arrangements which involve a question of principle concerning the Convention shall be dealt with in accordance with the procedure of section 30 of the Convention. i/

VIII. SUPPLEMENTAL ARRANGEMENTS

55. The Special Representative/Commander and the Government may conclude supplemental arrangements to the present Agreement.

IX. LIAISON

56. The Special Representative/Commander and the Government shall take appropriate measures to ensure close and reciprocal liaison at every appropriate level.

X. MISCELLANEOUS PROVISIONS

57. Wherever the present Agreement refers to the privileges, immunities and rights of the United Nations peace-keeping operation and to the facilities the [host country/territory] undertakes to provide to the United Nations peace-keeping operation, the Government shall have the ultimate responsibility for the implementation and fulfilment of such privileges, immunities, rights and facilities by the appropriate local [host country/territory] authorities.

58. The present Agreement is concluded for the sole purpose of assisting in the implementation of Security Council/General Assembly resolution [number and date of resolution] and has no bearing upon the respective positions of the parties concerning the status of [territory]. j/

59. The present Agreement shall enter into force on ...

60. The present Agreement shall remain in force until the departure of the final element of the United Nations peace-keeping operation from [host country/territory] except that:

(a) The provisions of paragraphs 46 and 53 [and 54] k/ shall remain in force.

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i/ In case the other party to the present Agreement is a party to the Convention.

j/ The insertion of this provision in an agreement is subject to its relevancy.

k/ See footnote i.

(b) The provisions of paragraph 51 shall remain in force until all claims have been settled that arose prior to the termination of the present Agreement and were submitted prior to or within three months of such termination.

UNITED NATIONS
ASSISTANCE MISSION TO RWANDA

UNAMIR-MINUAR

NATIONS UNIES
MISSION POUR L'ASSISTANCE AU RWANDA

OFFICE OF THE CHIEF ADMINISTRATIVE OFFICER

DATE: 10 October 1995

TO: Mr. W. de Souza
Executive Director

FROM: Susan Matthew, CAO

SUBJECT: **Proposed new SOMA**

With reference to the meeting held on 9 October 1995 concerning the Rwandan Government's proposed revisions to SOMA, please find attached comments by Mr. Ncube on the proposed revisions.

You may wish to include Mr. Ncube's comments with the other material being forwarded to UNNY on this subject.

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

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 defined in Section fourteen of this Agreement".

(a) Under Section 14 of the old Agreement 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 UNAMIR liable to pay for the use of these facilities.

(c) **Comment**: Under Article 105(2) of the Charter, UN subsidiary organs, like UNAMIR, should "enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connexion with the Organization." And under Article 105(3), the General Assembly may make recommendations as to how sub-paragraphs (1) and (2) of Article 105 may be applied by Member States. One such recommendation is the 13 February 1946 Convention on the Privileges and Immunities of the United Nations.

III. **STATUS OF UNAMIR**

5. **Paragraph 5**

The Government proposes the deletion of the following: "UNAMIR and its members shall respect all local laws and regulations as stipulated in article 46 of this Agreement".

(a) Article 46 of the existing Agreement puts UNAMIR personnel out of the reach of Rwandan jurisdiction, except in cases where the Special Representative of the Secretary General agrees to surrender the staff member to Rwandan jurisdiction.

(b) **Effect**: The deletion proposed by the Government will mean that UNAMIR personnel, including the SRSG, would be treated like any ordinary visitor to Rwanda who can be charged, prosecuted, detained, deported, imprisoned, and declared persona-non-grata. UNAMIR personnel will thus be exposed to all sorts of dangers, including physical harm or political victimisation without a mechanism available to the SRSG to protect the innocent and assist in punishing the wrongdoers among his personnel.

Should the Government of Rwanda persist with its proposal, it will be in derogation of its obligations under paragraph (a) of Section II of Article IV, to accord "immunity from personal arrest or detention... [and] from legal process" of, at least, the SRSG and his senior staff, and would also be in conflict with paragraph 25 of the UN General Assembly Draft Model Status-of-Forces Agreement between the United Nations and host countries of 9 October 1990 (A/45/594), which grants the privileges and immunities of Articles V and VII of the Convention to the civilian component members serving in peace-keeping missions.

(c) **Comment**: Article IV, Section 12 of the Convention exempts the UN and subsidiary organs from legal process in respect of words spoken, written or acts done by them in the discharge of their official duties.

The Government of Rwanda has not repealed the Law of 23 October 1964 by which it incorporated the relevant provisions of the Convention into its Code Civile.

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 an 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.

7. **Paragraph 7(b)**

The Government proposes to delete paragraph 7(b) of the present Agreement which reads: "The Government undertakes to treat military personnel of UNAMIR in accordance with the principles and spirit of the general international conventions applicable to the treatment of military personnel. These international conventions include the Four Geneva Conventions of 12 April 1949 and their Additional Protocols of 8 June 1977".

(a) **Effect**: The effect would be to treat UNAMIR military personnel the same as Rwandan soldiers, and therefore subject to Rwandan military and other law.

(b) **Comment**: Refusal by the Rwandan Government to treat UNAMIR military personnel according to the Four Geneva Conventions of 12 April 1949 and their Additional Protocols of 8 June 1977 would be a violation by Rwanda of its international obligations as a UN member under the Security Council Resolutions which authorised the deployment of the UNAMIR military personnel in Rwanda.

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.

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 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.

(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.

(b) **Comment**: The two changes cast the net of Government discretion 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 done in conjunction with the Government.

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.

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**: See "**Effect**" and "**Comment**" in item II on paragraph 3 proposals above.

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 fulfillment 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**

13. **Paragraph 15(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 15(b)**

The Government proposes to delete the word "resale". 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 15(c)**

The Government has deleted "provisions" 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 16**

The Government proposes to amend 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 17**

The Government proposes to replace the word "competent" authority with "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**

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**

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 22**

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 23**

The Government proposes 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.

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 24**

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 29**

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 32**

The Government proposes the following: "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.

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 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 34**

The Government proposes the following 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 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 35**

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.

(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 36**

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 37**

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 40**

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 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 44**

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 40.

(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**

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 47**

The Government proposes a new paragraph 47(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 48**

Paragraph 48 and 48(a) 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".

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 fulfillment 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 are exposed to the laws and jurisdiction of Rwandan Courts may have their property seized in fulfillment 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 56

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 57

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**

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, except perhaps for intimidation and harassment purposes.

Mtshana M. Ncube
Legal Officer

Elvis Bazawule
Legal Officer

UNAMIR, Kigali
9 October 1995

MINISTERE DES AFFAIRES ETRANGERES
ET DE LA COOPERATION
B. P. 179 KIGALI

N°2120/03.02/AP/EA

RECEIVED
30 SEP 1995
OFFICE OF THE SRSG
UNAMIR

NOTE VERBALE

for appropriate action. Seel

Le Ministère des Affaires Etrangères et de la Coopération de la République Rwandaise présente ses compliments à la MINUAR, et a l'honneur d'accuser bonne réception sa note verbale N°SRSG/NV/148/95 du 04/08/1995 relative à l'enregistrement du personnel international de la MINUAR dans la ville de Kigali.

CA

Le Ministère des Affaires Etrangères et de la Coopération Internationale de la République Rwandaise informe la MINUAR qu'il a transmis ses doléances aux autorités compétentes de la Préfecture pour une suite appropriée et saisit cette occasion pour lui renouveler les assurances de sa très haute considération.

MISSION DES NATIONS UNIES
POUR L'ASSISTANCE AU RWANDA
KIGALI

Kigali, le 28 SEP 1995

REPUBLIQUE RWANDAISE MINISTERE DES AFFAIRES ETRANGERES ET DE LA COOPERATION SECRETARIAT

FD

Copy to
- Mr NGUBE
- PROT
- Mr Rafii

Reçu le 30 SEP. 1995