UNAMIR

INTERNATIONAL TRIBUNAL FOR RWANDA

22 FEB 1993 - 13 APR 1995

/

[8 CONFIDENTIAL]
RH/NG MAR 2009

PLEASE RETAIN
ORIGINAL ORDER

UN ARCHIVES
SERIES S-1120
BOX 2
FILE 4
ACC. 1998/0278

ICTY

United Nations International Criminal Tribunal for the former Yugoslavia
Nations Unies Tribunal Pénal International pour l'Ex-Yougoslavie

Office of the Prosecutor
Bureau du Procureur

P.O. Box 13888
2501 EW The Hague
The Netherlands

B.P. 13888
2501 EW La Haye
Pays-Bas

Tel: (31) (70) 344-5330
Fax: (31) (70) 344-5358

To/A: The United Nations

Attn of/ A l'attention de: H.E. Ambassador S.M. Kahn
Special Representative of the Secretary-General
UNAMIR Kigali, Rwanda

From/de: Catherine Cissé, Legal Officer

Number of Pages/ Nombre de Pages: 1 + 2 (Including Covering Page/couverture incluse)

Date: 22 March, 1995

Fax Number/ Numéro de Télécopie: 001 212 963 3090

Country/Pays: U.S.A. - Rwanda

Some words comments by the Prosecutor

See L Rafi 23.3.

Should this message be incomplete or illegible, please call (31) (70) 344-5360
Si cette télécopie est incomplète ou illisible, prière de téléphoner (31) (70) 344-5360

Message: **Dear Sir,**

As promised please find attached a translation of the interview.

Yours sincerely,

LE TRIBUN: How do you consider Gladstone's argument that there is no sufficient evidence to charge the criminals?

PROSECUTOR N.F.: I got astonished. Normally he will present to that International Tribunal evidences we will have given him. We hold them here in Rwanda. Furthermore, those people sent by UN to collect pieces of information didn't do anything if up to now they hadn't found anything. Or maybe Goldstone keeps them for reasons known to him. As I said, this International Tribunal is cheating on us. In Yugoslavia a similar tribunal has now spent two years with only one person arrested.

LE TRIBUN: What do you think can be done for tribunals to start?

PROSECUTOR N.F.: The Government should appoint many Judiciary Police Officers, provide equipment and magistrates. For example, in Kigali prison there are more than seven thousand prisoners; if I could have 6 Judiciary Police officers and 10 Deputy public Prosecutors, 3 robust vehicles and 10 typists each with his or her machine I can finish 4,000 files in two months. If also they could give us the already available equipment we would start. I blame the government. We don't work in good conditions e.g. in our offices when it rains, we get soaked.

LE TRIBUN: Apart from being prosecutor, you belong to a human right organization. What do you do at this level? What do you do for children in jail with their mothers?

PROSECUTOR N.F.: At this level, we visit the detainees and help them to find their relatives. From March we will start inquiries in the whole country to know those who were killed and the killers. The government should look for how to console those whose family members have been killed and the cripples of the massacres. This will lead to peaceful cohabitation. As for children in jail with their mothers some have nowhere else to live, there are criminals and others are taken as hostages by their mothers so that they can get released. For this last case, I consult the Minister on how these innocent children can be released and if necessary by force. However this measure doesn't concern children who took part in the killings.

ACCORDING TO PROSECUTOR NSANZUWERE THE HUMAN RIGHTS LEAVE MUCH TO BE DESIRED (Le Tribun du Peuple No. 44)

On 28/02/1995 we held an interview with the Prosecutor NSANZUWERA Francois in his office about the situation of the human rights.

LE TRIBUN: How do you see the situation of the human rights?

PROSECUTOR N.F.: They are not fully respected. In these days I am not happy with the way people are arrested. The fact that a good number of them took part in the genocide and the massacres doesn't justify the summary arrests. I would condemn those disappearances, night arrests, etc... However there is maybe no more imprisonment in the containers. E.g. on 27/2/95 my deputy prosecutor told me that my Judiciary Police Inspector has been arrested by the gendarmerie under the allegation that he took part in the genocide. I don't deny this but the laws should be applied. If they had brought me his dossier I would have imprisoned him myself since it is in my duty. In the country where the rule of law prevails, if things continue in this way we can't go any farther and in my view we wouldn't differ from the criminals. If nothing is done to eradicate this sad situation, I will resign from my job and be a barrister instead of carrying the load of what I am not responsible for. Prisoners consitute a problem.

I don't suggest to stop, arresting people, but since on Thursday the commission in charge of selecting the accused had stopped I am concerned by people in prison and those of outside. Furthermore, I don't agree with the decision of the prefectural security committee of Kigali town which asked that commission to stop under the pretext of insecurity! This means that the arrested people must stay in prison. In addition, the problem of houses is still unsolved.

LE TRIBUN: Who were the members of this commission and what was the reason to be stopped?

PROSECUTOR N.F.: This commission is composed of the representative of gendarmerie, the representative of DMI and the other from intelligence Bureau. This commission was stopped because the representative of Gendarmerie and DMI didn't approve the intrusion of the intelligence service. There was no legal basis creating this commission. It has been established only to take away my right. I asked the Minister of Justice to create this commission when the 40 persons released by the tribunal were rearrested by soldiers and transferred to another place.

To avoid another misunderstanding, I requested that someone be appointed to work with me in harmony but there is no law which established that commission. Due to this misunderstanding, on Thursday 23/2/1995 no selection took place and possibly it will be the same on 2/3/1995 and those who should be released will continue suffering from this injustice.

Tribunal file

UNITED NATIONS
ASSISTANCE MISSION FOR RWANDA

UNAMIR-MINUAR

NATIONS UNIES
MISSION POUR L'ASSISTANCE AU RWANDA

THE SPECIAL REPRESENTATIVE OF THE UN SECRETARY-GENERAL IN RWANDA HOLDS PRESS BRIEFING WITH THE FORCE COMMANDER AND THE DEPUTY PROSECUTOR OF THE INTERNATIONAL TRIBUNAL

The UNAMIR Force Commander, Major General Guy Tousignant and the Deputy Prosecutor of the International Tibunal, Mr. Honoré Rakotomanana, took part today in the press briefing which the Special Representative of the UN Secretary-General, Ambassador Shaharyar M. Khan, gives every week to the local and international media.

Ambassador Khan talked about the two issues of great concern, namely, genocide and overcrowded prisons. He observed that with the approach of April 7, date on which genocide was launched, he had not seen any particular tension or too much fear in areas he had visited lately.

On the issue of overcrowded prisons, where conditions are sometimes inhuman, the Special Representative stated that UNAMIR is doing all it can to help expand prison facilities, as a short-term solution to alleviate congestion among detainees. He added that the other solution under way is the restoration of the judicial system in Rwanda, which is being carried out with the assistance of relevant aid organisations.

In his address on the same occasion, Major General Tousignant stressed the remarkable progress achieved in restoring peace and security.

> **"A year ago", he explained, "Rwanda was a broken nation, but now the rebirth and rebuilding have begun and we are making steady progress towards the healing of the country."**

The Force Commander pointed out the two main challenges that lay ahead for Rwanda: the safe return of refugees and displaced persons back to their homes and the restoration of a sound and fair judicial system.

The Deputy Prosecutor of the International Tribunal read out a message from Judge Goldstone, the Prosecutor of the said Tribunal, in which he indicated that investigations carried out so far have led to the identification of 400 suspects who are likely to be tried for genocide and crimes against humanity. Some of the suspects are still in Rwanda, while others are elsewhere in Africa, Europe and North America. Mr. Rakotomanana explained that the International Tribunal requires the cooperation of various countries involved in order to hand over the suspects to the Tribunal.

The UNICEF Representative, Mr. Patrick McCormick, also addressed the Press. He said that UNICEF is helping to evacuate 200 young detainees from ordinary prisons to the detention Center for the youth in Gitarama, about 42 Kms from Kigali. This will continue throughout this month. Some of the children accused of participation in genocide are extremely young - the youngest being about five years of age. Mr. McCormick added that his Office is negotiating with the Minister of Justice for the transfer of 1019 more children prisoners. The first trial involving children will start on April 6, 1995.

Concerning activities to mark the first anniversary of genocide, UNICEF is organising, on April 5 and 6, a seminar on trauma from the genocide experience. Several hundreds of traumatized children are undergoing treatment through a special programme set up by UNICEF.

Answering questions from the Press, the Special Representative said that even though Rwanda's judicial system is not yet properly restored, some trials can still be conducted. He added that putting off the trials until the system becomes perfect would entail too long a delay for the cases to start.

The Deputy Prosecutor of the International Tribunal observed, in that regard, that Rwanda being a sovereign State, it has the right to try the suspects as soon as its judges consider that the investigations are over and the files ready. The six detainees, expected to appear in court on April 6, are not part of the 400 persons deemed to be suspects by the International Tribunal.

Tribunal file

UNITED NATIONS
ASSISTANCE MISSION FOR RWANDA

UNAMIR-MINUAR

NATIONS UNIES
MISSION POUR L'ASSISTANCE AU RWANDA

5 April 1995

INFORMATION NOTE

The Deputy Prosecutor of the International Tribunal Calls for Cooperation

The Deputy Prosecutor of the International Tribunal for Rwanda has taken up office in Kigali. It is a fundamental step for justice and national reconciliation in Rwanda.

The International Tribunal is entrusted with the responsibility to judge the main authors of genocidal acts and crimes against humanity between April and July 1994. That is to say the people who incited others to commit those crimes, as well as those who planned and organized the criminal acts.

An appeal is hereby made to all the people affected by those atrocities and to humanitarian organisations to cooperate with the International Tribunal. The Office of the Prosecutor wishes to receive all evidence available that can help to prosecute and punish the instigators concerned.

It is a task that is not only delicate, but also difficult and complex, which, it must be remembered, supplements the efforts of Rwanda's system of justice.

During the initial phase of investigations, all communication concerning the International Tribunal can be addressed to the Office of the Prosecutor, Kigali.

UNITED NATIONS
ASSISTANCE MISSION FOR RWANDA

UNAMIR-MINUAR

NATIONS UNIES
MISSION POUR L'ASSISTANCE AU RWANDA

3 March 1995
OSRSG/LA/008

Excellency,

With reference to your letter of 28 February 1995 enquiring whether the International Tribunal for Rwanda will include in its work the investigation of the deaths of the Presidents of Rwanda and Burundi in the plane crash on 6 April 1994, which was followed by the massacres and genocide in Rwanda, I think that a specific answer will have to come from the Tribunal itself.

On my part, I believe that the jurisdiction of the Tribunal, as defined in Article 1 of its Statute, can be interpreted to include an investigation of the causes of the plane crash and the persons responsible to ascertain whether the evidence can support the issuance of indictments under that Statute against the persons in question for trial by the Tribunal. However, I will need to discuss this matter with the Prosecutor or his Deputy, at the earliest opportunity, in order to be able to provide you with a more definite answer.

Please accept, Sir, the assurances of my highest consideration.

Shaharyar Khan
Shaharyar Khan
Special Representative of the
Secretary-General for Rwanda

H.E. Mr. NKUBITO Alphonse Marie
Minister of Justice
Kigali

cc: **Ministry of Foreign Affairs**
& International Cooperation
Kigali

Office of the Prosecutor, International
Tribunal

REPUBLIQUE RWANDAISE
MINISTERE DE LA JUSTICE
B.P. 160
KIGALI.

Kigali, le 28 FEV. 1995
N° .429/06-07.....

Pl. examiner
x/ref une fois
reply. See
3.7

[redacted]

Son excellence Monsieur
Le Représentant Spécial des
Nations Unies au RWANDA
KIGALI.

Excellence,

Il vous souviendra que les massacres et le génocide rwandais ont pris le ton sur l'attentat des Président Rwandais et Burundais le 6 avril 1994. Comme notre Gouvernement n'a pas entamér cette enquête nous souhaiterions voir ce dossier rentrer dans l'activité du Tribunal International sur le RWANDA.

Veuillez agréer, l'expression de ma très haute considération.

Le Ministre de la Justice
NKUBITO Alphonse Marie

REPUBLIQUE RWANDAISE
Ministère de la Justice

Copie pour information :

- Monsieur le Ministre des Affaires Etrangères et de la Coopération.
  KIGALI.

IN 6.50

UNITED NATIONS

Office of the
U.N. Resident Coordinator

United Republic of Tanzania

FACSIMILIE TRANSMISSION FORM

FACSIMILIE REFERENCE NO. 0553 ***DATE: 21 February 1995***

AGENCY/ACCOUNT TO CHARGE : UN HQS ***REF : ORG 130/3/UN***
UNDP DA/447

TO : ***NAME:*** *Mr. Minta, Office of the SRSG UNAMIR,*
COUNTRY: *Kigali, Rwanda*
FAX NO : *(212) 963 3090*

FROM: *J. Victor Angelu*
UN Resident Coordinator

This transmission consists of the following pages including this page : 1

Subject: ***VISIT OF AMBASSADOR SHAHRYAR M. KHAN TO ARUSHA***

We would like to inform you that the Parliament of the United Republic of Tanzania is in sessession in Dodoma. Thus, most of the top Government Officials including Ministers and Regional Commissioners (Governors) are also in Dodoma. In view above, it is suggested that Ambassador Khan, SRSG visit to Arusha be undertaken anytime from 16 March 1995.

Best regards.

yes. He should fix it up
Sec.
22.2

SRSG.

Ibel
L.A

Matasalamat Mansion, Zanaki Street/Samora Avenue, P.O. Box 9182, Dar es Salaam, TANZANIA
Telephone: (051) 46711/4 or 36834/5, Cable Address. UNDEVPRO, DAR ES SALAAM, Telex: 41284, Fax. (255 51) 46718, 46469.

Int'l Tribunal file

OUTGOING FACSIMILE

DATE: 21 February 1995

TO: KHAN, UNAMIR, KIGALI	FROM: ANNAN, UNATIONS, N.Y.
FAX NO: 3-3090	FAX NO: 1 (212) 963-1813
SUBJECT: Press Clippings on Rwanda	
ATTN:	ROOM: S-927E
TOTAL NUMBER OF TRANSMITTED PAGES INCLUDING THIS PAGE: 14	

Attached are today's press clippings/Reuters/NewsEdge on Rwanda, DPI's press summaries as well as Press Briefing by Prosecutor of International Tribunals, for your information.

Best regards.

Sch.
24.2

LA

FOR INFORMATION OF UNITED NATIONS SECRETARIAT ONLY
Not for Distribution or Dissemination

17 February 1995

PRESS BRIEFING BY PROSECUTOR OF INTERNATIONAL TRIBUNALS

FOR FORMER YUGOSLAVIA, RWANDA

Richard J. Goldstone, Prosecutor of the International Criminal Tribunal for the Former Yugoslavia and for the International Tribunal for Rwanda, said at a Headquarters press briefing this afternoon that he and the Tribunal's Deputy Prosecutor, Graham Blewitt, were in New York to meet with the Advisory Committee on Administrative and Budgetary Questions (ACABQ).

Mr. Goldstone said that the ACABQ was considering the budget of the International Criminal Tribunal. It was also considering the application for start-up funding for the International Tribunal for Rwanda.

A correspondent asked why the progress made by both Tribunals was moving so slowly. Mr. Goldstone said that the slow progress was due to the nature of establishing international tribunals. For example, there were tremendous logistical difficulties relating to the staffing of an international prosecutor's office, such as identifying qualified staff and relocating them to the tribunal site. Also, geographic distribution of staff was of great importance. The progress of the Tribunal for the Former Yugoslavia had been slowed due to problems relating to the appointment of a prosecutor, which had taken more than a year. Even today, due to financial constraints, the Tribunal was functioning with only two thirds of the staff required. While he shared the frustration regarding the slow progress, it was not due to any lack of will.

A correspondent said that those that had been named in indictments last week by the Tribunal for the Former Yugoslavia appeared to be "small fish". Mr. Goldstone said that people who had been indicted had been charged with crimes such as genocide and crimes against humanity. They had been involved in the murder, rape and torture of many people. Those crimes warranted their appearance before the International Tribunal

The Tribunal also intended to bring charges against individuals who had given orders and conceived policies, Mr. Goldstone continued. Those who had committed actual offences were being charged as part of a strategy for bringing those that gave the orders into the net. Through the prosecution of current indictments, the Prosecutor hoped to establish a pattern of conduct inconsistent with spontaneous actions on the part of people in the areas, including military and paramilitary personnel.

A correspondent asked if systems for plea bargaining and witness protection had been established. Mr. Goldstone said that the Prosecutor was not prohibited from making deals with individuals who could lead them to people who were guilty of greater crimes. Witness protection was absolutely vital and a system was already in operation.

(more)

5158B

If a member of the Bosnian Serb forces was willing to come forward with information, could the Tribunal offer that person safe haven?. Mr. Goldstone said that would be possible.

Asked about the budgetary difficulties being encountered by the Tribunal for the Former Yugoslavia, Mr. Goldstone said that a budget for 1995 requesting $28 million had been submitted. He was optimistic that the Tribunal would receive what it needed.

Addressing the case of two brothers being tried for war crimes in the courts in the area of the former Yugoslavia, a correspondent noted that there was a chance that the two brothers would be released due to lack of evidence. He asked if the Tribunal would be willing to take on cases where it felt there had been a miscarriage of justice. Mr. Goldstone said that if the Tribunal believed that there had not been a proper or fair trial, it would be entitled to re-try a case. To avoid double jeopardy, the case would have to be very clear.

When would the first cases be tried in Rwanda? Mr. Goldstone said he hoped by the end of the year, but the work of the Prosecutor's Office in Kigali was in its very early stages. The first job was to gather evidence which could lead to charges against leaders responsible for the genocide which began in April 1994. The Office of the Prosecutor was opened in Kigali and a chief of investigations had been appointed. Three staff had already been appointed and it was hoped that the staff would expand to 15 within the next few weeks. That staff would begin collecting the preliminary evidence. Then, the Prosecutor's Office could determine its overall strategy.

Asked if an indictment would be issued against Radovan Karadzic, the Bosnian Serb leader, Mr. Goldstone said he could not discuss current investigations or intended indictments.

Since all the people indicted last week by the Tribunal were Serbs, a correspondent asked if the Tribunal was intending to skip all other violations. Mr. Goldstone said it would not be fair to draw any conclusion based on the first indictment, and that the Tribunal must be judged in due course. No, he said, the Tribunal would not be "skipping other violations".

Asked if an individual could be charged with committing genocide, Mr. Goldstone said that as it did not require more than one person to plan or execute genocide, it was possible to charge an individual with genocide.

Regarding the situation in Rwanda, a correspondent asked if the leaders in the refugee camps around Goma had offered to turn over any suspects to the Tribunal. Mr. Goldstone said it was too early to expect such offers, as the Tribunal was only just beginning to set up its office.

Noting that a database of crimes had been compiled, a correspondent asked if the information from that database would be used. Mr. Goldstone said that the database was now at the disposal of the Prosecutor's Office. While that information was not used to prepare cases for prosecution, the indictments that were issued a week ago by the Tribunal for the Former Yugoslavia were a result of the work conducted in gathering that information.

(more)

5158B

Asked how long it would take for that Tribunal to complete its work, Mr. Goldstone said that the jurisdiction of the Tribunal was open-ended. Following the establishment of peace in the former Yugoslavia, the Security Council would determine length of the Tribunal's jurisdiction. The work of the Rwanda Tribunal would be much shorter, as its jurisdiction was limited to 1994. Also, the geographic size of Rwanda was much smaller than the former Yugoslavia.

Asked if the Prosecutor's Office had received any pressure from States, Mr. Goldstone said that no pressure had been placed on the work of the Prosecutor.

A correspondent asked if some leaders might be resisting signing a peace plan since they could then be indicted by the Yugoslavia Tribunal. Mr. Goldstone said that a lasting peace would not be established if individuals were left in power who were guilty of the sort of atrocities committed in the former Yugoslavia. The cycles of violence would only continue in the former Yugoslavia, and the same principle applied to the situation in Rwanda.

Noting that the indictments issued to date had been against Serbs, a correspondent asked if evidence gathered so far would lead to the indictment of any Bosnians or Croats. Deputy Prosecutor Blewitt said that while the indictment handed down today all related to crimes committed by Serbs, there were investigations under way in relation to crimes committed by each group. When evidence became available significant enough to begin a prosecution, indictments would flow. It was not fair to say at this time that the Tribunal was only prosecuting Serbs.

Asked when indictments would be issued against Muslims or Croats, Mr. Goldstone said that would happen in the near future.

Noting that the Yugoslavia Tribunal had requested the extradition from Germany of a Serb accused of crimes, a correspondent asked why the extradition had not been demanded of a Muslim now being held in Denmark who had allegedly participated in crimes in the Croat camps in Bosnian. Mr. Goldstone said the German investigation related directly to an investigation which was already being worked on by the Tribunal. It was, therefore, appropriate that the Serb being held in Germany be tried before the Tribunal. In the case of the man in Denmark, the crimes of which he was charged were not related to matters which the Tribunal intended to investigate. He was a low-level official who Danish officials had determined was insane. For those and other reasons, the Tribunal had determined that it was appropriate for the Danish courts to try him.

The Tribunal encouraged national courts to charge individuals with crimes committed in the former Yugoslavia. The Tribunal only had two trial chambers and its scarce resources must be used appropriately.

Since the question of apprehension of suspects was still unresolved, a correspondent asked what was the point of issuing indictments if they could not be apprehended by the Tribunal. Mr. Goldstone said that indictments must be made on the assumption that all Governments would comply with their international obligations under Security Council resolutions.

(more)

5158B

If people were not apprehended, the Tribunal's rules entitled the Prosecutor to call into session a chamber of three judges to "reconfirm the indictment". At that time, evidence would be read and a historic record of events would be established. At that time, the Chamber would likely give reasons for confirming the indictment, which would demand that the Chamber begin addressing international humanitarian law in judgements. That would be a new phenomenon. Also, reaffirming the indictment would entitle that trial chamber to issue an international arrest warrant. That warrant would then be sent to Interpol, the International Criminal Police Organization, and the individuals would become international fugitives.

Arrest warrants had been issued in relation to the 20 indictments issued by the Yugoslavia Tribunal last week, Mr. Goldstone said. In response to those warrants, Mr. Karadzic had said that the suspects would not be handed over and that they should instead be tried in courts in the Serb-controlled parts of Bosnia. However, Mr. Goldstone said that the Tribunal would be patient, as things might change.

* * * *

5158B

UNITED NATIONS
ASSISTANCE MISSION IN RWANDA

UNAMIR-MINUAR

NATIONS UNIES
MISSION POUR L'ASSISTANCE AU RWANDA

INTER-OFFICE MEMORANDUM

DATE: 15 February, 1995

TO: **OIC Administration CCO CISS CProtocolO CSO CTO Legal Advisor**

FROM: **Joe Lombardo**
Special Task Officer

SUBJECT: **UPDATE ON THE SECOND MISSION OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA DELEGATION**

Confirmation has been received that the delegation from the International Criminal Tribunal for Rwanda (ICTR) will be arriving in Kigali on the Sabena flight on the evening of Monday 20 February, 1995. The delegation will consist of three members: Mr. Colin Port, Chief Investigator, Ms. Carolyn Edgerton, Legal Officer and one administrative assistant.

The delegation will be staying in Kigali for at least one month, after which they will be joined by eight other delegates. Accommodation was requested to be arranged for the delegation at the Meridien Hotel. Three rooms have been booked at that location. Further, two vehicles have been allocated for their exclusive use during their stay and one security escort will be provided to them on a full-time basis.

The following is a list of items that need to be addressed before the delegation's arrival on Monday:

ITEM	ACTION ADDRESS
Fax Machine installed in right side office on first floor of UNICEF	CCO (keys to the UNICEF building are with Mrs. Etenesh Aberra in Room 3035)
1 Sedan to be used by the delegation in addition to a 4X4 vehicle	CTO
1 Security escort provided on a full time basis	CSO
Meeting of VIPs at the airport on Mon. Feb 20	CProtocolO and CSO

The delegation will be faxing a tentative itinerary for their first week. Mrs. Aberra will copy the itinerary and distribute it to the Chief Protocol Officer and the Chief Security Officer.

The delegation should be met at the airport on Monday 20 February at approximately 1915 and brought to the Meridien Hotel. The following morning, the delegation should be met at approximately 0745 by the security escort and taken to the UNICEF building. The security escort should pick up the keys to the offices from Mrs. Aberra in Room 3035 on Monday before 1700 and give all the keys to Mr. Colin Port.

BRIEFING NOTE

L.A. Sec. 12

14th January 1995

Legal Options On The Removal Of Criminal Elements From The Rwandese Refugee Camps

A country of refuge has the primary legal authority for the maintenance of law and order in refugee camps on its territory. The international law applicable to refugees imposes certain obligations on the host country with regard to the treatment of refugees. But it does not oust the basic territorial jurisdiction of that country, which is a necessary attribute of its sovereignty and the real basis for the maintenance of law and order.

It is therefore inconceivable for a country not to have the legal capacity (as distinct for the logistic or resource capacity) to enforce its laws or maintain order in refugee camps on its territory. The more plausible questions that arise here relate not to the legal capacity to act but to the relative merits of different law-enforcement options, to the logistic capacity to undertake such action, and to their likely political repercussions.

The possibility of using an international force to remove criminal elements from the general population in the camps having been ruled out, it is for the governments of the countries concerned to undertake that task. International assistance of a different sort - such as equipment or other logistic support - may have to be provided where needed. On the assumption that the logistic capacity or support is available, this note examines the pros and cons of the various legal options for carrying out such operations or for gaining access to the perpetrators of war crimes now living in the camps (or elsewhere).

Option I: Enforcement of Local Criminal Laws

This is really not an option, but something that is imperative. Where local or national criminal laws are violated, it is for the country concerned to arrest and try the culprits. The acts of intimidation reported from the refugee camps, designed to prevent or discourage refugees from returning home to Rwanda, range from assaults and threats of violence to actual killings. All these are crimes under virtually every legal system.

There should therefore be no question about the legal basis for arresting and trying the perpetrators of such acts.

The obstacles to the arrest and trial of such persons may be largely evidentiary and logistic, given the apparent ineffectiveness (or absence) of policing in the camps and the imposed atmosphere of fear and intimidation. But these are obstacles that can be overcome through the exertion of governmental authority. There must be a demonstrated political will to tackle the problem, which should then be backed up with the necessary logistic support.

However, while such law enforcement can assist in solving the problem of intimidation in the camps, other steps will be necessary to secure access to those perpetrators of genocide and other war crimes in Rwanda who may currently be in the camps. For one thing, not all of such persons may have rendered themselves liable to arrest in the refugee camps by committing other offences there. For another, the commission of an offence in Zaire or Tanzania by a Rwandese national does not necessarily warrant expulsion to Rwanda to face charges for other offences there.

It is clear, though, that cooperative relationships can be established between the respective governments to achieve the latter objective, if the political will is there. (One example of such cooperation was the surrender of 37 persons accused of acts of violence in the refugee camps in Goma, by the Zaire authorities to the Government of Rwanda in November 1994). Moreover, a person held in custody in Zaire or Tanzania for offences committed there can be reached more readily if an indictment against that person is eventually issued by the International Tribunal. In these two respects one can see a linkage between national law-enforcement processes in respect of the refugee camps, and the prosecution of war-related crimes before the Rwandese courts and the International Tribunal.

Option II: Enforcement of Rwandese Law

For reasons of public policy (among others), no country will enforce the criminal laws of another; hence the need for extradition treaties. It is thus not likely that the Governments of Zaire or Tanzania would arrest persons that have sought refuge there for offences previously committed under Rwandese law. Arrests for such offences are possible for purposes of trial by the International Tribunal, but it will take several months before the relevant procedures there can be utilized (see discussion below). For purposes of trial before Rwandese courts, Rwanda will have to go through extradition

procedures to gain access to culprits who have sought refuge in other countries, if extradition treaties exist with the countries in question. The only other possibility is for those countries to arrest the persons concerned, perhaps on the basis of other offences committed there, and transfer them to Rwanda without formal extradition procedures.

Option III: Procedures of the International Tribunal for Rwanda

The adoption of Security Council resolution 955 and the Statute of the International Tribunal for Rwanda under Chapter VII of the United Nations Charter, on 8 November 1994, places enforcement obligations on all member States. Paragraph 2 of the resolution provides that "all States shall take any measures necessary under their domestic law to implement the provisions of the present resolution and the Statute, including the obligation of states to comply with requests for assistance or orders issued by a Trial Chamber under Article 28 of the Statute.

It appears from this that States may, on their own initiative, take "any measures necessary"; this may include arresting known suspects and handing them over to the International Tribunal. This will be subject to possible challenges under the national laws concerned. But the more likely scenario will be for the Tribunal to initiate that process, according to the procedures laid down in its Statute.

Under the Statute of the Tribunal, the first step in that process is for the Prosecutor to decide on the existence of a prima facie case against an accused person (after proper investigation) and to prepare an indictment for review by a Judge of the Tribunal (Article 17.4). The second step is for the Judge to confirm or dismiss the indictment; if confirmed, an order or warrant for the arrest of the accused is to be issued (Article 18). The third step is for the State where the accused person resides to arrest and transfer the accused to the custody of the Tribunal (Article 19.2; Article 28). The whole process of arrest and transfer, as well as the trial itself, is subject to a range of "due process" provisions protecting the rights of the accused (Article 20), including the presumption of innocence, the right to a fair trial, the right to Counsel, etc.

As indicated above, these procedures cannot be resorted to immediately. Although the office of the Prosecutor is due to be established shortly in Kigali, the evaluation of existing evidence, the conduct of additional investigations and the issuance of indictments will take a number of months. Meanwhile, it is hoped that the process of electing the Judges and of actually establishing the Tribunal will proceed with the requisite speed. But that process - entailing the nomination of Judges by Member

States, the short-listing of nominations by the Security Council, the eventual election by the General Assembly of six Judges out of the short-list, the appointment of Registry and other administrative staff, and the establishment of the Offices of the Tribunal as well as of ancillary facilities such as detention facilities for persons on trial - is not going to be quick. There is then, of course, the question of obtaining an adequate budget for the operations of the Tribunal.

Consequently, one cannot realistically expect indictments and arrest warrants to be issued within, say, the next six months. The expected results of the Tribunal process, namely actual trials, are thus not likely to materialize before the second half of this year. In the meantime, it is imperative that the other options discussed above be pursued with diligence, before the security situation in the refugee camps gets worse.

Ike Minta
Legal Adviser

- SRSG
- Mr. Dessande/Executive Director
- Political Adviser
- File

UNITED NATIONS NATIONS UNIES

INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA
CHURCHILLPLEIN 1, P.O. BOX 13888
2501 EW THE HAGUE, NETHERLANDS
TELEPHONE: 31 70 344-5347
FAX: 31 70 3445358

OFFICE OF THE PROSECUTOR

TRIBUNAL PÉNAL INTERNATIONAL
POUR L' EX-YOUGOSLAVIE
CHURCHILLPLEIN 1, B.P. 13888
2501 EW LA HAYE, PAYS-BAS
TÉLÉPHONE: 31 70 344-5347
FAX: 31 70 344-5358

BUREAU DU PROCUREUR

Our reference: 950055/RG/aem

13 January, 1995
The Hague

Dear Ambassador Khan,

You will by now have been informed of Justice Rakotomanana's appointment by the Secretary-General. I am sending you herewith a letter addressed by me to the Minister of Justice. I refer you to its contents and I would be grateful if you could arrange to have it delivered to him.

I trust that you will not object to my request that you facilitate Justice Rakotomanana's visit to Kigali. If you agree that it would be appropriate, I would like him also to meet the President, Prime Minister and other persons you consider appropriate.

Justice Rakotomanana fully shares my opinion that it will be both necessary and advisable for him to work in the closest co-operation with you and the UN agencies which are represented in Rwanda.

May I once again thank you for all you did for me during my visit.

With kind regards,

Justice Richard Goldstone
Prosecutor

22.12

H.E. Ambassador S.M. Khan
Special Representative of the Secretary-General in Rwanda
Kigali
Fax: 001 212 963 3090

c.c. Ambassdor Khan

UNITED NATIONS NATIONS UNIES

INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA
CHURCHILLPLEIN 1, P.O. BOX 13888
2501 EW THE HAGUE, NETHERLANDS
TELEPHONE: 31 70 344-5347
FAX: 31 70 3445358

OFFICE OF THE PROSECUTOR

TRIBUNAL PÉNAL INTERNATIONAL
POUR L' EX-YOUGOSLAVIE
CHURCHILLPLEIN 1, B.P. 13888
2501 EW LA HAYE, PAYS-BAS
TÉLÉPHONE: 31 70 344-5347
FAX: 31 70 344-5358

BUREAU DU PROCUREUR

Notre référence : 950054/RG/aem

La Haye, 13 janvier 1995

Votre excellence,

Vous devez d'ores et déjà être informé que, sur ma recommandation, le juge H. Rakotomanana, a été nommé par le Secrétaire général des Nations Unies aux fonctions de Procureur adjoint pour le Rwanda. J'ai eu le plaisir de passer deux jours avec lui à La Haye et je ne doute pas un seul instant que ses qualifications en font la personne convenant parfaitement à ce poste.

J'ai également le plaisir de vous informer que j'ai nommé M. Colin Port Chef du service des enquêtes pour le Bureau du Procureur de Kigali. M. Port qui pendant de longues années a procédé à des enquêtes au Royaume-Uni travaille avec moi à La Haye depuis cinq mois. Il arrivera à Kigali vers le 20 janvier 1995 pour y ouvrir mon bureau.

Juge Rakotomanana et moi-même avons convenu qu'il se rendrait à Kigali du 26 au 28 janvier 1995 environ. J'espère qu'il pourra vous rencontrer et vous présenter M. Port à cette occasion. Je prie l'ambassadeur S.M. Khan d'avoir la gentillesse de faire le nécessaire pour ces entretiens. Je suis sûr que vous serez heureux de rencontrer le juge Rakotomanana et que vous partagerez mon opinion à son sujet. Comme je vous le disais lors de ma visite au mois de décembre 1994, j'ai l'intention de recruter le plus rapidement possible du personnel pour le bureau du procureur à Kigali et d'ouvrir les enquêtes sur les responsables du génocide perpétré d'avril à juillet 1994.

Je me félicite de notre future association qui permettra de rendre justice aux victimes de telles atrocités.

Veuillez agréer, Monsieur, l'expression de mes sentiments les meilleurs.

Juge Richard Goldstone
Procureur

Blewett for

cc. Juge Rakotomanana

Son Excellence M. Alphonse Nkubito
Ministre de la Justice de la République du Rwanda
Kigali, Rwanda
Télécopie via UNAMIR 001 212 963 3090

	PLEASE DESPATCH		PLEASE RETURN
	PLEASE POUCH	X	SENT AS REQUESTED

- This note was sent (by fax) the same day to the Director of State Protocol.
- This enabled them to get in touch with Justice Ministry to fix a meeting with the group for 24/1/95 at 3:00 pm and then the minister himself changed the appointment from 3:00 pm to 9:00 Am.

DATE	FROM
25/1/95	

UNITED NATIONS
ASSISTANCE MISSION FOR RWANDA

UNAMIR-MINUAR

NATIONS UNIES
MISSION POUR L'ASSISTANCE AU RWANDA

VISIT TO KIGALI OF THE INTERNATIONAL TRIBUNAL FOR RWANDA ESTABISHMENT TEAM

(MONDAY, 23 JANUARY - 4 FEBRUARY 1995)

M. Colin PORT:	Team leader, Investigation Section, Office of the Prosecutor, The Hague
M. Gavin RUXTON:	Senior Legal Officer, Office of the Prosecutor
Ms. Catherine CISSE:	Legal Officer, Office of the Prosecutor
Ms. Carolyn EDGERTON:	Legal Officer, Office of the Prosecutor

UNAMIR Assistant Officers

Mr. Ike MINTA:	Legal Adviser, OSRSG (Rm. 4021. Ext. 11082)
Mr. Joseph LAMBARDO:	STO, Administration (Rm. 3029. Ext. 11221)

Note: This is part of the initial set-up team to begin constituting the Office of the Prosecutor for the International Criminal Tribunal for Rwanda.

During this initial establishment stages, the team will meet the Acting Chief of UNAMIR, Maj. General G. Tousignant; local and government officials, notably H.E.Mr. Nkubito, the Justice's Minister and then will visit crime scenes and other sites outside Kigali, including transit centres and refugee camps.

OSRSG - Protocol/Visitors Bureau: Room #4060 Ext. 11069 - 111071

Arrival in Kigali at 7.10 pm 19H00
By Sabena 565 from Brussels
Please do the needful. 2.00 pm.

TO Mr Muita

	APPROVAL		MORE DETAILS
	REPLY, PLEASE	X	YOUR INFORMATION
	SEE ME PLEASE		RETURNED AS REQUESTED
	YOUR SIGNATURE		INVESTIGATE AND REPORT
	NOTE AND FILE		FOR ACTION
	NOTE AND RETURN		REPLY FOR MY SIGNATURE
	YOUR COMMENTS		INITIAL AND FORWARD
	PLEASE DESPATCH		PLEASE RETURN
	PLEASE POUCH	X	SENT AS REQUESTED

- This note was sent (by fax) the same day to the Director of State Protocol.
- This enabled him to get in touch with Justice Ministry to fix a meeting with the group for 24/1/95 at 3:00 pm and then the minister himself changed the appointment from 3:00 pm to 9:00 Am.

DATE	FROM
25/1/95	

26 I 95

Mr Colin Fort,

(1) I've informed the Chef de Cabinet of the Ministry of Justice (the Minister was at Gako) of Mr Rokotomanana's imminent arrival here.

(2) Also, it turns out, according to the attached Note, that the State Protocol had informed the Minister of your team's arrival and had actually arranged your meeting with him, previously scheduled for 3 pm yesterday.

(3) I'm leaving tomorrow morning for Nairobi, returning Sunday 29th. I'm sure that the Admin, Protocol, and Human Rights Office will ~~assist~~ continue to you as necessary.

VISIT TO KIGALI OF THE INTERNATIONAL TRIBUNAL FOR RWANDA ESTABISHMENT TEAM

(MONDAY, 23 JANUARY - 4 FEBRUARY 1995)

M. Colin PORT:	Team leader, Investigation Section, Office of the Prosecutor, The Hague
M. Gavin RUXTON:	Senior Legal Officer, Office of the Prosecutor
Ms. Catherine CISSE:	Legal Officer, Office of the Prosecutor
Ms. Carolyn EDGERTON:	Legal Officer, Office of the Prosecutor

UNAMIR Assistant Officers

Mr. Ike MINTA:	Legal Adviser, OSRSG (Rm. 4021. Ext. 11082)
Mr. Joseph LAMBARDO:	STO, Administration (Rm. 3029. Ext. 11221)

Note: This is part of the initial set-up team to begin constituting the Office of the Prosecutor for the International Criminal Tribunal for Rwanda.

During this initial establishment stages, the team will meet the Acting Chief of UNAMIR, Maj. General G. Tousignant; local and government officials, notably H.E.Mr. Nkubito, the Justice's Minister and then will visit crime scenes and other sites outside Kigali, including transit centres and refugee camps.

OSRSG - Protocol/Visitors Bureau: Room #4060 Ext. 11069 - 111071

Arrival in Kigali at 7.10 pm 19HOT
By Sabena 565 from Brussels
Please do the needful. 2.00 pm.

UNITED NATIONS
ASSISTANCE MISSION FOR RWANDA

NATIONS UNIES
MISSION POUR L'ASSISTANCE AU RWANDA

UNAMIR-MINUAR

25 January 1994
OSRSG/LA/008

Your Excellency,

On behalf of the SRSG I would like to inform you of the arrival in Kigali this morning of Mr. H. Rakotomanana, Deputy Prosecutor of the International Tribunal for Rwanda. We were only informed late yesterday of his trip to Kigali. We hope to get further information for you on the details of his trip here, and to arrange necessary meetings with your Ministry.

We also apologize for our failure to inform you of the arrival on Monday of a team from the Prosecutor's Office, who met with you yesterday. Our inability to inform you was also due to the short notice that we had on their arrival. But our Protocol Office had informed the Rwandese Government Protocol of the arrival of that particular team.

Yours sincerely,

Ike Minta
Legal Adviser

His Excellency Mr. Alphonse NKUBITO
Minister of Justice
Kigali

* not delivered, owing to non-arrival of Deputy Prosecutor
* Chef de Cabinet informed verbally of imminent arrival.

UNITED NATIONS NATIONS UNIES

ASSISTANCE MISSION IN RWANDA MISSION POUR L'ASSISTANCE AU RWANDA

UNAMIR - MINUAR

PROGRAM ITINERARY FOR THE ESTABLISHMENT TEAM OF THE INTERNATIONAL TRIBUNAL FOR RWANDA

30 - 31 JANUARY 1995

The delegation intends to visit the following places during the aforementioned time period :

- An Internally Displaced Camp (IDP)
- NYAMATA
- KAYUMBA
- NTARANA Church
- A transit camp

ACTION :

TRANSPORT	- Administration/CTO
LOCATION OF SITES	- CMO
SECURITY	- COS
INFO	- OIC.SRSG/FC DFC ED/OSRSG OIC-Administration
CC:	- MA/FC MA/DFC COS DCOS G3 PLAN AMA/FC ADC/FC ADC/DFC

BEADENKIR DESSANDE, Chief, Protocol
28/1/95

UNITED NATIONS

NATIONS UNIES

95 JAN 20 10 23

IN 309

INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE PROSECUTION OF PERSONS RESPONSIBLE FOR SERIOUS
VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW COMMITTED
IN THE TERRITORY OF THE FORMER YUGOSLAVIA SINCE 1991

Office of the Prosecutor
Investigation Section
P.O. Box 13888
2501 EW The Hague
Netherlands

Tel. (31 70) 344 5360

FAX TRANSMISSION

TO	:	Officer in Charge Mr. A. Golo UNAMIR Office Kigali
Country	:	Rwanda
Fax Number	:	00 1 212 9 63 3090
From	:	Colin Port
Fax Number	:	(31 70) 344 5278 or 344 5358
Date	:	Friday, 20 January 1995
No. of Pages	:	3 (including this cover page)
Subject	:	**INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA : VISIT OF ESTABLISHMENT TEAM**

SRSG EIDIR LO (LA) CH

UNITED NATIONS NATIONS UNIES

INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA
CHURCHILLPLEIN 1, P.O. BOX 13888
2501 EW THE HAGUE, NETHERLANDS
TELEPHONE: 31 70 344-5347
FAX: 31 70 3445358

OFFICE OF THE PROSECUTOR

TRIBUNAL PÉNAL INTERNATIONAL
POUR L' EX-YOUGOSLAVIE
CHURCHILLPLEIN 1, B.P. 13888
2501 EW LA HAYE, PAYS-BAS
TÉLÉPHONE: 31 70 344-5347
FAX: 31 70 344-5358

BUREAU DU PROCUREUR

20 January 1995

Dear Sir,

On Monday, 23 January, I will be arriving in Kigali with Gavin Ruxton, Senior Legal Officer; Catharine Cisse, Legal Officer; Carolyn Edgerton, Legal Officer as part of the initial set-up team to begin constituting the International Criminal Tribunal for Rwanda. While two members of the contingent will be departing Rwanda on January 28, the remaining two will be in the country until approximately 4 February.

Following discussions with Ambassador Khan earlier this week, it is our understanding that we shall be met at Kigali airport and accommodated within the Belgian Village and Ambassador Khan's residence.

Although we gave Ambassador Khan some indications as to our material needs, it would be helpful if you could assist us, particularly during our initial establishment stages, in providing secure transportation and drivers.

We also expect to require the services of at least one French-English interpreter to interpret during meetings with local and government officials. Subject to timing, protocol and your evaluation of the situation, we should like to visit crime scenes and other sites outside Kigali, including transit centres and refugee camps.

We should be grateful if you would fax us as soon as possible the name, telephone and fax number of a contact person. Our contact prior to departure is Carolyn Edgerton, fax (31 70) 344 5278 and home telephone (31 70) 350 6847.

We look forward to meeting personally with members of your office and receiving your advice and guidance regarding investigations operations in Rwanda. We trust this short notice will not be unduly inconvenient and thank you in advance for your cooperation.

FOR

Colin Port
Director of Investigations

Officer in Charge
Mr. A. Golo
UNAMIR Office
Kigali
Rwanda

cc: Commanding Officer
Major General Tousignant
UNAMIR Office
Kigali
Rwanda

cc: Mr. A. Schiess
Officer in Charge
Special Investigations Unit
Human Rights Field Operations
Fax: 00 250 7 24 61

Under T.

23 January 1995

Comments on Mr. Corell's Fax of 19 January 1995

When Judge Goldstone met with the Human Rights Operation's Office on his visit here, the latter pointedly sought clarification on the role of their Special Investigations Unit in the work of the Prosecutor. The Judge had responded firmly that his Office will be in charge of investigating cases for the Tribunal, taking into account relevant information from all sources including the Human Rights Office. He had also stated that in his opinion, the broader investigative (as distinct from monitoring) functions of the Human Rights Office, where they fell outside the period of the Tribunal's jurisdiction, should actually be carried out in coordination with the Government of Rwanda rather than over and above it.

We have ourselves had some reservations over the extent of the authority claimed by the Human Rights Office, for instance, in relation to UNAMIR's guidelines on the surrender of arrested Rwandese to Government authorities.

There is obviously a problem of conflicting mandates between the Human Rights Office and the Office of the Prosecutor in respect of the investigation of acts of genocide and other war crimes occurring between 1 January 1994 and 31 December 1994. There is also, perhaps, a problem of over-broad perceptions of the role of the Human Rights Office. In my opinion that conflict should be resolved in favour of the Office of the Prosecutor in view of the Chapter VII authority behind the Tribunal's jurisdiction. In this connection, I cannot agree more with points 3 and 4 of Mr. Corell's note.

On the question of the SRSG's coordinating role vis-à-vis other UN operations here, I believe this should be made more explicit, perhaps in a formal statement or instruction by the Secretary-General, in an effort to rationalize the fragmented manner in which mandates have been handed down by the various legislative bodies of the Organization.

I. Minta
Legal Adviser

UNITED NATIONS NATIONS UNIES | TELEGRAPH

For use of Cable Operations Unit only / *Réservé au Groupe de la correspondance télégraphique*

PAGE ___ OF ___

TIME RECEIVED	A/C	PRECEDENCE	MSG. SEQ. NO.
	SVC. CLASS		
	CHECKED FOR DISPATCH		

For use of Drafter / *A remplir par le rédacteur*	DATE: 19 January 1995		ALLOTMENT / COMPTE	FILE / DOSSIER
DRAFTER / REDACTEUR	DEPT.	ROOM / BUREAU	EXT. / POSTE	
	OLA	S-3427	3-5338	

12 PITCH - 66/12 → | 10 PITCH - 66/10 →

Mr. S. Khan, Special Representative of
the Secretary-General to UNAMIR
Kigali

Telefax: 3-3090

Please see attached. Regards, Hans Corell, USG for Legal Affairs, the Legal Counsel.

DO NOT TYPE BEYOND THE MARGINS – SEE INSTRUCTIONS ON THE REVERSE SIDE

N'INSCRIVEZ RIEN DANS LES MARGES – VOYEZ LES INSTRUCTIONS AU VERSO

LAST LINE OF TEXT / *DERNIERE LIGNE DU TEXTE* →

////

CLEARED BY / VISE PAR

AUTHORIZED BY / AUTHORISE PAR

SIGNATURE: MGConstable DATE: .....

M. Constable, Pers Asst to the USG for Legal Affairs

NAME AND TITLE (PLEASE TYPE) / NOM ET QUALITE (A DACTYLOGRAPHIER)

COM.7 11-871

United Nations Nations Unies

INTEROFFICE MEMORANDUM MEMORANDUM INTERIEUR

TO: Mr. S. Khan, Special Representative of the Secretary-General to UNAMIR, Kigali

Mr. Ayala Lasso, High Commissioner for Human Rights, Geneva

Justice Richard Goldstone, Prosecutor International Tribunal for the Former Yugoslavia

DATE: 19 January 1995

REFERENCE:

From: Hans Corell
Under-Secretary-General for Legal Affairs
The Legal Counsel

Subj: ***Relationship between the SRSG to UNAMIR, the High Commissioner for Human Rights and the Prosecutor of the International Tribunal for Rwanda***

Following a visit to The Hague on 10 and 11 January 1995, I should like to share a few thoughts with you concerning the relationship between the Special Representative, the High Commissioner for Human Rights and the Prosecutor of the International Tribunal for Rwanda at this present juncture.

These thoughts are based, first of all, on the draft Memorandum of Understanding between the Prosecutor and UN High Commissioner for Human Rights conveyed to the Prosecutor under cover of a letter from Mr. Ayala Lasso of 5 January 1995. The draft memorandum was meant as a paper for discussion between the High Commissioner and the Prosecutor. This discussion took place on 11 January 1995 in the presence of, inter alia, Mr. Goldstone, Mr. Blewitt, Mr. Rakotomanana and myself. Mr. Mautner-Markhof represented the High Commissioner who was unable to participate in the meeting.My reflections are based also on these discussions (until 11:20 a.m., when I had to leave for the airport).

My first impression is that the exercise was very useful and that it is highly appropriate that the two entities make these contacts in order to verify their responsibilities. As I pointed out during our discussions, it is, however, necessary to involve also the Special Representative of the Secretary-General.

The draft memorandum addresses the question of the relation between the Tribunal, notably the Prosecutor, and the work performed by the Human Rights

Field Operation in Rwanda (HRFOR), established by the High Commissioner, pursuant to his general mandate provided in General Assembly resolution 48/141 (1993), and his obligations to support the work of the Special Rapporteur under Commission of Human Rights resolution S-3/1(1994). I limit my observations to five points:

1. Since a Deputy Prosecutor has been appointed and an Investigations Officer, under the authority of the Tribunal, is being despatched to Rwanda, I think that all elements relating to a situation before this occurred should be deleted from the text.

2. My conclusion is that the subject matter is such that the Special Representative of the Secretary-General has an interest, and, consequently, must be consulted. I draw your attention to the opinion constantly expressed by the Secretary-General, and, in particular, at the meeting in Geneva on 8 November 1994 at which Mr. Khan, Mr. Ayala Lasso and I were present, that all activities in a region where there is a Special Representative must be coordinated by the same. My advice is therefore that you revise the text of the agreement and then consult closely with Mr. Khan in order to make certain that the content of the document is acceptable also to him.

3. It is necessary to make a clear distinction between the work under the guidance of the High Commissioner and the work under the Statute of the Tribunal. Since many changes have occurred since the resolution by the Human Rights Commission was adopted, it is imperative that the drafters of the resolution on the same topic this year are made fully aware of the situation. Unless they are prudent, there is a risk of duplicating efforts or even confusing the situation in the field. In particular, it is important that investigations performed under the Statute of the Tribunal are not interfered with by others. If it is considered necessary to conduct investigations pertaining to periods which do not fall within the jurisdiction of the Tribunal, such investigations have to be made according to clear mandates and in accordance with the guidelines recently issued by the Secretary-General. I have sent a copy of these guidelines to the High Commissioner by courier since they are too voluminous to send by fax.

4. If the investigators under the Statute of the Tribunal will not be able to conduct investigations in all matters that come to the knowledge of UN authorities, and if it s felt that investigations should, nevertheless, be made, it is imperative that any such investigations are made by professionals, that they are conducted according to normal standards of criminal investigations, that they are conducted with the knowledge of the local authorities and that they thus should be seen as

assistance in restoring the criminal justice system of Rwanda. I see no harm in such investigators asking advice from the investigators under the Statute of Tribunal. However, the latter should not be involved unless the matter falls within the Statute of the Tribunal.

5. If it is felt that an agreement between the High Commissioner and the Tribunal (with the participation or acceptance of the SRSG) is needed, it must be made abundantly clear which should be the duties of the Legal Analysis and Coordination Unit (LACU) which is foreseen by the High Commissioner. As was pointed out by Judge Goldstone during our consultations, it is essential that the general public has a possibility to make the important distinction between the United Nations activities carried out under the auspices of the High Commissioner, and the work performed by the Tribunal.

c.c. *Mr. Goulding*
Mr. Gharekhan
Mr. Aimè
Mr. Zacklin
Mr. L. Johnson
Ms. Shraga

c/o SRSG

ICTY

United Nations International Criminal Tribunal for the former Yugoslavia
Nations Unies Tribunal Pénal International pour l'Ex-Yougoslavie

Office of the Prosecutor
Bureau du Procureur

P.O. Box 13888
2501 EW The Hague
The Netherlands

B.P. 13888
2501 EW La Haye
Pays-Bas

Tel: (31) (70) 344-5330
Fax: (31) (70) 344-5358

To/A:	International Tribunal for Rwanda
Attn of/ A l'Attention de:	Mr. Colin Port
From/De:	Marie Papazian Marie Papazian Special Assistant to Prosecutor
Number of Pages/ Nombre de Pages:	1 (Including Covering Page/Inclusive Page de Couverture)
Date:	24 January, 1995
Fax Number/ Numero de Télécopie:	00-212-963.30.90
Country/Pays	Rwanda

Should this message be incomplete or illegible, please call (31) (70) 344-5330
Si cette télélecopie est incomplète ou illisible, prière de téléphoner (31) (70) 344-5330

Message:

Please be advised that Justice Rakotomanana called on Monday morning to indicate that he will be flying (Air France) from Antananarivo to Nairobi. He arrives in Nairobi at 21:15 hrs. When we spoke, the Nairobi-Kigali segment had not yet been finalised, Judge Rakotomanana said this portion would be, probably by private plane, arriving in Kigali in the afternoon of January 25 or January 26. I will advise you as soon as possible if I learn of anything further. Judge Rakotomanana had said he would try to call me with additional details so that you would know when to meet him at the airport.

Regards Marie

Dr. Kabia's file

UNAMIR
95 JAN 20 19 23

UNITED NATIONS

NATIONS UNIES

IN 309

INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE PROSECUTION OF PERSONS RESPONSIBLE FOR SERIOUS
VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW COMMITTED
IN THE TERRITORY OF THE FORMER YUGOSLAVIA SINCE 1991

Rec'd 21-1-95 RD

Office of the Prosecutor
Investigation Section
P.O. Box 13888
2501 EW The Hague
Netherlands

Tel. (31 70) 344 5360

FAX TRANSMISSION

TO	:	Officer in Charge Mr. A. Golo UNAMIR Office Kigali
Country	:	Rwanda
Fax Number	:	00 1 212 9 63 3090
From	:	Colin Port
Fax Number	:	(31 70) 344 5278 or 344 5358
Date	:	Friday, 20 January 1995
No. of Pages	:	3 (including this cover page)
Subject	:	**INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA : VISIT OF ESTABLISHMENT TEAM**

SRSG (SDIR) LO CA K

UNITED NATIONS NATIONS UNIES

INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA
CHURCHILLPLEIN 1, P.O. BOX 13888
2501 EW THE HAGUE, NETHERLANDS
TELEPHONE: 31 70 344-5347
FAX: 31 70 3445358

OFFICE OF THE PROSECUTOR

TRIBUNAL PÉNAL INTERNATIONAL
POUR L' EX-YOUGOSLAVIE
CHURCHILLPLEIN 1, B.P. 13888
2501 EW LA HAYE, PAYS-BAS
TÉLÉPHONE: 31 70 344-5347
FAX: 31 70 344-5358

BUREAU DU PROCUREUR

20 January 1995

Dear Sir,

On Monday, 23 January, I will be arriving in Kigali with Gavin Ruxton, Senior Legal Officer; Catharine Cisse, Legal Officer; Carolyn Edgerton, Legal Officer as part of the initial set-up team to begin constituting the International Criminal Tribunal for Rwanda. While two members of the contingent will be departing Rwanda on January 28, the remaining two will be in the country until approximately 4 February.

Following discussions with Ambassador Khan earlier this week, it is our understanding that we shall be met at Kigali airport and accommodated within the Belgian Village and Ambassador Khan's residence.

Although we gave Ambassador Khan some indications as to our material needs, it would be helpful if you could assist us, particularly during our initial establishment stages, in providing secure transportation and drivers.

We also expect to require the services of at least one French-English interpreter to interpret during meetings with local and government officials. Subject to timing, protocol and your evaluation of the situation, we should like to visit crime scenes and other sites outside Kigali, including transit centres and refugee camps.

We should be grateful if you would fax us as soon as possible the name, telephone and fax number of a contact person. Our contact prior to departure is Carolyn Edgerton, fax (31 70) 344 5278 and home telephone (31 70) 350 6847.

We look forward to meeting personally with members of your office and receiving your advice and guidance regarding investigations operations in Rwanda. We trust this short notice will not be unduly inconvenient and thank you in advance for your cooperation.

FOR

Colin Port
Director of Investigations

Officer in Charge
Mr. A. Golo
UNAMIR Office
Kigali
Rwanda

cc: Commanding Officer
Major General Tousignant
UNAMIR Office
Kigali
Rwanda

cc: Mr. A. Schiess
Officer in Charge
Special Investigations Unit
Human Rights Field Operations
Fax: 00 250 7 24 61

UNITED NATIONS
INTEROFFICE MEMORANDUM

UNAMIR-MINUAR

NATIONS UNIES
MEMORANDUM INTERIEUR

TO: **Mr. Shaharyar M. Khan**
SRSG

DATE: 17 October 1994
REF: OSRSG/LA/008

THROUGH: **Dr. A. Kabia**
Executive Director

FROM: **I. Minta**
Legal Adviser

SUBJECT: **International Tribunal for Rwanda**

..... Please find attached, herewith, the preliminary evaluation requested.

I await instructions regarding any further work on this.

THE INTERNATIONAL TRIBUNAL FOR RWANDA: A PRELIMINARY EVALUATION

We were requested to examine the following issues:

I. Concurrent or Conflicting Jurisdictions

The following questions arise on this issue:

1. In what areas may the jurisdiction of the International Tribunal for Rwanda conflict or overlap with that of the courts of Rwanda?

2. In those areas, which jurisdiction should prevail, and why?

3. In what circumstances could double jeopardy arise (i.e., double or multiple trials of the same persons for the same act or offence), and how should it be handled or prevented?

I.1 Conflict or overlap

In principle, the courts of Rwanda have jurisdiction over all offences committed in Rwanda prior to, during and after the war. The absence of a functioning judicial system now does not change that basic fact: jurisdiction, as an attribute or expression of sovereignty, can still be asserted when the Rwandese courts have the capacity to do so.

Most (if not all) of the offences characterized as international crimes and placed under the jurisdiction of the International Tribunal would also, normally, be defined as ordinary (national) crimes (e.g, murder), under the laws of Rwanda. In addition, Rwanda can itself try them as international crimes although this could entail some technical difficulties

under Rwandese law (if the point were to be researched), and would most likely be unnecessary in any case.

Thus, both the International Tribunal and the Rwandese courts can assert jurisdiction over the same acts, although the legal characterization of those acts may differ - i.e., as international crimes (under the Statute and relevant conventions), and as national crimes under Rwandese law. Article 8 of the draft Statute of the International Tribunal for Rwanda recognizes this concurrent or overlapping aspect of the jurisdictions of these two court systems.

I.2 Resolving conflicts of jurisdiction

A conflict of jurisdiction arises when two courts seek to assert jurisdiction over the same legal issue, in this case, international crimes. If the Government of Rwanda attempts or is able to put any person on trial in a Rwandese court for any of the international crimes defined in the Statute, Article 8 (2) would oblige them to defer to the jurisdiction of the International Tribunal and thus stop such a trial.

However, this deference can only come into play if the International Tribunal is in existence and able to assert its own jurisdiction. Until the International Tribunal is established and functioning Rwanda can (in theory) assert jurisdiction in respect of any of those international crimes.

But the more plausible scenario would be that Rwanda may assert jurisdiction over those same acts as ordinary crimes under Rwandese law. Here, there will be no conflict of jurisdiction at all - or, rather a "false conflict", according to the doctrine - because the International Tribunal has no jurisdiction over ordinary (national) crimes characterized as such, even if the underlying facts and evidence are the same as the international crimes.

This represents a major loophole in the effort to subordinate the jurisdiction of the Rwandese courts to that of the International Tribunal - a loophole arising out of an essential legal difference between the characterization of an act as an **"international"** crime or an ordinary **"national"** crime.

This important difference between the two characterizations of crime is implicitly recognized in Article 9 of the Statute, when it states in paragraph 9 (2)(a), for instance, that:

> **"2. A person who has been tried by a national court for acts constituting serious violations of international humanitarian law may be subsequently tried by the International Tribunal for Rwanda only if:**
>
> **(a) The act for which he or she was tried was characterized as an ordinary crime...."**

This provision exists precisely because the International Tribunal has no authority or jurisdiction over ordinary crimes. In sum, therefore, there are two possible scenarios in which Rwanda could - if it had the capacity - proceed with trials in defiance of or despite the International Tribunal, namely:

(a) before the Tribunal becomes operational, and

(b) by trying particular acts as ordinary (national) crimes over which the International Tribunal has no jurisdiction.

I.3 Double jeopardy (Non-bis-idem)

This issue has been partly addressed above. It emerges from the above that double jeopardy arises only where the legal issue or characterization is the same, and the

proceedings are against the same person. If the same facts give rise to more than one legal characterization of a crime, it follows that the accused person can be tried more than once (or, normally, on several **counts** or charges). That is **not** double jeopardy.

Again, this basic characteristic of double jeopardy and its corollary, as explained above, is recognized in Article 9 of the draft statute, when it states in paragraph 1 that no person shall be tried before a national court if he/she has already been tried by the International Tribunal for the international crimes defined under the Statute (the reverse will also hold true); in contrast with the provision in paragraph 2 (a) which allows the possibility of two trials on the same facts, if characterized differently as an international crime by the International Tribunal, and second, as an ordinary (national) crime by national courts. It must be stated, though, that the second possibility is rather remote under present circumstances.

Article 9 (3) of the Statute also contains another implicit recognition of the distinction between the international and national legal characterizations of the crimes involved in Rwanda, by providing that where a person convicted of an international crime under the Statute had previously been convicted by a national court for the same act, the penalty to be imposed by the International Tribunal should take into account the extent to which the penalty imposed by the national court may have been served already.

II. How quickly can the Tribunal begin working?

The steps necessary for the Tribunal to be established and to begin its work are as follows:

II.1 Nomination of judges

Article 12(3)(a) requires the Secretary-General to invite nominations for judges of the **Trial Chambers** of the Tribunal from Member States (including non-members with permanent

observer missions at UN Headquarters). The judges of the Appeals Chamber are already provided for: the same as the Appeals Chamber of the former Yugoslavia Tribunal (Article 12.2). The Secretary-General's invitation can be issued on the same day or within a few days of the adoption of the resolution and Statute.

But, unfortunately, the selection and appointing process after that is somewhat cumbersome and is likely to be time-consuming. Less-cumbersome options could have been considered, but it is probably too late now. First, Member States have thirty days to make nominations (Article 12.3.b). One must thus allow for that time-lapse.

II.2. Short-listing

Next, the Secretary-General is to forward all the nominations received to the Security Council, from which the Council is to establish a short list of 12 to 18 candidates, taking due account of adequate representation of the principal legal systems of the world (Article 12.3.c).

It is difficult to predict how long this short-listing process will take especially if one considers the possibility that some lobbying may enter into the picture. A reasonable guess would probably be a period of up to 4 weeks for this process (or less, if we are lucky).

II.3. Election of the judges

After that, the President of the Security Council is to transmit the short list to the President of the General Assembly. From that list the General Assembly is then to elect the six judges of the Trial Chambers (Article 12.3.d).

Here, it is even more difficult to predict how long this will take. Procedural technicalities will first have to be cleared to get the item on the General Assembly agenda for the current session, and to get the voting underway. The voting process itself could

also be of unpredictable duration, particularly in view of the real possibility of lobbying by the candidates or their countries.

A cautious guesstimate would be one-to-two months for this process. Thus, altogether the three main steps above could take three to four months after adoption of the resolution and Statute.

II.4. Setting up the court

The court will not necessarily be ready to start work with the election of judges. Suitable premises will have to be secured at the agreed venue or seat of the court. It's administrative machinery will have to be put in place. Although the groundwork here could proceed simultaneously with the selection of the judges, it will probably be more realistic to allow an additional month or two for this process to be completed.

One must also allow time for all six newly-appointed judges to adjust their normal schedules and make themselves available. This could take a minimum of one to two months from the time of their election - although this period would coincide with the above estimate.

II.5 The Prosecutor

The other difficult element in this whole process is the role of the Prosecutor. Article 15 of the Statute provides that the Prosecutor **"shall be responsible for the investigation and prosecution of persons"** accused of crimes under the Statute. (Incidentally, this is a more accurate statement than the provision on the competence of the Tribunal, which is stated in Articles 1 to 4 as being **"to prosecute"** persons responsible for the international crimes. Although that terminology is probably a carry-over from the Nuremberg trials, it would have been better to indicate that the Tribunal is above prosecution, which is actually for prosecutors).

Fortunately, the Prosecutor is already provided for: the same as that for Yugoslavia (Article 15.3), although he will need to recruit additional staff, including a new Deputy, for the Rwanda cases, as well as necessary administrative and logistical support.

An even more important issue is that of investigations. Despite the fact that some evidence has already been gathered by the Special Rapporteur, the Commission of Experts, and others, a lot more investigative work still remains to be done.

Even as regards the evidence already gathered, more work still needs to be done. No prosecutor will put evidence before a court without full evaluation (see Article 17.1). More specifically, witnesses will have to be identified, located, interviewed, protected, and prepared for testimony in court. Indictments will have to be prepared, backed up by professional briefs fully argued and documented, on each alleged crime and each accused person. Relevant physical evidence - Exhibits - will have to be gathered and prepared for court. The accused persons will have to be apprehended and presented in court. Here, the possibility of delays through legal challenges of such arrests and detention, particularly in foreign countries, cannot be ruled out. These processes could add another three to six months to the trial preparations. A sufficiently large number of prosecuting staff commensurate with the case-load will be necessary to minimize such delays.

Then, of course, there are those cases that require substantial additional investigations, and those requiring completely new investigations. These two categories - which could proceed while the "ripe" cases were on trial - could take anywhere from several months to several years, depending on the availability of suitably qualified investigative experts in sufficient numbers.

III. The role of other countries

As most accused persons (and many surviving witnesses) have fled Rwanda, other countries will have to play a major role in facilitating access to these persons in order to expedite the work of the Tribunal. The Statute addresses this problem in several ways.

Here again, the most important area is that of investigations. The Prosecutor may have to seek the assistance of relevant state authorities in countries where accused persons or witnesses may have sought refuge. Such assistance may extend to the arrest of accused persons and their transfer to the custody of the Tribunal, the taking of testimony from witnesses, the securing of evidence, etc.

Although Article 28 of the Statute requires all States to comply with requests in these areas without undue delay, delays may nevertheless occur in particular situations - such as where an accused person challenges the grounds for his arrest and detention in the country of refuge. Litigation over due process applications in such cases could cause considerable delays in the work of the Tribunal.

NB

- In view of the time-factor in the preparation of this brief, a fuller evaluation could be provided later if necessary.

Ms. Ladan Rafii

Draft/Comments invited

Briefing Note: Nature, Extent and Consequences of the Concurrent Jurisdiction Between the International Criminal Tribunal for Rwanda and the Courts of Rwanda

Jurisdiction, being an attribute of sovereignty, derives from customary international law and belongs primarily to States and their institutions. In the judicial sphere, such jurisdiction is normally exercised by national courts in accordance with national laws, usually in respect of acts occurring within the national territory or outside the national territory but having effects on the State concerned.

In contrast, the jurisdiction or competence of international organizations and their subsidiary bodies, or of organs created by them, derives from conventional international law such as Treaties and Conventions, and from legally-binding decisions or resolutions taken under such Treaties or Conventions. Security Council resolution 955 (1994) establishing the International Criminal Tribunal for Rwanda is one such example.

The following questions arise as regards the relationships between the Tribunal and the Courts of Rwanda:

1. In what respects does the jurisdiction of the courts of Rwanda overlap or conflict with that of the International Tribunal for Rwanda, and which jurisdiction prevails in case of conflict?

2. How does either judicial body gain access to culprits in exile or outside their jurisdiction?

3. In what respects or areas would the two systems need to cooperate in their mutual interests?

4. Above all, what is the likely political impact of the trials for genocide and war crimes on the process of reconciliation in Rwanda, and how best should that be managed with a view to establishing a durable political order that effectively ends the cycle of violence in Rwanda?

1. Resolving conflicts of jurisdiction

Most of the international crimes placed under the jurisdiction of the International Tribunal for Rwanda - namely, genocide and other war crimes - would also normally be defined as ordinary crimes, such as murder, under the laws of Rwanda. Thus, the International Tribunal and the Courts of Rwanda both have jurisdiction over the acts in question and over the persons committing those acts in the defined period, namely 1 January to 31 December 1994, although the crimes arising from those acts may be defined differently. It follows that the courts of Rwanda have **exclusive** jurisdiction over such crimes committed outside the defined period, and over all ordinary crimes so defined under the laws of Rwanda.

A conflict of jurisdiction would therefore arise if both the courts of Rwanda and the International Tribunal seek to assert jurisdiction over the same person for the same crime. In such case, Article 8 (2) of the Statute of the International Tribunal provides:

> *"The International Tribunal for Rwanda shall have primacy over the national courts of all States. At any stage of the procedure, the International Tribunal for Rwanda may formally request national courts to defer to its competence in accordance with the present Statute and the Rules of Procedure and Evidence of the International Tribunal for Rwanda".*

Arguably, such a conflict of jurisdiction would not arise if Rwanda seeks to try an offender for an ordinary crime, even if the same act also constitutes an international crime under the jurisdiction of the Tribunal. This is because, in such case, the ordinary national crime is a different legal entity from the international crime, even if derived from the same facts, and the International Tribunal, by definition as well as by its Statute, has no jurisdiction over ordinary crimes.

However, a precedent seems to have been established under Rule 9 of the Rules of Procedure of the International Tribunal for the former Yugoslavia (which will most likely be adopted for Rwanda as well because the Statute of the Rwanda Tribunal was based on that for Yugoslavia), that eliminates the significance of the distinction between ordinary crimes and international crimes in this regard. That provision reads:

> *"Rule 9 : Prosecutor's Request for Deferral*
>
> *Where it appears to the Prosecutor that in any such investigations or criminal proceedings instituted in the national courts of any State:*

(i) the act being investigated or which is the subject of those proceedings is characterized as an ordinary crime;

(ii) there is a lack of impartiality or independence, or the investigation or proceedings are designed to shield the accused from international criminal responsibility, or the case is not diligently prosecuted; or

(iii) what is in issue is closely related to, or otherwise involves, significant factual or legal questions which may have implications for investigations or prosecutions before the Tribunal,

the Prosecutor may propose to the Trial Chamber designated by the President that a formal request be made that the national court defer to the competence of the Tribunal."

A request to the national court to refrain from trying an accused for an ordinary crime, despite the fact that the International Tribunal has no jurisdiction over that ordinary crime, seems to be a departure from the Statute of the Tribunal. This point could still be argued in court if the country involved was inclined to assert the distinction pointed out above. However, Rule 9 seems to have been adopted for desirable reasons - even if not for legally well-founded reasons - namely, to close a major loophole in the primacy of the jurisdiction of the International Tribunal over national courts.

In the absence of Rule 9, the primacy of the International Tribunal could easily be by-passed by the Rwandese courts trying accused persons for any of the acts of genocide or war crimes covered by the jurisdiction of the International Tribunal, simply by characterizing the act as an ordinary crime under national law. Indeed, the possibility of such trials being permissible, and of their not precluding another trial on the same facts - though for a different crime - by the International Tribunal is recognized under Article 9 (2) of the Statute of the Tribunal, which reads:

"(2) A person who has been tried by a national court for acts constituting serious violations of international humanitarian law may be subsequently tried by the International Tribunal for Rwanda only if:

(a) The act for which he or she was tried was characterized as an ordinary crime."

Ordinarily, such a double trial would not be legally permissible, and is actually prohibited by Article 9 (1) of the same Statute, if the crime is the same. The fact that

it is even contemplated in Article 9 (2) reflects the legal difference between ordinary crimes and international crimes, as noted above.

2. Access to Culprits

Access to culprits by the International Tribunal seems to be a fairly straightforward process. This process is based on the authority of Chapter VII of the UN Charter, under which Security Council resolution 955 (1994) and the Statute of the Tribunal were adopted.

In opting for the Chapter VII mode of establishing the Tribunal, as opposed to the traditional but longer process of establishing it by Treaty, the Secretary-General had argued as follows in his report to the Security Council (S/25704, 3 May 1993) in the case of the former Yugoslavia Tribunal - a precedent followed in the case of Rwanda:

> ***"In the light of the disadvantages of the treaty approach in this particular case and of the need indicated in resolution 808 [on Yugoslavia] for an effective and expeditious implementation of the decision to establish an international tribunal, the Secretary-General believes that the International tribunal should be established by a decision of the Security Council on the basis of Chapter VII of the Charter of the United Nations....***
>
> ***This approach would have the advantage of being expeditious and of being immediately effective as all States would be under a binding obligation to take whatever action is required to carry out a decision taken as an enforcement measure under Chapter VII."***

Consequently, Article 28 of the Statute of the International Tribunal for Rwanda provides:

> ***"Article 28***
>
> ***Cooperation and judicial assistance***
>
> ***1. States shall cooperate with the International Tribunal for Rwanda in the investigation and prosecution of persons accused of committing serious violations of international humanitarian law.***
>
> ***2. States shall comply without undue delay with any request for assistance or an order issued by a Trial Chamber, including, but not limited to:***
>
> ***(a) The identification and location of persons;***

(b) The taking of testimony and the production of evidence;

(c) The service of documents;

(d) The arrest or detention of persons;

(e) The surrender or the transfer of the accused to the International Tribunal for Rwanda."

Although this process is not the same as extradition, it is to be expected that accused persons will exploit all avenues open to them under the laws of their countries of refuge to resist their surrender or transfer to the International Tribunal. Apart from any reluctance or tardiness in the response of any State to a request for the arrest, surrender or transfer of an accused person, the adjudication of any legal challenges to such process would seem to be the only potential obstacle to the Tribunal's gaining of access to suspects through this facility.

In contrast, access to culprits in exile by the Courts of Rwanda would depend on extradition procedures. Such procedures will not be available where the country of refuge has no extradition treaty with Rwanda (this consideration would obviously influence the choice of countries of refuge by such suspects). Where there is an extradition treaty, there will still be the possibility of delays caused by legal challenges to the process. Where there is no such extradition treaty, the only possibility of access to culprits by the Courts of Rwanda would be for the country of refuge to voluntarily surrender them, subject to questions as to whether they are entitled to international refugee protections.

Where neither extradition nor voluntary surrender is possible, the Article 28 process remains the only possibility of access. However, that process is not available to the Courts of Rwanda.

3. Cooperation between the International Tribunal and the Courts of Rwanda

It should be noted that the process of nominating and electing the judges of the International Tribunal, of appointing prosecution and investigative staff and of Registry and other administrative staff, and generally of getting the International Tribunal fully established and operational, will take at least six months (by the most optimistic estimate) from the adoption of Security Council resolution 955 (1994).

In the case of the Yugoslavia Tribunal, four months elapsed (from the adoption of its resolution and Statute in May 1993) before the judges were elected; six months elapsed before they took office; eight months elapsed before an Acting Registrar was appointed, and 14 months before the Prosecutor was appointed; 15 months elapsed before professional field investigations could begin (different from the work of a Commission of Experts established in October 1992); as at the time of its first annual report in August 1994, budgetary constraints still impeded its work, and no trials had started.

The scenario is not likely to be the same with the International Tribunal for Rwanda, primarily because in the Yugoslavian situation many of the potential accused persons were still major or potential players in the efforts to negotiate an end to the war. But the Rwandese scenario is also not likely to be a great improvement on Yugoslavia. Consequently, the frustrations of the Government of Rwanda are likely to build up while awaiting the International Tribunal to be established and functioning, and the Government is likely to want to take unilateral steps towards trying some people in its own courts, while not having the requisite or adequate resources to do so.

This scenario is fraught with dangers of dislocation and discord, but also with opportunities to lay the grounds for mutually-beneficial cooperation between the International Tribunal (and the international community at large), and the Courts of Rwanda or the Rwandese judicial system in general.

The Government of Rwanda is currently struggling against heavy odds to resuscitate its law-enforcement machinery and rebuild its judicial system and other Government institutions. A functioning judiciary is obviously necessary not only as an important institution of governance but particularly to handle some of the processes of post-war normalization. The Courts of Rwanda will also have to undertake a sizable proportion of the trials for the atrocities committed during the war. Above all, the international Tribunal itself will need the cooperation of the Rwandese law-enforcement machinery in order to successfully discharge some of its own tasks - such as field investigations, interviewing witnesses, gathering evidence, and preparing case dossiers.

It is thus in the interest of the international community to provide all the assistance necessary to the Government of Rwanda in its efforts to rebuild its judicial system. Such assistance could be geared toward carrying out some of the investigative work of the International Tribunal, and could actually minimize the predictable disaffection of the Government over expected delays in the establishment and

functioning of the International Tribunal. The most mutually-beneficial areas of cooperation between the International Tribunal and the Rwandese law-enforcement and judicial system could thus be that of the investigation and processing of cases for trial.

(a) Investigations and preparation of case dossiers

Although a considerable amount of information and evidence on the atrocities committed during the civil war in Rwanda has been gathered by various bodies - including the Special Rapporteur of the Commission on Human Rights, the Commission of Experts appointed by the Secretary-General, and such non-governmental organizations as Amnesty International and Human Rights Watch/Africa, to mention only a few - the investigative task is far from completed.

For purposes of putting cases before the International Tribunal, the investigative task actually belongs to the Prosecutor of the Tribunal (the same as for Yugoslavia), under Articles 15 and 17 of the Statute of the Tribunal. This task is yet to be started, for irrespective of the authenticity and reliability of the evidence already gathered, or the completeness of such evidence for purposes of trial (on which one is included to be less certain), the Prosecutor is not likely to put any of that before the Tribunal without an independent review and assessment.

It is still necessary to match the evidence already gathered with individual suspects responsible for particular acts. In the process, witnesses will have to be identified, located, interviewed and prepared for court appearances. A witness-protection scheme will also have to be put in place. Indictments will have to be prepared, backed up by professional briefs fully argued and documented, on each alleged crime and each accused person. Relevant physical evidence - Exhibits - will also have to be gathered, preserved, and prepared for court. And accused persons will have to be traced, apprehended and presented in court (see discussion above).

There are then those cases that are yet to be investigated at all, or that require substantial additional investigations. All of these considerations apply both with respect to cases to be tried by the International Tribunal, and those to be tried by the courts of Rwanda. Rwanda's prisons are currently overflowing with suspects awaiting trial, but with virtually no investigative machinery to start processing their cases. Once cases are processed, decisions will have to be made on which cases should go to the International Tribunal and which to the Rwandese courts. There must therefore be close cooperation between the Tribunal, through the Office of the Prosecutor, and the

Rwandese authorities in this regard. This calls for an early visit to Rwanda by the Prosecutor of the International Tribunal to discuss the modalities of such cooperation.

(b) Other assistance to the Rwandese judicial system

In adopting resolution 955 (1994) on the Tribunal, the Security Council stressed **"the need for international cooperation to strengthen the courts and judicial system of Rwanda, having regard in particular to the necessity for those courts to deal with large numbers of suspects".**

Thus, apart from the assistance that the Rwandese authorities will need in order to be able to cooperate effectively with the Tribunal in discharging its own responsibilities, other forms of technical assistance will be needed to strengthen the Rwandese judiciary in its traditional functions. The need for such assistance has been recognized in many other official pronouncements, including Security Council resolution 965 (1994) extending the mandate of UNAMIR to 9 June 1995, as well as in the accompanying statement by the President of the Security Council. However, the international community has been slow in responding with concrete programmes or resources. Unfortunately, the planning of such programmes and the mobilization of resources tend to become a protracted process, although recent developments suggest that such assistance will soon be forthcoming (see, e.g, Report of the Joint Mission to Evaluate Needs of Justice System: UNDP/UNCHR/UNHCHR/USAID/Swiss Cooperation/ACCT/ICJ/IPA/Lisbon Forum/ICHRDD; Kigali, 5 December 1994).

4. Political Impact

The roots of the civil war in Rwanda lie deep in the country's history. Having won the war, the new regime now faces the probably more difficult task of winning the hearts and minds of the people of Rwanda. Despite all efforts in that direction, some may see the current political dispensation as only another period of relative calm before the next storm. The trials of the perpetrators of genocide, both by the International Tribunal and the Courts of Rwanda, must thus be seen not only in legal terms but also in the overall context of finding a permanent solution to the cycle of violence that has plagued Rwanda virtually throughout its history.

The trials must therefore not be seen as an instrument of vengeance or of getting rid of political opponents. They must not sow the seeds of resentment or revenge in the future. Great care must thus be taken to ensure that the perceptions created by the

trials do not feed into pre-existing perceptions, or experiences, regarding the persecution of the majority by the minority - this time, with the apparent participation or support of the International community.

It would be useful, therefore, not only to clearly identity the culprits responsible for the massacres and to bring them to justice, but, also equally important, to avoid a general condemnation of their political associates, their political parties, or their ethnic groups. Despite the group hysteria that played a large part in the massacres, group or ethnic condemnation must be avoided at all costs, as that will be one sure way of perpetuating ethnic animosities and a sense of grievance and revenge.

It may also be advisable for the International Tribunal to handle the most controversial cases, and perhaps, also the majority of cases, to remove the burden from the hard-pressed Rwandese judiciary.

The Government of Rwanda could also earn much political capital by declaring a general amnesty to all persons not under indictment either before the International Tribunal or the courts of Rwanda. Visible steps need to be taken to combat the fears of people in exile about possible persecution on their return home, by publishing a definite list of suspects and thereby clearing the air for all other exiles.

Above all, all political groups should be allowed to exercise their rights of participation in the new political dispensation, without any effort to exclude former opponents - except those on indictment for genocide or war crimes.

5 Dec 94

Ike Minta
Legal Adviser

INPUTS FOR PROGRESS REPORT OF THE S-G RE. UNAMIR

17th January 1994

International Criminal Tribunal for Rwanda

The Prosecutor of the International Tribunal for Rwanda, Judge Richard Goldstone (who is also responsible for the International Tribunal for the former Yugoslavia), visited Rwanda on 19 and 20 December 1994. During that visit he held discussions with the SRSG and with Senior members of the Government of Rwanda, including the President, the Prime Minister and the Minister of Justice. He also met with representatives of other United Nations agencies in Rwanda as well as of non-governmental organizations operating in Rwanda.

Judge Goldstone at that time announced his intention of opening the Office of the Prosecutor in Kigali in January 1995. Various possible sites for the office were visited, and arrangements are now fairly advanced for the opening of the office and for its staffing. (This should be updated before the report is finalized in February). On 12 January 1995, Mr. Honoré Rakotomanana was appointed as the Deputy Prosecutor, directly responsible for Rwanda. Formal investigation of the acts of genocide and other violations of international humanitarian law committed during the Rwandese civil war are thus to begin shortly (this needs updating by February) to prepare indictments for purposes of trial by the Tribunal.

The Prosecutor had indicated that his Office will concentrate on prosecuting the leaders who planned and directed the genocide and other war crimes in Rwanda within the period of the Tribunal's jurisdiction, i.e, 1st January to 31st December 1994. All other crimes will be left to be prosecuted by the Government of Rwanda within its sovereign jurisdiction. This will avoid the risk of conflicts of jurisdiction between the International Tribunal and the courts of Rwanda. As most of those leaders are currently in exile, it will be relatively difficult for the courts of Rwanda to reach them, except through extradition procedures - where an extradition treaty exists between Rwanda and the country of exile. In contrast, all States have an obligation, under the Statute of the Tribunal, to arrest and surrender such persons for trial by the Tribunal on the issuance of an indictment.

The Government expressed its support for these plans, and reiterated its appeal for urgent international assistance to rebuild its law-enforcement and judicial machinery in order to be able to carry out its own investigations and trials. The urgency of this appeal is illustrated by the fact that Rwandese prisons are now overcrowded, several times beyond their capacity, with thousands of suspects awaiting trial whose cases cannot be processed owing to the acute shortage of investigative personnel and other resources, as well as the absence of functioning courts.

LA

Meanwhile, preparations continue for the election or appointment of the Judges of the Tribunal, for the establishment of its headquarters (at a venue to be decided), and for the appointment of Registry and other administrative personnel. It is believed that these preparations would have been completed by the time the Prosecutor's Office is ready to present the first set of indictments for review and trial by the Tribunal.

Human Rights Field Operations.

The Human Rights Field Operations Office in Rwanda (HRFOR) became operational in September 1994. Its mandate includes: (a) reporting to the High Commissioner of Human rights, the General Assembly, the Security Council, ECOSOC and the Commission on Human Rights, on the ongoing human rights situation in Rwanda; (b) undertaking formal inquiries and compiling systematic information on acts of genocide and grave violations of humanitarian law, to be used for prosecution by the International Tribunal; (c) establishing confidence and thereby facilitating the return of displaced persons and refugees; and (d) implementing programmes of technical cooperation in the field of human rights, particularly in the area of the administration of justice.

As of January 1995, the office had deployed 74 personnel in eight field offices, with a presence in each prefecture. These comprise Human Rights Field Officers that are organized into Field Teams, the Technical cooperation Unit, and the Special Investigation Unit. The Field Teams monitor and report on the situation regarding internally displaced persons, the prisons, and on human rights violations. They also prepare documentation of mass grave sites and record preliminary information on potential witnesses.

The Technical Cooperation Unit (TCU) deals with two primary areas: rehabilitation of the justice system, and human rights education and training. In the sphere of rehabilitation of justice, the TCU coordinates the work of an Inter-Ministerial Working Group, comprising two committees, which meet weekly: one on the collection and processing of data on the genocide and gross human rights violations, and another on administration of justice. Members of the working group include the Ministry of Justice, the National Prosecutor, the Ministry of Rehabilitation, the Ministry of Defence/Gendarmerie, the Ministry of Interior, a CLADHO (local NGO coalition) representative and the representative of the UNDP. The Working group has identified a number of immediate and short term projects ranging from material and personnel needs to developing alternative dispute resolution mechanisms. International support is sought for these projects to enable Rwanda to rebuild its law-enforcement and judicial system.

The education arm of the TCU has been involved in basic human rights education for national Gendarmes and is working closely with the Ministry of Education, Ministry of

Higher Education, Ministry of Culture and Ministry of Women's Affairs to develop human rights education programmes.

The Special Investigations Unit (SIU) consists of experts seconded by foreign governments, who have specific responsibility and expertise in preparing cases for prosecution. To date, it has conducted forensic examination and documenting of numerous mass grave sites throughout the country. Investigators have conducted interviews and taken affidavits of witnesses to the atrocities. In the upcoming months, the SIU expects to work closely with the Prosecutor of the International Tribunal for Rwanda.

IN 0226

95 JAN 14 02 12

ICT

United Nations International Criminal Tribunal for the former Yugoslavia and Rwanda
Nations Unies Tribunal Pénal International pour l'Ex-Yougoslavie et pour le Rwanda

Office of the Prosecutor
Bureau du Procureur

P.O. Box 13888
2501 EW The Hague
The Netherlands

B.P. 13888
2501 EW La Haye
Pays-Bas

EXTERNAL RELATIONS OFFICE BUREAU DES RELATIONS EXTERIEURES

Tel: (31) (70) 344-5353
Fax: (31) (70) 344-5358

To/A: H. E. Ambassador Shaharyar Khan
Special Representative Secretary-General for Rwanda

Attn/:

From/De: Donato Kiniger Passigli
External Relations Officer

Rec'd shall be part of our press briefing Sah. 14.11

Number of Pages/
Nombre de Pages: 5 (Including Covering Page/Inclusive Page de Couverture)

Date: 13 January, 1995

LA Spokesman

Fax Number/
Numero de Télécopie: 00-1-212-9633090

Should this message be incomplete or illegible, please call (31) (70) 344-5353
Si cette télélecopie est incomplète ou illisible, prière de téléphoner (31) (70) 344-5353

Message:

Dear Ambassador,

As anticipated during our phone call, the Spokesman of the Secretary-General has announced yesterday at the noon briefing in N.Y. the appointment of Honore' Rakotomanana as Deputy Prosecutor for the International Tribunal for Rwanda. The appointment is effective immediately and his office will be in Kigali. Please find herewith copy of his curriculum vitae.

SR SG.

I am delighted to hear that I will meet you in Geneva next week. Colin Port, newly appointed Director of Investigations, looks forward to meeting you and he will inform you of his plans. We will be there on Tuesday morning to attend the meeting of the Rwanda Operational Support Group at the U.S. Mission and, on Wednesday and Thursday, for the UNDP Conference.

Thank you in advance for finding the time to meet with us.

Best Greetings on behalf of Justice Goldstone and on my own.

Dona

PG. 13

NOTICE BIOGRAPHIQUE

de Monsieur RAKOTOMANANA Honoré

62 years old

ETAT CIVIL

RAKOTOMANANA Honoré, né le 26 octobre 1933 à Behenjy (Ambatolampy) Madagascar)
Fils des feus RAKOTOMANANA et RAZANATSOA
Marié, père de quatre enfants.

ETABLISSEMENTS SCOLAIRES ET UNIVERSITAIRES FREQUENTES

- Ecole Officielle de Besarety (Antananarivo)
- Ecole Officielle de Behenjy (Ambatolampy)
- Ecole Régionale d'Antsirabe
- Ecole Le Myre de Villers (Section Judiciaire) (Antananarivo)
- Faculté de Droit d'Antananarivo
- Faculté de Droit de Paris
- Institut des Hautes Etudes d'Outre-Mer Paris.

TITRES UNIVERSITAIRES

- Diplôme de Licence en Droit (Régime 4 ans) avec mention
- Diplôme d'Etudes Supérieures de Doctorat en Droit (Doctorat de 1ème cycle) avec mention
- Diplôme de l'Institut des Hautes Etudes d'Outre-Mer Paris (moyenne de sortie : 19,70/20)

PROFESSION ET GRADE Magistrat :

- Procureur Général de la Cour d'Appel à la suite du 1er janvier 1978 au 24 septembre 1983
- Premier Président de la Cour Suprême à la suite du 24 septembre 1983 au 26 octobre 1991, date de la mise à la retraite.
- Premier Président de la Cour Suprême à la suite honoraire.

FONCTIONS SUCCESSIVEMENT EXERCEES DEPUIS SON ENTREE DANS L'ADMINISTRATION EN 1953

- Ecrivain-Interprète Judiciaire puis Assistant des Services judiciaires : 1953 - 1961
- Secrétaire-Rédacteur de Parquet: 1961 - 1964
- Président de la Section de Tribunal de Manakara : 1964 - 1965
- Substitut du Procureur de la République (Antananarivo) : 1965 - 1966
- Procureur de la République (Antsiranana): 1966 - 1968

le. 16.1

- Membre du Groupe National chargé de présenter des candidats aux sièges vacants de la Cour Internationale de Justice de 1981 à 1986.
- Président du Groupe National chargé de présenter des candidats aux sièges vacants de la Cour Internationale de Justice de 1987 à 1993.
- Conciliateur CIRDI (mandat expiré le 5 juin 1983)
- Membre de la Délégation Malgache à la session de Juillet - août 1971 du Comité des Utilisations Pacifiques du Fond des Mers et des Océans au-delà des limites de la juridiction nationale.
- Congrès de l'Institut International de droit d'expression française (Tunis, mai 1974).
- Membre du Comité d'experts chargé d'élaborer la Charte Africaine des droits de l'homme et des peuples (Dakar, 1979).
- Conférence des Ministres des Affaires Etrangères et des Chefs d'Etat et de Gouvernement de l'Organisation de l'Unité Africaine (1980, 1981, 1982).
- Visite d'information aux Etats-Unis (USIA) en 1986, notamment Conférences avec plusieurs Magistrats des Cours Suprêmes de plusieurs Etats d'Amérique précédées d'un entretien avec le Président de la Cour Suprême Fédérale WARREN BURGER.

PUBLICATIONS

- Du prêt d'argent en droit malgache et en droit français.
- De quelques aspects du droit de crédit à Madagascar.
- Notions de droit pénal général.
- Cours de procédure pénale approfondie.
- Cours de droit pénal spécial.
- Cours de droit pénal des affaires.
- Cours de méthodologie du jugement pénal
- Cours de droit civil
- Cours de droit commercial.

DISTINCTIONS HONORIFIQUES

- Chevalier de l'Ordre National Malagasy
- Officier de l'Ordre National Malagasy
- Commandeur de l'Ordre National Malagasy
- Grand-Officier de l'Ordre National Malagasy
- Grand-Officier de la Légion d'Honneur
- Grand-Croix de 2ème Classe de l'Ordre National Malagasy.

- Substitut de Procureur Général près la Cour d'Appel : 1968-1969.
- Chef de Service des Affaires Judiciaires, de la Nationalité et de l'Etat Civil, puis chargé de mission au Ministère de la Justice : 1969-1972, (a notamment fait partie du Comité chargé d'harmoniser les législations nationales avec les Conventions Internationale du Travail.).
- Secrétaire Général du Ministère de la Justice : 1972-1985.
- Haut Conseiller Constitutionnel (cumulativement avec les fonctions de Secrétaire Général du Ministère de la Justice) : 1983-1985 (Contrôle de Constitutionnalité et Contentieux électoral).
- Président de la Haute Cour Constitutionnelle du 1er Avril 1989 au 21 Août 1992 (Contrôle de Constitutionnalité et Contentieux électoral)
- Haut Conseiller Constitutionnel depuis le 21 Août 1992 (Contrôle de Constitutionnalité et Contentieux électoral).

ACTIVITES D'ENSEIGNEMENT

- Chargé de cours à l'Etablissement d'Enseignement de Droit, d'Economie, de Gestion et de Sociologie de l'Université de Madagascar : (droit pénal général, procédure pénale, droit pénal spécial, droit pénal des affaires, Institut d'Etudes Judiciaires et Droit et Technique des Affaires) depuis 1974.
- Chargé du cours de droit commercial à l'E.E.S.D.E.G.S. (effets de commerce) jusqu'en 1985.
- Chargé de cours au Centre National de Formation Administrative (droit pénal général, droit pénal spécial, droit civil et organisation judiciaire).
- Chargé de cours à l'Ecole Supérieure de Gendarmerie (Procédure Pénale approfondie)

ACTIVITES DIVERSES ET CONFERENCES INTERNATIONALES.

- Chargé de la Vulgarisation des textes législatifs et réglementaires à la Radio Nationale de 1970 à 1991.
- Ancien Membre du Conseil d'Administration de la Banque Centrale (de 1973 à 1992)
- Président de l'Association des Magistrats Malgaches.
- 26ème session de la Commission des Droits de l'homme à New-York, en Février - Mars 1970.

ICTY

United Nations International Criminal Tribunal for the former Yugoslavia
Nations Unies Tribunal Pénal International pour l'Ex-Yougoslavie

Office of the Prosecutor
Bureau du Procureur

P.O. Box 13888
2501 EW The Hague
The Netherlands

B.P. 13888
2501 EW La Haye
Pays-Bas

Tel: (31) (70) 344-5330
Fax: (31) (70) 344-5358

To/A: The United Nations

Attn of/
A l'attention de: H.E. Ambassador S.M. Kahn
Special Representative of the Secretary-General
UNAMIR Kigali, Rwanda

From/de: Justice Richard Goldstone
Prosecutor

I shall also
mention reaction to
seat.
See
CA.

Number of Pages/
Nombre de Pages: 1 + 1 (Including Covering Page/couverture incluse)

Date: 22 December, 1994

Fax Number/
Numéro de Télécopie: 001 212 963 3090

Country/Pays: U.S.A. - Rwanda

Should this message be incomplete or illegible, please call (31) (70) 344-5360
Si cette télécopie est incomplète ou illisible, prière de téléphoner (31) (70) 344-5360

Message: **Dear Ambassador Kahn,**

On my departure on Tuesday, the Minister of Justice undertook to inform me today on tomorrow of his Government's attitude to the Madagascan nominee as Deputy Prosecutor. It would assist me considerably if that information could be obtained this afternoon. If you can assist in this regard, I would be extremely grateful.

Yours sincerely,

Richard Goldstone

UNITED NATIONS NATIONS UNIES

INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA
CHURCHILLPLEIN 1, P.O. BOX 13888
2501 EW THE HAGUE, NETHERLANDS
TELEPHONE: 31 70 344-5347
FAX: 31 70 3445358

TRIBUNAL PÉNAL INTERNATIONAL
POUR L' EX-YOUGOSLAVIE
CHURCHILLPLEIN 1, B.P. 13888
2501 EW LA HAYE, PAYS-BAS
TÉLÉPHONE: 31 70 344-5347
FAX: 31 70 344-5358

OFFICE OF THE PROSECUTOR

BUREAU DU PROCUREUR

F 94008/RG/am

The Hague, 22 December 1994

Dear Ambassador Kahn,

On my own behalf and on behalf of my three colleagues may I express my appreciation and gratitude for all you did to make our visit to Kigali the success it turned out to be. The steps you took before we arrived, your briefing and wise counsil were essential ingredients in the endeavour. On a more personal level it was a delight to be with you and I hope to have the privilege of reciprocating your hospitality in The Hague.

I left Rwanda with the conviction that the tragedy which has befallen that nation is an unusual opportunity for the United Nations to assist the new Government break the cycle of violence and begin an era of reconstruction and reconciliation. I fully concur with your view that a primary goal must be the repatriation and reintegration of the refugees.

Pl. put up reply. Sen LA

The timeous public exposure of the atrocities committed in Rwanda and the national and international acknowledgement of them and of those responsible are correctly viewed by the Rwandan Government as essential preconditions to that end. I was so encouraged by your own strong support for that approach.

My concern is obviously to avoid bureaucratic delays within the UN system. Nothing is more calculated to sow discontent, frustration and, in consequence, anger on the part of the victims and those who are seeking to ameliorate the consequences of a human tragedy. Your influence I am certain, will assist in attempts to hasten the aid so urgently required.

With warm regards,

Yours sincerely,

Richard Goldstone

FAX 31-70-3445358

TO: GRAHAM BLEWITT

COPY C. CHARTIER

PRESS CONFERENCE
HELD TODAY IN KIGALI
AT 4.30 PM

JOINT PRESS STATEMENT OF THE PROSECUTOR AND MINISTER OF JUSTICE

VISA; B.D
DIR.DSRSG

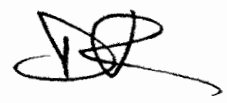
On 19 and 20 December 1994, the Prosecutor of the International Criminal Tribunal for Rwanda, Justice R. J. Goldstone held friendly and constructive meetings in Kigali with the President, the Prime Minister, the Minister of Justice, the Minister of Interior and the Minister of Reconstruction and Rehabilitation. The Special Representative of the Secretary-General of the United Nations, Ambassador S. M. Khan and Senior Members of the Prosecutor's Office were present at the meetings.

The Prosecutor informed the Rwandan Leaders that the immediate and primary focus of his investigation and prosecution would be directed at those who planned and executed the gravest of violations against International Humanitarian Law including serious allegations of genocide and crimes against humanity. A significant number of those whose participation will be investigated are now residing outside Rwanda.

The Rwandan Government has assured the Prosecutor of its full and unconditional support and cooperation with his Office.

The Prosecutor's Office in Kigali will be established in January 1995 and gradually be built up to a staff of approximately 170 people.

The Prosecutor agreed fully with the necessity for national courts in Rwanda trying and punishing the substantial number of persons who actively participated in the multiplicity of crimes which were committed, and associated himself with the call on the international community to urgently assist the Rwandan Government rebuild its Police Force, Prosecution Department and Court System. This traumatized nation will not be able to reconstruct and reconcile without substantial justice and public acknowledgement of what happened and in that endeavor the International Tribunal and the National Courts must work in harmony and in recognition of the independence of each of them.



4046- P2/2

UNITED NATIONS
ASSISTANCE MISSION FOR RWANDA

UNAMIR - MINUAR

NATIONS UNIES
MISSION POUR L'ASSISTANCE AU RWANDA

Internal Memorandum

TO: **CMO**
Legal Advisor

FROM: **G3 Air Ops**

INFO: **ED**

DATE: 19 **December 94**

Subject: **VISIT OF MR RICHARD GOLDSTONE - 20 DECEMBER 94**

1. I can confirm that helicopter support for the visit of Mr Goldstone to Nyarubuye and Nyamata is arranged. Is it possible to be arrange a Milob team on the ground at each location? (*)

2. I wish to make it policy that helicopters will not shut down at any location unless either there is UN presence on the ground or an RPA LO is carried on the aircraft. This policy is designed to avoid a repeat of the incident at Gabiro last week where a helicopter was temporarily impounded by the RPA.

3. The programme is rather vague in terms of timings and as the helicopter may wish to recover to Kigali from Nyamata and then pick up the party at a predetermined time this information is essential!

4. If you require any further information please contact me on extension 11161 or on Motorola channel 7 as 93H.

(*) field trip cancelled
KGC

J D Janiurek

J D JANIUREK
Sqn Ldr
SO2 G3 Air

UNITED NATIONS
ASSISTANCE MISSION FOR RWANDA

UNAMIR-MINUAR

NATIONS UNIES
MISSION POUR L'ASSISTANCE AU RWANDA

GUEST-LIST FOR DINNER IN HONOUR OF JUDGE GOLDSTONE (MONDAY, 19 DECEMBER 1994 AT BELGIAN VILLAGE)

Judge Goldstone and his entourage

Mr. Richard Goldstone	Chief Prosecutor for the International Criminal Tribunal for the former Yugoslavia and Rwanda
Mr. Allstair Milroy	Chief of Investigative Section to the International Court of Justice, The Hague, Netherlands
Mr. Donato Kiniger-Passigli	Foreign Relations Section
Mme. Catherine Cissé	Judge for the Department of the Prosecution

Members of the Rwandese Government

H.E.Mr. J.M. NKUBITO	Minister of Justice
H.E.Mr. Seth SENDASHONGA	Minister of Interior
Mr. François NZANZWERA	Chief Justice
Mr. Juvenal NKUSI, President de l'Assemblée	Head of National Assembly
Col. B. KAYUMBA	Head of Gendarmerie
Mme. Marthe MUKAMURENZI	Directeur du Cabinet (Ministry of Justice)

H.E. Ambassador Dillon	UNSG Special Envoy
Mr. Serge Telle	Assistant to Ambassador Dillon

UNAMIR Staff

H.E. Ambassador Shaharyar M. KHAN	SRSG
Dr. A.H. Kabia	Executive Director
BGEN Henri ANYIDOHO	Deputy Force Commander
Mr. BEADENGAR P. DESSANDE	Chief of Protocol
Mr. Ike MINTA	Legal Adviser
Col. Cheik O. DIARRA	Head of CivPol
Ms. Ladan RAFII	Political/Legal Officer

UNITED NATIONS
ASSISTANCE MISSION FOR RWANDA

NATIONS UNIES
MISSION POUR L'ASSISTANCE AU RWANDA

UNAMIR - MINUAR

18 décembre 1994
Rev.1

PROGRAMME DE LA VISITE A KIGALI, RWANDA, DU PROCUREUR RICHARD GOLDSTONE PRES LE TRIBUNAL PENAL INTERNATIONAL POUR L'EX-YOUGOSLAVIE ET POUR LE RWANDA, La Haye, Pays-Bas

---

19 - 20 décembre 1994

- **Membres de la délégation**:

M. Allstair Milroy, Chef, Section Investigation de la CIJ, La Haye

M. Donato Kiniger-Passigli, Section Rélations Extérieures

Mme. Catherine Cissé, Juge, Bureau du Procureur

- **Assistance de la MINUAR**: **M. IKE MINTA, Conseiller Juridique, Bureau du RSG, poste 4020, ext. 11082**
- Intérprête: poste 4085, ext. 11065 présent

Date	Heure	Activités	Responsable
17/12/94	P.M.	Arrivée à Nairobi. Accueil/hébergement	Bureau CAO/GIGIRI
19/12/94	07h30	Départ de Nairobi sur vol MINUAR	- MOVCON - AIROPS/GIGIRI
	08h30	- Arrivée à Kigali . Accueil à l'aéroport: SRSG . Transport-voiture	 Protocole CTO
	08h50	- Raffraichissements: Thé-café - MGT - Village Belge . Hébergement VB: 2 suites x 2 # 3 & 4	Protocole
	09h20	- Visite au siège de la MINUAR . Accueil par SRSG-OIC-FC	Protocole
	~~09h30~~ 10h15	- Entrevue avec SRSG & FC ACC: ED - Conselleir Juridique	MINUAR QG - Salle Conférence RC Proto./A/MA/FC
	10h30	- Rencontre Bureau du CDH Partic: MM. A. Essaied, Chargé de mission DH A. Schiess, OIC, Section Spéc. Inv. R. Howland, OIC, Assistance Téch. A. Lowell, Conseiller, Proc. Spéc/HCDH	Bâtiment ETC/DH Secrétariat CDH
	14h15 ~~11h45~~	- Ministre Justice: S.E.M. J.M. Nkubito	Ministère Justice
	12h45	DEJEUNER	Village Belge

with Rwanda Prosecutor General

	14h15	- Rencontre avec M. François Nzanzyvara, Procureur Général de la République Rwandaise	Bâtiment ETC/DH
	15h00	- Rencontre avec Dr. Tito Rutaremara, Députe à l'Assemblée Nationale	Bâtiment ETC/DH
	15h45	- Réunion avec les ONG internationales Partic: UNREO - ICR - MSF - OXFAM - SAVE CHILDREN	UNREO Complexe PNUD
	16h45	- Réunion avec les organisations DH Partic: DH - CLADHO (Jean Bosco) - AVP (Bernardette)	CDH Bâtiment ETC
	17h30	- Retour au Village Belge	Libre
	20h00	- Diner offert par SRSG Place: MGT Village Belge	Protocole
20/12/94	08h30	- Audience avec le Premier Ministre: S.E.M. Faustin Twagiramungu Partic: . Ministre de la Justice . Ministre de l'Intérieur . Ministre de la Réhabilitation . Ministre des Affaires Etrangères	Primature . Protocole tel: 86901 . Cabinet particulier
	AC	- Visite de curtoisie au Président de la République S.E. M. Pasteur Bizimungu	Palais Presidentiel
	11h00	- Réunion avec les Agences de l'ONU SRSG présent	Secrétariat PNUD Complexe PNUD
	12h00	Déjeneur - libre	
	13h15	- Départ à la piste d'helicoptère Aéroport Kigali Visite de sites . Nyarubuye (Préf. Kibungo) . Nyamata (Préf. Kigali-Rural)	Dr. Kabia AIROPS DFC/CMO Proto.Etat
	16h00	- Retour à l'aéroport de Kigali	AIROPS

BBC
Milles Collines
132
or
316

	16H15	- Conférence de Presse (presse nationale & internationale - NY Times - BBC - Reuters)	Salon VIP Aérogare
	17h00	- Départ pour Nairobi - Nuit	MOVCON AIROPS
21/12/94	11h00	- Transport à l'aéroport de Nairobi - Départ pour Amsterdam via Londres	MOVCON SAO-GIGIRI

BUREAU PROTOCOLE-LIAISON:
4060 - EXT: 11069 ou 71

Distribution:

SRSG - OIC.FC- ED. CAO - SPK, CSS, DCOS, OPS, G3 PLANS,
G3 AIROPS - MOVCON - AIROPS - BR/AIRPORT - PNUD - CDH - UNREO

NB: partic: participant
ACC: accompagnateur
AC: à confirmer

NOTE FOR THE FILE: INTERNATIONAL TRIBUNAL

I got a phone call from Mr. Kiniger-Passigli of the External Affairs Office of Judge Goldstone, The Hague, on 5 December 1994 regarding the proposed visit of Judge Goldstone to Kigali.

Mr. Kiniger-Passigli wanted to check whether UNAMIR and the Government of Rwanda would be agreeable to such a visit. I conveyed to him information I had on the position of the SRSG as well as of the Rwandese Minister of Justice on that issue.

Mr. Kiniger-Passigli called me again today, 7 December, to confirm that they had sent us a fax regarding the visit, scheduled to commence on 19 December 1994, and requesting UNAMIR's assistance with the necessary arrangements.

Follow-up will have to be undertaken on the above, as I will be away 8-18 December. Mr. Kiniger-Passigli's numbers are:

Phone	(31-70) 344 5353
Fax	(31-70) 344 5558

Ike Minta
Legal Adviser

7 Dec 94

- SRSG
- Dr. Kabia
- Mr. Dessande

27 October 1994
OSRSG/LA/008/94

Note for the File: International Tribunal for Rwanda

The SRSG held a meeting with the Minister of Justice of Rwanda, Mr. Alphonse Nkubito, at his Ministry on 26 October 1994. Also in attendance were Ms. Marthe Mukamurenzi, Directeur de Cabinet of the Ministry, Mr. Ike Minta, Legal Adviser (OSRSG) and Mr. Stanley Oliver, UNAMIR Interpreter. The following were discussed in relation to the International Tribunal for Rwanda.

1. **Chapter VII (UN Charter)**

The Minister expressed the view that the establishment of the Tribunal under Chapter VII of the UN Charter would give the Tribunal sweeping powers that might override the sovereignty of Rwanda. This view had been conveyed in their response to the preliminary report of the Commission of Experts on Rwanda [S/1994/1125 of 4 October 1994].

The SRSG expressed his understanding and sympathy with the problem posed by Chapter VII.

2. **The Seat of the Tribunal**

The Minister expressed his preference for Kigali as the Seat of the Tribunal, even if elements of the Tribunal for the former Yugoslavia based in the Hague were to be utilized. The main reason for choosing Kigali is to show to the people of Rwanda that justice is done with regard to the atrocities committed against them.

The SRSG responded that, on the other hand, justice must not only be done but must also be seen to be done. Therefore, to avoid a possible perception that the highly-charged atmosphere in Rwanda would influence the trials, it may be advisable to consider a suitable neighbouring country as the Seat of the Tribunal.

3. **Concurrent jurisdiction/cooperation**

The Minister underlined the advantages of the International Tribunal as a mechanism to ensure that all accused persons, many of whom have fled abroad, are not only brought to justice but that such justice is administered in an impartial manner. Nevertheless, he was concerned at the prospect of the International Tribunal having overriding powers in relation to the courts of Rwanda. Their own courts should be able to try some cases without having to submit to a superior jurisdiction to be exercised by the International Tribunal. Moreover, it should be possible to have at least one Rwandese judge among the judges of the International Tribunal.

The SRSG noted that while the draft Statute of the International Tribunal did not exclude national trials, there must be a way of ensuring that any national trials do not conflict with trials by the International Tribunal, but that the two systems inter-lock in a cooperative manner. How does Rwanda view this question of cooperation? Perhaps the Commission of Experts in their second visit prior to the preparation of their final report, could also point out a way towards resolving this problem.

The Minister responded by stating that the type of cooperation and the inter-locking nature of the two systems of jurisdiction must be made very clear. One important element is that the commencement date with regard to the acts of genocide must include the period during which such acts were planned; thus, the date must be earlier than that suggested in the draft Statute. These issues should be explored further.

X The Rwandese suggested that the date should be Nov 15, 1992 instead of Jan 1 1994

4. Penalties/equal treatment

The Minister stated that, while he was personally not in favour of the death penalty, many members of the Government were in favour of it; thus, the exclusion of the death penalty in the Statute of the International Tribunal would pose a problem. Furthermore, he was against the prospect of unequal treatment for different categories of culprits; it was quite likely that the most culpable people who gave orders and are now abroad may, at worst, end up in comfortable jails in Europe or other foreign countries, while those who carried out their orders may face the death penalty or other harsher punishment in Rwanda. This should be avoided.

The SRSG agreed on the need for equality or lack of discrimination in the punishment meted out to the culprits. Even more importantly, the issue of cooperation between the two trial system needs to be addressed [see item 3 above].

I. Minta
Legal Adviser

CC: Dr. Kabia, Executive Director

UNITED NATIONS

S

Security Council

PROVISIONAL

S/1994/1168
25 October 1994

ORIGINAL: ENGLISH

New Zealand, United Kingdom of Great Britain and Northern Ireland and United States of America: draft resolution

The Security Council,

Reaffirming all its previous resolutions on the situation in Rwanda,

Having considered the reports of the Secretary-General pursuant to paragraph 3 of resolution 935 (1994) of 1 July 1994 (S/1994/879 and S/1994/906), and having taken note of the reports of the Special Rapporteur for Rwanda of the United Nations Commission on Human Rights (S/1994/1157, annex I and annex II),

Expressing appreciation for the work of the Commission of Experts established pursuant to resolution 935 (1994), in particular its preliminary report on violations of International Humanitarian Law in Rwanda transmitted by the Secretary-General's letter of 1 October 1994 (S/1994/1125),

Expressing once again its grave concern at the reports indicating that systematic, widespread and flagrant violations of international humanitarian law, including acts of genocide, have been committed in Rwanda,

Determining that this situation continues to constitute a threat to international peace and security,

Determined to put an end to such crimes and to take effective measures to bring to justice the persons who are responsible for them,

Convinced that in the particular circumstances of Rwanda, the prosecution of persons responsible for serious violations of international humanitarian law would enable this aim to be achieved and would contribute to the process of national reconciliation and to the restoration and maintenance of peace,

Believing that the establishment of an international tribunal for the prosecution of persons responsible for the above-mentioned violations of international humanitarian law will contribute to ensuring that such violations are halted and effectively redressed,

Stressing also the desirability of international cooperation to strengthen the courts and judicial system of Rwanda,

Considering that the Commission of Experts established pursuant to resolution 935 (1994) should continue on an urgent basis the collection of information relating to evidence of grave violations of international humanitarian law committed in the territory of Rwanda and should submit its final report to the Secretary-General by 30 November 1994,

Acting under Chapter VII of the Charter of the United Nations,

1. Decides hereby, having received the request of the Government of Rwanda (S/1994/1115), to establish an international tribunal for the sole purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and by Rwandan citizens in the territory of neighbouring States between 1 January 1994 and a date to be determined by the Security Council, which shall determine the date within three months after the adoption of this resolution and to this end to adopt the Statute of the International Criminal Tribunal for Rwanda annexed hereto;

2. Decides that all States shall cooperate fully with the International Tribunal and its organs in accordance with the present resolution and the Statute of the International Tribunal and that consequently all States shall take any measures necessary under their domestic law to implement the provisions of the present resolution and the Statute, including the obligation of States to comply with requests for assistance or orders issued by a Trial Chamber under Article 28 of the Statute, and requests States to keep the Secretary-General informed of such measures;

new 3. Considers that the Government of Rwanda should be notified prior to decisions under articles 26 and 27 of the Statute;

4. Urges States and intergovernmental and non-governmental organizations to contribute funds, equipment and services to the International Tribunal, including the offer of expert personnel;

5. Requests the Secretary-General to implement this resolution urgently and in particular to make practical arrangements for the effective functioning of the International Tribunal, including recommendations to the Council as to possible locations for the seat of the International Tribunal at the earliest time and to report periodically to the Council;

6. Decides that the seat of the International Tribunal shall be determined by the Council having regard to considerations of justice and fairness as well as administrative efficiency including access to witnesses, and economy, and subject to the conclusion of appropriate arrangements between the United Nations and the State of the seat, acceptable to the Council, having regard to the fact that the International Tribunal may meet away from its seat when it considers it necessary for the efficient exercise of its functions, and the desirability of the establishment of an office and the conduct of proceedings, where feasible and appropriate, in Rwanda;

new

7. Decides to remain actively seized of the matter.

Annex

Statute of the International Tribunal for Rwanda

Having been established by the Security Council acting under Chapter VII of the Charter of the United Nations, the International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and by Rwandan citizens in the territory of neighbouring States since 1 January 1994 (hereinafter referred to as "the International Tribunal for Rwanda") shall function in accordance with the provisions of the present Statute.

Article 1

Competence of the International Tribunal for Rwanda

The International Tribunal for Rwanda shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and by Rwandan citizens in the territory of neighbouring States since 1 January 1994 in accordance with the provisions of the present Statute.

Article 2

Genocide

1. The International Tribunal for Rwanda shall have the power to prosecute persons committing genocide as defined in paragraph 2 of this article or of committing any of the other acts enumerated in paragraph 3 of this article.

2. Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(a) Killing members of the group;

(b) Causing serious bodily or mental harm to members of the group;

(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(d) Imposing measures intended to prevent births within the group;

(e) Forcibly transferring children of the group to another group.

3. The following acts shall be punishable:

(a) Genocide;

(b) Conspiracy to commit genocide;

(c) Direct and public incitement to commit genocide;

(d) Attempt to commit genocide;

(e) Complicity in genocide.

Article 3

Crimes against humanity

The International Tribunal for Rwanda shall have the power to prosecute persons responsible for the following crimes when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds:

(a) Murder;

(b) Extermination;

(c) Enslavement;

(d) Deportation;

(e) Imprisonment;

(f) Torture;

(g) Rape;

(h) Persecutions on political, racial and religious grounds;

(i) Other inhumane acts.

Article 4

Violations of Article 3 common to the Geneva Conventions and of Additional Protocol II

The International Tribunal for Rwanda shall have the power to prosecute persons committing or ordering to be committed serious violations of Article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977. These violations shall include, but shall not be limited to:

(a) Violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;

(b) Collective punishments;

(c) Taking of hostages;

(d) Acts of terrorism;

(e) Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;

(f) Pillage;

(g) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples;

(h) Threats to commit any of the foregoing acts.

Article 5

Personal jurisdiction

The International Tribunal for Rwanda shall have jurisdiction over natural persons pursuant to the provisions of the present Statute.

Article 6

Individual criminal responsibility

1. A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 4 of the present Statute, shall be individually responsible for the crime.

2. The official position of any accused person, whether as Head of State or Government or as a responsible Government official, shall not relieve such person of criminal responsibility nor mitigate punishment.

3. The fact that any of the acts referred to in articles 2 to 4 of the present Statute was committed by a subordinate does not relieve his or her superior of criminal responsibility if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

4. The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him or her of criminal responsibility, but may be considered in mitigation of punishment if the International Tribunal for Rwanda determines that justice so requires.

Article 7

Territorial and temporal jurisdiction

The territorial jurisdiction of the International Tribunal for Rwanda shall extend to the territory of Rwanda including its land surface and airspace and to the Territory of neighbouring States in respect of serious violations of international humanitarian law by Rwandan citizens. The temporal jurisdiction of the International Tribunal for Rwanda shall extend to a period beginning on 1 January 1994.

Article 8

Concurrent jurisdiction

1. The International Tribunal for Rwanda and national courts shall have concurrent jurisdiction to prosecute persons for serious violations of international humanitarian law committed in the territory of Rwanda and by Rwandan citizens in the territory of neighbouring States since 1 January 1994.

2. The International Tribunal for Rwanda shall have primacy over the national courts of Member States. At any stage of the procedure, the International Tribunal for Rwanda may formally request national courts to defer to its competence in accordance with the present Statute and the Rules of Procedure and Evidence of the International Tribunal for Rwanda.

Article 9

Non-bis-in-idem

1. No person shall be tried before a national court for acts constituting serious violations of international humanitarian law under the present Statute, for which he or she has already been tried by the International Tribunal for Rwanda.

2. A person who has been tried by a national court for acts constituting serious violations of international humanitarian law may be subsequently tried by the International Tribunal for Rwanda only if:

(a) The act for which he or she was tried was characterized as an ordinary crime; or

(b) The national court proceedings were not impartial or independent, were designed to shield the accused from international criminal responsibility, or the case was not diligently prosecuted.

3. In considering the penalty to be imposed on a person convicted of a crime under the present Statute, the International Tribunal for Rwanda shall take into account the extent to which any penalty imposed by a national court on the same person for the same act has already been served.

Article 10

Organization of the International Tribunal for Rwanda

The International Tribunal for Rwanda shall consist of the following organs:

(a) The Chambers, comprising two Trial Chambers and an Appeals Chamber;

(b) The Prosecutor; and

(c) A Registry.

Article 11

Composition of the Chambers

The Chambers shall be composed of eleven independent judges, no two of whom may be nationals of the same State, who shall serve as follows:

(a) Three judges shall serve in each of the Trial Chambers;

(b) Five judges shall serve in the Appeals Chamber.

Article 12

Qualification and election of judges

1. The judges shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to the highest judicial offices. In the overall composition of the Chambers due account shall be taken of the experience of the judges in criminal law, international law, including international humanitarian law and human rights law.

2. The members of the Appeals Chamber of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Law Committed in the Territory of the Former Yugoslavia since 1991 (hereinafter referred to as "the International Tribunal for the Former Yugoslavia") shall also serve as the members of the Appeals Chamber of the International Tribunal for Rwanda.

3. The judges of the Trial Chambers of the International Tribunal for Rwanda shall be elected by the General Assembly from a list submitted by the Security Council, in the following manner:

(a) The Secretary-General shall invite nominations for judges of the Trial Chambers from States Members of the United Nations and non-member States maintaining permanent observer missions at United Nations Headquarters;

(b) Within thirty days of the date of the invitation of the Secretary-General, each State may nominate up to two candidates meeting the qualifications set out in paragraph 1 above, no two of whom shall be of the same nationality and neither of whom shall be of the same nationality as any judge on the Appeals Chamber;

(c) The Secretary-General shall forward the nominations received to the Security Council. From the nominations received the Security Council shall establish a list of not less than twelve and not more than eighteen candidates, taking due account of adequate representation on the International Tribunal for Rwanda of the principal legal systems of the world;

(d) The President of the Security Council shall transmit the list of candidates to the President of the General Assembly. From that list the General Assembly shall elect the six judges of the Trial Chambers. The candidates who receive an absolute majority of the votes of the States Members of the United Nations and of the non-Member States maintaining permanent observer missions at United Nations Headquarters, shall be declared elected. Should two candidates of the same nationality obtain the required majority vote, the one who received the higher number of votes shall be considered elected.

4. In the event of a vacancy in the Trial Chambers, after consultation with the Presidents of the Security Council and of the General Assembly, the Secretary-General shall appoint a person meeting the qualifications of paragraph 1 above, for the remainder of the term of office concerned.

5. The judges of the Trial Chambers shall be elected for a term of four years. The terms and conditions of service shall be those of the judges of the International Tribunal for the Former Yugoslavia. They shall be eligible for re-election.

Article 13

Officers and members of the Chambers

1. The judges of the International Tribunal for Rwanda shall elect a President.

2. After consultation with the judges of the International Tribunal for Rwanda, the President shall assign the judges to the Trial Chambers. A judge shall serve only in the Chamber to which he or she was assigned.

3. The judges of each Trial Chamber shall elect a Presiding Judge, who shall conduct all of the proceedings of that Trial Chamber as a whole.

Article 14

Rules of procedure and evidence

The judges of the International Tribunal for Rwanda shall adopt, for the purpose of proceedings before the International Tribunal for Rwanda, the rules of procedure and evidence for the conduct of the pre-trial phase of the proceedings, trials and appeals, the admission of evidence, the protection of victims and witnesses and other appropriate matters of the International Tribunal for the Former Yugoslavia with such changes as they deem necessary.

Article 15

The Prosecutor

1. The Prosecutor shall be responsible for the investigation and prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and by Rwandan citizens in the territory of neighbouring States since 1 January 1994.

2. The Prosecutor shall act independently as a separate organ of the International Tribunal for Rwanda. He or she shall not seek or receive instructions from any Government or from any other source.

3. The Prosecutor of the International Tribunal for the Former Yugoslavia shall also serve as the Prosecutor of the International Tribunal for Rwanda. He or she shall have additional staff, including an additional Deputy Prosecutor, to assist with prosecutions before the International Tribunal for Rwanda. Such staff shall be appointed by the Secretary-General on the recommendation of the Prosecutor.

Article 16

The Registry

1. The Registry shall be responsible for the administration and servicing of the International Tribunal for Rwanda.

2. The Registry shall consist of a Registrar and such other staff as may be required.

3. The Registrar shall be appointed by the Secretary-General after consultation with the President of the International Tribunal for Rwanda. He or she shall serve for a four-year term and be eligible for reappointment. The terms and conditions of service of the Registrar shall be those of an Assistant Secretary-General of the United Nations.

4. The staff of the Registry shall be appointed by the Secretary-General on the recommendation of the Registrar.

Article 17

Investigation and preparation of indictment

1. The Prosecutor shall initiate investigations ex-officio or on the basis of information obtained from any source, particularly from Governments, United Nations organs, intergovernmental and non-governmental organizations. The Prosecutor shall assess the information received or obtained and decide whether there is sufficient basis to proceed.

2. The Prosecutor shall have the power to question suspects, victims and witnesses, to collect evidence and to conduct on-site investigations. In carrying out these tasks, the Prosecutor may, as appropriate, seek the assistance of the State authorities concerned.

3. If questioned, the suspect shall be entitled to be assisted by counsel of his or her own choice, including the right to have legal assistance assigned to the suspect without payment by him or her in any such case if he or she does not have sufficient means to pay for it, as well as to necessary translation into and from a language he or she speaks and understands.

4. Upon a determination that a prima facie case exists, the Prosecutor shall prepare an indictment containing a concise statement of the facts and the crime or crimes with which the accused is charged under the Statute. The indictment shall be transmitted to a judge of the Trial Chamber.

Article 18

Review of the indictment

1. The judge of the Trial Chamber to whom the indictment has been transmitted shall review it. If satisfied that a prima facie case has been established by the Prosecutor, he or she shall confirm the indictment. If not so satisfied, the indictment shall be dismissed.

2. Upon confirmation of an indictment, the judge may, at the request of the Prosecutor, issue such orders and warrants for the arrest, detention, surrender or transfer of persons, and any other orders as may be required for the conduct of the trial.

Article 19

Commencement and conduct of trial proceedings

1. The Trial Chambers shall ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the rules of procedure and evidence, with full respect for the rights of the accused and due regard for the protection of victims and witnesses.

2. A person against whom an indictment has been confirmed shall, pursuant to an order or an arrest warrant of the International Tribunal for Rwanda, be taken into custody, immediately informed of the charges against him or her and transferred to the International Tribunal for Rwanda.

3. The Trial Chamber shall read the indictment, satisfy itself that the rights of the accused are respected, confirm that the accused understands the indictment, and instruct the accused to enter a plea. The Trial Chamber shall then set the date for trial.

4. The hearings shall be public unless the Trial Chamber decides to close the proceedings in accordance with its rules of procedure and evidence.

Article 20

Rights of the accused

1. All persons shall be equal before the International Tribunal for Rwanda.

2. In the determination of charges against him or her, the accused shall be entitled to a fair and public hearing, subject to article 21 of the Statute.

3. The accused shall be presumed innocent until proved guilty according to the provisions of the present Statute.

4. In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he or she understands of the nature and cause of the charge against him or her;

(b) To have adequate time and facilities for the preparation of his or her defence and to communicate with counsel of his or her own choosing;

(c) To be tried without undue delay;

(d) To be tried in his or her presence, and to defend himself or herself in person or through legal assistance of his or her own choosing; to be informed, if he or she does not have legal assistance, of this right; and to have legal assistance assigned to him or her, in any case where the interests of justice so require, and without payment by him or her in any such case if he or she does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her;

(f) To have the free assistance of an interpreter if he or she cannot understand or speak the language used in the International Tribunal for Rwanda;

(g) Not to be compelled to testify against himself or herself or to confess guilt.

Article 21

Protection of victims and witnesses

The International Tribunal for Rwanda shall provide in its rules of procedure and evidence for the protection of victims and witnesses. Such protection measures shall include, but shall not be limited to, the conduct of in camera proceedings and the protection of the victim's identity.

Article 22

Judgement

1. The Trial Chambers shall pronounce judgements and impose sentences and penalties on persons convicted of serious violations of international humanitarian law.

2. The judgement shall be rendered by a majority of the judges of the Trial Chamber, and shall be delivered by the Trial Chamber in public. It shall be accompanied by a reasoned opinion in writing, to which separate or dissenting opinions may be appended.

Article 23

Penalties

1. The penalty imposed by the Trial Chamber shall be limited to imprisonment. In determining the terms of imprisonment, the Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of Rwanda.

2. In imposing the sentences, the Trial Chambers should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.

3. In addition to imprisonment, the Trial Chambers may order the return of any property and proceeds acquired by criminal conduct, including by means of duress, to their rightful owners.

Article 24

Appellate proceedings

1. The Appeals Chamber shall hear appeals from persons convicted by the Trial Chambers or from the Prosecutor on the following grounds:

(a) An error on a question of law invalidating the decision; or

(b) An error of fact which has occasioned a miscarriage of justice.

2. The Appeals Chamber may affirm, reverse or revise the decisions taken by the Trial Chambers.

Article 25

Review proceedings

Where a new fact has been discovered which was not known at the time of the proceedings before the Trial Chambers or the Appeals Chamber and which could have been a decisive factor in reaching the decision, the convicted person or the Prosecutor may submit to the International Tribunal for Rwanda an application for review of the judgement.

Article 26

Enforcement of sentences

Imprisonment shall be served in Rwanda or any of the States on a list of States which have indicated to the Security Council their willingness to accept convicted persons, as designated by the International Tribunal for Rwanda. Such imprisonment shall be in accordance with the applicable law of the State concerned, subject to the supervision of the International Tribunal for Rwanda.

Article 27

Pardon or commutation of sentences

If, pursuant to the applicable law of the State in which the convicted person is imprisoned, he or she is eligible for pardon or commutation of sentence, the State concerned shall notify the International Tribunal for Rwanda accordingly. The President of the International Tribunal for Rwanda, in consultation with the judges, shall decide the matter on the basis of the interests of justice and the general principles of law.

Article 28

Cooperation and judicial assistance

1. States shall cooperate with the International Tribunal for Rwanda in the investigation and prosecution of persons accused of committing serious violations of international humanitarian law.

2. States shall comply without undue delay with any request for assistance or an order issued by a Trial Chamber, including, but not limited

(a) The identification and location of persons;

(b) The taking of testimony and the production of evidence;

(c) The service of documents;

(d) The arrest or detention of persons;

(e) The surrender or the transfer of the accused to the International Tribunal for Rwanda.

Article 29

The status, privileges and immunities of the International Tribunal for Rwanda

1. The Convention on the Privileges and Immunities of the United Nations of 13 February 1946 shall apply to the International Tribunal for Rwanda, the judges, the Prosecutor and his or her staff, and the Registrar and his or her staff.

2. The judges, the Prosecutor and the Registrar shall enjoy the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law.

3. The staff of the Prosecutor and of the Registrar shall enjoy the privileges and immunities accorded to officials of the United Nations under articles V and VII of the Convention referred to in paragraph 1 of this article.

4. Other persons, including the accused, required at the seat or meeting place of the International Tribunal for Rwanda shall be accorded such treatment as is necessary for the proper functioning of the International Tribunal for Rwanda.

Article 30

Expenses of the International Tribunal for Rwanda

The expenses of the International Tribunal for Rwanda shall be expenses of the Organization in accordance with Article 17 of the Charter of the United Nations.

Article 31

Working languages

The working languages of the International Tribunal shall be English and French.

Article 32

Annual report

The President of the International Tribunal for Rwanda shall submit an annual report of the International Tribunal for Rwanda to the Security Council and to the General Assembly.

Handed to me by
Justice Kenisky, RPA
who have been
instructed of crimes,

E.1)

Isel

Legal Adv.

27.11

CAPITAL OFFENCES:

S/N	Rank	NAMES	UNIT	OFFENCE	COMMENTS
1.	LT	AUTHUR BUTARE	"C"	MURDER	On the 14th JUL.94 at KICUKIRO LT. Auther BUTARE abducted Mr. MUSIRIKARE Silas and took him to KACYIRU BARRACKS where he was murdered. He acted in Revenge.
2.	CPL	ABUBAKAR SAFARI	GHQs (TPT)	MURDER	During the month of July 94. Cpl ABUBAKER Safari, together with Pte SEKUBUMBA Frank and civilian commonly called MILITA at REMERA killed a civilian called GAMALIERE. Murdered intentionally with the pretext of killing an enemy
3.	PTE	SEKUBUMBA FRANK	GHQs (TPT)	MURDER	During the months of July 94, Pte SEKUBUMBA Frank together with Cpl ABUBAKER Safari and civilian commonly called MILITA at REMERA killed a civilian person called GAMALIERE. Committed the offence intentionally.
4.	PTE	RURISA KIZITO	157th BN	murder	On 16.08.94 a MWENDO-Bugesera Pte RULISA KIZITO was arrested for the case of killing five civilians who were his neighbours. He acted in revenge.
5.	"	KABERA AUGUSTIN	"A"	MURDER	PTE KABERA AUGUSTINE on the 27th JUL.1994 at KIMUHURURA in KIGALI together with an identified soldier murdered two people allegedly for being Interahamwe. He admits the charge. Committed the act extra judiciary
6.	CPL	NGARAMBE JOSEPH	GHQs Amory (Rwamagan)	MURDER	At around early June 94 at Rwamagana Pte NGARAMBE Joseph was arrested for the case of killin Interahamwe. He killed 04 unidentified civilians and unidentified children. He admits killing Interahamwe.
7.	"	SAFARI J.DE.DIEU	GHQ	MURDER	On 08.09.94 at KIMIHURURA CPL SAFARI J.DE DIEU together with Pte HIGIRUKWAYO Thomas and ALPHONSE killed TWO unidentified persons alleging them to be "INTERAHAMWE" who had poison and wanted to poison ALPHONSE. They committed the crime with extra judicial powers without authority. More investigations to follow.
8.	"	HIGIRUKWAYO Thomas	GHQ	MURDER	On 08.09.94 at KIMIHURURA Pte HIGIRUKWAYO Thomas together with Cpl SAFARI J DE DIEU and ALPHONSE killed Two unidentified persons alleging them to be INTERAHAMWE. Pte HIGIRUKWAYO confirms that Cpl Safari saw them with poison which they wanted to use to poison Alphonse and adds that they buried them near UNAMIR's DUSTBIN at KIMIHURURA. They committed the crime without authority. More investigations to follow

	SGT	RUBIMBURA JEAN BABTIST	T/W	MURDER	On 23.08.94 at NYAMIRAMA, KAYONZA killed ten people in self revenge after finding his whole family killed. The ten people were fleeing to TANZANIA.
10	CPL	NIYONSENGA INNOCENT	105 BN	MURDER	On 10.09.94 at KABARINDO, KIBUNGO killed Fifteen people in self revenge. They were responsible for having killed His whole family.
11	PTE	KAREGEYA BONIFACE	5TH BN	MURDER	On 14.09.94 at NTSINDA, RWAMAGANA killed a person by shooting. The killed person was together with other people armed with stones and sticks.
12	SGT	HIGIRO CLAUDE	"A" CMF	KIDNAP	SGT HITIMANA Claude on 7th Oct.94 At REMERA, is suspected to have kidnapped RUKARA. He denies any involvement .
13		KARANGWA APPOLINAIRE		MURDER	KARANGWA APPOLINAIRE On 22rd .09.94 at cell. GAHANGA, sect. RWABUTENGE, Commune KANOMBE killed VUGUZIGIRE , SIBOMANA and BARIBWANUWE in self-revenge
14	CPL	NDANGA	GHQs	MURDER	CPL NDANGA together with Pte KANYANGOGA Jean Bosco were arrested on 23rd Sept.1994 for beating to death MUNYANEZA at KIMIRONKO suspecting him to be an Interahamwe .
15	PTE	KANYANGOGA JEAN BOSCO	GHQs	MURDER	PTE KANYANGOGA together with CPL NDANGA were arrested on 23rd Sept.1994 for beating to death MUNYANEZA at KIMIRONKO suspecting him to be an Interahwamwe.
16	SGT	RWITARE SAM	5TH BN	MURDER	On 22nd Oct.1994 at RWAMAGANA, SGT RWITARE SAM, together with CPL NZIGIYE AUGUSTINE murdered MUSA a Businessman of Rwamagana.
17	CPL	NZIGIYE AUGUSTINE	5th BN	MURDER	CPL NZIGIYE AUGUSTINE together with SGT RWITARE SAM on 22nd OCT.1994 at RWAMAGANA murdered one MUSA a Businessman of RWAMAGANA .
18	PTE	MUSHUMBA	5th BN	MURDER	On around 20th OCT.1994 . PTE MUSHUMBA together with six civilians Murdered seven Interehamwe in secteur MURAMBI, commune MUHAZI.
19	PTE	MWUMVANEZA VINCENT	"A"	MURDER	PTE MWUMVANEZA VINCENT was arrested on 10th OCT.1994 at MUHIMA for killing a person alleging that he was an INTERAHAMWE militia
20	PTE	GIRUKWAYO	GHQs	MURDER	PTE GIRUKWAYO was arrested on 19th SEPT.1994 for killing a person alleging that he was an Interahamwe militia .

21. Mjr Bigabiro

~~22. Cpt.~~ et les cpt et Lt dont les preuves ne sont pas encore établies qui restent en prison.

22. Capitaine Ruzahaza et les cp de Lt

OSRSG/LA/008

Letter passed To LA (For Ladan Rafi) 31-5-95

Le Collectif des Epouses dont les Maris/Enfants
Ont été Arrêtés et sont portés Disparus depuis
Juillet 1994
Kigali-Rwanda

A

Monsieur le Ministre de la Justice
Kigali

Kigali le 26 Mai 1995

Objet:
Demande d'enquêtes internationales
sur la disparition des nôtres et
de protection sur nos personnes.

Monsieur le Ministre,

Au nom des familles qui ont vu les leurs, arrêter et disparaître entre les mains des soldats du F.P.R., et au moment où vont réellement démarrer les travaux du Tribunal Pénal International sur le Rwanda, nous avons l'honneur de nous adresser à votre haute autorité pour vous informer de notre intention de soumettre les dossiers des nôtres à l'attention dudit Tribunal.

En effet, Monsieur le Ministre, vous connaissez toutes les tentatives et démarches que nous avons faites pour retrouver leurs traces des nôtres auprès de vos services et des autorités concernées au plus haut niveau.

Comme vous le savez, vos services nous ont avoué leur incapacité et leur impuissance à retrouver ces personnes, ou même, ne fût-ce que leurs dossiers.

Dans de telles circonstances, et surtout du fait des menaces et harcèlements dont nous faisons l'objet, nous ne pouvons plus rester les bras croisés au vu du temps écoulé depuis leur disparition.

Veuillez trouver en Annexe, la liste non exhaustive des personnes disparues.

Tout en comptant sur votre assistance et votre bonne compréhension, nous vous prions d'agréer, Monsieur le Ministre, l'assurance de notre haute considération.

ONT SIGNE

Pour le Collectif des Epouses dont les Maris/Enfants ont été arrêtés et sont portés disparus depuis Juillet 1994.

Mme Colette MUJAWAYEZU

Mme Cathérine MUJAWAMARIYA

Mme Jeanne MUKANKURANGA

Copie Pour Information:

- Monsieur le Ministre de l'Intérieur
  Kigali
- Monsieur le Juge GOLDSTONE
  Procureur du T.P.I. sur le Rwanda
  ARUSHA-TANZANIE
- Monsieur le Juge Honoré RAKOTOMANANA
  Procureur Adjoint du T.P.I. sur le Rwanda
  Kigali
- Monsieur René Dégni SEGUI
  Rapporteur Spécial sur le Rwanda
  GENEVE-SUISSE
- Monsieur le Représentant Spécial
  du Secrétaire Général de l'ONU
  Kigali
- Monsieur le Représentant Spécial
  du Secrétaire Général de l'OUA
  Kigali
- Monsieur William CLARANCE
  Chef de la Mission du Haut Commissaire des Nations Unies
  Aux Droits de l'Homme sur le Terrain au Rwanda

Liste des disparus

1 - Soeurs Abizeramariya de ndera avec une cinquantaine d'olphelins qui étaient sous leur garde

2 - MBABAJENDE Charles c/o Liprodhor : Secrétaire Permanent

3 - Mr. RUTAYISIRE Tharcisse c/o Union des Banques Populaires

4 - RUDASINGWA Jean Léonard cadre à la Bralirwa

5 - Famille MUHATURUKUNDO Norbert Directeur Général dans un Ministrère (Mr. Mme. 4 enfants + bonne)

6 - Famille GASANA Callixte commerçant à Kigali (Mr. 5 enfants, son père, sa mère, ses deux soeurs et leurenfants son frère MUGABO et sa femme et leur enfants

7 - Mme NTABARESHYA MUKESHIMANA Pauline, ses 2 enfants, sa belle mère, les trois soeurs de son mari, en tout 12 personnes.

8 - Mr. RWANDEMA Nathanaël pasteur adventiste pensionné

9 - Mr. RUTWA Zéfanie

10 - Famille MUGEMANGANGO Obed (chauffeur Mr, Mme, 3 enfants et le petit frère du Monsieur

11 - KAREMERA Athanase, gestionnaire du Minaffet (Mr, Mme, 3 enfants)

12 - Mr. BENIMANA Ladislas et ses 2 enfant (contrôleur des Finances au Minifin)

13 - Famille BEMERIKI Froduald, Directeur au Miniplan (Mr, Mme, et 4 enfants)

14 - Famille NDAGIJIMANA Célestin (Mr, Mme et 4 enfants) Admifin à l'OVIBAR

15 - Famille MUJYANAMA Théoneste ex - Ministre de la Justice Mr, Mme, et leur 4 enfants

16 - Famille MBANZARUGAMBA Félicien cadre à la Bralirwa

Liste des disparus

1 - Soeurs Abizeramariya de ndera avec une cinquantaine d'olphelins qui étaient sous leur garde

2 - MBABAJENDE Charles c/o Liprodhor : Secrétaire Permanent

3 - Mr. RUTAYISIRE Tharcisse c/o Union des Banques Populaires

4 - RUDASINGWA Jean Léonard cadre à la Bralirwa

5 - Famille MUHATURUKUNDO Norbert Directeur Général dans un Ministrère (Mr. Mme. 4 enfants + bonne)

6 - Famille GASANA Callixte commerçant à Kigali (Mr. 5 enfants, son père, sa mère, ses deux soeurs et leurenfants son frère MUGABO et sa femme et leur enfants

7 - Mme NTABARESHYA MUKESHIMANA Pauline, ses 2 enfants, sa belle mère, les trois soeurs de son mari, en tout 12 personnes.

8 - Mr. RWANDEMA Nathanaël pasteur adventiste pensionné

9 - Mr. RUTWA Zéfanie

10 - Famille MUGEMANGANGO Obed (chauffeur Mr, Mme, 3 enfants et le petit frère du Monsieur

11 - KAREMERA Athanase, gestionnaire du Minaffet (Mr, Mme, 3 enfants)

12 - Mr. BENIMANA Ladislas et ses 2 enfant (contrôleur des Finances au Minifin)

13 - Famille BEMERIKI Froduald, Directeur au Miniplan (Mr, Mme, et 4 enfants)

14 - Famille NDAGIJIMANA Célestin (Mr, Mme et 4 enfants) Admifin à l'OVIBAR

15 - Famille MUJYANAMA Théoneste ex - Ministre de la Justice Mr, Mme, et leur 4 enfants

16 - Famille MBANZARUGAMBA Félicien cadre à la Bralirwa

16 - Famille MBANZARUGAMBA Félicien cadre à la Bralirwa
(Mr. Mme, et leur 2 enfants)

17 - Famille MIVUMBI Daniel agent de l'USAID (Mr, Mme, 3 enfants la bonne et la soeur de sa femme)

18 - Mme Colonel NUBAHA Laurent (Hélene BUGENIMANA et 5 enfants)
19 - Mr. NGENDAHIMANA Charles (Inspecteur du Commerce à Kigali)
20 - Mr. GAKOKO Charles, homme d'affaires

21 - Mr. NTIRENGANYA Marcel (homme d'affaires et transporteur) .../...

22 - Mr. MAZIMPAKA Etienne boutiquier au marche de KIGALI
23 - Mr. KAMUZINZI Guillaume, agent OCIR café
24 - Mr. KAREMERA Evariste Privé
25 - Mr. SABITI, agent Interfreight (chauffeur)
26 - Mr. BAGULIJORO Léodomir (agent MINIFIN)
27 - Mr. IYAMUREMYE Pierre claver pensionné
28 - Mr. KAGINA Léonidas (Professeur à l'ETO)
29 - Mr. KAYIBANDA J/M. Vianney agent MINIFOP
30 - Mr. UWIMANA Aimable (Docteur en mathématiques agent MINEPRISEC)
31 - Mme. BAHINZE Pauline et 5 enfants (Infirmière à CHK)
32 - Mr. MUGANGA Prime, étudiant

33 - Mme MUSHONGANONO Marie Goretti agence de dédouanement
34 - Mme. Lyeze Marie - Goretti, agent caisse Hypothécaire
35 - Mr. SEFARANGA Dominique (frère du n° 33)
36 - Mr. RUBASHA Hermenegilde (vieux commerçant de Kigali)
37 - Mr. SEMUNYANA Edouard, admifin Electrogaz
38 - Mr. NSEKANABO François, commerçant
39 - Mr. MUGAMBIRA, commerçant et hotellier à KIBUYE

40 - Mr. SEBULIKOKO Célestin (entrepreneur)

41 - Abbé HAVUGIMANA Alexis (professeur au petit séminaire de RWESERO)

42 - Mr. KAYINAMURA Grégoire chef de division au MIJEUMA

43 - Mr. NDAGIJIMANA Léonard chef de garage à l'Economat Général de KIGALI

44 - Famille MUTUNGIREHE Isaie, Directeur Général MINAGRI
(Mr., Mme., 3 enfants, bonne)

45 - Mr. KARANGWA Jean de Dieu Professeur à Rwamagana

46 - Famille MBYOGO, taximan à Rwamagana (Lui, sa femme et 5 enfants, son père, sa mère, ses soeurs et leurs enfants 23 personnes

47 - Famille MWONGEREZA Josias (±130 personnes) commerçant à KIGALI
48 - Famille SEKAGINA Faustin sous préfet à Rushashi (, Mme, et

48 - Famille SEKAGINA Faustin sous préfet à Rushashi ~~12~~ Mme, et 6 enfants 12 domestiques

49 - Mme MUJAWAMARIYA Eugène et son vieux beau père ~~2 domestiques~~ (agent USAID)

Pour le collectif des femmes dont les maris/ Enfants ont été arrêtés et porté disparus.

Colette MUJAWAYEZU

Catherine MUJAWAMARIYA

UNITED NATIONS
INTEROFFICE MEMORANDUM

UNAMIR-MINUAR

NATIONS UNIES
MEMORANDUM INTERIEUR

TO: **Mr. Shaharyar M. Khan**
SRSG

DATE: 17 October 1994
REF: OSRSG/LA/008

THROUGH: **Dr. A. Kabia**
Executive Director

FROM: **I. Minta**
Legal Adviser

SUBJECT: **International Tribunal for Rwanda**

..... Please find attached, herewith, the preliminary evaluation requested.

I await instructions regarding any further work on this.

THE INTERNATIONAL TRIBUNAL FOR RWANDA: A PRELIMINARY EVALUATION

We were requested to examine the following issues:

I. Concurrent or Conflicting Jurisdictions

The following questions arise on this issue:

1. In what areas may the jurisdiction of the International Tribunal for Rwanda conflict or overlap with that of the courts of Rwanda?

2. In those areas, which jurisdiction should prevail, and why?

3. In what circumstances could double jeopardy arise (i.e., double or multiple trials of the same persons for the same act or offence), and how should it be handled or prevented?

I.1 Conflict or overlap

In principle, the courts of Rwanda have jurisdiction over all offences committed in Rwanda prior to, during and after the war. The absence of a functioning judicial system now does not change that basic fact: jurisdiction, as an attribute or expression of sovereignty, can still be asserted when the Rwandese courts have the capacity to do so.

Most (if not all) of the offences characterized as international crimes and placed under the jurisdiction of the International Tribunal would also, normally, be defined as ordinary (national) crimes (e.g, murder), under the laws of Rwanda. In addition, Rwanda can itself try them as international crimes although this could entail some technical difficulties

under Rwandese law (if the point were to be researched), and would most likely be unnecessary in any case.

Thus, both the International Tribunal and the Rwandese courts can assert jurisdiction over the same acts, although the legal characterization of those acts may differ - i.e., as international crimes (under the Statute and relevant conventions), and as national crimes under Rwandese law. Article 8 of the draft Statute of the International Tribunal for Rwanda recognizes this concurrent or overlapping aspect of the jurisdictions of these two court systems.

I.2 Resolving conflicts of jurisdiction

A conflict of jurisdiction arises when two courts seek to assert jurisdiction over the same legal issue, in this case, international crimes. If the Government of Rwanda attempts or is able to put any person on trial in a Rwandese court for any of the international crimes defined in the Statute, Article 8 (2) would oblige them to defer to the jurisdiction of the International Tribunal and thus stop such a trial.

However, this deference can only come into play if the International Tribunal is in existence and able to assert its own jurisdiction. Until the International Tribunal is established and functioning Rwanda can (in theory) assert jurisdiction in respect of any of those international crimes.

But the more plausible scenario would be that Rwanda may assert jurisdiction over those same acts as ordinary crimes under Rwandese law. Here, there will be no conflict of jurisdiction at all - or, rather a "false conflict", according to the doctrine - because the International Tribunal has no jurisdiction over ordinary (national) crimes characterized as such, even if the underlying facts and evidence are the same as the international crimes.

This represents a major loophole in the effort to subordinate the jurisdiction of the Rwandese courts to that of the International Tribunal - a loophole arising out of an essential legal difference between the characterization of an act as an **"international"** crime or an ordinary **"national"** crime.

This important difference between the two characterizations of crime is implicitly recognized in Article 9 of the Statute, when it states in paragraph 9 (2)(a), for instance, that:

> **"2. A person who has been tried by a national court for acts constituting serious violations of international humanitarian law may be subsequently tried by the International Tribunal for Rwanda only if:**
>
> **(a) The act for which he or she was tried was characterized as an ordinary crime...."**

This provision exists precisely because the International Tribunal has no authority or jurisdiction over ordinary crimes. In sum, therefore, there are two possible scenarios in which Rwanda could - if it had the capacity - proceed with trials in defiance of or despite the International Tribunal, namely:

(a) before the Tribunal becomes operational, and

(b) by trying particular acts as ordinary (national) crimes over which the International Tribunal has no jurisdiction.

I.3 Double jeopardy (Non-bis-idem)

This issue has been partly addressed above. It emerges from the above that double jeopardy arises only where the legal issue or characterization is the same, and the

proceedings are against the same person. If the same facts give rise to more than one legal characterization of a crime, it follows that the accused person can be tried more than once (or, normally, on several **counts** or charges). That is **not** double jeopardy.

Again, this basic characteristic of double jeopardy and its corollary, as explained above, is recognized in Article 9 of the draft statute, when it states in paragraph 1 that no person shall be tried before a national court if he/she has already been tried by the International Tribunal for the international crimes defined under the Statute (the reverse will also hold true); in contrast with the provision in paragraph 2 (a) which allows the possibility of two trials on the same facts, if characterized differently as an international crime by the International Tribunal, and second, as an ordinary (national) crime by national courts. It must be stated, though, that the second possibility is rather remote under present circumstances.

Article 9 (3) of the Statute also contains another implicit recognition of the distinction between the international and national legal characterizations of the crimes involved in Rwanda, by providing that where a person convicted of an international crime under the Statute had previously been convicted by a national court for the same act, the penalty to be imposed by the International Tribunal should take into account the extent to which the penalty imposed by the national court may have been served already.

II. How quickly can the Tribunal begin working?

The steps necessary for the Tribunal to be established and to begin its work are as follows:

II.1 Nomination of judges

Article 12(3)(a) requires the Secretary-General to invite nominations for judges of the **Trial Chambers** of the Tribunal from Member States (including non-members with permanent

observer missions at UN Headquarters). The judges of the Appeals Chamber are already provided for: the same as the Appeals Chamber of the former Yugoslavia Tribunal (Article 12.2). The Secretary-General's invitation can be issued on the same day or within a few days of the adoption of the resolution and Statute.

But, unfortunately, the selection and appointing process after that is somewhat cumbersome and is likely to be time-consuming. Less-cumbersome options could have been considered, but it is probably too late now. First, Member States have thirty days to make nominations (Article 12.3.b). One must thus allow for that time-lapse.

II.2. Short-listing

Next, the Secretary-General is to forward all the nominations received to the Security Council, from which the Council is to establish a short list of 12 to 18 candidates, taking due account of adequate representation of the principal legal systems of the world (Article 12.3.c).

It is difficult to predict how long this short-listing process will take especially if one considers the possibility that some lobbying may enter into the picture. A reasonable guess would probably be a period of up to 4 weeks for this process (or less, if we are lucky).

II.3. Election of the judges

After that, the President of the Security Council is to transmit the short list to the President of the General Assembly. From that list the General Assembly is then to elect the six judges of the Trial Chambers (Article 12.3.d).

Here, it is even more difficult to predict how long this will take. Procedural technicalities will first have to be cleared to get the item on the General Assembly agenda for the current session, and to get the voting underway. The voting process itself could

also be of unpredictable duration, particularly in view of the real possibility of lobbying by the candidates or their countries.

A cautious guesstimate would be one-to-two months for this process. Thus, altogether the three main steps above could take three to four months after adoption of the resolution and Statute.

II.4. Setting up the court

The court will not necessarily be ready to start work with the election of judges. Suitable premises will have to be secured at the agreed venue or seat of the court. It's administrative machinery will have to be put in place. Although the groundwork here could proceed simultaneously with the selection of the judges, it will probably be more realistic to allow an additional month or two for this process to be completed.

One must also allow time for all six newly-appointed judges to adjust their normal schedules and make themselves available. This could take a minimum of one to two months from the time of their election - although this period would coincide with the above estimate.

II.5 The Prosecutor

The other difficult element in this whole process is the role of the Prosecutor. Article 15 of the Statute provides that the Prosecutor **"shall be responsible for the investigation and prosecution of persons"** accused of crimes under the Statute. (Incidentally, this is a more accurate statement than the provision on the competence of the Tribunal, which is stated in Articles 1 to 4 as being **"to prosecute"** persons responsible for the international crimes. Although that terminology is probably a carry-over from the Nuremberg trials, it would have been better to indicate that the Tribunal is above prosecution, which is actually for prosecutors).

Fortunately, the Prosecutor is already provided for: the same as that for Yugoslavia (Article 15.3), although he will need to recruit additional staff, including a new Deputy, for the Rwanda cases, as well as necessary administrative and logistical support.

An even more important issue is that of investigations. Despite the fact that some evidence has already been gathered by the Special Rapporteur, the Commission of Experts, and others, a lot more investigative work still remains to be done.

Even as regards the evidence already gathered, more work still needs to be done. No prosecutor will put evidence before a court without full evaluation (see Article 17.1). More specifically, witnesses will have to be identified, located, interviewed, protected, and prepared for testimony in court. Indictments will have to be prepared, backed up by professional briefs fully argued and documented, on each alleged crime and each accused person. Relevant physical evidence - Exhibits - will have to be gathered and prepared for court. The accused persons will have to be apprehended and presented in court. Here, the possibility of delays through legal challenges of such arrests and detention, particularly in foreign countries, cannot be ruled out. These processes could add another three to six months to the trial preparations. A sufficiently large number of prosecuting staff commensurate with the case-load will be necessary to minimize such delays.

Then, of course, there are those cases that require substantial additional investigations, and those requiring completely new investigations. These two categories - which could proceed while the "ripe" cases were on trial - could take anywhere from several months to several years, depending on the availability of suitably qualified investigative experts in sufficient numbers.

III. The role of other countries

As most accused persons (and many surviving witnesses) have fled Rwanda, other countries will have to play a major role in facilitating access to these persons in order to expedite the work of the Tribunal. The Statute addresses this problem in several ways.

Here again, the most important area is that of investigations. The Prosecutor may have to seek the assistance of relevant state authorities in countries where accused persons or witnesses may have sought refuge. Such assistance may extend to the arrest of accused persons and their transfer to the custody of the Tribunal, the taking of testimony from witnesses, the securing of evidence, etc.

Although Article 28 of the Statute requires all States to comply with requests in these areas without undue delay, delays may nevertheless occur in particular situations - such as where an accused person challenges the grounds for his arrest and detention in the country of refuge. Litigation over due process applications in such cases could cause considerable delays in the work of the Tribunal.

NB

- In view of the time-factor in the preparation of this brief, a fuller evaluation could be provided later if necessary.

UNBIS SEARCH RESULT PRINT FOR LIB44NG

I/ce
a list of item found in unbis (our info system); Dana (3.7412) said there wouldn't be very useful.
If you find anything useful, let me know by the doc symbol.
Nov/cv

A/C.3/48/L.51
Human rights questions.
Human rights situations and reports of special rapporteurs and representatives.
Rape and abuse of women in the territory of the former Yugoslavia :#draft resolution / Afghanistan, Bangladesh, Bosnia and Herzegovina, Djibouti, Egypt, Iran (Islamic Republic of), Malaysia, Morocco, Pakistan, Saudi Arabia, Senegal, Sudan, Tunisia, Turkey and Yemen
<New York> : UN, 29 Nov. 1993
4 p.
Language versions: A C E F R S
Photo-offset.
Distribution: Limited (not for deposit).

A/C.3/48/L.51/Rev.1 ← e.g. of doc. symbol.
Human rights questions.
Human rights situations and reports of special rapporteurs and representatives.
Rape and abuse of women in the former Yugoslavia :#draft resolution / Afghanistan, Albania, Bangladesh, Bosnia and Herzegovina, Cameroon, Costa Rica, Djibouti, Dominican Republic, Egypt, Gambia, Iran (Islamic Republic of), Malaysia, Morocco, Pakistan, Saudi Arabia, Senegal, Sudan, Tunisia, Turkey and Yemen
<New York> : UN, 29 Nov. 1993
4 p.
Language versions: A C E F R S
Photo-offset.
Distribution: Limited (not for deposit).

A/C.3/48/L.74 ← e.g of doc. symbol.
Human rights questions.
Human rights situations and reports of special rapporteurs and representatives.
Situation of human rights in Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia (serbia and Montenegro) :#draft resolution / United States of America
<New York> : UN, 30 Nov. 1993
8 p.
Language versions: A C E F R S
Photo-offset.

A/C.3/48/L.74/Rev.1 ←
Human rights questions.
Human rights situations and reports of special rapporteurs and representatives.
Situation of human rights in Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro) :#revised draft resolution / United States of America
<New York> : UN, 3, Dec. 1993
8 p.
Language versions: A C E F R S
Photo-offset.
Distribution: Limited (not for deposit).

A/C.3/48/SR.51
Summary record of the 51st meeting :#3rd Committee, held on Friday, 3 December 1993, New York, General Assembly, 48th session
<New York> : UN, 25 Feb. 1994
23 p.
GAOR, 48th sess., 3rd Committee
Language versions: A C E F R S
Photo-offset.
DHL Call No.: UNA(01)/R3

A/C.5/47/L.49
Financing of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committee in the Territory of the Former Yugoslavia since 1991.
Draft resolution / submitted by the Chairman
<New York> : UN, 9 Sept. 1993
2 p.
Language versions: A E F R S
Photo-offset.

A/RES/47/235
Financing of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991
:#resolution / adopted by the General Assembly
<New York> : UN, 21 Oct. 1993
2 p.
Adopted at the 110th plenary meeting, 14 Sept. 1993
Issued in GAOR, 47th sess., Suppl. no. 49
Language versions: A C E F R S
Photo-offset.

A/RES/48/143
Rape and abuse of women in the areas of armed conflict in the former Yugoslavia :#resolution / adopted by the General Assembly
<New York> : UN, 5 Jan. 1994
4 p.
Adopted at the 85th plenary meeting, 20 Dec. 1993
Issued in GAOR, 48th sess., Suppl. no. 49
Language versions: A C E F R S
Photo-offset.

A/RES/48/153
Situation of human rights in the territory of the former Yugoslavia :#violations of human rights in the Republic of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montengro) :#resolution / adopted by the General Assembly
<New York> : UN, 7 Feb. 1994
8 p.
Adopted at the 85th plenary meeting, 20 Dec. 1993
Issued in GAOR, 48th sess., Suppl. no. 49
Language versions: A C E F R S
Photo-offset.

A/RES/48/88
The situation in Bosnia and Herzegovina : resolution / adopted by the General Assembly
<New York> : UN, 29 Dec. 1993
6 p.
Adopted at the 84th plenary meeting, 20 Dec. 1993
Issued in GAOR, 48th sess., Suppl. no. 49
Language versions: A C E F R S
Photo-offset.

A/47/PV.111
Provisional verbatim record of the 111th meeting, held at Headquarters, New York, on Wednesday, 15 September 1993 : General Assembly, 47th session
<New York> : UN, 30 Sept. 1993
<26> p.
Language versions: A C E F R S
Photo-offset.
Distribution: Provisional (not for deposit).

A/47/1003
Election of judges of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991.
Letter dated 93/08/20 from the President of the Security Council addressed to the President of the General Assembly
<New York> : UN, 23 Aug. 1993
2 p.
Transmits Security Council resolution 857 (1993)
Language versions: A C E F R S
Photo-offset.

A/48/L.50
The situation in Bosnia and Herzegovina.
Draft resolution / Afghanistan, Albania, Algeria, Azerbaijan, Bahrain, Bangladesh, Bosnia and Herzegovina, Brunei Darussalam, Burkina Faso, Colombia, Comoros, Costa Rica, Djibouti, Egypt, Gambia, Guinea, Guinea-Bissau, Indonesia, Iran (Islamic Republic of), Jordan, Kuwait, Kyrgyzstan, Latvia, Lebanon, Libyan Arab Jamahiriya, Lithuania, Malaysia, Mauritania, Morocco, Niger, Oman, Pakistan, Qatar, Saudi Arabia, Senegal, Sierra Leone, Sudan, Tunisia, Turkey, United Arab Emirates and Yemen
<New York> : UN, 16 Dec. 1993
6 p.
Language versions: A C E F R S
Photo-offset.
Distribution: Limited (not for deposit).

A/48/L.50/Add.1
The situation in Bosnia and Herzegovina.
Draft resolution / Afghanistan, Albania, Algeria, Azerbaijan, Bahrain, Bangladesh, Bosnia and Herzegovina, Brunei Darussalam, Burkina Faso, Colombia, Comoros, Costa Rica, Djibouti, Egypt, Gambia, Guinea, Guinea-Bissau, Indonesia, Iran (Islamic Republic of), Jordan, Kuwait, Kyrgyzstan, Latvia, Lebanon, Libyan Arab Jamahiriya, Lithuania, Malaysia, Mauritania, Morocco, Niger, Oman, Pakistan, Qatar, Saudi Arabia, Senegal, Sierra Leone, Sudan, Tunisia, Turkey, United Arab Emirates and Yemen
<New York> : UN, 20 Dec. 1993
<1> p.
Additional sponsors: Mali and Marshall Islands
Language versions: A C E F R S
Photo-offset.
Distribution: Limited (not for deposit).

A/48/PV.11
General Assembly official records, 48th session :#11th plenary meeting, Thursday, 30 September 1993, New York
<New York> : UN, 18 Oct. 1993
43 p.
GAOR, 48th sess., Meeting records
Language versions: A C E F R S
Photo-offset.
DHL Call No.: UNA(01)/R3

A/48/PV.83
General Assembly official records, 48th session :#83rd plenary meeting, Friday, 17 December 1993, New York
<New York> : UN, 20 Jan. 1993
26 p.
GAOR, 48th sess., Meeting records
Language versions: A C E F R S
Photo-offset.
DHL Call No.: UNA(01)/R3

A/48/PV.93
General Assembly official records, 48th session :#93rd meeting, Thursday, 14 April 1994, New York
<New York> : UN, <1994>
12 p.
GAOR, 48th sess., Meeting records
Language versions: A C E F R S
Photo-offset.
DHL Call No.: UNA(01)/R3

A/48/915
Financing of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991.
Report of the Advisory Committee on Administrative and Budgetary Questions
<New York> : UN, 29 Mar. 1994
6 p.
Language versions: A C E F R S
Photo-offset.

E/CN.4/RES/1994/72
Situation of human rights in the territory of the former Yugoslavia :#violations of human rights in Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro)
Adopted at the 64th meeting, 9 Mar. 1994
In: Commission on Human Rights : report on the 50th session, 31 January-11 March 1994. - E/1994/24-E/CN.4/1994/132. - 1994. - p. 203-210. - (ESCOR, 1994, Suppl. no. 4)
Language versions: A C E F R S
Printed.

E/CN.4/RES/1994/77
Rape and abuse of women in the territory of the former Yugoslavia
Adopted at the 65th meeting, 9 Mar. 1994
In: Commission on Human Rights : report on the 50th session, 31 January-11 March 1994. - E/1994/24-E/CN.4/1994/132. - 1994. - p. 220-221. - (ESCOR, 1994, Suppl. no. 4)
Language versions: A C E F R S
Printed.

E/CN.4/Sub.2/RES/1993/17
Situation in Bosnia and Herzegovina
Adopted at the 27th meeting, 20 Aug. 1993
In: Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on its 45th session, Geneva, 2-27 August 1993. - E/CN.4/1994/2-E/CN.4/Sub.2/1993/45. - 25 Oct. 1993. - p. 51-53
Language versions: A C E F R S

E/CN.4/Sub.2/1993/L.30
Question of the violation of human rights and fundamental freedoms, including policies of racial discrimination and segregation and of apartheid, in all countries, with particular reference to colonial and other dependent countries and territories : report of the Sub-Commission under Commission on Human Rights resolution 8 (XXIII).
The#situation in Bosnia and Herzegovina :#draft resolution / Mrs. Attah, Mr. Bossuyt, Mr. Boutkevitch, Ms. Chavez, Mrs. Daes, Mr. Despouy, Mr. Eide, Mr. Guiss@el, Mr. Muksum-Ul-Hakim, Mr. Hatano, Mr. Heller, Mr. Joinet, Mr. Khalil, Ms. Ksentini, Mr. Maxim, Mr. Merrills, Mr. Ramadhane, Mr. Sacher, Mrs. Warzazi and Mr. Yimer
Geneva : UN, 18 Aug. 1993
4 p.
Language versions: A C E F R S
Photo-offset.
Distribution: Limited (not for deposit).

E/CN.4/1994/L.80
Question of the violation of human rights and fundamental freedoms in any part of the world, with particular reference to colonial and other dependent countries and territories.
Situation of human rights in the territory of the former Yugoslavia :$violations of human rights in the Republic of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro) ($draft resolution / Australia, Austria, Bulgaria, Denmark, France, Hungary, Ireland, Italy, Japan, Norway, Poland, Slovenia, Sweden, United Kingdom of Great Britain and Northern Ireland, United States of America and Uruguay
Geneva : UN, 4 Mar. 1994
9 p.
Language versions: A C E F R S
Photo-offset.
Distribution: Limited (not for deposit).

E/CN.4/1994/L.86/Rev.1
Question of the violation of human rights and fundamental freedoms in any part of the world, with particular reference to colonial and other dependent countries and territories.
Rape and abuse of women in the territory of the former Yugoslavia :$draft resolution / Albania, Bahrain, Bangladesh, Bosnia and Herzegovina, Brunei Darussalam, Chile, Germany, Iran (Islamic Republic of), Ireland, Jordan, Kuwait, Malawi, Malaysia, Mauritius, Pakistan, Saudi Arabia, Senegal, Sudan, Sweden, Syrian Arab Republic and Turkey
Geneva : UN, 8 Mar. 1994
4 p.
Language versions: A C E F R S
Photo-offset.
Distribution: Limited (not for deposit).

E/CN.6/RES/38/9
Rape and abuse of women in the areas of armed conflict in the former Yugoslavia
Adopted at the 17th meeting, 18 Mar. 1994
In: Commission on the Status of Women : report on the 38th session, 7-18 March 1994. - E/1994/27-E/CN.6/1994/14. - 1994. - p. 25-28. - (ESCOR, 1994, Suppl. no. 7)
Language versions: E F S
Photo-offset.
DHL Call No.: UNE(01)/R3

E/CN.6/1994/L.20
Rape and abuse of women in the area of armed conflict in the former Yugoslavia :$draft resolution / Algeria, Bangladesh, Bosnia and Herzegovina, Ecuador, Iran (Islamic Republic of), Malaysia, Morocco, Pakistan, Sierra Leone, Tunisia and Turkey
<New York> : UN, 15 Mar. 1994
5 p.
Language versions: A C E F R S
Photo-offset.
Distribution: Limited (not for deposit).

S/PV.3265
Provisional verbatim record of the 3265th meeting, held at Headquarters, New York, on Friday, 20 August 1993 :#Security Council
<New York> : UN, 20 Aug. 1993
3 p.
Language versions: A C E F R S
Photo-offset.
Distribution: Provisional (not for deposit).

S/PV.3269
Provisional verbatim record of the 3269th meeting, held at Headquarters, New York, on Tuesday, 24 August 1993 :#Security Council
<New York> : UN, 24 Aug. 1993
<53> p.
Language versions: A C E F R S
Photo-offset.
Distribution: Provisional (not for deposit).

S/PV.3296
Provisional verbatim record of the 3296th meeting, held at Headquarters, New York, on Thursday, 21 October 1993 :#Security Council
<New York> : UN, 21 Oct. 1993
3 p.
Language versions: A C E F R S
Photo-offset.
Distribution: Provisional (not for deposit).

S/RES/857(1993)
Resolution 857 (1993) / adopted by the Security Council at its 3265th meeting, on 20 August 1993
<New York> : UN, 20 Aug. 1993
<1> p.
Concerns establishment of the list of candidates in accordance with Article 13 of the Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia
Issued in: Resolutions and decisions of the Security Council, 1993. - S/INF/49. - (SCOR, 48th year)
Language versions: A C E F R S
Photo-offset.

S/RES/859(1993)
Resolution 859 (1993) / adopted by the Security Council at its 3269th meeting, on 24 August 1993
<New York> : UN, 24 Aug. 1993
3 p.
Concerns comprehensive political settlement of the situation in Bosnia and Herzegovina
Issued in: Resolutions and decisions of the Security Council, 1994. - S/INF/49. - (SCOR, 48th year)
Language versions: A C E F R S
Photo-offset.

S/RES/877(1993)
Resolution 877 (1993) / adopted by the Security Council at its 3296th meeting, on 21 October 1993
‹New York› : UN, 21 Oct. 1993
‹1› p.
Concerns appointment of Prosecutor of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991
Issued in: Resolutions and decisions of the Security Council, 1993. - S/INF/49. - (SCOR, 48th year)
Language versions: A C E F R S
Photo-offset.

S/26182
Draft resolution
‹New York› : UN, 24 Aug. 1993
3 p.
Concerns comprehensive political settlement of the situation in Bosnia and Herzegovina
Language versions: A C E F R S
Photo-offset.

S/26331
Draft resolution
‹New York› : UN, 20 Aug. 1993
‹1› p.
Concerns establishment of the list of candidates in accordance with Article 13 of the Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991
Language versions: A C E F R S
Photo-offset.

S/26608
Draft resolution
‹New York› : UN, 21 Oct. 1993
‹1› p.
Concerns appointment of Prosecutor of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991
Language versions: A C E F R S
Photo-offset.

Distr.
GENERAL

S/RES/827 (1993)
25 May 1993

RESOLUTION 827 (1993)

Adopted by the Security Council at its 3217th meeting, on 25 May 1993

The Security Council,

Reaffirming its resolution 713 (1991) of 25 September 1991 and all subsequent relevant resolutions,

Having considered the report of the Secretary-General (S/25704 and Add.1) pursuant to paragraph 2 of resolution 808 (1993),

Expressing once again its grave alarm at continuing reports of widespread and flagrant violations of international humanitarian law occurring within the territory of the former Yugoslavia, and especially in the Republic of Bosnia and Herzegovina, including reports of mass killings, massive, organized and systematic detention and rape of women, and the continuance of the practice of "ethnic cleansing", including for the acquisition and the holding of territory,

Determining that this situation continues to constitute a threat to international peace and security,

Determined to put an end to such crimes and to take effective measures to bring to justice the persons who are responsible for them,

Convinced that in the particular circumstances of the former Yugoslavia the establishment as an ad hoc measure by the Council of an international tribunal and the prosecution of persons responsible for serious violations of international humanitarian law would enable this aim to be achieved and would contribute to the restoration and maintenance of peace,

Believing that the establishment of an international tribunal and the prosecution of persons responsible for the above-mentioned violations of international humanitarian law will contribute to ensuring that such violations are halted and effectively redressed,

Noting in this regard the recommendation by the Co-Chairmen of the Steering Committee of the International Conference on the Former Yugoslavia for the establishment of such a tribunal (S/25221),

Reaffirming in this regard its decision in resolution 808 (1993) that an international tribunal shall be established for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991,

Considering that, pending the appointment of the Prosecutor of the International Tribunal, the Commission of Experts established pursuant to resolution 780 (1992) should continue on an urgent basis the collection of information relating to evidence of grave breaches of the Geneva Conventions and other violations of international humanitarian law as proposed in its interim report (S/25274),

Acting under Chapter VII of the Charter of the United Nations,

1. Approves the report of the Secretary-General;

2. Decides hereby to establish an international tribunal for the sole purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia between 1 January 1991 and a date to be determined by the Security Council upon the restoration of peace and to this end to adopt the Statute of the International Tribunal annexed to the above-mentioned report;

3. Requests the Secretary-General to submit to the judges of the International Tribunal, upon their election, any suggestions received from States for the rules of procedure and evidence called for in Article 15 of the Statute of the International Tribunal;

4. Decides that all States shall cooperate fully with the International Tribunal and its organs in accordance with the present resolution and the Statute of the International Tribunal and that consequently all States shall take any measures necessary under their domestic law to implement the provisions of the present resolution and the Statute, including the obligation of States to comply with requests for assistance or orders issued by a Trial Chamber under Article 29 of the Statute;

5. Urges States and intergovernmental and non-governmental organizations to contribute funds, equipment and services to the International Tribunal, including the offer of expert personnel;

6. Decides that the determination of the seat of the International Tribunal is subject to the conclusion of appropriate arrangements between the United Nations and the Netherlands acceptable to the Council, and that the International Tribunal may sit elsewhere when it considers it necessary for the efficient exercise of its functions;

7. Decides also that the work of the International Tribunal shall be carried out without prejudice to the right of the victims to seek, through appropriate means, compensation for damages incurred as a result of violations of international humanitarian law;

8. Requests the Secretary-General to implement urgently the present resolution and in particular to make practical arrangements for the effective

functioning of the International Tribunal at the earliest time and to report periodically to the Council;

9. Decides to remain actively seized of the matter.

/

* Doc on the debate: "S25704"

70 p.

The printed form requested will arrived upon receiving it.

Distr.
GENERAL

S/25704
3 May 1993

ORIGINAL: ENGLISH

Title:

REPORT OF THE SECRETARY-GENERAL PURSUANT TO PARAGRAPH 2
OF SECURITY COUNCIL RESOLUTION 808 (1993)

CONTENTS

A:\N9324835 Doc 1 Pa 1 Ln 0.5" Pos 0.9"

~~WP/IN933e/28 = S/RES/827~~

2

also on the diskette: under "RES 827"

Distr.

GENERAL

S/RES/827 (1993)

25

May 1993

RESOLUTION 827 (1993)

Adopted by the Security Council at its 3217th meeting, on 25 May 1993

The Security Council,

Reaffirming its resolution 713 (1991) of 25 September 1991 and all subsequent relevant resolutions,

Having considered the report of the Secretary-General (S/25704 and Add.1) pursuant to paragraph 2 of resolution 808 (1993),

Expressing once again its grave alarm at continuing reports of widespread and flagrant violations of international humanitarian law occurring within the territory of the former Yugoslavia, and especially in the Republic of Bosnia and Herzegovina, including reports of mass killings, massive, organized and systematic detention and rape of women, and the continuance of the practice of "ethnic cleansing", including for the acquisition and the holding of territory,

Determining that this situation continues to constitute a threat to international peace and security,

Determined to put an end to such crimes and to take effective measures to bring to justice the persons who are responsible for them,

Convinced that in the particular circumstances of the former Yugoslavia the establishment as an ad hoc measure by the Council of an international tribunal and the prosecution of persons responsible for serious violations of international humanitarian law would enable this aim to be achieved and would contribute to the restoration and maintenance of peace,

Believing that the establishment of an international tribunal and the prosecution of persons responsible for the above-mentioned violations of international humanitarian law will contribute to ensuring that such violations are halted and effectively redressed,

Noting in this regard the recommendation by the Co-Chairmen of the Steering Committee of the International Conference on the Former Yugoslavia for the establishment of such a tribunal (S/25221),

93-30628 (E) 250593 /...

Reaffirming in this regard its decision in resolution 808 (1993) that an international tribunal shall be established for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991,

Considering that, pending the appointment of the Prosecutor of the International Tribunal, the Commission of Experts established pursuant to resolution 780 (1992) should continue on an urgent basis the collection of information relating to evidence of grave breaches of the Geneva Conventions and other violations of international humanitarian law as proposed in its interim report (S/25274),

Acting under Chapter VII of the Charter of the United Nations,

1. Approves the report of the Secretary-General;

2. Decides hereby to establish an international tribunal for the sole purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia between 1 January 1991 and a date to be determined by the Security Council upon the restoration of peace and to this end to adopt the Statute of the International Tribunal annexed to the above-mentioned report;

/...

3. Requests the Secretary-General to submit to the judges of the International Tribunal, upon their election, any suggestions received from States for the rules of procedure and evidence called for in Article 15 of the Statute of the International Tribunal;

4. Decides that all States shall cooperate fully with the International Tribunal and its organs in accordance with the present resolution and the Statute of the International Tribunal and that consequently all States shall take any measures necessary under their domestic law to implement the provisions of the present resolution and the Statute, including the obligation of States to comply with requests for assistance or orders issued by a Trial Chamber under Article 29 of the Statute;

5. Urges States and intergovernmental and non-governmental organizations to contribute funds, equipment and services to the International Tribunal, including the offer of expert personnel;

6. Decides that the determination of the seat of the International Tribunal is subject to the conclusion of appropriate arrangements between the United Nations and the Netherlands acceptable to the Council, and that the International Tribunal may sit elsewhere when it considers it necessary for the efficient exercise of its functions;

7. Decides also that the work of the International Tribunal shall be carried out without prejudice to the right of the victims to seek, through appropriate means, compensation for damages incurred as a result of violations of international humanitarian law;

8. Requests the Secretary-General to implement urgently the present resolution and in particular to make practical arrangements for the effective functioning of the International Tribunal at the earliest time and to report periodically to the Council;

9. Decides to remain actively seized of the matter.

UNITED NATIONS

S

Security Council

Distr.
GENERAL

S/RES/808 (1993)
22 February 1993

RESOLUTION 808 (1993)

Adopted by the Security Council at its 3175th meeting, on 22 February 1993

The Security Council,

Reaffirming its resolution 713 (1991) of 25 September 1991 and all subsequent relevant resolutions,

Recalling paragraph 10 of its resolution 764 (1992) of 13 July 1992, in which it reaffirmed that all parties are bound to comply with the obligations under international humanitarian law and in particular the Geneva Conventions of 12 August 1949, and that persons who commit or order the commission of grave breaches of the Conventions are individually responsible in respect of such breaches,

Recalling also its resolution 771 (1992) of 13 August 1992, in which, inter alia, it demanded that all parties and others concerned in the former Yugoslavia, and all military forces in Bosnia and Herzegovina, immediately cease and desist from all breaches of international humanitarian law,

Recalling further its resolution 780 (1992) of 6 October 1992, in which it requested the Secretary-General to establish, as a matter of urgency, an impartial Commission of Experts to examine and analyse the information submitted pursuant to resolutions 771 (1992) and 780 (1992), together with such further information as the Commission of Experts may obtain, with a view to providing the Secretary-General with its conclusions on the evidence of grave breaches of the Geneva Conventions and other violations of international humanitarian law committed in the territory of the former Yugoslavia,

Having considered the interim report of the Commission of Experts established by resolution 780 (1992) (S/25274), in which the Commission observed that a decision to establish an ad hoc international tribunal in relation to events in the territory of the former Yugoslavia would be consistent with the direction of its work,

Expressing once again its grave alarm at continuing reports of widespread violations of international humanitarian law occurring within the territory of the former Yugoslavia, including reports of mass killings and the continuance of the practice of "ethnic cleansing",

Determining that this situation constitutes a threat to international peace and security,

Determined to put an end to such crimes and to take effective measures to bring to justice the persons who are responsible for them,

Convinced that in the particular circumstances of the former Yugoslavia the establishment of an international tribunal would enable this aim to be achieved and would contribute to the restoration and maintenance of peace,

Noting in this regard the recommendation by the Co-Chairmen of the Steering Committee of the International Conference on the Former Yugoslavia for the establishment of such a tribunal (S/25221),

Noting also with grave concern the "report of the European Community investigative mission into the treatment of Muslim women in the former Yugoslavia" (S/25240, annex I),

Noting further the report of the committee of jurists submitted by France (S/25266), the report of the commission of jurists submitted by Italy (S/25300), and the report transmitted by the Permanent Representative of Sweden on behalf of the Chairman-in-Office of the Conference on Security and Cooperation in Europe (CSCE) (S/25307),

1. Decides that an international tribunal shall be established for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991;

2. Requests the Secretary-General to submit for consideration by the Council at the earliest possible date, and if possible no later than 60 days after the adoption of the present resolution, a report on all aspects of this matter, including specific proposals and where appropriate options for the effective and expeditious implementation of the decision contained in paragraph 1 above, taking into account suggestions put forward in this regard by Member States;

3. Decides to remain actively seized of the matter.