UNAMIR

MISSION AGREEMENT

24 AUG 1994 - 22 MAY 1995

[5 CONFIDENTIAL]
EL/WG APR 2009

PLEASE RETAIN ORIGINAL ORDER

UN ARCHIVES
SERIES S-1120
BOX 1
FILE 5
ACC. 1998/0278

VANDAISE

Kigali, le 22 MAI 1995

N° /03.02.7.05/AP/EA.
1162

AFFAIRES ETRANGERES
A COOPERATION

B.P. 179 KIGALI

Excellence Monsieur le Représentant
Spécial du Secrétaire Général des
Nations Unies au Rwanda.
C/O MINUAR -KIGALI.

N/Réf. :

V/Réf. :

Objet : Concerne le projet d'accord complémentaire entre le Gouvernement Rwandais et les Nations-Unies sur l'Etablissement d'un Economat pour la MINUAR.

Son Excellence,

Référence faite au projet d'accord complémentaire repris en marge, j'ai l'honneur de vous informer qu'après avoir passé en revue l'accord entre les Nations Unies et la République Rwandaise sur le statut de la MINUAR signé à New York le 5 Novembre 1993, les articles 1 , 2 et 4 soulèvent mes objections quant à :

- La liste des bénéficiaires des services de l'Economat qui s'étend aux missions diplomatiques accréditées aux Rwanda et aux autres personnes.

Je suis d'avis que les bénéficiaires doivent être seulement les membres de la MINUAR et les fonctionnaires de l'ONU au Rwanda. Cela évitera des abus.

- Le recours aux services de concessionnaires pose des problèmes car il deviendrait impossible de connaître l'usage fait de ces produits importés hors taxes. Le statut de ces concessionnaires ne devrait pas non plus être assimilé à celui de la MINUAR , mais être celui d'hommes d'affaires contractuels de la MINUAR.
- La liste des articles presentée par la MINUAR reprend même les articles qui ne doivent pas être de besoins primaires hors taxes, ce qui donne lieu à la fraude fiscale, comme c'est le cas actuellement des produits alimentaires de la MINUAR qui se retrouvent sur le marché.

... / ...

UNITED NATIONS
INTEROFFICE MEMORANDUM

UNAMIR-MINUAR

NATIONS UNIES
MEMORANDUM INTERIEUR

TO: **Mr. A.H. Golo**
OIC/Administration

DATE: 12 May 1995
REF: OSRSG/LA/001

FROM: **I. Minta**
Legal Adviser/OSRSG

SUBJECT: **Submission to Headquarters of Issues which Require Legal Review**

.....

The attached fax from Mr. Medili, Director, FALD, refers to cases in which Missions have sought legal advice from Headquarters without the benefit of a local review by the Mission's Legal Adviser.

I am aware of only one instance in which we sought legal advice from Headquarters, i.e. on the question whether contractors are covered by the SOMA. That was after I had given my own review of the question to the then Executive Director, Dr. Kabia. The relevant correspondence were copied to you as well.

If any other cases have been referred to New York by other Legal Advisers at UNAMIR, I will be grateful if copies can be sent to me for my records. I will also be grateful if any similar cases referred to New York in future are also copied to me, at least for purposes of information.

Many thanks.

cc: SRSG

UNITED NATIONS NATIONS UNIES

FIELD ADMINISTRATION & LOGISTICS DIVISION

FACSIMILE TRANSMISSION

Outgoing FaxNo.: DIR/317	Date: 11 May 1995
To: Heads of Administration All Missions Info: Legal Advisers All Missions	From: Hocine Medili Director Field Administration & Logistics Division, DPKO
Fax:	Fax: 212-963-0383
Number of transmitted pages: one	Ref.: cp/jo
Attn:	
Subject: Submission to Headquarters of issues which require legal review	

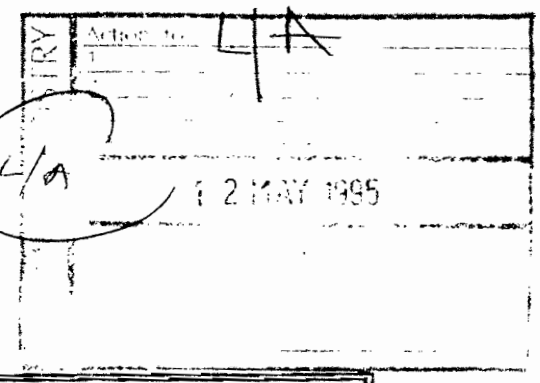
1. It has come to our attention that in some cases legal advice was requested from U.N. Headquarters without the benefit of local review by the Legal Adviser of the mission.

examples?

2. The review of legal issues at the mission is the responsibility of the Legal Adviser assigned to that mission. It is therefore requested that whenever legal advice is sought from Headquarters by a mission, the Head of Administration should first liaise with the Legal Adviser who should (a) ensure that all factual information is provided and relevant documentation compiled; and b) present an analysis of all relevant issues as well as recommendations on how the matter could best be resolved. Such an analysis will facilitate review of the matter by the relevant offices at Headquarters and undoubtedly minimize the required response time.

3. Matters referred to Headquarters for legal review which are not properly documented and which have not been initially assessed by the Legal Adviser will be returned to the mission.

4. Your cooperation in this matter would be appreciated.



E/DIR CAB CLSS L/A

Mr. Basnayake

Drafted by:	Authorized By: Hocine Medili

SRSG

01-4

UNITED NATIONS
INTEROFFICE MEMORANDUM

NATIONS UNIES
MEMORANDUM INTERIEUR

UNAMIR-MINUAR

TO: **Mr. F.K. Ofei-Odame** **DATE: 13 May 1995**
Team Leader, UNAMIR External Auditors

FROM: **Ally H. Golo**
OIC/Administration

SUBJECT: **Non-expendable Property: Seized, Missing and Stolen Vehicles and Other Equipment**

.....

Reference your Memorandum of 11 May 1995 on the above subject, please find attached, samples of correspondence between UNAMIR and the Government indicating our efforts to address the problem, namely:

1. Letter from the SRSG to the Rwandese Minister of Foreign Affairs, dated 19 April 1995, on a range of problems relating to violations of the Status of Mission Agreement (SOMA);

2. Note Verbale SRSG/NV/19/95 of 10 February 1995, addressed to the Ministry of Foreign Affairs, on the seizure of UNAMIR vehicles;

3. Note Verbale SRSG/NV/60/94 of 6 December 1994, addressed to the Minister of Defence protesting against the seizure of UNAMIR vehicles and asking for their release.

.....

In addition, these thefts and other problems have been raised at numerous meetings between UNAMIR and Government Officials. However, assurances of action by the Government have usually not been honoured. I attach a copy of the Minutes of one such meeting between UNAMIR's Legal Adviser and Senior Officials of the Ministry of Foreign Affairs (dated 19 January 1995).

The most recent development in our efforts to resolve ongoing problems with the Government, including the question of vehicle thefts is the series of meetings between the SRSG and the Government on UNAMIR's mandate and SOMA violations. These meetings are still continuing; the following is an extract from the Minutes of one of those meetings (that of 8 May 1995):

"6. The Special Representative added that even if common ground was found the current campaign of vilification against UNAMIR was causing serious concern in the United Nations. It was not the demonstrations that bothered the Special Representative; it was the officially approved harassment that UNAMIR was experiencing in its daily activities. For instance, UNAMIR diesel supplies had been confiscated, helicopter flights were being circumscribed, telecommunication links were being restricted and a general atmosphere of non-cooperation and harassment was preponderant. Over the past weekend three cars had been hijacked by people in uniform carrying AK-47 rifles. If this attitude continued it would be better to close down completely. A new mandate would require this "UNAMIR bashing" to stop and be reversed.

The above are only examples of our numerous and ongoing efforts to address our many problems with the Rwandese Government. In some instances they have denied Governmental responsibility for the thefts and hijackings, as one may expect. In many other instances they have promised action, but never followed through. In any event, you can see that we have not been silent on the issue, although it may be true to state that we are virtually at the mercy of the Government with regard to their willingness or capacity to investigate and stop these very disturbing incidents.

UNITED NATIONS
ASSISTANCE MISSION FOR RWANDA

NATIONS UNIES
MISSION POUR L'ASSISTANCE AU RWANDA

UNAMIR-MINUAR

DATE: 19 April 1995
REF: OSRSG/LA/001/95

Your Excellency,

1. I have the honour to refer to the Agreement signed on 5 November 1993 between the United Nations and Rwanda on the Status of the United Nations Assistance Mission for Rwanda (UNAMIR), and likewise to the Convention on the Privileges and Immunities of the United Nations adopted on 13 February 1946, to which the Agreement refers and to which Rwanda is a party. It may be recalled that the Agreement of 5 November 1993 was approved by the Rwandese Patriotic Front (RPF). At ..... Annex A are photocopies of relevant letters exchanged between the UN and RPF at that time.

2. I regret to bring to your attention a pattern of violations of various provisions of the said ..... Convention and Agreement. A sample of these violations is attached at Annex B as they are too numerous to list exhaustively. The violations extend to other United Nations subsidiary organs and their personnel in Rwanda, who are entitled to similar protections under the Convention and related Agreements and, in addition, to the provision of security protection by UNAMIR as required under Security Council resolutions.

3. To the extent that the incidents of violations also impede the exercise of UNAMIR's functions in the provision of security protection to other agencies of the United Nations, the incidents also contravene relevant provisions of the Security Council resolutions requiring the cooperation of Rwanda in the implementation of the mandates of UNAMIR and other United Nations agencies, in particular, paragraph 4 of Security Council resolution 965 of 30 November 1994.

4. I would also like to draw your kind attention to the correspondence and Notes Verbale previously filed by UNAMIR with your Ministry protesting against such violations and requesting corrective action by your Government; in particular, my letter of 11 October 1994 on the forcible

Dr. Anastase Gasana
Minister of Foreign Affairs & Cooperation
Kigali

entry into UNAMIR premises by RPA personnel to arrest a local staff member of UNAMIR, and my Notes Verbale SRSG/NV/60/94 of 6 December 1994, SRSG/NV/13/95 of 2 February 1995 and SRSG/NV/19/95 of 10 February 1995. In the single instance in which we had a response from your Ministry, as contained in your letter No. 128/03.00/CAB/PROTETAT of 2 February 1995 requesting personnel of your Government **"to respect the commitments made by Rwanda to the UNAMIR Statute"**, that request was not complied with.

5. Thus, instead of a cessation of such violations, that we were entitled to expect as a result of our representations, there has been an escalation in recent months. The following is a sample of incidents constituting such violations, details of which are contained in Annex B:

5.1 Searches of UNAMIR, its personnel, and other United Nations property including vehicles, aircraft, official documents and personal belongings, in violation of sections 3 and 22 of the Convention and paragraphs 3, 4, 15 and 26 of the Agreement.

5.2 Impounding or detention of UNAMIR imports and supplies in attempts to charge customs and other duties, or for other unknown reasons, in violation of sections 3 and 7 of the Convention and paragraph 15 of the Agreement.

5.3 Movement restrictions on UNAMIR and other United Nations personnel and denial of access at RPA checkpoints, including long delays sometimes accompanied by open hostility and threats. These incidents not only violate the freedom of movement provided for under paragraph 12 of the Agreement and required by paragraph 4 of Security Council resolution 965 (1994); they also violate the obligation of the Government of Rwanda to ensure the security and safety of UNAMIR personnel, as required by paragraph 6 of the Agreement.

5.4 Ejection of UNAMIR from Government-owned or Government-controlled premises at short notice or by ultimatum, and refusal to allow access to property (village Urugwiro) under lease to UNAMIR.

5.5 Imposition of passport requirements on UNAMIR military personnel from participating States, in violation of paragraphs 33 and 34 of the Agreement which state, inter alia, that "the

Special Representative and members of UNAMIR shall be exempt from passport and visa regulations and immigration inspection and restrictions on entering into or departing from Rwanda." In the most serious and most recent case, Nigerian troops who arrived on 3 April 1995 were repatriated on 4 April 1995 at the behest of the Rwandese Ministry of Defence.

5.6 Seizure and impoundment of UNAMIR and other United Nations vehicles following traffic accidents, in violation of section 3 of the Convention and paragraph 3 of the Agreement.

5.7 Arrests, detention and harassment of local staff of UNAMIR and other United Nations agencies without ready explanation. Several representations, and many visits by United Nations officials, have previously been made to your Government on this issue.

5.8 Harassment and intimidation of Rwandese nationals who approach UNAMIR with information or for protection and of those approached by UNAMIR and other agencies for information in the implementation of their mandates.

6. Your Excellency would agree with me that these incidents constitute violations of the relevant provisions of the Convention and Agreement referred to, and undermine the effective discharge of the mandates of UNAMIR and other United Nations agencies in Rwanda.

7. May I respectfully request the Government of Rwanda to kindly take urgent steps to ensure the cessation of such violations, and the scrupulous observance, henceforth, of the international obligations of Rwanda under the Convention and Agreement cited above. May I, in this connection, draw the attention of your Government to paragraph 56 of the said Agreement, which states:

> *"56. Wherever the present Agreement refers to the privileges, immunities and rights of UNAMIR and to the facilities provided to UNAMIR, the Government shall have the*

ultimate responsibility for the implementation and fulfilment of such privileges, immunities, rights and facilities by the appropriate local Rwandese authorities".

8. Please accept, Excellency, the assurances of my highest consideration.

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

cc: **H.E. The President of Rwanda**
H.E. The Prime Minister
H.E. The Minister of Defence
USG/DPKO, New York
USG/OLA, New York

S/1111-04 11/11
LINAMIR ANNEX "A"
AA28.22.1

CNR 092 P3/3

UNITED NATIONS NATIONS UNIES

POSTAL ADDRESS—ADRESSE POSTALE: UNITED NATIONS, N.Y. 10017
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE: UNATIONS NEWYORK

REFERENCE:

La 11 novembre 1993

Monsieur le Président,

J'ai l'honneur de me référer à la résolution 872 (1993) du 5 octobre 1993, par laquelle le Conseil de sécurité a décidé de créer sous son autorité la Mission des Nations Unies pour l'assistance au Rwanda (ci-après désignée sous le nom de "MINUAR"). Dans cette résolution, le Conseil a notamment demandé que les parties, c'est-à-dire le Gouvernement de la République rwandaise et le Front patriotique rwandais, prennent toutes les mesures voulues pour garantir la sécurité de la MINUAR et du personnel qui y participe.

Afin que la MINUAR puisse mener comme il convient les activités s'inscrivant dans le cadre du mandat qui lui a été assigné par la résolution 872 (1993), la Mission et son personnel jouiront des privilèges et immunités ainsi que des droits et facilités nécessaires, conformément au droit international et aux principes et pratiques ayant jusqu'à présent régi les opérations de maintien de la paix des Nations Unies. Les privilèges et immunités et les droits et facilités visés sont ceux que prévoit l'Accord sur le statut de la MINUAR et de son personnel. Un exemplaire de cet Accord, qui a été conclu à New York le 5 novembre 1993, vous est adressé ci-joint.

Le texte de l'Accord est porté à votre attention afin que le Front patriotique rwandais puisse pleinement coopérer à la mise en oeuvre des dispositions pertinentes qu'il contient. Je vous serais donc très obligé de bien vouloir accuser réception de cette lettre.

Veuillez agréer, Monsieur le Président, les assurances de ma très haute considération.

S. Iqbal Riza
Sous-Secrétaire Général aux
Opérations de Maintien de la Paix

Son Excellence
Le Colonel Alexis Kanyarengwe
Président du Front Patriotique Rwandais

RECEIVED
OASG/DPKO
ACTION:
INFO:
DEC 1 1993

CNR 092 P2/3

FRONT PATRIOTIQUE RWANDAIS
RWANDESE PATRIOTIC FRONT

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

Mulindi, 21 novembre 1993

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

Monsieur le Sous-Secrétaire Général,

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

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

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

Col. Alexis KANYARENGWE
PRESIDENT DU FRONT PATRIOTIQUE RWANDAIS

ANNEX 'B'

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

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

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

5.2 **Detention of UNAMIR imports and supplies**

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

5.3 **Movement restrictions**

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

More-recent documented cases of such restrictions include: restrictions at Gashora checkpoint (9 February 1995), restrictions reported by Ghanbatt (21 February 1995), MILOBs (9 and 28 February 1995, two incidents on 2 March 1995, 10, 23 and 25 March 1995), Malawi Coy (6 March 1995), AUSMED (23 March 1995), Tunbatt (2 February and 6 March 1995), Human Rights Operations (26 February 1995, 8 March 1995, 18 March 1995), the holding-up at Rusizi-2 border post of 23 trucks carrying relief supplies, with the risk of looting, reported on 4 April 1995 by UNAMIR forces providing convoy security; and restrictions on UNAMIR patrols at Ruhengeri (4 April 1995) among numerous others.

5.4 **Ejection from premises**

We note here that the Government's obligation to provide UNAMIR with premises for operational, administrative and accommodation purposes, as required under paragraph 16 of the Agreement, is not an absolute obligation. It is understandable that with the gradual return of normalcy, the Government would require UNAMIR to relinquish certain premises to permit their normal use. However, in such instances we should not be ejected forcibly (as occurred with respect to CIVPOL headquarters in September 1994) or by ultimatum (as occurred with respect to warehouse premises at Kigali airport in October 1994), or without the offer of alternative accommodation (as is the case with regard to

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

5.5 **Passport restrictions (see letter)**

5.6 **Seizure/Impoundment of UNAMIR vehicles**

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

5.7 **Arrests/detention of local staff**

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

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

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

UNITED NATIONS
ASSISTANCE MISSION FOR RWANDA

UNAMIR-MINUAR

NATIONS UNIES
MISSION POUR L'ASSISTANCE AU RWANDA

SRSG/NV/19/95

NOTE VERBALE

The United Nations Assistance Mission for Rwanda (UNAMIR) presents its compliments to the Ministry of Foreign Affairs and Cooperation of the Government of Rwanda and has the honour to convey the following.

1. As a result of two separate traffic accidents involving our vehicles, UNAMIR 730 and UNAMIR 4835 on 2 February 1995, both vehicles were impounded and are still being held at the Gendarmerie Station at Gikondo in Kigali.

2. Pursuant to previous discussions with your Ministry regarding the observance of the privileges and immunities of UNAMIR under the Status of Mission Agreement between UNAMIR and Rwanda, may we respectfully request your assistance in the release of both vehicles pending the finalization of investigations on the accidents.

The United Nations Assistance Mission takes this opportunity to renew to the Government of Rwanda the assurances of its highest consideration.

Kigali, 10 February 1995

UNITED NATIONS/NATIONS UNIES UNAMIR

H.E. Dr. Anastase Gasana
Minister of Foreign Affairs and Cooperation
Kigali

cc: Minister of Defence
Gendarmerie HQ

UNITED NATIONS
ASSISTANCE MISSION FOR RWANDA

UNAMIR-MINUAR

NATIONS UNIES
MISSION POUR L'ASSISTANCE AU RWANDA

SRSG/NV/60/94

NOTE VERBALE

The United Nations Assistance Mission for Rwanda (UNAMIR) presents its compliments to the Ministry of National Defence of the Government of Rwanda and has the honour to convey the following:

1. Our Chief of Security has informed us that one of our vehicles, a Toyota pick-up with the registration UNAMIR 1903-HR, has been impounded by officers of the National Gendarmerie and is currently being held at the MUHIMA police station, following an accident with another vehicle on 18 November 1994. Their efforts to get our vehicle released have been met with a demand that UNAMIR assume responsibility for the accident.

2. First of all, we believe that responsibility for the accident will depend on establishing the facts as to how the accident occurred. This does not seem to have been done. May we therefore request a formal investigation of the accident, in which we are ready to cooperate in accordance with paragraph 44 of the **Status of Mission Agreement between UNAMIR and the Government of Rwanda.** That provision reads as follows:

   "UNAMIR and the Government shall assist each other in carrying out all necessary investigations into offences in respect of which either or both have an interest, in the production of witnesses and in the collection and production of evidence, including the seizure of and, if appropriate, the handing over of items connected with an offence."

3. In the meantime, may we respectfully request the immediate release of UNAMIR 1903-HR, in view of the fact that the property of UNAMIR is immune from detention, confiscation or seizure under any circumstances. May we, in this regard, refer to Article II, Section 2 of the Convention on the Privileges and Immunities of the United Nations, to which Rwanda is a party, which provides as follows:

His Excellency MGEN Paul Kagame
Minister of National Defence
Kigali

"The United Nations, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except insofar as in any particular case it has expressly waived its immunity."

4. Similarly, Section 3 of that same Article also provides, inter alia:

"The property and assets of the United Nations... shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action".

5. Apart from the fact that the Convention itself is binding on the Government of Rwanda, its provisions are also applicable to Rwanda under the Status of Mission Agreement signed on 5 November 1993 between the United Nations and the Government of Rwanda.

6. In addition to releasing the UNAMIR vehicle in question, may we respectfully request that appropriate instructions be issued to all officers of the National Gendarmerie of Rwanda as well as to other relevant Government agencies to observe the privileges and immunities of UNAMIR under the Convention and Status of Mission Agreement cited above.

The United Nations Assistance Mission for Rwanda takes this opportunity to renew to the Government of Rwanda the assurances of its highest consideration.

UNITED NATIONS/NATIONS UNIES UNAMIR

Kigali, 6 December 1994

cc:

- National Gendarmerie
- Ministry of Foreign Affairs

NOTE FOR THE FILE

19th January 1995

Meeting at the Ministry of Foreign Affairs on implementation of the Status of Mission Agreement; 18 January 1995

Present: Mr. Leon NGARUKIYE, Head of Cabinet
Ambassador Simon INSONERE, Director General
Mr. Ike MINTA, Legal Adviser, UNAMIR
Maj. B. M. OSWALD, Legal Officer, AUSMED/UNAMIR
Ms. Sylvie NOSSEREAU, Interpreter, UNAMIR

Head of Cabinet:

We wrote to the technical ministries namely the Ministries of Finance, and Trade and Industry who are still working on the technical details regarding the correspondence on the mission status agreement between UNAMIR and Rwanda. We hope that they will finalize their work soon, and we apologize for this delay which is mainly due to the shortage in personnel, especially legal experts, which we are experiencing in the Government. Without anticipating the conclusions of the technical groups which are still pending, we foresee potential problems regarding the list of products that UNAMIR intends to import to the country [for the Commissary]. Although UNAMIR is regulated by the Vienna Convention and is, as such, entitled to run a commissary where duty-free items will be made available to its staff, the quantity of duty-free goods will have to be limited so that UNAMIR does not act as an importer or a concession holder, in which case customs duties would have to be levied.

Director:

You asked in your proposal [letter of 26 October 1994] whether the beneficiaries of the commissary, apart from UNAMIR staff, could be extended to include other diplomats and other persons. I think we must stay within the limits of the convention signed on 8 November 1993 and grant such privileges to UNAMIR personnel only. If UNAMIR's commissary were to act as some kind of sub-contractor,it would amount to a regular business. You will understand that our country cannot afford to extend diplomatic privileges and immunities to such a business. So we will have to work out the management arrangements for this commissary.

Legal Adviser:

We had lengthy meetings with the Director of Foreign Trade of the Ministry of Trade and Industry who came to see us and raised a number of issues, including that of beneficiaries. In our discussions we informed him that we are willing to amend some of our proposals after review of the Government of Rwanda's formal response embodying the issues he had raised, at which point we should sit down to discuss each item point by point at a joint meeting to finalize the proposal.

HC

We take good note of this proposal and will organize a meeting involving UNAMIR, the Ministries of Finance, Trade and Industry and Foreign Affairs as soon as we get the Ministries of Finance and Trade and Industry feedback on your proposal.

LA

I have a few additional points to raise:

1) The first one has to do with the exchange of letters on UNAMIR's status agreement. It is a mere formality but we insist on it as it was required by the Secretary General and the UN Legal Office in New York. Of course, the present agreement remains valid but this exchange is in light of the extension of UNAMIR's mandate. We first asked you for this exchange in a letter dated 5 October 1994 and have sent several reminders since then, but have received no formal response.

2) In the meantime, we would like you to issue instructions to Rwandan Government employees dealing with UNAMIR to make it clear that they should observe the privileges and immunities that UNAMIR and its staff are entitled to. We feel that this is necessary as we often have incidents occurring, e.g. at the airport with immigration officers (lengthy review of documents, body searches) and customs officers (when they try to levy tax on personal effects or even UNAMIR goods, such as fuel in a recent incident). Such instructions would certainly clarify our status with some of your people who may not be aware of our rights.

3) Similar briefings could also apply to the RPA. Indeed, at times we have incidents with RPA military in which we fear for our own security. There is a provision in the status agreement [paragraph 6] about the obligation of the host Government to provide security to UNAMIR staff. We understand if you are not in a position to provide such security and are not asking you to, but we should at least make sure that we do not feel threatened by your personnel. Problems arise mainly or probably because of lack of knowledge about our status. Therefore, instructions to clarify what our rights are may be appropriate.

4) When traffic accidents involving UNAMIR vehicles occur, our vehicles are systematically impounded until the results of the investigation become known and a fine is imposed on us. We are willing to cooperate in the investigation process and make amends for our mistakes, but it should be made clear that our vehicles are immune from such seizures.

HC's answer

1) As it has done in the past, the Government of Rwanda will spare no effort in cooperating with UNAMIR who have done so much for us. We will take action for the exchange of letters to take place soon.

2) We will also give instructions to our technical staff who work with UNAMIR for them to

be aware and respect UNAMIR's privileges and immunities. I have a suggestion to help get the message across to all the parties involved: as part of the meeting to be held between our three Ministries and yourselves, we could also include representatives from the Ministries of the Interior and Defence, so that all concerned know what procedures are applicable to UNAMIR. As far as problems such as the import of fuel, I suggest you turn directly to the Ministry of Foreign Affairs for us to take action immediately. This is what other diplomats and representatives of NGOs usually do whenever they have a problem. It will certainly save you time and a lot of hassle, as the Ministry of Foreign affairs is more familiar with where to turn to depending on the matter.

3) About security, I did receive several letters from you about incidents when your staff felt threatened, and each time, I reported them to the Ministry of Defense for appropriate action to be taken. Whenever you feel that RPA soldiers are ill-informed about your status, turn to us and we will intercede to prevent similar incidents being repeated in the future so UNAMIR personnel are able to do their work without being hassled.

4) About traffic accidents involving diplomats, investigation work is undertaken by the host country under the Vienna Convention. The gendarmerie will abide by international standards and do its work, i.e., write a report and let the vehicle go. Should your cars be seized again, get in touch with the Ministry of Foreign Affairs, but gendarmes are supposed to obey the rules and should not impound vehicles in the first place. We will make it clear to them. On your side, try to make sure that your staff abides by our traffic regulations.

Director:

To complement what was said by the Head of Cabinet:

1) about the exchange of letters, I would like to know if you have any problem in operating under the existing Agreement signed in 1993. If not, I think that the present Agreement remains applicable. It covers all your requirements and provides all the necessary guarantees as long as it has not been repealed. However, if you insist it is a necessary formality, there is no reason why we should not meet your request.

2,3,4) About difficulties in the field, be it at the airport, with the army or after traffic incidents, I would like to point out that your staff, in spite of international conventions granting them privileges and immunities, are not exempt from complying with our national law. I think some work could be done to promote an attitude in the minds of your personnel to stress that they are not above local law and that they are to display cooperative spirit and goodwill with local authorities. If this is not felt, some of our people may be frustrated, which in turn may lead to incidents. Of course, on our side, we must educate our people as well.

LA

Thank you for your comments. We welcome your eagerness to solve remaining problems. The exchange of letters is no more than a formality we are asking for as it originates from the

Secretary General himself. In the meantime of course, the existing agreement remains applicable and this is precisely the reason why we are now asking you questions about its implementation. You are right to point out that our personnel must also respect Rwandese laws. In fact, they are also required not to abuse their privileges and we take appropriate measures whenever some individuals act beyond what is permitted. We have, under the convention, obligations to assist you, and this is also the reason why we would like to participate in investigative work following traffic accidents [as required under paragraph 44 of the Status Agreement]. We are ready to assume our responsibilities, especially when our personnel are liable. About the fuel problem, it was brought to my attention only yesterday and I will get back to you after more careful review of the matter. I think it may be a good idea for us to have a specific point of contact at the Ministry of Foreign Affairs to relay such problems.
I now give the floor to my colleague from the military side who may have additional points to raise.

Major Oswald

Let me just raise two points which affect specifically the military:

1) Our movements throughout the country are sometimes restricted by the RPA, which is an obstacle to our peace-keeping here.

2) Related to the first issue, our soldiers are sometimes asked by RPA authorities to surrender their IDs which is a problem as it is our only means of identification in this country.

HC

I take note of the points raised by both of you. May I suggest that each of you write us a note listing all these points, so that we can forward it to the relevant bodies. Let me stress again that the Ministry of Foreign Affairs is your privileged point of contact and that we are your best advocate to defend your rights, as we are better informed than technical departments about the content of conventions. Your specific point of contact here will be Ambassador INSONERE (Director-General, telephone 77652).

Thank you for a very useful meeting.

LA

Will it be all right if we prepare a note for the file on this meeting, with a copy to you, that will serve as a point of reference for follow-up action?

So Agreed

Distribution:

UNAMIR: SRSG
FC
ED
DFC
OIC/Admin.
All Section Heads

Government: Head of Cabinet, Ministry of Foreign Affairs
Director General, Ministry of Foreign Affairs
Other Ministries (distribution by Ministry of Foreign Affairs)

UNITED NATIONS
ASSISTANCE MISSION FOR RWANDA

UNAMIR-MINUAR

NATIONS UNIES
MISSION POUR L'ASSISTANCE AU RWANDA

DATE: 19 April 1995
REF: OSRSG/LA/001/95

Your Excellency,

1. I have the honour to refer to the Agreement signed on 5 November 1993 between the United Nations and Rwanda on the Status of the United Nations Assistance Mission for Rwanda (UNAMIR), and likewise to the Convention on the Privileges and Immunities of the United Nations adopted on 13 February 1946, to which the Agreement refers and to which Rwanda is a party. It may be recalled that the Agreement of 5 November 1993 was approved by the Rwandese Patriotic Front (RPF). At ..... Annex A are photocopies of relevant letters exchanged between the UN and RPF at that time.

2. I regret to bring to your attention a pattern of violations of various provisions of the said ..... Convention and Agreement. A sample of these violations is attached at Annex B as they are too numerous to list exhaustively. The violations extend to other United Nations subsidiary organs and their personnel in Rwanda, who are entitled to similar protections under the Convention and related Agreements and, in addition, to the provision of security protection by UNAMIR as required under Security Council resolutions.

3. To the extent that the incidents of violations also impede the exercise of UNAMIR's functions in the provision of security protection to other agencies of the United Nations, the incidents also contravene relevant provisions of the Security Council resolutions requiring the cooperation of Rwanda in the implementation of the mandates of UNAMIR and other United Nations agencies, in particular, paragraph 4 of Security Council resolution 965 of 30 November 1994.

4. I would also like to draw your kind attention to the correspondence and Notes Verbale previously filed by UNAMIR with your Ministry protesting against such violations and requesting corrective action by your Government; in particular, my letter of 11 October 1994 on the forcible

Dr. Anastase Gasana
Minister of Foreign Affairs & Cooperation
Kigali

entry into UNAMIR premises by RPA personnel to arrest a local staff member of UNAMIR, and my Notes Verbale SRSG/NV/60/94 of 6 December 1994, SRSG/NV/13/95 of 2 February 1995 and SRSG/NV/19/95 of 10 February 1995. In the single instance in which we had a response from your Ministry, as contained in your letter No. 128/03.00/CAB/PROTETAT of 2 February 1995 requesting personnel of your Government **"to respect the commitments made by Rwanda to the UNAMIR Statute"**, that request was not complied with.

5. Thus, instead of a cessation of such violations, that we were entitled to expect as a result of our representations, there has been an escalation in recent months. The following is a sample of incidents constituting such violations, details of which are contained in Annex B:

5.1 Searches of UNAMIR, its personnel, and other United Nations property including vehicles, aircraft, official documents and personal belongings, in violation of sections 3 and 22 of the Convention and paragraphs 3, 4, 15 and 26 of the Agreement.

5.2 Impounding or detention of UNAMIR imports and supplies in attempts to charge customs and other duties, or for other unknown reasons, in violation of sections 3 and 7 of the Convention and paragraph 15 of the Agreement.

5.3 Movement restrictions on UNAMIR and other United Nations personnel and denial of access at RPA checkpoints, including long delays sometimes accompanied by open hostility and threats. These incidents not only violate the freedom of movement provided for under paragraph 12 of the Agreement and required by paragraph 4 of Security Council resolution 965 (1994); they also violate the obligation of the Government of Rwanda to ensure the security and safety of UNAMIR personnel, as required by paragraph 6 of the Agreement.

5.4 Ejection of UNAMIR from Government-owned or Government-controlled premises at short notice or by ultimatum, and refusal to allow access to property (village Urugwiro) under lease to UNAMIR.

5.5 Imposition of passport requirements on UNAMIR military personnel from participating States, in violation of paragraphs 33 and 34 of the Agreement which state, inter alia, that "the

Special Representative and members of UNAMIR shall be exempt from passport and visa regulations and immigration inspection and restrictions on entering into or departing from Rwanda." In the most serious and most recent case, Nigerian troops who arrived on 3 April 1995 were repatriated on 4 April 1995 at the behest of the Rwandese Ministry of Defence.

5.6 Seizure and impoundment of UNAMIR and other United Nations vehicles following traffic accidents, in violation of section 3 of the Convention and paragraph 3 of the Agreement.

5.7 Arrests, detention and harassment of local staff of UNAMIR and other United Nations agencies without ready explanation. Several representations, and many visits by United Nations officials, have previously been made to your Government on this issue.

5.8 Harassment and intimidation of Rwandese nationals who approach UNAMIR with information or for protection and of those approached by UNAMIR and other agencies for information in the implementation of their mandates.

6. Your Excellency would agree with me that these incidents constitute violations of the relevant provisions of the Convention and Agreement referred to, and undermine the effective discharge of the mandates of UNAMIR and other United Nations agencies in Rwanda.

7. May I respectfully request the Government of Rwanda to kindly take urgent steps to ensure the cessation of such violations, and the scrupulous observance, henceforth, of the international obligations of Rwanda under the Convention and Agreement cited above. May I, in this connection, draw the attention of your Government to paragraph 56 of the said Agreement, which states:

> *"56. Wherever the present Agreement refers to the privileges, immunities and rights of UNAMIR and to the facilities provided to UNAMIR, the Government shall have the*

ultimate responsibility for the implementation and fulfilment of such privileges, immunities, rights and facilities by the appropriate local Rwandese authorities".

8. Please accept, Excellency, the assurances of my highest consideration.

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

cc: **H.E. The President of Rwanda**
H.E. The Prime Minister
H.E. The Minister of Defence
USG/DPKO, New York
USG/OLA, New York

CRN111-04 ///
LINAMIR ANNEX "A"
AA28.22.1

CNR 092 P3/3

UNITED NATIONS NATIONS UNIES

POSTAL ADDRESS—ADRESSE POSTALE: UNITED NATIONS, N.Y. 10017
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE: UNATIONS NEWYORK

REFERENCE:

La 11 novembre 1993

Monsieur le Président,

J'ai l'honneur de me référer à la résolution 872 (1993) du 5 octobre 1993, par laquelle le Conseil de sécurité a décidé de créer sous son autorité la Mission des Nations Unies pour l'assistance au Rwanda (ci-après désignée sous le nom de "MINUAR"). Dans cette résolution, le Conseil a notamment demandé que les parties, c'est-à-dire le Gouvernement de la République rwandaise et le Front patriotique rwandais, prennent toutes les mesures voulues pour garantir la sécurité de la MINUAR et du personnel qui y participe.

Afin que la MINUAR puisse mener comme il convient les activités s'inscrivant dans le cadre du mandat qui lui a été assigné par la résolution 872 (1993), la Mission et son personnel jouiront des privilèges et immunités ainsi que des droits et facilités nécessaires, conformément au droit international et aux principes et pratiques ayant jusqu'à présent régi les opérations de maintien de la paix des Nations Unies. Les privilèges et immunités et les droits et facilités visés sont ceux que prévoit l'Accord sur le statut de la MINUAR et de son personnel. Un exemplaire de cet Accord, qui a été conclu à New York le 5 novembre 1993, vous est adressé ci-joint.

Le texte de l'Accord est porté à votre attention afin que le Front patriotique rwandais puisse pleinement coopérer à la mise en oeuvre des dispositions pertinentes qu'il contient. Je vous serais donc très obligé de bien vouloir accuser réception de cette lettre.

Veuillez agréer, Monsieur le Président, les assurances de ma très haute considération.

S. Iqbal Riza
Sous-Secrétaire Général aux
Opérations de Maintien de la Paix

Son Excellence
Le Colonel Alexis Kanyarengwe
Président du Front Patriotique Rwandais

RECEIVED
OASG/DPKO
ACTION:
INFO:
DEC 1 1993

CNR 092 P2/3

FRONT PATRIOTIQUE RWANDAIS
RWANDESE PATRIOTIC FRONT

Avenue de l'Observatoire, 3ème 8
1180 Bruxelles, BELGIQUE
Tél. 32-2-374-8898
Fax 32-2-374-4484

Mulindi, 21 novembre 1993

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

Monsieur le Sous-Secrétaire Général,

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

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

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

Col. Alexis KANYARENGWE
PRESIDENT DU FRONT PATRIOTIQUE RWANDAIS

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

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

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

5.2 **Detention of UNAMIR imports and supplies**

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

5.3 **Movement restrictions**

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

More-recent documented cases of such restrictions include: restrictions at Gashora checkpoint (9 February 1995), restrictions reported by Ghanbatt (21 February 1995), MILOBs (9 and 28 February 1995, two incidents on 2 March 1995, 10, 23 and 25 March 1995), Malawi Coy (6 March 1995), AUSMED (23 March 1995), Tunbatt (2 February and 6 March 1995), Human Rights Operations (26 February 1995, 8 March 1995, 18 March 1995), the holding-up at Rusizi-2 border post of 23 trucks carrying relief supplies, with the risk of looting, reported on 4 April 1995 by UNAMIR forces providing convoy security; and restrictions on UNAMIR patrols at Ruhengeri (4 April 1995) among numerous others.

5.4 **Ejection from premises**

We note here that the Government's obligation to provide UNAMIR with premises for operational, administrative and accommodation purposes, as required under paragraph 16 of the Agreement, is not an absolute obligation. It is understandable that with the gradual return of normalcy, the Government would require UNAMIR to relinquish certain premises to permit their normal use. However, in such instances we should not be ejected forcibly (as occurred with respect to CIVPOL headquarters in September 1994) or by ultimatum (as occurred with respect to warehouse premises at Kigali airport in October 1994), or without the offer of alternative accommodation (as is the case with regard to

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

5.5 **Passport restrictions (see letter)**

5.6 **Seizure/Impoundment of UNAMIR vehicles**

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

5.7 **Arrests/detention of local staff**

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

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

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

UNITED NATIONS
INTEROFFICE MEMORANDUM

UNAMIR-MINUAR

NATIONS UNIES
MEMORANDUM INTERIEUR

TO: **Mr. Kel Gleeson**
Chief, MCC

DATE: 18 April 1995
REF: OSRSG/LA/001/95

FROM: **I. Minta**
Legal Adviser/OSRSG

SUBJECT: **Introduction of Airport Departure Tax**

Your memo to the Chief Protocol Officer on the above subject has been referred to me, with the attached Legal Assessment addressed "To Whom It May Concern".

I think it is important that all relevant provisions of the SOMA be taken into account in this and any other matter. In particular, paragraphs 14 and 29 contain language relevant to the issue. They read as follows:

> *"14. UNAMIR may use roads, bridges, canals and other waters, port facilities and airfields without the payment of dues, tolls or charges, including wharfage charges. However, UNAMIR will not claim exemption from charges which are in fact charges for services rendered. [Emphasis added]*
>
> *"29. Members of UNAMIR shall be exempt from taxation on the pay and emoluments received from the United Nations or from a participating State and any income received from outside Rwanda. They shall also be exempt from all direct taxes, except municipal rates for services enjoyed, and from all registration fees and charges [Emphasis added]*

It is therefore necessary to ascertain exactly what tax or duty is being charged in this or any other instance, in order to decide whether it is a contravention of the SOMA. I do not think the provisions on freedom of movement, passport and visa requirements, provide a conclusive answer on the question of tax exemptions.

Besides all that, there are a number of provisions in the SOMA that require administrative arrangements to be made with the Government in order to ensure or facilitate the observance of relevant privileges and

immunities. The last time we were asked to assist with problems related to the rotation of troops (the case of the Senegalese in February), I think we made the point that formal procedures need to be established with the Government to regularize the handling of the personnel involved, to avoid having to deal with problems on an ad hoc basis. I believe such procedures should include agreeing with the airport and other authorities on the tax exemptions that should be observed.

I also believe that these arrangements are the responsibility of the Administration, mainly because they are better informed as to when troops are being moved and in what numbers, etc. Actually, it was suggested to us at the time of the Senegalese case that we should leave such matters to the Administration. However, I am willing to participate in any relevant negotiations, if required.

cc: FC
Chief Protocol Officer, OSRSG
OIC/Administration

UNITED NATIONS
ASSISTANCE MISSION FOR RWANDA

NATIONS UNIES
MISSION POUR L'ASSISTANCE AU RWANDA

UNAMIR - MINUAR

DATE: 15 April 1995
REF: MCC/AIR/474

TO: Chief Protocol Officer
Office of the SRSG

FROM: Kel Gleeson
Chief of the MCC

SUBJECT: **INTRODUCTION OF AIRPORT DEPARTURE TAX**

1. On 13 April 95 the MCC was advised by the Kigali International Airport that with immediate effect it was introducing a new airport departure tax on UNAMIR contingent soldiers. This tax is already being paid by civilian international staff departing through the airport.

2. The above events were advised to the Legal Officer of the Division Of Administration who prepared a submission for the Airport Commandant. This outlined the position of UNAMIR, advising that the imposition of the tax was not in accordance with the conventions of the SOMA that the government had agreed with. This was presented to the Airport Commandant who stated that the SOMA did not prevent him from applying the tax to UNAMIR contingent soldiers.

3. Unfortunately UNAMIR has a rotation pending over the weekend 17/18 April it is believed that it will be difficult to resolve the issue over this period. Accordingly the MCC has made arrangements to pay the tax for the current rotation.

4. Nevertheless, your support in bring to the attention of the government that the airport has introduced this tax in contravention of the SOMA would be appreciated. Until then the military will be asked to cover the $20 tax until some financial arrangement is made or the tax is withdrawn by the airport.

Enclosure:
1. Legal Assessment

c.c.
Office of the Force Commander
OIC-Administration

TO WHOM IT MAY CONCERN

The unilateral imposition of a **departure fee of US$20.00** on departing UNAMIR military personnel is **not warranted under the Status of Mission Agreement** ("SOMA") between UNAMIR and the Rwanda Government.

The following provisions of the SOMA govern:

Section 12. "UNAMIR and its members shall enjoy, together with its vehicles, vessels, aircraft and equipment, freedom of movement throughout the territory. That freedom shall, with respect to large movements of personnel . . . through airports . . . be coordinated with the Government"

Section 27. "Military personnel of national contingents assigned to the military component of UNAMIR shall have the privileges and immunities specifically provided for in the present Agreement."

Section 33. "The Government undertakes to facilitate the entry into and departure from Rwanda of the Special Representative and members of UNAMIR . . . . [T]he Special Representative and members of UNAMIR shall be exempt from passport and visa restrictions and immigration inspection and restrictions on entering into or departing from Rwanda."

Section 34. "For the purpose of such entry of departure, members of UNAMIR shall only be required to have: (a) an individual or collective movement order . . . and (b) a personal identity card . . . ."

APPLICATION

Section 34 of the SOMA indicates that the **only** requirement for departure of members of UNAMIR shall be a movement order and proper identity cards. Were payment of a departure tax contemplated by the SOMA, it would not be excluded from Section 34.

Moreover, Section 33 states that the Government of Rwanda shall facilitate the departure of members of UNAMIR, **without restriction**. A departure fee constitutes a restriction inasmuch as without it, the Government is claiming that movement out of the country will be restrained.

cf, paras 14 & 29

Section 12 indicates that any measures that involve such movement of UNAMIR personnel shall be **coordinated with the Government**. Accordingly, an the Government's unilateral imposition of unanticipated restriction is beyond the provisions of the SOMA.

Finally, Section 27 states that military personnel of national contingents enjoy the privileges and immunities specifically provided for in Sections 34, 12 and 33.

SUMMATION

Given the cumulative authority contained in Sections 12, 27, 33 and 34, namely that where the restriction on arrival and departure are enumerated and don't include a departure fee, whereas the Government of Rwanda is obliged to facilitate movement of UNAMIR personnel without restriction, whereas any other measure undertaken in this regard must be coordinated between UNAMIR and the Government and not undertaken unilaterally by either party, and whereas all of these provisions apply to UNAMIR military, the unilateral imposition of a departure tax is in contravention of the SOMA.

Please be guided accordingly.

14 April 1995

Mission file

UNITED NATIONS
ASSISTANCE MISSION IN RWANDA

NATIONS UNIES
MISSION POUR L'ASSISTANCE AU RWANDA

UNAMIR - MINUAR

To: All UNAMIR Civilian & Military personnel
B&R
UNDP, UNHCR, UNHRFO, UNREO (With a request to inform all NGOs and UN Agencies)

From: SRSG

Date: 11 Apr 95

Subject: SEARCHING OF UNAMIR VEHICLES BY RPA

---

1. Under SOMA, all UNAMIR vehicles are exempted from being searched by RPA, or any security agencies of the Rwandese government. In practice, this is manifested in another manner through varying interpretations by the parties involved. Rwandan officials interpret the SOMA to read that they have the right to search the personal luggage of members of UNAMIR. UNAMIR's interpretation is that personal property of the members of UNAMIR "*...required by them by reason of their presence in Rwanda with UNAMIR*" is immune to search.

2. In a joint UNAMIR/RPA meeting, it was agreed that searches of vehicles could only be conducted under very exceptional circumstances, which may involve the following:

a. Transportation of unauthorised (non-UN) personnel.

b. Transportation of unauthorised equipment or stores.

c. Personnel in the vehicle have been observed committing a crime.

3. As a result of the modified interpretation by the RPA, these searches have nearly become a routine exercise in many areas of Rwanda. Therefore, it is clear that the original understanding of para 2 has been misused. We are actively discussing a more reasonable approach. For the interim all personnel are cautioned to use restraint and diplomacy in these demands for searches. Requesting Milob or formed troop assistance for negotiation and not proceeding through the check point are possible alternative options to allowing the search to take place. All should be reminded that these searches are not worthy of escalation in the use of force resulting in increased tension or injury.

4. When assisting other personnel or agencies such as UNHCR and UNHRFO, Milobs and formed troops should remember it is the responsibility of the various agencies to determine whether or not to subject themselves to searches and under which parameters those searches can or can not be conducted.

5. UNREO's security plan directs its personnel to indicate that their vehicle is owned by the United Nations, is on official business and that they are protected from searches by formal agreement with the government. They are further directed, if the request for search persists, to permit the search but indicate that a report will be filed and forwarded to the host government's Ministry of Foreign Affairs.

6. UNHCR's and UNHRFOR's personnel have been directed by similar guidelines but are more concerned with the search of pouches. Their personnel have been directed to allow the search of pouches if demands persist but to indicate that documentation in pouches is not to be read.

7. Until an agreed policy is reached with the RPA please ensure these guidelines are followed.

UNITED NATIONS
INTEROFFICE MEMORANDUM

UNAMIR-MINUAR

NATIONS UNIES
MEMORANDUM INTERIEUR

TO: **FC**
OIC/Administration
CIVPOL Commissioner

DATE: 10 April 1995

FROM: **A.H. Kabia** for
Executive Director

SUBJECT: **SOMA Violations**

.....

I will be grateful to receive your comments on the attached draft letter to the Government, as soon as possible, before we finalize it for submission.

Although the letter is not intended to be an exhaustive catalogue of incidents, I will be grateful if you bring to my attention any particularly serious incidents that should be included (with details as to time, place, and persons involved), and any corrections on any of the incidents listed.

Thank you.

cc: **SRSG**

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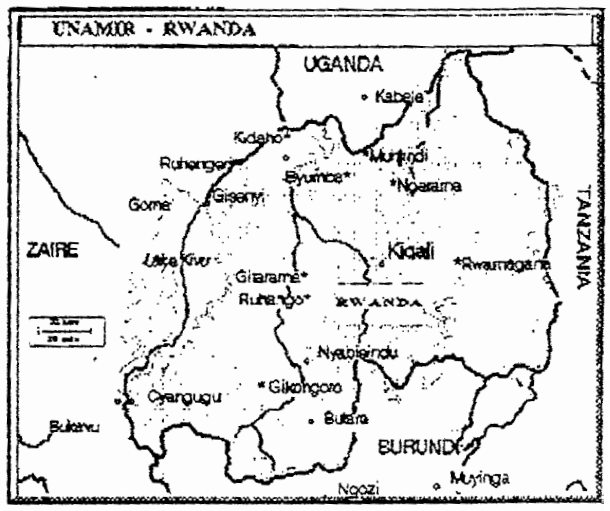
DPKO SITUATION CENTRE REPORT
UNAMIR - RWANDA
Time: 0800 Hours NYT 15 March 1995

HIGHLIGHTS

- The SRSG met with the Rwandan President.
- The Burundi President asked for international support.

POLITICAL

On 13 March, the SRSG accompanied by the Force Commander and Executive Director, held a meeting with President Bizimungo. The SRSG expressed his concern that recent attitudes from government elements at the middle and lower level reflected an unfriendly even hostile stance towards the UN, the Agencies and the international community. This was not in consonance with the positive attitude of the leadership. The President gave the assurance that the Rwanda Government remained appreciative and co-operative with UNAMIR. As for UN rights and privileges, he said that there was no direction from the government and some headstrong officials may have taken the initiative into their own hands. He requested his "Chef de Cabinet," Emmanuel Gasana, to look into the case of the Mission Status Agreement.



On 14 March, the SRSG and Force Commander visited the Rwandan Vice President and Minister of Defence. The overall security situation in the country was discussed.

BURUNDI: On 14 March, Burundi's President asked the international community to help his impoverished country avert the genocide that ravaged neighbouring Rwanda. His call for help was immediately supported by Belgium, which appealed to the world to devote more attention to the tiny central African state. (REUTER)

MILITARY

On 14 March, a RPA soldier sought protection at the UNAMIR headquarters. He claimed that his fellow soldiers have threatened to kill him for not complying with orders to kill a Hutu relative. In Sector 4C, MILOBS confirmed the shooting on 24 February near the orphanage in KAMEMBE, which resulted in the death of 12 people from NKOMBO ISLAND. The RPA had earlier denied any engagement The military situation was reported to be stable, but still tense.

HUMANITARIAN

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In Sector 6, the Indian battalion clinic which used to provide primary health care to the local population, was closed to locals by order from the Ministry of Health. The battalion was protesting against this decision.

UN RESTRICTED
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Mission Status file

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

UNAMIR - MINUAR

INTER-OFFICE MEMORANDUM

DATE: 4 April 1995
REF: COMMS/4.2

To: Ambassador Shaharyar Khan
SRSG

From: Ally H. Golo
OIC, Administration

This must be made one of key prime subjects of discussion. We spoke Sch

Subject: Confiscation of Communications Equipment by Rwandese Authorities

ED/CMO

Further to our memorandum of 17 March 1995 on the above captioned subject, we once more bring to your attention the non-receipt of communications equipment which has not been released to date by the Rwandese Customs Authorities at the Kigali Airport.

I submit herewith for your information a list of items which have been impounded:

1. 17 boxes containing VHF Communications equipment shipped from the USA.

2. 1 crate containing essential equipment for the VSAT Satellite Network shipped from UNOSOM Nairobi.

3. 1 box containing LM Ericsson PABX spare parts shipped from LN Ericsson Saudi Arabia.

4. 1 box of VSAT Satellite equipment sent by DHL to Kigali from SSE Telecommunications. **Please note that the SSE Engineer is standing by in Nairobi since 2 April 1995 awaiting the clearance of this equipment to effect essential repairs to the VSAT Satellite Terminals operating in Rwanda. While he waits, we are charged waiting time expenses.**

5. Panasonic PABXs and associated equipment. **This equipment is required to commence the telephone installations at the Trafipro Complex.**

Needless to say, non-receipt of the above equipment seriously affects essential operations of the various communications systems and we are now in danger of being unable to repair and maintain vital communications links. It is a matter of concern that if this matter is not addressed immediately, there will be a complete breakdown of the existing communications network with resultant repercussions on the safety and security of UNAMIR personnel deployed in the field. Your urgent intervention with the Rwandan Government is therefore requested to negotiate the release of this impounded equipment.

cc: MGen Tousignant, Force Commander
Mr. Abdul Hamid Kabia, Executive Director
Mr. Peter Hornsby, CISS

Mission Status file

MESSAGE

MR. KABIA

MR. DESSANDE

THE MILITARY HAS ASKED FOR OUR HELP IN SECURING THE PASSAGE OF 44 NIGERIAN TROOPS WHO HAVE BEEN HELD AT THE AIRPORT SINCE LAST NIGHT (ARRIVAL AT 10 PM) BECAUSE OF LACK OF PASSPORTS.

THE AUTHORITIES AT THE AIRPORT REFUSE THEM ENTRY.

ISEL RIVERO
825 AM
4 APRIL 1995

I tried you at the house but there was no answer. —

* Discussed with Chief of Staff, Col Kuhnau, by phone. Agrees that no useful purpose will be served by arguing the point at air port level, especially after Senegal. To let matters take their own course.

Perhaps, could take things up at Govt level. But there we are at handicap too in view of the Senegalese case.

Recs to NY after Senegal not followed here. This perhaps the Nigerians' thinking.

Isel 4 April 95

Mission Staffs file

UNITED NATIONS NATIONS UNIES

ASSISTANCE MISSION FOR RWANDA MISSION POUR L'ASSISTANCE AU RWANDA

UNAMIR - MINUAR

INTEROFFICE MEMORANDUM
MEMORANDUM INTERIEUR

1 April 1995

TO : Mr. Shaharyar M. Khan
SRSG, UNAMIR

FROM : Ally H. Golo
OIC Administration

SUBJECT: UNAMIR SOMA

1. In response to your 830 of 13 March 1995, the following issues and incidents have taken place which are cause for a great deal of concern on the part of UNAMIR.

2. In the area of provision of premises, UNAMIR has already been required to quit the Stadium, a facility where a number of troops were quartered. We are now being told to leave a portion of the Military Academy which will involve us needing to find space for some 150 troops of the Indian Engineer Company. One of the reasons given for this is the stated intention to re-commence training at that facility. WE have attempted to re-claim a building in Gizenyi earlier assigned to MOLPOC, part of an ECA facility but to no avail. In the case of other facilities, these are primarily in the nature of schools and church facilities where the legitimate stated desire is to return these facilities to service. We continue to experience problems with the identification of land to support installation of pre-fab structures. This is particularly true in the case of Kigali where we need to build a prefab "village" simply to handle our own accommodation requirements.

We continue to have a problem with the "Urugwiro Village". This is a government-owned hotel facility for which we signed a

2/.....

lease with effect 1 December 1994. To this point, we are still refused access to this facility. No money has yet been paid, however, this is still a badly needed facility for accommodation purposes.

In the particular case of the "UNICEF" building, this facility is owned by an individual who is now PNG. We have indicated that there may be a possibility to pay any rentals into an escrow account, however, we are now being told to pay rent directly to the RPA, or to leave the building.

Following the war, the CivPol HQ moved back into a facility which had been occupied by UNAMIR prior to the war. Shortly after moving back in, the occupants were forcibly evicted and the building taken over by the RPA. All UNAMIR equipment was recovered, but only on a very confrontational basis.

3. We are currently experiencing problems with customs and our major contractors. The Government are insisting that all our contractors, whose sole purpose in Rwanda is to provide support to UNAMIR, one: register within the country and two: pay duty on all the equipment they have brought in to support their work under the contract with the UN. We are also having difficulty with the clearance of materiel brought in by these contractors for the support of UNAMIR. Notwithstanding our documentary indication that this materiel is for UNAMIR support, customs are blocking the release. In the area of support equipment, customs initially impounded two light administrative vehicles used by Economat, the rations contractor and indicated additional equipment (forklifts, computers) might also be impounded if duty was not paid. We realize this is perhaps a "grey" area, however, it is understood to be common practise with all other missions that this equipment is not taxed. It is brought in to the mission area with the clear understanding that it is for use in support of the mission and will be re-exported once the contract on the mission terminates. We have also two containers of foodstuffs and other items imported by MGT/CSL, the catering contractor, being held even after all necessary documentation has been presented. The problem extends to BRSC, even after it has been explained that equipment used under

3/.....

this contract is UN-owned, we have still had incidents where threats have been received to impound vehicles in use by BRSC which are in fact UNAMIR contracted or owned vehicles.

4. Other problems, peripherally related to customs, concern a hold which has been placed on the importation of communications equipment into Rwanda. We are continuing attempts to have this equipment released. We have also requested the necessary authorizing signatures for the operation of our VSAT and Intelsat communications equipment but have not yet received the documentation, despite continued approaches in this area. Notwithstanding the convention, amplified by the SOFA which provides that UNAMIR may instal necessary communications links, we continue to be frustrated in our attempts to complete the necessary licensing and administrative details necessary to become fully operational.

5. On the matter of harassment, we have experienced a number of individual incidents, and are experiencing some areas where this is continuous. We have had a number of our local staff employees, and those of other UN agencies and our contractors, arrested by the RPA. We have considerable difficulty ascertaining the whereabouts of these individuals and then gaining access to them to follow-up on each situation. In one instance, RPA troops entered the premises of UNAMIR HQ and arrested a local staff member on-site. A strong protest was lodged at the time and, while there have been no more instances of arrests on UN premises, we still continue to experience cases of sudden arrests.

A number of expatriate staff of BRSC, the service contractor, have experienced threats against their lives. In one instance, a BRSC employee resident at a local hotel was told to either leave the country, or be killed. He left the next day. In a further incident, the BRSC staff member operating the fuel point was threatened when he, correctly, refused to refuel an RPA vehicle. This member also departed the next day after he received threats against his life. We have received a legal opinion from OLA to the effect that contractor employees have no protection under the Convention and the SOFA, a matter which is of concern not just to

4/.....

the contractors, but also to us as the users of these contracts. Interestingly, in the case of the crews of aircraft chartered on a long term basis, the provisions shown at the most recent draft of the Field Administrative Manual (FAM) give these individuals the status of "Experts on Mission", and extend them the privileges afforded these status.

A potentially very serious incident recently occured between the troops of the Australian Contingent and the RPA. We have good reason to believe this particular incident was orchestrated as there tends to be little love lost between these two. Before it was resolved, we had the situation of troops facing one another over loaded and cocked weapons.

International staff members have also experienced individual acts of both harassment and outright banditry. Early on in the mission, some staff were followed home where an attempt was made to steal the UN vehicle assigned to them. The attempt was thwarted, but not until individuals were physically assaulted. Another more recent situation, saw the house of a staff member entered by force and the entire contents stolen while a gun was held to the head of the staff member. The most disquieting aspects of both these incidents was that either all or some of the assailants were in uniform.

Vehicles have been stolen from members of UNAMIR, in some cases from parking spots at residences and in one case, at gunpoint on the road. The victim in the latter case was a CivPol.

6. A matter of continuing concern is that of the increasingly more hostile approach taken by the troops manning the RPA checkpoints around the country, particularly on the route from Kigali to Gizenyi. While in most cases, vehicles operated by the military and CivPol are allowed free passage, international civilians are stopped, ordered from the vehicle which is then searched. In a recent incident, the troops insisted to also search the staff members computer case and briefcase and demanded to read UN documents. This was refused and the staff member was consequently held until UNAMIR MP assistance arrived.

5/.....

This would appear to be an infringement on the right of freedom of movement provided under the SOFA and Article II, Section III of the Convention would appear to make it absolutely clear that this should not happen. The blanket application in this area can only be perceived as harassment. There can be no objection to stopping at a checkpoint, providing identification and having the vehicle number registered but this should not go beyond that extent.

7. At the earlier stages of the mission, UNAMIR rented a barge from an individual in Goma, Zaire, to resupply the troops located in Kibuye. The existing roads to Kibuye are bad, we do not have the helicopter assets to provide support by air and the barge was a very effective method. Initial concerns were that UNAMIR was allowing the wrong people to travel on this barge, to counter which, we offered to allow RPA troops to accompany each shipment. Notwithstanding this, we have been refused the right to charter this vessel.

8. Part of the mandate requires that UNAMIR patrol the borders, including the area of Lake Kivu, to observe and report on traffic. UNAMIR originally established a helicopter in Kibuye, equipped with radar, to accomplish this. We have also received a small number of inflatable boats to allow surface patrolling. We have been refused the ability to operate either the helicopter, or the boats.

9. You are aware also of the current prohibition on the operation of the tracked APCs provided to Tunbatt and Ghanbatt.

The foregoing outlines some examples for where we interpret these to be problems with the application of the SOMA in Rwanda. Of particular concern are those problems with customs, communications and the infringements on freedom of movement.

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

INTEROFFICE MEMORANDUM

TO: Ambassador Shaharyar M. Khan
SRSG

FROM: Ladan M. Rafii DATE: 27 March 1995
Political/Legal Officer

SUBJECT: Searches of U.N. personnel at Kigali Airport

I would like to take this opportunity to clarify certain matters regarding the search of personal property belonging to U.N. personnel conducted by Government officials at Kigali Airport, particularly with regard to customs clearance.

First and foremost, it should be noted that personal belongings, unlike official U.N. documents and property, are not granted immunity from search unless they constitute the personal property of certain categories of individuals. The following are immune from search with regard to their personal belongings:

- the Special Representative, the Force Commander and the Police Commissioner of CIVPOL
- MILOBS and CIVPOL personnel (in their capacity as U.N. experts on mission)
- other high-ranking members of the SRSG's staff as may be agreed upon with the Government

Other U.N. officials and members of UNAMIR (excluding locally-recruited staff) have the right to duty-free importation of personal effects at the time of their initial arrival in the country. However, under the provisions of UNAMIR's Status of Mission Agreement:

> **Members of UNAMIR...shall be subject to the laws and regulations of Rwanda governing customs and foreign exchange with respect to personal property not required by them by reason of their presence in Rwanda with UNAMIR.**

Clearly, this implies that airport officials are at liberty to apply domestic Rwandese law with regard to searches of personal luggage belonging to most U.N. staff arriving or leaving the airport. However, what is noticeable from my personal observations and experience, as well as that of other colleagues, is that airport officials are applying their regulations with a vengeance when it involves U.N., and especially UNAMIR, personnel, regardless of the category of people with whom they are dealing.

Despite the fact that our own U.N. personnel may be harbouring certain misconceptions with regard to their own immunity from search and seizure, Government officials should be reminded that official U.N. property, assets and documents, as well as the personal property of the above-listed categories of individuals, should not be subjected to searches at Kigali Airport.

cc: FC
ED
CSO
LA

Mission file

UNITED NATIONS ASSISTANCE MISSION IN RWANDA / NATIONS UNIES MISSION POUR L'ASSISTANCE AU RWANDA

UNAMIR - MINUAR

To: COS

Info: MA/FC
DCOS Sp
CO UNAMIR MP Coy (please note the requirement at paragraphs 12 and 13 and expedite investigation of 743's accident.)
C BOI Unit
C Claims
[redacted] (Mr Minta, to await his return from leave.)

From: Force PM

Date: 26 Mar 95

Subject: IMPOUNDED UNAMIR VEHICLES

1. You are aware that I have become involved in the recovery of vehicles impounded by the RPA and/or Gendarmerie (my personal tally, to date, is 14), that some stagnation has developed recently and that some impounded vehicles have been so for quite a while. Currently, I am aware that the following UNAMIR vehicles are impounded:

Vehicle	Allocated user	Gendarmerie	Date and cause of impoundment
4835, Mazda 3-ton truck.	INDBATT	Gikondo (Kigali)	2 Feb 95, minor collision near UNAMIR fuel station. UNAMIR driver at fault.
730, Toyota pickup	CSO's staff	Gikondo (Kigali)	2 Feb 95, skidded at an RPA checkpoint and struck another vehicle. UNAMIR driver at fault.
4900, Dumper	Engr Coy	Gikondo (Kigali)	11 Mar 95, struck as it pulled out to avoid a pothole by an RPA vehicle in an overtaking manoeuvre in which it passed 2 vehicles. Has been the subject of much discussion with Gendarmerie Headquarters.

743. Toyota pickup	On loan to ZAMBATT to support the Gikongoro Prosecutor's Op HOPE investigations	Gikongoro	Feb 95, after a collision with a similar RPA vehicle. It is alleged by the Gendarmerie that the UNAMIR driver was drunk but MPs were not informed of the accident until days later. Investigation continues but, so far, inconclusive.

AIM

2. The purpose of this minute is to outline the processes involved in the impounding and release of vehicles by the Gendarmerie, and to make recommendations.

BACKGROUND

3. Soon after I arrived in UNAMIR, as an extension of MP duties towards traffic discipline, I was asked to liaise with the Gendarmerie over the recovery of the INDBATT vehicle that had inadvertently broken into General Kagame's cavalcade and had been impounded in mid-December. In this process, I was made aware by the Head of Operations and Training at Gendarmerie Headquarters (Lt Col Patrick Nyamvumba, the hard-liner now commanding Alpha Mobile 2 in Gikongoro) that "UNAMIR had so many vehicles that it didn't care about them". When I challenged this notion, I was told of one that had been impounded at Muhima Gendarmerie for six weeks without any attempt on our part to get it back. It transpired that this vehicle was one of the UN HRFOR fleet and had struck an RPA vehicle in November - whilst its driver was drunk. It was not the only UN vehicle at Muhima, however; I found, also, a Land Cruiser of 3 CSG and a UNHCR 50-seat bus.

* not correct (see letter to reinf. Defence)

4. In the absence of anyone else doing this work (perhaps the CLO's office should have been doing it but he showed no inclination to participate fully), it seemed proper for me to get involved, therefore, because:

a. UNAMIR was desperately short of vehicles (with a strength of over 40 at that stage, for example, the MP Company had only 3 vehicles) and could not afford to have too many standing idle.

b. It created a poor and uncaring image in the eyes of Rwandans.

c. MPs are routinely called to liaise with the Gendarmerie and they, in turn for reasons explained below, were receiving complaints about UNAMIR's failure to make amends for accidents of its causing.

Aside from these reasons, someone had to demonstrate that we did not want to allow the Status of Mission Agreement to lapse.

5. Although I have not been able to obtain documentary evidence [illegible], I have been told by the Mi[illegible] that Rwandan law allows the impoundment of a vehicle only when:

a. A driver cannot prove ownership.

b. With him being uninsured, it is suspected that he might flee and fail to pay reparations to an injured party. Ultimately, of course, the proceeds from the sale of an impounded vehicle can provide direct compensation.

On this basis, the Ministers of Justice and of Foreign Affairs have agreed that there is no lawful reason for a UNAMIR vehicle to be impounded.

THE PROBLEM

6. The problem that we face today stems from 4 major causes:

a. The Rwandan Ministry of Defence powerbase. The Gendarmerie is controlled entirely by the Ministry of Defence and accepts no instructions from any other source. It is a rare Gendarme who is prepared to listen to argument about the SOMA and a rarer one still who is prepared to act on it.

b. UNAMIR Motor Insurance. UNAMIR's motor insurance company is based in Nairobi although I understand that attempts are being made to move our cover to Kigali. Lt Joseph has told me that our current insurance is not generally respected as valid cover in Rwandan Gendarmerie manuals - with the result that our vehicles are often assumed to be uninsured.

c. RPA intimidation of Gendarmes. Many of our accidents involve RPA officers who are prepared to intimidate Gendarmes into siding with them. Frank Kamanze's performance outside AUSMED on 15 Feb was an extreme - but not isolated - example of this kind. I am, incidentally, still out of pocket as a result of this case.

d. Bureaucratic delays. Our bureaucracy takes time and, following an accident:

(1) The UNAMIR MP Company investigates and prepares a report for distribution to, inter alia, the Chief of the Claims unit (C Claims) and the Chief of the Board of Inquiry Unit (C BOI Unit).

(2) The BOI Unit arranges a UN Board of Inquiry which subsequently passes its findings to C Claims.

(3) C Claims liaises with insurance companies (including our underwriter in Nairobi). Some claims will be refuted, others partially paid and, if it is found at fault in some way, some claims are referred to a contingent for settlement.

It should be obvious that C Claims cannot react if no claim is made - but it is not so to many Rwandan claimants, perhaps because they are not used to dealing with

bureaucracies by mail; it seems to be normal practice for Gendarmerie Headquarters to ignore pertinent letters from litigants.

7. I have done my best to resolve many of these difficulties but, recently, have lacked the time to pursue every individual case: I have discussed 4900, 4835 and 730 with officers of Gendarmerie Headquarters about once a week, however, have been to Gikongoro Gendarmerie to discuss 743 and have sent MPs there on 3 occasions. As you know, liaison with the RPA and Gendarmes on the ground requires considerable tact and patience... and a lot of time!

8. A further problem that I have encountered after successfully negotiating the release of some vehicles is that my assurance that UNAMIR will pay reparations if it is found to be at fault (always with the caveat that its bureaucracy must agree that it is at fault) raises the expectation in claimants that their claim will be met. When it is not met, or when they have not got the time to wait for it to be met, they sometimes become troublesome:

a. They pester Gendarmes.

b. Gendarmes, in turn, pester me.

c. Some claimants and/or Gendarmes then pester C Claims and C BOI Unit. Some have even threatened violence or the confiscation of our cars!

Such cases invariably lead to charges that UNAMIR will not pay and give justification to the impoundment of the next vehicle to be involved in an accident.

<u>THE REQUIREMENT</u>

9. The nub of all this is that Gendarmes are hidebound in following directives and need to be schooled in:

a. The rights of UN personnel.

b. How to make a claim against the UN - and the delay to be expected.

There is little doubt, however, that Gendarmes would be more inclined to cooperate if our vehicles carried proof of insurance, preferably provided by a local company.,

<u>ACTION TAKEN SO FAR</u>

10. Within the time available to me, I have addressed both the above requirements:

a. I have discussed the rights of UN personnel with Gendarmes, both senior and junior; their reaction is invariably to show understanding but to explain that their hands are tied... they have to seek authority from above.

b. I have met the Minister of Justice and discussed the matter with UNAMIR legal staff. The only documentary result is, invariably, a Note Verbale similar to the one attached. Such Notes are flawed, however, because:

(1) Rwandan Ministers seem to ignore them: none has ever received a reply.

(2) For reasons of protocol, they are addressed to the Minister of Foreign Affairs who has no more power over the Gendarmerie than does the Minister of Justice: General Kagame is the one who needs to address this issue.

c. I have drafted a multilingual insert for vehicle Trip Tickets that might be used to explain the rights of UN staff and the claims process to Gendarmes and potential claimants following accidents. My draft is still being debated by the civilian staff of UNAMIR (in particular, the CTO, C Claims, and C BOI Unit).

Provision of insurance cover is outside my remit!

CONCLUSIONS

11. The impounding of UN vehicles will continue for as long as the RPA refuses to acknowledge our right to proceed:

a. As provided in the SOMA.

b. As agents of a responsible organization that will not leave wronged parties without compensation.

...and refuses to pass appropriate instructions to the Gendarmerie. Unless we can prove that our insurance cover is valid in Rwanda, the only possible way for this situation to be corrected is for an officer of high standing - perhaps General Kagame himself - to accept our entitlement and to react accordingly.

12. As a matter of goodwill - and to expedite the release of personnel and vehicles involved in accidents - we should:

a. Continue to work on the Trip Ticket insert with a view to being able to provide injured parties with comprehensible advice on how to pursue claims against the UN. Ideally, this insert (or another) should provide proof of insurance cover.

b. Ensure that investigations and claims are handled as quickly as possible.

13. Although the MP Company will continue to provide a focus for liaison with the Gendarmerie on police matters, whenever necessary, it is more appropriate that the CLO's office should be responsible for day-to-day liaison after all investigative work has been completed.

RECOMMENDATIONS

14. It is recommended that:

a. The impounding of vehicles is addressed in an appropriate forum as soon as possible so the Ministry of Defence can be asked to issue instructions to the Gendarmerie.

b. The Ministry should be asked to provide us with a copy of its instructions so that we may include it in the Trip Ticket folder of all UNAMIR vehicles.

c. Our insurance cover is moved to a Rwanda-based company. Alternatively, other acceptable and speedy arrangements should be established to satisfy the Gendarmerie.

d. The CLO's office should be made responsible for post- and non-investigative liaison with the Gendarmerie.

Attached:

Copy of Note Verbale SRSG/NV/19/95, dated 10 Feb 95.

UNITED NATIONS
ASSISTANCE MISSION FOR RWANDA

UNAMIR MINUAR

NATIONS UNIES
MISSION POUR L'ASSISTANCE AU RWANDA

SRSG/NV/19/95

NOTE VERBALE

The United Nations Assistance Mission for Rwanda (UNAMIR) presents its compliments to the Ministry of Foreign Affairs and Cooperation of the Government of Rwanda and has the honour to convey the following.

1. As a result of two separate traffic accidents involving our vehicles, UNAMIR 730 and UNAMIR 4835 on 2 February 1995, both vehicles were impounded and are still being held at the Gendarmerie Station at Gikondo in Kigali.

2. Pursuant to previous discussions with your Ministry regarding the observance of the privileges and immunities of UNAMIR under the Status of Mission Agreement between UNAMIR and Rwanda, may we respectfully request your assistance in the release of both vehicles pending the finalization of investigations on the accidents.

The United Nations Assistance Mission takes this opportunity to renew to the Government of Rwanda the assurances of its highest consideration.

Kigali, 10 February 1995

UNITED NATIONS/NATIONS UNIES
UNAMIR

H.E. Dr. Anastase Gasana
Minister of Foreign Affairs and Cooperation
Kigali

cc: Minister of Defence
Gendarmerie HQ

Mission Status file

UNITED NATIONS
ASSISTANCE MISSION FOR RWANDA

NATIONS UNIES
MISSION POUR L'ASSISTANCE AU RWANDA

Office of the Special Representative
of the Secretary-General
UNAMIR - MINUAR

17 March 1995

BULLETIN NO. 1

1. I am addressing all United Nations civilian, civpol and military personnel in Rwanda with the objective of stressing the need to comply with Rwandese laws and regulations. It is also incumbent upon us to respect the cultural, traditional and social customs of the Rwandese People.

2. With regard to the official exchange rate for the Rwandese Franc, the Rwandese Government decreed a flexible exchange rate as of 6th March 1995. Currency must therefore be changed only through official channels. All personnel must avoid inducements to obtain local currency through private or unofficial channels.

3. I am concerned that United Nations privileges and immunities intended to assist officials in performing their official duties, are being misused. It has been brought to my attention, that some alcoholic beverages and electronic equipment have found their way into the open market. I deplore efforts to misuse the privilege for financial gain and should this trade continue, I shall not hesitate to stop duty-free imports of such items. United Nations personnel are requested to keep a meticulous check on duty-free imports and utilize them exclusively for their own use.

4. United Nations Personnel are also requested to drive with great care, to respect traffic laws and to observe speed regulations. Care must be taken not to drive following consumption of alcohol. Drivers not familiar with the rule of "priorité à droite" (priority from the right) are required to take a driving course from the Chief Transport Officer.

5. An increasing number of United Nations personnel are renting private residential accomodation. All rental agreements must be registered with UNAMIR for purposes of Security. In addition, an attestation should be obtained from the Prefecture prior to entering into any contractual arrangements.

6. Moreover, the Government's regulations must be respected in that rent should be paid to the real, approved owner of the house and not directly to a foreign bank in favour of a person with unchecked credentials. A visit to the corresponding Prefecture will ensure the correct ownership of the property.

7. Finally, all United Nations personnel are requested to respect the social and cultural customs of the Rwandese people, and United Nations Civilians are to abide by the Standards and Conduct of International Civil Servants and military personnel, by the Force Commander Directive's No.1. Conduct must always be dignified and respectful towards Rwandese citizens. Anyone who does not abide by these standards and behaves himself/herself in an unbecoming manner will be subject to disciplinary measures.

8. I am asking UNAMIR Military Police to keep a careful watch on all United Nations personnel's conduct regarding local traffic/driving regulations. UNAMIR Military Police has been empowered to take action against those drivers that are patently in breach of the law with respect to civilian staff, the Military Police have authority to detain only the vehicle of those suspected of driving under the influence of alcohol. In the event a staff member is suspected of drunken driving, the Military Police shall take custody of the vehicle, but drive the suspect to his/her residence before impounding the vehicle.

UNITED NATIONS
ASSISTANCE MISSION IN RWANDA

NATIONS UNIES
MISSION POUR L'ASSISTANCE AU RWANDA

Office of the Special Representative
of the Secretary-General

UNAMIR - MINUAR

17 MARS 1995

BULLETIN No. 1

1. JE M'ADRESSE À TOUT LE PERSONNEL CIVIL, CIVPOL ET MILITAIRE DES NATIONS UNIES AU RWANDA POUR LEUR SOULIGNER LA NÉCESSITÉ DE RESPECTER LES LOIS ET RÈGLEMENTS RWANDAIS. NOUS NOUS DEVONS ÉGALEMENT DE RESPECTER LES COUTUMES CULTURELLES, TRADITIONELLES ET SOCIALES DU PEUPLE RWANDAIS.

2. POUR CE QUI EST DU TAUX DE CHANGE OFFICIEL DU FRANC RWANDAIS, LE GOUVERNEMENT A ANNONCÉ PAR DÉCRET UN TAUX DE CHANGE FLEXIBLE À PARTIR DU 6 MARS 1995. IL EST DONC DEMANDÉ À TOUT LE PERSONNEL DE NE PAS SE PROCURER DES DEVISES LOCALES PAR DES CANAUX PRIVÉS OU SUR LE MARCHÉ PARALLÈLE.

3. J'AI PEUR QUE LES PRIVILÈGES ET IMMUNITÉS VISANT À PERMETTRE AUX PERSONNES À REMPLIR LEURS FONCTIONS OFFICIELLES SOIENT PARFOIS INVOQUÉS À MAUVAIS ESCIENT. J'AI APPRIS QU'ON AVAIT RETROUVÉ SUR LE MARCHÉ DES ALCOOLS ET DU MATÉRIEL ÉLECTRONIQUE NON DEDOUANÉ. JE DÉPLORE QUE CERTAINS TENTENT D'OUTREPASSER CES PRIVILÈGES POUR LA RECHERCHE D'UN PROFIT ET SI CE TRAFIC DEVAIT CONTINUER, JE N'HÉSITERAI PAS À METTRE UN TERME AUX IMPORTATIONS DE PRODUITS NON DEDOUANÉS. IL EST DEMANDÉ AU PERSONNEL DES NATIONS UNIES DE CONTRÔLER MÉTICULEUSEMENT TOUTES IMPORTATIONS DE MARCHANDISES NON TAXÉES ET D'UTILISER CES MARCHANDISES À DES FINS PRIVÉES UNIQUEMENT .

4. IL EST ÉGALEMEMENT DEMANDÉ AU PERSONNEL DES NATIONS UNIES DE CONDUIRE AVEC ÉNORMÉMENT DE PRUDENCE, DE RESPECTER LE CODE DE LA ROUTE ET LES LIMITATIONS DE VITESSE. IL EST IMPÉRATIF DE NE PAS PRENDRE LE VOLANT APRÈS AVOIR CONSOMMÉ DE L'ALCOOL. LES CONDUCTEURS QUI N'ONT PAS L'HABITUDE DE LA RÈGLE DE LA PRIORITÉ À DROITE SONT INVITÉS À PRENDRE UN COURS AUPRÈS DU RESPONSABLE DES TRANSPORTS.

5. UN NOMBRE DE PLUS EN PLUS IMPORTANT D'AGENTS DES NATIONS UNIES LOUE DES HABITATIONS PRIVÉES. UN EXEMPLAIRE DE CHAQUE BAIL DOIT ÊTRE REMIS À LA MINUAR POUR DES RAISONS DE SÉCURITÉ. DE PLUS, UNE ATTESTATION DOIT ÊTRE DEMANDÉE À LA PRÉFECTURE AVANT TOUTE SIGNATURE DE CONTRAT.

6. EN OUTRE, LES RÈGLES ÉDICTÉES PAR LE GOUVERNEMENT DOIVENT ÊTRE RESPECTÉES EN MATIÈRE DE LOYER, LEQUEL DOIT ÊTRE VERSÉ AU PROPRIÉTAIRE RÉEL ET LÉGITIME DE L'HABITATION, ET NON AUPRÈS D'UNE BANQUE ÉTRANGÈRE EN FAVEUR D'UNE PERSONNE INCONNUE. UNE VISITE AUPRÈS DE LA PRÉFECTURE CONCERNÉE PERMETTRA DE CONTRÔLER QUEL EST VERITABLE PROPRIÉTAIRE DE LA MAISON.

7. ENFIN, TOUT LE PERSONNEL DES NATIONS NATIONS SE DOIT DE RESPECTER LES COUTUMES SOCIALES ET CULTURELLES DU RWANDAIS, ET LES AGENTS DES NATIONS UNIES DOIVENT SE PLIER AUX STANDARDS DE CONDUITE DES FONCTIONNAIRES INTERNATIONAUX, QU'ILS SOIENT CIVILS OU MILITIARES. IL EST ESSENTIEL D'AVOIR UNE CONDUITE DIGNE ET RESPECTUEUSE ENVERS LES CITOYENS RWANDAIS. QUICONQUE REFUSERAIT DE RESPECTER CES STANDARDS ET SE CONDUIRAIT D'UNE MANIERE INDIGNE S'EXPOSERAIT A DES MESURES DISCIPLINAIRES.

8. JE DEMANDE A LA POLICE MILITAIRE DE LA MINUAR D'ETRE VIGILANTE ENVERS L'ATTITUDE DU PERSONNEL DES NATIONS UNIES EN MATIERE DE CONDUITE AUTOMOBILE ET DE RESPECT DU CODE DE LA ROUTE. LA POLICE MILITAIRE DE LA MINUAR A LE POUVOIR D'AGIR CONTRE TOUT CONDUCTEUR

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

TO: Ambassador Shaharyar M. Khan
SRSG

FROM: Ladan M. Rafii DATE: 9 March 1995
Political/Legal Officer

SUBJECT: Exchange of local and foreign currency in Rwanda

I would like to bring to your attention the fact that national regulations governing the exchange of foreign currency in Rwanda were recently revised by the Rwandese Government. Among the various revisions made, the Rwandese Government announced that, with effect from 6 March 1995, a flexible rate of exchange for the Rwandese franc would be instituted. Commercial banks and foreign exchange bureaux are now free to set their own rates of exchange. The National Bank of Rwanda (BNR) has ceased to announce official exchange rates for the Rwandese franc, although it will continue to calculate and publish, on a daily basis, the average market rate of exchange for reference purposes only.

Despite the prevalence of black market transactions in Rwanda which, in the past, have been mainly due to force of circumstance, UNAMIR staff should be reminded that any transactions of foreign currency with unauthorised dealers is considered an offense under national law. According to the latest regulations promulgated by the BNR, official transactions in foreign currency can only be undertaken with the BNR itself, or with other banks authorised by the BNR to engage in foreign exchange, or with foreign exchange bureaux (these are defined as any other establishment authorised by the BNR to engage in monetary transactions). Establishments such as hotels must also apply for and obtain a permit before they can engage in authorised exchange of currency (although hotel bills may still be paid in the currency of the client's choice acceptable to the hotel management).

At present, foreign currency may be exchanged at the following authorised commercial establishments: the BNR (Banque Nationale de Rwanda), Bank of Kigali (Banque de Kigali), the Commercial Bank (Banque Commerciale), and later, at the Continental Bank (Banque Continentale). Although permits have already been granted to eight foreign currency dealers in Rwanda under the new regulations (please see attached list), these offices may not yet be operational. According to BNR officials, the counter at Kigali Airport may also be considered an authorised dealer in foreign currency.

cc: FC
ED
CAO
CFO
LA

PERMIS D'EXPLOITATION DE BUREAU DE CHANGE

SITUATION AU 07/03/1995 EN FIN DE JOURNEE

N°	BUREAU	ADRESSE POSTALE	TELEPHONE	FAX	DATE AUTOR. PROVISOIRE
001	H. RAMJI	BP 205 KIGALI	7 68 40	7 54 50	06/03/1995
002	LA TROUVAILLE	BP 1420 KIGALI	7 68 92	7 47 37	06/03/1995
003	GAKUBA RUBOJO Egide	BP 1314 KIGALI	7 39 53	7 39 53	06/03/1995
004	EMBALLAGE RWANDA	BP 1551 KIGALI	7 57 05	7 57 05	06/03/1995
005	SADRUDIN ALIBHAI JINAH	BP 102 GISENYI	40 628	40 628	06/03/1995
006	SICODEX	BP 2081 KIGALI	7 33 18	7 33 18	07/03/1995
007	RWACOM	BP 457 KIGALI	7 39 33	7 36 51	07/03/1995
008	AFRICCOM	BP 1596 KIGALI	7 56 91	7 53 49	07/03/1995

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

TO: Ambassador Shaharyar M. Khan
SRSG

FROM: Ladan M. Rafii DATE: 4 March 1995
Political/Legal Officer

SUBJECT: Privileges and immunities of U.N. personnel

As you requested, I am providing you with a comparison of the privileges and immunities enjoyed by U.N. staff-members under the 1946 Convention on the Privileges and Immunities of the United Nations (hereinafter referred to as "the Convention"), and those accorded U.N. personnel in the Agreement between the United Nations and the Government of Rwanda on the status of UNAMIR (hereinafter referred to as "the Agreement").

First of all, it should be noted that the Agreement specifies that UNAMIR (including its members, property, funds and assets) shall enjoy the privileges and immunities provided for under the Convention in addition to those specified in the Agreement. That is, the privileges and immunities accorded under the Agreement encompass those provided to U.N. staff, property, funds and assets under the Convention. However, under the terms of the Agreement, such protection is also extended to the property, funds and assets of participating States used in connection with UNAMIR.

The following privileges and immunities, among others, are provided to the United Nations and its subsidiaries under the Convention, and by incorporation, to UNAMIR under the Agreement:

- immunity from every form of legal process with regard to its property and assets (unless it is expressly waived)
- inviolability of its premises (its property and assets are immune from search, requisition, confiscation, expropriation and any other form of interference), as well as all documents held or belonging to it
- exemption from all direct taxes, customs duties and prohibitions and restrictions on imports and exports (for official use), as well as financial controls and regulations
- communications facilities, including the right to use codes and to dispatch and receive correspondence by courier or in bags (which are accorded the same status as diplomatic couriers and bags)
- no censorship of official correspondence and other official communications
- recognition of U.N. laisser-passers as valid travel documents and expeditious processing of visa applications, if required for official travel
- immunity from legal process with respect to words spoken or written and all acts performed in an official capacity (the application of this principle under the Convention to U.N. representatives of members, officials and experts on mission has been extended to locally-recruited personnel of UNAMIR under the Agreement)

All U.N. agencies operating in Rwanda are entitled to the above privileges and immunities, regardless of whether they have signed separate individual agreements with the Rwandese Government. In the case of UNAMIR, the Agreement elaborates upon the privileges and immunities described in the Convention in the following areas:

1. Communications

- the right to install and operate radio sending and receiving stations, as well as satellite systems
- the right to unrestricted communication by radio, telephone, telegraph, facsimile or any other means, and to establish the necessary facilities for maintaining such equipment
- the right to make arrangements through its own facilities for the processing and transport of private mail addressed to or emanating from members of UNAMIR

2. Display of U.N. flag and vehicle markings

- the right to display the U.N. flag in certain locations and on certain vehicles and vessels, or as decided by the Special Representative

3. Travel and transport

- freedom of movement throughout the territory
- informing by Government of locations of mines and other dangers and impediments
- exemption from Government registration and licensing of all vehicles and vessels, as well as the payment of all public dues, tolls or charges

4. Privileges and immunities of UNAMIR

- to establish, maintain and operate commissaries at its headquarters, camps and posts for the benefit of members of UNAMIR (excluding locally-recruited staff)
- to re-export or otherwise dispose of unconsumed provisions, supplies and other goods imported for the exclusive and official use of UNAMIR which are not transferred or disposed of to the competent local authorities

5. UNAMIR premises

- the Government shall, to the extent possible, provide UNAMIR the necessary premises for the conduction of operational and administrative activities of UNAMIR, and for the accomodation of its members
- UNAMIR is to be assisted by the Government, as far as possible, in obtaining public utilities (it has the right to generate electricity for its own use within its premises, and to transmit and distribute it)
- the U.N. alone may consent to the entry of any non-member of UNAMIR to its premises

6. Provisions, supplies and services

- the Government agrees to assist UNAMIR, as far as possible, in obtaining equipment, provisions, supplies and other goods and services from local sources required for its subsistence and operations
- UNAMIR and the Government shall cooperate with regard to sanitary services, particularly with respect to the control of communicable diseases

7. Recruitment of local personnel

- UNAMIR may recruit locally such personnel as it requires
- upon request by the Special Representative, the Government undertakes to facilitate and accelerate the recruitment of qualified local staff by UNAMIR

8. Currency

- the Government undertakes to make available to UNAMIR Rwandese franc currency required for its use at the rate of exchange most favourable to UNAMIR

9. Status of members of UNAMIR

UNAMIR personnel are entitled to varying degrees of immunity based upon their rank and status.

a) Under the Agreement, the SRSG, the Force Commander, the Police Commissioner of CIVPOL, and other such high-ranking members of the SRSG's staff as may be agreed upon with the Government, are entitled to diplomatic immunity in accordance with international law.

b) Other U.N. civilian officials are entitled to certain privileges and immunities under the U.N. Convention, but not full diplomatic immunity. These include:

- exemption from taxation
- immunity from national service obligations, immigration restrictions and alien registration
- access to the same repatriation facilities as diplomatic envoys in times of international crisis
- right to duty-free importation of personal effects upon arrival in the host country
- recognition of the U.N. laissez-passer as a valid travel document entitling the bearer to speedy processing of visa applications, if required

c) MILOBS and CIVPOL personnel are considered experts on mission under the U.N. Convention. They are accorded privileges and immunities necessary for the independent exercise of their functions during the period of their missions, such as:

- immunity from personal arrest or detention and from seizure of personal baggage
- inviolability of all papers and documents
- for the purpose of their communications with the U.N., the right to use codes and to receive papers or correspondence by courier or in sealed bags
- the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys

d) Military personnel of national contingents comprising UNAMIR are entitled to privileges and immunities specifically provided for under the Agreement:

- exemption from taxation, immigration restrictions and alien registration
- duty-free importation of personal effects upon arrival
- speedy processing of entry and exit formalities

e) Locally-recruited staff of UNAMIR are entitled to tax exemption on U.N.-paid salaries and immunity from national service obligations.

I hope the above information (which, it should be noted, is by no means exhaustive) proves to be useful in clarifying the nature and extent of the various privileges and immunities to which U.N. personnel are entitled in Rwanda.

cc: ED
LA

UNITED NATIONS
INTEROFFICE MEMORANDUM

UNAMIR-MINUAR

NATIONS UNIES
MEMORANDUM INTERIEUR

TO: **Mr. Shaharyar Khan**
SRSG

DATE: 3 March 1995
REF: OSRSG/LA/001

FROM: **I. Minta**
Legal Adviser

This is an important paper
It needs to be actioned and
circulated. Salim-
3.3

SUBJECT: **Powers of Arrest and Detention in Respect of UNAMIR Personnel**

I have been approached by several UNAMIR staff for clarification of the powers of arrest and detention that may be exercised by or in respect of UNAMIR personnel. Concerns have been raised in this regard apparently because of two incidents in which staff have filed complaints of brutality or abuse of power against UNAMIR Military Police Personnel. I have not received copies of these complaints and I am thus not in a position to comment on them, particularly as they are still under investigation by CIVPOL (as confirmed to me by the CIVPOL Commissioner).

But I would like to re-state the provisions of the Status of Mission Agreement on powers of arrest and detention, and to request that these be conveyed to all UNAMIR personnel, in any appropriate manner, to meet their need for information on these matters.

I have reproduced below relevant portions of the check-list of the rights and obligations of UNAMIR and the Government of Rwanda, which I prepared on my arrival here. The check list was circulated to all Section Heads as Administrative Circular No. 007/94 of 11 October 1994, to inform them of the provisions of the SOMA, and to ascertain areas where there were problems of implementation so that follow-up action could be taken.

ISSUE/SOMA REFERENCE	UNAMIR	GOVERNMENT
Policing/Powers of Arrest (Art VI: 40-42)	• Personnel designated by SRSG shall police UNAMIR premises and deployment areas with powers of arrest; • Military police have powers of arrest over military personnel	• Government officials may take into custody any member of UNAMIR: (a) at request of SRSG; or (b) in the commission/attempt of a crime [42]

ISSUE/SOMA REFERENCE	UNAMIR	GOVERNMENT
Custody/Investigations (Art VI: 41-45; 47)	• Military personnel arrested shall be transferred to their contingent Commander [41]; other arrested on UNAMIR premises: transfer to Government [41]; • Preliminary investigation shall not delay transfer of custody; • UNAMIR and Government to cooperate regarding all necessary investigations [44] • Prosecution of UNAMIR civilians subject to SRSG/Government agreement [47.a]; failing which: see **Settlement of Disputes**	• UNAMIR personnel arrested for crimes: transfer immediately to UNAMIR [42] • Government to promptly inform UNAMIR regarding any UNAMIR member suspected of crime, with evidence [47] • Government to prosecute persons accused of acts against UNAMIR or its members [45]

For completeness, I have reproduced below, in full, the specific provisions of the SOMA referred to above. Points of particular importance are underlined:

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

41. The military police of UNAMIR shall have the power of arrest over the military members of UNAMIR. Military personnel placed under arrest outside their own contingent areas shall be transferred to their contingent Commander for appropriate disciplinary action. The personnel mentioned in paragraph 40 above may take into custody any other person on the premises of UNAMIR. Such other person shall be delivered immediately to the nearest appropriate official of the Government for the purpose of dealing with any offence or disturbance on such premises.

42. Subject to the provisions of paragraphs 24 and 26, officials of the Government may take into custody any member of UNAMIR:

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

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

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

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

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

47. Should the Government consider that any member of UNAMIR has committed a criminal offence, it shall promptly inform the Special Representative and present to him any evidence available to it. Subject to the provisions of paragraph 24:

> ***(a) If the accused person is a member of the civilian component or a civilian member of the military component, the Special Representative shall conduct any necessary supplementary inquiry and then agree with the Government whether or not criminal proceedings should be instituted. Failing such agreement, the question shall be resolved as provided in paragraph 52 of the present Agreement.***
>
> ***(b) Military members of the military component of UNAMIR shall be subject to the exclusive jurisdiction of their respective participating States in respect of any criminal offenses which may be committed by them in Rwanda."***

It may be noted that the personnel mentioned in paragraph 40, who have the powers of arrest indicated in paragraph 41, are to be designated by the SRSG. These personnel may be different from military police who, as provided in paragraph 41, have powers of arrest over the military members of UNAMIR.

The SOMA does not contain any detailed rules governing the manner in which powers of arrest may be exercised. Consequently, we may have to apply general principles of law, mainly human rights law, as guidelines or safeguards against any possible excesses.

cc: FC
Executive Director
DFC
OIC/Administration
All Section Heads

UNITED NATIONS
INTEROFFICE MEMORANDUM

UNAMIR-MINUAR

NATIONS UNIES
MEMORANDUM INTERIEUR

TO: **Mr. Shaharyar Khan**
SRSG

DATE: 1 March 1995
REF: OSRSG/LA/001

FROM: **I. Minta** IKM
Legal Adviser

SUBJECT: **Status of Mission Agreement (SOMA)**

Thanks I agree with your analysis and course of action proposed.
Shaharyar Khan 13
LA

This is an Addendum to Ms. Rafii's memo of 28 February 1995 on the above subject, to which she sent me a copy for information.

Article X, para 57 of the Status of Mission Agreement provides that the Agreement "shall remain in force until the departure of the final element of UNAMIR from Rwanda..." It's operation is thus not limited to the duration of the original mandate of UNAMIR nor to any particular extension of the mandate.

Furthermore, the Agreement should be read together with the 1946 Convention on the Privileges and Immunities of the United Nations, to which it refers. That Convention, to which Rwanda is a party, is also not limited to any particular mandate of any UN organ.

The <u>real</u> reason for requesting an exchange of letters with the Government does not thus seem to be the extension of UNAMIR's mandate beyond resolution 872 (1993), but rather the change of Government or, more specifically, the manner in which that change occurred. But this was only to make doubly-sure, because under the principles of State succession the Government is bound by the Agreements and commitments that it inherits.

Another way of making doubly-sure was to ask for a direct re-affirmation by the Government without an exchange of letters. I had suggested this option in one of our staff meetings following my arrival here, before New York sent the proposed exchange of letters.

In any event, we do have such a re-affirmation now, even if only implicitly. This is contained in the letter from the Ministry of Foreign Affairs dated 2 February 1995, addressed to the Minister of Defence (among others), citing the SOMA and requesting its observance. The File Note on my meeting with Senior Officials of the Ministry of Foreign Affairs on 18 January 1995 (copy attached) also contains such a re-affirmation.

.....

The main (or perhaps the only) source of our difficulties in respect of the SOMA remains the Ministry of Defence. I would thus recommend (as I have done previously) that we focus our efforts on that Ministry. In addition, we have requested the Ministry of Foreign Affairs to organize a meeting with all relevant Ministries to regularize the situation with regard to the Government's observance of the SOMA and the 1946 Convention.

cc: **Dr. Kabia**
Executive Director

UNITED NATIONS
INTEROFFICE MEMORANDUM

UNAMIR-MINUAR

NATIONS UNIES
MEMORANDUM INTERIEUR

TO: **Mr. Shaharyar Khan**
SRSG

DATE: 1 March 1995
REF: OSRSG/LA/001

FROM: **I. Minta**
Legal Adviser

SUBJECT: **Status of Mission Agreement (SOMA)**

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Furthermore, the Agreement should be read together with the 1946 Convention on the Privileges and Immunities of the United Nations, to which it refers. That Convention, to which Rwanda is a party, is also not limited to any particular mandate of any UN organ.

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cc: **Dr. Kabia**
Executive Director

NOTE FOR THE FILE

19th January 1995

Meeting at the Ministry of Foreign Affairs on implementation of the Status of Mission Agreement; 18 January 1995

Present: Mr. Leon NGARUKIYE, Head of Cabinet
Ambassador Simon INSONERE, Director General
Mr. Ike MINTA, Legal Adviser, UNAMIR
Maj. B. M. OSWALD, Legal Officer, AUSMED/UNAMIR
Ms. Sylvie NOSSEREAU, Interpreter, UNAMIR

Head of Cabinet:

We wrote to the technical ministries namely the Ministries of Finance, and Trade and Industry who are still working on the technical details regarding the correspondence on the mission status agreement between UNAMIR and Rwanda. We hope that they will finalize their work soon, and we apologize for this delay which is mainly due to the shortage in personnel, especially legal experts, which we are experiencing in the Government. Without anticipating the conclusions of the technical groups which are still pending, we foresee potential problems regarding the list of products that UNAMIR intends to import to the country [for the Commissary]. Although UNAMIR is regulated by the Vienna Convention and is, as such, entitled to run a commissary where duty-free items will be made available to its staff, the quantity of duty-free goods will have to be limited so that UNAMIR does not act as an importer or a concession holder, in which case customs duties would have to be levied.

Director:

You asked in your proposal [letter of 26 October 1994] whether the beneficiaries of the commissary, apart from UNAMIR staff, could be extended to include other diplomats and other persons. I think we must stay within the limits of the convention signed on 8 November 1993 and grant such privileges to UNAMIR personnel only. If UNAMIR's commissary were to act as some kind of sub-contractor,it would amount to a regular business. You will understand that our country cannot afford to extend diplomatic privileges and immunities to such a business. So we will have to work out the management arrangements for this commissary.

Legal Adviser:

We had lengthy meetings with the Director of Foreign Trade of the Ministry of Trade and Industry who came to see us and raised a number of issues, including that of beneficiaries. In our discussions we informed him that we are willing to amend some of our proposals after review of the Government of Rwanda's formal response embodying the issues he had raised, at which point we should sit down to discuss each item point by point at a joint meeting to finalize the proposal.

HC

We take good note of this proposal and will organize a meeting involving UNAMIR, the Ministries of Finance, Trade and Industry and Foreign Affairs as soon as we get the Ministries of Finance and Trade and Industry feedback on your proposal.

LA

I have a few additional points to raise:

1) The first one has to do with the exchange of letters on UNAMIR's status agreement. It is a mere formality but we insist on it as it was required by the Secretary General and the UN Legal Office in New York. Of course, the present agreement remains valid but this exchange is in light of the extension of UNAMIR's mandate. We first asked you for this exchange in a letter dated 5 October 1994 and have sent several reminders since then, but have received no formal response.

2) In the meantime, we would like you to issue instructions to Rwandan Government employees dealing with UNAMIR to make it clear that they should observe the privileges and immunities that UNAMIR and its staff are entitled to. We feel that this is necessary as we often have incidents occurring, e.g. at the airport with immigration officers (lengthy review of documents, body searches) and customs officers (when they try to levy tax on personal effects or even UNAMIR goods, such as fuel in a recent incident). Such instructions would certainly clarify our status with some of your people who may not be aware of our rights.

3) Similar briefings could also apply to the RPA. Indeed, at times we have incidents with RPA military in which we fear for our own security. There is a provision in the status agreement [paragraph 6] about the obligation of the host Government to provide security to UNAMIR staff. We understand if you are not in a position to provide such security and are not asking you to, but we should at least make sure that we do not feel threatened by your personnel. Problems arise mainly or probably because of lack of knowledge about our status. Therefore, instructions to clarify what our rights are may be appropriate.

4) When traffic accidents involving UNAMIR vehicles occur, our vehicles are systematically impounded until the results of the investigation become known and a fine is imposed on us. We are willing to cooperate in the investigation process and make amends for our mistakes, but it should be made clear that our vehicles are immune from such seizures.

HC's answer

1) As it has done in the past, the Government of Rwanda will spare no effort in cooperating with UNAMIR who have done so much for us. We will take action for the exchange of letters to take place soon.

2) We will also give instructions to our technical staff who work with UNAMIR for them to

be aware and respect UNAMIR's privileges and immunities. I have a suggestion to help get the message across to all the parties involved: as part of the meeting to be held between our three Ministries and yourselves, we could also include representatives from the Ministries of the Interior and Defence, so that all concerned know what procedures are applicable to UNAMIR. As far as problems such as the import of fuel, I suggest you turn directly to the Ministry of Foreign Affairs for us to take action immediately. This is what other diplomats and representatives of NGOs usually do whenever they have a problem. It will certainly save you time and a lot of hassle, as the Ministry of Foreign affairs is more familiar with where to turn to depending on the matter.

3) About security, I did receive several letters from you about incidents when your staff felt threatened, and each time, I reported them to the Ministry of Defense for appropriate action to be taken. Whenever you feel that RPA soldiers are ill-informed about your status, turn to us and we will intercede to prevent similar incidents being repeated in the future so UNAMIR personnel are able to do their work without being hassled.

4) About traffic accidents involving diplomats, investigation work is undertaken by the host country under the Vienna Convention. The gendarmerie will abide by international standards and do its work, i.e., write a report and let the vehicle go. Should your cars be seized again, get in touch with the Ministry of Foreign Affairs, but gendarmes are supposed to obey the rules and should not impound vehicles in the first place. We will make it clear to them. On your side, try to make sure that your staff abides by our traffic regulations.

Director:

To complement what was said by the Head of Cabinet:

1) about the exchange of letters, I would like to know if you have any problem in operating under the existing Agreement signed in 1993. If not, I think that the present Agreement remains applicable. It covers all your requirements and provides all the necessary guarantees as long as it has not been repealed. However, if you insist it is a necessary formality, there is no reason why we should not meet your request.

2,3,4) About difficulties in the field, be it at the airport, with the army or after traffic incidents, I would like to point out that your staff, in spite of international conventions granting them privileges and immunities, are not exempt from complying with our national law. I think some work could be done to promote an attitude in the minds of your personnel to stress that they are not above local law and that they are to display cooperative spirit and goodwill with local authorities. If this is not felt, some of our people may be frustrated, which in turn may lead to incidents. Of course, on our side, we must educate our people as well.

LA

Thank you for your comments. We welcome your eagerness to solve remaining problems. The exchange of letters is no more than a formality we are asking for as it originates from the

Secretary General himself. In the meantime of course, the existing agreement remains applicable and this is precisely the reason why we are now asking you questions about its implementation. You are right to point out that our personnel must also respect Rwandese laws. In fact, they are also required not to abuse their privileges and we take appropriate measures whenever some individuals act beyond what is permitted. We have, under the convention, obligations to assist you, and this is also the reason why we would like to participate in investigative work following traffic accidents [as required under paragraph 44 of the Status Agreement]. We are ready to assume our responsibilities, especially when our personnel are liable. About the fuel problem, it was brought to my attention only yesterday and I will get back to you after more careful review of the matter. I think it may be a good idea for us to have a specific point of contact at the Ministry of Foreign Affairs to relay such problems.
I now give the floor to my colleague from the military side who may have additional points to raise.

Major Oswald

Let me just raise two points which affect specifically the military:

1) Our movements throughout the country are sometimes restricted by the RPA, which is an obstacle to our peace-keeping here.

2) Related to the first issue, our soldiers are sometimes asked by RPA authorities to surrender their IDs which is a problem as it is our only means of identification in this country.

HC

I take note of the points raised by both of you. May I suggest that each of you write us a note listing all these points, so that we can forward it to the relevant bodies. Let me stress again that the Ministry of Foreign Affairs is your privileged point of contact and that we are your best advocate to defend your rights, as we are better informed than technical departments about the content of conventions. Your specific point of contact here will be Ambassador INSONERE (Director-General, telephone 77652).

Thank you for a very useful meeting.

LA

Will it be all right if we prepare a note for the file on this meeting, with a copy to you, that will serve as a point of reference for follow-up action?

So Agreed

Distribution:

UNAMIR:	**SRSG**	**Government:**	**Head of Cabinet, Ministry of Foreign Affairs**
	FC		**Director General, Ministry of Foreign Affairs**
	ED		**Other Ministries (distribution by Ministry of Foreign Affairs)**
	DFC		
	OIC/Admin.		
	All Section Heads		

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

TO: Ambassador Shaharyar M. Khan
SRSG

FROM: Ladan M. Rafii
Political/Legal Officer

DATE: 28 February 1995

SUBJECT: Status of Mission Agreement

In accordance with your recent request, I am writing to inform you of certain observations made with regard to the current status of the Agreement signed on 5 November 1993 between the United Nations and the former Government of Rwanda on the status of the United Nations Assistance Mission for Rwanda (UNAMIR).

1. The Agreement is confined to UNAMIR's mandate as described in the Security Council resolution 872 (1993) of 5 October 1993. Pursuant to this resolution, UNAMIR was mandated to:

- contribute to the security of Kigali
- monitor observance of the ceasefire agreement
- monitor the security situation in the country
- assist with mine clearance
- investigate instances of alleged non-compliance with the provisions of the Arusha Peace Agreement relating to the integration of the armed forces
- monitor the repatriation of Rwandese refugees and resettlement of displaced persons
- assist in the coordination of humanitarian assistance
- investigate and report on activities of the gendarmerie and police

Although UNAMIR's mandate has been modified in other resolutions passed by the Security Council subsequent to resolution 872, a strict interpretation of the terms of the Agreement would indicate that its provisions do not encompass any tasks assigned to UNAMIR beyond the scope of those outlined above.

Accordingly, and in response to a request from U.N. Headquarters in New York, a draft exchange of letters was prepared to ensure that the Agreement of 5 November 1993 applied to UNAMIR's current mandate. A letter dated 5 October 1994 was sent from the SRSG to the former Rwandese Minister of Foreign Affairs seeking the Government's approval of these letters. At a meeting held on 24 October 1994 between our Legal Adviser and the Director of Cabinet of the same Ministry, we were informed that the matter of the exchange of letters was still under discussion with the Government, but that a formal response should be expected soon. On 8 November 1994, a Note Verbale was sent to the Ministry of Foreign Affairs from the SRSG's office reminding the Ministry that we had yet to receive a response on the issue.

On 18 January 1995, our Legal Adviser attended a meeting at the Ministry of Foreign Affairs during which Head of Cabinet at the Ministry stated that the Government of Rwanda would spare no effort in cooperating with UNAMIR and that action on the exchange of letters would take place soon. He further stated that instructions would be issued to their staff interacting with UNAMIR to be aware of and to respect UNAMIR's privileges and immunities. The Director-General of the Ministry of Foreign Affairs added at this meeting that, in his opinion, the existing Agreement signed in 1993 remained valid.

Following problems experienced by various UNAMIR personnel at Kigali airport, a Note Verbale dated 2 February 1995 was sent to the Minister of Foreign Affairs referring to the privileges and immunities granted members of UNAMIR in the status of mission Agreement. We reminded the Ministry of our previous requests regarding the exchange of letters. In response, the Minister of Foreign Affairs wrote a letter the same day addressed to the Ministries of Defence, of Transport and Communications, and of Finance (with copies to the Rwandese President and Prime Minister) referring to the status of mission Agreement and requesting their respective personnel to "respect the commitments undertaken by the Rwandese Government concerning the status of UNAMIR." Despite this acknowledgement of the validity of the Agreement, UNAMIR has yet to receive any formal notification on the part of the Government indicating its willingness to supplement the existing Agreement to include coverage of UNAMIR's expanded mandate. (It should also be noted that the draft exchange of letters submitted to the Government on 5 October 1994 has since become outdated due to the further expansion of UNAMIR's mandate in Security Council resolution 965 of 30 November 1994.)

2. The existing Agreement refers to "the status of the United Nations Assistance Mission for Rwanda". For purposes of this Agreement, UNAMIR is deemed to consist of the "Special Representative" (including any member of UNAMIR to whom he delegates a specific function or authority); a "civilian component" (consisting of U.N. officials and other persons assigned by the Secretary-General to assist the SRSG or made available by participating States to serve as part of UNAMIR); and a "military component" (consisting of military and civilian personnel made available by participating States to serve as part of UNAMIR).

Other U.N. agencies operating in Rwanda are not covered by the terms of this Agreement, but they may have concluded their own individual agreements with the Government (as in the case of the U.N. Human Rights Field Operation in Rwanda). Even in the absence of such separate bilateral agreements, they would be accorded certain rights under the Convention on the Privileges and Immunities of the United Nations adopted by the U.N. General Assembly on 13 February 1946 and to which Rwanda is a signatory party.

3. The Agreement only refers to the term "the Government" as meaning "the Government of the Republic of Rwanda". That is, it is not restricted to a particular type of regime governing the country. As such, despite the recent change in Government, the existing Agreement is still legally binding (assuming the Government has obtained formal recognition), and any violation of this international obligation by the current Rwandese Government would result in state responsibility for which it would be held liable (unless it raises a valid defence for the non-performance of its obligations).

UNITED NATIONS
ASSISTANCE MISSION FOR RWANDA

UNAMIR-MINUAR

NATIONS UNIES
MISSION POUR L'ASSISTANCE AU RWANDA

SRSG/NV/55/94

NOTE VERBALE

The United Nations Assistance Mission in Rwanda (UNAMIR) presents its compliments to the Ministry of Rehabilitation and Social Integration of the Rwandese Republic and has the honour to refer to the circular of the Ministry dated 3 November 1994 addressed to all NGOs and other International Organizations on the flying of flags on their vehicles.

UNAMIR would like to point out that the flying of flags and, equally, the display of other insignia of identification by UNAMIR is addressed by the following provisions of the Status of Mission Agreement entered into between the United Nations and the Government of Rwanda on 5 November 1993.

> *Article IV, para 8: "The Government recognizes the right of UNAMIR to display within Rwanda the United Nations flag on its Headquarters, camps or other premises, vehicles, vessels and otherwise as decided by the Special Representative. Other flags or pennants may be displayed only in exceptional cases. In these cases, UNAMIR shall give sympathetic consideration to observations or requests of the Government"*
>
> *Para 9: "Vehicles, vessels and aircraft of UNAMIR shall carry a distinctive United Nations identification, which shall be notified to the Government".*

The above provisions reflect the general practice of all United Nations Agencies in all countries. Accordingly, we would appreciate it if the Ministry could bring this to the attention of all relevant Government agencies.

We wish to take this opportunity to renew assurances of our continued cooperation.

UNITED NATIONS / NATIONS UNIES UNAMIR

Kigali, 10 November 1994

H.E. Dr. Jacques BIHOZAGARA
Minister for Rehabilitation and Social Integration
Kigali
Rwanda.

24 October 1994

Note for the File: Status of Mission Agreement

I had a meeting with Mr. Leon NGARUKIYE, Le Directeur de Cabinet at the Ministry of Foreign Affairs today at 10.30 hrs. I was accompanied by Mr. Patrick Francis, UNAMIR Interpreter. The following were discussed.

1. **Exchange of Notes**

After conveying the compliments of the SRSG and the desire of UNAMIR for continued cordial relations with the Government, I pointed out that UNAMIR still awaited a response to the SRSG's letter of 5 October 1994 regarding a proposed Exchange of Notes on the Status of Mission Agreement. (I gave Mr. Ngarukiye another copy of the letter and two copies of the Status of Mission Agreement, in English and French).

Mr. Ngarukiye responded that the question of an Exchange of Notes is still under discussion by the Government, the delay has arisen from their usual difficulties in running the Ministries, and we should expect a formal response very soon.

2. **Instructions to Government Agencies**

I raised the question of instructions being issued to relevant Government agencies in the meantime, as UNAMIR personnel continued to encounter difficulties with various Government agencies and personnel. In particular, I drew Mr. Ngarukiye's attention to persistent problems faced by UNAMIR personnel at Kigali airport regarding the observance of our immunities form customs and immigration inspections, as well as free access to parts of the airport premises. These problems had also been brought to the attention of the Ministry in previous correspondence.

Mr. Ngarukiye promised that appropriate instructions will be issued to the customs and immigration authorities, in accordance with diplomatic practice. In addition, other problems we had raised in previous correspondence, pertaining to arrests and detention of UNAMIR personnel are also being addressed and we should soon expect responses to the relevant correspondence.

3. **Appointment of Liaison Officer**

I finally raised the need to have a Liaison Officer appointed by the Government and charged with the responsibility of handling all problems pertaining to UNAMIR/Governmen relations.

Mr. Ngarukiye responded that their Prime Minister had in fact raised that issue, which was under discussion and they will soon appoint a high level official from his Ministry to perform that function.

Ike Minta
Legal Adviser

cc:

- **Dr. A. Kabia, Executive Director**
- **Mr. A. Golo, OIC/Administration**
- **MOVCON**
- **MA to FC**
- **CSS**

UNITED NATIONS
INTEROFFICE MEMORANDUM

NATIONS UNIES
MEMORANDUM INTERIEUR

(UNAMIR)

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

DATE: 6 October 1994

FROM: **I. Minta**
Legal Adviser

SUBJECT: **UNAMIR's Status Agreement**

.....

1. I have prepared the attached check-list of the respective rights and obligations of UNAMIR and the Government of Rwanda under the Status Agreement, first, for purposes of information, and second, to facilitate follow-up or implementation measures.

2. As I do not know what follow-up measures may have been taken already, I would recommend circulating this to all relevant UNAMIR Senior officials for feedback, so that any outstanding follow-up could be expedited.

RIGHTS AND OBLIGATIONS UNDER UNAMIR STATUS AGREEMENT AND NECESSARY IMPLEMENTING MEASURES

ISSUE/REFERENCE	UNAMIR	GOVERNMENT
1. UNAMIR's status and activities (Art. IV.5 & 6)	• To strictly observe impartial and international nature; • to observe local laws/regs.	• To respect exclusive international nature, and to <u>take appropriate steps</u> to ensure security/safety of UNAMIR personnel
2. Military Conventions (Geneva - UNESCO)	• Full respect of general Conventions re:<u>conduct</u> of military personnel (Art. IV.7.a)	• Full respect of general Conventions re:<u>treatment</u> of military personnel (Art. IV.7.b)
3. UNAMIR identification/insignia (Art. IV.8 & 9)	• SRSG to decide/display/notify Government regarding	
4. Communications facilities (Art. IV.10 &11)	• Right to install/operate viz Art.10 of 1946 Convention	• To facilitate; allocate radio frequencies
5. Private (UNAMIR) mail	• Own arrangements; if involving currency, parcels or packages, conditions by arrangement with Government	
6. Freedom of movement (Art. IV.12)	• Entitled to such, throughout territory; • Coordinate with Government re:large movements of personnel, stores, vehicles, thru airports, etc.	• To <u>supply</u>, where necessary, <u>maps</u> and other information, including <u>locations of mine fields</u> and other dangers/impediments
7. UNAMIR vehicles (Art. IV.13)	• Shall carry 3rd party insurance per relevant legislation	• No registration/licensing requirements
8. Roads, bridges, canals, ports, airfields (Art. IV.14)	• Exemption from dues/tolls/charges, <u>except charges for services rendered</u>	• Not to levy dues/tolls/charges, except for services rendered
9. UNAMIR's status as subsidiary organ of UN; privileges, immunities under 1946 Convention; extend to funds/assets of participating states (Art. IV.15)	• For details, see under Government. • SRSG to ensure that commissaries established are not abused (eg, by sale/resale of goods to persons not entitled)	<u>Recognizes rights of UNAMIR to</u>: • Duty-free importation • establish/operate commissaries • no customs/excise/ warehouse restrictions • re-export or otherwise dispose of [goods/material]

ISSUE/REFERENCE	UNAMIR	GOVERNMENT
10. UNAMIR premises (Art. V.16)	• Such premises, even when provided by Government, shall be <u>inviolable and subject to exclusive control and authority of the UN</u> • <u>Entry</u> to UNAMIR premises: <u>UN alone</u> controls (Art. V.19	• <u>Shall provide</u>, to extent possible headquarters, camp, and other premises, for operational and administrative activities, and for accommodation of members of UNAMIR [no mention of charges]
11. Shared premises (Art. V.16)	• Where UN troops are co-located with Rwandese troops, direct/immediate access by UNAMIR shall be guaranteed	• To guarantee such access
12. Water, electricity and "other necessary facilities" (Art. V.17)	• To maintain any facilities provided by Government; may generate own electricity (Art V.18)	• To assist, as far as possible, in obtaining these; same priority as essential Government services; payment on agreed terms
13. Local purchases/services (Art. V.20)	• To ensure, on basis of information from Government, that local purchases do not adversely affect the economy	• To assist in obtaining, as far as possible; no sales taxes
14. Sanitary/health services (Art. V.21)	• Both parties to cooperate fully in accordance with international Conventions	
15. Local personnel (Arts V. 22; VI. 28, 46)	• Recruitment at UNAMIR's discretion • Immunity regarding official activities; exemption from tax and national service obligations	• Government to facilitate upon request
16. Local currency (Art. V.23)	• As needed	• Government to provide at most favourable rates
17. Diplomatic privileges of SRSG, FC & PC (Art. VI.24)	• ... and of "such high-ranking members of the SRSG's staff as may be agreed upon" with Government (**<u>Agreement needed here</u>**)	• Government to recognize/ observe diplomatic privileges under sections 19 & 27 of 1946 Convention

ISSUE/REFERENCE	UNAMIR	GOVERNMENT
18. Other UN officials (Art. VI.25)	• Privileges and immunities under Arts V & VII of 1946 Convention, including: • immunity from legal process • exemption from income tax and other direct taxes/fees/charges except municipal rates • immunity from immigration/alien registration requirements • duty free import of furniture/personal effects. All for official, not personal benefit; avoid abuse of privileges	• Government to recognize and observe Arts V & VII regarding.
19. MILOBS, Civ-Pol and Civilian personnel other than UN officials (Art. VI.26)	• Privileges/immunities of "Experts on Mission": Art. VI of Convention • UNAMIR to notify names to Government	• To recognize/observe Art. VI (Convention)
20. Military personnel of national contingents (Art. VI. 27, 37, 38, 39, 47)	• Privileges/immunities same as "Members of UNAMIR" (see below) • Shall wear their national uniform with UN insignia (Art VI. 37) • May carry arms on duty (also, civ-pol and security officers (Art. VI. 37) • Under exclusive jurisdiction of their states regarding any criminal acts (Art. VI. 47. b)	• To recognize/observe same • To recognize permits or licenses issued by UN/SRSG to UNAMIR personnel re:firearms (also, drivers' licenses)
21. Members of UNAMIR (including military; excluding locals) Arts VI: 29, 30-34, 46-48	• Exempt from: income tax; direct taxes (except municipality rates); registration fees/charges; customs duty on personal effects; immigration registration/restriction; • Immune from legal process regarding official activities • Any crimes to be handled by SRSG and Government • Civil claims against: SRSG to be notified for certification before proceeding, but personal liberty not to be restricted regarding.	• To recognize/observe same

ISSUE/REFERENCE	UNAMIR	GOVERNMENT
22. Entry, residence, departure (Art. VI: 32-34	• SRSG and members of UNAMIR: right to freely enter, reside in, and depart from Rwanda; • To inform Government of entry/departure; • No passport/visa requirements or immigration inspections; etc.	• To facilitate entry/departure • Entry/exit only requires: (a) individual or collective movement order by SRSG or Participating State (b) Personal ID [or national, or UN LP]
23. Staff identification (Art VI: 35, 36)	• SRSG to issue numbered ID cards; • Members to present on demand by Government official, but not surrender IDs	• UNAMIR IDs the only documents required
24. Policing/Powers of Arrest (Art VI: 40-42)	• Personnel designated by SRSG shall police UNAMIR premises and deployment areas with powers of arrest; • Military police have powers of arrest over military personnel.	• Government officials may take into custody any member of UNAMIR: (a) at request of SRSG; or (b) in the commission/attempt of a crime [42]
25. Custody/Investigations/ (Art VI: 41-45; 47)	• Military personnel arrested shall be transferred to their contingent commander [41]; • Arrested on UNAMIR premises: transfer to Government [41]; • Preliminary investigation shall not delay transfer of custody; • UNAMIR and Government to cooperate regarding all necessary investigations [44] • Prosecution of UNAMIR civilians subject to SRSG/Government agreement [47.a]; failing which: see **Settlement of Disputes**	• UNAMIR personnel arrested for crimes: transfer immediately to UNAMIR [42] • Government to promptly inform UNAMIR regarding any UNAMIR member suspected of crime with evidence [47] • Government to prosecute persons accused of acts against UNAMIR or its members [45]
26. Deceased members (Art. VI. 49)	• SRSG to take charge	

ISSUE/REFERENCE	UNAMIR	GOVERNMENT
27. Settlement of disputes (Art. VII: 50-54)	• Any private-law claims excluded from Rwandese jurisdiction by this Agreement: submit to standing **Claims Settlement Commission to be established** [50]; • Disputes regarding local staff: submit to SRSG/Admin procedures [51]; • Any other disputes, or appeals from claims settlement commission: submit to **tribunal of three arbitrators**, unless otherwise agreed [52]; • Disputes regarding 1946 Convention: see Section 30 of Convention [53]	
28. Liaison/Implementation (Arts. IX; X. 56)	• Appropriate steps by both parties;	• **Government has ultimate responsibility for implementation /observance of privileges/immunities of UNAMIR by all Government agencies**

UNITED NATIONS
ASSISTANCE MISSION FOR RWANDA

UNAMIR-MINUAR

NATIONS UNIES
MEMORANDUM INTERIEUR

DATE: 5 October 1994

Your Excellency,

1. I have the honour to refer to the Agreement concluded on 5 November 1993 between the United Nations and Rwanda on the Status of UNAMIR.

2. In view of the expansion of the mandate of UNAMIR in subsequent Security Council resolutions, the Secretary-General would like to propose an exchange of letters with the Government of Rwanda to facilitate the application of the Agreement to UNAMIR's expanded mandate.

3. Accordingly, a draft exchange of letters is attached for your consideration. I will be very grateful if you could advise me, as soon as possible, as to whether the attached draft meets with your Government's approval, following which the Secretary-General will send the letter formally to effect such exchange.

4. Meanwhile, I would like to bring to your attention that UNAMIR personnel have encountered occasional difficulties at Kigali Airport on the clearance of UNAMIR supplies through customs as well as on the free transit of our staff.

5. In order to avoid such difficulties, may I respectfully request that your Government issue the necessary instructions to all relevant Government agencies on the observance of the privileges and immunities of UNAMIR under the Agreement.

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

Yours sincerely,

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

His Excellency Mr.Jean Marie Vianney NDAGIJIMANA
Minister for Foreign Affairs and Cooperation
Kigali

NOTE FOR THE FILE

On 25 October 1994, Mr. Isaac Minta (Legal Adviser) and I made a visit to the Ministry of Justice in Kigali. The purpose of the visit was to schedule an appointment with the Minister's Directeur de Cabinet and to introduce ourselves as members of the Legal Unit of UNAMIR.

We were fortunate to be able to meet the Directeur de Cabinet, Ms. Marthe Mukamurenzi, who was gracious enough to grant us an immediate audience. After formal introductions were made, we proceeded to discuss issues of concern to us. Ms. Mukamurenzi insisted that the conversation be conducted in the French language.

Mr. Minta asked if we could obtain a copy of the official Government proclamation announcing the formation of the new Government in Kigali. We were assured that a document had already been prepared and that a copy of it would be made available to us within a few days. Inquiries were also made regarding the existence and location of a documentation centre whereby one could obtain access to national legislation. We were shown bound volumes of Rwandan legal codes (in French) and told that copies of any particular legislation would be made for us by the Ministry, should we so request. Ms. Mukamurenzi confirmed that national legislation existing prior to the change of regime in Rwanda should still be considered valid and binding law.

In response to a question regarding the state of disrepair of the facilities of the Ministry, she stated that information on their facilities in Kigali had already been compiled, but that further research had to be done with regard to an investigation of their facilities in other prefectures. We stated that the international community would like to assist in the reconstruction of the judicial system in Rwanda and she welcomed our offer of assistance. Finally, she provided us with the name of an official contact person for further enquiries regarding access to Rwandan legal texts (Mr. Vedaste Musonera, Directeur de la Legislation).

In short, the atmosphere of the meeting was very warm and cordial presaging future cooperation and goodwill between the two parties.

Ladan M. Rafii
Political/Legal Officer
27 October 1994

9/17/94

Etat Actuel du Système Judiciaire Rwandais

Tribunaux de Première Instance

Prefecture	Juges en place	Juges étrangers souhaités	Chambres possibles	Procureurs & Substituts	OPJ
Kigali	8	4	4	7 (dont 3 jurists)	9
Byumba	3	3	2	-	2
Ruhengeri	1	2	1	1	6
Gisenyi	1	2	1	-	4
Kibuye	2	4	2	-	1
Cyangugu	3	3	2	1	4
Butare	3	3	2	1	2
Gikongoro	2	4	2	-	1
Gitarama	1	2	1	1	-
Kibungo	-	-	-	-	1
Total	24	27	17	11	30

Tribunaux d'Appel

Kigali	1	2	1	1
Nyanza	3	3	2	1
Ruhengeri	1	2	1	-
Cyangugu	-	-	-	-
Total	5	7	4	2

Cour de Cassation	3	3	2	1

Conseil d'Etat	3	3	2

Cour des Comptes 1

En somme 40 juges étrangers souhaités
60-70 procureurs étrangers souhaités

UNITED NATIONS
ASSISTANCE MISSION FOR RWANDA

NATIONS UNIES
MISSION POUR L'ASSISTANCE AU RWANDA

FROM: MAJ F. KAMANZI

TO: RPA COMMANDER RUSUMO

FOR INFORMATION: MAJGEN TOUSIGNANT, COMFOR UNAMIR

DATE: 25 AUG 94

SUBJECT: **TAXATION UNAMIR II**

1. UNAMIR II is an accredited organization by the RPA and as such is not required to pay taxation on any goods entering Rwanda.

2. UNAMIR convoys are to be given unhindered access into RWANDA for the provision of logistic supplies. This includes the fuel and general goods vehicles operated by civilian contractor for UNAMIR II.

25.08.94

F. KAMANZI
MAJOR
LIAISON OFFICER
RAWANDISE PATRIOTIC ARMY

② FC
26/8

③ Sec
Copy to CAO
6-4

④ Noted
25 Aug 94

⑤ UNAMIR PAY
UNAMIR CARGO
Plse note keep
an attached copy; orig
to Dlt rtn to me.
R. Embuy
Maj
OC Mouvcon Air
30/Sep/94.