

[1 CONFIDENTIAL]

UNARCHIVES

SERIES S-1120

BOX 16

FILE 6

ACC. 1998/0278

OUTGOING CODE CABLE

TO: KITTANI/GOULDING/HANSEN, UNATIONS, NEW YORK
INFO: GHAREKHAN, UNATIONS, NEW YORK
FROM: SHAHARYAR M. KHAN, UNAMIR, KIGALI
DATE: 8 November 1995
NO.: MIR _____
NO. OF PAGES: 5
SUBJECT: Conference on Genocide, Impunity and Accountability

1. As stated in our MIR-3768, the Conference on Genocide, Impunity and Accountability organized by the Government of Rwanda was held in Kigali from 1st to 5th November. Please find attached a note for the file which summarizes the proceedings of the conference and the recommendations it issued.

2. The Conference has fulfilled its objectives. Apart from contributing to ensuring that the genocide not be forgotten nor denied, the Conference adopted over one hundred recommendations, most of which have the potential to be translated into concrete measures by the Government.

3. Whether this has been a rhetoric exercise or a real success will of course depend on the Government's will to act upon the recommendations issued, particularly in the field of the administration of justice. This is of course a decision that will be taken by the Government. There is however a strong case for the international community to insist on the implementation of certain of the recommendations issued, while providing assistance to the Government accordingly. The proposal to transform the Conference into a permanent body has some merit in that this could contribute to ensuring continuity in the implementation of the recommendations. However, the role that actors other than the Government would have in such a body was not clearly spelled out.

Best regards.

Note for the file
Conference on Genocide, Impunity and Accountability:
Dialogue for a National and International Response

Introduction

1. An international conference under the title "Genocide, Impunity and Accountability: Dialogue for a National and International Response", organized by the Government of Rwanda, was held in Kigali from 1st to 5th November 1995.
2. The aim sought by the Government in convening this Conference was to have participants produce concrete proposals which could be used by Rwandan policy-makers for developing a comprehensive and coherent policy and strategy to address the problems linked to the genocide. The conference debates were overshadowed by the double tension facing Rwanda: on one hand, the desire to quickly stabilize Rwandese society through a process of national reconciliation; on the other hand, the need to prosecute those responsible for the genocide so that this act not be condoned nor forgotten, without however allowing revenge acts to take place.

Participation and structure of the conference

3. Over 200 participants, of which some 60 foreign specialists in the fields of law, history, journalism, psychology, etc., took part to the Conference. Embassies accredited to Rwanda, UNAMIR, UN agencies and the ICRC were also represented. The interest shown by the Government was demonstrated by the participation of the President, Vice-President, Prime Minister, Speaker of the National Assembly, Minister of Foreign Affairs, Minister of Justice and various other Ministers and top senior officials of the Government.
4. Following the opening address by the President, the conference engaged in two days of initial introductory lectures on the topics to be discussed. After that, participants were divided into six working groups and engaged in a two-day session, following which recommendations of the various groups were put to the Plenary by the Rapporteurs of the various groups for their debate and adoption. The conference concluded with a presentation by the Rapporteur of the conference, the closing address being also delivered by the President.

Findings and recommendations

5. As summarized by the Conference Rapporteur, Professor Schabbas, the Conference has demonstrated the will of the Government to see those responsible for the genocide brought to justice, while at the same time balancing that imperative with the necessity to stabilize society and to take into account the limitations imposed by the functioning of a shattered justice system burdened now with an extraordinary heavy load of cases. Both determination and flexibility are required of the justice system. The debates showed the practical problems that the application of the provisions of the 1948 Convention on the

Prevention and Punishment of the Crime of Genocide poses, and, foremost, the fact that these provisions were openly violated by States parties to it regarding their obligation to prevent genocide from occurring.

6. The Plenary of the Conference adopted over one hundred recommendations, which will be incorporated to the proceedings of the conference, yet to be issued. With no pretense of being exhaustive, the following are the salient recommendations adopted by the Conference, as presented by each of the working groups (please note that there were six working groups for five topics, the topic of the functioning of the justice system being dealt with by two groups):

a) Group I. Genocide: causes, mechanisms and responsibilities: The historical responsibilities for the genocide that befall upon the colonial powers, which exacerbated ethnic divisions to explain what were mainly social differences in the traditional Rwandan society, the church, the intellectuals and the media, particularly since 1989, should be clearly spelled out. Facing already now an ideological current that denies that the genocide in Rwanda ever took place, it was recommended that a law be passed to prohibit the negation of the genocide. Such laws exist already in other countries with respect to the Jew holocaust. In this connection, it was also recommended that an exhaustive effort of documentation of the genocide be undertaken, both with a view to preserving the memory of the genocide and to serve as a documental basis for the prosecution of those responsible for the genocide. This documentation effort could be undertaken by a National Commission established to this effect. The memory of the genocide could also be preserved by the establishing of commemorative monuments, institutionalization of a memorial day, and other similar measures.

b) Group II. Genocide: management of the social, political and economic consequences: The repatriation and reintegration in their home communities of the refugees and the internally displaced was spelled out as being a priority. It was recommended that immediate material assistance be provided to the survivors of the genocide, as well as preferential treatment be accorded to them for access to social services. The Conference felt that a National Council for the victims of the genocide, run by the survivors, should be established, as well as a National Fund. Regarding the political consequences of the genocide, the State institutions, which had been destroyed, should be rebuilt, and international assistance provided in this regard. It was requested that the State cease to adopt ethnicity as a criteria for its administration. Problems of insecurity remain paramount, and those are connected with the sanctuary given by certain countries (Zaire, Kenya and France were mentioned) to members of the defeated army. Regarding the economic consequences of the genocide, Rwanda is now facing an economy which structures have been destroyed and is dominated by the provision of humanitarian assistance. It is fundamental to restore the sustainability of the economy. Property rights dispute should be urgently addressed. Finally, donors were asked to disburse the funds that had been pledged.

c) Group III. Bringing the perpetrators of genocide before justice: classical judicial systems and alternatives: The creation by the National Assembly of an independent Special Prosecutor Office was recommended, with powers to prosecute all crimes connected with the genocide with ample discretion. The Conference also recommended the creation of a specialized Chamber of the ordinary tribunals to deal with these crimes, or the creation of a specialized Tribunal altogether. The creation of its rules of procedure, which would have to be very flexible, would be left to the specialized Tribunal itself. They could include, for example, the presumption of participation in the genocide failing proof to the contrary of all those who belonged to particular organizations, i.e. the Interahamwe. In order to avoid arriving to trial, it was proposed to introduce for certain defendants the mechanisms of plea bargaining and acceptance of guilty pleas to which lower penalties would be associated. In this connection, it was proposed to categorize the perpetrators of genocide according to the level of their participation in this crime, in order to determine the applicability to them of these alternative systems. The applicability of traditional forms of justice (Gacaca) was recognized for the lesser crimes associated to the genocide, such as destruction of property. Acknowledging the problems of personnel facing the judiciary, it was proposed that some of the judges could be laymen drawn from citizens of high moral caliber, even with no legal training (similar to the Cour d'Assises). Finally, the desire of the Government to have fair trials was recognized, which calls for the defendants to be defended by a lawyer. The Government can only provide assistance to defendants in this respect according to available means; therefore the Conference called on the international community to provide assistance to the Government in this respect. It was requested that the Government adopt legislation to implement in the internal order the provisions of the international conventions on human rights and humanitarian law to which it is a party. Finally, total cooperation between the Government and the International Tribunal should be ensured.

d) Group IV. Addressing the problems of the victims of genocide: Addressing the issue of compensation to the victims, while recognizing in the first place the individual civil responsibility of the authors of the crimes or, had they passed away, of their heirs, it was felt that such responsibility for reparations should be broadened. It should include the responsibility of the institutions (political parties, media) that incited the acts of genocide, the responsibility of the Rwandese State and the responsibility of foreign countries, notoriously France and Belgium for their influence on the events. The creation of an Independent Commission to ensure that these reparations are paid as well as the creation of a Fund for this purpose was recommended.

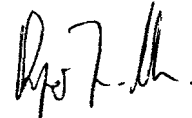
e) Group V. The role and responsibility of the international community in addressing the post-genocide situation: The Conference agreed with the findings of the Commission of Experts established pursuant to Security Council resolution 935 (1994) in that there exists an overwhelming evidence to prove that acts of genocide against the Tutsi ethnic group were committed, and that while crimes against humanity were committed by individuals of both sides of the conflict, there is no evidence to suggest that acts committed by Tutsi elements were perpetrated with an intent to destroy the Hutu ethnic group as such, within the meaning of the Genocide Convention. The legal and moral responsibility of States that failed to act or that supported the perpetrators of the genocide

should be recognized and accordingly appropriate compensation should be sought from them. The Conference requested States to give positive consideration to the demands by the Government of Rwanda for extradition to Rwanda of those suspected of committing crimes associated to the genocide.

7. A final recommendation of the Conference was to transform the Conference in a Permanent Kigali Conference so as to show the permanent commitment of the international community to collaborate with the Government in ensuring continuity in the implementation of the recommendations issued.

Assessment

8. The Conference was an organizational success. Participants engaged actively in the discussions and the recommendations issued in certain areas provide a plan of action that is ready for the Government's consumption. The international community should press and ensure that the potential benefit of these recommendations be translated into concrete actions. Whether this will be case is something that remains to be seen. However, if one thing was made clear during the conference is that the immensity of the task ahead, particularly in the field of administration of justice, calls for the immediate adoption of flexible solutions. The final recommendation to establish a Permanent Kigali Conference could be a way both to ensure that the memory of the genocide will be preserved and that the recommendations issued by the Conference are not forgotten.



Diego Zorrilla
8 November 1995