[5 CONFIDENTIAL]

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

CONFIDENTIAL

UNITED NATIONS BOARD OF AUDITORS - GHANA

UN ORGANIZATION:
UNITED NATIONS ASSISTANCE MISSION FOR RWANDA
(UNAMIR)

To: Mr. Ally H. Golo
Officer-In-Charge, Administration
UNAMIR,Kigali

Ref. No. : EA/GH/MIR.95/21

Date: 11 May 1995

From: F. K. Ofei-Odame
Team Leader
External Audit, Ghana

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

We shall be grateful for your comments on the following audit observations. Please submit your comments by 15 May 1995, duly signed, dated and referenced as indicated above.

Non-Expendable Property

Seized, missing and stolen vehicles and other equipment

Our review of UNAMIR Property Survey Board 'A' cases indicated that as at 23 April 1995, eight (8) cases involving the disappearance of 231 motor vehicles with a total value of $3,042,418.52 have been submitted for formal investigations by the Military Police. We noted that four out of eight cases as detailed below, have been referred to UNHQ Property Survey Board for review and advice.

145	Un-owned vehicles (during the war)	$1,380,131.10
80	Contingent-owned vehicles (during the war)	$1,622,162.49
6	Unowned vehicles (after the war)	$ 40,124.93
231	TOTAL	$3,042,418.52

Further checks at the Transport Workshop revealed that during the war, the place was completely looted, resulting in the loss of tools, spare parts estimated at $320,000; fuel stored in tanks; office equipment and vehicles. We were also informed that vehicles which remained were so vandalized that they were proposed for write-off action.

Additionally, the underlisted communication equipment were said to have disappeared:

79 Portable VHF Motorola radios
77 Spectra A3 Motorola radios
11 Fax machines
30 Canon photocopying machines

Furthermore, information available to us indicates the confiscation of some communication equipment and sporadic stealing and seizure of UNAMIR vehicles, some at gun point, ever after the war.

During our examination of the causes of the delay in dealing with the above cases, it was explained that the political atmosphere in Rwanda was not conducive for carrying out such investigations. Against this backdrop of silence and helplessness, United Nations vehicles and other valuable assets continue disappearing. We have to stress that the situation, if not checked at the highest governmental level, will certainly hamper UNAMIR's operations and will also cause the United Nations millions of dollars.

Once again, we wish to suggest that no time should be lost in finding ways and means of soliciting the co-operation and assistance of the Government to arrest the situation.

OUTGOING CODE CABLE

Pl. see my comment. ED LA

TO: KHAN, UNAMIR, KIGALI
FROM: ANNAN, UNATIONS, NEW YORK
DATE: 7 APRIL 1995
NUMBER: 1096

SUBJECT: **Rwandese national under UNAMIR protection**

1. Re your MIR-536 of 8 February and our UNAMIR-492 of 13 February on the above, please find attached copy of a memorandum from the Office of Legal Affairs, with our apologies for the delay in transmission. We share the views expressed in the memorandum which provides useful guidance for handling such cases.

2. Grateful you let us know whether this particular case has been resolved in the meantime and, if so, how. We would also be grateful for receiving, at your convenience, the additional information requested in our UNAMIR-942 of 13 February. Many thanks and regards.

CNR-87 P2/4

United Nations Nations Unies

INTEROFFICE MEMORANDUM MEMORANDUM INTERIEUR

TO: A: Mr. Hédi Annabi, Director
Department of Peace-Keeping Operations

DATE: 1 March 1995

REFERENCE:

THROUGH: S/C DE:

FROM: DE: Ralph Zacklin, Director and Deputy to the Under-Secretary-General in charge of the Office of Legal Affairs

SUBJECT: OBJET: Rwandese national under UNAMIR protection

1. Reference is made to your memorandum of 13 February 1995 and the UNAMIR cable of 8 February 1995 attached thereto, concerning a Rwandese national who sought refuge in UNAMIR base. Our advise on the matter is set out below.

2. The facts as described in UNAMIR cable are as follows: Mr. Elisafane Majambere, a Rwandese national, sought refuge in the UNAMIR base in Kibungo on grounds that, having witnessed a massacre involving the bourgemestre of the area, his life is in danger. In the course of a preliminary investigation conducted by Human Right Officers, RPA soldiers sought custody over Mr. Majambere accusing him of shooting one of theirs. A Presidential Commission was established to investigate allegations of both sides but its results have not yet been made known. In the present circumstances, UNAMIR suggests that we consider four alternative solutions:

(i) to surrender the refuge-seeker to the Government;
(ii) to request him to leave the premises and, if necessary, to expel him;
(iii) to expel him out of the country, or
(iv) to surrender him to the International Tribunal for Rwanda.

3. The question of providing a refuge to an asylum-seeker has both legal and humanitarian aspects. Legally, the right to seek asylum and the correlative obligation to provide it, are not universally recognized as part of customary international law. Situations of asylum-seekers are, therefore, governed by the two-fold principle of inviolability of the premises in question, and the obligation not to use them as a refuge for persons evading

i) 2 Legal documents apply One (SOFA) is punished by RPA
ii) what are UN premises? Force regional HQ? Mil obs post? Mil obs residence? UNICEF compound?

justice 1/. In the present case, according to the Convention on the Privileges and Immunities of the United Nations (Section 3), and the Status of Force Agreement between the United Nations and the Government of Rwanda (Articles 16 and 19), UNAMIR's premises are inviolable. UNAMIR alone may exercise authority there, and no governmental authority nor RPA soldiers can enter the premises without the prior consent of the Force Commander. The inviolability of UNAMIR's premises, however, does not mean that they may be used as a refuge for persons avoiding lawful arrest or legal process.

4. On a humanitarian basis, refuge may be given to an asylum-seeker if there is an imminent danger to his life and for the duration of such danger. If requested by governmental authorities in order to effectuate lawful arrest or to stand trial, an asylum-seeker may be handed over on condition of safe conduct, and guarantees of minimum standards of human treatment and due process of law.

5. In examining the four alternative solutions proposed by UNAMIR, it is our view that only the first option, namely, surrender to the Government upon request and on acceptable conditions and guarantees, should be pursued. Expelling an asylum-seeker within Rwanda or to a neighbouring country without adequate guarantees for life and safety could impose a heavy moral responsibility on the United Nations. Expulsion to a neighbouring country would, in addition thereto, be unlawful without the consent of the receiving State, and would also, as rightly pointed out in UNAMIR's cable, be seen as assisting a fugitive to evade justice. The fourth option of surrendering the asylum-seeker to the International Tribunal (whose seat has been determined in Arusha) should be discarded as surrender to the Tribunal would only be possible upon request of the Tribunal and if the person whose surrender is sought is accused of any of the crimes falling within the jurisdiction of the Tribunal.

1/ See for example Section 9 (b) of the Headquarters Agreement between the United Nations and the United States which provides that:

> "Without prejudice to the provisions of the General Convention or Article IV of this agreement, the United Nations shall prevent the Headquarters district from becoming a refuge either for persons who are avoiding arrest under the federal, state, or local law of the United States or are required by the Government of the United States for extradition to another country, or for persons who are endeavouring to avoid service of legal process."

6. When additional information is made available on the authority seeking custody of Mr. Majambere, the grounds for the request and possibly also the conclusions of the Presidential Commission, we would be in a better position to advise you on the formalities of the hand-over.

UNITED NATIONS
ASSISTANCE MISSION FOR RWANDA

NATIONS UNIES
MISSION POUR L'ASSISTANCE AU RWANDA

File
UNAMIR
95 FEB -9 15 06

OUTGOING CODE CABLE

CRN 32

TO: ANNAN, UNATIONS, NEW YORK

FROM: TOUSIGNANT, UNAMIR, KIGALI

DATE: 08 FEBRUARY 1995

NUMBER: MIR 536

SUBJECT: Rwandese National Under UN Protection

1. We would like to inform you of the case of a Rwandese National, Mr. Elisafane Majambere, who has sought refuge with UNAMIR and to seek your guidance on how to handle this and any similar case.

2. As indicated in some of our previous SITREPS, Mr. Majambere sought protection at a UNAMIR base in Kibungo (Sector 2) on 12 December 1994, stating that he knew of a massacre implicating the current Bourgemestre of the area and that he feared for his life. After preliminary enquiries were conducted by Human Rights Officers it was decided to transfer him to Kigali pending full investigation. In the course of the preliminary enquiries, the RPA sought custody of Mr. Majambere accusing him of involvement in the shooting of one of their soldiers. But as the RPA allegation could not be substantiated, we proceeded to transfer Mr. Majambere to Kigali on 17 December 1994.

3. Subsequently, the Government established a Presidential Commission comprising the Minister of Defence, the Minister of Justice, and the Head of the Human Rights Field Office in Rwanda to investigate both the allegations by and against Mr. Majambere. We have requested the results of that investigation, but they have not been made available to us.

4. Mr. Majambere has thus remained under protection at UNAMIR premises in Kigali since 17 December 1994, and we are now faced with the following options:

(a) Surrendering him to the Government, but subject to what conditions, and on what grounds may we demand such conditions?

95 FEB 15

(b) Advising him that UNAMIR cannot continue to give him refuge, and requesting him to leave our premises. As he will face arrest or worse if he leaves, he will most likely refuse to leave. We will then face the prospect of expelling him to face certain arrest, or worse.

(c) Transporting him to a border area and leaving him there to fend for himself, possibly to leave the country. Here, we may be stopped en route and asked to surrender him, or we may be accused of assisting a fugitive from justice - whether or not there is evidence of his involvement in any crime.

(d) Surrendering him to the custody of the International Tribunal for Rwanda through the Prosecutor's Office. Unfortunately, this option is not available now as their machinery is yet to be set up, and we do not know how long that will take or if they will assert jurisdiction over him.

5. We are thus faced with a dilemma, particularly as this case seems to be only marginally related to UNAMIR's mandate, and we are not equipped to cater for such internal refugees or persons at risk on our premises. We are also concerned that we may be faced with similar situations in increased numbers when the Tribunal commences its investigations. We would thus appreciate your urgent advice on this matter.

6. Best regards.

CNR 038 P 1/1

OUTGOING CODE CABLE

95 FEB 14 06 57

IMMEDIATE

95 FEB 13 P 4 11

TO: KHAN/TOUSIGNANT, UNAMIR, KIGALI
FROM: ANNAN, UNATIONS, NEW YORK
DATE: 13 FEBRUARY 1995
NUMBER: **492**

SUBJECT: **Rwandese national under UNAMIR protection**

1. Reference your MIR-536 of 8 February on the above, we are seeking the advice of the Legal Office and will revert to you as soon as possible. We have noted, however, from your cable that the UN Human Rights Field Office in Rwanda (HRFO) has carried out a preliminary inquiry which apparently led UNAMIR to decide to transfer Mr. Elisafane Majambere from Kibungo to Kigali. According to your cable, HRFO was also a member of the "Presidential Commission" set up to investigate Mr. Majambere's allegations and those made against him by the Government.

2. We wonder in this connection whether you have consulted with HRFO and what advice, if any, they have offered to UNAMIR. It is our understanding that some time ago UNAMIR and HRFO had discussed rules of procedure which would apply, inter alia, to persons seeking refuge with UNAMIR. In the event that these rules of procedure have been finalized, they would certainly be useful to the Legal Office for its consideration of this particular case. We would also advise you to consult the ICRC representative in Kigali and to inform us of his views. Finally, we would be grateful if you could clarify Mr. Majambere's ethnic affiliation and whether he has a civilian or military status. Regards.

CNR 586 P1/2

OUTGOING CODE CABLE

TO: KHAN, UNAMIR, KIGALI
FROM: ANNAN, UNATIONS, NEW YORK
DATE: 29 September 1994
NUMBER: UNAMIR: 3176

SUBJECT: Status of Mission Agreement

1. You will recall that, on 5 November 1993, the United Nations concluded an agreement on the status of UNAMIR with the former Government of Rwanda. Since then, however, the mandate of UNAMIR has been modified on several occasions.

2. In order to ensure that the agreement of 5 November 1993 applies to the current mandate of UNAMIR and with a view to obtaining from the new Government a confirmation that they are prepared to honour the obligations assumed by the previous Government under the agreement, the Legal Office has prepared the attached Exchange of Letters, in consultation with this Department.

3. Grateful you consult the Government on the text of the letter and seek their concurrence to it. The Secretary-General will then send the letter formally to the Foreign Minister. Please advise asap. Regards.

Legal Adv
pl advise
Secretariat.
Rule 60 379

Let us
first know
S. 3/10

CNR 586 P2/2

DRAFT

23 September 1994

Excellency,

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.

As you are aware, following the conclusion of this Agreement, the Security Council decided, by its resolution 912 (1994) of 21 April, to adjust the mandate of UNAMIR. On 17 May, the Council further decided, under resolution 918 (1994), to expand the mandate of the Mission. The additional responsibilities entrusted to UNAMIR under this resolution were reaffirmed by the Security Council in its resolution 925 (1994) of 8 June.

Accordingly, and in order to facilitate the fulfilment of UNAMIR's mandate, I propose that the provisions of the Agreement concluded between the United Nations and Rwanda on 5 November 1993 apply, mutatis mutandis, to UNAMIR's mandate as expanded by the Security Council.

If the above provisions meet with your approval, I would propose that this letter and the written confirmation of your acceptance of its provisions constitute an agreement between the United Nations and Rwanda supplementing the above-mentioned Agreement on the Status of UNAMIR.

Accept, Excellency, the assurances of my highest consideration.

Boutros Boutros-Ghali

H.E. Mr. Jean Marie Vianney NDAGIJIMANA
Minister for Foreign Affairs and Cooperation
Kigali