[7 CONFIDENTIAL]

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

UNAMIR - MINUAR

CRN 013

1996 JAN 15 P 8:58 UNAMIR

OUTGOING CODE CABLE

A dossier WS

TO:	KITTANI/GOULDING, UNATIONS, NEW YORK
INFO:	GHAREKHAN, UNATIONS, NEW YORK
FROM:	WILFRID DE SOUZA, UNAMIR, KIGALI
DATE:	15 JANUARY 1996
NO.:	MIR 111
NO. OF PAGES:	2
SUBJECT:	CONTRACTOR'S LIABILITY TO PAY CORPORATE TAXES

1. This afternoon Major Kamanzi of the Ministry of Defence requested a meeting with UNAMIR on the above subject. It transpired that Major Kamanzi wished UNAMIR to provide information on the type of work being carried out by UNAMIR contractors in order to facilitate the tax assessments being calculated by the Ministry of Finance.

2. I used this opportunity to convey to Major Kamanzi the two points raised in your code cable 131 of 12 January 1996. Firstly, the imminent arrival of experienced officials from Headquarters to discuss this matter with the Government and secondly, the contents of paragraph two of the said code cable which I transmitted verbatim.

3. Major Kamanzi stressed the need to have the experts arrive in Rwanda as soon as possible in order to find a solution to this matter. On the other hand he underlined that private companies operating in Rwanda were subject to the laws of the country and "had no right to erode national sovereignty".

ED
CAO
legal
Officer

CNR-003 P1/5

UNITED NATIONS
OPERATIONS
96 JAN -5 P 7:51

OUTGOING CODE CABLE

6-1-95

RECEIVED
6 JAN 1996
OFFICE OF THE SRSG
UNAMIR

TO: KHAN, UNAMIR, KIGALI
FROM: KITTANI, UNATIONS, NEW YORK
DATE: 5 January 1996
NUMBER: 051

SUBJECT: Contractor's liability to pay corporate taxes

1. Further to our 3928 of 21 December, we should like to brief you on the latest developments concerning the issue of taxation of UNAMIR contractors.

2. As you know, we have sought the views of OLA and their response is contained in Mr. Corell's memo dated 22 December, a copy of which is attached for your information.

3. On the basis of the advice of OLA, it has been decided that the Government's position concerning the application of such taxes cannot repeat cannot be accepted. This decision has been taken on the grounds that the concerned contractors are located in Rwanda for the sole purpose of providing goods and services to UNAMIR and that they should therefore be considered as an integral part of the UNAMIR machinery for implementing the Security Council mandate. The request of the Rwandese Government is also unprecedented and inconsistent with the 1946 Convention on the Immunities and Privileges of the UN. In addition, given the current financial crisis, the UN would not be in a position to effect the reimbursement that the contractors would promptly seek from the UN for the taxes imposed on them by the Government of Rwanda.

Reçu le - 6 JAN. 1996

4. This leaves us with no other option but to inform the Government that we cannot accept their position concerning the tax liability of UN contractors delivering essential goods and services to a peace-keeping operation which is already providing valuable assistance to Rwanda's recovery and rehabilitation efforts. However, in order to minimize the potential political fall-out of this decision, we have already approached the Government of Belgium, Canada, Germany, UK and US, with a view to having them use their influence with the Kigali authorities to accept the position of the UN. At their request and in order to assist them in this task, we have provided them with an Aide-Mémoire (copy attached), outlining the relevant aspects of the problem. We shall also, if necessary, raise the problem at the meeting of the ROSG scheduled to meet in Washington on 12 January.

5. Lastly, may we request that UNAMIR and the contractors desist from exchanges of correspondence on the tax issue, either between themselves or with the Government, so as not to prejudice the matter before the Member States mentioned in paragraph 4 above have had a chance to exert the necessary pressure to convince the Rwandese authorities to adopt a more constructive attitude.

6. Will keep you informed. Best regards.

-003 P3/5

United Nations Nations Unies

INTEROFFICE MEMORANDUM MEMORANDUM INTERIEUR

DPKO-OUSG
INCOMING MAIL

*Action by: HA SRC
Info copy to:
*Please return originals to Central/other:

TO: Mr. Ismat Kittani
A: Under-Secretary-General
for Peace-keeping Operations

DATE: 22 December 19

THROUGH:
S/C DE:

REFERENCE:

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

Central

cc JH
MP
EL
LS
S/R

SUBJECT:
OBJET: **UNAMIR contractors: imposition of taxes by the Government of Rwanda**

1. I have received copies of several exchanges of communications between UNAMIR and DPKO with regard to the continued insistence on the part of the Government of Rwanda to tax goods and services imported into Rwanda for UNAMIR. In a related issue, I also understand that the Government has requested to review all contracts with UN contractors.

Background

2. The Government has addressed its requests for payment of taxes to individual UN contractors providing goods and services to UNAMIR. These requests for payment have been under the guise of enforcing Rwandan tax laws. This Office previously has addressed requests for payment of customs duties on goods imported into Rwanda by UN contractors for the official and exclusive use of UNAMIR (see memorandum dated 21 June 1995 from Mr. Zacklin to Mr. Annabi). In our 21 June 1995 memorandum, we indicated clearly that goods imported into Rwanda for UNAMIR are exempted from such taxes and, therefore, are not payable by UN contractors providing such goods to UNAMIR.

3. We also previously have advised on requests for payment of social security taxes which contractors should have collected from the emoluments of local employees. In our opinion dated 27 November 1995 from Mr. Ssekandi to Mr. Medili, we indicated that such taxes levied on nationals of Rwanda are payable.

The Present Issue

4. Most recently, the Government of Rwanda has attempted to impose various other taxes on contractors providing goods and services to UNAMIR which are ordinarily payable by corporations established and doing business in the country. In this regard, the Government has claimed tax payment for "droit de patente" and "impôt sur les bénéfices" which appear to be income or corporate taxes. We understand that in calculation of these taxes, the Government has used as the basis the cost of "importations" into

Rwanda, which in essence represents the value of the goods imported by the contractors for UNAMIR.

5. While it is difficult to determine the nature and validity of these taxes, it seems from the information received that these are the latest in a series of efforts of the Rwandan Government to tax goods and services imported into Rwanda for the exclusive and official use of UNAMIR.

Analysis

6. The position of the Government on the new taxes may have severe implications for the continuation of UNAMIR operations since the UN may be called upon by the contractors to pay this as part of the costs paid by the UN to the contractors for provision of the goods and services or face possible refusal by the contractors to provide the goods and services to UNAMIR.

7. These taxes raise similar issues to those addressed in our memorandum of 21 June 1995. Our advice in that memorandum was based on the relevant provisions of the Convention on the Privileges and Immunities of the United Nations (the Convention), to which Rwanda is a Party. The Convention is applicable to UNAMIR, as clearly indicated in the Status of Forces Agreement concluded on 5 November 1993 between the UN and Rwanda on the status of UNAMIR (SOFA).

8. Pursuant to Section 7(a) of Article II of the Convention, the United Nations, its assets, income and other property are exempt from all direct taxes. Article II of the Convention also provides that the United Nations, its assets, income and other property are exempt from customs duties and prohibitions and restrictions on goods imported by the United Nations for its official use (see Section 7(b) of Article II of the Convention).

9. The UN contractors are engaged following a competitive bidding process and most of the contracts for the UNAMIR contractors being taxed by the Government have been negotiated and concluded at Headquarters. In respect of foreign based contractors which do not have a permanent establishment in Rwanda but are located there for the exclusive purpose of providing goods and services to UNAMIR, we believe that such imposition of taxes on goods and services provided to UNAMIR, would be inconsistent with the status of the UN.

10. As to the current contracts concluded between the UN and the contractors, the contracts make specific reference to the exemption from taxes the UN enjoys under Section 7 of Article II of the Convention. The contractors have indicated that the prices quoted in their offers to the UN excluded the possibility of paying local income or corporate taxes imposed on companies established in Rwanda and doing business there. Such taxes were never expressly

addressed in the bidding documents or during negotiations between the parties on the contract price, although certain local taxes such as social security taxes, were addressed. Furthermore, we understand that such taxes have not been imposed in connection with other peace-keeping operations.

Conclusion

11. From the above, it appears that the Government of Rwanda is not entitled to impose taxes on goods and services provided to UNAMIR. This position has to be upheld by UNAMIR vis-à-vis the Rwandan authorities. Furthermore, the UN has not assumed any legal obligation under the relevant contracts to pay/reimburse the contractors for the various disputable taxes being imposed by the Government. However, in the event that these latter taxes are imposed, they could indeed be construed as unforeseen costs. We cannot, therefore, exclude the possibility that contractors would institute claims against the UN for reimbursement of such taxes. In such an event, the burden of paying such taxes could ultimately fall on the UN.

12. It seems to us that, at this stage, the matter must be dealt with at the highest political level, as the imposition by the Government of Rwanda of the aforementioned taxes on UN contractors would have significant implications for UNAMIR and seems to be an attempt to circumvent the exemption of the UN from taxes under the Convention and the SOFA.

Release of Contract Documents

13. As to the release of contracts and in so far as they constitute UN documents, they are inviolable by virtue of the provisions of section 4 of the Convention which provides as follows: "the archives of the United Nations, and in general all documents belonging to it or held by it, shall be inviolable wherever located." We would point out, however, that certain information could be released by the UN on a voluntary basis if it is in the interest of the Organization.

cc: Mr. I. Riza
Mr. H. Medili
Mr. R. Adams

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

(UNAMIR - MINUAR

UNAMIR

1996 FEB -2 P 7 24

OUTGOING CODE CABLE

CRN-038 P1/6

TO: KITTANI/GOULDING/CORELL, UNATIONS, NEW YORK

INFO: GHAREKHAN, UNATIONS, NEW YORK

FROM: For SHAHARYAR M. KHAN, UNAMIR, KIGALI

DATE: 2 FEBRUARY 1996

NO.: MIR — 311

NO. OF PAGES: SIX

SUBJECT: PAYMENT OF COPORATE AND OTHER TAXES BY UN CONTRACTORS

THIS IS TO REPORT THAT THE UNITED NATIONS DELEGATION SENT TO KIGALI TO ASSIST WITH THE ISSUE OF CORPORATE AND OTHER TAXES DEMANDED BY THE GOVERNMENT OF RWANDA FROM UN CONTRACTORS HAD ITS LAST FORMAL MEETING ON 31 JANUARY, 1996. IT WAS HOPED THAT A FURTHER MEETING WOULD BE HELD TO-DAY 2 FEBRUARY, 1996 TO REPORT ON THE RESULTS OF CONSULTATIONS WITH UN HEADQUARTERS ON THE QUESTION OF EQUIPMENT. THIS MEETING HAS NOT OCCURRED BECAUSE WE HAVE NOT BEEN ABLE TO OBTAIN A DEFINITIVE FEEDBACK ON THE RECOMMENDATIONS MADE IN MY CABLE OF 31 JANUARY 1996 A COPY OF WHICH IS ATTACHED.

THE MEETING ON 31 JANUARY 1996 WAS HELD AFTER BOTH DELEGATIONS HAD REACHED A DEADLOCK IN THE LAST MEETING HELD ON 24 JANUARY. IT WAS A GREAT RELIEF FOR THE UN SIDE TO FIND THAT THE GOVERNMENT DELEGATION WAS WILLING TO LISTEN FURTHER TO SUPPORTING ARGUMENTS, FOR THE GOVERNMENT TO DEMONSTRATE FLEXIBILITY IN THE APPLICATION OF ITS TAXATION LEGISLATION IN THE CASE OF UNITED NATIONS CONTRACTORS SUPPORTING UNAMIR ACTIVITIES.

cRd-038 2/6

IN SUMMARY, THE LEADER OF THE GOVERNMENT DELEGATION SUMMED UP THE DISCUSSION BY STATING THAT THE POSITIONS OF BOTH SIDES HAVE NOW BEEN STATED AND WHAT WAS REQUIRED IS A PRAGMATIC SOLUTION. HE STATED THAT THE GOVERNMENT IS PREPARED TO TAKE A DECISION NOT TO ENFORCE ITS TAXATION LAW WITH RESPECT TO THE UNITED NATIONS CONTRACTORS, IN LIGHT OF THE ARGUEMENTS ADVANCED BY THE UNITED NATIONS DELEGATION, THAT THEIR WORK IN RWANDA IS EXCLUSIVELY FOR THE SUPPORT OF UNAMIR ACTIVITIES. HE ADDED, HOWEVER, THAT THE UNITED NATIONS SHOULD IN TURN SHOW FLEXIBILITY IN RESPECT OF OTHER PENDING MATTERS, IN PARTICULAR, WITH REGARD TO THE EQUIPMENT REQUESTED BY THE GOVERNMENT. HE ADDED THAT FOR AN OVERALL RESOLUTION OF ALL PENDING ISSUES TO BE ACHIEVED, HE WANTED TO BE GIVEN A DEFINITIVE TIME TABLE WHEN AN ANSWER ON THE GOVERNMENT'S REQUEST CAN BE OBTAINED. HE SAID HE WOULD WAIT TO RECEIVE SUCH AN ANSWER. IT IS FOR THIS REASON THAT WE SUBMITTED PROPOSALS FOR CONSIDERATION BY HEADQUARTERS TO ADVANCE THE PROCESS.

THE UNITED NATIONS DELEGATION WILL LEAVE KIGALI TO-MORROW 3 FEBRAUARY 1996 ON THE UNDERSTANDING THAT THE DISCUSSIONS ARE TEMPORARILY ADJOURNED TO ALLOW CONSULTATIONS WITH A VIEW TO RESUMING IN A WEEK'S TIME, AT WHICH TIME MR. KHAN WILL HAVE RETURNED, HOPEFULLY, WITH A SOLUTION ON THE EQUIPMENT ISSUE.

SUMMARY MINUTES OF THE MEETING HELD ON 31 JANUARY ARE ATTACHED.

SUMMARY OF MINUTES ON TALKS AND DISCUSSIONS WITH THE RWANDA GOVERNMENT DELEGATION

SUBJECT: TAXATION OF FOREIGN CONTRACTORS AND OTHER PENDING ISSUES BETWEEN THE GOVERNMENT AND UNAMIR

TALKS BETWEEN THE TWO DELEGATIONS CONTINUED ON 31 JANUARY FOLLOWED BY INFORMAL DISCUSSIONS ON 1 AND 2 FEBRUARY 1996.

AT A PLENARY MEETING BETWEEN THE TWO SIDES HELD ON 31 JANUARY, THE GOVERNMENT DELEGATION EXPRESSED READINESS TO FIND A PRAGMATIC RESOLUTION ON THE ISSUE OF THE TAXATION OF FOREIGN FIRMS PROVIDING SUPPORT TO UNAMIR BY NOT INSISTING TO APPLY THEIR LAW WHICH REQUIRES PAYMENT OF TAXES IRRESPECTIVE OF REGISTRATION AND ESTABLISHMENT OF FOREIGN FIRMS IN RWANDA AND PROVIDES FOR ENFORCEMENT MEASURES TO ENSURE PAYMENT OF SUCH TAXES.

AT THE SAME TIME, THE GOVERNMENT SIDE STRESSED THAT IT EXPECTED THE SAME FLEXIBILITY ON THE PART OF THE UNITED NATIONS IN OTHER AREAS, IN PARTICULAR, THE ACTION TO BE TAKEN ON THEIR REQUEST TO THE SECRETARY-GENERAL AND SECURITY COUNCIL RESOLUTION 1029 OF 18 DECEMBER 1995 ON MAKING UNAMIR EQUIPMENT AVAILABLE TO THEM.

THE GOVERNMENT SIDE INSISTED ON A CONCRETE TIME-FRAME FOR OBTAINING A DECISION ON THAT ISSUE. THE RWANDA SIDE MADE IT CLEAR THAT SUCH A DECISION WOULD MAKE IT EASIER TO EXPLAIN TO THEIR GOVERNMENT THE SUSPENSION OF THE APPLICATION OF THEIR LAW ON THE TAXATION ISSUE.

INFORMAL CONSULTATIONS BETWEEN THE TWO SIDES ON 1 AND 2 FEBRUARY INDICATE THAT THE GOVERNMENT MAY RAISE AGAIN THE QUESTION ON INCOME TAX OF THE EXPATRIATE PERSONNEL OF THE UNAMIR CONTRACTORS, IF A DECISION ON THE EQUIPMENT WAS NOT FORTHCOMING.

DISCUSSIONS WITH THE RWANDA DELEGATION WILL CONTINUE LATER TODAY.

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

UNAMIR

UNAMIR 1996 JAN 24 P 7:29

1996 JAN 24 P 7:22 **OUTGOING CODE CABLE** cfw-026 1/4

TO: KITTANI/GOULDING/CORELL, UNATIONS, NEW YORK

INFO: GHAREKHAN, UNATIONS, NEW YORK

FROM: For SHAHARYAR M. KHAN, UNAMIR, KIGALI

DATE: 24 JANUARY 1996

NO.: MIR-202

NO. OF PAGES: 4

SUBJECT: Discussions with the Rwandese Government on Taxation Of UN Contractors in UNAMIR and Other Outstanding Matters

1. Substantive discussions between the UN team (consisting of a delegation of senior officials from New York and the most senior UNAMIR officials: Acting Head of UNAMIR, Acting FC, CAO and the Legal Officer) and a delegation of the Rwandese Government led by Mr. Dusaidi and comprising members from the Ministry of Defence, the Ministry of Foreign Affairs, the Ministry of Finance, Customs and Tax Collector's Office were held at the UNAMIR Headquarters in Kigali on the 23 and 24 January 1996.

2. During the first day the Rwanda delegation stated that three matters were of paramount importance to maintain good relations with the mission. These are as follows:

(a) The question of equipment to be left by the United Nations for use in Rwanda. On this issue, the Rwanda delegation stated that as far as Rwanda was concerned, the matter was raised by them with the United Nations and a Security Council resolution has pronounced on it. Hence, they did not find it necessary to further discuss the matter with the UN delegation;

(b) The necessity to urgently negotiate and conclude a new Status of Mission Agreement. This issue is considered so important by the Rwanda team that they maintained that without movement on it there was no need to discuss any other matter. Upon consultations with Headquarters, New York, the UN team advised the Rwanda delegation of the readiness in New York to receive a delegation from Rwanda to address the matter;

cfr-026 7/4

(c) Taxation of foreign firms providing goods and services to UNAMIR. This matter was discussed during the two meetings between the UN and the Rwanda teams. The UN position was explained to the Rwanda team, in particular, that:

(i) The UN foreign firms do not have established presence or business in Rwanda and have only been engaged to provide goods and services in support of UNAMIR activities. Hence, the question of levying corporate taxes had to take account of the nature of the contracts entered into by the United Nations with such firms. Any levy which is based on the volume or value of the goods and services imported in Rwanda by the said firms on account of and for the exclusive use of UNAMIR would inevitably be viewed as a tax on UN goods and services from which the United Nations is exempt. However, the issue of tax in respect of the personnel provided by such firms could be considered and resolved, where appropriate;

(ii) The UN was, for example, undertaking the necessary steps to ensure payment of social security taxes due for local employees.

3. The position outlined in (c) above was rejected by the Rwanda delegation which insisted that it had the competence to tax the foreign firms under Rwanda law. The Rwanda delegation has demanded that the UN provide the Government with pertinent information for calculating such taxes and warned that if the United Nations did not cooperate in providing such information, it would use its own basis to calculate the tax and, where necessary, resort to other measures under the law, including confiscation of the equipment of these companies to satisfy the tax liability. The Rwanda delegation was informed by the UN side that the UN did not have the information demanded as it is not part of the contractual arrangements made by UN with such firms.

4. A more detailed account on the progress of the discussions and the UN position is contained in the attached letter to the leader of the Rwanda delegation, which is copied to the Ministries of Foreign Affairs and Finance.

5. It is our opinion that, for practical purposes, the discussions on the taxation issue are deadlocked and with no prospects for further progress on the basis of the positions maintained by the two sides. We are open to any suggestion you may have on how to proceed.

chr-026 3/4

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

UNAMIR - MINUAR

DATE: 24 January 1996

Dear Claude,

It was indeed a great pleasure to meet you again, and would like to take this opportunity to express my appreciation, and that of the UN delegation, for having agreed to meet us at such short notice, to discuss the various outstanding legal issues, including the important question of corporate taxes and other taxes for personnel obtained from contractors to assist UNAMIR in carrying out its activities in implementation of its mandate. My colleagues and myself enjoyed the frank and open discussions we have had in the last two days, and hope that the dialogue we have established can be continued.

I would like here to recall the discussions which have taken place in those two meetings. As I explained to you in the meeting today, the UN is anxious to reach an amicable resolution, in the most practical way possible, of the outstanding tax and other legal issues. In this connection, I mentioned that the UN is prepared, within its existing contracts with the firms providing personnel to UNAMIR, to assist in resolving the tax questions concerning such personnel. Furthermore, the question of communication charges, which do not constitute taxes as indicated in the Note Verbale sent to the Government by the UN Resident Coordinator, can be resolved along the lines provided in that Note Verbale. It is thus hoped that no measures will be taken in that regard, as previously contemplated, which would be inconsistent with the Agreements concluded by the Government with the UN and the various UN Agencies established in Rwanda.

On the other issues which you raised, I reported this morning that UN Headquarters is prepared to receive a delegation of the Government of Rwanda to discuss and resolve any pending questions on the SOMA. In addition, we are in the process of examining the other matters relating to third-party debts which you raised, and will be prepared to provide you with a status report tomorrow at the latest. With regard to the question of the airport facilities provided to UNAMIR, we believe that this will soon be resolved in accordance with the lease negotiated with the Airport Authorities of Rwanda.

Mr. Claude Dusaidi
Political Advisor to
the Vice President
Ministry of Defence
Kigali, Rwanda

cld-026 4/4

On the contractors issue, I explained in our meetings the process by which the UN has engaged these contractors and the manner in which they provide goods and services to UNAMIR. The actual activities in which they are involved are activities of UNAMIR, and involve the provision of logistics support to the various components of the Mission, the Government, and other Organizations providing assistance to Rwanda. These activities also include the importation of goods, equipment and services which are used in the implementation of the UNAMIR mandate. The role of the contractors in Rwanda has been, essentially, to make available to UNAMIR both locally and internationally recruited personnel in Rwanda to support UNAMIR in the conduct of its activities. Traditionally, peacekeeping missions relied on the civil and military components of the Mission, as defined in the SOMA to provide such services. However, with the expansion of the UN peace keeping role to include components of a humanitarian nature, the UN has increasingly had to rely on personnel provided by private contracting firms. As you can appreciate such personnel, while not expressly provided for in the SOMA, play a very significant supporting role in implementing the activities of the mission, in this case UNAMIR. Nevertheless, as I indicated to-day, the UN is willing in a the spirit of seeking to find an amicable resolution of the tax issue, to assist in working out arrangements with the contracting firms so that the taxes for their personnel can be resolved, having regard to the need to avoid double taxation.

As I also indicated, however, the question of the legal status of the contracts negotiated and signed by UN Headquarters in New York, and that of the firms without any business activities in Rwanda, with the exception of providing personnel to the UN to assist with UNAMIR activities, raises different legal and financial questions which cannot be so easily resolved. In any event, the UN position as explained, is that any attempts to tax such foreign firms based entirely on the value of the goods they provide to the UN abroad, and the services provided by personnel of such firms to support activities of UNAMIR, could be viewed as a tax on UN goods and services to which the UN is exempt.

We also discussed, briefly, the outstanding question concerning ECONOMAT which provided rations to UNAMIR, through a letter of assist issued by the UN to the Government of France. As we understand it the equipment of ECONOMAT still remains impounded for failure to pay tax. This matter and the other pending tax issues need to be resolved amicably and we hope that further discussions can be held to resolve them or, otherwise a procedure for their resolution could be worked out.

Yours Sincerely,

Francis.

Francis M. Ssekandi
Head of UN Delegation

cc: Mr. Bagambiki Felix
Mr. Murangira Apollinaire

RECEIVED
22 DEC 1995
OFFICE OF THE SRSG
UNAMIR

CNR-351 P1/1

UNITED NATIONS
PEACE OPERATIONS
1995 DEC 21 P 8:10

OUTGOING CODE CABLE
UNAMIR
1995 DEC 22 A 7:16

IMMEDIATE

TO: KHAN, UNAMIR, KIGALI
FROM: KITTANI, UNATIONS, NEW YORK
DATE: 21 December 1995
NUMBER: 3928

SUBJECT: **Contractor's liability to pay corporate taxes**

1. We have had extensive discussions on your UNAMIR-4280 of 19 December 1995 with representatives of OLA and FALD this afternoon. In view of its broad political, financial and legal implications, this issue will require close examination before a decision can be taken (we hope by the middle of next week) on the most advisable way to deal with this unprecedented problem.

2. We therefore ask you to advise the Rwandese Government that we expect them not to take any precipitate action that might impede UNAMIR's operations. We should expect that, with understanding and cooperation, they would work with us to resolve this matter.

3. We are very aware that this will be a difficult issue, for which all your admirable skills will have to be deployed.

Best regards.

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

CRH 009

UNAMIR
1996 JAN 12 A 11:30

OUTGOING CODE CABLE

TO: KITTANI/GOULDING/HANSEN, UNATIONS, NEW YORK

INFO: GHAREKHAN, UNATIONS, NEW YORK

FROM: SHAHARYAR M. KHAN, UNAMIR, KIGALI

DATE: 12 JANUARY 1996

NO.: MIR 089

UNAMIR
1996 JAN 12 A 11:39

NO. OF PAGES: 3

SUBJECT: CONTRACTOR'S LIABILITY TO PAY CORPORATE TAXES

1. Please refer to your code cable no. 051 of 5 January 1996. As indicated in my code cable 075 of 10 January 1996. I have faithfully conveyed UN's position to the Rwandan Government in terms of your instructions. The Rwandan rejection of our position was given immediately and we are now on a collision course towards a crisis by Wednesday 17th.

2. I shall not go into the merits of our stand as the issue was, clearly, reviewed in great depth by the Legal Division culminating in their considered position conveyed in Legal Counsel, Mr. Hans Corell's note to Mr. Kittani dated 22 December 1995. I have no doubt that the legal position as finally determined by OLA stating that the contractors, even though, not covered by UN privileges and immunities under SOFA, since they were operating for the sole purpose of providing services for UNAMIR, were not entitled to be taxed.

Reçu le 12 JAN 1996

CRN009

3. The problem for me is not of questioning the correctness or otherwise of the legal opinion but of consistency. It may be recalled that in our code cables MIR 2798 of 2 August 1995 and MIR 3073 of 28 August 1995 [the Economat case], we had ourselves suggested that the Legal Division provide a legal cover for our contractors being exempted from taxes. At the time, the opinion conveyed by OLA to Mr. Riza on 23 June 1995 prevailed as follows:

> **"The functions performed by Contractors in the context of UN peace-keeping operations are commercial in nature and range from the procurement of goods and the supply of services to construction and catering services. As such, the functions and tasks performed by Contractors do not fall within the scope of the understanding of the expression "experts on mission" which has evolved within the Organization and among its Member States. Therefore, Contractors do not qualify for the status of "expert on mission".**
>
> **As to privileges and immunities which you propose to be granted to Contractors, it should be pointed out that the categories of persons to whom privileges and immunities are granted under the SOFAs/SOMAs include those specifically provided for in the Convention, i.e., diplomats, officials of the Organization and experts on mission for the United Nations. Additionally and in accordance with customary law applicable to UN peace-keeping operations, SOFAs provide for privileges and immunities to be granted to military personnel contributed by Member States.**
>
> **As Contractors and their employees do not constitute a category of personnel under the Convention, States parties to the Convention are, therefore, under no obligation to grant them any privileges and immunities."**

4. According to these instructions that were conveyed to us, I have taken the position that the companies [eg Brown & Root] do not fall within the purview of UN privileges and protection. In consonance with UN's position, I have gone on record over this point when the issue was raised in our bi-lateral meetings with the Rwandan Government.

5. However, as a result of your latest instructions I have been obliged to adopt the opposite position which has required stretching the argument in order to bridge a virtual 180 degree turn in our stand. Even this embarrassment can be taken in one's stride as part of duty. But, it must be recognised that six weeks before our final exit, we are heading towards a major political crisis with Rwanda. I have no doubt that on 17th January the Rwandan Government will stop Brown & Root and our helicopters from functioning. The stoppage of Brown & Root will lead to a complete breakdown of UNAMIR especially as they are taking over from the outgoing Canadian logistic contingent.

6. I recognize that some important donor countries have been asked to intercede but I doubt if action will be forthcoming before 17th January.

7. I would strongly recommend that we view the situation from a political standpoint. An annual investment of 210 million dollars on UNAMIR making an honourable exit may be seen against the obvious clamouring by the Rwandan Government to squeeze some money out of UN. Often their demands such as against contractors, communications equipment, payment for repairs, are excessive and threatening but the overall political perspective needs to be borne in mind. I would recommend in the case of contractors that the UN agree to negotiate reasonable dues on the taxes. For this purpose a negotiating team from New York could be sent out.

Best regards.

CONFIDENTIEL

ECONOMAT DE L'ARMEE
EXPORT- MINUAR
KIGALI-RWANDA
TEL. 8 51 15
FAX 8 51 15

TELECOPIE / TELEFAX

N° : 0213

DE/FROM : **M. GARDEUX Thierry**

A/TO : **D G E A & Service Commercial.**

A L'ATTENTION DE/ FOR THE ATTENTION OF :
- Monsieur le Directeur Général de l'Economat LAURENT
- Monsieur POLLET

DATE : **27 juillet 1995.**

NOMBRE DE FEUILLETS INCLUANT LA PRESENTE/
NUMBER OF PAGES INCLUDING THIS ONE: **3**

Objet : Problèmes Economat-MINUAR.

Bonjour,

Comte-rendu de la réunion avec la Direction des Impôts.

Participants :

M NIYONTEZE Félicien	Directeur des Impôts.
M LOGOZ Christian	1er Secrétaire de l'Ambassade de France.
M GARDEUX Thierry	Représentant de l'Economat.

Cet entretien fait suite à la rencontre le mardi 25 juillet entre M COURBIN, Ambassadeur de FRANCE au RWANDA, et Monsieur le Ministre des Finances du RWANDA à laquelle participait M NIYONTEZE. Certains points indiqués ci-dessous ont été signalés au Ministre.

Après les présentations d'usage, nous avons donné les explications et interprétations suivantes à M NIYONTEZE, suite à l'action engagé par l'administration des Impôts auprès de la brigade de criminologie de Kigali :

1°) L'Economat est un établissement public français mandaté par son gouvernement afin d'effectuer une mission d'approvisionnement auprès de la MINUAR. Cette mission est définie dans le cadre d'une L.O.A. signée entre le siège des NATIONS-UNIES à New-York et le Gouvernement de la FRANCE. L'Economat est simplement le prestataire de service et ne peut

être considéré comme l'interlocuteur unique des administrations du RWANDA, ni être assimilé à une société privée venue faire des affaires sur le marché intérieur du RWANDA. Si la Direction des Impôts décide de poursuivre son action, elle devra s'adresser conjointement à Monsieur l'Ambassadeur de France, seul habilité à représenter l'Etat français, et à Monsieur le S.R.S.G. de la MINUAR.

2°) En aucun cas M GARDEUX, simple agent de l'Economat, ne peut être tenu pour responsable vis-à-vis d'une procédure engagée à l'encontre de l'Economat. L'interdiction de quitter le pays doit être abandonnée avant toute discussion supplémentaire.

3°) Sur le fond du problème et à la lecture du S.O.M.A. il apparaît évident que l'Economat, dans le cadre de sa mission, bénéficie de privilèges et de garanties qui n'ont pas été respectés par les procédures engagées à son encontre lors des mois précédents.

Il a été présenté à M NIYONTEZE les articles du S.O.M.A. suivants :

Page I - point c) : sur le statut des personnels mis à la disposition de la MINUAR par un "Etat participant".

Page 2 - point 4. : sur les droits, immunités et privilèges des biens, fonds et avoirs des "Etats participants".

Page 5 - points 15. a) b) & c) : sur les possibilités de la MINUAR et de ses "Economats" de créer, d'entretenir et de gérer leur propre activité.

Au vu de ces nouveaux éléments, M NIYONTEZE, nous a, dans un premier temps, indiqué qu'il n'avait jamais ordonné le dépôt par ses services d'une plainte à l'encontre de l'Economat et de son représentant. Cette procédure est due à l'initiative d'un de ses agents sans qu'il en soit lui-même avisé. Il s'est ensuite engagé à produire une lettre signifiant principalement que l'action engagée auprès de la brigade de la criminologie sous sa forme actuelle (plainte, saisie, etc.) est abandonnée. Instruction sera donnée au Directeur des douanes de libérer immédiatement l'ensemble des matériels saisi par la douane à l'aéroport (véhicules, pièces détachées, etc.). Le chef d'Etat Major de la gendarmerie sera également avisé que l'interdiction de quitter le pays concernant Monsieur GARDEUX devra être levée.

Cette lettre sera présentée au Ministre des Finances dès lundi pour signature et adressée à l'ensemble des parties intéressées :

- Monsieur le Vice-Président du RWANDA.
- Monsieur l'Ambassadeur de France au RWANDA.
- Monsieur le Ministre des Affaires Etrangères du RWANDA.
- Monsieur le Ministre de l'Intérieur.
- Monsieur le Chef d'Etat Major de la Gendarmerie.
- Monsieur le S. R. S. G. de la MINUAR à Kigali.
- Monsieur le représentant de l'Economat.

Une copie du S.O.M.A. sera demandée au Ministère des Affaires Etrangères du RWANDA par l'administration des impôts. En fonction de ce texte M NIYONTEZE avisera de la suite à donner à cette affaire d'imposition.

Suite à ces décisions notre réunion s'est terminée et nous nous sommes rendus, M LOGOZ et moi-même, à l'Ambassade de FRANCE afin d'aviser M COURBIN des résultats de cet entretien.

Ceci constitue une première étape dans la résolution des problèmes que rencontre l'Economat vis-à-vis des administrations du RWANDA.

Je tiens à signaler que la possibilité d'une issue favorable à ces problèmes est due en très grande partie aux différents contacts et engagements pris par M COURBIN et M LOGOZ auprès des différents responsables du gouvernement et services administratifs du RWANDA. Dès le premier contact, ils m'ont assurer de leur soutien et aide total. Leurs conseils de patience et de calme se sont avérés utiles compte-tenu de la situation locale.

Du coté de la MINUAR, j'attends les résultats des entretiens entre M DE SOUZA (E. D. UNAMIR) et le responsable de la brigade de la criminologie, ainsi qu'avec le Ministre des Finances. Pour ma part, j'ai signalé à Monsieur BRIERE (CMCO UNAMIR), les interprétations par l'Economat et l'Ambassade de FRANCE. des articles du S.O.M.A. en notre faveur. Une réunion, entre certaines parties intéressées, devrait prochainement avoir lieu afin de faire le point sur l'évolution de ce dossier.

Thierry GARDEUX