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CNR-67 P1/5

OUTGOING CODE CABLE

TO: KHAN, UNAMIR, KIGALI
FROM: ANNAN, UNATIONS, NEW YORK
DATE: 22 MARCH 1995
NUMBER: 908
SUBJECT: International Tribunal

[Handwritten signature]

95 MAR 22 P 1:10

Please find attached, for your information, copy of a self-explanatory letter on the above, received recently from the Permanent Representative of Rwanda. Regards.

P1. Put up any comments that we need to send.

23.3

*ED
1801
LA.*

*Mr. Rafii
Could you pl
start working
on the request
comment to provide
the arrival of the
L.A. 3K
more
24/3*

95 MAR 23 06 24

UNAMIR

*As per SRSG,
our comments are
not necessary.*

*LMC
30/3/95*

REPUBLIQUE RWANDAISE

New York, 16th March 1995

CNR-67 P2/HA

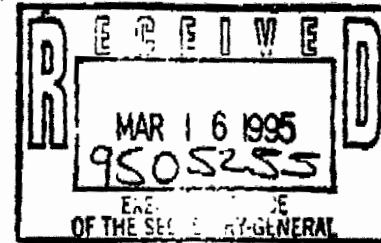
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FAX (212) 808-0976

*Mr Corell
cc Mr Annan
Mr Gouding
IK/HCA/FA*



H.E. Mr. Boutros BOUTROS-GHALI
Secretary General of the
United Nations

NEW YORK

Excellency,

While I welcome your recent report pursuant to paragraph 5 of Security Council resolution 955 (1994) on the International Tribunal for Rwanda (S/1995/134), dated 13 February 1995, I would like to draw your attention to some of the conclusions made therein.

In particular, I would like to express my concern about the conclusions on the criteria for the determination of the seat of the Tribunal, particularly the statements on the criteria - justice and fairness. The relevant paragraphs in the report state:

*Impeccable
reasoning -*

" In the view of the Secretary-General, the criterion of "justice and fairness" in the context of selecting a location for the seat means the conduct of trial proceedings in an environment that would ensure justice and fairness to both victims and accused. Although the international character of the Rwanda Tribunal is a guarantee of the just and fair conduct of the legal process, it is nevertheless necessary to ensure not only the reality but also the appearance of complete impartiality and objectivity in the prosecution of persons responsible for crimes committed by both sides to the conflict. Justice and fairness, therefore, require that trial proceedings be held in a neutral territory.

CNR-67 P3/5

2

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134-1!

" In that connection, the Secretary-General notes that, in the atmosphere now prevailing in Rwanda, there are serious security risks in bringing into the country leaders of the previous regime alleged to have committed acts of genocide to stand trial before the International Tribunal".

The implications of the content of the above conclusions are objectionable to the Government and people of Rwanda. As is stated in the report, the international character of the Rwanda Tribunal is itself a guarantee of the just and fair conduct of the legal process. The selection process for the judges for the trial chambers and the appeals chamber as well as the Deputy Prosecutor would ensure impartiality and objectivity in the prosecution of persons responsible for genocide and other violations of international humanitarian law.

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The argument presented in the above-quoted paragraphs do not sufficiently justify the location of the trial proceedings outside of the country to ensure the "appearance of complete impartiality and objectivity in the prosecution of persons...". It implicitly states that justice and fairness could not be guaranteed under the present Government. This implication is clearly unacceptable in view of the record of the present Government which has replaced a regime which official investigations to date have shown to be responsible for genocide.

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to be fair.
See

In the first instance, the Secretariat need not be reminded that it was the present Government which initially called for, and strongly campaigned for, the quick establishment of an international tribunal to try those responsible for genocide. The call was made in the interest of ensuring justice -- free, fair and unbiased trials -- which would contribute to allay to fear of retribution and would facilitate national reconciliation. However, for reasons which were clearly expressed in Rwanda's statement to the Security Council on November 8 1994, my Government did not support the resolution which set up the Tribunal. Much of the content of the resolution did not take account of the reality of the situation in Rwanda. However, my Government has since stated its willingness to cooperate with the Tribunal to the extent that it is not set up in a manner which runs counter those realities. Although the Government has maintained its position that the Tribunal be located in Kigali, it has raised no objection to the seat being established in a location easily accessible to Rwanda in a neighbouring State.

CNR-67 P4/5

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true.

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23.3

For the past eight months the present Government has shown the people of Rwanda and the international community that it is a responsible government. It has provided protection and security for the victims of genocide and have ensured security of the country. In addition, it has shown integrity and respect for human rights in its handling of those persons who have been arrested for participating in genocide and are awaiting trial. The accused have been dealt with according to the laws of the country. The Government of Rwanda has undertaken to prevent summary executions and to hold in custody persons alleged to have committed acts of genocide, pending their trials. It has also ensured that random acts of revenge by soldiers in the Rwandese Patriotic Army had been dealt with swiftly by court martial. Others suspected of committing acts of vengeance have been arrested.

Mr. S. S.
ice
point

In other words, justice and fairness have been priorities for the present Government and are principles on which the Government would not compromise. Such commitment and assurance have been repeatedly noted by our Special Representative to Rwanda in his analysis of the present state of security in the country. Hence to imply or state that an environment exists that would not ensure justice and fairness for the victims and the accused in Rwanda is unacceptable. To do so in an official document can contribute to undermining the Government of Rwanda.

Security would continue to be a high priority for the present Government. It would be especially concerned to ensure the security of those persons alleged to have committed acts of genocide so that they stand trial in national courts and/or before the International Tribunal. A primary concern is that the people of Rwanda are able to witness justice being carried out that would put an end to the culture of impunity that has reigned in Rwanda during the last few decades.

In view of the above, I would appreciate if the conclusions which are stated in the report and which I have referred to above could be withdrawn since they are offensive to a Government which has shown a high degree of commitment to the security in the country and to the rule of law. Since they are already stated in an official document, I would like to suggest that they be addressed in the next report to be prepared by your office on the situation in Rwanda.

CNR-67 P5/5

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Your Excellency, an urgent response and action on the matters raised would be greatly appreciated by the Government of Rwanda.

Accept, Excellency, the assurances of my highest consideration.



Manzi BAKURAMUTSA
Ambassador
Permanent Representative
of Rwanda to the United Nations



CNR 679 P1/4

UNITED NATIONS
OPERATIONS **OUTGOING CODE CABLE**

1994 DEC -1 P 8: 52

TO: Mr. Khan, SRSG, UNAMIR, Kigali

FROM: Hans Corell, UNATIONS, New York

DATE: 2 December 1994

NUMBER: **3991**

SUBJECT: International Tribunal: Answers to Questions

This is in response to your code cable of 29 November 1994. Many of the questions are difficult to answer within the limited space of a cable. However, I have tried to be as detailed as possible.

Question 1:

Given Rwanda's desire to proceed immediately against perpetrators of genocide and given the inevitable deliberation with which the International Tribunal will evolve, in what manner can Rwanda start the process of bringing criminals to trial?

There is as much as the national justice system is ready, they can start.

According to the Statute of the Tribunal, Rwandan Courts and the Tribunal have concurrent jurisdiction. This means that the Rwandan authorities can take any steps they see fit to start the process of bringing criminals to trial. The problem, as I understand it, is that there is no justice system within Rwanda. This has to be restored, and for this international help is needed. Mr. Ayala-Lasso is engaged in this endeavour.

Question 2:

Where, if at all, do the international and national systems inter-mesh? If not do they each go their different ways? If Rwanda proceeds to try some accused persons under national law, on what grounds can the International Tribunal intervene, if at all?

The international and national systems inter-mesh in several aspects. I limit myself to two aspects: namely, the concurrent jurisdiction and the international

- 2 -

cooperation in bringing suspects to justice. The concurrent jurisdiction with primacy for the International system means that the Rwandan authorities can take any steps they see fit to bring people to justice. However, if the International Tribunal thinks that the case merits being tried before it, it can ask the national jurisdiction to cede in favour of the International Tribunal. Rwanda is obliged to adhere to such a request. In the same spirit, if a trial has been held at the national level, and the International Tribunal thinks that this trial is a sham, the International Tribunal can intervene. The system just outlined means that Rwanda is under the obligation to assist the Tribunal in all aspects relevant to the international trial. I refer in this context to Articles 8, 9 and 28 of the Statute.

Question 3:

How can Rwanda's national jurisdiction seek to bring criminals outside the country (e.g. Tanzania, Zaïre, France, etc.) to justice? Would extradition be possible? Or are the criminals abroad to be judged exclusively by the International Tribunal? If so, when does it proceed to spread its net to try criminals outside Rwanda?

As soon as Rwanda's national jurisdiction is operational, it can use the normal channels to bring criminals outside the country to justice. This activity would fall within normal rules of extradition. Whether extradition is possible, depends on the legal situation in Rwanda and in the requested State. A full answer to all the aspects here would require an extensive explanation. The general rule is, however, that a requested State would be under the obligation to extradite or to conduct the trial within its own legal system. The answer would then be that extradition might occur in some instances and be refused in others.

The Convention against Genocide contains a specific provision (Article VI), which lays down that persons charged with genocide shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by an international penal tribunal as may have jurisdiction "with respect to those Contracting Parties which shall have accepted its jurisdiction". This rule and the Statute of the Tribunal for Rwanda may, in combination, have an impact on how States deal with requests for extradition by Rwanda.

This being said, it should be noted that the International Tribunal has no exclusive jurisdiction over criminals abroad. However, all States are obliged to cooperate with the Tribunal and it is to be presumed that requests by the Tribunal to surrender accused persons will be honoured.

- 3 -

The question when "criminals abroad" will be tried by the Tribunal should be put to the Prosecutor. The normal procedure for the Prosecutor is to go where evidence leads him. I am, therefore, confident that the Prosecutor will deal with all aspects of criminal investigations as soon as the Tribunal becomes operational.

Question 4:

Will the evidence gathered by Human Rights Monitors and forensic experts be available to both the International Tribunal and the national jurisdiction? If only to the former, why should the Rwandese government cooperate with these Monitors and Experts?

It is to be assumed that evidence gathered by human rights monitors and forensic experts will always be available to the International Tribunal. Whether they will be available to the national jurisdiction is a more delicate question. My suggestion is that you put this question to Mr. Ayala-Lasso, who is in charge of this activity. The normal procedure in monitoring human rights is that the monitors report to the High Commissioner for Human Rights, who decides what measures should be taken. One such measure could be for him to report to the Government in question. The Government would then be obliged, at least morally, to take the necessary measures to improve the situation.

Irrespective of how this matter will be dealt with, it is important that the Rwandese Government cooperate with the monitors and experts; it is self-evident that this is in their own interest.

Question 5:

Can the National Judiciary present an immediate list of prima facie suspects of genocide, etc. to the International Tribunal? Is the International Tribunal obliged to receive and examine such a list? How soon can the International Tribunal send out requests for the arrest of accused persons (who would be in foreign countries)?

National authorities can certainly present an immediate list of prima facie suspects to the International Tribunal. However, I would suggest that a preliminary contact be made with the Tribunal before such a step is taken. The International Tribunal, more precisely its prosecutorial function, is indeed obliged to receive and examine such a list. I refer in this context to Article 17, paragraph 1 of the Statute.

The last question depends partly on how soon the Tribunal is established. A warrant of arrest requires a decision by a Trial Chamber. Therefore, the Judges must be elected and appropriate rules of procedure must be adopted.

CNR 679 P4/4

- 4 -

However, all States are bound by their own national legal systems. Therefore, if suspects appear in a particular foreign country, the authorities in that country may have to take action on their own with a view to bringing suspects before their own courts.

As I said, some of your questions might need more elaborate answers, but I hope that the above is sufficient at this juncture.

sy

1994-12-02

01:55

PAGE = 04

F/IN-5160

I have spoken to Mr. Passigli
Judge Goldstone would be welcome.

ICT

UNAMIR

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

12 16

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3/ Papers. (QA)

EXTERNAL RELATIONS OFFICE

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CP
Latan

Shaharyar Khan
8.12

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

CONFIDENTIAL

From/Dc: Donato Kiniger Passigli
External Relations Officer

1 Nairobi

Number of Pages/

Nombre de Pages: 2

(Including Covering Page/Inclusive Page de Couverture)

Date: 7 December, 1994

Fax Number/

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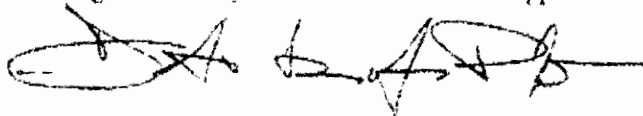
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Message:

Sir,

I called your Office earlier this morning in order to convey to you personally the intentions of Judge Goldstone who asked me to prepare his first official visit to Rwanda. Your support is obviously essential and your good offices could pave the way for fruitful meetings with the highest Government authorities.

While I wait for your return call, I am sending you copy of a letter addressed by Justice R. Goldstone to the Chief of Staff in New York, further to a meeting held with the Secretary-General last Friday in Geneva. A tentative itinerary is mentioned in the letter and I would like to discuss the agenda with you or a liaison officer appointed by you. Respectfully yours,



SRSG

UNITED NATIONS



NATIONS UNIES

INTERNATIONAL CRIMINAL TRIBUNAL
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2501 EW THE HAGUE, NETHERLANDS
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OFFICE OF THE PROSECUTOR

BUREAU DU PROCUREUR

The Hague, 5 December 1994

Dear Mr. Aimé,

Further to my meeting with the Secretary-General in Geneva last Friday, which you kindly organized, it was agreed that my visit to Kigali would take place as soon as possible.

The Secretary-General asked me to convey to you my intention of going to Kigali on the 18 of December, for two days, in order to meet with the Government authorities, the UN Co-ordinator in Rwanda, and some leading non-governmental organizations. I trust that my mission will be facilitated with your good offices.

Mr. Kiniger-Passigli, in charge of external relations, will be the contact person in my office for all relevant arrangements. I intend to have with me Mr. Allstair Milroy, Chief of the Investigation Unit of the ICTY, Mr. Donato Kiniger-Passigli and Ms Catherine Cissé, a lawyer of my staff.

We plan to be in Nairobi the evening of 18 December in order to get the UNAMIR flight - if available - the following morning. I would intend to catch the flight of 21 December to Amsterdam via London departing Nairobi at 11.00 am.

In close co-ordination with your office, Mr. Kiniger-Passigli will contact Mr. Shaharyar Khan in Kigali for the necessary formalities and to approach the Government authorities prior to any confirmation of my visit.

With kind regards,

Yours sincerely,

Justice Richard Goldstone
Prosecutor

CNR 613 P1/16 01

OUTGOING CODE CABLE

UNAMIR

19 OCT 18 05:01

TO: KHAN, UNAMIR, KIGALI
 FROM: ANNAN, UNATIONS, NEW YORK
 DATE: 17 OCTOBER 1994
 NUMBER: UNAMIR 3335
 SUBJECT: Security Council Informal Consultations

19 OCT 17 12:10 45
 SECURITY COUNCIL

The SECCO held today informal consultations on the establishment of an International Tribunal for Rwanda. A new draft resolution with a draft Statute as an annex was also circulated. Attached are (a) Note on the Consultations, and (b) the new draft resolution with a draft Statute as an annex.

Pl. show this document to M. Degni-Segny

Shahary Z
 18:10

ED am
 HISSR.

SRSG

SECURITY COUNCIL INFORMAL CONSULTATIONS
ON RWANDA

17 October 1994

The SECCO held today, 17 October, informal consultations on the establishment of an International Tribunal for Rwanda. A new draft resolution with a draft statute as an annex was circulated (see attached). The United States, as one of the two co-sponsors of the draft, explained that at the request of Rwanda the co-sponsors had in operative Paragraph 1 of the draft resolution as well as wherever it was relevant in the statute included a phrase extending the competence of the Tribunal to cover serious violations of international humanitarian law committed by Rwandan citizens in the territory of neighbouring States. He also stated that although the setting up of the Tribunal was urgent it seemed that some delegations needed to seek instructions from their capitals before taking action on the draft resolution.

Rwanda said that although it had requested for support in establishing the International Tribunal it appeared that Council Members had looked at the Yugoslavia Tribunal and had taken so much from it which they had included in the draft resolution and statute for the Tribunal for Rwanda. The Rwandese Government would want more time to study the drafts before making its views known.

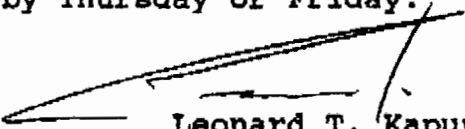
New Zealand, as the other co-sponsor of the drafts, said that in the process of consultation with Rwanda it had appeared that Rwanda had different views from those of Council Members and of the Committee of Experts. It was only appropriate that more time be given for the Rwandese Government to study the drafts.

France, Oman speaking on behalf of the Non-Aligned countries, China and Spain supported Rwanda's request for more time. France proceeded to ask whether the neighbouring countries would be consulted before extending the competence of the Tribunal to cover crimes committed on their Territory. The United States replied that according to civil law there was no need to consult them. An example was given that when French citizens committed crimes against other French citizens in foreign countries, they would be brought before French courts without consulting the other countries.

Spain reiterated its former position that a two step approach should be followed in establishing the Tribunal. First, the Security Council should adopt the principle of establishing the Tribunal then at a later stage the Tribunal would be established. That approach, according to Spain, would have avoided the problems being raised by Rwanda. New Zealand disagreed with Spain stating that that approach would only be postponing problems raised now to a later stage.

CNR 613 03

The President requested consultations to continue but noted that the President of Rwanda had emphasized the urgency of establishing the Tribunal to assist in the process of national reconciliation. It was therefore important that the Security Council was not seen as delaying the process. Such an impression could have negative effects in Rwanda. The President hoped that the consultations could be concluded by Thursday or Friday.



Leonard T. Kapungu
17 October 1994

UNITED NATIONS

ASSISTANCE MISSION FOR RWANDA

NATIONS UNIES

MISSION POUR L'ASSISTANCE AU RWANDA

UNAMIR - MINUAR

OUT-GOING CODE CABLE

TO: ANNAN/GOULDING/CORELL, UNATIONS, NEW YORK
FROM: SHAHARYAR M. KHAN, UNAMIR, KIGALI
DATE: 8 September 1995
NO: MIR _____
NO. OF PAGES: 1
SUBJECT: PREPARATION OF THE OFFICES OF THE INTERNATIONAL TRIBUNAL IN ARUSHA, TANZANIA

*Ms Rafii
Please discuss
21.9.95
WS*

1. As stated in our MIR 3138 of 4 September 1995, the United Nations delegation which visited the premises of the International Tribunal for Rwanda (ITR) at the Arusha International Conference Centre (AICC) expressed concerns regarding the need to resolve certain issues pertaining to security, logistics and communications in connection with the ITR's operations in Arusha. In light of the need for prompt action in this regard, UNAMIR, in consultation with the Prosecutor's Office, initiated a follow-up reconnaissance visit to the AICC and a meeting with officials of the Ministry of Communications in Tanzania to take place from 8-10 September, 1995.

2. On 6 September, the UNAMIR team was advised by Mr. Herman Gili, the ITR's Acting Chief Administrative Officer, to cancel the trip pending the signing of the lease agreement for the AICC. He informed us that a meeting had already taken place with the Tanzanian Minister of Communications and that the proper authorizations with respect to communications equipment had been obtained from the Tanzanian Government.

3. Based on the above developments, the proposed UNAMIR reconnaissance mission was cancelled. As our common objective is to ensure the earliest possible functioning of the Tribunal, we would appreciate being kept informed of any developments which may require action on the part of UNAMIR.

4. Best regards.

Reçu le - 8 SEP, 1995



INTER-OFFICE MEMORANDUM

DATE: September 7, 1995

TO: S. Khan
SRSG

FROM: W. Clive
OIC Administration ai

SUBJECT: SITE RECONNAISSANCE AND DISCUSSIONS WITH THE MINISTRY OF COMMUNICATIONS OF THE GOVT OF TANZANIA

In consultation with Judge Goldstone and Mr. Adede, UNAMIR had initiated a follow-up site reconnaissance of the Arusha International Conference Center (AICC) and a meeting with officials of the Ministry of Communications of the Government of Tanzania.

The team was to look into issues such as the installation of a satellite communications network, existing telephone facilities and VHF radio requirements. The team had secured a meeting at 1430 on Friday, August 8 1995 with the Minister of Communications in Dar-Es-Salaam to initiate the licensing procedure for the Tribunal's Tanzanian communications needs.

In addition Mr. Joseph Lombardo, the administrative and logistic liaison officer for the Tribunal was to accompany the team and would have evaluated the conference facilities as well as any support services that are available in the city. Mr. Michael Booth, UNAMIR Security Officer would have accompanied the team to undertake a preliminary security survey of the AICC and his findings were to be forwarded to UNSECOORD and the Registrar of the Tribunal. The team was to be lead by Mr. William Clive, OIC Administration, ai.

However, we were requested by Mr. Gili to cancel the trip after briefing him by telephone yesterday. Mr. Gili informed us that Mr. Duncan Robinson had already written a technical report, had met with the Minister of Communications and had secured all the proper authorization from the government. Further, Mr. Gili informed us that it would be highly impractical for a team to visit the site in Arusha as negotiations have not been completed for the AICC. Based on Mr. Gili's request, UNAMIR has cancelled its mission to Arusha.

Ambassador, as you know, UNAMIR will most probably be tasked with the implementation of any plan to get the Tribunal operational in Tanzania. I feel that this cancellation will hinder our eventual efforts to effectively assist the Tribunal to establish itself in Tanzania.

Please put up a short cable
summarizing our position. we should
have all info available if we are
going to be tasked. *Shahmmy J. Khan*
EJ/mchm

