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UNAMIR

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

INFO: ZACKLIN, UNATIONS, NEW YORK

FROM: SHAHARYAR M. KHAN, UNAMIR, KIGALI

Shaharyar M. Khan

DATE: 30 OCTOBER 1995

NO.:

MIR

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SUBJECT: SOFA

1. Reference your code cable no.3353 dated 24 October through which OLA's views on the SOFA have been conveyed to us.

2. While I fully concur with OLA's assessment that many of the amendments proposed by the Government of Rwanda constitute a fundamental departure from the customary practices and principles applicable to United Nations peace-keeping operations, my main difference of view is that to reject discussion out of hand could be perceived by the Government as being a dismissive attitude. The United Nations could, instead, engage in negotiations aimed at considering those few amendments proposed by the Government which the United Nations could accept and at sounding the Government's disposition to review their proposal so as to bring it in accordance with the customary practices and principles applicable to peace-keeping operations.

3. To this effect, our Legal Office has prepared a detailed paper analysing the changes proposed by the Government of Rwanda in its revised draft on the SOFA. For the purpose of their analysis, the changes proposed by the Government have been placed under five sections, according to their rationale. In section I are changes that run counter the application of the

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provisions of the Convention on the Privileges and Immunities of the United Nations, in section II are changes that affect the necessary independence of UNAMIR, in section III are changes that reduce the extent of the Government's assistance to UNAMIR, in section IV are changes that put a greater financial burden on UNAMIR's presence in Rwanda and in section V are minor changes such as changes in language.

4. I believe that the changes proposed can be placed under the following broad headings as regards their acceptability:

A. Totally unacceptable changes:

- In section I: Paragraphs 3, 11(b), orig.19, orig.46, 52.
- In section II: Paragraphs 7(b), 12, 29, 34, 44, 53.

B. Changes that should not be accepted:

- In section II: Paragraphs 6, 8, 14, 15, 21, 32, 34, 43(c).
- In section V: Paragraphs 5, 14(c), 23, 38, 41, 43(a), 53.

C. Changes that should not be accepted as they stand now, though some of the Government's concerns could be addressed differently:

- In section II: Paragraphs 11, 13, 14, 30, 31.

D. Changes subject to negotiation:

- In section II: Paragraph 1(a).
- In section III: Paragraphs 12, 15, orig.20, 19.
- In section IV: Paragraphs 14(a), 15, orig.20, 20, 26.
- In section V: Paragraph 11(b).

E. Changes that could be accepted as they stand now or with minor modifications:

- In section II: Paragraph 54.
- In section V: Paragraphs 5, 7(b), 14(b), 16, 33, 37, 38.

5. I agree with the view that the changes under sections A, B and C should be rejected. Amendments proposed under section D could be negotiated while those under section E are either innocuous or even benefit our position. I, therefore, maintain that it would be desirable to

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engage in negotiations with the Government of Rwanda on the SOFA and to maintain the positions of principle as stated in para 2 of Mr. Zacklin's note which are contained in sections A-C above, while negotiating the amendments under section E and to some extent under sections D. I do not, for instance, feel that the Rwandese desire for UNAMIR to seek government approval for installing our communications on Rwanda's sovereign territory, or the Government of Rwanda's effort to introduce a visa system or its desire to ensure that no black-marketing of currency takes place, is unreasonable. For the UN to adopt a dismissive attitude to such efforts would not be politically expedient.

6. Moreover, if we do not engage in negotiations, how would it be possible to introduce the amendments on our contractors suggested in Mr. Zacklin's note? In any case, these amendments are not likely to be accepted by the Government of Rwanda.

7. I would, therefore, recommend that the detailed paper that is attached be examined by OLA. I find the recommendations contained in it to be reasonable and in consonance with the principles stated in para 2 of Mr. Zacklin's note.

Best regards.

COMMENTS ON THE MODIFICATIONS TO THE SOMA FOR UNAMIR
PROPOSED BY THE GOVERNMENT OF RWANDA

- References in the text are made to the paragraphs of the Government of Rwanda (GoR) proposal. Whenever a reference is made to paragraphs of the original SOMA, this is clearly indicated.
- The comments on the changes proposed by the GoR have been grouped into five sections:
 - I. **Changes that affect the application of the provisions of the Convention on the Privileges and Immunities of the United Nations (CPI), to which Rwanda is a party;**
 - II. **Changes that affect the necessary independence of UNAMIR;**
 - III. **Changes that reduce the extent of the Government's cooperation with UNAMIR;**
 - IV. **Changes which main effect is to impose a greater financial burden on UNAMIR's presence in Rwanda;**
 - V. **Minor changes such as changes in language, etc...**
- In each of these sections, proposed changes have been listed following the order in which they appear in the text.
- Though it was felt that it was useful to create such categories for the purposes of negotiation, some of the proposed changes fall under more than one of the above categories, in which case this has been indicated.
- Finally, an initial assessment of the acceptability or not of the proposed changes from a legal point of view has been given in each case under the heading "recommendations". With respect to changes proposed under section III and IV, no assessments have been given since it was felt that it is both a political and an administrative decision to determine to what extent does the United Nation want to abide by the Government's demands for substantially increased payments.

I. Changes that affect the application of the provisions of the Convention on the Privileges and Immunities of the United Nations (CPI), to which Rwanda is a party.

-Paragraph 3: In this paragraph, which is under the heading "Application of the Convention", the proposal omits any direct reference to the privileges and immunities referred to in the CPI. It states that "UNAMIR, its members, property, funds and assets shall enjoy the privileges and immunities specified in the present agreement *as defined in section fourteen of this Agreement*". In section 14 it is stated, as it was in the original text, that "UNAMIR, as a subsidiary organ of the United Nations, enjoys the status, privileges and immunities of the United Nations in accordance with the convention".

The proposed change has therefore no real legal effect. The CPI applies to UNAMIR, which comprises its members, property, funds and assets. This is so first and foremost because Rwanda is a party to the CPI and also because its applicability is expressly recognized in paragraph 3 through its reference to paragraph 14.

However, the fact that under the heading "Application of the Convention" no direct reference is made to such application is odd, departs from past practice and casts a doubt over the good faith of the authors of this proposed change.

Recommendation: The change is unnecessary, creates confusion and should therefore not be accepted.

-Paragraph 11 (b): Original paragraph 11 (b) has been modified in its last part, now reading "it is understood that connections with the local system of telegraphs, telex, telephones and masts [sic] will be charged *in accordance with existing national tariffs*", instead, as in the original text, "at the most favourable rate".

Although the aim pursued by GoR with this amendment is merely economic, it runs counter section 9 of the CPI, which establishes that the treatment as respects communications tariffs shall be "...not less favourable than that accorded by the Government of that Member to any other Government including its diplomatic mission...".

Recommendation: This modification should be considered along with all the others which aim at having the UN pay more. However, the change should not be accepted because it runs counter section 9 of the CPI, although the extent to which privileges and immunities of the UN are here negated is not crucial.

-Original paragraph 19: The following provision: "The United Nations alone may consent to the entry of any government officials or of any other person not member of UNAMIR to such premises" has been deleted from the GoR proposal.

It should be noted that inviolability of the UN premises is granted in article II, section 3 of the CPI. Such inviolability is anyway recognized in the modified SOMA in the third sentence of paragraph 15: "...Without prejudice to the fact that all such premises

remain Rwandese territory, *they shall be inviolable and subject to the exclusive control and authority of the United Nations...*". Therefore, it is not clear what the deletion of original paragraph 19 aims at.

Recommendation: This omission has no legal effect, but the mere fact that it has been proposed brings some confusion as to the motives of the GoR. It should not be accepted.

-Original paragraph 46: The following paragraph has been omitted: "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".

It should be noted that such immunity is anyway recognized for the SRSG and the FC in paragraph 21 (applicability of the status specified in sections 19 and 27 of the CPI), for other United Nations officials assigned to the civilian component of UNAMIR in paragraph 22 (applicability of articles V and VII of the CPI), for military observers, civilian police personnel and other experts in mission in paragraph 23 (applicability of article VI of the CPI) and for locally recruited staff in paragraph 25.

The modification leaves without immunity the military personnel (see paragraph 24), though they are still granted immunity from criminal jurisdiction in paragraph 43 (b).

This omission casts a doubt over the GoR intentions as regards the granting of such immunity. It should also be noted that the provision which ensures that immunity for such acts is granted even after the expiration of the Agreement has been eliminated, which is even more significant considering that the proposed paragraph 53 establishes that the Agreement will only be in force "until the current mandate of UNAMIR expires...".

Recommendation: This omission is not acceptable. It leads to confusion, it leaves unprotected certain categories of personnel, and it does not ensure the applicability of this immunity beyond the end of the mandate of UNAMIR.

-Paragraph 44: Comments on the modifications proposed in this paragraph (original paragraph 48) will be offered in part II. Although these modifications do not directly run counter any provision of the CPI, their effect could be, as far as civil proceedings are concerned, to significantly reduce the applicability of the immunity from legal process in respect of words spoken or written and all acts performed by staff members in their official capacity, contained in section 18 (a) of the CPI.

-Paragraph 52: Under the new paragraph, the Government has qualified its responsibilities with regard to the granting of privileges and immunities to UNAMIR by adding "*whenever possible*" to the following text: "...the Government shall *whenever possible* have the ultimate responsibility for the implementation and fulfilment of such privileges, immunities, rights and facilities by the appropriate Rwandese authorities".

This addition is a mockery. It is tantamount to say that all the obligations of the Government under the Agreement are dependent on its capability (or will) to implement them. If this provision were to be applied, none of what is agreed with the GoR would be binding upon it, since the GoR would only be responsible for its implementation "*whenever possible*".

Recommendation: The modification is totally unacceptable.

II. Changes that affect the necessary independence of UNAMIR

-Paragraph 1 (a):

Recommendation: Although it has not been proposed by the Government, the list of resolutions that establish UNAMIR's mandate which is quoted in paragraph 1 (a) should be updated.

-Paragraph 6: The proposed text omits the phrase: "The Government shall respect the exclusively international nature of UNAMIR...".

This is a soft-law provision with no direct legal effects. The international nature of UNAMIR, as a subsidiary organ of an international organization, is in itself an obvious fact. It is because of its international nature that UNAMIR is granted certain privileges and immunities that are not granted to other entities. The "*international status*" of UNAMIR is recognized anyway by the GoR in paragraph 7.

But precisely because it is an obvious fact which recognition imposes no specific obligations on the Government, it is not well understood why the Government wants to delete this provision.

Recommendation: It should be maintained that there is no reason to delete this provision.

-Paragraph 7 (b): The Government undertakes "to treat (but not "*at all times*") military personnel of UNAMIR in accordance with (not "*with full respect for*") the principles and spirit of the general international conventions applicable to the treatment of military personnel".

Whereas the second modification proposed is not satisfactory but has no far-reaching effects, the deletion of the words "*at all times*" cannot be accepted. It would amount to recognize that the application of humanitarian law with respect to UNAMIR military personnel could be temporarily excluded. This runs completely counter the very spirit of humanitarian law provisions, which are precisely intended to be applied *at all times*.

Recommendation: The deletion of "*at all times*" is unacceptable. The change in language proposed, "*in accordance with*" instead of "*with full respect for*" is not

very satisfactory but could be accepted.

-Paragraph 8: The GoR only recognises the right of UNAMIR to display within Rwanda the United Nations flag on its headquarters and camps and on the vehicles of the Special-Representative and the Force Commander, not on "other premises, vehicles, vessels and otherwise as decided by the Special-Representative". It also omits the phrase: "other flags and pennants may be displayed only in exceptional cases. In these cases, UNAMIR shall give sympathetic consideration to observations or requests of the Government".

Regarding the display of the UN flag, such display is important for identification purposes on vehicles other than those of the Special-Representative and the Force Commander. Regarding the display of other flags, the concerns of the Government could be addressed.

Recommendation: The right of the Special-Representative to decide if circumstances warrant the display of the UN flag on vehicles should be insisted upon. Regarding other flags, the Government suggestion could be accepted.

-Paragraph 11: The communications facilities that UNAMIR may enjoy in Rwandese territory are only granted "*after Government approval and [in] conformity with national laws on registration of communications equipment*". With regard to telecommunications services, although the original paragraph 10 (a) stated that frequencies for such stations "shall be decided upon in co-operation with the Government", the modified text proposed by the GoR states that these frequencies shall be decided upon "*by the Government in co-operation with UNAMIR*".

The double aim sought by GoR is to have better control on communications that take place from its territory and, in all likelihood, to impose fees on registration of communications equipment. Registration of all communications equipment would be extremely cumbersome. It could be argued that registration fees for the equipment are in fact direct taxes imposed on the United Nations, whereas the Organization is exempt from all direct taxes, except those which are in fact no more than charges for public utility services (Article II, section 7 CPI).

Recommendation: The UN could offer information on its activities and abide by national technical specifications aimed at regulating the flow of communications from Rwanda. However, the UN should not accept to go through registration of its equipment and payment of fees thereof.

-Paragraph 12: Freedom of movement of UNAMIR and its members throughout the territory is only granted "*in exercise of its mandate*".

This is a major restriction that amounts to giving to GoR the right to determine what activities undertaken by UNAMIR are within or not its mandate.

Recommendation: The modification is totally unacceptable.

-Paragraph 12: Regarding freedom of movement, whereas the original agreement

stated "that freedom shall, with respect to *large* movements of personnel, stores or vehicles through airports or on railways or roads used for general traffic within Rwanda, be co-ordinated *with* the Government", the proposal of the GoR now states that co-ordination will be done *by* the Government and it no longer applies to "large movements" but to any "*movement*".

This restriction, if thoroughly applied by the GoR, would amount to a paralysation of any movement of UNAMIR personnel, stores and vehicles unless authorized by the GoR.

Recommendation: The modification is unacceptable as it stands now. The legitimate desire of the GoR to be informed of such movements could be addressed on other terms.

-Paragraph 13: Whereas the original paragraph 13 stated that vehicles, vessels and aircraft of UNAMIR shall not be subject to registration or licensing by the Government, the proposed paragraph 13 states that: "*All UNAMIR vehicles shall be registered in accordance with national law governing registration of vehicles...*".

As in the case of communications equipment, this is again a modification introduced with the aim to have a better knowledge of UNAMIR activities and, above all, to have UNAMIR pay registration fees for its vehicles. It could again here be argued that such registration fees do not differ from a direct tax, whereas the UN is exempt from payment of all direct taxes.

The proposal departs enormously from past practice. If the UN is required to register all its vehicles in Rwanda, it would impose a considerable burden on its operations, which would be effectively held hostage to Rwandan bureaucracy, not to mention the enormous economic cost that the registration of all vehicles would imply.

Recommendation: The UN could offer to provide information to the Government on the vehicles it operates in Rwanda, but should not agree to registration of these vehicles.

-Original paragraph 14: The following provision: "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" has been deleted from the GoR proposal.

Although the aim pursued by deleting this provision is clearly economic, i.e. to make UNAMIR pay for such use of facilities, not to include such provision could have the effect of hampering UNAMIR's freedom of movement.

Recommendation: It ultimately boils down to a decision on how much is the UN ready to pay. However, the UN should insist on having a general provision that allows UNAMIR to use roads, bridges, etc. for its operations.

-Paragraph 15: The last sentence of original paragraph 16 has been deleted:
"...Where United Nations troops are co-located with military personnel of the host country, a permanent, direct and immediate access by UNAMIR to those premises should be guaranteed".

The fact is that there are no UNAMIR troops co-located with Rwandese military personnel. However, as a matter of principle, if UN troops are co-located with other troops an independent access for UN troops exclusive use is the only way to guarantee that access to the UN premises will not be impeded by the host country, apart from obvious safety considerations.

Recommendation: The principle should be maintained, although it has no practical implications in view of the actual deployment of UNAMIR.

-Paragraph 21: The proposed text excludes the Police Commissioner from the list of officials granted the status specified in sections 19 and 27 of the Convention.

The reason for such exclusion, which only affects one individual, is not well understood. The Police Commissioner is anyway granted the privileges and immunities of article VI of the CPI, by virtue of the application of paragraph 23.

Recommendation: The modification proposed is not a fundamental one. However, the original text should preferably be maintained.

-Paragraph 29: The GoR wants to subject the entry to, residence in and departure from Rwanda of the Special Representative and members of UNAMIR *"to the express consent of the Government"*.

This modification is linked to the proposed modifications in paragraphs 30 and 31:

-Paragraph 30: The GoR still "undertakes to facilitate the entry into and departure from Rwanda of the Special Representative and members of UNAMIR and shall be kept informed of such movement". However, all reference to exemptions from passport and visa regulations, immigration inspections and restrictions and regulations governing the residence of aliens in Rwanda has been eliminated;

-Paragraph 31: Similarly, in connection with the entry and departure of members of UNAMIR, whereas the original agreement referred to the need to have an individual or collective movement order and a personal identity card from the mission (see original paragraph 34), the GoR proposal now requires members of UNAMIR *"to have valid passports and individual or collective movement orders issued by or under the authority of a participating state"*.

The purpose of these modifications is clearly to subject UNAMIR members to visa requirements, both in order to charge visa fees and to gain better information on the identity of individuals working for UNAMIR. This latter aim is also served by the new paragraph 54, which states that "UNAMIR shall give a full list of all its members and their work to the Government".

These proposed changes are certainly cumbersome on UNAMIR but would seem acceptable in principle. What is not acceptable is that the Government might be allowed to restrict UNAMIR's operativity through the issuance of visas. Particularly, the assertion at the beginning of paragraph 29 ("*Subject to the express consent of the Government...*") might contribute to this impression. This provision would also allow the Government to unilaterally deport at any time any member of UNAMIR. In addition there is an inconsistency between paragraphs 29 and 30: if the Government has to expressly consent to the entry, residence and departure of personnel (para 29), it is redundant to say that the Government "*shall be kept informed of such movement*".

Recommendation: It should be clarified with the Government if its sole intention is to require visas. If so, the language of paragraph 29 should be softened accordingly and the redundancy with paragraph 30 eliminated.

-Paragraph 32: The GoR proposal eliminates the last sentence of the original paragraph 35: "Except as provided for in paragraph 34 of the present Agreement [first entry to Rwanda], such identity card shall be the only document required of a member of UNAMIR".

This modification falls probably in line with the proposal to eliminate visa exemptions and to require passports. However, these issues should not be necessarily linked. Passports and visas might be required for the entry into and departure from Rwanda, but for the purpose of identification of members of UNAMIR within the territory of Rwanda the UN-issued identification card should suffice. On the other hand, this is implicitly recognized in paragraph 33, where it appears that "members of UNAMIR ... may be required to present ... their *UNAMIR identity cards*": there is no reference to any other document there.

Recommendation: Although this is not a fundamental issue, the UN-issued ID card should be sufficient for the purposes of identification within Rwanda.

-Paragraph 34: According to its last sentence only "United Nations Security officers designated by the Special Representative may possess and carry arms while on duty in accordance with their orders", whereas the original paragraph 37 included also "Military members and civilian police of UNAMIR" among those who could carry arms.

This is a major modification that implies, for example, that United Nations troops would no longer be authorized to carry arms.

Recommendation: The modification is totally unacceptable.

-Paragraph 34: The following provision contained in original paragraph 37: "United Nations Security Officers and Field Service Officers may wear the United Nations uniform. The wearing of civilian dress by the above-mentioned members of UNAMIR [military members, United Nations civilian police, United Nations Security Officers and Field Service Officers] may be authorized by the Special Representative at other times [when not performing official duties]" has been deleted.

The rationale for this change is not very clear and seems to be contradictory. Whether the Government does not want to see uniforms around (this is what transpires from the modification to the use of the UN uniform, linked also to the issue of display of the UN flag), whether it does not want to see people who normally wear uniforms in civilian clothing (implied in the second modification referred to above).

In any case, regarding the United Nations uniform worn by Security Officers and Field Service Officers, for purposes of identification its use should be maintained. The right of the Special Representative to authorize certain members of UNAMIR to wear civilian dress when out of duty should also be maintained.

Recommendation: These matters should be left to the UN to decide upon; the changes should not be accepted.

-Paragraph 43 (c): The GoR has added the following provision to the text of the original paragraph 47: *"In either case, the Government reserves the right to deport any member of UNAMIR, civilian or military, for trial in his home country"*.

The capacity of the Government to deport members of UNAMIR is already implied in paragraph 29, which subjects the entry into, residence in and departure from Rwanda "to the express consent of the Government". However, to link unilateral deportation to the issue of the exercise of criminal jurisdiction is not acceptable because paragraphs 43 (a) and (b) establish the procedure to deal with criminal offenses allegedly committed by civilian personnel and military personnel. To allow the Government to, these provisions notwithstanding, deport anyone it suspects to have committed a crime in Rwanda is to negate the effectiveness of the agreed procedures.

Recommendation: The proposed addition to paragraph 43 should not be agreed upon.

-Paragraph 44: The whole system of jurisdiction related to civil proceedings has been substantially modified. The decision whether the proceeding is related to the official duties of the staff member does not any longer belong to the Special Representative but to *"a Rwandan court of competent jurisdiction"*. There is no longer any obligation to notify the Special Representative that civil proceedings have been instituted against a member of UNAMIR before any court of Rwanda. Property of a member of UNAMIR that is certified by the Special Representative to be needed by the defendant for the fulfilment of his official duties is no longer free from seizure for the satisfaction of a judgement, decision or order. Finally and most important, the final sentence of original paragraph 48: *"The personal liberty of a member of UNAMIR shall not be restricted in a civil proceeding, whether to enforce a judgement, decision or order, to compel an oath or for any other reason"* has been deleted.

Following the GoR proposal, a staff member who is a defendant in a civil suit could be brought to trial, his case reviewed by a court that could decide that the acts committed by the defendant were not official acts, his property seized and even his personal liberty restricted to enforce the judgement rendered by the court, all this without even notifying the Special Representative.

The effect of the modifications is to significantly reduce the applicability of the immunity from legal process granted by the CPI and the SOMA itself with respect to civil proceedings.

Recommendation: The modification is totally unacceptable.

-Paragraph 53: Whereas the original text stated that "the present Agreement shall remain in force until the departure of the final element of UNAMIR from Rwanda...", the proposed text maintains that the Agreement shall remain in force *"until the current mandate of UNAMIR expires or such other date as the Government and the United Nations may mutually agree"*.

Considering that the withdrawal of the mission may go well beyond the expiration of the mandate, this means that, unless there is agreement to the contrary with the Government, all the privileges and immunities granted by the Agreement will not apply to the United Nations during the withdrawal period.

Recommendation: The modification is totally unacceptable.

-Paragraph 54: The GoR adds a totally new paragraph: *"UNAMIR shall give a full list of all its members and their work to the Government"*.

This list would satisfy some of the concerns of the Government concerning information about the mission. There is no reason for the United Nations not to comply with this demand.

Recommendation: The proposal may be accepted.

III. Changes that reduce the extent of the Government's cooperation with UNAMIR

-Paragraph 12: The GoR no longer agrees "to supply UNAMIR, where necessary, with maps and other information, including locations of mine fields and other dangers and impediments, which may be useful in facilitating its movements".

-Paragraph 15: The GoR no longer agrees "to the extent possible, [to] provide UNAMIR such areas for headquarters, camps or other premises as may be necessary for the conduct of the operational and administrative activities of UNAMIR and for the accommodation of the members of UNAMIR". It now merely proposes, to the extent possible, *"to assist" UNAMIR "in locating such areas"*, which do not any longer include "premises for the accommodation of the members of UNAMIR".

-Original paragraph 20: The obligation of the GoR to assist UNAMIR with its local purchases has been deleted.

-Paragraph 19: Although UNAMIR may still recruit locally such personnel as it

requires, the GoR has eliminated the following text: "Upon the request of the Special Representative, the Government undertakes to facilitate the recruitment of qualified local staff by UNAMIR and to accelerate the process of such recruitment".

IV. Changes which main effect is to impose a greater financial burden on UNAMIR's presence in Rwanda

- As already indicated, the proposed changes in paragraphs 11, 13, 14 and 29 to 31 will have, apart from an effect on the independent conduct of UNAMIR's operations, serious economic consequences for the presence of UNAMIR in Rwanda. The proposed changes commented in section III, which aim at reducing the scope of the Government's collaboration with UNAMIR, could also have economic consequences for UNAMIR.

-Paragraph 14 (a): Regarding the sale of goods in the commissaries, the GoR proposes to add the following: "...*provided that UNAMIR members shall only enjoy duty free benefits similar to the benefits accorded to members or staff of diplomatic missions accredited to Rwanda of equal rank or status*".

Access to the UN commissary is already restricted to United Nations international staff; no access is allowed to locally-recruited staff. Considering the actual size of the UNAMIR commissary at Trafipro, the limitation sought by the Government is rather petty.

-Paragraph 15: Whereas premises were originally, to the extent possible, to be provided by the GoR, the proposed paragraph 15 now reads: "*Payment shall be made by UNAMIR on terms to be agreed with the competent authority*". It is also added that "*UNAMIR shall be responsible for the maintenance and upkeep of such areas so provided*".

-Original paragraph 20: This whole paragraph has been deleted in the GoR proposal. Of particular relevance is the last sentence: "The Government shall exempt UNAMIR from general sales taxes in respect of all official local purchases".

The deletion of this provision will have the effect to subject UNAMIR to the payment of sales tax on all local purchases.

-Paragraph 20: The GoR no longer undertakes to make available to UNAMIR Rwandese francs at the rate of exchange most favourable to UNAMIR, as original paragraph 23 provided for. Instead, "*UNAMIR shall conform to the existing national monetary laws and exchange mechanism and conduct its commercial operation through the banking system*".

-Paragraph 26: Though still exempt from taxation on the pay and emoluments received from the United Nations or from a participating state and any income received outside Rwanda, members of UNAMIR are no longer exempt from all other direct taxes and from all registration fees and charges. The GoR proposes that "...*They shall however*

not be exempt from municipal rates for services enjoyed and from all registration fees and charges".

UNAMIR has never claimed exemption from "municipal rates for services enjoyed". However, the proposed changes make UNAMIR members also liable for "all other direct taxes" and for "all registration fees and charges".

V. Minor changes such as changes in language, etc...

-Paragraph 5: The GoR proposes to add "*provisions and*" in the sentence: "UNAMIR and its members shall refrain from any action or activity incompatible with the impartial and international nature of their duties or inconsistent with the *provisions and* spirit of the present arrangements...".

Recommendation: The addition could be accepted.

-Paragraph 5: The GoR proposes to add "*as stipulated in article 46 of this Agreement*" to the following sentence: "UNAMIR and its members shall respect all local laws and regulations *as stipulated in article 46 of this Agreement*".

The reference to "article" 46 does not make sense; paragraph 46 refers to the procedure for the settlement of disputes, it says nothing about ensuring greater respect to local laws and regulations.

Recommendation: This modification should not be accepted as it stands now.

-Paragraph 7 (b): Refer to comments made on this paragraph in section II.

-Paragraph 11 (b): The reference to "*masts*" needs to be rephrased. As it stands now, "...connections with the local system of...*masts*..." does not make sense.

Recommendation: Clarification should be sought from the GoR.

-Paragraph 14 (b): In the paragraph requiring the Special Representative to "take all necessary measures to prevent abuse of such commissaries and the sale *or resale* of such goods to persons other than UNAMIR", the proposal omits the reference to "*or resale*". It also deletes "*sympathetic*" from "and he shall give *sympathetic* consideration to observations or requests of the Government concerning the operation of commissaries".

Recommendation: Both omissions actually benefit UNAMIR.

-Paragraph 14 (c): The word "*provisions*" has been omitted from the list of articles that may be cleared ex customs and excise warehouse, free of duty by UNAMIR.

This is in all likelihood an unwilling omission from the GoR part, since the word "*provisions*" appears in paragraph 14 (a) with respect to the categories of articles which

may be imported free of duty by UNAMIR. Reference to "*provisions*" is also made in paragraph 14 (d) regarding re-exportation of provisions "cleared ex customs and excise warehouse".

Recommendation: The deletion of the term "*provisions*" should not be accepted.

-Paragraph 16: Payment for water, electricity and other necessary facilities shall no longer be made to the "competent authority" but to the "*appropriate authority*".

Recommendation: No problem with that, except that it is not very consistent with the modification proposed by GoR in paragraph 15, which speaks of "the competent authority".

-Paragraph 23: The word "*Other*" has been added at the beginning of the sentence.

This addition probably seeks to maintain the parallelism with paragraph 22 and exclude from the granting of the status of experts in mission those officials already referred to in paragraph 21, who are granted the status specified in sections 19 and 27 of the Convention.

Recommendation: The proposed modification adds confusion and is not necessary.

-Paragraph 33: The word "shall" has been replaced by "*may*" in "Members of UNAMIR as well as locally recruited personnel *may* be required to present, but not to surrender, their UNAMIR identity cards upon demand by an appropriate official of the Government".

Recommendation: The change in language actually benefits UNAMIR.

-Paragraph 37: The GoR has added "*other*" to the phrase: "To this end, personnel designated by the Special Representative shall police the premises of UNAMIR and such *other* areas where its members are deployed".

Recommendation: The proposed change may be accepted.

-Paragraph 38: Personnel designated by the Special Representative to police the premises of UNAMIR may under the proposed text "*apprehend* any other person on the premises of UNAMIR", whereas the original paragraph 41 read that they may "*take into custody* any other person on the premises of UNAMIR".

Considering that following the arrest of such person, he/she shall be delivered immediately to the nearest appropriate official of the Government, the proposed change in language might actually be welcomed. The "*apprehension*" gives a better idea of the temporary nature of the measure than "to take into custody".

Recommendation: The proposed change may be accepted.

CRW-371 17/17

-Paragraph 38: Following the GoR proposal, military personnel placed under arrest outside their own contingent areas are to be transferred to "*their contingent command*", instead of, as in the original paragraph 41, to "their contingent Commander".

This is likely to be an unwilling mistake from the part of the GoR.

Recommendation: The proposed change should not be accepted.

-Paragraph 41: The first and second sentences have been linked and the description of the items to be handed over as being "connected with an offence" has been deleted.

As it stands now, the sentence makes little sense. This is probably an unwilling mistake from the part of the GoR.

Recommendation: The proposed change should not be accepted.

-Paragraph 43 (a): Under the original agreement, members of the civilian component and civilian members of the military component are given the same treatment as regards the procedure to be followed should a criminal offense be committed by them. The GoR proposal eliminates the phrase "*or a civilian member of the military component*".

However, paragraph 43 (b) has not been changed accordingly, and only refers to "military members of the military component". Therefore, the proposed modification adds unnecessary confusion by leaving unanswered the question of the treatment to be given to civilian members of the military component.

Recommendation: The proposed change should not be accepted.

-Paragraph 53: The deletion of the words "except that" before sub-paragraphs (a) and (b) eliminates the link between the chapeau and the sub-paragraphs and makes no sense.

Recommendation: The proposed change should not be accepted.

CRW-371 17/17

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Recommendation: The proposed change should not be accepted.

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Recommendation: The proposed change should not be accepted.



TO: All Staff members concerned
(see distribution list)

FROM: Shaharyar Khan
SRSG

Date: 27 September 1995

SUBJECT: Status of Mission Agreement

1. The Government of Rwanda has now communicated to us its proposals concerning a new Status of Mission Agreement.

2. I have therefore designated the following staff members to study the document and make their recommendations to me as soon as possible.

Mr. Wilfrid DE SOUZA
Col. SHIVA KUMAR
Mr. William CLIVE
Mr. Mamady CONDE
Mr. Mtshana NCUBE
Mr. Paul ISCHLIKA
Ms. Ladan RAFII

3. The team will work under the chairmanship of the Executive Director.

cc. FC

OUT-GOING CODE CABLE

TO: ANNAN/GOULDING, UNATIONS, NEW YORK

FROM: For SHAHARYAR M. KHAN, UNAMIR, KIGALI

DATE: 25 October 1995

NO: MIR _____

NO. OF PAGES: 3

SUBJECT: JOINT CONSULTATIONS HELD BETWEEN UNAMIR AND THE
GOVERNMENT OF RWANDA

-
1. Please find attached a signed copy of the minutes of a meeting held between representatives from UNAMIR and the Government of Rwanda on 17 October 1995 to discuss various aspects of UNAMIR/Government relations.
 2. Best regards.



**JOINT MEETING BETWEEN THE RWANDESE GOVERNMENT AND UNAMIR
HELD ON 17 OCTOBER 1995**

1. On 17 October 1995, a meeting was held between representatives from the Rwandese Government and UNAMIR to discuss various aspects of UNAMIR/Government relations. The following were present:

Government

Mr. Claude Dusaidi	Office of the Vice-President
Dr. Emmanuel Ndahiro	Office of the Vice-President
Mr. Mushyo Kamanzi	Ministry of Defence
Mr. Higiro Thaddée	Ministry of Foreign Affairs
Mr. Jean-Marie Byakweli	Ministry of Rehabilitation and Social Integration
Mr. Senglo Nsengumuzemyi	Ministry of Planning
Mr. Gérard Rutagengwa	Ministry of Planning
Maj. Kamarade Kayitare	RPA Liaison Officer

UNAMIR

Mr. Shaharyar M. Khan	Special Representative of the Secretary-General
Maj. Gen. Guy Tousignant	Force Commander
Mr. Wilfrid de Souza	Executive Director
Ms. Susan Matthew	Chief Administrative Officer
Col. Shiva Kumar	Chief of Staff
Ms. Isel Rivero	Special Assistant to the SRSG
Mr. Mtshana Ncube	Administrative/Legal Officer
Ms. Ladan M. Rafii	Political/Legal Officer

2. The SRSG began the meeting by informing the Rwandese Government representatives that UNAMIR had completed and sent to United Nations Headquarters in New York (UNNY) a survey of all its equipment available in Rwanda classified according to particular categories. He stated that it was up to officials at UNNY to decide which items would be needed for future peace-keeping operations and which would be available for disposal at the end of UNAMIR's mandate. The SRSG further added that UNAMIR eagerly awaited the Rwandese Government's response regarding certain basic issues concerning UNAMIR's mandate, and gave assurances that a decision would not be made without input from the Security Council and the Rwandese Government. He also mentioned that the Permanent Representative of Germany to the Security Council had proposed a Presidential Statement which would serve as an indicator of UNAMIR's future mandate and presence in Rwanda.

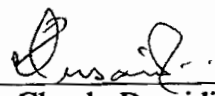
3. Mr. Dusaidi agreed that the question of UNAMIR's future mandate was for the Security Council to decide and stated that he could not comment more on this issue. He expressed an interest in seeing the catalogue of goods prepared by UNAMIR in order to determine what would be of use to his Government. He added that he would later go into greater detail regarding UNAMIR's assistance role and what the United Nations could do to assist Rwanda in its rehabilitation and reconstruction efforts.

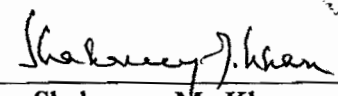
4. On the question of UNAMIR's mandate, the SRSG stated that he would like to make certain clarifications. He explained that there had been rumours at UNNY that due to the financial crisis being experienced by the United Nations, the Secretary-General would be compelled to propose to the Security Council measures to be taken with regard to UNAMIR's mandate. Although the SRSG acknowledged that the Secretary-General had indeed been considering the adoption of certain measures, it had been decided at high levels in UNNY not to take any precipitate measures in this regard. As a result, the future mandate of UNAMIR would be decided between the Security Council and the Government of Rwanda in the usual manner without regard to financial constraints.

5. With regard to the disposal of UNAMIR's equipment, the SRSG proposed that the matter should be raised with high-level officials in UNNY by the Permanent Representative of Rwanda to the United Nations, as well as by the President of Rwanda during the course of his forthcoming visit to New York to participate in the fiftieth anniversary celebrations of the United Nations. The SRSG stated that due to the necessity of observing regulations governing the disposal of equipment used by United Nations peace-keeping missions throughout the world, a decision at a high level would be required to change existing procedures. He explained that those items perceived as being required for future operations would be stored or sent to another mission; those considered too expensive to be transported, redundant or of little remaining use could be left behind, in which case each item would be valued with United Nations agencies operating in Rwanda being given priority over the Government of Rwanda for purposes of distribution. He added that he fully understood the Government's need for United Nations assistance and its interpretation of an "assistance mission". The SRSG stated that he was urging a response from UNNY on the matter as quickly as possible.

6. Regarding the Status of Mission Agreement, Mr. Dusaidi inquired as to when the legal subcommittee would be established to discuss the modifications proposed by the Rwandese Government. The SRSG replied that a UNAMIR subcommittee had already been set up, and if the Government could provide the names of members of its own subcommittee, discussions on the matter could begin the same week.

7. The meeting ended with Mr. Dusaidi inquiring when his Government could have access to the list of UNAMIR equipment discussed, to which the SRSG replied that the list may be made available by the following week.

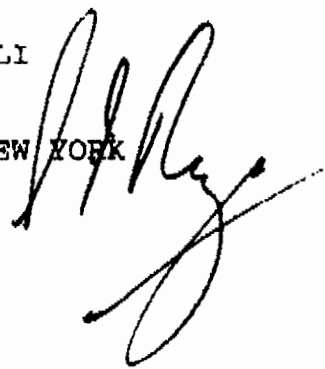

Mr. Claude Dusaidi
Date: 20/10/95


Mr. Shaharyar M. Khan
Date: 19.10.95

CNR 306 P 1/4

OUTGOING CODE CABLE

TO: KHAN, UNAMIR, KIGALI
 FROM: ANNAN, UNATIONS, NEW YORK
 DATE: 24 October 1995
 NUMBER: 3353



RECEIVED
 OPERATIONS
 24 OCT 1995 17:03

SUBJECT: PROPOSED AMENDMENTS BY THE GOVERNMENT OF RWANDA
 TO THE SOFA

With reference to your MIR-3576 of 13 October 1995, we have received from the Office of Legal Affairs the attached memorandum dated 20 October. We thought it would be best to send it to you in its entirety. In view of the difficulties encountered by United Nations contractors in Rwanda, you may wish to note the recommendations in para. 4 of Mr. Zacklin's memo. Please also note that the 26 July memorandum mentioned in para. 4 included a very thick document entitled 'Draft Model Status of Forces Agreement between the UN and host countries', which is still under review.

Best regards.

United Nations  Nations Unies CNR-306 P2/4
INTEROFFICE MEMORANDUM MEMORANDUM INTERIEUR

TO: Mr. Kofi Annan
A: Under-Secretary-General for
Peace-Keeping Operations
THROUGH:
S/C DE:

20 October 1995

REFERENCE:

FROM: Ralph Zacklin, Director and Deputy to the
DE: Under-Secretary-General
SUBJECT: Office of the Legal Counsel
OBJET:

UNAMIR - Proposed amendments by the Government of
Rwanda to the SOFA

1. This is with reference to Mr. Khan's cable dated 13 October 1995 (MIR-3576) forwarding for our review an amended version of the SOFA as proposed by the Government of Rwanda. The proposed amendments have already been reviewed by a Committee appointed by Mr. Khan within the Field Office which unanimously reached the conclusion that such amendments were unacceptable. In taking into consideration the conclusion of the Committee, Mr. Khan is of the view that the proposed amendments "need to be placed in their political context". To that end, he suggested that certain factors be taken into account such as the desire of the new Government of Rwanda to assert itself and the understandable position of the Government to reduce the visibility of UNAMIR. Furthermore, according to Mr. Khan, some proposals which are expressed in an inappropriate language would, otherwise, be reasonable.

2. We regret that we are unable to share Mr. Khan's views. In reviewing the proposed amendments, we found that most of them constitute fundamental departures from the customary practices and principles applicable to United Nations peace-keeping operations as codified in the Model SOFA (A/45/594) on the basis of which the SOFA was concluded with Rwanda on 5 November 1993. Such amendments relate to essential privileges and immunities, rights and facilities of UNAMIR and its members and include:

CNR-306 P3/4

- denying the applicability of all the provisions of the Convention on Privileges and Immunities of the United Nations (the Convention) to which Rwanda acceded without any reservation;
- subjecting the status of members of UNAMIR to the authority of the Government;
- reducing the privileges and immunities of UNAMIR and its members;
- minimizing to a great extent the facilities and assistance usually provided by governments to United Nations peace-keeping operations;
- restricting and exercising control over the facilities in respect of communications and the freedom of movement;
- denying access to roads, port facilities and airfields without the payment of dues, tolls or charges.

3. The amendments proposed by the Government of Rwanda do not, in our view, constitute a basis on which we consider that negotiations could proceed towards a revised draft SOFA. It should be made clear to the Government that any amendment to the SOFA will have to be considered in light of the fundamental principles of the Convention and the customary principles and practices of United Nations peace-keeping or similar operations contained in the model SOFA.

4. In this respect, it should be recalled that the version of the model SOFA which includes provisions concerning facilities necessary for contractors to carry out their tasks in the context of UN peace-keeping operations was forwarded to Mr. I. Riza by my

CNR-306 P4/4

memorandum dated 26 July 1995. Taking into consideration the difficulties encountered by UN contractors, including in Rwanda, any changes to the existing SOFA should also include the provisions of the above-mentioned version of the model SOFA. In the absence of any agreed amendment, the existing SOFA will continue to regulate the status of UNAMIR.



UNAMIR - MINUAR

INTEROFFICE MEMORANDUM

Date: 9 October 1995

To: Col. Shiva Kumar
Ms. Susan Matthew
Mr. Mamady Lamine Condé
Mr. Mtshana Ncube
Mr. Paul Ischlika
Ms. Ladan Rafii

From: Wilfrid de Souza
Executive Director

Subject: Status of Mission Agreement

A handwritten signature in black ink, appearing to read 'W. de Souza', written over the printed name of the sender.

1. As a follow-up to our meeting of this afternoon, please find attached the draft cable we have prepared to convey our views to New York on the proposed new SOMA.
2. I would appreciate receiving your suggestions, if any, by tomorrow noon.
3. Thank you for your cooperation.

OUT-GOING CODE CABLE

TO: ANNAN/GOULDING/CORELL, UNATIONS, NEW YORK
INFO: KITTANI/GHAREKHAN, UNATIONS, NEW YORK
FROM: SHAHARYAR M. KHAN, UNAMIR, KIGALI
DATE: 9 October 1995
NO: MIR _____
NO. OF PAGES: 33
SUBJECT: **MODIFICATIONS TO THE STATUS OF MISSION AGREEMENT
PROPOSED BY THE GOVERNMENT OF RWANDA**

1. We attach for your information an analysis of the text of the new Status of Mission Agreement (SOMA) recently proposed by the Rwandese Government. A copy of the original SOMA, as well as the Government's new version of the Agreement incorporating their proposed changes which we received from the Office of the President are also attached for your reference.

2. All the components of UNAMIR (political, military and administrative), after holding formal consultations on the matter today, have unanimously concluded that the proposed modifications sought by the Government were all to the detriment of UNAMIR and would undermine our position as a United Nations peace-keeping mission. Furthermore, some of the proposals are contrary to the 1946 Convention on the Privileges and Immunities of the United Nations, as well as standard provisions at other United Nations peace-keeping missions operating in other areas of the world. The committee was of the unanimous view that the proposed text is totally unacceptable. However, we are submitting it for your consideration and legal opinion, as well as any action you may deem appropriate.

3. We look forward to receiving your comments on the proposed modifications to the SOMA on an early basis as the Rwandese Government has indicated its expectations of a quick response on our part.

4. Best regards.