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ACTION IO-16

INFO	LOG-00	AF-01	ARA-01	CIAE-00	SMEC-00	OASY-00	DODE-00
	EAP-01	EUR-01	H-01	TEDE-00	INR-00	L-01	ADS-00
	NEA-01	NSAE-00	NSCE-00	OIC-02	OIG-04	OMB-01	PA-01
	PM-00	PRS-01	P-01	SNP-00	SP-00	SSO-00	SS-00
	TRSE-00	T-00	USIE-00	SA-01	PMB-00	DRL-09	G-00

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FM USMISSION USUN NEW YORK
TO SECSTATE WASHDC IMMEDIATE 9404
INFO AMEMBASSY THE HAGUE
USMISSION GENEVA
UN SECURITY COUNCIL COLLECTIVE

C O N F I D E N T I A L SECTION 01 OF 02 USUN NEW YORK 004148

DEPT PASS L/UNA

E.O. 12356 DEL OADR
TAGS: PREL UNSC

SUBJECT: RWANDA TRIBUNAL

1. CONFIDENTIAL - ENTIRE TEXT.

2. SUMMARY: US, UK AND NZ MISSION LEGAL ADVISERS MET PM
9/30 WITH UN DEPUTY LEGAL COUNSEL ZACKLIN TO GO OVER DRAFT
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RES AND DRAFT STATUTE CIRCULATED BY US AND NZ EARLIER.
ZACKLIN AND UK LEGAL ADVISER, WHILE NOTING THAT COMMENTS
WERE PRELIMINARY, HAD NO PROBLEM WITH OVERALL STRUCTURE OF
APPROACH OR US DESIRE TO MOVE RAPIDLY. A NUMBER OF SMALL
AND MEDIUM ISSUES OF SUBSTANCE AND DRAFTING EMERGED BUT
NONE FUNDAMENTAL. PRELIMINARY REPORT OF INDEPENDENT EXPERTS
ONLY BECAME EVEN INFORMALLY AVAILABLE AFTER MEETING.
END SUMMARY

3. FOLLOWING COMMENTS WERE MADE ON STATUTE
(A) ART 1. (1) ZACKLIN QUERIED WHETHER JURISDICTION SHOULD

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NOT BE EXTENDED BEYOND TERRITORY OF RWANDA AS PER INITIAL US SUGGESTION OR OTHERWISE TO COVER CAMPS AND THE PLOTTING OF THE APRIL 6 EVENTS AND THOSE WHICH FOLLOWED IMMEDIATELY. WILMESHURST (UKUN) SAID HMG STRONGLY PREFERRED LIMITING SCOPE TO EVENTS IN RWANDA. VAN BOHEMEN (NZ) SAID NZ HAD NO PROBLEM WITH BROADER TERRITORIAL SCOPE BUT FEARED NEIGHBORING COUNTRIES AND THUS AFRICAN GROUPS WOULD BALK.

(2) ZACKLIN QUERIED WHETHER APRIL 1, 1994 DATE WAS BEST. HE ACKNOWLEDGED US POINT THAT ONCE YOU DEPARTED FROM A RECENT DATE IT WAS LIKE PEELING AN ONION AND YOU COULD GO BACK TO THE 70S OR EVEN THE 50S AND AGREEMENT WOULD BE DIFFICULT. ZACKLIN SUGGESTED JAN 1, 1994 AS POSSIBLE NEUTRAL DATE THAT WOULD BE LESS CONSTRAINING THAN APRIL 1. COMMENT: IN LIGHT OF SUBSEQUENT READING OF EXPERTS' INTERIM REPORT WITH ITS STRONG STATEMENTS ON PRE-APRIL 1 ACTIVITIES IN PLANNING AND PREPARING ACTIVITIE PERHAPS JAN 1 MIGHT BE WISER END COMMENT.

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(3) ZACKLIN SUGGESTED END DATE FOR JURISDICTION OF TRIBUNAL ALA SC RES 827 (1). COMMENT: WHILE "OBJECTIVE" CRITERIA SUCH AS "RESTORATION OF PEACE" MIGHT NOT BE AVAILABLE "A DATE TO BE DETERMINED BY THE SC" WOULD SEEM APPROPRIATE. END COMMENT.

(B) ART 2. WILMSHURT SAID HMG RECOMMENDED "ARMED CONFLICT" IN PLACE OF "WAR" GIVEN INTERNAL NATURE OF CONFLICT. COMMENT: SUCH A CHANCE SEEMS VARIOUSLY APPROPRIATE. END COMMENT

(C) ART 3. ZACKLIN QUERIED NEED TO INCLUDE TEXT OF DEFINITION OF GENOCIDE AS OPPOSED TO SAYING GENOCIDE AS SET OUT IN THE CONVENTION.

(D) ART 4 (H). ZACKLIN SUGGESTED SUB PARA SEEMED REDUNDANT. WILMSHURST SUGGESTED DELETING FROM CHAPEAU, PHRASE "ON NATIONAL, POLITICAL ETHNIC RACIAL OR RELIGIOUS GROUNDS" TO AVOID EXCESSIVE OVERLAP WITH GENOCIDE AND TO CONFORM IT TO STATUTE OF YUGOSLAV TRIBUNAL. US DEL NOTED THAT WHILE CLAUSE WAS NOT EXPRESSLY INCLUDED IN YUGO STATUTE, THE REPORT OF THE SYG WHICH PROPOSED THE ARTICLE INCLUDED SUCH A LIMITATION AND THUS A LEGISLATIVE HISTORY AND SEVERAL

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STATES HAD MADE STATEMENTS AT THE TIME OF THE ADOPTION OF THE YUGO STATUTE SAYING THEY UNDERSTOOD THE ARTICLE TO INCLUDE IMPLICITY SUCH A QUALIFYING PHRASE.

(E) ART 7: PRESENCE OF TERRITORIAL SCOPE ISSUE DISCUSSED ABOVE NOTED

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(F) ART 10(C): ZACKLIN QUERIED PHRASE "SERVICING THE TRIAL CHAMBERS AND THE PROSECUTORS." PRELIMINARY CONSENSUS WAS THAT LITTLE LOST IN DELETING PHRASE AND POSSIBLE GAINS IN FLEXIBILITY ARGUED FOR DELETION.

(G) ART 11: ZACKLIN RAISED QUESTIONS WHETHER THERE WOULD BE PROBLEMS FOR DELEGATIONS PRIOR TO ADOPTION OR RWANDA TRIBUNAL JUDGES AT LATER STAGE OVER FACT THAT YUGO JUDGES CAN SIT IN TRIAL OR APPEALS CHAMBERS AND EVEN ROTATE THANKS TO THE RULES BUT RWANDA TRIBUNAL JUDGES COULD NOT. PRACTICAL DIFFICULTIES OF FINDING A FIX AND UNDESIRABILITY OF MOVING JUDGES FROM ONE CHAMBER TO THE OTHER PERSUADED US ALL TO PUT THE QUESTION ASIDE FOR THE TIME BEING RECOGNIZING THAT IF OTHERS RAISED IT PRIOR TO ADOPTION OF STATUTE, WE MAY HAVE TO TRY AND FIND A FIX.)

(H) ART 12 (5): ALL AGREED WITH ZACKLIN'S SUGGESTIONS THAT TERMS AND CONDITION BE "THOSE OF THE YUGO TRIBUNAL" RATHER THAT ICJ.

(I) ART 13 (2): ALL CONCERNED BELIEVED THE SECOND SENTENCE COULD BE DELETED.

(J) ART 14: ZACKLIN URGED THAT IN THE INTERESTS OF

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EFFICIENCY AND HARMONIZATION RWANDA TRIBUNAL SHOULD BE
MORE FIRMLY TIED TO PROCEDURES OF YUGOSLAV TRIBUNAL.
COLLECTIVE CONCLUSION WAS THAT RULES OF PROCEDURES
AND EVIDENCE OF THE YUGOSLAV TRIBUNAL" SHALL APPLY
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SUBJECT TO SUCH CHANGES AS THE JUDGES OF THE RWANDA
TRIBUNAL DEEM NECESSARY".

(K) ART 26: ZACKLIN QUERIED WHETHER POSSIBILITY OF
IMPRISONMENT IN RWANDA SHOLD BE EXLUDED OR WHETHER IT
SHOULD BE FORMULATED A LONG THE LINES "...IN RWANDA OR
FROM A LIST..." DISCUSSION WAS INCONCLUSIVE.

4. THE QUESTION OF THE SEAT OF THE COURT WAS DISCUSSED.
VAN BOHEMEN SAID RWANDAN HAD TOLD HIM RWANDA HAD NO

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OBJECTION TO THE HAGUE AS THE SEAT SO LONG AS THE TRIALS WERE CONDUCTED IN RWANDA. REST EXPRESSED VARYING DEGREES OF DOUBT AT THOUGHT OF TRIALS IN RWANDA AS OPPOSED TO NAIROBI OR ADDIS. THERE WAS A TENDENCY TO FAVOR ZACKLIN'S SUGGESTION THAT PRACTICAL CONSIDERATIONS SHOULD DRIVE THE ISSUE AND THAT PERHAPS BEST WAY WOULD BE TO SPECIFY SEAT "AT A LOCATION TO BE DETERMINED BY THE SC ON THE RECOMMENDATION OF THE SYG". COMMENT: WHILE THIS COULD CERTAINLY BE A PLAUSIBLE APPROACH AT THIS STAGE, THE EXTREMELY STRONG RECOMMENDATION OF THE EXPERT IN THEIR REPORT FAVORING THE HAGUE, COMBINED WITH THE RWANDAN ATTITUDE MIGHT SUGGEST SIMPLY RETURNING TO THE HAGUE PURE AND SIMPLE. IN THIS CONNECTION IT SHOULD BE NOTED THAT NETHERLANDS APPEARS ANXIOUS TO HOST THIS INTERNATIONAL COURT AS WELL THOUGH HOW GENEROUS THEY ARE PREPARED TO BE REMAINS TO BE SEEN
END COMMENT.

5. WILMSHURT NOTED HMG DESIRE TO GET STARTED IN CREATING RWANDA JUSTICE SYSTEM AND SUGGESTED CONSIDERATION BE GIVEN TO POSSIBLE PARA IN RESOLUTION TO THIS END.

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6. FINALLY ZACKLIN QUERIED WHETHER WE PLANNED TO ADD NOTION FROM SC RES 827(7) ON WORK OF TRIBUNAL BEING WITHOUT PREJUDICE TO RIGHT OF VICTIMS TO SEEK COMPENSATION. ZACKLIN RECALLED THAT PARA HAD BEEN ADDED TO RES 827 AS COMPROMISE IN LIGHT OF NON-ALIGNED DESIRE TO EMPOWER TRIBUNAL TO GRANT COMPENSATION. INCONCLUSIVE DISCUSSION THAT FOLLOWED SEEMED TO SUGGEST INCLINATION TO LEAVE IT OUT FOR NOW AND IF NON-ALIGNED INSISTED TO INCLUDE SAME LANGUAGE AS IN 827.

7. WHILE WE HAVE YET TO HEAR FROM THE FRENCH AND SUCH LIKELY PROPOSERS OF AMENDMENTS AS THE SPANISH WHO STILL FAVOR A TWO STEP PROCESS ALA 808 AND 827 NOT TO MENTION THE NON-ALIGNED AND MORE FINAL VIEWS FROM US, UK AND NZ, DEPTS VIEWS ASAP ON THE ABOVE WOULD BE HELPFUL. IN THE MEANTIME, WE PLAN TO BE IN TOUCH WITH SC PRESIDENT, HANAY, ABOUT EARLY ISSUANCE OF A PRESIDENTIAL STATEMENT WELCOMING INTERIM REPORT OF THE EXPERT COMMISSION AND EXPRESSING INTENT TO ACT ON ITS RECOMMENDATIONS INCLUDING IN PARTICULAR ESTABLISHMENT OF A TRIBUNAL.

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