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	INR-00	IO-16	L-01	ADS-00	M-00	NEA-01	NSAE-00
	OIC-02	OIG-04	OMB-01	PA-01	PM-00	PRS-01	P-01
	SNP-00	SP-00	SR-00	SSO-00	SS-00	STR-01	TRSE-00
	T-00	USIE-00	SA-01	PMB-00	PRM-10	PRME-01	DRL-09
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FM USMISSION USUN NEW YORK  
 TO AMEMBASSY KAMPALA IMMEDIATE  
 SECSTATE WASHDC IMMEDIATE 9916  
 AMEMBASSY DAR ES SALAAM IMMEDIATE  
 AMEMBASSY BUJUMBURA IMMEDIATE  
 AMEMBASSY KINSHASA IMMEDIATE  
 INFO AMEMBASSY KIGALI IMMEDIATE  
 WHITEHOUSE WASHDC  
 UN SECURITY COUNCIL COLLECTIVE  
 AMEMBASSY NAIROBI  
 AMEMBASSY ADDIS ABABA  
 USMISSION GENEVA  
 AMEMBASSY BRUSSELS

C O N F I D E N T I A L SECTION 01 OF 03 USUN NEW YORK 004459

DEPT FOR C - AJOYCE; L - MMATHESON; AF - A/S MOOSE  
 WHITEHOUSE PASS TO NSC FOR RICE AND STEINBERG;  
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E.O.12356: DECL:OADR  
 TAGS: PHUM, PREL, PREF, AORC, RW, UN  
 SUBJECT: RWANDAN VIEWS ON WAR CRIMES TRIBUNAL

REF: STATE 283000

1. CONFIDENTIAL - ENTIRE TEXT.
2. SUMMARY: RWANDAN DELEGATION MET WITH USUN  
 AMBASSADOR INDERFURTH AND LEGAL EXPERTS TO DISCUSS

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RWANDAN MISUNDERSTANDINGS ABOUT THE NATURE OF THE INTERNATIONAL WAR CRIMES TRIBUNAL. RWANDAN DEL LEFT THE MEETING WITH MOST OF THE ISSUES RESOLVED, EXCEPT FOR THE QUESTION OF AN END DATE FOR THE PERIOD TO BE COVERED BY THE TRIBUNAL. FRANCE IS INSISTING ON AGREEMENT FROM FOUR NEIGHBORING STATES TO CERTAIN PROVISIONS OF THE RESOLUTION. END SUMMARY.

3. RWANDAN PERM REP BAKURAMUTSA, FORMER RPF UN REP CLAUDE DUSAIDI AND AN ADVISOR TO THE PRESIDENT MET WITH USUN AMBASSADOR INDERFURTH, USUN LEGAL ADVISER ROSENSTOCK, L'S PRINCIPAL DEPUTY LEGAL ADVISER MICHAEL MATHESON, USUN/W SENIOR ADVISER AND COUNSEL DAVID SCHEFFER AND POLOFF SHESTACK (NOTETAKER) TO DISCUSS THE DRAFT SC RESOLUTION AND STATUTE OF THE RWANDAN WAR CRIMES TRIBUNAL. AMB INDERFURTH LED OFF BY DELIVERING THE TALKING POINTS (REFTEL) WHICH U/S WIRTH USED IN HIS 10/19 CONVERSATION WITH RWANDAN PRESIDENT BIZIMUNGU. BAKURAMUTSA INTRODUCED HIS REMARKS BY NOTING THAT RWANDA DID WANT AN INTERNATIONAL TRIBUNAL.

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4. DATES. THERE WAS PROTRACTED DISCUSSION ABOUT THE APPROPRIATE TIME FRAME TO BE COVERED BY THE TRIBUNAL, WITH THE RWANDANS ARGUING STRENUOUSLY FOR AN EARLIER BEGINNING DATE AND A CERTAIN END DATE. MATHESON AND ROSENSTOCK ASSURED THE RWANDANS THAT EVIDENCE DERIVED FROM ACTIONS BEFORE THE BEGINNING POINT WOULD BE ADMISSIBLE IF THERE WAS A CONTINUING CONSPIRACY TO COMMIT GENOCIDE. THEY SUGGESTED IT MIGHT BE POSSIBLE TO FIND LANGUAGE CLARIFYING THIS POINT ON THE ADMISSIBILITY OF EVIDENCE, BUT WARNED THAT OPENING SUCH A DEBATE MIGHT CAUSE DELAY IN THE COUNCIL. THE RWANDANS REJECTED THE NOTION THAT THIS MATTER COULD BE SPELLED OUT AND CLARIFIED BY AN ORAL STATEMENT AT THE TIME OF ADOPTION OF THE RESOLUTION. THE RWANDANS SUGGESTED AN ALTERNATIVE OF FIXING A STARTING DATE OF OCTOBER 1993 (SIX MONTHS PRIOR TO THE MASSACRES). THE U.S. THOUGHT THAT DATE MIGHT NOT BE ACCEPTABLE TO THE FRENCH.

5. THE U.S. SIDE POINTED OUT THAT IT WAS PREMATURE FOR THE SC TO DETERMINE AN END DATE FOR THE TRIBUNAL'S PROSECUTIONS, SINCE THERE WAS A POSSIBILITY OF A RECURRENCE OF MASSACRES IN THE REFUGEE CAMPS- WE SUGGESTED SPECIFYING A DATE AT WHICH POINT THE COUNCIL

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WOULD REOPEN THE QUESTION OF THE END DATE. RWANDANS ASKED THAT SUCH A DATE BE LINKED TO EVENTS ON THE GROUND, NOT TO PROCEDURES WITHIN THE TRIBUNAL SUCH AS ELECTION OF JUDGES. THEY PROMISED TO APPROACH THEIR GOVERNMENT ON THE QUESTION OF DATES.

6. PRIMACY. THE U.S. SIDE CLEARED UP RWANDAN  
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MISCONCEPTIONS ABOUT ARTICLE 8, PARA 2 WHICH SAYS "THE INTERNATIONAL TRIBUNAL FOR RWANDA SHALL HAVE PRIMACY OVER NATIONAL COURTS. AT ANY STAGE OF THE PROCEDURE, THE INTERNATIONAL TRIBUNAL FOR RWANDA MAY FORMALLY REQUEST NATIONAL COURTS TO DEFER TO ITS COMPETENCE IN ACCORDANCE WITH THE PRESENT STATUTE AND THE RULES OF PROCEDURE AND EVIDENCE OF THE INTERNATIONAL TRIBUNAL FOR RWANDA." THE FIRST SENTENCE CAN BE AMENDED TO READ "... PRIMACY OVER NATIONAL COURTS OF ANY MEMBER STATE", THEREBY CLARYING THE MEANING.

7. RWANDANS QUESTIONED WHETHER THE LEVEL OF COOPERATION BETWEEN THE INTERNATIONAL TRIBUNAL AND LOCAL RWANDAN COURTS COULD BE SPELLED OUT, SINCE THE INTERNATIONAL TRIBUNAL WOULD OBVIOUSLY NOT BE ABLE TO BRING ALL THE NUMEROUS CRIMINALS TO TRIAL. THEY ALSO ASKED WHETHER THE INTERNATIONAL TRIBUNAL COULD ORDER THE ARREST OF INDIVIDUALS WHO WOULD THEN BE TURNED OVER TO THE RWANDAN COURTS FOR TRIAL. MATHESON POINTED OUT THAT THERE WOULD HAVE TO BE CLOSE COOPERATION BETWEEN THE TWO COURTS, AND THAT THE RWANDANS SHOULD MEET WITH THE INTERNATIONAL PROSECUTOR SOONEST TO WORK OUT SUCH QUESTIONS. HE EXPLAINED THAT COUNTRIES WOULD NOT BE WILLING TO TURN THEIR NATIONALS OVER TO A LOCAL COURT WITHOUT

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C O N F I D E N T I A L SECTION 02 OF 03 USUN NEW YORK 004459

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EXTRADITION TREATIES SPELLING OUT SAFEGUARDS. HE NOTED  
 THE ACHIEVEMENT OF GETTING THE SECURITY COUNCIL TO AGREE  
 TO TURN PERSONS OVER TO THE INTERNATIONAL TRIBUNAL. THE  
 ISSUE OF HOW TO EXTEND JURISDICTION OVER CRIMINALS NOW  
 IN REFUGEE CAMPS WAS TIED IN TO THE LARGER QUESTION OF

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HOW TO HANDLE THE SECURITY SITUATION IN THE CAMPS, AND WOULD NEED TO BE DEALT WITH LATER.

8. VENUE. THE RWANDANS AGREED THAT THE ADMINISTRATIVE SEAT OF THE TRIBUNAL WOULD BE LOCATED OUTSIDE RWANDA, BUT WANTED REASSURANCE THAT TRIALS WOULD BE HELD IN RWANDA, SO THAT THE GOR COULD CONVINCE ITS CITIZENS THAT JUSTICE WAS COMING TO RWANDA. MATHESON ACKNOWLEDGED THAT PRACTICAL REASONS WOULD DICTATE THAT MUCH OF THE PROCEEDINGS WOULD BE HELD IN RWANDA, ALTHOUGH THE STATUTE COULD NOT INSIST THAT ALL TRIALS BE HELD THERE. HE OFFERED TO FIND LANGUAGE NOTING THE INTENTION TO CONDUCT PROCEEDINGS TO THE EXTENT POSSIBLE IN RWANDA..

9. PARDON AND PLACE OF IMPRISONMENT. THE RWANDANS ASKED THAT ALL OF ARTICLE 27 OR AT LEAST THE FIRST SENTENCE BE DELETED. (FYI, ARTICLE 27 READS: "IF, PURSUANT TO THE APPLICABLE LAW OF THE STATE IN WHICH THE CONVICTED PERSON IS IMPRISONED, HE OR SHE IS ELIGIBLE FOR PARDON OR COMMUTATION OF SENTENCE, THE STATE CONCERNED SHALL NOTIFY THE INTERNATIONAL TRIBUNAL FOR  
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RWANDA ACCORDINGLY. THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL FOR RWANDA, IN CONSULTATION WITH THE JUDGES, SHALL DECIDE THE MATTER ON THE BASIS OF THE INTERESTS OF JUSTICE AND THE GENERAL PRINCIPLES OF LAW." END FYI)  
ALTERNATIVELY, THE GOR WANTED TO BE CONSULTED ABOUT WHERE PEOPLE WOULD BE IMPRISONED AND WHEN THEY WOULD BE RELEASED.

10. MATHESON EXPLAINED THAT RWANDA WAS ONE OF THE POSSIBLE PLACES TO IMPRISON THE CRIMINALS, AND THAT NOT MANY OTHER COUNTRIES WERE LIKELY TO OFFER TO ACCEPT PRISONERS, ALSO, THE TRIBUNAL WAS NOT OBLIGED TO GRANT PAROLE JUST BECAUSE A PERSON WAS ELIGIBLE. AFTER THE TRIBUNAL WAS DISBANDED THE SC WOULD DETERMINE WHO WOULD MAKE DECISIONS ABOUT PARDON, WITH THE LIKELY RECIPIENT OF THAT RESPONSIBILITY BEING THE RWANDANS. MATHESON SUGGESTED THAT GENERALIZED LANGUAGE BE ADDED TO THE RESOLUTION INSTRUCTING THE TRIBUNAL TO CONSULT WITH THE GOR IN THE EXERCISE OF ITS FUNCTIONS.

11. FOCUS ON GENOCIDE. TO EMPHASIZE THAT THE TRIBUNAL'S PRIMARY FOCUS WILL BE ON GENOCIDE, ARTICLE 2 (WHICH DEALS WITH VIOLATIONS OF THE GENEVA CONVENTION)

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WILL BE MOVED TO BECOME ARTICLE 4 (FOLLOWING ARTICLES ON "GENOCIDE" AND "CRIMES AGAINST HUMANITY"). ALSO, THE ENTIRE TITLE OF THE GENEVA CONVENTION (WHICH MENTIONS ACTIONS "CONCERNING ARMED CONFLICT") WILL BE ADDED TO THE ARTICLE TO AVOID ANY MISPERCEPTION THAT COMMON CRIMES WILL FALL UNDER THE TRIBUNAL'S JURISDICTION.

12. TIMING. AMB BAKURAMUTSA DID NOT THINK HE COULD GET  
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HIS GOVERNMENT'S FINAL REACTION ON THE TRIBUNAL BEFORE THE END OF THE WEEK, GIVEN DIFFICULT COMMUNICATIONS WITH KIGALI AND THE TIME DIFFERENCE, AND ASKED THAT ACTION IN THE COUNCIL BE PUT OFF UNTIL MONDAY, OCTOBER 24.

13. FOREIGN MINISTER. ON THE SEPARATE ISSUE OF THE FOREIGN MINISTER WHO DISAPPEARED WITH THEIR MONEY, BAKURAMUTSA NOTED THAT HE WAS FROM AN OPPOSITION PARTY, THAT HE WAS CONSIDERED ONE OF THE LEAST DANGEROUS OF THE OPPOSITION, AND THAT THE INTERNATIONAL COMMUNITY WAS PRESSURING THE GOR TO INCLUDE SUCH OPPOSITION MEMBERS.

14. VIEWS OF OTHER SC MEMBERS. SUBSEQUENT TO THE MEETING WITH RWANDANS, USUN CONFERRED WITH OTHER CO-SPONSORS OF THE SC RESOLUTION. NEW ZEALAND AND UK HAD NO BASIC PROBLEMS WITH THE GROUND COVERED WITH THE RWANDANS. FRANCE, HOWEVER, MAY POSSIBLY HAVE A PROBLEM WITH PUSHING THE STARTING DATE BACK TO OCTOBER 1, 1993. ALSO, FRANCE INSISTS THAT THE GOVERNMENTS OF ZAIRE, TANZANIA, UGANDA AND BURUNDI MUST AGREE TO ARTICLE 1 OF THE STATUTE, WHICH EXTENDS THE COMPETENCE OF THE TRIBUNAL TO ACTS CONNITTED BY RWANDAN CITIZENS IN THE TERRITORY OF NEIGHBORING STATES. (FYI: ARTICLE 1 READS AS FOLLOWS: "THE INTERNATIONAL TRIBUNAL FOR RWANDA

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SHALL HAVE THE POWER TO PROSECUTE PERSONS RESPONSIBLE  
 FOR SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW  
 CONNITTED IN THE TERRITORY OF RWANDA AND BY RWANDAN  
 CITIZENS IN THE TERRITORY OF NEIGHBOURING STATES SINCE 1

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JANUARY 1994 IN ACCORDANCE WITH THE PROVISIONS OF THE  
PRESENT STATUTE." END FYI)

15. FOR KINSHASA, BUJUMBURA, KANPALA AND DAR: USUN  
SUGGESTS THAT POSTS CONTACT APPROPRIATE AUTHORITIES TO  
CONFIRM THEIR ACCEPTANCE OF INTERNATIONAL JURISDICTION  
OVER WAR CRIMES AND ACTS OF GENOCIDE COMMITTED IN THEIR  
TERRITORY BY RWANDANS. USUN BELIEVES THAT UN  
REPRESENTATIVES OF THOSE COUNTRIES WILL NOT HAVE  
SUFFICIENT AUTHORITY TO COMMIT THEIR GOVERNMENTS TO  
THIS, ALTHOUGH WE WILL APPROACH THEM ALSO IN NEW YORK .

16. MINIMIZE CONSIDERED.

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