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Our file: 3/88/1

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FROM: NEW YORK

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19-May-1994

TO: WELLINGTON

WGTN UNSC

Immediate

CC: GENEVA

Routine

MFAT (HRU, MEA, UNC, LGL, DSP3, DSP1)

Subject

CHR: SPECIAL SESSION ON RWANDA

Geneva's C00623, your U49836, Geneva's C00628 and fax 364, your U49948.

2 We would like to offer a few general comments on some of the issues likely to be canvassed by the CHR and to suggest how they might be taken up in the Cameroon/Canada/Nigeria paper.

Genocide

3 While the word "genocide" was not included in the Presidential statement of 30 April or in Res 918, at our insistence both documents (last sentence of para 3 of the statement, Pp 10 of the resolution) contain language from the Genocide Convention which describes the crime even if the word itself is not used. We think the Commission should do no less. If the Commission were to take the same approach and recall that such actions are a crime under international law but not specifically link the thought to what has happened in Rwanda, then the British objections about the Commission not being a judicial body fall away.

Responsibility

4 As you note, the most that the Council was able to do was the painfully negotiated first sentence in para 2 of the 30 April statement. Something along the same lines would be good, but we do not think it worth pushing to go much further, given evident African sensitivities. As you will be aware, the latest media stories out of Rwanda/Tanzania and, we understand, recent reports from UNHCR, suggest that the RPF may not be as blameless as they have claimed. (We should note that the RPF vigorously deny these reports and tell us they have invited the UNHCR to visit the areas where RPF killings are alleged to have taken place to see for themselves.)

Investigations

5 Point (f) of the last para of the 30 April statement asked the SecGen to make proposals for the investigation of serious (human rights) abuses during the conflict. Op 18 of Res 918, though phrased a little differently, in effect repeats the same request. The report sought from the SecGen is essentially procedural: ie to advise on how such investigations might be carried out. The Council was not expecting the SecGen to carry out such an investigation directly. The terminology of the request (investigation of serious violations of international humanitarian law) is standard Council-speak to get around Chinese objections to the Council becoming involved in human rights issues.

6 It follows that it would not be an adequate response for the CHR simply to commend the Council's actions in this regard. Unlike the Council, the CHR is an appropriate body to call directly for an investigation into human rights abuses and to set in place procedures for such an investigation to be carried out. It is therefore, in our view, essential that the CHR not only commend the Council's request to the SecGen but add to it as outlined below.

#### Prosecution of offences

7 Clearly it will be necessary to delay actual consideration of a mechanism for establishing a tribunal until after the report called for in Op 18 of Res 918 is available. The same argument was made to us when we tried to hold on to the original language of Op 18 which sought a report on prosecution mechanisms rather than repeating the request in the 30 April statement. And we understand your caution in the light of the problems over the Yugoslavia tribunal. But, we think it would be wrong for the Commission not to begin to tackle the issue now.

8 As noted above, the SecGen's report under Op 18 will not establish responsibility; it will only address how investigations might be carried out. The consequences of waiting for that report would be that the SecGen would have no guidance of the sort that the CHR as an appropriate human rights advisory body could make, thereby increasing the risk that he might opt for a very cautious recommendation that we should wait (for years?) until the investigations themselves have been concluded. But, whatever the reports say, there can be no doubt that massive abuses of human rights have been committed. It is not a case of having to determine whether there were crimes of sufficient magnitude committed to warrant prosecution. The only questions are who should be prosecuted and how.

9 We think it dangerous to use the problems of the Yugoslavia tribunal to argue against considering similar mechanisms for Rwanda. On the one hand, the situations are totally different; on the other, accusations of double standards would certainly be made.

Cameroon/Canada/Nigeria paper

10 The above points might be taken up in the paper as follows:

- (a) Insert a new point 3 bis along the lines of Pp 10 of Res 918;
- (b) Insert a new point 4 bis noting the request contained in Op 18 of Res 918 and stressing the need for effective investigation and prosecution of persons responsible for grave human rights abuses;
- (c) Insert a new point 4 ter calling on the appropriate United Nations bodies to give urgent consideration to the establishment of mechanisms for the prosecution of persons responsible for committing such abuses.

End Message