

CONFIDENTIAL

115/23/37.

Your file: 115/23/37

Our file: 3/88/1

20:17 (5529)	700/NYK/00000/00000	\$686.12
--------------	---------------------	----------

FROM:	NEW YORK	C04600/NYK	10-Jun-1994
TO:	WELLINGTON	WGTM UNSC	Priority
CC:	BEIJING	BONN	Routine
	BRUSSELS	CANBERRA	Routine
	GENEVA	HARARE	Routine
	LONDON	MADRID	Routine
	MOSCOW	OTTAWA	Routine
	PARIS	SANTIAGO	Routine
	TOKYO	WASHINGTON	Routine
	DEFENCE		Routine

MFAT (MEA, UNC, LGL, ISAC, HRU, EUR, DP3, DSP3, EAB)

P/S MFA
 DEFENCE HQNZDF (DSIA, OPS, DDI)
 DEFENCE MOD (GENTLES)

Subject
 SECURITY COUNCIL: RWANDA

Our u/n fax of 8 June concerning the adoption of Res 925(1994) on Rwanda.

Summary

- Spain proposes that Council set up commission of experts on breaches of humanitarian law in Rwanda
- Informal discussions are under way to get Rwanda off the Council or at least to remove or neutralise the current representative before Rwanda's Presidency in September

Action

- Comments on Spanish draft resolution

Report

Commission of experts

As noted in our fax (not to others) forwarding the text of Res 925 (1994) of 8 June, the Spanish said in their EOJ that the adoption of that resolution should not mean the end of the Council's consideration of the SecGen's report. They foreshadowed the idea of the Council requesting the SecGen to establish a commission of experts to examine information on violations of humanitarian law in Rwanda. The Spanish have this afternoon circulated to all Council members the draft

CONFIDENTIAL

resolution in our accompanying fax (Wellington and Geneva only) which proposes the establishment of such a commission.

2 The draft follows closely the format and language of Res 780(1992) which called for the establishment of the commission of experts into war crimes in the former Yugoslavia, with the references to the Geneva Conventions replaced by references to the Genocide Convention. The covering note advises that the draft will be raised at the next round of informal consultations. These are scheduled for Monday, 13 June.

3 We know from informal discussions that the British and Americans are not enthusiastic about the idea of the UN pursuing in Rwanda a path similar to that taken in Yugoslavia. But that reluctance stems not from the gravity of the matter (which is undeniable) but from an unwillingness for the UN to be forced to investigate and punish crimes in countries in which they have no direct interests. In the US case, there is also a concern that acknowledgement that genocide has occurred will lead to pressure for the US to become directly involved. This last point was the subject of a NY Times article today (see earlier fax - Wellington only).

4 Part of the US/UK reluctance probably also relates to the current difficulties in getting the Yugoslavia war crimes tribunal up and running. They would prefer not to have to repeat that sort of exercise and they know that once a commission has been established and evidence has been collected, there will inevitably be pressure to set up a tribunal along the lines of the Yugoslavia war crimes tribunal. Indeed, Op4 in the Spanish draft is more specific that the equivalent in Res 780 and refers directly to the objective of ensuring that persons responsible for committing crimes are brought to justice. It points, therefore, to the establishment of a tribunal.

5 We understand from the British that the Legal Office has raised two questions with the Spanish about the draft. The first concerns funding to cover the costs of the Commission. The costs of the Yugoslav Commission were to be met from within existing resources, but in reality the Commission was reliant on the services and facilities provided free of charge by its energetic Chair, Bassiouni. New funding will be required for a Rwanda Commission. The second issue was the time frame for the investigation. The Yugoslav Commission went on far longer than had been expected and the Secretariat had been left with the job of trying to force it to wrap up its work. The Legal Office has suggested that the Spanish draft should set a time period within which the Commission should complete its task.

6 Notwithstanding their reservations, the British at least recognise that there is little chance of turning the initiative off now that it has been tabled and made public. (The Spanish have also circulated their draft to the media.)

7 For our part, we can see no sustainable basis for the Council to refuse to follow the path proposed by the Spanish. Indeed, to do so would be tantamount to saying that war crimes and genocide in Africa are of less importance than those carried out in Europe. Moreover, the establishment of such a process may even help the process of political reconciliation in Rwanda if it serves as a means of getting the leaders of the interim government out of the way. Unlike the situation in Yugoslavia, it seems that those responsible for organising the killings are not necessary to political process. The ceasefire talks are being conducted by the military leaders in charge of the government forces, not the political personalities who set up the interim government.

Exclusion of Rwanda from the Security Council

8 As mentioned by phone (van Bohemen/Ward), there have been a number of informal discussions among Council members on what to do about Rwanda's seat on the Security Council. The Spanish and Czechs have been very exercised on the point, and the Spanish have told us that they intended to convene a meeting of Non-NAM Council members, though they have not done so as yet. We took the precaution earlier this week of sounding out the P3 on their views since we expected that they would have theological concerns unrelated to Rwanda which would predispose them against any move to expel Rwanda or to challenge the credentials of the current representative and leave an empty seat.

9 There have been various discussions on the subject among P5 members over the past week and the P5 have agreed to take up the matter as a group on Monday, 13 June. They have all recognised the public relations debacle that could ensue if Rwanda is the President in September when their Heads of State and Government are in town for the General Assembly and they are forced to shake hands with Bizimana, the current PR who takes his instructions from the interim government.

10 The Americans had been considering the possibility of trying to persuade the Africans to call for a vote in the Assembly which would rescind the decision to elect Rwanda. Even if the Africans could be persuaded (which would not be easy to organise), and even if it were legally possible for the Assembly to curtail in this way the membership rights bestowed by Article 23(2) of the Charter (which must be open to question), such a decision would require a 2/3 majority which would be difficult to achieve. A more logical and straight forward course would be to challenge Bizimana's credentials under the Council's Provisional Rules of Procedure. But since, if successful, that would result in an empty seat, the Ps are unenthusiastic. They are concerned at the precedent that this would establish. (Noone thinks it would be a good idea to give the seat to the RPF.)

11 The French are trying to promote a less drastic solution,

namely that Bizimana should be persuaded, in accordance with a maximalist interpretation of Rule 20 of the Provisional Rules, to stand aside from all discussions in the Council during his Presidency and to leave it to the next in line to fill the Presidency on an interim basis. But that scheme has two flaws. One is that we would have to endure two months of Spain as President which, given the prolixity of the Spanish PR, would be no small price for other Council members to pay. A more fundamental objection is that, under the last sentence of Rule 20, Bizimana would still retain his ceremonial responsibilities under Rule 19, so that would not solve the PR problem.

12 The British are now inclining to the view that the only clean solution would be for Rwanda to be persuaded to resign their seat, and thus pave the way for the election of a new member. Resignation is not without precedent. We understand that when there has been a deal to split a Council term, the country taking the first year must, in formal terms, resign before the succeeding State can take its place. But, while that may be the cleanest solution, it will not be an easy one to secure.

13 Discussion is still at a very preliminary stage. We will report further on this issue following the P5 meeting.

End Message