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MEMORANDUM

TO: Ambassador Albright
THROUGH: Ambassador Gnehm
FROM: Ambassador Marrero *[Signature]*
SUBJECT: Rwanda: Bringing the Guilty to Justice

Issue for Decision

Whether you recommend that the Department consider the possibility of a Security Council resolution expanding the jurisdiction of the International Criminal Tribunal for the Former Yugoslavia to include violations of international humanitarian law committed in Rwanda during the conflict, and in the event the Department agrees, that it should authorize USUN to begin consultations with other missions and the Secretary-General in this regard.

JUSTIFICATION

The USG is moving on the humanitarian front to help survivors and those still fleeing the mass slaughter in Rwanda. We have also taken new steps, including personal involvement of President Clinton, toward enabling African states to strengthen UNAMIR's capacity to protect civilians and encourage the parties to return to the table at Arusha. In Geneva we supported a strong resolution at the special session of the Human Rights Commission mandating the appointment of a special rapporteur assisted by human rights monitors. We are now doing a lot, but we can do more.

The Security Council in SC 918 requested the SYG to "present a report as soon as possible on the investigation of serious violations of international humanitarian law committed in Rwanda during the conflict."

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The HRC resolution called in response for the special rapporteur, inter alia, to "compile systematically information on possible violations of human rights and acts which may constitute breaches of international humanitarian law and crimes against humanity, including acts of genocide in Rwanda, and to make this information available to the SYG."

Thus, the groundwork for gathering evidence has been laid. Based on our contact with NGOs, it is clear that Rwandan and international NGOs can name names and provide evidence.

What is missing is the means to try those believed responsible for the horrible slaughters that continue to take place. Most of them are alive and our sense of humanity should demand that they be brought to justice.

I believe that a Security Council resolution expanding the jurisdiction of the International Criminal Tribunal for the Former Yugoslavia to include violations of international humanitarian law committed in Rwanda during the conflict would have several virtues.

First, it is the fastest way of taking international action to punish the guilty. The infrastructure for such an undertaking, the International Tribunal, is now mostly in place. Although there will be budgetary problems if its mandate is increased, they can be resolved if the international commitment exists to pursue the guilty in this case. A chief prosecutor remains to be found, but this effort continues. Capturing the guilty will also be difficult, as it has been in the former Yugoslavia, but, as in that case, individual perpetrators may be captured eventually. (Germany, Switzerland, Denmark and Austria have apprehended alleged violators from the former Yugoslavia.)

Second, making this bold proposal will address the accusations made by some that the West is concerned only for those who commit crimes in Europe. Some of these accusers read racist motivations into our actions.

Third, such an initiative has a small chance of serving as a deterrent to further massacres, or at least an inducement to take the Arusha talks more seriously.

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Fourth, the U.S. was criticized for delaying the Security Council action on Rwanda while we raised the questions stemming from PDD 25. Our initiative on the human rights violations may undo some of the political damage from our earlier action.

DOWNSIDE

Finding credible witnesses will be difficult.

Will this establish a precedent we would be reluctant to follow in other cases, e.g., Somalia?

What effect, if any, does this proposal have on proposals to establish an International Criminal Court?

In view of the positions we took at the Security Council, which was regarded as having delayed action on the Rwanda resolution, our initiating a proposal to pursue the guilty might be viewed as disingenuous.

L/USUN has doubts about the advisability of expanding the mandate now, although they believe that it is technically feasible. L also believes that the extra burden imposed on the International Tribunal could interfere with fulfillment of its initial mandate. L thinks it is better to wait until the Tribunal proves successful.

POL agrees with the observations of L and also believes that, since the International Tribunal has no concrete achievements in the Yugoslavia case, it would be compounding failure to give it the additional mandate suggested in this memo.

Recommendation

ECOSOC recommends moving forward with proposing this initiative to the Department. POL does not agree, and L thinks we should wait. Their arguments go to the merits of the issue, which would be considered in the context of the Department's review. We believe that at the very least the issue deserves that consideration in Washington.

_____ approve _____ disapprove

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decl: 12/31/94
draft: ECO:CKuehl
clear: ECO:JBlaney;Pol:LShestack;L:CWillson
cc AMB Inderfurth, Amb Gelber, REF, ECOSOC chron, HCHR file,
Kuehl chron

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