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PAGE 01 USUN N 02491 01 OF 02 160036Z  
ACTION SS-00

INFO LOG-00 OASY-00 ADS-00 /000W  
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O 152353Z JUN 94  
FM USMISSION USUN NEW YORK  
TO SECSTATE WASHDC IMMEDIATE 7116  
INFO USMISSION GENEVA

C O N F I D E N T I A L SECTION 01 OF 02 USUN NEW YORK 002491

EXDIS DECAPTIONED

DEPARTMENT FOR A/S MOOSE, BENNET, SHATTUCK  
DEPT PLEASE PASS TO NSC FOR HALPERIN

E.O.12356: DECL 12/31/99  
TAGS: PHUM, SC, UNHRC-1, RW  
SUBJECT: RWANDA: BRINGING THE GUILTY TO JUSTICE

REF: L PRESS GUIDANCE ON RWANDA 6/10/94

1. CONFIDENTIAL - ENTIRE TEXT.
2. USUN RECOMMENDS THAT THE DEPARTMENT EXAMINE WHETHER THE USG SHOULD PROPOSE UN ACTION TO PROSECUTE PERSONS CHARGED WITH ACTS OF GENOCIDE AND OTHER BREACHES OF INTERNATIONAL HUMANITARIAN LAW IN RWANDA. PROPOSALS TO THIS EFFECT HAVE BEEN MADE BY SOME MEMBERS OF CONGRESS

CONFIDENTIAL

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PAGE 02 USUN N 02491 01 OF 02 160036Z  
AND MANY NGOS. USUN ANTICIPATES THAT OTHER COUNTRIES WILL LAUNCH THIS HUMAN RIGHTS INITIATIVE AS THEIRS. INDEED, SPAIN HAS CIRCULATED JUNE 10 A DRAFT RESOLUTION (FAXED TO IO/UNP AND REPORTED SEPTTEL) CALLING FOR THE ESTABLISHMENT OF A COMMISSION OF EXPERTS TO GATHER EVIDENCE RELATED TO BREACHES OF THE GENOCIDE CONVENTION AND OTHER VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW IN RWANDA. SEE PARA 9 FOR ACTION REQUEST.

3. REF PRESS GUIDANCE STATES THAT THE USG HAS "EVERY REASON TO BELIEVE THAT ACTS OF GENOCIDE HAVE OCCURRED IN

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RWANDA." IN VIEW OF THIS CONCERN, USUN BELIEVES THE USG SHOULD EXAMINE WHETHER TO URGE UN ACTION TO GATHER EVIDENCE AGAINST AND PROSECUTE INDIVIDUALS GUILTY OF ACTS OF GENOCIDE AND OTHER BREACHES OF INTERNATIONAL HUMANITARIAN LAW IN RWANDA.

GATHERING EVIDENCE  
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4. KEY TO ANY SUCCESS WILL BE GATHERING INFORMATION THAT CAN BE USED IN SUBSEQUENT PROSECUTIONS. INITIAL UN EFFORTS ARE ALREADY UNDERWAY. THE SYG THROUGH UNAMIR WILL NO DOUBT BE ABLE TO FURNISH MORE SPECIFIC EVIDENCE IN THE FUTURE THAN HAS APPEARED SO FAR IN HIS FORMAL REPORTS TO THE SC. THE SPECIAL RAPPOREUR OF THE UN COMMISSION ON HUMAN RIGHTS IS SPECIFICALLY MANDATED TO RECEIVE INFORMATION ON, INTER ALIA, "RESPONSIBILITIES FOR THE RECENT ATROCITIES." THE SPECIAL RAPPOREUR WILL ALSO "GATHER AND COMPILE SYSTEMATICALLY INFORMATION" ON SUCH VIOLATIONS AND MAKE THIS INFORMATION AVAILABLE TO  
CONFIDENTIAL

CONFIDENTIAL

PAGE 03 USUN N 02491 01 OF 02 160036Z  
THE SYG. HE WILL BE ASSISTED BY A TEAM OF HUMAN RIGHTS FIELD OFFICERS.

5. USUN BELIEVES THE USG CAN PROVIDE IMPORTANT LOGISTICAL ASSISTANCE TO THE EFFORTS OF THE UN. WE RECALL SPECIFICALLY THE ASSISTANCE PROVIDED TO THE UN BY THE USG IN COMPILING INFORMATION ON SPECIFIC ALLEGED VIOLATORS OF HUMANITARIAN LAW IN THE FORMER YUGOSLAVIA. SHOULD THE USG CONSIDER SUCH AN EFFORT FOR RWANDA?

PROSECUTION  
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6. IN THE EVENT THE DEPARTMENT DECIDES TO PROCEED WITH CONSIDERATION OF THE POLICY ISSUE SUGGESTED HERE, THE REVIEW SHOULD WEIGH THE RELATIVE MERITS OF THREE APPROACHES WHICH HAVE BEEN MENTIONED IN THE GENERAL DISCUSSIONS AND COMMENTARY WE HAVE HEARD ON THE MATTER.

A) ESTABLISHMENT OF AN INTERNATIONAL TRIBUNAL FOR RWANDA:

PRO:

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THIS OPTION WOULD FOLLOW A KNOWN PROCEDURE, I.E., THE INTERNATIONAL TRIBUNAL FOR THE FORMER YUGOSLAVIA;  
CON:

THIS OPTION WOULD BE TIME-CONSUMING AND INVOLVE CONSIDERABLE EXPENDITURE OF RESOURCES, BECAUSE A NEW COURT WOULD HAVE TO BE ESTABLISHED, STAFF ASSEMBLED, AND  
CONFIDENTIAL

CONFIDENTIAL

PAGE 04 USUN N 02491 01 OF 02 160036Z  
PROSECUTORS NAMED.

B) EXPANSION OF THE COMPETENCE OF THE INTERNATIONAL TRIBUNAL FOR THE FORMER YUGOSLAVIA (ITFY) TO INCLUDE THE SITUATION IN RWANDA:

PRO:

THIS MAY BE THE MOST EXPEDITIOUS WAY OF MOVING ON THIS ISSUE;

THE COURT AND ITS PROCEDURES ARE WELL ON THEIR WAY TO BEING ESTABLISHED; ADDITIONAL PERSONNEL AND FUNDS COULD FIT INTO THE EXISTING STRUCTURE;

IT MAY BE EASIER TO CAPTURE AND HOLD FOR TRIAL ACCUSED CRIMINALS FROM RWANDA, SINCE MANY GUILTY MILITIA LEADERS WILL MOST LIKELY BE ON THE LOSING SIDE IF THE CURRENT MOMENTUM CONTINUES (WHEREAS BOSNIAN SERBS, FOR EXAMPLE,

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PAGE 01 USUN N 02491 02 OF 02 160036Z  
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UNCLASSIFIED

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TEND TO BE PROTECTED IN THEIR TERRITORY, OR EVEN IN  
SERBIA ITSELF);

MOVING QUICKLY MAY HAVE A SMALL DETERRENT EFFECT IN  
RWANDA;

ACTING SPEEDILY  
WILL HELP BLUNT CRITICISM OF EARLIER USG  
RELUCTANCE TO RECOGNIZE THAT ACTS OF GENOCIDE HAVE TAKEN  
CONFIDENTIAL

CONFIDENTIAL

PAGE 02 USUN N 02491 02 OF 02 160036Z  
PLACE;

CON:

THE ITFY HAS YET TO PROVE ITSELF ABLE TO FULFILL ITS  
ORIGINAL MANDATE; SADDLING IT WITH AN ADDITIONAL MANDATE  
COULD INTERFERE WITH ITS ORIGINAL MANDATE;

EXPANDING THE MANDATE QUICKLY MAY ESTABLISH A PRECEDENT  
WE WOULD NOT WISH TO SEE FOLLOWED ELSEWHERE. (THE  
CHINESE HAVE ALREADY SIGNALLED TO THE SC THAT THE ITFY  
SHOULD NOT BE CONSIDERED AS A PRECEDENT);

WE SHOULD WAIT UNTIL THE ITFY IS FUNCTIONING AND HAS  
PROVED SUCCESSFUL BEFORE PLACING MORE RESPONSIBILITIES

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ON IT;

THE AFRICANS MAY PERCEIVE THAT, BY COUPLING RWANDA WITH THE FORMER YUGOSLAVIA, WE ARE IN FACT RELEGATING THEM TO C) ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT (COMPETENCE NOT LIMITED TO RWANDA)

PRO:

THIS OPTION COULD SERVE THE INTERNATIONAL COMMUNITY BEST IN THE LONG RUN;

CON:

THIS OPTION WILL TAKE YEARS TO BRING TO REALITY. (THE INTERNATIONAL LAW COMMISSION IS CURRENTLY WORKING ON THE CONFIDENTIAL

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PAGE 03 USUN N 02491 02 OF 02 160036Z  
TECHNICAL LEGAL PROBLEMS INVOLVED, AND WIDESPREAD ACCEPTANCE BY THE INTERNATIONAL COMMUNITY IS NOT YET CERTAIN.)

7. COMMENT: IN PROPOSING THAT THE RWANDA JUSTICE ISSUE BE CONSIDERED AND OFFERING SOME OPTION, USUN DOES NOT WISH TO PREJUDGE THE OUTCOME OF THE REVIEW. WE MERELY URGE THAT IF THE DEPARTMENT CONCLUDES THAT THE IDEA HAS MERIT, IT SHOULD UNDERTAKE THE NECESSARY ASSESSMENT AND PROVIDE APPROPRIATE GUIDANCE SO THAT WE NOT BE FORECLOSED OUT OF THE OPTION OF THE U.S. TAKING THE INITIATIVE ON THE ISSUE BY ANOTHER DELEGATION DOING SO FIRST. HOWEVER THE DEPARTMENT DECIDES TO MOVE ON THIS ISSUE, WE WISH TO STRESS THAT AS MUCH AS WE BELIEVE THAT THE GUILTY IN RWANDA SHOULD BE BROUGHT TO JUSTICE, THE MEANS CHOSEN TO DO SO SHOULD NOT HAMPER THE EXISTING YUGOSLAVIA TRIBUNAL. THIS SUGGESTS, FOR EXAMPLE, THAT ANY CONSIDERATION OF EXPANSION OF THE EXISTING TRIBUNAL, IF IN THE FINAL ANALYSIS IT IS DETERMINED THAT THIS IS THE PREFERRED OPTION, MUST ENSURE THAT ADEQUATE FUNDING AND STAFF ARE MADE AVAILABLE TO ENABLE THE TRIBUNAL TO CARRY OUT ITS NEW MANDATE.

8. USUN IS REPORTING SEPARATELY ON SC DISCUSSIONS JUNE 14 ON THE SPANISH DRAFT RESOLUTION REQUESTING THE ESTABLISHMENT OF AN COMMISSION OF EXPERTS TO GATHER EVIDENCE IN THE CASE OF RWANDA. AS THE DEPARTMENT IS AWARE, THIS PROPOSAL IS SEPARATE FROM ANY EVENTUAL UN

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ACTION ON ESTABLISHING A MECHANISM FOR TRYING THE  
ACCUSED. THE QUESTION OF WHAT TO DO WITH THE RWANDAN  
CULPRITS HAS ALREADY BEEN BROUGHT UP BY SEVERAL

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PAGE 04 USUN N 02491 02 OF 02 160036Z  
DELEGATIONS, HOWEVER.

9. ACTION REQUESTED: FIRST, USUN WOULD APPRECIATE  
GUIDANCE ON WHETHER AND HOW WE SHOULD ADDRESS THIS ISSUE  
FURTHER. SECOND, WE REQUEST CONSIDERATION OF GUIDANCE  
ON HOW TO RESPOND IN THE EVENT ANOTHER DELEGATION TAKES  
THE LEAD IN PROPOSING RWANDA CRIMES PROSECUTION ALONG  
THE LINES OUTLINED HERE. THIRD, WE SEEK GUIDANCE ON THE  
ALBRIGHT

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