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Status Report on the War Crimes Tribunal in Rwanda

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Memorandum



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Subject

Status Report on the War Crimes Tribunal
in Rwanda

Date

January 12, 1995

To

MARK M RICHARD
Deputy Assistant Attorney General

From

STEPHEN A. MANSFIELD *Am*
Deputy Chief, Public Corruption and
Government Fraud Section
U.S. Attorney's Office
Central District of California

In December 1994, a U.S. government team accompanied the Chief Prosecutor of the U.N. War Crimes Tribunal during a brief trip to Rwanda. The Chief Prosecutor conducted introductory meetings concerning the work of the Tribunal with political, military and U.N. leaders in Rwanda. The U.S. team met with U.N. officials to inspect possible sites for an investigative office in Kigali and possible accommodations for investigators and prosecutors who might be detailed in Kigali. The U.S. team also discussed overall security concerns with the U.N. Deputy Force Commander and examined logistical issues relating to the feasibility of equipping and securing an investigative office.

The U.S. team consisted of FBI Special Agent Jerry Dyer, DOJ computer and logistics specialist Lisa Polisar, Steve Carlton, a computer specialist from an outside firm and me. This was the second U.S. government trip to Rwanda. The first trip occurred in September-October 1994 and involved a preliminary assessment of investigative opportunities in Rwanda. The summary report concerning that trip, which is attached, recommended that certain steps be taken to preserve evidence, develop a strategic investigation plan, establish and equip an investigative office and examine security issues relating to the possible deployment of U.S. personnel.

In November 1994, the U.N. Security Council adopted the resolution establishing the tribunal for Rwanda. Chief Prosecutor Goldstone announced in Rwanda that the Tribunal will focus its efforts on the prosecution of the top military and political officials responsible for planning and implementing the massive war crimes in Rwanda. Goldstone is interested in staffing an investigative office in Kigali as soon as possible beginning as early as February 1995. Goldstone has requested U.S. agents and prosecutors as well as law enforcement personnel from other nations. Set forth below are some matters that should be considered before deciding on the extent and manner in which the Department may support this effort.

1. OFFICE AND ACCOMMODATION SITES

The U.N. Deputy Force Commander convinced me that UNAMIR fully appreciates its obligation under the Security Council's resolution to provide security for the Tribunal's activities in Rwanda. In terms of office space, he proposed that prefab offices for investigators be constructed and placed on a grassy field within UNAMIR's new military compound site. This would be one of the most secure sites in Rwanda. However, much construction and renovation will be required before UNAMIR can move its headquarters to this new site and secure it. UNAMIR officials estimate that it will be completed in February. Based on my inspection of the site and my experiences in Rwanda, I would project a completion date in the Summer of 1995 at the earliest.

To satisfy the immediate need for office space, I examined a building just outside the present UNAMIR compound, which was formerly occupied by UNICEF. The location of this building makes it quite secure. It sits between the present UNAMIR compound (which will be converted to UNAMIR housing when the compound moves to its new site) and existing UNAMIR housing. It is surrounded by a security fence and has a guard house. UNAMIR promised 24 hour armed guard security for this building. While we were in Rwanda, I recommended to Justice Goldstone that he move quickly to obtain control of this building. Based on the post-war conditions of numerous other buildings I have examined in Kigali, the former UNICEF building is as good as we could ever expect.

Lisa Polisar will be submitting a report concerning the suitability of this office from a logistical standpoint. The building is currently vacant except for one tenant occupying the third floor. We were told that this tenant should be moving out in the very near future. For obvious security and confidentiality reasons, this would be necessary before investigators could occupy the building.

Accommodations, however, still pose a problem. The most compelling illustration of the problem is what we encountered during our brief visit last month. Despite the fact that we were travelling with the Chief Prosecutor's delegation and all Rwandan and U.N. officials were primed to show strong support for war crime prosecutions, the U.S. team was sent to the Meridien Hotel for accommodations. This stench-ridden hotel suffered much damage and destruction during the war. Much repair work is needed. During the war, thousands of refugees were forced to live in the rooms, hallways and lobbies of the hotel. Due to the overcrowding inside and the fear of going outside, residents defecated on the floors accounting for the terrible stench within. Two rooms in this hotel were provided for our group of three men and one woman. Due to the broken windows and shards of glass on the floor in one of the rooms, we were all forced to sleep in one small room with permanently closed windows.

This incident is not reported to complain about discomforts experienced during our short visit. (Our group was quite rugged and had a hardy laugh about the adverse accommodations.) The problem is that when I inquired with UNAMIR about possible

accommodations for war crimes investigators who might be detailed in Rwanda in the near future, the Meridien Hotel was offered as the best option. The principal reason for offering the Meridien is the large number of rooms there. From a security standpoint, U.N. officials believe it is easier and more effective to provide home security if all tribunal personnel live under one roof. However, when I asked how 24 hour armed security would be provided at the Meridien Hotel, there was no clear plan. In fact, there were questions about whether the owners of the hotel would permit armed U.N. soldiers to be stationed in and about the hotel.

When I inquired about other housing options I was told that the Hotel Diplomat might have rooms available. (I stayed at the Diplomat for three weeks during my first trip to Rwanda; there was no running water and periodic electricity.) Upon inspection during this trip, the Diplomat had improved since last Fall. The desk clerk indicated that there is usually running water now and the electricity problems appear solved. The Diplomat, however, would not have a sufficient number of rooms to house all investigators, although it could possibly handle the U.S. team. Of course this would not satisfy the U.N. security goal of keeping all tribunal staff housed in one place.

Another housing option for U.S. investigators and prosecutors is the former residence of the U.S. Ambassador. During my meeting with him in Kigali last month he offered it to me and pledged his support for the war crimes prosecution effort. The house has approximately four bedrooms and is surrounded by a fence with a guard house. It suffered damage during the war and needs substantial repairs (mostly to the kitchen and windows) before it would be habitable.

In sum, my impression from this trip is that no one has taken any concrete steps to secure suitable and safe accommodations for detailees who might be stationed in Kigali. Obviously, fully satisfactory arrangements must be made before anyone is detailed to Rwanda. The problem in finding safe and suitable accommodations in Rwanda raises the larger, threshold question: Should the Tribunal's investigative offices be headquartered in Rwanda or in a neighboring African nation (or the Hague) where it would be safer and more comfortable?

2. LOCATION OF OFFICE HEADQUARTERS

The current thinking by Justice Goldstone is that office headquarters for investigators and prosecutors should be in Kigali. In contrast, everyone seems to agree that the Tribunal (ie. judges, clerks and courtrooms) will not be located in Rwanda because of security concerns and the difficulty in attracting good judges if they were required to live in Rwanda. For the same reasons that judges should not be stationed in Rwanda, I believe serious thought should be given to whether investigators and prosecutors should be detailed on a full-time basis in Rwanda.

The arguments in support of the current proposal for detailing investigators on a full time basis in Kigali are: 1) investigators should be where the evidence is located, 2) a Kigali office avoids the inefficiency and expense of frequent travel to Rwanda from an outside office, and 3) having a war crimes investigative office in Rwanda (even if it is not the court itself) will mollify the Rwandan government which has placed tremendous political pressure on the U.N. to locate the Tribunal in Rwanda.

First, it makes sense to put criminal investigators where the evidence is. The problem here is that the evidence is not solely in Kigali where the investigators would be stationed. Witnesses will also be located throughout the country in villages, in the refugee camps at the borders, and, quite probably, in other countries where sources live or have fled. In fact, substantial documentary evidence from the former government, while presently in Kigali government offices, should be sent out of Rwanda to a safe office where it can be properly translated, analyzed, organized and preserved in a secure setting.

Second, as indicated above, substantial travel will still be necessary even if the office is located in Kigali. Based on my experience travelling in the Rwandan countryside after the war, such travel is very time-consuming because of serious security concerns and poor road conditions. Significant advance planning, research and coordination is necessary before one can safely and effectively travel in the field in Rwanda. Traveling to such sites will require the same time-consuming advance planning whether it is from Kigali or a location outside of Rwanda. Flights into Rwanda are not the problem. Travel throughout Rwanda is the problem. Moreover, the time and expense of travel to crime sites from outside the country did not appear to hamper unduly the Tribunal's work in the former Yugoslavia. There, investigators and prosecutors stationed at the Hague travelled to the former Yugoslavia for investigative purposes and were able to bring their first indictment in less than six months.

Third, detailing investigators and prosecutors in Kigali to create a "Tribunal presence" in Rwanda causes the same problems for these professionals as it does for judges and court clerks -- it is dangerous and will make it difficult to attract good investigators. Furthermore, the security concerns should not be understated. If the allegations under investigation are true that a group of hard-line extremist Hutus assassinated their president as part of a genocidal plan to kill systematically over 500,000 Tutsis, then it is more than merely possible that a handful of Hutu guerrillas could surreptitiously infiltrate Kigali and murder one or more investigators or toss a hand grenade into the investigative offices to destroy evidence.

In addition, detailing investigators in Kigali on a full-time basis will increase burn out and add unnecessary stress. From my experience in Rwanda during last September and October, the lifestyle in Kigali is one of intense work -- long, hard days, seven days a week. This important work is very demanding. With nothing else to do in Kigali, the U.N. and relief agency personnel are in a constant work mode. Because of the serious security concerns outside of Kigali and the warning that land mines are possibly everywhere (even along well traveled roads in Kigali), walking through the scenic countryside as an occasional escape from the intense work environment is not possible. During my first trip to Kigali, UNAMIR

reported that an average of two children per week were being blown up by land mines in and around residential and commercial areas in Kigali. As a rule, one walks only where cars have safely traveled.

For all of these reasons, an alternative approach for the location of the investigative headquarters should be considered. For example, the investigative headquarters could be located in a safe neighboring African nation (as presently is the plan for the Tribunal). There, strategic investigative planning, organizing and reporting could take place. The time-consuming tasks of document interpretation, review, analysis, and organization should take place at such a secure location rather than in Kigali. In my experience in complex investigations, such tasks require substantial time. There is no reason such tasks should not be performed in a pleasant and safe environment if possible.

A special in-country investigative office should also be established in Kigali. It would be occupied successively by rotating investigating teams traveling to Rwanda on specific investigative missions from office headquarters. The trips to the field in Rwanda could last between 1 and 3 weeks based on what seems appropriate given the mission. These missions should be carefully planned at headquarters in terms of safety, logistics and substantive strategy. They should also be intensive with the idea that lengthy reporting activities and detailed strategizing sessions should take place back at headquarters rather than in the field or in the Kigali office. The Kigali office could be based in the former UNICEF building described above. It would not be necessary to move to larger offices in the new UNAMIR compound in the future (as tentatively planned) because the office will only need to house one or two rotating investigative teams at a time. Rotation of investigative teams could be scheduled to ensure that there is always a significant "Tribunal presence" in Kigali. After an intensive and tiring mission in the field, opportunities for R&R would exist after necessary reporting has been completed at headquarters.

The most significant benefit of this approach is that it substantially reduces the security risks that result from the proposal to station investigators in Kigali on a full-time basis. While security risks will always exist during Rwanda field missions, with less overall time in Rwanda and less predictable work and lifestyle patterns in Rwanda, investigators will be much harder targets to hit and less like "sitting ducks". This approach also reduces burn out and increases the chance of attracting the most qualified people for this difficult and challenging assignment.

3. THE ORGANIZATION STRUCTURE AND ROLES OF PROSECUTORS AND INVESTIGATORS.

It is unclear at this point what role U.S. prosecutors and investigators will play in the Rwanda Tribunal. A Deputy Prosecutor has not been selected yet and it is unclear how much authority he or she will be given to create the organization structure and practices.

The Chief of Investigations at the Hague, who accompanied us in Rwanda last month, prepared a proposed organization chart, which is attached. It is based on the structure in place at the Hague. It is unclear if this will, in fact, be adopted in Rwanda. It is quite an odd model from a U.S. perspective and raises questions about how U.S. personnel would be utilized and when they would be needed. Under this model, only three prosecutors are designated to try cases. Other prosecutors work as "legal officers" on investigative teams and report to agents or policemen who serve as "team leaders".

Also unclear to me is what influence, if any, the U.S. might have on the design of the organizational structure. I believe we should carefully explore these issues in deciding how and when U.S. resources can be best committed to this important mission. If it would be worthwhile, we could meet to discuss these matters in more detail. I can be reached at (213) 894-5615 or 6974 (W) or (818) 793-6776 (H).

cc Kenneth Harris
Senior Trial Attorney
DOJ Office of International Affairs

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MEMORANDUM

To: Mark M Richard
Deputy Assistant Attorney General

Drew C. Arena
Deputy Assistant Attorney General
Director, Office of International Programs

Mark Steinberg
Deputy Assistant Attorney General

George W. Proctor
Director, Office of International Affairs

From: Stephen A. Mansfield
Deputy Chief, Public Corruption and
Government Fraud Section
U.S. Attorney's Office
Central District of California
(213) 894-5615

Re: Summary of U.S. Government Investigative
Detail in Rwanda

Date: October 18, 1994

This a summary report of our recent trip to Rwanda. As you know, our U.S. Government (USG) team was provided to the U.N. Human Rights Center in response to its request for international assistance in initiating formal criminal investigations into the allegations of genocide and grave violations of international humanitarian law in Rwanda.

Our team consisted of five members: one FBI Agent, one DOD attorney, two State Department attorneys and, on behalf of DOJ, myself. Once in Rwanda, we were joined by a Finnish attorney, an embassy political counsel who the U.N. provided to assist us. No other countries were represented in this mission. The USG team departed for Rwanda, via Geneva for briefings, on September 18, 1994. The team conducted investigations in Rwanda from September 21 until October 5. During this trip, the team interviewed more than 25 witnesses, collected documentary and other tangible evidence and established important contacts with government officials, military leaders, and non-governmental organizations, which will be extremely useful for future investigations. Three members of our team returned to the U.S. on October 7, 1994. Crystal Nix, Special Assistant to the Legal Advisor for the State Department and I returned to the

U.S. on October 8, 1994, after stopping in Geneva to brief U.N. officials on our trip and coordinate future actions.

INITIAL MEETINGS IN GENEVA

On September 19th and 20th, the USG team met with U.N. officials in Geneva for briefings. To facilitate our transportation and security in Rwanda we were accorded the status of U.N. agents conducting preliminary criminal investigations for the High Commissioner for Human Rights. We were provided appropriate U.N. credentials, which were quite useful to us in Rwanda. While in Geneva, we also met with the Commission of Experts for Rwanda, a group of African representatives charged with responsibility for conducting preliminary investigations in Rwanda and making recommendations to the U.N. concerning future action. (On September 30th, for example, the Commission issued a report recommending the establishment of an international tribunal for Rwanda.) The Commission informed us of their prior investigative efforts, which appeared quite general and sporadic in nature. The Commission suggested three field sites that they believed warranted further investigation.

The High Commissioner for Human Rights asked me to serve as Interim Head of the Office of Special Investigations, which consisted of our group plus all other prosecutors, investigators and forensic experts offering assistance in the future. In addition to providing investigative leadership to our group while in Rwanda and other nations providing assistance thereafter, I was asked to formalize and coordinate a criminal investigative structure in Rwanda to allow a Chief Prosecutor, once appointed, to begin expeditiously long-term criminal investigations.

INVESTIGATIVE ACTIVITIES IN RWANDA

Our investigative activities in Rwanda are summarized in my October 2nd memorandum to the Chief, Special Procedures, Center for Human Rights, a copy of which is attached. Also attached is my October 14th summary report to the U.N. Commission of Experts. Finally, to illustrate the need for coordination of activities in Rwanda, I have attached my memorandum of September 27th defining the respective roles of criminal investigators and field officers. This policy statement was endorsed by the High Commissioner for Human Rights in a subsequent memorandum by him to the Chief of the Field Operation in Rwanda.

DEPARTURE MEETINGS IN GENEVA

Upon departing Rwanda, we stopped in Geneva for briefings at the U.N. We briefed the Commission of Experts, the U.S. Ambassador in Geneva, the Assistant Secretary of State for Human Rights, and the Chief, Special Procedures, Center for Human Rights. I also met with the High Commissioner for Human Rights who asked that I remain as Interim Head of Special Investigations (acting out of Los Angeles) for

the purpose of coordinating future activities of law enforcement professionals offered to the U.N. by other nations.

In that regard, while in Geneva, I met with two Spanish forensic experts who were eager to begin quickly exhumations in Rwanda. Because of the significance and sensitivity of such investigative activity, I directed them not to conduct any physical sampling or scientific analysis until after they had met with and gained the approval of a Chief Prosecutor. (This is consistent with what Justice Goldstone indicated to me in a meeting prior to our Rwanda trip.) They indicated that they would comply with this directive. The Spanish forensic team is, nevertheless, extremely interested in doing something immediately. To satisfy this need and avoid unsupervised investigative activity, we proposed that they perform a needs assessment of investigative opportunities in Rwanda based on observation alone. While I managed to delay such a trip until late October, their departure date is rapidly approaching. Tomorrow, in my meeting with Justice Goldstone, I will advise him of this and ask that he take appropriate steps to delay or supervise their investigative activities. Other experts with appropriate qualifications will also need to be interviewed before any significant forensic work can be done.

CONCLUSION

In our meeting this week, I would like to discuss the possible future role that our government can play in facilitating formal criminal investigations in Rwanda. I do not believe that future *ad hoc* investigative steps (e.g. visits to field sites for interviews) should be taken at this time. Rather, the enormity and complexity of the crimes in Rwanda demand a long-term strategic investigation plan devised by the Chief Prosecutor. It is unclear how quickly a Chief Prosecutor for Rwanda can formally begin work. What is clear from my investigation is that a number of things can and should be done now, prior to the formal appointment of a Chief Prosecutor, to preserve evidence against loss or destruction and to establish a structure and an equipped investigative office that will be necessary for long-term investigations.

For example, important documents from the former government must continue to be located and obtained. These may provide circumstantial or even direct evidence of acts related to a plan of genocide. Unfortunately, as we learned in our investigation, the current government has been altering certain of these documents by their current practice of handwriting comments on such documents. While I have met with the Minister of Interior and asked that this practice stop and that all documents be retrieved and held for our criminal investigation, the immediate need to oversee document preservation and receipt remains.

The establishment of an equipped office space should also begin as soon as possible given the obvious need for it and the inordinate amount of time necessary to complete such a task in Kigali. We have prepared a needs assessment for an investigative office, a copy of which is attached.