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Moving Ahead with the International Tribunal for Rwanda

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RELEASED IN FULL

TO Don Hefflin
FROM Amb Rawson

PHUM
[Signature]

July 24, 1995

TO: DRL - Mr. Shattuck
DRL - Ms. Nix
AF - Amb. Bogosian
AF/C - Ms. Rander
AID/DIIR - Mr. Mahdesian

FROM: David Rawson

SUBJECT: Moving Ahead with the International Tribunal for Rwanda

I am not a lawyer or the son of a lawyer so I have a hard time understanding the legal niceties and jurisdictional quandaries which have kept us from achieving our most important policy objective: the rapid establishment of the International Tribunal for Rwanda and the bringing to international account those who carried out genocide in that country over a year ago. I am not heartened by comparisons which suggest that we are making quicker progress than the tribunal for Yugoslavia nor by special pleading that the wheels of justice grind slow. In my inexperienced view, we are mired down and not delivering to Rwanda and the world on our promise to bring those criminals to dock. So, as the son of a physician, let me offer my layman's diagnosis and prescription.

I. Diagnosis

Who is chief surgeon? The problems start at the top where apparently there is confusion regarding who is in charge. Goldstone is apparently locked into a tough arm-wrestling match with Zacklin in the UN's Office of Legal Affairs. (UNAMIR's Chief Administrative Officer Chaim Ozelin is reportedly a close friend of Zacklin's). Do we need an ombudsman appointed who will oversee this whole operation and make sure all parties are committed to making it go forward as quickly as possible? Perhaps Goldstone's meeting with Boutros on July 26 will sort this out. One thing is clear: the operation cannot be managed from New York and expect to succeed; it must have its own budget and the right to determine (with accountability of course to donors and UN hierarchy) operational guidelines for spending that budget.

Locating the pain. After months of fiddling, we cannot seem to determine where this operation should take place. I have pled for a Rwanda centric vision. Genocide took place here. The people who saw it happen live here; European witnesses fled within a few days of its initiation. I cannot understand the arguments contending that the bulk of the evidence is abroad in various capitals. We were as close to what was going on before the war as anyone and, except for rumor, we had no evidence of the planning of genocide. Granted some who knew what was going down are abroad but live mainly in Zaire and Kenya and easily reached from Kigali if they ever could be convinced to become witnesses for the prosecution. So far no one of those close to former government has admitted to genocide.

At this point however, I am prepared to say that if the tribunal feels it can run

an investigation and prosecution of genocide in Central Africa from the pristine comforts of the Hague, so be it. Lets get on with the job. From the Hague 3752, it appears that we do not even have a formal letter requesting use Dutch facilities yet. (I take no comfort in Embassy, The Hague's comment par. 18 that "a draft letter has faked to OLA on July 7" [sic]). Facilities in Arusha may take six to nine months before they can be occupied. In Kigali, in spite of the presence on the ground of a competent team, no one seems to know where the Memorandum of Understanding with the government stands. We have made some progress in identifying housing and office space but not enough yet for a full, fledged investigative operation. I have offered the English teaching center on which we have a lease until 1979, as either office or staff housing space, on a short-term or long term sub-lease, but the Tribunal folks are reluctant to be seen as that close to the American Embassy. We can work through these constraints, but we need clearer perspectives on where the Tribunal operations will be located and how many cadre are needed in which place to get the job done.

Scheduling the operation. I have long urged that the Tribunal give evidence of its existence as a political statement about our hopes for curing the patient Goldstone nearly brought about a national political crisis last Spring when he projected indictments in 1996. Nonetheless, the Tribunal keeps missing datelines: a promised startup of the Kigali office and investigation in January is barely off the ground in July. Indictments more recently promised by fall now appear unlikely by the end of the year. It may be that we cannot foreshorten the process, but we must at least be seen to be doing something. How much field investigating has been undertaken to date, what kind of information has been collected? I see the ITR's modest, investigative team about town in various offices and in restaurants but I have not heard of them getting systematically into the field. When I asked a British Inspector at the airport last Friday what progress was being, he answered, "Things are going well." That will not do as a response to major donor. I could not pursue the questioning further because he was shuttling back to England on business class and I was in steerage. In lieu of discernible achievements like indictments, we and the Rwandan government need to be kept informed on what concrete activities are actually underway.

Staffing the operation. This brings us to the operational issues that have constituted speed bumps on the highway to progress. Seconding Americans and providing an advance of funds were great ideas. But Americans we send here need to have requisite skills as field investigators and especially to speak French. Ray Boyden is precisely what we need for administrative oversight but he requires a contract that will assure his continued presence here. The advance of funds, last time heard, had not yet reached USAID in the form of a fund site. We cannot do a thing without those little numbers. So let us clean up our own act before we start trying to straighten out the rest of the administrative mess.

Nonetheless, there is lots to do. Ray Baysden has noted that the administrative culture in UNAMIR is pointed toward winding down rather than building up. But UNAMIR needs to be reminded from Khan on down that reducing troop levels was only part of the new mandate terms. A major part of the new mandate was taking care of the Tribunal. To emphasize this, I accompanied Ray

Boyd on his first courtesy call on UNAMIR Administrative chief Ozellin, and pointed out how critically important the speedy implementation of Tribunal activities was to everything the international community was trying to accomplish in Rwanda. And I told Khan about our visit with Ozellin. Yet, the Tribunal appears to be having trouble getting access to top floors of their office complex as promised. Tribunal business must be pushed toward the top of UNAMIR's agenda.

Whose patient is it? Part of the problem is the Tribunal's abstract notions of autonomy. In the Kigali environment, we are all dependant on each other. There is nothing UNAMIR, or the Human Rights Field Office, or the United States Embassy could do to compromise the Tribunal's position. We all want it to succeed and quickly. Why the reluctance to hire experienced Human Rights monitors who also happen to be lawyers? They have more credibility in Rwanda today than anyone the Tribunal has fielded on its own. Why the reluctance to take over the English Teaching Center temporarily, in order to let people get on with their real jobs? Rigid principles of autonomy will keep the Tribunal spinning its wheels in Rwandan mud without ever getting to its destination.

The Tribunal does need its own administrative structure, however. At this stage in its development, neither this Embassy nor UNAMIR nor any other UN conduit can handle the myriad administrative issues raised by a permanent Tribunal presence here. The Tribunal needs its own budget and its own registrar with authority to spend money, rent houses, buy vehicles, pay local salaries etc. Why per par 10 of the Hague 3762 must issues of phone bills, office furniture, or electrical generators be raised with Conner in New York, or per par 20, despite the Tribunal's "authority for 30 new positions," must the hiring process go through New York? Genocide is an extraordinary event. Our response to it must show some administrative creativity and flexibility, not the old drives for bureaucratic control and institutional autonomy.

On a practical level, we need to set up a flow chart and track what goods or personnel are where. There is a notable ambiguity to the promises recorded in The Hague 3762 clothed as they are in diplomatic phrases regarding "matters under consideration." But I would like to know where the computers, faxes and phones physically are. What specifically is required to move them from where they are to Kigali? What detailees are we currently considering? Who are the Department of Justice prosecutors? Will they come to Kigali? If so, when? What is required to get them there? Does the Tribunal now have access to the Brindisi Depot? If not, whom specifically are we contacting to make this happen. Where are the six vehicles we are contributing? How do we get them to Kigali?

Ideally, the above should be done in a critical path framework so that we put emphasis on what needs to be done now so that we can push forward a corollary task later. In this regard, it seems to me that we are spending more time designing and procuring a computer program to handle data than we are in placing investigators in the field to develop data. With as little information as has been collected in the field and, given the reluctance of the Tribunal to use the solid work of the Special Investigations Unit, what information are we going to process in the Hague or put on those computers once they get to Kigali? GIGO applies.

END PAGE 1 OF 2

II. Prescription

From the above detailed examination, I offer the following prescription:

- That the bi-weekly reports to donors not only list pledged and received items and staff but also a general description of what the staff are accomplishing;
- That Boutros decide who is in charge of Tribunal policy or set up an Ombudsman to referee between Zacklin and Goldstone;
- That MOU's with Rwanda, Tanzania, Zaire and other key countries be quickly negotiated and signed so as to create an atmosphere of achievement;
- That UNAMIR put the Tribunal toward the very top of its agenda;
- That a Registrar's office be set up empowered to do necessary hiring and purchasing for the Tribunal;
- That decisions be taken about Tribunal locations detailing what may realistically expected to be done in each location and in what time line;
- That we develop a working flow chart which will help us at the receiving be better prepared to move the process, persons, and material forward;
- Finally, that we engage the help of interested private organizations like the Coalition of Conscience and harness their dynamism and creativity to the tasks at hand.

The above are a few suggestions from a person who admittedly does not know a lot about the process of setting up the International Tribunal for Rwanda but who wants very much for it to succeed.