

ICTR-01-72-A

9-7-2009

(625/A - 604/A)

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UNITED NATIONS
NATIONS UNIES

**International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda**

Arusha International Conference Centre

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IN THE APPEALS CHAMBER

Before: Judge Patrick Robinson, *President*
Juge Mehmet Güney
Juge Fausto Pocar
Juge Liu Daqun
Juge Theodor Meron

Registrar: Adama Dieng

Filed on: 9 July 2009

Simon BIKINDI

v.

The Prosecutor

Case No. ICTR-I-72-A

Handwritten signature and stamp of the Registrar, Adama Dieng, dated 10 July 2009.

PROSECUTOR'S RESPONSE

**To "Defence Motion to Take Judicial Notice and/or Admit
Additional Evidence"**

Office of the Prosecutor

Hassan Bubacar Jallow
Alex Obote-Odora
Dior Fall

Counsel for the Appellant

Andreas O'Shea

A. — Nature of the Filing and Prosecutor’s Position

(i) Overview

1. The Prosecutor hereby responds to the Appellant Bikindi’s *Defence Motion to Take Judicial Notice and/or Admit Additional Evidence*¹, in relation to “the activities of *Operation Turquoise* within Rwanda.

2. The Prosecutor opposes the Motion, which should be summarily dismissed as it is based on confusing, speculative, and ill-founded assertions. First, the Appellant cannot requests the Appeals Chamber to take judicial notice, in a blanket way, of “the contents of”² documents. If the request only concerns the 5 purported facts listed therein³, then the Prosecutor submits that they are all irrelevant to this case and taking judicial of them would be meaningless for the purpose of the Appellant’s case and the verdict under appeal.

3. Second, the proffered evidence does not qualify for admission under Rule 115. It was available and was unsuccessfully tendered by the Appellant at trial. It is utterly irrelevant to any findings material to the Appellant’s conviction or sentence. In his attempt to overcome his unsuccessful attempt to produce the proffered evidence at trial, the Appellant, speculating as to its capacity to “undermine the likelihood”⁴ of his guilt, fails to establish how it *could*, or more appropriately *would* have had any impact on the verdict under appeal.

¹ *Bikindi v. The Prosecutor*, Defence Motion to Take Judicial Notice and/or Admit Additional Evidence, Case No. ICTR-01-72-A, 9 June 2009, [“The Motion”]. The Motion was registered at the ICTR Judicial Record Archives in Arusha, on 11 June 2009, and served on the Prosecutor the same day.

² Motion, para. 19.

³ Motions, paras. 21 and 33. The Appellant’s numbering is incoherent. The Prosecutor follows the sequence provided under paragraph 21 of the Motion and renumbered the proffered facts, as follows: (a) *Operation Turquoise* consisted of French and Senegalese troops; (b) *Operation Turquoise* was a humanitarian operation; (c) The zone of operation of *Operation Turquoise* consisted of the regions as set out in p. 3, para. 3 of report S/1994/795, 5 July 1994; (d) The said mission began as from 22 June 1994; (e) The troops landed in Goma and subsequently moved to Kibuye.

⁴ Motion, para. 30. See also Motion paras. 25, 27.

B. — Response to Issues in the Appellant’s Motion

(i) *The Appeals Chamber need not take judicial notice of the proffered facts in this case*

4. The Prosecutor does not dispute the existence of *Operation Turquoise* itself. However, even if the proffered facts as listed at paragraph 21 of the Motion, could qualify as facts of common knowledge, they are irrelevant to the issues on appeal.⁵ These facts, which, according to the Appellant, concern “movements and other *factual details* of *Operation Turquoise*”⁶, cannot, in any way, support the Appellant’s speculative contentions that he could not have committed the offence, “in the manner alleged”⁷, because of supposed activities of *Operation Turquoise*. As such, and even if the standard under Rule 94(A) is not discretionary⁸, taking judicial notice of facts that are obviously irrelevant would be meaningless for the purpose of the Appellant’s case.

5. With regard to proposed Fact (a), it is irrelevant and also incorrect that “*Operation Turquoise* consisted of French and Senegalese troops” only. It would appear that French and Senegalese troops were the first ones to join, as evidenced in document S/1994/795, the *Letter dated 5 July 1994*.⁹ However, document S/1994/933, the *Letter dated 4 August 1994*, from the same source, shows that *Operation Turquoise* also included, as of 25 July 1994, soldiers from Mauritania, Egypt, Chad, Guinea-Bissau, Nigeria, and Congo.¹⁰ It is not clear why the Appellant departed from the listing of troops contained in the supporting documents he relies upon and in his 9 April 2008 Motion.

⁵ *The Prosecutor v. Karemera et al*, Decision on Prosecutor’s Interlocutory Appeal of Decision on Judicial Notice, Case No ICTR-98-44-AR73(C), 16 June 2006, at para.23, footnote 32, referring to *Prosecutor v. Hadzihasanovic and Kubura*, Case No. IT-01-47-T, Final Decision on Judicial Notice of Adjudicated Facts, 20 April 2004.

⁶ Motion, para. 24 [emphasis added].

⁷ Motion, para. 25.

⁸ *The Prosecutor v. Karemera et al*, Decision on Prosecutor’s Interlocutory Appeal of Decision on Judicial Notice, Case No ICTR-98-44-AR73(C), 16 June 2006, at para.22.

⁹ S/1994/795, *Letter dated 5 July 1994 from the Permanent Representative of France to the United Nations addressed to the Secretary-General*, transmitting the first report on the implementation of Operation Turquoise, p. 1, 2. The Appellant failed to attach this document to the Motion. The Prosecutor attached a copy of it, found in the Appellant’s *Motion for Judicial Notice Pursuant to Rule 94 of the Rules*, 9 April 2008.

¹⁰ See Motion, Annex A, S/1994/933, *Letter dated 4 August 1994 from the Chargé d’Affaires A.I. of the Permanent Representative of France to the United Nations addressed to the Secretary-General*, transmitting the second report on the implementation of Operation Turquoise, 4 August 1994, Registry pagination 399/H, 398/H.

6. Concerning the alleged “zone of operation” of *Operation Turquoise* [Fact (d)], the Appellant relies on paragraph 3 of document S/1994/795. This paragraph simply indicates that *several main routes* were reconnoitred from Goma to Kibuye and the Ndaba pass, and from Bukavu and as far as Gikongoro and Butare. The initial actions within Rwandan territory are said to have concerned “Reconnaissance of refugee camps in Cyangugu and western Rwandan from 22 to 25 June 1994” and “Progressive deployment of the Force on the aforementioned advancement routes from 24 June to 4 July 1994.”¹¹

7. The Appellant was convicted on 2 December 2008 of direct and public incitement to commit genocide and sentenced to 15 years imprisonment. None of the proffered facts and the supporting documents are capable of affecting, in any way, the Trial Chamber’s conclusions that:

*[T]owards the end of June 1994, in Gisenyi prefecture, the Appellant travelled on the main road between Kivumu and Kayove in a convoy of Interahamwe and broadcast songs, including his own, using a vehicle outfitted with a public address system. When heading towards Kayove, the Appellant used the public address system to state that the majority population, the Hutu, should rise up to exterminate the minority, the Tutsi. On his way back, the Appellant used the same system to ask if people had been killing Tutsi, who were referred to as snakes.*¹²

8. Notwithstanding the alleged zone of operation of *Operation Turquoise* [Fact (d)] and even if the mission officially began on 22 June 1994 [Fact (c)]¹³, there is no specific evidence that there was any troops deployed “at about the same time and down the same road through Kivumu sector and over the hills of Nyamyumba commune towards Kayoye communal office.”¹⁴ There is also no evidence that *Operation Turquoise*’s troops, which were, according to proposed Fact (b), only engaged in a humanitarian operation, could or would have necessarily interfered with the Appellant’s activities. If the Appellant intends to rely on the so-called *Operation Turquoise* protected zone, it should be noted that such zone would not have been established until sometime in July 1994¹⁵, that is after the period he

¹¹ Document S/1994/795, p. 3-4.

¹² *The Prosecutor v. Simon Bikindi*, Judgement, Case No. ICTR-01-72-T, 2 December 2008, paras.281 & 422 [emphases added].

¹³ As noted at paragraph 6 of document S/1994/795, *Operation Turquoise* was being implemented in accordance with Security Council Resolution 929 adopted the same day. Resolution 929, which was attached to the Appellant’s 9 April 2008 Motion, is hereby attached to this Response, for ease of reference.

¹⁴ Motion, para. 25.

¹⁵ S/1994/924, para. 7.

committed the crime for which he was convicted, as found at paragraphs 281 and 422 of the Judgement.

9. The Appellant’s arguments in this regard rest on mere conjectures. The Appeals Chamber should therefore decline to take judicial notice of the proffered facts, as they are irrelevant for the purpose of the Appellant’s case and the verdict and sentence under appeal.

(ii) The proffered evidence does not qualify for admission under Rule 115

The proffered evidence was available at trial and is irrelevant for the purpose of Rule 115

10. A preliminary consideration for the admission of additional evidence on appeal requires the Appeals Chamber to determine whether the proposed evidence sought to be admitted was available during the trial in any form whatsoever, and whether it relates to a material issue and is reasonably capable of belief or reliance.¹⁶

11. The proffered evidence was manifestly available and the Appellant made use of it at trial. The Appellant’s assertions that, “there is no issue as to delay”¹⁷ and that “[s]ince the documents being referred to are part of an assertion on appeal that the Trial Chamber erred in law this consideration (of their availability at trial) is also not applicable”¹⁸, are unsupported and unmeritorious. There is no such exception to the availability threshold, based on a party “assertion on appeal”. The Appellant’s contention on this point is not supported by any argument, law or jurisprudence. To the contrary, the Appellant’s admission that the “information is not new”¹⁹ should be fatal to the Motion.

12. In fact, the Appellant is impermissibly attempting to remedy his failings and oversights during the pre-trial and trial phases, with regard to the proffered facts and documents concerning *Operation Turquoise*. On 9 April 2008, 5 months after the closure of the defence case, Counsel for the Appellant in this appeal, who was also counsel during trial, filed a motion requesting Trial Chamber III to take judicial notice, pursuant to Rule 94(A),

¹⁶ *Prosecutor v. Nahimana et al.*, Decision on Appellant Hassan Ngeze’s Six Motions for Admission of Additional Evidence on Appeal and/or Further Investigation at the Appeal Stage, 23 February 2006 [“*Decision on Ngeze 6 Motions*”], para. 7. See also Rule 115 (B); ICTR Practice Direction on Formal Requirements for Appeals From Judgement, 4 July 2005 [“*Practice Direction*”].

¹⁷ Motion, para. 24.

¹⁸ Motion, para. 29.

¹⁹ Motion, para. 24.

of 5 facts concerning *Operation Turquoise*, claiming that they were facts of common knowledge within the meaning of Rule 94(A).²⁰ Two of the documents the Appellant relies upon in this Motion, identified as document S/1994/795, which he failed to attach to the present Motion, and document S/1994/933, were annexed to the 9 April 2008 Motion.²¹ The 5 facts listed in the 9 April 2008 Motion are substantially the same as the ones listed at paragraph 21 of this Motion.

13. Trial Chamber III dismissed the 9 April 2008 Motion, having considered that “the Defence is requesting the admission of facts that are contained in United Nations documents which have been *available to the public for more than thirteen years* [...] [and] that the instant issue should have been debated during trial proceedings and not introduced five months after the closing of the Defence.”²² The Appellant did not seek to appeal the Trial Chamber’s decision and does not show why the Trial Chamber’s decision was incorrect. Rule 115 cannot be used as an opportunity for a party to remedy any failings or oversights made during the pre-trial and trial phases.²³ The Motion should be rejected on this basis alone.

14. With regard to relevance, the Appeals Chamber repeatedly held that “evidence is relevant if it relates to findings material to the conviction or sentence, in the sense that those findings were crucial or instrumental to the conviction or sentence.”²⁴ The Appellant does not propose any specific arguments to show how each of the proffered facts, or the evidence contained in the supporting documents, relate to either a specific material fact or an essential element of the charge for which the Appellant was convicted. He simply made a general

²⁰ *The Prosecutor v. Bikindi*, Case No. ICTR-01-72-T, Motion for Judicial Notice Pursuant to Rule 94 of the Rules, 9 April 2008 [“The 9 April 2008 Motion”].

²¹ See Annex A to 9 April 2008 Motion (pages 513 through 534 of the Trial Record).

²² *The Prosecutor v. Bikindi*, Case No. ICTR-01-72-T, Decision on Requests for Judicial Notice Pursuant to Rule 94 of the Rules, 27 May 2008, para. 7 [emphasis added].

²³ See, *Prosecutor v. Nahimana et al.*, ICTR-99-52-A, “Confidential Decision on Appellant Hassan Ngeze’s Six Motions for Admission of Additional Evidence on Appeal And/or Further Investigation at the Appeal Stage”, 23 February 2006, para. 5; *Prosecutor v. Nahimana et al.*, ICTR-99-52-A, “Decision on Appellant Hassan Ngeze’s Motion for the Approval of Investigation at the Appeal Stage”, 3 May 2005, p. 3; *Prosecutor v. Akayesu*, ICTR-96-4-A, Appeal Judgement, 1 June 2001, para. 177.

²⁴ *Prosecutor v. Mrksic and Sljivancanin*, Case No. IT-95-13/1-A, Decision on Mile Mrksic’s Second Rule 115 Motion, 13 February 2009, para. 7, *Kupreskic et al.* Appeal Judgement [“(AC)”], para. 62, referring to *Prosecutor v. Krajisnik*, Case No. IT-00-39-A, Decision on Appellant Momcilo Krajisnik’s Motion to Call Radovan Karadic Pursuant to Rule 115, 166 October 2008, para. 5; *Prosecutor v. Stanisic and Simatovic*, Case No. IT-03-69-AR65.4, Decision on Prosecution Appeal of Decision on Provisional Release and Motions to Present Additional Evidence Pursuant to Rule 115, 26 June 2008, para. 7.

assertion that “the documented movements of *Operation Turquoise* are relevant to the determination of the likelihood the offence was committed by the appellant in the circumstances alleged.”²⁵ He further claims that because the documents “are of an official nature and issued by the United Nations, their credibility and reliability cannot be seriously disputed.”²⁶

15. The Prosecutor notes in this regard that documents S/1994/795 and S/1994/933 are simply *Letters to the Secretary-General*, dated 5 July 1994 and 4 August 1994, respectively, from representatives of France Permanent Mission to the United Nations Addressed, transmitting France’s first and second reports on the implementation of Operation Turquoise. As such, they are not necessarily binding on anyone, as would be a United Nations Security Council resolution. More importantly, the Appellant fails to show how the proffered evidence relates to specific findings material to his conviction or sentence.²⁷ His cursory argument is unconvincing and obviously insufficient to demonstrate, specifically, the relevance of the proffered evidence to the Appellant’s appeal. As such, the Motion does not comply with the requirement set forth under Rule 115 and the Practice Direction on Formal Requirements for Appeals from Judgements.²⁸ The Motion should be dismissed on this basis too, without detailed consideration.²⁹

The Evidence would or could not have been a decisive factor in reaching the decision at trial

16. Since the proffered evidence was available at trial, the Appellant must establish that its exclusion would amount to a miscarriage of justice.³⁰ The Appellant however fails to make any cogent argument to show that the proffered additional evidence, considered in the

²⁵ Motion, para. 25.

²⁶ Motion, para. 28.

²⁷ Rule 115(A); Paragraph 7 (c) of the Practice Direction, dated 4 July 2005 (a similar provision was included in the earlier Practice Direction dated 16 September 2002).

²⁸ Paragraph 7 of the *Practice Direction*.

²⁹ *Prosecutor v. Galic*, IT-98-29-A, Decision on Defence Motion to Present Additional Evidence, 15 November 2006; *Prosecutor v. Naletilic and Martinovic*, IT-98-34-A, Decision on Naletilic’s Amended Second Rule 115 Motion and Third Rule 115 Motion to Present Additional Evidence, 7 July 2005, para. 15.

³⁰ *The Prosecutor v. Nahimana et al.*, ICTR-99-52-A, “Decision on Appellant Jean-Bosco Barayagwiza’s Motions for Leave to Present Additional Evidence Pursuant to Rule 115 of the Rules of Procedure and Evidence”, 8 December 2006, para. 6.

context of the evidence given at trial, *would*, or even *could*, show that his conviction was unsafe.³¹

17. The Appellant merely speculates that, “The convoy incident is *unlikely* to have taken place in late June 1994 because the route to Kibuye prefecture *would have* taken troops at about the same time and down the same road through Kivumu sector and over the hills of Nyamyumba *commune* towards Kayove communal office and Kibuye *prefecture*, where it was alleged that Bikindi incited killing.”³² He makes no argument to show how the proffered evidence supports such a contention. Here too, his arguments rest on conjectures, as evidenced by the language used throughout the Motion, which is trifled with words such as “likelihood” or “unlikely”.³³

18. The Appellant’s speculative arguments cannot demonstrate that the proffered evidence *would*, or even *could* have affected his conviction in any way. They cannot be relied upon to trigger an appellate intervention for the admission of the proffered evidence on appeal. The Motion should be dismissed on this basis too.

Conclusion

19. Neither the factual details of *Operation Turquoise* requested to be judicially noticed nor the proffered additional evidence can support any of the Appellant contentions on appeal.

³¹ *Prosecutor v. Nahimana et al.*, ICTR-99-52-A, Decision on Appellants Jean-Bosco Barayagwiza’s and Ferdinand Nahimana’s Motions For Leave to Present Additional Evidence Pursuant to Rule 115, 12 January 2007, para. 8.

³² Motion, para. 25 [emphases added].

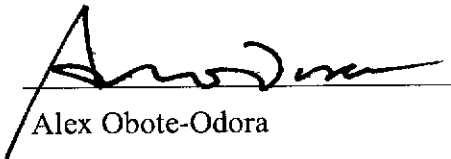
³³ See Motion, paras. 25, 30.

C. — Relief Sought

20. On the basis of the foregoing reasons, the Prosecutor requests the Appeals Chamber to dismiss the Motion in its entirety.

Respectfully submitted this 9 July 2009 in Arusha, Tanzania.

WORD COUNT: 2797



Alex Obote-Odora

Chief, Appeals and Legal Advisory Division

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UNITED
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Security Council

Distr.
GENERAL

S/RES/929 (1994)
22 June 1994

RESOLUTION 929 (1994)

Adopted by the Security Council at its 3392nd meeting,
on 22 June 1994

The Security Council,

Reaffirming all its previous resolutions on the situation in Rwanda, in particular its resolutions 912 (1994) of 21 April 1994, 918 (1994) of 17 May 1994 and 925 (1994) of 8 June 1994, which set out the mandate and force level of the United Nations Assistance Mission for Rwanda (UNAMIR),

Determined to contribute to the resumption of the process of political settlement under the Arusha Peace Agreement and encouraging the Secretary-General and his Special Representative for Rwanda to continue and redouble their efforts at the national, regional and international levels to promote these objectives,

Stressing the importance of the cooperation of all parties for the fulfilment of the objectives of the United Nations in Rwanda,

Having considered the letter of the Secretary-General of 19 June 1994 (S/1994/728),

Taking into account the time needed to gather the necessary resources for the effective deployment of UNAMIR, as expanded in resolutions 918 (1994) and 925 (1994),

Noting the offer by Member States to cooperate with the Secretary-General towards the fulfilment of the objectives of the United Nations in Rwanda (S/1994/734), and stressing the strictly humanitarian character of this operation which shall be conducted in an impartial and neutral fashion, and shall not constitute an interposition force between the parties,

Welcoming the cooperation between the United Nations, the Organization of African Unity (OAU) and neighbouring States to bring peace to Rwanda,

Deeply concerned by the continuation of systematic and widespread killings of the civilian population in Rwanda,

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Recognizing that the current situation in Rwanda constitutes a unique case which demands an urgent response by the international community,

Determining that the magnitude of the humanitarian crisis in Rwanda constitutes a threat to peace and security in the region,

1. Welcomes the Secretary-General's letter dated 19 June 1994 (S/1994/728) and agrees that a multinational operation may be set up for humanitarian purposes in Rwanda until UNAMIR is brought up to the necessary strength;
2. Welcomes also the offer by Member States (S/1994/734) to cooperate with the Secretary-General in order to achieve the objectives of the United Nations in Rwanda through the establishment of a temporary operation under national command and control aimed at contributing, in an impartial way, to the security and protection of displaced persons, refugees and civilians at risk in Rwanda, on the understanding that the costs of implementing the offer will be borne by the Member States concerned;
3. Acting under Chapter VII of the Charter of the United Nations, authorizes the Member States cooperating with the Secretary-General to conduct the operation referred to in paragraph 2 above using all necessary means to achieve the humanitarian objectives set out in subparagraphs 4 (a) and (b) of resolution 925 (1994);
4. Decides that the mission of Member States cooperating with the Secretary-General will be limited to a period of two months following the adoption of the present resolution, unless the Secretary-General determines at an earlier date that the expanded UNAMIR is able to carry out its mandate;
5. Commends the offers already made by Member States of troops for the expanded UNAMIR;
6. Calls upon all Member States to respond urgently to the Secretary-General's request for resources, including logistical support, in order to enable expanded UNAMIR to fulfil its mandate effectively as soon as possible and requests the Secretary-General to identify and coordinate the supply of the essential equipment required by troops committed to the expanded UNAMIR;
7. Welcomes, in this respect, the offers already made by Member States of equipment for troop contributors to UNAMIR and calls on other Members to offer such support, including the possibility of comprehensive provision of equipment to specific troop contributors, to speed UNAMIR's expanded force deployment;
8. Requests Member States cooperating with the Secretary-General to coordinate closely with UNAMIR and also requests the Secretary-General to set up appropriate mechanisms to this end;

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9. Demands that all parties to the conflict and others concerned immediately bring to an end all killings of civilian populations in areas under their control and allow Member States cooperating with the Secretary-General to implement fully the mission set forth in paragraph 3 above;

10. Requests the States concerned and the Secretary-General, as appropriate, to report to the Council on a regular basis, the first such report to be made no later than fifteen days after the adoption of this resolution, on the implementation of this operation and the progress made towards the fulfilment of the objectives referred to in paragraphs 2 and 3 above;

11. Also requests the Secretary-General to report on the progress made towards completing the deployment of the expanded UNAMIR within the framework of the report due no later than 9 August 1994 under paragraph 17 of resolution 925 (1994), as well as on progress towards the resumption of the process of political settlement under the Arusha Peace Agreement;

12. Decides to remain actively seized of the matter.

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Security Council

Distr.
GENERAL

S/RES/925 (1994)
8 June 1994

RESOLUTION 925 (1994)

Adopted by the Security Council at its 3388th meeting,
on 8 June 1994

The Security Council,

Reaffirming all its previous resolutions on the situation in Rwanda, in particular its resolutions 912 (1994) of 21 April 1994 and 918 (1994) of 17 May 1994, which set out the mandate of the United Nations Assistance Mission for Rwanda (UNAMIR),

Having considered the report of the Secretary-General dated 31 May 1994 (S/1994/640),

Bearing in mind the statement made by the President of the Council on 3 May 1994 (S/PRST/1994/22),

Reaffirming its resolution 868 (1993) of 29 September 1993 on the security of United Nations operations,

Noting with concern that, to date, the parties have not ceased hostilities, agreed to a cease-fire, or brought an end to the violence and carnage affecting civilians,

Noting with the gravest concern the reports indicating that acts of genocide have occurred in Rwanda and recalling in this context that genocide constitutes a crime punishable under international law,

Reiterating its strong condemnation of the ongoing violence in Rwanda and, in particular, the systematic killing of thousands of civilians,

Expressing its outrage that the perpetrators of these killings have been able to operate and continue operating within Rwanda with impunity,

Noting that UNAMIR is not to have the role of a buffer force between the two parties,

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S/RES/925 (1994)
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Noting also that UNAMIR's expanded military component will continue only as long as and to the extent that it is needed to contribute to the security and protection of displaced persons, refugees and civilians at risk in Rwanda and to provide security, as required, to humanitarian relief operations,

Underscoring that the internal displacement of some 1.5 million Rwandans facing starvation and disease and the massive exodus of refugees to neighbouring countries constitute a humanitarian crisis of enormous proportions,

Reiterating the importance of the Arusha Peace Agreement as the basis for the peaceful resolution of the conflict in Rwanda,

Commending the countries which have provided humanitarian assistance to Rwandan refugees, as well as emergency aid to alleviate the sufferings of the Rwandan people, and those countries which have contributed troops and logistical support to UNAMIR, and reiterating the urgent need for coordinated international action in this respect,

Welcoming the cooperation between the United Nations and the Organization of African Unity (OAU) and the contributions of the countries of the region, especially that of the facilitator of the Arusha peace process, and encouraging them to continue their efforts,

Welcoming the visit to Rwanda and to the region by the United Nations High Commissioner for Human Rights,

Noting the appointment, pursuant to resolution S-3/1 of 25 May 1994 adopted by the United Nations Commission on Human Rights, of a Special Rapporteur for Rwanda,

Reaffirming its commitment to the unity and territorial integrity of Rwanda,

1. Welcomes the Secretary-General's report of 31 May 1994 (S/1994/640);
2. Endorses the Secretary-General's proposals contained therein for the deployment of the expanded UNAMIR, in particular:
 - (a) The immediate initiation of the deployment of the two additional battalions in phase 2 in close synchronization with phase 1;
 - (b) The continuation of urgent preparations for the deployment of the two battalions envisaged for phase 3; and
 - (c) Flexible implementation of all three phases to ensure effective use of available resources to accomplish the tasks listed in paragraphs 4 (a) and (b) below;
3. Decides to extend the mandate of UNAMIR, expiring on 29 July 1994, until 9 December 1994;

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UNITED
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Security Council

Distr.
GENERAL

S/1994/795
5 July 1994
ENGLISH
ORIGINAL: FRENCH

LETTER DATED 5 JULY 1994 FROM THE PERMANENT REPRESENTATIVE OF FRANCE
TO THE UNITED NATIONS ADDRESSED TO THE SECRETARY-GENERAL

You will find attached, in implementation of paragraph 10 of Security Council resolution 929 (1994) of 22 June 1994, the first report on the implementation of Operation "Turquoise". I should be grateful if you would have this letter as well as the annex to it circulated as an official document of the Security Council.

(Signed) Jean-Bernard MÉRIMÉE

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Annex

Operation "Turquoise"

1. Troop contingent

The troop contingent for operation "Turquoise" has been placed under the command of General Lafourcade, who has at his disposal an inter-service theatre command post (PCIAT), which has been established in Goma and is linked to the Paris Inter-Service Operational Centre.

The troop contingent is made up of the following components:

- (a) A north forces subgroup composed of three combat units in Kibuye;
- (b) A south forces subgroup made of two combat units in Cyangugu;
- (c) A specialized subgroup consisting of four units in Bukavu;
- (d) A detachment of fighter aircraft in Kisangani;
- (e) Three transit bases in Bangui, Libreville and Douala.

The troop contingent currently numbers 2,300 French soldiers and 32 Senegalese soldiers.

2. Composition of the Force (expected strength)

2.1 Inter-service means

- (a) An inter-service command post (PCIAT - 305 troops);
- (b) A rapid intervention military medical unit (EMMIR - 46 troops);
- (c) A specialized detachment with five helicopters (220 troops);
- (d) Three detachments of the Armed Forces Petrol Service (35 troops).

2.2 Means of the Air Force and Navy

A unit of four Mirage F1CR, four Mirage F1CT, one Atlantic, two C135 FR, two Casa 235, five tactical cargo aircraft (C130, C160), two SA330 (SAR) helicopters. Total strength is 340 troops.

2.3 Means of the Army

- (a) Four motorized infantry companies (580 troops);
- (b) A 12-vehicle light armoured car squadron (130 troops);

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- (c) A six-piece heavy mortar section (70 troops);
- (d) An Engineers section (25 troops);
- (e) A logistical support battalion that has been partially dispatched and is being deployed (expected strength - 450 troops);
- (f) A detachment of Army light aircraft (ALAT) with three Puma helicopters (60 troops);
- (g) A logistical support battalion that has been partially dispatched and is being deployed (expected strength - 450 troops);
- (h) A detachment of Army light aircraft (ALAT) with three Puma helicopters (60 troops);
- (i) Two tactical headquarters (62 troops);
- (j) A command and service company (150 troops).

2.4 Means of the National Gendarmerie

A provost detachment (10 troops).

2.5 Foreign troop strength

A Senegalese infantry section (32 troops).

Other units provided by various African countries could be integrated into the Force. A Belgian advanced surgical unit is expected.

3. Sites and method of deployment

Initially installed in Goma and Bukavu on 22 June 1994, the Force subsequently reconnoitred several main routes:

- (a) In the north, from Goma towards Kibuye and the Ndaba pass;
- (b) In the south, from Bukavu in the area of the Nyugwe forest and as far as Gikongoro and Butare.

The operation consisted of:

- (a) Preliminary actions (measures to alert and pre-position forces in central Africa) from 16 to 21 June 1994;
- (b) Initial actions:
 - (i) Establishment of an advanced operational base in Goma and an air platform in Kisangani from 21 to 24 June 1994;

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S/1994/795
English
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- (ii) Reconnaissance of refugee camps in Cyangugu and western Rwanda from 22 to 25 June 1994;
- (iii) Progressive deployment of the Force on the aforementioned advancement routes from 24 June to 4 July 1994.

4. Evaluation of the situation

The humanitarian mission entrusted to France is proving to be delicate, particularly in the centre and the south of the area reconnoitred by the "Turquoise" Force.

Until 2 July 1994, our troops had been able to operate without incident within the government zone from the Zairian towns of Goma and Bukavu.

Subsequently, the advance by the Rwandese Patriotic Front (RPF) led to a further flow of refugees. This made us define a safe humanitarian zone for the refugees within the Cyangugu-Kibuye-Gikongoro triangle.

The humanitarian problem in this zone is today assuming considerable dimensions, which require the involvement of the entire international community. Hundreds of thousands of displaced Tutsi and Hutu persons require emergency assistance. The protection provided by France should make it possible to provide such assistance as speedily as possible.

5. Humanitarian actions undertaken

5.1 Protection and organization of refugee camps

The "Turquoise" Force is carrying out action to provide protection around two camps:

5.1.1 Nyarushishi, an already existing camp containing 8,000 persons (Tutsi). Protection is being provided by the Rwandese Armed Forces (RAF) and soldiers from the "Turquoise" Force (one section).

5.1.2 Biserero, a camp set up and protected by French forces (1,000 Tutsi as of 1 July).

5.2 Humanitarian activities

5.2.1 General situation

Since the arrival of the "Turquoise" Force in Rwanda, the number of refugees spread out among more than 50 camps in the government zone is estimated at 850,000.

In the south of the country, many refugees are moving towards Gikongoro (westward movement) and towards Burundi (southward movement).

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During his visit to the area, Mr. Arturo Hein, Director of the United Nations Emergency Office for Rwanda (stationed in Nairobi), gave a very favourable assessment of the mission and operating methods of Operation "Turquoise".

5.2.2 Actions carried out

Establishment of a rapid-intervention military medical unit (EMMIR) in Cyangugu (as of 5 July).

Delivery of 37 tons of humanitarian aid from the French Government and its distribution in the Kibuye and Gikongoro regions. Four hundred tons are expected in the next few days.

Evacuation of 1,325 persons.

The Western European Union has been requested to provide the following means:

- (a) A reserve of 35 tons of medicine (renewable every three weeks);
- (b) 400 tons of non-perishable foodstuffs;
- (c) Clothing and blankets for 200,000 persons.

Flagrant human rights violations have been directly observed by French soldiers and have been reported by the civilian population. Thus, the "Turquoise" forces discovered mass graves in the Cyangugu and Kibuye regions. Furthermore, bodies likely to be of persons of Tutsi origin were found near Biserero.

All relevant information collected will subsequently be transmitted to the experts on the Commission of Inquiry established under Security Council resolution 935 (1994) of 1 July 1994 and to the Special Rapporteur.

6. Assessment of the implementation of the operation and possible difficulties to be encountered

Operation "Turquoise" is being implemented in accordance with Security Council resolution 929 (1994).

The French forces have demonstrated impartiality in the field by rescuing many Hutu and Tutsi Rwandese from certain death. This impartiality is beginning to be recognized by the RPF, which permitted the evacuation of 1,000 persons from Butare, even though a minor incident took place.

Certain difficulties remain. For the time being, non-governmental organizations and international institutions are doing very little to take over work carried out by the "Turquoise" forces, particularly in the south. In this field, as in the area of participating in the logistical support for our intervention, few promises have been carried out. While our contingent serves

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to deter the militias and armed forces involved in the conflict, it is still insufficient in view of the number of displaced persons to be assisted.

Furthermore, the difficulties involved in controlling the extremely tense military situation are not insignificant. Thus, possible hostility on the part of the RAF and the Hutu militias against our contingent may increase the dangers which our forces are already facing from RPF. Participation by third countries in the operation would constitute appreciable assistance to our efforts.

Lastly, the military effort borne almost entirely by France could not be extended without the serious prospect of relief by UNAMIR II. Most of the contribution offers are still uncertain or accompanied by conditions or time-limits that are incompatible with the taking over of our mission in the next two months. France therefore calls upon all Member States to ensure that the deployment of the reinforced UNAMIR is speedily carried out.

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S/1994/795
English
Page 7Appendix IEvacuations carried out
(as of 4 July 1994)

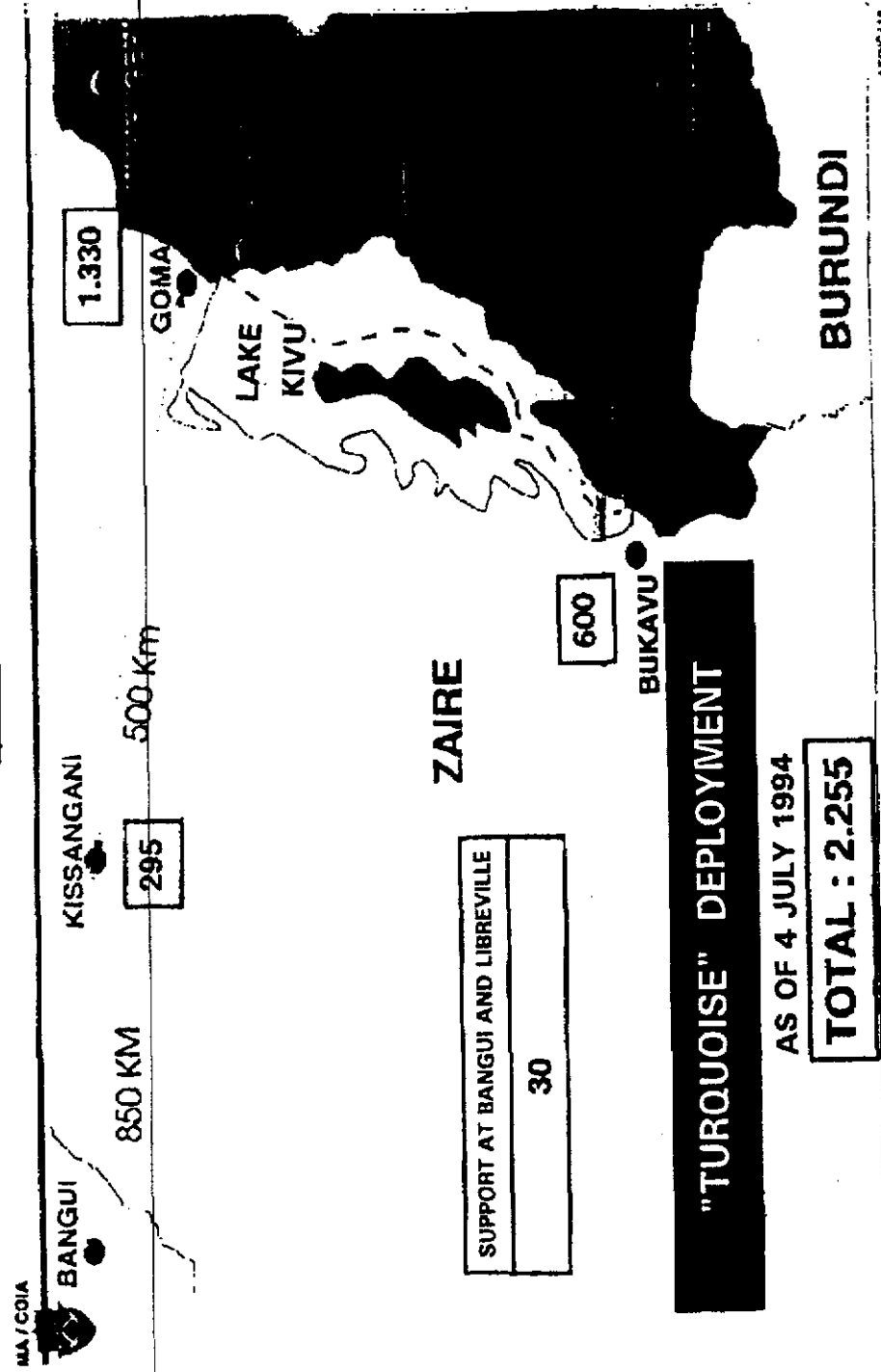
Date	Place of removal	To	Persons concerned
28 June	Kibuye	Goma	35 nuns 8 orphans
29 June	Kibuye	Goma	1 nun
30 June	Gishyita	Goma	94 Tutsi
2 July	Butare	Goma	16 nuns
2 July	Kibuye and Butare	Goma and Bukavu	130 civilians
3 July	Butare	Burundi	262 persons
3 July	Butare		700 TDH orphans
3 July	Butare		30 nuns
4 July	Gikongoro	Goma	14 persons 3 nuns
	North Kigeme	Gikongoro	1 nun 31 Tutsi
Total			1 325

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Appendix II





TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH CMS

COURT MANAGEMENT SECTION
(Art. 27 of the Directive for the Registry)

I - GENERAL INFORMATION (To be completed by the Chambers / Filing Party)

To:	<input type="checkbox"/> Trial Chamber I N. M. Diallo	<input type="checkbox"/> Trial Chamber II R. N. Kouambo	<input type="checkbox"/> Trial Chamber III C. K. Hometowu	<input type="checkbox"/> Trial Chamber III A. N'Gum
	<input type="checkbox"/> Chief, CMS J.-P. Fomété	<input checked="" type="checkbox"/> Appeals Chamber / Arusha Chamber II F. A. Talon		<input type="checkbox"/> Appeals Chamber / The Hague K. K. A. Afandé R. Muzigo-Morrison
From:	<input type="checkbox"/> Chamber (names)	<input type="checkbox"/> Defence (names)	<input checked="" type="checkbox"/> Prosecutor's Office <i>ALEX OBOTE-</i> ODORA (names)	
				<input type="checkbox"/> Other: <i>A. S. BYE</i> (names) <i>[Signature]</i>
Case Name:	The Prosecutor vs. SIMON BIKINDI		Case Number: ICTR-I-72-A	
Dates:	Transmitted: 9 July 2009		Document's date: 9 July 2009	
No. of Pages:	22	Original Language: <input checked="" type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda		
Title of Document:	PROSECUTOR'S RESPONSE TO " DEFENCE MOTION TO TAKE JUDICIAL NOTICE AND/OR ADMIT ADDITIONAL EVIDENCE"			
Classification Level:		TRIM Document Type:		
<input type="checkbox"/> Ex Parte		<input type="checkbox"/> Indictment	<input type="checkbox"/> Warrant	<input type="checkbox"/> Correspondence
<input type="checkbox"/> Strictly Confidential / Under Seal		<input type="checkbox"/> Decision	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Notice of Appeal
<input type="checkbox"/> Confidential		<input type="checkbox"/> Disclosure	<input type="checkbox"/> Order	<input type="checkbox"/> Appeal Book
<input checked="" type="checkbox"/> Public		<input type="checkbox"/> Judgement	<input checked="" type="checkbox"/> Motion	<input type="checkbox"/> Book of Authorities
		<input type="checkbox"/> Submission from non-parties	<input checked="" type="checkbox"/> Submission from parties	
		<input type="checkbox"/> Accused particulars		

II - TRANSLATION STATUS ON THE FILING DATE (To be completed by the Chambers / Filing Party)

CMS SHALL take necessary action regarding translation.				
<input type="checkbox"/> Filing Party hereby submits only the original, and will not submit any translated version.				
<input type="checkbox"/> Reference material is provided in annex to facilitate translation.				
Target Language(s):				
<input type="checkbox"/> English		<input type="checkbox"/> French		<input type="checkbox"/> Kinyarwanda
CMS SHALL NOT take any action regarding translation.				
<input type="checkbox"/> Filing Party hereby submits BOTH the original and the translated version for filing, as follows:				
Original	in	<input checked="" type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda
Translation	in	<input type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda
CMS SHALL NOT take any action regarding translation.				
<input type="checkbox"/> Filing Party will be submitting the translated version(s) in due course in the following language(s):				
<input type="checkbox"/> English		<input type="checkbox"/> French		<input type="checkbox"/> Kinyarwanda
KINDLY FILL IN THE BOXES BELOW				
<input type="checkbox"/> The OTP is overseeing translation. The document is submitted for translation to:			<input type="checkbox"/> DEFENCE is overseeing translation. The document is submitted to an accredited service for translation (fees will be submitted to DCDMS):	
<input type="checkbox"/> The Language Services Section of the ICTR / Arusha.			Name of contact person:	
<input type="checkbox"/> The Language Services Section of the ICTR / The Hague.			Name of service:	
<input type="checkbox"/> An accredited service for translation; see details below:			Address:	
Name of contact person:			E-mail / Tel. / Fax:	
Name of service:				
Address:				
E-mail / Tel. / Fax:				

III - TRANSLATION PRIORITISATION (For Official use ONLY)

<input type="checkbox"/> Top priority	COMMENTS	<input type="checkbox"/> Required date:
<input type="checkbox"/> Urgent		<input type="checkbox"/> Hearing date:
<input type="checkbox"/> Normal		<input type="checkbox"/> Other deadlines:



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**APPEALS - PROOF OF SERVICE – BY FAX
PREUVE DE NOTIFICATION - CHAMBRE D'APPEL – PAR FAX**

Date: 09/07/2009		Case Name / affaire: - SIMON BIKINDI	
		Case No / no. de l'affaire: ICTR-01-72-A	
To: A:	Appeals Chamber Support Unit, The Hague: - Mr. Koffi Afande - Ms. Rosette Muzigo-Morrison - Mr. Ramadhani T. Juma		<input checked="" type="checkbox"/> Judge / Juge Mohamed Shahabuddeen, Presiding <input checked="" type="checkbox"/> Judge / Juge Mehmet Guney <input checked="" type="checkbox"/> Judge / Juge Fausto Pocar <input checked="" type="checkbox"/> Judge / Juge Liu Daqun <input checked="" type="checkbox"/> Judge / Juge Theodor Meron
	ACCUSED / DEFENSE <input checked="" type="checkbox"/> Accused / Accusé BIKINDI..... see / voir * CMS4 <input checked="" type="checkbox"/> Lead Counsel / Conseil Principal: A. O'Shea <input type="checkbox"/> In Arusha / à Arusha: (see / voir CMS3) <input type="checkbox"/> Fax: <input type="checkbox"/> Co-Counsel / Conseil Adjoint: <input type="checkbox"/> Arusha (see / voir CMS3) <input type="checkbox"/> Fax: OTP / BUREAU DU PROCUREUR <input type="checkbox"/> Hassan Bubacar Jallow, Prosecutor <input type="checkbox"/> B. Majola, Deputy Prosecutor <input type="checkbox"/> Dior Fall <input checked="" type="checkbox"/> Alex. Obote-Odora , Senior Trial Attorney in charge of case: (input type="checkbox"/> name) <input type="checkbox"/> The Hague / La Haye <input type="checkbox"/> Arusha (see / voir CMS3) <input type="checkbox"/> Kigali		
From: De:	<input type="checkbox"/> JP. Fomété (Chief, CMS) <input type="checkbox"/> (Chief, JPU) <input checked="" type="checkbox"/> C. Hometowu (TC III) <input type="checkbox"/> F. A. Talon (Coordinator/Team IV) <input type="checkbox"/> Other		
CC:	<input checked="" type="checkbox"/> Registrar <input type="checkbox"/> OLA, NY <input checked="" type="checkbox"/> Deputy Registrar <input type="checkbox"/> Press <input checked="" type="checkbox"/> ICTR Spokesperson <input checked="" type="checkbox"/> SAR <input type="checkbox"/> WVSS <input type="checkbox"/> DCDMS <input checked="" type="checkbox"/> CSS <input checked="" type="checkbox"/> SADR <input type="checkbox"/> Other		
Subject Objet:	Kindly find attached the following documents / <i>Veillez trouver en annexe les documents suivants:</i>		
Documents name / titre du document		Date Filed / Date enregistré	Pages
PROSECUTOR'S RESPONSE TO "DEFENCE MOTION TO TAKE JUDICIAL NOTICE AND/OR ADMIT ADDITIONAL EVIDENCE"		09/07/2009	625/A – 604/A

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