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INTEROFFICE MEMORANDUM

MEMORANDUM INTERIEUR

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Mr. Iqbal Riza
Assistant Secretary-General for
Peace-Keeping Operations

DATE 25 May 1994

REFERENCE

Ralph Zacklin, Director, and Deputy
to the Under-Secretary-General
Office of the Legal Counsel



Rwanda

In your cable of 24 May 1994, you requested the legal advice of this Office on the following questions:

- A. Is the "interim Government" in Gitarama a successor Government to the legitimate Government of Rwanda?
- B. Is Security Council resolution 918(1994) valid despite the fact that an interested party participated in the vote contrary to Article 27(3) of the United Nations Charter?

1. Although the Arusha Agreement, by its terms, had come into effect upon signature, and President Habyarimana was subsequently sworn in as President, the Transitional Assembly and the other organs of the Transitional Government were never established. Therefore, the Government of Rwanda, which ceased to exist shortly after the death of the President on 6 April 1994, was not the Transitional Government. Consequently, the Arusha Agreement, including its succession provisions, are not applicable to the succession issue. That question would therefore be governed by the constitutional law of Rwanda. Moreover, the factual situation inside Rwanda has yet to stabilize with de facto authority apparently being exercised by several competitors for power. The "interim Government" seems, nevertheless, to be operating, at least in some parts of Rwanda, as the de facto authority. As such, it can, in our opinion, legally be contacted and dealt with by the United Nations in the same manner as other potential contributors to the peace process in Rwanda.

2. As far as the validity of resolution 918(1994) is concerned, the resolution was validly adopted and

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 DATE ADMITTED: 22-11-1993
 TENDERED BY: EFCT/CE
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there is no question as to its legality. The practice under Article 27(3) is far from uniform but the recent practice tends to show that it has been observed more in the breach than in its implementation. Two of the more recent examples of this are the votes in the Falklands case and the hostages case in which the UK and the US, respectively, voted. In any event, the question was not raised in the course of the Security Council's adoption of 918 and no discussion of this point occurred.