



Security Council

Distr.
GENERAL

S/20412/Add.1
16 March 1989

ORIGINAL: ENGLISH

FURTHER REPORT OF THE SECRETARY-GENERAL CONCERNING
THE IMPLEMENTATION OF SECURITY COUNCIL RESOLUTIONS
435 (1978) AND 439 (1978) CONCERNING THE QUESTION
OF NAMIBIA

Addendum

1. I wish to transmit to the Council the text of the Agreement between the United Nations and the Republic of South Africa concerning the Status of the United Nations Transition Assistance Group in Namibia (South-West Africa), done at New York on 10 March 1989, which is annexed to the present report.
2. I shall continue to keep Council members informed of any further developments with regard to the establishment of the United Nations Transition Assistance Group.

Annex

Agreement between the United Nations and the Republic of South Africa
concerning the Status of the United Nations Transition Assistance
Group in Namibia (South-West Africa)

I. DEFINITIONS

1. For the purposes of this Agreement the following definitions shall apply:
2. "UNTAG" means the United Nations Transition Assistance Group established pursuant to Security Council resolution 435 (1978) consisting of:
 - (a) The "Special Representative" appointed by the Secretary-General of the United Nations pursuant to Security Council resolution 431 (1978). Any reference to the Special Representative in this Agreement shall, except in paragraph 31, include any member of UNTAG to whom he delegates a specified function or authority;
 - (b) A "civilian section" composed of United Nations officials and of other persons assigned by the Secretary-General to assist the Special Representative;
 - (c) A "military section" composed of military and civilian personnel assigned by participating States to serve as part of UNTAG.
3. "Member of UNTAG" means any member of the civilian or military section but, unless specifically stated otherwise, does not include locally recruited personnel.
4. "Participating State" means a State contributing personnel to the military section of UNTAG.
5. "Territory" means Namibia (South-West Africa).
6. "Government" means the Government of the Republic of South Africa including the Administrator-General of the Territory, as well as all competent local authorities.
7. "Convention" means the Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly of the United Nations on 13 February 1946.

II. APPLICATION OF THIS AGREEMENT

8. Unless specifically provided otherwise, the provisions of this Agreement and any obligation undertaken by the Government or any privilege, immunity, facility or concession granted to UNTAG or any member thereof apply in the Territory only.

III. APPLICATION OF THE CONVENTION

9. The Convention shall apply to UNTAG, subject to the special provisions specified in this Agreement.

10. Article II of the Convention shall also apply to the property, funds and assets of participating States used in connection with UNTAG.

IV. STATUS OF UNTAG

11. Members of UNTAG shall refrain from any activity of a political nature in the Territory and from any action or activity incompatible with the impartial and international nature of their duties or inconsistent with the spirit of the present arrangements. The Special Representative shall take all appropriate measures to ensure the observance of these obligations.

12. The Government undertakes to respect the exclusively international nature of UNTAG.

Premises

13. The premises referred to in section 3 of the Convention shall include those made available to UNTAG pursuant to paragraph 25 of this Agreement and any other premises actually occupied or used by UNTAG.

Taxation

14. The Government undertakes to exempt UNTAG from general sales tax paid on all official UNTAG purchases for own use, excluding those for resale in commissaries.

United Nations flag; vehicle markings

15. UNTAG shall display the United Nations flag at or on its headquarters, camps and other premises, vehicles, vessels and otherwise as agreed to in consultation between the Special Representative and the Government. Other flags or pennants may be displayed only in exceptional cases and in accordance with conditions prescribed by the Special Representative. The display of such flags or pennants shall be subject to prior consultation with the Government.

16. Vehicles, vessels and aircraft of UNTAG shall carry a distinctive United Nations identification, which shall be notified to the Government.

Communications

17. UNTAG shall enjoy the facilities in respect of communications provided in article III of the Convention only for the purpose of executing its task as laid down in Security Council resolution 435 (1978).

18. Subject to the provisions of paragraph 17, UNTAG shall have authority to install and operate radio-sending and receiving stations as well as satellite systems to connect appropriate points within the Territory and United Nations offices in other countries, and to exchange traffic with the United Nations global telecommunications network; provided that the satellite systems shall be installed and operated by UNTAG only after consultation with the Government. The telecommunication services shall be operated in accordance with the International Telecommunication Convention and Regulations, and the frequencies on which any such station may be operated shall be decided upon in co-operation with the Government and shall be communicated by the United Nations to the International Frequency Registration Board.

19. Subject to the provisions of paragraph 17, UNTAG shall enjoy, within the Territory, the right to unrestricted communication by radio (including satellite, mobile and hand-held radio), telephone, telegraph, facsimile or any other means, and of establishing the necessary facilities for maintaining such communications within and between premises of UNTAG, including the laying of cables and land lines and the establishment of fixed and mobile radio-sending, receiving and repeater stations, provided that land lines and cables between premises of UNTAG shall be laid only after consultation and agreement with the Government and provided further that the frequencies on which the radio will operate shall be decided upon in co-operation with the Government. It is understood that connections with the local system of telegraphs, telex and telephone may be made only after consultation and in accordance with arrangements with the Government, it being further understood that the use of the local system of telegraphs, telex and telephones will be at rates and under conditions not less favourable than those applicable to comparable users.

20. UNTAG may make arrangements through its own facilities for the processing and transport of private mail addressed to or emanating from members of UNTAG. The Government shall be informed of the nature of such arrangements, and shall not interfere with or apply censorship to the mail of UNTAG or its members. In the event that postal arrangements applying to private mail of members of UNTAG are extended to transfer of currency or the transport of packages and parcels, the conditions under which such operations are conducted shall be agreed with the Government.

Travel and transport

21. UNTAG and its members shall enjoy, together with its vehicles, vessels, aircraft and equipment, freedom of movement within the Territory. The Special Representative shall consult in advance with the Government with respect to large movements of personnel, stores or vehicles through airports or on railways or roads used for general traffic within the Territory. The Government undertakes to supply UNTAG, where necessary, with maps and other information that may be useful in facilitating its movements.

22. Vehicles, including all military vehicles, vessels and aircraft of UNTAG shall not be subject to registration or licensing by the Government provided that all such vehicles shall carry the third-party insurance required by relevant legislation.

23. UNTAG may use roads, bridges, canals and other waters, port facilities and airfields without the payment of dues, tolls or charges other than charges for services rendered.

Imports, exports and local purchases by or for UNTAG

24. (a) UNTAG may in terms of relevant legislation import into the Territory, or into South Africa for direct transport to the Territory along routes prescribed by the Government, free of duty or other restrictions, equipment, provisions, supplies and other goods which are for the exclusive and official use of UNTAG or for resale in the commissaries provided for in paragraph 46.

(b) UNTAG may also in terms of relevant legislation clear ex-customs and excise warehouse, free of duty or other restrictions, equipment, provisions, supplies and other goods which are for the exclusive and official use of UNTAG or for resale in the commissaries provided for in paragraph 46.

(c) All such equipment as far as it is still usable, all unconsumed provisions, supplies and other goods so imported or cleared ex-customs and excise warehouse which are not transferred, or otherwise disposed of on terms and conditions to be agreed upon, to the competent local authorities of the Territory or to an entity nominated by them, shall be exported from the Territory and from South Africa on completion of UNTAG's task.

(d) To the end that such importation, clearances and exportation may be effected with the least possible delay, a mutually satisfactory procedure, including documentation, shall be agreed between UNTAG and the Government.

V. FACILITIES FOR UNTAG

25. The Government undertakes to assist UNTAG as far as possible in obtaining and making available where applicable, premises, water, electricity and other facilities required at rates, dues or charges not less favourable than those charged to comparable consumers or users and in the case of interruption or threatened interruption of service to give as far as is within its power the same priority to the needs of UNTAG as to essential government services. Amounts due by UNTAG in this regard shall be settled on a basis to be agreed with the Government. UNTAG shall be responsible for the maintenance and upkeep of facilities so provided.

26. UNTAG shall have the right, where necessary, to generate, within its premises, electricity for its use and to transmit and distribute such electricity.

Provisions, supplies and services; sanitary arrangements

27. The Government shall assist UNTAG as far as possible in obtaining equipment, provisions, supplies and other goods and services from sources within the Territory and, if necessary, within South Africa, required for its subsistence and operations. In making purchases on the local market, UNTAG shall take the necessary steps to avoid any adverse effect on the local economy.

28. UNTAG and the Government shall co-operate with respect to sanitary services and shall extend to each other the fullest co-operation in matters concerning health, particularly with respect to the control of communicable diseases in accordance with international conventions.

Recruitment of local personnel

29. UNTAG may recruit locally such personnel as it requires. In the recruitment of such personnel, UNTAG shall at all times act in close consultation with the Government. The Government undertakes, upon the request of the Special Representative, to assist UNTAG in the recruitment of such personnel. The terms and conditions of employment for locally recruited personnel shall be prescribed by the Special Representative.

Currency

30. The Government undertakes to make available to UNTAG against reimbursement in mutually acceptable currency, South African currency required for the use of UNTAG, including the pay of its members, at the rate of exchange most favourable to UNTAG that is officially recognized by the Government.

VI. MEMBERS OF UNTAG

Status

31. The Special Representative, the Commander of the military section of UNTAG and such high-ranking members of the Special Representative's staff as may be agreed upon with the Government shall have the status specified in section 19 of the Convention provided that the privileges and immunities therein referred to shall be those accorded to diplomatic envoys by South African law.

32. Officials of the United Nations assigned to the civilian section of UNTAG and whose names are for that purpose notified to the Government by the Special Representative shall be considered as officials within the meaning of section 17 of the Convention.

33. Other persons assigned to the civilian section of UNTAG as well as civilian personnel assigned to the military section whose names are for the purpose notified to the Government by the Special Representative shall be considered as experts on mission within the meaning of article VI of the Convention.

34. Military personnel assigned to the military section of UNTAG shall have the status specially provided for in this Agreement.

35. Locally recruited personnel shall enjoy only those privileges and immunities specifically provided for them in this Agreement.

Entry, residence and departure

36. The Special Representative and members of the civilian section of UNTAG shall, whenever so required by the Special Representative, have the right to enter into, reside in and depart from the Territory, and as required for that purpose to travel in direct transit through South Africa from agreed points of entry and exit. The Special Representative shall notify the Government, and whenever possible in advance, of the movement of any such member in transit to and from the Territory.

37. Members of the military section of UNTAG shall be exempt from passport and visa regulations and immigration inspection and restriction on entering into or departing from the Territory, and as required for that purpose on transiting South Africa from agreed points of entry and exit along agreed routes and on agreed conditions provided that the Special Representative shall notify the Government in advance of the movement to or from the Territory of any such member. They shall be exempt from any regulations governing the residence of aliens in the Territory, including registration, but shall not be considered as acquiring any right to permanent residence in the Territory. For the purpose of such entry or departure or transiting of South Africa such members shall be required to have only: (a) an individual or collective movement order issued by or under the authority of the Special Representative or any appropriate authority of a participating State; and (b) a personal identity card issued in accordance with paragraph 38 of this Agreement, except in the case of first entry when the personal identity card issued by the appropriate authorities of a participating State shall be accepted in lieu of the said UNTAG identity card.

Identification

38. The Special Representative shall issue to each member of UNTAG before or as soon as possible after such member's first entry into the Territory, as well as to all locally recruited personnel, a numbered UNTAG identity card, which shall show full name, date of birth, title or rank, service (if appropriate) and photograph. Except as provided in article VII of the Convention or in paragraph 37 of this Agreement, such identity card shall be the only document required of a member of UNTAG.

39. Members of UNTAG as well as locally recruited personnel shall be required to present, but not to surrender, their UNTAG identity cards upon demand of an appropriate official of the Government.

Uniform and arms

40. Military members of UNTAG shall wear, while performing official duties, the national military uniform of their respective States with standard United Nations accoutrements. The wearing of civilian dress by military members of UNTAG may be authorized by the Special Representative at other times.

Military members of UNTAG, members of the civilian police element of UNTAG and United Nations Security Officers designated by the Special Representative may possess and carry arms while on duty in accordance with their orders.

Permits and licences

41. The Government agrees to accept as valid, without tax or fee, a permit or licence issued by the Special Representative for the operation by any member of UNTAG, including locally recruited personnel, of any UNTAG transport or communication equipment and for the practice of any profession or occupation in connection with the functioning of UNTAG; provided that no licence to drive a vehicle or pilot an aircraft shall be issued to any person who is not already in possession of an appropriate and valid licence.

42. Without prejudice to the provisions of paragraph 40, the Government further agrees to accept as valid, without tax or fee, a permit or licence issued by the Special Representative to a member of UNTAG for the carrying or use of firearms or ammunition in connection with the functioning of UNTAG.

Taxation

43. Members of UNTAG shall be exempt from taxation on the pay and emoluments received from the United Nations or from a participating State and any income received from outside the Territory.

They shall also be exempt from all other direct taxes, except the general sales tax and municipal rates for services, and from all registration fees and charges.

Customs and fiscal regulations

44. The Special Representative shall co-operate with the Government and shall render all assistance within his power in ensuring the observance of the customs and fiscal laws and regulations of the Territory and of South Africa by the members of UNTAG, in accordance with this Agreement.

45. Members of UNTAG shall in terms of relevant legislation have the right to import free of duty their personal effects in connection with their arrival in the Territory. They shall be subject to the laws and regulations of the Territory and, as appropriate, of South Africa, governing customs and foreign exchange with respect to personal property not required by them by reason of their presence in the Territory with UNTAG. Special facilities for entry and exit shall be granted by the Government to regularly constituted units of the military section, provided that it has been notified sufficiently in advance. On departure from the Territory, members of UNTAG may, notwithstanding the above-mentioned exchange regulations, take with them such funds as the Special Representative certifies were received in pay and emoluments from the United Nations or from a participating State and are a reasonable residue thereof. Special arrangements shall be made for the implementation of these provisions in the interests of the Government and the members of UNTAG.

46. For the benefit of the members of UNTAG, but not of locally recruited personnel, UNTAG may establish, maintain and operate commissaries at its headquarters and in camps. Such commissaries may provide goods of a consumable

nature and other customary articles of small value. The Special Representative shall take all necessary measures to prevent abuse of such commissaries and the sale or resale of such goods to persons other than members of UNTAG, and he shall give sympathetic consideration to observations or requests of the Government concerning the operation of the commissaries.

Military police; arrest and transfer of custody; mutual assistance

47. The Special Representative shall take all appropriate measures to ensure the maintenance of discipline and good order among members of UNTAG as well as locally recruited personnel. To this end personnel designated by the Special Representative shall police the premises of UNTAG and such areas where its members are deployed. Elsewhere such personnel shall be employed only subject to arrangements with the Government and in liaison with it in so far as such employment is necessary to maintain discipline and order among members of UNTAG.

48. The military police of UNTAG shall have the power of arrest over the military members of UNTAG. The personnel mentioned in paragraph 47 above may also take into custody any other person on the premises of UNTAG. Such other person shall be delivered immediately to the nearest appropriate official of the Government for the purpose of dealing with any offence or disturbance on such premises.

49. Subject to the provisions of paragraphs 31 and 33 officials of the Government may take into custody any member of UNTAG:

(a) When so requested by the Special Representative; or

(b) When such a member of UNTAG is apprehended in the commission or attempted commission of a criminal offence. Such person shall be delivered immediately, together with any weapons or other item seized, to the nearest appropriate representative of UNTAG whereafter the provisions of paragraph 54 shall apply mutatis mutandis.

50. When a person is taken into custody under paragraph 48 or paragraph 49 (b), UNTAG or the Government, as the case may be, may make a preliminary interrogation but may not delay the transfer of custody. Following such transfer, the person concerned shall be made available upon request to the arresting authority for further interrogation.

51. UNTAG and the Government shall assist each other in carrying out all necessary investigations into offences in respect of which either or both have an interest, in the production of witnesses and in the collection and production of evidence, including the seizure of and, if appropriate, the handing over of things connected with an offence. The handing over of any such things may be made subject to their return within the terms specified by the authority delivering them. Each shall notify the other of the disposition of any case in the outcome of which the other may have an interest or in which there has been a transfer of custody under the provisions of paragraphs 48, 49 and 50.

52. The Government shall ensure the prosecution of persons subject to its criminal jurisdiction who are accused of acts in relation to UNTAG or its members which, if committed in relation to the forces of the Government, would have rendered such acts liable to prosecution.

Jurisdiction

53. All members of UNTAG including locally recruited personnel shall be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity. Such immunity shall continue even after they cease to be members of or employed by UNTAG and after the expiration of the other provisions of this Agreement.

54. Should the Government consider that any member of UNTAG has committed a criminal offence, it shall promptly inform the Special Representative and present to him any evidence available to it.

Subject to the provisions of paragraph 31:

(a) If the accused person is a member of the civilian section or a civilian member of the military section, the Special Representative shall conduct any necessary supplementary inquiry and then agree with the Government on whether the United Nations should institute disciplinary proceedings or the Government institute prosecution. Failing such agreement, the question shall be resolved as provided in paragraph 59 of this Agreement;

(b) Military members of the military section of UNTAG shall be subject to the exclusive jurisdiction of their respective participating States in respect of any criminal offences which may be committed by them in the Territory.

55. If any civil proceeding is instituted against a member of UNTAG before any court of the Territory the Special Representative shall be notified immediately, and he shall certify to the court whether or not the proceeding is related to the official duties of such member.

(a) If the Special Representative certifies that the proceeding is related to official duties, such proceeding shall be discontinued and the provisions of paragraph 57 of this Agreement shall apply.

(b) If the Special Representative certifies that the proceeding is not related to official duties, the proceeding may continue. If the Special Representative certifies that a member of UNTAG is unable because of official duties or authorized absence to protect his interests in the proceeding, the court shall at the defendant's request suspend the proceeding until the elimination of the disability, but for not more than ninety days. Property of a member of UNTAG that is certified by the Special Representative to be needed by the defendant for the fulfilment of his official duties shall be free from seizure for the satisfaction of a judgement, decision or order. The personal liberty of a member of UNTAG shall not be restricted in a civil proceeding, whether to enforce a judgement, decision or order, to compel an oath or for any other reason.

Deceased members

56. The Special Representative shall have the right to take charge of and dispose of the body of a member of UNTAG who dies in the Territory, as well as that member's personal property located within the Territory, in accordance with United Nations procedures.

VII. SETTLEMENT OF DISPUTES

57. Except as provided in paragraph 59, any dispute or claim of a private law character to which UNTAG or any member thereof is a party and over which the courts of the Territory do not have jurisdiction because of any provision of this Agreement shall be settled by a standing Claims Commission to be established for that purpose. One member of the Commission shall be appointed by the Secretary-General of the United Nations, one member by the Government and a Chairman jointly by the Secretary-General and the Government. If no agreement as to the Chairman is reached within thirty days of the appointment of the first member of the Commission, the President of the International Court of Justice may, at the request of either the Secretary-General of the United Nations or the Government, appoint the Chairman. Any vacancy on the Commission shall be filled by the same method prescribed for the original appointment, provided that the thirty-day period there prescribed shall start as soon as there is a vacancy in the chairmanship. The Commission shall determine its own procedures, provided that any two members shall constitute a quorum for all purposes (except for a period of thirty days after the creation of a vacancy) and all decisions shall require the approval of any two members. The awards of the Commission shall be final and binding, unless the Secretary-General of the United Nations and the Government permit an appeal to a tribunal established in accordance with paragraph 59. The awards of the Commission shall be notified to the parties and, if against a member of UNTAG, the Special Representative or the Secretary-General of the United Nations shall use his best endeavours to ensure compliance.

58. Disputes concerning the terms of employment and conditions of service of locally recruited personnel shall be settled by the administrative procedures to be established by the Special Representative.

59. Any other dispute between UNTAG and the Government, and any appeal that both of them agree to allow from the award of the Claims Commission established pursuant to paragraph 57 shall, unless otherwise agreed by the parties, be submitted to a tribunal of three arbitrators. The provisions relating to the establishment and procedures of the Claims Commission shall apply, mutatis mutandis, to the establishment and procedures of the Tribunal. The decisions of the Tribunal shall be final and binding on both parties.

VIII. SUPPLEMENTAL ARRANGEMENTS

60. The Special Representative and the Government may conclude supplemental arrangements to this Agreement.

61. The Special Representative and the Government shall take appropriate measures to ensure close and reciprocal liaison at every appropriate level.

IX. NATURE AND DURATION OF AGREEMENT

62. This Agreement is concluded for the sole purpose of assisting in the implementation of Security Council resolution 435 (1978) and has no bearing upon the respective positions of the parties concerning the status of the Territory.

63. This Agreement shall enter into force upon signature by or for the Secretary-General of the United Nations and the Government.

64. This Agreement shall remain in force until the departure of the final element of UNTAG from the Territory except that:

(a) The provisions of paragraphs 53 and 59 shall remain in force;

(b) The provisions of paragraph 57 shall remain in force until all claims have been settled that arose prior to the termination of this Agreement and were submitted prior to or within three months of such termination.

In witness whereof the undersigned, duly authorized representatives of the United Nations and the Government, respectively, have signed this Agreement in two copies in English.

Done at New York on 10 March 1989.

FOR THE UNITED NATIONS:

FOR THE GOVERNMENT OF THE
REPUBLIC OF SOUTH AFRICA:

(Signed) Martti AHTISAARI

(Signed) Jeremy B. SHEARAR

Appendix

Memorandum of understanding

In the course of the negotiations between the United Nations and South Africa relating to the Agreement concerning the Status of the United Nations Transition Assistance Group in Namibia, understandings were reached between the Parties concerning the interpretation and application of certain provisions of the Agreement. Those understandings are set forth in the present memorandum.

In relation to paragraph 29

With regard to the recruitment of local personnel it is understood that UNTAG will engage in the direct recruitment of local staff on as wide a basis as possible, having regard to the need to secure the highest standards of efficiency, competence and integrity, in accordance with the Secretary-General's responsibility under Article 101 of the Charter. In this connection UNTAG will consult inter alia with the South African Government which may assist it to obtain appropriately qualified local staff.

In relation to paragraph 54

- (i) In regard to the exercise of jurisdiction under paragraph 54 (b) by the participating States in respect of any criminal offences, the United Nations will obtain in its relationship agreement with each participating State which assigns such members to UNTAG an undertaking that it is able and willing to exercise the required jurisdiction.

Should a participating State fail within a reasonable time to take steps to exercise the required jurisdiction in any particular case, including arrest and detention when appropriate, and should the accused remain in the Territory, he shall become subject to local criminal jurisdiction.

- (ii) The Special Representative shall, within a reasonable period, inform the Government whether a participating State has exercised jurisdiction in a particular case and if so he shall inform the Government of the outcome thereof.
- (iii) A participating State may at any time request the Government, through the Special Representative, to exercise criminal jurisdiction in general in all cases or in a particular case.
- (iv) In any case where a member of UNTAG is subject to local criminal jurisdiction the Special Representative shall make such member available for any criminal proceedings that may be instituted against such member.

