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

Addendum

1. The text of the Constituent Assembly Proclamation, which was published in the Official Gazette (Namibia) on 6 November 1989, as well as the related exchange of letters between my Special Representative and the Administrator-General dated 3 November 1989, are attached as annexes I and II to the present report. In accordance with the provisions of section 6 of that Proclamation, the Constituent Assembly of Namibia held its first meeting at 10 a.m. on 23 November 1989 at the Tinten Palast, Windhoek.

2. The Proclamation also provides that the member whose name appears at the top of the list of candidates of the registered party which attained the greatest number of seats in the Assembly or any other member designated by him should serve as Acting Chairman during the inaugural session of the Assembly. Accordingly, the President of the South West Africa People's Organization (SWAPO), Mr. Sam Nujoma, opened the proceedings of the Assembly.

3. Following the nominations of Mr. Hage Geingob (SWAPO) and Mr. A. Matjila (Democratic Turnhalle Alliance (DTA)) for the office of Chairman of the Assembly, the members of the Assembly, voting by secret ballot, elected Mr. Hage Geingob (SWAPO) as Chairman of the Constituent Assembly.

4. Thereafter, my Special Representative delivered to the Chairman a letter formally communicating to the Assembly the text of the 1982 Principles concerning the Constituent Assembly and the Constitution for an independent Namibia. 1/ On the afternoon of 23 November 1989, the Assembly endorsed by acclamation a motion proposed by Mr. Theo-Hen Gurirab (SWAPO), that the 1982 Principles serve as the framework for the drafting of the Constitution. The Assembly also created a committee, comprising members from all seven political parties represented in the Assembly, to draft its rules of procedure. These were adopted on 28 November 1989.

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English

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Notes

1/ Official Records of the Security Council, Thirty-seventh Year, Supplement for July, August and September 1982, document S/15287.

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Annex I

PROCLAMATION

by the

ADMINISTRATOR-GENERAL FOR THE TERRITORY OF SOUTH WEST AFRICA

(& proved by the State President on 3 November 1989)

No. AC. 62

1^89

PROVISION FOR THE ESTABLISHMENT OF A CONSTITUENT ASSEMBLY FOR
SOUTH WEST AFRICA/NAMIBIA, AND FOR INCIDENTAL MATTERS

WHEREAS a constituent assembly is to be established for South West Africa/Namibia by way of free and fair election⁸ under the supervision and control of the United Nations pursuant to Security Council resolution 435 (1978):

AND WHEREAS I am called upon to make provision for the establishment of such constituent assembly;

AND WHEREAS certain aspects of the implementation of the provisions of this Proclamation are to be set out in an exchange of letters between myself and the Special Representative appointed by the Secretary-General of the United Nations and made known in the Official Gazette;

THEREFORE, under the power⁸ vested in me by Proclamation 181 of 19 August 1977, I hereby make the laws set out in the Schedule.

L. A. PIENAAR

Administrator-General

Windhoek, 6 November 1989

SCHEDULE

Definitions

1. In this Proclamation, unless the context indicates otherwise -

- (i) "Assembly" means the Constituent Assembly referred to in section 2; (iii)
- (ii) "Chairman" means the Chairman or Acting Chairman of the Assembly, as the case may be; (v)
- (iii) "Election Proclamation" means the Election (Constituent Assembly) Proclamation, 1989 (Proclamation AG. 49 of 1989); (iv)

/...

- (iv) "member" means an elected member of Assembly; (ii)
- (v) "registered party" means a political organisation regarded as registered for the election in terms of section 4 of the Registration of Political Organizations (Constituent Assembly) Proclamation, 1989 (Proclamation AC. 43 of 1989). (i)

Establishment of Constituent Assembly

2. (1) There is hereby established a Constituent Assembly, whose members shall be the persons elected in accordance with the provisions of the Election Proclamation, with power to -

(a) Draw up a constitution for South West Africa/Namibia:

(b) Adopt that Constitution as a whole by a two-thirds majority of its total membership, the result of such vote being subject to the scrutiny of members representing all registered parties in the Assembly:

(c) Declare South West Africa/Namibia to be an independent State on a date determined by it and on which date the Constitution adopted in terms of paragraph (b) shall come into force;

(d) Establish, subject to the provisions of that Constitution, a government for the independent State as aforesaid.

(2) Before determining the date of independence, the Assembly shall seek the views of the Administrator-General.

Vacation of seat by member of Assembly

3. (1) A member shall vacate his seat if he no longer represents the registered party in the Assembly by which he was nominated as a candidate at the election or by which he was nominated in terms of any provision of this Proclamation or the rules or orders of the Assembly.

(2) The validity of a decision of or any proceedings in the Assembly shall not be affected by the vote or participation of a member who subsequently vacated his seat in terms of subsection (1.), or by the fact that a vacancy existed in the Assembly at the time of such decision or proceedings.

Filling of casual vacancies in Assembly

4. Unless and until the Assembly determines otherwise -

(a) A casual vacancy in the Assembly shall be filled in the manner referred to in paragraph (b) within 14 days after it has occurred or within such further period as the Chairman may approve from time to time;

(b) A vacancy in the Assembly shall be filled by the Chairman declaring to be a duly elected member of the Assembly with effect from the date of the declaration, any qualified person who -

(i) Has been nominated in writing for that purpose by the registered party of which the vacating member was a candidate at the election in respect of the Assembly or which had nominated the vacating member under this section; and

(ii) Has accepted his nomination in writing;

(c) The Secretary or Acting Secretary of the Assembly, as the case may be, shall forthwith by notice in the Official Gazette make known particulars of any declaration referred to in paragraph (b).

Members of Assembly may be paid remuneration and allowances

5. (1) A member of the Assembly shall be paid such remuneration and allowances and shall be afforded such facilities as may be determined by the Assembly.

(2) The Assembly may determine different remuneration, allowances and facilities in respect of members holding different offices in the Assembly.

First meeting of Assembly

6. The first meeting of the Assembly shall take place at 10h00 at the Tinten Palast, Windhoek, one week after the day of certification of the election for the Assembly as contemplated in Security Council resolution 435 (1978).

Chairman of Assembly

7. (1) (a) The member whose name appears at the top of the list of candidates of the registered party which has attained the greatest number of seats in the Assembly in terms of the Election Proclamation, or any other member designated by him, shall be the Acting Chairman of the Assembly and shall open the proceedings at its first meeting.

(b) The first order of business of the Assembly shall be the election of the Chairman, presided over by the Acting Chairman,

(c) Unless the Assembly determines otherwise -

(i) A proposal of a candidate for election as Chairman shall be moved by a member and seconded by at least two other members;

(ii) The vote shall be by secret ballot and the candidate elected shall be the nominee who receives at least 37 votes:

(iii) If there are more than two candidates and no candidate receives the required number of votes, the candidate who received the smallest number of votes shall be eliminated and a further vote shall be taken in respect of the remaining candidates, this procedure being repeated as often as may be necessary. Provided that if there are two or more candidates with an equal number of votes being the lowest number of votes, in that case all of them shall be eliminated unless by such elimination only one candidate would remain;

(iv) If there are only two candidates or if only two candidates remain after the elimination of any candidate, and there are three successive inconclusive ballots the Acting Chairman shall call for new nominations, and the procedure specified in this paragraph shall be repeated.

(d) The result of each ballot in terms of this section shall be subject to the scrutiny of members representing all registered parties in the Assembly.

(2) Unless and until the Assembly determines otherwise, the Chairman elected in terms of sub-section (1), shall hold that office for as long as he is a member.

(3) Any vacancy in the office of Chairman shall be filled in accordance with the rules and orders of the Assembly.

(4) The provisions of this section shall not be construed as prohibiting the election or the designation by the Assembly of any vice-chairman or other office-bearer of the Assembly.

Rules and orders of Assembly

8. (1) The Assembly may make rules and orders with respect to the order and conduct of its business and proceedings.

(2) Unless and until the Assembly by any such rule or order provides otherwise -

(a) All-meetings of the Assembly shall take place on such times and at such places as may be determined by the Assembly or, if necessary, by the Chairman;

(b) The presence of at least 37 members shall be necessary to constitute a sitting of the Assembly for the exercise of its powers;

(c) Except as provided in section 2 (1) (b), the determination of all other questions in the Assembly shall require the favourable vote of at least 37 members;

(d) The Chairman or a member designated by him shall preside at any sitting of the Assembly and regulate the conduct of its business and proceedings;

(e) The Assembly may establish committees to perform such functions as the Assembly may determine;

(f) The Secretary or Acting Secretary, as the case may be, shall cause a record of the proceedings of the Assembly to be kept;

(g) The proceedings of the Assembly shall be open to the public.

Secretary and other officers of Assembly

9. (1) Until such time the Assembly appoints any person as Secretary for the Assembly or determines otherwise -

(a) The Administrator-General shall, in consultation with the Chairman, appoint a person, on such conditions as the Administrator-General may determine, as the Acting Secretary of the Assembly who shall perform the functions and duties assigned to him by this Proclamation or by the Assembly or the Chairman;

(b) The Acting Secretary shall, in the performance of his duties and functions, be assisted by persons temporarily appointed by him in consultation with the Chairman on such conditions as the Acting Secretary may determine;

(c) The Acting Secretary and all persons assisting him in the performance of his duties and functions, shall perform their duties and functions under the control of the Chairman.

(2) The Assembly may obtain the services of any person on such conditions as may be determined by agreement with such person.

Finance

10. The expenditure of the Assembly shall be defrayed out of moneys appropriated by the Administrator-General and approved by the Assembly for that purpose.

Immunity of members of Assembly

11. (1) No member of the Assembly shall, for the purposes of any legal process, be arrested without the approval of the Assembly.

(2) No member shall be liable to any legal proceedings by reason of his speech or vote in the Assembly or any committee of the Assembly.

Offences relating to Assembly

12. Any person who -

(a) Threatens or obstructs a member or endeavours by force or threats to compel a member to do or not to do any thing in connection with any matter relating to the Assembly; or

(b) While the Assembly is in session, creates or joins in any disturbance in the Assembly or in its vicinity, whereby the proceedings of the Assembly are or are likely to be interrupted, obstructed or disturbed; or

(c) When the Assembly is in session, uses any form of loudspeaker, otherwise than for official purposes, or who organizes or takes part in any procession of or demonstration by persons, within a radius of 300 metres from the Assembly,

shall be guilty of **an offence** and liable on conviction to a fine not exceeding R6 000 or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

Duty of protection

13. The Administrator-General shall, through his administration, ensure that the proceedings of the Assembly shall not be disturbed, and shall also protect, at the request of the Assembly or any authorised member thereof, the Assembly from any internal disturbances of its proceedings.

Interference in proceedings of Assembly prohibited

14. There shall be no interference or intervention by any authority, body, institution or person in the proceedings of the Assembly or with the implementation of its decisions.

Exclusion of jurisdiction of courts of law

15. No court of law shall have any jurisdiction to review, quash, reverse, interdict or otherwise interfere with any proceeding, act, power or duty performed, done or exercised under this Proclamation by the Assembly or any of its members or officers.

Short title

16. This Proclamation shall be called the Constituent Assembly Proclamation, 1989.

Annex II

Exchange of letters between the Special Representative of the
Secretary-General and the Administrator-General

A. Letter dated 3 November 1989 from the Special Representative
of the Secretary-General addressed to the Administrator-
General

In connection with the impending promulgation of the Constituent Assembly Proclamation, 1969, I would like to state the following:

1. In accordance with the relevant decisions of the Security Council, in particular resolutions 431 (1976) of 27 July 1976, 435 (1978) of 29 September 1976, 629 (1969) of 16 January 1969, 632 (1969) of 16 February 1969, 640 (1969) of 29 August 1969 and 643 (1969) of 31 October 1969, free elections will be held for the whole of Namibia as one political entity to enable the people of Namibia freely and fairly to determine their own future by selecting a Constituent Assembly to formulate and adopt a constitution for an independent Namibia.

2. If at any time during the functioning of the Constituent Assembly, the Special Representative is not satisfied that the Assembly is in a position to accomplish its tasks, freely and expeditiously, he shall promptly so inform the Administrator-General and will make any comments and proposals in this regard that he considers necessary.

3. In accordance with his mandate to ensure the orderly transition of Namibia to independence under the United Nations plan, the Special Representative will follow the work of the Constituent Assembly and will address to the Chairman of the Assembly such observations on its procedures and work as seem appropriate to him. In particular he will communicate formally to the Chairman the Principles concerning the Constituent Assembly and the Constitution for an independent Namibia which were accepted by all the parties concerned in 1962 (S/15267); these Principles, among other texts, were presented to the Secretary-General as agreed to by the parties: the Secretary-General referred to them in his report to the Security Council of 23 January 1969 (S/20412) and stated that "these agreements and understandings remain binding on the parties": the Security Council approved that report by paragraph 1 of resolution 632 (1969). The Special Representative will keep the Secretary-General fully informed on the procedures and work of the Constituent Assembly, with special reference to the incorporation of the Principles referred to above in the draft constitution which is being prepared for adoption by the Constituent Assembly. The Secretary-General, for his part, will keep the Security Council informed so that the Council may take such action as it deems appropriate.

I would appreciate receiving express confirmation of your acceptance of the proposals in this letter. Upon receipt of that confirmation, I will not raise objection to the promulgation of the Constituent Assembly Proclamation, 1989.

(Signed) Martti AHTISAARI
Special Representative
of the Secretary-General
for Namibia

B. Letter dated 33 November from the Administrator-General
addressed to the Special Representative of the
Secretary-General

I acknowledge the receipt of your letter of 3 November 1969 in connection with the impending promulgation of the Constituent Assembly Proclamation 1969.

I confirm that I have no objection to its contents. My acceptance thereof is without prejudice to and does not detract from my own responsibilities to ensure the orderly transition of South West Africa/Namibia to independence in accordance with the provisions of the Proclamation and Security Council resolution 435 (1978) as amplified, especially, by Security Council resolution 632 (1989).

(Signed) L. A. PIENAAR
Administrator-General

