

No. 30610

**UNITED NATIONS
and
SOUTH AFRICA**

Agreement concerning the legal status, privileges and immunities of the United Nations Observer Mission and its personnel in South Africa (with annexes). Signed at Pretoria on 14 December 1993

Authentic text: English.

Registered ex officio on 14 December 1993.

**ORGANISATION DES NATIONS UNIES
et
AFRIQUE DU SUD**

Accord relatif au statut légal, aux privilèges et immunités de la Mission d'observation des Nations Unies et de son personnel en Afrique du Sud (avec annexes). Signé à Pretoria le 14 décembre 1993

Texte authentique : anglais.

Enregistré d'office le 14 décembre 1993.

AGREEMENT¹ BETWEEN THE UNITED NATIONS AND THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA CONCERNING THE LEGAL STATUS, PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS OBSERVER MISSION AND ITS PERSONNEL IN SOUTH AFRICA

PREAMBLE

WHEREAS the Security Council, by its resolution 772 (1992) of 17 August 1992,² authorized the Secretary-General to deploy, as a matter of urgency, United Nations Observers in South Africa, in such a manner and in such numbers as he determines necessary to address effectively certain areas of concern which had been noted in his report on the question of South Africa (S/24389);

WHEREAS pursuant to the above-mentioned resolution and with the agreement of the South African Government and other concerned parties the United Nations Observer Mission in South Africa (hereinafter referred to as "UNOMSA") has been deployed to work in coordination with the structures set up under the National Peace Accord;

WHEREAS the Security Council, by the same resolution, called on the Government of South Africa, parties and organizations, and the structures set up under the National Peace Accord, to extend their full cooperation to the United Nations Observers so as to enable them to carry out their tasks effectively;

WHEREAS the Charter of the United Nations provides in its Article 105 (1) that the United Nations shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes;

WHEREAS the Government of South Africa shall as is set out in this agreement extend to the UNOMSA and its personnel in South Africa certain privileges and immunities as embodied in the Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly of the United Nations on 13 February 1946³ and certain other privileges and immunities which might be extended to diplomatic missions, their premises and personnel in accordance with the South African Diplomatic Immunities and Privileges Act, 1989 (No. 74 of 1989);

The Parties now hereby agree as follows:

¹ Came into force with retroactive effect from 13 September 1992, in accordance with section 54.

² United Nations, *Official Records of the Security Council, Forty-seventh Year, Resolutions and Decisions of the Security Council, 1992, (S/INF/48)*, p. 105.

³ *Ibid.*, *Treaty Series*, vol. 1, p. 15, and vol. 90, p. 327 (corrigendum to vol. 1, p. 18).

ARTICLE I: DEFINITIONS

Section 1. For the purpose of this Agreement, the following definitions shall apply:

- (a) "Charter" means Charter of the United Nations and Statute of the International Court of Justice;
- (b) "UNOMSA" means the United Nations Observer Mission in South Africa established pursuant to Security Council resolution 772 (1992) of 17 August 1992 with the terms of reference as described in the report of the Secretary-General of 7 August 1992 (S/24389);
- (c) "Secretary-General" means the chief administrative officer of the Organization as appointed by the General Assembly upon the recommendation of the Security Council;
- (d) "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;
- (e) "Resolution" means Security Council resolution 772 (1992) of 17 August 1992;
- (f) "Report" means the report of the Secretary-General of 7 August 1992 (S/24389) on the question of South Africa;
- (g) "South Africa" means the Republic of South Africa;
- (h) "Government" means the Government of the Republic of South Africa and all competent local authorities;
- (i) "Parties" means the United Nations and the Government;
- (j) "Head of Mission" means the United Nations official in charge of the UNOMSA office in South Africa;
- (k) "UNOMSA officials" means all members of the staff of UNOMSA employed under the Staff Rules and Regulations of the United Nations, with the exception of persons who are recruited locally and assigned to hourly rates as provided in General Assembly resolution 76 (I);¹
- (l) "Experts on Mission" means individuals undertaking missions for UNOMSA, other than UNOMSA officials or persons performing services on behalf of UNOMSA;
- (m) "Persons performing services on behalf of UNOMSA" means natural and juridical persons and their employees, other than nationals of the host country, retained by UNOMSA to execute or assist in the carrying out of its tasks;

¹United Nations, *Official Records of the General Assembly, First Session, Second Part (A/64/Add.1)*, p. 139.

- (n) "Senior official" means the Head, Deputy Head of Mission, and other officials as may be agreed;
- (o) "UNOMSA Personnel" means UNOMSA officials, experts on mission and persons performing services on behalf of UNOMSA during the period of performance;
- (p) "UNOMSA Office" means all offices or premises available to or occupied, maintained or used by the UNOMSA in South Africa for the purposes of carrying out its tasks in terms of resolution 772 (1992).

ARTICLE II. PURPOSE AND SCOPE OF THIS AGREEMENT

Section 2. This Agreement embodies the basic principles and conditions under which the UNOMSA shall carry out its tasks. For this purpose, offices will be established and United Nations Observers will be deployed in South Africa in such a manner and in such numbers as the Secretary-General in consultation with the Government determines necessary to address effectively the areas of concern noted in his report, in coordination with the structures set up under the National Peace Accord of 14 September 1991 which established a compromise framework, agreed upon by all the major parties, organizations and groups of South Africa, to end violence and to facilitate socio-economic development and reconstruction.

ARTICLE III. APPLICATION OF THE CONVENTION

Section 3. Pursuant to this Agreement, the Convention shall apply mutatis mutandis to the UNOMSA premises and the UNOMSA personnel in South Africa.

ARTICLE IV. STATUS OF UNOMSA

Section 4. The UNOMSA shall establish and maintain offices in South Africa for the purpose of discharging its functions in terms of resolution 772 (1992) and of this Agreement.

Section 5. UNOMSA personnel, in keeping with the terms of the resolution 772 (1992) and the relevant provision of the Charter, shall perform their functions in a strictly neutral, independent and non-partisan manner.

Section 6. The Government undertakes to respect the exclusively international nature and non-partisan character of the UNOMSA, and to permit in terms of Section 15 of this Agreement the movement of UNOMSA personnel throughout South Africa in order for UNOMSA to discharge its responsibilities effectively, provided that in normally restricted areas, namely airports and military installations, permits are to be applied for.

United Nations flag, emblem and markings

Section 7. The UNOMSA shall display the United Nations flag, and/or emblem at or on its office premises, official vehicles and

otherwise as agreed between the UNOMSA and the Government. Vehicles, vessels and aircraft of the UNOMSA shall carry a distinctive United Nations emblem or marking, which shall be timeously notified to the Government.

ARTICLE V. FACILITIES FOR UNOMSA

Section 8. The Government, in agreement with the UNOMSA, shall take such measures as may be appropriate to enable the UNOMSA to discharge its functions in South Africa speedily and effectively. Such measures shall include the authorization to operate UNOMSA radio equipment which has been licensed at the prescribed license fees and other telecommunications equipment which meets internationally accepted standards, and to import vehicles as necessary and to licence and register such vehicles with United Nations licence plates, and in respect of State-owned airports, the granting of air traffic rights, the exemption from airport charges (landing, parking and passenger fees) and other fees payable in the transportation of goods, equipment and personnel of UNOMSA.

Section 9. The UNOMSA may use any public roads, bridges, canals and other waterways and port facilities without the payment of dues, tolls, royalties or charges other than charges for services rendered, without prejudice to freedom of movement.

Section 10. It is understood, however, that where it is not feasible for the UNOMSA to obtain direct exemptions from payments of fees, tolls, royalties and other forms of charges, arrangements may be made whereby the Government can reimburse the UNOMSA for payments made in that regard.

Section 11. The Government undertakes to assist the UNOMSA, as far as possible, in obtaining and making available where applicable, appropriate office premises, water, electricity and other facilities required free of charge, or, where this is not possible or contrary to other provisions of this Agreement, at the most favourable rate, 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 the UNOMSA as to essential Government services. Any amounts due by the UNOMSA in this regard shall be settled on a basis to be agreed with the Government. The UNOMSA shall be responsible for the maintenance and upkeep of facilities so provided.

Section 12. The Government shall take all the measures, as may be agreed, to ensure the security and protection of the UNOMSA premises, the inviolability of its archives and the safety of UNOMSA personnel. The Government shall, upon the request of and in consultation with the Head of Mission, provide the UNOMSA with such enhanced security arrangements and take such special measures as the two parties may consider necessary for the effective exercise of UNOMSA's functions.