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Preamble

The Government of the Republic of South Africa and the Government of the Kingdom of Lesotho (hereinafter called "the Parties");

Considering the value of the water resources in Southern Africa;
Recognizing the advantages of regional development and that co-operation between the Parties with regard to the development of mutual water resources can significantly contribute towards the peace and prosperity of the Southern African region and the welfare of its peoples;
Desiring to enhance the conditions of life of the people of the Kingdom of Lesotho and the Republic of South Africa by raising the level of development of those resources;
Considering the mutual benefits for the Kingdom of Lesotho and the Republic of South Africa to be derived from the enhancement, conservation and equitable sharing of the water resources of the Senqu/Orange River and its affluents, and taking account of their particular natural advantages; and
Wishing to promote the traditions of good neighbourly relations and peaceful co-operation between the Parties;
hereby agree as follows:

Article 1: Definitions

(1) In this Treaty, unless inconsistent with the context —

“Average Annual Electricity Price” means —
the average unit price of all electricity sold in any one year by ESCOM or its successors in the Republic of South Africa, which price is published in the annual reports and accounts of ESCOM or its successors;

“Customs Union Agreement” means —
the Customs Union Agreement of 11 December 1969 between the Governments of the Republic of South Africa, Botswana, Lesotho and Swaziland and all memoranda and addenda thereto;

“Customs Union” means —
the Customs Union established in terms of the Customs Union Agreement;

“Designated Delivery Point” means —
that point, situated at the Caledon River, in the conveyance system connecting the tailpond dam of the hydroelectric power complex of the Project with the Designated Outlet Point;

“Designated Outlet Point” means —
that point of outlet of the conveyance system connecting the tailpond dam of the hydroelectric power complex of the Project to the catchment of the Ash River in the Republic of South Africa or such other point or points as may be agreed upon by the Parties;

“Due Date” means —
the date at which payments in terms of paragraphs (15), (16), (17) and

(18) of Article 12 and paragraph (1) of Article 13 become due, which date in each instance is specified in accordance with the provisions of paragraph (21) of Article 12 and paragraph (2) of Article 13, as the case may be;

“Financial Year” means —

a period of twelve months commencing 1 April of any given year and ending 31 March of the following year, both dates inclusive;

“Hydrological Year” means —

a period of twelve months commencing 1 October of any given year and ending 30 September of the following year, both dates inclusive;

“Internationally Recognized Standards” means —

the best relevant national or international standard of competence, expertise and practice;

“Lesotho” means —

the Government of the Kingdom of Lesotho;

“Lesotho Central Bank” means —

the Central Bank of Lesotho established by the Lesotho Monetary Authority Act, 1978;

“Nominal Annual Yield” means —

that quantity of water determined from time to time in accordance with the provisions of paragraph (5) of Article 7;

“Present Value” means —

the 1995 equivalent value of costs, computed in accordance with the procedures set out in the Royalty Manual;

“Production Price Index” means —

the Production Prices Index (Commodities for South African Consumption) issued monthly by the Central Statistical Services of South Africa;

“Project” means —

that water delivery project ultimately delivering seventy cubic metres of water per second consequent upon the implementation of the phases provided for in paragraph (1) of Article 5 as well as the concomitant hydroelectric power project identified in Annexure I;

“Project Implementation” means —

all the steps required to complete the Project to its operating state including studies, investigations, designs, procurement of equipment, construction and commissioning;

“Project Works” means —
all constructions, installations, facilities, equipment, supplies and infrastructure of a temporary or permanent nature comprising the Project or required for implementing the Project;

“Royalty Manual” means —
the technical document denoted as such and agreed to by the Parties by way of Protocol I to this Treaty and annexed thereto;

“SACU Study” means —
the technical document denoted as such and agreed to by the Parties by way of Protocol II to this Treaty and annexed thereto;

“Scheduled Monthly Demand” means —
that portion of the minimum quantity of water specified for any one calendar year in Annexure II scheduled by the Lesotho Highlands Development Authority in operation plans compiled in terms of paragraph (7) of Article 7 for delivery each month during such year;

“South Africa” means —
the Government of the Republic of South Africa;

“South African Reserve Bank” means —
the central bank of the Republic of South Africa operating in terms of the South African Reserve Bank Act, No. 29 of 1944;

and cognate expressions shall be construed accordingly.

- (2) “Delivery to South Africa” shall mean delivery at the Designated Delivery Point and cognate expressions shall be construed accordingly.
- (3) The term “phase” shall include “sub-phase” unless otherwise indicated or inconsistent with the context.
- (4) The terms “Article” and “Annexure” mean respectively an Article of, and an Annexure to, this Treaty. Except as otherwise indicated, reference to a paragraph is to a paragraph in the Article or in the Annexure in which the reference is made.
- (5) Annexures I to III shall be read with and shall form an integral part of this Treaty.

Article 2: Designated authorities at Government level

- (1) Unless otherwise specified in this Treaty, the Parties respectively designate the following authorities to implement the provisions of this Treaty:
 - (a) on the part of Lesotho, the Ministry of Water, Energy and Mining or such other Ministry as may be designated from time to time in order to implement specific provisions of this Treaty; and

- (b) on the part of South Africa, the Department of Water Affairs or such other Departments of State as may be designated from time to time in order to implement specific provisions of this Treaty.
- (2) Each Party shall have the power to effect changes to any such designation provided for in paragraph (1) and shall promptly notify, as far as possible in advance, the other Party of any such change.

Article 3: Purpose of the treaty

The purpose of this Treaty shall be to provide for the establishment, implementation, operation and maintenance of the Project.

Article 4: Purpose of the project

- (1) The purpose of the Project shall be to enhance the use of the water of the Senqu/Orange River by storing, regulating, diverting and controlling the flow of the Senqu/Orange River and its affluents in order to effect the delivery of specified quantities of water to the Designated Outlet Point in the Republic of South Africa and by utilizing such delivery system to generate hydroelectric power in the Kingdom of Lesotho.
- (2) Without prejudice to the provisions of paragraph (1) each Party shall be allowed the opportunity to undertake ancillary developments in its territory, including:
 - (i) the provision of water for irrigation, potable water supply and other uses;
 - (ii) the development of other projects to generate hydroelectric power; and
 - (iii) the development of tourism, fisheries and other projects for economic and social development.

Article 5: Project implementation

- (1) The Project shall be implemented by way of any or all of the phases described in Annexure I or such additional phases as may be required ultimately to deliver seventy cubic metres of water per second: Provided that any phase described in Annexure I may be modified by agreement between the Parties.
- (2) Unless the Parties decide otherwise, each phase of the Project shall be implemented in time to satisfy the minimum water deliveries as specified in Annexure II. Water deliveries to South Africa from Sub-phase IA of the Project shall be due to commence in the year 1995 and water deliveries to South Africa from Sub-phase IB of the Project shall be due to commence in the year 2002.
- (3) The conveyance systems for the discharge from the most downstream hydroelectric power station in the Kingdom of Lesotho shall be de-

signed, built, operated and maintained in such a manner that neither Party shall be in a position to interfere unilaterally with the flow of water to the Designated Delivery Point.

- (4) The conveyance systems referred to in paragraph (3) shall be designed, built, operated and maintained in such a manner that:
 - (a) the hydroelectric power generation shall not be affected when, for any reason, all or part of the water due to be delivered to South Africa cannot be received at the Designated Outlet Point; and
 - (b) the flow of water to the Designated Outlet Point shall not be impaired when, for any reason, all or part of the water due to be delivered to South Africa cannot be passed through the hydroelectric power complex forming part of the Project.
- (5) The outlet facilities at the dam of the tailpond reservoir of the hydroelectric power complex forming part of the Project shall be designed, built, operated and maintained in such a manner that the maximum discharge from such outlet facilities, other than a discharge by means of a spillway, cannot exceed eight cubic metres of water per second.

Article 6: General duties regarding the Project

- (1) The Parties shall use their best endeavours to secure and facilitate the implementation of the Project: Provided that the implementation of each phase of the Project subsequent to Phase I, shall be subject to the consent of each Party prior to such implementation and provided further that, without prejudice to the provisions of Article 12, a Party not consenting to the implementation of any such subsequent phase of the Project shall compensate the other Party for any wasted Project implementation costs reasonably expended by such other Party in anticipation of the implementation of such subsequent phase.
- (2) Lesotho shall, in accordance with the provisions of this Treaty, have the overall responsibility for that part of the Project situated in the Kingdom of Lesotho and the security thereof.
- (3) South Africa shall, in accordance with the provisions of this Treaty, have the overall responsibility for that part of the Project situated in the Republic of South Africa and the security thereof.
- (4) Lesotho shall establish the Lesotho Highlands Development Authority as an autonomous statutory body under the laws of the Kingdom of Lesotho in accordance with the provisions of this Treaty.
- (5) South Africa shall establish the Trans-Caledon Tunnel Authority as an autonomous statutory body by means of appropriate legislation in accordance with the provisions of this Treaty.
- (6) The Parties hereby establish the Joint Permanent Technical Commission in accordance with the provisions of this Treaty.
- (7) Lesotho shall, in accordance with the provisions of this Treaty, ensure

the delivery of such quantities of water as specified in Annexure II, to South Africa.

- (8) Neither of the Parties shall cause or permit under any circumstance nor for any reason whatsoever any unilateral interference with the delivery of water to the Designated Outlet Point.
- (9) Lesotho shall, in accordance with the provisions of this Treaty, ensure that minimum rates of flow as provided for in Article 7 be maintained in the natural river channel downstream of each of the Project dams.
- (10) Each Party shall, in respect of its territory, provide the Lesotho Highlands Development Authority and the Trans-Caledon Tunnel Authority respectively, with all powers, authorizations, exemptions and rights necessary for the implementation, operation and maintenance of the Project, including the procurement of land and interest in land. Each Party shall engage its best endeavours to assist any such Authority in obtaining, in an expeditious manner so as not to delay the Project, land or any interest in land required for such purposes.
- (11) Each Party shall provide the Lesotho Highlands Development Authority, the Trans-Caledon Tunnel Authority, and the Joint Permanent Technical Commission, respectively with all the necessary access rights required in the course of the implementation, operation and maintenance of the Project.
- (12) The Parties shall, subject to the normal requirements of national legislation, secure the granting of visas and other travel documents to personnel engaged in the implementation, operation and maintenance of the Project and shall ensure the necessary freedom of access to the locations of the Project Works to such personnel.
- (13) Each Party shall enact appropriate legislation to enable it to give effect to the terms of this Treaty and shall ensure that all such legislation be enacted in time to allow for the effective implementation, operation and maintenance of the Project.
- (14) The implementation, operation, maintenance, safety inspection and monitoring procedures of the Project Works shall be carried out in accordance with Internationally Recognized Standards.
- (15) Lesotho shall take the necessary measures to prevent or abate any significant pollution of the water to be delivered to South Africa. The Parties shall consult through the Joint Permanent Technical Commission with a view to reaching agreement with regard to the defrayment of the reasonable costs for prevention or abatement of pollution caused by adverse effects of the Project.
- (16) Notwithstanding the tied finance or tied finance guarantee requirements of financing institutions, tendering for the Project Works shall be by competitive bidding without discrimination as to the nationality of any tenderer, unless the Parties approve of such requirements. The ap-

proval of South Africa shall not be required with regard to such tied finance or tied finance guarantee requirements in respect of that part of the Project Works solely concerned with generating hydroelectric power in the Kingdom of Lesotho, unless only tenderers of South African nationality are precluded from tendering in terms of such requirements.

- (17) The consulting services relating to the delivery of water to South Africa shall allow for the contribution of consultants nominated by South Africa to the extent of not less than fifty per cent in value with regard to that part of the Project situated in the Kingdom of Lesotho.
- (18) Neither Party shall apply quantitative restrictions on goods, materials, plant, equipment or services, whether produced or manufactured in the territory of any of the Parties or imported from outside such territories, required for the implementation, operation or maintenance of the Project or any phase thereof. The procurement of all such goods, materials, plant, equipment or services shall be without any restriction whatsoever as regards the primary or secondary source of supply except as may be required by tied finance or tied finance guarantee arrangements and shall be without prejudice to the provisions of paragraphs (16) and (17).

Article 7: Lesotho Highlands Development Authority

- (1) The Lesotho Highlands Development Authority shall have the responsibility for the implementation, operation and maintenance of that part of the Project situated in the Kingdom of Lesotho, in accordance with the provisions of this Treaty, and shall be vested with all powers necessary for the discharge of such responsibilities.
- (2) Subsequent to the implementation of Sub-phase IA of the Project, the Lesotho Highlands Development Authority shall annually deliver such minimum quantities of water as specified for each calendar year in Annexure II, to South Africa at the Designated Delivery Point: Provided that any shortfall in the delivery of the minimum quantity of water specified for any calendar year in Annexure II may be recouped utilizing water delivered in excess of the Scheduled Monthly Demands during the six months following the end of such year which quantity of water so utilized shall constitute part of the water deliveries for the calendar year in respect of which the shortfall is recouped and provided further that on the request of South Africa, the annual quantities of water specified in Annexure II shall be adjusted in accordance with changes as projected by South Africa in the water use requirements in the Republic of South Africa and provided further that adjustments shall be made to only those annual quantities of water specified in Annexure II which exceed the total of the Nominal Annual Yield and the yield forecast by

the Lesotho Highlands Development Authority for Sub-phase IB or as the case may be, the total of the Nominal Annual Yield and such yield forecast by such Authority for any phase of the Project which is being implemented at the time of such adjustment which yield forecasts shall be established on the same basis as the Nominal Annual Yield.

- (3) Without prejudice to the provisions of paragraph (2), the Lesotho Highlands Development Authority shall, up to the date water deliveries from Phase II of the Project commence, annually deliver to South Africa the quantity of water equal to the Nominal Annual Yield: Provided that the Lesotho Highlands Development Authority shall not be obliged to deliver to South Africa the quantity of water in excess of the minimum quantity specified for the relevant year in Annexure II required for the initial filling of reservoirs forming part of the Project and provided further that in the event of insufficient inflow into the storage reservoirs forming part of the Project, the Lesotho Highlands Development Authority shall be obliged to deliver only such quantity of water in excess of the minimum specified for that particular year in Annexure II as shall be prescribed by reservoir operating rules constituted by the applicable operation plan compiled in accordance with the provisions of paragraph (7).
- (4) The quantity of water to be delivered in each calendar year by the Lesotho Highlands Development Authority to South Africa either in terms of paragraph (2) or (3) as the case may be, shall be delivered in monthly quantities scheduled in operation plans established in accordance with the provisions of paragraph (7).
- (5) The Lesotho Highlands Development Authority shall from time to time establish the Nominal Annual Yield which shall be that quantity of water, the annual delivery of which from the phases of the Project implemented at that stage can be maintained continuously on a long term basis with a reliability of ninety-eight per cent.
- (6) In the event of the storage reservoirs forming part of the Project being at full storage capacity, the Lesotho Highlands Development Authority may, if agreed to by South Africa, and in accordance with reservoir operating rules constituted by the applicable operation plan compiled in accordance with the provisions of paragraph (7), deliver to South Africa in any one calendar year, water in excess of the Nominal Annual Yield: Provided that should South Africa not agree to such delivery the Lesotho Highlands Development Authority shall have the right to pass such water through the hydroelectric power complex forming part of the Project.
- (7) The Lesotho Highlands Development Authority shall, two months prior to the end of 1994 and the end of each subsequent calendar year, compile for the ensuing calendar year, operation plans in respect of all

- water deliveries to South Africa as provided for in this Article as well as the generation of hydroelectric power in the Kingdom of Lesotho. Such plans shall allow for operational contingencies and shall be adjusted and updated during the course of such calendar year whenever changing circumstances necessitate such adjustment and updating.
- (8) The Lesotho Highlands Development Authority shall monitor the quantity of water delivered to South Africa and, jointly with the Trans-Caledon Tunnel Authority, shall at the end of each calendar month take the measure of the quantity of water so delivered during that month, at the measuring point in the conveyance system connecting the tailpond dam of the hydroelectric power complex of the Project with the Designated Outlet Point: Provided that if the Lesotho Highlands Development Authority or the Trans-Caledon Tunnel Authority should dispute such measurement the Joint Permanent Technical Commission shall resolve such dispute by determining the quantity of water which shall be deemed to have been delivered to South Africa.
 - (9) The Lesotho Highlands Development Authority shall at all times maintain rates of flow in the natural river channels immediately downstream of the Katse and Mohale dams of not less than five hundred and three hundred litres per second respectively and shall, if so required, release the quantities of water, from either the Katse or Mohale reservoirs as the case may be, necessary to maintain such rates of flow: Provided that subsequent to the implementation of Phase II of the Project, such rates of flow may be adjusted by agreement between the Parties and provided further that in the event of either reservoir being at its minimum operating level, the quantities of water released shall be equal to the flow rate into such reservoir not in excess of the specified rate of release.
 - (10) The Lesotho Highlands Development Authority shall on the request of Lesotho release into the natural river channels downstream of the headpond and tailpond reservoirs forming part of the hydroelectric power complex the quantities of water which have originated in the catchment areas of these reservoirs. In the event of such quantities not being released by way of overflow from such reservoirs, the relevant quantities shall be released through the low level outlets of such reservoirs.
 - (11) Prior to the implementation of any phase subsequent to Phase I, the minimum rate of flow to be maintained in the natural river channels downstream of dams forming part of such phase, shall be established by agreement between the Parties.
 - (12) Without prejudice to the provisions of paragraph (2) of Article 17 the minimum rate of flow to be maintained in the Senqu/Orange River from the Kingdom of Lesotho to the Republic of South Africa, shall be established by agreement between the Parties from time to time.
 - (13) The Lesotho Highlands Development Authority shall, of the water to

be delivered to South Africa in terms of this Treaty, release such quantity as may be requested by either Party and subject to agreement by the other Party, downstream of any storage reservoir forming part of the Project: Provided that the Joint Permanent Technical Commission shall establish the procedure to be followed in the event of such releases including the measurement of such quantities of water.

- (14) The Lesotho Highlands Development Authority shall, of the water to be delivered to South Africa in terms of this Treaty, release such quantity as may be requested by Lesotho and subject to agreement by South Africa, at abstraction points in the conveyance system upstream of the hydroelectric power complex of the Project: Provided that the Joint Permanent Technical Commission shall establish the procedure to be followed in the event of such abstractions including the measurement of such quantities of water.
- (15) The Lesotho Highlands Development Authority shall provide the Joint Permanent Technical Commission with all information, as and when required by such Commission, regarding all operational aspects of any phase of the Project implemented at that stage.
- (16) The Lesotho Highlands Development Authority shall give its full cooperation to the Joint Permanent Technical Commission and shall give full effect to the applicable provisions of Article 9.
- (17) The Lesotho Highlands Development Authority shall carry out its functions in accordance with Internationally Recognized Standards of managerial and technical competence, expertise and practice and to this end shall appoint, whenever appropriate, project management, design, financial or other consultants.
- (18) The Lesotho Highlands Development Authority shall effect all measures to ensure that members of local communities in the Kingdom of Lesotho, who will be affected by flooding, construction works, or other similar Project related causes, will be enabled to maintain a standard of living not inferior to that obtaining at the time of first disturbance: Provided that such Authority shall effect compensation for any loss to such member as a result of such Project related causes, not adequately met by such measures.
- (19) The Lesotho Highlands Development Authority shall, as provided for in paragraph (6) of Article 10, establish comprehensive accounting and costing systems in accordance with the recommendations of financial management system consultants. Such systems shall be subject to periodical review. The Joint Permanent Technical Commission shall have the right to request such review.
- (20) The Lesotho Highlands Development Authority shall establish effective and comprehensive management information systems including performance indicators, which shall be used to provide the information

required for management decision making during the implementation, operation and maintenance of that part of the Project entrusted to such Authority.

- (21) The Lesotho Highlands Development Authority shall, on the basis of the accounting and costing systems and procedures referred to in paragraph (19), apportion all costs incurred by such Authority as costs attributable to the delivery of water to South Africa and costs attributable to the generation of hydroelectric power in the Kingdom of Lesotho as well as for developments envisaged by the provisions of paragraph (2) of Article 4.
- (22) The Lesotho Highlands Development Authority shall effect all necessary catchment conservation measures as well as all measures necessary to prevent pollution of the water to be delivered to South Africa and pollution caused by the adverse effects of the implementation of the Project.
- (23) The Lesotho Highlands Development Authority shall, at least six months prior to the commencement of each phase of the Project and thereafter during the course of the implementation, operation and maintenance of such phase at least four months prior to the commencement of each Financial Year, separately, in respect of that part of the Project relating to the delivery of water to South Africa and in respect of that part of the Project relating to the generation of hydroelectric power in the Kingdom of Lesotho, compile:
 - (a) a long term cost plan. Such plan shall differentiate between capital and operating costs and shall identify the total estimated for such phase and contain an analysis of such expenditure on an annual basis. Such plan shall further include an estimate of contingency costs on an annual basis covering the period of the long term cost plan;
 - (b) a detailed cost plan covering the ensuing Financial Year. Such plan shall differentiate between capital and operating costs and shall identify the total estimated expenditure for such year and contain an analysis of such expenditure on a monthly basis. Such plan shall further include an estimate of contingency costs with regard to such Financial Year as well as each month covered.
 - (c) a long term funding plan identifying the total funding for such phase by way of loans, credit facilities and other borrowings and shall provide an analysis thereof on an annual basis;
 - (d) a short term funding plan for the ensuing Financial Year identifying the total funding for such year by way of loans, credit facilities or other borrowings and shall provide an analysis thereof on a monthly basis;

- (e) a schedule of the repayment of all loans, credit facilities and other borrowings covering the repayment of capital, interest and financing charges;
 - (f) a long term cash flow forecast for such phase and shall provide an analysis of such cash flow on an annual basis. Such forecast shall *inter alia* identify any foreign exchange requirements; and
 - (g) a detailed cash flow forecast for the ensuing Financial Year, and shall provide an analysis of such cash flow on a monthly basis. Such forecast shall *inter alia* identify any foreign exchange requirements.
- (24) The Lesotho Highlands Development Authority shall compile, at regular intervals, reconciliation statements with regard to all long term plans, forecasts and schedules referred to in paragraph (23) and shall update them to the extent necessitated by such reconciliation: Provided that such plans, forecasts or schedules shall further be reconciled and updated whenever an event or occurrence results in a significant variation thereof.
- (25) The Lesotho Highlands Development Authority shall compile on a monthly basis reconciliation statements with regard to all short term plans and forecasts referred to in paragraph (23) and shall account for any significant difference regarding any such plans or forecasts. Such plans and forecasts shall be updated on a monthly basis to the extent necessitated by such reconciliation.
- (26) The books and accounts of the Lesotho Highlands Development Authority shall be subject to annual and independent external auditing by chartered accountants.
- (27) The Lesotho Highlands Development Authority shall establish separate banking accounts for:
- (a) all amounts received from South Africa as cost related payments as provided for in Article 10 as well as amounts drawn down on loans or other borrowings procured for the implementation, operation and maintenance of that part of the Project relating to the delivery of water to South Africa; and
 - (b) all amounts received from Lesotho as cost related payments as provided for in Article 10 as well as all amounts drawn down on loans and other borrowings procured for the implementation, operation and maintenance of that part of the Project relating to the generation of hydroelectric power in the Kingdom of Lesotho or for the developments envisaged by the provisions of paragraph,(2) of Article 4.

Such banking accounts shall be established with the Central Bank of Lesotho or such other banking institution as approved, in respect of

amounts referred to in sub-paragraph (a), by the Joint Permanent Technical Commission and in respect of amounts referred to in sub-paragraph (b) by Lesotho.

- (28) The Lesotho Highlands Development Authority shall, if necessary to meet foreign expenditure and subject to the approval of the appropriate authorities of both Parties, establish with banking institutions outside the territory of either Party separate banking and deposit accounts for all monies drawn down on loans and other borrowings obtained from outside such territories and procured for the implementation, operation and maintenance of that part of the Project:
- (a) relating to the delivery of water to South Africa; and
 - (b) relating to the generation of hydroelectric power in the Kingdom of Lesotho or for the developments envisaged by the provisions of paragraph (2) of Article 4.
- (29) All monies held by the Lesotho Highlands Development Authority in any banking account and not immediately required to effect any payment shall be placed on deposit at market related interest rates.
- (30) All interest accruing on monies in the accounts referred to in paragraphs (27) and (28) shall be utilized exclusively for the implementation, operation and maintenance of that part of the Project for which the monies bearing such interest shall have been obtained.
- (31) The Lesotho Highlands Development Authority shall take out insurance against all loss or damage from whatever cause and against risks and public liabilities, which may arise in the course of implementing, operating and maintaining that part of the Project which is entrusted to such Authority, on the basis of normal commercial considerations.
- (32) All managerial and professional staff positions of the Lesotho Highlands Development Authority shall be filled by personnel in possession of appropriate qualifications and experience for such appointments.
- (33) The Lesotho Highland Development Authority shall be managed and controlled by a Board of Directors which shall be appointed by Lesotho and shall comprise a Chairman and such other members as shall be appointed on merit for their managerial, technical and financial qualifications and experience.
- (34) The Board of Directors shall establish the policy of the Lesotho Highlands Development Authority in accordance with the provisions of this Treaty giving priority to its duties arising from the delivery of water to South Africa and the generation of hydroelectric power in the Kingdom of Lesotho, as its primary functions.
- (35) Lesotho shall appoint a Chief Executive who shall have appropriate qualifications and experience for such appointment.
- (36) The Chief Executive shall implement the policies laid down by the Board of Directors of the Lesotho Highlands Development Authority.

- (37) The Chief Executive of the Lesotho Highlands Development Authority shall be under the obligation to consult with and to give his full cooperation to the Joint Permanent Technical Commission.
- (38) In carrying out his duties and in implementing the policies established by the Board of Directors the Chief Executive shall *inter alia* be responsible for:
- (a) presenting proposals concerning the implementation, operation and maintenance of that part of the Project which is entrusted to the Lesotho Highlands Development Authority and concerning the internal administration and procedures of such Authority to the Board of Directors and to the Joint Permanent Technical Commission for approval;
 - (b) preparing and presenting to the Board of Directors and the Joint Permanent Technical Commission for approval the annual budget and proposals for borrowings of the Lesotho Highlands Development Authority;
 - (c) controlling the expenditure and borrowings of the Lesotho Highlands Development Authority within limits set by the Board of Directors and ensuring that the costs incurred are accurately recorded and allocated to the appropriate cost centre;
 - (d) providing the Board of Directors and the Joint Permanent Technical Commission with the information they require or request for the discharge of their duties;
 - (e) issuing all tender documents and signing all agreements, undertakings and contracts on behalf of the Lesotho Highlands Development Authority;
 - (f) appointing and terminating the appointment of all managerial, professional and administrative staff; and
 - (g) such other duties as the Board of Directors may from time to time assign to such Chief Executive.
- (39) The Office of the Chief Executive of the Lesotho Highlands Development Authority shall act as the main channel of communication between such Authority and the Joint Permanent Technical Commission.
- (40) The Chief Executive of the Lesotho Highlands Development Authority shall give advance notification of at least five calendar days to the Joint Permanent Technical Commission of all meetings provided for in paragraph (21) of Article 9 and shall provide copies of all relevant documents in good time.

Article 8: Trans-Caledon Tunnel Authority

- (1) The Trans-Caledon Tunnel Authority shall have the responsibility for the implementation, operation and maintenance of that part of the Project in the Republic of South Africa, in accordance with the provisions

of this Treaty, and shall be vested with all powers necessary for the discharge of such responsibilities.

- (2) Notwithstanding the provisions of paragraph (1) of Article 7, the Trans-Caledon Tunnel Authority may be entrusted by the Parties, furthermore, with the responsibility for the implementation, operation and maintenance of that part of the water conveyance system situated in the Kingdom of Lesotho; for this purpose, the Trans-Caledon Tunnel Authority shall be vested by Lesotho with all powers, authorizations and exemptions necessary for the discharge of such responsibilities and shall furthermore maintain close liaison with the Lesotho Highlands Development Authority in relation to the implementation of the water conveyance system without prejudice, however, to the title or any other rights in respect of the said water conveyance system and related land.
- (3) The Trans-Caledon Tunnel Authority shall monitor the quantity of water delivered to South Africa and, jointly with the Lesotho Highlands Development Authority, shall at the end of each calendar month take the measure of the quantity of water so delivered during that month, at the measuring point in the conveyance system connecting the tailpond dam of the hydroelectric power complex of the Project with the Designated Outlet Point: Provided that if the Lesotho Highlands Development Authority or the Trans-Caledon Tunnel Authority should dispute such measurement the Joint Permanent Technical Commission shall resolve such dispute by determining the quantity of water which shall be deemed to have been delivered to South Africa.
- (4) The Trans-Caledon Tunnel Authority shall provide the Joint Permanent Technical Commission with all information as and when required by such Commission, regarding all operational aspects of any phase of the Project implemented at that stage.
- (5) The Trans-Caledon Tunnel Authority shall give its full co-operation to the Joint Permanent Technical Commission and shall give full effect to the applicable provisions of Article 9.
- (6) The Trans-Caledon Tunnel Authority shall carry out its functions in accordance with Internationally Recognized Standards of managerial and technical competence, expertise and practice and to this end shall appoint, whenever appropriate, project management, design, financial or other consultants.
- (7) The Trans-Caledon Tunnel Authority shall as provided for in paragraph (6) of Article 10, establish comprehensive accounting and costing systems in accordance with the recommendations of financial management system consultants. Such systems shall be subject to periodical review. The Joint Permanent Technical Commission shall have the right to request such review.
- (8) The Trans-Caledon Tunnel Authority shall establish effective and

comprehensive management information systems including performance indicators, which shall be used to provide the information required for management decision making during the design, implementation, operation and maintenance of that part of the Project entrusted to such Authority.

- (9) The Trans-Caledon Tunnel Authority shall, on the basis of the accounting and costing systems and procedures referred to in paragraph (7), apportion all costs incurred by such Authority as costs attributable to the delivery of water to South Africa and costs attributable to the generation of hydroelectric power in the Kingdom of Lesotho as well as for developments envisaged by the provisions of paragraph (2) of Article 4.
- (10) The Trans-Caledon Tunnel Authority shall effect all necessary catchment conservation measures as well as all measures necessary to prevent pollution of the water to be delivered to South Africa and pollution caused by the adverse effects of the implementation of the Project.
- (11) The Trans-Caledon Tunnel Authority shall, at least six months prior to the commencement of each phase of the Project and thereafter during the course of the implementation, operation and maintenance of such phase at least four months prior to the commencement of each Financial Year, separately, in respect of that part of the Project relating to the delivery of water to South Africa and in respect of that part of the Project relating to the generation of hydroelectric power in the Kingdom of Lesotho, compile:
 - (a) a long term cost plan. Such plan shall differentiate between capital and operating costs and shall identify the total estimated expenditure for such phase and contain an analysis of such expenditure on an annual basis. Such plan shall further include an estimate of contingency costs on an annual basis covering the period of the long term cost plan;
 - (b) a detailed cost plan covering the ensuing Financial Year. Such plan shall differentiate between capital and operating costs and shall identify the total estimated expenditure for such year and contain an analysis of such expenditure on a monthly basis. Such plan shall further include an estimate of contingency costs with regard to such Financial Year as well as each month covered;
 - (c) a long term funding plan identifying the total funding for such phase by way of loans, credit facilities or other borrowings and shall provide an analysis thereof on an annual basis;
 - (d) a short term funding plan for the ensuing Financial Year identifying the total funding for such year by way of loans, credit facilities or other borrowings and shall provide an analysis thereof on a monthly basis;
 - (e) a schedule of the repayment of all loans, credit facilities and other

borrowings, covering the repayment of capital, interest and financing charges;

- (f) a long term cash flow forecast for such phase and shall provide an analysis of such cash flow on an annual basis. Such forecast shall *inter alia* identify any foreign exchange requirements; and
 - (g) a detailed cash flow forecast for the ensuing Financial Year, and shall provide an analysis of such cash flow on a monthly basis. Such forecast shall *inter alia* identify any foreign exchange requirements.
- (12) The Trans-Caledon Tunnel Authority shall compile, at regular intervals, reconciliation statements with regard to all long term plans, forecasts and schedules referred to in paragraph (11) and shall update them to the extent necessitated by such reconciliation: Provided that such plans, forecasts or schedules shall further be reconciled and updated whenever an event or occurrence results in a significant variation thereof.
- (13) The Trans-Caledon Tunnel Authority shall compile on a monthly basis reconciliation statements with regard to all short term plans and forecasts referred to in paragraph (11) and shall account for any significant difference regarding any such plans or forecasts. Such plans and forecasts shall be updated on a monthly basis to the extent necessitated by such reconciliation.
- (14) The books and accounts of the Trans-Caledon Tunnel Authority shall be subject to annual and independent external auditing by chartered accountants.
- (15) The Trans-Caledon Tunnel Authority shall establish separate banking accounts for:
- (a) all amounts received from South Africa as cost related payments as provided for in Article 10 as well as all amounts drawn down on loans or other borrowings procured for the implementation, operation and maintenance of that part of the Project relating to the delivery of water to South Africa; and
 - (b) all amounts received from Lesotho as cost related payments as provided for in Article 10 as well as all amounts drawn down on loans and other borrowings procured for the implementation, operation and maintenance of that part of the Project relating to the generation of hydroelectric power in the Kingdom of Lesotho or for the developments envisaged by the provisions of paragraph (2) of Article 4.

Such accounts shall be established with the South African Reserve Bank or such other banking institution as approved, in respect of amounts referred to in sub-paragraph (a), by South Africa and in respect of

amounts referred to in sub-paragraph (b) by the Joint Permanent Technical Commission.

- (16) The Trans-Caledon Tunnel Authority shall, if necessary to meet foreign expenditure and subject to the approval of the appropriate authorities in the Republic of South Africa, establish with banking institutions outside the territory of either Party separate banking accounts for all monies drawn down on loans and other borrowings obtained from outside such territories and procured for the implementation, operation and maintenance of that part of the project:
 - (a) relating to the delivery of water to South Africa; and
 - (b) relating to the generation of hydroelectric power in the Kingdom of Lesotho or for the developments envisaged by the provisions of paragraph (2) of Article 4.
- (17) All monies held by the Trans-Caledon Tunnel Authority in any banking account and not immediately required to effect any payment, shall be placed on deposit at market related interest rates.
- (18) All interest accruing on monies in the accounts referred to in paragraphs (15) and (16) shall be utilized exclusively for the implementation, operation and maintenance of that part of the Project for which the monies bearing such interest shall have been obtained.
- (19) The Trans-Caledon Tunnel Authority shall take out insurance against all loss or damage from whatever cause and against all risks and public liabilities, which may arise in the course of implementing, operating and maintaining that part of the Project entrusted to such Authority, on the basis of normal commercial considerations.
- (20) All managerial and professional staff positions of the Trans-Caledon Tunnel Authority shall be filled by personnel in possession of appropriate qualifications and experience for such appointments.
- (21) The Trans-Caledon Tunnel Authority shall be managed and controlled by a Board of Directors appointed by South Africa, and shall comprise a Chairman and such other members as shall be appointed on merit for their managerial, technical and financial qualifications and experience.
- (22) The Board of Directors shall establish the policy of the Trans-Caledon Tunnel Authority in accordance with the provisions of this Treaty giving priority to its duties arising from the delivery of water to South Africa and the generation of hydroelectric power in the Kingdom of Lesotho.
- (23) The Board of Directors of the Trans-Caledon Tunnel Authority shall appoint a Chief Executive who shall have appropriate qualifications and experience for such appointment.
- (24) The Chief Executive shall implement the policies laid down by the Board of Directors of the Trans-Caledon Tunnel Authority.

- (25) The Chief Executive of the Trans-Caledon Tunnel Authority shall be under the obligation to consult with and to give his full co-operation to the Joint Permanent Technical Commission.
- (26) In carrying out his duties and in implementing the policies established by the Board of Directors the Chief Executive shall *inter alia* be responsible for:
- (a) presenting proposals concerning the implementation, operation and maintenance of that part of the Project entrusted to the Trans-Caledon Tunnel Authority and concerning the internal administration and procedures of such Authority to the Board of Directors and to the Joint Permanent Technical Commission for approval;
 - (b) preparing and presenting to the Board of Directors and the Joint Permanent Technical Commission for approval the annual budget and proposals for borrowings of the Trans-Caledon Tunnel Authority;
 - (c) controlling the expenditure and borrowings of the Trans-Caledon Tunnel Authority within limits set by the Board of Directors and ensuring that the costs incurred are accurately recorded and allocated to the appropriate cost centre;
 - (d) providing the Board of Directors and the Joint Permanent Technical Commission with the information they require or request for the discharge of their duties;
 - (e) issuing all tender documents and signing all agreements, undertakings and contracts on behalf of the Trans-Caledon Tunnel Authority;
 - (f) appointing and terminating the appointment of all managerial, professional and administrative staff; and
 - (g) such other duties as the Board of Directors may from time to time assign to such Chief Executive.
- (27) The Office of the Chief Executive of the Trans-Caledon Tunnel Authority shall act as the main channel of communication between such Authority and the Joint Permanent Technical Commission.
- (28) The Chief Executive of the Trans-Caledon Tunnel Authority shall give advance notification of at least five calendar days to the Joint Permanent Technical Commission of all meetings provided for in paragraph (21) of Article 9 and shall provide copies of all relevant documents in good time.

Article 14: Procedure in cases of *force majeure*

- (1) In case of any substantial impairment of the implementation of this Treaty caused by *force majeure* as defined in paragraph (2), the Parties shall take the necessary measures of palliation and restoration on the

basis of consultation and in a spirit of co-operation, in so far as the immediate circumstances of emergency so permit, and shall subsequently agree on joint action.

- (2) for the purpose of this Article, "*force majeure*" includes the following:
 - (a) any disturbance due to an extreme hydrological or other natural event, including extreme drought, and affecting the delivery of water to South Africa;
 - (b) the use of force by the states;
 - (c) armed insurrection and other forms of civil strife; and
 - (d) episodes of sabotage in so far as these do not form part of the contingencies referred to in sub-paragraphs (b) and (c) of this paragraph.
- (3) The provisions of this Article are without prejudice to the application of the principles of international law relating to treaties.

Article 15: Social and environmental considerations

The Parties agree to take all reasonable measures to ensure that the implementation, operation and maintenance of the Project are compatible with the protection of the existing quality of the environment and, in particular, shall pay due regard to the maintenance of the welfare of persons and communities immediately affected by the Project.

Article 16: The prevention and settlement of disputes

- (1) For the purpose of this Article "dispute" shall mean any dispute concerning the interpretation and application of this Treaty.
- (2) Lesotho, South Africa, the Lesotho Highlands Development Authority, the Trans-Caledon Tunnel Authority, and the Joint Permanent Technical Commission shall pay due regard to the overriding consideration that any dispute shall be resolved in a spirit of conciliation and that any impairment of the implementation, operation and maintenance of the Project shall be avoided.
- (3) The Chief Executive of the Lesotho Highlands Development Authority and the Chief Executive of the Trans-Caledon Tunnel Authority shall have the power to institute, each within his own sphere of responsibility and after prior notification of the Joint Permanent Technical Commission, the minimum action required to safeguard the safety and integrity of the Project during the period in which the dispute procedure provided for in this Article is in operation.
- (4) In the event of a dispute arising, either Party or the Parties jointly or the Lesotho Highlands Development Authority or the Trans-Caledon Tunnel Authority, may request the Joint Permanent Technical Commission to conduct an investigation and to present a written report containing his recommendations to both Parties, the Lesotho Highlands

Development Authority and the Trans-Caledon Tunnel Authority.

- (5) The Joint Permanent Technical Commission shall conduct the investigation and present its written report in terms of paragraph (4) with all reasonable dispatch. If the Joint Permanent Technical Commission cannot consider the matter within fourteen calendar days, it shall notify the referring party and, where appropriate, request an extension of time for consideration of the matter.
- (6) The Joint Permanent Technical Commission may either report that no action is called for or may make recommendations calling for measures to be taken by one of the Parties, the Parties jointly, the Lesotho Highlands Development Authority, or the Trans-Caledon Tunnel Authority, or may report that the matter is of such a nature that recourse to more formal procedures is called for.
- (7) In the event of a dispute not being resolved by means of any action taken in accordance with the provisions of paragraphs (4), (5) and (6), it shall be made the subject of negotiation between the Parties.
- (8) If a dispute cannot be resolved by negotiation between the Parties, such dispute shall be submitted to the Arbitral Tribunal as hereinafter provided.
- (9) The Parties may jointly institute arbitration proceedings on the basis of an agreement to that effect between them which agreement shall set forth the nature of the dispute and the names of the arbitrators appointed by each Party: Provided that any Party may institute arbitration proceedings by giving written notice thereof to the other Party which notice shall set forth the nature of the dispute and the name of the arbitrator appointed by such Party.
- (10) The Arbitral Tribunal shall consist of three arbitrators who shall be legally qualified persons and such Tribunal shall be constituted in each instance as follows:
 - (a) Each Party shall appoint one arbitrator and the third arbitrator, who shall be the President of such Tribunal, shall be appointed by agreement between the two arbitrators appointed by the Parties.
 - (b) Should the arbitrators appointed by the Parties fail to agree on the appointment of the President of the Tribunal within sixty calendar days of the agreement or notice, as the case may be, referred to in paragraph (9), the President of the International Commission on Large Dams (ICOLD) shall, at the request of either Party, appoint a person as President of such Tribunal, who shall not be a citizen or former citizen of the Kingdom of Lesotho or the Republic of South Africa or a resident or former resident in the territory of any Party.
 - (c) Should the Party notified of the initiation of arbitration proceed-

ings as provided for in paragraph (9), fail to appoint its arbitrator within sixty calendar days of such notification, such arbitrator shall at the request of the Party instituting such proceedings, be appointed by the President of such Tribunal which President shall be appointed *mutatis mutandis* by the President of the International Commission on Large Dams (ICOLD) in accordance with the provisions of sub-paragraph (b) at the request of the Party initiating such arbitration proceedings.

- (11) Any arbitrator may resign by submitting his resignation in writing to both Parties and any arbitrator may at any time be removed from office by agreement between the Parties.
- (12) In the event of death, resignation or removal of an arbitrator for whose appointment a Party is responsible, such Party shall appoint a replacement within sixty calendar days from the date of death, resignation or removal. Should such Party fail to make such appointment within such period, the President of the Arbitral Tribunal shall appoint an arbitrator in his stead. In the event of death, resignation or removal of the President of such Tribunal a replacement shall be nominated by agreement between the remaining arbitrators, within a period of sixty calendar days of such death, resignation or removal. Should the remaining arbitrators fail to agree on the appointment of the President, such appointment shall be made *mutatis mutandis* in accordance with the provisions of sub-paragraph (b) of paragraph (10).
- (13) Notwithstanding anything to the contrary contained in this Article, the Parties may at any time agree to refer a dispute to arbitration.
- (14)
 - (a) The Arbitral Tribunal shall convene at a time and venue to be determined by the President and such Tribunal shall thereafter determine the time and venue of any further sessions.
 - (b) Subject to the provisions of this Article, the Arbitral Tribunal shall establish its rules of procedure and shall decide all questions relating to its competence, jurisdiction and procedure.
 - (c) The official language of the Arbitral Tribunal shall be English.
 - (d) The Arbitral Tribunal may appoint such personnel, including a Registrar, as it may deem necessary for the proper execution of its functions in terms of this Article.
 - (e) All decisions of the Arbitral Tribunal shall be by a majority vote of the members but in the event of there being no majority vote, the President shall have a casting vote in addition to a deliberative vote.
 - (f) The Arbitral Tribunal shall afford both Parties a fair hearing and may render an award by default.
 - (g) The proceedings and deliberations of the Arbitral Tribunal shall

take place in private and all documents relating thereto as well as the award of such Tribunal shall remain secret, unless the Parties otherwise agree.

- (15) (a) The award of the Arbitral Tribunal shall be in writing and signed by the members who voted for it and shall constitute the award of the Tribunal, and a signed counterpart of such award shall be transmitted to each Party.
 - (b) The award of the Arbitral Tribunal shall be definitive and binding on the Parties, and they shall duly and expeditiously give effect thereto.
 - (c) During a period of thirty calendar days after the award has been communicated to the Parties the Arbitral Tribunal may, either of its own accord or at the request of either Party, rectify any clerical, typographical or arithmetical error in the award, or any obvious error of similar nature and shall forthwith communicate any such rectification to both Parties.
 - (d) Any dispute between the Parties as to the meaning and scope of the award shall, at the request of either Party and within sixty calendar days of the rendering of the award, be referred for decision to the Arbitral Tribunal which rendered the award.
- (16) (a) Without prejudice to the provisions of sub-paragraph (b) each Party shall be responsible for the remuneration of the arbitrator appointed by such Party, all other costs connected with such appointment and the costs entailed by the preparation and presentation of its own case. The remuneration of an arbitrator appointed by the President of the Arbitral Tribunal as provided for in sub-paragraph (c) of paragraph (10) or paragraph (12), as the case may be, as well as all other costs connected with such appointment shall be borne by the Party failing to effect such appointment. The remuneration of the President of such Tribunal, any personnel appointed by such Tribunal and all general expenses incurred as a result of the arbitration process, shall be borne equally by the Parties.
 - (b) *In the case of a unilateral application to the Arbitral Tribunal, instituted by way of notice as provided for in paragraph (9), such Tribunal may, with regard to the remuneration of the President of the Tribunal and all other general expenses in respect of such arbitration process, make such order as to cost as it may deem equitable.*
 - (c) The Parties shall within fourteen calendar days after receiving notice from the Arbitral Tribunal to that effect, deposit in the manner prescribed in such notice equal amounts specified in the notice in order to meet the estimated expenses with regard to the re-

muneration of the President of such Tribunal and personnel appointed by such Tribunal as well as all other general expenses in respect of the arbitration proceedings.

- (17) Except as the Parties may otherwise agree, the law to be applied by the Arbitral Tribunal shall be this Treaty and, whenever necessary for its interpretation or application, but only to the extent necessary for that purpose, the following in the order in which they are listed:
- (a) international agreements entered into by both Parties;
 - (b) customary international law universally recognized or having received the assent of both Parties;
 - (c) Roman Dutch customary law; and
 - (d) all such other rules of law in force in both the Kingdom of Lesotho and the Republic of South Africa.
- (18) At the conclusion of any arbitration proceedings, the President of the Arbitral Tribunal shall hand all records and documents relating thereto, to the Secretary of the Joint Permanent Technical Commission for safe-keeping.

Article 17: Savings clauses

- (1) The provisions of this Treaty are without prejudice to the views of each Party relating to the delimitation and demarcation of its international boundary.
- (2) The provisions of this Treaty are without prejudice to the rights under public international law of riparians of the Senqu/Orange River other than the Kingdom of Lesotho and the Republic of South Africa.
- (3) This Treaty is concluded without prejudice to all existing bilateral and multilateral agreements presently in operation between the two Parties, including the Customs Union Agreement, the Trilateral Monetary Agreement between the Governments of Lesotho, Swaziland, and South Africa of 18 April 1986, and the Bilateral Monetary Agreement between the Governments of Lesotho and South Africa of 18 April 1986.
- (4) South Africa shall cause ESCOM or its successors, to supply electricity to the Kingdom of Lesotho on such terms as are being or will be granted to any other comparable bulk consumer with its own generating capacity in the Republic of South Africa.

Article 18: Procedure for review and revision

- (1) The provisions of this Treaty shall be reviewed at intervals of twelve years, calculated from the date of signature hereof or at such other intervals as the Parties may agree upon.
- (2) Notwithstanding the foregoing, this Treaty may be amended at any time by agreement of both Parties.

Article 19: Entry into force

This Treaty shall enter into force on the date of signature hereof.

IN WITNESS WHEREOF, the Parties hereto acting through their representatives thereunto duly authorised, have caused this Treaty in the English language to be signed in quadruple in their respective names at..... on the day of in this Year Nineteen Hundred and Eighty Six.

.....
FOR AND ON BEHALF OF THE GOVERNMENT OF
THE REPUBLIC OF SOUTH AFRICA

.....
FOR AND ON BEHALF OF THE GOVERNMENT OF
THE KINGDOM OF LESOTHO

Annexure I— Project description

- (1) Without prejudice to the provisions of paragraph (1) of Article 5 the Project, as shown in Figure 1 to this Annexure, shall comprise the components described hereinafter and shall be implemented in phases of which Phase I shall consist of Sub-phases IA and IB.
- (2) Sub-phase IA shall comprise the following components:
 - a storage dam on the Malibamatso River at Katse, approximately 2,5 km downstream of its confluence with the Bokong River, forming the Katse Reservoir;
 - a hydroelectric power complex situated in the general location of the Hololo River and Nqoe River catchment area comprising a power station, related waterways, by-pass facilities for the delivery of water during non-generating periods and a headpond dam near Sentelina on the Nqoe River if necessitated by the design of the hydroelectric power complex;
 - a water transfer tunnel connecting Katse Reservoir with the hydroelectric power complex;
 - a tailpond dam on the Hololo or Nqoe River to regulate the discharges of the hydroelectric power station and serve as a break pressure reservoir;
 - a delivery tunnel connecting the tailpond dam with the Designated Outlet Point;
 - the terminal structure at Katse for the Sub-phase IB tunnel connecting the Mohale and Katse Reservoirs;

- an inlet structure for the Phase II transfer tunnel connecting Katse Reservoir with the hydroelectric power complex;
 - the Phase II intake structure of the hydroelectric power station if so required;
 - the Mashai-Katse pump station outfall at Katse Reservoir;
 - a common delivery tunnel intake at the tailpond dam to serve the delivery tunnels of Phase I and any other phases;
 - a transmission line connecting the switching station at the hydroelectric power station with the Maseru load centre;
 - access roads to the Project sites; and
 - ancillary facilities such as the administration and control centre at the hydroelectric power station, as well as camps and other amenities at the main Project sites.
- (3) The capacity of the water conveyance system constructed in Sub-phase IA shall be sufficient to accommodate the additional yields to be produced in Sub-phase IB.
- (4) Sub-phase IB shall comprise the following components:
- a storage dam on the Senqunyane River approximately 10 km upstream of the Marakabei bridge, forming the Mohale Reservoir;
 - a water conveyance tunnel connecting the Mohale and Katse Reservoirs;
 - extension of the hydroelectric power facilities constructed under Sub-phase IA if necessitated by the design of the hydroelectric power complex;
 - a second transmission line to the Maseru load centre;
 - access roads to the Project sites; and
 - ancillary facilities such as extensions to the administration and control centre, as well as camps and other amenities at the Project sites.
- (5) Phase II shall comprise the following components:
- a storage dam on the Senqu River at Mashai, approximately 20 km downstream of its confluence with the Malibatso River, forming the Mashai Reservoir;
 - a gravity tunnel from Mashai Reservoir to the tailpond dam of the hydroelectric power complex implemented as part of Sub-phase IA; or alternatively, a pump station and related water conveyance tunnel connecting the Mashai and Katse Reservoirs, a second water transfer tunnel running parallel to the water transfer tunnel implemented as part of Sub-phase IA connecting Katse Reservoir to the hydroelectric power complex, and additional hydroelectric power facilities in the general location of the Hololo River and Nqoc River catchment area;
 - a second delivery tunnel running parallel to the delivery tunnel implemented as part of Sub-phase IA, connecting the tailpond dam of

- the hydroelectric power complex with the Designated Outlet Point;
 - extensions of the transmission line system to accommodate the additional hydroelectric power facilities and, if so required, a pumping installation at Mashai Reservoir;
 - access roads to the Project sites; and
 - ancillary facilities such as extensions to the administration and control centre, as well as camps and other amenities at the Project sites.
- (6) The capacity of the water conveyance system constructed in Phase II shall be sufficient to accommodate the additional yields to be produced in Phase III and any eventual additional phases.
- (7) Phase III shall comprise the following components:
- a storage dam on the Senqu River at Tsoelike, downstream of its confluence with the Tsoelike River, forming the Tsoelike Reservoir;
 - a pump station and related water conveyance tunnel connecting the Tsoelike and Mashai Reservoirs;
 - extensions of the transmission line system to the Tsoelike-Mashai pump station;
 - upgrading of the Mashai-Katse pump station if constructed in Phase II;
 - access roads to the Project sites; and
 - ancillary facilities such as extensions to the administration and control centre as well as camps and other amenities at the Project sites.
- (8) The Project in its different phases shall include and make provision for facilities for the abstraction of water for ancillary developments as provided for in paragraph (2) of Article 4 and may, furthermore, include and make provision for:
- channel improvement and associated betterment works on the Ash River downstream of the Designated Outlet Point;
 - a diversion weir on the Matsoku River and a connecting tunnel to Katse Reservoir, which may be implemented either as part of Sub-phase IA or Sub-phase IB.

Annexure II — Minimum quantities for water delivery

The following shall be the minimum quantities of water to be delivered by Lesotho to South Africa in each calendar year as specified: Provided that such quantities shall be adjusted in accordance with the provisions of paragraph (2) of Article 7:

Calendar Year	Million Cubic Metres
1995	57
1996	123
1997	190
1998	258
1999	327

Calendar Year	Million Cubic Metres
2000	398
2001	470
2002	543
2003	618
2004	695
2005	772
2006	852
2007	932
2008	1 014
2009	1 098
2010	1 183
2011	1 271
2012	1 361
2013	1 452
2014	1 545
2015	1 640
2016	1 736
2017	1 835
2018	1 934
2019	2 036
2020	2 139
After 2020	2 208

Annexure III — Privileges and immunities

- (1) The representatives and alternates nominated in accordance with the provisions of paragraph (2) of Article 9, when present in the territory of the other Party in order to perform their functions as provided for by this Treaty, shall have the privileges and immunities as agreed to by the Parties.
- (2) No legal action shall be instituted against the Joint Permanent Technical Commission by either Party and such Commission shall enjoy immunity from civil and administrative jurisdiction of any court of law in the territory of either Party.
- (3) All property, assets and documents of the Joint Permanent Technical Commission wheresoever located and by whomsoever held, shall be inviolable as well as immune from search, requisition, confiscation, expropriation or any form of seizure by executive or legislative action of either Party. Such property, assets and documents shall also, to the extent necessary to carry out the functions of the Joint Permanent Technical Commission, be free from all restrictions, regulations and controls of whatsoever nature.
- (4) Each Party shall take all appropriate measures to protect all property, assets and documents of the Joint Permanent Technical Commission.
- (5) Each Party shall accord official communications of the Joint Permanent

Technical Commission the same treatment it accords diplomatic communications.

- (6) The Secretary of the Joint Permanent Technical Commission where he is not a local citizen, shall, in the territory of either Party:
 - (a) be immune from legal process with respect to acts performed by him in his official capacity: Provided that such immunity shall not apply in the case of a civil claim resulting from death, damage or personal injury caused by a motor vehicle belonging to or driven by him; and
 - (b) be accorded, the same immunities from immigration restrictions, alien registration requirements and national service obligations and the same facilities as regards exchange regulations as are accorded by either Party to a diplomatic representative of comparable rank.
- (7) The Joint Permanent Technical Commission, its assets, property, income, operations and transactions shall be exempt from all taxation. The Joint Permanent Technical Commission shall also be exempt from all stamp duties as well as from liability for general sales tax. Any amount paid by the Joint Permanent Technical Commission from which it is exempted in terms of this paragraph shall be refunded to it on request: Provided that the Joint Permanent Technical Commission shall not be entitled to exemption from amounts payable which are merely charges for public utility services.
- (8) Taxes levied on the salaries, emoluments and pension fund benefits of the Secretary and the other personnel of the Joint Permanent Technical Commission by the one Party shall constitute part of the contribution by the other Party towards the expenses of such Commission, proportional to the liability of each Party for the costs of such Commission apportioned in accordance with the provisions of Article 9.

Speech delivered by Mr R.F. Botha, Minister of Foreign Affairs, on the occasion of the signing of the Treaty between The Republic of South Africa and The Kingdom of Lesotho establishing the Lesotho Highlands Water Project, Maseru, 24 October 1986

The tides of affairs in our subcontinent have sometimes been turbulent. At times neighbour has turned upon neighbour and faced one another as enemies. The real enemy — the vicious cycle of poverty, hunger, instability and despair — was ignored.

When we all work together — *with* and not against each other
— we *can* turn tides
— we *can* break the poverty cycle
— we *can* grow and prosper and develop

Indeed

—we *can* embark upon immense and imaginative enterprises which can change the face of our part of the earth.

Today is such a day. We are signing the most important agreement ever entered into between our two countries.

My delegation and I have come here today to participate together with you in the realization of a dream long cherished by our peoples: the signing of the Treaty between the Governments of the Republic of South Africa and the Kingdom of Lesotho, establishing the Lesotho Highlands Water Project. This project will bring water to South Africa and development to Lesotho. It is a symbol of the will and capacity of our two countries to work together to bring about a better life for all the peoples in our region.

The preamble of this Treaty acknowledges the advantages of regional development and stresses the significant contribution that joint exploitation of our common resources can make towards peace and prosperity in Southern Africa. It also expresses the desire of the two Governments to enhance the quality of life and to promote good neighbourly relations and peaceful co-operation in our region.

A project of this magnitude between two neighbouring countries would not have been possible without strong ties of friendship between our peoples. These ties are strengthened by family relationships which stretch across the international border.

The long history of co-existence which has existed between the South African and Basuto people can be illustrated by many examples which have their origin in personal relationships which have developed over the years.

The Gun War which occurred between 1880–1881 developed because the British Government stipulated that all weapons in the possession of Basutos *should be handed over to the British Government. The Basuto people refused and war broke out.*

As a result of this war, many Basutos fled over the border to the Orange Free State where the Government took much trouble to accommodate the refugees on farms. Mielies and sorghum were provided and grazing for the livestock of the refugees was made available. Thousands of Basuto women and children were looked after in the Orange Free State in this way.

During the Anglo-Boer War, Basutoland became a safe refuge for a great number of Orange Free State citizens who fled there. A place to live was provided for more than 2 000 men, women and children. Grazing was provided for more than 138 000 livestock.

It now gives me great pleasure to announce that the South African Government has agreed to make available a loan facility to Lesotho for the purchase of 30 000 tons of white maize to be milled in Lesotho.

Measured by any standard, the Lesotho Highlands Water Project is vast and impressive. When fully developed, 6 major dams will have been built, 4

of which will be higher than any of the existing dams south of the Zambezi. In addition 250 km of tunnels will have been excavated through the highest mountains in Southern Africa. That is three times the length of the Orange-Fish tunnel. In the first phase alone, about 114 km of tunnels will traverse the Malutis and the Caledon River.

The project will open up the interior of Lesotho because 288 km of new road will have to be built, parts of which will be spectacular mountain passes. In addition, over 300 km of existing roads will have to be upgraded in both countries. The improvement in the road network alone will already be a boost for regional development and tourism.

Needless to say that the project will assist in combatting unemployment. The Lesotho Highlands Water Project will provide employment for thousands of people. The project will give Lesotho a source of electricity. Power will be extracted from the water flowing to the Vaal, demonstrating and symbolising the interdependence of the two countries.

The advantages of the project, expressed in financial terms, are also vast. Lesotho will receive the equivalent of more than R1,25 billion in royalties, spread over the life of the project, while South Africa will be better off by R1 billion, because of the cheaper water it gets.

That water will more than double the Vaal River's resources. The drought has shown that additional water is needed for mining, industrial, agricultural and household purposes. Indeed, the benefits will extend as far afield as Vaalharts and Douglas.

This project will, furthermore stabilize the water resources of the Orange River and thereby complement the Orange River Project. The benefits of the Lesotho Highlands Water Project will, therefore, be felt far beyond the immediate vicinity of the scheme itself. It will facilitate economic deconcentration. A variety of opportunities for all the sectors of our economies will be created. Indeed, the opportunities offered for new development are such that I have no hesitation in saying that the project will be of major benefit to all the countries of our region. We share a common destiny and therefore must set aside that which divides us in order to work together to build a better future for our peoples. For this we need water and electricity to produce food, job opportunities, education and training.

Let the outside world know that we are embarking on a joint project, and that we have the ability to do things together in Southern Africa. We invite them to become partners and to help us develop our region.

The decision to go ahead with the Lesotho Highlands Water Project rests on the faith my Government has in the future of our two countries, its faith in the future of our region and of our continent. It also rests on faith in our ability to settle peacefully differences which may arise. It is evidence of the fact that if we as Africans work together, we can find solutions to our problems without outside interference.

The Lesotho Highlands Water Project is therefore more than a project. It is a partnership and an act of faith. It is a message. Our peoples thirst for progress. Our lands thirst for water. We will enrich our lands and improve the standard of living of our peoples. We will create opportunities for development on a truly impressive scale.

Bana ba Moshoeshoe Mora Mokachane, Khotso pula naala.

United Nations and Namibia

Statement by Sir John Thomson GCMG on behalf of the European Community at the special session on Namibia in the General Assembly of the United Nations, 17-20 September 1986

This is the fourth time the General Assembly has been called into Special Session to discuss the question of Namibia. During the Eighth Emergency Special Session in September 1981 my distinguished predecessor, Sir Anthony Parsons, had the honour to speak on behalf of the Member States of the European Community. I do so again today.

Namibia has been an acknowledged international responsibility for over 60 years and an issue which has been before the United Nations virtually since its inception. Since the termination of South Africa's mandate over the Territory the matter has become one of grave international concern. 1986 sees the 20th anniversary of the adoption of GA Resolution 2145 (XXI). It is now nearly eight years since the UN Security Council adopted Resolution 435 (1978) endorsing a settlement plan for the Territory. Five years ago my predecessor expressed the grave concern of the Member States of the EC about the consequences for Southern Africa that would result from delay in reaching agreement on the implementation of that plan. Time has shown how right that warning was. We share the bitterness and frustration felt by African States and other members of the international community at this long lasting impasse over Namibia's future.

The position of the Twelve on the question of Namibia is clear and unambiguous. The illegal occupation of the Territory by South Africa must be brought to an end. The only acceptable basis for a peaceful and lasting solution to the problem is the implementation, without preconditions or pretext, of Security Council Resolutions 385 (1976) and 435 (1978). The settlement plan endorsed by the second of these Resolutions, has been accepted both by the Government of South Africa and by the South West African People's Organisation. It embodies the only universally accepted framework for a peaceful transition to independence in a manner which is guaranteed by this Organisation to be free and fair. We firmly believe that the people of Namibia must be permitted to exercise their right to self-determination through free

and fair elections under the supervision and control of the United Nations in accordance with the settlement plan. It is essential that South Africa should not subordinate the implementation of the settlement plan to the fulfilment of conditions which are extraneous to the independence of the Territory. We do not accept that it should be delayed or put aside for such reasons or for arrangements inconsistent with Security Council Resolution 435 (1978). We wish to see the plan implemented in its entirety without further delay so that the people of Namibia can move forward to the internationally recognized independence which is their due.

Unfortunately the South African Government has not yet seen fit to move forward in this way. On the contrary that Government has so far chosen to maintain its illegal occupation of Namibia in defiance of international opinion. In this context the Twelve particularly deplore the decision of the South African authorities to establish a so-called Transitional Government in Namibia in violation of the explicit provisions of Security Council Resolution 435 (1978). This resolution does not authorise the South African Government to delegate its responsibilities in the implementation of the United Nations settlement plan. The purely unilateral South African initiative establishing a so-called Transitional Government in Namibia represents a mere manoeuvre, aimed at further delaying Namibia's peaceful achievement of independence, as well as circumventing the United Nations and excluding it from the settlement process. The Twelve consider as null and void this measure taken by Pretoria and categorically reject any unilateral moves by the South African Government to transfer power in Namibia. Such moves can have no effect on the United Nations Plan except to set back the cause of peace and independence in the Territory and to increase tension in the region, as indeed the establishment of the so-called Transitional Government has already done.

The Twelve also deplore the policies of intimidation and repression pursued by South Africa within Namibia itself. These have been the subject of repeated condemnation by the international community. The catalogue of arbitrary arrests and detentions makes depressing reading; and South Africa has continued to pursue a policy of forced conscription of Namibian adults into the occupation army. Apartheid is still enshrined in the legislation in force in the Territory and evident in provisions at the second tier administrative level for separate schooling, hospitals and other facilities.

Since the General Assembly last debated the subject of Namibia, South Africa has continued its armed incursions into Namibia's neighbours, particularly Angola. These acts have taken place in defiance of international law and have created a grave danger to peace and security in the region. At the meeting between the Foreign Ministers of the Twelve and of the Front Line States in Lusaka last February, Ministers condemned South Africa's policy of destabilization in all its manifestations, including the use of any direct or indi-

rect armed actions in neighbouring states. We once again strongly urge South Africa to desist from such activities.

The Twelve forcibly condemn the use of violence by South Africa either against neighbouring states or in the maintenance of its illegal presence in Namibia. These developments make even more necessary the maintenance of the general and primary duty of the United Nations to promote peaceful solutions in conformity with the Charter, thus avoiding any encouragement of the use of force.

Over the years strenuous efforts have been made by the Secretary-General and his Special Representative, the Front-Line States, the South West African People's Organization, the Organization of African Unity and the Contact Group aimed at bringing about a just and peaceful solution to the Namibian question in accordance with Security Council Resolution 435 (1978). We strongly support these efforts and hope that the Secretary-General's current round of consultations will bear fruit. Meanwhile, the European Community and its Member States will continue their aid to the Namibian people, particularly through their support for the United Nations Institute for Namibia. They re-affirm their readiness to assist in the development of a free and independent Namibia.

The fact of this Emergency Special Session testifies to the importance attached by the international community to the question of Namibia. It is to be hoped that our deliberations will help to open the way for the early implementation of the settlement plan. For our part the Twelve will continue to press South Africa to abide by the clearly expressed decisions of the international community by withdrawing the constitutional arrangements put into effect in 1985 and by terminating her illegal occupation of Namibia thus allowing Namibians to exercise their right to self-determination and independence.

Letter dated 18 September 1986 from the Permanent Representative of South Africa to the United Nations addressed to the Secretary-General

The decision by the United Nations to call a special session of the General Assembly to consider the question of South West Africa/Namibia follows the sterile and confrontational course which the United Nations seems set on pursuing when considering this matter. Predictably, the General Assembly will adopt a resolution which will intemperately condemn South Africa and heap scorn on the constructive role which South Africa has played in South West Africa/Namibia over many years. No doubt certain countries will again be attacked for the realism which they display in their recognition of the facts which obtain in the Territory and in the Southern Africa region, of which South Africa and South West Africa form an integral part. No doubt the Gen-

eral Assembly will again adopt a resolution which will compound its own fallacious perceptions of events in the sub-continent. It will no doubt pursue a punitive and destructive course and ignore realities and co-operative actions which would allow a resolution of the vexing problems of the region which all should be encouraged to seek. No doubt the General Assembly will ignore the wishes of the very people whose interests it professes to advance, thereby denying itself any legitimate claim to impartiality and even-handedness. No doubt the decisions reached at the special session will enhance the existing perception that the fundamental tenets of democracy do not apply in the General Assembly's preferred approach to South West Africa/Namibia — for how else can decisions designating one political grouping as the representative of the people of the Territory as a whole be interpreted? No doubt Member States will again be requested to provide assistance for programmes and projects ostensibly for the benefit of the people of South West Africa/Namibia, not one cent of which has in the past 20 years in fact been expended to the advantage of the inhabitants of the Territory, but indeed have been directed against the people of the Territory. Finally, calls for further action against South Africa will no doubt again emanate from the special session and scant attention will be paid to voices which counsel reason and moderation.

This is the unfortunate backdrop against which the question of South West Africa/Namibia is being considered. For South Africa, it is not a new position but one which continues to deny the Territory and its people the progress and benefits they deserve.

Throughout the protracted debate which has taken place on this issue, South Africa has done its utmost for the people of South West Africa/Namibia. It has done so in the belief that the realities of the sub-continent dictate that progress and economic well-being are only capable of achievement in a situation of peace and stability. In the economic sphere, South Africa has made substantial contributions to provide for the needs of the people of the Territory, but our resources are limited and the needs in the economic sphere are great.

The limitations placed on the development of the narrowly-based economy of the Territory are severe: the arid physical environment, the sparsely populated character of the country, the high cost of establishing and maintaining an effective infrastructure and the absence of any significant domestic market-place, to name but a few. South Africa is accused, a charge which the special session will no doubt again level against it, of exploiting the natural resources of the Territory. This is ironic, especially in view of the fact that we are annually requested to make up the shortfall which the South West African/Namibian exchequer experiences. Without South African assistance, the people of the Territory would experience unbearable hardship.

In the international sphere, the record will show that South Africa has genuinely sought a solution to this long-standing question. It has been pre-

pared to co-operate with various Governments and with Your Excellency. It has, despite numerous set-backs, participated constructively in the international negotiations. Its position and proposals on South West Africa/Namibia have been clearly formulated with the active participation of the leaders of the Territory. Their interests and those of the people they represent are of paramount importance and the South African Government will continue in future to be guided by their wishes. It is a matter of great regret to the South African Government that its co-operative attitude has not yet been recognized or reciprocated. Much could have been achieved if a greater sense of realism had been allowed to prevail.

South Africa is concerned at the growing intervention from outside in the affairs of Southern Africa. The fact is that all the countries of the region will, at some stage or another, have to face up to the real danger which the presence of proxy forces in the sub-continent presents. You will recall, Your Excellency, that, at the time of the expansion of Soviet influence in Angola and the introduction of the Cuban surrogates into that country, a respected African leader referred to this development as the 'Soviet bear and its cubs' which were establishing themselves in Southern Africa. The intervening years have not lessened the threat that Soviet imperialism poses to the region, nor has the activity of the Cuban forces diminished. On the contrary, it has increased to an alarming extent. Disregarding these facts will not lead to their disappearance.

Your Excellency, I have outlined a number of aspects relating to South West Africa/Namibia and the region which are of great concern to the South African Government. There are many others. But it will be clear to you that the greatest immediate threat to the Southern Africa region is foreign intervention.

South Africa is prepared to play its part in establishing peace and stability in Southern Africa and to co-operate fully with its neighbours. The peoples of South West Africa/Namibia deserve to take their rightful place in the community of nations through a process which will reflect and accommodate their wishes and aspirations without intimidation from any quarter.

South Africa will continue to help them to realize this objective. We call upon the other countries of the region to assist in making this possible. Differences can only be resolved through dialogue; the interests of the sub-continent and its peoples call for it.

I should be grateful if this letter could be circulated as an official document of the fourteenth special session of the General Assembly, under agenda item 6, and of the Security Council.

(Signed) K.R.S. von Schirnding

South Africa and the United States of America

H.R. 4868 Anti-Apartheid Act of 1986

In the Senate of the United States,
August 15 (legislative day, August 11), 1986
Resolved,

That the bill from the House of Representatives (H.R. 4868) entitled "An Act to prohibit loans to, other investments in, and certain other activities with respect to, South Africa, and for other purposes", do pass with the following

Amendment:

Strike out all after the enacting clause and insert:

Short title

Section 1. This Act may be cited as the "Comprehensive Anti-Apartheid Act of 1986".

Table of contents

Sec. 2. The table of contents of this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.
- Sec. 3. Definitions.
- Sec. 4. Purpose

Title I—Policy of the United States with respect to ending apartheid

- Sec. 101. Policy toward the Government of South Africa.
- Sec. 102. Policy toward the African National Congress, etc.
- Sec. 103. Policy toward the victims of apartheid.
- Sec. 104. Policy toward other countries in Southern Africa.
- Sec. 105. Policy toward "frontline" states.
- Sec. 106. Policy toward a negotiated settlement.
- Sec. 107. Policy toward international co-operation on measures to end apartheid.

- Sec. 108. Policy toward necklacing.
- Sec. 109. United States Ambassador to meet with Nelson Mandela.
- Sec. 110. Policy toward the recruitment and training of black South Africans by United States employers.

Title II—Measures to assist victims of apartheid

- Sec. 201. Scholarships for the victims of apartheid.
- Sec. 202. Human rights fund.
- Sec. 203. Expanding participation in the South African economy.
- Sec. 204. Export-Import Bank of the United States.
- Sec. 205. Labour practices of the United States Government in South Africa.
- Sec. 206. Welfare and protection of the victims of apartheid employed by the United States.
- Sec. 207. Employment practices of United States nationals in South Africa.
- Sec. 208. Code of Conduct.
- Sec. 209. Prohibition on assistance.
- Sec. 210. Use of the African Emergency Reserve.
- Sec. 211. Prohibition on assistance to any person or group engaging in "necklacing".
- Sec. 212. Participation of South Africa in agricultural export credit and promotion programs.

Title III—Measures by the United States to undermine apartheid

- Sec. 301. Prohibition on the importation of krugerrands.
- Sec. 302. Prohibition on the importation of military articles.
- Sec. 303. Prohibition on the importation of products from parastatal organizations.
- Sec. 304. Prohibition on computer exports to South Africa.
- Sec. 305. Prohibition on loans to the Government of South Africa.
- Sec. 306. Prohibition on air transportation with South Africa.
- Sec. 307. Prohibitions on nuclear trade with South Africa.
- Sec. 308. Government of South Africa bank accounts.
- Sec. 309. Prohibition on importation of uranium and coal from South Africa.
- Sec. 310. Prohibition on new investment in South Africa.
- Sec. 311. Termination of certain provisions.
- Sec. 312. Policy toward violence or terrorism.
- Sec. 313. Termination of tax treaty and protocol.
- Sec. 314. Prohibition on United States Government procurement from South Africa.

- Sec. 315. Prohibition on the promotion of United States tourism in South Africa.
- Sec. 316. Prohibition on United States Government assistance to, investment in, or subsidy for trade with, South Africa.
- Sec. 317. Prohibition on sale or export of items on Muniton List.
- Sec. 318. Munitions list sales, notification.
- Sec. 319. Prohibition on importation of South African agricultural products and food.
- Sec. 320. Prohibition on importation of iron and steel.
- Sec. 321. Prohibition on exports of crude oil and petroleum products.
- Sec. 322. Prohibition on co-operation with the armed forces of South Africa.
- Sec. 323. Prohibition on sugar imports.

Title IV — Multilateral measures to undermine apartheid

- Sec. 401. Negotiating authority.
- Sec. 402. Limitation on imports from other countries.
- Sec. 403. Private right of action.

Title V — Future policy toward South Africa

- Sec. 501. Additional measures.
- Sec. 502. Lifting of prohibitions.
- Sec. 503. Study of health conditions in the "homelands" areas of South Africa.
- Sec. 504. Reports on South African imports.
- Sec. 505. Study and report on the economy of Southern Africa.
- Sec. 506. Report on relations between other industrialized democracies and South Africa.
- Sec. 507. Study and report on deposit accounts of South African nationals in United States banks.
- Sec. 508. Study and report on the violation of the international embargo on sale and export of military articles to South Africa.
- Sec. 509. Report on Communist activities in South Africa.
- Sec. 510. Prohibition on the Importation of Soviet Gold Coins.
- Sec. 511. Economic support for disadvantaged South Africans.
- Sec. 512. Report on the African National Congress.

Title VI — Enforcement and Administrative provisions

- Sec. 601. Regulatory authority.
- Sec. 602. Congressional priority procedures.
- Sec. 603. Enforcement and penalties.
- Sec. 604. Applicability to evasions of Act.

Sec. 605. Construction of Act.

Sec. 606. State or local anti-apartheid laws, enforce.

Definitions

Sec. 3. As used in this Act—

- (1) the term “Code of Conduct” refers to the principles set forth in Section 208 (a);
- (2) the term “controlled South African entity” means—
 - (A) a corporation, partnership, or other business association or entity organized in South Africa and owned or controlled, directly or indirectly, by a national of the United States; or
 - (B) a branch, office, agency, or sole proprietorship in South Africa of a national of the United States;
- (3) the term “loan”—
 - (A) means any transfer or extension of funds or credit on the basis of an obligation to repay, or any assumption or guarantee of the obligation of another to repay an extension of funds or credit, including—
 - (i) overdrafts,
 - (ii) currency swaps,
 - (iii) the purchase of debt or equity securities issued by the Government of South Africa or a South African entity on or after the date of enactment of this Act,
 - (iv) the purchase of a loan made by another person,
 - (v) the sale of financial assets subject to an agreement to repurchase, and
 - (vi) a renewal or refinancing whereby funds or credits are transferred or extended to the Government of South Africa or a South African entity, and
 - (B) does not include—
 - (i) normal short-term trade financing, as by letters of credit or similar trade credits;
 - (ii) sales on open account in cases where such sales are normal business practice; or
 - (iii) rescheduling of existing loans, if no new funds or credits are thereby extended to a South African entity or the Government of South Africa;
- (4) the term “new investment”—
 - (A) means—
 - (i) a commitment or contribution of funds or other assets, and
 - (ii) a loan or other extension of credit, and
 - (B) does not include—
 - (i) the reinvestment of profits generated by a controlled South African entity into that same controlled South African

- entity or the investment of such profits in a South African entity
- (ii) contributions of money or other assets where such contributions are necessary to enable a controlled South African entity to operate in an economically sound manner, without expanding its operations; or
 - (iii) the ownership or control of a share or interest in a South African entity or a controlled South African entity or a debt or equity security issued by the Government of South Africa or a South African entity before the date of enactment of this Act or the transfer or acquisition of such a share, interest, or debt or equity security, if any such transfer or acquisition does not result in a payment, contribution of funds or assets on credit to a South African entity, a controlled South African entity, or the Government of South Africa;
- (5) the term "national of the United States" means —
- (A) a natural person who is a citizen of the United States or who owes permanent allegiance to the United States or is an alien lawfully admitted for permanent residence in the United States, as defined by section 101 (a) (20) of the Immigration and Nationality Act (8 USC 1101 (a) (20)); or
 - (B) a corporation, partnership, or other business association which is organized under the laws of the United States, any State or territory thereof, or the District of Columbia;
- (6) the term "South Africa" includes —
- (A) the Republic of South Africa;
 - (B) any territory under the Administration, legal or illegal, of South Africa; and
 - (C) the "bantustans" or "homelands", to which South African blacks are assigned on the basis of ethnic origin, including the Transkei, Bophuthatswana, Ciskei, and Venda; and
- (7) the term "South African entity" means —
- (A) a corporation, partnership, or other business association or entity organized in South Africa; or
 - (B) a branch, office, agency, or sole proprietorship in South Africa of a person that resides or is organized outside South Africa; and
- (8) the term "United States" includes the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

Purpose

Sec. 4. The purpose of this Act is to set forth a comprehensive and complete framework to guide the efforts of the United States in helping to bring an end to apartheid in South Africa and lead to the establishment of a non-

racial, democratic form of government. This Act sets out United States policy toward the Government of South Africa, the victims of apartheid, and the other states in Southern Africa. It also provides the President with additional authority to work with the other industrial democracies to help end apartheid and establish democracy in South Africa.

Title I—Policy of the United States with respect to ending apartheid

Policy toward the Government of South Africa

Sec. 101.

- (a) United States policy toward the Government of South Africa shall be designed to bring about reforms in that system of government that will lead to the establishment of a non-racial democracy.
- (b) The United States will work toward this goal by encouraging the Government of South Africa to—
 - (1) repeal the present state of emergency and respect the principle of equal justice under law for citizens of all races;
 - (2) release Nelson Mandela, Govan Mbeki, Walter Sisulu, black trade union leaders, and all political prisoners;
 - (3) permit the free exercise by South Africans of all races of the right to form political parties, express political opinions, and otherwise participate in the political process;
 - (4) establish a timetable for the elimination of apartheid laws;
 - (5) negotiate with representatives of all racial groups in South Africa the future political system in South Africa; and
 - (6) end military and paramilitary activities aimed at neighbouring states.
- (c) The United States will encourage the actions set forth in subsection (b) through economic, political, and diplomatic measures as set forth in this Act. The United States will adjust its actions toward the Government of South Africa to reflect the progress or lack of progress made by the Government of South Africa in meeting the goal set forth in subsection (a).

Policy toward the African National Congress, etc.

Sec. 102.

- (a) United States policy toward the African National Congress, the Pan African Congress, and their affiliates shall be designed to bring about a suspension of violence that will lead to the start of negotiations designed to bring about a non-racial and genuine democracy in South Africa.
- (b) The United States shall work toward this goal by encouraging the

African National Congress and the Pan African Congress, and their affiliates, to—

- (1) suspend terrorist activities so that negotiations with the Government of South Africa and other groups representing black South Africans will be possible;
 - (2) make known their commitment to a free and democratic post-apartheid South Africa;
 - (3) agree to enter into negotiations with the South African Government and other groups representing black South Africans for the peaceful solution of the problems of South Africa;
 - (4) re-examine their ties to the South African Communist Party.
- (c) The United States will encourage the actions set forth in subsection (b) through political and diplomatic measures. The United States will adjust its actions toward the Government of South Africa not only to reflect progress or lack of progress made by the Government of South Africa in meeting the goal set forth in subsection 101 (a) but also to reflect progress or lack of progress made by the ANC and other organizations in meeting the goal set forth in subsection (a) of this section.

Policy toward the victims of apartheid

Sec. 103.

- (a) The United States policy toward the victims of apartheid is to use economic, political, diplomatic, and other effective means to achieve the removal of the root cause of their victimization, which is the apartheid system. In anticipation of the removal of the system of apartheid and as a further means of challenging that system, it is the policy of the United States to assist these victims of apartheid as individuals and through organizations to overcome the handicaps imposed on them by the system of apartheid and to help prepare them for their rightful roles as full participants in the political, social, economic, and intellectual life of their country in the post-apartheid South Africa envisioned by this Act.
- (b) The United States will work toward the purposes of subsection (a) by—
- (1) providing assistance to South African victims of apartheid without discrimination by race, colour, sex, religious belief, or political orientation, to take advantage of educational opportunities in South Africa and in the United States to prepare for leadership positions in a post-apartheid South Africa;
 - (2) assisting victims of apartheid;
 - (3) aiding individuals or groups in South Africa whose goals are to

- aid victims of apartheid or foster non-violent legal or political challenges to the apartheid laws;
- (4) furnishing direct financial assistance to those whose non-violent activities had led to their arrest or detention by the South African authorities and (B) (*sic*) to the families of those killed by terrorist acts such as “necklacings”;
 - (5) intervening at the highest political levels in South Africa to express the strong desire of the United States to see the development in South Africa of a non-racial democratic society;
 - (6) supporting the rights of the victims of apartheid through political, economic, or other sanctions in the event the Government of South Africa fails to make progress toward the removal of the apartheid laws and the establishment of such democracy; and
 - (7) supporting the rights of all Africans to be free of terrorist attacks by setting a time limit after which the United States will pursue diplomatic and political measures against those promoting terrorism and against those countries harboring such groups so as to achieve the objectives of this Act.

Policy toward other countries in Southern Africa

Sec. 104.

- (a) The United States policy towards the other countries in the Southern African region shall be designed to encourage democratic forms of government, full respect for human rights, an end to cross-border terrorism, political independence, and economic development.
- (b) The United States will work toward the purposes of subsection (a) by—
 - (1) helping to secure the independence of Namibia and the establishment of Namibia as a non-racial democracy in accordance with appropriate United Nations Security Council resolutions;
 - (2) supporting the removal of all foreign military forces from the region;
 - (3) encouraging the nations of the region to settle differences through peaceful means;
 - (4) promoting economic development through bilateral and multi-lateral economic assistance targeted at increasing opportunities in the productive sectors of national economies, with a particular emphasis on increasing opportunities for non-governmental economic activities;
 - (5) encouraging, and when necessary, strongly demanding, that all countries of the region respect the human rights of their citizens and non-citizens residing in the country, and especially the re-

- lease of persons persecuted for their political beliefs or detained without trial;
- (6) encouraging, and when necessary, strongly demanding that all countries of the region take effective action to end cross-border terrorism; and
 - (7) providing appropriate assistance, within the limitations of American responsibilities at home and in other regions, to assist regional economic co-operation and the development of inter-regional transportation and other capital facilities necessary for economic growth.

Policy toward "frontline" states

Sec. 105. It is the sense of the Congress that the President should discuss with the governments of the African "frontline" states the effects on them of disruptions in transportation or other economic links through South Africa and of means of reducing those effects.

Policy toward a negotiated settlement

Sec. 106.

- (a) (1) United States policy will seek to promote negotiations among representatives of all citizens of South Africa to determine a future political system that would permit all citizens to be full participants in the governance of their country. The United States recognizes that important and legitimate political parties in South Africa include several organizations that have been banned and will work for the unbanning of such organizations in order to permit legitimate political viewpoints to be represented at such negotiations. The United States also recognizes that some of the organizations fighting apartheid have become infiltrated by Communists and that Communists serve on the governing boards of such organizations.
 - (2) To this end, it is the sense of the Congress that the President, the Secretary of State, or other appropriate high-level United States officials should meet with the leaders of opposition organizations of South Africa, particularly but not limited to those organizations representing the black majority. Furthermore, the President, in concert with the major allies of the United States and other interested parties, should seek to bring together opposition political leaders with leaders of the Government of South Africa for the purpose of negotiations to achieve a transition to the post-apartheid democracy envisioned in this Act.
- (b) The United States will encourage the Government of South Africa

- and all participants to the negotiations to respect the right of all South Africans to form political parties, express political opinions, and otherwise participate in the political process without fear of retribution by either governmental or non-governmental organizations. It is the sense of the Congress that a suspension of violence is an essential precondition for the holding of negotiations. The United States calls upon all parties to the conflict to agree to a suspension of violence.
- (c) The United States will work toward the achievement of agreement to suspend violence and begin negotiations through co-ordinated actions with the major Western allies and with the governments of the countries in the region.
 - (d) It is the sense of the Congress that the achievement of an agreement for negotiations could be promoted if the United States and its major allies, such as Great Britain, Canada, France, Italy, Japan, and West Germany, would hold a meeting to develop a four-point plan to discuss with the Government of South Africa a proposal for stages of multilateral assistance to South Africa in return for the Government of South Africa implementing —
 - (1) an end to the state of emergency and the release of the political prisoners, including Nelson Mandela;
 - (2) the unbanning of the African National Congress, the Pan African Congress, (*sic*) the Black consciousness Movement, and all other groups willing to suspend terrorism and to participate in negotiations and a democratic process;
 - (3) a revocation of the Group Areas Act and the Population Registration Act and the granting of universal citizenship to all South Africans, including homeland residents; and
 - (4) the use of the international offices of a third party as an intermediary to bring about negotiations with the object of the establishment of power-sharing with the black majority.

Policy toward international co-operation on measures to end apartheid

Sec. 107.

- (a) The Congress finds that —
 - (1) international co-operation is a prerequisite to an effective anti-apartheid policy and to the suspension of terrorism in South Africa; and
 - (2) the situation in South Africa constitutes an emergency in international relations and that action is necessary for the protection of the essential security interests of the United States.
- (b) Accordingly, the Congress urges the President to seek such co-operation among all individuals, groups, and nations.

Policy toward necklacing

Sec. 108. It is the sense of the Congress that the African National Congress should strongly condemn and take effective actions against the execution by fire, commonly known as "necklacing", of any person in any country.

United States Ambassador to meet with Nelson Mandela

Sec. 109. It is the sense of the Senate that the United States Ambassador should promptly make a formal request to the South African Government for the United States Ambassador to meet with Nelson Mandela.

Policy toward the recruitment and training of black South Africans by United States employers

Sec. 110.

- (a) The Congress finds that —
- (1) the policy of apartheid is abhorrent and morally repugnant;
 - (2) the United States believes strongly in the principles of democracy and individual freedoms;
 - (3) the United States endorses the policy of political participation of all citizens;
 - (4) a free, open, and vital economy is a primary means for achieving social equality and economic advancement for all citizens; and
 - (5) the United States is committed to a policy of securing and enhancing human rights and individual dignity throughout the world.
- (b) It is the sense of the Congress that United States employers operating in South Africa are obliged both generally to actively oppose the policy and practices of apartheid and specifically to engage in recruitment and training of black and coloured South Africans for management responsibilities.

Title II — Measures to assist victims of apartheid

Scholarships for the victims of apartheid

Sec. 201.

- (a) Section 105 (b) of the Foreign Assistance Act of 1961 is amended —
- (1) by inserting "(1)" after "(b)"; and
 - (2) by adding at the end thereof the following new paragraph:
"(2) (A) (i) Of the amounts authorized to be appropriated to carry out this section for the fiscal years 1987, 1988, and 1989, not less than \$4 000 000 shall be used in each such fiscal year to finance education, training, and scholarships for the victims of apartheid, including teachers and other educational profession-

als, who are attending universities and colleges in South Africa. Amounts available to carry out this subparagraph shall be provided in accordance with the provisions of section 803 (c) of the International Security and Development Co-operation Act of 1985.

“(ii) Funds made available for each such fiscal year for purposes of chapter 4 of part II of this Act may be used to finance such education, training, and scholarships in lieu of an equal amount made available under this subparagraph.

“(B) (i) In addition to amounts used for purposes of subparagraph (A), the agency primarily responsible for administering this part, in collaboration with other appropriate departments or agencies of the United States, shall use assistance provided under this section or chapter 4 of part II of this Act to finance scholarships for students pursuing secondary school education in South Africa. The selection of scholarship recipients shall be by a nationwide panel or by regional panels appointed by the United States chief of diplomatic mission to South Africa.

“(ii) Of the amounts authorized to be appropriated to carry out this section and chapter 4 of part II of this Act for the fiscal years 1987, 1988, and 1989, up to an aggregate of \$1 000 000 may be used in each such fiscal year for purposes of this subparagraph.

“(C) (i) In addition to the assistance authorized in subparagraph (A), the agency primarily responsible for administering this part shall provide assistance for inservice teacher training programs in South Africa through such non-governmental organizations as TOPS or teachers’ unions.

“(ii) Of the amounts authorized to be appropriated to carry out this section and chapter 4 of part II of this Act, up to an aggregate of \$500 000 for the fiscal year 1987 and up to an aggregate of \$1 000 000 for the fiscal year 1988 may be used for purposes of this subparagraph, subject to standard procedures for project review and approval.”

- (b) The Foreign Assistance Act of 1961 is amended by inserting after section 116 the following new section:

“Sec. 117. Assistance for Disadvantaged South Africans—In providing assistance under this chapter or under chapter 4 of part II of this Act for disadvantaged South Africans, priority shall be given to working with and through South African non-governmental organizations whose leadership and staff are selected on a non-racial basis, and which have the support of the disadvantaged communities being

served. The measure of this community support shall be the willingness of a substantial number of disadvantaged persons to participate in activities sponsored by these organizations. Such organization to which such assistance may be provided include the Educational Opportunities Council, the South African Institute of Race Relations, READ, professional teachers' unions, the Outreach Program of the University of the Western Cape, the Funda Center in Soweto, SACHED, UPP Trust, TOPS, the Wilgespruit Fellowship Center (WFC), and civic and other organizations working at the community level which do not receive funds from the Government of South Africa."

Human rights fund

Sec. 202.

- (a) Section 116 (e) (2) (A) of the Foreign Assistance Act of 1961 is amended—
- (1) by striking out "1984 and" and inserting in lieu thereof "1984,"; and
 - (2) by inserting after "1985" a comma and the following: "and \$1 500 000 for the fiscal year 1986 and for each fiscal year thereafter".
- (b) Section 116 of such Act is amended by adding at the end thereof the following new subsection:
- "(f) (1) Of the funds made available to carry out subsection (e) (2) (A) for each fiscal year, not less than \$500 000 shall be used for direct legal and other assistance to political detainees and prisoners and their families, including the investigation of the killing of protesters and prisoners, and for support for actions of black-led community organizations to resist, through non-violent means, the enforcement of apartheid policies such as—
- "(A) removal of black populations from certain geographic areas on account of race or ethnic origin,
 - "(B) denationalization of blacks, including any distinctions between the South African citizenships of blacks and whites,
 - "(C) residence restrictions based on race or ethnic origin,
 - "(D) restrictions on the rights of blacks to seek employment in South Africa and to live wherever they find employment in South Africa, and
 - "(E) restrictions which make it impossible for black employees and their families to be housed in family accommodations near their place of employment.
- "(2) (A) No grant under this subsection may exceed \$100 000.

“(B) The average of all grants under this paragraph made in any fiscal year shall not exceed \$70 000.

- “(g) Of the funds made available to carry out subsection (e) (2) (A) for each fiscal year, \$175 000 shall be used for direct assistance to families of victims of violence such as ‘necklacing’ and other such inhumane acts. An additional \$175 000 shall be made available to black groups in South Africa which are actively working toward a multi-racial solution to the sharing of political power in that country through non-violent, constructive means.”.

Expanding participation in the South African economy

Sec. 203.

- (a) The Congress declares that —
- (1) the denial under the apartheid laws of South Africa of the rights of South African blacks and other non-whites to have the opportunity to participate equitably in the South African economy as managers or owners of, or professionals in, business enterprises, and
 - (2) the policy of confining South African blacks and other non-whites to the status of employees in minority-dominated businesses, is an affront to the values of a free society.
- (b) The Congress hereby —
- (1) applauds the commitment of nationals of the United States adhering to the Code of Conduct to assure that South African blacks and other non-whites are given assistance in gaining their rightful place in the South Africa economy; and
 - (2) urges the United States Government to assist in all appropriate ways the realization by South African blacks and other non-whites of their rightful place in the South African economy.
- (c) Notwithstanding any other provision of law, the Secretary of State and any other head of a department or agency of the United States carrying out activities in South Africa shall, to the maximum extent practicable, in procuring goods or services, make affirmative efforts to assist business enterprises having more than 50 per cent beneficial ownership by South African blacks or other non-white South Africans.

Export–import bank of the United States

Sec. 204. Section 2 (b) (9) of the Export–Import Bank Act of 1945 is amended —

- (1) by striking out “(9) In” and inserting in lieu thereof “(9) (A) Except as provided in subparagraph (B), in”; and
- (2) by adding at the end thereof the following:

“(B) The Bank shall take active steps to encourage the use of its facilities to guarantee, insure, extend credit, or participate in the extension of credit to business enterprises in South Africa that are majority owned by South African blacks or other non-white South Africans. The certification requirement contained in clause (c) of subparagraph (A) shall not apply to exports or purchases from business enterprises which are majority owned by South African blacks or other non-white South Africans.”

Labor practices of the United States Government in South Africa

Sec. 205.

- (a) It is the sense of the Congress that the labor practices used by the United States Government—
 - (1) for the direct hire of South Africans,
 - (2) for the reimbursement out of official residence funds of South Africans and employees of South African organizations for their long-term employment services on behalf of the United States Government, and
 - (3) for the employment services of South Africans arranged by contract should represent the best of labor practices in the United States and should serve as a model for the labor practices of nationals of the United States in South Africa.
- (b) The Secretary of State and any other head of a department or agency of the United States carrying out activities in South Africa shall promptly take without regard to any provision of law, the necessary steps to ensure that the labor practices applied to the employment services described in paragraphs (1) through (3) of subsection (1) are governed by the Code of Conduct. Nothing in this section shall be construed to grant any employee of the United States the right to strike.

Welfare and protection of victims of apartheid by the United States

Sec. 206.

- (a) The Secretary of State shall acquire, through lease or purchase, residential properties in the Republic of South Africa that shall be made available, at rents that are equitable, to assist victims of apartheid who are employees of the United States Government in obtaining adequate housing. Such properties shall be acquired only in neighborhoods which would be open to occupancy by other employees of the United States Government in South Africa.
- (b) There are authorized to be appropriated \$10 000 000 for the fiscal year 1987 to carry out the purpose of this section.

Employment practices of United States nationals in South Africa

Sec. 207.

- (a) Any national of the United States that employs more than 25 persons in South Africa shall take the necessary steps to insure that the Code of Conduct is implemented.
- (b) No department or agency of the United States may intercede with any foreign government or foreign national regarding the export marketing activities in any country of any national of the United States employing more than 25 persons in South Africa that is not implementing the Code of Conduct.

Code of conduct

Sec. 208.

- (a) The Code of Conduct referred to in sections 203, 205, 207, and 603 of this Act is as follows:
 - (1) desegregating the races in each employment facility;
 - (2) providing equal employment opportunity for all employees without regard to race or ethnic origin;
 - (3) assuring that the pay system is applied to all employees without regard to race or ethnic origin;
 - (4) establishing a minimum wage and salary structure based on the appropriate local minimum economic level which takes into account the needs of employees and their families;
 - (5) increasing by appropriate means the number of persons in managerial, supervisory, administrative, clerical, and technical jobs who are disadvantaged by the apartheid system for the purpose of significantly increasing their representation in such jobs;
 - (6) taking reasonable steps to improve the quality of employees' lives outside the work environment with respect to housing, transportation, schooling, recreation, and health; and
 - (7) implementing fair labor practices by recognizing the right of all employees, regardless of racial or other distinctions, to self-organization and to form, join, or assist labor organizations, freely and without penalty or reprisal, and recognizing the right to refrain from any such activity.
- (b) It is the sense of the Congress that in addition to the principles enumerated in subsection (a), nationals of the United States subject to section 207 should seek to comply with the following principle: taking reasonable measures to extend the scope of influence on activities outside the workplace, including —
 - (1) supporting the unrestricted rights of black businesses to locate in urban areas;

- (2) influencing other companies in South Africa to follow the standards of equal rights principles;
 - (3) supporting the freedom of mobility of black workers to seek employment opportunities wherever they exist, and make provision for adequate housing for families of employees within the proximity of workers' employment; and
 - (4) supporting the rescission of all apartheid laws.
- (c) The President may issue additional guidelines and criteria to assist persons who are or may be subject to section 207 in complying with the principles set forth in subsection (a) of this section. The President may, upon request, give an advisory opinion to any person who is or may be subject to this section as to whether that person is subject to this section or would be considered to be in compliance with the principles set forth in subsection (a).
- (d) The President may require all nationals of the United States referred to in section 207 to register with the United States Government.
- (e) Notwithstanding any other provision of law, the President may enter into contracts with one or more private organizations or individuals to assist in implementing this section.

Prohibition on assistance

Sec. 209. No assistance may be provided under this Act to any group which maintains within its ranks any individual who has been found to engage in gross violations of internationally recognized human rights (as defined in section 502 B (d) (1) of the Foreign Assistance Act of 1961).

Use of the African emergency reserve

Sec. 210. Whenever the President determines that such action is necessary or appropriate to meet food shortages in Southern Africa, the President is authorized to utilize the existing, authorized, and funded reserve entitled the "Emergency Reserve for African Famine Relief" to provide food assistance and transportation for that assistance.

Prohibition on assistance to any person or group engaging in "necklacing"

Sec. 211. No assistance may be provided under this Act, the Foreign Assistance Act of 1961, or any other provision of law to any individual, group, organization, or member thereof, or entity that directly or indirectly engages in, advocates, supports, or approves the practice of execution by fire, commonly known as "necklacing".

Participation of South Africa in agricultural export credit and promotion programs

Sec. 212. Notwithstanding any other provision of this Act or any other provision of law, the Secretary of Agriculture may permit South Africa to participate in agricultural export credit and promotion programs conducted by the Secretary at similar levels, and under similar terms and conditions, as other countries that have traditionally purchased United States agricultural commodities and the products thereof.

Title III—Measures by the United States to undermine apartheid

Prohibition on the importation of krugerrands

Sec. 301. No person, including a bank, may import into the United States any South African krugerrand or any other gold coin minted in South Africa or offered for sale by the Government of South Africa.

Prohibition on the importation of military articles

Sec. 302. No arms, ammunition, or military vehicles produced in South Africa or any manufacturing data for such articles may be imported into the United States.

Prohibition on the importation of products from parastatal organizations

Sec. 303.

- (a) Notwithstanding any other provision of law, no article which is grown, produced, manufactured by, marketed, or otherwise exported by a parastatal organization of South Africa may be imported into the United States, (1) except for agricultural products during the 12 month period from the date of enactment; and (2) except for those strategic minerals for which the President has certified to the Congress that the quantities essential for the economy or defence of the United States are unavailable from reliable and secure suppliers and except for any article to be imported pursuant to a contract entered into before 15 August 1986: Provided, that no shipments may be received by a national of the United States under such contract after 1 April 1987.
- (b) For purposes of this section, the term "parastatal organization" means a corporation or partnership owned or controlled or subsidized by the Government of South Africa, but does not mean a corporation or partnership which previously received start-up assistance from the South African Industrial Development Corporation but which is now privately owned.

Prohibition on computer exports to South Africa

Sec. 304.

- (a) No computers, computer software, or goods or technology intended to manufacture or service computers may be exported to or for use by any of the following entities of the Government of South Africa:
 - (1) The military.
 - (2) The police.
 - (3) *The prison system.*
 - (4) The national security agencies.
 - (5) ARMSCOR and its subsidiaries or the weapons research activities of the Council for Scientific and Industrial Research.
 - (6) The administering authorities for controlling the movements of the victims of apartheid.
 - (7) Any apartheid enforcing agency.
 - (8) Any local, regional, or homelands government entity which performs any function of any entity described in paragraphs (1) through (7).
- (b)
 - (1) *Computers, computer software, and goods or technology intended to service computers may be exported, directly or indirectly, to or for use by an entity of the Government of South Africa other than those set forth in subsection (a) only if a system of end use verification is in effect to ensure that the computers involved will not be used for any function of any entity set forth in subsection (a).*
 - (2) The Secretary of Commerce may prescribe such rules and regulations as may be necessary to carry out this section.

Prohibition on loans to the Government of South Africa

Sec. 305.

- (a) No national of the United States may make or approve any loan or other extension of credit, directly or indirectly, to the Government of South Africa or to any corporation, partnership or other organization which is owned or controlled by the Government of South Africa.
- (b) The prohibition contained in subsection (a) shall not apply to —
 - (1) a loan or extension of credit for any education, housing, or humanitarian benefit which —
 - (A) is available to all persons on a non-discriminatory basis; or
 - (B) is available in a geographic area accessible to all population groups without any legal or administrative restriction; or
 - (2) a loan or extension of credit for which an agreement is entered into before the date of enactment of this Act.

Prohibition on air transportation with South Africa

Sec. 306.

- (a) (1) The President shall immediately notify the Government of South Africa of his intention to suspend the rights of any air carrier designated by the Government of South Africa under the Agreement Between the Government of the United States of America and the Government of the Union of South Africa Relating to Air Services Between Their Respective Territories, signed 23 May 1947, to service the routes provided in the Agreement.
- (2) Ten days after the date of enactment of this Act, the President shall direct the Secretary of Transportation to revoke the right of any air carrier designated by the Government of South Africa under the Agreement to provide service pursuant to the Agreement.
- (3) Ten days after the date of enactment of this Act, the President shall direct the Secretary of Transportation not to permit or otherwise designate any United States air carrier to provide service between the United States and South Africa pursuant to the Agreement.
- (b) (1) The Secretary of State shall terminate the Agreement Between the Government of the United States of America and the Government of the Union of South Africa relating to Air Services between their Respective Territories, signed 23 May 1947, in accordance with the provisions of that agreement.
- (2) Upon termination of such agreement, the Secretary of Transportation shall prohibit any aircraft of a foreign air carrier owned, directly or indirectly, by the Government of South Africa or by South African nationals from engaging in air transportation with respect to the United States.
- (3) The Secretary of Transportation shall prohibit the takeoff and landing in South Africa of any aircraft by an air carrier owned, directly or indirectly, or controlled by a national of the United States or by any corporation or other entity organized under the laws of the United States or of any State.
- (c) The Secretary of Transportation may provide for such exceptions from the prohibition contained in subsection (a) or (b) as the Secretary considers necessary to provide for emergencies in which the safety of an aircraft or its crew or passengers is threatened.
- (d) For purposes of this section, the terms "aircraft", "air transportation", and "foreign air carrier" have the meanings given those terms in section 101 of the Federal Aviation Act of 1958 (49 USC 1301).

Prohibitions on nuclear trade with South Africa

Sec. 307.

- (a) Notwithstanding any other provision of law —
- (1) the Nuclear Regulatory Commission shall not issue any license for the export to South Africa of production or utilization facilities, any source or special nuclear material or sensitive nuclear technology, or any component parts, items, or substances which the Commission has determined, pursuant to section 109 (b) of the Atomic Energy Act, to be especially relevant from the standpoint of export control because of their significance for nuclear explosive purposes;
 - (2) the Secretary of Commerce shall not issue any license for the export to South Africa of any goods or technology which have been determined, pursuant to section 309 (c) of the Nuclear Non-Proliferation Act of 1978, to be of significance for nuclear explosive purposes for use in, or judged by the President to be likely to be diverted to, a South African production or utilization facility;
 - (3) the Secretary of Energy shall not, under section 57b. (2) of the Atomic Energy Act, authorize any person to engage, directly or indirectly, in the production of special nuclear material in South Africa; and
 - (4) no goods, technology, source or special nuclear material, facilities, components, items, or substances referred to in clauses (1) through (3) shall be approved by the Nuclear Regulatory Commission or an executive branch agency for retransfer to South Africa, unless the Secretary of State determines and certifies to the *Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate* that the Government of South Africa is a party to the Treaty on the Non-Proliferation of Nuclear Weapons, done at Washington, London, and Moscow on 1 July 1968, or otherwise maintains International Atomic Energy Agency safeguards on all its peaceful nuclear activities, as defined in the Nuclear Non-Proliferation Act of 1978.
- (b) Nothing in this section shall preclude —
- (1) any export, retransfer, or activity generally licensed or generally authorized by the Nuclear Regulatory Commission or the Department of Commerce or the Department of Energy; or
 - (2) assistance for the purpose of developing or applying International Atomic Energy Agency or United States bilateral safeguards, for International Atomic Energy Agency programs generally available to its member states, for reducing the use of

highly enriched uranium in research or test reactors, or for other technical programs for the purpose of reducing proliferation risks, such as programs to extend the life of reactor fuel and activities envisaged by section 223 of the Nuclear Waste Policy Act of 1982 or which are necessary for humanitarian reasons to protect the public health and safety.

- (c) The prohibitions contained in subsection (a) shall not apply with respect to a particular export, retransfer, or activity, or a group of exports, retransfers, or activities, if the President determines that to apply the prohibitions would be seriously prejudicial to the achievement of United States non-proliferation objectives or would otherwise jeopardize the common defense and security of the United States and, if at least 60 days before the initial export, retransfer, or activity is carried out, the President submits to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report setting forth that determination, together with his reasons therefor.

Government of South Africa bank accounts

Sec. 308.

- (a) A United States depository institution may not accept, receive, or hold a deposit account from the Government of South Africa or from any agency or entity owned or controlled by the Government of South Africa except for such accounts which may be authorized by the President for diplomatic or consular purposes. For purposes of the preceding sentence, the term "depository institution" has the same meaning as in section 19 (b) (1) of the Federal Reserve Act.
- (b) The prohibition contained in subsection (a) shall take effect 45 days after the date of enactment of this Act.

Prohibition on importation of uranium and coal from South Africa

Sec. 309.

- (a) Notwithstanding any other provision of law, no—
- (1) uranium ore,
 - (2) uranium oxide,
 - (3) coal, or
 - (4) textiles,

that is produced or manufactured in South Africa may be imported into the United States.

- (b) This section shall take effect 90 days after the date of enactment of this Act.

Prohibition on new investment in South Africa

Sec. 310.

- (a) No national of the United States may, directly or through another person, make any new investment in South Africa.
- (b) The prohibition contained in subsection (a) shall take effect 45 days after the date of enactment of this Act.
- (c) The prohibition contained in this section shall not apply to a firm owned by black South Africans.

Termination of certain provisions

Sec. 311.

- (a) This title and sections 501 (c) and 504 (b) shall terminate if the Government of South Africa—
 - (1) releases all persons persecuted for their political beliefs or detained unduly without trial and Nelson Mandela from prison;
 - (2) repeals the state of emergency in effect on the date of enactment of this Act and releases all detainees held under such state of emergency;
 - (3) unbans democratic political parties and permits the free exercise by South Africans of all races of the right to form political parties, express political opinions, and otherwise participate in the political process;
 - (4) repeals the Group Areas Act and the Population Registration Act and institutes no other measures with the same purposes; and
 - (5) agrees to enter into good faith negotiations with truly representative members of the black majority without preconditions.
- (b) The President may suspend or modify any of the measures required by this title or section 501 (c) or section 504 (b) thirty days after he determines, and so reports to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate, that the Government of South Africa has—
 - (1) taken the action described in paragraph (1) of subsection (a),
 - (2) taken three of the four actions listed in paragraphs (2) through (5) of subsection (a), and
 - (3) *made substantial progress toward dismantling the system of apartheid and establishing a nonracial democracy, unless the Congress enacts within such 30-day period, in accordance with section 602 of this Act, a joint resolution disapproving the determination of the President under this subsection.*
- (c) It is the policy of the United States to support the negotiations with the representatives of all communities as envisioned in this Act. If the

South African Government agrees to enter into negotiations without preconditions, abandons unprovoked violence against its opponents, commits itself to a free and democratic post-apartheid South Africa under a code of law; and if nonetheless the African National Congress, the Pan African (*sic*) Congress, or their affiliates, or other organizations, refuse to participate; or if the African National Congress, the Pan African (*sic*) Congress or other organizations —

- (1) refuse to abandon unprovoked violence during such negotiations; and
- (2) refuse to commit themselves to a free and democratic post-apartheid South Africa under a code of law, then the United States will support negotiations which do not include these organizations.

Policy toward violence or terrorism

Sec. 312.

- (a) United States policy toward violence in South Africa shall be designed to bring about an immediate end to such violence and to promote negotiations concluding with a removal of the system of apartheid and the establishment of a non-racial democracy in South Africa.
- (b) The United States shall work toward this goal by diplomatic and other measures designed to isolate those who promote terrorist attacks on unarmed civilians or those who provide assistance to individuals or groups promoting such activities.
- (c) The Congress declares that the abhorrent practice of “necklacing” and other equally inhumane acts which have been practices in South Africa by blacks against fellow blacks are an affront to all throughout the world who value the rights of individuals to live in an atmosphere free from fear of violent reprisals.

Termination of tax treaty and protocol

Sec. 313. The Secretary of State shall terminate immediately the following convention and protocol, in accordance with its terms, the Convention Between the Government of the United States of America and the Government of the Union of South Africa for the Avoidance of Double Taxation and for Establishing Rules of Reciprocal Administrative Assistance With Respect to Taxes on Income, done at Pretoria on 13 December 1946, and the protocol relating thereto.

Prohibition on United States Government procurement from South Africa

Sec. 314. On or after the date of enactment of this Act, no department, agency or any other entity of the United States Government may enter into a

contract for the procurement of goods or services from parastatal organizations except for items necessary for diplomatic and consular purposes.

Prohibition on the promotion of United States tourism in South Africa

Sec. 315. None of the funds appropriated or otherwise made available by any provision of law may be available to promote United States tourism in South Africa.

Prohibition on United States Government assistance to, investment in, or subsidy for trade with, South Africa

Sec. 316. None of the funds appropriated or otherwise made available by any provision of law may be available for any assistance to investment in, or any subsidy for trade with, South Africa, including but not limited to funding for trade missions in South Africa and for participation in exhibitions and trade fairs in South Africa.

Prohibition on sale or export of items on munitions list

Sec. 317.

- (a) Except as provided in subsection (b), no item contained on the United States Munition List which is subject to the jurisdiction of the United States may be exported to South Africa.
- (b) Subsection (a) does not apply to any item which is not covered by the United Nations Security Council Resolution 418 of 4 November 1977, and which the President determines is exported solely for commercial purposes and not exported for use by the armed forces, police, or other security forces of South Africa or for other military use.
- (c) The President shall prepare and submit to Congress every six months a report describing any license issued pursuant to subsection (b).

Munitions list sales, notification

Sec. 318.

- (a) Notwithstanding any other provision of this Act, the President shall:
 - (i) notify the Congress of his intent to allow the export to South Africa any item which is on the United States Munition List and which is not covered by the United Nations Security Council Resolution 418 of 4 November 1977, and
 - (ii) certify that such item shall be used solely for commercial purposes and not exported for use by the armed forces, police, or other security forces of South Africa or for other military use.
- (b) The Congress shall have 30 calendar days of continuous session (computed as provided in section 906 (b) of title 5, United States Code) to disapprove by joint resolution of any such sale.

Prohibition on importation of South African agricultural products and food

Sec. 319. Notwithstanding any other provision of law, no:

- (1) agricultural commodity, product, byproduct or derivative thereof,
- (2) article that is suitable for human consumption, that is a product of South Africa may be imported into the customs territory of the United States after the date of enactment of this Act.

Prohibition on importation of iron and steel

Sec. 320. Notwithstanding any other provision of law, no iron or steel produced in South Africa may be imported into the United States.

Prohibition on exports of crude oil and petroleum products

Sec. 321.

- (a) No crude oil or refined petroleum product which is subject to the *jurisdiction of the United States or which is exported by a person* subject to the jurisdiction of the United States may be exported to South Africa.
- (b) Subsection (a) does not apply to any export pursuant to a contract entered into before the date of enactment of this Act.

Prohibition on co-operation with the armed forces of South Africa

Sec. 322. No agency or entity of the United States may engage in any form of co-operation, direct or indirect, with the armed forces of the Government of South Africa, except activities which are reasonably designed to facilitate the collection of necessary intelligence. Each such activity shall be considered a significant anticipated intelligence activity for purposes of section 501 of the National Security Act of 1947.

Prohibitions on sugar imports

Sec. 323.

- (a) (1) Notwithstanding any other provision of law, no sugars, syrups, or molasses that are products of the Republic of South Africa may be imported into the United States after the date of enactment of this Act.
- (2) The aggregate quantity of sugars, syrups, and molasses that—
 - (A) are products of the Philippines, and
 - (B) may be imported into the United States (determined without regard to this paragraph) under any limitation imposed by law on the quantity of all sugars, syrups, and molasses that may be imported into the United States during any period of time occurring after the date of enactment of this Act,

shall be increased by the aggregate quantity of sugars, syrups, and molasses that are products of the Republic of South Africa which may have been imported into the United States under such limitation during such period if this section did not apply to such period.

- (b) (1) Paragraph (c) (i) of headnote 3 of subpart A of part 10 of schedule 1 of the Tariff Schedules of the United States is amended—
 - (A) by striking out “13.5” in the item relating to the Philippines in the table and inserting in lieu thereof “15.8”, and
 - (B) by striking out the item relating to the Republic of South Africa in the table.
- (2) Paragraph (c) of headnote 3 of subpart A of part 10 of schedule 1 of the Tariff Schedules of the United States is amended by adding at the end thereof the following new subparagraph:
 - “(iii) Notwithstanding any authority given to the United States Trade Representative under paragraphs (e) and (g) of this headnote—
 - “(A) the percentage allocation made to the Philippines under this paragraph may not be reduced, and
 - “(B) no allocation may be made to the Republic of South Africa, in allocating any limitation imposed under any paragraph of this headnote on the quantity of sugars, syrups, and molasses described in items 155.20 and 155.30 which may be entered.”.

Title IV — Multilateral measures to undermine apartheid

Negotiating authority

Sec. 401.

- (a) It is the policy of the United States to seek international co-operative agreements with the other industrialized democracies to bring about the complete dismantling of apartheid. Sanctions imposed under such agreements should be both direct and official executive or legislative acts of governments. The net economic effect of such co-operative should be measurably greater than the net economic effect of the measures imposed by this Act.
- (b) (1) Negotiations to reach international co-operative arrangements with the other industrialized democracies and other trading partners of South Africa on measures to bring about the complete dismantling of apartheid should begin promptly and should be concluded not later than 180 days from the enactment of this Act. During this period, the President or, at his direction, the Secretary of State should convene an international conference of the other industrialized democracies in order to

reach co-operative agreements to impose sanctions against South Africa to bring about the complete dismantling of apartheid.

- (2) The President shall, not less than 180 days after the date of enactment of this Act, submit to the Congress a report containing—
 - (A) a description of United States efforts to negotiate multi-lateral measures to bring about the complete dismantling of apartheid; and
 - (B) a detailed description of economic and other measures adopted by the other industrialized countries to bring about the complete dismantling of apartheid, including an assessment of the stringency with which such measures are enforced by those countries.
- (c) If the President successfully concludes an international agreement described in subsection (b) (1), he may, after such agreement enters into force with respect to the United States, adjust, modify, or otherwise amend the measures imposed under any provision of sections 301 through 310 to conform with such agreement.
- (d) Each agreement submitted to the Congress under this subsection shall enter into force with respect to the United States if (and only if)—
 - (1) the President, not less than 30 days before the day on which he enters into such agreement, notifies the House of Representatives and the Senate of his intention to enter into such an agreement, and promptly thereafter publishes notice of such intention in the Federal Register;
 - (2) after entering into the agreement, the President transmits to the House of Representatives and to the Senate a document containing a copy of the final legal text of such agreement, together with—
 - (A) a description of any administrative action proposed to implement such agreement and an explanation as to how the proposed administrative action would change or affect existing law, and
 - (B) a statement of his reasons as to how the agreement serves the interest of United States foreign policy and as to why the proposed administrative action is required or appropriate to carry out the agreement; and
 - (3) a joint resolution approving such agreement has been enacted within 30 days of transmittal of such document to the Congress.
- (e) It is the sense of the Congress that the President should instruct the

Permanent Representative of the United States to the United Nations to propose that the United Nations Security Council, pursuant to Article 41 of the United Nations Charter, impose measures against South Africa of the same type as are imposed by this Act.

Limitation on imports from other countries

Sec. 402. The President is authorized to limit the importation into the United States of any product or service of a foreign country to the extent to which such foreign country benefits from, or otherwise takes commercial advantage of, any sanction or prohibition against any national of the United States imposed by or under this Act.

Private right of action

Sec. 403.

- (a) Any national of the United States who is required by this Act to terminate or curtail business activities in South Africa may bring a civil action for damages against any person, partnership, or corporation that takes commercial advantage or otherwise benefits from such termination or curtailment.
- (b) The action described in subsection (a) may only be brought, without respect to the amount in controversy, in the United States district court for the District of Columbia or the Court of International Trade. Damages which may be recovered include lost profits and the cost of bringing the action, including a reasonable attorney's fee.
- (c) The injured party must show by a preponderance of the evidence that the damages have been the direct result of defendant's action taken with the deliberate intent to injure the party.

Title V — Future policy toward South Africa

Additional measures

Sec. 501.

- (a) It shall be the policy of the United States to impose additional measures against the Government of South Africa if substantial progress has not been made within twelve months of the date of enactment of this Act in ending the system of apartheid and establishing a non-racial democracy.
- (b) The President shall prepare and transmit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate within twelve months of the date of enactment of this Act, and every twelve months thereafter, a report on the extent to which significant progress has been made toward ending the system of apartheid, including —

- (1) an assessment of the extent to which the Government of South Africa has taken the steps set forth in section 101 (b) of this Act;
 - (2) an analysis of any other actions taken by the Government of South Africa in ending the system of apartheid and moving toward a non-racial democracy; and
 - (3) the progress, or lack of progress, made in reaching a negotiated settlement to the conflict in South Africa.
- (c) If the President determines that significant progress has not been made by the Government of South Africa in ending the system of apartheid and establishing a non-racial democracy, the President shall include in the report required by subsection (b) a recommendation on which of the following additional measures should be imposed:
- (1) a prohibition on the importation of steel from South Africa;
 - (2) a prohibition on military assistance to those countries that the report required by section 508 identifies as continuing to circumvent the international embargo on arms and military technology to South Africa;
 - (3) a prohibition on the importation of food, agricultural products, diamonds, and textiles from South Africa;
 - (4) a prohibition on United States banks accepting, receiving, or holding deposit accounts from South African nationals; and
 - (5) a prohibition on the importation into the United States of strategic minerals from South Africa.
- (d) A joint resolution which would enact part or all of the measures recommended by the President pursuant to subsection (c) shall be considered in accordance with the provisions of section 602 of this Act.

Lifting of prohibitions

Sec. 502.

- (a) Notwithstanding any other provision of this Act, the President may lift any prohibition contained in this Act imposed against South Africa if the President determines, after six months from the date of the imposition of such prohibition, and so reports to Congress, that such prohibition would increase United States dependence upon any member country or observer country of the Council for Mutual Economic Assistance (CMEA) for the importation of coal or any strategic and critical material by an amount which exceeds by weight the average amounts of such imports from such country during the period 1981 through 1985.
- (b) (1) Not later than 30 days after the date of enactment of this Act, the Secretary of Commerce shall prepare and transmit to the Congress a report setting forth for each country described in subsection (a) —

- (A) the average amount of such imports from such country during the period of 1981 through 1985; and
 - (B) the current amount of such imports from such country entering the United States.
- (2) Thirty days after transmittal of the report required by paragraph (1) and every thirty days thereafter, the President shall prepare and transmit the information described in paragraph (1) (B).

Study of health conditions in the “Homelands” areas of South Africa

Sec. 503. The Secretary of State shall conduct a study to examine the state of health conditions and to determine the extent of starvation and malnutrition now prevalent in the “homelands” areas of South Africa and shall, not later than 1 December 1986, prepare and transmit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report setting forth the results of such study.

Report on South African imports

Sec. 504.

- (a) Not later than 90 days after the date of enactment of this Act, the President shall submit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report on the extent to which the United States is dependent on the importation from South Africa of—
- (1) chromium,
 - (2) cobalt,
 - (3) manganese,
 - (4) platinum group metals,
 - (5) ferroalloys, and
 - (6) other strategic and critical materials (within the meaning of the Strategic and Critical Materials Stock Piling Act).
- (b) The President shall develop a program which reduces the dependence, if any, of the United States on the importation from South Africa of the materials identified in the report submitted under subsection (a).

Study and report on the economy of Southern Africa

Sec. 505.

- (a) The President shall conduct a study on the role of American assistance in Southern Africa to determine what needs to be done, and what can be done to expand the trade, private investment, and transport prospects of Southern Africa’s landlocked nations.

- (b) Not later than 180 days after the date of enactment of this Act, the President shall prepare and transmit to the chairman of the Committee on Foreign Affairs of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report setting forth the findings of the study conducted under subsection (a).

Report on relations between other industrialized democracies and South Africa

Sec. 506.

- (a) Not later than 180 days after the date of enactment of this Act, the President shall prepare and transmit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report containing a detailed assessment of the economic and other relationships of other industrialized democracies with South Africa. Such report shall be transmitted without regard to whether or not the President successfully concluded an international agreement under section 401.
- (b) For purposes of this section, the phrase "economic and other relationships" includes the same types of matters as are described in sections 201, 202, 204, 205, 206, 207, sections 301 through 307, and sections 309 and 310 of this Act.

Study and reports on deposit accounts of South African Nationals in United States banks

Sec. 507.

- (a)
 - (1) The Secretary of the Treasury shall conduct a study on the feasibility of prohibiting each depository institution from accepting, receiving, or holding a deposit account from any South African national.
 - (2) For purposes of paragraph (1), the term "depository institution" has the same meaning as in section 19 (b) (1) of the Federal Reserve Act.
- (b) Not later than 180 days after the date of enactment of this Act, the Secretary of the Treasury shall submit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report detailing the findings of the study required by subsection (a).

Study and report on the violation of the international embargo on sale and export of military articles to South Africa

Sec. 508.

- (a) The President shall conduct a study on the extent to which the international embargo on the sale and exports of arms and military technology to South Africa is being violated.

- (b) Not later than 179 days after the date of enactment of this Act, the President shall submit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report setting forth the findings of the study required by subsection (a), including an identification of those countries engaged in such sale or export, with a view to terminating United States military assistance to those countries.

Report on Communist Activities in South Africa

Sec. 509.

- (a) Not later than 90 days after the date of enactment of this Act, the President shall prepare and transmit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Affairs of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate an unclassified version of a report, prepared with the assistance of the Director of the Central Intelligence Agency, the Director of the Defense Intelligence Agency, the National Security Advisor, and other relevant United States Government officials in the intelligence community, which shall set forth the activities of the Communist Party in South Africa, the extent to which Communists have infiltrated the many black and non-white South African organizations engaged in the fight against the apartheid system, and the extent to which any such Communist infiltration or influence sets the policies and goals of the organizations with which they are involved.
- (b) At the same time the unclassified report in subsection (a) is transmitted as set forth in that subsection, a classified version of the same report shall be transmitted to the chairmen of the Select Committee on Intelligence of the Senate and of the Permanent Select Committee on Intelligence of the House of Representatives.

Prohibition on the Importation of Soviet Gold Coins

Sec. 510.

- (a) No person, including a bank, may import into the United States any gold coin minted in the Union of Soviet Socialist Republics or offered for sale by the Government of the Union of Soviet Socialist Republics.
- (b) For purposes of this section, the term "United States" includes the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.
- (c) Any individual who violates this section or any regulations issued to carry out this section shall be fined not more than five times the value of the rubles involved.

Economic support for disadvantaged South Africans

Sec. 511.

- (a) Chapter 4 of part II of the Foreign Assistance Act of 1961 is amended by adding at the end thereof the following new section:

“Sec. 535. Economic Support for Disadvantaged South Africans. —

(a) (1) Up to \$40 000 000 of the funds authorized to be appropriated to carry out this chapter for the fiscal year 1987 and each fiscal year thereafter shall be available for assistance for disadvantaged South Africans. Assistance under this section shall be provided for activities that are consistent with the objective of a majority of South Africans for an end to the apartheid system and the establishment of a society based on non-racial principles. Such activities may include scholarships, assistance to promote the participation of disadvantaged South Africans in trade unions and private enterprise, alternative education and community development programs.

“(2) Up to \$3 000 000 of the amounts provided in each fiscal year pursuant to subsection (a) shall be available for training programs for South Africa’s trade unionists.

“(b) Assistance provided pursuant to the section shall be made available notwithstanding any other provision of law and shall not be used to provide support to organizations or groups which are financed or controlled by the Government of South Africa. Nothing in this subsection may be construed to prohibit programs which are consistent with subsection (a) and which award scholarships to students who choose to attend South African-supported institutions.”.

- (b) Not later than 90 days after the date of enactment of this Act, the Secretary of State shall prepare and transmit to the Congress a report describing the strategy of the President during the five-year period beginning on such date regarding the assistance of black Africans pursuant to section 535 of the Foreign Assistance Act of 1961 and describing the programs and projects to be funded under such section.

Report on the African National Congress

Sec. 512

- (a) Not later than 180 days after the date of enactment of this Act, the Attorney General shall prepare and transmit to the Congress a report on actual and alleged violations of the Foreign Agents Registration Act of 1938, and the status of any investigation pertaining thereto, by representatives of governments or opposition movements in Subsa-

haran Africa, including, but not limited to, members or representatives of the African National Congress.

- (b) For purposes of conducting any investigations necessary in order to provide a full and complete report, the Attorney General shall have full authority to utilize civil investigative demand procedures, including but not limited to the issuance of civil subpoenas.

Title VI— Enforcement and administrative provisions

Regulatory authority

Sec. 601. The President shall issue such rules, regulations, licenses, and orders as are necessary to carry out the provisions of this Act, including taking such steps as may be necessary to continue in effect the measures imposed by Executive Order 12532 of 9 September 1985, and Executive Order 12535 of 1 October 1985, and by any rule, regulation, license, or order issued thereunder (to the extent such measures are not inconsistent with this Act).

Congressional priority procedures

Sec. 602.

- (a) (1) The provisions of this subsection apply to the consideration in the House of Representatives of a joint resolution under sections 311 (b), 401 (d), and 501 (d).
- (2) A joint resolution shall, upon introduction, be referred to the Committee on Foreign Affairs of the House of Representatives.
- (3) (A) At any time after the joint resolution placed on the appropriate calendar has been on that calendar for a period of 5 legislative days, it is in order for any Member of the House (after consultation with the Speaker as to the most appropriate time for the consideration of that joint resolution) to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of that joint resolution. The motion is highly privileged and is in order even though a previous motion to the same effect has been disagreed to. All points of order against the joint resolution under clauses 2 and 6 of Rule XXI of the Rules of the House are waived. If the motion is agreed to, the resolution shall remain the unfinished business of the House until disposed of. A motion to reconsider the vote by which the motion is disagreed to shall not be in order.
- (B) Debate on the joint resolution shall not exceed ten hours, which shall be divided equally between a Member favoring and a Member opposing the joint resolution. A mo-

tion to limit debate is in order at any time in the House or in the Committee of the Whole and is not debatable.

(C) An amendment to the joint resolution is not in order.

(D) At the conclusion of the debate on the joint resolution, the Committee of the Whole shall rise and report the joint resolution back to the House, and the previous question shall be considered as ordered on the joint resolution to final passage without intervening motion.

- (b) (1) The provisions of this subsection apply to the consideration in the Senate of a joint resolution under sections 311 (b), 401 (d), or 501 (d).
- (2) A joint resolution shall, upon introduction, be referred to the Committee on Foreign Relations of the Senate.
- (3) A joint resolution described in this section shall be considered in the Senate in accordance with procedures contained in paragraphs (3) through (7) of section 8066 (c) of the Department of Defense Appropriations Act, 1985 (as contained in Public Law 98-473), except that—
- (A) references in such paragraphs to the Committee on Appropriations of the Senate shall be deemed to be references to the Committee on Foreign Relations of the Senate; and
- (B) amendments to the joint resolution are in order.
- (c) For purposes of this subsection, the term “joint resolution” means only—
- (A) in the case of section 311 (b), a joint resolution which is introduced in a House of Congress within 3 legislative days after the Congress receives the report described in section 311 (b) and for which the matter after the resolving clause reads as follows: “That the Congress, having received on ——— the report of the President containing the determination required by section 311 (b) of the Comprehensive Anti-Apartheid Act of 1986, disapproves of such determination.”, with the date of the receipt of the report inserted in the blank;
- (B) in the case of section 401 (d) (3), a joint resolution which is introduced in a House of Congress within 3 legislative days after the Congress receives the document described in section 401 (d) (2) and for which the matter after the resolving clause reads as follows: “That the Congress, having received on ——— the text of the international agreement described in section 401 (d) (3) of the Comprehensive Anti-Apartheid Act of 1986, approves of such

- agreement.”, with the date of the receipt of the text of the agreement inserted in the blank; and
- (C) in the case of section 501 (d), a joint resolution which is introduced in a House of Congress within 3 legislative days after the Congress receives the determination of the President pursuant to section 501 (c) and for which the matter after the resolving clause reads as follows: “That the Congress, having received on —— a determination of the President under section 501 (c) of the Comprehensive Anti-Apartheid Act of 1986, approves the President’s determination.”, with the date of the receipt of the determination inserted in the blank.
 - (d) As used in this section, the term “legislative day” means a day on which the House of Representatives or the Senate is in session, as the case may be.
 - (e) This section is enacted —
 - (1) as an exercise of the rulemaking powers of the House of Representatives and the Senate, and as such it is deemed a part of the Rules of the House and the Rules of the Senate, respectively, but applicable only with respect to the procedure to be followed in the House and the Senate in the case of joint resolutions under this section, and it supersedes other rules only to the extent that it is inconsistent with such rules; and
 - (2) with full recognition of the constitutional right of the House and the Senate to change their rules at any time, in the same manner, and to the same extent as in the case of any other rule of the House or Senate, and of the right of the Committee on Rules of the House of Representatives to report a resolution for the consideration of any measure.

Enforcement and penalties

Sec. 603.

- (a) (1) The President with respect to his authorities under section 601 shall take the necessary steps to ensure compliance with the provisions of this Act and any regulations, licenses, and orders issued to carry out this Act, including establishing mechanisms to monitor compliance with this Act and such regulations, licenses, and orders.
- (2) In ensuring such compliance, the President may —
 - (A) require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction described in this Act either before, during, or after the completion

thereof, or relative to any interest in foreign property, or relative to any property in which a foreign country or any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of this Act; and

- (B) conduct investigations, hold hearings, administer oaths, examine witnesses, receive evidence, take depositions, and require by subpoena the attendance and testimony of witnesses and the production of all books, papers, and documents relating to any matter under investigation.
- (b) Except as provided in subsection (d) —
- (1) any person that violates the provisions of this Act, or any regulation, license, or order issued to carry out this Act shall be subject to a civil penalty of \$50 000;
 - (2) any person, other than an individual, that willfully violates the provisions of this Act, or any regulation, license, or order issued to carry out this Act shall be fined not more than \$1 000 000;
 - (3) any individual who willfully violates the provisions of this Act or any regulation, license, or order issued to carry out this Act shall be fined not more than \$50 000, or imprisoned not more than 10 years, or both; and
 - (4) any individual who violates section 301 (a) or any regulations issued to carry out that section shall, instead of the penalty set forth in paragraph (2), be fined not more than 5 times the value of the kruggerrands or gold coins involved.
- (c) (1) Whenever a person commits a violation under subsection (b) —
- (A) any officer, director, or employee of such person, or any natural person in control of such person who knowingly and willfully ordered, authorized, acquiesced in, or carried out the act or practice constituting the violation, and
 - (B) any agent of such person who knowingly and willfully carried out such act or practice, shall be fined not more than \$10 000 or imprisoned not more than 5 years, or both.
- (2) Paragraph (1) shall not apply in the case of a violation by an individual of section 301 (a) of this Act or of any regulation issued to carry out that section.
 - (3) A fine imposed under paragraph (1) on an individual for an act or practice constituting a violation may not be paid, directly or indirectly, by the person committing the violation itself.
- (d) (1) Any person who violates any regulation issued under section 208 (d) or who, in a registration statement or report required by

the Secretary of State, makes any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading, shall be subject to a civil penalty of not more than \$10 000 imposed by the Secretary of State. The provisions of subsections (d), (e), and (f) of section 11 of the Export Administration Act of 1979 shall apply with respect to any such civil penalty.

- (2) Any person who commits a willful violation under paragraph (1) shall upon conviction be fined not more than \$1 000 000 or imprisoned not more than 2 years, or both.
- (3) Nothing in this section may be construed to authorize the imposition of any penalty for failure to implement the Code of Conduct.

Applicability to evasions of Act

Sec. 604. This Act and the regulations issued to carry out this Act shall apply to any person who undertakes or causes to be undertaken any transaction or activity with the intent to evade this Act or such regulations.

Construction of Act

Sec. 605. Nothing in this Act shall be construed as constituting any recognition by the United States of the homelands referred to in this Act.

State or local anti-apartheid laws, enforce

Sec. 606. Notwithstanding section 210 of Public Law 99-349 or any other provision of law —

- (1) no reduction in the amount of funds for which a State or local government is eligible or entitled under any Federal law may be made, and
- (2) no other penalty may be imposed by the Federal Government, by reason of the application of any State or local law concerning apartheid to any contract entered into by a State or local government for 90 days after the date of enactment of this Act.

Implementation of the Comprehensive Anti-Apartheid Act

(Text: President Reagan's Executive Order) (670)

WASHINGTON — President Reagan October 27 signed an executive order implementing the Comprehensive Anti-Apartheid Act of 1986. The following is the text of that order, as released by the White House:

By the authority vested in me as President by the Constitution and statutes of the United States of America, including the Comprehensive Anti-Apartheid Act of 1986 (Public Law 99-440) ("the Act"), and section 301 of Title 3 of the United States Code, it is hereby ordered as follows:

Section 1. Implementation of the Act. All affected Executive departments and agencies shall take all steps necessary, consistent with the Constitution, to implement the requirements of the Act.

Sec. 2. Functions of the Department of State. The Secretary of State shall be responsible for implementing Sections 208, 302 (to the extent it relates to temporary imports), 303 (b), 307 (a) (2), 317, 318, 401 (b) (2), 501 (b), 504, 506, and 508 of the Act. Responsibility for transmitting the report required by Section 509 of the Act is delegated to the Secretary of State.

Sec. 3. Functions of the Department of the Treasury. The Secretary of the Treasury shall be responsible for implementing Sections 301, 302 (to the extent it relates to permanent imports), 303, 305, 308, 309, 310, 319, 320, 323 (a) (1), and 510 of the Act.

Sec. 4. Functions of the Department of Commerce. The Secretary of Commerce shall be responsible for implementing Sections 304, 321, and 502 (b) of the Act.

Sec. 5. Functions of the Department of Defense. The Secretary of Defense shall be responsible for implementing Section 322 of the Act.

Sec. 6. Functions of the United States Trade Representative. The United States Trade Representative shall be responsible for implementing Sections 323 (a) (2) and (b) of the Act and Section 402 (except for the imposition of import restrictions).

Sec. 7. Functions of the Agency for International Development. The Administrator of the Agency for International Development shall be responsible for implementing Sections 210 (to the extent of determining the existence of food shortages only) and 505 of the Act.

Sec. 8. Functions of the Department of Transportation. The Secretary of Transportation shall take the steps specified in Sections 306 (a) (2) and (3).

Sec. 9. Definition of Strategic Minerals. The Secretary of State shall be responsible, in consultation with the Secretary of Commerce and the Secretary of Defense, for determining which articles are strategic minerals within the meaning of the Act.

Sec. 10. Regulatory and Enforcement Authority. The head of each agency assigned functions by this Order is delegated authority under Sections 601 and 603 of the Act to the extent that they relate to functions delegated by this Order or conferred by the Act.

Sec. 11. Co-ordination and Policy Guidance. The Secretary of State is responsible for ensuring that implementation of the Act is effectively integrated with and is supportive of the foreign policy of the United States. In carrying out their respective functions and responsibilities, the head of each agency assigned responsibility under this Order shall consult with the heads of other affected agencies.

Sec. 12. Inter-Agency Coordinating Committee. An Inter-Agency Coordinating Committee on South Africa is hereby established, under the

Chairmanship of the Secretary of State. The Committee shall also include the Secretary of Treasury, Secretary of Defense, Attorney General, Secretary of Commerce, Secretary of Transportation, Secretary of Agriculture, the United States Trade Representative, and other members as appropriate. The Committee shall serve as a forum for consultations on United States policy concerning South Africa and shall monitor implementation of the Act to ensure consistency with United States policy objectives.

Sec. 13. Reservations of Functions. All authority not expressly delegated or granted herein is retained by the President. The President retains the authority to exercise any of the authority delegated or granted in this Order.

Sec. 14. Effective Date. This Order shall be effective immediately.

RONALD REAGAN The White House

October 27, 1986

Frontline States and South Africa

Joint statement by Heads of State of Angola, Botswana, Mozambique, Tanzania, Zambia and Zimbabwe in Maputo 12 October 1986.

Maputo Declaration

We, Jose Eduardo dos Santos, President of the People's Republic of Angola, Quett Masire, President of the Republic of Botswana, Samora Moises Machel, President of the People's Republic of Mozambique, Ali Hassan Mwinyi, President of the United Republic of Tanzania, Kenneth David Kaunda, President of the Republic of Zambia, and Robert Gabriel Mugabe, Prime Minister of the Republic of Zimbabwe, meeting on 12 October 1986 in Maputo, capital of the People's Republic of Mozambique, seriously concerned at the South African threat to provoke a generalized war in Southern Africa, earnestly appeal to the peoples and governments of the world to take all necessary measures against South Africa to safeguard peace in the region.

The racist government of South Africa has already embarked on the road of fascism and of war against the peoples of Southern Africa.

Botswana, Zambia and Zimbabwe have been attacked and the Angolan territory is being occupied by South Africa.

The Lusaka Understanding and the Nkomati Accord have been grossly and systematically violated by the Pretoria authorities. South Africa is occupying Angolan territory. Terrorists recruited, trained, organized, directed, financed, supplied and transported by South Africa attack Frontline states and in particular the People's Republic of Mozambique and the People's Republic of Angola. They massacre the people of these countries, they loot, pillage, burn down villages, homes, foodstores, hospitals, schools, churches, mosques, plantations, factories, buses, trains and trucks. They even kidnap and murder peaceful foreigners.

In its activities, and in express violation of the undertakings it has given, the South African Regime is using the territory of Malawi to attack the People's Republic of Mozambique. It thus drags Malawi into a conflict that is damaging to the interest of its own people, of the peoples of Southern Africa, and to peace in the region.

This situation worsened at the end of September. Then the Malawian

government; at the same time as it proposed negotiations with the People's Republic of Mozambique, organised, facilitated and set up conditions for bandit gangs to occupy frontier zones in the provinces of Tete, Sofala and Zambezia of Mozambique.

Over the last few days Pretoria has unleashed an incessant campaign of accusations and threats against the People's Republic of Mozambique. South African forces are concentrated along the borders with the People's Republic of Mozambique and Zimbabwe and commando units have been infiltrated to carry out acts of terrorism in Mozambique.

South Africa blames Mozambique and the other Frontline States for the growing opposition of the South African people to the policy of apartheid.

South Africa takes revenge for the unanimous international condemnation it suffers, by intensifying sanctions against the neighbouring states and expanding the war to them. Contrary to an existing convention, South Africa arbitrarily threatens to expel Mozambican workers from its territory in preparation for further aggression against Mozambique.

We, the Heads of State and Government of the Frontline States: consider along with all states of the world, that apartheid is a crime against humanity, condemned by all civilised men and women regardless of their political and ideological beliefs, reaffirm our determined and multi-faceted support to the People's Republic of Mozambique and the People's Republic of Angola.

We declare that our solidarity with the oppressed peoples of Namibia and South Africa is unwavering, and demand the immediate implementation of UNSCR 435 (1978).

We strongly condemn the support and collaboration that armed bandits in Southern Africa enjoy from certain western governments and attempts to promote them as political entities.

We denounce the complicity of the Malawian government with the Pretoria authorities in the terrorist campaign against the People's Republic of Mozambique.

We the Heads of State and Government of the Frontline States address ourselves to the Heads of State and Government of those countries that are members of the United Nations Security Council, and particularly to the permanent members, to the members of the European Economic Community, the Movement of Non-Aligned Countries, and of the Organization of African Unity, and call on them to use all means at their disposal to block Africa's race towards generalized war.

We call upon the international community, and particularly the industrialized countries, to support the People's Republic of Mozambique and the other Frontline States in the strengthening of their defence capacity so that they may confront Pretoria's aggressions. We also appeal for their support for the reconstruction of economies devastated by economic reprisals and military aggression.

We demand that the South African regime put an end to its war against its own people and the people of Namibia. This is the major condition for the restoration of a lasting peace in Southern Africa.

We, the Heads of State and Government of the Frontline States, solemnly reaffirm that we desire to build a Southern Africa where the peoples and states of the region, in peace and in all their diversity, coexist, co-operate, and jointly construct a common prosperity. This will be a Southern Africa free of *apartheid*, racism and colonialism, a Southern Africa dedicated to co-operation with all states and regions of the world, and will thus contribute towards international peace and security.

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