

THESE MINUTES ARE CONFIDENTIAL AND RESTRICTED TO MEMBERS OF THE NEGOTIATING COUNCIL.

MINUTES OF THE MEETING OF THE NEGOTIATING COUNCIL HELD AT 11h15 ON WEDNESDAY 11 AUGUST 1993 AT THE WORLD TRADE CENTRE

PRESENT: See Addendum A

1. Moment of Prayer/Meditation

A moment of prayer/meditation was observed by all members.

2. Welcome and Attendance

The participants were welcomed.

3. Ratification of the Agenda

The agenda was ratified with no amendments.

4. Minutes

It was noted that the minutes would be distributed during the course of the day for ratification at the next meeting of the Negotiating Council on Thursday 12 August 1993.

5. Reportback from the Planning Committee

It was noted that the Planning Committee had not met this morning and therefore no reportback was available.

6 ● **Substantive Issues - Combined Report of the Technical Committee on Constitutional Issues (10 August 1993)**

- 6.1 The Technical Committee on Constitutional Issues was welcomed. Present were A Chaskalson, GE Devenish, E Moseneke, B Ngoepe (after lunch), M Olivier, W Olivier and F Venter. Apologies were noted from M Wiechers.
- 6.2 Discussion followed around the Draft Outline of the Constitution. Questions of clarity were put to the Technical Committee. This was a continuation of the debate from the meeting of the Negotiating Council of 10 August 1993.
- 6.3 Clause 118 "Areas of competence of SPR Governments" refers:
- * It was suggested that there should be a clear distinction between concurrent powers and exclusive powers.
 - * It was suggested that SPR citizenship should be included in this item.
 - * It was suggested that the SPR's should have sources of revenue other than its allocation from the National Government. It was pointed out that the Constitution provided for SPR's to raise taxes, but made that dependent on the decision of the National Government. It was suggested that the SPR's should not be made subject to a "strangle hold" of the SPR Commission and the Financial and Fiscal Commission. This was referred to the Planning Committee.
 - * It was pointed out that the issues of citizenship and taxation are not technical issues, but political questions that require decisions from the Negotiating Council.

The meeting adjourned for lunch at 13h05.

The meeting reconvened at 14h15.

- * It was noted that the National Government should be able to provide resources to meet minimum standards at SPR level, for example in education. The Technical Committee was requested to provide for this more clearly.
- * It was suggested that the exclusive powers in clause 118 (1) (i) (road traffic), (m) (SPR roads) and (n) (SPR public transport) should be located under sub-clause (4) on concurrent powers.
- * It was suggested that, in the light of the proposed IBA Bill, sub-clause (l) (SPR public media) should be deleted.

* The principle of the allocation of exclusive powers to the SPR's was agreed to.

* It was noted that the Cape Traditional Leaders reserved its position on sub-clause (1) (g) (Traditional authorities and indigenous law).

* It was agreed that the areas of competence in clause 118 on which there was disagreement, should be referred to the Planning Committee for its attention. Any additions should be submitted to the Planning Committee as well. The following items were noted as points of difference:

○ SPR exclusive powers to be moved to concurrent powers or for deletion:

* (e) - Language policy and language(s) for official use in the SPR

* (i) - Road traffic

* (l) - SPR public media

* (m) - SPR roads

* (n) - SPR public transport

○ Proposed additions to exclusive powers:

* Citizenship

* Local Government

* Housing

* Education

* Welfare Services

* SPR and local policing

* Health services

Participants were at this point requested to submit any further suggestions or points of difference to the Planning Committee for its consideration. The Planning Committee should submit a recommendation to the Negotiating Council on how the lists should be composed.

* The principle that concurrent powers should apply to SPR's was agreed to. Here participants were also requested to refer points of difference, amendments or suggestions on sub-clause (4) to the Planning Committee for its attention and to submit a recommendation to the Negotiating Council.

* It was suggested that further clarity was needed on the deadlock breaking mechanism as it pertains to sub-clause (6). It was pointed out that when Parliament dissolves, only the SPR Legislatures will dissolve

and that this will not affect the existence of SPR's.

6.4 Clause 119 "Continuation, transfer and consolidation of existing administrative responsibility" refers:

- * Sub-clause (a) refers : It was suggested that provision should be made before the election of SPR Legislatures for the establishment of mechanisms to facilitate the rationalisation of SPR administrative institutions and structures. The Technical Committee pointed out that the proposed provisional Secretary and Secretariat for each SPR could provide in this need. This issue could, however, not be dealt with in terms of the Constitution (which will only come into force in 1994), but by the Negotiating Council or the TEC.
- * It was suggested that time frames should be added to sub-clause (h).
- * It was agreed to suspend debate on this clause until a schematic scenario is drawn up by the Technical Committee and until the Technical Committee on the TEC and its Sub-Councils has completed its work in this regard.
- * The Planning Committee was requested to give consideration to the proposal that a specialised body (separate from the Sub-Council on Local and Regional Government of the TEC) be created to deal with this issue.

The meeting adjourned for tea at 16h15.

The meeting reconvened at 16h45.

6.5 Clause 121 "SPR finance and fiscal affairs" refers:

- * It was noted that the issue of taxation and any issue relating to tax had been referred to the Planning Committee for consideration.
- * It was suggested that the Technical Committee considers the advice of a financial expert on sub-clauses (4) and (5).

6.6 Clause 124 "SPR Constitutions" refers:

- * The issue of the drafting and coming into force of constitutions for SPR's was discussed.
- * With regard to sub-clause (2), it was suggested that a possible way for SPR constitutions to be adopted, would be for participants at a regional

level to start discussing a regional constitution before the elections and this constitution being adopted by the elected regional legislature. This SPR constitution should comply with the adopted constitutional principles and not be in conflict with the Bill of Rights.

- * It was further suggested that no SPR constitutions could be adopted before the national constitution.
- * It was pointed out by the Technical Committee that SPR constitutions developed in parallel to the national constitution would also be tested against the adopted constitutional principles. This provided for a viable process.
- * It was noted that the issue of the adoption of SPR constitutions had been referred to the Planning Committee for its attention.

6.7 Clause 128 "Objects and functions of the Commission" refers:

- * Concerns were expressed about the massive responsibility and workload of this Commission. The Technical Committee was requested to suggest further mechanisms to deal with the tasks allocated to the Commission.
- * Concerns were also expressed with regard to the possibility that the number and boundaries of SPR's as decided by the Multi-Party Negotiating Process could be overturned by the Constitutional Assembly.
- * It was agreed that this issue would be revisited at a later stage.

6.8 Clause 131 "Vacation of office and filling of vacancies" refers:

- * It was noted that the lifespan of the Commission coincided with that of the Constitution.

6.9 Clause 133 "Committees" refers:

- * It was suggested that the Technical Committee considers that if any member is appointed as a committee member by the Commission, some mechanism should be established where such appointment is approved by the President.

6.10 The debate was concluded and the Technical Committee was thanked for its work so far completed.

7 ● **Closure**

7.1 The Chairperson was thanked for the way the day's proceedings were handled.

7.2 The meeting was closed at 18h00.

These minutes were ratified at the meeting of the Negotiating Council of 16 August 1993 and the amended version signed by the Chairperson of the original meeting on ...*26/8/93*.....


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CHAIRPERSON

Addendum A

The following delegates and advisers were present at the meeting of the Negotiating Council on Wednesday 11 August 1993:

MJ Mahlangu : Chairperson
 R Cronje : Assistant to the Chairperson

Organisation	Delegates	Advisers
ANC	C Ramaphosa B Kgositsile	M Manzini T Botha
AVU	M Mentz C Kruger	JJC Botha AJJ van Rensburg
Bophuthatswana	R Cronje R Mangope	SG Mothibe BE Keikelame
Cape Trad. Leaders	M Nonkonyana SN Sigcau	GD Gwadiso DM Jongilanga
Ciskei	M Webb VT Gqiba	TM Bulube IJ Smuts
DP	C Eglin M Finnemore	PG Soal KM Andrew
Dikwankwetla	TJ Mohapi K Ngwenya	JSS Phatang SOM Moji
IFP		
IYP	NJ Mahlangu NS Mtsweni	AP Laka Q Vilankulu
KP		
INM	SS Ripinga ND Mokoena	GG Zama MS Gininda
Kwazulu		
Labour Party	L Landers MYK Bassier	D Lockey
NIC/TIC	PJ Gordhan RB Adam	C Saloojee K Mayet
NP	D de Villiers TJ King	SJ Schoeman L Wessels

NT	A Rajbansi	N Rajaram R Sookaye
OFS Trad. Leaders	MB Mota M Moroke	RH Mopeli
PAC	P de Lille B Desai	L Makhanda E Sibeko
Solidarity	DS Rajah	N Singh AS Razak
SACP	S Shilowa L Jacobus	E Pahad
SA Government	RP Meyer LR Brink	TJ Kruger
Transkei	Z Titus N Jajula	
TVL Trad. Leaders	LM Mokoena FF Kekana	MA Netshimbupfe NE Ngomane
UPF	MJ Mahlangu A Chabalala	J Maake RJ Dombo
Venda	SE Moeti AK Masehela	GM Ligege S Makhuvha
XPP	MH Matjokana HM Manzini	GNK Hetisani

T Eloff	:	Administration
G Hutchings	:	Minutes
P Lelaka	:	Administration
M Radebe	:	Administration
R Vittee	:	Administration