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TO THE TECHNICAL COMMITTEE ON CONSTITUTIONAL MATTERS, FORM OF STATE AND CONSTITUTIONAL PRINCIPLES, CONSTITUTION MAKING BODY/CONSTITUENT ASSEMBLY, TRANSITIONAL/INTERIM CONSTITUTION, TRANSITIONAL REGIONAL GOVERNMENT, THE FUTURE OF THE TBVC STATES AND SELF-DETERMINATION.

HEADS OF ARGUMENT OF THE CONSERVATIVE PARTY OF SOUTH AFRICA RE MULTI-PARTY NEGOTIATION COUNCIL.

The Conservative Party presents herewith heads of argument on constitutional issues as indicated in the heading above to the Technical Committee on Constitutional Matters.

We would also like to indicate that we are at the disposal of the Technical Committee to argue these heads orally on a pre-determined and opportune time and place set down by the Technical Committee.

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PRELIMINARY ISSUES IN LIMINE

1.1 Violence

The Conservative Party strongly takes the view that the present climate of violence, intimidation and terrorist activities prevailing in the country are in no way conducive to proper constitutional negotiations within which a future constitutional dispensation for South Africa could be established.

The destructive influence of violence on the constitutional making process is clearly evident, as the latest example in Serbia/Bosnia-Herzegovina proves. Agreements do not stand for more than a single day before the advent of further violence.

1.2 Unitary State

The Conservative Party takes the strongest exception that a Unitary State and transitional measures in this regard are considered in the general constitutional debate and by the Multi-Party Negotiation process as the only constitutional model prevailing and that self-determination, apparently has a place only within the framework of such a unitary state.

The Conservative Party, for reasons still to be advanced, rejects this reasoning because it not only prejudices the constitutional debate as such but also the form of state and constitutional issues in this regard before hearing argument and taking issue with other constitutional models.

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It must in this regard be emphasized that the form of state undoubtedly predetermines the constitutional criteria that fall within the ambit of the other technical committees. This prejudice in favour of a unitary state, thereby excluding or virtually excluding other constitutional models before argument has been heard, would be totally unacceptable in a court of law.

1.3 The Process

The Conservative Party submits that a new constitution or constitutions for various peoples who so wish, must be firmly in place before any constitutional competencies can be transferred. This applies to the armed forces and police in particular. Any other arrangement, be it transitional or whatever would create legal chaos and could plunge the country into civil war.

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2.1 Introduction

We all want peace and prosperity. Peace in the world, in our region and in our country. As with all responsible organizations, we in the Conservative Party desire peace and mutual respect between the peoples of Southern Africa. We desire to resolve conflicts between the various peoples and states peacefully and in this regard aim to establish on a confederal basis, conflict and dispute resolution structures. This can be achieved only if we are responsible in recognizing all the realities in South Africa and try to accommodate them. Then, and only then, can lasting solutions be found.

Our constituency in the main is Afrikanerdom. We can trace our forefathers back to the 1650's when they arrived in South Africa.

A non-racial unitary South Africa, as it is contemplated by others, is an illusion and even if we create this in theory there will never be a non-ethnic unitary South Africa. Ethnicity is alive and well and is prospering throughout the world, including South Africa. Either accommodate ethnicity for those who feel strongly about it, like the Afrikaner people, or pay the price for underestimating it. Disregard of ethnicity will, without any doubt, lead to neverending conflict and even civil war.

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2.2 Constitutional Model

- * A confederation which consists of entirely independent states; be they single or federal states.
- * In essence it is a voluntary system, a non-prescriptive model, which allows states to enter into confederation or to opt out.
- * The various peoples of South Africa would not be forced into a unitary system.
- * Dispute-resolving structures amongst the various states on a confederal basis would be entrenched, without prejudice to each state's sovereign right to regulate its own domestic affairs.

2.3 Self-determination

- * The Conservative Party lays claim to the right of self determination for the Afrikaner people without being prescriptive to others as to their own particular constitutional model.
- * The Conservative Party is irrevocably committed to the attainment of the freedom of the Afrikaner people in their own fatherland under their own government. This we base on the right of self-determination which is a universally accepted right in general international law and recognized as jus cogens with a erga omnes legal operation.
- * The right of self-determination is recognized in various treaties and most importantly in the Charter of the United Nations and in numerous resolutions of this international body. In this regard we refer you to sections 1(2), 55, 73 and 76 of the Charter of the United Nations. Refer also to Resolutions 545(vi), 637(vii) and 2625(xxv) of the General Assembly of the United Nations. See also the Helsinki Conference of 1975 which dealt with this subject. See also "The Right To Self-Determination, Implementation of United Nations Resolutions", a Study prepared by Hector Gros Espiel, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities - UNITED NATIONS, New York, 1980.
- * The right of self-determination, a right of international law, is referred to in a plethora of literature. (We will elaborate on this when we are called upon to advance oral argument.) Suffice at this stage to refer to Webster's third new international dictionary which defines selfdetermination as follows:

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"Determination of one's acts or states by oneself without external compulsion.
The right of a people to decide its future political status (as with respect to form of government or independence) or its action in so deciding usu. by plebiscite".

See also the Oxford English dictionary: self-determination:

"The action of a people in deciding its own form of government; free determination of statehood, postulated as a right" (see quot. 1929)

- * We accept that the right of selfdetermination is a right of Peoples (Volke) and not of individuals or racial groups.
- * We are convinced that present national and international events confirm that self-determination is a natural element towards which all self-respecting peoples of the world strive, on the basis of which they will negotiate and, if need be, will fight for.
- * We are therefore of the opinion that the acceptance of self-determination as part of a constitutional solution in South Africa is completely realistic and should be recognised within the international context as well as in any future South African dispensation.

2.4 Form of State

- * In the constitutional debate there are parties that propose a single unitary state - with this they will be meeting the demands of one party.
- * There are others that propose a single state with a strong central government consisting of regions with powers and functions on issues of lesser importance - with this they will be meeting the demands of some parties.
- * We, however, propose self-determination for those who so wish, and any other different dispensation be it unitary or federal for all others who so desire, binding them together for the benefit of ALL in a Confederation of mutual acceptance and co-operation.

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- * With this open-ended proposal of a Confederation or a Commonwealth or Economic Community, we believe we are meeting the needs of all parties and that we are proposing a constitutional solution that will stand the test of time and bring peace to our region.
- * Therefore we reject any dispensation which will force our people into a unitary state under a single central government.
- * We believe that the number of states, (there will be at least two - a Afrikaner State and the New South Africa, there might be more) their functions, powers and their borders should be negotiated by the interested parties and legislated by the existing South African Parliament.

2.5 Transitional Arrangement

- * The Conservative party rejects transitional measures e.g. Transitional Executive Authority, Transitional/Interim Constitution, Transitional Regional Government etc.
- * From a constitutional and legal point of view it is the present parliament only that can lawfully transfer its powers and functions to newly created bodies which are established in terms of a new constitution(s). Any other arrangement, transitional or otherwise, would create what is in legal terms called a "Constitutional revolution". (See the Rhodesian Constitution after UDI, and the court cases in this regard.)

2.6 The future of the TBVC States.

- * The Constitutional model of the Conservative Party is non-prescriptive. As far as the future of the TBVC States are concerned we cannot and will not prescribe to these States what constitutional models or structures they must adopt.
- * It is common cause that some of these States would like to remain independent in a confederal structure. Others would like to be member states within a federation and others still would prefer to be re-incorporated into a unitary state.
- * However, we would like to point out that, in international law, recognition is by no means a prerequisite for the legal existence of states.

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3. CIRCULATION OF THIS DOCUMENT

- * We request that the Technical Committee and the Administration make this document available to all delegations in the Negotiating Council on or before Tuesday 18 May 1993.

ADV SC JACOBS, MP
DR CP MULDER, MP
(On behalf of the Conservative Party)

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