2/4/1/12/20

CONSTITUTIONAL ASSEMBLY

THEME COMMITEE 1 MEETING

DATE: 11 SEPTEMBER 1995

Chairman:

Thank you ladies and gentlemen. You're welcome to the meeting. We should make a start now. Hopefully this is our last meeting, unless some matters are referred back to us for further consideration.. Item 2 - Apology:

Mr Marais.

Mrs Pikoli.

Mr Moorcroft has just indicated that he is going to a portfolio committee.

Mr Momberg

Item 3 - Adoption of previous minutes (meeting held on 15th August 1995). The minutes are on pages 2-5. Any comments on the minutes? No comments. Any move for that option?

Mr de Venter is moving

Mr Carl Niehaus is seconding.

The minutes are rendered opted.

Matters arising: No matters arising.

I think we have already finalised blocks 7 & 9.

Anything under Item 6: Public Participation? Nothing.

Anything under General? Nothing.

Before I allow a short adjournment of about 10-15 minutes for parties to have a look at the report, let's allow Dr Heunes to have his say in this regard, and then a few questions can be asked.

Dr Heunes:

Thank you. Chairperson, you will recall that in our previous report in the analytical survey of the Theme Committee, if we visit paragraph 7 thereof: "The possibility of improving upon sections that are already in the present constitution and are likely to also be incorporated in the new constitution." You are also aware of the fact that Theme Committee 5 is taking upon itself the task of submitting a report of its own that has been prepared by Prof.Dugard. Our administrative secretary has seen that and informed us accordingly, as a result of which this Theme Committee has decided that I should negotiate/discuss with Prof.....the contents of the report and the contents of the report by this Theme Committee. Also involved in those consultations, the Department of Foreign Affairs notifies us that, because of the fact that apart from being responsible for the negotiations of international treaties, they've made submissions to this committee the recommendations of which were taken into account in the drafting of our report. As a result of that decision by this committee, I had a meeting with Prof. Dugard involving the law advisers of the Department of Foreign Affairs. With reference to the draft reports that were on the table; that of the Theme Committee and of various experts; we have drafted what you now have before you in the form of a proposed new text for sections of the constitution. Firstly, it is proposed that we put in a definition of an 'international agreement' to avoid any misunderstanding. This international agreement will then be an agreement governed by international law and concluded in written form between one or more international organisations and/or states.

These definitions come from the two Vienna Conventions:

- the one dealing with treaties between states
- the other dealing with treaties between states and/or international organisations.

It facilitates drafting if one has a definition of this nature, Chairperson.

Secondly, we recommend that the contents of the current section 35-1 should be retained an unammended form. What section 35-1 does is to invite the courts when they develop customary law in respect of human rights matters, to take account of international customary law. And for that reason we have recommended that this section be retained. I should perhaps mention that most recently the constitutional courts have given a wide meaning to public international law as including treaties to which this country is not a party, but which can be regarded as expressing general principles of international law. That would, for instance, include the European Bill on human rights.

The third proposal is that the current section 82-1F should be retained an unammended form. That has to do with the appointment of ambassadors, and receiving ambassadors and the representatives of foreign countries in this country.

The fourth proposal is that the present contents of section 82-1I should be amended. Presently it makes provision for the President to sign and negotiate what we've defined as international agreements. You will recall that the Department of Foreign Affairs submission has suggested that this is impractical, and that it should be amended to make provision for the President to actually appoint people to do it on his behalf by reason of considerations such as that one isn't always sure what is going to come up at a particular convention and to mandate people in advance to be able to speak and to sign agreements on behalf of the republic with the blessing of the State President acting in consultation with the Deputy President.

This is also an accurate reflection of what happens in practise; but it tells the man that reads the constitution how things actually work in practise. By reason of the fact that it is our impression that section 82 deals exhaustively with what is generally referred to as the 'Prerogative powers of the head of state,' we're making the suggestion that this Theme Committee should recommend incorporating also the power to recognise foreign states and governments. This is not something that one will want the courts to decide on because it presupposes an essentially political decision. The recognition of an entity that claims to be a state, or a government that claims to be a government is clearly not a judicial function. It's a political function. And the courts have, in the past, always deferred to the decision of the executive on this type of question. The point is that if you don't include it now in a document where you claim to have dealt with all the prerogatives, you're creating the risk that the courts might take it upon themselves to decide whether or not a foreign state or government has to be recognised for legal purposes. Whereas the function itself is one that properly belongs with the executive. And therefor it has been included here.

Paragraph 6: We refer here to norms of international law should become norms of public international law so as to make it consistent with the use of the concept also in section 35 to which I have referred you. Public international law would then include customary international law, as well as international law to the extent that it has been codified in treaties. Therefor for reasons of consistency and clarity, we suggest that international law be amended to republic international law. Then in section 227-2D it's proposed that the 'National Defence Force' subparagraph be redrafted to say "...shall not reach any international agreement or rule of customary international law binding on the republic relating to aggression...". That is merely for reasons of consistency in drafting. And the same applies to the suggested amendment 227-2E. Then as far as 231 is concerned, we have previously in our report referred to the practical problems that gave rise to the differences of opinion as to what it actually meant. We've tried to officiate all of that and deal with other aspects of the matter as well. And I think it is appropriate Mr Chairperson to take you through it quickly.

Firstly, it provides all rights and obligations under 'international agreements' which immediately before the commencement of this constitution were vested in or binding on the republic shall be vested in or binding on the republic under this constitution. Strictly speaking, it's not necessary to have a provision of this nature, but it does signal to the international community at large an intention to adhere to international judicial obligations, which we think is a good thing to do.

Secondly, it is proposed that the President or a person authorised, in terms of section 82-1I or any other law (e.g. the Extadition Act), may enter into an international agreement on behalf of the republic and does not require accession or ratification under international law. An international agreement referred to in 2 shall be tabled in respect of houses of Parliament within two months of it having been entered into if Parliament is then in session or if Parliament is not in session within two months of the commencement of the next session of Parliament; provided that an international agreement published in the Government Gazette in terms of an enabling statute, other than this constitution, shall not be required to be so tabled unless the enabling statute provides otherwise. The point about it being that if, for instance, in terms of the Extadition Act, such a treaty is concluded and published in the Government Gazette, Parliament, through that method, is informed of that fact. If however there is no such requirement, then it has to be tabled in Parliament so as to apprise Parliament both of the fact and the contents of an international agreement of this nature. May I ask that in your copies, wherever the word 'statute' appears, the word 'law' be substituted therefor because 'law' is legally defined in the Interpretation Act as meaning: "Acts of Parliament, Provinces, etc." So the better word to use is 'law' and not 'statute.'
Parliament shall be the competent body to ratify or exceed to any international agreement that requires ratification or excision under public international law for which purpose it shall express its approval for such international agreement by resolution in each house. You will want to know, Chairperson, what 'ratification' or 'excision' mean.

Many and mostly multi-lateral treaties, i.e. treaties involving more that two countries, determine that the treaties will come into effect upon ratification by a certain number of states. That means that when the treaty is negotiated, for instance, under the auspices of the General Assembly of the United Nations, the states parties to a convention which negotiates the treaty, sign that treaty subject to ratification. That means that they don't become bind unless and until the formal instrument of ratification has been deposited with the secretariat of the United Nations. So, when that happens, Parliament has to give the final authority for the treaty to be ratified. 'Excision' means that once a treaty has already come into operation and is no longer subject to ratification, you then, in order to become a party, file with the secretariat of the United Nations an instrument of excision; and in so doing you become a party. That is when you're not an original signatory to the treaty. An international agreement entered into by the President or any other person pursuant of the provisions of subsection 2 shall become part of the law of the republic when it is incorporated by act of Parliament or by proclamation in the Government Gazette if any enabling law so provides. There's another reference to 'law.' There are two references to 'statute' in 3 that should be amended. I propose, Chairperson, to give an amended version if the substitution for 'statute' is acceptable.

An international agreement approved by Parliament pursuant of the provisions of sub 4 shall become part of the law of the republic if Parliament so directs by way of resolution when it ratifies or exceeds to the international agreement or if the international agreement is incorporated by act of Parliament. The procedures for entering into, tabling, ratifying, exceeding to and incorporating international agreements referred to in subsections 2-6 shall apply to all international agreements signed on behalf of the republic under the present or previous constitution.

Reference to previous constitutions is necessitated by reason of an argument put forward by Prof. Divine which is actually an interesting one that I think wasn't contemplated when the present interim constitution was drafted. And that is that you can actually find, if one takes the example of ratification, that the government, in terms of the present constitution, signs an international agreement subject to ratification. In the mean time, and by reason of the constitutional development in this country, we have elections and there's a new government i.e you have a treaty that was originally signed by a government in terms of Constitution A. It now requires ratification in terms of Constitution B. And that is the reason for the insertion of what is essentially a new subsection.

The rules of Customary International Law binding on the republic shall, unless inconsistent with this constitution or an Act of Parliament, form part of the law of the republic. That is already there in the current section 231 and it is suggested that it be retained. And finally, in interpreting any law, or in considering any apparent inconsistency between Customary International Law and this constitution or any law, a court of law shall presume that it was not the intention of the legislature (instead of lawmaker) to legislate in conflict with Customary International Law. I daresay that that is a presumption that already finds application when the courts have to interpret the provisions of International Law. Thank you Chairperson. This is the product of the negotiations that you mandated me to conduct.

Chairperson:

Thank you Dr Heunes. Any clarification questions?

Speaker:

Mr Chairman, just a point of interest. It concerns 9,1 & 7. For more than thirty years South Africa was not a member of the Common Wealth. And for many years we've been expelled from the General Assembly of the United Nations. How will an international agreement, e.g. the Common Wealth international agreement, be binding on South Africa under the new constitution?

Dr Heunes:

Those agreements will in all probability all require to be exceeded to by South Africa. In other words, the instrument of excision will have to be filed with the appropriate secretariat. I know that South Africa has already signed some of those agreements and that instruments of excision will therefor be filed to enable South Africa to become a signatory and party to those international agreements or treaties. There are quite a number to which South Africa is in the process of becoming a party, or to which South Africa is already a party. I'm sure the Department of Foreign Affairs will be happy to inform you of precisely which ones South Africa is already a party to. I know, for instance, that South Africa is in the process of becoming a party to the new law of the Sea Convention, which it had signed but not yet ratified, to the best of my knowledge.

Speaker:

Do all those agreements that have not been signed have to be signed before we could exceed to it?

Dr Heunes:

No. In practice, when you're involved in negotiating the agreement, you sign the text of the negotiated agreement subject to ratification. Once a certain number of states have ratified a particular agreement, it then enters into force. For a state then to become a party to an agreement, it loges an instrument of excision. That is how it works in practise.

Rev. Meshoe:

I just want to make sure that I understand this. If the previous government signed agreements under the previous constitution, and the present government disagrees with that because they were not party to that, legally can they ignore that, or is there anything they can do about it? The second question is based on 9-2 about some agreements that may not require ratification. In such a case, who determines whether an agreement requires ratification or not?

Dr Heunes:

To answer the second question first. The agreement determines whether or not it has a provision to be ratified. As far as the first question is concerned, agreements generally also have suspension clauses. In other words, it provides the procedure to be followed if a party to it no longer wants to be bound by it. For instance, a written notice of six month's duration. So, you can't simply suspend. If you do, you will be in breach of international law. Normally you would adhere to the provisions of a treaty or of an international agreement, making provision for the suspension of a particular party. Maybe I should just read you what the Vienna Convention says about excision and ratification. It will facilitate a better understanding of what is in this drat proposal. In the definition section, 'ratification, acceptance, approval, and excision' mean in each case: *'The International Act, so named, whereby a state establishes on the international plane its consent to be bound by a treaty.'*

With reference to ratification: *'The consent of a state to be bound by a treaty is expressed by ratification when the treaty provides for such consent to be expressed by means of ratification. It is otherwise established that the negotiating states were agreed that ratification should be required or that the representative of the state has signed the treaty subject to ratification; or the intention of the state to sign the treaty subject to ratification appears from the full powers of its representative or was expressed during the negotiation.'*

With reference to excision: *'The consent of the state to be bound by a treaty is expressed by excision when the treaty provides that such consent may be expressed by that state by means of excision. It is otherwise established by the negotiating states that the negotiating states will agree that such consent may be expressed by that state by means of excision, or all parties have subsequently agreed that such consent may be expressed by that state by those means.'*

Thank you Chairperson.

Chairperson:

Perhaps Dr Heunes, on a similar question asked by Rev. Meshoe. I see here that the interim constitution does not lock in the present government into accepting all that was agreed upon under the old constitution. What is the difference between what is proposed now and what stands in the constitution, and what is the advantage in each case?

Dr Heunes:

Parliament can ofcourse do that, Chairperson, provided that it adheres to the manner and form requirements that are in the constitution. But I think it's best to read you Professor Dugard's comments on that provision. That will maybe make it clear to you. *'The transition from apartheid to democracy did not involve any change in the statehood of South Africa, but simply a change of government, however far-reaching and dramatic this change. Consequently, as a matter of international law, it was unnecessary to provide for succession to treaties for a new government automatically succeeds to the rights and obligations of its predecessor.* That is why I said it isn't necessary to have it but it is a positive signal to the international community.Despite this, section 2311 provides: *'All rights and obligations under international agreements which immediately before the commencement of this constitution were vested in or binding on the republic within the meaning of the previous constitution shall be vested in or binding on the republic under this constitution, unless provided otherwise by an Act of Parliament.'*

The clause has two unfortunate features:

1. It suggests that Parliament may unilaterally diverse itself of international obligations undertaken by the old regime. The phrase empowering Parliament to overwrite South Africa's obligations in the field of succession to treaties which does not appear in the constitutions of 1909,1961 or 1983 was apparently inserted to enable Parliament to repudiate suspected secret military agreements with Israel and Taiwan. If the new government established under the present interim constitution which is to terminate a treaty obligation, it is obliged under international law to follow the procedures for termination contained in the treaty itself or those prescribed by the Vienna Convention on the law of treaties i.e the convention to which I have now referred. Parliament cannot simply repudiate an international agreement.
2. The phrase within the meaning of the previous constitution which was added by a state law advisor after the Kempton Park text had been agreed on is unacceptable as it might be construed to include agreements between South Africa and the former TBVC states. When the final constitution is adopted in accordance with procedures laid down in Act 200 of 1993, there will be no change in the international legal personality of South Africa. Consequently the government constituted under the next constitution will automatically succeed to the international agreements of its predecessors. Although a succession clause along the lines of 2311 is unnecessary under international law, such a clause could have the important symbolic effect of emphasising South Africa's commitment to its international treaty commitments. It is suggested that it might follow in the format you now have before you.

   Chairperson:Another part Dr Heunes is on page 4, regarding the interpretation. You said the court normally interprets the provisions in preference to the international law. Why is it necessary then to put this clause in if that is a normal practise of doing things?

Speaker:

The first point Chairperson, is that it does not refer to treaties. It refers to Customary International Law only. In other words, nothing that the previous government did or didn't do comes into play at all at any time. It refers to Customary International Law being ' the law that has evolved through the ages and recognised as such by civilised nations.' That is the first point.

The second point is that it creates a rebbutable presumption. In other words, if either in terms or by necessary implication there is a conflict between a law of Parliament and a rule of Customary International Law, the presumption will be rebutted, in other words, the act will still prevail over Customary International Law. So it doesn't retract from the authority of Parliament's laws. It's merely an aid of interpretation. That is all it is. It doesn't say that if there is a conflict, then Customary International Law shall prevail. It simply says to the court: see if you can find a via-media if you can reconcile them. If you can't reconcile them, then obviously the Customary International Law will have to give way to the law, because also of the fact that 9 provides that: '*Unless inconsistent with this constitution or an Act of Parliament, it shall form part of the law of the land.*' So, it is similar to section 35 of the constitution which provides that: '*No law which limits any of the rights entrenched in this constitution shall be constitutionally invalid solely by reason of the fact that the wording used prima-facie exceeds the limits imposed in this chapter, provided such law is reasonably capable of a more restricted interpretation which does not exceed such limits; in which event such law shall be construed as having a meaning in accordance with the said more restricted interpretation.*'

It is very similar to that, and I think you will find also similarity in section 232 of the constitution. Subsection 3 thereof: *'no law shall be constitutionally invalid solely by reason of the fact that the wording used is prima-facie capable of an interpretation which is inconsistent with a provision of this constitution provided such a law is reasonably capable of a more restricted interpretation which is not inconsistent with any such provision; in which event such law shall be construed as having a meaning in accordance with the said more restricted interpretation'* We attend to do something similar to this, but in the final analysis, if the law speaks and it's in conflict with what Customary International Law says, whether in terms or by necessary implication, Customary International Law will have to yield before the Act of Parliament. Thank you, Chairperson.

Rev. Meshoe:

Thank you , Chair. I want to find out if it is not possible to simplify this clause to make it clear because the implication here is that Customary International Law will prevail over the constitution if there is a conflict because the sentence "the court of law shall presume that it was not the intention of the lawmaker to legislate in conflict with the Customary International Law" would mean to me that the lawmaker would presume that the constitution must be in line with the Customary International Law. Now can't it be simplified so that it does not leave this uncertainty in one's mind.?

Dr. Heunes:

It can be made clear by adding to it simply what I've told you now, and that is to say :"...unless by necessary implication or clear provision the Act ousts Customary International Law." That certainly is possible.

Chaiperson:

One last aspect, if I may ask. What is the point in entering into an international agreement which would need to be ratified by Parliament before it becomes part of our law. Take, for example, a case where an agreement is entered into at the end of the session of Parliament. If Parliament is going to take another six months to resume, as was the case with the previous Parliament, what is the status of the 'not ratified' agreement for that period of six or eight months before it is ratified by Parliament, and why enter into it instead of waiting until Parliament exceeds to it?

Dr Heunes:

Chairperson, one needs to bear in mind the distinction between the agreements that are simply tabled and don't require ratification, and the ones that require ratification. As I've indicated, what happens particularly when one is involved in the negotiation of an international agreement is that the agreement gets signed by the executive without any Parliamentary authority. But it provides for the process of ratification. And normally it says that it shall enter into force when a certain number of states have ratified the agreement. Now the fact of the state's signature to that agreement is an indication that the executive intends ratifying that agreement, but that it is subject to some other institution's approval. In this case Parliament's approval. Having indicated to the international community at large an intention on the part of the executive, Parliament is then approached to give its approval to the executive's intention to become party to the agreement. But as far as your question is concerned, nothing happens. The state doesn't become party to that agreement until and unless the Parliament has ratified it or decided to exceed to it. But there are other categories of agreements:

- bilateral agreements: for instance, to exchange ambassadors and to establish embassies. Those are finalised more quickly and won't require ratification. Those get tabled so that Parliament is properly informed of the fact thereof, but they don't require Parliamentary approval.

- But clearly when you have something as important as the Convention and the Law of the Sea, for instance, that is something you will want to put before Parliament, and you will want Parliament's blessing on what executive intends to do.

But in the mean time, until such time as the ratification follows the signature, nothing happens. And no one expects anything to happen precisely because the treaty provides for the process of ratification in anticipation of the approval also of another authority other than the one that has actually signed the international agreement.

(FIFTEEN MINUTES RECESS)

Chaiperson:

Could we resume this meeting. We have discussed this in a cocas. We have had a few suggestions regarding the problems with the current formulations. Particularly that it becomes difficult to govern with the provisions which are made here. In particular, there is a difference between what is provided here and what is in the present constitution. It is our belief that the suggested formulation in some respect which we'll point out very quickly, might amount to difficulty in governing or in protecting the citizens effectively. Particularly there is no way in which some body in the country is given power to deploy the army or to declare the state of defence and get ratification of Parliament thereafter. Nobody can do that. And we believe that would be a very difficult thing to do. In the current constitution, which we believe is good, as according to clauses in section 227 & 228, the President, or the person authorised by the President has the power to declare a state of defence, and even then inform the Parliament within a period. So this is the suggested formulation. Should any party disagree, they must indicate the options.

Dr Heunes:

Chairperson, I don't know that we're not talking in cross-references because in the analytical survey of the report, we say that a non-contentious aspect of the report is that the President has to be the commander and chief of the National Defence Force. We also say that another noncontentious aspect is that the President's authority in respect of the deployment of the National Defence Force.

Another noncontentious aspect is the purposes for which the National Defence Force may be employed, and furthermore, noncontentious is the aspect of checks and balances in respect of the employment of the National Defence Force.

And finally we say that if possible, relevant sections should be improved from a drafting point of view. All that we have done as far as the President's capacity in regard to the deployment of the Defence Force is concerned, is to merely amend those sections that we think can be improved upon from a drafting point of view. But this draft does not suggest that the other provisions should fall away. They're being retained by reason of the fact that in principle everyone has agreed as to what the President should be able to do as far as the deployment of the National Defence Force is concerned. The only matter which I understand became contentious after I left the previous meeting with the capacity of the President who, without Parliament's concurrence, declared a state of war. I think that may have been inspired by the fact that you may have been under the impression that he does not have the capacity to deploy the Defence Force without Parliament's approval which, if that is so, is with respect wrong, because he has that authority. But to declare a state of national defence is effectively to declare a state of war against another country or countries. And for that, I would have thought the Parliament's concurrence in advance would be required, particularly so if there is no restriction on the President to deploy the Defence Force to protect the territorial integrity of the country and the safety of its people.

To come back to what you've said Chairperson, the point about it is that there is no disagreement that the situation as currently worded sets out in the constitution should be retained. With the exception of the one matter, and that is the fact that as the constitution now provides, a state of national defence can only be declared with the concurrence of Parliament; and you've intimated that the ANC would want that to become contentious. The report says it is contentious, and the draft deals purely with those matters which need to be amended by reason of suggestions that were forthcoming from the Minister of Foreign Affairs on the one hand, and drafting imperatives on the other.

Chairperson:

That we understand Dr Heunes, but our problem is this draft which is going to be contained in the final constitution. What you're saying is that the schematic representation will not form part of the constitution. Now, that's where our problem lies.

Secondly, we are saying that the question of the President having powers to declare the state of defence subject to Parliament needs to be contained in the provision. It is contentious, I understand, but we are saying it must be contained as one of the options. If you look at our submissions, that's the one point we felt very strongly about. Even in arguments, we've indicated that we'd like to have it appearing there, because it's our position. We are not forcing other parties to agree with it, that is why we are saying it must be contained as an option. Otherwise we are not satisfied with it as it stands. Our views are not carried forward in the draft formulation.

Dr Heunes:

May I just point out that nobody's preference, as far as that is concerned, is contained in the draft. Chairperson, I don't see that it makes sense to put in a draft, matters which are already there and about which there is no difference of opinion. That is clearly the impression under which we all worked so far.

Chairperson:

I don't think we understand each other, Dr Heunes. We are not amending the present constitution, we are rewriting the constitution. In other words, certain letters will be taken from this constitution, but we are rewriting a new constitution. Now, what is not contained in the new draft formulation, we believe will not come on board, even if it is contained in the present constitution. What comes on board is not only what is amended, but also what is put in the new constitution. And we believe that this strong point must be contained in the new provision.

Dr Heunes:

Chairperson, I'm aware of what my responsibilities are, and I don't want to go beyond that. You are recommending effectively that the provisions (section 227 & 228) be retained with the amendments that you suggest, to the extent that it relates to the responsibilities of this Theme Committee. There are other Theme Committees that deal with other aspects of those matters such as, for instance, the Theme Committee that will have to deal with the President's powers and that of the executive. I don't know that it serves a useful purpose for this Theme Committee to simply take what is already in the constitution and send that forward to the CC. The CC is apprised of your preference regarding the powers of the President in respect of the deployment of the Defence Force. You have made, within the ambit of your brief, certain suggestions regarding an appropriate amendment simply, as far as section 227 is concerned, to provide for better drafting. If you want the secretariat to include, in the proposed new text, the entire section 227 & 228, then by all means let them do it. There's no reason why it shouldn't be done. The point about it is that, with the exception of the President's powers as far as the state of national defence is concerned, the parties here in this Theme Committee are agreed about the deployment of the Defence Force; and you say so in your report.

Chairperson:

I don't understand where lies the problem, Dr Heunes, because this is our preference as a party. And we want that provision to be contained. We simply feel that in the provisions of the new constitution the President's power for deployment of the army should be possible subject to ratification by Parliament.

Dr Heunes:

Chairperson, I'm not aware of a precedent where it is expected of a technical advisor to draft a particular party's preference in respect of what should or shouldn't go in the constitution. Technical advisors, as far as I understand, draft what the Theme Committee wants to go into the constitution *qua* Theme Committee. Our job is not, as far as I understand it, to draft for political parties their preference to cast that in constitutional language. I don't know if that is the position. I it is, I stand to be corrected. And I would draft your preference.

Chairperson:

Thank you very much. If it is to be drafted, I think we will be satisfied, because that's all we wanted. Even in the CC, where I'm a member, there are still a lot of conflicts regarding the different provisions. There are different provisions indicating the various views of the parties. The options are being indicated there. It's not something new. So, what we are saying is that if the other parties do not want the President to have those powers, they have the right to feel that way. But we want that option to appear in the formulation. We are not enforcing our own party political view, but we are saying this is an important aspect for us. Can we request that it be included?

Dr Heunes:

You certainly don't need my permission, Sir. I will draft it for you if the meeting wants me to do it.

Chairperson:

Any other comments? Perhaps it would be good for us to have the draft circulated while we stand to the CC. The CC would like to have the provisional draft of the constitution coming up very soon. We would then ask the secretariat to circulate among the members of the Theme Committee the draft formulation which has been sent to the CC.

Dr Heunes:

Chairperson, there was a suggestion by Rev. Meshoe about a possible amendment to the last subsection.

Rev. Meshoe:

Thank you Mr Chairperson. Although I do not have a proposal at the moment, I feel that on page 4 9-10, we need more clarification, because at the moment the presumption is that the court of law would expect the constitution to be in line with the Customary International Law. So there needs to be another amendment to clarify that position.

Chairperson:

Any other comment on that? Perhaps it's just a matter of rephrasing it in such a way that there's clarification. It seems there is no problem with that. So that matter can be attended to. Thank you very much. Then the meeting is declared closed.