

TRANSCRIPTION OF THE MEETING ON 17 JUNE

Dr Venter:

We would appreciate it if you give us the opportunity to present to you the remainder of our reports. We have a Supplementary Report on the Constitutional principles as was requested from us and the fourth and fifth reports all of which contain matters that have already been raised in debates at the last meeting. The Supplementary Report will be presented by Dr Olivier, the fourth report by Prof Devenish and the fifth by Mr Moseneke.....

The Supplementary Report to the Third Report was drafted in response to the debate on the third report which went up to the end of paragraph 2 of that Report in order to facilitate the discussion and the completion of that discussion on that paragraph, the Supplementary Report would help. The rest of the Third Report has been presented and the Council would be able to continue with its discussion without further presentation of that Report. The Fourth Report and the Fifth Report both emanated from our instructions at the previous meetings. We consider it useful if you could have the whole picture, because all the Reports supplement each other and they actually form a package. It would be useful if you could hear the presentation on all of them.

Dr Olivier: Reports on Supplementary Report

Prof Devenish: Presents Fourth Report

Mr Moseneke: Presents Report

Dr Venter: To round of the discussion: This Committee urgently needs further instructions from the Council in order to continue with its work constructively. I would suggest that the debate should continue where it was left of in the Third Report on the Constitutional principles. It would be useful to round off the discussion on Constitutional Principles of a general nature, then continue with the principles regarding SPR's and then continue with the fourth and fifth Reports.

Following an initial debate on the Reports of the Technical Committee, it was agreed that : (see attached Resolution adopted by the Negotiating Council on 17 June)

That the debate on Constitutional principles, the Third and Fourth Reports of the technical committees continues and that for the moment the fifth report should be kept in abeyance.

That the Technical Committee report next week on alternative ways of drafting and adopting the new constitution, including the bottom-up and top-down approaches and alternative views regarding the need for SPR constitutions and different options for such constitutions;

That if the debate continues on constitutional principles it does not mean that the principles will be finalised to the extent that they will be of a binding nature;

That an open ended approach should be adopted until a further report is presented by the Technical Committee.

RESOLUTION ADOPTED BY THE NEGOTIATING COUNCIL MEE.
17 JUNE 1993

1. That discussions in the Negotiating Council continue on Constitutional Principles and other reports of the Technical Committee that are before the Negotiating Council.
2. Request the Technical Committee on Constitutional Issues to, in view of submissions received, consider and report on:
 - 2.1 Alternative ways of drafting and adopting a new constitution, including the bottom-up and top-down approaches, and
 - 2.2 Alternative views regarding the need for SPR constitutions and different options for such constitutions.
3. That the Explanatory Memorandum accepted by all participants on 30 April 1993 in the Multi-Party Process relating to proposals arising from the Multi-Party Forum resolution on the Negotiation Process is re-affirmed and the Negotiating Council specifically reiterates its acceptance of paragraph 6 of the Explanatory Memorandum:
 - "6. It is expressly understood by all participants that each of the above proposals and the documentation emanating from such technical committees shall be discussed in the Negotiating Council with the view to arriving at an agreement on these matters. Furthermore that as when agreement is reached on each of these matters the Council shall expressly determine when and how the specific agreement shall be implemented. This provision is made so as to ensure participants have a clear understanding of the package of agreements which would constitute the key elements of the transition process. "

Debate on constitutional principles dealing with the
allocation of powers to different levels of government -
Third Report

The technical committee was asked to give consideration to the following amendments

3 : Eglin: Precede point 3 with the word
Constitutional

3.1: No Discussion

3.2 : No Discussion

3.3 : Mr Eglin suggested that 3.3 should read
"Each level of government shall have appropriate and
adequate legislative, executive and fiscal powers
and functions.

Mr Eglin further suggested that point 3.6 be
removed

3.4: Dr Delpport proposed an amendment to 3.4 with the aim
of putting the position of local government on a
firmer footing (see distributed proposed amendment)

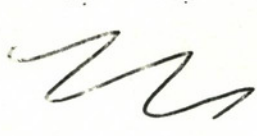
Mr Webb: In the light of the task that has been
given to the technical committee today to review other
types of structures of government, then 3.4 would have
to be completely overhauled in the sense that we would
not talk about legislatures of the SPR's we may have
to talk about SPR constitutions and that the regional
concept or development in terms of such a model would
require complete modification of this clause.

Mr Conje: Is the meaning of 3.4 is that each of the
levels in the structure would have original powers or
is it suggested that powers will be delegated from the
central government or through the process of
rationalization, these other structures are granted
decision making powers without any legislative powers

De Venter: The meaning of original powers is that
powers are allocated in the constitution

Mr Landers: Would like to refer to the proposed
amended of Dr Delpport - no motivation by Dr Delpport for
his resolution

Dr Delpport: As it stands no distinction is made between
local government and regional government. We must spell



out that local government is a form of government that will require more deviations from the basic model than regional government. Thus in the parliamentary structures one would be in a position to cater for such deviations from the standard model.

Ms Baleka : Accepts Mr Delpport's amendment. Proposed another amendment on the latter part of 3.4:
After the words "a specified majority of the legislatures of the SPR" insert " or alternatively of a specified majority of a chamber of parliament composed of regional representatives."

Mr Jacob: The use of the word ordinances presuppose a lower or weaker statute?

Mr Delpport: Agrees to change the word to SPR legislation.

3.5 Dr Delpport: "May" should read "shall"

3.6 V Moosa: 3.6 should not move to 3.3. In the event of it not falling away, in line with the earlier amendment to 3.4, 3.6 would have to look at whether we say "each level" or whether we say the "central and SPR level" Would like this referred to the technical committee for their consideration

3.7 Eglin: Financial and fiscal commission cant be a principle. It is a mechanism for achieving an objective. This clause says that it would be constituted to advise the national government on the distribution. AND the next clause says fiscal and financial allocations by the national government. SPRs should have a constitutional right to access to the fiscal and they should not be dependent on advise given to a national government and a national government then passing on funds. Their access to funds should be a constitutional provision. If you are going to have a financial and fiscal commission then this clause should be ".... shall be constituted to determine the distribution of financial and fiscal resources. The next one would not then be that they advise the national government but that fiscal and financial allocations to the national government and the SPR's is done via that commission. Irrespective of whether you have this commission written in, at this stage it must be that SPRs have a constitutional right to access to central funds to the extent that is necessary in order to achieve the very objectives of clause 3.8.

V Moosa: The first point that I would like to respond to is 3.6. In line with amendment made to 3.4, we need to take into account whether we want the central constitution to stipulate what all the fiscal powers of the different kinds of local levels of government would be. That is not

say that local level government will not have fiscal powers. That was the amendment which was made to 3.4. All I'm saying is that we should look at consistency throughout that. As far 3.7 is concerned, Mr Eglins point, we would find it difficult to accept a situation where a fiscal commission determines the distribution of fiscal and financial resources. It would be quite unprecedented where one appoints a commission to make such a determination. The allocation of finances should be that it is left to elected representatives not a commission. Thus the advice of the technical committee is quite correct.

Solidarity: In attempting to draw a constitution for a state where there will be called possible SPR's, is not customary to appoint a financial commission which will define the financial responsibilities of the centre and the states

Mr de Jager: Shouldn't the commission also advise other levels of government on fiscal and financial affairs.

Mr Ngubane: Supports the idea of the commission to ensure that there is an equitable system or equalization

3.8 Eglin: Proposed amendment: Fiscal and financial allocations "to" the national government instead of "by" the national government

Mr Matthew: Must not have a constitutional principle couched in such a way that it suggests that the commission will be deciding and not parliament how allocations will be made with respect to the budget. In the German situation, there is a special fund separate from the budget by which the VAT- 50% of it is used to create a fund from which financial transfers are made to equalise the situation. But the national budget is still under the control of the national parliament. The principle, the way it is written requires more clarification.

Valli : The main difference between Mr Eglin and the ANC is whether or not it is some committee of wise men that will be taking decisions about the fiscas or whether it should be elected representatives. We submit that it should be elected representatives that perform this function. There needs to be a commission which advises. The point about 3.8 is that we are talking about the national funds of the country. That money which is collected at the central level - how is that money distributed to the various regions. Is that decision to be taken willy nilly according to party political preferences of any government which is in power at a certain time or

can there be some form of formula based distribution with certain criteria that would have to be taken into account. What 3.8 does is that it stipulates what the criteria would have to be. That in spite of whatever the advise the fiscal commission may give to the government, the government should be conditionally bound to certain criteria when making that distribution. 3.8 is really correct.

Mr Nonkonyama: The point has been raised by the previous speaker. We must bear in mind the system of migratory labour. The new government must address the imbalances between regions.

S Shilowa: Point has been covered by Mr Matthew: Irrespective of whether you have federal or confederal system. You have to have a centre that is going to decide how and where money is going to be allocated. Will ask Mr Eglin to reconsider his viewpoint.

Rajbansi: Notwithstanding the history of distribution, it should be elected representatives who decide on financial allocations.

TecComm should consider the practical implementation of principles, and embody safeguards to ensure that regions are properly protected so that no advantage or disadvantage to regions.

3.9.1.1 Eglin: Insert the word " and accountable" after the word "responsible"

3.9.1.2 Mr Cronje: Need to spell out clearly the division of powers between the three levels to avoid deadlocks and conflicts

Dr Venter: The point raised by Mr Cronje is covered in 3.4

Ms Jacobus: Propose that the word territorial be replaced with "geographical"

3.9.2.1.3 De Jager" Last four words should be deleted to be replaced by the "of the forum where it can be most effectively applied to the advantage of the people"

MV Moosa: Mr Jagers point would make the clause a vague one. The constitution would not say how conflict is to be dealt with.

Mr Mahlangu: Appeal to delegates to leave the clause the way it stands.

Mr Felgate: Where there is a likelihood that conflicts may arise, it is wise to have a framework to deal with these conflicts.

Mr Eglin: Technical committee should take delegates through what they envisage concurrent powers as.

Mr Mothibe: Technical committee should look into creation of rules for dealing with conflict

3.9.1.4 IEP reserves position on clauses will produce a written document which deals with its concerns

3.9.1.5 stays as is

3.9.2.1 De Jager: Reserve their position - dont believe in a unitary state

Slovo: Whether we have a federal state or unitary state this clause will have an application

3.9.2.2 Stays as is (Mr Felgate called for more specificity

3.9.2.3 stays as is

3.9.2.4: Mr Slovo: Should read "national economic policy
....."
or that the teccomm address the question of national economic policy in the hands of national government

3.9.3: stays as is

3.9.4: stays as is

3.9.5 Felgate: after todays debate the teccomm should pay more attention to residual powers

Mr Webb: Residual powers should vest in the SPR government

Mr Slovo: Should be more debate to guide the teccomm: Party prefers that residual powers should vest in the national government

Eglin: Residual powers should vest in regional government: Should get as many powers as possible defined in the

constitution.

Mahlangu: Residual powers must remain with national government

Cronje: Agrees with Mr Eglin

Repinga: This aspect is linked to 3.9.1.3 The national government would be the best to adjudicate matters while matters are being investigated

Felgate: Residual powers should be left at regional level

V Moosa: The matter should not be debated as heatedly as is. Residual powers do not amount to vast and important powers.

The principle as it stands adequately covers those people who are concerned about residual powers. It minimizes the extent of residual powers if and when they occur. This is a matter that the CNB should decide on. If residual powers arise, it is a political decision and the constitutional court should not take decisions on this.

4. Asymmetry:

Mr Webb : Should express our views if we accept asymmetry as a principle?

Mr Moosa: Would be impossible to have symmetrical regions. Asymmetry cannot be seen as a principle.

Mr Felgate: Asymmetry does not only apply to a guideline to constitution building it also applies to a process. Asymmetry is a question the teccomm should give greater attention.

Mr Eglin: Agrees is not a principle cant impose it as a principle.

Dr Ngubane: In some areas regions are well established in some there needs to be greater rationalization. We are forseeing a situation where you might have to implement regionalism according to different time scales depending on the readiness of that region to assume those functions, that is why the issue was raised.

Mr Moseneke's explanation.....

5: Dr De Villiers: 5.2 The teccomm should consider raising it to the level of a constitutional principle or part of the criteria that should guide the writing of the constitution.