

2/4/2/1/10/23

✓ OK.

<b>ECCO</b>	The TECHNIHIRE group of Companies (Registration No. 86/03905/06)	
	1102 Heerengracht Centre Adderley Street Cape Town South Africa Tel.: 27-21-254590 e-mail: bbohle@aztec.co.za	P.O. Box 6550 Roggebaai 8012 Fax: 27-21-4191613
CONFERENCE AND LANGUAGE SERVICES		

<b>THEME COMMITTEE</b>	<b>2</b>
<b>DATE OF MEETING</b>	<b>21   08   95</b>
<b>NUMBER OF TAPES</b>	<b>2</b>
<b>CONTENT OF ENVELOPE</b>	
1) PRINT OUT	✓
2) NOTES	✓
3) TAPES	✓
4) COMPUTER DISK	✓

CORRECTED VERSION

THEME COMMITTEE 2

21 AUGUST 1995

may give expression to any particular form of Self-Determination provided there is substantial proven support within that community concerned for such a form of Self-Determination. And thirdly, if a territorial entity referred to in paragraph 1 is established, and this is the point the CPG made very strongly in their report, if a territorial entity referred to in paragraph 1 is established in terms of this Constitution before the new constitutional text is adopted, that is perhaps before sometime next year, the new Constitution shall entrench the continuation of such territorial entity including its structures, powers and functions. So from a technical point of view, it is certainly possible, I would submit, that while Principle 34 is definitely binding on the Constitutional Assembly, it doesn't bind the future Constitution to make provision for the continuation of Self-Determination, or it seems to me. It can't be. This schedule shall not be construed as precluding within the framework of the said right of Self-Determination, constitutional provision for a notion, so it may not be precluded. That is correct, it may not be precluded, that is quite correct.

Chairperson:

Any further comment. Dr Pahad, do you still violently insist that the rest be deleted?

~~armed~~ armed struggle

Pahad:

Well the days of ~~armed struggle~~ are over. No, I wasn't sure what ? was saying on that side. I mean, if you think you need to put binding on any future government, it's just tautology. It's actually fine, put it in, if that's what you want. Because if a government enters into an agreement with anybody or any form of parties to do anything, then presumably it is bound by its own decisions. But I don't have a problem with that, what I was saying was that I thought the rest of it just adds, or seems to qualify this original first part of the paragraph. It's not really adding anything to it, because it's just saying in relation to what should happen to the Constitution. They are saying in relation to the flexibility, the incremental approach, that would already be included in the schematic part of it which we've agreed earlier, that would then say that approach would be there. I thought what the first paragraph would then do if we just take that part of the first paragraph, that that then acts as a kind of guide to the Constitutional Committee, so when a Constitutional Committee is discussing it, one of the issues it would then discuss is to say, well okay, we may well not be able to resolve the issue now in terms of the new Constitution, but that we will include provisions which will allow for negotiations to continue. I mean that's all, this is what part of the paragraph says. It doesn't say anymore than that and I was just amending it slightly to say to leave out to the satisfaction of all this aspiring to Self-Determination because I thought that's a terrible qualification to add.

And in my own view I thought if we put in terms of Self-Determination what we....

(Tape 2)

..... where the section in the Interim Constitution itself says we just use the notion of Self-Determination and not internal Self-Determination so just to be consistent with what there is. But if Mr Beyers insist on binding on any future government, I don't have a problem. You can keep it there.

Chairperson: Any comment? Mr Eglin.

Eglin: First of all I actually would also delete all that clause about ease of amending the future Constitution. It's a detailed matter. We don't know how the Constitution is going to be amended. But in a sense it detracts from what I think is the thrust of this thing. Where I have a problem as a party is that this is.... We are now talking of the next Constitution. The most appropriate form of constitutional provision in the next Constitution may be a commitment to pursue through negotiations the issue of Self-Determination. I would believe the Constitutions could go no further than they should if not preclude, but to actually have an injunction in the new Constitution that we've got to carry on pursuing Self-Determination as a constitutional requirement goes far beyond the Constitutional Principle here, so I would have said that the most appropriate form could be an authorisation or a recognition of the right of people to pursue negotiation in order to get .... but as it stands here, is going to be a commitment on all of us. It doesn't say a commitment to those who want it. It says maybe a commitment to pursue. So I would think that it should be a permission that shall not preclude negotiation in order to pursue. It's not the same as saying there is a commitment to pursue. So we would go no further than saying it should not preclude negotiation as a means of pursuing this but I would not say an injunction in the Constitution to have it.

Chairperson: Anybody? Prof Corder.

Corder: Absolutely perfectly in order.

Chairperson: Mr Holomisa.

Holomisa: To say in ? of the worries that have been expressed by Mr Eglin and Mr Pahad about the rest of that paragraph, starting particularly with the word "depending", my worry has to do with the words "to the satisfaction of those aspiring to Self-Determination". It is clear insofar as Parliament is concerned that there is only one party that pursues this. Now if we're going to commit everybody to this type of

negotiation to the satisfaction of those people when it is clear that the rest of the other components of the government are never going to agree to this type of thing, then I'm not sure if this is what you want to do to the government, to commit it with such a lack of resources as it does to commit it to continue to pursuing this kind of exercise to the satisfaction of this very small number of people. I am not happy about that particular one. I suggest that even if we retain this paragraph but at least the words "to the satisfaction of all those aspiring to Self-Determination", those words would be deleted.

Chairperson: I think we've basically agreed that until the issue is resolved full stop, and then it carries on from depending. Is ek reg Prof Corder?

Corder: Well, what I understood from the majority of the people here Sir, the indication seem to be that it would... In fact you delete everything from the word "resolved" to the end of that paragraph, in fact to the end of that page. It seems to me that the consensus here seems to be that in effect you retain only the first sentence to the word "resolved". That the last paragraph will be part of the schematic summary in any case on page 11 in a comment, and that all the details relating to constitutional amendment etc, etc, should fall away including the last part of that first sentence from the words "to the satisfaction" to the end of that.

Chairperson: Somewhere along the line you missed something. Mr Beyers said he would prefer it to be like that and then Dr Pahad said he has no problem.

?: Mr Chairman, I will accept this one because Dr Pahad stopped I think at the second or the third line.

Chairperson: So it's resolved? So you're not persisting in having the rest included.

?: No, that's OK, but which will be binding on any future government until the issue has been resolved. If that is included I will be satisfied.

Chairperson: Agreed. Mr Ebrahim.

Ebrahim: Mr Chairman I just want to get the clarification here that if we are taking that part of it until the word "resolved", do we delete the word "internal"?

?: Yes.

Chairperson: Ladies and gentlemen, thank you and thank you to the Professors.

This concludes our meeting and we'll include the draft again for our next meeting. The ~~Call~~ Group must just remain behind.

Core

**Notes of inaudibility on Theme Committee 2 discussion dated 21 August 1995**

**Counter No.**

**(Tape 1)**

015 Inaudible question from floor.  
016 .....?..... to this page  
282 .....?..... sit on the CC  
350 that they ....?....  
681 wasn't sure what ? was

**(Tape 2)**

026 To say in ?

**Transcriber's Notes**

**In certain instances during this transcription, speakers would address the meeting without being motioned by the Chair to do so. It is therefore impossible for the transcriber to determine the names of these speakers.**

(Tape 1)

Chairperson: A hearty welcome to everybody especially Prof Corder and Prof Breytenbach. They are going to present their report to us this morning. There isn't any minutes available. I believe Thomas Smith was sick last week and he couldn't prepare the minutes so we will deal with that at another stage. Now the report is contained in the documents before us in two sections, the preview and then the block report. There are certain recommendations by the ad hoc committee with regard as to how we deal with that. We listen to that but it's interesting when it comes to agreement, they must explain that to us. They must either say a few or various and then we've got to analyze what is meant by a few and what is meant by various, so they must enlighten us on that. I will immediately.... I think Prof Breytenbach you will lead the discussion? Then I'll give over to you immediately.

? Inaudible question from floor.

Chairperson: ? to this page this morning, separately, the Prof must just indicate where must we fit it into the report.

Breytenbach: Good Morning Ladies and Gentlemen. What you've got in front of you is the second draft progress report of this ad hoc committee. A week ago my colleague, Prof Corder did make a presentation. At that point in time it was the first draft report or the first report. It was then based on the inclusion as well of the submission of the Freedom Front which was only made available earlier last week and the major difference between that report, as was tabled last week and this one entitled the Second Report also includes the report of the Commission on Provincial Government which was received by the Secretariat approximately Wednesday or Thursday. So it was a very quick process of accommodating that and the major differences are simply paragraph 2(1) on your page 2 under Self-Determination where there were no comments in the past. Here we did include a comment and that is the comment of the Commission on Provincial Government where it did state that it regards the reference in Principle 34 of the Constitution as rather vague, but from that following it does make a suggestion that negotiations ought to continue and that's the reason why. Not the reason why, but there is then we discovered a growing consensus between all the submissions so far with the exception of one party and a number of the individuals who had made submissions to this committee that negotiations on the concept of Self-Determination ought to continue.



That is then the reason, Mr Chairman, why if you page on, page 8 of the report, we did include for the first time a paragraph 3.3.3 (4.3.3.) where we simply put it short and sweet, page 8, agreements that negotiations should continue, the ANC, The Freedom Front, the Commission of Provincial Government. As some of the others propose that negotiations on a form of Self-Determination for communities concerned should continue and that the outcome should be the result of negotiations. Technical points were also amended, very few, such as that we've got now one organization more that made recommendations rather than fewer and then the thrust of our submission really is page 10 where under 6(a)(b)(c)(d) and (e) the major issues that... Let me just take you through these issues because I think these are the crux of where we stand. Paragraph 6(a) - The Committee therefore proposes that the political process continues. The Constitutional Assembly should issue guidelines in this respect, guidelines as to how the negotiations ought to continue with a view to on the one hand the looming deadlines and the substance of the matter on the other. Point B - One of the issues which we are not as a Technical Committee in a position to pronounce ourselves on, is this whole issue of Proven Support. The Freedom Front in its submission did refer to the issue of Proven Support and the outcome of last year's election, the 640 000 votes that the Freedom Front got for the election of the provincial component. We would also want to have guidance on whether or how the Constitutional Assembly views this one. Point 6 (c) - That the Constitution-makers adopt an open-ended approach that seems to be a fairly widely held consensus to the issue of Self-Determination while further deliberations take place including the formulation of positions on Self-Determination that may assist in expediting the Draft Constitution because as again we are aware as the ad hoc committee that the first date for the publication of the first draft of the Final Constitution is by the end of October and that the deadline also suggests that by May the Constitution ought to be adopted by the required political process. Point (d) - Except for only one party and some individuals who totally reject any form of Self-Determination, Volkstaat, there appears to be an emerging consensus on at least two issues. Negotiations should continue, is also our point 6(a), it's also been referred to again in (f) hereunder. We will get to that point, and then secondly that some or other form of cultural Self-Determination may be provided for at the local level. This is the consensus, a very tentative conclusion that we reached through the consensus that we deduced on the Freedom Front, the National Party, the Afrikaner Bond, the Conservative Party, that actually goes much further but doesn't exclude this, and that if there is to be a consensus so far, it is cultural Self-Determination on the local level, and we simply say

that Constitution- makers in the other Technical Committees ought to take cognizance of this so that coherence may not be lost if this committee proceeds with making certain recommendations and other committees are unaware of that and that would cause "out of sink" requirements in the final version of the Constitution. Point (e) - Since the deadline for the publication of the draft Final Constitution is approaching fast, other Theme Committees ought to take note of the thinking and implications emanating out of our deliberations so far and then I guess the most important provision or the most important recommendation really is (f) - If the deadline is reached without further clarity on the issues concerned the Constitutional Assembly should perhaps consider as an interim measure that is before the Final Constitution is adopted in 1996 that Principle 34 be retained in some form depending on the outcome of (a), (b), (c) and (d) above, and if so, references should be included somewhere in the text substantiating this Principle. It also seems desirable that provision be made in the draft of the Final Constitution for the continuation of negotiation which may lead to some form of Self- Determination after the adoption of the Final Constitution for such groups. Members of the ad hoc committee will look into tentative formulations and as far as that's concerned in my absence last week there was a proposal made and noted as such. The original proposal was made by General Groenewald namely that my colleague, Prof Hugh Corder, ought to look into tentative formulations and this is what this separate document is all about and I will hand it over to him to make some explanations on that particular point.

Corder:

Thank you Prof Breytenbach, Thank you Chair. This is as Prof Breytenbach said, arises directly out of General Groenewald's suggestion last week. It has been put forward by me and me alone, although Prof Breytenbach has seen it and approves of it. Prof Raath has been faxed this on Thursday afternoon. We have had yet no response from him so it's a very unofficial proposal and it doesn't contain any details as regards how the actual formulation will read or might read in any Final Constitution. It just talks about some general principles which might underlie such a formulation, and if I could take you through it sentence by sentence and just draw your attention to certain key words, perhaps. First of all the most appropriate form of constitutional provision may be, and this is just a suggestion, a commitment to pursue through negotiations the issue of internal Self-Determination. In other words arising out of the discussion that is already included in the body of the report, the idea of some kind of succession is not in vision at all. You see an issue of some internal Self-Determination in some form, the outcome of which will be binding on any future government until the issue has been resolved to the

satisfaction of all those aspiring to Self-Determination. At the moment we seem to have only one group of people who are aspiring to Self-Determination but it might be depending on the outcome of negotiations in their regard that other groups would aspire to Self-Determination because as you know the Principle 34 is not specific to one particular group. And then the question is asked how will this commitment be binding on any future government. Well the answer is I suppose depending upon the ease with which the Final Constitution may be amended whether it is a 60% majority or 50 plus one or two-thirds or whatever. It will probably be necessary to entrench this provision ie the provision relating to Self-Determination through negotiations in some way. For example, by making its amendment or appeal subject to a special majority in one or both Houses of Parliament and/or requiring the concurrence of a certain number of, or maybe even particular provinces and/or so these could be accumulative or separate. Perhaps other structures which may have been set up in order to facilitate the resolution of the issue. In other words if a body such as, for example, the Volkstaat Council was to continue as a forum through which negotiations were to be pursued, perhaps its approval would be necessary before an amendment or appeal of this binding commitment to resolve the issue of Self-Determination could take place. But then the final little paragraph there. In order to preserve maximum flexibility which we have called in the body of the report the incremental approach, such a provision ought to be general in formulation and broad in scope using the type of language, not necessarily the language itself, but the type of language to be found in Constitutional Principles generally in schedule 4 to the 1993 Constitution. Thank you.

- ?: Just before we carry on, go back to page 3. 2.2 Section 20, the first sentence. "Remain in and live" I presume, it should be. Instead of "leave".
- ?: That is from the current Chapter 3, The Bill of Rights. It is "leave the Republic". "Leave" is correct. LEAVE. That stands correct.
- ?: And then 2.3, Section 3. "Afrikaans and so forth for the promotion of their equal use". Is it referring to Afrikaans or the eleven languages?
- ?: That refers to all eleven official languages.
- Chairperson: And continue to the block report on page 11. Now this is where we need more clarity with regard to few and various.
- ?: This was the toughest part of the report compiled. So, clearly we

regard this as the most unimportant part of our report. It was simply made there because it was a proforma requirement that we did include a summary but it is virtually impossible to include the new answers in a telegram-style report where one really plays dice at the end of the day in deciding on which word to use. Whether one uses the word "few" or "various" or whatever. So I would really submit with due reference to ourselves in compiling this that this is the most unimportant part of the report. We actually urge members of the committee to read the rest of the report.

Chairperson: I think the committee will have sympathy with the ad hoc committee in this regard and we won't pursue that matter any further. Now I understand we've got the overview and the report ends on 9 and 10. We've got the recommendations of the ad hoc committee to which this loose page was added this morning. Any comments? Dr Pahad.

Pahad: Mr Chair, can I just suggest that when we're going through the thing, that we do come back to this schematic summary taking into account what Prof Breytenbach had said because there might be some formulations that we might want to propose that should be changed. But when it comes to that, I'll make my comments.

Chairperson: Any other comments on the report up to page 10? Mr Eglin.

Eglin: Chairperson, I hear what Prof Breytenbach says, ignore the summary. Well, not ignore it, but don't ..... But oddly enough, I actually think that a condense summary, well, a summary which identifies the issues of agreement or disagreement is in fact what this Theme Committee is about. It is not a negotiating forum which is got to look for common ground on the issue of a Volkstaat. If there are areas of common ground, it identifies them, but if there are areas of difference, they must also say so. So I am just a little concerned that the final .... therefore if the committee proposes, I don't know? The Technical Committee can propose, but the Theme Committee doesn't propose solutions in that sense. The Theme Committee identifies areas of agreement and difference. So I am just concerned that if I look at (a) to (f), it's an attempt to actually find a negotiated agreement between the various parties as to what they could say. It's not an attempt to state these the way what the parties positions are. And I just make a point, you know, from the point of view of the Democratic Party, is that we believe the Constitutional Principles compel us to permit the notion of Self-Determination to be carried on into the next Constitution. But what it doesn't say is that we actually got to create structures in order to force or promote that particular issue. So I've just got a concern that this thing that comes from a Theme Committee

is already an attempt to find, what I call, a solution to the differences rather than reports of a Theme Committee on what the differences are.

Chairperson: Anybody else? Prof Corder.

Corder: Can I just, thank you Sir, respond to Mr Eglin. Having served on Theme Committee 1 as a technical advisor for the last seven months, I'm very well aware of the point that Mr Eglin is making. But in the Management Committee guidelines of February or late January as to how to draw up a report, there is a sixth section called "Possible Approaches", and what (a) to (f) here is, are suggestions which have come from the technical advisors. We're three people and we endeavour to reach common ground, which we have reached, and you know not necessarily each of us would have agreed to the same degree with what is there, but it is a composite proposal which of course is for the acceptance or rejection of the Theme Committee. But I'm certainly, and I know Prof Breytenbach is all too aware of the fact that we should not be proposing and taking any kind of initiative here, except insofar as we are required to in terms of the guidelines.

Chairperson: Dr Pahad.

Pahad: I take Mr Eglin's point and he is quite right that the Theme Committee is not a negotiating forum. Sometimes I wish he will remind his own party about it from other Theme Committees, like Ken Andrews. (Laughter) But let me proceed. I think what we should do is this, because Prof Corder is also correct, is perhaps look at the schematic side and take into account what Mr Eglin had said, that that's a very important part of the report that we would want to make. At the end of that we then come to what Prof Corder is saying, that having established that, as which we will, that the provinces are very complicated that at this time they don't seem to be dissolvable. We then come to, as a Theme Committee, our recommendation to the Constitutional Committee with regard to saying we think that it's possible that the process may be continued in a certain direction. That if we did it that way, I think it would be fine, because there have been direct recommendations from Theme Committees in the form of concrete proposals, even with regard to what should appear in the Constitution itself. So I would like to propose that we do it slightly differently from the way Prof Breytenbach started, which is going to the schematic side. Let's look at it, let's try to establish in what we.... in another report can be done and then come to the concrete proposals which would follow from the schematic proposals.

Chairperson:

Anybody else? Whilst we're thinking, wouldn't it be advisable with regard to agreements and disagreements to submit the recommendations under the heading of Agreements in the block, instead of a separate recommendation, because this block is in essence our report to the CC and from that will flow drafts thereafter. .... clear my question. Instead of having the recommendations on page 9 and 10, can't we have it under the block system, the issues, then they stipulate the issues, and then the recommendations, the agreements and then comments at the end of that block. Can you assist us in this regard?

?:

I think that what, for instance, what we could do which would help the process is that for instance if you look on page 11, the first issue there Self-Determination, columns 1 and 2 would stay unchanged in what I'm getting from the sense of the meeting. But columns 3 and 4, for instance where under Agreements under number 1 there is Self-Determination, few accept the process. I accepted that and then Disagreements. Various isn't particularly helpful if one is only reading the summary if one doesn't look at paragraph 2.9 and 6 of the report. So, it might be, and we could certainly do this, is to actually expand that. Instead of saying, we could say few, and then stipulate exactly what they are, and then under Various we could say x,y and z and we could repeat that, I suppose, under each of the items or issues on the lefthand side there. And maybe have a Comments column. What I know some other Theme Committees do is that they have a Comments column, another column on the right-hand side and perhaps that's maybe where the recommendations could come in under Comments. It's just a suggestion.

Chairperson:

Mr Eglin.

Eglin:

.....?... sit on the CC, we know that is what would be useful to the members of the CC. Just to say Disagreements Various, it doesn't really help the CC members who have got to start making decisions as to what the disagreements are and who have them. So I think the elaboration of agreements and disagreements with some comment to identify what the main issues are would be very helpful to decide on where they must take the process from there.

Chairperson:

Is everybody satisfied with the approach that was expanded upon by Prof Corder? Okay, I am waiting for the Professors.

Prof ?:

Yes, I think there's also a practical side to it whether it could be done, and I think yes it can indeed be done by simply adding another column or in the form of another page and that would be to elaborate

on the disagreements and also perhaps on the agreements by means of a summary and it's practically possible. Now we think that it is all there, but one has got to page back to the report as it were and if it's got to be ready read as it were in one overview, that's not an impossible thing for us to do and it could be done quite expeditiously.

Chairperson: If the Professor says expeditiously. When? This week?

Prof ? : Yes, it could be ready by tomorrow lunch time.

Chairperson: Is the Theme Committee in agreement with that? Then we agree to that. Dr Pahad, you wanted to specifically refer to the Column report.

Dr Pahad: Yes. I thought that issue number 3 on Language, Culture and Community, it said Agreements - most consensus so far, Local Level Disagreements - virtually none. If I'm not mistaken, it seems to me that in any case, all of us have to comply with some of the provisions of Constitution Principles so that in the present Constitution in terms of, at a national level to languages, cultures and so forth, people are protected therefore we have eleven languages. So the question of the protection of cultures and languages of people is not only related to the local level. So this sometimes gives the impression that we are talking about only consensus. So there is this general approach to this thing. What there is, is how is this to be reflected in terms of the debate we're now having about Self-Determination. And in that sense there are a number of proposals been made by different parties including the National Party, the Freedom Front, the Afrikaner Bond and others about how they think this can take form. So I'm just asking that we slightly alter that, so that it's more in the form of saying that rather than agreements, I mean we can say some parties have said, for example inside of the ANC what I think we are saying, is that we are open to further discussions on this question in terms of how it can, if it's to come about, how can it actually be reflected, rather than saying that we're already agreed that such a situation should occur. So I'm just saying that in terms of that if we could just slightly alter it so that it is more accurate with regard to what we are talking about. Thanks.

May I say that under support, you see, again if we change it... Well, there isn't really any agreement. Instead of saying parties must consider the Freedom Front proposal, it would seem to me that what one could do is under Comment for the purposes of the Constitutional Committee say, that the Freedom Front in its proposals proposes that whatever percentage they're proposing or the 640 000 votes that they ....?... so it's rather a comment and bringing the attention of the

Constitutional Committee to a specific proposal of the Freedom Front, rather than just saying, must consider because we must consider every political party's proposal.

Chairperson

Anybody else? Prof Corder.

Corder:

Yes Sir, can I just find out from the Theme Committee if this would be acceptable. I know in the last report the Theme committee won on Capitals and Languages etc, etc, etc, because some parties had made no proposals on certain aspects. Instead of reflecting agreement or disagreement, those columns were left blank, but then everything went into the outstanding column. Would that be, it seems to me that, that's essentially what Dr Pahad was saying on this very last point. That there should be nothing, there should be a blank in the agreements and disagreements, but the question is really outstanding because there hasn't been sufficient attention paid to that in the submissions from all the bodies which we have consider this far. And that might be a helpful way of going forward.

Chairperson:

He appears to be agreeing, because he is shaking his head. Anybody else on this issue? Oh yes, Mr Eglin.

Mr Eglin:

Chairperson, I'm just wondering in terms of our report because Self-Determination is used in a very general sense and different people have got different interpretations of it. Whether it wouldn't be and the technical advisors could comment on it, whether one shouldn't say there are various forms in which Self-Determination could take place. And there may be more agreement on some aspects than on the other but I actually happen to believe that the Constitution which allows each person to use his own language and his own culture, it allows individual Self-Determination. In a very big way the Constitution at the moment allows it. It also allows collective Self-Determination when it comes to religious and cultural and linguistic matters including even in education. So that you've got, to what extent is there agreement that there's culture Self-Determination on a collective basis. But I think the really crunch issue is that to what extent can you use cultural Self Determination as a base for having territorial and other Self-Determination based on a common culture. In other words, do you use common culture as a basis for what I call political Self-Determination or Self-Determination ends when you in fact have got your common culture and Self-Determination in that field. But I would think significant areas of agreement is that when it comes to individuals or collective Self-Determination on linguistic and cultural matters, there's very broad agreement because that's the Principle. But to the extent that you should use culture as a base for



territorial and political Self-Determination is a matter on which I think there is significant disagreement. And I think it could be helpful if one starts to reach agreement on what I call..., and I think there is agreement on language and culture etc, etc. There is disagreement as to whether that should be the base for separatism in the political sense. So I, you know, we just say there is a disagreement on Self-Determination. I think in the context of that we should also indicate the various grades of Self-Determination on which there may be more agreement and others in which there may be less agreement. But I mean, I may be wrong. We just say Self-Determination is Self-Determination. If we are talking of the Volkstaat, then that is a particular thing. But if you're talking of Self-Determination in a more general sense, but I don't think the Volkstaat with territorial, what I call political boundaries, is the only form of Self-Determination.

Chairperson: The CPG also refers to that in their report on page 6 especially with regard to international government. So you'll include that in your report with regard to Self-Determination, that what Mr Eglin has just suggested. Anybody else on this issue? Then it appears that we have agreed as to what the format of the report should be which will be submitted to us during the course of the week and then we'll deal with it again on Monday. Prof Corder.

Corder: Can I just ask a question in response to the points made by Mr Eglin which I take completely. Does he, if I could refer him to page 2 of the report paragraph 1 point 2 on the top of page 2 and then several questions, four questions are asked there which specifically put on the agenda the fact that Self-Determination is not only a territorial concept and it's not only linked to the idea of a Volkstaat. The difficulty that we faced with it, was that most of the submissions tended to be, tended to focus on the idea of territorial Self-Determination, in particular the idea of a Volkstaat. And not a lot else came in on the other aspect of Self-Determination except from time to time reference, particularly let's say in the National Party proposals to local level, cultural, Self-Determination and also in the Freedom Front. So I accept completely that we haven't carried through those questions into the rest of the report and I think that would be important to try to incorporate. But are those the kinds of issues to which he was referring, those four questions. If so, then I think it would be logical to make them more prominent in the rest of the report.

Mr Eglin: Chairperson whether one agrees with the exact text, that's conceptually what it is. Well I just think that in terms of the report, rather than just asking the questions and then leaving them, one

could schematically see if one can find whether there are areas of agreement or disagreement on them. Chairperson, may I just say you say that we've agreed to the report, there is a recommendation on 9 and 10, there are six, (a), (b), (c), (d), (e), (f). May I say as I read them, certainly up to (e), it's got nothing to do with what should be in the next Constitution. It's really recommendations on the process that should be taking place now. It says if clarity isn't reached by the time we have the next Constitution, you may have to do something else. Now, I am not in favour of territorial separation either on a Coloured or a Zulu or an Afrikaner basis. What I say, politically, I'm quite happy culturally, but I take it that (a) to (e), we are saying this only because the present Constitution Principle actually says that that process can continue. And it makes provision for it under the Constitution. Under both the Constitution, the Volkstaat is there, and under the Principles yes that concept is there. So, to the extent that we are locked into that process because of the present Constitution, we're not going to argue that it shouldn't continue. But the real crunch issue is what happens under (f)? If and when that process has been taken as far as you can, what you put in the next Constitution, and I take it that this is hedging our bets. We want to see what happens in the next year or two before we decide what goes into the Constitution. Am I correct? Is that what we're saying, that carry on under (a), (b), (c), (d) and then see what happens how far it is and then later on you'll have to decide whether or what you put in the next Constitution. I don't know whether I am reading those provisions correctly?

Chairperson: It says there that Principle 34 be retained in some form depending on the outcome of (a), (b), (c) and (d) with regard...

Eglin: It's correct. It actually says that could be a solution depending on how far the process goes. But what we are saying at this stage is there is no definitive proposal as far as to what should actually go into the next Constitution and so the process continues until we can decide one way or the other. I mean I think that even if no progress is made, because that Constitution 34 is binding on the next Constitution, you might have to include it in the next Constitution. But I'm saying, all I'm trying to get is (a), (b), (c), (d), (e) are all prior to the next Constitution and (f) says, wait and see, but perhaps we may have to include 34 in it.

Chairperson: OK, anybody else? Dr Pahad.

Pahad: It would seem to me that from (a) to (d), a way could be found that it finds reflection in the schematic side of it, so it's reflected in one way

or the other. And I thought Mr Eglin is quite right about (f), but it would still seem to me to.... as a recommendation to the Theme Committee, because that's what Theme Committees are doing, recommending in terms of the new Constitution. That you can rather just repeat what is in the present Constitution about the discussions without the structures or you could take the formulation made by Prof Corder which is on a separate sheet of paper. Now, if we were to take the separate sheet of paper, I have some amendments to make to the separate sheet of paper, which can go in the form of a comment too, it seems to me without tying anybody down to do anything. But as a way of comment, as a way of trying to guide the discussions, in my view, I think it would be correct to put it as a way of trying to guide discussions in the Constitutional Committee otherwise the Constitutional Committee is going to refer back to the Theme Committee and say, but so what, I mean what, have you got any proposals? With your permission Mr Chairperson, I'd like to just say something on this separate sheet of paper. It would seem to me first of all Prof Corder, that it's very long and very involved about what should and should not happen subsequently. I would have thought that if we said something to the effect that the most appropriate form of constitutional provision may be, and quite frankly, the commitment to pursue through negotiations the issue of Self-Determination in some form until the issue has been resolved. We cut out the rest of the stuff about binding on future government presumably if a government is going to enter into that agreement. It has to be bound by its agreements. And cut out the rest of the thing and the flexibility part would then be reflected in any case in terms of pages 9 and 10, which will be included in the comments. So I suggest that if we approach it that way, then there is something additional we're saying to the Constitutional Committee to help it in its own deliberations on this question.

Chairperson: Just repeat exactly because you made some comments in between exactly what you want them to report in.

Pahad: It would read the most appropriate form of constitutional provision may be a commitment to pursue through negotiations the issue of Self-Determination in some form until the issue has been resolved, leaving out the outcome and leaving out to the satisfaction. I don't anyway believe you can satisfy everybody. It's not possible. So I thought that that's sufficiently general for the Constitutional Committee to try to get its teeth into the question.

Chairperson: And the rest to be deleted....

Pahad: That has to be deleted because I am saying the last paragraph will appear anyway in terms of pages 9 and 10 and the question about the amendment of the Constitution is a separate matter in any case. So whatever happens, if it is entrenched, it's entrenched. Even if it's not entrenched you would still require specific majority in the Constitution to amend it.

Chairperson: Any comments? Mr Beyers.

Beyers: Mr Chairman from our part, I think we are satisfied with the formulation as it is here. If you formulate it in the way Dr Pahad is proposing, you can leave it out for the same price. And you can ignore the entire thing. I don't know what is the sense of that comment then, if there is no binding on each side, you know, then I don't think there's any sense in putting up such a proposal.

Chairperson: You are suggesting it be retained as is? Professor Corder.

Corder: Perhaps I could just respond. First of all to what Mr Eglin said and then to this text here. I'll start with the text. I'm quite clearly not wedded to anything which is written here. I was responding to a specific request by General Groenewald on the last occasion which carried the approval of the Theme Committee to make some proposals as to alternative ways of doing this. It is absolutely true that if there isn't a political commitment to a solution, any government as we discovered in the 1950's can circumvent any entrenchment in any Constitution more or less. The suggestions as to the ways of entrenching a provision in the Constitution are general suggestions and I think that it's this Theme Committee which has as part of its task the whole issue of amendments to the Constitution and it might be that this could form part of that block rather than this block at this point. So the formulation of this loose piece of paper is entirely in the Theme Committee's hands, but it was drafted as a result of a particular proposal by a particular party. And then secondly, I think the political sense of it is perhaps informed by Constitutional Principle 34. If you look at 34, it gives no binding commitment that the issue of Self-Determination will be in the final Constitution. If you look at it, it says this schedule and the recognition therein is the right of the South African people as a whole to Self-Determination shall not be construed as precluding. So it gives no right, it just says it shall not be construed as precluding within the framework of the said right Constitution provision for a notion of the right to Self-Determination by any community sharing a common culture or language heritage within a territorial entity within the republic or any other recognized way. And then it says, the Constitution, that is the final Constitution,

*Tewble*

**THEME COMMITTEE 2**

**21 AUGUST 1995**

**1 TO 2**

(Tape 1)

Chairperson:

A hearty welcome to everybody especially Prof ~~Korde~~<sup>Corden</sup> and Prof Breyten Breytenbach. They are going to present their report to us this morning. There is <sup>isn't</sup> not any minutes available. I believe Thomas Smith was sick last week and he couldn't prepare the minutes so we will deal with that at another stage. Now the report is contained in the documents before us in two sections, the preview and then the block report. There are certain recommendations by the ad hoc committee with regard as to how we deal with that. We listen to that but it is interesting when it comes to agreements, they must explain that to us that they either say a few or various and then we have to analyze what is meant by a few and what is meant by various so they must enlighten us on that. I will immediately I think Prof Breytenbach you will lead the discussion. Then I'll give over to you immediately. Due to this page this morning separately the Prof must just indicate were must we fit it in to the report.

Prof Breytenbach:

Good Morning Ladies and Gentlemen what you've got in front of you is the Second Draft Progress Report of this ad hoc committee. A week ago my colleague Prof ~~Korde~~<sup>Corden</sup> did make a presentation at that point in time it was the First Draft Report or the First Report. It was then based on the inclusion as well of the submission of the Freedom Front which was only made available earlier last week and the major difference between that report as was tabled last week and this one entitled is the Second Report also includes the report of the Commission on Provisional Government which was received by the Secretariat approximately Wednesday or Thursday so it was a very quick process of accommodating that and the major differences are simply paragraph 2(1) on your page 2 under self determination were there were no comments in the past. Here we did include a comment and that is the comment of the Commission on Provisional Government where it did state that it regards the reference in ~~principal~~<sup>principle</sup> 34 of the Constitution as rather vague but from that following it does make a suggestion that negotiations ~~ought~~<sup>ought</sup> to continue and that is the reason why not the reason why but there is then we discovered a growing consensus between all the submissions so far with the exception of one party and a number of the individuals who had made submissions to this committee that negotiations

principle  
ought

*Provincial*

on the concept of self determination <sup>ought</sup> to continue. That is then the reason Mr Chairman why, if you page on, page 8 of the report, we did include for the first time a paragraph 3.3.3 (4.3.3.) where we simply put it short and sweet page 8 agreements that negotiations should continue, the ANC, The Freedom Front, The Commission of ~~Provisional~~ Government as some of the others propose that negotiations on form of self determination for communities concerned should continue and that the outcome should be the result of negotiations. Technical points were also amended very few such as that we've got now one organisation more that it made recommendations rather than fewer and then the thrust of our submission really is page 10 where under 6(A)(B)(C)(D) and (E) the major issues, let me just take you through these issues because I think these are the crux of where we stand. Par 6(A) The Committee therefore proposes that the political process continues, the Constitutional Assembly should issue guidelines in this respect. Guidelines as to how the negotiations ought to continue with the view on to the one hand the looming deadlines and the substance of the matter on the other. Point B, one of the issues which we are not as a Technical Committee in a position to pronounce ourselves on, is this whole issue of proven support. The Freedom Front in its submission did refer to the issue of Proven Support and the outcome of last years election the 640 thousand votes that the Freedom Front got for the election of the provisional component. We would also want to have guidance whether or how the Constitutional Assembly how does it view this one. Point 6 (C) that the Constitution makers adopt an open ended approach that seems to be fairly widely held consensus to the issue of self determination while further deliberations take place including the formulation of position on self determination that may assist in expediting the Draft Constitution because as again we are aware as the adhoc committee that the first date for the publication of the first Draft of the Final Constitution by the end of October and that the deadline also suggest that by May the Constitution ought to be adopted by the required political process. Point (D) except for only one party and some individuals who totally reject any form of a self determinate Volkstaat, there appears to be an emerging consensus on at least two issues. Negotiations should continue, is also our point 6(A) it's also been referred to again in (F) hereunder we will get to that point and then secondly that some or other form of cultural

self determination maybe be provided for at a local level. This is the consensus a very tentative conclusion that we reached through the consensus that we deduced on The Freedom Front, The National Party, The Afrikaner Bond, The Conservative Party that actually goes much further but doesn't exclude this and that if there is to be a consensus so far it is cultural self determination on the local level, and we simply say that Constitution makers in the other Technical Committees ought to take consensus of this so that co-herons may not be lost if this committee proceeds with making certain recommendations and other committees are unaware of that and that would cause a out of zinc requirements in the final version of the Constitution. Point (E) since the deadline for the publication of the draft final constitution approaching fast other Theme Committees ought to take note of the thinking and implications emanating out of our deliberations so far and then I guess the most important provision or the most important recommendation really is (F). If the deadline is reached without further clarity on the issues concerned the Constitutional Assembly should perhaps consider as an interim measure that is before the final Constitution is adopted in 1996 that principle 34 be retained in some form depending on the outcome of A,B,C and D above and if so, references should be included somewhere in the text substantiating this principle. It also seems desirable that provision be made in the draft of the final Constitution for the continuation of negotiation which may lead to some form of self determination after the adoption of the final Constitution for such groups. Members of the ad hoc committee will look into tentative formulations and as far as that concerned in my absence last week there was a proposal made and noted as such, the original proposal was made by General Groenewald namely that my colleague Prof (?) ought to look into tentative formulations and this is what this separate document is all about and I will hand it over to him to make some explanations on that particular point.

Prof (?)

*Raath*

Thank you Prof Breytenbach, Thank you Chair. This is as Prof Breytenbach said arises directly out of general Groenewald's suggestion last week. It has been put forward by me and me alone although Prof Breytenbach has seen it and approves of it Prof. Raath has been faxed this on Thursday afternoon. We have had yet no response from him



so it is a very unofficial proposal and it doesn't contain any details as regards how the actual formulation will read or might read in the final constitution it just talks about some general principles which might underlay such formulation and if I could take you through it sentence by sentence and just draw your attention to certain key words perhaps. First of all the most appropriate form of Constitutional Provision may be, and this is just a suggestion, a commitment to pursue through negotiations the issue of internal self determination. In other words arising out of the discussion that is already included in the body of the report the idea of some kind of succession is not in vision at all. The issue of some internal self determination in some form the outcome of which will be binding on any future Government until the issue has been resolved to the satisfaction of all those aspiring to self determination. At the moment we seem to have only one group of people who are aspiring to self determination but it might be depending on the outcome of negotiations in their regard that other groups would aspire to self determination because as you know that, principle 34 is not specific to one particular group. And then the question is asked how will this commitment be binding on any future government, well the answer is I suppose depending upon the ease with which the final constitution may be amended whether it is a 60% majority or 50 plus one or two thirds or whatever, it will probably be necessary to entrench this provision i.e. the provision relating to self determination through negotiations in some way. For example, by making its amendment or appeal subject to a special majority in one or both houses of Parliament and or requiring the concurrence of a certain number of, or maybe even particular Provinces and or, so these could be accumulative or separate perhaps other structures which may be set up in order to facilitate the resolution of the issue in other words if a body such as for example the Volkstaat Council was to continue as a forum through which negotiations were to be perused perhaps its approval would be necessary before an amendment or appeal of this binding commitment to resolve the issue of self determination could take place. But then the final little paragraph there, in order to preserve maximum flexibility which we have called in the body of the report the incremental approach. Such a provision ought to be general in formulation and brought in scope using the type of language, not necessarily the language itself, but the type of language to

be found in constitutional principles generally in schedule 4 to the 1993 constitution. Thank you.

**Chairperson:** Just before we carry on, turn back to page 3. 2.2 section 20 the first sentence. Remain in and live I presume, it should be, instead of leave.

**Mr. ?** That is from the current chapter 3, The Bill of Rights and it is leave the Republic. Leave is correct. LEAVE it stands correct.

**Chairperson:** And then 2.3 Section 3. Afrikaans and so forth for the promotion of their equal use. Is it referring to Afrikaans or the eleven languages?

**Mr. ?** That refers to all eleventh <sup>? eleven</sup> official languages.

**Chairperson:** And continue to the block report on page 11. Now this is where we need more clarity with regard to few and various.

**Mr. ?** This was the toughest part of the report <sup>to</sup> compile. So, clearly we regard this as the most unimportant part of our report. ~~It~~ was simply made there because it was a proforma requirement that we did include a summary but it is virtually impossible to include the new answers in telegraph style report where one really place dice at the end of the day in deciding on which word to use <sup>?</sup> whether one use the word few or various or whatever. So I would really submit with due reference to ourselves in compiling this that this is the most unimportant part of the report. We actually urge members of the committee to ~~read~~ <sup>read</sup> the rest of the report.

**Mr Chairperson:** I think the committee will have sympathy with the ad hoc committee in this regard and we won't persuade that matter any further. Now up to page 10 we have got the overview and the report and on 9 and 10, we've got the recommendations of the ad hoc committee to which this loose page was added this morning. Any comments?

**Mr[?]:** Can I just suggest that when we are going through the thing, that we do come back to the schematic summary taking ~~to~~ <sup>into</sup> account what Dr Breytenbach had said because there might be some formulations that we might want to propose that should be changed. But when we comes to that, I'll make my

comments.

Mr Chairperson:

Any other comments on the report up to page 10? Mr Eglin.

Mr Eglin:

Condensed

common

believe

Mr Chairperson, are those that Prof Breytenbach says, ignore the summary. Well, not ignore it but, you know, I actually think that a ~~condense~~ summary will not in, well, a summary that identify the issues of an agreement or a disagreement, is infact what this theme committee is about. It is not a negotiating forum which is got to look for ~~coven~~ ground on the issue of a Volkstaat. If there are areas of coven ground, that identifies them, of the areas of difference, they must also say so. So that, I am just a little concern that the final [?] of the committee proposals, I don't know what the technical committee can propose, but the theme committee doesn't propose solutions in the sense. The theme committee identifies areas of agreement and difference, so that I am just concern that I've look at A to F, it is an attempt to actually find a negotiated agreement between the various parties as to what they could say. It is not an attempt to state these a way they want the parties positions are. And I just make a point, you know, from the point of view of the Democratic Party as that, we ~~belief~~ the constitutional principles compel us to permit the notion of self determination to be carried on into the next constitution. But what it doesn't say is, that we actually got to create structures in order to force or promote that particular issue. So I just got a concern that this thing that comes from a theme committee is already an attempt to find, what I called, a solution to the differences rather than to report of the theme committee on what the differences are.

Mr Chairperson:

Anybody else? Prof [?]

Prof [?]

endeavored

Can I just..., thank you sir, respond to Mr Eglin, having served on theme committee 1 as a technical advisor for the last seven months, I am very well aware of the point that Mr Eglin is making. But in the management committee guidelines of February or late January as of how to draw up a report, there is a sixth section called possible approaches, and what A to F here is, are suggestions which have come from the technical advisors. We're three people and we ~~indevent~~ to reach common ground, which we have reached and you know, not necessarily each of us would have agreed to the same degree with what is there. But it is a composite

proposal which <sup>of course</sup> ~~off course~~ is for the <sup>acceptance</sup> ~~exception~~ or rejection of the theme committee. But I am certainly, and I know Prof Breytenbach is also aware of the fact that we should not be proposing and taking any kind of annotative here, except in so far as we are required in terms of the guidelines.

Mr [?]

and

slightly

I take Mr Eglin's point, and he is quite right that the theme committee is not negotiating for him, sometimes I wish he will remind his own party about different other theme committees, like in Andrews. But let proceed, I think what we should do, is this, because Prof [?] also correct. <sup>Islet's</sup> perhaps look at the schematic side ~~at~~ take into account what Mr Eglin had said, that is a very important part of the report that we would want to make. At the end of that we then come to what Prof [?] is saying that having established that as which we will, that the Province are very complicated that at this time they don't seem to be dissolvable. We then come to as a theme committee our recommendation to the constitutional committee with regards to saying we think that it is possible that the process may be continued in a certain direction. That, if we did it that way, I think it would be fine, because there have been direct recommendations from theme committees in the form of concrete proposals in with regard to what should appear in the constitution itself. So I would like to propose that we do it ~~slitely~~ <sup>slightly</sup> differently from the way Prof Breytenbach started which is good to the schematic side, let's look at it, lets try to establish in what we, another report can be done and then come to the concrete proposals which would follow from the schematic proposals.

Mr Chairperson:

Anybody else? Once we thinking would'nt it be advisable with regard to agreements and disagreements to submit the recommendations under the heading of agreements in the block, instead of a separate recommendation, because this block is in essence our report to the CC and from that will flow drafts thereafter.

Mr [?]

You have cleared my question. Instead of having the recommendations on page 9 and 10. Can't we have it under block system, the issues, then they stipulate the issues, and then the recommendations, the agreements and then commence at the end of that block.

Mr Chairman:

Can you assist us in this regard?

Mr[?]

I think that what, for instance, what we could do which would help the process is that for instance if you look at on page 11 the first issue there is self determination. Columns 1 and 2 would stay unchanged in what I am getting from in the sense of the meeting. But columns 3 and 4, for instance where under agreements under number 1 there is self determination, few except the process, I excepted that and then disagreement various is'nt particularly helpful if one is only reading the summery. If one doesn't look at paragraph 2.9 and 6 of the report. So, it might be, and we could certainly do this, is to actually expand that instead of saying, we could say few and then stipulate exactly what they are. And then, under various we could say x,y and z and we could repeat that I suppose, under each of the items or issues on the lefthand side there. And maybe have a comments column. What I know some other theme committees do, is that they have a comments column, another column on the righthand side, and perhaps that is maybe where the recommendations can come in and the comments. It is just a suggestion.

Mr [?]

...to sit on the CC. We know that is what would be useful to the members of the CC. Lets say this agreements various. It doesn't really help the CC members, they've got to start making decisions as to what the disagreements are and who have them. So I think the elaboration of agreements and disagreements with some comment to identify what the main issues are would be very helpful to decide on where they must take the process from there.

Mr Chairperson:

Everybody satisfied towards the approach that was expanded upon by Prof [?]. Okay, I am waiting for the Professors.

Prof [?]

Yes, I think that would, there is also <sup>the side</sup> practical sided whether it could be done and I think, yes it can indeed be done, by simply adding another column or on the form of another page and that would be to elaborate on the disagreements and also perhaps on the agreements by means of a summery and it is practically possible. Now we think that it is all there, but one has got to page back through the report as it were and if it's got to be ready read as it were in one overview, that is not an ~~imposable~~ thing for us to do and it could be done quite expeditiously.

*impossible*

Mr Chairperson:

Professor says expeditiously, when? This week?

Prof [?]

Yes, it could be ready by tomorrow lunch time.

Mr Chairperson:

Theme Committee in agreement with that? Then we agree to that. Dr Pahad, you wanted to specifically referred to the column report.

Dr Pahad:

Yes. I thought that issue number 3 on language, culture and community, it says that agreements most concern so far local level disagreements virtually none. If I am not mistaken, it seems to me that in any case, all of us have to comply with the, some of the provisions of constitution principles so that is present constitution in terms of, at a national level to languages, cultures and so forth, of people are protected therefore, we have eleven languages. So the question of the protection of cultures and languages of people is not only related to the local level. So I sometimes get the impression is that we are talking about only confess. So there is this general approach to the theme. What there is, is how is this to be reflected in terms of the debate we are now having about self determination. And in that sense there are number or proposals been made by different parties including National Party, the Freedom Front, the Afrikaner Front and how this about, how they think this can take the form. So I am just asking that we slightly alter that, so that it's more in the form of saying that rather in agreements, I mean you can say some part have said, for example in the side of the ANC what I think we are saying, is that we are open to further discussions on this question in terms of how it can, if it's to come about, how can it actually be reflected, rather than saying that we already agreed that such situation should occur. So I just saying that in terms of that if we could just slightly alter it so that it is more accurate with regard to what we are talking about. Thanks.

Mr [?]

May I say that under support, you see, again if we change it, there isn't really any agreement. Instead of saying parties must consider Freedom Front proposal, it would seem to me that one could do is under comment, for the purposes of the constitutional committee say, that the Freedom Front in this proposals, proposes that whatever percentage they proposing or the 640 000 votes that they have [?] that becomes part so that it is rather a comment and bringing the attention of the constitutional committee to a specific proposal of the Freedom Front, rather than just saying must consider, because we must

consider every political party's proposal.

Mr Chairperson

Anybody else? Prof [?]

Prof [?]

Yes sir, can I just find out from the theme committee if this would be acceptable. I know in the last report the theme committee won on capitals and languages, etc., etc. etc., because some parties had made no proposals on certain aspects instead of reflecting agreement or disagreement. Those columns were left blank, but then everything went into the outstanding column. Would that be, it seems to me that, that is essentially what Dr Pahad was saying on this very last point. That there should be nothing, there should be a blank in the agreements and disagreements, but the question is really outstanding because there has'nt been sufficient attention paid to that in the submissions from all the bodies which we have consider this far. And that might be a helpful way of going forward.

Mr Chairperson

He appears to be agreeing, because he is shaking is head. Anybody else on this issue? O ja, Mr Eglin.

Mr Eglin:

Mr Chairperson, I am just wondering in terms of our report of self determination is used in a very general sense. Different people have got different interpretations of it. Whether it would'nt be on the technical advisors could comment on it, whether one should'nt instead of saying, there are various way forms of which self determination could take place. And there may be more agreement on some aspects than on the other. When I actually happen to belief that the constitution which allows each person to use his own language and his own culture, it allows individual self determination. In a very big way the constitution at the moment allows it. It also allows collective self determination when it comes to religions and cultural and linguistic matters, including even in education. So that you got, to what extent is there agreement that there's culture self determination on a collective basis. But I really crunch issues that what extent can you use cultural self determination as a base for having territorial and other self determination based on a common culture. In other words, do you use common culture as a basis for what I call political self determination, or is self determination ends when you infact have got you common culture and self determination in that field. But I would think significant

areas of agreement that when it comes to individuals or collective self determination on linguistic and cultural matters there's very broad agreement, because that is the principle. But to the extent that you should use culture as a base for territorial and political self determination, is a matter on which I think there is significant disagreement. And I think it could be helpful if one starts to reach agreement what I call, and I think there is agreements on language and culture, etc., etc. There is disagreements as to whether that should be the base for separatism in the political sense. So I, you know we just say there is a disagreement on self determination. I think in the context of that we should also indicate the various graves of self determination on which they have been more agreement and others in which there may be less agreement. But I mean, I may be wrong. We just say self determination is self determination if we are talking of the Volkstaat and that is a particular thing. But when you talking of self determination in a more general sense, but I don't think the Volkstaat with territorial, what I call political boundaries, is the only form of self determination.

Mr Chairperson:

The CPG also refers to that in their report on page 6 auspiciously with regard to international Government. So you include that in your report with regard to self determination, that what Mr Eglin have just suggested. Anybody else on this issue? Then it appears that we have agreed as to what the format of the report should be which we will be submitted to us during the course of the week and then we will deal with it again on Monday. Must make a note. Prof [?]

Prof [?]

Can I just ask a question in response to the points made by Mr Eglin which I take completely. Does he, if I could refer him to page 2 of the report, paragraph 1 point 2, on the top of page 2 and then several questions, four questions are asked there which specifically put on the agenda the fact that self determination is not only a territorial concept, and it is not only linked to the idea of a Volkstaat. The difficulty that we faced with it, was that most of the submissions tended to be, tended to focus on the idea of territorial self determination, in particular the idea of a Volkstaat. And not a lot else came in on the other aspect of territorial, except from time to time reference particularly, lets say in the National Party proposals to local level, cultural, self determination and also in the Freedom Front. So I accept completely that we haven't



carried through those questions into the rest of the report and I think that, that would be important to try to incorporate. But are those the kinds of, are those the kinds of issues to which he was referring those four question. If so, then I think it would be logical to make them more prominent in the rest of the report.

Mr Eglin:

Mr Chairperson whether one agrees with the exact text, that is conceptional what it is. Well I do think in terms of the report, rather just asking the questions and then leaving them, one could scumatacly see if they cant confine whether there are areas of agreements or disagreements on them. Chairperson, may I just say you say that we have agreed to the report, there is a recommendation of 9 and 10 as 6 ABCDEF. May I say as I read them certainly up to E. It's got nothing to do with what should be in the next constitution. It is really recommendations on the process that should be taking place now. If says, if clarity isn't reached by the time we have the next constitution, you may have to do something else. Now, I am not into favour of territorial separation either on a coloured or a Zulu or Afrikaner basis. What I say, politically, I'm quite happy culturally, but I take it that A to E, we are saying this only because the present constitution principle, actually says that that process can continue. And it makes provision for it under the constitution, under both the constitution, the Volkstaat is there, and under the principles is that concept is there. So, to the extent that we are locked into that process, because of the present constitution, we now going to argue that it should'nt continue. But the real crunch issue is what happens under F. If and when that process is been taken as far as you can, what you put in the next constitution. And I take it that this is hatching our beards, we want to see what happens in the next year or two, before we decide what goes into the constitution. Am I correct that that's what we saying, that carry on under ABCDE and then see what happens, how far it is and then later on you'll have to decide whether or what you put in the next constitution. I don't know whether I am reading that, those provision correctly.

Mr Chairperson

It says there that principle 34 be retained in some form depending on the outcome of ABCDE with regard...

Mr Eglin:

It is correct, it actually says, that could be a solution

depending on how far the process goes. But what we are saying at this stage is, there is no definitive proposal as far as to what should actually go into the next constitutions. And so the process continues until we can decide one way or the other. I mean I, I think that even if no progress is made, because that constitution 34 is binding of the next constitution, you might have to include it in the next constitution. But I am saying, all I am trying to get is ABCDE are all prior to next constitution and F says, wait and see but perhaps we may have to include 34 in it. Okay...then I...

Mr [?]

It would seem to me that from A to E by certain from A to D, a way could be found that it finds reflection in this schematic side of its reflected in one way or the other. I know Mr Eglin is quite right about, about F. But it still seems to me to as a recommendation to the theme committee, because that is what theme committees are doing, recommending in terms of the new constitution. But you can either just repeat what is in the present constitution about the discussions without the structures or you could take the formulation made by Prof [?], which is on a separate sheet of paper. Now, if we want to take the separate sheet of paper, I have some amendments to make to the separate sheet of paper, which can go in the form of a comment or, it seems to me without tying anybody down to do anything. But as a way of comment, as a way of trying to guide the discussions, in my view, I think we have corrective put it as a way of trying to guide the discussions in the constitutional committee. Otherwise the constitutional committee going to refer back to the theme committee and say, but so what, I mean what, have you got any proposals. With your permission Mr Chairperson, I'd like to just say something on this separate sheet of paper. It would seem to me first of all Prof [?] that it is very long and very involved about what should and should not happen subsequently. I would have thought that if we said something to the effect that most appropriate form of constitution provision may be, and quite frankly, the commitment to precede through negotiations, the issue of self determination in some form, until the issue has been resolved. We cut out the rest of the stuff about binding on future Government presumably for Government is going to enter into that agreement. It has to be bound by its agreements. And cut out the rest of the thing, and the flexibility part would then be reflected in any case in

terms of pages 9 and 10, which will be included in the comments. So I suggest that if we approach it that way, then there is something additional we're saying to the constitutional committee to help it in its own deliberations of this question.

**Mr Eglin:** Just to repeat exactly, because you made some comments inbetween exactly what you want Mr [?], to report in.

**Mr [?]** It would read the most appropriate form of constitutional provision may be a commitment to presude through negotiations. The issue of self determination in some form until the issue has been resolved. Leaving out the outcome and leaving out to the satisfaction, I don't anyway belief you can satisfy everybody, it is not possible. So I thought that that's sufficiently general for the constitutional committee to try to get its teeth into the question...

**Mr Eglin:** And the rest to be deleted....

**Mr [?]** ...and the rest to be deleted, because I am saying the last paragraph will appear anyway in terms of pages 9 and 10 and the question about the amendment of the constitution is a separate matter in any case. So whatever happens, if it is entrench it is entrench, if it is not entrenched, even if it is not entrenched, you would still require a specific majority in the constitution to amend it.

**Mr Beyers:** Mr Chairman from our part I think we are satisfied with the formulation as it is here. If he formulate it in the way Dr Pahad is proposing, you can leave it out for the same price. And you can ignore the entire thing. I don't know what is the sense of that comment then, if there is no binding on each side, you know, then I don't' think there is any sense in putting up such a proposal.

**Mr Chairperson:** Your suggestion it be retained as is?

**Prof [?]** Perhaps I can just respond first of all to what Mr Eglin said and then to the text here. I am, I'll start with the text, I am quite clearly not wheaded to anything which is written here. I was responding to a specific request by General Groenewald on last occasion, which carried the approval of the theme committee to make some proposals as to alternative ways of

doing this. It is absolutely true that if there is'nt a political commitment to a solution, any Government as we discovered in the 1950's can circumvent any entrenchment in any constitution more or less. The suggestions as to the ways of entrenching a provision in the constitution are general suggestions and I think that is this theme committee which has as part of its task the whole issue of amendments to the constitution and it might be that this could form part of that block, rather than this block at this point. So it is entirely, the formulation of this loose piece of paper is entirely in the theme committees hands, but it was drafted as a result of a particular proposal by a particular party. And then secondly I think it, the political sense of it is perhaps informed by constitutional principle 34. If you look at 34, it gives no binding commitment that the issue of self determination will be in the final constitution. If you look at it it says this schedule and the recognition therein of the right of the South African people as a whole to self determination shall not be construed as precluding. So it gives no right, it just says it shall not be construed as precluding within the framework of the set right constitution provision for a notion of the right of self determination by any community sharing a common culture or language heritage within a territorial entity within the public or any other recognised way. And then it says, the constitution, that is the final constitution, may give expression to any particular form of self determination, provided there is substantial proof and support within the community concerned for such a form of self determination. And thirdly, if a territorial entity referred to paragraph 1, is established, and this is the point the CPG made very strongly in their report. If a territorial entity referred to paragraph 1 is established in terms of this constitution before the new constitutional text is adopted, that is perhaps before sometime next year, the new constitution shall entrench the continuation of such territorial entity including its structures, powers and functions. So from a technical point of view, it is certainly possible, I would submit, that while principle 34 is definitely binding on the constitutional assembly. It doesn't bind the future constitution to make provision for the continuation of self determination, or it seems to me. It can't be, shall we, this schedule shall not be construed as precluding within the framework of the set right of self determination, constitutional provision for a notion say may not be precluded. That is correct, it may not be precluded, that is

quite correct.

**Mr Chairperson:**

Any further comment. Dr Pahad do you still violently insist that the rest be deleted?

**Dr Pahad:**

Well the days of armstrugle are over. No, I wasn't sure what [?] was saying on that side. I mean, if you think you need to put binding on any future Government it is just the theotology, put it in, that is what you want. Because if a Government enters into an agreement with anybody, or any form of parties to do anything, then presumably it is bound by its own desicions. But I don't have a problem with that, what I was saying was that I thought the rest of it just adds, or seems to qualified that this original first part of the paragraph. It is not really adding anything to it, because he is just saying in relation to what should happen to the constitution. They are saying in relation to the flexibility, the incremental approach, that will already be included in the schematic part of which we've agreed earlier, that would then say that approach would be there. I thought what the first paragraph would then do if we just take that part of the first paragraph. That, that then acts as a kind of guide to the constitutional committee, so when a constitutional committee is discussing it, one of the issues it would then discuss is to say, well okay, we may well not be able to resolve the issue now in terms of the new constitution, but that we will include provisions which will allow for negotiations to continue. I mean that's all, this first part of the paragraph says. It doesn't say anymore than that. And I would just amending it slightly to say to leave out to the satisfaction of all this aspiring to self determination because I thought that's a terrible qualification to add. And in my own view, I thought if we put in terms self determination what we....

(Tape 2)

**Mr. ?:** With the section in the Interim Constitution itself says we just uses the notion of self determination and not internal self determination. So just to be consistent with what there is. But if Mr. Beyers insist on binding with any future government, I don't have a problem you can keep it there.

**Chairperson:** Mr. Emlin? Comment?

**Mr. Emlin:** First of all I actually would also delete all that clause about ease of amending the future constitution. It is a detailed matter we don't know how the Constitution is going to be amended. It in a sense attracts from what I think is the thrust of this thing. Where I have a problem as a party is that this is I am talking of the next Constitution the most appropriate form of Constitutional provision in the next Constitution may be a commitment to pursue through negotiations the issue of self determination. I would believe the Constitutions could go no further than they should not preclude but it actually have an injunction in the new Constitution that we have got to carry on perusing self determination as a Constitutional requirement goes far beyond the Constitutional principle here, so I would have said that the most appropriate form could be a authorization or a recognition of the right of people to persuade negotiation in order to get it, but as it stands here is going to be a commitment on all of us, it doesn't say a commitment to those who want it, this is maybe a commitment to pursue. So I would think that it should be a permission that shall not preclude negotiation in order to pursue is not the same as saying there is a commitment to pursue. So we would go no further than saying it should not preclude negotiation as a means of perusing this but I would not say an injunction in the constitution to have it.

**Chairperson:** Anybody, Prof Kode(?)

**Prof Kode:** Absolutely, perfectly in order

**Chairperson:** Mr Holomisa

**Mr Holomisa:** To say in adducent to the worries that have been expressed by

Mr Eglin and Mr Pahad about the rest of that paragraph starting particularly with the word depending. My worry has to do with the words to the satisfaction of those aspiring to self determination. It is clear in so far as parliament is concerned that there is only one party that pursues this. Now if I can commit everybody to these type of negotiation to the satisfaction of those people that when it is clear that the rest of the other components of the government, will never agree to this type of thing than I am not sure if this is what you want to do to the government to commit it with such a lack of resources as it does to commit it to continue to pursuing this kind of exercise to the satisfaction of this very small number of people, I am not happy about that particular one I suggest that even if we retain this paragraph but at least the worst to the satisfaction of all those inspiring to self determination those one's will be deleted.

**Chairperson:** I think we've basically agreed that until the issue is resolved full stop and then it carries on from depending. "Is ek reg Prof Korde?"

**Prof Korde:** From what I have understood from the majority of the people here sir, the indication seem to be it would in fact you delete everything from the word resolved to the end of that paragraph in fact at the end of that page. It seems to me that the consensus here seems to be that in effect you retain only the first sentence to the word resolved. That the last paragraph will be part of the schematic summary in any case on page eleven in a comment, and that all the details relating to Constitutional amendment ext. ext. should fall away including the last part of that first sentence from the word satisfaction to the end of that.

**Chairperson:** Somewhere along the line you miss something, Mr Beyers said he would prefer it to be like that and then Dr (?) he has no problem.

**Mr ? :** Mr Chairman, I will accept this one because Dr Pahad stopped at the second or third line.

**Chairperson:** Resolved

**Mr.?:** Yes

**Chairperson:** So you are not persisting in having the rest included.

**Mr?:** No that is ok, but which will be binding on any future government until the issue has been resolved. If that is included I will be satisfied.

**Chairperson:** Agreed, Mr Ebrahim.

**Mr: (?)** Mr Chairman I just want to get clarification here that if we are taking that part of it until the word resolved do we delete the word internal? Yes

**Chairperson:** Ladies and gentlemen, thank you and thank you to the Professors this concludes our meeting and we'll include the draft again for our next meeting. The core group must just remain behind.



\* included for your attention  
regarding the corrections  
that's been made.

**THEME COMMITTEE 2**

**21 AUGUST 1995**

**1 TO 2**

(Tape 1)

Chairperson:

A hearty welcome to everybody especially Prof Korde and Prof Breyten Breytenbach. They are going to present their report to us this morning. There isn't any minutes available. I believe Thomas <sup>Smith</sup> Met(?) was sick last week and he could'nt prepare the minutes, so we will deal with that at another stage. Now the report is contained in the documents before us in two sections, the preview and then the block report. There are certain recommendations by the ad hoc committee with regard as to how we deal with that. We listen to that but it's interesting when it comes to agreements they must explain that to us that they either say a few or various and then we have to analyze what is meant by a few and what is meant by various so they must enlighten us on that. I will immediately I think Prof Breytenbach you will lead the discussion. Then I'll give over to you immediately. Due to this page this morning separately the Prof <sup>essor</sup> must just indicate were must we fit it in to the report.

Prof Breytenbach:

Good Morning Ladies and Gentlemen what you've got in front of you is the Second Draft Progress Report of this ad hoc committee. A week ago my colleague Prof Korde did make a presentation at that point in time it was the First Draft Report or the First Report. It was then based on the inclusion as well of the submission of the Freedom Front which was only made available earlier last week and the major difference between that report as was tabled last week and this one, entitled is the Second Report also includes the report of the Commission on Provisional Government which was received by the Secretariat approximately Wednesday or Thursday so it was a very quick process of accommodating that and the major differences are simply paragraph 2(1) on your page 2 under self determination were there were no comments in the past. Here we did include a comment and that is the comment of the Commission on Provisional Government where it did state that it regards the reference in principal 34 of the Constitution as rather vague but from that following it does make a suggestion that negotiations ought to continue and that is the reason why not the reason why but there is then we discovered a growing consensus between all the submissions so far with the exception of one party and a number of the individuals

who had made submissions to this committee that negotiations on the concept of self determination ought to continue. That is then the reason Mr Chairman why, if you page on page 8 of the report, we did include for the first time a paragraph 3.3.3 (4.3.3.) where we simply put it short and sweet page 8 agreements that negotiations should continue, the ANC, The Freedom Front, The Commission of Provisional Government as some of the others, propose that negotiations on form of self determination for communities concerned should continue and that the outcome should be the result of negotiations. Technical points were also amended, very few such as that we've got now one organisation more that it made recommendations rather than fewer and then the <sup>thrust</sup> (?) of our submission really is page 10 where under 6(A)(B)(C)(D)(E) <sup>and</sup> the major issues, let me just take you through these issues because I think these are the <sup>crux of</sup> (?) at where we stand. Par 6(A) The Committee therefore proposes that the political process continues the Constitutional Assembly should issue guidelines in this respect. Guidelines as to how the negotiations ought to continue with the <sup>view on</sup> ~~few~~ to the one hand the looming deadlines and the substance of the matter on the other. Point B, one of the issues which we are not as a Technical Committee in a position to pronounce ourselves on, is this whole issue of proven support. The Freedom Front in its submission did refer to the issue of Proven Support and the outcome of last years election the 640 thousand votes that the Freedom Front got for the election of the provisional component. We would also want to have guidance whether or how the Constitutional Assembly how does it view this one. Point 6 (C) that the Constitution makers adopt an open ended approach that seems to be fairly widely held consensus to the issue of self determination while further deliberations take place including the formulation of position on self determination that may assist in expediting the Draft Constitution because as again we are aware as the adhoc committee that the first date for the publication of the first Draft of the Final Constitution by the end of October and that the deadline also suggest that by May the Constitution ought to be adopted by the required political process. Point (D) except for only one party and some individuals who <sup>voice & out</sup> totally reject any form of self determination <sup>(?)</sup> there appears to be an emerging consensus on at least two issues. Negotiations should continue, is also our point 6(A) is also been referred to again in (F) hereunder we will get to that point and then secondly that some or other

form of cultural self determination maybe be provided for at a local level. This is the consensus, a very tentative conclusion that we reached through the consensus that we deduced on The Freedom Front, The National Party, The Afrikaner Bond, The Conservative Party that actually goes much further but doesn't exclude this and that if there is to be a consensus so far it is cultural self determination on the local level, and we simply say that Constitution makers in the other Technical Committees ought to take <sup>co-herons</sup> (?) of this so that co-herons may not be lost if this committee proceeds with making certain recommendations and other committees are unaware of that and that would cause a out of <sup>sink</sup> (?) requirements in the final version of the Constitution. Point (E) since the deadline for the publication of the draft final constitution approaching fast other Theme Committees ought to take note of the thinking and implications emanating out of our deliberations so far and then I guess the most important provision or the most important recommendation really is (F). If the deadline is reached without further clarity on the issues concerned the Constitutional Assembly should perhaps consider as an interim measure that is before the final Constitution is adopted in 1996 that principle 34 be retained in some form depending on the outcome of A, B, C, <sup>and</sup> D above and if so, references should be included somewhere in the text substantiating this principle. It also seems desirable that provision be made in the draft of the final Constitution for the continuation of negotiation which may lead to some form of self determination after the adoption of the finale Constitution for such groups. Members of the ad hoc committee will look into tentative formulations and as far as that concerned in my absence last week there was a proposal made and noted as such, the original proposal was made by General Groenewald namely that my colleague Prof (?) ought to look into tentative formulations and this is what this separate document is all about and I will hand it over to him to make some explanations on that particular point.

Prof (?)

Thank you Prof Breytenbach, Thank you Chair. This is as Prof Breytenbach said arises directly out of general Groenewald's suggestion last week. It has been put forward by me and me alone although Prof Breytenbach has seen it and approves of it Prof. Raat<sup>d</sup>(?) has been faxed this on Thursday afternoon. We have had yet no response from him so

it is a very unofficial proposal and it doesn't contain any details as regards how the actual formulation will read or might read in the final constitution it just talks about some general principles which might underlay such formulation and if I could take you through it sentence by sentence and just draw your attention to certain key words perhaps. First of all the most appropriate form of Constitutional Provision maybe, and this is just a suggestion, a commitment to pursue through negotiations the issue of internal self determination. In other words arising out of the discussion that is already included in the body of the report the idea of some kind of succession is not in vision at all. The issue of some internal self determination in some form the outcome of which will be binding on any future government until the issue has been resolved to the satisfaction of all those aspiring to self determination. At the moment we seem to have only one group of people <sup>who are</sup> to aspiring to self determination but it might be depending on the outcome of negotiations in their regard that other groups would aspire to self determination because as you know ~~that~~ the principle 34 is not specific to one particular group. And then the question is asked how will this commitment be binding on any future government <sup>well</sup> and the answer is I suppose depending upon the ease with which the final constitution maybe amended whether it is a 60% majority or 50 plus one or two thirds or whatever, it will probably be necessary to <sup>entrance</sup> ~~entrance~~ this provision i.e. the provision relating to self determination through negotiations in some way. For example, by making its amendment or appeal subject to a special majority in one or both houses of parliament and or requiring the concurrence of a certain number of, or maybe even particular <sup>provinces</sup> provinces and or, so these could be accumulative or separate perhaps other structures which may be set up in order to <sup>(?)</sup> ~~(?)~~ the resolution of the issue in other words if a body such as for example the Volkstaat Council was to continue as a forum through which negotiations were to be perused perhaps its approval would be necessary before an amendment or appeal of this binding commitment to resolve the issue of self determination could take place. But then the final little paragraph there, in order to preserve maximum flexibility which we have called in the body of the report the incremental approach, such a provision ought to be general in formulation and brought in scope using the type of language, not necessarily the language itself, but the type of language to be found in constitutional principles

generally in schedule 4 to the 1993 constitution. Thank you.

Chairperson:

Just before we carry on, turn back to page 3. 2.2 section 20 the first sentence. Remain in and live I presume, it should be, instead of leave.

Mr. ?

That is from the current chapter 3 of the Bill of Rights and it is leave the Republic. Leave is correct. LEAVE it stands correct.

Chairperson:

And then 2.3 Section 3. Afrikaans and so forth for the promotion of their equal use. Is it referring to Afrikaans or the eleven languages?

Mr. ?

That refers to all eleventh official languages.

Chairperson:

And continue to the block report on page 11. <sup>Now</sup> and this is where we need more clarity with regard to few and various.

Mr. ?

This was the toughest part of the report compile <sup>?</sup> so clearly we regard this as the most unimportant part of our report, it was simply made there because it was a proforma requirement that we did include a summary but it is virtually impossible to include the <sup>new answers</sup> nuances in telegraph style report where one really place dice at the end of the day in deciding on which word to use whether one use the word few or various or whatever, <sup>with</sup> so I would really submit ~~to~~ due reference to ourselves in compiling this that this is the most unimportant part of the report.

We actually urge members of the committee to read the rest of the report.

Mr Chairperson:

I think the committee will have sympathy with the <sup>Ad hoc</sup> committee in this regard and we won't persuade that matter any further. Now up to the <sup>page 10</sup> stand we have got the overview and the report and <sup>ad hoc</sup> the 9 and 10, we've got the recommendations the <sup>ad hoc</sup> adopt committee to which this loose page was added. <sup>this morning</sup> Any comments?

Mr[?]:

Can I just suggest that when we are going through the thing, that we do come back to the schematic summary taking to account what Dr Breytenbach had said because there might be

some formulations that we might want to propose that should be changed. But when we comes to that, I'll make my comments.

Mr Chairperson:

Any other comments on the report up to page 10? Mr Eglin.

Mr Eglin:

Mr Chairperson, are those the [?] ignore the summary. Well, not ignore it but, you know, I actually think that a condense summary will not, well, a summary that identify the issues of an agreement or a disagreement, is infact what this theme committee is about. It is not a negotiating forum which is got to look for <sup>cover</sup> common ground on the issue of a Volkstaat. If there are areas of <sup>cover</sup> common ground, that identifies them, but the areas of difference, I must also say so, that I am just a little concern that the final [?] of the committee proposals, I don't know what the technical committee can propose, but the theme committee does'nt propose solutions in the sense. The theme committee identifies areas of agreement and difference, so that I am just concern that I look at A to F, it is an attempt to actually find a negotiated agreement between the various parties as to what they could say. It is not an attempt to state these a way they want the parties positions are. And I just make a point, you know, from the point of view of the Democratic Party as that, we belief <sup>in</sup> the constitutional principles compel us to permit the notion of self determination to be carried on into the next constitution. But what it doesn't say is, that we actually <sup>got</sup> has to create structures in order to force or promote that particular issue. So I just got a concern that this thing that comes from a theme committee is <sup>already</sup> a really an attempts to find, what I called, a solution to the differences rather than to report of the theme committee on what the differences are.

Mr Chairperson:

Anybody else? Prof [?]

Prof [?]

Can I just..., thank you sir, Respond to Mr Eglin, having served on theme committee 1 as a technical advisor for the last seven months, I am very well aware of the point that Mr Eglin is making. But in the management committee guidelines of February or late January as of how to draw up a report, there is a <sup>seven</sup> section called possible approaches, and what A to F here is, are suggestions which have come from the technical advisors. We <sup>re</sup> three people and we [?] <sup>in</sup> to reach common ground, which we have reached and you know, <sup>devent</sup>

not necessarily each of us would have agreed to the same degree with what is there. But it is a composite proposal which off course is for the exception or rejection of the theme committee. But I am certainly, <sup>and I know Prof Breytenbach is</sup> [?] also aware of the fact that we should not be proposing and taking any kind of annotative here, except in so far as we are required in terms of the guidelines.

Mr [?]

I take Mr Eglin's point, and he is quite right that the theme committee is not negotiating for him, sometimes I wish he <sup>will</sup> ~~wants to~~ remind his own party about different other theme committees, like [?] Andrews. But let proceed, I think what we should do, is this, because Prof [?] also correct. Is perhaps look at the schematic <sup>at his side</sup> at take into account what Mr Eglin had said, that is a very important part of the report that we would want to make. At the end of that we then come to what Prof [?] <sup>is</sup> ~~has~~ saying that having established that as which we [?] <sup>will</sup> that the Province are very complicated that at this time they don't seem to be dissolvable. We then come to as a theme committee our recommendation to the constitutional committee with regards to saying we think that it is possible that the process may be continued in a certain direction. <sup>That if we can put it</sup> ~~Let me put it~~ that way, I think it would be fine, because there have been direct recommendations from theme committees in the form of concrete proposals in with regard to what should appear in the constitution itself. So I would like to propose that we do it slitley differently from the way Prof Breytenbach started which is good <sup>to</sup> at the schematic side, let's look at it, lets try to establish in what we, another report can begin <sup>done</sup> and then come to the concrete proposals which <sup>would</sup> follow from the schematic proposals.

Mr Chairperson:

Anybody else? Once we thinking would'nt it be advisable with regard to agreements and disagreements to submit the recommendations under the heading of agreements in the block, instead of a separate recommendation, because this block is in essence our report to the <sup>cc</sup> ~~city~~ and from that will flow drafts thereafter.

Mr [?]

<sup>You</sup> have cleared my question. Instead of having the recommendations on page 9 and 10. Can't we have it under block system, the issues, then they stipulate the issues, and then the recommendations, the agreements and then commence at the end of that block.



Mr Chairman:

Can you assist us in this regard?

Mr[?]

I think that what, for instance, what we could do which would help the process is that for instance if you look at on page 11 the first issue there is self determination. Columns 1 and 2 would stay unchanged in what I am getting from the sense of the meeting. But columns 3 and 4, for instance where under agreements under number 1 there is self-determination, few except the process, I excepted that and then disagreement various is'nt particularly helpful if one is only reading the summery. If one does'nt look at paragraph 2.9 and 6 of the report. So, it might be, and we could certainly do this, is to actually expand that instead of saying, we could say few and then stipulate exactly what they are. And, <sup>then</sup> under various we could say x,y and z and we could repeat that I suppose, under each of the items or issues on the lefthand side there. And maybe have a comments column. What I know some other theme committees do, is that they have a comments column, another column on the righthand side, and perhaps that is maybe where the recommendations can come in and the comments. It is just a suggestion.

Mr [?]

...to sit on the <sup>cc</sup> cc. We know that is what would be useful to the members of the cc. Lets say this agreements various. It doesn't really help the cc members, they've got to start making decisions as to what the disagreements are and who have them. So I think the elaboration of agreements and disagreements with some comment to identify what the main issues are would be very helpful to decide on where they must take the process from there.

Mr Chairperson:

Everybody satisfied towards the approach that was expanded upon by Prof [?]. Okay, I am waiting for the Professors.

Prof [?]

Yes, I think that would, there is also practical sided whether it could be done and I think, yes it can indeed be done, by simply adding another column or on the form of another page and that would be to elaborate on the disagreements and also perhaps on the agreements by means of a summery and it is practically possible. Now we think that it is all there, but one has got to page back through the report as it were and if it's got to be ready read as it were in one overview, that is not an imposable thing for us to do and it ~~can~~ <sup>could</sup> be done quite expeditiously.

Mr Chairperson:

Professor says expeditiously, when? This week?

Prof [?]

Yes, it could be ready by tomorrow lunch time.

Mr Chairperson:

Theme Committee in agreement with that? Then we agree to that. Dr Pahad, you wanted to specifically referred to the column report.

Dr Pahad:

Yes. I thought <sup>that</sup> issue number 3 on language, culture and community, it says that agreements most concern so far local level disagreements virtually none. If I am not mistaken, it seems to me that in any case, all of us have to comply with the, some of the provisions of constitution principles so that is present constitution in terms of, at a national level to languages, cultures of people are protected therefore, we have eleven languages. <sup>and so forth</sup> So the question of the protection of cultures and languages of people is not only related to the local level. So I sometimes get the impression is that we are talking about only confess. So there is this general approach to the theme. What there is, is how is this to be reflected in terms of the debate we are now having about self determination. And in that sense there are number or proposals been made by different parties including National Party, the Freedom Front, the Afrikaner Front and how this about, how they think this can take the form. So I am just asking that we slitley alter that, so that it's more in the form of saying that rather in agreements, I mean you can say some part <sup>have said</sup> is ~~excepted~~. For example in the side of the ANC what I think we are saying, is that we are open to further discussions on this question in terms of how it can, if it's to come about, how can it actually be reflected, rather than saying that we already agreed that such situation should occur. So I just saying that in terms of that if we could just slitley alter it so that it is more accurate with regard to what we are talking about. Thanks.

Mr [?]

May I say that under support, you see, again if we change it, there is'nt really any agreement. Instead of saying parties must consider Freedom Front proposal, it would seem to me that one could do is under comment, for the purposes of the constitutional committee say, that the Freedom Front in this proposals, proposes that whatever precentage they proposing or the 640 000 votes that they ~~have~~ [?] that becomes part so that it is rather a comment and bringing the attention of the

constitutional committee to a specific proposal of the Freedom Front, rather than just saying must consider, because we must consider every political party's proposal.

Mr Chairperson

Anybody else? Prof [?]

Prof [?]

Yes sir, can I just find out from the theme committee if this would be acceptable. I know in the last report the theme committee won on capitals and languages, etc., etc. etc., because some parties had made no proposals on certain aspects instead of reflecting agreement or disagreement. Those columns were left blank, but then everything went into the outstanding column. Would that be, it seems to me that, that is essentially what Dr Pahad was saying on this very last point. That there should be nothing, there should be a blank in the agreements and disagreements, but the question is really outstanding because there has'nt been sufficient attention paid to that in the submissions from all the bodies which we have consider this far. And that might be a helpful way of going forward.

Mr Chairperson

He appears to be agreeing, because he is shaking is head. Anybody else on this issue? O ja, Mr Eglin.

Mr Eglin:

Mr Chairperson, I am just wondering in terms of our report of self determination is used in a very general sense. Different people have got different interpretations of it. Whether it would'nt be on the technical advisors could comment on it, whether one should'nt instead of saying, there are various way, forms of which self determination could take place. And there may be more agreement on some aspects than on the other. When I actually happen to belief that the constitution which allows each person to use his own language and his own culture, it allows individual self determination. In a very big way the constitution at the moment allows it. It also allows collective self determination when it comes to religions and cultural and linguistic matters, including even in education. So that you got, to <sup>what</sup> one extent is there agreement that there's culture self determination on a collective basis, but I really crunch issues that what extent can you use cultural self determination as a base for having territorial and other self determination based on a common culture. In other words, do you use common culture as a basis for what I call political self determination, or is self determination ends

when you infact have got you common culture and self determination in that field. But I would think significant areas of agreement that when it comes to individuals or collective self determination on linguistic and cultural matters there's very broad agreement, because that is the principle. But to the extent that you should use culture as a base for territorial and political <sup>self</sup> determination, is a matter on which I think there is significant disagreement. And I think it could be helpful if one starts to reach agreement what I call, and I think there is agreements on language and culture, etc., etc. There is disagreements as to whether that should be the base for separatism in the political sense. So I, you know we just say there is a disagreement on self determination. I think in the context of that we should also indicate the various graves of self determination on which they have <sup>been</sup> had more agreement and others in which there maybe less agreement. But I mean, I may be wrong. We just say self determination is self determination. <sup>It</sup> We are talking of the Volkstaat and that is a particular thing, <sup>But</sup> when you talking of self determination in a more general sense, but I don't think the Volkstaat with territorial, what I call political boundaries, is the only form of self determination.

Mr Chairperson:

The CPG also refere<sup>s</sup> to that in their report on <sup>page</sup> point 6 auspiciously with regard to international Government. So you include that in your report with regard to <sup>self-determination</sup> ~~the~~ <sup>that</sup> what Mr Eglin have just suggested. Anybody else on this issue? Then it appears that we have agreed as to what the format of the report should be which we will be submitted to us during the course of the week and then we will deal with it again on Monday. <sup>Must make a note</sup> Prof [?]

Prof [?]

Can I just ask a question in response to the points made by Mr Eglin which I take completely. Does he, if I <sup>could</sup> refer him to <sup>paragraph</sup> page 2 of the report <sup>as of</sup> 1 point 2, on the top of page 2 and then several questions, four questions are asked there which specifically put on the agenda the fact that self determinations <sup>is</sup> not only a territorial concept, and it is not only linked to the idea of a Volkstaat. The difficulty that we faced with it, <sup>was that</sup> most of the submissions tended to be, tended to focus on the idea of territorial self determination, in particular <sup>in</sup> the idea of a Volkstaat. And not a lot else came in on the other aspect of territorial, except from time to time reference particularly, lets say in the National Party proposals to local level, <sup>from</sup> ~~[?]~~ <sup>cultural</sup>

Self-determination

particularly and also in the Freedom Front. So I accept completely that we haven't carried through those questions into the rest of the report and I think that, that would be important to try to incorporate. But are those the kinds of, are those the kinds of issues to which he was referring those four question. If so, then I think it would be logical to make them more prominent in the rest of the report.

Mr Eglin:

Mr Chairperson  
[?] whether <sup>one</sup> ~~want~~ to agree with the exact text, that is conceptual what it is. Well I <sup>do</sup> just think in terms of the report, rather just asking the questions and then leaving them, one could scumatacly see if they cant confine whether there are areas of agreements or disagreements on them. Chairperson <sup>may</sup> I just say you say that we have agreed to the report, there is a recommendation of 9 and 10 as 6 ABCDEF. May I say as I read them certainly up to ~~E~~ It's got nothing to do with what should be in the next constitution. It is really recommendations on the process that should be taking place now. If says, if clarity isn't reached by the time we have the next constitution, you may have to do something else. Now, I am not into favour of territorial separation either on a coloured or a Zulu or Afrikaner basis. What I say, politically, I'm quite happy culturally, but I take it that A to E, we are saying this only because the present constitution principle, actually says that that process can continue. And it makes provision for it under the constitution, under both the constitution, the Volkstaat is there, and under the principles is that concept is there. So, to the extent that ~~which~~ we are locked into that process, because of the present constitution, we now going to argue that it should'nt continue. But the real crunch issue is what happens under F. If <sup>and when</sup> ~~it win~~ that process is been taken as far as you can, what you put in the next constitution. And I take it that this <sup>is heading</sup> ~~leading~~ our beards, we want to see what happens in the next year or two, before we decide what goes into the constitution. Am I correct that that's what we saying, that carry on under ABCDE and then see what happens, how far it is and then later on you <sup>ll</sup> have to decide whether or what you put in the next constitution. I don't know whether I am reading that, those provision correctly.

Mr Chairperson

It says there that principle 34 be retained in some form depending on the outcome of ABCDE with regard...

Mr Eglin:

It is correct, it actually says, that could be a solution depending on how far the process goes. But what we are saying at this stage is, there is no definitive proposal as far as to what should actually go into the next constitutions. And so the process continues until we can decide one way or the other. I mean I, I think that even if no progress is made, because that constitution 34 is binding of the next constitution, you might have to include it in the next constitution. But I am saying, all I am trying to get is ABCDE <sup>are</sup> is all prior to next constitution and F says, wait and see but perhaps we may have to include 34 in it. Okay... *then I.....*

Mr [?]

It would seem to me that from A to E by certain from A to D, a way could be founded <sup>that</sup> it finds reflection in this schematic side of its reflected in one way or the other. I know Mr Eglin is quite <sup>right</sup> [?] about, about F. But it still seems to me <sup>to</sup> as a recommendation to the theme committee, because that is <sup>to</sup> what theme committees are doing, recommending in terms of the new constitution. But you can either just repeat what is in the present constitution about the discussions without the structures or you could take the formulation made by Prof [?], *wich* it is on a separate sheet of paper. Now, if we want to take the separate sheet of paper, I have some amendments to make to the separate sheet of paper, which can go into <sup>the</sup> a form of a comment <sup>to</sup> or it seems to me without tie<sup>ing</sup> anybody down to do anything. But as a way of <sup>comment, as a way of</sup> trying to guide the discussions, in my view, I think we have <sup>corrective</sup> put it as a way of trying to guide the discussions in the constitutional committee. Otherwise the constitutional committee going to refer back to the theme committee and say, but so what, I mean what, have you got any proposals. With your permission Mr Chairperson, I'd like to just say something on this separate sheet of paper. It would seem to me first of all Prof [?] that it is very long and very involved about what should and should not happen subsequently. I would have thought that if we said something to the effect that most appropriate form of constitution provision may be, <sup>and</sup> quite frankly, the commitment to precede through negotiations, the issue of ~~X~~ *self-determina* in some form, until the issue has been resolved. We cut out the rest of the stuff about binding on <sup>future governments</sup> [?] ~~account~~ presumably for Government is going to enter into that agreement. It has to be bound by its agreements. And cut out the rest of the thing, and the flexibility part would then be reflected in any case in terms of pages 9 and 10, which will be included in the

comment<sup>s</sup> So I suggest that if we approach it that way, then there is something additional we <sup>are saying</sup> seem to the constitutional committee to help it in its own deliberations <sup>of</sup> and on this question.

Mr Eglin:

Just to repeat exactly, because you made some comments inbetween exactly what you want Mr [?], <sup>to report in.</sup>

Mr [?]

It would read the most appropriate form of constitutional provision may be a commitment to pesude through negotiation<sup>s</sup> is <sup>self-determination</sup> the issue of evade in some form until the issue has been resolved. Leaving out the outcome and leaving out to the satisfaction, I don't anyway belief you can satisfy everybody, it is not possible. So I thought that that's sufficiently general for the constitutional committee to try to get its teeth into the question...

Mr Eglin:

And the rest to be deleted....

Mr [?]

...and the rest to be deleted, because I am saying the last paragraph will appear anyway in terms of pages 9 and 10 and the question about the amendment of the constitution is a separate matter in any case. So whatever happens, if it is entrench it is entrench, if it is not entrenched, even if it is not entrenched, you would still require a specific majority in the constitution to amend it.

Mr Beyers:

Mr Chairman from our part I think we are satisfied with the formulation as it is here. If he formulate it in the way <sup>on</sup> Dr Pahad is proposing, you can leave it out for the same price. And you can ignore the entire thing. I don't know what <sup>is</sup> the sense of that comment then, if there is no binding on each side, you know, then I dont' think there is any sense in putting up such a proposal.

Mr Chairperson:

Your suggestion it be retained as is?

Prof [?]

Perhaps I can just respond first of all to what Mr Eglin said and then to the text here. I am, I start with the text, I am quite clearly not <sup>is weaded?</sup> [?] to anything which is written here. I was responding to a specific request by General Groenewald on last occasion, which <sup>carried</sup> ~~graved~~ the approval of the theme committee to make some proposals as to alternative ways of doing this. It is absolutely true that if there is'nt a political

commitment to a solution, any Government as we discovered  
? in the 1950's can ~~[?] any~~ <sup>circumvent?</sup> intrengement in any constitution  
more or less. The suggestions as to the ways of intrenging a  
provision in the constitution are general suggestions and I  
think that is this theme committee which has as part of its task  
the whole issue of amendments to the constitution and it might  
be that this could form part of that block, rather than this  
block at this point. So it is entirely, the formulation of this  
loose peace of paper is entirely in the theme committees  
hands, but it was drafted as a result of a particular proposal  
by a particular party. And then secondly I think it, the  
political sense of it is perhaps informed by constitutional  
principle 34. If you look at 34, it gives no binding  
commitment that the issue of self determination will be in the  
final constitution. If you look at it it says this schedule and  
the regocnition therein of the right of the South African  
people as a whole to self determination shall not be construed  
as precluding. So it gives no right, it just says it shall not be  
construed as precluding within the framework of the ~~[?]~~ <sup>Set right</sup>  
constitution provision for a notion of the right of self  
determination by any community sharing a common culture or  
language heritage within a territorial ~~[?]~~ <sup>entity</sup> within the public or  
any other recognised way. And then it says, the constitution,  
that is the final constitution, may give expression to any  
particular form of ~~(d), D,~~ <sup>self-determination</sup> provided there is substantial prove  
and support within the community concerned for such a form  
of self determination. And thirdly, if a territorial entered to  
referred to paragraph 1, is establish, and this is the point the  
CPG made very strongly in their report. If a territorial entry  
referred to paragraph 1 is established in terms of this  
constitution ~~the four~~ <sup>before</sup> new constitutional text is adopted, that  
is perhaps before sometime next year, the new constitution  
shall entrenched the continuation of such territorial entity  
including its structures, powers and functions. So from a  
technical point of view, it is certainly possible, I would  
submit, <sup>that</sup> while principle 34 is definitely binding on the  
constitutional assembly. <sup>?</sup> It doesn't bind the future  
constitution to make provision for the continuation of self  
determination, or it seems to me. It can't be, shall we, this  
schedule shall not be construed as precluding within the  
framework of the ~~[?]~~ <sup>set right of self-determination</sup> within constitutional provision for a  
notion say may not be precluded. That is correct, it may not  
be precluded, that is quite correct.



Mr Chairperson:

Any further comment. Dr Pahad do you still violently insist that the rest be deleted?

Dr Pahad:

Well the days of armstrugle are over. No, I wasn't sure what [?] was saying on that side. I mean, if you think you need to put binding on any future Government it is just the theotology, put it in, that is what you want. Because if a Government enters into an agreement with anybody, or any form of parties to do anything, then presumably it is bound by its own desicions. But I don't have a problem with that, what I was saying was that I thought the rest of it just adds, or seems to qualified this original <sup>that</sup> part of the paragraph. It is not really adding anything to it, because he is just saying in relation to what should happen <sup>first</sup> in the constitution. They are saying in relation to the flexibility, the <sup>incremental</sup> [?] approach, that will already be included in the schematic part of which we <sup>if</sup> agreed earlier, that would then say that approach would be there. I thought what the first paragraph would then do if we just take that part of the first paragraph. That <sup>that</sup> then acts as a kind of guide to the constitutional committee, so when a constitutional committee is discussing it, one of the issues it would then discuss is to say, well okay, we may well not be able to resolve the issue now in terms of the new constitution, but that we will include provisions which will allow for negotiations to continue. I mean that's all, this <sup>first</sup> was part of what the paragraph says. It doesn't say anymore than that. And I would just amending it slightly to say to leave out to the satisfaction of all this <sup>aspiring</sup> [?] to self determination because I thought that's a terrible qualification to add. And in my own view, I thought if we put in terms self determination what we....

(Tape 2)

Mr. ?:

With the section in the Interim Constitution itself <sup>says we</sup> when it just uses the notion of self determination and not internal self determination. So just to be consistent with what there is. But if Mr. Beyers(?) insist on binding with any future government, I don't have a problem you can keep it there.

Chairperson:

Mr. Eglin? Comment?

Mr. Eglin:

First of all I actually would also delete all that clause about ease of amending the future constitution. It is a detailed matter we don't know how the Constitution is going to be amended. It in a sense attracts from what I think is the thrust of this thing. Where I have a problem as a party is that this is I am talking of the next Constitution the most appropriate form of Constitutional provision in the next Constitution maybe a commitment to pursue through negotiations the issue of self determination. I would believe the Constitution could go no further than they should not preclude(?) but it actually have an injunction in the new Constitution that we have got to carry on perusing self determination as a Constitutional requirement goes far beyond the Constitutional principle here, so I would have said that the most appropriate form could be a authorization or a recognition for the right of people to persuade negotiation in order to get it but as it stands here is going to be a commitment on all of us, it doesn't say a commitment to those who want it, this is maybe a commitment to pursue. So I would think that it should be a permission <sup>that shall</sup> should not preclude negotiation in order to pursue is not the same as saying there is a commitment to pursue. So we would go no further than saying it should not preclude negotiation as a means of perusing this but I would not say an injunction in the constitution to have it.

Chairperson:

Anybody, Prof [Kode(?)]

Prof Kode:

Absolutely, perfectly in order

Chairperson:

Mr Holomisa

Mr Holomisa:

To say in the (?) <sup>addent to</sup> the worries that <sup>have been</sup> was expressed by Mr Eglin

and Mr Pahad about the rest of that paragraph starting particularly with the word depending. My worry has to do with the words to the satisfaction of those aspiring to self determination. It is clear <sup>as</sup> so far as parliament is concern<sup>ed</sup> that there is only one party that pursues this. Now if I can commit everybody to these type of negotiations to the satisfaction of those people that when it is clear that the rest of the other components of the government, <sup>they will agree</sup> will never agree to this type of thing than I am not sure if this is what ~~one~~ <sup>you</sup> want to do to the government to commit it with such a lack of resources as it does to commit it to continue to pursue <sup>ing</sup> this kind of exercise to <sup>the</sup> ~~this~~ satisfaction of this very small number of people, I am not happy about <sup>that particular one</sup> (?) I suggest that even if we retain this paragraph but at least the worst to the satisfaction of all those inspiring to self determination those ~~(?)~~ <sup>ones will be deleted.</sup>

Chairperson: I think <sup>we</sup> basically agreed that until the issue is resolved full stop and then it carries on from depending "Is ek reg Prof Korde?"

Prof Korde: From what I have understood <sup>from</sup> of the majority of the people here sir, the indication seem to be it would in fact you delete everything from the word resolved ~~in fact~~ <sup>to</sup> at the end of that paragraph in fact at the end of that page. It seems to me that the consensus here seems to be that in effect <sup>you</sup> retain only the first sentence to the word resolved, that the last paragraph will be part of <sup>the schematic</sup> ~~this~~ ~~cosmetic~~ summary in any case on page eleven in a comment, and that all the details relating to Constitutional amendment ext. ext. should fall away including the last part of that first sentence from the word satisfaction to the end of that.

Chairperson: Somewhere along the line you miss something, Mr Beyers said he would prefer it to be like that and then Dr (?) he has no problem.

Mr ? : Mr Chairman, I will accept this one because Dr Bahad ? stopped at the second or third line.

Chairperson: Resolved

Mr.?: Yes

Chairperson: So you are not persisting in having the rest included.

Mr?: No that is ok, but which will be binding on any future government until the issue has been resolved, <sup>and</sup> that is included I <sup>am</sup> satisfied. <sup>If</sup>

Chairperson: Agreed, Mr Ebrahim.

Mr: (?) <sup>Mr</sup> Chairperson <sup>man</sup> I just want to get clarification here that if we are taking that part of it until the word resolved do we delete the word internal? Yes

Chairperson: Ladies and gentlemen, thank you and thank you to the Professors this concludes our meeting and we <sup>will</sup> include the draft again for our next meeting. The <sup>core</sup> court group must just remain behind.