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**TO** : Technical Committee on Constitutional Issues  
**FROM** : Colin Eglin on behalf of the Democratic Party  
**DATE** : 12 August 1993

Herewith an input on behalf of the Democratic Party arising out of the discussion at the Negotiating Council on 11 August 1993 on the subject of clauses in the Draft Constitution relating to the exercise by the National Parliament of Concurrent Powers.

**CW Eglin**

**The issue of whether the exercise of legislative power in terms of concurrent powers by the National Parliament should be subject to objective criteria**

1. The second report of the Technical Committee states (page 8 clause 4.6.3)

"Where there are concurrent powers the Central Government usually has overriding power, but this can be made also subject to objective criteria to present clauses. We suggest that this be debated.

2. This was debated during the discussions of the third report of the Technical Committee (para 3.9.1.4 of the Third Report).

This debate is referred to further in the Fourth Report of the Technical Committee (pages 8 & 9 para 2.24.3).

During these debates it was made quite clear that the criteria stated in the constitutional principle see 3R 3.9.14 or 4R 2.24.3 most certainly applied to concurrent powers. The only issue was whether the clause containing the criteria extended beyond concurrent powers.

See 3R page 9.

Quoting from the CBM submission.

"So far the powers of the centre to override has been discussed solely in relation to concurrency. It also has wider application.

3. The Constitutional Principle XXIV, II, reads:

"In the event of a dispute concerning the legislative powers allocated by the constitution concurrently to the National and SPR governments which cannot be resolved by a court on construction of the Constitution. Precedence shall be given to the legislative powers of the national government.

This procession implies very strongly that there will be justiciable criteria determining the relative powers of the SPR's and Central Government in the field of concurrent powers.

4. I urge that the Technical Committee pursue the issue of making 'objective criteria' the basis of the National Parliament legislating in terms of concurrent powers.

I make some suggestions in this regard.

5. One of the problems that exist is that the Constitutional Principles envisage that most powers will be allocated to National, SPR and Concurrent, whereas the Transitional Constitution allocates powers to SPR's and Concurrent leaving the residual powers with the National Government.

I suggest:

1. That where, in terms of the Constitutional Principles powers are allocated exclusively to the National Government, that these powers are stated in the Transitional Constitution, making it clear that these powers would be overriding in both the exclusive SPR and concurrent fields.

These are three such principles, XXIV 5,7 and 8.

2. That where, in terms of the Constitutional Principle, powers are not allocated exclusively to the National Government but refer to National Government involvement, such principles should become the core of the objective criteria determining national parliament legislative competence in respect of concurrent powers.

Such principles are XXIV 1,6,10 and in particular 3.