

THESE MINUTES ARE CONFIDENTIAL AND RESTRICTED TO MEMBERS OF THE NEGOTIATING COUNCIL.

MINUTES OF THE MEETING OF THE NEGOTIATING COUNCIL HELD AT 10H20 ON TUESDAY 29 JUNE 1993 AT THE WORLD TRADE CENTRE

PRESENT: See Addendum A

1. Moment of Prayer/Meditation

A moment of prayer/meditation was observed by all members.

2. Welcome and Attendance

2.1 The participants were welcomed.

2.2 Apologies were extended to the meeting on behalf of the Planning Committee for the late start of meeting.

3. Ratification of the Agenda

The agenda was ratified with no amendments.

4. Minutes

It was noted that the minutes of 22 June and 23 June would be dealt with at the next meeting of the Negotiating Council on 30 June 1993.

5. Substantive Issues

5.1 Report from the Technical Committee on the Amendment or Repeal of Legislation Impeding Free Political Activity and Discriminatory Legislation:

5.1.1 The members of the Technical Committee were unable to attend the meeting, due to the fact that they were not initially scheduled to attend this meeting. It was noted that the relevant points from the debate of the Negotiating Council would be forwarded by the Administration to

the Technical Committee for their consideration.

5.1.2 The Technical Committee was mandated to liaise with the other Technical Committees where overlaps occur.

5.1.3 The Planning Committee was requested to set up mechanisms and procedures, for the approval of the Negotiating Council, which would allow greater co-ordination amongst the Technical Committees, including the drafting of legislation in a consistent way.

5.1.4 Discussion and debate then followed around the first part of the Final Report of the Technical Committee and the following was noted:

5.1.4.1 That an enquiry was made as to when the proposed discriminatory laws, as listed, would be repealed and the effect of such laws on structures such as the self-governing territories, etc. was raised.

5.1.4.2 That there seemed to be an overlapping between the work of this Technical Committee, that of the Technical Committee on Fundamental Human Rights during the Transition and that of the Technical Committee on the TEC and its Sub-Councils. This overlap should be attended to by the Technical Committee.

5.1.5 Discussion and debate then followed around "The Higher Code" and the following was noted:

5.1.5.1 It was suggested that a Code of Conduct for an election should be dealt with by the Technical Committee on the IEC.

5.1.5.2 Item 5.3.2 refers; A concern was expressed with regard to the powers of a political nature given to the tribunal. The Technical Committee should therefore re-examine the mechanism.

5.1.5.3 Item 5.3.2 refers; The Technical Committee should give details of how the tribunal would function. This should be done in conjunction with the other relevant Technical Committees.

5.1.5.4 It was suggested that all the criteria that may have a material effect on the work of the Technical Committee on the IEC, should be taken note of by the Technical Committee on the IEC.

- 5.1.5.5 Item 5.5.3 refers; The political nature of a tribunal was questioned and the Negotiating Council agreed to refer the matter back to the Technical Committee in order to reconsider the powers of a tribunal.
- 5.1.5.6 Item 5.5.3 refers; More detail was needed on the functioning of an ombud and a tribunal. The Technical Committee was requested to deal with this in consultation with the other relevant Technical Committees.
- 5.1.5.7 Item 5.5.5 refers; This clause should refer to the same tribunal.
- 5.1.5.8 Item 5.7 refers; It was noted that when CODESA dealt with the TEC, it also dealt with a Sub-Council which could in its opinion deal with any matter that has an impact on the levelling of the playing field. It was therefore suggested that the question of political matters should be separated and be dealt with by a Sub-Council of the TEC.
- 5.1.5.9 Item 5.10.3.2.1 refers; It was suggested that the assumption that there would be a voters role should not necessarily be made. It was further suggested that voting could be done by way of registration or by a decision that everybody who has an ID document would be entitled to vote.
- 5.1.5.10 Item 5.10.10 refers; It was suggested that the words "on the advice of the TEC" be deleted and replaced by the words "after consultation with the TEC".
- 5.1.5.11 The agreement on formulation, as per the Negotiating Council meeting of 28 June, should also be applicable throughout this Report, i.e. that the State President shall act only upon the advice of the Negotiating Council.
- 5.1.5.12 Item 5.10.12.1 refers; Reference is made to ten regions. Clarity was needed on whether it was referring to the establishment of regions, or if it was bound up with the number of regions or whether it refers to something different.
- 5.1.6 It was noted that the Negotiating Council had already agreed in principle to adult suffrage.

The meeting adjourned for tea at 11h10.

The meeting reconvened at 11h40.

5.2 Discussion on the Seventh Report from the Technical Committee on Constitutional Issues:

5.2.1 The members of the Technical Committee were welcomed. Present were A Chaskalson, E Moseneke, M Olivier, W Olivier, F Venter and M Wiechers. Apologies were noted from GE Devenish and B Ngoepe.

5.2.2 The Technical Committee presented its Seventh Report to the meeting. No discussion was allowed at this stage. After the adjournment to allow participants to study the report and to have lunch, discussion would start on the Seventh and subsequent Reports. The Technical Committee was thanked for their presentation.

The meeting adjourned at 12h10.

The meeting reconvened at 14h40.

5.2.3 Discussion and debate then proceeded around the Seventh Report. Questions of clarity were put to the Technical Committee. The following was noted:

5.2.3.1 The purpose of the Seventh Report was to facilitate discussion around the Fourth and Fifth Report.

5.2.3.2 The following proposal was put to the meeting to facilitate taking the debate forward in a constructive way:

* That the meeting needed an indication from those parties that required an explication of the "bottom-up approach" as to whether paragraph 3 and 4 are an adequate reflection of that;

* That the meeting then deals with the "equilibrium" in Section 6 and go through this section paragraph by paragraph, indicating where differences exist and if there is a willingness to bridge the differences.

- 5.2.3.3 It was further suggested that when paragraph 3 and 4 are discussed it be in compliance with the view of the IFP that its proposals should be considered by the Negotiating Council before it seeks to agree on the alternative proposal for a two stage model. It was also suggested that paragraph 4 is a correct reflection of the IFP's view in this regard.
- 5.2.3.4 The above proposal was agreed upon. Discussion and debate then followed.
- 5.2.3.5 The Technical Committee was requested to take note of the discussion, observations and suggestions around the Report.
- 5.2.3.6 It was suggested that the Technical Committee in this regard consider, as far as the content and ambit of paragraph 3.6 is concerned, the so called "Canada Clause" in the Canadian Constitution and come up with some proposals in this regard. This suggestion would depend on the mandate given to the Technical Committee in terms of the way forward.
- 5.2.3.7 The IFP stated that Item 3.7 was based upon a document which was not a mandated IFP document and that it had in fact been withdrawn. The scenario developed was not an accurate reflection of the point of view of the IFP.
- 5.2.3.8 The AVU stated that they did not agree with Item 4.1.3 of the Seventh Report.
- 5.2.3.9 The IFP suggested that the Technical Committee should revisit Item 4.1.3 of the Seventh Report. The NIC/TIC and the NPP requested that it be noted that other parties based in Natal did not share the same views as the IFP on this issue.
- 5.2.3.10 The IFP referred to Item 4.1.5 and stated the following: "The question of where residual power lies comes into the matter, the question of constitutions for the regions comes into the matter and one of the ways in which to achieve equilibrium, is to think in terms of decentralising this negotiation process and having regional processes where possible".
- 5.2.3.11 The IFP state that Item 4.1.9 was not the position of the

IFP.

- 5.2.3.12 The AVU stated that as far as the whole of Item 4 was concerned, it does not correspond with the view that the Constitution should be drawn up by the Multi-Party Negotiating Process.
- 5.2.4 The scenario was then dealt with clause by clause. Discussion and debate followed.
 - 5.2.4.1 Item 4.2.1 refers; It was noted that a federal type of State is what is referred to.
 - 5.2.4.2 Item 4.2.3 refers; It was noted that the sequence need not be in the order as suggested by the Technical Committee.
 - 5.2.4.3 Item 4.2.5 refers; It was suggested that SPR constitutions could be agreed upon in Multi-Party Negotiating Forums at a regional level and once agreement has been reached a referendum be held in the region.
 - 5.2.4.4 Item 4.2.5 refers; The IFP stated that it was not an advocate of an election of a Constituent Assembly which would act as a regional constitution-making body at all. Once boundaries have been agreed upon, there could be a decentralisation of the negotiation process.
 - 5.2.4.5 Item 4.2.7 refers; The Bophuthatswana Government requested that the principle of asymmetry be taken into account here.
- 5.2.5 The questions as listed in the Seventh Report were then put forward to the meeting. Various participants replied. Discussion and debate followed.
- 5.2.6 It was noted that the AVU and the IFP were not in support of an SPR Constituent Assembly.
- 5.2.7 The IFP stated that as a result of the Technical Committee having fundamentally flawed its Report by locking the Multi-Party Negotiating Process into a two-phase process and producing scenarios which develop the argument, it rejected the Report as a whole.
- 5.2.8 It was noted that the Report as amended/clarified in the discussion was an accurate reflection of parties concerned.

- 5.2.9 It was suggested that Item 6 of the Seventh Report be discussed as a matter of priority at the meeting of the Negotiating Council on 30 June 1993 but after discussion and debate the meeting proceeded to discuss Item 6 of the Seventh Report.
- 5.2.10 It was suggested that the debate need not be concluded at this meeting but it was important to start initial discussions on this Item. The debate could be carried forward to the next meeting of the Negotiating Council to allow participants time to consult.

The meeting adjourned for tea at 16h45.

The meeting reconvened at 17h05.

- 5.2.11 Discussion and debate continued around Item 6 of the Seventh Report.
- 5.2.12 After discussion a proposed resolution was put forward to the meeting by the ANC (see Addendum B). The proposed resolution was seconded but after further discussion it was agreed to explore the motion, complete the discussion at this meeting and take a decision with regard to the resolution as a matter of priority at the next meeting of the Negotiating Council on 30 June 1993.

6. Meeting of the Negotiating Council on Wednesday 30 June 1993

- 6.1 A draft agenda was circulated (see Addendum C).
- 6.2 It was agreed that the Negotiating Council meeting of 30 June 1993 would commence at 10h00 and carry on until 19h00.

7. Closure

- 7.1 The Chairperson was thanked for the way the proceedings were conducted.
- 7.2 The meeting was closed at 19h00.

These minutes were ratified at the meeting of the Negotiating Council of 19 July 1993 and the amended version signed by the Chairperson of the original meeting on ...10/8/1993.....


CHAIRPERSON

The following delegates and advisers were present at the meeting of the Negotiating Council on Tuesday 29 June 1993:

D de Villiers : Chairperson

Organisation	Delegates	Advisers
ANC	C Ramaphosa B Kgositsele	M Manzini
AVU	CD de Jager J Gouws	JJC Botha MJ Mentz
Bophuthatswana	R Cronje R Mangope	SG Mothibe SS Seane
Cape Trad. Leaders	SN Sigcau	GD Gwadiso
Ciskei	M Webb	TM Bulube IJ Smuts
DP	C Eglin M Finnemore	K Andrew AJ Leon
Dikwankwetla	JSS Phatang K Ngwenya	SOM Moji
IFP	VJ Matthews FX Gasas	WS Felgate
IYP	NJ Mahlangu N Mtsweni	AP Laka Q Vilankulu
KP	T Langley A Budd	C Uys SC Jacobs
INM	SS Ripinga ND Mokoena	MS Gininda PMH Maduna
Kwazulu	BS Ngubane	SH Gumede
Labour Party	L Landers CC August	J Douw D Lockey
NIC/TIC	PJ Gordhan P Radam	K Mayet
NP	L Wessels TJ King	SJ Schoeman

● P

	A Rajbansi A Rambarran	B Singh D Chetty
OFS Trad. Leaders	M Moroke RH Mopeli	MB Mota AM Molefe
PAC	P de Lille LS Makhanda	E Sibeko M Mphahlele
Solidarity	K Moodley	AS Razak
SACP	J Slovo L Jacobus	E Pahad
SA Government	RP Meyer C Schmidt	DA Schutte
Transkei	Z Titus N Jajula	LL Mtshizana
TVL Trad. Leaders	MA Netshimbupfe	LM Mokoena NE Ngomane
UPF	MJ Mahlangu A Chabalala	RJ Dombo J Maake
Venda	SE Moeti	GM Ligege S Makhuvha
XPP	PT Shiluvana	MH Matjokana TB Shibambu

T Eloff	:	Administration
G Hutchings	:	Minutes
P Lelaka	:	Administration
M Radebe	:	Administration
R Vittee	:	Administration

DRAFT RESOLUTION

This Negotiating Council meeting on Tuesday 29 June 1993 at the World Trade Centre in Kempton Park:

Noting:

1. That the Technical Committee on Constitutional Issues has been of invaluable assistance in elaborating various positions of participants and in suggesting possible approaches to reconciling these positions;
2. That a deadlock remains between those who advocate that a nationally elected Constitution-Making Body drafts and adopts the Constitution subject to Constitutional Principles agreed upon at the MPNP, and those who advocate that an un-elected MPNP should draft and adopt the new Constitution;

And Believing:

That the Negotiating Council must now make meaningful and constructive progress in searching for agreement on Constitutional Issues;

Therefore Resolves:

1. That the Negotiating Council accepts that this "equilibrium" offered in paragraph 6 of the Seventh Report of the Technical Committee on Constitutional Issues offers the best possible basis for finding agreement on the Constitution-Making Process;
2. That the Negotiating Council now commits itself to discuss, amend and agree upon the various proposals in paragraph 6 of the Seventh Report, in line with paragraph 6 of the Explanatory Memorandum adopted by the Negotiating Council on 30 April 1993.