

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

MINUTES OF THE MEETING OF THE NEGOTIATING COUNCIL HELD AT 10h00 ON TUESDAY 10 AUGUST 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

The participants were welcomed.

3. Ratification of the Agenda

The agenda was ratified with no amendments.

4. Minutes

4.1 Ratification of Minutes:

4.1.1 The minutes of the meeting of 30 July 1993 and 2 August 1993 were adopted with no amendments.

4.1.2 No matters arising were noted out of the minutes of 30 July and 2 August 1993.

5. Reportback from the Planning Committee

5.1 Proposed Commission on Languages and National Symbols:

5.1.1 A draft proposal was circulated to the meeting.

5.1.2 It was noted that the Planning Committee would, on the basis of participant's nominations, submit a recommendation to the Negotiating Council on the composition of the Commission.

5.1.3 The proposal was agreed to by general consensus (see Addendum B).

5.2 Name for the Constitution-Making Body:

5.2.1 The Planning Committee recommended that the name for the Constitution-Making Body should be the Constitutional Assembly.

5.2.2 Discussion proceeded around this issue. It was agreed by sufficient consensus to accept the recommendation of the Planning Committee.

5.3 Resolution on the Report of the Commission on the Delimitation/Demarcation of Regions and the Way Forward:

5.3.1 The amended draft resolution was put before the meeting.

5.3.2 Discussion proceeded on this issue. It was suggested that the Negotiating Council was not reconvening the Commission but setting up a sub-committee of the Negotiating Council, headed up by the Co-Chairpersons. The sub-committee was necessary to deal with outstanding issues.

5.3.3 It was noted that implicit in the resolution was the understanding that the Co-Chairpersons or members of the Commission would visit the "sensitive" areas and that all members of the Commission would be invited to assist the Co-Chairpersons.

5.3.4 The AVU expressed concerns about the non-demarcation of an area where a majority of Afrikaners resided. Lengthy discussion ensued around this issue with various views expressed. It was suggested that this debate would be more appropriate in the constitutional debate. It was noted that a political decision on this issue was needed and could not be taken by the proposed sub-committee. It was noted that the further report on self-determination of the Technical Committee on Constitutional Issues had not yet been discussed in the Negotiating Council.

5.3.5 It was noted that the concerns of the AVU could be dealt with in the realms of the proposed resolution as further submissions were invited. The AVU was specifically requested to make further submissions on this issue. It was further suggested that the AVU should consider other mechanisms for taking its case forward in the Negotiating Council.

5.3.6 It was suggested that a direct response should be obtained from the Commission on how the submission of the AVU was dealt with. It was noted that this request was catered for in item 2.3 of the proposed resolution.

5.3.7 It was noted that the Negotiating Council was not against the principle of self-determination for the Afrikaner.

5.3.8 It was agreed that the general concerns of the AVU with regard to self determination, as a principle and an application, be referred back to the Planning Committee. The date for the debate to be held on the report of Technical Committee on Constitutional Issues dealing with Conferederalism and self-determination should be determined as a matter of urgency. It was noted that the debate on these issues had been delayed in the hope that the KP would return to the Negotiating table and form part of that debate.

5.3.9 The resolution was adopted with sufficient consensus (see Addendum C).

5.3.10 The PAC reserved its position with regard to the resolution.

5.3.11 The AVU did not support the resolution.

5.4 **The proposed resolution on Walvis Bay:**

It was noted that this issue was still under discussion in the Planning Committee. A reportback would be given after lunch.

5.5 **Visit to the East Rand:**

5.5.1 It was noted that the visit would take place on Wednesday 11 August 1993 at 11h00. Participants would return to the World Trade Centre for lunch at 13h00 and the meeting of the Negotiating Council would commence at 14h00.

5.5.2 It was noted that the Sub-Committee and the Administration was in the process of organising the logistical arrangements.

5.5.3 Participants requested that the buses are not luxury buses but ordinary buses as utilised by the people of the area.

5.5.4 It was noted that a list would be circulated for participants to indicate their availability for the visit. It was stated the visit would be undertaken by participants at their own risk.

5.5.5 It was noted that provision would be made for the media to accompany participants on the visit.

5.5.6 At a later stage during the course of the meeting it was noted that, due to logistical and security complications, the Planning Committee recommended that the visit be postponed. This was agreed to.

6. **Substantive Issues - Combined Report of the Technical Committee on Constitutional Issues (10 August 1993)**

6.1 The Technical Committee on Constitutional Issues was welcomed. Present were A Chaskalson, GE Devenish, E Moseneke (after lunch), B Ngoepe, M Olivier, W Olivier, F Venter and M Wiechers (after lunch). The Technical Committee presented its Ninth Report and its further Draft Outline of the Constitution to the meeting. The Technical Committee was thanked for its presentation.

The meeting adjourned for lunch at 12h40.

The meeting reconvened at 14h30.

6.2 Discussion followed around the Draft Outline of the Constitution. Questions of clarity were put to the Technical Committee.

6.3 Clause 4 "The Supremacy of the Constitution" refers:

- * Clause 4 (1) and (2) refers : A question was raised whether any contradiction exists between the clauses and the proposed IEC Bill, as well as the existing constitution. The Technical Committee was requested to consider this.

6.4 Clause 5 "Citizenship" refers:

- * The Technical Committee was again requested to consider SPR citizenship.
- * The Technical Committee requested that the question of rationalising, repealing and co-ordinating of citizenship law should be referred to a Technical Committee for attention. The Planning Committee was requested to submit a recommendation in this regard to the Negotiating Council.
- * The Technical Committee was requested to identify in the course of the process, all the legislation required.

6.5 Clause 6 "The Franchise" refers:

- * It was suggested that provision should be made for persons who are 18 on the date of the election to vote.

6.6 In response to a question about the inclusion of the United Nations Declaration on minority groups, it was noted that this would be dealt with under Chapter

12 of the Draft Constitution when that was ready.

6.7 Clause 38 "Legislative Authority" refers:

- * It was noted that sub-clause 2 should be read together with the concurrent power with regard to local government in Item 118 (4) (b).
- * It was noted that there was general concern that an SPR Government could be bypassed with regard to local government.

6.8 Clause 39 "Duration of Parliament" refers:

- * It was suggested that in sub-clause 2, the period should be 60 days.
- * It was agreed that in sub-clause 2, the full wording as in the present constitution, should be included.

6.9 Clause 40 "Composition of the National Assembly" refers:

- * Discussion proceeded on sub-clause 1 after which the Technical Committee was requested to prepare the relevant schedule so that the debate could be taken further in the Negotiating Council. It was noted that participants were free to make submissions on the issue to the Technical Committee, if they so wished.
- * Lengthy debate followed on the meaning of the words "ordinarily resident". The principle was agreed and it was decided to leave this debate in abeyance until the above mentioned schedule has been received.
- * It was noted that the whole issue of lists would be dealt with at a more appropriate time.

6.10 Clause 42 "Qualification of Members of the National Assembly" refers:

- * It was noted that a person would have to be a voter to be a member of the National Assembly, Senate or an SPR Legislature. The Technical Committee was requested to include this where appropriate.
- * It was suggested that a provision should be made for the concept of non-permanent disqualification in this clause.

6.11 Clause 43 "Vacation of Seats" refers:

- * The Technical Committee was requested to reconsider sub-clause 1 (d) with regard to the absence for leave period and reduce the number of days.
- * It was suggested that the singular of the word "Members" should be utilised in sub-clause 1.
- * The Technical Committee was requested to reconsider the issue of the list compiled for the previous general election in sub-clause 2, to make them more flexible for the period until the next election, while maintaining party democracy.

6.12 Clause 44 "Quorum" refers:

- * It was suggested that the quorum should be 50%. It was agreed to return to this issue at a later stage.

The meeting adjourned for tea at 16h20.

The meeting reconvened at 17h00.

6.13 Clause 48 "President of the Senate" refers:

- * The Technical Committee was requested to consider the need for a Permanent Deputy President of the Senate.

6.14 Clause 53 "Vacation of Seats by Senators" refers:

- * It was suggested that sub-clause 1 (a) should include reference to a members who cease to be eligible for the SPR Legislature.

6.15 Clause 54 "Sessions of the Senate" refers:

- * It was noted that the same applies as with the National Assembly clause 46.

6.16 Clause 58 "Ordinary Legislation" refers:

- * It was suggested that the Technical Committee reconsiders other mechanisms as to how disputes between the two houses could or should be resolved with a view to ensure that the effect of weakening the position of the Senate be eliminated.

6.17 Clause 60 "Bills concerning specified SPR matters" refers:

- * It was agreed that the word "both" be inserted after the words "approved by" in sub-clause 1.

6.18 Clause 66 "Constitutional Principles" refers:

- * It was suggested that the Technical Committee again considers the argument raised against sub-clause (3) at a previous meeting. A draft proposal will be submitted to the Technical Committee by the ANC in this regard.

6.19 Clause 68 "Adoption of a new constitutional text" refers:

- * It was suggested that the word "advice" in sub-clause (3) be replaced with "opinion".
- * It was suggested that in sub-clause (2) it should be clearly spelt out which text the CMB should approve.
- * It was agreed that further consultation amongst participants was necessary on sub-clause (9).

6.20 The Ciskei Government noted that notwithstanding its presence in this Negotiating Council or its participation in the debate, nothing should be construed as indicating that it agrees, supports or accepts the provisions of Chapter 5.

6.21 Clause 101 "SPR Legislatures" refers:

- * It was suggested that there should be a similar clause as in clause 38.
- * It was agreed that with regard to sub-clause (3) every delegation reconsiders the issue and makes submissions to the Technical Committee if it so wishes.

6.22 Clause 102 "Sessions of SPR Legislatures" refers:

- * With regard to sub-clause (3), participants were requested to make submissions to the Technical Committee on the word "Premier" if they so wish. If nothing worthwhile was received, the name "Premier" would stand.

6.23 Clause 112 "Duration of SPR Legislature" refers:

- * The issue of the parallel running of the lifespans of National Parliament and SPR Legislatures was raised.

6.24 Clause 113 "SPR Executives" refers:

- * The Technical Committee requested an opportunity to reconsider sub-clause (2). This was agreed to.
- * Various participants expressed concerns with regard to sub-clause (6). It was suggested that the sub-clause required closer examination by the Technical Committee, taking into account the views expressed in the meeting. The principle of uniformity was agreed to as a guideline for the Technical Committee.
- * With regard to sub-clause (7), the issue of the integrity of the SPR Legislatures was raised and the Technical Committee was requested to reconsider the formulation.

6.25 It was agreed at this point to adjourn the meeting and continue with the debate at the next meeting of the Negotiating Council on Wednesday 11 August 1993.

6.26 During the course of the day's debate it was noted that the following issues were still under consideration by the Planning Committee:

- * The Preamble of the Draft Constitution
- * Chapter 1 : The National Symbols
- * Chapter 1 : The Languages.

7. **General Issues**

Planning Committee minutes of the meeting of 19 to 21 July 1993 and of the meeting of 26 to 30 July 1993 were distributed to the Negotiating Council for noting.

8. **Closure**

The meeting was closed at 18h20.

These minutes were ratified at the meeting of the Negotiating Council of 16 August 1993 and the amended version signed by the Chairperson of the original meeting on 25/8/1993.....


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CHAIRPERSON

Addendum A

The following delegates and advisers were present at the meeting of the Negotiating Council on Tuesday 10 August 1993:

D de Villiers : Chairperson
 MJ Mahlangu : Assistant to the Chairperson

Organisation	Delegates	Advisers
ANC	C Ramaphosa B Kgosisile	M Manzini T Botha
AVU	M Mentz C Kruger	AJ Horn
Bophuthatswana	R Cronje R Mangope	SG Mothibe BE Keikelame
Cape Trad. Leaders	M Nonkonyana SN Sigcau	GD Gwadiso DM Jongilanga
Ciskei	M Webb	TM Bulube
DP	C Eglin M Finnemore	PG Soal KM Andrew
Dikwankwetla	SOM Moji K Ngwenya	JSS Phatang
IFP		
IYP	NJ Mahlangu NS Mtsweni	AP Laka Q Vilankulu
KP		
INM	SS Ripinga ND Mokoena	GG Zama MS Gininda
Kwazulu		
Labour Party	L Landers MYK Bassier	D Lockey
NIC/TIC	PJ Gordhan F Hajaj	B Pillay K Mayet
NP	D de Villiers	SJ Schoeman L Wessels
NPP	A Rajbansi S Naidoo	H Pithamban A Hurbans

Q.S. Trad. Leaders

RH Mopeli
M Moroke

MB Mota

PAC

P de Lille
B Desai

L Makhanda
E Sibeko

Solidarity

DS Rajah

N Singh

SACP

S Shilowa
L Jacobus

E Pahad

SA Government

RP Meyer
LR Brink

A Fourie
TJ Kruger

Transkei

Z Titus
N Jajula

TVL Trad. Leaders

LM Mokoena
FF Kekana

MA Netshimbupfe
NE Ngomane

UPF

MJ Mahlangu
A Chabalala

J Maake
RJ Dombo

Venda

SE Moeti
AK Masehela

GM Ligege
S Makhuvha

XPP

MH Matjokana
HM Manzini

GNK Hetisani

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

**PLANNING COMMITTEE RECOMMENDATION ACCEPTED BY THE
NEGOTIATING COUNCIL ON 10 AUGUST 1993**

The Planning Committee recommends that a Commission be appointed to make recommendations to the Negotiating Council on the national symbols for the Constitutions for the transitional period. It is proposed that -

1. the terms of reference for such a commission could be those contained in the attached draft resolution;
2. at least ten but not more than fifteen people be appointed on the commission;
3. participating parties be asked to lodge nominations for appointments on the commission to the Administration on or before Tuesday 17 August 1993;
4. and that the Planning Committee should make recommendations on the composition of the Commission to the Council on or before Thursday 19 August 1993.

**RESOLUTION ADOPTED BY THE NEGOTIATING COUNCIL
ON A COMMISSION ON NATIONAL SYMBOLS: 10 AUGUST 1993**

1. **Whereas** in the deliberations concerning a constitution for the transitional period, the question of national symbols will have to be addressed;
2. **And** whereas this is an extremely emotional issue that will have to be dealt with with the utmost sensitivity;
3. **But** whereas cultural, artistic and technical aspects are also to be taken into account;
4. **We**, the Negotiating Council, hereby appoint

as members of a Commission on National Symbols to make recommendations before the end of October 1993 to us, the Negotiating Council, or to any body that might at that time have replaced the Negotiating Council, on a national flag, a coat of arms, a seal and an anthem for the Constitution for the transitional period.

- 5 **The** Commission is requested to -
 - 5.1 invite proposals from all interested persons or parties and to allow at least one month for submissions to be made;
 - 5.2 take into account the diversity of the South African population but concentrate on the unifying function that national symbols must serve;
 - 5.3 and in its recommendations submit at least four alternative flags and coat of arms.

**RESOLUTION ON THE REPORT OF
THE COMMISSION ON THE DELIMITATION/DEMARICATION OF REGIONS
AND THE WAY FORWARD
ADOPTED BY THE NEGOTIATING COUNCIL ON 10 AUGUST 1993**

This Negotiating Council meeting on 9 August 1993 at the World Trade Centre in Kempton Park:

1. **Noting** the various discussions on the Report of the Commission on the Delimitation/Demarcation of SPR's;
2. **Confirms** that the Report of the Commission provided a useful starting point to the discussion on the delimitation/demarcation of SPR's.
3. **Takes note** of a number of areas of agreement and some areas of disagreement on the Report identified by the Negotiating Council.
4. **Emphasises** that the people and communities who would be directly affected by the boundaries of SPR's, should have a further opportunity to contribute to the process of regional delimitation/demarcation, particularly in respect of a more detailed consideration of the boundaries of SPR's, including those highly sensitive areas identified by the Negotiating Council.

Therefore resolves:

To convey its sincere gratitude to the Commission for its valiant effort to prosecute the extremely difficult and strenuous brief given to it by the Negotiating Council, notwithstanding the extreme limitations of time and opportunity to consult more broadly.

And further resolves that the process be taken further through the following steps:

1. That further submissions are invited from participants in the Negotiating Council and from people and organisations in the sensitive areas identified in the debate in the Negotiating Council.
2. That the Co-Chairpersons of the Commission will work out the modalities for carrying out the undermentioned tasks in consultation with the Planning Committee and invite members of the Commission and the Technical Support Team to assist them to:
 - 2.1 Receive oral evidence in respect of the sensitive areas;

- 2.2 Analyse these submissions;
 - 2.3 Prepare a Technical Report which indicates the application of the criteria and the reasons for and against the options in respect of the different recommended regions;
 - 2.4 Evaluate and report on the information available to it with a view to assisting the Negotiating Council to take a decision on boundaries to be incorporated into the Constitution for the transitional period.
3. That the Planning Committee recommends appropriate time frames for this process in consultation with the Commission.