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**CONSTITUTIONAL
ASSEMBLY**

**THEME COMMITTEE 1
CHARACTER OF
DEMOCRATIC STATE**

**11 SEPTEMBER 1995
ROOM M515
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EXTRA DOCUMENTATION

**Draft Constitutional Provisions
Block 8**

PROPOSED NEW TEXT FOR SECTIONS OF THE CONSTITUTION
WHICH DEAL WITH FOREIGN RELATIONS AND INTERNATIONAL LAW

1. It is proposed that the following definition be inserted in the definition section:

"International agreement' an agreement governed by international law and concluded in written form -

(i) *between one or more states; or*

(ii) *between one or more states and one or more international organisations,*

whether that agreement is embodied in a single instrument or in two or more related instruments and whatever its particular designation;"

2. The contents of the current section 35(1) should be retained in unamended form.
3. The contents of the current section 82(1)(f) should be retained in unamended form.
4. The following should be substituted for the present contents of section 82(1)(i):

"to sign international agreements and to approve resolutions of international organisations and to appoint persons, either generally or specifically, to exercise these functions on behalf of the Republic;"

5. The following paragraph should be inserted at the appropriate place in section 82(1)'s successor:

"to recognise foreign states and governments;"

6. Save that the reference to *"norms of international law"* should become *"norms of*

public international law" the provisions of section 116(2) should be retained in unamended form.

7. Section 227(2)(d)'s successor should be formulated as follows:

"The National Defence Force shall ...

- (d) *not breach any international agreement or rule of customary international law binding on the Republic relating to aggression;"*.

8. Section 227(2)(e)'s successor should be formulated as follows:

"The National Defence Force shall ...

- (e) *in armed conflict comply with obligations under international agreements and customary international law binding on the Republic;"*.

9. The following is to be substituted for the contents of the current section 231:

"(1) *All rights and obligations under international agreements which immediately before the commencement of this Constitution were vested in or binding on the Republic, shall be vested in or binding on the Republic under this Constitution.*

(2) *The President or a person authorized in terms of section 82(1)(i) or any other law may enter into an international agreement on behalf of the Republic that does not require ratification or accession under international law.*

(3) *An international agreement referred to in subsection (2) shall be tabled in the respective Houses of Parliament*

within two months of it having been entered into if Parliament is then in session, or if Parliament is not in session, within two months of the commencement of the next session of Parliament: Provided that an international agreement published in the Government Gazette in terms of an enabling statute other than this Constitution shall not be required to be so tabled unless the enabling statute provides otherwise.

- (4) *Parliament shall be the competent body to ratify or accede to any international agreement that requires ratification or accession under public international law for which purpose it shall express its approval for such international agreement by resolution in each House.*
- (5) *An international agreement entered into by the President or any other person pursuant to the provisions of subsection (2) shall become part of the law of the Republic when it is incorporated by Act of Parliament or by proclamation in the Government Gazette if an enabling statute so provides.*
- (6) *An international agreement approved by Parliament pursuant to the provisions of subsection (4) shall become part of the law of the Republic if Parliament so directs by way of resolution when it ratifies or accedes to the international agreement or if the international agreement is incorporated by Act of Parliament.*
- (7) *The procedures for entering into, tabling, ratifying, acceding to and incorporating international agreements referred to in subsections (2) to (6) shall apply to all international agreements signed on behalf of the Republic under the present Constitution or previous Constitutions.*
- (8) *A resolution of an international organisation approved by the President or a person authorized in terms of section 82(1)(i) shall become part of the law of the Republic when it is incorporated by Act of Parliament or by proclamation in the Government Gazette if an enabling statute so provides.*
- (9) *The rules of customary international law binding on the Republic, shall, unless inconsistent with this Constitution or an Act of Parliament, form part of the law of the Republic.*

- (10) *In interpreting any statute, or in considering any apparent inconsistency between customary international law and this Constitution or any law, a court of law shall presume that it was not the intention of the law maker to legislate in conflict with customary international law."*

NOTE: This draft was prepared with reference to a previous draft presented by Prof. John Dugard and in consultation with him, the Chief State Law Adviser (International Law) and other State Law Advisers (International Law) attached to the Department of Foreign Affairs as well as with reference to the submissions that have been made in writing to the Constitutional Assembly.

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