

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

MINUTES OF THE MEETING OF THE PLANNING COMMITTEE HELD AT 09H30 ON THURSDAY 19 AUGUST 1993 AT THE WORLD TRADE CENTRE

PRESENT : B Alexander
R Cronje
C Eglin
PJ Gordhan
C Kruger
RP Meyer
MC Ramaphosa
Z Titus (Chairperson by rotation)
M Webb

M Maharaj (Sub-Committee)
SS van der Merwe (Sub-Committee)

T Eloff (Administration)
G Hutchings (Minutes)

1. Moment of Prayer/Meditation

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

2. Welcome and Attendance

- 2.1 All members were welcomed.
- 2.2 Apologies were noted for non-attendance by FT Mdlalose, B Ngubane (sub-committee), SN Sigcau and J Slovo.
- 2.3 Apologies for late arrival were noted by R Meyer.

4. Ratification of Agenda

The agenda was ratified with no amendments.

5 Substantive Issues

5.1 Commission the Demarcation/Delimitation of Regions:

- 5.1.1 The Sub-Committee requested an opportunity to meet with F Smit and then report back to the Planning Committee. It was suggested that if F Smit was not available full-time the possibility of a co-ordinator should be considered.
- 5.1.2 It was noted that B Nomvete was abroad and was due to return on 5 September 1993.
- 5.1.3 It was suggested that at this stage the setting of time frames, although essential, could not be achieved.
- 5.1.4 It was agreed that the Technical Support Staff could commence work, under the supervision of the Sub-Committee, with the available material.
- 5.1.5 It was noted that with regard to Item 1 of the Resolution on the Way Forward, no inputs had been received except the issues raised in the meeting of the Negotiating Council when the Report of the Commission was debated.

5.2 Draft Resolution to the Negotiating Council submitted by the Labour Party:

- 5.2.1 Discussion proceeded around the proposed resolution and the envisaged role of the international community.
- 5.2.2 It was agreed that the Sub-Committee should give this issue due consideration and submit recommendations to the Planning Committee, taking into account the debate in the Planning Committee. The following issues should be addressed by the Sub-Committee in its deliberations:
 - * To demarcate and identify areas in respect of which a role has emerged for the international community from the debates in the Negotiating Council;
 - * To identify areas where members of the international community were already involved in South Africa, how long they have been in the country, on what basis they are represented, what they have actually been doing, etc. (eg. in The National Peace Secretariat;)
 - * To investigate the feasibility of putting the international

community on "terms";

- * The international community should be clearly identified in this regard.

5.2.3 Also raised was the question of the administration, the infrastructure, the offices and the composition of the various structures to be established.

5.2.4 The possibility of the establishment of an ad-hoc committee of the Planning Committee to deal with this issue, assisted by the Sub-Committee, was raised.

5.3 **Proposed circular to all Technical Committees:**

5.3.1 The Sub-Committee recommended that this circular should not be sent to the Technical Committees but referred to the Sub-Committee for its attention.

5.3.2 This recommendation was agreed to. It was, however, pointed out that there is a need to ensure that the Technical Committees bring to the attention of the Planning Committee any additional legislation which may have to be drafted in order to ensure that timeous attention is given to it. It was further noted that the Technical Committee on Constitutional Issues had already identified the need for additional legislation.

5.4 **Standing Committee of Parliament and draft legislation on the IEC, TEC, IMC and the IBA:**

The Sub-Committee stated that this issue was still under consideration.

5.5 **Commission on National Symbols:**

5.5.1 The Sub-Committee gave a reportback to the meeting on this issue.

5.5.2 It was agreed not to finalise the issue of the recommended composition of the Commission immediately, but that the Sub-Committee would submit recommendations to the Planning Committee on Monday 23 August 1993.

5.5.3 It should be stated in the Negotiating Council that the deadline for submissions with regard to nominations for the Commission had been extended until Monday 23 August 1993 at 12h00.

5.5.4 It was noted that copies of submissions already received should be forwarded to Planning Committee members for information.

5.6 **Fundamental Human Rights during the Transition:**

- 5.6.1 It was noted that the Eighth Report had been discussed on Thursday 12 August 1993.
- 5.6.2 It was noted that at this point there was no report from the Ad-Hoc Committee. The next report from the Ad-Hoc Committee would be submitted once the meeting with the experts on customary law had taken place and their inputs had been received by the Ad-Hoc Committee. It was agreed that the Sub-Committee should give the Ad-Hoc Committee a deadline for the completion of its work.
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- 5.6.5 It was resolved that the two drafts be referred to the Technical Committee on Constitutional Issues which should treat the said drafts as recommendations to it. The Technical Committee on Constitutional Issues would be responsible for the formulation of the final chapter for approval by the Negotiating Council.
- 5.6.4 Paragraph 4 (b) of the Seventh Report (see Addendum D, p15 of the agenda documentation) refers. After discussion it was agreed that since this issue is tied up with the implementation of the first constitution it can only be dealt with after the Negotiating Council had approved of the first Constitution.

5.7 **Repeal or Amendment of Discriminatory Legislation:**

- 5.7.1 A report was presented by the Sub-Committee (see Addendum A).
- 5.7.2 Discussion proceeded around the recommendations. After the discussion the following was noted:

* Item 4 (i) of the recommendations was agreed to. Once the

"code" had been drafted it would be submitted to the Negotiating Council for amendment and/or approval. The Sub-Committee and the Technical Committee were given the latitude to bring in any experts that they may need in this regard but to keep the Planning Committee informed. It was stated that this item refers essentially to two different codes.

- * Item 4 (ii) of the recommendations was agreed to.
- * It was agreed that Item 4 (iii) and 4 (iv) should be linked. It was suggested that an overall co-ordinator may be needed and furthermore, that there may be a need to get some lawyers involved on a full-time basis to attend to the issues. The Sub-Committee requested the opportunity to come back with recommendations on this issue to the Planning Committee. Depending on the proposals of the Sub-Committee, the future of the Technical Committee on the Repeal or Amendment of Discriminatory Legislation should be considered.
- * It was noted that only the procedure for identification was agreed upon, and not the implementation

5.8 Independent Electoral Commission:

- 5.8.1 It was noted that the Ad-Hoc Committee and the Technical Committee were still working on the issues referred to them.
- 5.8.2 It was noted that the Goldstone Commission Report on the curbing of violence and intimidation, before, during and after the forthcoming elections had been referred to the Technical Committee. The Administration was requested to make copies of the report available to Planning Committee members for information.
- 5.8.3 At a later stage of the meeting, the Sub-Committee gave a reportback to the Planning Committee on the current status of the meeting between the Ad-Hoc Committee and the Technical Committee. It was noted that the issues were still far from being resolved.
- 5.8.4 After discussion it was agreed to adjourn the meeting to allow consultation with principals on the issues. It was suggested that the meeting of the Negotiating Council should be postponed as there would be no report for it to debate.

5.9 Independent Media Commission and IBA:

- 5.9.1 It was noted that no political issues had been referred back to the Ad-Hoc Committee and a final report may be submitted by the Technical

Committee on Wednesday or Thursday of the week commencing 23 August 1993.

5.9.2 Discussion proceeded around a note from the Technical Committee to the Planning Committee (see Addendum B).

5.9.3 After discussion it was agreed that this issue could only be dealt with by the Negotiating Council and was closely connected to constitutional issues and the future of the TBVC States.

5.9.4 It was noted that there was no report available from the Ad-Hoc Committee.

5.10 Violence:

5.10.1 Discussion proceeded around the issues referred to the Planning Committee by the Negotiating Council (see Addendum E, p16 of the agenda documentation).

5.10.2 It was agreed that the recommendation with regard to the SABC should not be taken any further.

5.10.3 It was agreed that the Communications Committee be requested to submit recommendations to the Planning Committee about what public broadcasters could do with regard to creating awareness of the negotiating process. These recommendations could then be forwarded to the public broadcasters.

5.11 TEC and its Sub-Councils:

5.11.1 Discussion proceeded around clause 23 (2) of the Eighth Working Draft of the Technical Committee which was referred to the Planning Committee for its attention.

5.11.2 No agreement could be reached on what percentage should be put forward as a recommendation to the Negotiating Council. It was, therefore, agreed to defer discussion on this issue, that informal discussions should be held and to deal with this issue on Monday 23 August 1993.

5.11.3 It was noted that R Meyer would give a report back to the Planning Committee on this issue on Monday 23 August 1993.

5.11.4 It was noted that two additional items had been referred to the Planning Committee for its attention and would appear on the agenda on Monday 23 August 1993.

● 5.12 **Joint Peace Keeping Force:**

- 5.12.1 The importance of attending to the preparatory work relating to the establishment of the Joint Peace Keeping Force at the earliest possible opportunity was raised.
- 5.12.2 In this regard, it was recommended that a meeting of all the technical experts and other interested parties who would be participating in this force, should be held.
- 5.12.3 Certain reservations were noted in this regard and it was decided that the Sub-Committee considers the issue and submits a report to the Planning Committee. It was agreed that this issue appears on the agenda of the Planning Committee on Monday 23 August 1993.

5.13 **The Ad-Hoc Committee on the TBVC States:**

C Eglin, as convener of the Ad-Hoc Committee, gave a reportback. C Eglin also submitted a written report (see Addendum C). Due to the problems experienced by the Technical Committee and the Ad-Hoc Committee on the Independent Electoral Commission and the need for the Planning Committee to adjourn, no discussion proceeded on this issue.

The meeting adjourned at 12h00.

The meeting reconvened at 14h05.

5.14 **Independent Electoral Commission:**

- 5.14.1 A reportback was given on the current status of the meeting between the Ad-Hoc Committee and the Technical Committee on the Independent Electoral Commission.
- 5.14.2 It was noted that the two committees had requested the opportunity to draft the Bill over the weekend. The Bill would be ready by Monday 23 August 1993 for distribution and for discussion in the Negotiating Council on Tuesday 24 August 1993.
- 5.14.3 It was agreed at this point to convene the meeting of the Negotiating Council to report back on the status of the meeting between the Ad-Hoc Committee and the Technical Committee on the Independent Electoral Commission. It was agreed to recommend to the Negotiating Council that it should not

proceed with its agenda as the report to be discussed was not yet ready.

The meeting adjourned at 14h25. It was agreed that the Planning Committee should reconvene after the Negotiating Council meeting adjourned.

The meeting reconvened at 14h40.

5.15 Constitutional Issues:

- 5.15.1 Discussion on a number of specific proposals with regard to how the existing divergent views on the Constitution-Making Process could be addressed were put forward by members of the Planning Committee.
- 5.15.2 It was agreed that a mechanism needs to be found in order to address this. One suggested mechanism did emerge in the form of bilateral and/or multilateral meetings.
- 5.15.3 It was also noted that the Planning Committee may have to review the whole process in the light of the different approaches which have emerged with regard to the Constitution-Making Process
- 5.15.4 It was agreed to only convene the Planning Committee meeting of 23 August 1993 only at 10h30 to allow time for bilateral discussions beforehand.

16. Closure

The meeting adjourned at 15h40.

These minutes were ratified at the meeting of the Planning Committee of 6 September 1993 and the amended version signed by the Chairperson of this meeting on 28/9/..... 1993.


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CHAIRPERSON

**REPORT OF SUB-COMMITTEE TO THE PLANNING COMMITTEE ON:
THE "HIGHER CODE" PROPOSED BY THE TECHNICAL COMMITTEE
ON THE REPEAL OF DISCRIMINATORY LEGISLATION, ON THE
IMPLEMENTATION OF A BILL OF RIGHTS AT AN EARLIER DATE, ON
ENFORCEMENT MECHANISMS AND RELATED ISSUES**

1. The Negotiating Council referred a number of issues relating to the work of the Technical Committee on the Repeal of Discriminatory Legislation to the Planning Committee for recommendations - See the attached document.
2. The Planning Committee instructed the Sub-Committee too discuss these issues with the Technical Committees involved
3. The Sub-Committee had various discussions with Technical Committees and this culminated in a joint discussion with the full committees on:
 - the Repeal of Discriminatory Legislation,
 - FHR,
 - Constitutional Issues, and
 - the IEC.
4. Draft Minutes of the discussions are attached. The recommendations emanating from the meeting are as follows:
 - i. The Technical Committee on the Independent Election Commission will draft a "code" dealing with the freedom of the individual to participate in the elections (as opposed to a code for political parties). Towards this end they will receive an input from the Technical Committee on Fundamental Human Rights.
 - ii. The Technical Committee on the Independent Election Commission will continue its work on developing the adjudication functions of the Commission which will include examination of the need for a tribunal to adjudicate a code as proposed.
 - iii. Participating parties should be called upon to repeal legislation offending against free political participation.

**NOTE FROM THE MEDIA TECHNICAL COMMITTEE TO PLANNING
COMMITTEE**

We believe that in order for the IBA and IMC legislation to be effective, it is necessary for the Authority and the Commission respectively to have jurisdiction over all broadcasters who broadcast in South Africa, including the TBVC States.

We accordingly request the Planning Committee to approach the representatives of the TBVC States with a view to discussing proposals as to how this can best be achieved.

We wish to point out that this matter is extremely urgent, since both Bills need to be finalised by early next week.

iv. A recommendation that a commission or other body be charged with the identifying of legislation against free political participation on an ongoing basis, and that the identified legislation could therefore ^{= officer} ~~there~~ be repealed or amended by way of proclamation, was agreed upon but not supported by all members.

5. The Sub-Committee supports the recommendations. As far as recommendation (4) ^{iv} is concerned, the Independent Election Commission could very well be the body identifying offending legislation.

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REPORT BY THE AD-HOC COMMITTEE ON THE TBVC STATES
TO THE PLANNING COMMITTEE
18 AUGUST 1993

1. The Terms of Reference of the Ad-Hoc Committee, as formulated by the Negotiating Council, read as follows:-

"To discuss and make recommendations on the position of the TBVC States in relation to the drafting and adopting of the Constitution for the Transitional Period and in particular :

 - The timing when a decision on the issue of reincorporation is necessary; and
 - To identify the issues which must be addressed and to recommend a process and the mechanisms to follow in the event of reincorporation being agreed."

2. The Ad-Hoc Committee has been unable to bridge the differences which exist on the issue of the timing when a decision on the issue of reincorporation is necessary.
 - 2.1 One view, which includes that of Transkei and Venda, is that a commitment to incorporation should be made in time to enable the TBVC States to participate on the same basis as the rest of South Africa in the elections under the Transitional Constitution.
 - 2.2 The other view held by Bophuthatswana and Ciskei is that they will not be in a position to take a decision on the issue of incorporation until the details of the "final constitution" are known and have been evaluated.
 - 2.3 In the circumstances the Ad-Hoc Committee has decided to convey to the Planning Committee the differing views held, together with the requests to the Planning Committee from the organisations that hold the views.

3. The initial discussion took place on the basis of the following outline:
 - A. If you are already committed to become part of a single democratic South Africa:-
 - A.1 What steps should be taken in the constitution-making process to give effect to this commitment.
 - A.2 What steps should be taken in respect of interim measures e.g. T.E.C., I.E.C., I.M.C., I.B.A., etc in so far as their applicability in your territory is concerned.

B. If you are not yet committed to become part of a single democratic South Africa:-

B.1 What steps should be taken in the constitution-making process to put you in a position to be able to make a decision on such a commitment.

B.2 What subsequent processes will have to take place within your own territory in order to confirm this commitment.

B.3 What further steps should be taken in the constitution-making process to give effect to this commitment.

B.4 What steps should be taken in respect of interim measures e.g. T.E.C., I.E.C., I.M.C., I.B.A., etc in so far as their applicability in your territory is concerned.

4.1 The position of **Transkei and Venda** relevant to the above outline was as follows:

4.1.1 These States had a commitment to be incorporated in a single democratic South Africa.

4.1.2 Incorporation should take place when the Transitional Constitution comes into effect subsequent to the election held in terms of that Constitution.

4.1.3 These States wish to take part in the election to be held in terms of the Transitional Constitution on the same basis as the rest of South Africa and they are proposing that mechanisms to give effect to this should be put in place.

4.1.4 With this in mind all structures and laws relating to the election and to the "levelling of the playing fields" would apply in Transkei and Venda on the same basis as they apply to the rest of South Africa.

4.1.5 Once the Transitional Constitution has been promulgated, and prior to the election, work can be commenced on determining modalities, procedures and time-frames for the incorporation of Transkei and Venda into national and S.P.R. structures.

4.2 **Transkei and Venda** request the Planning Committee :

4.2.1 to take note of their commitment to incorporation into a single

democratic South Africa - this incorporation will take place when the Transitional Constitution comes into effect subsequent to an election held in terms of that Constitution;

4.2.2 to take steps to ensure that legislative and administrative measures are in place in time to deal with:

4.2.2.1 the participation by Transkei and Venda in the election;

4.2.2.2 the applicability of the TEC, IEC, IMB, IBA and other measures designed to "level the playing fields" to Transkei and Venda;

4.2.2.3 the incorporation of Transkei and Venda into South Africa and the consequential rationalisation of laws, regulations, administrative structures, etc.

5.1 The position of **Bophuthatswana and Ciskei** relevant to the above outline was as follows:

5.1.1 At this stage these States do not have a commitment to incorporation into a single democratic South Africa.

5.1.2 While the participation of these States in the negotiation process is an indication that they would be prepared to consider the issue of incorporation, they will not be able to take a decision on this matter until the final Constitution, and in particular the powers, functions, and boundaries of the S.P.R.'s, has been decided upon.

5.1.3 At that stage the attitude of the citizens of Bophuthatswana and Ciskei on the issue of incorporation would be tested byway of a referendum.

5.1.4 Bophuthatswana also favoured consideration of a form of "associated membership" for Bophuthatswana during the period of the Transitional Constitution.

5.2. At the Committee's second meeting **Mr Keikelame (Bophuthatswana)** submitted a memorandum containing the following specific proposals outlining certain constitution-making processes based on the concept of associated membership.

The memorandum proposes that:

(a) an agreement between the Republic of Bophuthatswana and the

Republic of South Africa should be reached to confirm a new relationship based on the principles of associated membership of a new South African federal state;

- (b) the Bophuthatswana Parliament should elect on a pro rata basis a number of representatives to the newly-formed South African Transitional Parliament/Constituent Assembly (Constitution-making Body) to take part in all activities of such bodies. If such bodies should consist of two chambers such representation should take place in both chambers on the same basis as the representation of other regions in these bodies;
- (c) the Bophuthatswana representatives so elected should take part in all normal debates and activities of the Transitional Parliament without a vote;
- (d) the Bophuthatswana representatives so elected should take part in all constitutional debates and activities of the Constituent Assembly (CMB) with a normal vote;
- (e) the provisions of any South African law passed by the Transitional Parliament shall apply to Bophuthatswana only after they have been voted upon by the Bophuthatswana Parliament and passed as a law of Bophuthatswana;
- (f) the agreements and treaties between Bophuthatswana and the Republic of South Africa remain intact until mutually decided otherwise;
- (g) all new treaties and undertakings of the Republic of South Africa should apply to Bophuthatswana only after being ratified by the Parliament of Bophuthatswana;
- (h) the agreements between the Republic of South Africa and associates and the Republic of Bophuthatswana should in broad outline be based on the relationships within federacies and associated statehoods. (See 3 and 4 for examples. The relationship between West-Berlin and West Germany is an additional example)

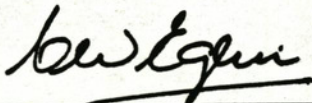
5.3 **Mr Webb (Ciskei)** expressed support for the concept of associated membership at least during the transitional period leading to the decision on the final constitution. He suggested that "observer status" would be an appropriate name for the nature of Ciskei's involvement in the transitional period.

5.4 Mr Keikelame and Mr Webb made it clear that in terms of the process they were proposing:

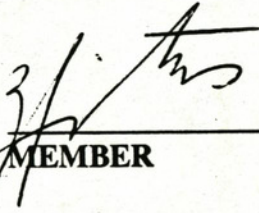
- 5.4.1 neither Bophuthatswana and Ciskei would take part in the election for a Parliament or S.P.R. legislatures in terms of the Transitional

Constitution,

- 5.4.2 that measures relating to such an election, i.e. T.E.C., I.E.C., I.M.C., and I.B.A. would not apply to or in these States,
- 5.4.3 Bophuthatswana and Ciskei would only be in a position to take a decision on reincorporation when the provisions of the final constitution were known,
- 5.4.4 In the meantime **Bophuthatswana and Ciskei** wish to remain involved in the constitution-making process on an associated member or observer status basis during the period of the transitional constitution.
- 5.5 **Bophuthatswana** has requested the Planning Committee to consider requesting the Technical Committee on Constitutional Issues to consider and report on the submission made by Bophuthatswana on the issue of "Associated Membership" as an answer to Bophuthatswana's relationship within a federal democratic South Africa.
- 5.6 **Ciskei** supported Bophuthatswana's request and further requested that the Planning Committee consider making provision for Ciskei to remain involved in the constitution-making process at national and SPR level during the transitional period on the basis of "observer" status.
6. The Ad-Hoc Committee trusts that its report will be helpful in facilitating the debate on the differing views that exist at present on the issue of the reincorporation of the TBVC States and in giving focus to the key political decisions that have to be taken before the electoral process can commence.
7. The Planning Committee is also asked to give further guidance on this matter and also to suggest how the matter can be further dealt with within the existing terms of reference bearing in mind the divergent views which have emerged. The crucial areas which require a political decision are:
- 7.1 the decision by some not to participate in the next elections;
- 7.2 uniform date for the abandonment of sovereignty.



CHAIRMAN



MEMBER

17 AUGUST 1993

THESE DRAFT MINUTES ARE CONFIDENTIAL AND RESTRICTED TO MEMBERS OF THE PLANNING COMMITTEE AND THE NEGOTIATING COUNCIL. THE MINUTES ARE STILL TO BE RATIFIED AT THE NEXT MEETING OF THE PLANNING COMMITTEE.

DRAFT MINUTES OF THE MEETING OF THE PLANNING COMMITTEE HELD AT 09H30 ON THURSDAY 19 AUGUST 1993 AT THE WORLD TRADE CENTRE

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PJ Gordhan
C Kruger
RP Meyer
MC Ramaphosa
Z Titus (Chairperson by rotation)
M Webb

M Maharaj (Sub-Committee)
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- 5.2.1 Discussion proceeded around the proposed resolution and the envisaged role of the international community.
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Committee and the Technical Committee were given the latitude to bring in any experts that they may need in this regard but to keep the Planning Committee informed. It was stated that this item refers essentially to two different codes.

- * Item 4 (ii) of the recommendations was agreed to.
- * It was agreed that Item 4 (iii) and 4 (iv) should be linked. It was suggested that an overall co-ordinator may be needed and furthermore, that there may be a need to get some lawyers involved on a full-time basis to attend to the issues. The Sub-Committee requested the opportunity to come back with recommendations on this issue to the Planning Committee. Depending on the proposals of the Sub-Committee, the future of the Technical Committee on the Repeal or Amendment of Discriminatory Legislation should be considered.
- * It was noted that only the procedure for identification was agreed upon, and not the implementation

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- 5.8.1 It was noted that the Ad-Hoc Committee and the Technical Committee were still working on the issues referred to them.
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- 5.8.4 After discussion it was agreed to adjourn the meeting to allow consultation with principals on the issues. It was suggested that the meeting of the Negotiating Council should be postponed as there would be no report for it to debate.

5.9 Independent Media Commission and IBA:

- 5.9.1 It was noted that no political issues had been referred back to the Ad Committee and a final report may be submitted by the Technical Committee on Wednesday or Thursday of the week commencing 23 August 1993.

5.9.2 Discussion proceeded around a note from the Technical Committee to the Planning Committee (see Addendum B).

5.9.3 After discussion it was agreed that this issue could only be dealt with by the Negotiating Council and was closely connected to constitutional issues and the future of the TBVC States.

5.9.4 It was noted that there was no report available from the Ad-Hoc Committee.

5.10 Violence:

5.10.1 Discussion proceeded around the issues referred to the Planning Committee by the Negotiating Council (see Addendum E, p16 of the agenda documentation).

5.10.2 It was agreed that the recommendation with regard to the SABC should not be taken any further.

5.10.3 It was agreed that the Communications Committee be requested to submit recommendations to the Planning Committee about what public broadcasters could do with regard to creating awareness of the negotiating process. These recommendations could then be forwarded to the public broadcasters.

5.11 TEC and its Sub-Councils:

5.11.1 Discussion proceeded around clause 23 (2) of the Eighth Working Draft of the Technical Committee which was referred to the Planning Committee for its attention.

5.11.2 No agreement could be reached on what percentage should be put forward as a recommendation to the Negotiating Council. It was, therefore, agreed to defer discussion on this issue, that informal discussions should be held and to deal with this issue on Monday 23 August 1993.

5.11.3 It was noted that R Meyer would give a report back to the Planning Committee on this issue on Monday 23 August 1993.

5.11.4 It was noted that two additional items had been referred to the Planning Committee for its attention and would appear on the agenda on Monday 23 August 1993.

5.12 Joint Peace Keeping Force:

5.12.1 The importance of attending to the preparatory work relating

to the establishment of the Joint Peace Keeping Force at the earliest possible opportunity was raised.

5.12.2 In this regard, it was recommended that a meeting of all the technical experts and other interested parties who would be participating in this force, should be held.

5.12.3 Certain reservations were noted in this regard and it was decided that the Sub-Committee considers the issue and submits a report to the Planning Committee. It was agreed that this issue appears on the agenda of the Planning Committee on Monday 23 August 1993.

5.13 The Ad-Hoc Committee on the TBVC States:

C Eglin, as convenor of the Ad-Hoc Committee, gave a reportback. Due to the problems experienced by the Technical Committee and the Ad-Hoc Committee on the Independent Electoral Commission and the need for the Planning Committee to adjourn, no discussion proceeded on this issue.

The meeting adjourned at 12h00.

The meeting reconvened at 14h05.

5.14 Independent Electoral Commission:

5.14.1 A reportback was given on the current status of the meeting between the Ad-Hoc Committee and the Technical Committee on the Independent Electoral Commission.

5.14.2 It was noted that the two committees had requested the opportunity to draft the Bill over the weekend. The Bill would be ready by Monday 23 August 1993 for distribution and for discussion in the Negotiating Council on Tuesday 24 August 1993.

5.14.3 It was agreed at this point to convene the meeting of the Negotiating Council to report back on the status of the meeting between the Ad-Hoc Committee and the Technical Committee on the Independent Electoral Commission. It was agreed to recommend to the Negotiating Council that it should not proceed with its agenda as the report to be discussed was not yet ready.

The meeting adjourned at 14h25. It was agreed that the Planning Committee should reconvene after the Negotiating Council meeting adjourned.

The meeting reconvened at 14h40.

5.15 Constitutional Issues:

- 5.15.1 Discussion and a number of specific proposals with regard to how the existing divergent views on the Constitution-Making Process could be addressed were put forward by members of the Planning Committee.
- 5.15.2 It was agreed that a mechanism needs to be found in order to address this. One suggested mechanism did emerge in the form of bilateral and/or multilateral meetings.
- 5.15.3 It was also noted that the Planning Committee may have to review the whole process in the light of the different approaches which have emerged with regard to the Constitution-Making Process
- 5.15.4 It was agreed to only convene the Planning Committee meeting of 23 August 1993 only at 10h30 to allow time for bilateral discussions beforehand.

16. Closure

The meeting adjourned at 15h40.

These minutes were ratified at the meeting of the Planning Committee of 1993 and the amended version signed by the Chairperson of this meeting on 1993.

.....
CHAIRPERSON

**REPORT OF SUB-COMMITTEE TO THE PLANNING COMMITTEE ON:
THE "HIGHER CODE" PROPOSED BY THE TECHNICAL COMMITTEE
ON THE REPEAL OF DISCRIMINATORY LEGISLATION, ON THE
IMPLEMENTATION OF A BILL OF RIGHTS AT AN EARLIER DATE, ON
ENFORCEMENT MECHANISMS AND RELATED ISSUES**

1. The Negotiating Council referred a number of issues relating to the work of the Technical Committee on the Repeal of Discriminatory Legislation to the Planning Committee for recommendations - See the attached document.
2. The Planning Committee instructed the Sub-Committee too discuss these issues with the Technical Committees involved
3. The Sub-Committee had various discussions with Technical Committees and this culminated in a joint discussion with the full committees on:
 - the Repeal of Discriminatory Legislation,
 - FHR,
 - Constitutional Issues, and
 - the IEC.
4. Draft Minutes of the discussions are attached. The recommendations emanating from the meeting are as follows:
 - i. The Technical Committee on the Independent Election Commission will draft a "code" dealing with the freedom of the individual to participate in the elections (as opposed to a code for political parties). Towards this end they will receive an input from the Technical Committee on Fundamental Human Rights.
 - ii. The Technical Committee on the Independent Election Commission will continue its work on developing the adjudication functions of the Commission which will include examination of the need for a tribunal to adjudicate a code as proposed.
 - iii. Participating parties should be called upon to repeal legislation offending against free political participation.

iv. A recommendation that a commission or other body be charged with the identifying of legislation against free political participation on an ongoing basis, and that the identified legislation could thereafter ^{=after} be repealed or amended by way of proclamation, was agreed upon but not supported by all members.

5. The Sub-Committee supports the recommendations. As far as recommendation (4) is concerned, the Independent Election Commission could very well be the body identifying offending legislation.

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● **NOTE FROM THE MEDIA TECHNICAL COMMITTEE TO PLANNING
COMMITTEE**

We believe that in order for the IBA and IMC legislation to be effective, it is necessary for the Authority and the Commission respectively to have jurisdiction over all broadcasters who broadcast in South Africa, including the TBVC States.

We accordingly request the Planning Committee to approach the representatives of the TBVC States with a view to discussing proposals as to how this can best be achieved.

We wish to point out that this matter is extremely urgent, since both Bills need to be finalised by early next week.

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● THESE DRAFT MINUTES ARE CONFIDENTIAL AND RESTRICTED TO MEMBERS OF THE PLANNING COMMITTEE AND THE NEGOTIATING COUNCIL. THE MINUTES ARE STILL TO BE RATIFIED AT THE NEXT MEETING OF THE PLANNING COMMITTEE.

DRAFT MINUTES OF THE MEETING OF THE PLANNING COMMITTEE HELD AT 09H30 ON THURSDAY 19 AUGUST 1993 AT THE WORLD TRADE CENTRE

PRESENT : B Alexander
R Cronje
C Eglin
PJ Gordhan
C Kruger
RP Meyer
MC Ramaphosa
Z Titus (Chairperson by rotation)
M Webb

M Maharaj (Sub-Committee)
SS van der Merwe (Sub-Committee)

T Eloff (Administration)
G Hutchings (Minutes)

1. Moment of Prayer/Meditation

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

2. Welcome and Attendance

2.1 All members were welcomed.

2.2 Apologies were noted for non-attendance by FT Mdlalose, B Ngubane (sub-committee), SN Sigcau and J Slovo.

2.3 Apologies for late arrival were noted by R Meyer.

4. Ratification of Agenda

The agenda was ratified with no amendments.

5 Substantive Issues

5.1 Commission the Demarcation/Delimitation of Regions:

- 5.1.1 The Sub-Committee requested an opportunity to meet with F Smit and then report back to the Planning Committee. It was suggested that if F Smit was not available full-time the possibility of a co-ordinator should be considered.
- 5.1.2 It was noted that B Nomvete was abroad and was due to return on 5 September 1993.
- 5.1.3 It was suggested that at this stage the setting of time frames, although essential, could not be achieved.
- 5.1.4 It was agreed that the Technical Support Staff could commence work, under the supervision of the Sub-Committee, with the available material.
- 5.1.5 It was noted that with regard to Item 1 of the Resolution on the Way Forward, no inputs had been received except the issues raised in the meeting of the Negotiating Council when the Report of the Commission was debated.

5.2 Draft Resolution to the Negotiating Council submitted by the Labour Party:

- 5.2.1 Discussion proceeded around the proposed resolution and the envisaged role of the international community.
- 5.2.2 It was agreed that the Sub-Committee should give this issue due consideration and submit recommendations to the Planning Committee, taking into account the debate in the Planning Committee. The following issues should be addressed by the Sub-Committee in its deliberations:
 - * To demarcate and identify where a role has emerged for the international community from the debates in the Negotiating Council;
 - * To identify where members of the international community were already involved in South Africa, how long they have been in the country, on what basis are they presented, what they have actually been doing, etc. (eg. in The National Peace Secretariat;)
 - * To investigate the feasibility of putting the international community on "terms";
 - * The international community should be clearly identified in this

regard.

5.2.3 Also raised was the question of the administration, the infrastructure, the offices and the composition of the various structures to be established.

5.2.4 The possibility of the establishment of an ad-hoc committee of the Planning Committee to deal with this issue, assisted by the Sub-Committee, was raised.

5.3 Proposed circular to all Technical Committees:

5.3.1 The Sub-Committee recommended that this circular should not be sent to the Technical Committees but referred to the Sub-Committee for its attention.

5.3.2 This recommendation was agreed to. It was, however, pointed out that there is a need to ensure that the Technical Committees bring to the attention of the Planning Committee any additional legislation which may have to be drafted in order to ensure that timeous attention is given to it. It was further noted that the Technical Committee on Constitutional Issues had already identified the need for additional legislation.

5.4 Standing Committee of Parliament and draft legislation on the IEC, TEC, IMC and the IBA:

The Sub-Committee stated that this issue was still under consideration.

5.5 Commission on National Symbols:

5.5.1 The Sub-Committee gave a reportback to the meeting on this issue.

5.5.2 It was agreed not to finalise the issue of the recommended composition of the Commission immediately, but that the Sub-Committee would submit recommendations to the Planning Committee on Monday 23 August 1993.

5.5.3 It should be stated in the Negotiating Council that the deadline for submissions with regard to nominations for the Commission had been extended until Monday 23 August 1993 at 12h00.

5.5.4 It was noted that copies of submissions already received should be forwarded to Planning Committee members for information.

5.6 Fundamental Human Rights during the Transition:

- 5.6.1 It was noted that the Eighth Report had been discussed on Thursday 12 August 1993.
- 5.6.2 It was noted that at this point there was no report from the Ad-Hoc Committee. The next report from the Ad-Hoc Committee would be submitted once the meeting with the experts on customary law had taken place and their inputs had been received by the Ad-Hoc Committee. It was agreed that the Sub-Committee should give the Ad-Hoc Committee a deadline for the completion of its work.
- 5.6.3 The Planning Committee was advised by the Sub-Committee that a letter to the experts on customary law was being drafted and would be submitted to the Traditional Leaders for their approval, to ensure that the letter adequately reflected their concerns, before it was sent out.
- 5.6.4 The Sub-Committee raised a further issue relating to the work of the Technical Committee. They advised that in accordance with the mandate given to the Technical Committee by the Negotiating Council, the said Technical Committee had produced two drafts relating to the chapter dealing with the Administration of Justice. It was noted that the chapter would form part of the Constitution for the transition period.
- 5.6.5 It was resolved that the two drafts be referred to the Technical Committee on Constitutional Issues which should treat the said drafts as recommendations to it. The Technical Committee on Constitutional Issues would be responsible for the formulation of the final chapter for approval by the Negotiating Council.
- 5.6.4 Paragraph 4 (b) of the Seventh Report (see Addendum D, p15 of the agenda documentation) refers. After discussion it was agreed that since this issue is tied up with the implementation of the first constitution it can only be dealt with after the Negotiating Council had approved of the first Constitution.

5.7 Repeal or Amendment of Discriminatory Legislation:

- 5.7.1 A report was presented by the Sub-Committee (see Addendum A).
- 5.7.2 Discussion proceeded around the recommendations. After the discussion the following was noted:
- * Item 4 (i) of the recommendations was agreed to. Once the "code" had been drafted it would be submitted to the Negotiating Council for amendment and/or approval. The Sub-

Committee and the Technical Committee were given the latitude to bring in any experts that they may need in this regard but to keep the Planning Committee informed. It was stated that this item refers essentially to two different codes.

- * Item 4 (ii) of the recommendations was agreed to.
- * It was agreed that Item 4 (iii) and 4 (iv) should be linked. It was suggested that an overall co-ordinator may be needed and furthermore, that there may be a need to get some lawyers involved on a full-time basis to attend to the issues. The Sub-Committee requested the opportunity to come back with recommendations on this issue to the Planning Committee. Depending on the proposals of the Sub-Committee, the future of the Technical Committee on the Repeal or Amendment of Discriminatory Legislation should be considered.
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