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CONSTITUTIONAL ASSEMBLY

MEMORANDUM

TO: Members of the Constitutional Committee Subcommittee
FROM: Executive Director
DATE: 28 March 1996
RE: Panel Memorandum on "Chapter 15: General Provisions."

We enclose for your consideration a proposed reformulation on international law for Chapter 15: General Provisions.

H EBRAHIM
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THE NEW CONSTITUTION

PANEL OF CONSTITUTIONAL EXPERTS

MEMORANDUM

TO: CHAIRPERSONS AND EXECUTIVE DIRECTOR OF THE CA

DATE: 27 MARCH 1996

RE: CHAPTER 15 : GENERAL PROVISIONS

Attached is a proposed reformulation of the provision on international law.

The new formulations are intended to make the distinction between international agreements which require Parliamentary approval and those which do not clearer.

Note: The drafting is tentative and, if the proposal is accepted, the TRT would have to consider the precise formulation.

CHAPTER 15

GENERAL PROVISIONS

International agreements

201. (1) An international agreement is not binding on the Republic unless it has been approved by resolution in both the National Assembly and (the second house).
- (2) An international agreement of a technical or administrative nature entered into by the national executive becomes binding on the Republic without approval by the National Assembly and (the second house). Such an international agreement must be tabled in the National Assembly and (the second house) within a reasonable time.
- (3) Any international agreement becomes law in the Republic when it is enacted into law by national legislation.¹
- (4) The Republic is bound by international agreements which were binding on the Republic before the commencement of this Constitution.

Customary international law

202. Customary international law forms part of the law of the Republic except when it is inconsistent with the Constitution or an Act of Parliament.

Application of international law

203. When interpreting any legislation, every court must prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative interpretation of the legislation that is inconsistent with international law.

¹ This terms covers both an Act of Parliament and subordinate legislation (e.g. proclamation in terms of an enabling statute).