

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

MINUTES OF THE MEETING OF THE NEGOTIATING COUNCIL HELD AT 10H00 ON THURSDAY 17 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

The participants were welcomed.

3. Ratification of the Agenda

3.1 The agenda was ratified with the following amendments:

- * The deletion of Item 5.3 from the agenda;
- * The addition of an Item 6.4 to read "Motion on Procedural Matters".

3.2 It was agreed that if a substantive issue was identified under the matters arising from the minutes, that no discussion take place on the issue but that it be put on the agenda of the Negotiating Council under substantives issues for a future meeting.

4. Minutes

4.1 The minutes of the meeting of 15 June 1993 were adopted with the following amendments:

4.1.1 The addition of an Item 4.2.5 to read "It was suggested that the Planning Committee should discuss the issue of sufficient consensus and report back to the Negotiating Council".

4.1.2 Item 5.2.12 to read "A request for an adjournment was refused by the meeting. At this point the following participants excused themselves

from the meeting to consult with their principals:

- * The AVU;
- * The Bophuthatswana Government;
- * The Ciskei Government;
- * The IFP;
- * The KP; and
- * The Kwazulu Government.

It was then agreed by sufficient consensus to proceed with the agenda."

4.1.3 The AVU, the Bophuthatswana Government, the Ciskei Government, the IFP, the KP and the Kwazulu Government noted that they cannot adopt the minutes beyond Item 5.2.12 as they were not present at the meeting at that stage.

4.2 Matters arising from the minutes of 15 June 1993:

4.2.1 Item 5.2.8 refers: It was agreed that the issue of sufficient consensus be dealt with as a matter of procedure under Item 6 of the agenda.

4.2.2 It was agreed that with regard to the Election Date only the resolution of 15 June 1993 (see Addendum D of the agenda documentation) would go forward to the meeting of the Negotiating Forum.

4.2.3 It was noted that the Bophuthatswana Government was not party to the decision on the Election Date.

4.2.4 It was noted that the Kwazulu Government was not party to the decision on the Election Date. The Kwazulu Government, furthermore, notified the meeting that they were not providing consensus and that the Kwazulu Government would object to any decisions taken with regard to any of the Constitutional Matters before the meeting. Furthermore, that in spite of anything that the Kwazulu Government may say or do in the debate, nothing will be construed as a waiver of this fundamental right.

4.2.5 The KP reserved their right to report back to the meeting as to the outcome of consultation with their principal with regard to the Election Date. This right was reserved even though the KP was not present when the Election Date was discussed.

4.2.6 It was noted that the Ciskei Government would make an input/amendment with regard to the Election Date to the meeting of the Negotiating Forum.

4.2.7 It was noted by the AVU that they would revisit the question of sufficient consensus under Item 6 of the agenda. The AVU further noted that when the election date was set, none of the conditions of the AVU for the setting of an Election Date had been addressed.

4.2.8 The KP noted that they cannot accept, abide or support the setting of the Election Date as fundamental issues such as the Form of State have not yet been addressed.

5. **Substantive Issues**

5.1 **SA Government/PAC Reportback:**

It was noted that this issue would be attended to after lunch. Notice was given that a resolution would be tabled.

Following the afternoon tea break, the current Chairperson of the Planning Committee tabled a draft declaration and a draft resolution with the meeting (see Addendum B). It was agreed that the declaration and the resolution be discussed at the meeting of the Negotiating Council on 18 June 1993.

5.2 **Constitutional Issues : Continuation of Discussion of the Technical Committee's Third Report:**

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

5.2.2 It was agreed that the Technical Committee present all their outstanding reports to the meeting, i.e. the First Supplementary Report, the Fourth Report and the Fifth Report. The presentation of all the outstanding reports would facilitate the discussion on the outstanding Constitutional Principles. It was noted that in the course of discussion and debate all the reports of the Technical Committee may be referred to.

5.2.3 The KP gave notice that the legal implications within the ambit of the Standing Rules with regard to guidelines and resolutions would be put on the agenda of the Council by the KP at a later stage.

5.2.4 At this stage it was agreed to adjourn for lunch. The Technical Committee was thanked for their presentation and the work so far completed.

The meeting adjourned for lunch at 13h00.

The meeting reconvened after lunch at 14h23.

- 5.2.5 A proposal as put forward by the SA Government and as amended by the meeting was agreed to (see Addendum C). It was noted that the report to be drafted by the Technical Committee would be available in the course of next week.
- 5.2.6 It was agreed to proceed to the discussion on the outstanding Constitutional Principles. This would empower the Technical Committee to prepare the above report with a clearer understanding of the views of participants.
- 5.2.7 It was agreed that no binding decisions would emerge from the debate/discussion on outstanding Constitutional Principles until the above referred to report was presented to the Negotiating Council.
- 5.2.8 The KP requested that the Technical Committee consider the submissions of the KP on this issue in their preparation of the report.
- 5.2.9 A reservation from the IFP regarding the application of the Constitutional Principles to any form of state was noted. Furthermore, the IPF reserved its right to return to discussion to the Reports of the Technical Committees when the Report on the various alternative models was presented to the Negotiating Council.

5.3 Discussion and Debate on Constitutional Principles dealing with the Allocation of Powers to Different Levels of Government:

5.3.1 General Issues:

- 5.3.1.1 It was agreed that the heading of the relevant section in the Third Report of the Technical Committee should read "Constitutional Principles dealing with the allocation of powers to different levels of government".
- 5.3.1.2 The KP noted that they are against a single unitary state for the whole of South Africa, as a confederation would be better suited for South Africa's particular situation. This applied to the whole of paragraph three of the Third Report of the Technical Committee on Constitutional Issues.

5.3.2 Government shall be structured at national, SPR and local levels:

The above principle was put to the meeting. No discussion followed and no suggested amendments were noted.

5.3.3 At each level of government there shall be democratic representation:

The above principle was put to the meeting. No discussion followed and no suggested amendments were noted.

5.3.4 Each level of government shall have appropriate and adequate legislative and executive powers and functions that will enable each level to function effectively:

5.3.4.1 The above principle was put to the meeting. Discussion and debate followed.

5.3.4.2 The following suggested amendment was noted:

- * The addition of the words "and fiscal" between the words "executive" and "powers"; in line with this amendment it was suggested that Item 3.6 of the Third Report be deleted.

5.3.4.3 Clarity on the role of Traditional Leaders was requested by the Cape Traditional Leaders.

5.3.5 The powers and functions of each level of government shall be defined in the constitution. Amendments to the constitution which alter the powers, boundaries, functions or institutions of regions shall in addition to any other procedures specified in the constitution for constitutional amendments also require the approval of a specified majority of the legislatures of the SPR's and if the amendment concerns specific SPR's only, the approval of the legislatures of such SPR's will also be needed:

5.3.5.1 The above principle was put to the meeting. Discussion and debate followed.

5.3.5.2 The following suggested amendments were noted:

- * "(i) The powers and functions of central and regional government shall be defined in the constitution. Amendments (unchanged) be needed.

(ii) A framework for local government pertaining to powers, duties and functions and to the structure, shall be set out in the constitution. The comprehensive powers, duties and functions and other features shall be set out in parliamentary statutes and/or SPR legislation.";

* After the words "a specified majority of the legislatures of the SPR" insert "or alternatively of a specified majority of a chamber of parliament composed of regional representatives";

* It was noted that a proposed amendment suggested by the ANC would be given to the Technical Committee.

5.3.6 The powers and functions of each level of government may include exclusive and concurrent powers, as well as the power to perform functions for other levels of government on an agency or delegation basis:

5.3.6.1 The above principle was put to the meeting. Discussion and debate followed.

5.3.6.2 The following suggested amendment was noted:

* The word "may" be replaced by "shall".

5.3.7 Each level of government shall have fiscal powers which will be defined in the constitution:

5.3.7.1 The above principle was put to the meeting. Discussion and debate followed.

5.3.7.2 The following suggested amendment was noted:

* That Item 3.6 should not move to 3.3 as was earlier suggested. If item 3.6 remains and in line with the suggested amendment to Item 3.4, the words "each level" should possibly be replaced by "central and SPR level".

5.3.8 A Financial and Fiscal Commission, including representatives of each of the SPR's shall be constituted to advise the national

government on the distribution of financial and fiscal resources:

5.3.8.1 The above principle was put to the meeting. Discussion and debate followed.

5.3.8.2 Suggested amendments noted were:

- * That the words "advise the national government on" be replaced by "determine";
- * That this principle and the following principle be replaced with "In addition to income derived from taxes imposed themselves, each level of government shall have a constitutional right to a share of nationally collected income, such share will be determined on an equitable basis after taking into account:
 - The national interest;
 - The respective administrative responsibilities;
 - Disparities between the SPR's;
 - The population and development needs; and
 - Other legitimate needs of each of the SPR's."

5.3.9 Fiscal and financial allocations by the national government to SPR governments shall be made on an equitable basis after taking into account the national interest, disparities within SPR's the advice of the Financial and Fiscal Commission, the population and developmental needs, administrative responsibilities and other legitimate interests of each of the SPR's:

5.3.9.1 The above principle was put to the meeting. Discussion and debate followed.

5.3.9.2 The following suggested amendments were noted:

- * That the clause should read "Fiscal and financial allocations to the national government to SPR governments shall be made on an equitable basis after taking into account their respective administrative responsibilities, the national interest, disparities within SPR's, the population and developmental needs and other legitimate interest of each of the SPR's;

* That this principle and the above principle be replaced with "In addition to income derived from taxes imposed themselves, each level of government shall have a constitutional right to a share of nationally collected income, such share will be determined on an equitable basis after taking into account:

- The national interest;
- The respective administrative responsibilities;
- Disparities between the SPR's;
- The population and development needs; and
- Other legitimate needs of each of the SPR's."

The meeting adjourned for tea at 16h15.

The meeting reconvened at 17h00.

5.3.10 **The level at which there is most control over the quality and delivery of services, should be the level responsible for the execution of the programme or the delivery of the services:**

5.3.10.1 The above principle was put to the meeting. Discussion and debate followed.

5.3.10.2 The following suggested amendment was noted:

* After the word "responsible" insert "and accountable".

5.3.11 **The national government shall not exercise its powers (exclusive or concurrent) so as to encroach upon the territorial, functional or institutional integrity of the SPR's:**

5.3.11.1 The above principle was put to the meeting. Discussion and debate followed.

5.3.11.2 The following suggested amendment was noted:

* That the word "territorial" be replaced by "geographical".

5.3.12 **In the event of a dispute concerning the legislative powers allocated by the constitution concurrently to the national and SPR governments, precedence shall be given to the legislative powers of the national government:**

5.3.12.1 The above principle was put to the meeting. Discussion and debate followed.

5.3.12.2 The following suggested amendment was noted:

* That the words "of the national government" be deleted and replaced with "of the forum where it can be most effectively applied to the advantage of the people."

5.3.13 **Where it is necessary for the maintenance of national standards, the maintenance of economic unity, the maintenance of national security or the prevention of action taken by one SPR which is prejudicial to the interests of another SPR or the country as whole, the constitution shall empower the national government to intervene through legislation or such other steps as may be defined in the constitution:**

5.3.13.1 The above principle was put to the meeting. Discussion and debate followed.

5.3.13.2 No suggested amendments were noted.

5.3.14 **The essential principles of the constitution, including the fundamental rights contained therein shall apply to all organs of the state at all levels of government:**

The above principle was put to the meeting. Discussion and debate followed in which it was noted that the clause was acceptable as is.

5.3.15 **Where there is necessity for South Africa to speak with one voice, or to act as a single entity - in particular in relation to other states - powers should be allocated to the national government:**

5.3.15.1 The above principle was put to the meeting. Discussion and debate followed.

5.3.15.2 No suggested amendments were noted.

5.3.15.3 It was noted that this clause does not pre-empt or foreclose on the Form of State.

5.3.15.4 The AVU reserved their position on this clause.

5.3.16 **Where uniformity across the nation is regarded as important with regard to a particular function, then power over that function should be allocated predominantly, if not wholly, to the national government:**

The above principle was put to the meeting. Discussion and debate followed in which it was noted that the clause was acceptable as is.

5.3.17 **Where minimum standards across the nation are regarded as important for the delivery of public services, the power to set such standards should be allocated to the national government:**

The above principle was put to the meeting. Discussion and debate followed in which it was noted that the clause was acceptable as is.

5.3.18 **The power to promote inter-SPR commerce and protect one common market in respect of the mobility of goods, services, capital and labour, should be allocated to the national government:**

5.3.18.1 The above principle was put to the meeting. Discussion and debate followed.

5.3.18.2 It was noted that the Technical Committee should address the question of national economic policy in the hands of national government.

5.3.19 **SPR governments shall have such powers, either exclusively or concurrently with the national government, as may be necessary, inter alia, for the purpose of regional planning and development and the delivery of services and aspects of health, welfare and education within their boundaries:**

The above principle was put to the meeting. Discussion and debate followed in which it was noted that the clause was acceptable as is.

5.3.20 **Concurrent Powers : Where mutual co-operation is essential or desirable or where it is important to guarantee equality**

of opportunity or access to a government service, the powers should be allocated concurrently to the national government and the SPR governments:

The above principle was put to the meeting. Discussion and debate followed in which it was noted that the clause was acceptable as is.

5.3.21 **Residual Powers : Powers which are not specifically allocated in the constitution to the national government or to an SPR government, shall vest in the national government, alternatively in the SPR governments:**

5.3.21.1 The above principle was put to the meeting. Discussion and debate followed.

5.3.21.2 Suggested amendments noted were:

- * That the clause should read "Should there be powers which are not specifically allocated in the constitution to the national government or to an SPR government, the Constitutional Court shall decide whether such powers shall vest in the national government or in the SPR governments or in the national government and the SPR governments concurrently."

- * That this clause should be revisited and the Technical Committee pay more attention to residual powers.

5.3.22 **Asymmetry:**

A discussion and debate on asymmetry followed. It was noted that asymmetry is a question that should be given greater attention by the Technical Committee.

5.3.23 **Matters requiring the consideration of the Negotiating Council:**

Discussion and debate followed but no decisions were taken.

5.3.24 **General:**

- 5.3.24.1 It was noted that Item 2.9 of the General Constitutional Principles dealing with Self-Determination would be dealt with at the next meeting of the Negotiating Council on 18 June 1993.
- 5.3.24.2 The IFP reserved its position on all of the above clauses and gave notice that it would produce a written document that would deal with concerns.
- 5.3.24.3 The Technical Committee was requested to take note of all the views expressed.

6. **Agenda for the meeting of the Negotiating Council on 18 June 1993**

- 6.1 It was agreed that the Planning Committee be mandated to prepare the agenda for the meeting of the Negotiating Council, taking into account the views and concerns expressed in this meeting of the Negotiating Council.
- 6.3 It was agreed that the meeting of the Negotiating Council of 18 June 1993 commence at 09h30.

7. **Closure**

- 7.1 The Chairperson was thanked for the way the proceedings were handled.
- 7.2 The meeting was closed at 18h25.

These minutes were ratified at the meeting of the Negotiating Council of 22 June 1993 and the amended version signed by the Chairperson of the original meeting on 24/6/93.....


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CHAIRPERSON

Addendum A

The following delegates and advisers were present at the meeting of the Negotiating Council on Thursday 17 June 1993:

FT Mdlalose	:	Chairperson
R Cronje	:	Assistant to the Chairperson
C Eglin	:	Assistant to the Chairperson

Organisation	Delegates	Advisers
ANC	C Ramaphosa B Kgosisile	MV Moosa N Zuma
AVU	CD de Jager J Gouws	JJC Botha MJ Mentz
Bophuthatswana	R Cronje R Mangope	SG Mothibe BE Keikelame
Cape Trad. Leaders	M Nonkonyana SN Sigcau	DM Jongilanga GD Gwadiso
Ciskei	M Webb VT Gqiba	TM Bulube
DP	C Eglin M Finnemore	K Andrew P Soal
Dikwankwetla	TJ Mohapi K Ngwenya	SOM Moji JSS Phatang
IFP	VJ Matthews FX Gasa	WS Felgate
IYP	NJ Mahlangu N Mtsweni	AP Laka
KP	T Langley A Budd	CP Mulder F le Roux
INM	SS Ripinga K Mahlaba	MS Gininda PMH Maduna
Kwazulu	BS Ngubane H Ngubane	SH Gumede
Labour Party	L Landers C August	E Samuels D Lockey
NIC/TIC	PJ Gordhan F Hajhij	B Pillay K Mayet

NP	DJ de Villiers TJ King	SJ Schoeman L Wessels
NPP	A Rajbansi A Rambarran	A Hurbans
OFS Trad. Leaders	AM Molefe RH Mopeli	MB Mota
PAC	P de Lille	E Sibeko M Molete
Solidarity	JN Reddy	AS Razak
SACP	J Slovo L Jacobus	E Pahad S Shilowa
SA Government	RP Meyer D Govender	T Delpert SS van der Merwe
Transkei	Z Titus N Jajula	LL Mtshizana
TVL Trad. Leaders	MA Netshimbupfe FF Kekana	LM Mokoena NE Ngomane
UPF	MJ Mahlangu A Chabalala	RJ Dombo J Maake
Venda	SE Moeti TJ Tshivhase	GM Ligege S Makhuvha
XPP	EE Ngobeni	MH Matjokana

T Eloff	:	Administration
G Hutchings	:	Minutes
K Morgan	:	Administration
P Lelaka	:	Administration
M Radebe	:	Administration
S Briggs	:	Administration

**DRAFT FURTHER RESOLUTION TO THAT ON
CESSATION/SUSPENSION OF HOSTILITIES PUT TO THE
NEGOTIATING COUNCIL ON 18 JUNE 1993**

This Negotiating Council meeting at the World Trade Centre on Thursday 17 June 1993:

Noting:

1. The Resolution passed after the special Negotiating Council meeting of 27 May 1993;
2. The Joint Statement by the South African Government and the Pan Africanist Congress of Azania dated 28 May 1993;
3. The Declaration on Cessation/Suspension of Hostilities, Armed Struggle and Violence tabled at the meeting of the Negotiating Council on 18 June 1993;
4. Noting that provision is made for dealing with armed formations in both the Reports of the Technical Committees on Violence and the TEC and its Sub-Councils;

Therefore Resolves That:

1. Matters which remain unresolved in relation to paragraph 1 and 2 above should be attended to immediately.

**DECLARATION ON CESSATION/SUSPENSION OF HOSTILITIES.
ARMED STRUGGLE AND VIOLENCE**

Put to the Negotiating Council on Thursday 17 June 1993

1. Recognising:

That our country and people urgently require stability and peace in order to progress to a democratic and harmonious future;

2. Mindful:

- * That we are all products of a conflict ridden society and emerging from a long period of tension and hostilities;
- * That political violence still persists in the resolution of political differences;

3. Believing:

- * That participants in the Negotiating Process have a responsibility to inculcate a new spirit of tolerance;
- * That political rivalry and competition does not require the use of violence;
- * That it is necessary for all participants to categorically eschew violence in all forms;
- * There is a need for cessation/suspension of hostilities/armed struggle/violence for peaceful negotiations to move forward;

4. Aware:

That an invaluable opportunity now exists to decide on our future through a process of peaceful negotiations;

5. Now Therefore Declare:

That as from this 18th day of June 1993 we, the parties subscribing to this declaration, commit/recommit ourselves to cease/suspend any form of hostilities/armed struggle/violence in pursuance of political objectives and in the resolution of political differences.

**RESOLUTION ADOPTED BY THE NEGOTIATING COUNCIL MEETING OF
17 JUNE 1993**

1. That discussions in the Negotiating Council continue on Constitutional Principles and other reports of the Technical Committee that are before the Negotiating Council.

2. Request the Technical Committee on Constitutional Issues to, in view of submissions received, consider and report on:
 - 2.1 Alternative ways of drafting and adopting a new constitution, including the bottom-up and top-down approaches, and

 - 2.2 Alternative views regarding the need for SPR constitutions and different options for such constitutions.

3. That the Explanatory Memorandum accepted by all participants on 30 April 1993 in the Multi-Party Process relating to proposals arising from the Multi-Party Forum resolution on the Negotiation Process is re-affirmed and the Negotiating Council specifically reiterates its acceptance of paragraph 6 of the Explanatory Memorandum:
 - "6. It is expressly understood by all participants that each of the above proposals and the documentation emanating from such technical committees shall be discussed in the Negotiating Council with the view to arriving at an agreement on these matters. Furthermore that as when agreement is reached on each of these matters the Council shall expressly determine when and how the specific agreement shall be implemented. This provision is made so as to ensure participants have a clear understanding of the package of agreements which would constitute the key elements of the transition process. "**