



MANCOM\GENERAL\DECINTNT.MG (2)

**DATE:** 12 February 1992

**FAX TO:** C Eglin  
F Mdlalose  
J Slovo  
G Viljoen  
J Zuma

**FROM:** Theuns Eloff

**RE:** **First meeting of the Subcommittee to investigate proposed amendments to the Declaration of Intent**

The first meeting of the Subcommittee will take place at the World Trade Centre on Monday 17 February at 15h00.

A copy of the Terms of Reference of the Subcommittee is attached for your attention.

CONVENTION FOR A DEMOCRATIC SOUTH AFRICA

PO Box 307, Isando, 1600, South Africa.  
Telephone (011) 397-1198/99. Fax (011) 397-2211



**TO: ALL MEMBERS OF THE MC SUBCOMMITTEE ON THE  
DECLARATION OF INTENT**

**CW Eglin  
FT Mdlalose  
J Slovo  
G van N Viljoen  
J Zuma  
R Cronje**

**FROM: CODESA ADMINISTRATION**

**DATE: 18 FEBRUARY 1992**

Please find attached draft minutes of the Sub-committee meeting of 17 February 1992.

THESE ARE DRAFT MINUTES. THEY ARE CONFIDENTIAL AND RESTRICTED TO THE MEMBERS OF THE DMC AND THIS SUB-COMMITTEE. THEY ARE SUBJECT TO RATIFICATION BY THE SUB-COMMITTEE AT ITS NEXT MEETING.

**MINUTES OF THE SUB-COMMITTEE ON THE DECLARATION OF INTENT AND PROPOSED AMENDMENTS HELD ON MONDAY 17 FEBRUARY 1992 AT 15H00 AT THE WTC**

PRESENT: CW Eglin (DP, Convener)  
FT Mdlalose (IFP, assisted by A Macaulay)  
J Slovo (SACP)  
GvN Viljoen (SA Govt.)  
J Zuma (ANC)

T Eloff (minutes)

Mr R Cronje (Bophuthatswana Govt.) was not present.

1. **Terms of Reference**

The Terms of Reference of the Sub-committee was noted (addendum A).

2. **Discussion of the IFP's proposed amendments** (addendum B)

The proposed amendments by the IFP were discussed. To facilitate this, a document by Mr Eglin was tabled (addendum C).

2.1 **First and second proposed amendments**

It was agreed to propose to the Management Committee that:

The Management Committee, and then CODESA II, issue a formal statement, which will become an annexure to the Declaration of Intent, making it clear that, irrespective of their individual views, the seventeen organisations/parties/administrations who signed the Declaration of Intent declare that:

- \* the Declaration is neutral on the issue of a unitary versus a federal state; and
- \* nothing in the Declaration is construed as preventing any signatory from advocating a unitary, federal or other democratic form of state, or the separation of powers between the central government and the regions, during the proceedings of CODESA or any of its Committees or Working Groups.

2.2 **Third proposed amendment**

2.2.1 It was agreed to propose to the Management Committee to create a third category of signatories, with wording as follows:

"We, the representative of the IFP/ Bophuthatswana Government, further solemnly declare to be bound by agreements we reach together with other participants in CODESA in accordance with the standing rules and hereby

commit ourselves to the implementation thereof within our capacity, powers and authority".

- 2.2.2 It was agreed that this formulation should be circulated to all sub-committee members as soon as possible, for their comments at the next meeting of the sub-committee.

3. **Next meeting**

It was agreed that the next meeting of the sub-committee will take place on Monday 24 February 1992 at 08H30.

The meeting adjourned.



MANCOM\GENERAL\DECINT.MG (2)

Addendum *A*

**RESOLUTION BY THE CODESA MANAGEMENT COMMITTEE REGARDING THE  
SUBCOMMITTEE APPOINTED TO EXAMINE PROPOSED AMENDMENTS TO THE  
DECLARATION OF INTENT**

At the meeting of the CODESA Management Committee on Monday 10 February 1992, it was resolved:

That a subcommittee be appointed to examine the amendments of the Inkatha Freedom Party to the Declaration of Intent with a view to making recommendations to the Management Committee concerning interpretations of the Declaration of Intent which would, if necessary, provide a greater degree of neutrality of wording and assurance that the wording of the Declaration of Intent is not prescriptive, and thereby create confidence and trust by all parties in the CODESA process.

CONVENTION FOR A DEMOCRATIC SOUTH AFRICA

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# INKATHA

Inkatha Freedom Party

I Qembu leNkatha yeNkuiuleko

PRIVATE BAG 9  
DUNDEE 6118  
TEL: 01011/24819  
FAX: 01109  
TELEX: 431104

## DECLARATION OF INTENT

### AMENDMENTS PROPOSED BY INKATHA FREEDOM PARTY

(1) Paragraph 1:

That the words "an undivided South Africa with one nation" be omitted and substituted by the following:

"A new South African nation."

REASON FOR AMENDMENT: WE OF THE IFP ARE MOVING THIS AMENDMENT BECAUSE IT MIGHT GIVE THE FALSE IMPRESSION THAT WE ARE NECESSARILY COMMITTED TO A UNITARY STATE AND WILL DENY US THE OPPORTUNITY TO ADVANCE THE ADVANTAGES OF FEDERALISM. NEVERTHELESS THE SUBSTITUTED WORDING WOULD EMPHASISE THE DESIRE TO CREATE A NEW SOUTH AFRICAN NATION.

(2) Paragraph 5:

Sub paragraph a: That the words "in which sovereign authority is exercised over the whole of its territory" be omitted.

REASON FOR AMENDMENT: WE MOVE FOR THE ELIMINATION OF THE WORDS CONCERNED FOR THE SAME REASONS REFERRED TO IN (1) ABOVE.

Sub paragraph d:

(i) That the word "horizontal" be inserted before the word "separation".

(ii) That the words "and a vertical separation of powers between the central government and the regions and" be inserted after the word "judiciary".

REASON FOR THE AMENDMENT: THE INTENTION OF THIS AMENDMENT IS AGAIN TO MAKE ROOM NOT ONLY FOR SEPARATION OF POWERS BETWEEN THE LEGISLATURE, EXECUTIVE AND JUDICIARY BUT FOR DEVOLUTION OF POWER FROM THE CENTRAL GOVERNMENT TO THE REGIONS.

(3) Under the heading "We agree" to delete the paragraph numbered 2 and to substitute the following:

"That CODESA and all of the parties, signatories hereto, will make every effort to facilitate the process leading to a democratic constitution to be submitted to a referendum of all the people of South Africa."

REASON FOR THE AMENDMENT: THE IFP MOVES FOR THIS AMENDMENT BECAUSE WE CANNOT PERMIT THE RECOMMENDATIONS HERE TO BE RECOGNISED AS HAVING THE EFFECT OF FORMAL BINDING LEGISLATION. RESULTING FROM THIS CHANGE, THE DETERMINATIONS MADE HERE MUST BE SUBJECT TO REFERENDA BEFORE THEY ARE LEGALLY EFFECTIVE.

(4) That the final paragraph of the declaration be omitted.

REASON FOR THE AMENDMENT: THE IFP MOVES FOR THIS DELETION BECAUSE THE WORDS MIGHT BE INTERPRETED AS CONFERRING PARLIAMENTARY POWER TO THE RESULTS OF THE NEGOTIATIONS REACHED AT THIS CONFERENCE.

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## NOTES BY C W EGLIN - 17 FEBRUARY 1992

The amendments proposed by the IFP fall into three distinct parts :

Part 1

The amendments proposed to paragraph 1 and to sub-paragraph (a) of paragraph 5 are, according to the IFP, because the Declaration of Intent as it currently stands

"might give the false impression that we are committed to a unitary state and will deny us the opportunity to advance the advantages of federalism"

It was the intention both of the Drafting Task Group (Task Group 2) and of the Steering Committee and the participants who endorsed the declaration that the Declaration of Intent should be neutral on the issue of a unitary as opposed to a federal constitution.

The amendments proposed by the IFP, therefore, do not raise a matter of principle, but of wording.

If deemed necessary the issue raised by the IFP amendment could be dealt with by altering the wording of the Declaration of Intent.

Part 2

The amendments proposed to sub-paragraph 5 according to the IFP is

"to make room only for separation of powers between the legislation, executive and judiciary (which is contained in the Declaration of Intent) but for devolution of power from the central government to the regions"

This amendment clearly moves the Declaration away from neutrality to a commitment to some form of federal state.

As a consequence the amendment would destroy the consensus on which the Declaration was based and could only be adopted if a new consensus was found in support of federalism.

Those who favour a unitary state did not press for this concept to be included in the Declaration. I urge those who favour federalism not to press for this concept to be included the Declaration.

The issue of a Unitary versus a Federal State may be resolved during the negotiations of Codesa but there is not sufficient consensus for one or other of these concepts to be included in the initial Declaration.

Part 3

The amendments proposed by the IFP to paragraph 2 of the Agreement and to delete the final paragraph and the proposal negate the essence of the agreement arrived at by the signatories of the Declaration.

The first amendment would delete the agreement :

"that Codesa will establish a mechanism whose task it will be, in co-operation with administrations and the South African Government, to draft the texts of all legislation required to give effect to the agreements reached in Codesa."



The second amendment would delete the further agreement that :

"We, the representative of political parties, political organisations and administrations, further solemnly commit ourselves to be bound by the agreements of Codesa and in good faith to take all such steps as are within our power and authority to realise their implementation."

In the place of these two agreements the IFP proposes :

"That Codesa and all of the parties, signatories hereto, will make every effort to facilitate the process leading to a democratic constitution to be submitted to a referendum of all the people of South Africa."

It is scarcely conceivable that the organisations that negotiated and agreed and signed the Declaration would renounce their commitment they gave to one another at the signing of the Declaration.

A far reaching decision of this nature could only be taken by a fully representative Management Committee and by Codesa 2.



**TO : ALL MEMBERS OF THE SUB-COMMITTEE INVESTIGATING  
THE DECLARATION OF INTENT**

**FROM : CODESA ADMINISTRATION**

**QUERIES : LOVEDALIA / GERDA**

**RE : DRAFT MINUTES - 2 MARCH**

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J Zuma	ANC	011-333-9090
R Cronje	Bophuthatswana Govt	0140-84-2943
C Eglin	Democratic Party	021-461-0092
F T Mdlalose	Inkatha Freedom Party	0358-20-2470
J Slovo	SA Communist Party	011-836-8366
G van N Viljoen	SA Government	021-461-0851



**F A X M E S S A G E**

**TO : MEMBERS OF THE SUB-COMMITTEE ON  
THE DECLARATION OF INTENT**

**FROM : CODESA ADMIN - DIANNE**

**DATE : 6 MARCH 1992**

**RE : MINUTES - 2 MARCH 1992**

Attached please find the following :

1. Minutes of the meeting held on 2 March 1992.

Should you have any queries, please do not hesitate to contact us.

Regards.

THESE ARE DRAFT MINUTES. THEY ARE CONFIDENTIAL AND RESTRICTED TO THE MEMBERS OF THE MANAGEMENT COMMITTEE. THEY ARE SUBJECT TO RATIFICATION BY THE SUB-COMMITTEE AT ITS NEXT MEETING.

MINUTES OF THE SUB-COMMITTEE ON THE DECLARATION OF INTENT AND PROPOSED AMENDMENTS HELD ON MONDAY 2 MARCH 1992 AT 08H30 AT THE WTC

PRESENT: R Cronje (Bop Govt)  
CW Eglin (DP, Convenor)  
FT Mdlalose (IFP)  
J Slovo (SACP)  
GvN Viljoen (SA Govt)  
J Zuma (ANC)  
  
T Eloff (Minutes)

1. Ratification of the minutes of the previous meeting

The minutes of the meeting of 24 February 1992 were ratified.

2. Reportback from the IFP on the proposed amendments

2.1 Dr Mdlalose indicated that the IFP would welcome a clear statement to the effect that the federal option is not excluded.

2.2 The meeting was informed that the IFP was working on a possible formal statement in this regard. The present form of this statement is as follows:

"The Management Committee and CODESA II issue a formal statement of interpretation in the attached form, which will be deemed to be an annexure to the Declaration of Intent when signed by the signatories, making it clear that, irrespective of their individual interpretative views and for the avoidance of doubt, the seventeen organisations/administrations/parties who signed the declaration of Intent declare that

no provision of the Declaration of Intent, interpreted alone or in conjunction with any other provision thereof, shall be construed as:

- \* favouring or inhibiting or precluding the adoption of any particular constitutional model: unitary, federal, confederal or otherwise consistent with democracy; or
- \* preventing any participant from freely advocating the same or the separation in terms of any constitutional model of powers between a central government and the regions; during the proceedings of CODESA or any of its committees or Working Groups.

2.3 The meeting requested the IFP to proceed to produce a final draft keeping the original formulation of the meeting of 17 February in mind. It was agreed that the final draft will be faxed to the secretary, who will circulate it to the subcommittee members before the next

meeting.

- 2.4 The IFP was requested to reconsider the issue of the seventeen parties all having to sign the abovementioned annexure, as opposed to a resolution by the Management Committee and eventually by CODESA II.
- 2.5 The issue of the signing of a commitment was considered and discussed. It was noted and agreed to that the IFP will make its own statement to the Management Committee in this regard, clarifying its position in terms of the Standing Rules adopted by CODESA I.

With regard to the issue of signing any commitment, it was stated that the IFP could only commit itself to those things that it has agreed to.

3. Date of next meeting

It was agreed that this will take place on Monday 9 March 1992 at 08H30.

The meeting adjourned.



**TO :** ALL MEMBERS OF THE DAILY MANAGEMENT COMMITTEE  
ALL MEMBERS OF THE MANAGEMENT COMMITTEE  
ALL MEMBERS OF THE SUB-COMMITTEE INVESTIGATING THE  
DECLARATION OF INTENT

**FROM :** CODESA ADMINISTRATION

**QUERIES :** LOVEDALIA / GERDA

**RE :** URGENT MEMORANDUM - RE RESCHEDULING OF MEETINGS

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J Zuma	ANC	011-333-9090
R Cronje	Bophuthatswana Govt	0140-84-2943
H Kayser	Ciskei Govt	0401-95-1205
Z J de Beer	Democratic Party	021-461-0092
		or 011-7884418
C Eglin	Democratic Party	021-461-0092
T J Mohapi	Dikwankwetla Party	01438-30318
F T Madlalose	IFP	0358-20-2470
N J Mahlangu	Intando Yesizwe	01215-2808
Prof S S Ripinga	Inyandza Nat Movement	01314-72453
P A C Hendrickse	Labour Party of SA	021-45-1953
P J Gordhan	NIC/TIC	031-309-2278
R Meyer	National Party	021-45-5870
A Rajbansi	Nat People's Party	021-403-2971
Z Titus	Transkei Government	0471-23876
J N Reddy	Solidarity Party	031-301-1077
		or 021-461-7912
J Slovo	SA Communist Party	011-836-8366
G van N Viljoen	SA Government	021-461-0851
M J Mahlangu	United People's Fnt	0156-37149
S Makhuva	Venda Govt	0159-23172
E E P Mhinga	Ximoko Prog Party	01526-23412



DAILYMAN\CORRESPONDENCE\MAR. (2)

**URGENT MEMORANDUM**

**TO:** All members of the DMC, MC and Subcom on the Decl of Intent  
**FROM:** CODESA ADMINISTRATION

**Re:** Rescheduling of the meetings of the DMC, MC and the Subcommittee on the Declaration of Intent

We would like to bring the following changes under your attention:

**1. TO ALL MEMBERS OF THE DMC**

The next meeting of the DMC will take place on Monday 9 March 1992 at 07:30 at the World Trade Centre.

**2. TO ALL MEMBERS OF THE MC**

Please note that your meeting have been rescheduled for 08:30 until 10:00 on Monday 9 March 1992 at the World Trade Centre.

**3. TO ALL MEMBERS OF THE SUBCOMMITTEE ON THE DECLARATION OF INTENT**

Due to the rescheduling of the meeting of the MC, the Chairperson of the Subcommittee on the Declaration of Intent has recheduled the next subcommittee to Monday 9 March 1992 at 17H00.

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**TO : ALL MEMBERS OF THE SUB-COMMITTEE INVESTIGATING  
THE DECLARATION OF INTENT**

**FROM : CODESA ADMINISTRATION**

**QUERIES : LOVEDALIA / GERDA**

**RE : DRAFT MINUTES - 9 MARCH**

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J Zuma  
R Cronje  
C Eglin  
F T Mdlalose  
J Slovo

ANC  
Bophuthatswana Govt  
Democratic Party  
Inkatha Freedom Party  
SA Communist Party

011-333-9090  
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Tel: NO  
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0140: 29 2002/3  
021: 4032911  
0358: 202438  
8366405

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**F A X M E S S A G E**

**TO : MEMBERS OF THE SUB-COMMITTEE ON THE  
DECLARATION OF INTENT**

**FROM : CODESA ADMIN - DIANNE**

**DATE : 11 MARCH 1992**

**RE : DRAFT MINUTES - 9 MARCH 1992**

Attached please find the following :

1. Draft minutes of meeting on 9 March 1992.

Should you have any queries, please do not hesitate to contact us.

Regards.

THESE ARE DRAFT MINUTES. THEY ARE CONFIDENTIAL AND RESTRICTED TO THE MEMBERS OF THE SUBCOMMITTEE AND THE MC. THEY ARE STILL SUBJECT TO RATIFICATION BY THE SUBCOMMITTEE AT ITS NEXT MEETING:

**MINUTES OF THE MEETING OF THE SUBCOMMITTEE ON THE DECLARATION OF INTENT HELD ON MONDAY 9 MARCH 1992 AT 17H00 AT THE WTC**

PRESENT: CW Eglin  
FT Mdlalose  
GvN Viljoen  
  
T Eloff (secretary, minutes)

apology: R Cronje

1. **Chairperson's opening remarks**

The Chairperson welcomed the delegates present.

2. **Report from the IFP (see previous minutes, item 2)**

2.1 Dr Mdlalose presented a memorandum from the IFP (Annexure A)

3. **On the interpretation of the Declaration of Intent**

The subcommittee taking note of both the draft statement previously prepared and the draft contained in the report by Dr Mdlalose, agreed to recommend to the MC:

that the MC and CODESA II endorse the following statement:

"For the avoidance of doubt as to the interpretation of the Declaration of Intent, it is declared by its signatories that irrespective of their individual interpretive views thereof, no provision of the Declaration, interpreted alone or in conjunction with any other provision thereof shall be construed as -

1. favouring or inhibiting or precluding the adoption of any particular constitutional model, whether unitary, federal, confederal, or otherwise, consistent with democracy;
2. preventing any participant from advocating the same or the separation, in terms of any constitutional model, of powers between a central government and the regions; during the proceedings of CODESA or any of its Committees or Working Groups;
3. and that its Addendum shall be added to and form part of the Declaration."

4. **On the IFP's commitment to the CODESA process**

The subcommittee took note of the IFP's statement of commitment to CODESA as set out below and agreed to report this to the MC:

"We the representatives of the IFP, solemnly declare:

- (a) the IFP to be bound by agreements we conclude or reach together with other participants in CODESA on our behalf in accordance with the Standing Rules and to which we have expressly assented if such agreements affect our vital interest, and hereby commit ourselves to the implementation thereof within our capacity, powers and authority;
- (b) that our participation in CODESA or any of its Committees or Working Groups since 20 December 1991 and in the future shall not be construed to mean or expressly, impliedly or tacitly mean that we have consented to the Declaration of Intent in its original form but only as construed in accordance with the intent of the Addendum."

It was noted that the subcommittee has now concluded its business.

The meeting adjourned.



# INKATHA

Inkatha Freedom Party

Iqembu leNkatha yeNkululeko

4 March 1992

## RESPONSE TO SUB-COMMITTEE ON THE DECLARATION OF INTENT AND PROPOSED AMENDMENTS

### Introduction

1. The IFP expresses its appreciation for the constructive spirit in which its Terms of Reference have been deliberated upon by the Sub-Committee's participants with a view to addressing the serious concerns of the IFP, as expressed by its tabled amendments to the Declaration of Intent.
2. With continued goodwill, the IFP considers that there is no good reason why consensus cannot be reached in the Sub-Committee's deliberations.

### IFP's First and Second Proposed Amendments (Paragraphs 1 and 5 a and d of the Declaration of Intent)

3. The Sub-Committee's approach, to acknowledge the principle that there are sincerely held differing interpretive views of the intentions expressed by the language of the Declaration, is a sound starting point.
4. Likewise, the IFP sees the difficulties inherent in reverting to the signatories of the Declaration and asking them to approve formal amendments thereto. The IFP approves therefore in principle the proposed method of going forward, namely, providing a means whereby all signatories will declare that irrespective of differing interpretations which

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may exist between them in regard to the Declaration, there will be total freedom by any participant to advocate its views on forms of government of a democratic nature during proceedings of CODESA and its Working Groups.

5. It can only be described as unfortunate and regrettable, in the IFP's view, that the wording of the Declaration had the effect of immediately excluding altogether from CODESA at least one important political player. The IFP would like to think that in the current process of re-examining the Declaration from its stand point, which is that CODESA is not sufficiently inclusive as presently constituted while political players such as Azapo, PAC and the CP are not participants, the effort should be made to arrive at a formulation to encourage such wider participation. The IFP believes that CODESA is only laying up future problems for itself and the country while it reflects its current seriously flawed inclusivity.
6. In the IFP's view the first proposal with regard to the IFP's proposed amendments, reflected in 2.1 of the Minutes of the Sub-Committee held on 17 February 1992 does not meet the IFP's position sufficiently, for the following reasons -
  - 6.1 the formal statement proposed to be issued by the Management Committee and by CODESA must be prepared and agreed to now as part of the current deliberations and not merely left to the Management Committee later to decide upon;
  - 6.2 signatories cannot declare the Declaration of Intent "is neutral" on the issue of a unitary versus a federal state when that issue is precisely a source of serious contention;

- 6.3 the formal statement referred to in 6.1 should take the form of an Addendum to the Declaration of Intent to be adopted by signatories to the Declaration of Intent at CODESA II as a mark of their solemn, clear and unambiguous commitment to its terms, thus specifically incorporating it into the main document by reference as an annexure thereto;
- 6.4 it should be more general in its conceptualisation of constitutional models which can be freely debated in CODESA, the only rider being that they should be consistent with democracy. It should not simply or necessarily be a matter of negotiation between a straight unitary versus a federal constitutional model. This would completely accord with and add force to the paragraph of the Declaration of Intent numbered 1 under "We agree" reading "that the present and future participants shall be entitled to put forward freely to the Convention any proposal consistent with democracy".

The IFP therefore tables before the Sub-Committee the following proposed Addendum for consideration

RESOLVED :

For the avoidance of doubt as to the interpretation of the Declaration of Intent, it is declared by its signatories that irrespective of their individual interpretive views thereon, no provision of the Declaration, interpreted alone or in conjunction with any other provision thereof shall be construed as -

1. favouring or inhibiting or precluding the adoption of any particular constitutional model, whether unitary, federal, confederal, or otherwise, consistent with democracy;
2. preventing any participant from advocating the same or the separation, in terms of any constitutional model, of powers between a central government and the regions; during the proceedings of CODESA or any of its Committees or Working Groups; and that this Addendum shall be added to and form part of the Declaration.

IFP's Third Proposed Amendment

(Final Paragraph of the Declaration of Intent)

7. The second proposal to the IFP's proposed amendments, reflected in 2.2 of the Minutes of the Sub-Committee dated 17 February 1991, in the IFP's view might be interpreted as meaning that if an agreement is arrived at by "sufficient consensus" in accordance with the standing rules, then the IFP would be bound thereby, even though it had not expressly assented thereto or may even have dissented therefrom. The following amending proposal is therefore tabled by the IFP for consideration -

"We the representatives of the IFP, solemnly declare :-

- the IFP*
- (a) ~~it~~ to be bound by agreements we conclude or reach together with other participants in CODESA on ~~its~~ *our* behalf in accordance with the Standing Rules and to which we have expressly assented if such agreements affect ~~its~~ *our* vital interest, and hereby commit ourselves to the implementation thereof within our capacity, powers and authority;

(b) that our participation in CODESA or any of its Committees or Working Groups since 20 December 1991 and in the future shall not be construed to mean or expressly, impliedly or tacitly mean that we have consented to the Declaration of Intent in its original form but only as construed in accordance with the intent of the Addendum".