

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 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.

POSSIBLE COURSES OF ACTION

The Management Committee and then Codesa 2 could issue a formal statement, which could become an annexure to the Declaration of Intent, making it clear that, irrespective of their individual wishes the seventeen organisations who signed the Declaration did so on the clear understanding

1. that the Declaration was intended to be neutral on the issue of a unitary vs a federal state, and
2. nothing in the Declaration was construed as preventing any signatory from advocating a unitary, federal or other democratic form of state during the proceedings of Codesa or any of its Committees or Working Groups.

This having been done, the IFP (and the Bophuthatswana Government) could consider signing the Declaration, either as it stands, or with amendments they believe to be appropriate.

Alternatively

The organisations who signed the Declaration could agree to amendments to remove alleged bias in favour of a unitary state.

This having been done, the IFP (and Bophuthatswana Government) could consider signing the amended Declaration, within its new form, or with further amendments they believe to be appropriate.