

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

ADOPTED AT THE MEETING HELD ON 24 FEBRUARY 1992

PRESENT :

C W Eglin (DP, Convener)
F T 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

The following proposal was made :

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.

Dr Mdlalose requested that this matter be taken back to the IFP for its consideration and to report back at a future meeting.

2.2 Third Proposed Amendment

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

"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".

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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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.