

Transcription : Negotiating Council Meeting - 24 June

Item 4
Item 4.1.1

Chairperson:

Dr Venter:

Professor Wiechers:

I would like to suggest that the way in which we deal with 4.1.1 is that in the first instance we address the outstanding Principle 2.9 and the special report of the Technical Committee on confederation first. We will then deal with the three outstanding principles in relation to the general constitutional principles, and then we will move on to Item 4.1.2.

If that is agreed can I invite the representative of the Technical Committee to provide us with an overview both of 2.9 in relation to the last discussion that we had, and in particular with an overview of the Special Report on Confederation. Dr Venter.

Mr Chairman, Professor Wiechers has prepared himself to present to you the special report, and I would suggest that we do so now.

Thank you, Mr Chairman, Honourable Members. May I just point out that if you look at our Special Report that I hope there is some logic, well we are sure there is some logic, in the way we label our report. We have the regular reports and they are done on the instructions of the other council. Then we have another category of Special Reports. These reports concern very important issues that have been raised and been given to us through the Planning Committee to look to, and also matters been raised in previous reports, but do not fall within the overall and the general line of reports. And then we have, of course, what we dealt with last night, Supplementary Reports. They are additional reports to our other reports. Now, Mr Chairman, Members, I am dealing with a Special Report on Confederal Issues. You will remember that right from the beginning in our first report when we discussed, or started to discuss some remarks were made by our Committee on the so-called dichotomy of unitary, united or federal states, and our point was that you can only say whether it is federal or decentralised once you know what the contents are. But we did say that the confederation is not a one single state, it is a combination, it is a voluntary association of states and we should like to have more particulars on that issue from those parties who favour the idea of confederation. Now we were supplied, by especially the Conservative Party, by an analysis dealing with that question, and I must also add, a shorter memorandum. It is not said here, but we took that shorter

memorandum into consideration in dealing with the analysis. Let me immediately say, that in the analysis which we received, there are many facts and statements made about many things; say the history of the Afrikaner, the course of democracies in Africa, political and constitutional realities in South Africa and so on, and our committee is of the opinion that it is not for us as a Technical Committee to cross swords with the participant party in that respect. As a matter of fact we consider this as a manifestation in the very real sense of a political party's right of self determination to hold political views and to express opinions on that. And that is exactly what we said in our first report where we mentioned the right of self-determination. But, in our second report we said it would be helpful if participants in the Negotiating Council in favour of confederation as an option would provide us with more clarity on the proposals and in particular the territory and population of the envisaged separate state and how it will meet the international law requirements of secession and self-determination. In the analysis of the Conservative Party it is in the view of the Committee quite clear to recognize within the broad, overall views on collective rights of self-determination, that Afrikaner as a cultural group should also have a right of self-determination in the sense that it was mentioned in that first report inter alia by grouping themselves freely into cultural bodies, political parties and especially in the sense of a cultural group, to act as watchdog bodies, regional and local, and to be represented in various institutions. What is problematic, however, is the feasibility of affording pre-established and exclusive constitutional political rights to Afrikaner in a separate state as contended for by the Conservative Party. And in this respect we are in agreement with the party when it says "the external features of the form state must be determined first." As we understand it, these formal or external features of a state relate to those elements that make up the essence of statehood, and if you look at Page 29 we mention these elements, and they would be the territory and boundaries of the state, the creation and establishment of the state - whether through partition or secession, the population of the state which implies a clear and legal definition of citizenship, and the legal status of non-citizenship, and then of course, the governments of the state. These are the classic contents and component parts of statehood.

Now as far as territory and boundaries are concerned we took notice of the party's intention to submit proposals to the Commission on the Demarcation and Elimination of Regions. So we leave it at that.

Now, the other question, the other element of statehood namely that of citizenship, we took notice of the definition of the party that this Afrikaner state, in this state, it be contemplated that those "afstameling van die Afrikaner Volk en daardie anders taalige patriote wat met die Afrikaner Volk lotsverbonde is, op die basis van wedersydse invaarding en gemeenskaplike vryheidsstrewes" that they

will live in that state. In other words those other people who are descendants from the Afrikaner Volk, and also the other patriots who are linked with the Afrikaner Volk, and on a basis of mutual acceptance, and common love and striving for freedom, associate themselves with the Afrikaner. We have in the Committee, had a bit of a problem with the definition of the word "Afrikaner" and legally the definition is not as clear as we on the Committee should like to have it, but for the rest of our report we use "Afrikaner" in that sense. It seems to us in the Committee, that during the debate in your Council, it was accepted or at least contemplated that in this Afrikaner or separate state, the Afrikaner will still be a minority and this would either mean a large scale population removal or shifts, in order to establish an Afrikaner majority within the boundaries of that state. And on this basis of political self-determination, the Afrikaner in their own independent sovereign state according to the proposals of the Conservative Party, would involve a denial of self-determination to the majority of people who would be living in that very same state. Also, Paragraph 2.8, we proceed pointing out that the Conservative Party indicated in the debate that its preference would be for voluntary partition rather than unilateral succession. Some examples were quoted and we kept in mind what had been said in the debate, but we want to point out from the Committee's side, that with the exception of Yugoslavia, all examples of states in which people seeking political self-determination constituted a clear majority in the partitioned segment. As far as we are aware, no example can be cited of a successful voluntary partition, or of a unilateral secession recognized by international law in which the territory of a nation state has been partitioned on the basis that a minority within one of these portions has been given exclusive political rights in such portion. So, it is our view in the Committee, that these views would be in conflict with international law and it is for that reason that we express the view in our first report, that an Afrikaner State established on such a basis, and against the will of the majority of the people living in such a state would be unlikely to secure international recognition.

So, those were the two elements so far, of statthood, Mr Chairman, Members, and the third element, or the fourth element would be then the legal system of the state it contemplates, because no state can exist without a government in accordance with the legal system within that state. We should like to know, because it is not clear in the analysis, how it is envisaged the legal system in accordance with which the government of the state, the proposed or envisaged Afrikaner state, will function and operate, will look like; and we ask pertinent questions in that regard under 2.9 - for instance what of the general constitutional principles will they apply and how will they apply in the Afrikaner state, what are the structures of government that are contemplated for the Afrikaner state, the Head of State, the electoral systems, the composition of the government. Now, if we have this

information it will certainly help the Council to determine the external features of the form of state advocated by the Conservative Party. And again, we emphasize that as it has been put in the analysis of the Conservative Party, that one should look at the external features of such a state.

So in conclusion on this part on our report, Special Report, on the analysis, we should like to have more clarity on these external features. You know, and on another note Mr Chairman, Members, I can say that the analysis given to us provides, or gives excellent food for thought, but we academics - I mean I as an academic, immediately want to start debating and say this and that, but it is not the function of a Technical Committee in what we are doing now, to engage in polemics or an academic debate, so we do hope Mr Chairman, the Council, that we are seeing these questions are being put to the parties or party, in order to help us to have more clarity on the confederal option.

And it is very much in the same vein, or the same regard, that we also deal with the submission of the Government of Bophutatswana, where we have been asked as a Technical Committee to look at confederations and to see whether there is a non-classical approach to this issue, which indicates a need in certain exceptional cases for an original, innovative and flexible approach. Now, we agree with all respect to the Government of Bophutatswana, that confederations do manifest themselves in different shapes and forms. If you look at one classic example of a confederation in the previous century, of the German confederation, it certainly is quite different from present confederations. = The examples quoted by the Government of Bophutatswana, Puerto Rico, the French Communité and also the City of Berlin, are certainly instances where in constitutional, in international law, one cannot say they are clear confederal examples. What we did then in the Committee, was to look at these various in-between forms, which is in theory sometimes called by the high-falutinâ\200\231 name of "Hegemonic Statesâ\200\231. It is states-states associations and we saw that these non-confederal, non-federal arrangements are usually found in three instances and we mention them in 2.3.1, 3.2.2 and 3.2.3. They are mainly islands away, or distanced from the mainland and they have special constitutional arrangements with the main, or the mother country. Then often, you will find an enclave or a city has a special status, and this comes through a history, often the end of a colonial period or often after a period of war, and we can look at the Free City of Danzig, Hong Kong, Berlin, Trieste, and there are other examples. Those are the second kind of non-conforming, or one could say, non-conformist, state arrangements.

And then the third kind, which has become historical now, but which is something - an example of that is known to South Africa, is the

Chairperson:

Mandated Territory, which is not a colony, which is not a province,â\200\231 which as in the case of the former South West Africa, was under the total administration of South Africa, and yet not a province, and never formed part of South Africa.

Now from all this, we concluded that these special non-conformist, or hegemonic state systems are very much the result of historical facts and other realities. Looking at the TBVC states, we pointed to certain historical and realistic features of these states, and we said that we must accept that these states do not enjoy any kind of international support; support in the sense of legal sanction or underwriting. And then also, objectively these states, and this is not said to denigrate any of these states, they are under and part of the vassalage of the South African Republic, and then of course these states do not constitute islands in the heart of the Republic of South Africa. I do concede that if you look at the map and you see some parts of these states are scattered the mainland of the Republic, they might look like islands but they are not of course. And then we assume that the majority of these states being previously or formerly South African Citizenships, could still wish to regain their South African Citizenship.

If we are to consider semi-confederal or hegemonic state systems for the Republic of South Africa and the TBVC countries, we in the Technical Committee would require instructions from the Negotiating Council to do so, and more detailed proposals than are contained in the submissions to us from the Bophutatswana Government.

May I just then read to you our conclusion, that we cannot take the issue of confederation further without instructions from the Negotiating Council. The issues raised by the Conservative Party and the Government of Bophutatswana raise crisply, the question whether partition, secession or the continued independence of any of the TBVC states is an acceptable option. We require instructions on these matters.

Mr Chairman, Honourable Members, it is not simply a question of "Thank you very much, over to you", we with all due respect in the Committee want to be of total assistance in analysing and commenting on this very, very important proposal and suggestion that has been made in the Council and it is exactly in that spirit that this Special Report is now, on behalf of my Committee presented to you at the Council. Thank you very much.

Thank you, Professor

Mr Jacobs, before I ask you to address the Council, let me attempt to

create some overview of both the discussion that we had on the last occasion and I donâ\200\231t, I must confess, have any constitutional legal

Mr Jacobs:

skills at all, but perhaps the Technical Committee will assist me in this and the presentation of this particular report.

Ladies and Gentlemen as I understand it, what we have before us is in the first instance a principle under 2.9 on self-determination which the Conservative Party in particular, believes can be extended to incorporate their view on the question of self-determination of peoples which then gives the right to those people to secede from South Africa as we know it. There was some debate on that day in relation to various aspects of that presentation made by Dr Mulder and Mr Jacobs in relation to citizenship, the territory they are talking about, the democracy etc.

What we have today are two elements of the report on confederalism; one which undertakes an analysis of the point of view of the Conservative Party and its submission, in which there is agreement between itself and the Technical Committee that we require clarification on what is called the external features of the form of state and the committee helps us to identify what those external features are and indicates what level of clarity there is on each of these features on the one hand, and on the other hand in relation to the submission of the Bophutatswana Government, which calls for a non-classical approach which the Committee defines as the hegemonic state approach or systems, we have an analysis in relation to that as well as I understand it, and we are asked as a Negotiating Council to make political decisions which will enable the Technical Committee to take both these aspects further. Is that a fair summary Professor Wiechers, of the situation as we have it. Thank you very much.

Mr Jacobs.

Mr Chairman, could I thank Professor Wiechers very much for his presentation. I would like to be brief but he has also taken some extensive time in putting his case, I won't overstep the mark but as this is of material interest to the Conservative Party I would like to comment on some aspects that Professor Wiechers raised.

Mr Chairman, firstly we agree entirely that confederation is a voluntary association of states. We have also indicated previously, and this must be understood as one of the cornerstones of our policy; the policy is a non-prescriptive one. We do not want to prescribe to anyone in this Council that they must go into a confederation. It is a voluntary association; it must also grow into that voluntary association if states wish to enter into such an association. The very fact that political parties have the right of self-determination, we could debate this at length. I previously indicated that political parties rights within a unitary state is to my mind, and I have thousands of authorities to substantiate my case, self-determination within a unitary state in legal

terms comes under the umbrella of protection of minority rights.

Thirdly, Mr Chairman, we as Afrikaner, and we respect everyone in this Council who has another political affiliation than Afrikaner, but we as Afrikaner we would not like to have watchdog bodies over our political rights. We are not a group. We are a nation, a fully-fledged nation as I previously indicated and for that reason we build our case on the celebrated and international accepted right of self-determination that has been explained in our first report and we also refer in this regard to a definition by the Oxford English Dictionary being "Self determination is a right of peoples, a right of statehood, a right of independence"â\200\235 this has also been the case in several resolution of the United Nations in colonial peoples and various German writers on international law, European writers, have said repeatedly that this is not only a right within colonial ambit, but also an international recognized right.

Mr Chairman, to come back to the report specifically, I think on Page 3, that is of fundamental importance. Four questions have been put - four elements, rather. The one is the territory and the boundaries of the state. We take the view, and we take this seriously, that this Commission, with due respect to this Committee, do not have the mandate as far as boundaries are concerned. It is the Commission on the Delimitation or the Demarcation of Boundaries, they have the mandate and because of that we will put our case to them.

Secondly, Mr Chairman, as far as partition or succession is concerned, we have also said previously we want today to give you the hand of friendship. And we say our solution must also be a package deal. We do not want to â\200\231go it aloneâ\200\231. We want you to come into our way of thinking; you might not agree, you might not agree but it is a non-prescriptive way of thinking. We say if we could have a package deal as far as our political aspirations are concerned, there is hope for South Africa. As far as secession is concerned, Mr Chairman, we have previously indicated that this is not the first option. We would not like to be forced into that option, but we have fought two colonial wars as a people. We were the first in the whole world, we were the first in the whole world that fought colonial wars. We donâ\200\231t want to do that again. We are not here to make wars. We are here to build a future and therefore secession or the compulsory way of creating a secession situation only is a very, but a very last resort. Our hand of friendship is there for you to take.

As far as the population, which implies a clear definition of the legal status of citizenship is concerned, Mr Chairman I will come back to that at the end. What I must, however, indicate is this very clear stance the Committee takes when it says, and I must emphasize I cannot answer each and everything, but questions could be put to me in this Council and we also willing to have friendship talks outside the

mere formalities of this Council to explain our position. But what is very important, Mr Chairman, is Paragraph 2.8. It says "The Conservative Party indicated in the debate in the Negotiating Council that its preference would be for voluntary partition rather than unilateral secession as I have indicated now. The examples of partition and secession that it gives in the analysis and which it mentioned during debate, are with the exception of Yugoslavia, all examples of states in which the people seeking political self-determination constituted a clear majority in the partitioned segment." Mr Chairman, but that is exactly the point. The Committee concedes with the exception of Yugoslavia. Now our case is a very clear one; we do not want, and I am speaking to each and every one of you, I am not addressing the Afrikaner now, we do not want to create a Yugoslavia situation. On the very same argument as the Commission has put forward and on which the Commission has made a major concession, we do not want to create a Yugoslavia situation and therefore we have in our first report in the very last page indicated the various percentages of population in Yugoslavia, the Serbs the Croats and all the others. And could I also add to this, Mr Chairman, we are - that is our point of view - we are starting afresh. We do not want to carry over in this new dispensation all the burdens and everything else that could be of some hindrance in starting afresh. When you start afresh you start with a clean slate. Starting with a clean slate means you must give every option a chance that could be a viable option for peace. Every option. We ask of you today also to give our option a chance. If after ten years or whatever, fifteen years, we in South Africa and we are not stubborn, see that this option does not work out. If the world sees it does not work out, if we cannot on a voluntary basis and I repeat, on a voluntary basis, if we cannot succeed in drawing Afrikaner and also include English speaker if they like, if they wish, on a voluntary basis to that state of ours then it will not be a success. And of course, then a new arrangement at that stage could be made. But please do not let us stand outside the door from the start. Let us not be standing in the cold. We will be creating this very same position that people are now complaining from other sectors of the population about. And the last, the very last sentence of the Committee in Paragraph 2.8 "that this state would be unlikely to secure international recognition". Again, Mr Chairman, two remarks: One - it must be, and we would like it to be a package deal. And in a package deal then there will be international recognition. My second remark is a legal remark: international recognition is by no means a prerequisite for statehood for the existence, the very existence of a state. There is a clear distinction between on the one hand the existence of the state and the recognition of the state.

Lastly, Mr Chairman, in Paragraph 2.9 various questions have been put to us concerning the governance and the legal system of the state. We can by no means answer these questions today extensively. Not

that we cannot answer them, but I must point out that this report has been presented to us two days ago. But we would like to have the indulgence of this honourable Council to make a written submission since oral evidence is not allowed, to make a written submission to this honourable Committee and I take the Committee on its word as far as the very last sentence is concerned. The last sentence says Mr Chairman, "if this information is provided by the Conservative Party to the Negotiating Council it will enable the Council to determine the external features of the form of state advocated by the Conservative Party." Now - two remarks: One - we are most glad that the terms external features of the state, or as I have previously indicated the distinction between form of state and form of government have now been accepted by the Committee as far as this formulation is concerned.

My last remark, Mr Chairman, is the following, and that is, we have previously compiled a draft constitution for an Afrikaner state and we must indicate that this is a guideline, it is subject to discussion within the ranks of the Conservative Party, it is not, and I repeat not, a final document, it is a guideline just as the guidelines are that have been put to us by the Commission as far as general constitutional principles are concerned. This has been compiled by myself in Afrikaans. It is a lengthy document; it is a very lengthy document, I have it here. I am willing to have this translated, I don't have the time reading all the reports of this wonderful Commission, but I have this to be translated and I will make this available to this honourable Council, thereby Mr Chairman, answering the questions in 2.9.1, answering the questions in 2.9.2 -of course in a draft constitution you don't answer these questions seriative(?), it is included in your document of course. And as far as 2.9.3 also answering the questions concerning the structures of the government including the powers and functions of the Head of State, how the Head of State will be appointed, how the legislature will be constituted, what electoral system will be adopted, who will be entitled to vote, how the legislature will take its decisions, how the executive will be constituted etc, etc. And also in this document is concerned two most important things; one a clear legal definition of citizenship based on the European law of descent, we do not go out from the law of solely which is one of the problems that the Commission have with our previous analysis, but we are fully entitled in this regard. And we will also include, Mr Chairman, in our further submission a process, a process of implementation. Now I must say I have written this process of implementation somewhere in the night between 2 and 3 it has not been completed, I would like to complete this.

I would like to conclude Mr Chairman, and I thank you very, very

much for your indulgence in this rather important aspect materially to our point of view. I would like to conclude with your permission with

Chairperson:

a quote. A quote by Andrew Kenny, London Spectator, Sunday Times of London in 1989:

"Five countries outside Europe are today ruled by white men from Northern Europe. All five at different times were part of the British Empire. Three of them remain part of the Commonwealth. Four of the five of these countries acted with unspeakable inhumanity towards the native people they found there, employing various means including systematic slaughter to reduce them to minorities. To reduce them physically to minorities. The peoples in these countries who were 100% of the population before the arrival of these men now form the following percentages. In the USA 0,5%, in Australia 1,0%, in Canada 1,5%, in New Zealand 9% and in South Africa 81%"

We are of the opinion that since our fore- fathers, unlike others, did not act with this unspeakable systematic -

listen, listen, hear me out

genocide, genocide and you can look at the figures. We, to ensure that we are a clear majority throughout South Africa, and read the history of some of these countries, read it. Surely we should not be penalised today because we are not the majority in some of these areas. I conclude. We in the Conservative Party, we still trust and we still hope that we could reach an agreement on the future constitutional dispensation for our country. A solution that does not exclude the realisation of the political aspirations of everyone, of everyone in South Africa. All of us owe this to our children and the generations to come. We should not negotiate a course that will lead to destruction, strife and even civil war. We believe that our constitutional proposals which as indicated, are non-prescriptive, non-prescriptive, our constitutional proposals for a peaceful South Africa, could indeed prevent that. Take our hand of friendship and co-operation for any other course might be too disastrous to contemplate.

I thank you very, very much.

Thank you Mr Jacobs, you have had a full eighteen minutes to make your presentation and I trust that will help us to take the discussion further as we go further into this particular debate.

Ladies and Gentlemen, what I would like to propose, Mr Cronje has indicated that he wishes to speak next, is that he also responds from the point of view of the Bophutatswana Government to the report, because the report does come to us in two manageable parts so to speak, and thereafter we will have to identify the elements around which our discussion takes place. I would like to encourage us and please apply your minds to this, not to just go for a free-for-all which doesn't really end up anywhere at the end of the day. Once Mr Cronje has addressed the House, I would like to make a proposal to you on how we could manage this discussion in order that we can have

Mr Cronje:

a constructive outcome in a very expeditious way, but I will come back to that.

Mr Cronje.

Mr Chairman, thank you for the opportunity. My understanding of the role and the function of the Technical Committee is a group of technical experts to give us technical advice on technical issues. And they will forgive me if I say that in their response to the Bophutatswana submission or this part of the Bophutatswana submission, there were some political assumptions and even political statements made. Whilst they accept ...

.... for Southern Africa. What we are looking at is a wholly new dispensation for Southern Africa. Hopefully, taking into consideration the realities of Southern Africa as they exist we have prefaced this particular submission to the Technical Committee on the basis, and they acknowledge this, that we should perhaps look at an approach which in some senses could be unique. I do not believe that in seeking solutions one should be tied down to what previous examples may exist throughout the history of man or the history of states, and if we find something which is unique to Southern Africa then at least we have established and made a contribution. And therefore, although Bophutatswana makes it very clear that its optimum option is that of a confederation it says equally that we believe that one has to assess other options as well and that we will give consideration to other things which will be in the best interests of our people and it is for them to make that decision, ultimately. Therefore we said that we do not wish to be tied down by classical examples or by the use of words which have different connotations to different people. I think there was a very well known political scientist who said that in any event federalism to confederalism perhaps is not so much a difference in substance as a difference in degree. It is true and it is also not true. So therefore we start off by saying that as far as the terminology of confederation is concerned, what it is and what it means although it might differ slightly in emphasis is well known, therefore we are not going to deal with it. There may also be the possibility of something between a confederation and what is classically termed a federal-type government. I don't like the word federation; a federal-type government. So what we said let us look at something unique, and we referred this to the technical experts for consideration. And what we used not as examples of confederations, not as examples of federations, but as an example of something which is different, unique in a sense, were two examples like that of West Berlin and like that of Puerto Rico which cannot really be described in classical terms, and said isn't there a possibility of something in-between because what we are seeking to find Mr Chairman, are solutions. Not creating

Chairperson:

Mr Cronje:

additional problems. Now in the course of the debate, or in the course of the representation, certain references were made to the TBVC states. Now we do not claim, nor did we endeavour to speak on behalf of the TBVC states. A) we do not have that authority, we spoke for Bophutatswana, but I will say secondly that there are differences between the TBVC states. Differences of many, many natures, for various reasons. And therefore we cannot just look to them as the TBVC states because the differences in certain respects are quite profound. References made that in the examples quoted history plays a role. That Chairman, is exactly our point. One of the main differences of the establishment of the TBVC states, and perhaps the motivation for adopting independence, was exactly this point of historical reasons. Because for Bophutatswana the adoption of independence in 1977 was not to implement the process of Apartheid, but was to use Apartheid to restore the independence removed 15 years before the Union of South Africa, removed by the British. So it is a whole different approach. It is an area that was historically free as most of South Africa was.

The objectivity of the meeting is interesting.

Please continue Mr Cronje. Ladies and Gentlemen can I appeal ..

Reference is made that the TBVC states is a vassalage of South Africa. If we analyze the statistics and facts of the United Nations and of the OAU, and we use that as a criteria, then I will point out at least 40 states in Africa which are more vassalagous and dependent on others, and some of the not very far from where we are now, than is for instance Bophutatswana. An argument about the recognition or the possibility of implementation, reference is made to the question of international recognition. And of course, the statement made is correct. But the question of political acceptability or not, Mr Chairman, was the purpose of this meeting, and depending on the successful or lack of success in negotiating something could influence that very aspect, but I would also submit that international recognition is not the only criteria for the recognition or the reality of a state. Spain was unrecognized for more than 80 years. It did not wipe them from the face of the earth, because there are other criteria as our learned friends, members of the Technical Committee know better than I, that what the requirements are for statehood which I do not wish to repeat, and which has been tested in the Supreme Court. It is unfortunate Mr Chairman, that perhaps we did not put it clearly or sufficiently clearly, that what we really sought was an opportunity to perhaps have an interesting debate on something which is not tied down to specific terminology, but to look at a way in finding a solution which could resolve our problems. In Paragraph 3.2 having accepted that our approach is one of sui generis it would appear, and that is the perception, the argument goes to indicate why, and

Chairperson:

arguments are used and that is the perception, used why a confederal or a confederal-type model is not acceptable or is not preferred. I think in the end it is for this forum to decide whether it is or whether it is not. In arguing, quite correctly, of the examples of what is called hegemony, the example is used that very often it is in respect of islands or protectorates or enclaves, and whilst I understand that there are geographic reasons for the why it was adopted in that way, what we are really looking at, Mr Chairman, are for models; and a model or a constitutional model could apply whether it is the Japanese islands, whether it is Puerto Rico or wherever. What we are looking for are solutions and I do not believe that the solution should be affected by the geographic composition, although it may in fact, be correct, it does not mean that examples elsewhere cannot adapted and adopted, and changed and made to fit if necessary, irrespective of the geographic nature of the territory or where it lies. There are many other examples where you have this split and this differences between areas which was not affected in the constitutional models.

I think , Mr Chairman, I will conclude by those remarks and I many be coming back; may I say that I thank the Committee very sincerely for having looked at this proposal, for taking the trouble to assess it, but the whole intention was that we should really, without being tied down to any specific model, to any specific example try and find something that will resolve the situation with which we are faced.

Mr Cronje, thank you very much. Just for the record, you had about nine minutes.

Ladies and Gentlemen the proposal that I wanted to make to you is that in both Mr Jacobs response to the Technical Committee and in their report, there are four essential elements identified as the external features on which, if we do not have greater clarity, as I understand it, the Technical Committee is saying that we canâ\200\231t really proceed with this matter. That clarity can either be in the form of detail, or it can be in the form of an acceptance in principle whether a particular point of view is acceptable. Secondly, in relation to the Bophutatswana representations to the Technical Committee it seems that the future of this argument relies on a decision that we have to make as to whether the Technical Committee is mandated to elaborate on what it calls the hegemonic state system; or, as Mr Cronje was beginning to imply, I think, that other options need to be explored and the question would then be how would those other options be explored. Now, I what I would like to suggest is firstly, that we treat each of these two submissions separately because that will facilitate discussion in the Negotiating Council in my view and you can correct me if you think I am wrong, but where, of course, there are overlapping features certainly we can make references across the two aspects. And then secondly, my proposal would be that in relation to the Conservative

Mr de Jager:

Chairperson:

Mr de Jager:

Chairperson:

Mr de Jager:

Party's proposal we go through the four elements for a start and begin to have some debate on them with a view to getting some understanding of where the feelings of this House are on those various elements, recognizing that ultimately we will have to take some political decisions about how to proceed with this particular matter as Mr Jacobs had pointed out in his presentation. My question to you then would be that are you finding the proposals that I am making acceptable in the two instances as a way forward, and if it is we can then proceed to take Speakers. Mr de Jager, are you addressing the question I am asking?

Yes, Mr Chairman, to a certain extent. Mr Chairman, we also have a distinct viewpoint on self-determination and I would like to put it, I won't take the nine minutes, I will try to present our view in say, five minutes.

Mr de Jager, how do you think we can best facilitate that? Would it not be advisable to finish our discussions on the first two elements and then set aside some time for yourselves so that we can treat it ...

... Mr Chairman ..

or would the House like to hear Mr de Jager now and then deal with all three? But the centre view seems to be, Mr de Jager, that we hear you now. Please proceed.

Mr Chairman, before I start a few words about confederation. I think that this concept should not lightly be ignored. It may be the ultimate solution to the situation in Southern Africa. It could bring our neighbours, Lesotho, Swaziland and Botswana into the confederate system which could be to the advantage of all us. It is a pity that we have not solved our problems to such an extent that they could be sitting with us today already to see what we could do about the greater solution. We accept, however, as far as we are concerned, Mr Chairman, that in the present South Africa we have so much in common, and our interests are so interwoven, that we need a national body to deal with common interests, for instance, external affairs, economic features and to have a hand .. that body will have legislative powers. The moment we accept that we are not advocating a true confederal system. We think that much of the problems could be solved by accepting the principle of asymmetrisms to solve asymmetries to solve that problem. Mr Chairman, as far as self-determination is concerned; I would like to refer delegates to Volume 15 of the Constitutional Papers, Page 762. As far as self-determination is concerned it is a paper presented by Prince Hans Adam from Liechtenstein on 16 March, 1993: I think he is putting the case for self-determination, I can't put it better than he did. I just want to quote one sentence "The right to self-determination is by its

nature a right which can only be applied to a group and not to an individual."

Mr Chairman, we are addressing Constitutional Principles Paragraph

2.9. I don't think it is necessary to address party politics it might have been an opportunity to put our policy to all of you, but I won't do that except for the extent where you may ask us questions and we would answer that gladly. We say that we must look at the principle and not to the party policy. Isay as far as the constitutional principle is under

discussion, is concerned, it is an accepted international principle that peoples have the right of self-determination. I would say in principle,

every people sitting round, people sitting round this table, the Afrikaner people, would have the right of self-determination. The question, however, is how could we accommodate that principle, how could we give a body to that principle in South Africa as it is at the moment. Mr Chairman, accepting the right, I want to state no right could be exercised to the detriment of other people. If I have got the right of self-determination I can't exercise that right to the detriment of people living with me in the same state, so I can't discriminate against them. I can't forcefully remove them. If they are there, if they have been born there with me, I can't escape the reality that they will be entitled to the vote, and I accept that. My party accepts that,

but we say that every people, nation in this room today have got a home base. History provided that to some of you, you are fortunate.

We say, help us; don't stand in our way to create a home base for the Afrikaner because that could be part of the solution in South Africa.

Get the Afrikaner to be co-defenders of the new system and not to be enemies of the new system and in doing so we are not asking you to do anything, or to help us, or to do things that could be to the disadvantage or to discriminate against other people, but we say, in certain areas in South Africa we have got a concentration of Afrikaner.

Whether we are the majority or not the majority in those areas, let's

not debate that today. Mr Slovo correctly said we perhaps only a majority in certain townships. That may be so, but that's not the principle involved. That we could argue and we will put our case before the Demarcation Commission; that's another story but as far as

the principle is concerned I say it's an accepted principle and if an area is demarcated, and we are not the majority there, we can't keep the vote from the other people but it will be demarcated that my people could decide whether they want to come to that area so that if you treat them well in the rest of South Africa maybe they will not come.

I will accept that, but maybe they'll come because birds of a feather flock together. You've got Zulus going to Zululand even it it's in the years of pension. You go to your people and you stay there. We say,

don't stand in our way. As long as we are not going to discriminate

against people, as long as we accept the fundamental rights would be applicable there, don't stand in our way, don't make it impossible for us to try and create a home base for our people because that's what our people want, and Sir, if you could, could - I don't ask your

Chairperson:

Mr Moosa:

assistance in that, I only ask you do not stand in our way and we will do that through the normal constitutional process not in another way, so we accept that we should follow the international laid down and recognized standards, and the standards which you put forward and which we have accepted in this chamber today. All those principles will be applicable and we will be there Sir, and you could control it in the sense that you could go to the Courts and enforce it because we are accepting this, these principles. So, Sir, we say our case is different from the case of self-determination put forward in this forum by others, and we say kindly look at it, consider it and see whether you can accommodate us. Sir, I have yesterday afternoon tabled a draft amendment and I think itâ\200\231s been given to the Committee, but I donâ\200\231t think the rest of the Council received it and I would ask whether perhaps the Administration could make copies available also to the rest of the Councillors. Thank you, Mr Chairman.

Thank you, Mr de Jager. Again for the record you have nine minutes and we are now of course, in respect of all three speakers overstepping our normal limit of five minutes but I think the Council understands the laxity that we have applied in this regard. Ladies and Gentlemen we go back to the question of procedure in relation to this debate. I have indicated earlier that we could separate the two Reports, or two elements of the Report, taking into account Mr de Jagerâ\200\231s comments as well and discuss the elements of each of them. I have an indication that Mr Moosa might want to suggest an alternative way.

Mr Moosa.

Mr Chairperson, having read the report it appears as though the Technical Committee has put the question to us in Paragraph 4 of the Report, on Page 9 as to what this Council needs to address and what questions this Council needs to answer in order to make it possible for the Technical Committee to take the matter forward in one way or another and they say in that, itâ\200\231s a short paragraph I will just read it, they say " we cannot take the issue of confederation further without instructions from the Negotiating Council. The issues raised by the Conservative Party and the Government of Bophutatswana raise crisply, the question whether partition, secession or the continued independence of any of the TBVC states is an acceptable option. We require instructions on these matters." So my proposal, Mr Chairperson, would be that we do precisely that, that we hold a discussion with a view towards giving the Technical Committee an instruction on these matters raised in Paragraph 4 so that our discussion should be directed towards that, whatever inputs we have should be directed towards that. Thatâ\200\231s the procedural point we would like to make. We would like to come in again later to respond to some of the comments made by Mr Jacobs and others, but we would do that if you allow the debate in this way.

Chairperson:

Mr Rajbansi:

Chairperson:

Mr Meyer:

Can I have one or two further comments Ladies and Gentlemen, in this regard, which might assist us and then we will try and guide you from the Chair. Mr Rajbansi.

Mr Chairman, if we take the line as suggested by Mr Moosa and as requested by the Technical Committee, the danger may be that we will hurriedly adopt rigid attitudes because of wide political divide and I suggest that we go along the path in which you suggested, Mr Chairman, where we treat the proposals of the Conservative Party and the proposal of the Bophutatswana Government separately, bearing in mind that there are commonalities and we must also bear in mind the request of the Technical Committee and we do it in such a way that we must also put under another heading, a way out which was pointed out by Mr Jacobs, that the Conservative Party also envisages that their proposals can be discussed even with individual participants outside this Council. And I also feel that apart from secession, or partition, something that must also be placed on the table between what the AVU has stated and the CV has stated, is a possible compromise between the proposals of the Conservative Party and the proposals of the AVU. I am afraid that if we stick rigidly to the suggestion made by Mr Moosa, then I think it will result in only one direction in that we adopt rigid attitudes and we must avoid that at all cost.

Mr Meyer

Mr Chairman, maybe a little bit of a different approach to that of Mr Moosa; if we look at the Report thatâ\200\231s under consideration at the moment, especially Paragraph 2.4 of it, I have the impression that the Technical Committee is actually saying to us a very important departure point to the concept of confederation, and they suggest there that one should look at it from a practical point of view and to see how concrete elements could be utilised to constitute statehood on the basis of a confederal approach; and then they say the No. 1 concrete element that would have to be looked at is the question of territory and boundaries of such a state. In terms of what Mr Jacobs himself has said, is that this is something that actually canâ\200\231t be looked into by the Technical Committee on Constitutional Matters, but according to the mandate of the Commission on the Demarcation of Boundaries, that is actually part of that instruction and Mr Jacobs has suggested that, if I understood him correctly, maybe I am taking it too far but I would like to hear him on this, has indicated to my mind that we should rather wait then for the Commission on Demarcation of Boundaries to come back on the question of territory and boundaries before we can actually take this matter any further. Mr Chairman, the basis of the argument that I would like to take further, is that there is in fact to my mind, no chance for us to constructively go into the question of confederalism as an option to be considered by this Negotiating Council unless we have clarity on this fundamental departure point as far as the concrete

Chairperson:

Mr Landers:

Chairperson:

Mr Jacobs:

Chairperson:

element is concerned and for that reason I would associate myself with the idea if that was the intention of Mr Jacobs, to say letâ\200\231s then rather wait for the Commission to see whether there is any viability in the discussion of such an option, because Mr Chairman, if I have to pronounce my own opinion on this now, as a matter of a political opinion, I must quite frankly state that it is not possible to find a constitutional solution for South Africa based on the confederal approach. How to accommodate self-determination is something totally different and I would argue that self-determination is not necessarily only to be accommodated in a confederal approach, but politically Iâ\200\231m saying I canâ\200\231t see a solution in a confederal approach but to give the Conservative Party a further chance to advocate their position I would say the only view, or the only way out, would actually be to wait for the Commission on the Demarcation of Boundaries. Mr Chairman, otherwise we are going to frustrate, if I may say so, the Technical Committee to take the matter of confederalism any further without giving them direction on this first concrete element that they have themselves identified in this current report. Just to ask them, with all due respect to the point that Mr Moosa has made, just to ask them to further consider now options as far as confederalism is concerned on the basis of partition or secession, or whatever, would be, I would say, to frustrate the Technical Committee unless this first concrete element is in itself being addressed. So, Mr Chairman, I would argue that would be the better and correct approach to take. If, on the other hand, this Council has to make a political decision at this stage, on the question of confederalism I have to state quite clearly that it would be our view that confederalism is not a constitutional option as such, but that doesnâ\200\231t exclude other ways and means to accommodate the concept of self-determination. I would argue within the federal approach.

Mr Landers

Mr Chairman, could I just ask a question? Pertinent questions has been put to me should I just wait for my turn then, or what is the case now?

... Mr Jacobs, all we are doing at this stage is to find out what views there are in the Council in terms of the way forward, and I think three different views have now been expressed. I propose to declare a tea break fairly shortly to allow us to have some informal discussions to resolve what might appear to be different views so I donâ\200\231t really think you need to respond at this stage if you donâ\200\231t mind; is that OK?

I donâ\200\231t mind Mr Chairman, I could be of assistance at a later stage to the Chair. -

Sure, thank you. Mr Landers.

Mr Landers:

Chairperson:

Dr Reddy:

Chairperson:

Mr Chairman, I didn't intend to address the way forward because I had thought there were clear proposals in this regard, but I am having a little difficulty in that aspects of the debate are actually now being placed on the table and are being debated, and I had indicated that I wanted to come in on the debate rather than on the way forward, so I am looking to you for help here. Do we curtail this debate on the way forward and decide which way we are going to deal with it and then continue with the debate, or do we take advantage of the debate on the way forward in order to put forward our points on the debate?

I take your point, and hopefully we'll have some clarity on that question. Now, we have three speakers after which we will have tea adjournment; the first is Dr Reddy, then Mr Eglin then Mr Slovo. Please address only the question of how do we take this debate further.

Mr Chairman, in a lighter vein I would not like to believe that this forum has been constituted to liquidate the South Africa that came into being at the time of Union in 1910. I appreciate and I understand the fears of people, the fears that have been expressed and the likely solutions that have been put forward to obviate the consequences that may flow from the realisation of those fears, but having regard to the fact, Mr Chairman, that a far wider concept of constitutional approach is the basis for a discussion, a debate by this forum, I would like to support the approach of Minister Meyer when he said I think it will be a fundamental requirement that for any positive debate to develop and to canvass a wider and a more broader concept of a constitutional approach, that Demarcation Committee having heard the presentations from different groupings for whatever reasons their submissions are put forward, comes forth with a report and then this whole ??? can be canvassed in its fullest form. As one who has subscribed to the philosophy of the devolution of power, you can call it at the end of the day, a state, a province or a region, and if that even means federalism, then if that is the name it is going to be called by, I am a supporter of it because I would like to do everything humanly possible, and I would like to believe that the majority of us present here would want to do the same, to save this country of ours to be a one single unit where Afrikaner, Englishman, Jew, Black, Indian and Coloured can underwrite the future well being and prosperity of all concerned and thereby take the cause for fear; this is a God-given opportunity that we have because after all Gentlemen, for reasons that you are all aware of, it's the white people of this country who possess economic power, they have technical power, they have had the experience of a full nationhood and we need to share it, and we cannot share it if people are going to build fences around themselves; and that will be no contribution. So, with....

Dr Reddy, I am sorry you are beginning to enter the debate and I must restrain you.

Dr Reddy:

Chairperson:

Mr Eglin:

Chairperson:

Mr Eglin:

Chairperson:

Mr Slovo:

Thank you, Mr Chairman. All I want to say is that we must have an open mind in regard to this matter that a full debate must take place on the floor.

Thank you. I must ask for very brief presentations now from Mr Eglin, and then Mr Slovo.

Mr Chairman, the Technical Committee..

Can we have some order in the House please. Thank you.

.. suggests a procedure, and that is the crisp decision as to whether partition, secession or continued independence is an option. I can understand them saying that, and I am only raising this point in terms of how the debate could proceed. On the other hand I listened very carefully to Mr Cronje and he seemed to be saying should we not explore how much asymmetry is desirable or practical, and it may not lead to any one of these three things but it may lead to a considerable degree of asymmetry in terms of the structures that occur. And I think, apart from my views on it, I think there is a case for saying should we not as one of the exercises explore asymmetry to the extent that it is either necessary or desirable, and it may well be that we find even the maximum amount of asymmetry that is necessarily desirable stops short of partition, succession or independence; but nevertheless I believe that whether you want those three things depends on whether a high degree of asymmetry is genuinely wanted and whether in fact, it is practical because I would argue that there is a case for exploring the extent of asymmetry in order to reach this conclusion rather than saying that you must come to a crisp conclusion on these three matters.

Thank you, Mr Eglin. Mr Slovo.

Yes, just on the last point, I believe that the question of asymmetry is going to divert us from addressing the real issues because we have accepted that we are going to come back to the question of asymmetry in the case of the various regions that will emerge, but on the assumption that they are part of one sovereign state whether federal or unitary. We are not talking about independence, secession or partition. On the point raised by Mr Meyer, I would like to say that I support the approach by Mr Valli Moosa. I don't think we can delay a decision on this question until we have a report from the Commission on Boundaries, because in order for that report to help us we would have to change the terms of reference of that Boundary Commission. The ethnic factor is not the key element in the terms of reference, and if we want a report from that Boundary Commission which would lay a basis for the kind of debate which Mr Jacobs has laid the foundation for, then we must really reconsider what that Boundary Commission

Chairperson:

Mr Cronje:

Chairperson:

Speaker:

Chairperson:

Speaker:

is about but we have taken a decision that essentially that Boundary Commission has been established for electoral purposes, and we have defined in the mandate of that Boundary Commission, eight or nine or ten factors to guide them in their approach to making recommendations and therefore, I believe that the proposal by Mr Moosa will be productive; I think we must have a debate we can't shirk the issue any longer; we can't go on indefinitely in this forum being completely uncertain about whether we are talking about one South Africa, and when I say one South Africa I am not raising the question of federal elements, of unitary elements, but one sovereign South Africa, or one whether we are going to have a series of ethnic states who will treaties amongst each other. If we do not dispose of that point I think we are wasting time.

Thank you, Mr Slovo. Mr Cronje wanted to address us, briefly I hope.

Mr Chairman, my understanding of the objectives of the Commission of Boundaries is not solely to deal with the electoral process only. That is not my understanding and it was not their instruction and it does not appear in the press statement and I just want to clarify that particular point.

Perhaps you and Mr Slovo can sort that out over a friendly cup of tea a little later. Ladies and Gentlemen what I would like to do is to take the various options that we have actually put out and see what concrete proposals we have on the table before we go to tea, so that we know

-~ what we have to canvass amongst each other. Mr Valli Moosa, I am

going to ask you whether you could put a proposal formally on the table, and if anybody else - I would like Mr Meyer's attention in this regard - wishes to put a formal proposal on the table, but not repeating any proposal that has been already put forward, I would like to hear that as well; very briefly without any motivation at this stage.

Mr Chairman, I don't want to interfere with your ruling but I must indicate that Mr Meyer has posed several pertinent questions to me, I won't be long - more than a half a minute - but I must reply to that I have the right of replying to questions directed to me ..

I won't deprive you of that, I would like to resolve the procedural issue before we get to that, if you don't mind.

Mr Chairman, if you and the house don't mind, my proposal was, the only person who counted it was Mr Meyer, if you could allow Mr Meyer and I to get together over tea and then put a proposal to the House, I think that would be a better ...

Chairperson:

Mr Landers:

Speaker:

Chairperson:

Is the House agreed on that? And Mr Jacobs when we return, I will certainly give you an opportunity to respond. Mr Landers.

Mr Chairman, I want to make an appeal to you and to this Council: Please let us debate this issue. Letâ\200\231s get to grips with it. Let us debate with one another and let us debate with the Conservative Party, Afrikaner Volks Unie, and whoever else. Letâ\200\231s stop running away from the debate. We are not saying that we must take a firm decision, finish and klaar right now. What we are saying is, letâ\200\231s debate the matter. We seem to be skirting around it and I canâ\200\231t understand why. What are you afraid of? Letâ\200\231s talk about these things. That is my proposal, Mr Chairman.

Iâ\200\231ll second that, Mr Chairman.

Weâ\200\231ll note those sentiments rather than, itâ\200\231s not really a proposal. We

now go to tea for 15 minutes and we return at 12h00.

Thank you.

Chairperson:

Chairperson:

Speaker:

Chairperson:

Mr Jacobs:

I had a request from various people who have an interest in this debate - if I can please have your co-operation - I had a request from various people who have an interest in this debate that they require time both to consult in their own ranks, and secondly amongst themselves, in order to come to an understanding about how we go forward. I am happy to report that they have been able to find some common ground in that regard. Three speakers in the first instance will share that common ground with us, and then we will go forward on this matter. Mr Jacobs first, Mrs Gouws you will be the fourth speaker.

Sir, I just want to clarify something. May I? I just want to clarify, Sir, this misunderstanding that now seems to prevail in this Council about the mandate given to the Demarcation Delimitation Commission. May I just read that because I think it is necessary for the debate to know exactly what this commission should be doing.

I will give you an opportunity to do that once we know and once we have given the three people an opportunity to put the proposal about how we go forward, and then you will be the first speaker thereafter.

Thank you, Sir.

Thank you. Mr Jacobs.

Mr Chairman, in the Special Report of the Technical Committee there are several questions that the Technical Committee posed specifically to the Conservative Party and I read from Page 5, or I refer to Page 5 in relation to the governance and the legal system of the state that the Conservative Party contemplates. 2.9.1. specific questions regarding Paragraph 2 of the Third Report, Paragraph 2.9.2 specific questions concerning the powers to the different levels of government, Paragraph 2.9.3. nearly, I think, ten or twelve questions, I am not going to read them out now, but they concern the structures of government including the powers and functions of the Head of State, how the legislature will be constituted etc, etc. Mr Chairman, in view of these specific questions we would like to have the opportunity, the opportunity be afforded to us, to reply to these questions. However, Mr Chairman, there are certain very important assumptions of the Technical Committee which could be addressed and they could be addressed immediately to our mind. I therefore propose that we proceed today on the aspects of the report, of the Special Report, but on the condition that the Conservative Party could get the opportunity to submit written submission to the Technical Committee as far as these specific questions are concerned, and that we could have time, say by Tuesday, because they are fairly lengthy questions, by Tuesday to make a written submission to the Technical Committee.

Chairperson:

Mr Meyer:

Chairperson:

Chairperson:

Mr Moosa:

Thank you, Mr Jacobs. Mr Moosa. Mr Meyer first.

In terms of what I said earlier, Mr Jacobs could also continue to present the Conservative Party's proposal regarding boundaries to the Commission, and also with a view to make discussion on that possible further on in this Council. To also inform the Council at the time of the next discussion, on what those submissions to the Commission on the Demarcation of Boundaries, have been to allow the Council also to consider that because otherwise we might have to wait for the Commission on Demarcation of Boundaries to come back with their report before we can actually discuss, or be aware of those submissions by the Conservative Party.

Mr Chairman, I would like to ask Mr Meyer's indulgence. We really take the view, and on well advised, we really take the view that this Commission or this Committee, does not have the mandate as far as boundaries are concerned. We have prepared ourselves to make submissions to the Commission on Boundaries, and we will do that, and I would like to propose ..

Mr Jacobs, I must ask you to hold on I will come back to your concerns in that regard. Mr Meyer will you finish your proposal please?

Mr Chairman, if I may just finish on this one. The point that I am making to Mr Jacobs is not actually to make his submissions on boundaries to the Technical Committee or to this Council, but for the sake of a constructive debate here when we come back to this question, that we also be informed basically, or in a broad framework sense, what those submissions regarding boundaries are so that it could actually enhance and promote the debate from a constructive angle in this Council.

I'll come back to you in a minute, Mr Jacobs. Mr Moosa.

Mr Chairperson, in agreeing with what Mr Meyer has said, we are of the view that discussions should nonetheless take place at this Council about the matters that have been raised in the Report, in order for discussion to take place, and accepting that the Conservative Party wants, is requesting to make further submissions; the Conservative Party should be allowed to make further submissions but this should be done at least by Tuesday next week, including a submission on the boundaries to the relevant Commission, and that for the purposes of the discussion now we would like the Conservative Party to start off by giving an indication of what these boundaries would be. We take into account the view they expressed that we should wait for the final report of the Commission on Boundaries, but notwithstanding that for the purposes of this discussion it will be extremely useful and quite

Chairperson:

Chairperson:

necessary for the Conservative Party to give some idea, even if not all of the details, some idea of what the boundaries will be. We can then go into the debate, specifically with the view to giving participants an opportunity to express themselves on the questions raised by the Technical Committee, and these questions are whether or not we are in favour of partition, secession or the continued independence of the TBVC states and bearing in mind that there would be further submissions from the Conservative Party, we don't need to then rule on that matter at this stage.

Thank you, Mr Moosa. Let me try Ladies and Gentlemen, to combine these proposals to you. We are saying that in the first instance the Conservative Party needs to be given an opportunity to make further representations, or submissions, to the Technical Committee in pursuance of some of the issues that have been raised both by the Technical Committee and others. We are saying secondly, that the question raised by the Technical Committee in Paragraph 4 of their Report as to the advisability, or acceptability or otherwise, of partition, secession or continued independence of TBVC states is something that we could address in a general way at this stage. We are saying also, that in the process of addressing those issues we should be free to mention the question of boundaries as Mrs Gouws wants to in respect of clarifying the mandate of the Commission, but I think Mr Jacobs, the request from Mr Meyer, is not that the Negotiating Council will decide on boundaries, but that information in relation to your submissions to the Commission would be helpful to the further debate of this issue within the Council itself. Perhaps you could bear that in mind. And then lastly, Mr Jacobs's point that there are certain assumptions of the Technical Committee that he and others might want to go into, and of course you are welcome to do that in the course of the debate. So this then is the direction in which, Ladies and Gentlemen, this debate will go and I trust that we will all be brief in the sense that this is not going to be the last opportunity to address this issue, but perhaps an opportunity to outline some of our concerns and views sufficiently for the Technical Committee to take account of them in view of any further submissions that they would like to make to us. With that in mind can I invite Mrs Gouws to ...

Mr Chairman, could I just make one brief reply please as far as the boundaries are concerned, of course Members are free to ask any questions they would like, but I would like to indicate that extensive submission is now being compiled and will be then re-presented to the Commission and when questions are addressed then we could hold this over, as far as we are concerned, for a further briefing in this regard.

OK. I trust that you will hear the request and trust that those who have made the request will hear you in this regard, and in the course of this debate we can see where we take that issue. Mrs Gouws.

Speaker: Chairman, sorry, just before you give Mrs Gouws and opportunity, I didn't hear you say that while giving the Conservative Party an opportunity to make further submissions we should agree that this matter would then be dealt with properly on Tuesday, and that it be finalised on Tuesday, so that the submissions that the Conservative Party makes should be with that in mind, and they may then even want to make those submissions before Tuesday in order to give all of us and the Technical Committee an opportunity to analyze them.

Chairperson: Well, we will certainly entertain that proposal when we get to the end of this discussion. Mrs Gouws.

Mrs Gouws: Thank you, Mr Chairman. I refer you to the media statement after the first meeting of the Commission on 8th June, here at the World Trade Centre. In paragraph, or article one, you read background and mandate and it says the Commission must report back to us within six weeks, with recommendations on the demarcation of South Africa in regions, realizing that regional boundaries will be relevant - relevant - to the electoral process as well as to the structures of the constitution. And in the last paragraph, you read that the Commission was finally mandated to take into cognizance any material it might wish to collect, and also of any progress made in the Negotiation Council by way of agreements on constitutional matters.

Chairperson: Thank you for the clarification, Mrs Gouws. The floor is open to you Ladies and Gentlemen. Mr Landers.

Mr Landers: Mr Chairman, in entering this debate I want to preface my remarks to the Conservative Party in this way. I have been asked by my Party to look into all the submissions, the comments, the addresses of the Conservative Party in particular. To look for some way in which we can possibly accommodate their ideas. I say this deliberately as a way of introduction so that the Conservative Party can understand the spirit in which I make further comments. Thus far, and the Technical Committee confirms this in their Report, but thus far the Conservative Party have been somewhat vague. The Technical Committee uses the word it lacks legal certainty in reference to the definition of Afrikaner. So, what I have before me here are certain concerns and questions which I would earnestly appeal to Advocate Jacobs and the Conservative Party, to provide clear answers to.

Firstly, in his address to this Council, Advocate Jacobs spoke of the law of descent in order to define or determine what is an Afrikaner, or who is an Afrikaner. So the question is who determines whether one complies with the criteria for descent, and what are those criteria for descent. The question as to what will happen to non-citizens within the Afrikaner state in terms of their basic or fundamental rights, has not been answered at all by the Conservative Party and we would

Chairperson:

Mrs Mangope:

urge them to come forth with a clear unambiguous answer in this regard. Now, another important aspect here is once you have determined who the citizens are in terms of descent, and I want to refer back to the question posed by Mr Colin Eglin, which wasn't answered at all because he posed the question 'descent in terms of what', what criteria - European descent, is it African descent. I would appeal to Advocate Jacobs to go back to Mr Eglin's question and please provide a clear answer. What will happen to the citizen; what will happen to the Afrikaner citizen, one who has complied or qualified in terms of the CP's law of descent when that citizen, or Afrikaner citizen marries a non-citizen. What happens to that Afrikaner citizen's basic rights, his rights to property, his voting rights, etc, when he marries a non-citizen. To the gender advocates, please forgive me for using the word when "he", I should have said when he or she, marries a non-citizen, but I think the point is very clear. So Mr Chairman, it is in that light that we approach this particular debate. There is no clarity on these matters and it makes the debate extremely difficult. = Advocate Jacobs has stated that confederation is a voluntary association of states and in terms of the Conservative Party's policy it is non-prescriptive, but are we not being prescriptive to the people already in that part of the country where the proposed Afrikaner state will come about if there is agreement on that. Are we not being prescriptive to them, because in essence we are going to be saying to them, "because you don't qualify in terms of the Conservative Party's policy or law of descent, you will have to be moved, or you will have to move." Voluntarily or otherwise. That point hasn't been made quite clear. And the final point that I would like Advocate Jacobs to address is in his statement that they are looking for a package-deal, but when he said that he didn't expand on it. He didn't say to us what precisely is that package-deal; I mean, what are we talking about, and we would appeal to the Conservative Party to look for another expression or terminology when they discuss this thing, because the use of the word 'deal' has certain very negative connotations. What are you talking about when you refer to 'we are looking for a package-deal' - and that in brief is my contribution thus far, Mr Chairman.

Thank you, Mr Landers. Mrs Mangope.

Thank you, Mr Chairman. When all of us were told that there are going to be negotiations we knew that we had hope to come to this Council and state our case. Now, the Technical Committee has done an outstanding job in providing academic arguments for a unitary state and clearly dismissing confederation as an option, and this was done in as early as the Second Report and their case was based on the lack of international recognition. I find it perplexing that on approaching this subject of looking at other options that there might be, no arguments are actually provided against the top-down approach and yet

Chairperson:

Mrs Mangope:

Chairperson:

Mrs Mangope:

Chairperson:

Mrs Mangope:

Chairperson:

Mrs Mangope:

Chairperson:

Mrs Mangope:

Chairperson:

Mr Matthews:

the entire Sixth Report focuses entirely on criticisms and why a confederation would not work and I would like to actually quote. On Page 5 of their Report they say the bottom-up approach could take up more time and increase the risks of deadlock in that the current negotiating process would have to be suspended until such time as PR constitutions have been drafted. [would like to know from this Council ..

Mrs Mangope, with respect, are you quoting from the Special Report or from the Sixth Report?

From the Sixth Report.

The problem is that we are only discussing the Special Report at this stage. If you can bear that in mind.

OK then I reserve my comments until then.

Mr Matthews. Sorry, Mr Mangope have you finished or would you like to contin.. '

It isnâ\200\231t actually the Special Report, Mr Chairman - no, itâ\200\231s the Sixth Report.

It is the Sixth Report. Is there any..

Can I finish my comment.

Yes, sure.

OK. So based on this I would actually like to appeal to this entire Council to hear our arguments out and to let us say our say without being booted into submission, or to actually look at one alternative only. The reason we are all here is we would like the way forward and weâ\200\231re all claiming that we would like the way forward, and we always speak on behalf of the masses. Do the masses actually know that what is being proposed in this Council is that option of a unitary state and a double phase process which is actually going to take more time with the proposal of a five-year phase process; do actually people know that we are not actually dealing with an actual constitution, but with an interim constitution. I would like the Council to consider looking at other options with an open heart and the spirit of negotiations.

Thank you, Mrs Mangope. Mr Matthews.

Mr Chairman, I think it requires a great deal of self control on the part

of a large number in this country to listen to any suggestion that the

real issue we are confronted with in South Africa is not the freedom of the black people, but the freedom of the Afrikaners. Now, I am one of those who believes firmly that there is an Afrikaner people and that Afrikaner people is entitled to self-determination. However, that is a very different thing from the proposals that are being made as to how that self-determination is to be exercised. The Afrikaner people have had over forty years of being in power to settle the question and they rejected partition; they have consistently rejected any idea of a separate Afrikaner state. The Thomlinson Commission tried to propose various states, to propose partition and no less a person than Dr Verwoerd, sternly rejected the idea of partition in this country. Now it is very difficult because it means people have got a right to keep on changing their minds about what they want and this looks as if it is only an issue because of the possible impending democratization of the country. Now, that must be taken into account when people propose the confederal option for instance. They've got to take into account the fact that a great deal of opportunity was given to those who wished to exercise their right freely, and when they did have that opportunity they rejected the idea so we continued all of us to build a single economy, a single destiny: whether some people were oppressed and whether others were oppressors, but we were confronted with an integrated economic system which was forced on some of us and which was imposed by some of us, and I think that really we have to face the fact that the vast majority of people in this country are very impatient actually, with ideas which envisage any kind of break up of the South African State and of course, we think that democracy, a Bill of Rights, a federal system and so on, that is the most concession that one is going to get, I think, from the vast majority of the people of this country. The reason why we have been fighting like mad to get members of the Conservative Party and others to come and put their case was not because we thought that case was overwhelmingly meritorious in any way, it was because if we are setting up a democratic state everyone must be given a full opportunity of putting their case. But that is not to say that there are no arguments, and very powerful ones, against the concept. That I think we need to put on record because we can get into a state where we forget why we are here; the basic reason we are here is to ensure the freedom and emancipation of the black majority, that is the essence of the problem and we must never depart from that principle in any way, directly or indirectly, and give the impression that we are really confronted with a different issue in our deliberations and I feel that we should bear in mind this basic idea. On the question as to who is an Afrikaner, Sir, well it's a matter of self definition there are no nations which don't define themselves. It's self definition. There are no criteria or parameters or which apply to every nation. Different nations have different reasons for coming into existence and therefore I think as far as that is concerned, if people want to define their own nation in a particular way they are at liberty to do so, and they don't have to

Chairperson:

Speaker:

comply with other criteria which other people may be insisting on. I think as far as that is concerned we all know, we all know what an Afrikaner is, we don't need definitions and books to do it, we know who they are. They are the ones who have denied for instance that there is an African nation and say that there are a whole lot of other groups, but there is no African nation, doesn't exist, which of course we contest. We say there is, as well. But that again is self definition which is an important principle in regard to nations, that they define themselves and do not require to be defined by others.

Mr

Thank you, Mr Chairperson. I think that there are areas where I really get confused and I need clarity in this whole argument as forward by the Conservative Party. We have differences as to the type of state we want, over the word single, unitary or federal, but we are all in agreement that we want a democratic sovereign state. Now, this new concept of having their own area, or their state, as far as I am concerned really is against and does not promote the whole issue of democracy. And then too, one gets confronted by a lot of contradictions. They say they are not prescribing, the whole process is going to be voluntary but the type of state they might be having might not, according to them have Afrikaners in the majority. Now, you get those people, they are not likely to be in the majority but they are the people who are likely to have the most space. And then another field where I am a bit concerned is where a description has been made of Afrikaners descent and the fact that their culture and everything will be considered and towards the end of the debate there is a curious invitation to the English-speaking people; now I just wonder now, what are we about. Is it a way of once again, saying a certain category of whites must be together and then the other people can find their way in the rest of South Africa. There are contradictions there. I too, am not clear about what was raised by Mr Landers, as to the question of a package deal. Those are aspects which have to be clarified and even when we talk in terms of fighting in colonial wars, well that was also used as a motivation. It was, it was used. Now one wonders in what context does fighting in colonial wars help in the finding of this Afrikaner state where there is going to be self-determination. But because we have to be charitable, and because we are here to help one another find solutions, I think that doubtful as we are as to this approach, however since they are going to be asked on Tuesday to give their aspect of the boundaries, I also think that in line with what is said in 3.2.1 about circumstances which can help in hegemonic state systems, I believe that one of those deals with territories and I think that it will help if, when we speak in terms of our boundaries, we also go to the islands which are associated with the mainland of South Africa and I think that we have examples of Robin Island there, which can be used, and any other small island you

Speaker:

Chairperson:

Mrs Kgositsile:

can find, where there won't be an interference with people who are already in residence provided those people want to make it a tourist centre will be approached. I think that this whole exercise has to be thought of again and again, because you cannot have a people when it suited South Africa to be ruled by a minority, saying that they were against any form of partitioning and now that history is being corrected and we are re-writing the whole process in South Africa, that you get an enclave or a portion of those people now saying "No, we shall think in terms of our own area, of partitioning as the right concept". That is why I say that my thinking does become clouded here and there because there is just no continuity in the thinking about a future South Africa and as for rights, as for rights, we have all said we want to uphold fundamental human rights; who can be part of an area and not have a full citizenship as we want for a New South Africa. Those are the points which, as far as I am concerned, make me feel that somewhere or other, no matter how much you can put it, this type of a mixture can not really cook well. I thank you.

Mr Chairman, will you just give me one word? I ask your indulgence just for one word? I really must take the strongest, but the strongest exception in regard to the reference of Robin Island I, I must tell you that if I am an honest person, I would like to be an honest person, when I would report this back to my people I cannot imagine what the consequences of such a remark will be. We are here to negotiate.

Mr Jacobs, I think that if we begin to enter further into those comments we are going to get other forms of statements being made which will actually take us in another direction, but you are free later in the debate to address that question. We have two speakers who will speak briefly I hope, and then we will then adjourn for lunch. Mrs Kgositsile.

Thank you, Mr Chairperson. I would like to first of all align myself with a lot of the comments made by the IFP speaker, Mr Joe Matthews, and I just make brief reference to some of the remarks by Mr Jacobs this morning. I listened very carefully to Mr Jacobs, and I heard appeals from him for his people not to be left at the door, and for the door not to be closed to them. I heard him refer to them extending a hand of friendship which I think we all appreciate, and is in fact why we are all here in this negotiating chamber. I heard mainly motivation for the whole concept of self-determination largely, but I also heard what verged on threats as to if you don't give us this then you might actually be faced with a civil war, which I found regrettable especially in view of the fact that so far I do not think that the submissions or the inputs of the Conservative Party have been very helpful in clarifying a whole range of questions that have been made reference to already by speakers this morning which I won't repeat. I would like to just approach this whole debate mainly from the point

Chairperson:

of view of the practicability of the proposal as well as the implications and as to the practicability, we have to wait for the submissions on the question of boundaries and so on, from the Conservative Party and hopefully we can get that soon enough and finalise this matter on Tuesday. But on the question of the implications, I want to look at it from the point of view of what are we trying to achieve, because as Mr Matthews said we are here mainly to ensure that the majority of the people of this country can enjoy life as much as is possible, which has been a right that has been enjoyed only by a minority in this country historically, and I am asking myself a question as to if five hundred people were to come tomorrow and they were to say "we want a piece of land here for people of this type" and I read some reports a few weeks ago about an organisation of coloured people who would like a state of their own. Now it is true we want to be inclusive, we want to hear everybody, we want to cater for, you know, as broad a range of needs and interests as possible within the context of negotiating a better future for this country, but I think we do have priorities. I think we do have priorities and that is a fact, and while we want to hear everybody out, I do not think that we will entertain their views and their demands at all costs, even at the detriment of some of those things which are very basic to why we are actually here. This country has been faced with racism as a major, major problem. One of the things that Mr Jacobs said this morning is that well, they would actually entertain the possibility of having some English-speaking people come into their state. That to me already suggests that in fact, we are having a situation here of perpetuating racism in some corner of South Africa if at some point we agree with them, because the majority of black people don't have English or Afrikaans as their language, as their first language, so we are already faced here with a proposal that we will have some white people somewhere in some corner of the country. According to my interpretation. I might be wrong, maybe Mr Jacobs will clarify us when they make further submissions, but I just thought one should make this points, Mr Chairperson. Thank you.

Thank you, Mrs .. Mrs Budd, I have noted you but we will allow you to speak after lunch. I would like you please to be patient with me otherwise there are many others who would like to reply I am sure, as well. Mr ..

Thank you, Mr Chairman. I am standing up on an issue that I feel needs to be restated as far as the Pan Africanist Congress of Azania is concerned, and this is the principle that we do not accept the Balkanization of our country in any form. Having listened to input from the Conservative Party, Mr Chairman, one, much as we say we are unitarist in approach, have to entertain a divergent viewpoint that we be convinced or otherwise of the viability of the confederal approach, in principle, but Mr Chairman, this has not been the case

Chairperson:

Chairperson:

Mrs Budd:

and I would like to add my voice to those speakers who view the threats immanent in an exposition that is intended to lay down principles, but we are left with no doubt about the whole range of not only principles, but actually even ?? that has been set out in the presentation of the Conservative Party. Further, Mr Chairman, one would like to raise a question whether the confederalists, whether in fact they do come up with a principle, an understanding, of what in their view is the African personality and the principles emanating from that, and I want to take the point raised by Mr Matthews whether the concern is so much with an Afrikaner ?? on that basis try to work out principles of a dispensation on a continent without coming to grips with the concept of an African. Lastly, one element that worries us also, is the perception on the Committee on Demarcation, where the perception must arise that there is the slightest suggestion that its role can possibly be linked to the likelihood of an exercise of demarcation. Lastly, Mr Chairman, it is our view that the submissions of the Conservative Party in particular, have not helped in any way the task of the Technical Committee. Thank you, Mr Chairman.

.. Ladies and Gentlemen, we will now break for lunch and return at a quarter past two. The Planning Committee is requested to meet at two oâ\200\231clock in the Planning Committee Room. Thank you very much.

Ladies and Gentlemen, may I have this opportunity to explain the delay in resuming the meeting. The Planning Committee met over lunch and unfortunately the discussion had to take a bit longer than we anticipated in order to respond to some of the requirements in relation to tomorrowâ\200\231s planned demonstration we have now processed most of the matters at hand, and the Administration will be preparing a written report to be presented to you before the end of this meeting, together with a draft set of guidelines on, guidelines for demonstrations for your consideration as well. So that was the reason for the delay in resuming the meeting. We now get back to the debate on Item 4.1.1 of the Agenda and Mrs Budd is our first speaker.

Thank you, Mr Chairman. The comment made by the Cape Traditional Leaders, that a curious invitation to English-speaking South Africans has been made by the Conservative Party is most offensive. It should be accepted that many Afrikaners were raised in the English medium due to the area that they lived in and were schooled in. Many English-speaking people are no less Afrikaners in the true sense of the word, than those whose home language is Afrikaans. As we are all supposedly here in this Council to negotiate the future of our country and all the people in this country, I would like to request that we respect the right of all individuals and refrain from making insulting remarks. Thank you.

Chairperson:

Dr Reddy:

Chairperson;

Professor Ripinga:

Thank you, Mrs Budd. Dr Reddy.

... direct my address to Dr Jacobs. When Dr Jacobs introduced the debate this morning, he emphasized on more than one occasion the need for a package deal on the part of the CP, and I would like Dr Jacobs when he responds to the other questions that have been raised, to give us clarity, clarification on such matters as the sharing of customs and excise receipts, Mr Chairman, tax revenue, the development of the infrastructure for the country, and the sharing of that infrastructure, and I think somewhere along the line reference was made to the EEC concept. I would like Dr Jacobs to develop this broadly when he responds. Thank you very much.

Thank you, Dr Reddy. Thank you for your brevity. Professor Ripinga.

.. .. I am going to be, I am going to be, to be very brief. Firstly, we in the Inyandza National Movement support the formulation of self-determination in 2.1 as formulated by the Technical Committee, and we therefore do not see any extension of this particular concept beyond what has been proposed. Secondly, we have a problem with the manner in which this particular concept of self-determination has been postulated. At this stage the way it has been presented it is more of an academic treatise based on those references that, in many cases, have been quoted out of context and I think it is very important because it determines the nature of the argument. If you quote something out of context, and you quote reference, whether international, as long as that reference has no credibility do not justify the fact that what you are trying to present has justification or it should be accepted, so that I think we have a problem in that with the argument as presented here on self-determination is not convincing and it is not helpful in the sense that reference to international academics that have been made, many of them conservatives, have no credibility. Secondly, the South African academics referred to in the treatise have been quoted out of context; I am referring in particular to Dr Venter. And thirdly, the issue of self-determination, making provision within the concept of confederation, as far as we are concerned that issue now is not an issue because at the moment as some of the speakers have said, the issue at the moment is to resolve the constitutional crisis in the country and we are busy here working constitutional parameters that are actually going to be used to weigh and measure whatever options are put on the table, and if we look at what has been put on the table by the Conservative Party, it is completely contradictory to the constitutional

that we are trying to set here. So that I think the best thing would be that the Conservative Party be given a chance to again to rev?? those questions that have been raised by the Technical Committee. But in this regard I would say, let them put in their layman's language, they

Second Speaker:

Speaker:

Third Speaker:

Chairperson:

Mr Ramaphosa:

Mr Jacobs:

Chairperson:

Mr Moeti:

must use the layman's language to present their case. Thank you.

Mr Chairman, just a question please. There has been reference made that overseas academics have been quoted out of context and South African academics, and only one example has now been presented, namely Dr Venter. Are there any other examples? ...

Point of order, Mr Chairman.
we want to reply ..
I am referring to ...

One minute Gentlemen. One minute Gentlemen. One minute. Yes,
Mr Ramaphosa.

Mr Chairman, I think it is highly improper for you to keep on allowing Advocate Jacobs to keep on responding to people who are making interventions. I haven't seen you do that for anyone else. The Conservative Party after each intervention want to interject, they want to make a contribution, to respond and what have you, and I don't think, Sir, that this debate should just revolve around what Mr Jacobs is putting forward. This debate needs to be entertained by all of us, and I think he should be stopped from making all those interjections. If he wants to respond, he should wait in line like everyone else to respond.

Mr Chairman,...

Mr Jacobs, I think - Mr Ramaphosa, thank you for your point of order. Mr Jacobs, what I would appreciate from this point onward and this is not necessarily in response to what Mr Ramaphosa has said, but I think that the manner in which sometimes you do intervene does create difficulties for me, because you don't seek my permission, you, you merely speak. So if you could please indicate when you would like to speak and allow me to use some discretion, I have allowed a fair amount of latitude to all of us to speak and you can be rest assured, as can all other delegates, that each of us will have a fair chance. I don't want any response at this stage if you don't mind and will come back to you if you want to speak, and you can indicate. Mr Moeti.

Chairperson, it is very difficult to accept the concept of self-determination as developed and presented by the Conservative Party. One finds it very difficult to differentiate between racial discrimination and the self-determination as presented by them. To me it looks like the perpetuation of racial discrimination that is prevailing in this

Chairperson:

Mrs August:

Chairperson:

Mr Slovo:

country. We have agreed with the Conservative Party on a number of occasions on non-racial discrimination, but they are bringing back this concept of racial discrimination. It is also difficult to accept that this is not a perpetuation of what is prevailing in South Africa. These experiments have been made and have failed. Different black ethnic groups have been divided in the metropolitan areas and also in the rural areas; it has not worked but they want to bring back the same issue which has failed, the same experiments which have failed. I would like to indulge the Conservative Party to desist from this tendency. Let us live together in the same South Africa, and luckily the black majority which have been dominated for centuries, they are not, they are not suggesting that there will be domination. They say letâ\200\231s live together as people without any other one dominating one another. So I think they need to revisit this, and I also accept what Professor Ripinga has said, that let us accept the definition of self-determination as defined by the Technical Committee. Thank you.

Mrs August.

Thank you, Mr Chair. I would like to pose to the CP, ask them "is ek â\200\231'n Afrikaner, want ek praat Afrikaans"? because they say that Afrikaner people in this regard means "afstameling van die Afrikaner Volk en daardie anders taaliges" thatâ\200\231s people with other languages, "patriote wat met die Afrikaner Volk lotsverbonde is en op die basis van wedersydse aanvaarding en gemeenskapslike vryheidsstreweâ\200\235 that means everyone who associates himself with them in their struggle for freedom. Thank you, Mr Chair.

Thank you, Mrs August. Mr Slovo.

Yes, Mr Chairperson, I donâ\200\231t believe that we should hold out any false hopes. I donâ\200\231t believe that this Council will sanction an ethnic state and especially, Mr Chairperson, it cannot sanction an ethnic state in which a segment of it not belonging to a particular ethnic group, whether they are in the majority or in the minority, would be second-class citizens. And on this score there is absolutely no ambiguity about the CP proposal. I congratulate them for being very honest about this, and as Mr Matthews said one indeed has to exercise a great degree of self-control in dealing with the CP arguments. What we are being told, Mr Chairperson, is that after three hundred and fifty years of racist domination in this land, there are going to be Blacks, Jews, Portuguese or what have you, who will not share full democratic rights with, and I canâ\200\231t find any other word for it, but to say with a ? and to us, Mr Chairperson, this is in this modern day and age an utter abomination. At least Mr de Jager introduces some voice of logic and reason in his presentation. His Afrikaner state he says, will be democratic, and if the majority happen to be black, as I think he concedes will inevitably be the case, so be it. But if that is so, I

Chairperson:

Mr Jongilanga:

would like to say to Mr de Jager, what then is left of your Afrikaner state. Mr Chairperson, what is being advanced by the Conservative Party is in any case an enormous danger to the Afrikaner people because we must remember that what is sauce for the goose, is sauce for the gander. If you claim a state in which citizenship is based on ethnically, on ethnic factors and on descent, then you must give that same right to every other ethnic group, and my question to the CP therefore is, since you know as well as we do that the majority of Afrikaners will be dispersed in every part of our country, would you accept for example, a PWYV state in which the cream of the Afrikaner upper strata live and work, to be treated by the majority as second-class citizens, or not even as citizens because they are not ethnically or by descent citizens of a majority living in the PWV region. I think that concept will be unconditionally rejected by the Afrikaner people, and Mr Chairperson, I am constrained to conclude that what is being talked about is not language, is not culture. What is being talked about is that those who are advancing this concept cannot stomach a change which will blacks equal to you; and I don't believe actually that you speak on behalf of even the majority of what you call Afrikaners. I am sitting - if you are talking about descent - I am sitting next to my fellow delegate, Miss Jacobus, whose grandfather was Boet Marais; and Mr Chairperson, if indeed it was language, if it was culture, if it was tradition that is attempted to be protected, the if you look at what we spent doing in the last month you will see that all the principles we have been discussing are peppered with guarantees in relation to these very questions - of the rights of the individual, the rights of culture, the rights of tradition, the rights of language. We have discussed these and we are going to discuss it, and if it is necessary to give further guarantees, let us address it as an issue connected with those factors and not with what I believe to be a double agenda. In my submission, Mr Chairperson, partition, secession or continued independence of the TBVC states is anathema to a future democracy. At best it is impractical, at worst it is the continuation of apartheid and race domination by other means. Thank you.

Thank you. I have three speakers after which, Ladies and Gentlemen, I want to put it to you that we have had a fair cross section of views expressed and sufficient diversity of views for the Technical Committee to take into account and I will seek your guidance at that point in terms of rounding up this debate. Mr Jongilanga.

Thank you, Mr Chairperson. The Cape Traditional Leaders would like to support Mr Joe Matthews, and those people who feel that we cannot subject our country to partition. Partition which was rejected by the Afrikaners of the Free State and the Transvaal when they lost their independence, or when they agreed to lose their independence of their Republics and joined ?? in the Union in 1910. Why must you reverse back now to partition which was rejected by many people; our

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Chairperson:

Mr Salojee:

Chairperson:

Mr Rajbansi:

forefathers. And furthermore, Mr Chairperson, I feel that the Conservative Party has not been successful in its motivation regarding this matter. We have no idea at this point in time, why do they opt to 7? themselves. I don't think they did tell us, and we are compelled now, you know, to make assumptions such as, are they creating a haven for those people who fear integration; or are they creating a state for all the white people who hate the non-whites. In doing so we shall be, you know, acting like the people of Europe in France at Versailles, where instead of solving at the end of the First World War, problems that lead to that war, planted seeds for future conflict. Thanks.

Thank you, Mr Jongilanga. Mr Salojee.

Mr Chairman, in the light of the pronouncements made by the CP, we would like to say certain things. The one thing is that peoples memory about the Apartheid system is not simply going to fade away. If the creation of a boundary for an Afrikaner Volkstaat takes place, and if it is going to mean again social engineering and the removal of vast numbers of people to various parts of the country, it will be massively rejected. If the creation of an Afrikaner state is going to mean secession, and a completely sovereign Afrikaner state, in the light of the Balkanization of our people during the Apartheid period it will be massively rejected by the majority of our people. If, as they say, the Head of State of an Afrikaner state cannot be a non-Afrikaner that notion too by the majority of our people in our country would be rejected with contempt, and this can go on. What we are saying in the light of what they have said, we have an astonishing situation here that around these tables here we are discussing the emergence of a genuine non-racial democracy and at this moment in time what is mind-blowing is what is being suggested that within this non-racial democracy we must recreate a small Apartheid state. What we would like to say, that instead of going into this 20th century trek into isolation and which we believe to historic doom, that they should seriously, like the manner in which they make this impassioned and emotional appeal to us all to accept their friendship and to accept their sincerity, we would also like to say that let us all join together to establish a genuine non-racial democracy where we could all live in peace and harmony; that if we take the route that they are suggesting there is the real possibility of us entering into a period of such intense conflict that the possibility of reconstructing our country on lines that would allow for genuine social and political justice would be ruled out completely.

Thank you, Mr Salojee. Mr Rajbansi.

Mr Chairman, we are examining under the question of collective rights

of self-determination and also a request from the Technical Committee in respect of certain instructions they require relating to whether we

Chairperson:

Mr Mohapi:

Chairperson:

support partition or secession. While it has been mentioned by certain participants that they want to examine the implications and look at the practical side when certain details are to be spelled out by the Conservative Party in respect of the external features of the form of state, I donâ\200\231t believe whether having details about the boundaries or the matters relating to external features will decide whether one supports partitioning or secession or excision of any part of South Africa. And, in as much as we are asking the Technical Committee to examine certain things, my appeal in the light of certain difficulties we have with the proposals of the Conservative Party, will also be directed to the Conservative Party to adopt a flexible approach in respect of the stand they have taken. I donâ\200\231t think that participants here opposed to dealing with self-determination in a little broader context as it has been suggested by the Technical Committee when we are dealing with general constitutional principles, but we have one important difficulty with the proposals of the Conservative Party and that is that our main function here today in this forum, is to deal with the restoration of the rights of peoples of this country and if any suggestion, and if any action that will result in depriving people of rights which they should have in a non-racial country or a non-racial state, then it poses tremendous difficulty in respect of anyone adopting any sympathetic approach towards the proposal of the Conservative Party. Therefore I want to appeal to the Conservative Party that the Afrikaner community is not an island, it is part and parcel of the South African society. They need the South African society and the South African society needs them, and my appeal to them is to emphasize self-determination but in a united, federal South Africa. Thank you.

Thank you, Mr Rajbansi. [did say earlier on that I had three speakers, Mr Rajbansi was the last of them and I have had a few appealing hands raised thereafter - if they are going to be brief I will definitely try and accommodate them. Mr Mohapi was first.

Thank you, Mr Chairman, for allowing me at this late state. Mr Chairman, I really want to direct my request to my good friends here, the CP and the ?? that they should go and think over their stands. I was all along under the impression that the Afrikaner people are regarding themselves as Africans and therefore children of this continent of Africa. I am today disappointed if they claim and they would like to have their own state and their own nation, whereas we are all Africans in this continent. I would like to appeal to them that they should really go and think very hard about this. I am therefore, supporting the others who say we shouldnâ\200\231t allow this partition and secession. Thank you, Mr Chairman.

Thank you, Mr Mohapi, and thank you for being brief. ~Mrs Govender.

Mrs Govender:

Chairperson:

Mr Ramaphosa:

Mr Chairman, I am not going to argue the logistics of whether we have this separate state of things like that because I think that people have done that sufficiently, but just to point out that history has been extensively quoted in this argument as to why one should have this partition, and I want to just point out two important things, or rather one very important fact. All of us are sitting here trying to remedy, and repair and recover from the disastrous consequences of Apartheid. It is clear to all of us that Apartheid has failed. Let us learn from history, let us not go back and repeat the mistakes of history by creating yet another Apartheid state. Rather let us look forward to one non-racial democracy where all South Africans co-exist. Thank you.

Thank you, Mrs Govender. Mr Ramaphosa. There is a few more appealing hands going up.

Yes, Mr Chairman, it's just very brief. If this Council, Sir, were to agree with the Conservative Party that South Africa should be partitioned, and that we should set up a state where Afrikaners would live their own existence, this Council would in fact, be endorsing a Conservative Party plan for the national suicide of Afrikaner people. Afrikaners qualify in the language of the ANC to be called as our people. All of us are South Africans; our people, and Sir, there is just no way that from the ANC's side we would allow a situation where a section of our people would hibernate themselves off to go and commit suicide. That cannot be allowed. Mr Matthews was quite eloquent in his presentation and he said one has to have self-control, and he is correct, because the position that is being put forward by the Conservative Party evokes certain feelings amongst people who have suffered for many, many years under the oppression of racists in this country, and to expect this Council which is representative of a large section of our community, to agree that we should set up a racist state and still have a relationship with that racist state in a confederal way is rather expecting too much from all of us, and it is something that the Conservative Party should agree cannot be allowed to happen. Many speakers have said that they rejected partition in the past because they were basically greedy, they wanted everything. Now that everyone has to share what we all have, the Conservative Party wants to hibernate off those Afrikaners who they believe support their cause because they don't want to share anything with all of us, and I think the Conservative Party must be disabused of this notion that it is possible to create an island with South African where racism can continue to thrive, where black people of non-Afrikaners will not be allowed to be citizens of the state they want. And Mr Chairman, I think there is overwhelming opposition to this notion. I initially felt that maybe what needs to be done is that they should be allowed to put proposals of where this state is going to be, but having listened to speaker after speaker putting forward their opposition to their plan, it becomes clear that even if they were to be given that opportunity it

Chairperson:

Mr Eglin:

might not work, but, Sir, because we want everyone to have a say here, I think they should be given that opportunity and the proposal that was put forward that they should submit their proposals, and hopefully, maybe by tomorrow afternoon, and that this should be debated and finalised by Tuesday, would be possibly the best way out and give the Conservative Party their very last opportunity of convincing this Council because so far they have failed to convince any one of us that their plan is a viable one. Thank you.

Thank you, Mr Ramaphosa. Mr Eglin and then Mr de Jager.

Mr Chairman, I have listened with as much understanding as is possible for me to muster to the representations made by the Conservative Party, and Mr Jacobs will not be surprised that at this stage I remain unconvinced, and there are two reasons for this. Contrary to the Conservative Party, I believe that the greatness of this country lies not in finding ways to live apart, but finding ways to live together and to work together. I think it is going to be the collective effort of all South Africans, whether they call themselves members of various nations within that South Africa, is going to be the road to the future. Secondly, we are to be engaged I believe, in the next few years on the most massive task of reconstruction of our society, and it doesn't only require the victims of the past to reconstruct, it requires those people who have been the beneficiaries of the past not to opt out of the reconstruction process, to make their contribution to get rid of the disparities and the inequities which are the result of racial apartheid and economic deprivation. Mr Chairman, the ?? reason we have not been convinced and that is that nothing that has been said persuades us that you can reach even a modicum of constitutional self-determination in the sense of a separate state except if it is based on race discrimination. And so it will, whatever is said, the definition of citizenship, the denial of opportunity not only to people living in that state but the denial to me as a South African and others who are South African to be part of what was South Africa, is in fact, a prescriptive form of discrimination. So I want to appeal to my colleagues in the Conservative Party - I am not naive, race because of the history of this country will always be a potential factor for future political mobilization. But the issue is, are we going to get rid of that danger by entrenching it, or trying to get rid of discrimination? And what ?? the CP in essence is going to entrench the factor of race which determined the past in the politics of the future. But I would say yes, self-determination, let us be sensitive as the other principles on which we are partially agreed do, there are differences of culture, there are differences of language, there are difference of tradition, let's accommodate that within the body of a South Africa, but for heaven's sake don't let us use this occasion to fragment this country; let us rather instead of avoiding the challenges, instead of running away from the New South Africa, let us look at this New South Africa and say

Chairperson:

Mr de Jager:

Chairperson:

Mr Cronje:

with all its difficulties we in fact are South Africans and we are going to make it work.

Mr de Jager.

Mr Chairman, I am glad to see that you all love my colleagues in the CP to such an extent that you want to cling to them against their will. Mr Chairman, I really can't understand why you want to bind people to you if they don't want to be with you. If there are people who wouldn't like to be with you, or with anybody else, think about the freedom of association and see whether you can accommodate them in one way or the other. Do we really think we will create peace by binding people against their will. The governments of the past forty years couldn't succeed to create peace by acting against other people's will. So let us try and again discuss things, let's see whether we could accommodate each other, let's not draw the final battle lines - we may all regret it. Let's see whether we could accommodate each other, let's speak to each other - speak in bilaterals. I think perhaps then we could come to a better understanding. Sir, I haven't got anything to add to our concept of self-determination as we have put it. We've in fact told you that we accept the fact that we are here, and you are here, and we can't discriminate against you, But on the other hand, Sir, it's in the Afrikaner people that they want a degree of self-determination and allow them to do so as long as they not infringing on the rights of other people staying with them. That's what I plead from you, and that's our case.

Ladies and Gentlemen, we have had a very thorough discussion on this matter, both in respect of the presentation by the Technical Committee of their Report, the respective views of the CP, the Bophutatswana Government and the AVU itself, all of which seemed certainly at a prima facie level to indicate levels of flexibility which might be useful by the time we discuss this matter again on Tuesday. We have now reached a point where we have to finalise this debate on the following understanding, and I put this to you. Firstly that, and I have come to some understanding with Mr Jacobs on this as well, that they will put in their submissions to the Technical Committee as requested, secondly they would also perhaps respond to some of the questions in writing in order to clarify those questions for participants here for the debate on Tuesday, and thirdly, that both Paragraph 2.9 of the Constitutional Principles and a formal response to the Special Report would occur during the debate, or at the end of the debate on Tuesday. If you agree with that, that then is our decision by consensus if I don't hear any opposition on this matter. Mr Cronje.

Mr Chairman, I have no difficulties with what you have proposed

except to say, and I say it with all sincerity, let us endeavour to get away from isms. Let us rather look for solutions. We have stated

Chairperson:

Mr Jacobs:

Chairperson:

Mr Jacobs:

our position. In view of what Iâ\200\231ve said this morning in looking for informed, viable, alternative options I will be grateful if the Technical Committee would have taken that into consideration.

Thatâ\200\231s the flexibility I spoke about, Mr Cronje. Mr Jacobs.

Mr Chairman, I really appreciate for you putting that proposal. I still stand by this proposal that we submit then our written submissions as far as the Technical Committeeâ\200\231s Special Report is concerned, and also of course, there have been several, but several questions, lengthy questions, and we would also then submit this in writing and we have agreed that this could be done by Wednesday/Friday. Mr Chairman, but you would of course...

Can I just correct you there, Mr Jacobs. I think the general appeal has been that in view of the urgency of this matter, and its import particularly to yourselves, that we should try to create conditions to reach some kind of conclusion by Tuesday if itâ\200\231s possible. So I'll ask you to look into that and try to meet that deadline if itâ\200\231s possible.

We will try our best. Mr Chairman, but if you could just allow me, I will not be longer than two minutes or even one minute. Mr Chairman, I have, or my party, or my people, have been massively attacked today. Sometimes, and I would suggest most of the time, without any basis at all let alone a sound basis. Of course there were factual and legal arguments and we would reply to that, but there were also emotional arguments. Mr Chairman, emotion needs a change of heart not a change of argument. I pray for a change of heart. We are not here to quarrel with each other, but to find a solution and therefore, I am not going to quarrel with you, but I must of course, if you would allow me just say something about the Herenvolk in this regard. We do not, and I do not, and we in the Conservative Party do not see ourselves or consider ourselves as a Herenvolk, or belonging to an Herenvolk. What I must also emphasize in this regard, Mr Chairman, is that the person that raised this idea belongs to a party, and I must say this, that killed nearly 20 million people in one country, and we are not in favour of killing people. We want to create solutions for our country. If you charge me today to re-think, I would ask you from my side that you should also re-think. We do not want to discriminate in a sense of citizenship as has been indicated. We are not going to entrench race as has been indicated, but I would reply to that fully, but what we say we have the right to be a people and we have this right in our country, and we would like to be part of a solution not to be part of a problem. Mr Chairman, I thank you very, very much for your indulgence and we would then do our best but without any promise to reply fully by Wednesday next week so that this could be immediately discussed and I donâ\200\231t think we stand in the way of the progress of this honourable Council.

Chairperson:

Mr Jacobs:

Chairperson:

Mr Slovo:

Chairperson:

Mr Slovo:

Chairperson:

Mr Slovo:

Chairperson:

Mr Jacobs, I would just like you to bear with me. I think once again I must remind you, I understand your difficulties in terms of preparing extensive submissions in this regard, but I think that the view of the House as I understood it, was that we would like to revisit this matter on Tuesday. So whatever you can do by Tuesday in order to make the House better informed, and enable more constructive or more extended debate, that will be appreciated.

I already said I would see what we could do, Mr Chairman.
OK, thank you very much. Mr Slovo.

Mr Chairperson, you must allow me to ..

I do

.. deal with this charge of mass murder..

Very briefly

. against our party. I donâ\200\231t want to make a speech about it. I presume he is discussing events in another country. Our party has got a very proud and solid record on human rights in this country. We have neither killed 20 million people nor any implication which that sentence suggested and I just want to reject that and place on record that itâ\200\231s an uncalled for comment.

Thank you, Mr Slovo. I hope that the clarification is accepted by all. I trust you two can have a bilateral over tea or something to sort this matter out. Iâ\200\231ll declare teatime fairly shortly. You could also reserve your right to have the bilateral next week so that you can get supporting documents. The outstanding matter in relation Item 4.1.1 are four principles which were not decided upon at yesterdayâ\200\231s meeting; in particular 2.1, 2.8, 2.11 and 2.12. In consultation with the Technical Committee we have been advised that they would like these matters to be - these principles to be referred back to them and they will take account of the various discussions and any submissions that reach them before Tuesday next week, in assisting and reformulating them if that is necessary to meet the requirements of the various participants. Is that agreed? We then have completed Item 4.1.1 Ladies and Gentlemen. We move on to Item 4.1.2 which in effect now refers only to the Sixth Report of the Technical Committee and I invite them to lead us through it in the efficient manner that theyâ\200\231ve assisted us so far.

Mr Chairman,â\200\231 I find it necessary to introduce this Report by firstly making a few preliminary remarks. Some dissatisfaction has been expressed in the debate this morning, and also in the corridors

regarding the way in which we are interpreting our instructions" especially the one which lead to this Sixth Report. I think it may serve a purpose if we could just very briefly explain how we go about, and went about especially drafting this Sixth Report. We analyze the submissions and input from the debates that we attend as far as possible within our capabilities in a technical, legal, constitutional manner if you like, and then present our findings without political bias as far as that is humanly possible. Now, it is inevitable that all of these findings will not satisfy all political views. It is also not our task, or the way we see our task, to try to satisfy any specific political views. We see our task as facilitating this Council's deliberations by means of the production of these technical reports within the four corners of the instructions given to us by this Council. Now, Mr Chairman, in view of the measure of dissatisfaction that has been expressed it is necessary really to compare the instructions which lead to our Fifth Report, if you would allow me, with those underlying this report. If you have our Fifth Report handy, on the second page of that report we quoted the instructions underlying that specific report. We were instructed to make recommendations on firstly the procedures to be followed in the drafting and adoption of a multi-party negotiating, by the MPNP, of a constitution for the transitional period and secondly, on the procedure to be followed thereafter in the drafting and adoption of a constitution by an elected constitution making body. Those instructions were very specific regarding the nature of our task and we went about it by indicating or analysing, setting out the elements of such a constitution and further on the matters affecting the structure of the constitution for a transitional period with those elements. In our instruction of the 17th June, underlying this Sixth Report and I come now to the report as such. We were required to consider and report on alternative ways of drafting and adopting a new constitution including the bottom-up and top-down approaches and secondly, alternative views regarding the need for SPR constitutions and different options for such constitutions. We had attempted in this report to do exactly that and you will note that throughout, and especially towards the end, we have attempted to respond specifically to the resolution framed in this manner in order to meet the requirements. You will have noted, Mr Chairman, Ladies and Gentlemen, that we have a brief report with a schedule attached to it. The schedule contains an analysis of the different approaches to the bottom-up constitution. It is there merely analyzed and we do not offer comment - can I just also point out that...

SPR's. Secondly, that the existing regional institutions, existing at this stage will be abolished in this process, and thirdly that SPR interests will in such a process, or may in such a process, be sidelined. In our opinion we also stated there, there is every reason to be sensitive and aware of these concerns. In the second paragraph we tried to indicate the essence of the bottom-up and top-down approaches. Now, terminologically we do use the expressions bottom-up and top-down

because that was part of the instruction to us, but we also point out that these expressions have been used colloquially in the discussions of this Council although they aren't technically completely accurate. Nevertheless, the most concise summary of the bottom-up approach you will find in Paragraph 2.3. In the second sentence, I read it to you "Whereas the top-down approach foresees a national constitution-making process to map out and establish such SPR autonomy or autonomies the bottom-up approach foresees various mechanisms and procedures whereby SPR autonomy is in the first instance acknowledged as federalism and established either beforehand or simultaneously with the national constitution-making process." I am not going to refer or discuss the schedule, may I just refer you to Pages 13 and 14 of the schedule where this approach is pledged out in some more detail. In the CODESA process and the process followed in the Multi-Party Negotiating Process here, it seems to us that there has been an attempt to find a compromise between what is now termed here the top-down and bottom-up approaches, and in the previous work we that we have done and in the discussions of this Council, the approach that was followed was that the development of a set of constitutional principles, which is still under debate, could form a bridge these two approaches. Now, in Paragraph 2.4 we point out that the parties favouring the bottom-up approach, in the first place don't in all cases have exactly the same approach there are different approaches which one can group together under the heading of a bottom-up approach, but they do share the common view that SPR autonomy must not entirely be left in the hands of a constitution making body established by a national election, and secondly they generally insist on having entrenched SPR constitutions. Now, our analysis, Mr Chairman, and this is what I referred to at the beginning, of this approach is found in Paragraph 2.5, will most probably not satisfy the political views of all the participating parties, but this is our honest analysis, technical analysis of it. The difficulties that we find in this approach are threefold. In the first place the submissions reflect variations as regards the entire constitution making process. Some parties suggest that SPR constitution should be negotiated and endorsed solely on the SPR level, and others add to that the SPR constitutions should be drawn up in that way but also the SPRs should contribute to the process of national constitution making. Secondly, some parties favouring this approach proceed from an existing state of affairs which we cannot be sustained in the current circumstances and here we refer really to the system of self-governing territories and TBVC states within the context of this process. It would seem to us that state of affairs cannot be sustained, and secondly some of these approaches assume that a state of affairs must exist which does not presently exist. More specifically, in some of these proposals that existing regional institutions can accede to a constitutional status which will enable it lay claim to exclusive powers and functions in the constitution making process. The third difficulty that we have

identified is that the bottom-up approach will take up more time and it will increase the risks of deadlocks occurring in the process of constitution making because it will lead to, inevitably to the suspension of these current negotiating - this current negotiating process. Mr Chairman, because we in this case, also had to compile this report in a relatively short time, our analysis of the second part of our instruction is reflected quite briefly here in Paragraph 3 regarding the question of SPR constitutions as such, but the important point made there in Paragraph 3.1 is that it is difficult to conceive of a process in which SPR constitutions could be adopted and be implemented independently from a national constitution. There are various reasons for this naturally, one would be that in a single state all constitutional instruments for obvious reasons need to be co-ordinated, secondly that at this stage SPRs are not in existence. Furthermore, because naturally also of the non-existence of SPRs at this stage, there aren't constitution making bodies or entities existing at that level. Now, Mr Chairman, in our fourth paragraph which is the, to our minds, I think the most important element in this report as regards our task of facilitating the discussions here; I might introduce that by also reminding you of a previous report. In our Second Report, and this is also mentioned in the schedule, we pointed out that no significant progress can be made by the parties in this negotiating process without a significant resolution of what appears to be mutually exclusive approaches to the constitution making process. In other words, in order to make progress regarding the constitution making process, a resolution to these two different approaches need to be found, and under the heading of An Equilibrium we have in very broad outline and not in very precise terms, tried to indicate to the Council an approach that may lead to a resolution of this very difficult problem of two divergent approaches to the constitution making process. We think that a balance between these two approaches could possibly be achieved. However, as we point out in the introductory paragraph there, it will for the purposes of finding such an equilibrium, such a balance, be necessary to find agreement that there will have to be a constitution for the transitional period. And I say again, that the rest of what we propose here will most probably not satisfy any participating party entirely, but we put it forward because we think it may be worthwhile, worth your while, exploring and it can possibly be developed to contain elements of both the top-down and the bottom-up approaches. May I read these to you verbatim. Paragraph 4.1 "The deliberation and adoption of general constitutional principles pertaining to SPR autonomy which is presently being undertaken by the Negotiating Council" - the bridge that we have referred to previously and it seems that good progress has been made on that specific point.

"4.2 If these constitutional principles are adopted or I think one can say now 'when they are adopted' "the Negotiating Council will have to decide how these principles, or the principles pertaining to SPR

Chairperson:

Speaker:

Chairperson:

autonomy will be incorporated and applied in the constitution for the transitional period". We make that point because the principles are being developed for the purposes of the writing of and eventual a final constitution, but it will also be necessary we say here to consider how those principles will apply to the constitution for the transitional period. In this respect special regard will have to be taken to the existing boundaries and institutions and that would mainly be due to the need for the re-organization of administrations and so on. Furthermore the recommendations of the Commission on the Demarcation Delimitation of Regions will have to be taken into account, and the role and functions of SPR representatives in the national legislature in the transitional period. It may very well be we say, and that we would suggest can be debated with possible.. with much use.. it may very well be that the constitution for the transitional period could create mechanisms for consolidating SPR administrations and the election of SPR representatives both on national and SPR level.

4.3 If SPR government is instituted for the transitional period the constitution making body could call on these SPR governments or representatives to propose their separate SPR constitutions or it may also be one standard constitution in a national constitution, in conformity with those constitutional principles adopted by this body, to be authorised by or incorporated in the final constitution. And lastly, it might be possible for the constitution making body to approve the coming into operation of SPR constitutions even before the adoption of a final constitution."

Now, Mr Chairman, this theme and this specific report being one which seems to us to be slightly controversial, I think it would only be fair to also if you would allow my colleagues if they want to add anything to what I have said.

Thank you, Dr Venter. Would anybody else from the Technical Committee like to add?

There was only one thing I would want to add and that was the question of time which was referred to. One of the factors that we did take into account when we mentioned time, was the time which would be taken in drafting eight or having eight to ten constituent assemblies for eight to ten regions, who have first to agree upon their own constitution by some form of specified majority presumably, and having done that would then have to get together in another body and try to reconcile from ten, or possibly ten different positions, a final constitution with a constitution making body. So you have in effect, ten or eight to ten constituent assemblies sitting, then another constituent assembly before you can get to the constitution and that seemed to us to draw out the process.

Thank you, Chastleson. Anybody else from the Technical Committee?

Professor Ngubane:

If not, Ladies and Gentlemen, we have before us for our attention the Sixth Report as per instructions given to the Technical Committee on 17th June. They have indicated that they have had a very limited time to work on those instructions, but have nonetheless undertaken two things that we have before us. One is an analysis of the proposals made by some of the participants in the form of a schedule to the report, and the other is a report which identifies the concerns of people who advocate the bottom-up approach, so to speak. There is some analysis of this approach in terms of either possibilities or difficulties and the Technical Committee has endeavoured to find some bridging mechanism which might provide a way forward for us depending on the political decisions that this Council takes. The matter is open for discussion, and I trust that the manner in which you address this question would assist us to debate this report in a systematic way, but letâ\200\231s hear first the first few speakers and see what guidance we can get from them. Professor Ngubane.

Thank you, Mr Chairman. I am just going to make some preliminary comments on this Sixth Report. It seems to me that two instructions given, the one on alternative ways of drafting and adopting a new constitution, including the bottom-up and top-down approaches, and the second one alternative views regarding the need for SPR constitution and different options of such constitutions. It seems to me the overriding concern, I may be wrong here, but that is my impression, by the Technical Committee was to deal with the second point because it says the tone, the handling of the motivation of the people who have submitted material for consideration on federalism. Already the Technical Committee is analysing for us the motivation behind it. I find this very, very strange because I donâ\200\231t think I have seen any other submission here being analyzed in terms of its motivation, and I can argue with the three points which are said to be behind the motivation of this federalists, and I can assure you that as far as I know coming from one of those, it certainly does not coincide with what the Technical Committee wants to give to the motivation. I go on to say, Mr Chairman, that if we begin to analyze the motivation behind the constitutional proposals of each party in this Council, we will get nowhere with negotiations because all of us can look at what is behind, what are the hidden agendas are likely to be, and then we will get nowhere. We just have to take each otherâ\200\231s bone fides. What is our task is to look at principles and processes which represent as many desires of constituencies that we represent in this Council. That is why we in Kwa Zulu promote the federal option. The reasons for that lies essentially with the desire to see as many people as possible participating in their own lives, in their destinies. We have seen much to much of those who are capable, those who are in political leadership, those who are able to express themselves better, getting up to leadership positions and not really representing the interests of the people on the ground. Our concerns and our desires

Chairperson:

Mr de Jager:

regarding federation is that we feel it is the only way where those people who happen to know so well, who are not really represented in whatever we are doing here will have an opportunity of having a say. Of saying that I don't understand English, I don't understand the various concepts you are using, but I have these and these desires and I think this and that, and we feel that that is, that federation is better able to deliver that type of a political future for our country. And to indicate further, as I have said, I have no desire to be discussing this in depth, I am just indicating what really strikes me as amazing bias in the presentation. On Page 25, that is the schedule, you will find that after presenting the presentation with the submission of Kwa Zulu

federalist structure, it has been concluded by the Technical Committee

that this presentation rejects the notion of a two phase transition. The emphasis, Mr Chairman, is only to reject the notion. In 9.2 - rejects the establishment of an elected constituent assembly. In 9.3 - opposes the establishment of any transitional arrangements. In 9.4 - resists the holding of any election. 9.5 would be against termination of ?? It is this type of presentation and analysis by the Technical Committee which is worrying, because you begin to say this approach already is making decisions, that the Technical Committee is analysing and making decisions about the aims and motivation of whatever one submits if it is outside their political inclination. I don't think, Mr Chairman, this Council should really encourage this. I want to protest very vehemently against this approach. However, I am not saying that there is nothing positive in this presentation. Indeed, I look at their proposition on the Equilibrium; I would have wished that this had been developed more fully and fleshed out and given more flesh and really analyzed more in depth, much more in depth, and it hardly even covers a page yet is the most important part of this presentation. I thank you, Mr Chairman.

Thank you, Professor. Can I ask for perhaps at this stage before tea, general questions of clarification and perhaps one or two comments which might communicate the sentiments of the speaker, and then after tea we will find a systematic way of dealing with this particular report. I have four speakers at this stage, and will go through all of them very quickly with their co-operation. Mr de Jager, Dr Mdlalose, Dr Ngubane and Mrs Gouws, in that order. Mr de Jager.

... clarity on a few things. I refer to Paragraph 2.1 - "The top-down approach or process seeks to accommodate national and regional interests through the national election of the constitution making body in which regional interests are also represented." Analysing this I come to the conclusion that the next election would only be for a constitutional making body in which regional interests are also represented. So there will no regional government be elected say, on the 27th April, or whatever date it may be. Mickey, I think wants it on the 26th for instance. I am not worried about the date it could be

Chairperson:

Dr Ngubane:

the 31st of March it could be Christmas Day, I am not worried about that, but I want to tell you one thing if regional governments are not elected on the same day at the latest, we won't be able to go with the process. We want regional governments and a national government to be in place on the day of the election. I don't know if there was any misunderstanding about this. There are 26 parties represented here, it may be that after an election you will have parties A, B, C and D in the Government. They may have 70% between them and we may say here that we entrench all these things, they can't be changed without a 66 % majority, and those four parties may collude and they may say "no regional governments, we create a unitary state". Sir, we are not going to take that chance. We want regional constitutions in place together with a national constitution, whether its transitional or not, let's leave that for a moment. But on that day when the elections occur there would be regional governments elected, and a national government otherwise there is no guarantee in anything that we negotiating here.

Thank you, Mr de Jager. Dr Ngubane.

Thank you, Mr Chairman. This is not a point of debate I just want to state this clearly. It is commenting on the question of whether the Technical Committee has carried out the mandate that we gave to them as an instruction. We raise a preliminary point of great importance and related to the item on the Agenda referring to the discussion of general constitutional principles, and of the Sixth Report of the Technical Committee on Constitutional Matters drafted on the instructions of this Council given on Thursday 17, 1993. I want to clarify that I do not intend at this point to clear the Sixth Report per se, but I am making reference to the Sixth Report to raise an issue which is relevant to the present Agenda item. We are very concerned about the contents of the Sixth Report, and our concern with the Sixth Report makes it very difficult for us to proceed with the discussion to finality of other reports of the Technical Committee on Constitutional Matters and to approve the constitutional principles to finality. Without going into great detail and leaving the matter for a full discussion when the Sixth Report will be presented, we want to point out that the Sixth Report fails to comply with the instructions received from the Negotiating Council. The Sixth Report fails to address our concern regarding the preliminary determination of the form of state and the tabling of the federal option at this Multi-Party Negotiation Process. We hold that these processes are fundamental to full negotiations undertaken in good faith. Elections must be underpinned by a consensus constitutional instrument. = The Report also misconstrues and ignores significant positions of the Kwa Zulu Government Process Proposals. We perceive the Report as not being responsive to the request that this Council put to the Technical Committee and the representations that were put to it in submissions

Chairperson:

Dr Mdlalose:

by other participants in this Council. The Report up to now has discussed and fully detailed only one modality(?) for transition which is a set of constitutional principles enshrined in a very limited transitional constitution, with many exclusions in terms of the degree of power dispersion and a totally deterministic majoritarian party competitive system is left to decide the pace as well as, of implementation as well as the degree of protection of individual freedom and human dignity, the manner of participation of the regions, territories and communities in ?? decision making processes, as well as the question of degree of autonomy of the constitution constituting regions of the South African state. All this, Mr Chairman, is being left to a constituent assembly that will, as Mr de Jager pointed out, probably consist of three or four parties out of the 26 who are here today. We simply cannot allow our fate to be so uncertain. We cannot walk into the dark while we have a chance to avoid doing so. We stand by the position that we want to make informed and conscious decisions about the future of South Africa, and that before any agreement is reached on constitutional principles both alternatives must be put on the table. By alternatives, Mr Chairman, I mean the very admission by the Technical Committee in its earlier reports that different parties here can be grouped into about three categories, or two categories regarding the transition. That we accept, but then the Technical Committee has failed to give the other group full access to their thinking, to their structuring of a transition process that embodies the processes that the other group favour. This is our central concern and really we want to be very, very persuasive to this Council that all sides must be treated equally; that this negotiation process must be a fair one otherwise how do you expect us to react to this report. After all the concerns expressed, after even the disruption of negotiations that took place, we still come back to a situation that just doesn't accommodate our concerns. Even the issue of Equilibrium which could have been taken further had not been taken anywhere. I thank you.

Dr Mdlalose.

Mr Chairman, Sir, Inkatha Freedom Party wishes to fully support the position expressed by Kwa Zulu Government with reference to the need to formulate a full and detailed alternative to the process of transformation which the Technical Committee on Constitutional Matters is recommending that we approve. We find it a little strange that when we asked the Technical Committee to provide us with an alternative they provide us with reasons why the alternative may not be submitted. The matter to us is very clear and it boils down to meeting or defying the demands of the people of South Africa. We say this because there has been demonstrations which indicated how very many people are supportive of this. We can tell you that in Durban alone, there were more than 70 000 people, there were

Chairperson:

Mrs Gouws:

demonstrations at Port Shepstone, at Empangeni, in Pietermaritzburg, in Ladysmith, indicating just this. Now we don't know whether it is wise to defy the demands of the people; all we are asking for is to see two separate models. One model is coming up clearly, but we don't get the other model we get reasons why it may not be put forward. We are faced with only one process proposal developed by the Technical Committee which would prolong the process of transition for five years so as to accommodate a power sharing arrangement. In this process proposal there is no guarantee whatsoever that regions or states will be actually established after the first elections, in spite of whatever language could be in the interim constitution calling for the establishment of regions. Even the Sixth Report of the Technical Committee clearly suggests that it is likely that regions would be established only after the final constitution has been adopted by the constituent assembly. If we accept the notion of a two-stage process of transformation based on interim arrangements everything seems to be pointing out at saying get the constituent assembly it will be the panacea of everything. Get it, get it now, then all your cares will be looked after. We don't quite agree with that and we have seen the instruction that came up here on the 17th June, said just that. That present another alternative. We don't see that. We are not willing to discuss to finality the Third, Fourth, Fifth and Sixth Reports of the Technical Committee until we are all offered the possibility of considering an alternative approach. The candidates are not being denied the right to know what the various constitutional options and alternatives are when we are engaged in determining the conditions for our future in peace and prosperity. I believe this was the spirit that was reflected in the Minutes of Thursday, 17th June, 1993, Page 4, Paragraph 5.2.7 - I think that's the spirit that was reflected there. We are willing to work with the Kwa Zulu Government and with other parties which believe in a one stage transition and develop a report on such a proposal. We support the position of the Kwa Zulu Government in calling for a detailed report on an alternative model. Therefore we demand that this Negotiating Council proceeds with other matters, there are many other matters that we may proceed with to discuss, maybe even to finality such as violence, establishment of independent commissions, repeal of discriminatory legislation, etc, etc. There is plenty of work for us to do while the issue of constitutional matters get put on a better focus. We believe it is not on a correct focus just now. With due respect. Thank you very much.

Thank you, Dr. Mrs Gouws is the last speaker before tea, if that's okay with Mr Meyer and Mr Rajbansi. Mr Meyer do you want to address us before tea? Thank you. Mrs Gouws.

Thank you, Mr Chairman. Mr Chairman, it really saddens me that I have to make this general observation at this time, but in looking at the Fourth and Fifth and the Sixth Reports on Constitutional Issues, I am

Chairperson:

Dr Venter:

Chairperson:

so sorry to say that the perception that is becoming more and stronger everyday in this Council, is somehow that the Technical Committee is biased towards a unitary state and at every request thus far to present us with models so that we have a working document in front of us, has somehow always been sidestepped. Sir, I want to say that if what I requested four weeks ago in this Council, could have been met we could at this stage have had something to report back to a forum if we had that forum tomorrow. I asked and I reiterate, I asked please present us with alternative models so that we could have it in our hands in this Council and we could look at the top-down approach, and we could have looked at the bottom-up approach, and we could have had very in-depth and good discussions. Four weeks has passed, we have been bombarded by this Technical Committee with reports as high as this desk I am sitting behind, so I am not suggesting that they - did not work very hard, Sir, I will be the last one to say that, but I beg of them as we have asked them in the Minutes, it is stated of the 17th of the 6th of 93, 5.2.9 we asked them after a reservation from IFP regarding the application of constitutional principles to any form of state was noted, it says here. Furthermore, the IFP reserved its right to return to the discussion to the reports of the Technical Committee, and this is the crucial one, when the report on various alternatives and you allowed us to add constitutional models, was presented to the Negotiating Council. Again that was not done. I want to make it short, Sir, and I would like my tea. But I want to conclude saying this, the Technical Committee did not in any way did what we asked on the 17th when Mr Meyer tried to dissolve another deadlock on constitutional matters with his resolution. I asked specifically what does the words 'need for' why should it be in there and they assured me that was for the Technical Committee to look at the various options, and I want to say this 'need for' is not showed in this Sixth Report.

Ladies and Gentlemen, as far as the speakers are concerned, I would suggest that we stop now but in all fairness in terms of what the lawyers would call the (?)audi alterim partim rule, I would like to invite the Technical Committee if it wants to take this opportunity to give a general response to some of the observations made, and perhaps more specific responses after tea. Dr Venter.

Mr Chairman, I would prefer not to respond fully now to all points, I would just like to make the point that we are not privy to the minutes of these meetings and we take our instructions according to the formulations as they are presented to us in the resolutions concerned with our instructions. Thank you.

Thank you, Dr Venter. We will pursue this matter after tea and hopefully have a constructive discussion. We now break for tea and return at 4.35.

Chairperson:

Dr Venter:

In the interval I had an occasion to speak to a number of people who are concerned that in the process of perhaps expressing very legitimate observations about expectations not being met in the Sixth Report, we might have overstated our criticisms and observations about whether the Technical Committee has performed its task or not, and how it might have performed its task. I actually want to take the liberty on your behalf to apologize to the Technical Committee if in any way any personal offence was taken in respect of what might be political observations that have been made. I think that you will agree with me that they have worked under very excessive pressures imposed on them from our side, and have attempted to always do their best in responding to our requests for reports and clarification within the kind of time frames that we have actually applied. There is no doubt that not all of us are necessarily happy with the results of their effort, but we I think, need to find a way of constructively communicating that in order that we continue to maintain the right kind of relationship between the Technical Committee and the Negotiating Council. I leave that to you to ponder on, Ladies and Gentlemen and trust that we will be able to restore a constructive atmosphere in the Negotiating Council. In the comments that were made before the teabreak, three areas of concern have emerged, I just want to identify them briefly and then afford Dr Venter an opportunity to address us on behalf of the Technical Committee and then return to the list of speakers that we have. Those are, whether in fact the request for an elaborated model has been adequately met both in the report and in the annexure to the report. The second, very assertively voiced by Mr de Jager, is whether there will be regional governments/legislatures in place at the time when the national elections take place, and third, certain concerns about whether the constitutional principles in terms of the two-phase model, would be applicable to the constitution making process as we decide them here, or whether they will be subject to change in any way. [am sure there are other concerns as well, that were inherent in some of the comments, but these are some of the issues that we will have to address in the next period of our discussions in order to work out clearly how we respond to the Sixth Report.

Thank you, Mr Chairman, there are only a few points I would like to respond to, the first one being the comment on how we approached the analysis of the bottom-up approach; the fact that we referred to the motivations of the relevant parties. @~ We did that as part of our analysis because we considered it really to be necessary in order to understand and in order to give you a summarized overview of what the approach really entails. We certainly did not formulate them there and reflect them in a way that condemns them. As a matter of fact, at the end of that section on Page 2 of the Sixth Report, we say in our opinion there is every reason to be sensitive and aware of the concerns

Chairperson:

Speaker:

of these parties. Regarding the manner in which in the schedule we elaborated on that, that is on Page 13 and 14 of the Report, the wording that we used there where the word rejects, and opposes, and so on, those words were used, really reflects in our minds an accurate position, an accurate reflection in other words, of the position taken by these parties and it certainly is not intended to be derogatory or negative. The fact is that according to the submissions that we have received and analyzed those are the positions taken by the relevant parties in their documents. Mr Chairman, regarding the question of whether we have met the expectations regarding the request or the instruction to us to draft a model: we have been at a loss really to understand exactly what is required further than what we have presented until now, regarding the alternative models. You will remember, and if you have the Second Report at hand, that we devoted quite a few pages - itâ\200\231s Paragraph 5, itâ\200\231s four or five pages - to an analysis of the three different approaches and the models that we could distil from the submissions that we had at that stage. This we also did in some of our other reports and itâ\200\231s really not clear to us what more would a one-phased model entail, especially if we are required as we are, to respond to the submissions made to us. We could not distil anything more from those submissions that we have already done. And then, regarding the questions of the position or the status of SPR legislatures and the applicability of the constitutional principles, in the conclusion to our Sixth Report under the heading â\200\231Equilibriumâ\200\231, we suggest that those questions should be debated and should be

considered in an attempt through the debate to develop the position and the opinion of this Council in order to obtain clarity of what the status and position of SPRâ\200\231s will be at the time of the elections and after. We did not presume to be prescriptive, but in order to facilitate this discussion we suggest that there are various possibilities for the resolution of this difficulty. My colleagues may want to add, Mr Chairman.

Mr ...

Yes, I would like to say a few words if [may, Mr Chairman. I would like to deal first with the reference in our Report to the concerns of the parties. The reason for that is that those concerns were expressed in representations to us, and in indeed they were the very concern which Dr Ngubane expressed in his comments shortly before tea, and the reason for expressing or drawing attention to those concerns is that it is only by addressing those concerns and establishing whether or not there is a way around them, that the Negotiating Council will be able to, or could be able to come to a resolution of the issues before it. So, the reference to the concerns are in no sense co-lateral. They are identified and then we seek in the report to see if there is any way consistently with what the other parties might find acceptable to meet those concerns, otherwise, there is an impasse and so we draw

Chairperson:

Mr Meyer:

attentions to the concerns and say can they be met. The other thing I would like to comment on is the understanding of the fact that our reference at the end of the analysis of the various propositions, that an acceptance of those propositions involves a rejection of certain other propositions, which I think very unfortunately was characterised as amazing bias, is not only factually accurate as Dr Venter pointed out, but it's also relevant. It's relevant because what it is saying is that the two processes cannot be reconciled unless you find a bridge. They are incompatible with each other. And so you identify the process and then you say it is inconsistent with the other process which means that's that. And what we have attempted to do at different stages was to see whether there is a bridge or not; and if there is no bridge, Mr Chairman, if there's no bridge then sooner or later this Council is going to have to take a decision on process, and we are trying to point to the fact that that is a crucial decision, do you want a deadlock over it, or do you want to find a bridge? And we have offered a bridge in regard to the one stage, and we proposed a possible bridge in regard to constitution or regional constitutions in this report. So what we are doing is in no sense motivated by bias, indeed we are a very large group on our committee coming from very disparate backgrounds and the fact that we all come together on something like this should be sufficient indication to everybody concerned that we try to approach it, not from any preconceived positions. But what we have been offering is ideas for exploration, if they are worth anything they should be explored, they may not be excepted.

Thank you, Gentlemen. Thank you for your clarity on some of the issues that were raised in the earlier presentations. We have a list of about six speakers, I'll go through that list now and perhaps at the end of that list we could review how we want to manage this particular discussion. I would encourage us to focus on the question how do we deal on the one hand with the recommendations in the Sixth Report, and on the other hand with some of the concerns raised about the Sixth Report. Mr Meyer.

Mr Chairman, I would also first of all like to reflect on some of the remarks made by previous speakers in regard to this Sixth Report. First of all, Mr Chairman, I believe it is unfair to say, and I am trying to be as objective as possible in terms of an own analysis of all the reports that's before us, and I believe it is unfair to make a deduction that the Technical Committee is biased towards a unitary state system or model. I think, really, that is an incorrect and not an evaluated opinion of what we have before us from the Technical Committee, if I may so with respect to Mrs Gouws. If, Mr Chairman, we look at the Second Report, and I would like to point out without going to the detail, to Pages 8 - 12 of the Second Report, Paragraph 5, it deals there with the submissions that have been received at that stage by the Technical Committee. Then further on, Mr Chairman, if we look at

this report before us now, especially the annexure to us, Page 19 - handwritten, and further on, of the document that is before us now, I would submit that we actually have there, Mr Chairman, an analysis of the so-called bottom-up approach that is being proposed by various participants through their submissions, and I think it would be fair to say, Mr Chairman, that this is a clear analysis of the approach that some parties would like to take in connection with a constitutional transition to a federal state, as has been proposed by some parties; and this outlines at the same time, Mr Chairman, the bottom-up approach in quite detail from Page 22 onwards as far as annexure is concerned. So, Mr Chairman, I don't think we have here anything of the nature of a one sided approach by the Technical Committee, I think they have analyzed what they have received and as Mr Chastleson has just said, they have tried to provide us with a bridge-building proposal that could actually build a bridge between the bottom-up and the top-down approach. And I would suggest, Mr Chairman, if we read carefully the Sixth Report as from Page 14 - handwritten - Page 14 onwards we have a clear indication of what the proposal from the Technical Committee is in that regard. After analysing the top-down and the bottom-up approach, they say that "The two-stage process as it has developed through CODESA and now on the MPNP seeks to find a compromise between the two approaches, that would be the bottom-up and the top-down. We have pointed to this in previous reports and have suggested that a detailed set of constitutional principles could be a bridge between the two extremes, which if pursued and strengthened could provide a solution to the conflict concerning process. It is in this context and at the specific instance of the Negotiating Council that we have explored the possibilities of bridge-building." And then in the next sentence "Both approaches relate to the processes of constitution making and in particular the ways of which SPR autonomy must be established." That in itself, the mere reference to SPR autonomy in this regard, Mr Chairman, I would say is certainly an indication not of a simplistic unitary state model, at least. Mr Chairman, without going into the further detail of the Sixth Report I would suggest that we can find a basis of developing further discussion to satisfy both views in terms of the bottom-up and the top-down, through concentrating on the two-phased approach to see whether that can actually deliver the result that might be required by all of us around this table. I would like to add one point, Mr Chairman, and ask whether the Technical Committee can especially look into that question. In Paragraph 4.2 of this report, Page 18, they say that "If these constitutional principles are adopted the Negotiating Council will have to decide how the principles pertaining to SPR autonomy will be incorporated and applied in the constitution for the transitional period. In this respect special regard will have to be given to existing boundaries and institutions, the recommendations of the Commission, and the role and functions of SPR representatives in the national legislature in the transitional period." I would like to add one point to

Chairperson:

Mr Rajbansi:

that, Mr Chairman, which is not being discussed here in this report which I believe can play a very important additional role in terms of addressing what Mr de Jager has pointed out earlier, and also to a certain extent Dr Ngubane, and that is the question whether we should not look at the election also of regional legislatures at the same time as the election of a national legislature, because through the election of regional legislatures those that are being elected in that capacity can actually take the whole question of implementation thereafter further on the basis of the principles that we are now discussing and hopefully going to adopt, also in reference to constitutional principles related to regionalism and federalism. If we can ask the Technical Committee to address this question, and the role and the possibility of electing regional legislatures, I believe we can have a further confirmation of the way in which this process, the so-called two-phased approach can actually deliver the result that all of us want in the end. Thank you.

Mr Rajbansi.

Mr Chairman, I am very, very thankful to the points raised by Minister Meyer, I believe that he has provided the necessary materials for further bridge-building. @ Those who favour the bottom-up approach, Mr Chairman, in addition to placing an emphasis on the form of state, are of the view that there is no need for a transitional constitution, that the final constitution should be determined now, and I believe that the remarks of Dr Venter, that at the end of the Sixth Report that they have suggested possibilities in respect of the resolution of our problems. Now, Mr Chairman, there is one fundamental issue in addition to this fundamental difference, and that is the question centering around the states or the regions. There is an important school of thought, that what has to go into the final constitution should be considered and decided now. In Paragraph 4.2 of the Report, the Technical Committee correctly states that "if these constitutional principles are adopted, the Negotiating Council will have to decide how the principles pertaining to the SPR autonomy will be incorporated for the transitional period." But they have also pointed out a way to accommodate the concerns of those who approach, who follow, who support the bottom-up approach in Paragraph 4.3 and I wonâ\200\231t read the whole paragraph but just in the last sentence the Technical Committee even suggests that these constitutional principles which are adopted by the Multi-Party Negotiation Process be authorised or be incorporated in the final constitution. But the suggestion of the Technical Committee that whether these constitutional principles be incorporated in the final constitution be decided by the constitution making body, but the fundamental difference is that there are participants here who believe that these constitutional principles and the powers of the regions should be decided by the Multi-Party Negotiation Process. And therefore, Mr Chairman, earlier this morning we dealt with one of the issues which

Chairperson:

Mr Cronje:

was raised by the Conservative Party, and notwithstanding the fact that we all agreed that the Conservative Party submits further proposals to the Technical Committee, we gave our preliminary expression to a constitutional issue and I believe, Mr Chairman, that we must not postpone expressing our views on the form of state because the Technical Committee quite correctly stated that the supporters of the bottom-up approach also are of the view that the regional states, or the constitution leading towards federalism must also be decided now. And I believe that we must now be strong enough to express views on federalism or a unitary state or a unitary state with very, very strong federal principles. And I believe, Mr Chairman, that this Sixth Report is a very, very important document. It lays the foundation on which we can decide the future constitution of this country and my proposal, Mr Chairman, is that let us not chase after the shadows and miss the substance.

Mr Cronje

Mr Chairman, I think some of the difficulties faced by some of us is perhaps that we are too simplistic in our approach in the sense that not seeking for a constitutional model of the two options, but if one had a situation where one had the steps and processes in terms of the top-down and the bottom-up and the implications of those to compare, might make it a little bit simpler. I think what also makes the debate a little bit more complicated and difficult, and it is no fault of anyone,

least of all that of the Technical Committee, is the fact that in explaining some of the aspects of the Report, Mr Meyer referred to the Second Report. We are discussing the Sixth Report without even having looked at the Fourth and the Fifth Report. The way in which the Report is scheduled instead of in place of dealing with it paragraph by paragraph, its very difficult to make a general comment. So that perhaps also leads to a little bit of the difficulty. But having done so, Chairman, if one looks at the Report itself there could be a perception that whilst there is reference to the top-down process, there is very little criticism contained in it. When reference is made to the bottom-up process a number of difficulties with that process is enunciated not all, in my opinion, which are valid for reasons which one could argue and which I do not wish to do so now. I think there is one aspect which this meeting and which the Technical Committee must appreciate; for some of us in looking at the future one has to consider, if you are pragmatic, a number of options. We are very clear what we are, I am speaking as Bophutatswana, and what we would like, but we are looking at an option, an alternative option and that alternative option is the possibility of a system where as much autonomy will be in the state as possible. Now if, for instance, we look at the comment made in 4.4 - and I know it's only a comment - on Page 18, "It might be possible for the constitution making body to approve the coming into operation of SPR constitutions before the adoption of a final

constitution.â\200\235 I draw the conclusion that means after the transitional government, which theoretically could mean 5 years from now; which gives me what option? Which gives me what option? I am just literally interpreting what is written here, I am just putting up an argument, why it is important to be clear. Dr de Villiers disagrees, maybe I donâ\200\231t understand English. If we look at Page 15, at the top, it says in the second sentence "The top-down process seeks to accommodate national and regional interests through the national election of the constitution making body in which regional interests are also represented." Now I'm not sure whether in that statement accommodation is made for election of national representatives and regional representatives because if it is an election only for people in a national parliament we have to consider that as proposals stand at this point in time, Mr Chairman, it will probably be on a party list system. It therefore could be theoretically possible that parties in nominating their candidates could have a situation where if there was a house of 400 representatives and they win 100 seats, not one of those 100 could be from that region. I want to put a second submission: in the United States you have a situation where the country votes for a Republican President on a national basis, but votes for a Democratic Governor on a local basis. It is not necessarily so that the people I vote for, or the group I vote for at a regional level will be the same people that I vote for at a national level. Therefore, I think, there is a difficulty contained. If we look at Paragraph 2.5 on Page 16, a number of difficulties with the bottom-up are identified, but the same difficulties with the top-down process has not been identified. I am just referring to what is here. If we look at the second paragraph it says "generally some of the parties favouring a bottom-up approach proceed from an existing state of affairs which cannot be sustained or they assume a state of affairs which constitutionally does not presently exist" and then refers to, for instance, TBVC states. Our assumption is, Mr Chairman, that what we are looking at is a future dispensation and if there is a future dispensation based on previous assumptions of the sub-committee that these states will not exist, one would then assume that whether it is a self-governing state or a TBVC state it will find itself as part of a region, or a province, or a state, and therefore the argument is made on the basis of the principle so letâ\200\231s forget what the present constitutional dispensation is. What we are really dealing with are the principles, is the philosophy. Therefore, if Bophutatswana comes forward, for instance, and makes an argument for a particular region, and how autonomous it should be and what its powers and functions and duties will be, it is first of all the statement of a principle, of a philosophy, of a structure, and secondly it assumes that we are talking not of today and yesterday but we are talking about the future, so I donâ\200\231t see how that difficulty expressed in that second paragraph truly has any real relevance

Speaker Relevance?

Mr Cronje:

Chairperson:

Mr Webb:

Relevance. If we look at the top of Page 17 one finds an argument that "the bottom-up approach could take up more time and increase the risk of deadlock in that the current Negotiating Process would have to be suspended until such time as SPR constitutions have been drafted." That might well be, but on the other hand question is, is it not possible for the processes to take place concurrently. For discussion and liaison and negotiation at ground level to take place whilst this process is ongoing. What could be more legitimate, what could be more democratic, Mr Chairman, than having the people on the ground represented in their various political and organisational groupings, to have a say about their region, than to have somebody in Cape Town, perhaps without any regional representation, looking from a central point of view deciding on what is good for the region in the Western Transvaal or in the Eastern Cape. So from the point of democracy and legitimacy I would state to you that I think it is a far more preferable way of dealing with it. If we turn to Page 18 and we go to 4.4, | would just ask, now obviously there is not a point of view or a statement made, but just what the implication of 4.4 is, in the sense that apparently I am misinterpreting it. The submissions made, Mr Chairman, and the debate, I understand to serve as a guideline for the Technical Committee, and maybe once again [am misinterpreting, and that is quite possible, the relationship because if we make a submission it is a point of view, and if we participate in the debate it is for the Technical Committee to take note of. But they are the technical experts. We are not constitutional experts and therefore as far as the technical aspects of the construction of model systems constitutions, we really look to them and say well this is a sort of idea could you help us please. Please help us. I can also make a summary -and I am not critical please - of what the various parties have said, but I would appreciate it very much if in terms of a constitutional model or structure these things could be set out to serve as a guideline to compare apples with apples. The last observation I would like to make, that I understand that in the view of some there is to be a two-phased process. I would just ask, Mr Chairman, that irrespective of oneâ\200\231s view whether it is a one-phase or a two-phase process, it would be very difficult to establish SPRâ\200\231s on a transitional basis. To elect people, to structure it, to get the infrastructure together with a possibility, I am not saying it will happen, with a possibility that it may all be changed again in five years time so I would just ask that when we deal with the boundaries, the functions, the powers and duties, that irrespective whether it is a transitional constitution or a final constitution, as far as the SPRâ\200\231s are concerned it will be, I think the height of stupidity, to start a process which may again be disrupted and changed in three, four or five years time hence.

Mr Webb

Thank you, Mr Chairman. Mr Cronje has mentioned a number of

points that I had intended to mention, so I will deliberately not page my way through with observations of the Report if you do not mind, but my difficulty with the Report, and indeed with the last few Reports is, and I say this with the utmost respect, that the compromises which are proposed therein lack the objectivity which we would hope exists. And I would like to illustrate this in the most simplistic way. You will recall that the two-phase approach had been laid before us. I do not wish to revisit the manner in which that came about or how it was achieved because I was part of the Council at the time that that instruction was given. We then requested that a single-phase structure be developed. At the end of the day, and this is where I get to the objectivity, at the end of the day we are told that the compromise between a single-phase and a two-phase approach, and the compromise is a two-phase approach so that there isnâ\200\231t a compromise in this situation. I make that point, Sir. To enable us to achieve the compromise, and I say that we should be achieving the compromise, we would have to be able to see the proposals, the options, in the most simplistic ways, and if there were three options I would like the three options to be placed on the table so that we would have the benefit of those three options. And if I may use Mr Maharajahâ\200\231s oft stated pigeon hole concept, I would like to suggest that we should have three pigeon holes. Let us put the single-phase, uh two-phase approach in the pigeon hole, let us get another pigeon hole now and we can put the single phase in that, and then let us, this Council, compromise to find the third pigeon hole and make it full. So far I believe we havenâ\200\231t got clarity and at the moment only one of the pigeon holes is full. I would like to see the second pigeon hole filled so that we, us as a team, can fill the third pigeon hole. If I may pursue my thoughts on compromise just a step further, Sir, the section dealing with Equilibrium is, in fact, frightening. As I read and understand the Reports the regions may not be installed for five years until a final constitution, and that follows on what Mr Cronje said. In our domestic situation, in whatever way you may view it, this would reduce Ciskei into a regional void which may not be filled for a period of five years. Sir, what of the civil servants, the administrations and other functions do in that period of the void. May I suggest, therefore, Sir, that the same considerations about the pigeon holes, and this time I donâ\200\231t want a first, second and third one, I would like an A, B and C pigeon hole, so that we can distinguish the process from the constitutional results. And I ask, Sir, whether it is possible for, at this point in time having heard the Technical Committee and I respect them for this, indicating that they have done their best and they have given us the benefit of their expertise and let me say, unanimous decisions, because there are no dissenting statements in these Reports as I have seen. Unanimous decisions of the Technical Committee says that they have presented exactly what they could. Now, how do we go from here, Sir, to fill pigeon hole number 2 and pigeon hole B, so that we can arrive at the compromise 3 and compromise C. Thank you, Sir.

Chairperson:

Dr de Villiers:

Dr de Villiers

Mr Chairman, I am not going to respond directly to Mr Webb or Mr Cronje, but I would like to cover the same ground that we have covered in debates in this Council on numerous occasions. We say to one another that we have started from two conflicting points of view. That is the way we started right back at CODESA. We arrived, various groups who said that the transition to a New South Africa must , either be through a constituent assembly, there were those delegates and parties who held the view that a new legitimate constitution can only come about through a constituent assembly. That was a one-phase approach. Another group of parties and delegations held the view that we must negotiate the new constitution here in this forum through the Multi-Party Negotiating Process. It was obvious, we were already in two pigeon holes Mr Webb, we were already in deadlock, it was not possible to find a solution either by accepting the one point of view or accepting the other point of view. There was only one way of trying to solve the problem and that was to develop a third way, a way out of the deadlock and the way out appeared to be to have not a one-phase, either negotiating the constitution here, or either just having the constituent assembly writing it. Neither of the one-phases could be produced as a solution to accommodate all the views, and the way out was then a two-phased approach to accommodate those who wanted something negotiated that would give them guarantees and put their minds at ease on very fundamental issues, but also allow those who want a constituent assembly to finally ratify and endorse the new constitution, to meet one another. That was the exercise that was referred to as bridge-building, and as far as I see it what we have done over the last weeks, or what we have set ourselves to do, is to examine whether there is any possibility of building this bridge by examining if I can say, not a bridge but this new house, by examining every building brick, and we were not, we said right at the beginning, no party even if we accept certain principles even if it was approved by all the parties here was bound to accept the total package until we have completed the whole exercise. That is why we started with the constitutional principles, to try and see whether these principles are acceptable to all. It was part of the third option - the two-phased approach, the bridge building. Now, I have listened carefully, Mr Chairman, to parties arguing another approach, and my question is just, is the reference to another approach taking us back to a one-phase. I would like the Technical Committee to tell me were there any submissions spelling out another approach? I have not encountered it, I might have missed it. If the book is full of it, I know of those who want a negotiated constitution, I know of those who want a constituent assembly, I know, I see the efforts to try and build a bridge but if there is another option or another approach in constitution making outside what I have referred to I would like to see such a submission, and I am sure that any party or delegation would be free

to make such a submission. And, Mr Chairman, it is in that sense that I can argue as strongly as any party here who support a point of view that there must be strong regional governments with powers and functions entrenched in the constitution. I can argue that point. But I must accept that to arrive at a constitution that will also accommodate the views we hold, we need to stretch out and build a bridge also to accommodate those who hold a different view. In other words, those who still hold that there must be some form of constitution making by an elected body. I do not, therefore, accept the argument that the two-phased approach is only supported by those who stand for a unitary state. I reject that argument because we strongly stand for regional government and we believe its fully attainable through a two-phase approach. Therefore, Mr Chairman, I know the Technical Committee can explain it to all of us, but I have looked at 4.3 and 4.4. as far as regional governments are concerned and I see that again as strengthening the position of those delegations who want strong regional government, because the proposal or the suggestion explored here in 4.3 tells us that there is a possibility, theoretically, of already instituting regional governments in the transitions. That means that when an election takes place for a new parliament cum constituent making body, at the same time 4.3 tells me the way I read it there can already be regional governments because it says "If SPR government is instituted for the transitional period" that is immediately after the first election "the constitution making body" read parliament, could call on these SPR governments or representatives because they will also be represented as I see it as a strong possibility, in the parliament in the constitution making body to propose their separate SPR constitutions opening up for whatever you call a bottom-up approach, opening it up for people in a region to make inputs, but certainly a region cannot be allowed, or not be permitted to write a constitution entirely on its own, incompatible with the national constitution. And therefore, immediately the report goes on to say .. because it must, of course it must be compatible with the national constitution. I refer you to a sentence that I fully endorse on Page 5 - SPR Constitutions - "It is difficult" - 3.1. - "It is difficult to conceive of a process in which SPR constitutions could be adopted and implemented independently from a national constitution." I mean that speaks for itself. Mr Chairman, I have a stake in what is going to happen in the Northern Transvaal although I am from the Cape. I have a stake in what is going to happen in Natal because I am a South African and this country belongs to all of us. So each and every constitution, although the people in that region will, I believe will, have a strong say in how they would like to colour-in that constitution, must be subjected to the national constitution. And this is what this paragraph provides for. For regions to make inputs to develop constitutions within the national framework and then 4.4 goes on to say even "it might be possible for the constitution making body" - read parliament - "to approve the coming into operation of SPR constitutions before the adoption of a

Chairperson:

Mr Ramaphosa:

final constitution.â\200\235" In other words, if within a region, after the elections those elected can quickly finalise their regional constitution and itâ\200\231s not in conflict with the national constitution. It can be ratified by parliament. So I see a lot of scope for those who argue bottom-up approaches in what the Technical Committee has provided us with. Again, an effort to build a bridge but in such a way to fully accommodate those of us, and I include myself there and my party, who strongly feel for regional governments with powers entrenched in the constitution, effective powers, and I believe this kind of approach, this compromise, this bridge-building is the only way forward for us otherwise we will end again in deadlock, and nothing will come of the sincere efforts to negotiate a New South Africa.

Mr Ramaphosa

Mr Chairman, thank you. I want to start off by saying that it is regrettable that the integrity of the Technical Committee, which has now produced eight reports - six full reports, and I think two supplementary reports - which reports have been received to a large extent by this Council, is now being attacked, and they are now being accused of being biased. Sir, I think itâ\200\231s important that at some stage we should reconfirm our confidence in the Technical Committee because they are men and women of high integrity and knowledge, who have invested a lot of time in trying to assist us to reach a settlement on constitutional matters ... at even destabilising them as experts because they are now going to become concerned if they are given a task about the reception of their reports, or the product of their work. I feel strongly about this because it is the very first time, Sir, that a Technical Committee has been treated in this manner, and I would say with some contempt. If I was one of the experts I would be feeling very aggrieved at the way the Technical Committee was attacked. People tended not to deal with the issues but they dealt with the Committee. And I think as Members of this Council it is something that we ought to steer away from. We really need to be sensitive, we are dealing with human beings, with people who donâ\200\231t really have to be here. We have to be here. We asked them to do this work for us. At some stage, Sir, if it pleases you it might be good if we can address that. Sir, a number of people have spoken and have said that the Technical Committee has not given alternatives, full and detailed alternatives, on the bottoms-up approach. They have not given models and there are no proposals about regional government. I picked this up from an IFP input and thought, Sir, that maybe one could focus a little bit on it because I think it is unfair to say that there has been no proposal here that can resolve the problems that have been put forward. And people have tended to stress models and I would have thought, Sir, we need to also pick the right wording when we speak about these matters, because a model could be maybe a model constitution and I donâ\200\231t think we expected the Technical Committee to

develop a constitution. They have no power to develop a constitution unless we tell them what type of constitution we want. What we are really talking about is a scenario because we are dealing with the scenario of drafting a constitution. How should the constitution be drafted? The one scenario is that we should have a bottom-up approach and the other one is that you should have a top-down approach. One could also refer to that as an option but not really a model, because that could well be a constitution. Sir, in their Sixth Report they identify matters which they identified right at the beginning. When they issued the Second Report they immediately realised that there was a tension in terms of the scenario that could be opted for, and they said one of the best ways of addressing this tension could well be bridge-building or a compromise between the two positions. They say in their report, and I think it is important that focus should be placed on this, in the Sixth Report they say the factors that have lead those who want a bottoms-up approach are that they believe that a constitution making body if elected will not tolerate the establishment of autonomous regions. They also say that there is a fear that regional interest could be put aside in favour of national interests and they are also worried about how existing regional institutions are going to be dealt with where they basically have some autonomy at the present moment. I think, Sir, resolution of this problem can be found, and very easily found, in looking at the various reports that have come from the Technical Committee. In their Second Report, having identified the tension, they immediately made proposals that we should start drafting constitutional principles on regional government and begin the process of clarifying how regions will be governed. And all the parties that have raised the question of bottoms-up approach are parties when you even look at their inputs, or their submissions, are parties that are very strong on a federal form of government and strong regional government. They are parties who say you must have strong regions and once you have strong regions you can then probably consider how strong your national government can be. And I think it is, Sir, a matter of trying to resolve the two scenarios that we have. The one scenario is that you should have a two-phased approach, the other scenario is that you should have one phase where you draft the constitution and ideally at regional level, if not at regional level draft it in such a way that your regional government is going to be properly empowered. And on this issue, Sir, it is wrong to say that the Technical Committee has not dealt with the various alternatives. In their reports they actually flesh out both scenarios. In their Second Report, I think it was Mr Meyer, he referred to it, they actually set out how the one-phase would work. How the constitution could be drafted in the one-phase approach and how the constitution could be drafted in the second-phase approach. So it is not correct that that scenario has not been fleshed out to some extent. But, Sir, in the Sixth Report I think they even go further. They even go further to actually set out what the parties are proposing.

Now, as I understand it people are saying you should give us every detail of how the bottoms-up approach would work. I think the Committee has done as best as they could because no details, and I have looked at some of the proposals from the various parties, no details were proposed. Now they want the Technical Committee to work out the full details on matters that have not been proposed to them. But to the extent that they have been able to do so, they have actually set out what the IFP proposes in terms of the bottoms-up approach, what the Bop Government proposes, what the Ciskei Government proposes, what everyone proposes is in the Sixth Report. And I think a resolution of this difference, and it isn't a major one, Sir, is in actually looking a little bit closer at how what they are most concerned about would function, and that is regional government. The Report No. 4 from the Technical Committee goes some way in setting out how regional government could work and in that report, Sir, they don't only set out the powers that regional government would have, they actually build the possible regional government around the regional constitutional principles that we have been developing. And I would say, Sir, the answer could possibly, and I think the Technical Committee proposes this as well, the answer would probably lie around having a closer look at how regional government should function. I don't think putting forward all these bottoms-up and tops-down approaches in greater detail than the Technical Committee has already done would resolve the problem. What is essentially at stake here, and this comes from the parties who are strong on regional government, is how regional government is going to function, and what powers that regional government is going to have. And I think rather than to keep on saying we must come up with various models and so forth, which are already in the reports, we should actually grasp the nettle and now look more closely at how regional government will function. But whilst we are doing so, Sir, we should also realise that those who favour a two-phased approach have already gone a long way in actually accommodating the fears and the concerns of those who want strong regional government. The principles which the ANC has already accepted on regional government already go a long way of what we would ordinarily have wanted to accept, and all this was done with a view of ensuring that the fears of those who want strong regional government are addressed. And I think it is important for the people who want strong regional government to realise that those who want a two-phased approach are similarly strong on their own insistence that the constitution in the end must be drafted by an elected body. And therein the Technical Committee had already provided a bridge or an answer for us. And I would say, Sir, the "Equilibrium" that the Technical Committee is proposing would seem to me to be the best way of dealing with this matter, and I would also propose, Sir, that it might well be after your six speakers have spoken, the caucus around issues that need to be resolved should revolve around how best we build this bridge because the time has now come

Chairperson:

Mr Slovo:

Speaker:

Mr Slovo:

for us to confront this matter head-on. We tried earlier, but we thought we should go a further mile to accommodate those who wanted other matters to be addressed. This is now the time for us to grasp the nettle and deal with the fears that the regional government proponents, and we are all proponents of regional government, are actually putting forward.

Thank you, Mr Ramaphosa. I have a number of additional speakers, and I also have an indication from the Technical Committee that they - okay they are withdrawing, or waiving their right on that regard, and it's getting on in time as well and we have matters such as tomorrow's demonstration to discuss as well, so I would like the co-operation of the other four speakers whom I will allow to speak in that I have asked them to be as brief as possible and as pointed as possible about proposals in relation to how we go forward, some of which have already emerged. Mr Slovo is the first of them.

I wish, Mr Chairperson, that we could find less suggestive words than top-down and as Ramaphosa says "bottoms-up"..

He's become a traditional leader, I think.

I can't resist, just to lighten the burden of our discussion, telling you the story very briefly, Mr Chairperson, of the last time I heard the phrase "bottom-up" in a rather distorted form. It was the newly arrived Chinese Ambassador to London, who at the end of a banquet stood up and said "Up with your bottoms." But to get back to civilization, Mr Chairperson, if there was one thing that has been reinforced in mind by the various Technical Committee Reports it is that federalism, and unitarism in themselves are almost meaningless cliches. They have become dirty words depending on how we were brought up politically, or more precisely what language we have become used to in our political discourses and our political culture. Let me shock this meeting by saying that I am not terrified by the word "federal", and that no one here should be terrified by the word "unitary". It's clear that in essence, even though none of us want to admit it because we are frightened of words, that in essence there is an emerging consensus that our future state will incorporate both federal and unitary elements. So what are the essential differences between us? The point's already been made, the important and fundamental difference is who in the end writes and adopts the constitution. We, by the way, are opposed to a version of the top-down approach which is becoming dominant amongst certain representatives here, which is that we at the top here write the constitution and impose it on the people. However, we say the body that should write the constitution is an elected assembly. But the answer comes, and I understand the difficulty, the answer comes if an elected assembly writes and adopts the constitution, what guarantee

Mr Eglin:

have we got that they won't ride roughshod over regions. We understand and accept that problem. And the answer is, Mr Chairperson, firstly, we have regional principles as constitutional principles which we will find ways and mechanisms of ensuring that the constitution making body is bound. But secondly, Mr Chairperson, there will obviously have to be a powerful regional element in the constitution making body, either as part of it or perhaps as a senate. And its common cause from CODESA onwards that this regional element in the constitution making process will have a special say in relation to regional powers in the constitution. The issue of how this regional element will be elected is still undetermined, and it is open for discussion. It is surely not an insuperable negotiating obstacle because there are a number of alternatives that have already been floated. We know, if we've read the CODESA documents, there was the CODESA road of a constitution making body of 400 with 200 elected on regional lists and having a special say in those clauses of the constitution relating to the future powers of regions. That was the CODESA road. There is of course, there are of course a number of other possibilities that we need to explore and exchange views on. There could, for example, be the election at the same time as the national election, there could be an election of regional legislatures which will send representatives either to the constitution making body, or to a separate body called the senate based on regions. We have not explored that, it is not a mandated position but it is to me consistent with the spirit of trying to reach a togetherness on this point. And if

we can get closer to one another on these conceptions, obviously what would follow from that, is that this would require a constit ..

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Mr Chairman, when you come to the SPR it is our view that if you are going to have a government during the transition period at national level, there has to be provision made for government at regional level for the transition period. One could discuss what that will look like, but you cannot have a constitutional vacuum and you cannot rely on the existing institutions because they are not going to co-incide with new boundaries. So you have to create structures and we would argue that simultaneously with the introduction of the national constitution and bodies you are going to have to introduce some form of regional bodies, I am going to use the word, for the transition, at this stage. And if I see this it will have to be an elected body, it will have to be democratic, it will have four functions; it will have to govern the region, it will have to, I believe, flesh out the final detail of the structures of that institution or the regional institutions, it will have to make an input into the national constitution via the senate or whatever body it is, and it will also have the blocking mechanism to prevent the national constitution changing the SPR constitutions.

Chairperson:

Mr de Jager:

So, Mr Chairman, I think there is common agreement developing that there has to be effective elected SPR government during the transition. Now, if one can find a mechanism for drawing up that first SPR government in a way which is democratic and legitimate, I believe we should investigate it. If there is not that then I say letâ\200\231s have the same format for the SPR government in transition as we have for the National Government in transition. But I believe the area of difference is really developing around what kind of SPR government, and who shapes it, and who finalises it, is really the essence of the difference that I would ask the Technical Committee to explore.

Mr de Jager

Mr Chairman, Iâ\200\231m glad that the debate took this turn. Either I have trusted everybody too easily, or I have been a fool because I all the way through thought that weâ\200\231ll have elections on the same date for regional government and the central government it would be implemented at the same time because weâ\200\231re discussing the same principles for each of these parties. I never realized that there was some planning to put the regional principles in a pigeon hole and implement only the national principles. I have been wrong, I accept it, perhaps I havenâ\200\231t read my papers in the fine print way, and I've been shocked when I read the Sixth Report because then first I realized what was meant when, for instance Mr Slovo said we will have regions demarcated for electoral purposes. Not for the purpose of a government in the region, but for the electoral purpose to have some representations in the central government. Sir, if we accepted regional governments why should the implementation be shelved. We have worked out two sets of principles simultaneously. Both sets should be implemented. Why should the central government be implemented and not the regional governments. Why should the regional governments be implemented only after the election at the will of that elected body - maybe a year after, maybe six weeks, maybe whatever date, but whenever they decide to do so. If this body could write a constitution, a first constitution or an interim constitution for the national body why canâ\200\231t it do the same for the regional body. If youâ\200\231ve got problems about whether the legitimacy of those constitutions let us put it to a referendum. Sir, I say up to the Sixth Report where was the implementation, the election of a regional government ever mentioned? I, myself, as I say Iâ\200\231ve been misled perhaps because of my own stupidity, nobody else, I canâ\200\231t blame anybody else but Mr Chairman, I would like to request us now to get down and write the different constitutions. But I would like to remind people how did the Sixth Report come about because the Inkatha people stood up, and in fact there was a deadlock and a position taken, and Mr Meyer decided to make a compromise suggestion. Otherwise we would never had a Sixth Report and thatâ\200\231s what I am worrying about. Why have I been led up the garden path to believe that there would be a regional

Chairperson:

Dr Venter:

Chairperson:

Dr Ngubane:

government if it was never intended to have one at the

Dr Venter wants to clarify something.

Mr Chairman, can I just point in regard to this last question of Mr de Jager, to the Fourth Report Paragraph 3.1 where the notion and the two options for regional governments during the transition has been floated.

Thank you, Dr Venter. Our last speaker at this stage is Dr Ngubane. I am going to come back to Mr Felgate after he finishes to ask whether he wants to add anything.

Thank you, Mr Chairman. Mr Ramaphosa's perception that we are critical of the Technical Committee. @ We are not in any way questioning their integrity and their professionalism. What we are saying is very simply this. We cannot afford to go into a vacuum

(Tape blank for an interval)

and to cut out the verbiage of ongoing endless debate, the IFP would make the proposal that of all the parties it is perhaps on this

particular issue got the most adequate documentation. We have tabled for the Technical Committee a proposal for a constitution for the state of Kwa Zulu Natal. We have also tabled a proposal for a constitution for the whole of South Africa and the two constitutions shake hands. If you look at the Technical Committee's 5.5.1 under the heading *The IFP Kwa Zulu Government Proposal I think if you look at it from our point of view it is just simply inadequate. We have therefore, during the course of this debate written what we would have liked the Technical Committee to have been able to write under that heading. Now our suggestion is that if we hand in this document as the kind of correct summing up of the IFP's position, and not the Kwa Zulu position, the IFP's position, and if that was seen against the, in the context of a) a regional constitution and b) a national constitution then the points made in our earlier intervention will be noted and will be understood by the Technical Committee. We are therefore, appealing that we can't finalise this debate at the moment because we need to actually attack the real issue and that is that we are not talking to each other, we are talking against each other and we are not talking with each other. If we are negotiating, we can't be negotiating correctly if there is such a radical divide between the pros and cons, we're just talking across a chasm. So, Mr Chair, could I suggest that we do that, that we hand in a document which we would suggest to the Technical Committee, is a better summing up of our position and secondly that

Chairperson:

Mr Ramaphosa:

the Technical Committee examine this and then comments on this at a later stage to the Negotiating Council as to whether or not this throws lights on the dissatisfaction of all the parties who are opposed to the nature of the Sixth Report.

Ladies and Gentlemen, what I am going to attempt to do now is firstly describe the debate and discussion weâ\200\231ve just had, a lot of which, I think, has passed an interesting threshold in our normal debates where we have begun to appeal to each other across the table, so to speak, to begin to see each others point of view. And in that sense I disagree with Mr Felgate that we are necessarily talking against each other. Perhaps today we have had the first signals that we are beginning to reach out to each other. We have also had a very interesting description, particularly by Dr de Villiers, of the background to this debate and obviously itâ\200\231s a long one going back to last year for some people here, and Mr Webbâ\200\231s very important insistence on the pigeon hole concept to remind us that weâ\200\231re not necessarily tying our hands down at each stage, but rather beginning to see what arrangements we can arrive at with each other with a view to establishing some

(Tape blank for an interval)

process relating to the constitution making body and the constitution making process itself, and the differences between the various participants. What we probably require, and this is the first proposal, is their assistance in synthesizing these proposals into a systematic form in order that we have one picture that we can look at; what some might call a model, what others might call a scenario, I believe itâ\200\231s a fairly simple task

(Tape blank for an interval)

in relation to how the SPRâ\200\231s will function and we can put it in brackets - in transition - and whether we agree with â\200\231in transitionâ\200\231 or not, it seems is not relevant or important at this stage but it might be helpful to us to begin to deal with the mechanics of the operations of the SPRâ\200\231s.

Now Ladies and Gentlemen, those are the four proposals that I have been able to distil and I want to put them to you, firstly as a package, if not one at a time in order to elicit your response in terms of whether you find these proposals acceptable as a way forward. Mr Ramaphosa. '

Could we collapse the third and the fourth into one, because working out how your regional government will function, we would say in transition, means that you donâ\200\231t look at how the executive will function you also look at how the legislature will function because what you do

Chairperson:

Mr Ramaphosa:

Chairperson:

Dr Ngubane:

Chairperson:

Mr Felgate:

Chairperson:

Mr Ramaphosa:

at national level in transition, you should also do at regional level. So we would go along with that. So we could collapse three and four into one and we believe that is the best way to go.

In your view Mr Ramaphosa, is the Fourth Report adequate to create the basis for discussion on both those elements?

Yes, the Fourth Report deals with the powers and functions in transition. It could also be expanded maybe in the Seventh Report, which would flesh all that out including how the legislatures could function.

Dr Ngubane

While your suggestions are very helpful, Mr Chairman, I really would ask us to request the Technical Committee to deal with those proposals so that they are presented in a structured form. At the moment we don't have it in front of us, you know it's going to be a bit problematic to contribute and debate it meaningfully.

I think if we can, Dr Ngubane, find some basis on which we can say that in principle we accept this idea perhaps the Technical Committee might be able to provide us with a one or two page document which can say this how these proposals can actually operate, tomorrow morning if that's possible, and we will consult them on that now. Then we can at least say we are moving forward in this process. Mr Felgate.

Mr Chair, I would suggest that your proposal for the way forward would be admirable after the Technical Committee had reconsidered its Sixth Report. I do believe it is necessary for the Technical Committee to reconsider its Sixth Report.

Mr Ramaphosa

Well, Mr Chairman, just to deal with what Mr Felgate is saying, I don't understand how the Technical Committee can reconsider its own report without being given guidelines on how they should reconsider it. If anybody has to reconsider the report it is us and we have been dealing with that report up to now. Sir, what I wanted to suggest is that what we need to do, is to give the Technical Committee very clear instructions and I would be hesitant to say that they should produce a piece of paper for tomorrow. I think we should just be very clear on what we want them to do and they can then give us the timeframe within which they can do what we are asking them to do, and it should be very clear.- And going by what seemed to be emerging here, it seemed like merging Proposal 3 and 4 is the way to go to actually get the Technical Committee to get into more detail on how the SPR's

Chairperson:

Chairperson:

Mr Felgate:

Chairperson:

would be governed and how legislatures would work and so forth, in-
the transition period.

Thank you, Mr Ramaphosa. Mr Meyer, and then we will conclude
this matter.

Sorry, Mr Meyer, do you wish to address us?

I am sorry, Mr Chairman. Just that the previous point raised by Mr
Ramaphosa in connection with the collapsing of 3 and 4 of your
proposals. If I may, and I would like to address this point actually to
Mr Slovo while he is walking behind you Mr Chairman. If I
understood him correctly, he raised the subject also of a linkage of the
SPR administration, government whatever with the national level
through representation in a senate or a second chamber, whatever he
mentioned, and maybe we should also ask the Technical Committee to
look into this particular question as has been raised by Mr Slovo in
conjunction with your proposals 3 and 4.

Thank you, Mr Meyer. What we will now do Ladies and Gentlemen,
is to take this package of proposals firstly the whole concept of
elaborating a scenario on the basis of the various reports of the
Technical Committee and any contribution that any participant wishes
to make. Secondly, exploring the â\200\231Equilibriumâ\200\235 that they offer in
Paragraph 4 as a basis on which we can begin to explore further
consensus on this issue. Thirdly, looking at the whole issue of SPRâ\200\231s
in three regards. Firstly in relation to Report Four, secondly in
relation to how they would operate and thirdly, in relation to their
linkage to any national structure. I put that proposal to you for your
approval. Is it agreed? Are there any disagreements? Mr Felgate.

Mr Chair, I think we really must pause here. The IFP is of the
opinion that the Sixth Report is inadequate to form the basis for the
proposals that you are making. We have already suggested that it is
inherently weak in its presentation of the IFPâ\200\231s own position and
perhaps we can do the ultimate in being helpful and suggest that we
ourselves, together with some people we can put together as a team,
will write the Sixth Report as we believe it should have been written.
I think one of the issues ... I think one of the issues is the lack of
clarity in instructions to the Technical Committee, and the Technical
Committeeâ\200\231s interpretation of those instructions. So, may I make a
suggestion and can it be recorded, that a) the IFP would like the
Technical Committee to look at our draft of our position ...

Mr Felgate, with great respect. I have said that three times already.
I donâ\200\231t know what different point you are making in respect of that
particular point. I have already said it three times that your particular
contribution needs to be taken into account ... together with the

Mr Felgate:

Chairperson:

Mr Felgate:

Chairperson:

Mr Cronje:

Chairperson:

Paragraphs that I have indicated in Report Two and Report Six. But anyway we will note your point. What is your second point?

I was making a package, Mr Chair, out of two points but that was the first point and the second is that we will attempt to draft what we think the Technical Committee should be considering as its Sixth Report.

I really don't want to respond to that from the Chair, but I am going to do it and then seek the House's consent on that response. Mr Felgate, again there with great respect, the procedure here is that we receive reports from the Technical Committee. We discuss them as we have discussed them absolutely thoroughly today. We have spent many hours, we've had something like 16 or 17 speakers each one speaking for virtually over 5 minutes, which is going beyond the scope of the normal rules that we apply in our debate. The Technical Committee is then required to take into account the views expressed in the debate and in preparing further reports on the basis of instructions given to it, it will take into account the observations made, in this case about Report Six. I really don't think that our procedures as I understand them allow for any participant or any group of participants to redraft a Technical Committee Report because it then doesn't become a Technical Committee Report. So, with great respect I would like you to accept my proposal from the Chair in terms of how to move forward, certainly your sentiments that the Sixth Report needs elaboration in various regards, and that certain sentiments expressed here need to be given attention by the Technical Committee, will be passed on to the Technical Committee as an instruction from the Negotiating Council. I appeal to you then to accept that as a way forward and appeal to the House to accept my ruling in that regard.

As a procedural request, Mr Chair, I accept what you are now ruling. The procedure would then be for us to draft the document to hand it into the Planning Committee and for the Planning Committee then to table it in any way that the Planning Committee saw fit.

Again with respect, Mr Felgate, the procedure would be that any participant here is free to make submissions on any report presented by the Technical Committee, if you wish to prepare a submission please feel free to do so and hand it to the Technical Committee in the normal way. Thank you. Mr Cronje you wanted to say anything?

You've said it.

Ladies and Gentlemen, I would ask for your consent in two regards. Firstly, the instructions to the Technical Committee as I elaborated in terms of the package of three parts and secondly, in respect of my ruling in relation to Mr Felgate's contribution. Do you accept both of them? Any dissention? Then it is accepted by general consensus.

Dr Venter:

Chairperson:

Then what we will do Ladies .. Dr Venter?

Mr Chairman, I just wanted to enquire whether this Council is still going to debate the Fourth Report in order to assist us in ... do this job?

Yes, Dr Venter, I was just about to say that in line with the decision that we have taken, and again I want to just keep reassuring all participants by quoting Mr Webb, who is going to become a famous man now, that using the pigeon hole concept and using Paragraph 6 of the explanatory memo as basic provisos on which we work, that tomorrow as part of the constitutional issues that we will discuss, will be the Fourth Report of the Technical Committee. With that in mind, I want to offer an apology to the House for not having indicated earlier on that the previous recommendation of the Planning Committee that the Technical Committee on Fundamental Human Rights would join us at 4, had been violated in view of the fact that they were not available at that time and would only be available next week, and the Planning Committee will take their availability into account in programming the work of the Negotiating Council as a recommendation. Finally, Gentlemen and to the Lady who has now left, thank you very much for your patience and for your valiant efforts to assist the Negotiating Council. Good night.