

VOLUME ONE

REPORTS AND RECOMMENDATIONS
FROM THE NEGOTIATING COUNCIL TO THE
NEGOTIATING FORUM HELD AT

THE WORLD TRADE CENTRE

AT 10H00 ON FRIDAY 2 JULY 1993

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SECTION ONE

Introduction

[.1 The Negotiating Forum held on 1 April, 1993 referred the following matters to the Negotiating Council to consider and report progress on:

1.1.1 Resolution on Violence (cf. Resolution 5, Addendum A, p31)

1.1.2° Resolution on Transition Progress (cf. Resolution 4, Addendum A, p30)

1.1.3 Procedural issues

This progress report from the Negotiating Council to the Negotiating Forum deals with:

1.2.1 Procedures adopted;

1.2.2 Structures established;

1.2.3 Resolutions adopted; and

1.2.4 The further instructions given by the Negotiating Council in accordance with the mandate given by the Negotiating Forum on 1
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The Negotiating Council has had 20 meetings between 1 April, 1993 and 2 July, 1993 (cf. Addendum D, p94).

Procedures and Structures

2.1 Upon analysis of the instructions of the Negotiating Forum to the Negotiating Council the issues to be considered and reported upon appeared to fall under three main headings: â\200\230

Violence

The Constitutional issues including the process leading to a new democratic constitution for South Africa

Structures to be erected and procedures to be adopted in order to level the playing field and to supervise an election for a Parliament/
Constituent Assembly.

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The Negotiating Council resolved to constitute seven Technical Committees to assist it in addressing the specific issues that fall under these headings. Participants were asked to submit names of persons who were independent experts in these particular fields and who could be invited to serve on the Technical Committees.

As a consequence of this process the following Technical Committees set out in Addendum B (p55) were duly constituted by the Negotiating Council at its meeting on the 7th May 1993.

The members of the Technical Committee were briefed by the Planning Committee on the nature of the tasks before them, the suggested time frame and the method of reporting to the Negotiating Council.

The Sub-Committee of the Planning Committee consisting of Messrs F van der Merwe, Mac Maharaj and Dr B Ngubane were appointed to assist the Planning Committee in co-ordinating the Technical Committees and to act as a liaison mechanism between the Technical Committees and the Planning Committee.

The Technical Committees, having taken into account the instructions from the Negotiating Council, the discussions that have taken place at the meetings of the council and the written submissions by participants, have submitted the reports scheduled in Addendum A (cf. p25).

These reports have formed the basis of debate and negotiation in the Negotiating Council and have played an important role in assisting the Negotiating Process to move forward in a constructive way.

The Negotiating Council would like to place on record its sincere appreciation to the members of the Technical Committees for the enthusiastic and competent manner which they have tackled the tasks and entrusted to them and for the invaluable contribution they have made to the Negotiating Process.

The Negotiating Council adopted an Explanatory Memorandum on 30 April 1993, which stated, inter alia, that agreement will have to be reached on all key elements constituting a package before any agreements were implemented (cf. Resolution 7, Addendum A, p35). Furthermore, this Memorandum states:

6. It is expressly understood by all participants that each of the above proposals and the documentation emanating from such technical committees shall be discussed in the Negotiating Council with the view to arriving at an agreement on these matters. Furthermore that as when agreement is reached on each of these matters the Council shall expressly determine when and how the specific agreement shall be

implemented. This provision is made so as to ensure participants have a clear understanding of the package of agreements which would constitute the key elements of the transition process.

Technical Committees are not fora for negotiating substantive issues. They are instruments of the Negotiating Council in order to produce systematic documentation to facilitate discussion and negotiating in the Negotiating Council. Documentation produced by each of these technical committees shall be discussed at the Negotiating Council and on the basis of those discussions sent back to the technical committees for further development. This process would be repeated until agreement is reached in the Negotiating Council on a final document on the issue in question.â\200\235

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SECTION TWO

Resolution on Violence

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The Multi-Party Negotiating Process has always been seized with the question of violence since the Planning Conference of the 5th and 6th of March 1993, On the 1st of April the Negotiating Forum resolved to:

4 [dentify those issues that cause violence and which threaten the Negotiating Process and undermine the effective implementation of the National Peace Accord.

Mandate the Negotiating Council to establish what urgent steps and mechanisms are required to resolve the above issues as a matter of national priority. The Negotiating Council shall report to the next meeting of the Negotiating Forum."

(cf. Resolution 5, Addendum A, p31)

On the 7th of May 1993 the Negotiating Council agreed to the establishment of a Technical Committee on Violence. The Technical Committee has compiled and presented four reports to the Negotiating Council thus far. The Technical Committee is currently preparing the fifth report wherein it will address a number of outstanding issues which have already been identified in reports prepared by the Technical Committee.

On the 28th of May 1993, the Negotiating Council instructed the Technical Committee on Violence to report on conditions that should be created to eliminate violence, in accordance with the Declaration of [ntent on the Negotiating Process, adopted by the Negotiating Council on 7 May 1993. On the 22nd of June, based on the work done so far by the Technical Committee, the Negotiating Council resolved that:

"I. The National Peace Committee should finalise proposed amendments to the Peace Accord as a matter of urgency so as to strengthen the Accord, empower the Peace Structures and increase their effectiveness;

The Negotiating Council recommends that the signatories to the Peace Accord meet as a matter of urgency to reaffirm their commitment to the Accord and to approve the proposed amendments to i

Non-signatories should give urgent and immediate attention to signing the Peace Accord, after consultation with the National Peace Committee.

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That the Technical Committee on the Independent Electoral Commission develops:

4.1 A Code of Conduct for all parties, organisations, administrations and governments taking into account the Code of Conduct of the Peace Accord; and

4.2 Appropriate compulsory sanctions/punitive measures against those who transgress the Code.

Any party organising a public demonstration or any other form of mass action must comply with the guidelines set out in paragraph 6.2 of the Fourth Report of the Technical Committee on Violence;

The National Peace Committee submit proposed amendments to the Regulation of Gatherings Bill as a matter of urgency;

A series of phased confidence-building measures which would include the future of all armed formations, their personnel and arsenals, be adopted leading to the creation of impartial, legitimate and effective security forces with the consequent dissolution of all other armed formations. A distinction (should) be drawn between statutory and non-statutory armies on the one hand and police forces on the other hand. The Technical Committee on the Transitional Executive Council and its sub-councils (should) make proposals and precise mechanisms (should) be adopted;

Parties between whom conflicts exist, which have contributed to violence, in addition to participating in the Multi-Party Negotiating Process, meet bi-laterally to seek joint solutions to the conflicts between them;

The principle of a independent peacekeeping force and its practical implementation should be considered by the Technical Committee on Violence in consultation with the Technical Committee on the Transitional Executive Council.

Every party to the Multi-Party Negotiating Process commits itself without reservation to a holding of a free and fair election and to do everything possible to ensure that the electorate and the leaders and candidates of political parties are enabled to conduct their election campaigns and other political activities freely without being intimidated are obstructed and without fear of being injured or killed:

The Technical Committee on Violence (should) prepare detailed proposals on the desirability, financing, establishment and composition of a Peace/ Youth Services Corps.

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[1.2 The National Peace Committee and members of the Technical Committee on Violence be entrusted with the initial drawing up of structures for a Peace Corps.

(cf. Resolution 19, Addendum A, p50)

On the 22nd of June the Negotiating Council also adopted a Declaration on the Cessation/Suspension of Hostilities, Armed Struggle and Violence by general consensus. The relevant and operative part of the Declaration reads:

"Now Therefore Declare:

That as from the 22nd day of June 1993 we, the parties subscribing to this declaration, commit/recommit ourselves to peaceful resolution of conflict and, where applicable, cease/suspend any form of hostilities/armed/struggle/violence in pursuance of political objectives and in the resolution of political differences and further ensure that the conduct and utterances of all are consistent with this declaration. "

(cf. Resolution 16, Addendum A, p47)

The implementation of the Declaration would be linked to the relevant sub-council of the Transitional Executive Council and to paragraph 7 of the Resolution on Conditions that should be created to eliminate violence adopted by the Negotiating Council on 22 June, 1993 (cf. Resolution 19, Addendum A, p50).

The Negotiating Forum is requested to ratify this Declaration.

The Negotiating Forum, it is recommended, should confirm Resolution 19 above, as well as the Declaration contained in Resolution 16.

[It is finally recommended to mandate the Negotiating Council to instruct the Technical Committee to finalise all outstanding issues.

A schedule of the Reports of the Technical Committee and Resolutions taken by the Negotiating Council can be found in Addendum C, pp58-62.

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SECTION THREE

Resolution on The Transition Process

4.1 The brief of the Negotiating Council was to consider and report on all matters arising from the Constitutional Report, including the following and other constitutional issues:

Form of State and Constitutional Principles

Constitution-Making Body/Constituent Assembly
Transitional/Interim Constitution

Transitional Regional/Local Government

Fundamental Human Rights during the Transition

Transitional Executive Council, its Sub-Councils, the Independent Elections Committee and the Independent Media Committee

Future of the TBVC States

Self-determination

The various issues were assigned to Technical Committees to prepare documentation for discussion in the Negotiating Council.

4.2.1 The following issues were assigned to separate Technical Committees:

A0 Fundamental Rights during the Transition

a2 1.2 Transitional Executive Council

AL 2118 Independent Media Commission and an Independent Broadcasting Authority

4.2.1.4 Repeal or Amendment of Legislation Impeding Free Political Activity and Discriminatory Legislation

4.2.1.5 The issues in 4.1 above were assigned to the Technical Committee on Constitutional Issues.

In its first report the Technical Committee on Constitutional Issues provided its preliminary analysis and recommendations on the Form of State, self-determination and other constitutional issues. The Technical Committee in subsequent reports suggested that the most constructive and systematic way of formulating an approach to these issues would be to:

43381 Draft and agree upon justiciable constitutional principles which shall be binding upon the Constitution-Making Body;

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Agree upon a constitution-making process. The Technical Committee identified two approaches in this regard from the submissions available to them:

Formulate and agree upon boundaries, powers, functions, structures, legislation, government for SPRâ\200\231s:

Formulate a Constitution for the transitional period to ensure constitutional continuity and provide the legislative framework for the functioning of a Constitution-Making Body with legislative power.

The Technical Committee has also been extremely helpful in providing and exploring a possible "equilibrium" or "bridge" between the two approaches to constitution-making.

The Technical Committee furthermore provided an analysis of asymmetry in a section of its third report.

A special report was provided on Confederation.

On the basis of the above reports and discussions and agreements thereon, the Technical Committee believed that the Form of State would evolve.

The Technical Committee constantly emphasised the linkages between the issues above and the need to take a holistic approach to them. It was requested to take note of the concern of all participants in formulating its reports.

An executive summary of the work of the Technical Committee and a

schedule of its Reports to the Negotiating Council can be found in Addendum C, pp63-67.

Recommendations to The Negotiating Forum

The following are the recommendations of the Negotiating Council for adoption by the Negotiating Forum:

5.1 Constitutional Principles:

5.1.1 The Constitutional Principles agreed upon by the Negotiating Forum shall be binding on the Constitution-Making Body; the justiciability of these Constitutional Principles shall be ensured by a Constitutional Court/Tribunal.

The following are the Constitutional Principles for adoption by the Negotiating Forum, subject to paragraph 6 of the Explanatory

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Memorandum adopted by the Negotiating Council on 30 April 1993
(cf. Resolution 7, Addendum A, p35)

"2.] The Constitution of South Africa shall provide for the establishment of one sovereign state with a democratic system of government a common South African citizenship and a democratic system of government committed to achieving

~ equality between men and women and people of all races.

The Constitution shall be the supreme law of the land, shall be binding on all organs of government, shall prohibit racial, gender and all other forms of discrimination and promote racial and gender equality and national unity.

There shall be a separation of powers between the legislature, executive and judiciary, with appropriate checks and balances to ensure accountability, responsiveness and openness.

The judiciary shall be competent, independent and impartial and shall have the power and jurisdiction to safeguard and enforce the constitution and all fundamental rights.

There shall be representative government embracing multi-party democracy, regular elections, universal adult suffrage, a common voters roll, and in general, proportional representation.

Provision shall be made for freedom of information so that there can be open and accountable administration at all levels of government.

Formal legislative procedures shall be adhered to by legislative organs at all levels of government.

The diversity of language and culture shall be acknowledged and protected, and conditions for their promotion shall be encouraged.

Collective rights of self-determination in forming, joining and maintaining organs of civil society, including linguistic, cultural and religious associations, shall, on the basis of non-discrimination and free association, be recognised and protected.

All shall enjoy universally accepted fundamental rights,

freedoms and civil liberties, protected by entrenched and Justiciable provisions in the constitution.

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The legal system shall ensure the equality of all before the law and an equitable legal process. The principle of equality before the law includes laws, programmes or activities that have as their object the amelioration of the conditions of the disadvantaged, including those disadvantaged on the grounds of race, colour or gender.

The institution, status and role of Traditional Leadership, according to indigenous law, shall be recognised and protected in the Constitution. Indigenous law like, common law, shall be recognised and applied by the courts subject to the provisions of the fundamental rights contained in the Constitution and to legislation dealing specifically therewith.

Provision shall be made for participation of minority political parties in the legislative process in a manner consistent with democracy.

Amendments to the constitution shall require special procedures involving specified majorities.

Government shall be structured at national, SPR and local levels.

At each level of government there shall be democratic representation. This principle shall not derogate from the provisions of Principle 2.12.

Each level of government shall have appropriate and adequate legislative and executive powers and functions that will enable each level to function effectively. The allocation of powers between different levels of government shall be made on a basis which is conducive to financial viability at each level of government and to effective public administration, and which promotes national unity, legitimate regional autonomy and cultural diversity.

The powers and functions of national and SPR governments shall be defined in the Constitution. Amendments to the Constitution which alter the powers, boundaries, functions or institutions of SPRs shall in addition to any other procedures specified in the Constitution for constitutional amendments, also require the approval of a specified majority of the legislatures of the SPRs, alternatively, if there is such a chamber, a specified majority of a chamber of parliament composed of regional representatives, and if the amendment concerns specific SPRs only, the approval of the legislatures

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of such SPRâ\200\231s will also be needed.

[t was agreed that the Technical Committee explores the suggested amendments and reports back to the Negotiating Council.]

A framework for local government powers, duties, functions and structures, shall be set out in the Constitution. The comprehensive powers, duties, functions and other features of local government shall be set out in parliamentary statutes and/or SPR legislation.

The powers and functions of the national and SPR levels of government shall include exclusive and concurrent powers as well as the power to perform functions for other levels of government on an agency or delegation basis.

National and SPR governments shall have fiscal powers and functions which will be defined in the Constitution. The Jramework for local government referred to in paragraph 2.19 shall make provision for appropriate fiscal powers and functions for different categories of local government.

Each level of government shall have a constitutional right to an equitable share of revenue collected nationally so as to ensure that SPRâ\200\231s and local governments are able to provide basic services and execute the functions allocated to them in the Constitution.

A Financial and Fiscal Commission, representing inter alia each of the SPRâ\200\231s, shall recommend equitable fiscal and financial allocations to the SPR governments from revenue collected nationally, after taking into account the national interest, disparities within the SPRâ\200\231s as well as the population and developmental needs, administrative responsibilities and other legitimate interests of each of the SPRâ\200\231s.

The following criteria shall be applied in the allocation of powers to the national government and the SPR governments:

General:

2% The level at which there is most control over the quality and delivery of services, should be the level responsible and accountable for the execution of the programme or the delivery of the services.

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This principle has not yet been accepted. |

The national government shall not exercise its powers (exclusive or concurrent) so as to encroach upon the geographical, functional or institutional integrity of the SPRs.

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

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

National Government

2.24.5

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

Where uniformity across the nation is required for a particular function, then legislative power over that function should be allocated predominantly, if not wholly, to the national government.

Where minimum standards across the nation are required for the delivery of public services, the power to set such standards should be allocated to the national government.

The determination of national economic policies, and the power to promote inter-SPR commerce and protect the common market in respect of the mobility of goods, services, capital and labour, should be allocated to the national government.

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SPR Government

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

It was agreed that the Technical Committee reformulate this principle.]

Concurrent Powers

2.24.10 Where mutual co-operation is essential or desirable or where it is required to guarantee equality of opportunity or access to a government service, the powers should be allocated concurrently to the national government and the SPR governments.

In the event of a dispute concerning the legislative powers allocated by the Constitution concurrently to the national and SPR governments which cannot be resolved by a court on a construction of the Constitution, precedence shall be given to the legislative powers of the national government.

Residual Powers

2.24.12 The Constitution shall specify how powers which are not specifically allocated in the constitution to the national government or to an SPR government, shall be dealt with as necessary ancillary powers pertaining to the powers and functions allocated either to the national or SPR governments.

Notwithstanding the provision of any other clause, the right of employers and employees to join and form employer organisations and trade unions and to engage in collective

bargaining shall be recognised and protected.

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2.26 The independence and impartiality of a Commission for Administration, a Reserve Bank, an Auditor general and an Ombudsman shall be provided for and safeguarded by the Constitution in the interests of the maintenance of effective public finance and administration and a high standard of professional ethics in the Civil Service.

* [It was suggested that the concept of the Attorney General be included within the principle. It was therefore referred back to the Technical Committee for this purpose.]

Every member of the security forces (police, military and intelligence) and the security forces as a whole shall be required to perform his or her duties and functions and exercise his or her powers in the national interest and shall be prohibited from furthering or prejudicing party political interest."â\200\235

The following principle was proposed to the Negotiating Council but it was not agreed upon. It was agreed that this will be pursued in bilateral meetings. 3

"Nothing in the above Constitutional Principles shall prevent an SPR from democratically approving its own Constitution, which shall not be in conflict with the National Constitution."

After the following principle was put forward to the meeting for consideration "The right of self-determination of peoples, which allows them to determine their own political status through legislative and executive powers in the form of territorial independence and autonomy, is acknowledged", it was agreed that this whole issue be referred back to the Technical Committee.

That the Negotiating Forum confirms the establishment of a Commission on the Delimitation/Demarcation of SPRâ\200\231s, which shall report to the Negotiating Council (cf. Resolution 12, Addendum A,

p41)

That the Constitutional Principles as stated above relating to SPRâ\200\231s are adopted as being binding on the Constitution-Making Body.

That the powers, functions, and structures of regions for the transition period shall be incorporated in the Constitution for the transition period.

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5.2.4 That the election of Regional Legislatures and the establishment of Regional Governments in the transitional period shall be provided for in the Constitution for the transitional period.

Constitution for the Transition Period and the Constitution-Making Body:

That the Technical Committee shall draft a constitution for the transition period which shall make provision for:

5.3.1 The election according to a system of proportional representation of a Constitution-Making Body, legislature and national government for the transitional phase which will include a national and regional component. With regard to constitution making, this Constitution shall provide for dead-lock breaking and special majorities by which decisions will be taken:

The election of regional legislatures and the establishment of regional governments in the transition;

The powers, functions and structures of regions for the transitional period;

Fundamental human rights on a justiciable basis during the transitional period;

A Constitutional Court/Tribunal to ensure the justiciability of the Constitutional Principles, of the fundamental rights and of the Constitution itself.

(cf. Diagrammatic representation of the envisaged process on p21 at the end of this section)

Fundamental Human Rights during the Transition:

The Negotiating Council has discussed five reports of this Technical Committee. The Technical Committee will take into account discussion and debate in the Negotiating Council and present a final report in due course. It is recommended that the Negotiating Forum ratifies this instruction.

An executive summary of the work of the Technical Committee and a schedule of its Reports to the Negotiating Council can be found in Addendum C, pp68-73.

Recommendations for Levelling the Playing Field and Promoting Conditions Conducive to the Holding of Free and Fair Elections

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The following are the recommendations on these matters:

6.1 Independent Electoral Commission (IEC):

6.1.1 That the Negotiating Forum agrees in principle that an Independent - Electoral Commission be established, whose object shall be to administer and conduct a free and fair democratic electoral process of the new Parliament/Constituent Assembly/SPR Governments, including responsibility for any other matter connected therewith (cf. Resolution 20, Addendum A, p52).

[It is noted that a Draft Bill for the establishment of the Independent Electoral Commission is being prepared. The Technical Committee will also prepare an Electoral Act.

An executive summary of the work of the Technical Committee and a schedule of its Reports to the Negotiating Council can be found in Addendum C, pp74-80).

Independent Media Commission and Independent Broadcasting Authority:

6.2.1 That the Negotiating Forum agrees in principle that an Independent Media Commission be established with the following objectives:

26, 11 To ensure equitable treatment of political parties by broadcasting services;

2 L2 To ensure that State financed publications and State-information services are not used to advance the interest of any political party;

So as to contribute towards the promotion and creation of a climate favourable to free political participation and a free and fair election (cf. Resolution 18, Addendum A, p49).

It is noted that a Draft Bill for the establishment of the Independent Media Commission and for the Independent Broadcasting Authority has been prepared by the Technical Committee for consideration by the Negotiating Council.

An executive summary of the work of the Technical Committee and a schedule of its Reports to the Negotiating Council can be found in Addendum C, pp81-85.

Amendment or Repeal of Legislation Impeding Free Political Activity and Discriminatory Legislation:

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The Negotiating Council has discussed two reports of this Technical Committee and has agreed that a "Higher Code" should be established to deal with this legislation. The Technical Committee will take into account discussion and debate in the Negotiating Council and present a final report in due course. It is recommended that the Negotiating Forum ratifies this instruction.

An executive summary of the work of the Technical Committee and a schedule of its Reports to the Negotiating Council can be found in Addendum C, pp86-89).

Transitional Executive Council:

6.4.1 It is recommended that the Negotiating Forum agrees to:

6.4.1.1 [instruct the Technical Committee on the Transitional Executive Council and its Sub-Councils to begin with the drafting of legislation on the basis of the framework presented in paragraph 1 of their First Report, thereby putting into one document all the provisions and present the Negotiating Council with draft legislation.

The establishment of a Transitional Executive Council in principle, in line with the Resolution on Steps to be Taken for the Purposes of Establishing a New Constitutional Order as adopted by the Negotiating Council on 30 June 1993. This is an in-principle decision and the details of the draft legislation will still have to be discussed.

6.4.2 An executive summary of the work of the Technical Committee and a schedule of its Reports to the Negotiating Council can be found in Addendum C, pp90-93.

Recommendation on an Election Date

7.1 On 7 May 1993 the Negotiating Council resolved to:

"3.1 To reach agreements on binding constitutional principles, the constitutional framework and the constitution-making process in terms of which elections will be held;

To provide for an adequate time-frame for the implementation of decisions on these matters and procedures for elections; and

To ensure that the negotiating process moves forward sufficiently over

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the next four weeks at which stage to set the exact date for an election that should take place not later than the end of April 1994, subject to S @it 5.2

(cf. Resolution 13, Addendum A, p44)

On 3 June, 1993 the Negotiating Council resolved to recommend to the Negotiating Forum that the Negotiating Forum confirms that the election date shall be 27 April, 1994 (cf. Resolution 14, Addendum A, p45).

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SECTION FOUR

Procedural Issues

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Participation:

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Background:

The Negotiating Council, in its meeting of 7 May 1993, agreed to the following recommendation of the Planning Committee:

"1. Recommended Criteria and Process for New Participants:
[.1 Political Parties or Organisations to qualify must show:

% That it is indeed a political party or organisation intending to participate as such (in the political party or organisation's own name) in the first election under a transitional/new constitution;

That it has proven substantial support in a national context;

That its admission will enhance the peaceful negotiating process.

Traditional Leaders

The principle of provincial representation should be maintained for the time being, but the problems around the representivity of existing delegations should be addressed in consultation with and a manner acceptable to all concerned. This issue should be discussed in the meeting of the Negotiating Council and, if necessary, be referred back to the Planning Committee.

Other Applicants

It is proposed that applications of organisations who are not political parties or organisations, be refused.

The problem of both the Administrations and political parties in one region participating in the Negotiating Process, has not been resolved and will require further attention. "

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Process:

The following process for dealing with applications of political parties or organisations has been followed:

i Applicants were informed of the criteria and requested to submit whatever facts and arguments they wish to, but they were required to at least respond to the questionnaire made available;

Administration caused a newspaper survey over the preceding year to establish the type of press coverage every applicant has received;

As soon as all the information had been received, the matter was put to the Negotiating Council for a decision.

Recommendations:

On the basis of the information received and processed and on the basis of the above criteria, it is recommended that the applications of the following parties be rejected:

People's Democratic Christian Party
United Federal Party
Sindawonye Progressive Party
Reform Party of South Africa
Insika National Party

National Forum

African Democratic Movement
People's Progressive Party
Merit People's Party

National Seoposengwe Party
Third Force Nationalist Party
Green Party of South Africa
Sofasonke Party

Free Cape Movement

United Asian Front

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[t should be noted that the Volks Unity Committee and the Christian Democratic Party withdrew their applications.

[t should further be noted that discussions with the Afrikaner Freedom Foundation (Avstig) are still underway.

It is finally recommended that, notwithstanding the fact that the applications of these parties have been rejected, they are invited to

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make submissions to the relevant Technical Committees/Commission if they so wish.

Meetings Schedule:

The Negotiating Council recommends that:

9.2.1 The Negotiating Forum mandates the Negotiating Council to finalise all matters it is instructed to;

No further Negotiating Forum meetings should be convened;

9.2.3 A Plenary should be convened by the Negotiating Council once final recommendations are available.

Sufficient Consensus

The Negotiating Council appointed an ad-hoc sub-committee to investigate the issue of sufficient consensus. This sub-committee has had one meeting and will report back to the Negotiating Council in due course. [t has, however, agreed to come to an understanding that, until this issue is clarified and a new decision taken, the Standing Rules provide the mechanisms for taking decisions in the Multi-Party Negotiating Process.

Name (Minutes of the Negotiating Forum of 1 April 1993, par.4.2.2)
After numerous discussions and intensive debate, the Negotiating Council decided at its meeting of 7 May 1993 that this issue should be taken off the agenda until an appropriate time.

The involvement of non-South Africans as advisers (Minutes of the Negotiating Forum of 1 April 1993, par.4.3.3)

[t was agreed that non-South Africans will not be allowed to be advisers to participants in the Multi-Party Negotiating Process.

The role of the International Community (Minutes of the Negotiating Forum of 1 April 1993, par.7.1)

No decision was taken in this regard, but there was a general feeling that this issue would best be handled around the elections and specifically in the Independent Electoral Commission.

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DRAFT AGENDA
FOR THE MEETING OF THE MULTI-PARTY NEGOTIATING FORUM
TO BE HELD AT 10H00 ON 2 JULY 1993
Moment of Prayer/Meditation

Welcome and Attendance

Ratification of the Agenda

Minutes

- 4.1 Adoption of the minutes of the Negotiating Forum of 1 April 1993
- 42 Matters arising from the minutes of the Negotiating Forum of 1 April 1993

Substantive Issues - Report of the Negotiating Council

5.1 Procedures and Structures

52 Resolution on Violence: Recommendations to the Negotiating Forum

5.3 Resolution on the Transition Process: Recommendations to the Negotiating Forum

5.3.1 Constitutional Principles

SIS SESBRES

5.3.3 Constitution for the Transition Period and the Constitution-Making Body

5.3.4 Fundamental Human Rights during the Transition

5.3.5 Levelling the Playing Field and Creating Conditions conducive to the Holding of Free and Fair Elections:

DECESMI Independent Electoral Commission

SESESED) Independent Media Commission

SEARS A3 Amendment or Repeal of Legislation Impeding Free

Political Activity and Discriminatory Legislation

533:514 TEC and its Sub-Councils

5.3.6 An Election Date

Procedural Issues - Report from the Negotiating Council

6.1 Participation

6.2 Meetings Schedule

6.3 Name of the Process

6.4 Non-South African Participation

6.5 Role of the International Community

Administrative Matters

Closure

NEGFORUM/AGENDA/AGEN0207

2 July 1993

VOLUME 2

SUPPORTING DOCUMENTATION FOR THE
MEETING OF THE MULTI-PARTY
NEGOTIATING FORUM TO BE HELD
AT THE WORLD TRADE CENTRE
AT 10h00 ON FRIDAY 2 JULY 1993

Addendum A

ADOPTED RESOLUTIONS OF THE
MULTI-PARTY
NEGOTIATING PROCESS

RESOLUTIONS OF THE PLANNING CONFERENCE
OF THE 5 & 6 MARCH 1993

RESOLUTION ONE

DECISION OF FACILITATING COMMITTEE ON THE PROCESS
OF DECISION-MAKING IN THIS PLANNING CONFERENCE AND THE
FACILITATING COMMITTEE

All decisions are to be taken by general consensus.

If this cannot be achieved, conference will use the method of sufficient consensus.

This means that :

% there is a lack of general consensus;

x there is enough agreement from enough participants to enable the process to
move forward;

% parties who disagree can record their objections or rejections formally, but
will, in the spirit of co-operation, not hinder the process from going forward.

The ruling that there is consensus/sufficient consensus or not, should be taken by the
chair in his/her discretion. This can, however, be challenged by any party who
disagrees. The meeting will then deal with it as is appropriate.

RESOLUTION TWO

RESOLUTION ON THE NEED FOR THE RESUMPTION/COMMENCEMENT OF MULTI-PARTY NEGOTIATIONS

We, the parties, organisations and administrations assembled in this the Multi-party Planning Conference:

AWARE of the responsibility we individually and collectively bear for the wellbeing of our country;

BELIEVING that the problems of our country should be resolved peacefully through a process of negotiation;

REALISING the urgent need for the economic development of the country;

AGREEING that the resources of the country need to be preserved, developed and improved for the benefit of all the people of this country and for future generations;

ACCEPTING that all the people of this country and the whole community of nations throughout the world look to us to move the country forward towards a non-racial, non-sexist and fully democratic future;

NOW RESOLVE TO:

it Commit ourselves, individually and collectively, to the resumption/commencement of multi-party negotiations within the next month, in order to move as speedily as possible towards the attainment of our primary objective, which is the drafting and adoption of a new Constitution for South Africa;

AND FURTHER RESOLVES THAT:

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The multi-party forum shall be reconvened as a matter of national urgency, not later than 5 April 1993;

Each participating organisation will send two delegates and two advisers.

The first meeting will determine, inter alia:

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mechanisms and procedures (including chairpersonship);

how to accommodate the views of those participants who were not in CODESA in relation to the agreements reached in CODESA;

how these agreements can serve as a constructive foundation for the resumed/commenced negotiations process to build on;

how this forum shall be structured and named;

the role of the international community.

The Facilitating Committee of this conference will have the responsibility of deciding upon and implementing the steps that are necessary to give effect to this resolution.

All participants are required to make an unqualified commitment to this process as a pre-requisite for their participation.

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RESOLUTION THREE

RESOLUTION ON VIOLENCE

The Multi-Party Negotiations Planning Conference expresses its utmost indignation and condemnation for the despicable murder of 10 innocent people which took place on Table Mountain, Pietermaritzburg, on 5 March 1993. This unspeakable crime has taken place at a time when all the political parties, organisations and administrations of South Africa have finally joined together once again to express their commitment to address and solve South Africa's problems through negotiations. Irrespective of their political affiliation, the victims of this massacre have fallen prey to a climate of escalating violence which could jeopardise the success of negotiations. The Multi-Party Negotiations Planning Conference reiterates its unwavering rejection of all instances of political violence and actions leading to the promotion of violence. We offer our condolence to all those who have suffered deeply and commit ourselves to work relentlessly to end the violence, promote law and order and bring about a climate of peace, inter alia, through constitutional negotiations.

RESOLUTION 4

RESOLUTION ON THE TRANSITION PROCESS

We, the participants at the Negotiating Forum meeting at the World Trade Centre, Johannesburg on 1st and 2nd April 1993, having,

1.1 Received a report from the Negotiating Council on the CODESA reports and the transition process;

1.2 Identified some of the issues concerning constitutional matters which the Negotiating Council must consider.

Resolve to instruct the Negotiating Council to consider and report on all matters arising from the Consolidated Report, including the following and other Constitutional issues:

Form of State and Constitutional Principles

Constitution-Making Body/Constituent Assembly

Transitional/Interim Constitution

Transitional Regional/Local Government

Fundamental Human Rights during the Transition

Transitional Executive Council, its Sub-Councils, the Independent Elections Committee and the Independent Media Committee

Future of the TBVC States

Self-determination

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The Negotiating Council shall present reports on progress made on the above issues to the Negotiating Forum.

NEGFORUM/RESOLUTE/TRANSIT.RES
2 July 1993

RESOLUTION 5
THE NEGOTIATING FORUM, MEETING ON 1 APRIL 1993
RESOLUTION ON VIOLENCE

We, the participants at the Negotiating Forum meeting at the World Trade Centre on 1 And 2 April 1993:

NOTING % With revulsion the unacceptable escalation of violence that is engulfing our country;

OUTRAGED o At the killings particularly of women and children;

CONCERNED 4 About the damage violence is inflicting on all aspects of the economy, on relations among people and organisations and the consequent deepening of divisions;

AWARE o That violence poses a threat to the negotiating process which if it continues could wreck the process and plunge our country into an era of unprecedented conflict.

DO HEREBY UNEQUIVOCALLY

CONDEMN % Without reservation the wanton killing and maiming of the citizens of our country;

EXPRESS Â¥ Our sympathy and condolences to all those who are suffering in consequence;

COMMIT OURSELVES * To effective joint action by all of us leading to the eradication of violence and to the attainment of peace in our country as soon as possible;

v To peaceful negotiations as the only way to resolve differences.

AND THEREFORE RESOLVE TO

L Identify those issues that cause violence and which threaten the negotiating process and the undermining of the effective implementation of the National Peace Accord.

2o Mandate the Negotiating Council to establish what urgent steps and mechanisms are required to resolve the above issues as a matter of national priority. The Negotiating Council shall report to the next meeting of the Negotiating Forum.

RESOLUTION 6

RESOLUTION ON THE DELIMITATION, POWERS AND FUNCTIONS OF REGIONS

Whereas there appears to be broad agreement that the most suitable form of government for the future will be one which involves an allocation of powers to central and regional governments, while the differences that exist relate essentially to the boundaries, powers and functions of the regions and the process whereby such differences may be resolved;

Realising that regional boundaries will be relevant to the electoral process, as well as to the structures of the Constitution;

Accepting that the powers and functions of the regions are crucial to issues such as the form of state and self-determination, and will be a fundamental part of the constitution;

Convinced that while the demarcation of boundaries is a task which appropriately should be performed by a broadly based body of suitably qualified people, who will hear representations from the public at large and from different areas of the country, issues regarding the functions and powers of regions can at this stage of the negotiations best be dealt with by a smaller technical committee; and

Determined to ensure that we achieve a peaceful and negotiated agreement on the democratic transformation of our country within the time frames we have set for ourselves.

Hereby resolve:

1% That the Technical Committee on Constitutional Issues be charged with formulating as a matter of urgent priority, recommendations on the structures, powers and functions of regions, on constitutional principles and on the constitution making process.

2y That a Commission be appointed to make recommendations to the Negotiating Council within six weeks of its appointment, on the delimitation of regions.

PLANCOMM/DOCUMENT/COMMISS.RES

1 2 July 1993

That for the purpose of its recommendation the Commission should be charged to take into consideration, inter alia, the following criteria:

3.1 Historical boundaries, including provincial, magisterial and district boundaries and infrastructures.

3.2 Administrative considerations including the availability or non-availability of infrastructures and nodal points for services.

3.3 The need or otherwise to rationalise existing structures (including the TBVC States, self-governing territories and regional government).

3.4 The necessity of limiting financial and other costs as much as is reasonably possible.

3.5 The need to minimise inconvenience to the people.

3.6 The need to minimise the dislocation of services.

3.7 Demographic considerations.

3.8 Economic viability.

3.9 Developmental potential.

3.10 Cultural and language realities.

That the Commission should be required to allow interested parties and persons to submit their views and recommendations within a specified period which should not be less than one month after an invitation in this regard has been published; and that

the Commission should take these into account for the purposes of formulating its recommendations.

That the Commission should also be free to take cognisance of any other material it might wish to collect for the purposes of its recommendations.

That the Commission should also for the purposes of its recommendations take cognisance of any progress made in the Negotiating Council by way of agreements on constitutional matters.

That this Council shall from time to time review the progress made towards the reaching of agreements regarding the structures, functions and powers of regional governments under the Constitution replacing the present Constitution, and consider

PLANCOMM/DOCUMENT/COMMISS.RES

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the advisability of a Commission also being required to submit recommendations on such matters.

That the Commission should be composed of ten members agreed upon in this Council; that the members should be persons of acknowledged personal integrity and suitably qualified specifically or in general for the task assigned to the Commission; that participants be called upon to submit names of candidates to the Administration before 12h00 Friday 21 May 1993 and that the Planning Committee make a recommendation in this regard to this Council.

That the Planning Committee, with the assistance of the Technical Committee on Constitutional Issues, prepare draft Terms of Reference for the Commission for consideration by this Council.

PLANCOMM/DOCUMENT/COMMISS.RES

3 2 July 1993

RESOLUTION 7

EXPLANATORY MEMORANDUM ACCEPTED BY ALL PARTICIPANTS

ON 30 APRIL 1993 IN THE MULTI-PARTY PROCESS
RELATING TO PROPOSALS ARISING FROM
THE MULTI-PARTY FORUM RESOLUTION ON
THE NEGOTIATION PROCESS.

The Negotiation Process involves reaching agreement on a number of key elements. Discussion around any particular element gives rise to suspicion and fears that agreement on it would lead to that agreement being implemented before agreement has been reached on ALL the key elements that constitute a package around the negotiation process.

Such fears were addressed in the CODESA process in Working Group 3 whose report appears in the Consolidated Document on pages 22-29. This Report states that "These agreements (that is, relating to the first stage of the transition, namely the TEC) and their implementation are dependent upon agreement being reached by CODESA in respect of the second stage of the Transition, including an Interim Constitution, and general Constitutional Principles" (cf clause 4 of the Agreement on page 22).

Mindful that the above proviso is contained in the CODESA Agreements which are treated in the Multi-Party Forum as points of reference, and not as binding agreements; mindful also that some of the participants in the current Multi-Party Forum have specifically indicated that they consider themselves bound by the agreements reached in CODESA; while there are other participants in the current Multi-Party Forum who have specifically indicated that they do not consider themselves bound by the said agreements; it therefore becomes necessary that participants in the Multi-Party Forum should commit themselves to a similar type of provision so that the proposals based on the Multi-Party Resolution on the Negotiation Process may be addressed in a manner that removes any fears that agreement on any particular proposal necessarily implies agreement on their implementation.

The proposals contained in the first report of the Sub-Committee deals with the need for the setting up of technical committees on the following aspects:

4.1 The Independent Electoral Commission

4.2 The Independent Media Commission and the Independent Telecommunications Authority

4.3 The Amendment or repeal of legislation impeding free political activity and discriminatory legislation

4.4 On the TEC and its Sub-councils with the proviso that the question of security forces and all armed formations shall be given priority attention.

4.5 On strengthening the National Peace Accord

4.6 On the Peace Corps

The second report of the Sub-Committee on other constitutional matters proposes two more technical committees;

1 On fundamental rights in the Transition

2 On other constitutional matters namely, Form of State and Constitutional Principles, Constitution Making Body/ Constituent Assembly, Transitional/Interim Constitution, Transitional Regional Government, the Future of the TBVC States and Self Determination.

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It is expressly understood by all participants that each of the above proposals and the documentation emanating from such technical committees shall be discussed in the Negotiating Council with the view to arriving at an agreement on these matters. Furthermore that as when agreement is reached on each of these matters the Council shall expressly determine when and how the specific agreement shall be implemented. This provision is made so as to ensure participants have a clear understanding of the package of agreements which would constitute the key elements of the transition process.

Technical committees are not fora for negotiating substantive issues. They are instruments of the Negotiating Council in order to produce systematic documentation to facilitate discussion and negotiating in the Negotiating Council. Documentation produced by each of these technical committees shall be discussed at the Negotiating Council and on the basis of those discussions sent back to the technical committees for further development. This process would be repeated until agreement is reached in the Negotiating Council on a final document on the issue in question.

PLANCOMM/DOCUMENT/EXPLAN.MEM
2 2 July 1993

RESOLUTION 8

DECLARATION OF INTENT ON THE NEGOTIATING PROCESS ADOPTED BY THE NEGOTIATING COUNCIL ON 7 MAY 1993

This meeting of the Negotiating Council, held on 7 May 1993 at the World Trade Centre

L, Noting That There Is An Urgent Need To:

1.1 Inspire confidence in the negotiating process and our ability to resolve our problems peacefully;

1.2 Offer a clear vision of the major milestones in the negotiating and transition process;

1.3 Create conditions which eliminate violence in South Africa;

2 And recognising wide acceptance of the need for democratic elections in South Africa;

5 Therefore Commit Ourselves:

3.1 To reach agreements on binding constitutional principles, the constitutional framework and the constitution-making process in terms of which elections will be held;

3.2 To provide for an adequate time-frame for the implementation of decisions on these matters and procedures for elections; and

3.3 To ensure that the negotiating process moves forward sufficiently over the next four weeks at which stage to set the exact date for an election that should take place not later than the end of April 1994, subject to 3.1 and 3.2.

PLANCOMM/DOCUMENT/ELECT.RES

2 July 1993

RESOLUTION 9

RESOLUTION ON INTOLERANCE AND ASSASSINATIONS ADOPTED BY THE NEGOTIATING COUNCIL ON 18 MAY 1993

This Negotiating Council, meeting at the World Trade Centre on 18 May 1993:

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Notes with outrage:

1.1 The rising tide of political intolerance in South Africa;

1.2 The recent increase in actual and threatened political assassinations and violence; and is

Profoundly disturbed:

By the threats to the lives of certain political leaders, including the recently uncovered plan to assassinate the leader of a delegation in the Negotiating Council,

Believing:

That a political climate in which there is no violence, assassinations and intolerance is essential to the success of the negotiation process;

Therefore resolves to:

4.1 Express our sincere solidarity with and concern for the safety of all members of delegations;

4.2 Condemn the use of assassinations and other forms of political violence to resolve political differences;

4.3 Call on all to create the conditions which discourage violent attacks on political opponents and to ensure suitable legal action is taken against those contemplating assassination and similar violent acts.

PLANCOMM/DOCUMENT/INTOLER.RES
2 July 1993

RESOLUTION 10

RESOLUTION ADOPTED BY THE NEGOTIATING COUNCIL ON
25 MAY 1993

This Negotiating Council meeting on Tuesday 25 May 1993 at the World Trade Centre:

Notes with Concern and Condemns:

1% The insensitive manner in which the recent actions and arrests against the Leadership of the PAC were undertaken;

Is Appalled At:

19 The possible negative impact of these events on the Negotiation Process and unnecessary delay in the proceedings of the Negotiating Council;

Call on the South African Government To:

i Immediately charge or release those that have been arrested,
2, Return all materials seized from the PAC;

3 Take all necessary steps to remedy this unfortunate situation and undo the damage done to the Negotiation Process;

And Resolves To:

L, Meet on Thursday 27 May 1993 at 19h00 to examine matters arising from this issue in greater detail.

PLANCOMM/DOCUMENT/RES.PAC
2 July 1993

RESOLUTION 11

RESOLUTION ADOPTED AFTER THE SPECIAL SESSION OF
THE NEGOTIATING COUNCIL OF 27 MAY 1993

This Negotiating Council meeting at the World Trade Centre on Thursday 27 May 1993:

Concerned:

That the Negotiating Process must continue uninterrupted and reach a conclusion which will inspire confidence and optimism in all sections of South African society;

Resolves:

1 To urge all participants to comply with the relevant resolutions already passed;

2 To urge the PAC to remain part of the Negotiating Process;

5 To request the PAC and the Government to have a bi-lateral discussion as a matter of urgency to resolve their differences;

4. That the Negotiating Council is kept informed of the progress in the bi-lateral talks;

5q That Governments, Administrations, Political Organisations and the security forces

are hereby urged to do everything possible to create harmony, peace and a conciliatory climate for the Negotiation Process.

PLANCOMM/DOCUMENT/RES2.PAC

2 July 1993

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RESOLUTION 12

ADOPTED RESOLUTION OF
THE NEGOTIATING COUNCIL MEETING OF 28 MAY 1993
ON THE COMMISSION ON REGIONS/STATES/PROVINCES

WHEREAS there appears to be broad agreement that the most suitable form of government for the future will be one which involves an allocation of powers to national and regional governments, while the differences that exist relate essentially to the boundaries, powers and functions of the regions/states/provinces and the process whereby such differences may be resolved;

REALISING that regional boundaries will be relevant to the electoral process, as well as to the structures of the Constitution;

ACCEPTING that the powers and functions of regions/states/provinces are crucial to issues such as the form of state and self-determination, and will be a fundamental part of the constitution/s;

CONVINCED that while the demarcation of boundaries is a task which appropriately should be performed by a broadly based body of suitably qualified people, who will hear representations from the public at large and from different areas of the country, issues regarding the functions and powers of regions/states/provinces can at this stage of the negotiations best be dealt with by a smaller technical committee;

DETERMINED to ensure that we achieve a peaceful and negotiated agreement on the democratic transformation of our country within the time frames we have set for ourselves; and

HAVING charged a technical committee with formulating as a matter of priority, recommendations on the structures, powers and functions of regions/states/provinces, on constitutional principles and on the constitution making process;

WE, THE NEGOTIATING COUNCIL hereby appoint

Dr Bax Nomvete and Professor Flip Smit

PLANCOMM/DOCUMENT/COMMISS.LTR
2 July 1993

as Co-Chairpersons, and

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Basson Dion, Prof
Bernstein Ann, Ms

Daphne Paul, Mr

Du Plessis Attie, Mr
Govinden Betty, Ms
Gwagwa Lulu, Ms

Malefo Beauty, Dr

Muthien Yvonne, Dr
Burns-Ncamashe, Chief
Nkuhlu Wiseman, Professor
Rautenbach Ignus, Professor
Reyneke Koos, Mr

Steyn Anna, Professor

as members of a Commission on Regions/States/Provinces to make recommendations to us,
the Negotiating Council within six weeks, on the delimitation of regions/states/provinces.

FOR THE PURPOSES of its recommendations, the Commission shall:

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Take into consideration, inter alia, the following:

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Historical boundaries, including provincial, magisterial and district boundaries
and infrastructures;

Administrative considerations including the availability or non-availability of
infrastructures and nodal points for services;

The need or otherwise to rationalise existing structures (including the TBVC
States, self-governing territories and regional governments);

The necessity of limiting financial and other costs as much as is reasonably
possible;

The need to minimise inconvenience to the people;

~ The need to minimise the dislocation of services;

Demographic considerations;

Economic viability;

Development potential;

Cultural and language realities;

PLANCOMM/DOCUMENT/COMMISS.LTR

2 July 1993

Allow interested parties and persons to submit their views and recommendations within a specified period, which should not be less than one month after an invitation in this regard has been published, and take these into account;

Be free to take cognisance of any other material it might wish to collect; and

Take cognisance of any progress made in the Negotiating Council by way of agreements on constitutional matters.

PLANCOMM/DOCUMENT/COMMISS.LTR
2 July 1993

RESOLUTION 13

RESOLUTION ON CONSTITUTIONAL ISSUES
ADOPTED BY THE NEGOTIATING COUNCIL ON 1 JUNE 1993

HAVING NOTED:

The clear linkage between constitutional principles, the constitution-making process and constitutional structures, powers and functions of SPRâ\200\231s as apparent in paragraph 6 .3 of the Second Report of the Technical Committee on Constitutional Issues.

IT IS RESOLVED THAT:

1% The Negotiating Council proceeds to negotiate and endeavour to agree on the constitutional principles recommended by the Technical Committee as set out in paragraph 2 of its Third Report, and the detailed principle dealing with the allocation of powers to different levels of government as set out in paragraph 3 of its Third Report.

2 There is a need for the adoption of a Constitution for the transitional period, the text of which is agreed to at the Multi-Party Negotiating Process:

2.1 Which shall be drafted in accordance with the constitutional principles agreed upon in so far as they may be applicable;

2.2 Which will provide, inter alia, for justiciable fundamental rights, the structures of national and regional governments and their respective powers, functions and authority; and

2.3 As well as which will provide for the procedures relating to the drafting and adoption of a Constitution by the elected constitution-making body.

3 Now therefore the Negotiating Council instructs the Technical Committee on Constitutional Issues to make recommendations to it on:

3.1. The powers, functions and structures of the SPR during the transitional period;

3.2 The constitution-making process to be followed, including the structures that need to be established for that purpose;

3.3 The procedures to be followed in the drafting and adoption by the Multi-Party Negotiating Forum of a Constitution for the transitional period;

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2 July 1993

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RESOLUTION 14

RESOLUTION ON AN ELECTION DATE

ADOPTED BY THE NEGOTIATING COUNCIL ON 3 JUNE 1993

The Negotiating Council recommends to the Negotiating Forum of 25 June 1993 that the date of the election shall be 27 April 1994, but however with a view to maximise consensus on this matter, the Negotiating Council decides to finalize this matter on 15 June 1993.

Should a final settlement be reached at an earlier date to enable an election to be held earlier, the Negotiating Council should set an earlier date; while the period over which the election is to be held will have to be decided upon in co-operation with the Independent Electoral Commission.

PLANCOMM/DOCUMENT/ELECT.2

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RESOLUTION 15

RESOLUTION ADOPTED BY THE NEGOTIATING COUNCIL MEETING OF
17 JUNE 1993

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

Request the Technical Committee on Constitutional Issues to, in view of submissions received, consider and report on:

2.1 Alternative ways of drafting and adopting a new constitution, including the bottom-up and top-down approaches, and

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

That the Explanatory Memorandum accepted by all participants on 30 April 1993 in the Multi-Party Process relating to proposals arising from the Multi-Party Forum resolution on the Negotiation Process is re-affirmed and the Negotiating Council specifically reiterates its acceptance of paragraph 6 of the Explanatory Memorandum:

"6. It is expressly understood by all participants that each of the above proposals and the documentation emanating from such technical committees shall be discussed in the Negotiating Council with the view to arriving at an agreement on these matters. Furthermore that as when agreement is reached on each of these matters the Council shall expressly determine when and how the specific agreement shall be implemented. This provision is made so as to ensure participants have a clear understanding of the package of agreements which would constitute the key elements of the transition process. "

PLANCOMM/DOCUMENT/RES1706.SAG
2 July 1993

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RESOLUTION 16

DECLARATION ON CESSATION/SUSPENSION OF HOSTILITIES,
ARMED STRUGGLE AND VIOLENCE

Put to the Negotiating Council on Tuesday 22 June 1993

Recognising:

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

Mindful:

= That we are all products of a conflict ridden society and emerging from a long period of tension and hostilities;

i That many forms of political violence still persist in the resolution of political differences;

Believing:

5 That participants in the Negotiating Process have a responsibility to inculcate

a new spirit of tolerance;

That political rivalry and competition does not require the use of violence;

That it is necessary for all participants to categorically eschew violence in all forms;

5 There is a need for cessation/suspension of hostilities/armed struggle/violence for peaceful negotiations to move forward;

e That Governments, Administrations, Political Organisations and the security

forces must do everything possible to create harmony, peace and a conciliatory climate for the Negotiation Process.

Aware:

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

Now Therefore Declare:

That as from this 22nd day of June 1993 we, the parties subscribing to this declaration, commit/recommit ourselves to peaceful resolution of conflict and, where applicable, cease/suspend any form of hostilities/armed struggle/violence in pursuance of political objectives and in the resolution of political differences and further ensure that the conduct and utterances of all are consistent with this declaration.

PLANCOMM/DOCUMENT/PEACE.RES

2 July 1993

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RESOLUTION 17

FURTHER RESOLUTION TO THAT ON
CESSATION/SUSPENSION OF HOSTILITIES ACCEPTED BY THE
NEGOTIATING COUNCIL ON 22 JUNE 1993

This Negotiating Council meeting at the World Trade Centre on Tuesday 22 June 1993:

Noting:

- i, The Resolution passed after the special Negotiating Council meeting of 27 May 1993;
- 2, The Joint Statement by the South African Government and the Pan Africanist

Congress of Azania dated 28 May 1993;

3 The Declaration on Cessation/Suspension of Hostilities, Armed Struggle and Violence
tabled at the meeting of the Negotiating Council on 18 June 1993;

4. Noting that provision is made for dealing with armed formations in both the Reports
of the Technical Committees on Violence and the TEC and its Sub-Councils;

Therefore Resolves That:

1" Matters which remain unresolved in relation to paragraph 1 and 2 above shall be
implemented immediately and a written report thereon be placed before the
Negotiating Council not later than Thursday 24 June 1993.

PLANCOMM/DOCUMENT/PEACE.RES
2 July 1993

RESOLUTION 18

RESOLUTION ON
THE INDEPENDENT MEDIA COMMISSION
ACCEPTED BY THE MEETING OF THE NEGOTIATING COUNCIL OF

22 JUNE 1993

The Negotiating Council agrees in principle that an Independent Media Commission should be established with the following objectives:

1.1 To ensure equitable treatment of political parties by broadcasting services;

1.2 To ensure that state-financed publications and state-information services are not used to advance the interests of any political party;

so as to contribute towards the promotion and creation of a climate favourable to free political participation and a free and fair election. â\200\231

PLANCOMM/DOCUMENT/IMC.RES

2 July 1993

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RESOLUTION 19

RESOLUTION ON CONDITIONS THAT SHOULD BE CREATED
TO ELIMINATE VIOLENCE

ACCEPTED BY THE NEGOTIATING COUNCIL MEETING ON 22 JUNE 1993

This meeting of the Negotiating Council:

Noting that:

The Technical Committee on Violence has submitted four reports (including its report on the conditions that should be created to eliminate violence in accordance with the " Declaration of Intent on the Negotiating Process" adopted on 7 May 1993); and

Further noting:

That these recommendations should be read in conjunction with these reports;

Hereby resolves that:

1.

The National Peace Committee finalise proposed amendments to the Peace Accord as a matter of urgency so as to strengthen the Accord, empower the Peace Structures and increase their effectiveness;

The Negotiating Council recommends that the signatories to the Peace Accord meet as a matter of urgency to reaffirm their commitment to the Accord and to approve the proposed amendments to it;

Non-signatories should give urgent and immediate attention to signing the Peace Accord, after consultation with the National Peace Committee.

That the Technical Committee on the Independent Electoral Commission develops:

4.1 A code of conduct for all parties, organisations, administrations and governments taking into account the code of conduct of the Peace Accord;
and

4.2 Appropriate compulsory sanctions/punitive measures against those who transgress the code.

Any party organising a public demonstration or any other form of mass action must comply with the guidelines set out in paragraph 6.2 of the Fourth Report of the Technical Committee on Violence;

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The National Peace Committee submit proposed amendments to the Regulation of Gatherings Bill as a matter of urgency;

A series of phased confidence-building measures which would include the future of all armed formations, their personnel and arsenals, be adopted leading to the creation of impartial, legitimate and effective security forces with the consequent dissolution of all other armed formations. A distinction be drawn between statutory and non-statutory armies on the one hand and police forces on the other hand. The Technical Committee on the TEC and its sub-councils to make proposals on precise mechanisms to be adopted;

Parties between whom conflicts exist, which have contributed to violence, in addition to participating in the MPNP, meet bi-laterally to seek joint solutions to the conflicts between them;

The principle of an independent peacekeeping force and its practical implementation should be considered by the Technical Committee on Violence in consultation with the Technical Committee on the TEC.

Every party to the MPNP commits itself without reservation to a holding of a free and fair election and to do everything possible to ensure that the electorate and the leaders and candidates of political parties are able to conduct their election campaigns and other political activities freely without being intimidated or obstructed and without fear of being injured or killed;

The Technical Committee on Violence prepare detailed proposals on the desirability, financing, establishment and composition of a Peace/Youth Services Corps.

The National Peace Committee and the members of the Technical Committee on Violence be entrusted with the initial drawing up of structures for a Peace Corps.

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RESOLUTION 20

RESOLUTION ON THE INDEPENDENT ELECTORAL COMMISSION
ACCEPTED BY THE NEGOTIATING COUNCIL OF 22 JUNE 1993

The Negotiating Council agrees in principle that an Independent Electoral Commission be established, whose object shall be to administer and conduct a free and fair democratic electoral process of the new Parliament/Constituent Assembly/SPR Governments, including responsibility for any other matter connected therewith.

PLANCOMM/DOCUMENT/IEC.RES
2 July 1993

RESOLUTION 21

RESOLUTION ON STEPS TO BE TAKEN FOR THE PURPOSES OF ESTABLISHING A NEW CONSTITUTIONAL ORDER ADOPTED BY THE NEGOTIATING COUNCIL ON 30 JUNE 1993

The Negotiating Council agrees on the following steps to be taken for the purposes of establishing a new constitutional order:

1.1 The MPNP shall adopt the Constitutional Principles, including principles of regional government, providing for both strong regional government and strong national government;

1.2 The Constitutional Principles shall be binding on the Constitution-Making Body and shall be justiciable by a Constitutional Court/Tribunal,

1.3 The Commission on Delimitation/Demarcation appointed by the MPNP will make recommendations to the MPNP on regional boundaries for the purposes of elections and regional government for the transitional phase;

1.4 The MPNP shall agree on legislation to make provision for the following structures for the purpose of levelling the playing field and promoting conditions conducive to the holding of free and fair elections:

1.4.1 A Transitional Executive Council;

1.4.2 An Independent Electoral Commission;

1.4.3 An Independent Media Commission and an Independent Broadcasting Authority;

1.5 The MPNP shall agree on details of discriminatory legislation to be repealed;

1.6 The MPNP shall agree on a Constitution for the transitional period;

The - Negotiating Council accordingly requests the Technical Committee on Constitutional Issues to draft a Constitution for the transition which shall make provision for:

2.1 The election according to a system of proportional representation of a Constitution-Making Body, legislature and national government for the transitional phase which will include a national and regional component. With regard to constitution making, this Constitution shall provide for dead-lock breaking and special majorities by which decisions will be taken;

PLANCOMM/DOCUMENT/CONSTORD.RES
2 July 1993

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The election of regional legislatures and the establishment of regional governments in the transition;

The powers, functions and structures of regions for the transitional period;
Fundamental human rights on a justiciable basis during the transitional period;
A Constitutional Court/Tribunal to ensure the justiciability of the

Constitutional Principles, of the fundamental rights and of the Constitution itself;

Participants are given until the 12th of July 1993, to make further inputs to the Technical Committee with regard to the above draft Constitution for the transition.

This is agreed against the background of paragraph 6 of the Explanatory Memorandum adopted by the Negotiating Council on 30 April 1993.

PLANCOMM/DOCUMENT/CONSTORD.RES

2 July 1993

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ADDENDUM B

COMPOSITION OF TECHNICAL COMMITTEES

Violence

Mr L Ntsubane
Prof P.J. Oosthuizen
Prof A. Seegers
Prof H. Vilikazi

Mr P. Hatty

Mr M. Phillips

Ms S. Vos

Mr G.H. Myburgh

Secretary: Sylvia Briggs

Constitutional Matters

Mr F. Cachalia
Adv. A. Chaskalson
Prof G.E. Devenish
Adv E. Moseneke
Adv B. Ngoepe
Prof W. Olivier

Dr F. Venter

Prof M. Wiechers
Adv M. Olivier

Secretary: Kim Morgan

Fundamental Rights

Prof H. Corder

Prof L.M. du Plessis
Adv G. Grove

Ms S. Nene

Secretary: Miriam Cleary

gs

Transitional Executive Council

Ms Z. Du Toit
Prof F. Haysom
Dr C.J. Heunis
Mr E. Mapheto
Adv J. Renene
Prof D. van Wyk

Secretary: Susan Keane

Independent Media Commission

Ms A. Armstrong
Adv D. Dison
Adv P. Pretorius
Mr E.J. Mabuza
Prof. C. Noffke

Secretary: Olive Khosa/Susan Keane

Independent Electoral Commission

Prof D. Davis

Adv. H.R. Laubscher
Mr S.K. Ndlovu

Mr R.B. Rosenthal
Dr F. Ginwala

Adv. M.J. Olivier

Secretary: Melanie Cilliers

Re[;eal of Discriminatory Legislation

Prof J. Dugard

Prof M.G. Erasmus
Adv P. Motlana-Moraka
~ Adv P. Langa

Adv J. de Bruyn

Secretary: Danie Brand

ADDENDUM C

EXECUTIVE SUMMARIES AND
SCHEDULES OF
TECHNICAL COMMITTEES

TECHNICAL COMMITTEE ON VIOLENCE

Resolutions/Declarations/ Motions relating to Violence

26 April 1993

30 April 1993

07 May 1993

18 May 1993

28 May 1993

A Draft Motion on Violence was tabled and discussion was deferred to 30 April 1993

The Negotiating Council adopted, as interim measure, a recommendation by the Planning

Committee

The Negotiating Council adopted a Resolution on Attacks of Journalists

A Declaration of Intent on the Negotiating Process was submitted by the Planning Committee

and adopted on

A Resolution on Intolerance and Assassinations

was submitted and adopted

The Technical Committee was requested to report on the Conditions that should be Created to Eliminate Violence in accordance with the "Declaration of Intent on the Negotiating Process" adopted on 7 May 1993

17 June 1993 - A Draft Declaration and Draft Resolution on Cessation/ Suspension of Hostilities, was tabled at the Negotiating Council meeting and discussion was deferred to 18 June 1993

18 June 1993 - The amended Draft Cessation/Suspension of Hostilities, Declaration Armed on Struggle and Violence was tabled and deferred to

22 June 1993

22 June 1993 - The Declaration and Resolution tabled on 17 and 18 June was adopted as well as a Resolution on the Conditions that should be created to Eliminate Violence

The Technical Committee submitted four reports to the Negotiating Council. Discussions on the reports took place on:

- 18 May 1993
- 28 May 1993
- 3 Jne 11685
- 22, i 1888

Aspects of Reports Agreed Upon:

2,11 National Peace Committee

3.1.1 Strengthening of the Peace Accord.

3.1.2 Urgency of a meeting of Signatories to the National Peace Committee.

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3.1.3 Invitation of Non-Signatories to a meeting of the National Peace Committee.

3.1.4 Non-Signatories to consider signing the Peace Accord.

3.1.5 National Peace Committee to finalise proposed amendments to Peace Accord.

3.1.6 National Peace Committee to submit proposed amendments to the Regulation of Gatherings Bill.

Bi-lateral meetings between parties to seek joint solutions to conflicts between them.

Issues referred back for debate:

4.2

Redrafting paragraph six on Mass Action (Report 4).

Issues to be completed

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Peace Corps/Youth Services corps
Multi-Party control over security forces
Violence against women

Issues raised in Third Report:

5.4.1 The South African Government
5.4.2 Other Governments and administrations

5.4.3 Other

Weapons

of

Technical Committee in Consultation with other Committees

6.1 Principle of independent peacekeeping force together with TEC

Issues Referred to Other Technical Committees

7.1 IEC to develop a code of conduct for political parties as well as sanctions/punitive measures to deal with transgressors.

7.2 Future of armed formations to be discussed by TEC and its sub-councils

Further Submissions Requested

8.1 Submissions on "women as victims of political violence"

8.2 Independent peacekeeping force

EXECUTIVE SUMMARY OF THE TECHNICAL COMMITTEE ON CONSTITUTIONAL ISSUES

The Third Supplementary Report on Constitutional Principles of the Technical Committee on Constitutional Issues to the Negotiating Council (30 June 1993) has been accepted by the Negotiating Council with the following amendments/ exceptions:

1981 Principles 2.18, 2.24, 2.24.1 and 2.24.9 were referred back to the Technical Committee.

1.2 Principles 2.1, 2.12, 2.16, 2.24.11, 2.24.12, as well as the third proposed addition, were amended and accepted.

In the (30 June 1993) the Negotiating Council requests the Technical Committee on Constitutional Issues to draft a Constitution for the Transition Period.

Paragraphs 4 and 5 of the Fifth Report of the Technical Committee on Constitutional Issues provide both the Technical Committee with a framework for drafting the Constitution and interested parties with a framework for compiling submissions to the Committee (for which the deadline is 12 July 1993).

The Fourth Report on the powers and functions of SPRs during the transition was discussed and taken note of.

The Fifth Report of the Technical Committee:

5.1 It was agreed that the Technical Committee be mandated to proceed with their work as referred to in paragraph 4 and 5 of their Fifth Report. This would include the drafting of a constitution along the basic framework as suggested in paragraph 4 of the said report.

5.2 The drafting of this constitution should be interpreted in the light of the resolution as adopted by the Negotiating Council on 30 June 1993. (Resolution on Steps to be Taken for the Purpose of Establishing a New Constitutional Order)

SCHEDULE OF THE TECHNICAL COMMITTEE ON
CONSTITUTIONAL ISSUES

FIRST REPORT - 13 MAY 1993

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Introduction

Views

Self-Determination

Form of State

Constitutional Principles

Constitution Making Body/Constituent Assembly
Transitional/Interim Constitution

Transitional Regional/Local Government

Future of the TBVC States

Submissions by Parties

SECOND REPORT - 19 MAY 1993

AW S W â\200\224

Introduction

An Approach to Constitutional Principles
Structures, Powers and Functions of the SPR
The Integrity and Viability of the SPR
Constitution Making Process

Proposals of the Technical Committee on
Constitutional Issues

THIRD REPORT - 27 MAY 1993

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Introduction

General Constitutional Principles
Principles dealing with the allocation of
powers to different levels of Government
Asymmetry

Matters requiring the consideration of the
Negotiating Council

11

24

FOURTH REPORT - 3 JUNE 1993

pâ\200\224

Introduction

Assumptions regarding the Constitution Making
process and the establishment of Regional
Government

The different approaches to SPRâ\200\231s in the
Transitional Period

The allocation of powers to SPRâ\200\231s during the
Transition

Suggested allocation of Powers and Functions of
SPRâ\200\231s during the Transition

Structures of the SPRâ\200\231s during the Transitional
Period

Outstanding Matters

FIFTH REPORT - 15 JUNE 1993

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FIRST SUPPLEMENTARY REPORT ON CONSTITUTIONAL

Background

Outline of the Process

The Development and Formalisation of a
Constitution for the Transitional Period
Elements of a Constitution for the
Transitional Period

Matters affecting the Structure of the
Constitution for the Transitional Period
Outstanding Matters

PRINCIPLES - 15 JUNE 1993

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SECOND SUPPLEMENTARY REPORT ON CONSTITUTIONAL

Introduction

Paragraph 2. 2 : Gender

Paragraph 2. 4 : Judiciary

Paragraph 2. 8 : Diversity of Language and Culture

Paragraph 2.12 : Traditional Leaders and
Indigenous Law
Response to Further Submissions

PRINCIPLES - 23 JUNE 1993

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~ Introduction

The Constitutional Principles

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SIXTH REPORT - 23 JUNE 1993

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Introduction

The Bottom-Up and Top-Down Approaches
SPR Constitutions

An Equilibrium

SCHEDULE TO THE SIXTH REPORT

Analysis and Interpretation of Submissions and Proposals

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Introduction

Examination of the Approach

Variation of Detail

Form of State

Constitutional Transition to a Federal State
MPNP

Legislative Processes

Elections at National and SPR Levels

Approach to Constitution Making and Transition
Conclusions

SPECIAL REPORT ON CONFEDERALISM - 22 JUNE 1993

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Submissions Received

Submission of the Conservative Party of South Africa
Submission of the Government of Bophuthatswana
Conclusion

SEVENTH REPORT - 29 JUNE 1993

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Introduction

Avoiding Terminological Traps

Analyses and Suggestion regarding Process and
Submissions reviewed in Previous Reports
Developing the Process

Making a Choice

Possible Equilibrium regarding the Process of
Constitution Making

THIRD SUPPLEMENTARY REPORT ON CONSTITUTIONAL PRINCIPLES

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22
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Introduction
Constitution Principles
Proposed Additions

2.2 Still to agree on the principles embodied in:
2.2.1 Enforcement

2.2.2 Limitation

2.2.3 Suspension

23 None of the formulations have been approved as yet.

3 Those Issues referred back for Debate

31 No issues have been explicitly referred back to date but it would appear that three issues especially are controversial, namely:

BIS|EProperty,

3.1.2 Economic Activity

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3.2 Still to be debated:

3.2.1 Pension Rights

32.2 Preservation of the Religious Character and Medium of Instruction of

Education Institutions

4. Aspects relating to Substantive Issues in the Reports of other Technical Committees

4.1 The inclusion of a provision to provide for the diversity of expression and opinion in the public media. This will have to be referred to the Technical Committee on Media.

42 The co-ordination of the political rights with provisions proposed by the Electoral Committee.

43 Mechanisms for the enforcement of entrenched rights and freedoms. This overlaps with the work of the Constitutional Issues committee.

These issues have been or will be mentioned in the Reports of the Technical Committee on Fundamental Rights but have not been formally noticed by the Negotiating Council.

SCHEDULE OF THE TECHNICAL COMMITTEE ON
FUNDAMENTAL RIGHTS DURING THE TRANSITION

FIRST PROGRESS REPORT - 14 MAY 1993

I Introductory Remarks

2, Guiding Considerations

o Methodology

4. Rights and Freedoms identified for purposes of
Category 3.1

SECOND PROGRESS REPORT - 21 MAY 1993

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Background

28 Categorisation of Rights

2.1 First Category

2.2 Second Category

2.3 Third Category

Limitation and Suspension

Enforcement

Recommendations and Conclusion

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THIRD PROGRESS REPORT AND EXECUTIVE SUMMARY

28 MAY 1993

e Background

Do Amendments to Formulations in the Second Report

3 Criteria

4. Summary and proposed applications of the criteria
suggested in this Report

S Explication of the need and criteria for the
limitation and suspension of Fundamental Rights
and Freedoms included in any Bill or
Charter of Rights

6. Any institution to adjudicate on Fundamental
Rights during the Transition
Vs Recommendations

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FOURTH PROGRESS REPORT - 3 JUNE 1993

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Background

2 Rights and Freedoms agreed on:

2.1 Freedom of Expression

2.2 Assembly, Demonstration and Petition

2.3 Freedom of Association

2.4 Political Rights

25 Franchise

2.6 Access to Information

2.7 Administrative Decisions

2.8 Human Dignity

2.9 Religion and Belief

2.10 Personal Liberty

2.11 Right to Equality

2.12 Torture and Cruel Punishment

2.13 Freedom of Movement

2.14 Access to Court

2.15 Industrial Relations

2.16 Departure from and return to South Africa

2.17 Detained, Arrested and Accused Persons

2.18 Privacy

2.19 Citizenship

2.20 Environment

2.21 Eviction

2.22 Children

3 Rights and Freedoms still be agreed on:

B1 Servitude and Forced Labour

3.2 The Right to Life

3.3 Language and Culture

3.4 Residence

3.5 Economic Activity

3.6 Industrial Action

3.7 Property

3.8 Education

Limitations and Suspension Clause

Conclusions and Recommendations

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FIFTH PROGRESS REPORT - 11 JUNE 1993

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Background

Style of Formulation

Formulations suggested for inclusion in the
Transitional Constitution

Enforcement Mechanisms

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TECHNICAL COMMITTEE ON
THE INDEPENDENT
ELECTORAL COMMISSION

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EXECUTIVE SUMMARY OF THE TECHNICAL COMMITTEE ON THE INDEPENDENT ELECTORAL COMMISSION

Present status of Committee's brief

1. Executive Summary

1.1 The Terms of Reference of the Technical Committee required that a legislative framework be prepared as the basis for discussion by the Negotiating Council/Forum in order to establish an Independent Electoral Commission in

terms of certain principles and guidelines which were set out in its written brief.

1.2 Interm of its mandate, the Technical Committee has prepared and tabled an initial draft of the Independent Electoral Commission Act which provides for the establishment of the Commission which shall assume responsibility for the conduct, supervision, monitoring and evaluation of elections to be held for a parliament/constituent assembly (and SPR governments if applicable), and to provide generally for the necessary powers, functions, duties and procedures of the Commission.

1.3 The Technical Committee's first draft of the Act was tabled in the Negotiating Council on the 21st May 1993, and accepted in principle by the Council at its meeting on the 22nd June 1993, and interested parties were requested to prepare written submissions regarding the Technical Committee's first draft Act for the further consideration of the Committee. Thus far, 33 written submissions have been received by the Technical Committee.

1.4 The Technical Committee in its third report (3 June 1993) drew attention to the close interdependence of its draft Act, and the existing Electoral Act, and it indicated the need for a substantial revision of the Electoral Act which presently assumes voter registration, constituency based representation, and a racially based franchise. At its meeting on 22 June 1993, the Negotiating Council instructed this Technical Committee to include within the ambit of its brief, a review of the present Electoral Act with a view to drafting a new Act and/or suggesting appropriate amendments.

1.5 On the 28th June the Negotiating Council conducted its initial debate with] _ reference to the detailed provisions of the proposed Independent Electoral Commission Act, and it proposed a number of amendments for the further '200\2301 consideration of the Technical Committee.

1.6 Accordingly the Technical Committee is now engaged as a matter of urgency with the undermentioned tasks:

1.6.1 The preparation of a second draft of the Independent Electoral

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Commission Act, with due cognisance to the debate which has taken place in the Negotiating Council and the various written submissions which have been received from interested parties; such Act to incorporate an Electoral Code of Conduct which is to be prescribed by statute and enforced by the Commission upon political parties, candidates and other affected instances.

1.6.2 The preparation of a new Electoral Act (and or the preparation of an amended Act) to make provision for the envisaged electoral process and the transitional arrangements which are presently under negotiation.

Agreed principles

The Negotiating Council has accepted the Committee's draft Bill in principle, subject

to further consideration of issues which have been raised both in the debate and in the

written submissions. However, it is apparent that substantial agreement already exists with reference to the following:

2.1 The need for an Independent Electoral Commission and the broad terms of its mandate;

2.2 The composition, appointment and term of office of the Commission;

2.3 The administrative structure of the Commission, and its division into three functional directorates, namely:

% An Election Administration Directorate;

% An Election Monitoring Directorate;

3 An Election Adjudication Directorate;

A The broad application of electoral legislation to the envisaged first

election, and to any Referenda which may be considered necessary in relation to the constitutional process.

Outstanding Issues

Apart from the detailed drafting of the provisions of the proposed Act, a number of substantive issues remain to be negotiated and agreed including the following:

3.1 Various constitutional issues, with which this legislation will have to be harmonized, including in particular the status of SPRs, the role (if any) of regional lists and regional elections, and the principle of reincorporation of the TBVC and self-governing states.

3.2 Criteria for determining the eligibility of voters, candidates, and political parties participating in the first elections.

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The precise ambit of the Commission's powers, vis-a-vis other departments of state, and in particular with reference to the police and defence forces.

The circumstances in which the appointment of a commissioner may be terminated, and the role of the Appellate division in this process, and generally with reference to its power of review.

The terms of an Electoral Code of Conduct to be promulgated in terms of the Act.

The obligation to disclose the source of campaign funding and regulations concerning permissible election expenditure.

Criteria for determining whether the first election may be considered as having been free and fair, and the consequences in the event that the Commission certifies otherwise, either generally or in relation to a specific area/s.

These issues will require further proposals to be formulated by the Technical Committee, and this will in due course necessitate a resumed debate in the Negotiating Council with a view to arriving at substantial consensus.

Reports of other Technical Committees

In reports of the other technical committees, there are a number of references to the role of the Independent Electoral Commission and attention has been directed to the need to consider overlapping issues and the interdependence and interaction of the related legislation. Issues which require a joint consideration by the elected Technical Committees include the following:

4.1

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The Committee on Constitutional Issues

A number of issues have been indicated above, including those affecting the mandate and identity of the constitution-making body, the status of SPR's; the form of proportional representation; the role of regional and national lists in a future election; and the issues affecting voter eligibility and related matters.

The Committee on Discriminatory Legislation

The identification of legislation which requires to be repealed and/or amended as impeding free political activity during an election, and the contents of the

proposed electoral code and broad principles to be applied by the Commission in the conduct of the election.

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The Committee on the Transitional Executive Council

The final jurisdiction of the Independent Electoral Commission, and the inter-relationship of the Commission to the Transitional Executive Council, including a proposal of the Technical Committee that there be no right of repeal or review from decisions of the IEC.

The Committee on the Independent Media Commission and Independent Telecommunications Authority

There is a need to clearly demarcate the jurisdiction of the regulating authorities in relation to the co-existent and overriding powers of the Independent Electoral Commission.

The Committee on Violence

Proposals emanating from this Committee with regard to the need to develop compulsory sanctions for dealing with parties/administrations/organisations which transgress the electoral code but refuse to sign the Peace Accord; and a further proposal regarding an independent peace-keeping force with multi-party composition to be established and placed "under the control of the Independent Electoral Commission or under multi-party executive control."

Committee on Fundamental Rights during the Transition

Provisions which may be necessary to ensure that the decisions of the

Independent Electoral Commission are not susceptible to litigation during the period of transition in a manner which might jeopardise the electoral process.

Work Progress

The Technical Committee appreciates the extreme urgency of its undertaking the tasks with which it has been entrusted, and is committed to delivering the required documentation within the ensuring weeks. However, it must be appreciated that the finalisation of this draft legislation may be responsive to decisions which are taken with regard to other related matters in the Negotiating Council, and accordingly progress of the work of the various Committees is substantially interdependent.

SCHEDULE OF THE TECHNICAL COMMITTEE ON THE
INDEPENDENT ELECTORAL COMMISSION
FIRST INTERIM REPORT - 13 MAY 1993

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Initial Discussions

Preparation of Rough Draft

Proposed Statute

Drafting Process

Submissions Received

Comparative Legislation/Laws

Review of Submissions and Comparative
Legislation/Laws

SECOND REPORT AND EXECUTIVE SUMMARY - 21 MAY 1993

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List of Documentation
First Draft - The Independent Electoral
Commission Act:

2.1 Chapter 1 - Interpretation and Application
of the Act

2.2 Chapter 2 - Establishment of Commission

2.3 Chapter 3 - Reconstitution of Commission

2.4 Chapter 4 - Procedure and Administration

2.5 Chapter 5 - The Election Administration
Directorate

2.6 Chapter 6 - Election Monitoring Directorate

2.7 Chapter 7 - The Election Adjudication
Directorate

2.8 Chapter 8 - Adjudication of Election Results

2.9 Chapter 9 - Miscellaneous Provisions

THIRD REPORT - 3 JUNE 1993

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Introduction

Submissions

Matters requiring the consideration of the
Negotiating Council:

3.1 Ambit of Committeeâ\200\231s Brief

3.2 Composition of the Commission

3.3 Voter Eligibility

3.4 Disqualification of Commissioners

3.5 Certification of Results

3.6 Jurisdiction

3.7 Financial Constraints

3.8 Campaign Funding/Expenditure

3.9 Role of the Appellate Division

3.10 Rural Women Constituency

FOURTH REPORT - 11 JUNE 1993

Further Submissions Received

Request for Brief to draft New Electoral Act
Specific Issues

Selection Procedure of Commissioners
Conclusion

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TECHNICAL COMMITTEE ON
THE INDEPENDENT MEDIA
COMMISSION

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EXECUTIVE SUMMARY OF THE TECHNICAL COMMITTEE ON THE
INDEPENDENT MEDIA COMMISSION

The Negotiating Council has discussed the provisions of the 7th draft of the IMC Bill. The following issues/sections were referred back to the Technical Sub-committee for clarification and redrafting:

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The question of whether the IMC should regulate the privately owned print media;

Appointment of members of the Commission (Section 4 (2))

Extra legal experience (Section 5 (2))

Disqualification relating to crimes of dishonesty (Section 6 (h))

Regulations (Section 25)

Offenses and Penalties (Section 26)

Delegation of powers (Section 27)

This has been addressed in the sixth report of the Technical Sub-committee on the Independent Media Commission and Independent Telecommunications Authority (1 July 1993) (Eighth Draft of the Independent Media Commission Bill)

An IBA Draft Bill was formally tabled in the Negotiating Council meeting of 22 June 1993. Participants were requested to submit their comments with regard to the Draft Bill to the Technical Committee by Tuesday 6 July, 12h00.

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SCHEDULE OF THE TECHNICAL COMMITTEE ON THE
INDEPENDENT MEDIA COMMISSION AND THE
INDEPENDENT TELECOMMUNICATIONS AUTHORITY

FIRST REPORT - 13 MAY 1993

- 1 The Independent Media Commission
- 2 The Independent Telecommunications Authority

EXECUTIVE SUMMARY OF THE INDEPENDENT MEDIA
COMMISSION BILL

SECOND REPORT - 21 MAY 1993

Committee Meetings

Submissions Received

Draft IMC Bill (pages 6-23)

Submissions not reflected in Committee's
Recommendations

State Information Services

Written Material Published

Independent Broadcasting Authority Bill

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THIRD REPORT - 1 JUNE 1993

Submissions Received

Amendments to Sixth Draft of IMC Bill
Changes made to the Bill

Specific Sections of the IMC Bill
Jurisdiction of IMC

Submissions from the Conservative Party
Amendment to the First Report
Independent Broadcasting Authority Bill

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SEVENTH DRAFT - INDEPENDENT MEDIA COMMISSION BILL
(PAGES 30-46)

FOURTH REPORT - 11 JUNE 1993

1% Submissions

2. Progress on Draft Independent Broadcasting
Authority Bill

35 Comments

4, Recommendations

24

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FIFTH REPORT - 22 JUNE 1993

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Submissions

Preparation of Fourth Working Draft
Sections of the Bill requiring assistance of the
Negotiating Council

Request for further Submissions

EXECUTIVE SUMMARY OF THE FOURTH WORKING DRAFT OF THE
INDEPENDENT BROADCASTING AUTHORITY BILL

Chapter 1 Interpretation

Chapter 2 Object and Policy

Chapter 3 Independent Broadcasting Authority

Chapter 4 Committees, Appointment of Experts and
Inquiries

Chapter 5 Broadcasting Frequency Spectrum Management

Chapter 6 Broadcasting Signal Distribution Licences

Chapter 7 Broadcasting Licences

Chapter 8 Broadcasting Programmes

Chapter 9 Enforcement

Chapter 10 Regulations, Amendment and Repeal of Laws,

Short Title and Commencement Schedules

SIXTH REPORT - 1 JULY 1993

OB L

Consideration of the Negotiating Councilâ\200\231s Debate
Regulation of the Private Print Media

Negotiating Council Discussion on Section 6
Negotiating Council Discussion on Section 8
Negotiating Council Discussion on Section 25
Negotiating Council Discussion on Section 27

INDEPENDENT MEDIA COMMISSION BILL
(EIGHTH DRAFT) - 1 JULY 1993

Arrangement of the Act

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Definitions

Establishment of Commission

Objects

Appointment of Members of the Commission

Persons Qualified to be Members of the Commission
Persons Disqualified to be Members of the Independent
Media Commission

Term of Office of Members of Commission

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Vacation of Office of Members of Independent Media Commission and the filling of
such Vacancy

Remuneration of Members of Commission
Meetings of Commission

Establishment of Committees

Appointment of Experts

Staff of Commission

Powers and Functions of Commission

Party Election Broadcasts on Public Sound
Broadcasting Services

Political Advertisements on Sound Broadcasting
Services

Prohibition and Party Election Broadcasts and
Political Advertisements on Television
Broadcasting Services

Equitable Treatment of Political Parties by all
Broadcasting Services

State Financed Publications and State Information
Services

Hearings

Orders, Penalties and Recommendations
Expenditure in connection with Functions of the
Commission

Reporting Responsibility of Commission
Limitation of Liability in respect of anything done
under this Act

Regulations

Offenses and Penalties

Delegation

Short Title and Commencement

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TECHNICAL COMMITTEE ON
THE AMENDMENT OR REPEAL
OF LEGISLATION IMPEDING
FREE POLITICAL ACTIVITY
AND DISCRIMINATORY
LEGISLATION

EXECUTIVE SUMMARY OF THE TECHNICAL COMMITTEE ON THE
AMENDMENT OR REPEAL OF LEGISLATION IMPEDING FREE POLITICAL
ACTIVITY AND DISCRIMINATORY LEGISLATION

Planning Committee Minutes (5.1.5) of Monday 17 May recommended that the Technical Committee follow the first option mentioned in their first report (i.e. Paragraph 1.1 of report dated 13 May) - i.e. "To study all the laws and subordinate legislation pertaining to all forms of political activity normally associated with democratic elections."

The Technical Committee would "be assisted in this regard by the seconded members from the relevant justice departments, i.e. from the South African and TBVC States Department of Justice" (5.1.5 P.C. minutes of 17 May)

Negotiating Council meeting of 18 May (Item 5.7)

2.1 The Committee was requested to:

2.1.1 Take into account concerns of delegates, including Traditional Leaders.

2.1.2 Within a period of two weeks:

5 Identify those laws which are discriminatory and inhibit free political activity for reporting back to the Negotiating Council

i Propose a "higher code" and implementation mechanisms (see

First Report (13 May Item 1.2, 4, 5)

Technical Committee Final Report of 1 June

Discussed at Negotiating Council Meeting of Tuesday 22 June (Item 4.6)

3.1 Report tabled and presented. Discussion postponed.

32 Committee mandated to have discussions with other Committees on overlapping issues.

Discussion on report in absence of members of the Committee took place at the Negotiating Council Meeting of 28 June 1993.

4.1 Aspects of the Report Agreed Upon in the Negotiating Council:

4.1.1 A tribunal would be formed to deal with judicial issues relating to the election. This would be referred back to the Technical Sub-committee in conjunction with the IEC for more detail on the functioning thereof.

4.2 Issues referred back for debate:

4.1.2 Matters to be referred to the Independent Electoral Commission Technical Sub-committee:

- o A Code of Conduct for an election (point 5.4.1.)

Â® The freedom to form political parties, to belong to them and to stand as candidates (point 5.4.2.)

4.3 Matters to be dealt with when the MPNP dealt with the TEC:

4.3.1 Any issue impacting on the levelling of the playing field

4.4 Issues clarified/requiring clarification by the Negotiations Council:

4.4.1 Referring to Clause 5.10.3.2.1., regarding the assumption that there would be a voters roll: it was noted that this assumption could not necessarily be made. Voting could be done by way of registration or by a decision that everybody who has an ID document would be entitled to vote. :

4.4.2 1In clause 5.10.12.1., reference is made to 10 regions. Clarity was needed on whether this referred to the establishment of regions and if it was bound up with the number of regions.

SCHEDULE OF THE TECHNICAL COMMITTEE ON THE
REPEAL OR AMENDMENT OF LEGISLATION IMPENDING FREE
POLITICAL ACTIVITY AND DISCRIMINATORY LEGISLATION

FIRST REPORT - 13 MAY 1993 1

L, The Committee has identified the following two
ways of proceeding to accomplish its task

2 Advantages and Disadvantages of Each Option
s Reasons for adopting Option 1.2
4. Mechanisms for Implementing the Code
St General Principles and Powers to be contained
in a "Higher Code"
6. Conclusion

FINAL REPORT - 1 JUNE 1993 6

Issues to be considered:

Discriminatory Laws
Laws that may impede Free and Fair Elections

* South Africa
I, Discriminatory Laws Constituting the

Foundations of Apartheid â\200\230 9
24 Discriminatory Laws which flow from the Laws

Constituting the Foundations of Apartheid 12
3 Laws which discriminate on grounds of Sex and

Religion 13
4. Laws which may impede Free and Fair Elections 14
5). The "Higher Code" 18
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Proclamations creating Self-Governing Territories
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Annexure C 69

Submissions
(Pages 69-89 inclusive)

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TECHNICAL COMMITTEE ON
THE TRANSITIONAL
EXECUTIVE COUNCIL

EXECUTIVE SUMMARY OF THE TECHNICAL COMMITTEE ON THE
TRANSITIONAL EXECUTIVE COUNCIL

Number of reports tabled: 6

1.1 First report discussed in the Negotiation Council: 18 May 1993
(refer to list of submissions - see Index)

Discussion of further reports by the Negotiating Council took place on 1 June 1993.

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" That the Technical Committee on the TEC and its Sub-Councils begins the drafting of legislation on the basis of the framework presented in paragraph 1 of their First Report, thereby putting into one document all the provisions and present the Negotiating Council with draft legislation.

2 That furthermore, the Negotiating Council agrees in principle that a TEC will be established, in line with the Resolution on Steps to be Taken for the Purposes of Establishing a New Constitutional Order as adopted by the Negotiating Council on 30 June 1993.

% That finally, this is an in-principle decision and the details of the draft legislation will still have to be discussed.

Issues relating to other Technical Committees:

31 The Technical Committee on Violence has referred the issue of the future of armed formations to the TEC

379 Both the TEC and the IEC Technical Committees need to consider the issue of electoral jurisdiction during the transitional period.

3.3 The TEC is considering the adjudicatory function of the IEC (Section 5 of the first report), and notes that a final recommendation in this respect will only be possible after consideration of the report and recommendations of the IEC Technical Committee

SCHEDULE OF THE TECHNICAL COMMITTEE ON THE
TRANSITIONAL EXECUTIVE COUNCIL

FIRST REPORT - 13 MAY 1993 1

i Introduction

2. The TEC and Sub-Councils

SYSTEMATIC AND ITEMISED SET OF PROPOSALS TO
FACILITATE DISCUSSION IN THE PLANNING COMMITTEE AND
NEGOTIATING COUNCIL OF THE MULTI-PARTY NEGOTIATING PROCESS

Establishment and Objectives

Composition

Powers

Sub-Councils : Establishment, Composition, Appointment
and Powers

Jurisdiction and Disputes

Meetings

Decisions

Finances

Amendment

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SUMMARY OF THE MOST IMPORTANT ASPECTS OF THE FIRST REPORT

SECOND REPORT - 21 MAY 1993 15

1 Programme of Work

2 Tasks

3. Amendment of First Report

4, Supplement to Item 9 - Finances in First Report

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Summary of Inputs Received

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Submissions Received

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Powers and Functions:

2.1 In relation to Foreign Affairs

2.2 In relation to Finance

FOURTH REPORT - 28 MAY 1993 27

e Introduction

2, Overview of Positions

e Conclusion

SUMMARY OF REMAINING INPUTS RECEIVED

FIFTH REPORT - 9 JUNE 1993 31

1% Introduction

s Powers and Functions

ADDENDUM A

Relevant Extract from the First Report:

59 Jurisdiction and Disputes

SIXTH REPORT - 11 JUNE 1993 36

s Introduction

2 Powers and Functions

ADDENDUM D

MEETINGS OF THE NEGOTIATING COUNCIL HELD SINCE 1 APRIL 1993

Facilitating Committee 5 March 1993
Facilitating Committee 6 March 1993
Negotiating Council 18 March 1993
Negotiating Council 30 March 1993
Negotiating Council 26 April 1993
Negotiating Council 30 April 1993
Negotiating Council 7 May 1993
Negotiating Council 18 May 1993
Negotiating Council 25 May 1993
Negotiating Council 27 May 1993
Negotiating Council . 28 May 1993
Negotiating Council 3 June 1993
Negotiating Council ISRUNEMO9S
Negotiating Council 17 June 1993
Negotiating Council 18 June 1993
Negotiating Council 200\234 ZORINnERNIS08
Negotiating Council 23 June 1993
" Negotiating Council 24 June 1993
Negotiating Council 28 June 1993
Negotiating Council 29 June 1993
Negotiating Council 30 June 1993

Negotiating Council 1 July 1993