

**THE TRANSITIONAL EXECUTIVE COUNCIL (TEC)  
AS TRANSITIONAL INSTITUTION TO MANAGE AND PREVENT CONFLICT  
IN SOUTH AFRICA (1994)**

by

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*DEDICATION:*

*This thesis is dedicated to Professor Dirk Kotze', for his  
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## **ABSTRACT**

One of the most critical moments during any transition is when the executive power of the old regime is transferred to a new government in waiting. This is often characterised by instability and conflict. Hence the Transitional Executive Council (TEC) was established in South Africa to facilitate its gradual and peaceful transition in 1994.

The TEC can be seen as a negotiated, temporary and transitional institution that managed and prevented conflict in South Africa prior to the April 1994 general election. Although it existed only for four months, from December 1993 to April 1994, it played a significant role in South Africa's democratic transition. The TEC contributed to levelling the political playing field and creating a climate favourable for free and fair elections. The TEC's seven sub-councils further contributed to the smooth transition and creation of the Government of National Unity. In this study special attention has been given to the Sub-council on Foreign Affairs and its role in integrating South Africa into the international community. The Foreign Affairs sub-council played a pivotal role in laying the foundation for South Africa's membership of the various organizations like the Organization of African Unity (OAU) and the Commonwealth.

In order to gain a deeper understanding of the TEC, several theoretical frameworks are applied to analyse the different perspectives namely: transition theory, conflict resolution, power-sharing and constitutional negotiations.

## ACRONYMS

ANC	African National Congress
AWB	Afrikaner Weerstandsbeweging
CODESA	Convention for a Democratic South Africa
COSAG	Concerned South Africans Group
COSATU	Congress of South African Trade Unions
IFP	Inkatha Freedom Party
NP	National Party
OAU	Organization of African Unity
PAC	Pan Africanist Congress of Azania
SADC	Southern African Development Community
SADF	South African Defence Force
UDF	United Democratic Front
TBVC	Independent Bantustans: Transkei, Bophuthatswana, Venda, and Ciskei
TEC	Transitional Executive Council
WHAM	Winning Hearts and Minds



# **CHAPTER ONE**

## **INTRODUCTION**

### **1.1 Introduction**

During my work for the Honours degree, I completed a short paper on the Transitional Executive Council (TEC) as a transitional institution to manage and prevent conflict in South Africa. The lack of adequate literature and material on the subject motivated me to continue with this research and to develop it into a Master's dissertation.

Another reason for my interest in this topic is: I was selected as a participant to attend the Advanced Program in International Conflict Resolution at Uppsala University in Sweden. The South African transition process received special attention in the program and this encouraged me to specialize in this area. Many historians are ambivalent about the significance and the role the TEC played in the transition to democracy. The contribution of the TEC has largely been forgotten or undervalued. For example, the TEC's contribution to the transition should not only be determined by its role in the South African domestic politics but also by the role of its Sub-Council on Foreign Affairs in laying a strong foundation for the first foreign policy after 1994 which paved the way for South Africa's integration into the international community.

### **1.2 Background and Context**

The Transitional Executive Council (TEC) as a negotiated, temporary and transitional institutional arrangement and was meant to function in conjunction with existing legislative and executive structures during the four months immediately before the April 1994 general election. According to a report by Working Group III to Convention for a

Democratic South Africa II (CODESA II) in May 1992, the TEC had to contribute to levelling the political playing field and creating a climate favourable for free and fair elections and free political participation. The TEC's proposed sub-councils were required to possess executive powers in order to prepare for an elected parliament under an interim constitution. They were also expected to propose new legislation. The following two paragraphs in the mentioned report summarised the unique nature of the TEC as a political institution:

In the defined areas of responsibility of sub-councils of the TEC, ministerial powers and discretions [of the National Party (NP) government] in so far as they affect the levelling of the playing fields, the creation of a climate conducive to free and fair elections or free political participation will be exercised in consultation with the TEC, or a sub-council to which this function is delegated by the TEC. The decision of the TEC made within its terms of reference and its powers as set out above will be binding on and will be implemented by all participants including governments/administrations<sup>1</sup>.

An example of this limitation on the NP government's powers is discussed by Ivor Sarakinsky<sup>2</sup> in regard to the TEC's foreign affairs sub-council. According to him, the sub-council's task was to ensure that the NP government did not secure new loans and exploit the new friendlier international environment for its own advantage. Members of the sub-council also jointly facilitated South Africa's admission to international organisations such as the Organization of African Unity (OAU) and the Commonwealth.

### **1.3 International significance of the TEC**

Studies of transitions and conflict resolution often concentrate mainly on the domestic dynamics of such a process. The TEC, as an important transitional institution in South

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<sup>1</sup> Working Group III (CODESA). 1992. The Transitional Executive Council and Sub-council.

<sup>2</sup> Friedman Steven & Atkinson Doreen 1994: *South Africa Review 7: The Small Miracle: South Africa's Negotiated Settlement*. page 78.

Africa, identified not only domestic issues as critical for this period, but also the domain of international relations. Therefore, in this study special emphasis will be placed on the TEC's relevance for international affairs. This is a Master's study in International Politics and therefore an international focus is expected.

Several foci of an international nature were present in the TEC. It consisted of seven sub-councils, including the Sub-Council on Foreign Affairs (SCFA). Other sub-councils also included an international component, notably defence, intelligence and finance. Political conflict resolution (as a disciplinary domain in which the TEC can be placed) can be analysed from both a national and an international perspective. The fact that the TEC included the SCFA justified the notion that foreign affairs is a very important dimension of a transition process and therefore deserves special arrangements to ensure that foreign affairs matters do not bedevil the transition. By discussing the SCFA, the TEC's role as a transitional arrangement, which had to serve as a watchdog on policies and relations in foreign affairs, is explored. In brief, part of the TEC's significance is its demonstration that not only domestic matters are important for transitions but also international relations. This study's contribution is partly aimed at analyzing this dimension.

Discussion of the Sub-Council on Foreign Affairs will concentrate on its role in reintegrating South Africa into the international community. At the same time the study will look at how the different perspectives of the African National Congress (ANC) and NP government were resolved within the context of foreign relations.

The TEC as an institution was unique according to its architects, and therefore provides elements of a potential model for similar peace processes in the future. One example of its influence was in Lesotho. South African Minister Sydney Mufamadi, himself a TEC participant, acted as a mediator to resolve the conflict after the 1998 general election. One of the results of this mediation was the Interim Political Authority, an institution with some resemblances to the TEC.

In respect of defence and intelligence, the TEC sub-councils played an indispensable role in the amalgamation and integration of the forces of the two main antagonists. This has become an important experience for processes of disarmament, demobilisation and reintegration (DDR) of ex-combatants in other parts of Africa, like the Democratic Republic of the Congo (DRC), Sudan and Burundi.

The above points are justifications for looking at the TEC as an institution with international significance in the context of conflict resolution.

#### **1.4 Research Problem**

Most analyses of the constitutional negotiation process in the early 1990s have been conducted within the framework of the transition literature and thereafter in the democratic consolidation literature (represented by Larry Diamond, Phillippe Schmitter, Arend Lijphart, and others). It applies also to the few publications on the TEC, notably the publications by Sarakinsky<sup>3</sup> and Haysom<sup>4</sup>.

As far as we could have established, the TEC as a transitional institution has not yet been analysed from the perspective of conflict management, conflict resolution or conflict prevention. The purpose of this study is therefore to address the following research problem:

Did the TEC play an indispensable role in the negotiation process and transition to ensure a peaceful transfer of executive power at the time of the 1994 general election; and furthermore, was it a critical component of the transitional arrangements which prevented violent conflict during that period?

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<sup>3</sup> Sarakinsky, Ivor.1994. Rehearsing joint rule: The Transitional Executive Council, in *South African Review 7: The small miracle: South Africa's Negotiated Settlement* edited by Steven Friedman and Doreen Atkinson.

<sup>4</sup> Haysom, Nicolas 2002. Negotiating the political settlement in South Africa: Are there lessons for other countries? *Occasional Paper. Track Two*, vol. 11, no.3. Centre for Conflict Resolution, UCT.

A secondary motivation for this study is to search for practices or experiences used in the TEC, which might be considered as best practices or experiences worth considering in comparable international situations. The concept of a government of national unity (GNU) has become a popular transitional mechanism, but how useful can a TEC be as a predecessor of a GNU?

Another secondary motivation for the study is to determine whether limitations on the conduct of international relations (in the form of a TEC sub-council) by the incumbent regime during a transition, in addition to limitations on domestic policy areas, are a necessary prerequisite for a peaceful transition?

### **1.5 Research Methodology**

Due to the nature of this topic, very little research and academic material is available. Therefore most of the material obtained for this thesis was from primary sources. Most files of the TEC are kept in the National Archives in Pretoria and Bloemfontein. In the Pretoria archives we found that many of the files were unavailable or not yet available in catalogue. It was in this light, we sought to find alternative sources of material.

We were fortunate to obtain original documents and files from the Managing Secretary of the TEC, Gillian Hutchings, who had meticulously archived all records and documents of the proceedings of the TEC. In addition, we were given access to personal and private collections (in the form of memoranda and private notes) of the following people: Ambassador Moe Shaik, Roelf Meyer and Leon Wessels. We were kindly given special permission by Roelf Meyer and Leon Wessels to access and photocopy documents from the Archives for Contemporary History at the University of Free State. These documents and files were under embargo at the time, and will only become accessible to the public in 2014.

Another unique feature of this research is its in-depth interviews with the former TEC members. For many of them, this was the first time they were interviewed on the subject,

and therefore most of the interviewees' inputs have been cited for the first time. The fifteen interviews were conducted over a period of two years. We attempted to select a wide range of interviewees from: the Management Committee; different sub-councils; and the different political parties. We also interviewed key people who were on the periphery of the TEC, such as Albie Sachs, (ANC Constitutional Committee member), Gillian Hutchings (the Managing Secretary to the TEC) and Dawid van Wyk (member of the Technical Committee who drafted the TEC bill). The following people from the TEC were interviewed:

Roelf Meyer:	Chief negotiator of the NP/ SA Government, and member of the TEC Management Committee
Theuns Eloff:	Deputy Executive Director of the TEC
Mac Maharaj:	Joint Executive Secretary of the TEC
Fanie van der Merwe:	Joint Executive Secretary of the TEC
Zam Titus:	Member of the TEC Management Committee
Pravin Gordhan:	Member of the TEC Management Committee
 <b>Sub-council on Foreign Affairs</b>	
Leon Wessels:	SA Government representative
Tom Wheeler:	Seconded by the Department of Foreign Affairs
Aziz Pahad:	ANC representative
Sydney Mufamadi:	TEC Sub-council on Law and Security (ANC representative)
Moe Shaik:	TEC Sub-council on Intelligence (SACP representative)
Gillian Hutchings:	Managing Secretary of the TEC

**Non-TEC members:**

Albie Sachs:	Member of the ANC's Constitutional Committee
Dawid van Wyk:	Member of Technical Committee
Dr Vincent Maphai:	Political Analyst

All personal interviews were tape recorded and later analysed. Throughout this thesis the interviewees are footnoted.

The methodological limitations of interviews as a source of information are well known, especially in the discipline of history. In this study these weaknesses are acknowledged and were taken into consideration when the interviews were used as sources. Interviews rely on memory and are also a re-interpretation in hindsight of information, sometimes to justify mistakes or present them in a different form. All social sciences use interviews but they have to be confirmed by other sources. In the case of this study documentation from the Bloemfontein archives and other publications were used to confirm it. In some instances other, independent interviews were also used to validate the information gained from the source interview.

In addition to the above, secondary publications were referred to, various books on South African politics and negotiations, academic journal articles and newspaper reports, were consulted.

The method applied in this study is predominantly qualitative in nature - both in terms of analysing the documentation and the interviews. The interviews were not structured, because they are not meant to be a representative sample. Their function was purely to gather qualitative information not to serve as an opinion poll.

The second component of the methodology is to interpret the qualitative research within the theoretical frameworks associated with conflict transformation (discussed in the theoretical chapter). Included in our understanding of the research imperative is that

conflict transformation is not only concerned with the domestic matters of peace-making, but also the international or diplomatic dimensions of the transition. Therefore South Africa's international relations during the transition and the TEC's role in it, will be included in the conflict transformation analysis done in this study.

As an example of a single-case study and taking into account all its methodological/ and theoretical limitations, the conclusions will apply only to the TEC, and cannot claim general application or theoretical validity.

### **1.6 Theoretical Framework**

Given this background, the question is how existing theoretical and conceptual frameworks can assist us to understand the TEC's significance specifically in the context of conflict resolution theory. The transition and constitutional negotiations are firstly situated in the literature of transitions - notably, the work done by O'Donnell, Schmitter and Whitehead. This literature is inextricably linked to the literature on democratisation (Larry Diamond, Arend Lijphart, Philip Schmitter, etc) and the third wave (Huntington). Moreover, all of this can be linked to negotiation as an instrument of conflict resolution (like the Harvard Negotiation Program - Ury and Fischer) and the use of constitutional means (especially power-sharing) for conflict resolution (Timothy Sisk and International IDEA).

In conflict resolution theory, two approaches are at present the dominant paradigms: conflict transformation and a linear liberal approach. Conflict transformation (John Burton, Edward Azar, Joseph Montville and Kumar Rupesinghe) considers a multi-track approach to conflict resolution in deep-seated social conflicts, including formal negotiation between parties and informal initiatives at lower layers in the society. The linear approach looks at negotiation in terms of compromises and win-win solutions in more homogenous societies. Constitutional designs in combination with economic development have become the preferred combination for many conflict transformation



processes. The South African constitutional negotiation process, in which the TEC was one component, relates closely to this paradigm.

The specifics of the theoretical framework used in this study are discussed in chapter four.

### **1.7 Structure of the Study**

The remainder of this dissertation will be presented in the following format.

In chapter two, an overview of the transition in South Africa will be presented. In this chapter the different phases of the transition will be briefly explained in order to understand the role the TEC played in this process. This will be presented against the backdrop of the apartheid history and the quest for democratic dispensation. This chapter will contribute towards a deeper insight into the challenges faced by the negotiators in the transition.

In chapter three, a literature review will attempt to provide an overview of what has been written thus far on the TEC.

Chapter four will provide a theoretical framework of the TEC. It will focus on conflict resolution, institutional theories and transformation theories, and attempt to draw some conclusions.

Chapter five will concentrate on the TEC Act and provides a legislative and institutional framework for the study.

Chapter six focuses on the internal dynamics of the TEC. It pays particular attention to some of the issues the TEC had to deal with.

Chapter Seven, is a key chapter in the thesis, which provides an in-depth analysis of the Sub-council on Foreign Affairs.

Chapter eight will discuss some of the findings and provide concluding remarks.

## CHAPTER TWO

### OVERVIEW OF THE TRANSITION IN SOUTH AFRICA

#### 2.1 Introduction

My hypothesis in this study is that the TEC was a critically important institution during the transition in South Africa. The purpose of this chapter is to provide an overview of the transition in order to determine the significance of the TEC.

Some of the contentious or debated issues with respect to the transition are differences about when did it commence and for how long did it continue; and what was the nature of the transition (e.g. an elite pact or a mass based transformation process). Some argue that the transition already started in the mid eighties when talks about talks had been explored between National Party and ANC.<sup>5</sup> Others will argue that it started in 1989 with the Harare Declaration and the first release of political prisoners; while others identified the 2<sup>nd</sup> of February 1990 as the beginning of the transition.

The other debate between researchers is the duration of the transition- did it last until the first election in 1994 or until the end of the Government of National Unity (GNU) in 1999? Another alternative is 1996 when the final constitution was adopted and the new National Party (NNP) withdrew from the GNU. An unconventional view is that the transition was completed in 2004 when the IFP was not invited by the ANC to join the national government. We shall expand on these issues in more detail later in the chapter.

Another motivation for this chapter is to provide a framework for analysing the transition in South Africa and how the TEC relates to it.

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<sup>5</sup> Sparks, Allister. 1994. *Tomorrow is Another Country*, chapter 3.

In the 1980s, South Africa seemed doomed to join the list of countries that were torn by civil war and internal destruction, like Northern Ireland, Angola, Mozambique, Ethiopia and Eritrea. According to Vincent Maphai<sup>6</sup>, “organizationally and institutionally, South Africa is seen to have a long tradition of violence, intolerance and authoritarianism. These features permeate the entire fabric of society: corporal punishment in schools is a common place; family violence is also a matter of concern. On the political front, the situation has been transparent for centuries, 42 years of National Party rule has left a legacy of oppression and torture.” Political analysts believed that the conflict between the white minority (National Party) and the black majority opposition (the ANC and PAC) could only be solved in two ways: reform or revolution.

The reform option meant that the minority would continue to rule, while adapting to the economic and demographic changes which threatened classical apartheid. This would result in a lengthy conflict and a long and debilitating war. P.W. Botha’s reform package consisted of abolishing the influx control policy in 1986, the liberalisation of the black trade union movement and constitutional changes in the form of the tri-cameral constitution of 1983. In response to this constitution the United Democratic Front (UDF) was formed.

According to Van Zyl Slabbert, the revolution option implied that the liberation forces (including UDF) would overthrow the apartheid state resulting in anarchy and total civil war. “The ANC as its major opponent epitomised the ‘Total onslaught’ for the South African regime; the ANC became the major rationale for the ‘total strategy’, which in turn legitimised Botha’s version of reform”.<sup>7</sup>

In the second half of the 1980`s a third alternative emerged, namely a peaceful negotiated transition based on a new constitution. The decision by South Africa’s major political parties to engage in dialogue over the future post apartheid policy in early 1990 brought

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<sup>6</sup> Maphai, Vincent. 1993: Prospects for a democratic South Africa: *International Affairs*, page 232.

<sup>7</sup> Slabbert, Frederik van Zyl. 1992. *The Quest for Democracy: South Africa in Transition*, page 30.

with it an interesting academic debate over the nature of transition the country would follow.

At this juncture we will introduce the theoretical phases of a transition (articulated by Van Zyl Slabbert;<sup>8</sup> and Du Toit and Gagiano<sup>9</sup>) as a framework to analyse the South African transition. The four phases will be discussed, namely

1. Normalisation/ talks about talks / pre-negotiations
2. Preliminary bargaining
3. Substantive negotiations/ democratization
4. Consolidation

According to Van Zyl Slabbert and Du Toit and Gagiano the first phase of talks about talks or normalization consist of parties reaching consensus to resolve conflict peacefully. William Zartman argues that a mutually hurting stalemate constitutes a “ripe moment” for parties to explore negotiation as an alternative for conflict<sup>10</sup>. He further argues that the following commitments need to be made. The parties have to commit to peaceful negotiation as mutually advantageous. Consensus has to be reached on political violence, including issues like a ceasefire or suspension of armed activities, liaison between the parties in conflict, policing arrangements and the de-legitimation of violence. The parties have to accept joint responsibility for the management of the transition or the negotiated agreement. All parties should develop a sense of ownership of the negotiation process. Moreover, at this stage (and not later) all the parties or interest groups involved in the conflict should be drawn into the process. Marginalised or excluded groups could easily question the inclusivity and therefore legitimacy of the process, and thereby derail it.

The second phase is the preliminary bargaining which includes the following decisions:

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<sup>8</sup> Slabbert, Frederik van Zyl. 1992. *The quest for democracy: South Africa in transition*, chapter 6.

<sup>9</sup> Du Toit, Pierre and Gagiano, Jannie. 1988. Contending regime models and the contest for the middle ground in South African politics, *Politikon*, page.

<sup>10</sup> Darby John and MacGinty Roger. 2003: *Contemporary Peacemaking-Conflict, Violence and Peace Processes*, page 19.

Who are the participants in the negotiations?

Who are the parties in the conflict?

What is the negotiation agenda?

What are the issues to be negotiated?

Who will facilitate the negotiations?

Who steers the process?

What is the required majority for decision making if more than two parties are involved in the negotiations?

What should the timeframe of the negotiations be?

The substantive negotiation phase is the nuts and bolts of resolving the conflict and searching for a mutually acceptable agreement. Conflicting interests are presented and comparative bargaining weights are taken into account. In this phase, democratisation is a subsequent step in the phase of substantive negotiations where the parties agree on products and procedures that will enhance democratic nature of the political systems.

The final phase is the 'consolidation' of the transition and the results of the negotiation process. It is when the letter and spirit of an agreement are converted into practical implementation. The final outcome will either add credibility and legitimacy to the agreement, or failure negotiations cannot claim success before the results have been duly consolidated.

## **2.2 Pre-negotiations/ talks about talks**

During the 1960s and 1970s, ANC did not contemplate the option of negotiating with the state. However according to Alistair Spark's book *Tomorrow is Another Country*, Nelson Mandela had informally commenced talks with high government officials in the middle 1980s. During the Kabwe conference in 1985, President Oliver Tambo hinted at "growing speculation about negotiations between the ANC and the state", and further reiterates that "the NEC is of the view that we cannot be seen to be rejecting a negotiated

settlement in principle. In any case no revolutionary movement can be against negotiation in principle”.<sup>11</sup>

Oliver Tambo’s speech signalled the paradigm shift within ANC and its willingness to start negotiating. The ANC’s response was encouraging and positive, it nevertheless expressed scepticism about negotiation. It mistrusted the state’s seriousness on dismantling apartheid. “We are convinced that the Botha and De Klerk regime has neither the desire nor the intention to engage in any meaningful negotiations...it is true that we are not yet prepared to negotiate fundamental change, nor to countenance the creation of genuine democratic structures, nor to face the prospect of the end of white domination and white power in the foreseeable future.”<sup>12</sup>

Exploratory talks between the ANC and various organizations and groups were initiated after the Kabwe conference to introduce the pre-negotiation phase. At the same time the NP government was engaging Nelson Mandela with a dialogue to explore the possibilities of negotiations. The meetings between the ANC and non-government organizations (generally known as track II meditation) included South African corporate business, events facilitated by IDASA, the Mass Democratic Movement, and by Afrikaner intellectuals.

The first of these meetings was in Zambia, initiated by the Zambian President, Kenneth Kaunda. The ANC delegation was led by Oliver Tambo and the South African corporate business delegation by Anglo American chairman Gavin Relly. South African journalists like Hugh Murray, editor of the business magazine *Leadership SA*, also attended. Although these talks continued informally without the approval of the NP government, the situation in South Africa was complicated by the fact that the government had imposed a state of emergency in 1985, which curtailed all political activities. According to Lieberfeld “the ANC leaders considered talks as means of enhancing the democratic

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<sup>11</sup> Rantete. Johannes 1988. *The African National Congress and the negotiated settlement in South Africa*, page 144.

<sup>12</sup> Rantete. Johannes 1988. *The African National Congress and the negotiated settlement in South Africa*, page 145.

forces and weakening and demoralizing the regime- while ‘talks’ were to be used to divide the enemy, ‘negotiations were, in the 1980s, still largely understood in the context of nationalist struggle in Algeria, Vietnam, and, closer to home, Mozambique and Angola: negotiation of the terms of surrender at the climax of revolution.”<sup>13</sup> In contrast the South African government was committed to a strategy of repression and an unwillingness to negotiate with the ANC.

The Dakar Conference (1987) of was a watershed period in the South African history of negotiation. It brought together sixty-one predominantly Afrikaans speaking intellectuals with seventeen ANC leaders. The conference issued a joint declaration calling for negotiation and labelling the government as the main obstacle to democratization. It also recognized the ANC’s importance for conflict resolution and called for the unconditional release of all political prisoners.

A further example of track two talks was the meetings between the ANC and Afrikaner elite between 1987 and 1990. They held a total of six meetings in the United Kingdom and Switzerland funded by Angold. These meetings helped lay the foundation to discuss issues pertaining to political, economic and cultural interests of Afrikaners and whites in general. This created a sense of trust building and confidence in developing official dialogue/ negotiations with the ANC.<sup>14</sup>

These series of informal ‘talks’ culminated in the ANC taking the initiative to visualize the transition and presented it to the international community in the form of the Harare Declaration (1989). It agreed with the major principles of the ANC and further reiterated the organization’s preconditions before negotiations could start. The declaration stated “that together with the rest of the world, we believe that it is essential, before any negotiations can take place that the necessary climate for negotiation be created.”<sup>15</sup>

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<sup>13</sup> Lieberfeld 2002. *Evaluating the Contribution of Track-two diplomacy to conflict termination in South Africa*, page 300.

<sup>14</sup> Lieberfeld 2002. *Evaluating the Contribution of Track-two diplomacy to conflict termination in South Africa*, page 359-366.

<sup>15</sup> Rantete. Johannes 1988. *The African National Congress and the negotiated settlement in South Africa*, page 144.



The Harare Declaration called for the removal of all troops from the townships, the release of all political prisoners, the lifting of all bans and restrictions and the end of the state of emergency. The declaration envisaged the following phases in the transition:<sup>16</sup>

- 1) The discussion must take place between the ANC and the NP government to decide on a mutually binding cease fire
- 2) Negotiations must follow to establish the foundation for adopting a new constitution both parties will have to agree on certain constitutional principles outlined in the declarations.
- 3) Thereafter the parties have to negotiate the mechanism required to draw up the new constitution
- 4) The negotiating parties have to agree on the role of the international community in the transition process.
- 5) The participants have to agree on an interim government which had to supervise the drafting of the new constitution, and which had to govern the country during the transition.
- 6) After the new constitution had been adopted all armed action will be regarded as formally terminated. The International community should then lift all sanctions against South Africa.

When F. W .de Klerk, the President of South Africa, addressed Parliament on February 2, 1990, his opening addresses changed the course of history in South Africa. In his speech De Klerk declared the unbanning of the ANC and the release of Nelson Mandela and other political prisoners.

This watershed speech paved the way for the negotiation process and end apartheid rule. According to Nicolas Haysom<sup>17</sup> an ANC intellectual and constitutional lawyer, South Africa had been under increasing international pressure to abandon apartheid and

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<sup>16</sup> Harare Declaration: [www.anc.org.za/show.php?doc-ancdos/history/oau/harare.html](http://www.anc.org.za/show.php?doc-ancdos/history/oau/harare.html)

<sup>17</sup> Haysom, Nicolas: 2002. Negotiating the political settlement in South Africa: Are there lessons for other countries? *Occasional Paper. Track Two*, vol. 11, no.3: page 11

negotiate lasting solutions to its conflict. The pressure was in the form of international economic sanctions, trade sanctions (arms boycott, oil embargo), then cultural isolation, sports isolation and diplomatic isolation.

In the *Journal of Conflict Resolution* Kugler and Feng<sup>18</sup> argue that economic development is a sufficient but not a necessary pre-condition for democratic transitions. “As long as the economy continues to grow, so does the prospect for democratic transitions”. However in the case of South Africa, disinvestments and sanctions had contributed to an economic decline, which was intended to weaken the government. This is contrary to what Kugler and Feng argued.

The 1980s was a period dominated by internal resistance to the government. The ANC’s objective was to make the country ungovernable. The UDF, an ANC front, mobilized mass action in the townships. The NP government’s reaction was to declare a state of emergency. Economically the South African rand had been devalued, harsh sanctions were imposed that had major negative effect on the economy. Between 1960 and 1974, South Africa’s gross domestic product growth rate averaged 5.5% per annum. Between 1974 and 1984 it declined to 1.9%; and by late 1980s it had declined to one percent.<sup>19</sup> Financial sanctions prevented the South African government from accessing international loans, and a mandatory United Nations Security Council arms embargo prohibited all international trade in arms and military equipment with South Africa.

South Africa’s occupation of Namibia (which was referred to as South West Africa at the time); and its military involvement in Angola in support of the Unita rebel group further isolated South Africa from the international community. Further contributing factors to this isolation were sports, cultural and academic boycotts, as well as trade sanctions.

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<sup>18</sup> Kugler, Jacek and Feng, Yi. 1999. Explaining and Modelling Democratic Transitions. *Journal of Conflict Resolution*, page 140.

<sup>19</sup> Barber, James. 2000. *South Africa’s political miracles: The International dimension*, vol. 7, no.1, page 68.

After the February 1990 announcement by President de Klerk, and the return of ANC exiles, steps were taken to prepare for a negotiation process between the ANC and NP in the form of talks about talks. The first meeting in May 1990, produced the Groote Schuur Minute. In this agreement the two parties agreed on a process to deal with the climate of violence and intimidation. Both parties also committed themselves to peaceful negotiation; and a working group was appointed to make recommendations regarding political prisoners, their release and granting of immunity for political crimes.

A second set of bilateral talks between the two parties were held on the 6<sup>th</sup> August 1990. The agreement between the two was noted as the Pretoria Minute. In this meeting the most significant development was the ANC's announcement to suspend its armed activities. The meeting also considered the progress report on political prisoners and the granting of immunity.

One of the objectives of the talks about talks was that the belligerents have to agree on how to peacefully manage political violence in the South African context. This materialised in the National Peace Accord in 1991. The National Peace Accord was the first multiparty agreement during the transition. It established provincial and local peace communities throughout the country to resolve conflict situations. It also established the Goldstone Commission and the National Peace Secretariat. According to Haysom, this "created a structure within which South Africans from all sides were required to work together to resolve conflicts"<sup>20</sup> However, this accord was not without problems, as not all the political parties were signatories. For example the PAC, AZAPO and certain white conservative groups were not party to the accord.

### **2.3 Preliminary talks/ bargaining**

This concluded the talks about talks phase which was of a bilateral nature and introduced the multilateral phase of constitutional negotiations. The multiparty nature of the

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<sup>20</sup> Haysom, Nicolas: 2002. Negotiating the political settlement in South Africa: Are there lessons for other countries?, page 20.

negotiation raised the question of what the nature and the content of transition should be. The ANC already made its views known in the form of the Harare Declaration. It was in favour of a one-stage transition in which an early election is held to elect a constituent assembly and then negotiate a constitution. Other participants, like the NP, the Democratic Party (DP) and Inkatha were in favour of another, one-stage transitional arrangement of first negotiating a constitution which would then lead towards an election. According to Albie Sachs,<sup>21</sup> the 'regime bloc' demanded that the nominated negotiators themselves draft a new constitution. They preferred a convention in which all political parties would have an equal vote, regardless of their support. The 'liberation bloc' argues that the only constitution that would be legitimate was one drafted by elected constituent assembly acting with a mandate of the electorate.

According to Albie Sachs, "The whole point of a national constitution is that it is based upon the opinions of the whole nation. The concept of inclusivity was fundamental. To this extent the regime bloc was right. But the liberation bloc was also right. If a group sitting around a table could also undo it. There needed to be a fundamental process of constitution-making with a great degree of public participation. The involvement of the nation through elections was only a technical necessity for democratic legitimacy but precondition for psychological legitimacy. We needed a large, visible historical process with a manifest mandate from the nation as a whole".<sup>22</sup>

The ultimate compromise was a transition of two phases. The first phase was to establish constitution principles prior to the elections. And unrepresentative but inclusive grouping of political parties, government officials and traditional leaders would agree on a set of constitutional principles. These principles would be binding on an interim constitution drafted to govern the country while the final constitution was negotiated by elected representatives. The second phase was the operationalising the constitutional principles in

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<sup>21</sup> Sachs, Albie. 1998. *The Politics of Accommodation: Constitution Making in South Africa*, page 17; Interview with Albie Sachs, 11 November 2005.

<sup>22</sup> Sachs, Albie. July 1998. *The Politics of Accommodation: Constitution Making in South Africa*, page 18.

the final constitution. This phase was to commence after the first election when parliament also acts as the constitutional assembly.<sup>23</sup>

The first stage of the transition during the phase of preliminary bargaining took the form of the Conventional for a Democratic South Africa (Codesa). Codesa I met in December 1991 at the Holiday Inn hotel near the then Jan Smuts airport (Johannesburg). The multilateral nature was reflected in the fact that nineteen parties attended. The parties that objected to the Codesa were the IFP, the PAC, certain white conservatives groups and certain traditional leaders. The following points are associated with Codesa I:

- 1) The future South Africa will be a democratic, a united, non-racial, and non sexist state in which sovereign authority is exercised over the whole of its territory;
- 2) The NP government agreed to an interim transitional government, but not an elected constitutional assembly; and
- 3) Five working groups were created to report to another plenary of CODESA. These five consisted of the following:
  - The creation of a climate of free political participation
  - General constitutional principles/ the constitution making process and institution
  - Transitional measures/ interim government/ transitional authority
  - The future of the TBVC states
  - Timescales and the implementation of the decisions of CODESA.

For the purpose of this research, working group three (transitional measures, interim government and transitional authority) is particularly important, because the earliest proposals regarding the TEC originate from it. The terms of reference of this working group was to investigate the ways in which South Africa should be governed in the period leading to the new constitution. Important representatives on this working group were Thabo Mbeki and Joe Nhlanhla (ANC), Dawie de Villiers and Roelf Meyer (NP),

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<sup>23</sup> Haysom, Nicolas. 2002. Negotiating the political settlement in South Africa: Are there lessons for other countries? page 18.

Pravin Gordhan (Natal/Transvaal Congress) and Jeremy Cronin (SACP).<sup>24</sup> Working group three prepared the report for the CODESA II, entitled 'The Transitional Executive Council and Sub-councils', in which for the first time, the concept of the TEC was presented to the negotiation process. In this report the role of the TEC was envisaged as follows:

“During the first stage there is a need for a multiparty transitional executive structure to function in conjunction with existing legislative and executive structures, subject to the possible consolidation of the tricameral parliament and the general/own affairs departments. The purpose of the transitional executive structure will be to prepare for and to facilitate the transition to a democratic constitution to which CODESA is committed and in particular, the achievement of a level playing field and climate favourable to free political participation and the holding of free and fair elections”.<sup>25</sup>

CODESA II convened at the beginning of May 1992, with the purpose and aim being that working groups would report back and submit their recommendations to CODESA II. It became apparent that consensus was not reached on a number of issues: one being that the IFP-aligned Zulu King Goodwill Zwelithini was not permitted to attend CODESA II on behalf of the Zulu nation (traditional leaders in general were not allowed to attend the plenary). In protest to this, Chief Mangosuthu Buthelezi, Zwelithini's traditional prime minister, refused to attend the plenary session.

There were a number of reasons for the deadlock in CODESA II between the NP government and the ANC. One of the key issues was the decision-making procedure of the TEC, and the majority needed for the amendments of the interim constitution, which would establish the interim parliament and interim government. The dispute between the NP and ANC was about the majority required to make decisions. The ANC was in favour of 66 percent majority and NP in favour of a 75 percent majority. Finally the ANC

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<sup>24</sup> *The Star*, 10<sup>th</sup> September 1993: “The TEC – The proof will be in the eating”, page 13.

<sup>25</sup> CODESA II, Working Group III report, May 1992, page 22.

compromised to 70%, but the NP adhered to their position of 75%. According to Nicolas Haysom<sup>26</sup> there were three principal problems inherent in CODESA, namely:

- There were too many participants for the face to face talks to be effective;
- The absence of a decision making formulae for CODESA combined with a lack of will to compromise on important issues; and
- Too much transparency in the face of the media. Direct television coverage of sensitive discussions made concessions almost impossible, and encouraged ‘playing to the gallery’ of public expectations.

As a result of this deadlock the NP changed its chief negotiator from Tertius Delpont to Roelf Meyer, the new Minister of Constitutional Development. Meyer formed a close relationship with the Secretary-General of the ANC and its chief negotiator, Cyril Ramaphosa. They developed such a close understanding of each other that it laid a foundation for putting the negotiation process on a new footing. Roelf Meyer’s personal recollection is that he experienced a ‘paradigm shift’ during this period as a result of Ramaphosa’s sincerity and their common understanding of the future they both started to envisage.<sup>27</sup>

#### **2.4 Substantive negotiations**

Substantive negotiations can be defined as the phase during which all the negotiating parties assemble around the bargaining table to reach an agreement on the key issues. The NP came to the table with the view that negotiations and democratisation are primarily about ‘political rights’- such as the universal right to vote. The ANC’s view was that national liberation was more than only political rights or human rights but included socio-economic emancipation. The Communist Party propagated a socialist/Marxist perspective in which socio-economic transformation is essential for

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<sup>26</sup> Haysom, Nicolas. 2002. Negotiating the political settlement in South Africa: Are there lessons for other countries?, page 22.

<sup>27</sup> Interview with Roelf Meyer, December 2004.

genuine democratisation. Other parties like the PAC and Inkatha were between the two extremes discussed above.

Substantive negotiation is in essence about democratisation. Therefore the question is what type of democracy would be the best for South Africa. Claude Ake, a well-known Nigerian political scientist, argued for a unique form of democracy in Africa. Ake argued that African democracy “will have to de-emphasize abstract political rights and stress concrete economic rights, because the demand for democracy in Africa draws much of its impetus from the prevailing economic conditions within”.<sup>28</sup> Ake therefore argues in favour of democracies which prioritise socio-economic development in addition to liberal political rights.

The phase of substantive negotiations was introduced by resolving the deadlock after CODESA II. This was finally resolved when the ANC and NP government signed the Record of Understanding on 26<sup>th</sup> September 1992. The agreement included the following:

- 1) It laid the basis for structuring the transitional process.
- 2) It also laid the basis for the resumption of negotiations but terminated CODESA and introduced a new initiative, the Multiparty Negotiating Process. This included the parties critical of CODESA.
- 3) The parties agreed on certain negotiation principles: which included an interim government of national unity established alongside the constitution-making body.

The significance of the Record of Understanding was that the ANC and NP for the first time reached an agreement about the structuring of the transition. The ANC was initially in favour of a one-phase transition introduced by an election, which would be preceded by a short period to prepare for such an election. After the election the elected representatives would negotiate a final constitution. The NP (and also the IFP, DP and other smaller parties) also favoured a one-phase transition, characterised by a period of

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<sup>28</sup> Ake, Claude. 1993. “The Unique Case of African Democracy”, *International Affairs*, vol. 69, no. 2, page 241.



negotiations by unelected negotiators. Only after the constitution has been negotiated, an election should be conducted to elect a new government in accordance with the new democratised constitution. The ANC and NP formed a compromise in the form of the Record of Understanding by agreeing to a two-phase transition: the first phase (in line with the NP's sentiment) would be aimed at laying the foundation of a transition by negotiating an interim constitution which includes a framework for the final constitution, and which will establish an interim government. The second phase (in line with the ANC's sentiment), would be introduced by the election in accordance with the interim constitution, and would have as its objective, to negotiate a final constitution. In practice, the two phases materialised as first the period up to the 1994 general elections, and the second phase between 1994 and the 1999 general election.

The consequence of the Record of Understanding was that Inkatha withdrew from the negotiations and bilateral discussions with the government because an agreement was reached between ANC and NP only, excluding all the other parties. The parties that supported Inkatha's stand point formed the Concerned South African Group (COSAG) which consisted of 19 members.<sup>29</sup>

Joe Slovo, who is considered to be the architect of the "sunset clause", wrote in *The African Communist* in 1992 a "sunset" clause in the new constitution which would provide for compulsory power-sharing for a fixed number of years in the period immediately following the adoption of the constitution. This would be subject to proportional representation in the executive combined with decision-making procedures which would not paralyse its functioning.<sup>30:</sup>

As a direct result of bilateral agreements and the Record of Understanding a new phase was introduced in the negotiation process, which included some COSAG parties, and PAC, Conservative Party and Afrikaner-Volksunie.

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<sup>29</sup> Friedman, Steven. 1993. *The Long Journey - South Africa's quest for a negotiated settlement*, page 62-63.

<sup>30</sup> Slovo, Joe. 1992. "Negotiations: what room for compromise?" *The African Communist*, page 40.

Early in 1993 the Multiparty Negotiating Process was convened for the first time, in which the Negotiating Council and the plenary meeting of the leaders (as its highest body) was established. In this first meeting it was decided that six technical committees would be established, however this was later increased to eight. The Negotiating Council convened in the World Trade Centre in Kempton Park, where most of the substantive bargaining for the democratisation of South Africa took place. The outcome of the negotiations was the interim constitution adopted in 1993. This included 33 Constitutional Principles that constituted the framework of the final Constitution. COSAG withdrew from the negotiations before the interim Constitution was finalised and called for international mediation to address its concerns.

In preparation for the first general election, South Africa had to transform from an old regime to a new democratic state. This involved neutral facilitators. Hard negotiation among the parties took place through this four-tiered Multiparty Negotiation Process. They were frequently marked by breakdowns, deadlocks and even threats to boycott the negotiations. Ultimately, all the difficulties were overcome and agreement was reached on:

- a) 27 April 1994 as the date for the first ever non-racial election in South Africa.
- b) Setting up a TEC, which was to ensure that the electoral process during the run-up to the election was free and fair and that the government machinery and public funds were not used against the interest of, or for the benefit of any single political party<sup>31</sup>. This meant that the TEC was responsible to ensure a 'levelling of the political playing field' for the election.
- c) The framing of an interim constitution for South Africa, which was to come into force soon after the election in 1994.

The following institutions were established:

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<sup>31</sup> Singh, Harjinder. December 1993. South African Transitional Executive Council - An Analysis, page 4.

- 1) The Independent Electoral Commission (IEC) which was responsible for all aspects of 1994 general elections.
- 2) The Independent Media Commission and Independent Broadcasting Authority (IMC), which ensured that media was accessible to all political parties and that they were treated fairly by the media.
- 3) The TEC, which involved all parties in the Kempton Park negotiations. The significance of this was that all parties (except COSAG and those not involved in the negotiations) were involved in the governing of the key function of the government prior to the elections. The TEC was sub-divided into seven sub-groups: intelligence, law and order, stability and security, defence, finance, foreign affairs, regional authorities and the status of women. These councils functioned alongside the NP government, acting in effect as a parallel to the “government”. This enabled transfer of the executive powers to the new incoming government. However, this will be discussed in more detail in the following chapters.

## **2.5 Consolidation**

The first general election was held from 26 to 28 April 1994. The ANC won 62% of the votes and had control seven of the provinces. The NP had 20% of the vote and had control over the Western Cape. The IFP had 10% of the votes and took control of KwaZulu Natal. The other parties like the Freedom Front, DP and African Christian Democratic Party obtained the remaining votes to represent themselves in parliament. Those who were elected to parliament also played a role in developing the final constitution within the two years. The election brought the first phase of the transition to a close.

The second phase was introduced by the new, elected parliament consisting of two houses, and the Government of National Unity (GNU), consisting of the ANC, NP and IFP. The parliament served simultaneously as the Constitutional Assembly, which received a constitutional mandate to negotiate the final Constitution within two years, that is by 1996.

According to Haysom, “The South African Constitution provided for a period of five years in which opposition parties would participate in the government. This period was intended to serve as a stabilizing period of nation building, in which both the majority party and opposition parties would share responsibility for managing the transition”<sup>32</sup>.

The GNU consisted of President Mandela and Deputy Presidents Mbeki and De Klerk. Portfolios were divided amongst the parties on a proportional basis. The ANC received 62% (18 ministers) of the portfolios, the NP 20% (6 ministers) and IFP 10% (3 Ministers). According to Vincent Maphai, power-sharing in form of the GNU was an essential pre-condition for democratization in South Africa. In his view, the GNU served a positive role for ANC and the National Party because for the ANC “it guaranteed continued and essential support for whites. For the NP it provided a means of monitoring and limiting the power of the ANC. For the international community it met a combination of objectives: it brought political legitimacy through the ANC, as well as the promise of pressure for the free-market policies from the NP and IFP”.<sup>33</sup>

The transition required transformation processes in diverse spheres of the society: dismantling of the ten homelands and their integration into the nine new provinces; dismantling of the segregated local authorities and locally-negotiated transitions to integrate them into new non-racial local authorities; integration of all the armed forces into a new National Defence Force; transformation of the police services; new socio-economic reconstruction and development programmes all over the country; and many more challenges. The GNU agreed on a macro-economic strategy in the form of the Reconstruction and Development Programme, and on a new local government dispensation. In 1995 countrywide elections for local authorities were held, except in KwaZulu-Natal, where they were conducted in 1996.

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<sup>32</sup> Haysom, Nicolas: 2002. Negotiation the political Settlement in South Africa: Are there Lessons for other countries?, page 27.

<sup>33</sup> Maphai, Vincent. 1996. A season for Power Sharing – The New South Africa, page 68.

Between 1994 and 1996, the Constitutional Assembly proceeded with its task to negotiate the final constitution. In the Constitutional Committee, chaired by Cyril Ramaphosa, the represented parties presented their proposals within the mandatory framework set by the Constitutional Principles. The Committee was supported by technical committees and a panel of constitutional experts, similar to the procedure followed in the Multiparty Negotiating Process. Once a deadlock was reached on a particular issue (like the property clause), it was referred to the Ramaphosa-Meyer 'channel' for finalisation. When the parties approached the deadline for finalisation of the draft, a number of sensitive issues remained outstanding, including protection of property rights, education in the mother tongue, powers to the provinces and retirement benefits of former Members of Parliament.

The outcome of the negotiations remained in the balance right until the end of the process, when both parties made significant compromises, mainly as a result of the smooth functioning of the 'channel'. The IFP's refusal to participate in any of these negotiations raised some doubt about its public acceptability, especially in KwaZulu-Natal (KZN). After the Constitutional Bill's adoption by Parliament, it was referred to the Constitutional Court for certification. Its first judgement was not to certify it, because it did not meet all the requirements of the Constitutional Principles, including too much power granted to the provincial sphere of government. After its amendment by the Constitutional Assembly, the Court certified it in its second hearing. On 10 December 1996, President Mandela assented to the Act. Early in 1997 most sections of the new Constitution came into operation, except for the sections in the interim constitution guaranteeing continuity during the transition period up to 1999.

In 1996 the NP announced its withdrawal from the GNU, and many raised the question whether it also meant the end or the failure of the GNU. The IFP continued as a coalition partner and the government continued to function in the spirit of the GNU. The NP became an opposition party except in the Western Cape, where it ruled had the majority vote. The ANC in the province withdrew from the government of provincial unity. The transitional dispensation came to an end with the 1999 general election: the GNU was

replaced by an ordinary majority principle in the final Constitution, though the ANC (with a 62% majority) invited the IFP to join it in a new coalition government, and offered it three ministerial positions. In that sense, the philosophy of the transition continued after 1999. In two provinces (KZN and the Western Cape) coalition governments had to be formed in the absence of any absolute majorities. Since 1999 the ANC has done its utmost best to gain control over these provinces, and succeeded in it at the time of the 2004 general election. It means that the transition was formally concluded in 1999 but informally continued afterwards, and cultivated a sense of political tolerance and democratic consolidation sufficiently strong to prevent violence and conflict from recurring, especially in KZN.

## **2.6 Conclusion**

What was the significance of the transition for the TEC, which emerged from this chapter? Some of the salient features that appeared during the transition included the following:

The first significant feature of the transition was the personal relationship that developed at different levels between the negotiators. From a conflict resolution perspective confidence and trust building are essential prerequisites for successful transition. In chapter six (the TEC's dynamics) these personal relationships are discussed in detail. The significance of the transition is that it laid the foundation for these relationships in the TEC. As a general conclusion the view is adopted in this study (and it is supported by some of the personal interviews) that the TEC's success depended on the dynamics developed during the time of the transition before the TEC.

The second significant feature of the transition is that the practices developed up to the end of 1993 were extended to the TEC and it will be argued in chapter six that those practices were essential for the TEC's ultimate success. It included the principle of sufficient consensus, the rotating chairpersons, the principle of equal representation of the

different parties, and the delegation of technical matters to the sub-councils (similar to CODESA's and the MPNP's working and technical committees).

The third significant feature of the transition is the GNU. It is argued that the TEC made an important contribution to the transfer of executive powers from the old NP government to the GNU. The foundation established by the transition up to 1993, and followed by the TEC culminated in the essential building blocks necessary for the GNU.

The question many people pose is why is the South African transition regarded as a miracle? (Steven Friedman called it 'a small miracle' in his book with the same title).

This chapter has shown that the 'miracle' was that by means of conventional conflict resolution mechanisms such as negotiations, parties with radically opposing views were still able to meet at the negotiating table and resolve their differences by peaceful means. Most observers could not predict that the deep-seated differences of apartheid could be resolved by a negotiated settlement. The miracle is that it indeed happened despite political violence (the 'Third Force' and ANC/IFP clashes) and interventions by 'spoilers' (such as COSAG).

In the next the chapter a literature review will be done as a survey of the existing literature available on the TEC. It will provide the reader with an indication of the academic research work already done on this topic, the nature of this work, as well as other publications available for this study.

## **CHAPTER THREE:**

### **LITERATURE REVIEW OF THE TEC**

#### **3.1 Introduction**

Although the TEC played a pivotal role towards the democratic transition in South Africa, little has been written about it thus far. This can be attributed to a number of reasons; one of the most important being, that although the TEC played a significant role in contributing to the democratic process, the duration of the TEC (4.5 months) was a relatively short period in the history of the South African transition. Due to the short duration of the TEC, many have overlooked the existence of TEC and the significant role it played in preventing violent conflict and civil war in South Africa.

Another reason for the lack of information and research on the subject by scholars and academics is the twenty year embargo on historical material in the National Archives imposed by legislation. This has made access to information difficult and therefore there has been a general lack of scholarly work on this topic.

It was already discussed in detail in the introductory chapter; a large portion of the information obtained during the research has been from primary sources. Approximately twenty interviews were conducted, with different members of the TEC. Some members provided copies of their own personal memos and documents (meeting agendas, minutes of meetings, and confidential summary documents) to the author.

An exhaustive search has been conducted in a number of journals, published articles, historical books and the media. However, very little has been reflected and written on this subject.



The author had to rely on personal interviews, personal memos of the TEC's Management Committee members, and, minutes of the meetings. Other sources were derived from the National Archives in Pretoria, and collections in the Archives of Contemporary Affairs in Bloemfontein.

In this chapter, a literature review is undertaken to provide an overview of what has been written thus far about the TEC. Although only three or four authors can be identified who have written on the subject, of these many have given, only a descriptive view of the TEC. To date, no comprehensive study has been conducted on the subject.

This chapter will also provide a collage of the media environment that existed at the time. Questions will be asked about which media gave exposure to the TEC? Was the media supportive or negative towards the TEC? And finally, a critical analysis on how the media reported on the TEC will be included. Was it subjective, or biased towards one party? Finally, we will look at what has been written on the TEC in some of the journals like the *Journal of African Review*, *Journal for Contemporary History*, and *Indicator South Africa*.

Although my thesis gives an overview of the TEC, its main focus is on the Sub-Council on Foreign Affairs and in this area very little has been written on the subject. Historians and authors have only given a mere mention of the Sub-council.

### **3.2 Literature review of books on the TEC**

Though a vast literature on the transition in South Africa has evolved since the early 1990s, remarkably little has been published on the TEC in the form of books. Several biographical and autobiographical publications have also appeared, including those of persons involved in the TEC, like Mac Maharaj and Cyril Ramaphosa. The same tendency of little on the TEC is true of them. In Anthony Butler's biography of Ramaphosa<sup>34</sup> no reference is made to the TEC or his role in it. In Mark Gevisser's

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<sup>34</sup> Butler, Anthony. 2007. *Cyril Ramaphosa*.

biography of Thabo Mbeki<sup>35</sup> the TEC does not appear at all. On the one hand, it can be understood, because Mbeki was not a participant in the TEC, but on the other hand, it was the main transitional vehicle during the last four months before the 1994 election, and therefore it was important enough to deserve some mentioning.

In Padraig O'Malley's biography/autobiography of Mac Maharaj there are only minor references to the TEC. Maharaj – one of the TEC's Joint Secretaries with Fanie van der Merwe – did not mention anything in his autobiographical sections in the book. In his introductions, O'Malley only twice made reference to it: firstly, by explaining the TEC's mandate to ensure a level political playing field, which includes a virtual veto in some areas of governance, and secondly, the TEC's involvement in resolving the crisis in Bophuthatswana.<sup>36</sup>

In his autobiography, F W de Klerk followed the same approach. He also referred to the TEC's Bophuthatswana intervention,<sup>37</sup> which is presented in the same manner as O'Malley's. (Their versions have been confirmed by the personal interviews conducted separately with Maharaj and Van der Merwe.) De Klerk also briefly discussed the TEC's task in the transition: it would monitor the NP government in the run-up to the 1994 elections to ensure that its actions did not harm or benefit any of the political parties. Its task was therefore to create a climate conducive for free and fair elections.<sup>38</sup>

In the book literature this aspect of interpretation appears to be the only bone of contention: what was the TEC's nature and function? O'Malley and De Klerk shared the same view. Patti Waldmeir, on the other hand, limited to two paragraphs in her book, interpreted the TEC as an interim government and as a major concession in the NP's negotiation approach, because the NP relinquished their quest for veto power in a future government.

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<sup>35</sup> Gevisser, Mark. 2007. *Thabo Mbeki*.

<sup>36</sup> O'Malley, Padraig. 2007. *Shades of difference*, pages 393, 395.

<sup>37</sup> De Klerk, F W. 1998. *Die laaste trek*, page 333.

<sup>38</sup> De Klerk, F W. 1998. *Die laaste trek*, page 299.

At CODESA II, it had been agreed that the interim government, known as the Transitional Executive Council, or TEC, would need an 80 percent majority to take decisions – or a figure which would have given the National Party and government, each separately represented, dominance. But in the end, de Klerk compromised on a lower majority, which denied him an automatic veto; if he wished to prevail in the council, he would have to secure allies from other parties. It was the first public sign that de Klerk was ready to play the democratic game of persuasion, rather than relying on a rigid veto entrenched in law<sup>39</sup>.

The difference in interpretation is therefore between a watchdog responsible to ensure a level political playing field, and an interim government, which effectively replaced the NP as government. The chief NP government negotiator, Roelf Meyer, indicated in a personal interview,<sup>40</sup> and it is confirmed in the text of the Record of Understanding (26 September 1992), that an interim government was already agreed upon a year earlier than what Waldmeir claimed above. This matter of the TEC's nature and role is not yet resolved in the literature, and it is therefore one of the aspects to be investigated in this study.

Another personal memoir of the TEC's formative stages is that of Jan Heunis, the Government's legal expert in the technical committee, which drafted the TEC Bill. His recollections of the interactions with his ANC counter-part, Fink Haysom, are indicative of some of the internal dynamics of the transition. Firstly, he observed that he and Haysom were not aloof technical experts but were "on brief to the ANC and the government". Any progress in the committee depended on their concurrence (echoing "sufficient consensus"). The committee was not a terrain for merely technical drafting, but had to resolve deep-seated differences. On the one hand, the ANC wanted the TEC to have significance and not be a "toy telephone". On the other hand, according to Heunis, "to the government the whole idea of sharing power, albeit in the interim and albeit not

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<sup>39</sup> Waldmeir, Patty. 1997. *Anatomy of a Miracle*, page 212-213.

<sup>40</sup> Personal interview with Roelf Meyer, December 2004.

supreme executive power, with the ANC and other parties and in respect of important matters such as defence and law and order, was virtually unthinkable”.<sup>41</sup>

In view of these meager references to the TEC, it is difficult to identify any tendencies in scholarship on the TEC. Most of the available information is references in memoirs, biographies and autobiographies, and therefore academic interpretations and analyses are largely absent. In the next section the focus is on journal articles and book chapters.

### **3.3 Literature review of journal articles and book chapters**

Ivor Sarakinsky, in 1994 wrote the chapter, entitled “Rehearsing Joint Rule: The Transitional Executive Council, in South Africa” in a book called ‘*A Small Miracle - the South African Negotiated Settlement*’. In his chapter, Sarakinsky discusses how the TEC was conceived. He states that democracy is achieved in two ways; the first phase is the establishment of an interim governmental structure. In the second phase, the existing government remains in power until an election is held and a new government is democratically elected.

However, in the South African case the formation of the TEC was a compromise of the two. The NP government still remained in office, but its powers were limited by an interim body, namely the TEC. Sarakinsky states that since the TEC’s “life was short, and it took only a few key decisions, it may be remembered in history as but a blip on the transitional graph. But it did move the parties into an essential phase on the journey to democratic rule”.<sup>42</sup>

The chapter also emphasises the initial conflict that emerged among the several political parties and on how, each viewed the transitional period. The ANC viewed the NP as an illegitimate party and therefore insisted on the immediate abolishment of the existing

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<sup>41</sup> Heunis, Jan. 2007. *The inner circle*, page 199.

<sup>42</sup> Sarakinsky, Ivor. 1994. Rehearsing Joint Rule: The Transitional Executive Council, in *South African Review 7: The Small Miracle: South Africa’s negotiated settlement*, page 74.

government and that a transitional government be established in the interim. This interim government would be in a position to develop a new constitution and at the same time prepare for a new government.

Whilst, the Pan-Africanist Congress (PAC), had a more rigid and uncompromising position, it demanded that elections should be held immediately. The IFP believed that only after a new constitution was drafted, a free and fair election could be conducted. The IFP also insisted on having a federal system, as they believed that democracy could be better ensured among all ethnic groupings. The Conservative Party (CP) expressed the view that it would resist elections until a separate Afrikaner Volkstaat was established.

According to Sarakinsky, the NP took a contrary view to the ANC, PAC and the other parties. They insisted that a new constitution had to be negotiated first before there was any talk of an election. This meant that the NP would remain in power as the only legitimate elected government, even though it had not been elected by a majority.

It was clear from the outset that all political parties had conflicting views and different agendas, and these agendas were motivated by different ideological principles. According to Sarakinsky, the ANC did not want to lose its sphere of influence and power before the election and at the same time it wanted to prevent the NP from gaining an advantage to influence the election outcome.

The IFP, wanted to ensure that KwaZulu Natal had maximum power and that its monarchy, the Zulu King would, be included. On the other hand, the CP did not want its white rightwing supporters to be under the control of the majority black ANC government. All three minority parties had vested interests in protecting their spheres of influence. Because of these conflicting views, Codesa Working Group III was given the task to deal with these issues. According to Sarakinsky, the IFP was determined to present itself as a major player and in doing so, it proposed adjustments to its federal model which added more detail but did not change its substance. The NP began to change

its position largely in response to ANC pressure by recognising that elected representatives should be included in drafting the final constitution.

Sarakinsky argues that the ANC compromised on its original standpoint by accepting that the incumbent government could stay in power until the election. It rejected a multiparty cabinet and proposed a multiparty control over state media, security forces, and budget and election arrangements. This would ensure that conditions were appropriate for a free and fair election.

In Sarakinsky's chapter, he outlines how disputes were resolved among the different parties in drafting the TEC Bill. He concentrated on the technical committee responsible for drafting the Bill. The one key factor was the co-operation between the South African Government (SAG) and the ANC in bilateral talks outside of the committee. "The nature of the committee's task probably made bilateral deals almost inevitable since it had to agree on the specific powers the TEC and its sub-council would wield over other government departments"<sup>43</sup>. This indicated that negotiations did not only take place among members of the committee but also among relevant departments, and related ANC structures. For example, if the committee did not reach consensus then it would vacate the room and the relevant parties would consult. Once consensus was accomplished then the committee would resume again.

The Working Group III technical committee drafting the TEC Bill, recommended the following sub-councils: on regional and local government, traditional authorities; law and order, stability and security, defence and foreign affairs. It later added intelligence and the status of women.

In the latter part of his chapter, Sarakinsky gives a brief description of the different sub-councils; he explains that the intelligence sub-council's major dilemma was access to intelligence reports. The easy availability of information could threaten to be a security

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<sup>43</sup> Sarakinsky, Ivor. 1994. Rehearsing Joint Rule: The Transitional Executive Council, in *South African Review 7: The Small Miracle: The South Africa's negotiated settlement*, page 74.

risk. However, there was a dispute over who could decide what information was a security risk. It was finally agreed that an 'Access to Information Committee' was to be established in order to decide what was regarded as security threats. This would prevent political parties and TEC members from using classified security information to further their own aims in the run up to the elections. The Access to Information Committee stipulated that an 80% consensus was required in order for information to be released.

The Sub-council on law and order, stability and security is reported by Sarakinsky as an important sub-council in a time when there was significant violence in the country. He explains that it was "quickly accepted as government negotiators recognised that it would remove the need for monitoring by foreign observer bodies"<sup>44</sup>. He also points out that "good personal relations were established between ANC and SAP negotiators"<sup>45</sup>.

According to Sarakinsky, the Sub-Council on Defence proved to be equally challenging. This was due to the fact that both the SADF and MK negotiation teams were inexperienced and constantly suspicious of each other. Among the most disputed was the issue of SADF deployment during the election, which was central to the concerns and interests of both sides. It was finally agreed upon that the TEC would consult with the Defence Minister and formulate rules for deploying the SADF and other forces, and in return the SADF would be allowed to operate without any interference. Although this council proved to be challenging, it also managed to develop and shape policies in the new government.

In his chapter, Sarakinsky placed much emphasis and importance on the Sub-Council on Finance. The main objective of this sub-council was to ensure that the government did not use its position of power and control to 'buy' voters support. It prevented the national government from using public money for only one party's advantage. It also ensured that the ruling party did not gain votes by increasing pension and other benefits.

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<sup>44</sup> Sarakinsky, Ivor. 1994. Rehearsing Joint Rule: The Transitional Executive Council, in *South Africa Review 7: The Small Miracle: The South Africa's negotiated settlement*, page 75.

<sup>45</sup> Sarakinsky, Ivor. 1994. Rehearsing Joint Rule: The Transitional Executive Council, in *South Africa Review 7: The Small Miracle: The South Africa's negotiated settlement*, page 76.

This sub-council expanded its mandate by inviting all major parties to join its Economic and Technical Committee (ETC) - the idea being to start debating on fundamental economic issues. The finance minister at the time, Derek Keys, had hoped that this committee would develop an all-party agreement on future economic policy. However, the ANC was quick to state that the ETC was not a formal body and was not in position to make policy, despite Keys hint that it was.

The Finance Sub-Council did present a united front to investors. In September that year, ANC economics head Trevor Manuel and KwaZulu Finance Minister, Dennis Madide visited several countries, including the United States, to discuss aid and loans with international investors and businesses. The sub-council managed to project an image of investor-friendly and confidence building. The sub-council did achieve co-operation, one being that it helped draft the 1994/95 national budget. This was the first time that other political parties contributed to government policy.

In Sarakinsky's chapter, and other published papers that are available on the TEC, there is little reference to the Foreign Affairs Sub-Council. Sarakinsky has written a short paragraph, in which he states that "the Department of Foreign Affairs and the ANC's foreign affairs department had co-operated on diplomat training before this sub-council was established. The TEC was not supposed to be a vehicle for joint projects, but a guarantor of free and fair elections. The connection between this goal and foreign affairs was not readily apparent."<sup>46</sup>

He goes on to say that the Sub-Council on Foreign Affairs' main objective was to ensure that the ruling party did not secure loans and international contracts which could give them an added advantage. He states, further, that the "link between foreign affairs and the electoral advantage proved to be remote after all"<sup>47</sup>. (But he does exemplify that one of

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<sup>46</sup> Sarakinsky, Ivor. 1994. Rehearsing the Joint rule: The Transitional Executive Council in South Africa, page 78.

<sup>47</sup> Sarakinsky, Ivor. 1994. Rehearsing the joint rule: The Transitional Executive Council in South Africa, page 78.



the key features of the Sub-council on Foreign Affairs was its negotiated admission of South African to the OAU and the Commonwealth).

Although Sarakinsky has given an in-depth analysis of the TEC and its sub-councils, it is evident that not much detail and information was available on the Foreign Affairs Sub-Council. It is the objective of this thesis to provide a more in-depth analysis of the importance and significant role the Foreign Affairs Sub-Council did play, in contributing to the smooth transition to South Africa's new democracy. This will be further expanded in chapter seven.

Another article written on the TEC was by Dr Harjinder Singh from the University of Delhi entitled "South Africa Transitional Executive Council: An Analysis". In his introductory section, he explains why South Africa was forced to come to the negotiating table: "intense pressure on the South African government from the international community for the release of Nelson Mandela and others who were sentenced in the Rivonia trial, unbanning of political parties, restoring normal political activities, and for the dialogue with all parties with a view to repeal apartheid and for a political and economic order acceptable to all the racial and ethnic groups in the country".<sup>48</sup>

He goes on to show how South Africa took its initial steps from apartheid to freedom and finally to democracy with the first CODESA, which was held on December 20-21, 1991 in Johannesburg. Nineteen parties were invited to attend, however the PAC at the last minute walked out of the meeting. CODESA established five working groups, and through these groups some issues were attempted to be resolved. On the 15-16 May, 1992 CODESA resumed its second plenary session. It was during these sessions that CODESA 2 reached a deadlock and negotiations failed to continue. However, many participants felt that negotiations should still continue but under a different banner, like including wider representation and new structures in the negotiation forum. President de Klerk intervened by consulting a wider range of parties and set about establishing the Multi-Party

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<sup>48</sup> Singh, Harjinder 1993. South African Transitional Executive Council - An Analysis, page 2.

Negotiating Forum (MPNF), which met on the 1<sup>st</sup> April 1993. It was at this MPNF that the first election date was proposed for the 27<sup>th</sup> April 1994. But more importantly, the TEC Bill was finalized by the MPNF and enacted into law by the South African Parliament.

Singh expands further on the powers of the TEC Act and its implications as an institution to govern. In his chapter he also expands on the powers of the sub-councils, as well as the decision-making procedure of the council and the sub-councils. He goes into further detail of each of the six sub-councils and their specific functions. The TEC and its powers will be expanded further in Chapter 5.

According to Singh, “the ANC and its allies believe that the TEC is an alternative government, judged from the powers vested in it under the TEC Act.”<sup>49</sup> . However, the De Klerk government did not believe, or share this view. It was obvious that both parties had conflicting and different interpretations as to how they viewed the TEC. He points out that the ANC’s interpretation that the TEC was an alternative government should be rejected for the following reasons:

- 1) There cannot be two governments in one country.
- 2) The existing NP government still remained in complete power even though the TEC existed.
- 3) The existing white government was still in office in a type of ‘power sharing’ after the election.
- 4) The TEC Act did not replace, but rather supplemented the existing government in South Africa.
- 5) The powers of the TEC and its sub-councils have been framed within the limited framework of the ‘objects of the Bill’: “to ensure a free and fair election, to prevent the misuse of government machinery and funds for the benefit of or against any party”.<sup>50</sup> That is, the Bill had to ensure that all parties are free from any impediments that hamper their goals.

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<sup>49</sup> Singh, Harjinder. 1993. South African Transitional Executive Council - An Analysis, page 12.

<sup>50</sup> Singh Harjinder. 1993. South African Transitional Executive Council - An Analysis, page 12.

- 6) All government departments would be answerable to the present government.
- 7) Some of the powers that were bestowed on the TEC would be delegated to the Independent Broadcasting Authority, the Independent Media Commission, and the Independent Electoral Commission. This would dilute some of the powers of the TEC.
- 8) The functioning of the TEC and its secretarial services were funded by the South African government, which also included the National Peacekeeping Force.
- 9) The SADF and any security forces were still under the mandate of the government and not the TEC.

According to Singh, an institution like the TEC, “so heavily dependent on government cannot be called an alternative government”.<sup>51</sup> He goes further to express in his article that the name TEC does suggest it is an executive body with powers and this is confirmed in Article 2 of the TEC Act. The TEC shall have ‘executive and other powers’. However, Singh suggests that in reality it had very little independent executive functions during the transitional period.

He indicated that the Act used terminology such as ‘request and obtain...information...including records, initiate and participate in negotiations, acquaint itself with, to investigate, establish a committee...to evaluate or monitor any police action, call for report, recommend steps, receive all recommendations, liaise with the Independent Electoral Commission (IEC), to be kept informed, to oversee, etc’’, thus implying that the TEC’s execution of any decisions and recommendation will still be the prerogative of the white government.

According to Singh, the TEC was to act only as a watchdog institution during the election. It was never envisaged as an alternative, parallel government or “super cabinet”, but rather to eliminate all impediments to legitimate political activity, and to

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<sup>51</sup> Singh Harjinder. 1993. South African Transitional Executive Council - An Analysis, page 12.

eliminate every form of intimidation so as to enable all parties to canvass support from voters, organize and hold meetings freely and fearlessly”.<sup>52</sup>

Singh quotes Dr Dawie de Villiers, one of the National Party’s chief negotiators who claimed that the TEC was an institution that was a “limitation on the government’s powers in the interest of levelling the playing fields in the run-up to next year’s election. The TEC has been armed with only advisory and supervisory powers, a watchdog body with teeth, whose task it would be to create a climate for free political participation and ensure that no government uses its powers of patronage to give itself an unfair advantage”<sup>53</sup>.

However, Dr Singh is not pessimistic about the significance of the TEC. He points out that once the TEC was placed in office it would be very difficult for the white government to indulge in activities that would jeopardize its position in the election, as all its actions would be scrutinized and monitored by the TEC. The fear of being exposed would prevent them from any unscrupulous activities. For example, the TEC had the power to seek information on the deployment of the police and security forces.

Similarly, the TEC could use its power “to investigate, to monitor police action, to call for reports on steps taken by the police agency to prevent political violence, to recommend appropriate disciplinary or criminal proceedings against members of security forces to establish monitoring mechanisms to ensure that its directives have been complied with, to monitor any expenditure of public funds...will prevent the government from misusing its machinery, its powers and the public money at its disposal”<sup>54</sup>.

He says the TEC would make government fully accountable not only to all the people of South Africa, but also to the international community and therefore, it would have

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<sup>52</sup> Singh, Harjinder. 1993. South African Transitional Executive Council - An Analysis, page 14.

<sup>53</sup> Singh, Harjinder. 1993. South African Transitional Executive Council - An Analysis, page 13.

<sup>54</sup> Singh Harjinder. 1993. South African Transitional Executive Council - An Analysis, page 13.

had to take the TEC seriously. Another positive factor in favour of the TEC was that the TEC was in full concurrence within and participation by, the white government and therefore it was not excluded in the negotiation process.

The latter part of the article confines itself to specific achievements of the Sub-councils of the TEC. According to Singh, the Sub-Council on Finance looked at matters of economic development, economic policy and budget targets for the following fiscal year (1994-95). The objective was to ensure that funds were not mismanaged in favour of any party. The sub-council was also given extensive monitoring, investigative and advisory powers over all financial matters including borrowing, tendering procedures, and allegations of corruption especially among bureaucrats.

In his view, the Sub-Council on Defence made provision for the creation of a National Peace-keeping Force (NPF), which comprised members of all military forces. Its function would be to maintain peace and public order. The NPF would have its own distinctive uniform and be accountable to the Sub-Council on Defence.

According to Singh, the Sub-council on Finance used its powers to force the Transkei, Bophuthatswana, Venda and Ciskei (TBVC states) to reintegrate into South Africa. These four homeland states were supported by the apartheid government, and were an integral part of South African economy. The TBVC states refusal to join the South African reintegration programme in the run-up to the election, posed a major obstacle. At the same time, traditional leaders were trying to hold on to power. The TEC was able to use its financial muscle and force the government to dismantle its apartheid-based structures and convinces them to join in a free and fair election.

The reincorporation process of the TBVC states as outlined by Singh, neglects a number of important factors, which will be dealt with in chapter six of this study.

In conclusion, as has been mentioned before, little has been written on the Sub-council on Foreign Affairs. Similarly very little research has been done on the foreign relation process during the TEC period. Dr Singh explained that the TEC played “an active role in reorganizing the international relations of South Africa in such a way as to ensure that they serve the interest of all the communities of the country.”<sup>55</sup>.He also reiterates like Sarakinsky, that no international agreements could have been signed without the knowledge of the TEC. The sub-council also started taking a keen interest in reorganizing South Africa’s diplomatic missions abroad and ensuring that heads of mission were a true representative of the new democratic and non-racial South Africa.

It is important to note that Dr Singh wrote this article in December 1993, before the TEC Act was implemented. Therefore, one can correctly assume that some issues were not an accurate reflection of what actually transpired.

Another scholarly article that had been written on the TEC, published in *the Journal of African Law*, was the one written by Johan Hatchard, entitled “Towards Majority Rule in South African Transitional Executive Council”. In this article the author discusses the TEC Act itself and the impact of this legislation. This will be discussed in more detail in Chapter 5.

Another article published in *the Journal for Contemporary History* was by J A du Pisani, entitled, “Negotiating a Democratic South Africa: Bilateral and Multiparty Negotiations, June 1992 to December 1993”. In this article Du Pisani explains how the TEC was established and the TEC’s several sub-councils are outlined. It emphasises that policing would be controlled by the sub-council on law and order, stability and security. It explains that the TEC was responsible for all aspects of policing and complaints of police misconduct, as one of the key objectives of the TEC was to prevent political violence. All matters regarding foreign policy were referred to the Sub-Council on Foreign Affairs. According to the article, the main object of the Sub-council on Foreign Affairs was to promote international relations

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<sup>55</sup> Singh, Harjinder. 1993. South African Transitional Executive Council - An Analysis, page 16.

and to secure international assistance and contribution by the international community to the peaceful transition to democracy in South Africa. All decisions of the TEC were to be made on the basis of consensus with a majority of 75% in some of the sub-councils and two-thirds majority in others.

The article explains that the Independent Media Commission (IMC) Bill was mainly to promote a climate favourable to free political participation and free and fair elections by ensuring equitable treatment of all political parties by the broadcasting services.

He stated that “these broadcasts should be of an acceptable standard and had to stop 48 hours before the commencement of the polling period. All parties should be treated fairly”<sup>56</sup>. The IEC Bill sought to ensure a free and fair election for a transitional government and subsequent governments. The main responsibilities of the IEC were to ensure fair registration of voters and political parties, voter education, supervision of the electoral process, monitoring and evaluation of the process and finally the determination of the election results. These institutions that were established like the IEC, IMC, and the IBA, played a significant role in levelling the playing fields among the different parties and formed part of a package of transitional institutions together with the TEC.

In an article published in *Indicator South Africa*, titled ‘Tec-nical Transition’, Colin Eglin (a member of the TEC’s Management Committee) argues that many accused the TEC of secrecy, bumbling and ineffectiveness, but he disputed this, saying that the TEC “played a crucial role in maintaining political stability and facilitating the delicate and dangerous process of transition to democracy”<sup>57</sup>.

Eglin explained the different functions of the TEC in that it consists of 20 representatives of 20 different parties. He informed that the “parties and

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<sup>56</sup> Du Pisani, JA. 1994. “Negotiating a Democratic South Africa: Bilateral and Multiparty Negotiations, June 1992 to December 1993”, *Journal for Contemporary History*, page 59.

<sup>57</sup> Eglin, Colin. 1994. “Tec-nical Transition”, *Indicator South Africa*, vol. 11, no. 2, page 14.

administrations involved in the TEC had to commit...in writing to the objectives of the council...they were also bound by and to implement Council directives and to renounce violence as a means of achieving political objectives”.<sup>58</sup>

Eglin further explains the powers of the TEC by stating that “the TEC has no direct executive power, it has wide-ranging powers to monitor the activities of the government, to call ministers and the government to account, and to direct the government to act in any field which has a bearing on the election or transition to a new democratic order.”<sup>59</sup> He elaborates further by explaining in detail the different roles of the sub-councils, which operate “under the general supervision of the TEC they have their own statutory powers, duties and functions”<sup>60</sup>.

Eglin goes on to argue that the TEC and sub-councils survived in extremely difficult times. One of these factors can be attributed to the disparate nature of the different political parties, the logistical problems of staff and accommodation and inter-relationship between Council and its Management Committee, the seven sub-councils and their numerous sub-structures. Another major constraint was that all the representatives were also competing in a national election campaign. Eglin points out that another constraint was that the TEC had to deal with conflicts within the different participant structures like the Bophuthatswana, KwaZulu government, the IFP, and the Afrikaner Volksfront.

However, Eglin places emphasis on the achievements of the TEC and its sub-councils:

- It helped to level the playing field.
- It locked the parties participating in the TEC into a commitment to cooperate in ensuring free and fair elections and a peaceful transition to democracy.
- It enabled participants from different backgrounds to experience both the

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<sup>58</sup> Eglin, Colin. 1994. “Tec-nical Transition”, *Indicator South Africa*, vol. 11, no. 2, page 12.

<sup>59</sup> Eglin, Colin. 1994. “Tec-nical Transition”, *Indicator South Africa*, vol. 11, no. 2, page 12.

<sup>60</sup> Eglin, Colin. 1994. “Tec-nical Transition”, *Indicator South Africa*, vol. 11, no. 2, page 12.



problems and the practice of co-responsibility in government. This proved to be an important training ground for leaders in the eventually lead up to the Government of National Unity.

- The TEC also attended to solving some of the problems in the East Rand townships, KwaZulu/ Natal and the eventual incorporation of Bophuthatswana into South Africa.
- It established the IEC, IMC, IBA, the Special Electoral Board and the nine Provincial Committees for Local Government, which will function under the Local Government Transition Act.
- It monitored the legislation presented to Parliament at the special session in December 1993 and February 1994.
- The TEC's Sub-Council on Defence, through a new Joint Military Command Council, was supervising the integration of the various military forces into a new National Defence Force.
- The Sub-Council on Foreign Affairs had discussion on South Africa's future international relations with representatives of bodies from the United Nations, the European Union, the Organization of the African Unity, the Commonwealth, and the Economic Commission for Africa.
- It also brought together for the first time representatives of the South African government and the liberation movement.<sup>61</sup>

Eglin concludes his article by stating that the "TEC was a daring political concept and a unique constitutional mechanism - one day historians and political analysis will be able to look back and evaluate the role it played".<sup>62</sup> He argues that although the TEC did have some shortcomings, it played an enormously important role in maintaining political stability and in facilitating the delicate and dangerous process of transition from minority rule to non-racial democracy.

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<sup>61</sup> Eglin, Colin. 1994. "Tec-nical Transition", *Indicator South Africa*, vol. 11, no. 2, page 12.

<sup>62</sup> Eglin, Colin. 1994. "Tec-nical Transition", *Indicator South Africa*, vol. 11, no. 2, page 12.

The only other detailed chapter written on the TEC was by Dawid Van Wyk, who wrote the 'Introduction to the South African Constitution'. In this chapter, Van Wyk begins with South African's history from the British colonial period, and proceeds to the period before 2 February 1990, when talks behind closed doors began between the ANC and the ruling NP. He then gives a brief account of the Multi-Party Negotiating Process (MPNP). He provides a technical overview of the TEC and its powers and its functions. This chapter will be further discussed in chapter five when, the TEC Act is expounded in more detail.

### **3.3 Media literature review**

In order to obtain a holistic overview of information available on the TEC, the media cannot be excluded from this information gathering. This can be attributed to journalists obtaining primary sources of information by means of one-on-one interviews.

A media search (including dailies, weekly newspapers, and magazines) was conducted to determine what was written on the TEC from 1992 to 1994. One such magazine – the *Financial Mail* - had approximately 16 articles on the TEC. These articles can be divided into two periods the first period included articles that were written prior to, or in the lead up to the TEC, the second period deals with articles during the life of the TEC.

One of the earliest articles from the *Financial Mail* written on the TEC was on the 1<sup>st</sup> May 1992, entitled "Interim Government- A Rose is a Thorn" which quotes President F W de Klerk's proposal for a multiparty executive council to help "govern SA during an interim transitional phase and his efforts to stabilise the country"<sup>63</sup>. The article emphasises that this process would assist in the smooth transition to democracy and indicates that senior cabinet members believe this process to be essential if South Africa was to be taken seriously by industrialised countries and if it wanted to attract foreign investment. It also states that during the last week of April 1992 (therefore at the time when Working Group III was in the final stages of preparing a draft on the TEC for

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<sup>63</sup> *Financial Mail*, 1 May 1992, page 35.

CODESA II) De Klerk proposed that Parliament should directly elect an executive council of three to five leaders, who would alternate as president, while constitutional negotiations continued.

The government believed that this council could appoint sub-councils, responsible for government departments, which would eventually constitute a government of national unity. According to this article, cabinet sources believed this would be amenable to Western opinion and in turn would attract FDI to South Africa. Although the ruling party (National Party) would still retain supreme *de jure* authority, the council and sub-council would have *de facto* power over the running of the country.

The article indicated that: “government is confident that, in spite of enormous logistical problems, it could arrange elections before the end of the year if the proposals are accepted”.<sup>64</sup> However, the article stated that the ANC and the Inkatha Freedom Party rejected this proposal. Nelson Mandela is quoted as saying that the “organization insisted that a constitutional assembly with legislative powers, was essential to run the country”.<sup>65</sup>

On February 19<sup>th</sup> 1993, the *Financial Mail*, published an article entitled “Power-sharing: depends what you mean”. Its opening paragraph commenced with the following words: “there’s no secret deal, between government and the ANC”,<sup>66</sup> and the ANC Secretary General Cyril Ramaphosa confirmed that the issue of Government of National Unity has been discussed for a period after the adoption of the new constitution. This would ensure that such a government will unite South Africa, reconcile rival groups and start the process of nation building and levelling the playing fields. The article claims that opposition came from two sources. The first came from the IFP, particularly Buthelezi who feared exclusion during the transition and who reacted angrily to initial reports of power sharing. The second opposition came from some members of the ANC who wanted the party with majority electoral support to rule alone.

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<sup>64</sup> *Financial Mail*, 1 May 1992, page 36.

<sup>65</sup> *Financial Mail*, 15 May 1992, page 47.

<sup>66</sup> *Financial Mail*, 19 February 1993, page 45.

When the *Financial Mail* interviewed De Klerk (19th February 1993), he said that he was confident of his constituency “and is apparently once again negotiating from a position of strength; his main task is to persuade Buthelezi that he is not being excluded”.<sup>67</sup> Mandela on the other hand, is reported asking rhetorically “how much longer can he [Mandela] tolerate open defiance of the official ANC position from regional and junior leaders”. If he failed to muzzle or expel them, his own credibility will be affected - and De Klerk’s could well be enhanced”.<sup>68</sup>

On September 17<sup>th</sup> 1993, the *Financial Mail* reported in an article: “The Transition; Roelf’s High Wire Act” that the pressure of negotiation and differing interpretations from the number of parties was causing a tense atmosphere at Kempton Park. According to the *Financial Mail* report, the *Sunday Rapport* listed seven National Party cabinet Ministers who favoured an election alliance with anti-ANC groups.

The same article identified “tensions among MPs in the NP caucus over election strategy and perceptions that the NP is allowing the ANC to dominate the run –up to the election campaign”<sup>69</sup>. In this article, Constitutional Affairs Minister Roelf Meyer is claimed to have “egg-danced somewhat when questions were asked about the seven [Ministers] - he did not specifically deny differences in Cabinet, but said he was not expecting anyone to split from the party”.<sup>70</sup>

In the meantime the Afrikaner Volksfront (AVF) threatened to walk out of any talks - Roelf Meyer categorically stated that talks with representatives of the AVF would still continue as their exclusion would be detrimental to the peace process. Meyer indicated that the government’s talks with the AVF were aimed at trying to address the organization’s concerns over self-determination, differentiated citizenship rights for different regions and the functions and powers of regions. Meyer is quoted as saying: “while government is sympathetic to the AVF’s fears, it insists that no accommodation

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<sup>67</sup> *Financial Mail*, 19 February 1993, page 45.

<sup>68</sup> *Financial Mail*, 19 February 1993, page 45.

<sup>69</sup> *Financial Mail*, 17 September 1993, page 47.

<sup>70</sup> *Financial Mail*, 17 September 1993, page 47.

can be considered on the basis of discriminations”<sup>71</sup>. Meyer claimed that a referendum “to obtain a mandate if the AVF and IFP did not return to the talks was possible, but stressed it would be the last resort”<sup>72</sup>.

De Klerk also believed that a referendum may be necessary, but was of the opinion that it would create more problems than it would solve. Both Meyer and De Klerk indicated that there were other options besides a referendum.

By December 1993, *the Financial Mail* reported that the TEC “would meet for the first time on Monday (Dec 3<sup>rd</sup> 1993) and all set to debate the interim constitution Bill...the Alliance has little room to manoeuvre”.<sup>73</sup> However, the TECs position was threatened when the AVF and CP threatened to set up its own rival TEC and hold whites-only elections and create a demarcated white homeland. The AVF said “that the move is justified to protect Afrikaners against possible communist-orientated TEC or government aggression”<sup>74</sup>. Roelf Meyer was reported as saying that AVF’s threats to form its own TEC and white homeland are “strange and incomprehensible”.<sup>75</sup>

The ANC spokesperson Carl Niehaus said that AVF had no right to talk on behalf of Afrikaners because “...only 14% of all whites are prepared to move to a white homeland...according to recent survey only six out ten of the AVF’s own supporters would consider a volkstraat as a viable option”. Niehaus continues by saying that “the majority of Afrikaners support the transition to democracy and will actually need protection against threats from the AVF, whose action could plunge South Africa into a race war”. The article quotes a telephonic poll conducted by Markinor among 800 whites, which showed that only 28% favour the formation of a white homeland, and 22% who were favour of it believed this to be feasible, and only 14% would be willing to move to this homeland.

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<sup>71</sup> *Financial Mail*, 17 September 1993, page 47.

<sup>72</sup> *Financial Mail*, 17 September 1993, page 47.

<sup>73</sup> *Financial Mail*, 3 December 1993, page 39.

<sup>74</sup> *Financial Mail*, 3 December 1993, page 39.

<sup>75</sup> *Financial Mail*, 3 December 1993, page 39.

In the same edition of the *Financial Mail*, another article entitled 'Power is shared' gives a detailed account of the how the TEC was established and which members from the different parties are positioned within the sub-councils. The article claims that: "the sub-councils of the TEC would also be in a position to ensure that the NP regime is not able to use any of the state resources or structures so as to unfairly prejudice the other parties". It goes on to indicate that the TEC's first task "would also ensure that the Independent Electoral Commission and the Independent Media Commission are put in place". It further indicates that the TEC will have the power, based on simple majority of the 21 parties on it, to instruct De Klerk 's government to take steps to maintain law and order. It also indicated that the government and the ANC propose that the TEC have the responsibility to maintain law and order, including the declaration of a state of emergency or an unrest area.

By January 14<sup>th</sup> 1994, the *Financial Mail* reported positively about the TEC: "the TEC's management committee was tabling a comprehensive proposal to end violence on the East Rand". The significance and the importance of the TEC's role to resolve conflict is clearly illustrated with the example of the East Rand violence. It was reported in this article that the TEC's achievement of peace on the East Rand and other areas would be impossible without the full cooperation of the IFP. General Colin Steyn is quoted as saying "that the IFP was the main aggressor in many parts of Kwazulu".

"The TEC effectively instructed government to go ahead with SAP deployment in Kwazulu, in the light of allegations of KZP [KwaZulu Police] bias towards the IFP and its apparent inability to end violence in the homeland".<sup>76</sup> Buthelezi responded by saying that any SAP action in KwaZulu would be "regarded as an invasion and that his government would not hold itself responsible for the consequences of such an action". Buthelezi's defiance was a major challenge to the TEC. According to the *Financial Mail*, "Failure to resolve the issue one way or the other could severely undermine the council's credibility and ability to achieve its aim. Obviously a negotiated settlement with the IFP was the first prize". Another major issue that was highlighted in the article was how

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<sup>76</sup> *Financial Mail*, 14 January 1994, page 30.

would the TEC resolve the issue between government and the Transkei: “it is ludicrous to have no co-operation from Transkei, which will soon be part of SA again”. The article ends on a positive note by saying “that this week Ciskei announced that it would take up its seat on the TEC, and participate in the elections and provide men to serve as peacekeepers”.

The above is a summary of what has been written by the *Financial Mail* on the TEC. The many articles indicate that its early reporting on the TEC was factual by nature and as time progressed, reporters acquired a better understanding of the significance of the TEC.

The *Financial Mail* started taking the TEC more seriously (as the official watchdog of the government and as a means of resolving difficult situations). An overview of the publication indicates that the *Financial Mail* reporting was fair to all parties, including the ANC, NP, IFP and right wing parties like the CP and AVF. However, it was clearly evident that the extreme right wing like the CP and AVF were not given much exposure and in some cases were ridiculed, or not taken seriously.

Quality reporting on the TEC in commercial newspapers was limited. The *Natal Witness* reported on 12<sup>th</sup> June 1993, that the “Transitional Executive Council is more imminent than thought...the joint control of the administration of the state could well be taken as marking the cross over from dismantling the old dispensation to constructing the new. It goes on to suggest that: “the world now seems to be teetering on the verge of accepting South Africa’s new credentials...the country must be able to go to vote in a far more positive and stable mood”<sup>77</sup>. On the 31<sup>st</sup> October 1993, the ANC’s *Mayibuye* reported that the PAC “has decided not to participate in the TEC, but to continue in the negotiations and contest the April election. The PAC has joined the IFP, CP, Azapo, as well as the administrations of the Ciskei and Bophuthatswana in rejecting the TEC”<sup>78</sup>.

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<sup>77</sup> *The Natal Witness*, 12 June 1993, page 6.

<sup>78</sup> *Mayibuye*, 31 October 1993, page 7.

The ANC's view was that organisations that opposed the "TEC Bill could delay the liberation of our people. This is to be expected from defenders of apartheid, to be founded in the white extreme right and employees of the system in some Bantustans. It will be unfortunate if the PAC, at this crucial hour were to be seen to be on the side of those who wish to retain the status quo".<sup>79</sup>

### **3.4 Conclusion**

To conclude, it is clear from this chapter (the literature review) that not much has been written on the TEC thus far. Two authors, Ivor Sarakinsky and Dr Harjinder Singh, have given some analysis and insight into how the TEC was conceived and its functions. However, both authors wrote these articles during or prior to the TEC. This further illustrates the point that adequate research and in-depth analysis has not been done on this topic.

Another characteristic that has been identified in the literature review is that most of the literature refers to the TEC Act, and its legal implications but less importance is given to it as a transitional institution. The media coverage also adhered to this style of reporting where focus was on the workings of the TEC, rather than in-depth analysis.

The main themes that emerged from the literature review were that the TEC emerged as an alternative or a parallel government to the ruling party. It played a significant role as a 'watchdog' and in levelling the playing fields among all political parties. In scanning the research available on the topic, it was evident that little importance was given to the sub-councils in both media and among scholars and therefore more in depth research is required.

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<sup>79</sup> *Mayibuye*, 31 October 1993, page 7.



## CHAPTER FOUR

### THEORETICAL FRAMEWORK OF INSTITUTIONALISED CONFLICT RESOLUTION

#### 4.1 Introduction

One of the most critical moments in any transition is when the executive power of the old regime is transferred to a new one. This is often characterised by instability and violent conflict. The TEC was designed as a mechanism to facilitate a gradual and peaceful transition, especially of executive power. For four months (December 1993 - April 1994) the constitutionally-based National Party (NP) government functioned alongside a multiparty, appointed and embryonic executive. It was a *de facto* power-sharing arrangement that was formed to introduce the ANC to executive responsibilities, as well as curtail the NP's executive powers. It laid a firm foundation for the Government of National Unity (GNU), which was constituted after the 1994 elections.

The main purpose of this chapter is to assemble a theoretical framework that will adequately account for the role of the TEC during South Africa's political transition. There is currently no singular theoretical construction that can be effectively applied to analyse the diverse dimensions of the TEC, and its conflict resolution role. Hence, a framework that draws from a combination of theoretical schools, will be employed. This theoretical framework will be discussed in detail in the sections below.

Four key elements of the TEC will be identified in the discussion as constituent elements for which such a theoretical framework as an analytical tool is required.

Firstly, the political transition consisted of unique legislative and institutional arrangements that were central to the period of the early 1990s. The TEC, and its founding legislation, was part of a package of transitional institutions and processes that were implemented as a prelude to the general elections in 1994. Theories about political

transitions will therefore assist in analysing that particular role of the TEC in South Africa.

Secondly, in essence the TEC served as an institution. Hence, the inclusion of relevant institutional theories (particularly a focus on “new institutionalism”) in the theoretical framework is essential to be able to analyse its internal dynamics, its function in the transition and its contribution towards a new constitutional-institutional dispensation.

Thirdly, the multiparty and executive nature of the TEC already introduced a degree of power-sharing which continued in the GNU. It is therefore considered necessary and appropriate that theories related to political power-sharing are incorporated in the theoretical framework.

Fourthly, the scope of the TEC’s mandate extended beyond constitutional matters, to include some of the social and economic dimensions of the South Africa conflict. Hence, theories associated with conflict resolution and conflict transformation will also be included in the theoretical framework. All four dimensions are now considered:

#### **4.2 Transitional theories**

Theories of political transition are relevant for this study, because the TEC, together with the Independent Electoral Commission (IEC) and the Independent Media Commission (IMC), were responsible for managing South Africa’s transition towards a democratic dispensation.

The four volumes of *Transitions from Authoritarian Rule* (Johns Hopkins University Press, 1986), edited by Guillermo O’Donnell, Philippe C. Schmitter and Laurence Whitehead are some of the most influential literature on political transitions. They regard democratic transitions as a multi-stage process characterized by the erosion and collapse of authoritarian rule, followed by a democratic transition and consolidation. Other

notable theorists include Samuel Huntington, Claude Ake, Larry Diamond, Marc Plattner and Alfred Stepan.

In a significant portion of the theoretical literature on transitions to democracy it is argued that economic development is a necessary pre-condition for democracy. Further to this, it is advocated that economic development contributes to the devolution of political authority and the proliferation of ideas about democracy.<sup>80</sup> Kugler and Feng (1999) argue that “in the study of democratic transition, economic development is a sufficient, rather than necessary, condition for democratic transition. As long as the economy continues to grow, so do the prospects for a democratic transition. More important, economic development and democratic strength can reinforce each other”.<sup>81</sup>

Other political transition theorists argue that if economic development is absent, other factors can contribute to democratic transitions, such as relative equal distribution of wealth coupled with realisable political rights. The reason for this, according to Barry Gills, Joel Rocamora and Richard Wilson (1993), Claude Ake (1993) and Feng and Zak (1999), is that in the absence of substantial reform and redistribution of economic assets, including key institutions, the transition to democracy will be largely superficial, as the power relations in society and the economy will remain largely unchanged.<sup>82</sup> These theoretical approaches possibly indicate why some countries, such as Cuba and Burma (Myanmar) still maintain authoritarian regimes.

Bruce Bueno de Mesquita (1975) offers a model of statistical analysis, which indicates that an expanding winning coalition enhances economic growth, which in turn contributes to transformations into democratic rule. De Mesquita suggests that in

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<sup>80</sup> Diamond, Larry and Marc Plattner. 1993. *Global Resurgence of Democracy*; Diamond, Larry and Marc Plattner. 1999. *Democratization in Africa*; Huntington, Samuel P. 1992. *The Third Wave: Democratization in the Late Twentieth Century*.

<sup>81</sup> Kugler, Jacek and Feng Yi. 1999. “Explaining and Modeling Democratic Transition”, *The Journal of Conflict Resolution*, vol. 43, No. 2, page 140.

<sup>82</sup> Gills, Barry, Joel Rocamora and Richard Wilson (eds.) 1993. *Low Intensity Democracy: Political Power in the New World Order*; Ake, Claude. 1993. “The Unique Case of African Democracy”, *International Affairs*, vol. 69, no. 2 pp. 239-244; Feng, Yi and Paul J. Zak. 1999. “The Determinants of Democratic Transitions”, *Journal of Conflict Resolution*, Vol. 43, No. 2, pp. 162-177.

autocracies, small winning elites reward political leaders who provide their core constituents with private goods. By contrast, in democracies large winning coalitions reward leaders who provide prosperity for the society in general. This model may explain why democratic transitions were delayed in economically under-developed autocracies, such as the former Soviet Union, South Africa, and the former Zaire.<sup>83</sup>

Another major approach to the study of democratic transitions focuses on strategic interactions among political actors. Przeworski and Limongi (1997), for example, argue that democratization is not attributable to merely economic and political conditions, but to significant actions as well. These and other studies emphasize the strategic relationship between the dictatorship and its democratic opposition and view the transition process as that of a negotiation.<sup>84</sup>

Transition theorists generally regard the process of democratization to be an investment in security and peace. However, it is widely acknowledged that the transition to democracy is not always smooth. The transition process can create and exacerbate old tensions and create new forms of conflict. Samuel Huntington (1992) mentions three sites of conflict and tension: the competition for votes could result in communalism and ethnic conflict; the questioning of authority can promote an amoral or laissez-faire environment; and democratization can result in inter-state war.<sup>85</sup> Edward Mansfield and Jack Snyder (2002) have found in their research that countries in the transitional phase of democratization were more prone to war and conflict than countries that are in mature democracies or autocratic rule.<sup>86</sup>

According to Linz and Stepan (1996) the installation of a new democracy involves firstly removing all authoritarian elements of the existing non-democratic regime; and the

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<sup>83</sup> de Mesquita, Bruce Bueno. 1975. "Measuring Systemic Polarity". *Journal of Conflict Resolution*, vol. 19, no. 2, pp. 187-216.

<sup>84</sup> Przeworski, Adam and Fernando Limongi. 1997. "Modernization: Theories and Facts". *World Politics*, 49, pp. 253-273; Kugler, Jacek and Feng Yi. 1999. "Explaining and Modeling Democratic Transition". *The Journal of Conflict Resolution*, vol. 43, no. 2, page 141.

<sup>85</sup> Huntington, Samuel P. 1992. *The Third Wave: Democratization in the Late Twentieth Century*; Reychler, Luc 1999. *Democratic Peace-Building and Conflict Prevention: The Devil is in the Transition*, page 82.

<sup>86</sup> Mansfield, Edward D and Jack L. Snyder. 2002. "Democratic Transitions, Institutional Strength, and War". *International Organization*, vol. 56, no. 2, pp. 297-337.

installation and reinforcement of the democratic building blocks of the new regime. This further implies behavioural, attitudinal and institutional consolidation.<sup>87</sup>

Linz and Stepan (1996) distinguish four types of non-democratic regimes: authoritarianism, totalitarianism, posts-totalitarianism and ‘sultanism’ (see table below). According to Linz and Stepan (1996), the type of non-democratic regime in a particular country will determine the kind of transition path towards democracy.

**Table: Preceding non-democratic regimes (Linz & Stepan 1996)**

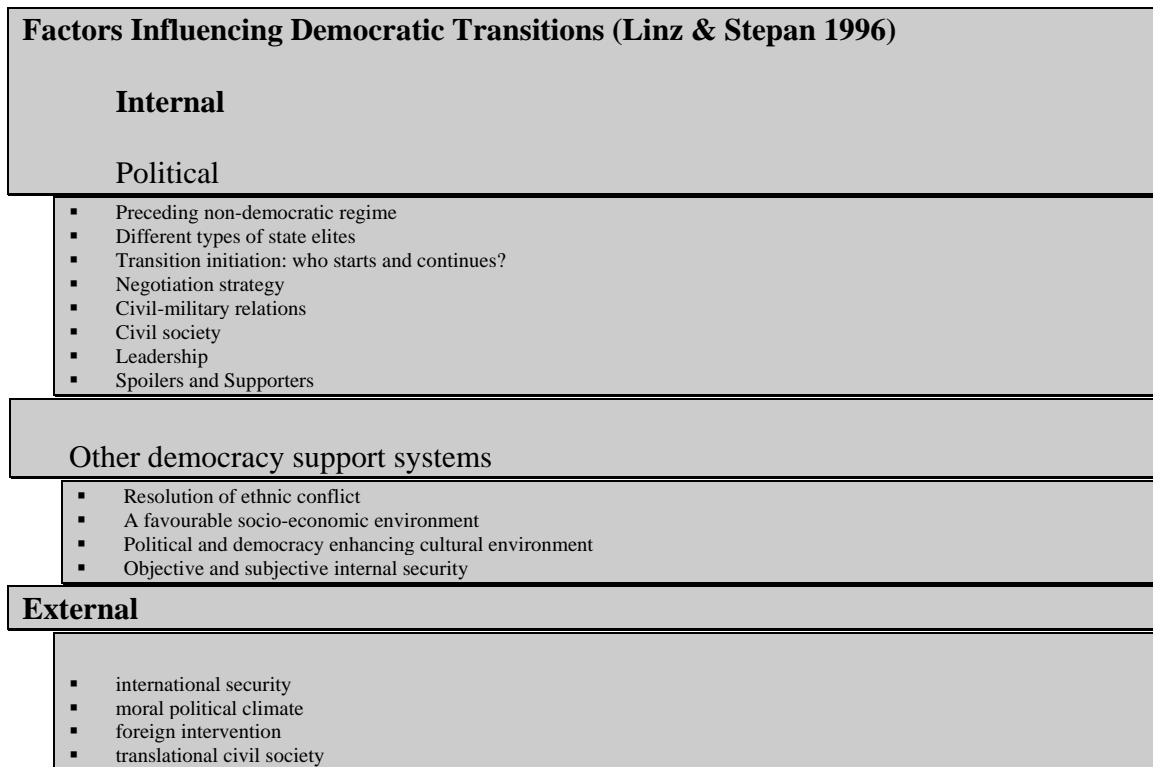
Authoritarianism	Political system with limited political pluralism; without elaborate and guiding ideology; without extensive or intensive political mobilization; in which a leader exercises power within formally ill defined but actually quite predictable norms.
Totalitarianism	No significant economic, social or political pluralism: elaborate and guiding ideology that articulates a reachable utopia; extensive mobilization into a vast array of obligatory organizations. Totalitarian leadership with undefined limits and great unpredictability for members and non-members.
Post-totalitarianism	Limited social, economic and political pluralism; weakened commitment to faith or utopia; progressive loss of interest by leaders and non-leaders involved in organizing mobilization; checks on top leadership via party structures, procedures and internal democracy.
Sultanism	Economic and social pluralism does not disappear but is subject to unpredictable and despotic interventions; highly arbitrary manipulation of symbols and extreme glorification of the ruler; no attempt to justify major initiative on the basis of ideology; low but occasional manipulative mobilization of a ceremonial type by coercive or clientelistic methods without a permanent organization; highly personalistic and arbitrary leadership; no rational legal constraints; strong dynamic tendencies; compliance to leaders based on intense fear and personal rewards

According to Reychler (1999) there are several factors that influence the process and the outcome of the democratization process. They include internal and external elements.

Some of the internal factors include: the preceding regime; the elite base; the actors who start and control the process; and the missing players. The democratic transition is also significantly influenced by four democratic support systems, namely: the resolution of ethnic conflict; the socio-economic environment; the political-cultural context; and the objective and subjective security. The most important external factors include:

<sup>87</sup> Linz, Juan and Stepan, Alfred. 1996. *Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Post-Communist Europe.*

international security; the moral-political climate; foreign interventions; and the role of translational civil society.<sup>88</sup>



In Linz and Stepan's (1996) research on transitions, significant importance is given to the role of leadership and political elites. They argue that understanding the key leaders and their power base, (including its opposition) is a preamble to anticipating the transition process. The different regimes, (as described above) will emulate different elites which in turn will have different implications for the democratic transition and consolidation.

They distinguish four different types of leadership (see the diagram below): hierarchical military; a non-hierarchical military; a civilian elite; and the distinctive category of sultanate. In the South African context leadership/elites were often linked to a negotiated elite pact; the same can be said about the TEC as an elite formation. Therefore, this aspect of the transitional theories deserves more attention in the South African case.

<sup>88</sup> Linz, Juan and Stepan, Alfred. 1996. *Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Post-Communist Europe*; Reychler, Luc. 1999. *Democratic Peace-Building and Conflict Prevention: The Devil is in the Transition*, page 91.

## Types of leadership

Hierarchical military	Positive; potentially favourable to democratic transition. The officer corps sees itself as a permanent part of the state apparatus, with enduring interests and permanent functions that transcend the interest of the government of the day. They have interest in a stable state and this requires government. They may devolve the exercise of government to civilians and accept a more democratic regime when they feel threatened by their prominent role in non-democratic regimes.
Non-hierarchical military	Has some characteristics that make it less of a potential obstacle to democratic transition and especially to democratic consolidation/ the probability of supporting a coup is higher than it would be if the military as a government were hierarchically led/ the chances that the military as an institution will tolerate punishment and trials of the members of the outgoing non-democratic government are significantly greater if the group being punished is not seen to be the military institutions itself, but a group within the military which has violated hierarchical norms
Civilian Leadership	In comparative terms, civilian led regimes will characteristically have greater institutional symbolic capacities than either military or sultanate leaders to initiate direct, and manage a democratic transition.
Sultanistic leadership	Sultanistic regimes present an opportunity for democratic transitions when the ruler is overthrown, assassinated or the sultanistic regime collapses/ problematic is the fact that there is very little space for a democratic opposition/ the manner of regime termination often leads to the dynamics of a provisional government which, unless there is a decision to hold rapid elections, normally presents dangers for democratic consolidation.

(Linz & Stepan 1996)

Linz and Stepan (1996) argue that in order to predict the peaceful nature of the democratic transition one needs to take cognisance of the importance of the leadership of the opposition. Analysts should determine the type of leadership ranging on the spectrum from weak to strong. A strong leadership is defined as: self confident and secure in its position; willing to take some risks in losing popularity in order to achieve its ends; and owning a clear view of the goals it wants to accomplish. Weak leadership can be defined as: conscious of other potential leaders; unable to afford to take risks and obliged to appeal to the groups; and liable to waiver in dedication to the goals.<sup>89</sup>

Another influential theorist on political transitions is Samuel P. Huntington. He distinguishes three types of transitions, namely:

(1) ***Transformation reform*** which refers to a state of affairs where the elite within the authoritarian regime initiates transformation. This usually implies that the

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<sup>89</sup> Linz, Juan and Stepan, Alfred. 1996. *Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Post-Communist Europe*; Reychler, Luc. 1999. *Democratic Peace-Building and Conflict Prevention: The Devil is in the Transition*, page 94.

government in power is stronger than the opposition group.

(2) **Replacement**, which are conditions when the authoritarian systems collapse or are overthrown by popular demand. During the replacement stage significant patterns are distinguished: firstly, the struggle against the regime, during which the opposition gains strength; secondly, the fall of the regime, and thirdly, the struggle for power after the government has collapsed. Replacement does not always lead to democracy. Leaders are often replaced by other dictators, or by other forms of authoritarian rule.

(3) **Transplacement** is the result of joint action by the government and opposition movement. This occurs when the existing government and the opposition realise that if they combine their efforts they will be more effective. Therefore they can opt for negotiating a power-sharing arrangement.<sup>90</sup>

The role of civil-military relations and civil society are key to the success of the transition process to democracy. These two aspects are considered in detail below.

Casper and Taylor (1996) argue that “democracy cannot be consolidated until the military becomes firmly subordinated to civilian control and solidly committed to the democratic constitutional order”.<sup>91</sup> The military role should be only limited to national security and international security issues. The military should be removed from all domestic security, government structures and intelligence matters. It severely restricts the power of the military to rule during a transition period. A democratic transition can be accelerated if the military can be convinced that their interest (individual and institutional) will be absorbed under civilian rule.<sup>92</sup> According to Schmitter, democratization in Latin America went smoothly when the elite, who were possibly threatened by the transition, especially the military, were given a “golden parachute”. Above all, they need a guarantee that if

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<sup>90</sup> Huntington, Samuel P. 1992. *The Third Wave: Democratization in the Late Twentieth Century*; Reychler, Luc 1999. *Democratic Peace–Building and Conflict Prevention: The Devil is in the Transition*, page 95.

<sup>91</sup> Casper, Gretchen and Michelle M. Taylor. 1996. *Negotiating Democracy: Transitions from Authoritarian Rule*; Reychler Luc. 1999. *Democratic Peace–Building and Conflict Prevention: The Devil is in the Transition*, page 100.

<sup>92</sup> Casper, Gretchen and Michelle M. Taylor. 1996. *Negotiating Democracy: Transitions from Authoritarian Rule*; Reychler Luc. 1999. *Democratic Peace–Building and Conflict Prevention: The Devil is in the Transition*, page 101.



they relinquish power they will not end up in jail.<sup>93</sup> The TEC had to deal with similar issues.

The role of the civil society is critically important for the process of transition to, and the consolidation of, democracy. Civil society typically encompasses public organizations, religious organizations, labour unions, interest groups, media and recreational organizations.

O'Donnell, Schmitter and Whitehead (1986) strongly argued that “the degree, distribution, and type of civil society can have an enduring impact on the consolidation of democracy”.<sup>94</sup> They imply that the greater the positive participation of civil society, the greater the chance that the transition will succeed. Other scholars have also argued that civil society can affect the consolidation of democracy negatively. For example, civil societies can be mobilized around ethnically, linguistically, culturally and other exclusive characteristics which can inhibit the democratization process.

Another important component to achieving a smooth transition process is the quality of leadership within civil society structures. Gandhi emphasises “the importance of leadership in the democratic transformation process and of preventing extremist leaders replacing the moderate ones”.<sup>95</sup>

Zartman (1995) observed that different phases of leadership tend to dominate during the different phases of the political transition. The first phase is characterised by a cultural protest led by a group of educated elites petitioning for political reforms. The second phase is led by charismatic leaders who want to unite the different groups and attract attention of the incumbent power by means of coercive civil action. The third phase is led by hard-liners, who want to use violent means to institutionalise change. Their leadership

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<sup>93</sup> O' Donnell, Guillermo, Schmitter, Philippe C and Whitehead, Laurence. 1986. *Transition from Authoritarian Rule: Comparative Perspective*, page 49.

<sup>94</sup> O' Donnell Guillermo, Schmitter, Philippe C and Whitehead, Laurence 1986: *Transition from Authoritarian Rule*, page 49.

<sup>95</sup> Reyhler Luc. 1999. *Democratic Peace-Building and Conflict Prevention: The Devil is in the Transition*, page 106.

style is one of action. Confrontational leadership, for example military means of overthrowing the government, characterises the fourth stage.<sup>96</sup>

It is also important to include the ‘spoiler’ as another category of leaders or groups who believe that democracy threatens their power, worldview and interest and therefore use unorthodox means to undermine the process of transition. Stephen Stedman is well known for his research on ‘spoilers’<sup>97</sup>. COSAG as a group in the South African transition, could be considered for this category.

In addition to the factors discussed above, other elements that need to be considered and that influence the democratic transition process, are the following: the ethnic composition of the country; deep insights into conflict management; the socio-economic environment; the moral-political climate; and objective and subjective security.

➤ Ethnic composition

Different ethnic conflicts within a state can cause a major obstacle to the democratic transition process. During democratic peacebuilding it is important to accurately map the different conflict groups. Reychler (1999) argues that to consolidate a democracy, a formula needs to be found for resolving these ethno-political conflicts. In resolving these ethno-political conflicts the following options can be considered: secession; containment; regional autonomy; assimilation; pluralism; and power-sharing. In the South African context, power-sharing was one of the options.

➤ Socio-economic environment

Different aspects of the socio-economic environment make a difference in the democratic transition process. These include the following: the standard of living of the people; economic trends; the existence of an established economic system; the role of business;

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<sup>96</sup> Zartman, William. ed. 1995. *Collapsed States: The Disintegration and Restoration of Legitimate Authority*.

<sup>97</sup> Stedman, S J. 1996. Negotiation and mediation in internal conflict, in Michael E. Brown (ed), p.369

resource distribution; the nature of privatisation, globalisation; and democratization of the state.

As previously indicated, many studies have indicated a link between economic development and the democratic transition process.

Dirk Kotzé summarised several of the assumptions used in these studies, namely that “democratisation is directly and positively correlated with conflict resolution/prevention; that socio-economic development is directly and positively correlated with democracy; and therefore that democratisation and socio-economic development provide a fitting structural basis for resolving and preventing conflict”.<sup>98</sup>

Another social-economic factor is resource distribution. States that have large distribution of economic, intellectual and power resources are more prone to democratic power sharing. In states with a concentration of power resources among a small elite, democracy is usually threatened. Therefore one can conclude that social reforms intended to further distribute economic, intellectual and power resources among all groups, strengthen the social bases of democracy and the democratizing process. This suggests that imposition of democracy by foreign powers is often difficult, because there is a vacuum of domestic resources. This can be observed in many former colonial countries after independence, because domestic power resources were not sufficiently redistributed to support democratic competition. This can be seen in the South African situation where strong power resources and lack of interference by foreign countries assisted in the democratization process.

### **4.3 Conflict resolution and transformation theories**

As part of its function as a transitional institution, it is argued in this study that the TEC was also designed to build confidence between the various political groups and organisations. Specifically, it engaged in conflict resolution processes and practices, such

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<sup>98</sup> Kotze Dirk 2005. “Implications of the Democracy - Development Relationship for Conflict Resolution”, *African Journal on Conflict Resolution*, page 61.

as facilitation, negotiation, and at times mediation. (Chapters 6 and 7 are good illustrations of this role.) In addition, part of the TEC's mandate was to address many of the more pressing issues relating to South Africa's protracted socio-economic conflicts. Hence, it is essential that conflict resolution and transformation theory be incorporated in the theoretical framework for this study.

According to Edward Azar (1990), one of the more distinguished conflict transformation scholars, and the architect of the theory of "protracted social conflict" (PSC), violent conflict is a consequence of the struggle by communal groups for basic needs such as security, recognition, acceptance, fair access to political institutions and economic participation. Most states which experience PSC tend to be characterised by incompetence, fragile and authoritarian governments that have failed to satisfy basic human needs. Azar links the disjunctions between the state and society in many African countries to a colonial legacy, which imposed territorial statehood onto a multitude of communal groups. In many post-colonial, multi-communal societies, the state machinery is often dominated by a single communal group, or a coalition of a few communal groups, that are unresponsive to the needs of other groups in the society, which strains the social fabric and eventually breeds fragmentation and PSC. PSC can be typically resolved by enhancing the access of individuals and groups to governance and justice resources.<sup>99</sup>

In some cultures, conflicts are defined as 'tangles' that must be unravelled. In Central America for example, the phrase 'we are all entangled',<sup>100</sup> (as in a fisherman's net), is one way of understanding conflict. The root cause of conflict is a knot of problematic relationships, conflicting interest and different worldviews. However undoing this knot is a painstaking process, many would argue, and the key to unravelling this knot would be how the knot was tied in the first place and then sequencing of the untying.

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<sup>99</sup> Azar, Edward E. 1990. *The Management of Protracted Social Conflict: Theory and Cases*; Miall, Hugh, Ramsbotham, Oliver and Woodhouse Tom. 1999. *Contemporary Conflict Resolution*, page 72.

<sup>100</sup> Ohlson, Thomas and Steadman, Stephan John. 1994. *The New is Not Yet Born: Conflict Resolution in Southern Africa*, page 186.

Kumar Rupesinghe argues that deep-rooted conflict can be constructively addressed by building and encouraging indigenous political, social, and economic mechanisms and attitudes that militate against the use of violence. This not only involves a transfer of power but also sustainable structural and attitudinal changes within a society and establishing new institutions to address outstanding matters.<sup>101</sup>

Other influential conflict resolution/transformation scholars include Johan Galtung, John Burton, John Paul Lederach, Morton Deutsch, Raimo Väyrynen and Adam Curle.<sup>102</sup> Drawing from the work and theories of these scholars, the following five generic transformers of protracted conflict can be identified, which bear relevance to South Africa's political transition in the early- to mid-1990s:

(1) *Context transformation*: Conflicts are embedded in a social, regional and international context, which is often critical to their continuation. Changes in the context may sometimes have more dramatic effects than changes within the parties or in their relationships. The end of the Cold War is the prime recent context transformation, which has unlocked protracted conflicts, for example in Southern Africa.

(2) *Structural transformation*: The conflict structure is the set of actors, issues and incompatible goals or relationships, which constitutes the conflict. If the root causes of the conflict lie in the structure of relationships within which the parties operate, then a transformation of these structures is necessary to resolve the conflict. In asymmetric conflicts, for example, structural transformation entails a change in the relationship between the dominant and weaker party. Empowerment of the weaker side (for example, through international support or recognition or mediation) is one way this can be achieved. Another is dissociation, which is the withdrawal from unbalanced relationships.

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<sup>101</sup> Rupesinghe Kumar. 1995. *Conflict Transformation*.

<sup>102</sup> Galtung, Johan. 1996. *Peace by Peaceful Means: Peace and Conflict, Development and Civilization*; Burton, John. 1990 *Conflict: Human Needs Theory*; Curle, Adam. 1971. *Making Peace*. London: Tavistock Press; Deutsch, Morton. 1972. *The Resolution of Conflict: Constructive and Destructive Processes*; Väyrynen, Raimo. 1991. *New Directions in Conflict Theory: Conflict Resolution and Conflict Transformation*; Lederach, John Paul. 1998. *Building Peace: Sustainable Reconciliation in Divided Societies*.

(3) *Actor transformation*: Parties may have to redefine directions, abandon or modify cherished goals and adopt radically different perspectives. This may occur through a change of actor, leadership, or the constituency of the leader or adoption of new goals, values or beliefs. This may involve intra-party conflicts, which is often crucial to the resolution of inter-party conflict. Changes of leadership are common as precipitators of change in protracted conflicts (for example, in Cyprus or South Africa). Change in circumstances and interests of the constituency of a party, represent also transformation of conflicts.

(4) *Issue transformation*: Conflicts are defined by the conflicting positions parties take on certain issues. When they change their positions, or when issues lose salience or new ones arise, the conflict is transformed. Hence, the actor transformation may frame the way to a settlement.

(5) *Personal and group transformation*: Buddhist philosophy understands conflicts as based within the hearts and minds of people; therefore it is the hearts and minds that have to change. According to Buddhist philosophy, conflicts arise from the following: craving for fixed goals, hatred or generalized suspicion or self distorted perceptions. This can be transformed by reconciliation, mutual acceptance, broad vision and clarity.

The misconception about conflict transformation is that it is primarily premised on creating a harmony of interests between actors and that a third party can settle the conflict by appealing to reason or the underlying humanity of the concerned parties. On the contrary, conflict transformation requires real changes in parties' interest, goals or self-definitions. These may be forced by conflict itself, or may come about because of inter-party changes. Therefore conflict resolution and transformation practitioners must not only concern themselves with issues that divide the main parties but also consider the social, psychological and political changes that are important to address root causes, the intra-party conflicts that may inhibit acceptance of a settlement, the context which affects the incentive for the parties, and the social and institutional capacity that determines whether a settlement can be made acceptable and workable.

#### 4.4 New Institutional Theories of the State

The key institution that is of relevance to this study is the state. Social contract theory is central to the notion of legitimate and democratic state authority. In essence it entails that an implicit ‘contract’ exists between the state and those individuals located within its ambit of power and influence; and that the power of the democratic state is derived and constrained by the consent of the governed. In short, the terms of the contract in a democracy are: the governed will respect and abide by the authority of the state in exchange for the equitable and ordered distribution of resources in order to reduce the possibility of destructive conflict. Where a dysfunctional social contract exists, those state institutions that have been established to manage and distribute resources, as well as to provide protection, are not functioning effectively or equitably. The extreme form of a dysfunctional social contract is the ‘failed state’.

In recent years a “new institutionalism” approach to the state has emerged that is gaining popularity, and is of specific relevance for this study. This approach, which is predominantly sociological in nature, promotes the idea that actors and institutions within the state structures have a significant degree of autonomy and influence. Essentially, this school of thought explores the impact and influence of institutions on human behaviour, by means of specific frameworks, such as rules and norms.

One of the main hypotheses of new institutionalism is that senior personnel of the state, by virtue of their position, are able to pursue agendas, which can be at odds with the interests and well being of those the state has been entrusted to govern in a fair and equitable manner. As the state typically monopolies the means of coercion, and given the dependence of most members of society on the state for resources, state personnel can to some extent impose their own partialities on the members of the society. Some of the more influential scholars of new institutionalism are Evans, Lecours, Reuschmeyer, Skocpol, Steinmo and Thelen.<sup>103</sup>

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<sup>103</sup> Lecours, André. 2005. *New Institutionalism: Theory and Analysis*; Evans, P., D. Reuschmeyer, T.

This school of thought is of particular relevance for a study of the TEC, as the individuals and institutions of which it was constituted played a fundamental role in shaping the future of the South African state and society.

#### 4.5 Power-sharing

In South Africa the transition from white minority rule to majority rule is a clear example where several parties hammered out a successful liberal democratic constitution. However, in essence it was a compromise, a power-sharing arrangement, as it “rested on being everyone’s second choice: optimal for no one, acceptable to everyone”.<sup>104</sup>

Power-sharing theories largely emerged as possible solutions for violent and deep-rooted ethnic conflicts. Power-sharing is a problem-solving approach to settle or manage disputes over positions in a political hierarchy. Typically, power-sharing entails the joint exercise of power. There are a number of manifestations of power-sharing. For example, minority groups can be granted semi- or full autonomy over their own affairs. Alternatively, power is shared through leadership forums, where leaders from each group work jointly and cooperatively to make decisions and resolve conflicts. This approach can only be successful if there are ethnically neutral decision making processes and public policies. In most cases, the electoral system will be constructed in such a manner as to promote multi-ethnic coalitions within the political system.

#### Ethnic conflict: mitigation versus exacerbating conditions

<u>Mitigation Condition</u>	<u>Exacerbating Conditions</u>
Ethnic issues are addressed early in the transition process	Ethnic issues are ignored at early stages of constitutional building
Ethnic tension is low to begin with	Existence of historical grievances and the presence of strong stereotypes
Ethnic groups are relatively equal in size and power	Ethnic groups are of greatly uneven size

Skocpol. 1985. *Bringing the State Back In*; Steinmo, S. K. Thelen, et al., (eds). 1992. *Structuring Politics: Historical Institutionalism in Comparative Analysis*.

<sup>104</sup> Reychers, Luc. 1999. *Democratic Peace-Building and Conflict Prevention: The Devil is in the Transition*, page 112.



The previous regime was not dominated by an ethnic minority	Identification of the previous regime with a specific ethnic group: the previous regime manipulated the ethnic mix of the country
All the main ethnic groups were united in opposition to the previous regime	Opposition to the authoritarian regime was dominated by a single group or fragmented along ethnic lines
The leaders of large ethnic groups are moderate	Ethnic leaders embrace extreme positions with regard to ethnic rights
External ethnic groups are not present	One or more groups in a given state are members of an ethnic group that governs a neighboring state
The army is loyal to the state rather than to a particular ethnic group	The military is loyal to one ethnic group

The essence of power-sharing is not to do away with democratic competition but to contain it within acceptable boundaries so that differences of opinion along ethnic groups do not ineluctably lead to inter-group violence”.<sup>105</sup>

Power-sharing involves many different kinds of practices. In many instances consociational power-sharing is employed, such as in Switzerland. Consociationalism will be successful if the following conditions are in place:

- None of the subcultures has a hegemonic position;
- The subcultures have clear boundaries and can easily be identified;
- Each subculture has pre-eminent leaders who are internally respected;
- There is an overarching loyalty across all subcultures to the country as a whole;
- The country is under international pressure to find a peaceful solution;
- The country has a tradition of accommodation and compromise;
- The overall overload of unresolved problems (unemployment, inflation, etc) is not considerable.<sup>106</sup>

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<sup>105</sup> Reychler, Luc 1999. *Democratic peace-building and conflict prevention: The devil is in the transition.* pg 112.

<sup>106</sup> Reychler, Luc 1999. *Democratic peace-building and conflict prevention: The devil is in the transition.* pg 113.

According to Reychler, the extent of the ethnic conflict and the power relationship determines the kind of power-sharing arrangement that will be used. Timothy Sisk differentiates four types of divided societies:

- *Fragmented* – in this society there are usually more than four major ethnic groups (Nigeria);
- *Balanced* - societies with less than four identified groups that are either bipolar or multipolar;
- *Dominant minority* - usually wield power to the exclusion of other ethnic groups (South African apartheid system);
- *Dominant majority* - here the majority group dominates other ethnic minorities (Russia); and
- *Competing asymmetric* - two competing ethnic groups (Rwanda & Burundi).

Timothy Sisk makes a distinction between the consociational and integrative approaches within power-sharing. Consociationalism relies on elite cooperation as the main characteristic of conflict management. Elites directly represent societal segments and they forge cooperation at the centre. This approach is built on four pillars, namely a broad-based parliamentary coalition, minority or mutual veto, proportionality and segmental group autonomy. According to Sisk, “power sharing in the executive in a grand coalition, or a variant thereof, ensures that the minority is not permanently excluded from political power ... In grand coalitions, political elites - representing the various segments of society - thrash out their differences in an effort to reach consensus, but public contestation among them is limited”.<sup>107</sup>

The integrative approach on the other hand, proposes mechanisms to disperse power, to devolve power, to induce segmental cooperation, to encourage alternative social alignments by emphasising cross-cutting cleavages, and to reduce disparities between groups through managed distribution of resources. This approach is premised on two considerations:

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<sup>107</sup> Sisk, Timothy D 1996. *Power sharing and international mediation in ethnic conflicts*. page 36.

- 1) Demonstrable incentives for politicians to appeal beyond their own communal segments for support and thereby rewarding moderation; and
- 2) Leaders must appeal to underlying moderate sentiments in the electorate and avoid extremism.<sup>108</sup>

The integrative approach is one example that was used in forming the Government of National Unity in South Africa. This enabled all the main parties to co-govern.

According to IDEA, any successful power-sharing arrangement depends on a sufficiently strong core of moderates who seek pragmatic co-existence. They must be able to withstand the critical extremists who mobilise on the basis of segmental interests. Power-sharing is essentially about confidence building. “Power-sharing systems work best when, ideally, they are a temporary measure to build confidence until more customary, sometimes-win-and-sometimes-lose democracy can be embraced”.<sup>109</sup>

#### **4.6 Conclusion**

In this chapter a multi-theoretical framework has been presented. This framework will be employed to develop a nuanced interrogation and analysis of the conflict resolution role of the TEC during South Africa’s political transition in the early-1990s. As there is currently no single theoretical framework that is appropriate for such a task, a hybrid framework has been developed that combines theoretical approaches to political transitions, conflict resolution, institutions and power-brokering. This framework has been specifically developed to assess the internal mechanics and dynamics of the TEC.

In the three chapters that follow, the key conflict resolution features and characteristics of the TEC will be examined, namely: the TEC Act (its institutional dimension), the structures and processes of the TEC, and the dynamics within (its role in power-sharing

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<sup>108</sup> Sisk, Timothy D 1996. *Power sharing and international mediation in ethnic conflicts*, pp. 40-41.

<sup>109</sup> Harris, Peter and Ben Reilly. (Eds.). 1998. *Democracy and Deep-Rooted Conflict: Options for Negotiators*, page 143.

and conflict transformation); and the Sub-council on Foreign Affairs (emphasizing the transitional function of the TEC). An analysis of the TEC Act is undertaken, as it provided the legal foundation for the establishment and functioning of the TEC, and determined the scope and range of this institution's work. A consideration of the inner workings of the TEC is essential to determine the extent to which this body contributed to conflict resolution. As the TEC was a multifaceted institution, it is not possible to provide a detailed analysis of all the sub-entities that constitute the TEC within the length constraints of this dissertation. Hence, only an examination of the Sub-Council on Foreign Affairs will be presented. This sub-council was arguably at the conflict resolution forefront within the TEC during the height of engagement in South African affairs.

## CHAPTER FIVE

### THE TRANSITIONAL EXECUTIVE COUNCIL ACT

#### 5.1 Introduction

The TEC Act represents the institutional dimension of the theoretical framework. In the theoretical chapter reference is made to the institutional dimension of the framework. The Act is the best representative of this dimension, because it was the basis document on which the TEC was established in December 1993. Therefore the institutional dimension of conflict resolution should be emphasized in this chapter.

The institutional dimension argues that institutions are important for conflict resolution. Institutions are necessary as instruments to implement peace agreements. They are important to distribute and regulate political power. They are important to accommodate different political interests in the process of building confidence in the emerging peace process or transitional political arrangement. They are part of the articulation of a new social contract to replace the one that caused the conflict.

Before the negotiating phase, each political party had different views to what they perceived as a 'government in transition'. The ANC viewed the old government as illegitimate, and argued as early as 1989 in the Harare Declaration that a transitional government must be established before an election, which would then write a new constitution. The PAC was less compromising; it demanded immediate elections for a constituent assembly and majority rule. The NP, in its 1989 election manifesto took a contrary view. It wanted to negotiate a new constitution, but insisted on remaining in power. They believed they were still the legitimate elected government, even if they were elected by a minority. The IFP believed that it wanted elections only after a constitution was agreed and if it provided for a federal type of government. Similarly, the Conservative Party rejected elections until a separate Afrikaner *Volkstaat* was agreed to.

These opposing views were presented as differences of principle between those who favoured a two-stage transition (first the creation of an interim body, then an election) and those who preferred one stage (continued rule by the present government until election). According to Ivor Sarakinsky, “the ANC position would ensure that it would gain a share of power before elections, preventing the NP from using the levers of government to influence the result. Its view, and that of the PAC, that elected representatives should write the constitution ensured that the majority could do so alone.”<sup>110</sup>.

The NP, IFP and CP had their own agendas; for the NP it was to remain in power as long as possible, for the IFP it was to maintain power and continue administering Kwazulu and for the CP it was to maintain white rightwing power and to avoid black majority vote. Since all three parties represented minorities they therefore all sought to maximise their own interest and hold on to power. Given this background, negotiating transitional government was not going to be an easy task.

## **5.2 Prelude to the formation of the TEC**

South Africa’s watershed moment was when President de Klerk announced his historical speech in Parliament in 2 February 1990. The process has begun; the first stage was dismantling of apartheid and simultaneously implementing a new democracy. This journey extended a period of four years from 2 February 1990 to 27<sup>th</sup> April 1994. The first negotiated Constitution came into operation at three periods: from 2 February 1990 to the start of the Convention for a Democratic South Africa (CODESA) in December 1991; from CODESA to the beginning of the MPNP in March 1993; and finally from the MPNP to 27 April 1994 (the TEC period).

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<sup>110</sup> Sarakinsky, Ivor. 1994. Rehearsing joint rule - The Transitional Executive Council in South Africa, page 69.

A number of preliminary essentials had to be established before the negotiation process would begin; among these conditions were the release of large number of political prisoners, arrangements had to be made for the return of persons who fled the country on account of their political views and the issue of the unbanning of various liberation movements (like the PAC, SACP, ANC) and especially the armed wing of the ANC, Umkhonto we Sizwe.

The first formal meetings between the South African government and the ANC leadership took place at Groote Schuur, Cape Town on the 4<sup>th</sup> May 1990. This resulted in the Groote Schuur Minute, which was the first document signed by the two parties and is regarded as the beginning processes leading to the interim Constitution. The Groote Schuur Minute was followed by two other agreements, the Pretoria Minute of 6 August 1990 and the D F Malan Agreement of February 1991. The former reiterated the commitment to the Groote Schuur Minute and re-addressed the same issues of political prisoners, violence, and state of emergency and security measures. Two additional items were included such the ANC`s renunciation of the armed struggle. The Pretoria Minute was concluded by stating that the way was clear for negotiation on a new constitution and that `exploratory talk` would begin. The D F Malan Accord clarified the ANC`s suspension of the armed struggle. In order to address this problem a National Peace Accord was signed on the 14<sup>th</sup> September 1991.

### **5.3 The Establishment of the Convention for a Democratic South Africa (CODESA)**

“Negotiations began with parties giving and taking, modifying as they move along, so that mutual second best solutions can be reached.”<sup>111</sup>. The IFP was determined to present itself as a major player while the NP continued to change its position, largely in response to the ANC pressure.

The first round of negotiations, CODESA, took place at the World Trade Centre in Kempton Park. Friedman argues that in “hindsight it is clear that agreement at CODESA

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<sup>111</sup> Sarakinsky Ivor: Rehearsing Joint Rule, The Transitional Executive Council, page 70

was not near, that as an opening round it was an exercise in preparation for what was to follow. Various reasons could be adduced for the fact that CODESA was not to be the ultimate constitution-maker.<sup>112</sup> Analysts argue that some of the failures of CODESA were its weak structure “the broadest cross-section of the country’s political leaders”.<sup>113</sup>

Each working group had two delegates and two advisors representing every party and organization. With nineteen parties, each group consisted of a hundred persons. Despite the confidentiality of the working group sessions, the very size of the groups hampered negotiations. Some groups set up subcommittees; another, Working Group 3, appointed its own technical committee to prepare a draft report. The briefs of the working groups also caused problems, given the relatively short period of time before the next plenary session, scheduled for mid-May 1992. Working Group 1 was saddled with conditions for ensuring free and equal participations in the political process<sup>114</sup>. Its terms of references covered two pages of fine print. Working Group 2 was assigned Constitutional Principles, Working Group 3 looked at transitional measures, Working Group 4 dealt with TBVC states and Working Group 5 dealt with time frames.

The frustration of the Working Groups can be seen from the reports submitted to the second plenary of CODESA, officially known as CODESA 2. Working Group 1 reported some progress, but listed outstanding matters. Working Group 2 did not submit a formal report because of time constraints. Working Group 3 produced a rather comprehensive structure and set of principles for the first phase of the transition to democracy, i.e. until the first elections. Working Group 4 provided a brief report outlining difficulties while Group 5 lamented the fact that its progress depended on movements in the other groups, which was slow and limited. However, all parties were determined to continue with the process of negotiations and dialogue. The participants felt that for negotiation to succeed there should be a new negotiation forum with wider representation and better negotiating structures. The political impact of the failure of CODESA was almost disastrous except

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<sup>112</sup> Friedman, Steven 1993: *South Africa’s Reluctant Transition* , page171-172

<sup>113</sup> Van Wyk, Dawid , John Dugard , Bertus de Villiers 1995. *Rights and Constitutionalism: The new South African legal order*, page 131

<sup>114</sup> Agreed terms of reference for Working Groups for CODESA - 12<sup>th</sup> May 1992: ref { 1/1/4}



for the determination of the chief negotiators from the ANC and the South African government to continue to bridge the gap. Some of the failures can be attributed to the IFP and COSAG not being bounded to the agreements in the Working group 3 and therefore rejected the TEC completely.

During a bosberaad between the ANC and the Government, the State President De Klerk and the ANC president Nelson Mandela held a meeting at the World Trade Centre in Kempton Park and they both issued a document entitled 'Record of Understanding', dated 26<sup>th</sup> September 1992. This document was in effect an agreement between Government / National Party and the ANC aimed at getting the negotiation process on track. The Record of Understanding also included that the new constitution would be drafted by an elected constitution making body, that there would be constitutional continuity and that, in view of this, the constitutional – making body would serve as an interim or transitional Parliament. While the Record of Understanding succeeded in revitalizing constitutional negotiations, it also had the negative effect of alienating the IFP. One of the results of the Record of Understanding was the development of the formation of the Concerned South African Group (COSAG), with the IFP, the KwaZulu government, the government of Ciskei and Bophuthatswana and the CP as the leading members. It also precipitated the withdrawal of these parties and organizations from the MPNP nine months later.

A further consequence of the Record of Understanding was the decision to establish a successor for CODESA, namely the Multi-party Negotiations Process (MPNP), which produced the interim Constitution and other legislations aimed at facilitating the transition to democracy, including the TEC.

#### **5.4 The Multi-Party Negotiation Process (MPNP)**

The Multi-Party Negotiation Process, like CODESA, took place at the World Trade Centre, Kempton Park, in the beginning of January 1993. Although many critics would argue that MPNP is not seen as natural successor to CODESA but in hindsight this is

reflected by many authors. Many of the lessons learnt in CODESA were applied to MPNP.

The MPNP had a four-tier structure. The highest tier of the forum was known as the Plenary constituted of party leaders and nine delegates from each participating party. Each delegation was mandated to include women also among its members. The Plenary consisted of 260 delegates, was the formal ratification stage, and was to meet as often as it was deemed necessary. The second tier constituted of the Negotiation Forum with four delegates including women, and two advisers from each party. The Negotiation Forum was to consider and adopt decisions made by the Negotiation Council, which was the third tier of the Multi-Party Negotiation Process. The Negotiation Council had two delegates, including one woman, and two advisers from each party. The Negotiating Council and the Planning Committee were the heart of the MPNP. The proceedings in the Council were public; however those in the Planning Committee were confidential - a practice which sometimes delayed the council on sensitive issues. It was then referred to the Planning Committee. The Planning Committee would then return to the Council.

The fourth and lowest tier was a ten-member Planning Committee whose main purpose was to finalise the agenda and give direction to the negotiations. There was also the Ad Hoc Technical Committees below the Planning Committee that dealt with specific issues by providing input under the directions of the Negotiation Council. Once an agenda was approved, tough negotiations took place in the technical committees before they were reported to the Negotiation Forum and ultimately to the Plenary where agreements were formally adopted at the leadership level. Decisions at all levels were taken by “sufficient consensus”. A six person Chairing Committee was appointed to oversee the process in the Negotiating Council and Negotiating Forum. Technical Committee was given the task to draft the legislative Bill for the establishment of the TEC.

In its first draft report, the TEC technical committee added to the CODESA agreement, offering a detailed account of how the TEC should function. But the debate on the structure and functions of the TEC was soaked up into a broader constitutional

controversy as COSAG and the IFP in particular, objected to the committee recommending a two-phase transition, so ignoring its view that the existing order should remain until a new, federal one was agreed.<sup>115</sup> The IFP and its allies were adamant that under no circumstances would they support a two phase process. If agreements were reached on an interim constitution; “a set of constitution principles which would be binding on the constitution-making body; final and entrenched boundaries, powers and structures of regions; forms of the state; and the nature of the new political dispensation, they would be open to negotiation on the TEC. IFP negotiator Walter Felgate described this position as a search for a solution...We want to accommodate each other”<sup>116</sup>

Hard negotiations among the parties took place through this four-tiered Multi-Party Negotiation Process. Finally the following agreements were reached:

- 1) Setting up the Transitional Executive Council (TEC) to ensure that the electoral process during the run-up to the elections was free and fair and that the Government machinery and public funds were not used against the interests of, or to the benefit of any single political party.
- 2) The framing of an interim constitution for South Africa which was to come into force after the election.
- 3) Establishing the Independent Media Commission (IMC) to ensure that the media in South Africa would function impartially and objectively;
- 4) Setting up the Independent Broadcasting Authority (IBA) to ensure that the South African radio and television would function impartially and objectively
- 5) Establishing the Independent Electoral Commission (IEC) to organize free and fair elections.

These Bills were enacted into law by the South African Parliament in its special session in November 1993. Although these technical committees played a major role in laying

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<sup>115</sup> Sarakinsky Ivor. 1994. Rehearsing Joint Rule – The Transitional Executive Council in South Africa. Pg 72.

<sup>116</sup> Sarakinsky Ivor. 1994. Rehearsing Joint Rule – The Transitional Executive Council in South Africa. Pg 72.

the foundation, they also experienced many problems, like not being able to deal with their briefs effectively. For example the Technical Committee on Violence could not address the issue effectively, particularly with various structures of the National Peace Accord and the Goldstone Commission.<sup>117</sup> It was not surprising that this committee did not feature prominently in the workings of the MPNP. Another example, the Committee on the Repeal of Legislation Impeding Free Political Activity and Discriminatory Legislation was asked to submit a list of all laws that had to be repealed. In its first report of 13 May 1993 it advised against this approach and recommended the adoption of a higher code against which laws could be tested and declared invalid. The Negotiating Council decided to combine the approaches and requested that committee produce a list of inhibiting and discriminatory legislation and to draft a higher code. The committee resolved the issue effectively. Months later, the Negotiating Council appointed another ad hoc committee to investigate the matter. This demonstrates that negotiation did not always proceed smoothly as anticipated. However, the four other committees (IBA, TEC, IMC, and IEC) did produce legislation to govern the transitional process and by September 1993, it was passed by Parliament. The Committee on the IMC and IBA drafted the Independent Media Commission Bill and the Independent Broadcasting Authority Bill: the committee on the IEC was responsible for the Independent Electoral Commission Bill, while the Committee on the TEC produced the Transitional Executive Council Bill.

The interim constitution only came to existence after the 1994 elections; this was also finalised by the Multi-Party Negotiations Process and later it was passed by the South African Parliament. These developments firmly put South Africa on the path leading to a democratic and non-racial country.

The one major advantage that the MPNP demonstrated over CODESA was its wide representation of political parties. However, during the course of time important parties like CP, IFP, KwaZulu, the Ciskei, and the Bophuthatswana governments withdrew from

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<sup>117</sup> Draft Minutes of the third meeting of the Technical Committee on the Transitional Executive Council (TEC) held on 13 May 1993 at World Trade Centre, Ref 1/3/7/1/1-9

the talks. Another feature of the MPNP was the inclusion of women which was of paramount importance during the MPNP process. The Gender Advisory Committee was established and this set the precedent to include women in all future endeavours. For example, the Sub- council on the Status of Women of the Transitional Executive Council (TEC) and the Commission on Gender Equality established in terms of the Constitution.

### **5.5 The Emergence of the TEC Bill**

The TEC was the strongest direct link between CODESA and the MPNP- its gist being rooted in the report of Working Group 3 to CODESA.<sup>118</sup> The main object of the TEC and its Sub-councils was to ensure that during the period leading to the first democratic election a climate for free political participation conducive to the holding of fair and free elections was created and maintained.<sup>119</sup> In an interview with Zam Titus, he outlined two objectives:

- (1) “To prepare for elections on the 27<sup>th</sup> April and the need to ensure that the transitions from an Apartheid state to democratic state is a smooth process .
- (2) The second objective was to ensure that the NP government does not change its mind or disrupt the negotiation process by using the intelligence and the army (SADF) to its advantage.”<sup>120</sup>

As discussed earlier, the emergence of the TEC came into being during Multi-party Negotiating Process (MPNP) resolution which precipitated the establishment of a number of technical committees, one of which was the Technical Committee on the TEC and its sub councils. The technical committee was requested to report to the Working Group 3 to CODESA II and to obtain the views of all other parties concerned.<sup>121</sup> As it turned out, the Committee’s deliberations and recommendations culminated into seventeen reports to the Negotiating Council of the MPNP, which eventually resulted in the draft bill.

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<sup>118</sup> Minutes of the third Meeting – Working Group 3, 11<sup>th</sup> , 17<sup>th</sup>, 24<sup>th</sup> February and 3<sup>rd</sup> March 1992: File 3 vol 52: File 4 vol 52,: File 5 vol 52: File 6, vol 52. { 1/3/7/5 (1-33) }

<sup>119</sup> Interview with Zam Titus : 23 November 2005

<sup>120</sup> Interview with Zam Titus : 23 November 2005

<sup>121</sup> Minutes of the third Meeting – Working Group 3, 11<sup>th</sup> , 17<sup>th</sup>, 24<sup>th</sup> February and 3<sup>rd</sup> March : 1992: File 3 vol 52: File 4 vol 52,: File 5 vol 52: File 6, vol 52. { 1/3/7/5 (1-33) }

The Working Group 3 was given the task to investigate, canvass all possibilities and identify key issues, processes and problems that needed to be addressed. And finally make recommendations as to how the country should be governed and managed until a new constitution was developed.

The Working Group 3 concluded that the process of transition to democracy should involve two preliminary stages. The first stage would look at how to prepare the country to hold a free and fair election for an elected Parliament under an interim Constitution with the power to draft a new Constitution in terms of agreed procedures and to act as an interim legislature<sup>122</sup>. This stage would involve covering the whole period prior to and including the election process. The second stage would envisage the adoption of a new democratic Constitution and the establishment of a new government in accordance with the provisions thereof. The Working Group also identified the need for multiparty transitional executive structure to function in conjunction with existing legislative and executive structures and tasked with the responsibility to prepare for and to facilitate the transition to a democratic Constitution.

An analysis of the Bill, that was prepared by the MPNP's Technical Committee on the TEC and the report of the Working Group 3 to CODESA II reveals that the Technical Committee followed very closely the thinking of the Working Group as expressed in its recommendations.

In order to understand the TEC Act, it is important to understand the negotiators' intention with the TEC. Roelf Meyer (interview December 2004) is of the opinion that the ANC developed the idea as a compromise for its promise in the Harare Declaration (1989) to establish an interim government. The first reference to something like the TEC by the ANC was when Thabo Mbeki, the ANC's head of International Affairs tabled an

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<sup>122</sup> Minutes of the third Meeting – Working Group 3, 11th, 17th, 24<sup>th</sup> February and 3<sup>rd</sup> March : 1992: File 3 vol 52: File 4 vol 52,: File 5 vol 52: File 6 vol 52. { 1/3/7/5 (1-33)}

ANC proposal at CODESA on 24<sup>th</sup> February 1992, including as “interim governing council”. It would oversee the Tricameral Parliament, the NP government and the administration of the Transkei, Ciskei, Venda and Bophuthatswana, as well as the other homelands. The ANC proposal suggested a two-stage transition: the first stage was to level the playing fields, followed by an election, and the second stage was a constituent assembly functioning as a constitution-making body and as a legislative assembly. In ‘Reflection on the last days of white rule’, Jan Heunis states that “to the government the whole idea of sharing power, albeit in the interim and albeit not supreme executive power, with the ANC and other parties and in respect of important matters such as defence and law and order, was virtually unthinkable. The ANC, on the other hand, did not want the Transitional Executive Council, as it was called, to be, in Cyril Ramaphosa’s words, a toy telephone.”<sup>123</sup>

Once CODESA had reached agreement on transitional arrangements, the tricameral parliament would legislate to give legal power to the “interim governing council”.

The ANC proposed that the Council should be able to veto as well as initiate legislation in the tricameral parliament and be dissolved either when elections are declared or when the constituent assembly is elected. “It was envisaged that the council would also directly be an independent, non-partisan commission with multiparty committees”. These sub-committees would be divided into security, the budget, foreign affairs and other such as local government. They will have complete control over these areas<sup>124</sup>

Between February and May 1992 (when the CODESA II convened), the concept of the TEC was identified by CODESA Working group III. An eight page report was prepared for CODESA II in which the TEC’s powers were set out, six sub-councils were identified (regional and local government, finance, law and order/ stability and security, defence, foreign affairs and elections) and their composition and powers were identified<sup>125</sup>

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<sup>123</sup> Jan Heunis, *The Inner Circle – Reflection on the last days of white rule*, page 199

<sup>124</sup> *Summary of World Broadcasts*, ME/1314 B/3, 26<sup>th</sup> February 1992.

<sup>125</sup> Working Group III (CODESA): The Transitional Executive Council and Sub council, 1992.

Due to the stalemate after the CODESA II deadlock and the Boipatong massacre, this report was delayed. After the Record of Understanding enabled a new negotiation process (the multiparty negotiating process) starting early in 1993, the new process decided to inherit most of the decisions by CODESA, including Working Group III's on the TEC. The IFP however, rejected this stance. The Concerned South African Group (COSAG) in response to the Record of Understanding rejected the TEC completely. The NP government and the ANC disagreed fundamentally on its powers. The ANC wanted it to have executive powers: the NP wanted it to be co-ordinated to the NP parliament. By the end of February 1993 the NP and the ANC have moved closer to a constitutional principles, and therefore also to finalise the TEC Act.

A technical committee, consisting of six experts prepared 17 reports for the MPNP's Negotiating Council. The IFP objected to a two phase transition and preferred that the status quo should remain until a new constitution was agreed. The IFP informed the committee that they would be willing to negotiate with the TEC only if agreement was reached on an interim constitution, a set of constitutional principles which would be binding on the constitution-making body, entrenched provincial boundaries, powers and structures, and the form of the state. After a five hour debate the negotiators agreed on a two-phase transition, an elected constitution making body, and agreed principles for an interim regional government and an interim constitution. This new negotiation climate enabled the technical committee to finalise a draft TEC bill.

The committee used the skeleton agreement of Codesa Working Group III. Many of the talks were not between committee members but between the relevant government departments and ANC structures. The technical committees were for law and order, stability and security; defence, and Foreign Affairs - the same that Mbeki proposed in



1992. It also suggested two additional sub-councils: intelligence, and the status of women. The next heated discussion focused on the security sub-council<sup>126</sup>.

The TEC established a unique practise and it was not influenced by a transition model from elsewhere in the world<sup>127</sup>. The NP realised that though it was still the *de jure* government, the TEC had become a concurrent, parallel *de facto one*<sup>128</sup>. The institutional arrangement as set out in the Act, will now be discussed.

## **5.6 The legislative framework of the Transitional Executive Council**

The Transitional Executive Council was constituted with executive powers for the following purposes:

- I. to prepare for and to facilitate the transition to a democratic order in South Africa;
- II. to create a climate for free political participation in which-
- III. there will be no impediments to legitimate political activities;
- IV. there will be no intimidation;
- V. political parties and organizations will be free to canvass support from voters, to organise and hold meetings, and to have access to voters for such purposes;
- VI. the power conditions conducive to the holding of free and fair elections in accordance with the provisions of (the Transition to Democracy Act) <sup>129</sup>

## **5.7 The TEC's objectives (Article 3):**

The objective of the Council was to facilitate and prepare for a peaceful transition to a new democratic South Africa. This process was initiated within the ambit/realm of

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<sup>126</sup> Sarakinsky, Ivor. 1994. Rehearsing joint rule: The Transitional Executive Council, in *South African Review 7: The small miracle: South Africa's negotiated settlement* edited by Steven Friedman & Doreen Atkinson. page 71-74

<sup>127</sup> Roelf Meyer, interview December 2004; S.S van der Merwe, interview 27 December 2004

<sup>128</sup> S.S van der Merwe, interview 27 December 2004

<sup>129</sup> Technical Committee on the Transitional Executive Council - Submission by the African National Congress / 12 May 1993- Legislative Framework for a Transitional Executive Council - D1/ page 3

legislative and executive structures of all levels of government in South Africa. The following criteria were regarded as fundamental:

- < to eliminate any impediments that hinder the process of smooth transition
- < to eliminate any form of intimidation that would effect the transition
- < to ensure that political parties have conditions that enable them to have a free and fair election
- < to ensure that women play an active role in the decision making process of the transition and in the electoral structures.
- < to ensure that no government or administration has an advantage over the other political parties
- < to create a climate conducive for a free and fair election<sup>130</sup>

In comparing the original document devised by Codesa 2 Working Group 3 and the final TEC document, one can notice the following changes: the inclusion of the Sub-council on women and the Sub- council on intelligence.

***Composition of the Council (Article 4):***

The TEC would consist of all the governments (NP, homelands and TBVC territories), political parties or organizations, which was at any time represented on the Negotiating Council, and which, in writing applied with the Negotiating Council for membership of the TEC. Other criteria were:

a) To commit itself to the objects of the Council, and in respect of itself and all organizations which are under its authority or council, and any armed force which is under its authority and control or associated with it and promotes its objectives;

b) undertakes to be bound by and to implement the directions of the Council; and

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<sup>130</sup> First report of the Technical Committee on the Transitional Executive Council 13 May 1993. Ref 1/3/7/1/1-9 page 11

(c) renounces violence as a means of achieving political objectives, shall be entitled to be represented by one member on the Council.

(d) It further provided that the government of or any political party registered only in or operating only from, or from or any organization operating from Transkei, Bophuthatswana, Venda or Ciskei shall not be participants in the Council unless the provisions of the Transitional Executive Council Act, the Independent Electoral Commission Act (1993), the Electoral Act (1993), the Independent Media Commission Act (1993), have been incorporated into the law of the State concerned.

(e) The participation of a government, political party or organizations can also be suspended by the Council, if it violates or acts in breach of the commitments made by it or if it refuses to comply with the directions of the Council and refuses to desist from actions which are contrary to its commitments.

***Powers of the Council (Article 7):***

Both the TEC and the sub-councils had a number of general executive powers assigned to them. However, of more importance is the specific powers allocated in sections 13-22 which is the core of the Act or as Zam Titus refers to the ‘teeth’ of the Act <sup>.131</sup>

Section 13 entailed that government, administration and other participants were obliged to provide the TEC with information about any intended legislation and action. If the TEC believed that any legislation or other action would impact negatively on the attainment of the objects of the TEC, it had the authority to intervene with the legislation or action. Any dispute in this regard could be resolved in terms of section 23.

Sections 14-20 listed the powers of the TEC and the sub- councils on the basis of the areas for which sub-councils has been established. Except for foreign affairs and local and regional government and traditional authorities, the lists of powers for the other sub

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<sup>131</sup> Interview with Zam Titus, 23 November 2005

council are rather extensive, reflecting the sensitive political nature of those other areas. Each section commenced with a standard introductory paragraph, stating that the TEC would have certain powers in regard to the specific issue, and that such powers would be exercised through the sub council concerned.

The TEC was also given powers to oversee the newly formed transitional institutions like the Independent Electoral Commission, the Independent Media Commission, and the Independent Broadcasting Authority.

The general powers of the council are the following:

- < it has the power to obtain any information or documents necessary for attaining its objective
- < to direct the sub-councils on any matters it sees necessary
- < to participate and initiate negotiations relating to its function and objects
- < to appoint staff to assist the council and sub-councils in the performance of the function. The staff may be appointed from any other public service department.
- < the council will be responsible for its own financial accounting and administration
- < the council may delegate its powers to any of its sub-councils, but it may not divest its powers.<sup>132</sup>

## **5.8 The Structure of the TEC and its Sub-councils**

As has been indicated earlier in this chapter that, the TEC comprises of all governments, political parties, or organizations which were represented in the Negotiating Council, who have committed themselves to the objects of the TEC, and have undertaken to be bound by and to implement directions issued by it in terms of the Act, and have renounced violence as a means of achieving political objectives.

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<sup>132</sup> First draft of the Technical Committee on the Transitional Executive Council, 13 May 1993  
Ref -1/3/7/1/1-9 page 13

In respect of the government of the Republics of Transkei, Bophuthatswana, Venda and Ciskei, they were required in terms of the Transitional Executive Council Act and other Acts to be incorporated and deal with the transitional and electoral processes. This was the prerequisite for TEC membership.

All participating governments, political parties, and organizations must be represented by one member and, if needed, by an alternative member. Members of the Council can either be full-time or part-time. The members of the seven sub-councils have to be appointed by the TEC itself in a full-time capacity and membership of the sub council is not restricted to members of the TEC. The Sub council on Law and Order, Stability and Security, and Defence and Intelligence each had eight members, whereas the others each had six members. The TEC may not appoint more than one person representing a particular participant in the Council on a particular sub-council.

Section 15 which deals with the powers and duties of the Sub-council on Law and Order, Stability and Security (see appendix), established a committee, composed of the civilian membership of the Police Board, to which certain categories of dispute relating to the performance of the functions of that particular sub council could be referred.

Section 22 (4)(a) (see appendix) provides for the establishment by the TEC of a committee to be known as the Access to Information Committee, consisting of four members whose task would be to securitize restricted information in order to determine if this information can be made available to the TEC or any of its sub-councils.

Section 23 (see appendix) provides that various categories of dispute involving the TEC and its sub-councils and any government, administration, political party, or organization shall be referred to the Special Electoral Court, established by the Independent Electoral Commission Act 150 of 1993, for determination.

In Section 7(1) (d) and (e) the TEC was able to appoint staff to assist it and its sub councils in the performance of their functions and to request the secondment of skilled

staff any public service in South Africa likewise to assist the TEC or a sub-council in the performance of its function.

Section 26(1) (a) provides that the Council must appoint a person to the office of Executive Director who would be responsible for the management of administration.

### **5.9 Powers of the TEC and its sub-councils**

Although the TEC exercised most of its powers through the sub councils, the TEC had final authority. This was evident in the way that the TEC executed or issued directives to the sub-councils. For example it made rules for the meetings for the sub-councils, it delegated powers to sub-councils without relinquishing its own powers and the way it appointed members of the sub-council. The TEC exercised full control over sub councils.

The TEC and its sub-councils had certain general powers designed for its facilitating and functioning. In this regard, the Constitution of the Republic of South Africa 1993 allocated the following powers to the TEC-

- (a) requiring of the State President or any other appropriate authority during the period following the general election and before the newly elected President assumes office to take such steps as are necessary to maintain law and order, including the declaration of a state of emergency or of an area to be an unrest area in terms of the Public Safety Act 3 of 1953 (s 235(4));
- (b) preventing the exercise of any executive authority, power, or function during the said period of which it disapproves
- (c) advising the State President on the determination of a design of a national flag and the national anthem.

(d) determination in consultation with the State President, the date on which sections of the Constitution should commence

(e) appointing two members of the Special Electoral Court as contemplated in 32(1)(b) of the Independent Electoral Commission Act 150 of 1993

An analysis of the specific powers and duties of the TEC and its sub councils indicates that the largest numbers of their powers are designed to keep them abreast of developments in the functions in respect of which a sub council had been established. Many of the powers of the TEC entitled it to request and obtain information and to make proposals, the implementation of which serve the attainment of its objects. However the TEC and its sub-councils did have significant powers that entitled them to be informed about certain matters and a right to make recommendations in respect of such and other matters. These are, for instance, when ministerial decisions need to be taken in consultation with the TEC or a sub- council, for example to declare a state of emergency.

At this juncture, we will only focus on selected sub-councils of defence, regional and local government and traditional authorities. For the purpose of this thesis the Sub-council of Foreign Affairs is of paramount importance. Its details are discussed in chapter seven.

Regarding the Sub-council on Defence, the Act defines , mainly for the purpose of (4) and (16) an armed force as meaning ‘any armed force not established by or under any law and which is under the authority and control of, or associated with and promotes the objectives of, a participant in the council and a ‘military force’ as meaning any defence force (which means any defence force of any government, established by or under any law) or armed force, excluding any policing agency<sup>133</sup>. The important stipulation is that all the armed forces must first acknowledge the superior authority of the TEC and the Sub- council on Defence. Another important function of the Sub- council on Defence was that an additional budget was allocated for resources, for daily maintainance,

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<sup>133</sup> Proposed Terms of Reference for Sub-council on Defense / 1/3/7/5 (1-33) page 20

remuneration and allowances. Another unique feature was the allocation of additional resources to establish a National Peacekeeping Force. The main purpose of this was to maintain peace and public order in South Africa in the built- up to the election.

*Section 14* in the Act deals with regional and local government and traditional authorities, it is characterized by the flexibility of the powers provided for, to consult a wide range of traditional leaders as well as all tiers of government during the transitional phase.

*Section 17*, deals with the powers and duties pertaining to finance, which was designed to enable the sub council to keep abreast with economic developments, and economic policy objectives; most importantly to become involved in the preparation of the 1994/1995 budget of the government. Of particular significance was that the sub-council must be involved in any new agreements negotiated between government and any foreign governments or international agency; therefore no agreements were to be concluded without the approval of the sub-council.

*Section 18* effectively involves the Sub council on Foreign Affairs and all matters that affect South Africa's international interest .These included all agreements that involved South African peaceful transition to democracy. The international community volunteered to provide socio-political-economic assistance towards its new democracy.

The most significant powers bestowed to the TEC is to be found in section 19, which makes provision for the recommendation to establish the Independent Electoral Commission, the Independent Media Commission, the Independent Broadcasting Authority, the National Peace Secretariat, policy-making forum, all statutory commissions and all electoral educational programmes on steps to promote the free and equal participation of women in the electoral process.

Finally in *Section 20*, which deals with powers and duties of the Sub-council on Intelligence, the sub-council established a joint Co-ordinating Intelligence Committee



comprised of all heads or senior representatives of every intelligence service or structure.

The Committee -

- (a) must monitor and liaise with all services to promote the objects of the Council
- (b) to establish a management structure to manage the affairs of the committee

*Section 21* refers to the territories established by the Self-governing Territories Constitution Act 21 1971. This Act applies to all self-governing territories including the Republics of Transkei, Bophuthatswana, Venda, and Ciskei decide to incorporate the provisions of the Act as well as related legislation into their domestic law, such a step would entitle them to become members of the TEC.

In conclusion the most important features of the powers and duties of the TEC and its sub-councils are that there are clearly designed to promote transparency, easy access to relevant information, and goal-orientated interaction between the public sector and the TEC and its sub-councils.

**Sub-councils:**

The following sub-councils were established under the Council:

- Regional and Local Government and Traditional Authorities
- Law and Order, Stability and Security
- Defence
- Finance
- Foreign Affairs
- Status of Women
- Intelligence

1) Establishment of sub-councils (Article 8)

Additional sub-councils could be established at the request of the council by means of an amendment to this Act. If any dispute occurred between the Council and the State President, the matter could be referred to the Special Electoral Court.

The members of the sub-councils had to be appointed by the Council in a full-time capacity. Members should not be restricted to members of the council. The following three sub-councils (Law and Order, Defence, and Intelligence) should consist of eight members while the Sub-councils on Regional/Local Government and Traditional Authorities, Finance, Foreign Affairs and the Status of Women had six members.

Only one person can represent or participate in the council or in the sub-council on behalf of a TEC member at a time. The conditions of service, remuneration and allowance of members of a sub council were determined by the State President in consultation with the Council.

#### **5.10 Decision-making by the TEC**

One of the most difficult compromises the Working Group III of CODESA had to reach before the completion of its report, related to the decision-making mechanism of the TEC. The proposal inherited from CODESA was that decisions should be taken by consensus, in the absence of which 80 per cent would suffice. Section 25 of the TEC Act contained the eventual agreement. In terms of subsection (1)<sup>134</sup> “All decisions of the TEC or the sub council should be taken on the basis of consensus”. When consensus was unattainable, the TEC decisions require the support of at least 75 per cent of the members, provided that in order to review a declaration by the State President of a state of emergency and to direct him to withdraw it, a TEC decision will require the support of 80 per cent of the members of the TEC<sup>135</sup>. The same applies in respect of the appointment of the committee which determines the need for access to restricted information, in which case 80 percent of the members of the TEC must include every member who participates in the Council who either represent a military force or a policing agency. In the case of the TEC, in the absence of consensus, 75 per cent of all its members could pass a valid resolution.

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<sup>134</sup> First Report of the Technical Committee on the Transitional Executive Council, 13 May 1993

<sup>135</sup> Working Group 3, CODESA 2, Report: COD2RPT. WG- General Constitutional Principals, Areas of Commonality - Prepared by Working Group 2 Steering Committee - 12.5.92

In the case of the sub-councils, it depended on the nature of the issue under decision. In the event of local and regional government and traditional authorities, finance, status of women and foreign affairs, two-thirds of the members could take a decision. The sub-councils on law and order, stability, defence and intelligence required 75 per cent of its members to be in favour of a decision.

Section 23 of the Act provides for the resolution of disputes. The special Electoral Court established in terms of the Independent Electoral Commission Act was appointed as the sole arbiter of disputes. Any disputes that would have an adverse impact on the objective of the TEC, or whether a direction of the TEC should follow, could be referred to the court by the affected government or organization. The court was obliged to deal with the matter immediately and its order was final. In order to prevent disputes from stalling the process or obstructing the process of transition, section 23(6) ensured that dispute had to be referred to the court within three days of it being notified to the TEC.<sup>136</sup>

### ***Specific Duties and Powers of the TEC and Sub-Councils***

In Article 13 the Act explains the powers and duties in general of the TEC and its sub-councils. They apply to legislation proposed by the incumbent government and other executive actions. The Article identified the following three main powers and duties:

Firstly, each Government and administration should keep the Council informed of all proposed legislative, including regulations, by-laws and other subordinate legislation, which have a bearing on the objects of the Council.

If the Council or sub-council believes that any proposed legislative of any government or administration will have an adverse effect on the attainment of the objects of the Council, it can direct the Government or administration not to proceed with the legislation.

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<sup>136</sup>Notes on the Informal Verbal Submission by Mr. Deon du Plooy, Chief Director of the Constitutional Development Services Department to the Technical Committee on the Transitional Executive Council (TEC) in the Multi-Party Negotiation Process held Monday 17<sup>th</sup> 1993 at the World Trade Centre. page 15

Secondly, each government, administration, political party or organization participating in the TEC must keep the Council informed of any activities or decisions that have a bearing on the objects of the Council. Furthermore, if the council or sub-council believe that a decision or action of any government, administration, political party or organization will have an adverse effect on the objects of the council, then it will have the right to direct the government, administration or political party not to implement that decision or proceed with that action.

Thirdly, each government, administration or political party or organisation participating in the TEC would have to comply with and give effect to any direction made to it by the Council or sub-council.

Articles 14-20 specified in detail the powers and duties of each of the six sub-councils. None of them have had identical powers but the powers can be summarised in the following broad categories:

- 1 to acquaint itself and monitor developments in policy objectives and activities in the six functional areas of the sub-councils
- 2 to propose the amendment, repeal or enactment of legislation, including subordinate legislation in the functional area
- 3 to promote the objects of the Council in general, especially in regarding regional and local government elections, and to educate the public on electoral processes
- 4 To liaise with all organizations and bodies relevant to the function of the sub-council, including the Local Government Negotiating Forum, regional governments, the Electrification Forum, the National Peace Secretariat, Demarcation Boards or commissions, the Independent Electoral Commission and the National Housing Forum
- 5 To make proposals regarding regional and local government budgets, the powers, duties and functions and the restructuring and rationalization of regional and local government administration, transitional measures, interim local government structures and the demarcation of boundaries.

- 6 To report on the shortfalls of finances in the regional or local government and to make recommendations to redress the problems.
- 7 To obtain information regarding disposal of regional and local government assets and intended loans by any local government.
- 8 To make recommendation on executive powers of traditional leaders during transition period, propose how to ensure free and fair political participation from traditional leaders to exercise their power.

The TEC constituted one element of a transitional package of three institutions, including the IEC and the IMC. (The IBA was also established as an additional component.). Therefore their powers in relations to the TEC should briefly be looked at.

#### ***The Independent Electoral Commission (IEC)***

The IEC Act had two objectives: firstly to ensure that the election in South Africa was free and fair, and secondly to provide infrastructure for certain referenda. It supported the overall objective of the TEC to level the playing field for the April general election. A wide range of structures was established by the Act for the achievements of these objects, such as Election Administration Directorate, Election Monitoring, Electoral Tribunals and the Special Electoral Court. Provisions were also made in the Act to extend the life of the IEC beyond the transitional period. Eleven South Africans and five international members were appointed by the State President on the advice of the TEC. Section 13 listed the powers of the IEC. These included the organization, conduct, administration, and supervision of any election; the prevention of intimidation; and voter education. Monthly reports had to be submitted to the TEC and the State President. In addition, in terms of s 4(1) the IEC had a wide field within which it could make regulations. The most significant part of the IEC was to certify the results within two to ten days after the poll and declare the election free and fair. The IEC, like other transitional institutions was established late in the process because of the slow progress with the Constitution.

### ***The Independent Media Commission (IMC)***

The Independent Media Commission Act was the third in the package of transitional measures aimed at insuring that the 'playing field are levelled' in process towards the first democratic election. It was aimed at electronic media (TV, radio,), all state-financed publication (newspapers) and state information services. The controlling body established in terms of the Act was the Independent Media Commission (IMC). Like the IEC and the TEC, its duration was to be until the first election, but the Act allowed it to be extended into the new South Africa with minor adjustments.

Upon the recommendation of the TEC, the State President could appoint seven people. All commissioners had to act independently and without bias. A broad cross-section of the population had to be committed to free speech. The IMC had to monitor all state broadcasts, publication, and state information services to ensure that no bias information would favour any one party or organization. The IMC had to report any irregularities to the TEC and the IEC. Sections 18-22 of the Act provided for regulation of political broadcasting and advertising during the election period, by ensuring equitable treatment of all political parties. In terms of s 23 any political party could lodge a written complaint to the IMC, which IMC would be obliged to conduct a public hearing. Section 26 of the Act requires the IMC to report on a quarterly basis to the TEC. Finally section 33 provided that the IMC would take precedence over any law in the event of conflict.

### ***The Independent Broadcasting Authority (IBA)***

The IBA was established in terms of the Independent Broadcasting Authority Act, which was at the same time the longest of the four transitional measures negotiated at the MPNP and the most technical. Its objective and aim was to regulate the broadcast industry in South Africa in consonance with the political transformation taking place in the country. Unlike the TEC, the IEC and the IMC, the IBA was not intended as a transitional institution but rather to be a permanent structure. An important feature of Section 28 is that the IBA had to encourage public participation, openness, and transparency, although

the IBA may not be regarded as a transitional body and it is not in the same category as the TEC, IMC and the IEC. Nonetheless, the IBA can be perceived as permanent body that ensured a long term presence.

An analysis of the specific powers and duties of the TEC and its Sub-councils indicate that by far the largest number of their powers are designed to keep them abreast of developments in the functional areas in respect of which a sub- council had been set up. To this end many of their powers entitled them to request and obtain information and to make proposals to serve the attainment of the TEC's objectives. However, the TEC and its sub-councils did have more significant powers than an entitlement to be informed about certain matters and a right to make recommendations in respect of such matters. There are, for instances, instances where ministerial decisions had to be taken in consultation with the TEC or a sub- council, such as the decision which precedes a declaration of a state of emergency (15(3) (a)). Amendments to the Act could also be made by the TEC in consultation with the State President (28(1)).

#### **5. 11 Different parties' attitudes towards the TEC**

The TEC caused aggressive backlash from homeland governments and the right-wing parties. The Conservative Party did not react favourably to the adoption of the TEC Bill during the Multi-Party Negotiation Process. They described the Bill as an invitation for the communists to take over the government. Homelands like Ciskei and Bophuthatswana attacked the Bill as they perceived it infringed on their sovereignty<sup>137</sup>. However it must be noted that the TEC Act did not apply to the four independent homelands unless their own legislatures adopt it in their own law. The homeland of KwaZulu government headed by Chief Buthelezi, remained absent from the talks and therefore did not adopt the TEC Bill in the negotiating forum. Numerous efforts were made to draw him in the negotiating forum - which failed dismally. Chief Buthelezi categorically stated that he would not allow the TEC Act to be implemented in his homeland. He was opposed to a two-stage

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<sup>137</sup> Resolution No.39, 8<sup>th</sup> March 1994 – The Bophuthatswana Government Decision Not to Participate in the election. Minutes of the Transitional Executive Council Meeting of 8<sup>th</sup> March 1994

transition to democracy in South Africa: first a transitional constitution and transitional government, and then, the final constitution by Constituent Assembly and a government based on that constitution. He wanted the final constitution to be adopted straightaway by the negotiating forum.

The ANC and its allies believed that the TEC is an alternative government whilst President de Klerk dismissed this idea and clearly proclaimed that the National Party was still the ruling party. These two different and conflicting interpretations of the TEC's status posed the dilemma between the two parties.

1) The ANC rejected the idea of two governments in power simultaneously. They believed that while the National party still remained in power and until free and fair elections were held the ANC did not recognize the TEC as the alternative government.

2) Some of the powers of the TEC were actually exercised by the Independent Broadcasting Authority, the Independent Media Commission and Independent Electoral Commission.

3) The TEC's expenses were funded by the South African Government and thus it did not have independent funding, even the National Peacekeeping Force was funded by the Government. Therefore an institution dependent on the Government cannot be called an alternative to the government.

4) The SADF and the security were under the control of the Government and not under the powers of the TEC.

5) As the name Transitional Executive Council suggests it has an executive body - this is justified by Article 2 of the TEC Act that states that "the TEC will have Executive and other powers". However, a detail inspection shows that the TEC had very little power. The powers of the Council and Sub-councils constantly refer to that it will "request, obtain, information ... to investigate, establish a committee, monitor any police actions,



liaise with the Independent Electoral Commission”. This indicates that the terminology used in the Act demonstrates that the TEC is not an independent executive body. Therefore it will not be able to execute its decisions. The execution of its decision and recommendation remained the prerogative of the government.

6) Some newspaper and journals, including the *Economist* have described the TEC as a ‘super cabinet’ or a parallel government. However, as Dr. Dawie de Villiers pointed out that the TEC is the “levelling of the playing fields” in the run-up to the general election in 1994. It is commented that the TEC is only the advisory and supervisory power, a watchdog with teeth, whose task is to create a climate for free political participation and to ensure that government does not abuse its power before and during the election.

## **5.12 Conclusion**

One needs to pause and reflect and ask if the TEC and its sub-councils had equal and effective powers as a government in power, or whether they appeared to act only as an advisory body? Minutes and other documents will indicate that the Act itself did grant the TEC executive powers and Section 13 further authorized the TEC to order governments, administrations, political parties, and other organizations to refrain from taking certain actions of unilateral decisions.

However, the Act did make provision to enable the TEC and its sub-councils to independently operate its ‘non-executive’ items, such as research, making proposals for budgets and making recommendations. It is evidently clear that the TEC saw its role to have effective powers to achieve its objectives and to prevent any government or other participants in disrupting the transition towards achieving democracy. One of the best examples, (as seen from the personal memoirs of Roelf Meyer) is how the TEC used its powers to control Bophuthatswana and Ciskei in March 1994 (this will be elaborated further in chapter six). Another poignant example is the declaration of the state of emergency in KwaZulu-Natal in April 1994<sup>138</sup>, which demonstrated that the TEC had the

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<sup>138</sup> Resolution on the instability in Northern Natal adopted by the Transitional Executive Council : 21

powers to intervene above the government. Another celebrated intervention was when the TEC overrode the government to freeze civil servant pay increase<sup>139</sup>.

Equally the sub-councils did have the powers and authority to intervene. For example, the regional government and traditional authorities sub-council recommended that the Lebowa government postpone the enthronement of Rhyne Sekhukhune Thulare as King Sekhukhune III as this would cause instability and threatened free and fair elections.<sup>140</sup>

These examples indicate that the TEC did effectively limit government powers on a range of issues.

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December 1994; and Interview with Pravin Gordhan, 20<sup>th</sup> April 2006

<sup>139</sup> Minutes of the Transitional Executive Council Meeting of the 8<sup>th</sup> March 1994

<sup>140</sup> Interview with Zam Titus, 23<sup>rd</sup> November 2005

Sarakinsky Ivor. Rehearsing joint rule: The Transitional Executive Council, page 87

## **CHAPTER SIX**

### **THE DYNAMICS OF THE TEC**

#### **6.1 Introduction**

We have completed the formal, institutional characteristics of the TEC as set out in the Act. The development of political theory in the 20<sup>th</sup> century made a progression from the institutional dimension to the dynamics of political institutions and phenomena. In this chapter the same progression will be followed. Experiences in politics have shown that the institutional approach is not necessarily a complete reflection of political dynamics. In the theoretical framework (chapter 4) the components most relevant for the TEC's internal dynamics are the theories on power-sharing and transitions. They will be used in an integrated manner in this chapter to present and analyse the main features of the TEC's working as a transitional mechanism.

Confidence-building is an integral element of any peace-building or conflict transformation process. It depends directly on the internal dynamics of negotiations, processes of dialogue, dispute resolution, joint decision-making and policy-making. The TEC constituted one of the last steps in the first stage of the transition up to the 1994 election. The question is how the experiences and dynamics in the earlier constitutional negotiations in CODESA and the MPNP influenced or determined the internal dynamics in the TEC, or how the TEC shaped its own dynamics and possibly influenced the success of the transition after the election. In this chapter some of these aspects will be investigated.

This chapter will rely primarily on interviews with members and officials of the TEC and their archival documentation. The discussion will be structured as follows: Firstly, the

discussion will deal with the Management Committee and the joint secretaries and thereafter the focus will move to one of the sub-councils, on intelligence. A case study has been selected to illustrate most of these dynamics, namely the TEC intervention in Bophuthatswana.

## **6.2 Management Committee and Joint Secretaries**

The Management Committee was established by the TEC Act at the end of December 1993. The committee consisted of the following six members: Roelf Meyer (NP), Cyril Ramaphosa (ANC), Joe Slovo (SACP), Zam Titus (Transkei), Pravin Gordhan (NIC/TIC), Colin Eglin (DP), and EE Ngobeni (Ximoko Progressive Party). The Management Committee was chaired by four rotating chairpersons, namely Pravin Gordhan, Zam Titus, Dawie de Villiers (NP), and Colin Eglin. The principle of rotation was a continuation of the practice established in the CODESA. This gave the different parties the opportunity to chair the proceedings and thereby building trust between the members. Within the structure of the TEC, it is evident that the centre of power was located in the Management Committee. It emerged as the effective decision making body in the TEC and had authority to direct the joint secretaries, to oversee the activities of the sub-councils and parliament. The Management Committee was the conduit through which the TEC could exercise its power as a watchdog of all government activities and decisions. The Management Committee used the two joint secretaries, (Mac Maharaj and S.S (Fanie) van der Merwe) to implement its decisions. In the interviews of both joint secretaries it became evident that they have established a “channel” similar to the Cyril Ramaphosa and Roelf Meyer channel. According to Maharaj they had “a mutual respect” which enabled them to solve delicate issues “within three minutes”. They became known as the firefighters<sup>141</sup> in the process. The ability of the two secretaries to make decisions speedily enabled their principals to resolve difficult issues.

One such example as explained by Fanie van der Merwe, was the Amnesty Bill which the parties could not agree on. Finally with the intervention of the two they were able to pass

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<sup>141</sup> Interview with Fanie van der Merwe: 23 May 2006

the resolution. Another example that was cited by Van der Merwe was the lack of agreement between the parties regarding the Electoral Commission Act and the Electoral Bill. The lack of agreement stalled the process for days until the two were able to intervene and they jointly redrafted the Bill<sup>142</sup>

According to the TEC Act, decision making in the Management Committee had to follow the practice established in CODESA and in the Negotiating Council of seeking absolute consensus, in the absence of which a 75% majority was required. In an interview with Pravin Gordhan he stressed that the concept of sufficient consensus was used extensively in resolving disputes and in many cases decision making. He indicated two major factors that had to be considered in consensus building: Firstly one had to recognize who are the major players and in this case it was the NP and the ANC. Secondly, one had to acknowledge the second tier of the key role players. “How do we keep the process going without minor disagreements becoming a substantial objective which holds up the process? It is about saying that the process and its outcome are more important ultimately than the individual component that makes it up. But at the same time if one of the major players disagrees you are still able to keep the process going.”<sup>143</sup>. According to Mac Maharaj, no formal voting took place in the committee and all decisions were taken by consensus. However, not all delicate matters were presented to the full Management Committee for decision making. For example the TEC’s intervention in Bophuthatswana was agreed upon by the ANC and NP government representatives while the other Management Committee members were informed of this decision later.

To illustrate the relationship between Management Committee and the joint secretaries, and their relationship with the TEC sub-structures, two cases studies can be mentioned:

1) The election special task team was mandated to draft an election policy for the Electoral Act but they didn’t make sufficient progress. Therefore the Management Committee mandated the joint secretaries to set a deadline for them. Mac Maharaj

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<sup>142</sup> Interview with Fanie van der Merwe: 23 May 2006

<sup>143</sup> Interview with Pravin Gordhan: 20 April 2006

recalled that on a Friday afternoon the two joint secretaries went to the election task team to inform them “that by the coming Monday they were expected to produce their final draft. One of its members, the Minister of Home Affairs, Danie Schutte refused to continue into the weekend. Penuell Maduna, one of the ANC representatives shared a similar objection. The two joint secretaries however had the authority to set these objections aside because of their mandate provided by the Management Committee and therefore their support by the participants’ main principals.<sup>144</sup>

2) The defence sub-council was mandated by the TEC Act to initiate the process of defence integration. The generals on the sub-council, however, were not making sufficient progress in the opinion of the Management Committee. Therefore the committee instructed the joint secretaries to address the sub-council and present them with specific deadlines. This illustrates that the sub-councils had stature mandate but could not function independently of the Management Committee<sup>145</sup>.

For the purpose of illustrating the internal dynamics of the TEC, case studies have been selected namely: The TEC’s intervention in Bophuthatswana, and its dealing in the Kwa Zulu – Natal.

### **6.3 The TEC and Bophuthatswana and KZN**

The South Africa Government created Bophuthatswana as an independent homeland on 5<sup>th</sup> December 1977, under the presidency of Lucas Mangope. It consisted of seven separate areas of land, incorporating twelve districts, scattered throughout the former Transvaal province of South Africa and the Northern Cape, including Thaba’ Nchu in then Orange Free State. Mmabatho was the capital.

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<sup>144</sup> Interview with Mac Maharaj: 26<sup>th</sup> January 2005

<sup>145</sup> Interview with Mr. Mac Maharaj: 26<sup>th</sup> January 2005

In December 1992, the negotiation process for an interim constitution for South Africa was being initiated. This signalled that apartheid had come to an end, and the new constitution would have to incorporate the independent homelands of South Africa. The position of Bophuthatswana became a matter of concern for the people of that region and for its government, particularly for President Mangope. Although the Bophuthatswana government took part in negotiations at Kempton Park, President Mangope constantly argued that “while doing this, his intention was to negotiate the best deal that would suit Bophuthatswana, which would remain independent and would not agree to being incorporated into South Africa”<sup>146</sup>. His government also became part of the so-called Freedom Alliance which consisted of the Conservative Party, the Afrikaner Volksfront, the Inkatha Freedom Party, the Ciskei government and the Bophuthatswana government. President Mangope’s insistence on remaining independent became a major issue between the Government and the people of Bophuthatswana.

The majority of the people favoured re-incorporation and the desired participation in the up-coming general election on the 27<sup>th</sup> April 1994. Bophuthatswana only generated 29% of its annual income and was dependent on South Africa for the remaining 71% of its budget<sup>147</sup>. One of the major concerns of civil servants was who would pay their future salaries and what would happen to their pensions should Bophuthatswana remain outside the new constitutional dispensation. President Mangope was adamant that Bophuthatswana would remain independent and its citizens would not participate in the election.

In October 1993, approximately 64 000 members of the public service formed the Association of Public Servants which culminated in a task team to address this specific issue. President Mangope reacted by announcing that all public servants would be dismissed from their jobs if they supported the ANC.

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<sup>146</sup> Interview with Mr Mac Maharaj: 26<sup>th</sup> January 2005 and Interview with Fanie van der Merwe: 23 May 2006

<sup>147</sup> Submission by the Bophuthatswana Government: Ref 01/02/2/6/5/vol.5  
- Speech by the Honourable chairman of the Council of State, Brig. O.J Gqozo at the 15<sup>th</sup> Ciskei National Show- 27 August 1993

Most of the government officials became extremely agitated and threatened to strike. Between 1992 and 1994 Bophuthatswana experienced an enormous amount of instability and unrest from the police, defence force, civil servants, and nurses. This was further extended by 30 000 teachers participating in the strike. Other areas that also became affected were the local / national broadcasting services that stopped operating. The country was in complete chaos and disarray. Mr Justice Johan Kriegler, who was the appointed chairperson of the IEC, approached President Mangope to allow his citizens to participate in the upcoming elections and to incorporate Bophuthatswana into South Africa. President Mangope refused this categorically.<sup>148</sup>

By the week of the 7<sup>th</sup> to 13<sup>th</sup> March 1994, there was massive dissatisfaction among the Bophuthatswana Police and the defence forces that found it difficult to be loyal to the Mangope regime.

On the 8<sup>th</sup> March, a meeting was convened consisting of the Bophuthatswana National Security Council and heads of Bophuthatswana Police Force, the Bophuthatswana Defence Force, the National Intelligence Service and some Cabinet Ministers to assess the situation and possible invasion by the ANC<sup>149</sup>. President Mangope included in this meeting General Constand Viljoen, who represented the Afrikaner Volksfront (which represented the extreme right wing). Mangope and Viljoen were both members of the Freedom Alliance (formerly COSAG) who opposed the MPNP-style of negotiations. Given their shared opposition to the ANC, Mangope's motivation to include General Viljoen (a former Chief of the SADF) was to assist with the security situation by including the Afrikaner Volksfront militia or armed component in a combined effort. General Viljoen gave Mangope his assurance that the more radical racist Afrikaner Weerstandsbeweging would not be part of this collaboration<sup>150</sup>.

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<sup>148</sup> Interview with Fanie van der Merwe: 23 May 2006

<sup>149</sup> Resolution No.54: Bophuthatswana: 29 March 1994

<sup>150</sup> Interview with Fanie van der Merwe: 23 May 2006 and Interview with Mac Maharaj



By 10<sup>th</sup> March the government administration had completely collapsed, President Mangope was advised to leave Mmabatho and go to his home town Motswedi, because the country was on the verge of chaos.<sup>151</sup>

On Saturday 12<sup>th</sup> March 1994, an emergency meeting of the Management Committee of the TEC was convened. It was at this point that the TEC, which regarded the situation as total anarchy and complete breakdown of the public service and the cessation of effective policing, took the decision to intervene in the situation. Mac Maharaj and Fanie van der Merwe were asked to intervene.

As a result that evening, Mr Pik Botha, the South African Foreign Minister, Gen. Georg Meiring (Chief of the SADF), the two Joint Secretaries of the TEC, Mac Maharaj and Fanie van der Merwe, and Professor Tjaart van der Walt (the SA ambassador in Mmabatho) were instructed by the TEC to go to President Mangope's hometown Motswedi and inform him that his presidency "was no longer recognized by the South African Government and that his Government was no longer in office"<sup>152</sup>.

Professor Tjaart van der Walt and Mr Job Mokgoro (from the ANC) were appointed as joint administrators of Bophuthatswana. An application by President Mangope to revoke this action was dismissed in the Bophuthatswana Supreme Court on 18<sup>th</sup> April 1994. The people of Bophuthatswana voted in the election in terms of the interim constitution and the Status of Bophuthatswana Act was repealed on the 27<sup>th</sup> April 1994. Bophuthatswana as an independent state/homeland ceased to exist and was reincorporated into South Africa<sup>153</sup>

It is important to mention the fact that in 1988 the South African Government had been requested by President Mangope to assist him in restoring him to power after certain

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<sup>151</sup> The Bophuthatswana Government's Decision not to participate in the election Resolution No.39- adopted by the Transitional Executive Council: 8 March 1994

<sup>152</sup> Interview with Mac Maharaj, 26<sup>th</sup> January 2005 and Interview with Fanie van der Merwe: 23 May 2006

<sup>153</sup> Statement issued by Colin Eglin, Chairperson of the Management Committee of the TEC: 12 March Ref: 1/4/1/18

Submission by the Bophuthatswana Government: Ref: 01/02/2/6/5/vol.5

dissidents attempted a coup. However, during this period in 1994, President Mangope did not request the South African Government or the Transitional Executive Council for assistance in stabilising the situation or restoring law and order and peace. He did not do so, he said, “because he did not trust the South African Government or Transitional Executive Council and felt that if he had called on them to assist, they would have staged a coup and deposed him and his government”<sup>154</sup>. According to Ivor Sarakinsky, Mangope believed that legally Bophuthatswana was still a sovereign state and the TEC had no power over it<sup>155</sup>. This presented the TEC with a difficult challenge; if elections were to be held throughout the country, it would have to assert its authority over the resisters - which could involve the military or could the TEC use its powers to persuade them to agree to.

This case study illustrates how the TEC’s Management Committee did not always use the statutory consultative process in making decisions but the dominating political parties, the NP and ANC, at times took joint decisions without the other parties.

Another example of the TEC using its powers was when it ordered the SAP in KwaZulu to stop the violence. “The TEC triggered a trial of strength with Buthelezi, calling on KwaZulu police Commissioner, Roy During to give evidence to it about alleged ‘hit squads’ operating inside the homeland. On the KwaZulu administration’s instruction, he declined.”<sup>156</sup>. The TEC took him to court; following an out of court settlement. Roy During finally agreed to appear, but in his private capacity. Symbolically the TEC demonstrated its authority – but more importantly it used the law rather than opted for violent means. Despite conflicting views, this does suggest that the Management Committee preferred legal means of resolving disputes rather than force.

Similarly, the TEC’s intervention in KwaZulu-Natal is another example. The accelerated violence in KwaZulu-Natal required military intervention to ensure that the election could be held. However, reports suggest that the TEC and SA Government did not agree

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<sup>154</sup> Interview with Mac Maharaj , 26<sup>th</sup> January 2005 and Minister Sydney Mufamadi , 11<sup>th</sup> May 2006

<sup>155</sup> Sarakinsky Ivor : Rehearsing joint rule – The Transitional Executive Council, page 85

<sup>156</sup> Interview with Pravin Gordhan: 20<sup>th</sup> April 2006

on this issue. It has been suggested that De Klerk initially rejected a TEC recommendation that an emergency be declared in the entire province, opting for selected areas only. This is not the only time that the TEC overrode the Government. When the NP government requested pay increases for the civil servants the TEC also rejected the idea. The TEC also prevented the South African Communication Services from promoting the new constitution; the campaign was taken over by the TEC.<sup>157</sup>

This claim about the powers of the TEC is further illustrated by the fact that the TEC vetoed a R216 million Development Bank loan to Bophuthatswana, citing restrictions on political activity in the territory. The Management Committee members called for tougher action against the Bophuthatswana administration and its incorporation into the new South Africa<sup>158</sup>

Another celebrated intervention was the TEC's response to an announcement by Housing Minister Louis Shill about a new housing development plan. The ANC argued that the development plan should not precede the election, so that no parties could use this as an advantage point to gain votes. After much debate the TEC was able to stop the process.<sup>159</sup> Pravin Gordhan recalls that there was "a lot of controversy about the decision being made about the Minister's housing scheme which was perceived as an election ploy. This created a lot of unhappiness at the time about this issue. The TEC demanded Mr Shill and the National Party to close up the scheme in order to ensure that the levelling of the playing field continues"<sup>160</sup>.

This example shows that the TEC did effectively limit government powers on a wide range of issues.

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<sup>157</sup> Draft minutes for the meeting of the Transitional Executive Council held on Tuesday 29 March 1994

<sup>158</sup> Draft Minutes of the Transitional Executive Council meeting held on Tuesday 12 April 1994: Ref 1/4/1/2.1 pg3

-Resolution No 5: The Development Bank of Southern Africa-Bophuthatswana loan agreement, adopted by the Transitional Executive Council: 14 December 1993

-Memorandum: 2 February 1994

<sup>159</sup> Resolution No 36: On Premature Announcement by Minister Shill on Housing Plan Negotiated with the National Housing Forum: 8 March 1994

Minutes of the Transitional Executive Council Meeting of 8<sup>th</sup> March. 1994

<sup>160</sup> Interview with Pravin Gordhan: 20<sup>th</sup> April 2006:

#### **6.4 The TEC as a negotiation instrument**

After completion of the interim constitution by the Negotiating Council at Kempton Park at the end of 1993, the formal negotiating process in the first phase of the transition was officially completed. The TEC together with the IEC, Independent Media Commission and the Independent Broadcasting Authority were mandated to prepare for the election and to ensure a level playing field at the time of the election. They were therefore not meant to be negotiating fora.

According to Roelf Meyer<sup>161</sup> the TEC members also understood the body not to continue with negotiations. However, in December 1993 the MPNP's Negotiating Council had closed its doors and there was no forum to continue with unattended issues or to deal with new issues, and therefore the TEC was informally used for that purpose.

Three developments illustrate its role as a negotiation instrument. Late in 1993 and early 1994 two parties maintained an antagonistic stance towards the April 1994 general election: the IFP and the white conservatives. As a result of talks to pull them into the electoral process, constitutional amendments were proposed: the constitutional principle of self-determination, establishment of the Volkstaat Council, change of the province's name to KwaZulu-Natal, and special recognition granted to the Zulu monarch. These changes were informally handled within the TEC context in preparation of a special, reconstituted Negotiating Council meeting, where they were finally approved.

It is significant to note that the TEC as a body was not involved in the talks with the IFP about its election participation. That was done in trilateral talks between ANC, NP, and the IFP, and later in bilateral ANC/ IFP talks. Some of these developments were reported in the TEC Management Committee for notification, but the TEC as a collective body did not participate in these talks or facilitated the bi-/tri-laterals.

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<sup>161</sup> Interview with Roelf Meyer, December 2004

A second illustration of the TEC's influence on negotiation was the "Postscript" as an amendment to the interim constitution. According to Mac Maharaj<sup>162</sup> and Moe Shaik<sup>163</sup>, the idea of a truth commission and amnesty constituted an integral part of the ANC's transition theory. It was, however, not included in the finalised interim constitution. The TEC's Management Committee therefore mandated the two joint secretaries to prepare a draft formulation. They completed it relatively quickly and took it to their principals, Cyril Ramaphosa and Roelf Meyer. At the ANC's Negotiating Committee, Maharaj first requested to consult with Ramaphosa in private. Ramaphosa accepted the formulation without much consideration and presented it to the Negotiating Committee, where it was also approved after some discussion. This process produced the Postscript, which served as the constitutional authorisation for the truth and reconciliation commission.

The third illustration of the TEC's negotiation function occurred in its Sub-council on Intelligence and specifically in the Joint Co-operation Intelligence Committee (JCIC). In this committee the different intelligence agencies and the ANC's department of intelligence and security were represented<sup>164</sup>. In the ANC's department's report to the ANC's National Conference in 1994, the following was said about the negotiation results<sup>165</sup>:

On the completion of its task, the JCIC on recommendation of the sub-council, established a forum (Heads of Civilian Services - HOCS) comprised of all the heads of the various intelligence agencies and a provisional national intelligence co-ordinating committee called NICOC. The task of HOCS was to ensure that the process initiated under the auspices of the sub-council in respect of the development of the future intelligence dispensation continued, whilst that of

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<sup>162</sup> Interview with Mac Maharaj, 26<sup>th</sup> January 2005

<sup>163</sup> Interview with Moe Shaik, 27<sup>th</sup> January 2005

<sup>164</sup> Interview with Moe Shaik, 2<sup>nd</sup> January 2004

<sup>165</sup> ANC National Conference: 1994. Report to National Conference on the new intelligence dispensation and the amalgamation process. page 3

NICOC was to ensure that joint intelligence process also continues beyond the legal mandate of the TEC.

The TEC Act established seven sub-councils. For the purpose of this research we have selected one to concentrate on, namely the Intelligence Sub-council. The discussion will highlight the role that the sub-council played in levelling the political playing field and laying the foundation for a post apartheid dispensation in the seven focus areas.

According to Moe Shaik, intelligence took the lead as early as the 1980's to prepare a situation conducive for the transition process. For example, Neil Barnard of the National Intelligence Service and the ANC's Joe Nhlanhla of DIS were involved in talks-about-talks in Europe. In view of this, the TEC's intelligence sub-council was particularly important.

CODESA working group III did not include an intelligence sub-council in its first report. The NP government was also opposed to such a sub-council. However, after a series of bilateral between the ANC and NP government the decision was taken that intelligence would play an important role to draw in defence- and security decision-makers into the transition process and preventing them from sabotaging the negotiation process. The agreement on the establishment of such a sub-council ensured that the NP government's access to intelligence was also included on the agenda of issues in which the levelling of the playing field was to be achieved, and "equally important for the first time in the history of this country intelligence was to be subjected to multiparty scrutiny, oversight and transparency"<sup>166</sup>.

The TEC Act empowered the Sub-council on Intelligence to make recommendations in respect of the future intelligence dispensation of the country, mechanisms of oversight, legislation regulating intelligence work, and to formulate a set of basic principles to guide intelligence work together with a code of conduct to be adopted by all intelligence services. The TEC Act also made provision for the establishment of a joint co-ordinating

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<sup>166</sup> Report to the National Conference on the New Intelligence Dispensation and the Amalgamation Process, October 1994. page 2.

intelligence committee (JCIC) whose functions were, inter alia to provide the TEC on a regular basis with intelligence estimates concerning the security situation in the country in the run-up to the elections. The JCIC comprised of the heads of all the intelligence services and departments in the country drawn from the civilian service, and the various police and military forces. The JCIC effectively managed the various intelligence services during this period of the transition. In addition to providing the TEC with appropriate intelligence, the JCIC played a crucial role in the run-up to the election process, especially in monitoring and reporting. The collapse of Bophuthatswana led to the installation of a joint (DIS/NIS) supervisory management team for the Bophuthatswana Intelligence Service under the guidance of the JCIC and the authority of the TEC.

The JCIC continued to provide the TEC with intelligence support leading unto the installation of the Government of National Unity and the inauguration of the President.

On the completion of its task, the JCIC on recommendation of the Sub-council, established a forum (Heads of Civilian Services - HOCS) comprised of all the heads of the various civilian intelligence agencies, and a provisional national intelligence co-ordinating committee (NICOC). The task of HOCS was to ensure that the process initiated under the auspices of the sub-council in respect of the development of the future intelligence dispensation continue, whilst that of NICOC was to ensure that the joint intelligence process also continues beyond the legal mandate of the TEC.

On closer inspection of the reports<sup>167</sup> from the Sub-council on Intelligence, it is evident that further negotiation occurred at the bilateral level to develop the future intelligence dispensation. Initially the National Party government's intelligence services wanted to maintain their dispensation as the basis for the future, however, the ANC's DIS insisted that the new dispensation must make a decisive and fundamental break with structures of

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<sup>167</sup> Report to the National Conference on the New Intelligence Dispensation and the Amalgamation Process. October 1994. page 4

the past. According to Moe Shaik, extensive research and consultation both nationally and internationally by the DIS presented its model for discussion.

The TEC therefore played a very important role in keeping all the negotiating parties together in the council plenary and its sub-structures. Though it was not meant to be a continuation of the Negotiating Council, it provided continuity in the transition process even when decisions to negotiations were required.

### **6.5 The TEC and the Tricameral Parliament.**

In contrast to a presidential executive system, a parliamentary executive system is characterised by parliamentary oversight over the executive as part of constitutional checks and balances. Given the unique historical context in South Africa at 1994, the TEC was functioning in exactly that sphere.

The Transitional Executive Council Act, No. 151 of 1993, concentrated on executive powers, as its name also indicated. However, article 13 introduced a legislative/parliamentary dimension. Sub-article (b) stated the following:

If the council or the sub-council concerned has reason to believe that any proposed legislative action of any government or administration is likely to have an adverse effect on the attainment of the objects of the council, it may, after affording the government or administration concerned an opportunity to make representations to the council or the sub-council concerned and subject to the other provisions of this Act, direct that government or administration in writing not to proceed with the legislation concerned, and that government or administration shall, subject to section 23, comply with such direction.

According to Mac Maharaj<sup>168</sup> this arrangement was a result of the NP government's insistence that there should not be a constitutional vacuum during the transition. The

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<sup>168</sup> Interview with Mac Maharaj, 26<sup>th</sup> January 2005



ANC therefore accepted that all legislation regarding the transition had to be passed by the tricameral parliament. But because it was an undemocratic parliament, the TEC's presence as a watchdog was necessary to legitimise the legislation.

Implementation of the above provision assumed the form of TEC representatives sent to Cape Town to attend the parliamentary session early in 1994. They were the two joint secretaries (Mac Maharaj and Fanie van der Merwe) and Roelf Meyer<sup>169</sup> referred also to Zam Titus. Titus was the Transkei representative on the TEC, also a member of its Management Committee, and according to TEC members, he played a pivotal role especially in legal matters.

Accordingly to Maharaj<sup>170</sup>, he and Van der Merwe attended the parliamentary session in the public gallery. The members of the tricameral parliament were very much aware of their presence and referred to them as the "waghonde" (watchdogs). The role they played was to verify all legislation tabled in Parliament. If they were not satisfied with it, they gave their proposed changes to the legislation to the Government with the understanding that they had to pass it through the NP parliamentary caucus.

The very first legislation passed in this manner was the TEC Act in October 1993. Other examples of the practical nature of these dynamics were the following:

In February 1994, the State President F.W.de Kerk was authorised by the Negotiating Council at Kempton Park and the TEC to amend certain Acts. In the cases of the Independent Media Commission Act and the Independent Broadcasting Authority Act he could amend them by proclamation in the *Government Gazette* in consultation with the TEC. In the case of the Independent Electoral Commission Act, he could do the same in consultation with the TEC and the IEC<sup>171</sup>.

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<sup>169</sup> Interview with Roelf Meyer, December 2004

<sup>170</sup> Interview with Mac Maharaj, 26 January 2005

<sup>171</sup> Negotiating Council. Amendments to the Constitution of the Republic of South Africa (Act 200, 1993) agreed to by the Negotiating Council meeting held on Monday 21 February 1994, 22 February 1994. page 8

## **6.6 Conclusion**

In this chapter we discussed some the dynamics of the TEC and how instrumental the role was that the TEC played in levelling the playing field. The pivotal role the management committee played in implementing decisions and facilitating a relationship between the different sub-councils, also received attention.

The TEC's internal dynamics were the focus of this chapter to illuminate the aspect of conflict resolution which depends on interpersonal interactions, decision-making dynamics, and the use of the TEC in the overall dynamics of the transition. The relationships within the Management Committee (Ramaphosa/Meyer and Maharaj/Van der Merwe), the TEC's interaction with Parliament, its involvement in resolving the crisis in Bophuthatswana, and the negotiations within the TEC are all examples of the dynamics which were essential for preparing for the 1994 election and the "levelling of the playing field". These dynamics were the products of the preceding negotiations in CODESA and the MPNP as well as the dynamics which developed in the TEC. At the same time the TEC also contributed to entrench a style of dynamics which ensured that the transition after the 1994 election could be relatively successful. An assessment of the TEC's contribution to South Africa's miracle in terms of these dynamics has been lacking in research endeavours. This chapter has made an effort to start addressing the deficit in academic and research engagements with the dynamic dimensions of the TEC. Much more work still could be done in this respect.

The theoretical framework consisting of transitional and power-sharing theories were relevant for this chapter. Given their macro-scope, this chapter has shown that these theories are not really suitable for the micro-nature of many of the dynamic aspects of institutions such as the TEC. More theory-development in the dynamic aspects of transitional institutions is therefore required.

## CHAPTER SEVEN

### THE TEC AND THE SUB-COUNCIL ON FOREIGN AFFAIRS

*The objective is to have the best possible relations with the countries of the world, to encourage and promote trade, investment and tourism and to look after the interest of South African citizens abroad.*<sup>172</sup>

#### 7.1 Introduction

Most of the TEC's activities were domestic in nature. However, the negotiators who designed the TEC also included a Sub-council on Foreign Affairs as an indication of the importance they attached to foreign relations in the transition. This justifies a separate in-depth look at the sub council. It also follows on the discipline within which this study is pursued, namely International Politics.

Research for this chapter depended almost entirely on interviews of members of the sub council and the TEC's official documentation. These were subject to the restrictions of twenty years embargo placed on official documents by the Archive Act. With the consent of Dr Leon Wessels (a sub-council member) and Roelf Meyer the researcher received permission to access their collections of documents kept at the University of the Free State.

Thus far, no publications on the Sub council on Foreign Affairs (SCFA) could be found.

#### 7.2 Powers and duties of the Sub-council

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<sup>172</sup> Pik Botha (Minutes of the first meeting of Subcouncil on Foreign Affairs held on 22 December 1993)

From the outset, it is imperative to understand the legislative powers and function of the sub council. In article 18 of the Act it was stipulated as follows:

The council shall, for the purpose of attaining its objects, through its Sub-council on Foreign Affairs, in regard to foreign policy liaise, monitor, make recommendations and where it is considered necessary, assist with a view to achieving progressively the broadest possible consensus on matters affecting South Africa's international interest, particularly its long-term interest: securing appropriate agreements with the international community regarding the contribution that community could make to the peaceful transition to democracy in South Africa in consultation with the Sub-council on Finance, securing such international assistance as the Sub-council considers necessary in order to address the socio-economic needs of the people as a whole and not to serve the interest of one or other political party; ensuring that any foreign policy initiative benefits the country as a whole and not one or other political party and promoting such international relations, including trade, finance, culture and sport relations, as in the opinion of the Sub-council will benefit the country as a whole.

The Minutes of the first meeting of the Sub council held in Cape Town on 22<sup>nd</sup> December 1993 reflect the discussion of these powers. It was stated the Sub council had original authority to make decisions without referring them to the TEC so long as they are not in conflict with the TEC Act. The TEC could however augment the Sub-council's decisions once the decisions were presented to it. One of the joint secretaries S.S van der Merwe explained in a meeting that these powers are final and that they were not delegate powers from the TEC to the Sub-council. In respect to the reporting to the TEC, the Sub-council was only obliged to submit its minutes<sup>173</sup>

The Sub-council's relationship with the Department of Foreign Affairs (DFA) can be articulated in the following manner. The importance of a close relationship between the department and the Sub-council was emphasized. DFA appointed a liaison section headed by Mr Tom Wheeler to ensure a continued maintenance of these links. The department

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<sup>173</sup> Minutes, 22 December 1993[SCFA/1/10 JAN94]: 3; Minutes, 22 December 1993: 4

also offered its services should the Sub-council need assistance in any area such as professional, conference facilities, office accommodation, etc. Furthermore the department offered its assistance to ensure that it is involved in regional conferences and consultation sessions/ visits with its missions abroad in order to achieve its goals to monitor liaises and guide the TEC on all matters relating to foreign policy.

At the Sub-council's first meeting the Director General of DFA, identified the following pressing local issues which the Sub-council had to attend to namely;

- The relationship between the department and other structures of the TEC especially the IEC
- The Department's role regarding the international observers;
- The appointment by the TEC of an official to deal with diplomatic liaison
- Holding of regional conferences to enable members of the Sub-council to carry out their functions: and
- To alert members of the Sub-council to the number of high level visitors who were expected in South Africa in the new year.

According to the minutes, point 3 became a contested issue because the appointed official was from the SA Communication Services, while the DFA preferred that the person is from their own department. It was recommended to DFA to pursue the matter with the TEC's Management Committee<sup>174</sup>.

In April 1994, a question arose about the power of the Sub-council as a result of preparations on an international conference on the rights of women. A legal opinion was requested on whether a Sub-council of the TEC other than the Sub-council on Foreign Affairs can assume responsibility for function which fall within the line function activities of the DFA. According to the opinion DFA is responsible for implementing the

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<sup>174</sup> Minutes 22 December 1993:3; Minutes 22 December 1993[SCFA/1/10JAN94]:2-3

government foreign policy. It is the channel through which the conduct of foreign relations is coordinated. The statutory powers of the Sub-councils had a limited lifespan.

According to section 29 of the Act these structures shall be dissolved upon the lapse of the Act (ie 10<sup>th</sup> May 1994). According to the legal opinion, the logical conclusion was that the powers of the TEC were aimed in the short term at the transition process. The Act did not provide for any of these bodies to assume powers that would have the effect of extending their lives beyond the existence of the Act. It therefore concluded that it would not be permissible for any structure to assume functions that will need to be performed after the lapse of the Act.<sup>175</sup>

In order to investigate the relationship between the TEC's Management Committee and the SCFA, the memoranda sent by the Committee's Managing Secretary to the Sub-council provides an indication. For example, the Management Committee had to approve of all activities with budget implications such as overseas visits. On 17 February 1994 the Sub-council received the following memorandum: The TEC approved of the visit by all members of the Sub-council, i.e. The Second Leg of the Attendance of Multilateral and Regional Planning Conferences and Deliberation Appointments by the Sub-council. Strong objection was expressed at the absence of a proper motivation for this trip as earlier agreed to by the Sub-council.<sup>176</sup>

A second example of Management Committee involvement was in the situation in Lesotho. In a memo on 27<sup>th</sup> January 1994, Management Committee requested information on the situation on Lesotho from SCFA to be discussed at their meeting a few days later. In another memo to the SCFA on 2 February 1994, the Management Committee criticized the Subcouncil for not referring to the 'Gaborone meeting' in its report<sup>177</sup>. This example indicates that in some important instances the Management

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<sup>175</sup> Agenda, 14 April 1994: 50-52.

<sup>176</sup> Memorandum, 17 February 1994 and interview with Aziz Pahad, 22 May 2006.

<sup>177</sup> Memo 27 January 1994; Memo 2 February 1994

Committee could take control of the situation, which was strictly speaking in the domain of the Sub-council.

A third example of the Management Committee's influence on Sub-council was when the TEC expressed serious reservations about the fact that all the Sub-council members went on visits together. In the Memo on 3<sup>rd</sup> March 1994, it was said that it is possible that the TEC may approve the proposed visit if the Sub-council cut down on the number of people who will go on the visit, having some members of the Sub-council remain behind to attend to other work of the Sub-council<sup>178</sup>.

### **7.3 Conceptual framework of the SCFA**

The different parties in the Sub-council came from divergent background in respect of foreign policy and their view of the world. It appears the Sub-council developed a common perspective on foreign policy. In the document prepared in 1994, they articulated the following framework:

- The end of the bipolar world has ushered in a new world order
- The new world order has the characteristics of both a unipolar and multipolar system
- Trends - internationalism, transnationalism and regionalism
- High in international agenda- trade, monetary, energy and environment issues  
South Africa is an African country
- The willingness of the international community to assist in the post-election development programmes
- The desire of some countries e.g. France, Singapore, Malaysia, Belgium, Netherlands, USA, etc to foster strong relations with SA
- Growing importance of human rights issues, democratization and good governance
- Endeavours towards world peace and stability
- The importance of normalizing SA- EU relations

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<sup>178</sup> Memo, 3 March 1994

➤ Importance of South- South co-operation and South- North relations

In the interview with Leon Wessels<sup>179</sup>, he emphasised that the SCFA did not have the mandate to develop foreign policy. However, the above list of assumptions together with the activities of the Sub-council in effect constituted a beginning of a new policy framework.

The years of Apartheid resulted in isolationist foreign policies; while on the other hand the ANC enjoyed wide spread international support. The challenge of the Sub-council was to develop new framework which utilize the ethos of negotiation process and transplant into the domain of foreign relations. This ethos was represented by ideals such as promotion of human rights, democratization, good governance, peace and stability and becoming part of the African continent and the South. At the same time, the Sub-council envisaged that South Africa should become an integral part of the International community and to promote multilateralism in particular<sup>180</sup>

The observation by the Sub-council that the new world order is both a uni-polar and multi-polar system was significant. It was merely five years since the fall of the Berlin Wall and therefore its emphasis on the uni-polar nature was understandable. However, its inclusion of multi-polar dimension is surprising, given the dominance of the USA at the time of the first Gulf War in 1991. In Samuel Huntington`s article, ‘The Lonely Superpower’ in *Foreign Affairs*<sup>181</sup> he argues that the world can be characterized as a uni-multi-polar arrangement in which the USA is the only superpower but cannot act without the support of some regional powers. It appears as if the Sub-council had a similar view of the world already a few years before this article was published. It emphasized the importance of the South in future International and multilateral interactions.

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179 Interview with Leon Wessels: April 2006

180 Interview with Aziz Pahad , 22 May 2006 ,Tom Wheeler 9<sup>th</sup> May 2006 and Leon Wessels 29<sup>th</sup> March 2006

<sup>183</sup> *Foreign Affairs* Volume 78 no. 2, March/April 1999



It appears that the Sub-council also anticipated trends in the emerging international community which focus on trade diplomacy instead of the conventional political diplomacy.

Therefore it emphasized normalization with the EU and South/South cooperation and improved South/ North relations. Therefore, the Sub-council recommended the following proposals to the Management Committee and the TEC in respect of future foreign relations:

- South Africa's re-entry of the multilateral fraternity be given urgent attention eg, United Nations, and its specialized agencies, OAU, Commonwealth
- Participation in regional structures, especially SADC to be considered
- The question of South Africa's development status was to be finalized on a firm basis. It was an economy in transition and for example the SA-EU cooperation agreement to be given urgent attention.
- The opening of new missions and possible rationalization in regard to existing ones.
- Normalization of trade relations particularly with countries in Asia.
- A study of the Lomé Convention and the implication of participation in the EU-ACP (Africa, Caribbean and Pacific) agreement. framework
- Proposed partnership with France in development of Africa
- Establishment of a South African Council on Foreign Affairs as a non-government structure that will ensure broad consultations on foreign relations<sup>182</sup>

#### **7.4 International Visits**

One of the most significant aspects of the SCFA was that it undertook international and regional visits during its five months existence. This was motivated by the following considerations: These visits played an instrumental role in establishing relations abroad and bringing confidence to the international community. The purpose of the visits was to

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<sup>182</sup> Executive summary of the TEC Sub-council on Foreign Affairs, Addendum ML

inform the international community on a first hand bases about the latest developments in South Africa. According to Aziz Pahad, the main purpose of the Sub-council was “to make the world understand the new democratic processes that was taking place in South Africa. The international visits also enable us to understand the outside world better and its structures that existed within the Foreign Affairs missions. It also assisted us in re-orientating all our missions to a new vision”<sup>183</sup>.

A second consideration was that the TEC wanted to “demonstrate to the international community the unified image which emerged from the negotiation process between ANC and the NP government.”<sup>184</sup>

Thirdly, these trips were an opportunity for the ANC representatives in various countries to acquaint them with their South African Government counterparts (in those countries) and the visiting members of the Sub-council. to jointly participate in the DFA’s regional conference or bilateral meetings. In many instances it was the first opportunity for the two rivals, eg ANC representatives and DFA officials, to engage as colleagues.

Fourthly, the TEC members were to be informed about the latest International developments and sentiments towards South Africa during these visits. It played an important role in preparing the future South African government to formulate its new foreign policy <sup>185</sup>. Extracting from the Minutes and supporting documents of the SCFA identified three legs of international visits. They were the following:<sup>186</sup>

- ✚ The first visit was undertaken by the Sub-council from the 4<sup>th</sup> to 11<sup>th</sup> February to New York and Washington, DC.
  
- ✚ The second leg included visits to Kenya and the OAU from the 18<sup>th</sup> to 22<sup>nd</sup> February (Addis Ababa)

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<sup>183</sup> Interview with Aziz Pahad , 22 May 2006

<sup>184</sup> Interview with Aziz Pahad , 22 May 2006 and Leon Wessels, 29 March 2006

<sup>185</sup> Interview with Leon Wessels, 29 March 2006.

<sup>186</sup> Sub Council on the Foreign Affairs ( SCFA), 15<sup>th</sup> March 1994 to 29<sup>th</sup> March 1994 and to April 1994-  
Third Leg : Ref 1/ 02/4/3/2/15

- ✚ The third visit was undertaken to Europe and Asia from 17<sup>th</sup> March until the 3<sup>rd</sup> April 1994. The following cities were visited: Paris, Brussels, the Hague, Amsterdam, Geneva, Brussels, Zurich, Singapore, Kuala Lumpur, Tokyo. Seoul, and Hong Kong.

We will focus on three visits in more detail.

### **7.5 First visit**

The visit to New York and Washington DC was conducted at a very high diplomatic level, because it included meetings with the UN Secretary General (Boutros Boutros-Ghali), permanent members of the UN Security Council, the Chairman of the Special Committee Against Apartheid, senior officials of the UN Secretariat, the Chairman of the Frontline States Group, the OAU Executive Commission of the African group, the UN Electoral Assistance Unit and the Conference Coordinator of the Beijing World Conference on Women <sup>187</sup>. These meetings at the UN proved to be extremely useful in establishing a new foundation for South Africa's future relationship with the UN and its specialized agencies. At the same time a Planning Conference was convened in New York with all the South African UN permanent representatives in New York, Vienna and Geneva and the ANC chief representative at the UN based in New York, Lindiwe Mabuza. According to the SCFA's executive summary of the meeting, "these discussions were of great value in clarifying South Africa's relations with the United Nations system before and after the elections" <sup>188</sup>

In Washington DC the Sub-council met with officials of the State Department and with key members of the Congress. At the same time, a Regional Planning Conference, hosted by DFA, was convened. "The purpose of the conference was to analyse SA relations

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<sup>187</sup> Executive Summary of the TEC Subcouncil on Foreign Affairs first working visit to the United States and London: 4 February to 11 February 1994, Addendum MI: 67)

<sup>188</sup> Executive Summary of the TEC Subcouncil on Foreign Affairs, Addendum MI: 67

with North and South American states, to consider policy options and to coordinate activities in the years ahead “ in short, to fundamentally re-assess South Africa’s foreign relations and policies in the Americas <sup>189</sup>” One of the controversial issues discussed at the conference was international sanctions against South Africa. Both the ANC chief representative and the South African ambassador to the USA, Harry Schwarz, agreed that sanctions had run their course, and that the new approach should be to promote investments. The two sides also agreed that they should activate their respective traditional supporters to encourage a bipartisan American approach towards South Africa in future.

The Conference observed that the Clinton Administration openly expressed their support of the democratic process in South Africa to succeed. Clinton expressed a package of measures to assist the new government which would have a positive spiral effect on development, which he referred to as a democratic dividend. The Conference also looked at the potential of Brazil as a potential export market for South Africa and that they need to commence bilateral relations with it.

In Washington, DC the Sub-council also met the African Subcommittee of the House Foreign Affairs Committee, the US Agency for International Development, members of the US Trade Representative, think tanks and the media (*US Today, The Washington Post*)<sup>190</sup>.

## **7.6 Second Visit**

The SCFA also planned a regional conference for Africa and the Middle East between the 18<sup>th</sup> and the 22<sup>nd</sup> February 1994 in Nairobi, Kenya. DFA organized it with the intension of promoting better future relations with Africa and the Middle East. The objective of this conference was to identify objectives, opportunities, prioritizing, coordinating policy and more importantly, to normalize diplomatic relations in the regions. This conference

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<sup>189</sup> Executive Summary of the TEC Sub-council on Foreign Affairs, Addendum MI: 68

<sup>190</sup> Executive Summary of the TEC Sub-council on Foreign Affairs, Addendum MI: 68-69

constituted of 22 South African Heads of Mission and a number of ANC representatives in the region, to discuss the following:

To enhance and normalize the bilateral relations on the continent.  
Southern Africa's political and economic prosperity to South Africa  
General overview of Central, West and East Africa  
Overview of North Africa and Middle East.

During this visit the SCFA also met with the President of Kenya, Daniel Arap Moi, who expressed support for the democratization process in South Africa. An indication of new diplomatic relations with Africa was when he announced to the Sub-council that the first Kenyan ambassador in South Africa would be appointed soon after this meeting.

In Addis Ababa the SCFA met with the top OAU executives, including Secretary General Salim Ahmed Salim, on 21 February 1994. In this meeting Dr Salim expressed the view that South Africa would soon take up its full membership of the OAU and it is expected of the country to play a leading role in Africa <sup>191</sup>. He further reiterated the OAU's full support for the democratization process in South Africa and committed the organization to sending observers to monitor the April 1994 general elections.

While in Addis Ababa the SCFA also met the President of the Transitional Government in Ethiopia, Meles Zenawi, who expressed support for the transition in South Africa and promised to dispatch election observers to South Africa. Also a meeting was convened with the Economic Commission for Africa (UNECA) to discuss follow-up actions arising from a workshop held in Johannesburg in 1993.

### **7.7 Third Visit**

It was stated in the Sub-council's Minutes that it "will participate in the European and Asian regional and multilateral planning conference, organized by the Department of

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<sup>191</sup> Executive Summary of the TEC Sub-council on Foreign Affairs, Addendum MI: 71

Foreign Affairs. As in the case of the first and second working visit of the sub council abroad, the planning conference will be utilized to promote the effective management of South Africa's relations with European countries in the years ahead. Analysis of trends and opportunities, identifying of objectives and priorities and coordinating of policies".<sup>192</sup>.

The first and second legs of the Sub-council's visits to the USA and Africa were reported in the SCFA's documentation as very productive and contributed positively to the aims and objectives of these conferences and further execution of the Sub-council's mandate.

The third visit included Europe and Asia. The Sub-council motivated its visit to these regions as "of paramount importance. Europe is South Africa's largest trade partner and the Far East will contribute to the revival of the South African economy more significantly than other grouping" <sup>193</sup>. The first meeting was a Bilateral Conference in Paris of all the South African missions in Europe. Presentations about bilateral relations were made by the following representatives: the UK, France, Germany, Italy, Scandinavian countries, Mediterranean countries, and Eastern Europe. The aim of this meeting was to analyse trends and opportunities, to identify objectives, to prioritizing and coordinate policies<sup>194</sup>.

The second meeting which occurred on the 19<sup>th</sup> March 1994 in Brussels, Belgium, was the European Multilateral Conference. The Director General of the DFA opened the meeting and emphasized the importance the EU will play in South Africa's development. Rusty Evans, the Director General, emphasized the fact that the EU was South Africa's main commercial partner and source of investment. "A stronger linkage with the EU will afford South Africa a greater opportunity to benefit from the biggest trading bloc in the world" (Draft speech of the Director General at the opening of the Multilateral European Conference) <sup>195</sup>. Part of these stronger linkages was the idea to formalize the ties between

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<sup>192</sup> TEC Sub-council on Foreign Affairs, 15 March 1994

<sup>193</sup> TEC: Sub-council on Foreign Affairs - Third and Final Leg to Europe and Singapore - 16 March to 28 March 1994 [1/4/1/12]: 59)

<sup>194</sup> Regional Conference - Tuesday 17 March 1994 - Paris [01/02/4/3/2/3]: 1-6

<sup>195</sup> Draft speech for the Director-General at the opening of the Multilateral European conference of the TEC Sub-council on Foreign Affairs and European Heads of Mission in Brussels, 19 March 1994, 01/02/4/3/2/3

the two in an agreement. He also suggested that South Africa should join the Lomé Convention (EU-ACP agreement). He also emphasized the valuable role the EU could play as an example of regional cooperation and integration for South Africa and southern Africa in particular.

Discussions in the conference concentrated on the structures and activities of the EU, an in-depth analysis of NATO and the EU and how it would impact on the current and future position of South Africa, and EU development assistance to South Africa.

On the 22<sup>nd</sup> March the Sub-council delegation returned from other European capitals to Brussels to meet a number of Commissioners of the European Commission, namely the President Jacques Delors, Hans van den Broek (External Political Relations), sir Leon Brittan (External Economic Relations), and M Marin (Cooperation and Development)<sup>196</sup>. This was concluded with deliberations with members of the European Parliament.

In Geneva the delegation met heads of UN specialized agencies, such as the International Labour Organisation, UN High Commission for Refugees, the Department for Humanitarian Affairs and the World Health Organisation.

From Europe the delegation proceeded to Asia. The following countries were visited Singapore, Malaysia, Japan and South Korea. A similar format to Europe was followed and in Singapore a bilateral conference was convened for all the heads of mission and ANC representatives. In Malaysia, the emphasis was on meeting senior government officials who gave insight into the federal relationship in respect of economic development, and on professional and efficiency of the Malaysian civil service. The visits to Japan and Korea were brief and they had deliberations with the Japanese Deputy Prime Minister and Foreign Minister, and the Korean Foreign Minister<sup>197</sup>. It is evident from these visits that the international community acknowledged the significance of the Sub-

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<sup>196</sup> Draft speech for the Director-General at the opening of the Multilateral European conference of the TEC Sub-council on Foreign Affairs and European Heads of Mission in Brussels, 19 March 1994 01/02/4/3/2/3).

<sup>197</sup> TEC: Sub-council on Foreign Affairs (SCFA), 15 March 1994 to 29 March 1994 and 2 April 1994, Ninth and final draft, page197

council's role in the transition. Within a short space of time the SCFA was able to solicit meetings with the high-level counterparts in North America, Europe and Asia. In retrospect, the three visits were successful. The positive consequences of the visits were -

- 1) The smooth cooperation between Heads of Missions and ANC representatives in the different countries. In many instances, they were regarded as the first meeting between the two belligerents in those countries. These contacts exported the goodwill of the negotiation process to these countries<sup>198</sup>
- 2) Positive response from the international community to support the democratization, the election (election observation) and future investments.

The international community was impressed by the coherency and unity of the two former antagonists. These visits established an embryonic framework for a future South African foreign policy which was articulated first in the 1996 DFA Discussion Document.

However, it appears that the African leg of the visits was not as comprehensive as the other visits. Looking back from the vantage point of the current emphasis by President Mbeki on the African Renaissance and African Century, and the ANC's policy that Africa should be its first priority, this lack of emphasis on Africa needs some clarification. One possible explanation is that the visits were determined by the diplomatic infrastructure of the old order, which was a product of international, diplomatic isolation.<sup>199</sup> According to Tom Wheeler, this tendency continued during the Mandela administration which emphasis global matters and not only African issues. It was the Mbeki government that changed this emphasis to Africa.<sup>200</sup>

## **7.8 Foreign Assistance and Development Issues**

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<sup>198</sup> This conclusion was confirmed by an interview with Tom Wheeler, 9 May 2006.

<sup>199</sup> This conclusion was confirmed by a interview with Tom Wheeler, 9 May 2006

<sup>200</sup> Interview with Tom Wheeler, 9th May 2006



According to the TEC Act, section 18 (b) and (c) gives the SCFA the mandate to pursue the following:

(b) securing appropriate agreements with the international community regarding the contribution that community could make to peaceful transition to democracy in South Africa,

(c) in consultation with the Sub-council on Finance, securing such international assistance as the Sub-council considers necessary in order to address the socio-economic needs of the people as a whole and not to serve the interests of one or other political party.

During the apartheid period the government was internationally isolated, while foreign assistance was channeled through anti-apartheid organizations and NGOs, like the Kagiso Trust, to development projects. In 1992, development funds from outside South Africa amounted to about R1 billion and was expected to increase to R2 billion in 1993. The challenge for SCFA and other transition bodies was to redirect this assistance to government institutions and to lay the foundations for new agreements which would promote foreign assistance for development purposes. The above mentioned section in the Act formalized this challenge in the mandate or terms of reference.

At one of the first meetings of the Sub-council the issue of development assistance was discussed. It took the following decision: “The meeting acknowledges the sensitivity of this issue and endorses the idea of broad consultations on the subject especially with those organizations which are directly involved in the process. The co-ordinators (sub-council and department) are tasked to make the necessary arrangements in this regard. A joint session with the Sub-council on Finance will once more be necessary<sup>201</sup>. (In an internal DFA document in January 1994, and submitted to the SCFA it noted that different parties had different approaches to donors and that it was handled in an uncoordinated fashion and therefore a coordinated development plan was requested by the

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<sup>201</sup> 01/02/4/3/2/vol.3: Minutes of the meeting of the Sub-council on Foreign Affairs and the RSA Department of Foreign Affairs 10-11 January. 1994:3

foreign donors. The following organizations were interested: African Development Bank, IMF/IBRD, UNDP, European Community, Development Assistance Committee of the OECD and bilateral donors.

As a consequence this document observed: “Donor countries can therefore expect to have a continuing dialogue with the new South Africa government through the Department of Foreign Affairs on development issues. This dialogue will constitute an integral part of South Africa’s bilateral and multilateral relations”.<sup>202</sup>

During the TEC’s term of office, it appeared that international community started to become sufficiently confident in the transition to promise assistance for the up coming election and for the new government’s development programme. During the sub-council’s visits abroad and visits by foreign representatives to South Africa foreign development assistance was often on the agenda and discussed. For example the Belgium government which, according to SACF document, was prepared to support the democratisation, justified it as follows: “Belgium endorses the European focus on good governance, capacity building and respect for human rights. With this focus in mind the Belgian Secretariat for Development Cooperation has sought, during the pre-electoral period to improve the understanding of the dynamics of South Africa’s transformation process by actively engaging with various actors in the process of democratization”<sup>203</sup>

The Belgian focus for assistance were in four main areas, namely voter education, conflict mediation, capacity building and institutional development, and observing and monitoring the elections<sup>204</sup>.

## **7.9 Development status of South Africa**

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<sup>202</sup> Draft position paper on South Africa’s political and financial position at the United Nations 01/02/4/3/2/vol.1 E94 DEKA01 2003: 3

<sup>203</sup> Belgian development cooperation with South Africa 01/02/4/3/2/13

<sup>204</sup> Belgian development cooperation with South Africa 01/02/4/3/2/13

Before the transition South Africa was regarded as a developed country by the United Nations and its specialized agencies like the ILO and UNCTAD, and OECD. The General Agreement on Tariffs and Trade (GATT) placed a certain obligation on the South African economy equal to developed economies, while the South African situation was not suitable for that. Another illustration of the consequences of this development status issue is the criteria laid down by the Vienna Convention for the Protection of the Ozone Layer. South Africa was expected to meet the obligations placed on developed economies which in many instances were unrealistic for South Africa<sup>205</sup>. The World Bank classified South Africa as an upper-middle income economy whilst the European Community regarded South Africa as an economy in transition similar to Eastern European economies. The SCFA adopted the position that this classification should be reviewed in favour of a developing status to promote more development assistance to South Africa. To illustrate this point, Japan is the largest donor country in the world but South Africa was disqualified because of its classification. The DFA cautioned the SCFA about lowering of the status because it had never occurred before and this might create a negative effect on investor confidence in South Africa. As an alternative they suggested that South Africa should secure Generalised System of Preferences privileges through bilateral negotiations with major trading partners. GSP privileges are allowed under GATT if granted on wide bases to less developed countries<sup>206</sup>.

### **7.10 International Donor Conference**

Most peace processes include an international donor conference (such as the one in Oslo for the Sudan in December 2005, or the ones for Afghanistan and Iraq) at which they promise development aid and assistance for the post-conflict reconstruction period. In the South African case a similar event was held in June 1994 in the form of an 'International Donors' Conference on Human Resource Development for a Post-Apartheid South Africa'.

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<sup>205</sup> SCFA/ 3/10/JAN 1994: 11-12

<sup>206</sup> Draft position paper on South Africa's political and financial position at the United Nations : 01/02/4/3/2/ vol.1- 94DEKA012003:2)

The Conference was jointly organized by the TEC's sub-councils on foreign affairs and finance, together with the United Nations, Commonwealth and UN Development Programme (UNDP). The aims were to provide a unified political focus to human resource development and the needs of the post-apartheid South Africa after the April 1994 general elections. According to the Memorandum of Understanding between the mentioned organizers, the aims of the Conference were a review of priority areas for human resources development strategically relevant for social transformation.

Exchange information about immediate human resource development needs of disadvantaged sectors of society between donors and South African organizations. Identify existing financial resources and where necessary, new funds required in respect of the priority areas. Identify possibilities of collaboration between South Africa institutions and their counterparts elsewhere, particularly in the region. Strengthen donor co-ordination and collaboration with recipient organizations/ institutions in South Africa<sup>207</sup>. The Secretary General of the Commonwealth, chief Emeka Anyaoku, summarized the international community's objective with the conference in a letter to the SCFA: "The main objective of the Conference will be to mobilize international support for addressing the human resource development needs of a post-apartheid South Africa, particularly those of the disadvantaged sectors of society"<sup>208</sup>

### **7.11 European Union and development issues for South Africa**

In 1994 the European Union (EU) was the largest bilateral trade partner of South Africa and also provided the largest share of development assistance to the country. Therefore the decision by the SA government's interdepartmental External Trade Relations Committee to draft a SA-EU framework agreement for submission to both the Sub-councils on foreign affairs and finance was in line with the emphasis on European

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<sup>207</sup> Draft Position paper on South Africa's political and financial position at the United Nations : Ref 01/02/4/3/2/vol. 1

<sup>208</sup> Letter, 13 December 1993 to the Co-chairpersons of TEC: 1 01/02/4/3/2/ vol.2)

relations. This Committee proposed that the Agreement should not regulate the details of trade, investment, and development assistance but should rather provide a broader framework under which protocols for specific focus areas could be included separately. According to the Committee's opinion, this approach was also favoured by the EU as a first step<sup>209</sup>

Why was the EU so important for the SCFA and the interdepartmental Committee? It was important for several reasons: it was the largest trading bloc at the time, it was South Africa's main trading partner and the most important source of foreign development aid, and it had tremendous political and economic influence in the new world order. Prior to 1994 South Africa did not have a formal agreement with the EU or was not a member of the Lomé Convention (ACP countries). The EU's interest in South Africa was part of its interest in improving regional cooperation in Africa, partly motivated by its colonial history. South Africa's democratization was another motivation for the European interest in the region.

At the time of the SCFA's third leg of visits to Europe and Asia (discussed in section), the Sub-council on Finance and the SCFA met representatives from the European Council and European Commission for exploratory talks in Brussels. On 22 March 1994 the SCFA continued these talks with three prominent European Commissioners, namely sir Leon Brittan (External Trade Relations), Hans van der Broek (External Political Relations) and Manuel Marín (Development Cooperation). From these talks it appeared that there was disagreement in the EU about the nature of the bilateral relationship. On the other hand, they indicated that the EU wished to discuss it as a priority only after the 1994 general elections.

According to a DFA political analysis presented to the SCFA, the following pertinent considerations regarding this bilateral relationship were identified, in addition to others already mentioned:

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<sup>209</sup> Draft Agenda for the second meeting of the Sub-council on Foreign Affairs to be held on Monday 10 January 1994: 14, 01/02/4/3/2/vol. 5).

- The EU wished to make a significant contribution to democratic transitions in South Africa and the Middle East.
- The analysis cautioned future decision-makers to include the possibility of an impending revision of Lomé IV and the GSP to comply with the stipulations of the Uruguay Round of GATT, in their preparations for talks with the EU.
- Any agreement between South Africa and the EU will have to be compatible with GATT. With regard to South Africa, consideration will have to be given to the dismantling of any trade restrictions.

The DFA analysis identified four options for future bilateral relations. Two of them were the following:

- South Africa becoming a member of the Lomé Convention:  
The DFA was skeptical that South Africa could become a member of the Convention, because of its economic strength compare to the ACP economies, but did not want to rule it out completely. As a compromise, the concept of ‘windows on Lomé’ was suggested.
- ‘Windows on Lomé’:  
This option is summarized as follows: “This option would restrain South Africa from competing unduly with ACP countries for Lomé funds and in EU markets whilst allowing the countries of Southern Africa to capitalize on the advantage of closer relations with South Africa. At the same time it would allow South Africa to continue to benefit from the EU’s Special Programme on South Africa and from the political advantage of association with Lomé. These windows could include a relaxation on the rules of origin criteria for Lomé products and the possibility of South African companies tendering for development projects in terms of the Lomé Convention.

***General System of Preferences (GSP):***

GSP benefits under GATT rules were unilaterally awarded by the EU to developing countries. Given South Africa's status as a 'developed economy', it was uncertain whether it would qualify for GSP benefits. On the other hand, in 1994 80% of South Africa's exports to the EU enjoyed zero tariffs.

*A bilateral framework agreement:*

According to the DFA analysis, a bilateral framework agreement tailor-made for SA-EU relations was the most preferred option for the Europeans. The onus was on South Africa to determine the nature of the bilateral relationship with the EU. The suggested nature of such a relationship was already mentioned earlier.<sup>210</sup>

**7.12 Sub-council on Foreign Affairs and multilateralism**

The fall of the Berlin Wall in 1989 and the collapse of communism brought an era of regional pluralism and encouraging more multilateral institutions to flourish. The years of isolation deprived South Africa of joining and participating in multilateral organizations. Therefore, during the TEC period the need to establish new multilateral relations was a priority. In the last weeks of the TEC's operation, the DFA drafted recommendations for the SCFA about matters the incoming Government of National Unity should pay attention to. One of such matters was multilateral foreign relations.

According to the DFA document presented to the SCFA, in the multilateral context South Africa should simultaneously interface with the North and the South and is in a unique position to act as a 'bridge' between the two blocs. Therefore the SCFA recommended that the GNU should pursue a 'bridge-builder' role for South Africa within the multilateral field. (This objective was further pursued during the Mandela government. It can be illustrated by South Africa's role in mediating between the US and UK on the one hand, and Libya on the other hand, to resolve the Lockerbie issue. Another example was

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<sup>210</sup> Background notes for special meeting: 7 April 1994: 1-5 01/02/4/3/2/5)

the role played by South Africa in the person of Jackie Selebi, at the Human Rights Commission in Geneva.)

One of the challenges of the new Government was to decide which multilateral organizations to join. The SCFA recommended that it takes the initiative in appointing a Special Task Team to recommend to the GNU regarding new membership. This recommendation was followed up by a Joint Committee (consisting of DFA, DTI, ANC and the National Economic Forum) which appointed six experts from its ranks to deliberate on multilateral membership.

For the purpose of discussing multilateralism, the focus will be confined to the United Nations and the Organisation of African Unity (OAU). Other multilateral organizations like the Non-Aligned Movement (NAM), the Commonwealth, the G77, GATT and SADC were important for South African foreign relations but received more attention after the GNU assumed office. The SCFA paid special attention to the UN and the OAU and therefore will be discussed here.

### **United Nations**

South Africa was a founding member of the UN in 1945. Since the NP came to power in 1948 the UN was critical of the apartheid policies, led first by India and later followed by other Third World countries. In 1948 South Africa also did not sign the Universal Declaration of Human Rights as a consequence of this criticism. In 1974 its membership of the General Assembly was suspended until 1994, because the Credentials Committee of the Assembly argued that the Government did not represent South Africa as a state<sup>211</sup>. In 1966 South Africa's mandate administration of South West Africa/Namibia was challenged in the International Court of Justice and later declared illegal. South Africa was gradually isolated from the international community in the form of non-mandatory economic sanctions and mandatory oil and weapons embargoes. Hence the normalization

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<sup>211</sup> Van Wyk, Dawid, Dugard John, Bertus de Villiers & Denis Davis. 1995 *Rights and Constitutionalism: The new South Africa legal order*. page 395



process started in 1990 had to address South Africa's relationship with the UN as one of its first priorities.

One of the consequences of this suspension which complicated a normalized relationship with the UN, was South Africa's membership arrears amounting to \$94 170 875 in 1994<sup>212</sup>. Article 19 in the UN Charter states that: "A Member of the United Nations which is in arrears in the payment of its financial contributions to the organization shall have no vote in the General Assembly if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years".<sup>213</sup> The view of the ANC Observer Mission to the UN was that South Africa's suspension was not unconstitutional and therefore the former South African government was liable for its membership contributions. Therefore an incoming ANC-led government would not be liable for the financial arrears. Their opinion was that the UN should absolve South Africa from its arrears <sup>214</sup>

In a draft DFA position paper on South Africa's political and financial position at the UN it was revealed that in the 1994/1995 estimates of expenditure an amount of R51, 074 million was earmarked for regular contributions to the UN peacekeeping operations.

DFA's suggestion to the SCFA about re-entry into the UN was to develop a strategy based on the UN's "Declaration on Apartheid and its Destructive Consequences in Southern Africa".

The Declaration stated that the "new South Africa shall, upon adoption of the new constitution, participate fully in relevant organs and specialized agencies of the United

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<sup>212</sup> It included the following amounts:

Regular budget assessment for 1993	\$ 4 184 096
Regular budget arrears 1974-1993	\$ 53 229 000
UN peacekeeping operations 1974-1993	\$ 33 449 479

<sup>213</sup> Minutes of the meeting of the Sub-council on Foreign Affairs and the UN/ UNDP Commonwealth Secretariat Delegation held on Wednesday 12<sup>th</sup> January 1994, Pretoria : Ref 01/02/4/3/2/Vol 2

<sup>214</sup> Draft position paper on South Africa's political and financial position at the United Nations: 4-5; 01/02/4/3/2/vol. 1.

Nations”<sup>215</sup>. The above-mentioned arrears had to be accommodated in this strategy. Another component of the strategy was adherence to mandatory Security Council resolutions.

In 1993 the South African Parliament adopted the ‘Resolutions of the Security Council of the United Nations Act (No. 172 of 1993) which enabled the State President to issue a proclamation that a Security Council resolution will become applicable in South Africa. Preceding this Act, in 1990 South Africa for the first time announced that it would adhere to mandatory Security Council resolutions. It involved the resolution concerning an international military response to Iraq’s invasion of Kuwait. The same undertaking was also given to the resolutions imposing sanctions against the former Yugoslavia (1992) and against UNITA in Angola (1993)<sup>216</sup>

### **Organization of African Unity (OAU)**

Before 1994, South Africa had never been a member of the OAU. Instead, the former NP government was one of the main targets of OAU actions. Most notable, was the Liberation Committee which supported all the liberation movements, including the ANC and PAC since the 1960s. Both of them also enjoyed observer status in the continental body.

It has been discussed earlier in this chapter under the section ‘International Visits’ that the SCFA visited the OAU in Addis Ababa. During this visit South Africa’s new membership was discussed. Before this visit the Sub-council observed in one of its meetings that “this is one of those issues which carry political overtones”. The minutes of the meeting recorded a decision that the issue of OAU membership should be

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<sup>215</sup> Draft position paper on South Africa’s political and financial position at the United Nations.

<sup>216</sup> Draft agenda for the second meeting of the Sub-council on Foreign Affairs to be held on Monday 10 January 1994: 41 – 01/02/4/3/2/vol. 5.

discussed by the whole TEC, “because it is an issue which requires full internal political consensus”<sup>217</sup>

The DFA briefed the Sub-council about the internal dynamics within the OAU between Egypt (the incumbent Chairperson) and Tunisia (the successor Chairperson). They competed to ‘sponsor’ South Africa’s entry into the OAU at the summit in June 1994, though sponsorship was not required for any new member. Therefore, the DFA suggested a visit to the OAU’s Secretary General to discuss South Africa’s intention to apply for membership, and to consult with Egypt (as chairperson) about it. This would have to be followed by consultations with Tunisia on how the membership application should be approached<sup>218</sup>.

### **7.13 Bilateral issues**

Two bilateral issues came to the attention of the SCFA, namely Lesotho and Swaziland. The TEC referred these matters to the Sub-council for consideration.

#### **1) Lesotho**

In 1994 South Africa became involved in a crisis in Lesotho. According to a letter written by the Minister of Foreign Affairs, Pik Botha, to the UN Secretary General, Boutros Boutros-Ghali, on 18 January 1994, the immediate cause of the crisis was a salary dispute in the Royal Lesotho Defence Force which caused it to split into two opposing factions. It created a situation which threatened Lesotho’s stability and security. The Prime Minister of Lesotho, Ntsu Mokhele, addressed a letter to President F W de Klerk of South Africa requesting a peacekeeping force to be dispatched to Maseru. Minister Botha went to Maseru to meet all the parties involved in the crisis. He stressed that South Africa would not recognize “any regime which comes to power in an irregular fashion”. Botha cautioned the UN Secretary General that if the Lesotho Government might fall, it may

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<sup>217</sup> Minutes of the meeting of the Sub-council on Foreign Affairs and the RSA Department of Foreign Affairs, 10 and 11 January 1994: 7- 01/02/4/3/2/vol.3).

<sup>218</sup> Minutes of the meeting of the Sub-council on Foreign Affairs and the UN/UNDP: Commonwealth Secretariat delegation held on Wednesday 12<sup>th</sup> January 1994, Pretoria : ref 01/02/4/3/2/2 vol.2: 96

lead to “a prolonged civil war, with all the disastrous consequences associated with such a situation”<sup>219</sup>. Botha indicated in his letter, which was copied to the SCFA, that the South African Government was not willing to send a peacekeeping force to Lesotho, but that the UN might be able to do so, should Lesotho request so.

The Lesotho Government acknowledged the TEC’s authority in this matter. In the Prime Minister’s letter to President De Klerk requesting a peacekeeping force, he made the following observation<sup>220</sup>

We are aware of the present Constitutional position of South African State, whereby all major decisions in Foreign and Defence matters have to be taken on the basis of concensus (sic) in the Transitional Executive Council.

During this period the SCFA issued a media statement on the crisis in Lesotho. “The Sub council believes that any attempt to replace the Government of Lesotho by force would be unacceptable to South Africa. The Sub council also notes the support for the Government’s position as expressed by Mr. Mandela and various foreign governments”. The Sub council also called for the involvement of the Commonwealth’s members in Southern Africa (such as Zimbabwe, Botswana or Zambia) in the situation, and for a strong South African military and police presence on the border with Lesotho<sup>221</sup>. Four years later Lesotho again exploded into conflict after the opposition parties refused to accept the results of the general election. South Africa’s involvement in the situation is still shrouded in controversy, but it is not the subject of this discussion.

## **2) Swaziland:**

The territorial dispute between Swaziland and South Africa is al long-standing matter going back to the period before Swaziland’s independence. This was brought to the Sub

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<sup>219</sup> Letter from SA Minister of Foreign Affairs to UN Secretary General, Dr Boutros Boutros-Ghali, 18 January 1994; 2; 01/02/4/3/vol.2.

<sup>220</sup> Letter from Lesotho Prime Minister to the RSA State President, 14 January 1994; 01/02/4/3/2/vol.2.

<sup>221</sup> Draft press statement SCFA; 01/02/4/3/2/vol.1.

council's attention at a meeting in Pretoria with a Swazi delegation on 7 April 1994. The delegation submitted a lengthy exposition by the Swazi Border Adjustment Committee<sup>222</sup>.

In the consultation the two delegations discussed the history of the dispute, the agreements between the two countries and possible resolutions of the matter. In 1967, before Swaziland's independence, South Africa requested the United Kingdom, as the colonial administration, to finalise Swaziland's international borders. Britain preferred to postpone the matter until after independence. Swaziland informed the OAU and UN about its claim and also consulted the ANC in the matter. Between 1968 and 1982 various meetings were held between the Governments of the two states. Swaziland claims the territories of Ingwavuma in the east and Kangwane in the north-east. In 1982 consensus was reached between the two parties that a detailed description and map of the border areas, as well as a detailed description of the international border between the two states would be included in a joint agreement. The agreement would also determine that persons of Swazi origin living in South Africa as citizens would become citizens of the Kingdom of Swaziland by way of legislation. This understanding was never converted into a formal agreement. Instead, the South African Government maintained a low profile, but accepted the need for resolving the issue.

The legal advisor in the Swazi delegation impressed on the SCFA to urge the South African Government to immediately implement the terms of the 1982 'agreement'. Should it be impossible to implement it immediately because of the impending April general elections, the Swazi delegation insisted on an alternative, namely implementation by 1 August 1994, failing which the matter would be referred for adjudication to the UN's International Court of Justice in The Hague.

The Swazi delegation made the observation that the border dispute was not addressed by the South African Multiparty Negotiating Process's Commission on the Delimitation/

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<sup>222</sup> Submissions made by Border Adjustment Committee, Kingdom of Swaziland, to Sub-committee for Foreign Affairs of T.E.C., re finalisation of border adjustments as agreed to between Kingdom of Swaziland and the Republic of South Africa, 7 April 1994, Annexure A to the Draft Minutes of the meeting of the Sub-council on Foreign Affairs with a delegation from Swaziland held on Thursday 7 April 1994; 01/02/4/3/2/6.

Demarcation of Regions and that the TEC should not ignore the matter. From the Swazi side it was reiterated that persons of Swazi descent living in the areas under discussion should not be excluded from the 1994 election, even if their political future had not yet been finalised. The SCFA undertook to bring this matter to the TEC's attention<sup>223</sup> Twelve years later, this territorial dispute is still in abeyance.

#### **7.14 Security and Defense Issues**

The SCFA were involved in a number of situations where security and defense matters were to be addressed as part of the transition. Two such examples were the audit and control of arms used and stored by Umkhonto we Sizwe (MK) outside South Africa, and the SADF attack on the PAC's armed wing, APLA, in Umtata.

South Africa's transition also required a demobilization of the armed forces and their reintegration into a new defense force (the DDR processes). Part of this process was to collect and audit the arms and military equipment used by MK in their bases and storage points outside the country. The Sub-council on Defense tasked the Joint Military Coordinating Council (JMCC) to audit these ammunition storages abroad and prepare their return to South Africa. The JMCC recommended to the Sub-council on Defense that the SCFA and the TEC should negotiate with the respective countries audit and repatriate the MK armaments back to South Africa.

Several African countries were involved in storage of MK armaments. In a memorandum from the Sub-council on Defense to the SCFA on 21 March 1994, some of the following countries were discussed:

- Angola: armaments were stored in Government stores in Luanda. The Angolan Government's cooperation would be required for the audit.
- Botswana: weapons were stored in safe houses and the Botswana Government

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<sup>223</sup> Draft Minutes of the meeting of the Sub-council on Foreign Affairs with a delegation from Swaziland held on Thursday 7 April 1994; 01/02/4/3/2/6.

was to be informed about their existence. The armament had to be transferred to the

Botswana Government for safe-keeping. Persons implicated in these safe houses had to be granted indemnity by the Government. The material had to be transferred to South Africa.

- Mozambique: in accordance with the Nkomati Accord ANC material had to be confiscated and stored by the Mozambican Government. Armaments not confiscated and held in underground places in Mozambique had to be treated in more or less same manner as in Botswana.<sup>224</sup>

In the second instance of the SADF attack on APLA in Umtata on 8 October 1993, the SCFA became involved in the matter, because General Bantu Holomisa, Chairman of the Military Council of Transkei, accused the South African Ambassador and Embassy of complicity in the attack.

The DFA submitted a document briefing the SCFA on the situation in the Transkei. It stated that it seek the advice and information from the Sub-council on the matter. Secondly, the Sub-council should also comment on the continued desirability of continued diplomatic relations with the Transkei during the transitional period<sup>225</sup>

### **7.15 The Election and international involvement**

Certain of the election issues were channeled to the Sub-council on Foreign Affairs due to the international involvement in the election. It applies specifically to international electoral observation. From the onset, the TEC had welcomed international observers to the upcoming election and requested the United Nations to coordinate their presence. Mr Lakhdar Brahimi was appointed as the special representative of the UN Secretary General for this purpose.

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<sup>224</sup> Memorandum from the TEC Sub-council on Defence to the Sub-council on Foreign Affairs, 21 March 1994: 1-2).

<sup>225</sup> SADF: Raid on APLA shelter: Umtata: 8 October 1993; 01/02/4/3/2/vol.4.

According to section 1 in the Independent Electoral Commission Act, international observers representing inter-government organizations or individual governments will be accredited by the Sub-council on Foreign Affairs in conjunction with DFA. These accreditations were the responsibility of the Sub-council and would liaise with the IEC in this respect. However, international NGOs had to be accredited with the IEC and not with the SCFA. The TEC did not extend invitations to any specific international actor. Instead they requested that South African missions abroad liaise with potential and accredited observers<sup>226</sup>

One of the controversies between IEC and the SCFA was the requirement of visas for all international (intergovernmental organizations and governments) observers. It also applied to citizens of countries exempt from visa requirements in South Africa. NGO observers were also required to have visitors visas endorsed for the specific purpose for election observation. However it would be technically possible for observers to enter South Africa without a visa. NGO observers were required to be registered with the IEC and this created a problem to obtain a visa in time. As a solution it was resolved that proof of application for registration will be sufficient<sup>227</sup>. The chairperson of the IEC, Judge Johan Kriegler, briefed the SCFA on the 15<sup>th</sup> March 1994 about the preparation of the election in 1994 and international observation. According to the minutes of the meeting “the message sent that observers should have a visa to enter SA projected negatively on the country”<sup>228</sup>

It can be concluded from the above that SCFA played a significant role in assisting the election and contributing to a ‘leveling of the playing field’<sup>229</sup>. The international visits by the SCFA to Europe, Asia, Africa and America most probably contributed to a willingness and confidence to send observers to SA.

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<sup>226</sup> Recommended Procedures for Accreditation of International Observers with the Sub-council on Foreign Affairs: 45; 01/02/4/3/2/2/Vol.1

<sup>227</sup> Task force of the Sub-council on Foreign Affairs to resolve procedural matters re Accreditation of Foreign Observers to the April 1994 election: 01/02/4/3/2/Vol.3

<sup>228</sup> Draft Minutes of the meeting of the Sub-council on Foreign Affairs held on Tuesday 15 March 1994: 1: 01/02/4/3/2/6).

<sup>229</sup> Interview with Deputy Minister Aziz Pahad, May 2006



## **7.16 Conclusion**

The question that this chapter posed was how the Sub-council on Foreign Affairs as part of the TEC contributed to the transition from a conflict resolution perspective? It is evident from the discussion and interviews that the Sub-council played a pivotal role in confidence building internally (domestic) and externally (international). The various visits abroad undertaken by SCFA assisted to establish credibility, trust and assurances among the international community that South Africa was on its way to a democratic election and a successful transition. Domestically it assisted to establish sound interpersonal relations between the two former antagonists inside and outside South Africa. This also helped in bridging the gap between the new and old order in DFA.

As much as the Sub-council had achieved unexpected results it had also experienced dilemmas during its term of operation. Some of the Sub-council's weaknesses were its inability to address and resolve crisis issues in Lesotho and Swaziland. The current emphasis on Africa in South Africa's foreign relations and policies were not reflected in the Sub-council's agenda. It was most probably determined by DFA's organizational capacity, which was almost absent on the African continent.

Finally, the question can be raised: was the SCFA instrumental in formulating foreign policy for the post-apartheid period? The internal dynamics in the Sub-council (especially between the NP and ANC and their officials) certainly laid a very important foundation for the future Department of Foreign Affairs and its policy pillars, but it was not in itself a policy-making body. Its role was on the one hand to act as a watch-dog of DFA: that it could not act unilaterally in favour of the NP. Secondly, it started with an integration process of the old DFA and the ANC's Department of International Affairs and its diplomats. Lastly, it served as an extension of the TEC and the transition in general, to liaise directly with the international community.

## CHAPTER EIGHT

### CONCLUSION

“The end of apartheid had long been anticipated, but not the means by which it was to be achieved. Before 1990 the prevailing assumptions had been that it would come only after further bitter strife and bloodshed. Yet, conflict was not absent, the political revolution- by which white minority rule was replaced by a democratic government- was achieved by multiparty negotiations leading to an election and the peaceful installation of a new government. South Africa’s political miracle was, therefore a combination of ends and means”,<sup>230</sup>

The above quote presents a clear scenario concerning the expectations and actual reality that characterised some of the key elements that contributed towards bringing democratic governance in South Africa.

At the outset of this research, two problem questions were posed, namely:

Can we firstly conclude that the TEC played an indispensable role in the negotiation process and transition to ensure a peaceful transfer of executive power at the time of the 1994 general election, and secondly that it served a critical component of the transitional arrangements which prevented any violent conflict during this period?

In light of the above questions, the conclusion will be based on the additional considerations. We establish that the TEC was formed for three main reasons:

- To level the playing field between the different parties in the upcoming first democratic elections.
- To act as a watchdog on the incumbent National Party government; furthermore that no single party will have an advantage over the other, and
- To ensure that the upcoming election is conducted in a free and fair manner.

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<sup>230</sup> Barber James. 2000: South Africa’s political miracle: The International Dimension. *South African Journal of International Affairs*. Vol 7, No 1. p 51

The TEC's first objective was to level the playing field. Did the TEC succeed in this objective? It is evident from the interviews that the TEC played a significant role in levelling the playing fields between the ruling NP and the ANC. However, it was not successful in integrating parties, like the COSAG group, the IFP and the PAC, to participate in the TEC. The internecine conflict between the ANC and IFP is therefore one example of the TEC's inability to prevent conflict.

Another prominent example, of the TEC inability to resolve conflict situation was in Bophuthatswana, and it eventually had to intervene with a non-violent "coup". Similarly, this applied to the conflict perpetrated by the far rightwing shortly before the election. Although Bophuthatswana was taken over by force, the TEC managed to obtain the consensus from most of the different parties in its handling of what many called a difficult situation. In the end, it was successful incorporating all the homelands like Ciskei, Bophuthatswana into one South Africa.

It was clear from the interviews that no significant break-downs of communications emerged between members of the TEC, and therefore it can be concluded that as an institution it was successful in resolving and preventing conflict within its own sphere of influence.

The second consideration was did: the TEC act as an effective watchdog against the ruling party? From the interviews and documentation it clear that the TEC did act as an effective watchdog against the ruling party, some of these examples can be cited -

- ✓ The violence in Kwazulu Natal created instability and hindered progress towards democratic change. The TEC's interventions in KwaZulu Natal by declaring a state of emergence is a example of how the TEC interventions ensured that elections continued.
- ✓ The TEC vetoed a R216 Million Development Bank loan to Bophuthatswana
- ✓ TEC overrode the government decree to civil service pay increase
- ✓ The TEC was able to stop Housing Minister Louis Shill's housing development plan.
- ✓ The TEC played a significant role as a 'watchdog' which ensured all opposing and rival parties to participate in a free and fair election.
- ✓ The establishment of the IEC , IBA and the IMC

Besides the role of a watchdog, one cannot underestimate the pivotal role the TEC played as negotiator between the different opponents. Pravin Gordhan commented that the ANC and NP developed a 'harmonised synergy' in the manner that it was able to resolving conflict, this was also substantiated by Mac Maharaj, S.S van der Merwe and Roelf Meyer.<sup>231</sup> This harmonising synergy or chemistry between the key negotiators assisted in resolving conflict. An important element of trust developed among the TEC members which assisted in making the TEC a successful watchdog and negotiator against the ruling party. Many countries who are in conflict, usually experience mistrust and suspicion which often leads to complete break down and eventually results in violent conflict, for example Israel and Palestine.

Although, it has been argued that the TEC did align itself around ANC's issues, the NP could not find enough allies on these disputes to secure its veto. But the issues mentioned here were only a portion of the TEC's work; on many others, the high percentages required for decision-making forced parties to continue to seek consensus rather than to outvote each other. While heated election debates continued in the public area, the TEC continued to negotiate the post- election issues. This continued closed door negotiation process in many ways helped to strengthen the relationship between the National Party and ANC members.

The TEC, further entrenched the culture of bargaining, negotiating and compromising and this paved the way to prepare the ground for Government of National Unity. The informal networks and personal relationships that emerged during this interim period served as a foundation which allowed the transition to transform into a non-violent situation. The TEC was an outcome of a negotiation process - this implied that it was necessary that both parties come to a common goal. The NP claimed that it had not succumbed to a transitional government. The ANC asserted that its transitional aims had been achieved, informally if not through a law. In reflection the two achieved this by using different words to describe the same thing - one side's 'transitional government' was the other's 'transitional council', just as one's power-sharing became another's Government of National Unity. This culture of deal-making that emerged between the two opposing parties, many would argue, is a product of compromise, which positively lead to a successful election in the end. The TEC succeeded in its mission, in that it

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<sup>231</sup> Interview with Pravin Gordhan: 20<sup>th</sup> April 2006

enabled the participants to gain some useful experience in “power- sharing” which was the bed-rock of the future constitution of South Africa.

The TEC cannot only be judged for its success in being a parallel government that managed to level the playing fields. One of its other main roles was that it cleared the way symbolically to move from an undemocratic to a democratic form of government. It served a bridging function between the old order and the new. This can be seen in the Sub-council on Foreign Affairs, which allowed for the smooth transition to occur from old foreign affairs to a new order. The Sub-council on Foreign Affairs played a vital role in developing the new foreign policy for South Africa.

The numerous international visits conducted by the Sub-council on Foreign Affairs ensured confidence building and support by the international community. These visits started an important process of South Africa being incorporated into multilateral organizations like the OAU and the Commonwealth. It also ensured that the diplomatic missions of South Africa were headed by people who are committed to democracy and non-racialism in South Africa. It also appointed heads of mission and other officers of the missions from all the different racial groups and that appointments were based on merit. During this period the Sub-council on Foreign Affairs had started to reorganize South Africa’s diplomatic missions and their activities in the light of the changed and fast changing political scenario in South Africa.

To conclude, this study set to determine the role of the TEC and its significance within the democratic process. In hindsight, the members of the TEC who were interviewed, have unanimously agreed that the TEC played a pivotal role in the transition process and in establishing the Government of National Unity.

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