

PRENEGOTIATION IN SOUTH AFRICA (1985 – 1993)
A PHASEOLOGICAL ANALYSIS OF THE TRANSITIONAL NEGOTIATIONS

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DECLARATION

I, the undersigned, hereby declare that the work contained in this thesis is my own original work and that I have not previously in its entirety or in part submitted it at any university for a degree.

Signature:

Date:

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OPSOMMING

Die opvatting bestaan dat die Suid-Afrikaanse oorgangsonderhandelinge geïnisieer is deur gebeurtenisse tydens 1990. Hierdie studie betwis so 'n opvatting en argumenteer dat 'n noodsaaklike tydperk van informele onderhandeling voor formele kontak bestaan het. Gedurende die voorafgaande tydperk, wat bekend staan as vooronderhandeling, het lede van die Nasionale Party regering en die African National Congress (ANC) gepoog om kommunikasiekanale daar te stel en sodoende die moontlikheid van 'n onderhandelde skikking te ondersoek. Deur van 'n fase-benadering tot onderhandeling gebruik te maak, analiseer hierdie studie die oorgangstydperk met die doel om die struktuur en funksies van Suid-Afrikaanse vooronderhandelinge te bepaal. Die volgende drie onderhandelingsfasies word onderskei: *onderhandeling oor onderhandeling*, *voorlopige onderhandeling*, en *substantiewe onderhandeling*. Beide fasies een en twee word beskou as deel van vooronderhandeling.

Volgens hierdie studie het die eerste fase so vroeg as 1985 onder uiters geheime omstandighede begin, en het dit so voortgeduur tot met die finalisering daarvan in 1990. Drie verskillende kommunikasieweë het ontstaan gedurende hierdie tydperk. Die eerste weg was tussen regeringsamptenare en die gevange Nelson Mandela. Gereelde ontmoetings is gehou in 'n poging om 'n verstandhouding te kweek oor wat nodig sou wees om Suid-Afrikaanse politiek te normaliseer. Die tweede weg het meestal op internasionale grondgebied afgespeel deur middel van tussengangers, en het 'n indirekte kommunikasiekanaal tussen uitgeweke ANC lede en amptenare van die regering se Nasionale Intelligensie Diens bewerkstellig. Die derde weg het bestaan uit onafhanklike pogings deur rolspelers buite die regering om kommunikasie te bewerkstellig met die uitgeweke ANC-leierskap. Alhoewel die weë op verskillende vlakke die onderhandelingsproses beïnvloed het, word al drie as deel van die eerste fase beskou.

Die tweede fase is ingelei deur F.W. de Klerk se parlementêre openingstoespraak in 1990. In hierdie fase het nuwe onderhandelaars na vore getree en dit is gekenmerk deur 'n deurlopende poging van die regering en die ANC om 'n kontraksone vir substantiewe onderhandeling te skep. Prominente skikkings het ingesluit die Groote Schuur Minuut, die Pretoria Minuut, die D.F. Malan Verdrag, en die Nasionale Vredesverdrag. Die totstandkoming van 'n veelparty-onderhandelingsforum, Codesa, het die einde van voorlopige onderhandeling aangedui, alhoewel slegs tydelik. Na 'n dooiepunt bereik is in Mei 1992 het dit noodsaaklik geword om terug te keer na voorlopige onderhandeling. Die daaropvolgende bilaterale ontmoetings tussen die regering en die ANC is gekenmerk deur die ontwikkeling van prominente onderhandelingsverhoudings, veral tussen Roelf Meyer en Cyril Ramaphosa, en tussen Nelson Mandela en F.W. de Klerk. Met die ondertekening van die Rekord van Verstandhouding en die totstandkoming van die Veelparty-onderhandelingsproses in 1993, het vooronderhandeling tot 'n einde gekom.

Deur hoofsaaklik op vooronderhandeling te fokus, probeer hierdie studie om beide bestaande vooronderhandelingsteorie te verfyn, asook moontlike riglyne vir ander diepverdeelde samelewings te identifiseer. Vir 'n onderhandelingsproses om suksesvol te wees is dit noodsaaklik dat blywende goedertrou en 'n werkbare kontraksone tot stand gebring word voor die aanvang van enige vorm van substantiewe onderhandeling.

ABSTRACT

The perception exists that the South African transitional negotiations were initiated by events during 1990. This study challenges such a perception and argues that prior to formal contact there existed a crucial period of informal bargaining. This period, known as prenegotiation, saw members of the National Party government and the African National Congress (ANC) attempt to communicate in order to gauge the possibility of a negotiated settlement. By utilising a phaseological approach to bargaining/negotiation, this study analyses the transition in order to ascertain the structure and functions of South African prenegotiation. The following three negotiation phases are identified: *bargaining about bargaining*, *preliminary bargaining* and *substantive bargaining*. Both of the first two phases are regarded as part of prenegotiation.

This study argues that the first phase started as early as 1985 under conditions of immense secrecy and stayed that way until its conclusion in 1990. Three different avenues of communication were established during this time. The first avenue existed between government officials and the imprisoned Nelson Mandela. Regular meetings were held in an attempt to create an understanding of what was needed to normalise South African politics. The second avenue operated mostly on international soil, through intermediaries, and became an indirect channel of communication between exiled ANC officials and officials in the government's National Intelligence Service. The third avenue consisted of independent efforts by extra-governmental role-players to establish communication with the exiled ANC leadership. All three avenues impacted differently on the negotiation process, yet all are regarded as part of the bargaining about bargaining phase.

The second phase was initiated by F.W. de Klerk's opening of parliament speech in 1990. In this phase new negotiators came to the fore and it signified an ongoing attempt by the government and the ANC to establish a contract zone for substantive bargaining. Prominent agreements included the Groote Schuur Minute, the Pretoria Minute, the D.F. Malan Accord and the National Peace Accord. The establishment of a multi-party negotiating forum, Codesa, ended preliminary bargaining, but only temporarily. After deadlock occurred in May 1992 it became necessary to revert back to prenegotiation issues before further progress could be made. The bilateral discussions that ensued between the government and the ANC saw the most prominent bargaining relationships of the transition develop, notably between Roelf Meyer and Cyril Ramaphosa, and between Nelson Mandela and F.W. de Klerk. With the signing of the Record of Understanding and the establishment of the Multi-Party Negotiating Process in 1993, prenegotiation came to an end.

In focussing primarily on prenegotiation, this study attempts both to refine existing prenegotiation theory and to identify possible recommendations for other deeply divided societies. For the success of a negotiation process it is an imperative that lasting good faith and a workable contract zone are established prior to any form of substantive bargaining.

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CHAPTER 1

OUTLINE

1.1. Introduction

The first democratic elections in the history of South Africa, on April 26 – 29 1994, was regarded in the eyes of the world as nothing short of a miracle. Due to the perceived intractability of the South African conflict, such a relatively peaceful transition was widely proclaimed to be a triumph of the human spirit as well as a timely lesson for similar conflict-ridden societies. The euphoria has since given room to more sober reminders of the problems and issues surrounding governance in a post-apartheid South Africa. Concomitantly, the negotiations that led to a transition taking place at all, are perceived as part of South Africa's "previous" history. Popular history accounts and academic analyses of the transition are appearing sporadically, but the full range of lessons to be learnt from the South African transitional negotiations have not been explored.

1.2. Problem statement

South Africa continues to be a deeply divided society and any effort to diminish the existing lines of conflict is dependent on the parameters set by the 1996 constitution. Yet, the successful resolution of current domestic and international conflict can similarly depend on the lessons taught by a decade of South African negotiations that preceded the 1996 constitution. It is my view that the South African case is specifically significant regarding the initial stages of the negotiation process – broadly referred to as the prenegotiation phase. The addressing of prenegotiation issues comprised the largest part of the South African negotiation process, and I am of the view that the successful completion of this stage was imperative to the success of the process as a whole. What this study pursues is a detailed description of the how's, what's and where's of phased negotiations, with a specific focus on prenegotiation. This can not only create a better

understanding of the South African transition and its outcomes, but also ensure a significant contribution to the discipline of conflict resolution.

A public perception exists that the South African transitional negotiations were initiated by the opening of parliament address of F.W. de Klerk on 2 February 1990. I argue that this view is based on an incorrect analysis of both the events that preceded his speech as well as the concept of *negotiation*. In contrast, I hold the view that an analysis of the South African transition is incomplete if it only focuses on post-1990 events, as numerous preparatory events occurred in the preceding years. Yet, a context has to be found in which to analyse the ‘behaviour’ of role-players before 1990. A phaseological approach to conflict resolution serves as the ideal framework for creating such a context. Although numerous approaches to the study of negotiation exist, the phaseological approach aims to fulfill a clarifying role regarding the timing and development of a bargaining relationship. It does not preclude or disregard the other methods of analysis, but can be successfully integrated with them. Despite the absence of consensus over the exact number and structure of phases, all phase theorists agree on the existence of a broad initial stage, here referred to as prenegotiation.

Hence, two research problems are identified in this study:

- The first problem asks the question: “When did the South African transitional negotiations commence?” It relates to the perception among many analysts that, despite bargaining and bargaining-related events prior to 1990, the South African negotiation process only started after February 1990. In view of this, I propose a distinct schematic analysis of the negotiation process based on phases; one which I feel more accurately reflects the dimensions of the case.
- The second research problem involves the question: “What lessons from the South African case can be applied to similar deeply divided societies?” To answer this question it is necessary to first reflect on the above-mentioned schema and discern what functions the phases performed. Following from this, tangible propositions will be presented which could ensure success in the resolution of similar conflicts.

1.3. Limitations of the study

Research on the prenegotiation phase in the South African transition is lacking, partly due to the absence of a uniform perspective on what constituted prenegotiation, but also because of the exclusive and secretive conditions under which South African prenegotiation was conducted. Both secrecy and exclusivity were salient characteristics throughout the negotiations, to the extent that they became functional to the success of the process as a whole. This proves to be an obstacle to research, and will likely stay so. It is doubtful whether all the facts surrounding the motivations, decisions and dialogues of participants will ever be disclosed.

Due to the intensity and institutionalised nature of past South African conflict, issues such as identity, nationalist aspirations and cultural fears were intertwined with hard bargaining. The way in which some of these issues were resolved remain contentious even at the time of writing. One example is the simmering debate among the supporters of the previous National Party (NP) government over the latter's conduct during the negotiations on issues such as group rights and minority protection.¹ For leaders on all sides to come forward at this stage and admit errors of judgement might be asking too much, compounding efforts to establish the facts surrounding certain bargaining events.

A significant problem encountered during the research for this study is the habit of role-players, when asked about the negotiation process, to couch their answers in a retrospective analysis of the events. This is also referred to as 'reinventing history.' It is doubtful whether current interpretations by participants always reflect the views they held at the time of negotiation. To counter the possible misrepresentation of facts caused by this phenomenon, two strategies were employed. First, an attempt was made to assemble as many divergent viewpoints as possible in order to compare the similarities and differences between negotiators' perceptions. Secondly, certain fixed questions were asked to all interviewed respondents to gauge their positions and correlate the answers.

¹ The analysis of negotiation does not stop at the last bargaining event. A crucial element of any negotiation process is the outcome. Subsequently, the interplay of power continues after agreement is reached, as parties, due to the reaction of their respective audiences to the deals presented to them, bicker over who ensured the best bargain. An analysis of the outcome, however, falls outside the scope of this study, and where it is discussed it will be viewed in relation to the preceding phases.

It should be noted that the first strategy was not as effective as hoped. To ensure a balanced analysis a roughly equal number of participants from the previous government and the ANC respectively were approached for interviews. Although it was expected that not all of the persons approached would agree to be interviewed, it was found that the negotiators of the previous government were much more approachable and willing to participate. The end product is a set of interviews which seems to be numerically biased in favour of this group. This was not the intention.

The reasons for the ANC members' unwillingness to participate are open to speculation. A first explanation could be the prominent positions that most ANC negotiators now fill in government – which involve busy schedules and huge workloads – vis-à-vis the positions of the ex-government negotiators, which made the former unavailable for interviews of this nature. A second explanation could be the public perception that the previous government received a far worse deal than the ANC in negotiations, leading their participants to perceive this as an ideal opportunity to 'set the facts straight.' A last explanation, which were offered by some negotiators in their correspondence, could be that the South African case has become such a popular area of study for South African and international scholars alike, that the continuous granting of interviews becomes repetitive and simply takes up too much time.

I have to stress that the above set of circumstances does not in any way invalidate the study's findings. The interviews that were conducted are still relevant as indicators of the perceptions of former government negotiators. For ANC points of view, the *Herman Giliomee papers: Patti Waldmeir interviews* were utilised, which were just as effective as personal interviews. Furthermore, the main focus of this study is the negotiation process as it presented itself through events, an area over which the perceptions of negotiators have a limited impact.

1.3.1. Theoretical shortcomings

South Africa proved to be a demanding case for an analysis based on prenegotiation theory, as the manner in which events transpired between 1985 and 1993 did not always match with existing theoretical assumptions. Despite the fact that anomalies are to be expected in a unique case such as South Africa, I am of the opinion that many of the visible discrepancies rather serve to identify theoretical shortcomings of the

phaseological approach. Some of these shortcomings are due to the levels of analysis on which research about prenegotiation is usually conducted. Thus, in analysing the South African transition, this study pursues a dual purpose. Whereas the phaseological approach is used on the one hand to assess the prenegotiation phase in the South African transitional negotiations, the specific dimensions of the case are in turn used to refine the phaseological approach. To this end proposals regarding the successful resolution of intergroup conflicts, based on the South African experience, will be put forward.

1.4. Summary of the argument

In short, I argue in this study that the South African transition to democracy was a process based on a sequence of bargaining events, starting in 1985 and ending in 1993, which can be analysed in terms of their timing, functions, participants and outcomes – factors that indicate the phase of which each event was part. I further argue that each phase in a negotiation process fulfils certain functions, hence the success of each phase rests on the adequacy of agreements in every prior phase. The South African transition was not initiated by an impulsive leap into an unsure future, based on the metaphysical experiences of an individual. Although the possible consequences were never truly understood, it was a structured and calculated exercise to manage the inherent conflict in the system of apartheid, and solve the impasse that became a striking feature of the system during the 1980's. All bargaining events were not co-ordinated from a central point, yet, as a whole they comprise the range and scope of South African prenegotiation.

1.5. Research questions

The following research questions are addressed in this study:

- When did prenegotiation commence?
- What caused prenegotiation to commence?
- Which phases can be identified in the South African transitional negotiations?

- What differentiates these phases from each other?
- What role did audiences play during the negotiations?
- What role did secrecy play in the negotiations?
- What role did individual negotiators play in the process?
- What are the crucial determinants for success in prenegotiation?
- Is the success of prenegotiation a determinant to the success of the process as a whole?

1.6. Methodology

1.6.1. The literature study

The data-gathering process in this study comprised of two parts, a literature study and a set of personal interviews. In the literature study sources were divided into two broad categories, namely books and articles which deal with the dimensions of negotiation/bargaining and conflict resolution, and books and articles which deal with the South African negotiations. Category one was studied first so as to create an analytical context in which to view further reading. Specific attention was given to those sources that analysed the process of bargaining/negotiation as a process based on stages or phases. Personal correspondence with academics in the field also functioned as a way of coming to terms with the theory.

In category two a wider variety of sources were used. Apart from books and articles which offered some sort of interpretation of the process, sources such as newspaper articles and Internet documents on the transition were important to offer specific accounts of significant events. This part of the literature study was also crucial in helping me to identify the primary role-players in the transition process. The information gathered here was used in the preparation of interviews.

1.6.2. Personal interviews

The second part of the data-gathering process consisted of personal interviews conducted with role-players in the negotiation process and opinion holders (e.g. academics) with knowledge of the South African case or an interest in bargaining

issues. Respondents were sorted in a way that reflected their participation in the process chronologically. They were contacted in that order and asked for permission to be interviewed.

The documentation that accompanied each interview request included a cover letter, stating the request, the reasons therefore and the nature of the study, and an abstract of the research proposal for the study. Respondents were assured complete anonymity should they prefer it. If respondents granted the request for an interview, a follow-up communication was sent to them, reaffirming the date and time of the particular meeting and stating whether it would be anonymous. Respondents were also asked for their permission that a tape recording could be made of the interviews.

Between May 1996 and October 1997 a total of eleven interviews were conducted with eight different respondents. Where a respondent was only willing to grant a single interview, permission was obtained to send clarifying questions as the need arose, to which the person could reply in writing. The recorded interviews were all transcribed by me. The interviews were not only used for information-gathering purposes, but also served as ideal opportunities to build up contacts. Hence, respondents were probed for the names of other role-players that might not have surfaced in the literature study.

1.6.3. Interviews by other researchers

Because some role-players declined to be interviewed, interview transcripts of another researcher were used to supplement the existing data. In the research for a recent book, Patti Waldmeir conducted a vast number of interviews with negotiators and other participants in the South African transition.² The transcripts of her interviews were handed to the Archive and Manuscript library at the University of Cape Town, who made copies available to researchers, subject to the agreement that the copies are to be used only for research purposes and/or study and not to be published. In the event of the transcripts being referred to or quoted from, the full reference for the item must be listed.

² Waldmeir, P. *Anatomy of a Miracle: The End of Apartheid and the Birth of the New South Africa*, London: Viking, 1997.

1.7. Type of interview

The decision to make use of personal interviews as a method of data-gathering was taken due to the lack of information available on certain aspects of the South African negotiations. The specific type of personal interview that was used is the *focused interview*. Nachmias & Nachmias identify four characteristics of this form of interview:

- It takes place with respondents known to have been involved in a particular experience.
- It refers to situations that have been analysed prior to the interview.
- It proceeds on the basis of an interview guide specifying topics related to the research hypotheses.
- It is focused on the subjects' experiences regarding the situation under study.³

Although the encounter between the interviewer and the respondents is structured respondents can be given considerable liberty in expressing their definition of a situation that is presented to them. This interview technique was preferred because it offers the interviewer enough room to probe if sensitive issues are addressed.

1.8. Final validation

I am aware of a common perception that theorists of negotiation and negotiators themselves hold different views as to what constitutes a negotiation process. This is due to the fact that negotiation can involve impulsive decisions as well as the strategic use of tactics such as bluffs and threats, all of which are difficult to convert into theory. In order to bridge possible conceptual disparities in interviews, I usually presented respondents with a schematic representation of the phases in the South African transitional negotiations as seen by me, and asked them to comment. Some remained skeptic, but even their criticism proved very useful in developing a model which accurately reflects the phases as they transpired.

³ Nachmias, C. and Nachmias, D. *Research Methods in the Social Sciences*, (4th ed.), London: Edward Arnold, 1992, p. 224.

As a final validation for the methodology used, I submit the following statement: "Although many skilled negotiators view their work more as an art or craft than as a systematic body of propositions, knowledge, and teachable skills, nevertheless, if skillfully drawn out, they can provide certain lessons."⁴

1.9. Structure

In Chapter 2, a theoretical framework is developed. First of all, the dimensions of the conflict is discussed, as South Africa exhibited a distinct form of conflict. The discussion then proceeds to the process known as bargaining/negotiation, which is a method of conflict resolution. Bargaining/negotiation also constitutes the theoretical backbone of any analysis which deals with the interaction of two or more entities in the pursuit of some sort of deal. Different approaches to the study of bargaining/negotiation are discussed, in order to differentiate effectively between the phaseological and other approaches. The latter part of the chapter is assigned to a discussion of the phaseological approach. The assumptions of the approach, the main advocates thereof, the differing views on the number and structure of phases, and the possible shortcomings of the approach are discussed. This serves the purpose of defining the prenegotiation phase. A choice is made as to what constitutes the most effective framework when analysing the South African case. The three phases identified are *bargaining about bargaining*, *preliminary bargaining* and *substantive bargaining*. Both the first two phases are regarded as part of prenegotiation. Lastly, the characteristics and functions of prenegotiation are discussed.

Chapter 3 discusses the bargaining about bargaining phase of the South African transitional negotiations. In it, I argue that the mutual movement towards a consideration of negotiation as a conflict resolving mechanism started in May 1985. The bargaining about bargaining phase was not repeated and lasted until February 1990. As the first phase had a crucial impact on the rest of the process, specific attention is given to its functions. The three different forums in which discussions took place during this

⁴ Eurich, A.C., foreword to *The Practical Negotiator*, by Zartman, I.W. and Berman, M.R. New Haven and London: Yale University Press, 1982, p. ix.

phase are discussed in detail. This is done to ascertain how and why the decision was made to transform the South African political dispensation through negotiation.

In Chapter 4 an analysis is made of the preliminary bargaining phase. Despite a move to substantive bargaining in December 1991, it became necessary to revert back to preliminary bargaining in 1992 in order to break a deadlock in discussions. This movement is of crucial importance when attempting to understand the negotiation process, hence it is analysed in detail. Although references are made to instances of substantive bargaining, the main focus falls on events associated with preliminary bargaining.

Chapter 5 provides a summary of the argument and proposes some recommendations for other deeply divided societies, based on lessons learnt in the South African case. The recommendations deal with, among others, the roles of leaders, individual negotiators and supporters in establishing a successful negotiation process.

CHAPTER 2

A THEORETICAL APPROACH TO THE STUDY OF PRENEGOTIATION

2.1. Introduction

In order to define a theoretical construct such as prenegotiation, its context has first to be described. It is of no use to any scholar studying South Africa if the crucial role of prenegotiation in the transition is underlined without first stating its role. Why is prenegotiation important? In response to what was prenegotiation pursued? What origin does prenegotiation theory have as an approach to conflict resolution? Answers to these questions should first be sought before any meaningful discussion on the objectives of prenegotiation can continue. To just state that prenegotiation theory is but one approach to the study of negotiation, and negotiation in its turn is but one possible response to a situation of conflict, is insufficient. Concepts such as conflict and negotiation formed an integral part of South African political dynamics between 1985 and 1994, and prenegotiation as a methodological approach is embedded in their parameters.

2.2. Conflict

2.2.1 Defining conflict

The conceptual delineation of *conflict* is a difficult task. Bercovitch states that “[f]ew concepts seem more central to the social sciences than the concept of conflict, yet few have created more confusion and been studied in a less systematic way than the concept of conflict”.¹ Schelling corresponds the diverse theories of conflict with the diverse meanings of the word conflict. He identifies two broad groupings in this diversity. According to him, where the study of conflict is concerned, one group regards conflict as a pathological state and seeks to find its causes and treatment. The other group

¹ Bercovitch, J. “Problems and Approaches in the Study of Bargaining and Negotiation,” *Political Science*, vol. 36, no. 2, December, 1984, p. 125.

accepts conflict as a given and studies the behaviour associated with it.² This is a handy distinction, but seems to be a slightly oversimplified view of the study of conflict. A study aimed at finding possible causes and solutions to conflict does not necessarily have such a strong normative view of the conflict itself. This is evident from Zartman's statement that the cause of conflict is an incompatibility of goals or actions.³

By keeping the above-mentioned in mind, an attempt can be made to define the parameters of conflict. Bercovitch defines conflict as "...a perception of incompatibility between two or more actors and the range of behaviour associated with such perceptions."⁴ Mitchell asserts that "[i]t is a truism that conflict between unequals are conducted differently from conflicts between equals."⁵ This states not only the presence of a power relationship in a situation of conflict, but also implies that *perceptions* about power come into play. Levinger and Rubin identify six properties that, according to them, all social conflict have, irrespective of the level of analysis:

- It derives from perceived divergence of interest.
- It can be addressed in a relatively small number of ways.
- It contains a mixture of motives.
- It can be ended through either behaviour or attitude change.
- It leads to outcomes that range from purely destructive to purely constructive.
- It stems from a broad variety of causal antecedents.⁶

Levinger and Rubin further state that in social conflict one or both parties perceive their interests as divergent – whether or not they are divergent. Again a notion of perceptions come into play. Indeed, they continue to state that "[c]onflicts may derive from competition for scarce resources, differences in values or beliefs, or the parties'

² Schelling, T.C. *The Strategy of Conflict*, Cambridge, Massachusetts: Harvard University Press, 1960, p. 3.

³ Zartman, I.W. "Conflict Reduction: Prevention, Management, and Resolution," in Deng, F.M. and Zartman, I.W. (eds.), *Conflict Resolution in Africa*, Washington, D.C.: The Brookings Institution, 1991, p. 299.

⁴ Bercovitch, "Problems and Approaches," p. 125.

⁵ Mitchell, C.R. "Asymmetry and Strategies of Regional Conflict Reduction," in Zartman, I.W. and Kremenjuk, V.A. (eds.), *Cooperative Security: Reducing Third World Wars*, New York: Syracuse University Press, 1995, p. 27.

⁶ Levinger, G. and Rubin, J.Z. "Bridges and Barriers to a More General Theory of Conflict," *Negotiation Journal*, vol. 10, no. 3, July 1994, p. 202.

differing definitions of their relationship.”⁷ The implication of this is that, although conflict has a structural and physical dimension, the nature of a conflict is equally an intellectual construct based on parties’ experiences and perceptions. These experiences can also create a muddled perception of conflict, as conflict over one set of issues can be obscured by conflict over issues at a different level.

According to Horowitz an acceptable definition for conflict is one of the most elusive aspects in ethnic conflict theory. He states that most definitions embody an element of struggle, strife, or collision which serves the purpose to distinguish conflict from competition. Furthermore, according to various definitions conflict involves a struggle for mutually exclusive rewards or the use of incompatible means to realise a goal. For Horowitz, mutually exclusive ends or means need not be intrinsic to all conflict. His proposed definition regards conflict as a struggle aimed at gaining objectives and simultaneously neutralising, injuring or eliminating rivals; thereby leaving the nature and incompatibility of objectives and methods open to further scrutiny.⁸

All scholars do not hold to the view that there should be a distinction between conflict and competition. As seen above, Levinger and Rubin define conflict as deriving from competition, and in South Africa, competition over scarce resources was an important factor in the conflict. In my view neither of the above definitions are adequate in their own to describe conflict as it transpired in South Africa. It is necessary to construct a composite definition from those listed above. The following definition will be used in this study:

Conflict exists where two or more parties hold incompatible positions towards each other due to differences in values or beliefs, or competition for certain scarce resources; which can be influenced by tangible events or mutual perceptions. In such a situation, parties aim to neutralize, injure or eliminate rivals.

⁷ *Ibid.*, p. 202.

⁸ Horowitz, D.L. *Ethnic Groups in Conflict*, Berkeley: University of California Press, 1985, p. 95.

2.2.2 Types of conflict

Smyth identifies two important distinctions when analysing conflict. The first he identifies is a distinction between conflicts that involve a change in the power relationship of parties and conflicts that do not. The second distinction is between conflicts where a mutually acceptable, agreed-upon institution to deal with changes in the power relationship between parties exist, and conflicts where such an institution is not evident.⁹ He illustrates these distinctions by identifying the types of conflict associated with different configurations of the distinctions. This is illustrated in Figure 2.1.

Figure 2.1¹⁰

Conflicts, Power Relationships, and Institutions

	Power Relationship Altered	Power Relationship Does Not Change
Agreed-Upon Institutions	<p>II Democratic elections</p> <p>Mergers</p>	<p>I Market transactions</p> <p>Civil suits</p>
No Agreed- Upon Institutions	<p>IV Revolutions</p> <p>Secessions</p> <p>Devising new international agreements</p>	<p>III Football riots</p> <p>Spontaneous civil disturbances</p>

⁹ Smyth, L.F. "Intractable Conflicts and the Role of Identity," *Negotiation Journal*, vol. 10, no. 4, October 1994, p. 311.

¹⁰ *Ibid.*

Smyth regards Quadrant IV as the definitional area where most severely intractable conflicts can be found. Conflicts are regarded as intractable when no possible solution seems to be present. I argue that before 1990, South Africa found itself in a conflict situation akin to those in Quadrant IV. According to Smyth, conflicts in this category focus on the altering of a power relationship, but there is no agreed-upon institution which can contain the tension, as the institution is usually the focus of tension. As examples he identifies ethnic calls for self-determination; accusations of institutional discrimination; accusations of imperialism; and appeals for the extension of universal suffrage as a basic human right.¹¹

I further argue that between 1990 and 1994, as negotiations for a new dispensation took form, conflict in South Africa moved towards Quadrant II. In this category, if parties agree in principle that a coalition government should be formed, negotiation centres around its mechanisms of control. Based on assessments of their support, party leaders propose mechanisms that would offer them the most control in a coalition government. Smyth argues that in such negotiations a tolerance for ambiguity is needed from parties, as leaders are aware that their assessments might not be accurate and therefore attempt to include alternative measures as well.¹² Although numerous issues are negotiable, such as cabinet positions and policies, Quadrant II implies that all parties accept the mechanism, such as a constitution, which sets the parameters of control. This was signified by the negotiated interim constitution in South Africa. What is of interest for this study, is how South Africa managed to move from Quadrant IV to Quadrant II in the space of 8 years (1985 – 1993).

A majority of the studies that deal with conflict and conflict theory have an international or regional focus. According to Horowitz attempts to develop conflict theory in political science have been made in connection with international relations. He cautions against this and argues that despite certain similarities between interethnic relations and international relations, the application of international conflict theories on ethnic conflict can prove to be forcing unknown parameters on a distinct field.¹³ Levinger and

¹¹ *Ibid.*, p. 314.

¹² *Ibid.*, p. 313. Two significant examples that illustrate such ambiguity in the South African case are the abstract procedure which was known as “sufficient consensus”; and the stipulation written into the interim constitution that cabinet should make decisions in a “consensus seeking spirit.”

¹³ Horowitz, *Ethnic Groups*, p. 95.

Rubin identify four levels of analysis in the study of conflict, namely international, interorganisational, intergroup and interpersonal.¹⁴ This study analyses conflict on an intergroup level of analysis. Yet, most of the work that has been done on prenegotiation operate on an interpersonal or international level.¹⁵ Part of the aim of this study is to test the applicability of prenegotiation theory on intergroup conflict, and determine what generalisations can be made to similar conflicts. The situation therefore necessitates the exploration of international conflicts and their nature.

As South African conflict before 1994 operated on the intergroup level under a system of forced racial classification, the obvious conclusion was that it was an ethnic conflict. Disregarding the common sense factor, models such as that of Rabushka and Shepsle, which focus on ethnic entrepreneurs who deliberately increase the salience of ethnic criteria in public issues, have been applied successfully to the South African case.¹⁶ Yet, different perceptions occur on this issue. Giliomee argues that South African conflict is communal rather than ethnic and motivates it as follows:

“Ethnic is too narrow a category for it refers to a group with a common belief in a shared ancestry and history. This would fit the Afrikaners, but not the larger white community, or for that matter, the African or larger black community. Communalism...operates within less rigid boundaries and is more geared to the politics of group entitlement which makes special claims upon the state for rewards and services on the basis of past performance (or exploitation).”¹⁷

Horowitz provides a sober analysis of the definitional problem when he says: “There is a conflict in South Africa that has something to do with race. This is about as far as agreement runs among many of the participants and interpreters of the conflict.” He

¹⁴ Levinger and Rubin, “Bridges and Barriers,” p. 202.

¹⁵ See Douglas, A. *Industrial Peacemaking*, New York and London: Columbia University Press, 1962.; Morley, I. and Stephenson, G. *The Social Psychology of Bargaining*, London: George Allen & Unwin Ltd., 1977.; Stein, J.G. (ed.), *Getting to the Table: The Processes of International Prenegotiation*, Baltimore and London: Johns Hopkins University Press, 1989.

¹⁶ See Du Toit, P. “Bargaining about Bargaining: Inducing the Self-Negating Prediction in Deeply Divided Societies – The Case of South Africa,” *Journal of Conflict Resolution*, vol. 33, no. 2, June 1989, p. 211.

¹⁷ Giliomee, H. “The Communal Nature of the South African Conflict,” in Giliomee, H. and Schlemmer, L. (eds.), *Negotiating South Africa's Future*, Johannesburg: Southern Book Publishers, 1989, p. 114(*).

continues to identify two types of conflict in South Africa: the conflict itself, and the metaconflict – the conflict over the nature of the conflict.¹⁸ One of the three problems he identifies that is exacerbated by the conflict about conflict is the fact that it contracts the range of acceptable innovations and future arrangements.

Horowitz's assessment points to a dilemma which was experienced by the parties in South African prenegotiation. Parties were confronted with a definite existence of differing opinions on what the conflict was all about, let alone differing opinions on how to resolve the conflict.¹⁹ What was needed for any progress to take place was first of all a meeting of minds on the nature of the conflict. In game theory jargon, it was necessary for the parties to redefine the conflict from a zero-sum conflict, in which one party gains all and the other loses everything, to a non-zero sum conflict, in which mutual gains and mutual losses are to be expected.²⁰ This is where this study enters into the debate, by arguing that only by taking part in a process structured by the characteristics of prenegotiation could such a common perspective emerge. (Pre)negotiation, however, was not the obvious choice. The resolution of conflict via a mutually accepted set of rules and agreements was but one method of addressing the political stalemate that existed in South Africa. Alternative options were never fully discarded until in the later stages of the process.

2.2.3 Responses to conflict

Levinger and Rubin identify six alternative approaches of responding to conflict. They are:

- *Domination*

One side attempts to impose its will through physical or psychological means.

- *Capitulation*

One side unilaterally cedes to the other whatever the latter demands or expects.

¹⁸ Horowitz, D.L. *A Democratic South Africa? Constitutional Engineering in a Divided Society*, Berkeley: University of California Press, 1991, pp. 1 – 2, 27.

¹⁹ See Du Toit, P. *Power Plays: Bargaining tactics for transforming South Africa*, Halfway House: Southern Book Publishers, 1991, pp. 10 – 33, for a discussion of three contending regime models for a 'better' South Africa. These models are each embedded in a different view of conflict in South Africa.

²⁰ For a more elaborate discussion of zero sum versus non-zero sum encounters, see Zartman and Berman, *The Practical Negotiator*, pp. 12 – 13.

- *Withdrawal*

One side walks away from the conflict, refusing to be a party to it any longer.

- *Inaction*

One side deliberately does nothing in the hope that the passage of time will change things more to one's liking.

- *Negotiation*

Two or more interdependent parties use the give-and-take of offers and counteroffers in an effort to build a mutually acceptable settlement.

- *Third Party Intervention*

An individual or group that stands apart from a particular dispute helps the parties to the conflict to identify issues and move towards settlement.²¹

In South Africa, negotiation was chosen from the above range as the most viable alternative for managing a peaceful transition. As mentioned above, such a situation where the South African conflict would be addressed by way of negotiation, was not a foregone conclusion during the late 1980's and early 1990's, when the ANC and the NP-government seemingly searched for a possible mutual solution. It was possible for any of the six options to emerge as the preferred choice for at least one of the parties. Indeed, it was part of the risk taken by them in the establishment of a bargaining relationship. For the purposes of this study only negotiation will be discussed in detail, as it was the strategy of choice for both the ANC and the government.

A final conceptual clarification should be made regarding possible responses to conflict. Various scholars stress the importance of distinguishing between different end-goals when responding to conflict. Here they differentiate between the *resolution*, *management* and *settlement* of conflict.

Zartman regards the resolution of conflict as "...the elimination of the causes underlying conflict, generally with the agreement of the parties." He emphasises that it is a tall order, and usually only occurs over long periods of time, not by direct action. According to him the management of conflict "...refers to the elimination,

²¹ Levinger and Rubin, "Bridges and Barriers," pp. 203 – 204.

neutralization, or control of the means of pursuing either the conflict or the crises.”²² This may involve measures such as denying both sides the means of combat, neutralizing one party’s means by slightly increasing the other’s, separating the combatants in space and time and substituting conferences to talk for fighting.²³

Levinger and Rubin distinguishes between two kinds of solutions: settlement and resolution. For them, settlement “...refers to behavioral change, as when two sides find a way to reach agreement, but their basic attitudinal opposition remains largely unchanged.” According to them this usually occurs when one party resentfully acquiesces to the other’s demands, thus feeling coerced. Resolution, for Levinger and Rubin, “...not only implies a change of behavior but also convergence in underlying attitudes.” This is usually accompanied by the internalisation of new patterns of action by the parties, reflecting the shift in attitudes.²⁴

According to Hill conflict is settled and not resolved when parties are coerced into accepting a solution. She proceeds to quote Burton on this topic, who states: “A conflict is resolved, as distinct from settled, when the outcome is self-supporting, and for this to happen the new relationship must be negotiated freely by the parties themselves.”²⁵

In view of the above perspectives I approach the South African negotiations as an attempt in conflict resolution. This assessment is based on the argument that the perceptions of conflict between the two major parties shifted from widely disparate to similarly focused, which signified a new approach of both to their bargaining relationship. They did this on own admission and was not forced into accepting an imposed view. Hence, both parties moved from positions aimed at eliminating the ‘enemy’, towards an acceptance of a political resolution based on mutually agreed-upon parameters and rules.

²² Zartman, I.W. *Ripe for Resolution: Conflict and Intervention in Africa*, New York: Oxford University Press, 1985, p. 8. For reasons of clarification, Zartman regards conflict as “...the underlying issue in dispute between parties”, and crisis as “...the active outbreak of armed hostilities.”

²³ *Ibid.*, p. 8.

²⁴ Levinger and Rubin, “Bridges and Barriers,” pp. 204 – 205.

²⁵ Hill, B.J. “An Analysis of Conflict Resolution Techniques: From Problem-Solving Workshops to Theory”, *Journal of Conflict Resolution*, vol. 26, no. 1, March 1982, pp. 114 – 115.

2.3 Negotiation

2.3.1. Introduction

The uses and interpretations of the word negotiation are diverse. Not only is it utilised when referring to everyday acts such as “negotiating roads/obstacles/life” etc., but as a concept it has come to mean more than might be expected. For example, in South Africa a common perception has emerged that a revolution was negotiated, stretching the meaning of both *revolution* and *negotiation* past their previously conceived conceptual limits. This leads to the dilemma identified by Iklé when he states that certain concepts “...appear to be well understood until we wish to define them.”²⁶ To this can be added Zartman’s words: “After all these years, we still have trouble living with concepts. Unlike tangible realities, such as a dog, concepts have no clear beginnings and ends, no unambiguous middles, and not even a usefulness that is beyond debate.”²⁷ Not only is the defining of the concept problematic, but the broader understanding of the process called negotiation is as important and as difficult to comprehend. Bercovitch succinctly addresses the problems relating to the conceptualisation of negotiation when he states:

“Of all the strategies that have been used to contain the destructive potential of conflict and encourage cooperation, negotiation is undoubtedly the most important. Yet notwithstanding its timelessness, universality, and centrality to international conflict management, the process of negotiation is little understood. Most scholarly attention devoted to the subject focuses on the give-and-take and exchange of concessions that constitutes on aspect of negotiation. But if we are to comprehend, let alone improve the process of negotiation, we must take into account other forms and aspects of the process. We must strive to understand negotiation’s complexity, and the context in which it is embedded; perhaps more important, we must ensure that its dynamic nature – the way states and other actors move from stage to stage, from conflict to compromise, is adequately grasped.”²⁸

²⁶ Iklé, quoted in Morley and Stephenson, *Social Psychology*, p. 20.

²⁷ Zartman, I.W. “Prenegotiation: Phases and Functions,” in Stein (ed.), *Getting to the Table*, p. 1.

²⁸ Bercovitch, J. “International Negotiations and Conflict Management: The Importance of Prenegotiation,” *The Jerusalem Journal of International Relations*, vol. 13, no. 1, 1991, p. 7.

As Bercovitch mentions, and as Levinger and Rubin²⁹ also argue, negotiation is but one strategy to address conflict. Despite its ubiquitous nature, it needs to be delineated accurately in a study such as this.

Before a discussion is held on negotiation it is necessary to refer to the status of the concepts *negotiation* and *bargaining*. Unfortunately no universal consensus exists whether these two concepts can be regarded as synonymous. Some scholars use them interchangeably and others differentiate between them on the basis of their scope and functions. In the theoretical delineation of both concepts, any distinction will be noted, yet in the analysis negotiation and bargaining will be used interchangeably. This is necessary to prevent confusion, as the variety of sources dealing with the South African case differ. It is not done haphazardly, as I have studied these sources and it is my opinion that all the references to bargaining and negotiation fall within the definition of negotiation accepted by this study.

2.3.2 Defining negotiation/bargaining

According to Smyth, negotiation "...is not the application of analytical logic to a problem but an exercise in talking (preferably accompanied by listening)."³⁰ This may seem like a vague definition, but it alludes to one of the most important characteristics of negotiation, namely interaction.

Zartman mentions that negotiation is regarded by some scholars as one of the basic processes of decisionmaking, along with legislation and adjudication. He stresses that it is not a static event, and involves the selection of a single value out of many for implementation and action. He identifies four components in a negotiation process:

- It involves the participation of parties as actors, and the interaction among them.
- It involves values, interests or demands that parties present to the other parties for the purpose of collective choice.

²⁹ See section 2.2.3.

³⁰ Smyth, "Intractable Conflicts," p. 319.

- An important component is the outcome of negotiations.³¹ Zartman stresses that all negotiations have an outcome, even if they are regarded as unsuccessful.³²
- Negotiation signifies mutual movement, and only if movement from initial positions occurs, has negotiation taken place.³³

Five further assumptions of negotiation are identified by Zartman in order to distinguish it more fully from legislation and adjudication:

- The negotiation process is seen as having a mixed-motive nature. This involves the presence of common and conflicting goals among parties.
- The negotiation process is assumed to have a non-zero sum character. This is due to different values assigned to different issues, or the presence of side payments, which accompanies the agreement to negotiate.
- Imperfect information exists between parties regarding the other's resources and their willingness to distribute them. According to Zartman, the verbal encounter of a negotiation process is designed to shape a new reality, not reveal a given reality.
- Variable values, which stem from controlled communication come into play.
- Controlled communication in its turn indicates the inherent element of power. Zartman defines power as "...the volitionally controlled ability of one party to produce...movement or re-evaluation on the part of the other party, often more generally as the ability of one party to cause another to change behavior in an intended direction."³⁴

Bercovitch regards bargaining and negotiation as interchangeable concepts and he identifies six characteristics of bargaining and negotiation that support Zartman's assessment. They are:

³¹ Outcomes can be defined as "...the results of negotiations or the ways in which settlements occur." See Putnam, L.L. "Challenging the Assumptions of Traditional Approaches to Negotiation," *Negotiation Journal*, vol. 10, no. 4, October 1994, p. 338.

³² For a discussion of the role that perceived outcomes can have on parties' approach to negotiations, see Atkinson, G.G.M. *The Effective Negotiator: A practical guide to the strategies and tactics of conflict and bargaining* (2nd ed.), London: Quest Research Publications. 1977, pp. IV – VI.

³³ Zartman, I.W. (ed.), "Introduction" *The 50% Solution: How to Bargain Successfully with Hijackers, Strikers, Bosses, Oil Magnates, Arabs, Russians, and Other Worthy Opponents in This Modern World*, New Haven: Yale University Press, 1983, pp. 7 – 8.

³⁴ *Ibid.*, pp. 9 – 18.

- Bargaining and negotiation is a conflict management mechanism rooted in all social systems and involving at least two analytically distinct actors in conflict over resources or positions.
- These actors join voluntarily in a process designed to manage their conflict, implying that the actors can choose whether to enter the process, as well as accept or reject its outcome.
- Actors are part of a social relationship in which they have both common and conflicting interests.
- Bargaining and negotiation as a conflict management mechanism is rooted in the perception of the actors, who knowingly try to alter the perceptions of each other.
- Bargaining and negotiation operates within two parameters: expanding cooperation in the interests of the system or environment; and maximising each actor's objectives and interests.
- The relationship is conducted in a sequential manner, consisting of repeated exchanges of information, evaluation and decisions in order to reach an acceptable outcome.³⁵

Rubin and Brown refer to the divergent meanings of bargaining and negotiation in everyday use. They note that references to bargaining usually involve an interaction of individuals over some sale or purchase, whereas negotiation is used in connection with interaction involving complex social units. Despite some differences, they regard the two concepts as mostly similar and explicitly state that they use them interchangeably. Consequently they define bargaining as "...the process whereby two or more parties attempt to settle what each shall give and take, or perform and receive, in a transaction between them."³⁶ Rubin and Brown admit that this is a restrictive definition, and continue to identify five structural and psychological characteristics of bargaining relationships. These are:

- At least two parties are involved
- The parties have a conflict of interest with respect to one or more different issues.

³⁵ Bercovitch, "Problems and Approaches," p. 127.

³⁶ Rubin, J.Z. and Brown, B.R. *The Social Psychology of Bargaining and Negotiation*, New York: Academic Press, 1975, p. 2.

- Regardless of the existence of prior experience or acquaintance with one another, the parties are at least temporarily joined together in a special kind of voluntary relationship.
- Activity in the relationship concerns (a) the division or exchange of one or more specific resources and/or (b) the resolution of one or more intangible issues among the parties or among those whom they represent.
- The activity usually involves the presentation of demands or proposals by one party, evaluation of these by the other, followed by concessions and counterproposals. The activity is thus sequential rather than simultaneous.³⁷

According to Bercovitch “[m]ost scholars view negotiation as a process designed to help the parties agree on the distribution of values and resources between antagonists.” He refers to a number of definitions.³⁸ Fisher and Ury define negotiation as “...back and forth communications designed to reach an agreement when you and the other side have some interests that are shared and others that are opposed.” Cohen sees negotiation as “...a structured dialogue of claim and counter-claim in which an attempt is made by the accredited representatives of states to reconcile opposing views and reach agreement on subjects of mutual concern.” Ikle regards negotiation as “... a process in which explicit proposals are put forward for the purpose of reaching an agreement on an exchange or the realization of a common interest.”³⁹

According to Bercovitch, the above definitions do not address all the aspects of negotiation. He argues that negotiation is not merely a quantitative move along some metric dimension, but occur in the context of a relationship extending over time. It is also subject to many constraints and influences that stem from that relationship, and have among others psychological, economic and legal aspects. Bercovitch argues that Gulliver’s definition accurately describes negotiation as a process of interaction and strategic decisionmaking, when Gulliver defines negotiation as “...the whole range of interactions between the two parties in dispute. It embraces everything that occurs, from the initiation and recognition of the dispute, to the final outcome.”⁴⁰

³⁷ *Ibid.*, pp. 6 – 15.

³⁸ The definition of Rubin and Brown as noted above is also mentioned by Bercovitch. As this has already been outlined, it will not be discussed again.

³⁹ Bercovitch, “International Negotiations,” pp. 9 –10.

⁴⁰ *Ibid.*

According to Bercovitch, the activities identified in association with negotiation should also be kept in mind, namely information exchange and the revision of expectations; the use of social influence strategy and tactics; and a joint decision. A very important observation is made by Bercovitch, which relates to the focus of this study. He states that "...the overall process of negotiations begins *before* the actual trading of offers and concessions, and ends well after an agreement on these has, or has not been, achieved."⁴¹[my emphasis]

Bercovitch argues that it is necessary to differentiate between different types of negotiation. He identifies the following elements as factors which influence the type of bargaining:

- Level of analysis

He identifies two broad levels of analysis. In the first, the behaviour of individuals who are in a conflict relationship are involved, and in the second the behaviour of representatives of groups, nations and other collectivities are involved. This can be subdivided into international and intergroup negotiation. Bercovitch stresses that it should not be assumed that the process is similar on all levels.⁴²

- The character of interactions

Two types of interactions are distinguished. Distributive interactions, according to Bercovitch, are characterised by competitive behaviour, commitments, misperceptions, and other processes that may intensify conflict. Integrative actions exhibit a call for openness and a willingness to examine new possibilities and behaviour that is exploratory and aimed at solving problems.⁴³

- The context of bargaining and negotiation

The social context in which bargaining and negotiation takes place may affect the nature of the process.⁴⁴

⁴¹ *Ibid.*, pp. 10 –11.

⁴² Bercovitch, "Problems and Approaches," pp. 128 – 129.

⁴³ *Ibid.*, p. 129.

⁴⁴ *Ibid.*

According to Bercovitch certain variables may also affect the course and character of a bargaining process. They are divided into the following three categories:

- **Personal factors**

These include individual characteristics, needs and attitudes expectations that actors bring with them to the bargaining process.⁴⁵

- **Role factors**

These influences are attached to expectations of the actors' reference groups. They can strengthen the bond between actors, as they are aware of similar expectations on the other side(s).⁴⁶

- **Situational factors**

Such factors refer to social and psychological conditions under which negotiation transpires. They are grouped in the following way:

- Physical components: e.g. location of bargaining, neutrality of the site, arrangements for conflict management.
- Social components: e.g. the number of parties involved, presence of third parties.
- Issue components: e.g. tangible or intangible conflict issues and their dimensions.
- Components relating to interpersonal orientation: e.g. the presence of communication channels, openness or secrecy of the process.

- **Interactional factors**

These factors focus on the prior relationship between parties and the nature of the interdependence. They include:

- The parties' attitudes towards each other.
- The distribution of power between parties.
- The way communication is conducted.
- To what extent parties utilise social influence strategies.⁴⁷

⁴⁵ *Ibid.*, p. 130.

⁴⁶ *Ibid.*, pp. 130 – 131.

⁴⁷ *Ibid.*, pp. 131 – 132.

It can be seen that many of the definitions on bargaining and negotiation significantly overlap. This shows that negotiation exhibits certain salient characteristics irrespective of the discipline it is embedded in. It is, however, necessary to delineate the specific parameters of negotiation as it is understood in this study. The definition of negotiation on which I base my argument, is that of Zartman and Berman. They define negotiation as:

“...a process in which divergent values are combined into an agreed decision, and it is based on the idea that there are appropriate stages, sequences, behaviors and tactics that can be identified and used to improve the conduct of negotiations and better the chances of success.”⁴⁸

The crucial assumptions for this study that are evident from the above definition are the voluntary, interactive nature of negotiation; and its sequential structure which can (and should) be manipulated in order to improve the chances of a mutually beneficial agreement. By accepting that these assumptions are of primary importance in the analysis of South African prenegotiation, it does not mean that other assumptions are disregarded. They assist in enhancing the concept of negotiation, but to a lesser extent. It is necessary to provide a relevant, compact definition of negotiation when proceeding with this study, and it is my opinion that the definition of Zartman and Berman is the most appropriate to fulfill that goal.

2.3.2.1. The norm of good faith

Implicit in Rubin and Brown’s assessment of a bargaining relationship as a “special kind of voluntary relationship” is the recognition of *good faith* as a crucial factor in successful negotiations.⁴⁹ In the South African negotiations, the establishment of good faith proved to be decisive in many instances to move the process forward. As a concept it can be broken down into a number of constituent parts, which need to be addressed in order to create a successful bargaining relationship. These are:

⁴⁸ Zartman and Berman, *The Practical Negotiator*, pp. 1 – 2. It should be noted that this definition is aimed at international negotiation. As it shall be seen, however, it is aptly suited for the dimensions of the South African case which exhibited various characteristics of international negotiation, but also continues to be an exceptional case in many instances.

⁴⁹ See Section 2.3.2.

- **a rejection of unilateral strategies**

According to Du Toit, good faith is evident when all parties discard the notion of using negotiation procedures, venues and processes to pursue victory on their own terms, in other words ‘talking the opponent into submission.’⁵⁰

- **an undertaking to keep promises**

According to Bacharach and Lawler, good faith entails that once a bargainer makes an offer, it cannot be retracted and once agreement is reached, it must be enforced.⁵¹

Both of the above elements of good faith can only be forthcoming if parties possess over the following:

- **a belief in reciprocity**

A party can only establish whether its opponents will act in accordance with the commitments mentioned above through previous experience. Prenegotiation serves as the ideal forum for parties to gauge the willingness of their opponents to reciprocate.

- **mutual trust**

To believe opponents when they undertake to keep to their promises and refrain from unilateral acts, an amount of trust is necessary. Atkinson identifies three areas of trust:

- trust in intent – parties are convinced their opponents want an agreement
- trust in process – parties undertake to keep with the conventions of negotiation
- trust in implementation – parties agree to implement any agreement⁵²

2.3.3 The contract zone

As seen above, negotiation can be regarded as an opportunity to transform an essentially zero-sum conflict into a non zero-sum configuration. This ensures that all the parties involved will have gained something at the end of negotiations. It does not exclude compromise, however. To accede to demands and arguments from the other side(s),

⁵⁰ Du Toit, P. “Bargaining Power: Dependence Capabilities and Tactical Options in South African Politics,” *Politikon*, vol. 18, no. 2, June 1991, p. 87.

⁵¹ Bacharach, S.B. and Lawler, E.J. *Bargaining: Power, Tactics and Outcomes*, San Fransisco: Jossey-Bass, 1981.

⁵² Atkinson, G. *Negotiating the Best Deal: Techniques that really work*, Cambridge: Director Books, 1990, p. 19.

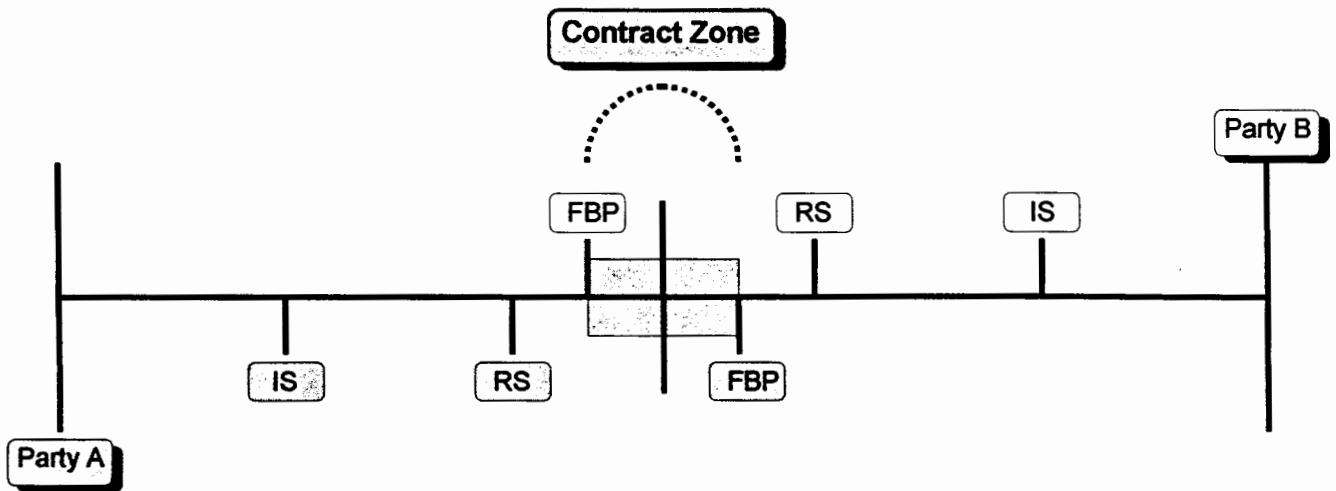
without capitulating entirely to them, demands from negotiators a firm grasp of their party's policies and goals for negotiation. Therefore every party approaches talks with a clear idea of what they really want, what they are ultimately prepared to concede and what would not be worth negotiating for.⁵³ I argue in this study that successful negotiation depends on the ability of the parties to find some form of common ground or mutually appealing propositions. This area of convergence is called the *contract zone*.

The contract zone is, however, only the small area of convergence found in usually widely disparate viewpoints. As was noted, parties approach negotiations with an elaborate model of their needs and wants and how far they are prepared to bend over backwards. This positioning of parties can be depicted on a continuum ranging between each party's idea of the perfect settlement. The continuum-model used in this study will be based on the representation given by Atkinson. For each party, Atkinson states, there is firstly an *ideal settlement* (IS), which he defines as the "most favourable settlement which could with realism be achieved in negotiation...and is established on the basis of bargaining power rather than idle hope". This is usually the point of reference from which parties enter negotiations, and make their opening demand. Secondly, he identifies the *realistic settlement* (RS): "...that point of settlement fully justified by bargaining power which could be reached with reasonable skill in negotiation and no unforeseen adverse circumstances". Thirdly there is the *fall back position* (FBP), defined as "...the point beyond [sic] which confrontation will be preferred".⁵⁴ The contract zone, which he terms the "parameters of bargaining" represents the area of overlap between the two sides.⁵⁵ Figure 2.2. represents the negotiation continuum.

⁵³ Of course the perception each party has of the power relationship among contenders influences all these decisions as well, but for this section focus will be placed on the positions themselves.

⁵⁴ Zartman and Berman argue that this is a puzzling concept, as the very nature of negotiation through persuasion is to make the other party re-evaluate its position. See Zartman and Berman, *The Practical Negotiator*, p. 122.

⁵⁵ Atkinson, *The Effective Negotiator*, pp. 42 – 43.

Figure 2.2.⁵⁶

2.3.4. Different approaches to the study of negotiation

As negotiation is a multi-faceted process, it comes as no surprise that different approaches exist in the study of any given bargaining relationship. Although certain approaches are better applied to specific types of conflict and negotiation, such as game theory to evenly matched bilateral negotiations e.g. the Cold War, most tend to be fluid enough so as not to preclude interaction with other approaches. Zartman states that although different approaches aim to explain negotiation outcomes in terms of different variables, the line of distinction is often blurred between some of them.⁵⁷ According to Bercovitch all the approaches concern themselves with the question of bargaining effectiveness, and the elements which are regarded as most important in bargaining behaviour. The latter includes two-party interaction, conflict, responsive behaviour, cooperation and joint determination. Bercovitch, however, is of the opinion that the approaches do vary considerably in terms of their reliance on independent variables, internal consistency and logical completeness. He describes the scope of these approaches as ranging from descriptive to analytic to predictive.⁵⁸

By synthesising the work of Zartman and Bercovitch, at least seven distinct approaches to negotiation can be identified. They are:

⁵⁶ *Ibid.*

⁵⁷ Zartman, *The 50% Solution*, p. 20.

⁵⁸ Bercovitch, "Problems and Approaches," p. 132.

▪ **The Historical approach**

According to Zartman this approach explains a given outcome through a particular set of ingredients or through one unique element.⁵⁹ Bercovitch states that this approach suggests that conflict outcomes are determined by specific historic inputs. He argues that although it provides a detailed description of personalities, settings and events present in a specific bargaining episode, it cannot be easily replicated. To extrapolate or generalise from a historical study is very difficult.

▪ **The Structural/Resources Approach**

According to Zartman the structural approach explains outcomes in patterns of relationships between parties or their goals, and reflect parties' relative strength.⁶⁰ Bercovitch describes the explanations of bargaining offered by this approach as focused on the distribution of power, skills, knowledge, and other resources, and refers to it as the resource approach.⁶¹ He argues that its main shortcoming is an inability to cope with the intrinsic difficulties of explaining outcomes.⁶² Both authors argue that the structural/resource approach remains attractive because of its capacity to make theoretical predictions regarding outcomes in a bargaining situation.⁶³

▪ **The Strategic/Game-theoretic approach**

Zartman's description of the strategic approach focuses on the element of choice, as determined by the way values are structured and parties select alternatives. Skill and power do not play a role, as all choices are based on the assumption of rationality. He argues that they are of a normative nature, hence they propose methods of maximising gain in a situation where all sides have access to information.⁶⁴

⁵⁹ Zartman, *The 50% Solution*, p. 20.

⁶⁰ *Ibid.*, p. 23.

⁶¹ It should be noted here that power is the most important resource, as the status and availability of knowledge and skills are indicators of a parties relative position of power. What is also significant is the distinction between actual power and perceived power. For an analysis of the South African bargaining situation before 1991 based on this approach, see Du Toit (1991).

⁶² Bercovitch, "Problems and Approaches," p. 133 – 134.

⁶³ *Ibid.*, p. 134.; Zartman, *The 50% Solution*, p. 25.

⁶⁴ *Ibid.*, p. 26.

Bercovitch differentiates between approaches which strive to relate outcomes to a number of independent variables, and game-theoretic approaches which aim at plotting a bargaining relationship as an abstract, mathematical model in which outcomes and moves can be predicted and ordered preferentially. The latter attempt to prescribe what the best strategy for each party is, and to what outcome that would lead. They focus on possible solutions to mixed-motive relationships. He differentiates between a number of game categories, which are based on seven basic assumptions which permit parties to search for a solution to problems of conflict.⁶⁵

▪ **The Personality types/Psychological approach**

According to Zartman this approach runs the risk of reducing parties in negotiation to caricatures, as it regards the personality types of negotiators to be the main variable influencing outcomes. Propositions are made in this approach as to which personality types will be able to negotiate successfully with each other (usually persons with similar backgrounds). Zartman argues that personality types can have an influence, but that there are very few pure personality types, which negates such a reductionist view.⁶⁶

Bercovitch states that the psychological approach embraces the micro level of analysis, by assuming that conflict outcomes are determined by a restricted set of personal variables. For him, the merit of the approach lies in the importance of identifying different personal characteristics and how they affect conflict reducing strategies. However, because it cannot embrace the macro level of analysis as well, it has a limited use when determining what factors influence bargaining outcomes.⁶⁷

▪ **The Behavioural skills/Social-psychological approach**

Despite different levels of enthusiasm by the authors, the approach based on behavioural skills as identified by Zartman, and the social-psychological approach of Bercovitch describe the same approximations. Zartman identifies its historic roots by referring to codes of conduct for negotiators and appropriate qualities that they should develop as proposed by historic documents. He states that the entrance of social

⁶⁵ Bercovitch, "Problems and Approaches," pp. 137 – 138. See this source for a discussion of the assumptions and game categories. As this study does not rely on a game-theoretical analysis it will not be discussed in further detail.

⁶⁶ Zartman, *The 50% Solution*, pp. 27 – 29.

⁶⁷ Bercovitch, "Problems and Approaches," pp. 134 – 135.

psychologists into the study of negotiation signified the first attempts to analyse the impact of behavioural traits, such as toughness, trust and threats, on bargaining situations. The main aim is to gauge the effectiveness of such traits in the search for an agreement, as well as their conduciveness in a situation where all parties utilise them to some extent. Zartman's main criticism against this approach is the lack of insight it offers into the process of negotiation.⁶⁸

Bercovitch regards the social-psychological approach as the only one which treats bargaining outcomes as products of personal, role, situational and interactional factors.⁶⁹ He argues that as an approach it takes a systematic look at all aspects of bargaining, and tries to bridge the gap between theory and reality. By viewing conflict management as operational in three time dimensions, namely antecedent, concurrent and consequent, it studies the interaction of input variables as mediated through the bargaining structure on the basis that they determine outcomes.⁷⁰

▪ **The Process variables/Cognitive and learning approaches**

The process variables approach, for Zartman, differs from approaches who deal with outcomes derived from various types of initial factors. Here, negotiation is seen as a challenge-and-response encounter where the moves that parties make are the inputs, and negotiation is a learning process. Offers and counteroffers are regarded as exercises in power, and each offer determines the following counteroffer. The result is variable values assigned to resources rather than prefixed perceptions on the worth of a concession or demand.⁷¹

Bercovitch makes a further distinction and identifies both cognitive and learning approaches, which are related. The former assume that parties' perception of future expectations influences outcomes, and the latter sees outcomes as a function of their experience of past interactions. According to Bercovitch cognitive approaches are useful when explaining why parties did or did not use certain strategies. Learning approaches assume that the rate at which parties learn (to cooperate with or trust each

⁶⁸ Zartman, *The 50% Solution*, pp. 29 – 30.

⁶⁹ See section 2.3.2.

⁷⁰ Bercovitch, "Problems and Approaches," pp. 139 – 142.

⁷¹ Zartman, *The 50% Solution*, pp. 30 – 32.

other) determines the likelihood of successful outcomes. The corollary would be that more interaction equals an increase in trust and cooperation.⁷²

Despite its usefulness, Bercovitch identifies some limitations of these approaches. He stresses that they only emphasise the interactional factor, assuming that a situation of symmetry exists between parties and that bargaining takes place in a cultural vacuum. Therefore, they are not suited for the study of natural negotiations, but can only be used under laboratory conditions.⁷³

▪ **The Procedural approach**

Zartman identifies an approach which has risen to prominence in the postwar period. He states that where observation and cogitation were historically the only means by which negotiation was analysed, experimentation and simulation has since become widely accepted. Experimentation creates its own reality, while simulation attempts to approximate reality. The aim is to separate variables and focus on their particular influence in situations of negotiation. Behavioural, structural and procedural variables can be tested in such a way.⁷⁴

▪ **The Contextual/Phaseological approach**

According to Zartman, the contextual approach is similar to the historical approach, as it focuses on the chronology of a negotiation event. From this point of view, outcomes are determined by a distinct phaseological interpretation of history. This interpretation can be based on the history of negotiation itself, or the larger history of conflict into which the negotiation fits.⁷⁵

Bercovitch identifies similar characteristics of this approach and terms it the phaseological approach. According to him, its aim is to identify a negotiation cycle in the interaction between parties. The phaseological approach holds a normative view of negotiation, proposing that the viability of a successful outcome in a negotiation process depends on whether the parties progress through phases and display appropriate

⁷² Bercovitch, "Problems and Approaches," pp. 136 – 137.

⁷³ *Ibid.*

⁷⁴ Zartman, *The 50% Solution*, p. 32.

⁷⁵ *Ibid.*, pp. 22 – 23.

behaviour in each phase.⁷⁶ Both authors argue that an underlying assumption is present that any attempt to restructure, skip or reverse the order of phases can lead to a situation where success is difficult to attain.⁷⁷

Zartman stresses that this approach does not say which one of a few possible outcomes will be chosen, but rather explains how the choosing takes place.⁷⁸ According to Bercovitch, the main problem of the phaseological approach is that it does not offer much insight into role, situational and personal factors affecting bargaining, as it emphasises interaction phases. He is of opinion that it neglects the context in which the process occurs.⁷⁹ This differs from Zartman's analysis, who regards the approach as indeed contextual. My point of view is that this constitutes in part a conceptual difference, and that the assumptions of both authors are valid. However, to prevent confusion, this approach will further be referred to only as the phaseological approach. Another problem of the approach that both authors mention is the tautological nature of its generalisations, e.g. 'successful outcomes of negotiations are the result of successful problem solving activities.'⁸⁰ A method to counter this is by pinpointing what functions certain events fulfill, and what their impact on a successful negotiated settlement is.

The phaseological approach is used in this study to analyse the South African transitional negotiations. As shown above, it exhibits certain shortcomings. I am of opinion that this is an intrinsic problem of all the approaches discussed. Each approach focuses on the impact of specific variables and influences on negotiation, and not one pretends to be all-encompassing in its analysis. Each rather relates to the variables and conditions it sees as most important. To counter the known shortcomings of the phaseological approach, concepts and tools of other approaches will be utilised in this study to enlarge the canvass of the South African bargaining situation, while still primarily focusing on the structure and functions of phases in general, and prenegotiation in particular. However, numerous approaches also exist within the phaseological approach, making it necessary to compare the different models before a choice is made.

⁷⁶ Bercovitch, "Problems and Approaches," pp. 135 – 137.

⁷⁷ *Ibid.*, p. 136.; Zartman, *The 50% Solution*, p. 23.

⁷⁸ *Ibid.*, pp. 22 – 23.

⁷⁹ Bercovitch, "Problems and Approaches," p. 136.

⁸⁰ *Ibid.*; Zartman, *The 50% Solution*, p. 23.

2.4 Prenegotiation and the phaseological approach to negotiation.

The delineation of phases in the phaseological analysis of negotiation has proven to be a troublesome exercise.⁸¹ Stein writes that most negotiation analyses begin at the table and states: “We do not know enough about when, why, and how parties *get to* the negotiating table.”⁸²[my emphasis] From this, a preliminary assumption can be made that the phase approach, while also involved in the analysis of proceedings at the table, places a crucial emphasis on the movement towards the table. This movement can be broadly referred to as prenegotiation, which in itself has been viewed and circumscribed in various ways. Zartman views a phase as a particularly troublesome form of concept, because of the time dimension it exhibits in relation to its other qualities. Is it single- or bi-directional? Is its linkage with other phases fixed under all circumstances? He identifies prenegotiation as one such phase concept which defy an explicit conceptual delineation. According to Zartman:

“[t]here is no doubt that there is something before negotiation, but it is less clear whether it is a prelude to or a part of negotiation, whether there is a difference in nature between these two, how sharp the boundaries are and how reversible the flows, or what the relation is to other contextual events such as crises and régimes.”⁸³

To understand the dimensions of phases and specifically prenegotiation it is necessary to study the views of the main proponents of a phase approach. This will be done chronologically.

2.4.1 Ann Douglas

The first detailed theoretical framework of phased negotiations was developed by Ann Douglas. Her approach stems from perceptions gathered while involved in various bargaining situations as observer, rather than an analyst afterwards. She argues that when analysing the long-term trends in negotiation it is useful to refer to a steady

⁸¹ For the sake of brevity ‘phaseological’ will in future be substituted with ‘phase’ when referring to the approach.

⁸² Stein (ed.), *Getting to the Table*, p. IX.

⁸³ Zartman, “Prenegotiation,” p. 1.

process build-up to a settlement, but when observing bargaining in motion a striking feature of negotiations are the step-like movements it undertakes to combine a central tendency. She warns against viewing phases as units measured in clock hours, and expresses the view that it is difficult to specify when one phase reaches a conclusion and the next starts. For Douglas phases are not parameters enforced from above by analysts, but are identified by parties in a negotiation process when searching for an analytical breakdown of sequential events. Hence, phases are identified along functional rather than chronological lines.⁸⁴

She states the following very important observations regarding phases:

“[t]he notion of ‘phases’ in negotiation derives from the general deduction that the individuals at the conference table will receive increasing degrees of surcease from institutional control over their operations...The fact that these negotiator-party relationships are not haphazard and unpredictable in their order of emergence in successful negotiating makes plausible the notion of a sequence of phases – in other words, the notion of a negotiating process. Unlike a developmental sequence which culminates in a foregone conclusion...negotiation involves a process which cannot be telescoped without sacrificing harmony that is evident when the phases keep to their appointed times.”⁸⁵

▪ **Phase One: Establishing the Negotiation Range**

The first phase that Douglas identifies is aimed at creating a contract zone, or negotiation range. She states that it usually runs for a long time against the background of perceived irreconcilable differences between parties. It also comprises emotional and dogmatic statements in which unusually high demands are put with constant allusions to parties’ supposed bargaining power. Because of parties’ propensity to relish in emotional defenses and the launching of stinging attacks, Douglas states that it is the phase which is the most universally standardised in its trappings, not only for negotiators, but for analysts.⁸⁶

⁸⁴ Douglas, *Industrial Peacemaking*, pp. 13 – 14.

⁸⁵ *Ibid.*, p. 14.

⁸⁶ *Ibid.*, pp. 13 – 18.

She argues that it is important for the latter not to approach first phase meetings with the idea that it is merely another example of a small and autonomous problem-solving group. The actor units in this phase are parties and not individual negotiators, therefore the latter on both sides usually pushes the party line at all costs.⁸⁷ This serves the function of setting the negotiation range within which parties can negotiate.⁸⁸ According to Douglas parties do not start from a central point when bargaining, but first define the outer limits from where they can slowly move inwards. She argues that it is necessary in phase one to start off by striving towards a preliminary emphasis of the factors of disagreement.⁸⁹

▪ **Phase Two: Reconnoitering the Range**

If the outside parameters of the negotiation range have been set in phase one, the process moves to the second phase. Douglas argues that this involves bargaining over the area in which a possible agreement can be sought, in other words bargaining over the range of the contract zone. She states that this phase tends to be even longer than the first due to the intensification of inter-person interactions. Parties usually continue to show overt hostility, but the competition centres around the pursuit of the best location in the contract zone, thus attempting to maximise gains with the tacit approval of the other party, recognising that they pursue a similar aim. According to Douglas the parties "...press the opposite side to confess its basic weakness and capitulate; they themselves yield ground only after many protestations of reluctance or self-proclaimed magnanimity." By utilising their previous roles of behaviour, they ensure that the organisational bodies they represent continue to play a role.⁹⁰

According to Douglas the second phase is brought on by the realisation of each party that they have to tone down their threats and boasts in order to gain two ends. These are:

- the need to form an estimate of the real bargaining strength of the other, and

⁸⁷ Douglas also notes that concurrent with inter-party jostling, it has been observed that individual negotiators form close ties with opponents. She emphasises the need to discern between the individual and party levels of interaction in this phase. See *Ibid.*, p. 18.

⁸⁸ See Section 2.3.3.

⁸⁹ *Ibid.*, pp. 13 – 21.

⁹⁰ *Ibid.*, p. 33.

- an approximation of how long and far it can continue pressing its own demands without being drawn into a showdown with the opponent.

Thus, each party recognises the need for mutual movement in order to increase the chances of a settlement. If no room for movement is available and the terms of settlement has been laid down at the start of phase two, a *negotiated* outcome is not possible.⁹¹

Another effect associated with phase two is the increase in autonomy that individual negotiators receive. Because their role is split between individual and institutional functions it means that there is less direction from above and they can make or reject proposals based on their own evaluation. This also offers institutional groups a form of protection against potentially damaging decisions by their negotiators, as they personally can claim ignorance or bad judgement on the side of the individual, thereby shirking commitment. Douglas warns that this can lead to marauding behaviour among negotiators if they and their opponents know that any deal must first be ratified by their institutions. Yet, if a negotiator has moved to a certain point at one stage, only to backtrack at the demand of his superiors, the opponents perceived view of his fallback position is altered, which can cause a determined effort to define the previously held position as the only one they will accept (and indeed, hoping for more in the process). For Douglas it is pivotal that parties attempt to reach all possible configurations of settlement. Even in failing to ensure a preferred outcome, parties can at least claim to have exhausted all possible options during phase two, legitimising the final settlement as the best which could be achieved.⁹²

▪ Phase Three: Precipitating the Decision-reaching Crisis

According to Douglas, as soon as parties have reached an informal agreement, or have exhausted all possibilities and announces an impasse, they enter phase three. It is now up to the institutions involved to accept or reject the settlement that the negotiators produced. A settlement does not have to include a final word on all issues. If certain

⁹¹ *Ibid.*, p. 34.

⁹² *Ibid.*, pp. 34 – 50.

small issues remain after the deal is accepted, parties can alter their positions equally to include outstanding differences.⁹³

Douglas argues that the main aim of phase three, however, is for each party to ascertain whether the opponent will hold out due to final uncertainties or formally submit an irreducible offer. All issues raised and agreed upon in phase two must now be reaffirmed and synthesized, expecting from the parties to be especially vigilant in order to ensure a correct formulation of the agreement. Special attention has to be given to the status of agreements previously regarded as 'official' or 'unofficial', depending on the situation in which they were reached. From the point of view of Douglas's approach, once the officials have given their approval to an agreement and the negotiators have thrashed out its formulation, the negotiation process ends.⁹⁴

2.4.2. Daniel Druckman

In order to gauge the effect of group identification and prenegotiation exercises on the outcomes of bargaining, Druckman conducted a series of simulations reflecting a bargaining forum.⁹⁵ In this sense his aim differed from Douglas in that he did not attempt to identify phases in a bargaining situation, but rather the effects of a preparatory phase to negotiation.

Druckman found that parties who prepared their strategy unilaterally beforehand were rigid in their bargaining positions and tended to yield less. Where parties studied the issues bilaterally beforehand, therefore focusing on both positions, settlement was reached faster and the amount of yielding was greater from both sides. This can be seen as an exercise similar to what I refer to as establishing the negotiation range/contract zone. As Druckman formulates it, the latter results were a function of prenegotiation experience, keeping in mind the effects of group commitment where it was tested. He

⁹³ *Ibid.*, pp. 72 – 99.

⁹⁴ *Ibid.*

⁹⁵ The research designs and data-analysis techniques will not be discussed here, as this study focuses on the findings with regards to prenegotiation. For an in-depth discussion of these simulations see Druckman, D. "Dogmatism, Prenegotiation Experience, and Simulated Group Representation as Determinants of Dyadic Behavior in a Bargaining Situation," *Journal of Personality and Social Psychology*, vol. 6, no. 3, 1967, pp. 279 – 290.; and Druckman, D. "Prenegotiation Experience and Dyadic Conflict Resolution in a Bargaining Situation," *Journal of Experimental Social Psychology*, no. 4, 1968, pp. 367 – 383.

notes however, that whether bargainers represented themselves or groups did not have an effect on compromise behaviour.⁹⁶ According to him an implication of the results is that informal discussion between parties, where they concentrate on issues before debate takes place, is a technique for inducing cooperation. Druckman formulates this finding as such: “A prebargaining atmosphere which leads to a consideration of the debate as a collaborative, problem solving venture in which neither side is committed to unilateral positions appears to facilitate conflict resolution.”⁹⁷

2.4.3. Ian Morley and Geoffrey Stephenson

Morley and Stephenson make use of data gathered during experiments and observations of real-life bargaining to propose certain characteristics of negotiators' bargaining behaviour. They focus on Douglas's assumptions regarding the structure of phases in bargaining and the movement of negotiators between their roles as individuals and representatives of an organisational view; and test its applicability to their data. Morley and Stephenson stress that the interpersonal relationship between participants played a critical role throughout the bargaining processes and simulations they observed.⁹⁸

According to Morley and Stephenson the balance of power between parties are established in the first phase of negotiation, and this has a bearing on the direction of the final outcome. They argue that demands and the ability to enforce them form the essence of first phase discussions. From their experimental work, they propose that the accessibility of the other in the first phase is a crucial variable in the outcome of negotiations. This entails the amount to which each negotiator acquires a knowledge of, and liking for the opponent. They propose that a better knowledge and a high liking might have a positive influence on the outcome.⁹⁹

From their observational work, Morley and Stephenson propose that the identifiability of the other is a salient marker of progress in negotiation. A decrease in identifiability is equated with an increase in interchangeability between negotiators. In other words, negotiators in a sense become disentangled from the trappings of inter-party rivalry and

⁹⁶ Druckman, “Dogmatism,” p. 288.

⁹⁷ Druckman, “Prenegotiation Experience,” pp. 379 – 382.

⁹⁸ Morley and Stephenson, *Social Psychology*, pp. 284 – 285.

⁹⁹ *Ibid.*, pp. 285 – 287.

proceed to find a joint solution to the conflict. An important aspect to keep in mind, according to Morley and Stephenson, is the utilitarian value of party conflict. They support the assessment by Douglas that the posturing inherent in the first phase is necessary to bring individual negotiators closer together, as they take on more personal roles. Despite the effectiveness of increased identifiability in determining the relative power of an opponent, it involves some dangers as well. As negotiators sometimes need to retreat out of view of critical audiences in order to settle a sensitive deal, the possibility exists that they can become too predilected with nurturing a personal bargaining relationship, at the cost of party support.¹⁰⁰

A third proposal that Morley and Stephenson offer from experimental analysis, assumes that the more formal first phase negotiation is, the less the chances are for increased accessibility. This need not be regarded as negative, as formality directs attention to the issues involved, decreases sensitivity to the others' feelings, and inhibits the development of personal reciprocity; thus leading to the expectation that formality and identifiability are positively correlated. They argue that under the assumption that negotiators are more identifiable with their parties in formal settings, a "...principal function of the first phase of negotiation (in which identifiability is high) is to establish the strength of case of the parties concerned."¹⁰¹

Based on the phases of Douglas, Morley and Stephenson identify three phases of negotiation and their characteristics.¹⁰² They are:

▪ **Phase One: Distributive Bargaining**

- Parties assess the feasibility of demands.
- Implicit decisions are made as to who will have to concede most in the movement towards a settlement.
- Strength of case and the power relationship between parties are important.¹⁰³

¹⁰⁰ *Ibid.*, pp. 287 – 289.

¹⁰¹ *Ibid.*, pp. 289 – 290.

¹⁰² For a schematic summary of the characteristics of negotiation groups and individuals throughout the stages of negotiation identified by Morley and Stephenson, see *Ibid.*, Figure 13.2., p. 291.

¹⁰³ *Ibid.*, p. 292.

- **Phase Two: Problem Solving**

- It is constituted by a movement towards agreement.
- Proposals are made and exchanged in the light of the opening exchanges.
- For proposals to match the criteria established in phase one, the interpersonal bargaining relationship comes to the fore.¹⁰⁴

- **Phase Three: Decision Making and Action**

- The implications of possible settlement points are thoroughly explored.
- Consistency with the previous pattern of relationships is crucial.¹⁰⁵

2.4.4. William Zartman and Maureen Berman

By using a model based on stages of negotiation, Zartman and Berman attempt to clarify the nature of the process of negotiation. Each stage in their model is associated with different problems and behaviours. They underline the fact that such a model is primarily an analytical tool, hence the delineation and recognition of conceptual stages are much easier than it is in reality. They regard the haziness of changeovers between phases in real-life negotiations as a boundary problem which is ubiquitous to concepts and should not invalidate a study of negotiation. According to Zartman and Berman the model is also not a rigid construct, but reflect a general sequence recognisable in most negotiation processes, and one that if followed, will produce the best results.¹⁰⁶ They identify three phases: the diagnostic phase, the formula phase, and the detail phase.

- **The Diagnostic Phase**

Zartman and Berman state that as soon as each party in a conflict makes the decision to explore the possibility of negotiating, the negotiation process begins, even if it happens long before any formal contact sessions take place. Concomitantly, this implies a crucial change in perception from all parties regarding the situation. Yet, a willingness to negotiate may not be sufficient for actual talks to start if parties view the issues as non-negotiable. Neither can negotiations start if one party refuses to talk. For this reason, Zartman and Berman regard the negotiability of any issue or sets of issues as a

¹⁰⁴ *Ibid.*, p. 292.

¹⁰⁵ *Ibid.*, p. 292.

¹⁰⁶ Zartman and Berman, *The Practical Negotiator*, pp. 1 – 11.

subjective matter reliant on the perception and will of the parties involved. Without a mutual view that a solution might be possible, negotiation cannot begin.¹⁰⁷

For negotiation to take place, Zartman and Berman identify a number of appropriate situations and conditions.¹⁰⁸ They are:

- Negotiation is appropriate when there is neither authority nor majority but when unanimity is the decision rule.
- Negotiation is appropriate when new solutions have to be invented to replace unacceptable old ones or new ones have to be created when new problems arise.
- Negotiation is appropriate when there is a change in the structure of affairs and a new order must be created or problems have to be managed in the absence of such a new order.
- Negotiation is appropriate when propitious changes have taken place.
- The moment is propitious for negotiation when both sides perceive that they may be better off with an agreement than without one.
- The moment is propitious for negotiation when power relations shift towards equality: when the former upper hand slips, or the former underdog improves his position.
- Negotiation is appropriate when all parties to a dispute have a veto over its solution.
- Negotiations are appropriate when they deal with a new outcome that can be created only jointly.
- Negotiations are also appropriate when they deal with an exchange of outcomes that can only be decided upon jointly.¹⁰⁹

Zartman and Berman provide a summary of the above situations and state that "...negotiation is appropriate when the parties see that a problem can only be resolved jointly and when they have the will to end an existing situation that they consider unacceptable, while admitting the other party's or parties' claim to participate in the

¹⁰⁷ *Ibid.*, pp. 42 – 45.

¹⁰⁸ What should be kept in mind is that negotiation is one method of addressing conflict. The characteristics offered by Zartman and Berman are seen to be conducive, even imperative, factors to negotiation, but it does not mean that if they are present, negotiation will follow – that remains an issue of choice for the parties.

¹⁰⁹ *Ibid.*, pp. 46 – 66.

solution.” The three most important aspects here for them are will, perception and equality.¹¹⁰

It can sometimes be difficult to convince a party to join a negotiation process, especially when its traditional opponents are already part of the process. Perceived power is very important in the preliminary stages, and parties can be afraid that joining last might create a perception that they joined out of weakness. Zartman and Berman identify some ways of creating opportunities for parties to join a negotiation process, which include positive and negative options.¹¹¹ The positive options are:

- Discussing the possibilities of creative solutions, such as new alternatives, with an outside party, without promising anything. The idea is to convince such a party that the stalemate is not permanent.
- Offering possible side payments, compensation or other benefits in order to induce a party to agreement.
- Focussing on a new good or a dual gain that might be created by joint action.¹¹²

Negative tactics focus on showing a party that a situation will only degenerate if a joint solution is not found, and pointing to worst-case alternatives. This can be done by utilising either threats or warnings. Zartman and Berman identify two types of threatening action. When a *stalemate* exists, parties can draw attention to it, and communicate the fact to each other that they have necessary but insufficient resources to address the problem, thereby attempting to orchestrate an agreement. A party can also utilise a *veto*, preventing another party from creating a solution. The idea for the former is to prove itself indispensable in the search for a solution by enforcing non-movement.¹¹³ Two other strategies are identified for inducing cooperation between conflicting parties:

- Parties can be pressured into a negotiation process by third party actors. According to Zartman and Berman this will be more effective if the latter is perceived as

¹¹⁰ *Ibid.*, p. 66.

¹¹¹ *Ibid.*, pp. 69 – 70.

¹¹² *Ibid.*, pp. 70 – 74.

¹¹³ *Ibid.*, pp. 74 – 78.

neutral as well as inescapable. Third parties can utilise the same positive and negative tactics as discussed above.

- By focusing on the existing amount of agreement between parties, the areas of disagreement can reduce in prominence (or alternatively increase in prominence, which could have a negative effect).¹¹⁴

Zartman and Berman summarise prenegotiation tactics as deliberate attempts to point out that a given situation is increasingly painful to all parties involved, and that the best solution for a mutually beneficial outcome will be to enter into a negotiation process. As part of these tactics parties can be pressured into negotiation through the use of internal or external forces. They warn, however, that the means of pressure in the diagnostic phase can usurp the situational factors as the dominant issue of conflict. Furthermore, by heightening another party's awareness of possible beneficial outcomes, it can happen that the party raises its expectations accordingly. Zartman and Berman stress that the diagnostic phase is not the ideal forum to make concrete proposals, which if made prematurely, can negatively influence the later stages of the process.¹¹⁵

- **The Formula Phase**

Zartman and Berman state that the second phase cannot begin if an opponent is perceived to be unwilling to concede and receive. If parties are convinced that a mutually acceptable solution for their conflict is possible they can proceed in two different ways in search of an agreement – inductive or deductive. The authors describe an inductive approach as when parties build an agreement together as they proceed through compromises and concessions on issues. Agreement on detailed points are reached discretely, without much reference to the holistic structure of relations between points. They regard the deductive approach as an exercise in first establishing the general principles, or formula governing the issues, before working out details of implementation. Here the detailed point of agreement are put forward by the holistic framework. Zartman and Berman argue that the approach most commonly used when parties did not commit to an explicit declaration, is intuitive. However, they state that in

¹¹⁴ *Ibid.*, pp. 78 – 81.

¹¹⁵ *Ibid.*, p. 82.

successful negotiations the deductive approach is usually both present and desirable, as it offers structure and coherence to agreements on details.¹¹⁶

A formula is defined by Zartman and Berman as "...a shared perception or definition of the conflict that establishes terms of trade, the cognitive structure or referents for a solution, or an applicable criterion of justice."¹¹⁷ This characterisation can be broken down into its three constituent parts:

□ A Shared Perception

Perceptions differ between parties, as they are based on the needs, goals and experiences of a party. When parties try to communicate their perceptions, they often assume what are important and need to be expressed. In phase one, a party attempts such communication, and also tries to understand what the other party's perceptions are. Concurrently, each party tries to embed its perceptions as the set of assumptions that should govern the process. The rationale behind the search for a formula in phase two is the need for a common or shared perception. The proposed formula should "encompass the essence of both parties' demands and prove useful in guiding negotiators to work out detailed ways of meetings them."

For example, two parties compete for control over a territory which lies between them. Neither party supports the partition of the territory, yet neither wants the opponent to control the territory. Thus, they have a common perception of the *unity* of the territory and its *denial* to the other. A 'neutralisation formula' taking cognisance of this could propose that the territory as a whole would be denied to both.¹¹⁸

□ Joint Referents

Zartman and Berman define referents as "...the secondary or underlying values that give meaning to the items under discussion." They argue that it is necessary for the values of referents to be known to all parties in order to ensure a deal.¹¹⁹

¹¹⁶ *Ibid.*, pp. 89, 93.

¹¹⁷ *Ibid.*, p. 95.

¹¹⁸ *Ibid.*, pp. 95 – 98.

¹¹⁹ *Ibid.*, pp. 98 – 102.

For example, party A occupies a piece of land bordering its territory which it acknowledges is not its own, but does not want to relinquish to party B, who is staking claim to it. In order to find a solution, it has first to be determined what party A gains by its occupation of the area, in other words, what is the underlying value of the area for party A. If the referent turns out to be the area's function as a buffer zone against security threats, a formula can be devised based on the notion of 'security for territory'. Hence, party A relinquishes the territory in exchange for its establishment as a demilitarised zone.

□ An Idea of Justice

Although referents concern types of values, they also refer to an idea of justice, in other words, parties' perceptions of what they will deem to be fair to their side, which relates to the mechanisms whereby resources will be allocated. Zartman and Berman identify five types of justice. In a simplified way they signify the following:

- *substantive justice* – each side chooses the particular criterion that supports its own side
- *procedural justice* – all values must be split equally, share and share alike
- *equitable justice* – the apportionment of shares rests on the basis of each party's unique characteristics
- *compensatory justice* – the weaker parties should receive the most
- *subtractive justice* – all possession of shares should be removed on both sides¹²⁰

According to Zartman and Berman the two basic characteristics of a formula are relevance and comprehensiveness. This entails that the formula should address as many points of the conflict as possible, which in turn entails that parties should confront and disseminate the basic elements of the conflict. If there is still conflict about the conflict (which is not a farfetched scenario as parties are still opponents with opposing views) a solution might be to devise a neutral formula, which allows both parties to agree, without them having to forsake what they deem to be important issues. Another crucial objective is for parties to stay flexible over the formula, especially when it is contentious in some aspects. The authors argue that a formula should be susceptible to

¹²⁰ *Ibid.*, pp. 102 – 105.

improvement, without losing its coherence, relevance or comprehensiveness. However, until a final formula has been agreed upon, it is useful for a party to have alternative formulas prepared, in order to counter unacceptable proposals of the opponent.¹²¹

Zartman and Berman differ with the position of Douglas in that they regard phase two to be shorter than phase one. They argue that the longer the formula phase continues, the more changes will be made to the formula, or the more alternative formulas will be proposed. Changes in the formula can have either a positive or a negative influence on agreement. As negotiations usually take place against the backdrop of ongoing conflict, a prolonged formula phase can result in a deteriorating of the conflict situation. What they propose for parties is to remember that the problem at hand is the 'enemy', not the opponent, from which they can not be severed while negotiation is an option. According to Zartman and Berman it is crucial not to get bogged down in broad formulaic discussions, but to also pay attention to details and where they can be addressed without irrevocably harming the relationship. This also serves the function of preparing negotiators for the final phase.¹²²

▪ **The Detail Phase**

In the detail phase, parties focus on the solution of more detailed problems and the creation of particular agreements. Although Zartman and Berman identify the detail phase as analytically distinct from the formula phase, they emphasise that the difference between the two does not necessarily manifest itself clearly during real-life negotiations. Once the formula phase is perceived to be completed, it does not mean that it is impossible to revert back and adjust the formula. Because the boundary between the latter two phases is blurred, movement back and forth is a constant possibility. Indeed, the authors stress the fact that trial and error are imperative to the success of phases two and three, as well as the negotiation process as a whole. They warn that this will probably be necessary in most cases, as dealing with details are often the most complex part of negotiation.¹²³

¹²¹ *Ibid.*, pp. 109 – 117.

¹²² *Ibid.*, pp. 143 – 146.

¹²³ *Ibid.*, pp. 147 – 149.

Even after the supposed cordiality with which phase two is completed, parties can become very suspicious of each other in phase three. This is due to the perception among parties that the opponent's acceptance of the formula could be a trick, which in its turn is influenced by the realisation that an agreement on detail might be final. In other words, parties guard against unexpected implications which could be detrimental in the long run, especially as they have to face audiences with a final deal. For this reason parties start off the detail phase with moves and non-moves. This is aimed at sending signals to the opponent that movement is either not possible, or is expected on certain issues.¹²⁴

During phase three parties continue to communicate information selectively about their own positions, in order to gain as much as possible and concede as little as possible. Zartman and Berman add the important reminder that this is a bi-directional exercise. Selective communication of information can also be referred to as bluffing. This can take on various forms. Parties bluff over the reality of information, the hierarchy of values, and the degree of commitment. Bluffing also serves as a deterrent because for the opponent the chances are just as good that they may be real. Bluffing can prove to be ineffective if a party learns how its opponent acts and reacts. Thus, if one or more bluffs by a party have been exposed, it may taint the authority of any further statements by them. The end product is that, by meting out punishments or rewards, parties teach each other as well as learn from each other how to react to bluffs.

To extend the above analogy, if the bluffing party was punished after being found out, they will think twice before trying it again. As this process continues, parties are at all times reminded of the external factors that guide their behaviour, such as audiences, outside conditions or referents. This also has an influence on bargaining behaviour such as bluffing and the selective communication of information. As Zartman and Berman states: "The detail finally chosen is the consequence of the criterion that justifies it...the prime object in fixing details is to fix the rationale behind them."¹²⁵

¹²⁴ *Ibid.*, pp. 149–150.

¹²⁵ *Ibid.*, pp. 152–161.

Zartman and Berman state that much of phase three deals with the subtle balancing of important and unimportant details. Importance and unimportance are fluid descriptors as their values can change, depending on the moment in which they are introduced. They identify a point in negotiations which they term the “crest”. This signifies a turning point after which details surrounding the remaining items are rapidly resolved. Yet, it is also a point after which the chance of rupture becomes even more threatening, as parties may try to sneak in some preferred position they could not gain earlier.¹²⁶

If the above danger is avoided, and agreement has been reached on all outstanding issues, negotiations end. According to Zartman and Berman it might be necessary to introduce some external constraint to the continuance of negotiation, as parties can attempt to better their position indefinitely. A deadline is such a constraint, and it can be introduced internally or externally, as well as at any time during negotiations. The two dimensions of deadlines are reasonableness and seriousness, which both influence the “success” of negotiations in terms of substantiality and the detail level of an agreement. One disadvantage of deadlines is that they may distort or interrupt the natural flow of interparty communication in the negotiation process. A deadline can, however, not influence the fact that the negotiation process ends as soon as all parties confirm that agreement has been reached on all issues.¹²⁷

2.4.5. Harold Saunders

Saunders identifies five stages in negotiation. He argues that to persuade conflicting parties to commit to a negotiated settlement can be more time-consuming, complicated and difficult than it is to reach an agreement once formal negotiations have begun. He acknowledges the usefulness of Zartman and Berman’s model, but states that it is necessary to reach back even further into the sequence of events that lead to a decision to negotiate, in order to help parties reach that point. One reason for a five-point model is to ensure that once in a negotiation process, parties can determine more effectively where they are and adapt their strategies in accordance. Saunders also emphasis the

¹²⁶ *Ibid.*, pp. 187 – 189.

¹²⁷ *Ibid.*, pp. 191 – 202.

need for parties to sometimes revert back to a previous stage, in order to rethink and readapt.¹²⁸ The five phases he identifies are:

▪ **Defining the Problem**

Saunders argues that in negotiation theory the recognition that two parties share an interest in resolving a common problem is a crucial prerequisite for negotiation. In trying to ascertain why parties negotiate or fail to negotiate, it is necessary to first determine how they view the problem and how these views relate to each other. According to him a common definition of the problem is an imperative for success in negotiation, although it doesn't preclude an attempt to negotiate. Saunders assigns what he terms the "highly political task" of redefining the problem, to leaders and policymakers of the groups.¹²⁹

▪ **Producing a Commitment to a Negotiated Settlement**

According to Saunders the decision to negotiate rely on the leaders' assessment of the advantages of negotiation, whether it could lead to a fair settlement, what the other side's reaction would be, and whether the balance of power is conducive to a settlement. He describes it as a very complex phase because these judgments are knowingly based on perceptions. The following is an elaboration of the judgements:

- The judgement that the present situation has a detrimental effect on a party's interests. Parties have to decide whether negotiation will lead to a better, or indeed, best possible situation.
- The judgement that a fair settlement is possible. Again parties have to assess the advantages of negotiation vis-à-vis possible alternatives, and whether an acceptable solution will be possible (in view of what is perceived as the other parties' demands from a settlement). Saunders emphasises that "fairness" entails that all parties should accept that their ideal solution will not be attainable.

¹²⁸ Saunders, H. "We Need a Larger Theory of Negotiation: The Importance of Pre-negotiating Phases," *Negotiation Journal* 1, July 1985, pp. 249 – 254.

¹²⁹ *Ibid.*, pp. 255 – 256.

- The judgement whether the other parties will be willing to compromise and accept a settlement.¹³⁰ Psychological elements such as mistrust, suspicion and dislike come into play here, as parties have to gauge whether all would be able to conform to the demands set by a mutual search for agreement.
- The judgement that a balance of power will permit a fair settlement. This includes the extent to which an opposing party could mobilise external factors to unfairly influence negotiation, and whether it would.¹³¹

▪ **Arranging a Negotiation**

When parties have made the decision to negotiate, the parameters of negotiation have to be determined. Saunders identifies two aspects of this phase. Firstly, the objective of negotiation has to be defined. This involves agreement on principles guiding negotiation, for example, will the settlement be all-encompassing or deal with individual issues over a period of time. Secondly, unanimity over physical arrangements has to be reached. Here included are decisions regarding location, the role of supporters, and participants.¹³²

▪ **The Actual Negotiation**

Saunders argues that though this phase is the most visible, it may take up much less time than the preceding phases.¹³³

▪ **Implementation**

Successful implementation is necessary for the overall success of the negotiation process. Therefore it should be ensured in the previous phases that both parties have a stake in implementing the agreement.¹³⁴

¹³⁰ The aspects identified by Saunders in his first two phases which deal with a common definition of the problem, a judgement that a fair settlement is possible and an evaluation of the other party's willingness to compromise, all refer to the process of establishing good faith in a bargaining relationship.

¹³¹ *Ibid.*, pp. 257 – 260.

¹³² *Ibid.*, pp. 260 – 261.

¹³³ *Ibid.*, p. 261.

¹³⁴ *Ibid.*, p. 261.

2.4.6. Pierre du Toit

According to Du Toit a general acceptance exists that if conflicting parties are eager to resolve their opposing interests, because of the potential mutual benefit of such a move, they commit themselves to bargaining over the issue. In the bargaining process these parties will then attempt to maximise their gains and minimise their losses. One method of doing this is through what Du Toit calls manipulative bargaining, "...in which a bargainer attempts to influence the opponent by changing the opponent's perception of the decision-making environment in which they confront one another. This involves primarily a process of persuasion by selectively supplying and/or withholding information from the opponent." In his analysis of bargaining, Du Toit identifies three phases, of which he regards the first as a specific category of manipulative bargaining.¹³⁵ The phases are:

- **Bargaining about Bargaining**

The reason why this is regarded as a form of manipulative bargaining is that the issue under discussion involves whether a party should try to attain victory on its own terms or aim to resolve the conflict of interest that stems from a situation of conflict. This pursues the objective of establishing agreement between parties that the search for a bargained resolution is more profitable than resorting to sectoral outbidding, such as ethnic outbidding in deeply divided societies.¹³⁶

Hence, the first phase involves making a choice between possible divergent outcomes. As mentioned, these outcomes usually arrange themselves on a continuum with zero-sum victory/domination through violence on one side, and a non-zero sum mutually agreed settlement on the other. The main function of the first phase is to push the parties more into the direction of the latter, to persuade them that outright victory is not possible, and outright defeat not necessary.¹³⁷ Even if bargaining about bargaining is initiated, the nature of bargaining can range between purely cooperative and purely competitive. Du Toit also notes that phase one may range from cases of symmetrical

¹³⁵ Du Toit, "Bargaining about Bargaining," pp. 213 – 215.

¹³⁶ *Ibid.*, pp. 213, 215.

¹³⁷ Du Toit, P. "The Tragic Theory of Bargaining," in Du Toit, P. and Esterhuyse, W. (eds.), *The Myth Makers: The elusive bargain for South Africa's future*, Halfway House: Southern Book Publishers, 1990, pp. 6 – 7.

bargaining to cases of highly asymmetrical bargaining.¹³⁸ It is argued that the primary drive of the bargaining about bargaining phase as it is described here, centers around an attempt by parties to establish the norm of good faith in their bargaining relationship.

▪ **Preliminary Bargaining**

In this stage, conflicts that concern the bargaining relationship are addressed. Du Toit identifies:

- agendas (what is negotiable and what is not)
- arenas (where the bargaining is to take place)
- tactics (whether violence should be renounced, suspended, or openly allowed)
- rules of conduct (what the relative status of the participants should be)
- preconditions (what prior actions are required before actual bargaining starts)¹³⁹

According to Du Toit the perceived mutual benefits entailed in settling on these issues can be justified in terms of the prior success of bargaining about bargaining.¹⁴⁰

▪ **Substantive Bargaining**

As soon as the above issues have been resolved, the parties move into the last stage of negotiation. This deals with the resolving of the initial differences that caused conflict to arise. According to Du Toit parties search for a specific settlement from the range of settlements found inside the contract zone. He argues that the basis of success in previous stages have a direct impact on the mutual benefit and desirability of such a settlement.¹⁴¹

The approach of Du Toit is used by me to analyse the South African transitional negotiation process. The decision to use this framework was taken after a preliminary study of the characteristics of the South African case. From this it is argued that it will be difficult to ascribe more than three distinct phases to this example, as the process was predominated by a few overarching issues. The move between phases was mostly a redefining of these issues, and as such the approach used has to be tightly structured,

¹³⁸ Du Toit, "Bargaining about Bargaining," pp. 215 – 216.

¹³⁹ Du Toit, "The Tragic Theory of Bargaining," pp. 6 – 7.

¹⁴⁰ Du Toit, "Bargaining about Bargaining," p. 216.

both conceptually and practically. Furthermore, this approach has to some extent been tested on the South African case in the work of Du Toit, which enhances its credibility. I am of the view that some of the other approaches might be associated too much with certain types of conflict on certain levels of analysis, making extrapolation to an unique case difficult. Both the *bargaining about bargaining* and *preliminary bargaining* phases will be regarded as prenegotiation.

2.5 Prenegotiation: Functions and Parameters

The work of Stein et al. focuses specifically on international prenegotiation, and the contributors analyse such cases as the Arab-Israeli conflict, North American Free Trade, GATT, and Cold War arms. However, it constitutes one of the most comprehensive syntheses of the assumptions and parameters of prenegotiation. It is my view that these assumptions, while recognising the different levels of analysis, are just as applicable to South Africa.¹⁴²

As was mentioned, Zartman regards prenegotiation as a “troublesome phase concept”, not disputing its existence but rather referring to the uncertainty relating to its nature.¹⁴³ He reiterates a definition put forward by Stein that:

“[p]renegotiation begins when one or more parties considers negotiation as a policy option and communicates this intention to other parties. It ends when the parties agree to formal negotiations (an exchange of proposals designed to arrive at a mutually acceptable outcome in a situation of interdependent interests) or when one party abandons the consideration of negotiation as an option.”¹⁴⁴

¹⁴¹ *Ibid.*, p. 216.

¹⁴² Stein (ed.), *Getting to the Table*. A preliminary acceptance of this study has been that previous research and theory on prenegotiation have to a large extent centred only on the interpersonal or international levels of analyses. Partly because of this, and partly despite of it, South Africa was chosen as a case study. Central to the aim of the study is an attempt to broaden the scope of prenegotiation theory to intrastate, intergroup conflicts.

¹⁴³ See Section 2.4.

¹⁴⁴ Zartman, “Prenegotiation,” p. 4.

Zartman also proposes a second definition:

“In essential terms, prenegotiation is the span of time and activity in which the parties move from conflicting unilateral solutions for a mutual problem to a joint search for cooperative multilateral or joint solutions. From both definitions, it is clear that the nature of the activity lies not in conducting the combined search for *a/the* solution but in arriving at and in convincing the other party to arrive at the conclusion that some joint solution is possible.”
[original emphasis]¹⁴⁵

The above definitions include the following three assumptions:

- Parties arrive at the decision to negotiate separately, differently and not concomitantly.
- Whereas parties previously pursued unilateral strategies, they now either shift fully to a multilateral strategy, or incorporate it as one option among others.
- Each party makes an identifiable decision for which, although conflicting with previous positions, a cause may be sought, explained, and eventually produced.¹⁴⁶

Zartman further argues that the decision to negotiate is usually associated with a mutually hurting stalemate, and/or a recent or impending catastrophe. Due to these factors a multilateral strategy is usually seen as more promising or comparatively cheaper vis-à-vis a blocked and costly unilateral strategy. According to Zartman the case studies described in Stein et al. yield similar answers about the use and functions of prenegotiation. He states that all the studies had shown that prenegotiation is necessary as a preparatory phase without which no negotiation could have taken place. Prenegotiation is seen as “...a purposive period of transition that enables parties to move from conflicting perceptions and behaviours to co-operative perceptions and behaviours.”¹⁴⁷ Hence, the goal of prenegotiation can be described as convincing parties in a conflict not of accepting any forwarded solution, but of accepting the *possibility* of a joint solution.

¹⁴⁵ *Ibid.*

¹⁴⁶ *Ibid.*, p. 5.

¹⁴⁷ *Ibid.*, p. 7.

According to Zartman each party has to view those who were seen as once untrustworthy enemies bent on destroying it, as adversaries, worthy of trust and capable of co-operation. Thus, for each party a winning mentality has to be transformed into a conciliatory mentality which accepts a mutually found solution and settles for an attainable second best position rather than an unattainable victory. These shifts are regarded as crucial by Zartman, and he identifies seven functions of prenegotiation which have to be fulfilled, in no special order, to bring it about.¹⁴⁸ To phrase it differently: During prenegotiation a symbiosis evolves between parties, where commitment is the substance of prenegotiation on the one hand, and the functions of prenegotiation ensure continued commitment on the other. The seven functions are:

- **Risks**

As has been argued, the power relationship between parties comprises a central aspect of the negotiation process, and it is based on the perceptions that the parties create of themselves as well as each other. Hence the process is very risky, especially when co-operating, as the other parties might interpret it as a sign of a weak bargaining position. Prenegotiation reduces the risk by functioning as a dress-rehearsal for substantive negotiations. No binding decisions are made, making it easier for parties to exit without compromising their position of power. Furthermore, it is easier for parties to state maximum terms without being bound to them.¹⁴⁹

- **Costs**

Negotiated settlements as well as unilateral options entail costs. When parties prenegotiate they are able to establish the costs of concessions and agreement, making their final decision to talk or not to talk much more calculated. In Zartman's terms, the *outcome* must be of more value to all parties than the *security point* - the value of what is obtained by each party without an agreement. Parties thus establish a perception of their opponents' motives for negotiation, as well as sort out their own.¹⁵⁰

¹⁴⁸ *Ibid.*, pp. 7 – 8.

¹⁴⁹ *Ibid.*, p. 8.

¹⁵⁰ *Ibid.*, pp. 8 – 9.

▪ Requirement

According to Zartman a number of studies have pointed out that beyond hurting stalemate, a sense of reciprocity is almost equally important for parties' decision to negotiate.¹⁵¹ In other words, co-operation only takes place if parties have a sense of requirement. Reciprocity has been shown to be a crucial element in good-faith negotiations. Conversely, Zartman notes that "...fear of reciprocity is its own undoing: one does not make concessions because one is sure the other side will not repay and the other does not repay concessions because it is sure that the other will not either." Prenegotiation is crucial in this sense, as it creates the ideal setting for parties to convince their opponents of their good intentions in reciprocating concessions, in an environment where assurances are indicative more of future behaviour than of commitments. Hence, parties can go through different motions to gauge their outcomes without having to be too explicitly bound by them.¹⁵²

▪ Support

When a party prenegotiates, covertly or openly, some sort of response is expected from either the party core or the general followers. By analysing the reaction of the party's constituency the leaders create an effective mechanism to test support for its decision to consider negotiation. On the other hand it serves as a warning to party members what they can expect, giving them the opportunity to evaluate their perspective, and attempting to influence their perception of the opponent. As soon as one party receives an amount of support for its decision to consider negotiation, it places the other role-players in a moral dilemma, thereby increasing the chance that they will also submit to co-operation and informal coalition building. Zartman also points out that:

"...the construction of domestic support should not merely be the affair of each side. Each party has a role to play in the other's politics, and that party which has first concluded that negotiation is a conceivable outcome has an especial challenge to reach into the domestic political processes of the other and help build a supportive coalition for accommodation."¹⁵³

¹⁵¹ See Axelrod, R. *The Evolution of Co-operation*, New York: Basic Books Inc. Publishers, 1984., for a game-theoretic discussion of co-operation and the long term interest that parties have in it when faced with blind-eyed negotiations.

¹⁵² Zartman, "Prenegotiation," p. 9.

¹⁵³ *Ibid.*, pp. 10 – 11.

▪ Alternatives

If parties jump headlong into the process of substantive negotiation, especially in multilateral negotiations, the chances of reaching an immediate deadlock are quite significant. The reason why is that no contract zone exists. Also, the problem is not necessarily that parties' ideal solutions are too far from each other on a continuum, but that they could be on *different* continuums. Zartman regards the core function of prenegotiation as an attempt to transform the problem into a manageable, negotiable issue. As a process it involves the invention of, and choice between alternative ways of dealing with the problem, in order to at least create initial consensus among parties. Alternatives also involve the setting of themes and limits, and defining the conflict in a non-zero sum configuration, thus eliminating unrealistic, complex and unworkable solutions. Thus, in prenegotiation the agenda is set and shaped. If parties fail to define the problem, choose between alternatives, and set an agenda, prenegotiation is not complete.¹⁵⁴

▪ Participants

Prenegotiation also functions as an elimination round for possible parties involved. Likewise to the selecting of alternatives, choices have to be made between parties involved in the process. As Zartman puts it: "Just as all aspects of the conflict are not likely to be solved, so it may not be possible to include all parties in an agreement." The two decisions are connected in the sense that the decision regarding alternatives will influence the choice of parties. However, it is very important that an inclusive as possible settlement is reached in order to create stability. If either the major contender or the major issue is left out there can be an agreement but not necessarily a solution. This is referred to as the dilemma of comprehensiveness versus compatibility, as coalition builders attempt to make it broad enough to ensure a stable agreement, but no broader than necessary to cover the bases and expand membership at a later stage.¹⁵⁵

▪ Bridges

Substantive bargaining is placed under immense pressure when parties are still engaged in conflict outside the negotiation forum. Prenegotiation functions as an opportunity for

¹⁵⁴ *Ibid.*, pp. 10 – 12.

¹⁵⁵ *Ibid.*, pp. 12 – 13.

parties to formally declare a temporary cessation of hostilities in order to build an informal coalition. Zartman states that the changes in perception, mentality, tactics, definitions, acceptability levels, and partners all play a part in building bridges from conflict to conciliation. To complement these, prenegotiation also sets up mechanisms on a temporary and provisional basis to provide for the changes to take place. One mechanism is a temporary suspension of conflict activities, such as cease-fires, the suspension of conflicting practices, and moratoriums on arms production. These measures usually conclude prenegotiation. Another mechanism is the building of trust, such as when parties construct small tests for each other to see if the others adhere to good faith principles or not. The symbolic meaning of bridge building steps taken is to remove any misinterpretation of intentions.¹⁵⁶

The characteristics and functions of prenegotiation as part of the phaseological approach, outlined in this chapter, will serve as a framework for the analysis of the South African transitional negotiation process.

¹⁵⁶ *Ibid.*, pp. 13 – 14.

CHAPTER 3

PHASE ONE: BARGAINING ABOUT BARGAINING

3.1. Introduction

A striking characteristic of the South African negotiations is the small number of people that were involved in strategic decision-making and the steering of the process. It can be argued that collectively approximately fifteen individuals steered the transition from beginning to end, an important point to keep in mind when reflecting on the South African case. The first phase as delineated in this study was especially secretive and exclusive, as the political situation in South Africa did not allow for a spontaneous public acceptance of negotiation as a strategy on either side.¹ The bargaining about bargaining phase was crucial in creating a common understanding (at least between the individuals involved) of the necessity and possibility of a mutually agreed settlement. Much of the success of the process depended on this phase, to the extent that it partially *determined* the route and outcome of the following phases. Yet, what is important to keep in mind when analysing the bargaining about bargaining phase, is the serendipitous nature of prenegotiation behaviour. What might seem to have been calculated movements towards establishing a forum for hard bargaining, could have been strategies to further undermine or alienate opponents. Any analysis of a movement towards negotiation should be sensitive to this issue, so as not to be too deterministic in its conclusion.

¹ It should be noted that an approach which regards the South African conflict as bipolar is reductionist to a certain extent. There was at no stage a situation where two hegemonic powers of equal strength were locked in an all-encompassing battle for ascendancy (an assumption which implicitly negates the use of game theory as an effective framework for analysing the South African situation). The NP-government and the ANC-alliance are viewed as the two *main* role-players during the transition, as they had the greatest influence, but they did not assert sole control over the process. Other actors were involved, directly or indirectly, and reference will be made to their roles where relevant. Furthermore, even the two main parties were internally divided on various issues, an aspect which will be discussed in detail. The singular focus on them in this chapter is necessary due to the crucial roles they played in terms of the first phase and the movement towards subsequent phases.

3.2. Historical context

After the banning of the African National Congress (ANC) in 1960 the conflictual relationship between them and the South African government can be seen as formally defined by a zero-sum configuration. Both adopted strategies which did not involve any measure of compromise, but were rather aimed at achieving victory on each party's own terms. Whereas the ANC's strategy involved overthrowing the government and setting up alternative structures to establish majority rule, the government's strategy was aimed at deepening apartheid structures by eradicating all opposition against it. Hence, the crux of the conflict remained the institutionalised system of apartheid.²

With the start of the armed struggle in 1961 by the ANC, the zero-sum nature of the conflict was deepened, as both parties formally perceived the use of violence as the only plausible method to attain their goals, thereby effectively discarding negotiation as a policy option. This introduction of violence into the parties' respective strategies proved to be a decisive stumbling block to relations between the ANC and the government and would remain so until as late as 1993. A related factor which would prove to be a major contributory to the absence of a contract zone was the jailing of prominent ANC leaders, such as Nelson Mandela in 1963, due to their support for a revolutionary take-over of the state.

Despite gradual reforms to apartheid in the early 1980's by P.W. Botha, the then leader of South Africa, the ANC still based its policy on four strategic pillars identified at the Morogoro conference in Tanzania, 1969. They were mass mobilisation, the setting up of alternative structures, the international isolation of South Africa, and the armed struggle.³ The latter, coupled to the ANC's links with the South African Communist Party and the Soviet Union proved to be the most problematic for the government in addressing the issue of the ANC. For the ANC, the government's insistence on upholding apartheid and the non-inclusion of blacks into the tricameral parliament, caused them to reaffirm their policies.

² It is not the aim of this study to deal with the history of apartheid, and it is recognised that apartheid evolved through various forms and stages. What is important for this study is the nature of the relationship between the ANC and SAG, which remained essentially a non-zero sum configuration.

³ Breytenbach, W.J. *The ANC: Future Prognosis*, University of Stellenbosch: Institute for Futures Research, 1989, p. 7.

3.3. Official Positions

Unbeknown to all but a handful of South Africans, a move towards negotiation as an outcome to the political crisis began to take form in the 1980s. It stayed a secret until 1990 though, as most people, including high-ranking officials on both sides, were only informed of this movement at the end of the first phase. By that time the accomplishments of a few years of informal talks had already begun to steer the process in the direction of a settlement.

The negotiators on both sides realised the possibility of settlement much earlier, and while they continued with covert talks they had to start adapting policy in order to create an environment conducive to public negotiations. It had also become necessary on both sides through the years to sensitize followers to the need and possibility of negotiation as a lasting policy option. However, against the background of heightened unrest and states of emergency, such policy shifts were not seen to be signs of imminent talks by the general public. It is only with the advantage of hindsight that the movement towards common ground can be identified when analysing official policy statements. These official policy changes of the ANC and South African government will be discussed here.

3.3.1. The South African Government

According to Kobie Coetsee, who was appointed as minister of justice in 1980, individuals in the South African government began to realise after the Soweto uprising in 1976 that solutions to apartheid-related problems had to be found. He argues that a number of commissions, as far back as the Schlebusch Commission in 1972, also played an important role in changing the political thoughts of National Party members regarding South Africa's future.⁴

Despite some exposure to other ideas and people, official government policy towards the ANC still could not pass the obstacles of violence and communist backing. All possible concessions on policy were always linked to either the ending of the armed struggle, or a rejection of violence, or both. Waldmeir states that Nelson Mandela

⁴ Kobie Coetsee, interview by author, 8 October 1996.

received seven release offers from the government between 1976 and 1985 on the condition that he would give up the liberation struggle, all of which he refused.⁵ According to Kobie Coetsee, a visit by P.W. Botha to Franz Josef Strauss of Bavaria in January 1985 changed the former's perception of the issue, as it was proposed to Botha that he should agree to possible negotiations, but under the precondition that the ANC (or Mandela) renounce violence completely and publicly. This proposal was also cleared with Margaret Thatcher.⁶ Botha, upon his return made the proposal public in a speech to parliament on 31 January 1985 on the condition that Mandela "unconditionally rejected violence as a political weapon."⁷ The proposal was rejected by Mandela and the rejection was made public at a rally in a letter read by Zinzi Mandela.⁸

According to Coetsee, Botha still regarded this as the ideal way in which to solve the problem of Mandela, linked to the original terms, as he "... was working on the release along the lines of Mr. Mandela going back to the Transkei, Matanzima taking Mr. Mandela, for Mr. Mandela to be invited there, for Mr. Mandela to be placed there..."⁹ In effect, the government policy of only negotiating with moderate African leaders stayed unchanged. As P.W. Botha stated: "[t]he world was asking me to let Mandela go, I told them I was busy with an own positive programme of development, civil administration...look, there were black people who spoke to me in those days, they are quiet today..."¹⁰

Despite the ANC and Mandela's reaction to the proposal, it became the official policy of the South African government, and was repeated often, as in the following speech by Botha on 15 May 1986:

"As far as the Government is concerned, it remains adamant that it is prepared to negotiate with citizens of South Africa, provided they do not resort to violence as a means of attaining their political and other goals, or call in foreign agencies to support them. Negotiation of necessity implies

⁵ Waldmeir, *Anatomy of a Miracle*, p. 93. One was by the minister of defence, Jimmy Kruger, in 1976, and the other six were by P.W. Botha.

⁶ Kobie Coetsee, interview by author, 4 April 1997.

⁷ <http://www.anc.org.za/ancdocs/history/mandela/64-90/jabulani.html>

⁸ Waldmeir, *Anatomy of a Miracle*, pp. 93 – 94.

⁹ Kobie Coetsee, interview by Patti Waldmeir, March 2 1995.

¹⁰ P.W. Botha, interview by Patti Waldmeir, 1 March 1995.

that participants should accept that not all their requirements are likely to be met; it implies a willingness to listen, to discuss and seek solutions. But these solutions will result from deliberations by South Africans in the interest of South Africans. It is in this spirit that the Government approaches the process of negotiation and I want to appeal to all who have made the choice for peaceful and constitutional change, to display a similar disposition.”¹¹

Some analysts have argued that this position was merely put forward by the government in order to gain some moral high ground.¹² Whatever the rationale might have been, it remained official policy of the government until the unbanning of the ANC and other organisations on 2 February 1990 by F.W. de Klerk. De Klerk reiterated Botha’s position in July 1989, when he said that he would not negotiate with the ANC if it continued to support violence as a means to an end.¹³ For such a long-standing position to be changed so abruptly, a major cause had to be evident, yet there were no tell-tale signs of a build up to this significant shift in government policy, nor of the imminent changes in the power relationship between the ANC and South African government. For example, Breytenbach wrote in July 1989:

“It is unlikely that the ANC will gain (any form of) power by either 1992 or 2000. However, by 2010 and 2020 the ANC might **share** some power as a coalition partner. Monopoly power is still not foreseeable. This implies certain compromises and coalition outcomes. It is therefore pointless to discuss ANC ‘ruling’ policies, as the chances are slim that the ANC could govern South Africa on their own.”¹⁴

The above serves as a prime example of the ruling perception that existed among most analysts at the time of the unbanning, which negated any official change in government policy towards negotiations with the ANC.

¹¹ *Talking with the ANC...*, Pretoria: Bureau for Information, 1986, p. 33.

¹² Tom Lodge, interview by Gerrit Olivier. In *Praat met die ANC*, Emmarentia: Taurus, 1985, p. 72.

¹³ Sisk, T.D. *Democratization in South Africa: The Elusive Social Contract*. Princeton, New Jersey: Princeton University Press, 1995, p. 79.

¹⁴ Breytenbach, *The ANC*, p. vi.

3.1.2. The African National Congress

As was the case with the government, the ANC's official decision to give negotiation priority did not overtly stem from incremental policy shifts, but came to the fore in an almost abrupt fashion. Also similar to the government, the ANC had been arguing for negotiation for quite some time, but on conditions that were unacceptable to the other side.

With the launch of the armed struggle in 1961, the ANC regarded sabotage and military action as the primary methods to realise their goals. This position was reiterated at various conferences, and also internally by people such as Nelson Mandela. At the first Morogoro conference, Tanzania in 1969 the ANC and SACP mutually committed themselves to a revolution in two phases, as a reaction to what they referred to as "internal colonialism."¹⁵ At the second Morogoro conference in 1975 the ANC made the following plea to the Organisation for African Unity:

"Re-affirm the recognition of the legitimacy of the armed struggle and call on all Member States to spare no effort to help increase the striking power of our Liberation Movement in pursuit of the struggle for the seizure of power in South Africa."¹⁶

Similar resolutions were made by the ANC at the Kabwe Conference in 1985.¹⁷ As the ANC's conditions for negotiations included the dismantling of apartheid and a transfer of power, no contract zone was forthcoming. A government publication used the following quotes to summarise the ANC's position on negotiations:

"...the ANC will talk to somebody at the proper moment in the proper conditions, but will do so because our struggles has reached a point where we believe that talking, apart from anything else we'll be doing, is the way forward."¹⁸

¹⁵ Esterhuysen, W. "Die ANC en onderhandelinge" in Esterhuysen, W. and Nel, P. (eds.), *Die ANC*, Cape Town: Tafelberg, 1990, p. 114.

¹⁶ <http://www.anc.org.za/ancdocs/history/morogoro.html>

¹⁷ gopher://gopher.anc.org.za:70/00/anc/history/kabrep.txt

¹⁸ Oliver Tambo, broadcast by *Radio Freedom*, October 1985, in *Talking to the ANC...*, 1986, p. 30.

“In any case if there were any talks and if we thought the time had come for talks with the Pretoria regime, we would not abandon the armed struggle, we would simply carry on.”¹⁹

“I, Oliver Tambo, would not meet him [State President P.W. Botha], but if the time came for the ANC and the people of South Africa – the leadership as a whole of South Africa – when the time came in South Africa for a meeting to take place, then of course, a meeting will take place. It will come when the struggle is so far that Botha sees it to be in his own interest to transfer power to a democratic majority, not Black majority.”²⁰

In a statement on 9 October, 1987, the ANC announced its preconditions for negotiations. These were:

- the ANC will not unilaterally abandon or suspend the armed struggle
- the ANC will not be dictated to as far as its allies are concerned
- the ANC rejects the proposed the National Statutory Council as a forum for negotiation
- the ANC demands the unconditional release of all political prisoners, detainees, all captured freedom fighters and prisoners of war, as well as the cessation of all political trials
- the state of emergency must be lifted
- the army and police must be withdrawn from the townships
- all repressive legislation must be repealed²¹

The demands were rejected by the South African government, as it did not include any compromise from the ANC's side on the issues of violence and the SACP. Then, on August 21, 1989, the most definite change in ANC policy occurred with the release of the *Declaration of the OAU Ad-hoc Committee on Southern Africa on the Question of South Africa*, better known as the Harare Declaration. It was based on a draft document fashioned by ANC leaders eleven days earlier, and in it the ANC committed itself to

¹⁹ Oliver Tambo, interview in *Zimbabwe Herald*, 4 February 1985, *Ibid.*, p. 32.

²⁰ Oliver Tambo, broadcast by *Radio Freedom*, 18 May 1986, *Ibid.*

²¹ Breytenbach, *The ANC*, p. 16.

negotiations as the most viable way to bring about a new dispensation. Sisk argues that the Harare Declaration "...was crucial in that it signalled within the ANC the apparent ascendancy of the idea of supporting negotiation over a revolutionary people's war."²²

The Declaration stated as one of its principles:

"We believe that a conjuncture of circumstances exists which, if there is a demonstrable readiness on the part of the Pretoria regime to engage in negotiations genuinely and seriously, could create the possibility to end apartheid through negotiations. Such an eventuality would be an expression of the long-standing preference of the people of South Africa to arrive at a political settlement."²³

In the Harare Declaration the ANC's conditions for negotiation were reduced to the following five demands:

- Release all political prisoners and detainees unconditionally and refrain from imposing any restrictions on them.
- Lift all bans and restrictions on all proscribed and restricted organisations and people.
- Remove all troops from the townships.
- End the state of emergency and repeal all legislation, such as, and including, the Internal Security Act, designed to circumscribe political activity.
- Cease all political executions.²⁴

In view of both sides' conditions for negotiations, violence still remained the main obstacle to a preliminary contract zone. What remained was the need for a concession from either side to start the process of talks. This concession came in the form of F.W. de Klerk's address at the opening of parliament on February 2 1990, when he unbanned the ANC and other organisations. His speech provided the crucially needed overlap in the views of the opposing parties, in that both formally ascribed primary importance to

²² Sisk, *Democratization in South Africa*, p. 80.

²³ <http://www.anc.org.za/ancdocs/history/harare.html>

²⁴ *Ibid.* See Addendum A for the complete declaration.

the issue of negotiations. Although the policies of both parties changed in a staccato fashion over the years, they were not decisions taken on a whim, but rooted in the context of a deteriorating political and economic situation in South Africa, and the secret communication that existed between the two main opponents. It is necessary to study these issues in order to put the policy shifts of both sides in full perspective.

3.4. A mutually hurting stalemate

It has been noted that the decision to negotiate is usually associated with a mutually hurting stalemate and/or an impending catastrophe in any given conflict situation.²⁵ I argue that both a mutually hurting stalemate and the danger of an impending catastrophe were evident in South Africa, and that they were caused by a variety of factors. The influence of these factors became manifest especially during the 1980's, as the South African domestic situation deteriorated rapidly in the political, economic, and social spheres. This put pressure on both parties to entertain the notion of alternative courses of action. The military conflict between the government and ANC, as well as various international factors were also important causes of the stalemate. The contributing factors will briefly be discussed.²⁶

3.4.1. The Politics of Apartheid

According to O'Donnell and Schmitter the "...typical sign that a transition has begun comes when these authoritarian incumbents, for whatever reason, begin to modify their own rules in the direction of providing more secure guarantees for individuals and groups."²⁷ In South Africa the National Party government increasingly began to tamper with apartheid legislation in the 1980's, due to the negative practical implications it had for governance. The government also acknowledged that it was reforming the political system, but under P.W. Botha's leadership there was yet no signs of opting for a non-separation of people.

²⁵ See Section 2.5.

²⁶ It should be noted that a mutually hurting stalemate was but one (albeit complex) reason for the parties to consider negotiation. Other factors, such as those relating to the influence of individuals and the Cold War, will be discussed at a later stage. Section 3.4 is only concerned with structural factors that caused stalemate.

²⁷ Quoted in Sisk, *Democratisation in South Africa*, p. 57.

A range of appointed commissions under P.W. Botha's reign influenced the government's analysis of apartheid's problems, and initiated some reforms. Yet, despite these reforms and the 1983 constitution which made provision for a tricameral parliament, governance became increasingly difficult. This was because of boycotts by community organisations, strikes by workers, the non-functioning of black local authorities, greater influx from the homelands, civil disobedience and dissent among the ruling party's followers.²⁸ Swilling summarised the political dilemma of the government in 1988 as follows:

“...significant structural changes have occurred, but state responses have not assumed the form of a new or coherent ideological package that could serve as an alternative to apartheid. Instead the state is caught between the exigencies of structural needs that transcend traditional apartheid boundaries and the vicissitudes of the political terrain where it defends the need for ‘orderly reform’ – a euphemism for white and capitalist interests – against the right-wing pressuring for the retention of grand apartheid and the demands emanating from the large majority of South Africans for the transfer of power to those parties that represent this constituency. South Africa is currently in the grips of an interregnum which consists of a social stalemate where ‘the old is dying and the new cannot be born’.”²⁹

In view of the above situation, the South African government began to dismantle some apartheid measures such as pass laws and influx control, yet without clear vision as to what the process should lead to.³⁰ According to Kobie Coetsee, P.W. Botha and all his predecessors battled with the numerical majority of blacks vis-à-vis whites in the formulation of policy, which limited their political options. He states: “[P.W. Botha] had not a clear game plan, he had an ultimate view, things must be normalised, we must deal with the blacks, we must be fair, but how are we going to overcome the question of numbers, what is available?”³¹

²⁸ Swilling, M. “Introduction: The Politics of Stalemate” in Frankel, P., Pines, N. and Swilling, M. (eds.), *State, Resistance and Change in South Africa*, London: Croom Helm, 1988, pp. 1 – 18.

²⁹ *Ibid.*, pp. 14 – 15.

³⁰ For a summarised version of the major reforms during P.W. Botha's presidency, see Sisk, *Democratization in South Africa*, p. 70, table 2.3.

³¹ Coetsee, interview by Waldmeir, 1995.

Mike Louw, then deputy director-general of the National Intelligence Service (NIS), argues that as apartheid crumbled in the 1980's government leaders started to recognise that it failed. He states:

“[I]t was clear the thing was in shreds. So what was left then, we were left without anything to really guide the country except for the pragmatic manoeuvrings that were then going on, constitutionally by P.W. and other people...and at the same time sanctions were biting, the entire world had turned their backs on us...”³²

The following description by Louw of the government's attitude towards the future of apartheid at the time serves as an excellent example of the recognition that a catastrophe was imminent:

“The entire nation was being stigmatised by this [rejection by the world] and economically we were beginning to suffer and we could not see, if you projected what was happening on the ground, if you projected that into the future you could see no light at the end of the tunnel. It was a question of sooner or later, there is going to be a huge conflagration and it's going to destroy the entire country and the longer you wait the more difficult it is going to be to climb out of this hole and the sooner you move the better.”³³

3.4.2. Economic decline

After an economic boom in the late 1960's and early 1970's, South Africa's economy entered a slow downward spiral as political problems began to impact on the economic sphere. Van der Berg argues that the downward trend in the South African economy after 1975 was caused by a combination of factors:

³² Mike Louw, interview by Patti Waldmeir, 29 May 1995.

³³ *Ibid.*

- the inability to switch to an export-oriented economic policy because of domestic economic inefficiencies and the partial closure of international markets to South African exports
- domestic conflict which resulted in a low level of confidence from South African investors
- the international perception of South Africa's conflict which resulted in capital outflow instead of capital income³⁴

According to Van den Berg, these factors, coupled with rising wages and lowering job opportunities, created a situation where the average income of black workers did not rise. This in turn led to growing inequality coupled with an inability to accede to demands of the black population. A legitimacy crisis ensued which pointed at the need for social and political reforms in order to create economic stability.³⁵ Another factor which pushed up public expenditure was the regular increases in the defence budget. Whereas R44 million was spent on defence in 1960-1, the 1986-7 budget allocated it R5.2 billion. Coupled to this were also Special Accounts that funded the South West African Defence Force and Armscor, which brought up the estimated total to approximately R7 billion.³⁶ Hence the government's Total Strategy became too expensive and exacerbated the mutually hurting stalemate.

The argument that the economic costs of apartheid contributed to stalemate is supported by Joel Netshitenzhe, then member of the ANC's National Executive Council (NEC), who argues that the popular uprisings during the 1980's brought the South African government to its senses and demonstrated to them that containment of resistance was not possible any more. It also prompted a worried business sector to apply more pressure on the government to change its policy. According to him, for the ANC the economic decline brought home the message that continued struggle would destroy the productive capacity of the economy and undermine the eventual efforts of the ANC to deliver once a new dispensation was introduced.³⁷

³⁴ Van der Berg, S. "Die ekonomiese argument vir onderhandelings en die ANC se ekonomiese sienings", Esterhuysen, W. en Nel, P. (reds.), *Die ANC*, Kaapstad: Tafelberg, 1990, pp. 103 – 104.

³⁵ *Ibid.*, pp. 104 – 105.

³⁶ Evans, M. and Phillips, M. "Intensifying Civil War: The Role of the South African Defence Force", Frankel, P., Pines, N. and Swilling, M. (eds.), 1988, pp. 122 – 123.

³⁷ Joel Netshitenzhe, interview by Patti Waldmeir, 19 May 1995.

3.4.3. Military stalemate

Against the backdrop of military clashes between the ANC and South African government which at times escalated to the level of a full-scale war, the continuance of respectively the armed struggle and emergency security measures took their toll on both sides. Despite the economic effects, both sides realised in the end that an all-out military victory would not be possible. The ANC would not have been able to take over power, nor would the government have been able to eradicate all military resistance. The military conflict was further not limited to South African soil, but were conducted in most frontline states, exacerbating the already present logistic, political and economic problems.

According to Willie Esterhuyse, the government and ANC "...realised that they were too weak to defeat each other." He argues that the emergency regulations between 1985 and 1987 were important in strengthening the stalemate:

"That was P.W.'s main contribution; destroying the hope of the radicals that they would be able to kick Pretoria out of its seat of power...It proved to the Boers that we can't go on but it also proved to the ANC that there was no way that they would be able to defeat it. It was a stalemate, let's call it a military stalemate, they had to fight it out."³⁸

A similar point of view is given by Niel Barnard, then director-general of the NIS, when he states as one of the reasons for the start of negotiations "...the fact that all South Africans realised that at the end no one was going to win any sort of struggle. There was balance of forces so to speak..."³⁹

3.4.4. International Factors

The South African case increasingly became an international problem. Partly because of the efforts by the exiled ANC leadership, many world governments became aware of the issues and attempted to create a solution. The P.W. Botha government particularly loathed international attempts to apply pressure on them. Yet, the South African and

³⁸ Willie Esterhuyse, interview by Patti Waldmeir, 25 November 1994.

³⁹ Niel Barnard, interview by Patti Waldmeir, 25 November 1994.

Namibian conflicts were more intricate than was initially obvious, as international interests in terms of the Cold War also played a role in determining attitudes towards South Africa. The end product, however, was the growing isolation of South Africa in the international market and political scene. As Sisk notes: "The pursuit of apartheid entailed tremendous costs in international relationships for the South African regime, which in turn influenced the resources available to repress it."⁴⁰

The United Nations (UN) passed a number of resolutions which condemned apartheid as a "crime against humanity," the first of which was in 1968. In 1972 South Africa lost its voting rights,⁴¹ and in 1977 Resolution 418 was adopted by the UN Security Council which imposed a mandatory arms embargo on South Africa.⁴² UN-backed sanctions against South Africa were introduced by the Security Council with Resolution 569 in 1985. Member states were urged to:

- Suspend all new investment in South Africa
- Prohibit the sale of Krugerrands and all other coins minted in South Africa
- Restrict contact in the field of sports and cultural relations
- Suspend guaranteed export loans
- Prohibit all new contracts in the nuclear field
- Prohibit all sales of computer equipment that may be used by the South African army and police⁴³

Chase Manhattan Bank was the first to stop granting loans to South Africa, and it created a snowball effect in the following years. After the bombing of among others Lusaka, which coincided with the visit of the Eminent Persons Group in 1986, the US Congress enacted the Comprehensive Anti-Apartheid Act in August 1986, and it was followed by sanctions from the Commonwealth and European states, including Britain.⁴⁴ All these impacted heavily on South Africa's economy, as well as its policy options, pressuring the government in the direction of negotiations. As Aziz Pahad notes:

⁴⁰ Sisk, *Democratization in South Africa*, p. 65.

⁴¹ *Ibid.*

⁴² [gopher://gopher.undp.org:70/00/undocs/scd/scouncil/s77/16](http://gopher.undp.org:70/00/undocs/scd/scouncil/s77/16)

⁴³ [gopher://gopher.undp.org:70/00/undocs/scd/scouncil/s85/10](http://gopher.undp.org:70/00/undocs/scd/scouncil/s85/10)

⁴⁴ Waldmeir, *Anatomy of a Miracle*, p. 56.

“I don’t want to underestimate the 1986 sanctions. PW’s [Rubicon] speech was a disaster for their strategy because overnight it brought all the major powers onto the sanctions issue and that meant that you were caught in a pincher movement; the internal situation and the external and the economy was slowly collapsing anyway, because by that time they would have realised that the economy was collapsing and if they had carried on the way it was going, more and more unemployed, more people on the streets. So society in that sense was in a very serious crisis and negotiations was then a response to that. That’s my own view.”⁴⁵

According to Chris Landsberg of the Centre for Policy Studies, the Nkomati accord in 1984 between South Africa and Mozambique limited the options of the ANC as they started to lose sanctuaries in frontline states. This weakened their military capacity to an extent and forced them to re-evaluate their strategies. The change in attitude of the USA and the Soviet Union at the Reykjavik summit in 1986 also played a role in accelerating a situation of stalemate in South Africa. Both superpowers were starting to search for solutions to costly regional conflicts, which signified to the South African government and the ANC respectively a change in attitude from their backers. In 1986 Oliver Tambo had a meeting with Mikhail Gorbachev, where the former applied pressure on the ANC-leader to adapt their policies. This was followed in 1987 by an explicit statement to the ANC from Moscow that they were starting to favour a negotiated settlement in South Africa.⁴⁶

According to an unconfirmed account, Gorbachev told the SACP’s Joe Slovo during a visit to Moscow in the mid-1980’s that the SACP would have to decide whether they still wanted to be regarded as Stalinists, and pressured him to realign the SACP’s policies. Coupled to these events were the negotiations on the Angolan and Namibian issue, which led to a transfer of Namibia under a democratically elected government. Hence, as the Soviet empire started to crumble and the USA attempted to extract itself from regional conflicts, the traditional allies of both the South African government and

⁴⁵ Aziz Pahad, interview by Patti Waldmeir, 4 November 1994.

⁴⁶ Chris Landsberg, interview by Patti Waldmeir, 6 December 1994.

the ANC receded. This created a situation where both parties were unable to secure an outright military victory, exacerbating the mutually hurting stalemate.

3.4.4. The mutual nature of stalemate

From the above discussion it can be argued that the factors which impacted on stalemate were on the whole more detrimental to the government's position, and that the ANC only stood to gain from a deterioration of apartheid. What is important to keep in mind though, is that the ANC was focused on achieving liberation and eventual upliftment of especially blacks in South Africa, coupled with a form of majority rule. A well-developed infrastructure and healthy economy was in their best interest, hence a protracted and destructive transition would have undermined their chances of later success if they could achieve their primary goals. The legitimacy crisis of the government further impacted directly on the lives of blacks, as increased disillusionment and unrest led to situations such as the states of emergency between 1985 and 1987. A mutual perception of these factors were crucial in the start of South African negotiations.

3.5 The Start of Negotiations

The official changes in policy of the ANC and South African government were not solely born out of reactions to domestic and international pressures. As has been mentioned, informal talks between elites of both leading groups had been underway from as early as 1985, and these impacted on the strategies of the two parties. In the same sense it can be argued that the mutually hurting stalemate and the inherent dangers of continued conflict as evident in 1989 did not *lead* to the start of negotiations, but rather served to *accelerate* the process as it had been unfolding since 1985. Due to the informal nature of the preliminary meetings it became possible for parties to gauge the other's perceptions on issues such as reform and transformation, without having to reach agreement. These meetings helped a great deal to create an atmosphere for dialogue. The coming about of the bargaining about bargaining phase will subsequently be discussed.

3.5.1. Laying the groundwork

In 1983 a discussion document entitled *Basic Political Conditions for the survival of the Afrikaner* was circulated among members of the Afrikaner Broederbond (AB) by the newly elected chairman Pieter de Lange. In it was argued that apartheid had become counter-productive to the survival of white South Africans, and that room should be made for black participation in politics. The document created grave tension among members and many left the society as a result of it.⁴⁷ What is important about this document is that it signified a shift in perceptions among members of the ruling group on the issue of compromise and multilateral strategies. According to Willie Esterhuyse, however, its importance should not be overemphasised. He argues:

“The idea was not to go for negotiations. I think the alternative was always reform or revolution and the attempt was to steer things in a direction where the Afrikaner sort of kept its control over important mechanisms. De Klerk’s idea of power sharing was the Broederbond’s idea of power sharing. The idea was not to negotiate themselves out of power, it was to get into a position where there was a sort of joint management and where the minority could play a very effective role in determining the course of events. No one in the Broederbond believed in the release of Mandela and the unbanning of the ANC, that was not on the cards...It was part of a power play in an attempt to co-opt in a different manner the other population groups into a system where the minority elite will remain not in power but will be there in the engine room...It dealt with minimum conditions but the document was important from a psychological point of view. It finally confronted decision makers and leaders with the reality that, listen, we need an alternative. And I think in this sense it was important. But what then happened, a lot of unintended consequences which they had to deal with emerged which led to different sort of positions.”⁴⁸

A similar sentiment is expressed by Sparks who describes the AB in the early 1980’s as “...the main agency for trying to find a way out of the Afrikaners’ historic dilemma:

⁴⁷ Waldmeir, *Anatomy of a Miracle*, pp. 52 – 53.

⁴⁸ Esterhuyse, interview by Waldmeir, 1994.

how to abandon apartheid and come to terms with the black majority without losing control of the country and ultimately the national identity of the Afrikaner *volk*.”⁴⁹ De Lange, who drafted the document, concurs in the following manner:

“We never abandoned the idea that the whites would have power, but they wouldn’t have power in an ordinary sense because the power previously had been political and economic and bureaucratic and technical, whereas the struggle was being built up on boycotts, on strikes, on mass action, that was real power.”⁵⁰

I would argue that the primary importance of the AB document is the change of attitude it signified among individuals close to, and in government. It is unrealistic to expect a document circulated in AB circles *circa* 1983 to espouse the idea of majority rule under a black (probable ANC) government. If a party considers the possibility of negotiations, even if it is only implied, the default position it takes is usually that of an ideal settlement, as was the case with the document. Without prior contact a party does not yet sufficiently understand its opponent’s positions on issues. Consensus and compromise are not yet explicitly stated as goals, but the possibility of it signifies a shift in perception. Therefore the AB document is important in the sense that it implicitly helped to create an environment for negotiations, by redefining the issue in non-zero sum terms.

The ANC similarly realised that they might have to entertain the idea of talks in future and should be prepared for it. According to Willie Esterhuysen:

“[T]he one thing that the ANC lacked, especially the diplomats, was an insight into what the Afrikaners were thinking...The interesting thing is...Tambo was the one who was very very emphatic about the fact that they should get to know Afrikaners within the establishment to find out what was going on in their heads because at that stage a small group in the ANC also

⁴⁹ Sparks, A. *Tomorrow is Another Country: The Inside Story of South Africa’s Negotiated Revolution*, Sandton: Struik Book Distributors, 1994, p. 72.

⁵⁰ Pieter de Lange, interview by Patti Waldmeir, 12 October 1994.

realised that negotiations were inevitable but they couldn't say it so they had to build a plank."⁵¹

At that stage direct contact was not only impossible for the ANC, but also for the South African government. In 1984, Profs. Willie Esterhuysen and Sampie Terreblanche of the University of Stellenbosch received a message from Lusaka that the ANC would like them to travel to Lusaka for possible meetings. Both met the criteria set by the ANC, as both were government advisors and influential Afrikaners. It was seen as an ideal opportunity for dialogue without direct contact between the government and ANC. News of the proposed trip reached P.W. Botha however, and the two academics were summoned to his office, where he requested them not to go, as it would seem to signify a start of negotiations with the ANC, to which they complied.⁵²

According to Esterhuysen, "[Botha] said I can't afford for you to go because of the symbolism of it will be negative and we can't have all sorts of intermediaries and so on. If anything should happen it should be the government."⁵³ Thabo Mbeki affirms the account and adds that such a meeting could have been seen as the start of negotiations between the ANC and South African government, which the government was not prepared to do at that stage.⁵⁴ According to Esterhuysen, Mbeki admitted to him later that the time was not ripe for talks in 1984.⁵⁵ According to my assessment the ANC was not prepared to enter into formal negotiations in 1984, for the following reasons:

- its cadres were still bent on achieving a military victory and would have opposed such a move
- the proponents of negotiation were still only a faction within the ANC.
- the stalemate had not yet reached its ceiling, creating no immediate incentives for negotiation on both sides

What is significant of the 1984 attempt at dialogue is the changes in attitude from influential elites associated with both sides, entertaining the idea of discussions. It did

⁵¹ Esterhuysen, interview by Waldmeir, 1995.

⁵² Sparks, *Tomorrow is Another Country*, p. 76.; Waldmeir, *Anatomy of a Miracle*, p. 76.

⁵³ Esterhuysen, interview by Waldmeir, 1995.

⁵⁴ Thabo Mbeki, interview by Patti Waldmeir, 19 January 1995.

⁵⁵ Willie Esterhuysen, interview by author, 19 June 1996.

not, however, signify the start of prenegotiation as a commitment from the parties themselves to find a mutual solution to the conflict was still lacking. It was rather an unsuccessful attempt at information gathering, which in itself plays an integral part in any decision to negotiate. For this reason strategy changes were not on the cards yet, but if the meeting had taken place it might have had an effect on strategies from either side.

3.6. The Mandela initiative

During the late 1970's and early 1980's political prisoners began to institute court cases against the government regarding their rights, privileges and the government's release policy. Many of these cases were instituted by prisoners on Robben Island, and the government lost an increasing number of them. A decision was made by the justice department to search for a possible solution, and a think tank was held on Robben Island around 1982.⁵⁶ The meeting was initiated by the minister of justice, Kobie Coetsee, and was attended by senior officials of the justice department and prison services. The primary motivation was to find a solution for the problematic court cases, and it was decided that a new release policy would have to be devised. According to Coetsee, by focusing on such a solution, he became more aware of the prisoners' environment in general, and specifically individual prisoners. He states: "...I became perhaps exposed to the individual personality of Mr. Mandela...the individual Nelson Mandela."⁵⁷

As a result more lenient release proposals for security prisoners were approved by parliament, and a decision was also made to transfer Nelson Mandela from the island. This was decided in order to arrange his future release, along the lines that he would return to Transkei.⁵⁸ In March 1982 five ANC leaders, including Mandela, were transferred to Pollsmoor prison in Cape Town. Despite letters from Mandela to among other Hendrik Verwoerd and the justice minister appointed in 1980, Kobie Coetsee, no

⁵⁶ Coetsee, interview by author, 1996. Coetsee was unsure about the exact year that the think tank met. It could have been at the end of 1981.

⁵⁷ Coetsee, interview by Waldmeir, 1995.

⁵⁸ *Ibid*

government officials had responded to his requests for discussions. The move seemed to signify something for Mandela, but nothing was forthcoming yet.⁵⁹

3.6.1. First Contact

The first contact between a government minister, in the form of Kobie Coetsee, and Nelson Mandela took place in November 1985, when the former had to be hospitalised for surgery. Mandela describes the meeting as follows:

“In 1985...I was taken to Volks Hospital in Cape Town under heavy security...But I had another visitor, a surprising and unexpected one: Kobie Coetsee, the minister of justice. Not long before, I had written to Coetsee pressing him for a meeting to discuss talks between the ANC and the government. He did not respond...But that morning I was amazed. The government, in its slow and tentative way, was reckoning that they had to come to some accommodation with the ANC. Coetsee’s visit was an olive branch.”⁶⁰

This meeting is regarded as the initiation of the *bargaining about bargaining* phase, the first phase in the negotiation process that would lead to a mutually agreed settlement eight years later. Whereas Mandela in his capacity had already communicated a desire to discuss negotiations, the hospital visit by Coetsee was the first indication by the government that it might consider talks. The implication of this was that leaders on both sides were slowly reassessing a zero-sum view of South African conflict, thereby implying that any solution would have to be found jointly. Such a reassessment is crucial for negotiations to begin, and only at the above meeting was it first implicitly conveyed.

According to Mandela no politics were discussed at the hospital meeting, but “it was clear that he was putting out feelers.”⁶¹ Coetsee stresses that the meeting was not a result of his chance meeting with Winnie Mandela the previous day while on a flight to

⁵⁹ Mandela, N. *Long Walk to Freedom: The autobiography of Nelson Mandela*, Randburg: Macdonald Purnell, 1994, pp. 497, 512.

⁶⁰ *Ibid.*, p. 512.

⁶¹ Sparks, *Tomorrow is Another Country*, p. 25.

Cape Town. He argues that interaction was made easier in a more comfortable environment and within the context of previous policy changes. The hospital was seen as an ideal venue, as Coetsee took it upon himself never to see Mandela as a prisoner. According to Coetsee preparation was done in detail prior to the meeting, including such issues as who were to perform the operation. He states that the preparation and meeting were sanctioned by P.W. Botha, who wanted to prevent any interference by foreign media or doctors. According to Coetsee he made use of the opportunity to send goodwill signals to Mandela.⁶² After Mandela recuperated fully upon his return to prison, he was separated from his fellow prisoners and put in a private cell, where according to him, he decided to use the opportunity to start discussions with the government.⁶³ He describes the decision as follows:

“It was clear to me that a military victory was a distant if not impossible dream...They must have known this as well. It was time to talk.

“This would be extremely sensitive. Both sides regarded discussions as a sign of weakness and betrayal. Neither would come to the table until the other made significant concessions. The government asserted over and over again that we were a terrorist organisation of communists, and that they would never talk to terrorists or communists...The ANC asserted over and over that the government were fascistic and racist and that there was nothing to talk about until they unbanned the ANC, unconditionally released all political prisoners and removed the troops from the townships.

“A decision to talk to the government was of such importance that it should only have been made in Lusaka. But I felt that the process needed to begin...”⁶⁴

3.6.2. The Eminent Persons Group

According to Mandela he wrote to Coetsee twice after he was separated from his fellow prisoners, asking for a start to talks about talks, but received no response.⁶⁵ The next high-profile meeting that presented itself was with the Eminent Persons Group (EPG)

⁶² Coetsee, interview by author, 1996.

⁶³ Mandela, *Long Walk to Freedom*, p. 513.

⁶⁴ *Ibid.*, pp. 513 – 514.

⁶⁵ *Ibid.*, p. 516.

in early 1986. The group comprised of seven members of Commonwealth states, and was co-chaired by former Australian Prime Minister Malcolm Fraser and former Nigerian ruler General Olusegun Obasanjo. The EPG's mission was to collect information on the South African situation and attempt to engineer a solution to the conflict. For this reason they also met with cabinet ministers of the South African government individually and collectively. According to the group one of their goals was "...to encourage, through all practical ways, the evolution of...a process of political dialogue [with a view to establish a non-racial and representative government]."⁶⁶ Waldmeir argues that both Mandela and the government were eager to exploit the meetings to their advantage. Mandela saw it as an opportunity to put forward his and the ANC's case, whereas the government was trying to drum up support for its strategy of gradual reform.⁶⁷

The first contact the EPG had with Mandela was with a personal visit by Obasanjo on 21 February 1986 in the guest house at Pollsmoor prison. At this meeting they discussed the nature of the delegation's brief, and it was decided to arrange two more meetings with all members present. According to Obasanjo, in his conversation with Mandela the latter argued for a "negotiated government" in South Africa, being very careful not to be too far ahead or too far behind ANC attitudes at that stage.⁶⁸ The first of the planned meetings took place in May 1986, and topics relating to South Africa's future and possible solutions to the political impasse were discussed. According to Mandela he stressed his commitment to a negotiated settlement, but emphasised that he would not reject violence until such a process was present. He asked the group to convey his sentiments to the ANC in Lusaka, which at the same time was meant as a message to the government.⁶⁹

The government, however, was not eager to accept advice on how to resolve the conflict. Olusegun Obasanjo notes that "I thought every government wants to present a good face to the world. The South African government of P.W. Botha is no exception, they wanted to present a good face to the world."⁷⁰ However, at a meeting between the

⁶⁶ *Mission to South Africa*, p. 19.

⁶⁷ *Ibid.*, p. 95.

⁶⁸ *Ibid.*

⁶⁹ Mandela, *Long Walk to Freedom*, pp. 317 – 318.

⁷⁰ Olusegun Obasanjo, interview by Patti Waldmeir, 8 November 1994.

EPG and cabinet ministers, the latter did not react well to a statement by Malcolm Fraser that the EPG was in South Africa to help the government. According to Obasanjo, Chris Heunis, then minister of constitutional affairs, "...wanted to kick us within the first ten minutes... [He] jumped up and said who asked you for your help."⁷¹

The government presented their position in a document handed to the EPG at a meeting between the cabinet and the delegation. In it they argued the following:

"It is the conviction of the Government that any future constitutional dispensation providing for participation by all South African citizens should be the result of negotiations with the leaders of all communities.

"The Government will not prescribe who may represent black communities in negotiations on a new constitution for South Africa.

"The only condition is that those who participate in the discussions and negotiations should forswear violence as a means of achieving political objectives."⁷²

The government then proceeded to list a number of premises on which negotiations would be based. These included:

- co-responsibility and power-sharing between those communities on matters of national concern
- the protection of minority rights, without one group dominating the other⁷³

Finally, they made the following statement:

"The South African Government also confirms that the situation of detainees or prisoners will be reviewed as violence recedes and normality returns; and

⁷¹ *Ibid.*

⁷² *Mission to South Africa*, p. 80.

⁷³ *Ibid.*, p. 81.

- it is positively committed to and actively involved in contributing to the peace, stability and development of the Southern African region.”⁷⁴

The last statement turned out to be ironic in the light of further events. On 19 May 1986 the South African army launched air and commando raids on suspected ANC bases in Zambia, Zimbabwe and Botswana. This was on the morning of the planned second meeting with Nelson Mandela, and a planned meeting between a constitutional committee of the government and the EPG. The raids were launched on the orders of P.W. Botha, and sent a clear signal to the EPG and international community on the issue of what was deemed to be outside interference in the domestic policies of South Africa. Despite initial overtures to the EPG by the government, the strategists behind the Total Onslaught had the final say on South Africa's position vis-à-vis the ANC and negotiations.

When the meeting with the government took place after all, the EPG did not raise the issue of the raids, but rather proposed the notion of a negotiated settlement as part of a report on their mission. The proposals were turned down as unacceptable by the government.⁷⁵ The Mandela meeting was cancelled, and the EPG left South Africa in June 1986. According to Landsberg, the report published by the EPG included the first public proposal of negotiation as a solution to the South African dilemma.⁷⁶ It did not, however, address the issue of sanctions, as all members did not support sanctions as a strategy.⁷⁷ Despite this, the army raids into neighbouring states left leaders with anti-sanction sentiments such as Margaret Thatcher and Ronald Reagan with little choice, and sanctions were introduced shortly afterwards, as an unintended consequence of the EPG mission.

Chester Crocker, the U.S. assistant secretary of state for Africa at the time, reflects on the passive role of Western governments during the EPG's visit, and argues that the government was split between those who wanted to utilise the EPG in order to force the ANC into a decision on violence, and those who first wanted to eradicate black

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

⁷⁶ Landsberg, interview by Waldmeir, 1994.

⁷⁷ Obasanjo, interview by Waldmeir, 1994.

resistance.⁷⁸ Obasanjo makes a similar observation when he states that “the cabinet was divided between the doves and the hawks, and the hawks had their day.”⁷⁹ This typifies the conflicting attitudes which were prevalent in government circles at the time on the issue of negotiation. In my opinion the raids served as a severe blow for the perceptions of the government’s good faith intentions, despite the probable interpretation by some government officials that they were merely contributing to the stability of the region, as stated.

The South African government was however not the only party who was internally divided on the issue of negotiations. A similar situation existed in ANC circles, where debate was heated over the question of negotiation vis-à-vis the armed struggle. After the May 1986 raids the pressure increased on pro-negotiation ANC-members to discard notions of peaceful settlement. The internal conflict within both parties led to a situation in the South African transition where individuals on both sides, rather than the collective of executives and supporters paved the way for talks. Hence, internal conflict on both sides was a crucial determinant of the method of bargaining which transpired during the bargaining phase.

3.6.3. The Committee

After the EPG mission, Nelson Mandela and Kobie Coetsee had a meeting at Coetsee’s house. They discussed the impasse regarding negotiations, and Mandela asked for a meeting with P.W. Botha and Pik Botha, the Minister of Foreign Affairs. Nothing transpired, however, and Mandela wrote Coetsee another letter, to which he also did not receive a response. Mandela was, however, increasingly granted daytrips, and from 24 December 1986 he was taken on various excursions in and around Cape Town and the Western Cape under supervision. Although his release was not imminent due to the deadlock over the violence issue, it seemed that preparation for it had begun. Yet, Mandela argues that he regarded it as a tactic to make him long for freedom and extract concessions from him.⁸⁰

⁷⁸ Crocker, C. *High Noon in Southern Africa: Making Peace in a Rough Neighborhood*. Johannesburg: Jonathan Ball Publishers, 1992, pp. 305 – 306.

⁷⁹ Obasanjo, interview by Waldmeir, 1994.

⁸⁰ Mandela, *Long Walk to Freedom*, pp. 520 – 52.

In 1987 Mandela resumed contact with Coetsee. P.W. Botha still regarded the Transkei option as the ideal solution to the question of Mandela, hence no movement towards an agreed conflict resolution mechanism was forthcoming. At the meetings negotiations were still not discussed explicitly, as Botha still regarded Mandela's case as problematic. This was signified by a meeting that was organised between Mandela and George Matanzima, brother to the head of the Transkei government, at Coetsee's house. The two men met, and according to Coetsee both were very conciliatory, but they still did not see eye to eye politically.⁸¹

As time progressed Botha became more interested to learn about Mandela's proposals, and at his request Coetsee assembled a committee which could enter into discussions with Mandela on a more formal basis.⁸² The members of the committee were Coetsee; the commissioner of prisons, General Johan Willemse; the director general of prisons, Fanie van der Merwe; the head of the National Intelligence Agency, Niel Barnard; and his deputy, Mike Louw.⁸³ This more structured approach signified a change in the government's attitudes towards (pre)negotiation, yet still none of it was public knowledge or declared to the cabinet. The composition of the committee was significant in that it reflected a conscious decision to involve non-politicians. One reason for this decision was the fear that information might be leaked if politicians were involved.

The National Executive Committee of the ANC got word of possible talks between Mandela and the government, and became worried. A letter of Oliver Tambo was smuggled to Mandela, asking him what the situation was. Mandela replied that he was trying to initiate contact between the ANC and the government. Because of the suspicion in him from the ANC in exile, Mandela saw the government's tactics as an attempt to drive a wedge between him and the ANC. His perception could also have been caused by the fact that Botha as well as the committee's participants continued to shun any outside intervention or mediation. One of the first points conveyed to Mandela at the first meeting was that there was not going to be any mediation; a condition to

⁸¹ Coetsee, interview by author, 1996.

⁸² Waldmeir, *Anatomy of a Miracle*, p. 100.

⁸³ Sparks, *Tomorrow is another country*, p. 36. Barnard and Louw were included after initial discussions between the others and Mandela, where the latter eventually agreed upon their participation. The first meeting between all the members of the committee and Mandela took place in May 1988.

which he agreed.⁸⁴ This served the purpose of co-ordinating contact with Mandela centrally, ensuring a united front against him, and keeping exit costs low. According to Niel Barnard: “[t]he more the outside world tried to become involved the more stubborn we became to not try and let them have any kind of involvement...”⁸⁵ Although intermediaries such as the committee was used, the government was always aimed at having a direct line of communication between themselves and the ANC. I am of the opinion that this was because of suspicion towards the neutrality of third parties, as the prevailing opinion of outside persons were that Mandela should be released as soon as possible. For the government, perceptions of their own power came into play, hence to strengthen their position they regarded it as imperative that they should keep the initiative.

What is interesting is that Mandela did not report of these meetings via his communication channels to Lusaka. He was also vehemently opposed to any talks between the government and the exiled ANC leadership, and grew increasingly so. According to one source, a proposal was made to him during his discussions with the committee that the government should initiate contact with the ANC in exile. He completely refused, and insisted that if the government wished to do this, they should smuggle the persons involved into the prison.⁸⁶ This was probably due to his suspicion that the government might attempt to drive a wedge between him and them, and extract an embarrassing statement or compromise from either side. Yet, it could also have been an attempt to consolidate his powerbase within the organisation, making a deal with the government dependent on him, or stalling talks with the ANC until he was released.

Although exit costs were always kept in mind, it was increasingly doubtful whether the government through the committee could extract themselves from talks with ANC figures as time passed. Especially in light of Mandela’s age and international pressure to release him, Botha and his officials realised that if he died in prison, it would cause a severe outcry and backlash both domestically and internationally. Mandela probably also realised this. Therefore, I would argue that it became crucial for talks to continue

⁸⁴ Anonymous, interview by author, 9 April 1997.

⁸⁵ Barnard, interview by Waldmeir, 1994.

⁸⁶ Anonymous, interview by author, 9 April 1997.

on issues such as Mandela's release until agreement could be reached. The elusive contract zone could however not be found during Botha's term in office.

Mike Louw confirms that Mandela was afraid they might "make mischief" and that the two sides would be played off against one another. Louw argues that the committee was actually afraid that such a perception had already taken root within the ANC outside, and that they were wondering if they could still trust Mandela. He states:

"And here we were making progress I think as far as the talks were concerned...with an indication of how Mr. Mandela's mind was working, and putting our money on him so to speak that he would do the right thing when he was eventually released. And at the same time we were worried that he was losing confidence of those outside so we had to do something to get the other side on board as well."⁸⁷

All the government sources with which I have spoken, deny that there was ever an attempt to drive a wedge between the ANC in exile and Nelson Mandela. They stress that it became important, as Mandela's release became more imminent and doubts in his leadership surfaced, that the exiled ANC leadership should also be engaged. This, however, remained a tricky situation as the leadership wasn't as easily approachable and the risks involved in terms of the government's constituency were quite huge. Not surprisingly, however, the point of view of ANC members remain that division was sought between them and Mandela.

According to an anonymous source the main aim of the committee was to discuss Mandela's release with him.⁸⁸ Sparks notes that Niel Barnard had a brief to question Mandela on his views of three issues crucial to the government. These were his assessment of violence as a means to an end, his attitude towards communism, and his flexibility on the issue of majority rule.⁸⁹ According to Barnard he conveyed this to Mandela at the first meeting by telling him "...I have been instructed to talk to you, and the reason is we must find out are you interested in a peaceful settlement? What are

⁸⁷ Louw, interview by Waldmeir, 1995.

⁸⁸ Anonymous, interview by author, 18 April 1997.

⁸⁹ Sparks, *Tomorrow is Another Country*, p. 48.

your views on the use of force and what are your views on communism...” On the issue of majority rule he states that Mandela was asked “...are you interested in a peaceful political system, and indicating from that, what would be the positions of minorities...?”⁹⁰

Mike Louw reiterates the above as issues that were discussed and also mentions issues such as Mandela’s view of South Africa’s political future, the question over the youth’s perceptions, and South Africa’s involvement in neighbouring states that were discussed. He divides the issues into topics of the day and strategic future predictions. According to Louw the committee’s approach was to gather information from Mandela on his assessment of the issues. He states that they made as little input as possible in order to listen to Mandela, but adds “[w]e were not supposed to convince him, but [in] many instances we were of the opinion he was a bit out of touch to our lives, and we gave a few inputs to see how he would react...”⁹¹

It is clear from these recollections that the government’s aim was to gather as much information as possible from Mandela, in order to weigh up their options and formulate their strategies in the event of his release. The meetings had the effect of forcing them to evaluate their own positions and decide if a negotiation range was possible within the parameters of both sides’ ideal settlements, concurring with Gibson’s outline of the first phase in negotiation. As Morley and Stephenson note, they had to assess the feasibility of demands. The fact that they “evaluated” Mandela in the light of a possible adversary in official negotiations, in other words whether they could negotiate with him, signified an implicit acceptance that any solution to the dilemma of this prisoner and the problem of the ANC would involve a multilateral strategy. This is a crucial precondition for negotiation as outlined by Zartman and Berman and Du Toit. For the government it was not just a question of who to negotiate with and what to expect. The problem had to be redefined.

To further influence Mandela and inform him of current thought on political, social and economic issues, preparations were made for him to meet with influential South

⁹⁰ Barnard, interview by Waldmeir, 1994.

⁹¹ Louw, interview by Waldmeir, 1995.

Africans of all sectors. To ensure better communication and secrecy in this regard, he was transferred to Victor Verster prison in December 1988, a move initiated by Kobie Coetsee. Yet that was not the only rationale behind the move. By relocating Mandela to a house on the outskirts of the Victor Verster prison grounds, and allowing him to meet with more of his own contacts, an attempt was made to demystify him, as reports of meetings with other ANC members were sure to leak out.⁹² This was also a government-sponsored attempt to bridge the gap between him and the increasingly suspicious ANC-NEC in Lusaka. Furthermore the government, faced with dread scenarios when Mandela was released, began to release other prisoners in order to prepare ANC supporters for Mandela.

During Mandela's incarceration at Victor Verster, approximately 44 meetings with prominent organisations and/or persons were arranged for him. At these meetings Mandela was informed of issues ranging from economic policy to international affairs. The argument from government side was that Mandela needed to appear credible upon his release, as his leadership was not a given.⁹³ This, coupled to the daytrips was also an attempt to accustom him to public life. Apparently Willemse played an important part within the committee advocating the release of Mandela, as he argued that negotiations should be held only when all persons were on an equal footing.⁹⁴

The talks with Mandela turned out to be frustrating at times for the committee members, as Mandela would return to unresolved issues weeks after they've been discussed. He would also stick to the positions he'd taken in. As Mike Louw notes: "He had 27 years to work on his points and he was sticking to them."⁹⁵ Despite this perceived lack of willingness to compromise, talks continued. A possible explanation for Mandela's non-movement could be that his positions were already compromises to a certain extent, and that the real compromises still had to come from government side. Niel Barnard notes that Mandela argued from the start of discussions that any new dispensation should be democratic, and whoever won power would run the country; but also recognising that the country could not be run without Afrikaner leaders and their supporters.⁹⁶ This

⁹² Barnard, interview by Waldmeir, 1994.

⁹³ Coetsee, interview by author, 1996.

⁹⁴ Anonymous, interview by author, 9 April 1997.

⁹⁵ Louw, interview by Waldmeir, 1995.

⁹⁶ Barnard, interview by Waldmeir, 1994.

placed the onus for movement on the government's side – for them to accept the possibility of an ANC-led government.

According to Kobie Coetsee the talks he had with Mandela on constitutional issues was not part of a negotiation process yet, but was related to the setting up of an agenda.⁹⁷ A formal agenda was not yet forthcoming, however, as no official commitment to negotiate a new dispensation had taken place on either side. Similarly, no concrete legislative or constitutional changes were discussed during the committee-Mandela meetings, but rather what should be done from each side to reach such a point. The mutual reiteration of preconditions for bargaining served the purpose of moving towards preliminary bargaining, subsequent discussions inevitably lead to issues such as the release of political prisoners, the removal of restrictions on the ANC, and the issue of violence.

Despite this, no real progress was being made in terms of action taken by the government. Mandela started to grow more and more restless and on more than one occasion demanded to speak directly with P.W. Botha, as he effectively had the final say on all issues of reform. According to Barnard, Mandela told him "...you are not such a bad guy and I happen to like you here and there, but you don't have the political power and I want to talk to the man with political power, and that is P.W. ..."⁹⁸ After several failed attempts by Mandela to secure such a meeting, it at last took place on 5 July 1989 under strict security, with Mandela being smuggled into Tuynhuys at night.

Prior to the meeting, in March 1989, Mandela had sent a detailed memorandum to P.W. Botha in which he argued that a negotiated settlement should be found to solve the problem of conflict. Although Botha had resigned as leader of the National Party in February 1989, he was still State President, and Mandela regarded him as the primary person who could initiate change. In the memorandum Mandela proposed a start to negotiations between the ANC and the government if the latter would drop three of its preconditions. These were the call on the ANC to reject violence, the demand that all links are broken with the SACP, and the condition that the ANC should abandon the

⁹⁷ Coetsee, interview by author, 1996.

⁹⁸ Barnard, interview by Waldmeir, 1994.

concept of majority rule. He also argued that the fears of whites would have to be taken into account, yet reconciled with the idea of a democratically elected majoritarian government.

These issues were not addressed at the meeting with Botha, however, as it was mainly a “courtesy call.”⁹⁹ Still, although the meeting itself did not produce much of a result in terms of the negotiation process, it was a significant step in South African history. The outcome of the meeting did, however have a significant impact. The most notable outcome was the shock announcement of the meeting by Botha the weekend after, during a hunting trip with some cabinet members, when he circulated a photo taken of him and Mandela among those present. It created an uproar as the cabinet realised that they were not informed of contact with Mandela for a significant time. Botha again circulated the photo at a security council meeting the following Monday, and in the same week the story of the meeting reached the newspapers.¹⁰⁰ The importance of the aftermath was that, whatever statements were made, the news of such a meeting started to prepare supporters on both sides, until then oblivious of the process, for contact with the ANC.

By the end of the committee meetings with Mandela a report was compiled by Mike Louw in collaboration with the other members. According to Louw the main conclusion was that Mandela was a man of integrity, and a man with which the government could deal with, keeping in mind that he was immovable on some issues. This served an important role later in convincing the government to engage Mandela in talks, without having to worry that he would continuously shift between positions. What is significant is that all the persons who were involved in the committee regarded Mandela as probably the most important role-player in all the talks that led to a new dispensation. An anonymous source regards the committee-Mandela meetings as probably the most significant cause of the negotiated settlement.

⁹⁹ Mandela, *Long Road to Freedom*, pp. 538 – 540.

¹⁰⁰ *Ibid.*

3.7. Establishing contact with the exiles

One problematic aspect of talking with Mandela was that, despite his status, he was but one individual within the ANC. Even if he would play a big role in a negotiated settlement, he had been separated from his colleagues for too long to assert his leadership role and refine his views on an ongoing basis. The government realised early on that if they were going to engage Mandela in talks, they also had to engage the ANC leadership, as a solution could not rest on the decisions of one man. The latter was a logistical nightmare, however, as talks with the ANC outside South Africa was not as morally defensible as talking with prisoners of the government. The influence of audiences was very important, and the government could not risk being seen to talk with the enemy by their supporters. For this reason as many planned meetings as possible between white South Africans and the ANC were quashed between 1984 and 1986, when extra-governmental persons started to attempt contact on their own.

Although it is denied by government negotiators, it would have been an appealing option and a logical strategy to attempt and create tension, even a possible rift, between the ANC and Mandela. Given the context of post-1985 South Africa, and the increasingly obvious realisation by the South African government that they would probably have to regard the ANC as future opponents in negotiation, such a tactic would have been implicitly accepted. It can even be argued that the government attempted to prepare Mandela in such a way that he would be the local and international choice when it came to a decision of who to support. If bargaining is regarded as an attempt between parties to exchange scarce resources and simultaneously acquire as much possible advantage for themselves, the offering of freedom to Nelson Mandela in exchange for a rejection of violence is a fine example of the carrot-stick dimensions of negotiation. Although it is argued that the government perceived itself to be in a powerful position, prenegotiation served as the ideal forum to alter the ANC's perception concurrently, as well as create a disturbance in the power relationship. Hence, for the government, as for any side in bargaining, a weakening in the opponent's bargaining power would have been advantageous, whatever their end goal was. This study therefore argues that it was to be expected that the government would at least implicitly try and create dissension in

ANC ranks if it meant that they would be weakened in negotiation. This is due to the nature of bargaining.

Even government intermediaries such as Willie Esterhuysen argues that a strategy to divide the ANC might have been the case. He states that "I may be wrong, and I hope I am wrong. I think in that period, make it '84 to '88, the idea was still to see if they could get a split in the ANC, between the nationalists and the so-called communists, which is a wrong sort of categorisation."¹⁰¹ Aziz Pahad reiterates the sentiment and adds that it must have seemed uncanny for the government that the ANC and Mandela's arguments correlated so closely. He states that the similarities were a blessing in disguise, as it would have sent a signal to the government what the ANC's positions would be, regardless which leader is negotiated with.¹⁰²

3.7.1. Being handed an intermediary channel

Whatever the underlying strategy of the Mandela discussions, the government needed information on the position of the ANC in exile. This was especially evident in 1985 after the report issued at the ANC's Kabwe conference. The ANC declared it would negotiate only over the modalities of the transfer of power, yet recommended that a set of preconditions for negotiations be drawn up, and the government started to realise the need for firsthand information on the ANC. A similar situation was evident in ANC circles, where members were interested in gauging the attitude and mentality of Afrikaners. Yet in light of ANC policy and internal differences, they were in a similar dilemma as the government and could not initiate direct contact, for the fear of a backlash from supporters. Furthermore, both parties feared that a move from their side might signify weakness on their behalf. What was needed was either a chance occurrence or a mediated effort from a third party. The latter scenario was the one that presented itself in 1987.

In February of that year, Michael Young, who was head of communications and corporate affairs at the British mining conglomerate Consolidated Goldfields, met with Profs. Willie Esterhuysen and Sampie Terreblanche of Stellenbosch University in order

¹⁰¹ Esterhuysen, interview by Waldmeir, 1994.

¹⁰² Pahad, interview by Waldmeir, 4 November 1994.

to gauge whether they would be interested in another attempt to meet with the ANC. This was part of an effort to make contact with elites within the establishment who might be interested in talks with the ANC. The idea had its origin in a series of unsuccessful meetings between British business elites and the ANC during 1986, when Oliver Tambo reportedly asked Young to establish contacts between the ANC and Afrikaners.¹⁰³ Young discussed the proposal with Rudolph Agnew, the chairman of Consgold, who gave his qualified support. Young then proceeded to gather names of possible contacts within the Afrikaner establishment, and contacted Fleur de Villiers, who was a Johannesburg-based consultant for Consgold at the time. De Villiers steered him towards Esterhuysen and Terreblanche.¹⁰⁴ After initial contact was made, Young and Humphrey Woods, another senior official within Consgold, proceeded to organise the first meeting.

Three weeks after the start of preparations, Esterhuysen received a visit from two senior NIS officials at his home. It was apparent that they had information on the proposed meeting, as they asked Esterhuysen if he would be prepared to advise them on how to deal with the issues of constitutional and political renewal. This included reporting back to them on any ANC meetings, as they had set up a small committee consisting of five NIS officials who were working towards a new strategy in dealing with the ANC.¹⁰⁵ Esterhuysen complied on the condition that he could inform the ANC of it, which was accepted by the officials. The NIS committee comprised of Niel Barnard, Mike Louw, Maritz Spaarwater, and two other unnamed persons: a woman and a man. The only other person informed of Esterhuysen's role was P.W. Botha.¹⁰⁶ It is important to note that this committee was set up one year prior to the committee that met with Nelson Mandela, of which Barnard and Louw were also part. Due to Botha's knowledge of both developments, it might have been a deciding factor in co-ordinating the committees with dual membership.

According to an unconfirmed account, an attempt to broker contact between the ANC and the government was also made by a lawyer in the Western Cape who regularly

¹⁰³ This could not be established as fact, as some sources doubt whether Oliver Tambo made the plea.

¹⁰⁴ Sparks, *Tomorrow is Another Country*, pp. 78 – 79.

¹⁰⁵ *Ibid.*

¹⁰⁶ Waldmeir, *Anatomy of a Miracle*, p. 79. The fact that P.W. Botha knew of the indirect link with the ANC was confirmed to the author by an anonymous source.

corresponded with P.W. Botha. The person claimed to have links with the ANC in exile and offered his services as facilitator to Botha, who instructed Stoffel van der Merwe, then minister of information, to liaison with him. Apparently Van der Merwe misinterpreted Botha's instruction as a mandate to establish official talks and approached the Swiss government for funding. They complied and an office was set up for the lawyer, who organised some preliminary meetings with the ANC, but did not show up. Botha, who was oblivious of the developments, meanwhile undertook a visit to Switzerland and was subsequently thanked for the opportunity he granted the Swiss to assist in setting up dialogue. Needless to say he was furious when he learnt of the initiative and Van der Merwe, as a result, almost lost his cabinet position. The project was then cancelled. One other attempt to mediate the conflict was made by the Dutch government, but it never passed the initial stages and as a result was cancelled.

3.7.2. The role of the National Intelligence Service

Before the discussion is continued it is important to reflect on the role and influence of the NIS on the whole transition process in South Africa. A question that needs to be answered is why did the NIS play such a seemingly crucial role in the move towards negotiation with the ANC? This is especially relevant in the light of the common assumption that they were a central cog in the repressive machinery of apartheid. Furthermore, in terms of negotiation, are intelligence agency officials a logical choice in relationships that require the building of trust? What were the motivations and aims of the NIS in South Africa's prenegotiation phase? Answers to these questions are important when analysing South Africa's transitional negotiations, especially in the light of a broader application when dealing with deeply divided societies.

It has become a common assertion that a great amount of hostility existed between National and Military Intelligence, dating back from the Vorster government. According to Kobie Coetsee a change in preferences were evident in Botha's coming to power, as he preferred advice from the military security establishment.¹⁰⁷ This is evident when looking at the increasingly important role that people like Gen. Magnus Malan and bodies such as the State Security Council played under Botha's presidency. According to Coetsee he was instructed by Botha to close down the NIS. However, he came to the

¹⁰⁷ Coetsee, interview by author, 1996.

conclusion that NIS provided one of the few openings to the world for the embattled government, in terms of its monitoring capacity. After a dramatised arrest of a Russian spy, Botha's perception of the NIS changed to a more favourable position. Coetsee argues that this led the way to develop an under-utilised aspect of the NIS's capacity, namely making analyses and predictions regarding domestic politics and compiling future scenarios as a strategic aid to government. According to Coetsee the two state departments that specifically made use of this capability were the departments of justice and correctional services. The underlying antagonism between the two intelligence bodies stayed prevalent however.¹⁰⁸

According to Niel Barnard the NIS advocated talks with the ANC even before 1986. He states that a report compiled in 1984 by P.S. Swanepoel, the NIS Chief Director of Evaluations at the time, argued that the government should start talking with Mandela. The report also sketched a scenario that the release of Mandela in Johannesburg could attract almost two million supporters – a dreaded prospect for the government. This assessment convinced the NIS that a strategy of gradually demystifying Mandela should be implemented, a cause of Mandela's eventual prison transfers.¹⁰⁹

According to Willie Esterhuysen an argument can be made out that National Intelligence understood what *intelligence* was all about, as opposed to *information*. He states that whereas MI reacted more to incidents of sabotage and how perceived perpetrators could be tracked down, NIS thought more strategically. After events such as the signing of the Nkomati accord in 1984, where NIS was intimately involved, and later on the Angola/Namibia negotiations, where Barnard was one of the three main negotiators, they would probably have made an assessment that the process of change would become irreversible with time, and decided to act more proactively. Esterhuysen argues that concomitantly they probably expected a division between blacks in time, a perception which had unintended consequences. He says that on numerous occasions after 1987 he had discussions with the small committee of NIS officials on the topic of strategic reform, and that they were the crucial strategists on government side throughout the initial stages.¹¹⁰

¹⁰⁸ *Ibid*

¹⁰⁹ Barnard, interview by Waldmeir, 1994.

¹¹⁰ Esterhuysen, informal discussions with author, 19 June 1996 – 3 November 1997.

Another explanation by Esterhuysen for the prominence of NIS in setting up dialogue, was the competition between them and MI. According to him they were attempting to gain ascendancy as the primary intelligence body in South Africa, and for this reason he does not regard their move as morally motivated. He states that the strategies discussed internally by the NIS focused on an alternative to the Total Onslaught strategy that was then eminent during the Botha government. However, the nature of the Total Onslaught idea placed the managing of responses to it more in MI's field of expertise. According to Esterhuysen the NIS's strategies thus had to focus on the part of the political spectrum they had sole access to, which turned out to be external movements of extra-political organisations. The officials that met with Esterhuysen in 1987 told him that the NIS needed a form of dialogue with organisations like the ANC to counter the one-sided information they had on them. He notes, however, that he does not think they were at that stage aiming at the setting up of negotiations.¹¹¹

Chester Crocker argues that Niel Barnard's presence in the Namibian negotiating team brought in a key constituency. This can be argued for the South African case as well. He states:

“While National Intelligence did not possess the clout of the SADF's military intelligence directorate on regional military issues, it offered a distinct viewpoint on both regional and global issues. In addition, its domestic intelligence function gave Barnard a major say on anything related to the African National Congress.”¹¹²

Esterhuysen's assessment of the NIS was that they were faced with a complex dilemma, and said to them “I can't do a thing like this and act as an informant. I am prepared to act as a sort of informal messenger but I can't be an informant.”¹¹³ He continues:

“The fascinating thing about the discussions I have had in so many, what they called safe houses...was that we sat there sometimes for a whole day discussing policy alternatives which then indicated to me that the strategists in government were not just confused, but found themselves at a crossroads.

¹¹¹ Esterhuysen, interview by Waldmeir, 1994.

¹¹² Crocker, *High Noon in Southern Africa*, p. 407.

¹¹³ *Ibid*

For them to discuss with me strategies and policy options was an indication that something had gone wrong somewhere.”¹¹⁴

Another reason, despite the need for a strategic approach, that Esterhuysen mentions as an explanation for why the NIS became involved, is the need for secrecy and low exit costs that existed. The official position of the NIS, which Esterhuysen also had to convey to the ANC, was that they would not personally engage in discussions.¹¹⁵ Therefore they had to make use of an intermediary in order to distance themselves from any involvement with the ANC. Yet, if a positive link could be proven between the ANC and NIS, they would be able to reply that it was their responsibility to gather information on the ANC and the talks merely served as a purpose for them to do their jobs.¹¹⁶ The end product was that in no way could the government be held responsible, and some sources were at the time of writing still reluctant to confirm whether P.W. Botha knew of the contact. This is because it is still a sensitive issue, given the context at the time, to acknowledge that persons in government initiated contact with the ANC that would lead to the current dispensation, regardless of the reasons.

The high level of incompatibility between NIS and MI is illustrated by the security preparations that were made for Esterhuysen during and in-between the European meetings. These were not as much aimed at protecting him from the ANC, but from agents associated with MI. For this reason Esterhuysen approached a prominent government official and personal friend, and as an insurance tactic Esterhuysen informed him of the developments, in case something went wrong. Esterhuysen had contacts within the cabinet, who for instance informed Esterhuysen when an MI official named him as an ANC courier at a State Security Council (SSC) meeting. At that stage only two people in the SSC knew of the initiative and could do nothing. Despite training Esterhuysen received in general safety and detecting car bombs, he was also protected by NIS officials for a period of time, illustrating the severe risk of MI interference.

The significance of the NIS behaviour in terms of their conflictual relationship with MI, lies in the affirmation of the serendipitous nature of the process. As Esterhuysen notes,

¹¹⁴ *Ibid.*

¹¹⁵ This changed in 1989. See Section 3.7.4.

¹¹⁶ Esterhuysen, interview by author, 1996.

the actions of the NIS had many unintended consequences, of which an eventual transfer of political power to the ANC was one. This does not mean that the characterisation of these events as prenegotiation is invalid. The recognition was evident that a form of co-operation would be necessary in future to resolve the conflict, and that in itself served to formalise negotiation at a later stage. The fact that negotiation *did* occur in the end, and was not suppressed by a knee-jerk reaction by the NIS, shows that the unintended consequences were partly due to an inadequate delineation of parameters by the NIS of their own bargaining position.

3.8. The external initiative

After Michael Young met with Sampie Terreblanche and Willie Esterhuyse in February 1987 and both expressed their willingness to meet with the ANC, he attempted to recruit some other high-ranking Afrikaners. On the recommendation of Esterhuyse he approached Johan Heyns, moderator of the Dutch Reformed Church; Pieter de Lange, head of the Afrikaner Broederbond (AB); Tjaart van der Walt, rector of Potchefstroom University; Willie Breytenbach, a civil servant turned academic; and Marinus Wiechers, professor in law at the University of South Africa (UNISA). Heyns, De Lange and Van der Walt declined to partake.

Between October 1987 and 1 July 1990 eight meetings took place between the ANC and prominent Afrikaners. The first meeting took place in October 1987 at a hotel known as The Complete Angler in Marlowe. From the establishment side Esterhuyse, Terreblanche, and Breytenbach was present, and from the ANC side Aziz Pahad, Harold Wolpe, Wally Serote, and Tony Trew. The meeting was chaired by Michael Young, and was mainly an exercise in breaking the ice. Nothing substantial was discussed, as only vague arguments were made from both sides on what their perceptions were of South Africa's situation and future. It was decided that more meetings were to be organised.¹¹⁷

The second meeting between the groups took place in February 1988 at the Eastwell Manor Hotel in Kent. Thabo Mbeki joined the ANC delegation and Marinus Wiechers,

¹¹⁷ Willie Esterhuyse, informal discussions with author, 19 June 1996 – 3 November 1997.

Tjaart van der Walt, and Naas Steenkamp, president of the Chamber of Mines, joined the Afrikaner group, while Young again chaired the meeting. Both sides had compiled agendas of the issues they wanted to discuss, yet reiterated that they had no official mandate to negotiate on behalf of the government or ANC respectively. This was a crucial aspect of these talks, and a reason why most participants did not regard it as negotiations. Esterhuysen states that the ANC constantly reminded the other participants that it was not a meeting with the ANC, but rather with members of the ANC. The issues that were discussed at this meeting included:

- the ANC's position on violence
- the ANC's preconditions for negotiation
- the role of leaders in pacifying militant supporters
- the ANC's political and economic policy
- the relationship between civil and military powers in South Africa
- the proposed National Statutory Body which aimed at including blacks in political decisionmaking
- the ANC's stance towards minority rights and black-on-black violence
- the resumption of international sporting links by South Africa¹¹⁸

Esterhuysen notes that the discussions were at all times informal and that delegates explored only hypothetical events. One side would present the other with a scenario and assess their reply in terms of concessions they might be willing to make. Despite the more formal dialogue, participants were also awarded ample time to engage in personal discussions. This created the ideal situation to pursue dual track deliberations, where the groups workshopped agenda issues, and Esterhuysen and Mbeki debated possible agendas for formal negotiation in private. Esterhuysen informed Mbeki of the NIS link, a factor which was never explicitly conveyed to the other members, with the exception of the ANC's Jacob Zuma, who also attended some meetings. Hence, the private discussions dealt more with concrete issues and obstacles to negotiation, as both Mbeki and Esterhuysen would report back to their respective leaderships and return with different proposals. According to Esterhuysen he had a relatively free hand to decide on

¹¹⁸ *Ibid.*

which issues to raise with Mbeki, but from time to time the NIS committee would supply him with questions and proposals to convey indirectly to the ANC.¹¹⁹

From the third meeting, discussions took place mostly at Mells Park, a house owned by Consolidated Goldfields. Both delegations introduced new participants on a regular basis, with the greatest fluctuation taking part in the Afrikaner group. At the request of the ANC, Esterhuysen shuffled the composition of the group in order to introduce the ANC members to a divergence of views, especially regarding economics in the later stages. During the course of talks approximately twenty different people were brought in by Esterhuysen. Prominent figures that were included from the fifth meeting included Marinus Dalling of Sanlam; Attie du Plessis, the brother of minister of finance Barend du Plessis; Mof Terreblanche, who was a close friend of F.W. de Klerk; Willem Pretorius of the Metropolitan Group; Gert Marais, the editor of *Finansies en Tegniek*; Louis Kriel, the head of Unifruco; Ebbe Domisse, the editor of *Die Burger*; and Ernst Lombard of the Dutch Reformed Church.¹²⁰

For the third meeting in August 1988 the participants were Esterhuysen, Terreblanche, Wimpie de Klerk, the brother of F.W. de Klerk on the one side, and Mbeki, Pahad, and Trew on the other with Young chairing. The issues that were discussed in the group included:

- the release of Nelson Mandela
- the ANC's commitment to exercise control over its grassroots supporters
- the use of violence by the ANC
- the question of Namibia
- white support for reform¹²¹

At this meeting the ANC presented a conciliatory document for discussion in the group, which included their proposals for a new South African dispensation. The issue of a suspension of the armed struggle if the ANC were unbanned was also discussed.¹²²

¹¹⁹ *Ibid.*

¹²⁰ *Ibid.*

¹²¹ *Ibid.*

¹²² *Ibid.*

Against the backdrop of Mandela's transfer to Victor Verster prison, the fourth meeting took place at Flitwick Park in Bedfordshire in December 1988. All of the August participants were present, and the group discussion centred around the following issues:

- the divisions within government agencies regarding the ANC
- the proposed Democratic Party as opposition to the government
- the issue of Mandela's release as a precondition for the suspension of the armed struggle
- the ANC's discussion document put forward at the previous meeting
- the question of Namibia

This meeting served as a very important turning point for Esterhuyse's group in terms of their approach to the talks. Whereas they usually attempted to explain the complexities of changing the government's attitude, and argued for a wait-and-see approach, they now started to seek answers to questions such as what should be done to ensure an open process?¹²³ Esterhuyse regards the meetings before December 1988 as part of a stage where discussions were held on procedures to get negotiation on track. The second stage were more focused on positions and principles.¹²⁴ Esterhuyse and Mbeki also increasingly discussed the release of Mandela and possible direct contact between the NIS and ANC to organise such an event. During the course of 1988 the two of them also had one private meeting in a hotel in England.

In April 1989, two months after P.W. Botha resigned as National Party leader and was replaced by F.W. de Klerk, the fifth meeting took place at Mells Park. Although De Klerk was not yet state president (and would only become acting state president in August 1989) the discussion inevitably centred around the expectations participants had of reform under De Klerk's leadership, once he took over. At that stage, De Klerk was not oblivious to the meetings between Esterhuyse's group and prominent ANC figures, as his brother kept him informed. Although F.W. de Klerk did not support the idea, Wimpie de Klerk declared at this meeting that his brother was eager to know what the ANC positions on various issues were, for instance their conditions for a start of

¹²³ Sparks, *Tomorrow is Another Country*, p. 85.

¹²⁴ Esterhuyse, interview by Waldmeir, 1994.

preliminary talks. The ANC delegation reiterated that the release of Mandela and the unbanning of the ANC were of primary importance. What was not known to most of those present, however, was that detailed discussions on these issues had been going on between Mbeki and Esterhuysen, on the behest of Barnard, who reached a stage in the talks with Mandela where direct contact with the exiled ANC were increasingly sought after. However, F.W. de Klerk as a new player introduced new factors and concerns for those involved, and no plans were made for an actual meeting at first.¹²⁵

3.8.1. Direct Contact

By June 1989 the preparations to establish direct contact were underway. It is my view that the power struggle within the NP must have had a significant effect on the decision by the NIS to meet directly with the ANC. After all the preparations that were made since 1985, it would have been frustrating for the NIS to be moved out of the president's sphere of advisors, and effectively deprived of political influence or status. The presentation of a *fait accompli* to the new leader must have seemed to be the only solution to ensure a continuing of the process. Esterhuysen and Mbeki had to meet personally to finalise a possible meeting. Esterhuysen was informed by Barnard, however, that British Intelligence might have picked up on the meeting, and did not discuss anything of significance with Mbeki when they met at the offices of British American Tobacco (BAT). Instead, he slipped the latter a note stating that they might be under surveillance. They dispersed and met up again at a nearby pub, where a code word and telephone number were handed to Mbeki, which were used to set up the meeting.¹²⁶

The NIS could not meet without the consent of the president though. This created a dilemma for them, as De Klerk, who was to become the new president, had limited information on the events of the past few years, and it was unsure whether he would agree to such contact, especially in the light of his perceived conservatism. To ensure that a meeting could take place, they capitalised on his lack of experience in the president's job and the distraction of the recent power struggle. On 16 August 1989, one day after De Klerk was sworn in as acting president, Barnard tabled a proposal at a

¹²⁵ Esterhuysen, informal discussions with author, 19 June 1996 – 3 November 1997.

¹²⁶ *Ibid.*

meeting of the State Security Council. The proposal argued in vague terms for direct contact to be established with the ANC. A resolution was accepted under De Klerk's chairmanship which effectively granted the NIS permission to engage in direct discussions with the ANC, contrary to official policy.¹²⁷ The resolution read:

"It is necessary that more information should be obtained and processed concerning the ANC, and the aims, alliances and potential approachability of its different leaders and groupings. To enable this to be done, special additional direct action will be necessary, particularly with the help of National Intelligence Service functionaries."¹²⁸

This gave NIS the official mandate they needed to finalise arrangements for the meeting. Amid a large degree of mutual suspicion, the meeting took place on 12 September 1989 at the Palace Hotel in Lucerne, Switzerland. Of the NIS, Mike Louw and Maritz Spaarwater attended, and of the ANC, Jacob Zuma and Thabo Mbeki. No concrete agreements were reached at this meeting, as it centred around the sticky issues that prevented negotiation. The ANC's Harare Declaration released approximately three weeks earlier spelled out the ANC's official position, and the talks created an opportunity to discuss the ANC's preconditions in detail. Both sides made use of the opportunity to exchange views, and both affirmed their commitment to negotiation under certain conditions.¹²⁹

When Spaarwater and Louw reported back to F.W. de Klerk about the ANC's commitment to negotiation, De Klerk was furious to learn of the meeting, and argued that he was not informed. The resolution was again shown to him, to which he had to accede it gave them the prerogative to talk with the ANC, and Louw convinced him that it was an investigative meeting, not a negotiating one.¹³⁰ At this point the NIS strategy faced a possible obstacle. If De Klerk decided to quash any further meetings, the whole process could stall. He did not, however, and agreed for further contact to take place in order to thrash out preconditions for negotiations.

¹²⁷ *Ibid.*; Sparks, *Tomorrow is Another Country*, p. 111.

¹²⁸ *Ibid.*

¹²⁹ Sparks, *Tomorrow is Another Country*, pp. 112 – 114. For a good overview of the NIS-ANC meetings see *Ibid.*, pp. 109 – 119.

¹³⁰ *Ibid.*, p. 113.

Whereas it seems that the government officials were very dependent on the consent of their leaders throughout the process, the ANC seemed to be less. In August 1989, just prior to the first direct contact, Oliver Tambo was hospitalised after he had suffered a stroke. It did not seem to have an adverse affect on the ANC strategy though, as Mbeki, his logical successor, was intimately involved in the process as well as a leading strategist, and continued with the meetings. None of the role-players refer to the incident, which implies that it could be insignificant. Yet, it is worth keeping in mind to when the bargaining phases are analysed, in order to ascertain if dependency on leadership did play a role.

The sixth meeting between the Afrikaner group and the ANC members also took place in September 1989. The discussions as could be expected turned again to Mandela's release and the unbanning of the ANC as preconditions for negotiations. Despite the usual members, Kriel, Lombard and Domisse took part on the Afrikaner side. While Wimpie de Klerk opened a new channel to his brother, Esterhuysen still kept the link to Barnard open. Wimpie de Klerk started to raise issues which concerned his brother, and these and other questions were discussed with more of a common purpose among the participants, as they perceived them to be more official. No-one was yet formally informed of the Esterhuysen – Mbeki channel. The issues included:

- the expected timetable of a transition
- the influence of the SACP on the ANC
- the issue of violence during a negotiation period
- the ANC's views on power-sharing
- the ANC's control over its internal alliance partners
- the status of Mandela within the ANC
- black-on-black violence
- the acceptability of group rights in a new dispensation
- the lifting of sanctions
- the role of intermediaries
- the implementation of the Namibian peace-accord
- the international context

Although the Mells Park talks kept the momentum of the process going, its significance reduced after the first direct contact was established between the NIS and the ANC. This was due to the official mandate that the NIS received from De Klerk, and the ANC-group acquired after the Harare Declaration. Two more Mells Park meetings took place after the ANC-NIS contact started, as the ANC still wanted to engage as many prominent Afrikaners as possible to determine their positions on various issues. It also operated as an efficient link to the NIS strategists.

Bargaining about bargaining serves as a forum where parties can establish contact without the responsibility to maintain it. Douglas notes that parties enter the first phase of negotiation with radically opposing views, and severe distrust, which ideally gets adapted as their positions become more conciliatory. Because prenegotiation serves as a dress-rehearsal for possible future bargaining, it offers parties the opportunity to ascertain whether their opponents will be susceptible to change through mutually accepted agreements, without being bound by decisions. It also serves as an exercise in confidence building, to extend personal relationships with adversaries and establish mutual trust.. Aziz Pahad gives an excellent account of this process at the Mells Park meetings:

“[C]learly [at] every first meeting, [there was] fear and apprehension about this animal you are meeting across each side. But fortunately the atmosphere was such that it was easy to break that quickly. And then of course the discussions were never: ‘We like each other.’ Everybody put their views and there were very sharp exchanges on almost every topic. Sharp but not antagonistic...Outside of the formal sections we exchanged ideas to battle out positions. I think the significance of those were that we had very good formal discussions, but the informal discussions around dinner or just sitting up to three, four in the morning allowed us to go beyond people’s...You come with a prepared agenda, but when you get to two or three you start discussing everything and your agenda and set positions go out of the window. I want to believe that we came from extremely different positions at those meetings – not a coming together of

thinking, because that was never going to happen, hopefully we would not all think alike, but we would begin to understand what is the general direction, what are the possibilities, what are the frameworks around which negotiations can start.”¹³¹

Because of the generally accepted imminence of the release of Mandela, the government proceeded with its tactic to prepare grassroots South Africans for the inevitable event and demystify Mandela. On 15 October 1989 the government released the first group of high-profile political prisoners, which included Walter Sisulu, Ahmed Kathrada, Andrew Mlangeni and Raymond Mhlaba who served with Mandela at Robben Island prison. The government’s tactic was still that of gradually initiating change in order to take its supporters with. An international dimension is also ascribed to the release by some analysts. According to Sampie Terreblanche F.W. de Klerk was pressured by Margaret Thatcher to deliver on his reform promises after a personal meeting between them in June 1989. Thatcher had to face a Commonwealth meeting as chairperson in October 1989, and could not turn up with empty hands, as she was severely criticised in the past for her support of South Africa. The timing and significance of the move was designed to boost both Thatcher and De Klerk’s images at the meeting. The argument is supported by the fact that De Klerk immediately left the room and phoned Thatcher on the day the decision to release the group of prisoners was made.¹³²

In the first weekend of December 1989, the cabinet held its first *bosberaad* under the leadership of F.W. de Klerk at D’Nyala game reserve near Ellisras. The purpose of the weekend-long meeting was to discuss the ANC’s preconditions for negotiation and formulate a response by the government. According to Roelf Meyer, then a deputy minister, it was decided during the course of the weekend to accept the ANC’s main negotiation demands. A decision was taken to release Mandela and other political prisoners and unban proscribed political organisations.¹³³ The debate apparently became heated when the question of the SACP surfaced, as some ministers, namely Magnus Malan, Adriaan Vlok and Kobie Coetsee were strongly opposed to their unbanning.

¹³¹ Pahad, interview by Waldmeir, 4 November 1994.

¹³² Sampie Terreblanche, interview by author, 18 June 1996.

¹³³ Roelf Meyer, interview by author, 5 September 1997.

Others argued that their exclusion from such a deal would create renewed problems. Although no concrete strategic decisions emerged, the bosberaad played an important role in bringing the cabinet on board for major reforms.¹³⁴

On 13 December 1989 Nelson Mandela and F.W. de Klerk had their first meeting, along with Coetsee, Willemse, Barnard and Louw. They discussed issues such as the ANC's preconditions for talks as set out in the Harare Declaration, and the concept of group rights as proposed by De Klerk for a new dispensation. The meeting was not aimed at negotiating Mandela's release, but served as an introductory discussion on the imperatives for negotiation to take place. This would be the first of three meetings De Klerk had with Mandela before the latter's release¹³⁵

The NIS committee that initiated contact with the ANC were still very much a factor in the strategic planning of government actions. They probably had the most extensive information available on ANC positions due to their long involvement with the Mells Park meetings. From that it was evident that the ANC would not accept an incremental approach to the unbanning of parties. As 2 February 1990 crept closer, which was the date scheduled for the opening of parliament, Barnard and Louw argued extensively with De Klerk over the need to make a clean break with official policy and unban all organisations, as he was still uncertain about the implications an unbanning of the SACP would have. They seemingly convinced him of their case, and helped in preparing the framework of his opening speech. Their involvement ensured that very few people, even in cabinet, knew what De Klerk would say on 2 February. Despite its broad framework being decided, the speech was still unfinished the night before, and De Klerk completed the final version on his own.¹³⁶

On 2 February 1990 De Klerk delivered the speech that would signify to the world an apparent start to negotiations, yet in fact signified the introduction of the preliminary bargaining phase. The speech complied to the basic conditions set by the ANC for a start to negotiations. On 11 February 1990 Nelson Mandela was released from prison, and the onus now rested on the ANC's shoulders to reciprocate and build on the good

¹³⁴ Sparks, *Tomorrow is Another Country*, p. 106.

¹³⁵ Mandela, *Long Road to Freedom*, pp. 544 – 545.

¹³⁶ Anonymous, informal discussions with author, 1997.

faith signals sent by the government. Although the speech did not initiate a change in the way bargaining was conducted, as meetings continued to be conducted covertly at first, it signified a change in the nature of the talks. This was apparent in three more meetings the NIS and the ANC held to discuss the transition of the negotiating process into the open. They were conducted on in February and March 1990 in Lucerne, at the Bellevue-Palace Hotel in Berne, Switzerland, and at the Noga-Hilton Hotel in Geneva, Switzerland respectively.¹³⁷ The conduct of these meetings as an initiation of the preliminary bargaining phase will be discussed in the following chapter.

3.9. The role of extra-governmental groups

As is evident from both the Mandela- and the external initiatives, the bargaining during South Africa's bargaining about bargaining phase was conducted under conditions of immense secrecy. For people outside the process the only indicators of movement (or non-movement) were the official policy changes of the government and ANC respectively.¹³⁸ Against this backdrop various individuals and organisations in South Africa saw the need for contact with the ANC, in order to pressure the government into negotiations. A wide range of unsanctioned meetings with the ANC were conducted from 1985 to 1989 by concerned citizens and organisations, and the excursions were usually referred to as 'pilgrimages'. On the face of events from 1990 it seems valid to grant a certain amount of recognition to these meetings in initiating change through the lobbying of government. Yet, all the extra-governmental participants were oblivious to the contact that had been established with Mandela since 1985, and unaware of the imminent contact with ANC officials in Europe. It is therefore important to assess the impact of these meetings on government strategy.

Approximately seventy five meetings between white South Africans and the ANC took place between 1985 and 1989.¹³⁹ No unified purpose existed between the groups and individuals who partook in these events, except for a common interest in the views of

¹³⁷ Sparks, *Tomorrow is Another Country*, pp. 115 – 119.

¹³⁸ See section 3.3.

¹³⁹ Louw, R. (ed.), *Four Days in Lusaka: Whites in a changing society, Five Freedoms Forum – African National Congress Conference*, Excom: Five Freedoms Forum, 1989, p. 160.

the ANC on various issues. Of all these meetings, the Dakar trip in 1987, which was organised by the Institute for a Democratic Alternative to South Africa (Idasa) and included more than fifty eminent Afrikaners from diverse backgrounds, received the widest exposure, acclaim and criticism. At the time of the meeting a state of emergency was still in place in South Africa, leading to widespread condemnation of the trip by the government and Afrikaans media. According to the organisers the purpose of their trip was to gain information about official ANC policy on such issues as negotiation and violence.¹⁴⁰ By doing so the participants attempted to pressure the government in accepting negotiation as a possible strategy, or as one of the organisers, Alex Boraine states: "To emphasise the need for urgent genuine negotiations and to highlight the futility of ignoring the ANC as a political entity, we planned the Dakar conference. It was a serious attempt to address the stalemate which exists in our country."¹⁴¹

For the NIS committee that were starting to organise its own contacts with the ANC in exile and with Mandela, these meetings only served as a nuisance and irritation. As Niel Barnard describes their attitude at the time: "We will talk to them [the ANC] on our own, directly, and that was the reason why we criticised that infamous Dakar meeting; the reason being that...there was no way that we as a government were going to be prescribed by clerics, academics and the private sector as to how we should conduct the political business of this country."¹⁴²

All parties, however, readily agree that meetings such as those had an important role in sensitising white South Africans to the ANC, and preparing them for negotiation at a later stage. Barnard states that although they didn't find the reports that helpful, as they had their own information channels, meetings such as the Dakar trip "played an important role in psychologically preparing the grassroots of this whole process."¹⁴³ According to Mike Louw, Barnard regularly discussed the meetings with P.W. Botha, to which the latter was very much opposed. He argues that this complicated their strategy as it was crucial for them to take Botha along with them, yet he grew agitated by outside people trying to pressure him or offering him assistance. With regards to such pressures

¹⁴⁰ Jannie Gagiano, interview by author, May 1996.

¹⁴¹ Boraine, A. *Dakar Report Back*, Cape Town: IDASA Occasional Papers, 1987, p. 3.

¹⁴² Barnard, interview by Waldmeir, 1994.

¹⁴³ *Ibid*

Louw says "...there is no way he would have followed that path, he would have gone his own way and done it in his own manner, or he wouldn't have done it at all."¹⁴⁴

This led the committee to regard the meetings as obstructive; although the groups involved thought they were accelerating the process. According to Louw the first thing the NIS members told Thabo Mbeki's group when they met in 1989 was that extra-governmental contacts with the ANC should be stopped. Louw disputes the notion that the meetings softened up ordinary Afrikaner people, as he says the meetings were viewed by them with suspicion and regarded as a possible plot by the ANC to break up Afrikaner hegemony.¹⁴⁵ Again, if bargaining is about maximising interest in a situation of give and take, this does not seem to be too inaccurate an assessment. It can be a logical speculation that the ANC would also have tried to weaken the opposition within a situation of dialogue, by creating division.

Aziz Pahad argues that meetings such as the Dakar excursion should not be underestimated. He argues that this gave the ANC an opportunity to speak to a much broader subsection of South Africans than they would have if talks were only with the government. It also created an opportunity for both sides to discard their book knowledge of each other in favour of first hand information. He stresses that the idea was not to agree with everything the others said, but rather to gain knowledge of the others' viewpoints. According to Pahad, Dakar was important for its legitimisation role of subsequent meetings. He further argues that the meetings with various groups in the 1980's set important precedents for events such as the Harare Declaration in 1989 and the Grootte Schuur Minute in 1990.¹⁴⁶

In view of the above, I argue that the role of these meetings in sensitising the government's constituency should not be underestimated. Although events such as the Dakar trip were severely criticised by the establishment in South Africa, it did play a role in making them aware of the common humanity of all South Africans, as this was an argument the participants usually pursued vigorously upon their return. It did not, however, influence the bargaining process that was underway between the government

¹⁴⁴ Louw, interview by Waldmeir, 1995.

¹⁴⁵ *Ibid.*

¹⁴⁶ Pahad, interview by Waldmeir, 4 November 1994.

and the ANC, both internally or externally. The motives and strategies behind the NIS group's initiatives were already developed by the time the pilgrimages started to take place. In fact, the extra-governmental initiatives ran the risk of derailing the sensitive bargaining process that had been established. The inflamed reaction of audiences to contact with the ANC increased the risk of embarrassment for the government if its secret dealings were exposed, especially as the secrecy aspect of the initial phases would prove to be crucial to the success of the negotiation process as a whole.

Hence, to argue in retrospect that the extra-governmental meetings with the ANC opened up the process by applying pressure on the government to also enter talks, is incorrect, as it ignores the developments that had been taking place behind-the-scenes. The EPG experience also showed that P.W. Botha did not react well to outside pressure and it is plausible that the extra-governmental efforts further infuriated him and set back the process of bargaining about bargaining.

To better analyse the influences of groups and individuals on the negotiation process, it is necessary to study the characteristics and outcomes of preliminary bargaining as it transpired in the South African transitional negotiations.

CHAPTER 4

PHASE TWO: PRELIMINARY BARGAINING

4.1. Introduction

After the completion of the *bargaining about bargaining* phase, the South African transition process became more 'political.' Whereas strategists on both sides were responsible for the movement towards an acceptance of negotiation as a viable and legitimate strategy, politicians now started to play an important role in the delineation of bargaining parameters. An anonymous government source states that after De Klerk's speech, every ministerial department suddenly wanted to take over the process, and politicians increasingly took over the roles that administrators fulfilled up to that point.¹ A similar situation arose in ANC circles, where the separated alliance partners had to form a core negotiating group, and new people were introduced to the process. This signified a factor which can be crucial to the success of any negotiation process: the nature of the transition between bargaining phases. I argue here that a smooth changeover between phases is important in maintaining momentum gained in talks about talks.

F.W. de Klerk's speech in February 1990 created an ideal environment for the *continuance* of negotiations initiated by a select group of people. Yet, to a certain extent the process had to start over again. By bringing it into the public sphere, thereby introducing new role-players and audiences, it again became necessary to build trust between individuals and delegations. Good faith that were established between individuals, especially intermediaries, became obsolete in the face of changing delegations. This study argues that to ensure a smoother changeover between phases, it is necessary to involve as many persons as possible from the bargaining about bargaining phase, in the preliminary bargaining phase. They can then also serve as facilitators between previously excluded persons.

¹ Anonymous, interview by author, 9 April 1997.

Whereas the bargaining about bargaining phase focuses on the rather abstract issue of a willingness to cooperate, preliminary bargaining focuses on more practical issues that impede progress towards a mutually agreed settlement. Parties now have to delineate exactly what they are bargaining for; who is to be part of the process and who not; what issues are not negotiable; where, when and for how long the bargaining should take place; and what still needs to be sorted out before substantive bargaining can resume. The move to preliminary bargaining assumes that bargaining is formally accepted as the chosen method of conflict resolution. For all parties the stakes rise dramatically in such an event. Agreements become binding, exit costs become very high, and pressure mounts from external audiences and their expectations. According to Zartman and Berman's analysis the second phase is focused on devising a formula to deal with the reasons for immediate conflict, and also provide a lasting solution to the situation.²

In the South African case, however, it was not just a case of selecting a location, date and time for the first direct contact between the government and the ANC, as the unbanning order did not solve all remaining problems between the two. Individual ANC members were still proscribed, and numerous of their members were still in jail. To solve these and other remaining issues that impeded the official start of preliminary bargaining, some more discreet meetings had to be held through existing channels to arrange for a climate conducive to negotiation on an equal footing. Again the covert option was chosen as the best way in which to deal with such sensitive issues.

4.2. The first year (1990)

4.2.1. Organising public contact

As was mentioned, the unbanning of the ANC and the release of Nelson Mandela in February 1990 did not initiate an immediate start to government-ANC meetings. The ANC on their side was caught unawares by the government's sudden move, and seemed to struggle to adapt in a changing climate during the first few weeks after the announcement. De Klerk offers the following explanation for the suddenness of the move:

² See section 2.4.4.

“The...game plan was put together at the [1989] bosberaad. But the way in which we had to manage it was of course to really...prevent any leaks, because it would have diffused the impact we wanted to achieve. Not for the sake of ourselves, but for the sake of South Africa. For the sake of...almost a shock effect, ensuring that right from the beginning we’re dealing with a new situation where we won’t be sniping [at] each other from the old moulds in which we found ourselves. We really wanted to level the playing field, to clean the slate with one swipe, and to give a kick-start to a whole new process. So confidentiality was extremely important.”³

It is my view that the surprise unbanning of the ANC and other organisations was also a deliberate tactical move aimed at catching the ANC and the international arena unawares, thereby creating a favourable perception of the government. It also served the purpose of preventing advance planning from the ANC to counter the initiative with strategy moves of their own. The outcome was that it placed significant pressure on the ANC to reciprocate. After almost thirty years as a banned organisation the ANC now had to simultaneously adjust their strategies, consolidate the internal and external movements into a unified alliance, placate those supporters who still wanted victory by revolutionary means, and prepare for talks with the South African government in the space of a few weeks. The counter-effect of the initiative was that the government similarly had to deal with internal disagreement as they had no way of preparing their supporters for the change in policy. Concurrently they had to neutralise opposition from the right-wing who protested against the whole idea of a legitimate ANC, as well as address logistical and legislative problems regarding the status of proscribed ANC members.

The direct channel of communication that existed between the ANC and the NIS served as an ideal conduit through which to organise direct negotiations. On 6 February 1990, four days after De Klerk’s opening speech to parliament, Mike Louw and Maritz Spaarwater met with Thabo Mbeki and Aziz Pahad in Lucerne, Switzerland. The discussions focused on measures that still had to be taken in order to ensure a

³ F.W. de Klerk, interview by Patti Waldmeir, 23 November 1994.

resumption of negotiation on an equal footing between the government and ANC. Difficulties still persisted on issues such as the status of political prisoners (let alone the definition of what constituted a political prisoner), and the return of exiles to South Africa. The NIS officials also asked for reciprocal measures by the ANC to assist in keeping the process peaceful. According to Louw: “[t]hat was a different kind of meeting. We were not feeling each other out any more. Now we were starting to set up structures and make practical arrangements.”⁴

Probably the most important aspect of the meeting was the decision to set up working committees to steer the initial stages of preliminary bargaining. Four groups were decided upon, and they had to deal with the following issues respectively:

- the release of Nelson Mandela
- the release of detainees
- setting up discussions at the political level
- the maintenance of contact between the NIS and the ANC’s intelligence service⁵

It should be noted that these ANC-NIS discussions have been inappropriately categorised by some authors as the initiation of the whole negotiation process. This is probably because of their secretive nature. Sparks describes proceedings at the above second meeting between the NIS and ANC as follows: “Then there was the matter of starting the negotiation process. There would have to be an initial phase of talks about talks, of deciding who would represent whom and what form the process should take.”⁶

I argue that this is an incorrect analyses of the nature and goals of these meetings. Talks about talks have already been completed at that stage, and according to the framework used in this study these meetings were part of preliminary bargaining. The discussions on the release of Mandela and political prisoners related to practical measures that needed to be taken, as the government already committed themselves to the release Mandela, and implicitly accepted the inevitability of releasing other prisoners. As Du Toit notes, preliminary bargaining *inter alia* involves reaching an agreement over

⁴ Mike Louw, quoted in Sparks, *Tomorrow is Another Country*, pp. 115 – 117.

⁵ *Ibid.*

⁶ *Ibid.*, p. 116.

preconditions, of which these meetings surely were part.⁷ For officially sanctioned discussions to have taken place on the issue of preconditions to substantive bargaining, *before* talks about talks have been conducted, is a theoretical impossibility.

After 2 February 1990 a decision was made by De Klerk and his advisors to release Mandela as early as possible, and an initial date of 10 February 1990 was set. This was done in part to sustain the advantage gained by the government's initiative of 2 February, and to place pressure on the ANC to reciprocate with concessions of their own. As has been mentioned, the seizure of the initiative by the government was successful as a bargaining tactic, and it offered them the opportunity to regain some moral high ground vis-à-vis the ANC. They wanted to extend this advantage with Mandela's speedy release. However, they misinterpreted his freedom as a bargaining resource they had control over. When De Klerk informed Mandela on 9 February 1990 of his planned release in Johannesburg the following day, the latter refused it, and insisted that he'd be given a week notice and be released in Cape Town. Mandela realised that his continued imprisonment created an embarrassment for the government, especially in the light of their recent reforms. He subsequently manipulated this to his own advantage by ensuring his release on more of his own terms. After serious debate between De Klerk and Mandela a compromise was reached, and Mandela was released on 11 February 1990 from Victor Verster prison.⁸

On 16 February 1990 the ANC NEC, including Mandela, met at the ANC headquarters in Lusaka, Zambia to discuss their response to De Klerk's call for negotiation. A decision was made to send an ANC delegation to meet with the government to discuss preconditions for negotiation. Sisk describes this meeting as the initiation of direct government-ANC talks about talks.⁹ In turn, Waldmeir describes events after Mandela's release as follows:

“Before these two leaders [Mandela and De Klerk] could start their long courtship in earnest – before they could begin ‘talks about talks’ on a new constitution – their officials would need to hold ‘talks about talks about

⁷ See Section 2.4.6.

⁸ Waldmeir, *Anatomy of a Miracle*, p. 153.

⁹ Sisk, *Democratization in South Africa*, p. 85.

talks,' discussions on removing the obstacles which kept the two sides away from the negotiating table."¹⁰

I regard both these analyses as inaccurate, as the period after Mandela's release falls within the ambit of preliminary bargaining, for reasons discussed above.¹¹

4.2.2. Preparations for official contact

The third meeting between the ANC and NIS took place two weeks after the 6 February meeting in Berne, Switzerland. This was the first direct meeting that Niel Barnard attended, accompanied by Fanie van der Merwe, Louw and Spaarwater. The ANC delegation comprised of Mbeki, Pahad and Joe Nhlanhla. The aim of the meeting was to discuss preparations for the first formal contact session between the government and the ANC, and the return of exiles for that purpose. It was decided that a committee should be set up to steer the arrangements for the meeting. It was to be headed by Fanie van der Merwe from the government side and Jacob Zuma from the ANC side. Zuma, with two other exiled ANC members, Penuell Maduna and Gibson Mkanda, entered South Africa in late February under conditions of immense secrecy. Other members of the ANC component, which totaled around nine participants included Mathews Phosa and Curnick Ndlovu. The government component comprised Van der Merwe, Mike Louw and Lieutenant General Basie Smit, then head of the Security Police.¹² A final European meeting was held in the first week of March 1990 to finalise arrangements on the Steering Committee and the status of its ANC members.¹³

The Steering Committee had a crucial role to play in terms of preliminary bargaining. Mutual trust and good faith had not yet been established between all the participants, and the decisions of the committee had to reflect a shared indication by the parties that

¹⁰ Waldmeir, *Anatomy of a Miracle*, p. 158.

¹¹ Sisk does not discuss the meetings between the ANC and government intermediaries in Europe. In the absence of this information his argument might seem logical. However, the set of facts as presented in this study suggest otherwise, and for this reason bargaining about bargaining is regarded as having been completed at the time.

¹² Sparks, *Tomorrow is Another Country*, p. 122. According to Sparks, Roelf Meyer was part of the government delegation. He was, however, not mentioned by an anonymous source I spoke to.

¹³ Sisk, *Democratization in South Africa*, p. 90.; Sparks, *Tomorrow is Another Country*, p. 118.; Waldmeir, *Anatomy of a Miracle*, pp. 158 – 160. There are some discrepancies among the above sources regarding the exact dates that the committee was set up. What is certain is that the events mentioned took place between the end of February and early March 1990. A possible reason for the differing dates is the

they took negotiation seriously. According to Sisk the committee had to decide on such issues as the agenda of the talks, its location, the size and composition of the delegations, and what security measures would be taken to ensure the participants' safety.¹⁴ An anonymous source who served on the Steering Committee adds that discussions also involved the date and nature of the meeting. He stresses however that the main goal of the committee was to ensure that the first meeting did indeed take place, and he adds that all decisions taken were negotiated. According to the source the Steering Committee's arrangements for the first meeting presented the first ever official agreement between the government and the ANC.¹⁵

It was decided by the committee that the first meeting would take place on 11 April 1990 at the Groote Schuur mansion outside Cape Town. The choice of venue was an important one, and from a logistic sense the first meeting proved to be the most difficult to organise of the initial meetings. According to an anonymous source the choice of Groote Schuur was based on three important criteria. Firstly, the venue had to be able to accommodate a large number of people, and be able to cater for them, as it was decided that the delegations would be large due to the symbolic importance of such a forum. Secondly, it had to be "politically correct", in other words conform to the criterion of neutrality.¹⁶ Lastly, it had to be secure and well protected to ensure the safety of all involved. Any attack on the venue could have had a catastrophic effect on the negotiation process. Two alternative venues were also prepared in case of a crisis.¹⁷ The first was aboard a ship in Simonstown Naval base and the second was at Ysterplaat Air Force Base.¹⁸

Despite the unbanning of all restricted organisations, a problem arose when it became apparent that the secretary-general of the SACP, Joe Slovo, would be part of the ANC delegation. Although the issue of the SACP had been debated at the 1989 *bosberaad* it

absolute secrecy in which the events took place, as the ANC members met with people like Smit, without the knowledge of his commanders.

¹⁴ Sisk, *Democratization in South Africa*, p. 90.

¹⁵ Anonymous, interview by author, 5 September 1997.

¹⁶ It is unsure why the president's mansion was chosen, as it did not quite conform to the criterion of neutrality. What seems to be certain is that practical considerations played a very important role, hence the Groote Schuur mansion was probably chosen for its capacity to house a large number of guests.

¹⁷ *Ibid*.

¹⁸ Sparks, *Tomorrow is Another Country*, p. 123.

had never fully been resolved, and the government still regarded members of the party as *personae non grata*. According to Sparks the issue came to a head at the 1990 Berne meeting. He states that Barnard unsuccessfully tried to convince the ANC members that Slovo's presence would present a problem to the government, as the ANC delegation asserted their right to choose whomever they wanted. Barnard then apparently telephoned De Klerk who refused to entertain the idea of Slovo present, and it was conveyed to those assembled. The ANC, however, did not budge on their position. After extensive deliberation and more calls to De Klerk, he acceded, and a decision was made that both sides could include whoever they wanted, even if it meant the presence of ultra-right wingers on the government side. Sparks notes that De Klerk initially told Barnard : "How can you expect me as head of state to welcome the leader of the Communist Party into the country?"¹⁹ From this it can be inferred that De Klerk's motivation for refusing to entertain Slovo, was not only because of a suspicion towards Communist Party members in general, but also influenced by the perception of audiences. The government had to sell its reforms to skeptical supporters, of whom many were still bogged down in Total Onslaught perceptions of the conflict. It was therefore probably perceived that the positive image of the first meeting could be tainted by the presence of prominent communists.

Waldmeir recalls a different version of the above events, describing the debate over communist members in the ANC delegation as having taken place when the Steering Committee was already at work in South Africa. According to her, Mandela played an important role in refusing to omit Slovo or other communists, despite opinion clashes within the ANC.²⁰ Mandela does not make any mention of this issue in his autobiographical description of the build-up to the first public meeting. Only in a discussion on the build-up to subsequent meetings does he argue that the government continued to find the presence of SACP members in the ANC delegations problematic.²¹ An anonymous source does not offer exact dates but confirms that the issue was discussed during the build-up to the first meeting.²² It is therefore accepted by me that the version offered by Sparks is the most accurate. Yet, regardless of where the debate

¹⁹ *Ibid.*, pp. 118 – 119.

²⁰ Waldmeir, *Anatomy of a Miracle*, p. 159.

²¹ Mandela, *Long Walk to Freedom*, p. 577.

²² Anonymous, interview by author, 5 September 1997.

took place, the anticipated impact of audiences on the process once it was in the open became increasingly apparent.

A second obstacle emerged in the first week of April 1990 when police shot at demonstrators in Sebokeng township and killed at least eleven. The ANC suspended the proposed meeting and a top level discussion was held on 5 April 1990 between De Klerk and Mandela, in the company of three senior ANC officials. Although the shooting impeded the development of mutual trust between the leaders, it was agreed that it would be investigated, and a new date for the Groote Schuur meeting was set for 2 – 4 May 1990.²³ The Steering Committee continued with preparations and temporary indemnities were granted to ANC delegation members. The ANC delegation was accommodated at the Lord Charles Hotel in Somerset West and afforded security police protection. A high level of mistrust still existed between the parties, however, and problems arose when the newly-arrived ANC members took to coming and going from the hotel without informing the police assigned to them.²⁴ This created a problem for the government who wanted to ensure that no attempts were made to harm the ANC group, lest it be interpreted as part of a government ploy to lure them into the country under false pretenses.

4.2.3. The Groote Schuur Minute

The precarious arrangements held out and on 2 May 1990 the first ever public meeting took place between the government and the ANC. According to an anonymous source, the moment the delegates met it was a success, as the primary goal which the Steering Committee was set up to address, was reached.²⁵ Waldmeir gives an account of the initial reactions of party delegates at meeting their “enemies”, and states that as a whole it was successful in adjusting mutual perceptions of each other. During the three days many exploratory conversations were held, which did not so much focus on negotiations as on the future of South Africa. General preconditions for a formal forum were addressed, including issues such as violence and the release of political prisoners, as both sides were eager to extract concessions on preconditions from the other. At the end

²³ Sisk, *Democratization in South Africa*, p. 90.

²⁴ Waldmeir, *Anatomy of a Miracle*, p. 160.

²⁵ Anonymous, interview by author, 5 September 1997.

of the three-day summit a document was presented to the press which was known as the Groote Schuur Minute. Its preamble read as follows:

“The government and the African National Congress agree on a common commitment towards the resolution of the existing climate of violence and intimidation from whatever quarter as well as a commitment to stability and to a peaceful process of negotiations.”²⁶

Implicit in the wording of the preamble was an agreement by both parties to suspend violence as a means to attain their goals. This meant that the ANC committed themselves to a process where good faith negotiation was seen as the primary conflict resolution mechanism; and while they did not explicitly discard the armed struggle as a strategic option, it was placed on a lower order of preference. Most of the agreements of the Groote Schuur Minute was seemingly focused on steps that had to be taken by the government to ensure an environment conducive to negotiation. Yet, many of them also included implicit remarks which committed the ANC to refrain from using violence in the pursuit of their goals. The points of agreement included:

- The establishment of a working group which had to decide on definitions for ‘political offences’ and ‘political prisoners’, and set up a framework for their release.
- The arrangement of temporary immunity from prosecution for high-ranking and selected members of the ANC members. An interesting aspect here was the motivation that these members would “...assist in bringing violence to an end and to take part in peaceful political negotiations.”
- The review of security legislation and the repeal of the state of emergency, which included the a statement that “...the ANC will exert itself to fulfil the objectives contained in the preamble.”
- The setting up of channels between the government and ANC which aimed at curbing violence.²⁷

²⁶ <http://www.anc.org.za/ancdocs/history/transition/minutes.html>

²⁷ *Ibid.*

The issue of political prisoners remained one of the most difficult to solve. Mandela notes that at Groote Schuur the government and the ANC debated the issue thoroughly but could not come to an agreement on who qualified for political prisoner status. According to him, the government argued for a narrow definition and the ANC wanted a broad as possible definition. He argues that the disagreement over a definition of 'politically motivated' crimes turned out to be an issue "...that would bedevil us for quite a while to come." Mandela also states that the ANC conveyed their constitutional model to the government at the Groote Schuur meeting. This entailed an elected constituent assembly that would draw up a new constitution, precursed by an interim government who would monitor the transition. The ANC proposed a multiparty negotiating conference to set up the interim government and the guidelines for the election of a constituent assembly.²⁸

The most significant effect of the Groote Schuur Minute was to acquaint former enemies with each other and start a process of confidence building between individuals. The concessions made by the government were important in establishing the notion of good faith, as not all ANC members and supporters were sufficiently convinced that the government meant to make meaningful changes to the South African political landscape. The Groote Schuur Minute also served the role of acquainting the supporters on both sides with new faces and a new style of politics.

The government was still looking for a major concession by the ANC. They realised, however, that their best chance of gaining a conciliatory stance from the ANC was dependent on the implementation of the undertakings in the Groote Schuur Minute. Shortly after the meeting thirty eight high-ranking ANC exiles were indemnified. Although the committee on political offenders could still not agree on what constituted political crimes, parliament passed a bill in May 1990 which also indemnified political offenders from prosecution. In June 1990 the state of emergency was lifted, except in Natal.²⁹ In an attempt to stimulate some reciprocal measures from the ANC, F.W. de Klerk asked Nelson Mandela prior to a six-week visit to Europe and North America if he would consider asking the international community to lift sanctions in the light of

²⁸ Mandela, *Long Walk to Freedom*, pp. 570 – 571.

²⁹ Sisk, *Democratization in South Africa*, p. 92.

changes that were implemented by the government. Mandela turned the request down, as sanctions were an important tool in keeping pressure on the government to continue with reform. He argued that significant reform still had to be implemented before the ANC could soften their stance on South Africa's economic isolation.³⁰

4.2.4. The end of unofficial contact

Despite the formalisation of the process after 2 February 1990, two more meetings between ANC members and prominent Afrikaners took place at Mells Park. Esterhuysen still had a very important link to Barnard, and both sides made use of the opportunity to discuss issues as they were unfolding during the first few months of preliminary bargaining. The meetings adapted well to the new phase, as discussions moved away from hypothetical policy statements to discussions on probable negotiation strategies. The seventh meeting in the series took place on the weekend of 9 February 1990. The Afrikaner delegation consisted of Esterhuysen, Mof Terreblanche, Attie du Plessis, Ebbe Domisse and Willem Pretorius. Esterhuysen had permission to inform the ANC members of Mandela's imminent release one hour before the announcement by F.W. de Klerk would be made. The celebrations that ensued influenced the tone for the rest of the discussions during the weekend. Due to the composition of the group, economic issues were on top of the agenda. Serious discussions were also held on the issue of law and order, with debates shifting focus to ANC positions on a future South African dispensation.³¹

The last Mells Park meeting took place from 29 June to 1 July 1990. The ANC delegation again stayed the same, while the Afrikaner group consisted of Willie Esterhuysen, Willem de Klerk, Attie du Plessis, Willem Pretorius, Mof Terreblanche, Marinus Wiechers, and Fanie Cloete, a former constitutional advisor to Chris Heunis. For the first time a member of the South African government also took part in the meeting: Dawie de Villiers, then minister of Energy Affairs, attended with a mandate from the government. The meeting was signified by vigorous debates on issues that included:

³⁰ Mandela, *Long Walk to Freedom*, p. 573.

³¹ Esterhuysen, informal discussions with author, 1996 – 1997.

- tactics by parties to delay formal negotiations
- the need to convince ANC to accept compromises
- deciding on participants to formal negotiations
- the government's constitutional proposals and the issue of group rights
- the state of the economy and the lifting of sanctions
- the ANC's economic policy

What is interesting of this last meeting is that Mbeki apparently stated that he was confident sanctions would be lifted soon. This conflicts with Mandela's position in his discussion with De Klerk a few weeks earlier. I offer two possible explanations for this discrepancy. The first could be that policy positions between ANC leaders were still not fully coordinated due to the long separation between different factions. The second explanation is that either Mandela or Mbeki was bluffing. The good faith that had been established between the participants at the Mells Meetings could have impacted on Mbeki's statement. Mandela and De Klerk were still developing common trust, and it might have been the best strategic option to tell De Klerk that the lifting of sanctions were not eminent, in order to pressure him into conceding to more ANC demands. The Mells Park delegates, on the other hand, did not have a direct influence on the negotiation process, and as the Afrikaner group included a few economists it could have been an attempt to neutralise their worries. If Mbeki was bluffing, it is not sure what the ANC attempted to gain. It could have been a move aimed at winning them over to a more moderate ANC view.

4.2.5. Operation Vula

While violence continued to be the main detractor of a good faith relationship between the government and the ANC during 1990, the increasing rapport between De Klerk and Mandela became the first significant case of personalities having an effect on the success of preliminary bargaining. Their developing relationship deteriorated in July 1990, however, when the government arrested a number of prominent ANC members on the charge of attempting to overthrow the state by revolutionary means. Those arrested included Mac Maharaj, Ronnie Kasrils and Pravin Gordhan, as leaders of a covert operation known as Vula. The idea behind the project was initiated as far back as 1986, with its main aim to allow a leadership group of the ANC in exile to infiltrate

South Africa and direct a popular uprising that would lead to the overthrow of the South African government. The project was started in 1988 primarily by Maharaj, and he developed an extensive communication network not only between the underground structures and Lusaka, but also between Mandela and the exiled leadership.³²

According to Maharaj, Vula stemmed from conflict that arose between the political wing of the ANC and MK over the role of recruits. New ANC members were continually lured out of South Africa to join MK, which weakened the organisational capabilities of the internal movement. The issue continually surfaced at the Revolutionary Council level, and at a meeting held in Makeni, Zambia in 1986, Maharaj, Joe Modise and Joe Slovo proposed that senior ANC members from Lusaka should enter South Africa to provide integrated political and military leadership to internal units. The plan was accepted in principle and Maharaj drew up various proposals which divided the aim of the operation into three initiatives: political work, propaganda work and mass mobilisation.³³

Maharaj states that when he entered the country in 1988, “the buzzword [among the UDF] was negotiations.” This was due to meetings that had taken place between the UDF and Chris Heunis since 1985, and subsequently between the UDF and the United States, who also had contact with Heunis and were making overtures to both to start negotiations. According to Maharaj he bluntly told UDF officials to forget about negotiations and rather ensure that they consolidated the position of the ANC internally.³⁴ He argues:

“From my point of view operationally, strategically I had already accepted that there is going to be negotiations. If the opportunity arose it would be Lusaka, it will be Madiba. But those of us on the ground, we just get down to redoubling our efforts to get the structures moving and our capacity to wage mass struggle...[It] was clear that along the line you are going to have to negotiate. My problem was the other side is refusing, [it was] clear we have got to push hard, we have to pursue a strategy that doesn't say we are

³² Sparks, *Tomorrow is Another Country*, pp. 62 – 67.; Waldmeir, *Anatomy of a Miracle*, pp. 81 – 82.

³³ Mac Maharaj, interview by Patti Waldmeir, 16 November 1994.

³⁴ *Ibid.*

heading for negotiations, build your strength so you can wage the struggle for any eventuality...when the moment for negotiations arises your strength will not be how many arms you've got, but how much leadership you've got for all round political struggle."³⁵

The sentiments of Maharaj are echoed by Sphiwe Nyanda, who states that "...the approach [of Vula] was not to differentiate between combat and political work."³⁶ After the government's move in February 1990, the select few in the ANC who knew of Vula, were confronted with a different internal situation, and had to decide whether the operation should continue. During the build-up to the Groote Schuur Minute it was decided to keep the project in place, but with a different function. By primarily focusing on the maintenance of high levels of mass mobilisation, it became an insurance policy against the possible failure of negotiations. The Vula operatives were arrested prior to what became known as the Pretoria Minute, the second official meeting between the government and the ANC. Their computer with documents were also seized, and the operation was immediately labeled as a communist plot to overthrow the government. The police's argument was based on a spurious link to a SACP meeting in May 1990, where the leadership reflected on their policy options in the light of the Groote Schuur Minute.³⁷ Due to the use of a codename "Joe" in the operation's documents, the assumption was made that Joe Slovo was part of Vula. The government attempted to use this as an opportunity to exclude Slovo from the ANC's negotiating team once and for all, but it failed, as no clear link was evident between him and the operation. The outcome was an embarrassment for the government, and for different reasons, the ANC. The arrested members were released after a few weeks.³⁸

Mandela gives the following account of the events surrounding Vula:

³⁵ *Ibid.*

³⁶ *Mayibuye*, vol. 1, no. 3, 1990, as cited by Lodge, T. "The African National Congress in the 1990s," in Moss, G and Obery, I. (eds.), *South African Review 6: From 'Red Friday' to Codesa*, Johannesburg: Ravan Press, 1992, p. 46.

³⁷ Collinge, J. "Launched on a Bloody Tide: Negotiating the New South Africa," in *Ibid.*, p. 3.

³⁸ *Ibid.*

“De Klerk called for an urgent meeting with me and read to me from documents he claimed had been confiscated in the raid. I was taken aback because I knew nothing about it.

“After the meeting I wanted an explanation, and called Joe Slovo. Joe explained that the passages read by Mr. de Klerk had been taken out of context and that Vula was a moribund operation. But the government was intent on using the discovery to try to prise the ANC away from the SACP and keep Joe Slovo out of the negotiations.”³⁹

According to Waldmeir, Mandela was furious with the Vula operatives, as it tarnished the image of the ANC as a party committed to negotiation. She argues that the incident highlighted tensions within the ANC on the issue of negotiations as a viable strategy to transform South Africa, as many still regarded it necessary that any mechanism of conflict resolution should only be aimed at the transfer of power.⁴⁰ In a press statement issued on 22 June 1991, Mandela said the following:

“On behalf of the African National Congress and its allies, let me clarify one further point. Vula and other similar projects did not in any way constitute the pursuance of a double agenda, nor did they constitute actions inconsistent with our search for a negotiated resolution. anything, they strengthened negotiations rather than undermine them.”⁴¹

It is my view that, despite the government’s failure to analyse Vula correctly, it still projected a negative image of the ANC’s commitment to good faith negotiations. Their ability to demand concessions was seriously weakened, as the government temporarily occupied the moral high-ground in the eyes of many spectators. This was short-lived, however, as the country-wide violence lead to an increasing amount of accusations directed at the government, charging them with fuelling the violence.

³⁹ Mandela, *Long Walk to Freedom*, p. 577.

⁴⁰ Waldmeir, *Anatomy of a Miracle*, pp. 162 – 164. A different version of events is offered by one of the Vula operatives, Tim Jenkin, who states that Mac Maharaj resigned from Operation Vula in February 1990, but rejoined after a discussion with Nelson Mandela. For a detailed account of Operation Vula from an ANC perspective, see Jenkin, T. “Talking To Vula: The Story of the Secret Underground Communications Network of Operation Vula,” gopher://gopher.anc.org.za:70/00/anc/pr/1991/pr0108.01

⁴¹ <http://www.anc.org.za/ancdocs/history/mandela/pr910622.html>

4.2.6. The Pretoria Minute

Against the background of violence and distrust between the main parties, the Steering Committee organised a second meeting between the government and the ANC. The meeting was less symbolic than the first, hence less deliberation went into issues such as location and participants. According to a Steering Committee source the Presidency mansion in Pretoria was chosen because it was handy at the time. Most delegate members were in Pretoria at that stage, and the venue became just a “place” to meet.⁴²

In the interim no real headway had been made on the issue of political prisoners, and violence showed no signs of abating. Both the ANC and the government were aware that these issues would crop up again, and they started to prepare arguments and proposals. According to Mandela, Joe Slovo approached him in July 1990, prior to a scheduled meeting of the ANC’s NEC. He proposed to Mandela that the ANC voluntarily suspend the armed struggle in order to create an ideal climate for negotiations to proceed. Mandela agreed to support it and the idea was put forward at the NEC meeting two days after their initial discussion. It was not well received by all present, but after intense debate the NEC accepted Slovo’s proposal. Mandela states that “I argued that the suspension could always be withdrawn, but it was necessary to show our good faith.”⁴³

I argue that the decision by the ANC to suspend the armed struggle was partly caused by the embarrassment caused by Operation Vula. Although the fact that Slovo proposed the idea was crucial in that he had undisputed radical credentials, the ANC had to realise that they would have to make some concessions soon.⁴⁴ The government was facing increasing pressure from its supporters and the right wing to halt the process, a step which would have been very frustrating for the ANC. The ANC-alliance also expected that the government would continue to raise the issue of the armed struggle, as it remained their primary precondition for formal negotiations. By preempting the government with their proposal they could succeed in claiming the initiative for such a move, and it could also partially consolidate good faith, which began to flounder after

⁴² Anonymous, interview by author, 5 September 1997.

⁴³ Mandela, *Long Walk to Freedom*, pp. 577 – 578.

⁴⁴ *Ibid.*

events in Sebokeng and other townships in July 1990. This significant concession could in turn allow them to demand concessions on their outstanding preconditions.

On 6 August 1990 the government and the ANC met for the second official meeting at the presidency in Pretoria. As the discussions grew in complexity and the participants began to get used to each other, the bargaining took a more earnest note. The Pretoria Minute that emerged from the meeting included the following agreements:

- the suspension of armed action by the ANC
- an undertaking by the government to release all political prisoners by 30 April 1991, and allow all exiles to return home
- the intention to form national, regional and local structures to address situations of conflict at these levels
- an undertaking by the government to work towards the lifting of the state of emergency in Natal
- an agreement for the commencement of constitutional exploratory talks between the government and the ANC
- the establishment of a working group to deal with the implementation of the suspension of armed action.⁴⁵

The Pretoria Minute also recognised that other parties would have to be brought on board if negotiations continued. It stated:

“We are convinced that what we have agreed upon today can become a milestone on the road to true peace and prosperity for our country. In this we do not pretend to be the only parties involved in the process of shaping the new South Africa. We know there are other parties committed to peaceful progress. All of us can henceforth walk that road in consultation and co-operation with each other. We call upon all those who have not yet committed themselves to peaceful negotiations to do so now.”⁴⁶

⁴⁵ <http://www.anc.org.za/ancdocs/history/transition/minutes.html>

⁴⁶ *Ibid.*

As part of the agreement to release political prisoners from 1 September 1990, the amended report by the Working Group on Political Offences set up at Groote Schuur was accepted in the Pretoria Minute. The report stated that all sentenced prisoners, persons liable for prosecution and persons in detention could be granted indemnity. It still did not include a common definition of a political offence, but it listed a number of guidelines which would help to determine whether or not an offence was political. These included:

- a necessity to study the specific circumstances of each case
- the recognition that ‘common’ crimes could also be regarded as political offences in the light of:
 - the motive of the offender
 - the context in which the offence was committed
 - the nature of the political objective
 - the legal nature of the offence
 - the object of the offence
 - the relationship between the offence and the political objective being pursued
 - the question whether the offence was committed with the approval of the organisation, institution or body concerned⁴⁷

Two additional working groups were set up in the Pretoria Minute to deal with the detail of the ANC’s suspension of the armed struggle and agenda items for a future constitutional conference respectively. This action again confirms the status of these meetings as part of preliminary bargaining. Sisk argues that the Pretoria Minute was a key agreement in the build-up to substantive negotiations. According to him:

“The pact signalled *not* a political alliance between the two players...but an agreement that during the transition both the regime and the liberation movement would respect each other’s role as an indispensable player in the process. The state’s repressive machinery would be rolled back at the same time the ANC agreed to ‘suspend’ the armed struggle. Thus, the ‘vital interests’ of the government and the ANC could be met: neither would be

⁴⁷ *Ibid*

defeated unilaterally by military force as the negotiation process went forward.”⁴⁸

It is clear from the above that the issues discussed formed part of preliminary arrangements and concessions that had to be made to create a suitable condition for formal negotiations. The 1990 summits did not centre around whether the government and the ANC would *want* to settle by means of negotiation, that was already decided in the bargaining about bargaining phase. It focused rather on issues relating to the agenda, participants, tactics, rules of conduct and preconditions to substantive bargaining. The common perception that these were still talks about talks persisted, however. In the final report of the Political Offences Working Group the main function of the Steering Committee is described as “...to steer the talks about talks.” It also describes the Groote Schuur Minute as “...the first agreement on the talks about talks between the government and the ANC.”⁴⁹ Despite this perception among negotiators themselves the framework as advanced in this study is deemed as a correct analysis of the phases of negotiation based on its functions.

4.2.7. The matrix of violence

As the working groups established under the two accords continued with their assignments, the two main parties set out to consolidate their support bases and initiate dialogue with other parties. However, an increase in violence remained an obstacle to the consolidation of the main bargaining relationship and relations soured between the government and the ANC. Speculation that a third force was destabilising the black communities grew more intense and the mutual trust established between Mandela and De Klerk deteriorated as a result. Numerous public allegations were made between the parties, each blaming the other for its lack of leadership in halting the violent tide.

Contact was still maintained, but the interaction became more hostile as time passed. Mandela notes that on 23 July and 27 November 1990 he demanded an explanation from De Klerk why the security forces made no significant arrests after violent clashes between IFP supporters and ANC loyalists. He states that he never received any

⁴⁸ Sisk, *Democratization in South Africa*, p. 95.

⁴⁹ <http://www.anc.org.za/ancdocs/history/transition/minutes.html>

answers.⁵⁰ The two leaders met again on 8 December 1990 to discuss the issue, but no solution was forthcoming. This point of conflict seriously impacted on the ability of the two figures to strengthen a relationship of good faith. De Klerk states that Mandela's insistence that he should act on the incidences of violence, and his own frustration with Mandela that he could not sufficiently understand the complexity of the issue, was "...the most important cause of friction in the run-up to the election between us."⁵¹

Mandela and other ANC figures reiterated their belief on numerous occasions that the Third Force was a government sponsored attempt to weaken the ANC's support base and obstruct the process of transformation. The government continued to vehemently deny any such allegations. No conclusive link was found that tied De Klerk to an official third force. If a link existed between any government negotiators and a third force, it creates serious doubts about the good faith intentions of the government at the time. The irony is that the increased violence and ANC complaints of government collaboration placed the most pressure on the government, who had to concede on numerous issues of security to prove their bona fide intentions. Hence, if it was part of the government's strategy, it was counter-productive to the negotiating process. It does not fall within the scope of this study to investigate the existence of a third force in more detail. It should be noted, however, that although the NIS gained superiority over MI in the bargaining about bargaining phase, the rift between them still existed. The notion of a faction within the state apparatus fuelling conflict in townships can therefore not be discarded.

On 16 December 1990 the ANC held a consultative conference in South Africa, where the issue of negotiations was heavily debated. Despite strong opposition it was decided to continue with preliminary talks, and Mandela reiterated that some meetings with the government would have to be confidential, despite criticism against this method. According to Sisk, Mandela noted that those who oppose secret meetings "did not understand the nature of negotiations."⁵² The ANC also called for the maintenance of

⁵⁰ Mandela, *Long Walk to Freedom*, pp. 579 – 580.

⁵¹ De Klerk, interview by Waldmeir, 1994.

⁵² *The Star*, 22 December 1990, cited in Sisk, *Democratization in South Africa*, p. 98.

sanctions and the release of political prisoners by 30 April 1991, threatening to suspend talks if this did not transpire.⁵³

4.2.8. The nature of the transition

The most contentious issue between the government and the ANC was the nature of the transition. The two parties had completely opposing views on how a new constitution and dispensation would be introduced. The ANC reiterated in 1990 that only an elected constituent assembly should have the power to draft a new constitution, a position supported by the Pan Africanist Congress (PAC) and Azanian People's Organisation (Azapo). It also foresaw an interim government to guide the period of constitution writing. As their proposals would involve elections based on one person one vote *before* a new constitution was in place, it created problems for the government, who's strategy did not involve negotiating themselves out of power, but rather ensuring that any new dispensation would be crucially dependent on their veto and support. This was due to the obvious numerical advantage that Africans (as mostly supporters of the ANC) had over whites and other minority groups.

The government proposal relied on the concept of a multiparty conference to negotiate the constitution under which elections would then take place. The inherent nature of a bargaining situation would to an extent exclude the influence of support, as parties would compete on an equal footing and rely more on perceptions of power than numerical backing. The mechanisms for continued white power would thus be in place before suffrage was extended to a black majority. The preference for a multiparty conference was also voiced by the IFP and the Democratic Party (DP). The ANC in turn regarded this as an attempt to make any electoral outcome irrelevant, and rejected it.⁵⁴

The government made use of a number of conferences in 1990 to argue their position. They envisaged a bicameral parliament with members representing ethnic groups, a two thirds majority requirement in the senate to pass legislation and a revolving presidency. Emphasis was put on the concept of group political rights, described as the freedom to

⁵³ *Ibid.*, pp. 97 – 98.

⁵⁴ Friedman, S. (ed.), *The Long Journey: South Africa's quest for a negotiated settlement*, Johannesburg: Ravan Press, 1993, p. 14.

associate with one's own group without anyone being forced to do so by law.⁵⁵ As a lot of measures were included in the government proposals to ensure that the old power configurations could still exercise influence (without explicitly stating it as such), it remained incompatible with the idea of a constituent assembly. The government realised that its only chance of consolidating such a system would be with a multiparty forum where it could muster support of old allies, hence the disagreement with the ANC. In 1991 the ANC replied to these proposals by stating:

“[T]o ensure checks and balances, they propose mechanisms that will be unique to South Africa, ensuring that whites retain the accumulated privileges of apartheid under the guise of constitutional principle.”⁵⁶

On 8 January 1991 a concession was made by the ANC NEC on the nature of the transition. In a speech delivered by Mandela the ANC reiterated its position that a constituent assembly should draw up a new constitution, but also proposed an all-party conference to clear the way for the establishment thereof. Mandela argued as follows:

“The summoning of such a congress would constitute the first step in the process leading to the adoption of the new constitution. Unless it were mandated by the people themselves, this congress would not itself have the power to draw up a constitution.

“The all-party congress, which can only be convened after all obstacles to negotiations have actually been removed, would have to carry out three tasks. These are:

- To set out the broad principles within which the detailed constitutional work would be carried out;
- To determine the make-up of the body, such as an elected Constituent Assembly, that would draw up the constitution;
- To establish an interim government to oversee the process of transition until a new parliament was elected, and a democratic government formed, on the basis on the new constitution.”⁵⁷

⁵⁵ Sparks, *Tomorrow is Another Country*, pp. 125 – 128.

⁵⁶ [gopher://gopher.anc.org.za:70/00/anc/pr/1991/pr0904.01](http://gopher.anc.org.za:70/00/anc/pr/1991/pr0904.01)

⁵⁷ [gopher://gopher.anc.org.za:70/00/anc/pr/1991/pr0108.01](http://gopher.anc.org.za:70/00/anc/pr/1991/pr0108.01)

By stating the need for an all-party forum, the ANC implicitly acceded that it was necessary for all parties to be involved in steering the preliminary stage of the transition. Whereas it previously argued for elections to take place first and foremost, it now accepted that elections would only follow after the rules for a constituent assembly were set by all South African parties. Sisk argues that the issue was in all likelihood discussed at the December meeting between Mandela and De Klerk (ignoring the call among ANC members for greater transparency in negotiations). He states that it created renewed tension between the ANC and movements such as the PAC and Azapo, and "...further served to legitimate the white minority government's role in forging a post apartheid South Africa." According to Sisk the proposal gave new life to the South African negotiating process, as no preconditions were set for participants.⁵⁸

The ANC concession signified the establishment of a contract zone between the ANC and the government on the nature of the transition (albeit a small one). Sufficient common ground existed for negotiations to enter a new dimension, that of creating a platform for constitutional negotiations, as either a movement towards a constituent assembly or a new constitution, depending on the outcome of further deliberations. Other issues had to be addressed first, however, as the fate of political prisoners and the climate of violence were still unresolved.

4.3. The build-up to an all-party conference

Despite initial contact between the government and Mangosuthu Buthelezi at the start of 1990, and informal talks between the ANC and the PAC, other parties were still excluded from most discussions. Between the IFP and the ANC virtually no dialogue was forthcoming, due to the animosity caused by violent attacks and retributions between their supporters. On 29 January 1991 delegations of the ANC and IFP, led by Mandela and Buthelezi respectively, met to discuss the setting up of peace structures. A common agreement was reached which aimed at stabilising conflict-ridden

⁵⁸ Sisk, *Democratization in South Africa*, p. 99.

communities. The meeting was crucial in establishing recognition of the IFP as a legitimate participant in the South African transition.

The ANC also continued to forge ties with the PAC and Azapo. On 1 February 1991, the day of the opening of parliament, they jointly protested throughout the country against the continuance of the tricameral system. De Klerk, however, surprised again when he announced the abolition of all apartheid legislation within the coming year. In doing so, he regained initiative in steering the transition process and increased the government's commitment to good faith negotiations. Sisk argues that the move was also motivated in the light of conditions set by the international community for the lifting of sanctions.⁵⁹

4.3.1. The D.F. Malan Accord

On 15 February 1991 government and ANC delegations met again to thrash out issues relating to the ANC's suspension of the armed struggle and the release of political prisoners. This was necessary because deadlock had ensued in the Armed Action Working Committee, set up under the Pretoria Minute. The meeting took place behind-the-scenes at the D.F. Malan Airport outside Cape Town. Once again the venue was chosen for practical reasons, as the agenda dominated preparatory work by the Steering Committee. After intense debate between the parties agreement was reached on steps that had to be taken by the ANC in accordance with their suspension of the armed struggle. It became evident from the meeting that the relationship between the parties had deteriorated to a certain extent. This could either be ascribed to a loss of good faith, or preliminary posturing before the planned all-party conference. The escalating violence played a large role in discussions such as these. The government questioned whether the ANC should be allowed to set up defence structures in the townships, and the ANC from its side expressed the need for the government to also commit itself to a non-violent approach. Both parties still held each other to blame for the unprecedented number of violent deaths throughout the country, and adopted their bargaining positions accordingly. A Liaison Committee was appointed to implement the accord. The main agreements of the D.F. Malan Accord included the following:

⁵⁹ *Ibid.*, p. 101.

- Under the terms of suspension of “armed action” and “related activities” the ANC would stop:
 - ❑ Attacks by means of armaments, firearms, explosive or incendiary devices
 - ❑ Infiltration of men and material
 - ❑ Creation of underground structures
 - ❑ Statements inciting violence
 - ❑ Threats of armed action
 - ❑ Training inside South Africa
- The mutual acceptance that a democratic process implies and obliges all political parties and movements to participate peacefully and without resort to the use of force, hence:
 - ❑ no political party or movement should have a private army
- All inhabitants of South Africa were entitled to hold peaceful demonstrations to express their views
- All violence and intimidation from whatever quarter accompanying mass action should be eliminated
- Nothing agreed upon or omitted from any agreement would invalidate or suspend the provisions of any South African law.⁶⁰

On the face of it, the main concessions included in the D.F. Malan Accord were made by the ANC. It is important to note, however, that the meeting was set up to deal with deadlock over issues regarding the ANC’s suspension of the armed struggle, and as such was a logical conclusion of the Pretoria Minute. Hence, it might seem as a one-sided agreement. A major concession made by the ANC, which signified a distinct shift from their policies prior to 1990, was the acknowledgement that no agreements reached during the transition could invalidate or suspend the provisions of any South African law. The accord raised angry commentary from within the ANC’s own ranks, as many prominent members felt it necessary to maintain underground structures in case of a setback in negotiations.⁶¹ By agreeing to suspend armed action, and clearly defining it, the ANC proved beyond doubt its public commitment to good faith bargaining, but also ran the risk of embarrassment if disillusioned supporters acted against the agreement.

⁶⁰ <http://www.anc.org.za/ancdocs/history/transition/minutes.html>

⁶¹ See Sisk, *Democratization in South Africa*, p. 103.

The government was in a similar position. It agreed to peaceful conduct in the D.F. Malan Accord, but did not have control over all its state sponsored forces of coercion. If allegations of a third force proved true, the government's good faith would seriously be cast in doubt.

This raises an important point with regard to prenegotiation in deeply divided societies. Due to the usual secrecy under which prenegotiation is conducted, and the suspicion among members excluded from bargaining proceedings towards negotiation as a mechanism of conflict resolution, negotiators are likely to be viewed as weak when they make concessions. This then leads to a backlash among supporters, who try and prevent it from occurring. To prevent supporters from slowing down movement towards settlement, negotiators might enter into agreements even more secretly, in the hope of presenting them as significant gains to their supporters. The problem arises when supporters do not fully understand the implications of agreements, are not briefed on the details, or are wholly opposed to them. Their subsequent actions can incur a significant loss of face for the negotiators who attempt to prove their good faith beyond doubt in the bargaining arena. Hence, any agreement reached by prenegotiators involves a significant amount of risk, as their audience might inadvertently or on purpose transgress its parameters, and cause the negotiators to lose face among their bargaining opponents.

4.3.2. Attempts to broker a stalemate

To an extent, this is what happened. The township violence did not decrease after the signing of the accord, and the ANC became frustrated with what they perceived as a lack of commitment to a peaceful transition by the government. The government also had made slow progress with the release of political prisoners and the indemnification of exiles, and the perception arose that they were stalling the implementation of the Groote Schuur Minute. The government argued, however, that the lack of progress was due to logistical difficulties as the ANC had not furnished them with lists of their members in prison or exile. Due to mounting criticism from their supporters that the government was dictating the transition, the ANC issued an ultimatum on 5 April 1991, stating that they would suspend all talks with the government if nothing was done to the escalating violence. The also demanded:

- the immediate dismissal of law and order minister Adriaan Vlok and defence minister Magnus Malan
- the outlaw of traditional weapons
- a commitment by the SADF to show restraint in crowd control
- the transformation of single-sex worker hostels into family housing
- the establishment of an independent commission to administer hearings on security-related issues⁶²

The ANC announced that 30 April 1991, the date set for the final release of political prisoners, would be the deadline, and vowed to start with a mass action campaign on 9 May 1991 if demands were still not met. Collinge notes that the decision was taken in consultation with the regional structures of the ANC and its allies, which explained for its hawkish nature.⁶³ The government latched onto this and retaliated through Gerrit Viljoen, who blamed the SACP underground structures for manipulating the ANC into taking such positions.⁶⁴ By doing this the government alluded to the D.F. Malan agreement which committed the ANC to a suspension of underground structures. As a strategy it failed, however, as no conclusive proof could be mustered. Hence, the government set itself to meet the demands.

De Klerk attempted to solve the problem by proposing a commission of inquiry into violence as well as a multiparty summit on violence. The offers were rejected by the ANC. Despite some reforms on the issue of traditional weapons the ANC remained adamant that it would suspend talks, as no substantial measures were introduced to address their demands. On the issue of the two ministers' dismissal, De Klerk flatly refused. By 30 September under a thousand political prisoners had been released, and a new wave of applications streamed in just before the deadline. The government encountered serious problems in trying to avert the suspension of talks and mass action, and to add further insult, the conference on violence was rejected by most parties.⁶⁵

⁶² *Ibid.*, p. 104.

⁶³ Collinge, "Launched on a Bloody Tide," p. 23.

⁶⁴ Laurence, P. "South African Communist Party Strategy Since February 1990," in Moss and Obery (eds.), *South African Review* 6, p. 83.

⁶⁵ Sisk, *Democratization in South Africa*, pp. 104 – 105.

A breakthrough came when a group of concerned religious leaders on their own volition approached both parties in an attempt to break the deadlock. Concerned by the ongoing violence, they wanted to prevent open hostility between the parties as they feared it might lead to a further increase in violence. Both the government and the ANC had significant problems in controlling all their members and supporters, and it was feared that a loss of good faith between the respective leaderships could spill over into violent conflict on the ground, as ANC-IFP conflict was already on the increase. In a number of separate meetings with Mandela and De Klerk the religious leaders urged them to find a compromise on the outstanding issues. The effort was successful and on 9 May 1991 the government and the ANC met for discussions. After intense debate it was agreed that an all party conference on violence, organised by a neutral party, should be held as soon as possible. The government committed itself to stronger measures in dealing with the issues of cultural weapons and violence. Both parties accepted contact should be upheld through the working committees.⁶⁶

On 27 May, after the peace conference initiated by De Klerk was boycotted by several parties and hence failed to produce any binding agreement, the ANC issued a statement confirming their support for a neutrally organised peace conference. They declared:

“The ANC remains committed to participation in a conference on violence, structured to produce binding agreements with enforcement mechanisms in such areas as:

- a code of conduct for all political parties
- a code of conduct for the security services
- elaboration on the powers and functions of an independent Commission on Violence
- a comprehensive programme of community reconstruction.

“The ANC shall, in consequence, continue to support the initiatives undertaken by religious leaders and organised business to ensure that such a broad-based conference is speedily convened.”⁶⁷

⁶⁶ *Ibid.*, pp. 106 – 107.

⁶⁷ gopher://gopher.anc.org.za:70/11/anc/pr/1991/pr0527.01

A Liaison Committee was set up at the De Klerk conference, and on 22 June 1991 it met with business and religious leaders to discuss the possibility of an all-party peace conference. A Preparatory Committee was set up to co-ordinate the arrangements for such a meeting, which began its work shortly after.

In the first year after the unbanning of the ANC the preliminary bargaining phase was very much dominated by the government, who capitalised on the ANC's perceived inability to exercise strong central leadership over its various allied segments. The relationship between De Klerk and Mandela proved to be a very important aspect in the consolidation of the negotiating process. After the D.F. Malan Accord, however, the power relationship slowly began to shift in the ANC's favour. This was partly due to the government's inability to deal effectively with the violence, and the ANC's increased effectiveness in mobilising its supporters behind its positions. Despite accusations against the ANC that it undermined the establishment of good faith in the bargaining relationship, the government's ability to assert the good faith principle became seriously hampered by the destabilising violence. The Mandela-De Klerk relationship concomitantly deteriorated. Two events in the latter half of 1991 further strengthened the ANC's hand in demanding concessions from the government.

4.3.2.1. The 48th Annual ANC Conference

From 2 – 6 July 1991 the ANC convened in Durban for their first full conference on South African soil in 31 years. The expectations were high that the issue of negotiations might prove to be divisive among the different factions within the ANC. As was expected, some heated debates took place over the issue, but in the end it was accepted that negotiations were reaching a critical stage and should be continued. In his opening address, Mandela deftly couched the strategy of negotiations in ANC rhetoric, setting the tone for further discussions. He argued that the struggle was not over, and that negotiation was one of the strategic pillars of ANC policy. Mandela further argued that the negotiations signified the success of the struggle in forcing the government to engage the ANC.⁶⁸ The declaration adopted by the conference reiterated the ANC's demands for substantive bargaining and its commitment to a transfer of power. The declaration included:

⁶⁸ <http://www.anc.org.za/ancdocs/speeches/sp910700-02.html>

- a commitment to resolve the South African conflict by peaceful means
- a demand that the government should similarly demonstrate its commitment to peace and reconciliation
- a demand that all political prisoners had to be released
- a call to set up an interim government and constituent assembly, preceded by an all party congress
- a resolution that the ANC would remain a national liberation movement, rather than become a political party⁶⁹

In his closing address, Nelson Mandela, who had been elected as president of the ANC, argued that “[o]n the question of negotiations, this conference has given us all a very clear mandate. We have reaffirmed the premise that negotiations is a terrain of struggle leading to our central objective, the transfer of power to the people.” He acknowledged that the ANC negotiators had been criticised for their lack of consultation prior to bargaining events, and stated that the problem would be addressed.⁷⁰ This was in contrast to his statement at the consultative conference in December 1990 that those who complained against the secretive nature of negotiations did not understand the process.⁷¹

From the July 1991 conference the ANC-leadership received its first official mandate to negotiate with the government, and indeed continue with the preliminary bargaining that had been underway for over a year. The mandate had a positive effect on the ANC’s relative bargaining power, as it secured the support of all its leading allies for its strategy of bargaining. A renewed urgency emerged among the newly elected leadership, which would accelerate the negotiation process in the months to come.

4.3.2.2. Inkathagate

Against the background of arrangements for the all party peace conference, the government’s image received a severe blow on 19 July 1991. It was reported in two newspapers, the *Weekly Mail* and *New Nation*, that the government had supplied the IFP with a substantial amount of money between November 1989 and April 1990 to conduct

⁶⁹ <http://www.anc.org.za/ancdocs/history/conf/declare48.html>

⁷⁰ <http://www.anc.org.za/ancdocs/speeches/sp910700-03.html>

⁷¹ See section 4.2.6.

mass rallies, thus enhancing the image of the IFP to the international community. As at least one of the marches was directly linked to violent clashes between the ANC and the IFP, allegations that the country-wide violence was government-sponsored gained renewed credibility. The Inkathagate scandal, as it became known, seriously damaged perceptions of the government's and De Klerk's good faith in negotiations.⁷²

The ANC moved swiftly to capitalise on the revelations. In a press statement issued on the same day they argued that "It is evident to us that the government is pursuing a double agenda of talking peace while it wages war on the ANC and the democratic movement." They repeated their demands that Vlok and Malan be dismissed, counter insurgency units within the SADF and SAP be disbanded, an independent inquiry be set up to investigate the causes of violence, and that sanctions should be held in place. With regard to the two ministers they stated that "We shall test President de Klerk's own commitment to maintaining the search for peace on course against his actions in this regard."⁷³

The disclosure of covert government-IFP collaboration created a dilemma for De Klerk. Despite attempts to discard the collusion as a non party-political strategy aimed at the lifting of sanctions, it was clear that it was a damaging episode and that the government needed to reassert its good faith intentions. The problem for De Klerk was that he could not afford to alienate his supporters or the state agencies under control of the two ministers, namely the police and defence force. On 29 July 1991 De Klerk announced a compromise position: the cabinet would be reshuffled. Malan and Vlok were demoted to the ministries of prisons and forestry and water affairs respectively.⁷⁴ The government could, however, no longer claim to steer the process, and its policies and actions as a result became reactive rather than proactive. The ANC's recurring argument that the government could not take part in *and* control the transition process was strengthened as a result. Hence, the notion of an interim government became more obvious, and opposition to it less defensible.

⁷² Sisk, *Democratization in South Africa*, pp. 110 – 112.

⁷³ gopher.anc.org.za:70/00/anc/pr/1991/pr0719.01

⁷⁴ Sisk, *Democratization in South Africa*, p. 110.

4.3.3. The National Peace Accord

By September 1991 the Preparatory Committee of the National Peace Initiative, consisting of government, ANC and IFP delegations as well as religious leaders, concluded the final arrangements for an all party peace conference. This included at least two behind-the-scenes meetings between De Klerk and Mandela. On 14 September 1991 thirty one parties met at the Carlton Hotel in Johannesburg for the signing of the National Peace Accord.⁷⁵ At the end of the meeting, there were twenty two signatories to the agreement, which in principle signified a major step in the direction of creating conditions conducive to good faith bargaining.⁷⁶ The following undertakings and agreements were included in the National Peace Accord:

- The establishment of a multiparty democracy in South Africa is our common goal.
- Since insufficient instruments exist to actively prevent violence and intimidation at regional and local levels, it is agreed that committees be appointed at regional and local levels to assist in this regard.
- A National Peace Committee shall be established to assist in implementing the Accord.
- All political parties and organisations shall actively contribute to the creation of a climate of democratic tolerance.
- The police shall exercise restraint in the pursuance of their duties and shall use the minimum force that is appropriate in the circumstances.
- No public funds shall be used to promote the interests of any political party or political organisation and no political party or political organisation shall accept any public funds to promote its interests which shall have the effect of interfering negatively in the political process.
- The government shall not allow any operation by the security forces with the intention to undermine, promote or influence any political party or political organisation at the expense of another by means of any acts, or by means of disinformation.

⁷⁵ *Ibid.*, pp. 113 – 115.

⁷⁶ <http://www.udw.ac.za/UDW/NPA/About.txt> The PAC, CP, AWB and AZAPO abstained from signing the agreement.

- In pursuit of this understanding the parties agree that no weapons or fire-arms may be possessed, carried or displayed by members of the general public attending any political gathering, procession or meeting.
- No private armies shall be allowed or formed.⁷⁷

The inclusive nature of the National Peace Accord set the stage for an all party conference to negotiate the nature of the transition. The government and the ANC as the two main parties, still disagreed on what the aims of such a forum should be. Both supported the notion of an all party conference, albeit for different reasons. A committee headed by two judges began to arrange the event after the signing of the Peace Accord. Although the ANC and the government participated in the arrangements, they also engaged in confidential bilateral meetings. At these meetings issues relating mostly to decision-making procedures and the agenda were discussed.

4.4. Codesa: substantive bargaining?

A preparatory meeting between twenty odd parties was held on 29 and 30 November 1991, and the government and ANC conveyed their agreement on a decision-making mechanism to the other parties. The mechanism, known as 'sufficient consensus' would entail that where full consensus was not forthcoming among all participants, consensus among the two major contenders would be sufficient to establish agreement on any given issue.⁷⁸ The PAC immediately balked at the notion, and walked out of the meeting on the second day of talks, claiming that collusion by the government and ANC would effectively exclude all other parties from having a say on major issues.⁷⁹ Other parties also criticised the mechanism, but none discontinued its participation. The sufficient consensus principle would become a crucial instrument in forging deals between the government and the ANC under the pretence of multiparty talks. For this reason it remained a bone of contention throughout the process. Another issue which remained unresolved was the IFP's insistence that the king of the Zulus should have a separate delegation, as he represented a different constituency. Despite the fact that it

⁷⁷ <http://www.udw.ac.za/UDW/NPA/>

⁷⁸ Friedman, (ed.), *The Long Journey*, pp. 24 – 25.

⁷⁹ Sisk, *Democratization in South Africa*, pp. 203 – 204.

was rejected by the other parties, the IFP provisionally committed themselves to participate in the multiparty process. Mangosuthu Buthelezi would stay away, however, in protest of the ruling.

The most important facet of the preparatory meeting's work was the drawing up of an agenda for the all party conference. The following issues were identified:

- creation of a climate for free political participation
- definition of general constitutional principles
- agreement on a constitution-making body/process
- creation of transitional arrangements
- decision about the future of the TBVC homelands
- agreement on the role of the international community in negotiation
- selection of a time frame
- creation of a mechanism for implementation
- discussion of other issues⁸⁰

The completion of the agenda set the scene for the first meeting between South Africa's major parties to discuss the nature of the transition to a future dispensation. The preparations for the Convention for a Democratic South Africa (Codesa), as the talks were to be known, also signified, in the eyes of the negotiators, the end of the preliminary bargaining phase and the ushering in of substantive bargaining.

In light of the differing approaches to Codesa, especially between the ANC and the government, it can be argued that Codesa was merely an extension of preliminary bargaining. An all-encompassing contract zone was not yet forthcoming from the two major parties, with a crucial difference in their perceptions on what Codesa's function would be. I take a different view, however, and regard Codesa as the start of substantive bargaining for the following reasons:

⁸⁰ *Ibid.*, p. 203.

▪ agenda

At the start of Codesa, all parties had already committed themselves to the “establishment of a multiparty democracy in South Africa”.⁸¹ This meant that agreement existed on what an all-party conference should ultimately succeed in creating. When the parties drew up an agenda for Codesa, the issues reflected the goal to which the parties would be working, namely a new constitution. Issues such as the future of the TBVC homelands, agreement on constitutional principles and the creation of transitional arrangements, all reflected substantial issues which had a bearing on the nature, scope and principles included in a new constitution. The negotiation process was political, therefore the parties themselves would not *draw up* a constitution, as this would be done by constitutional experts, but rather *negotiate* its structure and content. The agenda reflected this by identifying the main topics which would have to be included in a constitution.

The question can be asked but why did the ANC and the government remain vague prior to Codesa over the pivotal difference in their strategies? I argue here that both of them regarded a multiparty conference as the ideal forum to build up support for their preferred mode of transition, from which they could attempt to out-bargain the opponents on the issue.

▪ tactics

Despite a lot of work that still had to be done on the quelling of violence countrywide, all possible agreements regarding tactics had been reached. The Pretoria Minute, D.F. Malan Accord and National Peace Accord together resolved the issue of violence and subversion as bargaining tactics. In these agreements it was decided that the transition should be peaceful, and most parties committed themselves to constructive tactics. The implementation was not yet finalised, but it was decided, most notably by the ANC, that the process should continue despite such obstacles. For this reason a move to substantive bargaining was made.

⁸¹ See the National Peace Accord, section 4.2.4.

- **preconditions**

A similar situation to that above existed regarding preconditions for substantive bargaining. Problems still existed with the release of all political prisoners, but the ANC decided that it would continue with the process. A major factor urging them forward was the violence. It was commonly accepted that the transition, due to the uncertainties surrounding it, played a role in fuelling violence, as party supporters on the ground attempted to strengthen their relative positions vis-à-vis each other. It is also a possibility that the ANC regarded the outstanding issue of political prisoners as an ideal lever of power to coax opponents into concessions. Whatever the rationale behind parties' perceptions, preconditions were sufficiently met (at least in a formal sense) to proceed with substantive bargaining.

- **rules of conduct**

The National Peace Accord laid down rules for all signatories regarding their code of conduct and the principles they should adhere to in the search for a peaceful settlement. Participants were represented as equal partners, and it was agreed to that no actor should have the capacity to use its position unfairly in order to gain any advantage. The equality principle was important in laying the groundwork for substantive bargaining.

- **participants**

The National Peace Accord also played an important part in convincing both the ANC and the government that the process could no longer be steered bilaterally. To effectively bring all possible parties into the process, it was necessary to convene a multiparty forum. The other parties were not as involved in preliminary bargaining, and their inclusion into negotiations meant taking the next step towards a new constitution, hence the start of substantive negotiations. Deliberations were finalised on who could partake in the forum prior to its start, signifying the end of prenegotiation.

From the above it is evident that all issues relevant to preliminary bargaining seemed to be sufficiently addressed by the end of November 1991, at least in the eyes of the negotiators. For this reason Codesa, which involved a new forum with a new agenda, can not be regarded as an extension of preliminary bargaining, but rather signified the start of the substantive bargaining phase.

4.5. Codesa 1

On 20 December 1991 nineteen parties took part in the first plenary session of Codesa at the World Trade Centre at Kempton Park. For such a significant event the choice of venue raised a few questions. Sparks notes that Codesa “assembled at an improbable place at an improbable time,” as the venue was neither imposing nor rich in history.⁸² I am of the opinion that the venue was, exactly for these reasons, ideally suited for the event, as it conformed to all the conditions of neutrality. No party could assert a historic link to the venue, and as it was ideally placed next to Johannesburg airport, simplifying transport arrangements.

Despite a public argument on the first day of Codesa between Mandela and De Klerk on among others, the issue of the ANC’s armed struggle, Codesa produced some significant results. A declaration of intent was signed by all the parties except the Bophuthatswana government and it was agreed that five working committees would be set up to negotiate agreements on the following issues:⁸³

- the creation of a climate for free political participation and the role of the international community
- constitutional principles
- transitional arrangements
- the future of the TBVC homelands
- time frames for the transition⁸⁴

A Gender Advisory Committee was also set up to advise on the gender implications of agreements. Its structure was similar to that of the working groups, yet it did not fulfil the same functions.⁸⁵ The Declaration of Intent was mainly an undertaking by the participants of Codesa to work towards a new, democratic South African dispensation in which all South Africans would be able to participate. In this effort, the parties committed themselves to a peaceful transition and the active pursuit of reconciliation.

⁸² Sparks, *Tomorrow is Another Country*, p. 130.

⁸³ The IFP only signed the Declaration of Intent at the second plenary meeting of Codesa in May 1992.

⁸⁴ Cooper, C., et al., *Race Relations Survey 1991/92*, Johannesburg: South African Institute of Race Relations, 1992, p. li.

⁸⁵ Friedman (ed.), *The Long Journey*, p. 32.

The Declaration of Intent was purposely vague on the nature of the transition, as this was the main point of conflict between the government and the ANC and still had to be negotiated. The signatories committed themselves “[t]o set in motion the process of drawing up and establishing a constitution...” which was an ambiguous enough statement to include both a constituent assembly and a multiparty constitution writing body as possible solutions.⁸⁶ It can be argued, however, that the nature of Codesa signified a slight move in the government’s favour, as the working group agreements (made by non-elected representatives) were to form the basis of a new constitution.⁸⁷

The structure set up at Codesa to coordinate the negotiations was made up of the following:

- two delegates and two advisors from each party in each working group
- a steering committee in each working group, with members selected from the delegates
- a daily management committee of eight members from different parties, to maintain the momentum of the process and settling procedural disputes within working groups
- a head management committee
- a secretariat, in charge of administration
- administrative personnel, offered by the Consultative Business Movement

It does not fall within the scope of this study to offer a detailed analysis of the substantive bargaining phase in the South African transitional negotiations, as it is mainly concerned with the issue of prenegotiation.⁸⁸ In light of the arguments proposed in Chapter 1, it is necessary, however, to give a brief overview of substantive bargaining events as they transpired in order to gain a clear understanding of the reasons for their deadlock between 1992 and 1993.

⁸⁶ “Appendix G, Convention for a Democratic South Africa: Declaration of Intent,” in Cooper et al., *Race Relations Survey 1991/1992*, pp. 557 – 558.

⁸⁷ Friedman notes that the working group decisions were theoretically not binding as the full convention had to ratify them. However, as each party had delegations in all five working groups, the chances for rejection were slim. Friedman (ed.), *The Long Journey*, p. 32.

⁸⁸ For an analysis of substantive negotiations see Cooper et al., *Race Relations Survey 1991/92; 1992/93.*; Friedman (ed.), *The Long Journey.*; Friedman, S. and Atkinson, M. (eds.), *South African Review 7, The*

4.5.1. Differing perceptions

When the working groups started their deliberations on 6 February 1991, the chances of deadlock were already significant. At the opening of parliament on 24 January 1991, F.W. de Klerk outlined the government's view of Codesa and its role in the transition. According to this view Codesa would act as a forum for the drawing up of a set of principles for a transitional constitution, which in its turn would make provision for a transitional parliament. When such a constitution was finalised, a general referendum would be held to determine whether the general population accepted it. White votes would be counted separately, and only if the general population *and* the majority of the whites supported it would an election be held to establish the transitional parliament. This parliament would then be charged with drawing up a final constitution, again with the provision of a white veto.⁸⁹

The government's proposal entailed an implicit acceptance that an elected body would write the final constitution, yet by arguing for a white veto it wanted to ensure that the 'old' government could steer the process and block any unwanted constitutional measures. By conceding on one of the ANC's demands it hoped to secure a reciprocal gesture.

The ANC, however, still regarded Codesa's role as that of a negotiating forum to decide on the form of a transitional government. Such a transitional government would have binding authority, approved and ratified by the tricameral parliament. When it was consolidated it would hold elections for a constituent assembly, which in its turn would draft the first and final constitution. The ANC explicitly rejected the notion of a white veto at any stage of the process.⁹⁰

The government's hopes for reciprocity were met, yet the ANC's concession was not aimed at sanctioning a white veto over the constitution. Instead, they agreed to offer the tricameral parliament a say over the transitional arrangements, to ensure legal continuity. This dispute over the role and functions of Codesa were to be expected, as

Small Miracle: South Africa's Negotiated Settlement, Johannesburg: Ravan Press, 1994.; and Sisk, *Democratization in South Africa*.

⁸⁹ *Ibid.*, p. 206.

⁹⁰ *Ibid.*

no prior agreement on the nature of the transition existed. When it surfaced, however, it highlighted a crucial issue with regards to the negotiation process, namely that prenegotiation was not sufficiently completed. Due to the inclusion of other parties into the fold of negotiations at the end of 1990 and the recurring violence that hampered the development of good faith between the two main parties, it had been decided to press forward with the negotiation process. However, a complete contract zone did not exist between the two main parties, and their differences were set to hamper progress at Codesa.

Despite differing perceptions between the ANC and the government on negotiation issues, the increasing momentum of the transition started to unsettle the white right wing and its supporters, who excluded themselves from Codesa. In February 1992 their opposition to the negotiations became increasingly vocal, and on 17 February 1992 white sentiment towards the process was conveyed through a resounding by-election victory for the Conservative Party (CP) in Potchefstroom. De Klerk responded by calling an all-white referendum on the issue of negotiations, scheduled for 17 March 1992, to reassert his mandate for reform. After intense public lobbying by the NP, the DP and big business, 68.6 percent of those whites who voted supported De Klerk's initiative.⁹¹

Due to the positive result of the referendum, the government's negotiators, bolstered by the outcome, apparently returned to their Codesa working groups with a sense of renewed strength. Friedman states that, according to numerous Codesa delegates, a notable shift in attitude among government and NP negotiators became evident after the 1992 referendum. Whereas they were conciliatory before the event, they became more obstructive upon their return and attempted to unilaterally enforce agreements.⁹² This is denied by among others Kobie Coetsee.⁹³ Another source argues that it was not a case of a conceited attitude, but rather an attempt by the government and NP negotiators to assert their perceived stronger position in the eyes of their opponents as well as their supporters. He also states that the result of the referendum might have influenced the attitude of ANC negotiators as well, as they had no real indication of what their support

⁹¹ *Ibid.*, p. 209.

⁹² Friedman (ed.), *The Long Journey*, pp. 40 – 41.

⁹³ Coetsee, interview by author, 1996.

would be. A regular concern of the ANC delegation was that they would not be able to secure at least two thirds of the electoral support, and the strong support for the NP-government among whites in the referendum exacerbated this concern. A possible explanation for the lack of progress after the referendum could have been a decision by the ANC to first consolidate support via mass action before the process reached an advanced stage.⁹⁴ I am of the opinion that both explanations are plausible, and that the government's aggressive approach after the referendum was in all likelihood countered by a similar, yet more subtle approach by the ANC, who aimed to ride out the perceived wave of government support before returning to hard bargaining.

A sign of the government's new approach was a set of proposals tabled after the referendum, which aimed to ensure a set of transitional executive councils which would oversee the levelling of the playing field before any elections took place, or a constitution writing body was formed. The implications of these proposals would be a lengthier transition and an increased opportunity for white vetoes over crucial issues. The ANC rejected these proposals and argued for a constituent assembly elected on a proportional basis with a two-thirds majority decision-making rule. They also proposed multiparty committees in the interim government to approve legislation. As the opposing perceptions mounted it was decided to arrange for a second plenary session of Codesa on 15 – 16 May 1992 to speed up the process.⁹⁵

4.6. Codesa 2

The setting of a date for Codesa 2 was aimed at coaxing parties into settlement on outstanding issues, as they had to submit their final reports at the meeting. As the planned session drew closer, however, it became clear that certain issues remained problematic. The government continued with the hard-line stance they adopted after the referendum and insisted on a transitional government that would be in place for a few years. The ANC, in an attempt to counterweigh the government's perception of power

⁹⁴ Anonymous, interview by author, 18 April 1997.

⁹⁵ Sisk, *Democratization in South Africa*, pp. 209 – 210.

threatened with mass action. It was felt that a countrywide show of support for the ANC could deflate the government's perception and edge them towards compromise.

Whereas most of the working groups had reached agreements on key issues, serious deadlock occurred in working group two. The issue under dispute was the percentage a constituent assembly would need to make decisions affecting regions. As the two opposing views were held by the ANC and the government, the sufficient consensus principle could not be used to break the logjam. On 15 May 1992 Codesa 2 convened despite no consensus on the issue. This led Nelson Mandela and F.W. de Klerk to meet privately on the same night in an attempt to solve the impasse at the highest level. They could not reach an agreement, however, and it was decided to refer the issue to Codesa's Management Committee.⁹⁶ Despite Codesa's inability to produce a complete settlement, the working groups made significant progress on individual issues. Broken down into individual working groups, the agreements reached included the following:

▪ **Working group 1**

- Despite the priority of the release of political prisoners, the government and ANC should resolve the issue bilaterally and prevent it from hampering progress on other issues.
- An interim executive, once it has been established, should be consulted on any state of emergency; and the regulations issued thereunder should be justiciable in a court of law.
- Any discriminatory legislation should be repealed.
- All disputes between parties should be resolved peacefully.
- It would be illegal to be in possession of any weapon at a political gathering.
- An independent body to regulate the telecommunications industry needed to be established.
- The bodies set up under the National Peace Accord needed to be developed further.
- All the security forces would be placed under the control of the interim body, once established.

⁹⁶ *Ibid.*, pp. 210 – 211.

- A task group had to be set up to discuss the role of the international community in the transition.⁹⁷

- **Working group 2**
 - During the transition period legislative power would be vested in an interim parliament consisting of two houses, with members being proportionally elected.
 - A final constitution should be drawn up by the national assembly in the interim parliament and accepted by a 70 percent majority.⁹⁸

- **Working group 3**
 - The transition period would consist of two stages. In the first stage a multiparty transitional executive council (TEC), in conjunction with existing legislative and executive structures, would facilitate the transition, level the playing field, and create a climate conducive to free political participation and the holding of free and fair elections. The second stage was not discussed.⁹⁹

- **Working group 4**
 - The independent homelands would participate in the transitional arrangements.
 - The independent homelands should be incorporated in South Africa.¹⁰⁰
 - Civil servants in the homelands would not be retrenched and would keep their benefits and salaries.
 - A technical committee would be set up to address all issues pertaining to incorporation.¹⁰¹

⁹⁷ Cooper, C. et al., *Race Relations Survey 1992/93*, Johannesburg: South African Institute for Race Relations, 1993, pp. 499 – 503.

⁹⁸ *Ibid.*, pp. 503 – 504.

⁹⁹ *Ibid.*, pp. 504 – 506. This includes a detailed overview of the workings of the TEC.

¹⁰⁰ The Bophuthatswana government delegation did not support this decision.

¹⁰¹ *Ibid.*, pp. 506 – 507.

▪ **Working group 5**

- A drafting committee had to be drawn up which would ensure that qualified experts were responsible for drawing up legislation arising from agreements reached at Codesa.¹⁰²

Despite significant movement towards a new constitution, issues central to the transition remained unaddressed by Codesa. The deadlock that existed centred primarily on decision-making mechanisms of an interim government, which had a crucial bearing on the nature and outcome of the transition. The government still preferred an extended transition phase, where existing government structures could exercise as much control as possible over the writing of a constitution, and day-to-day governance. Central to their position was the idea of a minority veto for whites, either in its direct form or enshrouded in high decision-making percentages. The ANC preferred a speedy transition, in which a new constitution could be implemented as soon as possible and the transfer of political power be made a reality. It was evident that the two parties still did not agree on what the outcome of negotiations should be, as no contract zone existed on crucial issues.

The establishment of a contract zone is essentially a bilateral exercise, and it is my opinion that the sheer size of Codesa's working groups hindered progress on substantial issues. According to Friedman, a senior NP source admitted that the original vision for Codesa was that of a multiparty conference driven by the three major parties, namely the government/NP, the ANC and the IFP. It was agreed by the NP prior to Codesa that only these three parties would have representation on all working groups. Smaller parties, however, demanded full participant status, and this led to a situation where working groups were very large and proceedings cumbersome. Hence, Friedman argues as follows:

“What was time-consuming was the elaborate attempt to create an impression of multiparty debate. Codesa was a bargaining forum rather than a problem solving exercise – for good reason. There is little point in joint

¹⁰² *Ibid.*, pp. 507 – 508. It should be noted that working group 5 did not discuss any time frames for the implementation of agreements reached at Codesa, which it was formed to do, as agreements were reached at too late a stage.

problem solving until there is agreement on what the problems are. WG1's discussion on several issues shows clearly that there was no consensus on this – without agreement on the nature of problems...there clearly can be no search for solutions."¹⁰³

The structure of Codesa to a certain extent forced the government and the ANC to discard their negotiation strategy of covert, bilateral meetings in favour of a public, consultative strategy. As they both realised that such a strategy would hamper progress, they initiated bilateral discussions, held in-between official working group meetings, to discuss issues and positions beforehand. This enabled them to cut down on official debates within working groups, as the principle of sufficient consensus ensured that their agreements would be accepted.¹⁰⁴ A senior government negotiator goes as far to say that the working groups did absolutely nothing in achieving settlements, and that the working group structure was merely window-dressing for the public and the other parties involved. He argues that the real bargaining took place behind the scenes.¹⁰⁵ This is an extraordinary statement, but if correct, holds a very important lesson to similarly divided societies when brokering a new dispensation; namely that the smaller the number of participants, the better the chances for agreement.

The Working Committee of Codesa convened for the first time on 25 May 1992 to discuss the deadlocked issues, but similarly could not reach agreement. As the process dragged along it became apparent that an effective channel of communication would have to be set up between the government and the ANC to discuss the deadlock. The Mandela-De Klerk relationship was effective when singular decisions had to be made or good faith re-established, but it could not deal with the complex strategic questions involved in the search for a settlement. Furthermore, the external environment for bargaining was not improving, as violence continued to flare up around the country. In light of the crude symbiosis that had evolved between violent events and breakthroughs, it is not ironic that a violent event would serve as the catalyst for serious behind-the-scenes bargaining.

¹⁰³ Friedman (ed.), *The Long Journey*, pp. 58 – 59.

¹⁰⁴ This is not to say that *no* debate took place within work groups and the two main parties steamrollered all issues. It merely served as a strategy to prevent getting bogged down by large numbers of delegates.

¹⁰⁵ Anonymous, interview by the author, 9 April 1997.

4.7. Deadlock

On 17 June 1992, a day after the ANC-alliance started with a mass action campaign to force the government into conceding on their demands or stepping down, IFP-supporters in Boipatong, a township outside Johannesburg, led an attack on houses of ANC-supporters, killing 15 people and injuring many more. The incident caused outrage from the ANC, and in a strongly worded statement they proclaimed that they placed the blame for the incident “squarely on the shoulders of Mr F.W. de Klerk.” After an emergency meeting by the ANC NEC on 23 June 1992, it was decided to suspend negotiations with the government. In a statement released after the meeting, the ANC leadership accused the government of pursuing “a strategy which embraces negotiations, together with systematic covert actions, including murder, involving its security forces and surrogates.”

The NEC also referred to the existing deadlock in negotiations, by stating: “What is at issue is more than the crisis of the negotiations process. The fundamental reason for the deadlock is whether there is to be democratic change, or white minority veto powers.”¹⁰⁶ The ANC urged De Klerk to commit himself to the creation of an elected Constituent Assembly which would draft a new constitution and the establishment of an interim government. A list of preconditions for the resumption of negotiations was drawn up and the ANC argued that “[t]he response and practical steps taken by the De Klerk regime to these demands will play a critical role in determining the direction and speed with which bona fide negotiations can take place.”¹⁰⁷ The preconditions included:

- The termination of all covert operations including hit squad activity.
- The disarmament, disbanding and confinement to barracks of all special forces as well as detachments made up of foreign nationals.
- The suspension and prosecution of all officers and security force personnel involved in the violence.
- The government should ensure that all repression in the self-governing states and the homelands would be ended.

¹⁰⁶ gopher://gopher.anc.org.za:70/00/anc/pr/1992/pr0618.01

¹⁰⁷ gopher://gopher.anc.org.za:70/00/anc/pr/1992/pr0623.01

- The immediate implementation of the programme to phase out the hostels and convert them into family unit accommodation.
- Installation of fences around hostels.
- Guarding of the hostels by security forces on a permanent basis, monitored by multilateral peace structures, and the expulsion of those who occupy the hostels illegally.
- Regular searches of hostels with the participation of multilateral peace structures.
- Banning the carrying of all dangerous weapons in public on all occasions, including 'cultural weapons.'
- The implementation of an International Commission of Inquiry into the Boipatong Massacre and all acts of violence as well as international monitoring of the violence.
- The release of all political prisoners.
- The repeal of all repressive legislation, including the laws which were passed during the previous session of parliament.¹⁰⁸

To breach the impasse caused by the ANC's suspension of negotiations and their subsequent preconditions for the resumption of talks, it became clear that an informal communication channel had to be formed. The conflicting demands for a new constitution illustrated the acute absence of a contract zone between the government and the ANC. In order to establish such a contract zone, it became necessary to revert back to issues relating to the agenda, tactics, preconditions and rules of conduct associated with preliminary bargaining. The consolidation of the transition process thus relied on a return to prenegotiation. The building of a good faith relationship also remained crucial to the success of negotiations, and this could not be done while bargaining on the nitty gritty of a new constitution. However crucial the relationship between Mandela and De Klerk still proved to be, it had deteriorated badly, and it was decided to develop contact between Cyril Ramaphosa, the ANC secretary general and its chief negotiator in working group 2 and Roelf Meyer, the newly elected minister of constitutional affairs, who took over the role of the government's chief negotiator after the departure of Gerrit Viljoen. The whole scenario forced the government and the ANC to 'relearn the mutually hurting stalemate,' since the crises of violence and deadlock reminded them that a successful transition would depend on their willingness to compromise. Hence,

¹⁰⁸ *Ibid*

their decision to continue with behind-the-scenes negotiations reflected a new sense of urgency in their search for a solution.

4.7.1. The establishment of the National Economic Forum

The mass action campaign in June 1992 was not solely an ANC strategy aimed at gaining concessions from the government, it was also the result of a stand-off that existed outside of the bargaining forum between labour and government over key economic issues. Central to the dispute was the notion of a national economic forum. Although business, labour and government agreed on the need for such a forum, they could not decide on what its scope should be. After intense bargaining took place against a backdrop of mass action, it was announced in August 1992 that the National Economic Forum (NEF) would convene for its first plenary session in September 1992.¹⁰⁹

The significance of this event is that the need for an economic forum was originally proposed a year earlier at a behind-the-scenes meeting between members of the ANC and prominent Afrikaner and business leaders. The two groups, who included many Mells Park participants, met at Hartebeespoort Dam in August 1991, in the wake of the Inkathagate scandal and a general loss of good faith between the main negotiating parties. The ANC delegation included Thabo Mbeki, Aziz Pahad, Tony True and Penuell Maduna. From the Afrikaner side Attie du Plessis, Willie Esterhuyse and Leon Wessels attended, whereas Marinus Dalling, who organised it, could not attend. One of the issues that were discussed dealt specifically with the causes of South Africa's economic decline. It was decided among the participants that a national economic forum should be set up to steer the economy during the transition. Du Plessis was appointed as the person who would set up the structures and offered informal support from the ANC. A follow-up meeting was also held between him, Esterhuyse, Pahad and Mbeki from where the developments that would lead to the forum's inception in September 1992 were put in place.

The above bilateral agreement is a significant event in terms of the prenegotiation process. First, it emphasises the importance of good faith, as parties who had a good

¹⁰⁹ Cooper et al., *Race Relations Survey 1992/93*, pp. 326 – 329.

working relationship returned to their old lines of communication when the process seemed slow-moving. Second, it reaffirms the effectiveness of secrecy in implementing sensitive agreements. I doubt whether all parties would have supported the way in which the decision to set up an economic forum was made, yet it reflected the method of bargaining which would prove the most successful throughout the process.

4.8. Breaking the deadlock: the channel

The call to engage in behind-the-scenes discussions in order to resolve the impasse came, surprisingly, from the ANC through Ramaphosa. This is significant when analysing the Codesa 2 deadlock. It is unverifiable whether allegations made by the government at the time are true, that the ANC deliberately scuppered Codesa 2, because they were not fully prepared for a final agreement. It is, however, not implausible to argue that internal differences within the ANC and the expectations of supporters who still regarded the negotiations with suspicion, could have prompted the ANC to first embark on a public show of power, hence generating support among more militant members; before the issues could be resolved, probably in terms more beneficial to the ANC.¹¹⁰ One government source actually ascribes the deadlock to the government's tactics in Working Group 2. According to him, the government moved around between positions too much and this resulted in a loss of good faith between the delegations.

On 26 June 1992, Mandela sent a memorandum to De Klerk in which he formally stated the ANC's position on the deadlock and reaffirmed the preconditions for a resumption of formal negotiations. The memorandum dealt with two broad issues, which it identified in the following manner:

“First there is the crisis in the negotiation process itself. The central blockage stems from the refusal of the NP government to move together with all of us in the process of truly democratising South Africa. Secondly,

¹¹⁰ According to Friedman (ed.), *The Long Journey*, p. 85., another theory suggests: “...that Ramaphosa and Meyer, independently perhaps...concluded that no amount of last-minute manoeuvring could produce an agreement at Codesa 2 which had any realistic hope of surviving. As their colleagues battled to reach an agreement which they had decided could not endure, they – independently or in concert – determined that Codesa should die, to be replaced by the hard bargaining which might bridge the divide.”

the continuing direct and indirect involvement of the NP government, the state security forces and the police in the violence as well as your unwillingness to act decisively to bring such violence to an end has created an untenable and explosive situation.”¹¹¹

In reference to his 1989 letter to De Klerk, Mandela restated that the two issues which needed to be addressed were the demand for majority rule in a unitary state and the concern of white South Africa over this demand, and that “the most crucial task which will face the government and the ANC will be to reconcile these two positions.” He argued that the government attempts to reconcile them was solely based on the notion of a white veto, whereas the ANC had proposed constitutional principles as a method to bind a Constituent Assembly. Mandela said that the transition needed to be finalised within a relatively short time frame, as the government’s bona fides were in doubt on the issue of complicity in violence: “The evidence shows that either the NP government, even at its top most levels, sanctions such activities or that it is powerless to restrain the very forces it created.” In conclusion he wrote: “Our demands are the minimum measures required of your government if it is to establish a credible base for resolving the impasse our country has reached.”¹¹²

On 2 July 1992 De Klerk replied in writing to Mandela’s memorandum. The reply included a lengthy discussion of the government’s position on the issues under dispute and a strong attack on the ANC for what the government perceived to be disruptive policies. De Klerk’s memorandum also included the government’s proposals on an interim constitution, a transitional government and a constitution writing body. The following points were argued:

- The use of mass mobilisation by the ANC to issue demands on the negotiation process was just as unacceptable to the government as the use of violence for that purpose.

¹¹¹ <http://www.anc.org.za/ancdocs/history/mandela/memo920626.html>

¹¹² *Ibid.*

- The government was committed to a constitutionally structured transition, as opposed to the ANC's "unstructured and immediate transfer of power before a proper Transitional Constitution is negotiated."
- The ANC was responsible for obstructing the negotiation process and engineering the Working Group 2 deadlock at Codesa.
- The use of threats and ultimatums by the ANC had a detrimental and erosive effect on the mutual trust that was beginning to develop in the negotiations.
- The ANC seemed to view negotiations as an "area of struggle", which in the government's view excluded the notion of compromise.
- The government did not orchestrate any violent attacks, but rather regarded statements made by ANC leaders and the setting up of self defence units as contributing to violence.
- The ANC had a "bad track record in maintaining agreements and can be considered an unreliable negotiating partner."¹¹³

On 9 July 1992, Mandela replied to De Klerk's letter, and stated the following:

- The call by the government to hold face-to-face talks on their differences would be a wasted opportunity, as it would become bogged down in decisions on an agenda.
- To broach the impasse it would be imperative to isolate the question of transitional arrangements from that of the constitution making body, as the two parties' focus differed.
- The ANC regarded the writing of a constitution by a non-elected constitution making body as undemocratic.
- The ANC regarded it as necessary that all interim arrangements relating to the administration and governance of regions should be such as not to pre-empt the decisions of the constitution making body.
- The elevation of transitional arrangements to the central focus of negotiations by the government betrayed its pre-occupation with obtaining guarantees of a constitutionally entrenched role for the National Party. Unless the question of the constitution making body is dealt with as the primary focus of negotiations, issues relating to transitional arrangements would be deprived of their proper relevance.

¹¹³ <http://www.anc.org.za/ancdocs/history/transition/lett2july.html>

- The question of the form of government should be left to a democratically elected constitution making body.
- The ANC rejected the government's claim that it was doing everything in its power to stop the violence and still regarded the government as instrumental in fermenting unrest.¹¹⁴

It is my view that the correspondence between the two leaders merely served as posturing on unresolved issues, a process characteristic of prenegotiation. The rationale behind the letters was not that of resolving issues through bargaining, but it determined the climate in which the "channel", set up between Ramaphosa and Meyer, would operate. As such the memoranda served as policy guidelines for the negotiators to structure their arguments.

The two delegations which constituted the channel, led by Ramaphosa and Meyer, met approximately 43 times between 23 June and 26 September 1992 in an attempt to revive the negotiation process. Although not completely impervious to events outside, their aim was mainly to reach an agreement which would see the ANC return to negotiations. Whereas both Ramaphosa and Meyer had direct links to Mandela and De Klerk respectively, they were also assisted by two chief advisors each. Meyer's aides were Niel Barnard and Fanie van der Merwe, who had both been involved in the process virtually from the start, while Ramaphosa was assisted mainly by Mac Maharaj and Joe Slovo, although Mohammed Valli Moosa, Penuell Maduna and Mathews Phosa among others also attended some meetings.¹¹⁵ The six delegates had limited experience working together outside of large delegations, and an initial period of confidence-building ensued as the negotiators weighed up their opponents.¹¹⁶

4.8.1. Personalities

During this period of intense bilateral talks, the role of personalities became very important, as mutual trust and good faith were crucial to any breakthrough. This corresponds to the approaches of Douglas and Morley & Stephenson, who argue that

¹¹⁴ <http://www.anc.org.za/ancdocs/history/mandela/fwletter.html>

¹¹⁵ Anonymous, interview by author, 9 April 1997.; Roelf Meyer, interview by author, 5 September 1997.

¹¹⁶ The first formal contact between Ramaphosa and Meyer was in 1991 during the preparatory work for a multiparty conference. Van der Merwe and Maharaj had previously worked together while members of Codesa's Secretariat.

the interpersonal bargaining relationship comes to the fore during phase two of a bargaining process. Douglas also identifies the increase in autonomy that individual negotiators receive in this phase, which corresponds to the South African case.¹¹⁷ Although the most significant paring was between Meyer and Ramaphosa, Van der Merwe and Maharaj usually worked together on the technical details surrounding agreements, with Barnard and Slovo discussing broader strategic issues. The role of Mandela and De Klerk also remained important, as tentative agreements were usually referred to them individually for evaluation before final acceptance.

In terms of personalities, the choice of Ramaphosa and Meyer as chief negotiators were conducive to the resolution of deadlock, despite their different styles and approaches. Ramaphosa's experience in labour disputes made him a very tough negotiator who could force concessions, a fact which certainly played a role in his selection. Meyer acknowledges that "[t]hese guys had an advantage over us, they'd been through negotiations par excellence in the mining industry...while we had to learn through experience on a daily basis – you can't read these things in books."¹¹⁸ Meyer, on the other hand, represented a more conciliatory approach from the government, which was crucial for establishing movement in the process.

According to Meyer, the period between June and September 1992 was crucial for the bargaining process as a whole, as it was only here that he and Ramaphosa learned to trust each other.¹¹⁹ He states that in retrospect the government should have settled at Codesa 2 if they wanted to receive a better deal, but that the continued process ensured the firm establishment of good faith as a guiding principle for the negotiations and its aftermath.¹²⁰ According to Meyer the relationship between him and Ramaphosa remained businesslike, which was to the advantage of the process. As no personal expectations existed it made bargaining easier and more effective. He states: "It was sort of professional, while at the same time one of trust and mutual respect."¹²¹

¹¹⁷ See Sections 2.4.1 and 2.4.3.

¹¹⁸ Roelf Meyer, quoted in Waldmeir, *Anatomy of a Miracle*, p. 210.

¹¹⁹ Roelf Meyer, interviews by author, 8 October 1996 and 5 September 1997.

¹²⁰ Joe Slovo acknowledges that the government would have received a better deal had they settled at Codesa 2 and states: "...thank goodness the other side rejected it, because I think in retrospect it was giving too much away...I think it was not a compromise we should have put forward. It wasn't well thought out enough." Joe Slovo, interview by Patti Waldmeir, 14 November 1994.

¹²¹ Roelf Meyer, interview by Patti Waldmeir, 16 November 1994.

Ramaphosa confirms that Meyer established his integrity and good faith in their meetings during 1992 and 1993. He points out that their bargaining relationship developed to such an extent that later on “[w]e had established [a] type of rapport, we didn’t need to take false positions on certain crucial matters.”¹²² With regards to the pairing strategy Ramaphosa argues:

“[The chemistry that we developed] was conducive to solving problems. One of the key things in negotiations is to find a whole lot of mechanisms to resolve problems, to a point of appointing smaller groups and maybe identifying two people on both sides who get on well together and give those issues to them and they eventually come up with a solution, that’s what happened with Roelf and me.”¹²³

The mutual trust that transpired in the deadlock-breaking discussions did not mean that the meetings were devoid of any hostility or aggressive posturing. All the negotiators agree that some discussions were very heated. Meyer recalls that “[t]hat was the period during which we had our most bitter fights, Cyril and myself, but at the same time we moved closer almost on a daily basis...”¹²⁴ The function of good faith is not to create a bonhomie among negotiators, but to ensure that clashes of opinion do not result in deadlock or vindictive retaliatory measures. This was evident among the South African delegates, who despite differences of opinion on many issues, continued to bargain with the sense that the other party was not purposely aiming to derail discussions. An indication of this is that one of the events that all negotiators recall clearly involved a bitter exchange between Ramaphosa and Meyer, to the extent that their aides had to intervene.¹²⁵ Both Ramaphosa and Meyer claim to have gained an ascendancy over the other afterwards. Whichever way, the existence of sufficient good faith allowed the talks to continue.¹²⁶

¹²² Cyril Ramaphosa, interview by Patti Waldmeir, 19 January 1995.

¹²³ *Ibid.*

¹²⁴ Roelf Meyer, interview by Michael Holman and Patti Waldmeir, 21 June 1994.

¹²⁵ For a more detailed account of the event see Waldmeir, *Anatomy of a Miracle*, pp. 211 – 212.

¹²⁶ See Mac Maharaj, interview by Patti Waldmeir, 31 January 1995.; Cyril Ramaphosa, interview by Patti Waldmeir, 19 January 1995.; Roelf Meyer, interview by Patti Waldmeir, 16 November 1994.

A different situation existed between Mandela and De Klerk, however. Many of the negotiators believe that the public clash between the two leaders at Codesa 1 created a rift which would only widen during the years to come.¹²⁷ Especially the issue of violence proved to be conclusive in gradually breaking down trust between them. Most ANC negotiators, as well as some government negotiators, argue that Mandela repeatedly rode roughshod over De Klerk at private meetings aimed at sorting out outstanding issues. They argue that Mandela grew frustrated with De Klerk's apparent shifting on issues, which led him to become very intransigent.¹²⁸

4.8.2. Audiences

One detractor of the way prenegotiation was conducted from June to September 1992 was the animosity it created between especially the government negotiators and their immediate audience. As prenegotiation usually requires the greatest policy shifts from parties in a negotiation process, it can cause negotiators to become unpopular in their own camp. The movement from a zero sum configuration of conflict to a non-zero sum involves major concessions from both sides. In the case of the pre-September 1992 talks, however, the government was expected to concede the most, as prenegotiation dealt with unresolved issues stemming from previous negotiation. The ANC regarded their preliminary concessions as finalised and pressured the government to establish good faith from their side by conceding on outstanding issues.

According to a government negotiator, the establishment of trust is not only relevant between opposite negotiators, but also crucial between negotiators and their leadership. If negotiators do not have the full support of their leadership, selling a bargain becomes much more difficult as they can be perceived as traitors when making significant concessions. The rift between those in bargaining situations and those outside becomes even larger in the aftermath of agreements, as the latter still tends to "blow off revolutionary steam" on deals they do not comprehend. It therefore becomes necessary for negotiators to be able to stand their ground against audiences when agreements are

¹²⁷ Apparently the clash stemmed from a miscommunication, as De Klerk sent a message to Mandela prior to the first plenary session to inform him of his intention to address the issue of the armed struggle. The message was never conveyed, hence Mandela's indignation at De Klerk's statements during the closing arguments, which led to the bitter exchanges.

¹²⁸ *Ibid.*

reached, as renegeing on a deal because of outside pressure can harm the good faith of the bargaining relationship.¹²⁹

According to Meyer, De Klerk on most occasions supported the negotiators whenever decisions and tactics were discussed by the cabinet. The differences in perception that still existed between them he ascribes to the fact that “F.W. did not go through the daily negotiating process that I went through – our nature, our experience, our orientation is different.”¹³⁰ The rest of the cabinet were usually extremely critical towards the deals proposed by the negotiators. Meyer notes:

“...we were negotiating right through that final period, the last three weeks and so [before the Record of Understanding], working out the details, [and] every time we reported back we were given hell on our own side – why can’t you get this and why can’t you get that? And every time we tried to explain that this is the situation and this is the reason and that and that.”¹³¹

Waldmeir notes that the ANC negotiators experienced a similar situation:

“But both sides say the toughest battles were not those at the World Trade Centre but those which took place between the rival camps. ‘There are two aspects of negotiation – negotiating with the enemy, and negotiating with yourselves. The latter is ten times more difficult,’ ANC negotiator Mohammed Valli Moosa once told me. ‘A camaraderie develops where your constituency is seen as your enemy, and the enemy as your ally,’ says his colleague, Frene Ginwala.”¹³²

An excellent example of this dimension of negotiation occurred during the final bargaining sessions for what would be known as the Record of Understanding. Apparently two clauses remained problematic as the document proceeded through a number of drafts; one was an undertaking by the ANC to distance themselves from the

¹²⁹ Anonymous, interview by the author, 9 April 1997.

¹³⁰ Meyer, interview by Holman and Waldmeir, 1994.

¹³¹ Roelf Meyer, interview by Patti Waldmeir, 10 February 1995.

¹³² Waldmeir, *Anatomy of a Miracle*, p. 227.

SACP to a certain extent and the other an agreement that mass action would not be used to further goals pertaining to negotiation. Due to the problematic implementation of the first clause it was dropped and negotiators from each side were assigned to reach agreement on the second clause. One negotiator recalls that the general feeling among the group was one of solidarity against their respective leaderships, as the persons in the group had met a number of times already and they had realised a deal would not be possible on the issue. They therefore proceeded to discuss sport and general events of the day, waiting for time to pass in order to report a deadlock. After a while they touched on the subject under discussion, stating some general principles, but again realised a mutually acceptable deal would not be possible and adjourned when they were called back. It turned out that during their session the issue had been debated in a much more hostile manner between Mandela and De Klerk, to the same effect that no agreement was forthcoming and the clause was dropped.

The above account illustrates the increased identifiability which occur in prenegotiation between opposite negotiators in a similar situation. According to Morley and Stephenson identifiability can also increase as formality decreases. The nature of the June – September 1992 meetings, which were accompanied by some social interaction after meetings, illustrates this point similar to the Mells Park meetings between Mbeki and Esterhuysen. The nature of the rift that can appear between negotiators and their constituencies thus takes on the characteristics of a negotiator vs. non-negotiator conflict of interest.

4.8.3. The external environment

The 1992 prenegotiation phase did not take place in a contextual void, and events outside of the government-ANC meetings also impacted on the process. After deadlock ensued in May 1992 the government started to engage other dissident parties in talks with the aim of drawing them into the process. On 19 August 1992 the government met with the PAC and they agreed in principle to the notion of a constituent assembly. More talks were to follow soon between them, as well as between the government and Azapo. After the resignation of four members from the CP to form a pro-negotiation party, the Afrikaner Volksunie (AV), the CP also showed signs of joining the process. These events also played a role in moving the process towards renewed substantive

bargaining. As Zartman notes, one of the functions of prenegotiation is to reach consensus over which participants to include in substantive bargaining and which to exclude.¹³³ The position of the IFP remained problematic, however. Mangosuthu Buthelezi refused to attend Codesa 2 because of the ruling that the royal house of the Zulus could not constitute a separate delegation.¹³⁴

Another important external factor was the implementation of a mass action campaign by the ANC throughout the country. This took place in the form of stayaways, marches and most significantly a general strike called by Cosatu on 3 August 1992, in order to force the government to accede to the ANC's demands. The success of the mass action bolstered the ANC's perception of their bargaining power and, in a move similar to the government's post-referendum actions, they decided to strengthen their position. One of the main obstacles to a transition remained the conduct of anti-ANC homeland governments, notably Ciskei, Bophuthatswana and Kwazulu, in opposing incorporation into South Africa on the ANC's terms. A decision was taken by the ANC to topple these governments by popular demonstrations, removing not only them as obstacles of the transition, but also as possible allies of the government.

On 7 September 1992 the ANC held a march on Bisho, the capital of Ciskei, with the aim of taking the city under siege until Oupa Gqozo, the homeland's leader, stepped down. Despite attempts by the Ciskei government to declare the march unlawful, a compromise position was reached that the march could proceed, but only to a stadium outside of the city. The ANC, however, devised a strategy for the marchers to break through the perimeter and proceed to the city under the lead of Ronnie Kasrils, a former head of intelligence of MK. When the attempted break was made, Ciskei defence force soldiers who were set up around the stadium opened fire and killed 29 marchers, leaving many injured. The event immediately sent shockwaves throughout the country and Kasrils was reprimanded afterwards by the ANC for his lack of judgement. Whereas international opinion was tipped in the ANC's favour prior to the event, its aftermath saw severe criticism on both the government and the ANC for its inability to end the violence, and a call was made for the resumption of negotiations. The ANC reacted by

¹³³ See Section 2.5.

¹³⁴ Cooper et al., *Race Relations Survey 1992/1993*, pp. 34 – 36.; Sisk, *Democratization in South Africa*, p. 217.

condensing their preconditions to three issues. These were the release of all outstanding political prisoners including Robert McBride and two other ANC members who had been convicted of terrorist murders, the fencing in of hostels to prevent violent attacks, and the banning of so-called cultural weapons.¹³⁵

4.8.4. Final obstacles to an agreement

The release of the three prisoners remained one of the last obstacles to agreement. On 24 September 1992 Mandela telephoned De Klerk and informed him that the agreed summit would not take place if the prisoners were not released. De Klerk asked for time to consult with his advisors, but did reply in the time agreed. Mandela then demanded that the three prisoners had to be released before the summit. On 26 September 1992 the negotiators met for a last session on the proposed Record of Understanding with De Klerk and Mandela present. The meeting was held to reach final agreement on the ANC's preconditions. The three issues that remained outstanding were the demand by the ANC for the release of the three prisoners, the fencing in of hostels and the ANC's mass action campaign, of which the decision had been discussed above. Some heated exchanges took place specifically on the release of the political prisoners. According to Ramaphosa the event transpired as follows:

“The Record of Understanding was especially a bad one because we were dealing with the release of political prisoners, the death row ones, and they wanted amnesty and Madiba wouldn't yield on this, he wouldn't. And De Klerk had said publicly in the negotiations before they had to meet in a small group that they would never release them and Madiba [Mandela] said you must never put forward a position of intransigence like saying never, when you know in the end you are going to have to give in, because when you do give in you will be humiliated and I am trying to save you from humiliation. You should never use that approach, listen to what we have to say, the reason we are putting forward [demands] and don't take positions that you would have to abandon, because it is not good for you and your

¹³⁵ Cooper et al., *Race Relations Survey 1992/1993*, pp. 29 – 30.; Sisk, *Democratization in South Africa*, pp. 217 – 220.; Sparks, *Tomorrow is Another Country*, pp. 147 – 152. The government was especially opposed to the release of McBride, who was convicted in 1986 for the planting of a car bomb in Durban which killed three people and injured 69 others.

party. And then he would go on long about he is concerned about ensuring that his [De Klerk's] support base is not eroded, he is concerned about ensuring that the National Party does not lose support and its strength and so forth. And the way to strengthen is to work with the ANC and the way to work with the ANC means to give in to the ANC's demands, because if they don't give in to our demands we are going to humiliate them and he will see to it that it happens and so forth. And I am saying in a general sense it is always rather sad to see De Klerk harangued by Madiba on a whole range of issues, but especially on violence. At times it would descend into personal attacks which of course you know, you read about publicly, but some were quite vicious as they were repeated in closed sessions."¹³⁶

De Klerk yielded and on 28 September 1992 McBride, Mthetheleli Mncube, Mzondeleli Nondula and 160 other political prisoners including Barend Strijdom, who had gained notoriety as the "Wit Wolf", were released.¹³⁷ The meeting then turned to the issue of hostels and according to Mac Maharaj, the ANC delegates were told privately by government negotiators that the cabinet could not agree on the document which had been prepared on the issue. He states that when the hostels question arose formally, De Klerk, however, argued that he had not studied the document and therefore could not sign it. He argued that the agreement should proceed, leaving the hostels issue to be resolved afterwards. Mandela refused and stated that he would have to declare the meeting a failure. De Klerk requested time to consult, and the document was cleared later the afternoon.¹³⁸

On the whole government negotiators do not refute the perceptions of the events as described above. A government negotiator admits that certain government positions were dropped on the hostels issue, but argues that the clause was agreed to solely to get negotiations back on track, as that was regarded of primary importance at the stage. The feeling was apparently also that the agreements would not really be put in place and that it only obstructed progress towards multiparty talks. It seems as if the ANC during this phase started to make use of a tactic where any outstanding agreements were referred to

¹³⁶ Ramaphosa, interview by Waldmeir, 19 January 1995.

¹³⁷ Cooper et al., *Race Relations Survey 1992/1993*, p. 421.

¹³⁸ Maharaj, interview by Waldmeir, 31 January 1995.

the two leaders, in the knowledge that Mandela had an ascendancy over De Klerk in bargaining situations. In view of the poor working relationship between them, it seems contradictory to the common proposition that good faith in bargaining is crucial to reach mutually acceptable agreements.

4.8.5. Bargaining with history

A deciding factor in the government's continued commitment to negotiation could have been the perception that their position weakened increasingly as the process dragged on, and that a deal had to be struck as early as possible, before the ANC's bargaining power and support levels increased. According to Roelf Meyer, the government negotiators:

“...experienced [it] very often that our case was not often too good, because we had to fight against the historic background, not only popular opinion, but also the correct thing to do...we often also publicly found ourselves in a difficult situation...[as] a number of situations were very difficult to overcome from a negotiating point of view.”¹³⁹

A government negotiator states that both the ANC and government recognised that the power equation would logically move from the government towards the ANC as the negotiation process progressed, as the fact that the process dealt with a transfer of power to the ANC could not be disputed. He argues that any strong stance by the government had to be made at the beginning of the process if they wanted to strengthen their positions in the long term. Another government source argues that it is easy to criticise the government in hindsight for not securing better deals, but it should be taken into account that the government was negotiating with an organisation that would undeniably secure a majority of votes in a general election and hence, form the new government. This recognition by government negotiators was present throughout the negotiation process and informed their strategies.¹⁴⁰

¹³⁹ Meyer, interview by Waldmeir, 10 February 1995.

¹⁴⁰ Anonymous, interview by author, 18 April 1997.

4.9. The Record of Understanding

On 26 September 1992 the Record of Understanding was signed, which signified the ANC's return to negotiations. Most observers were oblivious to the long hours of negotiation that went into its drafting and acceptance. The document itself noted that meetings had taken place between Roelf Meyer and Cyril Ramaphosa since 21 August 1992, when they were, in fact, initiated shortly after the ANC's suspension of negotiations. The Record Of Understanding included the following significant agreements:

- There would be a democratic constitution assembly/constitution-making body which had to:
 - be democratically elected
 - draft and adopt a new constitution, implying that it should sit as a single chamber
 - be bound only by agreed constitutional principles
 - have a fixed time frame
 - have adequate deadlock breaking mechanisms
 - function democratically i.e. arrive at its decisions democratically with certain agreed to majorities
 - be elected within an agreed predetermined time period

- During the interim/transitional period there would be constitutional continuity and so constitutional hiatus. In consideration of this principle, it was further agreed that:
 - the constitution-making body/constituent assembly would also act as the interim/transitional Parliament
 - there would be an interim/transitional government of national unity
 - the constitution-making body/constituent assembly cum interim/transitional Parliament and the interim/transitional government of national unity would function within a constitutional framework/transitional constitution which would provide for national and regional government during the period of transition and would incorporate guaranteed justiciable fundamental rights and freedoms
 - the interim/transitional Parliament could function as a one-or two-chambered body.

- All remaining political prisoners would be released. On the prisoners that no agreement existed discussions would take place to secure their release in stages
- Some problematic hostels identified by the two groups would be fenced and policed to prevent criminality by hostel dwellers and to protect hostel dwellers against external aggression.
- The public display and carrying of dangerous weapons would be prohibited, subject to exemptions based on guidelines prepared by the Goldstone Commission.
- The right of all parties and organisations to participate in peaceful mass action in accordance with the provisions of the National Peace Accord and the Goldstone Commissions' recommendations were recognised.¹⁴¹

4.10. The aftermath of the Record of Understanding

Although the main concessions included in the Record of Understanding were made by the government, the ANC's commitment to a two-phase process, a government of national unity and constitutional guidelines to guide the writing of a new constitution, also contributed to the establishment of a contract zone between the parties. The Record of Understanding signified the possibility of a mutually agreed settlement emerging from good faith negotiations for the first time. Booysen regards the power gains made by the ANC in 1992, culminating in the Record of Understanding as a "levelling [of] the playing field of negotiating power."¹⁴² The perception of both parties that they were dealing with an equal negotiating partner led the way to the establishment of a new forum for substantive bargaining.

The signing of the Record of Understanding did not yet signify the formal end of prenegotiation in the South African transition. It remained a bilateral agreement to mark the return of the ANC to negotiations and as such did not reflect the views of all parties; in fact, some issues between the government and the ANC also remained unresolved. The importance of the document lay in the acceptance by each of the two main parties of an attainable second best solution to the conflict, rather than an unattainable victory.

¹⁴¹ <http://www.anc.org.za/ancdocs/history/transition/record.html>

¹⁴² Booysen, S. "Changing relations of political power in South Africa's transition: The politics of conquering in conditions of stalemate," *Politicon*, vol. 19, no. 3, 1992, p. 72.

By negotiating inductively, the parties had agreed upon a formula which would guide the process through its final phase. Prenegotiation would only be concluded when the formula was made as inclusive and as detailed as possible. In this light, the primary effect of the Record of Understanding was a sufficient existence of good faith to ensure a possible lasting agreement. The remaining issues were to be dealt with in the following months.

4.10.1. Deciding on participants

A major unintended consequence of the Record of Understanding was the reaction of the IFP, specifically Buthelezi, to the summit. Especially the agreements on hostels and dangerous weapons were perceived by them as unilateral attempts to weaken their bargaining position and ultimately to marginalise them from the negotiation process. The reaction was mostly aimed at the government, who in the past attempted to forge ties with the IFP on the issue of federalism and, as proved by Inkathagate, even supplied them with money for demonstration campaigns. The IFP therefore regarded the document as a malicious act by a possible alliance partner and broke off negotiations with the government. None of the government negotiators were expecting the IFP's reaction to be so heated, and the ensuing rift came as a surprise to them. F.W. de Klerk accedes that the government miscalculated on the issue of Inkatha. He states:

“[With hindsight] I would have been more sensitive to the situation of Inkatha and now minister Buthelezi when we resumed. I underestimated the suspicion which there was. We felt that the September 1992...agreement was a reiteration of what had already been agreed, the constitutional part. And it was a reiteration and that therefore, we shouldn't have been accused of now making deals just on the bipartisan basis on the constitutional issues, because Inkatha supported at Codesa what was reiterated in the September record of agreement and I didn't expect the very negative reaction.”¹⁴³

The issue of the IFP highlighted an obstacle which would remain unresolved throughout most of the negotiation process, namely that of participants. As has been noted, one of the functions of prenegotiation is to determine who the participants would be once substantive bargaining takes place. In the South African case the IFP's tactics hindered

¹⁴³ De Klerk, interview by Waldmeir, 23 November 1994.

progress on this issue throughout the negotiation process, so much so that it remained unclear until the end whether they would be part of a final solution. The involvement of IFP supporters in many incidences of violence also impacted indirectly on the relationship between the government and the ANC, where the latter continuously accused the government of not adequately preventing incidences of violence.

Another contentious issue was the announcement by Mandela after the Record of Understanding summit that the ANC and the government would in future first reach agreement bilaterally before tabling the issue in a multiparty forum.¹⁴⁴ On 6 October 1992 Buthelezi along with Lucas Mangope of Bophuthatswana, Oupa Gqozo of Ciskei, the Afrikaner Freedom Foundation, the AV, CP and IFP formed the Concerned South Africans Group (Cosag). The participants called for the replacement of Codesa by a more representative forum, a halt to the implementation of the Record of Understanding and the disbanding of MK before they would agree to negotiations.¹⁴⁵

The heightening rejection of ANC-government bilateral agreements by other parties illustrated the irony of the behind-the-scenes trust building meetings between the two main parties. In order to establish good faith between them they inadvertently disillusioned smaller parties, leading these to claim bad faith. The outcome of the Record of Understanding was a period in which both the government and the ANC had to lure dissident parties back into the process, with varying degrees of success. This is a prime example of the difficulties involved when deciding on participants. As has been noted, if some parties are viewed to be obstructing an agreement a decision can be made to exclude them from the process. However, it is my view that in Inkatha's case such a move would have been detrimental to the process as they had access to quite a large constituency, one whose peaceful inclusion into the process was imperative. The issue remained unresolved until just before the general election in 1994, in a sense questioning the assumption that agreement over participants is of primary importance in prenegotiation. Yet, the difficulties their exclusion created for the South African negotiation process does prove that the resolution of conflict over participants is crucial, even if it takes place at a later stage. It is difficult to assess what the outcome of

¹⁴⁴ Sisk, *Democratization in South Africa*, p. 220.

¹⁴⁵ Cooper et al., *Race Relations Survey 1992/1993*, p. 37.

elections would have been without the IFP's participation, but the possibility of renewed conflict can not be ruled out. According to Joe Slovo the IFP was one of the main detractors of a speedy transition. He states:

“The thing couldn't have been finished in six months, but it went on for four years. I think the basic reason it went on for four years is Inkatha. It could have been cut by half, two years, two and a half years. I think they did greater damage to the negotiating process than Terreblanche.”¹⁴⁶

Despite this view, which highlights the obstructionist role played by the IFP, it is clear that the chances for resolving any conflict situation are improved if the process is made as inclusive as possible. It could be that the IFP based their tactics on a similar assessment, taking the risk that the government and the ANC, in search of an inclusive settlement, would make significant concessions towards them if they held out long enough. If this was the case their strategy should not be regarded as spoiling, but rather as a shrewd pursuit of brinkmanship. I am of the view, however, that this was not the case. The IFP's main concern was their marginalisation from the process and their (sometimes emotional) reactions to government-ANC agreements belie any notions of shrewd manipulative bargaining. If they could, they would have spoiled the process, but they realised belatedly that this would put them in a far worse position after elections, hence, they decided to join.

4.10.2. A Government of National Unity

Although the ANC and the government had agreed in the Record of Understanding to an interim government of national unity during the transition, its composition was still unclear. The notion of a government of national unity was not a new proposal, as ANC negotiators had been advocating the idea since the start of negotiations. According to Willie Esterhuyse, Thabo Mbeki had proposed to him as early as 1989 that a coalition government, or government of national unity, be set up to ease the transfer of power once negotiations had been finalised.¹⁴⁷ Although not as explicit, Mandela also raised the issue of white fears to black domination in his 1989 memorandum to P.W. Botha.

¹⁴⁶ Slovo, interview by Waldmeir, 1994.

¹⁴⁷ Esterhuyse, interview by author, 1996.

He argued that any dialogue between the government would involve an attempt to reconcile the demands of blacks with the fears of whites.¹⁴⁸ According to Waldmeir, Mandela reiterated the sentiment in May 1991 that any new dispensation had to include adequate representation of all groups.¹⁴⁹

Although it was not official ANC policy at the time, the notion again resurfaced during the preliminary bargaining events. Around the time of Codesa 2 the ANC negotiating commission had a series of bilateral meetings with the government, where the ANC made use of the opportunity to probe the government on its positions and strategies. At a follow-up meeting to one where the government only responded to questions by the ANC, the government delegation argued that they should also be granted the opportunity to ask questions on ANC positions. This was a deviation from the agenda, hence the ANC had not prepared positions beforehand. It was subsequently decided between Thabo Mbeki and Cyril Ramaphosa that the former would lead the discussions. Mbeki, after stressing that his arguments were not based on official policy, presented an overview of the rationale behind a government of national unity.¹⁵⁰ He recalls the event as follows:

“[I] then raised this question about perhaps we might need to look at some sharing of power in one way or another for a certain period of time to assist in this process of transition and so on. Barend du Plessis said: ‘Oh, you mean Sunset Clauses.’ That is the first time the phrase itself was used...So there was some discussion...Of course when we came back as the ANC, people said Thabo made all these proposals which were indeed personal things and so on, but we need to probe these matters because they have now become part of this discussions and the brainstorming. So that’s were the thing started.”¹⁵¹

According to Mohammed Valli Moosa, the ANC’s negotiations commission held a series of in-depth discussions on the reasons for deadlock after the failure of Codesa 2.

¹⁴⁸ <http://www.anc.org.za/ancdocs/history/mandela/64-90/doc890705.html>

¹⁴⁹ Waldmeir, *Anatomy of a Miracle*, pp. 213 – 214.

¹⁵⁰ Mbeki, interview by Waldmeir, 19 January 1995.

¹⁵¹ *Ibid.*

The discussions centred around the ANC's perceptions of why the government seemed slow-moving in agreeing to a settlement. According to him the commission came to the following conclusion:

"The NP as a party was not going to enter into an agreement which meant that there was nothing in it for them, because they were not in the negotiations for altruistic reasons, they were not philanthropists...So we had a lot of discussions and a lot of debate and in our discussions the idea of sunset clauses began to gain currency and we had to accept from our side that a negotiated settlement entails compromises...We then accepted all of that and the idea of sunset clauses was that there be some provisions which expire and initially we didn't know what these provisions could be...But we retained that framework of interim government, constituent assembly and then the final constitution as such...And it is true that both Mac and Thabo, in the negotiations commission, we did say just jot down something for discussion at the next meeting. And there we had for the first time begun to concretise the whole thing."¹⁵²

In October 1992 an article entitled "Negotiation: A Strategic Perspective," written by Joe Slovo in his personal capacity, was published in the *African Communist*. In it Slovo argued for the implementation of a temporary period of powersharing in a government of national unity, which would ensure a forced ruling coalition until the end of the century. The decision to publish the proposals was made by Slovo himself, in order to extend the debate surrounding the proposals to the ANC's constituency. He argues:

"...I jumped the gun because there were discussions along those lines...[but] it was just sort of not taken seriously, just wasn't discussed in any depth. I then felt we had to break this in a dramatic way even though I was risking charges of indiscipline...It was really shock therapy as far as I was concerned on this issue, because I felt we couldn't go on being unsure about the general direction."¹⁵³

¹⁵² Mohammed Valli Moosa, interview by Patti Waldmeir, 30 November 1994.

¹⁵³ Slovo, interview by Waldmeir, 1994.

The proposals immediately triggered heavy criticism among the ANC's constituency and leadership. Valli Moosa states that "[t]here was a very very strong reaction in the organisation to the paper, our structures were up in arms about it."¹⁵⁴ In late November 1992 the ANC NEC held a three day meeting to debate the proposals. Some members were still strongly opposed to the idea of sunset clauses and especially the first day produced emotional debates on the issue. A first draft to accept the proposals was voted down, and only after it had been backed by Mandela and redrawn did the majority of NEC members accept the decision. The reasoning behind the ANC's decision to accept a government of national unity for a fixed period is described by Thabo Mbeki as follows:

"The notion of a government of national unity, it derives precisely from the understanding that we thought the army, the white police, the white business, the white civil service would say the National Party was their political representative; relatively few in numbers because of the demography of the country, but with a hold on very important levers of power, the economy, the civil service etc. Let's say we all thought that these sections of the population wielding the sort of power would say the National Party is our representative and therefore when we came into government, we came in with the numbers, they would come in with the power and you would need to work together for a certain period instead of saying to those power centres: 'You are the opposition.'"¹⁵⁵

The reworked document as accepted by the ANC NEC on 18 November 1992 signified another crucial turning point in the negotiation process. In it the ANC acknowledged that it did not have the capacity to overthrow the government in 1989 and that negotiations were adopted as a strategy because of a mutually hurting stalemate. It argued that the government still commanded vast military resources and the ANC did not, therefore three options were open to the ANC in their pursuance of a transfer of power:

¹⁵⁴ Valli Moosa, interview by Waldmeir, 30 November 1994.

¹⁵⁵ Mbeki, interview by Waldmeir, 19 January 1995.

- a resumption of the armed struggle, which the ANC discarded as non-viable
- a protracted negotiation process, combined with mass action and international pressure until the balance of forces would be shifted to such an extent that the ANC could secure a negotiated surrender from the government
- a swift negotiations process combined with mass action and international pressure which would take into account “the need for national unity against counter-revolutionary forces,” and would make use phases to change the balance of forces¹⁵⁶

The NEC argued in the document that the third option would be the most successful in establishing the ANC’s objectives and stated that “negotiations therefore represents a victory for the democratic movement and a defeat for the forces of apartheid.” They also stated that negotiations would be conducted both multilaterally and bilaterally, in accordance with the issues discussed To structure the process the ANC proposed the following phases:

- I. The period prior to the establishment of the Transitional Executive Council.(In which the aim would be to secure an agreement on free and fair elections, Interim Government and Constituent Assembly; stop unilateral restructuring; broaden the space for free political activity; and, address the issue of violence).
- II. The period from the establishment of the Transitional Executive Council leading up to the election of the Constituent Assembly and the establishment of an Interim Government of National Unity.(In which the aim would be to consolidate peace through joint control over all armed forces; ensure free and fair elections; and mobilise for a decisive victory in the elections.)
- III. The period of the drafting and adoption of the new constitution by the Constituent Assembly. (In which the aim would be to establish an Interim Government in which the ANC would be a major player; adopt a new democratic constitution; and start addressing the socio-economic problems facing the country).
- IV. The period of the phasing in of the new constitution, which will include the restructuring of the state machinery and the general dismantling of the system of apartheid.

¹⁵⁶ <http://www.anc.org.za/ancdocs/history/transition/perspect.html>

- V. The period of the consolidation of the process of democratic transformation and reconstruction.¹⁵⁷

4.10.3. A timetable for the transition

The government accepted the notion of sunset clauses and proceeded to forward their proposed timetable for such a transition. This stemmed from a commitment between the ANC and the government in the Record of Understanding to establish a timetable for a phased transition. The timetable was announced by F.W. de Klerk on 26 November 1992. In it the government proposed the following deadlines:

- **End of February 1993**

The deadline for the establishment of bilateral discussions across a broad spectrum of political parties aimed at the resumption of negotiations, whether in a new forum or in a more representative and restructured Codesa

- **End of March 1993**

The deadline for the convening of such a multilateral negotiating forum

- **End of May 1993**

The deadline for multilateral agreements on a Transitional Constitution (including constitution-making procedures, constitutional principles and regional governments), a Transitional Executive Council and an Election Commission

- **May/June 1993**

The deadline for adoption of legislation for the Transitional Executive Council and Election Commission

- **June 1993**

The deadline for the institution of the Transitional Executive Council and Election Commission

¹⁵⁷ *Ibid.*

- **End of September 1993**

The deadline for the enactment of a Transitional Constitution (also providing for a constitution-making body)

- **End of October 1993**

The deadline for the formulation and promulgation of election rules and regulations

- **March/April 1994**

The deadline for the levelling of the playing field; measures to ensure free political participation; the containment of violence; the inclusion of political parties; the organisation of party political campaigns; the finalisation of logistical preparations and voter information campaigns; the holding of elections¹⁵⁸

4.11. Finalising prenegotiation

The agreements and proposals made public at the end of 1992 cemented the newly-established contract zone between the government and the ANC. Both sides had realised that behind-the-scenes bilaterals were conducive to the reaching of agreements, and it was decided to continue with this method of bargaining. They conducted crucial *bosberade* in December 1992, from 20 January 1993 and on 10 – 12 February 1993, at which detailed agreement was reached over the nature of the transition and the structures of a government of national unity. The agreements included the following:

- An interim constitution and bill of rights would be drafted by a multiparty conference and enacted by the tricameral parliament
- The transition would be overseen by a Transitional Executive Council
- An independent electoral commission would oversee the election
- A multiparty committee would be appointed to look at possible regions and their powers
- Proportional representation would be the electoral system of choice

¹⁵⁸ <http://www.anc.org.za/ancdocs/history/transition/timetable.html>

- All parties who received more than five percent of the votes in the election would receive cabinet positions in accordance with their support
- A single president would be elected by the constituent assembly
- The constituent assembly would take decisions on a two thirds majority basis
- All recommendations on regions arising from the appointed commission were binding unless blocked by a three quarter majority in the constituent assembly
- The government of national unity would operate under a five year sunset clause
- The next elections would be held within five years of the first one¹⁵⁹

Apart from bilaterals with the ANC, the government also engaged the IFP in secret meetings, in order to draw them into the process. It was unsuccessful though, and only after reassurances of strong regional powers during an ANC-IFP meeting did the latter agree to take part in a multiparty conference. In March 1993 preparatory meetings were held for a new multiparty forum and only the Afrikaner Weerstandsbeweging (AWB), Herstigte Nasionale Party (HNP) and Azapo refused to take part. On the face of it the return to prenegotiation was successful, as the new forum boasted twenty three parties, increasing its inclusivity. On 1 April 1993, after a number of preparatory meetings, the Multi-Party Negotiating Process (MPNP) convened for its first session. This signified the official end of prenegotiation in the South African transition. The contract zone established between the government and the ANC would prove strong enough to steer the process through its final phase.¹⁶⁰

¹⁵⁹ Sisk, *Democratization in South Africa*, pp. 223 – 224.

¹⁶⁰ For in-depth discussions of the last stage in the transitional negotiations, see Friedman and Atkinson (eds.), *South African Review 7*; Sisk, *Democratization in South Africa*; Sparks, *Tomorrow is Another Country*; and Waldmeir, *Anatomy of a Miracle*. Its analysis falls outside the scope of this study.

CHAPTER 5

CONCLUSION: THE APPLICABILITY OF THE SOUTH AFRICAN CASE

5.1. Introduction

The relatively peaceful transition of a deeply divided country such as South Africa from an autocratic system of government to a democracy, is arguably one of the most unique cases of conflict resolution in the world. In general, the epithets that have been used to describe the negotiated settlement hint at a convergence of larger-than-life personalities in an unexpected quest for a peaceful solution. In this study I argue that, despite individual characteristics, the South African negotiations conformed to a framework identified on different levels of interaction in various other cases of conflict resolution. This suggests that the success of a negotiation process can in part be determined by its adherence to preset rules of conduct. The focus of this study falls on the phased sequence of events regarded as conducive to settlement and it is argued that an analysis of these phases offers a crucial insight into the reasons for South Africa's success. The South African case also offers relevant insights for the resolution of conflict in other deeply divided societies. It is therefore important to identify the pivotal empirical factors in the process between 1985 and 1993, in order to offer them as possible recommendations for societies attempting to broker conflict. It is also necessary to reflect on prenegotiation theory and re-emphasize known factors which proved to be crucial in the South African transition.

5.2. The mutual recognition of stalemate

The evidence from the South African transitional negotiations confirms the notion of Zartman that a mutually hurting stalemate or impending catastrophe or both serve to

accelerate movement towards a mutual recognition of negotiation as a viable strategy.¹ Zartman also notes that parties arrive at a decision to negotiate differently, separately and not concomitantly. The military, political and economic crises which surrounded apartheid all played primary roles in persuading agents within the government and the ANC to search for a solution along less antagonistic lines. What proved to be conclusive, however, was the mutual nature of such an acceptance. The absence of negotiation does not mean the absence of unilateral attempts to establish negotiation. In the South African case this was illustrated by the number of letters written by Nelson Mandela to the government while in prison, in which he argued for the peaceful resolution of conflict. Attempts such as these did not signify the start of prenegotiation and would remain ineffectual until a similar strategy was adopted by the government.

The South African case also illustrates that once discussions start it does not necessarily imply a vision from parties to settle the causes of conflict. Talks can start with the sole purpose of addressing symptoms emanating from adversarial policies. In the case of Mandela the preliminary aim of discussions in 1985 was to resolve the issue of his continued imprisonment. Some sources have argued that Kobie Coetsee would not have continued with talks without the knowledge of P.W. Botha, a valid assumption when observing the hierarchical structure of authority during his leadership period. Yet, Botha's primary aim was to resolve the issue of Mandela's increasing international status. Hence, the main characteristic of a decision to negotiate is the mutual acceptance of contact between enemies, as both can still ascribe different purposes to negotiation itself. Once bargaining events take place parties attempt to persuade each other of the "real" aim of negotiations. This correlates with Zartman's assessment that the shift to a multilateral strategy can be one option among others, and parties have only to acknowledge the need for multilateral contact for the negotiation process to begin.

5.3. Secrecy vs. audiences

A salient characteristic throughout the South African transitional negotiations is the secrecy in which most of the bargaining was conducted. Although secrecy is prevalent

¹ See section 2.5 and section 3.4.

in most cases of prenegotiation, it is not an obligatory precondition. The reason for the frequency of behind-the-scenes talks during prenegotiation is the low-exit costs it warrants for a party if it decides to discontinue its pursuit of a multilateral strategy. It also creates room for parties to gauge their opponent's strategy without the interference of audiences and allows for the development of good faith between opposing sides as well as individual bargainers. In the South African context of the 1980s, it was imperative for both the ANC and the government to keep the process as secret as possible. This was not only to circumvent the almost certain opposition that would emanate from supporters of both groups, but also, and probably more importantly, because the full leaderships on both sides were not informed.

5.3.1. Secret vs. confidential bargaining

To acknowledge that secret bargaining took place from as early as 1985 is still a sensitive issue for most negotiators. Especially in the ANC, where a fair amount of emphasis is placed on the organisation's democratic tradition, the existence of secret meetings with the government during a period when cooperation was regarded akin to capitulation, is not readily admitted. A government official who was part of the committee that held talks with Mandela in prison, states that the latter emphasised that he was partaking in *confidential bargaining*, not *secret bargaining*. According to this perspective secret bargaining takes place when nobody, except those taking part, are aware of its existence, whereas confidential bargaining takes place with the knowledge of a constituency, yet the content of discussions are not divulged.²

On the face of it, the above distinction seems to be a question of semantics, especially in terms of the dictionary meanings ascribed to the two words. Although individuals within the ANC leadership received speculative reports that Mandela was talking with government officials, the movement at large only became aware of such contact by 1988/89. The external contact between Mbeki and Esterhuysen's groups was also held in conditions of secrecy, in this case partly to prevent outside involvement. I am of opinion that the distinction, as offered, is inapplicable to the largest part of the *bargaining about bargaining* phase. The success of this phase hinged precisely on the building of trust among individuals without the intervention of outside forces. Confidential bargaining

² Anonymous, interview by author, 18 April 1997.

implies a broad sanction, which these talks did not have. It is therefore regarded as an interpretation formulated to prevent renewed controversy among current supporters. Especially on the government side no such distinction can be applied. Events which lend themselves more to being described as confidential bargaining, are the meetings in the Channel between June 1992 and April 1993. These occurred with the implicit endorsement by supporters and the leaderships on both sides, yet they occurred behind closed doors.

The question arises, however, is this a useful distinction to make when analysing prenegotiation? Would a process based on *confidential bargaining* be more successful than one based on *secret bargaining*? The argument put forward here is that secrecy is more conducive to the establishment of good faith, whereas confidentiality ensures earlier involvement of supporters in a negotiation process, lessening the extent of adverse reactions to formal bargaining once it is initiated. However, involvement of supporters during the bargaining about bargaining phase negates the idea of low exit costs, especially if their support is not a given. Hence, it is proposed that secrecy is maintained throughout the bargaining about bargaining phase, with confidential bargaining more suited in the preliminary bargaining phase.

5.3.2. The use of intermediaries

In an attempt to engage the ANC without becoming directly involved, the NIS task team decided to make use of intermediaries such as Willie Esterhuysen. This decision was based on an assessment of the conflict between MI and NIS and the dangers inherent in an uncovering of direct links with the ANC. The question that arises is whether the use of intermediaries was an effective strategy. According to a government strategist at the time the contact between intermediaries and the ANC was not as decisive to the process as the direct meetings with Mandela. This is because the external initiative was more tactical and exploratory and the intermediaries did not carry any responsibility in terms of the process. They merely served as a conduit for the bi-directional flow of information.³

³ Anonymous, interview by author, 9 April 1997.

From their side the ANC-members were aware of Esterhuyse's undertaking to Barnard, and Barnard's probable link with Botha. They regarded this information channel as an indirect avenue for discussions with the broader Afrikaner establishment, and proceeded in the belief that through their communications with among others, such as the Mells Park group, their messages would be conveyed to prominent figures in the civil service, police and military. According to Thabo Mbeki, in retrospect, this was based on an incorrect assessment of the Afrikaner establishment as one tight-woven hegemonic unit who supported the National Party and would be briefed by them.⁴

Although the intermediaries had no official sanction to make proposals on behalf of the government, they served the very important function of gaining and offering insights into the workings of both groups. The success of any strategy in prenegotiation depends on its ability to deepen the process and induce movement towards a next phase. In this sense the use of intermediaries functioned as a crucial dress rehearsal for future contacts between the ANC and NIS officials in particular. The establishment of good faith between Mbeki and Esterhuyse further altered perceptions on both sides regarding the intransigence of traditional enemies. A final function of these meetings, which stemmed as much from the composition of the two sides as the context in which discourse took place, was the discussions it produced on strategic issues. Official delegations might have been tempted to engage in trivial bartering, rather than assess the future of any mutual strategy. On the other hand, the functioning of the external group correlated to what Saunders terms "defining of the problem," in other words identifying causes to the conflict, proposing possible solutions and assessing the impact of these solutions.⁵ Whereas in the committee meetings with Mandela neither side excluded the possibility of extracting concessions, the hypothetical issues discussed at the Mells Park meetings ensured a strategic angle to prenegotiation discussions.

5.3.3. Involving audiences in the process

Once a negotiation process is moved into the public sphere, parties have to decide whether to conduct all bargaining under public scrutiny or to present audiences only with finalised agreements. The main detractor of an all-out transparent approach is the

⁴ Mbeki, interview by Waldmeir, 1995.

⁵ See section 2.4.5.

pressure on negotiators to perform in the eyes of their supporters, hence decreasing the chances of concessions or mutual movement. Behind-the-scenes bargaining, on the other hand, offers negotiators respite from critical audiences and is generally conducive to reaching an agreement.

If the latter option is preferred, communication channels between negotiating parties and their supporters have to be set up in order to keep the latter up to date and project the preferred image of the bargaining process. Good communication between negotiators and audiences is beneficial to all negotiating parties. If audiences are not informed and convinced of the need for concessions, they can become dissatisfied and protest against the need for a multilateral strategy. This can then impact on the bargaining process, forcing one party to take a tougher stance against its opponents and possibly creating deadlock. Effective channels of communication are especially relevant in deeply divided societies where groups still exhibit hostility towards each other.

The above proposition was illustrated in the South African case by the ANC's suspension of negotiations in May 1992 and their subsequent call to mass action, forcing deadlock and a renewal of prenegotiation to get the process back on track. The event highlighted the increasing dissatisfaction with the negotiation process among ANC supporters. Ironically, although the suspension of negotiations impeded progress towards a settlement, it strengthened the ANC's bargaining power once formal bargaining was resumed. Hence, it is also possible that an effective channel of communication can be used as a bargaining mechanism, as a party can utilise its support base to demand concessions.

The mutual dependence on good communication between negotiators and audiences is stressed by Thabo Mbeki, who argues that the main problem for the ANC during the transition was the rise in activism among supporters disillusioned by the strategy of negotiation. According to him this stemmed from a need among supporters to be regularly informed of developments, as they only perceived events from the outside. Mbeki states that whereas the ANC learned to respond to such demands, the government did not. He relates an event where he had to address members of the University of Stellenbosch Business School during the negotiation process, but the

venue had to be moved due to the large number of people interested. According to Mbeki it turned out that most of those that attended were NP-supporters who were not informed on how bargaining was progressing and wanted to hear directly from him. He states the following:

“We complained to them [the government] about this and said: ‘but why are you not briefing your people, because this thing is going to land all of us in a lot of trouble. We come to agreements, your constituency is not there and then suddenly you have to retreat because of pressure from your constituency.’”⁶

Mbeki speculates that the reason the government did not brief their supporters was because they regarded the concessions they had to make too big, therefore opting for a strategy where they would present the audience with a *fait accompli*, hoping that a package deal would seem more balanced than the individual concessions and gains. Mbeki’s argument corresponds with the events that lead to the 1992 white referendum. Although a general slide in government support had been detected since 1990, the government did not respond in a way designed to address the issue head on. The call for a referendum was triggered when specific events, such as the by-election defeats of the NP, reflected an undeniable lack of confidence in the government. After the latter received a mandate to continue with negotiation from the referendum result, they did not engage their audiences on that level again.

A last example of the role of audiences is the spoiling effect that disgruntled IFP supporters had on the establishment of good faith between the government and the ANC. The IFP’s involvement in numerous incidences of violence, which stemmed from their fear of exclusion, nearly derailed the process on more than one occasion. These incidents illustrate the responsibility of negotiating parties to all audiences. Zartman lists the summoning of support for multilateral strategies as one of the functions of prenegotiation and notes: “...the construction of domestic support should not merely be the affair of each side. Each party has a role to play in the other’s politics...”⁷ Coupled

⁶ Mbeki, interview by Waldmeir, 1995.

⁷ Zartman, “Prenegotiation,” pp. 10 – 11.

to the function of choosing participants, the role of audiences proved to be crucial to the overall success of the South African transition.

5.3.4. Secrecy vs. mediation

Willie Esterhuyse argues that secrecy played a large role in setting up the process in its initial stages. Without the interference of audiences or mediators, parties had more room to probe alternatives and gauge opponents' reactions to sensitive proposals. Although the Mells Park meetings were chaired by Michael Young the most important discussions were held between Mbeki and Esterhuyse, creating a behind-the-scenes of the behind-the-scenes situation. This was because one of the first indirect agreements between the NIS working group and the ANC members entailed that no mediators or facilitators would be involved, a principle which was carried over to preliminary and substantive bargaining.⁸

A member of the Mandela-committee states that it was agreed upon at the first meeting with Mandela that no third parties would be involved in the discussions. He states that this principle was applied throughout the process and was probably *the* crucial determinant of success. Even while public bargaining took place at forums such as Codesa, confidential channels were operating to ensure continued movement towards a settlement. One important condition for the success of these channels, as identified by the source, is the existence of mutual trust between the negotiators involved and the party leader(s). He argues that an absence of this trust makes the convincing of audiences much more difficult, as negotiators are perceived as traitors when they don't have the backing of the leader once concessions are granted.⁹

Despite the fact that most of the bargaining about bargaining took place with the express agreement among parties that outside facilitation would not be used, some recognition has to go to persons and organisations not directly involved with either of the two parties in setting up forums for discussion. Esterhuyse stresses the important role that the business community played in establishing contact between the ANC and high-profile Afrikaners, albeit that they did not play an active mediation role. As was

⁸ Esterhuyse, interview by author, 1996.

⁹ Anonymous, interview by author, 9 April 1997.

mentioned, both the government via the NIS and the ANC sought to establish contact from the mid-1980's, yet could not risk sending public overtures for talks to their opponents. In the case of Mandela it was easy to maintain contact and limit damage in the event of an information leak, due to the explicit relationship between jailer and prisoner. The continued lobbying by political prisoners for rights and privileges also mandated continued contact between them and the government. A third party was, however, necessary to establish contact in the case of the ANC in exile.

Third parties also played an important role in adjusting perceptions of the general public towards supposed enemies. This was proved by the series of pilgrimages that white South Africans undertook to meet with the ANC. Although the government regarded it as a hindrance to their own discussions, it played an undeniable role in setting a precedent for more formal contacts. What is disputed, however, is the role these groups have declared for themselves in retrospect. At no stage did any of the third party delegates receive an official mandate to engage the ANC in issues related to bargaining about bargaining. Furthermore, the one-off nature and size of delegations impeded the development of any significant 'bargaining' relationships. Although general *goodwill* was expressed between the ANC and visiting delegations, no *good faith* could be established due to the nature of these meetings as fact-finding exercises and not bargaining events. For the strategists steering the government's negotiation program, no information was forthcoming from the pilgrimages that they had not already acquired through their own channels. This proves the proposition that the meetings with the ANC were mainly aimed at preparing audiences for negotiation and not at negotiation itself.

A main reason for the exclusion of third parties is what was perceived as the questionable motives of mediators. It became apparent that because of South Africa's high profile as a deeply divided society, many international organisations and officials offered their services to broker the conflict. Especially the South African government did not trust the motives of these actors and they regarded any overtures as attempts to gain diplomatic currency or force the government into accepting predetermined solutions. The EPG mission highlighted the fact that P.W. Botha usually reacted in defiance to external initiatives. For this reason the NIS group, as main strategists of talks from government side, regarded third party intervention as a nuisance, as it

complicated their approach to Botha. In view of the antagonism between MI and the NIS any publicly mediated summit would further have complicated the intense power struggle between the two structures. One of the primary reasons for the secrecy of the bargaining about bargaining phase was to prevent MI from blocking the process.

As has been argued, the initial aim of talks for the NIS was not the facilitation of a transfer of power. The government and the ANC still held widely disparate viewpoints on the outcome of talks, with the government aware that they held a minority perspective in terms of the world view of apartheid. Therefore, the selection of a mutually acceptable mediator would probably not have been possible. Neither the government nor the ANC would have accepted any designate who was perceived to be sympathetic towards their opponent.

Even throughout the preliminary bargaining phase international involvement was restricted to issues such as the monitoring of violence. No mediation was ever applied in breaking deadlocks between the government and the ANC. Perhaps this reflects why one of the outstanding issues of the transition remains the IFP's insistence that a deal was brokered to allow for international mediation in determining whether the powers of regions had been adequately addressed, a claim discarded by the ANC.

In conclusion, the principle of secrecy was used to good effect in the South African transitional negotiations. According to Roelf Meyer the most important decisions during preliminary bargaining were taken in behind-the-scenes bilateral meetings where the secret nature of the meetings created the opportunity for parties to establish lasting good faith. He argues that a large part of the success of prenegotiation can be ascribed to the covert circumstances in which important discussions were held.¹⁰ This view is held by most of the negotiators in the South African transition. By excluding external actors and audiences to a certain degree, it was ensured that negotiators could focus on bargaining itself, which in turn offered room for the above-mentioned establishment of good faith. This is an important lesson of the South African transitional negotiations.

¹⁰ Meyer, interview by author, 5 September 1997.

5.4. The non-linear dynamics of prenegotiation

One of the problematic aspects of a phaseological approach to negotiation is the accurate delineation of phases. Even if phases are well-defined the identification of empirical events that signify a changeover between them can be difficult. In the case of South Africa the formal changeovers occurred in tandem with notable events, yet all the changeovers did not represent a linear progression along the lines of a predetermined sequence.

This study's analysis of the South African negotiations has shown that although the process proceeded through phases one, two and three in sequence, it became necessary to revert back to phase two in order to break the deadlock that had ensued. This about-turn proved to be a decisive factor in the success of the process. By convening the talks away from audiences and addressing the causes of conflict between the parties, negotiators were able to establish common ground from which they could proceed with substantive bargaining. Most of the primary negotiators who were involved in the Channel from June 1992 stress the importance of the talks that led to the Record of Understanding in demonstrating good faith between them.

It is argued here that an option to return to prenegotiation at any time during a bargaining process should be accepted as a crucial deadlock-breaking mechanism in deeply divided societies.

The South African transitional negotiations illustrated that opposing views on the causes and outcomes of conflict form the main obstacles to its resolution. Prenegotiation serves as the ideal platform to address these issues, necessitating two-way movement in bargaining in order to create solutions.

The strategy of a reverse loop is not explicitly addressed as a deadlock-breaking mechanism in prenegotiation theory. Relevant sources usually focus on the phases themselves rather than the movement between them, mainly because the boundaries between phases are regarded as vague, conceptual constructs. Zartman and Berman do, in fact, argue that movement back and forth between the formula and detail phases is

not only possible, but indeed desirable, if formulas prove to be controversial or ineffective.¹¹ Judging by the South African experience, it is somewhat strange, however, that reverse movement between phases have not been addressed in more detail. This study aims to contribute to the relevant literature by proposing the following guidelines:

- Reverse circular movement between phases is not necessarily a one-off process. As a strategy it can be utilised whenever deadlock over fundamental issues arises.
- A return to prenegotiation can be initiated bilaterally without the suspension of multilateral substantive bargaining.
- Deadlock is not a compulsory precondition for reverse circular movement. Parties wishing to re-establish good faith or explore potential solutions without being bound to them can purposely revert to a prenegotiation forum.

5.5. The effective prenegotiator

According to Zartman and Berman, negotiators are made, not born. They argue that it can be taught and learned how to steer a negotiation process, yet they accept that individuals apply knowledge differently in terms of their personalities.¹² In this sense the South African transition provided a crash-course in bargaining for many would-be negotiators. Because of its exclusive nature, it can be argued that the success of prenegotiation hinged on the ability of *individuals* to cooperate in the search for a mutually agreed settlement. Factors concerning the personal make-up of negotiators will be subsequently analysed to determine how important the choice of personalities was to the process.¹³ In the light of the findings it is relevant to reflect on the influence of individuals on the outcome of a negotiation process. Could external pressures have forced an eventual solution in the case of South Africa, irrespective of individual contributions, or do individuals themselves play the determining role in altering history?

¹¹ See Section 2.4.4.

¹² Zartman and Berman, *The Practical Negotiator*, p. 16.

¹³ This is relevant only where negotiators were selected. In the initial stages of the process certain individuals became part of bargaining on their own volition and because of their personal appraisals of the situation. In these cases the emergence of trust was based on the luck of the draw. This emphasises the risk involved in prenegotiation, as a lack of personal "chemistry" between negotiators can smother the process at its inception.

5.5.1. The recurring issue of trust

It has been argued that the existence of mutual trust between negotiators is an important facet of any negotiation process. When analysing the South African transitional negotiations from a phase perspective, it becomes apparent that changeovers between phases also coincided with a change of personalities. Whereas certain individuals were involved in the process from start to finish, new negotiators were introduced along the way. The question that arises is what effect did this have on the building of trust between opposing groups as well as between individual negotiators? How important is continuity in terms of negotiators for a sequential bargaining process?

▪ The Mandela initiative

The composition of the working committee which steered talks with Nelson Mandela was significant in the sense that it did not reflect a purely political front. The exact reasons for the decision to exclude cabinet members is unknown. One possible explanation is offered by Kobie Coetsee, who argues that the inclusion of NIS members was part of a strategy to enhance their intelligence building capacity. Judging by the initial reaction of P.W. Botha to Coetsee's initiative it is also possible that the discussions were deliberately kept secret to prevent embarrassment in the event of an information leak.¹⁴ Whichever way, by refraining from including politicians, a climate was created for the talks to become more strategically aimed. The inclusion of Mike Louw and Niel Barnard, however, initially inhibited the development of mutual trust between Mandela and the group, as he remained suspicious as to why the NIS would be part of such talks. Their inclusion partly informed his perception that the government was attempting to drive a wedge between him and the ANC in exile. This lingering suspicion would remain a stumbling block in the establishment of complete mutual trust between Mandela and his interlocutors, although the two sides learned to respect the positions put forward during discussions.

¹⁴ Some sources argue that Coetsee blocked any attempts from cabinet members to meet with Mandela and acted as if the latter was his own personal prisoner. The possibility that contact was initiated as part of a personal career move on Coetsee's part can not be ruled out. In the absence of other cabinet members Coetsee would remain the senior member in the committee, ensuring that its co-ordination would depend on him.

▪ **The external initiative**

The decision by the NIS think tank to make use of an intermediary in establishing contact with exiled ANC members in 1987 was couched in an analysis of the political context at the time. As the primary motive of such contact was to gather information on ANC positions without being directly linked to the initiative, the strategy proved to be effective. However, despite the ANC members' insistence that they had no official mandate to engage in talks, their delegation comprised of leading strategists in the organisation. This offered them the opportunity to coordinate any future developments with the same core group involved in the meetings.¹⁵ In retrospect the government strategy did not allow for this, as Esterhuysen had no responsibility towards the government, nor was he in a position to affect changes based on his assessment of the ANC. His relationship with Mbeki was crucial in establishing trust and a notion of good faith on an interpersonal level, but it could not influence the ANC's perception of the government in general. Hence, the existence of good faith was subject to the implicit recognition that the ANC would have to re-establish it once direct bargaining got underway. This was acknowledged by the NIS group at the end of the Mells Park meetings, and an offer was made to Esterhuysen to stay part of the process once it continued, which he declined.

Although the prior existence of trust between specific role-players would have strengthened the process once it entered the preliminary bargaining phase, the opening up of the process in 1990 in any event introduced new participants on both sides who had no prior contact with their previous enemies. Hence, the covert nature of the *bargaining about bargaining* phase made it inevitable that establishment of good faith would have to be repeated.

▪ **The leadership dimension**

After an initial period where the established negotiators continued to uphold contact, the stage was cleared for the entrance of politicians from government side to enter the process. Administrators such as Fanie van der Merwe and Niel Barnard, who had been involved in the process for quite some time, were utilised in organisational and advisory capacities. This resulted in the process also becoming more political, as intra-party

¹⁵ Interestingly enough, this did not happen.

jostling and “playing-to-the-public” became factors in the establishment of a bargaining relationship. From the ANC-side decisions had to be made on the positions of internal alliance partners in delegations. The inclusion of people such as Beyers Naude, an ostracized minister of the Dutch Reformed Church, in official delegations, signified an attempt by the ANC to project an image of a broad front acting as opponents to the government. Although Nelson Mandela asserted a leadership role on the ANC side, there most certainly must have been discussions among ANC-members to decide which negotiating wing should lead talks.

The most visible pairing in the second phase took place between De Klerk and Mandela. After the release of the latter in 1990 they embarked on a public show of trust, mutually affirming the integrity of the other. This public display of goodwill played an important part in conveying a message of compromise towards their respective supporters. It was, however, a risky strategy, as a deterioration in their relationship would also affect public perception of the feasibility of a negotiated settlement. A rift eventually occurred in December 1991 at Codesa 1, after which their relationship continued to ebb between conciliatory and adversarial. Due to both Mandela and De Klerk’s hands-on approach to negotiation, their failure to consolidate the interpersonal notion of good faith impacted directly on the bargaining process. Each time external events caused the rift to grow wider, they responded by taking stronger positions inside the forum of bargaining. In effect their inability to establish lasting trust increased the responsibility of negotiators to secure compromises. Thus, although the Mandela-De Klerk relationship was very important in altering perceptions of those outside the process, it was in many instances counter-productive to the general development of good faith between the government and the ANC.

In view of the above it is perhaps necessary to reflect on the effectiveness of a strategy where leaders become directly involved in bargaining.

It is argued here that the primary role of leaders should be to extend an image of mutual accommodation between opposing groups to their respective audiences.

This does not imply their exclusion from a bargaining process. It limits their involvement to the provision of *leadership*, i.e. ratifying agreements and breaking deadlock, thereby providing room for them to become involved in the external building-up of support for a multilateral strategy. Constant bickering between leaders negates the principles of negotiation they are supposed to maintain.

According to Douglas an effect associated with the second phase of bargaining is the increase in autonomy granted to individual negotiators. This implies increased reliance on their ability to make decisions and a decrease in directives from above.¹⁶ In the South African case the opposite was true. The changeover to preliminary bargaining signified an expanding involvement of leaders in day-to-day bargaining. This could have been partly due to a power struggle between De Klerk and Mandela, in which each aimed to assert the role of primary role-player during the transition. Yet, the unconcealed hostility which apparently surfaced between them in one-on-one meetings worked against the establishment of good faith and complicated the task of negotiators. Having a bargaining contest at the top level of leadership can furthermore be detrimental to the party with the weaker leader, as no control mechanism is in place to counter unnecessary concessions.

It is argued here that, since the issue of leaders-as-negotiators is not explicitly addressed in prenegotiation literature, the South African experience can offer relevant insights in this regard to prenegotiation theorists and similar deeply divided societies. It will, however, be mostly relevant to societies hallmarked by conflict on an intergroup level within the boundaries of one country. If the leaders of the main negotiating groups in these societies ultimately vie for the top position in a new dispensation, as was the case in South Africa, the competition that emanates from this can entice them to adopt strategies aimed solely at discrediting their opposition. It can also pressure them to try and weaken the support base of the opposition through unscrupulous means. The bottom line is that an absence of good faith between opposing leaders, who also function as primary negotiators, can cause much more damage to a negotiation process than bad faith between subordinate negotiators, who can be replaced more easily.

¹⁶ See section 2.4.1.

It is therefore a great risk to involve leaders directly in issue-for-issue hard bargaining.

▪ **The channel**

In the face of the deteriorating relationship between Mandela and De Klerk, the setting up of a bargaining channel between Roelf Meyer and Cyril Ramaphosa proved to be *the* decisive step in ensuring success during the post-1990 negotiation period. Based on accounts given by the two negotiators, it can be argued that their bargaining relationship provided a textbook example of a “successful” relationship. Not only was it based on mutual trust and good faith, but it was developed over time, out of the view of audiences and kept on a professional basis.

Although these are all applicable lessons, what cannot be learned from the South African case is how to initiate a pairing of two compatible negotiators. The convergence of Ramaphosa and Meyer as the chief negotiators were subject to external factors, distinct for each side. Ramaphosa was selected for the role on the basis of his successful background in industrial bargaining. He was in all likelihood perceived by the ANC to be the best choice if they wanted to ensure maximum concessions. Meyer, on the other hand, was elevated first to the position of minister of constitutional development after the departure of Gerrit Viljoen in 1992. Based on the position of Viljoen as primary negotiator, Meyer was awarded the role due to his appointment, but only after an internal leadership battle with Tertius Delpont, then deputy minister of constitutional development, for the ministerial post. Hence his appointment was ultimately based on the inherited status of his new position.¹⁷

Although both Meyer and Ramaphosa had previously worked together in the build-up to Codesa, it had been in larger working groups, which did not provide the ideal setting for an establishment of mutual trust. This could only take place once they were appointed to seek a solution to the deadlock in May 1992. Hence, the pairing of the two negotiators who’s bargaining relationship would become crucial for the success of the process, was similar to the situation of Esterhuyse and Mbeki, determined by the luck of the draw.

¹⁷ This position is adopted here because no evidence has been forthcoming that Meyer was deliberately appointed to act as direct opposition to Ramaphosa.

Although it does not fall within the scope of this study, it can be speculated whether different personalities would have produced a similar outcome.

The difficulty of determining beforehand which negotiators would be mutually compatible is further illustrated by the case of two advisors in the Channel, Mac Maharaj and Fanie van der Merwe. The two of them also developed a successful bargaining relationship, but their circumstances differed from that of Meyer and Ramaphosa. In their case they had a background of cooperation which started with their involvement in the Secretariat of Codesa. Based on the efficient working relationship they established there, they were continuously assigned to the same structures afterwards, which provided them with the opportunity to develop their good faith bargaining relationship.

The above examples show one area of prenegotiation which could have been better managed had the same persons who established good faith in bargaining about bargaining been deployed in preliminary bargaining and substantive bargaining. The circumstances determined, however, that new pairings were introduced as late as June 1992. This was one of the main reasons why it became necessary to revert back to prenegotiation between June 1992 and April 1993. The establishment of good faith was determined to a large degree by the bargaining environment and the personalities involved and only after the return to prenegotiation were the negotiators on a footing conducive to substantive bargaining. Even though it may be unsettling, it should also not be forgotten that luck played a large part in coordinating the process up to the point of the MPNP in 1993, especially with regards to the choice of negotiators.

5.5.2. Learning how to bargain

Most studies focussing on the dimensions of prenegotiation have done so from either an international or an individual level of analysis. In the types of conflict that are to be found on these levels, those who attempt to resolve it are usually experienced negotiators, be they diplomats, mediators or labour consultants. The implicit assumption in such cases is that these negotiators have extensive knowledge of the theories relating to their field, as well as of common tactics utilised in bargaining.

In the case of South Africa, however, a minority of the participants in negotiation had any prior experience of hard bargaining. The decision not to make use of mediation made it necessary for negotiators to acquire skills as the process developed and it also made them responsible for the steering of the process.

It is argued here that, because of its informal nature, prenegotiation served as an ideal platform for negotiators to gain experience in bargaining without being bound to its outcome.

This dimension of prenegotiation is an important addition to the existing theory. Another factor which limited the range of possible negotiators for the bargaining about bargaining phase was the conditions of secrecy under which contact was established in Europe. The NIS working group could not initiate direct talks with the ANC in fear of an information leak, hence they had to make use of intermediaries through already established links. The planned meetings between Willie Esterhuyse and the ANC served as a timely opportunity for them to set up a communication channel. This implied, however, that they had to make use of Esterhuyse and also brief him. The ANC from their side recognised the need to engage Afrikaners in talks, but did not yet envision contact with the government. Esterhuyse's acceptance to act as a conduit between the two parties presented the ANC with an unexpected channel of contact. Yet, they also had to accept the intermediary along with the contact. Neither of the parties had the luxury to choose their intermediaries. The ANC faced a similar situation in compiling their delegation to meet with Esterhuyse's group. Due to the presence of a strong anti-negotiation sentiment within the ANC they had to choose participants from the few who supported talks, again not being able to exercise free choice. Even though the respective leaders on both sides knew about the contact they could not become directly involved, in case their involvement became public.

It is therefore evident that, especially in the first phase, parties may have limited options in choosing negotiators due to the secrecy of the process.

A corollary would be that if negotiation is discreetly initiated by a faction within a larger group, the negotiators will out of necessity come from the faction itself. This may

result in the selection of inexperienced individuals as negotiators, underlying the need for prenegotiation to be regarded as a training ground for future bargainers. A dilemma can occur when bargaining about bargaining is finalised but no official movement has taken place in 'the parties' positions outside the bargaining forum, preventing a changeover to the next phase. In the South African case the NIS had to force change at the end of 1989 by exploiting De Klerk's inexperience in his new position as president in order to establish direct contact with the ANC. This was necessitated by the joint movement which occurred in both the external meetings with the ANC and the internal talks held with Mandela in prison. At that stage the NIS working group had exhausted their intelligence gathering exercise and needed to proceed with direct talks.

5.6. The recommendations: a summary

In view of the above discussions, a few key lessons on the conduct of prenegotiation can be extracted from the South African transitional negotiations. It is my opinion that the recommendations based on these lessons are generalisable to a broader set of deeply divided societies. While some of them are based on existing assumptions of prenegotiation theory, others became apparent in the analysis of the South African process. They are:

- The acceptance of negotiation as a viable response to conflict is dependent on a *mutual* perception of stalemate among parties
- The principle of secrecy/confidentiality is conducive to the success of prenegotiation
- A decision to negotiate under conditions of secrecy does not preclude the involvement of audiences. Communication channels can be set up to inform audiences of agreements after they have been reached.
- The establishment of good faith and mutual trust between negotiators are the two most crucial determinants of the success of prenegotiation
- The exclusion of third parties can be conducive to the establishment of good faith and mutual trust between negotiators
- Prenegotiation is not a one-off process. The success of negotiation as a whole is determined by parties' ability to revert to prenegotiation in the event of deadlock

- Party leaders should not also be chief negotiators
- The establishment of good faith between negotiators is partly determined by the compatibility of their personalities
- No formula exists that can determine beforehand which negotiators would be the most compatible
- Prenegotiation can serve as a training ground for inexperienced negotiators
- The successful completion of prenegotiation is imperative for the success of negotiation as a whole
- The use of intermediaries is an effective strategy to set up channels of information between opposing parties who do not want to risk direct contact

5.7. Conclusion

This study has provided a phaseological analysis of the South African transitional negotiations. By identifying three phases on the basis of their functions, namely *bargaining about bargaining*, *preliminary bargaining* and *substantive bargaining*, it has been argued that the successful completion of the first two phases in terms of their objectives is crucial to the success of a negotiation process as a whole.

In the South African case a number of crucial events had to take place in order to ensure the success of prenegotiation. Two of the most important factors proved to be the bi-directional movement between bargaining phases and the establishment of good faith between negotiators. These are also the two most generalisable lessons learnt from the South African experience. Although South Africa has much more to offer in terms of experience when it comes to the study and pursuit of prenegotiation, any scholar or negotiator should be wary to supplant the model as is onto another deeply divided society, without a prior understanding of the societies specific attributes. Prenegotiation the South African way is not the only way to resolve conflict in a deeply divided society. It is merely one successful example of modern-day conflict resolution.

ADDENDUM A HARARE DECLARATION

Declaration of the OAU Ad-hoc Committee on Southern Africa on the Question of South Africa; Harare, Zimbabwe: August 21, 1989. *

I. Preamble

1. The people of Africa, singly, collectively and acting through the OAU, are engaged in serious efforts to establish peace throughout the continent by ending all conflicts through negotiations based on the principle of justice and peace for all.
2. We reaffirm our conviction, which history confirms, that where colonial, racial and apartheid domination exists, there can neither be peace nor justice.
3. Accordingly, we reiterate that while the apartheid system in South Africa persists, the peoples of our continent as a whole cannot achieve the fundamental objectives of justice, human dignity and peace which are both crucial in themselves and fundamental to the stability and development of Africa.
4. With regard to the region of Southern Africa, the entire continent is vitally interested that the processes, in which it is involved, leading to the complete and genuine independence of Namibia, as well as peace in Angola and Mozambique, should succeed in the shortest possible time. Equally, Africa is deeply concerned that the destabilisation by South Africa of all the countries of the region, whether through direct aggression, sponsorship of surrogates, economic subversion and other means, should end immediately.
5. We recognise the reality that permanent peace and stability in Southern Africa can only be achieved when the system of apartheid in South Africa has been liquidated and South Africa transformed into a united, democratic and non-racial country. We therefore reiterate that all the necessary measures should be adopted now, to bring a speedy end to the apartheid system, in the interest of all the people of Southern Africa, our continent and the world at large.
6. We believe that, as a result of the liberation struggle and international pressure against apartheid, as well as global efforts to liquidate regional conflicts, possibilities exist for further movement towards the resolution of the problems facing the people of South Africa. For these possibilities to lead to fundamental change in South Africa, the Pretoria regime must abandon its abhorrent concepts and practices of racial domination and its record of failure to honour agreements all of which have already resulted in the loss of lives and the destruction of much property in the countries of Southern Africa.

* <http://www.anc.org.za/ancdocs/history/harare.html>

7. We reaffirm our recognition of the rights of all peoples, including those of South Africa, to determine their own destiny, and to work out for themselves the institutions and the system of government under which they will, by general consent, live and work together to build a harmonious society. The Organisation of African Unity remains committed to do everything possible and necessary, to assist the people of South Africa, in such ways as the representatives of the oppressed may determine, to achieve this objective. We are certain that, arising from this duty to help end the criminal apartheid system, the rest of the world community is ready to extend similar assistance to the people of South Africa.

8. We make these commitments because we believe that all people are equal and have equal rights to human dignity and respect, regardless of colour, race, sex or creed. We believe that all men and women have the right and duty to participate in their own government, as equal members of society. No individual or group of individuals has any rights to govern others without their consent. The apartheid system violates all these fundamental and universal principles. Correctly characterised as a crime against humanity, it is responsible for the death of countless numbers of people in South Africa, resulting in untold loss of life, destruction of property and massive displacement of innocent men, women and children. This scourge and affront to humanity must be fought and eradicated in its totality.

9. We have therefore supported and continue to support all those in South Africa who pursue this noble objective through political, armed and other forms of struggle. We believe this to be our duty, carried out in the interest of all humanity.

10. While extending this support to those who strive for a non-racial and democratic society in South Africa, a point on which no compromise is possible, we have repeatedly expressed our preference for a solution arrived at by peaceful means. We know that the majority of the people of South Africa and their liberation movement, who have been compelled to take up arms, have also upheld this position for many decades and continue to do so.

11. The positions contained in this Declaration are consistent with and are a continuation of those elaborated in the Lusaka Manifesto, two decades ago. They take into account the changes that have taken place in South Africa since that Manifesto was adopted by the OAU and the rest of the international community. They constitute a new challenge to the Pretoria regime to join in the noble effort to end the apartheid system, an objective to which the OAU has been committed from its birth.

12. Consequently, we shall continue to do everything in our power to help intensify the liberation struggle and international pressure against the system of apartheid until this system is ended and South Africa is transformed into a united democratic and non-racial country, with justice and security for all its citizens.

13. In keeping with this solemn resolve, and responding to the wishes of the representatives of the majority of the people of South Africa, we publically pledge ourselves to the positions contained hereunder. We are convinced that their implementation will lead to the speedy end of the apartheid system and therefore the opening of a new dawn of peace for all the peoples of Africa, in which racism, colonial domination and white minority rule on our continent would be abolished for ever.

II. Statement of Principles

14. We believe that a conjuncture of circumstances exists which, if there is a demonstrable readiness on the part of the Pretoria regime to engage in negotiations genuinely and seriously, could create the possibility to end apartheid through negotiations. Such an eventuality would be an expression of the long-standing preference of the people of South Africa to arrive at a political settlement.

15. We would therefore encourage the people of South Africa, as part of their overall struggle, to get together to negotiate an end to the apartheid system and agree on all the measures that are necessary to transform their country into a non-racial democracy. We support the position held by the majority of the people of South Africa that these objectives and not the amendment or reform of the apartheid system, should be the aims of the negotiations.

16. We are at one with them that the outcome of such a process should be a new constitutional order based on the following principles, among others:

16.1. South Africa shall become a united, democratic and non-racial state.

16.2. All its people shall enjoy common and equal citizenship and nationality, regardless of race, colour, sex or creed.

16.3. All its people shall have the right to participate in the government and administration of the country on the basis of a universal suffrage, exercised through one person one vote, under a common voters roll.

16.4. All people have the right to form and join any political party of their choice, provided that this is not in the furtherance of racism.

16.5. All shall enjoy universally recognised human rights, freedoms and civil liberties, protected under an entrenched Bill of Rights.

16.6. South Africa shall have a new legal system which shall guarantee equality of all before the law.

16.7. South Africa shall have an independent and non-racial judiciary.

16.8. There shall be created an economic order which shall promote and advance the well-being of all South Africans.

16.9. A democratic South Africa shall respect the rights and sovereignty and territorial integrity of all countries and pursue a policy of peace, friendship and mutually beneficial co-operation with all people.

17. We believe that the agreement on the principles shall continue the foundation for an internationally acceptable solution which shall enable South Africa to take its rightful place as an equal partner among the African and world community of nations.

III. Climate for Negotiations

18. Together with the rest of the world, we believe that it is essential, before any negotiations take place, that the necessary climate for negotiations be created. The apartheid regime has the urgent responsibility to respond positively to this universally acclaimed demand and thus create this climate.

19. Accordingly, the present regime should, at the very least:
- 19.1. Release all political prisoners and detainees unconditionally and refrain from imposing any restrictions on them.
 - 19.2. Lift all bans and restrictions on all proscribed and restricted organisations and people.
 - 19.3. Remove all troops from the townships.
 - 19.4. End the state of emergency and repeal all legislation, such as, and including, the Internal Security Act, designed to circumscribe political activity.
 - 19.5. Cease all political executions.
20. These measures are necessary to produce the conditions in which free discussion can take place - an essential condition to ensure that the people themselves participate in the process of remaking their country. The measures listed above should therefore precede negotiations.

IV. Guidelines to the process of negotiation

21. We support the view of the South African liberation movement that upon the creation of this climate, the process of negotiations should commence along the following lines:
- 21.1. Discussions should take place between the liberation movement and the South African regime to achieve the suspension of hostilities on both sides by agreeing to a mutually binding cease fire.
 - 21.2. Negotiations should then proceed to establish the basis for the adoption of a new Constitution by agreeing on among, others, the Principles enunciated above.
 - 21.3. Having agreed on these Principles, the parties should then negotiate the necessary mechanism for drawing up the new Constitution.
 - 21.4. The parties shall define and agree on the role to be played by the international community in ensuring a successful transition to a democratic order.
 - 21.5. The parties shall agree on the formation of an interim government to supervise the process of the drawing up and adoption of a new constitution; govern and administer the country, as well as effect the transition to a democratic order including the holding of the elections.
 - 21.6. After the adoption of the new Constitution, all armed hostilities will be deemed to have formally terminated.
 - 21.7. For its part, the international community would lift the sanctions that have been imposed against apartheid South Africa.

22. The new South Africa shall qualify for the membership of the Organisation of African Unity.

V. Programme of Action

23. In pursuance of the objectives stated in this document, Organisation of African Unity hereby commits itself to:
- 23.1. Inform governments and inter-governmental organisations throughout the world, including the Non-Aligned Movement, the United Nations General Assembly,

the Security Council, the Commonwealth and others of these perspectives, and solicit their support.

23.2. Mandate the OAU ad-hoc committee on Southern Africa, acting as the representative of the OAU, assisted by the Frontline States, to remain seized of the issue of a political resolution to the South Africa question.

23.3. Step up all-round support for the South African liberation movement and campaign in the rest of the world in pursuance of this objective.

23.4. Intensify the campaign for mandatory and comprehensive sanctions against apartheid South Africa; in this regard, immediately mobilise against the re-scheduling of Pretoria's foreign debts; work for the imposition of a mandatory oil embargo and the full observance by all countries of the arms embargo.

23.5. Ensure that the African continent does not relax existing measures for the total isolation of apartheid South Africa.

23.6. Continue to monitor the situation in Namibia and extend all necessary support to SWAPO in its struggle for a genuinely independent Namibia.

□

23.7. Extend such assistance as the Governments of Angola and Mozambique may request in order to secure peace for their people.

23.8. Render all possible assistance to the Frontline States to enable them to withstand Pretoria's campaign of aggression and destabilisation and enable them to continue to give their all-round support to the people of Namibia and South Africa.

24. We appeal to all people of goodwill throughout the world to support this Programme of Action as a necessary measure to secure the earliest liquidation of the apartheid system and the transformation of South Africa into a united, democratic and non-racial country.

ADDENDUM B

THE GROOTE SCHUUR MINUTE

The Groote Schuur Minute*

The government and the African National Congress agree on a common commitment towards the resolution of the existing climate of violence and intimidation from whatever quarter as well as a commitment to stability and to a peaceful process of negotiations.

Flowing from this commitment, the following was agreed upon:

1. The establishment of a working group to make recommendations on a definition of political offences in the South African situation; to discuss, in this regard, time scales; and to advise on norms and mechanisms for dealing with the release of political prisoners and the granting of immunity in respect of political offences to those inside and outside South Africa. All persons who may be affected will be considered. The working group will bear in mind experiences in Namibia and elsewhere. The working group will aim to complete its work before 21st May 1990. It is understood that the South African government, in its discretion, may consider other political parties and movement and other relevant bodies. The proceedings of the working group will be confidential. In the meantime the following offences will receive attention immediately:

- a. The leaving of the country without a valid travel document.
- b. Any offences related merely to organisations which were previously prohibited.

2. In addition to the arrangements mentioned in paragraph 1, temporary immunity from prosecution of political offences committed before today, will be considered on an urgent basis for members of the National Executive Committee and selected other members of the ANC from outside the country, to enable them to return and help with the establishment and management of political activities, to assist in bringing violence to an end and to take part in peaceful political negotiations.

3. The government undertakes to review existing security legislation to bring it into line with the new dynamic situation developing in South Africa in order to ensure normal and free political activities.

4. The government reiterates its commitment to work towards the lifting of the state of emergency. In this context, the ANC will exert itself to fulfill the objectives contained in the preamble.

5. Efficient channels of communication between the government and the ANC will be established in order to curb violence and intimidation from whatever quarter effectively.

The government and the ANC agree that the objectives contained in this minute should be achieved as early as possible.

Cape Town,
4th May 1990

* <http://www.anc.org.za/ancdocs/history/transition/minutes.html>

ADDENDUM C

THE PRETORIA MINUTE

Pretoria Minute*

The government and the ANC have held discussions at the Presidency, Pretoria, today 6 August 1990.

1. The Government and the ANC have again committed themselves to the Groote Schuur Minute.

2. The final report of the Working Group on political offences dated 21 May 1990, as amended, was accepted by both parties. The guidelines to be formulated in terms of the Report will be applied in dealing with members of all organisations, groupings or institutions, governmental or otherwise, who committed offences on the assumption that a particular cause was being served or opposed. The meeting has instructed the Working Group to draw up a plan for the release of ANC-related prisoners and the granting of indemnity to people in a phased manner and to report before the end of August. The following target dates have in the meantime been agreed upon:

- The body or bodies referred to in paragraph 8.2 of the Report of the Working Group will be constituted by 31 August 1990.
- The further release of prisoners which can be dealt with administratively will start on 1 September 1990.
- Indemnity which can be dealt with in categories of persons and not on an individual basis will be granted as from 1 October 1990. This process will be completed not later than the end of 1990.
- In all cases where the body or bodies to be constituted according to paragraph 8.2 of the Report of the Working Group will have to consider cases on an individual basis, the process will be expedited as much as possible. It is hoped that this process will be completed within six months, but the latest date envisaged for the completion of the total task in terms of the Report of the Working Group is not later than 30 April 1991.

This programme will be implemented on the basis of the Report of the Working Group.

3. In the interest of moving as speedily as possible towards a negotiated peaceful political settlement and in the context of the agreements reached, the ANC announced that it was now suspending all armed actions with immediate effect. As a result of this, no further armed actions and related activities by the ANC and its military wing Umkhonto we Sizwe will take place. It was agreed that a working group will be established to resolve all outstanding questions arising out of this decision to report by 15 September 1990. Both sides once more committed themselves to do everything in their power to bring about a peaceful solution as quickly as possible.

* <http://www.anc.org.za/ancdocs/history/transition/minutes.html>

4. Both delegations expressed serious concern about the general level of violence, intimidation and unrest in the country, especially in Natal. They agreed that in the context of the common search for peace and stability, it was vital that understanding should grow among all sections of the South African population that problems can and should be solved through negotiations. Both parties committed themselves to undertake steps and measures to promote and expedite the normalisation of the situation in line with the spirit of mutual trust obtaining among the leaders involved.

5. With due cognizance of the interest, role and involvement of other parties the delegations consider it necessary that whatever additional mechanisms of communication are needed should be developed at local, regional and national levels. This should enable public grievances to be addressed peacefully and in good time, avoiding conflict.

6. The Government has undertaken to consider the lifting of the State of Emergency in Natal as early as possible in the light of positive consequences that should result from this accord.

7. In view of the new circumstances now emerging there will be an ongoing review of security legislation. The Government will give immediate consideration to repealing all provisions of the Internal Security Act that –

- a. refer to communism or the furthering thereof;
- b. provide for a consolidated list;
- c. provide for a prohibition on the publication of statements or writings of certain persons; and
- d. provide for an amount to be deposited before a newspaper may be registered.

The Government will continue reviewing security legislation and its application in order to ensure free political activity and with the view to introducing amending legislation at the next session of Parliament. The Minister of justice will issue a statement in this regard, inter alia calling for comments and proposals.

8. We are convinced that what we have agreed upon today can become a milestone on the road to true peace and prosperity for our country. In this we do not pretend to be the only parties involved in the process of shaping the new South Africa. We know there are other parties committed to peaceful progress. All of us can henceforth walk that road in consultation and co-operation with each other. We call upon all those who have not yet committed themselves to peaceful negotiations to do so now.

9. Against this background, the way is now open to proceed towards negotiations on a new constitution. Exploratory talks in this regard will be held before the next meeting which will be held soon.

PRETORIA
6 August 1990

ADDENDUM D

THE D.F. MALAN ACCORD

DF Malan Accord: Report of the Working Froup under Paragraph Three of the Pretoria Minute*

1. The Working Group was established under paragraph 3 of the Pretoria Minute, which reads as follows:

"In the interest of moving as speedily as possible towards a negotiated peaceful political settlement and in the context of the agreements reached, the ANC announced that it was now suspending all armed actions with immediate effect. As a result of this, nor further armed actions and related activities by the ANC and its military wing, Umkhonto weSizwe will take place. It was agreed that a Working Group will be established to resolve all outstanding questions arising out of this decision to report by 15 September 1990. Both sides once more committed themselves to do everything in their power to bring about a peaceful solution as quickly as possible."

2. Having decided that it would not have been possible to submit a final report by the 15th September 1990, an interim report was brought out on 13 September 1990.

3. Since then a number of meetings have taken place. This report was finalised at a meeting on the 12th of February 1991.

4. With reference to the work "suspending" as used in paragraph 3 of the Pretoria minute, the Working Group what was said in paragraph 4 of its Interim Report, namely that suspension occurred as a step in the process of finding peaceful solutions, with the presumption that the process would lead to the situation where there would be no return to armed action.

5. (a) Under the terms of suspension of "armed action" and "related activities" by the ANC, with specific reference also to Umkhonto weSizwe and its organised military groups and armed cadres, it was agreed that the following will not take place:

- i. Attacks by means of armaments, firearms, explosive or incendiary devices.
- ii. Infiltration of men and material
- iii. Creation of underground structures
- iv. Statements inciting violence
- v. Threats of armed action
- vi. Training inside South Africa

* <http://www.anc.org.za/ancdocs/history/transition/minutes.html>

(b) The Working Group:

- i. agreed that the democratic process implies and obliges all political parties and movements to participate in this process peacefully and without resort to the use of force;
- ii. therefore accepted the principle that in a democratic society no political party or movement should have a private army;
- iii. noted that the ANC had, in good faith and as a contribution to the process of arriving at a peaceful settlement announced the suspension all armed actions and related activities, with the presumption that the process would lead to the situation where there would be no return to armed action;
- iv. noted that by virtue of the fact that Umkhonto weSizwe is no longer an unlawful organisation, membership thereof is not in violation of any of the provisions of paragraph 3 of the Pretoria Minute and the letter and spirit of the Pretoria Minute as a whole;
- v. noted the historical fact that the ANC and Umkhonto weSizwe had placed arms and cadres within the country;
- vi. agreed that in the context of paragraph 5(b) (ii) , (iii) and (iv) above, it was vital that control over such cadres and arms be exercised to ensure that no armed actions or related activities occur;
- vii. further agreed that in the context of paragraph 59b(ii), (iii) and (iv) above, a phased process be initiated in order to enable these cadres of the ANC to resume their normal lives and also facilitate and legalise control over the arms and the process to ensure such legality will immediately be taken further by the Working Group;
- viii. agreed that where applicable, individual weapons shall be licenced in terms of existing legislation
- ix. further agreed that the security forces take cognisance of the suspension of armed action and related activities and that the parties hereto will remain in close liaison with one another according to the procedure prescribed in 6 9a) of this document with a view to ensuring prompt and efficient reporting, investigation and redressing, where applicable, of all allegations of unlawful activities or activities contrary to the spirit of this agreement, by the security forces.

(c) The Working Group:

- i. agreed that the population at large has a right to express its views through peaceful demonstrations;
- ii. further agreed that it is urgent and imperative that violence and intimidation from whatever quarter accompanying mass action should be eliminated
- iii. further agreed that peaceful political activities and stability must be promoted;
- iv. further agreed that it this end joint efforts should be made to implement the intentions contained in paragraphs 5 of the Groote Schuur and the Pretoria Minutes to ensure that grievances and conflict-creating situations are timeously addressed.

6. (a) The Working Group agreed that designated members of the ANC would work with government representatives in a Liaison Committee to implement this agreement, and that the existing nominated SAP and ANC liaison officials appointed in accordance with paragraph 5 of the Groote Schuur Minute shall serve as supporting structure of the Liaison Committee.

(b) It is agreed that this agreement will be implemented forthwith and its objectives attained as speedily as possible.

(c) It is further agreed that in view of the above the process of attaining the objectives contained in paragraph 2 of the Pretoria Minute will be realised according to the procedures contained in that minute.

7. It is understood that nothing in or omitted from the agreement will be construed as invalidating or suspending the provisions of any law applicable in South Africa.

8. It is recommended that this Working Group be continued to supervise the implementation of this agreement relating to paragraph 3 and the activities of the Liaison Committee and to give attention to further matters that may arise from the implementation of this agreement, such as proposed defence units.

ADDENDUM E

THE RECORD OF UNDERSTANDING

Meeting Between the State President of the Republic of South Africa and the President of the African National Congress Held at the World Trade Centre on the 26 September 1992*

1. The attached Record of Understanding was agreed to.
2. On the way forward –
 - The two delegations agreed that this summit has laid a basis for the resumption of the negotiation process.
 - To this end the ANC delegation advised the South African Government that it would recommend to its National Executive Committee that the process of negotiation be resumed, whereafter extensive bilateral discussions will be held.
 - It was agreed that the practicalities with regard to bilateral discussions will be dealt with through the existing channel.

Record of Understanding

1. Since 21 August 1992 a series of meetings was held between Mr Roelf Meyer, Minister of Constitutional Development and Mr Cyril Ramaphosa, Secretary General of the African National Congress.

These meetings entailed discussions with a view to remove obstacles towards the resumption of negotiations and focused on the identification of steps to be taken to address issues raised in earlier memoranda. The discussions took note of various opposing viewpoints on the relevant issues and obstacles. It was decided that these issues should not be dealt with exhaustively in the understanding. This document reflects the understanding reached at the conclusion of the discussions regarding these obstacles and issues.

2. The understandings on issues and obstacles included the following, although it was observed that there are still other important matters that will receive attention during the process of negotiation:
 - (a) The Government and the ANC agreed that there is a need for a democratic constitution assembly/constitution-making body and that for such a body to be democratic it must:

* <http://www.anc.org.za/ancdocs/history/transition/record.html>

- be democratically elected;
- draft and adopt the new constitution, implying that it should sit as a single chamber;
- be bound only by agreed constitutional principles; have a fixed time frame;
- have adequate deadlock breaking mechanisms;
- function democratically i.e. arrive at its decisions democratically
- with certain agreed to majorities; and
- be elected within an agreed predetermined time period.

Within the framework of these principles, detail would have to be worked out in the negotiation process.

- (b) The Government and the ANC agreed that during the interim/transitional period there shall be constitutional continuity and so constitutional hiatus. In consideration of this principle, it was further agreed that:
- the constitution-making body/constituent assembly shall also act as the interim / transitional Parliament;
 - there shall be an interim/transitional government of national unity.
 - the constitution-making body/constituent assembly cum interim/transitional Parliament and the interim/transitional government of national unity shall function within a constitutional framework/transitional constitution which shall provide for national and regional government during the period of transition and shall incorporate guaranteed justiciable fundamental rights and freedoms. The interim/transitional Parliament may function as a one-or two-chambered body.
- (c) The two parties are agreed that all prisoners whose imprisonment is related to political conflict of the past and whose release can make a contribution to reconciliation should be released.

The Government and the ANC agreed that the release of prisoners, namely, those who according to the ANC fall within the guidelines defining political offences, but according to the Government do not, and who have committed offences with a political motive on or before 8 October 1990 shall be carried out in stages (as reflected in a separate document: IMPLEMENTATION PROGRAMME: RELEASE OF PRISONERS) and be completed before 15 November 1992. To this end the parties have commenced a process of identification. It is the Government's position that all who have committed similar offences but who have not been charged and sentenced should be dealt with on the same basis. On this question no understanding could be reached as yet and it was agreed that the matter will receive further attention.

As the process of identification proceeds, releases shall be effected in the above-mentioned staged manner. Should it be found that the current executive powers of the State do not enable it to give effect to specific releases arising from the above identification the necessary legislation shall be enacted.

- (d) The Goldstone Commission has given further attention to hostels and brought out an urgent report on certain matters and developments on this regard. The commission indicated that the problem is one of criminality and that it will have to investigate which localities are affected.

In the meantime some problematic hostels have been identified and the Government has undertaken as a matter of urgency to address and deal with the problem in relation to those hostels that have been associated with violence. Further measures will be taken, including fencing and policing to prevent criminality by hostel dwellers and to protect hostel dwellers against external aggression. A separate document (Implementation Programme: Hostels) records the identification of such hostels and the security measures to be taken in these instances.

Progress will be reported to the Goldstone Commission and the National Peace Secretariat. United Nations observers may witness the progress in co-operation with the Goldstone Commission and the National Peace Secretariat.

- (e) In the present volatile atmosphere of violence the public display and carrying of dangerous weapons provokes further tension and should be prohibited. The Government has informed the ANC that it will issue a proclamation within weeks to prohibit countrywide the carrying and display of dangerous weapons at all public occasions subject to exemptions based on guidelines being prepared by the Goldstone Commission. The granting of exemptions shall be entrusted to one or more retired judges. On this basis, the terms of the proclamation and mechanism for exemption shall be prepared with the assistance of the Goldstone Commission.
- (f) The Government acknowledges the right of all parties and organisations to participate in peaceful mass action in accordance with the provisions of the National Peace Accord and the Goldstone Commissions' recommendations. The ANC for its part reaffirms its commitment to the provisions of the Code of Conduct for Political Parties arrived at under the National Peace Accord and the agreement reached on 16 July 1992 under the auspices of the Goldstone Commission as important instruments to ensure democratic political activity in a climate of free political participation. The two parties also commit themselves to the strengthening of the Peace Accord process, to do everything in their power to calm down tensions and to finding ways and means of promoting reconciliation in South Africa. In view of the progress made in this summit and the progress we are likely to make when negotiations are resumed, the ANC expresses its intention to consult its constituency on a basis of urgency with a view to examine the current programme of mass action.

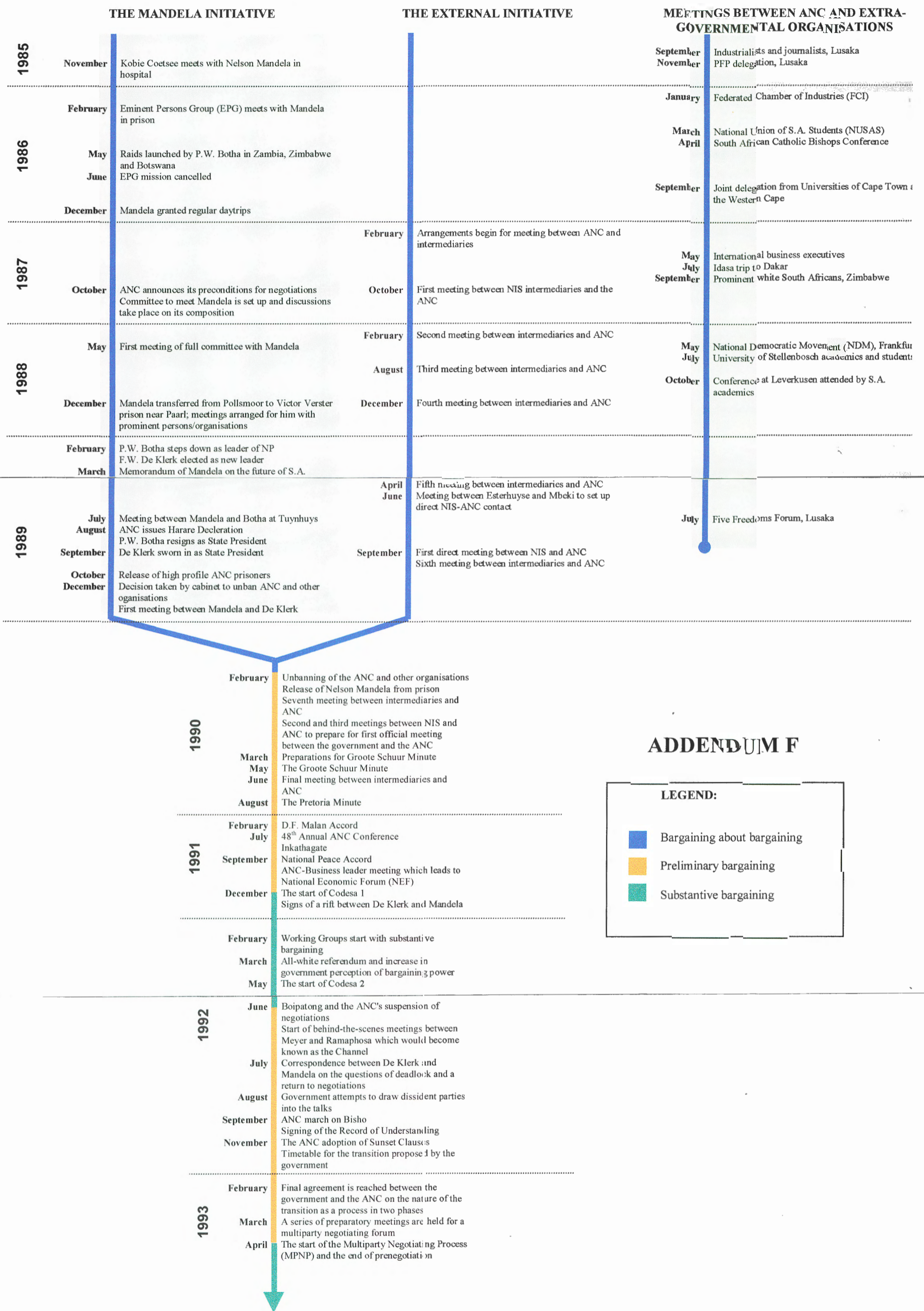
3. The two parties agreed to hold further meetings in order to address and finalise the following matters which were not completed at the summit:

- Climate of free political activity.
- Repressive/security legislation.
- Covert operations and special forces.
- Violence.

Agreed to at Johannesburg on 26 September 1992:

F W de Klerk	N R Mandela
State President	President: ANC
26 September 1992	

THE SOUTH AFRICAN PRENEGOTIATION PHASE (1985—1993): A CHRONOLOGY



ADDENDUM F

LEGEND:

- Bargaining about bargaining
- Preliminary bargaining
- Substantive bargaining

BIBLIOGRAPHY

A. Books and Journals

Atkinson, G. *Negotiating the Best Deal: Techniques that really work* Cambridge: Director Books, 1990.

Atkinson, G.G.M. *The Effective Negotiator: A practical guide to the strategies and tactics of conflict and bargaining* (2nd ed.), London: Quest Research Publications, 1977.

Axelrod, R. *The Evolution of Co-operation*. New York: Basic Books Inc. Publishers, 1984.

Bacharach, S.B. and Lawler, E.J. *Bargaining: Power, Tactics and Outcomes*, San Francisco: Jossey-Bass, 1981.

Bercovitch, J. "Problems and Approaches in the Study of Bargaining and Negotiation," *Political Science*, vol. 36, no. 2, December 1984.

Bercovitch, J. "International Negotiations and Conflict Management: The Importance of Pre-negotiation," *The Jerusalem Journal of International Relations*, vol. 13, no. 1, 1991.

Boraine, A. *Dakar Report Back*, Cape Town: IDASA Occasional Papers, 1987, p. 3

Breytenbach, W.J. *The ANC: Future Prognosis*, University of Stellenbosch: Institute for Futures Research, 1989.

Cooper, C., et al, *Race Relations Survey 1988/89*, Johannesburg: South African Institute of Race Relations, 1989.

Cooper, C., et al, *Race Relations Survey 1991/92*, Johannesburg: South African Institute of Race Relations, 1992.

Cooper, C., et al, *Race Relations Survey 1992/93*, Johannesburg: South African Institute of Race Relations, 1993.

Crocker, C. *High Noon in Southern Africa: Making Peace in a Rough Neighborhood*. Johannesburg: Jonathan Ball Publishers, 1992, pp. 305 – 306.

Deng, F.M. & Zartman, I.W. (eds.), *Conflict Resolution in Africa*, Washington, D.C.: The Brookings Institution, 1991.

Douglas, A. *Industrial Peacemaking*, New York and London: Columbia University Press, 1962.

- Druckman, D. "Dogmatism, Prenegotiation Experience, and Simulated Group Representation as Determinants of Dyadic Behavior in a Bargaining Situation", *Journal of Personality and Social Psychology*, vol. 6, no. 3, 1967.
- Druckman, D. "Prenegotiation Experience and Dyadic Conflict Resolution in a Bargaining Situation", *Journal of Experimental Social Psychology*, no. 4, 1968.
- Du Toit, P. "Bargaining about Bargaining: Inducing the Self-Negating Prediction in Deeply Divided Societies – The Case of South Africa," *Journal of Conflict Resolution*, vol. 33, no. 2, June 1989.
- Du Toit, P. *Power Plays: Bargaining tactics for transforming South Africa*, Halfway House: Southern Book Publishers, 1991.
- Du Toit, P. "Bargaining Power: Dependence Capabilities and Tactical Options in South African Politics" *Politikon*, vol. 18, no. 2, June 1991.
- Du Toit, P. and Esterhuysen, W. (eds.) *The Myth Makers: The elusive bargain for South Africa's future*, Halfway House: Southern Book Publishers, 1990.
- Esterhuysen, W. and Nel, P. (eds.), *Die ANC*, Cape Town: Tafelberg, 1990.
- Frankel, P., Pines, N. and Swilling, M. (eds.), *State, Resistance and Change in South Africa*, London: Croom Helm, 1988.
- Friedman, S. (ed.), *The Long Journey: South Africa's quest for a negotiated settlement*, Johannesburg: Ravan Press, 1993.
- Friedman, S. and Atkinson, D. (eds.), *South African Review 7: The Small Miracle: South Africa's negotiated settlement*, Johannesburg: Ravan Press, 1994.
- Giliomee, H. and Schlemmer, L. (eds.), *Negotiating South Africa's Future*, Johannesburg: Southern Book Publishers, 1989.
- Hill, B.J. "An Analysis of Conflict Resolution Techniques: From Problem-Solving Workshops to Theory", *Journal of Conflict Resolution*, vol. 26, no. 1, March 1982.
- Horowitz, D.L. *Ethnic Groups in Conflict*, Berkeley: University of California Press, 1985.
- Horowitz, D.L. *A Democratic South Africa? Constitutional Engineering in a Divided Society*, Berkeley: University of California Press, 1991.
- Levinger, G. and Rubin, J.Z. "Bridges and Barriers to a More General Theory of Conflict", *Negotiation Journal*, vol. 10, no. 3, July 1994.

- Louw, R. (ed.), *Four Days in Lusaka: Whites in a changing society, Five Freedoms Forum – African National Congress Conference*, Excom: Five Freedoms Forum, 1989, p. 160.
- Mandela, N. *Long Walk to Freedom: The autobiography of Nelson Mandela*, Randburg: Macdonald Purnell, 1994, pp. 497, 512.
- Mission to South Africa: The Commonwealth Report*, Middlesex: Penguin Books, 1986, p. 19.
- Morley, I. and Stephenson, G. *The Social Psychology of Bargaining*, London: George Allen & Unwin Ltd., 1977.
- Moss, G & Obery, I. *South African Review 6: From 'Red Friday' to Codesa*. Joahannesburg: Ravan Press, p. 46.
- Nachmias, C. and Nachmias, D. *Research Methods in the Social Sciences*, (4th ed.), London: Edward Arnold, 1992.
- Olivier, G. *Praat met die ANC*, Emmarentia: Taurus, 1985.
- Putnam, L.L. "Challenging the Assumptions of Traditional Approaches to Negotiation," *Negotiation Journal*, vol. 10, no. 4, October 1994.
- Rubin, J.Z. and Brown, B.R. *The Social Psychology of Bargaining and Negotiation*, New York: Academic Press, 1975.
- Saunders, H. "We Need a Larger Theory of Negotiation: The Importance of Pre-negotiating Phases." *Negotiation Journal* 1, July 1985.
- Schelling, T.C. *The Strategy of Conflict*, Cambridge, Massachusetts: Harvard University Press, 1960.
- Sisk, T.D. *Democratization in South Africa: The Elusive Social Contract*. Princeton, New Jersey: Princeton University Press, 1995.
- Smyth, L.F. "Intractable Conflicts and the Role of Identity", *Negotiation Journal*, vol. 10, no. 4, October 1994.
- Sparks, A. *Tomorrow is Another Country: The Inside Story of South Africa's Negotiated Revolution*, Sandton: Struik Book Distributors, 1994, p. 72.
- Stein, J.G. (ed.), *Getting to the Table: The Processes of International Prenegotiation*, Baltimore and London: Johns Hopkins University Press, 1989.
- Talking with the ANC...*, Pretoria: Bureau for Information, 1986.
- Waldmeir, P. *Anatomy of a Miracle: The End of Apartheid and the Birth of the New South Africa*, London: Viking, 1997.

Zartman, I.W. and Berman, M.R. *The Practical Negotiator*, New Haven and London: Yale University Press, 1982.

Zartman, I.W. (ed.), *The 50% Solution: How to Bargain Successfully with Hijackers. Strikers, Bosses, Oil Magnates, Arabs, Russians, and Other Worthy Opponents in This Modern World*, New Haven: Yale University Press, 1983.

Zartman, I.W. *Ripe for Resolution: Conflict and Intervention in Africa*, New York: Oxford University Press, 1985.

Zartman, I.W. & Kremenjuk, V.A. (eds.), *Cooperative Security: Reducing Third World Wars*, New York: Syracuse University Press, 1995.

B. Interviews

Anonymous, interview by author, 9 April 1997.

Anonymous, interview by author, 18 April 1997

Anonymous, interview by author, 5 September 1997.

Niel Barnard, interview by Patti Waldmeir, 25 November 1994. *BC 1070, Hermann Giliomee Papers: G: Patti Waldmeir interviews.*

P.W. Botha, interview by Patti Waldmeir, 1 March 1995. *BC 1070, Hermann Giliomee Papers: G: Patti Waldmeir interviews.*

Kobie Coetsee, interview by Patti Waldmeir, 2 March 1995. *BC 1070, Hermann Giliomee Papers: G: Patti Waldmeir interviews.*

Kobie Coetsee, interview by author, 8 October 1996

Kobie Coetsee, interview by author, 4 April 1997.

F.W. de Klerk, interview by Patti Waldmeir, 23 November 1994. *BC 1070, Hermann Giliomee Papers: G: Patti Waldmeir interviews.*

Pieter de Lange, interview by Patti Waldmeir, 12 October 1994. *BC 1070, Hermann Giliomee Papers: G: Patti Waldmeir interviews.*

Willie Esterhuysen, interview by Patti Waldmeir, 25 November 1994. *BC 1070, Hermann Giliomee Papers: G: Patti Waldmeir interviews.*

Willie Esterhuysen, interview by author, 19 June 1996

Steven Friedman, interview by author, 3 July 1996.

Jannie Gagiano, interview by author, May 1996.

Chris Landsberg, interview by Patti Waldmeir, 6 December 1994. *BC 1070, Hermann Giliomee Papers: G: Patti Waldmeir interviews.*

Mike Louw, interview by Patti Waldmeir, 29 May 1995. *BC 1070, Hermann Giliomee Papers: G: Patti Waldmeir interviews.*

Thabo Mbeki, interview by Patti Waldmeir, 19 January 1995. *BC 1070, Hermann Giliomee Papers: G: Patti Waldmeir interviews.*

Mac Maharaj, interview by Patti Waldmeir, 16 November 1994. *BC 1070, Hermann Giliomee Papers: G: Patti Waldmeir interviews.*

Mac Maharaj, interview by Patti Waldmeir, 31 January 1995. *BC 1070, Hermann Giliomee Papers: G: Patti Waldmeir interviews.*

Roelf Meyer, interview by Patti Waldmeir and Michael Holman, 21 June 1994. *BC 1070, Hermann Giliomee Papers: G: Patti Waldmeir interviews.*

Roelf Meyer, interview by Patti Waldmeir, 16 November 1994. *BC 1070, Hermann Giliomee Papers: G: Patti Waldmeir interviews.*

Roelf Meyer, interview by Patti Waldmeir, 10 February 1995. *BC 1070, Hermann Giliomee Papers: G: Patti Waldmeir interviews.*

Roelf Meyer, interview by author, 8 October 1996.

Roelf Meyer, interview by author, 5 September 1997.

Joel Netshitenzhe, interview by Patti Waldmeir, 19 May 1995. *BC 1070, Hermann Giliomee Papers: G: Patti Waldmeir interviews.*

Olusegun Obasanjo, interview by Patti Waldmeir, 8 November 1994. *BC 1070, Hermann Giliomee Papers: G: Patti Waldmeir interviews.*

Aziz Pahad, interview by Patti Waldmeir, 4 November 1994. *BC 1070, Hermann Giliomee Papers: G: Patti Waldmeir interviews.*

Aziz Pahad, interview by Patti Waldmeir, 21 May 1995. *BC 1070, Hermann Giliomee Papers: G: Patti Waldmeir interviews.*

Cyril Ramaphosa, interview by Michael Holman and Patti Waldmeir, 21 June 1994. *BC 1070, Hermann Giliomee Papers: G: Patti Waldmeir interviews.*

Cyril Ramaphosa, interview by Patti Waldmeir, 19 January 1995. *BC 1070, Hermann Giliomee Papers: G: Patti Waldmeir interviews.*

Joe Slovo, interview by Patti Waldmeir, 14 November 1994. *BC 1070, Hermann Giliomee Papers: G: Patti Waldmeir interviews.*

Sampie Terreblanche, interview by author, 18 June 1996.

Mohammed Valli Moosa, interview by Patti Waldmeir, 27 October 1994. *BC 1070, Hermann Giliomee Papers: G: Patti Waldmeir interviews.*

Mohammed Valli Moosa, interview by Patti Waldmeir, 30 November 1994. *BC 1070, Hermann Giliomee Papers: G: Patti Waldmeir interviews.*

Jacob Zuma, interview by Patti Waldmeir, 27 January 1995. *BC 1070, Hermann Giliomee Papers: G: Patti Waldmeir interviews.*

Jacob Zuma, interview by Patti Waldmeir, 17 March 1995. *BC 1070, Hermann Giliomee Papers: G: Patti Waldmeir interviews.*

C. Internet Resources

<gopher://gopher.undp.org:70/00/undocs/scd/scouncil/s77/16>

<gopher://gopher.undp.org:70/00/undocs/scd/scouncil/s85/10>

<gopher://gopher.anc.org.za:70/00/anc/pr/1991/pr0108.01>

<gopher://gopher.anc.org.za:70/11/anc/pr/1991/pr0527.01>

<gopher://gopher.anc.org.za:70/00/anc/pr/1991/pr0719.01>

<gopher://gopher.anc.org.za:70/00/anc/pr/1991/pr0904.01>

<gopher://gopher.anc.org.za:70/00/anc/pr/1992/pr0618.01>

<gopher://gopher.anc.org.za:70/00/anc/pr/1992/pr0623.01>

<http://www.anc.org.za/ancdocs/history/conf/declare48.html>

<http://www.anc.org.za/ancdocs/history/harare.html>

<http://www.anc.org.za/ancdocs/history/mandela/64-90/doc890705.html>

<http://www.anc.org.za/ancdocs/history/mandela/64-90/jabulani.html>

<http://www.anc.org.za/ancdocs/history/mandela/pr910622.html>

<http://www.anc.org.za/ancdocs/history/mandela/memo920626.html>

<http://www.anc.org.za/ancdocs/history/mandela/fwletter.html>

<http://www.anc.org.za/ancdocs/history/transition/minutes.html>

<http://www.anc.org.za/ancdocs/speeches/sp910700-02.html>

<http://www.anc.org.za/ancdocs/speeches/sp910700-03.html>

<http://www.anc.org.za/ancdocs/history/transition/lett2july.html>

<http://www.anc.org.za/ancdocs/history/transition/perspect.html>

<http://www.anc.org.za/ancdocs/history/transition/timetable.html>

<http://www.udw.ac.za/UDW/NPA/About.txt>

<http://www.udw.ac.za/UDW/NPA>