

AFRICAN STUDIES ASSOCIATION OF AUSTRALASIA  
AND THE PACIFIC

ANNUAL CONFERENCE

30 NOVEMBER - 3 DECEMBER 1990

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SOUTHERN AFRICA:

A FEDERAL CONSTITUTION ?



## I - THE BREAKING OF A VICIOUS CIRCLE

Friday February 2 1990 marked a decisive turning point in the history of South Africa. In just 45 minutes the new President F.W. De Klerk stunned the world with his historic and courageous speech delivered at the opening of Parliament. With impressive statesmanship Mr De Klerk forged links that far exceeded the expectations of friends and critics alike and broke down major barriers that had so far impeded South Africa's progress.

In his far-reaching address Mr De Klerk:

- unbanned the African National Congress, the Pan African Congress, the South African Communist Party and other political organisations
- promised the unconditional release of Mr Nelson Mandela and gave many other political prisoners amnesty
- scrapped the consolidated list of banned people
- promised to repeal the Separate Amenities Act during the course of the year
- suspended all executions pending changes to the death penalty
- lifted media emergency regulations as well as the education emergency regulations.

He said that: "The security emergency regulations will be amended: the restrictions in terms of the emergency regulations on 33 organisations will be rescinded; the conditions imposed in terms of the security emergency regulations on 374 people on their release will be rescinded and the regulations which provided for such conditions are being abolished; reduced emergency detention to a maximum of six months. Detainees also acquire the right to legal representation and a medical practitioner of their own choosing" and he "promised tax cuts in the next budget".

Mr De Klerk invited all those serious about seeking a peaceful solution to South Africa's problems to come to the negotiating table. "To those political leaders who have always resisted violence I say: Thank you for your principled stands. This includes all the leaders of parliamentary parties, leaders of important organisations and movements such as Chief Minister Buthelezi, all of the other Chief Ministers and urban community leaders," Mr De Klerk noted. "Through their participation and discussion they have made an important contribution to this moment in which the process of free political participation is able to be restored. Their places in the negotiating process are assured," he commented. (1)

After nearly 27 years in prison Nelson Mandela was released on 11 February 1990. Earlier, in November 1989, eight black political prisoners sentenced to life imprisonment were freed, among them Walter Sisulu, Raymond Mhlaba and Ahmed Kathrada (Weekly Mail, October 13-19). The events leading up to this situation go back to the election of President F.W. De Klerk on 7 September 1989 who claimed that the "white electorate had given him a mandate for reform which he would use to give full political rights to all South Africans." His National Party lost no less than 29 seats to the newly formed Democratic party and Conservative party. At the final count the NP took 93 seats in the House of Assembly, the CP 39 and the DP 33. Since then the convergence of the NP and DP (formerly principally the Progressive Federal Party), has secured the NP of a solid majority even though the Conservatives have gathered further strength as well. De Klerk said that the (white) electorate had soundly rejected those who had opposed change and that he had deliberately not looked over his right shoulder because "I wanted a mandate for renewal and reform" (The Argus and Cape Times, 8/9/89). The astonishing thing happened: he got it, theoretically a five-year mandate.

This paper will consider the options in the negotiation process after an overview of the principal events since his election and the problems in the way of the commencement of the constitutional talks.

Initially, De Klerk said that the Government could not unban the ANC unless it renounced violence (the "Armed Struggle") but this precondition was soon dropped when that proved to be non-negotiable. All beaches were opened to all races by Christmas. The troop withdrawals from Namibia and preparations for Namibian independence continued steadily, resulting in the independence of that former Trust Territory on 21 March 1990. In a statement on 1 June the Minister for Planning and Provincial Affairs, Mr. Hermis Kriel announced that the new Discrimination Legislation Regarding Public Amenities Repeal Bill would come into effect from 15 October 1990. This legislation would make it possible for such amenities to be used by all races (Sunday Times, JHB, 3/6/90). The Government kept its promise by repealing the Separate Amenities Act as scheduled.

Impressive and dignified public performances were given by Nelson Mandela removing doubts about his age and health. This provided leadership to the ANC and galvanised mass support in South Africa. Exiled leaders and refugees came back in droves, among them Joe Slovo whose dual membership of the ANC and South African Communist party (SACP) caused some consternation.

On 5 April De Klerk had "fruitful" preliminary discussions with Mandela after the ANC had cancelled an earlier planned meeting in protest over police killings in Seboken. After three days of further talks, from 2 to 4 May, a Historic Accord hailed as a "Peace Deal" was unveiled. The ANC resolved not to call for the intensification of sanctions and would consider "suspending the armed struggle". After lengthy discussions the ANC did suspend the armed struggle on 7th August but Mr Nelson Mandela has not been shy to revoke the spectre of renewed military action since.

The Government agreed to consider the release of political prisoners and to provide immunity for political offenses. At a joint press conference, televised world-wide, De Klerk and Mandela spoke in glowing terms about the progress made and the "cordial and friendly" atmosphere which characterised the crucial talks aimed at removing obstacles to negotiating a new constitution (Cape Times, May 5). There are, no doubt, formidable obstacles, eg. in the form of Conservative and extreme Right Afrikaners who are mounting an increasingly determined campaign not to yield one inch from their claim that South Africa belongs to them and that they won't accept majority rule or equality with the blacks.

The "New South Africa", born with De Klerk's Pretoriaströika, has a long way to go. The continued internecine clashes in Johannesburg and, especially, in Natal have put a cloud over the earlier optimism. The easing of repression, Arlene Gets observed (SMH, 30/5/90), has prompted an apparent rise in crime and a definite rise in white fears. House owners are spending thousands on security firms that "adorn" already high walls with coils of razor wires and metal tipped spikes. Parts of the Apartheid edifice remain intact. Although the abolition of the legislation is promised, affirmative action would be needed to turn the country around. Constitutional clauses may well be demanded to ensure such action within a specified time framework. The police is an obstacle right now and will require a massive re-organisation and change of personnel if it is every to be trusted by the people at large. The clashes in Natal, which have resulted in over 1000 deaths during the year, create a most unfavourable climate for negotiation. In the Johannesburg township Tokoza 750 people died in similar clashes. They are directly related to major differences between the ANC and Inkatha, the movement initiated and led by Chief Mangosuthu Buthelezi, leader of the KwaZulu "homeland": which date back to the early 1970s. Future ambitions of the Zulu leader no doubt play a role as well. Nelson Mandela has had discussions with other "homeland" leaders, and has toured Natal in a desperate effort to restore peace and end the killings, but he has not met with Buthelezi.