

THE TEC SUBCOUNCIL ON DEFENCE:
POWERS, STRUCTURES, PRINCIPLES
AND EFFECTIVENESS

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INTRODUCTION

The TEC Subcouncil on Defence will have an immensely complicated and daunting task given the number of functions it has to perform and the complexity and political sensitivity of these functions.

This document seeks to contribute to the Subcouncil's work in the following way:

Section A summarises and categorizes the Subcouncil's functions and powers as provided for in its terms of reference;

Section B lists the structures which the Subcouncil is empowered to establish by its terms of reference;

Section C identifies some key problems areas which are not dealt with in the terms of reference;

Section D makes proposals on ways in which the Subcouncil can most effectively manage its functions; and

Section E presents a set of principles for defence in a democracy.

DEFINITIONS

For the purpose of this document, the following definitions contained in the Transitional Executive Council Bill are relevant:

% â\200\234armed force' means any armed force not established by or under any law and which is under the authority and control of, or associated with and promotes the objectives of, a participant in the Council;

* defence force' means any defence force of any Government, established by or under any law;

* military force' means any defence force or armed force, but does not include any policing agency.

SECTION A

FUNCTIONS AND POWERS OF THE SUBCOUNCIL

1. Monitor military developments

1.1 The Subcouncil shall be kept informed by military forces of any activities or

plans for action which are likely to have an adverse effect on the attainment of the objects of the TEC. [Section 16(2)(a)]

The Subcouncil shall be kept informed by participants in the TEC of any proposed legislation and internal rules regarding the conduct and deployment of military forces. [Section 16(2) (b)]

Ensure the 'good conduct' of military forces

The Subcouncil may investigate the conduct of a member or members of a military force which is likely to have an adverse effect on the attainment of the TEC's objects. [Section 16(2) (c)]

The Subcouncil may recommend disciplinary action, criminal proceedings or other appropriate measures against members, elements or units of a military force whose actions have an adverse effect on the attainment of the TEC's objects. [Section 16(2) (d)]

The Subcouncil may formulate a code of conduct which is binding on all members of military forces and monitor the observance of the code. [Section

16(2) (e)]

Prepare for the future South African defence force

The Subcouncil may undertake or commission research into relevant aspects of the future defence force. [Section 16(2) (f)]

The Subcouncil may oversee any planning, preparation and training for the future defence force. [Section 16(2) (g)]

Oversee the deployment of defence force units

The Subcouncil shall make regulations, in consultation with the Minister of Defence, governing (i) the deployment of defence force units in crime prevention or peacekeeping operations and (ii) the relationship and interaction between these units, the National Peacekeeping Force and any policing agency involved in such operations. [Section 16(4) (a)]

The Subcouncil may order, with the concurrence of the Minister, the discontinuance of such deployment of a defence force unit. [Sections 16(4) (a)

and (b)]

The Subcouncil may review the deployment of any defence force unit which takes place before the commencement of this section and, in consultation with the Minister, order the discontinuance of such deployment. [Section 16(4) (b) (i)]

Review regulations governing defence forces

The Subcouncil shall be consulted by the Minister of Defence and the appropriate functionary in the TBVC states in exercising their legislative power to make, amend or repeal regulations regarding defence force conduct, functioning, structures and deployment relevant to the objects of the TEC. [Section 16(7)]

The Subcouncil shall be consulted by the commanders of armed forces who issue directives in regard to these matters. [Section 16(7)]

The Subcouncil may itself propose, amend or repeal such regulations or directives. [Section 16(7)]

Establish and deploy a National Peacekeeping Force

The Subcouncil shall budget for and be allocated the necessary resources to establish and maintain a National Peacekeeping Force (NPKF). [Section 16(10) (a)]

The Subcouncil shall oversee the training of the NPKF. [Sections 16(12) (a), (b) and (Â€)]

The Subcouncil shall formulate the philosophy, doctrine, syllabi and training policy of the NPKF. [Section 16(12) (b)]

The Subcouncil shall establish criteria for the recruitment and selection of members of the NPKF. [Section 16(12) (c)]

The Subcouncil shall establish the NPKF command structure and appoint, and at its discretion dismiss, the Commander and other senior officers. [Section 16(12) (d)]

The Subcouncil shall determine standing operational procedures for the NPKF. [Section 16(12) (e)]

The Subcouncil shall consult with other military forces and policing agencies regarding the deployment and operation of the NPKF. [Section 16(12) (f)]

The Subcouncil shall make regulations regarding the following: the NPKF's powers and duties; the circumstances under which it may be deployed; the remuneration and service conditions of its members; its relationship and interaction with other military forces and policing agencies deployed in peacekeeping; and disciplinary procedures and a code of conduct for its members. [Section 16(12) (g)]

The Subcouncil shall determine the requirements of the NPKF in respect of uniforms, transport, accommodation, equipment and other logistical support, and shall ensure that such requirements are met. [Section 16(13)]

Administer assembly points

The Subcouncil shall budget and allocate resources for the maintenance, remuneration and administration of armed forces within assembly points. [Section 16(2) (k)]

The Subcouncil shall administer a certified personnel register of members of armed forces in assembly points. [Section 16(3) (b)]

Additional functions

The Subcouncil may undertake research on policy regarding armed forces which are not under the control of the TEC. [Section 16(2)(f)]

The Subcouncil may undertake research on the future of the arms and related industries. [Section 16(2)(f)]

The Subcouncil shall keep the military forces, the media and the public informed of developments regarding defence matters. [Section 16(2)(h)]

The Subcouncil shall monitor media reporting on defence matters. [Section 16(2)(1)]

The Subcouncil shall ensure and monitor the audit and effective supervision by military forces of their arms and armaments. [Section 16(9)(a)]

The Subcouncil shall ensure and monitor the identification of members of military forces through a certified personnel register submitted by these forces, and shall update the register on a monthly basis. [Section 16(9)(b)]

SECTION B

DESIGNATED STRUCTURES

The Subcouncil is explicitly or implicitly empowered by its terms of reference to establish the following mechanisms, bodies or structures.

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An independent body to investigate the conduct of any member or members of a military force which is likely to have an adverse effect on the attainment of the TEC's objects. [Section 16(2)(c)]

A team of experts to do research on i) the future defence force, ii) policy in regard to armed forces not under the control of the TEC and iii) the future of the arms and related industries. [Section 16(2)(f)]

A press and information office. [Section 16(2)(h)]

A military co-ordinating council, comprised of the commanders of military forces or their representatives, to i) liaise with military forces in order to promote the objects of the TEC and ii) report and make recommendations to the Subcouncil on matters relating to its functions. [Section 16(2)(j)]

Monitoring mechanisms to ensure that the directives of the Subcouncil are complied with and that the activities of military forces have no adverse effect on the attainment of the TEC's objects. [Section 16(6)(a)]

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Mechanisms to ensure appropriate interaction between the Subcouncil, military forces, the NPKF, policing agencies and other relevant agencies. [Section

16(6) (b)]

A team of experts to monitor the audit and supervision of arms and armaments. [Section 16(9) (a)]

An NPKF Command Council, comprised of representatives of the military forces and policing agencies participating in the NPKF. [Section 16(11)]

A unit of NPKEF training instructors who may be drawn from the participating military forces and policing agencies but shall also include foreign experts. [Section 16(12) (a)]

A secretarial, administrative and financial staff.

The two diagrams which appear at the end of this document represent the possible relationship between the Subcouncil and its sub-structures.

SECTION C

ADDITIONAL AREAS AND PROBLEMS

The following defence-related matters are not covered explicitly in the Subcouncil's terms of reference. The Subcouncil may regard some of these matters to be implied by its terms of reference and others to fall outside its mandate.

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The arms trade. Will the Subcouncil make decisions or be consulted on arms imports and exports in the light of the United Nations arms embargo?

The armaments industry. Will the Subcouncil oversee the activities of the armaments industry (beyond doing research on the future of the industry)?

External military aid. Will the Subcouncil make decisions or be consulted on military aid to other countries? This is particularly important with regard to official and unofficial support to Unita and the Angolan government.

Integration. The Subcouncil is empowered to prepare for the formation of the new defence force. This implies, but it is not stated explicitly, that the Subcouncil will address the integration of existing armies. The following issues relate as much to integration as they do to the new defence force: timing; size; role; reconciliation; training; reorientation; affirmative action; political appointments; rank; international assistance; and support for demobilised soldiers.

Military action. The Subcouncil is to be kept informed by military forces of any activities or plans for action which are likely to have an adverse effect on the attainment of the TEC's objects [Section 16(2)(a)]. What happens if the military force does not believe that its action will have such an effect? Is it necessary to draw up more detailed regulations in this regard? Is it possible thereby to prevent a recurrence of the SADF's raid on Apla?

Military intelligence. The Subcouncil should pay special attention to the SADF's Department of Military Intelligence (DMI). The Harms, Goldstone and Steyn commissions and the Webster and Goniwe inquests have exposed DMI's past and current efforts to undermine opposition groups and the political process through violence and other illegal methods.

Liaison with other subcouncils. The Subcouncil will obviously have to maintain close contact with the Subcouncil on Intelligence and the Subcouncil on Law and Order, Stability and Security.

SECTION D

ENSURING THE SUBCOUNCIL'S EFFECTIVENESS

It is important to acknowledge that the Subcouncil on Defence will face a formidable challenge for the following reasons:

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it has a large number of functions, many of which are technically complex;
it has to establish and oversee many sub-structures;

it has very little time to accomplish the above before elections are held in April 1993;

its area of responsibility - defence and military forces - is politically volatile;

it will have to make decisions on the basis of consensus or a 75% majority of eight political parties with divergent views and interests;

it will function in tandem with an existing executive structure responsible for defence;

certain of its decisions will need the consent of the Minister of Defence;
certain of its decisions may be resisted by elements of military forces;

it will have to overcome a high level of mistrust among the rank-and-file of the existing armies; and

it will operate in an environment where there are no established principles of defence in a democracy.

In the light of these difficulties, the Subcouncil could consider the following proposals to manage its tasks in an effective manner.

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The Subcouncil will have to employ a sufficiently large administrative, financial and secretarial staff which is either non-partisan or has a multi-party composition, which is familiar with military matters, and which has access to sophisticated surveillance and communications equipment.

The Subcouncil could constitute a Defence Policy Board, comprised of civilian and military experts, which acts in an advisory capacity and has the following tasks:

to prepare policy options regarding the exercise of the Subcouncil's functions;

to undertake research on the future defence force and arms industry;

to review defence legislation and military disciplinary regulations, and propose amendments thereto where necessary, :

to formulate a draft Code of Conduct for military forces and the NPKF; and

to advise on the training and modus operandi of the NPKF.

The Subcouncil could appoint a team of international military experts who would act as consultants to the Policy Board and the Subcouncil and could also serve as trainers and monitors.

The Subcouncil should consider delegating certain of its tasks and responsibilities to individual members, other persons or sub-committees, with clear procedures for consultation and final authorisation.

The Subcouncil should determine priorities and establish a time frame for meeting them.

The Subcouncil could seek to identify areas of common agreement amongst its members before tackling more controversial matters.

The Subcouncil could consider the possibility of merging certain of its sub-structures.

The Subcouncil could initiate a series of confidence-building activities to promote trust between the rank-and-file of the military forces.

The Subcouncil may not be able to complete all of its functions before April 1994. It could therefore see its work as part of a long-term process that will be assumed by the new Ministry of Defence after the elections.

The Subcouncil could draw up a set of political and ethical principles for defence in a democracy. The principles would serve the following purposes:

- guide the Subcouncil's planning and decision-making;
- guide the integration of armies and establishment of the new defence force;
- guide the formulation of the Code of Conduct;

- lay the basis for orientation programmes within the NPKF, the existing military forces and the new defence force;

- build unity within the Subcouncil; and
- contribute to promoting public confidence in the Subcouncil and the military sphere. [A list of potential principles is presented in the following section].

A military ombudsperson or office could be appointed or established by the Multi-Party Negotiating Council or the TEC. The ombudsperson would be an independent officer with the following responsibilities:

- to oversee the investigation of complaints against military forces and the NPKF by members of the public;

- to oversee any other investigation required by the Subcouncil; and

- to monitor observance of the Code of Conduct.

SECTION E

PRINCIPLES OF DEFENCE IN A DEMOCRATIC SOUTH AFRICA

This section proposes a set of principles which could guide the operation of the Subcouncil, the formulation of new policy on security and defence, and the establishment of the new defence force. Ideally, the public should have an opportunity to debate the principles.

National security shall be sought primarily through efforts to meet the social, political, economic and cultural rights and needs of the South African people

South Africa shall promote the security of the state and its citizens primarily through democratic governance, economic development, social justice and respect for human rights and cultural diversity.

South Africa shall pursue peaceful and co-operative relations with neighboring states

South Africa's regional policy shall be based on the pursuit of mutually beneficial relations with neighboring countries and the principles of co-operation, non-aggression, non-interference in domestic affairs and peaceful resolution of conflict.

South Africa shall participate in regional efforts to establish common security arrangements.

South Africa shall adhere to international law regarding the use of force and the conduct of warfare

South Africa shall abide by the United Nations Charter which outlaws the threat or use of force in international relations, and shall observe the Geneva and Hague conventions which seek to regulate conduct in armed conflict with reference to humanitarian concerns. The Defence Force shall instruct its members accordingly.

South Africa shall also become a signatory to relevant arms control and disarmament treaties of the UN and the Organisation of African Unity (OAU). South Africa shall be committed to disarmament

South Africa shall endorse the commitment of the UN and the OAU to national, regional and global disarmament in the interests of greater military stability and socio-economic development.

South Africa shall accordingly reduce force levels, armaments and military expenditure to the greatest extent possible in the light of the domestic and regional security environment.

The primary role of the Defence Force shall be to defend South Africa against external aggression

The primary role of the Defence Force shall be to safeguard South Africa's sovereignty, people and territorial integrity against external aggression.

The secondary roles of the Defence Force shall include support of the civil authority in the event of natural disasters and emergencies, assistance to neighboring states at the request of their governments, and participation in international peacekeeping exercises.

The Defence Force shall have a defensive orientation

The doctrine, posture, strategies and structure of the Defence Force shall be designed to meet defensive rather than offensive objectives.

The Defence Force shall be bound by the principle of civil supremacy over armed forces

The Defence Force shall be subject to civilian control and shall be accountable to government and parliament. Such control and accountability shall be exercised through, inter alia, the Minister of Defence, a civilian Department of Defence and a multi-party parliamentary defence committee.

The Defence Force shall no way interfere in the political process or the functions of the civil authority.

The Defence Force shall respect the rule of law

The Defence Force shall at all times adhere to the relevant provisions of the constitution, bill of rights and domestic legislation, and shall take disciplinary action against its members who contravene these provisions.

The Defence Force shall respect democracy and human rights

The Defence Force shall seek to develop an institutional culture which respects the constitution, democracy and human rights.

To this end, the Defence Force shall design appropriate internal disciplinary procedures, a code of conduct and an education programme for all its members.

A military ombudsperson could be appointed by parliament to oversee developments in this area and to investigate complaints against the Defence Force by soldiers and members of the public.

Defence matters shall be transparent

The activities of the Defence Force and national policy on security and defence shall be sufficiently transparent to enable meaningful public and parliamentary scrutiny and debate.

The general principle at issue here shall be * freedom of informationâ\200\231 subject to certain restrictions, rather than maximum secrecy subject to certain exceptions.

The Defence Force shall be politically non-partisan

The Defence Force shall be not be biased in favour of, or against, any political party.

Defence Force personnel shall not be actively involved or hold office in any political party, but may belong to the party of their choice. Such membership shall not interfere with their professional responsibilities.

The composition of the Defence Force shall ultimately reflect the composition of South Africa

The Defence Force shall endeavour to ensure that the composition of its leadership and rank-and-file reflects the racial and ethnic diversity of the country. To this end, the Defence Force shall introduce a programme of affirmative action with due regard to professional standards.

The Defence Force shall maintain professional standards

The Defence Force shall ensure that it maintains the necessary technical, managerial and organisational skills to perform its primary and secondary roles efficiently and effectively. :

The Defence Force shall function according to established policies, procedures and rules in times of war and peace.

The Defence Force shall respect the rights of soldiers

The Defence Force shall uphold the personal dignity and physical integrity of soldiers, and shall respect their rights as citizens, within the normal constraints of military training and discipline.

The Defence Force shall acknowledge that soldiers have a right and a responsibility to disobey unlawful commands.

The Defence Force shall be non-racial and non-sexist

The Defence Force shall endeavour to develop a non-racial and non-sexist culture through appropriate policies, regulations and education programmes.

The author is the Executive Director of the Centre for Intergroup Studies, University of Cape Town, and a member of the Military Research Group. He would like to thank Paul-Bolke Mertz for a number of useful comments on an early draft of this document.

Sub Council on Defence
Functions and Structure

Command
Control &
Communication

Office

(plus Monitoring)

"controlling

' Advising

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International
Advisory
Team

4. SUBCOUNCIL ON DEFENCE

IEC and other
transitional
structures

Subcouncil
Defence

South
African
Government

TBVC
states

National
Peacekeeping
Force
command
council

independent
investigation
body

Coordinating
council
of
commanders

Monitoring
body

Liaison with
SAP and
National

Peacekeeping
Force

Commission
for
research

National
Peacekeeping
Force
training unit

National
Peacekeeping
Force
command
structure