

to submit written presentations on various aspects of arms trade policy and decision-making. These presentations will be made available, on request, to the media and interested parties.

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Between Monday 19 and Friday 30 June, the Commission will convene a public hearing in Cape Town. at a venue at or near to Parliament, to hear oral contributions and debate on the written submissions.

wishing to make submissions.

The following list of topics is intended to serve as a. guideline to parties  
It should not, however. be viewed as exhaustive.

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Policy; degggminanu

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the ethical, strategic. military, political, foreign policy. technological  
and economic considerations relevant to arms trade policy;  
relevant domestic and international factors and developments.

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criteria for determining to which countries South Africa, should or  
should not sell arms;  
absolute or selective prohibitions on the sale of particular categories  
of weapons;  
other elements of a. responsible arms trade policy; and  
approPriate means of ensuring the effective implementation of such  
a policy.

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responsibility for formulating. approving and maintaining a system  
of country and weapon classification;  
responsibility for approving applications to market and sell  
transfer) of weapons abroad; and  
the role of parliament in relation to policy formulatzon and regulatmg  
the implementation thereof.

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Transgarengx

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principles and mechanisms regarding transparency of arms policy  
and sales;  
South Africa's participation in the United Nations Arms Register.

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review of existing legislation regulating arms trade, and amendments

A number of the documents were withdrawn after the restructuring of Armscor in 1992, but had not been replaced by mid-1994.

#### 4.7 Management malaise

#### 4.9 Emphasis on sales

Armscor's organisational and operational features, discussed above, reflect a substantial disregard for where South African arms exports end up. At a general level this was

### 10.3 Direct contact with foreign governments

Sales of weapons and ammunition should be concluded directly with the relevant government authority in the country of import (eg the ministry of defence, trade or foreign affairs).

If military components or technology are sold to a private defence company, the supplier should be obliged to obtain an International Import Certificate (IIC) which records formal approval of the sale by a government agency in the importing country. The certificate should be submitted to the South African arms control body within a prescribed period.

Sales contracts should not be concluded with foreign agents, intermediate buyers, private individuals, political parties or rebel movements.

### 10.4 Agents

Agents may be used to initiate or facilitate transactions where they have special knowledge of, or contacts in, a particular geographic area.

An intelligence agency should be mandated to conduct regular assessments of the bona fides of all agents with whom Armscor and the defence industry work. In collaboration with the administrative arms control body, the agency should maintain a register of these agents. The defence industry should be obliged to report any contact with agents to this agency.

There should be no contact with agents who are known to operate, or suspected of operating, on the black market.

### 10.5 Verification of end-users

Applications for export permits should not be approved in the absence of an End-User Certificate (EUC) issued by the relevant government authority in the country of import.

sales to Sudan, Angola, Northern Ireland and Rwanda. [See, for example, Human Rights Watch, 1994a: 16-17; and Relatives for Justice, 1995]

Between the late 1980s and February 1993, South Africa supplied approximately R100 million worth of arms to the Rwandan government. Armscor initially described the products as being "primarily of a technical nature" [Business Day, 16 May 1995]. A subsequent press release stated that the arms included rifle grenades, mortars, bombs, rocket launchers, rockets, mines, machine guns, pistols and ammunition [Armscor press release, 30 May 1995].

Armscor's 'defence' of these sales is scarcely reassuring:

"Armscor cannot agree with your insinuations that South Africa's selling of armaments has precipitated the civil war in Rwanda and contributed to the human suffering - you are apparently totally ignoring the political and ethnic bases of that conflict and further fail to consider the fact that more people were hacked and clubbed to death than shot by South African made armaments" [Letter from Mr T] de Waal, Managing Director of Armscor, to Amnesty International, 27 September 1994]

The criticism by Black Sash and other human rights groups underlines the fact that country classifications may be arbitrary and will require the exercise of political judgement. This raises two important questions: on the basis of what criteria will such judgement be made in the future? [Section 6.1]; and by whom? [Section 8.3]

Finally, the public disclosure of the Log Pamphlet underscores the importance of transparency as a means of controlling and regulating arms exports. Conditions of secrecy, on the other hand, facilitate abuse of human rights in the conduct of foreign relations as much as in the domestic arena. The question of transparency with regard to future arms sales is considered in Chapter 9.

## 2.3 Arms sales to Lebanon

In 1983 the Cabinet classified the Lebanese government as a Group 1 country. In 1985 the Lebanese government's "main opposition", the Christian Militia, was classified as a Group 2 market. In 1987 the emphasis changed to supporting the Militia which was upgraded to Group 1; the government was downgraded to Group 2. In January 1994 the DFPC recommended that the Militia be placed in Group 3. Armscor immediately implemented this recommendation although it had not yet been approved by Cabinet at the time of the Commission's appointment.

sub-machine guns; AK-47 rifles; shotgun and AK-47 ammunition; and Claymore mines. These transactions were, in principle, consistent with the country and weapons classification contained in the Log Pamphlet. However, in the course of the Wazan inquiry it became apparent that some or all of the armaments were either destined for, or diverted to, prohibited destinations.

In its First Report the Commission found that the favourable classification of the Christian Militia, and the classification of AK-47s as 'non-sensitive' weapons, were wholly inconsistent with a responsible arms trade policy. This finding was based on the following factors:

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a)

The South African government was prepared to supply missiles, missile launchers, mines and other weapons to parties engaged in a civil war in which non-combatants typically bore the brunt of the fighting.

b)

Like many of the other belligerents in the Lebanese civil war, the Christian Militia had a record of gross human rights abuses. According to reports published by Amnesty International, the Militia engaged in

to stop the use of certain types of weapons considered to be inhumane or indiscriminate in their effects.

#### A.10

The Convention places various restrictions and in some cases an all-out ban on the use of

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incendiary weapons  
weapons deemed to cause unnecessary suffering  
weapons having indiscriminate effects  
weapons deemed to be excessively injurious  
weapons causing non-detectable fragments  
anti-personnel mines and boobytraps

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#### A.12

During a General Assembly meeting of the United Nations in October 1993, during which this Convention was debated, an appeal was made to member states to consider the implementation of a moratorium on the further selling and exporting of anti-personnel mines, because of the indiscriminate effect of anti-personnel mines.

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In March 1994 Armscor took the initiative by requesting the Minister of Defence to place a moratorium on the marketing, export and transit of landmines. This moratorium was ratified by the Minister of Defence on 26 July 1994 and duly published in the Government Gazette". The RSA thereby set an example to the rest of the international community by unilaterally extending this moratorium to all types of landmines, including anti-tank and vehicle mines.

#### A.13

The Inhumane Weapons Convention, has been structured as three separate Protocols, being

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Protocol I on weapons with non-detectable fragments, escaping detection by X-ray in the human body.

Protocol II deals with anti-personnel mines (including booby-traps and other devices) which are used indiscriminately and in large numbers.

Protocol III deals with incendiary weapons and munitions that are primarily designed to set fire to objects or to cause burn injuries.

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#### A.14

South Africa is an active participant in this Convention, especially because of domestic expertise in the field of mine-protection and mine-clearing.

Government Gazette No 15891 of 29 July 1994, Notice No R1355.

Participation in the Convention is administered by the Department of Foreign Affairs, in consultation with the SANDF (Chief of Staff Operations).



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adequate security for all states at the lowest possible levels of armaments;  
recognition of the legitimacy of conventional arms transfers to meet the security  
and defence needs of member states of the United Nations and the equal  
responsibility of both supplier and recipient states

In mid-1993, South Africa indicated that it was 'currently unable to contribute'  
to the United Nations Conventional Arms Register because of the UN Security  
Council Resolution 418 (1977), which imposed the arms embargo on the  
country. The Cabinet approved South Africa's participation in UNCAR in  
September 1994.

In May 1995, South Africa submitted the first report on imports and exports for  
the period '25 May 1994 till 31 December 1994. (The UN arms embargo was  
lifted on 25 May 1994.)  
The technologies of some conventional weapons are of dual-use nature, which  
means it can also be applied to the development and manufacture of weapons  
of mass destruction. This makes effective control of this technology essential.  
South Africa may also wish to become a member of the international dual-use  
control regime to replace the COCOM.

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COCOM {q}. Coordinating Committee for Multilateral Export Controls. an informal treaty organisation  
of

17 NATO 'câ"230oâ"230unmrâ"230mi-r\201mri ditched a: the end of March 1994) which  
has controlled the flow of arms and  
technologies to former East Block Countries and Russia

### 3.3 The Log Pamphlet

In 1982 the Minister of Defence approved procedures for regulating and controlling arms exports through a permit system. These procedures were contained in a policy directive, the Log 17 Pamphlet 19, which was issued and administered by the SADF/SANDF Chief of Staff Logistics.

The main focus of the directive was the sale by Armscor of surplus SANDF stock. The chief concern was the protection of South Africa's security and strategic interests. The Pamphlet also defined the basis for classifying countries and armaments, and contained the classification of individual countries and product types. [Sections 2.1 to 2.4 of this report]

Amendments to country classifications required the support of the DFPC, the Minister of Defence, the State Security Council and the Cabinet. Alterations to the categorisation of armaments required the approval only of the Chief of the SANDF (Operations Division) [Paragraph 11(d), Log 17 Pamphlet 19, 1993].

### 3.4 The marketing permit

As noted above, armaments may not be marketed except under the authority of, and according to the conditions stated in, a marketing permit issued by Armscor.

A prospective marketer must fill in a marketing application form, specifying the products and countries under consideration. This form is received by Armscor's Armaments Control Division which checks that the application complies with statutory and procedural prescriptions. If required by the nature of the product, clearance will be sought from the SANDF (in terms of the Log Pamphlet) and the Non-Proliferation Secretariat of the Department of Trade and Industry (in terms of the Non-Proliferation Act).

international security by promoting confidence-building among states and encouraging restraint in the production and transfer of arms.

regulations.

There are on-going efforts by states, academic specialists and a UN Group of Experts to strengthen and expand the scope of the Register, particularly with respect to military holdings and procurement through national production [Chalmers et al, 1994].

Confidentiality. In the view of the Commission, this qualification defeats the purpose of

the Register.

government submitted a report to the Register for the period 1994. Of the 21 countries which had reported on this period by November 1995, South Africa alone stated that "confidentiality claims in the specific contracts preclude publication of further details"

[Basic Papers, No. 13, 3 November 1995, pg. 5].

### 9.3 Arguments against full transparency

remain confidential. They opposed, in particular, public disclosure of marketing and export permits and the classification of countries.

## 4.2 Free-on-board shipments

Arm Scor frequently sold its weapons 'free-on-board' (FOB). In terms of this arrangement, the buyer was responsible for transporting the goods to the country of import; the buyer chartered a ship (or other means of transport) for this purpose; the buyer paid the transport costs; and ownership of the goods passed to the buyer as soon as they were loaded on to the ship in South Africa.

Once ownership had passed, the buyer was free to choose the route of the ship and the final destination of the consignment. Arm Scor had no control over this choice and may even have had no knowledge of the port of discharge. The buyer was at liberty to take the weapons to a place other than that authorised by the export permit.

This danger could have been avoided had Arm Scor sold its goods 'cost, insurance and freight' (CIF), in terms of which the seller is responsible for getting the consignment to the port of discharge. When the Commission asked the charterer of the vessel used in the Wazan debacle how South Africa could ensure that future arms shipments arrived at the correct location, he replied succinctly: "Use a South African ship".

## 4.3 Shipping documentation

Some of the official shipping documents for the Lebanon transactions indicated that the vessels carrying the arms might not be bound for Lebanon. For example, the Report Outwards and the Certificate of Clearance, issued by Customs and Excise in South Africa, stated that the ships were heading for "One Red Sea Port" or the "High Seas".

Customs and Excise apparently had no brief to pay attention to such matters and had no knowledge of the country classifications contained in the Log Pamphlet. Customs officials consequently did nothing to alert Arm Scor to a potential problem with the shipments.

PROCEDURAL MATTERS

The effectiveness of arms export regulations obviously depends on the manner in which they are applied and enforced. Chapter 4 described how Armscor's organisational features and operational procedures during the apartheid era undermined the formal system of control and facilitated the diversion of arms exports to unauthorised destinations.

Accordingly, this Chapter presents proposals for ensuring that operational procedures, administrative rules and Armscor's institutional culture are consistent with a responsible approach to arms trade.

10.1 Armscor's Board of Directors

The Minister of Defence should appoint a new Board of Directors for Armscor. The process of appointment should be conducted in an open fashion which enjoys public confidence. The Directors should include respected community and business leaders whose views on arms trade coincide with government policy.

The Board should play an active and dynamic role in exercising its statutory responsibility to "manage and control the affairs of the corporation" [Section 5(1) of the Armscor Act].

More specifically, the Board should be mandated to oversee the transformation of Armscor and, where necessary, appoint new managers to implement this process. The Board should provide the Minister with regular reports on its progress in this regard.

#### 6. 4. 4 Long-term perspective

The classification of countries and evaluation of export applications should not be based solely on prevailing conditions in the prospective recipient state and surrounding region, it is essential that longer term political and strategic perspectives are also taken

into account.

More often than not the initiation of internal or external hostilities is predicted timeously by international relief organisations, intelligence agencies and human rights groups. Yet the tendency of supplier states is to ignore such warnings when exporting arms, and to cease delivery only when the situation has reached crisis proportions (as in the case of Iraq, Rwanda and Nigeria). This is patently irresponsible.

## SUMMARY OF RECOMMENDATIONS

### 1. Policy

Armaments constitute a special category of goods and technology since they are designed for the use or threat of force. They may be utilised for the legitimate purpose of self-defence and for the illegitimate purposes of external aggression and internal repression. They may provoke and exacerbate regional instability and conflict, and thereby contribute to widespread destruction of life and property.

Arms exports consequently entail inescapable moral choices on the part of supplier states. If these states deliberately or carelessly sell weapons to repressive or aggressive regimes, they bear a measure of culpability for the use to which their weapons are put. The right to life enshrined in our Constitution is universal. People everywhere are entitled to expect that this right is respected not only by their own government but also by other states.

An emphasis on the promotion of international peace and security and respect for human rights in arms trade policy derives from the founding charters of both the United Nations and the new South African state. It reflects a legal as much as an ethical commitment.

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From a strategic perspective, arms exports may jeopardise the security of the supplier state if they are sold to an adversary or to a country in which that state might later be engaged in peacekeeping or peace enforcement.

There is also the pragmatic consideration that South Africa would regain its pariah status if it pursued a foreign policy, and trade in arms, in an irresponsible fashion. In the light of the above, the primary goal of new arms export policy should be to restrict the transfer of armaments. The ethical, political, legal and strategic reasons for exercising restraint should take precedence over the economic and commercial motivation for selling arms.

The subordination of economic matters does not imply that they are unimportant. The government will have to address the economic impact of a restrictive arms trade policy on the defence industry. The future of the industry, and the question of conversion to civilian production, should be the subject of a government White Paper.

### 2. Country classification and code of conduct

South Africa should adopt criteria and rules for determining to which countries it may or may not sell arms. The criteria would comprise general factors to be taken into

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Strategic factors.

A state's purchase of a particular type of armament may be regarded as sensitive or non-sensitive depending on various strategic considerations:

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v)

the military doctrine and posture of that state;  
the quantity of the items purchased and already held by that state;  
the stability of that state and the surrounding region;

the military balance in the surrounding region; and

South Africa's relations with that state.

For example, the purchase of a large number of combat aircraft by a Southern African country might be perceived by its neighbours as provocative and destabilising. Yet the development of a limited anti-aircraft capability by that country is unlikely to be viewed in the same

way.

An assault may have little military significance in a conventional armed conflict (eg the Gulf War), but it is obviously sensitive in a civil war (eg Rwanda, Angola and Mozambique).

Whether or not the importing state is involved in hostilities, or is likely to become involved in hostilities, is clearly relevant. [Sections 6.1.2 and

So too is the manner in which that state engages in combat. International humanitarian law prohibits certain methods of warfare even where the use of force is legitimate. For example, it is unlawful to launch an



## CHAPTER 10: ORGANISATIONAL, OPERATIONAL AND

### PROCEDURAL MATTERS

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Armcor's Board of Directors  
Transformation of Armcor  
Direct contact with foreign governments  
Agents  
Verification of end-users  
Proof of delivery  
Shipping arrangement  
Avoidance of haste  
Capacity of the administrative arms control body

## CHAPTER 11: COMPLIANCE, SANCTIONS AND

### ENFORCEMENT

Compliance by the defence industry  
Sanctions  
Enforcement

11.1  
11.2  
11.3

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Appendix C: South Africa's participation in international arms control initiatives  
Appendix D: Cabinet memorandum on conventional arms control, August 1995  
Appendix E: Extract from Black Sash submission to public hearing  
Appendix F: European Community Common Criteria for Arms Exports  
Appendix G: Closing Communique of the Meeting of the Five on Arms Transfers and

Non-Proliferation



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3.4.2

that all sovereign countries have the inherent right of self-defence in  
â\200\230 terms of the Charter of the United Nations;

3.4.3

3.4.4

the need to ensure that transferred conventional arms are not used in  
violation of the purposes and principles of the Charter of the United  
Nations;

that excessive and destabilizing conventional arms build-up pose a  
threat to national, regional and international peace and security. Sales  
to countries in war prone regions should continuously be evaluated  
and reviewed to limit the possible escalation of regional conflict;

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3.4.5

the need for effective national mechanisms for controlling the transfer  
of conventional arms and related technologies; and

3.4.6

its support and its commitment to provide data and information as  
required by the United Nations resolution establishing the Register of  
Conventional Arms, taking into account it's national interests.

3.5 Common Approach.

In order to further the general aim of an international Ã©Operative and common  
approach to security, South Africa will promote and by means of an effective  
national arms control system, exercise due restraint in the transfer of  
conventional arms and related technologies by taking the following into account:

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3.5.5

Respect for human rights and fundamental freedoms in the recipient  
country.

An evaluation based on the United Nations Universal Declaration of  
Human Rights and the African Charter on Human and People's Rights.  
Due consideration will be given especially in cases where the political,  
social,  
seriously and  
systematically violated by the authorities of that country.

religious and legal

cultural,

rights

are

The internal and regional security situation in the recipient country, in the light of existing tensions or armed conflicts.

The record of compliance of the recipient country with regard to international arms control agreements and treaties.

The nature and cost of the arms to be transferred in relation to the circumstances of the recipient country, including its legitimate security and defence need and the objective of the least diversion of human and economic resources for armaments.

#### 3.5.6

The degree to which arms sales are supportive of South Africa's national and foreign interests.

### 3.6 Transfers and Trade

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#### 3.6.1

be used for the violation or suppression of human rights and fundamental freedoms;

3.6.2 contravene South Africa's International commitments, In particular its obligations under arms embargoes adopted by the UN Security Council and other arms control agreements or responsibilities In terms of internationally accepted custom;

3.6.3 endanger peace by introducing destabilising military capabilities into a region, or otherwise contribute to regional instability and negatively - influence the balance of power;

3.6.4 be diverted within the recipient country or re-exported for purposes

3.6.5 have a negative impact on South Africa's diplomatic and trade relations with other countries; .

. 3.6.6 support or encourage terrorism;

3.6.7 be used for purposes other than the legitimate defence and security

3.6.8 contribute to the escalation of regional conflicts.

needs of the recipient country; and

### 3.7 Assistance and Information Exchange

South Africa will

#### 3.7.1

consider mutual assistance in the establishment of effective national mechanisms in accordance with international practices for controlling

3.7.2 exchange information, in respect of national legislation and practices

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seriously undermine the recipient state's economy;  
prolong or aggravate an existing armed conflict, save where the recipient is recognised by the UN Security Council to be defending itself against aggression; or

in any way undermine South Africa's security, strategic capabilities or foreign interests.

Put positively, South Africa should export arms only for the purposes of individual or collective self-defence, the legitimate maintenance of good governance, and peace operations authorised by the UN Security Council.  
South Africa should under no circumstances export weapons of mass destruction and related technology.

South Africa should adhere strictly to all international arms control agreements to which it is bound.

### 2.3 Country classification

A system of classifying countries into acceptable and unacceptable recipients of South African arms is an important source of guidance to administrative, control and enforcement bodies.

The classification system should comprise the following categories:

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b)

c)

Group 1: countries which are legitimate recipients of South African arms and likely to retain this status for the foreseeable future.

Group 2: countries which are prohibited from receiving South African arms.

Group 3: countries which cannot be placed easily in either of the above categories. Prospective exports to these countries would require rigorous evaluation on a case-by-case basis.

Outstanding sales and service contracts should be cancelled immediately if the status of the importing state is downgraded to the prohibited category.

The classification of countries and evaluation of prospective exports should be based on the code of conduct outlined above, and should take account of long-term political and strategic perspectives.

## 7. Compliance, sanctions and enforcement

The statute should provide for sanctions in respect of both willful contraventions and acts of omission and commission which are grossly negligent.

The brief of the National Intelligence Co-ordinating Committee should include the gathering and analysis of information regarding such contraventions.

controls.

A concerted effort should be made to tighten border controls, and air surveillance in particular, in the light of repeated claims that private individuals and companies are engaged in illegal arms transfers from South Africa.

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legitimate seti-det'ense;  
b

They will consider carefully whether proposed transfers will:  
Promote the capabilities of the recipient to meet needs {or  
Serve as an appropriate and proportionate response to the  
security and military threats confronting the recipient country;  
Enhance the apabilityofthe recipient to participate in regional  
or other collective arrangements or other measures consistent with the  
Charter of the United Nations or requested by the United Nations;

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a  
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restraints to which they are parties;  
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of the recipient State;  
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They will avoid transfers which would be likely to:  
Prolong or aggravate an existing armed conĩ-\202ict;  
Increase tension in a region or contribute to regional instability;  
Introduce destabilizing military capabilities in a region;  
Contravcne embargoes or other relevant internationally agreed  
Be used other than for the legitimate defense and security needs  
Support or encourage international terrorism;  
Be used to interfere with the internal affairs ot'sovereignStates;  
Seriously untiermine the recipient Stateâ\200\231s economy.



## GLOSSARY OF TERMS

In the course of this report, the following terms apply:

'armaments' refers to weapons, ammunition and other goods, components and technology designed for military use or for the manufacture or maintenance of military products and systems

'arms' and 'armaments' are used interchangeably

'Arm Scor Act' refers to the RSA Armaments Development and Production Act, 57 of 1968

'arms exports' refers to the sale or transfer of armaments

'conventional armaments' refers to armaments other than weapons of mass destruction

'dual-use items' refers to goods and technology with both civilian and military application

'First Report' refers to the First Report of the Commission of Inquiry into Alleged Arms Transactions Between Arm Scor and One Eli Wazan and Other Related Matters, Johannesburg, 15 June 1995

'Log Pamphlet' refers to the Log 17 Pamphlet 19, a policy directive on arms control issued and administered by the SANDF

'Non-Proliferation Act' refers to the RSA Non-Proliferation of Weapons of Mass Destruction Act, 87 of 1993

'weapons of mass destruction' refers to nuclear, chemical and biological weapons and related technology, and to missiles and missile systems governed by the Missile Technology Control Regime

The formulation and implementation of policy shall be subject to the constitutional imperatives of openness and accountability in public affairs. Appropriate checks and balances shall include transparency, ministerial control and accountability, and parliamentary oversight. [Chapters 8-9]

Arms transfers shall be controlled through legal, procedural and enforcement measures intended to ensure that the country code of conduct is observed and that exports are not diverted to unauthorised destinations. [Chapters 10-11]

South Africa shall participate in, and seek to strengthen, the United Nations Conventional Arms Register.

South Africa shall adhere strictly to all international arms control agreements and treaties to which it is bound.

In the view of the Commission, state subsidies to the defence industry should be limited to those areas in which self-sufficiency is of vital importance during armed conflict

[Section 5.1]. If the industry were reorientated along these lines, there would be considerably less economic pressure to export arms.

#### 5.7 Statement of policy

In the light of its views expressed above, the Commission proposes the following summary statement on new policy regarding conventional arms transfers.

Armaments constitute a special category of goods and technology since they are designed for the use or threat of force. They may be utilised for the legitimate purpose of self-defence and for the illegitimate purposes of external aggression and internal repression. They may provoke and exacerbate regional instability and conflict, and thereby contribute to widespread destruction of life and property.

South Africa shall therefore pursue a policy of responsibility and restraint in the export of arms.

This policy shall be based on the principles of the Constitution and the United Nations Charter. It shall reflect, in particular, South Africa's commitment to promoting international peace and security, international arms control and disarmament, and respect for fundamental human rights and freedoms.

Arms exports shall consequently be limited to the functions of self-defence, participation in peace operations and the maintenance of good governance by the recipient state.

Arms exports shall be regulated according to foreign policy and domestic security concerns; a system of armaments classification; and a country code of conduct which encapsulates the commitment and principles referred to above.  
[Chapters 6-7]

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The Cabinet committee should be obliged to submit a list of all proposed exports to the parliamentary sub-committee on arms control at least thirty days before the intended date of export. The list should state the name of the importing countries and the type, quantity and price of the armaments under consideration. The sub-committee should be empowered to request Parliament to consider the appropriateness of a prospective export if it has reason to believe that the export does not comply with the country code of conduct. Parliament may debate the matter and, within the prescribed period of thirty days, confirm or reject by a simple majority the Cabinet committee's decision.

approval for every arms transaction. Rather, Parliament would have the power to veto a transaction which falls short of the established criteria and rules. The exercise of this power would not delay unduly the completion of the permit application process. Thirty days is not an inordinately long period given the time frame normally associated with concluding arms sales contracts. The parliamentary review would be greatly facilitated if, at the start of each year, the government notified Parliament of the arms transfers it expected to finalise with in the following twelve months (as in the US) [Anthony, 1991:193]. This would give Parliament sufficient warning of pending exports which are controversial. It should be noted that, in the case of the US, the President may override a congressional veto on security grounds. The Commission has not followed this approach since we believe that national security considerations should serve only to restrain, and not justify, arms exports.

Further, the congressional right of veto applies only to exports valued at \$14 million or more in respect of 'significant military equipment', and \$50 million or more for other weapons and military services. The Commission regards this limitation as inappropriate because small arms may have a relatively low value but nevertheless cause tremendous harm.

devoted to the defence sector. These resources would be better utilised in more labour-intensive civilian manufacturing. [Batchelor and Willet, 1995: 13-15]

In most developing countries military production is economically inefficient. Costs are typically higher than in industrial countries because of short production runs, limited economies of scale and a high dependence on imported components and technology. Consequently, arms exports may not be competitive in the world market, and imports may be much cheaper than local production. [Brzoska, 1989:514-516]

This perspective applies to South Africa [Brzoska, 1989:513; and Celliers, 1994]. For example, the SANDF has not purchased the Rooikat helicopter developed by Denel, and the contract for new trainer aircraft was awarded to the Swiss Pilatus rather than the locally produced Ovid.

These considerations cast serious doubt on claims that the defence industry and arms exports are a sound basis for stimulating the economy, job creation and foreign exchange.

Nevertheless, on the strength of current research the Commission is unable to conclude that the industry is a net economic liability or asset. What is required is a comprehensive review of the industry in the context of broader industrial strategy [Subcouncil on Defence, 1994:6]. In the view of the Commission, the future of domestic arms production, and the related questions of diversification and conversion to civilian manufacture, should be addressed in a government White Paper in consultation with stakeholders and interest groups.

### 5.3 The strategic necessity for restraint

In addition to the strategic motivation for retaining a domestic arms industry, there are compelling strategic reasons for exercising restraint in the export of arms.

It obviously makes little sense to sell weapons to countries which are adversaries or potential adversaries of South Africa; nor does it make sense to transfer sensitive technology from which the SANDF derives a distinct strategic advantage. These

Given these difficulties, technology controls should concentrate most closely on the following areas: weapons of mass destruction; armaments which may have strategic military value to the prospective recipient; items which are sensitive in terms of South Africa's security; and exports of civilian technology to countries which are subject to international arms embargoes.

#### 4.10 The Armscor Act

The undue emphasis on sales also derived from a fundamental flaw in the Armscor Act. On the one hand, the Act confers on Armscor the power to develop, market and sell arms; on the other hand, it makes Armscor responsible for controlling arms exports [Section 3.1]. The former activities require a pro-active approach to marketing, while the latter call for a substantial measure of restraint.

This anomalous situation was not resolved by delegating the different functions to separate departments within Armscor. The Lebanon transactions revealed clearly an institutional emphasis on sales before restraint.

#### 4.11 Conclusion

This Chapter illustrates the extent to which Armscor's operational procedures and organisational features undermined the formal system of arms control and contributed to the diversion of exports to unauthorised destinations.

It follows that new policy which seeks to avoid such outcomes should be accompanied by substantial operational and organisational reform. Attention should be paid to the following issues in particular:

- a)
  - b)
  - c)
- determining the appropriate body to serve as the administrative arms control authority [Section 8.4.1];
- appointing a new Board of Directors for Armscor and transforming the culture of the organisation [Sections 10.1 and 10.2]; and
- introducing systems to ensure greater control over the end destination of arms exports, and training the relevant officials accordingly [Sections 10.3-10.9].

Wulf, H., 1991. 'United Nations deliberations on the arms trade'. L11: Anthony (ed), Arms Export Regulations, op cit, pp. 228-237.



The Commission was greatly enriched by the hearing. We express our appreciation to all the participants for their contributions.

### 1.5 Focus and organisation of this report

Accordingly, this report is divided into two parts:

Part 1 considers South Africa's export of conventional armaments at the time of the Commission's appointment, in terms of policy [Chapter 2]; control [Chapter 3]; and various operational and organisational matters [Chapter 4]. Part 2 presents proposals for new conventional arms export policy [Chapter 5]; country guidelines and classification [Chapter 6]; armaments classification [Chapter 7]; decision-making and oversight [Chapter 8]; transparency [Chapter 9]; organisational, operational and procedural matters [Chapter 10]; and compliance, sanctions and enforcement [Chapter 11].

Part 2 of the report can be summarised as follows:

Armaments constitute a special category of goods and technology since they are designed for the use or threat of force. They may be utilised for both the legitimate purpose of self-defence and the illegitimate purposes of external aggression and internal repression. They may provoke and exacerbate regional instability and conflict, and thereby contribute to widespread destruction of life and property.

Hartung, W.D., 1995 . 'US weapons at war', report by the Arms Trade Resource Centre, World Policy Institute, New School for Social Research, New York.

Heitman, H., 1995 . 'South African armaments trade policy', submission to the Cameron Commission, Cape Town, June.

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Human Rights Watch Arms Project, 1994b. Angola: Arms Trade and Violations of the Laws of War since the 1992 Elections. New York: Human Rights Watch.

Human Rights Watch Arms Project, 1995. 'Rwanda/Zaire. Rearming with impunity: international support for the perpetrators of the Rwandan genocide', Vol. 7, No. 4, May

Kasrils, R., 1994. 'The government's perspective for the future of South Africa's defence industry', presented by the Deputy Minister of Defence at the Defence Industry Conference, AIC Conferences, Midrand, October.

Klaaren, 1994. 'Human rights legislation for a new South Africa's foreign policy', South African Journal on Human Rights, Vol. 10, Part 2, pp. 260-275.

Komatina, M., 1991. 'Opening address'. In: The International Law of Arms Control and Disarmament: Proceedings of the Symposium. Geneva. 28 February - 2 March 1991. New York: United Nations, pp. 29-34.

Laurance, J., 1995. 'Addressing the negative consequences of light weapons trafficking: opportunities for transparency and restraint'. In: Boutwell et al, Lethal Commerce, op cit, pp. 140-157.

Mandela, N ., 1994. Opening Address by President Nelson Mandela at the Defence Exposition of South Africa (DEXSA), Nasrec, 22 November 1994.

## CHAPTER 9: TRANSPARENCY

The question of transparency regarding arms exports was debated extensively during the Wazan inquiry and the Commission's public hearing. This Chapter considers the main arguments in this regard; it describes the UN Arms Register; and it concludes with a set of concrete proposals for greater openness in arms trade policy and practice.

### 9.1 Arguments for openness

The Constitution incorporates the principles of openness and freedom of information as fundamental tenets of public conduct. It states, *inter alia*, that "provision shall be made for freedom of information so that there can be open and accountable administration at all levels of government" [Constitutional Principle IX].

Transparency is an essential feature of democracy. It fulfils the right of citizens to know how public funds and the affairs of government are being managed; it constitutes a check against abuse of power and thereby furthers human rights concerns; it is an important means of ensuring government accountability; and it empowers citizens to contribute in a meaningful way to national decision-making.

The motivation for transparent governance is entirely applicable to arms export policy and practice. Citizens are entitled to know whether their country is selling armaments for the purpose of self-defence, external aggression or internal repression by the recipient state.

There is little doubt that sectors of the public are concerned about these matters. Distress over the Wazan debacle and the content of the Log Pamphlet was apparent in numerous newspaper articles and editorials, as well as in submissions to the Commission from churches and human rights groups. As noted earlier, political parties called on Parliament to conduct an investigation into the debacle.

The Commission's inquiry into the impugned transaction underlined the importance of independent scrutiny of arms export decisions. It confirmed the truism that while

b)

c)

d)

Armaments may be used to maintain authoritarian regimes, violate human rights and suppress ethnic minorities, opposition parties and popular dissent.

Arms supplies may trigger or exacerbate regional instability, and may prolong or aggravate existing hostilities.

Excessive arms build-ups in developing countries divert scarce resources

Instead, the Commission wishes to emphasise that South Africa's obligation to avoid contributing to these problems is as much legal as it is political and ethical. In ratifying the UN Charter, South Africa has committed itself to maintain international peace and security [Article 1]; to settle its international disputes by peaceful means [Article 2(3)]; and to refrain from the threat or use of force against other states or in any other manner inconsistent with the purposes of the UN [Article 2(4)].

alia, the use of force in a manner which does not discriminate between military targets and} Civilians.

Our Constitution enshrines these commitments through its endorsement of international humanitarian law, the law on aggression, international human rights law and international customary law in general. [See Klaaren, 1994:261-2]

As in France, the supplier should be required to lodge with the administrative arms control body a deposit which is repaid on submission of the DVC. [Saferworld, 1992: 107]

#### 10.7 Shipping arrangement

Arms consignments should be sold 'at cost, insurance and freight' rather than 'free-on-board'. In terms of the former shipping arrangement, the supplier is responsible for organising the transport of the goods to the country of import [c/f Section 4.2].

#### 10.8 Avoidance of haste

Applications for marketing and export permits should be evaluated with due care and deliberation. Other than in exceptional circumstances, the applications should not be processed as a matter of urgency.

'Exceptional circumstances' would exclude commercial considerations. They would be limited to cases where the prospective client is the United Nations or where the UN Security Council has ruled that the recipient country is the victim of aggression.

#### 10.9 Capacity of the administrative arms control body

At the time of the Commission's appointment, applications for marketing and export permits were processed by a single Armscor official with a small administrative staff.

The new arms control body in the Defence Secretariat should have sufficient personnel and resources to pay proper attention to the applications, liaise with other government departments and the defence industry, and perform its various other functions.

South Africa should therefore pursue a policy of responsibility and restraint in the export of arms.

This policy should be based on the principles of the Constitution and the Charter of the United Nations. It should reflect, in particular, South Africa's commitment to promoting international peace and security, international arms control and disarmament, and respect for fundamental human rights and freedoms.

Arms exports should consequently be limited to the functions of self-defence, participation in peace operations, and the maintenance of good governance by the recipient state.

Arms exports should be regulated according to foreign policy and domestic security concerns; a system of armaments classification; and a country code of conduct which encapsulates the commitment and principles referred to above. The formulation and implementation of policy should be subject to the constitutional imperatives of openness and accountability in public affairs. Appropriate checks and balances should include transparency, ministerial control and accountability, and parliamentary oversight.

Arms transfers should be controlled through legal, procedural and enforcement measures intended to ensure that the country code of conduct is observed and that exports are not diverted to unauthorised destinations.

South Africa should participate in, and seek to strengthen, the United Nations Conventional Arms Register.

South Africa should adhere strictly to all international arms control agreements and treaties to which it is bound.

### 3.8 Assessment of Permits

All permit applications for countries and products will be assessed on a case-by-case basis in relation to the principles and guidelines contained herein.

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### 3.9 Product Classification

3.9.1 W. Sensitive, Major Significant Equipment (SMSE) - SMSE comprises conventional implements of war that could cause heavy personnel casualties and/or major damage and destruction to material, structures, objects and facilities. (eg Artillery, Bombs, Grenades, Armoured Fighting Vehicles, etc).

3.9.2 mm. Sensitive Significant Equipment (SSE) - SSE comprises all types of hand held or hand carried assault weapons of a calibre smaller than 12.7 mm. All Assault rifles, machine guns, pistols and related small arms and ammunition are included in this category.

3.9.3 W. Non Sensitive Equipment (NSE) - NSE comprises all support equipment usually employed in the direct support of combat operations that have no inherent capability to kill or destruct. Although, if employed in conjunction with SMSE they could have a force multiplier effect. (eg Radars, Meteorological Stations, Radio Equipment, Support Vehicles and Aircraft, Recovery Equipment , etc).

#### 3.9.4 W. Non Lethal Equipment (NLE)

- NLE is limited to purposely designed de-mining and mine clearing and mine detecting equipment, all non lethal pyrotechnical and riot control products and related equipment. (Rounds, and Teargas).

Mine Detectors, Signal Flares,

Baton

(eg

3.9.5 ngm. Not for Sale (NFS) - NFS items comprise all those defence or related products that are not allowed to be sold legally.

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## CHAPTER 7: ARMAMENTS CLASSIFICATION

7.1  
7.2  
7.3  
7.4  
7.5

Category X: prohibited exports  
Category Y: other armaments  
Category Z: dual-use goods and technology  
Armaments lists  
Technology transfer

## CHAPTER 8: DECISION-MAKING AND OVERSIGHT

8.1  
8.2  
8.3  
8.4  
  
8.5

Constitutional principles  
Policy  
Classification of countries and armaments  
Marketing and export permits  
8.4.1 Departmental level  
8.4.2 Inter-departmental level  
8.4.3 Ministerial level  
8.4.4 Parliamentary level  
The military ombuds system

## CHAPTER 9: TRANSPARENCY

9.1  
9.2  
9.3  
9.4

Arguments for openness  
United Nations Arms Register  
Arguments against full transparency  
Proposals  
9.4.1 Policy  
9.4.2 Country classification  
9.4.3 Armaments classification  
9.4.4 Marketing and export applications  
9.4.5 Judicial review  
9.4.6 UN Arms Register  
9.4.7 Regional initiatives  
9.4.8 Annual report of exports

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## 2.4 Procurement of Defence Equipment

Not all defence equipment required by the NDF can or should be procured from local industry. Many complex systems cannot be produced cost-effectively by local firms and will have to be purchased abroad. The management expertise required for the specialised procurement functions is located within the Department of Defence.

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## 3 PRINCIPLES GOVERNING NATIONAL ARMS TRADE

### 3.1 Arms Control

The import and export of conventional arms into South Africa and the transit of such arms through South Africa to neighbouring or foreign states shall be subject to a control process as determined by the Government.

### 3.2 Principle of Government support

In a competitive international market it is important that South Africa and its defence industry be recognised as a responsible and reliable supplier of defence materiel.

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The South African Government will support the export initiatives of the defence industry by permitting the industry to contract and honour obligations which have been duly approved in terms of the proposed National Arms Control system. The South African Government shall however reserve the right to prohibit or withdraw such support should it be in conflict with or irreconcilable with international or national interest at any given time.

### 3.3 Transparency

The principle of openness and transparency relating to arms trade will be applied. This will be limited only by the needs of national interest and confidential bilateral agreements with other states.

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### 3.4 Control Measures

Conventional arms control measures are based on principles of the United Nations Charter, International Law, recognised international arms control systems including economic, ethical, political, military and security consideration. Such controls should be managed by a legitimate South African arms control system that will ensure a responsible approach to arms transfers. South Africa affirms

#### 3.4.1

that in accordance with the principles and aims of the Charter of the United Nations, it holds the view that the reduction of world military expenditures could have a significant positive impact for the social and economic development of all peoples;

## CHAIRPERSON'S FOREWORD

appointment was primarily the result of an institutional disregard for where South  
This, the Commission's Second Report, examines this theme further. On the strength of  
the Commission's investigation of arm control systems in South Africa and other

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MR JUSTICE E C  
CHAIRPER

## 7.1 Category X: prohibited exports

The marketing and export of certain types of armament should be prohibited. The products and technology which comprise this category should be determined by the following three criteria, each of which constitutes a distinct sub-category of prohibited exports:

a)

International arms control regimes and treaties.

The following regimes ban completely the sale or transfer of weapons of mass destruction and related technology: the Nuclear Non-Proliferation Treaty; the Missile Technology Control Regime (MTCR); and the Biological Weapons Convention. A chemical weapons convention is in the process of being concluded [Saferworld et al, 1995: Chapters 1-3].

The Inhumane Weapons Convention covers conventional armaments which are regarded as inhumane and indiscriminate in their effect (eg land mines, non-detectable shrapnel and incendiary weapons).

South Africa's adherence to these regimes is outlined in Appendix C.

In compliance with UN Resolution 48/75 K of 1993, in March 1994 the South African government placed an indefinite moratorium on the marketing, export and transit of land mines.

13)

Undertakings in respect of imported products, components and technology.

South Africa will be obliged to adhere to the conditions stipulated in end-user and end-use certificates which it has issued when importing armaments. These conditions typically include a commitment not to re-export the items in question without the express permission of the seller [Section 3.5].

Accordingly, this Chapter proposes an alternative approach which divides armaments into the following three categories:

a)

b)

Category X would embrace items which may not be exported under any circumstances.

Category Y would consist of all other armaments and military technology, the export of which is assessed on a case-by-case basis and requires a government permit.

c) W would include dual-use items which are subject to varying controls.

transfer.

MATTERS

Between 1991 and 1994 Armscor concluded contracts for the sale of a large quantity of weapons, ammunition and military equipment to Lebanon [Section 2.3]. Some or all of these products ended up at other, prohibited destinations.

While mischief was undoubtedly afoot, the diversion of the goods was primarily attributable to an institutional disregard for the intended destination of South African arms exports. This disregard was evident in a number of Armscor's operational procedures and organisational features which rendered ineffectual the formal system of control.

These matters were the subject of the Commission's First Report and are summarised below.

4.1 Use of foreign agents

In the course of the Lebanon transactions, Armscor at no stage communicated directly with the designated end-user of its weapons (ie the Christian Militia and the Lebanese government). Instead, negotiations were conducted, and contracts were concluded, exclusively with foreign agents and intermediate purchasers.

The distance between Armscor and the authorised end-user made it possible for the intermediaries to divert the arms consignments to unauthorised destinations. This risk was heightened by Armscor's failure to ascertain the bona fides of the foreign actors with whom it worked.

It is highly unlikely that the Wazan debacle would have occurred had Armscor been in direct contact with the purported buyer of the 1994 arms consignment, the government of Lebanon. The Lebanese government was in fact completely unaware of the deal.



## 10.2 Transformation of Armscor

Armscor's Board should direct senior management to undertake the following tasks under its supervision:

a)

b)

eliminate systems and methods which were designed to evade the arms embargoes;

eliminate systems and methods which undermine control over the end-destination of arms exports;

introduce or reinforce means of ensuring that arms exports end up at the authorised destination;

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develop new administrative and financial procedures;

establish an effective system of management control and supervision;  
and

introduce an educational programme for Armscor personnel in order to explain and promote the philosophy and objectives of new policy.

Following the release of the Commission's First Report, the Freedom Front proposed that Armscor should be dismantled; its marketing activities should be devolved to Denel and its control and procurement functions should be transferred to the Defence Secretariat [Citizen, 22 July 1995]. A similar proposal was made by Mr T Yengeni, Chairperson of the Joint Standing Committee on Defence [Argus, 18 July 1995].

The Commission shares the view that administrative control over arms exports should reside in the Defence Secretariat [Section 8.4.1]. The question of arms procurement, which is Armscor's main function, lies outside the focus of this report.

CABINET MEMORANDUM ON CONVENTIONAL ARMS  
CONTROL, AUGUST 1995

APPENDIX D

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If the application is in order, it will be registered and processed for submission to the Armaments Marketing Permit Committee, recently renamed the Committee for Armaments Marketing and Export Control (CAMEC). After CAMEC has assessed the application, a recommendation is made to Armscor's Management Board for final approval.

The head of the Armaments Control Division is the chairperson of CAMEC. CAMEC comprises representatives of the following bodies, each of which serves a specific function:

- a)
- b)
- d)
- e)

The Department of Foreign Affairs comments on political and foreign policy concerns relating to marketing and potential export to the countries under consideration.

The SANDF Chief of Staff Intelligence, Chief of Staff Operations and Chief of Staff Logistics monitor defence concerns and build an intelligence base with respect to marketing and potential export activities.

Armscor's Department of Combat Systems and Department of Aeronautics and Maritime assess product and supplier integrity; the likely impact of the sale on the procurement requirements of the SANDF and the South African Police Service (SAPS); sensitive technologies; and related issues.

Armscor's Quality Assurance Department evaluates the quality of the product.

Armscor's Security Department monitors security concerns regarding current acquisition projects for the SANDF and SAPS.

Armscor's Department of Foreign Trade monitors foreign licence agreements and related issues.

individual misconduct and institutional irresponsibility may occur in any circumstances, they are more likely to flourish in conditions of secrecy.

national security. Yet there is also the danger, so patently evident in the apartheid era, that 'national security' is invoked to justify and stifle criticism of repressive and aggressive actions.

From an international perspective, there is broad agreement that "increased openness and transparency in the field of armaments could enhance confidence, ease tensions, strengthen regional and international peace and security, and contribute to restraint in military production and the transfer of arms" [UN General Assembly Resolution 46/36 L of 9 December 1991].

Finally, three pragmatic considerations should be taken into account. First, South Africa is unlikely to export military products and technology which are so sensitive that their disclosure could undermine the country's strategic capabilities.

Industries Directory which contains a complete catalogue of local defence products [Armcor, 1995a:3].

## 9.2 United Nations Arms Register

The UN Register of Conventional Arms came into effect in 1992. It seeks to enhance transparency in conventional arms transfers and military holdings in order to strengthen

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arbitrary detentions, kidnapping, disappearances, extrajudicial executions, torture and acts of terrorism.

Senior Armscor officials were aware that the Militia had little international credibility and was obliged to purchase arms on the black market.

The Militia retained its status as an acceptable recipient of South African arms for as long as four years after it had been disbanded following the end of the civil war in Lebanon in 1989.

Although the previous government publicly regarded the AK-47 as a symbol of 'communist terrorism', it classified the weapon as 'non-sensitive' (Category B) for export purposes. It clandestinely sold or distributed thousands of these rifles to rebel movements, such as the Christian Militia and Unita in Angola, for use in internal conflicts.

Militia and the Lebanese government suggests that their classifications were based on commercial rather than political or strategic factors.

#### 2.4 The Log Pamphlet

Four trends in South Africa's arms export policy can be discerned from the classification assigned to the 159 countries listed in the 1989 version of the Log Pamphlet.

## United Nations Conventional Arms Register (UNCAR)

Malta, in 1965,

A15 Because armament transfers are an important element of global security, such transfers are of concern to the UN General Assembly. requested the establishment of a UN arms registerâ\200\235. in 1978 the UN General Assembly proclaimed the week of 24 October of each year as "Disarmament Week" to promote disarmament and in 1992 implemented the United Nations Conventional Arms Register (UNCAR)" as aâ\200\234 confi-\20ldence building mechanism. The UNCAR requires disclosure, by April each year, of annual imports and exports of the following seven categories of conventional arms:

Category i:

Battle Tanks, weighing up to 16,5 metric tons with a main weapon of larger than 75mm.

A.16

Category ii: Heavy Artillery with a calibre of 100mm or more;

Category iii: Armoured combat vehicles with armour protection and equipped to carry at least four troops and/or armed with an integral (integrated) weapon of at least 20mm calibre, or an anti-tank missile launcher

Category iv: Combat aircraft-\201 capable of carrying unguided rockets, guided

missiles, cannons or other weapons;

Category V: Attack helicopters capable of carrying anti-armour air-to-ground guided weapons and equipped with an integrated fire control and aiming system;

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vehicles) with ranges greater than 25kms.

Category Vi: Warships, including submarines and surface vessels with a

Category VII:

standard displacement of at least 850 metric tons and

Missiles (missile systems, guided bombs and remotely piloted

The trend towards transparency in armaments, based on the principles of confidence and security building, has been stimulated by the work of a number of bodies such as the Conference on Disarmament (CD) and the Conference on Security and Co-operation in Europe (CSCE). The Register is founded on the principle of co-operative security amongst states. This principle is based in conformity with the United Nations Charter, the inherent right of self-defence;

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Everyone's United Nations Department of Public Information. 10' edition. United Nations New York, 1986.

The United Nations' Conventional Arms Register was established by the Secretary General on 1 January

1992 in accordance with General Assembly resolution 46/36t. on 9 December 1991.

APPENDIX A

CAMERON COMMISSION

COMMISSION OF INQUIRY INTO THE ALLEGED

ARMS TRANSACTIONS BETWEEN ARMSCOR

AND ONE ELI WAZAN AND OTHER

RELATED MATTERS

PRESS RELEASE

DATE:

STATUS:

WEDNESDAY 26 APRIL 1995

IMMEDIATE

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The terms of reference of the Commission of Inquiry into Armscor include the following mandate:

To comment, in obligations and responsibilities, on the appropriateness of

the context of South Africa's national and international

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11')

current trade policy with regard to weapons and related materials; and

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the decision-making processes with regard to such trade.

In

early

a comprehensive strategy in regard to the arms industry, including an arms trade  
The Cabinet Committee's task is to devise a new comprehensive policy  
policy.  
framework in regard to the arms industry and the control of the arms trade.

Committee

appointed

to

formulate

a

March,

the

Cabinet

The Commission's task, by contrast, is not to formulate a new arms trade practices and policy for the country, but to comment on arms trade policy, This task is decision-making processes current at the time of its appointment. complementary to that of the Cabinet Committee, which has indicated that the Commission's comments, in the light of South Africa's national and international obligations and responsibilities, on the appropriateness of the trade policy which gave rise to the Wazan incident, may prove very useful to the Cabinet Committee-

The Commission's task regarding these matters is thus  
The Commission will therefore un

interest and importance.  
inquiry in a participatory and open manner.

5  
undertake its

of great public  
policy

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The Commission hereby invites interested parties and members of the Public



#### 4.4 End-User Certificate

Since May 1994 Armscor has required applicants for export permits to obtain an End-User Certificate from the prospective country of import. [Section 3.5]

In the course of the Wazan sale, however, the Armaments Control Division accepted a forged EUC which carried the letterhead and seal of the Lebanese Ministère De L'Intérieur but did not record the name and designation of the signatory. Armscor received the document from a foreign agent and made no effort to authenticate it with the Lebanese government. Verification procedures in respect of EUCs were only introduced in September 1994.

#### 4.5 Maladministration

Armscor failed to keep detailed and accurate records of the Lebanon transactions. Contracts were concluded or altered without written confirmation between Armscor and the client; many of the key documents were undated or incorrectly dated; others contained numerous arithmetic and factual errors; and no proper account was kept of the flow of funds emanating from the contracts.

The acute financial and administrative incompetence and negligence had three related consequences: they obscured the true nature of the transactions; they created an environment in which misconduct could flourish undetected; and they thereby facilitated the diversion of the arms shipments.

#### 4.6 Disregard for internal procedures

The Armscor department responsible for the Wazan transaction ignored many of the procedures contained in internal policy documents. Some of these procedures were intended, in whole or in part, to prevent South African weapons from ending up in the wrong hands.

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The responsibility for procuring the EUC should lie with the administrative arms control body in South Africa rather than with Armscor or the defence industry. Alternatively, this body should be responsible for authenticating the EUC through diplomatic channels.

The EUC should indicate clearly the identity of the issuing authority; the name and designation of the signatory; the specifications, serial numbers and quantity of the armaments under consideration; and a commitment not to resell or transfer the armaments without the express permission of the responsible ministry in South Africa. In the event of an importing country acting in breach of this commitment, the transgression should be publicised internationally. All further arms sales to that country should be prohibited.

The verification of EUCs will become increasingly important as arms control measures are strengthened. Private contractors may seek to evade the controls by routing exports through neighbouring states from which the goods are resold or transferred to prohibited destinations. Attention should therefore be paid to the enforcement role of customs, police and intelligence authorities [Section 11.3].

#### 10.6 Proof of delivery

The Supplier should be required to obtain a Delivery Verification Certificate (DVC)

and submit this document within a prescribed period to the administrative arms control body in South Africa. The DVC is a form issued by the customs authority in the importing country as proof that the goods have arrived at the designated port of discharge and been collected by the designated purchaser. [Saferworld, 1992:81] As in the US and the UK, the administrative arms control body should verify receipt of the goods through diplomatic channels. [Saferworld, 1992: 106]

First, the strategic and ideological preoccupations of apartheid and the Cold War are clearly evident. For example, armaments could not be sold to Vietnam, Nicaragua, Cuba, North Korea and many of the Frontline States in Southern Africa (eg Zambia, Zimbabwe and Tanzania).

Second, South Africa took account of the fact that the West regarded certain countries as 'terrorist states'. Accordingly, arms sales to Libya, Iran and Syria were prohibited.

Third, the classifications reflect a measure of geopolitical ignorance; for example, Scotland and England were listed as separate countries. The classifications also lacked political consistency, especially with regard to the former communist states: Albania, Bulgaria, Czechoslovakia, Yugoslavia and China were placed in Group 1; East Germany in Group 2; and Russia and Mongolia in Group 3.

As noted above, the Christian Militia remained in Group 1 long after it had been disbanded. The Department of Foreign Affairs compounded the anomaly by informing the Commission that "there is no militia in Lebanon that bears the official title of the 'Lebanese Christian Militia'; it is unclear which party is meant when that appellation is used" [Department of Foreign Affairs, 1995: 12]. This statement is surprising in the light of the Department's direct involvement in reviewing the Log Pamphlet. It is possible that the DFPC and Cabinet mistakenly described one of the several Christian militias in Lebanon, namely the Lebanese Forces, as the 'Christian Militia'.

Fourth, the country classifications frequently ignored factors like political instability,

civil war, military rule and gross abuse of human rights. Acceptable recipients of South African arms included Bulgaria, Haiti, Indonesia, Malawi, Sri Lanka, Sudan, Liberia, Malaysia, Nigeria, China and Somalia. Rwanda, the Burmese government and the

Burmese Karen Resistance Movement were eligible to receive small arms.

During the Commission's public hearing the Black Sash submitted a summary of the gross human rights violations of several Group 1 countries, based on reports by Amnesty International [Appendix E]. Local and foreign media, church groups and non-governmental organisations have criticised, in particular, alleged South African arms

Finally, the South African government should present to Parliament its submission to the UN Arms Register, as well as an annual report on all arms sales concluded during the previous year. [Sections 9.4.6 and 9.4.8]

#### 8.5 The military ombuds system

The Minister of Defence has proposed the establishment of a military ombuds office [RSA, 1995: 11]. As in Sweden and Germany, the ombudsperson would be an independent official appointed by parliament to investigate complaints against the Defence Force by military personnel and members of the public.

In the view of the Commission, the ombudsperson should also be responsible for overseeing adherence to arms control legislation and regulations by government officials and the defence industry. The ombudsperson would investigate allegations such as those which gave rise to this Commission. Evidence of criminal conduct would be referred either to an attorney-general or to the police for further investigation [Section 11.3].

In the view of the Commission, it follows logically that the legal obligations which govern the conduct of South Africa's foreign relations preclude it from arming states which defy these obligations.

It is especially important to recognise that the right of self-defence, which is invoked to justify arms industries and arms exports, is an exception to Article 2(4) of the UN Charter. Article 2(4) entails a substantive ban on the use or threat of force against other states, and is regarded as the primary rule of international law [McCoubrey and White, 1992:24]. It may therefore serve as a sufficient legal basis for the obligation of arms control and disarmament [Shi, 1991:23; and Komatina, 1991:32].

#### 5.5 The argument for banning arms exports

Given the destruction wrought by armies and weapons throughout history, pacifists and certain religious leaders in South Africa have argued that there should be a complete prohibition on arms exports. [Storey, 1994; Crawford-Browne, 1995; and Statement from the Synod of Bishops of the Church of the Province of Southern Africa, 9 September 1994]

The Commission has much sympathy with this position. Even the most responsible arms control systems are subject to error and abuse; they are inherently fallible because they rely on subjective judgement; and it is impossible to predict or control the manner in which imported weapons will be used by or in the recipient state in the long-term, particularly in volatile countries and regions.

The proponents of arms transfers acknowledge that "an error-free arms trade is an impossibility. ...If you trade in weapons, notwithstanding your best endeavours to sell only to the friends of international order, ...from time to time a thug will take illicit delivery" [Gray, 1995:64].

The main weakness of the 'no arms export' position, however, is that it fails to address adequately the problem of national self-defence in the absence of a world government

## CHAPTER 11: COMPLIANCE, SANCTIONS AND ENFORCEMENT

The Commission's review of arms export practice under the previous government revealed significant weaknesses at the level of enforcement [Chapter 4]. Further, the experience of other countries suggests that a more restrictive policy on arms exports may increase the likelihood that unscrupulous companies and individuals will seek to bypass controls.

This Chapter presents proposals aimed at bringing the areas of compliance, sanctions and enforcement into line with a responsible approach to arms trade.

### 11.1 Compliance by the defence industry

Defence companies should be required by law to take the following steps to ensure compliance with arms export legislation and regulations:

- a)
- b)
- c)
- d)

establish internal control, verification and audit procedures;

nominate a senior official who will be held responsible for compliance (as in Germany);

maintain records of all exports for a period of five years from the date of transaction (as in Denmark); and

introduce a training programme, in collaboration with the administrative arms control body, for all employees involved in marketing and export procedures. [Saferworld, 1992:100-101]

The arms control body should notify the defence industry promptly of any amendments to these procedures.

In the light of the above, this report contains numerous proposals regarding arms control legislation. If accepted, these proposals would require the replacement of existing laws with a new act [Section 8.2].

Finally, this report does not consider in any detail the future of the defence industry; armaments development, manufacturing and import; and control of weapons of mass destruction. As outlined in Appendix C, the government has pursued the last of these areas with some vigour over the past three years.

#### 1.6 Cabinet Committee on Arms Control

In March 1995 the Cabinet appointed a committee of seven ministers, under the chairpersonship of the Minister of Defence, to formulate a comprehensive strategy for the arms industry, including the development of a new arms trade policy.

In correspondence with the Cabinet on the respective functions of this committee and the Commission, the Commission noted the following:

The Commission does not see it as its task to formulate a new arms trade policy for the country. That is clearly the task of the Executive. However, our duty to comment on the 'appropriateness' of 'current' policy seems to make it proper and necessary for us to forward submissions and suggestions to the Executive as to the content of the new policy, and to set out the considerations which appear to us to be relevant in formulating it.

The desirability of submitting such comments and proposals flows also from the Commission's duty to analyse the policy, operational and organisational factors which gave rise to the Wazan incident.

[The public hearing] will enable us to conclude our task in a way which is useful and complementary to the work of the Cabinet Committee. [Letter to Prof J Gerwel, 5 April 1995]

The Commission decided that these matters would best be considered in the form of a public hearing. In consultation with interested parties, it set a date and formulated an agenda and procedures for the event.

The Commission issued a press release advertising the hearing and inviting written submissions on the following topics: policy determinants; features of a responsible arms trade policy; decision-making processes; transparency; legislation; and arms control. [Appendix A]

The public hearing took place from 19 to 28 June at a parliamentary venue in Cape Town.

The Commission received twenty-five written submissions, the authors of which are listed in Appendix B. A bound collection of the submissions accompanies this report and will be deposited in the library of Parliament and in public libraries in major cities.

In the course of the hearing, presentations were made by the SANDF and the Defence Secretariat; Armscor; the South African Defence Industry Association (SADIA); the Department of Foreign Affairs; international arms control experts; and local defence analysts, human rights organisations, churches and private citizens.

The representatives of statutory bodies and government departments expressed difficulty in commenting on current arms trade policy since this matter was under review by Cabinet. They also pointed out that the policy in force at the time of the Commission's appointment was in a state of flux given the election of the new government in April 1994 and the subsequent ending of the arms embargoes against South Africa.

Nevertheless, the hearing was characterised by a productive exchange on the many ethical, strategic and economic complexities of arms export policy and practice. It provided governmental bodies, interest groups and citizens with an opportunity to debate a critical aspect of national policy in an open and constructive fashion that transcended the customary clash of entrenched claims and counter-claims.



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## CHAPTER 8: DECISION-MAKING AND OVERSIGHT

This Chapter focuses on decision-making and related functions in respect of arms export policy, country and armaments classification, and marketing and export

### 8.1 Constitutional principles

The Constitution embraces the principles of accountability and transparency in public affairs. It provides that "there shall be a separation of powers between the legislature, executive and judiciary, with appropriate checks and balances to ensure accountability, responsiveness and openness" [Constitutional Principle VI].

The accountability of government to Parliament and the public, and the decision-making and oversight roles of Parliament, are fundamental features of our new democracy. They empower the citizenry, serve to check abuse of power and thereby further the commitment to human rights which underlies the constitutional order.

these principles and mechanisms. The Commission takes the contrary view. If new policy recognises that arms exports are sensitive because of their potential harm, then the decision-making process should be subject to rigorous scrutiny and review. The most controversial aspects of this process - namely the classification of countries

and the approval of exports - necessarily entail the exercise of subjective judgement [Sections 6.3 and 7.2]. Independent evaluation of that judgement may be the most effective means of safeguarding human rights and international security concerns about

the arms trade.

Political parties envisage parliamentary involvement in this area. Following the first revelations of the Wazan debacle, the Democratic Party and the National Party called on Parliament to demand full information on Armscor deals with foreign clients [Ltar

probably due to the circumstances of apartheid and the international arms embargoes against South Africa [Section 2.5].

A more immediate cause was a pre-dominant emphasis on marketing and selling armaments. This emphasis was a policy imperative, an institutional preoccupation and a personal compulsion on the part of certain officials.

For example, the department responsible for the Lebanon transactions was obliged to cover its entire operating budget from the commission of five per cent which accrued to Armscor from the sale of surplus SANDF stock. Despite the fact that the department was acutely short staffed and raised this concern repeatedly, management increased its annual sales target from R10 million in 1992/3 to R30 million in 1993/4 and to R50 million in 1994/5.

The head of the department, Mr MTS Vermaak, believed that servicing clients and potential clients was more important than performing administrative tasks. He testified that if he had to record everything in writing, he would not make much progress with his sales performance. When the Commission asked him whether he ever wondered who used the weapons he had sold, against whom and with what consequences, he replied: "No, I 'm a salesman, not a politician".

There was great pressure to sell surplus SANDF stock in particular because of the substantial cuts that had been made to the defence budget over the preceding years. This factor had a bearing on the haste with which the Lebanon transactions were concluded in 1993 and 1994.

At a deeper structural level, the procurement requirements of South Africa's security forces were (and remain) insufficient to ensure the economic viability of the domestic arms industry. Given the strategic importance of maintaining the industry in the apartheid era, government policy was more concerned with promoting than with controlling arms exports. [Chapter 2]

The preoccupation with marketing and sales spawned an indifference to critical operating procedures and overrode the sense of caution demanded by a responsible approach to arms trade.

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ports in the

the Federal Republic of

supplier integrity; marketability and supportability of products; the procurement requirements of the SANDF and SAPS; technology transfer; and sensitive imports.

If CAMEC or the Armaments Control Division rejects a marketing or export application, it should be obliged to provide the applicant with a written explanation for the decision.

#### 8. 4. 3 Ministerial level

Under the previous government, CAMEC's recommendations to grant marketing and export permits were submitted to Armscor's Management Board for internal approval. This procedure cannot be retained if Armscor no longer serves as the statutory arms control body.

Instead, the recommendations should be ratified by a Cabinet committee. This will establish unambiguous executive accountability for arms export decisions.

The committee should comprise the ministers responsible for defence, the intelligence services, trade and industry, foreign affairs and three additional departments which have no direct interest in promoting arms exports. In order to deal with the potential conflict of interest raised earlier, the committee should be chaired by one of the three additional ministers.

In summary, the Cabinet committee would be responsible for formulating arms control policy, approving the classification of countries and armaments, and vetting marketing and export permits.

#### 8. 4. 4 Parliamentary level

The United States is currently the only armaments producing country in which elected representatives have the power to veto prospective arms exports [Anthony, 1991:192-193]. In the view of the Commission, the South African Parliament should enjoy similar power.

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considerations constitute the primary basis of most national arms control systems and were central to South African policy under the previous government [Chapter 2]. Equally obvious, though less widely appreciated, is the problem of exporting armaments to countries in which the supplier state might later be engaged in peacekeeping or peace enforcement. A recent example of this anomaly was the sale of arms by the UK, the US and France to Iraq before the Gulf War [Anderson, 1992:771-774]. South African troops might similarly have been confronted by South African weapons had they joined peace Operations in Angola, Rwanda, Iraq or Bosnia. In short, new arms' transfer controls should ensure, at a minimum, that exports "no foreseeable threat to South Africa's sovereignty or territorial integrity or the safety of its population or its forces" [Defence Secretariat et al, 1995: paragraph 6.5].

#### 5.4 Political and ethical reasons for restraint

In a paper presented to the Commission in June 1995, Professor Colin Gray of the Centre for Security Studies at the University of Hull argued that "armaments are a regrettable necessity because this is a noticeably imperfect world". He summarised his position as follows: "If the 'good guys' are unarmed, or underarmed, the 'bad guys', the 'thugs', will prosper". [Gray, 1995:3-4]

This assertion points, albeit inadvertently, to one of the central problems with which arms control is concerned: how to prevent the transfer of military products and technology to the 'bad guys'. Gray's position becomes a self-fulfilling prophecy if, as in the case of Iraq referred to above, the so-called 'good guys' continue to supply the 'thugs' with the means to inflict harm on their own citizens and those of other states. There are several political and ethical reasons to exercise restraint in arms transfers: Armaments may be used by the recipient state in acts of aggression and terrorism against other countries.

a)

Even the wealth of statistics and analysis invoked to promote arms control and disarmament is unable to convey this impact adequately. People use weapons to kill other people. This truism should form the basis of South Africa's policy on arms trade.

abuses against Kurdish rebels Star 19 July 1995].

obliged to further world peace and security.

integrity of a country; not to undermine any considerations of humanity nor to suppress the legitimate aspirations of any community". [Mandela, 1994]

White Paper.

## CHAPTER 1: INTRODUCTION

### 1.1 Origin of Commission

In September 1994 a consignment of South African weapons and ammunition, ostensibly destined for Lebanon, was shipped to Yemen where it was rejected by the Yemeni authorities. The owner of the goods was the South African National Defence Force (SANDF), and the seller was the Armaments Corporation of South Africa (Arm Scor).

A public outcry followed press disclosures of the incident. It emerged that the consignment included 10 000 AK-47 rifles and that, in terms of Cabinet policy, Yemen was a prohibited destination for South African arms. The incident became known as the 'Wazan debacle', with reference to Eli Wazan, the Lebanese agent who had facilitated the transaction.

The Minister of Defence, Mr J Modise, requested a report on the matter from Arm Scor. After receiving the report, he asked the Minister of Justice, Mr AM Omar, to establish an independent commission to investigate the debacle and related issues. This Commission was the result.

### 1.2 Commission's terms of reference

The President appointed the Commission on 14 October 1994 (Government Notice R 1801, Government Gazette 16035) with the following terms of reference:

1.

(a)

To inquire into, consider and report on:

all aspects and surrounding circumstances of the transaction/s between Arm Scor and one Eli Wazan for the sale of weapons as well as arms components and related material;



CONDUCT

arms exports; it addresses the various problems associated with their application; and it suggests a new basis for classifying countries. In the light of the Commission's emphasis on export restraint, the approach outlined in this Chapter is considerably stricter than that followed by the previous government [Sections 2.2 - 2.4].

6.1 Country criteria and code of conduct

may or may not export arms. Whereas the criteria comprise general factors which should be taken into account in decision-making, the rules consist of more specific policy directives and constitute a 'code of conduct'.

The advantage of adopting a code of conduct is that it narrows the scope for discretion and flexibility in decision-making on arms exports. Country codes of conduct to regulate conventional arms transfers have similarly been proposed by the European Parliament [Saferworld, 1992:145], and in the US Senate [Hartung, 1995 :32-33]. The criteria and code of conduct described below are drawn mainly from the Commission's perspective on arms trade [Chapter 5]; the European Community Common Criteria for Arms Exports [Appendix F 1; and the communique on arms transfers and non-proliferation issued by the five permanent members of the UN Security Council in 1991 [Appendix G].

## ABBREVIATIONS

Armscor

Armaments Corporation of South Africa

CAMEC

Committee for Armaments Marketing and Export Control

DFPC

Defence Foreign Policy Committee

DVC

EUC

IIC

MTCR

NCACC

NICOC

RSA

SADC

SADIA

SADF

Delivery Verification\201cation Certificate\201cate

End-User Certificate\201cate

International Import Certificate\201cate

Missile Technology Control Regime

National Conventional Arms Control Committee

National Intelligence Co-ordinating Committee

Republic of South Africa

Southern African\200\230 Development Community

South African Defence Industry Association

South African Defence Force

SANDF

South African National Defence Force

SAPS

South African Police Service

UK

UN

US

United Kingdom

United Nations

United States

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account in decision-making. The rules would consist of more specific policy directives and would constitute a 'code of conduct'. The adoption of a code of conduct would narrow the scope for discretion and flexibility in decision-making.

## 2.] Criteria

South Africa should consider carefully whether proposed arms transfers will:

- a)
- b)
- c)
- d)
- 6)

promote the capabilities of the recipient country to meet its needs for legitimate self-defence;

serve as an appropriate and proportionate response to the threats confronting that country;

enhance the recipient's capability to participate in collective arrangements consistent with the UN Charter or requested by the UN; be at risk of diversion to a third party; and undermine export restraints applied by regional bodies of which South Africa is not a member.

## A

1 South Africa should also take into account the recipient country's compliance with the UN Conventional Arms Register and international arms control agreements.

## 2.2 Code of conduct

South Africa should export weapons and ammunition only to internationally recognised governments. Sales contracts should not be concluded with agents, private individuals, intermediate buyers, political parties. South Africa should not export arms to regimes which are under military rule or guilty of systematic violations of human rights or international humanitarian law. South Africa should avoid arms transfers which are likely to:

or rebel movements.

- a)
- b)
- c)
- d)

increase regional tension and instability;

introduce destabilising military capabilities in a region; contravene an international arms embargo or any other resolution of the United Nations;

be used for internal repression, external aggression, international terrorism or any other international law;

purpose inconsistent with the UN Charter and

### 1.3 Focus of Commission's first inquiry and report

Between October 1994 and March 1995 the Commission investigated the circumstances surrounding the Wazan debacle and certain other consignments of South African arms purportedly sold to Lebanon between 1991 and 1993. The Commission scrutinised many hundreds of documents and heard evidence from eighteen witnesses. The witnesses included Armscor officials and several of the foreign actors involved in the transactions.

On 21 June 1995 the Commission presented the President with its report on the investigation (hereinafter 'the First Report'). In summary, the Commission found that numerous acts of commission and omission by Armscor officials and foreign actors had contributed to the debacle. However, the most significant cause was a general, institutional lack of responsibility regarding the end destination of South African arms exports.

This lack of responsibility was evident at policy, operational and organisational levels on the part of the previous Cabinet, the Defence Foreign Policy Committee and Armscor.

When viewed in this context, the Wazan debacle could not be regarded as solely the product of individual mischief or as an 'unfortunate accident'. Indeed, it emerged during the inquiry that three earlier shipments of South African arms allegedly destined for Lebanon had similarly ended up in prohibited countries, namely Yemen and the former Yugoslavia.

### 1.4 Public hearing on arms trade policy and decision-making

Having completed its inquiry into the Lebanon transactions, the Commission turned to Paragraph 2 of its terms of reference which it enjoins it to comment, in the context of South Africa's national and international obligations and responsibilities, on the appropriateness of current arms trade policy and decision-making processes.

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## 11.2 Sanctions

The penalties for contravening arms control legislation, or any notice, direction or permit issued in terms thereof, should be strengthened in order to signal the seriousness of the offence and provide a more effective deterrence against transgressions:

a)

b)

0)

c1)

Individual offenders should be liable on conviction to a minimum jail sentence (as in Germany).

Company offenders should be banned from marketing and export activities for a period of up to twenty years (as in the US).

Financial penalties should be a maximum of five times the value of the exported goods (as in the US).

There should be provision for confiscation of the goods in question and/or the profits or turnover emanating from an unlawful transaction (as in several European countries). [Saferworld, 1992: 107-108]

The new arms control act should also include the following provision which establishes a positive duty to report illegal arms exports:

Any person who has information concerning an actual or prospective unauthorised sale or transfer of armaments from or through South Africa And who fails to report such information in writing to the administrative arms control body or the South African Police Service shall be guilty of an offence.

The statute should provide for sanctions in respect of both willful contraventions and acts of omission and commission which are grossly negligent (as in Germany). [Saferworld, 1992:109]

The legal penalties should extend to South African Citizens and companies who breach domestic arms controls and international arms embargoes from outside the borders of South Africa (as in the US). [Saferworld, 1992:40-41]

On 30 August 1995 the Cabinet released a memorandum on new interim policy and structures regarding conventional arms transfers. The memorandum provides for the establishment of a National Conventional Arms Control Committee (NCACC) as the ministerial control, policy and decision-making authority; the creation of an independent Inspectorate with oversight powers; and the adoption of a set of criteria for determining to which countries South Africa may and may not sell arms. [Appendix D]

This report does not evaluate the memorandum since the Commission is restricted by its terms of reference to commenting on arms trade policy at the time of its appointment.

#### 1.7 Acknowledgements

The Commission is grateful to the Danish government, the British American Security Information Council (BASIC), Saferworld, the Stockholm International Peace Research Institute (SIPRI) and Amnesty International for providing valuable resource material.

We wish to record special thanks to Dr Paul Cornish, of the Royal Institute for International Affairs in London, who served as the Commission's consultant during the public hearing and commented on earlier drafts of this report.

Finally, the Commission is indebted to the following people who rendered invaluable administrative and logistical support: Joanna Flanders from the Centre for Conflict Resolution at the University of Cape Town; Advocate Brian Sheer from the office of the Attorney-General of the Witwatersrand; Mr Donald McDonald du Plessis from the prosecutor's office at the Pretoria Magistrates Court; and various members of the SANDF.



CAMEC; verifying End-User Certificates; and monitoring observance of undertakings issued by South Africa in respect of imported armaments.

The Division should also be tasked with the additional functions proposed in Chapters 10 and 11: overseeing Compliance with control procedures by the defence industry; authenticating international import and delivery verification certificates; and co-operating with police, intelligence and customs authorities on enforcement measures.

Further, the Commission shares the view of Armscor that control over different types of armament should reside in a single government body [Section 3.6]. This body would then be charged with ensuring adherence to all international arms control agreements to which South Africa is bound.

Notwithstanding the above proposal, the SAPS should remain responsible for controlling the licensing, sale and use of small arms, ammunition, explosives and teargas within South Africa.

In summary, the Armaments Control Division would perform administrative and control functions within the Defence Secretariat. It would reject permit applications which do not comply with the country classification and other statutory and procedural requirements, and would process the remainder for CAMEC's consideration.

#### 8. 4. 2 Interdepartmental level

As is currently the case, the Armaments Control Division should submit marketing and export permits for vetting by CAMEC. [Sections 3.4 and 3.5]

CAMEC should comprise senior officials from the departments of defence, foreign affairs and trade and industry; the relevant Armscor departments; Customs and Excise; the SAPS; the National Intelligence Co-ordinating Committee; and the SANDF.

CAMEC should evaluate permit applications according to foreign policy and domestic security concerns; the country code of conduct; armaments criteria; product and

Further, a domestic arms industry guarantees confidentiality between local suppliers and the armed forces; it therefore offers the potential for surprise in battle; it ensures that products and systems are finely tuned to the needs of the military; it is able to support, maintain and upgrade local equipment and systems in a cost-effective manner; and it permits the retention of defence production capacity in peace-time. [SADIA, 1995:8-9; Defence Secretariat et al, 1995: paragraph 3.3.2; and Kasrils, 1994:11-12]

In reality though, South Africa has never been, and will never be, self-sufficient in armaments [SADIA, 1995: 19]. Certain sectors of the local industry are highly dependent on imported components and technology, and the SANDF relies on external suppliers for major weapons systems like fighter aircraft and naval ships. Direct and indirect imports currently account for approximately 40% of total procurement spending on defence [Batchelor and Willet, 1995 : 12].

In these circumstances, the problems related to recipient dependence could be mitigated by following the approach of developing countries which diversify their sources of supply [Catrina, 1995: 126-127]. This strategy is now readily available to South Africa with the lifting of the UN arms embargoes. It is also relevant that the global arms trade is characterised by the conditions of a 'buyer's market'.

Since the ending of the embargoes, the attainment of complete self-sufficiency is no longer a strategic necessity. It may now be appropriate to restructure the local defence industry, retaining only those areas in which self-reliance is of critical importance during armed conflict. These areas include electronics; communications; ammunition; the provision of spares; and the capability to maintain and upgrade existing equipment.

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## 5.2 The economic debate on arms production and exports

With the notable exception of Japan, arms producing countries regard the export of armaments as an economic imperative since the requirements of their armed forces are seldom sufficient to ensure economies of scale and the commercial viability of their defence industries.

Countries were classified along the following lines:

a)

c)

b)

Group 1 countries had no restriction on the marketing or export of armaments which had been released for marketing.

Group 2 countries could only receive 'non-sensitive' armaments.

Group 3 countries were prohibited from receiving any armaments.

Weapons, ammunition and military equipment were grouped in three categories:

a)

b)

Category A embraced 'sensitive' armaments which could be utilised in an offensive role and might offer a strategic advantage to the user.

Category B encompassed 'non-sensitive' items like vehicles, radios, anti-riot equipment, and weapons and ammunition not exceeding 12.7

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1.10.1994]. The Chairperson of the Joint Standing Committee on Defence, Mr T Yengeni, called for a parliamentary inquiry into the impugned transaction [Cape Times, 8 October 1994].

Accordingly, this Chapter proposes three major changes to the system of decision-making under the previous government:

a)

b)

0)

Arms export policy should be contained in legislation and ratified by Parliament.

Marketing and export permits should be approved at ministerial level.

Parliament should be involved in vetting export permits and determining country and armaments classifications.

The following sections elaborate on these proposals. The question of transparency is discussed in Chapter 9.

## 8.2 Policy

The Armscor Act is concerned chiefly with establishing the legal authority to undertake, control and regulate various activities related to armaments. The broader dimensions of arms export policy are contained in the Log Pamphlet which is a classified document [Section 2.2].

This approach is not consistent with the constitutional emphasis on accountability, responsiveness and openness in the affairs of government. It limits severely the public's right to debate a crucial aspect of national policy and to hold the Executive accountable for its actions.

New arms control legislation which replaces the Armscor Act should therefore go beyond procedural matters to cover the following areas:

a)

the main principles and objectives of policy;

## CHAPTER 5: CONVENTIONAL ARMS EXPORT POLICY

This Chapter presents a framework for new conventional arms export policy. It reviews the main arguments raised by the proponents and opponents of arms exports, and concludes that the ethical, political and strategic reasons for exercising restraint should have primacy over the economic motivation for selling arms.

In the context of South Africa's 'national and international responsibilities and obligations', the primary sources of which are the Constitution and the United Nations Charter, new arms export policy should be based on the promotion of international peace and security, international arms control and disarmament, and respect for human rights and fundamental freedoms.

### 5.1 The motivation for maintaining an arms industry

States have an inherent right to defend their territory and inhabitants against external military aggression. This right is recognised in Article 51 of the UN Charter which deals with individual and collective self-defence against an armed attack, and is reflected in Section 227(1)(a) of the Constitution which refers to the functions of the SANDF.

It follows that states have a right to establish armed forces for the purpose of self-defence and to acquire, through domestic manufacture or foreign procurement, the materiel required to maintain these forces.

From a strategic perspective, local arms production is regarded as preferable to dependence on imports. Such dependence could lead to external interference in domestic political and military affairs, and in times of war leave a country at the mercy of foreign suppliers. [Heitman, 1995:1-2; and Catrina, 1990:121-123]

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#### 6.1.1.1 Criteria

South Africa shall consider carefully whether proposed arms transfers will:

- a)
- b)
- c)
- d)
- e)

promote the capabilities of the recipient country to meet its needs for legitimate self-defence;

serve as an appropriate and proportionate response to the security and military threats confronting that country;

enhance the recipient's capability to participate in collective arrangements or other measures consistent with the UN Charter or requested by the UN;

be at risk of diversion to an unauthorised third party; and

undermine export restraints applied by regional bodies of which South Africa is not a member (eg the European Union and the Organisation of American States).

South Africa shall also take into account the recipient country's compliance with the UN Arms Register and international arms control agreements.

#### 6.1.2 Code Ofconduct

South Africa shall export weapons and ammunition only to internationally recognised governments. It shall export military components and technology to private defence companies only with the express approval of the government of the importing state.

South Africa shall not export arms to regimes which are under military rule or which are guilty of systematic violations of human rights or international humanitarian law.

Further, South Africa shall avoid arms transfers which are likely to:

c)

d)

e)

The right to life enshrined in our Constitution is universal. People everywhere are entitled to expect that this right is respected not only by their own government but also by other states.

An emphasis on respect for human rights and international peace and security derives from - indeed its primacy derives from - the founding charters of both the United Nations and the new South African state. As noted above, it therefore reflects a legal as well as an ethical commitment.

There is the obvious pragmatic consideration that our country would quickly regain its pariah status if it pursued a foreign policy, and trade in armaments, in defiance of this commitment. It is consequently in South Africa's interest to adopt a responsible approach to exporting arms.

With its current elevated international status, South Africa has the potential to play a leading role in multi-national efforts to regulate and contain the arms trade. The government demonstrated this potential at the 1995 Review and Extension Conference of the Nuclear Non-Proliferation Treaty [ACRONYM Consortium, 1995].

Of course South Africa's leverage is limited by the fact that it accounts for only 0.4% of the global arms trade [Kasrils, 1994:11]. The unilateral denial of weapons to one of the world's 'bad guys' is hardly likely to change its conduct, especially if other states are willing to supply it with weapons. Indeed, some analysts argue that the negative consequences of the arms trade can only be tackled effectively through a multi-lateral regime [Anderson, 1992:797-805].

Regardless of the presence or absence of such a regime, however, arms suppliers have a substantial obligation to behave responsibly. At the heart of this report lies the conviction that governments, as much as individuals, are accountable for their actions. If states deliberately or carelessly sell weapons to repressive or aggressive regimes, they bear a measure of culpability for the use to which their weapons are put.

In its First Report the Commission noted with distress the failure of Armscor officials to appreciate the devastation and human misery that may be caused by selling arms.

The Cabinet committee should comprise the ministers of defence, trade and industry, foreign affairs, the intelligence services and three additional departments which have no direct interest in promoting arms exports. In order to prevent a possible conflict of interest, the committee should be chaired by one of the three additional ministers.

The administrative arms control body responsible for processing marketing and export applications should be transferred from Armscor to the Defence Secretariat.

This body should evaluate the applications according to the country classifications, rejecting those which fall into the prohibited category. The remaining applications should be scrutinised more closely on a case-by-case basis at inter-departmental, ministerial and parliamentary levels.

The Cabinet committee should submit a list of all proposed exports to the parliamentary sub-committee on arms control at least thirty days before the intended date of export.

The sub-committee should be empowered to request Parliament to consider the appropriateness of a prospective export if it has reason to believe that that export does not comply with the country code of conduct. Parliament may debate the matter and confirm or reject by a simple majority the Cabinet committee's decision.

The parliamentary review would be facilitated if, at the start of each year, the government notified Parliament of the arms transfers it expected to initiate in the following twelve months.

The government should present to Parliament its submission to the UN Arms Register, as well as an annual report on all arms sales concluded during the previous year.

If Parliament appoints a military ombudsperson, this official should oversee adherence to arms control legislation by government departments and the defence industry. The ombudsperson would investigate allegations such as those which gave rise to this Commission.

## 5. Transparency

Transparency is an essential feature of democracy. It fulfils the right of citizens to know how public funds and the affairs of government are being managed. It also constitutes a check against abuse of power, and thereby furthers human rights concerns.

The motivation for transparent governance is entirely applicable to arms export policy and practice. Citizens are entitled to know to whom their country is selling armaments. There is little doubt that sectors of the South African public are concerned about these matters.



From an international perspective, there is broad agreement that increased transparency in arms transfers could strengthen regional and international peace and security. The protection of information for security and commercial reasons should be accommodated, where reasonable and justifiable in a democratic society, as limited exceptions to a general rule of openness. Confidentiality provisions in the new arms control act, and resort to these provisions by government, should be subject to judicial review. Where non-disclosure is sought before the courts on the grounds of national security, the standard of proof should be that disclosure would 'with a high degree of certainty lead to immediate and identifiable harm'.

The government should publish a list of prohibited and sensitive country destinations. The classification of other countries should be revealed, on a confidential basis, to the parliamentary sub-committee on arms control. The categorisation of armaments should be disclosed to the public. Domestic security and commercial interests may be protected by withholding sensitive technical details, while still providing sufficient information to allow for informed parliamentary and public comment.

A complete list of pending applications for marketing and export permits should be published on a regular basis. The list should include the name of the prospective recipient and the type and quantity of the armaments in question. South Africa should not accept non-disclosure clauses in sales contracts. South Africa should participate in the UN Arms Register without qualification. It should seek to strengthen the Register with regard to information on military holdings, national arms production and transfers of light weapons. South Africa should encourage Southern African states to comply with the UN Arms Register. It should also promote the establishment of a regional arms register. The government should publish an annual report of all arms transfers concluded in the previous year, specifying the value and content of each transaction and the name of the recipient country.

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#### 6. Organisational, operational and procedural matters

The Minister of Defence should appoint a new Board of Directors for Armscor. The process of appointment should be conducted in an open fashion which enjoys public confidence.

## 6.2 Classification of countries

The current system of classifying countries into acceptable and unacceptable recipients of South Africa arms is an important source of guidance to administrative, control and enforcement bodies. The disadvantage is that the classifications, even if reviewed on a regular basis, may fail to keep abreast of the rapidly evolving political and military situation in many states and regions.

At the Commission's public hearing on arms trade policy, it was suggested that the classification system should therefore be scrapped in favour of a case-by-case assessment of applications for marketing and export permits. The problem with this approach is that it is too open-ended and does not provide sufficient direction at lower levels of decision-making.

In the view of the Commission, the two approaches should be combined. The administrative arms control body and the inter-departmental review committee should evaluate applications according to a country classification, rejecting those which fall into the prohibited category [Sections 8.4.1 and 8.4.2]. The remaining applications should be scrutinised more closely on an individual basis at ministerial and parliamentary levels [Sections 8.4.3 and 8.4.4].

It is worth noting in this regard that all the arms producing members of the European Community maintain country lists which establish proscribed or restricted destinations for the export of armaments and dual-use goods. [Saferworld, 1992245]

The classification system should comprise the following categories:

a)

Group 1: countries which are legitimate recipients of South African arms and likely to retain this status for the foreseeable future.

b)

Group 2: countries which are prohibited from receiving South African arms.

## APPENDIX C

Cloning Communism of the Meeting of the Five  
on Arms Transfers and Non-Proliferation  
London, 17-18 October 1991

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representatives of the United States: of America, the Republic  
France, the United Kingdom, Britain and Northern  
Ireland, and the United States of America met in London on  
17 and 18 October to discuss the arms transfer to  
conventional arms transfer: and to the non-proliferation of  
nuclear weapons.  
Representatives of the United States, the Republic  
of France, the United Kingdom, Britain and Northern  
Ireland, and the United States of America met in London on  
17 and 18 October to discuss the arms transfer to  
conventional arms transfer: and to the non-proliferation of  
nuclear weapons.

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At the meeting of the High Level Group of Experts  
on Arms Transfers and Non-Proliferation  
on 17 and 18 October 1991, the High Level Group of Experts  
on Arms Transfers and Non-Proliferation, consisting of  
representatives of the United States, the Republic  
of France, the United Kingdom, Britain and Northern  
Ireland, and the United States of America, met in London  
on 17 and 18 October to discuss the arms transfer to  
conventional arms transfer: and to the non-proliferation of  
nuclear weapons.

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continue discussions on how to develop these arrangements on a  
global and regional basis in order to achieve this objective;  
Welcome work at the United Nations General Assembly on the  
early establishment of a register of conventional arms transfers, and  
supported the current consultations on this issue between a wide  
range of UN members in which they are actively participating. It  
was also called for universal support for this work;  
Noted the threats to peace and stability posed by the arms  
transfer to conventional arms transfer: and to the non-proliferation of  
nuclear weapons.

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## CHAPTER 4: OPERATIONAL

### MATTERS

#### AND ORGANISATIONAL

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Use of foreign agents  
Free-on-board shipments  
Shipping documentation  
End-User Certiï-\201cates  
Maladministration  
Disregard for internal procedures  
Management malaise  
Knowledge of previous diversions of arms exports  
Emphasis on sales  
The Armscor Act  
Conclusion

## PART 2: PROPOSALS FOR NEW ARMS EXPORT POLICY

### AND CONTROL

## CHAPTER 5: CONVENTIONAL ARMS EXPORT POLICY

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The motivation for maintaining an arms industry  
The economic debate on arms production and exports  
The strategic necessity for restraint  
Political and ethical reasons for restraint  
The argument for banning arms exports  
Towards a responsible arms trade policy  
Statement of policy

## CHAPTER 6: COUNTRY CLASSIFICATION AND CODE OF

### CONDUCT

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#### Country criteria and code of conduct

##### 6.1.1 Criteria

##### 6.1.2 Code of conduct

##### Classification of countries

##### Problems in applying country criteria and rules

##### Mitigating the problems

##### 6.4.1 Policy emphasis on restraint

##### 6.4.2 Checks & balances in the decision-making process

##### 6.4.3 Clarifying the code of conduct

##### 6.4.4 Long-term perspective

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## NCACC RATIONALE AND PRINCIPLES

### RATIONALE AND PROPOSED PRINCIPLES GOVERNING CONVENTIONAL ARMS CONTROL

#### 1 INTRODUCTION

##### 1.1

This document proposes principles on which to base a comprehensive framework on the issue of conventional arms trade control, comprising :

##### 1.1.1

8 philosophy, policy and management approach appropriate to the cost-effective utilisation of a domestic defence industry; and

##### 1.1.2

3 conventional arms trade control system to govern the marketing, import, export and transfer of conventional arms.

#### 2 RATIONALE

##### 2.1

##### Constitutional Mandate of the National Defence Force

To uphold the Constitution and protect the sovereignty and territorial integrity of South Africa. the Constitution requires the existence of a modern. balanced, technologically advanced National Defence Force (NDF). maintaining a state of preparedness sufficient to execute the functions accorded to it in the Constitution.

##### 2.2

##### South African Defence Industry

To enable the NDF to meet its constitutional obligations, the services of an efficient defence industry are required. This will permit the cost-effective purchases of certain products and systems, ensuring life-cycle maintenance and support of such systems and, perform refurbishment and upgrades, where necessary.

##### 2.3 Economic Necessities for Defence Equipment Exports

To permit cost-effective performance by the defence industry and reduce unit costs of production of items required by the NDF, the defence industry must have access to international markets.

These lists should be revised on a regular basis in the light of local technological advances, product obsolescence and international arms control developments. They should conform to international customs terminology and to the lists published by international arms control bodies in respect of weapons of mass destruction, the MTCR and dual-use goods and technology.

From time to time it may be necessary to publish lists of goods and technology which may not be exported to countries subject to international sanctions. Such lists would derive from UN Security Council resolutions and may cover a wide range of non-military items (as was the case with South Africa under apartheid). Alternatively, the sanctions may be so all-embracing as to obviate the need for a detailed list.

## 7.5 Technology transfer

In designing a new arms control system and formulating lists of armaments, attention should be paid to the following difficulties associated with the transfer of technology which is used to manufacture military equipment.

First, armaments are consumable and their operating characteristics are known. The threat they represent is more or less quantifiable. In contrast, technology is susceptible to modification; it is capable of repeated application; and it may be used to produce armaments whose features are unknown. The threat posed by technology transfer is therefore largely unquantifiable. [Saferworld, 1992:30]

Second, it is much easier to transfer technology and scientific knowledge without detection than it is to export hardware secretly. For example, the critical details of a missile system can be communicated verbally or by fax or electronic mail virtually without trace. Restrictions on such communication, however, may constitute infringements of freedom of speech and association. [Saferworld, 1992:230]

Third, technology is generally more difficult to define precisely than physical products.

As noted earlier, special problems are associated with identifying dual-use technology.



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REPUBLIC OF SOUTH AFRICA

COMMISSION OF 'INQUIRY

INTO ALLEGED ARMS TRANSACTIONS

BETWEEN A ARMSCOR

. AND ONE ELI WAZA\200\230N

AND OTHER RELATED MATTERS

TO THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

MAY IT PLEASE YOU

You deemed it expedient to appoint a Commission of Inquiry into alleged arms transactions between one Eli Wazan and other related matters, with the following terms of reference:

1.

To inquire into, consider and report on Æ.

(a)

(b)

(c)

(d)

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(ii)

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deals,

and

other

relating

to

transactions

all aspects and surrounding circumstances of the transaction/s between Armscor and one Eli Wazan for the sale of weapons as well as arms components and related materials; the facts relating to the said transaction/s as well as details of other arms arms

Icomponents and related material, during the period 2 February 1990 to date hereof with a view to the identification of any possible similarities between such other deeds and transactions and the transaction/s referred to in paragraph (a) above; the identity of all persons, parties and/or countries involved in such transactions and their antecedents; whether there was any connection between such transactions and any other matter;

whether such transactions violated (a) any law and/or (b) any international embargo; '

Whether prima facie evidence exists indicating that any person committed -

- (i)
- (ii)

a criminal offence;  
serious misconduct, negligence or impropriety.  
in the context of South Africa's national and international  
South Africa's current trade policy with regard to weapons and  
components with reference to weapons and related materials;  
and  
decision-making processes with regard to such trade.

on the-appropriateness of -

and

,

-

To comment -  
obligations and responsibilities  
(i)

-

To submit an interim report (and further  
possible.

interim reports) as soon as

2.

3.

In its First Report, handed to you on 21 June 1995, the Commission dealt  
with the incident which gave rise to its appointment, to which it referred as  
the Wazani debacle.

"Israel:

Kazakhstan:

Mexico:

Morocco:

Nigeria:

Papua New

Guinea:

Peru:

Philippines:

Togo:

Turkey:

Palestinian

disappeared Acehnese and East Timorese remains  
unknown

13 000 Palestinians were arrested on security  
grounds. Systematic torture during interrogation  
was reported. 150 Palestinians were shot dead by  
Israeli forces, some possibly as extra-Judicial  
executions.

also

committed human rights abuses

There was an unknown number of executions

The

disappeared remains

unknown. Dozens of prisoners of conscience were

detained, and reports of torture were received

Hundreds of disappeared are still missing. Over

450 political prisoners were arrested during the  
year

Hundreds were detained without charge or trial.

Dozens of extra-Judicial executions were reported

hundreds

groups

armed

fate

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prisoners were

extra-Judicially

Dozens

by  
government forces, and torture of prisoners was  
reported  
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held without  
trial, or were tried by Judicial proceedings that  
fell short of international standards. 27 people  
were executed extra-Judicially, and 49 reported  
disappeared. Abuses by the armed opposition also  
occurred.  
65 extra-Judicial executions took place, and 14  
H1 police or military  
people disappeared while  
custody  
Reports  
executions  
Armed separatists committed serious human rights  
abuses. 250 people were detained without trial  
Thousands of suspected government opponents were  
long  
arbitrarily arrested,  
25  
periods of  
Liberation  
disappearances were  
for  
Tigers  
numerous human rights abuses and executions of  
prisoners  
50 extra-Judicial executions reported, as well as  
widespread human rights abuses by security forces  
Torture of political detainees was widespread and  
systematic - 24 deaths resulted from torture, and  
Scores. were  
26 disappeared in  
killed in possible extra-Judicial killings.

unacknowledged detention.

and many held for

extra-Judicial

in custody.

responsible

reported.

of

Tamil

Eelam

were

and

300

Over

The

Although all incidents reported took place in 1993, most were the  
results of conflicts of long standing. India, for instance, has  
been troubled since independence, Indonesia has been an under-  
long  
reported trouble spot  
history of opposition and counter opposition, as has Sri Lanka.

for many years, Peru also has a

## 6.4 Mitigating the problems

### 6. 4. 1 Policy emphasis on restraint

in this light. The 'burden of proof' would then lie with justifying rather than with challenging the appropriateness of particular transactions.

### 6. 4. 2 Checks and balances in the decision-making process

In summary, the following checks and balances are proposed later in this report:



Small arms are also a principal means by which authoritarian regimes suppress minorities, opposition parties and popular dissent. There is consequently a need to pay close attention to prospective arms transfers to police and para-military forces. In summary, the Commission proposes three guidelines for evaluating applications for export permits in respect of Category Y armaments:

- a)
- b)
- c)

Major conventional weapons systems and components have particular sensitivity in the context of actual or potential interstate conflict. Light weapons and ammunition are especially sensitive in the context of actual or potential internal conflicts.

There will inevitably be exceptions to the above. Export applications should therefore be assessed on a case-by-case basis according to the character of the prospective purchaser, the intended use of the items, and the various strategic factors outlined earlier.

### 7.3 Category Z: dual-use goods and technology

which can be transformed for military production. Second, it is extremely difficult to identify which items fall within the dual-use category; indeed, the scope for military application of civilian technology is virtually limitless. A broad selection of controlled items may impose an undue burden on domestic producers, but a narrow selection may lead to the uncontrolled export of goods with

g)

The Non-Proliferation Secretariat of the Department of Trade and Industry monitors sensitive products, components and technologies in terms of the Non-Proliferation Act.

CAMEC thus provides an opportunity for the relevant government body to comment on product and supplier integrity; marketability and supportability of products; production capacity in relation to local requirements; technology transfer; end-user undertakings issued by South Africa in respect of imported components; and the protection of various other interests.

The permit process ensures that companies do not market their goods in regions where arms trade is prohibited; that companies do not expend marketing resources fruitlessly where there is no prospect of exports being approved; and that South Africa's security and strategic capabilities are not compromised by any marketing actions.

A marketing permit defines the rules within which the marketer can operate. It is valid

for an initial period of two years and may be extended thereafter for 12 month periods.

The permit will be withdrawn if exports to the country in question are prohibited in the intervening period.

### 3.5 The export permit

A prospective exporter, having obtained a marketing permit and concluded a sales contract in terms thereof, must apply for an export permit on the prescribed form. The application must be accompanied by documentary proof of the contract in the form of an official order, contract or Letter of Credit.

Since the lifting of the arms embargoes against South Africa in May 1994, the procurement of an End User Certificate (EUC) has been an additional requirement. In international arms trade practice, an EUC serves to confirm the identity of the purchaser and the content of the proposed sale. The document also provides that the purchaser will not resell or transfer the arms to a third party without the permission of the exporting country.

The proposals listed below are intended to reï\202ect the new Constitution and democrati  
c  
order, while taking account of the arguments against full transparency.

#### 9.4 Proposals

##### 9. 4. 1 Policy

The legislation should be accompanied by a White Paper which presents the philosophy, rationale and mechanics of government policy. [Section 8.2]

##### 9. 4. 2 Counny classiï\201cation

The government should publish a list of prohibited and sensitive country destinations (as in Japan, Germany, the US and the UK). [Saferworld er al, 1995: Chapter 5]

##### 9. 4. 3 Armaments classiï\201cation

The categorisation of armaments should be disclosed to the public, subject to this qualiï\201cation: domestic security and commercial interests may be protected by withholding sensitive technical details, while still providing sufi\201cient information to  
allow for informed parliamentary and public comment.

##### 9. 4.4 Marketing and export applications

Nevertheless, the control system suffers from a number of critical shortcomings which will have to be addressed when formulating new policy:

a)

b)

Many of Armscor's operational and organisational features reflect considerable disregard for where South African arms end up, thereby undermining an essential purpose of the permit process. [Chapter 4]

The Armscor Act creates the anomaly that a single agency is responsible for marketing and selling armaments on the one hand, and for controlling arms exports on the other. The Commission's inquiry into the Wazan debacle revealed that the former activities took precedence over the latter. [Section 4.9]

The Commission's inquiry also highlighted the necessity for more effective monitoring and enforcement measures on the part of police, intelligence and customs authorities. [Section 11.3]

(1)

Statutory control over different types of armament is decentralised. The Commission shares the view of Armscor that this reduces the efficacy of

- the control system. [Section 8.4.1]

While policy was formulated by Cabinet, the implementation thereof was handled entirely at departmental level or by Armscor. Given the political sensitivity of the arms trade, the issuing of marketing and export permits should be approved at ministerial level and should be subject to parliamentary oversight [Sections 8.4.3 and 8.4.4]

As indicated above, sensitive technical details need not be disclosed. Save with this qualification, South Africa should not accept non-disclosure clauses in sales contracts.

#### 9.4.5 Judicial review

Confidentiality provisions in the new arms control act, and resort to these provisions by government, should be subject to judicial review.

Where non-disclosure is sought before the courts on the grounds of national security, the standard of proof should be that disclosure would "with a high degree of certainty lead to immediate and identifiable harm" (as in the US). [Freedom of Expression Institute, 1995:3-5]

#### 9.4.6 UN Arms Register

South Africa should participate in the UN Arms Register without qualification. It should support proposals to strengthen the Register, especially with regard to information on military holdings and national production.

South Africa should also press for the Register to be expanded to include data on light weaponry [Laurance, 1995: 149-154]. While this will undoubtedly pose methodological problems, it is important to recognise that accumulations of light weapons are destabilising in many regions and exacerbate internal conflicts [Section 7.2].

#### 9. 4. 7 Regional initiatives

South Africa should encourage the member states of the Southern African Development Community (SADC) to comply with the UN Arms Register.

South Africa should also promote the establishment of a regional arms register in Southern Africa. [Marino, 1994; Boutros-Ghali, 1994:24]

Armcor is mandated to develop, manufacture, purchase, import, export and promote the sale of arms [Section 3(2)(1)]. It is also responsible for exercising control over the development, manufacture, export and marketing of arms [Section 3(2)(IA)]. It will be suggested below that these two sets of functions should not reside in the same institution [Section 4.10 of this report].

The Act provides that no armaments shall be marketed or exported except under the authority of, and according to the conditions stated in, marketing and export permits issued by the Minister of Defence or a person authorised by him [Sections 4C(1)(a)]. Under the previous government, the Minister delegated the issuing of permits to Armcor.

Section 4E stipulates that any person who contravenes the terms of a permit, notice or Ministerial direction issued under the Act shall be guilty of an offence. Such person shall be liable on conviction to a fine of up to R10 000 and/or a period of imprisonment for up to ten years. Section 11A prohibits disclosure of information relating to armaments.

### 3.2 Government Notice No. R888

Government Notice No. R888 of 13 May 1994 contains two schedules listing the types of armaments which may not be developed, manufactured, exported, imported or conveyed through South Africa without a permit as contemplated in Section 4C of the Armcor Act.

Schedule 1 lists "general armaments" in fourteen categories. Schedule 2 lists items related to missile technology, in respect of which a permit is also required by the Non-Proliferation of Weapons of Mass Destruction Act, 87 of 1993 (hereinafter 'the Non-Proliferation Act').

The Notice revises and consolidates previous schedules as a result of local technological advances, the government's adherence to the Missile Technology Control Regime (MTCR), and its accession to the Inhumane Weapons Convention. [See Appendix C]

APPENDIX B

AUTHORS OF WRITTEN SUBMISSIONS TO THE PUBLIC  
HEARING OF THE CAMERON COMMISSION, CAPE TOWN,

JUNE 1995

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South African National Defence Force and Defence Secretariat  
South African Defence Association  
British American Security Information Council  
Dr Colin S Gray

Terry Crawford-Browne for Archbishop Tutu  
ARMSCOR

Royal Danish Embassy, Pretoria  
Dr Jakkje Cilliers, Institute for Defence Policy  
Professor Jacldyn Cock

Southern African Catholic Bishop's Conference  
Professor I H van Wyk

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Saferworld, England

The Black Sash

Professor D A du â\200\230Toit

Dr Kelvin Kemm, STRATEK

Peter Batchelor and Sue Willet, Centre for Coni-\202ict Resolution

Relatives for Justice, Northern Ireland

Freedom of Expression Institute

Department of Foreign Affairs

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Graeme Bloch

R P Kalil



human rights records of recipient states. As a result, South Africa contributed through its arms sales to widespread loss of life, injury and destruction of property in many regions (see, for example, Human Rights Watch, 1994a).

This approach is entirely inconsistent with a responsible arms trade policy. It is untenable in the light of South Africa's new Constitution, democratic dispensation and international obligations and responsibilities.

The following fundamental issues consequently need to be addressed:

a)

The formulation of new arms export policy which reflects a sound balance between political, ethical, strategic and economic factors, and which takes full account of international norms and the necessity to respect human rights. [Chapter 5]

b)

The inclusion in the policy of criteria and rules for determining to which countries South Africa may or may not sell particular categories of armaments. [Chapters 6 and 7]

c)

The identification or establishment of appropriate bodies to formulate and implement these criteria and rules, and to review their application. [Chapter 8]

## 2.2 Policy determinants

A system of country and weapons classification does not in itself constitute arms export policy. Policy comprises, inter alia, clearly defined norms and guidelines for assigning countries and weapons to particular categories within the system. In this regard, Armscor's submission to the public hearing convenes; by the Commission states that "typical considerations for the classification of countries were similar to those used by other major exporting countries". The submission describes the criteria adopted or proposed elsewhere in the world, but does not list those which applied in South Africa. [Armscor, 1995a:6 and 24-26]

The following extracts from the Log Pamphlet of 1993 (as translated) provide more detail on policy goals, strategies and constraints.

A strong internationally competitive armaments industry has been established with great care and effort in the Republic of South Africa (RSA). This industry is regarded, as a result of its capital and labour intensity, as a valuable asset and of strategic value for the RSA with the result that every effort is made to ensure that the industry survives under prevailing economic trends nationally and internationally, and to expand it in the best interests of South Africa. [Paragraph 1]

Armscor would like to be seen by the international community as a responsible supplier of armaments and will do everything in its power to prevent them from falling into the wrong hands and, as a result, harm South Africa's own strategic capabilities or that of friendly countries. [Paragraph 8(a)]

Armscor shall at all times take into consideration all international and national treaties, regimes, acts and related regulations in connection with arms proliferation, and accordingly shall apply control and monitoring measures and take steps to ensure that [marketing and export] actions take place within the confines thereof. [Paragraph 8(b)]

SOUTH AFRICA'S PARTICIPATION IN INTERNATIONAL  
ARMS CONTROL INITIATIVES, (EXTRACT FROM ARMSCOR.  
1995:)

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Arms trade control in South Africa was not transparent during the period when the UN arms embargo was in force. neither was South Africa able to co-operate with the international community in arms control initiatives. since the lifting of the arms embargo. that this has become possible. Article 26 of Chapter-IX of the UN Charter states:

"in order to promote the establishment and maintenance of international peace and security with the least diversion for armaments of the world's human and economic resources. the Security Council shall be responsible for formulating, with the assistance of the Military Staff Committee referred to in Article 47, plans to be submitted to the members of the United Nations for the establishment of a system for the regulation of armaments."

According to Goodridge, the emphasis of the UN Charter is upon maintaining a floor, as well as a ceiling, for national armaments. A floor is seen to be necessary because it is important that adequate armaments be available for the maintenance at peace, while a ceiling would prevent the unnecessary diversion of resources to arms-races that threaten international security.

Armament transfers are an important element of international trade. but because transfers take many forms. from normal trade to gifts. it is not easy to determine the exact magnitude thereof. Armaments transfers have important economic. commercial and foreign policy implications.

transfers have moved away from hand-to-hand and direct sales of materiel to the sale of advanced systems that require special training". The transfer of weapons. necessary to enable states to meet their legitimate self-defence needs as embodied in Article 51 of the UN Charter. is recognised as an inherent right. Many developing countries and, under-developed countries do not have economic resources to develop their own defence industries are reliant on the acquisition of arms and related goods from external sources.

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The Board should play an active role in exercising its statutory duty to manage and control the affairs of the corporation. It should be mandated to oversee the transformation of Armscor.

The Board should direct management to eliminate procedures which were designed to evade the arms embargoes; reinforce means of ensuring that arms exports end up at the authorised destination; develop effective management, administrative and financial systems; and introduce an educational programme on new policy for Armscor personnel.

Sales of weapons and ammunition should be concluded directly with the relevant government authority in the country of import.

If military components or technology are sold to a private defence company, the supplier should be obliged to obtain an International Import Certificate which records formal approval of the sale by the relevant authority in the importing country.

An intelligence agency should conduct regular assessments of the bona fides of all agents with whom Armscor and the defence industry work. The agency should maintain a register of these agents.

Export permits should not be granted in the absence of an End-User Certificate (EUC) issued by the importing government. The responsibility for procuring the EUC should lie with the administrative arms control body in South Africa rather than with Armscor or the defence industry.

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The EUC should indicate clearly the identity of the issuing authority; the specifications and quantity of the armaments in question; and a commitment not to resell or transfer the arms without the permission of the responsible ministry in South Africa.

In the event of an importing country acting in breach of this commitment, the transgression should be publicised internationally. All further arms sales to that country should be prohibited.

The supplier should be required to obtain a Delivery Verification Certificate which confirms that the goods have arrived at the correct destination and been collected by the designated purchaser. The arms control body should verify receipt of the goods through diplomatic channels.

Arms consignments should be sold 'cost, insurance and freight' rather than 'free-on-board'. In terms of the former shipping arrangement, the supplier is responsible for organising the transport of the goods to the country of import.

c)

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Group 3: countries which cannot be placed easily in either of the above categories. Prospective exports to these countries would require especially rigorous evaluation.

As is currently the case, a Cabinet committee should be responsible for approving the allocation of countries to these groups and for reviewing the classifications on a quarterly basis [Section 2.1]. The allocation and review should be based on the criteria and code of conduct outlined above.

Outstanding sales and service contracts should be cancelled immediately if the status of the importing state is downgraded to the prohibited category.

### 6.3 Problems in applying country criteria and rules

The Commission's critique of the Log Pamphlet revealed two significant problems in applying country guidelines to individual states for the purpose of controlling arms exports [Section 2.4]. First, most of the guidelines require the exercise of subjective political or military judgement. The guidelines may be broadly or narrowly interpreted, with substantially different consequences.

Second, it is difficult to make long-term predictions about states and inter-state relations. A country which is currently an acceptable recipient of arms may quite quickly lose that status as a result of internal or external developments. If weapons have

already been sold to that country, they may end up being used for repressive or aggressive purposes.

This danger is greatest in developing countries and politically volatile regions, as illustrated by South African arms sales to Rwanda. Armscor exported R100 million worth of weapons to the Rwandan government between the late 1980s and early 1993, at which time delivery ceased because of the deteriorating situation in Rwanda [Section 2.4]. Nevertheless, South African weapons were amongst those used in the ensuing campaign of genocide [Human Rights Watch, 1994a: 16-17].

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Agreed Guideline: on Conventional Arms  
The Peopleâ\200\231s Republic of China, the French Republic, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America, and reaffirming the principles which they stated as a  
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of the purposes and principles of the UN Charter,  
Mindful of their special responsibility for the maintenance of international peace and security,  
Reaffirming their commitment to seek effective measures to promote peace, security, stability and arms control on a global and regional basis in a fair, reasonable, comprehensive and balanced manner. . . Noting the importance of encouraging international commerce for peaceful purposes,  
Determined to adopt a serious, responsible and prudent attitude of restraint regarding arms transfers,  
Declare that, when considering under their national control procedures conventional arms transfers, they intend to observe rules of restraint, and to act in accordance with the following guidelines:

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### 3. Armaments classification

control:

a)

categorised along the following lines for the purpose of export

Category X would embrace items which may not be exported in certain circumstances because of their sensitivity

b)

c)

controls.

Category Y would consist of all other armaments and military technology, the export of which is assessed on a case-by-case basis and requires a government permit.

Category Z would include dual-use items which are subject to varying controls. Category Y armaments cannot be classified in abstract as sensitive or non-sensitive. This distinction depends on the context of each prospective sale. The appropriateness of exporting these armaments should therefore be assessed according to the situation in the importing country and the intended use of the arms.

While major conventional weapons, light weapons and ammunition are controlled in the context of actual or potential internal conflict, the export of these items requires a government permit. Control over different types of armament, which currently vests in various government departments, should be centralised in a single agency.

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### 4. Decision-making and oversight

Country classifications should be determined at an inter-departmental level according to the code of conduct outlined above. The classifications should be approved by a sub-committee on arms control.

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and global 'police force'. For as long as there are no effective international safeguards against aggression, states will regard the right of self-defence as fundamental.

With this in mind, and in the light of the South African government's declared intention to export armaments in a responsible fashion [Mandela, 1994], the rest of this report considers the features and mechanics of a responsible arms trade policy.

## 5.6 Towards a responsible arms trade policy

In formulating national arms control policies, supplier states seek to balance the conflicting economic, strategic, political and ethical perspectives outlined above.

The previous government established and maintained an arms industry for strategic reasons in the context of apartheid and the arms embargoes against South Africa. Arms export policy was driven by economic factors, though not at the expense of domestic security concerns. Ethical constraints did not enjoy much prominence. [Chapter 2]

The arguments for retaining this balance are raised frequently and are well known: 'if we don't sell arms, someone else will'; 'guns don't kill, people do'; and 'international relations are based on interests, not ideals'.

For the following reasons, the Commission is of the view that these arguments do not withstand scrutiny:

a)

b)

It is difficult to take seriously the notion that South Africa should be unconcerned about inflicting on other countries the anguish and destruction that it itself endured over the past decades.

Armaments are unlike any other commodity because they are designed for the use or threat of force. As inanimate objects they may be regarded as morally neutral, but arms transfers clearly have moral implications and thus, inescapably, entail moral choices on the part of supplier states.



increase regional tension and instability;

introduce destabilising military capabilities in a region;

contravene an international arms embargo or any other resolution of the United Nations;

d)

be used for internal repression, external aggression, international terrorism or interference in the internal affairs of a sovereign state;

be used for any other purpose inconsistent with the UN Charter and international law;

seriously undermine the recipient state's economy;

g)

11)

prolong or aggravate an existing armed conflict, save where the recipient is recognised by the UN Security Council to be defending itself against aggression; or

in any way undermine South Africa's security, strategic capabilities or foreign interests.

Put positively, South Africa shall export arms only for the purpose of:

a)

b)

c)

individual or collective self-defence as defined in the UN Charter;

the legitimate maintenance of good governance and internal stability; and

peace operations authorised by the UN Security Council.

South Africa shall under no circumstances export weapons of mass destruction and related technology.

South Africa shall adhere strictly to all international arms control agreements to which it is bound.

- b)
- 0)
- d)
- e)

the country code of conduct;

the basis for classifying armaments;

authority for decision-making at all levels; and

the principal means of ensuring that exports do not end up in the wrong hands (eg through the procurement of End-User Certificates).

Legislating these issues would confer on Parliament a substantive role in formulating policy and overseeing its implementation. It would give juridical status to the relevant norms and rules, thereby limiting the scope for deviations from policy. It would also provide more precise guidance to the defence industry and to administrative, decision-making and enforcement bodies.

The draft Act should be accompanied by a government White Paper which explains in greater detail the rationale, philosophy and mechanics of new policy.

Of course the focus of the legislation and the White Paper need not be confined to arms

exports. The former could cover the full range of activities related to armaments (ie research, development, manufacture, import, transit etc), and the latter could address the various issues outlined in Chapter 5 regarding the future of the defence industry.

### 8.3 Classification of countries and armaments

As is currently the case, the classification of individual countries should be determined

at an inter-departmental level, approved by the responsible Minister or Ministers, and ratified by Cabinet [Section 2.1]. This process should apply equally to the categorisation of armaments.

Once ratified by Cabinet, the classifications should be reviewed by a parliamentary sub-

committee on arms control comprising members of the parliamentary committees

## PROPOSALS FOR NEW ARMS EXPORT POLICY AND CONTROL

### PART 2

The time has also come for us to recognise the need to deal squarely with the mounting toll of death, destruction and human suffering inflicted by the use of conventional weapons in conflicts around the world. ...The term 'conventional' should not hide or render banal the vast destructive powers

responsible for defence and foreign affairs. The sub-committee should be empowered in law to recommend changes to the classification lists.

The above proposals should be followed in respect of regular review and revision of the classification lists.

#### 8.4 Marketing and export permits

This Section addresses administrative, decision-making and oversight functions in respect of marketing and export permits at departmental, inter-departmental, ministerial and parliamentary levels.

##### 8. 4.] Departmental level

Applications for marketing and export permits are currently received and processed by Armscor's Armaments Control Division. As noted earlier, this arrangement is clearly inappropriate since Armscor is also responsible for marketing and selling arms [Section 4.10].

Ideally, the administrative arms control body should reside in a government department which does not have a direct interest in promoting arms exports. This would preclude the body from being located in the ministries of defence, foreign affairs and trade and industry. Other ministries, however, do not have the requisite expertise in the arcane world of military technology and international arms controls.

For pragmatic reasons, the Armaments Control Division should therefore be housed in the Defence Secretariat under the supervision of the Secretary for Defence. A proposal to this effect has been made by Armscor [Armscor, 1995:2129]. As discussed below, the problem of conflict of interest would be addressed through checks and balances at higher levels of decision-making.

The Division should retain its current duties: ensuring that marketing and export applications comply with statutory and procedural prescriptions (including the country code of conduct and classification lists); registering applications and submitting them to

The South African arms industry produces roughly 4% of all manufacturing output; it contributes 1.1% of the GDP; and it provides an estimated 48 600 jobs [SADIA, 1995 :9-12]. Export sales amounted to R886 million in 1993/4 and R854 million in 1994/5, resulting in a positive trade balance in defence equipment of R124 million in 1993/4 and R335 million in 1994/5 [Arm Scor, 1995b:22].

The economic motivation for exporting arms has, however, been challenged in academic studies of military production in both developing and industrial countries. While individual companies may profit from selling arms, at a macro-economic level the returns are usually offset by state subsidies. [Hartung, 1994; Brzoska, 1989; and

Ball, 1988]

In the South African context, Batchelor and Willet argue that the net economic benefits of arms exports are marginal once direct and indirect subsidies are taken into account. These subsidies include export incentives under the General Export Incentive Scheme,

Willet, 1995: 12-14]

In 1994 South Africa's arms exports accounted for little more than 1% of total exports and 2% of manufactured exports. The official balance of trade in defence-related products excludes the costs of importing capital goods and other intermediate inputs; if these costs were included, South Africa might register a negative trade balance in military equipment. [Batchelor and Willet, 1995: 12]

since military production is capital-intensive and absorbs substantial resources; in the 1980s as much as 30% of government spending on research and development was

Category C products were not released for marketing due to the sensitivity of their foreign content; or because they were still being-developed for the SANDF; or because they might hold a strategic advantage or disadvantage for South Africa.

The Defence Force was responsible for the classification of armaments. The classification of countries was based on recommendations by the Defence Foreign Policy Committee (DFPC). These recommendations were approved, in turn, by the Minister of Defence, the State Security Council and Cabinet. The DFPC reviewed the classifications on a quarterly basis.

The DFPC initially comprised representatives of Armscor and the South African Defence Force (SADF). In 1992 the Department of Foreign Affairs and the National Intelligence Service joined the committee, and in 1994 the Department of Trade and Industry became a member. From 1991 the chairpersonship alternated between the Defence Force (Chief of Staff Intelligence) and Armscor (General Manager Import and Export Control).

The country and weapons classifications as approved by Cabinet were contained in a confidential military document known as the Log 17 Pamphlet 19 (hereinafter the 'Log Pamphlet') [Section 3.3]. The 1989 and 1993 versions of this document were disclosed to the public in controversial circumstances during the Commission's inquiry into the Wazan debacle.

At the time of the Commission's appointment, the classification system and the classifications contained in the Log Pamphlet were under review by the new Cabinet. The Deputy Minister of Defence had assumed the chairpersonship of the DFPC, and the State Security Council had been replaced by the Cabinet Committee for Security and Intelligence Affairs.

As noted above, in August 1995 the Cabinet announced a substantial revision of arms control policy and the establishment of the NCACC as the ministerial body responsible for this area. [Appendix D]

### 11.3 Enforcement

wrongdoing.

The South African Police Service (SAPS) should have a dedicated unit for investigating alleged arms control contraventions.

The SAPS and NICOC should perform these functions in co-operation with Interpol

The above proposals should be formalised in government regulations. The regulations should provide for functional co-operation between the administrative arms control body, the SAPS, NICOC and Customs and Excise. The latter bodies should be represented on CAMEC [Section 8.4.2].

PART 1

CURRENT ARMS EXPORT POLICY AND CONTROLN



(b)

(c)

(d)

(e)

(f)

the facts relating to the said transaction/s as well as details of other arms deals, and other transactions relating to arms components and related material, during the period 2 February 1990 to date hereof with a view to the identification of any possible similarities between such other deals and transactions and the transaction/s referred to in paragraph (a) above;

the identity of all persons, parties and/or countries involved in such transactions and their antecedents;

whether there was any connection between such transactions and any other matter;

whether such transactions violated (a) any law and/or (b) any international embargo;

whether prima facie evidence exists indicating that any person committed:

(i)

(ii)

a criminal offence; and

serious misconduct, negligence or impropriety.

To comment - in the context of South Africa's national and international obligations and responsibilities - on the appropriateness of:

(i)

(ii)

South Africa's current trade policy with regard to weapons and components with reference to weapons and related materials; and

decision-making processes with regard to such trade.

To submit an interim report (and further interim reports) as soon as possible.

Former members of the SADF, now operating as mercenaries, are allegedly involved in the illicit gun-running. The problem of mercenary ventures is itself extremely serious and warrants urgent government attention. While this issue falls outside the Commission's terms of reference, there are obvious analogies to be drawn between the transfer of armaments and the 'export' of military services. In neither case is it tolerable that the activity occurs in the absence of strict government control.

Countries [to which arms exports are prohibited] are normally a threat to international peace or otherwise politically unstable, or are hostile to South Africa. [Paragraph 9(0)]

The introduction to the 1989 version of the Log Pamphlet notes that because of limited domestic demand for weapons and ammunition, production capacity is not utilised optimally; unit costs are therefore high in comparison with similar equipment sold elsewhere in the world. The Cabinet had therefore accorded "the highest priority to the marketing of armaments". [Paragraphs 3 and 4, Log 17 Pamphlet 19, 1989]

Before evaluating the way in which this policy was applied in practice, six preliminary observations can be made:

a)

b)

0)

(1)

The primary policy objectives were to maintain the arms industry for strategic reasons and to increase arms exports for economic reasons.

The criteria for classifying countries were relatively vague. The Armscor and government officials who testified before the Commission were unable to shed further light on this subject.

There was no reference to human rights as a policy consideration.

Despite the stated emphasis on international concerns, the Department of Foreign Affairs only joined the DFPC a decade after its formation.

Before 1992, foreign policy matters were handled by the SADF and Armscor at departmental level.

e)

The Log Pamphlet of 1993 provided that deviations from the country Classification were permissible under "exceptional circumstances" but did not define these circumstances. [Paragraphs 9(a), (b) and (0)]

Apart from these comments, more meaningful conclusions about South Africa's arms export policy can be drawn from an analysis of its implementation. The following Sections consider Lebanon as a case study and review the country classification contained in the Log Pamphlet.

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Nuclear non-proliferation treaty

South Africa acceded to the Nuclear Non-Proliferation Treaty on 10 July 1991. This treaty is aimed at preventing the spread of nuclear weapons to non-nuclear weapons states.

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Missile Technology Control Regime

The Missile Technology Control Regime was formed in 1991 with its main focus on harmonising export controls on missile related technologies, materials and components that could be utilised in the manufacture of missile systems with a range of more than 300km. Initially it made provision for a warhead of more than 500kg, but because of CWC and BWC concerns, the payload criterion has been dropped as CB warheads can be fairly small.

South Africa is not yet a member of the MTCR, but has entered into a bilateral agreement with the United States, who acts as custodian of the MTCR, to effect an acceptable control mechanism in the RSA in relation to MTCR

CONCERTS.

A8

South Africa's obligations in terms of the MTCR are embodied in:

(a)

(b)

The Non-proliferation of Weapons of Mass Destruction Act (Act No 87 of 1993) and subsequent Government Gazette Notice R1789 of 14 October 1994, which address the CWC and MTCR proliferation

concerns.

Government Gazette Notice R888 of 13 May 1994 issued in terms of the Arms and Ammunition Development and Production Act, 1968 (Act No 57 of 1968), which addresses control over the conventional use of MTCR-listed items, as many of the technologies and components of MTCR concern have a dual-use application.

A9

Inhumane Weapons Convention

The inhumane Weapons Convention of the United Nations was opened for signature in 1981 and entered into force on 2 December 1983. its intention is

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The Chemical Weapons Convention (CWC) was formed in 1993 to serve as a watchdog relating to chemical

weapons and related substances. SA acceded to the CWC in 1994.

The Biological Weapons Convention (BWC) is in the process of being finalized. to serve as a watchdog over

biological weapons and related substances.

The MTCR- bilateral with the US Government was signed in 1994 and is being approved by Cabinet

The administration of Act 87 of 1993, ie the responsibility of the Non-proliferation Secretariat of the

Deplnment of Trade and industry.

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to it:  
recommendations regarding enactment of new legislation;  
responsibility for enforcement of legislation.

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South  
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in

It will be evident from this agenda. that the Commission's inquiry will focus  
The following issues are considered relevant

primarily on arms export policy.  
but of secondary importance to the inquiry:

arms imports policy; privatisation and diversification of the arms industry;  
and the State  
conversion to civilian production;  
subsidy of the arms industry.

counter-trade policy;

The Commission hereby requests

interested

parties

to make written

submissions to the Commission by Monday 5 June 1995.

The submissions should be addressed to:

Advocate Brian Sheer  
Advocate leading evidence on behalf of the Commission  
Office of the Attorney-General of the Witwatersrand  
Private Bag X 8

JOHANNESBURG  
2000

The Commission will after consultation inform the public and the parties of  
the procedures to be followed at the hearing. and how they are to be determined.

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DONALD MC DONALD DU PLESSIS  
' SECRETARY TO THE COMMISSION





## 2.5 The context of apartheid and the arms embargoes

The Commission noted in its First Report that it could not provide a definitive explanation for the manifest irresponsibility which characterised South Africa's arms export policy under the previous government. However, it seemed probable that two related developments were significant contributing factors.

At a general level, the National Party government before 1990 was determined to maintain the system of apartheid through repressive means. The immorality of domestic policy extended naturally to foreign policy. A state which injured and killed its own people was hardly likely to respect the citizens of other countries. More specifically, South Africa's internal and external policies led to the imposition of international arms embargoes against our country. The UN Security Council prohibited states from exporting arms to South Africa [Resolution 418 of 1977], and requested states to refrain from importing arms from South Africa [Resolution 558 of 1984]. While the embargoes stimulated the growth of the domestic arms industry, they also restricted the government's ability to buy and sell weapons freely and openly. Armscor consequently functioned behind a wall of secrecy; it relied on front companies and other clandestine methods to evade the embargoes; and it operated in the world of illicit arms dealing.

The government's overriding imperative was to manufacture, purchase and export arms in order to secure the survival of minority rule and the armaments industry. This imperative was not tempered by the constraints of independent scrutiny, public accountability or international norms.

## 2.6 Conclusion

South Africa's arms export policy at the time of the Commission's appointment was formulated in the context of apartheid, international isolation and the arms embargoes against this country. The policy was based primarily on strategic and economic concerns. There was insufficient regard for the political stability, foreign posture and

A marketing permit or a contract between Armscor and a local defence company is deemed sufficient authorisation for the development and manufacture of arms.

Statutory control over different types of armament vests in different agencies, with some considerable overlap:

- a)
- b)
- c)
- d)

Armscor controls conventional arms; anti-riot equipment; explosives; and MTCR-related products (the Armscor Act).

The SAPS controls small arms and ammunition (the Arms and Ammunition Act, 75 of 1969); teargas (the Teargas Act, 16 of 1964); and explosives (the Explosives Act, 26 of 1956).

The Department of Trade and Industry controls all commercial products (the Import and Export Control Act, 45 of 1963); weapons of mass destruction and MTCR-related products (the Non-Proliferation Act); and space technology (the Space Affairs Act, 84 of 1993).

The Atomic Energy Corporation controls nuclear technology (the Nuclear Energy Act, 92 of 1982).

Finally, it should be noted that in April 1992 most of Armscor's manufacturing subsidiaries were transferred to a new state-owned company, Denel, which is accountable to the Minister of Public Enterprises. Armscor retained responsibility for 'marketing facilitation', arms trade control and the acquisition of armaments and related products for the Defence Force, the SAPS and other government departments.

### 3.7 Comment

The regulation of conventional arms exports appears, at least on paper, to have been relatively comprehensive and thorough. The controls have been reinforced over the past eighteen months in the light of the ending of the arms embargoes, the election of the new government, and the Wazan debacle.

9. 4. 8 Annual report of exports

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At the time of the Commission's appointment, South Africa's conventional arms control policy was expressed chiefly in the Armaments Development and Production Act, 57 of 1968 (hereinafter 'the Armscor Act'); Government Gazette Notice No. R888 of 13 May 1994; and the SANDF policy directive Log 17 Pamphlet 19.

Section 1 defines 'armaments' as including the following:

"any vessels, vehicles, aircraft, bombs, ammunition or weapons, or any substance, material, raw material, components, equipment system, articles or technique of whatever nature capable of being used in the development, manufacture or maintenance of armaments or for defence purposes or other purposes determined by the Minister with the concurrence of the Minister of Economic Affairs".

Section 3(1) provides that the objects of Armscor "shall be to meet as effectively and economically as may be feasible the armaments requirements of the Republic, as determined by the Minister, including armaments required for export".

End Use Certificates are obligatory in respect of dual-use items governed by the Inhumane Weapons and Non-Proliferation regulations. ('Dual-use items' refers to goods and technology which have both military and civilian application).

Another important development occurred in May 1995. Whereas previously the head of the Armaments Control Division had sole responsibility for issuing export permits, the process is now handled in the same way as marketing permits. Once verification of the transaction is complete, CAMEC assesses the export application and makes a recommendation to Armscor's Management Board for final approval.

Exceptions might be made in special circumstances, however. For example, a company may want to export sheets of armour plate for the purpose of testing a cutting machine it is interested in purchasing.

The conditions attached to the export permit state that the seller is obliged to confirm that the export has been effected within seven days of the indicated export date. This is achieved by returning a copy of the permit, duly certified by Customs and Excise, to the Armaments Control Division.

### 3.6 Other controls

Section 4C of the Armscor Act provides that no armaments may be imported or conveyed through the Republic without a permit. The issue of such permits will take into account the laws of other countries, particularly with regard to end-user undertakings.

The main arguments in this regard can be summarised as follows:

- a)
- b)
- c)
- d)

Many facets of foreign policy are sensitive and cannot be conducted openly. Parliament and the public should trust the Executive to undertake 'quietâ\200\231 diplomacy in these areas.

The publication of country classiï-\201cations would embarrass states which are prohibited from receiving South African arms. These states might react by severing diplomatic and commercial relations with South Africa. Importing states may not want their arms acquisitions revealed to their adversaries or potential adversaries. South Africa may consequently lose customers if it rejects non-disclosure clauses in sales contracts. The defence industry might lose its competitive edge, especially in niche markets, if the details of innovative technology were publicised.

These arguments should be given due weight. However, it would be inappropriate to regard them as absolute imperatives which override, and thereby undermine, a fundamental constitutional principle. Rather, the challenge is to accommodate the points, where reasonable and justiiï-\201able in a democratic society, as limited exceptions to a general rule of openness.

An excellent formulation of this position is provided by the Chief of the SANDF in respect of revisions to the Defence Act:

"Laws must be deiï-\201ned in such a way that they restrict denial of access to information to the minimum possible and only leave [undivulged] the absolutely essential matters which may be truly to the detriment of the State". [Quoted in Freedom of Expression Institute, 1995:1]

When measured against this test, the relevant provisions of the Armscor Act are clearly excessive. Section 11A stipulates a general prohibition on disclosure of information relating to armaments.

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indiscriminate bombardment which does not distinguish between military targets and civilians. Certain types of munition, like cluster bombs, may be especially prone to such abuse. [McCoubrey and White, 1992: 189 257]

By way of illustration, in December 1994 the US Administration cancelled the sale of cluster bombs to Turkey on the grounds that the weapons might be used against Kurdish civilians. [Hartung, 1995: 16]

Evaluating export applications according to these criteria will entail a substantive exercise of political and military judgement. While some of the criteria are measurable (eg the prospective buyer's military capability), others are frequently difficult to determine (eg the prospective buyer's intentions). There will consequently be greater discretion in decision-making than with an a priori division of arms into sensitive and non-sensitive categories.

The proper exercise of this discretion should lead to a more restrictive approach to arms exports because it avoids generalisations; it requires careful consideration of the circumstances of the prospective purchaser; and it does not automatically assume that any armaments are non-sensitive.

In view of the country code of conduct proposed in Chapter 6, it would be desirable to distinguish between 'defensive' and 'offensive' weaponry. Although this distinction resides less in the products themselves than in the use to which they are put, there is broad consensus that certain items are essential to a strategic offensive capability. These are chiefly the major weapons categories addressed by the UN Arms Register: battle tanks, armoured combat vehicles, large calibre artillery systems, combat aircraft, attack helicopters, warships, and missiles and missile launchers. [Saferworld, 1992:32]

This perspective is most pertinent where there is a risk of inter-state hostilities being waged along conventional lines. In contrast, light weapons - such as land mines, assault rifles, machine guns, grenades, light mortars and small arms - typically have the greatest 'offensive' impact in internal conflicts and have led to hundreds of thousands of deaths in ethnic and nationalist struggles. [Boutwell et al, 1995 ; Cock, 1995; and Human Rights Watch, 1994a and 1994b]

## APPENDIX F

### EUROPEAN COMMUNITY COMMON CRITERIA FOR ARMS

(as agreed at the Luxembourg and Lisbon European Councils)

#### EXPORT

in June 1991 and June 1992)

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The respect for the international commitments of the member states of the Community, in particular the sanctions decreed by the Security Council of the United Nations and those decreed by the Community, agreements on non-proliferation and other subjects, as well as other international obligations.

The respect of human rights in the country of final destination.

A, The internal situation in the country of final destination, as a function of the existence of tensions or internal armed conflicts.

The preservation of regional peace, security and stability.

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The behaviour of the buyer country with regard to the international community, as regards in particular its attitude to terrorism, the nature of its alliances, and respect for international law.

The existence of a risk that the equipment will be diverted within the buyer country or re-exported under undesirable conditions.



- a)
- b)
- 0)
- d)

Arms export policy, and the country code of conduct in particular, should be contained in legislation and ratified by Parliament. [Section 8.2]

The formulation and implementation of policy should be subject to a high level of transparency. [Chapter 9]

Marketing and export permits should be approved at ministerial level. This will establish unambiguous executive accountability for arms transfers. [Section 8.4.3]

Parliament should be involved in the process of classifying countries and vetting export permits. [Sections 8.3 and 8.4.4]

#### 6. 4.3 Clarifying the code of conduct

To the greatest extent possible, the country code of conduct should be elaborated by formulating definitions for such terms as 'aggression', 'systematic violation of human rights', 'international terrorism' and 'interference in the internal affairs of a sovereign state'. [Saferworld, 1992: Chapters 3 and 4]

Resolutions of the UN Security Council should be a fundamental source of guidance in evaluating prospective arms sales. Secondary sources should include reports published by Amnesty International and Human Rights Watch.

## APPENDIX E

Extract from the Black Sash submission to the public hearing of  
the Cameron Commission, Cape Town, June 1995

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(information extracted from MM's international report for  
January to December 1993)

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In this, its Second Report, the Commission deals with the question of arms trade policy, encompassed by paragraph 2 of the Terms of Reference above. As is indicated in the Chairperson's Foreword, the Second Report has been prepared by Commissioner L N Nathan.

It nonetheless represents the views and findings of the Commission as a whole.

We, the undersigned members of the Commission, have the honour to its

present  
Recommendations, and Appendices.

Commission's

together

to

you

the

Second

Report,

with

SIGNED:

MR JUSTICE

RON

ON

ADVOCATE I V MALEKA

MR L N NATHAN

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The NCQCC will consist of the following:

Minister Kader Asmal (Chairperson)  
Ministers of Defence

Trade and Industry  
Foreign Affairs  
Safety and Security  
General Services  
Arts, Culture, Science and Technology

Deputy Ministers of Defence

Foreign Affairs  
Intelligence Services  
Safety and Security

The Minister of Defence will act as the interim responsible ministry with the Secretary of Defence as the accountable Director-General.

The existing Armscor permit application function will be transferred to the Defence Secretariat and staffed accordingly.

The Ministers of Foreign Affairs, Safety and Security, Defence, Transport, Intelligence Services, and Trade and Industry will have permanent status on the second Departmental Review, level, with additional ministries incorporated as required by the nature and impact of a specific permit application.

The Ministries of Defence, Foreign Affairs, and Trade and Industry represented by their Director-General, will conduct the scrutiny process at the third level under the Chairpersonship of the Defence Secretary.

The Cabinet further approved the of an independent inspectorate.

Such an inspectorate will ensure that all levels of the process are subjected to independent scrutiny and oversight and are conducted strictly in accordance with the policies and guidelines of the NCACC. The inspectorate will make periodic reports to the appropriate parties and standing Parliamentary Committees on Defence.

principle

Copies of the Organisational Structure and of the Principles Governing Conventional Arms Control are attached and will now be elucidated on by the Chairperson of the NCACC.

30 August 1995  
Cabinet Office



#### 7.4 Armaments lists

Arms control regimes have to define the products, components and technology which are subject to control; more specifically, a system of armaments classification has to identify which items fall within the different categories. A general definition of 'armaments', such as appears in the Armscor Act, is too broad in this respect [Section

3.1].

more predictable and consistent. [Saferworld, 1992:33]

armaments for export control purposes [Section 3.3].

## NCACC RATIONALE AND PRINCIPLES

### RATIONALE AND PROPOSED PRINCIPLES GOVERNING CONVENTIONAL ARMS CONTROL

#### 1 INTRODUCTION

##### 1.1

This document proposes principles on which to base a comprehensive framework on the issue of conventional arms trade control, comprising :

##### 1.1.1

8 philosophy, policy and management approach appropriate to the cost-effective utilisation of a domestic defence industry; and

##### 1.1.2

3 conventional arms trade control system to govern the marketing, import, export and transfer of conventional arms.

#### 2 RATIONALE

##### 2.1

##### Constitutional Mandate of the National Defence Force

To uphold the Constitution and protect the sovereignty and territorial integrity of South Africa. the Constitution requires the existence of a modern. balanced, technologically advanced National Defence Force (NDF). maintaining a state of preparedness sufficient to execute the functions accorded to it in the Constitution.

##### 2.2

##### South African Defence Industry

To enable the NDF to meet its constitutional obligations, the services of an efficient defence industry are required. This will permit the cost-effective purchases of certain products and systems, ensuring life-cycle maintenance and support of such systems and, perform refurbishment and upgrades, where necessary.

##### 2.3 Economic Necessities for Defence Equipment Exports

To permit cost-effective performance by the defence industry and reduce unit costs of production of items required by the NDF, the defence industry must have access to international markets.

devoted to the defence sector. These resources would be better utilised in more labour-intensive civilian manufacturing. [Batchelor and Willet, 1995: 13-15]

In most developing countries military production is economically inefficient. Costs are

typically higher than in industrial countries because of short production runs, limited economies of scale and a high dependence on imported components and technology.

Consequently, arms exports may not be competitive in the world market, and imports may be much cheaper than local production. [Brzoska, 1989:514-516]

This perspective applies to South Africa [Brzoska, 1989:513; and Celliers, 19949].

For example, the SANDF has not purchased the Rooikat helicopter developed by Denel, and the contract for new trainer aircraft was awarded to the Swiss Pilatus rather than the locally produced Ovid.

These considerations cast serious doubt on claims that the defence industry and arms exports are a sound basis for stimulating the economy, job creation and foreign exchange.

Nevertheless, on the strength of current research the Commission is unable to conclude that the industry is a net economic liability or asset. What is required is a comprehensive review of the industry in the context of broader industrial strategy

[Subcouncil on Defence, 1994:26]. In the view of the Commission, the future of domestic arms production, and the related questions of diversification and conversion to

civilian manufacture, should be addressed in a government White Paper in consultation with stakeholders and interest groups.

### 5.3 The strategic necessity for restraint

In addition to the strategic motivation for retaining a domestic arms industry, there are compelling strategic reasons for exercising restraint in the export of arms.

It obviously makes little sense to sell weapons to countries which are adversaries or potential adversaries of South Africa; nor does it make sense to transfer sensitive technology from which the SANDF derives a distinct strategic advantage. These

Given these difficulties, technology controls should concentrate most closely on the following areas: weapons of mass destruction; armaments which may have strategic military value to the prospective recipient; items which are sensitive in terms of South Africa's security; and exports of civilian technology to countries which are subject to international arms embargoes.

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#### 4.10 The Armscor Act

The undue emphasis on sales also derived from a fundamental flaw in the Armscor Act. On the one hand, the Act confers on Armscor the power to develop, market and sell arms; on the other hand, it makes Armscor responsible for controlling arms exports [Section 3.1]. The former activities require a proactive approach to marketing, while

the latter call for a substantial measure of restraint.

This anomalous situation was not resolved by delegating the different functions to separate departments within Armscor. The Lebanon transactions revealed clearly an institutional emphasis on sales before restraint.

#### 4.11 Conclusion

This Chapter illustrates the extent to which Armscor's operational procedures and organisational features undermined the formal system of arms control and contributed to the diversion of exports to unauthorised destinations.

It follows that new policy which seeks to avoid such outcomes should be accompanied by substantial operational and organisational reform. Attention should be paid to the following issues in particular:

a)  
determining the appropriate body to serve as the administrative arms control authority [Section 8.4.1];

b)  
appointing a new Board of Directors for Armscor and transforming the culture of the organisation [Sections 10.1 and 10.2]; and

c)  
introducing systems to ensure greater control over the end destination of arms exports, and training the relevant officials accordingly [Sections 10.3-10.9].

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Mandela, N., 1994. Opening Address by President Nelson Mandela at the Defence Exposition of South Africa (DEXSA), Nasrec, 22 November 1994.

The Commission was greatly enriched by the hearing. We express our appreciation to all the participants for their contributions.

### 1.5 Focus and organisation of this report

It is not possible to comment on the appropriateness of South Africa's arms trade policy at the time of the Commission's appointment without implicitly or explicitly presenting proposals for reform. This is evident in virtually every submission to the public hearing.

Further, a critique of South Africa's approach to arms trade under the previous government would have little value to Cabinet, Parliament or the public if it were not accompanied by recommendations for addressing the various problems identified.

Accordingly, this report is divided into two parts:

Part 1 considers South Africa's export of conventional armaments at the time of the Commission's appointment, in terms of policy [Chapter 2]; control [Chapter 3]; and various operational and organisational matters [Chapter 4].

Part 2 presents proposals for new conventional arms export policy [Chapter 5]; country guidelines and classification [Chapter 6]; armaments classification [Chapter 7]; decision-making and oversight [Chapter 8]; transparency [Chapter 9]; organisational, operational and procedural matters [Chapter 10]; and compliance, sanctions and enforcement [Chapter 11].

Part 2 of the report can be summarised as follows:

Armaments constitute a special category of goods and technology since they are designed for the use or threat of force. They may be utilised for both the legitimate purpose of self-defence and the illegitimate purposes of external aggression and internal repression. They may provoke and exacerbate regional instability and conflict, and thereby contribute to widespread destruction of life and property.



South Africa should therefore pursue a policy of responsibility and restraint in the export of arms.

This policy should be based on the principles of the Constitution and the Charter of the United Nations. It should reflect, in particular, South Africa's commitment to promoting international peace and security, international arms control and disarmament, and respect for fundamental human rights and freedoms.

Arms exports should consequently be limited to the functions of self-defence, participation in peace operations, and the maintenance of good governance by the recipient state.

Arms exports should be regulated according to foreign policy and domestic security concerns; a system of armaments classification; and a country code of conduct which encapsulates the commitment and principles referred to above.

The formulation and implementation of policy should be subject to the constitutional imperatives of openness and accountability in public affairs. Appropriate checks and balances should include transparency, ministerial control and accountability, and parliamentary oversight.

Arms transfers should be controlled through legal, procedural and enforcement measures intended to ensure that the country code of conduct is observed and that exports are not diverted to unauthorised destinations.

South Africa should participate in, and seek to strengthen, the United Nations Conventional Arms Register.

South Africa should adhere strictly to all international arms control agreements and treaties to which it is bound.

## CHAPTER 9: TRANSPARENCY

The question of transparency regarding arms exports was debated extensively during the Wazan inquiry and the Commission's public hearing. This Chapter considers the main arguments in this regard; it describes the UN Arms Register; and it concludes with a set of concrete proposals for greater openness in arms trade policy and practice.

### 9.1 Arguments for openness.

The Constitution incorporates the principles of openness and freedom of information as fundamental tenets of public conduct. It states, inter alia, that "provision shall be made

for freedom of information so that there can be open and accountable administration at all levels of government" [Constitutional Principle IX].

Transparency is an essential feature of democracy. It fulfils the right of citizens to

know how public funds and the affairs of government are being managed; it constitutes a check against abuse of power and thereby furthers human rights concerns; it is an important means of ensuring government accountability; and it empowers citizens to contribute in a meaningful way to national decision-making.

The motivation for transparent governance is entirely applicable to arms export policy and practice. Citizens are entitled to know whether their country is selling armaments for the purpose of self-defence, external aggression or internal repression by the recipient state.

There is little doubt that sectors of the public are concerned about these matters. Distress over the Wazan debacle and the content of the Log Pamphlet was apparent in numerous newspaper articles and editorials, as well as in submissions to the Commission from churches and human rights groups. As noted earlier, political parties called on Parliament to conduct an investigation into the debacle.

The Commission's inquiry into the impugned transaction underlined the importance of independent scrutiny of arms export decisions. It confirmed the truism that while

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Armaments may be used to maintain authoritarian regimes, violate human rights and suppress ethnic minorities, opposition parties and popular dissent.

Arms supplies may trigger or exacerbate regional instability, and may prolong or aggravate existing hostilities.

Excessive arms build-ups in developing countries divert scarce resources from social and economic development, undermining the security of both the recipient state and its people.

It would serve little point for the Commission to demonstrate the severity of these problems by describing the many conflicts in which conventional arms have left over twenty million people dead since World War II. The problems are widely acknowledged by states, at least in principle, and have been explored in numerous reports and declarations of the UN and other international bodies [Anderson, 1992; Wulf, 1991].

Instead, the Commission wishes to emphasise that South Africa's obligation to avoid contributing to these problems is as much legal as it is political and ethical.

In ratifying the UN Charter, South Africa has committed itself to maintain international peace and security [Article 1]; to settle its international disputes by peaceful means [Article 2(3)]; and to refrain from the threat or use of force against other states or in any other manner inconsistent with the purposes of the UN [Article 2(4)].

As a signatory to the UN Covenant on Civil and Political Rights, South Africa has pledged to respect fundamental human rights and freedoms. As a signatory to the Geneva Convention, it is bound to observe the rules of warfare which prohibit, inter alia, the use of force in a manner which does not discriminate between military targets and civilians.

Our Constitution enshrines these commitments through its endorsement of international humanitarian law, the law on aggression, international human rights law and international customary law in general. [See Klaaren, 1994:261-2]

As in France, the supplier should be required to lodge with the administrative arms control body a deposit which is repaid on submission of the DVC. [Saferworld, 1992: 107]

#### 10.7 Shipping arrangement

Arms consignments should be sold 'cost, insurance and freight' rather than 'free-on-board'. In terms of the former shipping arrangement, the supplier is responsible for organising the transport of the goods to the country of import [c/f Section 4.2].

#### 10.8 Avoidance of haste

Applications for marketing and export permits should be evaluated with due care and deliberation. Other than in exceptional circumstances, the applications should not be processed as a matter of urgency.

'Exceptional circumstances' would exclude commercial considerations. They would be limited to cases where the prospective client is the United Nations or where the UN Security Council has ruled that the recipient country is the victim of aggression.

#### 10.9 Capacity of the administrative arms control body

At the time of the Commission's appointment, applications for marketing and export permits were processed by a single Armscor official with a small administrative staff .

The new arms control body in the Defence Secretariat should have sufficient personnel and resources to pay proper attention to the applications, liaise with other government departments and the defence industry, and perform its various other functions.

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#### Assessment of Permits

All permit applications for countries and products will be assessed on a case-by-case basis in relation to the principles and guidelines contained herein.

#### 3.9 Product Classification

Any conventional arms product for which a permit application has been received will be dealt with in accordance with the product categorization system as described below :

3.9.1

3.9.2

3.9.3

3.9.4

MMM- Sensitive, Major Sensitive Equipment (SMSE) - SMSE comprises conventional implements of war that could cause heavy personnel casualties and/or major damage and destruction to material, structures, objects and facilities. (eg Artillery, Bombs, Grenades, Armoured Fighting Vehicles, etc).

W. Sensitive Sensitive Equipment (SSE) - SSE comprises all types of hand held or hand carried assault weapons of a calibre smaller than 12.7 mm. All Assault rifles, machine guns, pistols and related small arms and ammunition are included in this category.

W. Non Sensitive Equipment (NSE) - NSE comprises all support equipment usually employed in the direct support of combat operations that have no inherent capability to kill or destruct. Although, if employed in conjunction with SMSE they could have a force multiplier effect. (eg Radars, Meteorological Stations, Radio Equipment, Support Vehicles and Aircraft, Recovery Equipment , etc).

W. Non Lethal Equipment (NLE)  
- NLE is limited to purposely designed de-mining and mine clearing and mine detecting equipment, all non lethal pyrotechnical and riot control products and related equipment.

Baton  
Rounds. and Teargas).

Mine Detectors, Signal Flares,

(eg

3.9.5

W. Not for Sale  
(NFS) - NFS items comprise all those defence or related products that are not allowed to be sold (eg Landmines).



## 2.4 Procurement of Defence Equipment

Not all defence equipment required by the NDF can or should be procured from local industry. Many complex systems cannot be produced cost-effectively by local firms and will have to be purchased abroad. The management expertise required for the specialised procurement functions is located within the Department of Defence.

## 3 PRINCIPLES GOVERNING NATIONAL ARMS TRADE

### 3.1 Arms Control

The import and export of conventional arms into South Africa and the transit of such arms through South Africa to neighbouring or foreign states shall be subject to a control process as determined by the Government.

### 3.2 Principle of Government support

In a competitive international market it is important that South Africa and its defence industry be recognised as a responsible and reliable supplier of defence materials.

The South African Government will support the export initiatives of the defence industry by permitting the industry to contract and honour obligations which have been duly approved in terms of the proposed National Arms Control system. The South African Government shall however reserve the right to prohibit or withdraw such support should it be in conflict with or irreconcilable with international or national interest at any given time.

### 3.3 Transparency

The principle of openness and transparency relating to arms trade will be applied. This will be limited only by the needs of national interest and confidential bilateral agreements with other states.

### 3.4 Control Measures

Conventional arms control measures are based on principles of the United Nations Charter, international Law, recognised international arms control systems including economic, ethical, political, military and security consideration. Such controls should be managed by a legitimate South African arms control system that will ensure a responsible approach to arms transfers. South Africa affirms

#### 3.4.1

that in accordance with the principles and aims of the Charter of the United Nations, it holds the view that the reduction of world military expenditures could have a significant positive impact for the social and economic development of all peoples;

## CHAPTER 7: ARMAMENTS CLASSIFICATION

7.1  
7.2  
7.3  
7.4  
7.5

Category X: prohibited exports  
Category Y: other armaments  
Category 2: dual-use goods and technology  
Armaments lists  
Technology transfer

## CHAPTER 8: DECISION-MAKING AND OVERSIGHT

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8.5

Constitutional principles  
Policy  
Classiï-\201cation of countries and armaments  
Marketing and export permits  
8.4.1 Departmental level  
8.4.2 Inter-departmental level  
8.4.3 Ministerial level  
8.4.4 Parliamentary level  
The military ombuds system

## CHAPTER 9: TRANSPARENCY

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Arguments for openness  
United Nations Arms Register  
Arguments against full transparency  
Proposals  
9.4.1 Policy  
9.4.2 Country classiï-\201cation  
9.4.3 Armaments classiï-\201cation  
9.4.4 Marketing and export applications  
9.4.5 Judicial review

9.4.6 UN Arms Register  
9.4.7 Regional initiatives  
9.4.8 Annual report of exports

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## 7.1 Category X: prohibited exports

The marketing and export of certain types of armament should be prohibited. The products and technology which comprise this category should be determined by the following three criteria, each of which constitutes a distinct sub-category of prohibited exports:

a)

International arms control regimes and treaties.

The following regimes ban completely the sale or transfer of weapons of mass destruction and related technology: the Nuclear Non-Proliferation Treaty; the Missile Technology Control Regime (MTCR); and the Biological Weapons Convention. A chemical weapons convention is in the process of being concluded [Saferworld et al, 1995: Chapters 1-3].

The Inhumane Weapons Convention covers conventional armaments which are regarded as inhumane and indiscriminate in their effect (eg land mines, non-detectable shrapnel and incendiary weapons).

South Africa's adherence to these regimes is outlined in Appendix C.

In compliance with UN Resolution 48/75 K of 1993, in March 1994 the South African government placed an indefinite moratorium on the marketing, export and transit of land mines.

b)

Undertakings in respect of imported products, components and technology.

South Africa will be obliged to adhere to the conditions stipulated in end-user and end-use certificates which it has issued when importing armaments. These conditions typically include a commitment not to re-export the items in question without the express permission of the seller [Section 3.5].

## CHAIRPERSON'S FOREWORD

The Commission's First Report, which dealt largely with controversial arms shipments allegedly sold to Lebanon, was presented to President N R Mandela on 21 June 1995. The report concluded that the debacle which gave rise to the Commission's appointment was primarily the result of an institutional disregard for where South African arms exports ended up.

This, the Commission's Second Report, examines this theme further. On the strength of the Commission's investigation of arm control systems in South Africa and other countries, the report contains extensive recommendations on future arms trade policy and decision-making procedures.

The report is the product of the endeavours of Commissioner L N Nathan. His energy and expertise, which underlay much of the Commission's functioning, as well as its First Report, have now yielded this study. The Commission hopes that the study will assist in developing a coherent and responsible arms trade policy which conforms with the ideals and principles contained in our new Constitution.

## CHAPTER 7: ARMAMENTS CLASSIFICATION

The previous government divided armaments into three categories for the purpose of export control: Category A comprised 'sensitive' products which could only be sold to Group 1 countries; Category B encompassed 'non-sensitive' items which could be exported to Group 1 and Group 2 countries; and Category C products were not released for export. [Section 2.1]

A fundamental problem with this approach is that the distinction between 'sensitive' and 'non-sensitive' weaponry and military technology is seldom clear cut. Sensitivity may sometimes derive from the nature of the armament, but in most instances it will depend on the character of the purchaser and the use to which the arms are put.

A second problem is that the system did not cater adequately for dual-use goods and technology which have both military and civilian application and therefore pose special difficulties for arms control regimes.

Accordingly, this Chapter proposes an alternative approach which divides armaments into the following three categories:

a)

Category X would embrace items which may not be exported under any circumstances.

b)

Category Y would consist of all other armaments and military technology, the export of which is assessed on a case-by-case basis and requires a government permit.

c)

Category Z would include dual-use items which are subject to varying controls.

This Chapter explores each of these categories; it considers the necessity of drafting lists of controlled armaments; and it discusses the problems associated with technology transfer.

MATTERS

Between 1991 and 1994 Armscor concluded contracts for the sale of a large quantity of weapons, ammunition and military equipment to Lebanon [Section 2.3]. Some or all of these products ended up at other, prohibited destinations.

While mischief was undoubtedly afoot, the diversion of the goods was primarily attributable to an institutional disregard for the intended destination of South African arms

exports. This disregard was evident in a number of Armscor's operational procedures and organisational features which rendered ineffectual the formal system of control.

These matters were the subject of the Commission's First Report and are summarised below.

4.1 Use of foreign agents

In the course of the Lebanon transactions, Armscor at no stage communicated directly with the designated end-user of its weapons (ie the Christian Militia and the Lebanese government). Instead, negotiations were conducted, and contracts were concluded, exclusively with foreign agents and intermediate purchasers.

The distance between Armscor and the authorised end-user made it possible for the intermediaries to divert the arms consignments to unauthorised destinations. This risk was heightened by Armscor's failure to ascertain the bona fides of the foreign actors with whom it worked.

It is highly unlikely that the Wazan debacle would have occurred had Armscor been in direct contact with the purported buyer of the 1994 arms consignment, the government of Lebanon. The Lebanese government was in fact completely unaware of the deal.

## 10.2 Transformation of Armscor

Armscor's Board should direct senior management to undertake the following tasks under its supervision:

- a)
  - b)
- eliminate systems and methods which were designed to evade the arms embargoes;
- eliminate systems and methods which undermine control over the end-destination of arms exports;
- introduce or reinforce means of ensuring that arms exports end up at the authorised destination;
- â\200\230
- develop new administrative and financial procedures;
- establish an effective system of management control and supervision;
- and
- introduce an educational programme for Armscor personnel in order to explain and promote the philosophy and objectives of new policy.

Following the release of the Commission's First Report, the Freedom Front proposed that Armscor should be dismantled; its marketing activities should be devolved to Denel and its control and procurement functions should be transferred to the Defence Secretariat [Citizen, 22 July 1995]. A similar proposal was made by Mr T Yengeni, Chairperson of the Joint Standing Committee on Defence [A\_ngi-\201, 18 July 1995].

The Commission shares the view that administrative control over arms exports should reside in the Defence Secretariat [Section 8.4.1]. The question of arms procurement, which is Armscor's main function, lies outside the focus of this report.



APPENDIX D

CABINET MEMORANDUM ON CONVENTIONAL ARMS  
CONTROL, AUGUST 1995

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been conducted in Cabinet. Cabinet Committees and Ministerial Worldng  
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decision on 3 August 1994, supplemented and weaned by e eerie: of  
subsequent decisions. that e comprehensive framework be developed  
eetting out the underlying philosophy. policy and approach within which  
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If the application is in order, it will be registered and processed for submission to the Armaments Marketing Permit Committee, recently renamed the Committee for

Armaments Marketing and Export Control (CAMEC). After CAMEC has assessed the application, a recommendation is made to Armscor's Management Board for final approval.

The head of the Armaments Control Division is the chairperson of CAMEC. CAMEC comprises representatives of the following bodies, each of which serves a specific function:

a)

b)

The Department of Foreign Affairs comments on political and foreign policy concerns relating to marketing and potential export to the countries under consideration.

The SANDF Chief of Staff Intelligence, Chief of Staff Operations and Chief of Staff Logistics monitor defence concerns and build an intelligence base with respect to marketing and potential export activities.

Armscor's Department of Combat Systems and Department of Aeronautics and Maritime assess product and supplier integrity; the likely impact of the sale on the procurement requirements of the SANDF and the South African Police Service (SAPS); sensitive technologies; and related issues.

d)

Armscor's Quality Assurance Department evaluates the quality of the product.

Armscor's Security Department monitors security concerns regarding current acquisition projects for the SANDF and SAPS.

Armscor's Department of Foreign Trade monitors foreign licence agreements and related issues.

individual misconduct and institutional irresponsibility may occur in any circumstances, they are more likely to flourish in conditions of secrecy.

There will undoubtedly be occasions where confidentiality is required in the interests of

national security. Yet there is also the danger, so patently evident in the apartheid era,

that 'national security' is invoked to justify and stifle criticism of repressive and aggressive actions.

From an international perspective, there is broad agreement that "increased openness and transparency in the field of armaments could enhance confidence, ease tensions, strengthen regional and international peace and security, and contribute to restraint in military production and the transfer of arms" [UN General Assembly Resolution 46/36

L of 9 December 1991].

Finally, three pragmatic considerations should be taken into account. First, South Africa is unlikely to export military products and technology which are so sensitive that their disclosure could undermine the country's strategic capabilities.

Second, the marketing of armaments necessarily entails revealing their main features to agents and potential clients. Armscor publishes a biannual South African Defence Industries Directory which contains a complete catalogue of local defence products [Armscor, 1995a:3].

Third, there are few secrets in the world of arms trade. The UN Arms Register, the vigilance of international media and the expertise of research bodies and trade publications ensure that the vast majority of arms transfers are documented publicly. It would be antithetical to democracy if South Africans were, as in the past, to learn about aspects of their country's foreign policy from sources other than the government.

## 9.2 United Nations Arms Register

The UN Register of Conventional Arms came into effect in 1992. It seeks to enhance transparency in conventional arms transfers and military holdings in order to strengthen

## United Nations Conventional Arms Register (UNCAR)

A15

Because armament transfers are an important element of global security, such transfers are of concern to the UN General Assembly.

Malta. in 1965, requested the establishment of a UN arms register. In 1978 the UN General Assembly proclaimed the week of 24 October of each year as "Disarmament Week" to promote disarmament and in 1992 implemented the United Nations Conventional Arms Register (UNCAR) as a confidence building mechanism.

A16

The UNCAR requires disclosure, by April each year, of annual imports and exports of the following seven categories of conventional arms:

Category I:

Battle tanks, weighing up to 16,5 metric tons with a main weapon of larger than 75mm.

Category II: Heavy Artillery with a calibre of 100mm or more;

Category III: Armoured combat vehicles with armour protection and equipped to carry at least four troops and/or armed with an integral (internal) weapon of at least 20mm calibre, or an anti-tank missile launcher

Category IV: Combat aircraft capable of carrying unguided rockets, guided missiles, cannons or other weapons;

Category V: Attack helicopters capable of firing anti-armour air-to-ground guided weapons and equipped with an integrated fire control and aiming system;

Category VI: Warships, including submarines and surface vessels with a standard displacement of at least 850 metric tons and

Category VII:

Missiles (missile systems, guided bombs and remotely piloted vehicles) with ranges greater than 25kms.

A17

The trend towards transparency in armaments, based on the principles of confidence and security building, has been stimulated by the work of a number of bodies such as the Conference on Disarmament (CD) and the Conference on Security and Co-operation in Europe (CSCE). The Register is founded on the principle of co-operative security amongst states. This principle is based on the preservation of international and regional peace, security and stability in conformity with the United Nations Charter, the inherent right of self-defence;

A/200/2317

"

Everyone's United Nations Department at Public Information. 10th edmon. United Nations New York, 1986.

The United Nations' Conventional Arms Register was established by the Secretary General on 1 January 1992 in accordance with General Assembly resolution 46/36L of 9 December 1991.



arbitrary detentions, kidnapping, disappearances, extrajudicial executions, torture and acts of terrorism.

0)

Senior Armscor officials were aware that the Militia had little international credibility and was obliged to purchase arms on the black market.

(1)

The Militia retained its status as an acceptable recipient of South African arms for as long as four years after it had been disbanded following the end of the civil war in Lebanon in 1989.

e)

Although the previous government publicly regarded the AK-47 as a symbol of 'communist terrorism', it classified the weapon as 'non-

sensitive' (Category B) for export purposes. It clandestinely sold or distributed thousands of these rifles to rebel movements, such as the Christian Militia and Unita in Angola, for use in internal conflicts.

Mr PC Smith, the Anttinsâ\200\230eofsenior manager who served as the alternate chairperson of

the DFPC, was unable to explain to the Commission on what grounds the Militia had

been Classified and reclassified. Nevertheless, the Cabinet's willingness to arm both the

Militia and the Lebanese government suggests that their classifications were based on commercial rather than political or strategic factors.

This inference is strengthened by an internal memorandum drawn up by a senior Armscor official in 1989. The document, described more fully in the First Report, argues that the Militia should retain its favourable status on the basis of potential arms sales, even at the expense of human rights in Lebanon and South Africa's international image.

#### 2.4 The Log Pamphlet

Four trends in South Africa's arms export policy can be discerned from the classification assigned to the 159 countries listed in the 1989 version of the Log Pamphlet.

First, the strategic and ideological preoccupations of apartheid and the Cold War are clearly evident. For example, armaments could not be sold to Vietnam, Nicaragua, Cuba, North Korea and many of the Frontline States in Southern Africa (eg Zambia, Zimbabwe and Tanzania).

Second, South Africa took account of the fact that the West regarded certain countries as 'terrorist states'. Accordingly, arms sales to Libya, Iran and Syria were prohibited.

Third, the classifications reflect a measure of geopolitical ignorance; for example,

Scotland and England were listed as separate countries. The classifications also lacked

political consistency, especially with regard to the former communist states: Albania,

Bulgaria, Czechoslovakia, Yugoslavia and China were placed in Group 1; East

Germany in Group 2; and Russia and Mongolia in Group 3.

As noted above, the Christian Militia remained in Group 1 long after it had been disbanded. The Department of Foreign Affairs compounded the anomaly by informing the Commission that "there is no militia in Lebanon that bears the official title of the 'Lebanese Christian Militia'; it is unclear which party is meant when that appellation is used" [Department of Foreign Affairs, 1995:12]. This statement is surprising in the light of the Department's direct involvement in reviewing the Log Pamphlet. It is possible that the DFPC and Cabinet mistakenly described one of the several Christian militias in Lebanon, namely the Lebanese Forces, as the 'Christian Militia'.

Fourth, the country classifications frequently ignored factors like political instability, civil war, military rule and gross abuse of human rights. Acceptable recipients of South African arms included Bulgaria, Haiti, Indonesia, Malawi, Sri Lanka, Sudan, Liberia, Malaysia, Nigeria, China and Somalia. Rwanda, the Burmese government and the Burmese Karen Resistance Movement were eligible to receive small arms.

During the Commission's public hearing the Black Sash submitted a summary of the gross human rights violations of several Group 1 countries, based on reports by Amnesty International [Appendix E]. Local and foreign media, church groups and non-governmental organisations have criticised, in particular, alleged South African arms



APPENDIX A

CAMERON COMMISSION

COMMISSION OF INQUIRY INTO THE ALLEGED

ARMS TRANSACTIONS BETWEEN ARMSCOR

AND ONE ELI WAZAN AND OTHER

RELATED MATTERS

PRESS RELEASE

DATE:

WEDNESDAY 26 APRIL 1995

STATUS:

IMMEDIATE

INQUIRY INTO ARMS TRADE POLICY

The terms of reference of the Commission of Inquiry into Armscor include the following mandate:

To comment, in the context of South Africa's national and international obligations and responsibilities, on the appropriateness of

1)

11)

current trade policy with regard to weapons and related materials; and

the decision-making processes with regard to such trade.

\

In

the

Cabinet

early

March,

a comprehensive strategy in regard to the arms industry, including an arms trade policy.

The Cabinet Committee's task is to devise a new comprehensive policy framework in regard to the arms industry and the control of the arms trade.

a. Committee

appointed

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formulate

The Commission's task, by contrast, is not to formulate a new arms trade policy for the country, but to comment on arms trade policy, practices and

decision-making processes current at the time of its appointment.

This task is

complementary to that of the Cabinet Committee, which has indicated that the Commission's comments. in the light of South Africa's national and international obligations and responsibilities. on the appropriateness of the trade policy which gave rise to the Wazan incident, may prove very useful to the Cabinet Committee-

The Commission's task regarding these matters is thus of great PUPUC

The Commission will therefore undertake its policy

interest and importance.

inquiry in a participatory and open manner.

The Commission hereby invites interested parties and members of the Public

#### 4.4 End-User Certificates

Since May 1994 Armscor has required applicants for export permits to obtain an End-User Certificate from the prospective country of import. [Section 3.5]

In the course of the Wazan sale, however, the Armaments Control Division accepted a forged EUC which carried the letterhead and seal of the Lebanese Ministere De

L'Interieur but did not record the name and designation of the signatory. Armscor

received the document from a foreign agent and made no effort to authenticate it with the Lebanese government. Verification procedures in respect of EUCs were only introduced in September 1994.

#### 4.5 Maladministration

Armscor failed to keep detailed and accurate records of the Lebanon transactions. Contracts were concluded or altered without written confirmation between Armscor and the client; many of the key documents were undated or incorrectly dated; others contained numerous arithmetic and factual errors; and no proper account was kept of the flow of funds emanating from the contracts.

The acute financial and administrative incompetence and negligence had three related consequences: they obscured the true nature of the transactions; they created an environment in which misconduct could flourish undetected; and they thereby facilitated the diversion of the arms shipments.

#### 4.6 Disregard for internal procedures

The Armscor department responsible for the Wazan transaction ignored many of the procedures contained in internal policy documents. Some of these procedures were intended, in whole or in part, to prevent South African weapons from ending up in the wrong hands.

The responsibility for procuring the EUC should lie with the administrative arms control body in South Africa rather than with Armscor or the defence industry. Alternatively, this body should be responsible for authenticating the EUC through diplomatic channels.

The EUC should indicate clearly the identity of the issuing authority; the name and designation of the signatory; the specifications, serial numbers and quantity of the armaments under consideration; and a commitment not to resell or transfer the armaments without the express permission of the responsible ministry in South Africa.

In the event of an importing country acting in breach of this commitment, the transgression should be publicised internationally. All further arms sales to that country should be prohibited.

The verification of EUCs will become increasingly important as arms control measures are strengthened. Private contractors may seek to evade the controls by routing exports through neighbouring states from which the goods are resold or transferred to prohibited destinations. Attention should therefore be paid to the enforcement role of customs, police and intelligence authorities [Section 11.3].

#### 10.6 Proof of delivery

The Supplier should be required to obtain a Delivery Verification Certificate (DVC)

and submit this document within a prescribed period to the administrative arms control body in South Africa. The DVC is a form issued by the customs authority in the importing country as proof that the goods have arrived at the designated port of discharge and been collected by the designated purchaser. [Saferworld, 1992:8]

As in the US and the UK, the administrative arms control body should verify receipt of the goods through diplomatic channels. [Saferworld, 1992: 106]

In the light of the above, this report contains numerous proposals regarding arms control legislation. If accepted, these proposals would require the replacement of existing laws with a new act [Section 8.2].

Finally, this report does not consider in any detail the future of the defence industry; armaments development, manufacturing and import; and control of weapons of mass destruction. As outlined in Appendix C , the government has pursued the last of these areas with some vigour over the past three years.

#### 1.6 Cabinet Committee on Arms Control

In March 1995 the Cabinet appointed a committee of seven ministers, under the chairpersonship of the Minister of Defence, to formulate a comprehensive strategy for the arms industry, including the development of a new arms trade policy.

In correspondence with the Cabinet on the respective functions of this committee and the Commission, the Commission noted the following:

The Commission does not see it as its task to formulate a new arms trade policy for the country. That is clearly the task of the Executive. However, our duty to comment on the 'appropriateness' of the current policy seems to make it proper and necessary for us to forward submissions and suggestions to the Executive as to the content of the new policy, and to set out the considerations which appear to us to be relevant in formulating it.

The desirability of submitting such comments and proposals flows also from the Commission's duty to analyse the policy, operational and organisational factors which gave rise to the Wazan incident.

[The public hearing] will enable us to conclude our task in a way which is useful and complementary to the work of the Cabinet Committee. [Letter to Prof J Gerwel, 5 April 1995]

Finally, the South African government should present to Parliament its submission to the UN Arms Register, as well as an annual report on all arms sales concluded during the previous year. [Sections 9.4.6 and 9.4.8]

#### 8.5 The military ombuds system

The Minister of Defence has proposed the establishment of a military ombuds office [RSA, 1995: 11]. As in Sweden and Germany, the ombudsperson would be an independent official appointed by parliament to investigate complaints against the Defence Force by military personnel and members of the public.

In the view of the Commission, the ombudsperson should also be responsible for overseeing adherence to arms control legislation and regulations by government officials and the defence industry. The ombudsperson would investigate allegations such as those which gave rise to this Commission. Evidence of criminal conduct would be referred either to an attorney-general or to the police for further investigation [Section 11.3].

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### 1.3 Focus of Commission's first inquiry and report

Between October 1994 and March 1995 the Commission investigated the circumstances surrounding the Wazan debacle and certain other consignments of South African arms purportedly sold to Lebanon between 1991 and 1993. The Commission scrutinised many hundreds of documents and heard evidence from eighteen witnesses. The witnesses included Armscor officials and several of the foreign actors involved in the transactions.

On 21 June 1995 the Commission presented the President with its report on the investigation (hereinafter 'the First Report'). In summary, the Commission found that numerous acts of commission and omission by Armscor officials and foreign actors had contributed to the debacle. However, the most significant cause was a general, institutional lack of responsibility regarding the end destination of South African arms exports.

This lack of responsibility was evident at policy, operational and organisational levels on the part of the previous Cabinet, the Defence Foreign Policy Committee and Armscor.

When viewed in this context, the Wazan debacle could not be regarded as solely the product of individual mischief or as an 'unfortunate accident'. Indeed, it emerged during the inquiry that three earlier shipments of South African arms allegedly destined for Lebanon had similarly ended up in prohibited countries, namely Yemen and the former Yugoslavia.

### 1.4 Public hearing on arms trade policy and decision-making

Having completed its inquiry into the Lebanon transactions, the Commission turned to Paragraph 2 of its terms of reference which it enjoins it to comment, in the context of South Africa's national and international obligations and responsibilities, on the appropriateness of current arms trade policy and decision-making processes.



On 30 August 1995 the Cabinet released a memorandum on new interim policy and structures regarding conventional arms transfers. The memorandum provides for the establishment of a National Conventional Arms Control Committee (NCACC) as the ministerial control, policy and decision-making authority; the creation of an independent Inspectorate with oversight powers; and the adoption of a set of criteria for determining to which countries South Africa may and may not sell arms. [Appendix D] This report does not evaluate the memorandum since the Commission is restricted by its terms of reference to commenting on arms trade policy at the time of its appointment.

#### 1.7 Acknowledgements

The Commission is grateful to the Danish government, the British American Security Information Council (BASIC), Saferworld, the Stockholm International Peace Research Institute (SIPRI) and Amnesty International for providing valuable resource material. We wish to record special thanks to Dr Paul Cornish, of the Royal Institute for International Affairs in London, who served as the Commission's consultant during the public hearing and commented on earlier drafts of this report.

Finally, the Commission is indebted to the following people who rendered invaluable administrative and logistical support: Joanna Flanders from the Centre for Conflict Resolution at the University of Cape Town; Advocate Brian Sheer from the office of the Attorney-General of the Witwatersrand; Mr Donald McDonald du Plessis from the prosecutor's office at the Pretoria Magistrates Court; and various members of the SANDF.

## 11.2 Sanctions

The penalties for contravening arms control legislation, or any notice, direction or permit issued in terms thereof, should be strengthened in order to signal the seriousness of the offence and provide a more effective deterrence against transgressions:

a)

Individual offenders should be liable on conviction to a minimum jail sentence (as in Germany).

b)

Company offenders should be banned from marketing and export activities for a period of up to twenty years (as in the US).

c)

Financial penalties should be a maximum of five times the value of the exported goods (as in the US).

(1)

There should be provision for confiscation of the goods in question and/or the profits or turnover emanating from an unlawful transaction (as in several European countries). [Saferworld, 1992: 107-108]

The new arms control act should also include the following provision which establishes a positive duty to report illegal arms exports:

Any person who has information concerning an actual or prospective unauthorised sale or transfer of armaments from or through South Africa and who fails to report such information in writing to the administrative arms control body or the South African Police Service shall be guilty of an offence.

The statute should provide for sanctions in respect of both willful contraventions and acts of omission and commission which are grossly negligent (as in Germany).

[Saferworld, 1992:109]

The legal penalties should extend to South African citizens and companies who breach domestic arms controls and international arms embargoes from outside the borders of South Africa (as in the US). [Saferworld, 1992:40-41]

## CHAPTER 2: ARMS EXPORT POLICY

This Chapter describes and analyses South Africa's arms export policy at the time of, and before, the ill-fated Lebanon transaction in September 1994.

### 2.1 Country and weapons classification

In 1982 the government decided to prioritise the promotion of arms exports in order to ensure the economic viability of the local defence industry. The following year it introduced a system of country and weapons classification to regulate such exports.

Armscor was responsible for administering this system in fulfilling its statutory duty to

control the marketing and sale of armaments abroad [Section 3.1].

Countries were classified along the following lines:

a)

Group 1 countries had no restriction on the marketing or export of armaments which had been released for marketing.

b)

c)

Group 2 countries could only receive 'non-sensitive' armaments.

Group 3 countries were prohibited from receiving any armaments.

Weapons, ammunition and military equipment were grouped in three categories:

a)

b)

Category A embraced 'sensitive' armaments which could be utilised in an offensive role and might offer a strategic advantage to the user.

Category B encompassed 'non-sensitive' items like vehicles, radios, anti-riot equipment, and weapons and ammunition not exceeding 12.7

mm.

CAMEC; verifying End-User Certificates; and monitoring observance of undertakings issued by South Africa in respect of imported armaments.

The Division should also be tasked with the additional functions proposed in Chapters 10 and 11: overseeing Compliance with control procedures by the defence industry; authenticating international import and delivery verification certificates; and co-

operating with police, intelligence and customs authorities on enforcement measures.

Further, the Commission shares the view of Armscor that control over different types of armament should reside in a single government body [Section 3.6]. This body would then be charged with ensuring adherence to all international arms control agreements to which South Africa is bound.

Notwithstanding the above proposal, the SAPS should remain responsible for controlling the licensing, sale and use of small arms, ammunition, explosives and teargas within South Africa.

In summary, the Armaments Control Division would perform administrative and control functions within the Defence Secretariat. It would reject permit applications which do not comply with the country classification and other statutory and procedural

requirements, and would process the remainder for CAMEC's consideration.

#### 8.4.2 Inter-departmental level

As is currently the case, the Armaments Control Division should submit marketing and export permits for vetting by CAMEC. [Sections 3.4 and 3.5]

CAMEC should comprise senior officials from the departments of defence, foreign affairs and trade and industry; the relevant Armscor departments; Customs and Excise; the SAPS; the National Intelligence Co-ordinating Committee; and the SANDF.

CAMEC should evaluate permit applications according to foreign policy and domestic security concerns; the country code of conduct; armaments criteria; product and

Further, a domestic arms industry guarantees confidentiality between local suppliers and the armed forces; it therefore offers the potential for surprise in battle; it ensures that products and systems are finely tuned to the needs of the military; it is able to

support, maintain and upgrade local equipment and systems in a cost-effective manner; and it permits the retention of defence production capacity in peace-time. [SADIA,

1995:8-9; Defence Secretariat et al, 1995: paragraph 3.3.2; and Kasrils, 1994:11-12]

In reality though, South Africa has never been, and will never be, self-sufficient in armaments [SADIA, 1995 : 19]. Certain sectors of the local industry are highly dependent on imported components and technology, and the SANDF relies on external suppliers for major weapons systems like fighter aircraft and naval ships. Direct and indirect imports currently account for approximately 40% of total procurement spending on defence [Batchelor and Willet, 1995: 12].

In these circumstances, the problems related to recipient dependence could be mitigated by following the approach of developing countries which diversify their sources of supply [Catrina, 1995: 126-127]. This strategy is now readily available to South Africa with the lifting of the UN arms embargoes. It is also relevant that the global arms trade is characterised by the conditions of a 'buyer's market'.

Since the ending of the embargoes, the attainment of complete self-sufficiency is no

longer a strategic necessity. It may now be appropriate to restructure the local defence industry, retaining only those areas in which self-reliance is of critical importance during armed conflict. These areas include electronics; communications; ammunition; the provision of spares; and the capability to maintain and upgrade existing equipment.

## 5.2 The economic debate on arms production and exports

With the notable exception of Japan, arms producing countries regard the export of armaments as an economic imperative since the requirements of their armed forces are seldom sufficient to ensure economies of scale and the commercial viability of their defence industries.

1.10.1994]. The Chairperson of the Joint Standing Committee on Defence, Mr T Yengeni, called for a parliamentary inquiry into the impugned transaction [Cape Times, 8 October 1994].

Accordingly, this Chapter proposes three major changes to the system of decision-making under the previous government:

a)

Arms export policy should be contained in legislation and ratified by Parliament.

b)

c)

Marketing and export permits should be approved at ministerial level.

Parliament should be involved in vetting export permits and determining country and armaments classifications.

The following sections elaborate on these proposals. The question of transparency is discussed in Chapter 9.

## 8.2 Policy

The Armscor Act is concerned chiefly with establishing the legal authority to undertake, control and regulate various activities related to armaments. The broader dimensions of arms export policy are contained in the Log Pamphlet which is a classified document [Section 2.2].

This approach is not consistent with the constitutional emphasis on accountability, responsiveness and openness in the affairs of government. It limits severely the public's right to debate a crucial aspect of national policy and to hold the Executive accountable for its actions.

New arms control legislation which replaces the Armscor Act should therefore go beyond procedural matters to cover the following areas:

a)

the main principles and objectives of policy;

## CHAPTER 5: CONVENTIONAL ARMS EXPORT POLICY

This Chapter presents a framework for new conventional arms export policy. It reviews the main arguments raised by the proponents and opponents of arms exports, and concludes that the ethical, political and strategic reasons for exercising restraint should have primacy over the economic motivation for selling arms.

In the context of South Africa's 'national and international responsibilities and obligations', the primary sources of which are the Constitution and the United Nations

Charter, new arms export policy should be based on the promotion of international peace and security, international arms control and disarmament, and respect for human rights and fundamental freedoms.

### 5.1 The motivation for maintaining an arms industry

States have an inherent right to defend their territory and inhabitants against external military aggression. This right is recognised in Article 51 of the UN Charter which deals with individual and collective self-defence against an armed attack, and is reflected in Section 227(1)(a) of the Constitution which refers to the functions of the SANDF.

It follows that states have a right to establish armed forces for the purpose of self-defence and to acquire, through domestic manufacture or foreign procurement, the materiel required to maintain these forces.

From a strategic perspective, local arms production is regarded as preferable to dependence on imports. Such dependence could lead to external interference in domestic political and military affairs, and in times of war leave a country at the mercy of foreign suppliers. [Heitman, 1995:1-2; and Catrina, 1990:121-123]

#### 6.1.1 Criteria

South Africa shall consider carefully whether proposed arms transfers will:

- a)  
promote the capabilities of the recipient country to meet its needs for legitimate self-defence;
- b)  
serve as an appropriate and proportionate response to the security and military threats confronting that country;
- c)  
enhance the recipient's capability to participate in collective arrangements or other measures consistent with the UN Charter or requested by the UN;
- (1)
- e)  
be at risk of diversion to an unauthorised third party; and  
undermine export restraints applied by regional bodies of which South Africa is not a member (eg the European Union and the Organisation of American States).

South Africa shall also take into account the recipient country's compliance with the UN Arms Register and international arms control agreements.

#### 6.1.2 Code Ofconduct

South Africa shall export weapons and ammunition only to internationally recognised governments. It shall export military components and technology to private defence companies only with the express approval of the government of the importing state.

South Africa shall not export arms to regimes which are under military rule or which are guilty of systematic violations of human rights or international humanitarian law.

Further, South Africa shall avoid arms transfers which are likely to:



c)

The right to life enshrined in our Constitution is universal. People everywhere are entitled to expect that this right is respected not only by their own government but also by other states.

(1)

An emphasis on respect for human rights and international peace and security derives from - indeed its primacy derives from - the founding charters of both the United Nations and the new South African state. As noted above, it therefore reflects a legal as well as an ethical commitment.

e)

There is the obvious pragmatic consideration that our country would quickly regain its pariah status if it pursued a foreign policy, and trade in armaments, in defiance of this commitment. It is consequently in South Africa's interest to adopt a responsible approach to exporting arms.

With its current elevated international status, South Africa has the potential to play a leading role in multinational efforts to regulate and contain the arms trade. The

government demonstrated this potential at the 1995 Review and Extension Conference of the Nuclear Non-Proliferation Treaty [ACRONYM Consortium, 1995].

Of course South Africa's leverage is limited by the fact that it accounts for only 0.4% of the global arms trade [Kasrils, 1994: 11]. The unilateral denial of weapons to one of the world's 'bad guys' is hardly likely to change its conduct, especially if other states are willing to supply it with weapons. Indeed, some analysts argue that the negative consequences of the arms trade can only be tackled effectively through a multi-lateral regime [Anderson, 1992:797-805].

Regardless of the presence or absence of such a regime, however, arms suppliers have a substantial obligation to behave responsibly. At the heart of this report lies the conviction that governments, as much as individuals, are accountable for their actions. If states deliberately or carelessly sell weapons to repressive or aggressive regimes, they bear a measure of culpability for the use to which their weapons are put.

In its First Report the Commission noted with distress the failure of Armscor officials

to appreciate the devastation and human misery that may be caused by selling arms.

The Cabinet committee should comprise the ministers of defence, trade and industry, foreign affairs, the intelligence services and three additional departments which have no direct interest in promoting arms exports. In order to prevent a possible conflict of interest, the committee should be chaired by one of the three additional ministers.

The administrative arms control body responsible for processing marketing and export applications should be transferred from Armscor to the Defence Secretariat.

This body should evaluate the applications according to the country classifications, rejecting those which fall into the prohibited category. The remaining applications should be scrutinised more closely on a case-by-case basis at interdepartmental, ministerial and parliamentary levels.

The Cabinet committee should submit a list of all proposed exports to the parliamentary sub-committee on arms control at least thirty days before the intended date of export.

The sub-committee should be empowered to request Parliament to consider the appropriateness of a prospective export if it has reason to believe that that export does not comply with the country code of conduct. Parliament may debate the matter and confirm or reject by a simple majority the Cabinet committee's decision.

The parliamentary review would be facilitated if, at the start of each year, the government notified Parliament of the arms transfers it expected to implement within the following twelve months.

The government should present to Parliament its submission to the UN Arms Register, as well as an annual report on all arms sales concluded during the previous year.

If Parliament appoints a military ombudsperson, this official should oversee adherence to arms control legislation by government departments and the defence industry. The ombudsperson would investigate allegations such as those which gave rise to this Commission.

## 5. Transparency

Transparency is an essential feature of democracy. It fulfils the right of citizens to know how public funds and the affairs of government are being managed. It also constitutes a check against abuse of power, and thereby furthers human rights concerns.

The motivation for transparent governance is entirely applicable to arms export policy and practice. Citizens are entitled to know to whom their country is selling armaments. There is little doubt that sectors of the South African public are concerned about these matters.

## 6.2 Classification of countries

The current system of classifying countries into acceptable and unacceptable recipients of South Africa arms is an important source of guidance to administrative, control and enforcement bodies. The disadvantage is that the classifications, even if reviewed on a regular basis, may fail to keep abreast of the rapidly evolving political and military situation in many states and regions.

At the Commission's public hearing on arms trade policy, it was suggested that the classification system should therefore be scrapped in favour of a case-by-case assessment of applications for marketing and export permits. The problem with this approach is that it is too open-ended and does not provide sufficient direction at lower levels of decision-making.

In the view of the Commission, the two approaches should be combined. The administrative arms control body and the inter-departmental review committee should evaluate applications according to a country classification, rejecting those which fall into the prohibited category [Sections 8.4.1 and 8.4.2]. The remaining applications should be scrutinised more closely on an individual basis at ministerial and parliamentary levels [Sections 8.4.3 and 8.4.4].

It is worth noting in this regard that all the arms producing members of the European Community maintain country lists which establish proscribed or restricted destinations for the export of armaments and dual-use goods. [Saferworld, 1992:245]

The classification system should comprise the following categories:

a)

Group 1: countries which are legitimate recipients of South African arms and likely to retain this status for the foreseeable future.

b)

Group 2: countries which are prohibited from receiving South African arms.

APPENDIX G

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London. 17-18 October 1991

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From an international perspective, there is broad agreement that increased transparency in arms transfers could strengthen regional and international peace and security.

The protection of information for security and commercial reasons should be accommodated, where reasonable and justifiable in a democratic society, as limited exceptions to a general rule of openness.

Confidentiality provisions in the new arms control act, and resort to these provisions by government, should be subject to judicial review. Where non-disclosure is sought before the courts on the grounds of national security, the standard of proof should be that disclosure would 'with a high degree of certainty lead to immediate and identifiable harm'.

The government should publish a list of prohibited and sensitive country destinations. The classification of other countries should be revealed, on a confidential basis, to the parliamentary sub-committee on arms control.

The categorisation of armaments should be disclosed to the public. Domestic security and commercial interests may be protected by withholding sensitive technical details, while still providing sufficient information to allow for informed parliamentary and public comment.

A complete list of pending applications for marketing and export permits should be published on a regular basis. The list should include the name of the prospective recipient and the type and quantity of the armaments in question.

South Africa should not accept non-disclosure clauses in sales contracts.

South Africa should participate in the UN Arms Register without qualification. It should seek to strengthen the Register with regard to information on military holdings, national arms production and transfers of light weapons.

South Africa should encourage Southern African states to comply with the UN Arms Register. It should also promote the establishment of a regional arms register.

The government should publish an annual report of all arms transfers concluded in the previous year, specifying the value and content of each transaction and the name of the recipient country.

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## 6. Organisational, operational and procedural matters

The Minister of Defence should appoint a new Board of Directors for Armscor. The process of appointment should be conducted in an open fashion which enjoys public confidence.

These lists should be revised on a regular basis in the light of local technological advances, product obsolescence and international arms control developments. They should conform to international customs terminology and to the lists published by international arms control bodies in respect of weapons of mass destruction, the MTCR and dual-use goods and technology.

From time to time it may be necessary to publish lists of goods and technology which may not be exported to countries subject to international sanctions. Such lists would derive from UN Security Council resolutions and may cover a wide range of non-military items (as was the case with South Africa under apartheid). Alternatively, the sanctions may be so all-embracing as to obviate the need for a detailed list.

#### 7.5 Technology transfer

In designing a new arms control system and formulating lists of armaments, attention should be paid to the following difficulties associated with the transfer of technology

which is used to manufacture military equipment.

First, armaments are consumable and their operating characteristics are known. The threat they represent is more or less quantifiable. In contrast, technology is susceptible

to modification; it is capable of repeated application; and it may be used to produce armaments whose features are unknown. The threat posed by technology transfer is

therefore largely unquantifiable. [Saferworld, 1992:30]

Second, it is much easier to transfer technology and scientific knowledge without detection than it is to export hardware secretly. For example, the critical details of a missile system can be communicated verbally or by fax or electronic mail virtually

without trace. Restrictions on such communication, however, may constitute infringements of freedom of speech and association. [Saferworld, 1992:30]

Third, technology is generally more difficult to define precisely than physical products.

As noted earlier, special problems are associated with identifying dual-use technology.

## CHAPTER 4: OPERATIONAL AND ORGANISATIONAL

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Knowledge of previous diversions of arms exports  
Emphasis on sales  
The Armscor Act  
Conclusion

PAR\_\_\_\_\_T\_\_\_\_2: PROPOSALS FOR NEW ARMS EXPORT POLICY

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## CHAPTER 5: CONVENTIONAL ARMS EXPORT POLICY

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The motivation for maintaining an arms industry  
The economic debate on arms production and exports  
The strategic necessity for restraint  
Political and ethical reasons for restraint  
The argument for banning arms exports  
Towards a responsible arms trade policy  
Statement of policy

## CHAPTER 6: COUNTRY CLASSIFICATION AND CODE OF

### CONDUCT

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Country criteria and code of conduct  
6.1.1 Criteria  
6.1.2 Code of conduct  
Classification of countries  
Problems in applying country criteria and rules  
Mitigating the problems  
6.4.1 Policy emphasis on restraint  
6.4.2 Checks & balances in the decision-making process  
6.4.3 Clarifying the code of conduct  
6.4.4 Long-term perspective

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REPUBLIC OF SOUTH AFRICA

COMMISSION OF 'INQUIRY

INTO ALLEGED ARMS TRANSACTIONS

BETWEEN A ARMSCOR

A-~ND ONE ELI WAZAâ\200\230N

AND OTHER RELATED MATTERS

TO THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

MAY IT PLEASE YOU

You deemed it expedient to appoint a Commission of Inquiry into alleged arms transactions between one Eli Wazan and other related matters, with the following terms of reference:

1.

To inquire into, consider and report on it

(a)

(b)

(c)

(d)

(e)

.

(f)

other

transactions

relating

to

arm: deals and

all aspects and surrounding circumstances of the transaction/s

between Armscor -and one Eli Wazan for the sale of weapons as well as arms -components and related materials;

the facts relating to the said transaction/s as well as details of arms

other

-components and related material, during the period 2 February 1990 to date hereof with a view to the identification of any possible similarities between such other deals and transactions and the transaction/e referred to in paragraph (a) above;

the identity of all persons, parties and/or countries involved in such transactions and their antecedents;

whether there was any connection between such transactions and any other matter;

whether such transactions violated (a) any law and/or (b) any international embargo;

whether prima facie evidence exists indicating that any person committed -

- (i)
- (ii)

a criminal offence;  
serious misconduct, negligence or impropriety.

and

A

To comment -  
obligations and responsibilities

- (i)

in the context of South Africa's national and international

-

on the appropriateness of -

South Africa's current trade policy with regard to weapons and  
components with reference to weapons and related materials;  
and  
decision-making processes with regard to such trade.

- (ii)

To submit an interim report (and further  
possible.

interim reports) as soon as

In its First Report, handed to you on 21 June 1995, the Commission dealt  
with the incident which gave rise to its appointment, to which it referred as  
the Wazani debate.

ORGANISATIONAL STRUCTURE: CONVENTIONAL ARMS TRADE & INDUSTRY CONTROL  
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Safety 5â\200\230 Security  
Inspectorate of  
Explosives

Jr

Defence  
Ministty

Processing Unit

I

SCWMW  
COMMITTEE

YESâ\200\231NO

YES/No

NCAICC

CABlNE' Iâ\200\230

Inspectorate

Scrutiny  
Proms (DG's)

Policy  
(Ministers)

——.....

Israel:

Kazakhstan:

Mexico:

Morocco:

Nigeria:

Papua New

Guinea:

Peru:

Philippines:

Togo:

Turkey:

Palestinian

disappeared Acehnese and East Timorese remains  
unknown

13 000 Palestinians were arrested on security  
grounds. Systematic torture during interrogation  
was reported. 150 Palestinians were shot dead by  
Israeli forces, some possibly as extra-Judicial  
executions.

also

committed human rights abuses

There was an unknown number of executions

The

disappeared remains

unknown. Dozens of prisoners of conscience were  
detained, and reports of torture were received

Hundreds of disappeared are still missing. Over  
450 political prisoners were arrested during the  
year

Hundreds were detained without charge or trial.

Dozens of extra-Judicial executions were reported

hundreds

groups

armed

fate

of

of

were

executed

of

torture

000

political

prisoners were

extra-Judicially

Dozens

by  
government forces, and torture of prisoners was  
reported  
4  
held without  
trial, or were tried by Judicial proceedings that  
fell short of international standards. 27 people  
were executed extra-Judicially, and 49 reported  
disappeared. Abuses by the armed opposition also  
occurred.  
65 extra-Judicial executions took place, and 14  
H1 police or military  
people disappeared while  
custody  
Reports  
executions  
Armed separatists committed serious human rights  
abuses. 250 people were detained without trial  
Thousands of suspected government opponents were  
long  
arbitrarily arrested,  
25  
periods of  
Liberation  
disappearances were  
for  
Tigers  
numerous human rights abuses and executions of  
prisoners  
50 extra-Judicial executions reported, as well as  
widespread human rights abuses by security forces  
Torture of political detainees was widespread and  
systematic - 24 deaths resulted from torture, and  
Scores. were  
26 disappeared in  
killed in possible extra-Judicial killings.

unacknowledged detention.

and many held for

extra-Judicial

in custody.

responsible

reported.

of

Tamil

Eelam

were

and

300

Over

The

Although all incidents reported took place in 1993, most were the  
results of conflicts of long standing. India, for instance, has  
been troubled since independence, Indonesia has been an under-  
long  
reported trouble spot  
history of opposition and counter opposition, as has Sri Lanka.



for many years, Peru also has a

Of course these problems are not limited to South Africa; they are inherent

.  
predicaments in the application of country criteria and rules. Four means of addressing the problems are outlined below.

#### 6.4 Mitigating the problems

##### 6.4.1 Policy emphasis on restraint

Although many supplier states have adopted similar guidelines on arms transfers, the quantity and pattern of national exports differs markedly. It appears that the value and significance of the guidelines depends entirely on the way in which government policy informs their application.

This observation may explain why Germany's arms sales to the Third World constitute a very small proportion of its total arms exports [Weitbrecht, 1992:57-58]; why Japan, of the major industrial countries with significant arms industries, has the lowest volume

of arms transfers [Anthony, 1991: 103-107]; and why, in contrast, the US has consistently armed parties involved in conflict [Hartung, 1995].

Accordingly, the primary objective of South African policy should be to restrain, rather than promote, arms exports [Section 5.6]. Country criteria and rules should be applied in this light. The 'burden of proof' would then lie with justifying rather than with

challenging the appropriateness of particular transactions.

##### 6.4.2 Check and balances in the decision-making process

Government decision-making with regard to country classifications and the approval of

exports should be subject to independent scrutiny and review. This imperative derives from both the sensitivity of arms trade and the Constitution's emphasis on 'accountability, openness and responsiveness' in public affairs [Section 8.1].

In summary, the following checks and balances are proposed later in this report:

Small arms are also a principal means by which authoritarian regimes suppress minorities, opposition parties and popular dissent. There is consequently a need to pay close attention to prospective arms transfers to police and para-military forces. In summary, the Commission proposes three guidelines for evaluating applications for export permits in respect of Category Y armaments:

a)

Major conventional weapons systems and components have particular sensitivity in the context of actual or potential inter-state conflict.

b)

Light weapons and ammunition are especially sensitive in the context of actual or potential internal conflicts.

c)

There will inevitably be exceptions to the above. Export applications should therefore be assessed on a case-by-case basis according to the character of the prospective purchaser, the intended use of the items, and the various strategic factors outlined earlier.

### 7.3 Category Z: dual-use goods and technology

There are many products, components and technologies which can be utilised for both civilian and military purposes (eg chemicals, metals, plastics, electronics, computer systems etc). These items pose two serious problems in designing and enforcing national and international arms control regimes.

First, countries under international arms embargoes will invariably seek to import components and technology which are used predominantly in civilian manufacture but which can be transformed for military production. Second, it is extremely difficult to

identify which items fall within the dual-use category; indeed, the scope for military application of civilian technology is virtually limitless.

A broad selection of controlled items may impose an undue burden on domestic producers, but a narrow selection may lead to the uncontrolled export of goods with

g)

The Non-Proliferation Secretariat of the Department of Trade and Industry monitors sensitive products, components and technologies in terms of the Non-Proliferation Act.

CAMEC thus provides an opportunity for the relevant government body to comment on product and supplier integrity; marketability and supportability of products; production capacity in relation to local requirements; technology transfer; end-user undertakings issued by South Africa in respect of imported components; and the protection of various other interests.

The permit process ensures that companies do not market their goods in regions where arms trade is prohibited; that companies do not expend marketing resources fruitlessly where there is no prospect of exports being approved; and that South Africa's security and strategic capabilities are not compromised by any marketing actions.

A marketing permit defines the rules within which the marketer can operate. It is valid for an initial period of two years and may be extended thereafter for 12 month periods. The permit will be withdrawn if exports to the country in question are prohibited in the intervening period.

### 3.5 The export permit

A prospective exporter, having obtained a marketing permit and concluded a sales contract in terms thereof, must apply for an export permit on the prescribed form. The application must be accompanied by documentary proof of the contract in the form of an official order, contract or Letter of Credit.

Since the lifting of the arms embargoes against South Africa in May 1994, the procurement of an End User Certificate (EUC) has been an additional requirement. In international arms trade practice, an EUC serves to confirm the identity of the purchaser and the content of the proposed sale. The document also provides that the purchaser will not resell or transfer the arms to a third party without the permission of the exporting country.

The proposals listed below are intended to reflect the new Constitution and democratic

order, while taking account of the arguments against full transparency.

#### 9.4 Proposals

##### 9.4.1 Policy

New arms control legislation should cover the main principles and objectives of policy; the country code of conduct; the basis for classifying armaments; and authority for decision-making at all levels. [Section 8.2]

The legislation should be accompanied by a White Paper which presents the philosophy, rationale and mechanics of government policy. [Section 8.2]

##### 9. 4.2 Country classification

The government should publish a list of prohibited and sensitive country destinations (as in Japan, Germany, the US and the UK). [Saferworld et al, 1995: Chapter 5]

The classification of other countries should be revealed, on a confidential basis, to the parliamentary sub-committee on arms control.

##### 9. 4. 3 Armaments classification

The categorisation of armaments should be disclosed to the public, subject to this qualification: domestic security and commercial interests may be protected by withholding sensitive technical details, while still providing sufficient information to allow for informed parliamentary and public comment.

##### 9.4.4 Marketing and export applications

A complete list of pending marketing and export applications should be published on a regular basis. The list should include the name of the prospective recipient country and the type and quantity of the armaments under consideration.

Armcor is mandated to develop, manufacture, purchase, import, export and promote the sale of arms [Section 3(2)(1)]. It is also responsible for exercising control over the development, manufacture, export and marketing of arms [Section 3(2)(1A)]. It will be suggested below that these two sets of functions should not reside in the same institution [Section 4.10 of this report].

The Act provides that no armaments shall be marketed or exported except under the authority of, and according to the conditions stated in, marketing and export permits issued by the Minister of Defence or a person authorised by him [Sections 4C(1)(a)]. Under the previous government, the Minister delegated the issuing of permits to Armcor.

Section 4E stipulates that any person who contravenes the terms of a permit, notice or Ministerial direction issued under the Act shall be guilty of an offence. Such person shall be liable on conviction to a fine of up to R10 000 and/or a period of imprisonment for up to ten years. Section 11A prohibits disclosure of information relating to armaments.

### 3.2 Government Notice No. R888

Government Notice No. R888 of 13 May 1994 contains two schedules listing the types of armaments which may not be developed, manufactured, exported, imported or conveyed through South Africa without a permit as contemplated in Section 4C of the Armcor Act.

Schedule 1 lists "general armaments" in fourteen categories. Schedule 2 lists items related to missile technology, in respect of which a permit is also required by the Non-Proliferation of Weapons of Mass Destruction Act, 87 of 1993 (hereinafter "the Non-Proliferation Act").

The Notice revises and consolidates previous schedules as a result of local technological advances, the government's adherence to the Missile Technology Control Regime (MTCR), and its accession to the Inhumane Weapons Convention. [See Appendix C]

Nevertheless, the control system suffers from a number of critical shortcomings which will have to be addressed when formulating new policy:

- a)
- b)
- d)
- 6)

Many of Armscor's operational and organisational features reflect considerable disregard for where South African arms end up, thereby undermining an essential purpose of the permit process. [Chapter 4]

The Armscor Act creates the anomaly that a single agency is responsible for marketing and selling armaments on the one hand, and for controlling arms exports on the other. The Commission's inquiry into the Wazan debacle revealed that the former activities took precedence over the latter. [Section 4.9]

The Commission's inquiry also highlighted the necessity for more effective monitoring and enforcement measures on the part of police, intelligence and customs authorities. [Section 11.3]

Statutory control over different types of armament is decentralised. The Commission shares the view of Armscor that this reduces the efficacy of

- the control system. [Section 8.4.1]

While policy was formulated by Cabinet, the implementation thereof was handled entirely at departmental level or by Armscor. Given the political sensitivity of the arms trade, the issuing of marketing and export permits should be approved at ministerial level and should be subject to parliamentary oversight [Sections 8.4.3 and 8.4.4]

As indicated above, sensitive technical details need not be disclosed. Save with this qualification, South Africa should not accept non-disclosure clauses in sales contracts.

#### 9. 4. 5 Judicial review

Confidentiality provisions in the new arms control act, and resort to these provisions by

government, should be subject to judicial review.

Where non-disclosure is sought before the courts on the grounds of national security, the standard of proof should be that disclosure would "with a high degree of certainty lead to immediate and identifiable harm" (as in the US). [Freedom of Expression Institute, 1995:3-5]

#### 9.4.6 UN Arms Register

South Africa should participate in the UN Arms Register without qualification. It should support proposals to strengthen the Register, especially with regard to information on military holdings and national production.

South Africa should also press for the Register to be expanded to include data on light weaponry [Laurance, 1995:149-200\224154]. While this will undoubtedly pose methodological

problems, it is important to recognise that accumulations of light weapons are destabilising in many regions and exacerbate internal conflicts [Section 7.2].

#### 9. 4. 7 Regional initiatives

South Africa should encourage the member states of the Southern African Development Community (SADC) to comply with the UN Arms Register.

South Africa should also promote the establishment of a regional arms register in Southern Africa. [Marino, 1994; Boutros-Ghali, 1994:24]



human rights records of recipient states. As a result, South Africa contributed through its arms sales to widespread loss of life, injury and destruction of property in many regions (see, for example, Human Rights Watch, 1994a).

This approach is entirely inconsistent with a responsible arms trade policy. It is untenable in the light of South Africa's new Constitution, democratic dispensation and international obligations and responsibilities.

The following fundamental issues consequently need to be addressed:

a)

The formulation of new arms export policy which reflects a sound balance between political, ethical, strategic and economic factors, and which takes full account of international norms and the necessity to respect human rights. [Chapter 5]

b)

The inclusion in the policy of criteria and rules for determining to which countries South Africa may or may not sell particular categories of armaments. [Chapters 6 and 7]

c)

The identification or establishment of appropriate bodies to formulate and implement these criteria and rules, and to review their application. [Chapter 8]

APPENDIX B

AUTHORS OF WRITTEN SUBMISSIONS TO THE PUBLIC  
HEARING OF THE CAMERON COMMISSION, CAPE TOWN,  
JUNE 1995

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South African National Defence Forces and Defence Secretariat

South African Defence Association

British American Security Information Council

Dr Colin S Gray

Terry Crawford-Browne for Archbishop Tutu

ARMSCOR

Royal Danish Embassy, Pretoria

Dr Jakkie Cilliers, Institute for Defence Policy

Professor Jacklyn Cock

Southern African Catholic Bishops' Conference

Professor J H van Wyk

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Saferworld, England

The Black Sash

Professor D A du Toit

Dr Kelvin Kemm, STRATEK

Peter Batchelor and Sue Willet, Centre for Conflict Resolution

Relatives for Justice, Northern Ireland

Freedom of Expression Institute

Department of Foreign Affairs

Helmoed - Romer Heitman

Graeme Bloch

R P Kalil

## APPENDIX C

### SOUTH AFRICA'S PARTICIPATION IN INTERNATIONAL ARMS CONTROL INITIATIVES, (EXTRACT FROM ARMSCOR. 1995a)

#### A.1

Arms trade control in South Africa was not transparent during the period when the UN arms embargo was in force. neither was South Africa able to co-operate normally with the international community in arms control initiatives. it is only since the lifting of the arms embargo. that this has become possible.

#### A.2

Article 26 of Chapter VIII at the UN Charter states:

"in order to promote the establishment and maintenance of international peace and security with the least diversion of armaments of the world's human and economic resources. the Security Council shall be responsible for formulating, with the assistance of the Military Staff Committee referred to in Article 47, plans to be submitted to the members of the United Nations for the establishment of a system for the regulation of armaments."

According to the Charter. the emphasis of the UN Charter is upon maintaining a floor. as well as a ceiling, for national armaments. A floor is seen to be necessary because it is important that adequate armaments be available for the maintenance of peace, while a ceiling would prevent the unnecessary diversion of resources to armaments that threaten international security.

Armament transfers are an important element of international trade. but because transfers take many forms. from normal trade to gifts. it is not easy to determine the exact magnitude thereof. Armaments transfers have important economic. commercial and foreign policy implications. Recently armament transfers have moved away from handmade and rudimentary defence materiel to the sale of advanced systems that require special training"

The transfer of weapons. necessary to enable states to meet their legitimate self-defence needs as embodied in Article 51 of the UN Charter. is recognised as an "inherent right". Many developing countries and, under-developed countries do not have the economic or human resources to develop their own defence industries are reliant on the acquisition of arms and related goods from external sources.

#### A3

#### AA

#### A.2315

" munitions - 201 million

Why. Immutability of arms  
municions - 200 million

"

" million

Munitions - 231 million  
Unleashed - 235 million.

## 2.2 Policy determinants

A system of country and weapons classification does not in itself constitute arms export policy. Policy comprises, inter alia, clearly defined norms and guidelines for assigning countries and weapons to particular categories within the system.

In this regard, Armscor's submission to the public hearing convened by the Commission states that "typical considerations for the classification of countries were

similar to those used by other major exporting countries". The submission describes the criteria adopted or proposed elsewhere in the world, but does not list those which applied in South Africa. [Armscor, 1995az6 and 24-26]

The following extracts from the Log Pamphlet of 1993 (as translated) provide more detail on policy goals, strategies and constraints.

A strong internationally competitive armaments industry has been established with great care and effort in the Republic of South Africa (RSA). This industry is regarded, as a result of its capital and labour intensity, as a valuable asset and of strategic value for the RSA with the result that every effort is made to ensure that the industry survives under prevailing economic trends nationally and internationally, and to expand it in the best interests of South Africa. [Paragraph 1]

Armscor would like to be seen by the international community as a responsible supplier of armaments and will do everything in its power to prevent them from falling into the wrong hands and, as a result, harm South Africa's own strategic capabilities or that of friendly countries.

[Paragraph 8(a)]

Armscor shall at all times take into consideration all international and national treaties, regimes, acts and related regulations in connection with arms proliferation, and accordingly shall apply control and monitoring measures and take steps to ensure that [marketing and export] actions take place within the confines thereof. [Paragraph 8(b)]

c)

a

Group 3: countries which cannot be placed easily in either of the above categories. Prospective exports to these countries would require especially rigorous evaluation.

As is currently the case, a Cabinet committee should be responsible for approving the allocation of countries to these groups and for reviewing the classifications on a quarterly basis [Section 2.1]. The allocation and review should be based on the criteria and code of conduct outlined above.

Outstanding sales and service contracts should be cancelled immediately if the status of the importing state is downgraded to the prohibited category.

### 6.3 Problems in applying country criteria and rules

The Commission's critique of the Log Pamphlet revealed two significant problems in applying country guidelines to individual states for the purpose of controlling arms exports [Section 2.4]. First, most of the guidelines require the exercise of subjective political or military judgement. The guidelines may be broadly or narrowly interpreted, with substantially different consequences.

Second, it is difficult to make long-term predictions about states and inter-state relations. A country which is currently an acceptable recipient of arms may quite quickly lose that status as a result of internal or external developments. If weapons have already been sold to that country, they may end up being used for repressive or aggressive purposes.

This danger is greatest in developing countries and politically volatile regions, as illustrated by South African arms sales to Rwanda. Armscor exported R100 million worth of weapons to the Rwandan government between the late 1980s and early 1993, at which time delivery ceased because of the deteriorating situation in Rwanda [Section 2.4]. Nevertheless, South African weapons were amongst those used in the ensuing campaign of genocide [Human Rights Watch, 1994a: 16-17].

controls. They agreed to pursue discussions at their next meeting on these subjects;

Agreed to continue discussing the possibilities for lowering tension and arms, including the development of further measures of restraint concerning arms transfers and ways of encouraging regional and global efforts towards arms control and disarmament;

Agreed to continue to give these efforts high priority and meet again in the new year in the United States to take forward their discussions, and to meet regularly thereafter at least once a year.

Agreed Guideline on conventional arms transfers

The People's Republic of China, the French Republic, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America,

Recalling and reaffirming the principles which they stated as a result of their meeting in Paris on 8 and 9 July 1991,

Mindful of the dangers to peace and stability posed by the transfer of arms beyond levels needed for defensive purposes,

and

Reaffirming the inherent right to individual or collective self-defence recognized in Article 51 of the Charter of the United Nations, which implies that States have the right to acquire means of legitimate self-defence.

Recalling that in accordance with the Charter of the United Nations, UN member States have undertaken to promote the establishment and maintenance of international peace and security with the least diversion for armaments of the world's human and economic resources, Seeking to ensure that arms transferred are not used in violation

of the purposes and principles of the UN Charter,

Mindful of their special responsibility for the maintenance of international peace and security,

Reaffirming their commitment to seek effective measures to promote peace, security, stability and arms control on a global and regional basis in a fair, reasonable, comprehensive and balanced manner,

.

Noting the importance of encouraging international commerce for peaceful purposes,

Determined to adopt a firm, responsible and prudent attitude of restraint regarding arms transfers,

Declare that, when considering under their national control procedures for conventional arms transfers, they intend to observe rules of restraint, and to act in accordance with the following guidelines:

The Board should play an active role in exercising its statutory duty to manage and control the affairs of the corporation. It should be mandated to oversee the transformation of Armscor.

The Board should direct management to eliminate procedures which were designed to evade the arms embargoes; reinforce means of ensuring that arms exports end up at the authorised destination; develop effective management, administrative and financial systems; and introduce an educational programme on new policy for Armscor personnel.

Sales of weapons and ammunition should be concluded directly with the relevant government authority in the country of import.

If military components or technology are sold to a private defence company, the supplier should be obliged to obtain an International Import Certificate which records formal approval of the sale by the relevant authority in the importing country.

An intelligence agency should conduct regular assessments of the bona fides of all agents with whom Armscor and the defence industry work. The agency should maintain a register of these agents.

Export permits should not be granted in the absence of an End-User Certificate (EUC) issued by the importing government. The responsibility for procuring the EUC should lie with the administrative arms control body in South Africa rather than with Armscor or the defence industry.

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The EUC should indicate clearly the identity of the issuing authority; the specifications and quantity of the armaments in question; and a commitment not to resell or transfer the arms without the permission of the responsible ministry in South Africa.

In the event of an importing country acting in breach of this commitment, the transgression should be publicised internationally. All further arms sales to that country should be prohibited.

The supplier should be required to obtain a Delivery Verification Certificate which confirms that the goods have arrived at the correct destination and been collected by the designated purchaser. The arms control body should verify receipt of the goods through diplomatic channels.

Arms consignments should be sold 'cost, insurance and freight' rather than 'free-on-board'. In terms of the former shipping arrangement, the supplier is responsible for organising the transport of the goods to the country of import.



### 3. Armaments classification

Armaments should be categorised along the following lines for the purpose of export control:

- a)
- b)
- c)

Category X would embrace items which may not be exported under any circumstances because of their sensitivity in terms of South Africa's security or because of international arms control regulations.

Category Y would consist of all other armaments and military technology, the export of which is assessed on a case-by-case basis and requires a government permit.

Category Z would include dual-use items which are subject to varying controls.

Category Y armaments cannot be classified in abstract as sensitive or non-sensitive. This distinction depends on the context of each prospective sale. The appropriateness of exporting these armaments should therefore be assessed according to the situation in the importing country and the intended use of the arms.

While major conventional weapons have particular sensitivity in the context of actual or potential inter-state conflict, light weapons and ammunition are especially sensitive in the context of actual or potential internal conflict.

" ,

Control over different types of armament, which currently vests in various government departments, should be centralised in a single agency.

### 4. Decision-making and oversight

Decision-making on arms exports should be subject to the principles of executive accountability and parliamentary oversight. Country classifications and the approval of exports necessarily entail the exercise of subjective judgement. Independent evaluation of that judgement may be the most effective means of safeguarding human rights and international security concerns about the arms trade.

Arms export policy and the country code of conduct should be contained in legislation and ratified by Parliament. This would confer on Parliament a substantive role in formulating policy and overseeing its implementation. It would give juridical status to the relevant norms and rules, thereby limiting the scope for deviations from policy.

Country classifications should be determined at an inter-departmental level according to the code of conduct outlined above. The classifications should be approved by a Cabinet committee and reviewed by a parliamentary sub-committee on arms control.

and global 'police force'. For as long as there are no effective international safeguards against aggression, states will regard the right of self-defence as fundamental. With this in mind, and in the light of the South African government's declared intention to export armaments in a responsible fashion [Mandela, 1994], the rest of this report considers the features and mechanics of a responsible arms trade policy.

#### 5.6 Towards a responsible arms trade policy

In formulating national arms control policies, supplier states seek to balance the conflicting economic, strategic, political and ethical perspectives outlined above.

The previous government established and maintained an arms industry for strategic reasons in the context of apartheid and the arms embargoes against South Africa. Arms export policy was driven by economic factors, though not at the expense of domestic security concerns. Ethical constraints did not enjoy much prominence. [Chapter 2]

The arguments for retaining this balance are raised frequently and are well known: 'if we don't sell arms, someone else will'; 'guns don't kill, people do'; and 'international relations are based on interests, not ideals'.

For the following reasons, the Commission is of the view that these arguments do not withstand scrutiny:

a)

It is difficult to take seriously the notion that South Africa should be unconcerned about inflicting on other countries the anguish and destruction that it itself endured over the past decades.

b)

Armaments are unlike any other commodity because they are designed for the use or threat of force. As inanimate objects they may be regarded as morally neutral, but arms transfers clearly have moral implications and thus, inescapably, entail moral choices on the part of supplier states.

increase regional tension and instability;

introduce destabilising military capabilities in a region;

contravene an international arms embargo or any other resolution of the United Nations;

be used for internal repression, external aggression, international terrorism or interference in the internal affairs of a sovereign state;

be used for any other purpose inconsistent with the UN Charter and international law;

seriously undermine the recipient state's economy;

prolong or aggravate an existing armed conflict, save where the recipient is recognised by the UN Security Council to be defending itself against aggression; or

in any way undermine South Africa's security, strategic capabilities or foreign interests.

d)

g)

h)

Put positively, South Africa shall export arms only for the purpose of:

a)

b)

c)

individual or collective self-defence as defined in the UN Charter;

the legitimate maintenance of good governance and internal stability; and peace operations authorised by the UN Security Council.

South Africa shall under no circumstances export weapons of mass destruction and related technology.

South Africa shall adhere strictly to all international arms control agreements to which it is bound.

b)

0)

d)

e)

the country code of conduct;

the basis for classifying armaments;

authority for decision-making at all levels; and

the principal means of ensuring that exports do not end up in the wrong hands (eg through the procurement of End-User Certificates).

Legislating these issues would confer on Parliament a substantive role in formulating policy and overseeing its implementation. It would give juridical status to the relevant norms and rules, thereby limiting the scope for deviations from policy. It would also provide more precise guidance to the defence industry and to administrative, decision-making and enforcement bodies.

The draft Act should be accompanied by a government White Paper which explains in greater detail the rationale, philosophy and mechanics of new policy.

Of course the focus of the legislation and the White Paper need not be confined to arms exports. The former could cover the full range of activities related to armaments (ie research, development, manufacture, import, transit etc), and the latter could address the various issues outlined in Chapter 5 regarding the future of the defence industry.

### 8.3 Classification of countries and armaments

As is currently the case, the classification of individual countries should be determined at an inter-departmental level, approved by the responsible Minister or Ministers, and ratified by Cabinet [Section 2.1]. This process should apply equally to the categorisation of armaments.

Once ratified by Cabinet, the classifications should be reviewed by a parliamentary sub-committee on arms control comprising members of the parliamentary committees

PART 2

The time has also come for us to recognise the need to deal squarely with the mounting toll of death, destruction and human suffering inflicted by the use of conventional weapons in conflicts around the world. ...The term 'conventional' should not hide or render banal the vast destructive powers of some of those weapons, nor should the innocuous-sounding phrase 'arms transfers' make us forget the devastating effect of the supply of weapons in local conflicts. [Extract from address by UN Secretary General Javier Perez de Cuellar at the 15th Special Session of the UN General Assembly, 1988]

Category C products were not released for marketing due to the sensitivity of their foreign content; or because they were still being developed for the SANDF; or because they might hold a strategic advantage or disadvantage for South Africa.

The Defence Force was responsible for the classification of armaments. The classification of countries was based on recommendations by the Defence Foreign Policy Committee (DFPC). These recommendations were approved, in turn, by the Minister of Defence, the State Security Council and Cabinet. The DFPC reviewed the classifications on a quarterly basis.

The DFPC initially comprised representatives of Armscor and the South African Defence Force (SADF). In 1992 the Department of Foreign Affairs and the National Intelligence Service joined the committee, and in 1994 the Department of Trade and Industry became a member. From 1991 the chairpersonship alternated between the Defence Force (Chief of Staff Intelligence) and Armscor (General Manager Import and Export Control).

The country and weapons classifications as approved by Cabinet were contained in a confidential military document known as the Log 17 Pamphlet 19 (hereinafter the 'Log Pamphlet') [Section 3.3]. The 1989 and 1993 versions of this document were disclosed to the public in controversial circumstances during the Commission's inquiry into the Wazan debacle.

At the time of the Commission's appointment, the classification system and the classifications contained in the Log Pamphlet were under review by the new Cabinet. The Deputy Minister of Defence had assumed the chairpersonship of the DFPC, and the State Security Council had been replaced by the Cabinet Committee for Security and Intelligence Affairs.

As noted above, in August 1995 the Cabinet announced a substantial revision of arms control policy and the establishment of the NCACC as the ministerial body responsible for this area. [App\_endix BI

responsible for defence and foreign affairs. The sub-committee should be empowered in law to recommend changes to the classification.

The above proposals should be followed in respect of regular review and revision of the classification lists.

#### 8.4 Marketing and export permits

This Section addresses administrative, decision-making and oversight functions in respect of marketing and export permits at departmental, inter-departmental, ministerial

and parliamentary levels.

##### 8.4.1 Departmental level

Applications for marketing and export permits are currently received and processed by Armscor's Armaments Control Division. As noted earlier, this arrangement is clearly inappropriate since Armscor is also responsible for marketing and selling arms [Section 4.10].

Ideally, the administrative arms control body should reside in a government department which does not have a direct interest in promoting arms exports. This would preclude the body from being located in the ministries of defence, foreign affairs and trade and industry. Other ministries, however, do not have the requisite expertise in the arcane world of military technology and international arms controls.

For pragmatic reasons, the Armaments Control Division should therefore be housed in the Defence Secretariat under the supervision of the Secretary for Defence. A proposal to this effect has been made by Armscor [Armscor, 1995:2129]. As discussed below, the problem of conflict of interest would be addressed through checks and balances at higher levels of decision-making.

The Division should retain its current duties: ensuring that marketing and export applications comply with statutory and procedural prescriptions (including the country code of conduct and classification); registering applications and submitting them to

Exports allow for bigger production runs and amortise expenditure on research and development, thereby lowering the unit costs of production. They may earn foreign exchange and contribute to a favourable balance of payments. It is argued that the industry stimulates employment and technological development, with significant spin-offs for the civilian sector. [SADIA, 1995; Subcouncil on Defence, 1994; and Catrina, 1990:115419]

The South African arms industry produces roughly 4% of all manufacturing output; it contributes 1.1% of the GDP; and it provides an estimated 48 600 jobs [SADIA, 1995:9-12]. Export sales amounted to R886 million in 1993/4 and R854 million in 1994/5, resulting in a positive trade balance in defence equipment of R124 million in 1993/4 and R335 million in 1994/5 [Arm Scor, 1995bz22].

The economic motivation for exporting arms has, however, been challenged in academic studies of military production in both developing and industrial countries. While individual companies may profit from selling arms, at a macro-economic level the returns are usually offset by state subsidies. [Hartung, 1994; Brzoska, 1989; and Ball, 1988]

In the South African context, Batchelor and Willet argue that the net economic benefits of arms exports are marginal once direct and indirect subsidies are taken into account. These subsidies include export incentives under the General Export Incentive Scheme, government expenditure on defence research and development, the maintenance of an arms export infrastructure, and support for the marketing of armaments. [Batchelor and Willet, 1995: 12-14]

In 1994 South Africa's arms exports accounted for little more than 1% of total exports and 2% of manufactured exports. The official balance of trade in defence-related products excludes the costs of importing capital goods and other intermediate inputs; if these costs were included, South Africa might register a negative trade balance in military equipment. [Batchelor and Willet, 1995 : 12]

Moreover, the maintenance of the defence industry imposes long-term opportunity costs since military production is capital-intensive and absorbs substantial resources; in the 1980s as much as 30% of government spending on research and development was



# CURRENT ARMS EXPORT POLICY AND CONTROL

## PART 1

### 11.3 Enforcement

The administrative arms control body should be empowered to request and examine the records of Armscor, Denel and private defence companies for the purpose of monitoring compliance with arms control regulations, even in the absence of alleged wrongdoing.

The South African Police Service (SAPS) should have a dedicated unit for investigating alleged arms control contraventions.

The brief of the National Intelligence Co-ordinating Committee (NICOC) should include the gathering and analysis of information regarding such contraventions.

The SAPS and NICOC should perform these functions in co-operation with Interpol and their counterparts in other countries.

Customs and Excise should have an explicit mandate to monitor compliance with arms controls.

Where a government department or state agency uncovers evidence of an unauthorised sale or transfer of armaments, the matter should be reported immediately to the responsible Minister and investigated by the SAPS.

The above proposals should be formalised in government regulations. The regulations should provide for functional co-operation between the administrative arms control body, the SAPS, NICOC and Customs and Excise. The latter bodies should be represented on CAMEC [Section 8.4.2].

A concerted effort should be made to tighten border controls, and air surveillance in particular, in the light of repeated allegations that private individuals and companies are engaged in illegal arms transfers from South Africa [see, for example, Human Rights Watch, 1994bz51-54 and 1995:14].

Former members of the SADF, now operating as mercenaries, are allegedly involved in the illicit gun-running. The problem of mercenary ventures is itself extremely serious and warrants urgent government attention. While this issue falls outside the Commission's terms of reference, there are obvious analogies to be drawn between the transfer of armaments and the 'export' of military services. In neither case is it tolerable that the activity occurs in the absence of strict government control.

(b)

the facts relating to the said transaction/s as well as details of other arms deals, and other transactions relating to arms components and related material, during the period 2 February 1990 to date hereof with a view to the identification of any possible similarities between such other deals and transactions and the transaction/s referred to in paragraph (a) above;

(c)

(d)

(e)

(f)

the identity of all persons, parties and/or countries involved in such transactions and their antecedents;

whether there was any connection between such transactions and any other matter;

whether such transactions violated (a) any law and/or (b) any international embargo;

whether prima facie evidence exists indicating that any person committed:

(i)

a criminal offence; and

(ii)

serious misconduct, negligence or impropriety.

To comment - in the context of South Africa's national and international obligations and responsibilities - on the appropriateness of:

(i)

South Africa's current trade policy with regard to weapons and components with reference to weapons and related materials; and

(ii)

decision-making processes with regard to such trade.

To submit an interim report (and further interim reports) as soon as possible.

## Nuclear non-proliferation treaty

### A.5

South Africa acceded to the Nuclear Non-Proliferation Treaty on 10 July 1991. This treaty is aimed at preventing the spread of nuclear weapons to non-nuclear weapons states.

## Missile Technology Control Regime

### A.6

### A.7

The Missile Technology Control Regime was formed in 1991 with its main focus on harmonising export controls on missile related technologies, materials and components that could be utilised in the manufacture of missile systems with a range of more than 300km. Initially it made provision for a warhead of more than 500kg, but because of CWC and BWC concerns, the payload criterion has been dropped as CB warheads can be fairly small.

South Africa is not yet a member of the MTCR, but has entered into a bilateral agreement<sup>33</sup> with the United States, who acts as custodian of the MTCR to effect an acceptable control mechanism in the RSA in relation to MTCR concerns.

### A.8

South Africa's obligations in terms of the MTCR are embodied in:

(a)

(b)

The Non-proliferation of Weapons of Mass Destruction Act (Act No 87 of 1993) and subsequent Government Gazette Notice R1789 of 14 October 1994, which address the CWC and MTCR proliferation concerns.

Government Gazette Notice R888 of 13 May 1994 issued in terms of the Arms and Ammunition Development and Production Act, 1968 (Act No 57 of 1968), which addresses control over the conventional use of MTCR-listed items, as many of the technologies and components of MTCR concern have a dual-use application.

## Inhumane Weapons Convention

### A.9

The Inhumane Weapons Convention of the United Nations was opened for signature in 1981 and entered into force on 2 December 1983. Its intention is

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The Chemical Weapons Convention (CWC) was formed in 1993 to serve as a watchdog relating to chemical weapons and related substances. SA acceded to the CWC in 1994.

The Biological Weapons Convention (BWC) in the process of being finalized to serve as a watchdog over biological weapons and related substances.

The MTCR- bilateral with the US Government was signed in 1994 after being approved by Cabinet

The administration of Act 87 of 1993, ie the responsibility at the Nonoproiiferation Secr  
etariat oi the  
Depenment of Trade and Industry.

Countries [to which arms exports are prohibited] are normally a threat to international peace or otherwise politically unstable, or are hostile to South Africa. [Paragraph 9(0)]

The introduction to the 1989 version of the Log Pamphlet notes that because of limited domestic demand for weapons and ammunition, production capacity is not utilised optimally; unit costs are therefore high in comparison with similar equipment sold elsewhere in the world. The Cabinet had therefore accorded "the highest priority to the marketing of armaments". [Paragraphs 3 and 4, Log 17 Pamphlet 19, 1989]

Before evaluating the way in which this policy was applied in practice, six preliminary observations can be made:

a)

The primary policy objectives were to maintain the arms industry for strategic reasons and to increase arms exports for economic reasons.

b)

The criteria for classifying countries were relatively vague. The Armscor and government officials who testified before the Commission were unable to shed further light on this subject.

c)

(1)

e)

There was no reference to human rights as a policy consideration.

Despite the stated emphasis on international concerns, the Department of Foreign Affairs only joined the DFPC a decade after its formation.

Before 1992, foreign policy matters were handled by the SADF and

Armscor at departmental level.

The Log Pamphlet of 1993 provided that deviations from the country Classification were permissible under "exceptional circumstances" but did not define these circumstances. [Paragraphs 9(a), (b) and (0)]

Apart from these comments, more meaningful conclusions about South Africa's arms export policy can be drawn from an analysis of its implementation. The following Sections consider Lebanon as a case study and review the country classification contained in the Log Pamphlet.

## 2.5 The context of apartheid and the arms embargoes

The Commission noted in its First Report that it could not provide a definitive explanation for the manifest irresponsibility which characterised South Africa's arms export policy under the previous government. However, it seemed probable that two related developments were significant contributing factors.

At a general level, the National Party government before 1990 was determined to maintain the system of apartheid through repressive means. The immorality of domestic policy extended naturally to foreign policy. A state which injured and killed its own people was hardly likely to respect the citizens of other countries.

More specifically, South Africa's internal and external policies led to the imposition of

international arms embargoes against our country. The UN Security Council prohibited states from exporting arms to South Africa [Resolution 418 of 1977], and requested states to refrain from importing arms from South Africa [Resolution 558 of 1984].

While the embargoes stimulated the growth of the domestic arms industry, they also restricted the government's ability to buy and sell weapons freely and openly. Armscor consequently functioned behind a wall of secrecy; it relied on front companies and other clandestine methods to evade the embargoes; and it operated in the world of illicit arms dealing.

The government's overriding imperative was to manufacture, purchase and export arms in order to secure the survival of minority rule and the armaments industry. This imperative was not tempered by the constraints of independent scrutiny, public accountability or international norms.

## 2.6 Conclusion

South Africa's arms export policy at the time of the Commission's appointment was formulated in the context of apartheid, international isolation and the arms embargoes against this country. The policy was based primarily on strategic and economic concerns. There was insufficient regard for the political stability, foreign posture and



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to it:  
recommendations regarding enactment of new legislation;  
responsibility for enforcement of legislation.

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South  
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It will be evident from this agenda that the Commission's inquiry will focus  
The following issues are consmdered relevant

primarily on arms export policy.  
but of secondary importance to the inquiry:

arms imports policy; privatisation and diversification of the arms industry;  
conversion to civilian production;  
and the State  
subsidy of the arms industry.

counter-trade policy;

The Commission hereby requests

interested

parties

to make written

submissions to the Commission by Monday 5 June 1995.

The submissions should be addressed to:

Advocate Brian Sheer  
Advocate leading evidence on behalf of the Commission  
Office of the Attorney-General of the Witwatersrand  
Private Bag X 8

JOHANNESBURG  
2000

The Commission will after consultation inform the public and the Parties of  
the procedures to be followed at the hearing. and how they are to be determmed.

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DONALD MC DONALD DU PLESSIS  
â\200\231SECRETARY TO THE COMMISSION



## CHAPTER 3: ARMS EXPORT CONTROLS

At the time of the Commission's appointment, South Africa's conventional arms control policy was expressed chiefly in the Armaments Development and Production Act, 57 of 1968 (hereinafter 'the Armscor Act'); Government Gazette Notice No. R888 of 13 May 1994; and the SANDF policy directive Log 17 Pamphlet 19.

This Chapter outlines the purpose and content of these documents and describes the permit system which constituted the principle mechanism for controlling the marketing and export of armaments. The information in this Chapter is drawn from the official documents referred to above, and from Armscor's submission to the public hearing convened by the Commission [Armscor, 1995a]. Unless indicated otherwise, the term 'Section' refers to the Armscor Act and not this report.

### 3.1 The Armscor Act

The Armscor Act has two main objects: to establish a corporation for the development and production of armaments; and to empower the Minister of Defence to prohibit or control the export, marketing, import, conveyance through the Republic, development and manufacture of armaments.

Section 1 defines 'armaments' as including the following:

"any vessels, vehicles, aircraft, bombs, ammunition or weapons, or any substance, material, raw material, components, equipment system, articles or technique of whatever nature capable of being used in the development, manufacture or maintenance of armaments or for defence purposes or other purposes determined by the Minister with the concurrence of the Minister of Economic Affairs".

Section 3(1) provides that the objects of Armscor "shall be to meet as effectively and economically as may be feasible the armaments requirements of the Republic, as determined by the Minister, including armaments required for export".

A marketing permit or a contract between Armscor and a local defence company is deemed sufficient authorisation for the development and manufacture of arms. Statutory control over different types of armament vests in different agencies, with some considerable overlap:

a)

Armscor controls conventional arms; anti-riot equipment; explosives; and MTCR-related products (the Armscor Act).

b)

The SAPS controls small arms and ammunition (the Arms and Ammunition Act, 75 of 1969); teargas (the Teargas Act, 16 of 1964); and explosives (the Explosives Act, 26 of 1956).

c)

The Department of Trade and Industry controls all commercial products (the Import and Export Control Act, 45 of 1963); weapons of mass destruction and MTCR-related products (the Non-Proliferation Act); and space technology (the Space Affairs Act, 84 of 1993).

d)

The Atomic Energy Corporation controls nuclear technology (the Nuclear Energy Act, 92 of 1982).

Finally, it should be noted that in April 1992 most of Armscor's manufacturing subsidiaries were transferred to a new state-owned company, Denel, which is accountable to the Minister of Public Enterprises. Armscor retained responsibility for 'marketing facilitation', arms trade control and the acquisition of armaments and related products for the Defence Force, the SAPS and other government departments.

### 3.7 Comment

The regulation of conventional arms exports appears, at least on paper, to have been relatively comprehensive and thorough. The controls have been reinforced over the past eighteen months in the light of the ending of the arms embargoes, the election of the new government, and the Wazan debacle.

#### 9. 4. 8 Annual report of cporry

The government should publish an annual report of all arms transfers concluded in the previous year, specifying the value and content of each transaction and the name of the recipient country (as in Canada). [Anthony, 1991248]

End Use Certificates are obligatory in respect of dual-use items governed by the Inhumane Weapons and Non-Proliferation regulations. ('Dual-use items' refers to goods and technology which have both military and civilian application).

The Armaments Control Division scrutinises export applications for completeness and compliance with statutory and procedural conditions. Until September 1994 this evaluation was based primarily on the documentation and information supplied by the applicant. Since September 1994 the Division has independently verified the validity of

transactions and EUCs through diplomatic channels.

Another important development occurred in May 1995. Whereas previously the head of the Armaments Control Division had sole responsibility for issuing export permits, the process is now handled in the same way as marketing permits. Once verification of the transaction is complete, CAMEC assesses the export application and makes a recommendation to Armscor's Management Board for final approval.

The application will normally be refused in the absence of a marketing permit.

Exceptions might be made in special circumstances, however. For example, a company may want to export sheets of armour plate for the purpose of testing a cutting machine it is interested in purchasing.

The conditions attached to the export permit state that the seller is obliged to confirm

that the export has been effected within seven days of the indicated export date. This is achieved by returning a copy of the permit, duly certified by Customs and Excise, to the Armaments Control Division.

### 3.6 Other controls

Section 4C of the Armscor Act provides that no armaments may be imported or conveyed through the Republic without a permit. The issue of such permits will take into account the laws of other countries, particularly with regard to end-user undertakings.

The main arguments in this regard can be summarised as follows:

a)

Many facets of foreign policy are sensitive and cannot be conducted openly. Parliament and the public should trust the Executive to undertake 'quiet' diplomacy in these areas.

b)

The publication of country classifications would embarrass states which are prohibited from receiving South African arms. These states might react by severing diplomatic and commercial relations with South Africa.

c)

Importing states may not want their arms acquisitions revealed to their adversaries or potential adversaries. South Africa may consequently lose customers if it rejects non-disclosure clauses in sales contracts.

d)

The defence industry might lose its competitive edge, especially in niche markets, if the details of innovative technology were publicised.

These arguments should be given due weight. However, it would be inappropriate to regard them as absolute imperatives which override, and thereby undermine, a fundamental constitutional principle. Rather, the challenge is to accommodate the points, where reasonable and justifiable in a democratic society, as limited exceptions

to a general rule of openness.

An excellent formulation of this position is provided by the Chief of the SANDF in respect of revisions to the Defence Act:

"Laws must be defined in such a way that they restrict denial of access to information to the minimum possible and only leave [undivulged] the absolutely essential matters which may be truly to the detriment of the State". [Quoted in Freedom of Expression Institute, 1995: 1]

When measured against this test, the relevant provisions of the Armscor Act are clearly excessive. Section 11A stipulates a general prohibition on disclosure of information relating to armaments.

indiscriminate bombardment which does not distinguish between military targets and civilians. Certain types of munition, like cluster bombs, may be especially prone to such abuse. [McCoubrey and White, 1992:189-257]

By way of illustration, in December 1994 the US Administration cancelled the sale of cluster bombs to Turkey on the grounds that the weapons might be used against Kurdish civilians. [Hartung, 1995: 16]

Evaluating export applications according to these criteria will entail a substantive exercise of political and military judgement. While some of the criteria are measurable (eg the prospective buyer's military capability), others are frequently difficult to determine (eg the prospective buyer's intentions). There will consequently be greater discretion in decision-making than with an a priori division of arms into sensitive and non-sensitive categories.

The proper exercise of this discretion should lead to a more restrictive approach to arms exports because it avoids generalisations; it requires careful consideration of the circumstances of the prospective purchaser; and it does not automatically assume that any armaments are non-sensitive.

In view of the country code of conduct proposed in Chapter 6, it would be desirable to distinguish between 'defensive' and 'offensive' weaponry. Although this distinction resides less in the products themselves than in the use to which they are put, there is broad consensus that certain items are essential to a strategic offensive capability. These are chiefly the major weapons categories addressed by the UN Arms Register: battle tanks, armoured combat vehicles, large calibre artillery systems, combat aircraft, attack helicopters, warships, and missiles and missile launchers. [Saferworld, 1992:32]

This perspective is most pertinent where there is a risk of inter-state hostilities being waged along conventional lines. In contrast, light weapons such as land mines, assault rifles, machine guns, grenades, light mortars and small arms - typically have the greatest 'offensive' impact in internal conflicts and have led to hundreds of thousands of deaths in ethnic and nationalist struggles. [Boutwell et al, 1995; Cock, 1995; and Human Rights Watch, 1994a and 1994b]



## APPENDIX F

### EUROPEAN COMMUNITY COMMON CRITERIA FOR ARMS

#### EXPORT

(as agreed at the Luxembourg and Lisbon European Councils

in June 1991 and June 1992)

The respect for the international commitments of the member states of the Community, in particular the sanctions decreed by the Security Council of the United Nations and those decreed by the Community, agreements on non-proliferation and other subjects, as well as other international obligations.

The respect of human rights in the country of final destination.

The internal situation in the country of final destination, as a function of the

existence of tensions or internal armed conflicts.

The preservation of regional peace, security and stability.

The national security of the member states and of territories whose external relations are the responsibility of a member state, as well as that of friendly and

allied countries

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The behaviour of the buyer country with regard to the international community, as regards in particular its attitude to terrorism, the nature of its alliances, and respect for international law.

The existence of a risk that the equipment will be diverted within the buyer country or re-exported under undesirable conditions.

The compatibility of the arms exports with the technical and economic capacity of the recipient country, taking into account the desirability that states should achieve their legitimate needs of security and defence with the least diversion for armaments of human and economic resources.

a)

Arms export policy, and the country code of conduct in particular, should be contained in legislation and ratified by Parliament. [Section 8.2]

b)

The formulation and implementation of policy should be subject to a high level of transparency. [Chapter 9]

c)

Marketing and export permits should be approved at ministerial level. This will establish unambiguous executive accountability for arms transfers. [Section 8.4.3]

d)

Parliament should be involved in the process of classifying countries and vetting export permits. [Sections 8.3 and 8.4.4]

#### 6.4.3 Clarifying the code of conduct

To the greatest extent possible, the country code of conduct should be elaborated by formulating definitions for such terms as 'aggression', 'systematic violation of human rights', 'international terrorism' and 'interference in the internal affairs of a sovereign state'. [Saferworld, 1992: Chapters 3 and 4]

These definitions should be drawn from the Universal Declaration of Human Rights, the covenants on civil, political, economic, social and cultural rights, and other seminal declarations of the United Nations. Further clarification could be sought from the opinions issued in respect of these documents by bodies like the UN Commission for Human Rights and the International Law Commission. [Saferworld, 1992: Chapters 3 and 4]

Resolutions of the UN Security Council should be a fundamental source of guidance in evaluating prospective arms sales. Secondary sources should include reports published by Amnesty International and Human Rights Watch.

In this,

its Second Report, the Commission deals with the question of arms trade policy, encompassed by paragraph 2 of the Terms of Reference above. As is indicated in the Chairperson's Foreword, the Second Report has been prepared by Commissioner L N Nathan.

It nonetheless represents the views and findings of the Commission as a whole.

We, the undersigned members of the Commission, have the honour to its

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together

Report,

Second

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Recommendations, and Appendices.

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SIGNED:

ADVOCATE I V MALEKA

MR L N NATHAN

## APPENDIX E

Extract from the Black Sash submission to the public hearing of  
the Cameron Commission, Cape Town, June 1995

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Determined on the basis of their human rights record, and the  
likelihood that arms will not be used to suppress the population

(information extracted from Mnuty information report for  
January to December 1993)

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Hocambique.

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of extrajudicial  
military custody.

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of civilians and hostage takings

Hundreds

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Hundreds of detention: without charge or trial.  
Reports of extrajudicial killings, torture and  
of  
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The NCQCC will consist of the following:

Minister Kader Asmal (Chairperson)  
Ministers of Defence

Trade and Industry  
Foreign Affairs  
Safety and Security  
General Services  
Arts, Culture, Science and Technology

Deputy Ministers of Defence

Foreign Affairs  
Intelligence Services  
Safety and Security

The Ministry of Defence will act as the interim responsible ministry with the Secretary of Defence as the accountable Director-General.

The existing Armscor permit application function will be transferred to the Defence Secretariat and staffed accordingly.

The Ministers of Foreign Affairs, Safety and Security, Defence, Transport, Intelligence Services, and industry, and Arts, Culture, Science and Technology will have permanent status on the second Departmental Review, level, with additional ministries incorporated as required by the nature and impact of a specific permit application.

The Ministries of Defence, Foreign Affairs, and Trade and Industry represented by their Director-General, will conduct the scrutiny process at the third level under the Chairpersonship of the Defence Secretary.

of an independent  
The Cabinet further approved the  
inspectorate.

Such an inspectorate will ensure that all levels of the process are subjected to independent scrutiny and oversight and are conducted strictly in accordance with the policies and guidelines of the NCACC. The inspectorate will make periodic reports to the appropriate parties and standing Parliamentary Committees on Defence.

principle

Copies of the Organisational Structure and of the Principles Governing Conventional Arms Control are attached and will now be elucidated on by the Chairperson of the NCACC.

30 August 1995  
Cabinet Office

considerable military potential. South Africa should address this dilemma by following the international approach of establishing 'higher fences around fewer goods' (ie imposing tight restrictions on the export of a limited number of particularly sensitive items). [Saferworld, 1992:36 and 39]

It should also be recognised that dual-use goods and technology can be subject to varying degrees of control. For example, export may be permitted under open general licence; the supplier may be obliged to notify the administrative arms control body that the export has taken place; the export may require a permit; or the export may be prohibited. [Saferworld, 1992:38]

#### 7.4 Armaments lists

Arms control regimes have to define the products, components and technology which are subject to control; more specifically, a system of armaments classification has to identify which items fall within the different categories. A general definition of 'armaments', such as appears in the Armscor Act, is too broad in this respect [Section 3.1].

A comprehensive description of controlled exports is an important source of guidance to administrative and decision-making bodies, enforcement agencies and the defence industry. A high level of detail and clarity will help make the application of the system more predictable and consistent. [Saferworld, 1992:33]

Government Notice No. R888 of 1994 thus contains two schedules listing and describing the types of arms which may not be developed, manufactured, exported, imported or conveyed through South Africa without a permit [Section 3.2]. The Log

Pamphlet, which is a confidential document, lists the classification of various armaments for export control purposes [Section 3.3].

In the light of the armaments classification proposed above, new lists of items should be drawn up and published in a government notice. The technical details of certain Category X armaments may have to be withheld for security reasons.



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The Armscor Act  
Government Notice No. R888  
The Log Pamphlet  
The marketing permit  
The export permit  
Other controls  
Comment

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sales to Sudan, Angola, Northern Ireland and Rwanda. [See, for example, Human Rights Watch, 1994a: 16-17; and Relatives for Justice, 1995]

Between the late 1980s and February 1993, South Africa supplied approximately R100 million worth of arms to the Rwandan government. Armscor initially described the

products as being "primarily of a technical nature" [Business Day, 16 May 1995]. A

subsequent press release stated that the arms included rifle grenades, mortars, bombs, rocket launchers, rockets, rifles, machine guns, pistols and ammunition [Armscor press release, 30 May 1995].

Armscor's 'defence' of these sales is scarcely reassuring:

"Armscor cannot agree with your insinuations that South Africa's selling of armaments has precipitated the civil war in Rwanda and contributed to the human suffering - you are apparently totally ignoring the political and ethnic bases of that conflict and further fail to consider the fact that more people were hacked and clubbed to death than shot by South African made armaments" [Letter from Mr T] de Waal, Managing Director of Armscor, to Amnesty International, 27 September 1994]

The criticism by Black Sash and other human rights groups underlines the fact that country classifications may be arbitrary and will require the exercise of political judgement. This raises two important questions: on the basis of what criteria will such judgement be made in the future? [Section 6.1]; and by whom? [Section 8.3]

Finally, the public disclosure of the Log Pamphlet underscores the importance of transparency as a means of controlling and regulating arms exports. Conditions of secrecy, on the other hand, facilitate abuse of human rights in the conduct of foreign relations as much as in the domestic arena. The question of transparency with regard to future arms sales is considered in Chapter 9.

to submit written presentations on various aspects of arms trade policy and decision-making. These presentations will be made available, on request, to the media and interested parties.

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Between Monday 19 and Friday 30 June, the Commission will convene a public hearing in Cape Town. at a venue at or near to Parliament, to hear oral contributions and debate on the written submissions.

wishing to make submissions.

The following list of topics is intended to serve as a. guideline to parties  
It should not, however. be viewed as exhaustive.

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Policy; degggminantg

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the ethical, strategic. military, political, foreign policy. technological  
and economic considerations relevant to arms trade policy;  
relevant domestic and international factors and developments.

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criteria for determining to which countries South Africa, should or  
should not sell arms;  
absolute or selective prohibitions on the sale of particular categories  
of weapons;  
other elements of a. responsible arms trade policy; and  
apprOpriate means of ensuring the effective implementation of such  
a policy.

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responsibility for formulating. appro 'ing and maintaining a system  
of country and weapon classification;  
responsibility for approving applications to market and sell  
transfer) of weapons abroad; and  
the role of parliament in relation to poicity formulation and regulating  
the implementation thereof.

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principles and mechanisms regarding transparency of arms policy  
and sales;  
South Africa's participation in the United Nations Arms Register.

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review of existing legislation regulating arms trade, and amendments

A number of the documents were withdrawn after the restructuring of Armscor in 1992, but had not been replaced by mid-1994.

#### 4.7 Management malaise

Senior Armscor officials apparently never noticed, let alone addressed, the myriad administrative and financial problems outlined above. These problems were sufficiently serious to have warranted concerted management intervention. The Wazan debacle was not the product of a sound organisational system being thwarted surreptitiously. It resulted instead from a total breakdown of the system.

In its First Report, the Commission concluded that the failure of Armscor's senior managers to exercise proper supervision over their staff had contributed significantly to the debacle.

#### 4.8 Knowledge of previous diversions of arms exports

In the course of the Commission's inquiry into the Wazan transaction, it became apparent that senior Armscor officials were aware that two earlier consignments of South African weapons and ammunition, supposedly destined for Lebanon, had similarly been channeled to other destinations.

These diversions contravened the Log Pamphlet and the relevant export permits. Yet the officials failed to take appropriate action: they did not investigate the incidents; they

did not inform the Minister of Defence; and they did not sever Armscor's relationship with the foreign actors implicated in the transgressions.

#### 4.9 Emphasis on sales

Armscor's organisational and operational features, discussed above, reflect a substantial

disregard for where South African arms exports end up. At a general level this was

### 10.3 Direct contact with foreign governments

Sales of weapons and ammunition should be concluded directly with the relevant government authority in the country of import (eg the ministry of defence, trade or foreign affairs).

If military components or technology are sold to a private defence company, the supplier should be obliged to obtain an International Import Certificate (IIC) which records formal approval of the sale by a government agency in the importing country. The certificate should be submitted to the South African arms control body within a prescribed period.

Sales contracts should not be concluded with foreign agents, intermediate buyers, private individuals, political parties or rebel movements.

### 10.4 Agents

Agents may be used to initiate or facilitate transactions where they have special knowledge of, or contacts in, a particular geographic area.

An intelligence agency should be mandated to conduct regular assessments of the bona fides of all agents with whom Armscor and the defence industry work. In collaboration with the administrative arms control body, the agency should maintain a register of these agents. The defence industry should be obliged to report any contact with agents to this agency.

There should be no contact with agents who are known to operate, or suspected of operating, on the black market.

### 10.5 Verification of end-users

Applications for export permits should not be approved in the absence of an End-User Certificate (EUC) issued by the relevant government authority in the country of import.

to stop the use of certain types of weapons considered to be inhumane or indiscriminate in their effects.

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The Convention places various restrictions and in some cases an all-out ban on the use of

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incendiary weapons  
weapons deemed to cause unnecessary suffering  
weapons having indiscriminate effects  
weapons deemed to be excessively injurious  
weapons causing non-detectable fragments  
anti-personnel mines and boobytraps

During a General Assembly meeting of the United Nations in October 1993, during which this Convention was debated, an appeal was made to member states to consider the implementation of a moratorium on the further selling and exporting of anti-personnel mines, because of the indiscriminate effect of anti-personnel mines.

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In March 1994 Armscor took the initiative by requesting the Minister of Defence to place a moratorium on the marketing, export and transit of landmines. This moratorium was ratified by the Minister of Defence on 26 July 1994 and duly published in the Government Gazette". The RSA thereby set an example to the rest of the international community by unilaterally extending this moratorium to all types of landmines, including anti-tank and vehicle mines.

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The Inhumane Weapons Convention, has been structured as three separate Protocols, being

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Protocol I on weapons with non-detectable fragments, escaping detection by X-ray in the human body.

Protocol II deals with anti-personnel mines (including booby-traps and other devices) which are used indiscriminately and in large numbers.

Protocol III deals with incendiary weapons and munitions that are primarily designed to set fire to objects or to cause burn injuries.

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South Africa is an active participant in this Conventionâ\200\235, especially because of domestic expertise in the field of mine-protection and mine-clearing.

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Government Gazette No 15891 of 29 July 1994, Notice No R1355.

Participation in the Convention b administered by the Department of Foreign Affairs, in consultation with the  
SANDEF (Chief of Air Operations).

### 2.3 Arms sales to Lebanon

In 1983 the Cabinet classified the Lebanese government as a Group 1 country. In 1985 the Lebanese government's "main opposition", the Christian Militia, was classified as a Group 2 market. In 1987 the emphasis changed to supporting the Militia which was upgraded to Group 1; the government was downgraded to Group 2.

In January 1994 the DFPC recommended that the Militia be placed in Group 3.

Armscor immediately implemented this recommendation although it had not yet been approved by Cabinet at the time of the Commission's appointment.

The products ostensibly sold to the Lebanese government in August 1994 comprised AK-47s, G3 rifles and ammunition for these weapons. The products ostensibly sold to the Christian Militia between 1991 and 1993 included missile launchers and missiles; sub-machine guns; AK-47 rifles; shotgun and AK-47 ammunition; and Claymore mines. These transactions were, in principle, consistent with the country and weapons classification contained in the Log Pamphlet. However, in the course of the Wazan inquiry it became apparent that some or all of the armaments were either destined for, or diverted to, prohibited destinations.

In its First Report the Commission found that the favourable classification of the Christian Militia, and the classification of AK-47s as 'non-sensitive' weapons, were

wholly inconsistent with a responsible arms trade policy. This finding was based on the

following factors:

vi; a)

The South African government was prepared to supply missiles, missile launchers, mines and other weapons to parties engaged in a civil war in which non-combatants typically bore the brunt of the fighting.

b)

Like many of the other belligerents in the Lebanese civil war, the Christian Militia had a record of gross human rights abuses. According to reports published by Amnesty International, the Militia engaged in

adequate security for all states at the lowest possible levels of armaments;  
recognition of the legitimacy of conventional arms transfers to meet the security  
and defence needs of member states of the United Nations and the equal  
responsibility of both supplier and recipient states

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In mid-1993, South Africa indicated that it was 'currently unable to contribute'  
to the United Nations Conventional Arms Register because of the UN Security  
Council Resolution 418 (1977), which imposed the arms embargo on the  
country. The Cabinet approved South Africa's participation in UNCAR in  
September 1994.

In May 1995 South Africa submitted the first report on imports and exports for  
the period 25 May 1994 till 31 December 1994. (The UN arms embargo was  
lifted on 25 May 1994.)

The technologies of some conventional weapons are of dual-use nature, which  
means it can also be applied to the development and manufacture of weapons  
of mass destruction. This makes effective control of this technology essential.  
South Africa may also wish to become a member of the international dual-use  
control regime to replace the COCOM<sup>235</sup>.

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COCOM in the Coordinating Committee in: Multinational Export Controls. an international organi-  
sation of

17 NATO countries<sup>230</sup> it is<sup>202</sup> (the two<sup>200</sup> of it<sup>230</sup> ended on 31 March 1994)  
which has controlled<sup>234</sup> the<sup>202</sup> of arms and  
technologies<sup>5331</sup> Block Comm<sup>235</sup> and Rania

### 3.3 The Log Pamphlet

In 1982 the Minister of Defence approved procedures for regulating and controlling arms exports through a permit system. These procedures were contained in a policy directive, the Log 17 Pamphlet 19, which was issued and administered by the SADF/SANDF Chief of Staff Logistics.

The main focus of the directive was the sale by Armscor of surplus SANDF stock. The chief concern was the protection of South Africa's security and strategic interests. The Pamphlet also defined the basis for classifying countries and armaments, and contained

the classification of individual countries and product types. [Sections 2.1 to 2.4 of this

report]

Amendments to country classifications required the support of the DFPC, the Minister of Defence, the State Security Council and the Cabinet. Alterations to the categorisation of armaments required the approval only of the Chief of the SANDF (Operations Division) [Paragraph 11(d), Log 17 Pamphlet 19, 1993].

### 3.4 The marketing permit

As noted above, armaments may not be marketed except under the authority of, and according to the conditions stated in, a marketing permit issued by Armscor.

A prospective marketer must fill in a marketing application form, specifying the products and countries under consideration. This form is received by Armscor's Armaments Control Division which checks that the application complies with statutory and procedural prescriptions. If required by the nature of the product, clearance will be sought from the SANDF (in terms of the Log Pamphlet) and the Non-Proliferation Secretariat of the Department of Trade and Industry (in terms of the Non-Proliferation Act).

international security by promoting confidence-building among states and encouraging restraint in the production and transfer of arms.

States are requested to submit details, on an annual basis, of their imports and exports in the following categories: battle tanks, armored combat vehicles, large calibre artillery systems, combat aircraft, attack helicopters, warships, and missiles and missile launchers. States are also invited to provide background information on their military holdings, procurement through national production, and arms transfer policies and regulations.

There are on-going efforts by states, academic specialists and a UN Group of Experts to strengthen and expand the scope of the Register, particularly with respect to military holdings and procurement through national production [Chalmers et al, 1994].

During the Commission's inquiry into the Wazan debacle, the Department of Foreign Affairs announced that South Africa intended participating in the Register, subject to this proviso: it would not disclose sales where the importing state insisted on confidentiality. In the view of the Commission, this qualification defeats the purpose of the Register.

Following the ending of the arms embargoes against South Africa in May 1995, the government submitted a report to the Register for the period 1994. Of the 21 countries which had reported on this period by November 1995, South Africa alone stated that "confidentiality claims in the specific contracts preclude publication of further details" [Basic Papers, No. 13, 3 November 1995, pg. 5].

### 9.3 Arguments against full transparency

All the parties represented at the Commission's inquiry and public hearing accepted that South Africa's trade in arms should be transparent. However, Armscor, the SANDF and the Department of Foreign Affairs argued strongly that certain aspects should remain confidential. They opposed, in particular, public disclosure of marketing and export permits and the classification of countries.

## 4.2 Free-on-board shipments

Arm Scor frequently sold its weapons 'free-on-board' (FOB). In terms of this arrangement, the buyer was responsible for transporting the goods to the country of import; the buyer chartered a ship (or other means of transport) for this purpose; the buyer paid the transport costs; and ownership of the goods passed to the buyer as soon as they were loaded on to the ship in South Africa.

Once ownership had passed, the buyer was free to choose the route of the ship and the final destination of the consignment. Arm Scor had no control over this choice and may even have had no knowledge of the port of discharge. The buyer was at liberty to take the weapons to a place other than that authorised by the export permit.

This danger could have been avoided had Arm Scor sold its goods 'cost, insurance and freight' (CIF), in terms of which the seller is responsible for getting the consignment to the port of discharge. When the Commission asked the charterer of the vessel used in the Wazan debacle how South Africa could ensure that future arms shipments arrived at the correct location, he replied succinctly: "Use a South African ship".

## 4.3 Shipping documentation

Some of the official shipping documents for the Lebanon transactions indicated that the vessels carrying the arms might not be bound for Lebanon. For example, the Report Outwards and the Certificate of Clearance, issued by Customs and Excise in South Africa, stated that the ships were heading for "One Red Sea Port" or the "High Seas". Customs and Excise apparently had no brief to pay attention to such matters and had no knowledge of the country classifications contained in the Log Pamphlet. Customs officials consequently did nothing to alert Arm Scor to a potential problem with the shipments.

## CHAPTER 10: ORGANISATIONAL, OPERATIONAL AND PROCEDURAL MATTERS

The effectiveness of arms export regulations obviously depends on the manner in which they are applied and enforced. Chapter 4 described how Armscor's organisational features and operational procedures during the apartheid era undermined the formal system of control and facilitated the diversion of arms exports to unauthorised destinations.

Accordingly, this Chapter presents proposals for ensuring that operational procedures, administrative rules and Armscor's institutional culture are consistent with a responsible approach to arms trade.

### 10.1 Armscor's Board of Directors

The Minister of Defence should appoint a new Board of Directors for Armscor. The process of appointment should be conducted in an open fashion which enjoys public confidence. The Directors should include respected community and business leaders whose views on arms trade coincide with government policy.

The Board should play an active and dynamic role in exercising its statutory responsibility to "manage and control the affairs of the corporation" [Section 5(1) of the Armscor Act].

More specifically, the Board should be mandated to oversee the transformation of Armscor and, where necessary, appoint new managers to implement this process. The Board should provide the Minister with regular reports on its progress in this regard.

#### 6. 4. 4 Long-Term perspectives

The classification of countries and evaluation of export applications should not be based

solely on prevailing conditions in the prospective recipient state and surrounding region, it is essential that longer term political and strategic perspectives are also taken into account.

More often than not the initiation of internal or external hostilities is predicted timeously by international relief organisations, intelligence agencies and human rights groups. Yet the tendency of supplier states is to ignore such warnings when exporting arms, and to cease delivery only when the situation has reached crisis proportions (as in the case of Iraq, Rwanda and Nigeria). This is patently irresponsible.



b)

Strategic factors.

A state's purchase of a particular type of armament may be regarded as sensitive or non-sensitive depending on various strategic considerations:

i)

ii)

the military doctrine and posture of that state;

the quantity of the items purchased and already held by that state;

iii)

the stability of that state and the surrounding region;

iv)

the military balance in the surrounding region; and

v)

South Africa's relations with that state.

For example, the purchase of a large number of combat aircraft by a Southern African country might be perceived by its neighbours as provocative and destabilising. Yet the development of a limited anti-aircraft capability by that country is unlikely to be viewed in the same way.

The nature of conflict in the country of import and the surrounding region.

An assault may have little military significance in a conventional armed conflict (eg the Gulf War), but it is obviously sensitive in a civil war (eg Rwanda, Angola and Mozambique).

Whether or not the importing state is involved in hostilities, or is likely to become involved in hostilities, is clearly relevant. [Sections 6.1.2 and 6.4.4]

30 too is the manner in which that state engages in combat. International humanitarian law prohibits certain methods of warfare even where the use of force is legitimate. For example, it is unlawful to launch an

## SUMMARY OF RECOMMENDATIONS

### 1. Policy

Armaments constitute a special category of goods and technology since they are designed for the use or threat of force. They may be utilised for the legitimate purpose of self-defence and for the illegitimate purposes of external aggression and internal repression. They may provoke and exacerbate regional instability and conflict, and thereby contribute to widespread destruction of life and property.

Arms exports consequently entail inescapable moral choices on the part of supplier states. If these states deliberately or carelessly sell weapons to repressive or aggressive regimes, they bear a measure of culpability for the use to which their weapons are put.

The right to life enshrined in our Constitution is universal. People everywhere are entitled to expect that this right is respected not only by their own government but also by other states.

An emphasis on the promotion of international peace and security and respect for human rights in arms trade policy derives from the founding charters of both the United Nations and the new South African state. It reflects a legal as much as an ethical commitment.

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From a strategic perspective, arms exports may jeopardise the security of the supplier state if they are sold to an adversary or to a country in which that state might later be engaged in peacekeeping or peace enforcement.

There is also the pragmatic consideration that South Africa would regain its pariah status if it pursued a foreign policy, and trade in arms, in an irresponsible fashion.

In the light of the above, the primary goal of new arms export policy should be to restrict the transfer of armaments. The ethical, political, legal and strategic reasons for exercising restraint should take precedence over the economic and commercial motivation for selling arms.

The subordination of economic matters does not imply that they are unimportant. The government will have to address the economic impact of a restrictive arms trade policy on the defence industry. The future of the industry, and the question of conversion to civilian production, should be the subject of a government White Paper.

### 2. Country classification and code of conduct

South Africa should adopt criteria and rules for determining to which countries it may or may not sell arms. The criteria would comprise general factors to be taken into

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that all sovereign countries have the inherent right of self-defence in terms of the Charter of the United Nations;

the need to ensure that transferred conventional arms are not used in violation of the purposes and principles of the Charter of the United Nations;

that excessive and destabilizing conventional arms build-up pose a threat to national, regional and international peace and security. Sales to countries in war prone regions should continuously be evaluated and reviewed to limit the possible escalation of regional conflict;

3.4.5

the need for effective national mechanisms for controlling the transfer of conventional arms and related technologies; and

3.4.6

its support and its commitment to provide data and information as required by the United Nations resolution establishing the Register of Conventional Arms, taking into account its national interests.

3.5 Common Approach.

In order to further the general aim of an international co-operative and common approach to security, South Africa will promote and by means of an effective national arms control system, exercise due restraint in the transfer of conventional arms and related technologies by taking the following into account:

3.5.1

Respect for human rights and fundamental freedoms in the recipient country.

3.5.2

An evaluation based on the United Nations Universal Declaration of Human Rights and the African Charter on Human and People's Rights. Due consideration will be given especially in cases where the political, social, seriously and systematically violated by the authorities of that country.

and legal

religious

cultural,

rights

are

3.5.3

The internal and regional security situation in the recipient country, in the light of existing tensions or armed conflicts.

3.5.4

The record of compliance of the recipient country with regard to international arms control agreements and treaties.

#### 3.5.5

The nature and cost of the arms to be transferred in relation to the circumstances of the recipient country, including its legitimate security and defence need and the objective of the least diversion of human and economic resources for armaments.

#### 3.5.6

The degree to which arms sales are supportive of South Africa's national and foreign interests.

## CHAPTER 10: ORGANISATIONAL, OPERATIONAL AND

### PROCEDURAL MATTERS

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10.2  
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Armcor's Board of Directors  
Transformation of Armcor  
Direct contact with foreign governments  
Agents  
Verification of end-users  
Proof of delivery  
Shipping arrangement  
Avoidance of haste  
Capacity of the administrative arms control body

## CHAPTER 11: COMPLIANCE, SANCTIONS AND

### ENFORCEMENT

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Compliance by the defence industry  
Sanctions  
Enforcement

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Appendix A: Press release on public hearing

Appendix B:

Authors of written submissions to public hearing

Appendix C: South Africa's participation in international arms control initiatives

Appendix D: Cabinet memorandum on conventional arms control, August 1995

Appendix E:

Extract from Black Sash submission to public hearing

Appendix F :

European Community Common Criteria for Arms Exports

App\_endix G: Closing Communique of the Meeting of the Five on Arms Transfers and  
Non-Proliferation

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### 3.6 Transfers and Trade

Transfers and Trade will be avoided. Which WOU'd b9 "kB'Y \*0

#### 3.6.1

#### 3.6.2

be used for the violation or suppression of human rights and fundamental freedoms;

contravene South Africa's international commitments, in particular its obligations under arms embargoes adopted by the UN Security Council and other arms control agreements or responsibilities in terms of internationally accepted custom;

#### 3.6.3

endanger peace by introducing destabilising military capabilities into a region, or otherwise contribute to regional instability and negatively

- influence the balance of power;

#### 3.6.4

be diverted within the recipient country or re-exported for purposes contrary to the aims of this document;

#### 3.6.5

have a negative impact on South Africa's diplomatic and trade relations with other countries; ,

#### 7 3.6.6

support or encourage terrorism;

#### 3.6.7

be used for purposes other than the legitimate defence and security needs of the recipient country; and

#### 3.6.8

contribute to the escalation of regional conflicts.

### 3.7 Assistance and information Exchange

South Africa will

#### 3.7.1

consider mutual assistance in the establishment of effective national mechanisms in accordance with international practices for controlling and regulating the transfer of conventional arms and related technology; and

#### 3.7.2

exchange information, in respect of national legislation and practices in the field of transfers of conventional arms and related technology and on mechanisms to control these transfers.

e)

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g)

seriously undermine the recipient state's economy;

prolong or aggravate an existing armed conflict, save where the recipient is recognised by the UN Security Council to be defending itself against aggression; or

in any way undermine South Africa's security, strategic capabilities or foreign interests.

Put positively, South Africa should export arms only for the purposes of individual or collective self-defence, the legitimate maintenance of good governance, and peace operations authorised by the UN Security Council.

South Africa should under no circumstances export weapons of mass destruction and related technology.

South Africa should adhere strictly to all international arms control agreements to which it is bound.

### 2.3 Country classification

A system of classifying countries into acceptable and unacceptable recipients of South African arms is an important source of guidance to administrative, control and enforcement bodies.

The classification system should comprise the following categories:

a)

b)

c)

Group 1: countries which are legitimate recipients of South African arms and likely to retain this status for the foreseeable future.

Group 2: countries which are prohibited from receiving South African arms.

Group 3: countries which cannot be placed easily in either of the above categories. Prospective exports to these countries would require rigorous evaluation on a case-by-case basis.

Outstanding sales and service contracts should be cancelled immediately if the status of the importing state is downgraded to the prohibited category.

The classification of countries and evaluation of prospective exports should be based on the code of conduct outlined above, and should take account of long-term political and strategic perspectives.



They will consider carefully whether proposed transfers will:  
Promote the capabilities of the recipient to meet needs {or

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legitimate selfâ\200\224defense;  
b  
security and military threats confronting the recipient country;  
c  
Enhance the apability of the recipient to participate in regional  
or Other collective arrangements or Other measures consistent with the  
Charter of the United Nations or requested by the United Nations;  
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a  
b  
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restraints to which they are parties;  
0  
of the recipient State;  
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They will avoid transfers which woud be likely to:  
Prolong or aggravate an existing armed conĩ-\202ict;  
Increase tension in a region or contribute to regional instability;  
Introduce destabilizing military capabilities in a region;  
Contravcne embargoes or other relevant internationally agreed

Serve as an appropriate and proportionate response to the

Be used other than for the legitimate defense and security needs

Support or encourage international terrorism;  
Be used to interfere with the internal affairs of sovereignStates;  
Seriously undermine;- the recipient Stateâ\200\230s economy.

## 7. Compliance, sanctions and enforcement

Defence companies should be required to take positive steps to ensure compliance with arms export legislation and regulations. They should establish internal control, verification and audit procedures, and nominate a senior official who will be held responsible for compliance.

The administrative arms control body should be empowered to examine the records of Armscor, Denel and private defence companies for the purpose of monitoring compliance with arms control regulations.

The penalties for contravening arms control legislation and regulations should be strengthened. Individual offenders should be liable on conviction to a minimum jail sentence. Company offenders should be banned from export activities for up to twenty years. Financial penalties should be a maximum of five times the value of the exported goods.

The statute should provide for sanctions in respect of both willful contraventions and acts of omission and commission which are grossly negligent.

The legal penalties should extend to South African citizens who breach domestic and international arms controls from outside the borders of South Africa.

Any person who has information concerning an unauthorised transfer of arms from or through South Africa should be obliged to report such information to the administrative arms control body or the police.

The South African Police Service should have a dedicated unit for investigating alleged arms control contraventions.

The brief of the National Intelligence Coordinating Committee should include the gathering and analysis of information regarding such contraventions.

Customs and Excise should have an explicit mandate to monitor compliance with arms controls.

A concerted effort should be made to tighten border controls, and air surveillance in particular, in the light of repeated claims that private individuals and companies are engaged in illegal arms transfers from South Africa.

The problem of South African mercenaries warrants urgent government attention. There are obvious analogies to be drawn between the transfer of arms and the 'export' of military services. In neither case is it tolerable that the activity occurs in the absence of strict government control.

The formulation and implementation of policy shall be subject to the constitutional imperatives of openness and accountability in public affairs. Appropriate checks and balances shall include transparency, ministerial control and accountability, and parliamentary oversight. [Chapters 8-9]

Arms transfers shall be controlled through legal, procedural and enforcement measures intended to ensure that the country code of conduct is observed and that exports are not diverted to unauthorised destinations. [Chapters 10-11]

South Africa shall participate in, and seek to strengthen, the United Nations Conventional Arms Register.

South Africa shall adhere strictly to all international arms control agreements and treaties to which it is bound.

## GLOSSARY OF TERMS

In the course of this report, the following terms apply:

'armaments' refers to weapons, ammunition and other goods, components and technology designed for military use or for the manufacture or maintenance of military products and systems

'arms' and 'armaments' are used interchangeably

'Arm Scor Act' refers to the RSA Armaments Development and Production Act, 57 of 1968

'arms exports' refers to the sale or transfer of armaments

'conventional armaments' refers to armaments other than weapons of mass destruction

'dual-use items' refers to goods and technology with both civilian and military application

'First Report' refers to the First Report of the Commission of Inquiry into Alleged Arms Transactions Between Arm Scor and One Eli Wazan and Other Related Matters, Johannesburg, 15 June 1995

'Log Pamphlet' refers to the Log 17 Pamphlet 19, a policy directive on arms control issued and administered by the SANDF

'Non-Proliferation Act' refers to the RSA Non-Proliferation of Weapons of Mass Destruction Act, 87 of 1993

'weapons of mass destruction' refers to nuclear, chemical and biological weapons and related technology, and to missiles and missile systems governed by the Missile Technology Control Regime

In the view of the Commission, state subsidies to the defence industry should be limited to those areas in which self-sufficiency is of vital importance during armed conflict

[Section 5.1]. If the industry were reorientated along these lines, there would be considerably less economic pressure to export arms.

#### 5.7 Statement of policy

In the light of its views expressed above, the Commission proposes the following summary statement on new policy regarding conventional arms transfers.

Armaments constitute a special category of goods and technology since they are designed for the use or threat of force. They may be utilised for the legitimate purpose of self-defence and for the illegitimate purposes of external aggression and internal repression. They may provoke and exacerbate regional instability and conflict, and thereby contribute to widespread destruction of life and property.

South Africa shall therefore pursue a policy of responsibility and restraint in the export of arms.

This policy shall be based on the principles of the Constitution and the United Nations Charter. It shall reflect, in particular, South Africa's commitment to promoting international peace and security, international arms control and disarmament, and respect for fundamental human rights and freedoms.

Arms exports shall consequently be limited to the functions of self-defence, participation in peace operations and the maintenance of good governance by the recipient state.

Arms exports shall be regulated according to foreign policy and domestic security concerns; a system of armaments classification; and a country code of conduct which encapsulates the commitment and principles referred to above. [Chapters 6-7]

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The Cabinet committee should be obliged to submit a list of all proposed exports to the parliamentary sub-committee on arms control at least thirty days before the intended date of export. The list should state the name of the importing countries and the type, quantity and price of the armaments under consideration.

The sub-committee should be empowered to request Parliament to consider the appropriateness of a prospective export if it has reason to believe that the export does not comply with the country code of conduct. Parliament may debate the matter and, within the prescribed period of thirty days, confirm or reject by a simple majority the

Cabinet committee's decision.

It should be emphasised that this arrangement would not require explicit parliamentary approval for every arms transaction. Rather, Parliament would have the power to veto a transaction which falls short of the established criteria and rules.

The exercise of this power would not delay unduly the completion of the permit application process. Thirty days is not an inordinately long period given the time frame normally associated with concluding arms sales contracts.

The parliamentary review would be greatly facilitated if, at the start of each year, the government notified Parliament of the arms transfers it expected to finalise within the

following twelve months (as in the US) [Anthony, 1991: 193]. This would give Parliament sufficient warning of pending exports which are controversial.

It should be noted that, in the case of the US, the President may override a congressional veto on security grounds. The Commission has not followed this approach since we believe that national security considerations should serve only to restrain, and not justify, arms exports.

Further, the congressional right of veto applies only to exports valued at \$14 million or more in respect of 'significant military equipment', and \$50 million or more for other

weapons and military services. The Commission regards this limitation as inappropriate because small arms may have a relatively low value but nevertheless cause tremendous harm.

In the view of the Commission, it follows logically that the legal obligations which govern the conduct of South Africa's foreign relations preclude it from arming states which defy these obligations.

It is especially important to recognise that the right of self-defence, which is invoked to

justify arms industries and arms exports, is an exception. to Article 2(4) of the UN Charter. Article 2(4) entails a substantive ban on the use or threat of force against other

states, and is regarded as the primary rule of international law [McCoubrey and White, 1992:24]. It may therefore serve as a sufficient legal basis for the obligation of arms

control and disarmament [Shi, 1991:23; and Komatina, 1991:32].

#### 5.5 The argument for banning arms exports

Given the destruction wrought by armies and weapons throughout history, pacifists and certain religious leaders in South Africa have argued that there should be a complete prohibition on arms exports. [Storey, 1994; Crawford-Browne, 1995; and Statement from the Synod of Bishops of the Church of the Province of Southern Africa, 9

September 1994]

The Commission has much sympathy with this position. Even the most responsible arms control systems are subject to error and abuse; they are inherently fallible because they rely on subjective judgement; and it is impossible to predict or control the manner in which imported weapons will be used by or in the recipient state in the long-term, particularly in volatile countries and regions.

The proponents of arms transfers acknowledge that "an error-free arms trade is an impossibility. ...If you trade in weapons, notwithstanding your best endeavours to sell only to the friends of international order, ...from time to time a thug will take illicit delivery" [Gray, 1995:64].

The main weakness of the 'no arms export' position, however, is that it fails to address adequately the problem of national self-defence in the absence of a world government

Even the wealth of statistics and analysis invoked to promote arms control and disarmament is unable to convey this impact adequately. People use weapons to kill other people. This truism should form the basis of South Africa's policy on arms trade.

In the light of the above, the Commission is convinced that the primary goal of new arms transfer policy should be to restrict the export of armaments. The humanitarian, ethical, political, legal and strategic reasons for exercising restraint should take precedence over the economic and commercial motivation for selling arms.

This position is not entirely without precedent in South Africa. In 1993 the previous government ceased all arms sales to Rwanda, forgoing R45 million worth of outstanding orders; Armscor also refused to allow the supply of R20 million worth of arms to Burundi in 1994 [Armscor press release, 30 May 1995]. In July 1995 the government cancelled a R1.2 billion arms deal with Turkey because of human rights abuses against Kurdish rebels [\_S\_t\_a\_r\_ 19 July 1995].

The perspective which underlies these decisions is reflected in President Mandela's statements on South African arms trade:

"Our morality as a democratic government dictates that we have to act in accordance with internationally accepted norms and standards. We are obliged to further world peace and security.

In our approach to the sale of arms, we are resolved to act responsibly.

Arms are for the purpose of defending the sovereignty and territorial integrity of a country; not to undermine any considerations of humanity nor to suppress the legitimate aspirations of any community". [Mandela, 1994]

The subordination of economic matters does not imply that they are unimportant.

Subject to the ethical and legal imperatives outlined above, the government will have to assess the cost-effectiveness of military production; it will have to attend to the impact

of a restrictive arms trade policy on employment and technology development; and it may have to provide support for the conversion of sectors of the defence industry to civilian production. As noted earlier, these issues should be addressed in a government White Paper.



## CHAPTER 6: COUNTRY CLASSIFICATION AND CODE OF CONDUCT

At the heart of most national arms control systems is a set of guidelines for determining to which countries armaments may or may not be exported. The guidelines naturally differ among supplier states but are typically based on foreign interests, domestic security considerations and, to a greater or lesser extent, concerns about the proliferation and potential harm of arms.

This Chapter proposes the adoption of country criteria and a code of conduct to govern arms exports; it addresses the various problems associated with their application; and it suggests a new basis for classifying countries. In the light of the Commission's emphasis on export restraint, the approach outlined in this Chapter is considerably stricter than that followed by the previous government [Sections 2.2 - 2.4].

### 6.1 Country criteria and code of conduct

This Section presents criteria and rules for determining to which countries South Africa may or may not export arms. Whereas the criteria comprise general factors which should be taken into account in decision-making, the rules consist of more specific policy directives and constitute a 'code of conduct'.

The advantage of adopting a code of conduct is that it narrows the scope for discretion and flexibility in decision-making on arms exports. Country codes of conduct to regulate conventional arms transfers have similarly been proposed by the European Parliament [Saferworld, 1992:45], and in the US Senate [Hartung, 1995 :32-33].

The criteria and code of conduct described below are drawn mainly from the Commission's perspective on arms trade [Chapter 5]; the European Community Common Criteria for Arms Exports [Appendix F]; and the communique on arms transfers and non-proliferation issued by the 11 permanent members of the UN Security Council in 1991 [Appendix G].

## CHAPTER 1: INTRODUCTION

### 1.1 Origin of Commission

In September 1994 a consignment of South African weapons and ammunition, ostensibly destined for Lebanon, was shipped to Yemen where it was rejected by the Yemeni authorities. The owner of the goods was the South African National Defence Force (SANDF), and the seller was the Armaments Corporation of South Africa (Armscor).

A public outcry followed press disclosures of the incident. It emerged that the consignment included 10 000 AK-47 riï-\202es and that, in terms of Cabinet policy, Yemen was a prohibited destination for South African arms. The incident became known as the 'Wazan debacle' , with reference to Eli Wazan, the Lebanese agent who had facilitated the transaction.

The Minister of Defence, Mr J Modise, requested a report on the matter from 'Armscor. After receiving the report, he asked the Minister of Justice, Mr AM Omar, to establish an independent commission to investigate the debacle and related issues. This Commission was the result.

### 1.2 Commission's terms of reference

The President appointed the Commission on 14 October 1994 (Government Notice R 1801, Government Gazette 16035) with the following terms of reference:

1.

To inquire into, consider and report on:

(a)

all aspects and surrounding circumstances of the transaction/s between Armscor and one Eli Wazan for the sale of weapons as well as arms components and related material;

## ABBREVIATIONS

Armscor

Armaments Corporation of South Africa

CAMEC

Committee for Armaments Marketing and Export Control

DFPC

Defence Foreign Policy Committee

DVC

EUC

IIC

Delivery Verification Certification Certificate

End-User Certificate

International Import Certificate

MTCR

Missile Technology Control Regime

NCACC

National Conventional Arms Control Committee

NICOC

National Intelligence Co-ordinating Committee

RSA

Republic of South Africa

SADC

Southern African Development Community

SADIA

South African Defence Industry Association

SADF

South African Defence Force

SANDF

South African National Defence Force

SAPS

South African Police Service

UK

UN

US

United Kingdom

United Nations

United States

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account in decision-making. The rules would consist of more specific policy directives and would constitute a 'code of conduct'. The adoption of a code of conduct would narrow the scope for discretion and flexibility in decision-making.

## 2.1 Criteria

South Africa should consider carefully whether proposed arms transfers will:

- a)
- b)
- c)
- d)
- e)

promote the capabilities of the recipient country to meet its needs for legitimate self-defence;

serve as an appropriate and proportionate response to the threats confronting that country;

enhance the recipient's capability to participate in collective arrangements consistent with the UN Charter or requested by the UN;

be at risk of diversion to a third party; and

undermine export restraints applied by regional bodies of which South Africa is not a member.

South Africa should also take into account the recipient country's compliance with the UN Conventional Arms Register and international arms control agreements.

## 2.2 Code of conduct

South Africa should export weapons and ammunition only to internationally recognised governments. Sales contracts should not be concluded with agents, private individuals, intermediate buyers, political parties or rebel movements.

South Africa should not export arms to regimes which are under military rule or guilty of systematic violations of human rights or international humanitarian law.

South Africa should avoid arms transfers which are likely to:

- a)
- b)
- c)
- d)

increase regional tension and instability;

introduce destabilising military capabilities in a region;

contravene an international arms embargo or any other resolution of the United Nations;

be used for internal repression, external aggression, international terrorism or any other purpose inconsistent with the UN Charter and international law;

## CHAPTER 11: COMPLIANCE, SANCTIONS AND ENFORCEMENT

The Commission's review of arms export practice under the previous government revealed significant weaknesses at the level of enforcement [Chapter 4]. Further, the experience of other countries suggests that a more restrictive policy on arms exports may increase the likelihood that unscrupulous companies and individuals will seek to bypass controls.

This Chapter presents proposals aimed at bringing the areas of compliance, sanctions and enforcement into line with a responsible approach to arms trade.

### 11.1 Compliance by the defence industry

Defence companies should be required by law to take the following steps to ensure compliance with arms export legislation and regulations:

- a)
- b)
- c)
- d)

establish internal control, verification and audit procedures;

nominate a senior official who will be held responsible for compliance (as in Germany);

maintain records of all exports for a period of five years from the date of transaction (as in Denmark); and

introduce a training programme, in collaboration with the administrative arms control body, for all employees involved in marketing and export procedures. [Saferworld, 1992: 100-101]

The arms control body should notify the defence industry promptly of any amendments to these procedures.

Celliers, I., 1994. 'To sell or die: the future of the South African defence industry' ISSUP Bulletin, 1/94, Institute for Strategic Studies, University of Pretoria.

Chalmers, M., Greene, O., Laurance, E.J. and Wulf, H. (eds), 1994. Developing the UN Register of Conventional Arms. Bradford: University of Bradford.

Cock, I., 1995. 'A sociological account of light weapons proliferation in Southern Africa', presented at the Workshop on Light Weapons, BASIC and American Academy of Arts and Sciences, New Delhi, October.

Corsi, C., 1992. 'Italian legislation on the export of armaments', Disarmament, Vol. 15, No. 1, pp. 29-42.

Crawford-Browne, T., 1995. Untitled submission to the Cameron Commission, Cape Town, June.

Defence Secretariat and the National Defence Force, 1995. 'Commission of Enquiry into the Alleged Arms Transactions Between Armscor and One Eli Wazan and Other Related Matters: presentation by the Defence Secretariat and the National Defence Force', submission to the Cameron Commission, Cape Town, June.

Department of Foreign Affairs, 1995. 'The recent history of Lebanon', submission to the Cameron Commission, Johannesburg, March.

Freedom of Expression Institute, 1995. 'Submission to the Cameron Commission on Arms Trading', Cape Town, June.

Gray, C., 1995. 'Defence policy and the control of arms', submission to the Cameron Commission, Cape Town, June.

Hartung, W.D., 1994. 'Conflicting values, diminishing returns: the hidden costs of the arms trade', report by the Arms Transfer Control Project, World Policy Institute, New School for Social Research, New York, February.

The Commission decided that these matters would best be considered in the form of a public hearing. In consultation with interested parties, it set a date and formulated an agenda and procedures for the event.

The Commission issued a press release advertising the hearing and inviting written submissions on the following topics: policy determinants; features of a responsible arms trade policy; decision-making processes; transparency; legislation; and arms control.

[Appendix A]

The public hearing took place from 19 to 28 June at a parliamentary venue in Cape Town.

The Commission received twenty-five written submissions, the authors of which are listed in Appendix B. A bound collection of the submissions accompanies this report and will be deposited in the library of Parliament and in public libraries in major cities.

In the course of the hearing, presentations were made by the SANDF and the Defence Secretariat; Armscor; the South African Defence Industry Association (SADIA); the Department of Foreign Affairs; international arms control experts; and local defence analysts, human rights organisations, churches and private citizens.

The representatives of statutory bodies and government departments expressed difficulty in commenting on current arms trade policy since this matter was under review by Cabinet. They also pointed out that the policy in force at the time of the Commission's appointment was in a state of flux given the election of the new government in April 1994 and the subsequent ending of the arms embargoes against South Africa.

Nevertheless, the hearing was characterised by a productive exchange on the many ethical, strategic and economic complexities of arms export policy and practice. It provided governmental bodies, interest groups and citizens with an opportunity to debate a critical aspect of national policy in an open and constructive fashion that transcended the customary clash of entrenched claims and counter-claims.



## CHAPTER 8: DECISION-MAKING AND OVERSIGHT

This Chapter focuses on decision-making and related functions in respect of arms export policy, country and armaments classifications, and marketing and export permits. The management of these functions requires substantial adaptation in the light of the new Constitution and the requirements of a responsible approach to arms trade.

### 8.1 Constitutional principles

The Constitution embraces the principles of accountability and transparency in public affairs. It provides that "there shall be a separation of powers between the legislature, executive and judiciary, with appropriate checks and balances to ensure accountability, responsiveness and openness" [Constitutional Principle VI].

The accountability of government to Parliament and the public, and the decision-making and oversight roles of Parliament, are fundamental features of our new democracy. They empower the citizenry, serve to check abuse of power and thereby further the commitment to human rights which underlies the constitutional order.

It might be argued that the political sensitivity of arms trade requires the curtailment of these principles and mechanisms. The Commission takes the contrary view. If new policy recognises that arms exports are sensitive because of their potential harm, then the decision-making process should be subject to rigorous scrutiny and review.

The most controversial aspects of this process - namely the classification of countries and the approval of exports - necessarily entail the exercise of subjective judgement [Sections 6.3 and 7.2]. Independent evaluation of that judgement may be the most effective means of safeguarding human rights and international security concerns about the arms trade.

Political parties envisage parliamentary involvement in this area. Following the 2013 revelations of the Wazan debacle, the Democratic Party and the National Party called on Parliament to demand full information on Armscor deals with foreign clients [A\_t\_a\_r\_

probably due to the circumstances of apartheid and the international arms embargoes against South Africa [Section 2.5].

A more immediate cause was a preâ\200\224dominant emphasis on marketing and selling armaments. This emphasis was a policy imperative, an institutional preoccupation and a personal compulsion on the part of certain ofï-\201cials.

For example, the department responsible for the Lebanon transactions was obliged to cover its entire operating budget from the commission of i-\201ve per cent which accrued to

Armscor from the sale of surplus SANDF stock. Despite the fact that the department was acutely short staffed and raised this concern repeatedly, management increased its annual sales target from R10 million in 1992/3 to R30 million in 1993/4 and to R50 million in 1994/5.

The head of the department, Mr MTS Vermaak, believed that servicing clients and potential clients was more important than performing administrative tasks. He testiï-\201ed that if he had to record everything in writing, he would not make much progress with his sales performance. When the Commission asked him whether he ever wondered who used the weapons he had sold, against whom and with what consequences, he replied: "No, I'm a salesman, not a politician".

There was great pressure to sell surplus SANDF stock in particular because of the substantial cuts that had been made to the defence budget over the preceding i-\201ve years.

This factor had a bearing on the haste with which the Lebanon transactions were concluded in 1993 and 1994.

At a deeper structural level, the procurement requirements of South Africa's security forces were (and remain) insuffi-\201cient to ensure the economic viability of the domestic arms industry. Given the strategic importance of maintaining the industry in the apartheid era, government policy was more concerned with promoting than with controlling arms exports. [Chapter 2]

The preoccupation with marketing and sales spawned an indifference to critical operating procedures and overrode the sense of caution demanded by a responsible approach to arms trade.

Marine, 13., 1994. 'An impartial arms observatory and register for Southern Africa', submitted to the Cameron Commission, Cape Town, June 1995.

McCoubrey, H. and White, N .D., 1992. International Law and Armed Conflict. Aldershot: Dartmouth.

Relatives for Justice (Northern Ireland), 1995. Submission to the Cameron Commission, Cape Town, June.

RSA, 1995. 'Defence in a Democracy': Draft White Paper on National Defence for the Republic of South Africa, 21 June.

SADIA, 1995. 'Submission to the Cameron Commission by the South African Defence Industry Association and the Aerospace Industry Representative Association of South Africa', Cape Town, June.

Saferworld, 1992. 'Arms and dual-use exports from the EC: a common policy for regulation and control', Saferworld Report, December.

Saferworld and Deltac Limited, 1995. Proliferation and Export Controls: An Analysis of Sensitive Technologies and Countries of Concern. Chertsey: Deltac/Saferworld

Shi, J ., 1991. 'Opening address'. In: The International Law of Arms Control and Disarmament: Proceedings of the Symposium. Geneva. 28 February - 2 March 1991. New York: United Nations, pp. 21-27.

Storey, P., 1994. 'Moral and ethical issues raised by the defence industry', presented at the Defence Industry Conference, AIC Conferences, Midrand, October.

Subcouncil on Defence, 1994. 'National policy for the defence industry', draft document prepared by the Defence Industry Working Group, Subcouncil on Defence, RSA Transitional Executive Council, April.

Weitbrecht, A., 1992. 'The control of arms exports in the Federal Republic of Germany', Disarmament, Vol. 15, No. 1, pp. 57-65.

supplier integrity; marketability and supportability of products; the procurement requirements of the SANDF and SAPS; technology transfer; and sensitive imports.

If CAMEC or the Armaments Control Division rejects a marketing or export application, it should be obliged to provide the applicant with a written explanation for the decision.

#### 8. 4. 3 Ministerial level

Under the previous government, CAMEC'S recommendations to grant marketing and export permits were submitted to Armscor's Management Board for internal approval. This procedure cannot be retained if Armscor no longer serves as the statutory arms control body.

Instead, the recommendations should be ratified by a Cabinet committee. This will establish unambiguous executive accountability for arms export decisions.

The committee should comprise the ministers responsible for defence, the intelligence services, trade and industry, foreign affairs and three additional departments which have no direct interest in promoting arms exports. In order to deal with the potential conflict of interest raised earlier, the committee should be chaired by one of the three additional ministers.

In summary, the Cabinet committee would be responsible for formulating arms control policy, approving the classification of countries and armaments, and vetting marketing and export permits.

#### 8. 4. 4 Parliamentary level

The United States is currently the only armaments producing country in which elected representatives have the power to veto prospective arms exports [Anthony, 1991:192-193]. In the view of the Commission, the South African Parliament should enjoy similar power.

considerations constitute the primary basis of most national arms control systems and were central to South African policy under the previous government [Chapter 2].

Equally obvious, though less widely appreciated, is the problem of exporting armaments to countries in which the supplier state might later be engaged in peacekeeping or peace enforcement. A recent example of this anomaly was the sale of arms by the UK, the US and France to Iraq before the Gulf War [Anderson, 1992:771-774]. South African troops might similarly have been confronted by South African weapons had they joined peace operations in Angola, Rwanda, Iraq or Bosnia.

In short, new arms' transfer controls should ensure, at a minimum, that exports "pose no foreseeable threat to South Africa's sovereignty or territorial integrity or the safety of its population or its forces" [Defence Secretariat et al, 1995: paragraph 6.5].

#### 5.4 Political and ethical reasons for restraint

In a paper presented to the Commission in June 1995, Professor Colin Gray of the Centre for Security Studies at the University of Hull argued that "armaments are a regrettable necessity because this is a noticeably imperfect world". He summarised his position as follows: "If the 'good guys' are unarmed, or underarmed, the 'bad guys', the 'thugs', will prosper". [Gray, 1995:3-4]

This assertion points, albeit inadvertently, to one of the central problems with which arms control is concerned: how to prevent the transfer of military products and technology to the 'bad guys'. Gray's position becomes a self-fulfilling prophecy if, as

in the case of Iraq referred to above, the so-called 'good guys' continue to supply the 'thugs' with the means to inflict harm on their own citizens and those of other states.

There are several political and ethical reasons to exercise restraint in arms transfers:

a)

Armaments may be used by the recipient state in acts of aggression and terrorism against other countries.