

South Africa's New Arms Export Control Policy: A Post-Apartheid Approach

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On August 30, 1995, the South African cabinet approved an interim arms export control policy, which provides for a ministerial controlling body, criteria, principles, and guidelines, and a processing structure under the Secretary for Defence for the approval of applications for conventional arms transfers. The main purpose of the policy is to ensure that South Africa's practices in this regard conform to internationally accepted norms and standards. Although occasional controversies, such as that which emerged in January 1997 in relation to Syria, have revealed underlying problems and fundamental differences of opinion, these conventional arms control procedures appear to be working effectively in a technical and routine sense.

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South Africa finally emerged from almost two decades of isolation from the world's mainstream diplomatic and defence communities in 1994,¹ and has recently built up a substantial arms production base of its

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¹"Ex Africa Semper Aliquid Novi: How South Africa's Defence Industry Has Defied the Odds," *Defence & Foreign Affairs Strategic Policy* (Special 25th Anniversary Edition) 25, no. 4 (April 30, 1997): 16.

own.² Arguably, United Nations sanctions had increasingly distanced the state from the international community.³ But as a result of the years of isolation, it had achieved an enormous measure of national self-reliance in all technological, essential commodity, and particularly defence requirements. In the past, the South African defence industry had successfully supported the defence force.⁴ Not only did the then-South African Defence Force (SADF; now South African National Defence Force) cope, but on a military operational level, it defeated a Warsaw Pact-level threat in its Angolan operations.⁵ Today, the South African arms industry produces a wide range of military products. Although it is often unclear how far South African weapons depend on foreign inputs, there is evidence of the industry's capabilities for designing and developing advanced equipment. In many cases, South African systems are said to be comparable with systems being produced in Europe.⁶

However, the industry was not established as a national "showcase" to symbolize the country's independence. It was, on the contrary, an evolution of a World War II-based infrastructure which grew to meet an ongoing operational military requirement in the face of a very effective international embargo. Thus, what developed in South Africa was an industry not only of considerable scope in the manufacture of primary systems, but also an industry capable of providing the highly complex detail work

²International Institute for Strategic Studies (IISS), *The Military Balance 1996/97* (Oxford: Oxford University Press, October 1996), 238.

³In the 1960s and 1970s, the UN Security Council adopted a series of resolutions imposing sanctions against South Africa, including, inter alia, a mandatory arms embargo. See UN Security Council Resolution 418 (November 4, 1977). Text in D. J. Harris, *Cases and Materials on International Law*, 4th edition (London: Sweet and Maxwell, 1991), 890-91. For other resolutions, see Karel C. Wellens, ed., *Resolutions and Statements of the United Nations Security Council (1946-1989): A Thematic Guide* (Dordrecht, Boston, and London: Martinus Nijhoff Publishers, 1990), 161-66, 171-76. For discussion of the matter, now only of historical interest, see, e.g., G.M.E. Leistner, "Sanctions Against South Africa in Regional Perspective," *Africa Institute of South Africa Bulletin* (Pretoria) 25, no. 5 (1985): 49-59.

⁴Especially during the embargo years. See *South Africa 1992: Official Yearbook of the Republic of South Africa* (Pretoria: South African Communications Service, 2nd English edition in the new, shortened version, 1992), 49.

⁵"How South Africa's Defence Industry Has Defied the Odds," 17.

⁶Ravinder P. Singh and Pieter D. Wezeman, "South Africa's Arms Production and Exports," in *SIPRI Yearbook 1995: Armaments, Disarmament and International Security* (Oxford: Oxford University Press, 1995), 576-77.

necessary to make modern systems function. As a result, the South African defence industry has gradually become an integral part of South Africa's technical and industrial base. Even since the state's recent political transition, it remains an important technology sector, a key employer, and a potential earner of foreign exchange for the new South African government.⁷

In view of this fact,⁸ the South African Government of National Unity since its inauguration in May 1994 has committed itself to a policy of arms trade and transfer control which would reinforce and promote South Africa as a responsible producer, possessor, and trader in this field.⁹ On August 30, 1995, the cabinet approved an interim arms control policy, which makes provisions for a ministerial control body, criteria, principles, and guidelines, as well as an interim processing structure under the Secretary for Defence for the processing of applications. The main purpose of this policy, which is said to be a mixture of idealism and realism,¹⁰ is twofold. First, it should create a morally acceptable image by ensuring that South Africa's policy on this issue conforms to internationally accepted norms and practices.¹¹ In the past, dealings with foreign customers, under the perceived policy of "anything to anybody,"¹² were all shrouded in secrecy.¹³ Second,

⁷"How South Africa's Defence Industry Has Defied the Odds," 16-17.

⁸Generally speaking, the South African defence industry has already reached a level of production and expertise which has permitted it to compete successfully on the international armaments market. See *South Africa 1989/90: Official Yearbook of the Republic of South Africa* (Pretoria: Bureau for Information, 1989/90), 256.

⁹*Guide to the Terms of Reference of Conventional Arms Control in South Africa* (Pretoria: Directorate for Conventional Arms Control, Office of the Secretary for Defence, May 1, 1996), 1.

¹⁰*Ibid.*, 1, para 2.1; William Gutteridge, *South Africa's Future Defence and Security: Identifying the National Interest*, Conflict Studies 298 (London: Research Institute for the Study of Conflict and Terrorism, April 1997), 2.

¹¹Judith Matloff, "S. Africa Armsmakers Still Stiff-Armed by U.S. Even After Apartheid," *The Christian Science Monitor*, January 5, 1996, 6. See also note 9 above and Krish Naidoo, "An Interview with Aziz Pahad, Deputy Minister of Foreign Affairs," *SALVO: Armscor's Corporate Journal* (Pretoria: Corporate Communications Department, Armscor, 1997), 3, 4.

¹²Carole Birch, "Prospects for Security and Stability in the New South Africa," in *Brassey's Defence Yearbook 1995* (London and Washington, D.C.: Brassey's, 1995), 317. It was reported that South Africa even sold weapons to Warsaw Pact countries, despite the regime's vehement anti-communist stance at that time. See Matloff, "S. Africa Armsmakers Still Stiff-Armed by U.S.," 6.

¹³Paul Taylor, "South Africa Sees Exports Sustaining Arms Trade," *International Herald*

the policy would allow South Africa to maintain self-reliance and continue to earn hard currency.¹⁴ All these, in turn, would reinforce the new export control system now in place.

The Definition and Structure of the South African Defence Industry

Under the new Draft Position Paper on the South African Defence Industry for the Defence Review,¹⁵ the South African defence industry is defined as "those clusters of organizations in the public and private sectors (commercial companies and business units of such companies) mainly involved in the electronic, mechanical, aerospace, maritime, and chemical sectors of the manufacturing industry, which are (directly or indirectly) active in research, design, development, production, assembly, test, evaluation, upgrading, procurement, export, import, maintenance, logistic support, and project management of goods and services for security forces, local and overseas" (p. 3, para. 3). In concrete terms, this refers to:

1. Business units of state-owned companies, such as the Armaments Corporation of South Africa Ltd. (Armcor), Denel (Pty.) Ltd., and the Council of Scientific and Industrial Research (CSIR)
2. Industrial facilities of the South African National Defence Force (SANDF), such as the Simon's Town Shipyard, aircraft maintenance depots of the South African Air Force (SAAF), and vehicle maintenance depots of the South African Army

Tribune, May 27, 1994, 1. Indeed, there had been a continuous suspicion about this practice. In 1994, as a result, a Commission of Inquiry under the chairmanship of Justice Edwin Cameron was appointed to investigate the matter. See *Armcor Annual Report 1994/95* (Pretoria: Armcor, May 23, 1995), 4. For a brief account of the Commission's first report, see Lynne Duke, "Dilemma for Mandela: South Africa's Arms Trading," *International Herald Tribune*, July 27, 1995, 6.

¹⁴See, e.g., Bill Keller, "Arms Maker Remakes Itself: In the New South Africa, Firm Tries to Adapt," *International Herald Tribune*, August 27-28, 1994, 5.

¹⁵Version 4, August 1, 1996. The document is on file with the author.

3. Research and development facilities of organizations such as universities, technicons, and Armscor
4. Private companies and their business units¹⁶

In practice, this involves some 700 organizations, companies, and business units of companies, under the following structure:

Armscor

Established in 1977 as a merger between the Armaments Board (formed in 1964 as the Munitions Production Board) and the Armaments Development and Production Board (established in 1968),¹⁷ Armscor remains the best-known South African defence company, largely because during the country's isolation, it was the vehicle through which most national defence manufacturing occurred. Old names such as Atlas Aircraft were brought under Armscor, as well as the country's ordinance facilities.¹⁸

In 1992, Armscor was split into two separate organizations: it retained responsibility for arms acquisition under the Ministry of Defence, while Denel became responsible for arms production under the Ministry of Public Enterprises. According to Armscor, this reorganization was to give its industrial branch the flexibility to diversify and undertake civil production.¹⁹ As a result, Armscor is now the principal acquisition organization for security forces, whereas Denel is the principal manufacturer.²⁰ Today, Armscor is directly responsible to the Minister of Defence, who appoints

¹⁶"How South Africa's Defence Industry Has Defied the Odds," 16-17.

¹⁷*Draft National Policy for the Defence Industry* (Pretoria: Defence Industry Working Group, Transitional Executive Council, Sub-Council on Defence, April 18, 1994), 32.

¹⁸"How South Africa's Defence Industry Has Defied the Odds," 17.

¹⁹*Armscor Annual Report 1992-93* (Pretoria: Armscor, May 18, 1993), 2.

²⁰*Armscor Annual Report 1993-94* (Pretoria: Armscor, May 24, 1994), 17. Although Armscor has shed some of its original manufacturing arms, the company maintains a significant test and evaluation group for defence purposes, including: the Institute for Maritime Technology (research, development, and services to improve the performance of naval and maritime systems); Protechnik Laboratories and Hazmat (R&D in chemical defence; products such as body protection equipment, decontamination equipment and detection equipment); Alkantpan Test Range (all-purpose ballistic test range, including services such as instrumentation, test management, logistical planning, and specification development). See "How South Africa's Defence Industry Has Defied the Odds," 17.

the company's board of directors and chairperson. In addition, it has the secondary responsibility of a wide marketing promotion and facilitation for the entire national industry.

Denel

As mentioned above, Denel is now the principal manufacturer of the defence industry in South Africa, and is under the Ministry of Public Enterprises. Like its predecessor,²¹ this state-owned body, operating in a manner similar to companies in the private sector, has a number of divisions, including:

1. Denel Aviation: manufactures the *Rooivalk* (Red Kestrel) attack helicopter and the *Oryx* utility helicopter, and undertakes *Mirage* fighter upgrades
2. LIW: manufactures the 155mm G-6 self-propelled and G-5 towed artillery systems, armored vehicle turrets, and infantry weapons
3. Mechem: develops specialized vehicles, mine-detection and mine-clearance systems and munitions²²
4. Kentron: manufactures air-to-air missiles, anti-tank missiles, unmanned aerial vehicles, weapons, and avionics systems²³
5. Somchem: manufactures artillery rockets, warheads of all kinds, and explosives²⁴

Moreover, Altech Defence Systems (ADS) now develops and manufactures naval combat systems for surface ships and submarines, as well as sonar systems and electronic warfare systems. Other major arms-produc-

²¹In the past, Armscor and its subsidiaries undertook the development as well as the manufacture, inspection, testing, and maintenance of armaments. See *South Africa 1989/90*, 255.

²²*Jane's International Defence Review* 27, no. 8 (August 1994): 39.

²³*Ibid.* South Africa's Kentron is one of the few southern hemisphere missile developers. Its principal anti-tank missile is the ZT-3 Swift, a laser-based system which entered operational service in 1987. See *Jane's Defence Systems Modernisation* 10, no. 1 (March 1997): 8-9.

²⁴*Jane's Defence Contracts*, December 1995, 9, 13-14.

ing companies also include Reutech Defence and Allied, which manufactures the *Olifant* main battle tank, the *Rooikat* armored car, and the *Mamba* mine-protected armored personnel carrier.²⁵ In 1996, total employment in the industrial base was estimated to be on the order of 50,000 people.

South African Arms Exports

In a quarter of a century, the South African defence industry has grown to become the 10th largest in the world, with an output of R6 billion (US\$1.25 billion) per year. Twenty-one percent of its output is exported, amounting to some R0.9 billion (US\$0.2 billion) a year. It is therefore the most successful manufacturing export sector of that country's economy.²⁶

Today, South Africa's defence products are being sold widely on the international market. For example, the G-6 self-propelled artillery system, which is considered among the best in the world,²⁷ has been bought by Oman (twenty-four systems) and the United Arab Emirates (UAE) (seventy-eight systems);²⁸ and the *Rooivalk* attack helicopter, which is admired for its unsurpassed maneuverability,²⁹ has been ordered by Malaysia (eight aircraft).³⁰ In defence circles, there have been claims that these systems, while filling market niches, are virtually without competitors.³¹ Recently, South Africa has also agreed to sell G-6 big guns to Saudi Arabia and Kuwait in deals worth more than US\$2 billion.³² Other successful stories have in-

²⁵"How South Africa's Defence Industry Has Defied the Odds," 18.

²⁶Richard Meares, "Mandela in Tangle over Recent Arms Sales," *China Post* (Taipei), September 3, 1997, 4; "How South Africa's Defence Industry Has Defied the Odds," 17.

²⁷Singh and Wezeman, "South Africa's Arms Production and Exports," 581; *South Africa 1989/90*, 255.

²⁸Christopher F. Foss, "S. Africa Develops Long-Range 155mm Projectile," *Jane's Defence Weekly*, March 12, 1997, 33.

²⁹Meares, "Mandela in Tangle over Recent Arms Sales," 4.

³⁰Helmoed-Romer Heitman, "Production of Rooivalk to Advance Despite Cuts," *Jane's Defence Weekly*, September 3, 1997, 32.

³¹"In Search of New Markets," in *Portfolio of Black Business* (Johannesburg: WR Publications, 1994), 236.

³²Meares, "Mandela in Tangle over Recent Arms Sales," 4.

cluded the purchase of *Chubby* mine-detection systems by the British, French, and U.S. armies;³³ the sale of the *Casspir* anti-landmine/ballistic vehicle system to Peru and the United Nations; and the sale of *Mamba* armored personnel carriers as well as other mine-protected vehicles to the British, French, and U.S. armies, as well as the UN.³⁴ In February 1997, the People's Republic of China (PRC) was reported to have approached South Africa's Reutech, trying to buy the latter's radar systems in a deal worth an estimated US\$220 million.³⁵ At the same time, it was also revealed that the South African arms industry was making preparations for extensive military cooperation with the PRC, which reportedly involved the sale of sophisticated arms as well as the transfer of state-of-the-art technology, as South African scientists and technicians would help design and erect factories in the PRC for manufacturing arms developed in South Africa.³⁶

Because of this booming arms trade, the state-owned giant arms producer Denel earned about US\$1 billion in 1996. As a result, it is now the fiftieth largest arms-producing company in the world,³⁷ and is currently stepping up its marketing efforts in the Middle East,³⁸ Southeast Asia,³⁹ and China,⁴⁰ wishing to double its arms exports by the year 2000.⁴¹

³³*Africa Research Bulletin* 34, no. 10 (November 27, 1997): 12876.

³⁴"How South Africa's Defence Industry Has Defied the Odds," 18. Another major deal for giant state armsmaker Denel to sell Syria US\$650 million worth of sophisticated guidance systems for Soviet-made tanks came to naught in 1997 after debate. See Meares, "Mandela in Tangle over Recent Arms Sales," 4.

³⁵*Zhongguo shibao* (China Times) (Taipei), February 4, 1997, 9; February 5, 1997, 4.

³⁶*Rapport* (Johannesburg), February 2, 1997; Deon Geldenhuys, "The Politics of South Africa's 'China Switch'," *Issues & Studies* 33, no. 7 (July 1997): 115-16.

³⁷Meares, "Mandela in Tangle over Recent Arms Sales," 4. In 1995, the company's rank was 55th. See *SIPRI Yearbook 1997: Armaments, Disarmament and International Security* (Oxford: Oxford University Press, 1997), 264.

³⁸For example, the Somchem division of Denel has recently briefed Oman and the UAE on its newly-developed 155mm velocity-enhanced, long-range artillery projectile (VLAP), which has a range of over fifty kilometers. See note 28 above.

³⁹For example, Malaysia has already ordered eight *Rooivalk* combat helicopters from Denel Aviaton. It was reported that in total, twelve *Rooivalks* and eighteen *Oryx* helicopters are expected to be bought by the Malaysian army. See Robert Karniol, "Malaysia, S. Africa Close to Rooivalk Agreement," *Jane's Defence Weekly*, April 9, 1997, 13.

⁴⁰In January 1995, the company opened a Beijing office in preparation for extensive cooperation with the Chinese military. See *Lianhe bao* (United Daily News) (Taipei), July 10, 1996, 9.

⁴¹Meares, "Mandela in Tangle over Recent Arms Sales," 4.

As mentioned above, the South African defence industry since the transition of the state has remained an important technology sector, a key employer, and a potential earner of foreign exchange for the new government. As a result, the new government, rather than doing away with the industry altogether,⁴² has decided to retain it and bring it under a national control regime.⁴³

The Restructuring of Defence Organizations: A Step Forward Toward Arms Control

In 1994, the South African government restructured its defence functions in order to enhance ministerial, executive, and parliamentary control over the South African National Defence Force. In this reorganization, a "balance model" was introduced, which includes a Defence Secretariat to enhance parliamentary control, which has been an institutional reform target in the Reconstruction and Development Program of the Government of National Unity.⁴⁴

The Balance Model

The "balance model" is illustrated in figure 1 and at the basic level includes the Minister, the Department of Defence, the Ministry of Defence, the National Defence Force Headquarters, and the Secretariat. The demarcation of functions and powers between the chief incumbents is in principle as follows: (1) the Minister directs and controls defence functions; (2) the Chief of the National Defence Force is the head of the department; and (3) the Defence Secretary is the departmental accounting officer.⁴⁵ Presently, Armscor remains a state-owned corporation outside the ministry handling

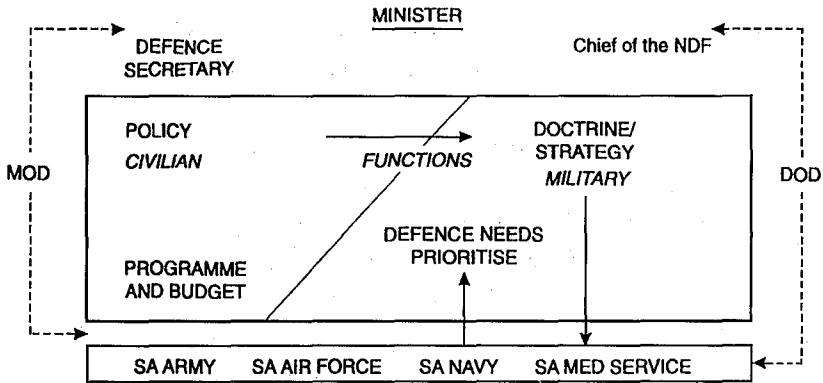
⁴²Within the African National Congress (ANC) many are opposed to the arms industry. See Singh and Wezeman, "South Africa's Arms Production and Exports," 575.

⁴³Birch, "Prospects for Security and Stability in the New South Africa," 316, 319.

⁴⁴Department of Defence, *New Era Defence* (Ministry of Defence Annual Report, Financial Year 1995/96) (Pretoria: Ministry of Defence, 1996), 6.

⁴⁵*The National Defence Force in Transition* (National Defence Force Annual Report, Financial Year 1994/95) (Pretoria: Ministry of Defence, 1995), 42, 43.

Figure 1
The Balance Model of South Africa's Defence Organization



Source: *The National Defence Force in Transition* (National Defence Force Annual Report, Financial Year 1994/95) (Pretoria: Ministry of Defence, 1995), 42.

acquisitions, although some believe it should be absorbed into the new ministry structure.⁴⁶

The Defence Secretariat

The establishment of a Defence Secretariat, headed by the Secretary for Defence as the accounting officer supporting the Minister's responsibility to direct and control defence functions, is a crucial facet of the balanced design.⁴⁷ In 1995, the Defence Amendment Act⁴⁸ legalized the establishment of a defence secretariat and demarcated the military powers and duties of the Chief of the National Defence Force and the role of the Secretary for Defence in administration and accountability.⁴⁹ According to this frame work, the Secretariat now exists to: (1) serve the Minister of Defence

⁴⁶Helmoed-Romer Heitman, "S. Africa Unifies Defence Command Structure," *Jane's Defence Weekly*, February 26, 1997, 15.

⁴⁷*New Era Defence*, 11.

⁴⁸No. 72 of 1995. The Act went into effect on October 6, 1995. The full text of the amendment is on file with the author.

⁴⁹Republic of South Africa, *National Defence Vote 29: 1996/97 Estimates, Explanatory Memorandum*, 20, para. 29 (b). The document is on file with the author.

with advice on defence policy, planning, programs, budgets, legislation, and litigation; monitor compliance with directions issued by the President or the Minister; and perform any other duties delegated by the Minister; (2) serve the Chairperson of the National Conventional Arms Control Committee (NCACC) with the administration of the NCACC process; (3) serve Parliament as accounting officer for the execution of the defence program and budget; and (4) serve on behalf of the Head of the Department for specialized (Secretariat) personnel matters.⁵⁰

At present, retired former SADF Chief of Staff Lieutenant General Pierre Steyn is the new Secretary for Defence. In his words, the Secretariat, which is a civilian body, will be the link between the public, Parliament, and the military. Thus the Secretariat will in effect see to it that the mechanism designed to counter threats does not itself become a threat. Currently, the Secretariat is strongly involved with the presentation of the defence budget to Parliament.⁵¹

The Control System in Practice: Procedural Requirements

On August 30, 1995, the cabinet, acting on the advice of an appointed Ministers Committee on Arms Control, decided to approve an interim solution to transfer control from Armscor and appoint the National Conventional Arms Control Committee to oversee the issuing of permits. Acting under the Secretary for Defence, the Directorate for Conventional Arms Control is now responsible for administering the process.⁵² In the past, the responsibility for granting export permits (for controlled goods) was vested in Armscor,⁵³ although Armscor's double role as arms supporter and regulator created much controversy.⁵⁴

⁵⁰See note 46 above.

⁵¹"How South Africa's Defence Industry Has Defied the Odds," 19.

⁵²*Questions and Answers on Arms Trade Control* (Pretoria: Directorate for Conventional Arms Control, Office of the Secretary for Defence, June 1996), 1.

⁵³*Armscor Annual Report 1993-94*, 17.

⁵⁴Singh and Wezeman, "South Africa's Arms Production and Exports," 582.

Under the new regime, applications for arms export authorization require a full process of assessment and scrutiny, based on four levels: processing, departmental review, a scrutiny committee, and final authorization at the National Conventional Arms Control Committee. Three types of permits are also required before companies can proceed with the marketing of defence products, services, and technologies: a marketing permit, contracting approval, and an export permit.⁵⁵

Process Description

On August 30, 1995, the cabinet approved a process to effect the new control system for contracting and export permits, with four tiers of accountability and responsibility, and audits by an inspector-general. The tiers include the following:⁵⁶

First tier—Directorate for Conventional Arms Control (DCAC): As mentioned above, the Armscor's armaments control function has been temporarily transferred to the Defence Secretariat and operates for the time being as the Directorate for Conventional Arms Control, with a Processing Unit looking after permit processing. In principle, the DCAC is responsible for attending to all matters relating to management of South Africa's conventional arms control responsibilities in terms of national legislation, regulations, policies, rules, requirements, and methodology, as well as fulfilling international and national expectations with regard to procedural actions in this regard. In practice, it is to consistently apply the legal basis on which controls are based in accordance with stated goals and aims governing such controls as accepted and approved by the government.⁵⁷

Second tier—multi-departmental review: At the second level, designated government departments, including Defence, Foreign Affairs, Safety and Security, Trade and Industry, the Non-Proliferation Council, Intelligence, and Science and Technology,⁵⁸ receive certain applications individu-

⁵⁵*Draft Position Paper on the SA Defence Industry for the Defence Review*, 9, para. 42.

⁵⁶"How South Africa's Defence Industry Has Defied the Odds," 19.

⁵⁷*Guide to the Terms of Reference of the Conventional Arms Control in South Africa*, 2, para. 2.3.1; 23, para. 4.1.1(b); 24-25, para. 4.1.2 (i).

⁵⁸"How South Africa's Defence Industry Has Defied the Odds," 19.

ally for review and assessment in accordance with prescribed criteria.⁵⁹ Each corresponding government department is requested to submit a written response within fourteen days after being requested to furnish the Processing Unit with a comment in relation to that specific department's responsibilities on a specific application referred to it for assessment. If no response is received within two working days after the lapse of the fourteen-day response period, a positive answer will automatically be registered.⁶⁰

Generally speaking, this multi-departmental review applies the following criteria: respect for human rights and fundamental freedoms in relation to the UN and African Charters (the Department of Intelligence); internal and regional security concerns, tensions, conflicts, uprisings, hostilities, etc. (Safety and Security, Defence); international arms treaties compliance (the Non-Proliferation Council); legitimate security and defence needs (Defence); national and foreign interest considerations (Foreign Affairs); destabilizing military capabilities (Defence); impacts on military, diplomatic, and trade relations (Defence, Foreign Affairs, Trade and Industry); and prevention of terrorism (Intelligence).⁶¹

Third tier—the Scrutiny Committee: At the third level is the Scrutiny Committee, consisting of the Secretary for Defence and the Directors General of the ministries of Foreign Affairs and Trade and Industry. The role of the committee is to scrutinize submissions and make recommendations to the NCACC. Matters designated for discussion by the Scrutiny Committee are required to reach the latter no later than two working days prior to the date of a scheduled meeting. Minutes of the Scrutiny Committee must also be presented to the NCACC for perusal and possible authorization of recommendations made; documentation possessed by the former must be made available to the latter at least two working days prior to meetings of the latter. The Scrutiny Committee has, until such time as it is reviewed, no authority to make and implement any decisions or to formulate policies

⁵⁹ *Guide to the Terms of Reference of Conventional Arms Control in South Africa*, 1, para. 2.2.2.

⁶⁰ *Ibid.*, 24, para. 4.1.2 (d).

⁶¹ *Conventional Arms Control Newsletter*, no. 2 (Pretoria: Directorate for Conventional Arms Control, Office of the Secretary for Defence, August 1996), 2.

relating to the arms trade and transfer control process/system. Its recommendations may, however, be considered by the NCACC.⁶²

Fourth tier—the NCACC: This level represents the fourth level of permit approval, although the cabinet has the ultimate say. The NCACC, in terms of the cabinet's decision of August 30, 1995, oversees the arms trade, with transfer controls vested in the collective political leadership of several ministers and deputies accountable to the cabinet. The NCACC is composed of a neutral minister as chairperson (presently the Minister of Water Affairs and Forestry, Professor Kader Asmal, has been appointed by the cabinet) and elements from the departments of Defence (minister and deputy); Trade and Industry (minister); Arts, Culture, Science and Technology (minister); Constitutional Affairs (minister); Public Enterprises (minister); Intelligence Services (deputy); Foreign Affairs (minister and deputy); Safety and Security (minister and deputy).⁶³

The NCACC acts as an advisory body to the Minister of Defence, who will remain responsible for the issuing of permits as prescribed by Section 4C of the Armaments Development and Production Act of 1968 (Act No. 57). Its purpose is to serve as a formal forum for the discussion of national and international issues relating to South Africa's involvement as a manufacturer, possessor, supplier, importer, and exporter of arms and related technologies, and to make recommendations to the government on South African policy in this regard.⁶⁴ Finally, the Directorate for Conventional Arms Control will submit monthly reports to the Scrutiny Committee and NCACC on all marketing, export, and import transit permits issued. In turn, the NCACC submits at semiannual intervals a detailed report on all its activities to the cabinet via the Cabinet Committee on Security and Intelligence Affairs (CCSIA). The Parliamentary Joint Committee on Defence will receive annual reports from the organization charged with controlling arms trade.⁶⁵

⁶²*Guide to the Terms of Reference of Conventional Arms Control in South Africa*, 1, para. 2.2.3; 32, para. 4.3.1.

⁶³*Ibid.*, 32-33, para. 4.4.1 (b), (c).

⁶⁴*Ibid.*, 33, para. 4.4.1 (d), (e).

⁶⁵*Draft Position Paper on the SA Defence Industry for the Defence Review*, 8-9, para. 37.

Types of Permits

The new export control system uses three permits for control purposes:

1. *Marketing permits* will be issued for specific items, and will be valid for all countries, bar those excluded by virtue of a UN embargo or a policy decision. The main purpose of this is to authorize marketing activities, which include aspects such as promotions, advertising, shows, exhibitions, demonstrations, quotations, and requests for proposal and tender participation, though at the sole risk of the permit holder.⁶⁶

The marketing permit is the first official contact between the Ministry of Defence, the NCACC, and the prospective South African marketeer (manufacturer or other) and thus forms the cornerstone for the code of conduct.⁶⁷ In this case, the following departments are required to submit assessments and recommendations: Defence (the SANDF, the Defence Secretariat, and Armscor); Trade and Industry; Arts, Culture, Science and Technology. Only in cases of a consensus agreement by the above-mentioned departments will the DCAC directly issue a permit without referral to the Scrutiny Committee or NCACC.⁶⁸ It is expected that most permits will be issued within two weeks of application.

2. *Contracting permits* will be issued after consideration of the details of the proposed export: what equipment is being sent to which country in what quantity, and with what long-term commitments. The obtainment of this specific information creates transparency regarding the extent of the commitment a company is about to enter into with a foreign country or entity, insofar as the development, production, and delivery of defence material and the supply of related services and technologies are concerned. This will allow full application of the criteria established for arms trade and transfer control. As contracting is regarded to be the most critical phase of total commitment, contracting approval will form one of the most important processes to be treated under the approved set of guidelines and

⁶⁶*Questions and Answers on Arms Trade Control*, 1, 3.

⁶⁷*Guide to the Terms of Reference of Conventional Arms Control in South Africa*, 14, para. 3.3.1 (a).

⁶⁸*Ibid.*, 15, para. 3.3.1 (d).

criteria. The Processing Unit of the DCAC receives, registers, and prepares applications and submit them without exception for full departmental review, scrutiny by the Scrutiny Committee, and approval by the NCACC.⁶⁹ The process takes between four to ten weeks.

3. *Export permits* will serve as the "final checkpoint," and are issued on the confirmation of the end-user certificate. Their issuance is also dependent on no fundamental changes in the relevant situation. Export permits for which contracting approval already exists may normally be issued directly by the DCAC after obtaining consensus feedback from departmental reviews. Regular reporting on such issuances will be run through the Scrutiny Committee to the NCACC. Only in cases indicative of a change in circumstances with regard to the importing country, or any deviation from the contracting approval already issued, or in any other event where there is not a consensus on an export, are such applications referred to the Scrutiny Committee and the NCACC for a ruling.⁷⁰ At present, the South African government will not approve defence equipment exports to Afghanistan, Armenia, Burundi, Iraq, Liberia, Libya, Nigeria, Somalia, Sudan, Yemen, Yugoslavia and its former provinces, and Zaire.⁷¹ Moreover, the government is (as of April 1997) currently reviewing its position regarding Indonesia, Iran, Kazakhstan, Kenya, Sri Lanka, North Korea, South Korea, Syria, and Turkey.⁷²

The Control System in Practice: Policy and Legal Principles

The White Paper on Defence

On May 14, 1996, the South African Parliament approved a White Paper on Defence,⁷³ in which a new defence export policy was unveiled

⁶⁹Ibid., 15-16, para. 3.3.2 (b), (c), (d).

⁷⁰Ibid., 18, para. 3.3.3 (d).

⁷¹*Conventional Arms Control Newsletter*, no. 2 (August 1996): 1.

⁷²"How South Africa's Defence Industry Has Defied the Odds," 19.

⁷³*Defence in Democracy: White Paper on National Defence for the Republic of South Africa* (Pretoria: Ministry of Defence, May 1996). The document is on file with the author.

which would embody South Africa's commitment to a responsible arms trade. As a statement of purpose, the White Paper declares: "South Africa is committed to the international goals of arms control and disarmament. It shall participate in, and seek to strengthen, international and regional efforts to contain and prevent the proliferation of small arms, conventional armaments, and weapons of mass destruction" (p. 6, para. 11.5).

According to this policy, South Africa will promote and exercise due restraint in the transfer of conventional arms and related technologies by taking the following factors into account (p. 43, para. 15):

1. Respect for human rights and fundamental freedoms in the recipient country, according to the Universal Declaration of Human Rights and the African Charter on Human and People's Rights; due consideration will especially be given in cases where political, social, cultural, religious, and legal rights are seriously and systematically violated by the recipient country's authorities
2. The security situation in the recipient country and surrounding region, in the light of existing tensions or armed conflicts
3. The record of compliance by the recipient country in regard to international arms control agreements and treaties
4. The nature and cost of the arms to be transferred in relation to the circumstances of the recipient state, including its legitimate security and defence needs, and the objective of the diversion of human and economic resources for armaments
5. The degree to which arms sales are supportive of South Africa's national and foreign interests

Furthermore, South Africa will avoid arms transfers and trade which are likely to (1) contravene South Africa's international commitments, in particular its obligations under arms embargoes adopted by the UN Security Council; (2) be diverted within the recipient country or reexported for purposes contrary to the principles previously stated; (3) have a negative impact on South Africa's diplomatic and trade relations with other countries; or (4) support or encourage terrorism (p. 43, para. 17).

Generally speaking, the new export policy emphasizes the principles

of openness and transparency, which will be limited only by national security interests consistent with the need for confidentiality (p. 42, para. 12). Under this, applications for permits are assessed on a case-by-case basis in relation to the principles and guidelines mentioned above and a system of product classification (p. 44, para. 21), which has been published in the *Government Gazette*.

Government Gazette Notice R1171 of August 2, 1996

On August 2, 1996, the South African government, acting under the Armaments Development and Production Act of 1968 (Act No. 57), promulgated two controlled goods schedules in its *Government Gazette Notice 1171*.⁷⁴ In these two schedules, products, technologies, and services are classified into different categories, so that the assessment criteria can be applied in relation to their sensitivity and intended end use.⁷⁵ In the first schedule, all controlled goods, products, and services are classified in terms of the following classification system:

Category A (Sensitive Major Significant Equipment): By definition, this category comprises conventional implements of war that could cause heavy personnel casualties and/or major damage and destruction to material, structures, objects, and facilities (Schedule 1, para. 1). In concrete, this refers to, for example, howitzers, bombs, missiles, torpedoes (Schedule 1, para. 1.2)⁷⁶ and all warships, submarines, or diving devices; all types of tanks and mine-protected and/or armored infantry fighting vehicles and armored personnel carriers; all vehicles with weapon mounting or gun-carriages, or otherwise have been designed as weapon platforms or fire control, observation and/or command posts; and all manned aircraft and aeronautical craft with fixed or rotating wings, which are equipped with

⁷⁴This government notice is contained in *Government Gazette* 374, no. 17324 (August 2, 1996): 1-15. The latter is obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria 0001, Republic of South Africa.

⁷⁵*Questions and Answers on Arms Trade Control*, 3.

⁷⁶Other items include: arms, semi- and fully-automatic weapons of a calibre of and larger than 12.7 mm; mortars; grenade launchers; missile/rocket or related launchers/systems; flame throwers; hand and rifle grenades and land and sea mines; and all other munitions with shaped explosive charges for use against vehicles, tanks, humans, ships, aircraft, helicopters, and structures.

hard-points, purposely designed for use as fighter craft (Schedule 1, para. 1.3). Generally speaking, Category A equipment coincides with the general tendency of the UN Register on Conventional Arms.⁷⁷

Category B (Sensitive Significant Equipment): This comprises all types of hand-held or hand-carried assault weapons of a calibre smaller than 12.7 mm (Schedule 1, paras. 2 and 2.1). For example, all assault and sniper rifles, machine guns, pistols, and related small arms and ammunition are included in this category.⁷⁸

Category C (Non-Sensitive Equipment): Generally speaking, this category comprises all support equipment usually employed in the direct support of combat operations, but which has no inherent capability to kill or destroy (Schedule 1, para. 3). Examples here include: radars; radio, jamming, fire control, and missile guidance equipment; active and passive night-vision sighting and aiming equipment; missile detection instruments and tracking devices; tactical bridging systems; support vehicles; and transport aircraft (Schedule 1, paras. 3.1-3.5). In short, Category C makes a clear distinction between equipment that kills and that which cannot,⁷⁹ although the latter, if employed in conjunction with Category A equipment, could have a force multiplier effect.⁸⁰

⁷⁷*Questions and Answers on Arms Trade Control*, 3. The Register requires voluntary dissemination of all imports and exports by April each year for the previous calendar year, in the following seven categories of conventional arms: (1) battle tanks weighing more than 16.5 metric tons with a main weapon larger than 75mm; (2) heavy artillery with a calibre of 100 mm or more; (3) armored combat vehicles with armor 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; (4) combat aircraft capable of carrying unguided rockets, guided missiles, cannons, or other weapons; (5) attack helicopters capable of firing anti-armor air-to-ground guided weapons and equipped with an integrated fire control and aiming system; (6) warships, including submarines or surface vessels with a standard displacement of at least 850 metric tons; and (7) missiles (missile systems, guided bombs, and remotely piloted vehicles) with ranges greater than twenty-five km. For a detailed account of the Register, see Herbert Wulf, "The United Nations Register of Conventional Arms," in *SIPRI Yearbook 1993: World Armaments and Disarmament* (Oxford: Oxford University Press, 1993), 533-44. In September 1994, the South African cabinet formally approved South Africa's participation in the Register. See *Guide to the Terms of Reference of Conventional Arms Control in South Africa*, 10.

⁷⁸*Questions and Answers on Arms Trade Control*, 3. See also *Guide to the Terms of Reference of Conventional Arms Control in South Africa*, 26.

⁷⁹*Questions and Answers on Arms Trade Control*, 3.

⁸⁰*Guide to the Terms of Reference of Conventional Arms Control in South Africa*, 26.

Category D (Non-Lethal Equipment): This category is limited to purposely designed de-mining, mine clearing, and detecting equipment, as well as all non-lethal pyrotechnical and riot control products and related equipment, e.g., mine detectors, signal flares, baton rounds, and tear gas (Schedule 1, para. 4.1).

Category E (Not for Sale): This includes all products that are not allowed to be sold: (1) all types of long life anti-personnel land mines, as well as purposely designed and manufactured booby-trap exploding devices; (2) napalm incendiary bombs and related napalm incendiary bomb filling substances; (3) munitions with undetectable fragments, which escape detection by X-rays; and (4) laser weapons with permanent blinding effects on the human eyes (Schedule 1, para. 5.1).

In the second schedule, it is stipulated that "[a]ll items listed in this [schedule] which possibly fall within the limitations of the international Missile Technology Control Regime (MTCR), must at all times also be covered by a permit." In the main, this applies to all rocket systems, ballistic missile systems, space launch vehicles, sounding rockets, unmanned air vehicle systems, cruise missile systems, and target drones capable of delivering any type of payload to a range of at least three hundred kilometers, as well as the specially designed production facilities for these systems.⁸¹

Conclusion

In conclusion, the South African arms industry has over the last three decades built up a sophisticated infrastructure with the capabilities and expertise to develop, manufacture, and maintain advanced military systems and subsystems. With this dynamic, it is well equipped to meet the challenges with which it is presented.⁸²

While the industry is planning to double its export efforts by the year 2000, the South African government has instituted new arms control policy

⁸¹This schedule is very long and complex. For more details, see the *Government Gazette* 374, no. 17324 (August 2, 1996): 8-15.

⁸²For more information, see, for example, Denel/Kentron, at <http://www.denel.co.za/kentron>.

and procedures to conform to international norms and standards.⁸³ The code developed and applied by the National Conventional Arms Control Committee under the chairmanship of Professor Kader Asmal has streamlined the process for sanctioning transactions and granting permits, and facilitated negotiation of the majority of transactions. Although the occasional open controversy, such as what occurred in January 1997 in relation to Syria, and potential controversies, as with China, reveal underlying problems and fundamental differences of opinion, these conventional arms control procedures appear to be working effectively in a technical and routine sense.⁸⁴

In short, South Africa's new arms export control policy is no doubt a step forward toward realizing its commitment as a responsible member of the international community. There is now tighter control of the arms industry than ever before.⁸⁵ Moreover, it seems very likely that the South African arms industry will survive in this reorganized form, with arms exports, which are necessary to the industry's survival, continuing in a more responsible and controlled way.⁸⁶

⁸³*Draft Position Paper on the SA Defence Industry for the Defence Review*, 4, para. 7.

⁸⁴Gutteridge, *South Africa's Future Defence and Security*, 22, 23.

⁸⁵Matloff, "S. Africa Armsmakers Still Stiff-Armed by U.S.," 6.

⁸⁶Singh and Wezeman, "South Africa's Arms Production and Exports," 582.