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SOUTH AFRICA

A QUESTION OF PRINCIPLE Arms Trade and Human Rights

SOUTH AFRICA

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II. THE APARTHEID ERA

The Armaments Corporation of South Africa, better known as Armscor, was tasked by law in 1968 by South Africa's apartheid government to develop and produce armaments.³ It is today housed in a sprawling complex on the outskirts of Pretoria, shared with the Ministry of Defence, that was built in the 1970s to accommodate the corporation's expanding activities.

During the apartheid years, South Africa, hit by an international arms embargo, developed its armaments industry by circumventing the sanctions.⁴ Covert channels and networks that had allowed the apartheid regime to smuggle in military technology for its infant industry also proved to be viable conduits for a South African weapons trade once domestic arms production started to exceed national requirements.⁵ This trend accelerated after 1982 when, in order to secure economies of scale and promote returns to its isolated and therefore vulnerable defense industry, the government decided to prioritize the promotion of arms exports.⁶ A prominent member of the National Party, the apartheid-era ruling party (which in 2000 merged with its former opposition, the Democratic Party, to become the Democratic Alliance), summarized the defense establishment's philosophy: "You cannot be idealistic: if you manufacture a weapon, you must be reconciled with the idea that the weapon will be used. The bottom line is that countries are going to buy arms and if you have the capability of manufacturing them, you will export them."⁷

Under the National Party government, Armscor was charged both with developing and promoting the sale of South African arms and at the same time controlling arms transfers.⁸ This blatant conflict of interest warped South Africa's arms trade from the beginning.⁹ Policy orientation to guide Armscor's export thrust was contained in secret documents known as "Log Pamphlets." Prospective clients for South African weapons were divided into three broad categories: the first group of countries would encounter no restriction in access to weapons targeted for marketing; the second group could only receive "non-sensitive" items; while access to South African weaponry was prohibited to the countries that fell into the third group.¹⁰

While these classifications might suggest restraint, in practice, Armscor was left wide latitude to pursue clients and markets that might have been shunned by more fastidious arms exporters. Armscor was also provided with a massive secret budget with which to circumvent sanctions.¹¹ South African weapons were sold to countries in which some of the worst human rights abuses in the world were occurring: governments or opposition forces in Angola, Haiti, Liberia, Nigeria, Rwanda, Somalia, and Sudan were at one time or another considered legitimate recipients of South African weapons.¹² The need for secrecy arising from sanctions, South Africa's pariah status, and the instability of the southern African region fostered a siege mentality in an industry whose arms exports directions mirrored the immorality of domestic policy.¹³

By the time the country held its first multiracial democratic elections in April 1994, South Africa had established itself as the tenth largest arms producer in the world with approximately 800 arms and arms component manufacturers employing a workforce of 50,000 (down from 160,000 in the 1980s). Exports accounted for about one percent of global arms trade, or the equivalent in sales in excess of R.800 million (U.S.\$225,000).¹⁴

³ Armaments Development and Production Act, Act 57 of 1968. Section 3(1) of this law states that the objectives of the corporation shall be to meet as effectively and economically as may be feasible, the armaments requirements of the Republic, including armaments required for export. See "Guide to the Terms of Reference of Conventional Arms Control in South Africa" (Pretoria: Directorate of Conventional Arms Control Office of the Secretary of Defence, May 1, 1996), p. 3. South Africa came to excel in the production of long-range artillery systems, laser-designated missiles, aircraft electronic warfare systems, tactical radios, anti-radiation bombs, battlefield mobility systems, attack helicopters, and mine-protected and mine-detection vehicles. See Armscor, *Annual Report 1997/98* (Pretoria: 1998); Frank Smyth, "Deadly Opportunities," *Multinational Monitor* (May 14, 1994), pp. 13-5; and Timothy C. Hendrickson, Robert L. O'Connell, "Weapons Acquisition Strategy South Africa (U)," a study by the U.S. Department of Defense, prepared by the Foreign Science and Technology Center, U.S. Army Intelligence and Security Command, November 1992. Obtained by Human Rights Watch through a Freedom of Information Act Request. ⁴ Sanctions were

imposed following the death in custody of anti-apartheid leader Steve Biko in September 1977. U.N. Security Council, Resolution 418, November 4, 1977, on South Africa marked the first time that the U.N. Security Council imposed mandatory sanctions against a member state under the power of Chapter VII of the U.N. Charter. Resolution 418 called on member states to stop the supply to South Africa of arms and related *matériel*, including police equipment and spare parts. It further demanded that the provision of all types of equipment and supplies and grants of licensing arrangements for the manufacture and maintenance of such equipment also cease. With Resolution 558 of December 13, 1984, the U.N. Security Council requested states to refrain from importing weapons from South Africa. On November 28, 1986, with Resolution 591, the Security Council urged all states to prohibit the export to South Africa of items that might build South Africa's military capacity. These items included aircraft, aircraft engines and parts, electronic and telecommunication equipment, computers, and four-wheel drive vehicles. ⁵ Human Rights Watch interview with a former covert operative, Johannesburg, February 10, 1999; Timothy C. Hendrickson, Robert L. O'Connell, "Weapons Acquisition Strategy South Africa (U)." ⁶ Commission of Inquiry into Alleged Arms Transactions Between Armscor and One Eli Wazan and Other Related Matters, *Second Report* (Cape Town: November 20, 1995), p. 9. Armscor operated through more than one hundred front organizations that had originally been set up to acquire advanced technology for the development of arms. Garth Shelton, "South Africa's arms industry: exports will determine the future," *Global Dialogue*, vol. 4.2 (August 1999), p.19. ⁷ Human Rights Watch interview with Boy Geldenhuys, Pretoria, January 28, 1999. ⁸ Armaments Development and Production Act, Act 57 of 1968, Section 3(2) (IA) states that Armscor's mandate requires the corporation to exercise control over the development, manufacture, acquisition, supply, export, or marketing of armaments. "Guide to the Terms of Reference," p. 13. ⁹ In a move intended to enhance the commercial viability of arms manufacturing, the government in 1992 separated the corporation from its manufacturing partner, Denel, thus effectively limiting Armscor's mandate to that of a procurement and export agent without addressing the unusual concentration of power in Armscor's hands. ¹⁰ A similar three-tiered classification system addressed categories of weapons and set limits on their export. Weapons were divided into category A, comprising "sensitive" armaments that could be utilized in an offensive role and might offer a strategic advantage to the user; category B, embracing "non-sensitive" equipment such as vehicles, radios, anti-riot *matériel*, and weapons and ammunition not exceeding 12.7mm; and category C, encompassing products that could not be released for marketing due to the sensitivity of their foreign content, or because they were still in the stage of development, or else they held a strategic advantage or disadvantage for South Africa. See also Commission of Inquiry, *Second Report*, pp. 9-10. ¹¹ Garth Shelton, "South Africa's arms industry," p. 19. ¹² Commission of Inquiry, *Second Report*, pp. 15-16. ¹³ See Commission of Inquiry, *Second Report*, p.17. ¹⁴ Garth Shelton, "South African Arms Sales to North Africa and the Middle East: Promoting Peace or Fueling the Arms Race?" Foundation for Global Dialogue Occasional Paper, no.16, published jointly by the Middle East and South Asia Project, University of the Witwatersrand and the Foundation for Global Dialogue, October 1998, pp. 2-3. See also Accadoga Chiledi, "New Role for Arms Industry," InterPress Service, November 22, 1994, and James Brew, "A Brisk Little Weapons Business," *Electronic Mail and Guardian*, www.mg.co.za/news, April 27, 1997.

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I. SUMMARY AND RECOMMENDATIONS

The South African government has made remarkable strides in transforming its arms export policy since the African National Congress (ANC) assumed power following multiracial elections in April 1994. Nevertheless, in important respects, the transformation of the arms control regime in South Africa is incomplete. In practice, the government's arms export decisions have not consistently reflected the ethical principles and policies that it has proclaimed. Much remains to be done, therefore, to institutionalize and provide a statutory backing for the framework set out in policy statements, and thereby to ensure that the guidelines are as strong in practice as they are in principle.

By 1994 South Africa had established itself as the tenth largest arms producer in the world, with approximately 800 arms and arms component manufacturers employing a workforce of 50,000 (down from 160,000 in the 1980s). Exports accounted for about one percent of the global arms trade, or the equivalent of sales in excess of R.800 million (U.S.\$225,000).¹ At the same time, the need for secrecy arising from the imposition of international sanctions against the apartheid regime that was in power until 1994, South Africa's growing isolation during that period, and the instability of the southern Africa region had fostered a siege mentality in an industry whose apartheid-era arms exports mirrored the immorality of domestic policy. Armscor, the state-owned arms exporter, was virtually given a free hand in pursuing lucrative markets that often turned out to be located where gross human rights abuses were taking place.

With the inauguration of a democratic, ANC-led government in May 1994, headed by President Nelson Mandela, the international arms embargo against South Africa was lifted. As in other areas of government responsibility, there were great expectations that the post-apartheid government would adopt a new and ethical foreign policy, including responsible arms trading practices. Then, four months after the Mandela government took office, in September 1994, an arms-related scandal led the government to appoint a commission of inquiry, known as the Cameron Commission. The Commission was mandated to investigate South African arms exports and propose policy reforms, in conformity with the new South African constitution and the stated commitment of the ANC to a foreign policy in which human rights criteria should play a central role.

In August 1995, following wide-reaching recommendations made by the Cameron Commission, South Africa's cabinet approved an interim arms control policy that spelled out the principles and criteria for national arms export decisions, which included a strong human rights plank. The government also created an interdepartmental cabinet committee to implement the policy, the National Conventional Arms Control Committee (NCACC), and approved Kader Asmal to be its chair. Then minister of water affairs and forestry (he became minister of education in 1999), Asmal had been a prominent anti-apartheid figure and constitutional law professor while in exile. The principles and norms of the new arms trade policies were also incorporated into white papers on defense and on defense-related industries, published in 1996 and 1999 respectively.

Despite these initiatives, South Africa's policy orientation and institutional changes have not yet been formalized in law and the governing legislation on the arms trade remains the apartheid-era Armaments Development and Production Act of 1968 (the Armscor Act). In 1998, the government began work on new legislation that would replace the Armscor Act and give statutory effect to the work of the NCACC, but the bill, known as the Conventional Arms Control Bill, was only presented to parliament in mid-2000. The proposed legislation unfortunately fell seriously short of the political commitments made in the earlier white papers to adopt a code of conduct, and strong protest from nongovernmental groups forced its withdrawal for redrafting. Meanwhile, official practice has also in important respects failed to match the high standards to which the government has committed itself.

South Africa's policy commitments, as formulated by the cabinet, are far-reaching. They include an explicit pledge not to supply weapons to parties that systematically violate or suppress human rights.² Further, South Africa has committed itself to refrain from transferring arms that would be likely to be used to violate human rights or suppress fundamental freedoms, even where persistent abuses have not been established. Moreover, under its policy South Africa undertakes to avoid arms exports that risk escalating regional conflict or contributing to regional instability, and promises to carefully consider other factors, such as internal armed conflict or tensions in a recipient country, when weighing arms export decisions. In its policy guidelines, South Africa also gives assurances that it

will exercise restraint with regard to its arms transfers, including by taking into consideration general human rights conditions in the recipient country and the existence of internal or regional tensions or armed conflict.

South Africa has, in accordance with these policies, refused to sell arms to a number of governments that would have been willing purchasers, including, for example, the former Nigerian military regime under Gen. Sani Abacha. However, South Africa's choice of some of its arms customers has revealed a gap between the principles professed by the NCACC and practice, which appears to be based more on considerations of realpolitik and economics. For example, as the Commonwealth Human Rights Initiative, a nongovernmental organization, has reported, five of the top ten destinations for South African arms exports between 1996 and 1998-India, Colombia, Pakistan, Congo-Brazzaville, and Algeria-had experienced some form of conflict during the same period. In addition, South Africa provided military assistance and weapons in 1998 to several of the major participants in the war in the Democratic Republic of Congo (DRC), a conflict marked by widespread, gross human rights abuses.

Sales to some of the belligerents in the DRC contravene the South African government's stated guidelines on human rights, and all such sales contravene its policy commitment to avoid weapons sales that risk contributing to the escalation of regional conflicts. In the case of Rwanda, for example, South African policy has apparently subordinated human rights criteria to political considerations. The Rwandan government is involved in the war in the DRC and is also accused of human rights abuses against its own citizens as it responds to the threat posed by rebels within its borders. The South African government had suspended the sale of weapons to Rwanda in 1996 over fears that South African arms might be used by Rwandan forces to commit abuses. It backtracked, however, in July 1997 and gave the green light to transfers despite a flare-up in the fighting in western Rwanda and the involvement of Rwandan troops in a series of atrocities. South Africa supplied weapons to Rwanda in 1998 as well, before deciding later that year to suspend sales of lethal military equipment to all the countries engaged in the DRC war.

South African officials insist that human rights remain a key consideration in their country's arms exports, but that they constitute only one ingredient of policy decisions. Others, they say, include regional stability and a regional balance of power, but attention to these factors may be inconsistent with human rights concerns. Human Rights Watch believes, therefore, that such considerations should not be used to justify weapons sales that endanger human rights. Providing military support or materiel to armed forces that have a record of committing serious human rights abuses and violating international humanitarian law inevitably furnishes such groups with the tools with which to continue abusive practices. It also suggests outside support for their behavior, thus fostering a dangerous culture of impunity. Moreover, Human Rights Watch contends that South Africa should fully abide by the responsible arms export policy to which it has pledged its commitment and be held publicly accountable when it fails to do so consistently.

As part of the post-apartheid arms control regime, the South African government has taken important steps to enhance accountability by greatly increasing the transparency of its arms export decisions, but here too it needs to go further. In 1995 South Africa submitted its first report to the United Nations (U.N.) register for conventional arms transfers (which publishes information offered voluntarily by governments on seven major weapons categories). However, the government's participation in the U.N. register came with an important restriction: it reserved the right to withhold reporting arms exports when necessary to protect client confidentiality. In 1997 South Africa began separately to publish annual reports on its arms transfers, which also came with significant caveats. For example, its annual reports include country destinations, but provide information on weapons transfers only in broad aggregates. This lack of specificity militates against full accountability. Weapons recipients who have the most at stake in keeping contracts confidential are often those with poor human rights records.

The degree of accountability is also limited. NCACC reports quarterly to the cabinet on arms transactions, but the government thus far has resisted the notion of allowing any decision-making or even an advisory role for parliament with respect to arms transfers. It also has yet to make good on its promise to create an independent inspectorate for defense-related industries that would ensure that the arms export control process is, at all levels, subject to independent scrutiny and conducted strictly in accordance with the principles, policies, and guidelines of the NCACC. Against this backdrop, challenges on human rights and transparency grounds to the government's arms transfer decisions have mainly come from nongovernmental organizations and the press.

In three areas, in particular, South Africa has taken a firm position consistent with its policies on human rights and international humanitarian law: banning antipersonnel landmines, curbing the spread and abuse of small arms, and reining in the activities of mercenaries. Human Rights Watch warmly welcomes South Africa's efforts in these areas. The Mandela government was one of the most active in promoting the global process that ultimately led to the signing in Ottawa in December 1997 of the Convention on the Prohibition of the Use, Stockpiling, Production, and Transfer of Anti-Personnel Mines and on their Destruction (the Mine Ban Treaty). Both under Mandela and, since 1999, under President Thabo Mbeki, South Africa has also become a driving force in international efforts to contain the scourge of small arms, and has figured prominently among the so-called like-minded governments that have sought to introduce and improve legal self-restraint measures in the weapons trade. In line with a new constitutional provision that prohibits South African citizens from participating in armed conflict either nationally or internationally, on May 20, 1998, the government passed the Foreign Military Assistance Act, a law unique in the world, that limits and controls the activities of mercenaries. The proliferation of private security and mercenary companies has been a constant embarrassment for the South African government.

Human Rights Watch acknowledges the remarkable progress made by South Africa in adopting a set of human rights friendly policies in relation to arms transfers. At the same time, it believes that the South African government must urgently address the inconsistencies that have emerged between its arms export policies and practices, and deny all human rights abusers its weapons, the tools with which such abuses have been committed. In particular, Human Rights Watch believes four areas need attention. To help ensure that the rights its citizens enjoy in their own country are not assaulted elsewhere in the world, South Africa should:

- * establish a statutory framework for the current system of arms export control and associated policy commitments;
- * strengthen the capacity of government officials to provide human rights input into the process of decision making;

- * increase the involvement of parliament and civil society in decisions relating to arms exports;
- * make a greater commitment to full transparency.

To this end, Human Rights Watch offers the following recommendations:

Recommendations

To the Government of South Africa

- * Repeal the Armscor Act of 1968, and adopt new legislation inclusive of all the NCACC policy guidelines, principles, control measures, and mechanisms also defined in the White Paper on Defence and the subsequent White Paper on Defence Related Industries. The new legislation should include explicit provisions regarding the role of the NCACC chairperson, who should continue to be a cabinet level minister with no direct interest in the arms trade. It also should unify oversight of the arms trade under a single organization and ensure that the customs agency is granted membership in this body.
- * In the interim, strictly adhere to the principles, control measures, and mechanisms contained in the White Paper on Defence and the White Paper on Defence Related Industries.
- * Create an inspectorate general for defense-related industries with the clear mandate to ensure that all levels of the NCACC process are subject to independent scrutiny and are conducted strictly in accordance with the principles, policies, and guidelines of the NCACC, and the above-mentioned white papers. The inspectorate should also report regularly to the appropriate parties and parliamentary oversight bodies, as called for in the White Paper on Defence and the White Paper on Defence Related Industries, and monitor implementation of legislation (the Conventional Arms Control Bill) that, once adopted, is expected to provide a legal framework for South Africa's arms trade controls.
- * Ensure that any arms transfers resulting from South Africa's participation in joint licensing and co-production agreements between South African companies and foreign partners strictly adhere to arms export criteria regarding human rights.
- * Train human rights experts in the Department of Foreign Affairs and the customs agency to better understand the connection between human rights, international humanitarian law, and the arms trade.
- * Report in full to the U.N. Register of Conventional Arms, without any reservation pertaining to client confidentiality.
- * Provide the quantities and detailed descriptions of type of weapons in annual reports and statistics currently published by the Directorate of Conventional Arms Control. Report all completed transfers, irrespective of client confidentiality considerations.
- * Grant parliament prior oversight of arms transfers, especially when these are directed to recipients with a record of human rights abuses.
- * Publish the list of countries to which weapons transfers are proscribed.
- * Consult the South African Human Rights Commission about the human rights implications of arms transfers.
- * Make public those demarches issued by the government of South Africa against weapons recipients who have violated commitments not to divert or re-export weapons without authorization. In each case, also make public details of any responses and release a statement indicating the government's commitment to bar further weapons transfers to the named recipient.
- * Work with other governments to develop standardized and difficult-to-forge end-user documentation, building on an effort initiated by Southeast European governments in December 1999.
- * Prosecute violators of national and international arms trade regimes, particularly of U.N. arms embargoes. Prohibit convicted violators from engaging in arms transfers. Publish a list of companies, individual brokers, and/or countries barred from arms trade activities.
- * Adopt nationally and promote at the international level adoption of a binding code of conduct on arms transfers that would prevent violators of human rights and international humanitarian law from receiving weapons. The code should also include a prohibition against trade in weapons with governments and military forces that deny access to humanitarian organizations and to governments and military forces that deny access to human rights monitors.
- * Promote a regional register for small arms and light weapons production, import, and export, and support the creation of an international register for such weapons.
- * Include arms trade issues in the periodic foreign policy reviews held by the Department of Foreign Affairs.
- * Adopt legislation to ensure that legal constraints on access to information do not unduly limit transparency and public accountability with regard to arms transfers. Explicitly authorize legal challenges to the implementation of such regulations, including when information about arms-related transactions is required to demonstrate a breach of applicable law. Extend the provisions of the Promotion of Access to Information Act to the activities of arms trade control bodies, including the NCACC.

To the South African Parliament

SOUTH AFRICA

* Actively seek information on South African arms transfers from the government and nongovernmental organizations. Conduct quarterly reviews of the government arms trade based on the information thus acquired.

* Create a parliamentary committee with the specific mandate to oversee and review NCACC policies and practices.

To the states of the Southern African Development Community

* Implement and enforce the Southern African Action Programme on Light Arms and Illicit Trafficking.

* Finalize negotiations and adopt a Firearms Protocol to combat illicit trafficking in firearms and otherwise stem their widespread availability and misuse.

* Adopt and implement strict legislation and controls on arms exports in accordance with the best available standard in the region.

* Create a regional register for small arms as described above.

To the International Donor Community

* Provide funds and expertise to build capacity in southern Africa, especially with regard to the strengthening, implementation, and enforcement of arms exports laws and regulations and arms embargoes.

Our story has revolved around the exploits of [Armescor officials and foreign actors] involved in the Lebanon transactions... Hundreds, perhaps thousands, of people killed or hurt by South African weapons were intimately involved in the story. They had no voice in our inquiry and have no name in this report. Yet at all times in our investigation and subsequent deliberations, we have felt their presence like the burden of a shadow.

(Commission of Inquiry into Alleged Arms Transactions between Armescor and One Eli Wazan and other Related Matters, *First Report*, "Afterword," June 1995.)

Our morality as a democratic government dictates that we have to act in accordance with internationally accepted norms and standard....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.

(Nelson Mandela, "Opening Address" at the Defence Exposition of South Africa [DEXSA], Nasrec, November 22, 1994.)

1 All monetary figures have been converted to U.S. dollars using the exchange rates that prevailed at the time of the transactions. Most figures in this report relate to annual export totals, in which case the average exchange rate for the relevant year was used. The conversions were performed using an online currency converter, available at www.oanda.com/converter/fxhistory. 2 This pledge is consistent with Human Rights Watch's own position that no country should permit weapons transfers to armed forces that have a record of committing serious violations of international human rights or humanitarian law.





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III. GOVERNMENT POLICY REFORM AFTER 1994

The April 1994 elections, followed by the May 1994 inauguration of a new, democratically elected government of national unity dominated by the ANC and headed by President Nelson Mandela, triggered a lifting of the international arms embargo against South Africa.¹⁵ It also produced great expectations for a new and ethical foreign policy, including responsible arms trading practices.¹⁶

The new government was immediately faced with the huge problems of a country deeply divided and unevenly developed. Correcting the anomalies of South Africa's arms industry was not a high priority on its agenda. But, forced by circumstance into early action, the ANC government soon oversaw a remarkable process of debate and reform of arms trade policies. "Before 1994, we had effectively two foreign policies," recalled a long-time foreign policy observer. "One was managed by the defense intelligence, the other by the Department of Foreign Affairs. When the government of Nelson Mandela took power, we had a dramatic shift with defense and related matters placed under intense oversight."¹⁷

The "Wazan debacle" and the Cameron Commission

The sudden shift in South Africa's approach to arms exports was prompted by an arms-related incident that shook the country in September 1994. This story, which first surfaced in media reports, involved a consignment of South African arms and ammunition ostensibly directed to Lebanon, according to the (forged) end-user certificate, but in practice meant to be routed via Yemen to an unknown destination.¹⁸ Yemen was then embroiled in a civil war. It also appeared on the list, approved by the previous cabinet, of countries proscribed from receiving South African weapons. The shipment intercepted in Yemen comprised 10,000 AK-47 assault rifles, 15,000 G3 assault rifles, and a million rounds of ammunition. As it turned out, the owner of the hardware was the newly renamed but yet to be restructured South African armed forces, the South African National Defence Force (SANDF); the seller was Armscor. Honoring its best tradition of secrecy, Armscor had not fully informed its new masters about this shadowy transaction and its ramifications. This time, however, the political climate did not allow the corporation to put a lid on the affair, which rapidly unfolded into a full-blown scandal. The "Wazan debacle," so-called with reference to the involvement of a Lebanese arms dealer named Eli Wazan, not only brought out a number of skeletons from Armscor's closet, and ignited a review of arms trade policies, but also marked a watershed in the country's view of its relationship with the outside world.

Responding to a public outcry about the arms deal on October 14, 1994, the government appointed a commission of inquiry that took on the name of its chairman, Edwin Cameron (later appointed to be a High Court judge). Despite its constrained power and limited resources, the Cameron Commission was able to obtain access to hundreds of documents and take evidence from eighteen witnesses, including Armscor officials and foreign actors involved in transactions that spanned from 1991 to 1993 and stretched from Yemen to the former Yugoslavia.¹⁹

The Commission presented its first report to the government in June 1995, featuring a cast of characters that included South African officials, a Lebanese middleman, and a Saudi prince. It concluded:

The Commission found that numerous acts of commission and omission by Armscor officials 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.²⁰

Persuaded that the whole arms trade policy of South Africa was badly in need of thorough review and reform, the Commission called a public hearing on the arms trade, held in Cape Town between June 19 and June 28, 1995. Recollecting the hearing, Laurie Nathan, one of the members of the Cameron Commission, observed that the event "had considerable political significance in the context of South Africa's new democracy, providing government, interest groups, and citizens with an opportunity to debate a previously secret aspect of national policy in an open forum."²¹ The arms trade debate became the catalyst for a far-reaching examination of questions of foreign policy, economics, and ethics, and conveyed a vivid portrait of a society in transformation but

still polarized between entrenched privileges and practices, and the need for transparency and renewal.²²

This debate by itself, however, could not overcome the core problem facing the new government: the difficulty of dismantling a defense apparatus monopolized by white Afrikaners and imbued with a clannish culture of secrecy of which the "Wazan debacle" was just a symptom. Laurie Nathan observed: "The [apartheid] government was intent on manufacturing and purchasing arms in order to secure the political survival of minority rule, and on exporting arms in order to secure the economic survival of the defence industry. These imperatives were not tempered by the constraints of independent scrutiny, public accountability or international norms."²³ Since a purge of the defense establishment was not possible for a government that had espoused the imperative of national reconciliation and integration and was bound by constitutional guarantees of continued employment for former civil servants, the country's new leadership set out at least to reform the rules governing the arms trade.²⁴ As Ronnie Kasrils, the deputy defense minister at the time, put it: "We decided that since we had a defense industry and since we needed it from a strategic point of view, then we would use it responsibly."²⁵ To this end, the government conferred on the Cameron Commission the additional mandate to examine the existing policy framework for arms exports and issue recommendations, in conformity with the new South African constitution and the government's stated commitments to integrate human rights concerns into foreign policy decisions.²⁶

The Commission's Recommendations

The Commission's second report, based on this brief, provided both a policy framework and operational norms aimed at reshaping South Africa's arms trade. In the end, not all of the Commission's recommendations were implemented, but they came to represent the standard against which government actions vis-à-vis arms transfers and human rights would be measured. As such, they have helped define the arms trade debate in South Africa.

The Commission's point of departure was that arms are not a neutral commodity, and, therefore, the decision to export them involves "inescapable moral choices" on the part of the supplier states. It stated: "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."²⁷ A responsible arms trade policy, the Commission argued, should be grounded in the nation's commitment to international law, and based on the respect for human rights enshrined in the new South African Constitution.²⁸

According to the Commission, the government should carefully consider whether proposed arms transfers would:

- C promote the capabilities of the recipient country to meet its needs for legitimate self- defense;
- C serve as an appropriate and proportionate response to the threats confronting that country;
- C enhance the recipient's capability to participate in collective arrangements consistent with the U.N. Charter or as requested by the U.N.;
- C be at risk of diversion to a third party;
- C undermine export restraints applied by regional bodies of which South Africa is not a member.²⁹

Tapping into a three-year-old international debate, the Commission proposed to enshrine these criteria in a code of conduct on arms transfers that would prevent South Africa from exporting weapons to nonstate actors (such as armed rebel groups), or to states under military rule or guilty of gross human rights abuses or systematic violations of international humanitarian law.³⁰ Specifically, the Commission proposed avoiding transfers that might:

- C increase regional tension and instability;
- C introduce destabilizing military capabilities in a region;
- C contravene an international arms embargo or any other resolution of the United Nations Security Council;
- C be used for internal repression, external aggression, international terrorism, or any purpose inconsistent with the U.N. Charter and international law;
- C seriously undermine the recipient state's economy;
- C prolong and aggravate an existing armed conflict, save when the recipient is recognized by the U.N. Security Council to be defending itself against aggression;
- C in any way undermine South Africa's security, strategic capabilities, or foreign interest.³¹

The Commission further argued that the system of country classification used by the National Party since 1983 should be intended only as a broad policy orientation and be integrated with a case-by-case approach that would allow for adjustments in the light of the criteria outlined above, and be made the object of parliamentary approval. A complete overhaul of weapons classification was also advocated by the Commission, which pointed out that the previous government's distinction between "sensitive" and "non-sensitive" items rested solely, and unsatisfactorily, on the nature of the weapons. Instead, such classification should also take into account the characteristics of the recipients and the intended use of the weapons.³²

Crucially, the Cameron commissioners addressed the intertwined issues of abuse of power and lack of transparency that had set the stage for the "Wazan debacle." In order to avoid the former, the commissioners proposed the creation of a cabinet committee comprising the ministers of defense, trade and industry, foreign affairs, the intelligence services, and three additional departments with no direct interest in promoting arms exports. Such a body would be chaired by one of the three additional ministers and mandated to scrutinize all arms exports, the Commission suggested. Administrative control over permits would be transferred from Armscor to the Defence Secretariat, the civilian component of the Department of Defence. As to transparency, the

Commission strongly advocated parliamentary oversight at all stages of the arms export decision-making process and the adoption of enabling legislation comprising guidelines for arms export and the code of conduct.³³ In addition, the commissioners recommended that South Africa regularly file submissions to the U.N. Register of Conventional Arms and publish its list of proscribed countries, quarterly reports on pending applications, and an annual report on all transfers.³⁴

The Commission concluded its report by recommending public exposure of countries found in violation of export agreements, the compilation of a list of licensed international agents and brokers, and the adoption of more thorough checks on end-user certificates' authenticity. It argued that countries that had violated an end-user agreement should be prohibited from receiving further armaments from South Africa.

By all accounts, the Cameron Commission's medicine was not easy to swallow for a defense establishment used to acting with a free hand across the board. But the government seemed determined to avoid another debacle and took firm steps to implement many of the Cameron Commission's recommendations.

A New Policy

Shortly after the publication of the Commission's first report, the cabinet approved an interim arms trade control policy, in August 1995, that spelled out the principles and criteria governing national arms trade and transfers.³⁵

The new policy, with its strong human rights criteria and commitment to transparency, echoed the Cameron Commission's prescriptions. It was elaborated in the White Paper on Defence that was compiled in consultation with other government departments, parliamentary committees, and nongovernmental organizations and approved by the cabinet and parliament in 1996.

Setting out principles to govern responsible arms transfers, the policy commits South Africa to promote and exercise due restraint in the transfer of conventional weapons by taking the following factors into account:

- C The respect for human rights and fundamental freedoms in recipient countries, with reference to the Universal Declaration of Human Rights and the African Charter on Human and Peoples' Rights, and giving careful scrutiny especially to cases where political, social, cultural, religious and legal rights are seriously violated by the authorities of that country.
- C The internal and regional security situation of the recipient country, in the light of existing tensions or armed conflicts.
- C The record of compliance of the specific country with regard to international arms control agreements and treaties.
- C The nature and cost of the arms to be transferred in relation to the circumstances of the recipient country, including its legitimate security and defense needs, and with the objective of minimizing diversion of human and economic resources for armaments.
- C The degree to which arms sales are supportive of South Africa's national and foreign interests.

As regards human rights criteria, the White Paper on Defence provides bluntly that "South Africa shall not transfer arms to countries which systematically violate or suppress human rights and fundamental freedoms."

Further, the policy incorporates a code of conduct, stating that arms transfers will be avoided where they would be likely to:

- C be used for the violation or suppression of human rights and fundamental freedoms;
- C contravene South Africa's international commitments, in particular its obligations under arms embargoes adopted by the United Nations Security Council and other arms control agreements or responsibilities with respect to internationally accepted custom;
- C contribute to the escalation of regional conflicts, endanger peace by introducing destabilizing military capabilities into a region, or otherwise contribute to regional instability and negatively influence the balance of power;
- C be diverted within the recipient country or be re-exported for purposes contrary to the principles stated above;
- C have a negative impact on South Africa's diplomatic and trade relations with other countries;
- C support or encourage terrorism;
- C be used for purposes other than the legitimate defense and security needs of the recipient country.³⁶

The White Paper on Defence also proposed the creation of an autonomous inspectorate for defense-related industries. The role of this body would be to provide independent scrutiny of arms trade activities and ensure that they are conducted strictly in accordance with the principles, policies, and guidelines laid out by the government in the wake of the "Wazan debacle." The inspectorate would also make periodic reports to the appropriate parties and parliamentary oversight bodies.³⁷

On December 1, 1999, the cabinet approved an additional document, the White Paper on Defence Related Industries, which defines the government's vision for the future of the defense industry. The policy explains that government regulation of this industry is based on the following considerations:

- C The nature of the products produced and the potential dangers posed by the uncontrolled development, production, manufacture, and trade of armaments.
- C The South African government's commitment to non-proliferation, disarmament, restraint, and effective arms control.
- C Cognizance of the fact that the government can directly influence the viability of the domestic defense-related industry.³⁸

The document places emphasis on the last item-enhancing the viability of the defense industry. Accordingly, it lays out several

policy options relating to industrial restructuring and also underscores the importance of arms exports to the industry's future. On the topic of export controls, the 1999 white paper restates the country's commitment to a restrained arms trade policy. It reaffirms the code of conduct and the call for an independent inspectorate featured in the earlier White Paper on Defence. The White Paper on Defence Related Industries also explains that the purpose of the control structures is "to ensure that arms trade and transfer policies are not unduly influenced by commercial interests and pressures, and that the guidelines, principles, and criteria are observed."³⁹

¹⁵ U.N. Security Council, Resolution 919, May 25, 1994. The United States maintained an embargo against South Africa until February 1998, when court cases brought in the U.S. against Armscor and others for violations of U.S. arms export controls during the apartheid era were settled, following on from the establishment of a framework for resolution of the issues in July 1996. *Media Statement on South African Export Controls: Normalization of Defence Trade Involving Iscor, Denel, Fuchs Electronics and Related Industries*, Statement issued by the South African Department of Foreign Affairs on behalf of Deputy President Thabo Mbeki and Vice President Al Gore, February 28, 1998. ¹⁶ For a broader discussion of this topic, see Bronwen Manby, "Human Rights and South Africa's Foreign Policy: A Guiding Light or Flickering Candle?", *South African Journal of Human Rights* Volume 16, No.2, Johannesburg, 2000. ¹⁷ Human Rights Watch interview with Jakkie Cilliers, Halfway House, January 28, 1999.

¹⁸ Commission of Inquiry into Alleged Arms Transactions Between Armscor and One Eli Wazan and Other Related Matters, *First Report* (Johannesburg, June 15, 1995), pp. 1-3, 39-41, available online at www.polity.org.za/govdocs/commissions/cameron.html. The Cameron Commission uncovered evidence that prior shipments of arms and ammunition from South Africa had been re-routed from Yemeni territorial waters to one of the republics of the former Yugoslavia, then under a United Nations arms embargo. The end-user certificate is a document committing the buyer not to divert or re-export weapons without the supplier's prior authorization.

¹⁹ Commission of Inquiry, *First Report*.

²⁰ Commission of Inquiry, *Second Report*, p. 3.

²¹ Laurie Nathan, "The Burden of a Shadow: A Report on the Cameron Commission of Inquiry into South African Arms Exports," unpublished paper, September 1997.

²² Commission of Inquiry, *Second Report*, Appendix B.

²³ Laurie Nathan, "The Burden of a Shadow."

²⁴ The first report of the Cameron Commission, however, did lead to some significant personnel changes: Two senior Armscor managers, the managing director (or chief executive officer), and the chairperson of the board resigned, and a new chairperson of the board, appointed by the defense minister, replaced most of the remaining board members. Human Rights Watch email communication with Laurie Nathan, May 8, 2000.

²⁵ Human Rights Watch interview, Pretoria, January 31, 1999.

²⁶ Commission of Inquiry, *Second Report*, Chairperson's Foreword, p. v.

²⁷ *Ibid.*, p. vi.

²⁸ Act 108 of 1996. See in particular, art. 12; art. 198(c), art. 199(5); art. 200(2), and arts. 231-33.

²⁹ Commission of Inquiry, *Second Report*, p. vii, 33-44.

³⁰ The debate on the code of conduct was initiated in 1992 by a U.S.-based coalition of nongovernmental organizations, the Arms Transfers Working Group. It soon reverberated in Europe where the first code of this kind was adopted by the European Union in June 1998. A year later the U.S. Congress adopted a less stringent measure. Council of the European Union General Secretariat Press Release, 10754/98 (Presse 272-G), August 3, 1998. Omnibus Appropriation Bill of the United State Congress, November 19, 1999.

³¹ Commission of Inquiry, *Second Report*, pp. vii-viii, 33-44.

³² *Ibid.* pp. ix-x, 62-69. See also footnote 7. The Commission proposed a division of countries into three groups: the first would include countries that are legitimate recipients and likely to retain this status for the foreseeable future; the second group would include countries that are prohibited from receiving arms; the third group would include countries that could not be easily placed in the former two categories and would therefore require especially rigorous scrutiny. In terms of weapons classification, the Commission proposed the following categories: category X, comprising items whose transfer is prohibited under international arms trade control agreements or because their

export may undermine South Africa's security; category Y, consisting of all other armaments and related technology, the export of which requires a government permit; and category Z, inclusive of dual-use items that are subject to varying controls. Ibid. pp. viii-ix, 48-61.

33 Specifically, the Commission argued that the cabinet committee submit a list of proposed exports to the parliamentary subcommittee on arms controls at least thirty days before the intended date of export, and that the subcommittee be empowered to request parliament to consider the appropriateness of a prospective export if it had reason to believe that such export did not comply with the code of conduct. It further recommended that parliament should be given a say in the matter of country classification.

34 Ibid., pp. x-xi, 70-76. The U.N. register was inaugurated in 1992 and includes seven major weapons categories. In 1998 a total of ninety-seven states submitted data on their import and export of these weapons to the register. Though these submissions are voluntary, the register is considered an important transparency and confidence-building instrument. Human Rights Watch, *World Report 2000* (New York: Human Rights Watch, 1999), p. 409.

35 "Guide to the Terms of Reference," pp. 1-5.

36 White Paper on Defence, chapter 8, paras. 15, 16, and 17, www.polity.org.za/govdocs/white_papers/defencewp.html.

37 Ibid, para. 27.

38 White Paper on the South African Defence Related Industries, chapter 6, www.polity.org.za/govdocs/white_papers/defence/defenceprocure6.htm.

39 Ibid.





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IV. INSTITUTIONAL FRAMEWORK AND CHALLENGES

The current structure for controls was created in 1995 as a complement to South Africa's new arms export policy, and, as described below, it follows the model proposed by the Cameron Commission. Recognizing that its reform was not yet complete, in 1998 the government also initiated efforts to formalize its arms export regime in law. New legislation was proposed in mid-2000 that would give statutory effect to the work of the NCACC, but it did not encompass many of the government's commitments with respect to human rights and transparency. Other institutional challenges remain, especially with regard to mediating among competing views within government over the weight to be given to human rights concerns in arms export decisions. In addition, arms procurement arrangements negotiated by South Africa may risk compromising its human rights commitments.

Control Structures

In order to oversee the new arms export policies, the cabinet appointed in August 1995 an interdepartmental cabinet committee, the National Conventional Arms Control Committee (NCACC), to study defense industry reforms, take charge of conventional arms control mechanisms, and ensure political oversight of the industry and arms exports.⁴⁰

In accordance with the Cameron Commission's recommendations, the thirteen-member committee comprises a wide range of ministers and deputy ministers, some with no direct stake in arms-related issues.⁴¹ The NCACC operates by consensus, with unresolved matters being referred to cabinet. Assuaging the concerns of human rights and arms control advocates, and signaling that the government meant business in undertaking sweeping reforms of the sector, the cabinet appointed as chair of the committee Kader Asmal, then minister of water affairs and forestry and since 1999 minister of education. He had been a prominent anti-apartheid figure and professor of constitutional law at Trinity College, Dublin, during more than twenty-five years of exile.

The cabinet also established a new four-level arms export control system that, operating on a case-by-case basis, eliminated the previous system of country classifications, and consists of:

C The Directorate of Conventional Arms Control (DCAC), a secretariat to the NCACC housed within the defense department and charged with the task of processing applications for arms export permits.

C A review of any proposed arms sales by pertinent government departments, including the Department of Foreign Affairs.

C A scrutiny committee, consisting of the secretary for defense and the directors general of the departments of foreign affairs and trade and industry, tasked with collecting inputs from these departments and making recommendations to the NCACC.

C The NCACC, upon which rests the final decision on the merits of applications and responsibility to advise the minister of defense on the appropriate course of action to take.

Armcor's mandate was limited to meeting the acquisition needs of the SANDF through national and international procurement, and to promoting the local defense industry.⁴²

From the industry's point of view, the process of clearing an arms export involves a three-step approach: requesting a marketing permit for goods to be sold (the first official contact between the ministry of defense, the NCACC, and the prospective manufacturer and seller), subsequently obtaining from the NCACC a contracting approval, and finally applying for an export permit.⁴³ Julius Kriel, executive director of South African Aerospace, Maritime and Defence Industries, summarized this process:

"Arms transactions are mostly government to government. In practice a country would put out an industry-to-industry tender which is first examined by the Non-Proliferation Council,⁴⁴ and then goes to the NCACC for the various permits, or the police for commercial firearms." Continued Kriel: "If, for example, Saudi Arabia wants to buy an attack helicopter, it would specify user's requirements and ask the potential supplier for information. Denel [the government-owned manufacturer] receives this request and asks for an advance marketing permit. A request for proposals would normally follow with more details on requirements such as time of delivery and specific quotes." "For major systems," he added, "it takes about R.3 million

(U.S.\$490,000) and one year to complete the bidding process. We then have to ask for a contracting permit to go into contract negotiations. When the contract is actually signed, we start the manufacturing process, and in the end we apply for an export permit to the NCACC."⁴⁵

Kriel maintained that the industry has grown very comfortable with the new policy guidelines, but lamented that the process is cumbersome: "This is because [the political decision makers] still do not trust the civil servants enough to delegate responsibility. We are not sure what makes them decide. We would like to see a more integrated arms control process."⁴⁶

Structural Changes and the Conventional Arms Control Bill

South Africa's post-apartheid policy orientation and institutional changes with respect to arms export controls have not yet been formalized in law, and the governing legislation remains the apartheid-era Armscor Act of 1968. A process of formulating new legislation-known as the Conventional Arms Control (CAC) Bill-began in 1998, and a bill was tabled in parliament in late July 2000.⁴⁷ According to a close observer, the delay in finalizing the bill reflected a lack of urgency on the part of cabinet and may have been due to serious differences of opinion among the relevant government departments.⁴⁸ More troubling, the legislation, once drafted, appeared to signal a step away from the political commitments made by the South African government. Among other problems, the proposed bill left out the code of conduct endorsed in the two white papers. Nongovernmental groups strongly objected to its provisions, and their advocacy efforts helped generate public and political opposition to the bill.⁴⁹ As a result, the secretariat of the Ministry of Defence, at the request of the parliamentary defense committee, withdrew the CAC Bill in September 2000 for redrafting. A revised bill is expected to be prepared for submission in the first quarter of 2001.⁵⁰

Preparation of a new CAC Bill provides the South African government an opportunity to correct several shortcomings of the current control structure, most of which were not adequately addressed in the first attempt to draft the new legislation. In addition to replacing the Armscor Act, a CAC Bill is needed to formally confer legal status on the NCACC. Currently, the NCACC acts without legally-defined powers or constraints, and it abides by guidelines that are subject to political rather than legal interpretation. The absence of a clear statutory framework to date has raised doubts among some members of civil society about the committee's decision-making process and its commitment to transparency.⁵¹ "The arms export process," observed a nongovernmental expert to Human Rights Watch, "depends too much on the individual members of the NCACC. Decisions are taken not against a check list, but in an ad hoc fashion....What is needed is a safety net with ceilings and common denominators which would account not only for the necessity of a sale, but for the wisdom of a sale. There have been cases, for example, in which the Department of Foreign Affairs advised against a particular transfer, but was overruled."⁵²

Minister Asmal, the chair of the NCACC, rejects charges of arbitrary and ad hoc decision making. Speaking in 1999, he told Human Rights Watch: "It is true that the Armscor Act has not been repealed, but [in setting new standards] we are acting as though there was a law. Technically, the minister of defense is the decision maker. But he cannot make a decision without my consenting. Had we waited for a statute [to frame NCACC operations], it would have taken more than three years."⁵³

Such a statute is also needed to give a legal framework to what are otherwise only political commitments. With this goal in mind, human rights and arms control groups have pressed the government to incorporate the code of conduct contained in the white papers into new arms control legislation, and have further advocated the inclusion of provisions to institute parliamentary oversight and enhance transparency. They also have proposed that new legislation formalize the stipulation that the NCACC be chaired by a cabinet level minister with no direct interest in the arms trade, as recommended by the Cameron Commission and endorsed in the two white papers. The proposed CAC Bill put forward in 2000 disappointed them on all counts. The nongovernmental groups argued for a revised CAC Bill to incorporate these elements.

The process of redrafting the controversial CAC Bill is also likely to revive the suggestion, contained in the white papers, for the government to house responsibility for arms export controls with a single statutory agency. Current control structures and mechanisms for conventional weapons are fragmentary and dispersed among different departments and implementing agencies, as the table below illustrates:

legislation	products controlled	structure	responsible ministry
Armaments Development and Production Act (Act 57 of 1968) [to be replaced by the Conventional Arms Control Bill]	Conventional arms (other than small arms and related ammunition)	NCACC, DCAC	Defense
Explosives Act (Act 26 of 1956)	Explosives (commercial & military applications)	SAPS (Inspectorate of Explosives)	Safety and Security
Firearms and Ammunition Act (Act 75 of 1969), Teargas Act (Act 16 of 1964) [to be replaced by a new Firearms Control Bill ⁵⁵]	Commercial arms and ammunition	SAPS (Central Firearms Register)	Safety and Security

Source: White Paper on the Defence Related Industries, chapter 6, Regulation of Armaments Production and Transfer.⁵⁶

The problems of this fragmentary control structure and the need to integrate control processes and legislation are acknowledged by the government. The White Paper on the Defence Related Industries, for example, laments the disjointed nature of the current legislative and institutional framework and proposes a "synthesized and consolidated" regulatory structure.⁵⁷ It also notes that firearms and ammunition sold commercially, even for export, are subject to a separate law.⁵⁸

One closely involved government official commented to Human Rights Watch that the problems with the fragmented control structure are compounded by a lack of capacity for implementing policies and enforcing them. "Enforcement is a big problem for us," he admitted, adding: "A step in the right direction would be bringing Customs into the equation since they are not part of the arms export process and have no representation in the NCACC."⁵⁹ The same official endorsed the idea that only one agency should be responsible for controls on conventional weapons, dual use goods, ammunition, and conventional weapons that are transacted commercially. He added that this agency should also provide oversight of paramilitary and mercenary activities. At a minimum, the official concluded, the integration and standardization of arms export control procedures would help in both verification and enforcement, and provide the rationale for assembling a database of conventional weapons, dual use goods, and military training. Nevertheless, centralization of control over the conventional arms trade was not a feature of the CAC Bill presented in July.

Other structural matters also remain to be addressed through the legislative process. The redrafted CAC Bill, for example, is anticipated to propose the establishment of an independent inspectorate. The withdrawn text of the bill called for the creation of such an inspectorate, but with a limited mandate. It did not address the recommendation, included in the white papers, that the inspectorate monitor adherence to the principles, guidelines, and policy of the NCACC, and report regularly to parliament.

Joint Licensing and Co-Production Agreements

An additional area that raises human rights concerns involves joint licensing and co-production arrangements between South African companies and foreign partners who may not be interested in the human rights record of prospective customers. According to Terry Crawford-Browne, an economist and a representative of the South African Coalition for Defence Alternatives, the hidden dangers for human rights represented by such arrangements became apparent in 1995 with a British proposal for a R.500 million (U.S.\$137.8 million) partnership between GEC, a privately-held British company, and South Africa's state-owned Kentron. Some provisions of this proposal, Crawford-Browne said, suggested that GEC could have co-opted South Africa into "manufacturing weapons under licence for export to politically sensitive regions such as the Middle East and the Far East." Crawford-Browne stated further that GEC "has a long record of supplying weapons to non-democratic countries that violate human rights."⁶⁰

Joint production or co-licensing deals can arise in connection with so-called countertrade deals, also known as offsets, arranged with government approval.⁶¹ Countertrade is "the means by which the costs to the recipient of purchasing defense goods are 'offset' by other deals agreed with the supplier."⁶² Llewellyn Swann of Armscore explained how countertrade works in South Africa: "For example, if we purchase R.10 million (U.S.\$1.6 million) worth of equipment, we ask for no less than fifty percent in countertrade investments, which are equally apportioned to the military and the commercial areas. We have identified twenty-two targeted areas which include steel mills and aerospace."⁶³ Since 1995, such ventures have become more and more eagerly sought after by South Africa, whose arms industry, despite successive export drives, continues to be in deficit. In the financial year 1999, Denel, the preeminent South African armaments manufacturer, reported a R.206 million (U.S.\$33.7 million) loss.⁶⁴ Armscor calculated that the total portfolio of counter-trade in 1997/98 consisted of some seventeen signed contracts with countertrade commitments for R.3.7 billion (U.S.\$637.4 million) in investments.⁶⁵

Human Rights Watch does not object in principle to national efforts to secure offsets when purchasing weapons. It is concerned, however, that such agreements, when they include provisions for joint licensing and co-production of weapons with foreign partners, could compromise South Africa's human rights commitments if adequate precautions are not taken. In December 1999, South Africa signed deals to buy R.30 billion (U.S.\$4.9 billion) worth of ships, submarines, and aircraft from European arms producers. Observers agree that this military modernization drive will not free up excess weapons from South Africa's arsenal for export. They point out, however, that South Africa's procurement agreements include a commitment by international arms suppliers to generate R.100 billion (\$16.3 billion) in countertrade exports and local sales for South African industry, a sizable portion of which will be invested in the defense industry. Critics have observed that the government may therefore be pressured to be more lenient in approving weapons sales. This is because international companies may reasonably expect South Africa to help sell their products if they invest in local weapons manufacturing.⁶⁶

Defense industry representatives agree that, in terms of policy, unresolved problems would remain if foreign partners in joint ventures with South Africa companies decided to sell to customers whom South Africa might find unsavory.⁶⁷

Conflicting Government Signals

Despite South Africa's efforts to design an arms export policy that is strongly committed to human rights, there are differing views within government regarding how to weigh human rights considerations against calculations based on geopolitical alliances, economic advantage, and other factors. An ongoing private debate is taking place within the ANC regarding this issue. Some officials feel the government should promote arms exports as a way to strengthen the economy, win new allies, and repay debts to old allies who supported the ANC during the armed struggle against the apartheid regime. Others argue instead that it should restrain such exports, especially within Africa, to avoid fueling conflict and to establish South Africa as the standard-bearer of

human rights and a credible player in diplomatic efforts to resolve crises.⁶⁸

Reflecting this debate, government officials at times have promoted defense cooperation in Africa without acknowledging the need to ensure that South Africa does not contradict the formal commitments contained in its official policy on arms sales by partnering with governments that abuse human rights or are engaged in armed conflict. Joe Modise, defense minister in the Mandela cabinet, reportedly asserted at an international seminar on defense equipment as early as November 1994 that Armscor was one of the key factors for peace in South Africa and the rest of the continent. According to press reports, he went on to urge African countries to make use of Armscor expertise in order to ensure better value for money spent on equipment. Modise, who had been a commander of Umkhonto we Sizwe (MK), the armed wing of the ANC in the resistance years, also advocated joint efforts for the refurbishment of military hardware and for a continent-wide "viable defense industry."⁶⁹ Ronnie Kasrils, then deputy defense minister, offered a rationale for this stance on cooperation and trade with African partners when he stated: "Our defense industry has to come to terms with a reduced market and can no longer rely on large and regular contracts with the home government. In practice, it means that our defense sector has to transform itself to meet these demands, and the challenge is to change without losing capacity."⁷⁰

Moreover, official government policy has not always seemed to guide South Africa's arms trade relations in practice, as detailed below. Justifying South Africa's relationships with questionable partners, Deputy Foreign Minister Aziz Pahad wrote in an article for the *Mail and Guardian* (Johannesburg): "The fact that South Africa enters into trade with nations with perceivably poor human rights records, does not mean that human rights considerations are not an integral part of South Africa's foreign policy. We would find very few nations to trade with if an unblemished human rights record were the sole criterion."⁷¹ Similarly, in an interview with Human Rights Watch, Kader Asmal, chair of the NCACC, observed that "all principles have to be interpreted and interpretation depends on considerations of future relationships between countries."⁷²

When it comes to human rights determinants, the government maintains that in-house reviews are conducted thoroughly and professionally. An official with the Department of Foreign Affairs described the review process involved in arms transfers: "The human rights section in the ministry receives all applications for exports. They have to respond within five working days. However, since arms exports are not dealt with as a matter of urgency, they have more time to come up with a country profile."⁷³

Some observers worry that the foreign ministry does not have the capacity to prepare accurate human rights profiles and contribute effectively to case-by-case reviews of proposed arms deals. As James Selfe, spokesman for defense of the Democratic Party—the liberal former opponent of the National Party when the latter was in government—commented: "Export controls have become a smokescreen in which no fact is weighed against the other. Are we asking ourselves what information are we using [in determining the rationale for a sale], are our country analyses accurate? I seriously doubt it since lots of officials in the ministry of foreign affairs do not understand what humanitarian law is all about."⁷⁴

Selfe and fellow parliamentarian Patricia de Lille of the Pan African Congress, the former partner and rival of the ANC as a liberation movement, pointed out that the government would be hard pressed to explain sales to countries such as Angola, Colombia, and China, to name a few, on the basis of its arms trade principles.⁷⁵ On the other hand, Boy Geldenhuys, then the foreign affairs spokesman for the National Party, the party that created Armscor and its secretive culture, declared in an interview with Human Rights Watch that, in principle at least, "the policies on exports are too strict." In practice, they raised fewer concerns for his party and the defense industry it promoted. Citing controversial arms sales to Rwanda, Turkey, and Algeria that went ahead under the current policy guidelines, Geldenhuys indicated: "All in all, I can live with this arms export policy."⁷⁶ In July 2000, the Democratic Party merged with the National Party to become the Democratic Alliance, the largest opposition party to the ANC. It remains to be seen how the perspectives of the two political parties regarding arms control issues will coalesce.

Alan Sharpe, chief director of the human rights section of the Department of Foreign Affairs, conceded that there is a trend to separate human rights from trade in general. This position was spelled out in December 1999 by Jacob (Jackie) Selebi, then head of the Department of Foreign Affairs, who stated that South Africa would be able to articulate respect for human rights to other governments only if these rights were separated from the question of trade.⁷⁷ Sharpe elaborated this rationale further by stating that: "Human rights are a cornerstone of our foreign policy, but we are not going to be the policeman of the world."⁷⁸

Parliamentarians and members of civil society have pointed out that a lack of consultation with groups outside the executive branch of government undercuts efforts to ensure that human rights information is given the weight it deserves in individual decisions to supply weapons. Barney Pitso, for example, head of the South African Human Rights Commission (SAHRC), a constitutionally established body, complained that the government hardly consults his commission, despite its responsibilities to ensure compliance with human rights standards. "Our job is to see whether policies are consistent with the constitution," he stated, "but the government often fails to see how we can contribute to the debate. No input from us has ever been requested by the NCACC. This has not prevented us from challenging policies, as we did with regard to the arms deal with Rwanda."⁷⁹ The SAHRC undertook an internal process of discussion as to its role in relation to government policy on arms sales and foreign affairs. This discussion has not, however, resulted in any consistent effort to comment on the human rights implications of specific transfers.

South African officials insist that human rights remain a key consideration in drawing a list of customers for South African weapons, but that they constitute only one ingredient of policy decisions. Other factors they consider, for example, are regional

stability and the regional balance of power.⁸⁰ Such considerations, however, may be at odds with human rights concerns. When this is the case, Human Rights Watch holds that they should not be used to justify weapons sales that seriously endanger human rights. Military support to armed forces that have a record of committing serious human rights abuses and violating international humanitarian law inevitably furnishes such groups with the tools with which to continue abusive practices and, importantly, suggests outside support for their behavior, thus helping to foster a dangerous culture of impunity.

Moreover, it is worth noting that South Africa's arms export control policy nowhere states that arms will be sold in order to achieve regional stability or balance of power. To the contrary, the code of conduct contained in the government's white papers includes the converse provision, that South Africa will avoid arms transfers when they are likely to contribute to the escalation of regional conflicts, endanger peace by introducing destabilizing military capabilities into a region, or otherwise contribute to regional instability and negatively influence the balance of power. Despite this provision and a commitment to consider the internal security situation in the recipient country when weighing an arms export decision, South Africa has furnished weapons to a number of countries that are involved in regional disputes or armed conflicts, as well as civil wars.

The appointment of a new defense team in 1999 may give human rights renewed prominence in the arms trade equation. President Thabo Mbeki named as defense minister Mosiuoa Patrick "Terror" Lekota, a product of the internal United Democratic Front (UDF) rather than of MK, the ANC's military wing, and Nosizwe Madlala Routledge, a pacifist by conviction, was made deputy minister. Local human rights proponents were hopeful that this team would further develop and implement South Africa's arms trade policy in keeping with the country's commitment not to permit its weapons sales to undermine abroad human rights it now respects at home. Minister Lekota's efforts to promote the sale of South African weapons to China, announced in June 2000, have dampened such expectations (see below).

⁴⁰ White Paper on Defence, chapter 8, paras. 1 and 9, www.polity.org.za/govdocs/white_papers/defencewp.html. See also, Directorate of Conventional Arms Control, www.mil.za/sandf/dro/ncacc/ncacc.htm.

⁴¹ The NCACC includes the ministers of defense (and deputy), trade and industry, arts, culture, science and technology, constitutional affairs, public enterprises, foreign affairs (and deputy), and safety and security (and deputy), as well as the deputy minister of intelligence services.

⁴² Armscor, *Annual Report 1997/1998*, p. 5. In terms of sales, Armscor retained the function of selling surplus stocks from which the corporation takes a 2.5% commission. In 1998, the sale of surplus equipment amounted to R.25 million (U.S.\$4.5 million). Human Rights Watch interview with Llewellyn Swann, Armscor's executive director, Pretoria, February 9, 1999.

⁴³ The Armscor Act provided a specification of required arms trade permits. Three additional areas and pertinent permits are covered by the law. These are: development and manufacturing permits, import permits, and transit permits. All are issued by the minister of defense, and the latter permit is required to ensure that "[n]o weapons in transit to other countries may be shipped across South African territory without the authority of and in accordance with the conditions stated in a permit issued by the Minister of Defence." "Guide to the Terms of Reference," pp. 13-21.

⁴⁴ This is the body responsible for handling issues relating to weapons of mass destruction.

⁴⁵ Human Rights Watch interview, Johannesburg, February 10, 1999.

⁴⁶ Human Rights Watch interview, Pretoria, January 29, 1999.

⁴⁷ "Conventional Arms Control Bill," submitted to parliament on July 28, 2000, available at www.polity.org.za/govdocs/bills/2000/b50-00.pdf.

⁴⁸ Human Rights Watch email communication with Laurie Nathan, May 8, 2000.

⁴⁹ "Editorial: Arms and the Ministry," *Mail and Guardian* (Johannesburg), September 1, 2000; Ivor Powell, "New Arms Control Bills Give State Carte Blanche," *Mail and Guardian* (Johannesburg), September 1, 2000; "Weapons Bill Under Fire," SAPA, September 7, 2000; Wyndham Hartley, "Arms Bill Violates Transparency Policy," *Business Day* (South Africa), September 13, 2000; South African Council of Churches, "Public Policy Update: Disastrous Arms Control Bill Omits Human Rights Criteria," September 15, 2000, at www.sacc-ct.org.za/ppu_cac.html. Laurie Nathan and Terry Crawford-Browne were among the nongovernmental arms control advocates who submitted memoranda that sharply criticized the draft legislation to the parliamentary defense committee, which met in closed session in September 2000 to consider the bill. Laurie Nathan, "Memorandum on Arms Exports and the Conventional Arms Control Bill: Submission to the Parliamentary Defence Committee," September 6, 2000; Terry Crawford-Browne, "Comment on the Conventional Arms Control Bill," September 5, 2000.

⁵⁰ Parliament of the Republic of South Africa, "Press Release: Conventional Arms Control Bill," September 19, 2000. The parliamentary defense committee announced that it expected a new draft bill to be ready by February 2001.

⁵¹ Human Rights Watch interviews with nongovernmental organization representatives, journalists, and government officials,

Johannesburg, January 27-30, 1999, and Cape Town, February 3 and 4, 1999.

52 Human Rights Watch interview with Virginia Gamba, Institute for Security Studies, Halfway House, January, 26, 1999.

53 Human Rights Watch interview, Cape Town, February 3, 1999.

55 This bill, introduced to parliament on May 19, 2000, and awaiting passage as of September, regulates the supply, ownership, transfer, and use of firearms. The text of the bill is available at www.polity.org.za/govdocs/bills/2000/b34-00.pdf.

56 Available at www.polity.org.za/govdocs/white_papers/defence/defenceprocure6.html. The table has been edited by Human Rights Watch to exclude information about weapons of mass destruction, nuclear weapons, and nuclear materials and technology.

57 White Paper on the South African Defence Related Industries, chapter 6, www.polity.org.za/govdocs/white_papers/defence/defenceprocure6.html

58 As stated in the White Paper on Defence Related Industries, "The NCACC has no jurisdiction over domestic transfers of commercial weapons, though an understanding exists between the Minister of Safety and Security and the chairperson of the NCACC that no commercial weapons will be given an export permit without being reviewed by the NCACC." The Firearms Control Bill, referenced in the table above, no longer includes a provision contained in a 1999 draft that would have formalized this arrangement by requiring NCACC approval for export permits issued under the Firearms Control Act.

59 Human Rights Watch interview with a government official, Pretoria, February 8, 1999.

60 Terry Crawford-Browne's submission to the Cameron Commission, November 22, 1994, and Human Rights Watch interview with Terry Crawford-Browne, Cape Town, February 4, 1999.

61 The term "countertrade" was widely used in the mid-1990s in South Africa to describe what were essentially barter transactions at the time. More recently, as arms deals increasingly came to include arrangements other than a direct exchange of goods, the more general term "offsets" has been applied. The two terms are now sometimes used interchangeably.

62 Bernard Udis and Keith E. Maskus, "Offsets as Industrial Policy: Lessons from Aerospace," *Defence and Peace Economics*, vol. 2, p.151.

63 Human Rights Watch interview, Pretoria, February 9, 1999.

64 The previous year, the company reported a net loss of R.745 million (U.S.\$135.6 million). Leon Engelbrecht, "Denel digging its way out of hole," *Defense Systems Daily*, September 28, 2000.

65 Armscor, *Annual Report 1997/98*, p. 48.

66 In general South Africa is expected to dedicate one-third of the value of offsets to investments in the defense industry, with the remaining two-thirds to be invested in civilian industries. Details of offset arrangements are not made public, however, so it is difficult to establish their actual value and distribution. Human Rights Watch e-mail communication with Terry Crawford-Browne, September 29 and October 7, 2000. Anthony Stoppard, "Disarmament-South Africa: Stained Arms Record Hard to Shake," InterPress Service, December 20, 1999. Human Rights Watch interviews with Terry Crawford-Browne and Patricia De Lille, Cape Town, November 18 and 19, 1999. This massive acquisition program has already sparked the undesirable side effect of suspected corruption. In November 1999, in connection with a wider investigation, Patricia de Lille delivered a voluminous package of documents with regard to the awarding of tenders to foreign companies involved in the procurement drive to a commission appointed to investigate allegations of major government corruption. The commission acknowledged the sensitivity of these documents. "Heath to Quiz People About Arms Corruption Claims," South African Press Association (SAPA), January 11, 2000. In July 2000, a parliamentary committee asserted that it had found no evidence of impropriety in the weapons acquisition process, but the defense minister cautioned that an investigation by the Auditor-General's office was not yet complete. SAPA, July 4, 2000. In September 2000, the Auditor-General announced that he was seeking a special investigation into seeming irregularities in the procurement process. "S.African auditor general to delve into arms deal," Reuters, September 20, 2000. Other investigations, including one by South Africa's Public Prosecutor, were also underway. SAPA, September 29, 2000. For a discussion of corruption allegations surrounding offset deals, see Terry Crawford-Browne, "South Africa's R30 billion Weapons Procurement Programme: OFFSETS, an invitation to corruption in a country desperate for socio-economic development (May 26, 2000)," unpublished paper.

67 Human Rights Watch interview with Julius Kriel, Executive Director of South Africa Aerospace, Maritime and Defence Industries, Pretoria, January 29, 1999.

68 John MacLennan, "Hawkish Modise Bypasses Conscience on Arms Sales," *Saturday Argus* (Cape Town), October 25/26, 1997. Human Rights Watch interviews with nongovernmental organization representatives, Halfway House, January 26, and

February 3 and 4, 1999.

69 Accadoga Chiledi, "South Africa Politics: New Role for the Arms Industry," InterPress Service, November 22, 1994. He repeated these themes at subsequent defense industry exhibitions; see, for example, Stephané Bothma, "Modise highlights benefits of SA defence industry," *Business Day* (Johannesburg), November 14, 1996.

70 Deputy Minister's Keynote Address to the South African Defense Industry Conference, VW Conference Centre, Midrand, March 27, 1998.

71 Aziz Pahad, "We don't trade off human rights," *Mail and Guardian* (Johannesburg), April 25 to May 1, 1997.

72 Human Rights Watch interview, Cape Town, February 3, 1999.

73 Human Rights Watch interview, Pretoria, January 28, 1999.

74 Human Rights Watch interview, Cape Town, February 2, 1999.

75 Human Rights Watch interviews, Cape Town, November 18 and 19, 1999.

76 Human Rights Watch interview with Boy Geldenhuys, Pretoria, January 28, 1999.

77 Interview with Jackie Selebi in *Global Dialogue*, vol.3, no.3, (Johannesburg, Institute for Global Dialogue, December 1998).

78 Human Rights Watch interview, Pretoria, February 8, 1999.

79 Human Rights Watch interview, Johannesburg, January 27, 1999.

80 Human Rights Watch interviews with foreign ministry officials, January 28, 1999, with defense ministry officials, Pretoria, February 8, 1999, and with Kader Asmal, Cape Town, February 3, 1999.



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VI. IMPLEMENTATION MEASURES

As a parallel process while new arms trade control structures were put in place, South Africa also took steps to improve concrete mechanisms for controlling the weapons trade. Two initiatives are especially noteworthy, although both are flawed. The government sought to combat unauthorized diversions of weapons sold by South Africa, and it also worked to strengthen implementation of the controls through enhanced transparency and public accountability.

End-User Certification, Verification, and Enforcement

The "Wazan debacle" investigated by the Cameron Commission highlighted one of the thorniest issues connected with arms trade verification and enforcement, that is, the ease with which arms export documentation can be falsified. It emphasized how flimsy credentials and promises from "end users," the formal recipients of weapons, are often taken at face value by supplier states, when, in fact, the arms are redirected to another destination. Violations of end-user pledges are likely to occur when rebel groups or states that are stigmatized for their abusive behavior roam the black market in search of sensitive goods that national or international laws deny them.

The Cameron Commission recommended that the government take the appropriate steps to "identify and eliminate all systems and methods which undermine control over the end destination of arms export [and]...to identify and introduce or strengthen means of ensuring that arms exports end up at the authorized destination (e.g., pro-active verification of end-user certificates)..."⁸¹ South Africa has made some progress in achieving this goal, though diversion of its arms has nonetheless taken place, and further, enhanced measures need to be adopted.

Deputy Minister of Foreign Affairs Aziz Pahad recognized the inescapable link between strict end-user controls and human rights guarantees in an interview in 1997 in which he stated: "The real test for the prioritization of human rights...is the strength of end-user certificates from the buying country and the availability and efficacy of penalties in the event of contravention."⁸² The government moved to ensure that this connection would not be lost. South Africa now requires end-user certificates to be authenticated by the South African government in addition to confirmation of bona fide credentials issued by the importer's authorities, and the agreement that weapons will not be re-exported without South Africa's permission. The end-user certificates, while not standardized, must include a description of the goods, their serial numbers, and quantities. Moreover, a delivery verification document is required in the transfer process.⁸³ Most importantly, South Africa reserves the right to initiate separate verification through its diplomatic representation in the recipient's state.

An example of this pro-active approach occurred in August 1997 when the South African High Commissioner in Kenya asked the Burundian government for the serial numbers of South African weapons that the Burundian military claimed it had captured from Hutu rebels in Burundi.⁸⁴ Curiously, in subsequent correspondence with Human Rights Watch, South Africa denied ever having initiated this action.⁸⁵

Reflecting the importance of end-user commitments as a control mechanism, a provision in the White Paper on Defence declares that there should be no further arms sales to countries that have breached such commitments.⁸⁶ Deputy Minister Pahad has reassured Human Rights Watch that in at least one case, when in late 1997 or early 1998 Namibia diverted South African trucks to the Democratic Republic of Congo, South Africa "stopped" further arms sales to that country.⁸⁷ Another South African official, however, described the government's response differently. According to this official, South African arms control authorities requested an explanation from the Namibian government about the diverted trucks and were awaiting an official response. He asserted that the South African government "need[s] tangible evidence that diversions occur" before taking action.⁸⁸

In another instance, South Africa initiated an inquiry in response to Human Rights Watch's charge that South African rounds of phosphorus shells intended for Malaysia had ended up in Sudan.⁸⁹ Speaking in early 1999 about the investigation, a government official indicated that South Africa had ascertained that the diversion had clearly occurred.⁹⁰ He confirmed that South Africa was

preparing a demarche to Malaysia, adding that the demarche would be made public, in accordance with the pertinent provision in the defense white paper that reads: "In the event of an importing country breach [of end-user agreements], the transgression will be publicized internationally."⁹¹

In an interview with Human Rights Watch, Kader Asmal reiterated this position by declaring that "if we come across a diversion, we will announce it publicly and then we will have to take action."⁹² Despite the government's stated commitment, Human Rights Watch has not been able to find any evidence that an open denunciation of Malaysia's diversion ensued.⁹³ On the contrary, the government has publicly acknowledged only that South African weapons appear to have been diverted in one case, while refusing to name the implicated countries.⁹⁴ In a positive development, Asmal announced in December 1999 that the government had commissioned an independent audit to probe whether "correct procedures" had been followed to prevent breaches of end-user certificates, and whether these procedures had been foolproof, but again there had been no news of any developments on this as of September 2000.⁹⁵ Without regard to Malaysia's role in the earlier arms diversion, in September 2000 South African arms industry officials reportedly announced that Denel was "very actively" pursuing a lucrative weapons deal with Malaysia and had asked former president Mandela to help them win the sale.⁹⁶

For South Africa and other suppliers, even sustained efforts to rigorously check documentation before authorizing arms transfers and to verify delivery of each shipment cannot guarantee that the weapons it exports are not diverted. "No country can enforce a system of inspectors, and no country will open its barracks to another government's inspections," said Julius Kriel. Once an unauthorized diversion has occurred, he added, "[t]he only way to make sure that end-user commitments are respected is to cut out the diverting party from logistical support and spare parts for your equipment."⁹⁷ Human Rights Watch believes that, at a minimum, in order to effectively deter diversions in violation of end-user agreements, all ascertained violations should be made public by the supplying government or parties privy to the pertinent information. In addition, South Africa should work with other governments to develop standardized and difficult-to-forge end-user documentation, as proposed by Southeast European countries at a meeting in Sofia, Bulgaria, in December 1999.⁹⁸ Such standardization, especially if complemented by other pro-active checks, would make it easier for authorities in arms exporting countries to detect false end-user certificates forged by unscrupulous arms brokers or provided by corrupt officials.

Transparency

Access to information is enshrined in article 32 of the 1996 South African constitution, which reads: "(1) Everyone has the right of access to (a) any information held by the state and (b) any information that is held by another person and that is required for the exercise or protection of any rights."

In accordance with this principle, the Cameron Commission stated: "The public has the right to know as much as is reasonably and practically possible about armaments transactions. This is not only an intrinsic right in a society committed to openness and democracy- the Constitution proclaims-it is also an important instrument in furthering the human rights concerns, both locally and internationally, which underlie our new constitutional order."⁹⁹ The "Wazan debacle" had clearly exposed how secrecy in the arms trade might endanger human rights. The Cameron Commission, as noted above, called on the South Africa government to take several concrete steps to ensure transparency.

In the 1996 White Paper on Defence, the South African government stated, following the recommendations of the Cameron Commission, that the Department of Defence has "a positive duty to provide sufficient information to ensure adequate parliamentary and public scrutiny on defence matters."¹⁰⁰ A year later, however, this commitment had been contravened. In July 1997, three South African newspapers disclosed a deal with an unnamed Middle Eastern client that reportedly would have represented the biggest weapons transaction "in the history of South Africa."¹⁰¹ Denel, the government-owned arms manufacturer, sprang into action to block further revelations by suing the three newspapers and a journalist under the Armscor Act, still in force, which prohibits the disclosure of any information relating to the supply, marketing, and export of armaments.¹⁰² The recipient country was widely rumored to be Saudi Arabia. In August 1997, Human Rights Watch was able to obtain official confirmation of the Saudi identity of the prospective recipient of South African long-range artillery systems through a question asked publicly and directly to Asmal.¹⁰³ Commenting on this episode, Joe Modise, the South African defense minister at the time, had this to say: "We were placed in this humiliating position because of our own press, which is supposed to be working in the interest of South Africa."¹⁰⁴ The fracas sparked a debate that ultimately led the government to announce a new policy on transparency in armaments exports.¹⁰⁵

Annual Reporting

In keeping with the new policy on transparency, the government pledged to make available details of transactions in regular reports. Annual reports on arms sales began to be posted to a website in 1998.¹⁰⁶ These reports identify the recipients of South African weapons and list the total value of annual arms exports by country, the characteristics of which are aggregated as follows:

C Category A. *Sensitive Major Significant Equipment (SMSE)*. SMSE comprises conventional implements of war that could cause heavy personnel casualties and/or damage and destruction to material, structures, objects, and facilities. Examples are artillery, bombs, fighter aircraft, attack helicopters, and armored fighting vehicles.

C Category B. *Sensitive Significant Equipment (SSE)*. SSE comprises all types of hand-held or portable assault weapons of a caliber smaller than 12.7mm. All assault rifles, machine guns, pistols, and related small arms and ammunition are included in this category.

C Category C. *Non-sensitive Equipment (NSE)*. NSE comprises all equipment usually employed in the direct support of combat operations that have no inherent capability to kill or destroy, although, if employed in conjunction to SMSE, could have a multiplier effect. Examples are radar systems, meteorological stations, radio equipment, support vehicles and aircraft, and recovery equipment.

C Category D. *Non-lethal Equipment (NLE)*. NLE is limited to purposely designated de-mining and mine clearing and mine detecting equipment, all non-lethal pyrotechnical and riot control products and related equipment. Examples are mine detectors, signal flares, baton rounds and tear gas.

C Category E. *Not for Sale (NFS)*. NFS comprises all defense or defense-related products that are not for sale, such as all landmines.

C Category G. *General Services*. This category includes any service to a foreign country that has a relevance to rendering aid, advice, or assistance or training in relation to conventional arms but excluding after sales and warranty services.¹⁰⁷

The annual reports show that South Africa sold weapons to the value of approximately R.850 million (U.S.\$ 198.9 million) in 1996, R.1.3 billion (U.S.\$282.2 million) in 1997, R.646 million (U.S.\$117.6 million) in 1998, and R.1.1 billion (U.S.\$179.8 million) in 1999.¹⁰⁸ The human rights records of a number of recipients of these weapons raised questions in terms of the government's stated commitments (see below).

Crucially, the government reserved the right to maintain confidentiality regarding recipients whenever necessary, meaning that it would refuse to report the country of destination for some arms exports. Moreover, the reports do not disclose either quantities or specific types of weapons. Ronnie Kasrils, then deputy defense minister, justified these omissions by saying: "We wanted a perfect [transparency] instrument but then we realized that the world works differently."¹⁰⁹ In the real world, officials maintain, confidentiality on arms transaction details is what makes deals possible.¹¹⁰

Laurie Nathan, a former member of the Cameron Commission, contested the validity of restricting reporting because of client confidentiality considerations. He argued: "Revealing the names of arms importing countries would hardly compromise our national security. Many buyers desire confidentiality, but their needs do not override a basic constitutional principle. Domestic security and commercial interests can be protected by withholding sensitive technical data while still providing sufficient information to allow for informed parliamentary and public comment." In addition, Nathan observed, "The marketing of armaments necessarily entails revealing their main features both to agents and to potential clients."¹¹¹

There is a discrepancy of views among different government departments about the way future reports will look. An official in the foreign affairs ministry, for example, told Human Rights Watch that evolution of the reports towards greater transparency is inevitable. One of this official's counterparts in the defense ministry, however, believed that the format of the reports is cast in stone: "This [report] model was chosen precisely in order not to encroach on our competitiveness, particularly with regard to long term contracts."¹¹² A different perspective within the defense establishment holds that since South Africa is the major weapons producer of the African continent, and the preeminent member of the Southern African Development Community (SADC), it should strive for greater openness in the arms trade. As SANDF Lt. Colonel Nicholas Clive Sendall observed (in his private capacity), "[t]here is a definite and clear linkage between the emerging security posture of South Africa as a regional power and public scrutiny and transparency as a means to building confidence in the region with regards to the intentions and posture of the South African government."¹¹³

The Role of Parliament

The NCACC reports on arms transactions quarterly to the cabinet, but-despite the defense white paper's commitment to ensuring parliamentary scrutiny-the government has resisted allowing any decision-making or even an advisory role for parliament on arms transfers.¹¹⁴ Minister Asmal, commenting that he failed to understand "this obsession with parliament," stated to Human Rights Watch that the NCACC system offers enough guarantees, and pointed out that the parliamentary committees with competence on arms export policy do not take an oath of confidentiality.¹¹⁵ The implication is therefore that these committees cannot be entrusted with sensitive information, and cannot be granted prior scrutiny of South Africa's weapons trade.

In practice, challenges to the government's arms transfers decisions on human rights or other grounds have mainly come from nongovernmental organizations and the press. Rarely has parliament been heard in this regard. Partly, this has been due to the steep learning curve that South Africa's parliament has been on since the 1994 elections. Aziz Pahad, the deputy foreign affairs minister, commented to Human Rights Watch that one of the problems the new government faced in its relationship with parliament was that when the ANC took power it first had to develop an understanding of how the system works. "We have to make sure the capacity [of parliament to carry out its responsibilities] is properly developed."¹¹⁶

Some features of the new constitution have also hampered the development of effective parliamentary oversight of the executive: in particular, that MPs are elected proportionally on a pure list system, and cannot cross the floor when in dissent with their own party's line. "If you disagree," said an analyst, "you can be thrown out of a party. This is why, instead of having watchdogs in our parliament, we have ended up with lapdogs."¹¹⁷ In addition, in areas of policy specialty such as defense, there is no burning issue comparable to those in health or labor, for example, that would open party fault lines. This has hampered both the development of parliamentary expertise, and a more active debate.¹¹⁸ Parliamentary specialists believe that, in order to promote a more effective oversight, it will be necessary to create a subcommittee with the task of shadowing the NCACC.¹¹⁹ The Second Report of the Cameron Commission proposed that prospective arms sales be vetted by a special parliamentary committee, comprising members of the defense and foreign affairs committees, which would make recommendations to parliament.

Nosizwe Madlala Routledge, who became deputy defense minister following the 1999 elections, stated in an interview with Human Rights Watch that there is no real impediment in bringing parliament into arms trade determinations. "Since we publish pertinent information at the end of the process, we should not be afraid to make it available earlier," she said.¹²⁰ This approach, if adopted, would fully honor the Cameron Commission's recommendations. The proposed Conventional Arms Control Bill, as described above, does not make progress in this direction.

The Promotion of Access to Information Act

In February 2000, the government fulfilled a constitutional obligation to adopt legislation to flesh out in statutory form the constitutional guarantee of access to information, passing through parliament and signing into law the Promotion of Access to Information Act. The act provides for individuals to have access to state and private records (and, controversially, for state access to private records also, in some circumstances), and sets out detailed rules for the disclosure of such information and exceptions to the general rule that access should be allowed. The act does not apply to records of the cabinet or its committees, and hence would therefore appear to exclude the records of the NCACC.¹²¹

In addition, the act provides for strict limits on access to defense-related information. Section 41(1) provides that public bodies may refuse a request for access to records if their disclosure "could reasonably be expected to cause prejudice to" the country's defense, security, or—subject to an exception for records that are more than twenty years old—its international relations. Requests can also be refused, under the same article, if disclosure would reveal confidential information shared between South Africa and another state or an international organization, or information required to be held in confidence by international agreement or customary international law.¹²²

To avoid any doubt, the section specifies that the records subject to these restrictions include records "relating to the quantity, characteristics, capabilities, vulnerabilities, performance, potential, deployment or functions of (i) weapons or any other equipment used for the detention, prevention, suppression or curtailment of subversive or hostile activities; or (ii) anything being designed, developed, produced or considered for use as weapons or such other equipment."¹²³ Disclosure of records may also be refused if they contain "financial, commercial, scientific or technical information...the disclosure of which would be likely to cause harm to the commercial or financial interests of [a] third party."¹²⁴

The restrictions contained in the Promotion of Access to Information Act, while broad in scope, do permit access to arms trade information in some cases. The act itself provides that a public body must grant access to a record if the disclosure would reveal evidence of which "a substantial contravention of or failure to comply with the law" or "an imminent and serious public safety or environmental risk" and "the public interest in the disclosure of the record clearly outweighs the harm contemplated in the provision in question."¹²⁵ Were arms export control criteria to be codified in law with the adoption of a redrafted CAC Bill, this rule could be used to obtain information pointing to a violation of arms trade policy.

The U.N. Register

In 1995 South Africa submitted its first report to the U.N. Register of Conventional Arms. The register, created in 1992, collates information offered voluntarily by governments on seven major weapons categories and is regarded as an important transparency and confidence-building instrument.¹²⁶ South Africa's participation in the register came with significant caveats: as with its national reports, South Africa reserved the right to withhold reporting arms exports when necessary to protect client confidentiality. In addition, South Africa stated that it would only disclose transfers "once the full contractual obligations with regard to full systems have been achieved."¹²⁷ Under this restriction, if South Africa arranged to sell military equipment to a client over several years as part of a single contract, it would withhold information until the final year of the contract even if previous arms deliveries had been made in earlier years.

This narrow approach to the register came under attack from a number of quarters. Critics in parliament pointed out that of the twenty-one countries that reported to the register in 1995, only South Africa announced that it would withhold information on client confidentiality grounds.¹²⁸

⁸¹ Commission of Inquiry, *First Report*, p. 4.

- 82 Krish Naidoo, "An interview with Aziz Pahad, Deputy Minister of Foreign Affairs," *Salvo* (January 1997), p. 5.
- 83 "Guide to the Terms of Reference," pp. 6-8. The 1999 white paper on defense-related industries called for "critical rules and obligations" relating to end-user certificates to be elaborated in the Conventional Arms Control Bill. The July 2000 CAC Bill only included a vague provision on end-user controls, and it remains to be seen if the topic will be addressed more fully in the revised version of the legislation.
- 84 Human Rights Watch interview with Stanislas Nakaha, ambassador of Burundi to Kenya, Nairobi, August 17, 1996.
- 85 Chairman of the NCACC correspondence with Human Rights Watch, Pretoria, September 17, 1999.
- 86 White Paper on Defence, chapter 8, para. 20, www.polity.org.za/govdocs/white_papers/defencewp.html.
- 87 Human Rights Watch interview, Cape Town, February 2, 1999.
- 88 Human Rights Watch interview, Pretoria, January 29, 1999. In a deal that may reflect the transfer of the trucks, which were said to have been donated, South Africa supplied Namibia with R.5,282,000 (U.S.\$961,300) worth of military support equipment in 1998. Directorate of Conventional Arms Control, "South African Export Statistics for Conventional Arms: 1997-1999," March 2000, www.mil.za/sandf/dro/ncacc/ncacc.htm.
- 89 Human Rights Watch/Arms, "Sudan. Global Trade, Local Impact," *A Human Rights Watch Short Report*, vol.10, no.4 (A), August 1998, p. 19.
- 90 Human Rights Watch interview with a South African government official, Pretoria, January 29, 1999.
- 91 White Paper on Defence, para. 20.
- 92 Human Rights Watch interview, Cape Town, February 3, 1999.
- 93 A review of South African press sources available online showed that no such denunciation had been reported by the major South African media as of September 2000.
- 94 Both Kader Asmal and Captain Fred Marais, head of the Directorate of Conventional Arms Control declined to name the countries involved. Captain Marais added that the incident was neither serious nor recent and emphasized that the South African government was pursuing the matter through diplomatic channels. SAPA, December 15, 1999.
- 95 Bonile Ngqiyaza, "Asmal Lays Down Law on Arms Purchasing," *Business Day*, December 17, 1999.
- 96 Henry Ludski, "Finally, SA Within Sight of Malaysian Arms Deal," *Sunday Times* (Johannesburg), September 10, 2000.
- 97 Human Rights Watch interview, Pretoria, January 29, 1999.
- 98 "Regional Conference on Arms Export Controls Ends," World News Connection, December 15, 1999.
- 99 Cameron Commission, *First Report*, p. 14.
- 100 White Paper on Defence, chap. 3, para. 8.
- 101 "Arms manufacturer lays charges against three newspapers and a journalist for publishing details of an arms deal," Freedom of Expression Institute, July 22, 1997, at www.fx.org.za/alerts/1997/aldenel.htm.
- 102 Ibid.
- 103 The exchange took place on July 25, 1997, at a conference organized by International Alert and the Centre for Conflict Resolution Conference on "Light Weapons and Peacebuilding in Central and East Africa," from July 23-25, 1997, in Cape Town. See also Rehana Rossouw and Marion Edmunds, "Asmal names mystery arms client," *Mail and Guardian* (Johannesburg), August 1, 1997.
- 104 "SA in Danger of Losing Major Arms Deal, Says Modise," SAPA, August 7, 1997.
- 105 Media Advisory, "Transparency in Armaments Exports," July 23, 1997.
- 106 Barry Streek, "SA arms sales listed online," *Mail and Guardian* (Johannesburg), October 1, 1999. The website address is

www.mil.za/sandf/dro/ncacc/ncacc.htm.

107 Directorate of Conventional Arms Control, "Product Categorization," available at www.mil.za/sandf/dro/ncacc/ncacc.htm.

108 Directorate of Conventional Arms Control, "South African Export Statistics for Conventional Arms: 1996-1998," and Directorate of Conventional Arms Control, "South African Export Statistics for Conventional Arms: 1997-1999."

109 Human Rights Watch interview, Pretoria, January 31, 1999.

110 Human Rights Watch interviews with government officials, Pretoria, January 28 and 29, 1999.

111 Laurie Nathan, "With Open Arms? South Africa's New Policy on Arms Export Transparency," *Sunday Independent*, July 27, 1997, and Laurie Nathan, "Comment on the Open Democracy Bill with Reference to National Security, Defence and Arms Trade," Commissioned by the Ceasefire Campaign for submission to the Portfolio Committee on Justice, August 14, 1998, p. 18.

112 Human Rights Watch interviews with government officials, Pretoria, January 28 and 29, 1999.

113 Nicholas Clive Sendall, "Transparency and the Management of Defence Information," A research report submitted to the Faculty of Management, University of the Witwatersrand, Johannesburg, in partial fulfillment of the requirements for the degree of Master of Management, Johannesburg, 1997, p. 35; and Human Rights Watch interview with Nicholas Clive Sendall, Pretoria, February 8, 1999.

114 Media Advisory, "Transparency in Armaments Exports."

115 Human Rights Watch interview, Cape Town, February 3, 1999.

116 Human Rights Watch interview, Cape Town, February 2, 1999.

117 Human Rights Watch interview with Terry Crawford-Browne, representative of the nongovernmental Coalition for Defence Alternatives, Cape Town, February 4, 1999.

118 Human Rights Watch interview with Richard Calland, representative of the nongovernmental parliamentary monitoring group Idasa, Cape Town, February 3, 1999.

119 Human Rights Watch interviews with Richard Calland and Terry Crawford-Browne, Cape Town, February 3 and 4, 1999.

120 Human Rights Watch interview, Cape Town, November 18, 1999.

121 It seems unlikely that the NCACC's work would be made subject to these controls after passage of legislation granting it legal status, since it is proposed to remain a committee of cabinet.

122 Promotion of Access to Information Act (No. 2 of 2000), section 41(1).

123 Ibid., section 41(2)(b).

124 Ibid., section 36(1).

125 Ibid., section 46.

126 In 1998 a total of ninety-seven states, including some of the world's major arms suppliers, submitted data on their import and export of weapons to the U.N. register. Human Rights Watch, *World Report 2000* (New York: Human Rights Watch, 1999), p. 409.

127 Media Advisory, "Transparency in Armaments Export."

128 Human Rights Watch interview with James Selfe, Democratic Party parliamentarian, Cape Town, February 2, 1999.



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VII. ARMS TRADE IN PRACTICE

The new arms export policy and operational framework, while offering stricter controls, have produced controversial results, causing critics to point to a gap between the theory professed by the NCACC and the practice arising from considerations of realpolitik and economics.¹²⁹

As indicated earlier, South Africa has on several occasions refused to sell weaponry on human rights grounds. For example, South Africa imposed an arms embargo on Nigeria with effect from November 2, 1995, following embargoes put in place by the European Union and United States.¹³⁰ Provoking protests from the Kenyan government, South Africa also refused to supply riot equipment to the Kenyan police.¹³¹ It also claimed to have resisted pressure from Sudan to provide maintenance for South African helicopters previously supplied to that country's abusive government by the apartheid regime.¹³² Following the October 1999 military coup in Pakistan, and the country's suspension from the Commonwealth, South Africa announced that it would suspend arms sales (although it later allowed delivery of arms sold under previously-negotiated contracts).¹³³ Zimbabwe complained in mid-2000 that it had not been able to purchase tear-gas from South Africa earlier that year, and South African officials reportedly attributed the export denial to civil unrest in Zimbabwe at the time.¹³⁴

Despite these positive examples, there have been other controversial decisions to allow the official export of South African arms to governments engaging in repression against their own people, or to countries involved in their own or others' civil wars. Thus, as the nongovernmental Commonwealth Human Rights Initiative (CHRI) reported in December 1999, five of the top ten destinations for South African arms exports between 1996 and 1998—India, Colombia, Pakistan, Congo-Brazzaville, and Algeria—were countries that had experienced some form of conflict during the same period.¹³⁵ Sales to such areas of instability and armed conflict are obviously in tension with the ethical principles featured in South Africa's policy documents, which permit weapons sales that will be used for legitimate defense and security purposes but not to exacerbate tensions and expand conflict. Moreover, a number of South Africa's arms sales to areas of violent conflict, including those to Colombia, Congo-Brazzaville, and Algeria, are to countries that have very poor human rights records. This latter set of arms deals stand in sharp contrast to the clearly stated pledge, cited above, that "South Africa shall not transfer arms to countries which systematically violate or suppress human rights and fundamental freedoms."

Profit vs. Human Rights

Addressing the controversies over South African arms deals with abusive governments and countries in conflict, the CHRI noted in its report that the "disturbing record of arms sales since April 1994 has fed the perception, domestically and internationally, that the ANC Government's foreign policy is haphazard and that South Africa has failed to become a restrained and responsible arms trader." It went on to add that recent arms deals "suggest that maintaining jobs in the arms industry, and other economic considerations, are more important than the Government's stated commitment to human rights principles." The group noted that the net returns from South Africa's arms exports are relatively insignificant, especially once the cost of subsidies for the defense industry are taken into account.¹³⁶

In many cases of controversial arms export decisions, observers have seen sudden shifts in policy. These shifts were apparently driven by differing views within the cabinet regarding the relative importance of "realist" assessments of South Africa's immediate political and economic interests, and views based on a commitment to human rights and a recognition of the need to reduce arms flows, especially into the African conflicts most likely to affect South Africa's own internal security.

In several cases, the "realist view" appeared to prevail until publicity about a deal provoked media and nongovernmental protests, prompting the government to back down and restate its commitment to human rights criteria. The following examples highlight discrepancies between South Africa's arms export policy and its arms trade practices. Some cases point to the inconsistent application of criteria with respect to arms sales to areas of armed conflict and repressive governments. Several other cases, those involving arms sales to highly abusive actors, reveal an ambivalence about the country's human rights commitments.

Rwanda and the Great Lakes

Following a storm of protest over a decision to approve arms sales to Rwanda in September 1996,¹³⁷ the South African government suspended the sale of weapons to that country in November 1996 over fears that South African arms might be used by Rwandan forces to commit abuses.¹³⁸ The NCACC backtracked in July 1997 and gave the green light to an arms transfer despite a flare-up in the fighting in western Rwanda and the involvement of Rwandan troops in a series of atrocities both within Rwanda and in the former Zaire (now Democratic Republic of Congo or DRC), in which Rwanda intervened in late 1996. Minister Asmal described the equipment to be exported as "non-lethal" and "non-sensitive," but added that, "in the future, South Africa will be prepared to consider supplies which fall in the higher, lethal categories ... subject to the observance of assurances such as those publicly given by the vice president of Rwanda" that South African-supplied weapons would not be used outside Rwandan territory.¹³⁹ A chorus of protest from national and international human rights organizations, including Human Rights Watch and Amnesty International, accompanied this reversal of policy. Faced with mounting criticism, the government justified the sale by declaring that a void would have been more dangerous, that Rwanda's was a legitimate and internationally recognized government, and that South Africa's ultimate goal in the Great Lakes region was complete demilitarization.¹⁴⁰ In the light of this stated goal, however, it remains to be explained why South Africa decided to provide weapons not only to Rwanda, but to Uganda, and the Republic of the Congo in 1997 in the face of compelling evidence in these countries and in the region that pointed to grave human rights abuses and persistent instability. The value of sales to all three countries in 1997 totaled over R.56 million (U.S.\$12.2 million).¹⁴¹ In 1998, South Africa again furnished arms to Rwanda and Uganda, this time worth over R.21 million (U.S.\$3.8 million).¹⁴²

To be sure, South Africa was not alone in praising countries like Rwanda and Uganda, despite their poor human rights records.¹⁴³ In 1998, for example, President Clinton also saluted Rwanda's Paul Kagame and Uganda's Yoweri Museveni as leaders in bringing about an "African renaissance."¹⁴⁴ Later that year, both African countries were deeply involved in the renewal of armed conflict in the DRC. Their troops have fought alongside Congolese armed groups in eastern Congo, where gross human rights abuses have abounded.¹⁴⁵

Angola, Namibia, and Zimbabwe, all partners with South Africa in the Southern Africa Development Community, also intervened in the DRC war, as did Burundi. South Africa armed several of the participants in the war: Namibia and Zimbabwe bought South African weapons in 1996, 1997, and 1998; Angola purchased "non-lethal" military equipment from South Africa in 1996, as well as arms in 1998; and Zimbabwe continued to receive "non-lethal" military equipment in 1999.¹⁴⁶ The DRC itself also received South African military support equipment weaponry in 1998 worth R.1,778,000 (U.S.\$324,000). The deal with the DRC allegedly included five Casspir armored personnel carriers sold in September 1998.¹⁴⁷ The DRC government has been responsible for gross and widespread violations of human rights and international humanitarian law resulting in numerous deaths of civilians.¹⁴⁸ While not all of the parties to the war may be directly linked to human rights abuses and might not therefore be disqualified from receiving South African weapons on human rights grounds, these arms sales run counter to South Africa's policy commitment not to sell weapons when such sales contribute to the escalation of regional conflicts.¹⁴⁹ By 1999, South Africa said it had halted sales of lethal military equipment to Rwanda and Uganda, as well as the other belligerents in the DRC. The government's annual arms export report, covering sales from 1997 to 1999, indicated that the NCACC "has been consistent in the decision taken in August 1998 that no lethal equipment will be exported to any of the countries involved in the conflict in the Democratic Republic of Congo."¹⁵⁰ For example, Ronnie Kasrils, then deputy defense minister, stated that the military support equipment sold to the DRC in mid-1998 had been put on hold and that spare parts would also be withheld.¹⁵¹

Turkey

Policy involving more distant but no less volatile regions also saw a conflict between human rights considerations and realpolitik, though in the case of Turkey it did not, in the end, result in arms transfers. In August 1995, South Africa pleased human rights and arms control advocates with a cabinet decision to suspend weapons sales to Turkey on the basis of serious human rights concerns, including widespread torture and mass displacement.¹⁵²

Not surprisingly, pressure from the defense establishment was brought to bear to reverse this decision: according to press reports, lucrative contracts for South African bombs, ammunition and helicopters had been at stake. Denel had also reportedly spent millions trying to promote its long-range artillery systems in Turkey.¹⁵³ In 1997 the cabinet reneged on its human rights commitments and lifted the embargo against Turkey, despite the absence of any significant improvement in respect for human rights by the Turkish government; the Turkish government announced that South Africa would accordingly be invited to bid for a multibillion dollar tender for military helicopters.¹⁵⁴ Yet, in August that same year, it was reported that the South African cabinet had vetoed the export of twelve Rooivalk attack helicopters to Turkey, though Denel denied that it had any plans to sell the weapons.¹⁵⁵ Turkey promptly declared that its counter embargo imposed against South Africa when arms sales to Turkey were first banned had never in fact been lifted, and that reports that Turkey had asked South Africa to supply the weapons were therefore "wishful thinking." The Department of Foreign Affairs issued a statement that all future applications for arms sales to Turkey would be dealt with "on a case to case basis."¹⁵⁶

Indonesia

In July 1997, Nelson Mandela visited Indonesia, a fellow-member with the new South Africa of the non-aligned movement, and one whose government had made financial contributions to the ANC both before and after 1994. At the time of the visit, the South

African president declared that: "If it becomes necessary for us to supply arms for external defense to Indonesia, we will do so without hesitation."¹⁵⁷ Indonesia was then still occupying East Timor, where its forces had been responsible over many years for gross human rights abuses against the local population.¹⁵⁸ Responding to questions about the human rights record of Indonesia in East Timor, Mandela added that South Africa would not take advantage of the two countries' friendship "to say what should be done."¹⁵⁹ In 1998 South Africa provided Indonesia with military support equipment worth R.2,597,000 (U.S.\$473,000).¹⁶⁰

Algeria

Another highly controversial example of the influence of old relationships in the arms equation became apparent in 1997. This time, the prospective customer was Algeria, another ANC backer, which a year later ended up buying major weapons systems worth R.83,349,000 (U.S.\$15.2 million), and spent R.1,584,000 (U.S.\$288,000) for "non-sensitive equipment" from South Africa.¹⁶¹ Algeria was involved at the time in a brutal civil conflict. More than 100,000 Algerians have died in the continuing conflict, and both armed Islamic opposition groups and government forces have been implicated in atrocities and systematic abuses.

The 1997 deal reportedly concerned the Seeker remote-piloted vehicle, a pilotless plane with state-of-the-art surveillance equipment, and possibly Rooivalk attack helicopters.¹⁶² Minister Asmal stated in parliament that the weapons included "sensitive, major significant equipment" and "nonsensitive equipment," and that cabinet had stipulated that the weapons should be used only for external self-defense and not for internal repression.¹⁶³ The Algerian government declared that the Seeker would be used only to patrol its borders and oil pipeline network.¹⁶⁴

In an interview with Human Rights Watch, then Deputy Minister of Defense Kasrils recalled that the debate on Algeria was not an easy one.¹⁶⁵ Asmal echoed that recollection and implied that the deal with Algeria had not sailed through smooth waters. Unable to reach a consensus in the NCACC, he said the matter was referred to the cabinet for resolution. However, once the decision to go ahead was taken, he was "totally comfortable with it."¹⁶⁶ Asmal further argued that Seekers cannot be used for internal surveillance. Arms experts maintain that the Rooivalks possibly included in the deal, as well as other attack helicopters in Algeria's arsenal, could have a significant impact against Algerian Islamic insurgents.¹⁶⁷ After the controversial 1997 deal, which was completed in 1998, South Africa went ahead with further arms sales to Algeria. Human Rights Watch was able to confirm in early 1999 that upgrade packages for Mi-17 military helicopters and Mi-24 attack helicopters in Algeria's arsenals had come up in negotiations with South Africa, and by May 2000 it was reported that South Africa was refitting Algerian Mi-24 attack helicopters with high-speed cannons.¹⁶⁸ In its annual report, the South African government indicated that it sold R.314 million (U.S.\$51.3 million) worth of arms and related services to Algeria in 1999.¹⁶⁹ The value of these purchases made Algeria South Africa's top arms client that year.¹⁷⁰

China

After a visit to China in June 2000, Defense Minister Mosiuoa Lekota reignited a controversy in South Africa over arms sales to China with his announcement that he and his Chinese counterpart had discussed a possible arms deal. He told reporters that they had agreed in principle to "examine the precise terms of such an agreement," which he hoped would be completed by the end of the year.¹⁷¹ Nongovernmental groups and opposition politicians immediately expressed dismay that South Africa hoped to sell arms to China, where widespread abuses, including systematic constraints on free association, assembly, and religious expression, have worsened since 1998.¹⁷² The Democratic Party added that, by engaging in arms trade negotiations with Beijing, South Africa risked undermining its ethical arms trade standards.¹⁷³ The country's far-reaching arms export policy, as described above, bars weapons exports to countries that systematically suppress fundamental freedoms. It also pledges the government to exercise particular restraint when the recipient country is known to commit serious violations of political, religious, and other rights.

In an apparent departure from these policy commitments, Minister Lekota remarked in China that human rights issues would not stand in the way of a potential deal.¹⁷⁴ Defense ministry spokesperson Sam Mkhwanazi appeared to take a somewhat different position when, responding to criticism, he indicated that South Africa and China would discuss the possible inclusion of clauses related to human rights issues as part of any arms sale.¹⁷⁵ Both officials made clear that South Africa intended to go forward with the arms deal negotiations.

This decision was consistent with South Africa's past record with regard to China. In 1996 and 1997, South Africa sold R.284,000 (U.S.\$66,500) and R.8,629,000 (U.S.\$1.9 million) worth of non-sensitive military equipment to China, which is under a European Union arms embargo imposed after the bloody 1989 crackdown on pro-democracy activists.¹⁷⁶ In December 1997, when South Africa announced that it would end its "two-Chinas" policy and establish a diplomatic relationship only with the People's Republic of China, it stated that it viewed diplomatic ties with Beijing as an opportunity "to discuss...human rights issues" with China. However, the South African government has repeatedly failed to raise human right issues in meetings with Chinese officials.¹⁷⁷

Other Arms Sales to Human Rights Abusers

These arms controversies have not occurred in isolation; to the contrary, South Africa has repeatedly opted to approve arms deals that it might have rejected on human rights grounds.¹⁷⁸ Angola's long and brutal war, for example, has been fed in part by South

African arms purchases by the government of Angola, whose forces have been responsible for gross and persistent human rights abuses and violations of international humanitarian law.¹⁷⁹ Another example is offered by Congo-Brazzaville, to which South Africa has supplied weapons, including after civil war broke out in 1997.¹⁸⁰ The impact of South Africa's weapons sales have also been felt in Colombia, where South Africa has consistently sold weapons over several years despite the record of gross abuse by Colombian military and paramilitary forces.¹⁸¹

¹²⁹ Human Rights Watch interviews with arms trade experts, nongovernmental organizations, journalists, and parliamentarians, Johannesburg, January 26-30, and Cape Town, February 3 and 4, 1999. ¹³⁰ According to NCACC chair Kader Asmal, interviewed on SAFM November 15, 1995, as reported by BBC Summary of World Broadcasts, November 17, 1995. The E.U. and U.S. had already imposed restrictions on arms sales to Nigeria, following the November 1993 coup that put General Abacha in power; these restrictions were strengthened following the October 30, 1995, sentencing and November 10 execution of Ken Saro Wiwa and eight other members of the Movement for the Survival of the Ogoni People (MOSOP). ¹³¹ William Onyango, "Kenyan teachers applaud Mandela," *Mail and Guardian* (Johannesburg), October 24 to 30, 1997. ¹³² Human Rights Watch interview with Ronnie Kasrils, Pretoria, January 31, 1999. ¹³³ SAPA, October 20, 1999, and "S.Africa sells arms to Pakistan despite freeze," Reuters, September 9, 2000. ¹³⁴ SAPA, August 21, 2000. ¹³⁵ Anthony Stoppard, "Disarmament-South Africa: Stained Arms Record Hard to Shake," InterPress Service, December 20, 1999. See also Commonwealth Human Rights Initiative, *Over a Barrel: Light Weapons and Human Rights in the Commonwealth*, report presented to the Commonwealth Heads of Government Meeting held in Durban, South Africa, November 12-15, 1999.

¹³⁶ Commonwealth Human Rights Initiative, *Over a Barrel*, pp. 192, 195.

¹³⁷ Robert Block and Kurt Swart, "Storm over SA approval of arms sales to Rwanda," *Sunday Independent* (Johannesburg), September 29, 1996; SAPA, October 30, 1996.

¹³⁸ Aziz Pahad had declared that South Africa would refrain from selling arms to Rwanda until peace and stability returned to the region. Lionel Williams, "South Africa Suspends Arms Sales to Rwanda," Panafrican News Agency (Dakar), November 7, 1996. At that time this deal, worth U.S.\$18.5 million, was suspended, a number of armored vehicles had already been provided to the Rwandan government. The U.N. arms embargo against Rwanda had been lifted on September 1, 1996.

¹³⁹ SAPA, July 23, 1997; Alexandra Zavis, "South Africa resumes arms trade with Rwanda," Associated Press, July 23, 1997. Human Rights Watch has not been able to determine whether this condition has been observed, but it notes that armed Rwandan troops have been continuously involved in fighting in the DRC since 1996.

¹⁴⁰ Human Rights Watch interviews with Kader Asmal, Pretoria, October 28, 1996, and Cape Town, February 3, 1999.

¹⁴¹ Directorate of Conventional Arms Control, "South African Export Statistics for Conventional Arms: 1997-1999." Asmal stated in April 1997 that South Africa had a guarantee from Uganda that the weapons sold would not be channeled across the border to rebels in then Zaire. SAPA, April 24, 1997.

¹⁴² Directorate of Conventional Arms Control, "South African Export Statistics for Conventional Arms: 1997-1999." In 1998 South Africa sold weapons worth nearly R.19.6 million (U.S.\$3.6 million) to Rwanda and worth R.1.5 million (U.S.\$273,000) to Uganda.

¹⁴³ See, for example, Human Rights Watch, Rwanda: the Search for Security and Human Rights Abuses," *A Human Rights Watch Short Report*, vol.12, no.1 (A), April 2000, and Human Rights Watch, *Uganda: Hostile to Democracy-The Movement System and Political Repression in Uganda* (New York: Human Rights Watch, 1999).

¹⁴⁴ Janet Fleischman, "Time for a new Africa policy," op-ed published in *The Washington Times*, March 2, 1998.

¹⁴⁵ Human Rights Watch has documented abuses committed in the conflict in the DRC. See Human Rights Watch/Africa, "Democratic Republic of Congo: Eastern Congo Ravaged-Killing Civilians and Silencing Protest," *A Human Rights Watch Short Report*, vol. 12, no. 3 (A), May 2000 and Human Rights Watch/Africa, "Democratic Republic of Congo: Casualties of War-Civilians, Rule of Law, and Democratic Freedoms," *A Human Rights Watch Short Report*, vol. 11, no. 1, February 1999. In addition, Ugandan and Rwandan troops turned weapons on each other in June 2000, taking a harsh toll on civilians in the city of Kisangani. The International Committee of the Red Cross (ICRC) indicated that at least 619 civilians and 141 soldiers were killed, and that some 1,700 people, most of them civilians, were wounded in the fighting. ICRC, "Democratic Republic of the Congo: ICRC emergency work continues following truce in Kisangani," July 6, 2000, available at www.icrc.org. Uganda and Rwanda earlier had clashed in Kisangani in August 1999 and, briefly, in May 2000. See Human Rights Watch, "Civilian Killings By Warring Parties In Kisangani: Uganda and Rwanda Urged to Spare Congolese Civilians," press release, August 18, 1999, at www.hrw.org/hrw/press/1999/aug/uganda818.htm.

¹⁴⁶ Directorate of Conventional Arms Control, "South African Export Statistics for Conventional Arms: 1997-1999."

147 Human Rights Watch interview with an arms trade analyst, Johannesburg, January 30, 1999.

148 While the total number of civilians killed will never be known, the total for Kinshasa alone was probably several hundred. This estimate is based on multiple interviews and reports from local and international organizations based in Kinshasa. No comprehensive report or breakdowns of the number of combatants and civilians killed were available from these organizations. Human Rights Watch, "Casualties of War," p. 11.

149 White Paper on Defence, chapter 8, para. 17.3, available at www.polity.org.za/govdocs/white_papers/defencewp.html. In addition, the White Paper states that, "Arms sales should continuously be evaluated and reviewed, especially with regard to countries in war-prone regions, in order to avoid the possible escalation of regional conflict," (at chapter 8, para. 14.4).

150 It clarified that an exception was made for mine-protected vehicles sold to a private mining company in Angola. As noted, non-lethal equipment worth approximately R.9.7 million (U.S.\$1.6 million) was sold to Zimbabwe in 1999. Directorate of Conventional Arms Control, "Media Release (March 2000)" and "South African Export Statistics for Conventional Arms: 1997-1999," both available at www.mil.za/sandf/dro/ncacc/ncacc.htm.

151 Human Rights Watch interview, Pretoria, January 31, 1999.

152 See, for example, the following Human Rights Watch publications regarding human rights conditions in Turkey in that time period: "Forced Displacement of Ethnic Kurds from Southeastern Turkey" (October 1994), *Weapons Transfers and Violations of the Laws of War in Turkey* (1995), and "Torture and Mistreatment in Pre-Trial Detention by Anti-Terror Police" (March 1997). For an update account that makes note of some progress on human rights, refer to Human Rights Watch, *World Report 2000* (New York: Human Rights Watch: 1999), p. 298.

153 Stefaans Brümmer, "Revealed: Where South Africa Can Sell Arms," *Mail and Guardian* (Johannesburg), July 29, 1999, and "Threats to Arms Contracts Through Media Publicity Feared," *SouthScan*, vol.12, no. 29 (August 15, 1997).

154 Noel Brunys, "Anglican Bishops Rebuke South Africa for Continuing Weapons Exports," *ENI Bulletin* (Ecumenical News International from the World Council of Churches), no.10, May 28, 1997; SAPA, April 18, 1997; Marion Edmunds, "SA lifts Turkish arms ban," *Mail and Guardian* (Johannesburg), May 9 to 15, 1997.

155 "State stops Turkey arms deal," *Sunday Independent* (Johannesburg), August 10, 1997; "SA will not sell Rooivalk to Turkey," *Star* (Johannesburg), August 12, 1997.

156 SAPA, August 11 and 14, 1997; Garth Shelton, "South African Arms Sales to North Africa and the Middle East," p. 26.

157 SAPA, July 15, 1997

158 In fact, the months of May, June, and July 1997, just before Mandela's announcement, appeared to mark an intensification of the conflict in East Timor and associated human rights abuses. See Human Rights Watch/Asia, "Indonesia/East Timor: Deteriorating Human Rights in East Timor," *A Human Rights Watch Short Report*, vol. 9, no.9, September 1997.

159 "Mandela will sell arms to Indonesia `without hesitation'," *Electronic Mail and Guardian*, www.mg.co.za/news, July 15, 1997. On the same occasion, Mandela visited imprisoned East Timorese resistance leader Xanana Gusmão, marking the first time that Xanana, imprisoned since 1992, had been allowed out of detention to meet a visiting dignitary. The visit thus helped give an enhanced international profile to Xanana's plight. In November 1997, however, Mandela conferred to Suharto the Order of Good Hope. In 1995 Mandela admitted that Indonesia had given financial support to the ANC. José Ramos Horta, "Mandela must take a stand on East Timor," *Sunday Independent*, (Johannesburg), May 10, 1998; "Gaffes almost sink Mandela's peace initiative," *SouthScan*, vol.12, no.28 (August 8, 1997); Stefaans Brümmer, "Mandela's strange links to human rights abuser," *Mail and Guardian*, (Johannesburg), May 26, 1995, and Gaye Davis, "Mandela placates East Timorese from his bed," *Mail and Guardian*, (Johannesburg), September 20, 1996.

160 Directorate of Conventional Arms Control, "South African Export Statistics for Conventional Arms: 1997-1999."

161 Ibid.

162 Newton Kanhema, "Algeria Buys Arms from South Africa," Panafrikan News Agency, October 12, 1997, and Robert Kirby: "Taking up arms with Asmal," *Mail and Guardian* (Johannesburg), April 9, 1998. Denel was invited to demonstrate the Rooivalk helicopter to the Algerian government in October 1997; Denel (Pty) Ltd media statement, October 17, 1997.

163 SAPA, March 18, 1998. See also Alan George, "Algeria on Arms-Buying Spree," *The Middle East*, February 1, 1999, p. 15.

164 SAPA, January 29, 1998.

165 Human Rights Watch interview, Pretoria, January 31, 1999.

166 Human Rights Watch interview, Cape Town, February 3, 1999.

167 Robert Lowry: "Chopper Wars. The Competition for Lucrative Military Helicopter Market is Rapidly Intensifying," *Arabian Trends*, reprinted in *World Reporter*, January 1, 2000.

168 Human Rights Watch interview with an arms expert, Cape Town, February 3 and 4, 1999, and Human Rights Watch interview with an Armscor official, Pretoria, February 9, 1999. "Algerian Air Force 'Hinds' undergo high-speed Vektor cannon refit in South Africa," *Jane's International Defense Review*, May 1, 2000. According to the article, most of Algeria's 33 to 35 Mi-24 "Hind" helicopters were being refitted with a high-speed cannon because of problems experienced with machine guns in "lengthy operations during civil unrest."

169 In 1999, South Africa sold R.84 million (U.S.\$13.7 million) worth of sensitive major significant equipment to Algeria, along with non-sensitive equipment worth R.207 million (U.S.\$33.8 million) and general services of R.23 million (U.S.\$3.8 million). These figures are rounded to the nearest million rand. Directorate of Conventional Arms Control, "South African Export Statistics for Conventional Arms: 1997-1999."

170 Ibid. India, which was ranked second overall, actually purchased more sensitive major significant equipment in 1999. It bought R.205 million (U.S.\$33.5 million) of equipment in this category.

171 "SA and China to Sign Agreement Soon: Lekota," SAPA, June 10, 2000.

172 "Govt Contravenes Own Policy on Arms Exports: Claims," SAPA, June 13, 2000, available at www.anc.org.za/ancdocs/briefing/nw20000614/42.html. On deteriorating human rights conditions in China, see Human Rights Watch, "China Human Rights Update," February 2000, www.hrw.org/campaigns/china-99/china-update.htm.

173 For example, the Democratic Party noted that the potential deal "could well be in violation of the rationale and principles governing the sale of conventional arms set out by the South African National Conventional Control Committee vis-a-vis human rights and fundamental freedoms," as quoted in "Defence Minister Criticised For Dealing With China," PANA, June 6, 2000.

174 "China Declines Comment on South Africa-China Arms Deal," AFP, June 6, 2000, and "SA and China to Sign Agreement Soon."

175 "Govt Contravenes Own Policy on Arms Exports: Claims."

176 Directorate of Conventional Arms Control, "South African Export Statistics for Conventional Arms: 1996-1998." Information on the E.U. arms embargo is available at projects.sipri.se/expcon/euframe/euchiemb.htm.

177 Both Deputy President Thabo Mbeki and Nelson Mandela refrained from bringing up human rights during their visits to Beijing in April 1998, and May 1999, respectively; again, China explicitly denied that human rights issues were discussed during President Jiang Zemin's visit to South Africa in April 2000. This omission was justified on the ground of "non-interference" with other countries' affairs. SAPA, December 6, 1997, SAPA, April 13, 1998, and SAPA, May 7, 1999; *ZA Now* (website of the *Mail and Guardian*, Johannesburg), April 26, 2000. In June 2000, a defense ministry spokesperson confirmed that Defense Minister Mosiuoa Lekota did not raise human rights issues during his week-long visit to China. "SA's Arms Export Plans Send Wrong Signal," *Business Day* (South Africa), June 14, 2000. South Africa did take a stand for human rights in China when, in 1997 and 1999, it voted against China's successful effort to avoid any discussion of its human rights record at the United Nations Commission on Human Rights in Geneva.

178 One nongovernmental organization in South Africa evaluated the country's arms exports using a broad interpretation of the country's human rights standards and also taking into consideration economic circumstances in recipient countries. In its May 2000 report, the group concluded that fifty-seven of the eighty-three South African arms clients from 1996-1999 did not satisfy NCACC criteria. Ceasefire Campaign, "Report on the Human Rights Situation in Recipient Countries of South African Arms," Johannesburg, May 2000.

179 Angola was the recipient of South African "non-lethal" support for R.43,000 (U.S.\$10,000) in 1996; sensitive major significant, and sensitive significant equipment for R.3,151,000 (U.S.\$573,000), and R.5,794,000 (U.S.\$1.1 million), respectively, in 1998. As noted above, a 1999 sale of sensitive significant equipment worth R.1 million (U.S.\$163,500) comprised armored vehicles sold to a private mining company. Directorate of Conventional Arms Control, "South African Export Statistics for Conventional Arms: 1996-1998," and "South African Export Statistics for Conventional Arms: 1997-1999." Arms purchases from South Africa, as well as human rights abuses, are described in Human Rights Watch, *Angola Unravels: The Rise and Fall of the Lusaka Peace Process* (New York: Human Rights Watch, 1999).

180 In 1996, South Africa approved the sale of R.60 million (U.S.\$14 million) in weapons to Congo-Brazzaville. "SA Sold arms

to war-torn Congo," Khareen Pech, *Mail and Guardian* (South Africa), August 15-21, 1997. In 1997, after civil war had broken out, it sold a further R.32 million (U.S.\$7 million) in arms, including sensitive major significant equipment valued at R.25 million (U.S.\$5.4 million). Directorate of Conventional Arms Control, "South African Export Statistics for Conventional Arms: 1997-1999."

181 South Africa's arms sales to Colombia included in 1997 approximately R.60 million (U.S.\$13 million) in sensitive major significant equipment, R.10 million (U.S.\$2.2 million) in sensitive significant equipment, and R.2 million (U.S.\$434,000) in non-lethal equipment. In 1998, these categories represented R.21 million (U.S.\$3.8 million), R.14 million (U.S.\$2.6 million), and R.10 million (U.S.\$1.8 million) in sales, respectively, in addition to R.14,000 (U.S.\$2550) in non-sensitive equipment. The year 1999 saw South Africa sell Colombia nearly R.22 million (U.S.\$3.6 million) in sensitive major significant equipment, R.7 million (U.S.\$1.1 million) in sensitive significant equipment, and R.160,000 (U.S.\$26,000) in non-lethal equipment. Directorate of Conventional Arms Control, "South African Export Statistics for Conventional Arms: 1997-1999." For a discussion of Colombia's human rights record, see Human Rights Watch, *The Ties That Bind: Colombia and Military-Paramilitary Links* (New York: Human Rights Watch, 2000), and Human Rights Watch, *War Without Quarter: Colombia and International Humanitarian Law* (New York: Human Rights Watch, 1998).





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VI. LANDMINES, SMALL ARMS, AND MERCENARIES

Perhaps the most successful transformation of South Africa's arms trade policy has been in the areas of landmines, small arms, and mercenaries. Whereas individual decisions to sell sophisticated South African weaponry have sometimes been questionable on human rights grounds, the geopolitical and economic arguments that can obscure formal commitments to human rights criteria do not play the same role in the case of landmines and small arms, where South Africa has been among the most prominent states in joining international campaigns for their banning, in the former case, and control, in the latter. More remarkably, South Africa is a world leader in imposing controls on private security companies or mercenaries operating from its territory.

Landmines

In harmony with its policies on human rights and international humanitarian law, the new South African government took an early, unquestionable, and firm position on banning antipersonnel landmines.¹⁸² South Africa was one of the most active states promoting the global process that ultimately led to the December 1997 signing in Ottawa of the Convention on the Prohibition of the Use, Stockpiling, Production, and Transfer of Anti-Personnel Mines and on their Destruction (the Mine Ban Treaty).¹⁸³

In February 1997, before the process came to its climax in Ottawa, South Africa had already announced a comprehensive ban on the use, production of, and trade in antipersonnel landmines, effective immediately, as well as its intention to destroy its existing stocks.¹⁸⁴ The National Assembly ratified the ban treaty on May 5, 1998, and on June 26 that year South Africa deposited its instrument of ratification, thereby becoming the twenty-first country to do so, and the fifth in Africa. South Africa takes pride in having destroyed its stockpiles far ahead of the four year period provided for in the Mine Ban Treaty, and in being a leader in mine-clearance equipment, as well as a provider of specialized medical expertise to assist mine victims.¹⁸⁵

Small Arms

Mines, however, are not the only scourge affecting Southern Africa. Interpol's regional bureau for southern Africa estimates that up to four million small arms and light weapons are making the rounds of the region.¹⁸⁶ Many of these weapons have been in circulation since the struggles for independence began and continued to cascade from conflict to conflict claiming more and more victims in the process.¹⁸⁷ "Upon cessation of hostilities many [arms] were left uncontrolled, some in the hands of civilian populations drawn into the conflict, others in many caches whose location[s] were either forgotten or deliberately unidentified, in case there was a need in [the] future to resort to war," observed an Interpol official.¹⁸⁸ Such tidal flows of small arms are also feeding rampant crime in the region, a wave that has not spared the streets of Johannesburg and Pretoria.¹⁸⁹ Weapons sold to the apartheid regime's clients in Angola and Mozambique came back to haunt the government of Nelson Mandela, as these arms started flooding the South African market. Experts maintain that the sheer number of these weapons, as well as those leaking from South African military armories through theft, may jeopardize the future stability of the country.¹⁹⁰

Not surprisingly, therefore, South Africa, the sole major arms producer of the continent, has shown marked sensitivity to the problem of further proliferation and misuse of small arms. A recognition of this was reflected in the White Paper on Defence. "South Africa is committed to the international goals of arms control and disarmament," the document reads, "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."¹⁹¹ This passage is particularly notable for the order of priority given to South Africa's disarmament efforts with small arms placed at the very top of the list, although they are generally considered the "poor relation" of weapons systems by the international disarmament establishment.

The South African government has taken steps to control the flow of illegal weapons, particularly small arms, through its airfields and porous borders. In 1997 South Africa closed 107 of its 117 international airports and activated radar facilities at Mafikeng, Upington, Ellisras, and Marriepskop in order to monitor flights over Botswana, Namibia, southern Zambia, and Angola. These facilities, however, were not equipped to follow low-altitude flights by smaller aircraft. "The air force should be tasked to monitor these flights," said a defense ministry official, "but since we have no threat of external aggression, there is little incentive to

develop that capacity." This official also pointed out that even better controls of the air-space would be useless if not complemented with interception and investigation of violators, operations for which South Africa is not equipped. "Our air force does not have long and medium-range patrolling aircraft," he noted.¹⁹²

To complicate matters, South Africa's land borders remain porous. "In February 1998, by cabinet decision, control of the borderline between border posts was transferred from the police to the defense department," said a different government official, "But are we able to control our borders absolutely? The answer is `no.'" Spot checks are routinely conducted at key crossing points, this official maintained. The problem, he said, is that smugglers always seem to be a step ahead of the authorities. "Weapons are hidden everywhere. We found them in modified petrol tanks," the official noted. South Africa's waters too are open, he said, since the country does not have a coastguard service; with its current fleet, the navy cannot enforce interception and hot pursuit missions against smugglers.¹⁹³

The situation is not helped by the fact that countries neighboring South Africa either lack effective arms trade control mechanisms, or enforcement capabilities, or both. In 1998 the U.N. International Commission of Inquiry (Rwanda), known as UNICOI, observed that the alleged transport of weapons from South Africa to the Great Lakes region through Zimbabwe and Zambia suggested that the "scale of illegal trafficking appears to exceed the present capacity of the Governments concerned to control it in full in accordance with their laws."¹⁹⁴ UNICOI noted that South Africa had placed the issue of illicit trafficking on the agenda of the Organization of African Unity, and that this action triggered a resolution requesting governments to provide information on their transfer and receipt of weapons.¹⁹⁵

South Africa was also a driving force in the adoption of the 1998 Southern Africa Regional Action Programme on Light Arms and Illicit Trafficking, devised in cooperation with the European Union. The program aims at sharing information and enhancing policies and enforcement capabilities in the region.¹⁹⁶

Since then, illegal arms trafficking has become a top priority for the Southern African Regional Police Chiefs Cooperation Organization (SARPPCO), a body created in 1995 with headquarters in Harare, Zimbabwe. With assistance from Interpol, SARPPCO has established a computerized communications system that tracks the movement of illegal firearms.¹⁹⁷

More broadly, working within the SADC, South Africa has helped develop a consensus on the need for measures to combat the interrelated problems of the illicit manufacturing, trafficking, possession, and use of firearms. This process culminated in February 2000 in an agreement on a draft text of a SADC Firearms Protocol. The draft Firearms Protocol, which is likely to undergo further revision before its anticipated adoption later in the year, requires signatories that have not done so already to adopt national legislation criminalizing violations of U.N. arms embargoes, as well as the illicit manufacturing, trafficking, possession, or use of firearms. Among other provisions, it also calls for controls on civilian possession of firearms; marking of weapons at the time of manufacture, import, or export; responsible disposal of surplus weapons; and improved regional law enforcement cooperation.¹⁹⁸ South Africa has incorporated many of these elements into draft domestic legislation, the Firearms Control Bill, that was presented to parliament in May 2000.¹⁹⁹

In the wider international arena, South Africa contributed to the U.N. group of experts whose task was to identify ways to prevent and tackle the "excessive and destabilizing proliferation of small arms."²⁰⁰ South Africa's policy on small arms further evolved when in 1998 an international campaign to curb the spread and abuse of these weapons began to take shape.²⁰¹ Although the campaign was led by nongovernmental organizations, South Africa figured prominently among the so-called like-minded governments that sought to define legal self-restraint regimes in the weapons trade. To this end, in July 1999 South Africa announced its intention to destroy 262,667 "redundant, obsolete, unserviceable and confiscated semi-automatic and automatic weapons of a calibre smaller than 12.7mm" rather than sell or export them.²⁰²

"On small arms South Africa is trying to gain the moral high ground," observed Jakkie Cilliers, a South African security expert. "This is why small arms have become something of a high priority for the ministry of foreign affairs." Regarding arms sales, he maintains, a distinction between small arms and other conventional weapons will always be made by South Africa. The former are to be scrutinized with stricter parameters in terms of quantities and recipients.²⁰³

In November 1999, at the time of the Commonwealth Heads of Government Meeting in Durban, South Africa, South African deputy defense minister Nosizwe Madlala Routledge called on Commonwealth countries to act responsibly in the trade of small arms and pledged that South Africa would continue to destroy seized illegal weapons and surplus small arms.²⁰⁴ It is hoped that this greater effort on the part of the government will fill the gap between policy and enforcement that has allowed illicit trafficking in small arms to prosper unabated.²⁰⁵

Mercenaries

Related to the spreading of illicit trafficking in arms and services is the growing number of private security firms in South Africa offering military assistance and weaponry to clients around the world. Private military corporations such as Executive Outcomes (E.O.) share a common background: a staff often composed of former operatives of the South African apartheid military.

Some South African mercenaries, whether acting individually or as part of a private security outfit, have played a role in arming

some of the worst human rights offenders. They often did so as part of an old-boy network with links to the South African national defense apparatus, putting to good use lessons they had learned during the apartheid era on how to circumvent arms embargoes. For example, Human Rights Watch in 1995 reported on a secret arms deal linking Hutu rebels connected to the Rwandan government responsible for the 1994 genocide with Willem Ehlers, a former aide to South African apartheid president P. W. Botha who had particular military connections;²⁰⁶ a subsequent U.N. investigation followed the financial trail left by Ehlers, which led to bank accounts in Switzerland, France and Italy.²⁰⁷ Both sides in Burundi's ongoing and brutal civil war received weapons with the help of South African nationals or companies registered in South Africa.²⁰⁸ South African nationals also were heavily involved in providing military assistance and equipment to both sides of the war in the Democratic Republic of Congo in 1998, according to investigative journalists.²⁰⁹ Closer afield, in Angola, South African arms merchants also have found lucrative markets in violation of the U.N. arms embargo against the rebel União Nacional para a Independência Total de Angola (National Union for the Total Independence of Angola, UNITA).²¹⁰ One South African national reportedly confessed to the Angolan authorities that he had been involved in more than 300 covert flights into Angola to supply arms and equipment to UNITA.²¹¹

On May 20, 1998, South Africa responded to concerns about the role of South African nationals in African conflicts by passing the Foreign Military Assistance Act, giving legislative detail to a constitutional provision prohibiting South African citizens from participating in either national or international armed conflicts.²¹² The law circumscribes the activities of South African nationals and residents, and juristic persons and entities registered and incorporated in South Africa, by defining a range of prohibitions, and by putting such activities under the control of the NCACC.²¹³ The act covers military training, logistical, intelligence or operational support, security assistance, any action aimed at overthrowing a government or furthering the military interest of a party to an armed conflict, and the offering of medical and para-medical services. In addition, it includes "procurement of equipment," which encompasses the activities of South African arms brokers.²¹⁴ Crucially, the act contains an "extraterritoriality" clause that empowers South African courts to prosecute South African violators even when their main base of operation is abroad, and stipulates penalties ranging from fines to imprisonment.²¹⁵ On October 2, 1998, the government also passed an implementing schedule for the act.²¹⁶

Government officials indicated that, as of February 1999, the applications for permits received by the NCACC related to the Foreign Military Assistance Act had been "very limited in number," and many of these were from legitimate businesses. They admit that successfully bringing violators to court is not going to be an easy task.²¹⁷ By instituting legal controls over the activities of South African individuals and private companies involved in the arms trade, South Africa is among the world's leaders in recognizing the responsibility of national governments for reining in unscrupulous private actors. Given the seriousness of the mercenary problem in South Africa, the government now must be sure to follow through with strict implementation and enforcement of controls over mercenary activity.

¹⁸² South Africa has been a party to the Geneva Conventions of August 12, 1949, since 1952 and acceded to the two 1977 Protocols additional to the Conventions in 1995.

¹⁸³ International Campaign to Ban Landmines, *Landmine Monitor Report 1999: Toward a Mine-Free World* (New York: Human Rights Watch, 1999), pp. 82-88.

¹⁸⁴ The minister of defense in reply to questions from parliament on May 15, 1996, stated that SANDF had a total of 311,179 landmines in stock. Of these 261,423 were anti-personnel landmines. Department of Defense, "Landmines in the Department of Defence", SANDF Logistical Division, May 20, 1997.

¹⁸⁵ Mechem, a specialized engineering division/subsidiary of Denel, since 1991 has been contracted by both the U.N. and private companies to demine Mozambique. In 1997 it was estimated that Mechem mine-clearance contracts in Mozambique and Angola amounted to U.S.\$5 million a year. In August 1997, South Africa signed a R.12 million (U.S.\$2.6 million) deal with Mechem to clear landmines along the Maputo Corridor. *Weekly Mail and Guardian* (Johannesburg), May 23, 1997, and *Star* (Johannesburg) August 4, 1997.

¹⁸⁶ The term "small arms" will be used hereafter to describe both small arms and light weapons.

¹⁸⁷ Tatjana Tubic, "Yesterday's Weapons Keep Doing the Rounds," *Mail and Guardian* (Johannesburg), April 28, 1999.

¹⁸⁸ Ibid.

¹⁸⁹ Katharine McKenzie, "Domestic Gun Control Policy in the Ten SADC Countries," a report commissioned by: Gun Free South Africa, September 1999, pp. 20-23.

¹⁹⁰ Chris Smith and Alex Vines, "Light Weapons Proliferation in Southern Africa," (London: Centre for Defence Studies, 1997), p. 26. Between January 1997 and May 1998, for example, more than 900 SANDF guns went missing. Surplus weapons were spread across 432 self-accounting units which are not sufficiently secure. Kerry Cullinan, "Move to increase control over the whereabouts of SANDF weapons," *Star*, August, 19, 1998.

- 191 White Paper on Defence, chap. 2, para 11.5.
- 192 Human Rights Watch interview, Pretoria, February 8, 1999.
- 193 Human Rights Watch interview, Pretoria, February 8, 1999.
- 194 "Interim Report of the International Commission of Inquiry (Rwanda), Annex, in Letter Dated 18 August from the Secretary-General addressed to the President of the Security Council, August 19, 1998, para. 31, and Final Report of the International Commission of Inquiry (Rwanda), Annex, in Letter Dated November 18, 1998 from the Secretary-General Addressed to the President of the Security Council, paras 57-60. UNICOI was created in 1996 to investigate arms flows to the perpetrators of the Rwandan genocide.
- 195 Ibid., para. 30.
- 196 Southern Africa Regional Action Programme on Light Arms and Illicit Trafficking, which was agreed at a conference organized by the Institute for Security Studies and Saferworld on "Developing Controls on Arms and Illicit Trafficking in Southern Africa," held in Pretoria, South Africa, May 3-6, 1998. The conclusions of the conference are available at www.iss.co.za/Pubs/ASR/7.4/regional.html.
- 197 Tatjana Tubic, "Yesterday's weapons."
- 198 Draft SADC Firearms Protocol, obtained confidentially by Human Rights Watch, New York, March 1, 2000.
- 199 The bill, available at www.polity.org.za/govdocs/bills/2000/b34-00.pdf, will replace the often-amended Arms and Ammunitions Act of 1969. It seeks to prevent gun crime; prevent the proliferation of illegal guns; and regulate the supply, possession, transfer, and use of firearms. For a summary of a draft version of the bill, see South African Council of Churches, "Public Policy Update: Draft Firearms Control Bill," March 8, 2000, at www.sacc-ct.org.za/ppu_guns.html, as well as South African Council of Churches, "Public Policy Update: Firearms Control Bill Tabled," May 30, 2000 at www.sacc-ct.org.za/ppu_gun2.html. For an analysis of small arms issues within South Africa, see Guy Lamb, "An Overview of Small Arms Production, Export, Ownership and Proliferation in South Africa," paper prepared for the seminar titled "Armed Civilians-A Threat to Peaceful Development," hosted by the Olof Palme International Center, Stockholm, March 23, 2000.
- 200 General and Complete Disarmament: Small Arms, "Report of the Panel of Governmental Experts on Small Arms," A/52/298, August 27, 1997, p. 7.
- 201 This occurred when thirty-two organization met in Orilla, Canada, in August 1998 and formed the International Action Network on Small Arms (IANSA). The network was formally launched in May 1999 in The Hague, Netherlands: www.iansa.org.
- 202 South Africa defense ministry correspondence with Human Rights Watch, Pretoria, May 12, 1999, and "Decision by the NCACC on the Destruction of Surplus Small Arms and Light Weapons," July, 11, 1999, available at www.polity.org.za/govdocs/pr/1999/pr0225.html. In a parallel move, the government introduced draft legislation to limit gun ownership in South Africa where there are four million registered firearms (one for every ten men, women, and children), and an estimated two million illegally held assault rifles. The law would limit handgun ownership to one per person, as well as restrict magazine capacity to nine rounds. Albeit modest in its approach, the draft law immediately encountered fierce opposition from gun lobbies. "Protesters Rally Against New South Africa Gun Law," Reuters, August 11, 1999.
- 203 Human Rights Watch interview, Halfway House, January 26, 1999.
- 204 "S. Africa Calls for Joint Action Against Small Arms Trade," Xinhua, November 11, 1999; and Human Rights Watch interview with the deputy minister of defense, Cape Town, November 18, 1999.
- 205 Human Rights Watch interview with Tawanda Mutasah, representative of Oxfam, Johannesburg, January 27, 1999.
- 206 Human Rights Watch/Arms Project, "Rwanda/Zaire: Rearming with Impunity: International Support for the Perpetrators of the Rwandan Genocide," *A Human Rights Watch Short Report*, vol.7, no.4, p. 14.
- 207 UNICOI cited two payments for 80 tons of weapons on June 15 and 17, 1994 of U.S.\$180,000 and U.S.\$150,000, respectively, emanating from Ehlers' bank account number 82113 CHEATA with the Lugano branch of the Union Bancaire Privée. On the same bank account Ehlers was credited with U.S.\$592,784 and U.S.\$734,099 on June 14 and 16, 1994, respectively. These payments came from the Banque Nationale du Rwanda, Kigali with the source of the funds listed as the Banque Nationale de Paris, SA. Ehlers, in turn, paid the government of the Seychelles U.S.\$330,000 and U.S.\$40,000 into a bank account held with the Banca Nazionale del Lavoro in Alessandria, Italy for a consignment of goods sold to the government of Zaire in a sale that he brokered. Addendum to the Third report of the International Commission of Inquiry (Rwanda), in Letter

dated 22 January 1998 from the Secretary-General, paras. 21-26. The perpetrators of the Rwandan genocide had been hit by a U.N. arms embargo on May 17, 1994. U.N. Security Council, Resolution 918, May 17, 1994.

208 To offer one example, in September 1996 a consignment of AKM assault rifles and hand grenades supplied by a South African company was on offer to Burundian buyers by a South African arms merchant. After a bid to sell the weapons to the Burundian military fell through, the arms dealer sold the consignment to Burundian rebels, who collected them from the port of Mtwara in Southern Tanzania. Human Rights Watch interviews with persons involved in the deal in Bujumbura, October 1996, Kampala (by telephone from Nairobi), October 10 and 11, 1996, Nairobi, October 10 (by telephone) and October 11, 1996, and Dar Es Salaam, September 15 and 16, 1996.

209 These reporters claimed that a consortium of affiliated air, cargo, transport, and military companies in South Africa concluded contracts for "non-lethal support" with DRC leader Laurent Kabila. A South African corporate intelligence company also reportedly was assisting Uganda, a supporter of Kabila's enemies, in the procurement of several South African armored personnel carriers. This deal was allegedly brokered by a former SANDF officer. Khareen Pech, William Boot and Ann Eveleth, "South Africa dogs of war in Congo," *Weekly Mail and Guardian* (Johannesburg), August 28, 1998.

210 U.N. Security Council, Resolution 864, September 15, 1993. The March 10, 2000, report of a U.N. panel of experts looking into embargo-busting in Angola implicated several South African nationals in violations of international sanctions imposed on UNITA. See "Report of the Panel of Experts on Violations of Security Council Sanctions Against UNITA," (New York: United Nations, 2000), S/2000/203, paras. 16, 20, 27 28, at www.un.int/canada/html/angolareport.htm.

211 Human Rights Watch, *Angola Unravels*, p. 118.

212 The Constitution of the Republic of South Africa, art. 198(b). Regulation of the Foreign Military Assistance Act, Act. no.15, 1998, *Government Gazette*, no.18912, May 20, 1998.

213 Specifically, the law stipulates that no person may within the Republic or elsewhere recruit, use or train persons for or finance or engage in mercenary activity. Regulation of the Foreign Military Assistance Act, section 2. The act further states no person may offer to render military assistance to any state or organ of state, group of persons or other entity or person unless he or she has been granted authorization to offer such assistance under the licensing authority of the NCACC. Ibid. sections 4 and 5.

214 Ibid., section 1.

215 Ibid., sections 8 and 9.

216 Regulation of the Foreign Military Assistance Regulations, no. R1232, *Government Gazette*, no.19300, October 2, 1999.

217 Human Rights Watch interview with a government official, The Hague, Netherlands, May 14, 1999.





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VIII. CONCLUSION

Since 1994 the ANC-led South African government has taken important steps toward meeting the aspirations of its own citizens, and the requirements of international law. It also has been a leader in addressing the human rights problems posed by some types of weapons and by unscrupulous private individuals and companies.

Yet, the gaps and inconsistencies between theory and application in South Africa's arms export have become a source of concern for many South Africans, even outside specialized circles. In a 1999 survey conducted by the Institute for Global Dialogue and the Stellenbosch University Department of Political Science, ninety-one percent of the 3,500 respondents either said they did not want their government to sell arms at all (thirty-eight percent) or would only accept these sales under strict humanitarian conditions (fifty-three percent). Only nine percent of the respondents (mostly white, male, and affluent) declared that South Africa should sell its weapons to whomever would pay.²¹⁸

The examples cited above indicate that more is needed. In particular, Human Rights Watch considers that the following are critical elements in the completion of South Africa's arms export control regime and its application.

A Statutory Framework

Until legislation incorporating the relevant principles and code of conduct is passed into law, the NCACC process of approving arms sales depends on the political commitment of its members to human rights considerations. The power of public opinion to shape the outcome is limited because information on arms exports is made available only after deals have been concluded. This state of affairs cannot guarantee that the government will abide by its own stated commitments; it does not allow other interested parties to mount legal challenges to arms trade decisions; nor does it provide for records to be made available under the Promotion of Access to Information Act (taking advantage of the provision granting access to a record if the disclosure demonstrates a failure to comply with the law). Human Rights Watch believes, therefore, that a statutory framework codifying the government's arms export policy is essential and urgent, and that the Conventional Arms Control Bill must be redrafted accordingly and enacted.

Strengthened Human Rights Input

Human Rights Watch considers that decisions in relation to arms sales are so intimately connected to the question of who will use the weapons and for what purpose, that human rights considerations must be the foremost priority in shaping an arms trade regime. While South Africa has taken important steps to integrate human rights concerns into the decision-making process, it is clear that economic and political considerations have on occasion outweighed human rights concerns. To some extent, this imbalance can be attributed to the differing political strengths within government of the Department of Defence, the Department of Trade and Industry, and the Department of Foreign Affairs. At least part of the solution to ensuring the centrality of human rights issues must be the strengthening of the human rights unit in the Department of Foreign Affairs, both institutionally and in terms of capacity, to enable it to make thorough assessments of the human rights implications of arms transfers (and other policies), and for those assessments to be given greater weight within the framework of the NCACC.

Increased Outside Involvement in Arms Trade Decisions

South African government officials have often indicated their commitment to expanding the range of those involved in forming foreign policy generally and arms trade policy in particular. Parliamentarians, civil society representatives, academics, and other experts were closely involved in the debate leading to the adoption of the 1996 White Paper on Defence, but this was not the case with respect to the development of the 1999 White Paper on Defence-Related Industries, and the only parliamentary hearings scheduled on the proposed CAC Bill before its withdrawal were closed to the public. In addition, there has been little if any consultation outside the executive branch of government when it comes to individual decisions to supply weapons.

Arms trade policy is most likely to comply with international and domestic human rights standards when it is debated among a

wide spectrum of individuals and institutions. Decisions that the government cannot justify to its own parliamentarians and national human rights institutions or to South African nongovernmental organizations are unlikely to be good decisions in human rights terms.

Transparency

Similarly, full disclosure of concluded arms trade transactions both within South Africa and to institutions such as the U.N. register offers important guarantees for the protection of human rights. South Africa has moved towards greater openness in its arms trade, yet it has not committed itself to full transparency. Human Rights Watch believes it should remove the self-imposed restrictions on reporting to the U.N. register, and also include in its domestic publication of arms sales details of quantities of weapons sold and the specific types of weapons involved. The government should also adopt legislation to ensure that restrictions on access on information do not unduly limit transparency and public accountability with regard to arms transfers. It should likewise fulfil its stated commitment to the creation of an independent inspectorate for defense-related industries whose duties would include monitoring implementation of government policy with respect to arms trade controls and reporting regularly to parliament.

218 Quoted in Commonwealth Human Rights Initiative, *Over a Barrel*, p. 192





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We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

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*Human Rights Watch
Arms Division*

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