

## CHAPTER 7

### THE CLINTON ADMINISTRATION AND THE END OF THE ARMS EMBARGO, 1993-1998

#### 7.1 INTRODUCTION

Bill Clinton became the President of the United States after the Democratic Party won the elections at the end of 1992. It was the first Democratic Party government since that of Carter from 1977 - 1980. The Clinton Administration witnessed the remarkable transition from apartheid South Africa to a democratic South Africa in April 1994, when Nelson Mandela became the country's first black president. Cordial relationships with South Africa were restored during the Clinton Administration, and the remaining punitive measures against the country were lifted, including the United Nations arms embargo. The US arms embargo against South Africa was also lifted in 1993, but immediately re-instituted against Armscor and its affiliates. The reason for this was the festering sore that rolled over from the Bush Administration – the arms smuggling case for which Armscor, Kentron, Fuchs Electronics and seven South Africans were indicted in the US. While strong politico-military ties were being forged between the two countries, the Armscor case dominated the entire first term of the Clinton Administration, and almost led to a virtually irreparable tear in the foreign relations between the two countries.

#### 7.2 MISSILE DEVELOPMENT: SOUTH AFRICA SUCCUMBS TO US PRESSURE

In March 1993, the Clinton Administration gained what they regarded a victory with regard to its efforts to stop missile proliferation. After heavy pressure from the US, the South African Cabinet succumbed and agreed to scrap plans to build a long-range, solid-fuel rocket for its space satellite program. Many viewed the decision as part of a decision by Armscor in 1992 to 'clean up its act', as well as a signal of South African readiness to sign the MTCR. After the indictment against three South African companies, Armscor included, and seven individuals connected to Armscor in 1992 on illegal missile-related exports from the US, Armscor started telling the public that it was cleaning up its act in an effort to clear its image of being a company involved in illegal deals and controversial arms exports. Since 1992, the company went out of its way to

pledge that it would in future comply with global standards of acceptable conduct, thereby striving for international respectability.<sup>1</sup>

The US argued that the missile, which South Africa maintained was intended only to launch satellites, could be put to military use or sold to other countries that could use it to deliver warheads. However, according to sources within the US Government, it was not so much concerned with the possible military use of the missiles as the possibility that Armscor had developed it to make money, without concern for the type of clients who might buy it, i.e. enemies of the US like Libya or Cuba. In the light of these fears, sanctions against Armscor were instituted in 1992.<sup>2</sup> When asked if the sanctions would be lifted if South Africa would submit to the rules of the US concerning the production of a new long-range, solid-fuel missile, Clinton Administration officials said that Armscor complicity would significantly reduce the problem, but unfortunately the issue was not so simple, therefore the sanctions would remain for the remainder of the two-year period for which it was instituted.<sup>3</sup>

### 7.3 DE KLERK'S DISCLOSURE OF THE SOUTH AFRICAN NUCLEAR WEAPONS PROGRAM

Following the decision to end its missile development program, South African President De Klerk in March 1993 confirmed long-time suspicions that the South Africa had developed nuclear weapons when he announced in Parliament that South Africa had built six crude nuclear bombs during a top secret fifteen-year program. The country was working on a seventh nuclear bomb when it was decided to dismantle the arsenal. According to De Klerk, the program was one of the nuclear era's most closely guarded secrets. More than 1,000 people had worked on the program over the years, yet details thereof never leaked. Only physicists, chemists and engineers who were South African born citizens or had lived in the country for at least fifteen years were allowed to join the program, and no more than ten people were allowed to know all the secrets. The

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1. F. Swart, SA los missiel weens 'swaar druk' van VSA, *Beeld*, 26 March 1993, p. 9; Anonymous, Are missiles on target? *The Sunday Star*, 28 March 1993, p. 26; P. de Ionno, Demand to quiz SA arms dealers, *Sunday Times*, 20 March 1994, p. 15; M.A. Hiltzik, Arms dealer takes aim at respectability, *Los Angeles Times*, 4 July 1992, p. A14; B. Keller, South Africa says it built 6 atom bombs, *The New York Times*, 25 March 1993, p. A1.
  2. See Chapter 6, Section 6.5.2.6, pp. 338-339.
  3. F. Swart, SA los missiel weens 'swaar druk' van VSA, *Beeld*, 26 March 1993, p. 9; Anonymous, Are missiles on target? *The Sunday Star*, 28 March 1993, p. 26; B. Keller, South Africa says it built 6 atom bombs, *The New York Times*, 25 March 1993, p. A1.

cost of the program was concealed in several budget accounts for nuclear energy development and the military. It was started in 1974 by Prime Minister John Vorster, at the urging of his Defense Minister, P.W. Botha. Only a handful of top ministers knew about the program. De Klerk himself only learned of the program after becoming the Minister of Energy in the early 1980s.<sup>4</sup>

The decision to embark on the program was made against the background of a Soviet expansionist threat in Southern Africa, South Africa's international isolation and the fact that it could not rely on outside assistance in the event of an attack. After De Klerk became State President in 1989, the devices were destroyed, the plant for making highly enriched uranium was closed, the uranium fuel was downgraded to make it unsuitable for weapons, and the blueprints were destroyed. According to De Klerk, South Africa was the first and only country to destroy its nuclear arsenal, because of the waning cold war and the withdrawal of Cuban troops from Angola, which eased the sense of menace. De Klerk emphasized that South Africa had never tested the nuclear bombs, and never intended to use them. Although South Africa had indeed sunk 200 meter deep by one-meter wide shafts in the Kalahari Desert for underground nuclear testing, the project was ceased when both the Soviet Union and the US protested in August 1977. In 1987, one of the two shafts was reopened and inspected. A hangar was erected over it for easy maintenance in case a decision was made to conduct an underground test.<sup>5</sup>

Following on the emphasis that South Africa had never tested nuclear bombs, De Klerk embarked on an explanation of what the country instead intended. In the case of a military threat, a three-phase strategy would kick in. As long as the military threat remained remote, the South African Government would remain in phase one, i.e. nuclear ambiguity, which meant that nuclear capability was neither acknowledged nor denied. If Soviet or Soviet-backed forces threatened to invade South Africa or Namibia, the

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4. B. Keller, South Africa says it built 6 atom bombs, *The New York Times*, 25 March 1993, p. A1; Anonymous, News summary: Pretoria built nuclear bombs; Old suspicions confirmed, *The New York Times*, 25 March 1993, p. A2; P. Liberman, The rise and fall of the South African bomb, *International Security* 26(2), Fall 2001, p. 56; D. Albright, South Africa comes clean, *Bulletin of the Atomic Scientists* 49(4), May 1993, pp. 3-6.
  5. B. Keller, Building (and dismantling) a threat, *The New York Times*, 28 March 1993, p. D2; Anonymous, Bombs away, *Economist*, 27 March 1993, p. 1; D. Albright, South Africa comes clean, *Bulletin of the Atomic Scientists* 49(4), May 1993, pp. 3-6; Anonymous, De Klerk: South Africa had the bomb, *Africa Report* 38(3), May-June 1993, p. 6; P. Liberman, The rise and fall of the South African bomb, *International Security* 26(2), Fall 2001, p. 56; R.J. Smith, South Africa's 16-year secret: The nuclear bomb, *The Washington Post*, 12 May 1993, p. A1.

Government would implement phase two, the covert disclosure, which involved acknowledging nuclear capability to relatively friendly Western nations in the hope of eliciting their intervention. If they expressed doubts about the existence of South Africa's nuclear arsenal, they would be invited to send inspectors to view the arsenal. If this still failed to convince them to intervene on South Africa's behalf, the latter would threaten to detonate a nuclear device underground. If this also failed and the situation deteriorated further, the Government would move to phase three – the overt disclosure. This comprised three steps. First, South Africa would publicly declare its capability or conduct an unannounced underground test. If this did not work, as second step a nuclear bomb would be detonated 1,000 kilometers south over the ocean. The last step would then be to threaten to use the nuclear weapons on the battlefield in an act of self-defense. Concerning the Vela incident of 1979, De Klerk denied again that South Africa had been involved, saying that the South African Government had never been able to pin down whether it had been a nuclear explosion.<sup>6</sup>

De Klerk further insisted that South Africa had devised and built the nuclear bombs without the assistance of other countries. This contradicted the strong suspicion of many experts and diplomats that at least Israel collaborated in the development of South Africa's nuclear program, particularly in the uranium enrichment effort. Israel was alleged to have provided the assistance in exchange for supplies of enriched South African uranium. Later research showed that even if there was no direct outside collaboration, the program was nonetheless embargo busting, because by the end of 1980s, South Africa had a long list of imported machine tools, furnaces and other equipment for its nuclear weapons program. Many of these originated in the US. The majority were not proscribed by international nuclear export controls, but they were nonetheless imported in violation of the arms embargo and other sanctions against South Africa, which prohibited nuclear cooperation in any form. In his announcement speech, De Klerk said that he had decided to disclose details of the nuclear weapons program to dispel suspicions that South Africa was withholding information, which might have threatened South Africa's commercial sales of medical isotopes and non-military nuclear technology. As part of this disclosure, the IAEA would be given access

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6. B. Keller, South Africa says it built 6 atom bombs, *The New York Times*, 25 March 1993, p. A1; B. Keller, Building (and dismantling) a threat, *The New York Times*, 28 March 1993, p. D2; P. Liberman, The rise and fall of the South African bomb, *International Security* 26(2), Fall 2001, p. 56; Anonymous, Bombs away, *Economist*, 27 March 1993, p. 1; D. Albright, South Africa and the affordable bomb, *Bulletin of the Atomic Scientists* 50(4), July/August 1994, pp. 37-48; R.J. Smith, South Africa's 16-year secret: The nuclear bomb, *The Washington Post*, 12 May 1993, p. A1.

to all sites and documents pertaining to the program, including previously undisclosed records, and an audit that accounted for every gram of nuclear material.<sup>7</sup> In his own words: “*South Africa’s hands are clean and we are concealing nothing*”.<sup>8</sup>

After De Klerk’s announcement, many wondered what had convinced him to come clean on South Africa’s nuclear weapons development. There was one main reason: pressure from both the ANC and the US, who charged that South Africa had possibly hidden nuclear bomb components and manufacturing plants, and that it had been evasive about its stockpile of weapons-grade uranium. The charges were the result of a series of events involving IAEA inspectors that were sent to South Africa after the country had signed the Nuclear Non-proliferation Treaty. Under the Treaty, South Africa had to declare its nuclear inventory to the IAEA, whose job it was to check that Treaty members did not divert nuclear materials for military purposes. In October 1991, in accordance with its Treaty commitments, South Africa provided the IAEA with an inventory of all its nuclear materials and all the facilities that contained such materials as of 30 September 1991. To ease the task of the IAEA investigators, extensive historical production information from the enrichment plants was provided, including detailed information on the Y Enrichment Plant at Valindaba. Furthermore, access was offered to whatever facilities the IAEA asked to inspect. In the following months, IAEA inspectors scoured the country in order to determine whether the inventory and other information given to them were correct.<sup>9</sup>

During the investigation, the IAEA officials learned that South Africa had produced at least 200 kilograms of weapon-grade uranium. Given the high cost of production, the size of the stockpile renewed suspicions that South Africa had a nuclear bomb program. Accordingly, the IAEA inspectors visited the site in the Kalahari where South Africa planned to build an underground nuclear test site. Soil samples by the officials showed that the site had never been used for the detonation of a nuclear bomb. Thereafter, the

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7. B. Keller, South Africa says it built 6 atom bombs, *The New York Times*, 25 March 1993, p. A1; Anonymous, News summary: Pretoria built nuclear bombs; Old suspicions confirmed, *The New York Times*, 25 March 1993, p. A2; B. Keller, Building (and dismantling) a threat, *The New York Times*, 28 March 1993, p. D2; D. Albright, South Africa and the affordable bomb, *Bulletin of the Atomic Scientists* 50(4), July/August 1994, pp. 37-48; D. Albright, South Africa comes clean, *Bulletin of the Atomic Scientists* 49(4), May 1993, pp. 3-6.
  8. As quoted in B. Keller, South Africa says it built 6 atom bombs, *The New York Times*, 25 March 1993, p. A1.
  9. D. Albright & M. Hibbs, South Africa: The ANC and the atom bomb, *Bulletin of the Atomic Scientists* 49(3), April 1993, pp. 32-38; D. Albright, South Africa comes clean, *Bulletin of the Atomic Scientists* 49(4), May 1993, pp. 3-6; Anonymous, Bombs away, *Economist*, 27 March 1993, p. 1.

investigation proceeded to the Y Plant at Valindaba, where South Africa had produced highly enriched, weapons-grade uranium since January 1979. Here it was found that the material accounting system at the plant was not complete or accurate enough to verify its inventory. For example, the plant lacked a formal measurement control program for the tails or waste stream of the plant. This made it difficult to verify how much weapons-grade uranium was actually produced. Furthermore, in the early years of the plant, it operated without adequate tails monitoring equipment. Thus, IAEA attempts to assay the tails stored in waste tanks at the Y-plant had been only partially satisfactory, thus creating discrepancies. This raised suspicions even more, especially in the light of a US official saying that South Africa had run its nuclear plants in a similar way to the US had run its nuclear weapons facilities, i.e. to maximize output. Had the US signed the Nuclear Non-proliferation Treaty as a non-weapons state, there would also have been discrepancies in its inventory. This evidenced that South Africa had indeed developed nuclear weapons. After the discrepancies at the Y Plant, the IAEA acted on US intelligence information directing them to Building 5000 at the Pelindaba nuclear site. After asking for access to the building, the South African Atomic Energy Agency told the IAEA that the building was a general-purpose critical facility and part of its reactor development group, which was disbanded several years before. Building 5000 itself was said to be closed in the early 1980s. Inspection of the building revealed that it had performed nuclear weapons-related activities. It was found that the building had indeed been abandoned for several years, but the rusted equipment found there evidenced that it had been used to shape spherical fissile cores for a nuclear explosive device.<sup>10</sup>

The questions raised by the Y-plant discrepancies and the evidence found at Building 5000 led to the mentioned charges of the US Government and the ANC. In late December 1992, the ANC at a press conference demanded full disclosure of all present and past activities of the South African nuclear weapons program. The ANC alleged that continuation by the South African Government to act clandestinely and give ambiguous answers on all nuclear matters, undermined the important process of building the confidence of all South Africans in the process of democratizing the country. The US in turn believed that the South African Government was withholding information because it feared that the ANC would interfere with its efforts to sell off its inventory of

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10. Anonymous, Bombs away, *Economist*, 27 March 1993, p. 1; D. Albright & M. Hibbs, South Africa: The ANC and the atom bomb, *Bulletin of the Atomic Scientists* 49(3), April 1993, pp. 32-38; D. Albright, South Africa and the affordable bomb, *Bulletin of the Atomic Scientists* 50(4), July/August 1994, pp. 37-48.

weapons-grade uranium to the US. Without the stockpile, it would be very difficult for a future government to reverse course and build nuclear weapons.<sup>11</sup>

Some political experts described the non-proliferation efforts as being motivated by concern that the South African Government did not want any undeclared material or infrastructure falling into the hands of a future ANC government. In fact, evidence indicate that the US and other Western governments had put pressure on the South African Government to destroy any nuclear weapons technology and high grade uranium, before a new ANC government, with links to countries like Libya and Cuba, came to power. Therefore, after the signing of the Nuclear Non-proliferation Treaty, the South African Government had set as top non-proliferation priority the elimination of its weapons-grade uranium. The uranium was offered for sale to the US, whose officials had indicated that it was prepared to buy all South Africa's enriched uranium, including the weapons-grade stocks. The South African Government expected that the uranium would be placed under IAEA safeguards and kept out of the US' nuclear program. In exchange, South Africa would receive non-weapons grade, low-enriched uranium to use in its nuclear power reactors. However, since the CAAA of 1986's embargo on the import of South African weapons-related material was still in effect, such a transaction would be a breach of the embargo. Another elimination alternative entailed blending of the highly enriched uranium with enough natural or depleted uranium to produce a low-enriched product, but this was a slow process due to the necessary safeguards.<sup>12</sup>

When asked for details of the nuclear bomb program, Waldo Stumpff, chief executive of the South African Atomic Energy Corporation (AEC), said that South Africa already had a nuclear bomb by the end of the 1970s, but it was not tested. However, he said that there was no reason to believe that it would not have worked. He declined to reveal the size of the six bombs, but another AEC official, who declined to be identified, revealed that the bombs were large crude devices with an explosive power of 18,000 - 20,000 tons of TNT. The devices used a gun-type design, weighed about 1 ton, had a diameter of nearly 65 centimeters and a length of approximately 1,8 meters. Thus, they were very similar to the bombs that the US had dropped on Japan in the Second World War.

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11. D. Albright, South Africa comes clean, *Bulletin of the Atomic Scientists* 49(4), May 1993, pp. 3-6; D. Albright & M. Hibbs, South Africa: The ANC and the atom bomb, *Bulletin of the Atomic Scientists* 49(3), April 1993, pp. 32-38.

12. D. Albright & M. Hibbs, South Africa: The ANC and the atom bomb, *Bulletin of the Atomic Scientists* 49(3), April 1993, pp. 32-38; Anonymous, De Klerk: South Africa had the bomb, *Africa Report* 38(3), May-June 1993, p. 6.

As the devices were too large for delivery by artillery, they were designed to be dropped from British-made Buccaneer bombers. Later research showed that the first two nuclear devices were completed in 1978 and 1979, of which the first was dismantled for parts and the second equipped with measurement instrumentation. The second device remained dedicated for an underground test. In July 1979, the overall responsibility for the nuclear program was transferred to Armscor, after a high-level steering committee on nuclear weapons policy recommended the building of deliverable nuclear weapons in order to acquire a credible deterrent capability. The steering committee consisted of the Prime Minister, the Ministers of Defense, Foreign Affairs, Minerals and Energy, and Finance, and the chiefs of Armscor, the Department of Foreign Affairs, the Atomic Energy Board and the SADF. Armscor finished the third bomb, the first bomber-deliverable device, in 1982. Thereafter, further refinements in reliability, safety and delivery design delayed completion of the fourth device until August 1987. After that, production accelerated, so that the nuclear arsenal stood at six and a half by late 1989. The last three and a half devices were nuclear versions of Armscor's remotely guided H2 glide bomb, which allowed greater range and penetrability than ordinary gravity bombs.<sup>13</sup>

Concerning the nuclear facilities where the developments took place, many analysts had believed that the national nuclear research centre at Pelindaba was South Africa's only nuclear weapons manufacturing site. Great was the surprise when it became known after De Klerk's announcement that there was another, highly secret nuclear weapons manufacturing site 25 kilometers west of Pretoria. The site was originally known as the Kentron circle facility, but later became known as Advena. It was built during the 1980s and had extensive manufacturing capabilities aimed at building a reliable gun-type nuclear weapon deliverable by aircraft. Initially, when the nuclear weapon development was still under the auspices of the AEC, highly enriched uranium was produced at the Valindaba Y-Plant since January 1978. Natural uranium slurry, also called yellowcake, was collected from gold mines and converted to uranium hexafluoride gas, which was then fed into 112 separating units connected in parallel in three long, camouflaged buildings at Valindaba. The separators isolated and concentrated a key fissionable

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13. B. Keller, South Africa says it built 6 atom bombs, *The New York Times*, 25 March 1993, p. A1; B. Keller, Building (and dismantling) a threat, *The New York Times*, 28 March 1993, p. D2; P. Liberman, The rise and fall of the South African bomb, *International Security* 26(2), Fall 2001, pp. 53-54; D. Albright, South Africa comes clean, *Bulletin of the Atomic Scientists* 49(4), May 1993, pp. 3-6.



isotope, uranium-235, and roughly after a year, produced significant quantities of a uranium gas enriched to slightly less than ninety percent, i.e. weapons-grade uranium. Technical problems however forced the closure of this plant from 1979 to 1981, when production started again in the same manner. Early nuclear manufacturing was done at Building 5000. It is believed that the first nuclear device was prepared there. In 1979, when the responsibility for manufacturing was shifted to Armscor, the AEC continued to be involved as uranium-provider. Armscor started building a facility at Advena, and the main manufacturing building and an environmental test facility were finished in 1981. The environmental test facility was used for testing the reliability of the nuclear device under real-world conditions, which was particularly important because full-scale nuclear testing were never intended.<sup>14</sup>

The first nuclear device at Advena was completed in April 1982. Later, in the mid-1980s, Armscor investigated a mobile nuclear intermediate range ballistic missile option. These were paper-based studies investigating how the bombs could be adapted into warheads for missiles from the South African ballistic missile program. In the light of this, a new weapons plant consisting of about ten new buildings, known as Advena Central Laboratories, was started in 1987 and completed just before the nuclear program ended in 1989. The plant was capable of manufacturing two to three more advanced warheads per year and loading them onto missiles. At the time that the nuclear program ended, an even longer-range, intercontinental ballistic missile was on Armscor's drawing boards. However, the Government had by that time not yet authorized the physical development of ballistic missile warheads. By late 1988, both international and domestic changes had made the nuclear deterrent superfluous, and in the opinion of De Klerk, an obstacle to the development of South Africa's international relations. Accordingly, in late 1989 the Government decided to close the Y Plant, which happened in February 1990. The final-step equipment that was used to enrich uranium to bomb-grade was dismantled and removed. In early 1990 a decision was also made to dismantle and destroy the nuclear weapon arsenal and to return all nuclear material in Armscor's possession to the AEC. Armscor's facilities were accordingly decontaminated and dedicated to non-nuclear commercial purposes, e.g. high-tech products for the aerospace, mining, medical, and other industries. Dismantling took place under the joint

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14. D. Albright, A curious conversion, *Bulletin of the Atomic Scientists* 49(5), June 1993, pp. 8-12; R.J. Smith, South Africa's 16-year secret: The nuclear bomb, *The Washington Post*, 12 May 1993, p. A1.

control of Armscor and the AEC, and the process included accounting for all the nuclear material and destroying all available technical nuclear weapons-design documents, drawings, computer software and other data.<sup>15</sup>

De Klerk's announcement was welcomed and praised by the Clinton Administration, who noted that the Nuclear Non-proliferation Treaty did not specifically require such a candid disclosure. The Administration stated that the US had long suspected that South Africa had developed nuclear weapons and that De Klerk's announcement was consistent with US assessment. However, this assessment was primarily based on an analysis of the quantities of enriched uranium South Africa had produced and not on direct intelligence on the number of weapons that the country had manufactured. In this regard, De Klerk had told them something new. Some experts within the Administration said that they needed to learn more about the program to be sure that all the devices were destroyed. Some other officials expressed skepticism about De Klerk's assertion that no outside nation had assisted in the nuclear program, although disagreement remained among these officials about the extent of possible Israeli-South African military cooperation. Also, some questions remained, e.g. whether South Africa's statement that it had destroyed all of its nuclear devices and downgraded the uranium it contained, could be confirmed. In response to these questions, the IAEA said that some of its inspectors were already in South Africa and would visit all the facilities that had not been visited yet. On 25 March 1993, three IAEA inspectors visited the Advena facility. There they found nuclear material casting and machining workshops, high security vaults, high-explosive test cells, and an environmental testing facility. Facility personnel told them that all the specialized equipment used in the nuclear weapons program had been removed and destroyed and that the casting and machining workshops had been fully dismantled. Documentation on the dismantling and accountancy records had however not been destroyed and were made available to the inspectors.<sup>16</sup>

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15. D. Albright, A curious conversion, *Bulletin of the Atomic Scientists* 49(5), June 1993, pp. 8-12; D. Albright, Slow but steady, *Bulletin of the Atomic Scientists* 49(6), July/August 1993, pp. 5-7; P. Liberman, The rise and fall of the South African bomb, *International Security* 26(2), Fall 2001, p. 54; D. Albright, South Africa comes clean, *Bulletin of the Atomic Scientists* 49(4), May 1993, pp. 3-6.
  16. Anonymous, De Klerk: South Africa had the bomb, *Africa Report* 38(3), May-June 1993, p. 6; M.R. Gordon, Washington welcomes de Klerk disclosure, but wants more details, *The New York Times*, 25 March 1993, p. A12; Anonymous, News summary: Pretoria built nuclear bombs; Old suspicions confirmed, *The New York Times*, 25 March 1993, p. A2; B. Keller, Building (and dismantling) a threat, *The New York Times*, 28 March 1993, p. D2; D. Albright, South Africa comes clean, *Bulletin of the Atomic Scientists* 49(4), May 1993, pp. 3-6.

There was also skepticism from non-Government entities and persons. *U.S. News and World Report* had questions about the roles that the US and Israel played in the nuclear weapons development. Concerning the US, the paper questioned its complicity during the Reagan Administration in its drive to thwart communist expansion in Africa. *The New York Times* in turn quipped that the South African Government had not yet done enough to reassure a troubled world. It had remained tight-lipped about the fate of the fissile material and other bomb components it may have produced. Also, it had yet to reveal its nuclear cooperation with other countries – i.e. where it had acquired the uranium, technology and know-how to build the bombs. The ANC questioned the quick disposal of the nuclear material and documents, fearing an attempt to cover up important evidence. Furthermore, they did not believe De Klerk's claim that there had been no foreign assistance, and therefore would not believe South Africa's hands were clean until all details of the weapons program had been disclosed. South African newspaper *Beeld* suggested that one of the main reasons why the South African Government decided to dispose of the six nuclear bombs was fear that a future ANC government with links to Libya, the Palestinian Liberation Organization (PLO) and Cuba could decide to sell a nuclear bomb to these enemies of the US. Therefore, the US Government had probably pressurized De Klerk to destroy the bombs, even though South Africa had never acknowledged that it had manufactured nuclear weapons. It only acknowledged that it had the ability. Another reason suggested by *Beeld*, as already confirmed by De Klerk, was the political developments in the Soviet Union and the changed situation in Angola, which made it unnecessary for South Africa to have a deterrent like an nuclear bomb.<sup>17</sup>

*Beeld's* opinion about the ANC obtaining a nuclear bomb was also a concern of Helmoed Römer-Heitmann, a representative of *Jane's Defence Weekly*. He alleged that in the previous few years, there had definitely been growing concern in the West about the ANC obtaining a nuclear bomb. According to him, the reason for the fear was that the ANC was too friendly with the leaders of Libya, the PLO and Cuba. In his opinion, the US had pressurized De Klerk to destroy the nuclear bombs – a situation of saying 'if you don't do it, we will do it for you'. In addition, Pakistan was working on a nuclear project

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17. Anonymous, Bomb, bomb, who had the bomb? *U.S. News and World Report* 114(13), 5 April 1993, page unknown (Online); Anonymous, South Africa's unexploded bombs (Editorial), *The New York Times*, 27 March 1993, p. 20; Anonymous, De Klerk: South Africa had the bomb, *Africa Report* 38(3), May-June 1993, p. 6; L. Louw, Waarom bomme gebou is ... en waarom dit nou afgetakel is, *Beeld*, 26 March 1993, p. 9.

and Libya was moving in that direction. Thus, the US and other Western countries feared a so-called 'Islamic bomb' being planned and developed by countries like Egypt, Libya and Saudi Arabia. Yet another speculation by *The Sunday Star* was linked to the US pressure on the South African Government to end its missile program, because of fears that the missiles could be sold to countries like Iraq, Iran or Libya, who would use it to deliver nuclear payloads against the US. The paper suggested that De Klerk, by proving that South Africa was nuclear friendly, hoped to capture the moral high ground in the missile dispute.<sup>18</sup>

### 7.3.1 SUSPICIONS AND SPYING ACTIVITIES BY THE CLINTON ADMINISTRATION

Although the South African Government received praise from the Clinton Administration for its decision to come clear on South Africa's nuclear weapons program, a spying incident in early April 1993 indicated that it was still suspicious whether South Africa had fully disclosed everything with regard to the program. The incident involved the South African newspaper *Sunday Times* and an Embassy official of the Clinton Administration. The official had approached the newspaper's picture editor to buy photographs taken inside the Y-plant of the Valindaba nuclear facility, where uranium was upgraded to weapons grade and used in South Africa's six nuclear devices. The *Sunday Times* had published some of the photographs. After being asked if the photographs were intended for use by US intelligence agents, the official replied that they just wanted to look at them, as they were keeping an eye on things. The *Sunday Times* refused the request.<sup>19</sup>

After the incident, it was determined that despite public rapprochement between the US and South Africa, the latter was still on a highly sensitive watch list maintained by US intelligence and police agencies. Up until the mid-1980s, the South African Embassy in Washington, D.C. and its personnel were kept under the type of surveillance reserved for hostile powers like the Soviet Union, called the criterion list. As discussed, intelligence efforts then moved on to the planting of listening devices in the Embassy, which were discovered in late 1991. During this time, especially after the murder of

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18. L. Louw, *Waarom bomme gebou is ... en waarom dit nou afgetakel is*, *Beeld*, 26 March 1993, p. 9; Anonymous, *Are missiles on target?* *The Sunday Star*, 28 March 1993, p. 26.

19. S. Barber, *US still spying on South Africa*, *Sunday Times*, 4 April 1993, p. 5.

ANC member Dulcie September in France in March 1988, the US apparently came close to calling South Africa a terrorist state. However, it had seemed that the intelligence efforts had started to ease under the Clinton Administration, to the point where South Africa could be removed from the criterion list. Yet, after the incident with the *Sunday Times*, when asked whether South Africa remained on the criterion list, a Clinton Administration official said that he believed it was. After he checked if it was indeed the case, he simply said that he could not discuss the issue further, thereby indicating that the matter was still extremely sensitive.<sup>20</sup>

In mid-1994, it was reported that IAEA inspectors were allowed access to all South Africa's old nuclear sites and extensive data on its uranium production. It was found that there were still some leftovers from the six and a half nuclear bombs that had the danger to fuel nuclear proliferation elsewhere. This included some 400 kilograms of uranium extracted from the dismantled warheads. The uranium was placed under international safeguards. As discussed, in 1992 De Klerk offered to sell South Africa's weapons-grade uranium to the US. Bush Administration officials expressed interest, but asked to delay the discussions until after the November 1993 US elections. Bush lost the elections, and the Clinton Administration only focused on the offer in mid-1993. By this time, South Africa had decided to downgrade the uranium to use in its commercial nuclear reactor. Furthermore, a stringent new law regulating the export of nuclear and missile technology had been enacted, but was not yet fully instituted. Both disclosures held a threat, especially because South African nuclear weapons experts were being laid off, with sixteen of them threatening to sell secrets to the highest bidder unless they received a severance package of several millions of Rands. They allegedly already had foreign agents making them offers. Also, the country still had its weapons-grade uranium. This raised new fears in the US that some of the South African technology and weapons-grade uranium could end up in the hands of its enemies, in spite of the embargo on the import of South African military technology and products.<sup>21</sup>

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20. S. Barber, US still spying on South Africa, *Sunday Times*, 4 April 1993, p. 5.

21. G. Cerio & L. Howard, A bungled nuclear deal, *Newsweek* 124(4), 25 July 1994, p. 2; Anonymous, South Africa's other deadly legacy, *The New York Times*, 12 May 1994, p. A24.

#### 7.4 STORM OVER SOUTH AFRICAN EFFORTS TO BUY AIRCRAFT

In May 1993, an incident with regard to South African efforts to buy new aircraft for its Air Force, indicated that the Clinton Administration was not yet prepared to show South Africa some leniency. A storm broke loose over South African efforts to buy Swiss-manufactured Pilatus PC-7 training aircraft. Despite the fact that Switzerland was not a member of the United Nations, the Security Council in February 1993 made a public appeal to the country to prevent the sale of the aircraft to South Africa. The appeal was made on the basis of Switzerland having committed itself formally to adhering to the arms embargo, even as non-member of the United Nations. The appeal stated that the sale would be contrary to the spirit and intent of Resolution 418 (1977) by which the mandatory arms embargo against South Africa was instituted. It was furthermore pointed out that Resolution 591 (1986) urged all states to prohibit the export of aircraft, aircraft engines and engine parts to South Africa, if they had reason to believe that it was destined for the military and/or police force in South Africa. Lastly, Switzerland was reminded of the fact that it had previously adhered to similar decisions taken by the Security Council, e.g. against Iraq.<sup>22</sup>

Besides pressure on Switzerland, against whom the US could take no steps because it was not a member of the United Nations, pressure was also placed on Canada. The turbine engines of the Pilatus aircraft were manufactured by the Canadian division of the firm Pratt and Whitney, a subsidiary of the US firm United Technologies Corporation based in Hartford, Connecticut. In January 1993, the Canadian Government gave permission to Pratt and Whitney Canada to deliver sixty engines over one year to Switzerland for use in the aircraft that were to be sold to South Africa. In defense of the transaction, a spokesman for Pratt & Whitney Canada said that the engines were officially classified as civilian products, and could therefore be exported, even though it would be used in military training aircraft flown by members of the South African Air Force. But it was still a direct violation of the US arms embargo, which prohibited the export of US-origin type material or material manufactured by a US-affiliated firm to South Africa by a third country, if the exporter knew or had reason to believe that it would be used for military purposes. The Clinton Administration therefore attempted to

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22. M. Hough, Military sanctions against the RSA: Current and future prospects, *Strategic Review for Southern Africa* 15(1), May 1993, pp. 32-33; F. Swart, Stof lê nie oor vliegtuie – VSA wil transaksie verongeluk, *Beeld*, 5 May 1993, p. 6.

block the sale, thereby placing Canada in a moral dilemma. Much pressure was placed on the Canadian Government to revoke the decision, especially because the anti-apartheid groups in the US voiced their concern that the sale would go through in spite of being prohibited under the arms embargo. In their view, if the sale went through, it would mean that the arms embargo had come to nothing. The US Department of State shared this sentiment, stating in a letter to one of the anti-apartheid groups, American Committee on Africa, that they had voiced their opposition to the sale in the most serious terms and that they would continue with efforts to cancel the transaction.<sup>23</sup> These protests were to no avail, however, because sixty Pilatus Astra aircraft were eventually sold to South Africa at a cost of almost R10 million each.<sup>24</sup>

## 7.5 EFFORTS BY ARMSCOR TO GAIN US MILITARY BUSINESS

The Pilatus-drama did not dampen the dedication of the South African arms industry to make its mark on the global weapons market, especially now that political transformation in the country was beyond the point of return. In September 1993, Armscor took the initiative to offer its services and technology to the US and the United Nations as part of an effort to gain international respectability. The incident provided a glimpse into the differences of opinion within the Clinton Administration with regard to the arms embargo. It entailed a statement by Armscor that it would welcome an opportunity to supply the United Nations and the US with locally developed landmine-clearing technology, which they described as being the most sophisticated in the world. In the statement, Armscor alleged that in South Africa's 15-year involvement in warfare, which ended when the armed forces of both South Africa and Cuba were withdrawn from Angola, the country had developed advanced counter-measures against landmine threats. That made the South African mine-resistant vehicles and mine-lifting technology the most sophisticated in the world. The statement followed reports in the US that its officials, as well as those of the United Nations, were waiting for the lifting of the arms embargo against South Africa to enable them to use the country's landmine-clearing technology. US officials asserted that South African mine clearance systems were reliable but also cheap at a time when getting rid of landmines, described as hidden killers, had been identified as one of the most serious international security problems facing US and United Nations peacekeepers. In the light of this, South African

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23. F. Swart, Stof lê nie oor vliegtuie – VSA wil transaksie verongeluk, *Beeld*, 5 May 1993, p. 6.

24. E. Gibson, Ongelukke kos geld, sê VF+, *Beeld*, 30 September 2004, p. 5.

reporters suspected that once the arms embargo was lifted, South Africa could become a major foreign currency earner, given the estimated 85 million uncleared landmines in 62 countries, which killed or severely injured about 150 people a week. The South African landmine-clearing system was cheap and reliable and could clear long stretches of road in a short time, in comparison with international contractors charging more than R3 000 per mine in clearance operations. These operations were furthermore not always as effective as the South African system.<sup>25</sup>

The offer came in the wake of a unilateral and immediate moratorium by the United Nations on the international marketing and export of landmines.<sup>26</sup> However, despite the huge interest in the US, the embargo on arms imports from South Africa was still in place. Purchasing the landmine clearing system from South Africa would directly violate this embargo. The South African offer was therefore placed on hold until the arms embargo was lifted.

## 7.6 EVENTS BUILDING UP TO THE END OF THE US ARMS EMBARGO

### 7.6.1 THE DEBATE OVER SANCTIONS, YET AGAIN

The differences among the officials in the Clinton Administration on the implementation of the arms embargo could be viewed as but one aspect of a much larger issue, namely the ongoing debate whether sanctions worked or not. At the start of the Clinton Administration at the beginning of 1993, all signs pointed to a satisfactory end to apartheid in South Africa and the possibility of the lifting of all sanctions against the country, including the arms embargo. It seemed certain that Clinton would be able to normalize relations after a long range of US presidents who had to implement the embargo.

Many viewed the arms embargo and the economic sanctions against South Africa as a test; a benchmark against which the future imposition of sanctions could be measured. South Africa presented a case study of sanctions in various forms that had run their course. After the arms embargo and economic sanctions against South Africa were

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25. S. Bothma, Demand for SA expertise, *Business Day*, 6 September 1993, p. 3; P. de Ionno, Demand to quiz SA arms dealers, *Sunday Times*, 20 March 1994, p. 15.

26. S. Bothma, Demand for SA expertise, *Business Day*, 6 September 1993, p. 3.



instituted, the US went on to impose official sanctions of one kind or another against a dozen countries as a way of punishing a misbehaving state. Yet the question remained – did they work? The difference in opinion remained in the wake of the agreement of the South African Government in the first week of September 1993 to submit to the oversight of a multiparty council in the months before South Africa's first democratic election in April 1994. The agreement made the transition to democracy all but irreversible, leading the ANC to a point of being on the verge of calling off all the penalties that the world had imposed against apartheid. Some argued that the arms embargo and economic sanctions had forced the South African Government to the point of agreement, while others argued that while the measures had powerful consequences, there was no consensus that the results were quite what were intended. Other factors also had to be taken into consideration: the riots and guerrilla war waged by the ANC; the ascent of more sophisticated and pragmatic Afrikaners like F.W. de Klerk; the collapse of communism and the Soviet Union, which had so terrified the South African whites; the shame of sports and cultural boycotts; and lastly the self-defeating folly of the ideology of apartheid, which tried to make foreigners of the country's black inhabitants.<sup>27</sup>

The ANC contended that the arms embargo and economic sanctions had helped to hasten the end of apartheid through a combination of psychological and economic pain, while critics maintained that while the sanctions worked to a certain extent, economic growth would have worked better, and would have left the next Government with a healthier country to run. The critics contended that sanctions have slowed down the bigger engine, i.e. the factors already mentioned in the previous paragraph, which was already breaking down apartheid. On the other hand, the sanctions ricocheted with many unpredicted effects. One of these was the fact that South Africa, being cut off from foreign military supplies through the arms embargo, succeeded in building up one of the seven or eight largest armaments industries in the world and becoming an exporter of sophisticated weapons.<sup>28</sup>

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27. B. Keller, Sanctions may have worked, at a price, *The New York Times*, 12 September 1993, p. D5; M. Jhangiani, Mandela may lift boycott; U.N. expects to get call to end sanctions, *St. Louis Post-Dispatch*, 24 September 1993, p. 11A.

28. B. Keller, Sanctions may have worked, at a price, *The New York Times*, 12 September 1993, p. D5; Anonymous, South Africa's good deeds are rewarded, *St. Louis Post-Dispatch*, 11 October 1993, p. 14B.

## 7.6.2 THE WORLD-WIDE END OF ECONOMIC SANCTIONS AGAINST SOUTH AFRICA

In 1993, Nelson Mandela of the ANC indicated that he would call for an end to the economic sanctions against South Africa once the South African Government agreed to set up an executive council to oversee the country's transition into a non-racist society. In late September 1993 that condition was met when the South African Parliament approved plans for a transitional government that included blacks. Mandela followed this up with a call at the United Nations on 24 September 1993 for the lifting of all remaining economic sanctions against South Africa, after proclaiming that the countdown to democracy in South Africa had begun.<sup>29</sup>

In his speech before the United Nations, Mandela said that the ANC believed that in order to strengthen the forces of democratic change and to help create the necessary conditions for stability and social progress, the time had come for the international community to lift all economic sanctions against South Africa. The call led to governments and cities almost immediately initiating measures to end all economic sanctions against South Africa. However, the arms embargo remained in effect. Because it was instituted by the Security Council, they had to act to remove it. Furthermore, Mandela did not call for an end to the arms embargo. The decision to leave the arms embargo in place for the time being was generally claimed worldwide as being a wise decision. Many felt that the intense black-on-black violence and the racial attacks by black and white extremists that were still riding the high tide in South Africa should not be fuelled by arms from the outside world. Yet, a few months later, in January 1994, the Clinton Administration indicated that it might lift some aspects of its arms embargo faster than was expected, when it was announced that a senior delegation of the US defense headquarters, the Pentagon, would visit South Africa for the first time in 30 years. The delegation consisted of ten members and the purpose of the visit was to help South Africa to integrate its defense force. Similar visits were prohibited since 1963 as part of the US' implementation of the voluntary and mandatory arms embargoes.<sup>30</sup>

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29. M. Jhangiani, Mandela may lift boycott; U.N. expects to get call to end sanctions, *St. Louis Post-Dispatch*, 24 September 1993, p. 11A; P. Lewis, Mandela calls to an end to sanctions, *The New York Times*, 25 September 1993, p. A1

30. Anonymous, South Africa's good deeds are rewarded, *St. Louis Post-Dispatch*, 11 October 1993, p. 14B; D. Olojede, Mandela asks world to end sanctions, *Newsday*, 25 September 1993; Anonymous, Pentagon-groep gaan SA vir eerste keer in 30 jaar besoek, *Beeld*, 5 February 1994, p. 2.

But despite the above-mentioned visit, the continuing arms embargo violation case against Armscor, Kentron, Fuchs Electronics and seven South African individuals indicated that the US would not move fast to lift the arms embargo completely. It would be remembered that on 31 October 1991, the mentioned firms and individuals were indicted for conspiracy with the US firm ISC to violate the US Export Control Act by exporting military-related items to South Africa. The South African firms and individuals refused to stand trial in the US, and the case rolled over into the Clinton Administration.<sup>31</sup>

In March 1994, Armscor offered to come clean on its involvement in hi-tech weapons smuggling to Iraq and China and to pay R6 million in fines to protect the seven individuals against US Grand Jury criminal indictments. Since the dispute had carried on since November 1991, Armscor was so anxious to settle it that it was prepared to allow the seven individuals to give evidence in the US on one condition: they had to be given immunity from imprisonment. It was the first time that Armscor admitted to breaking US law. But US prosecutors, led by Assistant US Attorney General Robert Goldman, refused to cut a deal unless Armscor made a full disclosure about the identity and activities of its US suppliers for the previous five years. Armscor then considered turning to the ANC to intervene in order to resolve the dispute, while the South African Department of Foreign Affairs attempted to take the dispute away from the US Department of Justice so that it could be resolved diplomatically. The reason was that protection of foreign collaborators who had helped South Africa keep pace with advanced military technology during the arms embargo had been authorized at the highest levels of government, thus, the case had a political flavor. Furthermore, identification of such suppliers or middlemen would have left them vulnerable to prosecution and brand Armscor as a pariah in the multi-billion rand international weapons trade, in which secrecy was regarded as a fundamental rule. But Armscor's anxiety in solving the dispute also involved two other fears. First, it was feared that the dispute could influence the US to use its Security Council veto to block the expected lifting of the United Nations arms embargo later in 1994 at the request of a new South African Government. Secondly, Armscor was concerned that an ANC-dominated government might accede to the extraditions request by the US in order to appease US

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31. See Chapter 6, Section 6.5.2.2, p. 330.

commercial and military concerns about the strength and capabilities of the South African arms industry.<sup>32</sup>

In April 1994, in a secret turn-about, the South African Government sent the seven individuals off to the US for questioning, after a deal that assured them that they would not be arrested and prosecuted when they arrived in the US. There were many speculations that the deal followed the ANC's refusal to guarantee the seven individuals protection from extradition should it win the pending elections in late April 1994. The interrogation of the seven would take place in Philadelphia on 18 April 1994. Prosecutors were expecting the seven to provide evidence against 30 US individuals and companies, particularly those who had supplied Saddam Hussein of Iraq with military equipment. The seven were also expected to be questioned regarding the suppliers of optical equipment used in the infra-red seeker of the South African V3B air-to-air missile, which was said to be cloned from the US Sidewinder missile, as well as gyroscopes used in guidance systems and cryostat cooling devices for the V3B missile, which were also expected to be originating from the US. Lastly, an unnamed US company was believed to have supplied magnetrons and electronic valves used in radars for the South African H2 television and laser-guided glide bomb, which was said to be designed to deliver nuclear and conventional warheads. However, the seven men were only given limited exemption from strict South African laws controlling the disclosure of official secrets and arms industry information – they were only allowed to provide information relating to the deals between Armscor and ISC. They were forbidden to embark upon any discussion relating to South Africa's nuclear and missile projects or deals with other US companies.<sup>33</sup>

### 7.6.3 THE LIFTING OF THE UNITED NATIONS ARMS EMBARGO

While the seven men were being interrogated in the US, preparations for the first ever democratic elections in South Africa continued. On 27 April 1994, the decades-long reign of the National Party came to an end when the ANC won the elections, and Nelson Mandela became President of the Republic. Less than a month after the victory,

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32. P. de Ionno, Demand to quiz SA arms dealers, *Sunday Times*, 20 March 1994, p. 15; P. de Ionno, Secret deal on Armscor men, *The Sunday Times*, 17 April 1994, p. 1.

33. P. de Ionno, Secret deal on Armscor men, *The Sunday Times*, 17 April 1994, p. 1; M. Ley, Krygkor-7 moet in VSA getuig oor wapenkope, *Beeld*, 18 April 1994, p. 3; Anonymous, Sewe Krygkor-manne aan VSA uitgelewer, *Die Afrikaer*, 29 April – 5 May 1994, p. 1.

Mandela sent Vice President Thabo Mbeki and Deputy Minister of Foreign Affairs, Aziz Pahad, to the United Nations to deliver a personal letter before the Security Council. In the letter, Mandela referred to the changed political situation in South Africa, which he felt made punitive measures unnecessary. He asserted that the country now needed further encouragement. Accordingly, he requested that all remaining sanctions against the country, including the arms embargo, be lifted and that all boycott legislation be revoked. The letter was an effort to prevent South Africa from going down the same route as Namibia: although sanctions against that country were lifted immediately after it gained independence, legislation remained in many of the American states' law books. That made trade with the country very difficult.<sup>34</sup>

On 25 May 1994, the Security Council was due to gather to discuss the lifting of the mandatory United Nations arms embargo against South Africa, as well as the issue of South Africa's cooperation with other countries in the area of nuclear development. The latter issue was on the agenda because of the Security Council's Resolution 591 of 1986, which stipulated that all member countries had to refrain from all cooperation in the area of nuclear power that could contribute to the manufacturing and development of nuclear weapons in South Africa. Mbeki and Pahad would join the meeting to read the letter from Mandela. It was expected that the arms embargo would be lifted on some conditions, e.g. that the South African Government would adhere fully to international standards concerning the export of technology and equipment that could threaten the world peace. This would include exports to countries like Libya, Iraq or Rwanda.<sup>35</sup>

On 25 May 1994, as expected, the United Nations Security Council lifted the mandatory arms embargo of 1977 on the export of weapons to South Africa, as well as the 1984 embargo on the import of South African-developed and manufactured arms. The lifting of the arms embargoes constituted the last of the United Nations punitive measures that had been instituted against South Africa during the apartheid era. The decision was made after Mbeki had read Mandela's letter to the Security Council and latter voted on the issue. In the debate over the lifting of the arms embargoes, Mbeki stated that the

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34. W. Pretorius & F. Swart, Wapenverbod teen SA kan gou waai; Thabo Mbeki na VN met brief van pres. Mandela, *Beeld*, 23 May 1994, p. 1.

35. F. Swart, Kernkrag: SA se rol ter sprake; Mbeki woon debat in Veiligheidsraad by, *Beeld*, 24 May 1994, p. 4; W. Pretorius & F. Swart, Wapenverbod teen SA kan gou waai; Thabo Mbeki na VN met brief van pres. Mandela, *Beeld*, 23 May 1994, p. 1.

new South African Government was eager to see the fast establishment of a treaty on an African zone without nuclear weapons. Also, according to Mbeki, the transfer to a democratic order in South Africa represented the basis from which the country would continue to search for a negotiated, fair and stable regional security system for all the nations of Southern Africa. Mbeki further said that the South African Government would regard the decision by the Security Council to lift the arms embargoes against South Africa, as acceptance by the United Nations as a world body that South Africa had become a democratic country – a country on which the world could count as one that had committed itself to the strive for international peace and security. In this regard, the South African Government was determined to ensure that South Africa would fulfill all its commitments resulting from its international agreements, i.e. the Nuclear Non-proliferation Treaty, the Chemical Weapons Convention and the Biological Weapons Convention. It also included agreements over the movement of equipment and technology that could be used in the development of missiles that were able to shoot down weapons of mass destruction. Lastly, Mbeki assured the Security Council that South Africa was busy converting its military technology to civilian use, and asked the assistance of the international community in that endeavor.<sup>36</sup>

#### **7.6.4 A SPANNER IN THE WORKS: THE CASE AGAINST ARMSCOR**

##### **7.6.4.1 US' retainment of its arms embargo against South Africa**

In late May 1994, it was reported that the seven indicted men that had been sent to the US for interrogations, were back in South Africa. The prosecutors were expected to decide within a month whether to proceed with charges against the seven.<sup>37</sup> However, the case was not resolved so easily. It would continue for another three years before a final deal was struck. Thus, in the wake of the events at the United Nations, the US decided to maintain its own arms embargo against South Africa until further notice. In addition to the continuing case against Armscor, US experts warned that with the lifting of the United Nations embargo, cheap and efficient South African-made arms could flood the growing market of Third World countries. As example they quoted Armscor's

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36. F. Swart, Laaste boikot van VN teen SA is opgehef; Republiek kan wapens uitvoer, *Beeld*, 26 May 1994, p. 1; P. McNab, *et. al*, UN Security Council lifts arms embargo, *Military and Arms Transfer News* 94(1), 3 June 1994, p. unknown (Online document); Anonymous, Curbs on South Africa end, *The New York Times*, 26 May 1994, p. A10.

37. S. Motlhabakwe, Armscor men quizzed in US, *Business Day*, 26 May 1994, p. 2.

history of supplying weapons to blood-soaked regimes like Iraq and Libya, as well as a confession by the head of Armscor, Tielman de Waal, that South Africa had during the previous five years exported \$30 million worth of guns, grenades and mortars to Rwanda. The concern remained even after Armscor assured the world that the exports ceased in September 1993 when signs of a pending civil war became clear, and that South Africa was keeping to international standards that prohibited exports of weapons to country's that suppressed their own citizens and disregarded human rights. But further concern was raised in the US when De Waal announced that Armscor would double its arms exports in 1994 to \$500 million. What made matters worse, according to US experts, was Mandela's comments after the lifting of the United Nations arms embargo that there was nothing wrong with arms trade, because arms were meant in the first place to defend the sovereignty and integrity of a country. Therefore, he gave his blessing to Armscor's intention to double its exports. Many suspected that the new South African Government was tempted by the work opportunities and the foreign exchange that arms exports would create.<sup>38</sup>

Despite the concerns that were expressed, however, the US Department of Commerce announced in the Federal Gazette in mid-June 1994 that it was lifting curbs on the export of dual-use products, which could be used for either military or civilian purposes, to South Africa. But it was still clear that the complete lifting of the US arms embargo against South Africa by the Department of State would be substantially delayed because of the arms smuggling case against Armscor and its affiliates. This included the embargoes on the export to South Africa and the import from South Africa of arms and related equipment. It was expected that the embargoes would be lifted as far as the South African Government was concerned, but that Armscor and all its affiliated and offshoot companies would still be embargoed. In the wake of the announcement, the Clinton Administration and the South African Embassy embarked on negotiations to try and find a solution. This included plea-bargaining, i.e. negotiations on a lesser sentence for the seven former Armscor employees that had been indicted. It was also expected that the ban on Armscor and its affiliates could negate special exemptions that one of the off-shoot companies, Denel, had received from the Clinton Administration in exchange for South Africa agreeing to abandon its missile development under the

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38. J.S. Rita, US Congress in uproar over SA, *City Press*, 29 May 1994, p. 14; F. Swart, Amerikaners bekommerd oor SA se wapenbedryf, *Beeld*, 1 June 1994, p. 5; C. McGreal, ANC gives its blessing to increased arms exports, *The Guardian*, 4 June 1994, p. 16.

MTCR. However, when the possible lifting of the US arms embargo was discussed within the Clinton Administration, it was found that the Denel exemption had been granted in error. Although Denel was now independent from Armscor, it still originated from the latter and therefore was subject to the indictments. The South African Ambassador in the US, Harry Schwarz, nonetheless seemed positive about the negotiations, saying that if the Armscor embargo was extended, it could have adverse effects, but it did not mean that the lifting of the embargo against the South African Government held no benefits. South Africa would still gain a big part of the prize.<sup>39</sup>

As expected, the Department of State in late June 1994 lifted the remaining restrictions on the export of US arms and related equipment to South Africa, i.e. the 1977 arms embargo. Clinton certified the lifting on 27 June 1994, saying that the furnishing of defense articles and services to the South African Government would strengthen the security of the US and promote world peace. At the same time, however, the Department of State gave notice by way of a denial order published in the Federal Register on 30 June 1994 that a blanket embargo remained in place against Armscor, Denel, Kentron and Fuchs Electronics, as well as any of its subsidiaries, their employees and any successor company. This was due to the 1991 indictment of Armscor for violations of the US Arms Export Control Act. As a further sting, the arms embargo also remained in place against the South African National Defense Force (SANDF), the incorporating defense force that was established under the new South African Government, because Armscor was the only acquisition agency for the SANDF.<sup>40</sup>

#### **7.6.4.2 The indictment against Fuchs Electronics and the jeopardized Rooivalk helicopter sale to Britain**

In August 1994, US federal prosecutors followed up on the Armscor case by indicting Fuchs Electronics (Pty) Ltd., which was controlled by Barlow Rand at the time of the transgression, of illegally supplying Iraq with bomb technology in exchange for thousands of tons of crude oil in the 1980s. Because Fuchs Electronics had conspired

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39. Anonymous, Delay in lifting US arms curbs, *The Argus*, 17 June 1994, p. 3; P. Fabricius, Armscor – spanner in the works, *The Star*, 20 June 1996, p. 7.

40. Armscor Compliance Office, *Essentials of the Armscor Compliance Programme*, p. 3; Federation of American Scientists (Washington, D.C.), South African embargo lifted, *Arms Sales Monitor* 26, July 1994, p. unknown (Online document); D. Lautenbach, US order keeps SA's arms at bay, *The Star*, 18 August 1994, p. 11; B. Keller, Apartheid's arms-maker finds respectability, *The New York Times*, 26 August 1994, p. A3; S.C. LeSueur & G. de Briganti, S. Africa's export quest is stunted by U.S. trade ban, *Defense News*, 12-18 September 1994, p. 1.



with ISC to supply 300,000 FF-1 fuses used to ignite artillery rounds and cluster bombs, which would be delivered to IMEC, a firm with Iraqi links, the 1977 US arms embargo against South Africa was violated. The exports allegedly took place between 1985 and 1989, during which time ISC exported in excess of \$4,4 million worth of fuse power supplies to Fuchs Electronics to enable it to maintain its production line of fuses and to assist Fuchs Electronics to fulfill its fuse production requirements with Iraq. According to the prosecutors, the bombs thus supplied were used by Iraq during the Gulf War, while South Africa used the crude oil to bust the United Nations oil embargo against South Africa. They alleged that although it had long been known that Armscor and Barlow affiliates had collaborated with ISC to supply the Iraqi Government with hi-tech war material, the indictment against Fuchs Electronics was the first evidence that the trade involved a bombs-for-oil swop in an effort to circumvent the international oil embargo against South Africa.<sup>41</sup>

The indictment against Fuchs Electronics was followed by reports that Armscor was still trying to set up an out-of-court deal with the US federal prosecutors, which involved large sums of money in fines so that the seven officials would not have to stand trial in the US. In answer to enquiries, Armscor prepared a statement in which it stated that the company was aware of the proposed institution of a denial order by the US Government on the importation and exportation of arms, munitions and implements of war by and from Armscor. The company confirmed that Armscor was involved in a court case with the US authorities, and that discussions with the US federal prosecutors to achieve an out-of-court settlement were being conducted. However, Armscor was not prepared to provide any further information because of the negotiations being in a very delicate phase, and further information could jeopardize the proceedings of the negotiations. Further information was nonetheless offered by the Department of Foreign Affairs, who said that although there was as yet no fixed figure, indications pointed to a R54 million fine for Armscor and about the same for Fuchs Electronics. The Department was very concerned about this huge amount of money and an alleged perception that it

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41. P. Stober & E. Koch, US batters Armscor in bombs-for-oil court case, *The Weekly Mail & Guardian*, 12 – 18 August 1994, p. 3.

would have to be paid out of the Government's coffers, especially in respect of Armscor, which was a fully owned parastatal.<sup>42</sup>

The indictments against Armscor and Fuchs Electronics, as well as the blanket denial order against Armscor and the other mentioned entities, as discussed, raised new questions on whether the US was not protecting its own industry by acting so rigorously. Many South Africans wondered if the US refusal to accept a proposed settlement by Armscor was in fact not an effort to force the company out of the lucrative international arms market, thereby getting rid of a competitor and a potential source of arms proliferation in the Third World. Ironically, as discussed, the US had much to say about South African arms that could flood the Third World market after the lifting of the United Nations arms embargo, but in a Congressional Research Service report to the US Congress in July 1994, research data indicated that US arms agreements in 1993 accounted for nearly 75% of all Third World weapons deals! This constituted an increase from \$14.6 billion in 1992 to \$14.8 billion in 1993.<sup>43</sup>

South African Foreign Affairs officials were unwilling to speculate too much whether the US might use the Armscor situation as a guise for protectionism, but was nonetheless concerned about the longer-term effect the whole Armscor issue could have on the future of the South African arms industry. Even if the Armscor case was settled soon, a probation period of two years would still remain before it and the other affected companies could emerge from the shadow of the denial order. This could have an effect especially on the marketing and sales of the Denel-developed Rooivalk combat helicopter, which was regarded as one of the best in the world. However, potential buyers would possibly wanted to see certain high-tech equipment from the US installed in the helicopter. If these specialized items were not available to Denel because of the denial order, such potential buyers might snub the deal. Furthermore, Foreign Affairs officials were also afraid that because of the US limiting the access to markets of companies like Kentron and Fuchs Electronics, which also manufactured products not

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42. Armscor Archives (Pretoria), **Press release** by L.P. Celliers in answer to media enquiries regarding the ISC issue, 16 August 1994; D. Lautenbach, US order keeps SA's arms at bay, **The Star**, 18 August 1994, p. 11; P. Stober & E. Koch, SA arms-dealers offer R108-m to avoid US trial, **The Weekly Mail & Guardian**, 19-25 August 1994, p. 7; B. Keller, Apartheid's arms-maker finds respectability, **The New York Times**, 26 August 1994, p. A3; S.C. LeSueur & G. de Briganti, S. Africa's export quest is stunted by U.S. trade ban, **Defense News**, 12-18 September 1994, p. 1.

43. B. Opall, U.S. tightens grip on Third World arms market, **Defense News**, 8-14 August 1994, p. 3; D. Lautenbach, US order keeps SA's arms at bay, **The Star**, 18 August 1994, p. 11.

related to the arms industry, the broader reach of South African trade would be negatively affected.<sup>44</sup>

In August 1994, the above fears became a reality. Denel needed US weapons systems because of a bidding for a R17 billion contract involving the sale of 91 Rooivalk helicopters to Britain. South Africa was one of four countries bidding for the contract. Apparently, because Britain was a NATO<sup>45</sup> member, the US weapons systems were required to make the Rooivalk comply with NATO specifications. Furthermore, Britain's decision on who would supply it with the attack helicopters was being closely watched by Spain and the Netherlands, which also had requirements for similar helicopters. Between the three nations, as many as 150 helicopters could be exported. However, Armscor sources expressed suspicions that the Clinton Administration might deny the waiver in order to give its own aircraft manufacturers an advantage. One of the US manufacturers, McDonnell Douglas, was known as bidding for the contract with its Apache attack helicopter. In late August 1994, two US aircraft weapons and avionics manufacturing firms requested the Clinton Administration to waive the denial order on Denel to enable it to fit their products to the Rooivalk. The two firms requested the waiver in the light of US law making provision for waivers of a denial order in certain cases, i.e. if a company could demonstrate that a particular transaction would be in the interest of US foreign policy or national security, the Department of State could issue an exception.<sup>46</sup>

In a move that could possibly be regarded as a stoking of the above suspicions, the Clinton Administration formally informed the South African Government that it was not willing to accept a political settlement over the Armscor court issue, followed by a request for the seven individuals to testify in the US. Apparently, the seven individuals had agreed to assist the federal prosecutors in Philadelphia on all ISC-related issues in exchange for all the indictments against them being reversed. However, when the

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44. P. Stober & E. Koch, US batters Armscor in bombs-for-oil court case, *The Weekly Mail & Guardian*, 12 – 18 August 1994, p. 3; E. Koch, SA arms-dealers offer R108-m to avoid US trial, *The Weekly Mail & Guardian*, 19-25 August 1994, p. 7; D. Lautenbach, US order keeps SA's arms at bay, *The Star*, 18 August 1994, p. 11; B. Keller, Apartheid's arms-maker finds respectability, *The New York Times*, 26 August 1994, p. A3.

45. North Atlantic Treaty Organization.

46. P. Fabricius, American arms companies to test US denial order, *The Star*, 29 August 1994, p. 12; S. Bothma, US could scuttle Armscor's deal, *Business Day*, 20 August 1994, p. 1; S.C. LeSueur & G. de Briganti, S. Africa's export quest is stunted by U.S. trade ban, *Defense News*, 12-18 September 1994, p. 1; P. Fabricius, US ban on Armscor threatens the sale of Rooivalk to Britain, *Weekend Argus*, 28 August 1994, p. 3.

prosecutors demanded all information the men had about the involvement of any other US companies, the seven refused and the deal fell through. On 19 September 1994, when the trial against ISC official Robert Ivy was due to start, it was postponed to February 1995. This was further bad news for Armscor, as this postponement would also mean a postponement of the case against it as well as the continuation of the denial order while the company was still under indictment. It was expected that in the case of Armscor and the other companies being convicted, the US Government would probably debar them from trade with US companies for three years, although it was hoped that this would be reduced to one year. However, even if the debarment lasted for only one year, the companies would have to reapply for trading privileges in the US, and that also constituted a yearlong process. Nonetheless, it was still hoped that according to US law that allowed exceptions to a denial order on a case-by-case basis, Armscor and the other companies would not have to wait long to do business in the US.<sup>47</sup>

In October 1994, President Mandela decided to intervene. During a state visit to the US, he discussed the thorny Rooivalk issue with Clinton. In fact, he complained that the embargo on Armscor was effectively frustrating the South African bid for the sale of the helicopters to Britain. He pointed out to Clinton that the Rooivalk was manufactured by Denel, who became independent from Armscor in 1992, and therefore should not be considered as being subject to the embargo against Armscor. According to Mandela, Clinton showed a great deal of sensitivity to the issue and undertook to do what he could to waive the denial order against Denel. In turn, Mandela agreed that the ISC case would perhaps first have to be solved. He promised to send Armscor representatives back to the US immediately after he got back in South Africa.<sup>48</sup>

Clinton's promise to do what he could to waive the denial order against Denel was given despite a huge embarrassment for South Africa due to an arms sales scandal involving

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47. F. Swart, Amerika nie bereid tot politieke skikking oor Krygkor-skandaal, *Die Volksblad*, 31 Augustus 1994, p. 2; F. Swart, Amerika wil nie skik oor Krygkor-smokkelskandaal, *Beeld*, 31 August 1994, p. 18; F. Swart, VSA sê hy sal nie skik in Krygkor kwessie, *Die Burger*, 1 September 1994, p. 13; D. Pallister & D. Beresford, Britain keen to bring S African arms trade in from the cold, *The Guardian*, 23 September 1994, p. 15; S.C. LeSueur & G. de Briganti, S. Africa's export quest is stunted by U.S. trade ban, *Defense News*, 12-18 September 1994, p. 1.

48. C. Whitfield & P. Fabricius, Mandela back home and loaded with loot, *Natal on Saturday*, 8 October 1994, p. 6; Anonymous, White House to help ease Rooivalk deal, *The Daily News*, 6 October 1994; Anonymous, US money will soon stream in – Mandela, *City Press*, 9 October 1994, p. 2; Anonymous, Mandela vra Bill Clinton om te kyk na Rooivalk, *Beeld*, 12 October 1994, p. 11; P. Fabricius, Taking up arms for Gore/Mbeki commission, *The Star*, 13 January 1995, p. 12.

Armcor, Lebanon and Yemen. While Mandela was in the US, an aging Danish freighter anchored off the South African coast at Port Elizabeth. On board were enough guns to equip a small army – 25,000 AK-47 and G-3 assault rifles and 14 million rounds of ammunition. The weapons were bought from Armcor by a Lebanese middleman named Eli Wazen, who provided an end-user certificate stating that the weapons were intended for the Lebanese Government. The ship sailed for Lebanon on 25 August 1994. Instead, it went to Hodeida, a Yemenese port at the Red Sea. War-torn Yemen was under an arms embargo at the time, therefore the export of arms to it was illegal. When the weapons were not unloaded in Yemen, it was suspected that it was intended for UNITA in Angola, who was also under an arms embargo. Armcor denied this, saying instead that it had been conned. The ship then sailed back to South Africa due to the outcry, without the real recipient known. Nonetheless, it did not do the case against Armcor any good – in fact, the US federal prosecutors were now even more determined to bring the company to book.<sup>49</sup>

#### 7.6.4.3 South Africa signs Missile Non-proliferation Agreement

Parallel with Mandela's visit and the embarrassing weapons deal discussed above, a more positive occurrence helped to indicate to skeptics in the US that Armcor was in fact trying to turn around its law-violating image. The occurrence was the signing on 3 October 1994 of a bilateral Missile Non-proliferation Agreement (MNPA) by representatives of the US and South Africa. The MNPA entailed a bilateral missile-related export/import agreement as well as an accompanying joint statement on steps South Africa would take to terminate its Category I missile program. The agreement committed South Africa to abide by the export guidelines of the MTCR, and included provisions for the country to temporarily import space-launch vehicles for satellite activities, when it was agreed that such activities would not contribute to missile proliferation. Furthermore, the associated joint statement detailed South Africa's steps for terminating its space-launch vehicle program. The signature of the two documents was regarded as an important step in the shared commitment of South Africa and the US to halt the spread of weapons of mass destruction and the means to deliver them.<sup>50</sup>

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49. B. Drogin, S. Africa firm under the gun to explain wayward weapons, *Los Angeles Times*, 8 October 1994, p. A2.

50. M. McCurry, U.S. and South Africa sign Missile Non-Proliferation Agreement: Statement by Department Spokesman in Washington, D.C. on 4 October 1994, *Department of State Dispatch* 5(42), 17 October 1995, p. 694.

#### 7.6.4.4 Continued Armscor bids to sort out the dispute

In mid-October 1994, Armscor lawyers arrived in the US in a renewed effort to solve the smuggling case against it. It was understood that the South African Government had pressurized the company to seek a quick settlement out of court. The South African Government believed that Clinton would be more inclined by a quick settlement to use his presidential authority to waive the denial order against Armscor and its affiliate and offshoot companies, which was hampering the Rooivalk sales contract to Britain. The team of lawyers was to be engaged in three sets of negotiations. The first set would be with the US Department of Justice and prosecutors in Philadelphia, and concerned criminal penalties and what further information Armscor would have to supply to settle the charges. It also concerned the fate of the seven individuals and the Armscor affiliates that were indicted individually. The second set of negotiations would be with the Department of State, who was enforcing the embargo on sales to and procurement from Armscor and Denel, as required by the Arms Export Control Act while Armscor remained under indictment. At issue during this negotiation would be the scope and duration of administrative penalties the Department was obliged to impose even after the charges had been dealt with, which included a \$500,000 fine for each count on which the defendant was guilty, plus the continued denial of export licenses for three years. These issues would be dealt with in a consent agreement between the Department of State and Armscor. It was deemed possible that the Clinton Administration would agree to absolve Denel or certain subsidiaries on the grounds that they were not involved in the original offences. This would enable these entities to procure from US firms for the purposes of the Rooivalk bid to Britain. The third set of negotiations would entail talks with the Department of Commerce, which administered a further tier of arms export regulations to coordinate its actions with those of the Department of State.<sup>51</sup>

If the case were settled once and for all by this newest bid, the ball would be squarely in Clinton's court to decide whether or not to waive the denial order. In fact, many in South Africa would watch his reaction closely as a test of future US-South African

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51. P. Fabricius, Bid to end arms row, *The Daily News*, 19 October 1994, p. 1; P. Fabricius, Armscor bid to sort out smuggling allegations, *The Argus*, 19 October 1994, p. 3; S. Barber, SA team in bid to resolve US dispute, *Business Day*, 19 October 1994, p. 1; P. Fabricius, It needs total Armscor glasnost, *The Argus*, 20 October 1994, p. 20.

relations. But Clinton was actually in a difficult spot. On the one hand, he seemed to have genuine respect and affection for Mandela, and would have liked to assist him. On the other hand, he faced the ubiquitous domestic constraints that dogged all US foreign policy decisions. Therefore, he might have deemed it politically imprudent to appear to be harming the chances of a US firm winning the helicopter bid if he waived the Armscor denial order. Also, in the light of US officials insisting that the weapons proliferation issue was more important than the commercial one, such a waiver might be regarded as interference with US judicial process, which was aimed at condoning Armscor's supply of US technology to hostile countries like Iraq. Armscor's supplies to Iraq was especially sensitive in the light of the latter's confrontation with the US during the Gulf War. Nonetheless, South African officials argued, the US had often during the preceding few years praised South Africa for forgiving the past. Surely the US should do the same. They asked why the sins of the old government should be visited on the new. US officials replied by asking whether Armscor's sins were really past, and expressed concerns about continued weapons proliferation by the company. They also pointed out that the US had granted several waivers of denial orders in the recent past, but only to friendly countries that they trusted not to sell weapons indiscriminately. In the light of the recent fiasco of Armscor arms sales to Lebanon, they doubted if they could trust Armscor.<sup>52</sup> Therefore, one can deduct that more was at stake than the removal of the denial order against Armscor and Denel as a result of the unanswered indictments – the issue was really whether South Africa could be trusted as responsible arms exporter, or still represented a proliferation risk.

By November 1994, Armscor seemed to toughen rather than soften its stance. The reason: a new lawyer, Brendan Sullivan, now represented the indicted South African companies and the seven individuals. In a letter dated 21 November 1994, Sullivan made yet another new offer to the US prosecutors led by Nicholas Harbist and Robert Goldman. Sullivan's offer was to plead guilty with Kentron, but not with Fuchs Electronics, on five civil as opposed to criminal counts; to allow the seven individuals to testify, but without furnishing documents; and to pay a \$5,5 million fine instead of the demanded \$22,5 million. A further condition was that Denel, now privatized and no longer under Armscor's auspices, and Barlow Rand, which owned Fuchs Electronics, would not be affected by the three-year denial order for access to US arms technology.

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52. P. Fabricius, It needs total Armscor glasnost, *The Argus*, 20 October 1994, p. 20.

Furthermore, Sullivan demanded indemnity against future prosecution for agreeing to testify against the US accused; refused to accept the standard compliance program what would allow US officials to monitor that Armscor did not break US export laws in the future; and offered only a six months denial order for doing business with the US, for Armscor. The US prosecutors refused the offer, and accused Sullivan of retreating from the earlier, softer offers of his predecessor. They also complained that the seven individuals were threatened with 'sanctions' by their employers if they cooperated.<sup>53</sup>

#### 7.6.4.5 Tightening the bonds around Armscor: The Cameron Commission and other incidents

Back in South Africa, Armscor also faced scrutiny. It seems as if the bonds around it were tied from everywhere now; the company was brought to book. The scrutiny in South Africa was undertaken by the Cameron Commission, which was tasked with an investigation into South African arms deals since February 1990, i.e. since Nelson Mandela was released. It was the first judicial commission of enquiry in accordance with the new South African Constitution. The activities of the Commission would for the first time focus on accountability, transparency and respect for the international law as stipulated in the Constitution. It was chaired by Acting Judge Edwin Cameron. The commission gathered for the first time on 7 November 1994, and from the onset ruled that it would sit in public, despite strong protests by Armscor, the SANDF and the Department of Foreign Affairs that it should meet behind closed doors. Cameron took a strong stance from the onset, saying the Commission did not regard it its duty to protect arms transactions that assisted the cause of apartheid, nor to protect foreign parties that had violated the mandatory United Nations arms embargo against South Africa. Furthermore, it was not the Commission's responsibility to protect foreign parties that had used or were still using South African weapons for attack or suppressive purposes.<sup>54</sup>

Shortly after the Cameron Commission embarked on its investigation, new media reports claimed that dangerous chemicals, military components, electronics and materials for the ballistic missile program had been smuggled to South Africa by

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53. S. Barber, Arms case sours relations with US, *Sunday Times*, 25 December 1994, p. 4; P. Fabricius, A familiar fly in the ointment, *The Argus*, 12 January 1995, p. 18; P. Fabricius, Taking up arms for Gore/Mbeki commission, *The Star*, 13 January 1995, p. 12.

54. J. de Lange, Oortreders van die verbod nie beskerm, *Beeld*, 8 November 1994, p. 2.



individuals on board passenger flights, in violation of the United Nations arms embargo and air safety regulations. Answering the rumors, Armscor conceded that it was possible that Armscor individuals had exceeded their briefs and smuggled chemicals to South Africa in this manner. However, Armscor emphasized, the company could not take responsibility for such unauthorized actions. It also said that the information on the issue was very limited and Armscor was hoping to obtain further details, including the identities of the persons involved and the type of chemicals transported. Armscor's statement was concluded by saying that it was Armscor's official policy to adhere to international regulations.<sup>55</sup> This opinion was not shared by many, as can be clearly deduced from the judicial cases involving the company both in the US and South Africa.

On 22 November 1994, the ghost of the ISC case yet again haunted Armscor in a presentation before the Cameron Commission by Terry Crawford Brown, an envoy of Archbishop Desmond Tutu. According to Brown, the US forces in Iraq was bombarded with some of its own best weapons technology in the Gulf War, as a result of ISC selling the technology, in cooperation with Armscor, to Iraq and China. Brown further alleged that South Africa had also sold weapons, of which many could have contained US technology, to Rwanda, Liberia, Somalia, Sudan and Iran, all countries that were known for gross suppression and violations of human rights. Brown's presentation was heard as part of an application by the Department of Foreign Affairs and the SANDF that a highly secret document, Log 17, which regulated South Africa's international arms trade, be heard in closed sessions. Foreign Affairs and the SANDF tried to convince the Commission that the public revelation of Log 17 would severely harm South Africa's relations with some countries. But other entities, like the Institute for Freedom of Speech, asserted that the hearing of Log 17 behind closed doors would deny the public of the right to know what Armscor did in the past. The Cameron Commission later in a milestone decision refused the application not to make the documents pertaining to Log 17 public. It ruled that the public's right to know superceded any embarrassment the publication might cause.<sup>56</sup>

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55. C. Steyn, Armscor: Individuals may have smuggled, *The Citizen*, 21 November 1994, p. 5.

56. J. de Lange, Tutu-gesant kap Krygkor oor wapens - VSA wapentuig glo aan vyande verkoop, *Beeld*, 23 November 1994, p. 2; G. Davis, Armscor: The Alice in Wonderland memo, *Weekly Mail & Guardian*, 2 December 1994, p. 1.

Armcor was now in deep water – both in the US and South Africa. In South Africa, it was charged with vetting marketing and export applications for arms from the South African arms industry, and export applications for the sale of the old SADF's stock, in terms of the Armaments Development and Production Act. The Act's statutory responsibilities included safeguarding national security and ensuring that South Africa did not compromise international non-proliferation treaties and contributed to world peace. To make matters worse, in late December 1995 more details emerged about the smuggling aboard passenger aircraft. According to a former senior member of Armcor's procurement team, who spoke to the *Weekend Star*, Armcor officials had scurried around the world using aliases, front companies and lies to evade detection. They scoured back-door procurement processes to buy bits and pieces for the weapons production line and transported it to South Africa by air. For example, briefcases with a variety of compartments were used to carry small, dangerous goods as hand luggage when it was needed urgently and there was no time to arrange cargo clearance from South African Airways (SAA). The items would be wrapped with aluminum foil to make it undetectable by airport security cameras, or by dismantling them, or by putting other pieces of metal in with them as decoys. Once in South Africa, reverse engineering was used to copy the items. When top-secret goods such as weapons prototypes were imported as cargo via SAA, Armcor would send its own clearing agents to Jan Smuts Airport in Johannesburg. They would pick up the goods without going through customs clearance, otherwise there could have been a security leak. An example was the buying of pyrotechnics in Britain with a false end-user certificate supplied by the Egyptian Air Force. Payment was also made from Egypt. The pyrotechnics were transported via air to Egypt, and from there by air to Zambia, where it was again paid for. From Zambia, the pyrotechnics finally made their way to South Africa, also by air. Many high-tech US components for use in Armcor's missile program were also obtained this way, in violation of the arms embargo.<sup>57</sup>

In early January 1995 testimonies before the Cameron Commission, it was revealed that Armcor had sold about 40,000 Lee Enfield rifles to a US buyer in June 1992. This was a direct violation of the CAAA of 1986, which prohibited the import of any weapons-related items from South Africa. It was also in violation of the United Nations arms

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57. G. Davis, Armcor: The Alice in Wonderland memo, *Weekly Mail & Guardian*, 2 December 1994, p. 1; Anonymous, 'Parts for Armcor in hand luggage', *Weekend Star*, 31 December 1994, p. 5.

embargo against South Africa. The rifles were sold to Danish-US citizen Michael Steenberg, who planned to sell them as collector's items in the US.<sup>58</sup>

#### 7.6.4.6 The souring of US-South African relations

By January 1995, a dark shadow hung over US-South African relations as a result of all the revelations regarding Armscor and the inability of the South African Government under Mandela to resolve the arms smuggling case against the company. The dispute also threatened Mandela's credibility, as he had promised Clinton during his visit to the US a few months before that he would see the matter settled. However, instead of getting Armscor to cooperate, the latter took on an even more hardened position, which angered Clinton Administration officials and federal prosecutors. Furthermore, South African Deputy President Thabo Mbeki and Defense Minister Joe Modise, who in the meantime had emerged as the two key political actors in the affair, were letting Armscor have its own way despite a strongly worded *demarche* delivered by the US Embassy. This led to concern in the US that hardliners from both the old and new orders in South Africa had found common ground and were happy to see a wedge between the two countries. The old order seemed to be still bitter over the US arms embargo and economic sanctions, while the new order was still ideologically hostile to the US.<sup>59</sup>

As a result of the new tension, US Secretary of State for Politico-Military Affairs, Lynn Davis, put off sending a delegation to South Africa to formalize a variety of arms proliferation agreements. She saw little point in signing proliferation pacts with South Africa while its government appeared to be protecting its parastatal weapons manufacturing firm, Armscor, who had slapped the US in the face by supplying munitions with US technology to Iraq. Furthermore, the negotiations between Armscor and the federal prosecutors grinded to a halt. The latter warned Armscor that the time for striking a deal was fast running out, in the light of Ivy's trial being only six weeks away. If Armscor wanted to provide evidence in the proceedings, it had to cooperate immediately. If it failed to cooperate, the settlement price would rise, whether or not Ivy was found guilty. Lastly, the prosecutors noted that if the South African Government

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58. Anonymous, Armscor 'sold rifles to buyer in US', *The Citizen*, 18 January 1995, p. 5.

59. S. Barber, Arms case sours relations with US, *Sunday Times*, 25 December 1994, p. 4.

were to conduct a thorough housecleaning of Armscor, it could be regarded as a precedent to leniency.<sup>60</sup>

Confusion and resentment seemed also to reign within the South African Government. A senior official in the government said that the South African Government had expected the US prosecutors to be more conciliatory after Mandela and Clinton's intervention. Therefore, the government was shocked to find these prosecutors as tough as ever. Some in the South African Government accused the US of deliberately taking a hard line to shut South Africa out of the lucrative arms industry – a view that had been expressed often while the case continued. These government members said that they could not understand how the US could provide the new South African Government with foreign aid, and then take back some of it in the form of heavy fines against Armscor for something the pre-1994 government did. Still others in Government urged Armscor to settle on the US' terms, whatever the merits of the case, because of the hard reality that it would be impossible for Armscor to participate in the international arms market without US cooperation. Lastly, many within and out of Government felt that the case was surely also a political case, as the offences were committed by a government trying to circumvent the arms embargo. Therefore, there was a serious need for dialogue at a high level.<sup>61</sup>

In an effort to somewhat ease the tension in political-military relations between South Africa and the US, the Clinton Administration announced in late January 1995 that a high-ranking US official, Frances Cook, would visit South Africa in February 1995. Cook was Deputy Assistant Secretary of State for Regional Security Affairs. The visit was aimed at laying the foundations for cordial political-military relations with the new South African Government. Cook would meet with South African officials to discuss military-related issues like regional stability and peacekeeping, non-proliferation of arms, and arms export policy.<sup>62</sup> Since this type of visit had been prohibited under the arms embargo for many years, Cook's intended visit could be viewed as a significant step in the direction of normalizing relations between the US and South Africa.

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60. S. Barber, Arms case sours relations with US, *Sunday Times*, 25 December 1994, p. 4; P. Fabricius, A familiar fly in the ointment, *The Argus*, 12 January 1995, p. 18.

61. P. Fabricius, A familiar fly in the ointment, *The Argus*, 12 January 1995, p. 18; P. Fabricius, Taking up arms for Gore/Mbeki commission, *The Star*, 13 January 1995, p. 12.

62. P. Fabricius, SA and US review military relations, *The Star*, 25 January 1995, p. 13.

The significance of Cook's proposed visit however quickly faded. The visit never occurred. In the meantime, on 27 January 1995, the British Army non-officially informed Armscor that the tender for the supply of Rooivalk attack helicopters had failed. That brought an end to an effort to secure a highly profitable contract of more than R10 milliard and the creation of thousands of jobs. According to the British Army, the Rooivalk did not meet its requirements on technical grounds. One of the problems was that Armscor and Denel were not able to equip the Rooivalk with US weapons systems, due to the denial embargo against them. Also, the Rooivalk did not meet the necessary technical requirements, which could be ascribed partially to aged technical information about the helicopter that were submitted to the British authorities. The unsuccessful attempt was expected to lead to serious repercussions in the South African arms and related industries, as well as new stirrings in the South African Government on how to further handle the Armscor smuggling case in the US.<sup>63</sup>

#### **7.6.4.7 Mbeki intervenes, but still no deal**

Shortly after the news of losing the Rooivalk contracts, media reports in South Africa indicated that South African manufacturers of military vehicles and armaments could earn millions of Rands from US contracts, if the Armscor dispute obstacle between the two countries could be resolved. In mid-February 1995, South African newspaper *Beeld's* reporter in the US, Arrie Rossouw, reported that persons within the US defense circles looked with new eyes at the various aspects of South Africa's military potential. As the extent and sophistication of the South African arms industry was increasingly revealed, military experts of the US and other countries became more interested and wanted to know more. In fact, formal conversations were already underway between Denel and the US Department of Defense over a whole range of South African mine-resistant vehicles and the country's extremely advanced mine detection and destroying technology. Officials in the US Department of Defense acceded that the US ground forces were not properly equipped for the international peace operations in which the country increasingly became involved. Peace operations in Somalia, Rwanda and Haiti demonstrated that US soldiers were exposed to landmines, anti-personnel mines, small gunfire and sniper fire and had no personnel carriers to protect them against such situations. When the South African technology in this regard was studied, the US

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63. A. Rossouw & I. Capraro, Krygkor verloor R10 miljard-tender met die Rooivalk, *Beeld*, 27 January 1995, p. 1.

acceded that South Africa was leading the rest of the world with at least four development generations. South African developments like the Casspir, Mamba, Buffel and Samil personnel carriers were therefore being seriously considered by the US Department of Defense. Furthermore, South African manufacturers of mine detection and destroying equipment, in particular Mechem Consultants, a division of Denel, were found to be the world leaders in this area.<sup>64</sup>

The interest in South African arms and related equipment was reportedly the result of a demonstration of South Africa's ability to detect and destroy landmines and to protect its soldiers against landmine explosions and gunfire. The demonstration was done by a South African de-mining consultant, Johan van Zyl, at a conference of the US National Research Council on humanitarian landmine detection and destroying. Van Zyl's demonstration left engineers of the US, Britain, Canada, Norway and Sweden speechless, also on the amount of research that the South African scientists and engineers had undertaken over the years.<sup>65</sup> But even though the South African participation in the conference was regarded as yet another breakthrough regarding previously unallowed activities under the arms embargo, it was dampened by the fact that both Armscor and Denel were still embargoed by the US as a result of the unresolved smuggling case. Thus, even if the US Department of Defense found that it needed the South African systems to better equip its soldiers, the existing embargo would have made it impossible as long as the smuggling case remained unresolved.

In late February 1995, South African Vice-President Thabo Mbeki left on a six-day long official visit to the US to discuss various matters of importance for South Africa on the short and long term. Among these matters was the still unresolved Armscor case, which Mbeki discussed with the US National Security Advisor, Anthony Lake, on 1 March 1995. Although the governments of both countries felt that the matter had to be left in the hands of the court, the South African Government was also of the opinion that the matter had a political dimension that should not be ignored. The Clinton Administration in turn felt that the matter was clearly a pure judicial one, and therefore it could not allow a situation where the US Government was accused of hastening the matter or resolving it beforehand on a political level. In the light of these disagreements, Mbeki

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64. A. Rossouw, Amerika is 'honger' vir Suid-Afrika se wapenkundigheid, *Beeld*, 14 February 1995, p. 11.

65. A. Rossouw, Amerika is 'honger' vir Suid-Afrika se wapenkundigheid, *Beeld*, 14 February 1995, p. 11.

explained the South African Government's opinion to Lake. According to Mbeki, in accordance with South African law, the seven individuals who had to testify in the case also faced local prosecution if they revealed official secrets of the South African arms production and trade. This meant that indemnity had to be granted to them for a situation that clearly involved the South African Government, which then made the matter also a political one. Furthermore, according to US law, if the seven individuals and Armscor, Kentron and Fuchs Electronics were found guilty, an auditing and monitoring process would kick in to ensure that the involved parties ascribed to certain US requirements, before the trade embargo could be lifted. The law further prescribed that a US government official do the auditing. According to Mbeki, this requirement would mean interference in South Africa's sovereignty – therefore a matter that should be discussed on government level. Thus, the whole matter was not exclusively a judicial one, but also a political one. In Mbeki's view, the prosecutors and advocates for the defense could negotiate over the judicial aspects of the matter, but it clearly also had repercussions for the two governments, which had to be resolved on government level.<sup>66</sup>

On the same day as the meeting between Lake and Mbeki, the US also had some praise to offer, despite the tension caused by the Armscor dispute. At a news conference, Al Gore, the US Vice President, stated that the Clinton Administration appreciated the seriousness with which the South African Government approached the issue of the embargo and control of chemical and biological weapons, as well its dedication to adhere to the international agreement in this regard. Gore made the statement after a question by Mbeki concerning reports that the US was concerned about the expertise of South Africa in the development of chemical and biological weapons, and that this expertise could fall into the hands of a government like that of Libya. Mbeki reiterated that the two governments had been in talks for quite a while already on the embargo and control of chemical and biological weapons. He also reiterated that South Africa was a signatory of the international agreement concerning the embargo on the development and distribution of such weapons, and that it did not intend to violate the agreement in any way.<sup>67</sup>

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66. A. Rossouw, Mbeki besoek Amerika: baie op spel vir SA, *Beeld*, 25 February 1995, p. 4; A. Rossouw, Mbeki gryp in by VSA wapensaak oor 'politieke kleur', *Die Burger*, 1 March 1995, p. 15; A. Rossouw, Krygkor-twis: dit is politiek, sê SA, *Beeld*, 1 March 1995, p. 11.

67. A. Rossouw, Amerika loof wapenverbod in SA, *Beeld*, 2 March 1995, p. 4.

Mbeki and Lake both agreed that the Armscor case had to be solved as soon as possible in order for relations between the two countries to normalize. After a day of highly delicate initiatives, according to Mbeki, the case was left for the time being in the hands of the federal prosecutors and Armscor's attorneys. It was agreed that the court case would continue. Only after there was clarity on which South Africans had to testify and what the fines for a guilty plea would be, would there be further discussions on possible political implications, including the indemnity from prosecution of the witnesses and the payment of fines, which Armscor could possibly claim it was not able to pay. In such a case, it might become a matter of negotiation between the two governments. The agreement meant that the plea negotiations that had reached a dead end in December 1994, would be taken up again. Phil Hare, the South African Embassy's attorney, now also became part of the negotiations in an effort to reach an agreement on the handling of the court case. He had previously represented Armscor and the others in the case, but was later replaced by Sullivan. Although Mbeki did not directly say it, the agreement with Lake implied that the South African Government would now have to compel Armscor to accept the normal course of the court case.<sup>68</sup>

On 24 March 1995, media reports claimed that a deal to resolve the Armscor case was at hand. The South African attorneys prepared a comprehensive offer that encompassed an admittance of guilt, the fines for the criminal offences, amnesty for the seven individuals, steps against other individuals and companies that might sprout from the court case, the appointment of an independent auditor to monitor Armscor's export activities for a set period, administrative fines, and a so-called adherence program. It was expected that Armscor, Kentron and Fuchs Electronics would offer a guilty plea on several counts and that Armscor would pay a fine of just more than \$7 million.<sup>69</sup> Yet, a deal still evaded the negotiators. In June 1995, media reports asserted that the plea-bargaining deal now stipulated that Armscor was prepared to pay more than \$12 million to the US. According to the South African Department of Foreign Affairs, the fine consisted of \$10 million in admission of guilt penalties and \$2,5 million for administrative penalties for breaking US export regulations. But, in exchange, the

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68. A. Rossouw, SA, VSA wil Krygkor saak gou afhandel, *Die Burger*, 3 March 1995, p. 7; A. Rossouw, Krygkorhofspraak in VSA gaan voort, *Beeld*, 4 March 1995, p. 6; A. Rossouw, SA, VSA wil geding oor wapens agter die rug kry, *Die Burger*, 4 March 1995, p. 7; A. Rossouw, Mbeki help geskil oor wapensaak opklaar, *Die Burger*, 4 March 1995, p. 7.

69. A. Rossouw, Skikking tussen Krygkor, VSA oor die oortreding van die wapenwet, *Die Burger*, 24 March 1995, p. 7; A. Rossouw, Krygkor gaan boete van R25 milj. in VSA betaal, *Beeld*, 24 March 1995, p. 1.



charges against Kentron, Fuchs Electronics and the seven individuals had to be dropped.<sup>70</sup>

By late June 1995, it seemed as if the case would never be resolved. The negotiative juggling just went on and on, despite continuous assurances from officials from both countries that they wanted to see a fast resolution to the case. When in late June 1995 the Clinton Administration was accused of dragging its feet in the resolution of the case and using the denial order against Armscor and its affiliates to protect the US arms industry against South African competition, it was simply denied. According to a spokesman for the US Department of State, the country had committed itself to free and fair arms trade and was not busy with any protective measures that were directed at the South African arms industry. He added that the Armscor case was not a trading matter, but a matter of application of US law.<sup>71</sup>

To make matters worse for Armscor, the Cameron Commission report was released in late July 1995. The strongly worded report accused the former apartheid government and armaments manufacturer Armscor of systematic disregard for the final destination of the arms that it had sold. The report brought to light Armscor's use of front companies and foreign intermediates to evade the United Nations arms embargo against South Africa, as well as sales to controversial countries. The report revealed a litany of falsified end-user certificates to hide the ultimate destination of weapons, whether imported into South Africa or exported to other countries.<sup>72</sup> Naturally, in the light of the report, the US Department of Justice was even more reluctant to strike a deal with Armscor, and the case continued.

#### 7.6.4.8 US military market opens up for South Africa

Almost as a proof of the above statement concerning being committed to free and fair arms trade, the US market opened for South African manufacturers of military-related

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70. A. Rossouw, SA, VSA naby skikking oor Krygkor verhoor, *Die Burger*, 7 June 1995, p. 11; M. Bosch, S. Africa arms agency in U.S. plea bargain bid, *Reuters*, 14 June 1995, p. unknown (Online document); Anonymous, SA, Amerika skik oor onwettige wapens, *Beeld*, 14 June 1995, p. 4.

71. Anonymous, Krygkorsaak: VSA 'steun vrye handel', *Beeld*, 17 June 1995, p. 2.

72. Anonymous, S. Africa illegally sold arms, reports says Government evaded U.N. embargoes, sent weapons to Yemen, *Minneapolis Star Tribune*, 22 July 1995, p. 2A; L. Duke, Arms deals by S. Africa detailed, *The Washington Post*, 26 July 1995, p. A20; J. Matloff, S. Africa armasmakers still stiff-armed by US even after apartheid, *The Christian Science Monitor*, 5 January 1996, p. 6.

products in September 1995, although only for a non-Armscor affiliated company. RDS, an affiliate of a company called Dorbyl, had signed an agreement with the US Department of Defense to test one of RSD's landmine detection systems with the aim of buying an unspecified amount of units for peace operations worldwide. RSD was one of several foreign firms who tendered for the US contract in this regard. Further good news was that another South African firm that manufactured mine detection systems, the Denel affiliate Mechem Consultants, was invited to exhibit its products in November 1995 in the US. These privileges had been denied to South Africa for many years as a result of the arms embargo against the country, and therefore excitement rode the high tide in South Africa, even in the shadow of the unresolved Armscor case. Nonetheless, the developments were expected to finally break the ice between the two countries with regard to cooperation in the development and trade in military equipment, despite the existing denial order against Armscor and its affiliates. What made the invitation to Mechem significant, was that the Clinton Administration, in the light of decisive foreign policy and national security considerations, had given permission that the denial order against Mechem, as part of Denel, could be temporarily lifted. A possible motivation for this temporary lifting was perhaps the fact that Mechem had recently clinched a United Nations contract of R21,6 million to de-mine 7000 kilometers of Angolan roads, thereby kicking dust in the eyes of US, Canadian, British and French competitors.<sup>73</sup> At last, it seemed as if there might be light in the dark tunnel of the Armscor court case saga.

#### **7.6.4.9 Protests against the Clinton Administration's stubbornness to resolve the case**

By October 1995, the ongoing Armscor case had pushed the South African Ambassador in the US, Franklin Sonn, to the point of irrationality. Irritated by the whole matter, he stated in public that the US' determination to punish Armscor for willful and massive violations of US law, had placed Mandela in the dock. Ironically, when the ANC Government came to power in April 1994, Armscor feared that now that the ANC was at the sharp end of its product, it would make Armscor 'walk the plank'. Eighteen months later, many members of the ANC Government, Sonn included, felt that Armscor and Mandela were one and the same. Furthermore, Sonn started to issue thinly veiled warnings to the US State Department that unless Armscor's indictment was settled to

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73. A. Rossouw, Militêre mark gaan oop vir SA, *Beeld*, 27 September 1995, p. 4.

the South African Government's satisfaction, he might take his case to blacks in the US. He threatened the Department of State that he might join a 'million man march' planned in Washington, D.C. by a highly controversial figure, Louis Farrakhan, the leader of the organization called 'Nation of Islam', later in October, and bring to Farrakhan's attention the way the Clinton Administration was 'persecuting' Mandela. Sonn subsequently denied that he had threatened to take the case to black America. Other threats included the calling of a meeting of African ambassadors to alert them to an imminent crisis in US-South African relations over the Armscor affair.<sup>74</sup>

Not everyone agreed with Sonn's approach to the dispute. Many in the South African political establishment felt that his approach was plain silly and naïve, because Armscor was charged with committing very serious crimes on US soil. This made the case a judicial one, thus, its fate had to be in the hands of the US judiciary. Furthermore, the US Government's executive branch was prohibited from interfering with the judicial branch under the US Constitution. Therefore, if Clinton or any of his executive branch members asked the US Attorney General to drop the charges, it would be improper and would cause a scandal. Furthermore, it was unlikely that the Attorney General would entertain such a request, as, in constitutional terms, it would require him/her to overrule the will of the American people as expressed through the grand jury that handed down the indictments. Lastly, Sonn's approach disregarded the major progress that had been made in a very short time regarding normalization of US-South African politico-military ties, which had been non-existent for many years due to the arms embargo. In addition to the cases already discussed, the Clinton Administration owed South Africa a lot for achieving what it wanted in April 1995 at the Nuclear Non-proliferation Treaty review conference - one of the most important international events since Nelson Mandela became the South African President in 1994. The South African signature of the Treaty offered the US a bridge to the non-aligned countries, and, by outlining a plan for indefinite renewal of the Treaty, helped the US to attain that goal. South Africa had emerged as a world leader among non-aligned nations in promoting nuclear non-proliferation and disarmament. Moreover, one only had to look at the red carpet that the US Department of Defense rolled out for the first civilian director-general of South Africa's defense ministry, Pierre Steyn, when he visited the US in September 1995. This

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74. S. Barber, Ambassador Sonn is playing the wrong hand over Armscor, *Business Day*, 10 October 1995, p. 14; A. Rossouw, SA se verwarrende seine beduiwel gesprek met Amerika, *Beeld*, 12 March 1996, p. 9; A. Rossouw, Agterdog tussen VSA, SA bemoeilik Krygkor skikking, *Die Burger*, 13 March 1996, p. 15.

signified the importance that the US placed on its politico-military relationship with South Africa. Lastly, the Clinton Administration actively promoted the kind of reforms South Africa had undertaken in a very short space, and viewed the country as fast becoming a model to the rest of the world.<sup>75</sup>

The Clinton Administration regarded Sonn's threat to discuss the case with Farrakhan as an implicit threat that South Africa would take the case to the Afro-American community to place pressure on the Administration to revoke the indictments against Armscor. To make matters worse, a week after Sonn's remarks, Mandela and Clinton met in New York, where Mandela again asked Clinton to get personally involved to revoke the charges against Armscor. Thereafter, three months followed in which no progress was made, except for the US negotiators saying that they were flexible about a deal. On the basis of this, a meeting of senior representatives of both governments was set for the week of 12 February 1996. But, two weeks before that meeting, Mandela decided to have a meeting with Farrakhan – perhaps an ill-calculated decision at the time, although it could also have been a warning to the Clinton Administration that the Armscor dispute could become a domestic political problem. To complicate the whole issue of the Armscor dispute even more, Mandela announced two days before the meeting that he intended to invite President Fidel Castro of Cuba and President Moeammar Ghaddafi of Libya to South Africa. Both these leaders were the figurative red cloth before the American bull. The Clinton Administration still feared that if the South African Government did not properly manage Armscor, it could sell its arms technology to such governments, which had no regard for human rights. This tested the US flexibility to a deal to its limits, not even to speak about the visit of Tokyo Sexwale, the Premier of the South African Gauteng Province, in the week before the meeting. Sexwale accused the US of arrogance because it had criticized his visit to Cuba.<sup>76</sup>

In addition to the South African challenge, the Clinton Administration also drew more and more domestic disapproval with its handling of the Armscor dispute. In January 1996, former Defense Secretary in the Reagan Administration, Casper Weinberger,

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75. S. Barber, Ambassador Sonn is playing the wrong hand over Armscor, *Business Day*, 10 October 1995, p. 14; B. Crossette, South Africa emerges as a force for extending nuclear arms pact, *The New York Times*, 23 April 1995, p. A1; T. Robinson & J. Boutwell, South Africa's arms industry: A new era of democratic accountability? *Armed Forces and Society* 22(4), Summer 1996, pp. 599-619.

76. A. Rossouw, SA se verwarrende seine beduiwel gesprek met Amerika, *Beeld*, 12 March 1996, p. 9; A. Rossouw, Agterdog tussen VSA, SA bemoeilik Krygkor skikking, *Die Burger*, 13 March 1996, p. 15.

slammed the Clinton Administration for what he termed the prosecution of the new South African Government through charges of arms smuggling by Armscor while the apartheid government was still in power. Weinberger viewed it as one of the most indefensible examples of the Clinton Administration's policy of opposing and ignoring the wishes of the US' friends, i.e. Great Britain, Japan, Poland, Hungary, the Czech Republic, etc. and appeasing the country's enemies, i.e. North Korea. According to Weinberger, the Clinton Administration was always eager to proclaim its support for and friendship with the new South African Government, but few people realized that the Departments of State and Justice were pursuing and prosecuting South Africa in ways that the Clinton Administration would not tolerate if the country involved were North Korea or Russia. The problem with the Armscor case, according to Weinberger, was that the South African Government had changed rather dramatically after 1989. This basic fact, however, appeared to have been overlooked by the US Departments of State and Justice. South Africa was now a free country – free elections had been held and Nelson Mandela had been elected State President. Therefore, the old policies that the US' laws were designed to oppose, i.e. the arms embargo control regulations and CAAA of 1986, had been revoked. As a result, the US' persecution of the new South Africa should have ended, but it had not. Furthermore, the new South African Government, even though it had not been guilty of the offences, offered a very reasonable settlement – it would allow one of its old contractors to plead guilty and would cooperate in continuing actions against two individuals. However, quite correctly, the South African Government refused to permit a Department of State official to roam around its weapons agencies, or to plead guilty to things it never did, or to pay fines that it could not afford – all for offenses of a previous government.<sup>77</sup>

Weinberger ended his critique by saying that the demands of the Clinton Administration were based on the old legal doctrine of successor liability. Therefore, he said, it was an absurd, unnecessary and dreadful example of abuse of prosecutorial power. Furthermore, US Attorneys and the Department of Justice always had discretion to determine whether to prosecute or to discontinue an ill-advised case. In this regard, the Department of Justice's guidelines required it to ask whether a substantial federal

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77. C.W. Weinberger, South Africa: The sins of the father are visited on the son, *Forbes* 157(2), 22 January 1996, p. 33; P. Fabricius, Clinton slammed over Armscor prosecution, *The Argus*, 17 January 1996, p. 2; P. Fabricius, Weinberger advises dropping arms case, *The Daily News*, 18 January 1996, p. 13; P. Fabricius, Don't punish new govt for apartheid's sins, says Weinberger, *The Star*, 19 January 1996, p. 6; T.W. Lippman & L. Duke, U.S. refusal to drop case against S. African firm causes friction, *The Washington Post*, 21 February 1996, p. A22.

interest would be served by prosecution. In the light thereof, Weinberger asked what substantial federal interest was served in harming the new South African Government? He pleaded for common sense to prevail, and the Attorney General to drop the case. Lastly, Weinberger said that it was more than time that South Africa's true friends demanded that the Clinton Administration stop its harassment of South Africa.<sup>78</sup>

By February 1996, bitter words about the Armscor dispute were again being flung around. Officials of the South African Government stubbornly held on to their belief that they should not be penalized for the misdeeds of the previous government. Furthermore, they added that a state-run company should not be legally subject to criminal prosecution overseas. As basis for this, they cited a precedent in 1991, when the Bush Administration decided against confiscating certain Iraqi central bank assets on the grounds that it constituted a challenge to a sovereign nation. Thus, the South African Government argued, the case against state-owned Armscor was a challenge to South Africa's sovereignty. But the United State remained stiff-necked, saying that a criminal case against a corporation, regardless of who owned it, did not make it immune to prosecution. Armscor was still under indictment and still a fugitive from US justice, regardless of South African political sensibilities.<sup>79</sup> In the words of a Clinton Administration official: *"Sure they're upset. They broke the law and they don't want to pay the penalty. Just because the government changed, that doesn't mean this changed"*.<sup>80</sup>

The heroic stance of the Clinton Administration on justice can be regarded as rather childish. The post-April 1994 South African Government had for many years fought the policies and acts of the pre-April 1994 Apartheid Government, which had violated the US arms embargo. Now the post-1994 South African Government had to take the blame for transgressions it had not committed. It can therefore be asserted in all

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78. C.W. Weinberger, South Africa: The sins of the father are visited on the son, *Forbes* 157(2), 22 January 1996, p. 33; P. Fabricius, Clinton slammed over Armscor prosecution, *The Argus*, 17 January 1996, p. 2; P. Fabricius, Weinberger advises dropping arms case, *The Daily News*, 18 January 1996, p. 13; P. Fabricius, Don't punish new govt for apartheid's sins, *The Star*, 19 January 1996, p. 6; T.W. Lippman & L. Duke, U.S. refusal to drop case against S. African firm causes friction, *The Washington Post*, 21 February 1996, p. A22.

79. J. Matloff, S. Africa armsmakers still stiff-armed by US even after apartheid, *The Christian Science Monitor*, 5 January 1996, p. 6; T.W. Lippman & L. Duke, U.S. refusal to drop case against S. African firm causes friction, *The Washington Post*, 21 February 1996, p. A22; M. Braid, Apartheid arms deals haunt new regime, *Independent*, 15 July 1996, p. unknown (Online document).

80. As quoted in T.W. Lippman & L. Duke, U.S. refusal to drop case against S. African firm causes friction, *The Washington Post*, 21 February 1996, p. A22.

honesty that the Clinton Administration was not seeing the forest of a changed South Africa as a result of being blinded by the single tree of justice.

In the meantime, discussions between Vice-Presidents Mbeki and Gore continued. A proposal that was now being discussed was for Clinton to override the denial order against Armscor and its subsidiaries in return for South Africa allowing US officials to inspect any defense-related factory or documents to ensure that South Africa did not continue to export arms to hostile third countries. But just to make their stance clear again, the South African Embassy in the US in February 1996 issued a statement. The statement read that the US Department of Justice insisted that Armscor and one of its subsidiaries, which were agencies of the current South African Government and therefore partook of its sovereignty, submit to the criminal jurisdiction of the US courts, enter pleas of guilty to the charges against it and pay fines amounting to several millions of dollars. The statement reiterated that South Africa would not waive its sovereignty by permitting these two corporations to plead guilty. In addition, the South African Government refused to assign huge sums of money from its national revenues for the payment of fines in the US, as it would be tantamount to offering atonement for the transgressions of a previous government.<sup>81</sup>

#### **7.6.4.10 Agreement, at last**

In mid-February 1996, high-ranking officials of both the US and South African Governments met in Washington, D.C. in a final effort to resolve the Armscor dispute. The Clinton Administration made some undisclosed proposals to the South African delegates, which both parties agreed would not be made public until the South African Government had a chance to consider it. Franklin Sonn, the South African Ambassador in the US, only said after the meeting that South Africa would under no circumstances allow its sovereignty to be jeopardized by the Armscor court case or agreements with the US. He said it was not negotiable; therefore, if the US kept on demanding that the South African Government admit guilt on transgressions of the previous South African Government, there could be no agreement. In such a case, the South African Government would authorize its legal representatives in the US to apply in court in Philadelphia that the charges against Armscor and Kentron be thrown out on the basis

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81. T.W. Lippman & L. Duke, U.S. refusal to drop case against S. African firm causes friction, *The Washington Post*, 21 February 1996, p. A22.

that the court had no jurisdiction over a sovereign entity, and in this case, over the South African Government as the single shareholder of Armscor and Kentron. According to Sonn, there was no precedent for the case. However, the US regarded the South African proposals as an unallowable diversion from US judicial practice.<sup>82</sup>

In early March 1996, officials from both the US and South Africa involved in the negotiations for a settlement had to head off a crisis after Sonn made yet another controversial remark. He said that the countries faced a reduction in diplomatic relations because of the Armscor case. South Africa might suspend high-level visits with the US and withdraw from the US-South Africa Binational Commission if a resolution was not agreed upon soon. After the statement, the South African Department of Foreign Affairs quickly issued a statement that said that Sonn had sought to convey the seriousness of the dispute, but did not intend to link the resolution thereof to the activities of the Binational Commission and other high-level exchanges. The US Embassy in South Africa in turn said that it had no indication from South Africa of any dissatisfaction with the Binational Commission as a result of the Armscor dispute, and that the US remained fully committed to the Commission. Nonetheless, Sonn's remark further clouded the ongoing dispute, which by now was termed an irritant in US-South African relations.<sup>83</sup>

By June 1996, the South African Government had not yet decided whether they would accept the US' proposals of February 1996. In the meantime, Armscor General Manager, Eric Esterhuysen, told reporters at a news conference that the US arms embargo against the company and its affiliates had not been entirely negative. On the contrary, it had helped South Africa's defense industry to sell to countries seeking to remain outside of the US' influence. He said that what had transpired from the embargo was that most of the South African defense industries in the previous few years had found substitutes or alternatives to US-manufactured parts, which in a certain sense benefited the South African defense industries because there were countries who were looking for products that did not contain US-manufactured parts. The reason for this, according to Esterhuysen, was that the US, being the only superpower left, could control international policies through selling arms or controlling arms. Therefore, the

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82. A. Rossouw, Krygkor-krisis met Amerika op spits gedryf, *Beeld*, 6 March 1996, p. 1.

83. L. Duke, S. Africa, U.S. try to tone down conflict left from apartheid era, *The Washington Post*, 6 March 1996, p. A10; P. Fabricius, US-SA commission 'never in jeopardy', *The Star*, 7 March 1996, p. 8; S. Barber, Sore spot in US-SA links, *Sunday Times*, 21 July 1996, p. 4.



South African arms were attractive to countries that wanted to retain an element of independence for their armed forces.<sup>84</sup>

In mid-July 1996, Mbeki left for the second meeting of the Binational Commission to be held in the US from 22-23 July 1996, amid threats from South African Government ministers to reveal details of clandestine deals between the US and previous South African Governments, if the US did not drop the Armscor case. It was expected that Mbeki would seek a final settlement of the Armscor dispute in his meetings with Gore. In a telephonic conversation with Gore just before he left, Mbeki was urged to accept a face-saving deal under which Armscor would plead no contest to the charges against it. This would have meant that Armscor would throw itself upon the mercy of the US court. After intense talks with Gore while in the US, Mbeki announced on 24 July 1996 that he had reached an accord with the Clinton Administration that should lead to the complete lifting of the US arms embargo against South Africa, but it had yet to be approved by the US Department of Justice. Shortly after Mbeki's announcement, the White House announced an agreement in principle on the import and export of arms between South Africa and the US, which apparently met the interests of both countries and represented a successful effort to resolve a difficult bilateral matter. Armscor would plead no contest in the Philadelphia court to charges of breaking US arms export laws and the arms embargo between 1978 and 1989, but would pay about \$12,5 million as fine. In an important concession, the agreement stipulated that Denel, Armscor's commercial successor, would not face the usual one-year period of debarment from doing business with US arms companies. This concession would allow it back into US arms business the moment the agreement was formalized. In another concession, some of the \$12,5 million fine would be channeled back to South Africa to finance a compliance program to ensure that the indicted firms would in future only use licensed US arms.<sup>85</sup>

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84. S. van der Walt, VSA-verbod 'baat party' in SA, *Beeld*, 14 March 1996, p. 18; L. Fine, S. Africa says U.S. arms embargo helped some sales, *Reuters*, 11 June 1996, p. unknown (Online document).
85. T. Brown, S. Africa's Mbeki to meet Gore in Washington, *Reuters*, 11 July 1996, p. unknown (Online document); M. Braid, Apartheid arms deals haunt new regime, *Independent*, 15 July 1996, p. unknown (Online document); S. Barber, Sore spot in US-SA links, *Sunday Times*, 21 July 1996, p. 4; D. Shiels, S. Africa's Mbeki reports an end of arms dispute with U.S., *Reuters*, 25 July 1996, p. unknown (Online document); Anonymous, Leaders express hope over Armscor issue, *The Star*, 25 July 1996, p. unknown (Online document); E. Gibson, Skikking kom oor Krygkorgeskil, *Beeld*, 26 July 1996, p. 1; P. Fabricius, SA and US resolve arms smuggling case, *The Star*, 26 July 1996, p. unknown (Online document).

The agreement, with all its concessions, represented a grudging backdown by the South African Government. For the first time, Mbeki in his announcement of the accord recognized the US' concern that its laws had been broken and that one cannot just walk in, break the law and walk away. In essence, it had now been agreed that Armscor should submit to the US legal system. The no contest plea did not change this, although it softened the political impact, i.e. it allowed the South African Government to tell its constituency that it did not admit guilt for the transgressions of the previous apartheid government, but merely accepted its legal responsibilities. Nonetheless, although the agreement was still tentative, it was good news. Politically, the case poisoned what was otherwise excellent relations between the new South African Government and the US. Commercially, it was also welcome, because the US arms embargo against Armscor and its affiliates would be lifted.<sup>86</sup> According to the *Saturday Star*, the case offered two lessons to the South African Government: "*One, when you take over SA Inc you also assume its debts; and two: Uncle Sam has a smiling face but hates to lose.*"<sup>87</sup>

On another note, it seemed as if the US felt that it had scored a major victory and could now continue with similar cases against South African companies. Not long after the tentative deal, a South African hunting supply retailer, Suburban Guns Pty Ltd, was charged with three counts of US export control evasions for shipping \$1,8 million in hunting rifles and ammunition to South Africa in violation of the arms embargo. The shipments took place between April 1983 and September 1992. Suburban Guns bought the guns and ammunition from ten different US manufacturers, including Jonas Aircraft and Arms, U.S. Repeating Arms Co./Winchester, and Remington Arms. At the time, US Department of Commerce regulations required firearms exporters to obtain a license to ship guns and ammunition. But because of the arms embargo, the Department of Commerce refused to grant a license to export the arms to South Africa. Suburban Guns then urged some of its suppliers to apply for an export license to ship the guns by ocean freight to Zimbabwe and Namibia, although Namibia was also supposed to be included

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86. Anonymous, Leaders express hope over Armscor issue, *The Star*, 25 July 1996, p. unknown (Online document); P. Fabricius, SA and US resolve arms smuggling case, *The Star*, 26 July 1996, p. unknown (Online document); Anonymous, Lessons to be learnt as SA and US bury Armscor hatchet (Editorial), *Saturday Star*, 27 July 1996, p. unknown (Online document).

87. As quoted in Anonymous, Lessons to be learnt as SA and US bury Armscor hatchet (Editorial), *Saturday Star*, 27 July 1996, p. unknown (Online document).

in the arms embargo against South Africa. Suburban Guns then diverted the firearms and ammunitions to its store in Cape Town.<sup>88</sup> The outcome of this case is unclear.

#### 7.6.5 THE COMPLETE LIFTING OF THE US ARMS EMBARGO AGAINST SOUTH AFRICA

The agreement between Mbeki and Gore in July 1996 took a few months to be finalized. Since the agreement, representatives of both Governments met often to work out the details thereof. On 21 November 1996, it was reported that a favorable deal had been struck two weeks before when US officials visited South Africa. This meant that the US arms embargo against South Africa was lifted in theory and that the arms trade between the countries would be fully normalized. However, the deal had still had to be approved by the US Department of Justice, and it was expected that it would only be made formally known by February 1997, when the Binational Commission of cooperation between South Africa and the US would meet again in Cape Town. According to the deal, Armscor would have to pay a R7 million fine, while Fuchs Electronics had to pay R52 million.<sup>89</sup>

The fines were huge, but the shock thereof was a little dampened by what South Africa would get in return. First of all, the amounts were less than half of the amount that had been negotiated in 1995. Secondly, in the first practical outflow of the deal, the US gave South Africa five Hercules C-130 military transport aircraft, of which two would leave for South Africa at the end of November 1996. The rest would follow a few months later. The donation of the aircraft was already approved in 1995 by the Departments of State and Defense, but due to the Armscor dispute, it was held back until an agreement was reached. The donation was regarded as symbolic of the lifting of the US arms embargo against South Africa. The lifting of the embargo signified that several South African-manufactured weapons systems and equipment could be enhanced with US-manufactured components. That would help the South African arms export market tremendously, which would in turn yield an annual income of several millions of Rands for South Africa. South Africa experts were very excited about the deal, saying that arms dealers in the US had already started to make a 'shopping list' of

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88. M. Salcedo, S. African gun retailer charged, *Newsday*, 25 October 1996, p. unknown (Internet document).

89. A. Rossouw, Yanks skik oor Krygkor, verbod waai, *Beeld*, 21 November 1996, p. 2; Anonymous, Skikking, *Beeld*, 22 November 1996, p. 12.

South African military equipment. Among the most sought after equipment was South Africa's unique landmine detection system, called Chubby. The Chubby consisted of three different vehicles, i.e. the Meerkat, the Husky and the Duisendpoot. It could not only detect metal landmines, but also plastic ones. The US Department of Defense had already tested the system, and a team of eight US Defense Force members were sent to South Africa at the end of November 1996 to negotiate over the sale of twenty-two Chubby's to the US. The US was furthermore much interested in South Africa's Mamba mine resistant vehicles, for which a sale was also deemed imminent.<sup>90</sup>

In mid-January 1997, it seemed as if the Armscor deal would yet again fail. The reason this time was a row that broke out after it became clear that the South African Government wanted to sell arms to Syria, whom the US regarded as a sponsor of terrorism. In a warning to the South African Government, the Department of State said that some types of US assistance were barred for countries that sold military items to countries listed by the US as being sponsors of terrorism. The proposed sale included tank firing-control systems and cooperation on spy satellites and nuclear research. Exerting even more pressure, the chairman of the US Senate Foreign Relations Committee, Jesse Helms, who was regarded as being very influential, urged the Clinton Administration to cut foreign aid of \$120 million to South Africa and to cease all activities aimed at settling the Armscor dispute, unless the South African Government provided credible assurances that the tank fire control systems would not be exported to Syria. Helms deemed it unthinkable that the Clinton Administration would reward the South African arms industry with significant financial benefits resulting from the resolution of the Armscor dispute, while the South African Government was contemplating a major arms sale to a terrorist nation. Helms regarded the tank firing control systems as being lethal military equipment, which made it mandatory that foreign aid to South Africa be suspended, according to the US Anti-terrorism Act. Other individual members of Congress backed Helms, with some even planning the

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90. A. Rossouw, SA, Yanks skik oor Krygkor, verbod waai, *Beeld*, 21 November 1996, p. 2; E. Gibson, SA sal hulp kry van VSA met wapentuig; Uitvoer sal aansienlik toeneem, *Beeld*, 22 November 1996, p. 7; A. Rossouw, Hercules-vliegtuie vertrek eersdaags van VSA na SA, *Beeld*, 25 November 1996, p. 8; E. Gibson, 2 VSA-vliegtuie in SA bewys dat boikot verby is, *Beeld*, 12 December 1996, p. 5; Anonymous, Amerika koop dalk SA landmyn-veërs, *Beeld*, 4 December 1996, p. 2.

reinstitution of sanctions similar to those instituted in 1986. Some of these measures would also jeopardize future South African military sales to the US and NATO.<sup>91</sup>

Mandela angrily rejected the Department of State warning, saying that South Africa would conclude agreements with any country, whether they were popular in the West or not. He further said that the South African Government would meet soon to take a decision that would be in the interest of South Africa. However, he reiterated, the decision would not be based on any influence by any country. Mandela was particularly enraged that the Department of State issued the warning in public before discussing it with him first. The South African Foreign Ministry's director general, Rusty Evans, in turn indicated that a number of countries, including three European nations, were trying to sell virtually the same equipment to Syria. He asked why was South Africa then singled out for the bad treatment by the US? Yet another South African official said that as far as South Africa was concerned, the Armscor dispute had been laid to rest. Only the legal documents were still outstanding, but it was expected to be tabled at the next meeting between Mbeki and Gore. Lastly, Cheryl Carolus, the acting secretary-general of the ANC, said the party was satisfied with the South African Government's arms trade policy. She emphasized that South Africa was a sovereign country that was completely capable to decide to whom to sell its weapons. Therefore, the country took strong exception against any country that tried to bully it.<sup>92</sup>

After the initial storm over the proposed Syria deal had lost some of its fury, Mbeki announced that South Africa would have official conversations with the US over the matter, because it was found that poor communication channels had created the new tension. Also, the South African Government had decided to postpone the final decision over the transaction. In the US, Helms was reprimanded for drawing the issue out of

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91. Anonymous, U.S. may cut aid if arms sale to Syria is made by Pretoria, *The New York Times*, 14 January 1997, p. A9; Anonymous, Helms urges halt to U.S. aid to Pretoria, *Reuters*, 17 January 1997, p. unknown (Online document); R. Mkhondo, US senator urges Clinton to stall Armscor deal until SA aborts arms sale, *The Star*, 24 January 1997, p. unknown; A. Rossouw, Wapens aan Sirië: VSA-Kongreslede oorweeg sanksies, *Beeld*, 23 January 1997, p. 1.
92. S. Daley, South Africa rejects U.S. warnings on sale of arms to Syria, *The New York Times*, 16 January 1997, p. A6; Anonymoys, America, Syria and South Africa (Editorial), *The New York Times*, 19 January 1997, p. D14; R. Mkhondo, US senator urges Clinton to stall Armscor deal until SA aborts arms sale, *The Star*, 24 January 1997, p. unknown; N. Bezuidenhout & E. Gibson, VSA skynheilig en 'n boelie, sê ANC, *Beeld*, 21 January 1997, p. 2; Anonymous, Dit gons in Amerika oor die gespanne betrekkinge met SA, *Beeld*, 28 January 1997, p. 9.

context, and urged not to immediately demand the imposition of sanctions against South Africa if it set only one foot a little bit out of line.<sup>93</sup>

On 24 January 1997, a final agreement was reached between the US and South African Governments. The agreement would be signed when Mbeki and Gore met later in March 1997. In the meantime, a judge in Philadelphia, Jan Dubois, would check the settlement, which would formally end the criminal and civil legal proceedings against Armscor, Fuchs Electronics and Kentron. Armscor had reluctantly agreed to a control system where a South African would do the monitoring of arms imports from the US for three to four years, so that the country's sovereignty was not affected. The settlement also provided for the seven South African individuals to provide evidence if needed against Robert Ivy of ISC. Furthermore, the fines were detailed as follows: Armscor \$1 million (about R4,5 million), Kentron \$500,000 (about R2,5 million) and Fuchs Electronics \$11 million (about R50,25 million). Officials involved in the negotiation process confirmed the figures. The money for the fines would remain in South Africa in a trust with the Government, and would be used to strengthen the national arms export control system, which had been severely damaged by the disclosure of the pending South Africa-Syria arms sale.<sup>94</sup>

On 27 February 1997, Armscor and Kentron pleaded no contest on a count of violating the US arms embargo against South Africa. According to US law, a plea of no contest was treated as a guilty plea; therefore the two companies were fined \$1 million and \$500,000 respectively. In their plea agreements, Armscor and Kentron acknowledged that they had obtained shipments from ISC by routing them through front companies. Fuchs Electronics pleaded guilty on eleven related charges and was fined \$11 million. In addition, all three firms had to pay \$6.25 million in lieu of civilian penalties. According to US law, for every fine that had to be paid in a military case, half of that fine had to be paid to Government. The Clinton Administration however decided to forfeit its part of the fine and give it to the South African Government to set an arms-trading compliance program in place to help monitor South African arms sales. For this, the three companies had to compile a manual of adherence for authorization by the US. The

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93. A. Rossouw, Wapens aan Sirië: VSA-Kongreslede oorweeg sanksies, *Beeld*, 23 January 1997, p. 1.

94. Armscor Compliance Office, *Essentials of the Armscor Compliance Programme*, p. 3; Anonymous, SA and America bury the hatchet on Armscor case, *Cape Argus*, 30 January 1997, p. unknown (Online document); N. Chandler, South African arms companies to pay millions to US to end sanctions-busting case, *The Star*, 30 January 1997, p. 3; N. Chandler, SA and US agree to settle arms deal row, *Pretoria News*, 30 January 1997, p. 1.

manual had to detail procedures to ensure that US origin defense articles, services and technical data were transferred to Armscor with the necessary authorization, were properly tracked while in the possession of Armscor, and that all transfers to third parties were authorized and shipped in accordance with US requirements. All three companies furthermore agreed to cooperate in an investigation of US involvement in the arms smuggling during the arms embargo years. The seven South African individuals also pleaded guilty, but were not convicted.<sup>95</sup>

The South African Government was delighted that the Armscor dispute had now been finally settled in court after almost six years. According to Ricky Naidoo, spokesman for Mbeki, the settlement paved the way for the normalization of relations between the US and South Africa and the final end of the 34-year-old arms embargo against South Africa (1963 – 1977, voluntary; 1977-1997 mandatory). Naidoo added that the court decision was a political decision, and that details of the resumption of the arms trade between the two countries had yet to be ironed out. South African Deputy Foreign Minister Aziz Pahad in turn said that the Clinton Administration had agreed that all export restrictions on US arms companies and import restrictions on arms imports from South Africa would be lifted once the case was settled. He felt that the diplomatic negotiations over the dispute had been an example of the success of the relations between the US and South Africa. Advocate Mojanku Gumbi, the South African Government's legal representative in the case, regarded the fines as very reasonable, especially in the light of the original very large claim against the companies.<sup>96</sup>

In retrospect, *The Star* newspaper asserted that the Armscor dispute created a very difficult task to reach a settlement, and that the benefits and disadvantages of the dispute would probably puzzle politicians for years to come. The dispute led to frequent spats between government officials from both countries; the case had cost South

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95. Anonymous, South African firm pleads no contest on arms charges, *Reuters*, 27 February 1998, p. unknown (Online document); N. Mordant, Settlement signals end to U.S. arms ban on S.Africa, *Reuters*, 28 February 1997, p. unknown (Online document); Anonymous, R56-m fines settle arms row with US, *Cape Argus*, 28 February 1998, p. unknown (Online document); Anonymous, Regering bly wapensaak is afgehandel, *Beeld*, 1 March 1997, p. 4; Anonymous, Blue skies ahead after murky fog of Armscor case, *Cape Argus*, 7 March 1997, p. unknown (Online document); Anonymous, Verregaande eise van VSA knel wapenbedryf; Amerika wil inspraak hê in dié SA produkte, *Beeld*, 29 July 1997, p. 11; Armscor Compliance Office, *Essentials of the Armscor Compliance Programme*, p. 3.

96. N. Mordant, Settlement signals end to U.S. arms ban on S.Africa, *Reuters*, 28 February 1997, p. unknown (Online document); Anonymous, Regering bly wapensaak is afgehandel, *Beeld*, 1 March 1997, p. 4.

African taxpayers millions of Rands in legal fees; and, at times, the case directly impacted on both countries' foreign policies. However, despite all this, the end of the case had removed the last obstacle that stood in the way of fully restored US relations and ended the embargo on Armscor, its affiliated companies and other private companies. Finally, *The Star* gave credit for the resolution of the dispute to the efforts of Mbeki and Gore, stating that the case could have dragged on for several more years, had they not intervened.<sup>97</sup>

The case should have ended here, but it did not. Although military relations between the US and South Africa entered a new epoch in July 1997 with the establishment of a defense committee as addition to the Binational Commission between the two countries, the Armscor dispute still left some murky waters behind. The dispute was resolved in court, but in practice, the arms embargo was still active. The US were still hypersensitive over Armscor and Denel's arms deals, although Mandela had placed it under strict control. Furthermore, the US made far-reaching demands with regard to South African arms. Even if a South African-manufactured weapon or weapons system only contained a small US-manufactured component, the latter demanded full authority over the weapon or weapons system and the sale thereof. In addition, manuals were demanded for each of seven South African companies involved in arms manufacturing, in which it was detailed what programs were being followed to comply with US guidelines. Lastly, although the Armscor settlement agreement stipulated that a South African would do the auditing and monitoring of South African arms sales for three to four years, the Clinton Administration now demanded that it be an American citizen. South African experts regarded this a threat to trade secrecy.<sup>98</sup>

In the light of the abovementioned demands of the US, the South African arms industry complained that the delay to comply with US demands was costing South Africa millions of Rands in foreign exchange. It especially complained about the rejection of the compliance manual that had been submitted to the US Department of State's politico-military division. However, South African Defense Minister Joe Modise denied that there had been any tension between the US and South Africa over the establishment of a

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97. Anonymous, Armscor boil is finally lanced, *The Star*, 6 March 1997, p. unknown (Online document).  
98. J. Holzapfel, Handel met Amerika weer in die kollig, *Beeld*, 24 July 1997, p. 4; A. Rossouw, Donker geheime; wapenwette wat gekrap kan word, *Beeld*, 29 July 1997, p. 8; Anonymous, Verregaande eise van VSA knel wapenbedryf - Amerika wil inspraak hê in dié SA produkte, *Beeld*, 29 July 1997, p. 11.



defense industry compliance program, which stood in the way of the complete lifting of the embargo on Armscor and its affiliates. The compliance program would replace the denial order, which, according to US law, would deny any military trade between the US and South Africa for three years. According to Modise, the launch of the program had been caught up in bureaucratic red tape, the shunting of documents between lawyers and ministries, and countless dispatches of the documents through diplomatic channels. Initially, lawyers of both countries were confident that it would only take three to six months to finalize the compliance program, but now it would seem that it would take at least a year.<sup>99</sup>

By October 1997, the US delay in finishing the paperwork regarding the Armscor dispute caught up with it. South Africa had invited eight countries, excluding the US, to submit proposals for the improvement of the SANDF's equipment. The US were not invited because of the denial order against Armscor and its affiliates, which still prohibited exports to these entities because of the uncompleted paperwork. It would be remembered from an earlier discussion that the denial order also included the SANDF, because Armscor was its sole procurement agency. This fact led to much unhappiness in US arms manufacturing circles. Especially the aircraft provider McDonnell-Douglas was outraged at the situation. In the light of this, the Clinton Administration announced in late November 1997 that it was satisfied with South Africa's final draft of the compliance program, which would be ratified early in 1998 after some technical changes were made and a team of US officials had visited South Africa to satisfy themselves that every aspect would be followed to the letter. Accordingly, the arms embargo on Armscor and its affiliates would then be practically lifted within three months.<sup>100</sup>

By February 1998, the arms embargo against Armscor and its affiliates were still not lifted. Furthermore, in what could perhaps have been retaliation for not being invited to submit proposals for improvements to the SANDF, the Clinton Administration refused to approve the sale of 36 Swedish-built Gripen jet fighter aircraft to South Africa. Saab

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99. Anonymous, Verregaande eise van VSA knel wapenbedryf - Amerika wil inspraak hê in dié SA produkte, *Beeld*, 29 July 1997, p. 11; Anonymous, Lifting of Armscor ban 'held up by red tape', *Cape Argus*, 31 July 1997, p. unknown (Online document); E. Gibson, VSA-wapenvervaardigers kan nie vir dié SA kontrak tender, *Beeld*, 18 October 1997, p. 2.

100. E. Gibson, VSA-wapenvervaardigers kan nie vir dié SA kontrak tender, *Beeld*, 18 October 1997, p. 2; R. Mkhondo, US arms embargo to be lifted soon, *Cape Argus*, 25 November 1997, p. unknown (Online document).

Aerospace, which manufactured the Gripen, was on the shortlist to supply South Africa with jet fighter aircraft, but a third of the Gripen consisted of components that were manufactured in the US. Saab Aerospace confirmed the US refusal, saying that it had asked the US, in terms of its offset deal with the US on American components in the aircraft, for a marketing permit in January 1998 in the final run-up to the South African decision on a provider. The US refused because the embargo against Armscor and its affiliates were still in place.<sup>101</sup>

Although the SANDF would only announce in May 1998 who had won the bid for the supply of fighter aircraft, it anticipated a huge row over the refusal involving South Africa, the US, Sweden and Britain. Britain was involved because Saab Aerospace marketed the Gripen through British Aerospace. However, the South African Government later seemed non-plussed about the refusal, saying only that it expected a lifting of the arms embargo against Armscor and its affiliates soon. According to Mbeki's office, South Africa had done everything possible to assure the US of its commitment to complying with the terms set out in the settlement agreement, and it was only a matter of time before the final documents were ratified. It was also expected that the US would then reconsider the sale of the Gripen aircraft.<sup>102</sup>

On 28 February 1998, it finally happened: the US arms embargo against Armscor and its affiliated companies because of arms smuggling indictments in the US, was lifted. In a joint statement, Mbeki and Gore said that they had ratified a joint defense industry compliance program<sup>103</sup> during discussions the day before, which immediately opened the way for renewed arms trade with the US. Not only would South Africa now be allowed to export complete US weapons and weapons components, but also to include US technology in its own weapons systems built for export and to buy arms from other countries that included US-manufactured components. Before the compliance program

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101. Anonymous, VSA weier dat vliegtuie aan SA verkoop word, *Die Volksblad*, 17 February 1998, p. 2; Anonymous, US arms ban halts SA fighter deal; huge row expected, *Cape Argus*, 17 February 1998, p. unknown (Online document); E. Ferreira & A. Kotzé, Aankondiging oor vegvliegtuie met verbasing begroet, *Beeld*, 17 February 1998, p. 4.

102. Anonymous, US arms ban halts SA fighter deal; huge row expected, *Cape Argus*, 17 February 1998, p. unknown (Online document); E. Ferreira & A. Kotzé, Aankondiging oor vegvliegtuie met verbasing begroet, *Beeld*, 17 February 1998, p. 4; Anonymous, VSA weier dat vliegtuie aan SA verkoop word, *Die Volksblad*, 17 February 1998, p. 2; Anonymous, S. Africa expects U.S. to lift arms ban soon: Official, *Xinhua News Agency*, 18 February 1998, p. unknown (Online document).

103. See Appendix V for a complete summary of the Armscor Compliance Programme.

was ratified, technical experts from both countries formalized the program in Pretoria, to ensure that the two countries did not pass secrets to third parties or other countries.<sup>104</sup>

The announcement was welcomed with joy in South Africa. Denel announced that it was excited about prospects of arms dealing with the US, but was nonetheless carefully optimistic that huge orders would come to it on the short term. Because the US arms industry was the largest in the world, it would be an uphill struggle for South African arms manufacturing company to make an impression there. On the other hand, US companies wanted to bid for the improvement of the SANDF, and this was probably one of the major reasons why the case was solved at last. Denel expected that the US would now exert pressure on South Africa to be allowed to tender at such a late stage. It was also expected that the refusal to grant a license for Saab Aerospace for the sale of its Gripen aircraft to South Africa would now be reversed. Also, even more positive for Denel was the fact that South Africa could now learn from the US regarding aircraft technology, in which the latter was the undisputable world leader at the time. Lastly, Denel could now for its Rooivalk attack helicopter obtain the necessary US systems that many countries interested in the helicopter required.<sup>105</sup>

Some restrictions remained after the lifting of the arms embargo, i.e. the compliance manual<sup>106</sup> and an ombudsman who had to monitor future transactions. South Africa was subjected to these requirements until 21 July 2004, when it was also lifted unreservedly. With that, the cloud that had remained over South African arms deals since the lifting of the arms embargo in 1998, completely vanished. South Africa could now compete on a level arms trade playground.<sup>107</sup>

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104. R. Mkhondo, SA defense agreement with the US at last, *Saturday Star*, 28 February 1998, p. unknown (Online document); M. Granelli, US lifts arms blockade on SA; All clear for R1 billion deals, *Cape Argus*, 28 February 1998, p. unknown (Online document); Anonymous, Amerika hef verbod teen wapenhandel met Suid-Afrika op, *Beeld*, 28 February 1998, p. 2; T. Weiner, U.S., after 35 years, lifts arms embargo against South Africa, *The New York Times*, 28 February 1998, p. A4; Anonymous, VSA se verbod teen SA ná 7 j. opgehef, *Die Volksblad*, 28 February 1998, p. unknown; Anonymous, U.S. ends South Africa arms embargo, *The Washington Post*, 28 February 1998, p. A16; Armscor Compliance Office, *Essentials of the Armscor Compliance Programme*, pp. 3, 6.

105. Anonymous, Denel opgewonde oor opheffing van sanksies tussen SA en VSA, *Die Volksblad*, 3 March 1998, p. 11; E. Gibson, 'Stryd wag op SA wapenbedryf om indruk in VSA te maak, *Beeld*, 3 March 1998, p. 11; Anonymous, A cheery smile and a cold eye (Editorial), *Pretoria News*, 5 March 1998, p. 11.

106. See Appendix V for a complete summary of the Armscor Compliance Programme.

107. E. Gibson, SA wapenboeie in VSA losgemaak, *Beeld*, 22 July 2004, p. 10.

## 7.7 CONCLUSION

The Clinton Administration witnessed many firsts in South Africa. When Clinton took office as US President in 1993, the political transformation in South Africa was already far advanced. The white minority government of many years was finally talking to Nelson Mandela and the ANC. The negotiations were not without hick-ups, but were nonetheless remarkable. Within three months of becoming President, Clinton witnessed two previously unprecedented acknowledgements by the South African Government: first, South Africa had an advanced ballistic missile program; and second, the country had a nuclear weapons program, which had resulted in six and a half nuclear bombs being developed between 1978 and 1989, thus slap-bang within the time span of the mandatory arms embargo. There had been many rumors during the embargo years that South Africa had such programs, but it could never be proven and the country never admitted it despite heavy pressures from the US. Now one South African surprised the world by openly disclosing it. South Africa became the first nation to fully develop a nuclear arsenal and then voluntarily dismantle it. That led to the country emerging as a world leader among non-aligned nations in promoting nuclear non-proliferation and disarmament. Moreover, in April 1995, only two years after De Klerk's announcement, South African diplomacy played a significant role in United Nations-sponsored talks that forged a consensus among member nations of the Nuclear Non-proliferation Treaty to extend the agreement indefinitely.

The voluntary disclosures promoted South Africa's image in the world tremendously, especially because it became the first country to destroy its nuclear arsenal without pressure from outside. However, it did not seem to do South Africa's image in the US much good, because the Clinton Administration kept on doubting that South Africa had come completely clean, as was evidenced by spying activities and South Africa's retainment on a highly sensitive watch list. As with the Bush Administration, the Clinton Administration played its policy towards South Africa closely according to the book. It seemed that it did not fully trust that the political transformation in South Africa was for real, even after April 1994, when the ANC won the first elections ever in South Africa based on the principle of 'one man, one vote', and Mandela became the first black South African President. Clinton later became very fond of Mandela and the two remained friends after both their presidential terms had expired. In the early years, however, although Clinton expressed a genuine fondness and respect for Mandela,

heavy words often fell between them. The reason for this was the unresolved Armscor court case in the US that had rolled over from the Bush Administration. Mandela asked Clinton to intervene to settle the case, but the latter declined because it would have meant that he was intervening with US judicial processes. This would have done him immense harm among the US voting body, and he wanted to remain in office for a second term. Despite promises to Mandela that he would do what he could, he left the case to run its course. This created much tension between the two governments, and although many other positive relationships were forged, it was always in the shadow of the Armscor case.

The Armscor case also caused a clash of interests. The US Department of Defense was much interested in South African-produced military systems, and was eager to trade. Yet, they were bound by a denial order against Armscor and his affiliates and offshoot companies. This led to much frustration, especially after South African invited tenders for the upgrading of its defense force and the US was excluded. But the Clinton Administration remained stiff-necked, arguing that they could not yet fully trust South Africa not to sell arms to its enemies. Even after Mandela sorted out Armscor's law-violating image and imposed strict controls on the company, the Clinton Administration remained doubtful. For many, this implied distrust in the South African Government, which fuelled tensions even more. The South African Government felt that South Africa as sovereign nation was being attacked. The Armscor case was resolved in 1997 after much political tug-of-war efforts, but the arms embargo was only lifted in 1998. Even after that, some clauses remained that kept Armscor and other South African arms production companies from freely participating in the open military market until 2004, when these clauses were lifted unreservedly.