

CHAPTER VII OF THE UNITED NATIONS CHARTER: ACTION WITH RESPECT TO THREATS TO THE PEACE, BREACHES OF THE PEACE, AND ACTS OF AGGRESSION

Article 39

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

Article 40

In order to prevent an aggravation of the situation, the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims, or position of the parties concerned. The Security Council shall duly take account of failure to comply with such provisional measures.

Article 41

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

Article 42

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

Article 43

1. All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security.
2. Such agreement or agreements shall govern the numbers and types of forces, their degree of readiness and general location, and the nature of the facilities and assistance to be provided.
3. The agreement or agreements shall be negotiated as soon as possible on the initiative of the Security Council. They shall be concluded between the Security

Council and Members or between the Security Council and groups of Members and shall be subject to ratification by the signatory states in accordance with their respective constitutional processes.

Article 44

When the Security Council has decided to use force it shall, before calling upon a Member not represented on it to provide armed forces in fulfillment of the obligations assumed under Article 43, invite that Member, if the Member so desires, to participate in the decisions of the Security Council concerning the employment of contingents of that Member's armed forces.

Article 45

In order to enable the United Nations to take urgent military measures, Members shall hold immediately available national air-force contingents for combined international enforcement action. The strength and degree of readiness of these contingents and plans for their combined action shall be determined within the limits laid down in the special agreement or agreements referred to in Article 43, by the Security Council with the assistance of the Military Staff Committee.

Article 46

Plans for the application of armed force shall be made by the Security Council with the assistance of the Military Staff Committee.

Article 47

1. There shall be established a Military Staff Committee to advise and assist the Security Council on all questions relating to the Security Council's military requirements for the maintenance of international peace and security, the employment and command of forces placed at its disposal, the regulation of armaments, and possible disarmament.
2. The Military Staff Committee shall consist of the Chiefs of Staff of the permanent members of the Security Council or their representatives. Any Member of the United Nations not permanently represented on the Committee shall be invited by the Committee to be associated with it when the efficient discharge of the Committee's responsibilities requires the participation of that Member in its work.
3. The Military Staff Committee shall be responsible under the Security Council for the strategic direction of any armed forces placed at the disposal of the Security Council. Questions relating to the command of such forces shall be worked out subsequently.
4. The Military Staff Committee, with the authorization of the Security Council and after consultation with appropriate regional agencies, may establish regional sub-committees.

Article 48

1. The action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all the Members of the United Nations or by some of them, as the Security Council may determine.

2. Such decisions shall be carried out by the Members of the United Nations directly and through their action in the appropriate international agencies of which they are members.

Article 49

The Members of the United Nations shall join in affording mutual assistance in carrying out the measures decided upon by the Security Council.

Article 50

If preventive or enforcement measures against any state are taken by the Security Council, any other state, whether a Member of the United Nations or not, which finds itself confronted with special economic problems arising from the carrying out of those measures shall have the right to consult the Security Council with regard to a solution of those problems.

Article 51

Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

(*Charter of the United Nations*, 26 June 1945, San Francisco.
<http://www.un.org/aboutun/charter/>)

Resolution 418 (1977) of 4 November 1977 (mandatory)

The Security Council,

Recalling its resolution 392 (1976) of 19 June 1976, strongly condemning the South African Government for its resort to massive violence against and killings of the African people, including schoolchildren and students and others opposing racial discrimination, and calling upon that Government urgently to end violence against the African people and to take urgent steps to eliminate *apartheid* and racial discrimination,

Recognizing that the military build-up by South Africa and its persistent acts of aggression against the neighboring States seriously disturb the security of those states,

Further recognizing that the existing arms embargo must be strengthened and universally applied, without any reservations or qualifications whatsoever, in order to prevent a further aggravation of the grave situation in South Africa,

Taking note of the Lagos Declaration for Action against *Apartheid*,

Gravely concerned that South Africa is at the threshold of producing nuclear weapons,

Strongly condemning the South African Government for its acts of repression, its defiant continuance of the system of *apartheid* and its attacks against neighboring independent States,

Considering that the policies and acts of the South African Government are fraught with danger to international peace and security,

Recalling its resolution 181 (1963) of 7 August 1963 and other resolutions concerning a voluntary arms embargo against South Africa,

Convinced that a mandatory arms embargo needs to be universally applied against South Africa in the first instance,

Acting therefore under Chapter VII of the Charter of the United Nations,

1. *Determines*, having regard to the policies and acts of the South African Government, that the acquisition by South Africa of arms and related matériel constitutes a threat to the maintenance of international peace and security;
2. *Decides* that all States shall cease forthwith any provision to South Africa of arms and related matériel of all types, including the sale or transfer of weapons and ammunition, military vehicles and equipment, paramilitary police equipment; and spare parts for the aforementioned, and shall cease as well the provision of all types

- of equipment and supplies and grants of licensing arrangements for the manufacture and development of nuclear weapons;
3. *Calls upon* all States to review, having regard to the objectives of the present resolution, all existing contractual arrangements with and licenses for granted to South Africa relating to the manufacture and maintenance of arms, ammunition of all types and military equipment and vehicles, with a view to terminating them;
 4. Further decides that all States shall refrain from any co-operation with South Africa in the manufacture and development of nuclear weapons;
 5. *Calls upon* all States, including States non-members of the United Nations, to act strictly in accordance with the provisions of the present resolution;
 6. *Requests* the Secretary-General to report to the Security Council on the progress of the implementation of the present resolution, the first report to be submitted not later than 1 May 1978;
 7. *Decides* to keep this item on the agenda for further action, as appropriate, in the light of developments.

Adopted unanimously at the 2046th meeting

(United Nations Security Council, **Resolution 418 (1977)**, 4 November 1977, www.un.gov).

Resolution 558 (1984) of 13 December 1984 (voluntary)

The Security Council,

Recalling its resolution 418 (1977) of 4 November 1977, in which it decided upon a mandatory arms embargo against South Africa,

Recalling its Resolution 421 (1977) of 9 December 1977, by which it entrusted a Committee consisting of all its members with the task of, among other things, studying ways and means by which the mandatory arms embargo could be made more effective against South Africa and to make recommendations to the Council,

Taking note of the Committee's report to the Security Council contained in document S/14179 of 19 September 1980,

Recognizing that South Africa's intensified efforts to build up its capacity to manufacture armaments undermines the effectiveness of the mandatory arms embargo against South Africa,

Considering that no State should contribute to South Africa's arms production capability by purchasing arms manufactured in South Africa,

1. *Reaffirms* its resolution 418 (1977) and stresses the continuing need for the strict application of all its provisions;
2. *Requests* all States to refrain from importing arms, ammunition of all types and military vehicles produced in South Africa,
3. *Requests* all States, including States non-members of the United Nations to act strictly in accordance with the provisions of the present resolution;
4. *Requests* the Secretary-General to report to the Security Council Committee established by resolution 421 (1977) concerning the question of South Africa on the progress of the implementation of the present resolution before 31 December 1985.

Adopted unanimously at the 2564th meeting.

(United Nations Security Council, **Resolution 558 (1984)**, 4 November 1984, www.un.gov).

Resolution 591 (1986) of 28 November 1986

The Security Council,

Recalling its resolution 418 (1977), in which it decided upon a mandatory arms embargo against South Africa,

Recalling its resolution 421 (1977) by which it entrusted a committee consisting of all the members of the Council with the task of, among other things, studying ways and means by which the mandatory arms embargo could be made more effective against South Africa and to make recommendations to the Council,

Recalling its resolution 473 (1980) on the question of South Africa,

Recalling the 1980 report of the Security Council Committee established by resolution 421 (1977) concerning the question of South Africa on ways and means of making the mandatory arms embargo against South Africa more effective,

Recalling resolution 558 (1984), in which all States were requested to refrain from importing arms, ammunition of all types and military vehicles produced in South Africa,

Recalling further resolution 473 (1980), by which the Security Council requested the Security Council Committee established by resolution 421 (1977) to redouble its efforts to secure full implementation of the arms embargo against South Africa by recommending measures to close all loopholes in the arms embargo, reinforce it and make it more comprehensive,

Reaffirming its recognition of the legitimacy of the struggle of the South African people for the elimination of *apartheid* and the establishment of a democratic society in accordance with their inalienable human and political rights as set forth in the Charter of the United Nations and the Universal Declaration of Human Rights,

Strongly condemning the racist regime of South Africa for further aggravating the situation and its massive repression against all opponents of *apartheid*, for the killing of peaceful demonstrators and political detainees, and for its defiance of General Assembly and Security Council resolutions, in particular Security Council resolution 417 (1977),

Reaffirming its resolution 418 (1977) and stressing the continuing need for strict application of all its provisions,

Mindful of its responsibilities under the Charter for the maintenance of international peace and security,

1. *Urges* States to take steps to ensure that components of embargoed items do not reach the South African military establishment and police through third countries;
2. *Calls upon* States to prohibit the export of spare parts for embargoed aircraft and other military equipment belonging to South Africa and any official involvement in the maintenance and service of such equipment;
3. *Urges* all States to prohibit the export to South Africa of items which they have reason to believe are destined for the military and/or police forces of South Africa, have a military capacity and are intended for military purposes, namely, aircraft, aircraft engines, aircraft parts, electronic and telecommunication equipment, computers and four-wheel drive vehicles;
4. *Requests* of all States that henceforth the term “arms and related matériel” referred to in resolution 418 (1977) shall include, in addition to all nuclear, strategic and conventional weapons, all military, paramilitary police vehicles and equipment, as well as weapons and ammunitions, spare parts and supplies for the aforementioned and the sale or transfer thereof;
5. *Requests* all States to implement strictly its resolution 418 (1977) and to refrain from any co-operation in the nuclear field with South Africa which will contribute to the manufacture and development by South Africa of nuclear weapons or nuclear explosive devices;
6. *Renews* its request to all States to refrain from importing arms, ammunition of all types and military vehicles produced in South Africa;
7. *Calls upon* all States to prohibit the import or entry of all South African armaments for display in international fairs and exhibitions under their jurisdiction;
8. *Further calls upon* States which have not done so to put an end to all exchanges as well as to visits and exchanges of visits by government personnel, when such visits and exchanges maintain or increase South Africa’s military or police capabilities;
9. *Further calls upon* all States to refrain from participating in any activities in South Africa which they have reason to believe might contribute to its military capability;
10. *Requests* all States to ensure that their national legislation or comparable policy directives guarantee that specific provisions to implement resolution 418 (1977) include penalties to deter violations;

11. *Further requests* all States to adopt measures to investigate violations, prevent future circumventions and strengthen their machinery for the implementation of resolution 418 (1977) with a view to the effective monitoring and verification of transfers of arms and other equipment in violation of the arms embargo;
12. *Further requests* all States, including States non-members of the United Nations, to act in accordance with the provisions of the present resolution;
13. *Further requests* the Security Council Committee established by Resolution 421 (1977) concerning the question of South Africa, in pursuance of resolution 418 (1977), to continue its efforts to secure full implementation of the arms embargo against South Africa in order to make it more effective;
14. *Further requests* the Secretary-General to report to the Security Council on the progress of the implementation of the present resolution, the first report to be submitted as soon as possible but in any event no later than 30 June 1987;
15. *Decides* to remain seized of the matter.

Adopted by consensus at the 2723rd meeting.

(United Nations Security Council. **Resolution 591 (1986)**, 28 November 1986.
www.un.org).

ESSENTIALS OF THE ARMSCOR COMPLIANCE PROGRAMME

Background

The compliance procedures are described in the Armscor Compliance Manual, consisting of two volumes, document numbers A-MAN-0196-VOL I and A-MAN-0196-VOL II. These documents are available on the Arms Control Compliance Intranet Website. All employees involved in the procurement, acquisition, acceptance, marketing, exhibition, repair and shipping of defence articles are required to follow these procedures.

Objective of the Compliance Programme

The objective of the Compliance Programme is to prevent violations of any export vision of the US Arms Control Export Act (AECA) or of any regulation contained in the International Traffic in Arms Regulations (ITAR), or of any order, license or other authorization issued under the AECA.

The ITAR contains the United States Munitions List, which is a list of controlled defence articles, services and technical data. The ITAR is also available on the Arms Control Compliance Intranet Website.

Principles of the Compliance Programme

- The prevention of unauthorised transfers/deliveries of US origin defence articles, technical data and services to Armscor.
- Controlling US origin defence articles, technical data and services while in Armscor's possession.
- Ensuring that all transfers of US origin defence articles, technical data and services to third parties are in accordance with the necessary authorisation by the US Department of State, including non-transfer and use certificates that may be required.
- Preventing diversion to proscribed countries or debarred persons and organisations.

Reasons for Armscor's adherence to the Compliance Programme

In terms of its Compliance Policy Armscor as a responsible organisation performs all its acquisition, procurement, marketing, sales and shipping operations in accordance with the provisions of relevant South African legislation as well as the defence export requirements of supplier countries.

The Compliance Programme which had been established in Armscor is a prerequisite for the granting of US export licenses for the transfer of US origin defence articles, technical data and services to Armscor.

For Armscor to procure defence materiel cost effectively for the SANDF and other Government Departments, it is important to have access to US technology and equipment.

Requirements of the Compliance Programme

The compliance procedures prescribe actions at certain steps of Armscor's normal business procedures. The responsibilities are clearly indicated in the Compliance Manual.

Placing of Orders

Armscor orders contain specific contractual conditions that place the responsibility on suppliers and contractors to identify and inform Armscor whenever US origin defence articles, technical data and/or services form part of deliverables.

The Programme Manager is also responsible for progressively identifying US origin defence articles, technical data and/or services during the acquisition phases of programmes. Authorisation Committees have the responsibility to ensure that all these contractual conditions are included in all RFI's, RFP's and orders.

Keeping of records

Records pertaining to compliance procedures must be kept as prescribed by the Compliance Manual for at least five years. As these records will serve as proof of our conformance to the compliance agreement, they must be readily available for verification and audit purposes.

Acceptance and Labelling

The Programme Manager and his Quality Representative are responsible for:

- Identifying all US origin defence articles and the identification and labelling of technical data received by Armscor;
- Ensuring that the US items identified are in accordance with the statement supplied by the supplier;
- Following up any discrepancies with the supplier and/or the United States Office of Defence Trade Controls (DTC);
- Providing Armscor's Compliance Office with the necessary information on all US origin defence items transferred to and from Armscor.

Transfers to Clients or Contractors

The Programme Manager is responsible for informing the SANDF, other Government Departments or contractors, as the case may be, that equipment to be transferred contains US origin defence items. Armscor's contractors have the responsibility to ensure that US origin defence items are always safe and secure.

Note:

When the transfer of US technical data to Armscor is authorised, it is on the understanding that such data will be made available to South African citizens only. If an Armscor employee hold citizenship of another country and is allowed access to the technical data, the US interprets this as an unauthorised export of data to that foreign country, unless specific approval has been obtained from DTC.

Marketing

SANDF equipment containing US defence articles may not be exhibited or marketed without the authorisation of DTC. The Marketing Manager can either contact the original supplier of the US origin defence articles who will then approach DTC for the necessary approval, or can request the Compliance Office to approach DTC via the South African Embassy.

When Armscor markets equipment on behalf of the South African industry, the Marketing Manager must ensure that the industry has the necessary approval from DTC to market the US origin defence articles contained in the equipment.

Stock Sales

Wherever Armscor is involved in the sale of redundant SANDF stock, the Marketing Manager is responsible for identification of all US origin defence materiel and to ensure that the necessary written DTC authorisation is obtained before transfer of ownership can take place.

US origin defence articles and technical data may not be marketed or transferred to proscribed countries or persons debarred by the US. The lists of proscribed countries and debarred persons are available from the Compliance Office. The Marketing Manager must always be aware of high-risk sales. Indicators of high-risk sales are contained in the Compliance Manual.

Temporary Export to US for Repairs

US origin materiel will sometimes need servicing or repairs. In such cases the materiel may have to be re-exported to the US. We are obliged to identify all US origin defence materiel and take steps to ensure that the necessary import/export approvals have been obtained. Where upgrades or enhancements to US origin defence materiel are planned, this may also require DRC authorisation if US technology or US companies are involved.

Commodity Jurisdiction

If there is any doubt whether an article, service or technical data that is to be transferred to Armscor or retransferred to a third party, is covered by the US Munitions List, find out! But remember, always play it by the rules as prescribed in the Compliance Manual.

Voluntary Disclosure

If you know or suspect that the requirements of the Compliance Programme have been violated, either by yourself, a fellow employee, or by Armscor, it must be reported immediately to your Senior Manager and to the Senior Manager in whose department the violation or suspected violation has occurred. He/she must conduct an investigation, and if it is agreed that a violation did occur, a voluntary disclosure document will be prepared.

This document will be studied by the Management Board and, when approved, will be submitted to the Ombudsman.

If you are not satisfied with the decision of the Senior Manager or the Management Board, you are at liberty to report the case directly to the Ombudsman. This will serve as a mitigating factor for you, but not for Armscor. Remember, work through the Ombudsman. If we do not do so, we may be liable for prosecution in terms of South African security laws.

Proscribed Countries and Denied Persons

Not all countries and persons in the world demonstrate the values prescribed by the US Government with respect to the control of defence materiel. Such countries are denied access to US origin defence articles, services and technical data.

A list of such countries and entities is available on the Intranet webpage of the Compliance Office. The list will be updated on a regular basis.

Penalties

Any violation of US arms export legislation can lead to severe sanctions and penalties against Armscor and/or the employees involved, thus jeopardising Armscor's business opportunities. Compliance with the procedures in the Compliance Manual is very important to Armscor in order to avoid wilful or unintentional violation.

The role of the Compliance Office

The Armscor Compliance Office provides assistance to Programme Managers with the identification of US origin defence articles as well as the processing of applications for the marketing and transfer of SANDF stock. This office will also carry out internal audits to monitor the effectiveness of the Compliance Programme and will submit reports to the General Manager: Corporate Affairs, who has been designated as the Armscor official responsible for the Compliance Programme.

The function and role of the Ombudsman

The role of the Ombudsman is to monitor the effectiveness of the Compliance Programme, to investigate violations and to submit reports to both Governments. The Ombudsman is regarded as a partner in making the Compliance Programme work.

Implications for Industry and the SANDF

Industry must ensure that all US origin defence articles to be delivered to Armscor are identified and that the necessary US authorisation has been obtained.

The SANDF can assist by tracking all US origin defence articles in order to ensure the accurate and speedy identification of US origin defence articles whenever SANDF stock is transferred to Armscor or industry for repairs, upgrade, modification or sales.

The requirement to adhere to the AECA and ITAR is not restricted to Armscor and Denel, but applies to any person, company or country that receives US origin defence articles, services or technical data (including government bodies, such as the SANDF).

(Armscor Development Office, *Essentials of the Armscor Compliance Programme*. Undated).