

UNITED NATIONS SECURITY COUNCIL



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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

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LETTER OF TRANSMITTAL

19 September 1980

I have the honour to transmit herewith a report on ways and means of making the mandatory arms embargo against South Africa more effective, adopted by the Committee at its 45th meeting, on 19 September 1980. The report is being submitted in accordance with paragraph 11 of Security Council resolution 473 (1980) of 13 June 1980.

(Signed) Khwaja Mohammed KAISER
Chairman

Security Council Committee established by
resolution 421 (1977) concerning the
question of South Africa

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I. INTRODUCTION

A. Resolution 418 (1977): Objectives, scope and State obligations

1. Resolution 418 (1977) was adopted by the Security Council unanimously on 4 November 1977 in connexion with the item "Question of South Africa". Two main objectives of the resolution are contained in the preamble, as follows:

- (1) "... 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", (third preambular paragraph),
- (2) "... a mandatory arms embargo needs to be universally applied against South Africa in the first instance", (ninth preambular paragraph).

2. By this resolution, the Security Council acted "under Chapter VII of the Charter of the United Nations" (tenth preambular paragraph). The Security Council further determined that "the acquisition by South Africa of arms and related matériel constitutes a threat to the maintenance of international peace and security (operative paragraph 1).

3. With regard to the obligations of States under the resolution, including States non-members of the United Nations, they are described in operative paragraphs 2, 3 and 4 as follows:

"2. ... 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, the aforementioned, and shall cease as well the provision of all types of equipment and supplies, and grants of licensing arrangements, for the manufacture or maintenance of the aforementioned;

"3. Calls upon all States to review, having regard to the objectives of this resolution, all existing contractual arrangements with and licences 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. ... all States shall refrain from any co-operation with South Africa in the manufacture and development of nuclear weapons;"

B. Mandate of the Committee established by resolution 421 (1977)

4. Under resolution 421 (1977) adopted on 9 December 1977, the Security Council decided "to establish, in accordance with rule 28 of the provisional rules of procedure of the Security Council, a Committee of the Security Council consisting of all members of the Council to undertake the following tasks and to report on its work to the Council with its observations and recommendations:

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"(a) To examine the report on the progress of the implementation of resolution 418 (1977) which will be submitted by the Secretary-General;

"(b) To study ways and means by which the mandatory arms embargo could be made more effective against South Africa and to make recommendations to the Council;

"(c) To seek from all States further information regarding the action taken by them concerning the effective implementation of the provisions laid down in resolution 418 (1977);"

5. The report of the Secretary-General referred to above was submitted to the Security Council on 28 April 1978 (S/12673). It was considered by the Committee at its 4th meeting on 5 May 1978.

6. On 13 June 1980 the Security Council, at its 2231st meeting, adopted resolution 473 (1980) on the question of South Africa. Under paragraph 10 of the resolution, the Council called "on all States strictly and scrupulously to implement resolution 418 (1977) and enact as appropriate effective national legislation for that purpose". Furthermore, in paragraph 11, the Council requested the Security Council Committee established by resolution 421 (1977) concerning the question of South Africa "to redouble its efforts to secure full implementation of the arms embargo against South Africa by recommending by 15 September 1980 measures to close all loop-holes in the arms embargo, reinforce and make it more comprehensive".

7. The present report is being submitted in accordance with the above resolution of the Security Council. At its 40th meeting on 10 September 1980, the Committee decided to request from the Security Council an extension until 19 September 1980 of the time-limit established in resolution 473 (1980) for the submission of the report. Subsequently, the President of the Security Council informed the Committee that, following informal consultations among the members of the Council, there was no objection to the Committee's request to extend the time to 19 September 1980 (S/14166).

II. PROBLEMS ENCOUNTERED IN THE IMPLEMENTATION OF THE EMBARGO

A. Circumvention of the embargo

8. Several members of the Committee expressed the view that there were loop-holes in the arms embargo which should be closed, and difficulties of interpretation of aspects of resolution 418 (1977) which should be resolved. Others considered that stricter compliance and better monitoring were needed, but that the strengthening of the embargo should not mean its extension to items other than arms. One member of the Committee pointed out that there was no consensus that the current embargo was inadequate.

9. Several non-governmental organizations and experts who addressed the Committee, either orally or in writing, have expressed concern over reported

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violations of the arms embargo. In particular, Mr. Abdul S. Minty, Director of the World Campaign against Military and Nuclear Collaboration with South Africa, maintained that South Africa had been able to use devious routes, often with the connivance of high-level government officials, to secure ammunition and equipment.

1. Deliveries of embargoed equipment and components thereof through third parties

10. Mr. Minty stated that embargoed equipment and components thereof were being delivered to South Africa through third parties. He referred, in particular, to aircraft engines of United States origin for the Piaggio P-166, the AM-3C and the AL-60 aircraft, as well as the Rolls Royce engines exported by Italy to South Africa. He also referred to Martin Baker ejector seats for the Mirage F-1 aircraft supplied by France. He stated that the United States Westinghouse Company maintained links with the French Framatome Company: United States legislation did not prohibit co-operation through third parties in this instance. There was a need for licensing and export agreements to include the final destination clause which would prevent arms from reaching the South African military establishment through third countries.

11. In response to Mr. Minty's remarks, the United States, by a note dated 10 April 1980, informed the Committee that transfers by recipient countries to third countries of all United States Government-origin and many commercial-origin defence articles and services must be approved by the United States Government. Under present policy and legal constraints, however, all requests to approve third-party transfers to South Africa would be denied. With reference to aircraft engines such as those used in the P-166 and C4M aircraft, these were exportable under the condition that the aircraft were not used for police, military or paramilitary purposes, but the United States Department of Commerce had not licensed the export to South Africa of the above aircraft engines in recent years.

12. In a letter dated 27 June 1980, Italy maintained that Mr. Minty's remarks referred to transactions prior to the adoption of resolution 418 (1977) and resolution 311 (1972). At no time had the Italian Government authorized the sale of civilian or military aircraft to the South African armed forces. Although under Italian legislation only the export of military aircraft was subject to government licence (and the AL-60, Piaggio P-166 and the AM-3C were classified as planes for civilian or liaison use only), in the case of South Africa, this régime of controls had been extended to civilian aircraft since 1972 and no licences had been granted for the export of either complete planes or spare parts. In addition, since 1972, the Italian Government had not issued export licences for component parts of the MB 326K aircraft or the Rolls Royce "Viper" engine.

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2. Subcontracting to third parties the manufacture of component parts of embargoed aircraft destined for South Africa

13. Mr. Minty referred to another way of circumventing the arms embargo, namely, by subcontracting to third parties the manufacture of component parts of embargoed aircraft destined for South Africa. He stated that the World Campaign against Military and Nuclear Collaboration with South Africa rejected the approach that a State which was making certain parts for the Mirage or any other aircraft, or continuing to service South African aircraft engines, or acting in any way as a subcontractor, was implementing the arms embargo. In particular, Mr. Minty questioned whether the engines for the Piaggio P-166, the AM-3C, and the AL-60 aircraft were being supplied to South Africa by Italy. The World Campaign did not believe that South Africa had the capability, entirely on its own, to make Rolls Royce engines and many of the components for the Impala II and other aircraft which it was producing. Similarly, he added, Belgium allowed some components of the Mirage aircraft and other planes to be made in Belgium.

14. Italy's response to Mr. Minty's remarks was contained in its letter referred to under subsection 1 above. Belgium, in its note to the Committee dated 17 October 1979, stated that Belgian enterprises contributed only by way of subcontracting to the manufacture of certain components for the account of aeronautical industries.

3. Other indirect and/or clandestine ways of supplying arms and related matériel to South Africa

15. Some cases of alleged violations of the arms embargo involving indirect and/or clandestine methods of supplying arms and related matériel to South Africa have already been described in the previous report of the Committee to the Security Council (S/13721). A few additional reported violations have been brought to the attention of the Committee since then. A brief summary of these cases describing clandestine methods allegedly used to circumvent the embargo is given below:

(a) Space Research Corporation

16. In the case of Space Research Corporation, arms were reportedly shipped via Antigua and Barcelona on vessels registered in the Netherlands and the Federal Republic of Germany. Reports cited 52 cases (30,000 155-mm) of long-range artillery shells which arrived in Durban, South Africa in July 1978, as well as two 155-mm gun barrels and one radar-tracking system consisting of two vans.

17. In a note dated 20 March 1980, Canada informed the Committee that a preliminary inquiry was under way under section 455 of the Criminal Code. In a further note dated 19 August 1980, Canada advised that, after an exhaustive investigation, seven charges had been laid against Space Research Corporation (Quebec) under the Export and Import Permits Act, in connexion with the shipment of arms to South Africa and the falsification of documents to obtain export permits. The firm, which had entered a plea of guilty, was fined on all charges.

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18. In a note dated 22 April 1980, the United States informed the Committee that Space Research Corporation had entered a plea of guilty in the legal process resulting from the investigation by the United States Government. The United States expressed the view that the very fact of the investigation and its outcome indicated the effectiveness and utility of resolution 418 (1977).

19. In its note dated 1 August 1979, Spain informed the Committee that for the purpose of investigating possible illegal actions by Spanish firms with regard to compliance with the arms embargo against South Africa, the Spanish Government had established a Co-ordinating Committee to Investigate Irregularities in the International Arms Trade. The activities of the Committee had revealed information concerning the alleged involvement of the firm Barreiros Hermanos Internacional in connexion with the trans-shipment of the 52 containers of Canadian shells referred to above. Judicial action was taken against this firm. The Spanish authorities noted that the findings of the Co-ordinating Committee indicated that the systematic acceptance by governmental authorities of documents which were not internationally accepted "certificates of final destination" might facilitate violations of the arms embargo. The Spanish Government, therefore, proposed that steps should be taken in the appropriate bodies to draw up a standard text for compulsory use by all arms-exporting countries.

20. In its note dated 19 March 1979, the Netherlands informed the Committee that the Minister of Foreign Affairs of the Netherlands had stated that the Dutch vessel Breezand, chartered to a Spanish company, had taken on cargo in Barcelona for Durban, South Africa, which was not in accordance with the arms embargo. The official investigation did not reveal any malicious intent on the part of the Netherlands company. The Netherlands authorities drew attention to the discrepancy between the description of the cargo in the cargo manifest and that in agreement with the Spanish company which had chartered the ship. Dutch shipping companies had given assurances that they would adhere strictly to the arms embargo.

21. Belgium, in its note dated 25 June 1979, informed the Committee that the activities of Space Research Corporation International in Belgium - a joint venture of SRC and the Belgian firm PRB - were restricted to research and engineering.

(b) Allul

22. With regard to the case involving the Spanish vessel Allul, published reports had cited the attempted shipment of 2,830 Belgian rifles, 1,200 tons of unspecified weapons and a number of tanks of Indian origin to South Africa. By a note dated 25 June 1979, Belgium informed the Committee that the Allul had left Antwerp on 12 December 1978 and arrived in Durban on 11 June 1979. The vessel did not take on any cargo of arms at Antwerp, as is attested by the manifest, a copy of which was transmitted to the Committee.

23. In its note dated 1 August 1979, Spain informed the Committee that the investigation into the activities of the Allul by its Co-ordinating Committee to Investigate Irregularities in the International Arms Trade had revealed that the

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Allul had been detained in Rochester in the United Kingdom en route to South Africa. It was found to be carrying 2,830 FN-FAL 50-00 rifles consigned to the firm Barreiros Hermanos under a bill of lading specifying "items" allegedly intended for the Spanish Army. At no time had the Spanish authorities ordered these weapons nor had they issued any certificate concerning their final destination. The vessel returned to Belgium where the said "items" were unloaded on 27 August 1978.

24. The United Kingdom, by its note of 1 March 1979, informed the Committee that the Allul had called at Rochester from 14-16 December 1978 and that the local Customs and Excise Office had established that no arms were listed on the export manifest.

(c) Barreiros Hermanos Internacional

25. With regard to the case involving the Spanish company, Barreiros Hermanos Internacional, the reply of the Spanish Government to the Committee's inquiry was contained in its note of 1 August 1979 referred to above.

(d) Tanks for South Africa

26. In a note dated 31 January 1980, the United States Government informed the Committee that it had reliable information to the effect that several Soviet-made T-54/55 tanks had been delivered to Rhodesia via South Africa after they had arrived in Durban from Libya. The Committee concurrently received published reports on this subject, stating that the tanks had reached South Africa on a French-registered vessel.

27. By a note dated 20 February 1980, the USSR rejected the assertion in the United States note as utterly unfounded. It stated that the falsehood uttered by the United States Government was of a provocative nature and represented a clumsy manoeuvre on the part of the United States to detract attention from the real violators of the embargo.

28. In a note dated 23 May 1980, the Soviet Union confirmed the information given in its earlier note, refuting the allegations levelled at the Soviet Union as completely groundless. The note stressed that the Soviet Union rigorously and steadfastly fulfilled all the provisions of Security Council resolution 418 (1977) concerning the imposition of sanctions against South Africa, and that attempts to suggest that the USSR was involved in the acquisition of arms by South Africa were clearly intended to divert attention from those actually violating the embargo on arms supplies to that country.

29. By a note dated 23 April 1980, the Libyan Arab Jamahiriya informed the Committee that the arms in question had been sent by Libya to a friendly country, Uganda, in response to the request of its legitimate Government at that time. It seemed that the company which handled these arms had changed the course of their vessel and delivered the arms to South Africa. In this connexion, the Libyan authorities concerned planned to take legal action against that company for collusion with the racist South African Government.

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30. By a note dated 10 June 1980, France informed the Committee that the inquiry conducted by the French authorities revealed that the French shipping company, Marseille Fret, which for several years had been providing maritime transport on behalf of Libya, occasionally used chartered ships for that purpose. That was the case for the German ASD Astor, among others. During a stopover in Benghazi in February 1979, the ASD Astor was chartered to the company Ras-el-Hilal. In accordance with this charter by the Marseille Fret and Ras-el-Hilal, the latter company therefore had full commercial responsibility for the ship after 1 March 1979. Consequently, that company was responsible for providing the cargo with the necessary documents and giving instructions with regard to the ship's route and fuel supply. Marseille Fret could, therefore, in no way be implicated in that matter.

4. Maintenance and repair of engines of embargoed aircraft and other South African military equipment

31. Mr. Abdul S. Minty, Director of the World Campaign against Military and Nuclear Collaboration with South Africa, drew attention to the continued maintenance and repair of engines of embargoed aircraft and other South African military equipment. He questioned whether certain countries were supplying spare parts for and servicing South African military equipment despite the arms embargo. In particular, he referred to the provision of spare parts for the Lockheed Hercules C-130 and the Lockheed L-100 aircraft and to the servicing of the Buccaneer aircraft and Westland helicopters. He wondered whether the Transall transport aircraft and Mirage engines in the possession of South Africa were being serviced in Belgium and France. He suggested that these countries be asked how the aircraft were still flying if spare parts had been denied for the last three years. He also wondered how many spares South Africa continued to receive from the Federal Republic of Germany for its Advokaat communications system.

32. In a note dated 10 April 1980, the United States stated that it continued to export spare parts for the fleet of L-100s maintained by Safair Aviation, which was partially owned by the South African Government. Some of those spares were compatible with the C-130. However, Safair maintained a careful log of the spare parts used, which the United States reviewed frequently. As the United States maintained a considerable fleet of C-130s, it was well qualified to determine the rate at which parts wore out and the provision of spares was necessary. The United States did not provide a sufficient number of spare parts to enable Safair to maintain its fleet of L-100s and also transfer parts for the maintenance for South Africa's C-130s. The United States concurred in Mr. Minty's observation that the continued operation of South Africa's C-130 fleet indicated that they were obtaining spare parts from somewhere. The United States felt this would be an appropriate subject for investigation by the Committee. However, the United States had no information on the source of those spares, which to its knowledge did not come from the United States.

33. By a note dated 26 October 1979, the Federal Republic of Germany transmitted to the Committee a copy of its brochure entitled "Facts v. Fiction", in which it is stated that the Advokaat radar system was delivered to South Africa for civilian purposes only.

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B. Legislative and other measures taken by States and the compliance of these measures with the arms embargo

34. In fulfilment of its mandate, the Committee devoted several meetings, in particular its 4th and 10th meetings held on 5 May 1978 and 17 April 1979 respectively, to consideration of the question of legislative and other measures adopted by States in order to ensure the effective implementation of the resolution. As mentioned in the Committee's previous report to the Security Council (S/13721, sect. II, para. 13), 118 States responded to the Secretary-General's notes on measures taken by them in implementation of resolution 418 (1977). Study of the responses of States shows that some Governments have adopted new legislative measures to implement the arms embargo against South Africa, while others simply refer to existing administrative acts and regulations. In the majority of cases, Governments found it sufficient to express their intention to comply fully with the provisions of resolution 418 (1977).

35. The Committee took note of a communication from the International NGO Action Conference for Sanctions Against South Africa, held in Geneva from 30 June to 3 July 1980, including a report by its Commission on Aspects of Military and Nuclear Collaboration with South Africa. The report stated that efforts must be made to enact national legislation to enforce the embargo strictly. In those countries which do have such legislation, efforts must be made to strengthen them, especially with regard to penalties. Presently, penalties are so mild they do not act as a deterrent, they do not challenge the profitability of the arms trade with the apartheid régime. The Commission further suggested research and review of existing national legislation that could be used for the enforcement of the embargo. For instance, many countries have a list of strategic goods which cannot be sold to particular countries, determined by certain criteria, but their application in the case of South Africa is inadequate. Legislation in this area needs to be strengthened.

36. Among the new legislative measures adopted by some Governments with reference to resolution 418 (1977), mention may be made of the following, which have been communicated to the Committee:

(a) Denmark - the Royal Decree of the Queen of Denmark, which entered into force on 10 February 1978

"Pursuant to section 1 of Act No. 156 of 10 May 1967 on Certain Measures in Pursuance of the United Nations Charter the following provisions shall be introduced to fulfil the United Nations Security Council resolution of 4 November 1977 concerning an arms embargo against South Africa:

"1.1. It shall be prohibited to sell and transfer, or attempt to sell and transfer, or in any other way provide or transport, the following items to South Africa, individuals or undertakings in South Africa, or undertakings operated from South Africa:

"(i) Arms, weapons and war matériel and related matériel of all types;

"(ii) Ammunition of all types;

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- "(iii) Military vehicles and military equipment and paramilitary police equipment;
- "(iv) Spare parts for the aforementioned;
- "(v) Equipment, components and matériel of all types for the manufacture or maintenance of the aforementioned.

"1.2. It shall further be prohibited to grant or attempt to grant licensing arrangements to the aforementioned parties for the manufacture or maintenance of the items listed under 1.1 above.

"2. It shall be prohibited to participate in, or attempt to participate in, any co-operation with South Africa, individuals or undertakings in South Africa or undertakings operated from South Africa, which involves manufacture and development of nuclear weapons.

"3. Contravention of sections 1 and 2 above shall be punishable pursuant to section 110c of the Civil Penal Code by a fine, mitigated imprisonment, or, in aggravating circumstances, regular imprisonment for a term not exceeding three years.

"4. This Decree shall enter into force on the date of its publication in the Government Gazette (LOVTIDENDE)." (S/12510/Add.1, annex, pp. 1 and 2)

(b) Finland - the Presidential Decree issued on 23 December 1977 at Helsinki

"Upon the proposal of the Ministry of Foreign Affairs, the following shall, under paragraphs 1 and 5 of the Act of 29 December 1967 on the Fulfilment of Certain Obligations of Finland as a Member of the United Nations (659/67), be enacted:

"1

"In order to fulfil the obligations incumbent on Finland under the resolution adopted by the Security Council of the United Nations on 4 November 1977 on South Africa, any provision to the Republic of South Africa of arms and related matériel of all types, including the sale and transfer of weapons and ammunition, military vehicles and equipment, paramilitary police equipment and spare parts of the aforementioned, is prohibited, as well as the provision to South Africa of all types of equipment and supplies, and grants of licensing arrangements, for the manufacture or maintenance of the aforementioned.

"2

"Regarding the penalty and other consequences of violation of this Decree or any directives issued on the strength thereof, there shall be applied the provisions of paragraph 4 of the Act on the Fulfilment of Certain Obligations of Finland as a Member of the United Nations (659/67).

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"3

"When necessary, the Government shall issue directives in greater detail on the implementation of this Decree and on the supervision of its observance." (S/12511/Add.1, annex)

(c) Norway

"By virtue of Act of 7 June 1968 (No. 4) relating to implementation of obligatory decisions of the United Nations Security Council the following regulations are adopted to implement Security Council resolution 418 (1977) of 4 November 1977.

"1

"It shall be prohibited for Norwegian subjects and persons on Norwegian territory to provide to South Africa 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 such matériel and equipment.

"It shall likewise be prohibited to provide to South Africa equipment and supplies and to provide grants of licensing arrangements for the manufacture or maintenance of matériel as mentioned above.

"2

"It shall be prohibited for Norwegian subjects and persons on Norwegian territory to participate in any co-operation with South Africa in the manufacture and development of nuclear weapons.

"3

"These regulations shall enter into force immediately." (S/12509/Add.1, annex)

(d) United Kingdom - note verbale of 28 April 1978

"The United Kingdom has for many years operated an effective embargo on the supply of arms to South Africa through the Export of Goods (Control) Order 1970 (as amended). Apart from certain items of paramilitary police equipment, which have now been added to Group 1 of Schedule 1 of that Order (by means of amendment Order SI 1978 No. 271), the goods to which resolution 418 (1977) relates already fell within the scope of that part of the Order. No licences are granted for the export of such goods to South Africa.

"An Order in Council (SI 1978 No. 277) has also been made prohibiting persons from entering into any licensing arrangements for the use in South Africa of patents, registered designs or industrial information or techniques

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specially devised or formulated for the manufacture or maintenance of arms or equipment specially designed for military or paramilitary police purposes. Copies of these Orders are attached.

"These measures, which took effect on 24 March, complete the legislative arrangements for implementation in the United Kingdom of the mandatory arms embargo against South Africa imposed by resolution 418 (1977). A review, pursuant to paragraph 3 of that resolution, is being undertaken of existing contractual arrangements with and licences granted to South Africa which fall within the scope of that paragraph." (S/12494/Add.1)

(e) Sweden - decree of 15 December 1977, amended on 16 February 1978

"Section 1

"For the purpose of the decree, arms and related matériel are defined as:

"1. Matériel listed in the annex to the proclamation concerning the prohibition of exports from Sweden of arms and military equipment (1979:614).

"2. Equivalent matériel designed for use by police forces.

"3. Supplies especially intended for the manufacture or maintenance of matériel specified in 1 and 2 above.

"Section 2

"Arms and related matériel may not be exported from Sweden if they are intended to be imported into South Africa.

"Section 3

"Arms and related matériel may not be brought into South Africa.

"Section 4

"Arms and related matériel may not be supplied to South Africa if intended to be used for economic activity operated from South Africa. Furthermore, such matériel may not, by grants of licences for the manufacture or maintenance, be supplied for economic activities within South Africa.

"Section 5

"No measure may be taken that is of a nature to promote operations specified in sections 2-4 above, if it means:

"1. The manufacture, processing, assembly, installation, maintenance or repair of arms or related matériel, or the supply of technical assistance to such operation.

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"2. The loading, unloading, transportation, or the reception for storage of arms or related matériel.

"3. The transfer of arms or related matériel, or conveyance of special rights, thereto.

"4. The transfer of an invention of arms or related matériel, or the conveyance of special rights thereto.

"5. The commissioning of or intermediary services concerned with measures specified in 1-4 above.

"Section 6

"The prohibitions imposed by this decree apply to actions taken by Swedish citizens and aliens here in Sweden or on a Swedish ship or aircraft.

"Any Swedish citizen who when outside Sweden takes any action which is forbidden pursuant to sections 2-5 will be judged according to the Act Concerning Certain International Sanctions and by a Swedish Court of Law, even if chapter 2, section 2 or 3 of the Swedish Penal Code are not applicable and notwithstanding chapter 2, section 5 A, subsections 1 and 2 of the said Code.

"This decree enters into force on 1 January 1978." (S/12508/Corr.1)

37. In its note dated 23 May 1979, the United States stated that in February 1978 regulations were issued pursuant to the Export Administration Act which prohibit the export of any goods to, or for the use of, the South African military and police.

38. According to communications from States addressed to the Security Council, the following countries are resorting to their legislations or to previous legislative acts to implement the mandatory arms embargo: Federal Republic of Germany, Austria, Ghana, New Zealand, Qatar, Switzerland, Lichtenstein, Togo, Yugoslavia, United States, Jordan, Somalia and Iceland.

39. At the Committee's 5th meeting on 27 June 1978, the Chairman of the Special Committee against Apartheid said that since all Governments were under an obligation to implement the provisions of Security Council resolution 418 (1977), the actions of the countries which had actually supplied military matériel, spare parts and licences to South Africa were of crucial significance. At the 9th meeting held on 3 April 1979, he noted that, where national legislation had been reported to the Security Council, there had been a tendency to regard Security Council resolution 418 (1977) merely as confirmation of the discredited voluntary arms embargo and to define arms in the most restrictive way. Thus these legislations contain many omissions and do not provide for sufficiently severe penalties in cases of violation. Furthermore Mr. Minty, the Director of the World Campaign against Military and Nuclear Collaboration with South Africa, urged that an

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analysis should be made of the legislation of those countries which had traditionally supplied arms to South Africa. He noted that the Netherlands Government, for example, had no specific legislation to implement the provisions of Chapter VII of the Charter with regard to South Africa; it simply exercised controls in terms of its general policy governing the export of arms.

40. With regard to the analysis of the legislation of the countries which regularly supply arms to South Africa, one member of the Committee observed that such an analysis would serve no purpose unless all States pledged first that they would close any loop-holes revealed. Endorsing Mr. Minty's suggestion, another member of the Committee said that the Committee should consider appointing a consultant to carry out the analysis of the legislation of the countries which regularly supplied arms to South Africa. A third member considered that even when legislation did not necessarily deal directly with the arms embargo, it should be examined with a view to determining how it related to compliance with the embargo.

C. Phraseology of resolution 418 (1977)

41. The Committee's attention has been drawn to varying interpretations of the provisions contained particularly in operative paragraphs 2, 3 and 4 of the resolution. A number of speakers considered that the arms embargo had not been effective to date, inter alia, because some States find certain loop-holes in resolution 418 (1977) and that the Security Council should close those loop-holes, thereby enabling the Committee to fulfil its mandate more effectively.

1. Interpretation of the terms "arms and related matériel"

42. In the view of some members, as well as witnesses who have addressed the Committee, the differing interpretations of the terms "arms and related matériel" in operative paragraph 2 of the resolution led to the circumvention of the mandatory arms embargo. They expressed concern over the need for greater clarity and consistency of application with regard to these terms.

43. One member of the Committee stated that the term "related matériel" included any commodity or know-how in the form of designs, drawings or documentation which was likely to increase South Africa's military or paramilitary capacity. Thus, the embargo should include, inter alia, the transfer of equipment and technology for all kinds of aircraft, including those which were exported ostensibly for civilian purposes, telecommunications, diesel and petrol engines of all kinds, and some types of special steel alloys. In order to accomplish such an objective, the Committee would have to rely on the expertise provided for the Special Committee against Apartheid and non-governmental organizations such as the British Anti-Apartheid Movement and SIPRI. He suggested that, after a careful study, the Committee could eventually compile a list of products which fell within the category of "arms and related matériel of all types" which could be circulated to all Governments as falling within the purview of mandatory sanctions.

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44. Other members, as well as some witnesses, felt that more clarity was needed with regard to (i) the provision to the South African authorities of certain items of strategic importance under the contention that such items did not form part of a weapons system and were, therefore, not covered by the embargo; (ii) the continued provision, directly to the South African military establishment, of certain items intended for and known in advance to be destined for their use, under the contention that such items were "non-military" in nature, and therefore, not part of the embargo; (iii) the provision to various companies or civilian customers in South Africa of certain items of strategic and military importance, which later found their way, inexplicably, into the hands of the South African military authorities, and which, either directly or indirectly, helped to strengthen the South African military or police forces.

45. At the 7th meeting on 3 April 1979, Mr. A. S. Minty, Honorary Secretary of the British Anti-Apartheid Movement and Director of the World Campaign against Military and Nuclear Collaboration with South Africa, stated that the resolution seemed to be clear in prohibiting the supply of all goods which would assist the South African military and paramilitary forces. Yet certain Governments seemed to have difficulty in establishing clear guidelines and there were a variety of interpretations of the resolution. There was clearly a need for a more precise definition of what constituted "arms and related matériel" as well as a checklist of items covered by the embargo. As an example of the problem, Mr. Minty charged, a United Kingdom firm, ICL, had supplied computers to the South African authorities for use by the police and for a South African plant which manufactured weapons. Representations to the United Kingdom Government had produced the response that since the computers themselves did not form part of a weapons system, they were not covered by the embargo. He said that the United States, however, prohibited computer sales to the South African military establishment.

46. A second problem related to the implementation of the embargo by individual Governments; whereas the United States Administration stated that it prohibited all supplies to the South African military establishment, several other States continued to provide what they considered to be non-military items directly to the South African military. The Committee and the Security Council should take a clear decision to the effect that all supplies to the South African military and police forces should be prohibited, no matter how the items were defined by individual States.

47. A third problem arose out of so-called dual-purpose, or civilian, items which were supplied to various companies or civilian customers in South Africa and which, either directly or indirectly, strengthened the military or police forces. One example was the export of aircraft to so-called civilian customers in South Africa, which were later used by the South African military establishment. Once again the problem of interpretation needed to be overcome by clear definition. The British Anti-Apartheid Movement believed that all exports to South Africa should be prohibited.

48. Mr. Minty cited instances of alleged violations of the arms embargo which, in his opinion, clearly demonstrated the problems associated with the question of varying interpretations. He recalled that the United States had declared that it

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did not supply any equipment to the South African military establishment. However the South African Air Force had received Cessna 135s, Merlin Swearingen and other aircraft. He wondered whether those aircraft have been sold to the defence force or to so-called private purchasers who had then passed them on to the Air Force. Mr. Minty contended that the South African air commando squadrons used so-called private aircraft, many of them supplied by United States and other companies in the context of civilian trade with South Africa. Those aircraft were in practice used by the military and police and should be covered by the embargo.

49. With regard to the Lockheed Hercules transport aircraft, he stated that the civilian version of the Lockheed Hercules C-130 was, in fact, the Lockheed L-100 supplied to a company called Safair, which was wholly owned by the South African Government. Mr. Minty also referred to the sale of the Advokaat communication system by the Federal Republic of Germany. The system was based in Silver Mine, not far from Simmonstown, described by the South African defence white paper as a joint maritime operations centre from which the operational command of the maritime forces was carried out. The Federal Republic of Germany, however, maintained that the Advokaat was an entirely civilian project and did not have much military significance. This was another case of an interpretation of the term "arms and related matériel".

50. The United States, in its note dated 23 May 1979, 1/ stated in particular that arms and related material were defined, for purposes of United States law, as including all items and related technical data on the United States Munitions List (22 CFR 121.01), and other items with a military application (not on the United States Munitions List) including technical data relating to such items. In addition, "arms and related material of all types" were considered to include defence articles and services sold on a government-to-government basis under the foreign military sales programme, whether or not such articles and services involved items or data on the munitions list. The United States also forbade export of any United States-origin item or technical data to the South African military and police. The note also stated that civilian aircraft, including Cessna 135s, were sold to non-military purchasers in South Africa. The United States Commerce Department licensed such sales with the approval of the Department of State. Current United States regulations required the purchaser to certify that the aircraft would not be used for police, military or paramilitary purposes. In addition, the purchaser must agree not to resell the aircraft without United States Government approval. The United States Embassy in Pretoria conducted end-use checks to verify that the conditions were being fulfilled. Safair Aviation, partially owned by the South African Government, did maintain a fleet of L-100s. Spare parts for the L-100s, some of which were compatible with C-130s, continued to be exported. Safair maintained a careful log of the use of the spare parts, which United States officials were allowed to review. Aircraft engines such as those used in the P-166 and C4M aircraft were exportable under the same conditions as civilian aircraft. However, the United States Department of Commerce had not licensed the export to South Africa of the engines used in the above aircraft in

1/ For the complete text of this note, see S/13721, annex IV.

recent years. The engines used in the AM.3 aircraft were manufactured by Rolls Royce and were not of United States origin. The United States Government continued to license the sale of computers to South Africa but would not approve any sale to the South African military or police, or to those agencies directly involved in administering apartheid (i.e. the Ministry of Plural Relations). Depending on the size of the computer and the purchaser involved, various restrictions were placed on the computer export licence to ensure no use inconsistent with United States policy.

51. In its note dated 29 June 1979, 2/ concerning the points raised by Mr. Minty, Italy expressed appreciation for the fact that some recognition had been granted to the objective difficulties Governments might encounter - in the absence of an internationally accepted classification - in defining the expression "armaments and related materials" in the context of the peculiarities of the South African situation.

2. Paragraph 3 of resolution 418 (1977) concerning licences and contractual arrangements and questions arising therefrom

52. In paragraph 3 of resolution 418 (1977), the Security Council called on all States to review, with regard to the objectives of the resolution, all existing contractual arrangements with, and licences 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. Some members of the Committee, as well as witnesses who addressed themselves to this question, pointed out that serious difficulties were being encountered in the effective implementation of the embargo due to the varying interpretations given by States to the nature and scope of their obligations under that paragraph. It was observed that certain States tended to view the phraseology of paragraph 3 as indicating that the goal of terminating all existing contractual arrangements and licences was: (a) conditional upon and subsequent in time to a prior review of such contracts; or that (b) once such a review had been made, their termination was optional, depending on the findings of the State concerned; and therefore, (c) having undertaken such a review, a particular Government might not deem it a necessary obligation imposed by the letter and spirit of resolution 418 (1977) to terminate certain types of existing contractual arrangements or licences even in cases where allegations had been made that the embargo had been violated.

53. Mr. A. S. Minty, Director of the World Campaign against Military and Nuclear Collaboration against South Africa, maintained that the question of licences represented the main loop-hole in terms of domestic arms production in South Africa. More information was needed on the transfer of know-how and technology and on investment for arms and ammunition production. There was a need to draw up lists of licences and of Western subsidiaries in South Africa which could be important

2/ For the complete text of this note, see S/13721, annex IV.

in the South African military and industrial complex. Mr. Minty raised a number of specific questions regarding existing licences between South Africa and other countries. Certain aircraft such as the AM30 and the AL-60 (known locally as the "Bosbok" and the "Kudu") were being produced in South Africa under an Italian licence. He wondered whether the United States had taken measures to prevent Italy from passing on engines of United States origin for those aircraft, and whether United States licensing and export arrangements included a final destination clause which would prevent arms and equipment from reaching the South African military establishment. The South African inventory contained other Italian aircraft received since 1972 as well as locally-made Impala I and Impala II under licence from Italy. He maintained that it would be very difficult for the South African Government to manufacture over 200 Impala aircraft under licence illegally and to have over 100 aircraft of Italian origin in its territory without the knowledge of the Italian Government. He asserted that the Impala I and Impala II, as well as the original MB 326 and MB 326K sold to South Africa had been powered by Rolls Royce engines made in Italy under United Kingdom licence. Mr. Minty also questioned the licensing and export arrangements existing between a host of French and Belgian companies with South African agents. For example, Mirage F-1 aircraft were made under a licence granted by France. He wondered whether the licence contained a clause binding France to renew it. It was important also to ascertain the arrangements for the production in South Africa of the Israeli Gabrielle missile and fast patrol boats.

54. In its note dated 29 June 1979, Italy adduced the following points in reply to Mr. Minty: (a) the licence for the production of the South African version of the Aermacchi MB 326 (Impala I) had been ceded una tantum, without a provision for its termination by contract between the Italian firm Aermacchi and the South African firm Atlas Aircraft, as long ago as 1964. The Impala I had been produced under licence by Atlas Aircraft, entirely in South Africa, since the late 1960s. Under the clauses of the manufacturing licence, Aermacchi continued to provide Atlas Aircraft with some more advanced components of the MB 326 until 1972. The last export licence related to this contract had been issued by the Italian authorities prior to the adoption of resolution 311 (1972), although the operation had taken place at a later date, and it concerned four airframes of the MB 326K model produced by Aermacchi (non-complete planes, as had been erroneously published). Since that time, no further export licences had been granted to the Italian firm, for either complete licences or spare parts. Thus the technical co-operation between Aermacchi and Atlas had totally ceased and Aermacchi currently had no investments, officer or personnel in South Africa. Following the ban imposed by the Italian authorities in 1972 on export licences for armaments supplies to South Africa, Atlas Aircraft had developed autonomously its own version of the MB 326K, which was known as Impala II, and whose design derived only partially from the Italian prototype; (b) with regard to Rolls Royce "Viper" engines, the licence for their production had been ceded, again una tantum, by Piaggio to Atlas Aircraft in 1964, contextually with the cession of the licence for the MB 326. For many years now, the engine had been produced entirely in South Africa by Atlas Aircraft. The Italian note pointed out that as the supply of technical assistance and spare parts for both the MB 326 and the Rolls Royce engines had been discontinued since 1972, the unilateral withdrawal of the licences at this stage would not affect

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in the least the production and in fact, would just result in a net benefit for South Africa.

55. The United States, in its note dated 23 May 1979, also addressed itself to the question of licences. The note stressed that there was no valid United States licence for the manufacture in South Africa of equipment on the Munitions List. Although United States licensing agreements with second parties did not include a clause prohibiting exportation to South Africa, they were handled in a manner that achieved this end. All United States licensing agreements required a sales territory which listed the countries to which exportation was permitted. This method was preferred because the United States did not approve wide sales territories. In fact such prior permission for exports was normally restricted to members of NATO, Australia, New Zealand and Japan. The United States in no case approved sales to South Africa. With regard to the question of revoking all licences granted to South Africa, the note stated that pursuant to the authority of the Arms Export Control Act and the international traffic-in-arms regulation, the United States had not granted any approvals for the licensed manufacture in South Africa of arms and related material on the Munitions List. The policy of the United States, furthermore, was to deny permission for the export of technical data to South Africa nor would the United States approve any transfers to South Africa of technical data previously exported under licence to a third country. The export of capital goods required for the manufacture of arms was not regulated under the Arms Export Control Act, except in so far as those goods were themselves considered to be a defence article on the Munitions List. If such export was made in furtherance of a manufacturing licence agreement for the production abroad of Munitions List defence articles, the manufacturing licence agreement in question must first be approved by the United States; no such agreements were approved for licensed manufacture in South Africa.

56. In its reply dated 17 October 1979, France referred to an earlier note dated 30 October 1978 addressed to the Secretary-General (S/12910), stating that since the adoption of resolution 418 (1977), contractual arrangements relating to the supply of arms to South Africa had become de facto, null and void. With regard to licences granted in the past, it was noted that they related relatively to old transactions and that the recipients had by no means made use of them all. The French Government had called on industry to take practical measures to terminate their co-operation. Any application for the renewal or extension of such licences would be refused as would be the case for the granting of new licences.

57. A note dated 4 February 1979 from Israel stated that with regard to licences granted in the past relating to the manufacture and maintenance of arms and ammunition, the Government of Israel had called on industry to take measures to terminate such licences. The Government would not approve any application for renewal or extension of such a licence.

3. Nuclear collaboration with South Africa and its implications
for the manufacture and development of nuclear weapons
by South Africa

58. The Committee has devoted considerable attention to the question of nuclear

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collaboration with South Africa. It has already submitted a separate report to the Security Council on this item (S/13708).

59. At the 5th and 9th meetings on 27 June 1978 and 3 April 1979 respectively, the Chairman of the Special Committee against Apartheid made statements in which he drew attention to the Seminar on Military and Nuclear Collaboration with South Africa organized by the Special Committee in London in May 1978. He said that the report of the Seminar contained a wealth of information on the loopholes in the arms embargo and on the collaboration of some States with the apartheid régime in the nuclear field. The Special Committee against Apartheid considered that the formulation of paragraph 4 of resolution 418 (1977) was totally inadequate in preventing the apartheid régime from acquiring nuclear capability since, as interpreted by South Africa's nuclear collaborators, namely, France, the Federal Republic of Germany, the United Kingdom and the United States, it allowed the transfer of technology, capital equipment and fissionable material to South Africa. He stressed that a mandatory embargo on all forms of collaboration with South Africa in the nuclear field was urgently required in the light of the frantic efforts of the apartheid régime to become a nuclear power.

60. Other speakers from non-governmental organizations were heard by the Committee, including Professor Ronald Walters of Howard University, Washington, D.C., Mr. Abdul S. Minty, Director of the World Campaign against Military and Nuclear Collaboration against South Africa and Mr. Wolff Geisler, representative of the Anti-Apartheid Movement of the Federal Republic of Germany. They stressed that South Africa was rapidly developing nuclear-weapons capability, mainly with the help of technology and equipment provided by the Federal Republic of Germany. Professor Walters drew attention to what he considered deficiencies in the wording and particularly to the term "refrain" in paragraph 4, which did not imply a total ban on all forms of nuclear co-operation with South Africa. He said that the Committee might consider specifying additional prohibitions which logically flowed from the provisions of paragraph 4. In his view, it might, for example, be considered appropriate to prohibit trade in, or the provision of, special nuclear materials, source materials or by-product materials, and the provision of production or utilization facilities, and to restrict access by South African scientific personnel to data and training in nuclear-energy applications. In addition, in order to prohibit all collaboration with South Africa and other States in the development of nuclear weapons, all relations defined as "peaceful" or "civilian" should be prohibited as well. Since South Africa had access to the resources of multinational firms and received financial assistance from Western institutions, it was able to finance its military and nuclear build-up. He stressed that the aim should be to adopt a comprehensive programme for a mandatory arms embargo which placed all aspects of the South African nuclear build-up fully within the framework of arms control and considered all remedies from that vantage point.

61. Mr. Abdul S. Minty referred to "loopholes" resulting from the phraseology of paragraph 4 of resolution 418 (1977) which, in his view, allowed for varying interpretations by the States concerned. Several States had construed the prohibition to "refrain from any co-operation with South Africa in the manufacture and development of nuclear weapons" as (a) not constituting an absolute proscription

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against any such co-operation; (b) allowing for unilateral interpretation as to what constituted such "co-operation with South Africa" in the context of the resolution; (c) allowing for the interpretation, expressed by certain States which were the traditional trading partners of South Africa, that certain types of nuclear co-operation with South Africa, other than co-operation in "the manufacture and development of nuclear weapons", was permissible, if not to be wished for, such as nuclear co-operation in the framework of International Atomic Energy Agency (IAEA) safeguards; and (d) allowing each State to decide for itself the type of nuclear co-operation with South Africa which constituted "co-operation with South Africa in the manufacture and development of nuclear weapons" within the context of the letter and spirit of paragraph 4 of resolution 418 (1977).

62. Mr. Minty rejected the approach of Western Powers on continuing their nuclear links with South Africa in order to persuade South Africa to sign the Non-Proliferation Treaty (NPT). He said that in all the years that efforts were apparently being made to persuade South Africa to sign the treaty, nuclear collaboration had, in fact, increased. The former Prime Minister of South Africa, Mr. Vorster, had stated that if South Africa signed the NPT, it would expect even more substantial nuclear collaboration than at present. Thus, in effect, the manoeuvres centring on the NPT resulted in South Africa's nuclear capability being enhanced rather than reduced. In the light of the suspected nuclear detonation in September 1979, the Security Council should meet urgently to adopt mandatory measures to prohibit all forms of nuclear collaboration with South Africa.

63. Mr. Minty referred to cases of alleged co-operation by certain States with South Africa. He stated that South Africa claimed to be part of the over-all Western monitoring system for detecting nuclear explosions in close co-operation with the United Kingdom and the United States. South Africa's nuclear partners, including the Federal Republic of Germany, France and other States were still supplying it with nuclear equipment and material. He maintained that Israeli scientists had collaborated with their South African counterparts in the nuclear field. The Federal Republic of Germany had not prohibited the export to South Africa of isotope-measuring equipment (used to determine the isotope-mixing ratio of uranium hexafluoride in uranium-enrichment plants and for a wide range of other purposes) by the firm Varian MAT. The secret uranium enrichment plant at Valindaba had been developed in close co-operation with companies of the Federal Republic of Germany. Mr. W. Geisler also said that the Pretoria régime was building a uranium-enrichment plant to produce weapon-graded uranium, mainly with the help of the Federal Republic of Germany.

64. All members of the Committee have indicated that an urgent need exists to prevent the acquisition of nuclear weapons by whatever means on the part of the South African Government. As some delegations viewed the issue, the difference in views was not over the substance of the problem, but rather, as regards the approach to a solution. In the view of many members, particularly relevant was the fact of the so-called "nuclear event" of 22 September 1979, off the coast of Africa, which many press accounts had labelled a nuclear explosion.

65. Some members of the Committee doubted that any proposal to prohibit all nuclear collaboration with South Africa, including collaboration for peaceful

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purposes, came within the Committee's terms of reference. It was both necessary and possible to make a distinction between nuclear activities for civilian ends and nuclear activities for military purposes. To deny that possibility was tantamount to questioning the very concept of non-proliferation and the development of nuclear energy for peaceful purposes. Those Members maintained that they did not collaborate in any way with South Africa in the development of a nuclear-weapons capability; nor did they supply nuclear materials, nuclear facilities and equipment or related scientific training and economic assistance directed towards these objectives. The right of all States to apply and develop programmes for the peaceful uses of nuclear energy for economic and social development was internationally recognized and enshrined in a number of instruments including the Statute of IAEA, the Treaty on the Non-Proliferation of Nuclear Weapons and the final document of the General Assembly's special session on disarmament. They none the less noted the existence in South Africa of nuclear installations not subject to the safeguards of the IAEA. They considered that the acceptance of safeguards on all nuclear installations and materials would promote international confidence in the peaceful nature of a nation's nuclear activities; they shared, however, the general concern that South Africa might use nuclear installations not covered by IAEA safeguards to develop nuclear military capacity. Moreover, those members also felt that co-operation with South Africa in the nuclear field was not inconsistent with internationally recognized principles of non-proliferation and at present was the only way of keeping a check on the development of the nuclear sector in South Africa.

66. One member of the Committee observed that the countries which engage in nuclear co-operation with South Africa obviously did not consider safeguards to be all that important since the nuclear assistance extended to South Africa was much greater than that given to other countries which had accepted the safeguards and which had accepted serious political commitments including those contained in the Non-Proliferation Treaty. South Africa was not prepared to undertake such commitments, considering that it already received nuclear assistance. It might, therefore, be advisable to recommend that the Security Council impose an embargo on all nuclear co-operation not just on co-operation for military purposes with South Africa.

67. Another member noted that the dialogue had, unfortunately, become polarized as to the best way of preventing South Africa from developing nuclear weapons. Nevertheless, the differences seemed mainly to relate to approach and not to substance. One possible approach lay in concerted national efforts to ensure that South Africa's entire nuclear programme became subject to international inspection and safeguards. If South Africa refuses such controls, all forms of nuclear collaboration should be halted. It was in the interest of all concerned to move closer to a common international approach to the problem and in that connexion, full-scope safeguards offered the best possibility for the early implementation of measures for dealing with South Africa's nuclear ambitions.

68. The majority view was that South Africa was striving to produce nuclear weapons in collaboration with Western States. The acquisition by South Africa of any nuclear capacity posed a significant threat to the countries in the region and to

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international peace and security. In view of South Africa's record of untrustworthiness, no one could remain convinced that, even if South Africa were to become a signatory to the NPT, the danger would be reduced. Therefore, the real issue was that all forms of nuclear collaboration with South Africa must be ended. The wording of the resolution seemed to give rise to varying interpretations of what constituted nuclear collaboration with South Africa. Appropriate steps would have to be taken to amend resolution 418 (1977) with a view to eliminating any loopholes in the resolution. The solution seemed for the Security Council to adopt a new resolution prohibiting all forms of nuclear collaboration. It was stated also that a prohibition should be placed on the transfer of technology to South Africa and especially on the training of personnel for nuclear weapons production.

69. In a note dated 27 May 1980, and referring to a previous note of 4 October 1979, France stated that the terms of reference of the Committee, as set out in resolution 421 (1977), did not encompass the consideration of nuclear co-operation for exclusively peaceful purposes. The nuclear power plant, which was under consideration at Koeberg in South Africa, would be placed under the control of the International Atomic Energy Agency (IAEA).

70. The United Kingdom, in notes dated 1 August 1979 and 27 May 1980, stated that it does not collaborate in any way with South Africa in the deployment of a nuclear weapons capability; nor does it supply nuclear materials, nuclear facilities and equipment or related scientific training and economic assistance directed towards these objectives. Those exports which have taken place in recent years have been for nuclear safety or medical or other research purposes not associated with South Africa's nuclear-power programme.

71. The United States, in a note dated 14 April 1980, stated that the United States Nuclear Proliferation Act of 1978 (NNPA) required that for exports of nuclear materials and equipment from the United States under future applications, the recipient State must have IAEA safeguards on all its nuclear activities. The technology which Westinghouse had made available to Framatome was based on licensing arrangements which predated NNPA by several years. The technology was generally available on the international market, and its transfer was generally authorized by United States law, except to Communist nations. Westinghouse had no involvement with the Koeberg project as such, and its links with Framatome fell outside the terms of NNPA. Consequently, the United States Government had no basis for control of these links. The United States representative in the Committee also stated that the United States had not, during the previous four years, authorized any significant export of nuclear materials or equipment for use in South Africa's nuclear-power or research programmes.

72. In a note of 23 June 1980, Israel stated that it firmly rejected the allegations included in the statement of Mr. Minty.

73. The Federal Republic of Germany, in a note dated 21 July 1980, informed the Committee that it had issued an Order by which spectrometers and mass spectrometer sources designed for measuring the isotopic composition of uranium hexafluoride (UF₆) gas, uranium or uranium compounds had been added to the list of items the

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export of which required prior authorization by the competent authorities of the Federal Republic of Germany. It would be the policy of the Federal Government not to authorize the export of isotope-measuring instruments/mass spectrometers to South Africa unless it could be clearly established that these items would not be used for the enrichment of uranium or in other sensitive fields of the nuclear fuel cycle. Certificates stating that certain items were not subject to authorization for export expired after six months. No such certificates had been issued to the company Varian MAT for the export of isotope-measuring instruments/mass spectrometers to South Africa since the middle of 1979.

III. CONCLUSIONS AND RECOMMENDATIONS

74. In accordance with paragraph 1 of resolution 421 (1977), the Committee has considered information from States "regarding the action taken by them concerning the effective implementation of the provisions laid down in resolution 418 (1977)", and has studied "ways and means by which the arms embargo could be made more effective". The Committee studied reports of alleged violations of the embargo, taking into account communications from States, testimony from experts and non-governmental organizations, and reports from the news media. Bearing in mind the provision contained in paragraph 11 of resolution 473 (1977) of the Security Council, the Committee devoted considerable attention to an analysis of the difficulties which have impeded the full and universal application of the embargo, and to measures needed to close the loop-holes in the embargo, reinforce it and make it more comprehensive. The conclusions and recommendations of the Committee are set out below:

A. Conclusions

75. There is strong circumstantial evidence to indicate that illicit transfers of "arms and related matériel of all types" to South Africa continue to take place. Clandestine operations are carried out from an undetermined number of countries, in circumvention of the arms embargo. Devious routes are used, on which the Committee has scant information. News media and non-governmental organizations have reported some cases of possible violations, but States have seldom reported such violations.

76. In cases where "a final destination clause" is not included in arms export agreements, embargoed military items may reach South Africa via third parties. Sometimes, the manufacture of component parts of embargoed equipment is subcontracted by one country to another, thus allowing the latter to be a participant in violating the embargo. The continued operation of South Africa's imported military aircraft indicates that spare parts continue to reach that country, and that aircraft and possibly other military equipment continue to be serviced and maintained by foreign companies.

77. Some licensing agreements previously granted to South Africa, for the manufacture and maintenance of arms and related matériel, continue to be in force. Thus, military items are manufactured locally in South Africa, either by South African firms or by local subsidiaries of foreign corporations. Some States have

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either prohibited the granting of, or stated their intention not to grant, new licences. However, the "review" by States of existing contractual arrangements with and licences granted to South Africa under the terms of paragraph 3 of resolution 418 (1977) has, in most cases, not been brought to the attention of the Committee.

78. The Committee notes with concern the existence of varying interpretations of certain provisions of resolution 418 (1977), as follows:

(a) The term "arms and related matériel of all types" has not been adequately defined. No internationally-accepted list of products falling within this category has been compiled;

(b) Some ambiguity exists with regard to "dual purpose" items, i.e. items used for both civilian and military ends;

(c) Some States may allow certain items to be exported to civilian customers in South Africa, with the possibility that they could be diverted to military use;

(d) The word "review" in paragraph 3 of resolution 418 (1977) has been considered to be lacking in precision. Some States have interpreted the provision regarding the termination of licences as either conditional or voluntary;

(e) In paragraph 4 of resolution 418 (1977), the injunction "to refrain from any co-operation with South Africa in the manufacture and development of nuclear weapons" has been the subject of considerable discussion within and outside the Committee. There may be a lack of precision as to what type of nuclear co-operation falls within the purview of paragraph 4. Nuclear co-operation with South Africa, defined by some members as "peaceful" and "civilian", is considered by most members as constituting co-operation which could lead to "the manufacture and development of nuclear weapons". It has also been argued that full-scope international safeguards are necessary in order to prevent South Africa from manufacturing and developing nuclear weapons as provided for in paragraph 4 of resolution 418 (1977). Nevertheless, the Committee is convinced that an urgent need exists to prevent the acquisition by South Africa of nuclear weapons. The effective implementation of the embargo could be facilitated with a clarification of the nature and scope of State obligations under the said paragraph.

79. The Committee notes that few legislative measures have been adopted by States in implementation of resolution 418 (1977). Although general legislative or administrative measures may be invoked to enforce the embargo, would-be violators would find it more difficult to evade a specific law, whether in their own or other countries. Therefore, the enactment of such laws by all States would promote the effectiveness of the arms embargo.

80. Although resolution 418 (1977) has created clear obligations upon States, the Committee has so far only dealt with breaches of the arms embargo reported to it. It has not been supplemented by additional machinery within the framework of the Committee for investigation, verification and control. There has not been a systematic study, undertaken on behalf of the Committee, of the international flow

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of arms and equipment towards South Africa, nor has there been an international system for research into reported violations of the arms embargo.

B. Recommendations

81. The following recommendations are submitted for consideration and decision by the Security Council, in accordance with paragraph 11 of Security Council resolution 473 (1980). Reservations are listed in paragraph 82 below.

- (i) All States should undertake concrete steps to close existing loop-holes in the embargo. To this end, all States should ensure that arms-export agreements include guarantees which would prevent embargoed items from reaching the South African military establishment and police through third countries. The guarantees should cover components of embargoed items subcontracted by firms from one country to another.
- (ii) States should prohibit the export of spare parts for embargoed aircraft and other military equipment belonging to South Africa, and the maintenance and servicing of such equipment.
- (iii) States should revoke or terminate all industrial licences previously concluded with South Africa to manufacture arms and related matériel of all types.
- (iv) States should prohibit government agencies and corporations under their jurisdiction from transferring technology or using technology subject to their control in the manufacture of arms and related matériel of all types in South Africa.
- (v) States should prohibit corporations under their jurisdiction from investing in the manufacture of arms and related matériel in South Africa.
- (vi) States should prohibit the export to South Africa of "dual-purpose" items, i.e., items provided for civilian use but with the potential for diversion or conversion to military use. In particular, they should cease the supply of aircraft, aircraft engines, aircraft parts, electronic and telecommunications equipment and computers to South Africa. Supplies of four-wheel drive vehicles destined for the military or police forces should also be prohibited.
- (vii) The term "arms and related matériel of all types", referred to in resolution 418 (1977), should be clearly defined to include all equipment intended for the military and police forces of South Africa.
- (viii) All forms of nuclear collaboration with South Africa should cease. There should also be a termination of the exchange of nuclear scientists with South Africa, as well as the termination of the training of South African nuclear scientists in any country.

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- (ix) All States should ensure that their national legislation or comparable policy directives guarantee that specific provisions to implement resolution 418 (1977) include stiff penalties for violations.
- (x) All States should include in their national legislation or comparable policy directives provisions to prohibit within their national jurisdiction the enlistment and/or the recruitment of mercenaries or any other personnel for service with South Africa's military and police forces.
- (xi) States which have not done so should put an end to exchanges of military attachés, as well as exchanges of visits by government personnel, experts in weapons technology and employees of arms factories under their jurisdiction, when such visits and exchanges maintain or increase South Africa's military or police capabilities.
- (xii) No State should contribute to South Africa's arms-production capability: thus the embargo should include imports of arms and related matériel of all types from South Africa.
- (xiii) NATO countries, in implementing the terms of resolution 418 (1977), should reject any arms purchase orders by South Africa, submitted through the codification system used by NATO member States.
- (xiv) Recalling the provision of paragraph 1 (c) of resolution 421 (1977) in which the Committee's request to "seek from all States further information regarding action taken by them concerning the effective implementation of the provisions laid down in resolution 418 (1977)," the Committee considers that further action is needed to study systematically the international flow of arms to South Africa, with a view to the effective monitoring and verification of transfers of arms and other equipment in violation of the embargo. Measures should also be taken to investigate violations and prevent future circumvention of the embargo. International public opinion should be more informed as to the terms of the embargo and alerted to its violations. It is, therefore, necessary to maintain direct contact with responsible intergovernmental and non-governmental organizations whose activities and/or expertise are likely to promote the strict implementation of the embargo. Consequently, the Committee considers that the machinery for the implementation of the embargo should be strengthened.
- (xv) A sanctions branch should be created within the Secretariat to assist the Committee in carrying out its functions, as outlined above.
- (xvi) One member proposed that the Committee recommend that the Security Council should call on all States which continue to collaborate with South Africa in the nuclear field to stop such collaboration unless South Africa accepts full-scope international safeguards.

82. The United Kingdom placed a general reserve on the above recommendations. France expressed reservations concerning subparagraphs (iii), (v), (vii), (xi), (xiii) and (xv) and opposition to subparagraphs (vi) and (viii). The United States expressed reservations with regard to subparagraphs (v), (vi), (viii), (x) and (xv).
