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Security Council Committee established pursuant to resolution 1521 (2003) concerning Liberia

Note verbale dated 6 July 2004 from the Permanent Mission of South Africa to the United Nations addressed to the Chairman of the Committee

The Permanent Mission of the Republic of South Africa to the United Nations presents its compliments to the Chairman of the Security Council Committee established pursuant to resolution 1521 (2003) concerning Liberia and, with reference to paragraph 21 (b) of resolution 1521 (2003), has the honour to present the attached information regarding the actions taken by the Republic of South Africa to implement effectively the measures imposed by resolution 1521 (2003).

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Annex to the note verbale dated 6 July 2004 from the Permanent Mission of South Africa to the United Nations addressed to the Chairman of the Committee

REPORT BY THE SOUTH AFRICAN GOVERNMENT ON MEASURES ADOPTED AND LEGISLATION UTILISED TO ENSURE IMPLEMENTATION OF SECURITY COUNCIL RESOLUTION 1521 (2003)

Introduction

In accordance with paragraphs 2, 4, 6 and 10 of Security Council resolution 1521 (2003), the South African Government has taken the necessary measures to ensure full compliance with Security Council sanctions against Liberia. The following contains a list of specific measures adopted and acts utilised in the implementation of sanctions against Liberia:

Paragraph 2

National Conventional Arms Control Committee (NCACC)

The South African Government has since its inauguration in May 1994, committed itself to a policy of non-proliferation, disarmament and arms control which covers all weapons of mass destruction and extends to concerns relating to the proliferation of conventional weapons.

On 30 August 1995 the South African Cabinet approved an Interim Arms Control Policy. This policy formed an integral part of its commitment to democracy, human rights, sustainable development, social justice and environmental protection. The Interim Arms Control Policy was based on the Armaments Development and Production Act (Act No. 57 of 1968). In 1997 the National Conventional Arms Control Act Committee (NCACC) initiated a drafting process for a new Conventional Arms Control Bill in order to obtain the legal statutory authority to control conventional arms and services.

The National Conventional Arms Control (NCAC) Act was promulgated on 1 May 2003 and replaced the Armaments Development and Production Act, 1968 (Act No. 57 of 1968). The Act established a National Conventional Arms Control Committee (NCACC) consisting of Cabinet Ministers. The Act enables the NCACC to ensure the implementation of a legitimate, effective and transparent control process, which would foster national and international confidence in the control procedures.

The Act has laid down a set of guiding principles and criteria to be used in the assessment of conventional arms transfers. These guiding principles and criteria are based on internationally accepted norms and, *inter alia*, include consideration of human rights and fundamental freedoms as well as the adherence to international treaties and agreements. These criteria stipulate, amongst others, that the NCACC must:

a) Avoid endangering regional and international peace and stability by introducing destabilising military capabilities into a region, which could aggravate or prolong any existing armed conflicts;
b) Adhere to international law, norms and practices and the international obligations and commitments of South Africa, including United Nations arms embargoes; and
c) Avoid contributing to terrorism and crime.

The Act makes provision for four levels of responsibility. These include a technical processing level, which is carried out by the Secretariat of the NCACC, a multi-departmental review process, a departmental scrutiny process and finally a control, policy and decision-making authority, which are embodied in the NCACC.

Provision is made for an independent Inspectorate, which is to ensure that trade in conventional arms and services is conducted in compliance with this Act. The scope and authority of inspection functions has further been broadened and is more clearly defined compared to the previous Act.

The Act also makes provision for stiffer penalties for offenders than the previous Act.

The Act requires quarterly reporting to Parliament, providing an *ex post facto* overview of exports.

Besides controlling conventional arms and services, the Act also regulates military dual-use goods. This brings the Act into line with international arms control practices such as the Wassenaar Arrangement. Another important aspect that the Act regulates in the trade in conventional arms and services is controlling brokering and freight forwarding services.

The Act has extra-territorial powers designed to control trade in conventional arms and services of South African Nationals, as well as all foreign registered persons in South Africa, abroad.

The NCACC has registered resolution 1521 (2003) and South Africa's commitment towards complying with the Resolution. No permits for the transfer of any military equipment or related materiel of all types, or services, or the provision of logistic support as specified in resolution 1521 to Liberia will be authorised by the NCACC for as long as these measures remain in force. In accordance with the requirements of the resolution, the control measures do not apply to protective clothing, including flak jackets and military helmets temporarily exported to Liberia by United Nations personnel, representatives of the media and humanitarian and development workers and associated personnel, for their personal use.

The NCACC has not received any reports of arms transfers that could be considered to be of a suspicious nature, nor has there been any contravention of any of the Parliamentary Acts referred to in the section below.

Regulation of Foreign Military Assistance Act, 1998 (Act No. 15 of 1998)

The South African Government decided in 1995 to pass an Act, which would control unauthorised foreign military assistance to any State in conflict. The aim of such an act was to prevent South African companies and citizens from participating in armed international conflicts except as provided for in the Constitution. The Regulation of Foreign Military Assistance Act was passed in September 1998, making South Africa one of a few countries in the world outlawing mercenarism and regulating foreign military assistance.

Section 2 of the Act, prohibits any mercenary activity. Mercenary activity refers to direct participation by a combatant in armed conflict for personal gain.

Section 3 of the Act, prohibits the rendering of foreign military assistance, or any offer to render such assistance, by any person within South African territory or by any South African national outside of the Republic, unless authorisation has been obtained from the National Conventional Arms Control Committee (NCACC).

Armed conflict includes any armed conflict between:

- The armed forces of foreign states;
- The armed forces of a foreign state and dissident armed forces or other armed groups;
- Armed groups.

Foreign military assistance is a very broad definition and the Act defines it as follows:

- Advice or training;
- Personnel, financial, logistical, intelligence or operational support;
- Personnel recruitment;
- Medical or para-medical services;
- Procurement of equipment;
- Security services for the protection of individuals involved in armed conflict or their property;
- Any action aimed at overthrowing a government or undermining the constitutional order, sovereignty or territorial integrity of a state;
- Any other action that had the result of furthering the military interest of a party to the armed conflict, but not humanitarian or civilian activities aimed at relieving the plight of civilian activities in an area of armed conflict.

In its consideration of applications related to foreign military assistance, the NCACC is guided by the Act. Any person wishing to obtain authorisation, or seeking to obtain approval of an agreement or arrangement for the rendering of foreign military assistance, needs to submit an application to the NCACC. In this regard, the Act contains criteria for the granting or refusal of such authorisations and approvals, stipulating that these may not be granted if, amongst others, the authorisation or approval would “be in conflict with the Republic’s obligations in

terms of international law" (Section 7(1)(a)) or if it would "support or encourage terrorism in any manner" (Section 7(1)(d)).

The Act prohibits a natural person who is a South African citizen or is permanently resident in the Republic, a juristic person registered or incorporated in the Republic, and any foreign citizen within the borders of the Republic from rendering foreign military assistance without authorisation from the National Conventional Arms Control Committee (NCACC).

The Act has extra-territorial application, and a court of law will have jurisdiction over an act committed outside the territory of South Africa, unless it was an act committed by a foreign citizen wholly outside its borders.

The Act provides that any person who contravenes a provision of the Act (i.e. by providing unauthorised military assistance) shall be guilty of an offence and liable on conviction to a fine or to imprisonment or both.

Non-Proliferation of Weapons of Mass Destruction Act, 1993 (Act No. 87 of 1993)

The South African Council for Non-Proliferation (NPC) implements South Africa's non-proliferation controls. The Non-Proliferation of Weapons of Mass Destruction Act, 1993 (Act No. 87 of 1993) provides the statutory authority for the NPC to control the export, import, transit and re-export of South African dual-use technology, material and equipment which could be used in the production of weapons of mass destruction and other advanced weapons systems.

Dual-use capabilities are defined by the Act as "those capabilities relating to technology, expertise, service, material, equipment and facilities which can contribute to the proliferation of weapons of mass destruction, but which could also be used for other purposes, including conventional military, commercial and educational use". These goods could form part of larger weapons systems or could be purely for civilian use.

The Act also provides the necessary legal framework for the implementation, within South Africa, of the non-proliferation and arms control obligations, which would arise out of South Africa's participation in the various export control regimes.

Firearms Control Act, 2000 (Act No. 60 of 2000)

In terms of Section 73 of this Act, no person may import or export firearms and ammunition without the necessary permit. The Act as well as the NCAC Act makes provision for the NCACC to authorise the export of firearms and ammunition against the set criteria contained in the NCAC Act.

The sentence for the contravention of Section 73 is 15 years imprisonment. In terms of Section 31 (1) of the Firearms Control Act, 2000 (Act No. 60 of 2000), no person may trade in any firearm or ammunition without a dealer's license. There are certain requirements which must be met before a

dealer's licence will be issued and conditions may be imposed on the dealer (Sections 32 and 33). The information with regard to licenses of dealers is centralised and can be obtained from the Registrar of Firearms. In terms of Section 124 the Registrar must establish and maintain the Central Firearms Register.

The firearms and ammunition may only be sold to a dealer or the State and if exported, must be done in terms of Section 73 of this Act. In terms of Section 45 of the Act manufacturing of firearms and ammunition can only be done by a person in possession of a manufacturer's license. Sentence for contravening Section 45 is 25 years imprisonment.

Paragraph 4

The following South African legislation is relevant in ensuring compliance with resolution 1521 (2003):

Immigration Act, 2002 (Act No. 13 of 2002)

The Act prohibits illegal foreigners or prohibited or undesirable persons from entering or sojourning in the Republic and, when discovered, such persons may be arrested and removed from the country. The Department of Home Affairs has computerised visa and entry stop-lists to prevent the entry of prohibited persons. In order to improve the control over the cross-border movement of persons and goods by air, the number of international airports has been reduced from 40 to 10. This has enabled the implementing authorities to concentrate their efforts and resources with a view to greater effectiveness.

Regarding the implementation of Security Council resolutions, including the names contained in the Travel Ban lists of 23 March 2004 and 14 April 2004, the South African authorities deal with these as follows:

- The names of the individuals are placed on the Department of Home Affairs' Visa and entry Stoplist. These names are also circulated on a Passport Control Instruction to all offices. This allows for immediate response from the relevant officials, should such a person enter or leave the country.

- In the event where only names or aliases without a date of birth are supplied, a Passport Control Instruction with the names is circulated to all offices. It is stated in these Passport Control Instructions that all applications for visas, temporary or permanent residence permits and for admission to or transit through the RSA of persons who are known to be on this list, must be refused.

Implementing Mechanisms

The law enforcement and intelligence agencies currently utilise the Department of Home Affairs' Movement Control Systems (MCS). The MCS is an electronic system at all border

posts and airports registering arrivals and departures into and from South Africa of all foreigners. To this end, all ports of entry/exit are computerised.

Illegal, prohibited and undesirable foreigners found in the country, having entered without the required authorisation or who have become illegal/prohibited or undesirable whilst in the country, may be arrested, charged and removed from the country in terms of the provisions of the Immigration Act, (Act 13 of 2002). Any person who assists such persons to enter and/or remain in the country are liable to prosecution in terms of the provisions of the said Act.

Paragraph 6

The following South African legislation is relevant in ensuring compliance with resolution 1521 (2003):

The South African Diamond Industry

The South African diamond industry is regulated by two pieces of legislation. The Minerals & Petroleum Resources Development Act, 2000 (Act No. 28 of 2000) which enables persons to prospect and mine diamonds, and the Diamonds Act, 1986 (Act No. 56 of 1986) which regulates "possession, purchase and sale, exports and matters connected there-with".

The Diamonds Act can be broken up into nine (9) segments, i.e. Application of the Act; The South African Diamond Board; Illegal acts; Licenses and permits; The diamond trade; Exports of diamonds; Control measures; Offences, penalties and other judicial matters; and General. Legislation makes provision for issuing of Licenses, Permits and Certificates.

The Kimberley Process Certification Scheme (KPCS), aimed at the eradication of conflict diamonds was implemented internationally on 1 January 2003.

The South African Diamond Board administers the prescribed KPCS (Regulations promulgated under section 95 of the Diamonds Act and published under Government Notice R1361 of 1 November 2002.)

***Licensing system**:*

After considering applications for prospecting, the regional Directorate Mineral Development of the Department of Minerals and Energy issues a permit to prospect or a license to mine diamonds. A holder of a prospecting permit is compelled by the permit he/she holds to report monthly on his/her recoveries both to the Mineral Bureau and the South African Diamond Board separately. The permit issued confines production of diamonds by the holder to an area specified on the permit. The permit, therefore, identifies the area of origin of those diamonds under that permit.

After being issued with a permit by the Directorate Mineral Development, the South African Diamond Board (SADB) then opens a full record of the permit holder. All details of the permit holder are captured in the "Licensing Module" resident at the SADB.

Applications for cutting, dealing, researching and toolmaking licenses are issued directly by the South African Diamond Board. This system feeds into a transactions module called the J-Register System.

***Transactions module**:*

Possession and transacting in diamonds is monitored through a "Transactions module". All transactions of licenses are kept in a separate module called the J-Register System. This system differentiates between various kinds of licenses, J-I Producers, J-II Dealers and J-III Cutters.

Primary transactions:

Producers registers reflect transactions initiated by the producers; (a) Production of diamonds; (b) Disposal of diamonds; (c) Stocking of diamonds. In terms of primary transactions, producers require the following permits:

a) Section 40 (2) permit allowing a person to sell on his/her behalf
b) The permit must be approved by the Board under Section 31 (1) of the Diamonds Act, Act 56 of 1986.

Secondary transactions:

The Dealers register reflects transactions initiated by dealers; (a) Purchase of diamonds; (b) Disposal of diamonds; and (c) Stocking of diamonds. The License of the Dealer reflects full details of the person that owns the License, his/her business premises and the Company registration number.

The Cutters register reflects transactions initiated by cutter, (a) Purchase of diamonds; (b) Processed diamonds; (c) Disposal of diamonds; and (d) Stocking of diamonds. The License of the Cutter reflects full details of the person that owns the License, his/her business premises and the Company registration number.

***Import/Export system**:*

Export of diamonds:
Producers, Dealers and Cutters in South Africa can export rough diamonds. A Cutter however requires a permit in order to export rough diamonds.

"N(i)" documents are used to register and monitor rough diamond exports.
"N(ii)" documents are used to register and monitor polished diamond imports.

Import of Diamonds:

Only Toolmakers can import diamonds into South Africa. A Cutter, however, requires a permit to import rough diamonds.

"R(i)" and S(i) forms are used to register and monitor rough diamond imports.
"Form P" forms are used to register and monitor polished diamond imports.

Paragraph 10

The following South African legislation is relevant in ensuring compliance with resolution 1521 (2003):

The International Trade Administration Act, 2002 (Act 71 of 2002)

The powers of the Minister of Trade & Industry in regulating imports and exports are outlined in Chapter 2, paragraph 6 of the Act. It stipulates that the Minister may, by notice in the Gazette, prescribe that no goods of a specified class or kind, or no goods other than goods of a specified class or kind may be imported into the Republic of South Africa, or exported from the country, except under the authority of and in accordance with the conditions stated in a permit issued by the Trade Administration Commission.

The Commission was established by the International Trade Administration Act and its mandate includes, *inter alia,* the issuing of permits or certificates and the monitoring of trade matters.

In addition to the above, the documentation was also distributed to the South African Revenue Service (Customs) for their attention. The list of products was distributed to all the relevant authorities at the Customs Department and has been placed on a so-called "Prohibitive and Restricted List of Goods". All possible measures have therefore been taken that these goods do not enter South Africa pursuant to resolution 1521 (2003).