

**Legislative Control Over the Military: A Critical
Analysis of the Strategic Arms Package**

A minor dissertation submitted in partial fulfilment of the requirements for the award
of the degree of: *Master of Social Science in International Relations*

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Declaration

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ABSTRACT

The Strategic Arms Package, otherwise commonly known as the Arms Deal, has been the largest public controversy of South Africa's post-Apartheid era. Opposition parties and civil society have severely criticised the SAP. The purpose of this dissertation is to understand what the Arms Deal shows about legislative control over defence in a democratic South Africa, and also the impact it has had on security relations.

This dissertation takes the form of a critical analysis and attempts to provide a balanced assessment of what exactly has transpired during the history of the Arms Deal. Through the 'window' of the Arms Deal the study will attempt to highlight the strengths and weaknesses of South Africa's democratic institutions and other relevant role players. The study addresses four main criticisms of the Arms Deal. These include: first, the necessity of the Arms Deal; second, the affordability of the Arms Deal; third, the allegations of corruption within the Arms Deal; and fourth, whether the Arms Deal has relegated Parliament as a rubber stamp body.

The dissertation's main findings are related to democratic civil-military relations and democratic legislative control over the military. Executive dominance over the legislature is a phenomenon present in democracies around the world. Executive dominance is a tradition from the Apartheid era that has continued. Another tradition that has continued from the Apartheid era is weak oversight over the military within the South African Parliament. Also, South Africa's democratic institutions are vulnerable to economic pressure and undemocratic influences.

LIST OF ABBREVIATIONS

Advanced Light Fighter Aircraft	ALFA
Affordability Committee	AC
African Defence Systems	ADS
African National Congress	ANC
African Union	AU
Armament Acquisition Control Board	AACB
Armament Acquisition Council	AAC
Armament Acquisition Steering Board	AASB
Armaments Corporation	ARMSCOR
Armaments Production Board	APB
Auditor-General	AG
Black Economic Empowerment	BEE
British Aerospace	BAE
Chief of the South African Defence Force	CSADF
Chief of the South African National Defence Force	CSANDF
Coalition of South African Trade Unions	COSATU
Defence Export Services Organisation	DESO
Defence Industrial Participation	DIP
Democratic Alliance	DA
Department of Defence	DOD
Department of Trade and Industry	DTI
Directorate of Special Operations	DSO
Fast Attack Craft	FAC
Foreign Direct Investment	FDI
Foreign Exchange	FOREX
German Frigate Consortium	GFC
German Submarine Consortium	GSC
Gross Domestic Product	GDP
Institute for Democratic Alternative in South Africa	IDASA
Joint Investigation Team	JIT
Joint Standing Committee on Defence	JSCD

Lead in Fighter Trainer	LIFT
Less Developed Country	LDC
Member of Parliament	MP
Military Expenditure	MILEX
Minister of Defence	MOD
More Developed Country	MDC
National Assembly	NA
National Convention Arms Control Committee	NCACC
National Coordinating Mechanism	NCM
National Council of Provinces	NCOP
National Industrial Participation	NIP
National Party	NP
National Prosecution Authority	NPA
National Security Management System	NSMS
New Economic Partnership for African Development	NEPAD
Portfolio Standing Committee on Defence	PSCD
Reconstruction and Development Program	RDP
Republic of South Africa	RSA
Research and Development	R&D
South African Army	SAA
South African Air Force	SAAF
South African Defence Force	SADF
South African National Defence Force	SANDEF
South African Navy	SAN
South West African People's Organisation	SWAPO
Special Defence Account	SDA
Special Investigation Unit	SIU
State Security Council	SSC
Standing Committee on Public Accounts	SCOPA
Strategic Arms Package	SAP
Umkhonto weSizwe	MK
Union Defence Force	UDF
United Nations	UN
United Nations Security Council	UNSC

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CHAPTER ONE

1. INTRODUCTION

1.1 Motivation and Research Problem

Democracy always implicitly presumes unlimited civilian supremacy over the command of the armed forces – anything short of that defines an incomplete democracy.¹

In 1999 the South African government entered into a strategic arms acquisition deal with a price tag of over R29 billion. The Strategic Arms Package (SAP), otherwise commonly known as the Arms Deal, has been the largest public controversy of South Africa's post-Apartheid era. Opposition parties and civil society have severely criticised the SAP. This criticism ranges from the affordability of the SAP to the necessity of the acquisition itself; best known for the incessant allegations of corruption that have encircled the SAP since the outset and that continue to be made public.

The Arms Deal² is important for several reasons. The sheer cost of the SAP is staggering compared to any arms procurement in South Africa's history. The Arms Deal is South Africa's first attempt at a strategic arms procurement package. The SAP is also South Africa's first strategic arms procurement under a form of legislative civilian control, characterised by democratic security relations. Never have democratic security relations existed in South Africa, nor has there ever been a strong legislative control over defence. Both exist, from an institutional point of view, in post-Apartheid South Africa. Thus, the SAP is a useful window through which to gaze at these things. The SAP is *the* test of the state of legislative control over defence and the nature of security relations in democratic South Africa.

South Africa underwent a process of democratisation in the early 1990s that culminated in its first democratic elections in 1994. Ever since, the country's political leaders have faced the very difficult task of transforming the Apartheid-era defence

¹ Hans Born, "Democratic Oversight of the Security Sector: What does it mean?" in *Working Paper Series-No. 9*, (Geneva Centre for the Democratic Control of Armed Forces [DCAF], April 2002), 1. Accessed on 21/05/2005 at [http://www.dcaf.ch/publications/Working_Papers/09\(E\).pdf](http://www.dcaf.ch/publications/Working_Papers/09(E).pdf)

² The terms Arms Deal and Strategic Arms Package will be used interchangeably, but both refer to the same arms acquisition programme.

sector into one that is 'democracy friendly'. Legislative control over the military has been of paramount importance to the success of South Africa's democratic transition. Thus, the Arms Deal provides a timely opportunity to examine the key characteristics of this new democratic defence sector and describe the nature of the relations between the relevant security actors.

1.2 What is the Strategic Arms Package?

The SAP is a series of major arms procurement contracts signed between the South African government and international arms suppliers. The contracts were lumped together into a 'package' intended to provide a more affordable deal for the government. The SAP was mostly financed through an intricate set of loans from foreign banks.

In December 1999, the government announced that it had signed agreements with various suppliers to re-equip the SANDF, with the South African Navy (SAN) and the South African Air Force (SAAF) being the chief beneficiaries of the SAP.³ The SAP consisted of five main contracts. First, the German Submarine Consortium (GSC) was awarded the contract to supply four submarines to the SAN at the price of R4 289 million. Second, the Italian company Agusta was awarded the right to supply 30 utility helicopters to the SAAF for R1 532 million. Third, the lead-in fighter trainer or commonly known as "LIFT" contract was awarded to British Aerospace to provide the SAAF with 24 Hawk fighter/trainer jets at the price of R3 728 million.⁴ Fourth, the contract for four corvettes was awarded to the German Frigate Consortium-Thomson (GFCT) for R5 473 million. Fifth, the advanced light fighter aircraft or ALFA contract was granted to British Aerospace to supply 28 SAAB⁵ Gripen fighters at the price of R9 952 million.⁶ The decision has since come under fierce criticism by

³ Judith February, "South Africa- Democracy and the South African Arms Deal," in *Three Strikes against Graft* commissioned case study for the *ISS Anti-Corruption Strategies Programme*, (Indaba Hotel, Gauteng, South Africa: Institute for Security Studies, 15-17 March 2004), 9.

⁴ The *Hawk* was chosen against the preference of the Secretary of Defence and the Chiefs of the SAAF, as the government was keen to grant a major contract to the British arms company. See Terry Crawford-Browne, "ECAAR-SA will Release BAE Systems Arms Deal Loan Agreements," *Economists Allied for Arms Reduction*. (2 December 2004), 1.

⁵ Note that British Aerospace (BAE) has half a share in the Swedish SAAB company.

⁶ *Ibid.* 12.

all quarters of South African society, and one could call it the biggest controversy in the post-Apartheid era.

1.3 Research Question and Focus

Given the importance, significance and incessant controversy that surround the Arms Deal it is important to first *get the facts right* before one proceeds with any evaluative or causal analysis. This has been very difficult given the swarm of media activity around the deal. Few weeks pass without media reports of Arms Deal corruption/scandal. Thus, the SAP has created much noise over the past several years, but how much of it is actually of any substance? What is fact and what is fiction? The sheer scope and scale of the Arms Deal has ensured a widespread impact on South Africa's political landscape and greater society.

The purpose here is to understand what the Arms Deal shows about legislative control over defence in a democratic South Africa, and also the impact it has had on security relations. The research question for this study is: "What does the Strategic Arms Package saga, between 1998 and 2005, show about legislative control over defence in South Africa?" This is a descriptive question and was chosen because it is the most viable means of understanding the role played by all the actors concerned.

1.4 Research Design and Analytical Approach

Because this is a critical analysis, it requires a balanced assessment of what exactly has transpired during the history of the SAP. Through the 'window' of the Arms Deal the study will attempt to highlight the strengths and weaknesses of South Africa's institutions and other relevant role players. These aspects are crucial to a balanced critical analysis. Given the widespread impact of the SAP it is impossible to include everything. There have also been many court cases related to the SAP, but some remain uncompleted or have not yet convened. Thus, the study will only include legal actions that have been completed with legal verdicts. The scope of the study stretches from the Apartheid era until the present year, 2006.

The study consists of four chapters, excluding the introduction and conclusion. The chapters are divided according to the four main criticisms of the SAP:

- a) The necessity of the SAP

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- a) The necessity of the SAP

- b) The affordability of the SAP
- c) The allegations of corruption
- d) Parliament as a 'rubber stamp' body.

All chapters include brief introductions and summaries. The summaries are crucial to the main conclusion as these will highlight the important strengths and weaknesses relevant to the subject material of the chapter concerned.

Chapter Two is a brief historical survey of arms deals in South Africa. Although the dissertation does not take the form of a time comparison it is important to illustrate the continuities, if any, between arms deals under Apartheid and those under the post-Apartheid democracy, with a view to legislative control over the military.

Chapter Three surveys the roles and responsibilities of the relevant players within legislative control over arms acquisition in a post-Apartheid, democratic South Africa.

Chapter Four is the first chapter that deals with the actual SAP. The chapter addresses the roots of the SAP and considers the criticisms of military necessity and affordability that have been levelled against the SAP.

Chapter Five discusses the impact of the SAP on South Africa's democratic institutions. The chapter concerns the legal prosecutions and the massive political fallout that transpired in the aftermath of the SAP. The chapter also addresses the criticisms of corruption within the SAP and that the SAP has rendered Parliament a rubber-stamp institution for the executive.

1.5 Conceptualisation

1.5.1 What is legislative control over the military?

“War is a much too serious matter to be entrusted to the military”. - Former French Prime Minister Georges Clémenceau.⁷

Clémenceau’s statement reminds us that in a democracy it is the elected representatives of the people who hold the supreme power and that all sectors of the state should be under their control. The task of controlling the military is split between the legislature and the executive. In most liberal democracies the executive is the management branch of government, which is tasked with implementing state policy and pursuing the objectives set by the legislature. Parliament has three functions: to produce legislation, to approve state expenditure and to exercise oversight over the executive in the execution of its functions. The responsibility of executive control and micro-managing the military lies with the executive. This includes the drawing up of budgets, the recruitment of personnel, the purchase of suitable equipment, training and overall strategy. Parliament must respect the executive’s prerogative to manage the military.⁸

Although not involved in the day-to-day management of the military, Parliament should still retain much power over the executive and the military. The legislature’s control over the military consists of the following several items. Firstly, Parliament is considered as sovereign and has the responsibility to approve all policy and legislation regarding defence brought before it by the executive. Secondly, only Parliament can authorise a national state of emergency and/or make a declaration of war.⁹ Thirdly, it decides whether to employ the military abroad. Fourthly, it must ratify all international agreements on security and defence policy. Fifthly, it retains some kind of power that allows it to remove the relevant minister or government itself. Sixthly, Parliament has the role of authorising and scrutinising any expenditure

⁷ Geneva Centre for the Democratic Control of Armed Forces (DCAF), *Parliamentary oversight of the Security Sector: Principles, Mechanisms and Practices*, ed. Hans Born, Anders Johnsson and Phillipp Fluri, (Geneva: Centre for Civil-Military Relations, 2003), 19. Accessed on 27/052005 at <http://www.dcaf.ch/handbook/>

⁸ Ibid. 7.

⁹ Len Le Roux, “Challenges for Defence Management in Africa” in *Guarding the Guardians*, ed. Len Le Roux and Martin Rupiya, (Tshwane: Institute for Security Studies, 2004), 88. Accessed on 26/05/2005 at <http://www.iss.co.za/pubs/Books/guardiansaug04/LeRoux.pdf>

relating to defence. Seventhly, Parliament decides whether to, and which, arms to procure for the military.¹⁰

Of these seven mechanisms of legislature control over the military, Parliament's control of the budget can be the most effective. As mentioned previously, the military consumes a substantial portion of the state's budget and if the national budget is in the hands of Parliament, then this ensures that Parliament is able to wield considerable power over the military. Of course this is only until the money is actually handed over to the military to be spent. Parliament's inability to micro-manage the military, especially with regards to its expenditure, results in a loss of power to the executive. Thus, Parliament's second function of oversight over the executive is paramount to ensure that the executive, as well as the military, are accountable for their actions.

Of its three functions, Parliament's most important function is to exercise oversight over the executive. Parliament monitors the executive because the executive is charged with direct management over the military. Oversight over the military is exercised through the executive. Legislative oversight over the military is not a goal in itself; the point is to hold the executive accountable and to ensure that a balance exists between society and the military. Parliament's function is to ensure that the goals of society and the goals of the military are aligned.¹¹

Many mechanisms exist in order for Parliament to exercise its powers of oversight. Firstly, Parliament can question the executive on their actions and intentions. Secondly, Parliament can request think tanks, universities and expert private persons to research any area regarding the executive and its duties with regards to defence. Thirdly, Parliament can make public any legislation proposed by the executive with regards to defence. Fourthly, parliamentarians can visit military bases and units. Fifthly, Parliament should have the power to appoint special inquiries or commissions.¹² What is crucial is that Parliament discharges this function in a robust

¹⁰ Peter Feaver, "Civil- military relations", in *Annual Review of Political Sciences*, (1999, No. 2), 211-241.

¹¹ Hans Born, *Representative Democracy and the Role of Parliaments: An Inventory of Democracy Assistance Programmes*, (International Security Network), 5. Accessed on 25/05/2005 at http://www.isn.ethz.ch/5isf/5/Papers/Born_paper_IV-2.pdf.

¹² Ibid. 7.

manner, as it is predominantly a reactive function. Often the executive and the military will present Parliament with *a fait accompli*, expecting little resistance and if this is so, then oversight begins to mean very little.

Legislative control consists of control over defence legislation, the budget, arms procurement and force employment. Parliament sets all the rules for defence and has the final say. However, this means very little if not backed up with robust oversight over the executive and the military. Thus, in addition to having authorisation over defence, Parliament should also exercise robust oversight.¹³ But what is the importance of Parliament exercising oversight over defence?

Democratic legislative control over the military requires parliamentary oversight over arms procurement or acquisitions. Parliamentary oversight is crucial to ensure the legality of proposed arms procurement with regards to international treaties and protocols. Parliamentary oversight is essential to ensure that the proposed acquisition falls within the ambit of the national security policy and/or defence strategy. Arms procurement can place great financial strain on the country in the short and long run, thus Parliament is needed to balance the cost of the arms against the needs of the social sector. Oversight also enables Parliament to ensure that the proposed arms procurement not be of such a scale as to result in a regional arms race.¹⁴ Transparency is vital as the public is often sceptical towards the allocation of tax funds for the acquisition of arms, and thus Parliament is a great source of legitimacy. Greater transparency also prevents corruption, fraud and the abuse of tax funds.¹⁵

1.5.2 Defence Expenditure

1.5.2.1 MILEX

Military expenditure or MILEX refers to expenditure on the day-to-day running costs of the Department of Defence. This includes the payment of personnel to the maintenance of all military property. In short, it is expenditure on items that are already in the inventory of a military.

¹³ DACF, 1.

¹⁴ Ibid. 163.

¹⁵ Ibid. 162.

1.5.2.2 Arms Research, Development and Production

This expenditure refers to funds set aside for the research, development and production of armaments and military equipment destined for either procurement by the domestic military or sales to a foreign military.

1.5.2.3 Arms Acquisition

This refers to routine expenditure on the acquisition of equipment for the military.¹⁶ This expenditure is usually the responsibility of the Chief Accounting Officer of the relevant Defence Department and falls under the political control of the head of the relevant government department, in this case the Minister of Defence. This expenditure can include any maintenance and/or procurement of defence systems that are of a non-cardinal nature. This could otherwise be known as routine expenditure that would not raise too many eyebrows if each acquisition were looked at individually. Though, often levels of arms acquisition can be extremely high if looked at over a financial year. The levels of arms acquisitions under the Apartheid regime are useful examples of such high expenditure.

1.5.2.4 Strategic Arms Acquisition

Strategic Arms Acquisitions differ significantly from routine arms purchases in that they are very rare and very expensive 'once-off' acquisitions. This significance is supported by the fact that such expenditure is the responsibility of a country's executive and, ideally, legislative branches of government. This is non-routine expenditure where a series of arms acquisition programmes are 'packaged' into one cardinal expenditure programme. Such acquisition usually occurs when states wish to modernise and rearm their defence forces on a large scale. The Strategic Arms Package in South Africa is thus an example of such defence expenditure. Thus, given the infrequency such high defence expenditure, this invariably attracts much attention from the opposition and civil society.

¹⁶ Acquisition here refers to any and all actions taken in satisfying the need for military material, facilities and/or logistics, whereas procurement is a narrower concept referring to the actual contracting for the satisfaction of any of these requirements. This can include procurement planning, request for tenders, contracting and formal acceptance.

CHAPTER TWO

2. HISTORY OF ARMS DEALS IN SOUTH AFRICA

2.1 Introduction

This chapter is a brief historical survey of arms deals in South Africa. Although the dissertation does not take the form of a time comparison it is important to illustrate the continuities, if any, between arms deals under Apartheid and under the post-Apartheid democracy with a view to legislative control over the military.

This is a brief survey of the history of arms acquisitions in South Africa, both before the mandatory United Nations arms embargo of 1977 and under the sanctions-era that succeeded it. The chapter will address the question of legislative control over arms acquisitions during the Apartheid-era. The purpose of the chapter is threefold. First, the chapter aims to describe the development of the local arms industry in the pre-sanctions era and its rapid expansion under the arms embargo, eventually culminating with its decline in the early 1990s. Second, the chapter seeks to map the changing security environment in South Africa during this period, as these processes influenced the design, structure and importance of the defence sector, with varying effects on the 'defence family' and arms acquisitions. Third, the nature of arms acquisition under the arms embargo era of the 1980s was characterised by a lack of transparency, covert dealings and much secrecy. Understanding this aspect is important to grasping the importance of the Strategic Arms Package, which will be dealt with in Chapters Four and Five.

The chapter is split into two parts. The first part deals with the period 1945-1977 prior to the mandatory UN arms embargo. The second part of the chapter deals with the period 1978-1994 following the mandatory UN embargo.

2.2 Before the United Nations Arms Embargo (1945-1977)

2.2.1 Before the Republic (pre-1961)

The Union Defence Force (UDF), a product of the establishment of the Union of South Africa in 1910, was the predecessor of the South African Defence Force (SADF).¹⁷ As stipulated by the Defence Act, which was ratified by Parliament in

¹⁷ Noel Stott, "From the SADF to the SANDF: Safeguarding South Africa for a better life for all?" in *Violence and Transition Series Vol. 7, 2002, 5.*

1912, the UDF fell under the political supremacy of the South African Parliament. However, South Africa still remained under the Imperial Crown and thus its military could be involved in Imperial wars such as the First and Second World Wars. However, the South African Parliament could determine the extent of this involvement, and also retained sovereignty over matters relating to the defence of South African territory.¹⁸

The Department of Defence (DOD), headed by a civilian, administered the UDF. Military spending was very low and the military officer corps attributed this to the presence of civilians in the upper echelons of the DOD.¹⁹ The Defence Act prescribed that the Secretary of Defence was the head of the department and its chief accounting officer. In the early years its armament needs were very minimal, and consequently South Africa had not yet developed an arms production capability. All arms procurement was sourced externally with parliamentary approval. The advent of the Second World War and industrialisation changed this. These twin forces created a quasi-arms industry.²⁰ The industry remained relatively small until its rapid expansion in the 1970s. The military in South Africa, prior to the 1960s, was a relatively small force with a corresponding small defence budget. Politically, Parliament was supreme, and military spending was not a priority amongst legislators or their constituencies.²¹ The rise to prominence of the Nationalist party, coupled with internal resistance and Cold War geo-politics, would reverse this trend.

In 1949 the Defence Resources Board was appointed to investigate South Africa's industrial capacity for armaments production. It provided this service until 1966. The Lyttleton Engineering Works was later established in 1953 to deal with manufacturing of munitions and other items. It would later be replaced by the Armaments Production Board in 1964, after the passing of the Armaments Act, Act No. 87 of that same year.²² The Defence Production Board, established in 1951, acted as a liaison between

¹⁸ Annette Seegers, *The Military in the Making of Modern South Africa*, (London: Tauris, 1996), 20.

¹⁹ Seegers, 55.

²⁰ Rialize Ferreira and Ian Liebenberg, "Civil-military relations and arms procurement in South Africa: 1994-2002," in *Society in Transition 2004*, 35(1), 61.

²¹ Stott, 6.

the DOD and the private sector. The Board played an advisory role to the DOD with regards to arms procurement and development of a domestic arms industrial base. Very little expansion took place during these years, as the South African defence industry was in its infancy. South Africa was wholly reliant on Britain as a defence partner and a source of military hardware.²³ Government preferred to break free from this dependency as ‘the winds of change’ continued to sweep through Southern Africa. Momentum came with the massacre at Sharpeville on 21 March 1960. The ensuing brutal repression by the Nationalist government would attract the ire of the world. The massacre initiated an international lobby for the imposition of an arms embargo on all exports to South Africa.²⁴

2.2.2 Early Expansion of the Defence Industry (1961-1968)

The emergence of racial Nationalist Party policies, coupled with the international condemnation of the Sharpeville massacre, led South Africa towards independence from Britain. The Republic of South Africa was declared in May of 1961. Pretoria believed that it needed to develop military self-sufficiency since it severed its close military ties with Britain.²⁵ Government decided that military expenditure would have to be increased, especially armaments. Pretoria attempted to block the ‘winds of change’ through increased investment in defence. South Africa wished to preserve its military dominance in the Southern Africa region and maintain control over South West Africa.²⁶

The Constitution of 1961 did not establish the SADF, nor did it enact mechanisms of democratic civilian control over defence. The Defence Act of 1957 founded the South African Defence Force and was the military’s blueprint until well into the 1990s.²⁷

²² James McWilliams, *ARMSCOR: South Africa’s Arms Merchant*, (New York: Brassey’s, 1990), 5.

²³ Agostinho Zacarias, *The South African Defence Industry and the New Thinking on Security*, (Johannesburg: The South African Institute of International Affairs, 1998), 2.

²⁴ McWilliams, 11.

²⁵ *Ibid.* 10.

²⁶ *Ibid.* 11.

²⁷ Jabu Kuzwayo Advocae, “Developing mechanisms for Civilian Oversight over the Armed Forces,” in *African Security Review Vol 7 No. 5, 1998*, 4.

The 1961 Constitution failed to establish any parliamentary committee system that would ensure any effective oversight over the executive.²⁸

The 1966 Verster Commission, established to investigate the re-organisation of the DOD, recommended that the Chief of the Defence Force replace the Secretary of Defence as the head and chief accounting officer of the DOD. To make matters worse, or less democratic, the Minister of Defence was removed from the chain of command and relegated to matters concerning strictly defence policy. Effectively, the Chief of the SADF would report directly to Cabinet. The Commission stated three reasons for this move. First, it cited a lack of expertise and suitable advisors to both the Secretary and Minister of Defence. Second, it claimed that civilians could not understand the complexity of modern war. Third, the Secretariat of Defence was a waste of scarce resources.²⁹ These moves signalled the end of Parliament's supremacy over matters of defence. Though executive political control would continue, no civilian influence existed over the military. Civilians would until the 1990s play a minor role as administrative support personnel.³⁰

However, this period was not only characterised by the decline of Parliament's influence. The fallout of the massacre at Sharpeville in 1961 resulted in international condemnation of the Nationalist government's Apartheid policies and its repression of the disenfranchised.³¹ The UN responded with a voluntary arms embargo against South Africa in 1963, supported by Britain in 1964.³² The 'voluntary arms embargo' under Security Council Resolution 182 was unanimously approved by the UN Security Council (UNSC). Notably, France and Britain ensured that 'defensive weapons' were not included in the Resolution's definition of banned arms. This rider

²⁸ James Ngculu, "Parliament and Defence Oversight: the South African experience," in *African Security Review Vol 10 No. 1, 2001*, 1.

²⁹ Leko Mollo, "Negotiating for Civilian Control: Strategy and tactics of Umkhonto we Sizwe (MK) in the democratic transition of South Africa," MA Thesis at *United States Navy Postgraduate School*, (2000), 16.

³⁰ Jakkie Cilliers and Lindy Heineken, "South Africa: Emerging from a Time Warp," in Charles Moskos, John Williams and David Segal (eds), *The Postmodern Military: Armed Forces after the Cold War*, (Oxford: Oxford University Press, 2000), 251.

³¹ By disenfranchised I refer to those race groups classified at the time as "non-European."

³² Peter Batchelor; Paul Dunne and Guy Lamb, "The Demand for Military Spending in South Africa," *Journal of Peace Research*, Vol. 39, No. 3. (May, 2002), 340.

was of twin importance. Britain and France were South Africa's main arms suppliers and this trade was lucrative for both Permanent Five powers. More importantly, it created a loophole that arms traders and South Africa could exploit to continue arms shipments under the euphemism 'defensive weapons.'³³ Britain remained South Africa's main source of armaments, though Government took a strategic decision to pursue self-sufficiency in arms procurement.³⁴

The Armaments Production Board (APB) was established in 1964 as a division of the DOD. It was charged with invigorating the defence industry. During this time only ten percent of arms were procured domestically.³⁵ The Nationalist government established the APB in order to be more efficient in arms procurement. Responsibility needed to lie with an institution outside the civil service structure unlike the Defence Production Board. Thus, the new Armaments Production Board coordinated all manufacturing, procurement and supply of armament to the SADF.³⁶

By 1965, the Apartheid state had become self-sufficient in the production of small calibre weapons and ammunition. By this time, 120 manufacturing licenses were issued to domestic arms companies. However, larger hardware, including helicopters and heavy artillery, continued to be purchased from overseas contractors, notably of French, Italian and Israeli origin.³⁷ The Atlas Aircraft Corporation began manufacturing the Italian Impala jet fighter under licence in 1967.³⁸ Throughout the 1960s South Africa's arms industry allowed a weapons pile-up and gradual expansion. The South African arms industry took off and soon became a major industrial force. Many countries continued to provide South Africa with arms, technical expertise and licences to enable domestic production despite the voluntary arms embargo.³⁹

³³ Isebill Gruhn, *British Arms Sales to South Africa: The Limits of African Diplomacy*, (Denver: University of Denver, 1972), 4.

³⁴ Seegers, 144.

³⁵ Ferreira and Liebenberg, 65.

³⁶ Zacarias, 3.

³⁷ *Ibid.* 3.

³⁸ McWilliams, 11.

2.2.3 The Rise of ARMSCOR (1968-1977)

The Armaments Development and Production Act of 1968 established the Armaments Corporation (ARMSCOR) as a statutory corporation or parastatal. ARMSCOR was charged with all procurement and acquisition of arms for the SADF. ARMSCOR was a response to the UNSC call that all states cease arms shipments to a then pariah South Africa. As pressure mounted on arms traders by the international community, South Africa's arms supply lines began to dry up fast. ARMSCOR was given statutory powers to manufacture, develop, supply and standardise all armaments for the use of the SADF. State armament subsidiaries were placed under its control and it was also responsible for controlling the private sector. Additionally, the acquisition of manufacturing licenses, suppliers and co-production projects was earmarked as a major function within ARMSCOR's ambit of responsibility.⁴⁰

ARMSCOR entered into contracts with third party contractors, as well as initiating production through its own subsidiaries. ARMSCOR was given authority to develop the arms industry with little constraint from the state's bureaucracy.⁴¹ ARMSCOR was charged with the entire production of armaments, including research and development, servicing of parts and repairs/overhauls. More importantly, ARMSCOR assumed responsibility for the procurement and acquisition of arms from both local and international arms companies.⁴² By the mid-1970s, the Nationalist government's investment in ARMSCOR had resulted in a thriving arms industry. The Special Account of the SADF, which was not subject to any oversight by Parliament, did much to increase local arms production.⁴³

³⁹ Ibid. 17.

⁴⁰ Zacarias, 3.

⁴¹ David Botha, "South Africa's Defence Industry: Charting a New Course?" in *ISS Occasional Paper* 78, *September 2003*, 1.

⁴² McWilliams, 7.

⁴³ Seegers, 146.

2.3 Under the United Nations Arms Embargo (1978-1994)

2.3.1 The Emergence of Total Strategy (1978-1989)

*"I want to repeat today that South Africa can no longer be isolated by arms boycotts. We are absolutely self-sufficient regarding internal demands."*⁴⁴

This statement was made to Parliament on 26 April 1972 by the then Minister of Defence, PW Botha. It indicates the rapid expansion of the domestic arms industry in South Africa since the inception of ARMSCOR. South Africa faced a mandatory UN arms embargo in the late 1970s.⁴⁵ The continued occupation of South West Africa, the invasion of Angola and increased internal repression following the riots of 16 June 1976, sounded the death knell for South Africa's acquisition of foreign arms.⁴⁶ Between 1978 and 1979 ARMSCOR concluded 6 494 contracts with foreign arms suppliers to the value of R1, 742 million, even though the embargo had been in place for a year. In the following year the number of contracts increased to well over 9 000.⁴⁷ ARMSCOR was in the middle of a rapid rise to supply the war effort.⁴⁸

South Africa's counter-insurgency war against the South West African People's Organisation (SWAPO) was characterised by frequent incursions into neighbouring Angola. These actions were also aimed at the armed forces of Angola (FAPLA) and combatants of Umkhonto weSizwe (MK).⁴⁹ South Africa's involvement in conflicts in South West Africa, Rhodesia, Angola and Mozambique was legitimated as a fight against the spread of Communist proxies in Southern Africa. This discourse took hold within the SADF and P.W Botha's MOD. Botha and his advisors formulated their militaristic policy of 'Total Strategy,' and argued that it was the only way South

⁴⁴ McWilliams, 21.

⁴⁵ See William Cobbett, "Apartheid's Army and Arms Embargo," in Jacklyn Cock and Laurie Nathan, eds., *War and Society: The Militarisation of South Africa*, (Cape Town: David Philip, 1989).

⁴⁶ Ferreira, 65.

⁴⁷ McWilliams, 26.

⁴⁸ See Department of Defence. *White Paper on Defence and Armaments Production*. Pretoria: Government Printer, 1967-1977; and Department of Defence. *White Paper on Defence and Armaments Supply*. Pretoria: Government Printer, 1982-1984.

⁴⁹ Len le Roux and Henri Boshoff, "The State of the Military," in *The State of the Nation*, (Johannesburg: HSRC Press, 2005), 177.

Africa could defend itself from the ‘Total Onslaught’ of Communism in Southern Africa.⁵⁰

Botha’s ascent to the position of Prime Minister (1979-84) and later as State President (1984-1989) saw the establishment of the National Security Management System (NSMS) and the State Security Council (SSC) as the policy-making brain. The SSC was the only statutory cabinet committee, having been established by the *Security Intelligence and State Security Council Act* of 1972. It included the President as chairman, his ‘inner circle’ of cabinet ministers and the chiefs of the various security departments.⁵¹ Gavin Cawthra argues that these institutions:

“Provided military, intelligence and defence officers and officials (‘securocrats’) with considerable leverage over the policy process.”⁵²

This counter-revolutionary agenda influenced all state policy against any groups labelled by the government as ‘Communist.’ The SADF brass had overwhelming control over defence policy because the Defence Secretariat had been scrapped in the previous decade and no civilian influence existed within the military chain of command. Even Botha’s Minister of Defence, General Magnus Malan, had previously been the Chief of the SADF. The SSC included the State President and the Ministers of Foreign Affairs, Law and Order, Defence and Justice. Many members were high ranking civil servants and ‘private persons’ not accountable to Parliament. State security policy was firmly in the hands of the ‘Securocrats’ on the SSC and not even Cabinet, let alone Parliament, retained much influence over the policy process.⁵³ Legislative oversight over defence was by then a non-issue.

The rise of what Frankel dubbed *Pretoria’s Praetorians* created a secretive arms procurement environment in complete violation of the UN arms embargo. The mandatory arms embargo of 1977 dealt a severe blow to South Africa’s arms industry,

⁵⁰ Stott, 10.

⁵¹ Kuzwayo, 2.

⁵² Gavin Cawthra, *Reconceptualising Security for the Twenty-First Century: South Africa’s experience in remaking defence*, (Universidad Torcuato Di Tella, September 2000), 4.

⁵³ *Ibid.* 4.

but also sparked a greater resolve to develop self-sufficiency within the defence industry. Since the late 1960s ARMSCOR had been producing armaments under licenses acquired from overseas arms developers and importing various technology in order to keep the arms industry afloat.⁵⁴ ARMSCOR diverted attention towards import substitutions and the covert acquisition of technology and expertise, often dealing with pariah states. Within a few years, ARMSCOR could modify and manufacture sophisticated armaments for the SADF's conflict in South West Africa and Angola.⁵⁵ However, by 1981 the Rhodesian Bush War had ended with the independence of Zimbabwe and the Angolan Border War was for the time being scaled down. SADF orders decreased accordingly and ARMSCOR once again diverted its attention towards the international arms market, this time as an arms producer, with reasonable success.

By 1981 ARMSCOR had become the largest arms industry in the region. With an annual turnover of R1, 5 billion, ARMSCOR employed 15 000 to 30 000 people at any given time.⁵⁶ Nonetheless, the Apartheid state's expenditure on defence continued to increase. Between 1982-1983 defence expenditure was close to R3 billion and by the mid-1980s 20 percent of Government's annual budget was allocated to defence. ARMSCOR was allowed to form new companies such as Kentron, and merged many others to solidify the defence industry and speed up research, development (R&D), and production. Research institutions and universities were sub-contracted to do much of the R&D.⁵⁷ In order to maintain its production line and its technical expertise, ARMSCOR had to produce over and above the needs of the SADF, hence ARMSCOR's entry into the international market. In no time Apartheid South Africa's arms merchant became an earner of much-needed foreign exchange. South Africa's arms industry could not produce enough weaponry to match the number of weapons streaming into Southern Africa. Instead ARMSCOR resolved to manufacture weapons of superior quality.⁵⁸ ARMSCOR retained this quality edge because it was secretly

⁵⁴ Jakkie Cilliers and Markus Reichardt, *About Turn: The Transformation of the South African Military and Intelligence*, (Midrand: Jetline Print, 1995), 255.

⁵⁵ Ferreira, 65.

⁵⁶ Ibid. 66.

⁵⁷ Zacarias, 3.

involved in co-production of weaponry with other states such as Taiwan and especially Israel.⁵⁹ Israel provided South Africa with much expertise and technology in the field of electronics, whilst ARMSCOR provided its high expertise in ferro-alloys, high grade steels and non-ferrous metals.⁶⁰ A report in the *Washington Post* stated:

“Defence companies in France, Italy and Israel- probably with the knowledge of their governments- have helped maintain and upgrade major weapons systems provided to South Africa prior to the mandatory arms embargo.”⁶¹

Clearly ARMSCOR was kept afloat by its secret dealings with foreign arms traders who knowingly broke the arms embargo in order to maintain the influx of expertise and technology. The international arms market is of course not an exclusive economy, provided that clients have the wherewithal to pay.

Throughout this period of increased defence spending, Parliamentary oversight was sidestepped as most acquisition orders were made through the Special Defence Account or SDA.⁶² This account was established by the Defence Special Account Act, whereby funding was to be appropriated by Parliament, surplus to the annual defence budget, for the requirements of the DOD. The Minister of Defence and the Minister of Finance would be required to consult and jointly request Parliament to provide x amount of funding at whichever time. The account was allowed to accrue an unlimited amount of funds. Unspent money was not required to be returned to the Treasury at the end of every financial year. The Chief of the South African Defence Force was the ‘Accounting Officer’ and responsible for managing the SDA. In any transparent democracy this responsibility would be given to a civilian within government. But the DOD had for many years not had a civilian secretariat. Moreover, the Minister of Finance exercised very little influence on the kind of

⁵⁸ McWilliams, 27.

⁵⁹ Naomi Chazan, “The Fallacies of Pragmatism: Israeli Foreign Policy towards South Africa,” *African Affairs*, vol. 82, No. 327. (April, 1983), 181.

⁶⁰ *Ibid.* 55.

⁶¹ *Washington Post*, “State Department Lists Allies Arming South Africa,” (3 April 1987).

⁶² Stott, 6.

expenditure from these funds and seldom questioned whether the expenditure was justified or not. Most of the expenditure remained secret and observers argue that most of the funds were used for the SADF and ARMSCOR. Thus, the generals controlled the purse strings and there was little, if any, constraint placed on the amount of funding funnelled into this account.⁶³ The SDA served a laundering purpose as it would have been impossible to calculate Apartheid South Africa's MILEX by simply studying the annual defence budgets. The SDA was in effect an unofficial defence budget completely removed from the oversight of Parliament and civil society. The SDA exists today and it is the means by which the current government pays for the Strategic Arms Package.⁶⁴

Under the Armaments Development and Production Act of 1968, the State President enjoyed sweeping powers with regards to the arms industry and its transparency to both Parliament and the public. No information regarding the acquisition, supply, marketing, export, development, manufacture, repair or research of armaments could be made public without the written consent of the Minister of Defence.⁶⁵ Nor was ARMSCOR subject to the Companies Act of 1926 or any other legislation aimed at regulating the private sector. ARMSCOR was outside the oversight of Parliament and was given the kind of financial freedom and flexibility not enjoyed by any other government parastatal.⁶⁶ All in all, ARMSCOR held a unique position within the politico-military-economic nexus of the Apartheid state and was virtually untouchable by civil society and/or Parliament.

The massive increase in military expenditure or (MILEX) under 'Total Strategy' was constantly justified to the public and Parliament as necessary in order to protect the *laager* against aggression from within and mostly from without. This marketing ploy, was very much like the United States' Pentagon's annual publication, *The Soviet Threat*. The idea is to create an awareness of foreign threats and cultivate a fear of

⁶³ McWilliams, 85.

⁶⁴ This will be discussed later.

⁶⁵ Xolani Skosana, *Arms Control, South African Style: The Dynamics of Post-1994 Arms Export Control Policy*, (Pretoria: Institute for Security Studies, 2002), 62.

⁶⁶ *Ibid.* 89.

Soviet-made weaponry accumulating on South Africa's borders, to justify the Apartheid arms build-up and ARMSCOR's business.⁶⁷

2.3.2 The Fall from Grace or Not Quite (1990-1994)

The Angolan/Namibian Border War ended in 1989. By the end of the conflict, SADF had lost its air superiority in the Southern African region. This was best demonstrated at the Battle of Cuito Cuanavale, which signalled the withdrawal of the SADF from Southern Angola. The peace agreements signed between Angola, Cuba, South Africa and the superpowers paved the way for South Africa's withdrawal from Namibia as well. The high level of MILEX that characterised the regime of PW Botha could no longer be justified. International sanctions had taken their toll on South Africa's economy and the Nationalist government could no longer afford the expensive defence budgets.⁶⁸ The new president, FW De Klerk, introduced massive cuts to the SADF's budget. The geo-political environment was changing rapidly with the fall of the Berlin Wall and collapse of European Communist regimes. The threat of a 'Total Onslaught' was finally laid to rest. The SADF could no longer justify new arms and high budgetary support. ARMSCOR could no longer rely on the DOD as its main client. Procurement orders dried up fast.⁶⁹

ARMSCOR was forced to double its efforts towards finding new clients on the international market. Between 1990 and 1994 the arms industry cut approximately half of its 160 000-strong workforce. ARMSCOR was restructured in 1992. DENEL was formed to assume control over all manufacturing and production of armaments. DENEL was placed under the responsibility of the Minister of Public Enterprises, whilst ARMSCOR remained under the Minister of Defence. ARMSCOR meanwhile retained its original responsibility of procurement of armaments and military equipment on behalf of the DOD.⁷⁰ The main point of De Klerk's reforms are that they re-established civilian control over defence. State security policy underwent a healthy dose of liberalisation. De Klerk replaced the SSC with the State President's

⁶⁷ McWilliams, 63.

⁶⁸ Peter Batchelor and Susan Willett, *Disarmament and Defence Industrial Adjustment in South Africa*, (Oxford: Oxford University Press, 1998), 50.

⁶⁹ Ibid. 54.

⁷⁰ Zacarias, 4.

Office and Cabinet as the main centre of power within the state. The NSMS was also replaced by a National Coordinating Mechanism (NCM) in 1990. De Klerk effectively reclaimed the state apparatus from the 'securocrats.'⁷¹ He also appointed civilians like Roelf Meyer and Kobie Coetzee as Ministers of Defence so as to undercut the influence that the SADF had enjoyed through military men like General Magnus Malan. Between 1989 and 1993 the defence budget was cut by 40 percent, conscription abolished, and South Africa's nuclear weapons programme was blocked.⁷²

However, Batchelor argues that although very significant, the reforms were inconsistent and did not go far enough. He cites a cabinet meeting in early 1990 where it was decided that the SADF would remain 'untouched' by the impending transition to majority rule. The SADF was to provide a core around which the transition could take place and would remain under the firm control of the government.⁷³ Here one can see that although the military's influence had been severely curtailed by De Klerk's regime, it remained the key player in the transition. The SADF was the government's reinsurance policy against an unfavourable outcome in negotiations with the ANC. To this end the SADF convinced the Nationalist government that it should meet with the ANC (read the MK) to discuss the future of the military under majority rule.

During the period of negotiations in the early 1990s, a general amnesty from criminal and civil prosecution for HRV's was one of the first issues on which the negotiators from both the SADF and MK could find consensus. Their task, for most of 1993, was to decide the basis of transformation and integration of a new military for a post-Apartheid South Africa. Their common concern was that this should be as stable and peaceful a process as possible. The negotiators' feelings, especially those of the SADF, were that democratic elections would not be successful without some assurance to the militant right and left that their misdeeds would not come back to haunt them, and that this incentive should come in the form of a general and unqualified amnesty.⁷⁴

⁷¹ Batchelor and Willett, 55.

⁷² Ibid. 56.

⁷³ Ibid. 56.

The NP negotiating strategy dictated that the SADF remain untouched by recriminations as it was to be the 'stable core around which the dynamic of change could occur.'⁷⁵ For the purposes of moving the crucial military negotiations along, this 'military pact' became more solidified once the human rights obstacle had been cleared and the two groups could begin to deal with the 'nuts and bolts' of military integration and transformation. Thus, as the greatest threat to democracy and possessing the most powerful coercive capability within the state, there was no question that the military would have to be the guarantor of the transition. A general amnesty would ensure that this organisation had sufficient incentive to fulfil that role. However, a general amnesty was not the only carrot that was placed on the table for the SADF and the MK. The promise of rearmament and a modern and technologically advanced military under the new dispensation did much to develop common ground and understanding between the hawks in the SADF and the MK.

Meanwhile the structure of the defence budget changed dramatically between 1989 and 1994. Much more of the defence budget was spent on personnel and operating costs, and much less was spent on procurement and R&D. Surplus military equipment was sold or withdrawn from service. Many major weapons projects were cancelled and/or postponed.⁷⁶ South Africa's arms industry had been much maligned under the De Klerk regime. Many of the state arms companies were struggling to peddle their wares on the international market due to the global recession in the arms trade following the end of the Cold War. Much restructuring and adjustment within the newly-formed DENEL did much to increase the fortunes of some arms companies, whilst this was to the detriment of others. Reunert, Grintek and Altech were defence groups who benefited from DENEL's new focus on arms export. However, this upswing lasted only from 1992 until 1995, when these groups would experience financial difficulty and created much strain on the state.

⁷⁴ Ibid., 23.

⁷⁵ Ibid., 119.

⁷⁶ Peter Batchelor, "South Africa's Arms Industry: Prospects for Conversion," in Jacklyn Cock and Penny Mckenzie (eds) *From Defence to Development: Redirecting Military Resources in South Africa*, (Cape Town: David Philip Publishers, 1998), 105.

However, the new democratically elected government of Nelson Mandela would nonetheless inherit a significant industry, contributing 1 percent of GDP.⁷⁷

2.4 Summary and Conclusion

2.4.1 Prior to Mandatory Arms Embargo (1945-1977)

Prior to the voluntary arms embargo of 1963, South Africa was very dependent on Britain as a supplier of armaments. The internal situation in South Africa became progressively worse and came to a head at Sharpeville in March of 1960. The aftermath of the Sharpeville massacre and the repression of resistance politics by the Apartheid state outraged the international community. Calls were made for an arms embargo on South Africa.

South Africa left the Commonwealth in 1961 and declared a Republic following the condemnation of the international community over the massacre in Sharpeville. The UN response to South Africa's internal oppression was a voluntary arms embargo in 1963, although not adhered to by major arms suppliers like France and Britain. The Republic's response was to increase the number of arms imports and to attempt to develop its domestic armaments industry. By 1968 the state established ARMSCOR to control the defence industry. ARMSCOR expanded the domestic industry and increased the rate of arms acquisitions for the ever-expanding SADF.

The DOD was also restructured and the civilian secretariat was removed. The Chief of the SADF was made the accounting officer and assumed responsibility for both the administration of the DOD and the operations of the SADF, thus relegating any civilian influence or direct oversight.

Between the years 1968 and 1977 ARMSCOR increased the size of the defence industry and the level of self-sufficiency to keep pace with the growing demands of the SADF. Meanwhile, momentum increased within the international community for a mandatory arms embargo on South Africa. The 1976 riots and South Africa's invasion of Angola in 1975 provided the catalyst. In 1977 the UN declared Apartheid a crime against humanity and placed a mandatory ban on all arms shipments into South

⁷⁷ Christopher Wrigley, *The South African deal: A Case Study in the Arms Trade*, (London: Campaign Against Arms Trade, 2003), 4.

Africa. The rise of the arms industry points to the strength of a modernising South African economy and increased dominance of the executive over Parliament.

2.4.2 Under the Mandatory Arms Embargo (1977-1994)

The ascension to power of PW Botha was a blessing for both ARMSCOR and the SADF. Under 'Total Strategy,' violence was a preferred tool of the state against internal resistance. On a regional level Total Strategy promoted the use of the SADF to destabilise neighbouring countries under the guise of combating Communism. The 1980s was characterised by the emergence of the *securocrats* and the military, through the State Security Council, as the main influences over state policy.

This period saw massive military expenditure, half of which could never be accounted for due to the Special Defence Account. Overall, the 1980s were by far the least democratic period in South Africa's history with regards to defence issues. With almost no transparency or accountability, the DOD, ARMSCOR and the Executive operated without the interference of civilians. The executive had mounted a virtual Presidential coup through the State Security Council and Parliament was rendered a 'rubber stamp' institution. There was no democratic civilian control as Parliament was not in control of the military's purse strings.⁷⁸

Arms acquisitions continued under the mandatory embargo. ARMSCOR became quite inventive in working the margins. Arms deals were signed with countries such as Israel and Taiwan, considered as fellow pariah states. South Africa even developed a nuclear weapons project. More important in this regard is the resilience displayed by the South African economy, which survived these years of financial misrule.

The replacement of Botha by De Klerk did much to restore some civilian control over defence. Although significant, De Klerk's reforms did not go far enough, as he needed the SADF intact in the event that the negotiations with the ANC went sour. The key point here is that the military and ARMSCOR survived the transition era not unscathed, but intact. These institutions would take much of what they had learnt under Total Strategy into the new democratic era.

⁷⁸ Note that even so, this Parliament itself was not democratic as it had always been elected under an exclusive ballot, which excluded the majority of South Africans.

Three main things can be concluded here. The first is that legislative oversight in a Parliamentary democracy⁷⁹ is a very difficult proposition. Executives in these systems are given much power with regards to the control of the military provided that they maintain their majority within the legislature. From a democratic point of view, parliamentary executive democracies face a greater challenge in legislative control over the military than is the case in constitutional democracies with strict separation of powers.

Second, the arms embargo afforded the executive the ability to accrue an enormous amount of power. Sanction gave executives political legitimacy to further centralise power over the state. Botha's Presidency in the 1980s could be described as virtually imperial with regards to control over the military and arms acquisitions. Sanctions strengthen executives and weaken legislatures.

Third, Parliament has never enjoyed effective control over defence in modern South Africa. The process of democratisation in South Africa in the early 1990s did very little to change the status quo. Although a constitutional democracy was established with democratic institutions of oversight, the Apartheid era prepared the ground for a Parliament that would struggle to assert its constitutional function of legislative control over the military. There exists continuity between the tradition of legislative control over defence under Apartheid and its condition at the outset of the post-Apartheid democratic dispensation in 1994.

⁷⁹ Note that Apartheid South Africa's 'democracy' excluded the majority of its inhabitants.

CHAPTER THREE

3. ARMS ACQUISITIONS IN POST-APARTHEID SOUTH AFRICA: ROLES AND RESPONSIBILITIES?

3.1 Introduction

*'How can a democracy be defended with an undemocratic organization?'*⁸⁰

South Africa's post-Apartheid democratisation led to a conversion within defence. The thrust of this conversion has focussed around the role of 'defence in a democracy.' The ANC government has attempted to establish democratic civil-military relations characterised by strong civilian control.⁸¹ Civilian control should be characterised by strong legal restrictions on the military's role in internal security and intelligence operations, a civilian-headed defence ministry that controls and coordinates the defence sector, and legislative control and oversight of defence expenditure and policy.⁸² Do post-Apartheid civil-military relations fit this description?

For the most part, yes. The South African Constitution states that the South African National Defence Force (SANDF) will be subordinate and fully accountable to Parliament and the executive. The SANDF can only operate within the parameters of the Constitution, domestic legislation and international law and it is to respect human rights and South Africa's democratic process. In addition to this the defence policy and military activities are to be transparent so that there can be parliamentary and public scrutiny.⁸³

The purpose of this chapter is to develop an understanding of the legislative control over arms acquisitions within a constitutional democracy. These roles and

⁸⁰ Born, 5.

⁸¹ Rialize Ferreira and Dan Henk, "Military Implications of Human Security: The Case of South Africa," paper presented to *Inter-University Seminar on Armed Forces and Society*. (Palmer House Hilton Hotel, Chicago, 21 October 2005), 11.

⁸² Wendy Hunter, "Assessing Civil-Military Relations in Post-Authoritarian Brazil," in *Democratic Brazil: Actors, Institutions and Processes*, Eds. Peter Kingstone and Timothy Power (Pittsburgh: University of Pittsburgh Press, 2000), 103.

⁸³ Laurie Nathan, "The 1996 Defence White Paper: An Agenda for state Demilitarisation," in *From Defence to Development: Redirecting Military Resources in South Africa*, Eds. Jacklyn Cock and Penny McKenzie (Cape Town: David Phillip Publishers, 1998), 43.

responsibilities are entrenched in the Constitution of the Republic and the Defence White Paper. The chapter focuses on several actors within the defence sector. The chapter is organised into six parts. The first two parts deal with the Constitution and the Defence White Paper respectively. The third part discusses the Department of Defence (DOD), which consists of the civilian Defence Secretariat and the South African National Defence Force (SANDF). This part discusses the role of the domestic arms industry in arms acquisitions, which consists of both ARMSCOR and DENEL. The fourth part moves onto the executive, which consists of the Presidency and Cabinet, and the Ministry of Defence. The fifth part investigates the roles and functions of the South African Parliament and its various oversight committees that deal with the defence sector. The committees include the Portfolio Standing Committee on Defence, the Joint Standing Committee on Defence, the National Convention on Arms Control Committee, and the Standing Committee on Public Accounts.

3.2 The South African Constitution (1996)

*The Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled.*⁸⁴

The parameters of governance and management over the DOD and the SANDF are enshrined in the Constitution of the Republic of South Africa. The transitional arrangements between the African National Congress (ANC) of Nelson Mandela, and the NP government of FW de Klerk, culminated in the first democratically elected parliament in 1994. The interim constitution of 1993 and the final constitution of 1996 governed the basic structures and powers of Parliament. The negotiating parties agreed to a parliamentary system characterised by a significant separation of powers between the executive and legislature. The ANC desired a parliament that would symbolise “people’s power”, whilst the NP government desired a strong check on executive power by the same institution.⁸⁵

⁸⁴ Republic of South Africa, *Constitution of the Republic of South Africa*, (Cape Town: Government Printer, 1996), 2.

⁸⁵ Harald Mathisen & Elling Tjonneland, *Does Parliament Matter in New Democracies? The case of South Africa 1994-2000*, (Bergen: Michelsen Institute, 2000), 2.

Prior to the constitutions of 1993 and 1996, the armed forces were not subject to any constitutional authority. Instead, the Defence Act of 1957 was the enabling legislation of the SADF. Neither the Constitution of 1961, nor the South African Constitution Act 1983, superseded the Defence Act. Thus, defence legislation under Apartheid was not required to conform to any constitutional constraints. However, the 1996 Constitution is the supreme piece of legislation in the Republic and delineates the governance and management of the defence sector. The Constitution outlines the hierarchy of the defence sector. The Chief of the SANDF (CSANDF) is the executive commander and his/her command is under the direction of the Minister of Defence (MOD) during peacetime and under the President during states of national emergency. The MOD is also accountable to Parliament and Cabinet on behalf of the SANDF.⁸⁶

The Constitution places national security under the authority of Parliament and the executive, and entrenches Parliament's powers of oversight over issues relating to national security.⁸⁷ The post-Apartheid South African Parliament is also afforded a multiparty parliamentary committee system by the Constitution. These committees are required to exercise oversight over all the security services, as determined by legislation and/or the rules and orders of Parliament. The "chapter nine" institutions, including the Public Protector, the Auditor-General and the Human Rights Commission, are also afforded powers of oversight in this regard in conjunction with the relevant committees.⁸⁸ Judith February argues that failure by these institutions to exercise their powers of oversight is in fact a constitutional failure.⁸⁹

3.3 The White Paper on Defence

Although the origins of the SAP are within the Defence Review, the issue of rearmament of the SANDF is much older. This is rooted in the pre-1994 negotiations between the MK and the SADF, the result of which was a promise of rearmament of the SANDF in exchange that the military become the mid-wife to the transition to democracy. The Joint Military Co-ordinating Committee, consisting of the SADF,

⁸⁶ Ngculu, 1.

⁸⁷ Kuzwayo, 3.

⁸⁸ Ngculu, 1.

⁸⁹ February, 21.

MK, APLA, and the armies of the TBVC territories, and tasked to plan the future of the SANDF, was dominated by the SADF. This ensured that the SANDF force structure and design would be based largely on similar lines as the SADF.⁹⁰

The White Paper on Defence was adopted by Parliament in 1996 as the guiding policy for the management of the DOD. It outlines South Africa's approach to security and delineates the roles and functions of the MOD, DOD and government within this approach. The White Paper adopted what is known in security circles as a "human security" approach to national security. The SANDF is tasked with the primary mission of defending RSA against external aggression, whilst maintaining a defensive posture in peacetime. The SANDF's secondary missions include international peace operations, border protection and assisting the SAPS.⁹¹ The White Paper is characterised by the democratic influence throughout its text, signalling a dramatic departure from Apartheid-era security policy.

According to the *White Paper on Defence*, South Africa's national security strategy is predicated on a 'wider notion of security,' which encompasses the human, social, environmental and military security of the state and its citizens as enshrined in the *Constitution of the Republic of South Africa*. The objective of the national security policy is the consolidation of democracy, the pursuit of social justice, economic development and a safe environment, a reduction in the level of crime, violence and political instability.⁹² Interestingly, this is similar to the concept of security under the Apartheid regime where the securocrats employed a wide and increasingly militarised view of security.⁹³

Nathan argues that this understanding of national security bears a resemblance with 'Total Strategy' of the Apartheid regime in that both are concerned with political, economic and social security, but that the key distinction is that the former attempts to

⁹⁰ Len Le Roux, *History of the post-Apartheid Department of Defence and the South African National Defence Force*, unpublished manuscript.

⁹¹ Gavin Cawthra, "Security Governance in South Africa," Paper for the *Security Governance Project* (Friedrich Ebert Stiftung), 5.

⁹² *Defence in a Democracy*, 3.

⁹³ M. Hough and A. Du Plessis, *Selected Official South African Strategic and Security Perceptions: 1992-2000*, (Pretoria: Institute for Strategic Studies, 2000), 50.

demilitarise security whilst the latter attempted to militarise all aspects of security.⁹⁴ Current policy takes a ‘broad view on security, but a narrow view on defence,’ where the latter becomes a subset of the former.⁹⁵

The paper grew out of a need by the MOD to justify the budgetary requirements of the DOD. The Secretariat for Defence, then headed by Pierre Steyn, was newly established and did not possess the capacity to formulate policy. Thus, the responsibility fell on the Joint Standing Committee on Defence (JSCD) to formulate a new policy framework for the defence sector, in conjunction with the input of many security analysts and academics. Cawthra comments:

“The JSCD was very active during the White Paper process and insisted on ratifying the draft line by line.”⁹⁶

Policy was influenced by a strong concern for democratic civilian control over the defence sector. Mills points out that ANC political culture is characterised by transparency and democratic decision-making, which explains the approach taken by the JSCD in the drafting of the White Paper.⁹⁷ The predominantly ANC members of the JSCD and the defence analysts wanted a narrow role for the military in a democratic South Africa. However, the human security approach, adopted by the White Paper, calls for the inclusion of non-military issues on the security agenda. Buzan has argued that this leads to a process of securitisation, where the military is able to involve itself in non-military areas within the state.⁹⁸ This is exactly what the JSCD and many analysts were wary of, as the SADF had been involved in civilian projects and this led to the military’s politicisation within the Apartheid state.⁹⁹ This accounts for the inclusion of external defence as the primary mission of the SANDF in the White Paper. The White Paper says:

⁹⁴ “The 1996 Defence White Paper: An Agenda for State Demilitarisation?” 45.

⁹⁵ Ibid, 46.

⁹⁶ “Reconceptualising Security for the Twenty-First Century,” 8.

⁹⁷ Mills, 3.

⁹⁸ See Barry Buzan, *People, States and Fear 2nd Edition*. (Hertfordshire: Harvester Wheatsheaf, 1991).

⁹⁹ “Reconceptualising Security for the Twenty-First Century,” 10.

*“The SANDF may be employed in a range of secondary roles as prescribed by law, but its primary and essential function is service in defence of South Africa, for the protection of its sovereignty and territorial integrity.”*¹⁰⁰

Although the White Paper embraces the new notion of security, it accepts the state-centric realist view in the delineation of the functions and roles of the SANDF. The White Paper espouses the view that the SANDF be adequately equipped to fulfil this conventional mission. The White Paper indicates that the SANDF should be a balanced, *modern* and *technologically advanced* force, in order to fulfil its primary mission effectively and efficiently.¹⁰¹ This phrase is a product of pre-1994 negotiations between the MK and the SADF. The White Paper posits that South Africa lacks any foreseeable external threats. But in the event of possible aggression such a force could not be equipped instantaneously, hence the need to arm and equip for any eventualities in the future.¹⁰²

3.4 Department of Defence

3.4.1 The Defence Secretariat

The Defence Secretary is the chief accounting officer of the DOD¹⁰³ and is responsible for formulating DOD policy and exercising oversight over the defence sector as a civilian member of the DOD. Within the Defence Secretariat there is an Acquisitions Division, which is headed by the Chief of Acquisitions. This chief is responsible for industrial and procurement policy for the DOD, coordinating all research and technology, and is accountable to the Defence Secretary. The Defence Secretariat is responsible for all acquisition activities. The Secretariat is to ensure that all acquisitions for the DOD are executed within *national objectives, policies and constraints*. The Secretariat is also expected to provide auditing of all Defence expenditure.¹⁰⁴

¹⁰⁰ Republic of South Africa, *White Paper on Defence*, (Cape Town: Government Printer, 1996), 25.

¹⁰¹ Government Gazette, *White Paper on the South African Defence Related Industries*, (GCIS, December 1999), 5.

¹⁰² *Ibid.* 6.

¹⁰³ Refers to a position where the official is responsible for all expenditure within the relevant department.

¹⁰⁴ Department of Defence, *MODAC Investigation of Technology and Armament: Acquisition in the Department of Defence*, (Pretoria: Department of Defence, 8 August 1996), 7.

The Defence Secretary chairs the Armament Acquisition Steering Board (AASB). The board approves non-cardinal projects and also screens cardinal acquisition projects. This is the second level of control in the approval of acquisition projects. The Board consists of members from the SANDF, the Secretariat and ARMSCOR.¹⁰⁵ The Secretariat's main function is to ensure the best 'bang for buck.' The Secretariat is tasked with maintaining the best quality in all acquisition projects, and ensuring that the expenditure for these projects falls within the financial constraints of the defence budget and the overall financial objectives of the state.¹⁰⁶

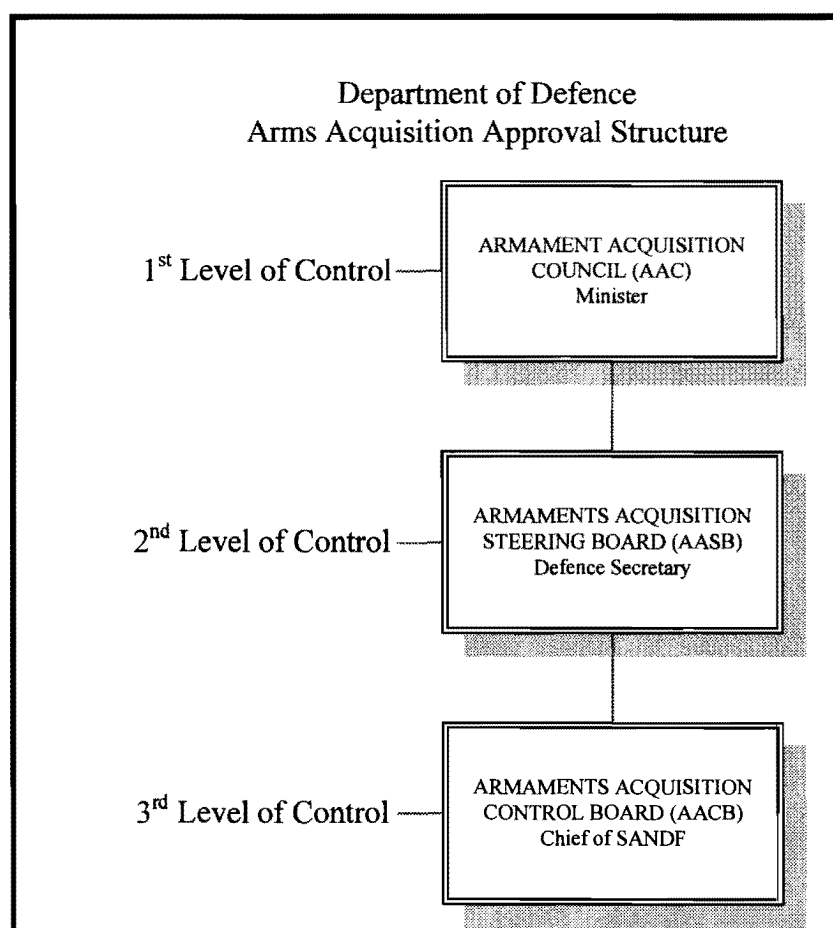


Fig. 1

As far as policy regarding arms contracting goes, it is the Secretariat's responsibility that all contracts are granted at the highest possible level. In other words, possible suppliers of defence systems are to be contracted for the development, production and

¹⁰⁵ Ibid. 8.

¹⁰⁶ Ibid. 14.

maintenance of these systems. The DOD does not deal with sub-contracted suppliers.¹⁰⁷ This point will be very important within the context of the Strategic Arms Package.

3.4.2 The South African National Defence Force

The post-Apartheid SANDF is challenged by an imbalance between its capital equipment and its numbers of personnel. The integration of the old SADF and the armed wings of the liberation movements created an inflated force. The SANDF is headed by the Chief of the South African National Defence Force (CSANDF), who enjoys executive command over the SANDF under the direction of the Minister of Defence in peacetime, and the President in times of national emergency.¹⁰⁸ In other words, the CSANDF is charged with ensuring that the defence policies, planning and administrative directives of the MOD are implemented accordingly.¹⁰⁹

The South African National Defence Force is responsible for determining its own arms requirements, provided that these requirements fall in line with the approved structure of the force and the defence policies, programmes and budgets of the MOD, the Secretariat and Parliament. The SANDF takes responsibility for the overall management of armament acquisition projects. The SANDF ensures that defence systems are in line with stated requirements and that it receives these systems in that order.¹¹⁰ The third level of control in the armaments acquisition hierarchy is the Armament Acquisition Control Board (AACB), which is under the chairmanship of the Chief of Staff Logistics of the SANDF. The AACB is responsible for the screening of all acquisition projects in terms of the stated requirements of the SANDF.¹¹¹

¹⁰⁷ MODAC, 51.

¹⁰⁸ Philip Frankel, *Soldiers in a Storm: The Armed Forces in South Africa's Democratic Transition*, (Boulder: West view Press, 2000), 106.

¹⁰⁹ Ibid. 108.

¹¹⁰ MODAC, 7.

¹¹¹ Ibid. 8

3.4.3. The Arms Industry

3.4.3.1 ARMSCOR

The White Paper says that ARMSCOR is to manage all acquisition processes for the DOD. David Botha describes this management as follows:

“Programme management, the drafting of tender documentation, and the awarding of contracts. It ensures that the technical, legal, and financial integrity of companies supplying acquisitions are in accordance with DOD requirements. Additional tasks include offering marketing support for the industry, facilitating participation in international armaments shows, and the co-management of Industrial Participation Programmes with the Department of Trade and Industry (DTI).”¹¹²

ARMSCOR was restructured in April 1992. The state-owned company DENEL was established to take control of the domestic defence industry under the political authority of the Ministry of Public Enterprises. ARMSCOR remained under the MOD and retained its core function of arms procurement on behalf of the DOD.¹¹³ REUNERT, ALTECH and GRINTEK were public holding companies that were to make up the core of the domestic defence industry. The chairman of ARMSCOR was also made a member of the Defence Planning Committee, which is chaired by the Minister of Defence.¹¹⁴ The ANC initially espoused a developmental approach to security. This changed once Joe Modise and Ronnie Kasrils took charge of the MOD. They soon realised that the ANC’s new policy ideas had to coexist within the old security structures. Kasrils especially views the domestic defence industry as a valuable leader within the state’s technological base and an important earner of foreign exchange.¹¹⁵ ARMSCOR/DENEL is a statutory body and a state-owned company.¹¹⁶

By 1995 South Africa was on the US Arms Control and Disarmament Agency’s list of the twenty top international arms exporters at a position of twelve. The lifting of the

¹¹² Ibid. 5.

¹¹³ Zacarias, 4.

¹¹⁴ Ibid. 5.

¹¹⁵ Ibid. 7.

¹¹⁶ MODAC, 9.

mandatory arms embargo of 1977 opened the way for South Africa's defence industry to compete on the international market. South Africa sold arms to a variety of countries. This aggressive marketing by domestic manufacturers stemmed from a need to make up for the shortfall in the domestic defence budget and the trickle of procurement by the DOD.¹¹⁷

The government has created a somewhat contradictory policy environment. On the one hand government has adopted a normative foreign policy framework with all the bells and whistles of human rights and multilateralism, and on the other hand it has aggressively pursued the export of South African arms. Some of these foreign clients possess very questionable human rights records or are involved in intrastate conflict. Two examples of these contradictions are South Africa's sale of arms to the Rwanda/Burundi region between 1994 and 1995, and the proposed sale of arms to Syria, commonly known as the Wazan debacle.¹¹⁸ Nonetheless, the domestic defence industry is considered a national asset by Government and is here to stay. But what is its role within the context of arms procurement for the DOD?

The post-Apartheid government has changed industrial policy for the defence industry in South Africa. Self-sufficiency in armaments production is no longer an aim of the DOD, but rather to maintain limited self-sufficiency in certain areas of defence. Thus, instead of producing large-scale weapon systems like fighter jets and tanks, which will be procured from foreign sources, the domestic industry will produce computer systems and ammunition for such systems. Domestic procurement of defence systems is of course preferred above imports, within budgetary constraints. When defence systems are procured from foreign contractors a premium is placed on securing a maximum amount of domestic production and the transfer of technology to the domestic industry. Counter-trade agreements are the norm for all foreign procurement of defence systems. The DOD wishes to encourage competition for contract tenders so as to ensure the best deals available. Tenders are supposed to be awarded on the basis of value for money and life cycle costs of the defence systems to be procured.¹¹⁹

¹¹⁷ Garth Shelton, *South African Arms Sales to North Africa and the Middle East: Promoting peace or fuelling the arms race?* (Johannesburg: Foundation for Global Dialogue, 1998), 3.

¹¹⁸ Zacarias, 8.

¹¹⁹ MODAC, 5.

ARMSCOR plays a pivotal role within the process of arms acquisitions. The corporation is required to manage all programmes and the contracting of the defence industry. Most of the contracting of the defence industry is of course with the state-owned company DENEL. ARMSCOR ensures that the programmes maintain their technical, financial and legal integrity in accordance with the requirements of the MOD. ARMSCOR also is tasked with managing all defence industrial development so as to support armament acquisition programmes.¹²⁰

3.4.3.2 DENEL

However, the actual production work is done under the auspices of DENEL, which operates under the Ministry of Public Enterprises. DENEL is a profit-orientated state asset and is thus expected to compete internationally like any private commercial enterprise.¹²¹

DENEL was established in 1992 as the manufacturing partner of ARMSCOR under the Ministry of Public Enterprises. DENEL is an economically independent industrial giant and operates under the Companies Act, unlike the situation in the Apartheid-era whereby ARMSCOR was not accountable under this Act.¹²² Initially DENEL aimed to follow a process of defence conversion whereby it would convert its defence production to civilian use. This, however, proved too expensive a strategy and, coupled with defence cuts, DENEL decided to rather find new international markets. DENEL, along with other defence companies Reunert, Altech, Plessy and Grineker, account for 90 percent of the domestic industry's capital expenditure. By 1997 arms had become South Africa's second largest manufactured export, although it accounts for less than 1,2 percent of GDP and only one percent of manufacturing jobs in South Africa. Although South African companies hold less than one percent of the international arms market, they have developed enough expertise to maintain this share.¹²³

¹²⁰ Ibid. 7.

¹²¹ Ibid. 6.

¹²² Skosana, 3.

¹²³ Shelton, 2.

The DOD expects that the domestic defence industry is contracted to carry out the research, design, development, manufacture, testing, maintenance and support of defence systems. The industry is also compelled to implement its marketing and export of armament within the framework of the relevant national policies and approval of the appropriate departments of state.¹²⁴

3.5 The Executive: Cabinet

3.5.1 The Presidency

The Presidency has a limited, but very important role to play within Strategic Arms Acquisition programmes. In order for the defence industry, especially DENEL, to achieve the lowest possible cost of its arms it is important to increase production. The quantity of armament required by the SANDF is too small, thus export is very important in keeping costs down. The Presidency plays an important role in encouraging overseas clients to basically 'buy South African.' The government has a direct interest in arms export gaining foreign exchange and other technology.¹²⁵ Miller argues that the international arms trade is very much determined by foreign policy. She says:

"Civil and military trade are inter-related in that the willingness to supply defence goods becomes the price of access to the wider civil market."¹²⁶

Government views the domestic defence industry as a key to unlock international markets for civilian goods from South Africa and to ensure favourable import of other civilian goods into South Africa. Given the ANC government's obsessive pursuit of Foreign Direct Investment (FDI) into South Africa, the idea that arms acquisition programmes are a form of economic foreign policy is not that farfetched.¹²⁷ In any event, the international arms market saw a decline in sales following the end of the Cold War. Sales have, however, increased since 1996 by about 8 percent from the

¹²⁴ MODAC, 13.

¹²⁵ MODAC, 19.

¹²⁶ Davina Miller, *Export or Die: Britain's Defence Trade with Iran and Iraq*, (London: Cassell, 1996), 3.

¹²⁷ This issue will be discussed at greater length later on in the dissertation.

previous year. In a tight arms market, South Africa's ability to peddle its wares, like the *Rooivalk* attack helicopter and the *Rooikat* armoured car, is dependant on successful and competitive marketing. In this regard the Presidency is seen as an important cog in the marketing machine.¹²⁸

3.5.2 The Ministry of Defence

The MOD has changed the ANC's pre-election policy of disarmament and demilitarisation to one more characteristic of economic pragmatism. The MOD views the defence industry as an asset that gives South Africa international status. That also allows her to partner the major powers in confronting the security agenda within Africa. The MOD argues that the post-Cold War security environment requires South Africa to maintain a modern, well-equipped and technologically advanced SANDF. This policy is justified by the instability and insecurity that pervades Sub-Saharan Africa.¹²⁹ The policy change was not unanimously welcomed within the ANC. For instance, the Minister in charge of the then Reconstruction and Development Program (RDP), Jay Naidoo, argued that security should not be equated with defence. Civil society argued that South Africa's insecurity lay in ethnic tensions, economic refugees, environmental destruction, small arms proliferation and economic inequality. Massive military expenditure was thus unnecessary in their view.¹³⁰ This tension would continue well into the government of Thabo Mbeki in 1999.

Final political authority and responsibility for routine/non-cardinal arms acquisition rests with the Minister of Defence. The only exception is in the case of large-scale cardinal projects like the Strategic Arms Package that require the political approval of the Presidency and Cabinet. Government's defence acquisition policy states that any major procurement of defence systems (known as cardinal programmes) must be approved by Cabinet, under the oversight of Parliament's Joint Standing Committee on Defence.¹³¹ The Minister chairs the highest and final level of committee of control within the acquisitions hierarchy of the DOD. This committee is the Armament

¹²⁸ Shelton, 6.

¹²⁹ Shelton, 6.

¹³⁰ Zacarias, 7.

¹³¹ MODAC, 51.

Acquisition Council (AAC).¹³² The AAC membership includes the Defence Secretary, the CSANDF and the Executive General Manager of ARMSCOR. The AAC approves armament acquisition policy, approves all armament acquisition budgets and approves all cardinal projects.¹³³

3.6 Parliament

3.6.1 Portfolio Standing Committee on Defence

“The much lauded principle of good governance is a by product of parliamentary and civil oversight of the functions of the executive.”¹³⁴

No constitutional arrangements existed regarding parliamentary oversight prior to 1994. Neither was anything said about parliamentary committees. The 1983 Constitution merely stated that the President’s Council could make rules and orders, but this body consisted of the executive. Thus, Parliament had no constitutional powers of oversight over the executive.¹³⁵ However, the post-Apartheid Parliament has developed a multi-party committee system, as required in the 1996 Constitution.

The Portfolio Committee on Defence (PSCD) comprises all the political parties that enjoy representation in the National Assembly (NA). The committee, although similar to the Joint Standing Committee on Defence in function, additionally deals with any legislation regarding the defence sector. The PSCD is mandated to monitor, investigate and enquire into any defence policy. The committee also plays a main role in the approval by the NA, as a whole, of the defence budget and the deployment of SANDF personnel. The PSCD has the power to subpoena any individual, including any member of the executive, to give testimony that it may deem necessary to aid the committee in its work.¹³⁶ However, the main point that the White Paper makes about the acquisitions process is that all major arms procurement and acquisitions *must have the approval of Parliament*.¹³⁷

¹³² MODAC, 7.

¹³³ Ibid. 25.

¹³⁴ Slaa, 17.

¹³⁵ Ngculu, 1.

¹³⁶ Le Roux & Boshoff, 189.

3.6.2 Joint Standing Committee on Defence

The JSCD enjoys broader powers of oversight, although it is not mandated to deal with defence legislation. The committee focuses on armament policy and the SANDF's state of readiness. The committee differs from the PSCD in that it consists of members from both the NA and the NCOP. It is modelled on the Committee on Defence of the German Bundestag.¹³⁸ However, not all parties in Parliament are represented in the JSCD. In order to have representation within the JSCD, parties have to occupy more than ten seats in the NA.¹³⁹ Wide-ranging powers of investigation are afforded to the committee by the Constitution. The JSCD is a creation of necessity out of South Africa's transition. The committee was set up to smooth the integration process of the new SANDF, which was formed from an amalgamation of the former non-statutory and statutory forces. The committee was tasked to exercise oversight over the 1998 Defence Review process, which covered issues of transformation, structure, budgets, organisation within the SANDF.¹⁴⁰ Although the PSCD, the JSCD and SCOPA are mandated to exercise oversight in the acquisition process of the DOD, in reality it is the JSCD that plays the main oversight role in this regard. Often the distinction in powers and functions of these committees are not clear.¹⁴¹

One of the main problems the committee has faced is the high rate of turnover among members. New members often have little or no experience in defence matters.¹⁴² Moreover, the committee lacks specialised research support and is often bombarded with overly technical information by planners from the SANDF. Thus, for all its good work it lags behind the SANDF in terms of understanding the technocratic aspects of defence issues.¹⁴³ The JSCD is a clear representation of the problems facing

¹³⁷ *White Paper on Defence*, Chapter 7 par. 5.

¹³⁸ Frankel, 118.

¹³⁹ Greg Mills, "The South African National Defence Force: Between Downsizing and New Capabilities," in *Naval War College Review*, Winter (1999), 3.

¹⁴⁰ Ngculu, 2.

¹⁴¹ Ferreira, 72.

¹⁴² *Ibid.* 70.

¹⁴³ Frankel, 120.

parliamentary oversight committees in new democracies, especially where the military has enjoyed as much corporate autonomy as under the Total Strategy years.

3.6.3 National Convention Arms Control Committee

The NCACC is an important cog within Parliament's oversight mechanism. The committee is tasked with two functions. The first is to exercise oversight in the acquisition, procurement and export of all arms and the second is to design arms acquisition policy for the SANDF. Furthermore, the NCACC is charged with evaluating all applications for arms-related research, development, manufacturing, marketing, contracting and grants permits for these activities.¹⁴⁴ According to Mills the committee is also mandated to approve all acquisitions of arms into South Africa, though as we will see this was not the case in the Strategic Arms Package.¹⁴⁵ This mandate is covered in Chapter Eight of the White Paper on Defence 1996, which outlines the scope and nature of the NCACC's work.

The NCACC was established on the recommendation of the Cameron Commission of Inquiry into the 'Wazan' debacle. ARMSCOR had been implicated in a proposed sale of armaments to Lebanon in 1994. However, it was later learned that the end user of the armaments was in fact Yemen, which was a banned purchaser of arms by the South African government due to its internal conflict. The debacle caused significant damage to South Africa's new image as an upholder of human rights and multilateralism. The response of the government was to establish the NCACC. However, the contradiction between South Africa's arms exports and its foreign policy remains with recent reports that South African-made RG-31 armoured personnel carriers have been used by the US Army and private military companies in Iraq.

The NCACC was set to become a statutory body when the National Conventional Arms Control Bill was tabled before the PSCD in July of 2000.¹⁴⁶ However, the Bill was rejected on the grounds that it deviated from the Constitution and the White Paper on Defence. Moreover, the Bill was tabled after a long delay even though the NCACC

¹⁴⁴ Skosana, 1.

¹⁴⁵ Mills, 4.

¹⁴⁶ Skosana, 9.

had been in existence for some time. It is interesting that the Bill was only submitted before the PSCD in 2000 almost one year after the Strategic Arms Package deals had been signed by Cabinet. The proposed Bill will give the NCACC powers of consent over all armament exports and imports for the use of the SANDF.

3.6.4 Standing Committee on Public Accounts

The DOD is subject to external audit, as required by the Constitution, and this function is fulfilled by the office of the Auditor-General who in turn reports to SCOPA. February argues that SCOPA had developed a status as the most efficient committees within Parliament. But this reputation was tarnished by the Arms Deal.¹⁴⁷ Nonetheless, SCOPA, unlike other committees, does not deal with policy or legislation, but focuses solely on public expenditure by government. The committee's task is to assess the efficiency and effectiveness of government's management of state finances. The committee checks whether every government department's expenditure is in line with their respective budgets.¹⁴⁸ The DOD is no exception in this regard and falls directly within the ambit of financial oversight by SCOPA, including arms acquisitions.

Recent years have seen the expansion of executive dominance over the legislature with regards to governance. Anthony Butler argues that the nature of policy has changed in such a way that executive power vis a vis parliament has grown substantially, relegating many parliaments (with the exception of the United States Congress) to no more than rubber stamp bodies.¹⁴⁹

Contemporary wisdom is that policy is best suited for the executive, which was designed for this task. Butler describes policy as complex and very technical. The volume of information and activity can overwhelm parliamentarians who cannot match the resources at the disposal of the executive. Contemporary policy also requires co-ordination, leadership and economic intervention, all of which fall within the expertise and capacity of the executive.¹⁵⁰ Parliament is ill equipped to match the

¹⁴⁷ February, 4.

¹⁴⁸ Ibid. 21.

¹⁴⁹ Anthony Butler, *The Commons*, (Unpublished Manuscript), 3.

executive and thus most governance is left to the latter. Butler summarises by describing executive dominance at the expense of the legislature as “*a natural and inexorable process.*”¹⁵¹ If it is that parliaments have been emasculated over the years, then the contention is that parliaments only recover this ‘lost power’ over governance through robust oversight over the executive’s management of state bureaucracies, especially the military.

Parliaments around the world, with a few exceptions, occupy a lower status to the executive. The Third Wave of Democratisation has placed legislatures back on the agenda of those countries where previously executive dominance, at the expense of the judiciary and legislature, had been the standard.¹⁵² Apartheid South Africa provides a sterling example in this regard. The Commonwealth Parliamentary Union argues that, given the reality of executive dominance, parliamentary oversight is sorely lacking in many of its member countries.¹⁵³ South Africa’s Parliament is no different and definitely suffers from these weaknesses. Parliament in the Apartheid era enjoyed virtually no oversight powers because of centralisation by the NP executive and the absence of a Constitution that served as the final institution of authority. The post-Apartheid Parliament, though operating in a constitutional democracy, has continued this tradition of weak oversight. Though Parliament has formal and institutionalised powers of oversight, the executive continues to enjoy a majority that allows it to escape the type of robust oversight seen in a system with strict separation of powers, such as in the United States Congress. Nonetheless, Parliament has played a critical role in transforming the security debate in South Africa, most notably in the White Paper on Defence and issues of force integration and gender representation.

3.7 Summary and Conclusion

Civil-military relations in post-Apartheid South Africa is characterised by a concerted effort on the part of government to establish democratic civilian control over defence.

¹⁵⁰ Ibid. 4.

¹⁵¹ Ibid. 5.

¹⁵² Ibid. 5.

¹⁵³ Inter-Parliamentary Union, *A Guide to Parliamentary Practice*, (UNESCO, 2003), 2.

The Constitution of 1996 and the Defence White Paper of the same year set out the framework for this democratic legislative control, in a sharp move away from the Praetorian tendencies of the Total Strategy years. The SANDF have accepted this situation, although with many points of contention over the years. But this is expected in a democratising state like South Africa where the functions, roles and responsibilities of defence actors are quite often forged through conflict and points of contention. One could give South Africa's civil-military relations a relatively average bill of health, as there is much further to go in this regard.

Government is keen on maintaining ARMSCOR/DENEL's share of the international arms market and to secure a limited self-sufficiency in arms production for the SANDF. The White Paper argues for a modern and technologically advanced SANDF and here in lies the basis for defence industrial policy. The domestic defence industry remains an important sector within the state and this is confirmed by attitudes within the MOD and at least half of Cabinet. More importantly the Presidency has taken on a role whereby it views the export of armaments to the international market as an important vehicle for creating FDI into South Africa's emerging economy.

There are three levels of control within the armament acquisitions hierarchy of the DOD. These levels of control are a far cry from the days of Total Strategy in terms of transparency and auditing. It is important to note that all large scale cardinal projects, like the Strategic Arms Package (SAP), require the approval of Cabinet. The role of Parliament is to exercise oversight throughout the acquisition process, but the nature of this oversight has not been quite fully understood and this is one of the main points of contention within the context of the SAP.

Three things become clear in this chapter. First, there are two types of arms acquisitions in the South African defence sector. The first is a routine or otherwise known as non-cardinal acquisition program. In South Africa the Minister of Defence assumes responsibility for these types of programs. These programs are a common occurrence and often do not carry high expenditure, thus they are not usually controversial in nature. The second type is the strategic arms acquisition, which in South Africa requires the approval of Cabinet and the Presidency. These programs are

a rare occurrence, expensive and tend to be cloaked in controversy. The Strategic Arms Package or Arms Deal is the first example of the second type in South Africa.

Second, Parliament in South Africa is weak in comparison to the Executive. Democratic South Africa is a constitutional democracy as opposed to the limited and exclusive parliamentary democracy under Apartheid. However, the tradition of weak oversight over the military has continued. Though oversight is formally institutionalised within the Constitution, strict party discipline exercised within the majority party dilute the quality of oversight. Parliament suffers from a lack of capacity in order to exercise robust oversight, especially over the military. Parliamentarians lack knowledge and experience of the defence sector and Parliament's research capacity is under-resourced. Thus, Parliament's oversight ability remains weak within democratic South Africa.

Third, legislative control over the military is idealised within civil-military relations literature. In practice, legislatures struggle to hold the executive and the military accountable. Control over budgets and the ability to declare wars are the two key pillars of legislative control over the military. But these require robust oversight, and legislatures are often sidelined by executives in this regard. Moreover, legislatures within parliamentary democracies are not very jealous of the military budget.

CHAPTER FOUR

4. A CRITICAL ANALYSIS OF THE STRATEGIC ARMS PACKAGE

4.1 Introduction

This chapter seeks to make a critical analysis of the Strategic Arms Package with regards to several issues. The primary purpose is to assess the role of the relevant actors within the context of the SAP according to their assigned roles in the Constitution and the Defence White Paper. These actors include the DOD, consisting of the SANDF and the Defence Secretariat, the Presidency and Cabinet, ARMSCOR and the Parliament.

The chapter looks first at the origins of the SAP and focuses on the Defence Review process of 1998. It was this process which set the ball rolling for the SAP acquisition programme. Within this study we also ascertain exactly what kind of defence systems were procured and from which contractors and for how much. The chapter is then organised into two main sections, which are titled with two common criticisms of the SAP. The first criticism considers the military necessity of the defence systems and hardware purchased. The hypothesis is that some of the items purchased could be argued to fall within the strategic understanding of South Africa's defence needs, whilst others were not necessary. The second criticism is organised into two parts, the first focuses on the alternatives to the items purchased within the SAP and the second part investigates the 'offsets' agreements that formed part of the SAP. Here the hypothesis is that there were indeed more affordable alternatives to the items that were contracted. With regards to the offset agreements, it will be clear that the SAP's legitimacy in the eyes of Parliament and civil society was manufactured on the back of these agreements, but that their validity is sceptical at best. These issues could have far reaching implications in terms of the affordability of the deal in the future.

4.2 The Defence Review Process (1998)

The White Paper for Defence, although significant in its scope, left much work to be done in terms of the SANDF's force structure and design. The consequent Defence Review of 1998 was set to fulfil this task, as well as providing a forum for wide ranging consultation amongst South African society on defence policy.¹⁵⁴ The Defence Review was split into different working groups who were charged with

¹⁵⁴ See Department of Defence, *Chapter 15 of Defence Review*, (Pretoria: DOD, 1998)

formulating policy on various issues. Cawthra notes that the involvement of NGOs in the human resources working group, resulted in some very progressive policies in terms of the rights of women and homosexuals.¹⁵⁵ This could be attributed to the presence of many people who had been involved in activism within civil society under Apartheid.

However, he also notes that more ‘technical’ issues, from a military standpoint, were not subjected to as much scrutiny by these groups. This was especially the case with the formulation of the SANDF’s force design, where members of the SANDF were able to outsmart the activist lobby. In the end, the JSCD was presented with four possible options regarding the design and structure of the SANDF. See the table below:

	Option 1	Option 2	Option 3	Option 4
Total Cost, SANDF (Rm)	5 010	6 014	4 084	5 912
Personnel				
Full-time Component	22 000	36 000	26 200	27 200
Part-time Component	69 400	98 000	77 900	82 000
Light Fighters	32	32		44
Transport Helicopters	96	96	48	64
Submarines	4	4		4
Corvettes	6	6	8	6

Table 1¹⁵⁶

Unsurprisingly, the working group endorsed the first option that included corvettes for the South African Navy (SAN) and fighter aircraft for the South Africa Air Force (SAAF).¹⁵⁷ The Review reaffirmed the White Paper’s commitment to a ‘strategic defensive posture,’ but included the ability to mount offensive operations with the use of conventional forces in order to repel any external attack from a similar military power. In order for the SANDF to maintain such a military capability, the Review chose the option endorsed by the working group. The SANDF would retain a core conventional force, read corvettes and fighter jets, which could be rapidly expanded in

¹⁵⁵ “Security Governance in South Africa,” 5.

¹⁵⁶ Department of Defence, *Defence Review*, (Pretoria: Government Printer, 1998), 44.

¹⁵⁷ *Reconceptualising Security for the Twenty-First Century*, 13.

times of crises.¹⁵⁸ Here one sees an early instance of manufactured legitimacy for the impending Strategic Arms Package.

As far as acquisition of arms and equipment were concerned, the Defence Review made significant changes to the future management of these processes. The Review rejected the old policy that RSA should have self-sufficiency in its arms requirements, except in key areas. A decision was taken to maximize the use of local suppliers, and more significantly, all platform suppliers¹⁵⁹ were to be responsible for the sub-contracting of suppliers of subsystems.¹⁶⁰ This is a crucial development in the Review in terms of the acquisitions process and our understanding of allegations of corruption within the SAP process. However, much policy concerning the defence industry was left to be dealt with by the NCACC in the 1999 *White Paper on Defence-Related Industries*.

There was much criticism of the Review, even at the time of its approval by Parliament. The Institute for Security Studies, in a submission to the PSCD, argues that the Review is significantly flawed in its emphasis on the SANDF's conventional ability to fulfil its primary mission of defending RSA against foreign aggression. They argue that in fact, the current security context within Southern Africa and South Africa domestically, dictates that the SANDF is more likely to be required to fulfill its secondary missions such as peace operations and assisting the SAPS. The conventional capability of the SANDF, as promulgated in the Review, is ill suited to these missions.¹⁶¹ Ferreira argues that the emphasis on the primary mission within the Review indicates that legitimating the SANDF's conventional core force was uppermost in the minds of those wishing to see the re-equipment and re-armament of the SANDF.¹⁶² In other words, the Defence Review was used as a legitimating mechanism for the impending Strategic Arms Package. Interestingly, the approval of

¹⁵⁸ Ibid. 15.

¹⁵⁹ Here a "platform" refers to a single unit of military hardware i.e. A fighter jet or a corvette. Previously, various parts of a platform would have been sourced from different suppliers.

¹⁶⁰ "South Africa's Defence Industry," 5.

¹⁶¹ Institute for Security Studies, *Submission on the South African Defence Review to the Portfolio Committee on Defence*, (Pretoria: ISS, 2004), 1.

¹⁶² Ferreira, 74.

the Review by Parliament has often been used by members of the executive, the MOD and the DOD, as an indication that Parliament had in fact approved the SAP itself. However, as February correctly points out, Parliament's approval of the Review is not tantamount to an approval of the SAP. What Parliament had approved was an ideal image of the SANDF force design, subject to budgetary constraints.¹⁶³ Moreover, the Review did not include details about the exact cost of the various options to the state's budget and thus Parliament was not in an informed position to approve expenditure on re-armament.¹⁶⁴

The Defence Review, although characterized by a transparent and consultative process, paved the way for the Strategic Arms Package, which would have massive implications throughout the political system and the economy. Given the nature of the Review process, one could make a strong though cynical argument that the Review provided an instant source of legitimacy for the SAP.

4.3 The Roots of the SAP

Although the SAP deals were only signed in 1999, lobbying by the SAN to acquire a blue water fleet began as early as 1994. The then Minister of Defence, Joe Modise, had approached Parliament with a request to acquire corvettes from a Spanish company Bazan. However, the involvement of the newly established Joint Standing Committee on Defence (JSCD) put a spanner in the works, arguing that first the very legitimacy of the SANDF had to be assessed before any acquisitions could be approved.¹⁶⁵ The refusal by the JSCD is what sparked the Defence Review process. The Minister subsequently withdrew his request from Parliament's agenda in 1995, but placed the issues of corvettes back on the agenda in 1997. By 1997, the DOD was far into negotiations with German and French consortiums as possible suppliers of the corvettes, long before the Defence Review had even been approved by Parliament. Throughout the Review process, the Germans had apparently been lobbying various members of the working groups and 'wining and dining' influential members within

¹⁶³ February, 3.

¹⁶⁴ Ferreira, 77.

¹⁶⁵ Thandi Modise, "Parliamentary Oversight of the South African Department of Defence: 1994-2003," in *Guarding the Guardians*, ed. Len Le Roux and Martin Rupiya, (Tshwane: Institute for Security Studies, 2004), 45.

the JSCD.¹⁶⁶ A case in point being the recent conviction of the then chairperson of the JSCD, Tony Yengeni, of defrauding Parliament when he accepted a discount provided by Daimler South Africa on a luxury vehicle.

The period preceding the signing of the agreements was characterized by intense lobbying behind the scenes by those advocating for the SAP, most of all the SAN. The military was very successful at lobbying influential MPs, arguing that the SANDF's equipment was obsolete. Here is where the lack of expertise in military matters on the part of MPs was sorely showed up. One could argue that is why MPs have access to research units within Parliament in order to fill this gap, but at the time Parliament's research capabilities were limited. In any event, the monopoly on military technical expertise was on the side of those advocating for the SAP, a fact that was strongly impressed on those who did not. Moreover, the promise of job creation to the tune of an estimated 65 000 jobs and possible offsets of over R100 billion pumped into a struggling economy, is what really tipped the scales in the favour of the militarists.¹⁶⁷

Offset agreements are used by arms companies to add incentives for the possible buyer to award them arms contracts. There are two kinds of offsets agreements. One involves a counter-purchase where the foreign supplier company agrees to buy components from local manufacturers in exchange for the right to supply the required hardware.¹⁶⁸ The other is when the foreign supplier agrees to investments into the local economy, especially within the arms industry.¹⁶⁹

Nonetheless, many MPs and influential figures within the SAP process were enticed by the promises of offsets. From a defence industry standpoint, the SAP was a blessing. The domestic South African arms industry had by the mid-1990s become a

¹⁶⁶ Ferreira, 72.

¹⁶⁷ Laurie Nathan, "Consistency and inconsistencies in South African foreign policy," in *International Affairs* Vol 81, No. 2, (2005), 369.

¹⁶⁸ Wrigley, 1.

¹⁶⁹ However, much controversy surrounds the legitimacy of offsets within the arms trade around the world and this will be dealt with later.

financial liability for the state. Attempts to launch a competitive foray into the world arms market had not been successful and it soon became clear that an external injection of capital and expertise was needed. This would come in the form of the offset agreements attached to the SAP. The benefits for government was that it could finally offload control of unprofitable arms companies to black economic empowerment schemes and foreign companies, and retain those cash cows that would benefit from NIP projects.¹⁷⁰ While the benefit for the foreign arms companies are obvious. Needless to say, the successful negotiation of the SAP was in the financial interests of many influential figures in South African business and politics.

Lobbying eventually became serious business when tenders were advertised for suppliers for the various items on the DOD's shopping list. Four committees were established to consider the various tenders, a technical committee, a finance merit committee, a defence industrial participation (DIP) committee, and a national industrial participation committee. Tenders were given marks out of 300. All results were given to the coordinating Strategic Offers Committee for consideration, who in turn submitted its results to the Armament Acquisition Steering Board. Recommendations were then forwarded to the Armaments Acquisition Council (AAC). The AAC reported to the Minister's Committee, chaired by then Deputy President Thabo Mbeki, who in turn reported to Cabinet.¹⁷¹

By December 1999, the government announced that it had signed agreements with various suppliers to re-equip the SANDF, with the SAN and the SAAF being the chief beneficiaries of the SAP.¹⁷² These contracts will cost the South African tax payer billions of Rands and divert this revenue away from much needed social projects such as housing, education and health. The very first question that comes to mind is whether the SAP was necessary in the first place?

¹⁷⁰ Ibid. 2.

¹⁷¹ February, 13.

¹⁷² February, 9.

4.4 Criticism One: Assessing the military necessity

The White Paper and the Defence Review hold that the SANDF has a primary function of defending RSA against external aggression. We have ascertained that this condition was accepted due to the fear amongst many ‘doves’ within Parliament and civil society that the SANDF would otherwise involve itself in civilian matters. On the other side many ‘hawks’ saw this as a useful means to legitimate arms purchases. We have also ascertained that the SANDF will for the foreseeable future be primarily involved in performing secondary functions, for which its conventional capability is ill suited. In other words, it makes little sense that you would need a jet fighter to perform peace operations in the Great Lakes region, let alone a corvette. Simply put, the SAP has equipped the SANDF for the wrong mission.

Although the SAP consists of five different types of military hardware, the submarines and the jet fighters have provided much ammunition for critics of the SAP. The fighter jets will definitely afford the SAAF complete air superiority over Sub-Saharan African skies. However, South Africa is bordered to the north by economically dependant countries that have no incentive to threaten South Africa’s sea or airspace. To the east, south and west are expanses of ocean. The only African countries that possess submarines are Algeria, Egypt and Libya, all operating in the Mediterranean.¹⁷³ Even if one were to accept the White Paper and Review’s assertion that South Africa should retain the conventional capability to repel possible external aggression in the distant future, this aggression is likely to be a land based offensive. Such a defense is more likely to require a well equipped SA Army, which has not been a beneficiary of the SAP. The submarines and the fighter jets seem to be an extravagance. However, given policies like NEPAD and the context of the African Union, the government’s foreign policy view is that a well equipped, modern and technologically advanced SANDF seems to give South Africa much clout in these international organisations.

Williams argues that the SAP has contributed to a possible regional arms race and that the corvettes, submarines and jet fighters are ‘offensive’ weapons that are contrary to

¹⁷³ Leon Engelbrecht, “South Africa’s multi-billion arms programme revisited: Part Two,” in *Defence Systems Daily*, (19 November 2001),

South Africa's foreign policy of co-operative defence with its neighbours.¹⁷⁴ Moreover, many human security and development proponents argue that given the nature of conflict in Sub-Saharan Africa, traditional military strength is not the answer to the security challenges that face a regional power like South Africa.¹⁷⁵ The majority of African conflicts are of an *intrastate* type. The traditional understanding of security being a territorial thing is outdated and security threats are more complex in the post-Cold War setting.¹⁷⁶ The White Paper on Defence does however embrace a wider notion of security, but there has indeed been a breakaway from this on certain issues within the Defence Review process.

Harris argues that the military has undergone too much 'mission creep,' for example whereby the corvettes are to be used to protect the coastal economic zones of the Southern African coast. He argues that privatizing this function or mandating another government department would make more cost effective sense.¹⁷⁷ He points out that the Department of Environmental Affairs and Tourism has recently launched three inshore patrol vessels and one deep sea patrol vessel to patrol South Africa's exclusive economic zone. The cost of these vessels was a total of R500 million whilst the Meko class corvettes come with a price tag of R6,9 billion. The cost of the corvettes in the long term will be more than double that amount.¹⁷⁸ He goes further to argue that if South Africa wishes to maintain a defence force that is built around a 'defensively orientated' core, then the size and expenditure on this core component should be in reference to the military strength of South Africa's neighbours. The SANDF already dominates the region without the expenditure of the SAP.¹⁷⁹

¹⁷⁴ Rocky Williams, "Human Security and the Transformation of the South African National Security Environment from 1990-2004: Challenges and Limitations," in *Journal of Security Management*, March, (2005), 10.

¹⁷⁵ Geoff Harris, *Military Expenditure in Sub-Saharan Africa: Why guns cost more than butter*, (Johannesburg: The Free Market Foundation, 2004), 4.

¹⁷⁶ Geoff Harris, *The Irrationality of South Africa's Military Expenditure*, (Durban: University of Natal, 2000), 3.

¹⁷⁷ Harris, 12.

¹⁷⁸ *Military Expenditure in Sub-Saharan Africa*, 24.

¹⁷⁹ *The Irrationality of South Africa's military expenditure*, 6.

However, what is clear is that the SAN and SAAF require at least minimal rearmament given their neglect over the past decade. The point of the matter is the nature of that rearmament and its financial burden on the state.

What about Parliament's role on this issue? As far as the necessity of the SAP is concerned, one can distinguish between the necessity of the SAP as a whole and the necessity of some of the items procured. The contention is not with the former but with the latter. The SAP is the product of a decade long process characterized by intensive lobbying on the part of the DOD, influential members of cabinet and the ruling ANC, and more importantly foreign arms companies. The Constitution requires that the SANDF be a modern and technologically advanced force. This is fleshed out in the Defence White Paper and Review. The SAP is inherently flawed due to the acceptance by the White Paper and the Defence Review of conventional external defense as the primary mission of the SANDF. The reality is very different as the SANDF is primarily engaged in its secondary missions. However, Parliament approved both the White Paper and the Defence Review and therefore effectively approved conventional defense. Moreover, this point was inspired by the Constitution in order to ensure that the military stay out of partisan politics. Subsequently, the point is not to assess whether a procurement program should have been implemented or not, but rather to assess whether Parliament exercised oversight over this program in the interest of South Africa and its citizens. Given the acceptance of conventional defense, the SAP was a necessary result of years of degeneration of the SANDF and its equipment.

Parliament approved in principle the rearmament of the SAAF and SAN by approving the Review policy. By adopting the Defence Review, Parliament approved a determined design and structure of the SANDF. This design included jet fighters and submarines. An important cog in the machine of parliamentary oversight is expertise. Parliament's approval of the Defence Review is due to its lack of expertise in matters relating to defence. The JSCD and PSCD were involved in the formulation of this policy, which laid the foundation for the SAP process. However, these committees were newly established and consisted of inexperienced members with regards to the technical matters of defence. To this day Parliament lacks a research capacity that could match the capacity of the DOD. Thus, there is legislative control, but the quality

of the control is weakened by a lack of capacity. Moreover, given the operational reality of the SANDF, the Gripens and submarines have equipped the SANDF for the wrong mission.

One can hold Parliament accountable for approving policy that necessitated the procurement of jet fighters and submarines for the SAAF and SAN respectively. A greater understanding of the SANDF's present and future operational requirements would undoubtedly have compelled the JSCD to reject the recommended design in the Defence Review. Admittedly this is only speculation, but the point remains valid. To its defense, Parliament approved the design on the basis that all procurement should be subject to the constraints of available funding, but this is exactly where oversight was sorely lacking within the SAP process.

4.5 Criticism Two: Assessing the affordability

4.5.1 Alternatives

The SAP has been vehemently defended as a necessary purchase. Fighter jets and submarines aside there are stronger arguments for the corvettes and the utility helicopters. However, many observers have noted that although they do not question the necessity of these items, they very well do question the affordability of the contracts chosen. This is especially the case with the Hawk trainer contract. Moreover, the South African government has received even greater criticism as to the financing of the deal itself. Many have argued that the SAP has placed South Africa in a precarious financial position as the government had to undertake loans from foreign banks in order to finance the SAP.

David Botha argues that as a percentage of GDP, the SAP is well below international norms highlighting that the Defence Review accepted 1,8% of GDP was required to pay for acquisitions and operating costs. He adds that the original hardware requirement was even lowered in order to make the SAP more affordable.¹⁸⁰ See the table below.

¹⁸⁰ David Botha, "The Arms Deal Controversy," in *African Security Review Vol, 12 No. 3* (2003), 45.

Equipment	Planned	Actual
Gripen	38	28
Hawk	24	24
Corvettes	5	4
Submarines	4	3
Helicopters	60	30

Table 2 ¹⁸¹

Of all the tenders that were considered the final successful contracts were the ones that scored the highest points in terms of performance, price, the industrial participation benefits and available financing. However, the Hawk trainer contract was not the best in terms of price. The Italian made Aermacchi MB 339, a highly rated machine, was half the price of the Hawk trainer. British Aerospace however, added a larger amount of offsets to the Hawk tender. The Brits offered \$1,2 billion compared to the \$431 million on offer from the Italians and this is what tipped the balance in the favour of the British.¹⁸² Many argued that because the Hawk, designed as both a trainer and combat fighter, was only required as a training platform for SAAF recruits it was an unnecessary option. The Hawk would unlikely be used in a combat role by the SAAF, and thus a cheaper trainer such as the MB339 was the better choice.¹⁸³

If this is so, what explains the preference for the Hawk? Wrigley argues that because the Hawk and the Gripen were both connected to British Aerospace, the South African government saw greater value in choosing the British contract for reasons of foreign policy. Even though the Italian, Czech and German tenders were cheaper.¹⁸⁴ Seemingly South Africa's interest would have been to secure the British deal as this guaranteed that a struggling BAE would have been more willing than any other tender to buy into the local defence industry, thus effectively 'rescuing' the South African government of this liability. This is in fact what has happened since the SAP was signed. Miller argues that these are tactics central to Britain's defence industry's

¹⁸¹ Ibid. 46.

¹⁸² Ibid. 47.

¹⁸³ Wrigley, 11.

¹⁸⁴ Ibid. 10.

attempts to increase its arms exports, with the endorsement of the British government. These tactics include:

*“A willingness to facilitate offset deals; the use of aid in underwriting arms sales; and the provision of a subsidy for sales to developing countries in the form of disproportionate amounts of credit for military, as opposed to civil, exports.”*¹⁸⁵

The arms exporters receive assistance from the British government through the Defence Export Services Organisation (DESO). They advise companies on markets and facilitate *access to overseas decision-makers* (my emphasis).¹⁸⁶ Thus, political and economic interests were far more influential in the success of the BAE tender for the LIFT contract.

This view is supported by Ferreira who argues that the Russians were willing to provide a package deal that consisted of MIG jet fighters, training aircraft and submarines at a much cheaper price.¹⁸⁷ One can only assume that the Russian bid received a lukewarm reception from the South African government because the Russian Federation is outside of the Western European economic club, as well as being less attractive in terms of offset arrangements. Moreover, the Spanish and Italian bids for the corvette contract were cheaper than the German bid. Wrigley has claimed that if one looks at the distribution of the contracts the main suppliers are Germany, Britain, Italy and Sweden. These are all Western European powers and major trading partners of South Africa, although France has been a major loser in the bidding process.

However, the French company Thales has been given the right to provide the electronics for the Westland Super-Lynx maritime helicopters that are to serve aboard the corvettes.¹⁸⁸ Note that these helicopters do not form part of the SAP, but will be

¹⁸⁵ Miller, 5.

¹⁸⁶ Ibid. 5.

¹⁸⁷ Ferreira, 77.

¹⁸⁸ Tenders for the maritime helicopters have not as yet been advertised, but undoubtedly will be given that the corvettes main design requirements were to carry helicopters. Thus, by purchasing the corvettes, the SA government has bound itself to future purchases of these helicopters. It is only a matter of time.

purchased in the near future. Also, rumours are that a future acquisition of main battle tanks for the SA Army would see the French-made *LeClerc* as the favoured option for the SANDF.¹⁸⁹ However, given BAE's substantial offset arrangements with South Africa, such a deal is more likely to be granted to BAE's subsidiary Vickers, which produces the *Challenger 2*.¹⁹⁰ In any event it is clear that cheaper alternatives existed to the actual contracts that were signed. The only issues separating these were the promise of more attractive offset arrangements and the South African government's preference for European suppliers.

What of the cost of the SAP deal in real terms? The price of the SAP, as reported to the public by Cabinet, was a total of R29, 9 billion. The price breakdown is below.

Equipment	Suppliers	Quantity	Value Rm
Corvettes	German Frigate Consortium	4	R5, 473
Submarines	Ferrostaal, Germany	3	R4, 289
Light Utility Helicopters	Augusta, Italy	25	R1, 532
Gripen Fighter Jets	SAAB/BAE Consortium	28	R9, 952
Hawk Trainer/Fighter	BAE, UK	24	R3, 728

Table 3¹⁹¹

However, this total was the price of the SAP, and excluded finance charges, escalation clauses and foreign exchange fluctuations.¹⁹² The actual cost in real terms would be far greater. At the moment the cost of the SAP is in excess of R60 billion due to the depreciation of the Rand against the Dollar.¹⁹³ February makes an interest analysis that gives greater clarity of the costs involved:

¹⁸⁹ Wrigley, 11.

¹⁹⁰ Note that naturally the British made *Challenger 2* will be yet another expensive acquisition in comparison to say the French *LeClerc*.

¹⁹¹ Ferreira, 75.

¹⁹² Note that in order to finance the SAP, government agreed to a set of loan from foreign banks that are pegged to the exchange rate. Thus, the more the Rand depreciates to the Dollar, the higher the cost to the state of repaying the loans to these banks.

¹⁹³ February, 3.

“By comparison, for example, the annual health and welfare budget of the Eastern Cape Province is approximately R8, 5 billion. The expenditure of public funds on arms thus represents in excess of six years of that health and welfare budget.”¹⁹⁴

Four committees were established to evaluate and score the various bids. The Affordability Committee (AC) was established by the Department of Finance and was charged with assessing the cost of the SAP in the long run and whether it ascertaining the financial and economic risks attached. The AC reported that on signing the SAP, the government would be committing the state to finance payments up until 2013, which would be a long term obligation with hidden implications. They emphasized three risks.

Firstly, the Minister’s Committee was warned that FOREX rate fluctuations could dramatically increase the costs to the state. Secondly, the offset arrangements were subject to suspicion as they could not be guaranteed nor strictly enforced. Thirdly, it was not possible to understand the full implications of the interest attached to the financing loans. On this the AC viewed the SAP as having a high level of financial risk to the state with little or no guarantee that the offset arrangements would materialize, thus alleviating the negative impact on the South African economy.¹⁹⁵ Nonetheless Cabinet, based on the endorsement of the Minister’s Committee, approved the signing of the SAP. Even though the financial impact of the SAP on the states coffers will be enormous, the real cost of the SAP will be seen in the lack of state funding for poverty alleviation.¹⁹⁶ Nathan goes further to say that in signing the SAP, government had reneged on its pledge in the White Paper to contain defence spending.¹⁹⁷

Parliament should not have managed the SAP process that is the preserve of cabinet and the presidency. One could however, question why Parliament was not informed of

¹⁹⁴ Ibid. 4.

¹⁹⁵ Ibid. 8.

¹⁹⁶ See Robert Mattes, “South Africa: Democracy without the People?” in *Journal of Democracy*, Vol 13, No. 1 (2002), 24.

¹⁹⁷ See Laurie Nathan, “Parliamentary approval of original Defence Review was no mandate to buy weapons,” in *Sunday Independent* (22 July 2001).

the possible financial implications of the SAP for the state. Most MPs knew as much about the financial issues within the SAP as the public. At no point was parliament made aware of the foreign exchange risks involved with the financing of the SAP. Most MPs were swayed by the promise of job creation and the massive foreign investment that would flow from the deal as a result of offset arrangements. The real costs of the SAP were not made public at the time and government informed both Parliament and the media that the SAP would cost R29, 9 billion. We now know that this is not so.¹⁹⁸ Even SCOPA stated that Cabinet had been fully aware of the possible financial implications and had a responsibility to inform the public accordingly, which it failed to do.¹⁹⁹ Parliamentary oversight is virtually impossible without access to information, which in well funded legislatures such as the US Congress is made available via dedicated research staff. In the case of the SAP, Parliament was not fully informed so as to take steps it might have deemed fit at the time. Whether this means that Parliament would have rejected the SAP is a moot point, because Parliament was never requested to approve the SAP.

4.5.2 'Offsets'

If the SAP was laden with so much cost and risk, why did the Minister's Committee endorse signing the contracts? When asked this same question most government officials' response includes a reference to the massive benefits that the SAP deal will bring to the South African economy. Thus, it is imperative that we assess the offset arrangements as these seem to be contested ground amongst both advocates and opponents of the SAP.

Offsets, otherwise known as industrial participation (IP) programs in the international defence industry, are used by arms companies to provide incentives to the purchasing state and to compensate the loss of work within that country on the arms transfers. Since 1996 South Africa has maintained a mandatory policy of national industrial participation (NIP). The aim is to use government procurement as a mechanism to create economic and industrial benefits. Thus, when government departments and state-owned enterprises procure foreign supplies to the value of \$10 million, it becomes obligatory that the foreign supplier provide offset arrangements in the form

¹⁹⁸ February, 9.

¹⁹⁹ Standing Committee on Public Accounts, *Fourteenth Report*, (30 October 2000), 2.

of investment into the domestic economy.²⁰⁰ ARMSCOR also has a Defence Industrial Participation (DIP) policy that requires offsets for similar value procurement concentrating local defence industries.²⁰¹ All NIP projects are managed and monitored by the Department of Trade and Industry (DTI), and DIP is the jurisdiction of the DOD and ARMSCOR.²⁰²

Two criticisms are important here. One is the enforceability of the offset agreements, and the other is whether they actually alleviate the economic impact of massive expenditures of state funds.

Often governments include certain clauses in offsets agreements that include a penalty if IP is not forthcoming. However, arms companies take this into account and increase the price of the arms transfers accordingly to make up for a possible fine. Moreover, it would be difficult for any government such as South Africa's to hold an arms company accountable for their IP commitments in a court of law. Within the SAP the government attached a 10% of the value of the tender penalty on most contracts.

However, arms companies could very well just pay the fine and extricate themselves from having to honour their offset commitments.²⁰³ Interestingly, the Apartheid government experienced this when Israel reneged on its offset commitments in the 1970s after having supplied the SAN's *Warrior* class fast attack craft (FAC).²⁰⁴ To its credit the SCOPA queried the enforceability of the offsets within the SAP during its public hearings and indicated that the value of the penalties was too small in comparison to the value of the offsets.²⁰⁵ BAE, hailed as having been the best provider of offsets, combined both the Hawk and Gripen offset projects in order to lessen the amount of investment into the South African economy. SAAB/BAE had up

²⁰⁰ "South Africa's Defence Industry: Charting a New Course," 8.

²⁰¹ David Botha, "Offsetting the Costs of SA's Strategic Defence Package," *ISS Paper 75*, (July 2003), 1.

²⁰² Gillian McEwan, "Defence Offsets and the South African Aerospace Industry," paper presented at *Conference on Defence Offsets and Economic Development*, (Cape Town: 25-27 September, 2002), 4.

²⁰³ February, 11.

²⁰⁴ Leon Engelbrecht, "South Africa's multi-billion arms programme revisited: Part One," in *Defence Systems Daily*, (15 October 2001), 6

²⁰⁵ February, 12.

until 2002 only made investments totalling £100 million out of a promised £1, 3 billion.²⁰⁶

Nonetheless, by August of 2002, offset arrangements were ahead of schedule indicating that the some arms companies intend to honour their commitments to South Africa. However, Wrigley argues that even if this is the case and all offsets commitments are discharged within the allocated period, the quality of the offsets are still up for debate. He notes that many critics describe the offsets as investments that would have taken place without the SAP.²⁰⁷ Seemingly, one cannot dismiss the offsets as 'empty promises' but it is true that the positive implications for the South African economy and average citizen were exaggerated. And this is worrying given that offsets were the ace held by government to convince the South African tax payer that the SAP was in their best interest. Moreover, arms companies are notorious for their lack of business ethics and profit ambitions, thus it does not make sense that arms companies would spend more than the value of their tenders just in order to 'seal the deal.'

On the other hand many advocates have pointed out that offsets are being honoured and are benefiting the South African economy. Leon Engelbrecht argues that offsets investments, particularly in the local defence industry, are being discharged. He points out that the offsets attached to the SAP have in fact saved many local defence companies from bankruptcy and have turned many others into profitable concerns. Such companies include Grintek and Denel who have as a result of offsets been offered various contracts to supply Bahrain and Hungary.²⁰⁸ Much of the government's arguments for the SAP centered round the benefits that would accrue to the economy in terms of investment. The creation of 65 00 jobs as a result was used as a legitimating instrument for a public concerned about a level of unemployment reaching 40% figures. The Coalition of South African Trade Unions (COSATU) has responded that even though the SAP and attached offsets have generated employment, this employment has benefited the wrong demography. Unemployment amongst black South Africans is largely attributed to a skills shortage and thus any economic boom

²⁰⁶ See David Leigh, "The sordid truth behind an arms deal," *The Guardian(UK)*, (17 July 2002).

²⁰⁷ Wrigley, 13.

²⁰⁸ "South Africa's multi-billion arms programme revisited: Part Two," 2.

within the skills intensive defence industry is unlikely to impact on this demographic.²⁰⁹ COSATU went further to criticize offsets as capital intensive and benefiting an industry that is predominantly located within Gauteng Province.

*"The defence industrial participation projects will aggravate the dichotomies in the economy and not narrow them. Furthermore, to the extent they mobilise local capital into a fairly capital-intensive sector, they will actually limit employment creation."*²¹⁰

Strategic arms acquisitions, according to leading defence industry economists is not an effective means of creating jobs. Harris argues that the price tag of the SAP, which is R30 million, means that each of the promised 65 000 jobs came at a price of R460 000 each. That same amount of money could employ between five and six educators or nursing staff.²¹¹

Offsets have been widely rejected as having enough economic impact so as to alleviate the negative impact of arms purchases on the economy. Critics of the international arms trade have argued that offsets are an international phenomenon that is nothing more than empty promises. They argue that offsets actually increase the price of arms acquisition, are very difficult to monitor and provide opportunities for corruption.²¹² What has been accepted by many economists is that offsets via arms purchases can have a positive impact on economic growth. However, economic growth is very different to economic development, the former referring to a monetary increase in the size of a nation's economy as measured by GDP.²¹³ The latter is more complex and intense and takes into consideration more relevant things such as distribution of economic benefits and access to resources.²¹⁴ South Africa is an

²⁰⁹ COSATU, "The Arms Deal and Employment Creation," submitted to *Portfolio Committee on Trade and Industry*, (6 February 2001), 2.

²¹⁰ Ibid. 3.

²¹¹ *The Irrationality of South Africa's military expenditure*, 9.

²¹² Terry Crawford-Browne, *Offsets and the affordability of the arms deal*, (Cape Town: Economists Allied for Arms Reduction, 2002), 2.

²¹³ Paul Dunne, "The making of arms in South Africa," *The Economics of Peace and Security Journal*, Vol. 1, No. 1. (2006), 43.

example of what is known as a 'Less Developed Country' or LDC. Although much of its economic muscle is characteristic of a 'More Developed Country' or MDC, much of its society is ravaged by economic problems characteristic of a LDC.

Thus, closer inspection of the SAP and its offset agreements point to a belief amongst South Africa's political and business leaders that foreign arms procurement can be a vehicle for economic growth. This belief is nothing new and has been held by many other countries in similar stages of economic development, namely Brazil.²¹⁵ This view sees growth in two ways. First, the local arms industry expands as a result of foreign investment, licensing and co-production. Second, local arms companies acquire foreign markets in which to promote their products. Governments prefer to spend domestically and offsets provide them with a means to channel funds back into the domestic economy. Moreover, the international tendency is that countries align politically and economically with those countries from whom they purchase expensive armaments.²¹⁶ Thus, much of the Strategic Arms Package had to do with South Africa's military industrial complex. The ANC government views this industry, along with minerals and energy, as a strategic vehicle for which to drive economic growth.

Also, the merger between DENEL, British Aerospace and Thomson CSF would most definitely have occurred without the carrot of the SAP. The latter two companies needed the merger more than DENEL, given the contraction within the international arms industry.²¹⁷

Offsets do not provide investment in housing, medical centres, schools or in the agricultural sector. The biggest recipient of non-military industrial participation attached to the SAP has been the minerals and energy sector. The SAP therefore

²¹⁴ Lloyd Dumas, "Weapons Procurement and Development: Do offsets Mitigate or Magnify the Military Burden?" presented at *Conference on Offsets and Development*, (Cape Town, South Africa; September 2002), 3.

²¹⁵ Sam Freeman, "Offsets and the Development of the Brazilian arms industry," presented at the *Conference on Offsets and International Development*, (University of Cape Town, September 25-27, 2002), 3.

²¹⁶ William Jones, "The Value of Military Industrial Offsets," in *DISAM Journal*, Winter (2001-2002), 108.

²¹⁷ Paul Dunne, *The economics of South Africa's defence offsets*, paper presented to the International Conference on Defence Offsets and Economic Development, (Cape Town, September 2002), 5.

the military ensuring the transition to democracy. The DOD outguns both the executive and Parliament with regards to knowledge of the defence sector. The Defence White Paper, Defence Review and other government legislation require that the DOD pursue its acquisitions policy within the general framework of the state's financial policy. The DOD is obligated to keep costs to a minimum given South Africa's socio-economic problems. It failed in this regard as there were cheaper alternatives to the Hawk, and the submarines and Gripens were an extravagance. Given its dominant share of defence sector knowledge it was incumbent on the DOD to advise government and Parliament as to the most affordable options.

4.6.2 The Presidency and Cabinet

The executive's role within the SAP was to sell the SAP to Parliament and civil society. The executive promised the creation of 65 000 jobs, though most of those jobs are within a capital intensive and high skills defence industry, thus leaving the unskilled and unemployed out of the equation. FDI was also used as a carrot to manufacture legitimacy for the SAP, even though there is no guarantee that these foreign companies will pay up or that their investment is actually related to the SAP at all. The executive was an active participant in the SAP in that it negotiated directly with foreign governments like Britain and Germany, who are South Africa's main European trade partners and source of FDI. The SAP was a means to attract FDI and gain access to foreign markets.

Through the SAP government could give South Africa more status within the international community and be able to become the West's main partner in security in Africa. Moreover, within the context of the SAP we see South Africa's quasi military economic complex. This is the area where business meets politics. The offset agreements included empowerment deals and this did much to sweeten the SAP for the most influential leaders in business, government and the military. The SAP is a financial risk to South Africa's growing economy and does very little for economic development. Government's responsibility and obligation is to manage the economy with as little risk as possible. The SAP could very well prove to be extremely costly for the state in the future.

4.6.3 Parliament

Parliament did in fact approve the Defence Review with the force design option that included a conventional core force. Government and the DOD's assertions that this is tantamount to an approval of the arms deal are false. Parliament approved of an ideal design given financial constraints. Moreover, Parliament was not in an informed enough position to make that approval of the Defence Review. Parliament lacks the research support and expertise to counter the wealth of defence sector knowledge held by the DOD. The DOD through lobbying and the lobbying of foreign arms companies were able to influence Parliamentarians.²¹⁹ Although not all Parliamentarians were convinced, the nature of party discipline and the list electoral system ensured that MPs 'towed the line.' MPs were also impressed by the promised offsets in the form of employment and FDI. However, if they had the expertise or the research capacity, they would have been able to counter these assertions by the arms industry, the DOD and government.

What is clear is that the SAP essentially was covered by developmental rhetoric, emphasising job creation and economic growth. Many were seduced by these arguments but in the end they hold little, if any, water.

4.6.4 The Arms Industry

The success of the conventional core force option during the Defence Review was important to the arms industry, as this would ensure the rearmament of the SANDF. Both the domestic and international defence industries played their part by lobbying Parliament and government since the early days of South Africa's new democracy.

Both the international and domestic arms industry had a huge stake in the successful agreement of the SAP. Local arms companies received FDI and defence technology, as well as a foothold in the international arms market. Foreign firms like BAE were able to invest locally thus securing for themselves the ability to 'close the deal' on any future arms contracts with South Africa. International arms companies took advantage of a fledgling South Africa within the world of the arms trade. Although to their credit South Africa's government drove a very hard bargain, they were nonetheless a bit out

²¹⁹ The case of former JSCD Chairman Tony Yengeni and the Mercedes 4x4 is an example of this 'lobbying.'

of their depth in terms of expertise in arms trade negotiations etc. ARMSCOR and the DOD were the only sectors of the state that had the ability to correctly advise government and Parliament but failed to do so as their interest mirrored the interest of the international arms industry.

Three things can be concluded here. First, the primary mission of the SANDF is in fact a very distant possibility given South Africa's military dominance in the region. Nonetheless, from the view of democracy the military is best kept out of partisan politics. Thus, conventional defence as the primary mission of the SANDF is not the problem. Rather, considering the extravagance of the Gripens and submarines, the SAP is flawed. The SANDF has been equipped for the wrong mission. The SANDF is primarily involved in what are called its secondary missions, such as peace operations and support of the SAPS, and will continue to do so for the foreseeable future.

Second, strategic arms acquisitions are a form of economic and foreign policy. Domestically, the SAP provided an opportunity for government and business to coalesce their interests. Also, the SAP ensured that the military (SANDF) was rewarded for its role in the transition to South Africa's democracy, thus strengthening the stability of the new democratic dispensation. Externally, the SAP provided an opportunity for the domestic defence industry and other South African commodities to gain access to foreign markets. The South African government was less concerned about what arms it bought than who it bought arms from.

Third, legislative oversight over arms acquisitions in new democracies is fraught with difficulty. Strategic acquisition programs are an expensive undertaking that require that the state concerned have a wealth of civilian expertise on the defence sector. This is not the case in fledgling democracies like South Africa where the military hold most of the cards, thus relegating the impact of the legislature on defence expenditure.

CHAPTER FIVE

5. THE IMPACT OF THE SAP ON DEMOCRATIC INSTITUTIONS

5.1 Introduction

This final chapter focuses on the aftermath of the signing of the SAP deals. This saga has come to be known as the Arms Deal scandal referring to the many allegations of corruption and bribery that have surfaced in the wake of the SAP. The purpose of the chapter is to investigate the role of only two defence sector actors within this saga, namely Parliament and the executive.

The chapter is organized into two sections. The first section looks at the Standing Committee for Public Accounts (SCOPA) initial reactions to the Auditor-General's investigation into the SAP. This reaction resulted in the Joint Investigation Team (JIT). This section discusses these events with a view to understanding the third main criticism of the SAP that concerns the allegations of corruption. The second section investigates the JIT Report and Parliament's reaction to that report. This section seeks to understand the effect of the SAP on South Africa's democratic institutions. This is the fourth main criticism of the SAP and concerns the question whether the SAP corruption saga has rendered Parliament a 'rubber stamp' body with very little power over government. Thus, this chapter focuses on issues of Parliamentary oversight, transparency and general good governance. This saga has been the most important litmus test of the state of South Africa's democracy and the quality of its democratic civilian control over defence.

5.2 Criticism Three: Lobbying and Corruption

"It seems that certain individuals are not satisfied with a single bout of empowerment. Instead, they are the beneficiaries of repeated bouts of re-empowerment." -- ANC Secretary-General Kgalema Motlanthe, on black economic empowerment.

"For evil to prosper, good men must remain silent" -Martin Luther King Jr and Schabir Shaik.

There are three cases of corruption that are important in this section. The first case regards former ANC Parliamentary Whip, Tony Yengeni. The second case concerns

Schabir Shaik. The third case centers round legal proceeding launched by Richard Young, owner of the company C²P.

The office of the Auditor-General (AG) had launched an investigation into the SAP based on the premise that the SAP was a high risk audit area. The review was quite comprehensive making findings about several aspects of the SAP.²²⁰ These aspects were highlighted as requiring an investigation. The review addressed first the independence of various actors that were involved in the procurement deal. Secondly, it addressed the evaluation of the LIFT project. Third, it addressed the guarantees connected to the NIP. Fourth, the procurement policy of the MOD especially with regards to the SAP itself. Fifth, it investigated the negotiations with regards to the procurement of the corvettes. Sixth, it was concerned about the tender process relating to the awarding of sub-contracts.²²¹

The Special Review was handed to SCOPA for debate. The subsequent report by SCOPA to the NA suggested that, given the seriousness of the Auditor-General's concerns and the amount of expenditure involved in the SAP, that a meeting between the Auditor-General, the Public Protector, the National Director of Public Prosecutions (NPA) and the Special Investigation Unit (SIU) be established to formulate a forensic investigation into these issues. The Joint Investigation Team (JIT) was to be the brainchild of a series of such meetings.²²² It is important to note that the intention of SCOPA in calling for forensic investigation was not to question the merits of the SAP itself, but rather to question the merits of procurement processes involved.²²³

There were three parts to the JIT process. The first part involved a criminal investigation into certain allegations of corruption and conflicts of interest within the SAP process that were brought to the attention of the JIT. The NPA criminal

²²⁰ Auditor-General, *Special Review of the Selection Process of Strategic Defence Packages for the Acquisition of Armaments at the Department of Defence*, (Pretoria: Auditor-General, 2000), 3.

²²¹ Adv. Stoffel Fourie, *The Joint Investigation into the Strategic Defence Procurement packages of the South African National Defence Force*, (Public Protector, 2003), 6.

²²² *Ibid.* 6.

²²³ February, 3.

investigation was carried out by its Directorate: Special Operations or commonly known as the Scorpions. The DSO team was divided into four sub-teams. Two sub-teams dealt with the arms procurement process, whilst the other two concerned themselves with the allegations of conflicts of interest.²²⁴ Of the allegations that were investigated, many were found to be of no substance. Other allegations were substantive and were to have serious repercussions for those persons implicated.

This was especially so in the case of Tony Yengeni, a former Chairperson of the JSCD. Yengeni was investigated by the Scorpions for having received a luxury vehicle at a reduced price from Daimler-Benz South Africa, a successful contractor in the SAP. Yengeni was accused of having endorsed the bid of Daimler-Benz during the bid process of the SAP in exchange for heavy discount on the vehicle, whilst he was the Chairman of the JSCD. He was eventually arrested on charges of fraud and corruption, to which he pleaded guilty on the second charge on the basis that the State withdraw the charge of corruption against him. His appeal against his sentence of 4 years imprisonment has since been overturned. The key point here is that Yengeni was one of the ANC's top MPs in Parliament and his conviction gave much weight to the 'corruption noise' that surrounds the SAP. A similar fate befell a senior official within the DTI.²²⁵ Although there may have been instances of corruption and conflicts of interests throughout the SAP process, the DSO investigation found that there was no evidence to support the claim that corruption could have undermined the SAP contracts as a whole.²²⁶

The second part of the JIT process was carried out by the office of the Public Protector, much of which was conducted in public. The JIT did this because of the massive amount of public interest in the 'arms deal scandal,' and its concerns for the transparency and legitimacy of the investigation. Moreover, the criminal and forensic audit investigation of the DSO and the AG respectively, dealt with sensitive information and the Public Protector Act allowed for public investigations.²²⁷

²²⁴ Fourie, 14.

²²⁵ Ibid. 11.

²²⁶ Ibid. 12.

²²⁷ Fourie, 12.

The third part of the JIT, a forensic audit, was the responsibility of the AG. The AG established five sub-teams and each was given different duties to ensure time efficiency. All teams reported to a project manager. The forensic audit was very intense, many witnesses were interviewed and thousands of documents were studied. In fact this part of the JIT was hailed by many as a very thorough investigation in accordance with international norms pertaining to forensic investigations.²²⁸

The final JIT Report was submitted on 15 November 2001 for the scrutiny of Parliament. The ruling ANC welcomed the report and in an online article, noted that the report states:

*"No evidence was found of any improper or unlawful conduct by the Government. The irregularities and improprieties...point to the conduct of certain officials of the government departments involved and cannot...be ascribed to the President or the Minister's involved in their capacity as members of the Minister's Committee or Cabinet. There are therefore no grounds to suggest that the Government's contracting position was flawed."*²²⁹(Bold print my own)

This strong final statement concerning government's contracting position is for the larger part correct with a view to the various allegations of corruption and irregularities within the SAP. However, government's contracting position can be questioned in the sense that entering the SAP was a political choice, a choice between expenditure on social welfare or defence. Thus, a choice for which Parliament can and should hold government accountable. However this was discussed at length in the previous chapter.

In a submission to Parliament, the Institute for a Democratic Alternative in South Africa (IDASA) stated that the several parliamentary committees were not equipped with enough research resources, time and contextual knowledge of the SAP in order to examine the JIT report.²³⁰ Moreover, it takes issue with Parliament's eventual adoption of the report citing many findings within the JIT to be insufficient and also

²²⁸ Ibid. 13.

²²⁹ ANC, "Arms Procurement: Briefing Note No. 4," in *ANC Today*, (October 2003), 3.

²³⁰ IDASA, *Democracy and the Arms Deal Part Three*, (Cape Town: IDASA, 2003), 5.

highlights a few omissions from the report.²³¹ IDASA also argues that the acceptance of the JIT report in no way spells the end of parliament's oversight obligations towards the SAP. The institute holds that it is constitutionally required that Parliament exercise continued oversight over the SAP especially with a view to the promised delivery of offsets.²³²

Furthermore allegations have been made that the Auditor-General and the other Chapter Nine institutions that were involved in the JIT were complicit in the 'sanitisation' of the JIT report. The AG was accused of having allowed the executive to doctor the report so as to negate any possible negative impact that the report might have on the image of the SAP.²³³ These allegations have resulted in court procedures against the AG by the owner of one of the former tenders in the SAP, C²I². The owner, Richard Young, wished the court to compel the AG to release confidential information that the JIT received during its investigations into the SAP. The information apparently suggests that his company's tender had been the preferred bid by the DOD but subsequently lost out to the tender from Schabir Shaik's African Defence Systems (ADS), formerly known as Altech Defence Systems.²³⁴ Young won his case in 2003 and gained access to the documents which confirmed his allegations that the JIT Report had been 'doctored' to protect certain senior ANC members.²³⁵ These events have done much to tarnish the public image of the Chapter Nine institutions, such as the AG. Whether they are legitimate allegations, that may be, but the point is that the fallout of the SAP has not left untouched those very institutions of state that are supposed to be the watchdogs of South Africa's democratic experiment.

C²I² was one of the domestic companies that had bid to supply the combat systems on the corvettes that were to be built by the GFC. The company ADS, of which Schabir

²³¹ Ibid. 1.

²³² Ibid. 2.

²³³ Auditor-General, *Special Report of the Auditor-General: Pertaining to Allegations on the joint Investigating Team (JIT) Arms Deal Report*, (Pretoria: Auditor-General, 2003), 2.

²³⁴ Note that 80% of the French arms company, Thomson-CSF's, shares in Altech were sold to the South African subsidiary under the new name African Defence Systems (ADS). Shaik had secured this transfer through an empowerment deal. This explains his and DAS connection the French arms giant and the subsequent prosecution of both Shaik and Thomson-CSF, now known as Thales.

²³⁵ William Gumede, *Thabo Mbeki and the Battle for the Soul of the ANC*, (Cape Town: Zebra, 2005), 303.

Shaik was both a director and shareholder, was also one of these bidders. Shaik's ADS was the successful tender for the combat suite and C²I² was not successful. Richard Young launched court proceedings against the DOD and made complaints to the JIT about the procurement process for the combat suites. Young's main argument was that his company was the preferred choice by the SAN to supply the system, but that corruption and irregular practices confirmed DAS as the successful tender. Important to note is that the state's procurement policy holds that the main contractor, in this case GFC, is responsible for all subcontracts. However, these procurement procedures must adhere to those of both the State Tender Board and ARMSCOR. The JIT report finds that this was not the case and highlights many irregularities that it regards as unfair and not transparent.²³⁶ The DOD and ARMSCOR argued that they were not responsible for the awarding of the subcontracts and by implication are not responsible for any corrupt activities that took place.

However, the JIT found that the DOD/ARMSCOR were indeed involved in these tendering procedures for two reasons. One that the SAN owned R20 million worth of technology being developed by C²I², and two that Schabir Shaik's brother Shamin 'Chippy' Shaik was the head of DOD acquisitions at the time of the procurement process and had failed to properly recuse himself from relevant meetings.²³⁷ Shamin Shaik was eventually fired as Head of Acquisitions for these 'irregularities.'²³⁸ Moreover, Shamin Shaik has been accused of having links with various companies who were beneficiaries of the SAP.²³⁹ The report goes further to find that the C²I² bid was indeed preferred by the SAN²⁴⁰ and that confidential information of his tender was forwarded to ADS²⁴¹ and unfairly compromised his company's competitive advantage.²⁴²

²³⁶ JIT Report, 309.

²³⁷ Ibid. 301

²³⁸ Gumede, 303.

²³⁹ "Shamin 'Chippy' Shaik," *Mail and Guardian*, (26 May-June 1 2000).

²⁴⁰ The SAN has refuted these claims at many times even though witnesses in the JIT investigation have confirmed the validity of this claim.

²⁴¹ Another interesting point here is that at the time of the procurement, ADS was in the middle of a takeover by Thomson and that other subcontracts were won by foreign Thomson subsidiaries eg. Detexis. ADS was also in consort with the GFC at the time and this raises many questions about the

On the adoption of the JIT report, the government regarded the investigation into the SAP as effectively closed. However, ever since allegations of corruption within the tendering process for sub-contracts have surfaced regularly.²⁴³ Consequently, highly important and influential figures have since been criminally charged with corruption resulting in high profile court cases characterized by cinematic drama. The most notable trial has been that of Schabir Shaik, former financial advisor to the former Deputy President Jacob Zuma and brother to the former head of DOD Acquisitions Divisions, Chippy Shaik.²⁴⁴

In 2005 Shaik was convicted of “having a generally corrupt relationship” with Jacob Zuma, which eventually led to the dismissal of Zuma as the country’s Deputy President by President Mbeki. Zuma now faces charges of corruption later this year. The main issue here was that Shaik had solicited ‘protection’ from Zuma for the French arms company Thales, formerly known as Thomson-CSF from the JIT investigation, and especially from SCOPA. Note that Thales has a stake in Shaik’s company African Defence Systems (ADS) through the DIP, and that ADS was a successful sub-contractor in the SAP. The damning evidence was a scathing letter from Zuma, in his position as Deputy President and Head of Government Business in Parliament, to the Chairman of SCOPA in exchange for an annual ‘loan’ of R500 000 from Thales to Zuma facilitated by Shaik.

His conviction is related to corruption during the JIT investigation and hearings held by SCOPA into the ‘Arms Deal. The conviction is not related to corruption within the Arms Deal itself.²⁴⁵

fairness of the procurement of the corvette combat suite given that the main contractor was essentially sub-contracting a partner outside of normal DOD/ARMSCOR procurement procedures.

²⁴² Ibid. 302.

²⁴³ Chiara Carter, “Senior Defence Official in Arms Corruption Scandal,” *City Press*. (7 February 2000).

²⁴⁴ Note the past tense used here indicating that all have since been fired.

²⁴⁵ These events nonetheless, add much fuel to the smoke that the Arms Deal produces on an almost weekly basis. What is clear is that much of the future of the Arms Deal corruption saga should be illuminated through the corruption trial of Former Deputy President Jacob Zuma. Note that this case is sub-judice.

5.3 Criticism Four: A rubber stamp Parliament?

"The custom of posing sweetheart questions to the executive perpetuates a tradition within the ANC, as one observer crassly put it, of farting each other warm."- Commentator, Rhoda Kadalie on what she said was the lack of independent thinking in Parliament.

The inclusion of the SIU headed by Judge Heath in the JIT was to be the cause of political fallout between members of SCOPA, the NA and the Presidency. This debacle was thus far the toughest test of South Africa's political institutions, especially Parliament's muscle with a view to the executive. February notes that prior to the SIU debacle, SCOPA enjoyed much success as a parliamentary committee with regards to oversight. The committee was characterized by a serious concern for public expenditure and along with the technical expertise afforded by the office of the Auditor-General SCOPA was able to deliver quality oversight over public expenditure compared to pre-1994.²⁴⁶ The controversy began when a proclamation was not granted by the Presidency for the SIU to be part of the JIT.²⁴⁷ It is important to note here that the Public Protector and the Auditor-General are constitutionally enacted investigative institutions, whilst the DSO falls under the National Prosecuting Authority of the Department of Justice and Constitutional Development.

The SIU, on the other hand was a special commission of investigation tasked with tackling corruption especially in the Eastern Cape Province. Opposition MPs, especially the then Chairman of the SCOPA Gavin Woods, argued that it was SCOPA's wish that the SIU form part of the JIT and that this had been made clear in its Fourteenth Report. Naturally ANC MPs on SCOPA were obliged to take a different view once the feelings of the ANC Presidency were made known. And here is where the inherent difficulty of exercising oversight over the executive in a party-list electoral system is made clear. ANC MPs, such as Andrew Feinstein, who had earlier supported the inclusion of the SIU were now forced to backtrack as the ANC presidency was not of the same view. In fact to illustrate the powerlessness of party MPs against party discipline, Feinstein was eventually replaced as head of the ANC

²⁴⁶ February, 4.

²⁴⁷ South African Government, *Statement by the Director General in the Presidency on behalf of President Mbeki*, (19 January 2001), 3. Accessed on 16 November 2005 at <http://www.gov.za/projects/procurement/decision.htm>

study group on SCOPA. This debacle points to the arguments of countless commentators who have accused the ANC leadership, including the Presidency, of a too centralized leadership style intolerant of criticism. This ‘rebellion’ by the ANC caucus in Parliament caused great consternation amongst the ANC National executive Committee which insisted that MPs must ‘tow the party line.’²⁴⁸ Even the opposition party, the Democratic Alliance, replaced its MPs with higher ranking party heavyweights who lacked a working knowledge of both the SAP and the SCOPA.²⁴⁹ These events show that it is not so much one-party dominance than it is party executive dominance that is the problem.

Woods had even written a letter to President Thabo Mbeki to request that the Presidency issue a proclamation allowing the SIU to join the JIT. He was later reprimanded for the letter by former Speaker of the NA, Frene Ginwala. A constitutional question directly related to parliament’s role of oversight is raised by this event. February notes that the understanding of oversight meant that Parliament hold the executive to account. But the understanding of how that accountability was to be enforced was the subject of much political and legal wrangling inside and outside of Parliament.²⁵⁰

“Patricia De Lille’s understanding of accountability suggested that Parliament had ‘instructed’ the executive to grant the SIU a proclamation. As the Speaker rightly pointed out...this would be of dubious legal and constitutional validity.”²⁵¹

In other words Parliament can only instruct the executive via legislation, but the executive is obligated to account (read explain) for its doings in the pursuit of this legislation to Parliament. The main point here is not whether Parliament should have been able to instruct the executive. This would be tantamount to micro-management on the part of Parliament and lead to the debilitation of the Constitutional principle of separation of powers. The main point is that the SCOPA broke down, and its oversight capacity along with it, when its member MPs were not able to publicly

²⁴⁸ Gumede, 300-303.

²⁴⁹ February, 4.

²⁵⁰ Ibid. 5.

²⁵¹ Ibid. 5.

disagree with their respective political parties, because of party discipline and the party list electoral system. ANC MP Andrew Feinstein proved to be the main casualty when his criticism of the ANC's dealing of the JIT probe failed to stand up to the will of the ANC's executive.

At the end of the day, the JIT only consisted of the DSO, the Public Protector and the Auditor-General. Mathisen notes that the ANC, like any other party, exercises discipline over its MPs through various means. The most important of which is via the role of the party whip who ensures that all MPs pursue party policy as formulated by the ANC's National Working Committee and National Executive.²⁵² The replacement of Feinstein illustrates many commentators' concerns of centralization of party and state power in the hands of the ANC National Executive and, more importantly, the Presidency respectively.²⁵³ Gumede talks of a culture of muzzling any criticism from within the party and viciously attacking any from outside. He mentions the lack of debate within party structures especially within the Parliamentary caucus.²⁵⁴ Even the official opposition, the Democratic Alliance, has been accused of similar practice. Thus, Parliamentarians have no freedom to represent the interest of taxpayers over the will of their respective parties. Mattes goes further arguing that rigorous parliamentary oversight ANC MPs invariably would be tantamount to criticism of ANC senior leadership. Also constitutional provisions allow that disloyal MPs can be replaced with loyal ones thus effectively prohibiting any possible vote of no confidence in the executive by Parliament.²⁵⁵ The vote of no confidence is Parliament's only constitutional mechanism to effect both the separation of powers and the supremacy of Parliament itself. Thus, SCOPA was effectively hamstrung by the electoral system present in South Africa, thus negating its capacity to exercise its constitutional obligation of oversight.

²⁵² Mathisen and Tjønneland, 9.

²⁵³ Ibid. 10.

²⁵⁴ Gumede, 304.

²⁵⁵ Mattes, 24.

5.4 Summary and Conclusion

5.4.1 The Presidency and Cabinet

The JIT found little evidence that confirmed opposition parties' and certain sections of civil society's assertions that the SAP was an entirely corrupt process. In other words, there was no direct link made between the SAP process and corruption. Nonetheless, the JIT and Parliament's investigations only dealt with 5 percent of the SAP and given the amount of smoke these probes drew, a full scale investigation into the entire SAP would prove to be very interesting to say the least.

One instance of alleged irregularities is highlighted by the JIT report. This refers to the C²P tender for the combat suite on the corvette. It has been confirmed that the DOD preferred this bid, but eventually chose the bid of Shaik's company, ADS. The conflict of interest is stark when one considers that Shaik's brother, Chippy, was the head of the DOD's acquisitions department at the time and failed to recuse himself from relevant meetings discussing these tenders.²⁵⁶

However, it is in the response to the JIT where we see corruption within government. The conviction of Shaik and the dismissal of Zuma as the country's Deputy President related to a corrupt relationship between these two and the French arms company Thales. These allegations are related to the JIT and SCOPA's investigations and not the SAP acquisition process itself. Nonetheless, the main negative effect that the SAP has had on the executive is that it made these institutions vulnerable to the aggressive lobbying and corruption of unscrupulous arms dealers. It is well known that most arms deals involve corruption given the competition within the market. Moreover, the SAP afforded unscrupulous businessman the opportunity to seek 'protection' from high-ranking government officials. The SAP is a classic example of why business and politics are best kept as far apart as possible, or at least kept under close supervision by Parliament and civil society.

What is clear from the probes into the SAP is that the Presidency has centralized decision-making and essentially power within its office. Parliament has little if any

²⁵⁶ Note that recent reports in the *Mail and Guardian* cite recent investigations by the German authorities on the German Frigate Consortium. The GFC is accused of having bribed numerous South African officials in order to secure the corvette bid, which was successful. These events cast a shadow over the SAP itself and have done much to reignite allegations that the SAP is the largest corruption scandal in the post-Apartheid era. See *Mail and Guardian* (7 July 2006).

influence over policy-making and MPs face strict disciplinary measures if they vigorously pursue their oversight obligations. Moreover, the disturbing link between highly influential business leaders and senior government leaders cannot be denied. The probe into the Arms Deal shows that government officials have become adept at buying influence over business and vice versa.

5.4.2 Parliament

The SAP provided arms companies and business people who stood to gain from the arms acquisition an opportunity to buy influence over MPs within key committees in Parliament by 'wining and dining' and giving 'gifts'. A case in point being the prosecution of Tony Yengeni, a former Chairperson of the JSCD, who is cited by many observers as having otherwise performed an exemplary role within the defence debate during the integration years of the SANDF. Corruption connected to the SAP has affected some of the leading MPs within Parliament.

The JIT investigations into the SAP showed up the difficulty of effecting parliamentary oversight in a party list electoral system characterized by strict party discipline. Amongst both the ruling and opposition parties, MPs with an intimate knowledge of the SAP and the JIT process were removed from notably SCOPA and replaced with party heavyweights. This did much to weaken Parliament's response to the JIT Report and its ability to effectively counter the role of the executive in the state's reaction to the 'arms deal saga.' Moreover, the JIT Report also showed up Parliament's lack of a specialized research capacity and expertise in defence issues so as to maximize its response to the JIT Report and in its oversight inquiries over the DOD.

On a more positive note, the aftermath of the SAP via the JIT process showed the relative strength of Parliament in the post-Apartheid era. In stark contrast to the days of Total Strategy, Parliament was free to hold public hearings and through its committee system set the ball rolling for the establishment of the JIT in the interests of transparency and accountability. In this regard Parliament passed a very important test in its freedom and constitutional independence under the separation of powers. Moreover, the courage displayed by many individual MPs across party lines in the face of much opposition within their own party structures and under great amounts of

pressure, also is a testament to how far parliament has come since the days of Total Strategy. Under the Apartheid regime an investigation like the JIT would have been unheard of and quite simply impossible. Having said this, much work needs to be done in order to strengthen parliament's oversight capacity as this is the only mechanism to ensure government's accountability for its decisions and this capacity remains Parliament's overriding weakness.

Three things can be concluded here. First, power has increasingly been centralized in the executive in post-Apartheid South Africa. Parliament is unable to check executive dominance over defence issues. The political fallout over the investigation into the SAP shows that MPs are powerless in the face of strict party discipline exercised by the executive. This creates a lack of accountability within the executive and thus a significant weakening of legislative control over arms acquisitions in South Africa.

Second, strategic arms acquisitions weaken democratic institutions and this is especially so in the new democracies of the Third Wave. They provide opportunities for grand corruption as these democracies have not yet strengthened their institutional capacity to manage such undertakings with minimal risk to democracy.

Third, given the negative legacy of Apartheid and a fledgling democracy, South Africa possesses a resilient economy. The Bretton Woods institutions, namely the World Bank and the International Monetary Fund, have not voiced any displeasure at South Africa's SAP. In fact the silence is deafening. This and the willingness of foreign banks to enter into large loan agreements with the South African government indicates confidence in South Africa's economic potential and status.

CHAPTER SIX

6. CONCLUSION

6.1 Research Problem and Question

The South African government entered into the Strategic Arms Package (SAP) or Arms Deal in 1999. This strategic arms acquisitions program has proven to be the single most controversial issue in post-Apartheid South Africa.

The SAP is a series of major arms procurement contracts signed between the South African government and international arms suppliers. The contracts were lumped together into a 'package' intended to provide a more affordable deal for the government. The SAP was mostly financed through an intricate set of loans from foreign banks. In December 1999, the government announced that it had signed agreements with various suppliers to re-equip the SANDF, with the SAN and the SAAF being the chief beneficiaries of the SAP.²⁵⁷ The SAP consisted of five main contracts.

The SAP has drawn incessant criticism from many quarters, most notably the opposition parties and civil society. The Arms Deal is the first strategic arms acquisition of its kind in South Africa. The cost of the SAP is staggering compared to any other arms acquisition program in South Africa's history. The SAP is also the first acquisition of this type under democracy in South Africa. Thus, the Arms Deal provides a timely opportunity to examine South Africa's defence in a democracy, of which legislative control over the military is the most important component.

The purpose of this dissertation was to understand what the Arms Deal shows about security relations in a democratic South Africa and the impact it has had on legislative control over the military. The research question for the dissertation was: "What does the Strategic Arms Package saga between 1998 and 2005 show about legislative control over defence in South Africa?" This is a descriptive question and was chosen as the best way to use the Arms Deal as a window into legislative control over the military in South Africa.

²⁵⁷ Judith February, "South Africa- Democracy and the South African Arms Deal," in *Three Strikes against Graft* commissioned case study for the *ISS Anti-Corruption Strategies Programme*, (Indaba Hotel, Gauteng, South Africa: Institute for Security Studies, 15-17 March 2004), 9.

6.2 Research Design and Analytical Approach

The dissertation is an empirical critical analysis. Thus, a balanced assessment was sought as to what exactly transpired during the history of the Arms Deal between 1998 and 2005. Through the 'window' of the SAP the study will attempted to highlight the strengths and weaknesses of South Africa's democratic institutions and other relevant role players. These aspects are crucial to a balanced critical analysis. Empirical accuracy was critical. Because of the noise surrounding the Arms Deal it was impossible to include everything. Thus, the dissertation only focused on the important things within the SAP. The study only included legal actions that have been completed with legal verdicts. The scope of the entire study stretches from the Apartheid era until the present year, 2006.

The study consisted of four chapters excluding the introduction and conclusion. The chapters are divided according to the four main criticisms of the SAP:

- a) The necessity of the SAP
- b) The affordability of the SAP
- c) The allegations of corruption
- d) Parliament as a 'rubber stamp' body.

6.3 Summary

Chapter Two provided a historical survey of legislative control over arms acquisitions in South Africa. What is clear is that legislative oversight in a Parliamentary democracy is very difficult. Parliamentary executive democracies face a greater challenge in legislative control over the military than is the case in constitutional democracies with strict separation of powers. Sanctions strengthen executives and weaken legislatures. Sanctions also allow executives to centralise power over the state. A tradition of weak legislative oversight over arms acquisitions was developed under the Apartheid era.

Chapter Three investigated legislative control over arms acquisitions in South Africa and the roles and responsibilities of the various role players. What became clear was that there are two types of arms acquisitions in South Africa. Routine/non-cardinal acquisition programs are common and require the approval of the Minister of Defence. Non-routine/cardinal acquisition programs are rare, expensive, and

controversial and require Cabinet approval. Parliament in democratic South Africa is weak in comparison to the Executive. Although formally institutionalised within the Constitution, the tradition of weak legislative control over the military has continued. Legislative control over the military is idealised as legislatures struggle to hold the executive and the military accountable.

Chapter Four addressed the Arms Deal itself and the criticisms of military necessity and affordability. What is highlighted in this chapter is that the SAP equipped the SANDF for the wrong mission. The primary mission of conventional defence against external threat, although crucial in keeping the military out of politics, is a distant possibility. The SANDF is primarily involved in secondary missions of peace operations and support of the SAPS. Strategic arms acquisitions create stability amongst the elite as they provide an opportunity for government and business to wed their interests and reward the military for keeping out of politics. Legislative oversight over strategic arms acquisitions in new democracies is fraught with difficulty. They are an expensive undertaking that require that the state possess a wealth of civilian expertise on the defence sector, which is seldom the case in new democracies like South Africa.

Chapter Five addressed the impact of the Arms Deal on South Africa's democratic institutions. The chapter showed that power has been centralized in the executive in post-Apartheid South Africa. Parliament is unable to check executive dominance over defence issues, which creates a lack of accountability within executive-legislature relations. This weakens legislative control over arms acquisitions in South Africa. Strategic arms acquisitions weaken democratic institutions in new democracies because of a lack of institutional capacity and make these institutions vulnerable to grand corruption and other undemocratic influences.

6.4 What the Arms Deal shows

6.4.1 Defence in a Democracy:

"I would like to advise those who find it politically and strategically expedient to perpetuate the negative stereotype of the African, which we inherited from our past, to take the greatest care that they do not start a fire they cannot put out. But we too, the Africans, share a similar responsibility not to start fires that we cannot put out."

–South African President Thabo Mbeki

Indeed, the Strategic Arms Package has started a fire. South Africa has never completed large scale arms procurement in its history, especially not under a democracy.

Large scale arms procurement needs democracy in order to be successful. Arms procurement deals like the SAP require legitimacy, and such legitimacy can only be manufactured under a democracy. One only has to look at the United States defence budget for the prime example of this. Many democracy theorists have argued that democracy needs modernisation. In other words the engine of democracy is fuelled by money, hence the blurring of lines between business and politics.

Defence in a democracy is an expensive business. Large scale arms procurement keeps the military content and provides them with the means to prepare for future conflicts, thus lending legitimacy to the role of defence in society. The promise of rearmament was part of the metal that forged the alliance between the SADF and the MK during transition. The military played midwife to the birth of the democratic South Africa and ensured this to be a relatively bloodless process. In short, the success of South Africa's transition was paid for by the Strategic Arms Package. Therefore, keeping the military at bay often comes with a heavy price tag. In South Africa that price tag might exceed R90 billion rand in six years. Such expenditure would seem risky in a developing state. But what is clear is that the South African economy, although widely considered as under-developed, remains strong and stable enough to absorb this expenditure.

Strategic arms acquisitions oil the machinery of state by providing stability. The SAP was filled with empowerment deals aimed at obtaining buy-in from the elite to ensure the success of the deal. The Arms Deal is *the* South African example of what happens

when business meets politics. Democratic governments need to buy influence within business and business needs to buy influence within politics. This is characteristic of modern democracy. In South Africa the SAP shows that transparency and accountability Transparency and accountability might very well be casualties in this process, but stability within democracy seems to endure provided that the perception of legitimacy remains intact.

6.4.2 Legislative control over the military in a democracy

The debate within civil-military relations literature about legislative control over the military is in idealized terms.

Executive dominance over the legislature is a phenomenon present in democracies around the world. Executives enjoy greater access to resources than legislatures and tend to have more expertise in matters relating to defence. The emergence of technocrats within government has only widened this gap. Arms embargoes and other sanctions exacerbate this situation by further weakening legislatures importance, whilst strengthening executives' relative position.

What is clear is that legislatures in constitutional democracies, characterized by a strict separation of powers, have greater success in exercising control over the military budget and expenditure. Legislatures in parliamentary democracies enjoy more success in controlling deployment of the military, but struggle to exercise control over military budgets. This is due to the majority held by governments within both the executive and the legislature. This situation severely limits a parliamentary democracy's legislature to check the executive's dominance within matters relating to the military.

6.4.3 Legislative control over the military in democratic South Africa

Legislative control over the military consists of several things. However, three things stand out as the most important. First, legislatures must control all defence legislation and policy. Second, legislatures must have the sole authority to make declarations of war and approve deployment of the military. Third, legislatures must control/approve the military's budgets. The latter is the most effective way that legislatures can maintain control over militaries. Legislative oversight, in addition to approving

legislation, budgets and deployment, is the key cog in the machine of legislative control over the military. Legislative oversight lends weight to legislative control over the military. The South African Parliament enjoys all of these powers. They are formally institutionalized within the Constitution, which is the highest authority within the state. However, legislative control over the military in South Africa remains weak.

There is a tradition from the Apartheid era of weak oversight over the military within the South African Parliament. Although Parliament has formal powers of control, the transition to democracy in 1994 has not changed the tradition of weak oversight. Indeed, greater formal legislative control over the military exists in post-Apartheid South Africa, but legislative oversight over the military and the executive remains weak. Thus, these extensive powers are severely diluted by Parliament's inability to hold the executive and the military to account.

Parliament also suffers from a lack of expertise in defence issues. MPs are either too inexperienced or do not possess the necessary expertise with which to match the executive and especially the military. Moreover, Parliament has an inadequate research capacity with which to plug this gap in expertise over defence issues.

Furthermore, strict party discipline ensures that MPs of the ruling party do not exercise robust oversight as is seen in the case of Congressional and Senate committees of the United States. The majority held by the ruling party, both within Parliament and the executive, ensures that MPs regard themselves as party members first, and elected officials second.

Executive dominance is another tradition from the Apartheid era that has continued. Indeed, this is a far cry from the imperial presidency experienced under Total Strategy. However, what remains similar is that the executive dominates the legislature. One-party dominance has seen power centralized within the executive and Parliament is unable to check this dominance.

South Africa's democratic institutions are vulnerable to economic pressure. Under Apartheid the arms embargo severely weakened Parliament whilst strengthening the

executive. The Arms Deal shows that this is still so. The SAP provided opportunities for grand corruption and made South Africa's institutions vulnerable to foreign and domestic business interests. In other words, the SAP shows that business will buy influence within politics and vice versa. This undermines institutions and legislative control over the military, and consequently democracy.

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