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**SOUTH AFRICAN GOVERNMENT OFFICE
- WORLD TRADE CENTRE -**

11 August 1993

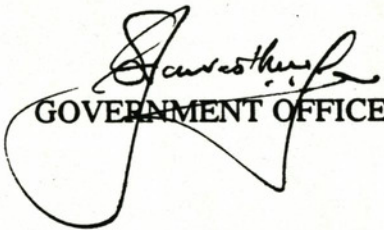
Head of the Administration
Multi-Party Negotiating Process
World Trade Centre

Dear Dr Eloff

**SUBMISSION BY THE SOUTH AFRICAN GOVERNMENT FOR THE
ATTENTION OF THE TECHNICAL COMMITTEE: TEC AND SUB-
COUNCILS**

1. Attached is a submission by the South African Government entitled ***POWERS AND DUTIES IN REGARD OF INTELLIGENCE.***
2. Kindly transmit the document for immediate attention to the Technical Committee.

Yours sincerely


GOVERNMENT OFFICE: WORLD TRADE CENTRE

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POWERS AND DUTIES IN REGARD TO INTELLIGENCE

- 1.(1) The Council shall, for the purposes of achieving its objects, have the following powers and duties to be exercised through its Subcouncil on Intelligence:
- (a) To acquaint itself with the existence, nature, objectives and functioning of all intelligence services/structures in South Africa.
 - (b) To establish a Joint Co-ordinating Intelligence Committee comprised of Heads of each intelligence service/structure, or a duly authorised senior representative, which committee shall be tasked with the responsibility to monitor and liaise with the relevant services/structures (including departmental intelligence structures) to ensure the promotion of the objects of the Council, also taking into account matters of common concern in regard to the Subcouncils on Law and Order, Stability and Security and Defence. The Joint Co-ordinating Intelligence Committee shall have the authority to establish, if necessary, a management structure which shall be tasked with the responsibility of managing the affairs of the Joint Co-ordinating Intelligence Committee.
 - (c) To adopt a set of basic principles of intelligence guided by the principles set out in Schedule 1 to this Act, also to serve as a basis for the creation of a national intelligence capability in a new democratic dispensation.
 - (d) To formulate a Code of Conduct which shall be binding on all members of intelligence services/structures (including those members in departmental intelligence structures) during the period of transition and which could serve as a basis for an official Code of Conduct in a new dispensation.
 - (e) To monitor, in consultation with the Joint Co-ordinating Intelligence Committee, the compliance/commitment of intelligence services/structures, and its members, to the Code of Conduct and the objects of the Council.
 - (f) To investigate, or order the investigation by the Joint Intelligence Co-ordinating Committee, of any matter (including complaints by the public) which relates to the Council's objects or the Code of Conduct, and for the

purposes thereof the Subcouncil, in consultation with the Joint Co-ordinating Intelligence Committee, shall determine the necessary powers for such an investigation, subject to the relevant provisions of the Act.

- (g) To require the investigation by, or under the auspices of, the Joint Co-ordinating Intelligence Committee of any alleged activity or action by a member of any intelligence service/structure which, if proven, had or would have the effect of having undermined or undermining the Code of Conduct/objects of the Council and, in consultation with the appropriate Minister/principal, where necessary, require the suspension of such a member pending the outcome of the investigation.
- (h) Should the outcome of any investigation, as envisaged in subsections (1)(f) and (g), not be to the satisfaction of the Subcouncil or party concerned, the process of appeal shall, taking into consideration the sensitive nature of intelligence, firstly progress to the relevant principal or the responsible Minister in order to solve the issue. If no consensus could be reached, the appropriate provisions of section 21 shall apply mutatis mutandis.
- (i) To request and to receive on a regular basis from all intelligence services/structures, via the Joint Co-ordinating Intelligence Committee, evaluated information on the overall security situation in the country, highlighting threats, actions or events that:
- * adversely affect the levelling of the political playing field;
 - * limit free political participation;
 - * undermine the transition to democracy and the holding of free and fair elections; and
 - * promote a climate of violence inside the country.

- (j) To request and receive, via the Joint Co-ordinating Intelligence Committee, from all/any intelligence services/structures evaluated information on matters of special concern/urgency, subject to the proviso that the relevant services/structures:
- * be informed beforehand of what will be required from them;
 - * be given fair time to prepare the required information or their presentations; and
 - * will have the right to be assisted or represented by persons duly authorised to do so.
- (k) To make recommendations on steps to ensure that all intelligence services/structures do not carry out any operations or activities that are intended to undermine, promote or influence any political party/organisation at the expense of another by means of any acts or by means of disinformation.
- (l) To investigate existing legislation and make recommendations on new legislation (including suitable mechanisms of accountability and political control/oversight) relating to the practice of intelligence in a new political dispensation.
- (m) To facilitate the transition to a future intelligence dispensation by commissioning research and formulating proposals in this regard.
- (n) To budget for and to be allocated the necessary resources and to engage staff in the performance of its duties and functions.
- 1.(2) The Subcouncil shall in the exercise of its powers and the performance of its duties:

- (a) take due cognizance of the sensitive and unique nature of intelligence in which regard the provisions of section 20 shall apply mutatis mutandis. Special precautions shall be taken to prevent intelligence from being politicised and avoid to the utmost that intelligence matters become a topic for unnecessary open debate and party political point scoring.
- (b) recognise that the day to day management of all intelligence services/structures remain the responsibility of the relevant Minister/principal of such intelligence service/structure. In this regard all intelligence services/structures shall during the period of transition, subject to section 3, continue to fulfil their duties to their respective governments/administrations/organisations in need of an intelligence input.
- (c) take due cognizance not to execute its powers duties and functions in conflict with the provisions of section 13 and 14 of the Act.

BASIC PRINCIPLES AND GUIDELINES OF NATIONAL INTELLIGENCE

1. Introduction

It is accepted that the creation of a new political dispensation in South Africa shall have to be accompanied by the process of reviewing the security system, including the role, culture, methodology and structures of intelligence.

2. Definitions

In this document :

2.1 "national intelligence" means integrated intelligence that covers the broad aspects of national policy and national security of special concern to strategic decisionmaking on a national level;

2.2 "departmental intelligence" means the intelligence which Government departments and agencies need or generate to execute their (own) legal and functional responsibilities (in the interest of the State).

3. Guidelines on national security

National security should be understood in comprehensive terms to include the military, political, economic, social, technological and environmental dimensions.

National security should, therefore, besides its traditional concern with defence, violence and subversion, encompass the basic principles and core values associated with and essential to the quality of life, freedom, justice, prosperity and development. The following broad principles should underpin the activities of the intelligence community:

- * South Africa shall be committed to resolving internal and external conflict primarily through non-violent means.
- * National, social and individual security shall be sought primarily through efforts to meet the social, political, economical and cultural needs of the citizenry.
- * South Africa shall pursue peaceful and co-operative relations with neighbouring states in order to promote regional security, stability and development.

4. The mission, purpose and functions of intelligence

- * The primary mission of national intelligence is to gather, collate, evaluate information and disseminate intelligence that pertains to the security of the state and its citizenry.
- * Intelligence services are required to act in the interests of the country as a whole. In this respect intelligence should enhance national security, protect and promote the interests of the state and the well-being of its citizens.
- * National intelligence functions shall include those of counter-intelligence, foreign intelligence and domestic intelligence.

- * Given the actual and potential moments of conflict in South Africa and the dynamic interaction with the international environment, it is suggested that the abovementioned functions will be indispensable for government decision-making in a future South Africa.

5. Basic principles and points of departure

- * The functions of intelligence in a new constitutional dispensation, in order to enhance national security in South Africa, shall be governed by the following:

5.1 The principle of a national intelligence organisation

- * The intelligence needs and responsibilities of central government in a highly diversified and complex society requires the existence of a national intelligence capability essential for effective government and decision-making. Such a service is necessary to collate, interpret and integrate national strategic intelligence as well as to determine national intelligence priorities and to provide a balanced framework for national policy.
- * Irrespective of South Africa's constitutional model, a national intelligence capability needs to exist. National intelligence is a function and responsibility of central government that cannot be delegated to regional governments.
- * The national intelligence organisation shall uphold the principles of integrity, objectivity, and credibility. Further, it shall strive at all times to be relevant to the maintenance, promotion and protection of national security. The national intelligence organisation shall be loyal to the State and the Constitution.
- * The existence of a national intelligence capability does not negate the necessity for departmental intelligence capabilities to support line-functional responsibilities and departmental decision-making.

5.2 The principle of political neutrality

- * A national intelligence organisation is a national asset and shall therefore be politically non-partisan.
- * No intelligence or security service/organisation shall be allowed to carry out any operations or activities that are intended to undermine, promote or influence any political party or organisation at the expense of another by means of any acts (e.g. "active measures" or "covert action") or by means of disinformation.

5.3 The principle of legislative sanction, accountability and parliamentary control

- * The mission, function and activities shall be regulated by relevant legislation, the Bill of Rights, the Constitution and an appropriate Code of Conduct.
- * Intelligence work shall derive its authority from a legal framework and shall be subordinate to measures of accountability and parliamentary control.

- * Legislation must provide the intelligence services with the mandate to carry out their typical intelligence activities pertaining to the security, stability, well-being and interests of the State and its citizens.

5.4 The principle of the balance between transparency and secrecy

- * Effective intelligence, whilst requiring amongst others the essential component of secrecy, needs to be sensitive to the interests and values of a democratic society. In pursuance of this, a reasonable balance between secrecy and transparency needs to be found. The need for intelligence should be reconciled with fundamental civil liberties, ethical norms and democratic values of society. A system of declassification should be considered to enhance the principle of public accountability and openness.

5.5 The principle of separation from policy making

- * As a general rule, national intelligence should be restricted to play an informative and advisory role with reference to policy formulation. This role will entail the presentation of facts, assessments, forecasts, options formulation and advice.
- * Decision-making, policy formulation and strategy are the prerogative of policy makers and executives. The influence of intelligence on policy formulation will depend on the timeliness and accuracy of information supplied and on the quality of intelligence estimates produced. However, mutual trust between policy makers and intelligence professionals is desirable without compromising the objectivity of the intelligence provided.
- * In regard to the above, a national intelligence organisation should not have law enforcement responsibilities (powers of arrest, detention and search).

5.6 The principle of the constant flow of intelligence

- * The flow of intelligence to the Government of the day should always be maintained. Efficiency and continuity should be constant objectives whilst making provision for transformational needs.
- * The compilation of a national intelligence service shall endeavour to reflect the gender and racial composition of society whilst also taking into consideration the objective criteria of merit. To this end, an affirmative action programme shall be implemented to address imbalances. Necessary security requirements shall always be a prerequisite for membership of the intelligence organisation.
- * Members of existing intelligence services shall be eligible to serve in the new institutions should they accept the new constitution, are committed to its values and qualify from a professional point of view.
- * Provision should be made that all recruits/appointees in an intelligence service be optimally enabled by relevant training programmes to perform their duties at the required level.

5.7 **The principle of effective management and organisation**

- * The national intelligence organisation shall ensure effective management, organisation and administration of its activities. It shall strive to promote a strong organisational culture that reflects high standards, professionalism and moral integrity. Management shall strive constantly to improve the objectivity, timeliness and accuracy of information and the quality of its intelligence estimates.
- * The national intelligence organisation shall strive to develop the full potential of all its members and promote the qualities of loyalty, esprit de corps, expertise, creativity, courage of conviction, adaptability and foresight.

5.8 **An ethical code of conduct for intelligence work**

- * All members of intelligence services shall be required to accept a code of conduct that governs their performance. The code of conduct should have the support of all relevant parties, be based on universally accepted democratic principles and inclusive of accepted intelligence principles, norms and practices.

5.9 **Co-ordination of intelligence and liaison with departmental intelligence structures**

- * A national security system should include structures and opportunities to facilitate an input by those domestic departmental intelligence/information structures as authorised by law.
- * It is to be expected that such structures will observe the legal obligations, style, character and culture of the departments they serve, but it is essential that they observe the same fundamental approach to their tasks as that applicable to the national intelligence organisation.
- * A well functioning intelligence co-ordinating mechanism is essential to solve possible differences and disputes in the Intelligence Community. These differences could relate to the flow of information, priorities, duplication of resources, the audi alteram partem principle with regard to interpretation and other matters pertaining to the other functions of intelligence.
- * The scope and degree of co-ordination between a national intelligence organisation and departmental intelligence/information structures will be influenced by the constitutional arrangements of the new South African State.