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

18 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 ***SA GOVERNMENT PROPOSALS REGARDING CLAUSE 14 OF THE TRANSITIONAL EXECUTIVE COUNCIL BILL, 1993.***
2. Kindly transmit the document for immediate attention to the Technical Committee.

Yours sincerely



GOVERNMENT OFFICE: WORLD TRADE CENTRE

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SA GOVERNMENT PROPOSALS REGARDING CLAUSE 14 OF THE TRANSITIONAL EXECUTIVE COUNCIL BILL, 1993 :

GENERAL EXPLANATORY NOTE :

1. [ ] Words in bold type in square brackets indicate omissions from existing enactments.  
  
\_\_\_\_\_ Words underlined with a solid line indicate insertions in existing enactments.
2. Patent errors in draft have been corrected.

Powers and functions in regard to defence

14. The Council shall, for the purpose of achieving its [objectives] objects, have the following powers to be exercised through its Subcouncil on Defence :

- (1) (a) To be kept informed by each defence force and armed force of any participant (excluding policing agencies), hereinafter referred to as 'military forces' regarding the activities of such military forces, including, but not restricted to, the planning, preparation and execution of any action by such military forces likely to have an adverse impact on the Council's objects;
- (b) To be kept informed by any Government or [administration] political party of any proposed legislation (including subordinate legislation) and internal directives or regulations, as the case may be, regarding the conduct and deployment of any military force;
- (c) To investigate through an independent body, or to require the investigation into the conduct of any member or unit of a military force which may be in breach of any applicable code of conduct or disciplinary code [or] and which is intended to or likely to adversely affect the objects of the Council;

- (d) To recommend appropriate disciplinary action or criminal proceedings and order, in consultation with the commander of the military force concerned, the confinement or suspension[, on full pay,] of any member or members of the military force concerned pending such proceedings or recommend appropriate measures in regard to any unit [or department] of such military force;
- (e) To formulate and monitor the application and implementation of a code of conduct which shall be made binding on all members of all military forces;
- (f) To undertake or to commission research into any relevant matter including, but not limited to, the parliamentary control, composition, manpower policy (including conscription), organisation and executive command of a future South African Defence Force, the policy towards unofficial military and para-military organizations, and the future of the arms and related industries;
- (g) To oversee any planning, preparation and training [of] for a future [defence force] South African Defence Force;
- (h) To liaise with the media and with the various military forces so as to keep both military forces and the public informed of developments regarding defence-related matters;
- (i) To monitor media reporting on defence-related matters;
- (j) To establish a co-ordinating council comprised of the commanders or such other person appointed by the commander of each military force, which will be tasked with liaising with the structures of all military

forces to ensure the promotion of the objects of the Council and to make recommendations to the Subcouncil concerning any military matters relating to its powers and [duties] functions; and

- (k) To budget for and receive additional resources other than from the Defence Budget for the daily maintenance and administration of all non-governmental military forces, as contemplated in subsection (12), which are governed by and accept the supervision of the Council in terms of this Act, and which are recognised non-governmental military forces in terms of this Act.

(2) [A defence force] Statutory defence forces may be deployed, with the approval of the [appropriate] relevant Minister [or commander], in crime prevention and peace-keeping operations, but any such deployment shall, subject to subsection (3), be required to be in accordance with the regulations and procedures established by the Subcouncil in consultation with the relevant Minister of Defence in terms of subsection (3).

(3) The Subcouncil shall, in consultation with the relevant Minister of Defence, prescribe regulations governing the deployment [and command] of [any military force] statutory defence forces in crime-prevention or peacekeeping operations, save that until [such] requirements and procedures relating to such deployment have been duly promulgated in terms of this Act, [a defence force] statutory defence forces may be deployed or continued to be deployed in terms of the existing requirements and procedures governing such [intervention or] deployment.

(4) The Subcouncil shall review the deployment of any unit of a statutory defence force in terms of such existing requirements and procedures within one month of the establishment of the Subcouncil.

(5) The Subcouncil shall review, in consultation with the

[Minister] relevant Ministers of Defence, existing requirements and procedures for the deployment of statutory defence forces in crime-prevention or peacekeeping operations within one month of the establishment of the Subcouncil.

(6) In the event of the Subcouncil and the [Minister] relevant Ministers of Defence being unable to agree on the regulations governing the deployment of [military] statutory defence forces in crime-prevention and peacekeeping operations, the appropriate provisions of section 21 shall apply mutatis mutandis.

(7) The regulations referred to in subsection (6) shall recognise that the day to day management of any military force remains the responsibility of the command structure of such a military force, including routine transfers, training, promotion, and, in regard to the [SADF] South African Defence Force, such day to day management shall include any routine defensive functions relating to the protection of the integrity of the borders of South Africa, save that the Subcouncil [on Defence] and the Independent Electoral Commission may impose limitations on such routine functions which are likely to interfere with the creation of a climate for free and fair elections.

NOTE : This subsection assumed re-incorporation of the TBVC states and will have to be re-drafted in the light of future developments in this regard.

(8) The Subcouncil shall establish monitoring mechanisms to ensure that its directives are complied with and that the activities of any military force have no negative impact on the creation of [the] conditions for free and fair elections, and may further establish any mechanism to ensure appropriate interaction between itself, the various military forces, the National Peace-keeping Force ("NPF"), policing agencies and any other relevant agency at national, regional or local level.

(9) [A minister] The Minister of Defence exercising powers in terms of the Defence Act, 1957 (Act No 44 of 1957), or the

appropriate [functionary] functionaries exercising corresponding powers provided for in the corresponding legislation of the Republics of Transkei, Bophuthatswana, Venda and Ciskei to [issue] make, amend or repeal regulations governing relevant aspects of defence force conduct, functioning, structures and deployment relevant to the Council's objects, or any commander of an armed force issuing directives in regard to the above matters, shall act in consultation with the Subcouncil, which may itself propose such regulations or directives or amendments to or the repeal of such regulations or directives [itself]; provided that if no agreement is reached between such Minister or functionary and the Subcouncil, the appropriate provisions of section 21 [will] shall apply mutatis mutandis.

(10) Without derogating from the [rights] duties of any [particip-  
 ant in the Council or administration] Government, political  
 party or organization under section 19, the commander of any military force shall ensure that any decision of the Subcouncil regarding the deployment or conduct of any military force is made known to and binding upon [the] all members of such military force including, where appropriate, promulgation thereof in terms of the relevant standing orders and disciplinary code.

(11) The Subcouncil shall have the necessary responsibility to ensure the safekeeping, [the] audit and effective supervision of the arms, [and] as well as the identification of the personnel of any military forces.

NOTE : The question relating to the State President's power to issue a declaration of martial law will be considered in the context of the whole question of the Council's possible power in respect of the State President's prerogative and statutory powers.

(12) (a) In this section a "non-governmental military force" shall [mean] include Umkhonto we Sizwe[, Azanian Peoples Liberation Army] and any other armed force that the Subcouncil may from time to time determine.

(b) In the application of this section no person shall be considered a member of a force referred to in paragraph (a) unless

(i) that person was a registered, trained member of [the] such force falling under its discipline and command at the commencement of this Act; and

(ii) his name and other particulars are included in a certified personnel register submitted by such force to the Subcouncil at the commencement of this Act.

(13) The Subcouncil [(on Defence)] shall budget for and be allocated the necessary resources to establish and maintain the NPF which shall be comprised of elements of all military forces (in equal numbers) and policing agencies which fall under the authority and control of the participants in the Council which wish to [contribute to] participate in such force.

NOTE : The Technical Committee is not in a position to make a firm recommendation regarding which Subcouncil should be responsible for the NPF, but proposed that the terms of reference should be as set out hereinafter.

(14) The Subcouncil shall for these purposes establish an NPF Command Centre comprised of representatives of all the military forces and policing agencies which participate in the NPF.

(15) The Subcouncil in consultation with the NPF Command Centre shall :

(a) establish and see to the training of a unit of NPF instructors which may be drawn from the participating military forces and policing agencies but [shall] may also include international experts;

- (b) [to] formulate the philosophy, doctrine, syllabi and training policy for the NPF;
- (c) establish criteria for the recruitment, training and selection of NPF members; provided that the NPF shall comprise representatives of all the military forces (in equal numbers) and policing agencies wishing to participate;
- (d) establish the command structure of the NPF and shall appoint (and, if it so decides, dismiss) the commander and other senior officers of the NPF, who shall account to the Subcouncil through the NPF Command Centre;
- (e) prescribe the jurisdiction of, and the circumstances for the deployment, of the NPF;
- (f) make regulations governing the authority, control over, conditions of service, levels of remuneration of the NPF, as well as interaction between it and any other armed force deployed in a peacekeeping operation or in the same areas as the NPF;
- (g) formulate and promulgate a disciplinary code including a code of conduct, which shall be made binding on the NPF;
- (h) establish standard operational procedures for the NPF; and
- (i) consult with other military forces and policing agencies regarding the establishment and operation of the NPF.

(16) The South African Defence Force shall be responsible for supplying the [National Peacekeeping Force] NPF with the



necessary and agreed upon uniforms, transport, accommodation, equipment, and other logistical support in accordance with the procedures and [directions] directives as decided upon by the Subcouncil in consultation with the NPF Command Centre, save that [National Peacekeeping Force] the NPF shall have its own distinctive uniform, vehicles and other insignia. The Subcouncil shall budget for and acquire funds other than from the Defence Budget for this purpose.

(17) In the event of the Subcouncil and the NPF Command Centre being unable to reach a decision on the matters requiring to be regulated in terms of paragraphs (c), (d), (e), (f), (g) and (h) of subsection [14](15) of this section, the appropriate provisions of section 21 shall apply *mutatis mutandis*.