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16 July 2007

Ms T. Tobias
Chairperson Portfolio Committee on Defence
Parliament of the Republic of South Africa
Cape Town

Honourable Chairperson,

PROHIBITION OR RESTRICTION OF CERTAIN CONVENTIONAL WEAPONS BILL

Your invitation dated 20 June 2007 to participate in Public Hearings and written submissions on the Prohibition and Restriction of Certain Conventional Weapon Bill (B7 – 2007) refers.

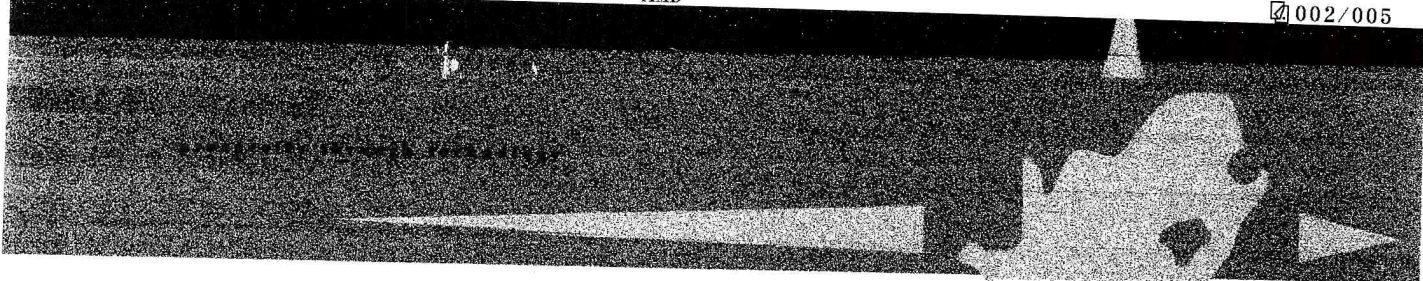
Attached please find a consolidated industry submission for your consideration and please do not hesitate to liaise with us should you have any enquiries or requirement for AMD to represent the industry at any discussions on the matter.

Kindest regards

**SIMPHIWE HAMILTON**
EXECUTIVE DIRECTOR: AMD

Directors: Mrs K. Maleke (chairperson), A. Holloway (vice chairperson), R. Bonarius, B. Coetzer (dr), L. Duncker, N. Falude-Mkuna (ns), S Hamilton (exec dir), I. Ichikowitz, P. Labuschagne, S. Liebenberg, F. Lopez, W. Malowinja, L. Maisela, C. Meintjes, Maj Gen K. Mokoape, Lt Gen (ret) L. Moloi, S.P. Ngwenya, R. Saloojee, P. Smit, H.S. Thomo


AMD
SOUTH AFRICAN
INDUSTRY ASSOCIATION



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SADRI SUBMISSION ON THE 'PROHIBITION OR RESTRICTION OF CERTAIN CONVENTIONAL WEAPONS BILL' (B7-2007)

BACKGROUND

AMD is the South African Aerospace, Maritime and Defence Related Industries Association and has, as its primary objectives, the representation of the industry in matters of mutual interest as well as the promotion of a profitable, sustainable and responsible industry. As an integral part of its responsibilities, AMD communicates with various stakeholders ranging from government departments (Defence, Foreign Affairs, Trade and Industry as well as Science & Technology) to private industry (both South African and foreign) as well as educational institutions. This communication can take the form of briefing notes, discussion papers and position papers on an array of matters that affect the SA Defence Related Industries including but not limited to government policy and strategy, the evolution of certain technologies as well as the economics of defence. This submission is in response to a 'Call for Submissions' as published by the National Assembly's Portfolio Committee on Defence and represents a consolidated view of the SA Defence Related Industries (SADRI)¹.

SADRI

The South African Defence Related Industries (SADRI) is a cluster of those organisations in the South African Private and Public Sector which is directly or indirectly involved in activities related to the industrial and trade processes of defence related materials, goods and services.

APPROACH

Despite the fact that the 'Call for Submissions' was widely publicised, AMD, as the industry representative association, decided to (re-)distribute both the call and the proposed Bill to all its members on the 18th of June 2007 and received significant inputs from ATE and Denel. These have been consolidated into a single SADRI response to the proposed Bill and are presented below.

¹ The South African Defence Related Industries (SADRI) is a cluster of those organisations in the South African Private and Public Sector which is directly or indirectly involved in activities related to the industrial and trade processes of defence related materials, goods and services.

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RESPONSES TO THE BILL

CLAUSE	COMMENTS ON PROVISIONS WITH AN IMPACT ON THE SADRI	
	RESPONSE TO CLAUSE	SUGGESTED AMMENDMENT
<p>Clause 1: "military objective" means any object which by its nature, location, purpose or use makes an effective contribution to military action and whose total or partial destruction, capture or neutralisation offers a definite military advantage, but does not include military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects;</p>	<p>Under Clause 1, the definition for "military objective" reads: " means any object which by its nature....". The SADRI's observation in regards is that there is a difference between an 'objective' and 'object' and as such there is prospect for confusion in the interpretation of the intended meaning.</p>	<p>Our submission is that the word "object" in this clause should either be replaced by "objective", or the words "or objective" should be added to this clause after "object".</p>
<p>Clause 1: "procure" means to obtain a prohibited weapon through purchase, forfeiture, donation, cession, transfer and discovery;"</p>	<p>Under Clause 1, the definition for "procure", includes the words "or discovery" and this may have the unintended consequence of making a person who innocently discovers such prohibited weapon guilty of an offence as contemplated by the Bill.</p>	<p>The words "or discovery" be deleted from this definition.</p>
<p>Clause 1: "transfer" includes the - (c) transit of prohibited or restricted weapons through the territory of the Republic by any means;"</p>	<p>Under Clause 1, the definition for "transfer" includes the "transit of prohibited or restricted weapons through the territory of the Republic by any means".</p> <p>Some SADRI companies are involved in demining activities, the destruction of mines, unexploded munitions and ordnance, etcetera, in terms of their main business. It is conceivable that they may have to transport prohibited and/or restricted weapons under this Bill, for legitimate and lawful purposes in performing their duties.</p>	<p>The Bill should make a clear and executable / enforceable provision of how legitimate and lawful possession (as in the case of SADRI companies whose business might legitimately involve this and read with Clause 5 of the Bill) or transfer of prohibited weapons will be regulated.</p>
<p>Clauses 5; 6; 7; 8 : Definition of "person"</p>	<p>The Bill does not clearly define a 'person' under the definition but extensively uses the term throughout its text with clause providing what could be deemed to be a definition.</p>	<p>Suggest that "person" be defined in the section on 'Definitions'</p>

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CLAUSE	RESPONSE TO CLAUSE	SUGGESTED AMMENDMENT
<p>Clause 5 (b): "possess, procure, manufacture, stockpile, transfer, deal in, import or export a component part of a weapon contemplated in paragraph (a).</p>	<p>Clause 5(b) prohibits possession, procuring, manufacturing, stockpiling, transfer, dealing in, importing or exporting a component part of a weapon contemplated in paragraph (a); and,</p> <p>The definition for "component part" means any identifiable component designed or adapted to form an essential and integral part of any weapon prohibited by this Act.</p> <p>It is a concern to SADRI that generic components (such as for example, detonators) which may be used in a variety of devices, including devices prohibited by this Bill, although not specifically designed or adapted or provided, exported or supplied as a component for a prohibited weapon, may potentially be used in such prohibited weapons without the knowledge of the manufacturer.</p>	<p>In order to provide greater clarity in clause 5(b) we suggest that the definition under clause 1 of 'component part' be amended as follows;</p> <p>'component part' means any identifiable component designed or adapted specifically for the purpose to manufacture weapons described in 5(a) or to form an essential and integral part of any weapon prohibited by this Act"</p>
<p>Clause 6: "(1) No person may use or direct any mine, booby-trap or other device -(4) ... military purpose for which it was placed in position."</p>	<p>Anti personnel mines should not be restricted if used for defensive purposes (own forces) or protecting anti tank mine fields if the mine fields are clearly marked.</p>	<p>Cognisance should be taken of the Mine Ban Treaty and all efforts made that this Bill does not dilute and undermine the provisions and intention thereof.</p>
<p>Clauses 6 & 7: "(1) No person may use or direct any mine, booby-trap or other device -(d)objectives, or are themselves military objectives."</p>	<p>The control of stockpiling/manufacture/transfer etc. restricted weapons is not clearly defined.</p>	<p>Suggest that control of stockpiling/manufacture/transfer etc of restricted weapons be clearly defined and / or provided for in the Bill.</p>
<p>Clause 8 (1) & (2): "No person may - (a) use, possess, procure, manufacture, stockpile, transfer, deal in, import or export blinding laser weapons, or (b) possess, procure, manufacture, stockpile, transfer, deal in, import or export a component, part of weapons contemplated in paragraph (a) 2. Any person employing laser systems shall take all feasible precautions to avoid the incidence of permanent blindness to the naked eye.</p>	<p>This clause prohibits the use of Blinding Laser Weapons. However, the Munitions list clause ML19 f, of the National Conventional Arms Control Act, 2002 (Act No 41 of 2002) states it as an acceptable but Controlled Item.</p>	<p>Cognisance should be taken of the Munitions list clause ML19 f, of the National Conventional Arms Control Act, 2002 (Act No 41 of 2002) and all efforts made that this Bill does not dilute and undermine the provisions and intention thereof. It is further suggested that a decision be taken on whether the items are Controlled, Prohibited or Restricted.</p>

CLAUSE	RESPONSE TO CLAUSE	SUGGESTED AMMENDMENT
<p>Clause 10: "Any person in possession of any prohibited weapon or component part immediately before the commencement of this Act must, within six months from the date of commencement of this Act, notify a police official of such possession"</p>	<p>There is great risk of RSA companies/civilians unknowingly, being potentially in possession of components that has this potential.</p>	<p>Suggest that the Portfolio Committee on Defence and Department of Defence create mechanisms to inform all South Africans and especially the SADRI of the potential risk.</p>
GENERAL COMMENTS		
<p>Preamble point No. 6.: "acceded to the Convention on Prohibitions or Restrictions on the Use of Injurious or to Have Indiscriminate Effects of 10 October 1980 and its original three Protocols on 13 September 1995, Protocol IV on 13 October 1995 and the amended Protocol II on 26 June 1998; and"</p> <p>and Clause: 2(d): "provide for the reporting on the Republic's compliance with the Convention to Parliament, and to the Secretary General of the united Nations."</p>	<p>With the RSA Government having signed the Convention with its 3 Protocols, it is deemed to be the Government's responsibility to strike an acceptable balance between what it has committed to in the Convention and what it wishes to change resulting from the debate arising from having advertised the Bill. The possibility exists that countries would implement the decisions of the Convention differently, depending on the response/debate from its own citizens/industries, thereby having different "rules of the game".</p>	<p>The SA government and thus Parliament should assess how the Convention which this Bill seeks to bring into law in SA is implemented in a fair manner globally and across of signatories in this regard. Specific focus should be placed on how this Convention could be unfairly used to prevent and prohibit certain countries from acquiring military capabilities that might offer a leading edge in military operations.</p> <p>Further, It is hoped that government controlled and funded research and development of the said prohibited/restricted weapons or devices is not entirely banned as this could leave SA with a technical capability gap and thus the SANDF could find itself in a severe operational disadvantage in the future.</p> <p>Lastly, the extra judicial provisions of the Bill ensure that SA meets its international obligations but it is equally important that the RSA encourages compliance by all signatories as well as the ability to implement the sanctions provided for in the Bill between nations. To this end the existence of other enabling legal instruments should be verified.</p>

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