

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

Khulumani, et al., **S.D.N.Y.**
Plaintiffs **Case No.: 1:03-cv-4524 (FES)**
v.
Barclays National Bank, et.al.
Defendants

Brief of *Amici Curiae* in Support of Plaintiffs’
Opposition to Defendants’ Motion to Dismiss

Interest of the Amici Curiae

KOSA is a registered non governmental organisation in Germany with an office in Bielefeld, integrating all active members of the former German Anti Apartheid Movement (1974-2001) and cooperating with peoples and social movements in Southern Africa for a peaceful and sustainable development of the Southern African Region. Members of Kosa are developmental organisations, networks of groups supporting a particular country in the Southern African Region and international solidarity groups. KOSA itself is an active member of the European Network of Information and Action on Southern Africa, ENIASA. Members of KOSA participated in Mai 1998 in the creation of an international campaign for the cancellation of apartheid caused debt and reparations to victims of Apartheid in South Africa and the region of Southern Africa. This campaign later formed part of the international jubilee 2000 campaign aiming to significantly lower the debt burden of highly indebted developing countries. *Amici Curiae* are groups and individuals interested in helping victims of gross violations of human rights and fundamental freedoms under the Apartheid regime to obtain due restitution, compensation and rehabilitation. *Amici* have filed this brief to provide the Court with additional information and arguments in support of Plaintiffs’ Opposition to Defendants’ Motion to Dismiss.

Introduction and Summary of Argument

1. As German citizens still trying after 55 years to draw certain lessons from our recent past, we recognize that German Fascism and the Apartheid system have had one point in common. That is an all pervading racist ideology. To say it in the terms of attorney de Menthon at the Nuremberg trial: the racist ‘Herrenvolk’-theory constitutes a “crime against the human spirit”. It is an ideology that denies and rejects all rational, moral and spiritual values, on the basis of which peoples during thousands of years tried to build human civilization. (*Telford Taylor, The Anatomy of the Nuremberg Trials. A Personal Memoir. 1992, p. 347 in the German edition of 1996*). For postwar German youth one basic lesson had to be to resist and struggle against racism and racial discrimination. Yet, some of the victims of German Fascism had to wait for more than 50 years to receive redress for slave labour to which they had been subjected in German companies during the Second World War. We wish that victims of apartheid crimes did not have to wait that long for compensation from German and other foreign corporations, which were intimately involved in propping up and prolonging the life of the apartheid system.
2. The Nuremberg trials revealed the extent of the use of forced labour and slave labour, the ‘Aryanisation’ of Jewish property and corporate profiteering in the fascist war economy. West German industrialists emerged from the war and the Nuremberg trials with their national and international reputation and corporate image in tatters. However, within a few years of the cold war they had managed, without ever having admitted responsibility for past crimes against humanity, to whitewash their image (*S.Jonathan Wiesen, West German Industry and the Challenge of the Nazi Past, 1945-1955. University of North Carolina Press 2001*). They now appeared as pillars of society and German culture in rebuilding and miraculously reconstructing the German economy. But as soon as South Africa had released frozen

“enemy property” in the early 1960s, the West-German industrialists were very eager –soon after the Sharpeville Massacre - to rebuild and rapidly expand economic ties with the racist Apartheid State.

3. *Amici curiae* view a vigorous public debate on issues of social justice to be healthy for any democratic society. The annual reports of the South African Human Rights Commission on economic and social rights reflect such debates. These constantly refer to citizen’s rights as enshrined in the democratic constitution and do not question in any way the legitimacy of the democratically elected government.
4. We agree with the African National Congress’, ANC, submission to the South African Truth and Reconciliation Commission Hearing on the Role of Business (November 1997), which states *inter alia* that the foreign and local business community must acknowledge its own role of past discrimination and oppression in shaping Apartheid Laws. These laws formed the frameworks in which the extremely distorted patterns of ownership and control of the economy, of skills and expertise developed that now prevail. Leaders of the business community engaged in extensive collaboration with a system involved in gross violations of human rights. Guided by the South African liberation movement led by the African National Congress, by publications of the United Nations Centre Against Apartheid and the Ecumenical Council of Churches Program to Combat Racism, the German Anti-Apartheid Movement focused its research and activities on two major questions:
 - a) Do private German bank loans help finance the apartheid system by granting loans to the central government and strategic parastatal corporations in South Africa? We concluded that this was the case.
 - b) Do private German firms observe in letter and spirit the voluntary and later the mandatory arms embargo against the Apartheid State? We concluded that some loopholes in the national legislation allowed violations of the embargo.

The Anti-Apartheid Movement in Germany saw economic sanctions against South Africa as the most effective means to ensure a comprehensive arms embargo against the Apartheid system. It is this fourth point that we want to expand in our argument.

ARGUMENT

Between 1910 and 1961 the Union of South Africa was a constitutional monarchy and a member of the British Commonwealth. Following a referendum among the white electorate, she became a republic in 1961, in which so-called Coloured, Asian and African people did not possess the franchise. The ‘white’ settlers were citizens, members of the black majority were subjects. The ruling National Party’s apartheid policy ensured the maximum degree possible of political, territorial and residential, educational and social separation. Many of the basic laws of segregation and apartheid were introduced to create a cheap black labour force to benefit businesses owned by the ‘white’ minority. ***Business played a role in shaping Apartheid Laws.***

Pass Laws: From the time of the development of the mining industry and throughout the first half of the 20th century mine owners pressed for a tightening up and extension of pass laws as an effective instrument of coercion and control of the black work force. Pass laws continued to be in force after 1960. That must be acknowledged as a policy measure that benefited not only mine owners but also all other industries / employers. Pass bearing ‘natives’ were specifically excluded from the formal bargaining structures set up by the *Industrial Conciliation Act*.

The Chamber of Mines not only lobbied successfully for a tightening up of pass laws, but established itself a monopoly labour recruiting organization that institutionalized the migrant labour system and the single sex compounds for mineworkers, in which workers were segregated along “tribal” lines. The system forced workers to leave their wives and children behind in the Bantustans. This had a devastating effect on the family structure. In 1897 the mining houses agreed among themselves not to pay more than a ‘maximum average wage’ to black workers – thus ensuring that any labour shortages would not result in higher wages. This agreement remained in force until the mid-1970s. Its net effect was that the real average wage paid to black mineworkers remained lower in 1969 than it had been in 1889 (Wilson, 1972, p.46). The average monthly wage paid to African workers in the mining industry was Rand 24 in 1970. The ratio of white to African wage levels in mining stood at 16.3:1 (Davies *et al*, 1985, p.31). This depressed also wages in manufacturing industry – the highest paying sector – where monthly wages

paid to African workers stood in 1970 at around Rand 70, well below the minimum necessary to support a family at minimal nutritional levels.

The Masters and Servant Laws remained on the statute book until 1977. They made it a criminal offence punishable by imprisonment for black workers to break their contract by, *inter alia* desertion, insubordination or refusing to carry out the command of an employer. Breaches of contract by employers were, however, a civil offence.

The Native Labour (Settlement of Disputes) Act of 1953 prohibited Africans from membership of registered trade unions. This was part of the then Labour Minister Ben Schoeman's policy of "bleeding the black trade unions to death". The subsequent repression of African trade unions was not opposed by business organisations, but rather used to hold down black wage levels.

Influx Control regulations intended to redirect 'surplus' black labour from the urban industries to the farms to benefit white commercial farmers unwilling to pay wages at current market prices.

Forced Removals. During the 1960s white commercial agriculture shifted from the former 'labour tenant' system to a 'contract labour' system. Under the former, workers families were given the right to occupy and work a portion of the farmer's land; under the latter, workers were recruited to the farm for a seasonal contract period. A substantial portion of the millions of people forcibly removed in the 1960s and 1970s from rural areas proclaimed "white" by Government to the Bantustans were former labour tenants and their families.

Group Areas laws: as black commercial farmers were not allowed to compete on a level field with white commercial farmers, so the group areas laws excluded black owned businesses from competing in central urban business districts. In 1963 the Department of Bantu Administration instructed local authorities that African business should be confined to the Bantustans, and trading rights in African townships was only granted to those qualified for permanent residence. African traders must only provide for essential daily domestic needs; they were not permitted to set up, for example, a dry-cleaning business or garages in the townships. Africans were forbidden to own more than one business. No African who had business interests in one of the Bantustans was allowed to set up in the townships as well. Even when some of these restrictions were relaxed by proclamation in 1976, an annexed schedule of permitted activities excluded small-scale manufacturing. White business organisations never protested against the group area laws, even though these were against free market principles; rather they treated these restrictions on others as opportunities to expand the scope of their own activities and profits.

Business and the Trade Unions: During the 1960s – after the massacre of Sharpeville and the banning of the liberation movement – extensive repression saw to it, that strikes were virtually unheard of. Business celebrated this period as 'the golden sixties'. In fact, real wages for black workers stagnated for a decade. A wave of spontaneous strikes in 1973 initiated the rebuilding of a non-racial trade union movement. The emerging unions were not illegal; initially they focused on factory floor issues and fought for recognition at factory floor level. The Apartheid State promoted dummy 'works and liaison committees' as alternatives to unions. Most employers preferred to cooperate with the state and proved extremely reluctant to grant recognition to genuine trade unions. Repression runs like a thread through the union's movement history. Union activists were subjected to five-year banning orders. In the Bantustans, where many workers lived who worked in 'border area' industries, unions were repressed or banned. Union members were repeatedly detained, harassed and tortured. Many unionists lost their lives, others were seriously injured, driven into exile, imprisoned or mentally scarred. Thousands of workers lost their jobs and were dismissed by employers for union activity. Soon after its birth in 1985 the Congress of South African Trade Unions, COSATU, was declared a restricted organization in terms of emergency regulations. Mine companies maintained heavily armed private security forces and showed no hesitation in calling on police and army units to assist them. Unions were targeted by the National Security Management System created in the mid-1980s. The State Security Council was continually fed with information on unions from local 'Joint Management Centres' (JMCs). Not only state security organs were represented on JMCs, but also members of the local business community and the chambers

of commerce. Until the late 1980s the role of business was one of cooperating with the state authorities in taking measures to undermine and crush trade unions representing black workers. That the attitude of business towards the unions changed over time is largely due to the fact that through determined struggle and at a great cost the black workers established their unions as a force that could not be eliminated, repressed or ignored. The Sullivan Code and the European Union's Code of Conduct had only a minor impact on business policies towards trade unions.

Business and the Militarisation of South Africa:

When Prime Minister P.W.Botha came to power in 1978, private corporations worked closely with the military in designing the "total strategy" of the apartheid regime. At the Carlton Conference in 1979 the Prime Minister introduced leading business personalities to his government's new strategy and won them over to his guiding vision. The implementation of the total strategy is associated with gross human rights violations inside South Africa and beyond its borders in neighbouring countries. There were at least four levels on which the collaboration between the apartheid war machine and the private sector was to be increasingly institutionalized over the 1980s.

- Through the production of arms (including several nuclear bombs) and other military equipment, under the general coordination of Armscor,
- Through the National Security Management System with its regional and Joint Management Committees,
- Through the Defence Manpower Liaison Committee and
- Through the National Keypoints Act which promoted the privatisation of repression.

Reorganization of South Africa's armaments and arms procurement industry occurred in the same year as the mandatory arms embargo against South Africa imposed by the UN Security Council Resolution 418. By 1984, more than 2,000 private-sector firms were involved in domestic arms production either as contractors or suppliers of military technology and equipment to the South African Defence Forces (SADF). Military expenditure in constant 1985 prices increased from 2,146 million Rand in Financial Year 1973/4 to Rm 4,908 in FY 1977/78 peaking in FY 1989/90 at 5.45 billion Rand. The arms industry employed in 1989 more than 130 000 workers, some 8 % of total employment in the manufacturing sector of South Africa. Moreover, by 1989 ARMSCOR employed nearly 2,000 scientists and engineers. That amounts to over 10 percent of the total number of Research and Development personnel in the national economy. (*Batchelor, Cock, McKenzie 2000*).

However, because of the country's limited resources and the arms embargo, the local defence industry did not try to reproduce the R&D already achieved by the major Western arms producers; instead, it concentrated on acquiring a capacity for upgrading, modifying and modernizing existing armaments and weapons systems. This remains true also, when it comes to the development of weapons of mass destruction (nuclear bombs, medium range missiles). South Africa was able – with the help of front companies and affiliates of foreign corporations – to obtain foreign inputs (technology, personnel, components) in circumvention of the UN arms embargo (*Landgren 1989; Brzoska, 1991*). Local private companies, on behalf of the apartheid state, also used the loophole of „dual purpose“ products or technologies (components or end-products that had both a civilian and a military application), pretending that these products were being imported for civilian use.

Government also pursued self-sufficiency in a number of related industries, such as the manufacture of engines and gearboxes which could be used for armoured vehicles (*Landgren 1989; Batchelor 1996*). Apart from Armscor, an excessive share of state investment went into other strategic industries such as ESKOM (electric energy from coal) and SASOL (synthetic fuel and chemicals factory based on coal).

Corporations supported the notion of „repressive reforms“ that were integral to the Total Strategy ideology. The structures of the National Security Management System had to identify troublesome townships. With the help of the private sector they hoped to launch „elite“ development projects for prestige neighbourhoods in order to build a buffer social stratum amongst black township dwellers which would help calm the situation. The co-option of the private sector was a feature for the local level, in the Joint Management Committees. For example, in the Port Elizabeth JMC there were, apart from SADF and SAP command structures, some

27 members from the private sector, including the Master Builders' Association, Assocom, the Midland Chamber of Industries, the Port Elizabeth Chamber of Commerce, the Small Business Development Corporation, the Afrikaanse Sakekamer and even the NG Kerk. In a city racked with high unemployment and poverty, they not only shared information on trouble brewing up, but also planned to build up a „prestige“ black neighbourhood.

The Defence Manpower Liaison Committee promoted „mutual understanding between the SADF and Commerce and Industry with regard to a common source of Manpower“. The army would call up an engineer or a specialised technician in order to use his technical skills in a particular project of the armed forces. The person would not wear a uniform, but would be credited with his call-ups. Following Demalcom's guidelines, companies began topping up the low army salaries paid to national servicemen. Many continued to pay full salaries to their conscripted staff. Some also paid employees who volunteered for extra military duty. Some also gave their staff paid time off during commando service. Such payments by private companies amounted to a large subsidy for the SADF.

Government designated hundreds of factories as National Keypoints, including certain mines, oil refineries, power stations and manufacturing factories. Owners were required to provide and pay for security as well as set up security committees jointly with the SADF, which included recommended private security consultants. Provision had to be made for the storage of arms on the factory premises. Some of the financial burden of „national security“ was thereby shifted to the private sector, releasing apartheid security forces for other repressive activities.

In 1997 the ANC called on the business community to indicate precisely what relationship it had with covert units of the apartheid state responsible for gross violations of human rights.

The extent and function of German bank loans to South Africa.

Publications of the UN Centre Against Apartheid documented loans of individual banking consortia, as published in financial newspapers for the period 1972 to 1984. (*Corporate Data Exchange, Beate Klein, Eva Miltz*). This gave the German Anti-Apartheid Movement the *impetus* to look closer at the issue of the role of foreign, especially German banks in the financing of the Apartheid system. Members of Parliament raised the issue with the German Federal Government as well. (*for instance Bundestag Drucksache 10/3309 and 10/5297 of April 9, 1986*).

Drawing on data supplied by the Deutsche Bundesbank and the South African Reserve Bank, we come to the conclusion that German net capital exports to South Africa amounted to DM 148 million in 1971-1974; to DM 2,605 million in the period 1975 to 1979; to DM 1,021 million in the period 1980 to 1984 and to DM 2,476 million for the last four years of the apartheid regime, 1990-1993. (*Madörin, Wellmer 1999*). Of the total foreign debt of the South African public sector (this includes public authorities and public corporations) in 1993, amounting to an estimated sum of US \$ 15,266 million, German business in 1993 was the most important creditor of the public authorities of South Africa with 17.5% of all claims as well as the second most important creditor of South Africa's public corporations with 26.2 % of all claims. Taken together, German banks and private corporations claimed 27.3 % of the foreign debt of the public sector of the apartheid system in 1993. German business was in 1993 the most important financier of apartheid.

Taking the period 1971 to 1993 as a whole, German income from non-direct investment in the economy of the apartheid state totals DM 7.45 billion, according to data supplied by the German Central Bank.

In Pretoria we consulted the South African National Archives in order to identify individual bank loans. For the period 1950 to 1980 we drew a sample of 475 individual loans with an accumulated nominal value of about US \$ 15 billion. The documentation (*Wellmer 2003*) does not claim to be complete; also, documents for the period 1981 to 1993 are not yet accessible. However those bank loans to public corporations identified for the period 1965 to 1974 represent about 50 percent of the value of South African Reserve Bank data over that period for non-direct foreign investment to South Africa's public (parastatal) corporations. For the period 1975 to 1980 our sample documents loans whose value amounts to 33 percent of respective Reserve Bank Data.

Value of identified loans to the public sector in US Dollar million, 1950 to 1980:

Year	SA Public Sector debtors		Mining debtors	Value in US \$ m
	Public authorities	Publ. corporations		
1950-54	195.8	85.2	66.3	347.3
1955-59	240.9	11.6	12.0	264.5
1960-64	210.2	14.0	27.0	251.2
1965-69	465.1	464.7	24.9	954.7
1970-74	910.4	3,161.1	63.2	4,134.7
1975-79	700.9	4,947.2	n.a.	5,648.1
1980	316.3	3,086.0	n.a.	3,402.3
1950-1980	3,040.0	11,770.0	193	15,003.0

Source: National Archive Pretoria

Coming to the importance of German creditor banks, we identified for the period 1958-1980 69 loans, in which the Deutsche Bank or one of its affiliates participated; in 40 cases the Deutsche Bank or its daughters were part of the lead-consortium. The nominal value of these loans amounted to DM 6,145.0 million or US \$ 2.3 billion.

For the period 1965 to 1980 we could identify 60 loans of the Dresdner Bank group (now part of Allianz AG) to the public sector of South Africa. In 54 of these cases the Dresdner Bank or one of its daughters were part of the lead management of the loan issue. The nominal value of these loans amounted to DM 4,477.5 million or US \$ 1.8 billion

The Commerzbank and its daughters and associates issued loans to the SA public sector institutions with a nominal value of DM 4,732.8 million or US \$ 1,789.6 million.

We also looked at the economic history of the apartheid system to find out what role foreign (and German) loans played at given moments of instability (1960, 1969, 1976/77, 1987 and the sanctions period). Regarding loans to central government we came to the following conclusions:

- Foreign loans to central government helped the apartheid regime to solve acute financial problems and to stabilise the balance of payments
- Foreign loans to central government financed arms acquisitions and arms development by the military and the police forces, noting that from 1986 onwards army units were also deployed to suppress resistance in the black townships. Foreign investors with a high risk exposure welcomed tough security measures like the five year long state of emergency.
- Foreign loans were often instrumental in facilitating the transfer of technical know how needed by the regime to consolidate, expand and modernise the means to control and repress the majority of the South African population
- The larger the financial exposure of foreign creditors towards the Apartheid State, the more their interest increased to ensure the success of that system: fresh capital was invested to guarantee the success of previous investments.
- In the case of a public bond issue of the central government, the foreign banks marketing these securities acted as financial managers of the Apartheid State, regardless of their personal attitude towards the racial policy of the regime.
- The financial support of the Apartheid State by foreign banks only ended with the collapse of communist regimes in eastern Europe and with the end of the Cold War. At that time, when even after five years of successive states of emergency the Apartheid State could not get the political situation under control, foreign creditors supported the end of race discriminations in order to save their investments and ensure the servicing of the foreign debt of South Africa's public sector.

To guard itself against the threat of economic sanctions, the Apartheid State aimed for self-sufficiency in certain strategic areas like energy, communication, radar, information technology, armaments and transport. For this reason the state invested heavily in the expansion of parastatal corporations. Thus foreign loans to parastatal corporations did not only help finance a public service (e.g. the production and distribution of

cheap electricity to mining and manufacturing by ESKOM or the production of synfuel by SASOL); such a loan was in any case a loan to an implementing unit of Apartheid State policy in strategic areas. An ESKOM manager stated in his testimony to the South African Truth and Reconciliation Commission on November 11, 1997: „...it is true that ESKOM effectively operated as an institution of Apartheid, and, in the process, appears to have served mostly white interests.“

Loans to parastatal corporations of South Africa were as a rule guaranteed by central Government. This was a legal condition of creditor banks. The conclusion is that each loan, trade credit or bond issue of a parastatal corporation was treated by creditor banks as if it had been a loan to South Africa's central government itself. ***The implementation of the arms embargo by the German authorities and arms manufacturers.***

In the Federal Republic of Germany arms production was prohibited until 1955. Progressively these restrictions were lifted thereafter; but arms export licences were confined initially to NATO member states. The first German arms export control law was passed as late as 1961 – the War Material Control Act. It regulated production, ownership, handling and sales of weapons. Of decisive importance was the definition of what constituted war material or weapons. Such rather narrow definitions were contained in the 1961 Bundesgesetzblatt. The list of war material was modified on September 30, 1973. According to the Weapons of War list, weapon platforms such as vehicles are not included. Hence, the expanding West German defence industry since 1960 concentrated its export efforts on the sale of equipment not defined as „military“ according to West German Law, and on the sale of licences regarding such equipment.

Relevant to exports to South Africa were the guidelines for the granting of export licences for other strategic goods not defined as arms; these are stated in § 7 of the Foreign Trade Act of April 28, 1961. This Act stipulates that export licences must not be granted for a) weapons, ammunition and war material; b) objects useful for the development, production or the deployment of weapons, ammunition and war material or c) blueprints and other production instructions for items defined under a) and b), where such exports

- Endanger the security of the Federal Republic of Germany
- Disturb peaceful coexistence
- Disturb West German foreign relations

Government could also restrict the export of items destined for the execution of military actions or legal business concerning patents on inventions, licences, production processes and other experiences and know how relating to products mentioned above. In terms of these strategic goods, an end-use certificate is always demanded from the customer.

Successive governments prided themselves publicly of having „the most restrictive arms export policy of all arms producing countries.“ However, after the UN Security Council imposed its mandatory arms embargo against South Africa on November 4, 1977, the Government of the FRG realised that its 1961 laws were insufficient to fully implement obligations arising from the new UNSC resolution. The German government therefore changed its Foreign trade act in March 17, 1978, in order to make export controls regarding South Africa even more restrictive.

Even with these revisions it is evident that the definition of what constituted a weapon of war remained very narrow. The Foreign Trade Act did not include dual purpose items and dual purpose technology. The wording of the definition in fact, legalized all dual purpose exports to South Africa. West German input to the South African military market is found in armoured and military vehicle industry in South Africa, in the rocket and missile industry, in electronics and communications equipment and in the nuclear industry, in particular the uranium enrichment technology. This narrow definition of what constituted „weapons of war“ was emphasized by the parliamentary Secretary of State of the Ministry of Economics in response to a parliamentary enquiry concerning the shipment of trucks for the South African Army. He stated: „The export of military vehicles is subject to the requirement of a permit according to § 5, sentence 1 of the Foreign Trade Act in connection with item 0006, section A, part 1 of the export list, an appendix to the Trade Act. Item 006 refers –according to the title- to tanks and other vehicles specifically designed for military purposes. Letter b of the item referred to above mentioned vehicles where the adaptation of weapons is prearranged.“ All trucks and licensed production rights for trucks exported to South Africa have, in fact, concerned vehicles possible to designate as civilian, and all military adaptations have been carried out by ARMSCOR in co-operation with the West

German subsidiaries in South Africa.

The German Government did not deny that the German company STEAG had concluded an agreement with the South African Uranium Enrichment Corporation (UCOR) to conduct an economic feasibility study on uranium enrichment processes developed by Prof. Becker and another allegedly developed independently by UCOR. It is also acknowledged that STEAG billed UCOR for technical services. No one denied that the documents of the South African embassy in Germany as published by the ANC concerning the intense business relationship between STEAG and UCOR on a uranium enrichment plant installation were genuine. It is also a fact that MAN Maschinenfabrik Augsburg Nürnberg AG had various patents registered in the South African patent office. On the fifth of December 1979 MAN AG patent letters were sealed on a technology of feeding process gas into a swirl tube (registering number 78-5311). MAN also registered in 1979 a patent on a swirl chamber for separating gas mixtures under Number 78-5482. MAN also applied for a patent in South Africa on a swirl tube for separating gas or isotope mixtures under Registration number 78-5483. MAN also applied in October 1978 for a patent on a vortex tube for the separation of gas and isotope mixtures under registration number 78-5632. This is obviously technology used by the German / South African uranium enrichment process. However, Government chose not to subsume such 'legal business concerning patents on inventions, licences, production processes and other experiences' under the export restrictions of the existing War Material Control Act.

New guidelines were finally formulated by Government in May 1982. The most significant change for South Africa's access to know-how was the inclusion of licences and machinery to produce weapons used in warfare as items to be controlled under the arms export policy. The definition of prohibited designations was also changed from the previous 'area of tension' to encompass countries where the danger of an outbreak of armed conflict exists; the internal situation of a country was also to be considered.

The implementing agencies in the FRG concerning the embargo are concentrated in an inter-ministerial council – the Federal Security Council. It consists of high ranking representatives of the office of the Chancellor, the Ministry of Foreign Affairs, the Ministry of Finance, the Ministry of Defence and the Ministry of the Interior. However, few applications for export of sensitive goods to South Africa reach this council. The licensing of goods and components defined as non-military is handled by the ministry of finance. In practice, a potential exporting company tables an unofficial enquiry with the section in charge at the Ministry of Finance, in advance of export. Export licences are sought only for equipment which already has been approved informally for export to South Africa. There is no special monitoring unit ensuring the implementation of the embargo. An author of the Stockholm International Peace Research Institute wrote in 1989: 'But in FR Germany, a strong anti-apartheid movement was established during the 1960s and 1970s, and a large part of the South Africa debate has actually concerned cases of military shipments revealed by this movement.' (Landgren 1989).

Items covered by the Foreign Trade Act are routinely controlled by the Federal Agency for Commercial Economy. In the 1986 court case against the Rheinmetall company, charged for illegally sealing an ammunition assembly line through Paraguay to South Africa for G-5 production, some information on the operation of these export controls was revealed. A Federal Agency officer reported that the usual procedure for a manufacturer exporting prohibited equipment was to separate the components and file export applications for each single part. In cases of doubt, the policy was to regard the need to export as a priority.

Conclusion

For the reasons set fourth above, this court should not grant defendents motion to dismiss and allow the case to go forward.

