Controls on unmanned aerial vehicles (UAVs)

by Daan van Beek, Non-Proliferation Secretariat

Abstract

The purpose of this document is to provide a high-level overview of South African controls on unmanned aerial vehicles (UAVs). The controls draw from the Non-Proliferation of Weapons of Mass Destruction Act, 1993 (Act No. 87 of 1993) which are informed by the South African policy on non-proliferation of weapons of mass destruction.

Keywords

non-proliferation, controls, weapons of mass destruction, legislation, MTCR, UAVs

Introduction

The control over weapons of mass destruction (WMD) and related technology is globally pursued through international agreements and arrangements (treaties, conventions and control regimes) relating to nuclear, chemical and biological weapons and their specific means of delivery. South Africa subscribes to, supports and participates in most of these agreements and arrangements.

South Africa’s policy on the non-proliferation of weapons of mass destruction was adopted by Cabinet in August 1994 and is reflected in the enactment of specific legislation in the form of the Non-Proliferation of Weapons of Mass Destruction Act, 1993 (Act No. 87 of 1993) (Non-Proliferation Act).

Legislative framework

The Non-Proliferation Act was promulgated to provide for control over weapons of mass destruction; and the establishment of a council to control and manage matters relating to the proliferation of such weapons in the Republic; to determine its objects and functions; to prescribe the manner in which it is to be managed and controlled; as well as to provide for matters connected therewith.

The South African Council for the Non-Proliferation of Weapons of Mass Destruction (the council) is a statutory body appointed by the minister of Trade and Industry, and the technical and administrative support to:

- Protect the interests, carry out the responsibilities and fulfil the obligations of the Republic with regard to non-proliferation.
- Advise the minister with regard to any matter which it deems necessary and which falls within the purview of the Non-Proliferation Act.
- Supervise and implement matters arising from international conventions, treaties and agreements related to proliferation affairs entered into or ratified by the government.
- Identify and indicate to the minister goods to be declared controlled goods and activities including means of transit or re-export, including those relating to goods in bond.
- Prohibit the manufacture, procurement in any manner, use, operation, stockpiling, maintenance.
- Import, export, re-export or transit, transport or disposal by any means of specified goods and activities.
- Determine that the manufacture, procurement in any manner, use, operation, stockpiling, maintenance, import, export, re-export, transit, transport or disposal by any means of specified goods may only take place under a permit issued by the council.

As contemplated in the Non-Proliferation Act, the minister of Trade and Industry publishes, by notices in the Government Gazette, lists of dual-use goods and technologies that are controlled. Activities and goods that contribute or could contribute to WMD programmes are referred to as controlled activities and goods. Therefore, controls come into effect whenever a person is involved in or intends to become involved in any activities and or with goods that contributes or could contribute to WMD programmes. Therefore, activities related to the design, development, production, acquisition, maintenance, use of chemicals, biological and nuclear materials and missiles is allowed, provided they are for legitimate defence application as contemplated
in the Constitution of South Africa; or for commercial or civil application and provided that the necessary assurances and processes are in place to ensure that they will not be diverted or contribute to WMD programmes.

The Non-Proliferation Act also stipulates that any person who is in control of any activity with regard to controlled goods, or who has in his possession, or custody, or under his control, controlled goods must register with the council. Registered persons who intend to become involved in or are involved in any controlled activity; need to apply for the relevant permits.Activities related to these goods and technologies, i.e. import, export, transfers, manufacture, transit and transhipment; also require a permit issued by the council. Permits authorise specified activities by persons registered with the council in accordance with the conditions prescribed in a duly authorised permit.

**International obligations**

One of the international agreements that South Africa is party to is the Missile Technology Control Regime (MTCR), which seeks to coordinate national export licensing efforts aimed at preventing the proliferation of unmanned delivery systems capable of delivering weapons of mass destruction. The MTCR was originally committed to controlling the transfer of equipment and technology able to contribute to a ballistic or cruise missile, which could deliver a 500 kg nuclear warhead to a range of at least 300 km. However, the MTCR has since become increasingly concerned about the proliferation of missiles capable of carrying chemical or biological payloads, which can be significantly lighter. In January 1993, the regime therefore agreed to extend its scope to include any missile capable of a range of at least 300 km. The MTCR is neither an international treaty nor a legally binding agreement. MTCR partners voluntarily pledge to adopt the regime’s export guidelines and to restrict the export of items in the regime’s annex. There are no provisions in the regime for the enforcement of its terms or sanctions for violations. Trade of MTCR controlled items between regime partners and with non-partner states that adhere to the guidelines is not absolutely prohibited, but it is constrained by national export control legislation. South Africa became a member in 13 September 1995.

South Africa has agreed to include all goods and technologies that are listed in MTCR annexes into the domestic legislation; which has been promulgated in the Government Gazette Notice No. 22 of 3 February 2010, as amended on 18 February 2015.

In terms of the South African control structure, delivery systems, which include unmanned aerial vehicles (UAVs) are controlled under the MTCR as well as Biological Toxin Weapons Convention (BTWC) and Chemical Weapons Convention (CWC) controls. In terms of the BTWC and CWC the delivery systems specifically designed for the purpose or intention of a weapon is included as part of a definition of a weapon. The MTCR classifies UAVs with capabilities that exceed 500 kg payload and 300 km range as Category 1 and Category 2 as those UAVs with capabilities of less than 300 km range regardless of payload. UAV software and technology can be controlled regardless of payload and range specifications as stipulated in the Government Notice No. 22. Whereas exports of Category 1 items are subject to presumption of denial, the transfer of specially designed production facilities for Category 1 items are prohibited. Exports of Category 2 items are subject to case-by-case review against specified non-proliferation factors.

**Conclusion**

In a competitive international market, it is important that South Africa and its related industry is regarded as a responsible, reliable supplier and recipient of dual-use goods and technologies. The council will consider requests for exports and development initiatives; and then provide guidance according to national legislation and international obligations. However, despite the guidance provided, the council reserves the right to prohibit or withdraw such support at any time, should it be in conflict with South Africa’s national or international interests. South Africa acknowledges the need for consistency and effective interaction between the control authorities and the broad scope of industry and thus maintains effective collaboration and coordination with both national and international stakeholders in the field of non-proliferation.

**References**


Contact Florah Mamashela, Non-Proliferation Secretariat, Tel 012 394-5779, nonproliferation@thedti.gov.za