

- the dti, on behalf of the council, signed a SLA with the Council for Geosciences (CGS) for the institution to assist in the implementation of the Comprehensive Nuclear Test-Ban Treaty (CTBT).

4. International Obligations (Treaties, Conventions & Control Regimes)

South Africa adheres to a number of international treaties, agreements and control regimes that has an impact on its policy on non-proliferation, disarmament and arms control. It is to be noted, however, that although South Africa is not a member of the Australia Group (AG), it has incorporated some of the AG biological and chemical control list into its national regulations.

South Africa is a member of the following legally binding treaties conventions and other informal groups that work together against the threat of the proliferation of weapons of mass destruction:

Treaty/Convention	Year ratified/acceded
Treaty on the Non-Proliferation of Nuclear Weapons (NPT)	1991
Biological and Toxins Weapons Convention (BTWC)	Ratified 1975
Chemical Weapons Convention (CWC)	Ratified 1995
Comprehensive Nuclear-Test-Ban Treaty (CTBT)	Ratified 1999
Treaty on the Prohibition of Nuclear Weapons (TPNW)	
Other	Year Joined
Zangger Committee	1995
Nuclear Suppliers Group (NSG)	1995
Missile Technology Control Regime (MTCR)	1995
Wassenaar Arrangement (WA)	2006

5. Obligations in terms of Biological Controls

5.1. Biological and Toxin Weapons Convention (BTWC)

The Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and their Destruction, commonly known as the Biological Weapons Convention (BWC), entered into force on 26 March 1975. South Africa signed the convention in 1972 and ratified in 1975. The BWC's institutional operations are managed through the Implementation Support Unit (ISU), which is staffed by three permanent employees based in Geneva.

The convention bans the development, production, stockpiling, acquisition and retention of biological agents or toxins in quantities that have no justification for protective or other peaceful purposes. It also bans equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict. The actual use of biological weapons is prohibited by the 1925 Geneva Protocol. As of June 2018, 180 states parties had signed the convention with six signatories.

The convention does not have a verification protocol, but it mandates that state parties should consult with one another and cooperate, bilaterally or multilaterally, to solve compliance concerns. It also allows state parties to lodge a complaint with the United Nations Security Council (UNSC) if they believe other member states are violating the provisions of the convention. State parties convene a conference every five years to review and improve the implementation of the convention.

5.1.1. Government Notice No. 494 of 29 March 2019

Government Notice No. 494 prohibits the possession, development, manufacture, production, acquisition and in any manner the use, operation, stockpiling, maintenance, transport, disposal, sale and retention of biological weapons. The notice further declares certain dual-use biological agents, toxins, related equipment and technology that may be used in the manufacture of biological weapons to be controlled goods.

The notice is divided into two annexures; as explained below:

- Annexure A, which lists as controlled biological goods various genetically modified micro-organisms; toxins; and human, animal and plant pathogens.
- Annexure B, which lists equipment that is capable of handling and manufacturing the controlled biological agents.

5.1.2. Trade in controlled biological goods

Only the export, re-export or transit of controlled biological goods require permits. The transfer or transport of such goods by an entity registered with the council to another within the country must be declared in writing to the council 21 days before such a transfer is to occur.

5.1.3. Other domestic biological control structures

Other government departments are mandated with the control of biological goods, namely the Department of Health and the Department of Agriculture, Forestry and Fisheries. These departments should also be consulted to ascertain the control and permit requirements relating to certain biological goods.

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Overview of the Non-Proliferation Council Biological Controls

OVERVIEW OF BIOLOGICAL CONTROLS

1. BACKGROUND

There is a widespread need to prevent the proliferation of nuclear, biological and chemical weapons, also referred to as Weapons of Mass Destruction (WMD). Control over WMD, their specific means of delivery and the associated dual-use ramifications is globally pursued through various treaties, conventions and regimes. South Africa subscribes to, supports and participates in most of these agreements and arrangements.

2. South African Policy on Non-Proliferation, Arms Control and Disarmament

In 1994, the South African Government adopted a policy on non-proliferation, disarmament and arms control. The primary goal was to reinforce and promote the country as a responsible producer, possessor, trader and end-user of dual-use-controlled goods and advanced technologies in the nuclear, biological, chemical and missile delivery system fields. The country therefore promotes the benefits that non-proliferation, disarmament and arms control hold for international peace and security, particularly to other countries in Africa and the Non-Aligned Movement (NAM).

3. Mandate of the Non-Proliferation Council

3.1. Non-Proliferation Act

In South Africa, due regard has been taken to ensure the non-proliferation of WMD through the enactment of the Non-Proliferation of Weapons of Mass Destruction Act, 1993 (Act No. 87 of 1993). The Act, as amended, 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 objectives and functions; to prescribe the manner in which it is to be managed and controlled; as well as to provide for matters connected therewith."

3.1.1. Related Regulations

As contemplated in the Act, the Minister of Trade and Industry publishes by notices in the *Government Gazette* lists of dual-use goods that are controlled. The Minister may on the recommendation of the Council, whenever he deems it necessary or beneficial to the public interest, by notice in the *Government Gazette* declare goods that may contribute to the design, development, production, deployment, maintenance or use of WMD to be controlled goods.

The Act is supported by the following regulations and notices published on 3 February 2010, and updated notices published 29 March 2019.

- a. Registration: Any person who is in control of any activity with regard to controlled goods or who has in his possession controlled goods must register with the Council in accordance with Government Notice No. R16 of 3 February 2010.
- b. Biological: Dual-use microbial or other biological agents, toxins and related equipment and technology that may be used in the manufacture of biological and toxin weapons are declared as controlled goods under the Government Notice No. 494 of 29

March 2019.

- c. Chemicals: Chemical Weapons Convention (CWC) list of chemicals are declared as controlled goods under Government Notice No. 495 of 29 March 2019. The Chemical Weapons Regulations regarding the application of provisions of the CWC was promulgated on 3 February 2010, under Government Notice No. R.17.
- d. Missiles: The Missile Technology Control Regime (MTCR) equipment, technology and related items are declared as controlled goods under Government Notice No. 491 of 29 March 2019.
- e. Nuclear: The nuclear-related dual-use equipment, materials, software and related technology of the Nuclear Suppliers Group (NSG) are declared as controlled goods under Government Notice No. 492 of 29 March 2019. Furthermore, certain nuclear-related dual-use equipment, materials and software and related technology are declared as controlled goods under Government Notice No. 493 of 29 March 2019.

3.1.2. Permit administration

The import, export, re-export, transit and transhipment of these listed goods require a permit issued by the Council. Registered persons who intend to trade in controlled goods need to apply for the relevant type of permits.

3.2. Non-Proliferation Council

The South African Council for the Non-Proliferation of Weapons of Mass Destruction was established in terms of the Non-Proliferation Act. According to the Act, the Council shall, on behalf of the state, protect the interests, carry out the responsibilities and fulfil the obligations of the Republic with regard to non-proliferation, and advise the Minister with regard to any matter that it deems necessary and that falls within the purview of this Act.

3.2.1. Functions of the Council

- a. To control and manage all activities relating to non-proliferation, and provide guidance, instructions and information in connection therewith.
- b. To implement matters arising from international conventions, treaties and agreements related to proliferation affairs entered into or ratified by the Government of the Republic.
- c. To obtain or promote cooperation between government departments and other government institutions; as well as industry.
- d. To identify and indicate to the Minister goods to be declared controlled goods and activities.
- e. To determine which activities must take place under a permit issued by the Council.
- f. To administer the registration of persons involved in controlled activities or who are in possession of controlled goods.
- g. To issue and administer permits.
- h. To take the necessary steps to prevent the contravention of the provisions of the Act.

3.2.2. Membership of the Council

The members of the council are appointed by the Minister of Trade and Industry and comprises representatives from various government departments directly involved in issues of non-proliferation as well as industry representatives. The NPC meets at least every six to eight weeks to deliberate on non-proliferation-related issues, assess the activities of its committees and consider permit applications received from industry.

3.2.3. The Non-Proliferation Secretariat

The Non-Proliferation Secretariat to the council are officials of the Department of Trade and Industry (**the dti**). The Secretariat provides the administrative and secretarial services to the council and its committees.

3.2.4. The Committees of the Non-Proliferation Council

The process of control must be integrated, coordinated and administered among the various stakeholders that are involved in the implementation and enforcement of South Africa's legislation on non-proliferation. In this vein, the council has established a number of working committees that are constituted by representatives from different government departments including, in some instances, industry representatives and experts in specific fields related to non-proliferation.

The committees include:

- a. Non-Proliferation Control Committee (CC)
The CC advises the council on non-proliferation issues, permit applications and special investigations.
- b. Biological Weapons Working Committee (BWWC)
The BWWC advises the council on issues related to the Biological and Toxin Weapons Convention (BTWC) and the implementation of biological controls.
- c. Chemical Weapons Working Committee (CWWC)
The CWWC advises the council on issues related to CWC and the implementation of chemical controls.
- d. Nuclear and Missile Dual-Use Committee (NMDUC)
The NMDUC advises the council on nuclear-related dual-use and missile-related technical issues.
- e. Non-Proliferation Review Committee (NPRC)
The NPRC advises the NPC on legislative issues such as the amendment of the Non-Proliferation Act.
- f. Project Management Committees (PMCs)

The council has signed Service Level Agreements (SLAs) with various institutions to further enhance South Africa's commitment to non-proliferation obligations. Meetings are held regularly between the Secretariat and these institutions to monitor the implementation of the SLAs:

- **the dti**, on behalf of the council, has signed the Memorandum of Understanding (MOU) on the enforcement of the Non-Proliferation Act at national ports of entry with SARS Customs.
- **the dti**, on behalf of the council, signed a SLA with Protechnik Laboratories, a division of Armscor for the institution to assist in the implementation of the CWC.