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March 8, 1994
Letter, South African Ambassador R. F. Botha

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TO:	MA792	E	NON PROLIFERATION AND DISARMAMENT
	MA793	E	Sub-dir: Non-Proliferation and Disarmam
FROM:	MA79	E	Sub-dir: Kern, Militêre Skakeling en On
DATE:	MARCH 8, 1994		

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7 Maart 1994

Geagte Kollega

ISC-HOFSAAK

Met verwysing na die vergadering in bovermelde verband op 15 Februarie 1994 by die Staatspresident, en die besluit om ambassadeur Schwarz in Washington te versoek om 'n volledige analise te maak van die situasie en aan my verslag te doen hieroor, wil ek u graag op hoogte van verdere verwikkelinge in hierdie verband bring.

Parallel tot ambassadeur Schwarz se gesprekke met die Amerikaanse Staatsdepartement het ek met u goedkeuring ambassadeur Schwarz gemagtig om mnr Philip Hare, regsverteenwoordiger van die Ambassade in Washington, met die staatsaanklaers in Philadelphia te laat skakel sodat 'n verkennende gesprek gevoer kan word (sonder om enige iemand te kompromitteer of enige onderhandelinge te voer). Die belangrikste punte van ambassadeur Schwarz se verslag oor sy gesprek met die Amerikaanse Ondersekretaris belas met Afrika, mnr George Moose, is aangeheg as aanhangsel A terwyl mnr Hare se verslag oor sy verkennende gesprek met die staatsaanklaers as aanhangsel B vir u agtergrond ingesluit word.

Tydens die gesprek tussen mnre J Moolman en T de Waal van Krygkor en my Direkteur-generaal, mnr L H Evans, op 24 Januarie 1994 was die voorstel gemaak dat u 'n brief aan mej J Reno, Amerikaanse Prokureur-generaal, rig om die bereidwilligheid van die regering tot volle samewerking in die ISC-hofsaak aan haar oor te dra. My departement het in hierdie verband met ambassadeur Schwarz gekonsulteer, en terwyl hy in die breë met die konsep van 'n skrywe deur u aan mej Reno saamstem, maak hy die volgende voorstelle :

1. Dat u intussen 'n brief aan hom (ambassadeur Schwarz) rig waarin u hom meedeel dat :

   a. Mnr Barry Simon, Krygkor se Amerikaanse regsverteenwoordiger, vir die huidige onttrek word van die onderhandelingsproses en dus geen mandaat op hierdie stadium het om namens Krygkor en die regering op te tree nie (ambassadeur Schwarz wil hierdie skrywe aan die aanklaers en die Departement van Justisie toon om die erns van die regering se betrokkenheid by die saak te beklemtoon);

   b. Aan mnr Hare bevoegdheid verleen word om (met die staatsaanklaers) te onderhandel; en

   c. U in terme van die Amerikaanse diplomatieke nota gedateer 5 Januarie 1994 aan ambassadeur Schwarz bevestig dat "the Government of South Africa wishes to clarify its position on the resolution of the Armscor matter and states that it will offer co-operation" en dat daar 'n onderneming te goeder trou deur die Suid-Afrikaanse Regering verskaf word om te onderhandel in hierdie verband.

2. Dat 'n ontmoeting tussen mnr Hare en die staatsaanklaers plaasvind met die oog daarop om hulle te oorreed om die Amerikaanse eise te verminder en by daardie geleentheid ook u brief aan ambassadeur Schwarz te toon.

3. Dat ambassadeur Schwarz voortgaan om 'n afspraak met amptenare van die Amerikaanse Departement van Justisie te reël.

4. Dat sodra informele versekeringe van die aanklaers/departement van Justisie ontvang word dat die voorgestelde inhoud van u brief aan mej Reno aanvaarbaar is, u skrywe aan mej Reno versend word.

5 Dat enige dokumentasie om die Amerikaanse Justisie-owerhede behulpsaam te wees en verbandhoudend met die ISC-hofsaak slegs verskaf sal word na die vergadering tussen uself en die Prokureur-generaal.

Met verwysing na sub-paragraaf 4 hierbo neem ek die vrymoedigheid om vir u oorweging 'n konsepbrief aan mej Reno in te sluit. (Aanhangsel C)

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Terwyl bogenoemde voorstelle en veral die benadering dat u 'n brief tot mej Reno rig, verskil van die aanklaers se voorstel, naamlik 'n omvattende onderneming van goeie trou, is ek van mening dat die hantering van die saak op regeringsvlak in die huidige tydsgewrig noodsaaklik geword het. U brief aan mej Reno sou dus geskied teen die agtergrond dat die besluit van die Suid-Afrikaanse Regering om te goeder trou saam te werk, 'n politieke besluit is, en dus ook op gepaste wyse langs die formele interregeringskanaal deur u aan die Amerikaanse Prokureur-generaal oorgedra moet word.

Teen die agtergrond van die besluit om voorlopig die ondertekening van die MTCR-verwante bilaterale ooreenkoms met die VSA uit te stel, is ek van mening dat daar na aanleiding van bogenoemde, en in die lig van die ander faktore wat ten tyde van die vergadering by die Staatspresident genoem was, as 'n saak van dringendheid voortgegaan moet word met die ondertekening. Gegewe die regering se bereidwilligheid tot goeder trou optrede in die hofsaak, vorm die weerhouding van ondertekening myns insiens nie meer 'n geloofwaardige bedingingsinstrument nie. My departement staan gereed om die ondertekening te fasiliteer en ek sou daarmee wil voortgaan. Ek ontvang gevolglik graag u dringende insette sou u nie saamstem nie.

'n Afskrif van hierdie skrywe word ter inligting aan die Staatspresident en Minister DJ de Villiers gestuur.

Met vriendelike groete

R F BOTHA

Mnr H J Coetsee
Minister van Justisie en van
Verdediging
Kamer 8.10, Presidiagebou
h/v Paul Kruger en Pretoriusstraat
0001 PRETORIA

To: MA792 E NON PROLIFERATION AND DISARMAMENT
MA793 E Sub-dir: Non-Proliferation and Disarm
FROM: MA79 E Sub-dir: Nuclear, Military Liaison and [Word unclear]
DATE: 8 MARCH 1994
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7 March 1994

Dear Colleague

ISC – COURT CASE

With reference to the meeting held on 15 February 1994 with the State president and the decision to request Ambassador Schwartz in Washington to make a full analysis of the situation and to provide me with such, allow me to bring you up to speed with developments in this regard.

Parallel to Ambassador Schwarz's talks with the American Department of State, I authorised, with your approval, Ambassador Schwarz to let Mr Philip Hare (legal representative of the Embassy in Washington) get in touch with the Philadelphia state prosecutors to hold exploratory talks (without compromising anyone or to perform any negotiations). The most important points of Ambassador Schwarz's report on his talks with the US Assistant Secretary of State for African Affairs, Mr George Moose, is hereto attached as appendix A and for background Mr Hare's report on his exploratory talks with the state prosecutors is attached as appendix B.

During the talks between Mr J Moolman and Mr T de Waal from Armscor and my Director-General, Mr LH Evans, held on 24 January 1994, it was proposed that you direct a letter to Miss J Reno, US Attorney General, to confirm the willingness of the government's full co-operation in the ISC court case. My department consulted with Ambassador Schwarz in this regard and although he agrees with the concept of a letter directed to Miss Reno, he made the following suggestions:

- That you in the meantime direct a letter to him (Ambassador Schwarz) where in you inform him that:
  - Mr Barry Simon, Armscor's US legal representative, be withdrawn for the moment from the negotiations process and thus he has no mandate to act on behalf of Armscor and the government (Ambassador Schwarz wants to present this letter to the prosecutors and the Department of Justice to emphasise the seriousness of the government's involvement in this matter);
  - Authorisation be granted to Mr Hare to negotiate (with the state prosecutors); and
  - You in terms of the American diplomatic note dated 5 January 1994 confirm to Ambassador Schwarz that "the Government of South Africa wishes to clarify its position on the resolution of the Armscor matter and states that it will offer co-operation" and that an undertaking in good faith be given by the South African government to negotiate in this regard.
- A meeting be arranged between Mr Hare and the state prosecutors with the aim to convince them to reduce the demands made by the US and also to present your letter to Ambassador Schwartz.
- Ambassador Schwartz continue to arrange an appointment with the officials of the US Department of Justice.
- Once informal assurances are received from the prosecutors / Department of Justice that the proposed content of your letter to Miss Reno is acceptable, that your letter be send to Miss Reno.
- Any documentation to assist the US Justice authorities and related to the ISC – court case, will only be made available after the meeting between yourself and the Attorney General.

With reference to sub paragraph 4 above I took the liberty to attach hereto a concept letter to Miss Reno for your consideration. (Appendix C)

Although the above mentioned suggestions and specifically the approach that you direct a letter to Miss Reno, differs from the US state prosecutors' suggestion of a comprehensive undertaking of good faith, I am of the opinion that the handling of the matter on government level in this current time frame has become essential. Your letter to Miss Reno would then be against the background that the decision of the South African Government to co-operate in good faith was a political decision and that this should be conveyed by you to the US Attorney General along the formal intergovernmental channel.

Against the background of the decision to temporary postpone the signing of the MTCR related bilateral agreement with the USA, I am of the opinion that wrt the above mentioned and in light of the other factors discussed in the meeting with the State President, the signing should proceed as a matter of urgency. Given the government's willingness to act in good faith in the court case, the withholding of signature of the agreement is no longer deemed as a credible bargaining tool. My department is ready to facilitate the signing and I would like to continue with that. I am awaiting your urgent input should you not agree.

A copy of this letter is send for information to the State President and Minister DJ de Villiers.

Kind regards

R F Botha

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0001 Pretoria