Democratic states that have a domestic arms industry with an export capacity face a fundamental moral dilemma: the arms and the military equipment that they sell or donate to other states can directly or indirectly violate the core principles and values upon which democracies have been established, especially the protection of human rights. Hence, most arms exporting democracies, including South Africa, apply human rights protection criteria when determining arms export destinations. Nevertheless, human rights concerns are often weighed up against competing national and diplomatic considerations.

This balancing act is explicitly outlined in South Africa's National Conventional Arms Control Act, which requires the South African government when considering arms export applications to, amongst other considerations: safeguard the national security interests of South Africa and its allies; avoid arms transfers to governments that systematically violate or suppress human rights and fundamental freedoms; adhere to international law, norms and practices and South Africa's international obligations and commitments, including UN Security Council arms embargoes; and avoid the export of arms that may be used for purposes other than the legitimate defence and security needs of the importing government. The main purpose of this arms export criteria is an attempt to ensure that South Africa is a responsible and reliable arms trader.

Over the past 15 years, South Africa's adherence to these criteria has been widely criticised. The criticism primarily relates to incidences where national, diplomatic and other considerations appear to have trumped human rights imperatives. In 1997, South Africa was criticised both internationally and domestically for arms transfers to Rwanda at a time when military groups linked to the Rwandan government were allegedly responsible for human rights abuses. In 2008, the South African government authorised the transport of Chinese arms to Zimbabwe via South African territory at the time of an acute domestic crisis in that country. However, due to legal action by civil society groups, the delivery of this arms consignment via South African soil was blocked. In 2009, the Democratic Alliance, the official opposition, accused the South African government of authorising "dodgy" arms deals to states with questionable records of respecting human rights and fundamental freedoms, citing Iran, North Korea, Syria, Venezuela and Zimbabwe. During July 2010, the Ceasefire Campaign accused the South African government of selling arms to countries that are "problematic" in terms of internal oppression and respecting fundamental freedoms. The Ceasefire Campaign made reference to Algeria, Colombia, India, Saudi Arabia and the United Arab Emirates.

Indeed, a number of states to which South Africa exports arms arguably do not adhere to the high standards of human rights protection that are enshrined in the South African Constitution. The reasons for this state of affairs are not easily palpable, but appear to relate to the nature of the arms control legislation, the imperatives of South Africa's national interest and foreign policy, as well as dynamics within the domestic and international arms industry.

The National Conventional Arms Control Act does not require the government to adhere to specific and quantifiable human rights benchmarks. The human rights criteria in the Act are entirely subjective, reinforced by the requirement that arms export authorisations be made on a case-by-case basis. The advantage of this approach is that the government is in a position to consider current and relevant human rights information prior to making a decision on whether to grant an export permit or not. However, a key disadvantage is that there may be significant inconsistencies in South Africa's arms exports in terms of the respect for and protection of human rights.

There is also no clear prioritisation of criteria within the Act. This can be problematic where the South African government has strong national or diplomatic interests to grant an
export permit, but the recipient government does not adhere to a high standard of human rights protection. In such circumstances, human rights considerations may play second fiddle to national and diplomatic interests. This was arguably the case in the incident involving the granting of the permit for arms to be transported to Zimbabwe in 2008.

For decades the South African government has invested substantial resources in the domestic arms industry. Since the 1980s, due to shrinking demand for defence products and services in South Africa, a key strategy for the industry’s survival has been to target the export market. However, the South African industry is a minnow compared to the industries of the United States, the European Union and China. Consequently, the South African arms industry often has limited options as to which states it can sell its products and services. Added to this, states with exemplary internal human rights records and that are not engaged in a foreign war are not major arms consumers.

Given this state of affairs, South Africa is likely to continue to export arms to some states with questionable human rights records in the foreseeable future. However, individuals and organisations concerned with the protection of human rights may be able to mitigate this trend. Options include strategic public pressure and the lobbying of relevant Members of Parliament to hold the Executive accountable for its approval of arms export applications. The enactment of amended arms control legislation that allows for broader public scrutiny of South African arms exports has been indefinitely delayed, and campaigning on this issue could be a useful departure point.

Guy Lamb