

control arms

Mr. Peter Harder
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Dear Mr. Harder,

The G8 has committed itself to addressing the problems of Africa. One of those problems – that we witness every day in our work - is the uncontrolled proliferation of small arms, which has led to a massive human toll in lost lives, lost livelihoods, and lost opportunities to escape poverty. Of the 650 million small arms in the world, the majority are outside state ownership, and consequently there are no guarantees about how they will be used.

Irresponsible arms transfers are a proven catalyst for conflict, increasing the incidence of conflict, prolonging wars once they break out, increasing the lethality and worsening the human cost. A typical civil war imposes an unsustainable economic burden on low income countries and makes it virtually impossible for these countries to achieve the Millennium Development Goals.

The G8 has already made some useful steps to control arms, stressing the importance of regulating exports of small arms in the Miyazaki Initiatives for Conflict Prevention (2000), committing G8 states to refuse arms exports if there is a risk they will be used for repression or aggression. And in 2003, the G8 headlined peace and security in Africa, and promised to help African governments curb illegal arms trafficking.

However these efforts are not in proportion to the G8's particular responsibility. As well as comprising the most influential countries in the world with a concomitant responsibility for leadership in addressing the world's problems, the G8 includes the world's five biggest arms exporters - together accounting for 84% of all conventional arms exports worldwide.

G8 countries must therefore commit themselves to working with others to develop:

1. **principles** for international arms transfers, based on 'states existing responsibilities under relevant international law' – a commitment made by all states in the UN Programme of Action on small arms (Section II, Paragraph 11). Such principles have already been articulated in a draft Arms Trade Treaty – see enclosed.
2. a new **instrument** for international arms transfers which would incorporate these principles. International controls are needed because the arms trade is an international problem; national and regional controls are simply not enough as suppliers/brokers move their operations to the weakest link in the supply chain. Such an instrument should be legally-binding.

The principles and new instrument are endorsed by the UN Secretary General's High-Level Panel on Threats Challenges and Change, which recommends a legally binding agreement on transfers. The importance of strengthened arms transfer controls is also reflected in the actions of African countries: the *ECOWAS Moratorium* on the import, export and manufacture of small arms is currently being strengthened into a legally binding

convention, and detailed implementation guidelines on arms transfers for the *Nairobi Protocol* (a legally binding agreement signed by 11 countries in the Great Lakes and Horn of Africa) are currently under ministerial review.

A strong statement from the G8, supporting the development of global principles and a new international instrument, based on the attached Arms Trade Treaty principles, is both necessary and achievable. Arms exports from **all** G8 countries are subject to similar principles in the EU Code of Conduct for arms exports, and/or the OSCE Principles for Conventional Arms Transfers and/or the Wassenaar Arrangement Best Practice Guidelines for Exports of Small Arms and Light Weapons.

We welcome actions by Canada, the UK, and France to advance stronger arms transfer controls. Canada recently committed itself to taking forward the issue of arms transfers within the Human Security Network and developing a caucus of interested states, and played a strong role in a recent meeting on global principles in Tanzania. France was instrumental in the development of the EU Code of Conduct, and previously proposed an International Code of Conduct on arms exports within the G8 framework. The UK will take to the G8 the recommendation of the UK-sponsored "Commission for Africa" that "as a matter of priority and no later than 2006, the international community should open negotiations on an international Arms Trade Treaty".

Every day, millions of men, women and children are living in fear of armed violence. We therefore urge the Canadian government to encourage the G8 to endorse the attached principles of the draft Arms Trade Treaty and the need for a new international instrument to control arms transfers.

Yours sincerely,



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cc: Hon. Pierre Pettigrew, Hon. James Peterson

Global Principles for International Arms Transfers

Inspired by Nobel Peace Laureates, drafted by international lawyers, and spearheaded by NGOs and governments alike, the following principles bring together States' existing obligations under international law in respect of the international transfer of arms.

To engage governments on the need for a new international instrument on arms transfers, these principles have been pulled together into a concept paper entitled 'The Framework Convention on International Arms Transfers', more popularly known as the Arms Trade Treaty or ATT.

The principles laid down here are to be applied as a minimum and do not prejudice the application of more stringent national, regional or international rules.

Principle 1: Effective state control

All international transfers of arms should be carried out in accordance with national laws and procedures, and subject to written state authorisation, on a case-by-case basis.

This basic underlying principle states that transfers must be subject to effective state control.

Principle 2: Express Limitations

States shall not authorise international transfers of arms which would violate their obligations under international law. These include:

1. Obligations under the Charter of the United Nations – including
 - a. decisions of the Security Council such as those imposing arms embargoes
 - b. the prohibition on the use or threat of force
 - c. the prohibition on intervention in the internal affairs of another State
2. Any other treaty or decision by which that State is bound, including:
 - a. Binding decisions, including embargoes, adopted by relevant international, multilateral, regional and sub-regional bodies,
 - b. Prohibitions on arms transfers that arise in particular treaties which a State is party to, such as the 1980 Convention on the Use of Certain Conventional Weapons Which May Be Considered Excessively Injurious and the protocols and the 1997 Anti-personnel Mines Convention
3. Universally accepted principles of international humanitarian law:
 - a. Prohibition on the use of arms that are of a nature to cause superfluous injury or unnecessary suffering
 - b. Prohibition on weapons that are incapable of distinguishing between combatants and civilians
4. Transfers which are likely to be diverted for any of the above.

This principle codifies existing limitations under international law on States' freedom to transfer and to authorize transfers of arms. It focuses on circumstances in which a state is already bound and thus these are express limitations. The language is clear – 'States shall not'.

Principle 3: Limitations based on likely use

States shall not authorize international transfers of arms where they are likely to be used:

1. for breaches of the UN Charter and customary law rules relating to the use of force;
2. in the commission of serious violations of human rights;
3. in the commission of serious violations of international humanitarian law, including genocide and crimes against humanity;
4. to carry out terrorist acts or support or encourage terrorism

5. or be diverted and used to commit any of the above.

Principle 2 addressed particular types of weapons and recipients where the transfer is prohibited – in such circumstances, all transfers are illegal. In contrast in Principle 3, the limitations are based on the use or likely use of the weapons to be transferred. The responsibility of States not to authorise transfers under this principle flows from the obligation not to participate in the internationally wrongful acts of another State. This universally accepted principle is codified in the *Articles on Responsibility of States for Internationally Wrongful Acts* and widely regarded as a principle of customary international law applicable to all States. Pursuant to this principle, States must refrain from authorising transfers in circumstances when they know or ought to know that weapons of the kind in question are likely to be used to commit violations of international law.

Principle 4: Factors to be taken into account

States Parties shall take into account other factors before authorizing an arms transfer, including:

1. the recipient's record of compliance with commitments and transparency in the field of non-proliferation, arms control and disarmament.

States should not authorize the transfer if it is likely to:

2. be used for or to facilitate the commission of violent crimes;

3. adversely affect regional security;

4. adversely affect sustainable development;

5. involve corrupt practices;

6. contravene other international, regional or sub-regional commitments or decisions made, or agreements on non proliferation, arms control and disarmament.

7. be diverted for any of the above.

Principles two and three are core provisions based on states existing obligations under international law. In contrast, the items included in Principle 4 are not currently enshrined in law but are found in a growing body of regional and international instruments on arms transfers, as well as the Programme of Action – thus they reflect emerging norms.

States are required to consider the possible effect of the transfer of arms on these factors. As these are not legal obligations, there is a weaker obligation on states – note that the language used is 'states should take into account', rather than 'states shall not'. It imposes a positive duty of states to address these issues. Where it appears that the transfer may have such an effect, this principle establishes a presumption against authorisation.

Principle 5: Transparency

States shall submit annual reports on international arms transfers to an international registry.

The overall objective of this principle is increased transparency on arms transfers. States should report on international arms transfers from or through their territory or subject to their authorisation. These reports should be sent to an International Registry of International Arms Transfers.