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Amnesty International Secretary General Irene Khan's letter to companies on the trade of illicit arms

Dear Global Compact participant,

I am writing to you, as the head of a company supporting the principles of the Global Compact, the initiative of United Nations Secretary-General Kofi Annan. As you know, Amnesty International is represented on the Advisory Panel of the Global Compact. We are developing an important initiative, which is particularly relevant as leaders of the Group of Eight leading industrialized states meet in Canada.

The focus of interest at this year's G8 meeting is going to be on Africa, with particular emphasis on the priorities being developed by the New Partnership for Africa Development (Nepad), an inter-African initiative to promote development, democracy and human rights.

We believe that your company, which supports the principles of corporate social responsibility, and has specifically accepted the importance of the nine principles of the UN Global Compact, is in a position to play a particular role. In our discussions with companies around the world, we have often heard that many companies that operate in politically unstable regions, have three paramount concerns. First, the safety and security of their employees. Second, the protection of the company's property from damage and destruction. Third, the protection of the physical infrastructure and the people around the project in the local community.

As Amnesty International pointed out in the recent UN dialogue of Business in Zones of Conflict, one of the prime factors endangering the safety and security of employees and local communities is the uncontrolled proliferation of small arms in and near zones of violent conflict. Soldiers representing warring factions, armed opposition groups, and indeed, government forces, have access to small weapons, which are often used indiscriminately, causing widespread human rights abuses and violations.

In order to minimize risks to their employees, companies often appeal to the local and national police and law enforcement agencies, and hire security firms, state owned or private. Frequently, these officers and security company staff are not trained in practices consistent with international human rights standards such as the United Nations Basic Principles on the Use of Firearms for Law Enforcement Officials, nor are they aware of their elementary obligations as set out in the United Nations Code of Conduct for Law Enforcement Officials. Copies of these two UN documents are enclosed. Copies of relevant Amnesty International documents are also enclosed.

Companies' operations have been seriously disrupted and economic development undermined by human rights abuses during violent clashes between armed opposition groups, government

security forces, and private security personnel. In our dialogue with several large companies, executives have often complained that the easy availability of small arms in some countries makes crime more violent, more lethal and more prolonged. We believe now you have an opportunity to help address this situation.

International consensus is developing to implement a Program of Action agreed by the United Nations Conference on Illicit Trade in Small Arms and Light Weapons held in July, 2001.¹ Tracing, marking, identifying, effectively regulating and eliminating the proliferation of these weapons has become a priority for most countries around the world.

Civil society, including hundreds of NGOs, is part of this move. The issue now is whether there is enough political will to enhance administrative and law enforcement capacity to put this Program of Action into practice.²

We therefore invite you to participate in this initiative to promote (a) the creation of professional law enforcement capacities fully consistent with international human rights standards and subject to oversight and accountability; and (b) an international system of restraint and responsibility in the transfer of arms, based upon the fundamental values of human rights and the international rule of law. We believe there is a strong business case for such an initiative from a company like yours, and it would be fully consistent with the principles of the Global Compact.

Please use the United Nations documents cited above and see the accompanying attachments to this letter, which outline the initiative being developed internationally by Amnesty International and other Nobel Peace Laureates. This initiative calls for the adoption of a set of binding principles regarding the international transfer of arms, initially by the most powerful states, the Group of Eight. The principles are based upon existing international law.³

We urge you to use your influence to impress upon the head of state and relevant government ministers and officials in the countries in which you are headquartered and operate, as well as the leaders of G8 states, to firmly commit themselves to work towards the successful conclusion of a binding agreement.

We also invite you, to state in public your commitment to the cause of effective control and monitoring of small arms because of corporate commitment to protecting human rights. You could do this in speeches on corporate social responsibility, or through your comments on public affairs, or in any other way you deem appropriate.

We also call upon your company to put in place policies which make sure that your own personnel and any security forces engaged by you will be familiar with, and committed to international guidelines and standards for the use of force in policing, such as the UN Basic Principles on the Use of Force and Firearms and the UN Code of Conduct for Law Enforcement Officials.

We would like to hear from you about any action your company takes on this issue. Representatives from Amnesty International's section in your country will be contacting your office, to provide further information.

Should you have any further questions, please let us know at business@amnesty.org.

Sincerely,

Irene Khan
Secretary-General
Amnesty International

APPENDIX: An International Agreement on Arms Transfers

Amnesty International and other Nobel Peace Laureates and their supporters proposed a Framework Convention on International Arms Transfers to the 2001 United Nations Conference on Small Arms. It sets out certain core principles and mechanisms based upon existing international law relating to international transfers of arms. These would require that all states, including the G8, shall:

1. Adopt, and apply in accordance with states domestic laws and procedures, a requirement that all international arms transfers be licenced.
2. Not license international transfers of arms which would violate states' obligations under international law. These shall include:
 - (a) obligations arising under decisions of the United Nations Security Council (i.e. Security Council embargoes on transfers of weapons to specific states taken by the Security Council under Chapter VII of the UN Charter);
 - (b) obligations arising under international treaties by which the Contracting Parties are bound (i.e. the 1972 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, the 1993 Chemical Weapons Convention, the two most recent protocols to the 1980 Convention on the Use of Certain Conventional Weapons Which May Be Considered Excessively Injurious, and the 1997 Anti-personnel Mines Convention);
 - (c) transfers of arms the use of which is prohibited by international humanitarian law because they are incapable of distinguishing between combatants and civilians or are of a nature to cause superfluous injury or unnecessary suffering; and
 - (d) obligations arising under customary international law. (i.e. It is well established that transfers of weapons by one state into the territory of another without the latter's consent may amount to unlawful interference in the affairs of the recipient state).

3. Not license international transfers of arms in circumstances in which there exists a reasonable risk that the arms would:
 - (a) be used in violation of the prohibitions on: the threat or use of force; threat to the peace; breach of the peace or acts of aggression; unlawful interference in the internal affairs of another state;
 - (b) be used to commit serious violations of human rights;
 - (c) be used to commit serious violations of international humanitarian law applicable in international or non-international armed conflict;
 - (d) be used to commit acts of genocide or crimes against humanity;
 - (e) be diverted and used to commit any of the acts referred to in the preceding sub-paragraphs.

4. Avoid licencing international transfers of arms in circumstances in which there are reasonable grounds for considering that the transfer in question would:
 - (a) be used for or to facilitate the commission of violent crimes;
 - (b) adversely affect political stability or regional security;
 - (c) adversely affect sustainable development; or
 - (d) be diverted and used in a manner contrary to the preceding sub-paragraphs.

5. Establish such mechanisms of national law as are necessary to ensure that these requirements are effectively applied in accordance with the minimum standards (e.g. the need for a transaction-by-transaction licensing mechanism; details of the minimum information that must be disclosed by applicants for licences; as well as rules relating to the licensing process more generally, such as mechanisms for parliamentary scrutiny, public accountability and, possibly, national complaints mechanisms);

6. Establish an international registry of international arms transfers, and
 - (a) submit to the international registry an annual report on all aspects relating to arms transfers from or through their jurisdiction;
 - (b) enable the international registry to publish an annual report reviewing the annual reports of all states.

7. Agree that the obligations set out above shall be applied as a minimum standard, without prejudice to any more stringent national or other requirements.

8. Supplement this agreement by further joint measures.

9. For the purpose of this agreement, define "arms" as:

- a) Small arms and light weapons designed for personal use or for use by several persons serving as a crew;
- b) Major weapons systems, their parts, components, ammunition and related equipment;
- c) Paramilitary, police and security equipment, its parts, components, accessories and related equipment;
- d) Military, police and security training, including the provision of expertise, knowledge or skill in the use of weapons, munitions, paramilitary equipment, components, and related equipment above;
- e) Sensitive military and dual-use technologies.

And define "international transfers" as:

The movement of arms between two or more jurisdictions pursuant to an agreement regardless of whether for consideration or otherwise.

Nobel Peace Laureates who support the establishment of a treaty to control international arms transfers include the American Friends Service Committee, Amnesty International, Oscar Arias, Norman Borlaug, His Holiness the Dalai Lama, John Hume, International Physicians for the Prevention of Nuclear War, Mairead Maguire, Rigoberta Menchu, Adolfo Perez Esquivel, Jose Ramos Horta, Joseph Rotblat, Aung San Suu Kyi, Reverend Desmond Tutu, Lech Walesa, Elie Wiesel, Betty Williams, and Jody Williams.

Notes:

Draft Article 16, as adopted in August 2000 by the International Law Commission in its Draft Articles on State Responsibility, provides that:

"A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if:

- a) That State does so with knowledge of the circumstances of the internationally wrongful act; and
- b) The act would be internationally wrongful if committed by that State."

Thus, in situations where a state carries out an act which is not necessarily wrongful itself, but which assists a second state in the commission of a violation of international law, the first state may be responsible for participating in the wrongful act committed by the second, provided it had been aware of the intended wrongful act.

Wrongful acts include the commission of serious violations of human rights. These would include violations of the non-derogable provisions of the 1966 International Covenant on Civil and Political Rights and of regional instruments such as the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, the 1969 American Convention on Human Rights or the 1980 African Charter on Human and Peoples' Rights, as well as serious violations of instruments focusing on specific issues, such as the 1984

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the 1979 UN Code of Conduct for Law Enforcement Officials, and the 1990 UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

Wrongful acts also include the commission of serious violations of international humanitarian law, crimes against humanity or acts of genocide. A recent and exhaustive list of serious violations of international humanitarian law applicable in both international and non-international armed conflicts as well as of crimes against humanity was laid down in the 1998 Statute of the International Criminal Court. These provisions are consistent with the existing obligation of High Contracting Parties to the Geneva Conventions.

The 1948 Convention on the Prevention and Punishment of the Crime of Genocide lays down a definition of the crime of genocide. The criminal acts covered are not only genocide but also conspiracy to commit genocide. It is unlikely that a state that assisted in the perpetration of a genocide by providing the weapons with which the genocide was committed would have the intent to "destroy or whole or in a national, ethnical, racial or religious group" required by the Convention for its acts to amount to complicity in genocide. In situations where this intent is absent, the supply of weapons in circumstances in which it is apparent that they will be used to perpetrate a genocide will nevertheless amount to a violation of international law.

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1 The UN Conference recognised the need for such responsibilities to be codified in global instruments, by agreeing to:

"Strength(en) or develop agreed norms or measures at the global, regional or national levels that would reinforce and further co-ordinate efforts to prevent, combat and eradicate the illicit trade in small arms and light weapons in all its aspects" (Section I, Paragraph 21(a))

2 The UN Programme of Action issued at the Conference included the following reference to the need for strict arms export controls:

"To assess applications for export authorisations according to strict national regulations and procedures that cover all small arms and light weapons and are consistent with States' existing responsibilities under relevant international law taking into account in particular the risk of diversion of these weapons into the illegal trade. Likewise, to establish or maintain an effective national system of export and import licensing or authorisation, as well as measures on international transit, for the transfer of all small arms and light weapons, with a view to combating the illicit trade in small arms and light weapons" (Section II, Paragraph 11)

3 The rules are:

Golden rule of supply:

No Government should authorize any transfer of arms where there is a clear risk that these items will be used by the likely recipient to commit:

- * grave human rights abuses;
- * war crimes;
- * crimes against humanity.

Golden rule of demand:

Governments should ensure that the circulation and use of arms is strictly limited in terms of UN human rights standards and international humanitarian law so that:

- * use by law enforcement officials is only permitted when strictly unavoidable in order to protect life;
- * military use is only permitted if proportionate, targeted, and in accordance with international humanitarian law;
- * surplus and illegal weapons within the population are collected and destroyed in situations where they could contribute to serious human rights violations.