

## **INTERNATIONAL CODE OF CONDUCT ON ARMS TRANSFERS**

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#### **(CHECK AGAINST DELIVERY)**

Amnesty International, as a Nobel Peace Laureate, supports the initiative of a number of Nobel Peace Laureates led by Dr Oscar Arias to jointly promote an International Code of Conduct on Arms Transfers. Indeed, Amnesty International has participated in the drafting of the Code and is urging its members in over 100 countries to bring the Code to the attention of governments, politicians and the general public.

The Universal Declaration of Human Rights states that every human being has the inalienable right to life, liberty and security of person. The Geneva Conventions and Protocols prohibit arbitrary and summary executions, indiscriminate killings, mutilation, torture, cruelty and hostage-taking.

Yet today mass violations of these basic rights are carried out in many armed conflicts around the world by government and armed opposition forces who are given virtually unrestricted access to arms and associated military equipment and training. Many powerful governments which illegitimately deny asylum to refugees fleeing armed conflict zones nevertheless supply arms to the perpetrators of abuses from which the refugees are fleeing.

The same easy availability of arms and para-military equipment and services encourages many governments to arbitrarily detain, murder, torture and mistreat unarmed civilians who are identified as political opponents - those violating governments know the supplies will continue.

Here are just a few cases which Amnesty International has dealt with recently:

- Despite further human rights violations against demonstrators by the Indonesian security forces using military and riot control vehicles in 1996, new contracts for the supply of light tanks, armoured vehicles and water cannon to Indonesia were approved by the German and United Kingdom governments. These contracts were approved despite a ban on the transfer of armoured vehicles, small arms and riot control equipment by the USA. An official audit report finding that a UK program to train Indonesian police had not included respect for human rights, contrary to the declared aim of the program.
- Amnesty International obtained US government documents in November 1995 which showed that US weapons exported to Colombia to fight drug trafficking actually went to Colombian army units responsible for deliberate and arbitrary killings of civilians and other grave human rights violations.

- Military procurement documents found in eastern Zaire in late 1996 provided further confirmation of a report published by Amnesty International in June 1995 of secret arms flights involving United Kingdom and Nigerian traders delivering weapons and ammunition from Albania and Israel to Rwandese armed forces in eastern Zaire in mid-1994 when these forces were committing a genocide in Rwanda. But none of the traders have been prosecuted.
- Amnesty International sections in Europe and North America are pressing their governments to stop transfers of military helicopters and military transport vehicles which were known to have been used to facilitate political killings, “disappearances” and torture by the Turkish armed forces. In November 1996, the Turkish Government announced that it would no longer seek to purchase a number of military attack helicopters from the USA because the US government was “stalling” the order to clarify their possible use in human rights violations. The Turkish Government said it wanted to lease the helicopters from France or Russia instead. The French and Russian authorities have nevertheless allowed their helicopter manufacturing companies to launch a vigorous sales drive in Turkey.
- Amnesty International sections in Europe and the USA are also questioning the transfer of attack helicopters, fighter jets and artillery by the US government to the Israel armed forces following atrocities committed by the Israeli armed forces in the Lebanon using such equipment. Significantly, the US government has taken the unusual step of refusing to even reply to Amnesty’s six questions.
- In September 1995 it was revealed that US army manuals written in Spanish which were used to train military officers at the School of the Americas from the 1960s until at least 1991 contained instructions recommending the use of bribery, blackmail, threats, extortion and torture.

It is scandalous that in the closing years of the Twentieth Century the governments, companies and individuals who supply such military, para-military and security equipment, technology and training, as well as the associated logistics and finance, are still in most cases not subject to proper control.

There is virtually no public transparency of their activities, let alone parliamentary scrutiny of the proposed transfers. There is scant evidence from governments that the human rights record of their intended customers is fully taken into account before export licences are granted and the arms are shipped. There is almost no monitoring or accountability of the end-use of such arms in terms of international human rights and humanitarian law criteria. Arms brokers and even traffickers have taken advantage to circumvent and evade what few controls exist.

Unless the international community can agree on basic principles for governments to establish fair and effective systems of arms control, there will be little chance of ending this trade in terror. The Nobel Laureates’ Code elaborates such basic principles, which cover:

- respect for fundamental human rights
- respect for humanitarian law
- support for transparency and independent monitoring of arms transfers.
- light weapons, para-military equipment, technology and training.

- financial and logistical support for the transfer of such items.
- an expanded role for the United Nations and other relevant inter-governmental organizations.

Control measures on arms to protect human rights can only begin to be effective if they cover all types of military, security and police transfers including the full range of equipment, technology, training and personnel, as well as provide for the effective monitoring of all actors involved in the process: producers, reconditioners, wholesalers, retailers, brokers, bankers, official aid donors, transporters, insurers and, most importantly, the end-users.

Consider, for example, how important it is to include the provision of military, security and police training to foreign personnel. While such training is often linked by powerful governments to the purchase of equipment and to development assistance programs, there is an absence of common standards amongst states regarding the human rights content and purposes of such training. Rigorous human rights criteria for the selection of candidates, trainers, curricula, and post-course monitoring are not agreed or made explicit. Nor is there a common requirement that effective systems of accountability and human rights protection should be in place in the recipient country as a precondition for military, security and police training.

The same is true for the provision of logistical and financial support for military, security and police transfers. This is not subject to common standards of scrutiny by states. Governments cite commercial confidentiality or administrative cost as reasons not to disclose important data on financial support for such transfers, or do not disclose details of transshipment licences for weapons. In the present context of internationalisation of trade, it is crucial that such information about military transfers is available to parliaments.

Accountability in respect of military and security transfers must extend to information regarding the likely end use. Amnesty International is concerned that sufficient information must be available as to the recipient of the transfer before an agreement is finalized so that a proper assessment can be made of the human rights consequences of the transfer. In each case, there must be a human rights impact assessment which includes reports on the patterns of use of military, security and police transfers.

Where a military, security or police transfer is approved on the basis that the goods and expertise will be used in a particular way, that use must be specified in an end-use certificate and monitored. In the event that reliable evidence comes to light that the transfer has been used in serious human rights violations, the matter should be discussed by the sending government and representatives of the international community with the user's government. Any further transfers of that type should be immediately stopped in accordance with the terms of a clause relating to human rights in every end-user certificate issued by the sending government until satisfactory measures have been taken to prevent the repetition of such violations. This would also mean that spare parts, maintenance, training and other contractual obligations would cease when the violation was confirmed. The willingness of the authorities in the recipient country to cooperate with inquiries could then be taken into account in any decision on further transfers of the same type.

The Nobel Laureate's Code is relevant to all serious attempts to set up better arms control. Since 1989 there have been repeated appeals in the United Nations and other inter-governmental fora from less powerful states to control the "destabilizing" flows of illicit small arms, often associated as they are with other forms of illicit trafficking. The United Nations

Panel of Governmental Experts on Small Arms will soon provide a report to the UN Secretary General. It is expected that this will include several recommendations including the establishment of better customs control at borders. However there is little sign so far that the violation of fundamental human rights will be officially recognized by the Panel as a root cause and a major consideration in the “destabilizing” flows.

A number of government representatives and officials from powerful states have expressed their interest in supporting the concept of such a Code. The European Council agreed in Luxembourg in 1991 and Lisbon in 1992 to abide by a set of eight “Common Criteria for Arms Exports”. The Criteria set out conditions which should govern all decisions by European Union (EU) governments to issue licences for the export of arms and ammunition. One condition is "the respect of human rights in the country of final destination". Other conditions also relate to the overall protection of human rights. In 1993 the EU Common Criteria formed the basis for a new set of Principles governing arms exports adopted by member states of the Organization for Security and Cooperation in Europe, in which EU Member States participate. However, neither these “Principles” nor the eight Common Criteria are binding on Member States, and there is no common interpretation of how they should be most effectively implemented. Amnesty International hopes that a campaign in support of the Nobel Laureate’s Code will have a positive impact on these and other inter-governmental fora.

There are, of course, powerful governments which have been historically opposed to any control measures on conventional arms. Nevertheless, we will continue our efforts to convince all governments that it is in everyone’s interest to regulate arms more strictly in terms of international human rights criteria. A global campaign for an International Code on Arms Transfers can be built involving thousands of non-governmental organizations, religious bodies, professional and other associations, as well as sympathetic governments. We will step up our campaigning for the introduction of measures contained in the Nobel Laureate’s Code - measures which must be included in binding national and international laws.

In conclusion, let me reaffirm that Amnesty International is in principle opposed to military, security and police transfers which can reasonably be assumed to contribute to human rights violations such as torture and ill- treatment, “disappearances”, or deliberate and indiscriminate killings. That is why we urge everyone to stand up and campaign for the implementation of the principles in this Code.

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**March 1997**

## **INTERNATIONAL CODE OF CONDUCT ON ARMS TRANSFERS**

The following Code has been drawn up and supported by several Nobel Peace Prize Laureates who are appealing to all governments to take urgent practical steps to implement it.

### **PREAMBLE**

Gravely concerned that international transfers of major conventional weapons, small arms and light weapons, and ammunition result every year in human misery and countless deaths, the majority of which are suffered by civilian populations;

Recognising that, according to the UN Charter, every state has a right to individual and collective self-defence against acts of aggression, and that every human being has the inalienable right to life, liberty, and security of person, as stated in the Universal Declaration of Human Rights;

Convinced that conflicts should be settled by peaceful means rather than by the use or threat of force;

Alarmed by the excessive stockpiling of conventional weapons and by their increasingly sophisticated and lethal levels of technology, both of which tend to increase instability through regional arms races;

Recognising that internationally transferred arms and ammunition are frequently used to facilitate and commit human rights abuses and to prevent democratic governance, in contravention of international human rights law;

Recognising, moreover, that these weapons transferred internationally are frequently used to commit acts of aggression between and within states;

Mindful that weapons transfers often result in situations whereby vendor states confront enemies that they themselves have helped to arm;

Concerned that international arms transfers can undermine social and economic development in both exporting and importing countries by diverting scarce resources;

Noting that reduction of global military spending in many countries could release substantial resources for the social and economic development of all peoples and would permit dramatic increases in funding for demobilisation and conversion of resources to peaceful, productive uses;

Reaffirming that the United Nations has an important role to play in maintaining international peace and security through the regulation of armaments, as set forth in the Charter;

Welcoming, in this context, steps taken by Member States to provide for transparency and restraint of arms transfers, such as: the United Nations Register of Conventional Arms, the Panel of Governmental Experts on Small Arms, General Assembly resolutions on curbing the

illicit transfer of conventional arms, the standardised reporting form of military expenditures, and the UN Disarmament Commission's Guidelines for International Arms Transfers;

Welcoming also that, in addition to measures of transparency and restraint, regulations on arms transfers have been achieved in specific cases, such as anti-personnel land mine export moratoria and arms embargoes;

Noting, however, that existing regulations are inadequate and that, in order to further the cause of global peace, security, and human rights, a more comprehensive international mechanism to regulate and monitor the transfer of arms must be established.

We hereby call on all governments to abide by the following rules and principles to govern international arms transfers:

## **SECTION I: DEFINITIONS**

### ***Article 1: Arms***

For the purposes of this Code, arms include:

- A. All weapons, munitions, sub-components and delivery systems, including, for example: battle tanks, armoured combat vehicles, military aircraft, artillery systems, military helicopters, missiles, paramilitary police equipment, mortars, machine guns and sub-machine guns, rifles, pistols, anti-tank weapons, mines, grenades, cluster bombs, and all types of ammunition.
- B. Sensitive military and dual-use technologies, including, for example: semiconductor materials, encryption devices, certain machine tools, super-computers, propulsion technology, avionics, thermal-imaging equipment and chemical irritants.
- C. Military and security training including the provision of expertise, knowledge or skill in the use of such weapons, munitions, sub-components and sensitive technologies.

### ***Article 2: Transfers***

For the purposes of this Code, transfers are defined as:

- A. Any transaction resulting in a change of title to, and/or control over, any arms defined in Article 1, and any physical movement of any arms defined in Article 1 from one jurisdiction to another. Such transfers include those conducted in return for direct payment, credit, foreign aid, grants, and goods received as a result of off-set or barter arrangements. They also include transfers of expertise, information, designs, technology or goods under licensing and co-production agreements, leasing arrangements, and arms deliveries in return for which the supplier receives no financial compensation, goods or services. Logistical and financial support for any of the above arrangements are also included.
- B. Any provision by one or more persons to another in a different jurisdiction of expertise, knowledge or skill in the use of arms as defined in Article 1 above.

## SECTION II: PRINCIPLES

Arms transfers may be conducted only if the proposed recipient state, or recipient party in the country of final destination, is in compliance with all of the following principles:

### ***Article 3: Compliance with international human rights standards***

A. Arms transfers may be conducted only if it can be reasonably demonstrated that the proposed transfer will not be used by the recipient state, or recipient party in the country of final destination, to contribute to grave violations of human rights, such as:

- \*genocide and other crimes against humanity, for example “ethnic cleansing”<sup>1</sup>;
- \*extra-legal, summary or arbitrary executions;
- \*enforced disappearances;
- \*torture or other forms of cruel, inhuman or degrading treatment or punishment;
- \*detentions in violation of international human rights standards.

Arms transfers may be conducted only if the proposed recipient state, or recipient party in the country of final destination:

- B. Vigorously investigates, prosecutes and brings to justice those responsible for the above-mentioned violations and abuses of human rights and violations of the laws and customs of war;
- C. Makes it part of the training of the armed forces and law enforcement agencies that anyone ordered to commit the above-mentioned grave violations has a duty to refuse;
- D. Works towards the establishment of impartial and independent bodies that oversee the protection of human rights and does not impede the free functioning of domestic and international human rights organisations.

### ***Article 4: Compliance with international humanitarian law***

Arms transfers may be conducted only if the proposed recipient state, or recipient party in the country of final destination:

- A. Does not engage in, or sponsor, grave breaches of the laws and customs of war as set forth in the Geneva Conventions of 1949, and additional Protocols of 1977, and other rules and principles of international humanitarian law applicable during inter-state or intra-state armed conflict which, for example, prohibit arbitrary and summary execution, indiscriminate killing, mutilation, torture and cruel treatment, and hostage taking;
- B. Provides access on a regular basis to humanitarian non-governmental organisations in time of conflict or humanitarian emergency, including access of the International Committee of the Red Cross to detainees.
- C. Co-operates with international tribunals, either ad-hoc or general, with the power to adjudicate violations of the rules listed under (A).

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<sup>1</sup> Ethnic cleansing is here defined as mass killings and/or forced displacement on the grounds of ethnicity.

**Article 5: Respect for democratic rights**

Arms transfers may be conducted only if the proposed recipient state:

- A. Allows its citizens to choose their representatives through free and fairly-contested periodic elections that feature secret balloting;
- B. Permits its citizens to express their political views through the freedom to speak, disseminate ideas and information, assemble, associate, and organise, including the organisation of political parties.
- C. Has civilian institutions that determine national security policy and control the operations and spending of the armed forces and law enforcement agencies;

**Article 6: Respect for international arms embargoes and military sanctions**

Arms transfers may be conducted only if the proposed recipient state, or recipient party in the country of final destination:

- A. Is in compliance with international agreements relating to arms embargoes and other military sanctions decreed by the United Nations Security Council, whether or not they have been adopted specifically under Chapter VII of the UN Charter;
- B. Is in compliance with arms embargoes and other military sanctions decreed by regional organisations or regional arrangements to which it is a party.

**Article 7: Participation in the United Nations Register of Conventional Arms**

Transfers may be conducted only if the recipient state fully participates in reporting arms transfers to the United Nations Register of Conventional Arms, as defined in United Nations General Assembly Resolution 46/36 L of December 9, 1991.

**Article 8: Commitment to promote regional peace, security and stability**

Arms transfers may be conducted only if the proposed recipient state or recipient party in the country of final destination:

- A. Is not involved in an armed conflict in the region, unless it is recognised by the UN as being engaged in an act of self-defence in accordance with Article 51 of the UN Charter; or is playing a role in a UN-mandated operation;
- B. Is not, as a result of this transfer, introducing weapons beyond those considered appropriate for its legitimate self-defence; or introducing a significantly more advanced military technology into the region;
- C. Recognises the right of other UN-recognised states in the region to exist within agreed boundaries, and agrees to submit disputes relating to territorial claims to third party settlement;
- D. Carries out and/or respects an agreed cease-fire as party to a former conflict;



E. Does not advocate national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, in particular propaganda inciting individuals to overthrow their own or a foreign government, or inflammatory propaganda in pursuit of the vindication of territorial claims;

F. Is not engaged in actions or practices which are likely to lead to a significant number of displaced persons or refugees.

**Article 9: Opposition to terrorism**

Arms transfers may be conducted only if the proposed recipient state, or recipient party in the country of final destination:

A. Has ratified, and is not in violation of, the international conventions and instruments concerning terrorism or acts associated with terrorism, including, for example: the Tokyo Convention on Offences and Certain Acts Committed Onboard Aircraft; the Hague Convention for the Suppression of Unlawful Seizure of Aircraft; the Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civilian Aircraft; the Convention on Offences Against Internationally Protected Persons (New York Convention); the International Convention Against the Taking of Hostages (Hostages Convention); and the Convention on the Physical Protection of Nuclear Material;

B. Is in compliance with the international obligations relating to the apprehension and prosecution or extradition of terrorist suspects found within the territory of the recipient state; or of persons indicted by an international ad-hoc War Crimes Tribunal or by an international criminal tribunal;

C. Does not allow its territory to be used as a base for terrorists, or as a base to supply or direct terrorists.

**Article 10: Promotion of human development**

Arms transfers may be conducted only if the recipient state's expenditures on health and education combined exceeds its military expenditures, unless the recipient state can reasonably demonstrate that such transfers are justified by exceptional needs to counter acts of aggression.

**SECTION III: IMPLEMENTATION**

**Article 11: Enacting the Code**

All States shall introduce national legislation and regulations which ensure effective implementation and enforcement of this Code. Such laws and regulations shall:

A. Incorporate this Code;

B. Provide mechanisms for public scrutiny of all transfers in advance of any decision to authorise a transfer;

C. Require end-use certification which incorporates the principles of the Code into legally binding conditions for the receipt of arms. End-user certification must identify both the recipient, and the actual use to which the equipment will be put;

D. Establish effective channels for receiving information on implementation of the Code from non-governmental organisations.

E. Require States to make a criminal offence any transfers made in violation of the Code, or any attempt to effect, to conspire to effect, or to incite any such transfer.

***Article 12: Monitoring the Code internationally***

All States shall:

A. Provide an annual report on the implementation of the Code to the Secretary-General of the United Nations who will report to the General Assembly;

B. Consult each other and cooperate with each other bilaterally, through the Secretary General of the UN, or through other appropriate international procedures to resolve any problems that may arise with regard to the interpretation and application of the provisions of this Code; and shall consider measures designed to encourage compliance, including collective measures in conformity with international law.

***Article 13: Verification***

C. Parties to the Code shall convene a review two years after this Code comes into operation with the specific purpose of developing an effective verification commission.