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CANADA AND THE ARMS TRADE TREATY

ERNIE REGEHR

The international arms trade has to date avoided serious international control measures, but in the fall of 2006 the UN General Assembly launched a process designed to bring the regulation of military exports into the arms control mainstream. The proposal for an Arms Trade Treaty, designed to make it more difficult to arm repression and fuel conflict, is about to be studied by a UN experts group, and even though formal negotiations are not imminent, the debate has already begun to articulate basic transfer principles and to point to changes in national export control systems that will become necessary. As a second-tier military exporter of some significance, and as an advocate of an arms trade treaty, Canada is in a position to promote controls based on agreed standards, transparency, and peer scrutiny and ensure that international well-being and respect for human rights will become the key test of responsible national export control policies and practice.

Le commerce international des armes a jusqu'à présent échappé aux mesures de contrôle internationales sérieuses, mais l'Assemblée générale de l'ONU a, à l'automne de 2006, entrepris de ramener les exportations militaires dans le giron du contrôle des armes. Le projet de traité sur le commerce des armes, qui vise à compliquer la tâche

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aux fournisseurs qui alimentent la répression et les conflits, est sur le point d'être étudié par un groupe d'experts de l'ONU et, même si des négociations officielles ne sont pas imminentes, le débat a déjà commencé à articuler les principes de transfert fondamentaux et à dégager les modifications des systèmes nationaux de contrôle des exportations qui s'imposeront. À titre d'exportateur militaire de deuxième volet d'une certaine importance et de défenseur du traité sur le commerce des armes, le Canada est en mesure de favoriser des contrôles fondés sur des normes acceptées, sur la transparence et sur l'examen attentif des pairs et de veiller à ce que le bien-être international et le respect des droits de la personne deviennent l'épreuve clé de la politique et des pratiques responsables en matière de contrôle des exportations.

FIRST STEPS TOWARD A TREATY

The military supply lines to Pakistan and Burma (Myanmar), two countries of current notoriety, run directly through the UN Security Council, with branch lines from Europe, Asia, and even Canada. China, France and the United States are the prime military benefactors of Pakistan, while China and Russia do the same for Burma. Germany, Sweden, Switzerland, the Ukraine, Indonesia, and Canada (more on Canadian-built Bell helicopters later) have at various times also tried to help satisfy Pervez Musharraf's prodigious appetite for military goods, while India, Serbia, and the Ukraine have done the same for General Than Shwe.

Arming the world is a big and largely unregulated business, a reality that any despot worthy of the name knows and exploits. But in the fall of 2006 the international community took a first small but formal step toward changing that. The United Nations General Assembly, with only one dissenting vote, agreed to explore the creation of "common international standards for the import, export and transfer of conventional arms."¹ The objective is to stop arming repression and exacerbating conflict, and the resolution preamble sums up the developing consensus that the absence of standards "undermines peace, reconciliation, safety, security, stability and sustainable development."² The proposed instrument is a treaty, and Canada's Ambassador for Disarmament told the Geneva-based UN Conference on Disarmament earlier in 2007 that "a comprehensive, legally-binding Arms Trade Treaty could provide important international and human security benefits, notably by curtailing the irresponsible trade in all types of conventional arms."³

Action in one sense has been a long time coming. Ideas for regulating arms transfers, long advocated by non-governmental organizations, have been on the edges of UN disarmament discourse since its founding. But, given the economic, political, security, and regional interests that meet

and compete in the global arms trade, the idea of an arms trade treaty (ATT) actually made it into the political mainstream with surprising speed after it was proposed in 1997 by Oscar Arias of Costa Rica and a group of fellow Nobel Peace Laureates.

A second step in the process has now also been taken. In 2007 the Secretary-General canvassed and reported on the views of UN member states regarding the feasibility of the treaty. And the third step has already been committed — in 2008 an international Group of Governmental Experts will study the feasibility and parameters of a treaty.⁴ After that the steps will become rather more challenging as they pick their way through the maze of producers, sellers, buyers, brokers, and dealers that populate the buoyant and lucrative international arms trade.

THE INTERNATIONAL ARMS TRADE TODAY

World military spending reached about \$1.2 trillion in 2006.⁵ Some 20 percent of that, \$200 billion plus, went to arms procurement. Most procurement is for the arsenals of advanced industrial states whose primary source is domestic production. Less than a fifth of world military procurement is from foreign sources — i.e. is traded internationally. The US Congressional Research Service (CRS), which annually tabulates global arms sales and deliveries, reports that in 2006 international arms deliveries reached a value of just under \$30 billion, of which about two-thirds went to developing countries.

In the second half of the 1980s the arms trade was more than double current levels, but post Cold War declines in military spending led to significantly reduced procurement budgets. In recent years military spending has returned to or exceeded Cold War levels, but the bulk of the increases are by the US, and because it relies primarily on domestic production for its military equipment, there has not been a corresponding increase in international arms transfers.

The industry that supplies the arms trade is now thoroughly globalized and is at once heavily concentrated and diffuse. Its concentration is owing to the relatively few companies and fewer countries that carry out the complicated systems integration that is now the key function of the prime contractors that produce major weapons systems. It is diffuse because those prime contractors rely on a global network of designers, developers, and builders of the components and subsystems that they assemble into a single, major weapon system.

Canada's military industry, while producing some complete systems like armored vehicles and aircraft, is an important part of the network of component and sub-system suppliers. That network is also expanding to emerging industrial economies outside the usual European-North American axis of production. While some of these produce major weapons systems — e.g. China and India, largely on the strength of robust national demand from their own forces, as well as Brazil, Israel, the two Koreas, Indonesia and South Africa — the Stockholm International Peace Research Institute (SIPRI), which tracks transfers of major weapons systems, identifies at least 30 additional countries that regularly produce military goods for export.

In recent years the permanent five members of the UN Security Council have accounted for 75-90 percent of all arms exports. A secondary group of about five suppliers provides 10 percent or more of all exports, with all others supplying the rest. SIPRI and the CRS in their most recent reports show Canada to be second or third from the top among second tier suppliers (making it the seventh or eighth highest supplier and accounting for about 2 percent of the world total).

CANADA'S MILITARY EXPORTS

While Canada is one of the world's top 10 military suppliers, it ranks high among the minor suppliers rather than being in the company of major suppliers. Even so, this country's overall role is understated in the government's most recent annual report on military exports (figures for 2002). "Canada's military export totals are modest by world standards," says the report summary. "Based on figures in the UN Register, Canada accounts for less than 1 per cent of the world arms market." The UN Register of Conventional Arms, a valuable voluntary reporting mechanism which is discussed briefly below, is not the place to go for reliable arms transfer data. Canada's status as an arms supplier would be more accurately described as modest by Russian and American standards, but high by world standards.

Canadian export figures tabulated by the Department of Foreign Affairs and International Trade (DFAIT), based on mandatory reporting by industry of exports shipped in accordance with export permits, are considerably higher than those reported by SIPRI (\$365 million in 2005) and the CRS (\$600 million in 2006). Methods of collecting data and of valuing transfers differ among all the sources and thus they are not readily comparable. In 2002 Canadian exports to non-US customers reached \$678 million.⁶ Ottawa does not track sales to the US because no export permits are required, but independent tabulation by Project Ploughshares of direct sales to the Pentagon, as arranged through the Canadian Commercial Corporation,⁷ indicates that in 2002 Canadian prime contracts with the US Department of Defence reached \$650 million. During much of the Cold War exports to the US were tallied and showed that, in addition to prime contracts with the Pentagon, Canadian firms subcontracted with US producers for sales that matched the levels of prime contract sales. If that pattern still holds, the value of prime contracts and subcontracts together would be closer to about \$1.3 billion

per year — indicating total annual military exports of about \$2 billion. A note on methodology in the Annual Report for 2002 explains that while figures for exports to the US are not included, they "are estimated to account for over half of Canada's exports of military goods and technology." Based on that conservative estimate, Canada's total military exports for 2002 would still be valued at a minimum of \$1.4 billion.

About 85 percent of Canada's non-US exports in 2002 went to OECD countries, with two-thirds of those sales going to the top four customers — Australia, Germany, South Korea, and the UK. Sales of \$50 million to Saudi Arabia accounted for half of all sales to non-OECD countries. Other non-OECD countries that purchased more than \$2 million in military goods from Canada in 2002 include Bolivia, Botswana, Chile, Egypt, India, Israel, Malaysia, Oman, Singapore, Taiwan, and Thailand.

CURRENT INTERNATIONAL ARMS TRANSFER CONTROLS

The globalization of production, the entry of new sellers into a highly competitive market, and a blurring of the distinction between some civilian and military goods all present significant challenges to effective transfer controls.

While many countries are involved in producing components for a particular major weapon system, only the country where the final assembly and systems integration take place has any control over its final destination. The component suppliers, including Canada, generally control their products only to the point at which they are used in manufacturing, not to their ultimate military use. The United States sometimes exercises control over the re-transfer of US-origin technology in components and subsystems, and has done so with regard to engines produced in Canada by Pratt and Whitney, a subsidiary of US-based United Technologies Corp.

In 2006 the US State Department blocked the sale of Spanish-built transport and maritime patrol aircraft powered by Pratt and Whitney engines to Venezuela on the grounds

that they could have a destabilizing impact on the region. In the case of Canadian-supplied Pratt and Whitney engines for a small Brazil-built counter-insurgency aircraft sold to Columbia there was no US intervention. Under Canadian export guidelines, the direct export of a counter-insurgency aircraft to Colombia would likely be prevented, given the combination of ongoing armed conflict and extensive human rights violations, while the sale of maritime patrol aircraft to Venezuela would likely be approved. In other words, the US intervention in the export control process related to Canadian-built engines produced the opposite result of what Canadian policy would have produced.

The lack of uniform standards also creates incentives for companies in states with more restrictive policies to license production or set up subsidiaries in more permissive states in order to expand the market for their products. The Austrian company Glock, which manufactures pistols, was reported in 2006 to be pursuing a production facility in Brazil — where it would not be bound by EU guidelines.

And with more new producers entering a competitive military market, the pressure to downgrade control standards is inevitable. The domestic markets of emerging producers of components cannot sustain such ventures. Not only is there pressure to maximize exports, but the mechanisms to monitor and regulate exports are frequently not in place.

Current transfer control practices generally assume the same sharp distinction between civilian and military technology that existed in the Cold War era, with controls focused on commodities predefined as military goods. The growing tendency for military establishments to buy commercial off-the-shelf items, like Canadian-built civilian Pratt and Whitney engines and Bell helicopters, has not been matched by an updating of transfer control policies to regulate goods that start life as civilian commodities but get spun into military systems and uses.

As long as countries maintain military and police forces, there will necessarily be international trade in arms. The challenge is to regulate that trade to ensure that it does not lead to excessive and destabilizing accumulations, undermine human security, exacerbate or prolong conflict, or undermine sustainable development. This is not a challenge beyond the capability of the international community, and there are in fact significant precedents for setting international controls and standards to regulate cross-border movement of goods with security implications.

WMD controls supported by global consensus

Trade in materials or technology for use in weapons of mass destruction (WMD) is prohibited, but, of course, many of the materials that are potentially useful in the production of nuclear, chemical, or biological weapons may be traded for non-weapons uses, so the focus of regulations is to prevent the diversion of otherwise legal materials to WMD purposes. These particular prohibitions and regulations are supported by a broad international consensus against the use or acquisition of weapons of mass destruction.

Chemical and biological transfer controls are supported by The Australia Group, a group of states that have developed and maintain a set of voluntary arrangements to prevent the diversion of chemical and biological materials for weapons purposes. The group focuses on national export licensing arrangements that are designed to implement obligations in the Chemical Weapons Convention and the Biological and Toxin Weapons Convention.

Similarly, the Nuclear Suppliers Group (NSG) produces voluntary guidelines to regulate the trade in nuclear materials for peaceful purposes, again in an effort to ensure that such materials are not diverted for weapons purposes. While the famous A.Q. Khan network of clandestine nuclear trading has been a blow to the non-proliferation regime, its ultimate

exposure reinforces the overall effectiveness of the regime and NSG controls — and especially confirms the strength of normative support for WMD prohibitions.

The Missile Technology Control Regime (MTCR) is also a voluntary grouping of states, in this case organized to develop common export policy controls to prevent the proliferation of "unmanned delivery systems capable of delivering weapons of mass destruction." Missiles are not a prohibited weapon, and neither are materials and components for missiles, but the 34 MTCR member states, including most of the significant suppliers, come together under the common recognition that the unrestrained proliferation of missiles with the capacity to carry a nuclear warhead, including their acquisition by non state groups, would represent a serious threat to international peace and security. The MTCR is credited with introducing a welcome measure of restraint, but it cannot claim the same level of success as the Australia Group or the NSG — largely because the restraint on missile acquisition does not enjoy the same level of international support. Because short-range ballistic and cruise missiles are suitable for the delivery of conventional warheads, more states have a legitimate claim to access the technology and thus may be more inclined to see the MTCR as a supplier cartel — although, to be sure, it is largely states with nuclear weapons or nuclear weapons ambitions that have persisted in missile technology acquisition.

Conventional arms transfer controls

All production and sales of conventional arms are at least indirectly subject to some general though minimal international restrictions and obligations. All military production worldwide, whether for domestic procurement or export, is theoretically subject to the restraint embedded in the UN Charter's charge to "promote the establishment and maintenance of international peace and security with the least diversion for armaments of the world's human and economic resources" (Article 26). All

Governments are prohibited from using the weapons and equipment they acquire, whether from domestic or foreign sources, for aggressive purposes or for violating human rights and humanitarian law.

The Landmines Convention prohibits the transfer of anti-personnel mines, and in the case of small arms and light weapons (SALW) generally, the 2001 Programme of Action (PoA), adopted by consensus, commits states to controlling small arms and light weapons transfers according to existing obligations under international law. The particular intent was to recognize the obligation not to transfer weapons if there is a reasonable risk that such weapons will be used in violation of the UN Charter or human rights and international humanitarian law. The Organization for Security and Co-operation in Europe (OSCE) "Principles Governing Conventional Arms Transfers" and the European Code of Conduct on arms transfers also commit states to avoid the transfer of arms to destinations where there are significant risks that such arms will be used to violate human rights or exacerbate conflict.

The Wassenaar Arrangement on Export Controls on Conventional Arms and Dual-Use Goods and Technology was "established in order to contribute to regional and international security and stability, by promoting transparency and greater responsibility in transfers of conventional arms and dual-use goods and technologies, thus preventing destabilizing accumulations." Wassenaar establishes a list of military and dual-use commodities, on which its 39 participating states can base their own export control lists.⁸

Consensus and demand reduction

Like the MTCR, the various arrangements and principles adopted to restrain conventional weapons transfers enjoy only a modest level of success, compared with controls on materials related to weapons of mass destruction. All suppliers are pulled in conflicting directions. Economic interests promote

sales, arms control imperatives counsel restraint, and perceived foreign policy objectives are sometimes advanced by restraint and sometimes by the abundant supply of arms. As a result, conventional arms transfer controls do not enjoy a deep international consensus of support.

While the development of such a consensus is essential and can be said to be progressing, efforts to control demand also deserve attention. Two recent African initiatives illustrate promise in that direction. The Economic Community of West African States (ECOWAS) has agreed to a new mechanism to formalize the region's long-term moratorium on imports of small arms and light weapons. The 2006 ECOWAS Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials bans the transfer of SALW into and out of the territories of member states. Individual states can apply for an exemption from this provision "in order to meet legitimate national defence and security needs, or to participate in peace support or other operations in accordance with the decisions of the United Nations, African Union, ECOWAS, or other regional or sub-regional body of which it is a member." The 2004 Nairobi Protocol commits each of its 11 member states to "establish and maintain an effective system of export and import licensing or authorisation, as well as of measures on international transit, for the transfer of small arms and light weapons." The Nairobi Protocol states are recipient rather than supplier states, although they manufacture some small arms and ammunition, so that the agreement is in large measure an import control mechanism.

Effective supply side controls will have to be buttressed by a broad range of demand reduction efforts, including regional security arrangements, regionally agreed restraints, and of course more effective conflict prevention and resolution initiatives.

Transparency

The United Nations Register of Conventional Arms (RCA) was established by action of the General Assembly in 1991 to receive data annually from UN member states on the number of items in seven defined categories of conventional arms that are imported into or exported from their territory. States are also invited to provide additional information on their military holdings, procurement through national production, and relevant policies. Participation is voluntary and, as a Group of Governmental Experts' review of the RCA concluded, it has achieved "a relatively high level of participation," but that participation needs to be more consistent and is well short of universal.

While the RCA is a transparency measure rather than a control instrument, it is linked to accountability and establishes the principle that the international transfer of conventional weapons, regardless of who the suppliers and recipients are, is the legitimate concern of the international community. The international community generally is affected by arms transfers, as it is by levels of military spending, and at a minimum should be informed of both.

EMERGING GLOBAL NORMS

The operative paragraphs of the General Assembly resolution set out the basic intent of the proposed arms trade treaty: "a comprehensive, legally binding instrument establishing common international standards for the import, export and transfer of conventional arms."

The Secretary-General's 2007 survey of member states sought their views on the feasibility of such an instrument and what its basic provisions should be. The survey produced an unusually high response, more than 90 countries (153 voted for the resolution), and more than 90 percent of the respondents argued that the feasibility of a treaty is evidenced by the variety of initiatives and voluntary arrangements that

already exist at sectoral, multilateral, regional and sub-regional levels. Most responding states believe the instrument should cover all conventional weapons and should focus on compliance with existing international law according to objective assessment – for example, serious violations of international human rights law and international humanitarian law. States also want controls on weapons transfers that risk uses in terrorist attacks and crime. More than half said controls should consider the impact of transfers on regional security and stability, and many argued that states should refuse transfers that are likely to undermine development objectives in recipient states. Transparency is essential to any agreement on arms transfer controls and the Secretary-General's survey indicated that states are well aware of this requirement and expect the Group of Governmental Experts to explore appropriate and effective transparency measures, including reporting procedures, regular meetings of the parties to the treaty, and the establishment of an agency dedicated to verifying treaty compliance. Respondents also suggested measures to assist states in building a national capacity to manage transfer controls.

The Nobel Laureates' 1997 declaration was the first broadly noted effort to set out a comprehensive set of principles. The Nobel Laureates said that arms transfers should only be permitted to states that:

- Comply with international human rights standards,
- Comply with international humanitarian law,
- Respect democratic rights,
- Respect international arms embargoes and military sanctions,
- Participate in the United Nations Register of Conventional Arms,
- Promote regional peace, security and stability,
- Oppose terrorism, and
- Promote human development.

The proposal was taken up by an international NGO Steering Committee⁹ that worked with legal experts to draft a set of arms transfer control guidelines and a framework treaty. The NGOs focused especially on provisions to ensure compliance with existing international human rights and humanitarian law.

The central principle advanced is that states are culpable if they knowingly assist other states in the commission of an illegal act, and the Steering Committee enlisted legal experts at Cambridge University in the UK to elaborate the implications of existing human rights law for arms transfers: "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...that State does so with knowledge of the circumstances of the internationally wrongful act; and...the act would be internationally wrongful if committed by that State."¹⁰ The NGOs and legal experts met with a number of like-minded governments, including with DFAIT officials in Ottawa, to explain the basic approach and solicit support. A broadly based campaign was launched in 2003, under the joint sponsorship of Amnesty International, OXFAM, and the International Action Network on Small Arms, to advance the idea of an arms trade treaty based on these principles.

Canada's engagement has included a 2001 unsuccessful effort to have the small arms program of action include a set of indicative export control guidelines, and in 2003 Canada hosted in Montreux, Switzerland a consultation with interested Governments and NGOs to consider ways and means of advancing elements of the small arms agenda, including transfer controls. That same year the UK government launched its Transfer Controls Initiative related to small arms with a focus on regional efforts to enhance cooperative controls. A breakthrough came in 2005 when the UK declared support for an arms trade treaty that would cover

all conventional weapons and subsequently worked with a group of sponsoring states that included Argentina, Australia, Costa Rica, Japan, and Kenya to draft the resolution adopted by the General Assembly in 2006. Kenya has been a key southern player and in 2006 hosted an international meeting of representatives of Governments and civil society to further elaborate on transfer control principles for small arms, the results of which were submitted to the 2006 small arms review conference.

CANADA'S CURRENT MILITARY EXPORT CONTROLS

As a second-tier military exporter of some significance, and as an advocate of an arms trade treaty, Canada is emblematic of a significant group of states that would like to see the arms trade reined in to advance arms control and human security objectives but without seriously jeopardizing their particular security and economic interests. The arms control imperatives are understood by many exporting states; indeed, it is states that both engage in arms production and value arms control that are the authors of the current arrangements designed to restrain international arms sales.

Canada is thus a participant in the Wassenaar Arrangement, is a member of the OSCE, and has specifically endorsed the EU Code. Its own export control system is based on widely accepted principles, and the current and long-standing formulation of those principles is that "Canada closely controls the export of military goods and technology to countries:

- that pose a threat to Canada and its allies;
- that are involved in or under imminent threat of hostilities;
- that are under UN Security Council sanctions; or
- whose governments have a persistent record of serious violations of the human rights of their citizens, unless it can be demonstrated that there is no reasonable risk that the goods might be used against the civilian population."¹¹

The goods to be thus controlled are drawn from the Wassenaar list of goods "specifically designed or modified for military use" and dual-use technologies "not designed for military use but employing strategically sensitive technologies."

The guidelines are replete with qualifiers that are open to interpretation — notably concepts like "imminent" hostilities or "a persistent record of serious violations" of human rights. Outright prohibitions apply only to states on the Area Control List (ACL) — countries to which the sale of military goods is expressly prohibited and to which all other exports require permits. The ACL was a particular Cold War measure that at the time included all Warsaw Pact countries. Since the Cold War ended the list has had less salience — Burma and Belarus now being the only countries currently on the list. Military exports to India and Pakistan were prohibited immediately following their 1998 nuclear tests. The outright ban continues in the case of Pakistan, but sales to India are examined on a case by case basis, permits to be granted only for sales which will "not contribute to destabilizing the regional military balance" or will not contribute to "India's nuclear weapons or ballistic missile programs."

A second country control list is the Automatic Firearms Country Control List (AFCCCL). Automatic weapons may be sold only to countries on that list. To make it onto the list (which currently includes 20 countries) a country must have an "intergovernmental defence, research, development and production agreement" with Canada. What that entails is not entirely clear — meaning, it entails significantly less than meets the eye. Becoming a prospective buyer of Canadian automatic weapons seems to be the main condition for being added to the list. In addition to several NATO and like-minded countries such as Australia and Sweden being there, Saudi Arabia and Botswana were added when exports to them were being pursued. The nature of the joint military research and development activities with either has never been elaborated,

but the fact that Canada could not sell armored vehicles to Saudi Arabia or surplus CF-5 fighter aircraft to Botswana, both of which had automatic weapons mounted on them, without putting the two countries on the AFCCL is obviously the critical factor.

Decisions to export any military commodities to eligible countries, that is countries not subject to specific embargoes, are made on a case-by-case basis. Exports to NATO and a small group of additional like-minded states are routinely authorized, but to other destinations export permit applications are reviewed directly by the Foreign Minister. Decisions on permit applications are preceded by consultations among DFAIT officials with responsibilities related to human rights, international security, and industry, as well as with the Department of National Defence and other government departments.

THE PROPOSED ATT AND IMPLICATIONS FOR NATIONAL EXPORT CONTROL REGULATIONS

Negotiating an arms trade treaty will not be a quick or easy process, but likely provisions of such a treaty, already widely discussed, include the requirement that signatory states:

- regulate all military exports;
- comply with UN arms embargoes and prohibitions on particular weapons (e.g. landmines);
- prevent exports of military goods when there are clear risks of their use in violating human rights or international humanitarian law or in terrorist attacks;
- prevent exports of military goods that would adversely affect regional security; and
- prevent exports of military goods that are likely to undermine sustainable development in the recipient country.

Some of these principles are already present in Canada's and other national export control systems, but a number of changes would be required to bring Canada substantially in line with these universal standards.

Transparency

Implementation of an arms trade treaty will rely above all else on transparency. An effective compliance mechanism will therefore have to include mandatory disclosure to an international registry of transfers of all military exports. Each state party to the treaty would in effect become accountable to all others, giving parties to the treaty the opportunity to challenge each other on particular transfers deemed to be not in compliance.

Canada's annual report on the Export of Military Goods, introduced in 1991, would go some way to meeting that transparency requirement — although, current reporting is certainly not a model of timeliness, the last report having been released in late 2003 reporting on 2002 exports. The report, when it is available, is extensive compared to the national reports of many countries (notwithstanding its major gap in excluding exports to the US — see below). However, effective monitoring of the likely impact of any particular export on human rights in the recipient country requires greater detail on the particular commodities sold than current reporting offers. For example, the report on 2002 lists the sale of a surveillance camera system to Colombia (for \$600,000) but offers no details of the context in which it is to be used and by whom. Thus there is no basis for assessing the level of risk that it will contribute to human rights violations. Aircraft have a variety of roles and functions, and since Canada is a supplier of aircraft and of components for foreign aircraft manufactures, assessments of their likely impact on human rights requires clear information on the kind of aircraft involved and their users and likely uses. The sale of \$30 million in helicopters and aircraft parts to Saudi Arabia, along with \$20 million in armoured vehicle deliveries ought to set off alarm bells on multiple levels. More information is required, but independent reports that the armoured vehicles were supplied to the Saudi National Guard, the security force

responsible for the protection and entrenchment of an authoritarian regime, raises obvious human rights concerns, not to mention concerns about regional stability and the excessive accumulation of arms in the region. The 2002 transfer was part of a multi-year contract for hundreds of light armoured vehicles worth more than \$1 billion.

Current Canadian reporting on small arms transfers is also not very revealing. The primary small arms category on the Export Control List broadly approximates the definition of small arms and light weapons used in the UN program of action, but some small arms and light weapons are included in other categories, and none of the categories is disaggregated sufficiently to get a clear picture of the scope of Canadian sales of what the UN defines as small arms and light weapons. To facilitate a clear accounting for Canadian sales of commodities governed by the UN small arms program of action, it would make sense for such a comprehensive category to be established, with various subcategories, including for automatic weapons.

Transparency is at the heart of mutual accountability and Canada will have to report in much greater detail on the particular commodities exported and on the intended uses.

Controlling exports to the US

Under the Defence Production and Development Sharing Arrangements between Canada and the United States, which have been in place for 50 years now, Canadian military exports to the United States are neither regulated nor recorded.

This regulatory and information gap already puts Canada at odds with some of its basic international commitments regarding arms transfers. The 1993 OSCE "Principles Governing Conventional Arms Transfers," the European Union "Code of Conduct for Arms Exports," which Canada endorsed in 1998, and the 2001 United Nations "Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in

Small Arms and Light Weapons in All Its Aspects" all include commitments to regulate all exports of military commodities according to internationally agreed criteria and existing obligations under international law. It also means that Canada is not able to report fully to the UN Register of Conventional Arms or to the Inter-American Convention on Transparency in Conventional Weapons Acquisitions. An ATT would likely include a similar reporting requirement.

Canada is currently regulating and disclosing less than half its military exports. To close this information and regulatory gap means extending the same export permit system that applies to all other countries, including other NATO allies, to the United States.

Controlling military goods to their military end-use

Like much of the global supply network, the Canadian military industry is prominently engaged in the manufacture of parts, components, and subsystems to supply foreign, especially American, military manufacturers that in turn incorporate them into military equipment, often for sale to third parties.¹² For the purpose of export permits, Canada regards the country of the manufacture or assembly of the complete system as the final destination. Because Canada exercises no control over the transfer of those components to third countries, Canadian aircraft engines sold to Brazil, for example, have become part of Colombia's counter-insurgency war, despite military export guidelines to discourage military transfers to countries "involved in or under imminent threat of hostilities." If all weapons-manufacturing countries shared the same export control standards and procedures the issue of the final destination of components would not be a concern, since the country of manufacture, operating according to common standards, would presumably not approve military exports that Canada would not approve. However, a significant variation in national export controls has resulted in repeated

cases in which Canadian military components were shipped via manufacturing countries to destinations that would not have been eligible for direct shipments from Canada.

To ensure that military goods are not indirectly exported to destinations that would not be eligible for direct shipments, export controls over major components and subsystems need to apply to the place of their actual military use.

Controlling civilian goods destined for military use

Certain Canadian-built equipment that is designated civilian is nevertheless sold to military forces without any requirement for an export permit. Bell Helicopter Textron Canada has supplied Bell 412 civilian helicopters to the Pakistani armed forces, even though Pakistan's nuclear tests in 1998 put it off limits for Canadian military exports. The same company has also shipped Bell 212 helicopters to the Colombian military and police, again without any export permit being required. Pratt and Whitney aircraft engines with a civilian designation are also regularly exported for use in military aircraft. The value of such shipments is not included in annual military export figures, and it is likely that Canadian export totals to non-US customers would be 15-20 percent higher if sales of equipment with civilian classifications to military end-users were included.

To meet a likely treaty requirement that all sales to military users be subject to military export regulations, Canada should require export permits for any equipment sale to a military user, whether or not the equipment has a civilian designation, and include such sales in its annual report on military exports.

Controlling exports to human rights violator countries and countries in conflict

Canada's current human rights guideline is designed to prevent sales to countries whose governments have a persistent record of serious violations of human rights, unless there is "no reasonable risk" the goods will be used to this end. This approach closely parallels the proposed ATT human rights provision which, in the absence of a multilaterally agreed boycott, would not prevent all sales to human rights violators — only sales of commodities that might be directly used in human rights violations. In the 2002 report, 18 of countries listed as receiving Canadian military equipment, the total valued at about \$60 million, were led by governments accused of serious human rights violations by watchdog groups like Amnesty International.¹³ In all but four of these cases the amounts were modest, less than \$1 million each, with no indication that the commodities sold were the kind likely to be used in the violation of human rights — although, as noted above, further disclosure would help to clarify the level of risk.

In the remaining four cases, the primary customer was Saudi Arabia with \$20 million in armoured vehicles and parts and \$30 million in helicopters and aircraft parts — with little doubt, as noted above, that these systems are relevant to the continuing entrenchment of an autocratic regime and to violating the rights of its citizens.

Any ATT requirement to prevent military exports that would be likely to undermine regional security and stability is addressed in part by the existing Canadian commitment to closely control exports to countries "that are involved in or under threat of hostilities." In 2002, the last year for which sales have been reported, less than one percent went to countries that were the scene of armed conflict (of course, if exports to the United States, a country not itself the scene of war but certainly engaged in war, were included, then well over half of Canadian exports would be in apparent violation of a central guideline).

To confidently assess the level of compliance with the human rights and regional security provisions, an effective arms trade treaty would clearly require significantly improved transparency.

Development impact

Current Canadian export guidelines do not include specific reference to the likely impact of military transfers on the development objectives of recipient states. Such considerations would have to come into play under an arms trade treaty and would thus require the elaboration of criteria for judging such an impact.

CONCLUSION

The process toward an arms trade treaty will continue in 2008. The Group of Governmental Experts will produce a report which should set out broad principles on which a treaty is to be based. It should also suggest options, assuming that full agreement is unlikely at this early stage, for resolving issues such as definitions, scope, transparency, and verification. The most successful Expert Groups manage to articulate common objectives and set out basic parameters for the subsequent debate or negotiations. An optimistic scenario would see an ATT Experts Group produce a report that warrants the General Assembly commending it as a basis for negotiation and mandating the commencement of such negotiations. Since the Experts Group will include significant skeptics — the likes of China, Russia, and India, all of which abstained on the original resolution — and the United States, which opposed it, a more likely outcome will be that the Group's report will identify important differences, perhaps relating especially to transparency and compliance questions. States in basic support of an ATT will then have to decide whether the differences are of the kind that might be sorted out in a negotiation process or whether the issue needs another round

of informal debate and advocacy leading to a second Experts' study a year or two along.

Progress is unlikely to be rapid, but neither is the issue likely to be sidelined or stalled indefinitely. Support among states is too deep and broadly based and the energy and expertise among NGOs is too focused and persistent for the process to easily run out of political steam.

It is also true that decision-making under an ATT would still face many of the challenges that are present in existing arrangements. Decision-making on specific transfers would not be given over to an international authority but would remain a matter of national discretion and therefore subject to all the conflicting political and economic pressures that continue to bedevil the pursuit of restraint in arms transfers. The obligations created by a treaty would be linked to judgements about the "likely" human rights behaviour of a particular recipient or about degrees of impact of particular transfers on issues like regional stability and human development — in other words, political interpretation would necessarily still be a part of export permit decisions. But, and here is the big change, under a treaty national discretion promises to be shaped by agreed standards and would be open to peer scrutiny, improved transparency, and legal challenges, all measures to help make international peace and human security the key test of responsible national action.

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ENDNOTES

1. Canada and 152 other states voted "yes," 24 abstained, and the United States cast the only "no" vote on resolution 61/89.

2. United Nations General Assembly. 2006. *Towards an arms trade treaty: establishing common international standards for the import, export and transfer of conventional arms*. UN General Assembly Resolution A/Res/61/89, December 18. Available at <http://daccessdds.un.org/doc/UNDOC/GEN/N06/499/77/PDF/N0649977.pdf?OpenElement>.

3. Final Record of the meeting of August 10, 2006, Conference on Disarmament (CD/PV.1032).

4. The Secretary General has announced that the Group of Governmental Experts will be drawn from the following 28 countries: Algeria, Argentina, Australia, Brazil, China, Colombia, Costa Rica, Cuba, Egypt, Finland, France, Germany, India, Indonesia, Italy, Japan, Kenya, Mexico, Nigeria, Pakistan, Romania, Russian Federation, South Africa, Spain, Switzerland, Ukraine, United Kingdom of Great Britain and Northern Ireland, and United States. The Group will meet three times and report to the fall session of the General Assembly. http://disarmament.un.org/cab/ATT/composition_of_the_GE.html

5. The Stockholm International Peace Research Institute (SIPRI) and the International Institute for Strategic Studies (IISS) both track military spending and come to similar numbers. \$1.2 trillion represents about 2.5 percent of world GDP or just under \$180 per capita (compared with Canadian military spending of about \$450 per capita). The military spending of the 15 top countries accounts for 83 percent of the world total. SIPRI and IISS respectively rank Canada as being the 13th and 14th highest in the world.

6. Foreign Affairs and International Trade Canada. 2003. *Export of Military Goods from Canada: Annual Report 2002*, December. <http://www.dfait-maeci.gc.ca/eicb/military/miliexport02-en.asp>.

7. The CCC acts as a broker and guarantor between Canadian companies and the US government, and all prime contracts of \$25,000 or more have to go through the CCC.
8. The Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies can be accessed at <http://www.wassenaar.org>.
9. African Peace Forum (Kenya), Amnesty International (International), Arias Foundation for Peace and Human Progress (Costa Rica), Caritas International (International), Friends Committee on National Legislation (USA), International Action Network on Small Arms (International), Non-Violence International (International), Oxfam (International), Project Ploughshares (Canada), Saferworld (UK), Schweitzer Institute (USA), Sou da Paz (Brazil), Viva Rio (Brazil), Women's Institute for Alternative Development (Trinidad and Tobago).
10. Gillard, Emanuela. 2000. *What Is Legal? What Is Illegal? Limitations on Transfers of Small Arms under International Law*. Available at <http://www.armstradetreaty.com/att/what.is.legal.what.is.illegal.pdf>.
11. "A Guide to Canada's Export Controls," Foreign Affairs and International Trade, June 2006 <http://www.international.gc.ca/eicb/military/documents/exportcontrols2006-en.pdf> (), p. XXIII.
12. Details on Canadian exports are available in reports by Ploughshares researcher Ken Epps at Canadian Military Production and Exports: Documents, *Project Ploughshares*, website. <http://www.ploughshares.ca/libraries/Control/ExportPubs.htm>.
13. Ken Epps, "Canada's arms exports in 2002," *The Ploughshares Monitor*, Winter 2004 (Vol. 25, No. 4).

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