

**LETTER DATED 7 JUNE 2007 FROM THE PERMANENT
REPRESENTATIVE OF ISRAEL ADDRESSED TO THE PRESIDENT OF
THE CONFERENCE ON DISARMAMENT TRANSMITTING A PAPER
REGARDING AN INITIATIVE ON BANNING ARMS TRANSFERS TO
TERRORISTS WITHIN THE FRAMEWORK OF THE INFORMAL
DISCUSSIONS HELD UNDER AGENDA ITEM 7 – TRANSPARENCY IN
ARMAMENTS**

On 26 February 2007, the delegation of the State of Israel presented the CD with its initiative on banning arms transfers to terrorists, within the framework of the informal discussions held under Agenda Item 7, “Transparency in Armaments.”

This non-paper was presented in light of the growing threat emanating from the continued flow of arms, munitions, military equipment and know-how to terrorists and terrorist organizations, and as a reflection of the broad international consensus on the need to responsibly address this threat, as codified in various multilateral decisions and declarations.

In order to emphasize the relevance of this issue to the work of the CD, and bearing in mind the strategic consequences of arms transfers to global peace and security, Israel proposes that the CD begin formal discussions aimed at identifying possible elements for a multilateral arrangement banning the transfer of arms to terrorists, based on the non-paper presented 26 February 2007. A copy of that paper is herewith attached.

We respectfully request that the Secretariat distribute this paper as an official document of the CD as well as place it on the CD’s website.

(Signed:)

Itzhak Levanon
Ambassador
Permanent Representative

BAN ON ARMS TRANSFERS TO TERRORISTS

1. In light of the growing threat emanating from the flow of arms, munitions, military equipment and know-how, bearing in mind the importance of the issue and the strategic consequences to global peace and security; and
2. Emphasizing the relevance of the issue to the work of the CD and based on the broad international consensus as reflected in various multilateral decisions and declarations;
3. The delegation of the State of Israel proposes that the CD will start discussions aimed at identifying possible elements for a multilateral arrangement banning the transfer to terrorists of arms, munitions, military equipment and know-how.

I. Background

4. Arms transfers to terrorists have become a strategic threat to regional and global peace and security. The continuous and increased flow of sophisticated weapons and other military equipment and know-how to terrorists exacerbate the nature of this threat. Among the sophisticated systems that have been found in the hands of terrorists are MANPADS, short, medium and long range rockets, missiles, UAVs and others. Such transfers can have a major destabilizing effect and stand in marked contrast to any endeavor to reach diplomatic solutions to conflicts. Arms transfers to terrorists have also shown the potential capacity to strengthen extreme elements in a conflict thus placing terrorists groups in a dominating position.
5. Since terrorist groups act with total disregard of any norms and principles imposed by international law of armed conflict, as well as basic moral norms, the possession and deployment of highly advanced weapons by terrorist groups lead to "asymmetric warfare" in the sense of the methods and moral standards which are employed by the respective sides during the conflict. The failure to prevent terrorists and terror organizations from acquiring advanced weaponry seriously jeopardizes not only international peace and security, but also the safety and wellbeing of innocent civilian populations who are caught up in the cross-fire which inevitably occurs when terrorists use such weaponry from within as well as against civilian areas.
6. This dangerous phenomenon is clearly of a global nature, not limited to a specific region and it constitutes an imminent threat to global security and stability.
7. Moreover, the economic and social ramifications of such arm transfers are detrimental to any attempt to improve the wellbeing of individuals, exacerbate the sense of insecurity of populations in conflict situations, and place in jeopardy all efforts to reduce threats and tensions.
8. Such transfers do not take place in a vacuum. In some cases they are supported by states that choose to provide terrorists with arms or to allow such transfers to take place in and from their territory. In other cases such transfers take place when states turn a blind eye. The lack of the necessary capacity to address this issue and/or insufficient prioritization attributed to this problem are additional contributing factors which allow for such transfers to go unhindered.

II. Relevance to the work of the CD

9. The final document of the First Special Session on Disarmament (SSOD1) adopted in June 1978 set the priorities for the international community in the field of disarmament, arms control and non- proliferation. The SSOD1 has also clearly underlined the need to enhance efforts to create a better international environment, including through the reductions of threats, stating: "*...it is necessary to take measures and pursue policies to strengthen international peace and security and to build confidence among states*". Though the SSOD1 did not address at the time the issue of terrorism directly, it did nevertheless note the need to address excessive and destabilizing accumulation of conventional arms.

10. It was only at the end of the cold war, while the international community was still devoting its main resources to WMD issues, that many states began to emphasize the need to also give due consideration to the question of the excessive and destabilizing effects of conventional armaments. This process culminated eventually in UN General Assembly resolution 46/36 L adopted on 6 December 1991.

11. This resolution initiated a two – track parallel process by launching the UN Register on conventional arms and simultaneously calling for the Conference on Disarmament to address the issue of Transparency in Armaments. By 1992, the CD had added the issue of "Transparency in Armaments" to its Agenda as a new item in order to deal with excessive and destabilizing arms accumulation. Today, given the grave threat posed by terrorists, there can be no dispute that advanced arms being placed in their hands have excessive and destabilizing effects. This provides a solid basis for the CD to address this issue in a serious and thorough manner.

III. Existing provisions relevant to the prevention of arms transfers to terrorists

12. Former Secretary-General, Kofi Annan, in his address to the International Summit on Democracy, Terrorism and Security held in Madrid on March 10, 2005, enumerated the basic elements of a comprehensive United Nations counter-terrorism strategy which were later reflected in the Outcome document. These basic elements, also known as the 5 "Ds" are:

- (a) to *dissuade* disaffected groups from choosing terrorism as a tactic to achieve their goals;
- (b) to *deny* terrorists the means to carry out their attacks;
- (c) to *deter* States from supporting terrorists;
- (d) to *develop* State capacity to prevent terrorism;
- (e) to *defend* human rights in the struggle against terrorism.

13. On the 8th of September 2006, the member states of the UN adopted the United Nations Global Counter-Terrorism Strategy. The strategy – in the form of a General Assembly Resolution and an annexed Plan of Action – consolidated for the first time a coherent and a common strategic approach to fight terrorism. The resolution strongly condemns terrorism and identified terrorists' acts as "*one of the most serious threats to international peace and security*".

14. The Action Plan annexed to the resolution spells out concrete measures for fighting terrorism. Among those measures, as agreed in Article II named "Measures to prevent and combat terrorism", paragraph 5:

"To strengthen coordination and cooperation among States in combating crimes that might be connected with terrorism, including drug trafficking in all its aspects, *illicit arms trade, in particular of small arms and light weapons, including man-portable air defense.*"

15. And paragraph 13:

"To step-up national efforts and bilateral, sub-regional, regional and international co-operation, as appropriate, to improve border and customs controls, *in order to prevent and detect the movement of terrorists and to prevent and detect the illicit traffic in, inter alia, small arms and light weapons, conventional ammunition and explosives*, nuclear, chemical, biological or radiological weapons and materials, while recognizing that States may require assistance to that effect."

16. The International Community previously acknowledged the problem of illicit transfers of small arms and light weapons (SALW) and recognized, in the preamble on the United Nations Program of Action on Small Arms and Light Weapons (PP5), that their transfer to terrorists exacerbates terrorism. Moreover, concern was raised regarding the close link existing between terrorism and illicit trade in SALW (PP7). On several other occasions a clear line is drawn between these two plagues.

17. However, the UNPoA has limitations:

- (a) By definition it deals only with small arms and light weapons while the problem of the transfer of arms to terrorists is wider in scope and includes also transfer of more sophisticated weapons, rockets and missiles.
- (b) It does not call for a clear prohibition on arms transfers to terrorists.
- (c) The UNPoA aims at addressing numerous issues linked to the problem of illicit trade in SALW, hence limiting the likelihood of effective implementation of given issues.

18. Nevertheless, the POA framework has produced a significant international instrument for tracing illicit small arms and light weapons. Thought should be given to whether some of the elements contained in this document could also be applied, *mutatis mutandis*, to addressing the issue of preventing the flow of arms to terrorists.

19. The dangerous links between terrorism and arms were also recognized in General Assembly resolution on "Measures to eliminate international terrorism" (A/RES/49/60). PP6 of the Declaration on Measures to Eliminate International Terrorism, which is annexed to the said resolution, stipulates its conviction *of the desirability for closer coordination and cooperation among States in combating crimes closely connected with terrorism, including... unlawful arms trade..* In order to fulfill the Declaration's aims States are called upon, in OP5(a) *To refrain from organizing, instigating, facilitating, financing, encouraging or tolerating terrorist activities and to take appropriate measures to ensure that their respective territories are not used for...the*

preparation or organization of terrorist acts intended to be committed against other States or their citizens.

20. Another existing provision which may be used in this context is UN General Assembly resolution 60/77 entitled "Prevention of the illicit transfer and unauthorized access to and use of man-portable air defense systems (MANPADS)," which was adopted without a vote and called for "*banning the transfer of man-portable air defense systems to non-State end-users*".

21. Amended Protocol II of the Convention on Certain Conventional Weapons (CCW), dealing with anti-personnel mines, also addressed this issue by explicitly prohibiting the "*...transfer any mine to any recipient other than a state.*"

22. The 12 UN Conventions against terrorism¹ demonstrate a partial or sectional approach to criminalizing certain types of behaviors such as hijacking, crimes against internationally protected persons, hostage taking etc. These conventions create the base for criminal legal assistance and international coordination in various areas of counter-terrorism. Despite the fact that none of the existing conventions provides a sufficient solution to the issue of transfer of arms and military equipment to terrorists and terrorist organizations, these instruments indicate how the international community could proceed in its efforts to combat different activities associated with terror.

23. Operative Paragraph 2(a) of UN Security Council Resolution 1373 calls specifically for "*refraining from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists.*"

24. Operative paragraph 4 on the UN security council resolution 1269 calls upon all States to take the appropriate steps to, among other things: "cooperate with each other, particularly through bilateral and multilateral agreements and arrangements, to prevent and suppress terrorist acts..." later, in the same Operative Paragraph, it calls also for State to take the appropriate steps to "Prevent and suppress in their territories through all lawful means, the preparation and financing of terrorist acts".

¹ Convention on Offences and Certain Other Acts Committed On Board Aircraft ("Tokyo Convention", 1963--safety of aviation): Convention for the Suppression of Unlawful Seizure of Aircraft ("Hague Convention", 1970--aircraft hijackings): Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation ("Montreal Convention", 1971--applies to acts of aviation sabotage such as bombings aboard aircraft in flight): Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons (1973- outlaws attacks on senior government officials and diplomats): International Convention Against the Taking of Hostages ("Hostages Convention", 1979): Convention on the Physical Protection of Nuclear Material ("Nuclear Materials Convention", 1980--combats unlawful taking and use of nuclear material): Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Extends and supplements the Montreal Convention on Air Safety), (1988): Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, (1988--applies to terrorist activities on ships): Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf (1988--applies to terrorist activities on fixed offshore platforms): Convention on the Marking of Plastic Explosives for the Purpose of Detection (1991--provides for chemical marking to facilitate detection of plastic explosives, e.g., to combat aircraft sabotage): International Convention for the Suppression of Terrorist Bombing (1997): (UN General Assembly Resolution) International Convention for the Suppression of the Financing of Terrorism (1999):

25. While the issue of WMD terrorism is dealt with to some degree in different instruments, resolutions and initiatives such as UN GA resolutions 61/86 and UN Security Council resolution 1540, the issue of conventional arms transfers to terrorists has had a significantly lower profile. We believe the provisions of those resolutions pertaining to WMD could considerably contribute to the creation of the norm preventing also conventional arms transfers to terrorists. In this context, it should be recalled that rockets of different ranges can serve as a means of delivery for WMD, and therefore, the transfer of such rockets to non-state actors, particularly to terrorists, is, today, already in contravention of Resolution 1540, operative paragraphs 1 and 2.

IV. Conclusion:

26. The elements mentioned above demonstrate the growing recognition of the international community of the importance of denying terrorists the means to carry out their attacks and the need to address this issue in all relevant bodies, including the CD.

27. Although there are currently diverse instruments which, in a convoluted and disjointed manner, deal with the problem of terrorism, there is still a critical need for a focused strategy to deal with this threat in all its aspects. The need to address this growing threat to global peace and security constitutes a strategic challenge whose significance and value cannot be underestimated.

Annex

CONCRETE WORK PROPOSALS

1. Global threat assessment.
 2. Stocktaking of existing international instruments including Export control regimes (Wassenaar, EU Code of Conduct, UN Security Council Resolutions, General Assembly resolutions etc...)
 3. Exchange of information on existing national penal legislation on terrorism, including sanctions on first and second tier (such as accomplices to terrorists' acts)
 4. Exchange on existing national practices on controls including transfers controls as well as stockpile management.
 5. Capacity building needs.
 6. Identification of types of arms that could be particularly attractive to terrorists (SALW, MANPADS, Rockets etc...)
 7. Possible elements for a future Ban on Arms Transfers to Terrorists international arrangements.
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