



United Nations Institute for
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Action to Prevent Illicit Arms Brokering: Suggestions for Action by the European Union and its Partners

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NOTE

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SUMMARY

It is vital that the European Union (EU) and its partners develop a coherent programme of work to assist states to establish mechanisms and practices to prevent the illicit brokering of international arms transfers. The relative absence of national legal frameworks to control arms brokering means that the distinction between “licit” and “illicit” small arms and light weapons brokering is currently unclear or non-existent in most states. This presents a security risk and a major obstacle to achieving EU human rights and development goals.

In June 2003 the EU adopted a Common Position on the control of arms brokering that could form a basic platform for international assistance programmes to develop effective laws and regulatory practices to control arms brokering. The Common Position can be used with other relevant international agreements on arms brokering to develop an action programme. This paper summarizes the main challenges and outlines what the EU could do to prevent such illicit arms brokering.

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ACTION TO PREVENT ILLICIT ARMS BROKERING: SUGGESTIONS FOR ACTION BY THE EUROPEAN UNION AND ITS PARTNERS

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INTRODUCTION

It is vital that the European Union (EU) and its partners develop a coherent programme of work to assist states to establish mechanisms and practices to prevent the illicit brokering of international arms transfers.¹ The relative absence of national legal frameworks to control arms brokering means that the distinction between “licit” and “illicit” small arms and light weapons (SALW) brokering is currently unclear or non-existent in most states. This presents a security risk and a major obstacle to achieving EU human rights and development goals.

In June 2003 the EU adopted a Common Position on the control of arms brokering that could form a basic platform for international assistance programmes to develop effective laws and regulatory practices to control arms brokering.² The Common Position can be used with other relevant international agreements on arms brokering to develop an action programme. This paper summarizes the main challenges and outlines what the EU could do to prevent such illicit arms brokering.

Many studies over the past ten years have shown that the strict state control of arms brokering, especially of small arms, light weapons and related materiel, is an essential prerequisite to removing and reducing the risk of illicit arms trafficking, especially into conflict-prone regions of the world.³ Successive United Nations reports on the violation of Security Council arms embargoes on different countries in particular show that uncontrolled arms brokering poses a transnational threat to the security and well-being of many states.⁴ International terrorist networks also use techniques of arms brokers, among others, to exploit national control systems in order to obtain their supplies.

Too few states have established national controls on arms brokering and, moreover, these national efforts lack consistency and therefore effectiveness. Specific weaknesses in the national systems of control of SALW have enabled arms brokers and traffickers who supply illegitimate end-users to thrive in modern global market conditions. These weaknesses include: insufficient cross-checking and regulation of the activities of brokers and other subcontractors in wider national arms export, import and transit control mechanisms and practices; the poor management of small arms and light weapons stockpiles by state officials, especially where those officials are open to corruption; the use of flags of convenience by transport companies which operate aircraft and vessels on circuitous routes from poorly regulated airports and seaports; and the use of offshore banking and shell companies that facilitate money laundering, especially in tax havens lacking financial accountability and scrutiny. Numerous case studies of arms brokering show how arms brokering networks exploit these weaknesses and how this contributes to ongoing violations of international law, arms proliferation, instability and human suffering.⁵

WHAT IS INTERNATIONAL ARMS BROKERING?

As arms markets have become more global and differentiated, the roles of brokers and other subcontractors in their networks have become more centralized procurement processes. There is now an increasing consensus among governments on the definition of arms brokering, but the latest thinking is not reflected consistently in national laws.

In general, international arms brokering can be defined as activity carried out by individuals or companies to mediate, arrange or facilitate an international arms transaction between a buyer and seller in return for a fee or material reward or benefit. Brokering activity does not usually involve the actual purchase, possession or delivery of the arms directly by the brokering agent, although this is known to happen. Rather, the brokering activities focus on mediation and may include the provision of vital technical, logistical and financial information to customers about arms supplies and prospective clients and subcontractors in different countries; the facilitation of documentation and/or payment between buyer and seller; or the arrangement of transportation, finance or insurance services for the delivery of the arms cargo in question.

THE UN FRAMEWORK

In 2000, a UN group of non-government experts examining the feasibility of regulating manufacturers and dealers of SALW encouraged all states to adopt national laws to control any brokering activities of such arms, *wherever these take place*, for citizens, persons normally resident, and companies that are permanently based and managed from premises in their territory. In March 2001, the UN Group of Governmental Experts, established pursuant to General Assembly resolution 54/54 V to report on the feasibility of restricting the trade in SALW to manufacturers and dealers authorized by states, called on Member States to establish national systems of control for brokering and related activities occurring within their territorial jurisdiction, in order to deal effectively with such illicit or undesirable arms transfers. The Group found that most states should address the registration of brokers, the licensing of brokering activities and systems of record-keeping and information sharing.

As part of the UN Programme of Action (PoA) on small arms and light weapons (Section 11, paragraph 14),⁶ states agreed in July 2001 to develop national legislation or administrative practices regulating those who broker SALW, including: registration of brokers, licensing or authorization of brokering transactions, penalties for illegal brokering and enhanced international cooperation.

Subsequently, in resolution 58/241 of 23 December 2003, the UN General Assembly mandated the Secretary-General to hold broad-based consultations “on further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons”. Five informal consultation sessions have since been held in New York and Geneva showing that a considerable measure of convergence has emerged on essential standards to prevent illicit arms brokering but that there are still some points of disagreement.

Efforts by groups of states have added to an emerging consensus. The Netherlands–Norway initiative to develop common approaches to regulate SALW brokering, launched in April 2003 and based upon a previous initiative by Norway in 1999,⁷ was followed by a series of international and regional meetings of states and non-state experts. Proposals for model regulations and best practice guidelines to strictly regulate SALW brokering have been developed

and agreed not only by the EU, but also by the Organization for Security and Co-operation in Europe (OSCE), the Wassenaar Arrangement, the Organization of American States (OAS), the Nairobi group and the Southern African Development Community (SADC).⁸

Other UN initiatives have also reinforced the call for legal measures to control arms brokering. The UN Firearms Protocol,⁹ negotiated in 2001 and entering into force on 3 July 2005 after ratification by 40 Member States, sets out some basic legal obligations of states regarding brokering in Article 15(i):

With a view to preventing and combating illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, States Parties that have not yet done so shall consider establishing a system for regulating the activities of those who engage in brokering. Such a system could include one or more measures such as:

- (a) Requiring registration of brokers operating within their territory;
- (b) Requiring licensing or authorization of brokering; or
- (c) Requiring disclosure on import and export licences or authorizations, or accompanying documents, of the names and locations of brokers involved in the transaction.

The UN Secretary-General's High-Level Panel on threats to security called for the development of a legally binding agreement on arms brokering in its report, and the UN Secretary General in his response, *In Larger Freedom*, endorsed this call.

However, during 2004 a few governments opposed proposals for the UN General Assembly to establish a mechanism for negotiations to establish an international instrument on controlling arms brokers. Thus, three and a half years after the report of the first Group of Experts issued their report, the General Assembly, in Resolution 59/86 of December 2004, merely requested the establishment after 2006 of a second UN Group of Experts to consider "further steps towards international co-operation" on this issue.

This formula is unlikely to enable real progress on the issue.¹⁰ Instead, the EU should join other states to push for a more robust and realistic process such as the establishment of an UN Open-ended Working Group to examine the feasibility of negotiating an international instrument to prevent illicit arms brokering, the mechanism that was used to establish an international instrument on tracing illicit transfers of SALW. The 2005 First Committee sessions and the 2006 Review Conference and preparatory meetings for the PoA are important opportunities for the EU and others to launch negotiations for such an international instrument.

In practice, most states have not yet implemented the PoA, but the number trying to address the issue has been growing. Research by the Small Arms Survey in 2004 found that only 25 states had laws on arms brokering. Twenty-one of these states are in Western Europe, one of these was in the Americas (the United States); 1 of these was in Africa (South Africa), one in South East Asia (Japan) and one was in the Middle East (Israel).¹¹ In mid-2005, it was estimated that between 30 and 40 states had enacted specific regulations covering brokering within their systems of arms export control, 25 of which were in Europe.¹² In the European region, countries with brokering regulations in place in 2005 include: Austria, Belgium, Bulgaria, the Czech Republic, Estonia, Finland, Germany, Hungary, Latvia, Lithuania, Malta, the Netherlands, Norway, Poland, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, Ukraine, and the UK.¹³

Caution should be exercised when interpreting such data on legislation because of the large variations in the quality and effectiveness of such national controls on brokering—in Israel, for example, brokering agents deemed to be trusted are simply registered without being subject to

strict licensing control or meaningful oversight. In other countries, local companies that are fronts for other international trafficking networks have been allowed to act as arms brokers. In global terms, progress has been slow, and even in those states which have laws applicable to arms brokering activities, too often the ethical standards and enforcement procedures are weak. Often loopholes are left open by legislators for arms brokering networks to exploit.

The standards for the national regulation of arms brokering activities recommended so far by regional, subregional and other intergovernmental organizations have addressed the following system requirements:

- Items covered by the definition of “arms” and “brokering”;
- Applicability—extraterritorial reach;
- Licensing criteria and procedures;
- Registration and screening;
- Record-keeping;
- Monitoring and verification;
- Penalties for violators; and
- International cooperation.

The EU should analyse and review best practices by all states in controlling arms brokering in each of the above areas so as to apply the best standards and procedures within the EU and promote them with partner states.

DEFINITION OF “ARMS”

It is taken almost as a given in UN and some regional discussions that an international instrument on arms brokering should only cover SALW because this class of arms has been defined as the most widely used in current conflicts. However, most state laws covering the transfer of SALW also include other arms in the control lists. Moreover, in all current conflicts the opposing forces using SALW also use other arms and military-related equipment, and a number of such items, such as military transport and communications equipment, are required to deploy forces that use SALW.

It is thus a distinct advantage that in the EU Common Position the definition of arms is assumed to be the same as that in the EU Code of Conduct, that being the common list of conventional arms and dual-use items controlled by EU member states. The Wassenaar Arrangement agreements to control arms brokering also apply to all conventional arms. The EU could improve the development of national laws on brokering by promoting the application of this wider definition of arms in its diplomacy and assistance programmes.

DEFINITION OF “BROKERING ACTIVITIES”

There appears to be some convergence in the definition of brokering activities. National laws tend to define brokering activities as the mediation of contracts and the negotiation of services. Existing national controls usually apply whether or not the broker acquires, possesses or delivers the arms in question. Some state laws also include provisions requiring the regulation of activities closely related to brokering such as financing, transporting, freight forwarding, and

consulting partners about arms transfer deals or deliveries; as well as marketing, promoting, advertising to commercial audiences the possibilities of making gains from arms transfer deals. Some definitions mention not only financial rewards from brokering but also possible non-pecuniary benefits that accrue to brokering agents, such as gains from bartering.

In cases where the recipient and end-user is illegitimate or dubious, brokers and their associates will try to circumvent stronger control systems and exploit weaknesses in the laws and practices of states with less control. Typically, they will arrange a transfer of arms from one foreign country to another to try to avoid falling under the jurisdiction of their home state. This is sometimes called third-country brokering, and is more difficult to control where the arms do not enter into the possession of the broker. Since the existing EU arms export control systems were considered quite robust, in 2004 Article 2 (3) of the EU Common Position was drafted so as to define “brokering activities” as

activities of persons and entities: negotiating or arranging transactions that may involve the transfer of items on the EU Common List of military equipment from a third country to any other third country; or who buy, sell or arrange the transfer of such items that are in their ownership from a third country to any other third country. This paragraph shall not preclude a Member State from defining brokering activities in its national legislation to include cases where such items are exported from its own territory or from the territory of another Member State.

The OAS opted for a wider definition of mediation and facilitation in the brokering of small arms which is helpful insofar as brokers often operate in networks with other subcontractors and experience shows that it is vital to bring the whole network into the frame of the national arms control law in order to prevent illicit trafficking. The Model Regulation for the Control of the International Movement of Firearms, their Parts and Components and Ammunition, agreed by the OAS in November 2003, defines a “broker” or “arms broker” as

any person or company who, in return for a fee, commission or other consideration, acts on behalf of others to negotiate or arrange contracts, purchases, sales or other means of transfer of arms. [As such, b]rokering involves mediation between any of the following other parties: manufacturing, exporting, importing, financing, mediating, purchasing, selling, transferring, transporting, freight-forwarding, supplying, and delivering arms—or any other act performed by a person, that lies outside the scope of his regular business activities and that directly facilitates such brokering activities.

The States Parties to the Nairobi Protocol chose a more simple definition in 2004, whereby

“brokering” means acting: (a) for a commission, advantage or cause, whether pecuniary or otherwise; (b) to facilitate the transfer, documentation and/or payment in respect of any transaction relating to the buying or selling of small arms and light weapons; or (c) thereby acting as intermediary between any manufacturer, or supplier of, or dealer in small arms and light weapons and any buyer or recipient thereof.

Officials of these states were asked in early 2005 whether their national laws would be drafted so as to include military items associated with SALW, but they were unsure. A very similar definition of arms brokering to that in the Nairobi Protocol had been previously adopted by the states involved in negotiating the SADC Firearms Protocol.

Arguably, the EU and its partners could if requested provide some technical assistance to states drafting national legislation and also to intergovernmental bodies developing standards for the control of arms brokering. But such technical assistance should be sensitive to other credible texts and allow for recipient states to consider the options for definitions and provisions that best

meet their needs for security, hence should not simply be confined to the parameters of the EU Common Position.

EXTRATERRITORIAL APPLICABILITY

Brokering networks involved in arranging arms supplies to illegitimate end-users will tend to conduct their activities outside jurisdictions with robust control systems. Thus, a growing number of responsible governments wish to address such illicit brokering through a degree of extraterritorial control of their nationals—as they do to prevent and curb the illicit trade in people, drugs and other items.

In 2005, 21 states had laws that provide for some degree of extraterritorial control of arms brokering, and most applied a licensing requirement for arranging arms transfers in foreign territories.¹⁴ The United States and South Africa have a high degree of extraterritorial control that applies to the brokering of any arms supplies outside the home country by residents, companies, as well as nationals wherever they are conducting the brokering activity. In contrast, the laws in France and Italy did not provide for extraterritorial control. The UK has some degree of extraterritorial control, but that only applies to UK permanent residents and companies that broker arms supplies outside the UK to destinations subject to UN, EU or other embargoes.

Most national laws to control arms brokering apply only to third-country brokering. In some cases, the home state of the brokering agent will require them to obtain a brokering license even if only part of the brokering activity is conducted on the home territory, including, for example, the sending or receipt of an e-mail, fax, or telephone call. This is largely the case within the EU.

EU officials have increasingly recognized that arms transferred internationally to illegitimate end-users involving brokering activities by EU nationals and companies are frequently not exported, imported or transited through the EU country from which the broker operates. This is also the case in other world regions. Yet the EU Common Position requires that member states only “take all the necessary measures to control brokering activities taking place within their territory”. The OAS on the other hand opted to recommend, in Article 8 of the Model Regulations, that national laws covering brokering activities should apply whether or not such activities are conducted in the controlling state’s territory or in a foreign state.

Existing legal controls on arms brokering with a degree of extraterritorial application are sometimes weakened by limited definitions of the arms covered (for example, by excluding military logistics, dual-use equipment or potentially lethal security equipment from control lists) or by excluding some types of brokers (for example, nationals who are citizens but permanently reside abroad) or by prescribing limited circumstances under which such third-country brokering takes place (for example, applying the controls only when the destination of the arms is prohibited by an embargo).

Specific references to the territorial location and control of brokering in some international agreements are not clear. For instance, the preamble to the Nairobi Protocol reads: “Concerned about the supply of small arms and light weapons into the region and conscious of the need for effective controls of arms transfers by suppliers and brokers outside the region...” Yet in Article 11, the Nairobi Protocol requires:

State Parties, that have not yet done so, shall establish a national system for regulating dealers and brokers of small arms and light weapons. Such a system of control shall include: i. regulating all manufacturers, dealers, traders, financiers and transporters of small arms and light weapons through licensing; ii. registering all brokers operating within their territory.

Such contradictory drafting leaves officials confused as to how to frame their national laws and the EU could in such circumstances offer technical assistance or training to help facilitate a solution.

LICENSING SYSTEMS

All but one of the 21 states with laws on arms brokering in 2004 required a license to “mediate” an arms deal between sellers and buyers. Ten states imposed requirements on other associated activities, such as arms financing and arms transporting. However, in only five states do regulatory systems involve the issuance of individual licences on a case-by-case basis for each transfer of arms—in other states, allowance has been made in the law for the granting of “open general” licences to a broker who could then mediate or negotiate many transfers usually for the same country or the same list of specified customers. To avoid abuse, open general licences should be restricted to exceptional cases where there is a high level of ethically responsible management of a defence project, but there is not much evidence published on this practice.

Typically, the brokering agent must submit details of the deal to the authorities and provide documentation on the origin, type, and quantity of the brokered arms, as well as on their intended end-user and end-use. In the Netherlands and Finland, the broker is required to submit an end-use declaration and relevant assurances by the intended recipient. This may allow the authorities to place conditions on the end uses and possible re-export of the arms.¹⁵ One weakness in developing this system further is the absence of internationally agreed standards for end-use certificates, a matter that the EU states wish to address.

A crucial weakness of most laws covering arms brokering is that the criteria for the issuance of licences are poorly defined and often inconsistent with international law. This is compounded by the absence of adequate operational guidance for the issuance of licences for arms exports and imports.

The EU Common Position requires that member states assess applications “for specific brokering transactions against the provisions of the EU Code of Conduct on Arms Exports.” While it embodies higher standards than most regional arms control agreements, the EU Code of Conduct nevertheless still falls short of requiring full compliance with some relevant provisions of international law. Efforts are underway to improve the criteria in the EU Code, for example by fully incorporating respect for international humanitarian law, and to make the Code legally binding. These improvements will help the EU member states improve their arms control systems as well as gain credibility when supporting the efforts of other states to make their national systems consistent with international law.

Since the development of the EU Code and other regional agreements, an increasing number of states have voiced their support for the establishment of universal minimum criteria to govern arms transfers. As indicated by officials at the Biennial Meeting of States on the PoA in July 2005, such universal criteria would give meaning to Section 2, Paragraph 11 of the PoA if they are consistent with relevant principles of international law. In this regard, the OAS Model Regulations

offer states an opportunity for considerable improvement of such criteria because in Article 5 the Regulations state that:

A license will be refused if brokering activities will, or seriously threaten to result in:

- acts of genocide or crimes against humanity
- humans rights violations
- perpetration of war crimes
- violation of UN or other embargo
- support of terrorist acts
- diversion to illegal activities, in particular organized crime
- breach of a bilateral or multilateral arms control agreement.

Each of the above criteria for the granting to licenses to arms brokers should be made consistent with states' overall criteria for international arms transfers as set out in national law, and each criterion should also be given operational guidelines for government officials to follow, as is the case for the operation of EU Code. These guidelines should also include a ban on prohibited and restricted arms, updated lists of embargoed destinations/recipients and those that pose a high risk of diversion, relevant data on the abuse of human rights with arms, and other practical advice to ensure compliance with each criterion when considering licenses.

REGISTRATION OF BROKERS

The registration of those wishing to conduct arms brokering activities should allow national authorities to screen out persons and companies that cannot be trusted to comply with domestic and foreign arms control laws, for example because of past violations of arms transfer regulations or convictions for other serious criminal offences, and also to keep track of the persons and entities authorized to engage in the trade of military equipment. This will be more effective if registrations are subject to regular renewal and if the registration system is transparent and used in combination with a case-by-case licensing system for each proposed brokered deal.

In 2004, 12 states were found to have a regulation requiring any person or entity engaging in arms brokering activities to be officially registered either (a) as a pre-condition for any licence to ensure some level of screening—e.g. Lithuania, the Netherlands, Slovenia and the United States; or (b) as part of an information collection system during the issuance of licences—e.g. in Norway, Sweden and the United Kingdom—where the information required on an application for a brokering license can provide the basis for a de facto registry of brokers.

The EU Common Position on brokering makes registration an optional requirement for member states and, moreover, allows EU states to opt for whatever registration system they choose. Article 4 states that:

1. Member States may also require brokers to obtain a written authorization to act as brokers, as well as establish a register of arms brokers. Registration or authorization to act as a broker would in any case not replace the requirement to obtain the necessary licence or written authorization for each transaction.
2. When assessing any applications for written authorizations to act as brokers, or for registration, Member States could take account, inter alia, of any records of past involvement in illicit activities by the applicant."

States operating some form of screening registration system included Belgium, Bosnia and Herzegovina, Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Malta, Nicaragua, Poland,

Romania, Slovakia, Slovenia, South Africa, Spain, Switzerland and the United States.¹⁶ These systems vary greatly in their degree of ethical stringency and transparency. Many states have viewed screening registration as an additional optional element of brokering controls, but stronger systems appear to have some distinct advantages.

For example, Estonian law requires that those wishing to engage in brokering activities must register not only to act as a broker but also for the particular categories of military equipment they may wish to broker. Each registered broker can be publicly identified on the electronic state register by name, and information is provided on the categories of arms and countries of destination for which the broker has been registered. In addition, the registration number and date are provided. This system allows for public scrutiny and for prospective clients to verify that an Estonian broker is considered to be a law-abiding agent by the Estonian authorities.

RECORD-KEEPING

All states with laws on brokering are required to keep records, but the problem is that the official data is almost never published thus undermining accountability and public scrutiny. The EU Common Position requires that “Member States should keep records for a minimum of 10 years of all persons and entities which have obtained a licence.” Under Article 15 (2) of the UN Firearms Protocol,

States Parties that have established a system of authorization regarding brokering as set forth in paragraph 1 of this article are encouraged to include information on brokers and brokering in their exchanges of information under article 12 of this Protocol and to retain records regarding brokers and brokering in accordance with article 7 of this Protocol.

Moreover, only 13 of the 21 states found to have laws on arms brokering in 2004 required arms brokers themselves to also keep full records of their activities. Yet this is essential for an adequate system of state record-keeping and control.

INFORMATION EXCHANGE, MONITORING AND VERIFICATION

It is evident through case studies that even where states have established controls on the brokering of arms between third countries as well as directly from their own territories, law enforcement and monitoring agencies do not always have information systems, verification procedures or the institutional capacity to enforce their laws.

For example, Article 11 of the Nairobi Protocol established fairly high standards for national laws covering “Dealers, Brokers and Brokering” as follows:

State Parties, that have not yet done so, shall establish a national system for regulating dealers and brokers of small arms and light weapons. Such a system of control shall include:

- i. regulating all manufacturers, dealers, traders, financiers and transporters of small arms and light weapons through licensing;
- ii. registering all brokers operating within their territory;
- iii. ensuring that all registered brokers seek and obtain authorization for each individual transaction taking place;

- iv. ensuring that all brokering transactions provide full disclosure on import and export licences or authorization and accompanying documents of the names and locations of all brokers involved in the transaction; and
- v. licensing, registering and checking regularly and randomly all independent manufacturers, dealers, traders and brokers.

However, most of the states in the Great Lakes Region and the Horn of Africa have not yet established laws to comply with this Article, and judging by the high level of illegal arms trafficking in those regions, most lack capacity to properly enforce such laws.¹⁷ The EU should integrate arms control expertise into programmes of assistance to licensing authorities and law enforcement agencies in developing countries, including the maintenance of databases on brokering activities, and licences granted and denied.

Article 5 of the EU Common Position requires that

Member States will establish a system for exchange of information on brokering activities among themselves as well as with third States, as appropriate. A specific arrangement for such exchange of information will be established. This arrangement will take particular account of the case where several Member States are involved in the control of the same brokering transaction(s)... Information will be exchanged, inter alia, in the following areas: legislation; registered brokers (if applicable); records of brokers; denials of registering applications (if applicable) and licensing applications.

Clearly, the exchange of some information on brokering and brokers requires a high level of trust between states that such information is reliable and will not be abused. The EU could help develop objective guidance for the quality control and handling of such information, and the establishment of corresponding anti-corruption standards, perhaps in association with state partners, Interpol and the World Customs Organization.

It is vital for arms control that exporting and importing states develop cooperative means of verifying the proper delivery and legitimate end-uses of authorized international arms transfers. The results of such investigations and inspections could be used by states to check the conduct of arms brokers and the outcome of their deals, but it seems that this is rarely done. Only in Belgium is a broker required to pay a deposit to the state authorities who must return the deposit once the authorized delivery of arms is verified. Moreover, the records of brokering agents must also be regularly inspected and this is a more common practice by EU states—brokers are usually required to submit regular reports every three or four months. The EU could assist member and partner states in establishing effective procedures for verification and monitoring.

PENALTIES FOR VIOLATORS

Article 6 of the EU Common Position on brokering requires that “Each Member State will establish adequate sanctions, including criminal sanctions, in order to ensure that controls on arms brokering are effectively enforced.” It is, however, unclear what “adequate” means and to what extent brokering agents have been prosecuted in the EU and elsewhere for violations of national laws on arms brokering. This should be the subject of specific analysis by the EU.

Generally speaking, minor offences arising from negligence such as the failure to maintain proper records can be subject to administrative fines or debarring from the register of authorized arms brokers. Criminal sanctions are required for more serious offences and existing national laws appear to impose criminal sanctions prison terms or fines for violations. EU states variously impose a minimum of four to ten years of imprisonment. In Belgium, Estonia and Switzerland it seems the

state authorities can legally confiscate the arms as well. It is unclear to what extent the proceeds and assets from criminal brokering activity can be confiscated for arms brokering offences or to what extent the law covers accomplices of brokers. Given the operational mobility of brokers, the EU should investigate the adequacy and consistency of penalties in different states to act as an international deterrent.

INTERNATIONAL COOPERATION

The EU has a vital interest in helping to build capacity at the regional and national levels to prevent illicit arms brokering, not least because unscrupulous arms brokers will try to operate at the point of least control. Government officials from developing countries without any brokering controls have indicated that their governments require technical and training assistance from the UN and donor aid countries to establish appropriate common standards and capacity to enforce controls on arms brokering. Clearly, the EU could direct its financial and technical assistance to enable EU Member States and third party States to develop effective national regulations on arms brokering taking into account the points raised above.

Where there is political commitment to a common set of ethical standards for the control of international arms transfers, donor agencies should help facilitate the development of detailed operational guidance for officials. This is beginning to be addressed. EU states have already been active in helping each other and their candidate and associate countries, but the shortcomings evident in EU regulations and procedures to control arms brokering indicate that such assistance programmes require improvement.

EU member states could also develop further their cooperation with UN and other global bodies to promote best practices to prevent illicit arms brokering, especially through:

- Active diplomacy in the meetings and conferences of the PoA;
- Assisting UN teams investigating violations of UN mandatory arms embargoes;
- Supporting better information gathering and sharing systems for Interpol and the World Customs Organization, and contributing to the enforcement of controls on arms brokers and brokering activities;
- Strengthening state controls over critical financial and transport infrastructure that is exploited by international arms brokering networks, such as improving financial and company accountability in tax havens and increasing the ability of the International Civil Aviation Organization and the International Maritime Organisation to enforce their regulations and report violations.

The most immediate diplomatic initiative required is for the EU and its partners to promote the adoption of a resolution at the 60th General Assembly session to establish an Open-ended Working Group to develop a draft international instrument to regulate arms brokering, and propose essential standards and capacity building required for the effective national controls on arms brokering. This should cover consideration of controls on transportation and financial services related to arms brokering.

Notes

- ¹ The generic term “arms” is used in this paper to include all military, dual-use and potentially lethal security equipment, including small arms and light weapons.
- ² Council of the European Union, *Council Common Position on the Control of Arms Brokering*, EU document 2003/468/CFSP, 23 June 2003.
- ³ The first major study of international arms brokering was Brian Wood and Johan Peleman, *The Arms Fixers: Controlling the Brokers and Shipping Agents*, Peace Research Institute of Oslo, 1999, <<http://www.nisat.org/publications/armsfixers/default.htm>>.
- ⁴ See in particular the many UN investigative reports on Angola, the Democratic Republic of the Congo, Liberia, Rwanda, Sierra Leone and Somalia.
- ⁵ See, for example, Amnesty International, “Democratic Republic of the Congo: Arming the East”, 2005.
- ⁶ *Report of the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All its Aspects*, UN document A/CONF.192/15, New York, 9–20 July 2001.
- ⁷ The Oslo Group of Like-Minded States, prompted by the publication of Brian Wood and Johan Peleman, *The Arms Fixers: Controlling the Brokers and Shipping Agents*, Peace Research Institute of Oslo, 1999, <<http://www.nisat.org/publications/armsfixers/default.htm>>.
- ⁸ The main agreements covering arms brokering are as follows: Organization for Security and Co-operation in Europe, *OSCE Document on Small Arms and Light Weapons*, OSCE document FSC.DOC/1/00, 24 November 2000; Organization for Security and Co-operation in Europe, *OSCE Principles on the Control of Brokering in Small Arms and Light Weapons*, OSCE document FSC.DEC/8/04, 4 November 2004; Wassenaar Arrangement, *Statement of Understanding on Arms Brokering*, 11–12 December 2002; Wassenaar Arrangement, *Elements for Effective Legislation on Arms brokering*, 10–12 December 2003; Organization of American States, *Draft Model Regulations for the Control of Brokers of Firearms, their Parts and Components and Ammunition*, document CICAD/doc.1271/03, 17–20 November 2003; *The Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa*, 21 April 2004; Southern African Development Community, *Protocol on the Control of Firearms, Ammunition and Other Related Materials in the Southern African Development Community Region*, 2001. Other agreements by regional and multi-lateral groupings also mention brokering.
- ⁹ General Assembly, *Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, Supplementing the United Nations Convention against Transnational Organized Crime*, UN document A/RES/55/255, 8 June 2001.
- ¹⁰ Unfortunately, an otherwise helpful new draft study of SALW brokering controls presents the proposed UN Group of Experts as the best framework for the way forward—see Holger Anders and Silvia Cattaneo, *Regulating Arms Brokering*, Groupe de recherche et d'information sur la paix et la sécurité, 2005, pp. 5 and 12.
- ¹¹ Small Arms Survey, Geneva, July 2004.
- ¹² *Biting the Bullet, International Action on Small Arms 2005: Examining the Implementation of the UN Programme of Action*, International Action Network on Small Arms, 2005, p. 6; and Holger Anders and Silvia Cattaneo, *Regulating Arms Brokering*, Groupe de recherche et d'information sur la paix et la sécurité, 2005.
- ¹³ Research by Anders and Cattaneo, 2003–2005.
- ¹⁴ Such states include the Czech Republic, Estonia, Finland, Hungary, Lithuania, the Netherlands, Nicaragua, Norway, Poland, Romania, Sweden, South Africa and the United States.
- ¹⁵ Holger Anders and Silvia Cattaneo, *Regulating Arms Brokering*, Groupe de recherche et d'information sur la paix et la sécurité, 2005.
- ¹⁶ *Ibid.*
- ¹⁷ Regarding arms trafficking in this region involving the activities of international brokering networks, see, for example, Amnesty International, “Democratic Republic of the Congo: Arming the East”, 2005; and Amnesty International, “Sudan: Arming the Perpetrators of Grave abuses in Darfur”, 2004.

ACRONYMS

EU	European Union
OAS	Organization of American States
OSCE	Organization for Security and Co-operation in Europe
PoA	UN Programme of Action on small arms and light weapons
SADC	Southern African Development Community
SALW	small arms and light weapons
UNIDIR	United Nations Institute for Disarmament Research