

**Dutch – Norwegian Initiative on Further Steps to Enhance
International Co-operation in Preventing, Combating and
Eradicating Illicit Brokering in Small Arms and Light
Weapons**

Oslo, 23-24 April 2003

Conference Report

Contents

Introduction	4
Background.....	5
Programme.....	6
Workshop reports.....	8
Workshop 1: Regulating Brokering: the scope of controls on arms brokering and links with other legislation	8
Presentation 1: Graham Zebedee	8
Presentation 2: Herbert Wulf	8
Discussion	8
Workshop 2: Licensing (including relevant documentation and disclosure) ...	10
Presentation 1: Brian Wood	10
Presentation 2 Paul van der Ijssel	10
Discussion	10
Workshop 3: Registration requirements for arms brokers (including relevant documentation and disclosure)	12
Presentation 1: Patricia Slygh	12
Presentation 2: Ian Anthony	12
Discussion	12
Workshop 4: Extra-territorial jurisdiction	15
Presentation 1: Loretta Bondi	15
Presentation 2: Jacek Silwoski	15
Discussion	15
Workshop 5: Criminalisation, Sanctions and Promoting enforceability	18
Presentation 1: Peggy Mason	18
Presentation 2: Dirk Roland Haupt & Christoph Monreal	18
Discussion	19
Workshop 6: International Co-operation	20
Presentation 1: Roy Isbister	20
Presentation 2: Katherine Verrier-Frechette	20
Discussion	21
Background Memos.....	23
Memo for Workshop 1: Regulating brokering: the scope of controls on arms brokering and links with other legislation	24
Memo for Workshop 2 Licensing of brokering activities	26
Memo for Workshop 3 Registration requirements for arms brokers	28
Memo for Workshop 4 Extra-territorial jurisdiction	31
Memo for Workshop 5 Criminalization, sanctions, and promoting enforceability	33
Memo for Workshop 6 International co-operation	35
Participants	37
Governmental Participants	37
NGO Participants	38
Speeches and Presentations	39
Opening Address By State Secretary Kim Traavik	40
Introductory Remarks By His Excellency the Ambassador of the Kingdom of the Netherlands to Norway, Mr Erik Ader	44
Keynote Address: Dr Peter Batchelor, Small Arms Survey, Geneva	47

Regulating Brokering by Herbert Wulf.....	55
Regulating Brokering: the scope of controls on arms brokering and links with other legislation by Graham Zebedee	59
Appendix: Excerpts from International Initiatives on Brokering	63
Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects.....	63
OSCE Document On Small Arms And Light Weapons	63
Inter-American Convention Against The Illicit Manufacturing Of And Trafficking In Firearms, Ammunition, Explosives, And Other Related Materials	64
Protocol On The Control Of Firearms, Ammunition And Other Related Materials In The Southern African Development Community (SADC) Region	64
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	65
Third Annual Report According To Operative Provision 8 Of The European Union Code Of Conduct On Arms Exports (2001/C 351/01).....	65
Bamako Declaration on an African Common Position on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons	66

Introduction

At the invitation of the Governments of the Netherlands and Norway, 71 experts from 28 nations gathered in Oslo on 22 – 24 April 2003. They met to discuss possible common approaches towards ensuring effective controls on small arms and light weapons (SALW) brokering activities. The participants came from Governments, International Organisations, research institutes and NGOs from across the world.

The aim of the Conference was to promote implementation of a key element of the UN Programme of Action (PoA) on the illegal trade in SALW: to help countries to ‘develop adequate national legislation or administrative procedures regulating the activities of those who engage in small arms and light weapons brokering’ (PoA, II.14). To this end, the Conference focussed particularly on examining possible elements of model regulation of brokering activities. The Conference aimed to develop shared understandings of such elements, in order to facilitate the adoption of effective national controls by all States where such controls are not already in place.

The development of such shared understandings was also seen as a way to promote appropriate harmonisation and co-ordination of national efforts to regulate SALW brokering activities. Such cooperation is necessary because illicit brokering activities, and the trafficking associated with it, have global dimensions and unscrupulous brokers typically exploit loopholes and inconsistencies in States’ regulations.

The Conference provided an opportunity for participants from governments interested in implementing brokering regulations to learn from the experience of governments that have been through this process; and receive advice from experts from academic institutions and NGOs that have studied the problem of illegal arms brokering.

Background

One of the key issues highlighted in numerous reports published by the experts working for the UN Security Council investigating sanctions violations, and by NGOs and investigative journalists, is the vital role played by illicit arms brokers in facilitating black market arms shipments. The recipients of these arms are those groups that are prohibited by law from acquiring weapons – embargoed states, rebels and insurgents, criminal gangs, and terrorists.

That such transactions undermine the legal authority of governments and international organisations is bad enough. More importantly, a 2002 UN report on illegal arms supplies to Liberia noted that the arrival of fresh supplies of arms to combatants coincided with intensified fighting whose direct consequences were measured in the dead, wounded, and fleeing civilian population.

Organizing such illegal shipments of arms involves a large amount of skill, organization, preparation, and financial resources. Documents need to be forged, officials bribed, legitimate arms companies persuaded to sell their weapons, money laundered, and aircrew recruited. The illegal broker fulfils these functions; and acts as a ‘middle man’, bringing together the seller and purchaser of the weapons, and arranging the transport and financing of illegal arms deals. One participant at the Conference described illegal arms brokers as ‘the weakest link’ in a black market arms transaction.

A problem that governments have faced in bringing brokers to justice, after their role in facilitating illegal arms deals has come to light, is that in many states the activity of brokering is not covered by existing laws. While states have well established laws governing the physical export and import of arms, the activity of arranging arms transfers often falls outside the remit of their regulations. Growing international attention to the threat posed by illegal brokers has prompted an increasing number of governments to enact legislation to control brokering. As of May 2003, 16 governments have legislation that regulates arms brokering.

Brokers have a legitimate role in the legal arms trade; ‘middle men’ have a part to play in meeting states’ legitimate security needs. The aim of the conference was to develop shared understandings on how to better regulate brokering. Regulation of arms brokers would help to prevent activity leading to illegal arms transfers, and allow lawful brokers to operate within a defined legal framework.

Illegal arms brokering represents a particular challenge to governments. The activity, by definition, concerns conduct taking place in a number of jurisdictions and proof is often (as in cases of fraud) only found after following a long trail of documentary evidence. States’ various constitutions and legal histories result in differing legal methods being used to regulate brokering. Therefore, it is important that they cooperate with each other, and learn from their shared experiences, in order to properly control arms brokering.

Programme

Tuesday 22 April

19.00-21.00 Evening Reception: Hosted by The Netherlands and Norway

Wednesday 23 April

8.30 Registration

9.30 – 11.00 Opening Session

Chair: Sten Anders Berge

Norway: Welcome and introduction by Kim Traavik

Netherlands: Welcome and introduction by Erik Adler

Keynote Address: Kuniko Inoguchi

Keynote Address: Peter Batchelor

11.00 – 11.30 Tea/Coffee

11.30 – 13.00 Workshop 1

Regulating Brokering: the scope of controls on arms brokering and links with other legislation

Chair: Patricia Lewis

Speakers: Herbert Wulf, Graham Zebedee

Rapporteur: Silvia Cattaneo

13.00 – 14.00 Lunch

14.00- 15.30 Workshop 2

Licensing (including relevant documentation and disclosure)

Chair: Owen Greene

Speakers: Brian Wood, Paul van der Ijssel

Rapporteur: Nic Marsh

15.30 – 16.00 Tea/Coffee

16.00 – 17.30 Workshop 3

Registration requirements for arms brokers (including relevant documentation and disclosure)

Chair: Paul van der Ijssel

Speakers: Ian Anthony, Patricia Slygh

Rapporteur: Jonas Aga Ucherman

19.00 Departure from hotels for dinner at Holmenkollen Park Hotel
23.30 Return to hotels

Thursday 24 April

9.30 – 11.00 Workshop 4

Extra-territorial jurisdiction

Chair: Peter Batchelor
Speakers: Loretta Bondi, Jacek Silwoski
Rapporteur: Camilla Waszink

11.00 – 11.30 Tea/Coffee

11.30 – 13.00 Workshop 5

Criminalisation, Sanctions and Promoting enforceability

Chair: Nicholas Marsh
Speakers: Peggy Mason, Dirk Roland Haupt & Christoph Monreal
Rapporteur: Christin Mørup Ormhaug

13.00 – 14.00 Lunch

14.00 – 15.30 Workshop 6

International Co-operation

Chair: Kate Joseph
Speakers: Katherine Verrier-Fréchette, Roy Isbister
Rapporteur: Gry Rabe Henriksen

15.30 – 16.30 Tea/Coffee

16.30 – 17.30 Session 7

Closing session (Report Back and Discussion)

Chair: Sten Anders Berge
Rapporteur: Mary-Honor Kloeg

17.30 – 18.00 Closing Statement: Paul van der Ijssel

Workshop reports

Workshop 1: Regulating Brokering: the scope of controls on arms brokering and links with other legislation

Presentation 1: Graham Zebedee

This presentation provided a description of the UK's draft brokering legislation. The legislation is designed to ensure that the criteria for judging brokering licenses conforms with the criteria used on arms export licenses. This would prevent the possibility of arms transfers being brokered in the UK to destinations that would not otherwise receive an arms export license. The draft legislation covers 'core' brokering activities, such as: the purchase, sale or arranging of transport; and contract negotiation (or promotion of contract negotiation). It does not cover related activities such as financing arms transfers or merely transporting arms. The draft legislation is geographically restricted to those activities that take place within the UK (except in the case of brokering long range missiles, torture equipment, or material which violates arms embargoes where the draft legislation applies to actions outside the UK). The draft legislation covers all items on the UK Military List. Last, it was mentioned that the EU is currently discussing an agreement that all members should regulate brokering activities that occur within their borders.

Presentation 2: Herbert Wulf

The second presentation highlighted many of the problems associated with illicit brokering. Concerning the scope of controls it stated that:

- a) There is a distinction (highlighted in the UN Feasibility Study) between core and related activities. The core activity involves bringing together (for financial gain) the actors involved in an arms transfer. This activity has been distinguished from other services, such as providing transportation.
- b) There are three types of brokering regulation: registering brokers; licensing the activity of brokering; and monitoring via disclosure of information in an export (or import) license application. A combination of all three can contribute to effective regulation.
- c) Brokering legislation, if it is to be comprehensive, should cover not just the trade in finished products, but also the transfer of know how, components, and production licenses.

Discussion

During the first workshop participants discussed a number of issues relating to the necessity and nature of controls, both at the national and international level, on brokering activities and agents. Participants stressed that brokers have a very important role in the illicit spread of SALW, and their activities should therefore be subject to national regulation if states want to eradicate this illegal trade. It was underlined that creating brokering regulations allows government authorities to distinguish legal from illicit activities and creates the necessary legal grounds for the prosecution of the latter. It was recognised that, at present, the lack of laws criminalizing illicit brokering is a severe obstacle to effective prosecution.

One issue that raised extensive discussion was the challenge that brokering regulations may not be necessary in some countries. Should brokering activities be addressed through specific regulations, or could they be controlled within the scope of broader regulatory systems? In this regard, a few participants expressed the opinion that strong export control systems could be a sufficient means of allowing government oversight on brokering. Regulations specifically targeted to brokers and brokering might run the risk of unnecessarily duplicating administrative procedures, relating to registration, licensing, or end-user certificates, which are already established by national legislation on arms transfers. It could also be difficult to identify those who would be required to apply for a brokering license.

Many arguments were brought forward to counter this view. It was stressed, first of all, that even if, in principle, strong export controls would be sufficient to cover brokering activities, in practice there are many differences between countries' arms trade regimes, as a consequence, legal gaps often remain. Also, many national regulations on arms transfers are ill equipped to control brokering. For example, they do not cover cases in which brokers facilitate deals without taking possession of the weapons, or without having the weapons enter the territory of the state from which they are operating.

Another issue of great concern is which activities should be included within the term "brokering". While there seemed to be agreement on the definition of the core activity of brokering, some differences centred on whether related activities such as transportation and financing should be included within the scope of brokering regulations. Some participants expressed the fear that using too broad a definition might make the number of agents too high to be controlled and the number of activities too broad for effective control. Other participants, however, argued that this is not the case, and that in countries where transport and financial agents are also controlled the numbers are not unmanageable. Also, it was stressed that distinctions that appear clear in theory might raise problems in their practical application.

It was generally acknowledged that a distinction should be kept between legal and illicit brokering. It was in fact stressed that many brokering activities are legal, and that these should be safeguarded. However, it was also recalled that the links between the legal and the illicit sphere can be very close, given that in many instances weapons illegally acquired have a legal origin.

Some participants underlined the importance of not only establishing national regulations, but also of implementing them. In this regard, it was stressed that international cooperation is crucial to increasing scrutiny over brokering activities. The exchange of information was mentioned as one possible avenue of cooperation among states, but the nature of the information to be exchanged was left to a later workshop.

Workshop 2: Licensing (including relevant documentation and disclosure)

Presentation 1: Brian Wood

Provided information on the problem caused by illicit arms brokers, and provided a definition of their activities. He then provided suggestions for governments interested in introducing regulations. These included the provisions that: arms brokering should require a permit; license approvals should be consistent with international law (including international humanitarian law); be based upon legitimate processes (such as documentation or financial flows); should provide comprehensive information on the transaction; and that this information should be cross-referenced with that collected by other parts of the export licensing system.

Presentation 2 Paul van der Ijssel

Gave an account of the Netherlands' system of arms brokering regulation. He emphasised that: brokers were regarded as the entity that gained financially from bringing two or more parties together to facilitate an arms transaction; brokering was not deemed to include activities such as shipping or insurance; each transaction required an individual license, which were considered on a case by case basis; the EU Code of Conduct criteria were used to inform licensing decisions; there was little material difference between the licensing procedures for arms brokering and export; and that brokering legislation covered all military equipment.

Discussion

Participants engaged in a wide ranging discussion on licensing requirements for arms brokering regulation. Cardinal points from the discussion are presented below.

Effectiveness

Some participants considering implementing arms brokering regulation requested information on the effectiveness of brokering legislation; particularly in the context of explicit brokering legislation replacing the implicit regulation of brokering activities present in other pre-existing legislation.

Participants from states with regulation in place suggested that brokering regulation was effective in providing governments with a legal tool that could be used should a case of illegal brokering come to light (a preferable situation to no such mechanisms being available); furthermore it was widely held that the existence of brokering legislation acted as a deterrent to wrongdoing. However, it was recognised that enforcing brokering legislation provided many challenges to law enforcement agencies. It was suggested that international cooperation would be the best means of addressing these challenges.

Costs

The costs of introducing licensing regimes were also discussed. Some participants expressed concern that brokering legislation would impose excessive administrative costs upon governments, and the firms and individuals undertaking legitimate business activities that became subject to new legislation. It was suggested by

participants with experience of regulating brokering that the number of entities subject to brokering regulations were likely to be relatively few in number; and therefore administering brokering license applications could be handled by existing arms export licensing mechanisms. Furthermore, some participants stated that the human costs, and the opportunity costs concerning lost development and trade, of allowing unrestricted illicit brokering outweighed the financial costs of implementing such legislation.

It was also suggested that the effectiveness of brokering regulations would increase as more states introduced them.

Scope

A number of participants suggested that brokering licenses should be required for transactions involving all types of military equipment (as opposed to limiting regulation to a specific category of weapons). This assertion was not disputed.

Case by case licensing or “Open” licenses

Several participants stated that brokering transaction licenses should be issued on a case-by-case basis, rather than providing brokers with “Open” licenses. Furthermore concern was expressed that brokering in SALW should not be subject to “Open” licenses, and should always be considered on a case-by-case basis.

Criteria

A number of participants stated that they believed that the criteria for issuing brokering licenses should be based upon a government’s existing criteria governing the physical export of arms. It was also expressed that the specific circumstances involving brokering may require some administrative innovation in the light of experience. However, such innovation could be managed within states’ general criteria concerning arms trade licensing.

A number of participants expressed a view that brokering licensing criteria should, where applicable, accord with documents on arms transactions produced by organisations such as the EU, OSCE, or OAS. This view was not opposed.

Information provision by license applicants

In a similar fashion to the discussion on criteria outlined above, it was expressed that the same information requirements for arms brokering licenses should apply as those in states’ existing regulations concerning arms export licensing.

Participants went on to discuss the provision of additional information with licenses. It was suggested that arms export license applications should include information on all the parties involved in conducting the transaction – particularly brokers, transport companies, and those responsible for financing. There was a debate concerning the practicality of such measures. Some participants suggested that exporting companies did not usually arrange transport until after an export license was granted (and just prior to their export). Others suggested that governments could overcome this problem by either requiring exporters to arrange transportation in advance, or to be granted an export license on the condition that they would provide such information when it became available.

Workshop 3: Registration requirements for arms brokers (including relevant documentation and disclosure)

Presentation 1: Patricia Slygh

The session started with an introduction on United States registration practices for brokers. The US system of registration of brokers and brokering activities is part of a wider control apparatus. All parties that manufacture or export defence articles, furnish defence services or engage in brokering activities, have to be registered. The US definition of “broker” is any person who acts as an agent for others in negotiating contracts, purchases, sales, or transport of defence articles or defence services in return for a fee, commission, or other consideration. Brokering activities are defined as acting as a broker, and include financing, transportation, freight-forwarding, or taking of any other action that facilitates the manufacture, export, or import of a defence article or defence service irrespective of its origin.

Presentation 2: Ian Anthony

The second presentation followed with an introduction on Registration Requirements. The main elements were a definition of brokering activities and a definition of registration as both a form of data collection and as an element of the control system. Examples of different types of control systems were given. A distinction was made between registering brokers and monitoring brokering activities. These two elements could of course be, and are in some countries, combined in a national control system. Although different countries have specific legal and administrative provision in their control systems for brokering, the need to collect and update information is a common requirement. It was pointed out that not only inter-governmental cooperation but also the engagement of industry was essential to achieve effective controls. The registration procedures chosen therefore had to contain incentives for good participation by industry.

Discussion

The debate concentrated on two subjects. a) Questions about US practices and b) Points of views on registration procedures:

a) Questions on US practices

A number of questions about US practices were raised. On a question regarding congressional scrutiny, Ms Slygh pointed out that Congress mainly wanted to evaluate the brokering registration system as such in order to spot loopholes and room for improvement. A report on the implementation of the brokering legislation will be presented to Congress in June 2003. A number of questions were also raised on the bureaucratic burdens of having a system that focuses both on registering brokers and brokering activity. Ms Slygh said that the brokering section was staffed with 5-6 people, which were integrated with the general department of export controls with some 50-60 persons. Records were originally created as a manual filing cabinet, but the registration system was currently in a process of converting to electronic means, which would simplify procedures significantly.

On the legal aspects, many participants were interested in how brokers were made responsible for their actions. Ms Slygh mentioned that certain knowledge about current legislation, such as the arms export act, was required upon signing an application for a brokering license and upon signing the individual license application. It was also mentioned that various trade organizations provided brokers with information on current legal status. The State Department also arranges seminars on specific topics from time to time.

Defence articles subject to brokering legislation, were referred to as items included in the US munitions list. The US munitions list covers SALW.

Some remarks on information sharing were also made. The US state department does not practice information sharing on brokering activities, other than required in the framework of international regimes like the Wassenaar Arrangement. However, there have been incidents where brokering license denials based on convictions had been published on the website of the US State Department. Finally, Ms Slygh pointed out that brokering license requests had to contain information on possible shipping routes, even if not specifically known by the broker. Financing activities were however excluded from the definition of brokering activities.

b) Points of views on registration procedures

The other questions and comments focused on what a licensable activity is, and what are essential information requirements for the registration of brokers and controlling brokering activities, and what purpose the registration could serve. A consensual understanding was established that some form of legislation was needed in a country in order to be able to identify and thereby prosecute illicit activity and to control legal activity. It was repeatedly mentioned that governments with no legislation at hand could run the risk of facing illicit arms trafficking without any legal tools to deal with it. Furthermore, it was pointed out that it seemed necessary to establish some criterion on what a brokering activity consists of, in order to define the legality, or not, of a particular action. In addition, many said that it seemed unnecessary to distinguish SALW from other weapons in respect to brokering activities.

There was a general understanding that brokers should be legally required to maintain full documentary records of their activities and to make them available to national authorities upon requests. There seemed to be a difference of opinion on the issue of end-user and end-user control systems as a key element of national controls of arms brokering activities. The debate on how to proceed in developing national legislation rather focused on issues of what to register and how to share information with others. Some government participants presented their system of registering of brokers and monitoring of brokering activities as integrated parts of their export control systems. An innovative example was given by a government participant whereby a system is established of requiring money deposits for a time period after a broker activity-taking place. This in order to guarantee that deals are carried out in the fashion described in the brokering application, before the money is returned.

Two basic questions were repeatedly brought up in the discussions. First, should individuals and companies be registered as brokers prior to any brokering activity, or should the legislative focus be placed upon the individual brokering activity. It seemed meaningless to register brokers without licensing brokering activity, but there

were different views on whether brokers should be registered as such or if governments should focus strictly on controlling brokering activities. The other basic question referred to information sharing. Emphasis has to be put on governmental cooperation in order for other governments to benefit from national experiences with single brokers and brokering activities and to prevent inappropriate brokers from legally operating in one country after having been denied a brokering license in another.

Workshop 4: Extra-territorial jurisdiction

Presentation 1: Loretta Bondi

The first presentation focused on the extraterritorial reach of the U.S. law on arms brokering, international legal cooperation in the area of extradition and a proposal for an international treaty on arms brokering. While the extraterritorial scope of the US law is wide, cooperation of other countries is necessary to enforce the law. Mechanism for legal cooperation in terms of investigations and extradition are key to achieve this, and some recent developments could make this easier such as the Bilateral Plus agreement, which is about to be signed between the United States and the EU countries. The EU Arrest Warrant being developed among the EU countries is another important development in the area of cooperation. Still, an international treaty that would harmonize regulations between countries and improve law enforcement effectiveness is a necessary complement to national and regional rules in order to tackle a global phenomenon like arms brokering.

Presentation 2: Jacek Silwoski

In the second presentation, a representative from the Polish government presented the Polish law regulating arms transfers and brokering activities. Poland adopted a new law on international trade in goods, technologies and services of strategic relevance for state security in 2001; mainly in order to harmonize regulations with EU and NATO countries before accession to these organizations. With regard to extraterritoriality, while the old law only regulated brokering activities when the arms transited Polish territory, the new law covers all activities undertaken by Polish citizens or companies, including outside Polish territory.

Discussion

The discussion focused mainly on the different degrees of extraterritorial jurisdiction that States have adopted in their national regulations on brokering and the advantages, disadvantages and challenges of applying and enforcing different types of extraterritorial controls. The issue of whether there may be different interpretations of the applicability of extra-territorial jurisdiction emerged from one of the comments made, and it was reiterated by others that a state is considered to exercise extraterritorial jurisdiction when none of the components of the offence is located on its territory. Participants generally acknowledged that some degree of extraterritoriality was necessary or should be considered when developing national regulations on brokering. The majority of the existing national laws controlling brokering activities seem to include provisions for some degree of extraterritorial jurisdiction. However, the scope of the extraterritorial jurisdiction varies. A few examples were highlighted of national laws that allow for almost full extra-territorial jurisdiction, meaning extraterritorial jurisdiction over brokering activities by national citizens wherever they occur. One case was also mentioned where a State included what one might call “inverted extraterritoriality” by granting national courts jurisdiction to prosecute foreign persons or companies for activities that would be considered offences even where this is not considered an offence in the country where

the offence was committed and/or where there is no request from other countries to prosecute the offence.

At present, a common option among those States that have national laws seems to be a middle ground, where the State would assert extraterritorial jurisdiction over all brokering activities by persons that are normally resident in its territory, and by companies that are permanently based and managed from premises on its territories. Although there were minor variations in national practice, this degree of extraterritoriality seemed acceptable to most participants.

A third model identified is to restrict extraterritorial jurisdiction to only certain categories of offences, mainly those related to violations of arms embargoes. While it was recognized that this category would at a minimum include UN Security Council arms embargoes, one case was highlighted where a national law currently under development is intended to cover arms embargoes generally. One participant pointed out that this was a rather innovative solution, which could provide more flexibility, as both regional and national embargoes would be included. Another distinction that became apparent from the discussion is whether or not the brokering legislation takes into account the origin of the weapons brokered. Most national laws seem to regulate brokering activities in the same way irrespective of the origin of the weapons. Still, one example was highlighted where a national legislation invokes extraterritorial jurisdiction over all brokering activities that involve SALW originating in the relevant State.

Arguments for limiting or excluding extraterritoriality from brokering regulations were put forth. What are some of the reasons why States choose not to assert jurisdiction over brokering activities where they occur outside the territory? The main arguments given for this was the difficulty of enforcing such provisions both because evidence of the offence may be hard to obtain and because the offence may not be extraditable if not considered an offence in the country where the person or company is operating. Since violations of arms embargoes would generally be recognized as an offence also by other states, enforcement of extraterritoriality and extradition is generally easier in these cases and may be an argument for choosing "the third model". Other participants did not agree with the conclusion that extra-territoriality should be limited based on these concerns, as extraterritorial jurisdiction is intended as a tool in circumstances where evidence is available. Without provisions for extraterritoriality in such cases, a State is left without any recourse to take action against the offender. An additional argument put forward to support this was that the number of cases is likely to be quite small, and would therefore not constitute a major administrative burden on national authorities.

Another interesting point raised is how States may wish to avoid explicitly invoking the principle of extraterritoriality in their brokering law and instead use other creative measures to establish a substantive connection with their jurisdiction. An example was provided of a State which achieves this through a reporting requirement, according to which companies have to report to the national register on all activities, even those conducted outside the national territory. Failure to comply with this requirement can result in administrative and/or penal sanctions. It was suggested that a more flexible approach that focuses on the intended outcome of national procedures rather than strict legal terminology may be warranted. This could be done by

discussing "extraterritoriality", while acknowledging that there may be several creative ways to achieve the same desired outcome, namely to establish a link to the relevant jurisdiction.

Overall, there seemed to be broad agreement that given the transnational nature of brokering activities, which makes it difficult for States to prosecute brokers who regularly exploit differences in legislation between countries, serious consideration must be given to include extraterritorial jurisdiction in laws and regulations. No participant presented serious objection to this notion. However, the scope of extraterritorial jurisdiction and the way in which it is provided for in national regulations can vary. The scope may range from full extraterritoriality to extraterritoriality being restricted to certain categories of activities or circumstances. Although it was not broadly discussed during the workshop, the observation was made that the development of common international regulations could be useful and that such standards could also make it easier to implement national laws.

Workshop 5: Criminalisation, Sanctions and Promoting enforceability

Presentation 1: Peggy Mason

This presentation brought up three key issues:

- a) There must exist clear *obligations* and *procedures* concerning arms brokering, including *penalties* for non-compliance. It must be clear who has to register as a broker, how a licence for brokering activities is obtained, and what administrative entities will be dealing with this. The system must be designed with enforceability in mind.
- b) *Criminalization* of breaches of the arms brokering laws must be carefully considered. It is necessary to distinguish between minor and major offences; and in the case of minor offences administrative penalties can be considered in addition to criminal proceedings. To help overcome the problem of proving the intent necessary for a crime, a reverse onus of proof might be considered. The legislation should provide that the accused can never use the defence of ignorance of the law.
- c) There are different options for *enforcement* of arms brokering laws. Enforcement is a crucial issue for the credibility of the legal system. Documentary requirements are necessary to monitor the brokering activities, and serve both to ensure compliance and to give clear evidence of non-compliance. Procedures to ensure efficient cooperation between relevant ministries are important, and this is also an area where harmonization of international regulations could greatly improve results.

Presentation 2: Dirk Roland Haupt & Christoph Monreal

A number of choices have to be made when designing brokering laws, and one that is important is whether to use a *core approach* or a *broad approach* to the legislation.

- A core approach just comprises the core activities of mediating between parties involved in arms transactions.
- A broad approach can comprise including associated services such as transportation, financing and technical services.

These two approaches have relevance to criminal investigation and gathering of evidence, public prosecution, conduct of trial and court proceedings, and transboundary legal assistance.

It was stressed that a core approach was more likely to lead to successful prosecutions than a broad approach. First, because such related activities would better be handled by specific instruments rather than including them in brokering laws. Second, the difficulty in enforcing financial regulations (given the experience from prosecuting other types of financial crimes) makes enforcement unlikely.

It was suggested that closer international cooperation would be a key means of improving the enforceability of brokering legislation. This would include cooperation between intelligence services, pre-licensing information exchange, verification of end-user certificates and delivery, and verification of other additional documents.

Discussion

The ensuing debate brought up the following themes:

- The usefulness of media attention in enforcement. If the media can be taught about brokering issues, and become more interested, they might be helpful in highlighting breaches of the laws.
- More states need to criminalize UN sanctions violations, as they are required to do. At present only 12 states have incorporated this into national laws.
- It transpired that there exist different national practices for initiating prosecutions under the brokering laws.
- The countries that have such laws have also initiated a very different number of prosecutions based on them. Some states already have experience in this regard, whereas other states have not yet undertaken such prosecutions. One reason that was mentioned for not undertaking prosecutions was the fear that possible unsuccessful cases might not set a good precedent.

Workshop 6: International Co-operation

Presentation 1: Roy Isbister

The transnational, and potentially complex, nature of arms brokering makes international cooperation essential to governments' efforts to control illegal activities. However, progress has been slow. The capability, often demonstrated, of brokers to take advantage of jurisdictional discrepancies and operate across the globe makes international, rather than just regional, cooperation an urgent priority. Shared understandings of the problem of illicit brokering, and the best means to tackle it, are fundamental to cooperation among governments; and essential to ensure the coherence of states' national legislation.

Cooperation needs to take place on a number of levels: effective and coherent regulation, enforcement and prosecution, and the provision of assistance. Specifically, this would include cooperation on: license decision-making, particularly concerning communication between the licensor and purchaser; sharing intelligence on the purchaser and all other parties involved in a potential transaction; sharing basic information regarding other states' laws and regulations (to ensure that a potentially illegal transfer is not authorised); facilitating extradition requests; law enforcement measures via the collection of evidence of illegal activity; and the circulation of information on wrongdoing as such information becomes apparent.

Presentation 2: Katherine Verrier-Frechette

The presentation first stated that given the transnational nature of brokering activities, international cooperation is important. In addition to mentioning the responsibility shared by governments, the UN Programme of Action mentions the benefits that might be derived from cooperation, at both regional and global levels, in tackling issues related to the illicit trade in SALW, including illicit brokering. There are three opportunities for sharing information:

- when drafting legislation.
- in response to a request from a licensing authority trying to establish the credibility of a broker.
- for law enforcement purposes.

These opportunities imply that that there is work to be done to ensure that international cooperation is addressed when designing legislation and regulation, for example, to ensure that the legislation has an aspect “international cooperation”.

International cooperation on best national practices has already been at work for some time. There is an infrastructure in place, based on the export control infrastructure, for sharing information for law enforcement purposes (but this is dependant upon laws having been broken). The main challenge will be to design and implement a system whereby information exchange will enable licensing authorities to determine the credibility of a broker, and overcome restricted access to information, such as concerning the protection of confidential personal or commercial information.

Discussion

Speakers and participants in this workshop discussed the transnational nature of the problem, and emphasised the value of international co-operation in order to close loopholes and gaps that can be exploited by brokers operating outside the law. The importance of information sharing as one of the main aspects of international cooperation on brokering was stressed. Although several participants warned of the potential and actual barriers to information sharing, there was a common understanding of the value of international co-operation in this area, although there is a clear need to elaborate on how this could be best achieved. During the discussion, the importance of political will in making international cooperation effective was highlighted. A number of initiatives in various fora were identified as promising in this regards, including the Wassenaar Arrangement processes, the OSCE best practice guide, the common position of the European Union, the commitments of the Firearms Protocol and the OSCE Document on SALW, and the work on the UN sanctions committees.

Information sharing in the fields of legislation, brokering control, and enforcement were found to be the main elements of international cooperation. In order to make it effective and coherent, some shared understandings of the nature of the problem would be instrumental. These could be done on the basis of the UN Programme of Action, although it was mentioned that the PoA only provides guidelines, which would need to be further developed. Questions were raised about whether or not the international community had reached a critical mass in order to move towards greater international co-operation in the form of such shared understandings or even model regulations. For example, it was noted that acceptance among governments of the need to license brokers has grown substantially during the last six months. A number of states now have brokering legislation or are in the process of preparing such legislation and could contribute towards common understandings by sharing their experiences on this legislation and on its implementation. Meanwhile the forthcoming OSCE Best Practice Guide on national control of brokering activities might provide a useful basis for the development of common understandings or model regulations.

However, it was pointed out that regional organizations, such as the OSCE or the Wassenaar Arrangement cannot develop truly international understandings. Without such international co-operation, brokers are able to move from country to country exploiting weaknesses in legislation. Second, the quality of international cooperation depends on national capacity to coordinate internally. Third, problems relating to the sharing of information between various actors, including states, the UN, Interpol, OSCE, EU and others, and possible ways to overcome these, such as through proactive information sharing, were discussed.

A division of information sharing into legal activities, semi-legal activities and illicit activities of brokers was suggested as a useful way of approaching the issue. Information sharing within these three areas would take very different forms. For example, states could exchange lists of registered or licensed brokers through official diplomatic channels, and share sensitive criminal intelligence on illicit activities, or licence/registration revocations through law enforcement channels. However, it was noted that information sharing on criminal intelligence relies on a law having been broken. Some felt that when it came to brokering activities, information sharing

should be more proactive, and mechanisms should be developed that would allow for information to be shared *before* a law is broken. The example of the work done by UN Sanctions Committees was cited in this connection, although it was noted that lack of systematic collection of information on UN sanctions busting by unscrupulous brokers means that sanctions committees and expert monitoring groups have to start from scratch each time. Some participants felt that this situation creates problems, such as a lack of institutional memory, and indicates an absence of political will to carry the process forward.

It was suggested that political will also depended strongly on public opinion. Because of this, NGOs should work for a better understanding of the issue among the public. Some felt that any future campaign on the small arms issue would have to involve the humanitarian community. The example of the International Campaign to Ban Landmines was mentioned.

In summary, participants were optimistic about the potential to share information on legislation and experiences with a view to developing shared understandings or model regulations. They looked forward to the elaboration of the EU common position and the OSCE best practice guide as steps in this direction. They were more cautious about the logistics and sensitivities surrounding the sharing of information on illicit activities, while nevertheless recognizing the value of such exchange. Finally, they considered the Framework Convention on brokering as a useful document and potential catalyst for action.

Background Memos

The following memos provided background information to the participants, and were produced prior to the conference. They do not represent the views of the participants (which have been summarised in the Chairman's Report), nor do they represent an institutional policy of any of the conference organisers.

Dutch Norwegian Initiative on further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons.

Memo for Workshop 1: Regulating brokering: the scope of controls on arms brokering and links with other legislation

1. The issues

It is important to develop shared understandings and harmonised definitions of ‘brokering’ and ‘brokers’ to be used in national regulations to control brokering of SALW. Otherwise damaging inconsistencies can exist between national regulations of various countries, creating opportunities for circumvention and obstructing international co-operation.

SALW brokering processes are often complex. The ‘core’ of SALW brokering activity is to arrange, mediate, facilitate, organise or negotiate arms deals between a supplier and recipient for material gain without necessarily taking ownership or possession of the arms. Typically, however, other activities are also an integral part of SALW brokering processes, particularly financial and insurance arrangements for the deals and transportation of the arms.

In order to exercise effective control over brokering activities, States should ensure that they have adequate legislation, regulation and administrative procedures in place to control relevant aspects of SALW brokering, as part of their efforts to prevent and combat illicit arms trafficking in all its aspects. However, there are complex choices to be made about how to develop and maintain such controls.

In practice, national controls on brokering of SALW will normally be embedded in wider national systems to control brokering in all types of arms and other controlled military and dual-use goods, in the same way that SALW export controls are integrated into States’ overall national systems for controlling arms transfers. This does not exclude that stand-alone arms brokering regulations may be preferred by national authorities to exert control over such activities.

2. Questions to be addressed in designing regulation

- How should ‘SALW brokering activities’ and ‘SALW brokers’ be defined for the purposes of national regulations and controls?
- What should be the scope of national regulations to control SALW brokering activities? Is it better to focus such regulations on ‘core’ brokering activities of arranging, mediating, facilitating, or organising arms deals, or should they also cover other activities associated with brokering, including financial arrangements, insurance and transportation of the arms?
- Should national regulations be primarily targeted on controlling ‘brokering activities’ or ‘brokers’?

3. Existing and emerging practices

Although countries that already have national arms brokering regulations differ in their exact definitions of ‘arms brokering’, they are generally very similar in substance. The most common understanding is that the ‘core’ of arms brokering activity is to arrange, mediate, facilitate, organise or negotiate arms deals between a supplier and recipient for material gain without necessarily taking ownership or possession of the arms. ‘Brokers’ are persons or companies that engage in such brokering activities. Any specific national regulations to control SALW brokering activities could therefore be expected to cover such core activity.

There is an emerging shared international understanding that effective arms brokering regulations need to be embedded within a broad system of regulation of transfers of controlled goods (including SALW) and laws criminalising trafficking, money laundering, corruption and other undesirable activities associated with unscrupulous arms brokering and transnational organised crime.

4. Possible options relating to regulation

Regulate ‘brokering activities’ or ‘brokers’?

Option A: design national regulations primarily to control arms brokering activities. This may have the advantage of focussing on the core activities of concern, irrespective of how participants in the process are labelled, or choose to label themselves (many of those who engage in brokering activities might do so only occasionally or on the margins of their core activities). In this option, national systems for prior registration of ‘arms brokers’ are not necessary.

Option B: design national regulations that impose specific requirements on ‘arms brokers’, as well as on arms brokering activities. This option is associated particularly with regulations that include national systems for prior registration of arms brokers, and will have certain advantages associated with such systems, for example ensuring systematic data collection, facilitating monitoring and reporting, and imposing eligibility requirements on people or companies that wish to broker arms deals.

Whether national regulations established to control SALW brokering activities should include associated activities such as financial arrangements and transportation.

Option A: target national arms brokering regulations on the ‘core’ brokering activities, and control such associated activities through other laws, including those covering illicit trafficking, money laundering and corruption. This option may avoid laws with inappropriately wide coverage that would capture too wide a set of transportation and financial agents that might be innocently or distantly implicated in brokering arms deals. It thus may avoid imposing excessive economic and administrative costs and be more enforceable.

Option B: include financial, transportation and other activities associated with arms brokering within the scope of brokering regulations. This option may ensure comprehensive coverage of regulatory controls that: cover the whole phenomenon; avoid problematic legal distinctions between core and ancillary brokering activities; and potentially increase the prospects for successful criminal prosecution.

Dutch Norwegian Initiative on further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons.

Memo for Workshop 2 Licensing of brokering activities

1. The issues

Since there is a legitimate role for brokers in the international arms trade, effective national regulation of arms brokering requires a national system for licensing such activities. Such a system could increase government oversight over brokering; also, it could make it easier to distinguish between legal and illicit activities. The latter, specifically, would be those conducted without government authorization.

The question of licensing is closely connected with other issues (such as documentation, registration procedures, and the scope of controls and jurisdiction) which are dealt with in the other memos.

A licensing system would allow States to put in place a process whereby the appropriate national authorities assess whether to authorise the proposed brokering of an arms deal. Such a process would involve the submission of appropriate information, documentation and guarantees on the side of the broker; a procedure by which relevant government ministries and agencies assess the application; and a series of principles, established at the national level, to guide decisions on whether to issue a licence. These principles, or criteria, would be a useful means to ensure clarity and consistency in the application of national legislation on brokering of SALW.

As regards the types of licences, decisions taken on a case-by-case basis, issuing brokering licences for each specific deal, would greatly increase the effectiveness of national brokering controls. However, in order to avoid administrative burdens, the possibility to grant open licences could be considered, particularly in those cases in which national authorities assess that the risks associated with the deals to be brokered are very low, where the broker is of the highest standing, and where the proposed deal would only involve transfers between trusted countries that each have strong and effective national arms controls systems. For example, States might exercise the option to issue open licences for brokering deals both between countries that are allies, and involving companies that are in close co-operation in defence production.

2. Questions to be addressed in designing regulation

- What criteria could be established, by national authorities, to guide decisions on the issuing of brokering licences? Should such criteria be specifically designed for the purpose of controlling brokering activities, or could the same criteria used to assess applications for arms transfers be applied?
- What type of licences could be allowed (individual and open) and in what cases?

3. Existing and emerging practices

The criteria for issuing brokering licences would be a national prerogative, although some useful guidelines could be derived from international agreements. In the UN Programme of Action States agreed to "assess applications for export authorisations according to strict national regulations and procedures that cover all small arms and light weapons and are consistent with the existing responsibilities of States under relevant international law, taking into account in particular the risk of diversion of these weapons into the illegal trade" (II.11).

The UN Disarmament Commission has also established some global guidelines that could be useful. Within the framework of regional organizations, many States have agreed to more specific sets of criteria, such as those developed within the EU, the OSCE and the SADC. All these elements could be taken into account by States to determine the principles, effective at the national level, to be used in deciding on whether to grant or refuse a brokering licence.

National licensing systems for arms transfers typically assess most licence applications on a case-by-case basis. Authorisation, if issued, is in the form of a specific licence for the transfer concerned. However, many States also make some use of open licences. For example, open licences may be issued permitting a specific exporter to transfer certain types of weapons or controlled goods to a particular recipient without requiring specific licences for each deal. General licences may be issued that authorise transfers of certain types or categories of goods to specific recipient countries, such as allies.

4. Possible options relating to regulation

- States could establish effective national licensing systems to regulate and authorise brokering activities, similar to those established for licensing transfers of SALW;
- States could apply the same national criteria for assessing applications for authorisation to broker a specific arms deal as they use in assessing applications for licences to transfer SALW to and from their own territory;
- National authorities could normally consider applications for authorisation of brokering activities on a case-by-case basis. If approved, individual licences for brokering activities would be issued for each deal to be brokered;
- States could allow for the possibility to issue open or general licences for arms brokering activities, particularly where national authorities assess that the risks associated with the arms deal to be brokered are very low. This could be the case, for example, when the broker is of the highest standing, or the proposed deal would only involve transfers between countries that exercise effective controls on arms transfers and have strong national arms control systems.

Dutch Norwegian Initiative on further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons.

Memo for Workshop 3 Registration requirements for arms brokers

1. The issues

The issue of whether and how to establish systems for registering arms brokers arises because such systems would be needed if national regulations are targeted on brokers as well as on brokering activities. A registration system can also help to facilitate effective monitoring, control, and enforcement of regulations.

Reliable and systematic documentation, as part of a registration system, would be useful for the effective administration and enforcement of national regulations to control SALW brokering, just as it is for effective national controls on transfers of arms and other controlled goods.

End-use and end-user controls would be particularly useful in relation to SALW brokering. Unscrupulous brokers have often been implicated in the diversion or re-export of authorised transfers to illicit or undesirable end-users and/or destinations.

2. Questions to be addressed in designing regulation

- Should a registration requirement for brokers be part of a licensing system for brokering activities?
- Should registration be considered as an administrative step, or as an eligibility requirement for the right to broker?
- What documentation should be required for each step of the process of controlling brokering activities (e.g. registration, licensing)?
- Should brokers be required to keep records of their transactions, and could they be requested to make it available to the national authorities?
- Should end-use/end-user controls be included in the licensing procedure for brokering activities?
- Should States, when considering brokering licensing applications, apply restrictions to the possible re-transfer of SALW or to the change of end-user?

3. Existing and emerging practices

3.1 Broker registration systems

A registration system, including a register of brokers, could strengthen the operation of controls on arms brokering activities by ensuring that systematic information about active brokers is maintained and regularly updated. Requirements that brokers pre-register before being permitted to apply for brokering licences could have a number of aims and functions within an overall national system for controlling brokering activities.

A broker registration system could be helpful to:

- improve administrative efficiency of the overall system for controlling brokering activities;
- exclude dubious persons and companies from legal brokering activities, through imposing eligibility requirements;
- improve enforcement, by offering additional possibilities for penalisation of brokers that contravene procedural or good practice requirements, for example through deregistration.

Some States have chosen not to establish such registration requirements. Depending on countries' particular legal and enforcement systems and traditions, such registers could be developed without imposing pre-registration requirements. For example, such a register could be developed by insisting on the provision of information when applications are made for specific brokering licences.

3.2 Documentation

Requirements for reliable and systematic documentation are commonly established at different phases of the control process: pre-registration of brokers (if required); licence applications; end-user and end-use documentation. Concerning registration, for example, information concerning the applicant is commonly requested, while in some cases details of the arms deal must also be provided.

3.3 End-use and end-user controls

Most national systems for controlling arms transfers require end-use and end-user documentation and guarantees as part of the licence application system. While the stringency and design of national end-use requirements varies substantially between different States, it is widely recognised that there is a need to develop and implement good practices in this area. Would national systems for controlling brokers similarly need to include adequate end-use and end-user requirements? If so, what elements should these include? For example, should end-use/end-user information be included in the documentation submitted by a broker for a licence application? Should restrictions be established relating to the possible re-export or change of end-user?

4. Possible options relating to regulation

- States might find it useful to put in place documentation requirements for brokers as part of their national arms control system. Such documentation requirements could relate to all aspects of the national brokering control system, including registration, licence applications, end-use and end-user information, and post-delivery verification;
- Brokers could be legally required to maintain full documentary records of their activities for as long as possible, and to make them available to national authorities upon request;
- States could establish and maintain adequate end-use and end-user control systems as a key element of the national controls of arms brokering activities. Licences would not be issued without full and appropriate documentation relating to end-use and end-users, and there would be procedures for authentication of such documentation and for checking the accuracy of the information provided. Systems for post-delivery monitoring could similarly be adopted and used;

- States could consider including restrictions or conditions on re-export or change of end-user as part of the brokering licensing system, consistent with their practices and in relation to licences for arms transfers.

States might find it useful to develop and maintain a systematic and reliable data-base of brokers operating within their jurisdiction, whether through a pre-registration requirement or by other means. States could consider adopting a system requiring brokers to register prior to applying for specific licences, and to impose eligibility requirements to prevent inappropriate brokers from legally establishing themselves.

Dutch Norwegian Initiative on further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons.

Memo for Workshop 4 Extra-territorial jurisdiction

1. The issues

Brokering of SALW is usually a transnational activity. Unscrupulous arms brokers frequently circumvent existing national controls by crossing borders to countries with less stringent, or no, brokering controls. The easy ability to evade national controls in this way undermines the efforts of the international community to control illicit SALW brokering and facilitates illicit trafficking in SALW.

In order to reduce the scope for such circumvention, some States have adopted national brokering legislation that asserts extra-territorial jurisdiction over the brokering activities of their citizens and or of persons and companies that are resident, or established, in their territory. However, States have differing positions on the wisdom or effectiveness of adopting legislation with extra-territorial jurisdiction.

2. Questions to be addressed when designing regulation

- What are the advantages and disadvantages of adopting national laws and regulations to control SALW brokering activities with some degree of extra-territorial jurisdiction?
- If States decide that effective controls on SALW brokering activities require some extra-territorial jurisdiction, which options should be adopted?
- What are the challenges (legal, political, practical) of applying and enforcing extra-territorial controls?
- What international guidelines could be adopted relating to extraterritoriality to ensure adequate international co-ordination, in view of the different national positions on this issue?

3. Existing and emerging practices

There is emerging agreement that all States should ensure that their national regulations on brokering at least apply to any arms brokering activities conducted within their territorial jurisdiction, whether by their own citizens or by other persons or companies resident, or established, in their territory.

There are different national positions and practices relating to laws imposing extra-territorial controls. Some degree of extra-territorial jurisdiction has been internationally agreed in relation to national legislation on some other issue areas, such as child sex tourism, war crimes, torture and drug trafficking. Nevertheless, the issue remains controversial, and there is as yet no international consensus on whether and how to impose extraterritorial controls in relations to arms brokering.

The UN Group of Governmental Experts established in 1999 (pursuant to UN Resolution 54/54 V) has encouraged States to consider adopting national laws to control all SALW brokering activities, where-ever these take place, by: their national

citizens; persons that are normally resident on their territory; and companies that are permanently based and managed from premises in their territory.¹

4. Possible options relating to regulation

Extra-territoriality of national laws

There are various ways in which extra-territorial jurisdiction might be included in national laws to control SALW brokering activities. These include:

- Assert full extraterritorial jurisdiction over SALW brokering activities of all national citizens, wherever they may act as brokers;
- Assert extraterritorial jurisdiction over all SALW brokering activities by national citizens of the State, by other persons that are normally resident in its territory, and by companies that are permanently based and managed from premises on its territory;
- Assert extra-territorial jurisdiction for specific categories of arms brokering activities or circumstances, such as brokering activities associated with circumvention of UNSC arms embargoes.

Each of these options have implications for the implementation and enforcement of SALW brokering controls, and the extent to which they might prejudice the livelihoods of citizens that are permanently resident abroad.

International guidelines

In view of the differences between States on whether and how to impose some degree of extra-territorial jurisdiction on brokering activities, the following options could be relevant in the development of shared international understandings:

- Develop shared understandings on the issue of extra-territorial jurisdiction;
- Aim to resolve differences and agree common approaches to extra-territorial jurisdiction over SALW brokering;
- Aim to develop some minimum guidelines on possible options in this area, to at least ensure minimum consistency and facilitate international co-operation in enforcement of controls.

¹ United Nations, *Report of the Group of Governmental Experts Established Pursuant to General Assembly Resolution 54/54 V of 15 December 1999, Entitled 'Small Arms'*, A/CONF:192/2 of 11 May 2001.

Dutch Norwegian Initiative on further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons.

Memo for Workshop 5 Criminalization, sanctions, and promoting enforceability

1. The issues

National laws, regulations and administrative procedures designed to control SALW brokering activities cannot be effective without appropriate enforcement. Effective enforcement, in turn, requires the existence of laws defining as crimes violations of brokering regulations, and a system of sanctions and penalties.

The establishment and maintenance of effective enforcement agencies and mechanisms would increase the effectiveness of national brokering controls. Any enforcement system, including criminalization and sanctions, should have sufficient credibility and enforceability to deter non-compliance and encourage wide adherence to requirements.

The challenges of enforcement, and the prospects for successful prosecution, should be taken into account in the design of the brokering control system, and in the formulation of regulations, given that some types of regulations are more enforceable than others.

2. Questions to be addressed when designing regulation

- How could compliance with registration and licensing requirements and obligations be ensured?
- How could licensing requirements, including end-use and end-user requirements, post-delivery verification and traceability of arms shipments, be enforced?
- Should a criminalization regime for non-compliance with arms brokering regulations and procedures be established? What elements should it include?
- What penalties and sanctions for violations of brokering regulations would be appropriate?

3. Existing and emerging practices

It is widely agreed that States should make every effort to ensure that national regulations on arms brokering activities are systematically and consistently enforced. This includes taking measures to ensure that the relevant law enforcement agencies and mechanisms have sufficient capacity to promote, and enforce, compliance with existing regulations.

To ensure that effective controls over registration and licensing requirements are maintained, it is increasingly recognised that it is good practice for States to do the following:

- Establish mechanisms to enable effective co-operation and co-ordination between ministries and agencies responsible for the operation and enforcement of their arms brokering control system;

- Ensure adequate monitoring, documentation requirements, record-keeping and reporting systems are in place to provide assurance of compliance and detect significant non-compliance in a timely way;
- Ensure that there are adequate provisions to enable effective investigation of possible non-compliance.

In existing practice concerning criminalization regimes the tendency has been to find a compromise between the need to fully punish brokers who break the law, and a reluctance to excessively penalise those deemed to have committed 'minor' offences. In most cases this has been achieved by formulating a distinction between serious and minor offences, or between those committed intentionally, and those due to negligence.

As for sanctions and penalties, although there are variations between national systems, a common element is for States to establish the possibility of both custodial (i.e. jail) and pecuniary (i.e. financial) sanctions.

4. Possible options relating to regulation

- States could consider putting in place mechanisms and procedures for effective interagency cooperation at a national level;
- States could establish legislation that clearly defines as crimes violations of national brokering regulations. In this respect, it may be useful to distinguish between minor offences (for example, the provision of incomplete information in a brokering licence application) and major ones (such as the conduct of a brokering deal without government authorization);
- States might consider developing shared international understandings on penalties and sanctions. For example, common guidelines that penalties should include imprisonment as well as fines, and shared understandings on maximum prison terms. Alternatively, they could agree that those convicted of significant non-compliance must face penalties that are comparable and consistent with national penalties available for illicit trafficking in arms;
- States might develop shared understandings on measures to prevent diversion of brokered SALW deals into the illicit trade. For example, common approaches might be developed to help ensure delivery to authorised end-users. This might, for example, include
 - Establishing requirements for brokers and shippers to provide prior documentation on transportation agents and routes;
 - Establishing requirements for adequate documentation to accompany shipments, and to criminalise false transportation documents;
 - Establishing systems to check delivery to authorised end-users.

Dutch Norwegian Initiative on further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons.

Memo for Workshop 6 International co-operation

1. The issues

Given the transnational nature of brokering activities, international co-operation is important for both developing and enforcing national controls on SALW brokering. While stressing that the primary responsibility lies with national governments, the UN Programme of Action also mentions the benefits that might be derived from cooperation, at both the regional and the global level, in tackling issues related to the illicit trade in SALW, including illicit brokering. Some regional organisations have established relevant co-operation mechanisms, including the EU, the OSCE, the OAS and the SADC.

2. Questions to be addressed in designing regulation

- Which mechanisms could enhance international co-operation with respect to the development and implementation of national regulations on SALW brokering?
- Should States, in a position to do so, consider requests to provide financial and/or technical assistance to enable States to develop adequate national regulations and associated administrative systems on SALW brokering and to deliver capacity building assistance to strengthen enforcement and associated judicial systems?
- How could international co-operation in enforcement be promoted? For example, States could consider establishing extradition procedures for violations of SALW brokering regulations; promote harmonization of national systems, in order to close legal loopholes that unscrupulous brokers might exploit in passing from more to less stringent national jurisdictions; cooperate in intelligence gathering and in the exchange of relevant information.
- How could States utilise existing systems, or organizations, to increase national and international control over brokering activities? For example, are there ways in which Interpol and the World Customs Organization could contribute to the enforcement of controls on arms brokers and/or brokering activities?

3. Existing and emerging practices

Currently, there is little formal international co-operation with respect to the issue of SALW brokering. However, some international agreements have underlined, in general or specific terms, the need for States to coordinate regionally and globally to tackle the issue of illicit SALW brokering. In the UN Programme of Action States agreed to “develop common understandings of the basic issues and the scope of the problems related to illicit brokering in small arms and light weapons with a view to preventing, combating and eradicating the activities of those engaged in such brokering” (II.39). The OSCE Document recommends that governments require the

registration and licensing of brokers (sec. III.D). The EU has also agreed on guidelines to control brokering activities.²

4. Possible options relating to regulation

- States could consider using their existing national points of contact to facilitate co-operation on issues related to SALW brokering.
- States could consider establishing information exchange mechanisms (bilateral and/or multilateral), covering national contact points, national regulations, experiences with development and enforcement of regulations, and sources of assistance in this area;
- States could develop systems for the exchange of confidential or sensitive information between licensing authorities and enforcement agencies, including black lists of brokers;
- States could make use of existing mechanisms of international cooperation, such as those established with the World Customs Organization and Interpol. These, for example, could be useful in the areas of information exchange, and enforcement.

² *Third Annual Report According To Operative Provision 8 Of The European Union Code Of Conduct On Arms Exports* (2001/C 351/01), pp. 3-4.

Participants

Governmental Participants

Aguilar Pulido	Diana Patricia	Ms	Ministry of Foreign Affairs	Colombia
Bauwens	Werner	Mr	Ministry of Foreign Affairs	Belgium
Bencini	Leonerdo	Mr	Embassy of Italy	Italy
Berge	Sten Anders	Mr	Ministry of Foreign Affairs	Norway
Burusapatana	Valapa	Ms	Office of the prime minister	Thailand
Chilvers	Spencer	Mr	Export Control organisation	United Kingdom
Esperon	Gloria	Ms	Ministry of Foreign Affairs	Mexico
Fu	Cong	Mr	Ministry of Foreign Affairs	China
de Jenlis	Etienne	Mr	Ministry of Defence	France
Genov	Galín	Mr	Ministry of Economy	Bulgaria
Glimmerveen	JC	Mr	Ministry of Finance	Netherlands
Grau	Heidi	Ms	Ministry of Foreign Affairs	Switzerland
Guillermo	Puente-Ordorica	Mr	Ministry of Foreign Affairs	Mexico
Haupt	Dirk Roland	Mr	Ministry of Foreign Affairs	Germany
Hendriksen	Gry Rabe	Ms	Ministry of Foreign Affairs	Norway
Husum	Anne Kari	Ms	Ministry of Foreign Affairs	Norway
Inoguchi	Kuniko	Ms	Ministry of foreign affairs	Japan
Katavetin	Jesda	Mr	Ministry of foreign affairs	Thailand
Kloeg	Mary-Honor	Ms	Ministry of Foreign Affairs	Netherlands
Koromi	Judit	Ms	Ministry of Foreign Affairs	Hungary
Kumar	Gaitri	Ms	Permanent mission of India	India
Leopold	Philippe	Mr	Ministry of Foreign Affairs	France
Ljungqvist	Christer	Mr	Ministry of Foreign Affairs	Sweden
Lundberg	Erik	Mr	Ministry of Foreign Affairs	Finland
Lovald	Johan	Mr	Ministry of Foreign Affairs	Norway
Marinescu	Simona	Ms	Ministry of Foreign Affairs	Romania
Matveev	Igor	Mr	Ministry of Foreign Affairs	Russia
Misune	Shinobu	Mr	Embassy of Japan	Japan
Monreal	Christoph	Mr	Federal Agency for Economics and Export Controls	Germany
Moolenaar	Anthony	Mr	Ministry of Justice	Netherlands
Neto	Ibrahim Abdul-Hak	Mr	Ministry of Foreign Affairs	Brasil
Nimaga	Mahamadou	Mr	Ministry of Foreign Affairs	Mali
Normia	Pertti	Mr	Ministry of the Interior	Finland
Pop	Gicu	Mr	Ministry of Foreign Affairs	Romania
Przemyslaw	Wyglanowski	Mr	Ministry of Foreign Affairs	Poland
Sangaré	Sirakoro Colonel	Mr	Commission Nationale de Lutte contre la Prolifération des Armes Légères	Mali
Sliwowski	Jacek	Mr	Ministry of economy, labour and social policy	Poland
Slygh	Patricia	Ms	State Department	USA
Suda	Andrzej	Mr	Ministry of Foreign Affairs	Poland
van der Ijssel	Paul	Mr	Ministry of Foreign Affairs	Netherlands
Vassilios	Gavathas	Mr	Ministry of public Order	Greece
Verrier-Fréchette	Katherine	Ms	Ministry of Foreign Affairs,	Canada
Vezer	Zoltan	Mr	Ministry of Economics	Hungary
Zakov	Dragomir	Mr	Ministry of Foreign Affaires	Bulgaria
Ze	Zhang	Mr	Ministry of Foreign Affairs	China
Zebedee	Graham	Mr	Foreign and Commonwealth Office	United Kingdom

NGO Participants

Anthony	Ian	Mr	Sipri	Sweden
Batchelor	Peter	Mr	Small Arms Survey	Switzerland
Bondi	Loretta	Ms	Johns Hopkins University	USA
Dale	Arne	Mr	Norgwegian Chuch Aid	Norway
Cattaneo	Silvia	Ms	Small Arms Survey	Switzerland
Claret	Fransesc	Mr	UNDDA	USA
De-Caris	Riccardo	Mr	SaferAfrica	South Africa
Egeland	Jan	Mr	Norwegian Red Cross	Norway
Eskidjian	Salpy	Mr	World Council of Churches	
Esteves	Alberto	Mr	Arias Foundation	Spain
Evjen	Odd	Mr	Norgwegian Chuch Aid	Norway
Greene	Owen	Mr	Bradford	United Kingdom
Hagen	Gisle	Mr	NORAD	Norway
Hove	Laila	Ms	Norwegian Red Cross	Norway
Isbister	Roy	Mr	Saferworld	United Kingdom
Joseph	Kate	Ms	OSCE	Austria
Lewis	Patricia	Ms	UNIDIR	Switzerland
Marcussen	Preben	Mr	Norwegian Red Cross	Norway
Marsh	Nicholas	Mr	PRIO	Norway
Mason	Peggy	Ms	Carleton University	Canada
Meek	Sarah	Ms	ISS	South Africa
Misol	Lisa	Ms	Human Rights Watch	USA
Ormhaug	Mørup	Mr	PRIO	Norway
Uchermann Aga	Jonas	Mr	PRIO	Norway
Waszink	Camilla	Ms	ICRC	Switzerland
Wood	Brian	Mr	Amnesty International	United Kingdom
Wulf	Herbert	Mr	BICC	Germany
Waage Hendriksen	Hilde	Ms	PRIO	Norway

Speeches and Presentations

Selected speeches and presentations from the conference. Unfortunately, many of the presentations have not been included as they were either made from handwritten notes or via Power Point.

The Dutch Norwegian Initiative on further steps to enhance international co-operation in preventing, combating and eradicating illicit brokering in small arms and light weapons. Oslo 22-24 April 2003

Opening Address By State Secretary Kim Traavik

Chairman, excellencies, ladies and gentlemen,

It is a great pleasure to welcome you all to Oslo and this Dutch-Norwegian conference on further steps to enhance international co-operation in preventing, combating and eradicating illicit brokering in small arms and light weapons.

Together with our Dutch friends, we have taken this initiative to foster a broader common international understanding on how illicit small arms brokering can be adequately controlled.

We appreciate the excellent co-operation that the Netherlands and Norway have established in the area of small arms and light weapons. A case in point is the seminar that we co-sponsored in Sofia last November.

Today and tomorrow, we are following up on the Sofia discussions, with a special emphasis on international cooperation with a view to controlling arms brokering. We hope the present conference will provide fresh impetus to that end.

Clearly, this summer's New York meeting to review the implementation of the Program of Action of the 2001 UN Conference on Small Arms and light Weapons will be an important event. Hence, we are privileged to have with us this morning the chair of the New York meeting, ambassador Koniko Inoguchi of Japan.

Curbing illicit trade in small arms is of course no less urgent now than two years ago. Reviewing the implementation of the 2001 Program of Action is important in and of itself. The purpose of the New York meeting is not and should not be to renegotiate the Program of Action.

But at the same time, the meeting needs to be forward-looking. It is the very essence of implementation review to pinpoint shortcomings and identify remedies.

We must not forgo this opportunity to make progress on broader issues related to international co-operation on stemming illicit trade in small arms, including the issue of arms brokering, which is at the heart of the agenda of this conference.

The Netherlands and Norway will make sure that the results of this conference are brought to the attention of the UN review meeting. To that end, there will be a side event in New York.

Illicit trade in SALW causes grave and growing humanitarian, social and economic problems. In terms of the number of lives taken, small arms and light weapons clearly are weapons of mass destruction.

Each year some five hundred thousand humans are killed with hand weapons. 57 persons are killed, every hour, every day of the year. And although it represents only a fraction of the total international trade in arms, illicit trafficking ignites or sustains a number of vicious and bloody conflicts.

Let us be blunt about it: Illicit trafficking kills. It deprives millions of children and adults of the most basic of human rights, the right to life.

There is no denying that the challenge is daunting. We certainly have our work cut out for us. Yet we can take heart from the fact that progress is clearly being made.

Over the last few years there has been a broadening and deepening of the international understanding that destabilising accumulation and uncontrolled spread of small arms and light weapons is a problem that simply has to be dealt with.

But there is no cause for complacency. Much more remains to be done.

A comprehensive strategy for the fight against the illicit trade in small arms is needed. Such a strategy should address issues related to supply and demand, as well as issues related to the problem of security and development - at regional and global level in addition to the level of the nation state.

In many cases states are among the main culprits. That is why national measures and controls are not enough.

Effective international co-operation is necessary to set norms and standards for acceptable behaviour. But of course the international community also needs to do more to fight international organized crime, which thrives on trafficking of small arms and light weapons.

The good news is that the willingness of governments as well as regional and international institutions to deal with these problems is increasing.

More and more governments adopt legislation and other measures aimed at better control. There are encouraging developments at the regional level, in particular in the OSCE area, in Africa and in Latin America.

More and more governments also adopt legislation and measures to control brokers and brokering activities. The number of governments that have done so remains modest. But it is growing. And many governments have initiated or are initiating necessary legislative processes.

The OSCE Document on small arms rightly states that regulation of brokers is a critical element in a comprehensive approach to combating arms trafficking.

The efforts being made in the EU to develop a Code of Conduct on small arms is a very significant development. Agreed EU procedures for monitoring arms brokering activities and guidelines for controlling brokering, will be the most ambitious attempt so far by an international institution to deal with this issue.

In the Wassenaar co-operation, too, participating States have recognised the importance of controlling arms brokering. There is a strong will to push on with the elaboration and refinement of criteria for effective legislation on arms brokering. The Wassenaar parties will also continue discussion of enforcement measures.

As you are aware, the 2002 plenary meeting of the Wassenaar Arrangement adopted a statement, originally proposed by Norway, which confirmed the need to bring arms brokering under control.

This statement represents a substantial political step forward. It commits the Wassenaar participating States to develop a policy on arms brokering. Building on this commitment, Norway will contribute actively to developing a list of guiding principles for arms brokering control in Wassenaar, in close co-operation with our partners.

The problem of illicit trafficking and brokering has of course also been brought to the attention of the Security Council. Not surprisingly, the focus of the Council has largely been on the effective implementation of arms embargos.

The role of arms brokers is of crucial importance in this context. The statement of the President of the Security Council on October 31 2002 rightly emphasised the importance of co-operation and sharing of information on arms traffickers that have violated arms embargos.

Ladies and Gentlemen,

To sum up: In the broad international campaign to control illicit flows of small arms and light weapons, we are facing a multi-faceted situation. There is good news, but there is also bad news. Real accomplishments and progress coexist with significant remaining challenges and problems.

On the one hand, governments, regional institutions and the UN in recent years have devoted increasing attention to the need for controlling arms brokering activities and arms brokers.

Governments have committed themselves to establishing national controls, including a system of registration of brokers and requiring authorisation for brokering. They have committed themselves to international co-operation and exchange of information. And regional organisations such as the OSCE, the EU and the Wassenaar Arrangement have initiated important work on these issues.

On the other hand it is equally clear that we are only just beginning to deal with this issue. We are still scratching the surface.

Very few governments have adopted relevant legislation. There exists no regional or global guidelines or model legislation that can ensure a uniform system of laws and regulations and avoid gaps that could be exploited by illegal brokers. This is a major challenge for the international community.

In short: We are not nearly there. The fact that small arms continue to flow into the world's trouble spots, despite all the laudable work carried out in recent years, is a stark reminder of this.

In conclusion, let me wish you every success in your important deliberations over the next two days. I am confident that the results of this meeting will be an important contribution to the success of this summer's review meeting and ultimately to the success of the next UN Conference on Small Arms and Light Weapons in 2006.

Thank you for your attention.

Dutch-Norwegian initiative on further steps to enhance international co-operation in preventing, combating, and eradicating illicit brokering.
Oslo, Norway, 22-24 April 2003

Introductory Remarks By His Excellency the Ambassador of the Kingdom of the Netherlands to Norway, Mr Erik Ader

Thank you very much Mr. Chairman.

Mr Chairman, Mr State Secretary, dear colleagues it is a privilege for me to address you at the outset of this Conference. It also a privilege for my country The Netherlands to be co-organisier of this event together with our friends from Norway. In that capacity I would especially like to welcome the distinguished Ambassador of Japan to the Conference on Disarmament Her Excellency Mrs. Kuniko Inoguchi here at the conference, who has the honourable task to chair the first biennial meeting on small arms and light weapons in New York in July this year. We wish you success and you can be assured of our full support.

In this conference we will discuss the implementation of a key element of the UN Programme of Action on small arms and light weapons we all agreed upon in July 2001 in New York, namely: “to develop adequate national legislation or administrative procedures regulating the activities of those who engage in small arms and light weapons brokering”.

Mr Chairman, when I was preparing this speech the name of a very popular television program at the moment in various countries in Western Europe crossed my mind. This programme is called “the weakest link”, it is a quiz. The idea is that the participant who is considered the weakest link by his fellow participants has to leave the show. What has this to do with small arms and light weapons or with brokering, you will think. The answer is nothing, except for the idea that it is the weakest link that determines the strength of a chain. What is true for chains is also true for global efforts to eradicate illicit trade in small arms and illicit brokering. The success of our efforts will depend on the weakest links, on the weakest control regime, on the ease with which controls can be circumvented. I will come back to this point.

As you are all aware brokering is a complicated issue. Brokering in itself is not necessarily an illegal activity. The majority of arms brokering activities are perfectly legitimate. However, as we also know, there are some arms brokers that play a key role in facilitating illegal transfers of arms to groups or persons that cannot or do not want to acquire arms legally. Unfortunately there are still examples of arms flows to embargoed states, rebels, criminals or terrorists in which brokering activities have played a crucial role.

Let me give you an example, between 1991 and 1995 a retired colonel of the Argentinean Army allegedly arranged a shipment of 6,500 tons of small arms, light weapons and ammunition from Argentina to Croatia – breaking an international arms embargo in the process, at that time. This is just one example, described in the Small

Arms Survey 2001, of how a broker took advantage of loopholes in national legislation and disguising the routes of deliveries, choosing to operate where there were loose customs, transport and financial regulations.

To prevent illicit arms flows like these to occur, it is necessary to bring brokering activities within the scope of national laws. However, this is not a problem we can solve only by having adequate national laws and controlling the situation within our own borders. The international context of illegal arms trade and brokering requires a regional or better a global approach. International co-operation in combating illicit trade is extremely important.

The Netherlands, as the present Chairman in Office of the OSCE, has chosen illicit trafficking as one of the main topics of our chairmanship. Illicit arms flows into areas of conflict or the proliferation of these weapons to insurgents, criminals or terrorists could cause great human suffering. As a young Burundian woman refugee once said: "Small Arms make big holes: holes in bodies and holes in families". And in addition to that emptiness left behind by the death of a loved-one, I can add: Holes in economic and social terms as well. It is now widely acknowledged that the wide and uncontrolled availability and use of small arms can undermine sustainable development in a country.

Illicit trafficking is wide ranging, in terms of the variety of the problems it causes, but also in terms of who it is affecting. It's not just countries in conflict who suffer from illicit trafficking in small arms. Many countries have to deal with illegal small arms. Recent research shows that between 85,000 and 125,000 illegal firearms are in circulation in the Netherlands alone, with all its negative consequences for us to deal with.

As I have already mentioned, illicit brokering can play an important role in causing these problems. Therefore we think it is important to continue to discuss the need for effective national control systems on arms brokering activities and how we can best harmonise our efforts, so as to make the weakest link as strong as possible.

Regulations and administrative procedures aimed at controlling brokers and/or their activities have to address complex issues. Questions of definitions, what are brokering activities exactly, do we include banking and shipping activities, what will be the effect on perfectly legitimate business activities, the question of jurisdiction: do we apply the rules only to brokering activities undertaken in our own country or to all brokering activities of our nationals or residents regardless where they take place. Every state that already has legislation, has had to deal with these problems

It would of course be desirable if States would find more or less similar approaches to these problems. Not only would this prevent this illicit Brokers from shopping around, it would also facilitate the development of co-coordinated international action on this issue. In this regard the Netherlands is very supportive of the development of guidelines for national legislation on brokerage within the EU. At the global level this is at this point in time perhaps not yet possible, but we think it would be extremely helpful if we could identify good practices and develop common elements of model regulations, that States can use in developing or adapting their own regulations and legislation of courses taking into account their own political and legal requirements.

It will not surprise you that one of the main goals of this conference is, to do exactly that. We are looking forward to discuss with you best practices, worst practices maybe, and learn from each other's ideas and experiences on how to best organize a control system that adequately regulates arms brokering with the aim to prevent illicit brokering activities. As the State Secretary already mentioned, we will make a summary of the discussions from this conference in a chairman's report to contribute to further considerations on this issue.

The Netherlands will make an effort, in close cooperation with Norway, to promote a more effective approach of the problem of illicit Brokering within the framework of the UN and the OSCE. We hope that representatives from other parts of the world will do the same in their own region.

Mr Chairman, The Netherlands is looking forward to work with you, representatives of all the governments and organisations being present here, today and tomorrow, to make a next step in enhancing international co-operation in preventing, combating, and eradicating illicit brokering.

Mr. Chairman, I realise that I have taken a fair amount of your time, and I do apologise for that, but the topic is very important. I wish you a very interesting and fruitful conference.

Thank you Mr Chairman.

**Dutch Norwegian Initiative on Further Steps to Enhance International
Cooperation in Preventing, Combating and Eradicating Illicit Brokering in
Small Arms and Light Weapons**

Keynote Address: Dr Peter Batchelor, Small Arms Survey, Geneva

Oslo, 23 April 2003

1. Introduction

Mr. State Secretary, Excellencies, Ladies and Gentlemen

Firstly, I would like to thank the governments of Norway and the Netherlands for taking the initiative to host this meeting.

The Small Arms Survey has been working closely with the Dutch and Norwegian governments over the last few months in preparing for this meeting, and we are pleased to be associated with this initiative to enhance international co-operation in preventing, combating and eradicating illicit brokering.

The aim of my presentation this morning is to give an overview of the issue of illicit brokering.

My presentation will focus on three specific questions:

- i) What is illicit brokering?
- ii) Why is illicit brokering a problem?
- iii) What is being done, at national and international levels, to address the problem of illicit brokering?

Before addressing these questions, I want to begin my presentation by referring you to a recent United Nations report - the report of the panel of experts appointed pursuant to Security Council Resolution 1408 (of 2002) concerning Liberia.

This report, published six months ago, provides details of the violation of the 1992 UN arms embargo on Liberia and the ECOWAS Moratorium on small arms transfers into West Africa.

It documents six air shipments carrying surplus Yugoslav arms that arrived in Liberia during the summer of 2002. These shipments comprised 210 tons of small arms, light weapons and ammunition, including 5000 automatic rifles.

These arms transactions did not simply break a few regulations. They undermined the legal authority of various governments, and involved the systematic violation of a whole spectrum of national and international laws, which relate to: end-user certificates, shipping manifests, the ban on travel by Liberian officials, and the financing of arms purchases through exports of diamonds, and other conflict goods, whose trade is also subject to UN sanctions.

More importantly, the arrival of fresh supplies of arms to combatants in Liberia coincided with intensified fighting in the ongoing civil war resulting in thousands of deaths and injuries and the displacement of large numbers of people.

One of the key issues highlighted in the report is that the arms shipments were facilitated by a number of brokers operating under the guise of five different companies that were located in the Federal Republic of Yugoslavia, Liechtenstein, Liberia, and Nigeria.

Put another way – the delivery of these arms shipments would not have been possible without the role played by brokers.

Organizing such illegal shipments of arms involves a large amount of skill, organization, preparation, and financial resources. Documents need to be forged, officials bribed, legitimate arms companies persuaded to sell their weapons, money laundered, and aircrew recruited. As the UN committee investigating sanctions breaking in Angola stated:

Landing heavy cargo planes with illicit cargoes in war conditions and breaking international embargoes requires more than individual effort. It takes an internationally organized network of individuals, well funded, well connected and well versed in brokering and logistics, with the ability to move illicit cargo around the world without raising the suspicions of the law or with the ability to deal with obstacles.³

At the heart of this network of actors are the brokers whose prime expertise lies in outwitting, evading, and breaking with impunity states' laws and regulations concerning arms transfers.

II. The problem of illicit brokering

What is illicit brokering?

Before addressing the issue of illicit brokering, it is important to define what we mean by the terms brokering and brokers.

Brokering –

Narrow definition: all activities associated with facilitating arms deals between suppliers and recipients for material gain without necessarily taking ownership or possession of the arms

Broad definition: includes other associated activities – financial, insurance, transport arrangements

Broker: defined as natural person or legal entity that carries out a brokering activity

³ *United Nations*, Final Report of the Monitoring Mechanism on Angola Sanctions, *Doc. No. S/2000/1225*, 2001, p 32.

Illicit brokering - defined as those activities that involve violations of national, and/or international laws.

These illicit brokering activities usually involve the supply of weapons to conflict zones, and/or to parties that cannot obtain them legally (i.e. countries under UN arms embargoes).

It is of course important to note that brokering is a perfectly legal activity. Many governments employ brokers to facilitate the transfer of arms, and other goods.

Thus we are not talking about prohibiting brokering activity. Rather we are concerned about ensuring that legal brokering activity is better controlled and regulated.

As with the illicit trade in small arms and light weapons in all its aspects, if the legal trade in small arms and light weapons is not regulated and controlled, then it will be impossible to prevent, combat and eradicate the illicit trade in small arms and light weapons.

And so it is with illicit brokering – in order to prevent, combat and eradicate illicit brokering – we need to regulate and control legal brokering.

Why is illicit brokering a problem?

Illicit brokering is a problem for at least 2 reasons:

One, because it involves the violation of national and/or international law.

Two, because it can facilitate the proliferation and supply of weapons to conflict zones, criminal groups, terrorists, authoritarian regimes, countries under embargoes etc.

These very weapons – are often implicated (directly and indirectly) in causing death and injury, displacement, human rights violations and a whole range of humanitarian impacts.

In many instances, illicit trafficking in SALW, made possible by brokers acting illegally, is connected to other criminal activities, such as drug trafficking or the smuggling of human beings and conflict goods. Illicit brokering, therefore, plays an important role in the uncontrolled spread of small arms and light weapons and in some of the criminal activities commonly associated with it.

There are a wide range of techniques used by brokers to evade national and international laws. Details of these techniques, drawing on field research in different parts of the world are provided in the NISAT book 'The Arms Fixers' and the chapter on brokers in the 2001 edition of the Small Arms Survey.

Transport agents – such as freight forwarders, air charter companies or companies operating cargo vessels, play a critical role in facilitating illicit arms deals, and also often act as brokers.

III. What is being done to deal with problem of illicit brokering?

i) National Level

Whereas most countries possess regulations on the production, import and export of SALW, arms brokering activities remain largely unregulated.

The lack of precise regulations makes it difficult to distinguish legal from illicit brokering deals.

This prevents governments from effectively prosecuting illicit brokers, since in many cases these brokers cannot be accused of having broken any law.

An early and groundbreaking study, produced by the Norwegian Initiative on Small Arms Transfers (NISAT), entitled *The Arms Fixers*, identified the lack of national and international laws and regulations governing brokering as a key weakness in national and international efforts to control arms trafficking.

A study in 2000⁴ identified only ten states with legislation that dealt explicitly with arms brokering.

Currently sixteen states have national legislation, which addresses the issue of brokering, and at least two more countries are in the process of passing similar national regulations.

However, in 4 of these 16 countries the issue of brokering is not dealt with explicitly, but is indirectly covered by provisions relating to the import and export of arms.

This raises the issue of whether legislation covering brokering should be dealt with in specific stand-alone legislation, or whether legislation covering brokering should be embedded in broader arms control legislation.

In reviewing current practice at the national level, it is clear that there are significant differences in the way in which brokering is regulated. These differences relate to issues such as: definitions, criminalisation and sanctions, and the scope of jurisdiction.

Definitions:

The definition of what activities constitute brokering activities varies across countries.

Most states define brokering narrowly, referring solely to the activity of intermediation for the conclusion of arms deals.

Very few countries use definitions, which include associated activities, such as financing, insurance and transportation.

A difference in definition obviously entails differences in the scope of legislation: who is to be considered as a broker and therefore liable for violations of national

⁴ James Coflin, *Small Arms Brokering: Impact, Options for Controls and Regulation*, Canada, Department of Foreign Affairs and International Trade, May 2000. Available at < http://www.dfaity-maeci.gc.ca/arms/pdf/small_arms_brokering-e.PDF >

regulations will depend on the legislation of the country where the relevant activity is being conducted.

Criminalisation and Sanctions

There are significant differences among countries with respect to standards for the criminalization and sanctioning of illicit brokering activities.

States, for example, have used different criteria to determine whether a violation of brokering regulations is minor or serious; the regimes for penalties and sanctions also vary accordingly.

Although most states have established pecuniary sentences (fines), only some of them have provided for the possibility of custodial sentences (prison).

Common understandings on the nature of illicit brokering activities and on appropriate sanctions and penalties might be useful for increasing the deterrent value of national controls. Linked to this is the issue of harmonisation of legislation, particularly within the framework of regional instruments.

Scope of Jurisdiction (extra-territoriality)

Finally there are significant differences in terms of the jurisdictional scope of existing legislation.

In particular, important differences exist on the validity of regulations outside a country's national territory (the issue of extra territoriality)

Most countries' controls over brokering stop at their national border, and do not cover the activities of its nationals if they are conducted abroad, or if the weapons do not enter the national territory.

This has greatly increased illicit brokers' freedom of action by de facto removing the legal constraints in which they should operate.

In a perfect world, in which all countries were able to exert complete oversight of brokering activities within their territory, conducted by all citizens and residents, extraterritorial jurisdiction would not be necessary.

However in today's globalised world, where only a handful of countries have national regulations on brokering in place, the issue of extra-territorial jurisdiction is being recognised as an important element of national and international efforts to regulate and control illicit brokering.

In general terms, strong differences in national controls on brokering open loopholes that individuals or companies can exploit for illegal transactions.

In most cases brokers are real experts in evading national legislations, and in moving their activities from countries where regulations are present and functioning, to countries where they are lax or non-existent.

With regard to the issue of scope of jurisdiction:

Dr. Walter Mapelli, an Italian Federal Prosecutor who is leading the prosecution of a prominent broker recently stated that:

"We must take into account the fact that jurisdiction is one step behind criminality today, because criminality is operating globally and continues to do so all the more."⁵

ii) International Level

What has been done at an international level to address the problem of illicit brokering?

National controls on brokering are not sufficient, because of the globalised nature of arms trafficking. Thus, international co-operation is essential to address the problem of illicit brokering.

As already mentioned by other speakers, various international and regional agreements include provisions dealing with illicit brokering.

As far back as 1999, States participating in the Second Oslo Meeting already called attention to the central role played by brokers in the illicit flows of weapons, particularly to zones of conflict and into the hands of transnational criminal organizations. The final report of the meeting also noted that differences in scope of national regulations could end up being used to create sanctuaries for illicit arms brokering deals.

The Report of the UN Group of Experts established in 1999, which was circulated as a background document of the 2001 UN Conference on small arms, examined various aspects connected with brokering of SALW. Recognizing that "Arms brokering and its related activities (...) are an intrinsic part of the legal trade in small arms and light weapons", the Report indicated various mechanisms and measures that states could adopt in order to increase scrutiny over an activity which is still largely unregulated at both the national and international levels. Regulatory options concerning licensing, registration and disclosure requirements were inserted in the Report.

Similar measures were mentioned in the Firearms Protocol, approved with GA Resolution 55/255 of June 2001, which also "encouraged" state parties that have systems of brokering authorizations in place, to keep records of brokers and transactions, and to exchange relevant information within the system established by the same Protocol.

⁵ Quoted in *Gunrunners* a 'Frontline World' documentary screened on the US PBS channel May 2002. <<http://www.pbs.org/>>

All these conclusions were reiterated in the UN Programme of Action on SALW of July 2001. In the Programme, states agreed to develop “adequate legislation or administrative procedures” at the national level to regulate activities of those engaged in the brokering of SALW deals. At the global level, they recognized the need to develop “common understandings of the basic issues and the scope of the problems related to illicit brokering”.

A number of other initiatives on brokering have been realised at the regional level:

Within the OSCE region, the Document on SALW of November 2000 states that “The regulation of the activities of international brokers in small arms is a critical element in a comprehensive approach to combating illicit trafficking in all its aspects”. In this view, States agreed to consider measures for the regulation of brokering activities, once again relating to licensing and registration systems, or to disclosure requirements.

A further step has been taken with the decision, made in July 2002, to create and circulate Best Practice Guides on brokering of SALW, that are currently being produced. In line with the desire to implement the OSCE Document on SALW, the guides aim to present states with model practices that might be used in the designing and implementation of national controls on brokering.

The European Union has elaborated a series of common guidelines for controlling brokering that could be a basis for national legislation. These guidelines are contained in the “Third Annual Report According To Operative Provision 8 Of The European Union Code Of Conduct On Arms Exports” of December 2001, whose relevant text has been circulated as part of the background materials for this meeting.

Finally, in the SADC Protocol States Parties undertook to include in national legislations, and as matter of priority, provisions regulating the brokering of firearms in their territory.

Civil society organisations such as NISAT and Fund for Peace have also been involved in this issue – from conducting research, to developing policy options (Model Convention on the Registration of Arms Brokers and the Suppression of Unlicensed Arms Brokering)

IV. Conclusion

Illicit brokering – is now a common feature of the illicit trade in small arms and light weapons.

As has been mentioned, the illicit trade has a wide range of humanitarian, developmental and human rights impacts.

Only by regulating and controlling the legal trade in small arms, including regulating brokering can we begin to address the issue of illicit brokering.

This conference is important for at least 2 reasons:

One: to help develop common international understandings of the problems associated with illicit brokering, and

Two: to identify possible options for addressing the issue, at both national, and international levels.

At the national level, there are certainly many possibilities for developing and/or strengthening existing national regulations on brokering drawing on existing national practice.

I look forward to constructive discussions on many of these issues over the next 2 days.

Regulating Brokering by Herbert Wulf⁶

1. **The role of arms brokers:** International transfer of small arms and light weapons is often facilitated by arms brokers. Governments – both potential suppliers and recipients of arms – make use of them. Usually, this role of brokers is legal, in the sense that brokers are given authority (e. g. in the form of a license) by governments to act in this area. Whether this role is legitimate is another question. At the same time brokering is a largely unregulated activity, in the sense that in most countries governments do not give or require brokers to register or apply for a license. They may operate in a “grey zone” between legal and illegal dealings.
2. **Bribes:** The use of local representatives, agents, consultants (or whatever such middlemen might be called), enables bribes to be paid out of large unspecified “fees” and commissions to key decision makers. Brokers often in concert with government officials, shroud their dealings in secrecy and use ingenious methods, like intermediary countries and agents, letter box companies and mail drops in safe havens to create a smoke-screen to hide the routes of the deliveries and the channels of payment.
3. **Legal and illicit trade in small arms and light weapons:** There is today ample evidence of arms supplies to illegitimate customers and end-users such as embargoed states, rebel groups, criminals and terrorists. However, the issue of small arms control is all too quickly associated with illicit trade. It can safely be said that the illicit trade is much smaller than licit (government sanctioned) trade. Similarly, the small arms issue is often associated with the arming of non-state actors. However, licit trade and transfers to governments also constitute a serious problem. Most illicitly held weapons were originally in the legal realm of this trade.
4. **Definition:** The UN Feasibility Study on Brokering distinguishes between core and related activities: “**Brokering and related activities**”. Individuals or

⁶ Professor Dr. Herbert Wulf, Bonn International Center for Conversion (BICC), contact: Katerkamp 12, D 25421 Pinneberg/Germany, Tel. +49-4101-71445; Fax: +49-4101-76332; e-mail: wulf.herbert@t-online.de.

companies acting as intermediaries between a supplier and a user may be performing one or more of the following roles: “dealer”, “agent acting on behalf of manufacturers, suppliers or recipients”, “broker”, “transportation agent” or “financial agent”. “**Dealers**” buy and sell quantities of arms and associated items according to the demand of users. “**Agents**” acting on behalf of manufacturers, suppliers or recipients have a mandate to represent one of them and to conclude a contract in the name of that person. “**Brokers**” bring together a supplier and a recipient and arrange and facilitate arms deals so as to benefit materially from the deals without necessarily taking ownership of the arms or acting on behalf of one of the two parties. For the purposes of this report, “**Transportation agents**” are agents involved in arrangements for the transportation of the arms and associated goods, and include shipping agents and brokers, freight forwarders and charterers.

5. **Legislation:** According to a report of the Small Arms Survey, so far only 13 to 15 countries, most of them in the OSCE area, have introduced domestic regulation of brokering activities. The absence of controls in many countries and inconsistencies and gaps in national laws and procedures among those that have introduced controls, gives brokers ample opportunity for unregulated business. The challenge is to ensure the effective introduction and enforcement of national legislation and procedures that are coordinated with like-minded states. The eventual aim should be to establish international norms of brokering regulation.
6. **Types of regulation:** Different measures have been proposed and implemented. Basically, there are three measures governments can take: registration of brokers, licensing, and monitoring through disclosure of import and export authorizations. All of three measures or a combination thereof can contribute to effective regulation of brokering.
7. **Options for specific or general legislation:** The preparatory workshop paper gives two options for implementation of brokering legislation: First, brokering regulations can be integrated in general export control legislation in order to provide a clear legal framework for brokering activities. Second, the general legislation could be complemented with provisions which explicitly cover

brokering activities. There is no general answer to which of the two options is preferable. This is very much a function of legal traditions in the various countries. As long as the activities related to brokering are explicitly covered by national legislation, it is irrelevant whether such regulations are part of arms export laws, or form separate instruments. Specific laws on brokering might be more precise in regulating this part of the trade since such regulatory regimes typically include a more or less precise definition of brokering and its related activities. On the other hand, as far as I know, in the USA, which has a specific law on brokering, nobody has been prosecuted under this law.

8. **Coverage of core and related activities:** Should brokering regulation cover only core activities such as mediating, facilitating, organizing and negotiating contracts for arms suppliers and recipients or should it also cover related and supporting activities such as transport, financing, insurance, promotion, advertising and marketing of arms? Countries have chosen different approaches: To concentrate on core activities enhances the possibilities for the authorities to cope with a small group of relevant actors. This option may avoid an inappropriately wide coverage. On the other hand if brokering explicitly includes the core and the related activities comprehensive coverage might be possible, thus avoiding problematic legal distinctions.
9. **Coverage of brokered products:** It is said in the report by the Small Arms Survey that brokering is commonly intended as the role of intermediation in the transfer of finished products. However, brokers are often involved also in the transfer of know-how or of components of weapons, as well as in facilitating license production abroad. All these elements should be borne in mind when identifying what activities should come under national scrutiny. While the Dutch Norwegian Initiative focuses on small arms and light weapons, it is probably unrealistic to focus brokering legislation exclusively on this category of weapons. In addition to difficulties of defining what is to be included, there would also be legal problems to include some and exclude other weapons purely by size.
10. **Actors or activities:** Should national legislation cover actors (brokers) or activities (brokering)? According to the preparatory paper for Workshop 1 to

focus on brokering activities has the advantage of looking at the core of the activities irrespective of how the actors are labelled or label themselves. To focus on arms brokers has the advantage that this system requires prior registration of brokers, the group of brokers is well known and their activities can be effectively monitored.

11. **Focus of attention:** See graph.

Dutch-Norwegian Initiative on further steps to enhance international co-operation in preventing, combating and eradicating illicit brokering in small arms and light weapons: Oslo, 22-24 April 2003

Regulating Brokering: the scope of controls on arms brokering and links with other legislation by Graham Zebedee⁷

Good morning. First, I would like to thank the Governments of Norway and the Netherlands for organising this conference, which focuses our the attention on what we consider to be a key issue in the Small Arms and Light Weapons agenda – brokering. The conference my government organised in January of this year at Lancaster House had a broader focus, covering brokering along with export controls and enforcement issues, so I am particularly pleased that we have a chance to address this important subject in more detail. It is also very useful that we are able to discuss these matters before the United Nations Biennial Meeting of States on the Program of Action on Small Arms and Light Weapons. Promoting progress in the context of the Program of Action was the aim at Lancaster House, and it is an important aim here.

In this short presentation I will describe the United Kingdom's proposed controls on brokering, as well as current developments at European Union level, and the likely extent of controls on brokering activities in Europe in the future.

Turning first to the situation in the United Kingdom, I should make clear that we do not yet have a law to control arms brokering. Therefore I cannot tell you our experience of the best way to enforce such a law, or what the magic formula is which will prevent illicit brokering from taking place. If we have a similar conference to this one in several years' time, I would be delighted to speak on these topics!

At present, the UK's legislation to control brokering is in draft, and indeed industry, non-governmental organisations and other interested parties have until the end of this month to tell us their views on our proposed legislation. However, I can tell you our preliminary conclusions on the most appropriate scope for brokering controls

I should first be clear that our proposed brokering legislation is not specific to Small Arms and Light Weapons. However, Small Arms were very much in our minds when considering what proposals to make. We were conscious that, although the proportion of *legal* transfers of *all* weapons which are brokered is fairly small, this percentage is probably much larger when we are considering *illicit* transfers of Small Arms. Many of us will be familiar with examples of such illicit transfers of Small Arms to West Africa in which brokers have been involved. These are often the transfers with the most serious consequences for people in the states where those weapons ultimately arrive and are misused. Although it is in the nature of illicit activities that no accurate

⁷ Counter-Proliferation Department, Foreign and Commonwealth Office, United Kingdom: graham.zebedee@fco.gov.uk

statistics exist, we do not underestimate the scale of the problem, nor the size of the international efforts needed to address it.

A key objective of our proposed legislation was to ensure that the criteria we use to judge arms exports – which are of course based on the EU Code of Conduct – are also applied to applications to broker international arms transfers. We do not want people to be able to use London, for example as a base to arrange an international arms transfer which we would not allow if it were a direct export from the UK.

Amongst other issues, we considered the following three important factors in designing our draft legislation:

First, we considered what activities should be defined as ‘brokering’. We decided that the core activity of brokering was where a person or company either:

- buys, sells or arranges the transfer of military equipment in their possession; or
- negotiates a contract between others for trade in military equipment overseas, or arranges such trade.
- does any act calculated to promote the arrangement or negotiation of a contract in return for a fee

The second case here is often referred to as trafficking, although I will use the word brokering to cover both activities today. Our initial conclusion was that it would not be appropriate to include the activities of *financing* arms transfers, nor of the pure *transport* of these weapons between one foreign country and another for all trade in all military equipment. Seeking to control those whose sole involvement in a transaction is in transportation, finance or other peripheral activities would cover an enormous amount of legitimate business, and we felt this would overwhelm our ability to effectively enforce our law. By focusing on the ‘core’ activities of brokers, we hoped to target our enforcement resources on the activities of most concern.

However, we do intend to impose controls on these ‘peripheral’ activities in three cases: where any activities facilitate the supply of any military equipment to embargoed destinations, the supply of torture equipment to any destination, or the supply of Long Range Missiles to any destination. We consider that this approach is justified where we are essentially seeking to prohibit these activities.

Second, we reflected on the right geographical scope for the controls. We knew that several countries operate a fully extraterritorial system, where all brokering transactions require a licence, regardless of the country in which they take place. We also knew that other states concluded that they could not enforce such a system. Our proposal is that where any part of the brokering activity takes place within the United Kingdom, the activity is covered by the law and so requires a licence first before the broker enters into any commitments.

In addition, the proposed law will apply outside the United Kingdom in only three cases, which are the same as those in which the type of activities covered by our

proposed controls are also wider. These are activities which we consider to be subject to universal condemnation - brokering of long-range missiles, brokering of torture equipment; and brokering military equipment to any embargoed destination.

I can confidently predict that some responses we receive to our consultation will ask for our law to apply extraterritorially to a fourth case - the brokering of Small Arms and Light Weapons. I will of course not prejudge our response to this call. However, I would note that some Small Arms transfers are legal and responsible deals, for example those connected to other countries' legitimate right of self-defence.

Third, we considered which items should be covered by these brokering controls. Our proposal is that everything on our national military list should be covered. This list of items is very similar to that agreed in the Wassenaar Arrangement. We are not proposing that dual-use goods be covered. Since this session of the conference also covers links to other pieces of legislation, I shall mention that the UK already has legislation which forbids any UK person from helping a foreign weapons of mass destruction program. However, this is largely outside the scope of this conference.

We also considered the question of regulating brokers themselves, for example by requiring them to register with the authorities before they can undertake any brokering transactions. I can say that we do not consider that maintaining a register would in itself be an effective substitute for control of brokering transactions themselves, which would be done through a licensing system. However, in this area, as in others, no final conclusions have been reached.

In all our deliberations, we wish to both effectively address the problem of irresponsible brokering and minimise unnecessary burdens on law-abiding businesses, which of course make up the vast majority.

The timescale for the introduction of this legislation has not yet been fixed, but I would hope that some aspects will come into force during 2003. When this happens, the United Kingdom will be the 6th or 7th member of the European Union to have such controls. I mention this because, as the title of this conference recognises, illicit brokering is an issue which requires an international solution. I do not want to imply that Europe is the only area of concern at this conference – however, a significant proportion of illegally-brokered arms originate from Europe, and for this reason, Europe is an ideal base for those persons carrying out illegal brokering activities. To effectively address this problem, there must be no place for such people to hide in order to carry on their trade. If there are some countries which have no legal instruments with which to prevent or disrupt the activities of illicit brokers, these countries will tend to attract this sort of activity.

Under discussion in Brussels at the moment is an agreement that all EU countries will introduce controls on brokering. The details of the agreement have not been finalised, but it is likely to conclude that an EU Member State should, as a minimum, require a licence before brokering activities take place on its territory. This will mean that, in several years' time, the European Union of 25 members has the potential to become a 'no-go zone' for illicit brokering. And I hope that this zone will be extended further, through the adoption of controls on brokering by other European countries. Indeed, the United Kingdom is already encouraging and trying to help these other countries to

develop and implement laws to counter illicit brokering. We are ready to help further wherever we can.

However, we know of course that this ‘no-go zone’ can only become a reality if all laws are properly enforced. This requires not only significant enforcement resources but also effective co-operation and information-sharing between national authorities. Enforcement is difficult, but we must ensure that there is no weak link in the chain. If there is, it will be exploited, and will undermine our efforts to eradicate the misuse of Small Arms and Light Weapons world-wide. Thank you.

Appendix: Excerpts from International Initiatives on Brokering

Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects

II. Preventing, combating and eradicating the illicit trade in small arms and light weapons in all its aspects

At the national level

14. To develop adequate national legislation or administrative procedures regulating the activities of those who engage in small arms and light weapons brokering. This legislation or procedures should include measures such as registration of brokers, licensing or authorization of brokering transactions as well as the appropriate penalties for all illicit brokering activities performed within the State's jurisdiction and control.

At the global level

39. To develop common understandings of the basic issues and the scope of the problems related to illicit brokering in small arms and light weapons with a view to preventing, combating and eradicating the activities of those engaged in such brokering.

OSCE Document On Small Arms And Light Weapons

SECTION III: COMBATING ILLICIT TRAFFICKING IN ALL ITS ASPECTS:

COMMON EXPORT CRITERIA AND EXPORT CONTROLS

(D) Control over international arms-brokering

1. The regulation of the activities of international brokers in small arms is a critical element in a comprehensive approach to combating illicit trafficking in all its aspects. Participating States will consider the establishment of national systems for regulating the activities of those who engage in such brokering. Such a system could include measures such as:

- (i) Requiring registration of brokers operating within their territory;
- (ii) Requiring licensing or authorization of brokering; or
- (iii) Requiring disclosure of import and export licenses or authorizations, or accompanying documents, and of the names and locations of brokers involved in the transaction.

**Inter-American Convention Against The Illicit Manufacturing Of And
Trafficking In Firearms, Ammunition, Explosives, And Other Related Materials**

Article I

Definitions

2. "Illicit trafficking": the import, export, acquisition, sale, delivery, movement, or transfer of firearms, ammunition, explosives, and other related materials from or across the territory of one State Party to that of another State Party, if any one of the States Parties concerned does not authorize it.

Article IX

Export, Import, and Transit Licenses or Authorizations

1. States Parties shall establish or maintain an effective system of export, import, and international transit licenses or authorizations for transfers of firearms, ammunition, explosives, and other related materials.
2. States Parties shall not permit the transit of firearms, ammunition, explosives, and other related materials until the receiving State Party issues the corresponding license or authorization.
3. States Parties, before releasing shipments of firearms, ammunition, explosives, and other related materials for export, shall ensure that the importing and in-transit countries have issued the necessary licenses or authorizations.
4. The importing State Party shall inform the exporting State Party, upon request, of the receipt of dispatched shipments of firearms, ammunition, explosives, and other related materials.

**Protocol On The Control Of Firearms, Ammunition And Other Related
Materials In The Southern African Development Community (SADC) Region**

Article 1

Definitions

"brokering" means:

- a) acting for a commission, advantage or cause, whether pecuniary or otherwise; or
- b) to facilitate the transfer, documentation or payment in respect of any transaction relating to the buying or selling of firearms, ammunition or other related materials; and thereby acting as intermediary between any manufacturer or supplier of, or dealer in, firearms, ammunition and other related materials and buyer or recipient thereof;

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

Article 15

Brokers and brokering

1. 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.
2. 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.

Third Annual Report According To Operative Provision 8 Of The European Union Code Of Conduct On Arms Exports (2001/C 351/01)

Control of arms brokering activities

In the context of the implementation of the Code of Conduct, the issue of arms brokering was raised and was discussed on several occasions by COARM. In accordance with the intention expressed in the second annual report, Member States have continued and deepened their discussions on the procedures for monitoring arms brokering activities. To that end, they have reached agreement on a set of guidelines for controlling brokering that could be a basis for national legislation.

Residents and entities within the EU must be prevented from engaging in arms transfer activities circumventing national, European Union, United Nations or Organisation for Security and Cooperation in Europe embargoes or export criteria of the EU Code of Conduct on arms exports; it is also desirable to establish the necessary tools for information exchange on both licit and illicit brokering activities, thereby enhancing cooperation within the EU with a view to preventing and combating arms trafficking. Member States have thus agreed that arms brokers resident or established within the territory of the EU and/or brokering activities that take place within the territory of Member States should be controlled. Such controls should cover the activities of persons and entities who act as agents, traders or brokers in negotiating or arranging transactions that involve the transfer of arms and military equipment from one foreign country to another. These measures will also establish a clear framework for legitimate brokering activities.

In order to prevent loopholes stemming from different national approaches and to facilitate the work of Member States wishing to develop or further elaborate national regulations, some suggestions for controls on arms brokers were evaluated and the following conclusions were drawn.

For transactions involving the activities of buying and selling (where the arms or military equipment enter into the legal possession of the arms-brokering agent) or mediating (without direct acquisition of property), a licence or written authorisation should be obtained from the competent authorities in the Member State where the brokering activities take place or where the brokers are resident or legally established. Such licence applications should be assessed on a case-by-case basis against the criteria of the EU Code of Conduct on Arms Exports.

Additionally, Member States should seriously consider registering brokers or requiring them to obtain a written authorisation from the competent authorities of the Member State where they are resident or established. In the assessment of an application for authorisation to act as a broker, records of involvement in illicit activities should be taken into account. Such a system of registration or authorisation should not be construed as implying any form of official approval of brokering activities, a fact that is made clear also by the maintenance of a system of individual or global licences authorising transactions.

Legal controls in this important area should be supported by effective penalties. Member States could exchange information on legislation, registered brokers and brokers who have a history of proven involvement in illicit activities and could continue discussions in the COARM Working Party to further define, inter alia, possible criteria for the assessment of applications to register as a broker or obtain authorisation to act as a broker.

Bamako Declaration on an African Common Position on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons

3. WE RECOMMEND that Member States should:

ii) Encourage the codification and harmonization of legislation governing the manufacture, trading, brokering, possession and use of small arms and ammunition. Common standards could include, but not be limited to, marking, record-keeping and controls governing imports, exports and the licit trade;