

## **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;