

Illicit Arms Brokering

*-The crucial role of brokers in illicit international
arms transfers & obstacles to cooperation towards
effective international regulation*

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Introduction

It is truly difficult to comprehend the extent and consequences of the international trade in small arms and light weapons (SALW) –both in the licit and illicit spheres. With over 500 million small arms in circulation throughout the world, the UN estimates that at least 500,000 people are killed annually by small arms¹. Their characteristics –being that they are light, easily available and transportable– make them attractive weapons both for criminal gangs and for the rebels and paramilitaries in the many regional conflicts around the world –often enabling the recruitment of child soldiers who would not be capable of handling larger, heavier and more complex equipment. It therefore seems appropriate to deem SALW “the real weapons of mass destruction,”² or as some say “the weapons of local destruction.”

While it is true that international awareness has been on the rise over the past decade, little progress has been made with regards to stemming the illegal flow of arms. Extensive publications, attempts at tightening regulations on the licensing of arms deals, and large international conferences –like the UN Conference on the Illicit Trade in Small Arms and Light Weapons in all its Aspects held in New York on 9-20 July 2001– all indicate a willingness to address the SALW issue and examine possible policies. However, with a large demand and seemingly endless supply, the weapons continually get into the wrong hands.

A substantive reason for this seems to be that the topic of arms brokering remains largely unaddressed and brokering activities are practically unregulated in the world today. This aspect of the problem has not yet received the attention and focus that it deserves. It is telling, for example, that as of May 2003 only 16 nations have

¹ Small Arms Survey 2001 (Oxford, UK: Oxford University Press, 2001), p.1. “UN Press Kit, Fact Sheet 1,” United Nations Department of Public Information, May 2001, <<http://disarmament.un.org/cab/smallarms/presskit/sheet1.htm>> (July 3, 2003).

² Small Arms Survey 2001, p.1

implemented legislation that regulates arms brokering³. And while there is recognition of the need for regulating brokering activities⁴, no global treaties currently exist. Further, though the nations which have already implemented brokering regulations are often drawn upon as examples, very few prosecutions of known illicit arms brokers have taken place –highlighting the fact that as long as these regulations remain solely at the national level, the brokers find the loopholes necessary to avoid detection and culpability.

This paper will focus on the issue of brokering. Some of the questions I will address are: Who are the brokers and what functions do they perform? How extensive is the problem of illegal arms brokering? What are the major obstacles to achieving an international legally binding regime regulating the middlemen in arms transfers? Finally, I will present and evaluate some of the proposed courses of action for dealing with the brokering issue.

Definitions

There is some disagreement regarding the definition of the terms that will be used in this paper. In particular, the definitions of the terms “broker” and “brokering activities” are disputed in terms of how broadly they should be interpreted and applied. A definition of “small arms,” on the other hand, is less controversial. While there is no universally agreed upon definition, it is generally understood to mean arms

³ Norwegian Initiative on Small Arms Transfers (NISAT). Conference Report “Dutch – Norwegian Initiative on Further Steps to Enhance International Co-operation in Preventing, Combating and Eradicating Illicit Brokering in Small Arms and Light Weapons,”
<<http://www.nisat.org/Brokering/Conference%20Report%20fulltext.pdf>> p.5.

⁴ See the 2001 UN Programme of Action (PoA) which states as an aim “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). Citation from NISAT Conference Report, p.4.

that are highly portable and can be carried by an individual. I will expand upon this definition below.

The Fund for Peace in the “Model Convention on the Registration of Arms Brokers and the Suppression of Unlicensed Arms Brokering,” prepared for the UN Conference in 2001, provide the following definitions for brokers and brokering activities:

- *[A] broker* is any person who acts on behalf of others, in return for a fee or other consideration, by negotiating or arranging contracts, purchases, sales or transfers of arms or arms services ...
- *[B]rokering activities* mean acting as a broker, including the importing, exporting, purchasing, selling, transferring, supplying or delivering of arms or arms services, or any action taken to facilitate any of those activities, including transporting, freight forwarding, mediating, insuring or financing.⁵

I find these definitions useful in that they are broad enough to cover a wide range of facilitating services, which is the key role of a broker. Another useful definition that highlights this particular emphasis on facilitation is found in the Small Arms Survey 2001. While stating that drawing too strict distinctions between the various actors involved in arms transfers could prove counter-productive, the authors make an important distinction between dealers and brokers based on which activities are considered most central to their role. “A dealer is an actor who *primarily* purchases weapons for subsequent resale; a broker is an actor who *primarily* works to facilitate weapons transactions,” and go on to define brokering as “the facilitation and organization of transactions on a relatively autonomous basis, and for some form of compensation or material reward (e.g. financial commission on the deal).”⁶

⁵ The Fund for Peace. “Model Convention on the Registration of Arms Brokers and the Suppression of Unlicensed Arms Brokering,”

<http://www.fundforpeace.org/publications/reports/model_convention.pdf> (July 13, 2003), p.3.

⁶ Small Arms Survey 2001, p.98.

Brokering activities thus entail a variety of services, summarized in the Small Arms Survey 2001 as follows: ensuring market access (bringing together buyers and sellers), consultation and technical advice (market information), procurement of weapons (sourcing), contractual negotiation and facilitation, arranging finance and payment, obtaining necessary authorizations (licences and certificates), and organizing the transportation of goods. The brokers do not always complete all of the services outlined above themselves, but will arrange for other intermediaries to provide those services –for example through financial agents, government officials, and transport agents.

Small arms are, as outlined above, most commonly defined as arms that can be readily carried and operated by an individual. Beyond this, the United Nations Panel of Experts outlined a classification of the category small arms and light weapons⁷. Small arms include: revolvers, pistols, rifles, carbines, sub-machine guns, and light machine guns. Light weapons include: heavy machine guns, hand-held and mounted grenade launchers, portable anti-aircraft and anti-tank guns, recoilless rifles, portable launchers of anti-tank and anti-aircraft missile systems, and mortars of calibres of less than 100mm. And ammunition and explosives include: cartridges for small arms, shells and missiles for light weapons, anti-personnel and anti-tank hand grenades, landmines and other explosives. In this paper, the terms *small arms* and *small arms and light weapons* will be used interchangeably.

⁷ United Nations Development Program. “Definition of ‘Small Arms’,” <http://www.undp.org/erd/archives/brochures/small_arms/sa8.htm> (May 21, 2003).

Chameleons: the role of brokers in the international arms trade

Arms brokering is by no means a new phenomenon and, as Kathi Austin argues, brokers have historically been uniquely unregulated⁸. What is new, however, is the framework within which brokers operate. Particularly, the context changed significantly after the end of the Cold War. Nations, both in the West and the former Soviet bloc, had been producing a variety of weapons and accumulating stockpiles for the sake of ‘keeping up with’ their competitors. When the Cold War came to an end, these stockpiles to a large extent became superfluous. Thus, several of the former Soviet bloc nations found themselves in the position of having large weapons’ surpluses while being short on capital and business opportunities⁹.

This is one of the supply-side factors highlighted by the Small Arms Survey 2001 as contributing to the current prominence of arms brokers. Another supply-side factor is the overall downsizing of the military and security forces of these nations, which has led some former defence and security agency employees to seek private sector work. These actors thus brought their expertise from the Cold War era into the private post-Cold War situation and were able to capitalize on their experience with and knowledge of the structures dealing with arms transfers.

In addition to supply-side factors, there have been significant changes in the demand patterns as well. The past two decades have seen a dramatic increase in intra-state conflicts and more and more non-state actors emerging as key actors in warfare. These actors often cannot afford expensive conventional arms nor do they have the capability to use them, and have thus increased the demand for SALW. Another change in demand patterns stems from the increasingly transnational scope of

⁸ Kathi Austin, “Illicit Arms Brokers: Aiding and Abetting Atrocities.” In The Brown Journal of International Affairs, volume 9, Spring 2002.

⁹ Rick Young (producer), “Interview with Johan Peleman,” Frontline/World (PBS), 2001. <<http://www.pbs.org/frontlineworld/stories/sierraleone/peleman.html>> (July 10, 2003).

organized crime. These actors rely on easily transportable but deadly weapons that can be used for intimidation and coercion purposes, and small arms fit these requirements perfectly.

Underlying the above-described changes are the forces of globalization. Globalization is in itself a much-debated term, but in essence it can be said to entail the significant advances in communications and information technology which have taken place over the past decade. This process has benefited states in many ways, but has most dramatically facilitated the forces of international trade and trade liberalization, and –indirectly– the forces of organized crime and others trading in the illicit global economy. And while it has clearly improved communications and trade opportunities for legitimate trade, it has at the same time opened new doors to illicit trade through improved communications, and easier and cheaper transportation. Further, the sheer size of the global trade today makes it extremely difficult to regulate and inspect.

Against this background and changed framework, brokers have in many ways become ‘trade chameleons,’ maneuvering the legal and illicit markets undetected and specializing at precisely that feat. As reflected in the definition of brokers presented above, arms brokers provide a number of key services to those interested in exporting and/or importing weapons –both legally and illegally– thereby facilitating all aspects of the transaction; from establishing contact between the parties involved to arranging transportation and financing.

Arms brokers are widely used in legal transfers, but play a particularly crucial role in the illicit market as the black market and “gray market” deals are much more complicated than a legal deal, and can basically not be done without the aid of a professional broker. This is particularly true of large-scale international deals. Thus,

brokers arguably comprise the backbone of the illicit arms market, and without them the trade would lose its structure and the networks that make possible the interactions of all parties involved¹⁰. Further, it is precisely their ability to navigate national legislation and camouflage any illicit activities that makes the distinction between legal and illegal a difficult one for law enforcement and prosecutors to tell, thereby making prosecutions practically impossible under today's legislative regime. This trait makes brokers attractive not only to the many warlords and embargoed parties in the world, but also to private parties and governments interested in covert transactions, also often referred to as "gray market" activities.

The power and flexibility that this expertise entails is strongly illustrated in the case of Leonid Efimovich Minin –charged in Italy in June 2001 with international gun smuggling and using a fake end-user certificate (EUC) to sell arms to Liberia and Sierra Leone. The smuggling charge is made possible because the Italian parliament adopted a U.N. arms embargo, thus passing it into Italian law, and the prosecutors argued that Minin thereby had violated an Italian national law. This Italian prosecutive initiative is the first of its kind, where no national law separate from the embargo is involved; normally, the U.N. embargoes are not enforced this concretely. It is therefore a precedence setting case, which has, unfortunately, so far yielded little result with no prosecution in sight. The reason for this is that while Minin indeed was involved in so-called "embargo-busting" to Liberia and Sierra Leone, he was skillful in disguising any illicit activities by exploiting loopholes in national regulations and by using several techniques and strategies central to the operations of arms brokers around the world.

¹⁰ Small Arms Survey 2001, p.105

When the police in Italy arrested Leonid Minin in his hotel room on August 4th 2000, they found in his possession several pieces of incriminating evidence, including: cocaine, \$500,000 worth of uncut diamonds, over \$35,000 in cash in various currencies, and a briefcase full of documents in various languages relating to Minin's diverse business operations¹¹. Among these documents were some of Minin's personal correspondence with Liberian President Charles Taylor's son "Chuckie", business correspondence, and evidence of Minin's dealings in oil, timber and other natural resources. However, the most important evidence found from the law enforcement point of view were documents detailing proposed and realized arms deals, particularly incriminating were the several copies of an end-user certificate (EUC) signed by General Robert Guei, the former Ivory Coast Head of State. Along with this, police found maps of the Liberia-Sierra Leone border and catalogs of weapons.

Brokers employ a variety of strategies to avoid detection and accountability. Some of these methods include: corrupting government and low-level officials, distancing themselves from the illegal activities by constantly registering and shutting down front companies, and using offshore banking/tax havens. By making the transaction highly complex –i.e. through fabricating various front companies and other entities, laundering gains to disguise the money trail, and employing transport agents adept at making cargoes "vanish into thin air"¹²– brokers often successfully manage to hide the chain of accountability and protect themselves from legal repercussions. Though it is perhaps too early to completely discard any chance of prosecution for Minin, it certainly does seem that he has managed to get away with

¹¹ Matthew Brunwasser, "Leonid Efimovich Minin: From Ukraine, a New Kind of Arms Trafficker," in series Gallery of International Arms Dealers, Frontline/World (PBS), 2002.

<<http://www.pbs.org/frontlineworld/stories/sierraleone/minin.html>> (June 14, 2003).

¹² Small Arms Survey 2001, p.107

his crimes in precisely this fashion. After having served two years on charges of narcotics possession for the cocaine police found in his hotel room at the time of arrest, the prosecution has still not managed to build a sufficiently strong case against him and most likely Minin will soon be free to get back to “business as usual.”

As Peleman argues in his interview with Frontline/World, Minin and his associates did everything by the books, even above and beyond the precision of many completely “legal” transfers, yet as long as offshore-registered companies can broker lethal equipment, the system will be vulnerable to abuse. Minin has explained that the EUC signed by Guei is perfectly valid and he had no reason to believe that the weapons were not being legitimately bought by the Ivory Coast government. As to the plane -owned by Minin- that delivered the weapons in Liberia, Minin simply swears that he has never set foot aboard the plane himself. He bought it, and then leased it to the Liberian government and thus it is solely the Liberian authorities which are to be held accountable for its activities. Austin argues that “the traffickers operate through a complex chain of associates and from a number of different launching pads,”¹³ thus making detection by law enforcement agencies extremely difficult. Minin’s case seems ideal as an illustration in support of this argument.

Major obstacles to international cooperation

Illicit arms brokering is a field with great opportunities for making large amounts of money with a low risk of apprehension¹⁴. Regulation is lax and focus has

¹³ Austin, p.213.

¹⁴ This pecuniary opportunity seems central to the motivations of illicit arms brokers. In “Greed and Grievance in Civil War,” Paul Collier and Anke Hoeffler examine two possible causes of civil war – namely grievance (e.g. high inequality, a lack of political rights, or ethnic and religious divisions in society) and greed (e.g. access to finance, natural resources, or donations from diaspora communities). These motivations could be applied to the case of illicit arms brokering as well. And though you may find some idealistic and “cause-motivated” arms brokers, most brokers process so-called “third-country deals” and seem clearly motivated primarily by the opportunity for fiscal gain.

generally been directed at other problematic issues. One of the reasons for this is that brokering is a perfectly legal profession and there are many who practice their trade within the boundaries of the law. Therefore, many decision-makers argue from this perspective that too much regulation will just lead to excessive bureaucracy and difficulties for those operating legally. However, knowing the devastation that small arms cause on a daily basis for so many people around the world, there must be other and more fundamental causes for this lack of regulation and international cooperation to battle this problem. I will here highlight three root causes that I believe contribute to the present-day failures in cooperation, namely: lack of trust between nations, lack of effective regulation, and vested interests on the part of nations involved in covert or “gray market” transfers.

Lack of trust

The nation-state is fundamental to our understanding of international relations in today’s world and the notion of sovereignty is the basis upon which all cooperation is built. Some authors, most notably Susan Strange in her much-debated work The retreat of the state: the diffusion of power in the world economy, have delineated a modern ‘retreat of the state’ where the state is steadily loosing power to the market forces. This may be true in certain areas of international relations, but not in terms of security and law enforcement where we see that the state is still the clearly predominant actor¹⁵. Thus, though international organizations and institutions have been gaining ground in certain fields as a result of globalization and the global political economy of capitalism and free trade –most notably the World Bank, International Monetary Fund and World Trade Organization– areas relating to

security, intelligence and law enforcement lag far behind. As Peleman argues, the world does not know how to deal with entities other than nation-states. From this perspective, particularly issues of extra-territorial jurisdiction become extremely problematic.

An underlying reason for this lag in cooperation is that nations have little trust in each other when it comes to matters of security. We are used to the concept of ‘the enemy’ as referring to something external to be battled at the national level, not as something permeating all societies, including our own, which needs to be battled through international cooperation. This is a result of the increasingly transnational scope of organized crime, and is therefore relevant not only in terms of regulating the arms brokers, but of security issues and intelligence sharing in general.

In addition to this innate distrust between nations due partially to traditional enemy perceptions, corruption is another strong deterrent to international trust and cooperation. The actors behind illicit economic activities strategically target weak states that often have weaker legal frameworks and less capacity to enforce the law, and are thereby more vulnerable to corruption. These circumstances have several repercussions, but from the point of view of the states with weaker institutional and legal frameworks, two consequences in particular ensue. First of all, their development of viable institutions which is frail to begin with, is further hampered by corruption. Secondly, the problem of corruption permeating the state and law enforcement bodies leads to the increased distrust of Western countries in matters of security and legislative cooperation. A legitimate ground for many states’ scepticism to information sharing can be found in the phenomenon of “undercutting.” This concept refers to a situation where, through information sharing, other nations are

¹⁵ However, it is interesting to note that while the state may still be the predominant actor, in many

made aware when one government decides to turn down an arms deal and instead of following up by also refusing to deal with the shunned party desiring arms, see the situation as an opportunity to “get in on” the deal.

Lack of effective regulation

A further obstacle to international cooperation lies in the scope of regulation today. Laws and guidelines are generally passed at the national level and lack the transnational application necessary to deal with issues of organized crime and illicit economic activities, such as illicit arms brokering. This is due partially to the lack of trust outlined above, but there are other factors involved as well, including lacking capacity, lacking innovation, and a discord between intentions and actions.

Lacking capacity can be the result of insufficient state funds or lagging consolidation of the state’s institutions and authority. In these situations, the states themselves might be interested in implementing more rigid regulations, but are unable to either because their power is not sufficiently consolidated, i.e. other actors in society have greater power than the state authorities do, or because the economic situation is so meek that officials are more vulnerable to corruption, both at the low and higher levels of the power structure. Thus, from this perspective, the problem may be lacking capacity rather than lacking will to reform.

Lacking innovation refers to a situation where the established structures and frameworks are so engrained that introducing a completely new approach is met with scepticism. This could be described as the norm in many cases. Society often changes and evolves at a faster pace than the institutions constructed to organize and run society do, i.e. the established patterns are slow to change. This is clear in the

conflict-torn societies SALW do pose a threat to the Weberian concept of the states’ monopoly on

increasingly globalized world where the national framework is strikingly limited when trying to address global issues like transnational organized crime. As Dr. Walter Mapelli, the Federal Prosecutor who is leading the Minin investigation and prosecution in Italy stated: “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.”¹⁶ In the context of illicit arms brokering, this is a clear advantage to the shady brokers and a disadvantage to the national law enforcement units trying to keep up with them.

Again the Minin case can prove a useful illustration. Minin’s defense team exploited these weaknesses in their defense strategy, claiming that he could not be convicted for any crime within a national legislation. The weapons were not from Italy and never touched Italian soil. They were being transported from one nation to another, but without ever passing through Italy’s jurisdictional territory. Thus, they argued, no crime had been perpetrated, at least not on Italian soil.

Finally, the lack of effective regulation for dealing with transnational issues also stems from a discord between intentions and actions. This discord can be a result of a combination of the factors outlined above. Basically, at local and national elections, politicians may appeal to voters by promising to combat organized crime, drug trafficking, arms trafficking, etc. In this appeal, they may promise increased international cooperation, new initiatives and a commitment to reform and change. However, once the elections are past, the good intentions often prove difficult to convert into actions.

legitimate violence.

¹⁶ Brunwasser, p. no. not available.

Active involvement, i.e. the “gray” market

In addition to the above-mentioned factors, states may in some cases have even more direct reasons to oppose strict regulation of arms brokering. There are two main causes for these reservations; one relating mainly to perfectly legal trade, the other mainly to the so-called “gray” market. First of all, though brokers clearly play a more pivotal role in illicit transfers, they also play a central role in legal transfers. Therefore, governments often use them actively to facilitate legal trade as brokers hold the expertise in this arena.

In addition to this legitimate use of brokers, states may have vested interests in maintaining a certain level of secrecy around arms transfers. This is particularly the case when states have an interest in aiding opposition forces in a country. As nations are the only legitimate buyers of large-scale weapons supplies, supplying opposition groups and/or paramilitary forces in foreign nations can be tricky business for those involved. The Cold War Era was the most notorious period for this type of covert transfers of arms, with the US supply of arms to the mujahideen in Afghanistan as the perhaps most often cited example. However, these types of transfers did not end when the Cold War Era did. To the contrary, the structures that were established then are still very much in use today, although the patterns are somewhat different due to the changed political and economic climate in the post-Cold War world.

Based on this proposition, Austin argues that governments may be reluctant to make their regulations more stringent or even prosecute arms brokers based on their current laws since a tightening of the illicit activities of some brokers could reduce the power of the brokers upon which governments have become dependent. To illustrate her argument, Austin uses the example of American arms broker Fred Keller. A UN team was investigating Keller’s role in arms trafficking to the Great Lakes region of

Africa, but the US would not cooperate with the investigating team. According to Austin, the root cause of this seeming inconsistency lay in the fact that Keller had also been supplying arms to US allies like the Sudanese People Liberation Army, and the government did not want to expose these violations.¹⁷

The Keller case is clearly a striking example, but it is by far the only one of its kind. In most regional conflicts around the world there are other states, aside from the one in which the actual conflict is taking place, that hold a stake in the outcome of the conflict. A brief list of recent covert arms transfer allegations would include: Uganda and the US in southern Sudan; Sudan in northern Uganda; Uganda in Angola; Turkish support for rebels in Chechnya; support by Greece, Syria, Armenia and Russia for Kurdish guerrillas in Turkey; official Pakistani aid to Kashmiri militants; French government support for the ex-armed forces of Rwanda and for the *Interhamwe* militia; and multiple regional states sponsoring multiple warring militias in central Africa¹⁸.

Furthermore, some would argue that there is a difference between the legal/illegal dichotomy versus the legitimate/illegitimate dichotomy. Whereas an arms transfer might be technically illegal due to the receiver of the supply being a non-state actor, in certain instances some would argue that the legal recipient of arms (i.e. the state) is an illegitimate actor who the legitimate forces of the opposition are trying to displace. This line of argument was frequently used in the case of the Kosovo Liberation Army (KLA) in Kosovo in the late 1990s. In this case, there were government officials, human rights organizations and voices in the media all calling for the supply of arms to non-state actors on humanitarian grounds, and several NATO member states did provide arms and training to the KLA. Whether or not

¹⁷ Austin, p.209.

these actions can be deemed morally sound is beyond the scope of this paper, but it is worth noting that the record of post-war armed violence carried out by men in Kosovo, many of them identified as KLA, has included “several grenade attacks on Serb-frequented market places and a rocket attack on a UN vehicle.”¹⁹

Regional and international initiatives

The system most commonly in place at the national level was designed, often by default, around the time of World War II. At that time, almost all arms transfers were of a state-to-state nature. Thus, under many existing national laws, international arms transfers require the exporting agent to obtain the approval of the home government. However, it is rarely necessary for a broker to obtain such approval when the arms have been procured in a foreign country and do not enter the country in which the broker or shipping agent resides. A result of this system is therefore that the activities of arms brokers and their shipping agents can remain largely outside the arms-control laws and regulations of their own country²⁰. Under this regime, experienced arms brokers can circumvent domestic controls with relative ease and it is the primary reason why so-called “third-country deals” have become so common. So long as there is no international regime to address this loophole, illicit brokers are free to take up residence elsewhere and use their networks to facilitate transfers between provider and recipient without significant fear of legal repercussions.

Illicit arms deals are, as illustrated in this paper, highly complex transactions. As Sarah Meek argues, however, each step in a deal represents an opportunity for law enforcement or other officials to uncover the broader picture and de-rail the

¹⁸ Lora Lumpe and Lucy Mathiak, “Government Gun-Running to Guerrillas,” in Running Guns: The Global Black Market in Small Arms (London, UK: Zed Books, 2000), p.67.

¹⁹ Lumpe and Mathiak, pp.67-68.

transaction²¹. Therefore, in order to increase the chance of success in the fight against illegal gun-running, a multi-faceted approach is needed; and approach which targets not only one aspect of the trade, but all of them –including the sources of the arms, the transportation stage, the issues of false documentation and corruption, and underlying demand factors. Further, action has to be taken not only at the national level, but also at the regional and international levels.

An increased awareness of the consequences of the illicit arms trade has over the past few years led to various initiatives by policymakers around the world. Some have now been in effect for a while, whereas others are still very new and in these cases it is too early to judge their effectiveness at present. These initiatives can be found at the national, regional and international levels and often draw upon approaches developed in the combating of other forms of trafficking, including illicit drugs, human beings, cars, endangered species, and currency since certain parallels between the techniques used by the organizers in each of these trades can be drawn. In this section I will focus on a selection of the major regional and international efforts that have been made over the past few years and which illustrate the evolution in focus which has taken place, with an evident increased focus on the problems of illicit arms brokering.

One of the initial regional treaties was adopted by the Organization of American States (OAS) in 1997: “The Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and other Related Materials.” This treaty was trend-setting in that it addressed issues of jurisdiction and extradition; authorized licensing of not only import and export but

²⁰ Brian Wood and Johan Peleman, The Arms Fixers: Controlling the Brokers and Shipping Agents, PRIO Report 3/99. Oslo, Norway: International Peace Research Institute, Oslo (PRIO), p.7.

²¹ Sarah Meek, “Combating Arms Trafficking: Progress and Prospects.” In Running Guns: The Global Black Market in Small Arms (London, UK: Zed Books, 2000), p.183.

also of international transit; and stressed the need for exchange of information, experience and training. However, the treaty failed to address the issue of arms brokering altogether.

The OSCE document on small arms and light weapons of November 24, 2000 did not have this same oversight and has a section (III.D) dealing specifically with international arms brokering. The section states:

(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.²²*

The OSCE document thereby acknowledges the issue of brokering as central to combating illicit gun-running and provides three different policy approach recommendations, and is thereby one step further than the OAS treaty. However, it does not prescribe a particular common approach, nor does it commit members to action, it simply encourages the establishment of a regime to deal with brokering issues.

The next major international document was the UN Programme of Action (PoA) which was the result of the “UN Conference on the Illicit Trade in SALW in all its Aspects” held on July 9-20, 2001. The PoA addresses actions which are necessary at the national, regional and global levels –and brokering activities are addressed both in the national and global measures sections. The two most specific

²² OSCE, “OSCE Document on Small Arms and Light Weapons 2000,” November 24, 2000. <<http://www.osce.org/docs/english/fsc/2000/decisions/fscw231.htm>> (July 15, 2003)

references to brokering can be found in section II entitled “Preventing, combating and eradicating the illicit trade in small arms and light weapons in all its aspects”:

1. We, the States participating in this Conference, bearing in mind the different situations, capacities and priorities of States and regions, undertake the following measures to prevent, combat and eradicate 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.²³

The language of the UN Programme of Action thus goes even further in prescribing concrete courses of action. This change of tone is particularly reflected in the use of the word “*should* [my emphasis] include measures...” rather than the OSCE’s “could.” The PoA also goes one step further in that it addresses the issue of legal penalties for all illicit brokering activities.

The next major international agreement to concretely address the issue of brokering was the “Best Practice Guidelines for Exports on Small Arms and Light Weapons” as adopted by the plenary of 11-12 December 2002 by the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, more commonly referred to as simply “the best practice guidelines.” These guidelines were adopted by the 33 participating nations in the Wassenaar

²³ United Nations Document A/CONF.192/15. “UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects.” July 20, 2001. <<http://disarmament.un.org/cab/poa.html>> (July 1, 2003)

Arrangement, and stated that: "...each Participating State will: ...(c) Put in place and implement adequate laws or administrative procedures to control strictly the activities of those that engage in the brokering of SALW and ensure appropriate penalties for those who deal illegally in SALW."²⁴ This agreement thus follows similar language as the PoA, committing participating states to implementing legislation and penalties on illicit brokering activities.

Finally, the most recent addition to the regional initiatives is the EU's "Council Common Position 2003/468/CFSP of 23 June 2003 on the control of arms brokering," which is perhaps the most comprehensive binding agreement on brokering in effect today. The document states as its aim "to control arms brokering in order to avoid circumvention of UN, EU or OSCE embargoes on arms exports, as well as the Criteria set out in the European Union Code of Conduct on Arms Exports,"²⁵ and makes reference to both the Wassenaar Arrangement and the UN PoA. The document addresses issues of extra-territorial jurisdiction, licensing, record-keeping, authorization and registration procedures, information sharing, and criminal sanctions, and further stipulates the need for a clear legal framework for lawful brokering activities. This agreement is clearly very new and it remains to be seen how successful its implementation will be, but it is a major step in the right direction and has the clear potential to make a significant impact on international illicit arms brokering.

²⁴ Participating States of the Wassenaar Arrangement, "Best Practice Guidelines for the Exports of SALW." Adopted by the Plenary of 11-12 December 2002. <http://www.wassenaar.org/docs/best_practice_salw.htm> (July 10, 2003)

²⁵ "Council Common Position 2003/468/CFSP of 23 June 2003 on the control of arms brokering." Official Journal of the European Union, L 156/79, June 25, 2003. <http://europa.eu.int/eur-lex/en/dat/2003/l_156/l_15620030625en00790080.pdf> (July 16, 2003) For the EU Code of Conduct on Arms Exports, see: <<http://projects.sipri.se/expcon/eucode.htm>>

Conclusion

Though the true extent of the international illicit arms trade is difficult to ascertain due to its highly complex and secretive nature, the devastating social consequences are all too evident. One has only to consider the tremendous number of annual casualties or to look at the social structure in conflict-torn regions of the world to understand that conscious international action is necessary. Attention to the issue of illicit arms brokering has been on the rise over the past five years especially, however, a long distance remains before harmonized and effective regulation of this lethal trade is in place. The problem of illicit gun-running has both local and global ramifications, and the issue thus needs to be dealt with at both the local and global levels. The regional and international initiatives outlined above certainly represent steps in the right direction, but focus on the issue needs to be maintained in order that the initiatives may be successful and continue to lead to ever greater international cooperation.

Central to the issue of illicit arms brokering, is the underlying need for accountability and responsible action. A useful comparison in this context is the international illicit drug trade. Industrialized countries are widely affected by the problem of illicit drugs, though they are not the main global suppliers of this illicit product. Therefore, efforts to reduce supply have been directed outwards; towards the main drug-producing nations in Latin America and Asia. In contrast, arms trafficking commands little of the industrialized nations' resources –rather, these nations are normally the suppliers of SALW while the recipients are to a large extent residents of nations too poor to effectively control the trade. Thus, as Sarah Meek argues, “this disparity in the availability and application of resources demonstrates the tremendous

need for strong international support to countries suffering under the direct impact of arms trafficking.”²⁶

Small arms producing nations have an obligation to make every effort to ensure that their weapons do not get into the wrong hands and do not contribute to serious human rights abuses, and international cooperation is necessary to ensure this goal. Many nations have already shown commitment to this goal through various regional and international agreements, including the OSCE Document on SALW, the UN Programme of Action, the Wassenaar Arrangement, and the EU Council Common Position. Taking the nature of illicit small arms transfers into account, it seems evident that one of the most important issues to address is precisely arms brokering. Arms brokers provide the necessary expertise to orchestrate large-scale illicit international transfers, and if effective action can be taken against their illicit activities, an important battle would be won.

²⁶ Meek, p.185.

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