

## CHAPTER 1

### THE PREVENTION OF ILLICIT BROKERING OF SMALL ARMS AND LIGHT WEAPONS: FRAMING THE ISSUE

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#### INTRODUCTION

The international arms trade is becoming more global, differentiated and diverse. One of the consequences is the increasing reliance of arms buyers and sellers on specialized services from persons or companies that act as intermediaries, or “middlemen”, to arrange arms transactions. Arms brokers are intermediaries who negotiate, in return for a commission or other material reward, gain or consideration, commercial and logistical arrangements to meet the requirements of buyers, sellers and other relevant actors, such as officials, financiers and transport agents, in order to facilitate the transfer of weapons and munitions.

Evidence suggests that such activities by arms brokers are not covered in most national laws and regulations, so a legal definition of “arms brokering” and “illicit arms brokering” remains an aspiration rather than a reality for the majority of states. Nevertheless, in the emerging laws and literature, the term “illicit arms brokering” usually refers to those acts of mediation to arrange arms transfers whose intended recipients are groups, individuals or states that are prohibited by national or international law from possessing or acquiring such arms—for example, embargoed states, armed groups and criminal gangs, including those believed to engage in terrorist attacks. However, whether such brokering activities are illegal in the country where the broker carries out the activity or where the broker resides or holds nationality depends on whether there is a relevant law—sadly, this is often not the case because so few states have laws that specifically address arms brokering. Some activities of arms brokers may nevertheless be criminal under more general laws, such as statutes that outlaw bribery, which is illegal in most, if not all, states.

Governmental authorities have tended to regard legitimate arms brokering as a necessary supportive activity in the increasingly complex international arms trade, and that such mediation has a part to play in meeting states' security needs as long as the resulting arms exports, imports and transshipments are properly regulated according to the rule of law. However, as this study shows, the absence, in most countries, of effective laws and regulations to govern arms brokering has created a significant "grey area" in the international arms trade that encourages the proliferation and misuse of arms, including small arms and light weapons (SALW), especially where recipients are relatively untrained and unaccountable.

**Box 1.1. The case of Akire Nemoto**

On 3 June 2004, Akire Nemoto,<sup>a</sup> reported to have been one of the senior members of a Japanese crime syndicate nicknamed "Overseas Arsenal", was arrested at his residence in Manila during a joint operation by the Philippine and Taiwanese police. Taiwanese police alleged that Nemoto had received US\$ 100,000 from a Taiwanese criminal gang to smuggle pistols and sub-machine guns into Taiwan. Nemoto came to police attention while they were investigating a drug smuggling case.

When he was arrested, Nemoto was reportedly found to be in possession of a KG-99 sub-machine gun, two pistols and ammunition. In addition, the Taiwanese police stated that the arrest had interrupted the shipment of 100 pistols and sub-machine guns to Taiwan, but that 100 pistols had already been sent. The weapons (along with heroin and amphetamines) were smuggled into Taiwan using fishing boats.

Nemoto is a Japanese national, however, he was not covered by the Japanese law on arms brokering because it applies only to residents in Japan, and not to the activities of its citizens located abroad. Nemoto was resident in Manila.

<sup>a</sup> Also referred to as "Akira Nemoto", "Nemoto Akire" and "Nemoto Akira".

Source: This illustrative case was written and researched by Nicolas Marsh using the following sources: Deborah Kuo, "Taiwan, Philippine Police Crack Yakuza Arms Trafficking Ring", *Central News Agency*, 4 June 2004; and Jimmy Chuang, "Japanese Gun-Smuggling Suspect Nabbed in Manila", *Taipei Times*, 5 June 2004.

Successive United Nations (UN) reports on the violation of Security Council arms embargoes on different countries show that a lack of effective accountability of arms brokering and trafficking networks poses a significant

transnational threat to both state security and human security, and at times has undermined the authority of the Security Council.<sup>1</sup> Over the past ten years, studies have shown that strict state control of arms brokering, including of SALW and related materiel, is an essential component to reducing and removing the risk of arms transfers contributing to violations of international law, especially in conflict-prone regions of the world where serious violations of humanitarian and human rights law are widespread and frequent.<sup>2</sup>

Studies and campaigns carried out by non-governmental researchers since the mid-1990s have changed public perceptions and prompted international bodies and governments to act on this growing and dramatic problem.<sup>3</sup> International outrage was expressed particularly about the brokering of arms to and within Africa after the revelations in 1995 that brokers had played a crucial role in arming the perpetrators of the 1994 genocide in Rwanda.<sup>4</sup> Further concern was expressed after reports emerged about the role of brokers in helping to arm the Angolan rebel movement, the National Union for the Total Independence of Angola (UNITA), as well as the Revolutionary United Front (RUF) rebels in Sierra Leone, despite arms embargoes imposed on these rebel groups by the United Nations Security Council.<sup>5</sup>

Although much of the supply and acquisition of arms in these areas of armed conflict was conducted by government agents or licensed entities, it became increasingly apparent in the late 1990s that lack of effective control of international arms brokering was an important additional factor fuelling conflicts in Africa and elsewhere, in particular in the destabilizing accumulation, illegal trafficking, unlawful possession and gross misuse of SALW. It was also recognized that the phenomenon has been closely linked to the illegal exploitation of natural resources, as well as to money laundering, corruption and other malpractices that together undermined socio-economic development and human rights in Africa and elsewhere. The recent focus of international concern about the ongoing arming of warring parties in the Democratic Republic of the Congo (DRC), where it was estimated that, since 1998, a staggering three million or more people have died, directly or indirectly, as a result of the armed conflict, has confirmed this general view.<sup>6</sup>

Despite Security Council resolution 1196 of 16 September 1998, in which the Security Council called upon states to adopt legislation making the

violation of arms embargoes a criminal offence, many states do not strictly monitor or prosecute the violation of UN arms embargoes by their nationals or residents, or follow up vigorously on the Security Council's "designation lists" to freeze the assets and ban the travel of those individuals and companies involved in gross violations.<sup>7</sup>

#### **Box 1.2. The case of Leonid Minin**

On 5 August 2000, Leonid Minin, an Israeli national<sup>8</sup> born in Ukraine and already known to the Italian and Belgian police for his trafficking activities, was arrested in a hotel near Milan. In his room, the police found non-declared diamonds,<sup>9</sup> large amounts of money, and about 1,500 documents in various languages (including English, Russian, Dutch and French) on oil, timber and arms transactions, mostly involving Liberia—a country subject to a UN arms embargo since 1992 and a diamond embargo since early 2001.<sup>10</sup> He was briefly detained and then put under house arrest, but on 21 June 2001 was re-arrested and charged with arms trafficking and illegal possession of diamonds (valued at €500,000). The public prosecutor of the Monza (Milan) Court charged Minin with organizing, in association with others, two arms shipments apparently destined for the ministries of defence of Burkina Faso and Côte d'Ivoire, but in fact directed to UN-embargoed Liberia and to the Liberia-backed RUF in Sierra Leone, also subject to a UN arms embargo.<sup>11</sup>

According to the seized documents, the first delivery arranged by Minin in March 1999 was a cargo of 68 tons of military equipment, including 3,000 AKM assault rifles, 1 million rounds of ammunition, 25 RPG-7s and related ordnance, Strela-3 and Metis systems and 80 related missiles. The arms were bought from the Ukrainian arms marketing company Ukrspetsexport through a Gibraltar-based firm, Engineering & Technical Company Ltd (allegedly one of Minin's shell companies), by using an end-user certificate from Burkina Faso signed on 10 February 1999 by Lieutenant-Colonel Gilbert Diendere. The arms were transported from Gostomel, Ukraine, to Ouagadougou, Burkina Faso, on an An-124 operated by a UK company, AirFoyle, which was the sales agent for Ukraine's Antonov Design Bureau. After it arrived in Burkina Faso, the cargo was trans-shipped to Monrovia, Liberia, in various flights made by Minin's own business jet.

Payments for the shipment show the global nature of the arms deal arranged by Minin. Italian prosecution authorities were directed—reportedly by Minin himself—to a Hungarian bank account owned by a company allegedly related to Minin, the British Virgin Island-registered firm Engineering & Technical Company Ltd. To this account, John Enriqué Smythe,<sup>12</sup> Commissioner of Liberia's National

**Box 1.2** (continued)

Bureau of Immigration for Naturalization, credited payments for a total US\$ 463,470 on 8 and 10 March 1999. Payments credited to the same account were entered for two other companies—Tholos Anstalt, for US\$ 965,750 on 22 April 1999, and Zimbabwe Defence Industries, for US\$ 1,383,150 and US\$ 2,103,150 on 22 March and on 31 May 1999, respectively. Payments amounting to US\$ 295,815 from the account were made on 1, 16 and 22 June 1999 to a T.J. Dube, who appears to share the same name with Colonel T.J. Dube, head of Zimbabwe Defence Industries. Further payments from the same account were made to various companies, including Ukrspetsexport, AirFoyle, Transbalkan Cargo Service (BV and Ltd), Phoenix FZE, Arsenal Corp. General Technical Co-operation LLC, and NAIRFO Trading SA.

The second arms delivery arranged by Minin was routed via Côte d'Ivoire rather than Burkina Faso. The arms deal consisted of 113 tons of arms brokered through Spetstechnoexport (a subsidiary of Ukrspetsexport), and included 10,500 AK-47 assault rifles, 120 sniper rifles, 100 grenade launchers, night-vision equipment and 8 million rounds of ammunition. A portion of these arms was delivered in July 2000, apparently destined for Côte d'Ivoire using an end-user certificate signed on 26 May 2000 by a senior official of the Ministry of Defence and authorizing a Moscow-based company, Aviatrend Ltd, to carry out the shipment.<sup>13</sup> The arms were transported from Gostomel to Abidjan, Côte d'Ivoire, on 15 July with the same An-124 that ferried the arms to Burkina Faso in 1999, this time chartered by Aviatrend. Once there, they were trans-shipped to Monrovia in several flights performed by a relatively smaller aircraft, an Il-18, using fake Liberian registration.<sup>14</sup> The aircraft was operated by West Africa Air Services, a phantom airline purposely set up by the Liberian government and Sanjivan Ruprah,<sup>15</sup> an arms and diamonds dealer and business partner of arms trafficker Victor Bout who has been named in several UN reports on the violation of Security Council arms embargoes. Aviatrend Ltd was found by Italian prosecutors to be controlled by Gibraltar-registered Aviatrend, owner of a bank account in Cyprus to which Minin sent about US\$1 million for the arms shipment through a complex route involving another account at the New York Chase Manhattan Bank.

On 17 September 2002, the Court of Appeal (*Corte di Cassazione*) in Rome upheld an appeal by the defendant against the continuation of his detention and ordered his release, unless he was charged and remanded for other crimes.<sup>16</sup> The judges ruled that the prosecution lacked jurisdiction on Minin's trafficking activities because the arms transfers in question did not pass through Italian territory. On 18 December 2002 at the trial of Minin in Monza, the judges

**Box 1.2** (continued)

declared him non-prosecutable for the charges relating to international arms trafficking because the court lacked jurisdiction; however, they upheld the charge for his illegal possession of diamonds, for which he was later convicted and fined €40,000.<sup>17</sup> Thus, Minin walked free and left Italy. However, the Monza public prosecutor appealed against the sentence in February 2003 and later submitted evidence to the Corte di Cassazione, including from the authorities in Ukraine, to support the right of jurisdiction to prosecute Minin for his trafficking of arms, even though the arms never entered Italy.<sup>18</sup> Nevertheless, on 9 January 2004, the Corte di Cassazione declared its non-competence to examine the documentation, rejected the appeal, and confirmed the acquittal of Minin. Subsequently, he tried to return to Italy from Israel but was rejected by Italian authorities because of his inclusion in a UN Travel Ban List established in June 2001 and reiterated in March 2004 to enforce the UN embargo on Liberia.<sup>19</sup>

Source: Research on primary documents for this case was carried out originally for Amnesty International by Sergio Finardi, director of TransArms - Research Center for the Logistics of Arms Transfers.

## INTERNATIONAL INITIATIVES

International discussions by states concerning the need to prevent the illicit brokering of arms have been conducted under the auspices of the United Nations as well as within regional and multilateral bodies. In 1996 the UN General Assembly agreed through the Disarmament Commission that “States should maintain strict regulations on the activities of private international arms dealers and cooperate to prevent such dealers from engaging in illicit arms trafficking.”<sup>20</sup> As Chapter 4 outlines, there emerged an understanding between 1996 and 2000, especially through the investigations of violations of UN arms embargoes on Angola, Rwanda, and Sierra Leone, that the international “brokering” (that is, mediation) of arms deals had become a closely related business activity to that of international “dealing” in arms (that is, the buying and selling of arms) and organizing the “delivery” of arms (that is, the transporting of arms).

In May 1999, a UN consultative meeting of non-government experts was held in New York to assist the Secretary-General in ascertaining the feasibility of undertaking a study for restricting the manufacture and trade of small arms to those manufacturers and dealers authorized by states, as

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requested by the General Assembly in resolution 53/77 E of 4 December 1998 entitled "Small arms". The meeting concluded that such a study was "both feasible and desirable, and could help Member States and the international community to promote national and international efforts in addressing the proliferation of small arms and light weapons".<sup>21</sup> The meeting agreed that the study:

should cover the possibility and desirability of licensing and/or regulating the activities of all participants in the production and international transfer of small arms and light weapons and ammunition, including not only manufacturers and dealers but also brokers, transportation agents and financiers. In particular, the different roles and responsibilities of dealers, brokers, transportation agents and financial institutions need to be clarified ...<sup>22</sup>

In 2001, the General Assembly adopted the United Nations 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 (The Firearms Protocol).<sup>23</sup> The Protocol, which entered into force on 3 July 2005 after ratification by 40 Member States, sets out some basic legal obligations of states to control the brokering of firearms and related parts and ammunition in Article 15(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.

Although the specific provisions on brokering in the UN Firearms Protocol are rather general and permissive, and not specific and mandatory, the Protocol establishes a principle of reciprocal authorization of brokering transactions by the exporting, importing and transiting states involved, as well as by the state where the broker operates. If it were further developed through additional standards and implemented effectively, the Protocol

could provide more transparency and accountability in the international transfer of small arms and make it more difficult for brokers of such arms to circumvent export/import/transit regulations.

In addition to this initiative to prevent international organized crime facilitated by firearms, many states wanted the UN to address also the humanitarian impact of the proliferation and misuse of SALW. Through UN General Assembly resolutions, the UN Secretary-General had since 1996 convened a series of expert groups to report on this wider issue.

In March 2001, a UN Group of Governmental Experts (GGE), established in December 1999 pursuant to General Assembly resolution 54/54 V, reported on the feasibility of restricting the manufacture and trade in SALW to those manufacturers and dealers authorized by states.<sup>24</sup> The GGE called on Member States to establish national systems of control for brokering and related activities occurring within their territorial jurisdiction, in order to deal effectively with illicit or undesirable arms transfers. The GGE found that most states did not have control systems for the registration of arms brokers, the licensing of arms brokering activities or for record-keeping and information sharing on arms brokering.

The report noted that:

arms brokering, which is a largely unregulated activity, can also *take place in grey areas between legal and illegal dealings* [emphasis added]. Some brokers deliberately exploit inconsistencies and gaps in national laws and administrative procedures to circumvent controls, and arrange transfers involving States where export control procedures and enforcement are weak.<sup>25</sup>

The GGE concluded that there was a need for all states to “consider ways to avoid gaps and inconsistencies in national approaches that may undermine the effectiveness of controls”.<sup>26</sup> The Group discussed the practicality of the negotiation by states of a legally binding international instrument. However, the GGE agreed that the lack of sufficient national experience with brokering regulation, together with the variety of national approaches to brokering control and the lack of agreed criteria, would complicate the achievement of a legally binding agreement at that time. The GGE indicated that, in the short term, the regional level might be the most promising for implementing international action and that states could:

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- develop and implement national regulations and controls;
  - identify good practices and develop common approaches or agreed minimum standards; and
  - make resources available nationally and through appropriate programmes for international cooperation and assistance.<sup>27</sup>

Since the publication of this GGE report in March 2001, government initiatives have tended to follow these broad recommendations, while the governments of Norway and the Netherlands have taken a leading role in assisting states to consider and develop their approaches to this problem (a process known as the Dutch–Norwegian Initiative on Brokering).

In July 2001, the participating states in the UN Conference agreed on the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (PoA).<sup>28</sup> In the PoA, Member States agreed to develop adequate national legislation or administrative procedures regulating the activities of those who engage in SALW brokering, including the registration of brokers, the 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.<sup>29</sup> States also agreed to consider further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in SALW.<sup>30</sup> The adoption of the PoA opened a new chapter in the international efforts to combat the illicit trade in SALW.

In December 2003, the UN General Assembly mandated the Secretary-General to hold broad-based consultations “on further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons”.<sup>31</sup> Four informal consultations were held in New York and Geneva in 2004, which showed that a limited measure of convergence by states had emerged on essential standards to prevent illicit arms brokering, especially of small arms and light weapons, although there were still some important points of disagreement. In December 2004 the General Assembly requested the Secretary-General:

to continue to hold broad-based consultations ... with all Member States and interested regional and subregional organizations on further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons, with a view to establishing, after the 2006 review conference and no later than

2007, and after the conclusion of the work of the Open-ended Working Group [on marking and tracing], a group of governmental experts, appointed by him on the basis of equitable geographical representation, to consider further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons ...<sup>32</sup>

Pursuant to that resolution, the United Nations Department for Disarmament Affairs (DDA) organized two additional broad-based consultations, which took place in New York and Geneva in July 2005. In preparation for these consultations, DDA also organized two workshops, between May and June 2005 in New York and Geneva, in collaboration with the Governments of the Netherlands and Norway.

Informal consultations were also held by DDA on the margins of other meetings, such as a regional symposium on the implementation of the PoA by the Arab States (Algiers, 11–13 April 2005), a United Nations workshop on small arms and light weapons (Beijing, 19–21 April 2005), a meeting on the implementation of the PoA organized by the Organization for Security and Co-operation in Europe (OSCE) (Vienna, 25 April 2005), the Organization of American States (OAS) Forum on Confidence- and Security-Building Measures (Washington, 25–26 April 2005), a workshop on transfer control initiatives for the Caribbean Community (CARICOM) (Nassau, 12 May 2005), a United Nations regional workshop on conventional arms (Nairobi, 31 May–2 June 2005), a workshop on transfer control initiatives for the Andean Community (Lima, 19–20 May 2005), and a workshop on transfer controls initiatives for the Southern Common Market (MERCOSUR) region (Porto Alegre, 2 June 2005).

Finally, with resolution 60/81 of 8 December 2005, the General Assembly decided to establish a Group of Governmental Experts, appointed by the Secretary-General on the basis of equitable geographical representation, “commencing after the Review Conference and no later than 2007, to consider further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons in three sessions of one week’s duration each”. The Group will meet in Geneva in late November 2006 and in New York in March and June 2007.

In addition to the efforts undertaken within the framework of the UN, a recent series of regional and multilateral instruments were established that

could help form the basis of a sustained effort by states to curb illicit arms brokering. However, many of these instruments do not define illicit arms brokering adequately or consistently, and for the main part do not yet cover countries in the Asian, the Pacific and the Middle East regions—all places where arms brokers are active. Also, most of these instruments are not legally binding on states. In June 2004 the General Assembly of the Organization of American States adopted the Inter-American Drug Abuse Control Commission (CICAD) Model Regulations for the Control of Brokers of Firearms, their Parts, Components and Ammunition,<sup>33</sup> which has many strong features, but so far it has not been widely adopted by the member states of the OAS.<sup>34</sup> In Africa a commitment to control the brokering of SALW has been made by all states of the African Union, the states of East Africa, the Great Lakes and the Horn of Africa (the Nairobi Group), the Southern African Development Community (SADC) and the Economic Community of West African States (ECOWAS).<sup>35</sup> Although the three subregional agreements in Africa are legally binding, the majority of states have yet to incorporate these standards into their national laws.<sup>36</sup> In Europe, standards for the control of arms brokering were agreed by the European Union<sup>37</sup> and by the OSCE.<sup>38</sup> A lesser known security-related initiative that mentions brokering was agreed by the UN Economic Commission for Europe.<sup>39</sup>

In addition, the Wassenaar Arrangement—the group of leading conventional arms producers and exporters—agreed in 2003 a set of common Elements for Effective Legislation on Arms Brokering.<sup>40</sup> Although this is merely a politically binding agreement, it raises the bar for brokering controls in a number of areas and covers the regulation of international transfers of all conventional arms.

Although Asia and the Middle East so far lack any agreed regional standards to control arms brokering, an explicit reference was made by the Association of Southeast Asian Nations (ASEAN) in May 2002 to preventing arms smuggling as part of transnational crime.<sup>41</sup> In 2004, Asia-Pacific Economic Cooperation (APEC) agreed to ban the use of non-governmental brokers and brokering services for transfers of man-portable air defence systems (MANPADS).<sup>42</sup>

### DEFINING “ARMS BROKERING ACTIVITIES”

Strictly speaking, brokering is the act of mediation and not the act of purchasing or taking possession of material items in a transaction. However, evidence suggests that arms brokers often act as arms dealers, merchants or traders in an intermediary role by buying weapons or munitions themselves in order to sell them for a profit. Sometimes they may also act as commercial agents who represent certain buyers and sellers in an ongoing relationship. In addition, to ensure the delivery of consignments, arms brokers often work in networks with arms suppliers; transport, warehousing and logistics agents; financiers; insurers and relevant state officials. Thus, the activities of arms brokers may include the finding of the arms to be traded, the facilitation of the commercial transaction, and the arrangement of necessary legal and other documentation, as well as the negotiation of arms sales, purchases, finance and insurance, and the logistical arrangements to ensure delivery.

Whether states can agree precise definitions of what constitutes “arms brokering” and “illicit arms brokering” is important if they are to close loopholes in existing laws and regulations. Emerging bodies of law and international standards regarding the control of arms brokering could help states derive a common understanding and work towards an agreement on these key definitions. The definition of brokering activities in law, and hence who may be a legitimate broker, varies among national laws and in regional instruments, as discussed in Chapter 2. Nevertheless, an underlying positive development is that there appears to be at least some convergence or overlap in the meaning applied by state authorities to definitions of brokering activities in their national laws. This is reflected to some degree in the regional or multilateral standards that exist so far.

The OAS opted for a fairly comprehensive definition of mediation and facilitation in arms brokering which, although limited to small arms, is helpful insofar as brokers often operate in networks with other subcontractors. Experience shows that, in order to prevent illicit trafficking, it is vital to bring the whole network into the frame of the national arms control law. The Model Regulations for the Control of Brokers of Firearms, Their Parts and Components and Ammunition agreed by the OAS/CICAD in November 2003, defines a “broker” or “arms broker” as:

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any natural or legal person who, in return for a fee, commission or other consideration, acts on behalf of others to negotiate or arrange contracts, purchases, sales or other means of transfer of firearms, their parts or components or ammunition.<sup>43</sup>

As such:

“Brokering activities” means acting as a broker and includes manufacturing, exporting, importing, financing, mediating, purchasing, selling, transferring, transporting, freight-forwarding, supplying, and delivering firearms, their parts or components or ammunition or any other act performed by a person, that lies outside the scope of his regular business activities and that directly facilitates the brokering activities.<sup>44</sup>

The OSCE agreed the Principles on the Control of Brokering in Small Arms and Light Weapons in November 2004 which define “brokering activities” in a manner similar to that of the European Union,<sup>45</sup> namely as activities of persons and entities:

Negotiating or arranging transactions that involve the transfer of the items referred to in the OSCE Document on Small Arms and Light Weapons, and in particular its preamble, paragraph 3, from any other country to another country;

or

Who buy, sell or arrange the transfer of such items that are in their ownership from any other country to another country.<sup>46</sup>

According to the emerging body of international instruments, arms brokering at its core appears first and foremost to be the mediation and negotiation of transactions between buyers and sellers, plus the arrangement of contracts or essential services to facilitate the deal and the delivery. Existing national controls apply irrespective of whether or not the broker acquires, possesses or delivers the arms in question when acting as an intermediary. In addition, some international definitions of brokering, such as that of the OSCE, include both brokering (negotiating or arranging transactions) and dealing or trading (buying and selling) regardless of whether the person or entity doing this acts as an intermediary. Arguably, this broader definition, found in several international instruments, reflects the reality of the business.

The participating states in the powerful arms manufacturing and exporting group the Wassenaar Arrangement agreed to:

Strictly control the activities of those who engage in the brokering of conventional arms by introducing and implementing adequate laws and regulations. ... For activities of negotiating or arranging contracts, selling, trading or arranging the transfer of arms and related military equipment controlled by Wassenaar Participating States from one third country to another third country, a license or written approval should be obtained from the competent authorities of the Participating State where these activities take place whether the broker is a citizen, resident or otherwise subject to the jurisdiction of the Participating State.

Similarly, a license may also be required regardless of where the brokering activities take place.

Participating States may also define brokering activities to include cases where the arms and military equipment are exported from their own territory.<sup>47</sup>

Other instruments include a slightly wider range of activities. In 2004, the states of East Africa, the Great Lakes Region and the Horn of Africa, some of whose populations have been seriously affected by proliferation and abuses fuelled by the international brokering and trafficking of SALW, adopted the Nairobi Protocol.<sup>48</sup> Article 11 of the Protocol on standards for national laws covering “Dealers, Brokers and Brokering” agreed that:

State Parties, that have not yet done so, shall establish a national system for regulating dealers and brokers of small arms and light weapons. Such a system of control shall include: regulating all manufacturers, dealers, traders, financiers and transporters of small arms and light weapons through licensing ... .<sup>49</sup>

The ECOWAS states also opted for a wider definition of brokering activities as “Work carried out as an intermediary between any manufacturer, supplier or distributor of small arms and light weapons and any buyer or user; this includes the provision of financial support and the transportation of small arms and light weapons”.<sup>50</sup>

The 1996 US law and subsequent regulations on the registration and licensing of arms brokering<sup>51</sup> define an arms broker as “any person who acts as an agent for others in negotiating or arranging contracts, purchases, sales or transfers of defense articles or defense services in return for a fee,

commission, or other consideration". This broad definition of brokering activities "includes the financing, transportation, freight forwarding, or taking of any other action that facilitates the manufacture, export, or import of a defense article or defense service, irrespective of its origin".<sup>52</sup>

Some national laws also include provisions requiring the regulation of activities closely related to brokering such as financing, transporting, freight forwarding and the consulting of partners about arms transfer deals or deliveries. But they tend not to include specific provisions to control arms marketing, promoting or advertising to commercial audiences the possibilities of making gains from arms transfer deals. The US law, for example, requires that:

banks, firms, or other persons providing financing for defense articles or defense services would be required to register under certain circumstances, such as where the bank or its employees are directly involved in arranging arms deals ... or hold title to defense articles, even when no physical custody of defense articles is involved.<sup>53</sup>

It is generally difficult, although not impossible, to prove that entities and individuals are "directly involved" in arranging arms deals, but arguably it is important that the law requires such persons to seek official authorization from the state where they are domiciled or registered. For example, managers of financial institutions and transport/logistics companies based in the receiving country, because of their familiarity with the local business environment, may be invited to take an active part in providing the expertise and contacts to facilitate an arms deal.

Existing definitions in the literature and UN reports on arms embargoes mention not only financial rewards from brokering, but also possible non-pecuniary benefits that accrue to brokering agents, such as gains from barter trade, or non-material considerations.

In order to help create a clear framework for lawful brokering activities, it is possible to distil from the current literature, legislation and practice and regional instruments, as well from the exchange of views within the UN framework, some essential elements of a general definition of arms brokering (See Box 1.3).

### Box 1.3. A general definition of arms brokering activities

Leaving aside for a moment the question of what types of arms and types of transfers are covered, it is possible to conclude that in general:

**Arms brokering** is activity carried out for a commission, advantage or cause, whether financial or otherwise, including political or personal consideration, by private individuals or corporate entities *involving one or more of the following*:

- *Acting as an intermediary to negotiate or arrange an arms transaction (deal) between any supplier, or provider of related services, and any buyer or recipient; such as (i) putting buyers and sellers in contact; (ii) finding and offering business opportunities to a buyer and seller; and (iii) providing detailed information or practical assistance to help implement or conclude a transaction;*
- *Arranging contracts and obtaining necessary documents and authorizations on behalf of others to conduct an arms transaction—this may include (i) proposing, designing or facilitating the transfer of contracts between buyer, seller and service providers; (ii) ensuring the exchange of other necessary commercial, import, export, end-use and customs documentation and payment(s) between the parties and the relevant state authorities;*
- *Organizing, negotiating or brokering essential services to complete an arms transaction such as technical consultancy, transportation, freight forwarding, warehousing/storage, logistics, financing or insurance; or*
- *Acting as an agent or representative for buyers, sellers or brokers to negotiate or implement or conclude an arms transaction.*

Arms brokers often engage in *additional closely related activities* such as:

- *Directly trading or dealing in arms as a merchant, thereby buying, selling and acquiring legal ownership and/or physical possession of arms, in order to transfer them to others for a profit or gain; or*
- *Providing essential services to conclude an arms deal and deliver the arms, including logistics, transportation, freight forwarding, warehousing/storage, legal, finance or insurance services.*

Arms brokers may *occasionally engage in*:

- *Marketing, promoting or advertising to commercial audiences the possibilities of making gains from arms transfer deals.*

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## DEFINING “ILLICIT ARMS BROKERING” ACTIVITIES

From the composite definition of what is often meant by the term “arms brokering” found in Box 1.3, one may derive a general definition of what should constitute “illicit arms brokering”. The latter would of course have to be shaped by the parameters of the law and regulations chosen by each state for its jurisdiction. The “illicit” nature of any particular arms brokering activity would depend on whether or not the person or entity was authorized to carry out such activity within that jurisdiction. Authorization would depend on the specific provisions of the law, but it may be useful to here set out the broad options.

There appears to be some consensus reflected in international standards and national law that the following transactions would constitute “illicit arms brokering”:

- Brokering activity relating to the export, import, re-export or transit of conventional arms or related services involving a *particular prohibited foreign country or recipient, or prohibited weapons/arms* (that is to say, brokering transfers to an embargoed or restricted country, or prohibited items—an aspect of “illicit trafficking”).
- Brokering activity relating to the export, import, re-export or transit of conventional arms or related services involving the supply to a *particular recipient without the authority to receive such arms* (brokering transfers to a recipient who does not have a valid end-user certificate<sup>54</sup>—another aspect of “illicit trafficking”).

Beyond that, the question of what sort of brokered transactions should be covered by legal mechanisms such as licensing—therefore determining further types of illegal brokering activity if authorization for such brokering has not been granted—may include one or more of several options:

- Brokering *any transaction* relating to the buying, selling or transfer of conventional arms *in any country* (covering domestic and international transfers). This option appears to be reflected in some existing national laws.
- Brokering *carried out in any country, including any foreign country, for the export, import, re-export or transit* of conventional arms or related services (“full extraterritorial brokering”). This option is

reflected in some national laws and multilateral and regional instruments.

- Brokering transactions for the export, import, re-export or transit of conventional arms or related services *where the physical items are transferred only between foreign countries* (“third-country brokering”). This option is reflected in most existing national laws as well as multilateral and regional instruments.
- Brokering transactions *carried out solely in the home country* for the export, import, re-export or transit of conventional arms or related services anywhere (“domestic brokering”). Again, this option is also reflected in national laws as well as multilateral and regional instruments.

In addition, any law on the control of arms brokering, and hence the prevention of illicit arms brokering, must also define *who* may carry out such activity and *what* items may be transferred. For existing national laws and multilateral/regional instruments on brokering, states have so far opted to include one or more of the following individual or corporate actors: permanent or established residents; registered companies or corporate entities; associations; nationals or citizens; and foreign nationals or citizens (resident and sometimes non-resident in the home state). It appears that government officials and agencies, particularly national armed forces and law enforcement agencies, are usually exempt from such controls.

A major parameter of what would constitute “illicit brokering activity” is determined by what *other intermediate activities* between suppliers/providers and buyers/recipients should be defined as “brokering” in the law—particularly, whether it includes:

- *Directly trading or dealing* in conventional arms and related services, thereby buying, selling and acquiring legal ownership or physical possession of such items, *in order to transfer them to others for a profit or gain*; or
- *Directly providing essential services to conclude such a transaction*, including transportation, freight forwarding, finance or insurance.

Of course, the definition of illicit brokering will also be determined by exactly what types of controlled items fall under the law and regulations on brokering. So far, states have chosen, variously, to include firearms, their parts, components and ammunition (as defined by the OAS); small arms

and light weapons (as defined by the United Nations); conventional arms and munitions (as defined by the Wassenaar Arrangement)—which would subsume the former definitions—with or without the inclusion of associated military and security services.

A complex but essential part of determining exactly what constitutes illicit brokering—and conversely exactly what constitutes licit brokering—of international arms transactions is whether such activity, even if authorized by a state official, actually conforms to international law. According to the 1996 United Nations Guidelines for International Arms Transfers, “illicit arms trafficking is understood to cover that international trade in conventional arms, which is contrary to the laws of States and/or international law”.<sup>55</sup>

Reflecting this commitment in 2001, Member States agreed in the UN PoA that they should “assess applications for export authorizations 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”.<sup>56</sup> What constitutes such international law is to some extent an evolving issue as new treaties and principles are established. States have progressively established and amended their standards or criteria for the authorization of legitimate arms transfers in national laws, regulations and policies so as to reflect such international law and need to apply the same criteria to brokering transactions if they are to prevent the proliferation and irresponsible transfer of arms.

National systems of controlling arms transfers and arms transactions should reflect relevant prohibitions and limitations in international law if a common understanding of and determination to prevent illicit arms brokering is to emerge. Currently, there are significant gaps in and contradictions among national systems. The UN General Assembly has set out some broad parameters for such prohibitions or limitations,<sup>57</sup> summarized in the principle that “limitations on arms transfers can be found in international treaties, binding decisions adopted by the Security Council under Chapter VII of the Charter of the United Nations and the principles and purposes of the Charter [of the United Nations].”<sup>58</sup>

Respect for UN arms embargoes is an obvious element of such limitations. However, the General Assembly has not yet agreed on a set of explicit standards that provide Member States with clear, consistent and fair criteria

for decisions on the authorization of international transfers of conventional arms and military equipment and services—and hence for the authorization of brokering activities. Such standards should at least reflect the most important elements of existing international obligations of states and provide for the right of legitimate self-defence as well as limit and define the scope of states to authorize the legitimate international transfer of weapons and munitions, including:<sup>59</sup>

- Rules of *state responsibility* prohibiting states from aiding and assisting other states in the commission of an internationally wrongful act, rules which are now codified in the International Law Commission's Articles on State Responsibility.<sup>60</sup>
- Rules of *international criminal law* prohibiting persons from aiding and abetting in the commission of an international crime. The "aiding and abetting" provision of the International Criminal Court Statute establishes criminal responsibility if a person aids, abets or otherwise assists in the commission or the attempted commission of a crime, including by *providing the means* for its commission.<sup>61</sup>
- *Positive obligations of states* to ensure respect for international humanitarian law and to cooperate in the protection and fulfilment of human rights beyond their borders.<sup>62</sup> For example, the imposition of arms embargoes is another way in which the international community seeks to prevent breaches of the peace while also giving effect to its common Article 1 obligation under the Geneva Conventions, Article 1 of the UN Charter and the International Covenants on human rights.<sup>63</sup>

Nevertheless, some recently agreed multilateral and regional instruments on the control of arms brokering do incorporate requirements to meet specific international standards for the authorization by states of such activities, and the standards reflect relevant principles of international law to a greater or lesser extent. These are discussed further below and in subsequent chapters.

## KEY CHALLENGES AND LOOPHOLES IN EXISTING BROKERING CONTROLS

Only a few states have established laws, regulations and administrative procedures to control arms brokering activities. In mid-2006, it is estimated

that around 40 out of 192 UN Member States had enacted specific laws or regulations covering brokering within their systems of arms export control, 25 of which were in Europe—see Chapter 2 for more detail. Therefore, one of the biggest challenges is the massive lack of legislative coverage of brokering activity worldwide. Existing national systems to control arms exports, imports and transit are of course in place in almost all countries, but these are exploited by unscrupulous arms brokers and traffickers who in the modern world economy are able to relocate their operations and reroute their deliveries at short notice. Nevertheless, the momentum to establish laws and regulations on arms brokering appears to be increasing.<sup>64</sup>

Caution should be exercised when interpreting aggregate data on legislation and regulations because of the large variations in the quality and effectiveness of such national control systems on arms brokering. Even in those states that have laws applicable to arms brokering activities, too often the standards and enforcement procedures are weak, as shown in Chapter 3. Loopholes exist that arms brokering networks can and do exploit. In general, major loopholes will be present if national laws and regulations *exclude*:

- effective registration and record-keeping of eligible brokers;
- licensing on a case-by-case basis using objective international standards;
- controls on brokering the transfer of specific types of arms and military equipment;
- controls on extraterritorial and “third-country” brokering activities;
- controls on brokering of financial and transport services for arms deals; or
- controls on the role of government officials who broker arms deals.

Each of these are discussed briefly here.

#### **EFFECTIVE REGISTRATION AND RECORD-KEEPING OF ELIGIBLE BROKERS**

Some states that claim to regulate arms brokering rely exclusively on a general permit or once-only registration allowing arms brokers to pursue their activity at will. Brokering agents deemed to be trustworthy are registered without being objectively screened or required to regularly renew their registration. Moreover, oversight procedures and standards

based on relevant principles of international law are often lacking in the design of registration regimes.

The official registration of those wishing to conduct arms brokering activities is a feature of some national laws and is recommended in international agreements—see Chapter 2. Registration should allow national authorities to screen out persons and companies that cannot be trusted to comply with domestic and foreign arms control laws, for example because of past violations of arms transfer regulations or convictions for other serious criminal offences, and also to keep track of the persons and entities authorized to engage in the trade of military equipment. However, in some international brokering standards, registration is optional.<sup>65</sup> Arguably, control of brokering would be more effective if registration were mandatory and subject to regular renewal and also if the registration system were transparent and used in combination with a case-by-case licensing system for each proposed brokered deal (such an approach is recommended in the OAS Model Regulations on Brokering<sup>66</sup>), and if record-keeping on the part of state officials and brokering agents were mandatory.<sup>67</sup>

Obtaining information on arms brokering and evidence of illicit arms brokering is often difficult because such activities are conducted in secret. Nevertheless, studies over the past decade reveal the main features of arms brokering activity in different countries. However, these studies have tended to focus only or mainly on private firms and individuals. Evidence shows that arms brokering activities have been performed by private firms and individuals specializing in the mediation of arms deals, organizations that represent sectors of the arms industry and promote their military and security products in the global market, and also government agencies tasked with facilitating the procurement of arms and the development of domestic arms production by foreign entities. Yet not all of these types of actors have been officially registered and licensed to broker arms transactions according to common standards based on objective criteria such as having no past involvement in illicit activities.

**Box 1.4. The case of Taos Industries, Speedex and Scout**

Large quantities of SALW from the Bosnia and Herzegovina war-time stockpiles and tens of millions of rounds of ammunition were exported and supposedly shipped to Iraq by a chain of private brokers and transport contractors under the auspices of the US Department of Defense (DoD) between 31 July 2004 and 31 June 2005.<sup>68</sup>

For this US-sponsored arms deal for Iraq, the Bosnian state authorities officially gave permission for the sale following the presentation of end-user certificates from the US Coalition Provisional Authority (CPA) and the interim Iraqi administration. However, the sale, purchase, transportation and storage of the weapons were handled entirely by a complex network of private arms brokers, freight forwarders and air cargo companies operating at times illegally and subject to little or no governmental regulation. Governmental and inter-governmental oversight ended at the cargo aircraft point of departure from the US air base in Tuzla.<sup>69</sup> In Bosnia, US DoD officials and US agency staff assisted the primary US contractor to identify weapons, facilitate their purchase and help enable their movement across Bosnian territory.<sup>70</sup> Officials in Iraq and Bosnia could not verify at the time where the arms ended up or even whether the particular consignments really reached Iraq or were diverted elsewhere.<sup>71</sup>

The arms brokering and freight forwarding network was a pyramidal structure with a primary contractor sitting at the apex astride a collection of largely unregulated, secretive companies operating out of private apartment buildings and gun shops but involved in an arms deal worth tens of millions of dollars. The primary contractor was Taos Industries Inc. based in Madison, Alabama. Taos Industries subcontracted to companies in Bulgaria, Croatia, Switzerland and the United Kingdom which in turn subcontracted to other firms, creating a network of business relationships involving a variety of companies. Other companies within the network operated from offices in Bosnia, Germany, Kyrgyzstan, Russia, Serbia, Ukraine and the United Arab Emirates.

Scout d.o.o. of Croatia was the interface arms brokering company which acted as a conduit between the Federal Bosnia and Herzegovina Ministry of Defence, Taos Industries and related subcontractors.<sup>72</sup> According to a well-informed official, Scout had “a long-standing relationship with the Pentagon” and “good connections with the [Bosnian] Federation Ministry of Defence.”<sup>73</sup> The relative power accorded to Scout was also explained by a Taos executive: “We could not buy the weapons without going through Scout. Scout owned every one of those weapons in that warehouse ... and [the NATO-led Stabilisation Force] ... allowed these guys [Scout] in and out ... we had no choice ... frankly it was a good deal for the US government rather than having them demilled ... they could be used in Iraq where they were needed. It [Scout] was the only party we could go to.”<sup>74</sup>

**Box 1.4** (continued)

Scout's business address in the arms transfer documentation was a fifth-floor flat in an outlying suburb in Zagreb, which was the private residence of the two directors of the company listed in Croatia's business directory.<sup>75</sup> The company listed its business activities as a travel agency, tour operator, a producer of electronic equipment and a representative of foreign companies among others. Last on the list was "arms and ammunition broker".<sup>76</sup> Another subcontractor involved in the brokering and shipping network transferring arms from Bosnia was a Swiss arms brokering company whose business address was a gun shop in the town of Laufen, close to Switzerland's border with Germany.

The first of four flights in August 2004 carrying arms destined for Iraq were conducted by Aerocom, a Moldova-based air cargo company accused in an April 2003 UN report to the UN Security Council of smuggling weapons from Serbia to Liberia in 2002 in contravention of the UN arms embargo on Liberia.<sup>77</sup> The Ukrainian-leased cargo aircraft was flying illegally because Aerocom had lost its Air Operating Certificate on 6 August 2004—the day before it began the series of arms flights from Tuzla.<sup>78</sup> The initial transportation of weaponry was arranged by Taos Industries' European freight forwarding broker, Speedex, which had offices at Sofia Airport in Bulgaria.<sup>79</sup> Senior Taos Industries executives stated that the choice of Aerocom as a cargo airline selected by Speedex was the European freight forwarding broker's decision alone.<sup>80</sup>

Despite the strong US law requiring the US Department of State to register and license the activities of arms brokers, government control systems and Congressional oversight of this arms supply chain was inadequate. The US DoD, which sponsored the transfers,<sup>81</sup> and its principal US contractor, Taos Industries, under US regulations should have instituted effective systems to ensure that their brokers and other contractors and subcontractors did not have a record of illicit arms trafficking and that all contractors had valid operating certificates. But the brokers were foreign firms operating outside the United States that did not require registration with the US Department of State and the transactions were for arms that were not of US origin, thereby further reducing any accountability to the Department of State.

Source: Hugh Griffiths worked on this case as a research consultant for Amnesty International. This case was extracted from Amnesty International and TransArms, *Dead on Time: Arms Transportation, Brokering and the Threat to Human Rights*, 2006, chapter 8.

Questionable or illegal brokering activities are often conducted by individual arms brokers who are able to exploit legal loopholes by operating with a network of shell companies, agents and subcontractors. Such brokering networks are usually fluid, opaque and complex. Individual arms brokers tend to be businessmen with military or security backgrounds and close contacts in the arms supply and security industry. From an arms distribution point of view, they may be a conduit for “strategic” political considerations of selling or buying states and powerful companies, even though from an individual point of view they are motivated primarily by private or corporate economic gain. They take advantage of the global banking, tax avoidance mechanisms and transport industries. Above all, those brokers dealing with dubious customers are skilled at hiding their tracks, often using fake documentation, bribery of officials at all levels, and sometimes linking up with organized criminal networks.

Therefore the design of laws, regulations and procedures for the registration of brokers and the licensing of arms transactions and transfers needs to take such factors fully into account, for example by requiring comprehensive information that can be cross-checked. This would be more likely under a system like that of the ECOWAS Convention, whereby:

1. Member States shall register all citizens and all companies incorporated in their territory that are brokering small arms and light weapons, including financial agents and transportation agents on [such armaments], and shall make such registration a requirement for their licit operation.
2. Member States shall ensure that all registered small arms and light weapons brokering agents obtain an explicit authorization for each individual transaction in which they are involved irrespective of where the arrangements take place.
3. Member States shall require that all small arms and light weapons brokering license applications for authorisation provide full disclosure of relevant import and export licences or authorisations and associated relevant documents, the names and locations of all brokering and shipping agents involved in the transaction and the transit routes and points of the small arms and light weapons shipments.<sup>82</sup>

### ABSENCE OF CASE-BY-CASE LICENSING USING OBJECTIVE INTERNATIONAL STANDARDS

A critical weakness of some laws covering arms brokering is that the criteria for the issuance of licences for brokering agents to conduct transactions are ill defined and may in practice be inconsistent with existing international law and standards. This is compounded by the inadequate integration of licensing methods with the operational guidance for ministers and officials in issuing licences for arms exports and imports. For example, arms export and import license applications appear not to require the submission of information about brokering agents and other subcontractors in the deal.

An additional problem is that not all states with laws and regulations on arms brokering rely on the issuance of “individual licences” on a case-by-case basis for each brokered deal involving the transfer of arms; other states merely grant “open general licences” to arms brokers who are then allowed to mediate or negotiate many transfers, usually for the same country or the same list of specified customers. Such open general licences could easily be abused and should be restricted to exceptional cases, for example where there is a high level of accountability and adequate public transparency by the management of a defence project who need to broker the supply of specified items.

According to the EU Common Position on Brokering adopted in June 2003,<sup>83</sup> EU member states are required to “take all the necessary measures to control brokering activities taking place within their territory.” The lawful engagement of such activities requires “a license or written authorisation ... from the competent authorities of the Member State where these activities take place” and member states must assess applications “for specific brokering transactions against the provisions of the EU Code of Conduct on Arms Exports.” The EU Code of Conduct, agreed in 1998, establishes a set of politically binding criteria, including that a proposed arms export must not be authorized by an EU member state if there is a “clear risk” that the arms in question will be used to facilitate serious human rights violations or violate international arms embargoes (see Chapter 2). In other words, the EU requires that arms brokering be regulated according to common standards that respect existing international law and, although the Code is not itself legally binding, governments in the EU are required to carry out specific checking and reporting procedures and can to some

degree be held to account by their legislatures for compliance with the Code.

Similar standards for the authorization of arms transfers have been agreed by other regional organizations and by multilateral bodies, for example in the OSCE<sup>84</sup> and the Wassenaar Arrangement.<sup>85</sup> However, systems of licensing to uphold international law and standards are not yet established and implemented in all states, even where they have made such commitments, and so international brokering and trafficking networks can easily circumvent such controls.

#### **Box 1.5. The case of Verona Commodities**

Following the signing of the peace accords by the parties to the conflict in the Democratic Republic of the Congo in 2002, which included Rwanda and Uganda, the armed forces of which and their allied armed groups had occupied large parts of eastern DRC, a series of arms flights were made from Tirana, Albania, to Kigali.<sup>86</sup> The flights continued until at least June 2003. These involved up to 400 tonnes of munitions, and were arranged by companies from Albania, Israel, Rwanda, South Africa and the United Kingdom. The deliveries coincided with the reported dissemination of arms from Kigali to rebel groups in the eastern DRC with Rwandan military support, including arms deliveries by air and road; to two Congolese armed opposition groups in the eastern DRC; and also with credible reports alleging arms movements from Kigali to Burundi.<sup>87</sup>

Testimony from participants pointed to the involvement of arms brokers and business intermediaries based in Israel, the Netherlands, and the Turks and Caicos Islands.<sup>88</sup> Albanian Ministry of Defence officials said that a company based in Israel brokered these arms shipments to Rwanda: “Verona Commodities is the agent which we have dealt with. It is an Israeli company with a license from the Israeli government—the Albanian embassy in Tel Aviv has checked it with the Israeli government.”<sup>89</sup> Verona Commodities is a company based in the diamond exchange building in Tel Aviv and is registered in the British Virgin Islands. Another company referred to by customs officers as being part of the deal was Verona Commodities of Burundi Ltd, with a postal address in Kigali. A businessman reportedly working for an Israeli company, Ebony, supervised the off-loading in Kigali of arms from Albania, according to sources. Another reliable source said that a freight-forwarding agent based in Tel Aviv had helped arrange the transport with air charter operators based in the United Kingdom and South Africa.

**Box 1.5** (continued)

According to documents and witness statements obtained by Amnesty International, the first series of six flights of arms from MEICO (the privately owned state-controlled Military Export-Import Company of Albania),<sup>90</sup> took place from Tirana to Kigali in planeloads each carrying over 40 tonnes of arms and ammunition from the end of October into November 2002. These shipments included several million rounds of ammunition, and at least one shipment contained grenades and rocket launchers.

Amnesty International found that three of the companies involved in these five arms deliveries operated from the United Kingdom—African International Airways (Crawley, West Sussex), Intavia Ltd (Crawley and Gatwick) and Platinum Air Cargo (Egham, Surrey).<sup>91</sup> The DC-8 cargo aircraft used for the shipments by African International Airways was registered in Swaziland and maintained in South Africa. The South African majority shareholder of African International Airways said in early 2004 that his company had performed the five flights as “government-to-government” transactions.<sup>92</sup> The UK manager of African International Airways said his company had performed six flights.<sup>93</sup> UK customs authorities questioned these companies in late 2003 after the UK government was alerted to irregularities in the freight shipment procedures.<sup>94</sup>

In addition, during 2003 Verona Commodities brokered another deal with an air charter company based in Rwanda, Silverback Cargo Freighters, which used two DC-8 aircraft to carry out another series of ammunition deliveries from Eastern Europe to Rwanda.<sup>95</sup> The two DC-8s operated by Silverback Cargo Freighters were each sold for a symbolic price of US\$ 10 in a complex deal from the United States and delivered to the company in May 2002.<sup>96</sup> According to Albanian officials, at least four arms flights brokered by Verona Commodities were carried out to Kigali from Tirana from April to at least June 2003.<sup>97</sup> Albanian officials said these flights involved the shipment of large quantities of ammunition. However, Rwandan import certificates did not include the name of Verona Commodities.

Subsequent to recognition of the new Rwandan government, Security Council resolution 1011 of 16 August 1995 terminated restrictions on the supply of arms and related materiel to the Government of Rwanda effective from 1 September 1996.<sup>98</sup> However, two operational paragraphs of this resolution retained aspects of the arms embargo. Arms transfers were prohibited “to Rwanda, or to persons in the States neighbouring Rwanda if such sale or supply is for the purpose of the use of such arms or matériel within Rwanda, other than to the Government of Rwanda ...”<sup>99</sup> and “that no arms or related matériel sold or supplied to the Government of Rwanda may be resold to, transferred to, or made available for use by, any State neighbouring Rwanda, or person not in the service of the Government of Rwanda, either directly or indirectly”.<sup>100</sup> Thus, no arms intended

**Box 1.5** (continued)

for delivery to Rwanda should have been permitted if there was a clear risk that Rwanda would directly or indirectly transfer any of those arms to government forces or non-government groups in eastern DRC or Burundi. The UN Security Council also imposed a mandatory arms embargo on the provinces of North and South Kivu and the Ituri region of the eastern DRC, and on groups not party to the peace agreement in the DRC, on 28 July 2003. The UN Panel of Experts<sup>101</sup> presented evidence to the Security Council in October 2003 of the Rwandan, Ugandan and DRC authorities' involvement in providing military support to armed groups in eastern DRC, including Rwandan military supplies to the RCD–Goma forces, the ANC (*Armée nationale congolaise*), from August 2003 which directly violated the UN arms embargo.<sup>102</sup>

When asked if these large ammunition exports to Rwanda would fuel further grave violations of human rights and international humanitarian law in eastern DRC, given the involvement of Rwanda's armed forces and their support for armed rebels in eastern DRC, Albanian officials said they did not know as they did not have diplomatic representation in that region. Subsequently, the Albanian government agreed with diplomats from the EU to abide by the EU Code of Conduct and to consult with EU allies before authorizing such arms exports in the future.

Source: This case study is derived from work for Amnesty International—see Amnesty International, *Democratic Republic of Congo: Arming the East*, 2005.

In addition, the OAS,<sup>103</sup> ECOWAS<sup>104</sup> and the Nairobi Group<sup>105</sup> have agreed sets of standards on licensing transactions and transfers that reflect the international obligations of states when transferring arms. These standards are intended to have legal force when used to consider the licensing of particular brokering activities. However, so far most member states have not incorporated the respective standards into domestic law and practice. It is impossible to envisage the prevention of illicit arms brokering as long as this is the case. For example, in one of the worst affected regions, standards that reflect relevant principles of international law were agreed by the Nairobi Group in June 2005 in the form of “best practice guidelines” for authorizing international transfers of SALW under the Nairobi Protocol and these are intended also to apply to the consideration of licences for brokering.<sup>106</sup> However, these guidelines have yet to be incorporated into domestic regulations and procedures.

Similarly, the OAS Model Regulations on Brokering require that:

The National Authority shall prohibit brokering activities and refuse to grant licenses if it has reason to believe that the brokering activities will, or seriously threaten to:

- (a) result in acts of genocide or crimes against humanity;
- (b) violate human rights contrary to international law;
- (c) lead to the perpetration of war crimes contrary to international law;
- (d) violate a United Nations Security Council embargo or other multilateral sanctions to which the country adheres, or that it unilaterally applies;
- (e) support terrorist acts;
- (f) result in a diversion of firearms to illegal activities, in particular, those carried out by organized crime; or
- (g) result in a breach of a bilateral or multilateral arms control or non-proliferation agreement.<sup>107</sup>

Such general universal criteria would give more meaning to Section 2, Paragraph 11 of the UN PoA when they are implemented in national law and consistent with relevant principles of international law.<sup>108</sup>

If and when such standards are incorporated into the domestic law of states, officials will need operational or procedural guidelines to ensure that decisions are made as objectively as possible. Procedures could, for example, include a list of prohibited and restricted arms,<sup>109</sup> updated lists of embargoed destinations/recipients<sup>110</sup> and those that pose a high risk of diversion, relevant data on the gross violation of international human rights or humanitarian law with types of arms being considered, and other practical advice to ensure compliance with each criterion when considering licenses.

An example of a prohibition on the brokering of a particular type of weapons system are the APEC Guidelines on Controls and Security of Man-Portable Air Defence Systems (MANPADS), which were submitted by the Russian and US governments during the 16<sup>th</sup> APEC Ministerial Meeting, 17–18 November 2004.<sup>111</sup> It stated that, “Exporting [governments] will not make use of non-governmental brokers or brokering services when transferring MANPADS, unless specifically authorized to on behalf of the [member government].”<sup>112</sup>

Where the conduct of lawful brokering activities within the domestic territory is limited exclusively to state companies, arms markets make it necessary for such states to criminalize those brokering activities of nationals conducted abroad that are in contravention of international law. As in the Verona Commodities case described in Box 1.5 (see p. 27), some officials argue that the monopoly of trade with respect to all arms exports and imports that is granted to a state company will enable those state authorities to prevent illicit arms brokering. However, cases of illicit international arms brokering involving nationals or companies in such states casts doubt on whether such systems are foolproof.<sup>113</sup> The use of front companies by brokers at home or abroad, including in off-shore tax havens and free-trade zones, to mask international arms trafficking activities is all too easy. And the risk of irresponsible or illegitimate arms transfers is greatly increased when each arms export is not subject to rigorous appraisal according to objective standards based upon relevant principles of international law.

#### **EXCLUDING TYPES OF ARMS AND MILITARY EQUIPMENT FROM CONTROL**

Current discussions in the UN and regional organizations tend to assume that controls on arms brokering should only cover SALW as this class of arms has been identified as the most widely used in today's conflicts. However, most state laws and regulations covering the transfer of SALW also include other arms in the control lists. Governments have usually decided to include all arms on the respective munitions lists rather than just SALW in order to streamline their regulatory and enforcement capacity and in recognition of the fact that many arms brokers tend to arrange deals across a range of military and security equipment.

In all current conflicts, belligerents using SALW also use other arms and military-related equipment, and a number of such items, such as military transport and communications equipment, are necessary for deploying SALW-equipped forces. It is thus a distinct advantage that most existing national laws on brokering cover all conventional arms and other military and dual-use items. In the EU Common Position, the definition of arms is assumed to be the same as that in the EU Code of Conduct—that is, the common list of military equipment controlled by EU member states. The Wassenaar Arrangement agreements to control arms brokering also apply to all international transfers of conventional arms.

**Box 1.6. The case of Endeavour Resources UK Ltd**

In September 2004, a UK newspaper reported that it had obtained documents showing that arms brokers based in Ireland and the United Kingdom had been involved in negotiations for arms deals to supply £2.25 million worth of arms to the Sudan.<sup>114</sup> The UK parliament had introduced a new law that entered into force on 1 May 2004 requiring all arms brokering deals conducted by UK residents on UK territory to be subject to licensed approval and also prohibiting arms brokering by UK nationals and residents to countries subject to a UN, EU or other arms embargo agreed to by the UK government, even when the deal is struck outside UK territory.<sup>115</sup>

In June 2004, an end-use certificate (EUC), apparently signed by the Sudanese government, authorized a UK firm, Endeavour Resources UK Ltd, to negotiate for 5,000 M973 9mm semi-automatic pistols to be supplied by Imbel, a company in Brazil, "for the sole use by the internal drug and law enforcement agencies of the Republic of Sudan."<sup>116</sup> Imbel denied supplying these pistols to the Sudan. According to customs data, the Sudan recorded the importation of US\$ 184,392 worth of "parts, pistols and revolvers" from the United Kingdom. The UK Department of Trade and Industry stated that it had no records of such an export.

The arms brokering activities of Endeavour Resources were not confined to small arms. Another EUC, dated 25 May 2004 and apparently also issued by the Military Industries Corporation of the Sudan, authorized Endeavour Resources UK Ltd to negotiate for the supply to the Sudan of twelve Antonov 26 cargo planes and 50 Antonov 2 "crop spraying" aircraft from the Ukrainian arms export company Ukrspetsexport.<sup>117</sup> The Antonov 2 can carry light cargo or up to 14 passengers, and is reputed for its suitability for parachute drops and landing on very short, rough runways.

Another EUC, apparently authorized by Military Industries Corporation on 23 August 2004, to negotiate for the supply of 50 T-72 main battle tanks and spare engines from Ukrspetsexport, was made out to Sinclair Holdings 7 Ltd, a company registered in the Republic of Ireland.<sup>118</sup> Additional EUCs were issued on 25 May 2004 to Endeavour Resources UK Ltd to negotiate for the supply of 12 BM-21 Grad 122mm multiple rocket launchers, 50 T-72 main battle tanks (and spare engines), 50 BMP-2 fighting vehicles, 50 BTR-80 armoured personnel carriers, 30 M-46 130mm field guns, as well as aircraft and pistols.<sup>119</sup>

The government agency responsible for enforcing UK arms control legislation is understood to have investigated the newspaper report, although no prosecution resulted. Despite an EU agreement to control arms brokering, Ireland did not have any legislation controlling the activities of Irish arms brokers who arrange arms supplies from Ireland or from foreign countries. Therefore, Irish registered companies engaged in such activities were unlikely to be prosecuted.

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Source: This case study is extracted from Amnesty International, *Sudan: Arming the Perpetrators of Grave Abuses in Darfur*, 2004, and was researched by the Omega Foundation UK.

### EXTRATERRITORIAL AND “THIRD-COUNTRY” BROKERING

The ease with which the business community can move across countries allows individual arms brokers, and more usually networks of brokers, dealers and service providers, to exploit the paucity and weakness of national laws and enforcement—as illustrated in the cases cited above. The weapons and munitions brokered may never enter the country where the broker operates. In turn, the broker may be based (that is, registered or resident) in one country and operate from another. By using a chain of shell companies and circuitous routes where administrative capacity and law enforcement are weak, unscrupulous arms brokers can arrange the delivery of arms cargoes to irresponsible recipients that have either not been authorized to receive them or have persistently used them unlawfully.

In cases where the intended recipient or end-user of the arms is illegitimate or dubious, brokers and their associates will have an incentive to try and arrange a transfer of arms from one foreign country to another without the physical transfer of arms entering their country of operation. They try in such cases to avoid the transaction falling under the jurisdiction of the state where they base their operations, as illustrated by the case of Leonid Minin described in Box 1.2. This is sometimes called “third-country brokering”, and has been the focus of efforts to control brokering by the OSCE, the EU and Wassenaar Arrangement. This type of brokering is even more difficult to control as the arms do not enter into the possession of the broker.

In addition, when a broker’s activities are prohibited or strictly controlled in their home state, they can themselves travel abroad and carry out their arms brokering activities and operations in another country where the activity is not illegal or is poorly regulated. This is called “extraterritorial brokering.”

In 2003, states participating in the Wassenaar Arrangement agreed to recommend extraterritorial licensing measures to control the brokering of conventional arms, regardless of “whether the broker is a citizen, resident or otherwise subject to the jurisdiction of the Participating State” and “regardless of where the brokering activities take place.”<sup>120</sup> The EU Common Position requires EU member states to control third-country

brokering,<sup>121</sup> and leaves it optional for EU member states to control extraterritorial brokering—EU states can merely “consider controlling brokering activities outside their territory carried out by brokers of their nationality resident or established in their territory.” No mention is made in the Common Position of controlling EU citizens who both reside and broker arms deals in foreign countries.

The OAS experts on brokering, on the other hand, opted to recommend, in Article 8 of the Model Regulations on Brokering, that national laws covering brokering activities should apply whether or not such activities are conducted in the controlling state’s territory or in a foreign state. The assumption here is that legislation which lacks such extraterritorial scope can be easily circumvented, and rather than preventing harmful brokering activity will simply move it elsewhere.<sup>122</sup>

Of the existing national laws and regulations on arms brokering, most appear to control “third-country brokering” to some degree, but there are still loopholes in application and enforcement, as illustrated in Chapter 3. In some cases, the home state of the brokering agent will require the agent to obtain a brokering license even if only part of the brokering activity is conducted on the home territory, including, for example, the sending or receipt of an e-mail, fax or telephone call.

#### **Box 1.7. The case of Shimon Yelinek**

Shortly before midnight on 5 November 2001, a ship named the Otterloo (owned by a Panamanian company) docked in the Colombian port of Turbo and delivered 3,000 Kalashnikov rifles and ammunition to a Colombian paramilitary organization. The recipients of the weapons, the United Self-Defence Forces of Colombia (*Autodefensas Unidas de Colombia*, AUC), had previously been placed on the US Department of State’s list of terrorist organizations.

The arms had originally been acquired from the Nicaraguan police by a Guatemalan company, GIR SA, in a complex barter exchange that also involved the Nicaraguan army. GIR SA bought the weapons on the behalf of the Panamanian police who were supposedly being represented by a broker resident in Panama named Shimon Yelinek, who supplied a purchase order and end-user certificate to the Nicaraguan authorities.

**Box 1.7** (continued)

However, after the Otterloo departed Nicaragua loaded with weapons, it went to Colombia without stopping in Panama and the arms were delivered to the AUC. The documents which purported to show that the Panamanian police were the customers turned out to be forgeries.

A subsequent OAS investigation into the affair named Shimon Yelinek as a key player in the diversion of the weapons. The OAS report noted that Yelinek had approached GIR SA claiming to be acting on the behalf of the Panamanian police, paid GIR SA for the arms, supplied the forged documentation, identified the Panamanian company that owned the Otterloo and travelled to Nicaragua in 2000 to inspect the arms prior to purchase.

Soon after the diversion of weapons to the AUC became public in April 2002, Yelinek left Panama. On his return in November 2002 he was arrested at Tocumen airport for his connection to the illegal arms deal.

Yelinek appealed against his incarceration and was initially set free by a lower court. However, the case was appealed by the *Fiscalía de Drogas* (the Public Prosecutor in charge). In March 2004, Panama's Supreme Court decided that the alleged activities had taken place in other countries (and were therefore outside its jurisdiction), and that it had not been shown that Yelinek's activities contravened any international treaties to which Panama was party. The Supreme Court closed the case and freed Yelinek.

This case demonstrates the importance of implementing strict brokering legislation. If Panama had required its residents to seek prior authorization before engaging in brokering activities then at the least they could have monitored Yelinek's actions. Moreover, if he had then gone on to undertake unauthorized brokering activities he could have been prosecuted. Yelinek is an Israeli citizen. However, Israel's brokering laws do not provide powers for it to monitor and regulate the activities of its citizens operating abroad.

Source: This case study was written and researched by Nicolas Marsh. The main sources used were: Juan Manuel Díaz, "Cierran investigaciones por tráfico de armas", *El Panamá América*, 31 March 2004; Permanent Council, *Report of the General Secretariat of the Organization of American States on the Diversion of Nicaraguan Arms to the United Defense Forces of Colombia*, OAS document OEA/Ser.G CP/doc. 3687/03, 6 January 2003; Florencio Gálvez, "Corte admite recurso a favor de Yelinek", *Crítica*, 31 March 2004; Oscar Martínez, "Magistrado a favor de anular proceso contra implicados en tráfico de armas", *El Panamá América*, 9 January 2004. See also, "Shadow Report on the OAS Report. Diversion of arms from Nicaragua to Colombia." Prepared by Patricia Orozco Andrade with the collaboration of Roberto Canales Flores, Centro de Estudios Internacionales, Managua, Nicaragua, April 2003. The latter report's findings are in many aspects very different from those of the official OAS report.

In 2005, at least 21 states had laws providing for some degree of extraterritorial control of arms brokering, and most applied a licensing requirement for arranging an arms transfer for supply and delivery in foreign territories.<sup>123</sup> The laws of the United States and South Africa have a high degree of extraterritorial application that applies to the brokering activities outside the home country by residents, companies as well as nationals wherever they are conducting the brokering activity.

The US law requires US brokers living anywhere and foreign nationals residing in the United States or subject to US jurisdiction to register and obtain licenses for all arms deals they arrange. Those persons conducting brokering activity required to register in the US as a broker include:

Any U.S. person, wherever located, and any foreign person located in the United States or otherwise subject to the jurisdiction of the United States ... who engages in the business of brokering activities ... with respect to the manufacture, export, import, or transfer of any defense article or defense service subject to the controls of this subchapter ... or any "foreign defense article or defense service".<sup>124</sup>

In describing brokering activities, US brokering regulations specify that such activities include, but are not limited to:

activities by U.S. persons who are located inside or outside of the United States or foreign persons subject to U.S. jurisdiction involving defense articles or defense services of U.S. or foreign origin which are located inside or outside of the United States. But, this does not include activities by U.S. persons that are limited exclusively to U.S. domestic sales or transfers (e.g., not for export or re-transfer in the United States or a foreign person).<sup>125</sup>

As one commentator has observed, "Not only does the law empower US implementing and enforcing agencies to monitor the number of brokers and the type of their operations, it also subjects violators to US jurisdiction wherever an offence has been committed."<sup>126</sup>

In other regional agreements, there are no specific clauses to enable the extraterritorial control of arms brokering by the home state of the broker. For instance, although the preamble to the Nairobi Protocol expresses concern "about the supply of small arms and light weapons into the region and conscious of the need for effective controls of arms transfers by

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suppliers and **brokers outside the region ...**” [emphasis added], Article 11 of the Nairobi Protocol requires states parties to:

- establish a national system for regulating dealers and brokers of small arms and light weapons. Such a system of control shall include:
- i. regulating all manufacturers, dealers, traders, financiers and transporters of small arms and light weapons through licensing;
  - ii. registering all brokers **operating within their territory** [emphasis added]... .

Since brokering networks involved in arranging arms supplies to illegitimate end-users will tend to conduct their activities outside jurisdictions with robust control systems, states that choose not to exercise a sufficient degree of extraterritorial control of their nationals and residents—as they do to prevent and curb the illicit trade in people, drugs and other items—will generally fail to control such mobile activity. In this respect, states will often remain entirely dependent on governments with weak arms control laws and enforcement capacity. Governments that are now considering new laws and procedures need to formulate them and plan to deal with these challenges. The critical question is whether states base jurisdiction on the *residency of the brokering entity* regardless of where the brokering activity takes place.

#### **BROKERING OR PROVIDING FINANCIAL, TRANSPORT AND LOGISTICAL SERVICES**

Each year, the global freight transport industry delivers hundreds of thousands of tons of weapons and other military and security equipment, ammunition and spare parts to armed forces, law enforcement agencies, and sometimes to armed groups around the world. Maritime and air transport play a significant role in the supply chain of military equipment, and air transport in particular has been the mode of choice in the supply chain of SALW and ammunition to many conflict zones.<sup>127</sup> Many of the middlemen who routinely facilitate the arms trade—including financial institutions, carriers and providers of logistical services—are not usually required specifically to register or seek specific licenses for their financial, transport or logistical activities, and therefore these may escape official monitoring.

If a person or firm brokers the use of a transport firm, a freight forwarder, warehousing or the funding and insurance for the delivery, this should be covered by the emerging national laws and regulations on arms brokering. However, if a person or firm actually provides such services for the purpose of delivering arms, they appear to be exempt in some jurisdictions from obtaining a license. For example, despite the extensive extraterritorial jurisdiction and other robust provisions on arms brokering, certain exemptions included in the US regulations on brokering exclude the provision of financing, freight forwarding and transporting of “defense articles”.<sup>128</sup> For instance, US law does not require registration by:

*persons exclusively in the business of financing, transporting, or freight forwarding, whose business activities do not also include brokering defense articles or defense services. For example, air carriers and freight forwarders who merely transport or arrange transportation for licensed United States Munitions List items are not required to register, nor are banks or credit companies who merely provide commercially available lines or letters of credit to persons registered in accordance with Part 122 of this subchapter ...*<sup>129</sup>

#### **Box 1.8. Victor Bout’s air trafficking of arms**

Several UN expert panels have reported on illicit arms brokers and traffickers who control air cargo syndicates. One name that frequently shows up is that of Victor Bout. This former air force navigator of the Soviet Union moved to the United Arab Emirates in the early 1990s where he began his own cargo business. Between 1995 and 1997, Bout’s activities were relocated to Ostend airport, Belgium, where he ran two companies,<sup>130</sup> Trans Aviation Network Group<sup>131</sup> and the Liberian registered Air Cess but with an office in Sharjah.<sup>132</sup> Bout and his company Air Cess left Belgium in July 1997. It is not known where he moved this company. An international aviation directory shows that in 1998 Bout (a.k.a. Victor Butt) headed two other companies, Centrafican Airlines and Cessavia; both run from the offices of Transavia Travel Agency<sup>133</sup> in Sharjah.<sup>134</sup> Air Cess suspended its operations in 1998,<sup>135</sup> but later directories list Cessavia operating under the name Air Cess with offices in Sharjah, and run by Victor Bout.<sup>136</sup>

The UN Panel of Experts on Angola reports that between 1996 and 1998 Air Cess made 38 arms flights for the National Union for the Total Independence of Angola (UNITA) in breach of the UN arms embargo.<sup>137</sup> Another company suspected of supplying UNITA with arms was AirPass, a subsidiary of Air Cess.<sup>138</sup> The attention

**Box 1.8** (continued)

of the United Nations was once again drawn to Victor Bout's companies during its investigation of the violations of the UN embargo against Liberia. Planes operated by Centrafrican Airlines made four flights between July and August 2000 for arms deliveries to Liberia.<sup>139</sup> Serious concerns were also raised by the government of Swaziland about an airline company called Santa Cruz Imperial/Flying Dolphin, based in the United Arab Emirates. The company had "used the Liberian registry for its aircraft, apparently unknown to Liberian authorities until 1998. It also used the Swaziland registry until the government of Swaziland de-registered them in 1999." When the government of Swaziland "discovered that some of the aircraft were still operating, the government of Swaziland sent information to the Civil Aviation Authorities in the United Arab Emirates where some of the aircraft were based ... because it believed that the operators may have been involved in arms trafficking."<sup>140</sup> In November 2000 an Il-18, chartered by Centrafrican Airlines from the Moldovan company Vichi, delivered sub-machine guns from Uganda to Liberia. Payments to Vichi were made by the Sharjah-based San Air General Trading.<sup>141</sup> San Air had previously been involved in a shipment of helicopter parts to Liberia in July 2000,<sup>142</sup> followed by another suspicious flight to West Africa in August 2000.<sup>143</sup>

Bout has also been active in the Democratic Republic of the Congo and Rwanda. When in February 2002 an international arrest warrant<sup>144</sup> was issued for Victor Bout by the Brussels investigative judge following the arrest of Sanjivan Ruprah, a press communiqué released by Mr Ruprah's lawyer noted that Paul Kagame, Rwanda's President, and the Rally for Congolese Democracy (RCD) rebels in Congo still had a debt in excess of US\$ 21 million owed to Mr Bout.<sup>145</sup> This was most likely connected to the logistic support that Bout's companies provided to RCD-Goma and the Rwandan army.<sup>146</sup> Officials from the Russian Federation have placed aircraft operated by Bout also in Somalia.<sup>147</sup>

Bout has also been active in other parts of the globe. In the mid-1990s he was supplying Rabani's government in Afghanistan.<sup>148</sup> One of the companies that was linked by the UN to the activities of Bout has flown for the Taliban. It is alleged that a secret meeting took place in October 1996 in a Sharjah hotel between representatives of Air Cess/Flying Dolphin<sup>149</sup> and Taliban representatives. When the meeting ended, the Taliban "had agreed to depend on Air Cess for wheels, tires and other military equipment for Taliban air force planes. Flying Dolphin would provide charter flights when Ariana<sup>150</sup> was unavailable. ... Air Cess ... became a conduit for arms and ammunition obtained for the Taliban from several Eastern European countries."<sup>151</sup> The director of Flying Dolphin has always denied any wrongdoing: "If there's anything happening like this, it's

**Box 1.8** (continued)

without my knowledge.”<sup>152</sup> Flying Dolphin operated weekly flights to Afghanistan between October 2000 and January 2001. These weekly flights were suspended in January 2001 when the UN imposed tougher sanctions on the country.<sup>153</sup>

Source: This case study was researched by Peter Danssaert of the International Peace Information Service, Antwerp.

**EXCLUDING THE ROLE OF GOVERNMENT OFFICIALS  
WHO BROKER ARMS DEALS**

Government officials sometimes act as arms brokers in an official or unofficial capacity, but brokering activity by officials in an official government capacity appears to be exempt from registration in most existing national laws and regional agreements, for example the OAS Model Regulations.<sup>154</sup> US government employees are exempt from provisions of the law on arms brokering if “acting in official capacity” as are “employees of foreign governments or an international organizations acting in official capacity.”<sup>155</sup>

Officials argue that the exclusion of government employees acting in an “official capacity” from registration, licensing and other legal requirements—even if they routinely engage in activities that actively promote sales of arms and security equipment and services—is justified because “the problem” of arms brokering is caused by uncontrolled private individuals and commercial companies. This argument ignores the fact that arms deals brokered by government officials may also sometimes result in the proliferation and misuse of arms unless such brokering is regulated according to strict international standards.

Two different situations involving arms brokering by government officials may pertain: when it is a case of an official acting in a corrupt or unauthorized way, or when an official is acting fully in accord with what his government leaders want, which is to circumvent an arms embargo or to mislead an exporting government.

**Box 1.9. The case of government brokers in the DRC and Namibia**

In February 2003 the government in Kinshasa, DRC, attempted to procure 50 T-55 tanks, 20 armoured personnel carriers and approximately 34 million rounds of ammunition from a Czech and a Slovak company.<sup>156</sup> Although this order was not necessarily in violation of the UN embargo on the DRC, it was an extremely large arms order and serious irregularities were noted in the procurement process. In mid-2003, an end-user certificate of the Namibian government was presented to the Czech and Slovak authorities, but agencies of both governments were apprehensive about the final destination of the arms and did not approve its export.<sup>157</sup> This was an instance of a real end-user certificate used in an apparently fraudulent way by procurement officials of the DRC.<sup>158</sup>

The director of Thomas CZ, the Czech arms company, reportedly acknowledged in June 2004 that his company had traded with the DRC and that prior to the 2003 UN arms embargo on the DRC his company had carried out business there.<sup>159</sup> On 28 June 2001 the *Président Administrateur-Délégué* of the Société Minière de Bakwanga (MIBA) in Brussels had received instructions from a senior DRC official to transfer US\$ 588,300 to a bank account of Thomas CZ.<sup>160</sup>

The original order from the DRC had been placed with Thomas CZ, but when the Czech government refused to issue an export licence, the order was placed with Technopol International in Slovakia as an intermediary. Thomas CZ then attempted to obtain an export license to deliver the materiel to Slovakia, while Technopol requested an export licence to Namibia, but both these requests were also refused.

Sources: This case study was extracted from Amnesty International, *Democratic Republic of Congo: Arming the East*, 2005, and was researched by Peter Danssaert of the International Peace Information Service.

To broker an arms deal, government employees may for example use their official position to:

- promise a firm involved in the arms deal that it will be included in government security assistance and arms surplus programmes, or unfairly aid a firm to tender for such a programme;
- facilitate a firm's access to financial aid and credit;
- arrange state support to a company for the purchase of its "offset" production of arms components;
- mobilize a government to support a barter trade deal to benefit a firm; or
- simply accept a bribe.

Some of these activities are crimes, regardless of whether one commits them as a government arms broker or in any other official capacity. It should instead be emphasized that general criminalizing legislation is not sufficient to prevent such practices, and therefore specific legislation is required. Sometimes it is alleged that former procurement agency officials and high-ranking military personnel on the boards of directors and private consultancies of arms manufacturers and private military companies have benefited from previously arranging lucrative contracts for those same firms.

One of the ways that governments, defence industry–governmental associations and firearm dealers associations help each other to promote the sale of arms and associated services is by regularly organizing and participating in international arms fairs and exhibitions. They also stage conferences aimed at promoting particular weapon systems. The rosters of speakers sometimes include military personnel, government officials and experts, any of whom may be a broker. These events are used to identify and promote the demand and sources of supply for customers of particular military and security products and services, and for announcing major arms deals and contracts. The brokering of arms deals is most usually carried out during informal meetings at such events. Therefore, all marketing, sales and official delegates or participants to such events should be properly registered and anyone reported to be involved in brokering transactions should be required to produce authorization for such activity.

“Unofficial” brokering by officials is difficult, but not impossible, to prove. Through careful monitoring and random checks, evidence could be obtained that government employees had received a tangible private fee or other extra benefit from brokering an arms deal. Furthermore, much greater transparency in authorized arms exports would discourage corruption by allowing for easier tracking of weapons and payments.<sup>161</sup>

Laws complementary to arms control laws designed to prevent and prosecute official corruption need to be enacted according to the best international standards and be robustly implemented. Such laws should also take into account the possibility of private gains by officials from arms brokering. There are a number of multilateral instruments against corruption and, although none appear to provide for the control of arms brokering as such,<sup>162</sup> they do set out standards that could prevent “unofficial” arms brokering by officials. For example, Article 9 of the 2003 UN Convention against Corruption requires states parties to, “... in

accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, *inter alia*, in preventing corruption.”<sup>163</sup>

This UN Convention goes beyond previous instruments of this kind by providing for the criminalization, not only of basic forms of corruption such as bribery and the embezzlement of public funds, but also trading in influence and the concealment and laundering of the proceeds of corruption. Offences committed in support of corruption, including money-laundering and obstructing justice, are also dealt with. Convention offences also deal with the problematic areas of private-sector corruption.

## SUBSEQUENT CHAPTERS OF THIS STUDY

The remainder of this study elaborates the scope and the implications for developing international standards for the control of brokering international arms transfers, particularly transfers of SALW, and why these have become an important agenda item within the United Nations and other international bodies. It is evident that most states have been slow to address the problem of illicit arms brokering but now it is possible to improve and widen existing state practice.

Chapter 2 outlines the main features of states’ licensing and registration rules and procedures and draws upon a significant but relatively small body of national law and regulation pertaining to arms brokering that has been emerging among a minority of states. Although the introduction of new control systems has been limited largely to European countries, there are some notable exceptions, and it is becoming possible to consider some regulatory options from this experience at national level.

Chapter 3 shows, through case studies and a review of sanctions and enforcement procedures, an array of problems and opportunities faced by law enforcement and monitoring agencies in curbing illicit arms brokering. Inconsistencies in information systems, verification procedures and the institutional capacity to enforce and uphold national laws, as well as UN arms embargoes, can be identified and addressed. Enhanced international systems of cooperation and standards are required, for example on

extradition, delivery verification and end-use certification, while criminal and administrative sanctions need to be made consistent.

Chapter 4 traces the precise evolution of the discussions on arms brokering within the United Nations since 1996, when the issue was first addressed within the context of UN arms embargoes. The chapter also explores the emergence of common standards on arms brokering through the existing instruments at the regional level. As well, international initiatives since 1999 to encourage states to establish effective laws, regulations and procedures to prevent illicit arms brokering are reviewed.

It is hoped that, pending the outcome of the forthcoming Group of Government Experts on brokering in late 2007, states should be encouraged to adopt and implement, if they have not yet done so, national laws, regulations and administrative procedures, that are consistent with best practice and the highest international standards, to control the brokering of arms transfers. Moreover, as is demonstrated in this report, the development of a United Nations instrument requiring effective laws, regulations and procedures on the part of states to prevent illicit arms brokering would considerably help such efforts.

## Notes

- <sup>1</sup> See in particular the many UN investigative reports on Angola, the Democratic Republic of the Congo, Liberia, Rwanda, Sierra Leone and Somalia. There are too many reports and UN Security Council decisions to list here so the following list is not exhaustive, but see, on Angola, S/RES/864 (1993), S/RES/1237 (1999), S/RES/1295, S/2000/203, S/2000/1225, S/RES/1336, S/2001/363, S/RES/1348, S/2001/966, S/RES/1374, S/2002/486, S/RES/1404, S/2002/1119, S/RES/1439 and S/2002/1339; on the Democratic Republic of the Congo, see S/RES/997 (1995), S/2002/1146, S/RES/1493 (2003), S/2003/1098, S/RES/1533 (2004), S/2004/551, S/RES/1552 (2004), S/2005/30, S/RES/1596 (2005), S/2005/436, S/RES/1616 (2005), S/RES/1649 (2005) and S/2006/525; on Liberia, see S/RES/985(1995), S/RES/1306 (2000), S/2000/1195, S/RES/1343, S/2001/1015, S/RES/1395, S/2002/470, S/RES/1408 (2002), S/2002/1115, S/RES/1458 (2003), S/2003/498, S/RES/1478 (2003), S/2003/937, S/RES/1521 (2003), and S/RES/1579

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(2004); on Rwanda, see S/RES/918 (1994), S/RES/1005 (1995), S/RES/1011(1995), S/RES/1013 (1995), S/RES/1053(1996), S/RES/1161 (1998) and for investigative reports see footnote 4 below; on Sierra Leone, see S/RES/1132 (1997), S/RES/1171 (1998), S/RES/1306 (2000), and S/2000/1195; and on Somalia, see S/RES/733 (1992), S/RES/751 (1992), S/RES/1356 (2001), S/RES/1407 (2002), S/RES/1425 (2002), S/RES/1474 (2003), S/2003/223, S/RES/1519 (2003), S/2003/1035, S/RES/1558 (2004), S/2004/604, S/RES/1587 (2005), S/2005/153, S/2005/625, S/REV/1630 (2005) and S/2006/229.

<sup>2</sup> The first major thematic study of international arms brokering was Brian Wood and Johan Peleman, *The Arms Fixers: Controlling the Brokers and Shipping Agents*, Peace Research Institute of Oslo, the Norwegian Initiative on Small Arms Transfers and the British American Security Information Council, 1999.

<sup>3</sup> The range of literature includes substantive research on arms brokering activities as well as short policy recommendations. See, for example, Brian Wood and Elizabeth Clegg, "Controlling the Gun-runners: Proposals for EU action to Regulate Arms Brokering and Shipping Agents", British American Security Information Council, The Norwegian Initiative on Small Arms Transfers and Saferworld, briefing paper, 1999; Brian Wood and Johan Peleman, *The Arms Fixers: Controlling the Brokers and Shipping Agents*, Peace Research Institute of Oslo, the Norwegian Initiative on Small Arms Transfers and the British American Security Information Council, 1999; Brian Wood and Johan Peleman, "Making the Deal and Moving the Goods: The Role of Brokers and Shippers", in Lora Lumpe (ed.), *Running Guns: The Global Market in Small Arms*, Zed Books Ltd, 2000; Elizabeth Clegg and Michael Crowley, *Controlling Arms Brokering and Transport Agents. Time for International Action*, British American Security Information Council, International Alert and Saferworld, Biting the Bullet Briefing 8, 2001; Amnesty International, British American Security Information Council, International Alert, Oxfam and Saferworld, *How Guns Get to War Zones—Techniques of Clandestine Arms Delivery*, 2001; Loretta Bondi, "Expanding the Net: A Model Convention on Arms Brokering", The Fund for Peace, 2001; Amnesty International, British American Security Information Council, Christian Aid, International Alert, Oxfam and Saferworld, "Loophole in New Law Could Allow British Dealers to Arm Terrorist Groups—Government Breaks Manifesto Commitment", UK Working Group on Arms, 16 October 2001; The Fund for Peace, *Model Convention on the*

*Registration of Arms Brokers and the Suppression of Unlicensed Arms Brokering*, 2001; William Godnick, "The Organization of American States and the 2001 United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All its Aspects. Tackling the Illicit Trade in Small Arms and Light Weapons", British American Security Information Council, International Alert, Saferworld, Project Ploughshares, Arias Foundation for Peace and Human Progress, 2002; Gail Wannenburg, "Catching the Middlemen Fuelling African Conflicts", in *South African Yearbook of International Affairs 2002/03*, The South African Institute of International Affairs, 2003; Ken Epps, "International Arms Embargoes", Project Ploughshares, 2002; Ian Davis and Roy Isbister (eds), *EU and US Co-operation on Arms Export Controls in a post 9/11 World. Report of a Roundtable Hosted by BASIC and Saferworld*, British American Security Information Council and Saferworld, 2003; Oxfam, "Regulating Weapons Deals: The Case for European Controls on Arms Brokers", *Oxfam Briefing Paper 39*, 2003; Dutch–Norwegian Initiative on Further Steps to Enhance International Co-operation in Preventing, Combating and Eradicating Illicit Brokering in Small Arms and Light Weapons, "Chairs' Report" and "Conference Report", 23–24 April 2003; The Fund for Peace, "Statement on the Occasion of the UK Enquiry into Secondary Legislation on the Arms Export Control Bill: the U.S. Law on Arms Brokering", 30 April 2003; Holger Anders, "Controlling Arms Brokering: Next Steps for EU Member States", Groupe de recherche et d'information sur la paix et la sécurité briefing, note d'analyse, 2004; Small Arms Survey, "Fuelling the Flames: Brokers and Transport Agents in the Illicit Arms Trade", in *Small Arms Survey Yearbook 2001: Profiling the Problem*, Graduate Institute of International Studies, 2001 (based largely on the work of Wood and Peleman); Small Arms Survey, "Targeting the Middlemen: Controlling Brokering Activities", in *Small Arms Survey Yearbook 2004: Rights at Risk*, Graduate Institute of International Studies, 2004; Noel Stott, Sarah Meek and Emily Schroeder (eds), *Understanding and Regulating Arms Brokering in Southern Africa*, Institute for Security Studies–Pretoria, workshop report, Johannesburg, 15–17 March 2004; Sibylle Bauer and Mark Bromley, "The European Union Code of Conduct on Arms Exports. Improving the Annual Report", Stockholm International Peace Research Institute, *SIPRI Policy Paper No. 8*, 2004; Roy Isbister and Elizabeth Kirkham, *An Independent Audit of the UK Government*

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*Reports on Strategic Export Controls for 2003 and the First Half of 2004*, Saferworld, 2005.

- <sup>4</sup> See Kathi Austin, *Rwanda/Zaire: Rearming with Impunity*, 1995; Amnesty International, *Rwanda: Arming the Perpetrators of the Genocide*, 1995; and the subsequent reports of the UN International Commission of Inquiry. The UN International Commission of Inquiry was established pursuant to Resolution 1013 (1995) of the United Nations Security Council, to “investigate, *inter alia*, reports relating to the sale or supply of arms and related materiel to former Rwandan government forces in the Great Lakes region in violation of Council Resolution 918, 997 and 1011”. The following reports were published: *Interim Report*, UN document S/1996/67, 29 January 1996; *Second Report*, UN document S/1996/195, 14 March 1996; *Third Report*, UN document S/1997/1010, 24 December 1997; *Addendum to the Third Report*, UN document S/1998/63, 26 January 1998; *Interim Report*, UN document S/1998/777, 19 August 1998; and *Final Report*, UN document S/1998/1096, 18 November 1998.
- <sup>5</sup> These revelations stemmed largely from the reports of UN arms embargo inquiries as well as from a few non-governmental organizations and investigative journalists. The UN investigative reports into the arming of UNITA, under the chair of Ambassador Fowler, were among the first to highlight the role of international arms brokering in the violation of UN arms embargoes. See UN documents S/2000/203, S/2001/363 and S/2002/486.
- <sup>6</sup> See the United Nations periodic investigative reports on the arms embargo on the DRC, as in footnote 1 above, and the UN Sanctions Committee List of individuals and entities subject to the measures imposed by paragraphs 13 and 15 of Security Council resolution 1596 (2005); see also Amnesty International, *Democratic Republic of Congo: Arming the East*, 2005.
- <sup>7</sup> See the ongoing UN group and panel investigative reports on UN embargoes. For background see Brian Wood, “Strengthening Compliance with UN Arms Embargoes—Key Challenges for Monitoring and Verification”, in United Nations Department for Disarmament Affairs, *DDA Occasional Papers No. 10*, 2006; Under Article 41 of the UN Charter, states have a legal obligation to abide by embargoes enacted by the Security Council and a duty to implement measures to ensure that persons within their jurisdiction also comply with the embargoes. Regarding the UN arms embargo “designation lists”, the US Treasury Department has for example implemented

these measures in a number of cases notably linked to the companies and close associates of Victor Bout—see also Box 1.8.

- 8 Minin had Bolivian, Israeli, Greek and Russian passports and two forged German passports. See “List of Individuals Subject to the Measures Imposed by Paragraph 4 of Security Council Resolution 1521 (2003) Concerning Liberia (The Travel Ban List)”, updated 30 November 2005, <[www.un.org/Docs/sc/committees/Liberia3/1521\\_list.htm](http://www.un.org/Docs/sc/committees/Liberia3/1521_list.htm)>.
- 9 Documents seized from Minin showed plans to sell diamonds to Russia and China through a polishing company based in Mauritius. According to Security Council, *Report of the Panel of Experts Pursuant to Security Council Resolution 1343 (2001), Paragraph 19, Concerning Liberia*, UN document S/2001/1015, 26 October 2001, Minin had diamond weighing equipment in his office in Liberia.
- 10 UN Security Council resolution 788 (November 1992) established an arms embargo on Liberia (implemented from 1995 under Resolution 985). The type of embargo adopted by this resolution was terminated by UN Security Council Resolution 1343 (2001) in March 2001, which imposed a new arms embargo on Liberia. In that resolution the Council decided that, “all States shall take the necessary measures to prevent the direct or indirect import of all rough diamonds from Liberia, whether or not such diamonds originated in Liberia.” See also the “travel ban list” that included Minin, *Security Council Committee Issues List of Persons Affected by Resolution 1343 (2001) on Liberia*, UN press release SC/7068, 4 June 2001. On 5 July 2000 the Security Council had also adopted Resolution 1306 that imposed a ban on the direct or indirect import of rough diamonds from Sierra Leone.
- 11 For references on this UN embargo, see footnote 1 above.
- 12 Named in the UN Panel of Experts on Liberia report for not providing requested information on suspicious flights to Liberia in February 2002, see Security Council, *Report of the Panel of Experts Appointed Pursuant to Security Council Resolution 1395 (2002), Paragraph 4, in Relation to Liberia*, UN document S/2002/470, 19 April 2002.
- 13 The certificate is part of the documentation attached to the Minin trial in Monza. For a detailed description of this case, see Security Council, *Report of the Panel of Experts Pursuant to Security Council Resolution 1343 (2001), Paragraph 19, Concerning Liberia*, UN document S/2001/1015, 26 October 2001.
- 14 The Il-18’s real registration at that time was ER-ICJ. It was owned by a Moldovan company, Renan, which was involved in other illegal arms

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transfers, and which leased the aircraft to West Africa Air Services. The latter company was “domiciled” in Liberia, and its office was a PO box address (5620) in Monrovia (1926). LeRoy Urey, Liberia’s Minister for Administration and Public Safety, represented the company in Liberia. See Security Council, *Report of the Panel of Experts Pursuant to Security Council Resolution 1343 (2001), Paragraph 19, Concerning Liberia*, UN document S/2001/1015, 26 October 2001.

- 15 According to the UN Panel of Experts Report, Ruprah was at that time Liberia’s “Deputy Commissioner of Maritime Affairs” and one of Liberia’s Global Civil Aviation agents appointed by the Ministry of Transport. It was at that time that Liberia’s Civil Aviation register was found to include several phantom planes with multiple fake registrations. Ruprah associated with Victor Bout through the Sharjah-based company San Air. San Air brokered several arms deals and received related payments in its various accounts. Ruprah was arrested in Belgium in February 2002 and released on bail. He fled to Italy but was again arrested in early August 2002 for carrying a forged Belgian passport. Despite the fact that the seized documents showed his involvement in these and other trafficking activities and despite being a fugitive from the bail in Belgium, he was released from jail with the obligation to present himself daily at the police. Soon after he escaped from Italy.
- 16 This account of the court case is based upon Court documents and interviews with legal authorities in Monza, 2002–2004.
- 17 The verdict of 11 June 2003 referred only to a portion of the diamonds seized from Minin. For the other portion of diamonds, the Court declared it did not hold jurisdiction and referred the case to the Belgian authorities in Antwerp.
- 18 For the prosecution of such a crime committed outside Italian territory, the law requires that the crime be also punishable in the country where it was initiated, in this case Ukraine, and also requires the existence of a request by the judicial authorities of that country for the prosecution of the crime. It was argued that the Ukrainian criminal code (before and after 2001, the year in which the old code was reformed) did provide for the prosecution of crimes related to this case, and that the Ukrainian authorities had officially requested international assistance from Italy in August 2003 for prosecuting Minin for arms trafficking.
- 19 See “List of Individuals Subject to the Measures Imposed by Paragraph 4 of Security Council Resolution 1521 (2003) Concerning Liberia (The Travel Ban List)”, updated 30 November 2005, <[www.un.org/Docs/](http://www.un.org/Docs/)

- sc/committees/Liberia3/1521\_list.htm>.
- 20 General Assembly, *Report of the Disarmament Commission*, UN document A/51/42(SUPP), 22 May 1996, para. 39.
- 21 General Assembly, *Report of a Consultative Meeting of Experts on the Feasibility of Undertaking a Study for Restricting the Manufacture and Trade of Small Arms to Manufacturers and Dealers Authorized by States*, UN document A/54/160, 6 July 1999, annex, para. 23.
- 22 *Ibid.*, para. 6.
- 23 General Assembly, *Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, Supplementing the United Nations Convention Against Transnational Organized Crime*, UN document A/RES/55/255, 8 June 2001. This resolution was preceded by the adoption of the *Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials* by the Organization of American States in November 1997.
- 24 General Assembly, *Report of the Group of Governmental Experts Established Pursuant to General Assembly Resolution 54/54 V of 15 December 1999, Entitled "Small Arms"*, UN document A/CONF.192/2, 11 May 2001.
- 25 *Ibid.*, para 62.
- 26 *Ibid.*, para.79.
- 27 *Ibid.*, particularly paragraphs 64, 69 and 82.
- 28 *Report of the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All its Aspects*, UN document A/CONF.192/15, 9–20 July 2001.
- 29 *Ibid.*, § II(14).
- 30 *Ibid.*, § IV(1)(d).
- 31 General Assembly, *The Illicit Trade in Small Arms and Light Weapons in All Its Aspects*, UN document A/RES/58/241, 9 January 2004.
- 32 General Assembly, *The Illicit Trade in Small Arms and Light Weapons in All Its Aspects*, UN document A/RES/59/86, 10 December 2004, operative paragraph 5.
- 33 OAS "Model Regulations for the Control of Brokers of Firearms, their Parts and Components and Ammunition", approved by the Inter-American Drug Abuse Control Commission (CICAD), held in Montreal, Canada, November 17–20, 2003, CICAD/doc1271/03, and adopted by the OAS General Assembly in June 2004; these Model Regulations on Brokering form a chapter in the "Model Regulations for the Control of the International Movement of Firearms, their Parts

- and Components and Ammunition”, originally adopted by the OAS General Assembly in 1998, CP/CSH-544/03 rev. 2 (1997 and 2003, Amendments), following a CICAD-sponsored “Draft Study on Small Arms Brokering”.
- <sup>34</sup> Only Nicaragua and the United States appear to have laws and regulations explicitly controlling arms brokering.
- <sup>35</sup> African Union, *Bamako Declaration on an African Common Position on the Illicit Proliferation, Circulation, and Trafficking of Illicit Small arms and Light Weapons*, 1 December 2000; Southern African Development Community, *Protocol on the control of Firearms, Ammunition and Other Related Material in the Southern African Development Community (SADC) Region*, 14 August 2001; and *The Nairobi Declaration on the Problem of the Proliferation of Illicit Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa*, 15 March 2000. Subsequently, a more elaborate text of regional standards for national law was developed by the states of East Africa, the Great Lakes and the Horn of Africa in *The Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa*, 21 April 2004. This Protocol was elaborated further in a set of Best Practice Guidelines for the control of small arms and light weapons agreed in 2004. The most recent African agreement to control small arms and light weapons, the Economic Community of West African States’ *Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials* of 14 June 2006 includes a provision requiring the 15 states parties in West Africa to regulate brokering activities.
- <sup>36</sup> A notable exception is South Africa, which has a fairly comprehensive law and regulations.
- <sup>37</sup> Council of the European Union, *Council Common Position 2003/468/CFSP of 23 June 2003 on the Control of Arms Brokering*, EU document 2003/468/CFSP, 23 June 2003.
- <sup>38</sup> Organization for Security and Co-operation in Europe, *Best Practice Guide on National Control of Brokering Activities*, document FSC.GAL/63/03/Rev. 2, 19 September 2003; and Organization for Security and Co-operation in Europe, *OSCE Principles on the Control of Brokering in Small Arms and Light Weapons*, document FSC.DEC/8/04, 24 November 2004.
- <sup>39</sup> United Nations Economic Commission for Europe, *Proposal for Standard Development in support of Trade Facilitation and Security*,

2003.

- 40 The Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies firstly agreed in 2002 a *Statement of Understanding on Arms Brokerage*, and this was followed in 2003 by *Elements for Effective Legislation on Arms Brokering*.
- 41 See “ASEAN Plan Of Action To Combat Transnational Crime”, <[www.aseansec.org/16133.htm](http://www.aseansec.org/16133.htm)>.
- 42 Asia–Pacific Economic Cooperation, *APEC Guidelines on Controls And Security of Man-Portable Air Defence Systems (MANPADS)*, document 2004/AMM/035, 18 November 2004.
- 43 OAS “Model Regulations for the Control of Brokers of Firearms, their Parts and Components and Ammunition”, approved by the Inter-American Drug Abuse Control Commission (CICAD), held in Montreal, Canada, November 17–20, 2003, CICAD/doc1271/03, and adopted by the OAS General Assembly in June 2004.
- 44 Ibid.
- 45 In the EU *Common Position 2003/468/CFSP of 23 June 2003 on the Control of Arms Brokering*, art. 2(3), “brokering activities” are defined as “... activities of persons and entities: ... negotiating or arranging transactions that may involve the transfer of items on the EU Common List of military equipment from a third country to any other third country; or ... who buy, sell or arrange the transfer of such items that are in their ownership from a third country to any other third country”.
- 46 Organization for Security and Co-operation in Europe, *OSCE Principles on the Control of Brokering in Small Arms and Light Weapons*, document FSC.DEC/8/04, 24 November 2004, § II(4).
- 47 Wassenaar Arrangement, *Elements for Effective Legislation on Arms Brokering*, 2003, para. 1.
- 48 These states are Burundi, the Democratic Republic of the Congo, Djibouti, Eritrea, Ethiopia, Kenya, Rwanda, the Sudan, Uganda and Tanzania.
- 49 For example, Article 11 of the Nairobi Protocol establishes fairly high standards for national laws covering “Dealers, Brokers and Brokering” as follows:  
State Parties, that have not yet done so, shall establish a national system for regulating dealers and brokers of small arms and light weapons. Such a system of control shall include:  
(i) regulating all manufacturers, dealers, traders, financiers and transporters of small arms and light weapons through licensing;

- (ii) registering all brokers operating within their territory;
- (iii) ensuring that all registered brokers seek and obtain authorisation for each individual transaction taking place;
- (iv) ensuring that all brokering transactions provide full disclosure on import and export licenses or authorisation and accompanying documents of the names and locations of all brokers involved in the transaction; and
- (v) licensing, registering and checking regularly and randomly all independent manufacturers, dealers, traders and brokers.

50 Economic Community of West African States, *Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials*, 14 June 2006.

51 United States of America, *International Traffic in Arms Regulations* (ITAR), rev. 1 April 2006, § 129.

52 Ibid.; according to the law, the term “foreign defense article or defense service” includes “any non-United States defense article or defense service of a nature described on the United States Munitions List regardless of whether such article or service is of United States origin or whether such article or service contains United States origin components.”

53 Ibid.

54 See, for example, OSCE, “Standard Elements of End User Certificates and Verification Procedures for SALW Exports”, Decision No. 5/04, 17 November 2004.

55 General Assembly, *Report of the Disarmament Commission*, UN document A/51/42(SUPP), 22 May 1996, annex 1, para. 7. These guidelines were formulated by the United Nations Commission on Disarmament and endorsed by the General Assembly in resolution 51/47 of 10 December 1996.

56 *Report of the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All its Aspects*, UN document A/CONF.192/15, 9–20 July 2001, § 2(11).

57 Paragraph 14 of the United Nations *Guidelines on International Arms Transfers* requires that:

in their efforts to control their international arms transfers and to prevent, combat and eradicate illicit arms trafficking, States should bear in mind the principles listed below ... [including]: States should respect the principles and purposes of the Charter of the United Nations, including the right to self-defence; the sovereign equality of all its Members; non-interference in the internal affairs of States; the obligation of Members to refrain in their international relations from

the threat or use of force against the territorial integrity or political independence of any State; the settlement of disputes by peaceful means; and respect for human rights; and continue to reaffirm the right of self determination of all peoples, taking into account the particular situation of peoples under colonial or other forms of alien domination or foreign occupation, and recognize the right of peoples to take legitimate action in accordance with the Charter of the United Nations to realize their inalienable right of self determination. This shall not be construed as authorizing or encouraging any action that would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self determination of peoples and thus possessed of a Government representing the whole people belonging to the territory without distinction of any kind.

- <sup>58</sup> Ibid., para. 8. In addition, to give effect to such international obligations, “States should establish and maintain an effective system of export and import licences for international arms transfers with requirements for full supporting documentation”, *ibid.*, para. 26; and that “in order to help combat illicit arms trafficking, States should make efforts to develop and enhance the application of compatible standards in their legislative and administrative procedures for regulating the export and import of arms,” *ibid.*, para. 36.
- <sup>59</sup> For a scholarly review of current international law on this, see Alexandra Bovin, “Complicity and Beyond: International Law and the Transfer of Small Arms and Light Weapons”, *International Committee of the Red Cross, International Review of the Red Cross*, volume 87, no. 859, 2005, pp. 467–496.
- <sup>60</sup> Articles 16 and 41(2). The articles were commended by the General Assembly and annexed to resolution 56/83, 12 December 2001.
- <sup>61</sup> *Rome Statute of the International Criminal Court*, UN document A/CONF.183/9, 17 July 1998, art. 25(3)(c).
- <sup>62</sup> For a set of recently agreed principles relating to the control of small arms and guided by international human rights and humanitarian law, see the draft *Principles on the Prevention of Human Rights Violations Committed with Small Arms*, contained in General Assembly, UN document A/HRC/Sub.1/58/L.11/Add.1, 24 August 2006.
- <sup>63</sup> Barbara Frey, *The Question of the Trade, Carrying and Use of Small Arms and Light Weapons in the Context of Human Rights and Humanitarian Norms*, Economic and Social Council, UN document E/CN.4/Sub.2/2002/39, 30 May 2002; also Barbara Frey, *Prevention of*

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*Human Rights Violations Committed with Small Arms and Light Weapons*, Economic and Social Council, UN document E/CN.4/Sub.2/2003/29, 25 June 2003.

- <sup>64</sup> To estimate the progress of the establishment of state laws and regulations, one may compare Chapter 2 of this study with a recent overview of national legislation: Holger Anders and Silvia Cattaneo, *Regulating Arms Brokering: Taking Stock and Moving Forward The United Nations Process*, Groupe de recherche et d'information sur la paix et la sécurité, GRIP Report, 2005. In 2004, research by Silvia Cattaneo for the Small Arms Survey found that only 25 states (of which 21 were in Western Europe) had laws on arms brokering, many of these established quite recently. These were Austria, Belgium, Bulgaria, the Czech Republic, Estonia, Finland, France, Germany, Hungary, Israel, Italy, Japan, Latvia, Lithuania, Norway, Poland, Romania, Slovakia, Slovenia, South Africa, Sweden, Switzerland, the Netherlands, Ukraine and the United States. See also *Biting the Bullet, International Action on Small Arms 2005: Examining Implementation of the UN Programme of Action*, International Action Network on Small Arms, 2005, p. 6.
- <sup>65</sup> The EU *Common Position 2003/468/CFSP of 23 June 2003 on the Control of Arms Brokering* makes registration an optional requirement for member states and, moreover, allows EU states to opt for whatever registration system they choose. Article 4 states that:
1. Member States may also require brokers to obtain a written authorisation to act as brokers, as well as establish a register of arms brokers. Registration or authorisation to act as a broker would in any case not replace the requirement to obtain the necessary licence or written authorisation for each transaction.
  2. When assessing any applications for written authorizations to act as brokers, or for registration, Member States could take account, *inter alia*, of any records of past involvement in illicit activities by the applicant.
- <sup>66</sup> OAS “Model Regulations for the Control of Brokers of Firearms, their Parts and Components and Ammunition”, approved by the Inter-American Drug Abuse Control Commission (CICAD), held in Montreal, Canada, November 17–20, 2003, CICAD/doc1271/03, and adopted by the OAS General Assembly in June 2004, art. 3(4): “Registration is effective for two years from the date of approval. Subsequent registration can only be effected by the submission and approval of a new registration form” [emphasis added].

- <sup>67</sup> Only in Belgium is a broker required to pay a deposit to the state authorities, who must then return the deposit once the authorized delivery of arms is verified. Moreover, the records of brokering agents may not be regularly inspected, although in the EU brokers are usually required to submit regular reports every three or four months.
- <sup>68</sup> See Amnesty International and TransArms, *Dead on Time: Arms Transportation, Brokering and the Threat to Human Rights*, 2006, chp. 8. The information therein is based upon contractual data published by the US Department of Defense; interviews with the principal US contractor involved in the supply chain, Taos Industries; and multiple senior European Union Force in Bosnia and Herzegovina (EUFOR) officials; additional information was provided by officials of the OSCE and the Office of the High Representative during 2005 and 2006.
- <sup>69</sup> A North Atlantic Treaty Organisation (NATO) official said that “NATO has no way of monitoring the shipments once they leave Bosnia”, while a EUFOR official claimed that “it is up to the subcontractors to ensure that the weapons reach the intended destination”; *ibid.*
- <sup>70</sup> This information was provided by executives of the principal US contractor, Taos Industries; a NATO officer and a US State Department official; *ibid.*
- <sup>71</sup> Information based on interviews with officials of EUFOR and the Bosnian government, as well as the Multi-National Security Transition Command in Iraq; see *ibid.*, pp. 113–114.
- <sup>72</sup> Arms transfer documentation, and interviews with EUFOR officials and Taos Industries executive. The Federal Bosnia and Herzegovina (BiH) Ministry of Defence was responsible for this contract at the time and these responsibilities have since passed to the unified BiH state-level ministry.
- <sup>73</sup> Meeting with senior official.
- <sup>74</sup> *Ibid.*
- <sup>75</sup> Photographic evidence.
- <sup>76</sup> Croatian business directory.
- <sup>77</sup> *Report of the Panel of Experts Appointed Pursuant to Paragraph 4 of Security Council Resolution 1458 (2003), concerning Liberia*, UN document S/2003/498, 24 April 2003.
- <sup>78</sup> Confirmed by the Moldovan Civil Aviation Authority; Civil aviation companies require Air Operating Certificates (AOCs) in order to fly legally according to the Civil Aviation Authority and the International Civil Aviation Organisation.

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- 79 Telephone conversation and e-mail correspondence with Krassimir Semkov, manager of Speedex; cross-checked with Taos Industries executives.
- 80 Interviews with Taos Industries executives.
- 81 Contractual data from the US Department of Defense, interviews with Taos Industries executives, and the Taos Industries website.
- 82 Economic Community of West African States, *Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials*, 14 June 2006, art. 20(1–3).
- 83 Council of the European Union, *Council Common Position 2003/468/CFSP of 23 June 2003 on the Control of Arms Brokering*, document 2003/468/CFSP, 23 June 2003.
- 84 Organization for Security and Co-operation in Europe, *OSCE Document on Small Arms and Light Weapons*, document FSC.DOC/1/00, 24 November 2000.
- 85 The Wassenaar Arrangement, *Best Practice Guidelines for Exports of Small Arms and Light Weapons (SALW)*, 12 December 2002.
- 86 Documents obtained and interviews conducted by Amnesty International, May 2003 to April 2004.
- 87 Further details are contained in Amnesty International, *Democratic Republic of Congo: Arming the East*, 2005.
- 88 Interviews with company officials and customs authorities, 2003; *ibid.*
- 89 Meeting with Albanian officials in Tirana, 2003; *ibid.*
- 90 Meeting with MEICO officials in Tirana, 2003; *ibid.* See also the MEICO website, <[www.mod.gov.al/eng/industria/meico](http://www.mod.gov.al/eng/industria/meico)>; and Bonn International Center for Conversion report with the UNDP on Albania available at <[www.sssr.undp.org.al/download/reports/bicc.pdf](http://www.sssr.undp.org.al/download/reports/bicc.pdf)>. The UNDP BICC report states that “MEICO is charge of the import and export of military equipment for the Albanian government. It can sell export items as functioning products or scrap. Its instructions are to observe UN arms embargoes. The list of relevant ‘forbidden’ destinations is provided by the Ministry of Foreign Affairs. Otherwise it is free to export as it sees fit and is not required to obtain an export license for each international transaction. Instead, it has a general license for arms exports.” According to <[www.cemes.org/current/ethpub/ethnobar/wp1/wp1-d.htm](http://www.cemes.org/current/ethpub/ethnobar/wp1/wp1-d.htm)>, “The state arms company, Meico, was sold off in 1994 to the largest privately owned Albanian company, Vefa Holdings.”
- 91 Amnesty International, *Democratic Republic of Congo: Arming the East*, 2005; this information is based upon Africa International Airways

- freight documents and interviews with company officials, United Kingdom, 2003. African International Airways was established in Swaziland in 1985 and then licensed in South Africa. Intavia Ltd is AIA's General Sales Agent and is based at the same Crawley address of AIA and at Gatwick. Platinum Air Cargo is an air cargo General Sales Agent, with offices in Egham, Surrey, UK; Ostend, Belgium; Schiphol, Netherlands; Houston and Dallas, United States.
- <sup>92</sup> Stefaans Brummer, "SA's war vultures", *Mail & Guardian online*, 16 January 2004.
- <sup>93</sup> Amnesty International, *Democratic Republic of Congo: Arming the East*, 2005, based on an interview with managers of African International Airways in 2005.
- <sup>94</sup> UK Foreign and Commonwealth Office, press statement, 8 August 2003: "The allegations we received concerned a possible breach of the UN sanctions against Rwanda, whereby arms and ammunition exported from Albania were destined for persons outside Rwanda. The FCO judged that if true, this would be a breach of UN Security Council Resolution 1011(1995) paragraphs 9 and 10. We therefore raised this issue with the governments of Albania and Rwanda with the intention of stopping any activity that may breach UN sanctions."
- <sup>95</sup> Silverback Cargo Freighters was founded in 2002 and was reportedly scheduled to serve the cargo needs of a start-up passenger company called Rwandair Express—based in Kigali, partially state-owned and operational from December 2002. "Rwanda's New Airline", *Rwanda: Behind the Headlines*, no. 7, December 2002; telephone interview with Silverback Cargo Freighters, Kigali, May 2005.
- <sup>96</sup> According to the US Federal Aviation Authority (FAA) and industry records, the two DC-8-62 aircraft were de-registered from the US registry in early May 2002, just after the last owner, a San Francisco-based company, had notified the FAA that the planes had been bought by an unspecified Rwandan purchaser. The same records show that the last owner sold the planes on 7 May 2002 to an entity with an address in the financial district of Tortola Island, in the British Virgin Islands.
- <sup>97</sup> Transcript of a meeting between the Secretary-General of the Albanian Ministry of Defence and his officials with a delegation from Amnesty International, Tirana, 11 August 2003.
- <sup>98</sup> Security Council, UN document S/RES/1011 (1995), 16 August 1995.
- <sup>99</sup> *Ibid.*, para. 9:  
*Further decides*, with a view to prohibiting the sale and supply of arms and related *matériel* to non-governmental forces for use in

Rwanda, that all States shall continue to prevent the sale or supply, by their nationals or from their territories or using their flag vessels or aircraft, of arms and related *matériel* of all types, including weapons and ammunition, military vehicles and equipment, paramilitary police equipment and spare parts, to Rwanda, or to persons in the States neighbouring Rwanda if such sale or supply is for the purpose of the use of such arms or *matériel* within Rwanda, other than to the Government of Rwanda as specified in paragraphs 7 and 8 above ... .

- <sup>100</sup> See Security Council, UN document S/RES/1011 (1995), 16 August 1995, para. 10.
- <sup>101</sup> The “UN Panel” referred to here is the UN Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth in the Democratic Republic of the Congo.
- <sup>102</sup> In accordance with the requirements of Security Council resolution 1457 (2003) of 24 January 2003 and resolution 1499 (2003) of 13 August 2003.
- <sup>103</sup> OAS “Model Regulations for the Control of Brokers of Firearms, their Parts and Components and Ammunition”, approved by the Inter-American Drug Abuse Control Commission (CICAD), held in Montreal, Canada, November 17–20, 2003, CICAD/doc1271/03, and adopted by the OAS General Assembly in June 2004, art. 5.
- <sup>104</sup> Economic Community of West African States, *Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials*, 14 June 2006, art. 6.
- <sup>105</sup> *Ministerial Declaration on Practical Implementation of Small Arms Action in the Great Lakes Region and the Horn of Africa*, 21 June 2005, annex A.
- <sup>106</sup> Regional Centre on Small Arms and Light Weapons, *Best Practice Guidelines for the Implementation of the Nairobi Declaration and the Nairobi Protocol on Small Arms and Light Weapons*, 2005.
- <sup>107</sup> OAS “Model Regulations for the Control of Brokers of Firearms, their Parts and Components and Ammunition”, approved by the Inter-American Drug Abuse Control Commission (CICAD), held in Montreal, Canada, November 17–20, 2003, CICAD/doc1271/03, and adopted by the OAS General Assembly in June 2004, art. 5.
- <sup>108</sup> Section 2(11) of the UN Programme of Action on small arms and light weapons requires states “To assess applications for export authorizations 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 ...”,

see *Report of the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All its Aspects*, UN document A/CONF.192/15, 9–20 July 2001. Amnesty International and other non-governmental organizations have suggested international standards that would be consistent with relevant international law in Amnesty International, *Compilation of Global Principles for International Arms Transfers*, 2006.

- <sup>109</sup> International instruments that prohibit the use of specific weapons (“weapon-specific” prohibitions) include the 1868 St Petersburg Declaration on explosive projectiles, the 1899 Hague Declaration concerning Expanding Bullets, the 1980 Convention on Certain Conventional Weapons and its Protocols, and most recently, the 1997 Convention on the Prohibition of Anti-Personnel Mines. The more recent conventions expressly prohibit not only the use of weapons but also their transfer.
- <sup>110</sup> For a list of current arms embargoes imposed by the United Nations Security Council, see “Sanctions”, <[www.un.org/News/ocg/sanction.htm](http://www.un.org/News/ocg/sanction.htm)>.
- <sup>111</sup> Asia–Pacific Economic Cooperation, *APEC Guidelines on Controls and Security of Man-Portable Air Defence Systems (MANPADS)*, document 2004/AMM/035, 18 November 2004.
- <sup>112</sup> *Ibid.*
- <sup>113</sup> See, for example, the case of Gus Van Kouwenhoven, prosecuted in the Netherlands for arranging arms transfers in contravention of the UN embargo on Liberia (see Box 3.1 in Chapter 3).
- <sup>114</sup> David Leppard and Robert Winnett, “Briton supplies arms to Sudan”, *The Sunday Times*, 5 September 2004.
- <sup>115</sup> The law was enacted as a result of campaigns by Amnesty International (UK) and other non-governmental organizations.
- <sup>116</sup> End-use certificate from Military Industry Corporation of the Sudan to Imbel of Brazil, dated 23 June 2004.
- <sup>117</sup> End-use certificate from Military Industry Corporation of the Sudan to Ukrspetsexport of Ukraine, dated 25 May 2004.
- <sup>118</sup> End-use certificate from Military Industry Corporation of the Sudan to Ukrspetsexport of Ukraine, dated 23 August 2004.
- <sup>119</sup> End-use certificate from Military Industry Corporation of the Sudan to Ukrspetsexport of Ukraine, dated 25 May 2004.
- <sup>120</sup> Wassenaar Arrangement, *Elements for Effective Legislation on Arms Brokering*, 2003.

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- <sup>121</sup> The EU Common Position on brokering is focused on “the activities of persons and entities ... negotiating or arranging transactions that may involve the transfer of items on the EU Common List of military equipment from a third country to any other third country; or ... who buy, sell or arrange the transfer of such items that are in their ownership from a third country to any other third country.” See Council of the European Union, *Council Common Position 2003/468/CFSP of 23 June 2003 on the Control of Arms Brokering*, 2003/468/CFSP, 23 June 2003, art. 2(3).
- <sup>122</sup> Discussion with OAS official, 2005.
- <sup>123</sup> Such states include the Czech Republic, Estonia, Finland, Hungary, Lithuania, the Netherlands, Nicaragua, Norway, Poland, Romania, Sweden, South Africa and the United States. See Holger Anders and Silvia Cattaneo, *Regulating Arms Brokering: Taking Stock and Moving Forward The United Nations Process*, Groupe de recherche et d’information sur la paix et la sécurité, GRIP Report, 2005.
- <sup>124</sup> United States of America, *International Traffic in Arms Regulations* (ITAR), rev. 1 April 2006, § 129.3(a).
- <sup>125</sup> United States of America, *International Traffic in Arms Regulations* (ITAR), rev. 1 April 2006, § 129.2(b).
- <sup>126</sup> See Ronald Franks, “Registration/Licensing of Arms Brokers, Manufacturers, Exporters and Importers”, Braumiller, Schulz & Co., <[www.globaltradelaw.net](http://www.globaltradelaw.net)>.
- <sup>127</sup> Amnesty International and TransArms, *Dead on Time: Arms Transportation, Brokering and the Threat to Human Rights*, 2006.
- <sup>128</sup> United States of America, *International Traffic in Arms Regulations* (ITAR), rev. 1 April 2006, § 129.3(b).
- <sup>129</sup> United States of America, *International Traffic in Arms Regulations* (ITAR), rev. 1 April 2006, § 129.3(b)(3).
- <sup>130</sup> Another company, TAN Group, was located in Brussels (*Bijlage tot het Belgisch Staatsblad*, 17 December 1994, N° 941217-132).
- <sup>131</sup> *Bijlage tot het Belgisch Staatsblad*, 12 April 1995, N° 950412-268.
- <sup>132</sup> Brian Wood and Johan Peleman, *The Arms Fixers: Controlling the Brokers and Shipping Agents*, Peace Research Institute of Oslo, the Norwegian Initiative on Small Arms Transfers and the British American Security Information Council, 1999, p. 64. Bout was officially residing in Sharjah according to the papers he filed at the Ostend trade registry (*Bijlage van het Belgisch Staatsblad*, 12 April 1995).

- <sup>133</sup> The UN Panel of Experts on Liberia uncovered a document from Transavia Travel Agency signed by Victor Bout in June 2000 (S/2001/1015 §250).
- <sup>134</sup> Ulrich Klee (ed.), *JP Airline-Fleets International 1999/2000*, BUCHair, 1999.
- <sup>135</sup> Ibid.
- <sup>136</sup> Ulrich Klee (ed.), *JP Airline-Fleets International 2001/2002*, BUCHair, 2001; see also letter of the Permanent Representative of the Russian Federation to the United Nations, 11 December 2000.
- <sup>137</sup> Security Council, *Final Report of the Monitoring Mechanism on Angola Sanctions*, UN document S/2000/1225, 21 December 2000.
- <sup>138</sup> Brian Wood and Johan Peleman, *The Arms Fixers: Controlling the Brokers and Shipping Agents*, Peace Research Institute of Oslo, the Norwegian Initiative on Small Arms Transfers and the British American Security Information Council, 1999, p. 67.
- <sup>139</sup> Security Council, *Letter Dated 14 December 2000 from the Chairman and the Members of the Panel of Experts on Sierra Leone Diamonds and Arms, Appointed Pursuant to Security Council Resolution 1306 (2000), Addressed to the Chairman of the Security Council Committee Established Pursuant to Resolution 1132 (1997) Concerning Sierra Leone*, UN document S/2000/1195, 20 December 2000, para. 231–234.
- <sup>140</sup> Ibid., para. 228. See also Security Council, *Final Report of the Monitoring Mechanism on Angola Sanctions*, UN document S/2000/1225, 21 December 2000, para. 136.
- <sup>141</sup> Security Council, *Report of the Panel of Experts Pursuant to Security Council Resolution 1343 (2001), Paragraph 19, Concerning Liberia*, UN Document S/2001/1015, 26 October 2001, para. 185; according to the UN expert panel on Liberia, the person that ran San Air General Trading was also general manager of Centrafican Airlines, and both companies shared the same address and telephone number. San Air and Centrafican moved to Ajman Free Zone in March 2001 and merged as CET Aviation (ibid., para. 269–271). They therefore conclude that “Centrafican Airlines and San Air are clearly two agencies of the same company” (ibid., para. 275).
- <sup>142</sup> Ibid., para. 202–206.
- <sup>143</sup> Ibid., para. 227–240.
- <sup>144</sup> “Aanhoudingsbevel tegen Victor Bout”, *Het Belang van Limburg*, 19 February 2002.
- <sup>145</sup> Press communiqué, Luc De Temmerman, 18 February 2002.

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- <sup>146</sup> See, for instance, Security Council, *Final report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo*, UN document S/2002/1146, 16 October 2002, para. 72. See also Amnesty International, *Democratic Republic of Congo: Arming the East*, 2005, p. 48.
- <sup>147</sup> Letter of the Permanent Representative of the Russian Federation to the United Nations, 11 December 2000.
- <sup>148</sup> According to letters sent by Sanjivan Ruprah in 2002 to the US Federal Bureau of Investigation, and in possession of the International Peace Information Service, Antwerp.
- <sup>149</sup> See Judy Pasternak and Stephen Braun, "Emirates looked other way while al Qaeda funds flowed", *LA Times*, 20 January 2002.
- <sup>150</sup> The UN sanctions imposed on Afghanistan in November 1999 closed down the operations of Ariana Airways, Afghanistan's national aviation company.
- <sup>151</sup> Judy Pasternak and Stephen Braun, "Emirates looked other way while al Qaeda funds flowed", *LA Times*, 20 January 2002.
- <sup>152</sup> *Ibid.*
- <sup>153</sup> Nissar Hoath, "New Afghan sanctions halt private air services", *Gulfnews.com*, 21 January 2001.
- <sup>154</sup> *Ibid.*
- <sup>155</sup> United States of America, *International Traffic in Arms Regulations (ITAR)*, rev. 1 April 2006, § 129.3(b)(1-2).
- <sup>156</sup> The end-user certificate lists 50 T-55 main battle tanks, two T-55 command tanks, four VT-55A recovery tanks, 20 BMP-1 vehicles, 20 million 7.62x39 rounds, 10 million 7.62x54 rounds, 2 million 12.7x108 rounds, 1 million 14.5x114 rounds, 1 million 30mm anti-aircraft shells and 6,000 122mm high-explosive rockets for the RM-70 system.
- <sup>157</sup> End-Use Certificate Ref. 408/19, Lt. Gen. D.S. Hawala, Ministry of Defence, Republic of Namibia, Attn. of: Technopol International, Mr. Koocany. International Peace Information Service interviews with Thomas CZ and Technopol, as well as with officials of both governments during 2004 and transcript from the Klenanice programme, Czech Television 1, broadcast on 15 June 2003, reported by Jaroslav Kmet and Dalibor Bartek. The manager of Thomas CZ blamed the television journalists for stopping the order.
- <sup>158</sup> All Party Parliamentary Group on the Great Lakes Region, *Arms Flows in Eastern DR Congo: A Report Pursuant to UN Security Council*

- Resolution 1533 (para 12)*, UK Parliament, 24 December 2004, pp. 29–30.
- <sup>159</sup> Telephone interview with the manager of Thomas CZ, 16 June 2004. He stated that he had sold radios to the DRC but refused to give any further facts. In June 2003, the manager told Czech television that he has been in the DRC and conducted business but also refused to give any details. See transcript from the Klenanice programme, Czech Television 1, broadcast on 15 June 2003, reported by Jaroslav Kmet and Dalibor Bartek.
- <sup>160</sup> *République démocratique du Congo, Ministère à la présidence de la république, A Monsieur le Président Administrateur-Délégué*, 00032/MIN/PRESIREP/2001.
- <sup>161</sup> Joe Roeber, *The Hidden Market: Corruption in the International Arms Trade*, 2004.
- <sup>162</sup> For example, the *Inter-American Convention against Corruption*, adopted by the Organization of American States on 29 March 1996; the *Convention on the Fight against Corruption involving Officials of the European Communities or Officials of Member States of the European Union*, adopted by the Council of the European Union on 26 May 1997; the *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, adopted by the Organisation for Economic Co-operation and Development on 21 November 1997; the *Criminal Law Convention on Corruption*, adopted by the Committee of Ministers of the Council of Europe on 26 January 1999; the *Civil Law Convention on Corruption*, adopted by the Committee of Ministers of the Council of Europe on 4 November 1999; and the *African Union Convention on Preventing and Combating Corruption*, adopted by the Heads of State and Government of the African Union on 12 July 2003.
- <sup>163</sup> The UN Convention against Corruption was adopted by the General Assembly in resolution 58/4 of 31 October 2003, and came into force on 14 December 2005 with 40 ratifications and 138 signatures; See General Assembly, *United Nations Convention against Corruption*, UN document A/RES/58/4, 21 November 2003, art. 9(1).