

## CHAPTER 4

### WIDENING OUR UNDERSTANDING OF THE BROKERING ISSUE: KEY DEVELOPMENTS

Valerie Yankey-Wayne

#### INTRODUCTION

Since the 1990s there has been increased concern about combating the illicit trafficking of small arms and light weapons (SALW). As brokering is often key in facilitating SALW transfers, preventing illicit brokering activities is an essential component of the response to illicit trafficking in SALW. While there is not universal agreement on a definition of these activities or the most appropriate response to control them, interest in this issue—on the part of the United Nations, policy makers and civil society groups—remains high.

A number of United Nations discussions within the UN framework, notably by the General Assembly and Security Council, have contributed to the understanding of the scope of brokering activities. In addition, regional and multilateral initiatives, governmental processes and civil society actions have made significant contributions to shaping the definition of, and response to, illicit SALW brokering.<sup>1</sup> This chapter outlines some of the main elements of decisions taken at the international, multilateral and regional levels to curb illicit arms brokering activities. It first traces chronologically some of the significant developments in the understanding of the issue of SALW brokering through relevant contributions by the General Assembly and the Security Council. A short examination of specific responses to brokering developed in response to UN sanctions follows. It then looks at how regional and multilateral agreements are advancing the consideration of SALW brokering activities.

## THE EMERGING CONCERN WITHIN THE UN FRAMEWORK

In October 1993, President Alpha Oumar Konare of Mali sent a letter to the United Nations Secretary-General, requesting that the UN send an advisory mission to the Sahara-Sahel region to consider the control and collection of small arms.<sup>2</sup> Until this time, “general and complete disarmament” covered illicit transfer and use of conventional arms,<sup>3</sup> with no particular emphasis on SALW. However, Mali’s request focused attention on the need to address SALW specifically.

The following year, the General Assembly requested the Secretary-General to report to its fiftieth session on the issue of assistance to states for curbing the illicit traffic in small arms and collecting them.<sup>4</sup> The same resolution also invited Member States to “implement national control measures in order to check the illicit circulation of small arms, in particular by curbing the illegal export of such arms”.<sup>5</sup> Two additional early considerations of SALW trafficking can be found in the work of the 1995 Disarmament Commission under its agenda item 5 on international arms transfers,<sup>6</sup> and that of the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (1995), which invited Member States to “improve policy development, increase the use of bilateral or multilateral cooperation agreements and, where necessary conduct more extensive research on [inter alia] illicit arms trafficking ...”.<sup>7</sup>

The issue of brokering as an element of the illicit trafficking problem has been woven throughout the work of the UN—through General Assembly initiatives (such as expert groups and agreements dedicated to various aspects of the SALW issue) and through the Security Council processes (expert panels, mechanisms and sanctions committees), particularly on Africa. Some of the key developments in the consideration of the brokering issue within the UN framework are described briefly below.

## INTERNATIONAL COMMISSION OF INQUIRY ON ARMS FLOWS TO THE PERPETRATORS OF THE RWANDAN GENOCIDE (1995–1998)

The subject of illicit brokering activities in SALW was not explicitly considered within the UN framework until the United Nations International Commission of Inquiry on arms flows to the perpetrators of the Rwandan genocide (UNICOI). UNICOI was established on 7 September 1995<sup>8</sup> against the backdrop of allegations related to the Rwandan genocide, and

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persistent UN and civil society reports<sup>9</sup> that the UN arms embargo, imposed by the Security Council on 17 May 1994,<sup>10</sup> was not being respected.<sup>11</sup>

UNICOI was mandated:

(a) to collect information and investigate reports relating to the sale or supply of arms and related matériel to former Rwandan government forces in the Great Lakes region in violation of Council resolutions 918 (1994), 997 (1995) and 1011 (1995); (b) to investigate allegations that such forces are receiving military training in order to destabilize Rwanda; (c) to identify parties aiding and abetting the illegal acquisition of arms by former Rwandan government forces, contrary to the Council resolutions referred to above; and (d) to recommend measures to end the illegal flow of arms in the subregion in violation of the Council resolutions referred to above...<sup>12</sup>

UNICOI reported several times between 1996 and early 1998.<sup>13</sup> The Commission of Inquiry was reactivated in April 1998 to collect further information and investigate reports relating to the sale, supply and shipment of arms and related matériel to former Rwandan government forces and militias in the Great Lakes region.<sup>14</sup>

The UNICOI reports marked a watershed in the understanding of what illicit brokering activities entail in practice. The reports illustrated that illicit brokering activities involved complex arrangements and transportation routes for illegal arms, as well as financial transfers and cargo operations.<sup>15</sup> The UNICOI reports also touched upon how dealers misused end-user certificates, exploited legal loopholes, evaded customs and airport controls, and falsified documents such as passports.<sup>16</sup> The reports made reference to allegations of individuals providing training and mercenary services in addition brokering the arms themselves.<sup>17</sup>

The groundbreaking UNICOI reports documented intricate networks of arms suppliers, brokers, private actors and transport companies providing a steady flow of weapons to the region. Some European and Asian countries were reported to have transferred weapons, for example through middlemen and brokers operating from South Africa, Zimbabwe and countries in Europe, and involving financial institutions around the world. For instance, the Commission's first report described in some detail weapons sales to Rwanda in violation of the Security Council arms

embargo.<sup>18</sup> UNICOI also received reliable information on alleged illegal trafficking of arms from South African territory to the Great Lakes region by road via Zimbabwe and Zambia,<sup>19</sup> as well as on allegations regarding payments related to weapons deliveries involving the Seychelles and Zaire.<sup>20</sup>

The details provided by the UNICOI reports on the dynamics of illicit arms trafficking transformed how the subject of arms brokering was understood. The Security Council, concerned about early findings<sup>21</sup> of UNICOI on the sale and supply of arms to former Rwanda government forces in violation of security council embargoes, called upon states whose nationals had been implicated by the report “to investigate the apparent complicity of their officials or private citizens in the purchase of arms from Seychelles in June 1994, and in other suspected violations of relevant Security Council resolutions”.<sup>22</sup>

Concerned about stemming the illicit arms flow to and around Africa, the Security Council in November 1998 encouraged the Secretary-General to “explore means of identifying international arms dealers acting in contravention of national legislation or embargoes established by the United Nations on arms transfers to and in Africa”.<sup>23</sup>

#### **GUIDELINES FOR INTERNATIONAL ARMS TRANSFERS (1996)**

In May 1996, the General Assembly took a decisive step to address the issue of transfers through the United Nations Disarmament Commission’s guidelines for international arms transfers, which cover all conventional weapons. The Disarmament Commission’s report to the General Assembly in May 1996 suggested 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>24</sup> In this context, reference was made to “international arms dealers” involved in illicit arms trafficking contrary to the laws of states or international law. This was the first mention within the context of the United Nations of “regulating” the activities of “private international arms dealers”.

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### THE 1997 PANEL OF GOVERNMENTAL EXPERTS ON SMALL ARMS AND THE 1999 GROUP OF GOVERNMENTAL EXPERTS ON SMALL ARMS

In the late 1990s, the General Assembly called for the establishment of two UN expert groups with a mandate to investigate the types of SALW being used in conflicts, the nature and causes of the excessive and destabilizing accumulation and transfer of SALW, including illicit production and trade, and the ways and means to prevent and reduce the excessive and destabilizing accumulation and transfer of SALW. The reports of both groups<sup>25</sup> identified the key role played by arms dealers, transportation agents and financial institutions in smuggling, concealment, mislabelling and false documentation of arms transfers. They also noted that negligent or corrupt government officials sometimes aided and abetted illicit arms trafficking. The 1997 Panel of Governmental Experts recommended further study of national controls on arms dealers, including the feasibility of a database of licit dealers, to assist in the regulation of brokering activities.<sup>26</sup>

The report of the 1999 Group of Governmental Experts recommended that applications for export authorizations should be assessed according to strict national criteria covering all SALW categories, including surplus or second-hand weapons:

Such legislative, regulatory or administrative measures could include the use of authenticated end-user certificates, enhanced legal and enforcement measures, as appropriate, to control arms-brokering activities, requirements to ensure that no retransfer of small arms and light weapons takes place without prior authorization of the original supplier State, and cooperation in the exchange of information on suspect financial activities. States should ensure that they exercise control over all brokering activities performed in their territory or by dealers registered in their territory, including cases in which the arms do not enter their territory.<sup>27</sup>

Taking note of the recommendations of the 1997 Panel,<sup>28</sup> in January 1999 the General Assembly had requested the Secretary-General “to initiate a study as soon as possible ... on the feasibility of restricting the manufacture and trade of such weapons to the manufacturers and dealers authorized by States”.<sup>29</sup> However this request was limited by the implicit assumption that “authorized” manufacturers and dealers required no international

regulation. The 1999 group encouraged further consideration of the issue of brokering, recommending that:

the study on the feasibility of restricting the manufacture and trade of small arms and light weapons to manufacturers and dealers authorized by States, requested by the General Assembly in paragraph 5 of resolution 53/77 E, should be completed in time for it to be considered at the international conference on the illicit arms trade in all its aspects, to be convened no later than 2001. It welcomes proposals that such a study be extended also to cover brokering activities relating to small arms and light weapons, *including transportation agents and financial transactions* [emphasis added].<sup>30</sup>

Building upon this recommendation and recognizing the importance it placed on the need to address both the transportation and financial aspects of the issue, in December 1999 the General Assembly asked the Secretary-General to appoint a group of governmental experts to study “the feasibility of restricting the manufacture and trade of small arms to manufacturers and dealers authorized by States, which will cover the brokering activities, particularly illicit activities, relating to small arms and light weapons, including transportation agents and financial transactions”.<sup>31</sup> In May 2000, the Secretary-General appointed a panel of governmental experts to carry out a study, on the feasibility of restricting the manufacture and trade of weapons to the manufacturers and dealers authorized by states, covering the brokering activities, particularly illicit activities, relating to SALW, including transportation agents and financial transactions. The Group was tasked:

to carry out a study ... on the feasibility of restricting the manufacture and trade of such weapons to the manufacturers and dealers authorized by States, which will cover the brokering activities, particularly illicit activities, relating to small arms and light weapons, including transportation agents and financial transactions [and to] submit the study as one of the background documents for the Conference to be held in 2001.<sup>32</sup>

### SANCTIONS REGIME IN ANGOLA (2000)

In 1993, the United Nations imposed an arms and petroleum embargo on the *União Nacional Para a Independência Total de Angola* (UNITA), which marked the first time such embargoes were used against a non-state actor.<sup>33</sup>

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Despite the embargo, UNITA continued to receive arms and fuel. The United Nations imposed additional sanctions upon UNITA in 1997 and 1998<sup>34</sup> to address the continuing violations. In 1999, the Security Council established an independent Panel of Experts to investigate violations of Security Council sanctions on UNITA.<sup>35</sup> The Panel, under the chairmanship of Robert R. Fowler, was required to inform the Security Council on how the sanctions against UNITA were being violated, who was violating them, and what could be done to make the sanctions more effective. The final report of the Panel of Experts (known as the Fowler Report) was submitted on 10 March 2000.<sup>36</sup>

Following up on this report, the Security Council established the Monitoring Mechanism on Angola Sanctions for a six-month period and mandated it to collect additional relevant information and to investigate relevant leads relating to any violations of the measures contained in the sanctions against UNITA, and investigate any relevant leads contained in the Fowler Report.<sup>37</sup> The final report of the Monitoring Mechanism was submitted on 21 December 2000.<sup>38</sup>

The Fowler Report “named and shamed” governments, companies, and individuals that had directly or indirectly violated UN sanctions on UNITA. This report confirmed that illicit SALW brokering activities are not limited to private actors, but can also involve governments, government agents and companies.

The various reports of the Security Council on Angola, including the Fowler Report and those of the Monitoring Mechanism, have contributed to the brokering debate by illustrating some key factors that facilitate illicit brokering in small arms—and which are briefly mentioned below.

#### **End-use certificates and transit points**

The Monitoring Mechanism discovered that while the export control systems and procedures of the countries they reviewed contained safeguards to prevent the diversion of weapons to embargoed regions or entities, illegal transfers still reached embargoed regions through the use of forged end-user certificates.<sup>39</sup>

The Fowler Report<sup>40</sup> had identified how UNITA used Zaire, Congo-Brazzaville, Burkina Faso, Rwanda and Togo as transit regions and bases for stockpiling weapons, as well as for providing end-user certificates. For

example, until May 1997, UNITA used Zaire as a base for the stockpiling of weapons,<sup>41</sup> and it used end-user certificates from Zaire and Togo as the means by which arms brokers working for UNITA were able to obtain the weapons.<sup>42</sup> The Monitoring Mechanism confirmed this through its investigations, concluding that 18 end-user certificates that surfaced in Bulgaria featuring Togo as the country of origin were forged, as were two end-user certificates that came to light in Romania featuring Togo as the country of origin.<sup>43</sup> According to the Fowler Report, UNITA also used Burkina Faso and Togo as transit points for arms originating from Eastern Europe.<sup>44</sup> For example, flights carrying weapons from Eastern Europe landed in Ouagadougou and Bobo-Dioulasso in Burkina Faso with falsified end-user certificates, and weapons were unlawfully trans-shipped from there to other end-users, including UNITA, in breach of Security Council resolution 864 (1993).<sup>45</sup>

As a consequence, the Monitoring Mechanism stressed the need for arms exporting countries to strengthen their systems pertaining to arms exports, in particular in verifying the authenticity and country of issuance of the relevant documents.<sup>46</sup> They also recommended a:

standard system of support and a sufficient level of security to deter and/or prevent the forgery of end-user certificates. Governments should consider putting in place systems to allow for the speedy exchange of information and verification of the validity of end-user certificates through the designation of a contact authority in the arms exporting and importing side or by any other way deemed appropriate [and] a register of intermediary firms/brokers dealing with import/export of arms should be put in place.<sup>47</sup>

#### **Lack of adequate legislation**

In addition, it came to the attention of the Monitoring Mechanism that the importation procedures in, for example, Togo and Burkina Faso did not appear to be governed by specific legislation,<sup>48</sup> or even managed by a body with clearly delineated responsibilities.<sup>49</sup> To this end, the Monitoring Mechanism recommended that “importation of arms should be subject to adequate legislation and should be managed through a mechanism that can define clearly the responsibilities of all agencies and officials involved. Such system should include provisions designating in person the officials authorized to sign end-user certificates”.<sup>50</sup>

### Transportation

The Fowler Report identified a number of the companies that had transported arms. For example, planes arrived in Zaire from Eastern Europe carrying arms and military equipment for UNITA.<sup>51</sup> Most of these planes arrived at night and the military cargo was off-loaded and then put in bags to try to disguise it as food or clothing.<sup>52</sup> Flight plans were also changed mid-flight. "Typically, flights will leave from [South Africa] declaring Zambia or the DRC as their destination. Once the flights cross into Zambian airspace the planes divert to locations in UNITA controlled territory".<sup>53</sup>

### Payment

The brokers used by UNITA were responsible for negotiating the price and payment of the goods and services,<sup>54</sup> which sometimes included "arranging transport and delivery, any necessary training on the use of the system, maintenance and sometimes even spare parts".<sup>55</sup> According to the Fowler Report, natural resources such as diamonds had a unique role within UNITA's political and military economy.<sup>56</sup> UNITA's ability to exchange rough diamonds for weapons sustained its capacity to procure weapons.<sup>57</sup> "Rough diamond caches rather than cash or bank deposits [constituted] the primary and the preferred means of stockpiling wealth for UNITA".<sup>58</sup> The broker "would sit together with UNITA's own diamond experts to assess and value the diamond packages that UNITA presented for payment".<sup>59</sup>

Shortly after the delivery of the Fowler Report, the Security Council encouraged:

all States to exercise all due diligence, in order to prevent the diversion or trans-shipment of weapons to unauthorized end-users or unauthorized destinations where such diversion or trans-shipment risks resulting in the violation of the measures contained in resolution 864 (1993), including by requiring end-use documentation or equivalent measures before exports from their territories are allowed, and further encourage[d] all States to ensure effective monitoring and regulation in the export of weapons, including by private arms brokers, where they do not already do so ...<sup>60</sup>

### 2001 GROUP OF GOVERNMENTAL EXPERTS

The year 2001 saw the achievement of three important international processes contributing to the understanding of the brokering debate. They

were the report of the Group of Governmental Experts, the Firearms Protocol, and the United Nations Programme of Action on SALW.

In March 2001, the Group of Governmental Experts established by General Assembly resolution 54/54 V reported on the feasibility of restricting the manufacture and trade in SALW to manufacturers and dealers authorized by states.<sup>61</sup>

Building upon on the principles and recommendations contained in the work of the 1997 and 1999 expert groups, this Group considered in detail three key issues identified in the 1999 report (the roles of brokers, transportation agents and financial agents) and considered practical approaches to the more effective regulation of state and private manufacture and trade.

In the absence of internationally accepted definitions, the 2001 Group reached a “common understanding” of the roles of these actors:

Individuals or companies acting as intermediaries between a supplier and a user may be performing one or more of the following roles: dealer, agent acting on behalf of manufacturers, suppliers or recipients, broker, transportation agent, or financial agent. **Dealers** buy and sell quantities of arms and associated items according to the demand of users. **Agents** acting on behalf of manufacturers, suppliers or recipients have a mandate to represent one of them and to conclude a contract in the name of that person. **Brokers** bring together a supplier and a recipient and arrange and facilitate arms deals so as to benefit materially from the deals without necessarily taking ownership of the arms or acting on behalf of one of the two parties. ... **[T]ransportation agents** are agents involved in arrangements for the transportation of the arms and associated goods, and include shipping agents and brokers, freight forwarders and charterers. ... **Financial transactions** include all banking and related activities to arrange for the payment of the purchase of small arms and light weapons, their parts and components, ammunition and explosives, technologies and services. Payments may include credit arrangements, payment in non-financial transactions like resources; they may also be made in the form of barter.<sup>62</sup>

The report of the 2001 Group of Governmental Experts emphasized the need to control brokering activities not just on the national level but also the international level. In addition to requesting adequate licensing and

registration at the national level, the study recommended international cooperation to identify and take adequate measures against related abuses and violations in this area. In this context, the group indicated the need for national registers of offenders to keep track of individuals and companies convicted of violations of the relevant laws and regulations.

The 2001 Group of Governmental Experts sought to demonstrate the degree of feasibility of various approaches in addressing illicit brokering activities at the national and international levels. Their considerations were acknowledged by commitments made in developments later in the year—within the legally binding Firearms Protocol and the politically binding United Nations Programme of Action on small arms and light weapons.

#### THE FIREARMS PROTOCOL

In June 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 (known as the Firearms Protocol). Although the Firearms Protocol does not define brokering activities, it buttressed the suggestions of the 2001 report of the Group of Governmental Experts by providing some useful guidelines for regulating brokering activities at the national level.

According to the Firearms Protocol, a system to regulate the activities of those engaged in brokering could comprise one or more measures, including:

- requiring registration of brokers operating within their territory;
- requiring licensing or authorization of brokering; or
- requiring disclosure on import and export licences or authorizations, or accompanying documents, of the names and locations of brokers involved in the transaction.<sup>63</sup>

#### UN PROGRAMME OF ACTION

In July 2001, the participating states in the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects 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). Within the

PoA states agreed to develop adequate national legislation or administrative procedures regulating the activities of those who engage in small arms brokering. These procedures should include measures such as registration of brokers, licensing or authorization of brokering transactions as well as appropriate penalties for all illicit brokering activities performed within the state's jurisdiction and control.<sup>64</sup> States also committed to criminalizing the illicit trade in SALW, which in effect means incorporating UN arms embargoes into national legislation.<sup>65</sup> As part of the follow-up mechanism to the PoA, states committed to consider further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in SALW.<sup>66</sup>

#### MOMENTUM ON BROKERING SINCE 2001

In December 2003, the General Assembly requested 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>67</sup> Between April 2004 and June 2005, six consultations organized by the United Nations Department for Disarmament Affairs (DDA)<sup>68</sup> took place in Geneva and New York.<sup>69</sup> In order to ensure that the views of regional organizations, states and civil society were taken into account, DDA also conducted consultations at the regional level in cooperation with Member States, subregional organizations and civil society.

In his 2005 report *In Larger Freedom*, the UN Secretary-General urged the negotiation of a legally binding international instrument regulating arms brokering. He stated, "[w]e must now begin to make a real difference by ensuring better enforcement of arms embargoes ... and negotiating a legally binding international instrument ... to prevent, combat and eradicate illicit brokering. I urge Member States to agree to expedite negotiations on an instrument on illicit brokering".<sup>70</sup>

The UN General Assembly adopted on 8 December 2005 an international instrument to enable states to identify and trace illicit SALW.<sup>71</sup> Although it made no reference to brokering activities, it stressed "that all aspects relating to illicit small arms and light weapons should be addressed in a coordinated and comprehensive manner".<sup>72</sup>

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According to information voluntarily provided between 2002 and 2006 in the national reports by UN Member States on the implementation of the PoA, 88% of states made reference to the subject of brokering activities in their national reports on implementing the PoA.<sup>73</sup> National reports and statements indicate that a significant number of European countries have brokering laws, although these vary widely in their scope and comprehensiveness. Other states, while recognizing the necessity of regulating brokering activities, have indicated that they have yet to take precautionary measures necessary to regulate arms brokering.<sup>74</sup>

At the 2006 PoA Review Conference, a number of countries expressed their ongoing support for mechanisms to address illicit brokering. For example, the European Union (EU) presidency statement asserted that “Brokering controls remain a high priority for the European Union as illicit brokering is recognized being among the main factors fuelling the illegal trade in SALW world-wide.”<sup>75</sup> The EU also expressed its hope that the Group of Governmental Experts on brokering would take a practical approach to its work and decide on the measures necessary to combat the harm done by unscrupulous arms brokers.

In December 2004 the General Assembly requested the Secretary-General to convene, after the 2006 Review Conference on the PoA and no later than 2007, a group of governmental experts “to consider further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons ...”.<sup>76</sup> This Group of Governmental Experts will commence work in November 2006. The Group’s report will be considered by the sixty-second session of the General Assembly.<sup>77</sup>

## LESSONS LEARNED FROM SANCTIONS AND ARMS EMBARGOES

The Security Council has developed, particularly through various panel and committee reports, valuable knowledge of the practical aspects of SALW brokering activities—and hence, has also developed practical responses. Their investigations of embargo implementation in Angola, Liberia, Rwanda, Sierra Leone and Somalia, among others, have unveiled complex networks of actors responsible for illicit trafficking of arms, and have thus provided further evidence on the dynamics of illicit brokering activities. The

“name and shame” tactic continues to be used to expose ongoing arms trafficking and sanctions violations.

In a report on the situation in Africa in 1998, UN Secretary-General Kofi Annan noted that an arms embargo “can help to diminish the availability of arms with which to pursue a conflict by making the acquisition of weapons more difficult”.<sup>78</sup> Arms embargoes are an important tool available to the Security Council to limit illicit brokering activities. For instance, partly as a result of evidence from the investigations of the Panels of Experts on Sierra Leone and Liberia, the Security Council called on arms-producing and exporting countries to:

enact stringent laws, regulations and administrative procedures in order to ensure, through their implementation, more effective control over the transfer to West Africa of small arms by manufacturers, suppliers, brokers, and shipping and transit agents, including a mechanism that would facilitate the identification of illicit arms transfers, as well as careful scrutiny of end-user certificates.<sup>79</sup>

Recommendations, particularly from reports concerning sanction implementation, have contributed to the understanding of the scope of brokering activities and the development of appropriate responses. These reports found that weak points of some control systems for arms transfers include:

- forged end-user certificates and lack of verification of arms transferred;
- use of third countries to arrange arms shipment;
- aircraft registration and flight plan fraud; and
- the financial assets or economic resources available to arms brokers.

Although the following selection of recommendations proposed by various reports were developed in the context of a specific country situation, they are useful to consider more widely—as appropriate—as they offer options that states might wish to consider at the national and regional levels. The recommendations also provide suggestions on areas for cooperation at the international level (for example, technical cooperation on law enforcement, monitoring mechanisms, investigations, border controls, and so forth).

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## END-USE CERTIFICATES

End-user certificates continue to be a weak point in arms transfers as arms are diverted from the declared end-use. Numerous investigations of violations of Security Council sanctions have identified forged or duplicate end-user certificates as a significant problem. Therefore, in order to prevent the forging and abuse of end-user certificates, and assist arms exports control authorities, the following responses have been suggested, among others:

- Member States that engage in trade of military goods and services could play a more active role in monitoring the implementation of the arms embargo by insisting on end-use certification.<sup>80</sup>
- “Member States could also undertake their own verification checks to trace goods that are reportedly diverted or are at risk of being diverted to the embargoed [regions or entities]”.<sup>81</sup>
- “[A]ll arms transfers by governments should provide for the mandatory authentication and reconciliation of all end-user certificates, as well as the verification of stated undertakings contained in those certificates”.<sup>82</sup>
- In order to make them harder to forge and misuse, a United Nations working group should “develop the modalities for a standardized End-User Certificate that would include the name, address and telephone number of the signing authority for the certificate, and name, address, telephone number and arms trading license of the broker(s) involved”.<sup>83</sup>
- The United Nations should “create a internet-based register of government officials—including examples of their certified signatures—who are authorized to sign end-user certificates”.<sup>84</sup>

## AVIATION

Illicit brokers frequently use aircraft to facilitate their activities. In many cases, authorities were unable to detect illegal over-flights, due to outdated equipment such as inadequate radar systems. Some civil aviation authorities also exercised poor oversight of planes flying on their registry, or there was a problem of registry fraud and abuse, thus enabling arms trafficking networks to conceal their operations through fake registrations and fraudulent documents. A number of recommendations have been

made in view of prohibiting unscrupulous arms brokers from using aircrafts to facilitate their illicit activities. They have also suggested possible options for international cooperation:

- In view of aircraft registration fraud, civil aviation authorities should transmit to Interpol the court documents about airlines involved in illicit activities. They are also encouraged to make court documents publicly available and to coordinate with concerned countries over the use of forged documents by airlines.<sup>85</sup>
- All aircraft, airport authorities and operators of planes operating in conflict regions are “advised to keep all their documentation, log books, operating licences, way bills and cargo manifests for inspection” by the relevant Sanctions Committee.<sup>86</sup>
- “[A]ll operators of aircraft [in conflict zones are] ... required to file their airworthiness and operating licences and their insurance documents with the International Civil Aviation Organization’s headquarters in Montreal, including documentation on inspections carried out during the past ... years. The aircraft of all operators failing to do so should be grounded permanently. Aircraft that do not meet ICAO standards should be grounded permanently”.<sup>87</sup>
- Specialized United Nations monitors should be placed at major airports in conflict regions (and perhaps further afield), “focusing on sensitive areas and coordinating their findings with other airports. This would enable better identification of suspect aircraft. It would also create a deterrent against illicit trafficking, and would generate the information needed to identify planes, owners and operators violating United Nations sanctions and arms embargoes”.<sup>88</sup>
- The International Civil Aviation Organization’s member states are to “computerize their registration lists and centralize them on the ICAO web site so that users could check the situation and status of each aircraft; [and] ICAO’s Safety Oversight programme should place greater emphasis on aircraft registration”.<sup>89</sup>
- All aircraft implicated in the investigations should be grounded. “The grounding order could then be lifted gradually for each individual aircraft, provided all the records (ownership of the plane, operator, operating licence, insurance, airworthiness certificate, certificate of registration and the location of the aircraft)

are inspected by both the Civil Aviation Authority in the country of registration and in the country where the aircraft has its maintenance base".<sup>90</sup>

- "The Security Council, through ICAO, IATA [International Air Transport Association] and the WCO [World Customs Organization] should create a centralized information bulletin, making the list of grounded aircraft known to all airports in the world".<sup>91</sup>

### DATABASES AND INFORMATION EXCHANGE

In order to curb the ease by which brokers procure illicit SALW or undertake illicit transfers of such weapons and their components, Security Council documents contain a number of recommendations on information sharing, including:

- Interpol could develop a common standard and the management of a database on significant cases of smuggling and sanctions-busting in conflict regions. "The IWETS (International Weapons and Explosives Tracking System) programme of Interpol could be used for the purpose of tracking the origin of the weaponry".<sup>92</sup>
- "A project should be developed to profile ... arms brokers with the cooperation of Interpol".<sup>93</sup>
- Governments should "agree to register, license and monitor the activities of arms brokers" and that "information collected through this exercise be stored in a national database on arms brokers that would be made available, as appropriate, to other Governments, as well as to regional and international organizations seeking to facilitate the curtailment of illicit arms transfers".<sup>94</sup>
- The establishment of bilateral border control mechanisms to share information and intelligence pertaining to arms embargoes.<sup>95</sup>

### FINANCIAL TRANSACTIONS

Financial transactions are at the centre of illicit trafficking activities. Banks, financial institutions and agents are used by brokers involved in illicit activities.<sup>96</sup> To address this important component of the issue, recommendations have included:

- The establishment of a list of individuals who are deemed to be in clear violation of UN embargoes. “Listed individuals may be subject to freezing of all funds and other financial assets or economic resources of groups, undertakings and entities, including funds derived from property owned or controlled, directly or indirectly by them or persons acting on their behalf or their direction. States should ensure that neither these nor any other funds, financial assets or economic resources are made available, directly or indirectly, for such persons’ benefit, by their national or by any persons within their territory. Additionally, States may be asked to revoke all business licences and any other certificates or titles that enable those individuals to remain economically active. The United Nations and its agencies may also consider cancelling current agreements with these individuals.”<sup>97</sup>
- Banking procedures could “be developed to facilitate the identification of individuals covered by sanctions, and the freezing of assets.”<sup>98</sup>

### TRAVEL BAN

Unrestricted travel by representatives or close associates of embargoed groups or entities has been key in facilitating illicit brokering deals and SALW transfers. For example, the Fowler Report notes how UNITA representatives travelled to third countries to make arms deals. “Having examined in detail all aspects of UNITA’s military and strategic procurement, ... the Panel developed a clear appreciation of the very close links between these vital aspects of UNITA’s operations and the ability of UNITA personnel to travel and conduct UNITA business abroad”.<sup>99</sup> The recommendation by the Expert Panel on Somalia offers a response to this problem:

- Targeted travel bans should be introduced for violators of arms embargoes. This may include “a temporary revocation by the issuing State of all passports and other travel documents. This step may be warranted in cases where individuals are found to be in violation of the arms embargo and where financial sanctions are not likely to have the desired effect of stopping future violations.”<sup>100</sup>

## LAW ENFORCEMENT

As noted in the final report of UNICOI, even where relevant national controls exist, “they are often circumvented by arms dealers who make use of third countries to arrange arms shipments. Governments should be encouraged to tighten the scope and application of the relevant laws in order to close that loophole”.<sup>101</sup>

In summary, the examples listed in this section suggest that authentication of end-user certificates as well as verification of the stated undertaking is key to regulating brokering activity in SALW. There is also the need to tighten control of national civil aviation services to prevent the diversion of weapons by brokers to conflict or embargoed regions. Additionally, information sharing and record-keeping on arms brokering, dealing and transporting among international and national law enforcement agencies are also essential to preventing and tracing activities of unscrupulous actors involving in brokering activities. Lastly, targeted financial and travel sanctions should be imposed on individuals and companies identified to be in clear violation of UN embargoes or involved in illicit brokering activities.

## REGIONAL AND MULTILATERAL INSTRUMENTS ADDRESSING BROKERING ACTIVITIES IN SALW

As the small arms issue attracted attention and gained momentum at the end of the 1990s, brokering started to be addressed through provisions in regional and multilateral declarations, agreements, codes of conduct and best practice guidelines. These initiatives have helped to focus discussion on what constitutes brokering activities. The differing contributions of these regional and multilateral instruments offer “food for thought” concerning what items an eventual international standard on brokering might cover. Additionally, provisions and suggestions by these regional and multilateral processes have stimulated reflection on possible wider responses to be taken within the UN framework.

While individual states are committed to the Firearms Protocol and the PoA, regional and multilateral agreements on SALW that include provisions on brokering do not have uniform geographical coverage—some countries in the regions of Asia, the Middle East, Northern Africa and the Pacific Islands are hardly covered by any regional or multilateral agreement. Since there is

uneven coverage by regional agreements on brokering, perhaps subregional initiatives might better address a given region's unique needs and priorities. Ultimately, however, as a consequence of the multinational dynamics of illicit brokering activities, it will be essential to adopt international minimum standards to address the currently existing loopholes in brokering controls.

**Box 4.1. Select regional and multilateral initiatives containing provisions on SALW brokering**

The African Union's Bamako Declaration on an African Common Position on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons (2000)

The Southern African Development Community's Protocol on the Control of Firearms, Ammunition and other Related Materials in the Southern African Development Community (SADC) Region\* (2001)

The Wassenaar Arrangement's Best Practice Guidelines for Exports of Small Arms and Light Weapons (SALW) (2002)

The Andean Plan to Prevent, Combat and Eradicate Illicit Trade in Small Arms and Light Weapons in All its Aspects (2003)

The European Union's Council Common Position on the control of arms brokering (2003)

The Organization of American States' Model Regulations for the Control of Brokers of Firearms, Their Parts and Components, and Ammunition (2003)

The Organization for Security and Co-operation in Europe's Handbook of Best Practices on Small Arms and Light Weapons (2003)

The Wassenaar Arrangement's Elements for Effective Legislation on Arms Brokering (2003)

The Wassenaar Arrangement's Elements for Export Controls of Man-Portable Air Defence Systems (MANPADS) (2003)

Asia-Pacific Economic Cooperation's Guidelines on Controls and Security of Man-Portable Air Defence Systems (MANPADS) (2004)

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\* (2004)

The Organization for Security and Co-operation in Europe's Principles on the Control of Brokering Small Arms and Light Weapons (2004)

Best Practice Guidelines for the Implementation of the Nairobi Declaration and the Nairobi Protocol on Small Arms and Light Weapons (2005)

Economic Community of West African States' Convention on Small Arms and Light Weapons, their Ammunition and Other Related Materials\* (2006)

\* legally binding

Regional and multilateral agreements concerning brokering have contributed to establishing a framework for discussion at the global level. In addition, they show that consensus among many states is possible on some key elements such as licensing requirements and conditions, registration and record-keeping, criminal liability and information sharing. Even on the complex issues of third-party brokering and extraterritoriality, advances have been made by the participating states of the Wassenaar Arrangement and member states of the Organization of Security and Co-operation in Europe (OSCE). Thus regional agreements and guidelines have contributed to a wider understanding of the subject and have developed consensus on some of the areas concerned. It is therefore useful to consider how these agreements approach various core issues related to SALW brokering activities.

#### SCOPE OF BROKERING ACTIVITIES

There are significant areas of convergence in these regional and multilateral standards of control on arms brokers and their activities. While the regional or multilateral instruments that define brokering describe it as facilitating or arranging transfers of arms, the definitions vary in scope.

Six regional and multilateral instruments provide definitions for arms brokers or brokering activities. They are the Organization of American States (OAS) Model Regulations, the Nairobi Best Practice Guidelines, the Nairobi Protocol, the Southern African Development Community (SADC) Protocol on Firearms, the OSCE Handbook of Best Practices, and the Economic Community of West African States (ECOWAS) Convention. For example, according to Article 1 of the OAS Model Regulations, “‘Broker’ or ‘Arms Broker’ means 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>102</sup> And according to the Nairobi Best Practice Guidelines:

a Broker is a person who acts: (a) for a commission, advantage or cause, whether pecuniary or otherwise; (b) to facilitate the transfer, documentation and/or payment in respect of any transaction, relating to the buying or selling of small arms and light weapons; or (c) as an intermediary between any manufacturer, or supplier of, or dealer in small arms and light weapons and any buyer or recipient thereof.<sup>103</sup>

With regard to goods covered by brokering activities, the Wassenaar Arrangement's Elements for Effective Legislation on Arms Brokering and the EU Common Position on the Control of Arms Brokering cover the brokering of transfers of military items, while other regional agreements only cover SALW.

The Asia–Pacific Economic Cooperation (APEC) Guidelines on man-portable air defence systems (MANPADS) suggest that exporting states should not make use of non-governmental brokers or brokering services when transferring MANPADS, unless specifically authorized by the importing and exporting states. Similarly, the Wassenaar Arrangement's Elements for Export Controls of MANPADS stipulates that participating states are not to make use of non-governmental brokers or brokering services when transferring MANPADS, unless specifically authorized to on behalf of the government.<sup>104</sup>

Despite their differences, it is worthwhile to note the strong areas of convergence within the relevant international and regional instruments and guidelines. These include recommendations and standards for:

- licensing or authorization of brokering transactions;
- the registration of brokers operating within a state's jurisdiction;
- third-party brokering and extraterritoriality;
- the exchange of information on brokering activities and legislation;
- and
- the requirement for legal sanctions.

It is therefore useful to consider how these agreements approach various core issues related to SALW brokering activities.

#### **LICENSING OR WRITTEN AUTHORIZATION OF BROKERS OR THEIR ACTIVITIES**

##### **Licensing procedure**

In general, all regional instruments require licensing or written authorization of brokers or their brokering activities within territories of states. The Wassenaar Arrangement's Elements for Effective Legislation on Arms Brokering advances the issue, stating "a licence may also be required regardless of where the brokering activities take place."<sup>105</sup> The OSCE Handbook of Best Practices is even more specific, noting that where State

A has extraterritorial controls on its own nationals, “(a) a license is required from each State, or (b) State A [may waive] the licensing requirement in cases where it considers the controls in State B to be adequate”.<sup>106</sup> The Nairobi Best Practice Guidelines and the OSCE Principles stand out as the only regional instruments that request that State Parties should ensure that all registered brokers seek and obtain a license for each transaction.<sup>107</sup> Additionally, the OSCE Principles on the Control of Brokering maintain that registration or authorization to act as a broker would not replace the requirement to obtain the necessary license or written authorization for each transaction.<sup>108</sup>

#### **Brokering controls consistent with international and regional sanctions**

The ECOWAS Convention, the OAS Model Regulations, the EU Common Position, the OSCE Handbook of Best Practices and the Wassenaar Arrangement’s Elements for Effective Legislation on Arms Brokering call on states not to authorize transactions that violate their obligations under the United Nations Charter. States are also not to authorize transactions that violate embargoes or decisions adopted by relevant international, multilateral, regional and subregional bodies. The ECOWAS Convention is even more restrictive, stating “[a] transfer shall not be authorised if its authorisation violates .... [u]niversally accepted principles of international humanitarian law” and human rights law.”<sup>109</sup>

#### **Brokering controls consistent with overall systems of export controls**

The ECOWAS Convention, the EU Common Position, the OAS Model Regulations, the OSCE Handbook of Best Practices, Nairobi Best Practice Guidelines and the Wassenaar Arrangement’s Elements for Effective Legislation on Arms Brokering request countries to ensure that their licensing procedures are consistent with national, regional and international systems of export controls (for instance, as concerns classes of weapons prohibited for export under the country’s export control legislation). For example, for cases at the regional level, under the ECOWAS Convention, brokering activities are assessed under the ECOWAS exemption process.<sup>110</sup> In this case, all transfers of weapons in the subregion are prohibited except those for legitimate self-defence and security needs, or for peace support operations. Exemption requests are submitted to the ECOWAS Executive Secretary by member states for approval.<sup>111</sup> Similarly, participating states to the Wassenaar Arrangement are to carefully assess applications for licences or authorizations in accordance with the principles and objectives of the Wassenaar Arrangement’s Initial Elements.<sup>112</sup> For the EU countries,

brokering controls are consistent with provisions of the European Union Code of Conduct on Arms Exports.<sup>113</sup> The OSCE Handbook of Best Practices advises that procedures adopted for the “licensing of brokering activities should be no less stringent than those applied to direct exports”,<sup>114</sup> and specifies that the information required of applicants in the licensing procedure should conform to international standards.<sup>115</sup>

### Screening brokers

The OAS Model Regulations, the EU Council Common Position on the control of arms brokering, the Nairobi Best Practice Guidelines, the Nairobi Protocol, the ECOWAS Convention and the OSCE Handbook of Best Practices all provide for screening brokers through licensing procedures. They require detailed information on the broker or brokering transaction, or both, before authorizing a license or certificate. Such information may include criminal liability, the nature of the brokering activity, the country of origin of the goods, a description of the goods and end-use documentation, among other elements. The OSCE Principles and OAS Model Regulations, for example, stress that states should not give authorization to any person who has been convicted of a related serious crime.<sup>116</sup> The ECOWAS Convention, the Nairobi Protocol and the Nairobi Best Practice Guidelines require full disclosure of brokering transactions, including relevant import and export licences or authorizations and associated relevant documents, and the names and locations of all brokers.<sup>117</sup> The Nairobi Best Practice Guidelines advance on the subject by requesting states to license financiers as well.<sup>118</sup> While the Nairobi Best Practice Guidelines focus generally on regulating transporters,<sup>119</sup> the ECOWAS Convention is more specific, including “shipping agents involved in the transaction and the transit routes and points of the small arms and light weapons shipments”.<sup>120</sup>

### Validity of a license

The OAS Model Regulations and the OSCE Handbook of Best Practices are the only regional instruments that make reference to validity of licenses. Since both instruments serve as guides for states, they refrain from imposing set periods. The OAS Model Regulations leave the validity of the license blank, to be determined by member states, while the OSCE Handbook of Best Practices states that the validity of licenses should be limited. “In order to compensate for such limited validity, extension options could be established, which could be exercised by the license holder upon application to the competent authority.”<sup>121</sup>

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## REGISTRATION AND RECORD-KEEPING

Registration and record-keeping are essential in order to keep track of arms brokers and their activities—and also can be used to help trace and identify illicit activities. A number of regional instruments including the Nairobi Best Practice Guidelines, the OAS Model Regulations, the OSCE Handbook of Best Practices, the OSCE Principles, the EU Common Position and the ECOWAS Convention all make reference to registration or record-keeping.

According to the OAS Model Regulations, “the information required on an application for a brokering license can provide the basis for a de facto registry of brokers.”<sup>122</sup> Although the OSCE Handbook of Best Practices asserts that a registration procedure prior to the licensing procedure would appear to be useful, but is not imperative, it insists that “[i]n the interests of proper administration and international exchange of information it is ... highly recommended that records of all licences issued, of licence holders and of the results of government screening for reliability be kept by the competent licensing authority.”<sup>123</sup>

The OAS Model Regulations is the only regional document that specifically indicates that there is no requirement for the registration of brokering activities conducted by state agents, that is “[e]mployees or officials of the Government ... acting in their official capacity; and ... [e]mployees or officials of foreign governments or international organizations acting in their official capacity”.<sup>124</sup>

The OAS Model Regulations request that registration be effective for a maximum of two years from the date of approval. Subsequent registration can only be effected by the submission and approval of a new registration form. However, it is left at the discretion of the state, as some countries may use the same period of registration that exists for exporters of firearms.

Sample broker registration forms contained within the OAS Model Regulations and the Nairobi Best Practice Guidelines require detailed personal and business information for registration of arms brokers.

The ECOWAS Convention, the Nairobi Protocol and the Nairobi Best Practice Guidelines specifically make reference to the registration of financial agents and transportation agents associated with brokering of SALW.<sup>125</sup> The Nairobi Protocol, for example, requires regular and random

checks on all independent SALW manufacturers, dealers, traders and brokers.

Thus far there seems to be consensus on the minimum number of years for keeping records on brokering activities and small arms in general. The EU Common Position on brokering and the OSCE Principles require their members to keep records for a minimum of 10 years on all persons and entities who have obtained a license for brokering activities.<sup>126</sup> States parties to the Nairobi Protocol also agreed to maintain records for 10 years.<sup>127</sup> The SADC Firearms Protocol as well requests states to maintain records and information relating to firearms for not less than 10 years.<sup>128</sup>

### THIRD-PARTY BROKERING AND EXTRATERRITORIALITY

With regard to territorial coverage, the OAS Model Regulations, the OSCE Handbook of Best Practices and the Wassenaar Arrangement's Elements for Effective Legislation on Arms Brokering have covered the issues of brokering in third-party countries and of extraterritoriality. According to the OSCE Handbook of Best Practices, definitions of controlled activities should apply throughout the national territory, regardless of whether they have been conducted by nationals or non-nationals. Additionally, "an extension of brokering controls to apply extraterritorially could be desirable for certain cases, such as activities carried out abroad by nationals and permanent residents, or in the enforcement of international arms embargoes".<sup>129</sup> The EU Common Position on the control of arms brokering advises member states not only to take all the necessary measures to control brokering activities within their territory, but also "to consider controlling brokering activities outside of their territory carried out by brokers of their nationality resident or established in their territory".<sup>130</sup>

The participating states of the Wassenaar Arrangement are encouraged to consider controlling brokering activities outside of their territory carried out by citizens, residents or by brokers who are established in their territory:

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 licence or written approval should be obtained from the competent authorities of the Participating State where these activities take

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place whether the broker is a citizen, resident or otherwise subject to the jurisdiction of the Participating State.<sup>131</sup>

### INFORMATION SHARING

Most of the regional agreements require national authorities to cooperate with one another to exchange information on respective brokering activities. The OAS Model Regulations, for example, require the OAS member states to share information contained in their respective broker registries, including information on ineligibility, debarments and denied applicants.<sup>132</sup> Similarly, the OSCE Principles recommend that information should be exchanged in the areas of legislation, registered brokers (if applicable), records of brokers, denials of registering applications (if applicable) and licensing applications.<sup>133</sup>

### CRIMINALIZING ILLICIT BROKERING

One important consequence of requiring states to criminalize the illicit trade in SALW—or more specifically the illicit brokering of SALW—is that it requires states to incorporate adherence to UN arms embargoes into their national legislation.

Almost all of the regional agreements encourage national authorities to determine the appropriate sanction in accordance with the gravity of the offence, in order to ensure that controls on arms brokering are effectively enforced. For example, the Nairobi Protocol, the OAS Model Regulations, the EU Common Position, the Andean Plan, the Wassenaar Arrangement, the ECOWAS Convention, the OSCE Handbook of Best Practices and the OSCE Principles on Brokering all make specific reference to criminalizing brokering activities at the national level, while the Nairobi Declaration, the Bamako Declaration and the SADC Firearms Protocol make only general reference to criminalizing illicit trafficking in SALW.

The OSCE Handbook of Best Practices advances on the question of penalties and criminal liability by suggesting that states apply effective and credible enforcement to acts of violations carried out in foreign states by nationals or permanent residents.<sup>134</sup> In the case of extraterritorial application of brokering controls, the activities carried out abroad by nationals and permanent residents should also be made subject to criminal prosecution.<sup>135</sup>

## **OTHER PROCESSES THAT HAVE CONTRIBUTED TO THE DEVELOPMENT OF THE DEBATE**

Initiatives by governments have also positively contributed to the understanding of the brokering issue. Processes directly focused on brokering include the Oslo Meetings and the Dutch–Norwegian Initiative. Others that may be relevant to SALW brokering include the Interlaken Process, the Bonn–Berlin Process and the Stockholm Process.

### **THE OSLO MEETINGS**

In July 1998 the Government of Norway hosted the Oslo Meeting on Small Arms and Light Weapons to examine elements of a common understanding of the problems caused by the uncontrolled proliferation of SALW. A second meeting in December 1999 recognized that brokering activities are one of the essential components of a comprehensive approach to dealing with problems relating to illicit trafficking in small arms.<sup>136</sup> Two suggestions arising from the second Oslo Meeting were that the Security Council could consider the insertion of clauses on brokering activities in legally binding embargo resolutions, and that the issue of brokering should be taken up in multilateral and regional bodies. The 1999 meeting also discussed how to include appropriate provisions on brokering in relevant international legal instruments. The 1999 meeting acknowledged that the proposed provision on brokering in the Draft Protocol on Firearms would make a significant contribution to the global approach to regulating brokering of small arms.<sup>137</sup>

### **THE DUTCH–NORWEGIAN INITIATIVE ON BROKERING OF SMALL ARMS AND LIGHT WEAPONS**

The aim of the Dutch–Norwegian Initiative is to assist states and regions to enact the necessary national laws and to strengthen international cooperation in controlling the brokering of small arms. This initiative, launched in April 2003, recognizes that there are relevant cultural, political and legal traditions that need to be part of the political process of developing a legal framework on arms brokering. Norway and the Netherlands approached regional organizations such as the Association of Southeast Asian Nations (ASEAN), ECOWAS, the OAS, the Pacific Islands Forum and SADC to discuss various relevant aspects of brokering. The

Dutch–Norwegian Initiative acknowledges that regional solutions or regional instruments to control arms brokering could serve as building blocks for an international instrument, since most regions already have basic agreements on cooperation on small arms issues. This initiative therefore seeks to develop the necessary capacities on the political level with regional organizations.

The Governments of the Netherlands and of Norway convened a conference in Oslo in April 2003 entitled “The Dutch–Norwegian Initiative on Further Steps to Enhance International Co-operation in Preventing, Combating and Eradicating Illicit Brokering in Small Arms and Light Weapons”. Experts from 27 states, alongside those from the United Nations, regional organizations, research institutes and non-governmental organizations, met to discuss possible approaches towards ensuring effective controls on SALW brokering activities. The meeting also examined possible elements of model regulations on brokering activities. The report of the chairman was presented to the First Biennial Meeting of States to Consider Implementation of the Programme of Action in New York in July 2003.<sup>138</sup>

#### THE INTERLAKEN PROCESS ON TARGETED FINANCIAL SANCTIONS

The Interlaken Process was convened by the Government of Switzerland in March 1998 to examine the feasibility of targeted financial sanctions. A series of workshops and conferences concluded that while targeted financial sanctions are technically feasible, they need adequate legal authority and administrative mechanisms to be effective.<sup>139</sup> The result of the Interlaken Process was a manual<sup>140</sup> that provides specific guidance and recommendations regarding the design and implementation of financial sanctions. It developed technical requirements to improve the application of financial sanctions. For example, effective implementation of financial sanctions at the national level requires that agencies “possess the authority, expertise, and capacity to give effect to Security Council resolutions”.<sup>141</sup> The Interlaken Process manual suggests that financial supervisory and regulatory agencies are likely to be the best source of technical expertise for the administration of sanctions. “States of various sizes often create specialist offices within the central bank or financial ministry but in many cases rely heavily upon expertise of knowledgeable individuals.”<sup>142</sup> The recommendations of the Interlaken Process could serve as a starting point

for discussions on the complex subject of regulating financial activities associated with arms brokering.

#### THE BONN–BERLIN PROCESS ON ARMS EMBARGOES AND TRAVEL AND AIR-TRAFFIC-RELATED SANCTIONS

In mid-2001, the Government of Germany sponsored the Bonn–Berlin Process as a contribution to reforming UN arms embargoes and travel-related sanctions. The recommendations from this process related to arms brokering took into consideration recent resolutions establishing arms embargoes, for example against Eritrea, Ethiopia and Sierra Leone.<sup>143</sup> The Bonn–Berlin Process recommended that brokering activities should be included in arms embargoes, and also highlighted the problem of transferring dual-use items. The process proposed a model resolution on arms embargoes to be used by the Security Council, which contains standardized language with respect to the scope of arms embargoes.<sup>144</sup>

#### THE STOCKHOLM PROCESS ON IMPLEMENTING AND MONITORING TARGETED SANCTIONS

The Government of Sweden initiated the Stockholm Process in late 2001. Building upon the work of the Interlaken and Bonn–Berlin Processes, it focused on the best ways of implementing and monitoring targeted sanctions. The Stockholm Process emphasized that in order to prevent arms transfers to conflict regions, there is need for a comprehensive approach that considers targeted sanctions as part of a broader coordinated political and diplomatic strategy.

From this initiative, Sweden produced the study *Making Targeted Sanctions Effective: Guidelines for the Implementation of UN Policy Options*,<sup>145</sup> which was presented to the Security Council in early 2003. The guidelines address arms embargoes, financial sanctions, travel bans, aviation bans and targeted trade sanctions. The study indicated that substantial illicit trafficking of arms may occur prior to the imposition of sanctions—which makes it difficult to disrupt established clandestine transfers.<sup>146</sup> Additionally, “trafficking of weapons by air transport has been extremely difficult to identify and detect.”<sup>147</sup> The report suggested that customs services are central in implementation efforts, and may benefit from international cooperation as has been undertaken in efforts to combat the drug trade.<sup>148</sup> The report also

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suggested that states should maintain a “black list” of groups and individuals engaged in illegal trafficking<sup>149</sup> and that states should support the standardization of end-user certificates for arms transfers.<sup>150</sup>

## CONCLUSIONS

This chapter has traced the development of the brokering debate through the UN framework as well as multilateral and regional processes—all of which have made vital contributions to the understanding of brokering activities in SALW. Together, these developments at the international, multilateral, regional and national levels have suggested many potential ways to effectively combat illicit brokering. They include:

**Broadening the scope.** There is a continuing debate on the range of activities included under “brokering activity”. This includes the arrangement of services by intermediaries, as well as by the buyers and sellers, from origin to end-use (including, for example, engaging the services of transport agents, financial agents, and all middlemen or companies involved in negotiating and arranging all aspects of the arms transfer). One of the difficult areas remaining is how to trace and monitor the financial activities associated with brokering. Although the report of the 2001 Group of Governmental Experts suggested that exchange of information on suspect financial activities might be helpful in the control of financing of arms transfers, the issue remains problematic since it is difficult to require licences for individual banking transactions. One option presented by the 2001 Group was to explore how law enforcement agencies could assist in investigating financial transactions related to illicit trafficking.<sup>151</sup>

**Casting the net wider.** Due to the multinational nature of the arms business, the question arises of to what extent legal authority may be extended over brokering activities, for example as regards extraterritorial jurisdiction and third-party transactions. There is also the question of whether controlling brokering activities should cover just SALW or whether it should be extended to cover the brokering of other military items, technology transfers, training services and technical support associated with arms. References to regulating brokering activities in both military and dual-use equipment in sanctions reports<sup>152</sup> provide a basis for considering the option of widening the scope of brokering activities.

**Sanctions and prosecution.** As the complexity of the arms trade has become apparent, the need for flexible yet effective sanctions is becoming clearer. The “name and shame” tactic has been complemented by provisions in regional and multilateral SALW instruments criminalizing the illicit trade in SALW, and in particular illicit brokering. The question is how legal action can be taken at the international level against unscrupulous arms dealers and their activities.

The complicated scope of brokering activities necessitates responses developed through international cooperation. It is within the security interests of all states to adopt common international standards to effectively address the issue of brokering as a contribution to the wider objective of preventing illicit SALW trafficking.

#### Notes

- 1 See Annex for a list of selected documents.
- 2 A UN Advisory Mission visited Mali in 1994, and Burkina Faso, Chad, Côte d’Ivoire, Mauritania, Niger and Senegal the following year.
- 3 See General Assembly resolutions 46/36 H of 6 December 1991, 47/52 G and 47/52 J of December 1992, and 48/75 H and 48/75 J of 16 December 1993.
- 4 General Assembly, *Assistance to States for Curbing the Illicit Traffic in Small Arms and Collecting Them*, A/RES/49/75 G, 15 December 1994, para. 7.
- 5 *Ibid.*, para. 5. The same request was made in A/RES/50/70 H, 15 January 1996.
- 6 The report of the Disarmament Commission was submitted in 1996. The report included guidelines for international arms transfers. See General Assembly, *Report of the Disarmament Commission*, UN document A/51/42, 22 May 1996, para. 39 and annex I.
- 7 *Ninth United Nations Conference on the Prevention of Crime and the Treatment of Offenders*, UN document A/CONF.169/16/Rev.1, 29 April–8 May 1995, § 1(I)(4).
- 8 Security Council, UN document S/RES/1013 (1995), 7 September 1995.
- 9 Non-governmental organizations published several reports that brought international attention to the illicit trafficking of arms, in

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particular to those who supplied the perpetrators of the Rwandan genocide. See, for example, Human Rights Watch, "Arming Rwanda: The Arms Trade and Human Rights Abuses in the Rwandan War", 1994; and Kathi Austin, *Rearming With Impunity: International Support for the Perpetrators of the Rwandan Genocide*, Human Rights Watch, 1995.

- <sup>10</sup> Security Council, UN document S/RES/918 (1994), 17 May 1994.
- <sup>11</sup> In 1995, the United Nations Security Council suspended the application of the arms embargo to the Government of Rwanda if items were shipped through specified points of entry, and later terminated the application of these restrictions on sales or supplies to the Government of Rwanda. See Security Council, UN document S/RES/1011 (1995), 16 August 1995, para. 7–9.
- <sup>12</sup> Security Council, UN document S/RES/1013 (1995), 7 September 1995, para. 1.
- <sup>13</sup> See Security Council documents S/1996/67, S/1996/195, S/1997/1010 and S/1998/63.
- <sup>14</sup> Security Council, UN document S/RES/1161 (1998), 9 April 1998; the Commission's mandate was not substantially altered. It produced the following reports: Security Council, *Interim Report of the International Commission of Inquiry (Rwanda)*, UN Document S/1998/777, 19 August 1998; and Security Council, *Final Report of the International Commission of Inquiry (Rwanda)*, UN document S/1998/1096, 18 November 1998.
- <sup>15</sup> For example, see Security Council, *Final Report of the International Commission of Inquiry (Rwanda)*, UN document S/1998/1096, 18 November 1998, para. 27 and 68; and Security Council, *Interim Report of the International Commission of Inquiry (Rwanda)*, UN Document S/1998/777, 19 August 1998, para. 43.
- <sup>16</sup> Security Council, *Final Report of the International Commission of Inquiry (Rwanda)*, UN document S/1998/1096, 18 November 1998, para. 106; Security Council, *Third report of the International Commission of Inquiry (Rwanda)*, UN document S/1997/1010, 24 December 1997, para. 31 and 90.
- <sup>17</sup> *Ibid.*, para. 24 and 27.
- <sup>18</sup> See Security Council, UN document S/1996/195, 14 March 1996, especially para. 21–39 and 41–45.
- <sup>19</sup> Security Council, *Interim Report of the International Commission of Inquiry (Rwanda)*, UN Document S/1998/777, 19 August 1998, para. 31.

- <sup>20</sup> Security Council, *Third Report of the International Commission of Inquiry (Rwanda)*, UN document S/1997/1010, 24 December 1997, para. 62.
- <sup>21</sup> Security Council, *Report of the International Commission of Inquiry (Rwanda)*, UN document S/1996/195, 14 March 1996.
- <sup>22</sup> Security Council, UN document S/RES/1053 (1996), 23 April 1996, para. 9.
- <sup>23</sup> Security Council, UN document S/RES/1209 (1998), 19 November 1998, para. 9.
- <sup>24</sup> General Assembly, *Report of the Disarmament Commission*, UN document A/51/42(SUPP), 22 May 1996, para. 39 (endorsed by General Assembly, UN document A/RES/51/47 B, 8 January 1997). Also in the 1996 Report of the Disarmament Commission, as part of the list (prepared by the Secretariat) of possible items to be included in the agenda of the Disarmament Commission, is the need for a comprehensive study on activities of illegal arms dealers. See *ibid.*, annex III(II).
- <sup>25</sup> General Assembly, UN document A/52/298, 27 August 1997; and General Assembly, UN document A/54/258, 19 August 1999.
- <sup>26</sup> General Assembly, UN document A/52/298, 27 August 1997, para. 80(l). In addition, para. 80(g) recommends that: "The United Nations should urge relevant organizations, such as the International Criminal Police Organization (Interpol) and the World Customs Organization, as well as all States and their relevant national agencies, to closely cooperate in the identification of the groups and individuals engaged in illicit trafficking activities, and the modes of transfer used by them ... ."
- <sup>27</sup> General Assembly, UN document A/54/258, 19 August 1999, para. 113.
- <sup>28</sup> General Assembly, UN document A/52/298, 27 August 1997.
- <sup>29</sup> General Assembly, UN document A/RES/53/77 E, 12 January 1999.
- <sup>30</sup> General Assembly, UN document A/54/258, 19 August 1999, para. 103.
- <sup>31</sup> General Assembly, UN document A/RES/54/54 V, 10 January 2000, para. 14 (a), (b).
- <sup>32</sup> *Ibid.*
- <sup>33</sup> Security Council, UN document S/RES/864 (1993), 15 September 1993. Subsequently, embargoes have been imposed on non-state actors in Afghanistan (S/RES/1333, S/RES/1390 and S/RES/1617), the Democratic Republic of the Congo (S/RES/1493), Liberia (S/RES/788),

- Rwanda (S/RES/918 and S/RES/997), Sierra Leone (S/RES/1132) and Sudan (S/RES/1556). Since it is easier for armed groups, particularly of transnational nature, to elude effective monitoring and sanctions, an embargo imposed on them places a larger responsibility on the broker or exporting state to ensure that arms embargoes are respected.
- <sup>34</sup> Security Council, UN document S/RES/1127 (1997), 28 August 1997; and Security Council, UN document S/RES/1173 (1998), 12 June 1998.
- <sup>35</sup> Security Council, UN document S/RES/1237 (1999), 7 May 1999.
- <sup>36</sup> Security Council, *Report of the Panel of Experts on Violations of Security Council Sanctions against UNITA*, UN document S/2000/203, 10 March 2000.
- <sup>37</sup> Security Council, UN document S/RES/1295 (2000), 18 April 2000.
- <sup>38</sup> Security Council, *Final Report of the Monitoring Mechanism on Angola Sanctions*, UN document S/2000/1225, 21 December 2000.
- <sup>39</sup> Security Council, *Final Report of the Monitoring Mechanism on Angola Sanctions*, UN document S/2000/1225, 21 December 2000, para. 53.
- <sup>40</sup> Security Council, *Report of the Panel of Experts on Violations of Security Council Sanctions against UNITA*, UN document S/2000/203, 10 March 2000.
- <sup>41</sup> *Ibid.*, para. 18, 20, 34.
- <sup>42</sup> *Ibid.*, para. 20, 35; paragraph 36 also points to allegations of false end-user certificates from Zambia.
- <sup>43</sup> Security Council, *Final Report of the Monitoring Mechanism on Angola Sanctions*, UN document S/2000/1225, 21 December 2000, para. 49(a) and (c), also see para. 39 and 48.
- <sup>44</sup> Security Council, *Report of the Panel of Experts on Violations of Security Council Sanctions against UNITA*, UN document S/2000/203, 10 March 2000, para. 21, 41.
- <sup>45</sup> *Ibid.*, para. 21.
- <sup>46</sup> Security Council, *Final Report of the Monitoring Mechanism on Angola Sanctions*, UN document S/2000/1225, 21 December 2000, para. 53 and 226.
- <sup>47</sup> *Ibid.*, para. 228, 229 and 231.
- <sup>48</sup> *Ibid.*, para. 29.
- <sup>49</sup> In general, responsibility for issuing end-user certificates for the importation of arms falls under the auspices of the Minister of Defence.
- <sup>50</sup> Security Council, *Final Report of the Monitoring Mechanism on Angola Sanctions*, UN document S/2000/1225, 21 December 2000, para. 227.

- 51 Security Council, *Report of the Panel of Experts on Violations of Security Council Sanctions against UNITA*, UN document S/2000/203, 10 March 2000, para. 18.
- 52 Ibid.
- 53 Ibid., para. 29.
- 54 Ibid., para. 136.
- 55 Ibid., para. 15.
- 56 Ibid., para. 77.
- 57 Ibid.
- 58 Ibid.
- 59 Ibid., para. 16.
- 60 Security Council, UN document S/RES/1295 (2000), 18 April 2000, para. 8.
- 61 *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/PC/33, 12 March 2001.
- 62 *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, Annex I.
- 63 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, art. 15.
- 64 *Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects*, § II (14).
- 65 Ibid., § II(15) and (32).
- 66 Ibid., § IV(1)(d).
- 67 General Assembly, UN document A/RES/58/241, 9 January 2004, para. 11.
- 68 The UN Department for Disarmament Affairs was entrusted with the task of conducting consultations and drafting the Report of the Secretary-General.
- 69 For more information, see <<http://disarmament2.un.org/cab/salw-brokering.html>>.
- 70 General Assembly, *In Larger Freedom: Towards Development, Security and Human Rights for All. Report of the Secretary-General*, UN document A/59/2005, 21 March 2005, para. 120.
- 71 General Assembly, UN document A/RES/60/81, 11 January 2006, para. 2.

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- <sup>72</sup> *International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons*, preamble. The text of the Instrument can be found in General Assembly, UN document A/60/88, 27 June 2005.
- <sup>73</sup> Elli Kytömäki and Valerie Yankey-Wayne, *Five Years in Implementing the United Nations Programme of Action on Small Arms and Light Weapons: Regional Analysis of National Reports*, United Nations Institute for Disarmament Research, 2006, p. xxii.
- <sup>74</sup> Ibid.
- <sup>75</sup> EU Presidency, statement at the UN Conference to Review Progress Made in the Implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, New York City, 27 June 2006.
- <sup>76</sup> General Assembly, UN document A/RES/59/86, 10 December 2004, operative paragraph 5.
- <sup>77</sup> General Assembly, UN document A/61/288, 23 August 2006, para. 9.
- <sup>78</sup> *The Causes of Conflict and the Promotion of Durable Peace and Sustainable Development in Africa. Report of the Secretary-General*, UN Document A/52/871-S/1998/318, 13 April 1998, para. 25.
- <sup>79</sup> Security Council, UN document S/RES/1467 (2003), 18 March 2003, annex (f).
- <sup>80</sup> Security Council, *Letter Dated 21 March 2006 from the Panel of Experts on the Sudan Addressed to the Chairman of the Security Council Committee Established Pursuant to Resolution 1591 (2005) Concerning the Sudan*, UN document S/2006/250, 19 April 2006, recommendation 4, para. 61.
- <sup>81</sup> Ibid.
- <sup>82</sup> Security Council, *Report of the Panel of Experts on Violations of Security Council Sanctions against UNITA*, UN document S/2000/203, 10 March 2000, para. 55.
- <sup>83</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. 27. Security Council, *Final Report of the International Commission of Inquiry (Rwanda)*, UN document S/1998/1096, 18 November 1998, para. 106.
- <sup>84</sup> Security Council, *Report of the Panel of Experts on Somalia pursuant to Security Council resolutions 1425 (2002)*, UN document S/2003/223, 25 March 2003, para. 187.

- <sup>85</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. 9.
- <sup>86</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. 255.
- <sup>87</sup> *Ibid.*, para. 256.
- <sup>88</sup> *Ibid.*, para. 268.
- <sup>89</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. 12.
- <sup>90</sup> *Ibid.*, para. 13.
- <sup>91</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. 257.
- <sup>92</sup> *Ibid.*, para. 260.
- <sup>93</sup> *Ibid.*, para. 261.
- <sup>94</sup> Security Council, *Report of the Panel of Experts on Violations of Security Council Sanctions against UNITA*, UN document S/2000/203, 10 March 2000, para. 53.
- <sup>95</sup> Security Council, *Letter Dated 4 January 2005 from the Group of Experts on Democratic Republic of the Congo Addressed to the Chairman of the Security Council Committee Established Pursuant to Resolution 1533 (2004)*, UN document S/2005/30, 25 January 2005. See recommendation regarding Democratic Republic of the Congo and Uganda in paragraph 246.
- <sup>96</sup> However, in an effort to evade financial sanctions, illicit traffickers sometimes use alternative mechanisms for payment, such as rough diamonds. Security Council, *Report of the Panel of Experts on Violations of Security Council Sanctions against UNITA*, UN document S/2000/203, 10 March 2000, para. 128.
- <sup>97</sup> Security Council, *Report of the Panel of Experts on Somalia pursuant to Security Council resolutions 1425 (2002)*, UN document S/2003/223, 25 March 2003, para. 188.

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- <sup>98</sup> Security Council, *Report of the Panel of Experts on Violations of Security Council Sanctions against UNITA*, UN document S/2000/203, 10 March 2000, para. 128.
- <sup>99</sup> *Ibid.*, para 131.
- <sup>100</sup> Security Council, *Report of the Panel of Experts on Somalia pursuant to Security Council resolutions 1425 (2002)*, UN document S/2003/223, 25 March 2003, para. 189.
- <sup>101</sup> Security Council, *Final Report of the International Commission of Inquiry (Rwanda)*, UN document S/1998/1096, 18 November 1998, para. 90.
- <sup>102</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.
- <sup>103</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, § 3.2.1.
- <sup>104</sup> Wassenaar Arrangement, *Elements for Export Controls of Man-Portable Air Defence Systems (MANPADS)*, 2003, para. 2(3).
- <sup>105</sup> Wassenaar Arrangement, *Elements for Effective Legislation on Arms Brokering*, 2003, para. 1.
- <sup>106</sup> This could be done after consultation among State A and State B. See Organization for Security and Co-operation in Europe, *Handbook of Best Practices on Small Arms and Light Weapons*, 2003, chp. 4, p. 13.
- <sup>107</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, § 3.2.4(b).
- <sup>108</sup> Organization for Security and Co-operation in Europe, *OSCE Principles on the Control of Brokering in Small Arms and Light Weapons*, document FSC.DEC/7/04, 7 December 2004, § IV(1).
- <sup>109</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(2–4). Brokering activities (stipulated in article 20) are also assessed under article 6 of the Convention.
- <sup>110</sup> *Ibid.*, art. 20(5).
- <sup>111</sup> *Ibid.*, art. 5 and 6.
- <sup>112</sup> The Wassenaar Arrangement, *Best Practice Guidelines for Exports of Small Arms and Light Weapons (SALW)*, 12 December 2002, introductory paragraphs.

- <sup>113</sup> 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. 3.
- <sup>114</sup> Organization for Security and Co-operation in Europe, *Handbook of Best Practices on Small Arms and Light Weapons*, 2003, chp. 4, p. 4.
- <sup>115</sup> *Ibid.*, p. 15.
- <sup>116</sup> Organization for Security and Co-operation in Europe, *OSCE Principles on the Control of Brokering in Small Arms and Light Weapons*, document FSC.DEC/7/04, 7 December 2004, § IV(2); 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. 4(5).
- <sup>117</sup> Economic Community of West African States, *Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials*, 14 June 2006, art. 20(3); and 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, § 3.2.4(d).
- <sup>118</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; § 3.2.4(c).
- <sup>119</sup> *Ibid.*
- <sup>120</sup> Economic Community of West African States, *Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials*, 14 June 2006, art. 20(3).
- <sup>121</sup> Organization for Security and Co-operation in Europe, *Handbook of Best Practices on Small Arms and Light Weapons*, 2003, chp. 4, p. 14.
- <sup>122</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.
- <sup>123</sup> Organization for Security and Co-operation in Europe, *Handbook of Best Practices on Small Arms and Light Weapons*, 2003, chp. 4, p. 14.
- <sup>124</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, para. 6 (a) and (b).
- <sup>125</sup> 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); 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, art. 11(1).
- <sup>126</sup> 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. 3.
- <sup>127</sup> 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, art. 7(d).
- <sup>128</sup> 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.
- <sup>129</sup> Organization for Security and Co-operation in Europe, *Handbook of Best Practices on Small Arms and Light Weapons*, 2003, chp. 4, p. 5.
- <sup>130</sup> 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(1).
- <sup>131</sup> The Wassenaar Arrangement, *Best Practice Guidelines for Exports of Small Arms and Light Weapons (SALW)*, 12 December 2002, para. 1.
- <sup>132</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.
- <sup>133</sup> Organization for Security and Co-operation in Europe, *OSCE Principles on the Control of Brokering in Small Arms and Light Weapons*, document FSC.DEC/7/04, 7 December 2004.
- <sup>134</sup> Organization for Security and Co-operation in Europe, *Handbook of Best Practices on Small Arms and Light Weapons*, 2003, chp. 4, p. 4.
- <sup>135</sup> *Ibid.*, p. 19.
- <sup>136</sup> This meeting coincided with the publication of *The Arms Fixers*, which was sponsored by the Norwegian Ministry of Foreign Affairs. 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>137</sup> See International Action Network on Small Arms, *The Second Oslo Meeting on Small Arms and Light Weapons (Oslo II)*, 6–7 December 1999. *Elements of a Common Understanding*, 2000.
- <sup>138</sup> See Norwegian Initiative on Small Arms Transfers, “Conference Report”, *Dutch–Norwegian Initiative on Further Steps to Enhance International Co-operation in Preventing, Combating and Eradicating Illicit Brokering in Small Arms and Light Weapons*, Oslo, 23–24 April 2003. Additionally, the Netherlands and Norway—along with Germany—submitted a proposal for an instrument on brokering to the OSCE, which resulted in the OSCE Principles on controlling brokering in 2004.
- <sup>139</sup> Thomas Biersteker, Sue Eckert, Peter Romaniuk et al., *Targeted Financial Sanctions: A Manual for Design and Implementation*, The Thomas J. Watson Jr. Institute for International Studies, Brown University, 2001, p. xi.
- <sup>140</sup> *Ibid.*
- <sup>141</sup> *Ibid.*, p. 90.
- <sup>142</sup> *Ibid.*, p. 92.
- <sup>143</sup> Michael Brzoska (ed.), *Design and Implementation of the Arms Embargoes and Travel and Aviation Related Sanctions: Results of the Bonn–Berlin Process*, Bonn International Center for Conversion, 2001. See also Ken Epps, “International Arms Embargoes”, Project Ploughshares, working paper 02-4, 2002.
- <sup>144</sup> Michael Brzoska (ed.), *Design and Implementation of the Arms Embargoes and Travel and Aviation Related Sanctions: Results of the Bonn–Berlin Process*, Bonn International Center for Conversion, 2001, p. 13.
- <sup>145</sup> Peter Wallensteen, Carina Staibano and Mikael Eriksson (eds), *Making Targeted Sanctions Effective: Guidelines for the Implementation of UN Policy Options*, Department of Peace and Conflict Research, Uppsala University, 2003.
- <sup>146</sup> *Ibid.*, para. 327.
- <sup>147</sup> *Ibid.*, para. 327.
- <sup>148</sup> *Ibid.*, para. 387.
- <sup>149</sup> *Ibid.*, para. 175.
- <sup>150</sup> *Ibid.*, para. 332.
- <sup>151</sup> *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, para. 78.

- <sup>152</sup> For example, the Sanctions Committee on Côte d'Ivoire (November 2005) raised questions on considering dual-use equipment such as trucks, Land Cruisers and helicopters. See Security Council, *Report of the Group of Experts Submitted Pursuant to Paragraph 7 of Security Council Resolution 1584 (2005) Concerning Côte d'Ivoire*, UN document S/2005/699, 7 November 2005, para. 87–157.