

International initiatives to prevent illicit brokering of arms and related materials

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One consequence of the globalization of the arms trade is the increasing reliance on the services of brokers, who find markets, negotiate deals and make logistical arrangements to meet the requirements of buyers, sellers and other relevant actors, such as government officials, financiers and transport agents. Brokers facilitate the transfer of weapons and munitions and related materials in return for a commission fee or other non-pecuniary reward or benefit. Brokering by individuals or corporate entities is used for the lawful trade in arms for the purpose of legitimate self-defence and law enforcement. However, in the majority of countries, national laws covering arms brokering are non-existent or inadequate. Unregulated arms brokering is therefore easily employed to facilitate international criminal activities associated with arms trafficking and to circumvent the international arms control and non-proliferation framework.

Although brokering activities are only one facet of the international arms trade, and the number of brokers involved in that trade appear to be limited relative to the number of arms suppliers and buyers, research shows that international arms brokering networks can disproportionately threaten and undermine international peace, security and respect for fundamental human rights. This was tragically demonstrated in the case of the international arming of the perpetrators of the Rwandan genocide—which is when the term “arms broker” was first used in official United Nations reports.¹ Other cases showing the grave danger of international arms brokering were brought to the attention of the international community in the late 1990s by non-governmental organizations, journalists and UN investigators,² and since then some important progress has been made by states in developing arms brokering control systems.

The international community has entered a new phase in its approach to the problem. Governments acting within the United Nations have moved toward a common understanding of what is meant by illicit arms brokering, and it is now agreed by the majority of states not only that the brokering of international arms transfers in its various aspects should urgently be brought under strict national control, but also that the scope of illicit brokering can include all types of weapons—small arms and light weapons (as was originally discussed in relation to brokering in the late 1990s) and conventional arms as well as materials, equipment and technology that could contribute to the proliferation of weapons of mass destruction (WMD) and their means of delivery.³

The main challenge now is to locate the gaps that need to be plugged in the existing system of national laws and to identify what specific, concrete measures states can carry out to effectively tackle the problem of unregulated and poorly regulated arms brokering⁴—and to build the collective political will to enable states to act in concert to take such measures.

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This article outlines the types of control measures that are now being recommended and established by states to meet these challenges, as well as some of the main difficulties in doing so. It describes how the momentum of states to act in concert to improve national legislation, regulations and administrative procedures can and should be further stepped up without delay.

Weakness of existing national controls

Between 2002 and 2008, 52 states reported to the United Nations that they had established legal control measures on brokering in small arms and light weapons (SALW), 33 states claimed they were in the process of doing so, and another 22 states said they had no specific national laws.⁵ There has been undoubted progress—in 1999, only 12 states had laws covering arms brokering.⁶ Research in 2005 found that over 30 states had law on arms brokering: in three years, the regional totals appear to have increased from 25 to 32 in Europe; from 1 to 4 in Africa; 2 to 8 in the Americas; 1 to 4 in the Asia-Pacific; and 1 to 4 in the Middle East–North Africa.⁷

Despite recent efforts, however, the stark reality is that over two-thirds of states have yet to establish a national legal framework to control any form of arms brokering, and many existing national controls are too weak. This poses a constant danger, especially to fragile states, which are more susceptible to the inflow of weapons and the outbreak of violent conflict.

Even where national laws and regulations do exist, in many countries the weak provisions of those laws and regulations still allow arms brokers and dealers to exploit loopholes and avoid controls on their activities and related financial and transport services. Designing an effective national control system to tackle irresponsible arms brokering requires a good understanding of the nature of the problem. For example, arms brokering can be a particularly opaque form of commercial activity because brokers do not necessarily take the arms into their possession, nor are their activities always rewarded in monetary assets. Moreover, brokers of transactions between buyers and sellers to transfer various types of arms and related materiel do not usually operate in one jurisdiction, but move from country to country to carry out their activities. Thus, the control of arms brokering cannot be designed in the same way as that of arms production, trade, exporting and importing.

Major loopholes occur where national regulations:⁸

- fail to ensure that eligible brokers are registered, screened and subject to rigorous record-keeping requirements and penalties;
- do not require that licensing of brokers' activities be considered on a case-by-case basis so as to prevent such activities when they pose a substantial risk of contributing to serious violations of the UN Charter or other existing international law, including international humanitarian law and international human rights law;⁹
- do not include the transfer of all types of arms and military equipment;
- do not control extraterritorial brokering by their nationals and legal residents (and registered companies);
- do not control brokers who operate domestically, but who arrange for arms transfers to be made via "third" countries;
- contain no provision to track financial and transport services involved in arms brokering; or
- exempt government officials who broker arms deals from oversight by an independent body and from a requirement to obtain specific authorization in accordance with minimum standards, including those on corruption.

Between 2002 and 2008, 40 of the 52 states claiming to have controls on arms brokering reported to the United Nations that they at least had established either a system of registration or

licensing or penalties: 22 states reported having a registration system; 28 reported on their licensing systems; and 22 said that illicit arms brokering was covered by a system of criminal penalties.¹⁰ By 2008 only 14 states had reported to the United Nations that they had legal provisions to regulate arms brokering carried out in foreign countries by their citizens, legal residents and registered or incorporated companies.¹¹

Thus, a high proportion of arms brokering activity by individuals and companies is still unregulated and it is still possible for unscrupulous arms brokers to evade international arms embargoes and circumnavigate even the most robust national regulatory and law enforcement systems. Arms brokers can establish international networks and move around to operate directly and indirectly in many jurisdictions outside their home country, easily fixing deals that involve a wide range of arms from countries with less effective controls or none at all.

USING GLOBAL LOOPHOLES TO EVADE US ARMS BROKERING LAW

The United States' law on arms brokering, promulgated in 1996 as an amendment to the US Arms Export Control Act, is perhaps the most extensive in the world in its provisions to control extraterritorial arms brokering since it covers not only arms brokering activity within the United States by US and foreign nationals, legal residents and companies, including instances of those actors' involvement in brokering "third country" movements of arms, but it also covers the brokering of US-origin "defence articles" by foreign nationals, wherever those articles may be located, and the brokering of any arms by US nationals, legal residents and companies in any foreign jurisdiction.¹² The following example shows the importance of this latter extraterritorial component, and why it also requires international cooperation and commitment to be enforced.

In January 2008, US immigration and customs officials received news from a foreign country concerning a previously unknown arms broker based in Florida, who, through his company, was offering to fix the supply of a range of military equipment, including several Russian-made Mi-24 attack helicopters, Mi-8 military transport helicopters and an SU-27 jet fighter engine.¹³ The US law enforcement authorities launched an investigation and obtained the broker's agreement in March 2008 to supply seven Mi-24 and three Mi-8T helicopters to a fictional foreign buyer in an African country through a controlled front company. Costs were quoted as \$750,000 purchase price plus \$40,000 for transport per helicopter. The Mi-24 attack helicopter would come with hard points in place to carry rockets and bombs.

The Florida-based broker said that the helicopters were in Kyrgyzstan and Serbia and could be shipped to an east African port. The broker also offered to provide spare parts, mechanical support, pilot training, Antonov transport aircraft, and AK assault rifles which he said could be placed on the helicopters. He said he could obtain an end-user certificate or government letter from another non-prohibited country for an additional cost and that he could get government officials to issue the papers without asking questions. He wanted to be remunerated in \$200,000 payments to several different bank accounts over several days so as not to attract the attention of the authorities. After one payment was made, the broker agreed to meet undercover US law enforcement agents in April 2008, and after making further offers he was arrested.

Searches of the broker's electronic and documentary records by the US Department of Justice revealed that he had been secretly brokering a wide range of arms deals using an elaborate international network of business associates from his US home for ten years. The network apparently did not include any US partners or US suppliers and stretched across Afghanistan, Brazil, Bulgaria, China, Colombia, the Democratic Republic of the Congo, Ecuador, Hungary, Iran, Iraq, Kyrgyzstan, Nigeria, Poland, the Russian Federation, Serbia, Sri Lanka, Ukraine and other countries. Contacts were involved in freight

forwarding, aviation sales, police equipment supplies and front companies. The arms included AK-47 assault rifles, Iglu rockets, OG-7V grenades and rocket-propelled grenade launchers, 122mm Grad rockets and other ammunition. None of these items were ever located in the United States and they were primarily obtained via suppliers based in Poland, the Russian Federation and Ukraine. China and the Russian Federation are two of eight states that have told the United Nations that arms brokers “do not exist” in their national jurisdictions because mediation of arms transfers is carried out exclusively by state companies.¹⁴

The broker did not keep an inventory. Completed and blank end-user certificates were found on the broker’s premises from several countries with seals (stamps) for several countries, along with pro-forma invoices, sales proposals, export and import documents, and business cards. The broker had been using foreign and US shell companies to conceal his illicit brokering.

After 10 years of evading US brokering law, the broker was charged in the United States with multiple counts of knowingly and wilfully engaged in brokering activities, negotiating and arranging contracts, purchases, sales and transfers of arms in foreign countries in return for fees and other considerations without first registering with the US Department of State. He was also charged with money laundering. The broker was convicted and was given 48-month prison sentence.

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This case demonstrates that even with a robust national law on brokering, a resident of that state can successfully broker illicit arms deals by taking advantage of less robust legislation elsewhere.

Until every state establishes and implements brokering controls, unscrupulous brokers will continue to operate in those countries that prove to be weaker links.

EXTRADITION CHALLENGES

Clearly, cross-border cooperation among regulatory and law enforcement authorities is necessary to prevent illicit brokering. National legislation should therefore contain provisions to guide relevant authorities when they share evidentiary information for law enforcement and prosecution purposes and when they assist other national authorities to determine the eligibility of a broker or the legitimacy of a potential brokering activity.

States usually share such information through official government channels on the basis of supporting agreements, such as bilateral Mutual Legal Assistance Treaties. For example, thanks to these treaties and the successful extradition of suspects, in February 2009 the Syrian-born arms dealer Monzer al Kassar was sentenced in a US court to 30 years in prison and his Chilean associate Luis Felipe Moreno Godoy was sentenced to 25 years.¹⁵ Al Kassar had been extradited from Spain, where Spanish authorities had arrested him as he was suspected of preparing to finalize a multimillion-dollar transaction of weapons with persons who claimed to represent the Fuerzas Armadas Revolucionarias de Colombia (FARC), but were in fact confidential sources working for the US Drug Enforcement Agency (DEA).¹⁶ Two of al Kassar’s suspected accomplices were arrested in Romania. According to the charges brought against them by the US Attorney, they agreed to sell assault rifles, millions of rounds of ammunition, pistols, hand grenades, rocket-propelled grenade launchers and surface-to-air missiles.¹⁷

Another extradition case pending is that of Viktor Bout, frequently mentioned in UN arms embargo reports for involvement in alleged violations in Africa, but never prosecuted for arms trafficking because of the inadequate laws of most states regarding the regulation of arms brokering and arms transport activities.¹⁸ On 6 March 2008, Bout was arrested in Thailand for allegedly offering to supply the FARC with arms and explosives when in fact he was dealing with undercover agents

of the US DEA.¹⁹ Thai police said that he was arrested on a Thai warrant, which stemmed from an earlier one issued by the US Attorney for the Southern District of New York at the request of the US DEA. Extradition hearings have been held in Bangkok without conclusion so far and the Russian authorities have expressed a desire that Bout is returned to his home country. At the time of writing, the prosecution intends to file an appeal against the most recent decision not to extradite Bout.

One case of extradition that was thwarted is that of Yair Klein, an Israeli national. In 2001, the Colombian authorities sentenced Klein *in absentia* for training paramilitary groups and drug traffickers (he was also reportedly involved in brokering arms deals for paramilitary groups).²⁰ In August 2007, Russian police arrested Klein in Moscow. In June 2008 the European Court of Human Rights reportedly postponed his extradition to Colombia on the grounds that he would suffer ill-treatment.²¹

UN framework to control brokering of small arms and light weapons

States agreed basic parameters to address the problem of illicit brokering when in 2001 they agreed the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (POA) and the UN Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition (Firearms Protocol), which came into force in 2005 to supplement the United Nations Convention against Transnational Organized Crime.

The POA contains an important if sketchy outline of what states should do to regulate SALW brokering activities, namely establish national laws and procedures including:

- registration of brokers;
- licensing or authorization of their transactions; and
- appropriate penalties for illicit brokering performed within the state's jurisdiction and control.²²

Although not applicable to state-to-state transfers of small arms, the UN Firearms Protocol, also adopted in 2001, establishes a principle of reciprocal authorization of brokering transactions by the exporting, importing and transiting states involved, as well as by the state where the broker operates, by recommending:

- registration of brokers operating "within their territory";
- licensing or authorization of brokering; or
- disclosure on import and export licences or authorizations, or on accompanying documents, of the names and locations of brokers involved in the transaction.²³

Since these agreements, practical measures to enhance international cooperation to prevent illicit brokering have continued to be discussed in the United Nations and in regional and other multilateral organizations.²⁴ In December 2008 Member States agreed in the General Assembly that illicit brokering in SALW is "a serious problem that the international community should address urgently" and encouraged states to implement the recommendations of the report of the Group of Governmental Experts (GGE) on the prevention of illicit brokering of SALW.²⁵ That expert report concluded that although arms brokering is not an illegal activity *per se*, "unregulated and poorly regulated arms brokering activities may result in small arms and light weapons transactions that increase the risk that arms are diverted to conflict-prone areas and embargoed entities, as well as to organized criminal and terrorist groups."²⁶ The General Assembly encouraged states to include in their voluntary national reports on POA implementation information on their efforts to prevent, combat and eradicate illicit brokering in small arms and light weapons, as well as on their actions aimed at enhancing international cooperation for this purpose.

However, as demonstrated in cases referred to here, brokering extends beyond small arms and light weapons: to limit national controls on arms brokering to SALW is not sufficient.

Broadening the scope of illicit arms brokering controls

Recently, the scope of arms brokering controls has been considerably broadened in UN discussions, not only as regards the activities that can be defined as illicit brokering, but also as regards the items that brokering controls can cover: including conventional arms as well as items used for WMD.

“CLOSELY ASSOCIATED ACTIVITIES” IN BROKERING SMALL ARMS AND LIGHT WEAPONS

The GGE on illicit brokering in small arms defined a broker in SALW as “a person or entity acting as an intermediary that brings together relevant parties and arranges or facilitates a potential transaction of small arms and light weapons in return for some form of benefit, whether financial or otherwise”.²⁷

The GGE also recognized that other closely associated activities might be undertaken by brokers of SALW as part of the process of putting a deal together to gain a benefit, and that these activities include acting as dealers or agents in SALW, or providing for technical assistance, training, transport, freight forwarding, storage, finance, insurance, maintenance, security and other services.²⁸

The significance of this broader approach can be appreciated when considering the widespread use of subcontracting in global arms markets. Supply chains can become a complex labyrinth of arms companies and transportation agents operating across several geographic boundaries and national export control jurisdictions. Stricter controls on brokering and closely associated activities will encourage states to exercise greater scrutiny over the subcontracting that occurs in legitimate arms transfers. For example, states could require all contractors to supply the names of all subcontractors to state authorities, in order to screen out individuals or companies that have previously been involved in illicit activities.

Irregularities in arms transfers authorized by the US Department of Defense and the Iraq Ministry of Defence following the invasion of Iraq in 2003 illustrate the problem of complex supply chains.²⁹ There were no effective systems of regulation, accountability and transparency for these transfers, making it virtually impossible for those who authorized weapons and munitions transfers to fully account for how many were supplied and to whom: as a result it is impossible to ascertain exactly how many arms have ended up in the hands of non-state armed groups or have entered illicit arms markets, but certainly many have been.

For example, arms deliveries from Bosnia and Herzegovina (BiH) were initiated by a US Department of Defense contract for the Coalition Provisional Authority in Baghdad but could not be accounted for by US officials.³⁰ Parts of the arms supply chain were subcontracted to companies operating in Bosnia and Herzegovina, Bulgaria, China, Croatia, Germany, Israel, Moldova, Serbia, Switzerland, Ukraine and the United Kingdom. One US company with multiple US Department of Defense contracts, Taos Industries, subcontracted Moldovan/Ukrainian company Aerocom to transport 99,000kg of arms, mostly Kalashnikov rifles, from BiH to Iraq between 31 July 2004 and 31 June 2005 for Iraqi security forces,³¹ even though Aerocom had smuggled weapons from Serbia to Liberia during 2002 in violation of a UN arms embargo, according to a UN expert report to the UN Security Council.³² In addition, Taos claimed not to know that Aerocom was operating without a valid air operator licence in 2004.³³ A Croatian company, Scout d.o.o., was also named as the broker in these shipments, but as there was no system to register arms dealers in Croatia, Scout’s activities could not be monitored either. In 2005, a Chinese-controlled company, Poly Technologies, was subcontracted under a \$29 million US Department of Defense contract with a Jordanian firm to supply more than 16,000 AK-47-style

assault rifles, machine guns and 72 million rounds of ammunition for the Iraqi security forces. Poly Technologies had been previously indicted in the United States by a Federal Grand Jury for an attempt to smuggle large quantities of AK-47-type assault rifles into the United States for use by organized criminal gangs, and former executives of the company have also been arrested in China.³⁴ Moreover, Poly Technologies has acted as the US-based distributor for weapons manufactured by China's state-owned China North Industries Corporation (Norinco). Between 2003 and 2005, Norinco was placed under a two-year US embargo following accusations that it had supplied ballistic missile technology to Iran.³⁵

BROKERING OF CONVENTIONAL ARMS

In their national laws and their policy commitments to regional or other multilateral agreements on brokering, the majority of states now accept that before approval, brokering transactions in conventional arms should be thoroughly assessed by national authorities against fundamental common criteria so as to ensure that all weapons and munitions to be transferred will remain in the hands of responsible and authorized end-users, and will not pose a substantial risk of being misused for unlawful purposes, especially for serious violations of international law.

Indeed, during the UN Secretary-General's consultation on the establishment of a global Arms Trade Treaty (ATT) on conventional arms, a large majority of states expressed the view that the scope of an ATT should include imports, exports, re-exports, temporary transfers, transshipments, re-transfers and brokered arms transactions.³⁶ Some state officials have suggested that it would be possible to include in the provisions of an ATT some standards for the national regulation of other types of arms transactions, including transactions closely related to brokering, especially transportation, logistics, finance and technical expertise.³⁷ One of the most fundamental common criteria raised by some states is that an ATT should have provisions to help states ensure that a proposed transfer of, or transaction in, any type of conventional weapons and munitions will not pose a substantial risk of contributing to serious violations of international human rights law or international humanitarian law.

BROKERING ITEMS FOR POTENTIAL USE IN WEAPONS OF MASS DESTRUCTION

In a number of cases conventional arms brokers have also been involved in the proliferation of WMD-related technology: not surprising, since the two markets often share the same clients. For example, between 1997 and 2002 a British arms broker based in the United Arab Emirates (UAE), who had supplied the nuclear proliferator A.Q. Khan with conventional military goods for Pakistan's army (ranging from military helmets to rangefinders for surface-to-air missiles), reportedly supplied machinery found by UN inspectors in Libya's "Project 1001" machine shop, designed to manufacture centrifuges for uranium enrichment.³⁸ This transaction formed part of A.Q. Khan's private efforts. The broker denied being aware of the purpose or true destination of the machinery, and the investigation was dropped. In 2005 the UAE reported to the United Nations that "it is worth mentioning that there is no illicit brokering in firearms in our country."³⁹

Other suppliers also appear to have operated across these two markets. According to a criminal complaint filed in Florida in April 2009, a Korean broker, based in the United States, asked a confidential informant of the US Defense Criminal Investigation Service to help him to broker arms to the Republic of Korea, including SU-27 fighter jet parts, and technology for the use of the RD-180 rocket propulsion system, a propulsion system for long-range missiles listed under the Missile Technology Control Regime (which seeks to control the proliferation of technologies that enable the unmanned delivery of WMDs).⁴⁰ The case is yet to be concluded, but the broker had other long-standing connections to both WMD and conventional arms markets: in 1989 he was convicted by

a US court of conspiring to export Sarin nerve gas to Iran in an aborted deal that had begun with discussions to supply 105 and 106mm ammunition to the Republic of Korea.⁴¹

Interviews carried out during research into embargo-busting activities reveal not only how all weapons types are subject to brokering, but also the importance of regulating “other closely related activities”, because of the large number and range of actors that can be involved in an international arms deal. A UK-based pilot was interviewed about arms cargo flights he was making into Central Africa, and referred in passing to the transport of heavy water:

“...well it used to come from China, going to Sharjah and then we used to take it to Bombay. We did a lot of flights to Bombay with it. ...the engineer or the first officer said ‘Well, they use it for cooling atomic piles and so on’... we took some to, er Buenos Aires. We took a lot down there...we didn’t know they were making themselves bomb...”⁴²

Another interviewee described an operation from Buenos Aires:

“...so the aircraft was loaded in the evening and we took off at night from Buenos Aires, I believe the flight, I thought it went to Palma, but it could have gone to the Canaries. I’m not exactly sure, but there were a lot of discussions about the fact that it had to leave at the night time, it had to be early in the morning because they didn’t want any questions asked and there wasn’t a problem getting into Tehran because, obviously, that was the end user. We were all very dubious about the long, cylindrical object that was in the aircraft, but we honestly didn’t have any idea what was in it at all.”⁴³

Most states have undertaken binding legal obligations or have made other commitments aimed at preventing the proliferation of nuclear, chemical or biological weapons, and have taken effective measures to account for, secure and physically protect sensitive materials.⁴⁴ However, since 2004 the United Nations Security Council has recognized the urgent need for all states to take “additional effective measures”. On 28 April 2004, the Security Council unanimously adopted resolution 1540, obliging states, inter alia, to refrain from supporting by any means non-state actors from developing, acquiring, manufacturing, possessing, transporting, transferring or using nuclear, chemical or biological weapons and their delivery systems. For the purposes of the resolution, a non-state actor was defined as any “individual or entity, not acting under the lawful authority of any State in conducting [such] activities”. This prohibition covers anyone brokering in such materials. Paragraph 3(c) obliges all states to “develop and maintain appropriate effective border controls and law enforcement efforts to detect, deter, prevent and combat, including through international cooperation when necessary, the illicit trafficking and brokering in such items in accordance with their national legal authorities and legislation and consistent with international law.”

With regard to the means of delivery for WMD, resolution 1540 defines those means to include “missiles, rockets and other unmanned systems capable of delivering nuclear, chemical, or biological weapons, that are specially designed for such use”. The resolution also calls for the establishment of “appropriate controls over related materials” and defines “related materials” as “materials, equipment and technology covered by relevant multilateral treaties and arrangements, or included on national control lists, which could be used for the design, development, production or use of nuclear, chemical and biological weapons and their means of delivery”.⁴⁵

In December 2008 the General Assembly recognized that illicit brokering activities cover “not only conventional arms but also materials, equipment and technology that could contribute to the proliferation of weapons of mass destruction and their means of delivery”, but that “efforts to prevent and combat illicit brokering activities should not hamper the legitimate arms trade and international cooperation with respect to materials, equipment and technology for peaceful purposes.”⁴⁶

Practical approaches to implement UN recommendations on arms brokering

Numerous cases of illicit and irresponsible arms brokering illustrate the need for states to enact into national law and procedures the control “elements” and the specific recommendations agreed by the UN Group of Governmental Experts in August 2007 as well as the common standards adopted by some regional organizations to prevent illicit arms brokering and closely related illicit activities, and to broaden these to cover conventional arms and items relating to the possible development of WMD. Member States now have many avenues of action officially recommended to them, from national measures to regional initiatives and international cooperation.

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Practical measures to enhance international cooperation recommended by the GGE include: operational information exchange between states; information exchange regarding control systems; coordination with the World Customs Organization (WCO) and Interpol, as well as the International Civil Aviation Organization, International Maritime Organization and non-governmental organizations; cooperation between states and UN bodies on brokering and other activities that violate Security Council arms embargoes; assistance in building capacity to prevent illicit brokering; periodic consideration of reports at the global level. The GGE suggests establishing an information clearing house function on brokering within the UN Office for Disarmament Affairs; improving the abilities of UN arms embargo monitoring and peacekeeping field operations; considering action arising from POA national reporting on brokering, using the POA’s biennial meetings of states to make more operational recommendations; and building brokering controls into other relevant global initiatives such as an Arms Trade Treaty.

At the national level, the GGE recommends: the formulation of a national needs assessment; integration of this into a National Action Plan; inclusion of national needs in POA reporting, with a contact point, and dedication of a specific section in the POA report to brokering; national legislation to control arms brokering using the “optional elements” in the GGE report as a tool. These elements cover a definition of brokering, illicit brokering, and “closely associated activities”, registration, record-keeping, licensing, related legislation, jurisdiction and penalties.

The GGE recommendations also encourage regional approaches, such as bringing together regional experts on legislation, discussing regional procedures for operational information exchange, inclusion of WCO regional offices in regional seminars, linking up with Interpol regional conferences, developing regional capacity-building programmes, and presenting regional reports on the prevention of illicit brokering at the biennial meetings of states.

Conclusion

It is no longer in dispute that arms brokering activity can adversely affect “international peace and security and prolong conflicts, thereby impeding sustainable economic and social development, and result in the threat of illicit transfers of conventional arms and the acquisition of weapons of mass destruction by non-state actors”.⁴⁷ However, arms brokering controls, requiring clear legal standards and practical monitoring of what is often an opaque and transnational activity, remain an aspiration in the majority of countries. Low political prioritization and the lack of effective national controls mean that the international community’s incapacity to protect itself from the dangers of such brokering will persist. While progress in plugging the gaps in the system of national laws appears to be accelerating, especially among the more developed countries, many more states need to devise and implement effective action plans to establish robust national legislation and to enhance their

international and regional cooperation on a principled basis so as to prevent illicit arms brokering and closely associated activities.

The General Assembly will return to the issue of preventing and combating illicit brokering in October 2009, at its next session. It is hoped that more states will strengthen measures to tackle illicit arms brokering *in all its aspects*. These should be framed in relation to the existing international obligations of states with regard to the export, import, transit, trans-shipment, brokerage and licensed production of conventional arms.

States now have a range of recommended standards and measures from UN and regional agreements on which to take prompt action, concerning not only the brokering of SALW but also the brokering of conventional arms and materials and delivery systems for WMD. The ongoing General Assembly discussions toward an Arms Trade Treaty could eventually result in a requirement on states to establish common standards and specific mechanisms to control international arms brokering and closely related activities. It is also recommended that all states report on steps they have taken to implement resolution 1540 and submit such a report to the 1540 Committee without delay.

Establishing a strict national registration and licensing system as well as information-sharing procedures to control such activities could help better ensure respect for international law, and could increase inter-state judicial cooperation to ensure prompt investigations and prosecutions according to the rule of law. If common standards were agreed, the authorities in states where the dealers and brokers reside, operate and hold citizenship would have a chance to consult the intended receiving states before a brokering transaction was approved, and thus provide another means to help save lives, protect livelihoods and contribute significantly to ensuring more respect for human rights in many countries.

Notes

1. See the reports of the UN International Commission of Inquiry on Rwanda: Interim Report, UN document S/1996/67, 29 January 1996; Second Report, UN document S/1996/195, 14 March 1996; Third Report, UN document S/1997/1010, 24 December 1997; Addendum to the Third Report, UN document S/1998/63, 26 January 1998 (where the term “brokered” is first used by the Commission itself); Interim Report, UN document S/1998/777, 19 August 1998; Final Report, UN document S/1998/1096, 18 November 1998.
2. The first major study of arms brokering was Brian Wood and Johan Peleman, 1999, *The Arms Fixers*, BASIC, NISAT and PRIO. See also the many reports by UN Panels of Experts on UNITA (Angola), Liberia, Sierra Leone and Somalia, the UN Group of Experts on the Democratic Republic of the Congo, and the UN Commission of Inquiry on Rwanda.
3. UN General Assembly Resolution 63/67 of 2 December 2008, UN document A/RES/63/67, 12 January 2009.
4. The term “poorly regulated” means national regulation inconsistent with the relevant principles of international customary law and treaties to which a state is a party and/or inconsistent with relevant good practice standards as contained in other international instruments to which a state has declared its commitment.
5. Silvia Cattaneo and Sarah Parker, 2008, *Implementing the UN Programme of Action on Small Arms and Light Weapons: Analysis of the National Reports Submitted by States from 2002 to 2008*, Geneva, UNIDIR. Only 103, or 70%, of states reported on their small arms and light weapons brokering controls to the UN between 2002 and 2008.
6. See Wood and Peleman, *op. cit.*
7. Research in 2005 conducted by Silvia Cattaneo for the Small Arms Survey.
8. For more detailed studies on illicit brokering of small arms, see UNIDIR, Small Arms Survey, and UN Department for Disarmament Affairs, 2007, *Developing a Mechanism to Prevent Illicit Brokering in Small Arms and Light Weapons: Scope and Implications*, Geneva; and Silvia Cattaneo, 2004, “Targeting the Middlemen: Controlling Brokering Activities” in Small Arms Survey, *Small Arms Survey 2004: Rights at Risk*, Oxford, Oxford University Press.
9. The Economic Community of West African States, the countries of the Great Lakes Region and the Horn of Africa (the Nairobi Group), the European Union, the Organization of American States, the Organization for Security and Cooperation in Europe and the Wassenaar Arrangement have agreed sets of standards for the licensing of international arms transfers that reflect the international obligations of states and these are not always applied to the brokering of international arms transactions; see footnote 24 below.
10. Cattaneo and Parker, *op. cit.*

11. *Ibid.*
12. The definition of arms brokering in the United States is set out in Title 22 Code of the Federal Regulations 129.2b (reference 22CFR129).
13. An account of this case was provided by the US Department of Justice, 2009.
14. Reports from China and the Russian Federation quoted in Cattaneo and Parker, *op. cit.*, p. 39.
15. "Syrian Arms Dealer Sentenced to 30 Years", *Reuters*, 25 February 2009; "Arms Dealer Jailed for 30 Years", *BBC News*, 25 February 2009.
16. For further information on this case, see the articles by An Vranckx, and Peter Danssaert and Brian Johnson-Thomas in this issue of *Disarmament Forum*.
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24. In November 1997 the Organization of American States adopted the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials. This was supplemented with Model Regulations on Brokering (2003). Regional and other multilateral instruments covering illicit brokering include: the Southern African Development Community's Protocol on the Control of Firearms, Ammunition and Other Related Material (2001); the European Union's more elaborate Common Position 2003/468/CFSP on the Control of Arms Brokering (2003), the Organization for Security and Co-operation in Europe's Best Practice Guide on National Control of Brokering Activities (2003) and Principles on the Control of Brokering in Small Arms and Light Weapons (2004); the Wassenaar Arrangement's Statement of Understanding on Arms Brokerage (2002) and Elements for Effective Legislation on Arms Brokering (2003); 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), elaborated further in a set of Best Practice Guidelines for the Control of Small Arms and Light Weapons (2004); the Economic Community of West African States' Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials (2006); and UN General Assembly resolution 62/47 of 5 December 2007, UN document A/RES/62/47, 10 January 2008.
25. UN General Assembly resolution 63/72 of 2 December 2008, UN document A/RES/63/72, 12 January 2009, preamble and paragraph 3.
26. Report of the Group of Governmental Experts established pursuant to General Assembly resolution 60/81 to consider further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons, UN document A/62/163, 30 August 2007, paragraph 1.
27. *Ibid.*, paragraph 8.
28. *Ibid.*, paragraph 10.
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31. See Amnesty International and TransArms, *op. cit.*
32. Report of the Panel of Experts on Liberia, 24 April 2003, UN document S/2003/498, 24 April 2003, paragraph 70.
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 45. United Nations Security Council resolution 1540 (2004), UN document S/RES/1540(2004), 28 April 2004.
 46. UN General Assembly resolution 63/67, op. cit.
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