
Development of International and Regional Small Arms Initiatives

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This presentation traced the development of international and regional small arms initiatives in order for participants to have a common understanding of this progress. It also elaborates on a recent initiative coming out of the Organization of American States (OAS) – the development of model regulations on brokering to implement their protocol on illicit firearms trafficking.

Efforts to control the proliferation of small arms and light weapons (SALW) goes back to the 1990s when the UN Secretary-General sent an assessment mission to West Africa. In 1996, the first UN Panel of Experts was convened. This set the international agenda that resulted in a number of UN Groups of Experts on SALW-related issues, the EU Code of Conduct, and in Africa the ECOWAS Moratorium. In 2001, the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (UNPoA) and the UN Firearms Protocol were adopted by the UN General Assembly. In July of 2003, the first Biennial Meeting of States took place in New York to examine progress made in implementing the UNPoA. Important issues were flagged and reflected in the subsequent UN General Assembly resolution, including brokering and tracing.

In 2006, the first review conference of the UNPoA will take place. This will be an important point to look back and see what progress will have been made at the international, regional and national levels.

There is therefore a great deal of policy on small arms. Most, if not all, of these agreements mention (to some degree) the issue of “brokering” within the context of a broader approach to regulating the use and trade of small arms and light weapons.

Key agreements

At the international level there are two agreements:

1. The UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects which was adopted by the General Assembly in 2001. This is a political agreement adopted by member states as part of a UN General Assembly resolution.
2. The UN Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition. The UN General Assembly also adopted this legally binding mechanism in May 2001. This protocol is part of the UN Convention on Transnational Organized Crime and so has a very particular focus.

At the regional level are the:

1. Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Material (1997). This agreement really led the way for the UN Firearms Protocol and subsequently for some of the initiatives in Africa. Late last year the OAS adopted model regulations on brokering.
2. ECOWAS Moratorium on the Importation, Exportation and Manufacture of Light Weapons in West Africa (1998).
3. Bamako Declaration on an African Common Position on the Illicit Proliferation, Circulation and Trafficking of Illicit Small Arms and Light Weapons (2000). The Bamako Declaration became a negotiating platform for African countries when they went to the UN for the small arms conference in July 2001. Many elements of the Bamako Declaration are found in the UNPoA.
4. Nairobi Declaration on the Problem of the Proliferation of Illicit Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa (2000).
5. Protocol on the Control of Firearms, Ammunition and Other Related Material in the SADC Region (2001).

From the names of these agreements one can see the commonalities and similarities in the approaches they take to addressing small arms and light weapons.

Other measures that are relevant in the context of brokering at the international and regional levels include:

1. The Wassenaar Arrangement – This is a consortium of primarily arms producing countries and looks at regulating weaponry and dual-use technology. It has agreed on certain common or harmonized approaches, best practises on certain issues, including on brokering and has developed what are called “elements for effective legislation” on brokering.
2. In 2000, the 54 members of the Organization for Security and Co-operation in Europe adopted the OSCE Declaration on Small Arms. The OSCE has also adopted a set of “best practice guidelines”, including on brokering, which reflects their current practice. The guide has no legal basis but tries to distil what is the highest common standard that countries in that grouping can agree to. It makes suggestions as to how countries can structure their legislation. The OSCE incorporates both Russia and the US and most of the countries of Europe. It is quite significant in terms of the

scope of its membership and in terms of the priorities it sets because it can get agreement from four of the five countries of the Security Council of the UN. This sometimes gives direction to how the UN chooses to focus its efforts.

3. The EU Code of Conduct on Arms Exports and Common Position on the control of arms brokering. The EU Code of Conduct sets criteria that countries should look at before making a decision on whether or not to export weapons. The Common Position is politically binding on member states while the Code of Conduct is legally binding on EU member states.
4. UN General Assembly resolutions and resolutions and reports of the UN Security Council. The UN General Assembly passes resolutions, which set in process different initiatives such as the Dutch-Norwegian Initiative. In terms of arms brokering, the Security Council has also played an important role in uncovering some of the brokering activities that occur on the Africa continent.

Challenges

Brokering has both legitimate and illegal aspects. Regulating brokering is not about penalizing an entire industry nor is it about regulating an entire industry out of existence. Questions of definition are thus important – how broadly one defines brokering is an issue that needs to be carefully examined. If defined too broadly, then many activities that one may not be interested in regulating fall into the net and if one defines it too narrowly, one may find that things one intended to regulate fall outside of the net.

There needs to be clarity on the purpose and the functioning of brokering regulation efforts. It is important to define the problem and then formulate a response to the problem. One must be careful not to just follow behind what seems to be an international movement or consensus. A policy response may result from the need to be seen to act, however at the implementation level one needs to be quite clear what one is trying to address.

Regulating brokering is part of wider efforts to regulate firearms or small arms. In the SADC Protocol firearms are defined as small arms and this presents its own challenges.

A further challenge is the need for information sharing and co-operation. Brokering cannot be addressed without sharing information amongst neighbours but also globally through either existing mechanisms or if these are found to be inadequate by creating new ways of sharing information.

By way of illustration, it may be useful to examine how the region of the Americas through OAS has chosen to move from the policy level – from a regional convention on illicit arms trafficking – to the national implementation level, specifically relating to brokering.

The Americas has taken a different approach to implementing their legislation or their regional conventions. They have tended to adopt model regulations. These are agreed collectively by all the countries in the region and act as a drafting guide for national legal experts to look at how their national laws can be amended to accommodate new conventions and new treatise. They first used this method for dealing with illicit drug trafficking and then for the implementation of the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Material and now more recently they are using this approach for brokering.

Key Elements

What are the key elements that the Americas have looked at in terms of their model regulations?

Firstly, they have identified the need for a designated national authority. Many countries have national points of contact and/or national focal points. In practice this means that there is a named department within the government that is responsible for (in this case) registering and licensing arms brokers. This could be an already existing authority or it may need to be established. The establishment of a designated national authority is often a first but necessary step.

In the case of the Americas, registration of brokers is optional. For countries that choose to register brokers, it is recommended that it be effective for two years after which one would have to re-apply. The person or company applying has to provide detailed information about the nature of the business, the types of goods, the destination, etc. Each registered broker would be assigned a registration number that would be kept in a registry maintained by the national authority.

For countries with export control regimes, the proposal is that licences be issued for each transaction. There is a provision for the information to be verified by the National Authority and that each licence have a specific period of validity. No license would be issued if the broker has been convicted of a related serious crime, e.g. conviction for money laundering. The national authority has the right to designate prohibited items that a particular broker cannot broker. No licenses would be issued for embargoed destinations. A license would not be transferable to any other legal entity or person.

Somewhat controversially, agents of government are exempt from such licensing requirements. This is because the scope of the firearms trafficking convention of the Americas only related to commercial transactions and excludes state-to-state sales.

Other key elements include the prohibitions, which are quite similar to the EU Code of Conduct and South Africa's National Conventional

Arms Control Act. Criteria to be taken into account when a decision is made to export weapons include could:

- result in genocide or crimes against humanity;
- violate human rights contrary to international law;
- lead to the perpetration of war crimes; \
- violate recognised embargoes;
- support terrorist acts;
- result in the diversion of arms to illegal activities;
- result in a breach of bilateral/multilateral arms control agreements.

This wide list of criteria means that the activities of brokers will be held to the same criteria as those of arms exports.

Transgressions and offences of the regulations include: non-registration/lack of licenses; brokering in violation of prohibitions, for example to embargoed destinations; and providing false information or material omissions. The national authority can withdraw a license or registration at any time and determine appropriate sanction if one violated the regulations.

Other elements contained in the model are the liability of legal entities to which a broker is attached, the scope of authority and the need for reports to be maintained by brokers and sent to the national authority and a framework for inspections to be carried out by the national authority.