
Implementing the UN Programme of Action: The Dutch-Norwegian Initiative

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The problem

The problem with regulating arms brokering in Southern Africa and in most other parts of the world is that there is no legal basis for such regulation in most countries.

Only about 25 countries in the whole world have any kind of legal regulation of brokering of small arms. That leaves about 165 countries where arms brokers can operate without legal restriction. This means that it is often irrelevant to talk of "illicit arms brokering". In most of the world arms brokering is not illicit because it is not regulated by law. At the same time, and as made clear by a great number of UN Reports, brokers are instrumental in diverting small arms to illicit end-users such as embargoed countries and countries in conflict.

If one is of the opinion that illicit arms brokering is a considerable problem for international, regional and national security in many parts of the world, and that these activities should be under national and international control, the first steps towards achieving this seem quite clear:

National laws and international agreements to control arms brokering must be established. Since brokering is by nature a transnational activity, co-operation between nations regionally as well as globally to implement national regulations and international agreements, is an absolute necessity. The control of brokering activities is beyond the capacities of any single state.

So the agenda is quite clear:

- formulation and adoption of national laws and regulations on arms brokering in about 165 countries
- establish mechanisms of harmonisation and co-operation in regional and global agreements to enforce national laws and regulations.

This is simply the aim of the Dutch-Norwegian initiative on brokering of small arms and light weapons.

Having new laws adopted is a daunting task in most countries. It takes time and requires political skill and stamina by the proponents. It is somewhat easier if the proposed regulations are perceived as necessary by many. To facilitate the adoption of legal regulations on arms brokering we must first make governments and civil society understand the need for them. This should be done through forming comprehensive partnerships that involve

representatives of both governments and civil society organizations at all levels.

On the government level we can in our view develop this co-operation best through a regional approach. However, this process will not succeed if civil society is not actively supporting it. The NGOs, national, regional and global must play a decisive role in this process.

We have been supporting this through our co-operation with and financial support to global NGOs, such as IANSA, Small Arms Survey, SaferAfrica, Safer World, ISS and others, and co-operation on projects with these NGOs.

In Norway we have an active group of NGOs making up NISAT, The Norwegian Initiative on Small Arms Trade, which is a very important partner to the Norwegian government. Regionally we have close ties and co-operation with many NGOs, such as the ISS and SaferAfrica in Southern Africa.

But we need more, and we need more grassroots movements. This is in my view a major challenge to the whole small arms community. I don't have any ready-made solution for how it should be done, except that I am sure that as everything else it will require more work and more money.

The Approach

When we decided to establish the Dutch-Norwegian Initiative it was quite obvious that it would not be feasible to work individually with 165 countries to promote adoption of national regulations on arms brokering. On that basis it seemed sensible to start at the regional level. This choice was also made with an eye to the fact that regional approaches would be critical for the development of harmonized controls and systems of co-operation.

A regional approach to fostering an international consensus to improve the legal basis for controlling arms brokering also makes sense for other reasons. One is that in many regions there are already basic agreements on co-operation on small arms issues. The DNI, therefore, set to build on these already existing frameworks, by supporting their enlargement to include arms brokering controls.

Let me mention some of the important regional documents:

- In 1997, the Organization of American States concluded **the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials**, which sets basic standards for the control of the import, export and transit of arms and promotes further co-operation among States, including between law enforcement

agencies. The OAS has also adopted Model Regulations for the Control of the International Movement of Firearms.

- In 1998 the **EU** focusing on transparency and voluntary restraint in transfers of small arms adopted a **Code of Conduct on Arms Exports**, which sets out eight criteria that Member States must take into account when taking decisions on requests for arms export licenses. EU countries are required to exchange information on the applications for arms export licenses that are denied, and to consult where one member state is considering awarding a license that has already been refused by another.
- In June 2003, the EU Council adopted a **Common Position** on the control of arms brokering. Included are criteria and definitions for Member States to incorporate in their national brokering legislation. According to the common position a license or written authorisation should be obtained for brokering activities from the authorities of the States where activities take place, and, where required by national legislation, where the broker is resident or established.
- On 24 November 2000, the **Organization for Security and Co-operation** in Europe (OSCE) adopted the **Document on small arms and light weapons**. OSCE participating States agreed to co-operate to address the problems associated with small arms in a comprehensive way by developing norms, principles and measures covering all aspects of the issue.

In order to address the difficulty in implementing the OSCE Document, in December 2003, the OSCE Forum for Security Co-operation developed a **Handbook of Best Practice Guides on small arms and light weapons control issues**. The Handbook is a comprehensive manual providing a set of best practice guides relating to all stages of a gun's life starting with the manufacture and ending with destruction and Disarmament, Demobilisation & Reintegration.

- In December 2000, the Ministers of the OAU issued the **Bamako Declaration on an African Common Position on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons**. The declaration recommends that States take appropriate measures to control arms transfers by manufacturers, suppliers, traders, brokers as well as shipping and transit agents in a transparent fashion. It also encourages the codification and harmonisation of legislation governing the manufacture, trading, brokering, possession and use of small arms and ammunition and urges states to enact appropriate legislation and regulations to control arms transfers by manufacturers, suppliers, traders, brokers, shipping and transit agents.

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- The 2001 Southern Africa Development Community (**SADC Protocol on the Control of Firearms, Ammunition and Other Related Materials**) commits member states to standards relating to, inter alia: the co-ordination of procedures for the import, export and transit of firearms shipments; the regulation of firearms brokering; and a review of national firearms legislation. It further commits member states to incorporating into their national laws as a matter of priority, "provisions that regulate firearm brokering in the territories of State Parties."
 - Adopting the "**Elements for Effective Legislation on Brokering**" in December 2003, members of the Wassenaar Arrangement agreed to strictly control the activities of those who engage in the brokering of conventional arms by introducing and implementing adequate laws and regulations.

The strength of each of these initiatives is very different. For example only the EU common position is legally binding.

Some people might say that an argument against a new regional approach is that the regional agreements and protocols already in place have had limited impact. I disagree with this argument. In my view these initiatives have had a very important impact. They must also be seen against the background that the focus on illegal, or may be we should say "undesirable" international trade in small arms, is relatively new. These issues have only gained some prominence in the international political discussion over the last decade.

Against that background it is in fact a great achievement that we have so many regional agreements. What the DNI aims to add to these existing agreements is twofold:

- to give specificity, by spurring regional discussions on what means best fit the concerned region;
- and it aims at fostering concrete co-operation.

As mentioned the processes to adopt new laws is complicated in most countries. It also very much depends on cultural, political and legal traditions that are not easily accessible for "outsiders". This implies that we should not attempt to teach anyone how these processes should be conducted in individual countries, neither with respect to the process nor to the outcome, Legal regulation of arms brokering can have many forms. This is the approach of the DNI.

Our ambition is to foster an international agreement that all nations and all regions should have the necessary national laws and international co-operation to control the brokering of small arms. We do not want to prescribe how this should be done.

The regional organizations are best places to take into consideration the relevant cultural, political and legal traditions that need to be

part of the political process to develop legal frameworks on arms brokering in member states. The same goes for the development of co-operation between the member states to implement these regulations.

We therefore believe that developing the necessary capacities and working on the political level with the regional organizations, will be an important measure to control the illicit small arms trade.

The Dutch-Norwegian Initiative (DNI)

The activities of the Dutch-Norwegian initiative so far have been limited by the capacities of the relevant bureaucracies in the two countries and very much helped by the capacities of The Small Arms Survey in Geneva.

The first outcome of the Initiative was the convening of a conference in Oslo in April 2003 on: "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 Governments from across the world and also from the UN, regional organizations, research institutes and NGOs, met at the invitation of the Governments of the Netherlands and Norway. The purpose was to discuss possible approaches towards ensuring effective controls on small arms and light weapons (SALW) brokering activities.

To this end, the Conference focussed particularly on examining possible elements of model regulations on SALW brokering activities. We tried to develop shared understandings of such elements, in order to facilitate the adoption of effective national controls by all States. The development of such shared understandings was also intended to promote appropriate harmonisation and co-ordination of national efforts to regulate SALW brokering activities.

That illicit brokering activities and the trafficking associated with it has global dimensions was emphasised by many during the Conference.

Participants also recognised that brokers may have a legitimate role in the legal arms trade. However, they noted that illicit brokering often plays an important part in the diversion of SALW into illicit trade and in efforts to circumvent States' arms transfer controls and UN Security Council arms embargoes. Enabling States to prevent and combat such undesirable brokering activities was identified as the primary motivation for ensuring adequate controls on SALW brokering.

The Chair's report from the Oslo conference was presented to the First Biennial Meeting on Implementation of the UN Programme of Action (BMS) in New York in July 2003.

According to participants and observers the conference was a success, very much due to the preparation of background and discussion papers by the speakers and The Small Arms Survey.

Initial step

In the fringes of the BMS, Norway and the Netherlands had informal contacts with several regional organizations regarding possible projects of co-operation on the DNI as a follow-up to the Oslo conference conclusions.

ECOWAS

The most immediate and forceful response was received from ECOWAS. In a meeting in August last year the Foreign Minister of Ghana as chair of ECOWAS, and Secretary Chambas requested the co-operation of Norway and the Netherlands to strengthen the organization's co-operation and capacity regarding arms brokering and related issues.

In our view one problem with many earlier regional undertakings in this field has been that the "ownership" by the regional governments and organizations to the projects has not been strong enough. It has therefore been an explicit aim of the DNI to secure full ownership of the projects by the regional organizations, in this case the ECOWAS and its members.

Based on an initial meeting held in October last year between the ECOWAS secretariat, representatives of the governments of Norway and the Netherlands and assisted by Small Arms Survey, the ECOWAS secretariat has been fully in charge of the project. We are very happy that as of January this year the Government of the United Kingdom has come in as a full partner in the ECOWAS project.

The first part of the ECOWAS project will be the "ECOWAS Conference On Combating Illicit Small Arms Brokering and Trafficking" in Abuja on March 22-24 this year. Copies of the draft programme for the conference are available here.

Our hope is that this conference will be the basis for a plan of action for the ECOWAS countries to strengthen their co-operation on controlling small arms transfers, including brokering, and production. This plan should include the implementation of the ECOWAS Moratorium. However, this will of course be up to the ECOWAS governments to decide.

We are encouraged by the political commitments of the ECOWAS to coming to grips with the small arms problem in the region. This commitment is signalled by the political decision taken by the

Council of Ministers to establish a Small Arms Unit in the ECOWAS secretariat. This is done to ensure sufficient capacity to co-ordinate national and regional measures and activities.

These efforts should also be seen in the context of other activities in the West African region concerning peace keeping and peace building, where many governments are undertaking major projects with regional governments and other institutions. The Norwegian government is considering establishing Training for Peace project aimed primarily at civilian institutions in the region. This would be a continuation of a project we have been supporting in the Southern African region for the last decade, in co-operation with among others today's hosts, the ISS.

SADC

Both bilaterally and through multilateral fora Norway and the Netherlands have a long and extensive tradition of co-operation with SADC as a whole and its member states on small arms and security issues. We are looking forward to continuing this under the DNI.

There has been an exchange of letters between Norway, the Netherlands and the SADC secretariat on the possibilities of starting co-operation on the control of illicit arms brokering and related issues. I had a meeting with the SADC secretariat in Gaborone in December last year on this. I have to say that the ball is in our court presently regarding the future of this project. We have been requested to come back to the SADC secretariat with a more specific proposal for a DNI project, and we will do that as soon as possible.

As with ECOWAS we want to make sure that the SADC governments take full ownership of such a project so that it does not become a Dutch-Norwegian undertaking. We understand that this will require some time for the political process in the SADC Organ for Security Co-operation to be completed.

After the Abuja conference, which can hopefully also impart some valuable experience to be used in later projects, we will go back to the SADC secretariat to continue our dialogue on potential co-operation with this region. With the wide experience of the SADC countries in many aspects of small arms issues we think that SADC has a particular role to play in the global efforts to control illicit arms brokering.

EU

The strongest and most advanced legal basis for co-operation on small arms issues is today found in the EU. The Netherlands is a member of the EU, Norway is not. But we have strong political co-operation with the EU through the EEA (European Economic Area). Norway has associated itself with the EU Code of Conduct on small arms as well as the EU Common position on arms brokering.

OSCE

The other regional organization that is most relevant to Norway and the Netherlands concerning small arms is the OSCE, for which the main reference instrument is the Document on small arms and light weapons of November 2000. This document is not in our view satisfactory with respect to the level of commitment regarding legislation and co-operation on arms brokering.

Under the DNI, which has been joined by Germany in the OSCE initiative, we submitted a so-called "Food for thought" paper to the OSCE Forum on Security Co-operation (FSC) proposing a separate OSCE Document on arms brokering.

The paper was discussed in the FSC in February this year and I dare say that it was relatively well received by most members. One has to take into consideration that a higher commitment to dealing with the problems of illicit brokering of small arms will imply solving difficult political, legal and bureaucratic problems for many members. It is therefore not to be expected that such proposals will draw spontaneous applause. However, the present chair of the OSCE, Bulgaria, has signalled its intention to discuss our proposal at the OSCE Ministerial this autumn. In the meantime, it is our intention to submit a proposal for an OSCE Instrument to combat illicit brokering.

We will submit to the FSC a follow up paper on OSCE principles for brokering legislation in two days from now.

The UN process

Last year's small arms resolution in the UN General Assembly contained a paragraph (No 11) requesting the Secretary-General to hold broad-based consultations with all Member States, interested regional and sub regional organizations, international agencies, and experts in the field, on further steps to enhance international co-operation in preventing, combating and eradicating illicit brokering in small arms and light weapons. It also requested the SG to report to the General Assembly at its fifty-ninth session (in 2004) on the outcome of these consultations.

We enthusiastically supported the whole resolution but particularly this paragraph, and we are grateful to the good offices of South Africa for its existence and adoption.

The UN DDA intends to hold meetings in Geneva in April and in New York in June this year to discuss arms brokering with UN member states, and we are looking forward to being able to have such discussions on a global level. We hope that the UN DDA will endeavour also to have consultations with separate regional organizations. We will support and aid such consultations in every way we can, because we see this as a very valuable opportunity to put arms brokering on the agenda of all major regional organizations.

The future

Illicit arms brokering is a very difficult issue. It is not even easy to define in a legal or political context precisely what is covered by the concept. However, to use an old saying: It is not easy to define an elephant but you can recognise him when you see him.

Despite the problems of precisely defining illicit arms brokering we do recognise it when we see it, and we can easily recognise that it is often the illicit broker that is the crucial link in the transfers of weapons that creates the most damage. Therefore we also have to recognise that we have to deal with this problem, nationally, regionally and on the global level. The problems regarding definitions and so on can be overcome. This is proven by countries and organizations that have already developed well functioning legislation and co-operation on these issues.

Let me end by emphasising something that may be obvious to most of us who are working with small arms issues on a daily basis, but is not so obvious to many people. Small arms problems are not primarily problems by themselves but problems linked to underlying and broader issues related to peace, security and social and economic development. Small arms problems in general are also closely tied to international terrorism and organized crime such as trafficking of human beings and drugs. This is particularly true for illicit brokering.

When we talk of *peace keeping* and *peace building* we must not forget that the main tools for destroying peace, security and progress and perpetrating violence, are small arms and light weapons supplied by the unscrupulous middlemen that we call brokers.