

Summary

States should fully implement the recommendations of the report of the 2007 Group of Governmental Experts (GGE) on the prevention of illicit brokering of small arms.

What is the problem?

Preventing and eradicating the risk of illicit and unregulated small arms transfers will help reduce injuries and deaths. This is an essential element of the UN Programme of Action (PoA). Time after time, investigations into illicit arms transactions, including those involving violations of UN arms embargoes, have revealed the role played by arms brokers and other intermediaries. With increasingly differentiated global markets for small arms, brokers can now circumvent and subvert national laws by arranging the transfer of small arms to criminals, embargoed destinations, non-state armed groups in conflict areas, and governments which use force for persistent violations of human rights and international humanitarian law.

A key purpose of the PoA is to establish legal control over arms transfers, and thus eradicate the illicit trade. Subverting lawful authority is not a simple task: stocks of small arms need to be found at the right price to enable a profit or commission fee, documents may need to be forged, officials bribed, payments laundered and transporters sub-contracted via circuitous routes. The most difficult task is finding and connecting the seller and purchaser, since they do not advertise their business publicly. Thus, connecting the links in the illicit arms transfer chain requires expertise, contacts and resources. These are often provided by a broker.

Despite its key role in the illicit trade, arms brokering – the activity of arranging arms deals – is unregulated in most countries. National legislation usually deals only with the physical sale, possession, use, export and import of weapons. In some cases brokers have been apprehended by police while violating UN arms embargoes, but have been released no national law was broken.

EXAMPLE: The Leonid Minin case – Illegal brokering to Liberia & Sierra Leone in 1999, involving Burkina Faso, Hungary, Israel, UK, Ukraine

Israeli/Ukrainian broker Leonid Minin exploited the poor international controls on the arms trade to supply weapons to Liberia. Minin was arrested in a hotel in Italy in August 2000, and found to be in possession of diamonds, large amounts of cash and 1,500 documents in several languages related to transactions of oil, timber and arms. These transactions were mostly with Liberia – a country under UN arms embargo since 1992.

In 1999 Minin had bought 68 tons of surplus military equipment, including 3000 AKM assault rifles and a million rounds of ammunition, from a Ukraine arms marketing firm called Ukrspetsexport. This transaction was brokered by Engineering & Technical Company Ltd, a shell company located in Gibraltar but registered in the British Virgin Islands, and reportedly owned by Minin. He provided an end-use certificate to Ukraine attesting that the weapons' ultimate destination would be Burkina Faso; however, that end-use certificate was forged.

The arms flew from Ukraine to Burkina Faso on an aircraft operated by a UK company, Air Foyle. Once it arrived, the cargo was transported directly to Monrovia, Liberia in several flights made by Minin's personal business jet. Payments for the arms from the Liberian government were made to a Hungarian bank account associated with the shell company Engineering & Technical Company.

Amnesty International reports that some of these weapons were later supplied to rebels in Liberia's neighbour, Sierra Leone, which was also under a UN arms embargo. Thus this deal by Leonid Minin led to at least one and possibly two violations of UN embargoes. Yet despite strong evidence against him, the Italian courts were unable to prosecute Minin for his trafficking activities because the arms had not passed through Italian territory.

Following the GGE on Illicit Arms Brokering in 2007, Israel included controls on arms brokering activities into its Defence Export Control Law. This now requires all Israeli citizens to obtain a licence for each arms transfer brokered, even if the weapons do not pass through Israeli territory.

Only about 40 States have legislation on arms brokers, and some of those laws are weak. That leaves gaping loopholes which allow illicit trafficking of small arms in many places across the globe. This was a serious problem when the PoA was agreed in 2001, and it remains one today.

Legal brokering: Arms brokering is not necessarily an illicit activity. Brokers often do play a lawful role facilitating arms transactions between governments and companies. Recognising this, some States have policies to register and license brokers, and/or authorise specific brokering activities. In some jurisdictions a brokering transaction is treated in a similar way to arms exports – the broker must apply for a license before arranging a transaction, and each application is evaluated in terms of established criteria such as respect for human rights and international law, and the risks of diversion or of aggravating or facilitating armed conflict. As with arms exports, simplified procedures can be developed for transactions involving allies. However, in some States, weak laws mean that “licit” brokering is not well regulated and this can impact on other States.

Obligations under international law

States have a due diligence responsibility to regulate arms brokering activities by their citizens, or on their territory, under existing international law, and to prevent transactions that contribute to serious violations of international humanitarian law and international human rights law. Details on States’ existing responsibilities can be found in the booklet “Compilation of Global Principles for Arms Transfers” published by the Arms Trade Treaty Steering Committee of NGOs. Two very relevant international agreements are:

- The UN Firearms Protocol, which entered into force in 2005, requires States to regulate brokering activities, including licensing arms deals and registering brokering agents.
- The Articles on States Responsibility commended by the General Assembly in 2001 require States not to assist each other in violating international law. So arms brokering activities authorised by one State that directly help another state to violating international law are contrary to the Articles on State Responsibility.

What does the PoA say?

In 2001 all States said they would implement implementing laws to regulate and control arms brokering of small arms. Specifically, the PoA commits States:

To develop adequate national legislation or administrative procedures regulating the activities of those who engage in small arms and light weapons brokering. This legislation or procedures should include measures such as registration of brokers, licensing or authorization of brokering transactions as well as the appropriate penalties for all illicit brokering activities performed within the State's jurisdiction and control. (II.14)

Other paragraphs specify commitments to developing common understandings (II.39) and international cooperation (IV.1.d) on brokering controls, and on including brokering in the remit of national commissions on small arms (II.4).

Progress so far

In the 1990s regulation of arms brokers was primarily a concern of civil society; but since 2001 considerable progress has been made, thanks especially to initiatives by Norway and the Netherlands. Some 40 States now have arms brokering legislation, up from about 12 in 2001. This figure is still far too low, and 2/3 of these countries are in Europe, but it is a growing number. Moreover, some of the groundwork for a continuing increase in the web of national laws has been laid through 10 regional and multilateral agreements that now recommend the adoption of brokering laws and detail how this should be done.ⁱ

In 2007 a Group of Governmental Experts (GGE) mandated by the UN General Assembly through the Secretary General produced an extensive report with many recommendations detailing how States can develop and implement brokering regulations and procedures. This report is a significant milestone for all States that have not yet passed brokering legislation and are not part of existing agreements on standards on brokering. For example, most of Asia and North Africa are not covered by any regional standards.

Recommendations

The BMS should endorse and recommend that States implement the recommendations of the GGE report on illicit arms brokering. That report’s first recommendation is that States should develop national legislation and procedures to regulate arms brokering activities. Without effective controls, States become a safe haven

for brokers arranging illicit arms deals using other intermediaries. Other important recommendations from the GGE report include:

1. Inclusive definitions. Brokering activities are carefully defined, as well as additional activities that are closely associated with brokering (paragraphs 9 and 10).

2. Cooperation with existing organisations, including Interpol, the Customs Cooperation Council of the World Customs Organisation, the International Civil Aviation Organisation, the International Maritime Organisation, and the International Air Transport Association (paragraphs 30-34). These international organisations could provide assistance and capacity to reduce illicit brokering.

3. Guidelines for national regulations. Section III of the report recommends where appropriate a list of elements drawn from existing national systems, including registration and licensing of the brokers and their activities, to bring them in line with the transfer licensing procedures.

4. Information sharing. States should voluntarily share information related to brokering transactions including transfer licence acceptance / refusals and authenticity of documents (paragraphs 55-56).

5. International assistance for capacity building of the relevant national authorities, where appropriate, including licensing authorities, law enforcement agencies and border control units (recommendation xv).

ⁱ They are the: Andean Plan to Prevent, Combat and Eradicate Illicit Trade in Small Arms and Light Weapons in all its Aspects; Central American Integration Community Code of Conduct on Transfers of Arms, Munitions, Explosives and Related Materials, Economic Community of West African States Convention On Small Arms And Light Weapons, Their Ammunition and Other Related Materials; European Union Common Position on the control of arms brokering; Nairobi Protocol For The Prevention, Control and Reduction of Small Arms And Light Weapons In The Great Lakes Region and The Horn Of Africa; Organisation of American States Model Regulations For The Control of Brokers of Firearms, Their Parts and Components and Ammunition; Organization for Security and Co-operation in Europe Principles on The Control of Brokering in Small Arms and Light Weapons; Southern African Development Community Protocol on The Control of Firearms, Ammunition and Other Related Materials; The Firearms Protocol of the United Nations Convention Against Transnational Organized Crime; and the Wassenaar Arrangement Elements for Effective Legislation on Arms Brokering.