

**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**

Chairs' Report

Experts from 27 Governments from across the world and also from the UN, regional organisations, research institutes and NGOs, met in Oslo on 22 – 24 April 2003 at the invitation of the Governments of the Netherlands and Norway to discuss possible approaches towards ensuring effective controls on small arms and light weapons (SALW) brokering activities.

The aim of the Oslo Conference was to enhance international co-operation in preventing, combating and eradicating illicit brokering in SALW and to promote implementation of a key element of the UN Programme of Action (PoA) on SALW: to help countries to 'develop adequate national legislation or administrative procedures regulating the activities of those who engage in small arms and light weapons brokering' (PoA, II.14). To this end, the Conference focussed particularly on examining possible elements of model regulation of SALW brokering activities. The Conference aimed 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. The fact that illicit brokering activities, and the trafficking associated with it, have global dimensions, and that unscrupulous brokers exploit loopholes and inconsistencies in States' regulations makes this necessary.

Participants 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 the illicit trade and in efforts to circumvent States' arms transfer controls and UN Security Council arms embargoes. The primary motivation for ensuring adequate controls on SALW brokering is to enable States to prevent and combat such undesirable brokering activities.

Developing elements of model regulation on SALW brokering

Discussions at the conference focussed on possible 'elements of model regulation' on SALW brokering activities, building on exchanges of information on national and

regional experiences, on the Report of the UN Group of Experts on brokering,¹ and on emerging best practices. The aim was to develop shared understandings on key elements of effective brokering controls, while retaining flexibility to accommodate variations in national situations, legal contexts and traditions.

The term ‘model regulation’ was adopted, in acknowledgement of the role of administrative procedures and secondary regulation as well as primary legislation in many national systems to control arms brokering activities. Participants noted that the priority, at this stage, is to develop common international understandings on such elements of model regulation, and to promote adoption of effective and consistent national controls on brokering by the largest possible number of States across the world. As progress is achieved towards this goal, the international community may then consider how to consolidate and strengthen international co-operation on this issue, including possible adoption of an international instrument.

The scope of regulatory controls on brokering of SALW

There was wide agreement amongst participants on many key issues relating to the scope of controls on SALW brokering activities.

First, it was emphasised that national regulations to control arms brokering activities should be an important element within broader systems of national controls on transfers of arms and other controlled goods. It should also be an important part of laws criminalizing trafficking, money laundering, corruption and other undesirable activities associated with unscrupulous arms brokering.

Second, most participants noted that States, in implementing the UN PoA provisions in this area, need to regulate at least the ‘core’ arms brokering activities of ‘arranging, mediating, facilitating, organising or negotiating arms deals between a supplier and recipient for material gain without necessarily taking ownership of the arms (or other controlled goods)’.

Third, a number of participants were of the opinion that it is desirable to include in brokering regulations requirements for disclosure of information on activities that are directly associated with the brokered arms deal. Controls and information disclosure requirements for other activities associated with arms brokering, including finance, insurance, transportation and technical assistance, should at least fall within the scope of States’ overall system of laws and regulations relating to arms transfers or to illicit trafficking and transnational crime.

Although this conference focussed on brokering of SALW, participants noted that in practice national controls will most often cover brokering activities concerning all categories of arms and other controlled goods. Many participants believed that national arms brokering controls should apply to the same categories of arms and controlled goods that are covered in national export and import controls.

¹ UN Document A/CONF.192/2, 2001.

Licensing of SALW brokering activities

It was noted that effective national controls must build on effective licensing systems to regulate and authorise brokering arrangements. It was widely acknowledged that it would be advisable that these licensing systems would be similar to those established for authorising transfers of arms and other controlled goods, with similar assessments of licence applications, authentication, documentation requirements, and adequate end-use and end-user control systems. This would imply that best practices relating to the arms transfer control systems would similarly apply, where relevant, to brokering controls. This approach would have the benefit of helping to minimise the additional costs associated with implementing brokering controls, since use can be made of existing arms transfer licensing systems and staff.

It was further noted that the same national criteria used to assess applications for licences for arms exports from a State's territory should be applied for assessing applications for authorisations to broker SALW deals.

There was wide agreement that national authorities should normally consider applications for authorisation of SALW brokering activities on a case-by-case basis, and individual licences for brokering activities would be issued for each individual transaction. Many participants underlined that States should exercise special care in issuing any open or general licences for SALW brokering activities. Such open or general licences should only be considered where national authorities assess that:

- the risks associated with the arms deal to be brokered are very low;
- the broker is of the highest standing;
- and the proposed deal would only involve transfers between countries that exercise effective controls on arms transfers and have strong national arms transfer control systems.

Registration, end-use and documentation

There was wide agreement that States should develop and maintain a systematic, up-to-date and reliable database of brokers operating within their jurisdiction. In practice, this could be ensured by adopting one of the following three options:

- Require pre-registration of all brokers, with eligibility requirements for authorised 'brokers';
- Require pre-registration of all brokers, without substantial eligibility requirements;
- Develop a database or register of active brokers through information provided on their first application for a brokering licence.

Many participants believed that systems requiring pre-registration of brokers offered important potential benefits.

Whichever option States choose to adopt, it was noted that, in order to exercise effective controls, States need to ensure that reporting requirements are in place and that reliable and comprehensive documentation is collected. It is advisable that such documentation requirements should as far as possible relate to all aspects of the national brokering control system, including registration, licence applications, end-use and end-user information, and shipment and post-delivery verification. It is also advisable that brokers be legally required to maintain full documentary records of their activities for as long as possible. In some countries a period of at least 20 years is seen as appropriate.

Extraterritorial Jurisdiction

It was noted that national regulations on SALW brokering should at least apply to any brokering activities conducted within their territorial jurisdiction, whether by citizens or by other persons or companies. However, unscrupulous brokers often evade existing national controls by crossing borders to countries with less stringent, or no, brokering controls. Therefore, some degree of extra-territorial jurisdiction over brokering activities may be desirable, subject to national constraints. This reflects existing practice, given that most of the States that presently have specific brokering regulations include provisions for at least some exercise of extraterritorial jurisdiction.

There was detailed discussion of the potential benefits and difficulties associated with exercise of extra-territorial jurisdiction over SALW brokering activities. It was recognised that States would continue to adopt different approaches to this issue for the foreseeable future. However, States could consider exercising at least limited extra-territorial jurisdiction, in one or both of the following ways:

- Exercise extraterritorial jurisdiction over all brokering activities by persons that are normally resident in the State's own territory, and by companies that are permanently based and managed from premises on this territory;
- Exercise extraterritorial jurisdiction over specific types of brokering activities, such as those associated with violations of UN Security Council and other arms embargoes.

States could also consider requiring that all brokers registered or based in their territory provide regular information on their brokering activities, conducted abroad as well as within the State's own territory.

Criminalisation, Sanctions and Promoting Enforceability

It was noted that national brokering regulations should be designed to promote enforceability, and have clear obligations and procedures relating to arms brokering activities and penalties for non-compliance. Significant violations of arms brokering laws and regulations should be criminalized, with administrative penalties also available for minor infractions. Ignorance of the law should not be an acceptable defence.

Penalties for those convicted on substantial non-compliance should include imprisonment as well as financial and other penalties, consistent with national penalties available for trafficking in arms. It was also noted that more States need to take action to criminalize violations of UN Security Council arms embargo violations in their national laws.

The challenges of promoting enforceability of brokering regulations were discussed. It was emphasised that States should make every effort to ensure that national regulations on arms brokering activities are systematically and consistently enforced. This would imply taking measures to ensure adequate capacity of relevant law enforcement agencies and mechanisms. These should include measures to ensure:

- effective co-operation and co-ordination amongst relevant national ministries and enforcement agencies;
- adequate monitoring, documentation requirements, record-keeping and reporting systems; and adequate provisions to enable effective investigation of possible non-compliance.



The value of the media in drawing attention to undesirable brokering activities was noted.

International Co-operation

There was wide agreement that it is important to promote and strengthen international co-operation to control SALW brokering activities. In particular, enhanced international co-operation is needed to:

- facilitate the development and adoption of effective and adequately harmonised brokering controls by all States;
- strengthen compliance and enforcement of brokering controls;
- facilitate successful prosecutions of those guilty of illicit brokering.

The establishment of national points of contact on brokering controls was identified as an important means to enable effective international co-operation in all of the above areas. Many participants encouraged States to consider establishing and further developing international and regional information exchange mechanisms, including on contact points, national regulations, experiences with development and enforcement of regulations, and sources of assistance in this area. These participants also encouraged co-operation between national enforcement agencies and intelligence services in a range of areas, including authentication of end-user certificates, and verification of delivery. Some participants suggested that States should establish or develop systems for international confidential exchange of sensitive information between licensing authorities and enforcement agencies, including black lists of brokers.

It was noted that States could make more use of already existing mechanisms of international cooperation, such as those established with the World Customs Organization and Interpol, for example in conducting investigations. Efforts to facilitate co-operation in prosecutions, including extradition arrangements, were also encouraged.

Follow-on process

It was the view of the Governments of the Netherlands and Norway that further steps are required to enhance international co-operation in preventing, combating and eradicating illicit brokering in SALW. These need to include continued international discussion on elements of model brokering regulation to promote the development of shared understandings on approaches to achieve effective national controls on SALW brokering activities and ways of facilitating international co-operation and co-ordination in the development and enforcement of such controls. Such discussions should be pursued in all relevant frameworks, particularly in relation to the implementation of the UN Programme of Action and the UN Firearms Protocol, as well as regional organisations and initiatives, with a view to achieving international consensus on elements of model regulation and associated best practices at the latest by 2006.

The Chairs of this Conference will present this Chair's report to the First Biennial Meeting on Implementation of the UN Programme of Action, due to take place in July 2003. Some participants indicated their intentions to submit this Chair's report to their respective regional organisations. This would be a contribution to regional efforts to ensure effective controls on SALW brokering activities and also to efforts to promote international consistency and co-ordination of national approaches to such controls.

Many participants emphasised the importance of exchanging information relating to SALW brokering activities, including on progress in developing and implementing relevant national controls to ensure effective overall controls on SALW transfers. Participants were encouraged to exchange information on relevant experiences and linkages with laws, regulations and administrative procedures to combat and prevent other aspects of illicit trafficking. Such information should also be provided to the UN DDA and other relevant bodies to ensure wide access by all interested parties.