

**IANSA Presentation to the United Nations Group of Governmental Experts to Consider Further Steps to Enhance International Cooperation in Preventing, Combating and Eradicating Illicit Brokering in Small Arms and Light Weapons.**

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**by**

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Just six weeks ago Mr B R Chaandrran was convicted for violating Singapore's arms brokering legislation. He, and an accomplice, had been engaged in brokering the transfer of 20 000 AKMS Kalashnikov assault rifles between two other countries located in Europe and in the Middle East. However, he was arrested because he was not, as is required by the Singapore legislation, registered to act as an arms broker.

This case demonstrates three important things that the Governmental Representatives present here should bear in mind. First, that legislation can be successfully used to control brokering and bring about the prosecution of wrongdoers. Second, that brokering is a global activity. Brokers are able to use modern communications in order to arrange deals spanning several continents. And last, brokers are responsible for arranging the transfer of significant quantities of small arms and light weapons – Mr B R Chaandrran attempted to broker enough to equip a small army.

Brokers play a significant and legitimate role in many industries, and their role is frequently regulated. In all business, regulation is a simple fact of life. Certainly, it can involve costs and inconvenience. Across the world, someone wishing to broker such diverse products as financial services, property, energy or even farm produce needs to comply with specific legislation covering brokering. In a growing number of countries the same applies to arms brokerage.

Regulation is not imposed simply in order to make people's lives difficult. We need regulation because it offers protection. For governments, legislation distinguishes brokers playing a legitimate role in the defence industry from brokers engaged in illicit activities. It helps to prevent the possibility that the citizens of their companies could be involved in the transfer of weapons to embargoed destinations, or to areas contrary to national policy or international law – such as to terrorists and their supporters; or to parities engaged in committing serious violations of human rights or International Humanitarian Law.

The world has made considerable progress on brokering since 2001. In addition to the commitment made in the Programme of Action to “develop adequate national legislation or administrative procedures regulating the activities of those who engage

in small arms and light weapons brokering”, numerous regional and multilateral agreements also include provisions on brokering in small arms and light weapons. The agreements include the:

- UN Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime.
- Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa.
- ECOWAS Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials.
- SADC Protocol on the Control of Firearms, Ammunition and other Related Materials.
- Bamako Declaration on an African Common Position on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons.
- EU Common Position on the Control of Arms Brokering.
- OAS Model Regulations for the Control of Brokers of Firearms, their Parts, Components and Ammunition.
- Andean Plan to Prevent, Combat and Eradicate Illicit Trade in Small Arms and Light Weapons in All Its Aspects
- Wassenaar Arrangement Elements for Effective Legislation on Arms Brokering.
- OSCE Principles on the Control of Brokering in Small Arms and Light Weapons.

We can also add to that list the APEC Guidelines on Controls and Security of Man-Portable Air Defence Systems (MANPADS) which state that governments in the Asia Pacific region will not use arms brokers in deals concerning MANPADS unless the brokers have received government authorisation. In addition, it is also important to recall that UN Security Council Resolution 1540 requires that states develop adequate laws and procedures to detect and prevent illicit brokering in nuclear, chemical or biological weapons. If all governments are already developing the means to control brokering in one type of military equipment then developing controls over brokering in small arms and light weapons is unlikely to represent a significant extra burden.

This array of additional agreements, some of which are legally binding, demonstrate an additional commitment by a clear majority of UN member states to introduce national brokering legislation. More importantly, analysis of these agreements also shows that there is a considerable degree of convergence regarding what arms brokering is, and how it should be controlled.

This convergence, found in these agreements and in some national legislation, is that:

- The core activity of arms brokering concerns arranging and facilitating arms transactions. This activity could involve two or more countries other than that in which the broker is located. The broker may not take possession of the arms in question.
- A broker receives some benefit for carrying out their activity, either as a payment or through some other consideration.

- Brokers should be registered by governments.
- Specific brokering activities should require individual licenses before they are carried out.
- Governments should exchange information on brokers, and on their laws and regulations.
- Legal sanctions should be introduced to punish those parties that do not abide by brokering regulations.

These arrangements are very similar in nature to the normal licensing of exports of small arms and light weapons. Many countries have found that brokering regulations can be integrated into their pre-existing export control systems. The bureaucratic burden for government and business can be minimised.

However, it is important to note that not all countries are covered by these regional or multilateral agreements. In particular, regional agreements on brokering do not cover South Asia and the Middle East. Arms brokering is in its very nature a globalised activity. If just a small number of countries do not implement brokering legislation then they will provide a haven in which unscrupulous brokers can operate. In order to implement their commitments in the Programme of Action governments need a framework in which to develop their laws and regulations.

In addition, the process of implementing regional agreements has, in some areas, been slow. At present only about 40 countries have implemented brokering legislation. A global instrument is the best way to ensure that all governments have the appropriate means to develop national laws and regulations.

There are just two important areas in which regional and multilateral agreements, and national legislation, have taken differing approaches. First, some governments have chosen to extend their jurisdiction to all activities by their citizens, whether or not they take place on national territory. Such extra-territorial jurisdiction allows a government to regulate the activities of a broker even if they have travelled to another country to conduct their business.

I believe that it is essential that governments extend the scope of their brokering controls beyond their borders. As long as some areas are not covered by national legislation it will be too easy for brokers to hop on an aeroplane and move to an area which is not covered by any brokering regulation at all. Any lack of extra-territorial jurisdiction in national legislation is an unacceptably large loophole that unscrupulous brokers will exploit.

Second, some regional agreements and national legislation also cover activities such as arranging financing and transportation that are also essential components of arms transactions. Unfortunately, illicit brokers do not respect the convenient divisions between arranging financing, transportation or arms transfers. Arms brokers are often involved in all aspects of an arms deal. Excluding arranging transportation or financing from the scope of a definition of brokering leaves another large loophole in the regulations.

The task of this Group of Governmental Experts should therefore be to consider the feasibility of a global instrument on brokering in small arms and light weapons. The

foundations of a global instrument have already been laid in the numerous regional and multilateral agreements. Consensus exists in many areas.

Most importantly, the process of developing a global instrument would be made significantly easier if you could consider the two issues where regional and multilateral agreements and national legislation differ – namely extra-territorial jurisdiction, and activities such as arranging financing and transportation.

I hope that by the end of your discussions you will have:

- Agreed upon the need for, and feasibility of, a global instrument on arms brokering.
- Defined those areas in which there is already a consensus.
- Decided upon the feasibility of including extra-territoriality, and services such as arranging transportation and financing, in national brokering legislation.

The building blocks are already in place. This is not an ambitious agenda.

I thank you for your attention.