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EDITOR'S NOTE

Developing appropriate brokering controls that permit legal trade to be conducted unimpeded while effectively filtering out illicit activities is a critical challenge facing the international community and national governments today. Much attention has been focused in recent years on combating the illicit brokering of small arms. The 2007 report of the UN Group of Governmental Experts tasked with considering further steps to enhance cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons has been instrumental in this reflection.

But Member States are also attempting to come to grips with the challenges posed by illicit brokering of materials, equipment and technology that could contribute to the proliferation of weapons of mass destruction and their means of delivery. This means hashing out the thorny issue of dual-use items, educating a much wider public and harmonizing national controls, and promoting cooperation and information sharing.

In UN General Assembly resolution 63/67, Member States are called upon, *inter alia*, to establish appropriate national laws and measures to prevent illicit brokering and encouraged to fully implement relevant international treaties, instruments and resolutions to prevent and combat illicit brokering activities. Building on this resolution, as well as efforts undertaken by other relevant bodies, such as the 1540 Committee of the UN Security Council, Member States have many avenues of action open to them, from national measures to regional initiatives and international cooperation. As the General Assembly will return to the issue of preventing and combating illicit brokering activities at its sixty-fifth session, this issue of *Disarmament Forum* examines recent initiatives to combat illicit brokering and asks how Member States could best address the phenomenon. This is the first output of a larger series of activities scheduled for 2010 on tackling illicit brokering, supported by the Government of the Republic of Korea.

The next issue of *Disarmament Forum* will focus on strengthening space security. For many, the Outer Space Treaty and subsequent agreements, indeed international law as a whole, are insufficient to address potential threats to space security. Building on UNIDIR's recent conference on the topic (see below), this issue of *Disarmament Forum* will explore the possible components of a strengthened space security regime and the possible ways forward for the international community.

On 15–16 June, UNIDIR held the conference “Space Security 2009: Moving Toward a Safer Space Environment”, the latest in its series of annual conferences on the issue of space security, the peaceful uses of outer space, and the prevention of an arms race in outer space. This year's conference focused on five topics: architectures for improving space security; ensuring space sustainability; confidence- and security-building measures; elements of treaty-based security; international law and space security; and emerging issues for space sustainability. Over 75 representatives of UN Member States, UN Observers, non-governmental organizations and civil society participated. The conference

report is available on UNIDIR's web site, and has been introduced in the Conference on Disarmament (CD) as an official document.

The project on promoting discussion on an Arms Trade Treaty (ATT) has held three of its six planned regional seminars, in Dakar, Mexico City and Amman. The participation in these meetings has been excellent, and discussions have been lively. The project has confirmed the importance of regional approaches to global processes, and participants from all the three regions targeted so far have warmly welcomed the joint EU–UNIDIR initiative to strengthen regional discussions and awareness-raising on an ATT. The project is now working on a side event to be held on the margins of the First Committee of the UN General Assembly, as well as the last three regional seminars.

As the CD explores eventual discussions on a fissile material treaty, on 7 August 2009 UNIDIR hosted a timely seminar for CD diplomats and the wider disarmament community focused on what can be learned from the last substantive negotiation within that forum—the CTBT. “From CTBT to FMCT: Unfinished Business with Lessons for the Conference on Disarmament” saw presentations by Dr Rebecca Johnson, author of *Unfinished Business: The Negotiation of the CTBT and the End of Nuclear Testing* (UNIDIR, 2009) on relevant lessons from the CTBT negotiations, and Mr Tim Caughley, Resident Senior Fellow at UNIDIR and former Deputy Secretary-General of the Conference, addressed ways ahead on the issue of fissile materials. The presentations were followed by animated discussions. You can listen to the presentations on our web site.

Kerstin Vignard

SPECIAL COMMENT

The unregulated transfer of weapons and related materials through illicit brokering constitutes an emerging feature of the proliferation challenge today. As governments have implemented tighter non-proliferation regimes at the domestic and international level, proliferators have become smarter in their ways of doing business. A number of research and investigative reports show that weapons-related proliferation through illicit brokering activities poses an ever-growing challenge not only to international peace and security, but to sustainable development and humanitarian efforts.

Although the problem of illicit brokering activities has been emphasized in various international disarmament and non-proliferation regimes, the discussions have so far mainly been confined to the context of small arms and light weapons (SALW). But even with regard to SALW, there have not been appropriate follow-up measures to implement the recommendations put forward in international discussions including relevant UN resolutions and the report of the UN Group of Governmental Experts on illicit brokering in small arms and light weapons.

However, the threats from illicit brokering are not restricted to the field of small arms and light weapons. In fact, we face a stark reality of weapons of mass destruction (WMD) or WMD-related proliferation through illicit brokering activities in breach of the international treaties that prohibit any transfer of WMD, namely the Non-Proliferation Treaty, the Chemical Weapons Convention, and the Biological and Toxin Weapons Convention. Considering that only one case of WMD-related proliferation may have a devastating effect on international non-proliferation efforts, as was clearly demonstrated by the revelation of the A.Q. Khan network, there is an urgent need to make renewed efforts to squarely address the issue. In recognition of such serious problems, Security Council resolution 1540 explicitly articulates the regulation of WMD-related brokering activities.

The Republic of Korea is playing a role in efforts to address the issue of illicit brokering controls, co-hosting with Australia, in March 2007, the first international seminar on brokering controls. The two states carried forward their contribution in tabling a resolution entitled "Preventing and Combating Illicit Brokering Activities" at the First Committee of the Sixty-third UN General Assembly: the resolution was adopted by consensus, with 61 countries participating as co-sponsors.

The resolution recognizes the need to prevent and combat illicit brokering activities not only in conventional arms but also in materials, equipment and technology that could contribute to the proliferation of WMD and their means of delivery. It also calls upon Member States to establish appropriate national laws or measures to prevent and combat illicit brokering activities, and to implement further relevant international treaties, instruments and resolutions.

With the resolution, the Republic of Korea intends to raise awareness among the international community, to stimulate in-depth discussion, and to pave the way for further international efforts on this issue. It is therefore indeed timely and meaningful that *Disarmament Forum* accords particular interest to this question and is looking into various threats and challenges regarding illicit brokering and the way forward. The Republic of Korea stands ready to work closely with the international community and UNIDIR, and further contribute to international cooperation.

Yu Myung-hwan

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International initiatives to prevent illicit brokering of arms and related materials

Brian WOOD

One consequence of the globalization of the arms trade is the increasing reliance on the services of brokers, who find markets, negotiate deals and make logistical arrangements to meet the requirements of buyers, sellers and other relevant actors, such as government officials, financiers and transport agents. Brokers facilitate the transfer of weapons and munitions and related materials in return for a commission fee or other non-pecuniary reward or benefit. Brokering by individuals or corporate entities is used for the lawful trade in arms for the purpose of legitimate self-defence and law enforcement. However, in the majority of countries, national laws covering arms brokering are non-existent or inadequate. Unregulated arms brokering is therefore easily employed to facilitate international criminal activities associated with arms trafficking and to circumvent the international arms control and non-proliferation framework.

Although brokering activities are only one facet of the international arms trade, and the number of brokers involved in that trade appear to be limited relative to the number of arms suppliers and buyers, research shows that international arms brokering networks can disproportionately threaten and undermine international peace, security and respect for fundamental human rights. This was tragically demonstrated in the case of the international arming of the perpetrators of the Rwandan genocide—which is when the term “arms broker” was first used in official United Nations reports.¹ Other cases showing the grave danger of international arms brokering were brought to the attention of the international community in the late 1990s by non-governmental organizations, journalists and UN investigators,² and since then some important progress has been made by states in developing arms brokering control systems.

The international community has entered a new phase in its approach to the problem. Governments acting within the United Nations have moved toward a common understanding of what is meant by illicit arms brokering, and it is now agreed by the majority of states not only that the brokering of international arms transfers in its various aspects should urgently be brought under strict national control, but also that the scope of illicit brokering can include all types of weapons—small arms and light weapons (as was originally discussed in relation to brokering in the late 1990s) and conventional arms as well as materials, equipment and technology that could contribute to the proliferation of weapons of mass destruction (WMD) and their means of delivery.³

The main challenge now is to locate the gaps that need to be plugged in the existing system of national laws and to identify what specific, concrete measures states can carry out to effectively tackle the problem of unregulated and poorly regulated arms brokering⁴—and to build the collective political will to enable states to act in concert to take such measures.

Brian Wood was the consultant to the United Nations Group of Governmental Experts on the prevention of illicit brokering of small arms and light weapons. He has researched and written widely on arms brokering and is the manager of research, policy and campaigning on arms control and the security trade at the International Secretariat of Amnesty International.

This article outlines the types of control measures that are now being recommended and established by states to meet these challenges, as well as some of the main difficulties in doing so. It describes how the momentum of states to act in concert to improve national legislation, regulations and administrative procedures can and should be further stepped up without delay.

Weakness of existing national controls

Between 2002 and 2008, 52 states reported to the United Nations that they had established legal control measures on brokering in small arms and light weapons (SALW), 33 states claimed they were in the process of doing so, and another 22 states said they had no specific national laws.⁵ There has been undoubted progress—in 1999, only 12 states had laws covering arms brokering.⁶ Research in 2005 found that over 30 states had law on arms brokering: in three years, the regional totals appear to have increased from 25 to 32 in Europe; from 1 to 4 in Africa; 2 to 8 in the Americas; 1 to 4 in the Asia-Pacific; and 1 to 4 in the Middle East–North Africa.⁷

Despite recent efforts, however, the stark reality is that over two-thirds of states have yet to establish a national legal framework to control any form of arms brokering, and many existing national controls are too weak. This poses a constant danger, especially to fragile states, which are more susceptible to the inflow of weapons and the outbreak of violent conflict.

Even where national laws and regulations do exist, in many countries the weak provisions of those laws and regulations still allow arms brokers and dealers to exploit loopholes and avoid controls on their activities and related financial and transport services. Designing an effective national control system to tackle irresponsible arms brokering requires a good understanding of the nature of the problem. For example, arms brokering can be a particularly opaque form of commercial activity because brokers do not necessarily take the arms into their possession, nor are their activities always rewarded in monetary assets. Moreover, brokers of transactions between buyers and sellers to transfer various types of arms and related materiel do not usually operate in one jurisdiction, but move from country to country to carry out their activities. Thus, the control of arms brokering cannot be designed in the same way as that of arms production, trade, exporting and importing.

Major loopholes occur where national regulations:⁸

- fail to ensure that eligible brokers are registered, screened and subject to rigorous record-keeping requirements and penalties;
- do not require that licensing of brokers' activities be considered on a case-by-case basis so as to prevent such activities when they pose a substantial risk of contributing to serious violations of the UN Charter or other existing international law, including international humanitarian law and international human rights law;⁹
- do not include the transfer of all types of arms and military equipment;
- do not control extraterritorial brokering by their nationals and legal residents (and registered companies);
- do not control brokers who operate domestically, but who arrange for arms transfers to be made via "third" countries;
- contain no provision to track financial and transport services involved in arms brokering; or
- exempt government officials who broker arms deals from oversight by an independent body and from a requirement to obtain specific authorization in accordance with minimum standards, including those on corruption.

Between 2002 and 2008, 40 of the 52 states claiming to have controls on arms brokering reported to the United Nations that they at least had established either a system of registration or

licensing or penalties: 22 states reported having a registration system; 28 reported on their licensing systems; and 22 said that illicit arms brokering was covered by a system of criminal penalties.¹⁰ By 2008 only 14 states had reported to the United Nations that they had legal provisions to regulate arms brokering carried out in foreign countries by their citizens, legal residents and registered or incorporated companies.¹¹

Thus, a high proportion of arms brokering activity by individuals and companies is still unregulated and it is still possible for unscrupulous arms brokers to evade international arms embargoes and circumnavigate even the most robust national regulatory and law enforcement systems. Arms brokers can establish international networks and move around to operate directly and indirectly in many jurisdictions outside their home country, easily fixing deals that involve a wide range of arms from countries with less effective controls or none at all.

USING GLOBAL LOOPHOLES TO EVADE US ARMS BROKERING LAW

The United States' law on arms brokering, promulgated in 1996 as an amendment to the US Arms Export Control Act, is perhaps the most extensive in the world in its provisions to control extraterritorial arms brokering since it covers not only arms brokering activity within the United States by US and foreign nationals, legal residents and companies, including instances of those actors' involvement in brokering "third country" movements of arms, but it also covers the brokering of US-origin "defence articles" by foreign nationals, wherever those articles may be located, and the brokering of any arms by US nationals, legal residents and companies in any foreign jurisdiction.¹² The following example shows the importance of this latter extraterritorial component, and why it also requires international cooperation and commitment to be enforced.

In January 2008, US immigration and customs officials received news from a foreign country concerning a previously unknown arms broker based in Florida, who, through his company, was offering to fix the supply of a range of military equipment, including several Russian-made Mi-24 attack helicopters, Mi-8 military transport helicopters and an SU-27 jet fighter engine.¹³ The US law enforcement authorities launched an investigation and obtained the broker's agreement in March 2008 to supply seven Mi-24 and three Mi-8T helicopters to a fictional foreign buyer in an African country through a controlled front company. Costs were quoted as \$750,000 purchase price plus \$40,000 for transport per helicopter. The Mi-24 attack helicopter would come with hard points in place to carry rockets and bombs.

The Florida-based broker said that the helicopters were in Kyrgyzstan and Serbia and could be shipped to an east African port. The broker also offered to provide spare parts, mechanical support, pilot training, Antonov transport aircraft, and AK assault rifles which he said could be placed on the helicopters. He said he could obtain an end-user certificate or government letter from another non-prohibited country for an additional cost and that he could get government officials to issue the papers without asking questions. He wanted to be remunerated in \$200,000 payments to several different bank accounts over several days so as not to attract the attention of the authorities. After one payment was made, the broker agreed to meet undercover US law enforcement agents in April 2008, and after making further offers he was arrested.

Searches of the broker's electronic and documentary records by the US Department of Justice revealed that he had been secretly brokering a wide range of arms deals using an elaborate international network of business associates from his US home for ten years. The network apparently did not include any US partners or US suppliers and stretched across Afghanistan, Brazil, Bulgaria, China, Colombia, the Democratic Republic of the Congo, Ecuador, Hungary, Iran, Iraq, Kyrgyzstan, Nigeria, Poland, the Russian Federation, Serbia, Sri Lanka, Ukraine and other countries. Contacts were involved in freight

forwarding, aviation sales, police equipment supplies and front companies. The arms included AK-47 assault rifles, Iglu rockets, OG-7V grenades and rocket-propelled grenade launchers, 122mm Grad rockets and other ammunition. None of these items were ever located in the United States and they were primarily obtained via suppliers based in Poland, the Russian Federation and Ukraine. China and the Russian Federation are two of eight states that have told the United Nations that arms brokers “do not exist” in their national jurisdictions because mediation of arms transfers is carried out exclusively by state companies.¹⁴

The broker did not keep an inventory. Completed and blank end-user certificates were found on the broker’s premises from several countries with seals (stamps) for several countries, along with pro-forma invoices, sales proposals, export and import documents, and business cards. The broker had been using foreign and US shell companies to conceal his illicit brokering.

After 10 years of evading US brokering law, the broker was charged in the United States with multiple counts of knowingly and wilfully engaged in brokering activities, negotiating and arranging contracts, purchases, sales and transfers of arms in foreign countries in return for fees and other considerations without first registering with the US Department of State. He was also charged with money laundering. The broker was convicted and was given 48-month prison sentence.

Even with a robust national law on brokering, a resident of that state can successfully broker illicit arms deals by taking advantage of less robust legislation elsewhere.

This case demonstrates that even with a robust national law on brokering, a resident of that state can successfully broker illicit arms deals by taking advantage of less robust legislation elsewhere.

Until every state establishes and implements brokering controls, unscrupulous brokers will continue to operate in those countries that prove to be weaker links.

EXTRADITION CHALLENGES

Clearly, cross-border cooperation among regulatory and law enforcement authorities is necessary to prevent illicit brokering. National legislation should therefore contain provisions to guide relevant authorities when they share evidentiary information for law enforcement and prosecution purposes and when they assist other national authorities to determine the eligibility of a broker or the legitimacy of a potential brokering activity.

States usually share such information through official government channels on the basis of supporting agreements, such as bilateral Mutual Legal Assistance Treaties. For example, thanks to these treaties and the successful extradition of suspects, in February 2009 the Syrian-born arms dealer Monzer al Kassar was sentenced in a US court to 30 years in prison and his Chilean associate Luis Felipe Moreno Godoy was sentenced to 25 years.¹⁵ Al Kassar had been extradited from Spain, where Spanish authorities had arrested him as he was suspected of preparing to finalize a multimillion-dollar transaction of weapons with persons who claimed to represent the Fuerzas Armadas Revolucionarias de Colombia (FARC), but were in fact confidential sources working for the US Drug Enforcement Agency (DEA).¹⁶ Two of al Kassar’s suspected accomplices were arrested in Romania. According to the charges brought against them by the US Attorney, they agreed to sell assault rifles, millions of rounds of ammunition, pistols, hand grenades, rocket-propelled grenade launchers and surface-to-air missiles.¹⁷

Another extradition case pending is that of Viktor Bout, frequently mentioned in UN arms embargo reports for involvement in alleged violations in Africa, but never prosecuted for arms trafficking because of the inadequate laws of most states regarding the regulation of arms brokering and arms transport activities.¹⁸ On 6 March 2008, Bout was arrested in Thailand for allegedly offering to supply the FARC with arms and explosives when in fact he was dealing with undercover agents

of the US DEA.¹⁹ Thai police said that he was arrested on a Thai warrant, which stemmed from an earlier one issued by the US Attorney for the Southern District of New York at the request of the US DEA. Extradition hearings have been held in Bangkok without conclusion so far and the Russian authorities have expressed a desire that Bout is returned to his home country. At the time of writing, the prosecution intends to file an appeal against the most recent decision not to extradite Bout.

One case of extradition that was thwarted is that of Yair Klein, an Israeli national. In 2001, the Colombian authorities sentenced Klein *in absentia* for training paramilitary groups and drug traffickers (he was also reportedly involved in brokering arms deals for paramilitary groups).²⁰ In August 2007, Russian police arrested Klein in Moscow. In June 2008 the European Court of Human Rights reportedly postponed his extradition to Colombia on the grounds that he would suffer ill-treatment.²¹

UN framework to control brokering of small arms and light weapons

States agreed basic parameters to address the problem of illicit brokering when in 2001 they agreed the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (POA) and the UN Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition (Firearms Protocol), which came into force in 2005 to supplement the United Nations Convention against Transnational Organized Crime.

The POA contains an important if sketchy outline of what states should do to regulate SALW brokering activities, namely establish national laws and procedures including:

- registration of brokers;
- licensing or authorization of their transactions; and
- appropriate penalties for illicit brokering performed within the state's jurisdiction and control.²²

Although not applicable to state-to-state transfers of small arms, the UN Firearms Protocol, also adopted in 2001, establishes a principle of reciprocal authorization of brokering transactions by the exporting, importing and transiting states involved, as well as by the state where the broker operates, by recommending:

- registration of brokers operating "within their territory";
- licensing or authorization of brokering; or
- disclosure on import and export licences or authorizations, or on accompanying documents, of the names and locations of brokers involved in the transaction.²³

Since these agreements, practical measures to enhance international cooperation to prevent illicit brokering have continued to be discussed in the United Nations and in regional and other multilateral organizations.²⁴ In December 2008 Member States agreed in the General Assembly that illicit brokering in SALW is "a serious problem that the international community should address urgently" and encouraged states to implement the recommendations of the report of the Group of Governmental Experts (GGE) on the prevention of illicit brokering of SALW.²⁵ That expert report concluded that although arms brokering is not an illegal activity *per se*, "unregulated and poorly regulated arms brokering activities may result in small arms and light weapons transactions that increase the risk that arms are diverted to conflict-prone areas and embargoed entities, as well as to organized criminal and terrorist groups."²⁶ The General Assembly encouraged states to include in their voluntary national reports on POA implementation information on their efforts to prevent, combat and eradicate illicit brokering in small arms and light weapons, as well as on their actions aimed at enhancing international cooperation for this purpose.

However, as demonstrated in cases referred to here, brokering extends beyond small arms and light weapons: to limit national controls on arms brokering to SALW is not sufficient.

Broadening the scope of illicit arms brokering controls

Recently, the scope of arms brokering controls has been considerably broadened in UN discussions, not only as regards the activities that can be defined as illicit brokering, but also as regards the items that brokering controls can cover: including conventional arms as well as items used for WMD.

“CLOSELY ASSOCIATED ACTIVITIES” IN BROKERING SMALL ARMS AND LIGHT WEAPONS

The GGE on illicit brokering in small arms defined a broker in SALW as “a person or entity acting as an intermediary that brings together relevant parties and arranges or facilitates a potential transaction of small arms and light weapons in return for some form of benefit, whether financial or otherwise”.²⁷

The GGE also recognized that other closely associated activities might be undertaken by brokers of SALW as part of the process of putting a deal together to gain a benefit, and that these activities include acting as dealers or agents in SALW, or providing for technical assistance, training, transport, freight forwarding, storage, finance, insurance, maintenance, security and other services.²⁸

The significance of this broader approach can be appreciated when considering the widespread use of subcontracting in global arms markets. Supply chains can become a complex labyrinth of arms companies and transportation agents operating across several geographic boundaries and national export control jurisdictions. Stricter controls on brokering and closely associated activities will encourage states to exercise greater scrutiny over the subcontracting that occurs in legitimate arms transfers. For example, states could require all contractors to supply the names of all subcontractors to state authorities, in order to screen out individuals or companies that have previously been involved in illicit activities.

Irregularities in arms transfers authorized by the US Department of Defense and the Iraq Ministry of Defence following the invasion of Iraq in 2003 illustrate the problem of complex supply chains.²⁹ There were no effective systems of regulation, accountability and transparency for these transfers, making it virtually impossible for those who authorized weapons and munitions transfers to fully account for how many were supplied and to whom: as a result it is impossible to ascertain exactly how many arms have ended up in the hands of non-state armed groups or have entered illicit arms markets, but certainly many have been.

For example, arms deliveries from Bosnia and Herzegovina (BiH) were initiated by a US Department of Defense contract for the Coalition Provisional Authority in Baghdad but could not be accounted for by US officials.³⁰ Parts of the arms supply chain were subcontracted to companies operating in Bosnia and Herzegovina, Bulgaria, China, Croatia, Germany, Israel, Moldova, Serbia, Switzerland, Ukraine and the United Kingdom. One US company with multiple US Department of Defense contracts, Taos Industries, subcontracted Moldovan/Ukrainian company Aerocom to transport 99,000kg of arms, mostly Kalashnikov rifles, from BiH to Iraq between 31 July 2004 and 31 June 2005 for Iraqi security forces,³¹ even though Aerocom had smuggled weapons from Serbia to Liberia during 2002 in violation of a UN arms embargo, according to a UN expert report to the UN Security Council.³² In addition, Taos claimed not to know that Aerocom was operating without a valid air operator licence in 2004.³³ A Croatian company, Scout d.o.o., was also named as the broker in these shipments, but as there was no system to register arms dealers in Croatia, Scout’s activities could not be monitored either. In 2005, a Chinese-controlled company, Poly Technologies, was subcontracted under a \$29 million US Department of Defense contract with a Jordanian firm to supply more than 16,000 AK-47-style

assault rifles, machine guns and 72 million rounds of ammunition for the Iraqi security forces. Poly Technologies had been previously indicted in the United States by a Federal Grand Jury for an attempt to smuggle large quantities of AK-47-type assault rifles into the United States for use by organized criminal gangs, and former executives of the company have also been arrested in China.³⁴ Moreover, Poly Technologies has acted as the US-based distributor for weapons manufactured by China's state-owned China North Industries Corporation (Norinco). Between 2003 and 2005, Norinco was placed under a two-year US embargo following accusations that it had supplied ballistic missile technology to Iran.³⁵

BROKERING OF CONVENTIONAL ARMS

In their national laws and their policy commitments to regional or other multilateral agreements on brokering, the majority of states now accept that before approval, brokering transactions in conventional arms should be thoroughly assessed by national authorities against fundamental common criteria so as to ensure that all weapons and munitions to be transferred will remain in the hands of responsible and authorized end-users, and will not pose a substantial risk of being misused for unlawful purposes, especially for serious violations of international law.

Indeed, during the UN Secretary-General's consultation on the establishment of a global Arms Trade Treaty (ATT) on conventional arms, a large majority of states expressed the view that the scope of an ATT should include imports, exports, re-exports, temporary transfers, transshipments, re-transfers and brokered arms transactions.³⁶ Some state officials have suggested that it would be possible to include in the provisions of an ATT some standards for the national regulation of other types of arms transactions, including transactions closely related to brokering, especially transportation, logistics, finance and technical expertise.³⁷ One of the most fundamental common criteria raised by some states is that an ATT should have provisions to help states ensure that a proposed transfer of, or transaction in, any type of conventional weapons and munitions will not pose a substantial risk of contributing to serious violations of international human rights law or international humanitarian law.

BROKERING ITEMS FOR POTENTIAL USE IN WEAPONS OF MASS DESTRUCTION

In a number of cases conventional arms brokers have also been involved in the proliferation of WMD-related technology: not surprising, since the two markets often share the same clients. For example, between 1997 and 2002 a British arms broker based in the United Arab Emirates (UAE), who had supplied the nuclear proliferator A.Q. Khan with conventional military goods for Pakistan's army (ranging from military helmets to rangefinders for surface-to-air missiles), reportedly supplied machinery found by UN inspectors in Libya's "Project 1001" machine shop, designed to manufacture centrifuges for uranium enrichment.³⁸ This transaction formed part of A.Q. Khan's private efforts. The broker denied being aware of the purpose or true destination of the machinery, and the investigation was dropped. In 2005 the UAE reported to the United Nations that "it is worth mentioning that there is no illicit brokering in firearms in our country."³⁹

Other suppliers also appear to have operated across these two markets. According to a criminal complaint filed in Florida in April 2009, a Korean broker, based in the United States, asked a confidential informant of the US Defense Criminal Investigation Service to help him to broker arms to the Republic of Korea, including SU-27 fighter jet parts, and technology for the use of the RD-180 rocket propulsion system, a propulsion system for long-range missiles listed under the Missile Technology Control Regime (which seeks to control the proliferation of technologies that enable the unmanned delivery of WMDs).⁴⁰ The case is yet to be concluded, but the broker had other long-standing connections to both WMD and conventional arms markets: in 1989 he was convicted by

a US court of conspiring to export Sarin nerve gas to Iran in an aborted deal that had begun with discussions to supply 105 and 106mm ammunition to the Republic of Korea.⁴¹

Interviews carried out during research into embargo-busting activities reveal not only how all weapons types are subject to brokering, but also the importance of regulating “other closely related activities”, because of the large number and range of actors that can be involved in an international arms deal. A UK-based pilot was interviewed about arms cargo flights he was making into Central Africa, and referred in passing to the transport of heavy water:

“...well it used to come from China, going to Sharjah and then we used to take it to Bombay. We did a lot of flights to Bombay with it. ...the engineer or the first officer said ‘Well, they use it for cooling atomic piles and so on’... we took some to, er Buenos Aires. We took a lot down there...we didn’t know they were making themselves bomb...”⁴²

Another interviewee described an operation from Buenos Aires:

“...so the aircraft was loaded in the evening and we took off at night from Buenos Aires, I believe the flight, I thought it went to Palma, but it could have gone to the Canaries. I’m not exactly sure, but there were a lot of discussions about the fact that it had to leave at the night time, it had to be early in the morning because they didn’t want any questions asked and there wasn’t a problem getting into Tehran because, obviously, that was the end user. We were all very dubious about the long, cylindrical object that was in the aircraft, but we honestly didn’t have any idea what was in it at all.”⁴³

Most states have undertaken binding legal obligations or have made other commitments aimed at preventing the proliferation of nuclear, chemical or biological weapons, and have taken effective measures to account for, secure and physically protect sensitive materials.⁴⁴ However, since 2004 the United Nations Security Council has recognized the urgent need for all states to take “additional effective measures”. On 28 April 2004, the Security Council unanimously adopted resolution 1540, obliging states, inter alia, to refrain from supporting by any means non-state actors from developing, acquiring, manufacturing, possessing, transporting, transferring or using nuclear, chemical or biological weapons and their delivery systems. For the purposes of the resolution, a non-state actor was defined as any “individual or entity, not acting under the lawful authority of any State in conducting [such] activities”. This prohibition covers anyone brokering in such materials. Paragraph 3(c) obliges all states to “develop and maintain appropriate effective border controls and law enforcement efforts to detect, deter, prevent and combat, including through international cooperation when necessary, the illicit trafficking and brokering in such items in accordance with their national legal authorities and legislation and consistent with international law.”

With regard to the means of delivery for WMD, resolution 1540 defines those means to include “missiles, rockets and other unmanned systems capable of delivering nuclear, chemical, or biological weapons, that are specially designed for such use”. The resolution also calls for the establishment of “appropriate controls over related materials” and defines “related materials” as “materials, equipment and technology covered by relevant multilateral treaties and arrangements, or included on national control lists, which could be used for the design, development, production or use of nuclear, chemical and biological weapons and their means of delivery”.⁴⁵

In December 2008 the General Assembly recognized that illicit brokering activities cover “not only conventional arms but also materials, equipment and technology that could contribute to the proliferation of weapons of mass destruction and their means of delivery”, but that “efforts to prevent and combat illicit brokering activities should not hamper the legitimate arms trade and international cooperation with respect to materials, equipment and technology for peaceful purposes.”⁴⁶

Practical approaches to implement UN recommendations on arms brokering

Numerous cases of illicit and irresponsible arms brokering illustrate the need for states to enact into national law and procedures the control “elements” and the specific recommendations agreed by the UN Group of Governmental Experts in August 2007 as well as the common standards adopted by some regional organizations to prevent illicit arms brokering and closely related illicit activities, and to broaden these to cover conventional arms and items relating to the possible development of WMD. Member States now have many avenues of action officially recommended to them, from national measures to regional initiatives and international cooperation.

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Practical measures to enhance international cooperation recommended by the GGE include: operational information exchange between states; information exchange regarding control systems; coordination with the World Customs Organization (WCO) and Interpol, as well as the International Civil Aviation Organization, International Maritime Organization and non-governmental organizations; cooperation between states and UN bodies on brokering and other activities that violate Security Council arms embargoes; assistance in building capacity to prevent illicit brokering; periodic consideration of reports at the global level. The GGE suggests establishing an information clearing house function on brokering within the UN Office for Disarmament Affairs; improving the abilities of UN arms embargo monitoring and peacekeeping field operations; considering action arising from POA national reporting on brokering, using the POA’s biennial meetings of states to make more operational recommendations; and building brokering controls into other relevant global initiatives such as an Arms Trade Treaty.

At the national level, the GGE recommends: the formulation of a national needs assessment; integration of this into a National Action Plan; inclusion of national needs in POA reporting, with a contact point, and dedication of a specific section in the POA report to brokering; national legislation to control arms brokering using the “optional elements” in the GGE report as a tool. These elements cover a definition of brokering, illicit brokering, and “closely associated activities”, registration, record-keeping, licensing, related legislation, jurisdiction and penalties.

The GGE recommendations also encourage regional approaches, such as bringing together regional experts on legislation, discussing regional procedures for operational information exchange, inclusion of WCO regional offices in regional seminars, linking up with Interpol regional conferences, developing regional capacity-building programmes, and presenting regional reports on the prevention of illicit brokering at the biennial meetings of states.

Conclusion

It is no longer in dispute that arms brokering activity can adversely affect “international peace and security and prolong conflicts, thereby impeding sustainable economic and social development, and result in the threat of illicit transfers of conventional arms and the acquisition of weapons of mass destruction by non-state actors”.⁴⁷ However, arms brokering controls, requiring clear legal standards and practical monitoring of what is often an opaque and transnational activity, remain an aspiration in the majority of countries. Low political prioritization and the lack of effective national controls mean that the international community’s incapacity to protect itself from the dangers of such brokering will persist. While progress in plugging the gaps in the system of national laws appears to be accelerating, especially among the more developed countries, many more states need to devise and implement effective action plans to establish robust national legislation and to enhance their

international and regional cooperation on a principled basis so as to prevent illicit arms brokering and closely associated activities.

The General Assembly will return to the issue of preventing and combating illicit brokering in October 2009, at its next session. It is hoped that more states will strengthen measures to tackle illicit arms brokering *in all its aspects*. These should be framed in relation to the existing international obligations of states with regard to the export, import, transit, trans-shipment, brokerage and licensed production of conventional arms.

States now have a range of recommended standards and measures from UN and regional agreements on which to take prompt action, concerning not only the brokering of SALW but also the brokering of conventional arms and materials and delivery systems for WMD. The ongoing General Assembly discussions toward an Arms Trade Treaty could eventually result in a requirement on states to establish common standards and specific mechanisms to control international arms brokering and closely related activities. It is also recommended that all states report on steps they have taken to implement resolution 1540 and submit such a report to the 1540 Committee without delay.

Establishing a strict national registration and licensing system as well as information-sharing procedures to control such activities could help better ensure respect for international law, and could increase inter-state judicial cooperation to ensure prompt investigations and prosecutions according to the rule of law. If common standards were agreed, the authorities in states where the dealers and brokers reside, operate and hold citizenship would have a chance to consult the intended receiving states before a brokering transaction was approved, and thus provide another means to help save lives, protect livelihoods and contribute significantly to ensuring more respect for human rights in many countries.

Notes

1. See the reports of the UN International Commission of Inquiry on Rwanda: Interim Report, UN document S/1996/67, 29 January 1996; Second Report, UN document S/1996/195, 14 March 1996; Third Report, UN document S/1997/1010, 24 December 1997; Addendum to the Third Report, UN document S/1998/63, 26 January 1998 (where the term “brokered” is first used by the Commission itself); Interim Report, UN document S/1998/777, 19 August 1998; Final Report, UN document S/1998/1096, 18 November 1998.
2. The first major study of arms brokering was Brian Wood and Johan Peleman, 1999, *The Arms Fixers*, BASIC, NISAT and PRIO. See also the many reports by UN Panels of Experts on UNITA (Angola), Liberia, Sierra Leone and Somalia, the UN Group of Experts on the Democratic Republic of the Congo, and the UN Commission of Inquiry on Rwanda.
3. UN General Assembly Resolution 63/67 of 2 December 2008, UN document A/RES/63/67, 12 January 2009.
4. The term “poorly regulated” means national regulation inconsistent with the relevant principles of international customary law and treaties to which a state is a party and/or inconsistent with relevant good practice standards as contained in other international instruments to which a state has declared its commitment.
5. Silvia Cattaneo and Sarah Parker, 2008, *Implementing the UN Programme of Action on Small Arms and Light Weapons: Analysis of the National Reports Submitted by States from 2002 to 2008*, Geneva, UNIDIR. Only 103, or 70%, of states reported on their small arms and light weapons brokering controls to the UN between 2002 and 2008.
6. See Wood and Peleman, *op. cit.*
7. Research in 2005 conducted by Silvia Cattaneo for the Small Arms Survey.
8. For more detailed studies on illicit brokering of small arms, see UNIDIR, Small Arms Survey, and UN Department for Disarmament Affairs, 2007, *Developing a Mechanism to Prevent Illicit Brokering in Small Arms and Light Weapons: Scope and Implications*, Geneva; and Silvia Cattaneo, 2004, “Targeting the Middlemen: Controlling Brokering Activities” in Small Arms Survey, *Small Arms Survey 2004: Rights at Risk*, Oxford, Oxford University Press.
9. The Economic Community of West African States, the countries of the Great Lakes Region and the Horn of Africa (the Nairobi Group), the European Union, the Organization of American States, the Organization for Security and Cooperation in Europe and the Wassenaar Arrangement have agreed sets of standards for the licensing of international arms transfers that reflect the international obligations of states and these are not always applied to the brokering of international arms transactions; see footnote 24 below.
10. Cattaneo and Parker, *op. cit.*

11. *Ibid.*
12. The definition of arms brokering in the United States is set out in Title 22 Code of the Federal Regulations 129.2b (reference 22CFR129).
13. An account of this case was provided by the US Department of Justice, 2009.
14. Reports from China and the Russian Federation quoted in Cattaneo and Parker, *op. cit.*, p. 39.
15. "Syrian Arms Dealer Sentenced to 30 Years", *Reuters*, 25 February 2009; "Arms Dealer Jailed for 30 Years", *BBC News*, 25 February 2009.
16. For further information on this case, see the articles by An Vranckx, and Peter Danssaert and Brian Johnson-Thomas in this issue of *Disarmament Forum*.
17. "DEA Investigation Nets International Arms Dealer with Ties to Terrorist Organizations", Drug Enforcement Agency, Public Affairs news release, 8 June 2007; "Spain Arrests Syrian Man for Selling Arms to FARC", *Washington Post*, 8 June 2007; "Detenido en Barajas un sirio buscado por EE UU por colaborar con organización terrorista", *El País* (Madrid), 8 June 2007.
18. For a summary, see Peter Danssaert, 2007, "Victor Bout's Air Trafficking of Arms", in UNIDIR, Small Arms Survey and United Nations Department for Disarmament Affairs, *op. cit.*
19. See *US v. Viktor Bout and Andrew Smulian*, "Indictment", case 1:08-cr-00365-SAS, court document 5. For more details of the case, see the article by Peter Danssaert and Brian Johnson-Thomas in this issue of *Disarmament Forum*.
20. "Colombia Seeks Israeli Mercenary", *BBC News*, 29 August 2007; "Colombia: Russia Moves to Extradite Israeli Mercenary", *The New York Times*, 13 March 2008.
21. "Rights Court Halts Mercenary's Extradition", *The Guardian*, 3 June 2008; "EU Court Halts Extradition to Bogota of Israeli who Trained Paramilitaries", *Haaretz.com*, 3 June 2008.
22. POA, Section II, paragraph 14, UN document A/CONF.192/15, 2001.
23. UN Firearms Protocol, in UN document A/RES/55/255, 8 June 2001, Article 15.
24. In November 1997 the Organization of American States adopted the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials. This was supplemented with Model Regulations on Brokering (2003). Regional and other multilateral instruments covering illicit brokering include: the Southern African Development Community's Protocol on the Control of Firearms, Ammunition and Other Related Material (2001); the European Union's more elaborate Common Position 2003/468/CFSP on the Control of Arms Brokering (2003), the Organization for Security and Co-operation in Europe's Best Practice Guide on National Control of Brokering Activities (2003) and Principles on the Control of Brokering in Small Arms and Light Weapons (2004); the Wassenaar Arrangement's Statement of Understanding on Arms Brokerage (2002) and Elements for Effective Legislation on Arms Brokering (2003); the Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa (2004), elaborated further in a set of Best Practice Guidelines for the Control of Small Arms and Light Weapons (2004); the Economic Community of West African States' Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials (2006); and UN General Assembly resolution 62/47 of 5 December 2007, UN document A/RES/62/47, 10 January 2008.
25. UN General Assembly resolution 63/72 of 2 December 2008, UN document A/RES/63/72, 12 January 2009, preamble and paragraph 3.
26. Report of the Group of Governmental Experts established pursuant to General Assembly resolution 60/81 to consider further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons, UN document A/62/163, 30 August 2007, paragraph 1.
27. *Ibid.*, paragraph 8.
28. *Ibid.*, paragraph 10.
29. Amnesty International and TransArms, 2006, *Dead on Time: Arms Transportation, Brokering and the Threat to Human Rights*, ACT 30/008/2006.
30. This contract was identified as W914NS-04-D-0115.
31. See Amnesty International and TransArms, *op. cit.*
32. Report of the Panel of Experts on Liberia, 24 April 2003, UN document S/2003/498, 24 April 2003, paragraph 70.
33. According to the Moldovan Civil Aviation Authority, Aerocom had its Air Operator Certificate revoked from 6 August 2004 onward.
34. "US Buys Weapons from Indicted Company", *Knight-Ridder News Agency*, 29 April 2005. Information on Poly Technologies Ltd and the US subsidiary accused of smuggling, Dynasty Holding Co. of Atlanta, can be found in James Mulvenon, 1997, *Chinese Military Commerce and US National Security*, RAND Corporation, pp. 13–16; *United States v. Ku et al.*, Affidavit Matthew H. King, Northern Judicial District of California, case 3:96-cr-00155.
35. US Department of State, Bureau of Nonproliferation, "Imposition of Nonproliferation Measures on an Entity in China, Including a Ban on U.S. Government Procurement", Public Notice 4370, *Federal Register*, vol. 68, no. 100, 23 May 2003; Bureau of International Security and Nonproliferation, "Imposition of Nonproliferation Measures

- Against Foreign Entities, Including a Ban on U.S. Government Procurement, and Removal of Penalties From One Entity”, Public Notice 5257, *Federal Register*, vol. 70, no. 250, 30 December 2005.
36. Submissions by states to the UN Secretary-General on an Arms Trade Treaty are analysed in Sarah Parker, 2007, *Analysis of States’ Views on an Arms Trade Treaty*, Geneva, UNIDIR; Sarah Parker, 2008, *Implications of States’ Views on an Arms Trade Treaty*, Geneva, UNIDIR; and Amnesty International et al., 2007, *A Global Arms Trade Treaty: What States Want*.
 37. For example, the GGE report of September 2007 recognized the need to control such activities; see also Amnesty International and TransArms, 2006, op. cit.
 38. These details can all be found in “Inquiry into ‘Nuclear Mr Fix-it’ Dropped”, *Sunday Times* (London), 13 January 2008; Kompass International (business directory) search indicates that the British arms broker’s company was operating from the UAE.
 39. UAE report quoted in Cattaneo and Parker, op. cit., p. 39.
 40. Criminal Complaint, US District Court, Southern District of Florida, case 09-6139-RSR, filed 16 April 2009.
 41. “Man Is Guilty of Conspiring to Export Nerve Gas to Iran”, *Associated Press*, 20 May 1989.
 42. Tape and transcript of an interview conducted by Brian Johnson-Thomas, February 2000.
 43. Confidential interview conducted in 2000.
 44. For example, those measures required by the 1980 Convention on the Physical Protection of Nuclear Materials and those recommended by the IAEA Code of Conduct on the Safety and Security of Radioactive Sources (revised 2003).
 45. United Nations Security Council resolution 1540 (2004), UN document S/RES/1540(2004), 28 April 2004.
 46. UN General Assembly resolution 63/67, op. cit.
 47. Ibid.

Curbing illicit brokering in WMD-related items: solutions in the making

Anne-Charlotte MERRELL WETTERWIK

Illicit brokering of arms and sensitive dual-use technology has been an elusive loophole in the international non-proliferation system for decades. The globalized marketplace would grind to a halt without the legitimate services a broker provides, but thus far there is no international instrument that separates licit from illicit brokering activities, and conflicts continue to be fuelled by arms and weapons systems provided with the aid of brokers, who can operate fairly freely just by avoiding stricter jurisdictions. State and non-state actors in pursuit of weapons of mass destruction (WMD) capabilities obtain sensitive technologies through the use of elaborate networks of brokers, whose knowledge allows them to circumvent the export control requirements of individual countries through means that are not necessarily illegal.

In recent years, the international community has increasingly focused on the activities of arms brokers. United Nations reports on the embargo-busting activities of brokers in Rwanda and Angola in the 1990s helped the international community move toward the 2001 UN Programme of Action to Prevent, Combat and Eradicate the Illicit trade in Small Arms and Light Weapons in All Its Aspects, which includes requirements for brokering controls.¹ However, these efforts are limited to brokering in small arms and light weapons (SALW), and Member States have been slow to implement even these.

When discussing efforts regarding the control of brokering of so-called dual-use products, the debate gets more complex. A dual-use product is an item that has a civilian use, but could potentially be used for military purposes. Sophisticated ventilation filters used in a pharmaceutical laboratory could just as easily be used in the production of a biological weapon. Protective suits for firefighters battling a chemical fire could just as well be used to protect the individual producing a chemical weapon. Both the filter and the protective suit illustrate how the export control of dual-use items is more complicated, as more scrutiny has to be directed at the end-user than at the item itself. There is a vast legitimate market for dual-use products—the previously mentioned filter enables the production of drugs that save lives—but at the same time there is a need to safeguard products from the potential military use they can have. The existence of the legitimate market makes it easier for proliferators to hide the intended end use of the item, particularly as the military use is often far from obvious. The challenge of determining the military end use and the presence of a fully legitimate market severely impact the fledgling efforts to tackle illicit brokering of dual-use goods. The world needs to address illicit brokering in a comprehensive way, focusing on the activity rather than the commodity.

A handful of countries have enacted controls for brokering activities. Attempts have also been made on a regional and multilateral level to put in place guidelines for brokering. But no equivalent has yet been established at the international level: there are no common standards and guidelines for

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the profession, so illicit activities continue and legitimate brokers are put in the same unfavorable light as illicit brokers.

The situation is, however, changing. On 12 January 2009 the United Nations General Assembly adopted resolution 63/67 to prevent and combat illicit brokering activities: a truly international step was taken. Resolution 63/67 provides a tool to reach further and aim higher: it calls upon Member

It will be easier to identify bad actors by giving the legitimate brokering profession a legitimate framework to manoeuvre within.

States to “establish appropriate national laws and/or measures to prevent and combat the illicit brokering of conventional arms and of materials, equipment and technology that could contribute to the proliferation of weapons of mass destruction and their means of delivery”.² This is the first time the whole concept of brokering has been addressed on an international level. Addressing the whole concept, regardless of the commodity, opens up opportunities for taking a comprehensive approach to attacking the grey zones in the global marketplace. It will be easier to identify bad actors by giving the legitimate brokering profession a legitimate framework to manoeuvre within.

The starting point: the brokering business

Brokering can be defined as the activity of facilitating a business transaction between two or more partners without necessarily being in possession of the goods in question. As is the case in any sector of globalized trade, brokers play an essential role in a well-functioning system. Brokers facilitate the movement of items from one place to another, provide on-the-ground knowledge and essential networks of contacts. Through the efforts of brokers, items can reach new markets that otherwise would have problems accessing the goods. The broker or agent usually provides the necessary field expertise to smooth the way for various business transactions. This is true both for licit and illicit trade. It is particularly important when discussing the trade in arms and in strategically sensitive dual-use products.

The potential consequences of illicit brokering in both arms and dual-use products are obvious. Two recent and notorious cases, involving gunrunning operations in Africa and the spread of nuclear weapons technology, illustrate the challenges that illicit brokering poses.

The Viktor Bout case: the original Lord of War or a legitimate businessman?

Viktor Bout’s story has many chapters, some still being written. It illustrates how easy it can be for an arms broker to avoid penalties and sanctions simply by avoiding certain jurisdictions. The case reveals some of the grey shades in the market where brokers such as Viktor Bout operate.

With the end of the Cold War the world was flooded with excess military and dual-use equipment originating from the former Soviet Union and Warsaw pact countries. As the Soviet Union disintegrated, control functions were not the top priorities of the successor states: effectively monitoring supplies, production and transport routes during this tumultuous period proved impossible, and military supplies were easily obtained by private individuals.³

At the same time, the incentive to obtain these stockpiles had grown. The change in the geopolitical power structure meant that many countries in all parts of the world were left to fend for themselves. Regional and ethnic strife that had been kept under a tight lid during the Cold War now boiled over.⁴ An unprecedented access to supplies met increasing demand, creating a volatile situation. In combination with very limited outside monitoring, regional and domestic tensions rose, from the western Balkans to Liberia.⁵

This situation also gave rise to a new generation of entrepreneurs, adept at taking advantage of opportunities wherever they materialized. One of these men was Viktor Bout. Little is definitively known about Viktor Bout, including his birthplace and even the spelling of his name. Most likely born in what is now Tajikistan, Bout served as a translator in the Soviet Military Intelligence service, the GRU. Upon leaving the GRU, Bout obtained surplus military aircraft in order to set up a fleet of planes ready to provide air freight services to whoever needed it.⁶ Viktor Bout's air freight empire grew from a small operation to an enterprise that at its peak involved more than 50 aircraft—a larger fleet than some countries possess.⁷

The first line of business for Bout was general transport: aid supplies, peacekeeping troops, even flowers. But he was soon making a name for himself in the lucrative business of supplying arms. One of his more notorious clients was the former president of Liberia, Charles Taylor. But Viktor Bout was also referred to as a major arms dealer in other areas—it is claimed he sometimes supplied both sides of a conflict.⁸

On 26 April 2005 the US Treasury Department issued a statement that tried to describe the vast business network of Viktor Bout. Over 30 companies were involved in the network, including Air Cess, Bout's main operational entity, established in Belgium in 1996 but registered in Monrovia, Liberia.⁹ US Presidential Executive Order 13348 placed Viktor Bout and his companies under the same prohibitive measures as other entities connected to Charles Taylor.¹⁰

Viktor Bout's operations themselves had the character of a dual-use item—sometimes using his fleet for civilian purposes, sometimes for military. He supplied arms for diamonds in Sierra Leone.¹¹ In 2000 the United Nations mentioned his name in the context of sanctions violations.¹² In 2003 his fleet was allegedly hired to fly supplies to Iraq for the United States.¹³ The United Nations used his services for transporting aid to Somalia, and to Sri Lanka after the tsunami of 26 December 2004.¹⁴ However, in March 2008 Bout travelled to Thailand allegedly to broker a deal to supply weapons to the Fuerzas Armadas Revolucionarias de Colombia, or FARC, a Colombian guerilla faction.¹⁵ Instead he found himself the target of a sting operation and was arrested. Bout claims to be wrongfully accused.¹⁶ On 11 August 2009 a criminal court in Bangkok, Thailand rejected the US request to have Viktor Bout extradited, stating that the US charges would not be applicable to Thai law. The prosecution has filed an appeal against the decision.¹⁷

The Asher Karni case: trading in sensitive nuclear technology

Asher Karni is an Israeli citizen who lived and operated in South Africa for over twenty years. In January 2004 he was arrested at Denver airport in the United States for facilitating the re-export of US-made spark gaps from South Africa to Pakistan. Spark gaps are sophisticated electronic devices that have a fully legitimate civilian use in medicine, but can also be used to detonate a nuclear weapon.

Karni has a military background, and in the early 2000s he started working for the South African company Eagle Technology, which specializes in providing electronic equipment to both military and civilian customers. At the same time Karni developed private business connections—which allegedly led to his dismissal from Eagle Technology¹⁸—and established his own company, Top-Cape Technology. In mid-2002 the Chief Executive Officer of the Pakistani company Pakland PME Corporation, Humayun Khan, contacted Karni with a request that he purchase export-controlled oscilloscopes from a US company. Oscilloscopes are a type of measuring equipment that can display the time and voltage values of an electrical signal—they can be used to provide data on the safety, reliability, deliverability and yield of a nuclear weapon.¹⁹ Khan reportedly acted as an agent in Pakistan, and had previously procured similar controlled oscilloscopes on an export licence from the United States.²⁰ This time he chose to contact Karni in South Africa, stating that “a careful approach” was needed as the goods

were controlled.²¹ After receiving the orders from Khan, Karni made inquiries at different suppliers. He soon learned that US-origin goods that required a licence to be shipped from the United States to Pakistan could move freely to South Africa.²² To avoid suspicion about the goods' true final destination, Karni chose to involve brokers in the United States to purchase the controlled products from the manufacturers. These brokers would ship the goods via an air freight company to Top-Cape in South Africa, where Karni would later re-export them to Pakistan using another air freight company.²³ The payment was to be transferred from Pakistan to the United States, relayed via South Africa.

In June 2003 Khan contacted Karni again with a request that he arrange the purchase of triggered spark gaps via a US-owned sales agent in France. Khan advised Karni not to disclose the end destination.²⁴ After his initial contact with Polytec, the French sales representative of PerkinElmer, Karni learned that the triggered spark gaps would need an export licence when shipped from France.²⁵ Karni then allegedly contacted another company, Giza Technologies, in Secaucus, New Jersey, United States. On 1 August 2003 Giza Technologies placed an order with PerkinElmer for 200 GP-20B triggered spark gaps, stating that they were shipping the items to a hospital in Johannesburg, South Africa.²⁶ The spark gaps were to be transported to South Africa in three shipments in late 2003.²⁷ On arrival in South Africa Karni sent the goods onward to AJKMC Lithography [sic] Aid Society—a possible front company, given that triggered spark gaps have no use in any type of printing process. South African and US authorities were alerted by an anonymous tip-off and a sting operation was launched with the assistance of PerkinElmer. Authorities on both sides of the Atlantic were able to track the items, which had been rendered useless by PerkinElmer, on their path within the United States, by air to South Africa, from there on to Dubai in the United Arab Emirates, to their arrival in Pakistan. Just as with the purchase of the oscilloscopes, Asher Karni's South African company Top-Cape served as a relay station between the producer and procurer. Having allegedly circumvented the requirement to pursue an export licence, and aided his Pakistani counterpart to hide where the goods were actually going, Karni was arrested and charged. He pled guilty to five felony charges, including conspiring to sell controlled nuclear technology to Pakistan, and was sentenced to three years in federal prison in 2005.²⁸ In addition he has been put under a ten-year export ban until 2015 by the US Department of Commerce, preventing him and any of his associates from participating, indirectly or directly, in any transaction involving any regulated commodity, software or technology exported or to be exported from the United States.²⁹

LESSONS LEARNED

In the court documents related to Karni's trial and the prosecution of his Pakistani contact there are several references to Karni's client asking him to be careful, discreet and not to disclose the true destination of the goods.³⁰ Asher Karni served as a middleman, and an effective one. Suspicions were raised because of the complicated trade routes, the hesitation to pursue orders when the requirement for a licence was raised, and the fact that the goods appeared not to fit the intended use (triggered spark have no use in lithography or printing).³¹ Despite these leads, Karni's unquestionable skills of navigating between different jurisdictions would have kept him in business if South African and US authorities had not been tipped off.³²

The entry point to the illicit market is often where there is a gap in controls.

The cases of Bout and Karni are different in nature but share some important similarities. Both involve multilayered procurement processes, actors operating outside of the exporting country's jurisdiction, and complicated trade routes. Karni, who obviously violated US law, could still avoid being prosecuted by staying clear of US jurisdictional territory. The cases demonstrate that the entry point to the illicit market is often where there is a gap in controls, such as where the same type of product requires a different kind of licence depending on the destination. They also show

that where globalization has created new routes for legal trade, illicit trade has followed. All kinds of commodities use the same routes and are often exchanged for one other: arms are traded for blood diamonds, humans for drugs.³³ Finally, the cases highlight how monitoring illicit trade has grown increasingly difficult due to the complexity of the market and the plethora of actors now associated with brokering, from financing to freight forwarding. There is clearly an urgent need for new regulatory instruments that can be introduced into more jurisdictions, thereby avoiding illicit brokers shopping for less restrictive places for operation.³⁴

Actions taken: leading by example?

The Wassenaar Arrangement—a multilateral export control regime for arms and conventional dual-use products—attempted concrete action on brokering several years ago. In December 2002 the Wassenaar Arrangement adopted a Statement of Understanding on Arms Brokerage,³⁵ where participating states agreed to consider registration, licensing and sharing information regarding brokers. This was followed up a year later with a more detailed guide for licensing arms brokering activities.³⁶ However, instruments adopted under the Wassenaar Arrangement are implemented by the individual participating states and their overall efficiency is hard to determine.

At the regional level, the European Union (EU) has adopted several legal instruments to control arms brokering. In 2003 the EU adopted Common Position 2003/468/CFSP calling for European Union member states to “take all the necessary measures to control brokering activities taking place within their territory”.³⁷ The document also encouraged EU member states to consider controlling brokering activities outside of their territory and called for the establishment of an exchange of information on brokering activities.³⁸ It subjects brokering to the European Code of Conduct on Arms Exports. However, the Common Position and the EU Code of Conduct on Arms Exports address only munitions and arms. Furthermore the documents were initially recommendations and lacked a strong legal requirement for implementation.

On 8 December 2008 the European Union adopted Common Position 2008/944/CFSP³⁹ defining common rules governing the control of exports of military technology and equipment. The new common position brings brokering activities and the Code of Conduct within the same—legally binding—regulatory framework. A licensing requirement is now established for brokering, and brokering activities will have to be judged according to the same eight criteria as are applied by the EU Member States to regular arms exports.⁴⁰ Nonetheless, the implementation of the 2008 Common Position remains the responsibility of individual member states, and it will be interesting to see how this instrument will be used in practice.

These initiatives have served their constituents fairly well, but what has been missing is a call for international action with regard to brokering in general. Even more important, very little has thus far been done with regard to dual-use brokering. The adoption of United Nations Security Council resolution 1540 of 28 April 2004 was a breakthrough for a practical export control mandate on an international scale, and one of the first times the need to control brokering of dual-use goods was mentioned in an international forum.⁴¹ The major non-proliferation treaties and conventions such as the Chemical Weapons Convention and the Treaty on the Non-Proliferation of Nuclear Weapons had not prevented some states from pursuing WMD development programmes, and multilateral export control regimes like the Nuclear Suppliers Group (NSG) had failed to prevent both secondary proliferation and state and non-state actors from obtaining sensitive products and technologies: there was a clear need to find new ways to improve the international non-proliferation network. Resolution 1540’s operational paragraphs mandate UN Member States to put in place export control procedures for WMD-related materials and technologies, including controls on brokering in dual-use items.⁴² In the years since the adoption of the resolution many states have worked on getting their

legislation in shape. Resolution 63/67 will address the need for all countries to put in place regulation for all types of brokering activities. However, controlling dual-use brokering still faces a number of significant challenges.

Remaining challenges and solutions

One of the major challenges is *controllability*. A large number of countries and an overwhelming majority of the arms producers in the world already have controls in place for the production and export of arms.⁴³ In such an environment the broker is most likely operating in a restrictive market. That is not the case with a broker of dual-use goods. The legitimate civilian use of the dual-use product means the item has a place in the commercial market and, most likely, in a less restrictive environment. Regardless of a country's legal traditions with regard to trade and export (some consider export as a privilege, others as a right), the free market argument is an issue that will have to be addressed when dealing with dual-use products.

This argument leads to the second general challenge: *identification* of the commodities to be controlled. How will you know if the item you produce and intend to export is controlled or not? It is one thing to control a tank, it is another to control chemicals that could either be used for industrial solvents or in the development of a chemical weapon. You may be aware of safety regulations surrounding this chemical, but the security and proliferation concerns might be more opaque. Larger companies might have the resources to keep track of the whole spectrum of safety and security concerns with regard to their products, but many smaller enterprises may not even know that their product could contribute to a military application. It is likely that some dual-use export control violations can occur purely through lack of awareness. The challenge of identification will have an even stronger impact on the broker, who plays no part in the production of the item and has limited knowledge of the product's capabilities: how will it be possible for this individual to identify a strategically sensitive item, in particular if operating from another country?

Finally, all types of brokering control face the obstacle of *extraterritoriality*. Anyone who has tried to implement export control policies in reality will tell you that once the item has left your jurisdiction it is very difficult to get it back, and even harder to bring people to justice. Some countries have put so-called extraterritoriality clauses in their legislation to facilitate prosecution of export control violations occurring outside of the domestic jurisdiction. But it remains enormously difficult to successfully prosecute a broker in dual-use goods: let us say that a citizen of country X is residing in country Y brokering a deal involving strategically sensitive biochemical technology between countries A and B. How can this individual be brought to justice? Moreover, how can this individual even know that he or she might be violating export control legislation, if the goods in question might at first glance appear purely for civilian use?

One of the more recent attempts to try and tackle these challenges is the recast of the EU regulation for dual-use export control: Council Regulation (EC) 428/2009 was adopted on 5 May 2009 and entered into force at the end of August, setting up a legally binding regime for the control of exports, transfer, brokering and transit of dual-use items.⁴⁴ The regulation has some interesting solutions. To summarize, Article 5(1) specifies that an authorization will be required for the brokering of listed dual-use items if the broker either has "been informed" or "is aware" that the products in question are or may be intended for a WMD purpose. This puts pressure on state authorities and legitimate brokers to exchange information, and opens the way for possible practical implementation. Good communication channels between practitioners in the field and the licensing and enforcement officials will ultimately help to address two of the challenges earlier described: controllability and identification.

What remains to be tackled is the extraterritoriality factor. This can only be solved through a comprehensive international network of controls, where there are no holes between jurisdictions. The important factor to focus on is that illicit brokering *is* controlled, not *how*—regardless of legal tradition and regulatory structure.

THE NEED FOR INFORMATION SHARING

Domestic information sharing between brokers and governmental officials is essential for the effective control of illicit brokering, but so is information sharing on an international, regional and bilateral level. Had South African and US authorities not shared the information they had on the Asher Karni case, Karni would probably still be operating out in the open.

THE NEED FOR KEEPING TRACK

A majority of the bilateral and multilateral initiatives taken so far have included a requirement to register brokers active within the jurisdiction of a state, but can also extend to citizens of that state operating abroad, as well as legal persons registered within the state and operating abroad. This practice has been common in the initiatives regarding conventional and small arms brokering, and could be of use for regulating brokering in general. A universal registration requirement could be a good path to take.

THE NEED TO FIND A BALANCE

Without proper guidance and a sound regulatory framework all brokers are bathed in the same grey light of suspicion. But this is a legitimate profession that global, legitimate trade—regardless of commodity—could not function without. Therefore it is of paramount importance that legitimate brokers operate within well defined rules. What needs to be proliferated therefore is a regulatory framework. General Assembly resolution 63/67 sets the scene by addressing brokering in general without concentrating on the commodity. This is the right way forward but no international instrument, no matter how well crafted, will be effective if it is not implemented. There is a constant ebb and flow of ideas among the non-proliferation community. Whenever the bar of international non-proliferation ideas is raised a little further, it is incumbent on every individual member of the international community to implement these ideas as well as possible, and through that process, to generate new ideas. To solve the problem of illicit brokering we need to translate political mandate to practical, global action.

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Arms brokering control in the Americas

An VRANCKX

The Americas have been at the forefront of efforts to control small arms proliferation. The Organization of American States (OAS) was the first regional organization to negotiate an agreement to prevent, combat, and eradicate illegal trafficking in firearms, ammunition, and explosives. This agreement, known as the Inter-American Firearms Convention or CIFTA, the acronym of its Spanish name,¹ entered into force in July 1998. By then OAS member states had also approved Model Regulations for the Control of the International Movement of Firearms, Their Parts and Components and Ammunition. These were later supplemented with Model Regulations for the Control of Brokers.² The Declaration of Bogotá, made at the First Conference of CIFTA states parties in 2004, led to the adoption of additional model legislation on the marking of firearms³ and strengthening controls at export points, as well as other legislative measures to ensure compliance with the purpose and effective application of the Inter-American Firearms Convention.⁴

Subregional initiatives also began providing for illicit arms brokering control. In 2003 an Andean Plan was approved to Prevent, Combat and Eradicate Illicit Trade in Small Arms and Light Weapons in all Its Aspects. Mercosur countries adopted a Memorandum of Understanding for the Exchange of Information Regarding the Manufacture and Trafficking of Small Arms, Ammunition, Explosives and Other Materials in 2004, and in 2006 the Central American states approved a Code of Conduct on the Transfer of Arms, Ammunition, Explosives and Other Related Material. Explicit anti-brokering legislation was enacted in Nicaragua and in the United States—even if the US has yet to ratify CIFTA.

American states have also been visible in work at the international level. Several have ratified the UN Firearms Protocol (adopted in 2001) and some, by their early ratification, helped it enter into force.⁵ Colombian Ambassador Camilo Reyes Rodríguez presided over the 2001 United Nations conference that engendered the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (POA).

Regional agreements are a source of support for POA implementation, and the pioneering agreements of the Americas have been applauded by governments and civil society alike. There is less unanimity, however, about the success of arms brokering controls in the Americas. How effectively American states have used legislation to respond to specific challenges can only be seen by exploring the quality of brokering investigations and the sentencing of those found guilty—are they likely to deter those tempted to supply the region's next generation of unauthorized arms users? In an effort to

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inform that assessment, this article will consider specific episodes in the development of the American illicit arms market and the authorities' responses.

Cold War supplies and internal diversions

During the Cold War, the larger American states south of the Rio Grande demonstrated considerable independence from the hemispheric superpower when it came to supplying their armed forces. Several combined relatively modest arms imports with domestic licensed production arrangements. Unauthorized arms users tended to obtain their arms by pilfering from state forces, or from civilians with access to local markets and imports. For example, most arms seized from criminals in Rio de Janeiro between 1974 and 2004 appear to have been domestically produced, and approximately half of the rest were made in the United States.⁶ A substantial number of those arms were traced to have passed through Paraguay. Paraguay legally imported large quantities of arms, from Brazil as well as a number of other countries, and foreign visitors were able, upon the presentation of a photocopied ID to police authorities, to buy these.⁷ Some of the larger firearms—particularly semi-automatic rifles—later found their way to criminal gangs in Brazil.

Latin American insurgent groups were also armed through pilfering, stealing and small-time smuggling. Such a supply chain did not equip the groups sufficiently to take on state authorities: however, the transfer of Warsaw Pact arms to the region through Cuba boosted many groups' arsenals.⁸ In response to the arms passed to Sandinista troops in Nicaragua via Cuba, the United States supplied the Contra army, often with the assistance of third countries.⁹ Equipment could be exported legally to Honduras for its regular armed forces, and then diverted to Contra bases. However, it is reported that some members of the Honduran military pilfered weapons and diverted them to guerrillas such as the Frente Faribundi Martí para la Liberación Nacional (FMLN) that opposed US-allied state forces in El Salvador.¹⁰

The Nicaraguan case illustrates that demobilization in the early 1990s (in El Salvador, Guatemala and Nicaragua) was not entirely successful: many combatants, distrustful of the peace process, appeared at disarmament, demobilization and reintegration programmes without their weapons. An association of demobilized Salvadoran liberation fighters reportedly even notified the US State Department with concerns that their old missiles were for sale on the local black market.¹¹ Even those arms that were properly collected could find their way back into illicit channels. For example, serial numbers registered by OAS representatives monitoring FMLN demobilization in El Salvador were recognized 15 years later on arms received by the OAS team monitoring demobilization processes in Colombia.¹² When and how these weapons re-entered circulation is unclear.

With so many weapons circulating within the region, no sophisticated transborder brokering schemes were necessary to supply the next hot market for illegal arms. Non-state armed groups in Colombia, active since the 1960s, became prominent arms buyers in the early 1990s, as opportunities opened for them to participate in the global illicit narcotics trade. These groups were supplied over trafficking routes from Brazil, Ecuador, Panama, Peru and Venezuela.¹³ Transfers were generally on a far smaller scale, the so-called "ant trade" of individuals illegally trading small quantities of arms. Private citizens were also known to provide Colombian guerrillas with weapons as part of kidnapping ransoms.¹⁴ The wide variety of equipment supplied over these varied routes included different types of AK-47, each of which required different ammunition. Obtaining all these types of ammunition was challenging, and showed that sheer quantity of weapons was not sufficient; non-state armed groups sought a more uniform, high-quality arsenal.

Nonetheless, the weapons available in the region have exacted a heavy human price, and continue to do so. The civil war in El Salvador claimed 75,000 lives over 12 years; but since the war, the rate of

deaths from criminal violence has been higher than the average annual rate of war deaths.¹⁵ Over 200,000 victims were counted during the protracted civil war in Guatemala, and here too the homicide rate since the war has been extremely high.¹⁶ Criminal violence is less pervasive in Nicaragua, but the loss of human life in the Sandinista–Contra confrontation has been compounded by the economic catastrophe caused by the war and by the United States' economic embargo.

The weapons available in the region have exacted a heavy human price, and continue to do so.

Clearly, American states were not effectively containing the markets for illicit arms. Reports, based on Brazilian police data, that Brazilian gangs disposed of arms that the United States had legally exported to Paraguay met with an ad hoc response: the United States stopped its exports to Paraguay in 1996, shortly after president Clinton made a first call to curb illicit arms trafficking at the UN General Assembly. But since Paraguay had imported vast quantities of arms for decades, and both the state and private dealers had abundant stockpiles, the move had little effect. Nonetheless, it bore witness to growing awareness of the consequences of illegal arms trafficking, which CIFTA and model legislation came to address.

The age of the brokers

In 1998, the year CIFTA entered into force, the Fuerzas Armadas Revolucionarias de Colombia (FARC) sought to procure a large arsenal of a single model of AK-47. FARC intermediaries approached Vladimiro Lenin Montesinos Torres, security advisor to the then Peruvian president Alberto Fujimori.¹⁷ Montesinos had helped fight two Peruvian insurgency movements, which did not make him an obvious choice, but he undoubtedly knew about arms. He had trained at the US Army's School of the Americas and had been a Peruvian army captain until 1976, when he was caught selling to US intelligence officers a list of weapons that Peru had bought from the Soviet Union.

Montesinos had Peruvian army generals sign an end-user certificate for AK-47 assault rifles. With that certificate, he sent an envoy to Miami to confer with a Franco-American business contact, Charles Acelor. Acelor in turn referred him to Sarkis Soghanalian, a Lebanese arms dealer and long-time resident of the United States, who was able to provide a Jordanian surplus stock of AK-47s. Through a Russian military attaché in Lima, arrangements were made for the use of a modified Ukrainian-registered cargo aircraft to airdrop the arms to troops near the border with Colombia.

When this aircraft made a first trip from Jordan to Peru, in March 1999, it dropped its cargo while still well above the Colombian jungle: descending to 10,000 feet, it delivered 240 crates of arms in packages of 20 crates each, each package attached to two parachutes. The aircraft made at least three similar runs, transporting a total of 10,000 AK-47s.

Colombian security forces seized the first of these AK-47s in July 1999. Specimens were traced to their source and the Peruvian link was revealed. Montesinos initially stated that Colombian guerrillas had stolen the arms from the Peruvian army. Later he admitted that people posing as Peruvian army officers had tricked him into brokering the deal. When that account was proven false as well, Montesinos went in hiding. He was arrested in Venezuela in July 2001 and extradited to Peru, where he found several court orders waiting, including one for his role in the diversion of assault rifles to Colombian guerrillas. By then the affair had become a well-documented case of illicit arms brokering. It served to alert the international community and push for international cooperation to prevent similar cases.¹⁸ An analysis of how this case was dealt with can help evaluate what responses the Americas are giving to illicit arms brokering.

At the time of the diversion, Peru had already ratified CIFTA but had no specific arms brokering law. This did not stop Lima's Corte Superior de Justicia initiating a high-profile prosecution in 2000.¹⁹ In 2006, Montesinos was sentenced to 20 years in prison for arms trafficking, embezzlement, conspiracy

against the security of the state, and other charges with which the Peruvian court effectively captured this case of illicit brokering.

This judgement concerns over 30 other people, including the crew that flew the aircraft and intermediaries who connected Montesinos to the FARC. It also concerns businessmen with US residency, who facilitated the sale. The revelation of their involvement in such a high-profile case had excited great expectations for testing US legislation on arms brokering.²⁰ In line with such expectations, the US Federal Bureau of Investigation helped trace Montesinos through bank accounts he had continued to use while hiding in Venezuela. Soghanalian, however, had to be tried *in absentia*, as the Peruvian court was unsuccessful in seeking his extradition from the United States.

Soghanalian defended his actions in newspaper interviews.²¹ He stated that he charged Montesinos between US\$ 75 and \$ 95 per rifle, and denied he anticipated the arms would be diverted mid-air. He added that the deal had been cleared with the US Central Intelligence Agency. That last claim concurs with the Jordanian authorities' defence for not having prevented the sale: they reportedly claimed having cleared the deal with representatives of US agencies.²² Orders not to obstruct the arms transfer would explain why none of the flights encountered problems leaving Jordan, nor when refuelling in Algeria, Cape Verde, Grenada and Trinidad and Tobago on one flight, nor even in Spain, Mauritania and still other places where it refuelled on other flights. None of the four flights, moreover, had problems entering the Amazon airspace that is monitored as part of counter-narcotics activities.

Montesinos sold the arms for a profitable US\$ 8 million.²³ And he sold arms which proved of little use to the FARC, as technicalities from a note that is reproduced in the Peruvian court documents reveal:

The serial numbers reveal the rifles were fabricated in Germany in 1984 and 1985, and are of the type "MpiKM". These were probably supplied to Nicaragua, where an undetermined number were handed to guerrilla groups in El Salvador and Guatemala in ... 1987, 1988, 1989.²⁴

The FARC wanted modern Russian-made rifles: Soghanalian had arranged for the supply of AKM-MPiKM 7.62 x 39 mm. This calibre of ammunition was increasingly hard to come by in Latin America, where NATO-standard 7.62 x 51 mm ammunition is commonly used and produced. The Peruvian armed forces were the only ones in the region that had used 7.62 x 39 mm ammunition in the past and for whom such ammunition had been produced locally. By the time the AKM-MPiKM were airdropped, that calibre of bullet sold at five times the price of more conventional ammunition.²⁵ From a public policy perspective and in retrospect, the Colombian security situation actually "benefited" from the FARC being armed with this specific weapon. The guerrillas wasted resources on arms for which ammunition could be supplied with difficulty and at increasing cost. This helped contain the damage that the guerrillas could have caused had they procured an arsenal for which ammunition was more easily available.

Nonetheless, some of the rifles had been used before they were recovered,²⁶ and they were of symbolic importance. The Caguan jungle region of Colombia had been demilitarized by the government's 1998 decision to conduct peace talks with the guerrillas. While the talks stalled in the course of the following years, the guerrillas were able to interact openly with civil society and international observers, while simultaneously displaying their new arsenal.

Explaining this arms purchase as the FARC's reaction to US support for Colombian regular armed forces is perhaps simplistic, when the timeline is examined in detail. The FARC approached Montesinos before October 1998, when the Pastrana government first presented its project for a development programme to the Colombian National Congress, which initially provided for social development,

action to protect human rights and the environment, and institutional strengthening. The international community was asked to help finance the plan, known at the time as the Plan Colombia para la Paz. The plan was revised to include military support during that process, with the help of Washington officials. This revised Plan Colombia fit the US policy that cocaine use in the United States must be tackled by containing the drugs where they were produced: the United States could provide planes to spray coca fields, combat helicopters to protect spraying operations and transport troops, and could even provide training and communications system upgrades. Advocacy groups in the United States lobbied against the Plan, arguing that financing Colombian armed forces might lead to human rights violations.

It could be said that Montesinos' deal with the FARC ultimately coincided with US interests in two ways: the weapons bought by the FARC did not in fact damage the security situation in Colombia, but at the same time, with their massive new arsenal, the FARC appeared to pose a much increased threat. This threat could help to diminish opposition to Plan Colombia.²⁷ US Congress allotted a first budget (US\$ 1.3 billion) to the Plan in 2000, stipulating that it was to finance efforts in the War on Drugs, not to fight guerrillas. In August 2002, the United States lifted that restriction and continued allotting military aid to Colombia over subsequent years.

Drugs and guerrillas were not all that Colombian state forces were equipped to confront. Among other threats was a private "anti-guerrilla" force, known by the acronym AUC (Autodefensas Unidas de Colombia). The AUC was outlawed in 1989 but continued to expand until it demobilized in 2003–2005. By then, the use of AUC arms had contributed significantly to Colombia having the world's second highest per capita homicide rate at the turn of the millennium.²⁸ Many of its arms were acquired by brokering arrangements similar to those described below.

In 1999, a retired Colombian army officer allegedly bought 7,640 AK-47 M1A1 5.56 calibre assault rifles, spare parts and matching ammunition from the Bulgarian Arsenal company, in Kazanlak.²⁹ The armaments left the Bulgarian port of Varna on a ship that docked at the Pacific coast harbour of Buenaventura, Colombia in November 2001. The arms were unloaded without raising a stir, piled on trucks and brought inland to AUC troops rather than to Colombia's state-owned military industry (INDUMIL), which the end-user certificate identified as the importer. The weapons went unnoticed until some were recorded in Colombian authorities' inventories of confiscated arms. Investigation revealed the origin of the rifles, identified the retired officer as the broker and revealed an active army major to have signed the end-user certificate. The brokers' clear links to state forces did not stop Colombian authorities from prosecuting them.³⁰ Court proceedings began in April 2003,³¹ and dragged on to the highest court of appeal in November 2008.³² A study of the case indicates that authorities in the exporting country could have prevented this diversion if they had found it suspicious that the officer who signed the end-user certificate was too low in the military hierarchy to be responsible for such documentation and/or they had made a confirmation call to the Colombian authorities.

More arms still were diverted to the AUC from the AK-47 stockpile that Cuba had supplied to Sandinista forces in Nicaragua. These arms had become part of the Nicaraguan police force's arsenal, and the cash-strapped Nicaraguan police force was tempted by a proposal to exchange these old AK-47s.³³ Ori Zoller, owner of a firearms brokerage agency, offered to barter a few thousand of the police's AK-47s for a few hundred new sidearms. He would find a buyer for the AK-47s to compensate for his delivery of the new sidearms.

Zoller's Israeli compatriot Shimon Yelinek arranged for an end-user certificate that identified the Panamanian police as the client of several thousand rifles, which helped clear the deal at the Nicaraguan end. The *Otterloo*, a ship bought in Mexico by a recently established Panamanian maritime transport company, would transport 3,000 AK-47s and several million rounds of matching

ammunition. In November 2001, that ship failed to stop in Panama, but instead unloaded the rifles in Colombia. The AUC arranged for further transport.

This well-known case of diversion goes by the name of the ship, the *Otterloo*. Colombian authorities became aware that the AUC had received the arms in January 2002, and in the following May the governments of Colombia, Nicaragua and Panama asked the OAS to investigate the case in an effort to ascertain who was responsible and consider how such events could be prevented in future. The OAS Secretary General assigned the investigation to Morris D. Busby, a US ambassador with a long track record in Central America. His research team found that Nicaraguan authorities neglected to check the Panamanian end-user certificate, in disrespect of the commitments Nicaragua made when ratifying CIFTA in 1999.³⁴ Nicaragua was moved to set up an Inter-institutional Investigative Commission to probe the matter.

This inspired optimism in the 2003 *Small Arms Survey*:

The most welcome revelation from the affair concerned the attitudes of governments. Instead of retreating in denial and obfuscation, regional governments were more willing to acknowledge their problems of illegal small arms trafficking, although some still hesitate to fix them. In the past, deals like this would have been tolerated or dismissed as the unfortunate result of negligence or graft. The 2003 OAS report leaves no doubt about the need for systematic reform of government stockpile management and transfer of decision-making in Central America.³⁵

The OAS investigation also recommended steps to prevent unlicensed brokers such as Yelinek from trading arms in the future and the OAS adopted a brokering amendment to the Model Regulations in 2003.

Despite the lack of anti-brokering legislation at the time, existing anti-terror laws could have been used to prosecute Yelinek, and thereby also to deter others. As Panama had been among the first to ratify CIFTA, it was expected to take the necessary steps for Yelinek's prosecution. But Yelinek left Panama in April 2002, when Colombian papers began revealing the *Otterloo* had supplied the AUC's latest arms acquisition.³⁶ He testified for judicial authorities in Israel that he had not been involved in the deal. He returned to Panama in November, as proof of his willingness to cooperate, and he was arrested upon arrival. Yelinek later provided testimony for Nicaragua's investigative commission.³⁷ However, it was too late for Ambassador Busby, whose report was already being translated for presentation to the governments of Colombia, Nicaragua and Panama.³⁸ Thus the OAS report did not include a full investigation of the role of a key figure in the case.

Yelinek was given bail in March 2003. Several Panamanian courts disputed whether they had jurisdiction over a crime an Israeli national was suspected to have committed in a country other than Panama.³⁹ By March 2004, the Panamanian Supreme Court decided to drop all charges against Yelinek and closed the investigation. The course of these proceedings has been questioned.⁴⁰

In Colombia, local judicial authorities had for some time been following a lead mentioned in the OAS report. The port facility in Puerto Zungo, where the *Otterloo* had unloaded its deadly cargo, was at that time under licence to Banadex, the Colombian subsidiary of the Chiquita food company. Banadex was in charge of the shipment, and provided its personnel, warehouses and equipment for the purpose of receiving and transferring the arms and ammunition to the AUC.⁴¹

In 2007, US judicial authorities finalized an investigation that put Chiquita's involvement with the AUC in the *Otterloo* case in a broader perspective. Chiquita was indicted and pleaded guilty to providing material support to a terrorist group. The US Department of Justice reached an agreement in which Chiquita paid a fine of US\$ 25 million.⁴² Under that agreement, none of the company's executives faced criminal charges.

These proceedings paralleled US efforts to prosecute others allegedly engaged in supplying arms to Colombian armed groups. In 2007, the United States arranged for the arrest of arms broker Monzer al Kassar in Madrid.⁴³ He was extradited to the United States, where a federal court sentenced him to 30 years in prison for having conspired to supply heavy military equipment to a terrorist organization. The case was based on evidence the United States had collected by a sting operation rather than a genuine deal with the FARC. In 2008, a similar procedure led to the arrest of Russian arms broker Viktor Bout in Bangkok. Undercover Drug Enforcement Administration agents had tempted Bout to make a business trip to Thailand on the understanding he was about to conclude an arms deal with representatives of the FARC.

Current challenges

As perhaps the use of sting operations against Viktor Bout and Monzer al Kassar illustrates, the demand for military-style arsenals and therefore the age of grand international brokering schemes appear to have expired in the Americas. Monzer al Kassar was successfully extradited to the United States and Viktor Bout's hearing for extradition to the United States is ongoing at the time of writing, although US resident Sarkis Soghanalian was not extradited to stand trial in Peru. In Peru and Colombia, one-time amateur arms brokers, inexperienced in keeping the compromising part of their deals in the shade, have been awarded harsh sentences. This may well have deterred others from trying their hand in similar deals.

Nonetheless, illegal arms trafficking continues. The more spectacular arsenals seized by Colombian state security forces are ascribed to narcotics traffickers. One example is an arsenal seized in mid-2008, alleged to belong to the troops of "Don Mario", a chief of a narcotics trafficking organization. It contained Russian AK-103s that Venezuelan state forces had legally imported only a few months earlier. It is not yet known how the weapons appear to have found their way into the hands of narcotics traffickers.

In Venezuela, escalating criminal violence means Caracas has one of the highest rates of homicide in the world. The overwhelming majority of these homicides are ascribed to firearms abuse.⁴⁴ Over the last decade, El Salvador, Honduras and Guatemala have been in the top ten in international homicide rankings—a more lethal position than during the Central American civil wars—mainly due to criminal armed violence.⁴⁵ Medical costs and efforts to prevent crime weigh heavily on small Central American countries, increasing their stakes in an effective arms control system.

In Mexico, narcotics cartels have also become more violent and more heavily armed. Arms control by the Mexican Secretaría de la Defensa Nacional (SEDENA) is seen as highly deficient.⁴⁶ With the assistance of the US Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), over 90% of firearms recovered in Mexico in 2008 were revealed to have originated in the United States,⁴⁷ where firearms can legally be purchased from tens of thousands of licensed arms dealers, as well as unlicensed individuals selling their private arms collections at gun shows.

Despite region-wide efforts to control brokering, the arms transfer control regime in the Americas suffers from differences across the region. In some states, such as Colombia, Brazil or Mexico, strict legislation has been put in place and is implemented, but the number of deaths involving firearms in these countries remains high, in part because legislation elsewhere in the region is either poorly implemented or non-existent, facilitating illicit transfers. The wide variety of high-powered arms sold openly on the US market finds a lucrative illicit re-sale market south of the Rio Grande. Criminal gangs can afford high prices on the illicit market, and this economic incentive drives

The wide variety of high-powered arms sold openly on the US market finds a lucrative illicit re-sale market south of the Rio Grande.

many small-time traffickers and traders, thereby dispersing illicit trade to a point where it becomes technically uncontrollable.

An important challenge is therefore to control illegal arms transfers from the United States. However, cases recently brought before US courts reveal a mixed record on arms brokering control on a small scale, just as the US record appears mixed for those involved in brokering larger-scale deals. In Arizona, a state notorious for its lenient gun laws and large number of dealers, and which was shown to have been a point of sale for 500 of the guns recovered by the Mexican police in 2008, a court dismissed charges against a local arms dealer who knowingly sold about 700 weapons through intermediaries to two smugglers, who then shipped the arms to a narcotics cartel in the Mexican state of Sinaloa.⁴⁸ Most of the weapons sold in this case were imported AK-47s.⁴⁹ But at the same time, elsewhere in the United States, a US resident accused of conspiring to buy high-powered firearms in Miami was found guilty of illegally exporting arms to Honduras.⁵⁰ Among her exports was the companion sidearm to the FN PS90 submachine gun, a weapon designed to fire a round capable of piercing body armour. The Belgian manufacturers of this arm insist that it is only sold to police forces.⁵¹ Its diversion to Honduras indicates that Criterion 7 of the European Union Code of Conduct on Arms Exports, which demands that export permits be screened against the risk of illegal re-exports, is not always effectively applied. Evidence is accumulating to suggest that US importers constitute a loophole in arms control regimes; European export control authorities hardly ever deny permits for exports to the United States.⁵²

It will require more than placing additional ATF agents and detection equipment on the US–Mexico border to stop illegal firearms transfers, even if the United States were to deposit its ratification of CIFTA, as 29 other OAS states have already done. Each state faces its own challenges in improving brokering controls, but only with a coherently applied arms export control regime across the region can the Americas hope to do better.

Notes

1. Convención Interamericana Contra la Fabricación y el Tráfico Ilícitos de Armas de Fuego, Municiones, Explosivos y Otros Materiales Relacionados, adopted 14 November 1997 in Washington, DC.
2. The Model Regulations on Movement were drafted by the OAS Inter-American Drug Abuse Control Commission (CICAD) in 1997 and amended in 2003. The Model Regulations on Brokering that the OAS adopted in 2003 constitute an additional chapter to the original regulations.
3. Progress in the drafting of this model legislation is reported by Michael Sullivan, 2009, “Armas de fuego”, *En la Mira – the Latin American Small Arms Watch*, vol. 4, no. 26, January–February.
4. A second CIFTA review conference was held in 2008 and annual meetings are held by the Consultative Committee.
5. Costa Rica, El Salvador, Guatemala, Jamaica, Mexico, Panama, Peru, St Kitts and Nevis all ratified early. By May 2009, Argentina, Brazil, Dominican Republic, Guyana, Honduras, Nicaragua, Paraguay, Trinidad and Tobago and Uruguay had also ratified the protocol.
6. Pablo Dreyfus and Nicholas Marsh, 2006, *Tracking the Guns: International Diversion of Small Arms to Illicit Markets in Rio de Janeiro*, Oslo and Rio de Janeiro, PRIO and Viva Rio/ISER.
7. *Ibid.*
8. Rachel Stohl, Matt Schroeder and Dan Smith, 2007, *The Small Arms Trade: A Beginner’s Guide*, Oxford, Oneworld Publications, pp. 8–9.
9. Lucy Mathiak and Lora Lumpe, 2000, “Government Gun-running to Guerrillas”, in Lora Lumpe (ed.), *Running Guns: The Global Black Market in Small Arms*, London, Zed Books, pp. 54–80.
10. The assertion is made by Rachel Stohl and Doug Tuttle, 2008, “The Small Arms Trade in Latin America”, *NACLA (North American Congress on Latin America) Report on the Americas*, March–April, pp. 14–20. Honduras has denied this.
11. “Los misiles de las FARC”, *Semana* (Bogotá), 6 September 1999.
12. Author interview with MAPP/OAS (Mission to Support the Peace Process) team in Bogotá, August 2008.
13. Kim Cragin and Bruce Hoffman, 2003, *Arms Trafficking and Colombia*, Santa Monica, CA, RAND Corporation.

14. International Crisis Group, 2004, *Colombia's Borders: the Weak Link in Uribe's Security Policy*, Latin America Report no. 9, Brussels and Quito, ICG, September, p. 13.
15. United Nations Office on Drugs and Crime, 2007, *Crime and Development in Central America*, United Nations.
16. Ibid.: the vast majority of homicides are carried out with firearms.
17. Unless otherwise stated, the details presented here can be found in Kathi Austin, 2001, *Arms Trafficking: Closing the Net. A Test Case for Prosecution under the US Law on Arms Brokering*, Washington, DC, Fund for Peace.
18. For example, the case is referred to in Small Arms Survey, 2008, "Deadly Deception: Arms Transfer Diversion", in *Small Arms Survey 2008: Risk and Resilience*, Cambridge, Cambridge University Press, 2008, pp. 112–144.
19. Primera Sala Penal Especial de la Corte Superior de Justicia de Lima, Impartiendo justicia a nombre de la Nación, *Sentencia* (Exp. nº 038-2001).
20. Kathi Austin, op. cit.
21. "Arms Dealer Implicates Peru Spy Chief in Smuggling Ring", *Los Angeles Times*, 1 November 2000; and "Sarkis Soghanalian: The Cold War's Largest Arms Merchant", *Frontline/World [PBS]*, March 2001, at <www.pbs.org/frontlineworld/stories/sierraleone/soghanalian.html>.
22. "Arms Dealer Implicates Peru Spy Chief in Smuggling Ring", *Los Angeles Times*, 1 November 2000; "CIA Links Cited on Peru Arms Deal that Backfired", *New York Times*, 6 November 2000; "Las armas de las FARC", *Semana*, 19 June 2001.
23. Jeremy McDermott, 2004, "FARC and the Paramilitaries Take over Colombia's Drugs Trade", *Jane's Intelligence Review*, vol. 16, no. 7, July, pp. 28–33.
24. Author translation from the note reproduced in the *Sentencia* (Exp. nº 038-2001), op. cit., p. 72 as "[49] Fojas 25,063, del Tomo LL-1. July 19, 1999 N° 328/GIAT/DINTE/PONAL/DAS/CI-129". The (confidential) note is signed by a liaison officer of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) at the US embassy in Bogotá, in reply to a request from the Colombian Inter-institutional Terrorist Analysis Group (GIAT) to trace recently seized rifles.
25. Ibid.
26. Specimens were among the 27,000 recently confiscated arms at a public arms destruction event in December 2008, according to a witness account by researchers from the Colombian thinktank Fundación Ideas Para la Paz.
27. This theory for the deal is suggested in "Las armas de las Farc", *Semana* (Bogotá), 19 June 2001.
28. United Nations Office on Drugs and Crime, *United Nations Survey of Crime Trends and Operations of Criminal Justice Systems, Covering the Period 1990–2000*, Table 02.02, at <www.unodc.org/pdf/crime/seventh_survey/567svr.pdf>.
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30. Fiscalía, "Aseguramientos por caso de fusiles búlgaros", press release no. 170, 29 May 2002, at <www.fiscalia.gov.co/pag/divulga/Bol2002/mayo/bol170.htm>.
31. Fiscalía, "Confirmada acusación por armas de Bulgaria", press release no. 120, 29 March 2003, at <www.fiscalia.gov.co/pag/divulga/Bol2003/marzo/bol120.htm>; "Tráfico pesado – Dos oficiales (r) del Ejército y una empresaria de la industria militar van a juicio, acusados de contrabando de armas para las Auc", *Revista Cambio* (Bogotá), 7 April 2003.
32. See <www.ramajudicial.gov.co/csj_portal/assets/Estad.%20Nov.%2028.doc>.
33. The details recounted here can all be found in the *Report of the General Secretariat of the Organization of American States on the Diversion of Nicaraguan Arms to the United Defense Forces of Colombia*, 6 January 2003, document OEA/Ser.G, CP/doc.3687/03 (dated 29 January 2003).
34. Ibid.
35. The Small Arms Survey refers to the case in "Insights and Mysteries: Global Small Arms Transfers", in *Small Arms Survey 2003: Development Denied*, 2003, Oxford, Oxford University Press, p. 116.
36. "Armamento ilegal nicaragüense podría estar en manos de autodefensas", *El Tiempo* (Bogotá), 24 April 2002.
37. "Entrevistan a empresario Yelinek", *La Prensa* (Panama City), 3 February 2003.
38. "OEA fracasa en caso armas: Morris Busby, Delegado Especial del Secretario General en la 'cuerda floja'", *El Nuevo Diario* (Managua), 8 December 2002.
39. "Going through the Motions about AUC Arms", *The Panama News*, vol. 9, no. 16, 17 August–6 September 2003, at <www.thepanamanews.com/pn/v_09/issue_16/news_03.html>.
40. Guido Bilbao, "Fallo polémico. El tráfico de armas que jamás se investigó", *La Prensa* (Panama City), 13 March 2005. The article indicates that two members of the Court of Justice were ministers at the time of the *Otterloo* events and already knew the case well.
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42. US Department of Justice, "Chiquita Brands International Pleads Guilty to Making Payments to a Designated Terrorist Organization and Agrees to Pay \$25 Million Fine", press release, 19 March 2007.
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45. United Nations Office on Drugs and Crime, 2007, *Crime and Development in Central America*, United Nations.
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49. "US Guns Wielded in Mexican Crimes: Arms Dealer's Case Highlights Flow of Weapons across Border", *International Herald Tribune*, 27 February 2009.
50. "Naples Woman Convicted in Weapons Plot", *The Miami Herald*, 24 March 2009.
51. Author interview with FN Herstal executive.
52. See the Annual Reports According to Operative Provision 8 of the European Union Code of Conduct on Arms Exports, available from <www.consilium.europa.eu/showPage.aspx?id=1484&lang=en>.

Illicit brokering of SALW in Europe: lacunae in Eastern European arms control and verification regimes

Peter DANSSAERT and Brian JOHNSON-THOMAS

The EU Code of Conduct on Arms Exports was established in 1998, proclaiming the European Union as one of the world's most progressive regions in strengthening and harmonizing arms export controls. The code contains eight criteria, which all member states must consider when agreeing to an arms export licence; it also establishes a notification, consultation and reporting mechanism among EU member states. The stabilization and association process (SAP) makes this code binding on EU candidate countries: neighbouring states and other third countries may choose to align themselves with the code.¹ Briefly, the criteria state that arms should not be exported where there is a likely risk that they will be used to exacerbate human rights abuses or armed conflict, hamper sustainable development or promote acts of terrorism—or be re-exported to destinations where those conditions may apply. It places a duty on national licensing authorities to ensure that due diligence is applied to export licensing decisions, including a proper and meaningful assessment of the stated end-user and the specific end use of the proposed transfer. In December 2008 this code was transmuted into a legally binding EU Common Position.

But we would argue that no arms control agreement which does not recognize the need to licence and control the activities of arms brokers can ever hope to be effective. Therefore the vital interest of the EU Code of Conduct for the purposes of this article is that it is extended to cover arms brokering activities by the EU Common Position on arms brokering of June 2003.² This Common Position also establishes a system for EU member states to share information relating to arms brokers operating within the EU, and requires member states to develop adequate export controls and enforcement procedures to effectively regulate arms brokers within the EU.

Despite the accession of most Eastern European states to the European Union and the pledged collaboration of the remainder with the EU Code of Conduct on Arms Exports, there is evidence to suggest that at least four states in Eastern Europe are not fully meeting their responsibilities under the code as regards small arms and light weapons (SALW). While states appear to be attempting to follow the code as written, they are not in practice adhering to its spirit. This paper looks at six recent events: first, the recent conviction in the United States of Monzer al Kassar after a “sting” operation where he agreed to supply arms to the Fuerzas Armadas Revolucionarias de Colombia (FARC); second, the extradition hearing in Bangkok of Viktor Bout, based on an identical “sting” operation by the US Drug Enforcement Administration (DEA); and third, a recent field trip to Montenegro, where the authors met with various officials and ministers from government departments and state-owned entities. Added to

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these are our findings following visits to Bulgaria, Serbia and Ukraine in 2008 in our capacities as the Arms Expert and Arms and Aviation Consultant respectively for the UN Security Council's Group of Experts monitoring the arms embargo on the Democratic Republic of the Congo (DRC).

The case of Monzer al Kassar

Monzer al Kassar was sentenced on 25 February 2009 in the US District Court for Southern New York for agreeing to supply weapons to the banned terrorist organization FARC. He was convicted after a long sting operation conducted by the DEA, in which he was paid substantial sums of money to procure weapons, including sophisticated surface-to-air missiles. The weapons were to be purchased from the Romanian state arms company, Romarm, which, as far as the written records show, did not obstruct the sale. DEA Agent William Brown states in an affidavit that:

al Kassar ultimately received more than \$400,000 for the weapons deal, in funds represented... to be FARC drug proceeds, but which in fact came from DEA undercover bank accounts ... al Kassar had repeated contact with his long-established arms suppliers in Bulgaria and Romania and he traveled to both countries to finalize arrangements to procure the weapons for the FARC.³

He continued by observing that the FARC allegedly wished to purchase the following items from al Kassar:

4,350 AKM assault rifles; 3,350 AKMS assault rifles; 200 RPK assault rifles; 50 Dragunov sniper rifles; 500 Makarov pistols; 2,000,000 rounds of 7.62mm x 39mm ammunition; 120 RPG grenade launchers; 1,650 PG-7V grenade rounds and 2,400 RGO-78 hand grenades.⁴

These items were notionally covered by an end-user certificate issued by the Nicaraguan government and were notionally for delivery by sea to a port in Suriname.⁵

Substantial sums of money began to be sent by the undercover agents of the DEA to bank accounts controlled by al Kassar and it is clear from the US court documents that al Kassar, in turn, successfully negotiated with Romarm and others to add surface-to-air missiles, including SA-7, SA-16 and SA-18, to the order.⁶ The Brown affidavit continues:

Al Kassar told [us] that he was in Bulgaria and traveling the following day to Romania in connection with the weapons deal. ...he would meet with the weapons manufacturers in Romania on May 11th. ...I have confirmed through airline records that al Kassar ... in fact entered Romania on May 10, 2007".⁷

During his journey to Romania and Bulgaria al Kassar received quotations for prices from two defence companies: Armitrans⁸ (Bulgaria) and Romarm (Romania).⁹ Brown makes it clear that "some of the weapons had been procured by al Kassar from Romarm, a weapons manufacturer in Bucharest, Romania".¹⁰ According to Brown, at one point "al Kassar indicated that he was in Romania, and that the weapons manufacturer was upset because al Kassar had promised them ... money for the deal".¹¹ The DEA undercover agent "told al Kassar that the FARC had 3.5 million Euros in Romania to provide to the weapons manufacturer. Al Kassar indicated that the Romanian arms manufacturer would not be willing to receive the cash, so something else had to be arranged. ...because of the delay in payment, al Kassar himself had paid some of his own money to the weapons manufacturer"¹² and emphasized that "he did not want to hurt his reputation with the weapons manufacturer".¹³ Al Kassar also offered to provide an additional end-user certificate for the surface-to-air missiles "at a cost of 15 to 20 per cent of the total cost of the weapons listed on the certificate".¹⁴

Presumably to mislead Romanian government officials, al Kassar used an intermediary to procure the guns and ammunition from Romarm. This was Milan Djurovich of Trawl Services Limited, a company registered in the United Kingdom, but apparently with offices in Belgrade, Serbia. Paperwork found in the possession of al Kassar indicates that Milan Djurovich also used a company named Transtrade GmbH. It is from the Transtrade fax number that al Kassar received a fax with a Trawl letterhead for a meeting on 11 May 2007 in Bucharest.¹⁵ Romanian export licence C32.7515 of 16 May 2007 issued to Romarm reports Trawl Services Ltd as the broker.¹⁶ A copy of a contract between Trawl Services and Romarm was also found in al Kassar's possession.¹⁷ The handwritten notes on the back of the document give an indication of the profit that al Kassar was intending to make. Djurovich planned to buy a variety of assault rifles (2,000 AKM and 2,250 AKMS), machine guns (200 RPK) and sniper rifles (50 Dragunov) from Romarm for US\$ 607,000, which he would sell to Abu Munawwar (al Kassar¹⁸) for US\$ 920,000. Al Kassar would sell these weapons to the FARC for US\$ 2,005,000.¹⁹

Monzer al Kassar has been mentioned numerous times in a variety of shady arms deals.²⁰ In a 1993 report on the Iran/Contra scandal he was said to have received US\$ 500,000 for supplying weapons to the Nicaraguan Contras.²¹ His name was also mentioned in an Argentine arms trafficking case involving the then Argentine president Carlos Menem, in which it is alleged that between 1991 and 1995 guns were sold to Croatia and Ecuador, when a United Nations arms embargo was in force against Croatia, and Ecuador was engaged in a border conflict with Peru (Buenos Aires was a guarantor for negotiating peace between the two states). Most of the Argentine culprits were sentenced in 2001: "the court called for further investigation of Syrian citizen Monser al Kassar [sic], of the money trail left by the illegal commissions paid ... investigators must track the steps of businessman Al Kassar and clarify Washington's responsibility in the events".²² In 1992 Switzerland blocked US\$ 6.2 million in a Geneva bank account in the name of al Kassar after allegations of money laundering. Instead of shipping tea and coffee to Yemen, Polish weapons were shipped to Bosnia and Croatia: the proceeds of this shipment had gone through the Geneva bank account.²³ In 2003 the United Nations Panel of Experts on Somalia found that al Kassar had undermined the UN arms embargo against Somalia in 1992.²⁴

EU member states are required to exercise "due diligence" when interpreting the Code of Conduct on Arms Exports. How was a notorious arms trafficker able to make deals with Bulgarian and Romanian defence companies, when these two countries had sought, and been accepted for, membership of the European Union—membership that carries as an obligation the strict observance of the EU Code?

EU member states are required to exercise "due diligence" when interpreting the Code of Conduct on Arms Exports.

The case of Viktor Bout

Viktor Bout is facing extradition from Thailand after his arrest following a very similar DEA operation to that carried out against Monzer al Kassar, in which he was allegedly induced to supply weapons to the FARC. In this example, the full documents have yet to be produced in court, but the indictment presented to the US Magistrate Judge in Southern New York, which resulted in the grant of Bout's arrest warrant, is available. According to DEA Special Agent Robert Zachariasiewicz's affidavit, Bout's co-accused, Andrew Smulian, said that, after speaking with Bout, "Bout had 100 Igla surface-to-air missiles available immediately. ...Smulian also advised that the weapons are in Bulgaria, and it will cost \$5 million to move them".²⁵ At a subsequent meeting with DEA undercover agents, on 30 January 2008, Smulian again reiterated that "the weapons are ready in Bulgaria"; Bout and Smulian later nominated to transport the weapons using "an airline company based in Romania".²⁶ The indictment alleges that Bout believes he is able to obtain and export weapons from Bulgaria, which raises concerns about the new member state's application of the EU Code of Conduct.

Montenegro's export control regime

On 20 and 21 January 2009, in the course of a series of meetings between the authors and both Montenegrin government officials and representatives of the state-owned Montenegro Defence Industry, concerns began to arise regarding Montenegro's arms export control regime. In particular, the tables of import and export licences issued during 2007²⁷ have a number of inconsistencies. For example, the import of 1,200 machine guns from Zimbabwe is shown in the table of imports as an import from Switzerland, which is only the state of residence of the company that brokered the deal, not the state of origin of the weapons. In the same year, 103 sets of refurbishment kits for torpedo 53-65KE were authorized for export to Macedonia. The table of exports states that the kits were ultimately for civilian use in Kyrgyzstan—which, one may recall, is at some considerable distance from the nearest ocean.²⁸

Bulgaria

In the course of a series of meetings with competent officials in Sofia during October 2008, it became clear that the EU Code of Conduct on Arms Exports was not always being interpreted according to its underlying principles. For example, there had been a small but significant transfer of spare parts for machine guns to the Government of Rwanda.²⁹ Rwanda is bound by a different UN Security Council sanctions regime than the DRC, therefore the transfer of these parts was licit, but given the highly portable nature of the equipment, the geographical proximity of the two states and the porosity of their border, and allegations of Rwandan assistance to the Congrès national pour la défense du peuple (CNDP) rebel group operating in eastern DRC, the transfer raised concerns. Examination of the relevant documents reveals that the company brokering this particular deal was a small operation with no physical presence at the given address in the United Kingdom: the company was an off-the-shelf purchase by an unknown entity subscribing just £1 share capital; the company secretary was a Ukrainian national; and the one named company director was also Ukrainian.³⁰ A more prudent interpretation of the EU Code would have militated against an export licence being granted to that particular company. Since this case was brought to the Bulgarian authorities' attention, they have consulted their British colleagues about subsequent export licence applications by that particular company, which is a positive sign of better European cooperation and adherence to the code.

Bosnia and Herzegovina

Until October 2006, the NATO-led Implementation Force (IFOR) and its successors (Stabilization Force, or SFOR, and then EUFOR) were effectively controlling all the exports and imports of military equipment from and to Bosnia and Herzegovina (BiH).³¹ All parties involved claimed to adhere to the EU Code of Conduct, regional arms control protocols, and "regional balance of power regimes".³² The movement of military equipment was controlled through an administrative procedure involving Forms 5 and 6. Form 5 was submitted by the BiH authorities to the multinational force 15 days in advance, detailing the contents, the timing of proposed movements and the final destination. Upon approval, the BiH authorities could issue an export/import licence and prepare a Form 6, which is a transport request form. Again the form had to be authenticated through the relevant ministry. It was then submitted to the multinational force 5 days prior to shipment. Form 6 also provided details of the contents, proposed timings and final destination: all data in Form 6 had to match the data in Form 5. If Form 6 was not correctly completed no export (or import) was allowed.

The BiH Ministry of Defence told the authors in 2006 that the majority of its surplus weapons and ammunition had been earmarked for destruction, but this never happened.³³ Instead, a large

quantity of weapons and ammunition were exported: almost 332,000 SALW were sold compared with 85,000 destroyed, and almost 65 million rounds of ammunition were sold compared with 3 million rounds destroyed.³⁴ Many of these weapons and ammunition were shipped to Iraq. The US military was in need of weapons for its security sector reform operations in Iraq, and the Stabilization Force, led by NATO, had control over the export of arms from BiH, which had an abundance of weapons. The shipments of arms from BiH to Iraq became so important that the entry into force of BiH's moratorium on the export of surplus SALW, issued on 22 July 2004, was delayed by a year.³⁵

The procedure for many of these shipments does not always appear to have adhered to the regional protocols as claimed.³⁶ All of the shipments to Iraq involved a combination of Croat, Swiss, UK and US arms brokers. Many appear to flout the spirit of the EU Code of Conduct as well as some of the detail. EUFOR file number 50627/04³⁷ is a typical example.³⁸ It involves a transfer of approximately 35 million rounds of SALW ammunition and approximately 10,000 Kalashnikov assault rifles to Iraq from Tuzla airport.³⁹ The three Forms 5 that were used identified the buyer and end-user as Marius Joray Waffen A.G. from Switzerland, represented by Ivan Peranec. On various occasions, Marius Joray has denied any involvement in these transfers, and claimed that his name had been used incorrectly in all these transactions.⁴⁰ Copies of the export licences were shown to the authors by the Bosnian arms company Unis Promex in October 2006. All clearly stated Marius Joray Waffen A.G. as the buyer.⁴¹ Marius Joray Waffen A.G. is a small weapons shop in the town of Laufen; Ivan Peranec runs Scout d.o.o., allegedly a travel agency⁴² in Zagreb, but operating in BiH as arms broker.⁴³ Of the 26 Forms 6 that coincide with these exports between 8 December 2004 and 23 June 2005 only three had Marius Joray Waffen A.G. in Switzerland as the final destination. The final destinations on the other Forms 6 were Coalition Provisional Authority (Baghdad), Marius Joray Waffen A.G./Coalition Provisional Authority (Iraq), Marius Joray Waffen/Republic of Iraq (Gen. Saad Saleh Khafagi).⁴⁴ As the names on Form 6 do not match those on the Forms 5, the procedure has not been adhered to.

In July 2005 approximately 78,000 assault rifles and light machine guns were exported to the United Kingdom on a UK import licence for three UK arms dealers.⁴⁵ These assault rifles are prohibited in the United Kingdom, and it is not clear what the dealers were going to do with the rifles upon receipt. Nonetheless, the MV *Sloman Traveller* sailed from the Croatian port of Ploče to Immingham, United Kingdom on 12 July 2005. It had taken several weeks to transport the guns to Ploče⁴⁶ from arsenals scattered around BiH—all allegedly under police escort.⁴⁷ According to a shipper's discrepancy note that was discovered in the records of the Port Authority some weapons had disappeared in transit between the Bosnian frontier post and Ploče: when the truck was unloaded at the quayside on 1 July 2005 six pallets of assault rifles were missing.⁴⁸ This represents potentially 720 assault rifles. The note describes the lack of physical security: "693 pallets said to contain 7,389 cases of surplus weapons. Pallets control: steel stripe bands loosened ... Cases are not sealed. Carrier shall not be liable for the number and content of cases" (emphasis added).⁴⁹ During various interviews the Bosnian authorities and EUFOR assured the authors that the cases had been unsealed for inspection prior to transport, and thereafter resealed.⁵⁰ There was no action taken to establish the whereabouts of the missing weaponry.

Ukraine

The Ukrainian government provided information regarding all exports of arms and ammunition to states in the Great Lakes region of Africa between 2004 and 2008 to aid the authors' work for the United Nations Security Council Group of Experts on the DRC. The amounts of ammunition exported were prodigious, but there was little further information. It was stated that it was impossible to note the head markings on any of the ammunition exported to the region, as it came from surplus stocks inherited from the Soviet Union. In fact, these ammunition rounds still carry headstamps and the boxes

would have been marked with lot numbers. It would have been possible to record these lot numbers at the time of export licensing, which would have facilitated future tracing of the consignments. The EU Code of Conduct has a User's Guide that describes best practice for the application of each criterion of the code. Although the User's Guide does not specify best practice for the recording of information on export licences, it seems reasonable that best practice demands the recording of more, not minimal, information on not only export licences but also accompanying cargo manifests, airway bills and the like: a more robust interpretation of the exporting state's responsibilities would be to the humanitarian and developmental advantage of the receiving state.

Conclusion

Arms brokers have for too long been the elephants in the room when establishing arms control agreements.

Arms brokers have for too long been the elephants in the room when establishing arms control agreements. Regulation of the activities of arms brokers is paramount to the effectiveness of arms control agreements. For as long as states recognize the role, and the undoubted usefulness to some, of arms brokers, they must also recognize the opportunities available for individual brokers to ply their trade for both good and ill in an increasingly global marketplace. The EU Code of Conduct and the Common Position on brokering do appear to recognize this. What is needed now is to ensure that the reasons and principles behind the code are better appreciated by all those who are affected by it.

One can argue that the cases referred to here demonstrate that states are struggling to adapt to this more challenging arms export control and verification regime. Perhaps a more coherent approach from the Council of the European Union would ensure that current efforts, which often rely on bilateral projects and can appear piecemeal,⁵¹ evolve into a more focused and effective assistance programme to inculcate the principles of the EU Code of Conduct on Arms Exports more firmly into the political culture of new and potential member states.

One practical way to heighten awareness of state responsibilities vis-à-vis the Code of Conduct is to broaden the base of those who receive sensitization to the code. Rather than providing purely for officials of the relevant ministries, politicians and the media should also be sensitized: these groups need to know what questions to ask of governments, not just when an annual report is presented to parliament, but on a continual basis. This process, which implies a series of small seminars in several locations, given the large geographical area involved (and also issues of language, etc.), would help markedly to provide another series of internal checks and balances on arms exports and, by inciting a dialogue, would help to ensure the Code of Conduct is honoured more effectively both within affected states and within the European Union as a whole.

Notes

1. Ukraine agrees to "take due account of the content and principles of the EU Code of Conduct on Arms Exports" in its Action Plan with the EU (adopted February 2005), and has received help from EU member states in its efforts to do so. Bosnia and Herzegovina committed itself to following the EU Code of Conduct in 2002, as part of the Stabilization and Association Process; Montenegro has also officially aligned itself with the code (as noted in the Annual Reports According to Operative Provision 8 of the European Union Code of Conduct on Arms Exports, available from <www.consilium.europa.eu/showPage.aspx?id=1484&lang=en>).
2. EU Common Position 2003/468/CFSP of 23 June 2003 on the control of arms brokering.
3. *US v. Monzer al Kassar*, Affidavit in Support of Request for Extradition, 17 July 2007, court document 56-2, case 1:07-cr-00354, paragraphs 9–10.
4. *Ibid.*, paragraph 25.
5. On 2 May 2007 al Kassar and a DEA agent met with the owner and the captain of the cargo vessel to discuss the transportation of the weapons. During the meeting it was made clear that the vessel would make a stop in Suriname

- for technical reasons, where the cargo would be discharged. (*US v. Monzer al Kassar*, Government's Memorandum in Connection with the Sentencing of Monzer al Kassar, court document 108, case 1:07-cr-00354, pp. 15–17.)
6. *US v. Monzer al Kassar*, Affidavit in Support of Request for Extradition, 17 July 2007, court document 56-2, case 1:07-cr-00354, paragraph 41; See also Trial Transcript 10 November 2008, 8BAAKASF; Trial Transcript 18 November 2008, 8BIFKASF; Trial Transcript 19 November 2008, 8BJGKASF.
 7. *US v. Monzer al Kassar*, Affidavit in Support of Request for Extradition, 24 July 2007, case 1:07-cr-00354, paragraphs 64 and 67.
 8. Letter Armitrans to Policia Nacional Nicaragua, 10 May 2007, ref. no. 114-En/10.05.2007.
 9. *US v. Monzer al Kassar*, Government's Memorandum in Connection with the Sentencing of Monzer al Kassar, op. cit., p. 17.
 10. *US v. Monzer al Kassar*, Affidavit, 24 July 2007, op. cit., paragraph 70.
 11. *Ibid.*, paragraph 73.
 12. *Ibid.*, paragraphs 73–74.
 13. *Ibid.*, paragraph 74.
 14. *Ibid.*, paragraph 69.
 15. Fax from Trawl Services, 27 April 2007, on file with author.
 16. Export Licence C32.7515, 16 May 2007, on file with author.
 17. Contract no. 004/07-nlc, annex no. 1, 13 April 2007.
 18. *US v. Monzer al Kassar*, Trial transcript 6 November 2008.
 19. Contract no. 004/07-nlc, annex no. 1, 13 April 2007.
 20. See Brian Wood and Johan Peleman, 1999, *The Arms Fixers*, BASIC, NISAT and PRIO, p. 9.
 21. L.E. Walsh, *Final Report of the Independent Counsel for Iran/Contra Matters, Volume I: Investigations and Prosecutions*, 4 August 1993, Washington, DC, Government Printing Office, chapter 8, at <fedbbs.access.gpo.gov/library/iran_rpt/>.
 22. "Illicit Arms Case Broadens in Scope", *IPS-Inter Press Service*, 9 April 2001.
 23. "Victoire à l'arraché d'un trafiquant d'armes", *Swissinfo.ch*, 13 March 2003.
 24. Report of the Panel of Experts on Somalia pursuant to Security Council resolution 1425 (2002), in UN document S/2003/223, 25 March 2003, paragraphs 41–48.
 25. *US v. Viktor Bout and Andrew Smulian*, "Indictment", case 1:08-cr-00365-SAS, court document 5.
 26. *Ibid.*, paragraphs 17d and 20.
 27. Ministry of Economic Development of Montenegro, 2008, *Annual Report on Foreign Trade in Controlled Goods in 2007*.
 28. It is also difficult to imagine a civilian use for a torpedo.
 29. Rwandan end-user certificate, 16 January 2007, reference 033/DEF/318/F/007/08.
 30. This information was obtained from Companies House, at <www.companieshouse.gov.uk>.
 31. The multinational force based itself upon Annex 1A, Article VI of the Dayton Peace Agreement, which allowed them to regulate the military traffic throughout BiH. However, documentation obtained by the authors showed that the force went beyond "the control and regulation of surface military traffic throughout Bosnia and Herzegovina" (see Peter Danssaert, Jan Cappelle and Brian Johnson-Thomas, 2007, *Recent Arms Deliveries from the Successor States of the Former Yugoslavia*, Antwerp, International Peace Information Service). This was denied by Nick Williams, Chief Political Advisor of EUFOR, in an email to the authors, 26 November 2006.
- Since 2006, Bosnia and Herzegovina's Law on Import and Export of Arms and Military Equipment and Control of Import and Export of Dual-Use Items charge four state-level ministries with control of the trade in arms and military equipment in Bosnia and Herzegovina (BiH), of which three have veto power: the Ministry of Foreign Trade and Economic Relations is responsible for issuing licences to import, export or transit; the Ministry of Foreign Affairs and the Ministry of Security must give their consent before a licence can be issued; and finally the Ministry of Defence can voice an opinion. Until March 2008 EUFOR was still responsible for granting transport permits within and from Bosnian territory. It is not yet clear how this has changed the situation with regard to illicit arms brokering.
32. E-mail between SFOR Joint Military Affairs Current Operations and SFOR Legal Advisor, 2 May 2003.
 33. Interviews with BiH Ministry of Defence representatives, 20 and 25 October 2006
 34. End 2006 more than 200 million rounds remained in the surplus stockpiles (Interviews with BiH Ministry of Defence representatives, 20 and 25 October 2006).
 35. Danssaert et al., op. cit., pp. 25–26.
 36. For a detailed analysis of the Iraqi shipments see Amnesty International and TransArms, 2006, *Dead on Time: Arms Transportation, Brokering and the Threat to Human Rights*.
 37. Reference 10-03-39-223-80/04 "Unis Promex to Swiss".
 38. EUFOR began its mission in BiH in December 2004, and the Stabilization Force left in December 2005.
 39. Danssaert et al., op. cit., pp. 20–21, 27–30.

40. "Anfrage Banga Boris. Schweizer Waffenschiebereien nach Irak und Afghanistan?" (06.1056), *Amtliches Bulletin der Bundesversammlung*, Beilagen – Nationalrat, Wintersession 2006, Zwölfte Sitzung, 20 December 2006.
41. Visit by IPIS to Unis Promex, 19 October 2006.
42. The agency used to have an Internet presence at <www.cursor.hr/pa.nsf/Pages/scout-zg> (visited 21 April 2006).
43. Various SFOR/EUFOR Forms 5 and 6; interview with BiH Ministry of Defence representatives, 20 October 2006. For additional information on the activities of Scout d.o.o. with the American arms broker Taos Industries, see H. Griffiths, 2007, "The Case of Taos Industries, Speedex and Scout" in UNIDIR, Small Arms Survey and UN Department for Disarmament Affairs, *Developing a Mechanism to Prevent Illicit Brokering in Small Arms and Light Weapons: Scope and Implications*, Geneva, UNIDIR, pp. 23–24; Amnesty International and TransArms, op. cit., pp. 111–113.
44. SFOR/EUFOR, file 50627/04. (See Danssaert et al., op. cit., pp. 27–30.)
45. Danssaert et al., op. cit., pp. 23.
46. Interview with Port Authority Ploče, 16 October 2006.
47. Interview with BiH Ministry of Defence representatives, 20 October 2006.
48. Brian Johnson-Thomas's visits to Port Authority Ploče, 16–17 October and 15–16 November 2006; Danssaert et al., op. cit., Annex 5.
49. Reproduced in Danssaert et al., op. cit., Annex 4.
50. Interviews with BiH Ministry of Defence representatives, 20 and 25 October 2006.
51. See, for example, Council Joint Action 2008/230/CFSP of 17 March 2008 on support for EU activities in order to promote the control of arms exports and principles and criteria of the EU Code of Conduct on Arms Exports among third countries.

The regulation of arms brokering in Southern Africa

Guy LAMB

As brokers are a crucial link in the chain of arms transfers to militaries, policing agencies, militias and rebel groups, the development and implementation of controls on arms brokering activities has drawn considerable global attention, particularly within the United Nations (UN) system. A number of international, regional and subregional multilateral agreements that aim to eradicate the uncontrolled proliferation of arms include recommendations and commitments to control brokering activities. Their objectives are to regulate licit brokering, which typically relates to the facilitation of legal government-to-government arms, ammunition and military equipment transfers, and to distinguish this clearly from illicit brokering, which generally entails the diversion of legitimately sourced arms, ammunition and military equipment into criminal markets; the facilitation of arms transfers in violation of United Nations Security Council arms embargoes; or the facilitation of access to arms for transnational organized crime syndicates.

Multilateral agreements, however, are in themselves not enough. Effective control over arms brokers can only be achieved through creating and implementing national legislation: many regions are yet to achieve legally enforceable legislation (and accompanying punitive measures) at the subregional and regional levels. It is essential that a comprehensive network of states with national controls be constructed and effectively maintained, as unscrupulous brokers are adept at moving their operations and evading controls. Those countries without adequate brokering laws and regulations indirectly undermine international attempts to prevent illicit arms trafficking.

This article focuses on arms brokering activity and regulation in the Southern African Development Community (SADC), a region that was plagued by illicit arms brokering in the 1990s and early 2000s, and that in 2001 established a firearms and ammunition control protocol, a regional instrument to control the illicit flow of small arms and light weapons, which includes provisions on arms brokering.¹

The evolution of arms brokering in Southern Africa

Arms brokering in Southern Africa can be traced back to the eighteenth century, the initial period of colonial penetration of Southern Africa, when brokering was characterized by entrepreneurs and transport agents of European descent arranging the supply of firearms, ammunition and gunpowder to settlers (and later indigenous people) to be used for hunting, protection of lives and property, and to engage in armed conflict. Between 1977 and 1994, arms brokers collaborated closely with the South African government to smuggle arms into South Africa in violation of a mandatory UN Security

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Council arms embargo (resolution 418).² From the early 1970s until the late 1990s, arms brokers arranged for the delivery of weapons, ammunition and military supplies both to governments and non-state groups throughout the Southern African region.

International attention with respect to arms brokering activities in Southern Africa became more acute from the mid-1990s, as it became clear that arms brokers were involved in supplying arms to Rwandan forces and to the União Nacional Para a Independência Total de Angola (UNITA) rebel group in Angola, in violation of UN Security Council arms embargoes. In the case of arms transfers to UNITA, a Human Rights Watch report in 1994 indicated that:

...UNITA continues to receive support from private sources in South Africa, and has found a number of other governments willing to provide arms, or to facilitate UNITA's arms purchases through private sources, most notably Zaire [now the Democratic Republic of the Congo].³

Similar allegations were made by the UN Panel of Experts on Violations of Security Council Sanctions against UNITA in 2000, which highlighted the role of arms brokers:

...arms procurement by UNITA was not by means of direct contact between UNITA and arms producing countries. ...UNITA placed orders with arms brokers who then undertook to procure the required items. A small number of favoured brokers accounted for the bulk of UNITA's weapons imports, but in some cases UNITA also solicited bids from a wider range of brokers—particularly when there were special needs or requirements. As a general rule, the broker who supplied the arms was also responsible for arranging transport and delivery, any necessary training on the use of the system, maintenance and sometimes even spare parts.⁴

As regards Rwanda, reports suggested that a South African arms broker had, in collaboration with an official of the Rwandan Hutu government-in-exile, brokered the shipment of arms and ammunition held by the Seychelles government to Rwandan Hutu forces in what is now the Democratic Republic of the Congo (DRC) in June 1994.⁵ The Seychelles authorities had confiscated the arms and ammunition in question in 1993, when they were destined for Somalia, which was under a UN Security Council arms embargo. The South African arms broker allegedly informed the Seychelles authorities that the recipient government for this new deal would be Zaire (now DRC).⁶

More recently (in 2006), a Belgian arms broker based in South Africa violated the UN Security Council arms embargo against Côte d'Ivoire.⁷ The South African authorities, mainly due to bureaucratic inertia, have been unable to take timely legal action against this arms broker, who has now left South Africa.

Allegations of illicit arms brokering have been made against individuals and business entities located within Zimbabwe since 1997. It has been reported that individuals who were closely associated with Zimbabwe Defence Industries (ZDI) (which is a state-run, but private, enterprise) were involved in arranging illicit arms transfers to a rebel group in Sierra Leone and Charles Taylor's regime in Liberia.⁸ In March 2004, a group of alleged mercenaries (predominantly South Africans), who were supposedly en route to stage a coup against the government of Equatorial Guinea, were arrested at Harare airport.⁹ The group was accused of attempting to acquire weapons in Harare from ZDI. A prominent Zimbabwean businessman has also been implicated in facilitating arms supplies to Zimbabwe in violation of a European Union arms embargo, in addition to other suspicious international arms deals.¹⁰

Illicit arms brokering, carried out from both inside and outside the subregion, is still having serious consequences in some parts of Southern Africa, particularly eastern DRC. The UN Security

Council Group of Experts on the DRC reported in January 2008 that “regional smuggling networks are supplying weapons to illegal armed groups in the eastern part of the Democratic Republic of the Congo”.¹¹ Such activities were in violation of the UN Security Council arms embargo on all foreign and Congolese armed groups and militias operating in the territory of North and South Kivu and Ituri, and on groups not party to the Global and All-Inclusive Agreement on the Transition in the Democratic Republic of the Congo.¹²

Arms brokering regulation: selected Southern African cases

The states of the Southern African region are making efforts to regulate arms brokering. The legally binding SADC Protocol on the Control of Firearms, Ammunition and Other Related Materials of 2001 commits its member states to implement legislation to control the activities of arms brokers in their territories. Section 5(3)(m) of the protocol stipulates that states parties should incorporate provisions that “regulate firearm brokering” in their national laws “as a matter of priority”.¹³

In June 2009 only two member states have specific legislative provisions to regulate brokering activities, namely Mauritius and South Africa.¹⁴ The other SADC member states have not instituted specific brokering controls due to a combination of insufficient capacity and technical expertise, as well as a lack of political will. Some SADC member states have indirect and non-specific brokering controls: that is, some of the dimensions of arms brokering are regulated implicitly by national measures to control the import, export and transport of arms and ammunition; typically by a permit or licence system, where, in most cases, any individual or entity requires official documentation to transfer arms or ammunition across, into or out of the country.

Here we review brokering regulations and their effectiveness in SADC member states that have experienced significant levels of arms brokering activity and/or instituted brokering or brokering-related regulations and controls.

SOUTH AFRICA

South Africa has the most advanced arms industry in sub-Saharan Africa, established in the late 1930s.¹⁵ As a result of the UN Security Council arms embargo, substantial government investment expanded South Africa’s arms industry significantly in the 1970s and 1980s, so that arms, ammunition and military equipment could be produced domestically.¹⁶ In the late 1980s, following South Africa’s military withdrawal from Angola and Namibia, as well as a considerable reduction in the capital expenditure component of the defence budget, the defence industry began to prioritize exports, and made extensive use of arms brokers as a means of circumventing the arms embargo, which was lifted in May 1994.¹⁷ As noted above, arms brokers based in South Africa, without the approval of the South African government, were also responsible for facilitating arms transfers to regions experiencing armed conflict and to groups and governments that were subject to UN Security Council arms embargoes.

In 1995, a year after the first all-race democratic elections, the South African cabinet penned a new arms export control policy, which was converted into legislation in 2002 (the National Conventional Arms Control Act). The new policy was principally motivated by the actions of a Lebanese arms broker, Eli Wazan, who in 1993 facilitated the export of South African arms to Yemen by means of fraudulent end-user certificates (which stated the end destination as Lebanon). South Africa was seeking to promote a new, more responsible, human rights-based foreign policy at the time, and Yemen was widely regarded as a country through which arms would be re-exported to conflict zones. The government established a Commission of Inquiry into the incident. Subsequent to

the commission's report, South Africa overhauled its arms export regulations by means of a cabinet memorandum.¹⁸ The memorandum led to the creation of the National Conventional Arms Control Committee (NCACC), a permanent cabinet committee to oversee the reform of the arms export regime and the regulation of South African arms exports. A secretariat (currently known as the Directorate for Conventional Arms Control, or DCAC), as well as an interdepartmental Scrutiny Committee was also established to support the NCACC.

The National Conventional Arms Control Act incorporates most of the regulations from the cabinet memorandum. It includes relatively detailed arms brokering controls, whereby arms brokers are required to register with the DCAC as well as to apply for export licences prior to arranging arms-related transfers. All arms export licence applications must be authorized by the NCACC. The NCACC has the authority to monitor and investigate any arms transfer that it regards as being suspicious. In addition, an arms broker found guilty of contravening key provisions of this act may receive a maximum prison sentence of 25 years.

In 2008, the National Conventional Arms Control Act was amended; this effectively strengthened the arms brokering control regime in South Africa, as it expanded the regulation of brokering activities from conventional arms to "controlled items", a more comprehensive list of arms and arms-related materials that is set to be determined by the NCACC during 2009. Section 1 of the current act defines brokering services as:

- acting as an agent in negotiating or arranging a contract, purchase, sale or transfer of controlled items for a commission, advantage or cause, whether financially or otherwise;
- acting as an agent in negotiating or arranging a contract for the provision of services for a commission, advantage or cause, whether financially or otherwise;
- facilitating the transfer of documentation, payment, transportation or freight forwarding, or any combination of the aforementioned, in respect of any transaction relating to buying, selling or transfer of controlled items; and
- acting as intermediary between any manufacturer or provider of controlled items, and any buyer or recipient thereof[.]

The National Conventional Arms Control Act (as amended) establishes the most comprehensive set of regulations in Southern Africa to control arms brokering activities. This legislation is applicable to any South African citizen, permanent resident or organization registered or incorporated in South Africa, irrespective of their physical location. The South African framework of regulations is widely regarded in the arms control community as being rigorous and robust. However, consistent implementation remains a challenge for the South African government, as over the past two years the NCACC has only met infrequently, and has not adhered to all the transparency provisions of the act. In addition, the DCAC does not have sufficient capacity to fully implement the responsibilities assigned to it.

MAURITIUS

The Mauritian government is currently pursuing a relatively stringent approach to firearms control, and the Firearms Act 2006 prohibits arms brokering activities in Mauritius. Section 32 of the act states:

no person shall act on behalf of another, whether in return for a fee, commission or other consideration, or not, to negotiate any contract or other arrangement in connection with ... manufacturing, exporting, importing, financing, mediating, purchasing, selling, transferring, transporting, freight-forwarding, supplying and delivering firearms, their parts or components or ammunition or any other act performed by a person, that lies outside the scope of his regular business activities and that directly facilitates the brokering activities.¹⁹

In terms of acquiring firearms, ammunition and related equipment for the official security forces, the Mauritian government tends to import directly from foreign manufacturers, as Mauritius does not manufacture arms and ammunition. Such orders are typically small, but are put out for tender and administered by the Prime Minister's office. As brokering within Mauritius is prohibited, only foreign persons or entities are permitted to submit tender documents.²⁰

Firearms and ammunition dealers source their stock directly from foreign manufacturers, predominantly in Europe (for example, enterprises in Austria, Czech Republic, Finland, Germany and Sweden).²¹ One dealer stated that he used to import firearms and ammunition from a broker based in South Africa, but that the process of importing the items proved to be expensive and time-consuming (due to the scrutiny required by the South African arms export regulations). This underscores the necessity for—and effectiveness of—common and rigorous brokering regulations in all arms-producing states.²²

ANGOLA

Much of Angola's criminal procedure and firearms-related legislation is outdated. For example, Article 265 of the Angolan Penal Code (1954) specifies punitive measures of one to five years imprisonment for individuals found guilty of the illicit manufacture, import, transport, purchase, sale, concealment, caching, marketing or holding of war materials, firearms and their ammunition. Angolan legislation prohibits the private import, export and sale of military-style firearms.

It is not possible to purchase firearms legitimately in Angola for civilian use. Instead, anyone seeking to purchase a weapon would first have to obtain a firearm permit, and then an import permit. They would have to purchase the firearm in another country (most likely in Namibia or South Africa) and provide the Angolan border authorities with the necessary documentation when it was imported. However, this system is weakened by a lack of effective communication between the Angolan and the Namibian authorities, as noted in the section on Namibia.

Angola has yet to ratify the SADC Firearms Protocol, and it has not established robust arms brokering controls and regulations. This is of concern, given Angola's experience of illicit arms brokering, particularly with UNITA, as mentioned above.

BOTSWANA

In Botswana, the Arms and Ammunition Act 1981 provides for the registration of arms dealers, as well as the regulation of the arms trade in Botswana. Article 13 of the act stipulates that no person shall trade, purchase, sell or transfer any arms or ammunition unless they are a registered arms dealer, and they are required to be a citizen or a resident of Botswana. A government permit is required for the legitimate import and export of arms and related material.

The Botswana government makes use of registered arms dealers to procure arms and ammunition for official use.²³ However, given the modest size of the Botswana security forces, the supply of arms and ammunition to government is not highly profitable. This, combined with the relatively small and highly regulated trade in firearms and ammunition for civilian use (which includes a raffle system of allocating firearm licences to individuals), has led to firearms dealers selling a range of other goods, such as camping and fishing equipment and accessories. No significant incidents of illicit arms brokering in Botswana have been reported, hence the lack of prioritization with regard to establishing specific brokering controls.

MALAWI

In Malawi, the Firearms Act 14:01 (1967) governs the use, possession and trade in firearms and related materials. The Registrar of Firearms (with the Malawi police) is the central authority with respect to the acquisition of firearms. This authority regulates the issue of permits and licences for the exportation and importation of firearms. Firearms dealers are accountable to the Registrar for all the transactions they conduct, and are required to keep a register and to submit returns to the Registrar of Firearms.

There have been no reports of significant firearm trafficking associated with Malawi, hence it is not possible to ascertain the effectiveness of the controls currently in place.

NAMIBIA

The Arms and Ammunition Act 1996 regulates the manufacture, trade, transfer, use and possession of small arms and light weapons in Namibia, but makes no specific provision for the regulation of arms brokering activities. However, individuals and organizations that seek to trade in arms and ammunition in Namibia must have a dealer's licence, which is issued by the Namibian Police Force (Nampol). Dealers are required to establish and maintain registers on all arms and ammunition acquired, disposed of, transferred and sold. Dealers are also obliged to submit monthly returns to the firearm registry. Only licensed arms and ammunition dealers and appropriate government agencies, such as the Namibia Defence Force, are permitted to import and export commercial consignments of arms and ammunition, and an import permit issued by Nampol is mandatory.²⁴

According to the National Focal Point on Small Arms and Light Weapons, Nampol acquires the majority of its firearms and ammunition from dealers. All police arms and ammunition contracts are put out to tender and, in principle, only licensed dealers in Namibia are eligible to submit tender documents.²⁵ Thus, dealers that are successful in securing a police contract essentially act as brokers. The Ministry of Defence typically secures its arms, ammunition and military equipment directly from manufacturers, and does not make use of brokers.²⁶

Namibia's current firearms control legislation allows for citizens of SADC states (who are not residents of Namibia) to purchase firearms in Namibia and then export them to their country of residence (subject to relevant national firearm controls). Angolan citizens reportedly make use of this provision most frequently. In order for such a transaction to take place legally, the non-citizen requires a letter of permission from the appropriate authority in their country of residence, as well as an official export permit from Nampol. However, there is typically no communication at all between Nampol and the authorities of the state to which the individual is purporting to export the firearm(s) and ammunition to ascertain whether the firearm(s) and ammunition physically left Namibian soil. This state of affairs has the potential to allow for individuals to stockpile and illegally trade in firearms and ammunition in Namibia. Nampol has taken legal action against Namibian-based businesspersons in the northern border regions with regard to firearm stockpiling.²⁷

TANZANIA

In Tanzania, the Armaments Control Act 1991 prohibits the import and export of armaments without official and documentary authorization by the National Armaments Control Advisory Board, an interdepartmental body appointed by the President of Tanzania. Any person who attempts to transfer arms and related material across Tanzanian soil without authorization will be subject to prosecution.

The authorities maintain strict control over the actions of firearms dealers in Tanzania. Detailed reports must be sent to the Firearm Registrar of the Tanzanian police on all firearm and ammunition

sales and purchases. All imports of firearms must first be authorized by the Firearm Registrar. Dealers are required to inform the police of the transportation of firearm stocks to their premises. The police will then provide protection during the transportation process. Given Tanzania's close proximity to eastern DRC, however, these controls are insufficient. DRC has experienced brisk arms embargo-busting activities in recent years, therefore Tanzania needs more specific legislation to effectively discourage and restrain illicit brokering.

ZIMBABWE

Zimbabwe's key firearms control legislative document is the Firearms Act 1957, but it does not include an arms brokering component. Recently an amendment to this legislation was drafted, but it is yet to be approved by the state law adviser and approved by the legislature. There are, however, elements within this legislation that relate to the trade and transportation of firearms and ammunition. Currently, all firearms dealers require an official licence and must maintain registers of their stock and transactions. Any person who transports firearms and ammunition across Zimbabwean soil is required to carry an official licence or a permit. This system is rigorously enforced by the Zimbabwe Republic Police. However, it is suspected that larger-scale brokering activity, particularly with regard to ZDI, is not being regulated in the same way.

OTHER SOUTHERN AFRICAN STATES

Despite the 2001 SADC Firearms Protocol committing member states to implement brokering legislation, there are no specific brokering controls within the remaining SADC member states. In Lesotho, Mozambique, Swaziland and Zambia, firearms exports and imports are administered by means of permit or licence systems similar to those in place in Botswana, Malawi and Namibia. In the DRC, the applicability of current firearms control legislation is a moot point: technically, there is a ban on civilian firearm possession. However, this ban has not been effectively enforced. In addition, despite its considerable experience of the activities of illicit arms brokers, the DRC has not yet instituted formal controls or regulations to govern arms brokers.

Conclusion

Significant levels of arms brokering activity have taken place within the SADC region over the past decade, and such activities are likely to continue in the foreseeable future. Much appears to be legitimate, but certain individuals and business entities have engaged in unscrupulous arms dealings, which have included the violation of UN Security Council and European Union arms embargoes—although a broker has yet to be convicted of illicit arms trafficking in the SADC region. Current, indirect controls are clearly insufficient: it is essential that those SADC member states that have not already instituted specific brokering regulations prioritize the establishment of such regulations.

A broker has yet to be convicted of illicit arms trafficking in the SADC region.

In 2007, the Southern African Regional Police Chiefs Cooperation Organisation (SARPCCO), in partnership with the Institute for Security Studies (South Africa), devised standard operating procedures (SOPs) for the implementation of key elements of the SADC Firearms Protocol. The objective of such operating procedures was to provide policy makers, legislative officers and practitioners of firearms control with guidance on how to amend national legislation in order for it to conform to the SADC Firearms Protocol. A number of these operating procedures relate to the regulation of arms brokering activities.

The implementation of the SOPs is being facilitated by SARPCCO's Regional Coordinating Committee (RCC) on Small Arms and Light Weapons, which is comprised of the heads of firearms control in all SARPCCO member states.²⁸ The RCC meets twice a year, and the members assist each other with amendments to national legislation and controls in order to bring them into line with the SADC Firearms Protocol. For example, in 2009, Botswana and Namibia are in the process of amending their firearms control legislation, and are using the SOPs as a reference source. In addition, in 2009 SARPCCO initiated the purchase of firearm marking equipment for member states and developed a common firearm record-keeping database to apply to the SADC region. Both developments will further empower security forces in the SADC region to respond constructively to the problem of illicit brokering in arms and ammunition.

Notes

1. This article summarizes the findings of Guy Lamb and Nicholas Marsh (eds), 2009, *Dangerous Dealings: Arms Brokering and Regulations in Southern Africa*, Institute for Security Studies and International Peace Research Institute, Oslo. Other contributors to this publication include Ben Coetzee, Noël Stott and Gugu Dube.
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3. Human Rights Watch, 1994, *Arms Trade and Violations of the Laws of War Since the 1992 Elections*, New York, Human Rights Watch, p. 53. See also the follow-up report by Human Rights Watch, 1999, *Angola Unravels: The Rise and Fall of the Lusaka Peace Process*, New York, Human Rights Watch, pp. 112–123.
4. *Report of the Panel of Experts on Violations of Security Council Sanctions against UNITA*, reproduced in UN document S/2000/203, 10 March 2000, paragraph 15.
5. Brian Wood and Johan Peleman, 1999, *The Arms Fixers*, BASIC, NISAT and PRIO, chapter 3; this case is also taken up in the *Report of the International Commission of Inquiry (Rwanda)*, UN document S/1996/195, 14 March 1996, paragraphs 21–39.
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7. *Report of the Group of Experts* submitted pursuant to paragraph 2 of Security Council resolution 1708 (2006) concerning Côte d'Ivoire, UN document S/2006/964, 12 December 2006, pp. 7–8.
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26. Interview with M. Shiweda, Managing Director, Windhoek Maschinenfabrik (pty) Ltd, Windhoek, 26 September 2007; interview with J. Auala, Chief Executive Officer, August 26 Holding Company (pty) Ltd, Windhoek, 27 September 2007.
27. Interview with Nangombe, 26 September 2007.
28. The member states of SARPCCO are: Angola, Botswana, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia, Zimbabwe.

UNIDIR FOCUS

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Rebecca Johnson

UNIDIR, 2009

382 pages

Sales number G.V.E.09.0.4

ISBN 978-92-9045-194-5

English

US\$50 (plus shipping and handling)

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PROJECT UPDATE

EC–UN Cooperation in Peacebuilding

This six-month project, which began in April 2009, aims to examine cooperation between the European Commission (EC) and the UN with regard to peacebuilding. It uses both quantitative and qualitative analysis to identify trends in the EC's funding relationship with the UN; to examine the coherence of the EC and the UN's peacebuilding concepts and policies; and to explore ways in which the EC might further support UN-led peacebuilding reforms. This assessment is intended to inform policy debates on the EC–UN partnership and system-wide coherence in peacebuilding. It is particularly timely in view of the current evaluation of the UN's peacebuilding policies and architecture (including the *Report of the Secretary-General on Peacebuilding in the Immediate Aftermath of Conflict* published in June 2009 and the 2010 review of the Peacebuilding Commission).

The project will result in the publication of a research report during the Swedish Presidency of the European Union (EU) in 2009, which will be discussed in the European Council's United Nations Working Party. The report will be designed to address the central research question "How has the European Commission contributed to UN peacebuilding efforts?" and to provide policy options for how the EC–UN partnership might be strengthened. More specifically, the report will identify trends in EC funding for the UN, including in fragile states, and provide a comparative overview of EC and UN policies relevant to peacebuilding. It will also provide a narrative account of the history of the EC's support for the UN's peacebuilding architecture and will examine EC–UN operational cooperation in the Peacebuilding Commission's focus countries. It aims to highlight opportunities and obstacles to policy and programming alignment both at headquarters and in the field and to suggest ways in which the EU might better support ongoing UN peacebuilding reform efforts.

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