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ATT ISSUE BRIEF NO. 5

The Arms Trade Treaty

Regulating Brokering to Reduce the Risk of Diversion

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About the Research

To support effective implementation of the Arms Trade Treaty (ATT) by increasing knowledge and strengthening shared understanding, the United Nations Institute for Disarmament Research (UNIDIR), Conflict Armament Research (CAR) and the Stimson Center have worked together in a research consortium since 2019. This ATT Issue Brief, the consortium's fifth, aims to enhance knowledge on brokering and serve as a reference for future meaningful dialogues on the topic within the ATT framework.

Acknowledgements

Support from UNIDIR core funders provides the foundation for all the Institute's activities. This research is supported by the Governments of Finland, Germany and Switzerland. The partners would also like to thank Ryan Fletcher, Natalie Bramlett and Melanie Garcia Flores for their research support.

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Citation

Hardy Giezendanner, Anna Mensah Sackey, Ishtiaq Khan, Rob Hunter-Perkins and Rachel Stohl (2025) "The Arms Trade Treaty Regulating Brokering to Reduce the Risk of Diversion", Issue Brief No. 5, UNIDIR, Conflict Armament Research, and Stimson Center. <https://doi.org/10.37559/CAAP/25/ASC/04>.

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About the Research Partners

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The United Nations Institute for Disarmament Research (UNIDIR) is a voluntarily funded, autonomous institute within the United Nations. One of the few policy institutes worldwide focusing on disarmament, UNIDIR generates knowledge and promotes dialogue and action on disarmament and security. Based in Geneva, UNIDIR assists the international community to develop the practical, innovative ideas needed to find solutions to critical security problems.

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Acronyms & Abbreviations

ATT	Arms Trade Treaty
CSP	Conference of States Parties
DPRK	Democratic People's Republic of Korea
ECOWAS	Economic Community of West African States
GGE	Group of Governmental Experts
NSAG	Non-state armed group
OSCE	Organization for Security and Cooperation in Europe
POA	United Nations Programme of Action to Prevent, Combat and Eradicate the illicit Trade in Small Arms and Light Weapons in All its Aspects
POE	United Nations Panel of Experts
SALW	Small arms and light weapons
WGETI	Working Group on Effective Treaty Implementation

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1. Introduction

Brokers can play an important role in facilitating or acting as intermediaries in the legitimate conventional arms trade. The phenomenon of individuals and companies facilitating and arranging arms deals between states and between states and arms producers – for example, bringing sellers and buyers together – is not new. However, since the 1990s, and particularly in conflicts in Angola and West Africa, high-profile cases and popular culture have raised greater awareness of arms brokering. This applies in particular to the way in which some unscrupulous brokers are actively engaged in the diversion and illicit trade in conventional arms, including small arms and light weapons (SALW), and ammunition to or between unauthorized (end-) users – including criminals, pirates, non-state armed groups (NSAGs) and groups listed as terrorist groups¹ and their procurement networks. The fact that such entities were not explicitly controlled or regulated by modern transfer control systems appeared to be a blind spot that needed to be addressed to prevent the diversion of arms. The lack of regulation of arms brokering and brokers in many United Nations Member States means that even brokers that facilitate global transactions for the legitimate, licit arms trade may unwittingly be involved in, or facilitate rather than prevent, diversion of arms to the illicit market. Thus, when considering how to prevent and mitigate the risk of international

arms transfers being diverted – and therefore posing a threat to peace, security and stability – the United Nations Security Council and multilateral arms control processes have examined the issue of brokering more closely since the 1990s.

The Arms Trade Treaty (ATT) is not the first multilateral conventional arms control instrument to require states to take measures to regulate arms brokering and prevent or reduce the risk of brokers diverting conventional arms to the illicit arms trade. Over the past three decades, United Nations Member States have adopted three global instruments that include provisions to address illicit arms brokering:

- ▶ The United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All its Aspects (PoA)²
- ▶ The United Nations Firearms Protocol³
- ▶ The Arms Trade Treaty (ATT)⁴

In addition, on numerous occasions the Security Council has expressed concern about and recalled the connection between illicit arms brokering and other illicit activities as a major factor fuelling and exacerbating conflicts. In resolutions on SALW, arms embargoes, non-proliferation, and eliminating the supply to and acquisition of weapons

¹ For the purposes of this issue brief, the terms “groups listed as terrorist groups” or “groups designated as terrorist groups” are used interchangeably to refer to NSAGs designated and listed by the United Nations Security Council in relevant resolutions as terrorist groups, affiliated groups, entities or individuals.

² United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, A/CONF.192/15, 20 July 2001, [https://undocs.org/A/CONF.192/15\(SUPP\)](https://undocs.org/A/CONF.192/15(SUPP)), Part II, para. 14.

³ Protocol Against the Illicit Manufacturing of and Trafficking in Firearms their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime, General Assembly resolution 55/255, 8 June 2001, <https://undocs.org/A/RES/55/255>, Article 15.

⁴ Arms Trade Treaty, 2013, <https://www.thearmstradetreaty.org/treaty-text.html?templateId=209884>, Article 10.



United Nations Security Council meeting, November 2021. Credit: © United Nations.

by terrorists,⁵ the Council has repeatedly called on states to implement their existing commitments. Thus, United Nations Member States have made multiple commitments to implement measures to regulate arms brokers and brokering activities and to take action to address illicit brokers and prevent illicit brokering in conventional arms. Moreover, the 116 ATT states parties are obliged under Article 10 of the Treaty to regulate brokering and under Article 11 to counter the diversion of conventional arms, including by illicit brokering.

During the final rounds of ATT negotiations in 2012 and 2013, a large majority of states from different regions noted that, without brokering controls, the Treaty would not be able to meet its stated objectives and purposes.⁶ A UNIDIR research report that informed the original negotiations found that definitions and other key issues had to be carefully considered when engaging in a dialogue on brokering in the context of the ATT.⁷ Yet, since the ATT's entry into force, there has been no dedicated dialogue on the effective implementation of its brokering and related provisions during the

⁵ For example, Security Council resolution 2616, 22 December 2021, [https://undocs.org/S/RES/2616\(2021\)](https://undocs.org/S/RES/2616(2021)), p. 2. See also Security Council resolution 2117, 26 September 2013, [https://undocs.org/S/RES/2117\(2013\)](https://undocs.org/S/RES/2117(2013)), pp. 2 and 5, paras. 7 and 10; Security Council resolution 1540, 24 April 2004, [https://undocs.org/S/RES/1540\(2004\)](https://undocs.org/S/RES/1540(2004)); for example, Security Council, Counter-Terrorism Committee, Global Survey of the implementation of Security Council resolution 1373 (2001) and other relevant resolutions by Member States, S/2021/972, 24 November 2021, <http://undocs.org/S/2021/972>, in particular paras 467, 472, 744, 747, pp. 140, 141, 218; Security Council resolution 2370, 2 August 2017, [https://undocs.org/S/RES/2370\(2017\)](https://undocs.org/S/RES/2370(2017)); and Security Council, Counter-Terrorism Committee, *Security Council Guiding Principles on Foreign Terrorist Fighters: The 2015 Madrid Guiding Principles + 2018 Addendum* (New York, 2019), <https://www.un.org/securitycouncil/ctc/sites/www.un.org.securitycouncil.ctc/files/security-council-guiding-principles-on-foreign-terrorist-fighters.pdf>, pp. 43–44.

⁶ Sarah Parker, *Analysis of States' Views on an Arms Trade Treaty* (Geneva: UNIDIR, October 2007), <https://unidir.org/files/publication/pdfs/analysis-of-states-views-on-an-arms-trade-treaty-332.pdf>, pp. 7, 20; Sarah Parker, *Implications of States' Views on an Arms Trade Treaty* (Geneva: UNIDIR, January 2008), <https://unidir.org/files/publication/pdfs/implications-of-states-views-on-an-arms-trade-treaty-en-240.pdf>, p. 18.

⁷ Elli Kytömäki, *Supporting the Arms Trade Treaty Negotiations through Regional Discussions and Expertise Sharing, Final Report of the EU–UNIDIR Project* (Geneva: UNIDIR, 2012), <https://unidir.org/publication/supporting-the-arms-trade-treaty-negotiations-through-regional-discussions-and-expertise-sharing-final-report/>.

annual Conferences of States Parties (CSPs) and working group meetings. Furthermore, previous research and other available information indicate that implementation by states parties is uneven: some seem concerned, others face implementation challenges.⁸ In addition, some of the signatory states

have concerns with regards to implementing the Treaty's brokering provisions.⁹ This is compounded by the fact that, ever since the original negotiations of the Treaty and its entry into force, a number of unresolved questions, knowledge gaps and key issues have remained.

1.1. Purpose of this ATT Issue Brief

This ATT Issue Brief is intended to address some of these gaps and to provide reference material to inform a meaningful dialogue between states and other interested stakeholders within the ATT framework on the effective implementation of the Treaty's brokering provisions. Further, it identifies some of the unresolved questions and key issues that merit further consideration by states and other interested stakeholders. Specifically, with the re-configured structure of the ATT Working Group on Effective Treaty Implementation (WGETI) and its work plan, there will be an examination of the implementation of ATT Article 10 (on brokering) in the near future.¹⁰ This Issue Brief is intended to provide a basis for fruitful discussions on the complex issue of regulating arms brokering.

This is the fifth ATT Issue Brief prepared by the research consortium that includes Conflict Armament Research, the Stimson Center and UNIDIR. It is part of a series of issue briefs that seeks to enhance knowledge, provide tools

and facilitate dialogue among states. They aim to strengthen shared understanding on the impact of the ATT in addressing diversion, as well as to identify effective measures and avenues to further promote effective policies and practices under the Treaty.

This ATT Issue Brief builds on existing research conducted by the consortium, relevant documents developed by ATT states parties to support effective Treaty implementation, instruments and guidance documents developed by states at the regional level, and relevant publications by international and regional organizations. It also includes an analysis of relevant information contained in publicly available initial ATT implementation reports from 70 states parties. As part of this research, the reports submitted by United Nations Member States under the PoA in 2024 were also analysed.

⁸ For example, ATT Baseline Assessment Project (ATT-BAP), *Initial Findings and Current State of Practice* (Coventry: ATT-BAP, October 2014), <https://www.stimson.org/wp-content/files/file-attachments/ATT-BAP-Initial-Findings-Current-State-Practice.pdf>, in particular p. 17. See also, for example, General Assembly, First Committee, 72nd session, 17th meeting, 18 October 2017, GA/DIS/3584, <https://press.un.org/en/2017/gadis3584.doc.htm>. See also Section 3 of this Issue Brief.

⁹ For example, *Realities, Challenges, and Opportunities: The Arms Trade Treaty in the Indo-Pacific Region* (Geneva: Small Arms survey, August 2024), <https://www.smallarmssurvey.org/sites/default/files/resources/SAS-Report-2024-ATT-Indo-Pacific-EN.pdf>, pp. 13–14.

¹⁰ The issue of brokering is listed in the new WGETI work plan as the third topic to be discussed. See Arms Trade Treaty, Working Group on Effective Treaty Implementation, Letter from the Chair, ATT/CSP10.WGETI/2024/CHAIR/775/Letter-SubDocs, 22 January 2024, https://thearmstradetreaty.org/hyper-images/file/ATT_WGETI_CSP10_Chair_Letter_and_Sub-WG_Documents_for_20-21_February_2024_EN/ATT_WGETI_CSP10_Chair_Letter_and_Sub-WG_Documents_for_20-21_February_2024_EN.pdf, Attachment A.

The Issue Brief is structured as follows:

- ▶ The rest of Section 1 introduces the topic and provides an overview of definitions. As well as describing what arms brokers and brokering activities are, it includes different regional and global common understandings of core brokering activities.
- ▶ Section 2 presents case studies to illustrate how illicit brokering facilitates the diversion of conventional arms and related items.
- ▶ Section 3 introduces the ATT provisions on regulating brokering and addressing the role played by illicit brokering in facilitating

diversion. It also provides an overview of implementation of Article 10 based on an analysis of publicly available initial reports submitted by ATT states parties as of July 2024, as well as other relevant information contained in reports on the implementation of the PoA.

- ▶ In conclusion, Section 4 outlines potential options for ATT states parties and other stakeholders to enhance shared understanding on the issue of brokering and on strengthen brokering regulation.

1.2. What is an arms broker and what are arms brokering activities?

Neither the ATT nor the other international arms control instruments provide definitions of “brokering activities” or “broker”. Among the dictionary definitions of brokering are, for example, “to arrange the details of an agreement, especially between different countries”,¹¹ or to act as an intermediary, such as “an agent who negotiates contracts of purchase and sale” (e.g., for commodities).¹² While there is no universally accepted definition or agreement at the international level by all states of who an arms “broker” is and what “brokering activities” are, states in Africa, the Americas and Europe have nevertheless agreed definitions of brokers or of brokering of SALW in regional conventional arms control instruments or guidelines (as shown in Table

1). The Wassenaar Arrangement, an export control regime, had also produced “best practices” for regulating brokering of a broad range of conventional arms and military equipment.¹³ In addition, the European Union explicitly calls for regulating the brokering of a wide range of military materiel.¹⁴ While these instruments and guidelines indicate that there is no single common approach, a shared common minimum understanding can be discerned – that is, that arms brokering involves mediating, facilitating or arranging an international arms transfer between an exporting party and an importing party in exchange for some form of benefit.

¹¹ For example, Oxford Learner’s Dictionary, “Broker”, https://www.oxfordlearnersdictionaries.com/definition/english/broker_2. Such as, for example, a peace agreement brokered with support from an external third party.

¹² For example, Merriam-Webster, “Broker”, <https://www.merriam-webster.com/dictionary/broker>.

¹³ Wassenaar Arrangement, “Statement of Understanding on Arms Brokering”, December 2002, <https://www.wassenaar.org/app/uploads/2019/consolidated/06Statement-of-Understanding-on-Arms-Brokerage.pdf>; and Wassenaar Arrangement, “Best Practices For Effective Legislation on Arms Brokering”, as amended, 2016, <https://www.wassenaar.org/app/uploads/2019/consolidated/Best-Practices-for-Effective-Legislation-on-Arms-Brokering.pdf>.

¹⁴ Council of the European Union, Council Common Position 2003/468/CFSP of 23 June 2003 on the control of arms brokering, *Official Journal of the European Union*, L 156/79, 25 June 2003, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32003E0468>.

TABLE 1.

Definitions and descriptions of brokers and brokering in regional instruments

INSTRUMENT / YEAR/ ARTICLE	BROKER	BROKERING
Economic Community of West African States (ECOWAS) Convention on Small Arms and Light Weapons, their Ammunition and Other Related Materials 2006 / Article 1(8)		“Work carried out as an intermediary between any manufacturer, supplier or distributor of small arms and light weapons and any buyer or user; this includes the provision of financial support and the transportation of small arms and light weapons.”
European Union Council Common Position on the control of arms brokering 2003 / Article 2(3)	“Persons and entities who buy, sell or arrange the transfer of such items that are in their ownership from a third country to any other third country.”	“Negotiating or arranging transactions that may involve the transfer of items on the EU Common List of military equipment from a third country to any other third country.”
Central African Convention for the Control of Small Arms and Light Weapons, their Ammunition and all Parts and Components that can be used for their Manufacture, Repair and Assembly (Kinshasa Convention) 2010 and amended 2011 / Article 2(l-m)	<p>“Broker: Any 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.”</p> <p>“Brokers, including financial and shipping agents, who do not register with the competent national authorities, shall be considered illegal.”</p>	“Brokering activities: can take place in the broker’s country of nationality, residence or registration; they can also take place in another country. The small arms and light weapons do not necessarily pass through the territory of the country where the brokering activity takes place, nor does the broker necessarily take ownership of them.”
Protocol on the Control of Firearms, Ammunition and Other Related Materials in the Southern African Development Community (SADC) 2001 / Article 1		<p>“‘Brokering’:</p> <ol style="list-style-type: none"> acting for a commission, advantage or cause, whether pecuniary or otherwise; or to facilitate the transfer, documentation and/or payment in respect of any transaction relating to the buying or selling of small arms and light weapons firearms, ammunition or other related materials; thereby acting as intermediary between any manufacturer, or supplier of, or dealer in small arms and light weapons and any buyer or recipient thereof.”

<p>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</p> <p>2004 / Article 1</p>	<p>“‘Broker’ is a person who acts:</p> <p>(a) for a commission, advantage or cause, whether pecuniary or otherwise;</p> <p>(b) to facilitate the transfer, documentation and/or payment in respect of any transaction relating to the buying or selling of small arms and light weapons; or</p> <p>(c) as an intermediary between any manufacturer, or supplier of, or dealer in small arms and light weapons and any buyer or recipient thereof.”</p>	<p>“‘brokering’ means acting:</p> <p>a. for a commission, advantage or cause, whether pecuniary or otherwise;</p> <p>b. to facilitate the transfer, documentation and/or payment in respect of any transaction relating to the buying or selling of small arms and light weapons; or</p> <p>c. thereby acting as an intermediary between any manufacturer, or supplier of, or dealer in small arms and light weapons and any buyer or recipient thereof.”</p>
<p>Organization of American States (OAS) Inter-American Drug Abuse Control Commission (CICAD) Draft Model Regulations for the Control of Brokers of Firearms, their Parts and Components and Ammunition</p> <p>2003 / Article 1</p>	<p>“‘Broker’ or ‘Arms Broker’ means any natural or legal person who, in return for a fee, commission or other consideration, acts on behalf of others to negotiate or arrange contracts, purchases, sales or other means of transfer of firearms, their parts or components or ammunition.”</p>	<p>“‘Brokering activities’ means acting as a broker and includes, 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.”</p>
<p>Organization for Security and Co-operation in Europe (OSCE) Handbook of Best Practices on Small Arms and Light Weapons</p> <p>2003 / Part IV</p> <p><i>and</i></p> <p>Principles on the Control of Brokering in Small Arms and Light Weapons (Decision No. 8/04)</p> <p>2004 / Section II, para. 4</p>	<p>“A broker is anyone who directly performs an activity defined as a brokering activity in the exercise of his own commercial or legal relations. The acts of natural persons, especially employees, are to be ascribed to the legal entity.</p> <p>Note: Provided that brokering activities are sufficiently clearly defined, an explicit definition of the term ‘broker’ might be dispensable.”</p> <p>(The OSCE Principles 2004 do not include a definition of “broker”)</p>	<p>“Brokering activities are activities of persons and entities: – Negotiating or arranging transactions that may involve the transfer of items referred to in the OSCE Document on Small Arms and Light Weapons, and in particular its preamble, paragraph 3, from any other country to another country; or – Who buy, sell or arrange the transfer of such items that are in their ownership from any other country to another country.</p> <p>This paragraph shall not preclude a participating State from regulating brokering activities to the maximum extent of their national law or defining brokering activities in its national legislation to include cases where SALW are exported from its own territory or from exempting from its own licensing obligations brokering activities related to the transfer of such items to or from another participating State.”</p>

While global instruments on conventional arms control contain a definition of neither arms brokering nor brokering, since the late 1990s United Nations Member States have highlighted the need, when implementing the PoA, for more attention to be focused on illicit arms brokering.¹⁵ These calls led the United Nations General Assembly to establish a Group of Governmental Experts (GGE) on illicit brokering in small arms in 2006.¹⁶ Its 2007 report provided international (minimum) definitions of arms broker and brokering activities, which corresponds with the “minimum common” elements contained in the regional arrangements contained in Table 1. Accordingly, it defined an arms broker as:

“a person or entity acting as an intermediary that brings together relevant parties and arranges or facilitates a potential transaction of [SALW] in return for some form of benefit, whether financial or otherwise.”¹⁷

This definition indicates that arms brokers can be either natural persons (e.g., one or more individuals) or legal persons (e.g., one or more companies) acting as intermediaries in the sale and purchase of SALW. It also indicates that the transaction may potentially take place – that is, it may or it may not be realized. In other words, brokers are often involved in finding opportunities and can open up negotiations that eventually may lead to a mediated or otherwise facilitated arms deal, but may not. The above definition accords with a general understanding of what a broker is and with the definitions contained in regional instruments.

The GGE also provided an indicative list of arms brokering activities, including:

- ▶ Serving as a finder of business opportunities for one or more parties
- ▶ Putting relevant parties in contact
- ▶ Assisting parties in proposing, arranging or facilitating agreements or possible contracts between them
- ▶ Assisting parties in obtaining the necessary documentation
- ▶ Assisting parties in arranging the necessary payments¹⁸

However, the GGE also recognized that a broker based in one country can make deals involving transfers between two other countries of arms and ammunition that they own. Thus, an arms broker based in one country can be engaged in transfers between a second and a third country (of arms that the broker does not own); as well as engaged in transferring arms that they own between two other countries. This situation is not self-evident in all definitions of brokering (including those illustrated in Table 1) and was an important distinction made by the GGE to ensure that such practices are not used as a means to circumvent controls and regulatory practices. Taken together, the “mediation” role mentioned above and “dealing between two other countries” have come to be considered core brokering activities. Several select, simplified scenarios for mediating and dealing are provided below to show some of the different ways in which a brokers involved in an arms transfer are not necessarily “visible” to the competent national authorities responsible for regulating arms transfers in importing and exporting states, as well as states that are used for the transit or trans-shipment of arms.

¹⁵ For example, First Biennial Meeting of States to Consider the Implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, Report, 18 July 2003, A/CONF.192/BMS/2003/1, <https://undocs.org/A/CONF.192/BMS/2003/1>; paras 34, 41, 67, 68.

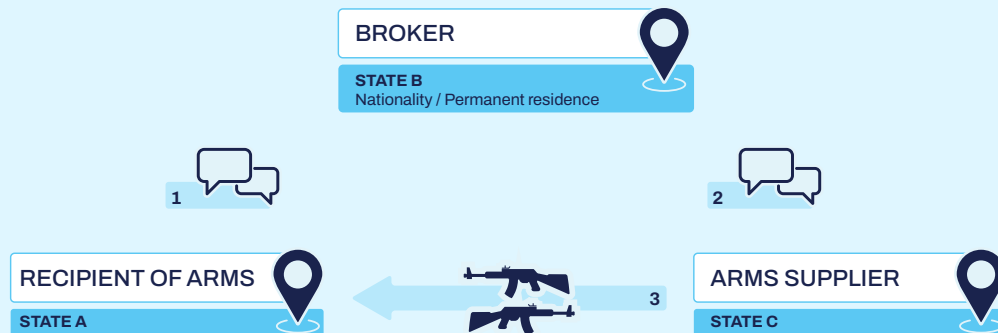
¹⁶ General Assembly resolution 60/81, 8 December 200, <https://undocs.org/A/RES/60/81>.

¹⁷ General Assembly, Report of the Group of Governmental Experts to Consider Further Steps to Enhance International Cooperation in Preventing, Combating and Eradicating Illicit Brokering in Small Arms and Light Weapons, A/62/163, 30 August 2007, <http://undocs.org/A/62/163>, paras 8–10.

¹⁸ General Assembly, A/62/163, paras 8–10.

BOX 1.

Arms Brokering: Mediation or dealing between two third states (Scenarios 1 and 2)

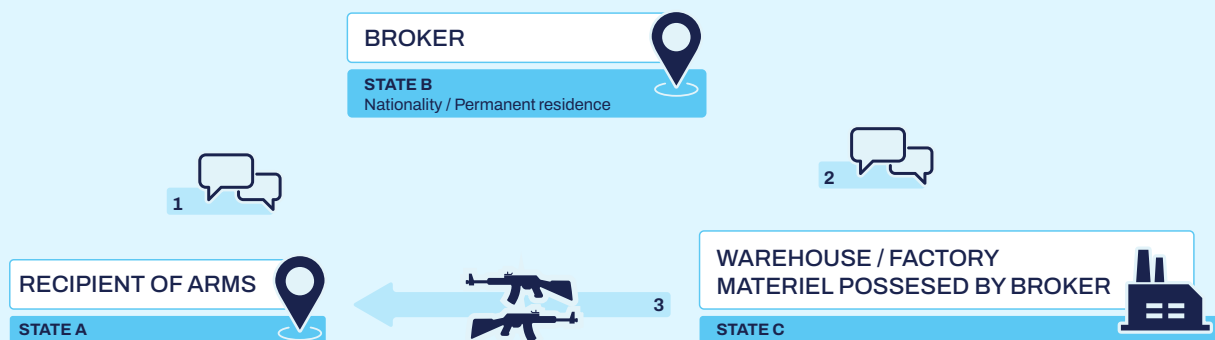


Brokering and mediation for an arms transfer between two third states takes place, for example, when:

- ▶ A potential recipient of arms is located in state A
- ▶ A potential supplier or several potential suppliers are located in state C
- ▶ A broker is located in state B and is a national, or a permanent resident (if an individual) of state B, or has its domicile (if a company) in state B

The potential recipient as well as and the potential supplier of arms are not in directly in contact with each other, but each knows and is known to the broker.

The potential recipient of arms engages the broker to connect them with a supplier of arms and facilitate an arms transfer. The broker may approach only one potential supplier, or may ask around among several potential suppliers, in state C, while searching for the best price on the market to meet the requirements of state A (the recipient in state A). The broker facilitates and arranges a transfer between the potential recipient in state A and the potential supplier of arms in state C.



Dealing between two states while the broker is based in another state takes place, for example, when:

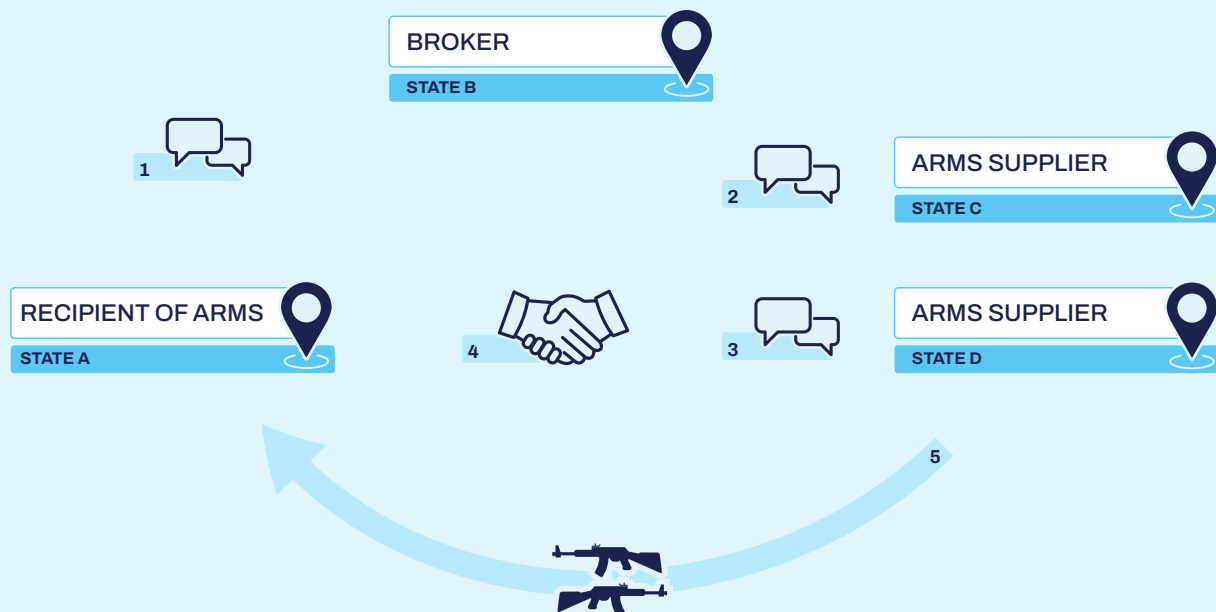
- ▶ A potential recipient of arms is located in state A
- ▶ A broker is located in state B and is a national, or a permanent resident (if an individual) of state B, or has its domicile (if a company) in state B
- ▶ The broker has a warehouse containing arms located in state C

The potential recipient of arms engages the broker to facilitate the transfer of arms. The broker, located in state B and conducting most of its business and activities from state B, informs the potential recipient in state A that arms (that the broker owns) can be provided from the broker's warehouse that is located in state C. The broker does not leave state B; but arranges for the arms that the broker owns to be supplied from state C to the potential recipient in state A.

In both scenarios, the arms transfer does not physically pass through the national territory of state B (and are not necessarily captured by the arms export controls of state B, nor constitute an export from state B to state A nor an import by state A from state B). Yet, the competent national authorities of state B have in both scenarios an interest in knowing about the arranged arms deal and transfer of arms facilitated by the broker out of the national territory of state B. This, especially if state A or other potential entities and recipients of arms in state A are subject to a United Nations Security Council arms embargo or otherwise known to be involved in illicit activities and grave violations of international law including humanitarian law, and posing threats to peace, security, and stability.

BOX 2.

Arms Brokering: Mediation (Scenarios 3 and 4)

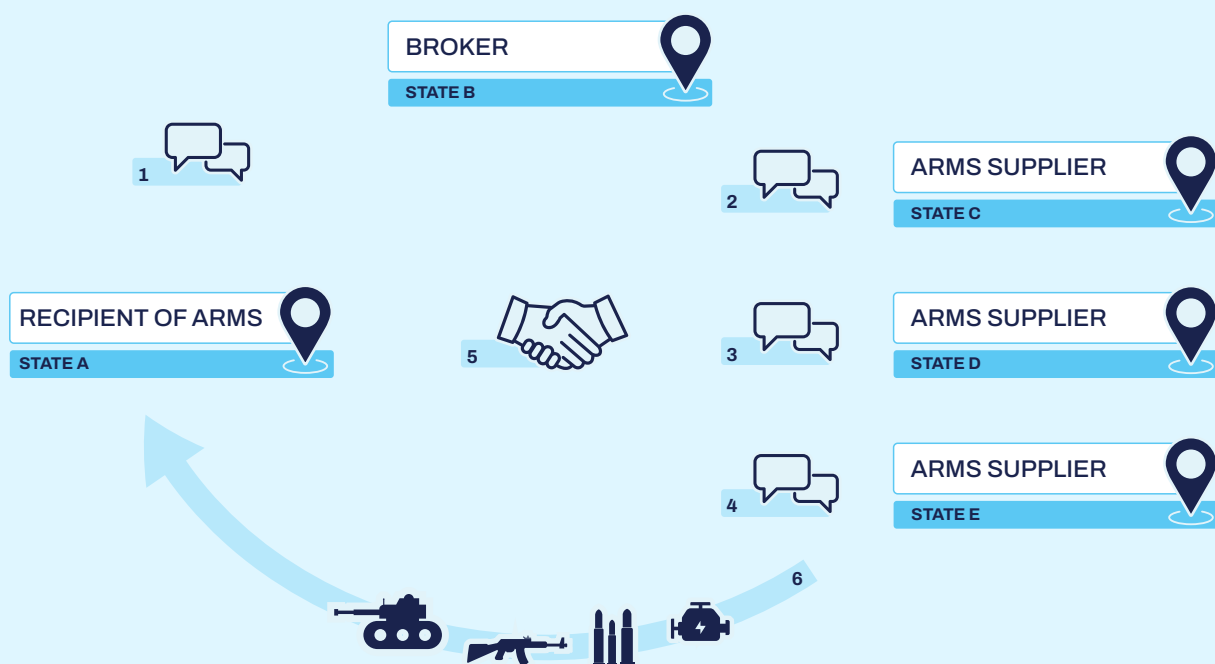


Conventional arms brokering including mediation takes place when, for example:

- ▶ A potential recipient of arms is located in state A
- ▶ Potential suppliers of arms, ammunition, parts and components are located in states C, D, E
- ▶ A broker is located and operates out of state B (and is a national, or a permanent resident (if an individual) of state B, or has its domicile (if a company) in state B

The potential recipient and the potential suppliers of arms and military equipment are not in direct contact with each other, but each knows and is known to the broker.

In one scenario, the potential recipient of arms engages the broker to connect them with a supplier of arms and facilitate an arms transfer. The broker engages the potential suppliers of arms (in states C and D), and while looking for the best market price, mediates between the potential suppliers to determine which supplier will meet the requirements of the potential recipients in state A. Eventually, the broker facilitates and arranges a deal between the potential recipient and supplier of arms.



In another scenario, the potential recipient of arms engages the broker to connect them with several suppliers of arms and facilitate transfers of a wide range of arms and military equipment. The broker engages the potential suppliers of arms in states C, D and E; because state A is seeking to acquire a range of arms and military equipment that none of the suppliers can fully meet alone. The broker mediates between the potential suppliers to determine which supplier will provide which arms to meet the requirements of the potential recipient of arms in state A. Through arms transfers arranged by the broker, the suppliers in states C, D and E deliver their consignments of arms to the recipient.

This, for example, is a realistic scenario of a comparatively small state that engages in the international conventional arms trade for its security or defence needs and does so primarily through importation. Because it requires a range of different arms and military equipment, it asks a broker to engage with different suppliers to put together what may be referred to as a package that meets its requirements.



Final UN Conference on the Arms Trade Treaty, 2013. Credit © United Nations.

The above-referred to discussions on the definition of brokering have caused confusion among some groups and in some parts of the world when, for example, a domestic firearms dealer is considered a broker, even though the activities of such a dealer do not involve international transfers between two other countries. While a domestic firearms dealer can purchase weapons directly (actually taking ownership) and resell them to authorized (end-)users on a domestic market; an arms broker acts as an intermediary who facilitates an international transfer of arms between buyers and sellers (without necessarily taking ownership).¹⁹ Thus, the terms (domestic) firearms “dealer” and “broker” refer to distinct roles, each with specific regulatory implications (those related to brokers discussed in Sections 3 and 4, with key elements related to national regulation of brokers included in Box 10). That said, a legal or natural person can simultaneously be a dealer for a domestic market as well as a broker for international transfers. Specifically, there can be situations in which the individual or company is:

1. Only importing arms for resale on the domestic market of the country in which

registered (i.e., the individual or company is a domestic dealer, not a broker);

2. Only engaged in brokering arms between third countries (i.e., the individual or company is a broker, not a domestic dealer);
3. Engaged both in importing arms for resale on the domestic market in the country in which registered and in brokering arms between third countries (i.e., the individual or company is both, domestically dealing and a broker involved in and facilitating international arms transfers).

Through their networks or contacts, an arms broker may be able to mediate arms deals or act as intermediary across one or several different countries and regions or even globally, and may wittingly or unwittingly facilitate the diversion of conventional arms. When discussing the regulation of brokering, the scope of jurisdiction of the brokering control measures must therefore be carefully considered. Scope of jurisdiction, extraterritoriality and the three common types of regulatory approach are discussed in Box 3. Implications are further illustrated in the infographic and described in the scenarios in Box 4.

¹⁹ Export Compliance Training Institute, “Arms Brokering and the ITAR”, 2023, <https://www.learnexportcompliance.com/arms-brokering-and-the-itar/>. See also US Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, “Fact Sheet – Federal Firearms and Explosives Licences by Types”, April 2024, <https://www.atf.gov/resource-center/fact-sheet/fact-sheet-federal-firearms-and-explosives-licenses-types>.

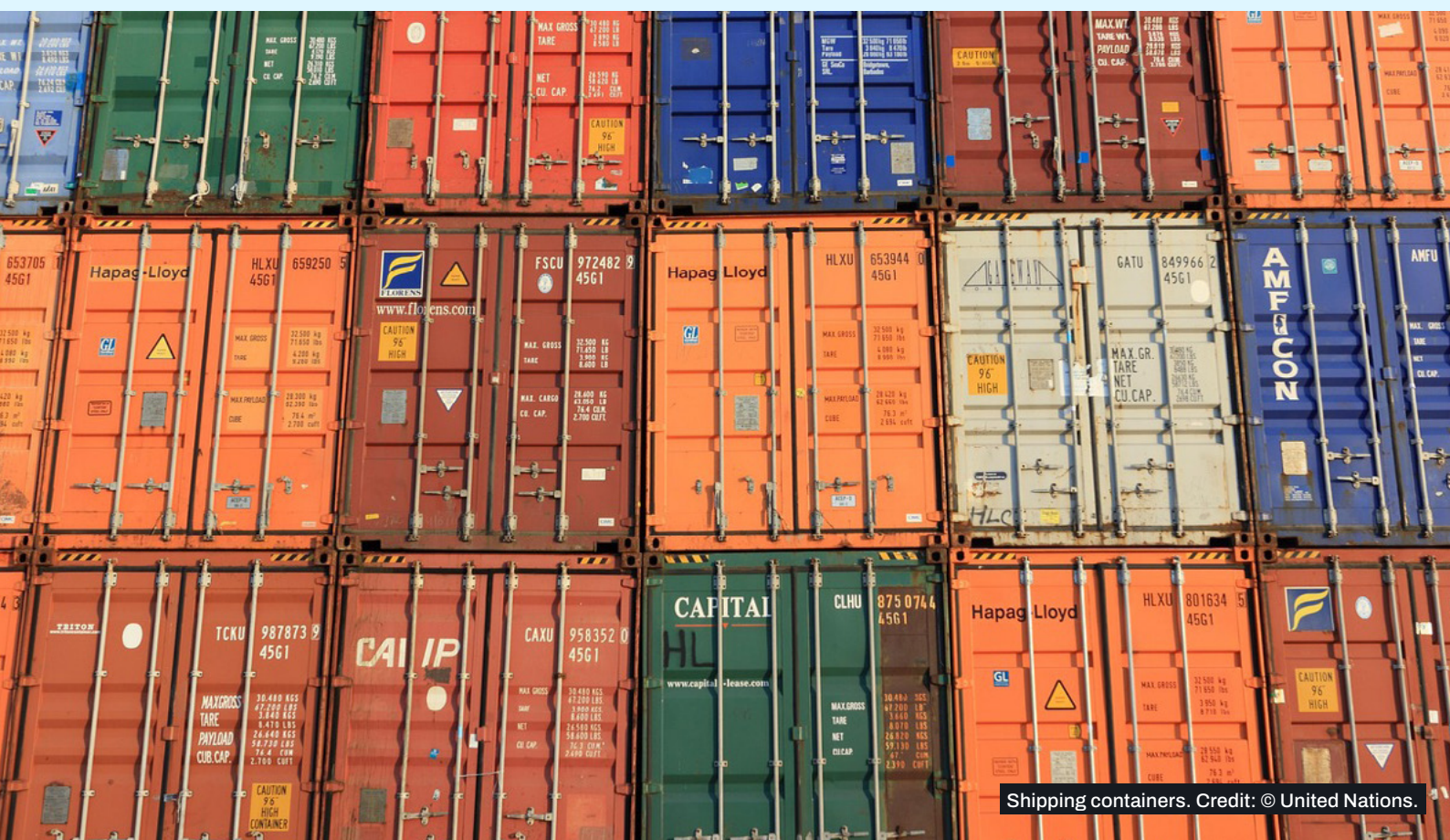
BOX 3.

Brokering controls, extraterritoriality and jurisdiction

An arms broker may conduct brokering activities in their state of nationality, residence or domicile, in another state or in multiple national jurisdictions. Thus, the location of the brokering activities can be far from the state in which the broker resides or is registered as a broker. This can pose a significant challenge for competent national authorities to enforce national laws and regulations. A key element and dimension of national brokering control systems and of countering illicit arms-brokering activities therefore relates to the scope of jurisdiction.

A distinction can be made for three types of regulatory approach:

- ▶ **National (territorial) controls and jurisdiction over brokers and brokering activities:** Regulations are in place to ensure that brokers and brokering activities that take place within national borders and territory comply with national legislation. Legislation could require that only citizens and companies registered in that country are permitted to apply for registration or for written authorization from national competent authorities (or both, registration and written authorization) to broker international arms transfers.
- ▶ **Partial extraterritorial controls and jurisdiction over brokers and brokering activities:** Controls apply to citizens and registered companies when seeking to conduct particular activities outside the national territory. For example, extraterritorial controls can apply to transactions for certain destinations or entities, such as those subject to an arms embargo imposed by the United Nations Security Council, or for particular types of arms and military equipment, irrespective of the country in which the brokering activities take place.
- ▶ **Full extraterritorial controls (and jurisdiction) over brokers and brokering activities:** The states apply the same rules and regulations to their nationals, residents and companies irrespective of where their brokering activities take place (that is, whether inside or outside the state of their nationality and registration).



Shipping containers. Credit: © United Nations.



Large transport vessel. Credit: © United Nations.

Some experts have expressed scepticism about the operability of extraterritorial controls on brokers and brokering activities because they depend on enforcement capability.²⁰ In addition, the constitutional and legal systems of some states do not permit extraterritorial controls. At the same time, other experts have argued that all United Nations Member States are already required to exercise extraterritorial controls in cases, for example, where brokers have violated the provisions of Security Council arms embargoes, including when operating outside their state of nationality, permanent residence (if an individual), or domicile (if a company).²¹ Previous UNIDIR research has indicated that “at least some degree of extraterritorial control by states becomes essential for a meaningful functioning” of national controls and systems.²² It is, however, clear that operationalizing brokering controls with at least partial extraterritorial dimensions requires international cooperation, information sharing and mutual legal assistance between states and competent national authorities.

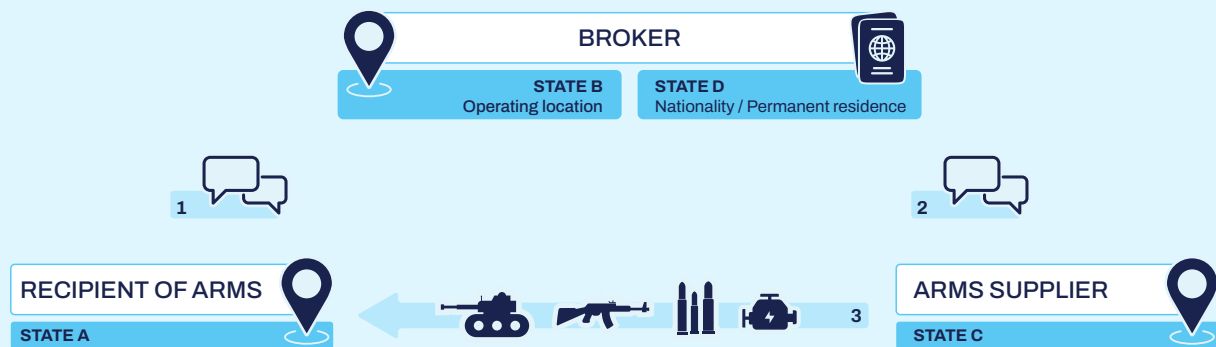
²⁰ Holder Anders and Alex Vines, “Sanctions and Enforcement”, in UNIDIR, Small Arms Survey and United Nations Department for Disarmament Affairs, *Developing a Mechanism to Prevent Illicit Brokering in Small Arms and Light Weapons: Scope and Implications* (New York and Geneva: United Nations, 2006), <https://unidir.org/files/publication/pdfs/developing-a-mechanism-to-prevent-illicit-brokering-in-small-arms-and-light-weapons-scope-and-implications-328.pdf>, pp. 109–110.

²¹ Holger Anders, *Controlling arms brokers from abroad: Challenges and policy options for EU States*, Note d’Analyse, Groupe de Recherche et d’Information Sur la Paix et la Sécurité, 2009, <https://www.nonproliferation.eu/wp-content/uploads/2018/09/holgeranders4f7174e4451b0.pdf>.

²² Silvia Cattaneo, “National Systems of Licensing and Registration”, in UNIDIR et al., *Developing a Mechanism to Prevent Illicit Brokering*, p. 74. See also Saferworld, “Best practice in the regulation of arms brokering,” March 2007, https://www.saferworld-global.org/downloadfile.php?filepath=downloads/pubdocs/Best_Practice_in_the_Regulation_of_Arms_Brokering.pdf.

BOX 4.

Arms Brokering: Extraterritorial brokering (Scenarios 5 and 6)



Extraterritorial arms brokering takes place when, for example:

- ▶ A potential recipient of arms is located in State A
- ▶ A potential supplier of arms is located in State C
- ▶ A broker is located and operating out of State B; but is a national, or a permanent resident (if an individual) of State D, or has its domicile (if a company) in State D

The potential recipient of arms engages the broker to connect them with a supplier of arms and facilitate an arms transfer. The broker then engages the potential supplier of arms and, while operating abroad and on foreign territory (outside its state of nationality, permanent residence (if an individual), or (if a company) its domicile), facilitates an arms deal and transfer between the potential recipient in another, and the potential supplier in yet another country. In such a scenario, the arms transfer does not physically pass through national territories of states D (the state of nationality, residence, or domicile of the broker) and B (and their arms export controls don't capture the transfer).

Regulatory loopholes exist and maybe purposefully exploited by unscrupulous brokers – in this specific case, a national or permanent resident of state D, or a (subsidiary or shell) company domiciled in state D – if state D regulates brokering only on its national territory, and the broker moves to and carries out activities out of state B, because state B does not regulate brokering (and may also not be an ATT state party). As a result, nor do states D and B have information on the broker and knowledge of its activity. In addition, state D is also unaware that its national, resident or a company domiciled on its territory is conducting brokering activities and may wittingly or unwittingly be involved in the diversion of arms transfers. Such regulatory loopholes are exploited by unscrupulous brokers that facilitate the diversion of conventional arms through more or less complex supply chains to states subject to United Nations Security Council arms embargoes, to high-risk destinations, and unauthorized (end-)users.

Another scenario presents itself if both states D and B regulate brokering – in this specific case, if State D regulates and controls partially or fully extraterritorial brokering activities undertaken abroad by its nationals, permanent residents, or companies domiciled in country D; and State B regulates and controls arms brokering by foreign nationals or companies on its national territory. From regulatory, operability and enforcement perspectives, this raises the more complex issues including:

- ▶ Double-, dual- (or over)-regulation (e.g., applicability of national brokering regulations from two states to the same individual, or company)
- ▶ Competent authority (e.g., the competent national authority for prior registration, and/or for applications and authorizations for the conduct of brokering activities facilitating arms transfers)
- ▶ Dual (or overlapping) jurisdiction (e.g., national jurisdiction of state B, as well as partial or full extraterritorial jurisdiction asserted and exercised by state D)

All of the above highlights the importance of international cooperation and requires cooperation, including information-sharing between states, as well as mutual legal assistance against illicit arms brokering that facilitates diversion of arms to unauthorized (end-) users and the illicit market.

In addition to the “core brokering activities”, regional instruments and some states regulate and control the provision of closely “associated brokering activities” (or ancillary or related services). This includes providing or facilitating the provision of:

- ▶ Technical assistance
- ▶ Training
- ▶ Transport
- ▶ Freight forwarding
- ▶ Storage
- ▶ Finance
- ▶ Insurance
- ▶ Maintenance
- ▶ Security
- ▶ Other services

As noted in Section 1, definitional issues have to be carefully considered when engaging in a dialogue on brokers and brokering in the context of the ATT. While the provision of such closely associated brokering services may be distinct from the core brokering activities in the strict sense, in practice the distinction is often less clear. While these activities in themselves do not necessarily constitute brokering according to the definition provided in some regional instruments, they might be naturally and regularly undertaken by brokers as part of the process of facilitating an arms deal.²³ In reality, a broker (i.e., individuals or companies) may in a given context and situation be offering or undertaking or be otherwise involved in both “core brokering activities” and also “closely associated brokering activities” (as shown in Sections 2 and 3). Box 5 summarizes core brokering and closely associated activities.

²³ General Assembly, A/62/163, para. 10.



Arms recovered from armed groups, Eastern DRC, 2013. Credit : © MONUSCO.

BOX 5.

Summary of core brokering and closely associated brokering activities

“Core brokering activities” include:

- ▶ Mediating an arms deal
- ▶ Dealing in arms and military equipment that are in the possession of the broker but do not constitute an export or import because they are to be transferred from one third country to another third country²⁴

“Closely associated brokering activities” (or ancillary services) may include providing or facilitating the provision of a range of services, including:

- ▶ The transportation of arms and ammunition
- ▶ Financing and insurance of an arms transfer
- ▶ Storage arrangements
- ▶ Other technical assistance

²⁴ Some analysts have argued that, strictly speaking, brokering is the act of mediation and not the act of purchasing or taking possession of material items in a transaction. See, for example, Brian Wood, “The Prevention of Illicit Brokering of Small Arms and Light Weapons: Framing the Issue”, in UNIDIR et al., *Developing a Mechanism to Prevent Illicit Brokering*, p. 12.

2. Brokering and Arms Diversion

As shown in the research consortium's Diversion Analysis Framework (DAF), diversion can occur at any stage of the arms transfer chain and could be facilitated by unscrupulous brokers colluding with corrupt officials or by otherwise exploiting institutional weaknesses or failures.²⁵ Brokers can therefore have a sense of impunity and can facilitate diversion in situations where the state in which they operate has grey areas or loopholes in its national legal framework. Through their market knowledge and network of contacts, brokers could exploit gaps and inconsistencies in national regulations.

Unscrupulous arms brokers may employ a number of deceptive tactics and methods to divert arms, ammunition and related material, including in support of efforts to circumvent international sanction regimes and facilitate arms diversion to sanctioned governments, entities and individuals.

The most notable brokering activities that may lead to diversion include:

- ▶ Use of front and shell companies
- ▶ Use of circuitous transport routes and exploitation of multiple jurisdictions
- ▶ Falsifying transfer documentation
- ▶ Use of “flags of convenience”
- ▶ Misreporting of cargo

The following five subsections explore each of these five ways in which brokers may facilitate diversion to unauthorized (end-) users and recipients, drawing primarily on case studies derived from CAR's field investigations and the results of successful tracing of arms and ammunition in armed conflicts. The subsections also include case studies that show how brokers have facilitated diversion to evade United Nations arms embargoes. This is followed, in Subsection 2.6, by a description of brokering-related challenges to post-transfer diversion investigations.

2.1. Use of front and shell companies

Unscrupulous arms brokers may use so-called front or shell companies to facilitate diversion. Front companies are corporate entities with minimal or no actual business operations of their own. They may also be called, variously, “international business”, “offshore”, “mailbox”, “letterbox” or “brass plate” companies. These companies are not necessarily involved in illicit activities, but do allow for the concealment or obfuscation of ownership

and control, which in turn enables brokers to avoid regulatory scrutiny from the competent states authorities.²⁶ Such companies have no physical presence in the jurisdiction in which they are domiciled and registered and often no employees and no commercial activity.²⁷ Concealment of beneficial ownership is a common strategy among front companies and their networks involved in efforts to evade multilateral sanctions.

²⁵ A. Malaret Baldo et al., *Arms Trade Treaty: Diversion Analysis Framework*, ATT Issue Brief no. 3 (Geneva: UNIDIR, 31 August 2021), https://unidir.org/sites/default/files/2021-08/ATT_Issue_Brief_3-Diversion_Analysis_Framework.pdf.

²⁶ Financial Crime Academy, “Shell Company, Shelf Company And Front Company”, <https://financialcrimeacademy.org/shell-company-shelf-company-and-front-company/>; Sanction Scanner, “What is Front Company?”, <https://www.sanctionscanner.com/knowledge-base/front-company-826>.

²⁷ Transparency International, “Shell Company”, <https://www.transparency.org/en/corruptionary/shell-company>.



Machine guns documented by CAR in Hasakeh, north-east Syria, 2022. Credit: © CAR.

The diversion of arms is, of course, not necessarily the main or sole motive for these individuals' or entities to set up front or shell companies. However, unscrupulous arms brokers are known to employ nominee directors and shareholders of such companies to act on their behalf, thus shielding the true owners and operators of the business. An example in which opaque registration practices obscured the identity of the beneficial owners

of a brokering company is provided in Case Study 1. Complex ownership structures and layers of intermediary entities is another, related method of obscuring money flows and ownership. These make it difficult for national authorities to identify beneficiaries and to trace financial flows, which enables unscrupulous arms brokers to launder the proceeds from arms deals.²⁸

²⁸ BASIC, International Alert and Saferworld, "Controlling Arms Brokering and Transport Agents: Time for International Action", Briefing no. 8, 2001, <https://www.saferworld-global.org/resources/publications/131-controlling-arms-brokering-and-transport-agents-time-for-international-action>.

Opaque brokering ownership

In June 2016, a CAR field investigation team documented small-calibre ammunition in the custody of an NSAG allied with the armed forces of the Government of South Sudan, which at the time was subject to a European Union arms embargo.²⁹ Tracing investigations identified that a brokering company, EBS Investments Corporation, registered and domiciled in the Seychelles, had been engaged to procure this ammunition in 2014 on behalf of the Ugandan Ministry of Defence and Veteran Affairs.

Under Seychellois corporate law, the registry of companies does not record the beneficial owners or shareholders of offshore companies. At the time, it was not possible for a law enforcement agency of another state to request the Seychellois authorities to obtain company ownership information for administrative procedures such as an export licence assessment. Importantly, such practices make it difficult for licensing authorities to establish the beneficial owners of a brokering company, keeping them effectively anonymous and thus impeding pre-export risk assessment. In this particular case, CAR found no evidence that EBS Investments Corporation or its directors were responsible for diverting materiel to South Sudan.³⁰ CAR did establish that a copy of the transfer documentation provided to the export licensing authorities had been redacted by the exporter to obscure the name of the brokering company, further frustrating efforts to assess potential diversion risks.³¹

Further investigations by CAR found that the co-owner of EBS Investments Corporation, of Egyptian nationality, had previously been linked to arms diversion. In 2001 the United Nations Panel of Experts (PoE) on Liberia reported that this individual had supplied more than 2,000 assault rifles through a different brokering company, called Culworth Investments Corporation, to Uganda. The Government of Uganda found that a consignment of these rifles did not correspond to the contract specifications and the Egyptian individual agreed to return them. Instead – without the awareness of the Ugandan authorities – the broker arranged to resell the rifles to a Guinean company, which the PoE on Liberia asserts was used in a range of illicit arms purchases by the embargoed Government of Liberia under Charles Taylor.³² The PoE also identified that the Egyptian individual resold the rifles to a Guinean company, using a Guinean end-user certificate that both Guinean authorities and the named Guinean company claimed was forged. Subsequently, the prominent Russian arms broker Viktor Bout transported the weapons by air from Entebbe, Uganda, to Liberia for use by Taylor’s embargoed regime.³³

²⁹ Information in this case study is taken from CAR, *Weapon Supplies into South Sudan’s Civil War: Regional Re-transfers and International Intermediaries* (London: CAR, 2018), <https://www.conflictarm.com/reports/weapon-supplies-into-south-sudans-civil-war/>.

³⁰ Council of the European Union, Council Decision 2011/423/CFSP, 18 July 2011, Official Journal of the European Union, L 188, 19 July 2011, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32011D0423>. In June 2018, well after this transfer was completed, the United Nations introduced global prohibitions on the provision of weapons or direct military assistance to the Government of South Sudan.

³¹ In its communications with CAR, the exporter stated that this was to protect commercially confidential and sensitive information from potential competitors and was not intended to inhibit pre-licensing checking of the end-user certificate. For details on how export controls can be used to address and prevent diversion as part of a series of case studies, see UNIDIR, Conflict Armament Research, Stimson Center, “Responding to Diversion”, <https://storymaps.arcgis.com/collections/175f3dffa24be4a2086a04f860a59f0ed>.

³² The PoE concerning Liberia was appointed by the United Nations Secretary-General in 2001 to investigate violations of the arms embargo against Liberia, the ban on the export of Liberian diamonds and the travel ban on senior officials of the Liberian Government. See Office of the High Commissioner for Human Rights, “Expert Panel on Liberia Presents Report to Security Council, with Proposals for Furthering Peace in Mano River Region”, Press release, 5 November 2001, <https://www.ohchr.org/en/press-releases/2009/10/expert-panel-liberia-presents-report-security-council-proposals-furthering>.

³³ Security Council, Report of the Panel of Experts Concerning Liberia, S/2001/1015, 26 October 2001, <https://undocs.org/S/2001/1015>.



2.2. Use of circuitous routes and exploitation of multiple jurisdictions

As described in Section 1, the international nature of many brokering activities poses a regulatory challenge to states. Unscrupulous arms brokers exploit gaps in national legal and regulatory frameworks or weak enforcement mechanisms in certain jurisdictions to facilitate the diversion of arms without detection. In doing so, they may also deliberately pick circuitous routes via jurisdictions with inadequate administrative capacity and laws or poor enforcement mechanisms in order to supply arms to unauthorized end users, including NSAGs and sanctioned national government entities.

Circuitous routing is a tactic used by unscrupulous arms brokers seeking to evade detection when engaged in illicit brokering

activities. It allows them to bypass regulatory controls and arms transfer control measures in order to divert arms to unauthorized recipients (see Case Study 2). This may include trans-shipment through multiple countries and jurisdictions, changing shipping routes or taking longer, indirect routes and exploiting countries or regions with poor regulatory oversight and poor mechanisms for enforcement of arms transfer controls. These brokers may even combine the use of a chain of shell or front companies (see Subsection 2.1) or flags of convenience (see Subsection 2.4) with circuitous routing. This makes the detection of diversion by relevant authorities incredibly difficult, particularly where administrative and law enforcement capacities are weak.³⁴

³⁴ Wood, “Developing a Mechanism to Prevent Illicit Brokering in Small Arms and Light Weapons”, p. 33.

Alleged use of circuitous routing for illicit arms transfer

In April 2024, United States authorities charged two people, both principals of an Iraq-based company called Black Shield Ltd, with attempting to illicitly export arms and ammunition from the United States to Sudan and Iraq. The indictment described an international transaction involving multiple jurisdictions in different regions.

In 2016, the two, together with other individuals, attempted to acquire 23-millimetre anti-aircraft ammunition, other ammunition, and different quantities and types of assault rifles illegally and illicitly in the United States. The total value of this materiel was 1.2 million US dollars. Allegedly, the deal was part of a larger scheme, with transactions planned to divert arms and ammunition worth a total of 4 million US dollars. Individuals of Indian and Belarusian nationality and emissaries of Black Shield Ltd travelled to the United States to inspect the ammunition.

The US indictment states that the deal involved circuitous routing and was intended for trans-shipment to and from Guatemala to false (end-)users in Cyprus, before ultimately arriving in Sudan and Iraq. The described transaction and the alleged deal involved payments from a front company in Benin, and Israeli-American and Israeli-Romanian-Uzbeki brokers, who acted as middlemen between the supplier and the end users.³⁵

2.3. Falsifying transfer documentation

Falsifying transfer documentation is a deceptive practice used by unscrupulous arms brokers to supply, without detection, arms to unauthorized (end-) users or states or entities subject to an arms embargo. These brokers might forge or falsify end use or end user documentation, for example, by misrepresenting the intended end use or end user to enable the diversion of arms to prohibited buyers or destinations.

In 1996, the International Commission of Inquiry on Rwanda identified two forms of

falsification as key factors in the diversion of arms: “the free use of fake end-user certificates”; and filing false flight plans and making clandestine night take-offs and landings in order to evade customs and other airport controls.³⁶ For example, in 1994, a South African broker facilitated attempts made by representatives of the newly embargoed Rwandan regime to purchase arms, travelling with a senior figure in the Rwandan Ministry of Defence to the Seychelles to negotiate the sale of arms and ammunition – including more

³⁵ US Department of Justice, Office of Public Affairs, “International Arms Dealers Charged with Conspiring to Unlawfully Export Weapons and Ammunition from the United States to Sudan and Iraq”, 16 April 2024, <https://www.justice.gov/opa/pr/international-arms-dealers-charged-conspiring-unlawfully-export-weapons-and-ammunition>.

³⁶ Security Council, International Commission of Inquiry (Rwanda), Third report, S/1997/1010, 24 Dec. 1997, paragraphs 90–91, <https://undocs.org/S/1997/1010>. For more information, see Mamello Mosiana, Daniel Ford and Hennie van Vuuren, *The Secretary: How Middlemen and Corporations armed the Rwandan Genocide* (Cape Town: Open Secrets, 2023), <https://www.opensecrets.org.za/the-secretary-report/>; K. Austin, “Illicit Arms Brokers: Aiding and Abetting Atrocities”, *Brown Journal of World Affairs*, vol. 9, no. 1 (spring 2002): 209–212, <https://bjwa.brown.edu/9-1/illicit-arms-brokers-aiding-and-abetting-atrocities/>.



The sky over Kigali, Rwanda. Credit: © United Nations.

than 6,000 mortars and 5,600 rifles – ostensibly on behalf of the Government of Zaire (now the Democratic Republic of the Congo). The shipment was transported to Zaire with assistance from Zairean state officials, who provided a false end-user certificate indicating the national military as the end user.

Similarly, in the widely reported Otterloo case in 1999, arms dealers deceived the Nicaraguan Government by posing as brokers for the Panamanian National Police. Using false end-user certificates and purchase orders, they diverted a large shipment of assault rifles and ammunition to a Colombian NSAG, the Autodefensas Unidas de Colombia (AUC), onboard the ship Otterloo without stopping in Panama.³⁷

Unscrupulous brokers may also falsify shipping documents, such as bills-of-lading or customs declarations, in order to divert arms. This can involve mislabelling cargo or providing forged documentation indicating the recipient as (or in) State A, while the actual destination is State B (see Case Study 3). As noted above, falsification of documentation is sometimes accompanied by collusion with state officials, whereby brokers may be able to persuade corrupt officials to provide authentic (yet inaccurate) documents to legitimize a transfer even if the shipment never passes through the issuing country en route to the undeclared recipient.³⁸

³⁷ This case study is available in more details in Malaret Baldo et al., *Arms Trade Treaty*.

³⁸ P. Holtom, “The Baltic States, Arms Brokers and Diversions of Arms”, *Lithuanian Annual Strategic Review*, vol. 3 (2005): 99–112, <https://doi.org/10.47459/lasr.2005.3.5>,

Falsified transfer documentation

Between June and August 2002, 200 tons of surplus SALW and ammunition were transferred and transported from Belgrade (Federal Republic of Yugoslavia) to Monrovia (Liberia) in six separate flights, in violation of a moratorium on SALW transfers to the West African region, and Security Council sanctions on Liberia due to the civil war. The Yugoslav authorities had authorized the transfer based on documentation identifying the Nigerian Ministry of Defence as the end user. However, subsequent investigations by the PoE on Liberia revealed that the documents (including airport stamps, end-user certificates and documentation, and cargo manifests) were all falsified. The Nigerian Government confirmed the forgeries to the PoE on Liberia. The operation was orchestrated and executed by different brokers (companies), registered in at least three different countries (the Federal Republic of Yugoslavia, Nigeria, Liberia, and Liechtenstein). A second set of documents compiled for the transport agent correctly identified Liberia as the final destination, but misdeclared the items as “mine drilling equipment”.³⁹

2.4. Use of flags of convenience

Unscrupulous arms brokers involved in illicit brokering activities may attempt to disguise their efforts to divert arms transfers involving shipping vessels through the use of so-called “flags of convenience”. A flag of convenience refers to the practice whereby a ship’s owner registers a ship sailing under the flag of a state other than the one in which the ship’s owner is based, especially where that state is perceived or known to impose fewer, or less rigorously enforced, maritime safety and security

regulations including restrictions on the vessel and its activities.⁴⁰ Brokers can seek to exploit less strict jurisdictions to arrange for shipment of illicit arms transfers via the use of flags of convenience, or may use such structures to help to hide beneficial ownership. While there are legitimate reasons for vessels to fly a third country flag, the 2001 report of the GGE on small arms stated that “most ships used in illegal arms shipments operate under flags of convenience”.⁴¹

³⁹ Security Council, Report of the Panel of Experts concerning Liberia, S/2002/1115, 25 October 2002, <https://undocs.org/S/2002/1115>.

⁴⁰ For more information, see H. Griffiths and M. Jenks, *Maritime Transport and Destabilizing Commodity Flows* (Stockholm: SIPRI, January 2012), <https://www.sipri.org/publications/2012/sipri-policy-papers/maritime-transport-and-destabilizing-commodity-flows>, p. 11; C. Bruwer, “Blue Frontiers – In Pursuit of Smugglers at Sea”, in Gallien and Weigand (eds), *The Routledge Handbook of Smuggling* (London: Routledge, 2022). See also International Maritime Organization, Legal Committee, Final Report of the Study Group on Fraudulent Registration and Fraudulent Registries of Ships, LEG 111/6, April 2024, <https://wwwcdn.imo.org/localresources/en/MediaCentre/MeetingSummaries/Documents/FINAL-REPORT-Study-Group-on-Fraudulent-Registration-and-Fraudulent-Registries.pdf>.

⁴¹ General Assembly, Report of the Group of Governmental Experts on Small Arms, A/CONF.192/2, 11 May 2001, <https://undocs.org/A/CONF.192/2>, in particular pp. 10, 22, paras 29, 77.

CASE STUDY 4.

Use of flags of convenience in sanctions evasion

On 11 August 2016, Egyptian authorities interdicted the cargo ship *Jie Shun* on its way from the Democratic People's Republic of Korea (DPRK) towards the Suez Canal in Egypt. The ship was carrying 24,384 disassembled PG-7 rocket-propelled grenades, concealed in crates of iron ore – itself a commodity subject to United Nations Security Council sanctions relating to the DPRK (resolution 1874). The 2017 report of the PoE on the DPRK called this “the largest seizure of ammunition in the history of sanctions against the DPRK, and showed the country's use of concealment techniques”, as well as highlighting “an emerging nexus between entities trading in arms and minerals”.⁴²

The *Jie Shun* sailed under a Cambodian flag of convenience, but was crewed and captained by DPRK nationals. The PoE's investigations identified several individuals who helped to broker the shipment, including one who had “served at least three functions for the *Jie Shun*: he was its emergency contact; he arranged the protection and indemnity insurance; and, through his company, Bene Star Shipping Ltd., he registered the vessel's operator, K-Brothers, in the Marshall Islands”.⁴³ These individuals identified themselves only as “consultants” for the *Jie Shun*. Further investigations discovered that the *Jie Shun* was owned and managed by Chinese entities and nationals and that the company that was the de facto owner of the vessel shared a physical address linked to several other DPRK-affiliated shipping companies.⁴⁴



⁴² Security Council, Report of the Panel of Experts Established Pursuant to Resolution 1874 (2009), S/2017/150, 27 February 2017, in particular pp. 4, 28-32, <https://undocs.org/S/2017/150>.

⁴³ Security Council, S/2017/150, paras 66–71.

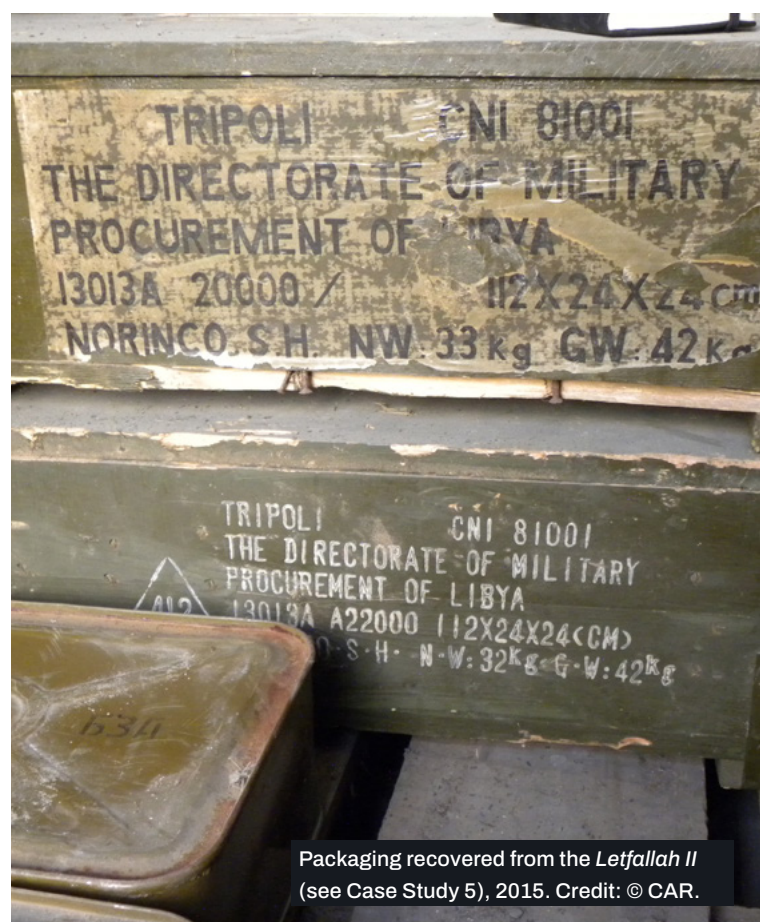
⁴⁴ James Byrne and Tom Plant, *Project Sandstone: The Jie Shun Incident – Chinese State-Owned Enterprise Connections to the North Korean Arms Trade* (London: Royal United Services Institute (RUSI), 2019), https://static.rusi.org/2021-05/project_sandstone_jie_shun_incident_final_for_web_0.pdf.

2.5. Misreporting of cargo

The misreporting of cargo is indicative of a range of deceptive methods and tactics that unscrupulous arms brokers have been documented as undertaking during an arms transfer. It can be used when conducting covert shipments of illicit weapons, or to create conditions to enable redirecting of part or all of the transferred items (see Case Study 5). Several such techniques have been highlighted by investigations and reports by United Nations Panels or Groups of Experts assisting Security Council Committees in monitoring the implementation of sanctions, including arms embargo regimes. These techniques include, for instance, the use of fraudulent registration numbers on aircraft, false flight plans and routings, and efforts to evade detection by air or sea, including by switching off the transponder systems that allow the real-time tracking of aircraft or ships in space and time by competent national authorities.

The Jie Shun case (Case Study 4 above) is an example of attempts to disguise an entirely covert shipment of ammunition, already disguised as a transfer of minerals. The bill-of-lading stated that the items being transferred by ship were “assembly parts of the underwater pump” and the address of the stated shipper was, in fact, that of a hotel. The contents of the shipment were further disguised by physically covering identifying markings, including the nailing of large canvas patches to the crates themselves.⁴⁵

Such mislabelling or misreporting is carried out in order to deceive customs or law enforcement authorities and officials in their efforts to detect and prevent illicit shipments entering a country.



⁴⁵ Security Council, S/2017/150, para. 63.

Letfallah II

On 12 April 2012, Lebanese authorities intercepted a cargo ship, the *Letfallah II*, in the port of Tripoli, Lebanon. The vessel, sailing under the flag of Sierra Leone, was carrying a large shipment of weapons and ammunition of various ages and origins, which were reportedly destined for Syrian opposition forces. Investigators from CAR and from the PoE assisting the United Nations Security Council 1970 Committee on Libya documented the seized material and traced weapons produced in Belgium, Italy and Romania to legal exports to the Libyan Government between the 1960s and 1980s.⁴⁶

The weapons and ammunition had been loaded onto the *Letfallah II* in Misrata in Libya. The ship then stopped in ports in Türkiye and Egypt, before reaching Lebanon. The shipment appears to have been brokered by a network of individuals based in Saudi Arabia, Lebanon and Libya. The ship owner – in interviews with United Nations investigators and with journalists – stated that they had been contacted by a Libya-based shipping agent, who put them in touch with a Lebanese broker who wanted to ship 12 sealed containers from Misrata (the final shipment consisted of three containers). The PoE subsequently established that Syrian citizens based in Saudi Arabia had initiated and financed the operation. The PoE interviewed a Lebanese national who worked as a port agent, who confirmed that he had travelled to Saudi Arabia to meet with the Syrian citizens who brokered the arrangement.⁴⁷

The contents of this shipment were falsely declared on multiple occasions. Egypt and Türkiye confirmed to the PoE that the cargo was misreported to its customs authorities as “construction material” or “combustible engines”.⁴⁸ The owner of the ship also initially stated that they had been informed that the vessel would be carrying engine oil.⁴⁹ Among the recovered material, CAR investigators documented a large quantity of 40-mm PG rocket-propelled grenades, manufactured in the DPRK, that were inside wooden crates labelled “PARTS OF ROCK DRILL”.

2.6. Challenges in investigations of brokers and post-transfer diversion

When states and their armed forces run international military assistance programmes to train and equip security forces in other states (e.g., Iraq and Afghanistan), this often involves large-scale procurement efforts. Brokers have

played proactive roles in these efforts. For example, CAR investigators identified large quantities of SALW produced largely in East European states and supplied between 2014 and 2017 under US Government contracts to

⁴⁶ CAR, “A Case for Tracing”, Diversion Digest Issue 003 (2020), p. 12; Security Council, Final Report of the Panel of Experts Concerning Libya, S/2013/99, 9 March 2013, <https://undocs.org/S/2013/99>.

⁴⁷ Security Council, S/2013/99, paras 172–175; and Security Council, Final Report of the Panel of Experts Concerning Libya, S/2014/106, 19 February 2014, <https://undocs.org/S/2014/106>, Annex X.

⁴⁸ Security Council, S/2013/99, para. 175; Security Council, S/2014/106, Annex X, para. 3.

⁴⁹ Dominic Evans, “Lebanon Impounds Ship Carrying Libyan Weapons”, Reuters, 28 April 2012, <https://www.reuters.com/article/world/lebanon-impounds-ship-carrying-libyan-weapons-idUSDEE83R05P/>. In an update to its investigation, in 2014 the PoE noted that the ship owner and captain were in fact aware of the cargo contents.

security forces in Iraq – or to NSAGs operating in Syria – by brokers based, registered and domiciled in the United States. Subsequently, large quantities of these SALW were diverted to the Islamic State in Iraq and the Levant (“Da’esh”) operating in Iraq and Syria.⁵⁰

In Afghanistan, a similar dynamic was documented by CAR. In 2019, for example, CAR investigators documented a Hungarian-manufactured 7.62 × 39-mm AMD-65 assault rifle seized during counter-terrorism operations against the Taliban in Herat Province. The Government of Hungary promptly responded to a formal CAR trace request. The rifle had been provided to Afghanistan’s Ministry of Interior Affairs for the exclusive end use of the Afghan National Police in one of four shipments (totalling 35,173 rifles), under a contract authorized by the US Security Assistance Program.⁵¹ These shipments were brokered in 2007 by Sweet Analysis Services Inc., a company registered and domiciled in the United States, which filed for bankruptcy in 2013. Subsequently, CAR was unable to contact the broker regarding this transfer. This example is representative of the myriad entities – often small and relatively short-lived – involved in brokering as part of large-scale procurement efforts as part of military assistance.

In such cases, there is often no evidence of wrongdoing by the brokers or the states involved in the transfer. Diversion documented by CAR following such programmes typically occurs years after the actual, physical transfer took place – in the above example, even after the company itself had gone out of business. CAR investigators usually determine diversion

in such cases to be the result of stockpile leakages and battlefield losses by the national forces themselves. However, in such environments, it is typical to see brokers respond to surges in demand and urgency. An attendant lack of accountability and follow-through can be a by-product of companies and businesses with short shelf-lives which disappear when demand has faded. Instances where a brokering company ceases to exist shortly after its involvement in a major arms deal hinders post-diversion investigations by presenting “black holes” in the transfer chain. It is therefore still important that brokers themselves practice transparency and accountability through effective maintenance of detailed records that are retrievable even after the brokering company itself no longer exists. This should be undertaken in addition to complying with states’ legal and regulatory frameworks and brokering control measures (as explained in Section 3).

As this section shows, most brokering activities that lead to the diversion of arms, ammunition and related materiel to unauthorized (end-)users happen before or during the arms transfer itself. As such, there is a range of important practical steps that ATT states parties can take to prevent, detect, mitigate and counter broker-led diversion. These have been elaborated in detail in the research consortium’s ATT Issue Briefs.⁵² Box 6 presents a non-exhaustive list of potential red flags and risk indicators, linked to the cases described in this Issue Brief, that may help licensing and law enforcement authorities and officials to detect and intervene in cases where brokers are attempting to divert arms transfers.

⁵⁰ CAR, “Weapons of the Islamic State: A Three-Year Investigation in Iraq and Syria”, 2017, <https://www.conflictarm.com/reports/weapons-of-the-islamic-state/>; CAR, “After the Caliphate: Islamic State Weapons in High-Profile Operations in North-East Syria”, 2024, <https://www.conflictarm.com/reports/after-the-caliphate-islamic-state-weapons-in-high-profile-operations-in-north-east-syria/>.

⁵¹ For the full right of reply for this transfer see CAR, “Illicit Weapons in Afghanistan”, Frontline Perspective, Issue 01, 2021, <https://www.conflictarm.com/perspectives/illicit-weapons-in-afghanistan-issue-01/>, endnote 7.

⁵² For a summary, see UNIDIR, CAR and Stimson Center, *Strengthening Shared Understanding on the Impact of the ATT in Addressing Risks of Diversion in Arms Transfers: A Compendium of Key Resources and Tools* (Geneva: UNIDIR, 2023), <https://unidir.org/wp-content/uploads/2023/05/ATT-compendium-web.pdf>.

Red flags and risk indicators related to brokers and brokering activities

Pre-transfer

- ▶ Evidence of opaque ownership structures (e.g. registration in jurisdictions that do not support information-sharing with due diligence efforts)
- ▶ Key personnel (e.g. beneficial owners, shareholders) or proximate companies (e.g. previous ownership) that have been previously sanctioned or otherwise involved in cases of diversion
- ▶ Inconsistencies or irregularities in transfer documentation, including end use or end user documentation, export licences, customs declaration, or bills-of-lading (e.g. photocopies, absence of key unique identifiers, missing fields)
- ▶ Payment from unclear, unrelated or unexplained third parties, or through methods with weak identity checks
- ▶ Payment schedule that is irregular in size or frequency, or other anti-money laundering behavioural flags⁵³

In-transfer

- ▶ Transfer route proposed via sensitive or convoluted routes (e.g. unexplained third countries, high-risk jurisdictions or jurisdictions in which multilateral sanctions are not actively enforced)⁵⁴
- ▶ Ownership of aircraft, vehicles or vessels with links to sanctioned entities or with previous involvement in cases of diversion
- ▶ History of repeated changes of aircraft or vessel registration details (e.g. tail numbers, ship identification numbers, ownership or management).
- ▶ Commodity descriptions that are vague or do not match between documentation types⁵⁵
- ▶ Registration of aircraft or vessels travelling under flags of convenience
- ▶ Unusual patterns of movement, including disabling of transponders, travelling by night, changes to reported destination mid-voyage, or unscheduled stopovers or port calls⁵⁶

Post-transfer

- ▶ Dissolution or bankruptcy of entity soon after transfer

⁵³ For example, Financial Action Task Force, “Virtual Assets: Red Flag Indicators of Money Laundering and Terrorist Financing – Public Sector”, September 2020, <https://www.fatf-gafi.org/content/dam/fatf-gafi/brochures/Handout-Red-Flags-VA-Public-Sector.pdf>; Council for Licensed Conveyancers (CLC), “Anti-Money Laundering Red Flags”, <https://www.clc-uk.org/anti-money-laundering-red-flags/>.

⁵⁴ CAR, “Procurement Networks behind Islamic State Improvised Weapon Programmes”, December 2020, <https://www.conflictarm.com/reports/procurement-networks-behind-islamic-state-improvised-weapon-programmes/>.

⁵⁵ World Bank, “Red Flags Indicating Illicit Trade”, <https://thedocs.worldbank.org/en/doc/20f1aa4dfdb82953581abe-2cab0ea559-0320052022/original/red-flags-indicating-illicit-trade.pdf>.

⁵⁶ CAR, “A Case for Tracing”, Diversion Digest Issue 003 (2020); and CAR, “Procurement Networks behind Islamic State Improvised Weapon Programmes”, December 2020, <https://www.conflictarm.com/reports/procurement-networks-behind-islamic-state-improvised-weapon-programmes/>.

3. The Arms Trade Treaty Obligation on Brokering and National Implementation of the Obligation

BOX 7.

The ATT obligation on brokering

Each State Party shall take measures, pursuant to its national laws, to regulate brokering taking place under its jurisdiction for conventional arms covered under Article 2 (1). Such measures may include requiring brokers to register or obtain written authorization before engaging in brokering.

ATT, Article 10

Article 10 on brokering is among the least detailed provisions of the ATT (see Box 7). Except for the two suggested measures in the article's second sentence, it provides little guidance for practical implementation. This section cross-references Article 10 with other

applicable and relevant articles of the Treaty for a more comprehensive understanding and in support of its implementation (in Subsection 3.1). Importantly, it also examines how states parties are implementing Article 10 of the ATT (in Subsection 3.2).

3.1. Connecting ATT Article 10 to other relevant treaty provisions

Article 2(2) includes brokering among the key activities of the international arms trade that are covered by the Treaty's use of the term "transfer". Therefore, any provision in the Treaty that refers to "transfer" also covers "brokering". Critically, to implement Article 5(5), a state party's national control system must include measures to regulate brokering in conventional arms. As shown in Subsection 3.2, states parties not only use registration and licensing to fulfil this obligation, but also other measures.

Article 10 refers explicitly to regulating the brokering of conventional arms under Article

2(1); it does not oblige states parties to regulate brokering of ammunition (covered by Article 3) or of parts and components (covered by Article 4). However, in accordance with Article 6 on prohibitions, a state party must not authorize brokering activities involving conventional arms, ammunition, parts and components if the transfer would violate United Nations Security Council sanctions such as an arms embargo or other relevant international treaty obligations. Further, if the state party has knowledge at the time of authorization that the arms or items covered by the brokering activities would be used in the commission of genocide, crimes against humanity, grave

breaches of the 1949 Geneva Conventions or other war crimes, then the brokering activities shall not be authorized and are prohibited.

Unsurprisingly, given that brokers could wittingly or inadvertently facilitate diversion, Article 11 contains important provisions for a state party to consider for regulating brokering and preventing illicit arms brokering. Article 11(1) obliges a state party involved in a transfer of conventional arms to take measures to prevent their diversion. This therefore includes the state party in which a broker is located when facilitating, mediating or making a deal for an arms transfer. Furthermore, Article 11(2) requires an exporting state to conduct an assessment of the risk of diversion, which can include examining the risk posed by entities involved in the arms transfer, such as an arms broker.⁵⁷ Article 11(5) specifically encourages the sharing of information among states parties “on illicit activities” including “illicit brokers”. Finally, Article 11(6) encourages states parties to report “to other states parties, through the Secretariat, on measures taken in addressing the diversion of transferred conventional arms”. This is one way of increasing the availability of information on different

measures taken to regulate brokering and will support states parties in their implementation of Article 10.

Article 12 (on record-keeping) neither obliges nor encourages states parties to keep records of registered brokers or written authorizations for brokering transactions, while Article 13 (on reporting) does not require annual reporting on authorized or actual transfers for which a state party has authorized or denied brokering activities. The case studies in Section 2 above highlight the challenges for enforcing national regulations on brokering without records and international cooperation – the provisions in Article 14 (on enforcement) and Article 15 (on international cooperation) are thus of particular relevance for the effective implementation of Articles 10 and 11. Given the limited guidance in the Treaty text on regulating brokering, information provided in a states parties’ initial reports serves as an importance source of information to understand the effective measures used by states parties to implement Article 10 and related provisions on brokering, and the challenges that they face in doing so.

3.2. National implementation of ATT brokering provisions: Insights from ATT initial reports

States parties are required under Article 13(1) of the Treaty to provide the Secretariat with an initial report; by doing so, they share information on measures undertaken to implement the Treaty.⁵⁸ As of July 2024, 91 of the 115 ATT states parties had submitted such a report. Of these, 70 chose to make their reports publicly

available, while 21 chose to make their reports available only to the Secretariat and other states parties.⁵⁹ While the lack of universal public reporting limits the insights these reports can provide, they nonetheless shed important light on measures undertaken by 70 states parties – nearly two-thirds of all ATT

⁵⁷ For examples of diversion risk indicators and suggested questions that national authorities can incorporate into their diversion risk assessments, see B. Wood and P. Holtom, *The Arms Trade Treaty: Measures to Prevent, Detect, Address and Eradicate the Diversion of Conventional Arms*, ATT Issue Brief no. 2 (Geneva: UNIDIR, 30 October 2020), <https://unidir.org/wp-content/uploads/2023/05/ATT-Issues-Brief-2-Formatted-v4.pdf>, Box 3, p. 21.

⁵⁸ Arms Trade Treaty, Article 13(1). ATT Article 13(1) also requires states parties to report to the Secretariat any new measures undertaken in order to implement the Treaty, when appropriate.

⁵⁹ ATT Secretariat, “Initial Reports”, <https://thearmstradetreaty.org/initial-reports.html?templateId=209839>.



Arms Trade Treaty UN GA vote. Credit: © United Nations.

states parties – to implement the Treaty. Thus, these reports provide valuable insights into national approaches to regulating brokering of conventional arms and items in the ATT context.

This subsection uses the publicly available ATT initial reports to examine how states parties are implementing their obligations under Article 10 and related Treaty provisions to prevent or mitigate the risk of brokers and brokering activities facilitating the diversion of conventional arms and undermining efforts to achieve the object and purpose of the Treaty. A summary of the information on ATT Article 10 implementation contained in the 70 states parties' reports is provided in Table 2.⁶⁰ National laws and regulations covering brokering in conventional arms usually cover the category of SALW. A short analysis of relevant information

on brokering controls contained in reports by United Nations Member States in 2024 on the implementation of the Programme of Action on SALW is therefore included in Box 9.

All 70 states parties that submitted public initial reports on their implementation of the ATT between 2015 and July 2024 provided information on whether (or not) they regulate brokering of conventional arms and related items and, if so, how. The amount of available information analysed in this subsection depends on which reporting template the states parties used, if any.⁶¹ At CSP7 in 2021, states parties endorsed a revised version of the initial reporting template with more detailed brokering-related questions.⁶² Further use of this template in initial reporting will be likely to provide even more insights into national brokering controls in the future.

⁶⁰ These reports were submitted by ATT states parties between 2015 and July 2024.

⁶¹ Sixty-one (87 per cent) of the 70 states parties submitted a report using a version of the ATT initial reporting template; 5 used a template devised by the ATT Baseline Assessment Project; and the other 4 states parties reported without using a template.

⁶² Six states parties used this template version to submit their initial report (or a revised, updated report) by July 2024.

TABLE 2.

Summary and overview of national implementation of ATT Article 10 on brokering⁶³

ATT STATE PARTY		NATIONAL CONTROL SYSTEM INCLUDES BROKER AND BROKERING CONTROL MEASURES	NATIONAL DEFINITION AND UNDERSTANDING OF BROKERS AND BROKERING			TYPES OF BROKERING CONTROL MEASURES				INFORMATION ON DOCUMENTATION AND INFORMATION REQUIRED AVAILABLE	SCOPE OF BROKERING CONTROL MEASURES					EXEMPTIONS
			NATIONAL DEFINITION AVAILABLE	CORE BROKERING ACTIVITIES REGULATED ("NARROW APPROACH")	CORE AND ASSOCIATED ACTIVITIES REGULATED ("BROADER APPROACH")	BLANKET PROHIBITION	PRIOR REGISTRATION BEFORE ENGAGING IN BROKERING	LICENSING OR OTHER FORM OF PRIOR, WRITTEN AUTHORIZATION	TWO STEP APPROACH		JURISDICTION		CATEGORIES AND ITEMS		ADDITIONAL SCOPE (BEYOND ATT)	
											NATIONAL	EXTRATERRITORIAL DIMENSION	ATT ARTICLE 2(1) ONLY	BEYOND ATT ARTICLE 2(1)		
1	Albania	✓	✓	-	✓	-	-b	-c	✓	✓	✓	-	-	✓	-	✓
2	Antigua y Barbuda	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
3	Argentina	-	-	-	-	✓	-	-	-	-	✓	-	-	-	-	-h
4	Australia	✓	-	✓	-	-	-b	-c	✓	-f	-	✓	-f	-f	-f	-f
5	Austria	✓	✓	✓	-	-	-	✓	-	✓	✓	-a	✓	-	-	✓
6	Barbados	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
7	Belgium	✓	✓	-	✓	-	-	✓	-	✓	-	✓	-	✓	✓	-h
8	Belize	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
9	Bosnia and Herzegovina	✓	✓	✓	-	-	-b	-c	✓	✓	✓	-a	✓	-	-	-h
10	Brazil	✓	✓	-	✓	-	-b	-c	✓	-e	✓	-	-	✓	✓	-e
11	Bulgaria	✓	✓	✓	-	-	-b	-c	✓	✓	-	✓	-	✓	-	-h
12	Canada	✓	✓	✓	-	-	-b	-c	✓	✓	-	✓	-	✓	✓	-h
13	Côte D'Ivoire	✓	-	-	-	-	-	-a	-	-e	-	-	-	✓	-	-i

⁶³ This table has been compiled from publicly available initial ATT implementation reports submitted by states parties between 2015 and July 2024. The publicly available reports are accessible from ATT Secretariat, "Initial Reports", <https://thearmstradetrety.org/initial-reports.html?templateId=209839>.

Legend: a – Information reported is inconclusive or not sufficiently detailed for a determination | b – Prior registration before engaging in brokering as part of a two-step approach | c – Licensing or other form of prior, written authorization as part of a two-step approach | d – Specified documentation and/or types of documentation and/or type of informational elements required | e – Other relevant information was reported; while not in this regard (e.g., intentionally left blank) | f – Another, or no, reporting template was used; the information is not available | g – Case by case or depending on circumstances | h – The report indicates that there are no exemptions to the reported, specified measures | i – The report indicates that there are no exemptions, without having specified control measures this applies to | j – Information not available.

14	Costa Rica	✓	-	-a	-a	-	-	-	-	-e	-a	-a	-	✓	-	-i
15	Croatia	✓	✓	✓	-	-	-	✓	-j	✓	✓	-a	✓	-	-	-h
16	Czech Republic	✓	✓	✓	-	-	-b	-c	✓	✓	-	✓	-	✓	✓	-h
17	Denmark	✓	✓	✓	-	-	-	✓	-	-e	✓	-a	-	✓	-	-h
18	Dominican Republic	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
19	El Salvador	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
20	Estonia	✓	✓	✓	-	-	-b	-c	✓	✓	-	✓	-	✓	-g	-h
21	Finland	✓	✓	✓	-	-	-	✓	-	✓	-	✓	-	✓	✓	-h
22	France	✓	-	-a	-a	-	-b	-c	✓	-f	✓	-	-f	-f	-f	-f
23	Georgia	✓	✓	✓	-	-	-	✓	-	-f	✓	-	-f	-f	-f	-f
24	Germany	✓	✓	✓	-	-	-b	-c	✓	✓	-	✓	✓	-	-	✓
25	Hungary	✓	✓	✓	-	-	-b	-c	✓	-e	-	✓	-	✓	-e	-e
26	Iceland	✓	✓	✓	-	-	-b	-c	✓	✓	✓	-a	✓	-	-	-h
27	Ireland	✓	✓	✓	-	-	-	✓	-	✓	-	✓	-	✓	-	-h
28	Italy	✓	✓	✓	-	-	-b	-c	✓	✓	-	✓	-	✓	✓	-h
29	Jamaica	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
30	Japan	✓	-	-a	-a	-	-	✓	-	-f	✓	-a	-f	-f	-f	-f
31	Latvia	✓	✓	✓	-	-	-b	-c	✓	✓	✓	-a	-	✓	✓	-h
32	Lesotho	✓	✓	-a	-a	-	-	-	-	-e	-a	-a	-	✓	✓	-i
33	Liberia	✓	✓	-	✓	-	-b	-c	✓	-e	✓	-a	-	-	-	-h
34	Liechtenstein	✓	✓	✓	-	-	-	✓	-	✓	✓	-	-	✓	✓	-h
35	Lithuania	✓	✓	✓	-	-	-b	-c	✓	✓	-	✓	-	✓	✓	-h
36	Luxembourg	-	-	-	-	-	-b	-c	✓	-	-	✓	-	-	-	-
37	Mexico	✓	✓	✓	-	-	-j	✓	-j	-e	✓	-a	✓	-	-	-h
38	Monaco	✓	✓	✓	-	-	-f	✓	-f	-f	✓	-	-f	-f	-f	-f
39	Montenegro	✓	✓	✓	-	-	✓	-	-	-f	✓	-a	-f	-f	-f	-f
40	Namibia	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
41	Netherlands	✓	✓	✓	-	-	-j	✓	-j	✓	-	✓	-	✓	✓	✓
42	New Zealand	✓	✓	✓	-	-	-b	-c	✓	✓	-	✓	-	✓	-	-h
43	Niger	✓	✓	-	✓	-	✓	-j	-j	✓	-a	-a	-	✓	✓	✓

[illegible]

3.2.1. Status of implementation of ATT Article 10

Of the 70 states parties that submitted a public initial ATT implementation report, 53 (76 per cent) reported that their national control systems include measures that allow the regulation, pursuant to their national laws, of brokering in conventional arms. Most of the other 17 states parties (24 per cent) at the time of their reporting were yet to start the implementation of Article 10 of the Treaty.⁶⁴ Several states parties explained that their national control system did not yet regulate brokers and brokering, but that a national legal review process was ongoing at the time of submission of the report and that efforts were being made to establish such a system. Almost all states parties that have an established national control system and measures to control brokers and their activities do so based on definitions available in national legislation.

3.2.2. National definitions and understandings of brokering

As of mid-2024, 44 states parties reported that their national legislation contains a definition of a broker or brokering, with 41 states providing a national definition of “brokering” and 3 states parties also an explicit definition of the term “broker”. A very small number of states noted that, while there is not a definition of a broker in their national legislation, the concept of arms brokering is included and covered by their national legislation.

An analysis of these definitions shows that 35 of these ATT states parties employ a narrow definition of arms brokering, primarily as constituting the core brokering activities (as described in Section 1). At least 11 states

parties use a broader approach in defining brokering that includes both core brokering and closely associated activities (see Box 5). Several states parties do not provide sufficient information in their initial reports that would allow determining which approach their national legislation takes.

Nevertheless, the available information suggests that, while national definitions of these terms vary, most of the ATT states parties that reported publicly define “brokers” as persons or entities:

- ▶ Acting on behalf of a third party or as an intermediary between two or more parties and brokering as mediating an arms deal or
- ▶ Dealing in arms, military equipment and technology, to be transferred from one third country to another third country

3.2.3. Types of control measures

As noted in Subsection 3.1, ATT Article 10 (on brokering) suggests two measures for regulating arms brokering: a requirement for brokers to register with a competent national authority; and a requirement for brokers to obtain written authorization before engaging in brokering activities. These measures need not be mutually exclusive and may be taken alongside other measures. Thus, the control measures described in the publicly available ATT initial reports can be categorized according to four common approaches for regulating arms brokering:

1. Registration to be a broker: for a fixed period of time, and for brokering activities for defined categories or items and destinations
2. Licensing and applications for authorization: whereby a broker applies for an

⁶⁴ Of these 17 states parties, Argentina and Palau responded in their reports “No” to question 6 A, which asks whether the national control includes measures that allow the regulation, pursuant to national laws, of brokering of conventional arms covered under Article 2(1) [Articles 6(1)–6(3) and 10].

authorization to undertake brokering activities, and applies for a licence or other form of written, prior authorization for each transaction

3. A two-stage process (or two-step approach): an arms broker first has to register, and must then apply for an authorization to undertake brokering activities for each transaction (i.e., a combination of the first two approaches and corresponding measures)

4. Prohibition on brokering

Table 3 provides a breakdown of the approach taken by the 48 states parties that provided information in their initial report on the specific types of national measures to regulate brokering (while information from 11 states parties in the initial report does not allow determining the specific types of measures). The most common form of regulation is to use a two-step approach, followed by licensing or written authorization.

TABLE 3.

Types of brokering control measures used by ATT states parties

TOTAL NUMBER OF ATT STATES PARTIES: 59 ⁶⁵	NUMBER OF STATES PARTIES
REGISTRATION OF BROKERS (AS THE SOLE MEASURE)	3 (5%)
LICENSING OR OTHER FORM OF WRITTEN, PRIOR AUTHORIZATION (AS THE SOLE MEASURE)	17 (29%)
TWO-STEP APPROACH (PRIOR REGISTRATION, AND SUBSEQUENT LICENSING OR OTHER FORM OF WRITTEN, PRIOR AUTHORIZATION)	26 (44%)
BLANKET PROHIBITION	2 (3%)

3.2.3.1. Registration of brokers

Among these 59 ATT states parties, only information provided in initial reports by 3 states (5 per cent; e.g., Montenegro, Niger and Paraguay) is indicative that their sole brokering control measure is a requirement for brokers to register with the competent national authority prior to undertaking brokering activities. See Box 8 for an example of such a requirement and an example particularly worth highlighting.

⁶⁵ In their initial ATT implementation reports, a total of 59 states parties reported that their national control systems include measures allowing the regulation of brokers and have established brokering control measures. In the other 11 cases (16 per cent), the information contained in the initial report is inconclusive or not sufficiently detailed or specific as to what these measures are.

An example of a national registration system for brokers and brokering

An example of a national registration system that is worth highlighting was reported by Estonia, which has an established system of registration and at the time of initially reporting had a publicly available national registry of brokers. This, in turn, enables:

- ▶ Cooperation, including information-sharing with other states (e.g., on brokers registered by Estonia, with identities, operations and other information known to Estonian authorities)
- ▶ Increased monitoring and oversight by Estonian authorities and knowledge of entities and individuals involved in brokering (e.g., transaction reports submitted by brokers)
- ▶ Dissemination by Estonian authorities of information to registered brokers (e.g., on the applicable legal and regulatory frameworks, prohibitions, or changes in national regulations)
- ▶ Transparency at the national and international level.⁶⁶

In the case of Estonia, the established registration system is in addition coupled with a two-step approach.

3.2.3.2. Licensing and applications for authorization

Seventeen of the 59 ATT states parties (29 per cent) reported using an approach based on licensing and applications for authorizations. In this approach, a broker applies for an authorization to undertake brokering activities, and then applies for a licence or other form of written authorization for each transaction. The majority of these states' parties indicated that authorizations take the form of individual licences that brokers must obtain for each brokering transaction.

3.2.3.3. A two-stage process (or two-step approach)

Twenty-six of the 59 parties (44 per cent) indicated that they had a two-stage process (or two-step approach): As a first step, an individual or entity wanting to engage in brokering

activities must first apply to a competent national authority to be a broker. If authorized, permitted or registered to be a broker, the second step is for the broker to apply for an authorization by a competent authority for each brokering transaction. This approach is thus a combination of the measures described in 3.2.3.1 and 3.2.3.2 above (corresponding to the two measures suggested in ATT Article 10) or for particular sets of transactions based on licensing conditions.

Sweden, for instance, explained that individuals or entities that want to be active in this area are “required to obtain a permit” (which in practice is equivalent to registration), and that “there are requirements both for registration as a broker and for a licence for individual transactions from or outside” of the country.⁶⁷

⁶⁶ Estonia, Initial ATT Implementation Report, 2015, <https://thearmstradetreaty.org/download/7b45b61c-3638-3e1c-b4df-c338efd2a6c5>.

⁶⁷ Sweden, Initial ATT Implementation Report, 2015, <https://thearmstradetreaty.org/download/bebf4cc5-4957-378f-9bd4-166c36eb57ad>.

3.2.3.4. Blanket prohibition of brokering

Only two of the 70 ATT states parties that submitted a publicly available initial report (less than 3 per cent of the total) prohibit arms brokering: Argentina and Palau. Argentina explained that, while trade is defined in national legislation in all its possible variants, the term brokering is not, and “as such arms brokering is not permitted”.⁶⁸ Palau explained that brokering is “effectively prohibited under the National Firearms Control Act”, which prohibits any person from having firearms in their “custody or control”.⁶⁹

3.2.4. Scope of control measures

As indicated in Section 1 (Box 3), there are at least two dimensions to the issue of scope with regards to national brokering regulations and control measures: the scope of items regulated and controlled; and the scope of jurisdiction exercised and asserted over brokering and brokers. The information provided by ATT states parties in their reports is therefore analysed in the following two sub-sections according to these two dimensions, and then on the scope beyond ATT Article 6 (on prohibitions).

3.2.4.1. Scope of control measures: Items covered

Thirteen (22 per cent) of the 59 states parties that reported that their national control

systems include brokering control measures reported that the scope of these measures includes categories and items as per ATT Article 2(1). A further 29 states parties (49 per cent) reported that the scope of their measures goes beyond those categories. The Netherlands’ brokering controls apply to categories and items covered by its national control system and list, which is based on the Common Military List of the European Union. This includes all categories covered under ATT Articles 2(1), 3 (ammunition) and 4 (parts and components), as well as other military equipment.⁷⁰ Canada also explained that its national brokering control measures extend beyond the scope of categories covered by the ATT and include “all military items . . . and also all other goods listed” and controlled “if their end-use is related to weapons of mass destruction”.⁷¹

3.2.4.2. Scope of control measures: Jurisdiction

Twenty-one of the 59 states parties (36 per cent) reported that their national control measures have a national dimension only. Switzerland explained that its brokering control measures apply “only to activities of a person or legal entity on Swiss Territory” and that the brokering of controlled goods between two third countries through brokering activities on its national territory is covered by its national law.⁷²

Another twenty-one of the 59 states parties (36 per cent) reported that their brokering

⁶⁸ Argentina, Initial ATT Implementation Report, 2015, <https://thearmstradetreaty.org/download/589e3d90-00b8-3f34-ad09-00fb8f05a509>, pp. 8–9 (author translation).

⁶⁹ Palau, Initial ATT Implementation Report, 2021, <https://thearmstradetreaty.org/download/30500135-a195-3374-923c-27f14ac4344a>.

⁷⁰ The Netherlands, Initial ATT Implementation Report, 2016, <https://thearmstradetreaty.org/download/68d51cd5-8dcf-3849-9f51-46c398d874ab>.

⁷¹ Canada, Initial ATT Implementation Report, 2020, <https://thearmstradetreaty.org/download/733233d5-8bb8-30f3-8a53-396909f9ae0e>.

⁷² Switzerland, Initial ATT Implementation Report, 2016, <https://thearmstradetreaty.org/download/06b4a15b-f55a-35db-98b5-0c3bed1f95d6>.

controls include an extraterritorial dimension for brokering activities carried out by their nationals, permanent residents, or companies abroad (as described in Box 3). New Zealand's measures apply, for example, "to any brokering activity carried out by New Zealand persons or entities, including those operating wholly or partially offshore".⁷³ Norway noted that "illegal brokering can, under certain circumstances specified [in the national penal code], be subject to criminal proceedings although committed abroad".⁷⁴ In other words, these states also assert some degree of extraterritorial controls (and jurisdiction) over brokering by nationals or companies domiciled on their territory that carry out activities abroad.

The information provided by the other states parties in initial reports is insufficiently detailed or specific and inconclusive as to the scope of jurisdiction of their controls of brokers and brokering.

3.2.4.3. Scope of control measures: Additional scope beyond the ATT

Eighteen states parties (31 per cent) reported that their national control systems go beyond the requirements of the ATT Article 6 (on prohibitions), as described in Subsection 3.1 above, and they also apply controls on brokering in other situations. Some ATT states

parties noted, for example, that brokering is subject to more stringent control measures under regional instruments to which they are a party or which they abide by (e.g., the European Union Council Common Position⁷⁵ or the ECOWAS Convention⁷⁶; see Table 1).

Some states also used this opportunity to highlight the connection between ATT Articles 10 and 11. For example, the Republic of Korea noted that, in addition to the obligations under Article 6, a brokering licence is also not issued in situations deemed by the competent national authority as constituting additional risks of arms diversion.⁷⁷

3.2.5. Exemptions in national brokering control measures

Ten states parties that have brokering control measures in place reported on exemptions to these measures; 31 states parties reporting that there are no exemptions to their national brokering control measures.⁷⁸ These 10 states reported exemptions for specific countries, specific national authorities (of their own), their armed forces, specific offices or individuals, and for cooperation with (their) industry.

For example, Austria reported its control measures contained exemptions for the brokering of transfers to or from other

⁷³ New Zealand, Initial ATT Implementation Report, 2015, <https://thearmstradetreaty.org/download/6cbd8770-a0be-3676-9932-d4fda67bf9ac>.

⁷⁴ Norway, Initial ATT Implementation Report, 2015, <https://thearmstradetreaty.org/download/6612b20d-b5a6-3779-ae1f-0896997cebd3>.

⁷⁵ For example, Latvia, Initial ATT Implementation Report, 2015, <https://thearmstradetreaty.org/download/17a97cde-552b-3ed7-9110-0ab70164dc4e>.

⁷⁶ For example, Niger, Initial ATT Implementation Report, 2016, <https://thearmstradetreaty.org/download/23817dbe-a63a-3cf9-b63e-d083614ce49a>.

⁷⁷ Republic of Korea, Initial ATT Implementation Report, 2018, <https://thearmstradetreaty.org/download/15686eca-2bf6-3ecd-93f8-a2c851f2706c>.

⁷⁸ For the remaining states parties that submitted a publicly available initial implementation report on the ATT and reported having brokering control measures in place, it remained unclear as to whether their national legislation foresees exemptions to these measures, or information is not available (due to the version of the template used).

European Union member states,⁷⁹ while Latvia explained that, under its system, a simplified procedure can be applied in such cases (of European Union member states). Several states (Albania, Austria, Germany, Niger, Sweden and Switzerland) reported exemptions for their armed forces. For example, Albania reported an exemption for its armed forces when abroad (and events of their armed forces with foreign armed forces on national territory), as well as for military or emergency assistance to other states.⁸⁰

Other states use exemptions to facilitate co-operation with their industry. For example, Sweden explained that “companies and individuals that only supply Swedish government authorities” are exempted, while its brokering controls apply to all other industry entities.⁸¹ Switzerland exempts its armed forces’ procurement office and activities by related companies.⁸² Regarding companies and individuals being involved in brokering activities abroad, Canada explained, for example, that its established brokering control measures “do not apply to transfers between affiliates of a corporation”, and to situations where its nationals abroad are “directed by their non-Canadian employer to undertake brokering activities, provided the Canadian does not control the foreign employer”.⁸³

3.2.6. Record-keeping

Forty-one of the 59 states parties (69 per cent) that reported that their national control systems include brokering control measures indicated that this includes provisions on the maintenance of records by the competent national authority of authorizations related to the conduct of brokering activities. Several states (e.g., Estonia) explained that such records are kept both in paper and electronic version.⁸⁴

The majority of these ATT states parties keep such records for a minimum of 10 years. Some indicated longer record-keeping periods in line with provisions of regional instruments of which they are also a state party. A small number indicated indefinite record-keeping periods.

Several of these ATT states parties also indicated that they require registered, authorized individuals and companies that undertake brokering activities on their territories or abroad to keep records and different types of information of such activities.

Of these states parties, none indicated in their initial ATT implementation reports that their recordkeeping systems include records of brokers that have been convicted by national courts of violating national laws and regulations on the conventional arms trade, illicit brokering activities and related offences.

⁷⁹ Austria, Initial ATT Implementation Report, 2015, <https://thearmstradetreaty.org/download/e6965540-9489-37c7-ab52-5727943a7b8c>.

⁸⁰ Albania, Initial ATT Implementation Report, 2015, <https://thearmstradetreaty.org/download/31c46d8a-9ac3-392f-90aa-6a1416f8e86d>.

⁸¹ Sweden, Initial ATT Implementation Report, 2015, <https://thearmstradetreaty.org/download/bebf4cc5-4957-378f-9bd4-166c36eb57ad> (Emphasis in original). Other industry entities are not exempted, but are usually provided with general licenses to the extent that such companies’ “internal operations include the management of transfers to a subsidiary abroad or between subsidiaries in two third countries (which does not exempt such transfers from applicable third country regulation)”.

⁸² Switzerland, Initial ATT Implementation Report.

⁸³ Canada, Initial ATT Implementation Report.

⁸⁴ Estonia, Initial ATT Implementation Report.

3.2.7. National authorities for regulating brokering

Of the 70 states parties that submitted a public initial report, 53 provided information on the competent national authority or authorities for the regulation of brokering. Thirty-six of these states parties have a single national authority that is responsible for the regulation of brokering, while 16 states have multiple competent responsible national authorities responsible for the regulation of brokering. Most commonly, these are (or are overseen by) the ministries of economy, trade, foreign, or interior affairs.

Forty states specified other national authorities involved in decision-making processes related to brokers and brokering. Among these states,

several indicated that brokering decisions are made by inter-ministerial, inter-departmental or inter-agency mechanisms, such as, for example, a council of ministers, a committee or a national commission.

Of the states parties that were at the time of their reporting yet to regulate brokers and brokering, 3 had already identified a single national lead entity responsible for this.

The competent national authorities identified by 53 ATT states parties in their initial public reports are summarized in Figure 1 (from the most to the least common). Other national authorities involved in decision-making processes related to brokering as identified by ATT states parties are summarized in Figure 2 (also from the most to the least common).

FIGURE 1.
Competent national authorities for the regulation of brokering

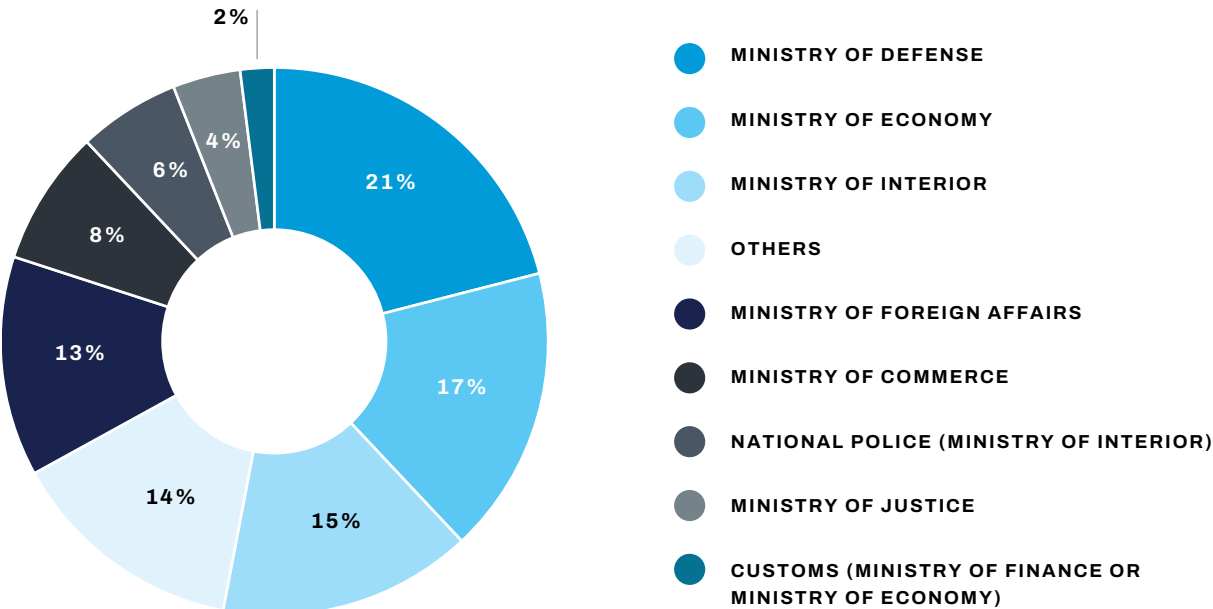
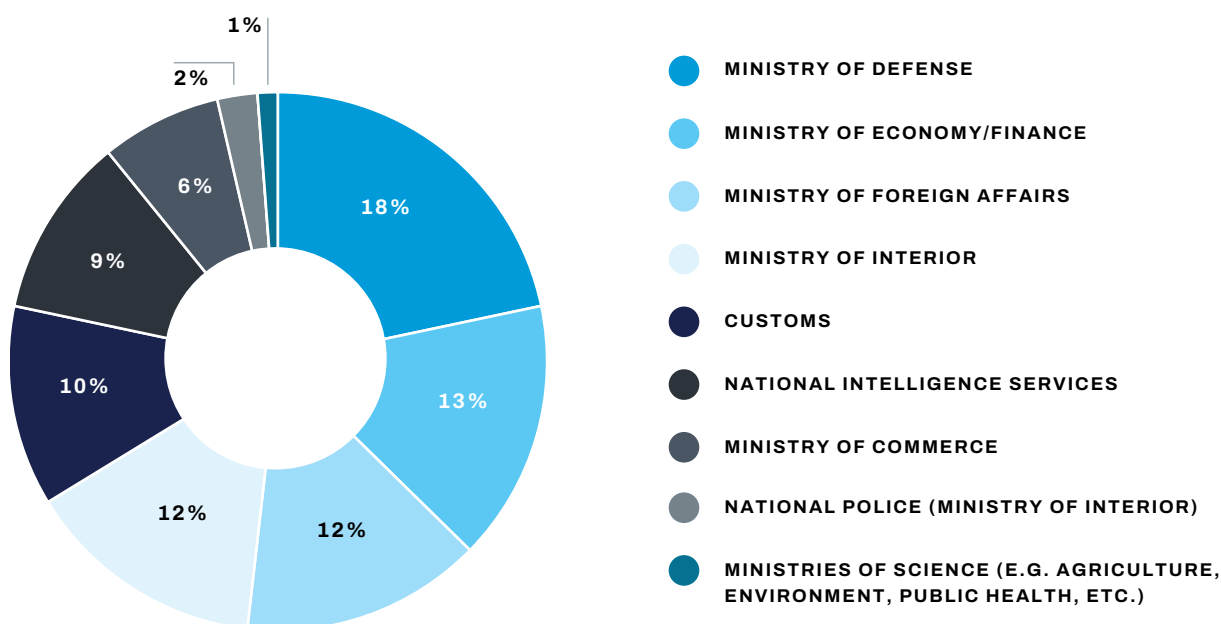


FIGURE 2.

National authorities involved in decision-making processes related to brokering



3.2.8. Implementation assistance

The 70 initial reports examined for the purposes of this section provides few insights into assistance needs and capabilities of these ATT states parties, as only the revised reporting template includes specific questions in this regard. Of the six states parties that submitted public initial reports using the revised template, as of July 2024:

- ▶ Two states parties (Barbados and Romania) indicated that they are in a position to provide assistance with establishing measures to regulate the brokering of arms
- ▶ Three states parties (Lesotho, Niger and the Philippines) indicated that they would like to receive assistance with establishing measures to regulate the brokering of arms

BOX 9.

Brokering-related information contained in 2024 PoA national reports

National reports on the implementation of the PoA on SALW are an additional source of information on states’ national control systems and the regulation of brokering, specifically as it pertains to SALW. Table 4 summarizes the brokering-related information provided by 100 United Nations Member States in their voluntary reporting in 2024 on the implementation of the PoA.⁸⁵

TABLE 4.
Implementation of the PoA brokering controls: Insights from national 2024 reports

	GLOBAL	AFRICA	ASIA-PACIFIC	EASTERN EUROPE	LATIN AMERICA AND THE CARIBBEAN	WESTERN EUROPE AND OTHER STATES
TOTAL NUMBER OF REPORTS	100	31	21	5	16	27
REGULATION OF BROKERING	78	23 (74%)	13 (62%)	4 (80%)	12 (75%)	26 (96%)
REGISTRATION OF BROKERS	71	21 (68%)	12 (57%)	3 (60%)	12 (75%)	23 (85%)
LICENSING, PERMIT OR OTHER FORM OF AUTHORIZATION	73	22 (71%)	13 (62%)	3 (60%)	11 (69%)	24 (89%)
REGULATION OF CLOSELY ASSOCIATED ACTIVITIES	69	21 (68%)	10 (48%)	3 (60%)	10 (63%)	25 (93%)
ACTIONS TAKEN AGAINST ILLICIT BROKERING	16	5 (16%)	3 (14%)	0 (0%)	4 (25%)	4 (15%)

Under the PoA, states have committed to criminalize illicit brokering through penalties and legal action.⁸⁶ National PoA reports of 2024 provide some information on efforts by some ATT states parties to investigate, prosecute or take judicial actions against brokers suspected to be violating their national regulations and being involved in illicit SALW brokering activities. For example, both Belgium and France reported ongoing investigations against individuals and entities involved in

⁸⁵ Programme of Action on Small Arms and Light Weapons, “2024 National Reports”, <https://smallarms.un-arm.org/national-reports>. Table 4 presents the regional breakdown in percentiles. For example, a total of 31 states from Africa submitted a national report on the implementation of the UN PoA in 2024. Of these 31 states, 23 states (74 per cent) reported that they have laws, regulations and administrative procedures in place on brokering. Of the 100 states that had submitted their 2024 PoA reports as of July 2024, 64 are ATT states parties, 12 are ATT signatories and 24 have not joined the ATT.

⁸⁶ Programme of Action, A/CONF.192/15, Sections II.14 and II.6.

brokering activities, while the United Kingdom reported that it maintained “a risk-based and intelligence-led approach to checking activities suspected of breaching national brokering legislation” and has reportedly also conducted a range of interventions to disrupt illegal brokering activities.⁸⁷

The PoA template for national reporting also allows states to provide information on whether they would like to “request assistance in developing laws, regulations and/or administrative procedures to regulate SALW brokering”. Thirty-three states indicated in their 2024 reports assistance required in developing their national laws, regulations and administrative procedures to regulate brokers and brokering activities. Of these states, 18 (more than half) were ATT states parties and 4 were ATT signatories as of July 2024. Most of these states require legal or technical assistance or institutional capacity-building. A short overview of ATT states parties that indicated assistance needs for regulating the brokering of SALW in their 2024 national reports on the implementation of the PoA is provided in Table 5.⁸⁸

TABLE 5.

ATT states parties that indicated assistance needs for regulating the brokering of SALW in their 2024 national reports on the implementation of the PoA

AFRICA	ASIA-PACIFIC	EASTERN EUROPE	LATIN AMERICA AND THE CARIBBEAN
Burkina Faso Côte d'Ivoire Ghana Guinea Guinea-Bissau Lesotho Liberia Madagascar Maldives Mali Nigeria Senegal Togo	Philippines	Bosnia and Herzegovina	Guatemala Honduras Peru

⁸⁷ PoA reports by Belgium, France and the United Kingdom. Programme of Action on Small Arms and Light Weapons, “2024 National Reports”.

⁸⁸ Programme of Action on Small Arms and Light Weapons, “2024 National Reports”; ATT Secretariat, “Treaty Status”, <https://thearmstradetreaty.org/treaty-status.html?templateId=209883>. ATT signatory states that indicated a need for assistance in the regulation of SALW brokering in their 2024 national report on the implementation of the PoA include Cambodia, Colombia, Malawi (signatory as of July 2024), Thailand and Vanuatu. States that have not yet joined the ATT and that indicated a need for assistance in the regulation of SALW brokering in their 2024 national report on the implementation of the PoA include the Democratic Republic of the Congo, El Salvador, Fiji, Haiti, Qatar and Uganda.

Overall, this section shows that ATT states parties have made progress in implementing Article 10 as well as related provisions of the Treaty and have establish brokering control measures. Yet, there remain significant gaps and loopholes in national legal and regulatory frameworks, in control systems, as well as in

the enforcement of the Treaty provisions on countering illicit brokering and diversion. The national control systems of many states still lack measures to regulate brokering, thereby posing a risk of exploitation by unscrupulous brokers seeking to divert conventional arms to the illicit market.



Airplane flying into the night. Credit: © United Nations.

4. Conclusion: Multilateral options for enhancing the regulation of brokers to counter diversion

All ATT states parties are obliged to implement measures to regulate brokers and arms brokering, as well as take action to address illicit arms brokering. This ATT Issue Brief shows that unscrupulous brokers operating in diversion-enabling environments exploit weaknesses and loopholes in national legal, regulatory and control systems to divert arms to the illicit market and to unauthorized (end-) users. Preventing illicit brokering requires collective efforts by the international community. A national legal, regulatory and control system that adequately regulates brokering in all states will enable international efforts to implement

ATT provisions on brokering in the interests of global peace, security and stability.

Overall, since the entry into force of the ATT, states parties have made progress in regulating brokers and the brokering of conventional arms in order to reduce the risks of unscrupulous brokers diverting these arms to the illicit market and to unauthorized (end-)users. However, a lot remains to be done. This concluding section considers several options and avenues that are available to states parties to further strengthen the regulation of arms brokering under the ATT framework.

4.1. Considerations on brokering for the Working Group on Effective Treaty Implementation

This ATT Issue Brief is intended to provide a basis for fruitful substantive discussions in the context of the reconfigured and restructured ATT WGETI under its new work plan.⁸⁹ The work plan, which was welcomed by ATT CSP10, provides for an examination of the implementation of ATT Article 10 (on brokering) in the near future. The following key findings and insights from the analysis of information contained in the 70 publicly available initial reports from ATT states parties may be particularly useful:

- ▶ There is good potential for ATT states parties to achieve a common understanding

on what constitute “core arms brokering activities”, although the same cannot be said for “closely associated arms brokering activities” that could be regulated.

- ▶ States parties not only use registration and authorization or licensing for individual transactions to regulate brokering. Many or most use a two-step approach, consisting of both registration and then authorization or licensing for individual transactions. A few states prohibit all brokering activities within their national jurisdiction.
- ▶ At least 21 ATT states parties also exercise controls over brokering by their nationals,

⁸⁹ Arms Trade Treaty, Working Group on Effective Treaty Implementation, Chair’s Report to CSP10, 19 July 2024, [https://www.thearmstradetreaty.org/hyper-images/file/ATT_CSP10_WGETI_Chair_Report_to_CSP10_EN_\(incl._annexes\)/ATT_CSP10_WGETI_Chair_Report_to_CSP10_EN_\(incl._annexes\).pdf](https://www.thearmstradetreaty.org/hyper-images/file/ATT_CSP10_WGETI_Chair_Report_to_CSP10_EN_(incl._annexes)/ATT_CSP10_WGETI_Chair_Report_to_CSP10_EN_(incl._annexes).pdf), in particular Annex B. See also Arms Trade Treaty, CSP10, Final Report, ATT/CSP10/2024/SEC/807/Conf.FinRep. 23 August 2024, https://thearmstradetreaty.org/hyper-images/file/ATT_CSP10_ATTS_Final_Report/ATT_CSP10_ATTS_Final_Report.pdf, in particular para. 28.

or permanent residents, or domiciled companies, when these brokering activities are carried out in other states (i.e., have extraterritorial controls and assert some degree of extraterritorial jurisdiction).

- ▶ Different national authorities are responsible for national regulation or are involved in decision-making processes related to brokering and brokers. This highlights in particular the importance of national coordination and inter-agency cooperation among relevant authorities.

When considering the implementation of ATT Article 10 and related provisions, or while reviewing national systems, laws and regulations on brokers and brokering to strengthen the national control system, the key elements and questions outlined in Box 10 merit consideration. They draw on measures contained in relevant international instruments on conventional arms control, including the ATT, as well as international good practice and guidance documents.



Checklist of key elements and questions related to national regulation of brokers and brokering activities

Definitions of brokering activities or broker

- ▶ What types of activity are defined as “brokering” and subject to regulation? What “closely associated activities” are defined and subject to regulation?
- ▶ Which sources of existing international or regional guidance are most in line with definitions of a broker or brokering activities used at the national level?

Scope of items regulated and scope of jurisdiction

- ▶ Which categories of item are subject to brokering regulations?
- ▶ Are all natural persons (individuals) and legal persons (companies) that are engaged in “core brokering activities” or “associated brokering activities” subject to regulation?
- ▶ Are brokering activities of the state’s citizens or its permanent residents in other states regulated (i.e., are extraterritorial controls exercised and jurisdiction asserted)?

Approaches to the regulation of brokers and brokering

- ▶ Which approaches and measures are used to regulate brokering activities?
- ▶ What are some advantages and limitations of the different approaches to regulating brokering?
- ▶ Which other approaches, methods and measures are used to regulate brokering activities?

Registration and screening of potential brokers

- ▶ Must all legal persons be registered as an arms broker before undertaking brokering activities?
- ▶ What requirements and application criteria need to be satisfied by applicants before being registered as an arms broker?
- ▶ How long (duration) is the registration of an arms broker valid before it becomes subject to renewal?
- ▶ Is a two-step process employed in the regulation of brokering (i.e., registration of a legal person as a prerequisite before an application, licencing or other form of authorization for each individual transaction)?

Licensing of brokering activities

- ▶ Is a one-step licensing process employed?
- ▶ What types of information (informational requirements) for use by competent national authorities must applicants provide when applying for a licence to undertake brokering activities?
- ▶ Are there provisions for exemptions from licensing procedures for brokering activities? If so, under what circumstances and in which situations are such exemptions provided?
- ▶ How long (duration) are licences to undertake brokering activities valid?
- ▶ Where a one-step licensing process is used, is a register maintained of all brokers and applications for a brokering licence?

Risk assessments (including refusal and revocation)

- ▶ What criteria are used to assess an application for a brokering licence before authorizing or denying the licence? Are these criteria the same as for export licence applications? Do these criteria cover provisions contained in ATT Article 7 (on export and export assessment)?
- ▶ Is end-use or end-user documentation used as a means to share information on brokers involved in a proposed transfer as part of risk assessments undertaken prior to authorizing a transfer involving brokering activities?
- ▶ What factors and criteria are considered for refusal or revocation of a licence for a proposed transfer involving brokering activities?

Record-keeping and reporting for brokering activities and/or brokers

- ▶ Are registered brokers and/or persons that have received a licence to undertake brokering activities required to keep records of their activities?
- ▶ What types of information are registered brokers and/or persons that have received licences required to keep in their records? For how many years do records need to be kept?
- ▶ Are registered brokers and/or persons that have received licences required to report to a competent national authority on brokering activities? What types of information are required to be reported to the competent national authority?
- ▶ How frequently are registered brokers and/or persons that have received licences required to report to the competent national authority on brokering activities (e.g., monthly, quarterly, annually) after each brokering transaction has been completed?

Penalties and sanctions for violations of national legislation relating to brokering

- ▶ Which types of offence are included in national legislation (administrative, civil or criminal)? Which types of penalty and sanction are used for brokering offences? Which other legislation and regulations need to be considered for offences and penalties for brokering?

International cooperation and information exchange

- ▶ Which types of international cooperation (including information exchanges) and international law enforcement cooperation (including mutual legal assistance) are necessary for the enforcement of regulations on brokers and brokering activities?

Based on the questions and responses in the initial report, as well as existing international guidance, the WGETI could provide guidance for ATT states parties seeking to put in place

measures to regulate brokering and to counter the role of brokering in the diversion of conventional arms.

4.2. Opportunities to enhance international cooperation to counter the role of brokering in the diversion of conventional arms

The ATT seeks to establish the highest possible common international standards for regulating or improving the regulation of the conventional arms trade. The ATT process therefore provides an opportunity for states parties and other interested stakeholders to cooperate and work towards the establishment of systemic measures to prevent diversion of arms that is facilitated by illicit brokering and brokers. Such measures are considered “mechanisms or comprehensive arrangements that are established and maintained [by states] for national control systems and international cooperation to prevent, detect, address, and eradicate diversion”⁹⁰ of arms facilitated by illicit brokering activities. In addition to the ATT, the United Nations Firearms Protocol requires its states parties to establish measures to regulate brokering of firearms, their parts and components, and ammunition. States parties to both instruments are encouraged to include information on brokers in their information exchanges as part of international cooperative efforts to counter diversion and trafficking.⁹¹ There are several ways in which this could be carried forwards within the ATT framework.⁹²

First, the ATT provides an opportunity for states parties to voluntarily exchange information on brokers they have registered, and/or authorized/licensed in line with their national control systems and regulations. Several states parties already make information on registered and/or authorized/licensed brokers publicly available online (see, e.g., Box 8 above). A more systematic exchange of this information between ATT states parties could be useful for national diversion risk assessments.⁹³ This would help states parties’ competent authorities to determine the reliability and legitimacy of intermediaries (e.g., brokers) involved in proposed transactions. This, in turn, could help build trust and confidence between states parties.

Second, ATT states parties could be encouraged – where their national legal systems include laws and regulations that allow it – to voluntarily share information on brokers that have been convicted by national courts of violating national laws and regulations on the conventional arms trade, illicit brokering activities and related offences. Such an exchange of information could help to prevent a broker who has been convicted in one country for

⁹⁰ Wood and Holtom, *The Arms Trade Treaty*.

⁹¹ Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, in particular Article 15 (brokers and brokering), Article 12 (information), Article 13 (cooperation).

⁹² Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, in particular Article 15 (brokers and brokering), Article 12 (information), Article 13 (cooperation).

⁹³ P. Holtom, H. Giezendanner and H. Shiotani, *Strengthening End Use/r Control Systems to Prevent Arms Diversion: Examining Common Regional Understandings* (Geneva: UNIDIR, 2017), <https://unidir.org/files/publication/pdfs/strengthening-end-use-r-control-systems-to-prevent-arms-diversion-en-686.pdf>.

illicit arms brokering activities seeking to pursue the same or similar illicit activities in another country. More research and analysis of trends regarding convicted illicit brokers could yield insights that could contribute to a better understanding of the scope of the global problem of illicit arms brokering and illicit arms and ammunition flows, as well as support international cooperation against illicit brokering (see Box 11).

Third, end-use and end-user control systems are one way in which states can cooperate during the pre-transfer stage to prevent and detect suspicious developments and potential

risks of diversion facilitated by unscrupulous brokers. The former ATT WGETI sub-working group on Article 11 (on diversion) examined the issue of end-use and end-user documentation on several occasions.⁹⁴ The exchanges determined that there is agreement among ATT states parties on the type of information to be included in end-use and end-user documentation. However, states parties have not yet been encouraged to exchange, via the ATT Secretariat, information and the national templates that they use. Doing so would further aid risk assessments to prevent or counter diversion of arms.

BOX 11.

Cooperation including mutual legal assistance against illicit arms brokering activities

International cooperation, including mutual legal assistance, between states parties can be used in judicial proceedings and to investigate and prosecute illicit brokers and brokering activities. The ATT requires states parties to cooperate and, “where jointly agreed and consistent with their national laws, afford one another the widest measure of assistance in investigations, prosecutions and judicial proceedings in relation to violations of national measures” established as part of the implementation of the Treaty.⁹⁵ Such international cooperation, including international law enforcement cooperation and mutual legal assistance, can be essential in investigations, prosecutions and judicial proceedings related to violations of national brokering regulations. Such cooperation is especially useful in cases of brokering involving the alleged or confirmed provision of false or forged transfer documentation (e.g. end-use or end-user certificates and documentation, or other documentation, licences, cargo manifests, etc. that accompany a transfer), front companies, or ship registrations. This is because such cases usually cut across multiple national jurisdictions and can therefore only be addressed through cooperation.

⁹⁴ See “Possible Measures to Prevent and Address Diversion”, Annex D of the report of the Working Group on Effective Treaty Implementation, welcomed by CSP4 (2018), including para. 7, essential and optional elements for end-use/r documentation, [Article 11 - Possible measures to prevent and address diversion.pdf](#); ATT Working Group on Effective Treaty Implementation Chair’s Draft Report to CSP5 (2019), in particular Annex D, “Elements of a Guide to End Use and End User Documentation”, [ATT_CSP5_WGETI Draft Report_EN.pdf](#); and Final Report, CSP7 (2021), in particular paras. 21 b. and 28 d., [CSP7 Final Report \(ATT.CSP7.2021.SEC.681.Con.FinRep.Rev1\) - 02 September 2021.pdf](#).

⁹⁵ Arms Trade Treaty, Article 15(5).



The knotted gun, New York, United States. Credit: © United Nations.

Fourth, the ATT Diversion Information Exchange Forum (DIEF) provides a unique platform for cooperation between states parties and signatories concerning concrete cases of diversion facilitated by suspected or detected illicit brokering activities and brokers.⁹⁶ States parties are already encouraged to share specific cases and diversion-related information on illicit transfers, illicit arms brokers, their methods of concealment and illicit routes.⁹⁷ States parties may find the research consortium's Diversion Analysis Framework and counter-diversion tools useful for identifying key risk areas or defining red flags regarding brokers and brokering activities.⁹⁸

⁹⁶ ATT Secretariat, "Diversion Information Exchange Forum (DIEF)", <https://thearmstradetreaty.org/diversion-information-exchange-forum.html?templateId=1386528>.

⁹⁷ Arms Trade Treaty, "Diversion Information Exchange Forum: Terms of Reference", Adopted at CSP6, Updated at CSP10, [https://thearmstradetreaty.org/hyper-images/file/ATT_DIEF_Updated_Terms_of_Reference_\(ToR\)_EN/ATT_DIEF_Updated_Terms_of_Reference_\(ToR\)_EN.pdf](https://thearmstradetreaty.org/hyper-images/file/ATT_DIEF_Updated_Terms_of_Reference_(ToR)_EN/ATT_DIEF_Updated_Terms_of_Reference_(ToR)_EN.pdf).

⁹⁸ Malaret Baldo et al., Arms Trade Treaty; UNIDIR, CAR and Stimson Center, Strengthening Shared Understanding on the Impact of the ATT in Addressing Risks of Diversion in Arms Transfers.

The Arms Trade Treaty: Regulating Brokering to Reduce the Risk of Diversion

This ATT Issue Brief is intended to support the efforts of ATT states parties to implement the Treaty's brokering and related provisions. Since the Treaty's entry into force, no dedicated dialogue has occurred under the ATT framework on the regulation and control of brokers and brokering in conventional arms. A number of questions, knowledge gaps and key issues have thus remained unresolved since the negotiation of the Treaty.

This Issue Brief addresses some of these gaps by identifying key issues that merit further consideration by states and other interested parties. It is intended to provide a basis for discussions on the complex issue of regulating arms brokering by the ATT Working Group on Effective Treaty Implementation.

This is the fifth in a series of ATT Issue Briefs released as part of joint research by the research consortium composed of UNIDIR, Conflict Armament Research and the Stimson Center. The objective of the research is to enhance knowledge and facilitate dialogue among states, to strengthen shared understanding on the impact of the ATT in addressing risks of diversion, and to identify avenues to further promote effective policies and practices under the Treaty.



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