

**United Nations Regional Seminar: Enhancing  
International & Regional Cooperation to Prevent,  
Combat & Eradicate Illicit Brokering in Small Arms &  
Light Weapons in East & Southeast Asia**

# **Regional Initiatives to Combat Illicit Brokering Activities**

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**18 February 2010**

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# Introduction

- **Intense political discussion of brokering has led to a range of regional agreements or multilateral initiatives**
- **These include: Bamako Declaration, SADC protocol, Nairobi Declaration, Protocol & BPG guidelines, ECPWAS Convention, CICAD model regulations, Wassenaar elements for effective legislation, EU common position, OSCE Principles**
- **These range from guidelines/recommendations through to the the politically and the legally binding**
- **North Africa, the Middle East, Asia & the Pacific, have made less progress in controls on brokering**



## Introduction

**Regional initiative for E Asia and SE Asia would take forward the UNPoA (2001) commitment to:**

*‘Develop adequate national legislation or administrative procedures regulating the activities of those who engage in small arms and light weapons brokering’ including ‘registration of brokers, licensing or authorization of brokering transactions as well as the appropriate penalties for all illicit brokering activities performed within the State’s jurisdiction and control’ (UN, 2001, sec.II, pa.14)*

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## Introduction

**Regional initiative for E Asia and SE Asia would take forward the UN Firearms Protocol commitment to:**

*‘Consider establishing a system for regulating the activities of those who engage in brokering’, potentially including registration, licensing, requirement to list brokers’ names in licensing documents, exchange of information on brokers, and retention of records (UN Firearms Protocol, 2001, art. 15.1)*



## **Existing regional initiatives – African Union, Bamako Declaration (2000)**

### **Recommends:**

- **‘Appropriate measures to control arms transfers by manufacturers, suppliers, traders, brokers, as well as shipping and transit agents’**
- **Regional legislative harmonising on brokering**
- **Legislation or regulations to prevent breach of (UNSC) embargoes**
- **Enhancing capacity of LEAs/border control authorities**



## **Existing regional initiatives – Southern African Development Community (SADC) Protocol on the Control of Firearms, Ammunition and Other Related Materials (2001)**

- **Legally binding**
- **States agree to legislate to control SALW including ‘provisions that regulate firearm brokering in the territories of State Parties’**
- **Brokering is defined**
- **Agreement to legislate against and ‘sanction criminally, civilly or administratively’ the violation of UNSC embargoes**



## **Existing regional initiatives – Great Lakes & Horn of Africa, Nairobi Declaration (2000)**

- **Agreement to ‘urge source countries to ensure that all manufacturers, traders, brokers, financiers, and transporters of SALW are regulated through licensing’**
- **Led to...**



# **Existing regional agreements – Great Lakes & Horn of Africa, Nairobi Protocol for the Prevention, Control & Reduction of SALW (2004)**

## **Legally binding agreement to:**

- **Include in national legislation ‘provisions regulating brokering in the individual State Parties’**
- **Register brokers on territory**
- **License manufacturers, dealers, traders, financiers and transporters for each transaction**
- **Disclose on import and export licenses or authorization & accompanying documents of names, locations of brokers involved**
- **Sanction under law violation of arms embargoes**
- **Not extra-territorial**
- **The Nairobi BPGs probably go further**



## **Existing regional initiatives – Great Lakes & Horn of Africa, Nairobi BPG guidelines (2005)**

### **Guidelines on implementing the Nairobi protocol includes**

- **Definition of brokering**
- **Model broker registration and licence application forms**

### **Recommend:**

- **Registration, licensing of all transactions for all actors involved in brokering-related activities**
- **Full disclosure of transfer licenses and involved brokers for all transactions**
- **Brokering only in line with transfer guideline (includes detailed licensing criteria)**



## **Existing regional initiatives – Economic Community of West African States (ECOWAS) Convention (2006)**

- **Prohibits all SALW transfers unless an exemption is obtained from the ECOWAS Secretariat**
- **Defines brokering as including financing and transport services**
- **Licensing requires details of all companies involved in transport, handling, storage arrangements in transit**
- **Licensing criteria apply to brokering authorisation**
- **Permanent registry requires details of brokers, shippers, financiers, intermediaries**
- **Secretariat to outreach to manufacturers**
- **Criminalisation of brokering**
- **Article 20 refers to brokering and includes Registration, Extra Territoriality and Licensing**



## **Existing regional initiatives – EU Common Position on the Control of Arms Brokering (2003)**

**Evolved from 2001 guidelines on national legislation**

**Aim to avoid circumvention of UN, EU, OSCE embargoes and EU Code of Conduct on Arms Exports**

**Legally binding provisions**

- **Licensing against EU code criteria**
- **Records for 10 years**
- **Information exchange: laws, registered brokers, denial notification (registration & licensing)**

**Options**

- **Extraterritoriality, control of brokering of national exports, registration, review of licence applicants' records**

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## **Existing multilateral initiatives – OSCE Principles on the control of brokering in SALW (2004)**

**OSCE doc on SALW (2000) acknowledges brokering controls as ‘critical’, recommends**

- **Registration, licensing, disclosure of broker details in licensing docs**

**Handbook of best practices sets out fundamental and optional measures**

**Principles on the Control of Brokering in SALW**

- **Politically binding**
- **Repeat provisions of EU Common Position**



# **Existing multilateral initiatives – Wassenaar Arrangement, Elements for Effective Legislation on Arms Brokering (2003)**

**Statement of Understanding on Arms Brokerage (2002)**  
began process of considering control measures

## **Elements for Effective Legislation on Arms Brokering:**

- **Similar to the EU common position but politically rather than legally binding**
- **Licensing**
- **Optional: extra-territoriality, records of licences, penalties, registration**
- **Recommend exchange of info on brokering within WA General Information Exchange and assistance between states for setting up controls**
- **Need to be updated**



# **Existing regional initiatives – OAS Inter American Drug Abuse Commission (CICAD) Model Regulations for the Control of Brokers of Firearms, their Parts & Components & Ammunition (2003)**

**Not legally binding, but most comprehensive recommendations:**

- **Defining brokering**
- **National authority to regulate**
- **Registration and licensing (incl model application forms)**
- **Prohibition of certain activities, define criminal offences and penalties**
- **Criteria for refusal of broker licence application**
- **Extra-territoriality**
- **Reporting by brokers and inspection**
- **Provisions relating to the disclosure of import and export licences**



## **Strengths of existing initiatives**

- **Consensus around need for licensing based on sound criteria, prohibitions and penalties**
- **Commitment to reinforce UN and other embargoes**
- **Records will help states gain institutional memory**



# Weaknesses of existing initiatives

- **Optional status of extraterritorial controls a significant weakness**
- **Need for more regulation of broker-related activities: financing, transportation**
- **Need to agree on criteria for granting a brokering licence**
- **Need to make more effort to verify End Use**
- **Need more practical co-operation beyond export control systems**
  - Law enforcement level (investigations, prosecutions, extradition)
  - Maritime/aviation controls
  - Financial controls



## **Points for consideration regarding regional co-operation**

- **Until legislation is passed, it is hard to know the extent of brokering activities of concern**
- **Brokering controls needed:**
  - To ensure legitimate military-industrial trade is not undermined by diversion or illicit activities
  - Because of our shared interest in peace and human security
  - Because irresponsible SALW brokering has a destabilising effect in areas whose stability is of strategic and economic importance to E & SE Asian states
- **What elements of other regional initiatives would draw consensus among E & SE Asian states?**



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