

Targeting the Middlemen:

CONTROLLING BROKERING ACTIVITIES

In recent years, research conducted by both governmental and non-governmental organizations has revealed that brokers play a critical role in the illicit trade of small arms and light weapons. This research has also highlighted that the ease with which brokers act illicitly strongly depends on a series of regulatory gaps at both the national and the international levels. The most evident of these gaps is that arms brokering is generally unregulated. Around the world, only 25 countries have regulations that specifically address brokering activities. Other gaps include lax controls on governmental weapon stockpiles, lack of controls of transport and financing agents, as well as inadequate border and customs controls.

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Since the 2001 UN small arms conference, however, an unprecedented amount of activity has taken place to help control arms brokering. This chapter analyses national and international initiatives, focusing in particular on countries that have established national brokering controls and comparing their regulations to identify differences and potential shortcomings. Finally, the chapter assesses whether these national regulations are effective in punishing illicit arms brokering.

The main findings of this chapter are the following:

- Controls on licit and illicit brokering are closely linked: unless states regulate the former, they will be unable to prevent the latter.
- Small arms brokering control activities, promoted by states at the national and international levels, rely primarily on national capacities for implementation.
- Where they are present, national brokering regulations differ widely, creating potential loopholes and the possibility of circumvention. Furthermore, effective implementation of such controls presents a number of challenges.
- International cooperation is critical in preventing illicit brokering activities.



Italian customs police find weapons in a truck whose manifest said it contained humanitarian aid for Kosovo refugees in April 1999.

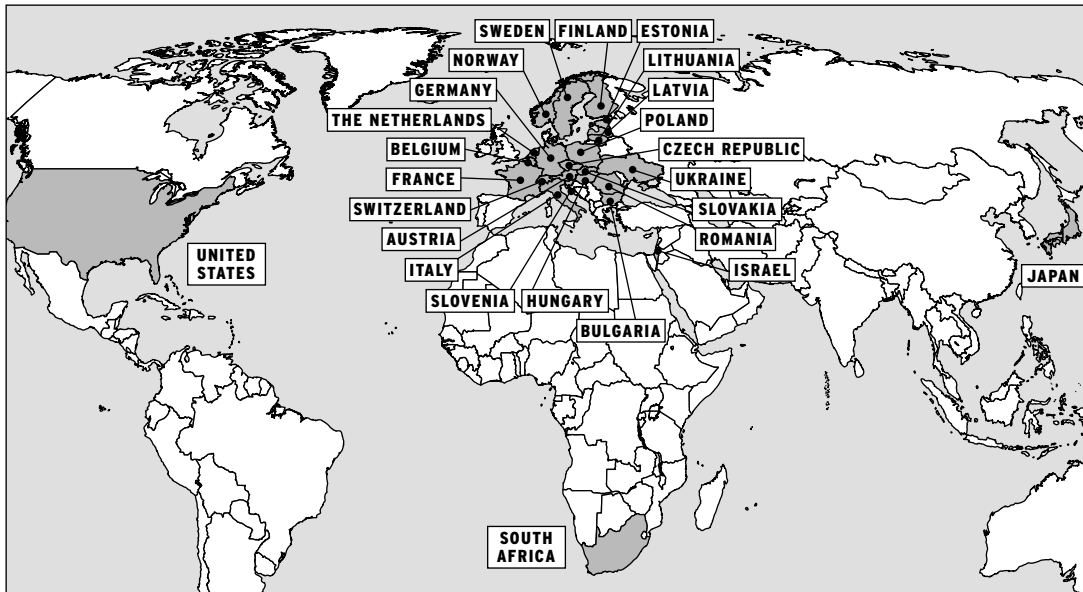
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The line between licit and illicit brokering activities is frequently blurred. In principle, legal brokering takes place with governmental authorization, which, in turn, should be given in accordance with national and international norms. In practice, given that very few countries have in place a system of authorization of brokering activities, brokers find themselves in a 'grey zone' in which their actions are effectively unregulated. Although brokering an arms deal to an embargoed country is clearly in violation of international legal provisions, much brokering activity that is suspect may not be as unequivocally illegal.

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Provisions in the 25 countries with brokering regulations in place vary considerably, particularly in their scope of application, both within and outside the national territory of controlling states. There is a lack of consensus with respect to the definition of activities that are subject to licensing and the criteria for assessing brokering licence applications. In some cases, national regulations leave important loopholes, notably when they establish exemptions to licensing requirements, or the possibility of granting open brokering licences.

Map 5.1 Countries with brokering controls



The analysis of national brokering regulations in the context of criminal proceedings inevitably involves an evaluation of their effectiveness. Convictions for brokering-specific offences are rare; however, some brokers have been convicted for other violations, typically money laundering, forgery, and arms exports or imports. While the low number of convictions may reflect the fact that some national brokering regulations have not been in force very long, it may also be linked to other factors, such as poor knowledge of the relevant laws and weak legal practice in their application; lack of international cooperation; difficulties in conducting investigations; and legal loopholes.

Arms brokering remains a largely unregulated activity. The issue has become prominent on the international agenda, however, as evidenced by a number of important international and regional initiatives. In particular, initiatives of the European Union (EU), the Organization for Security and Co-operation in Europe, the Wassenaar Arrangement, and the Organization of American States (OAS) have significant potential for affecting national policies on brokering controls. Encouraging developments are also underway in the Economic Community of West African States and the South African Development Community. Among these initiatives, the EU *Common Position on the Control of Arms Brokering*, which is legally binding, and the OAS *Model Regulations for the Control of Brokers of Firearms, Their Parts and Components and Ammunition*, both adopted in 2003, show great promise.

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At a minimum, increased international discussions on illicit brokering might bring forth a common understanding of the issue and of the possible means of dealing with it. More importantly, they might spur the adoption of brokering regulations in more states, thus closing the biggest gap that allows illicit brokering to take place.