

**Options for States interested in further extending regulatory
controls over brokering small arms and light weapons.**

By

Nicholas Marsh

Norwegian Initiative on Small Arms Transfers project

at the

International Peace Research Institute, Oslo

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Executive summary

The 2001 Group of Governmental Experts report recommended that the problem of unregulated arms brokering could best be addressed by focusing upon developing shared understandings of the issue, regional arrangements and national legislation. This policy was endorsed in the 2001 United Nations Programme of Action (UNPoA); all states committed themselves to introduce adequate brokering regulations, and the policy has been followed since then.

In addition to the UNPoA, governments have agreed to numerous multilateral and regional agreements concerning brokering. However, the regional approach has been patchy – only Europe, the Americas, Central Asia, and Eastern Africa are covered by agreements that both define brokering and suggest regulatory tools to control it.

Unfortunately, the development of regional and multilateral agreements has not, yet, led to the widespread introduction of national brokering legislation. Of 191 UN member states, less than 40 have brokering legislation, and 25 of them are located in Europe.

The regional approach could best be enhanced by working with regional organisations that have existing agreements concerning brokering and promoting information exchange and the implementation of national legislation.

Regions that may be 'ripe' for new brokering agreements are those that already have regional frameworks concerning small arms and/or arms trafficking. The most likely candidates are ASEAN and ECOWAS. In addition, APEC may offer some possibilities. Unfortunately, the League of Arab States and the South Asian Association for Regional Cooperation do not offer many such building-blocks.

Rather than solely focusing upon widening and deepening regional coverage, it would be more efficacious to concomitantly concentrate upon obtaining a global instrument. Moreover, a global instrument would help to iron out any inconsistencies in the regional approaches, and provide a good framework for international cooperation.

The current General Assembly mandate for a new Group of Governmental Experts is vague and offers many opportunity costs.

Governments should ensure that the UN initiatives are focused upon the creation of an Open Ended Working Group which would negotiate a global instrument.

Should governments perceive that sufficient international consensus has not been reached in order to ensure that a strong and wide-ranging instrument could be negotiated via an Open Ended Working Group, then they could consider defining a more specific mandate of the Group of Governmental Experts.

This option would require the Group of Governmental Experts to start in 2006, *and* for its goal to be to pronounce on the feasibility of developing a global instrument. Moreover, the Group of Governmental Experts should also be tasked with recommending the practicability of regulation via various control methods.

Introduction¹

In March 2001, a UN Group of Governmental Experts (GGE), chaired by Ambassador Mason, presented its report on the feasibility of 'restricting the trade in small arms and light weapons to manufacturers and dealers authorised by states.'ⁱ The report noted that:

arms brokering, which is a largely unregulated activity, can also take place in grey areas between legal and illegal dealings. Some brokers deliberately exploit inconsistencies and gaps in national laws and administrative procedures to circumvent controls, and arrange transfers involving States where export control procedures and enforcement are weak.ⁱⁱ

Arms brokering – the activity of arranging arms transfers – has been identified as a key link in the supply chain that diverts weapons into illegal hands.ⁱⁱⁱ The broker acts as a 'middle man' between the seller and buyer, and/or may also provide other services such as financing or transport. While there has been much international attention concerning brokers' involvement in violations of sanctions and import/export laws and UN arms embargoes, it is important to note from the outset that there is no serious call to ban brokering as such. This is because brokering can be an essential and legitimate part of the defence industry.

Arms brokering was described in 2001 as being 'unregulated' because then only a small number of countries had any legislation that covered the activity of arranging arms transactions. Instead, states' export control laws generally concerned the physical movement of defence equipment from (or into) a state's national territory. A broker, though, may not own the arms being transferred. Furthermore, they could reside in one country and arrange transfers that take place wholly beyond the borders of the country in which they are based. Even if the broker were engaged in violating UN sanctions it might be very difficult for a country to prosecute them if their legislation did not explicitly cover the activity of arranging arms transfers.^{iv}

Since the 2001 report, governments have made a large number of commitments in multilateral and regional fora to control arms brokering. However, as of October 2005, brokering is still a largely unregulated activity. Less than 40 states (out of 191 UN members) have legislation that explicitly controls arms brokering.^v

The GGE report concluded that there was a need for all states to "consider ways to avoid gaps and inconsistencies in national approaches that may undermine the effectiveness of controls".^{vi} The group considered the practicality of negotiating a legally binding international instrument on brokering. However, it was felt that this would be hindered by a lack of experience of regulating brokering, lack of agreed criteria, and differing national approaches. Instead, the GGE report recommended that states should:

- implement national legislation;
- seek consensus and document best practices;
- focus upon regional level instruments; and
- provide assistance (where necessary) in meeting these goals.

Since 2001, the international community has generally followed these recommendations. This memorandum will evaluate what progress has been made, and recommend how best to further improve the regulation of arms brokering.

¹ The author would like to acknowledge the contribution to this memorandum made by Holger Anders Silvia Cattaneo, and Noel Stott. Responsibility for the text is the author's alone.

Multilateral initiatives and national legislation

Two months after the GGE report was published, on 31 May 2001 the 'Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition', supplementing the United Nations Convention against Transnational Organised Crime was adopted by General Assembly resolution 55/255 at the fifty-fifth session (2001) of the General Assembly of the United Nations.

This 'Firearms Protocol' states in Article 15 that states should consider regulating brokering activities through registering and/or licensing brokers operating on their territory, and requires the disclosure on import or export licences of the names (if any) of the brokers involved in the transaction. States are also encouraged to share information on their brokering legislation.

The next opportunity for states to build upon the GGE recommendations was at the 2001 United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects. The ensuing Programme of Action (UNPoA) developed the GGE's recommendations into the following commitment found in Section II, Paragraph 14:

To develop adequate national legislation or administrative procedures regulating the activities of those who engage in small arms and light weapons brokering. This legislation or procedures should include measures such as 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.

Furthermore, Section 2 Paragraph 39 committed states to:

To develop common understandings of the basic issues and the scope of the problems related to illicit brokering in small arms and light weapons with a view to preventing, combating and eradicating the activities of those engaged in such brokering.

Section 2, Para 4 committed states to develop national coordination agencies covering many aspects of the trade, collection, and destruction of small arms. Part of the national coordination agencies' remit concerned small arms brokering. Last, in Section 4 of the UNPoA, which covered follow-up to the conference, paragraph 1, section d, recommended to the General Assembly:

To consider further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons.

This final commitment was implemented in UN General Assembly resolution 58/241 of 23 December 2003, which mandated the Secretary General to hold broad based consultations "on further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons".^{vii}

As of October 2005, four such consultations have been held under the auspices of the UN Department for Disarmament Affairs (DDA) – in New York and Geneva. They were attended by a wide range of interested governments, regional organisations, NGOs and independent experts. Most participants at the consultations have indicated their interest in 'consolidating existing common understandings on key aspects of the problem of illicit SALW brokering and, to the extent possible, to forge consensus on outstanding issues.'^{viii}

Governments were encouraged to develop common understandings concerning brokering at an international conference which was held under the auspices of the 'Dutch-Norwegian Initiative on further steps to enhance international cooperation in preventing, combating, and eradicating illicit brokering in small arms and light weapons'. This was conducted in parallel to the discussions organised by the DDA, but was not formally part of the UN process. The conference, held during April 2003, brought together 71 people (from governments, international organisations and academia). The Chair's report identified many areas of consensus, including the scope of brokering controls, licensing, registration, criminalisation and international cooperation.

The Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies also addresses brokering. The Arrangement's first agreement was the 2002 *Statement of understanding on arms brokerage*. This was followed up in 2003 with its *Elements for effective legislation on arms brokering*.^{ix} The Elements require states to license brokering activities taking place on their territory (and suggest that they could also cover extra-territorial activities). They also require that states keep records on brokering activities, share this information with other governments, and establish penal provisions for anyone guilty of breaking brokering legislation.

Whatever the agreements made at multilateral or regional fora, legislation has to be introduced by national governments. As Wood and Peleman wrote in their 1999 NISAT report, illicit brokers:

become experts in knowing the weaknesses of different national control systems, the location of cheap sources of supply and the use of secretive shipping and banking arrangements. Experienced arms brokers who agree to supply recipients in areas of violent conflict and gross human rights abuse will usually try not to contravene national laws directly – at least, not where they know law enforcement agencies have the capacity to enforce those laws. [...] the arms that they trade will often never pass through domestic territory where they live, and the money will be laundered through tax-haven accounts.^x

It is therefore vital to ensure that national brokering laws are widespread, effective and consistent, otherwise illicit brokers will be able to circumvent regulations by moving their operations to countries which do not have brokering legislation, or they may be able to exploit loopholes and inconsistencies in national legislation. One means of avoiding such problems is to make national laws apply to all the activities of citizens wherever they may be (so called 'extra-territoriality').

The 2005 'Red Book' stated that 32 states have brokering legislation.^{xi} However, it is difficult to accurately measure the number of countries as some have 'implicit regulation' which concerns states whose arms trade regulations may cover brokering, but do not specify the activity or the mechanisms by which it should be regulated. For example, a state may designate one company as being the only one allowed to engage in arms transactions. Brokers may, therefore, act illegally if they are not part of the monopoly company.

Therefore, depending upon definition, the 32 identified in the 'Red Book' could be increased to near 40. Still, this number falls well below the 191 member states of the United Nations (who have all committed themselves to implementing brokering legislation through the 2001 Programme of Action). This lack of widespread national laws is a major drawback, and increasing the number of states with explicit brokering legislation must be the only way by which the success of international initiatives concerning brokering can be measured.

Regional initiatives

The report by the 2001 Group of Governmental Experts recommended that brokering might best be addressed at the regional level. Since then this recommendation has been carried out – several regional agreements have been concluded. These range from commitments concerning brokering within documents that cover a wider range of issues concerning small arms and light weapons (such as the Nairobi Protocol) to specific documents on brokering (such as the EU Common Position).

Existing regional agreements

Specific agreements that define both brokering and the regulatory measures needed to control it are:

Detailed Agreements	Year
The Organisation for Security and Cooperation in Europe (OSCE) Principles on the Control of Brokering in Small Arms and Light Weapons	2004
The Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa	2004
A European Union (EU) Common Position on the Control of Arms Brokering	2003
The Organisation of American States (OAS) Model Regulations for the Control of Brokers of Firearms, their Parts, Components and Ammunition	2003

These agreements exhibit considerable degree of convergence, namely that:

- Brokering concerns arranging the transfer of arms.
- Each brokering activity should be licensed.
- Governments could also require that brokers be registered.
- Information should be exchanged on brokering activities and legislation.
- Legal sanctions should be introduced.^{xii}

Of the above, only the EU Common Position and the Nairobi Protocol are legally binding.

In addition, two agreements have provided less detailed guidance on how brokering legislation should be implemented. These are:

Less specific commitments	Year
The Southern African Development Community (SADC) Protocol on the Control of Firearms, Ammunition and Other Related Materials.	2001
Bamako Declaration on an African Common Position on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons.	2000

The legally binding SADC Protocol defined brokering, but does not specify how it should be regulated. The non-binding Bamako declaration merely indicated that brokering should be regulated, but did not define the activity or suggest how it should be regulated.

In general, the regions covered by specific brokering agreements are:

- Eastern Africa; the Americas; Europe; Central Asia (including Asian Russia but excluding Afghanistan)

Despite this progress it is noticeable that the GGE strategy of relying on regional initiatives has been only partially successful. Significant areas of the world – East Asia, South East Asia, South Asia, the Middle East, and North Africa – lack any meaningful brokering framework at a regional level.

Furthermore, of the countries with brokering legislation in 2005, 25 are located in Western Europe, or are EU members or accession candidates. In the other regions, implementation of legislation has been patchy, remaining countries identified in the 2005 'Red Book' are: USA, Nicaragua, Seychelles, South Africa, Israel, Japan, and Singapore.^{xiii} In addition, Mauritius (as of October 2005) is in the process of implementing brokering legislation. Furthermore, brokering legislation in some states was already in place before 2001 - including in the United States, Germany and Israel.

The progress in Western Europe may be because the EU has a legally binding agreement (the 2003 EU Common Position) that requires its members to implement brokering legislation. As of July 2005, one survey found that some two thirds of EU members were in conformity with the requirements of the EU Common Position.^{xiv} In Southern Africa, while the SADC Secretariat has not emphasised brokering controls, brokering is on the agenda of the Southern Africa Regional Police Chiefs Co-operation Organisation (SARPCCO). SARPCCO has started to develop some momentum. In Eastern Africa, the Nairobi Protocol articulated, in April 2004, a commitment to implement brokering legislation, and provided a detailed definition and a set of measures that states should introduce. As yet, it has this progress has not born fruit in the form of legislation.

Building-blocks

A number of governments that do not have brokering legislation, and are outside the scope of existing regional agreements, are however signatories to multilateral agreements concerning brokering. They could be fruitful partners and may act as regional champions.

Wassenaar Arrangement members (and not covered by regional agreements):
Australia; Republic of Korea; and Turkey.

Parties to the UN 'Firearms Protocol' (and not covered by regional agreements):

Ratified: Algeria; Laos; Libya; Oman; and Turkey.

Signed but not ratified: China; India; Lebanon; Nauru; Republic of Korea; and Tunisia.

The 2001 GGE strategy of focusing upon regions could be further extended to those regions that have not yet developed agreements. The potential for developing new agreements via regional organisations is assessed below:

Association of South East Asian Nations (ASEAN)

The most promising regional organisation may be ASEAN. The member states have already developed the *ASEAN Plan of Action to Combat Transnational Crime*. This agreement contains explicit reference to arms smuggling. For example, the *2002 Work Programme on Terrorism to Implement the ASEAN Plan of Action to Combat Transnational Crime* states that ASEAN states should:

“Strengthen law enforcement capabilities, especially the need for comprehensive domestic legislation against illicit arms trafficking.”

Section 4.3, point b

“Implement the programme of action, where practicable, in accordance with the outcome of the UN Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects in 2001”

Section 4.6, point c.

Arms smuggling has been mentioned (in passing) in the communiqués issued by the ASEAN ministerial meetings. Moreover, Singapore has brokering legislation and Laos has ratified the UN ‘Firearms Protocol’. These countries could act as regional partners.

The only drawback with this approach may be with Myanmar/Burma. It may be difficult to press the need for embargo enforcement as that country is the subject of an EU arms embargo.

To conclude, the ASEAN *Plan of Action to Combat Transnational Crime* offers a good opportunity to extend the purview of brokering legislation in South East Asia.

South Asian Association for Regional Cooperation (SAARC)

In some ways South Asia may be a good target. It has been affected by illicit transfers of small arms that have ended up in the region’s conflicts, and in the hands of criminal organisations.

However, the SAARC has not laid much groundwork. For example, its *Additional Protocol to the SAARC Regional Convention on Suppression of Terrorism* does not include any reference to arms trafficking (or even small arms in general).

More importantly, relations between the organisation’s member governments – Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka – tend to be, to put it mildly, somewhat fraught. As there is no pre-existing regional framework with a mandate to cover arms trafficking (comparable to ASEAN) a regional approach in South Asia is likely to be a long process. Nevertheless, the SAARC offers the perhaps the most likely partner for cooperation in South Asia.

League of Arab States

The League of Arab States (LAS) offers little pre-existing basis for action on brokering. The LAS has passed a resolution calling for the General Secretariat to intensify their co-ordination to combat the illicit trade in small arms and light weapons.^{xv} Furthermore the *Conference for the Implementation, by the Arab States, of the UN Programme of Action on the Illicit Trade in Small Arms and Light Weapons* was held in December 2003.^{xvi} The co chairs summary stated that;

The legislative challenge includes the areas of production (marking), stockpiles, civilian possession and brokering.

However, at a subsequent meeting in April 2005, the region’s governments did not make any further commitment, save noting that discussions regarding a GGE had advanced at the UN level. Thus the lack of any pre-existing small arms framework in the region is likely to be a hindrance to any attempts to create consensus on brokering.

Economic Community of West African States (ECOWAS)

In March 2004, the ECOWAS members convened the *ECOWAS Conference on Combating Illicit Small Arms Brokering and Trafficking*. The participants called for

the adoption of an ECOWAS 'Convention on illicit brokering of small arms'.^{xvii} However, as of October 2005, this convention is not extant. It may, though, be awaiting the much heralded transformation of the ECOWAS Moratorium into a convention.

The currently existing ECOWAS Moratorium, and associated Plan of Action, offers a good regional building block for a brokering agreement. This foundation would likely to be enhanced by the development of a broader ECOWAS Convention on the control of small arms and light weapons.

Asia-Pacific Economic Cooperation (APEC)

There is some precedent for an APEC involvement in small arms transfer control. The 2003 Bangkok declaration committed APEC leaders, concerning man-portable surface to air missiles (MANPADS), to:

take domestic action to regulate production, transfer, and brokering;^{xviii}

This agreement was made more explicit in the 'APEC Guidelines On Controls And Security Of Man-Portable Air Defence Systems (MANPADS)' which was submitted by Russia and the US during the 16th APEC Ministerial Meeting, 17-18 November 2004. They stated that:

Exporting economies will not make use of non-governmental brokers or brokering services when transferring MANPADS, unless specifically authorized to on behalf of the economy [member government].

There is thus some basis on which to build. Furthermore, some members of APEC (such as those who are also members of the OSCE, OAS or Wassenaar Arrangement) are already covered via other agreements and/or have domestic brokering legislation. The main threshold that would need to be crossed when promoting a regional agreement to APEC would be to find a friendly state to propose a brokering agreement. However, the existence of pre-existing agreements that cover some members may inhibit further action within APEC, as it may be difficult to coordinate governments around a new agreement.

Conclusion – moving toward a global agreement

The regional approach advocated by the 2001 GGE report has only been partially successful. Western Europe is the only region in which a significant number of governments have adopted legislation (and even so in July 2005 about one third of EU member states had yet to do so). The existence of regional agreements on brokering, in for example the OAS, has not led to a widespread adoption of new brokering legislation.

Therefore, perhaps the most important strategy may be to work with countries that are already party to agreements concerning brokering and concentrate upon assisting them in meeting their existing commitments to implement legislation.

Those regions that already have an arms trafficking framework will be those most likely to be amenable to creating regional agreements on brokering. There are two regions that fit this bill – ASEAN and ECOWAS. In addition, APEC has made some modest steps in this direction.

However, other regional organisations, namely the League of Arab States and the South Asian Association for Regional Cooperation are unlikely to offer an easy opportunity to develop new agreements.

Moreover, much more work could be done to raise awareness and promote understanding on the issue. In particular, governments need to be appraised of the need to control their nationals operating in third countries and/or arranging the transfer arms from third countries.

Concerning regions without pre-existing frameworks concerning arms trafficking, the likelihood of progress might be increased by focussing on a global (legally binding) agreement. Such a global agreement would bypass some of the regional obstacles outlined above.

In addition, a global agreement would have two further benefits. First, a global agreement would help to iron out inconsistencies in regional agreements and national legislation. As mentioned in the first GGE report, unscrupulous brokers "deliberately exploit inconsistencies and gaps in national laws and administrative procedures to circumvent controls, and arrange transfers involving States where export control procedures and enforcement are weak." Second, the creation of an international instrument would greatly assist the creation of global understanding of the issue. Last, a global agreement would create a lasting framework for international cooperation.

Initiatives within the UN system.

The points within the 2001 Programme of Action concerning brokering (mentioned above) were a considerably watered down version of what had appeared in previous drafts of the PoA. The original drafts had included an agreement to negotiate a legally binding instrument concerning brokering. Instead, the PoA generally followed the 2001 GGE report and recommended the development of national legislation and common understandings (which have been carried out via the various multilateral and regional agreements concerning brokering).

The development of an international instrument would, one hopes, be a more achievable goal following some five years of discussions in various fora resulting in significant progress in the development of common understandings. Therefore, it is pertinent to examine how this might be achieved. This final section therefore reviews three options for UN level initiatives on brokering.

Option 1 – a Group of Governmental Experts (GGE) with the existing mandate

During its 59th session (2004), the UN General Assembly passed resolution 59/86, which included a request for the Secretary-General to continue the current 'broad-based consultations' on brokering with a view to:

establishing, after the 2006 review conference and no later than 2007, and after the conclusion of the work of the Open-ended Working Group [on Marking and Tracing], a group of governmental experts, appointed by him on the basis of equitable geographical representation, to consider further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons, and requests the Secretary-General to report to the General Assembly at its sixtieth session on the outcome of his consultations;^{xix}

The first option would simply be to create the above mentioned GGE by 2007, which would consider further steps to enhance international cooperation.

Benefits

The proposed GGE would, hopefully, provide the international community with much needed education on the brokering issue. It is noticeable that while many of the NGOs attending UN forums contain the same experts as they did in 2001, many of the government personnel have changed. Therefore, a GGE may provide a good opportunity to disseminate both the need for brokering regulations, and best practice on how to do it.

Furthermore, the proposed GGE would be a modest, although not insignificant, step forward from the original group headed by Ambassador Mason as it would be wholly focussed upon brokering (rather than looking at brokering as one of three elements of its mandate).

Drawbacks

The current mandate represents many opportunity costs. First, if the GGE was set up by late 2007, it would be unlikely to report on its findings until the early part of 2009 (based on the timeframe of the GGE headed by Ambassador Mason). The conclusion of such a report four years hence is a very un-ambitious object, especially given the gravity of the problem.

Furthermore, the current resolution provides for a very vague mandate. While it could allow for discussion of a legal instrument, the discussions may just repeat those of the previous GGE – namely to improve cooperation at a regional level.

Therefore, there is a danger that sticking with the current resolution may not move us dramatically closer to the development of international regulatory standards.

Moreover, as the scope of the GGE's mandate has not been properly defined, it might *not* discuss more tangential (which in the arms brokering context are especially pertinent) issues such as financing and/or transportation. Therefore, there is a danger that the proposed GGE could actually provide less elucidation than the previous 2001 GGE.

Option 2 – call for an immediate Open Ended Working Group

A resolution could be presented at the 1st Committee calling for the above resolution for a GGE to be reviewed, and then replaced with an Open Ended Working Group (OEWG) that would start in 2006. The OEWG would be tasked with developing an international instrument on brokering

This process could further be enhanced by the OEWG being endorsed by the 2006 conference to review the Programme of Action. It is notable that IANSA has called for the immediate development of legally binding international instrument.^{xx}

Benefits

As noted above, the best way of enhancing international control over brokering is to develop a global instrument. Therefore an OEWG would be the quickest means of achieving this objective.

Drawbacks

Unfortunately, an immediate OEWG may encounter some problems. First, as the marking and tracing OEWG made clear, there is considerable room for divisive argument within an OEWG. After much wrangling, its outcome was a non-legally binding marking and tracing instrument, which also did not cover ammunition. These omissions can only be described as a set-back.

The concern is, therefore, that an OEWG on brokering may meet a similar end – a lack of consensus may result in a weak and non-binding outcome. This concern is highlighted by the existing lack of consensus on several key issues, such as extra-territoriality and the inclusion of activities such as transport or financing. Furthermore, as noted above, the current lack of expertise present in the government personnel who would negotiate such an instrument in an OEWG does not bode well for a strong legally binding instrument.

Finally, trying to replace an existing resolution for a GGE with one for an OEWG may not be successful. If this were the case, then any attempt to improve the current GGE mandate may be lost.

Option 3 – a two stage process

The third option sees the creation of a legally binding instrument, via an OEWG, as the ultimate aim. However, it would use a GGE report as the first step toward this goal.

The process would therefore be to modify the GGE mandate so that it would explicitly be instructed to consider the feasibility of establishing an international, and legally binding, instrument on brokering. It would also be required to consider some of the more contentious issues (such as extra-territoriality, financing and transportation).

The GGE report could then conclude by stating whether it believed that it would be practicable to form an OEWG to negotiate a legally binding instrument. A positive endorsement would have the very beneficial effect of framing the debate with a subsequent OEWG.

Furthermore, the GGE would recommend whether an international instrument should be legally binding; likewise, it would fully examine the issues concerning extra-territoriality, financing and transportation, and provide recommendations.

Benefits

The ultimate aim of this two stage process would be to create a legally binding international instrument – it would therefore set an ambitious, but achievable, agenda. Moreover, the preceding GGE would be used to educate and frame the eventual mandate of an OEWG. By making further recommendations concerning extra-territoriality, financing and transportation subsequent OEWG discussions could be better informed and productive.

Drawbacks

The main problem with this approach is that it would take many years before an international instrument could be agreed upon. Given the urgent nature of the problem, this would be a severe cost.

Conclusion

Option 1, staying with the existing GGE, is clearly the least appealing alternative. While it would have some educational value, there is a strong possibility that by end of the current decade we would be no closer to negotiating an international instrument – and so significant gaps would remain in the world's attempts to control brokering.

The aim of international activity should be to create a global instrument. Therefore, option 2 – to immediately start an OEWG – would be the fastest means of reaching this objective. However, it is possible that sufficient international consensus has not been reached to initiate an OEWG, or to ensure that it is productive.

Therefore, if the time is not yet ripe to create an OEWG, then option 3 – a two stage approach - is likely to be the best way of reaching the objective of creating a strong and wide ranging global instrument.

End Notes

ⁱ Report of the Group of Governmental Experts established pursuant to General Assembly resolution 54/54 V of 15 December 1999, entitled “Small arms”. UN Document A/CONF.192/PC/33, 12 March 2001.

ⁱⁱ *Ibid*

ⁱⁱⁱ For more information see Peleman, Johan and Brian Wood. 1999. *The Arms Fixers Controlling the Brokers and Shipping Agents*. OSLO: PRIO. Available at http://www.nisat.org/default.asp?page=publications/pub_videos.htm

^{iv} See Anders, Holger and Silvia Cattaneo. 2005. *Regulating Arms Brokering Taking Stock And Moving Forward The United Nations Process*. GRIP. <http://www.grip.org/bdg/pdf/g4308.pdf>

^v International Action on Small Arms. Examining the Implementation of the Programme of Action. 2005. London; Biting the Bullet. p302

^{vi} *Report of the Group of Governmental Experts. 2001. op. cit. . p.22 paragraph 79*

^{vii} For details of the sessions, see <http://disarmament.un.org:8080/cab/salw-brokering.html>

^{viii} Assistance To States for curbing illicit traffic in small arms and collecting them. Report of the Secretary General. UN Document A/59/181. 27 July 2004, para. 18.

^{ix} Agreed at the 2003 Plenary Meeting and available at

http://www.smallarmssurvey.org/source_documents/Regional%20fora/Other%20fora/WA%20Element%20of%20legislation%20brokering%202003.pdf

^x Peleman, Johan and Brian Wood. 1999. *The Arms Fixers Controlling the Brokers and Shipping Agents*. OSLO: PRIO. Available at

http://www.nisat.org/default.asp?page=publications/pub_videos.htm

^{xi} International Action on Small Arms. Examining the Implementation of the Programme of Action. 2005. London; Biting the Bullet.

^{xii} List drawn from Marsh, Nicholas. 2005. *Brokering of Small Arms and Light Weapons*. Paper presented at a meeting of the Small Arms Working Group. New York. 13 April.

^{xiii} Information on Europe and other regions from *International Action on Small Arms. Examining the Implementation of the Programme of Action*. 2005.op. cit.

^{xiv} Anders, Holger. 2005. *Implementing the EU Common Position on the control of arms brokering: progress after two years*. Brussels: GRIP, July. Available at <http://www.grip.org/bdg/g4579.html>

^{xv} International Action on Small Arms. Examining the Implementation of the Programme of Action. 2005.op. cit.

^{xvi} <http://www.fas.org/asmp/campaigns/smallarms/ArabStatesSALWConferenceReport.pdf>

^{xvii} <http://www.sec.ecowas.int/presse/en/presseshow.php?nb=27&lang=en&annee=2004>

^{xviii} http://www.apec.org/apec/leaders__declarations/2003.html#HumanSec

^{xix} The illicit trade in small arms and light weapons in all its aspects. Resolution adopted by the General Assembly. UN Document A/RES/59/86, 3 December 2004, para.5.

^{xx} http://www.iansa.org/issues/arms_brokers.htm. Downloaded 26 September 2005.