

ARMS BROKERING CONTROL.

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Ladies and gentlemen,

During the last few years several governments and organisations have been devoting increasing attention to the need for controlling arms brokering. There is sufficient evidence and documentation of arms supplies to embargoed states, conflict zones and rebel groups facilitated by arms brokers. Rwanda, Sierra Leone, the Democratic Republic of Congo, Angola, Liberia, Afghanistan and the Balkans are examples of this. A number of reports from UN investigators on arms flows to embargoed states and perpetrators of crime also point to the need to control the activities of brokers. In addition, controlling arms brokering would contribute in preventing terrorists in acquiring arms or military material. This was also underpinned by the presentations on MANPADS and UAVs earlier this week.

Although there are no agreed international definitions, in general terms arms brokers and their activities can be described as being "anyone acting on behalf of others, in return for a fee or other consideration, by negotiating or arranging contracts, purchases, sales or transfers of arms or military equipment from one third country to another".

As a result of increased attention and documentation, there is a growing willingness among governments and regional and international institutions to deal with the issue. There is also a trend towards more international co-operation, co-ordination and sharing of relevant information, and the number of countries introducing measures to control arms brokering is growing slowly. On this background we could say that we are about to pass the point of discussing if arms brokering should be controlled, but rather to discuss how.

In my view, arms brokering control needs to be closely connected to or ideally part of the national export control legislation. However, the nature of the issue is global, and the effectiveness of the control is dependent of a certain degree of consistency in the legal systems around the world. Sharing and use of information and relevant intelligence among governments is also crucial elements.

At present there are no internationally agreed guidelines or principles which could help facilitate a system of national regulations to prevent loopholes and legal gaps that can be exploited by arms brokers. However, there have been encouraging developments and substantial progress made lately on the international arena. In addition, there are several processes and discussions taking place in various fora which hopefully will lead to a further strengthening of the international fight against illicit arms trafficking facilitated by brokers in the near future.

When addressing the issue of regional and international initiatives on arms brokering control, I will confine myself to those which I consider the most relevant with regard to

export controls at this point in time. Some of these are directed against SALW and some have a broader approach, targeting arms and military materiel as such.

In addition to the ongoing discussions on the role of the international community, NGOs and research institutions are also important. The increasing willingness among governments and regional and international institutions to deal with the brokering issue, is also a result of the increased attention of and documentation provided by non-governmental organisations.

Achievements at the international level contributes to closer co-ordination of arms brokering control between states, as well as to more consistency with regard to some core principles. Brokers can take advantage of the differences in arms control laws and practices and relocate their activities to countries with weak controls. The purpose of the ongoing efforts is to avoid circumvention of the objectives and intentions of the various organisations and arrangements as well as the UN Security Council arms embargoes by creating a clear framework for lawful brokering activities. At the same time, legitimate brokers often play a necessary role in arms transfers. Norway believes that their activities will not be hampered by the enforcement of arms brokering controls, but that they instead have a stake in ensuring that their business is separated from that of black market operators.

Norway is one of what is still a small number of countries, where arms brokering control is covered by national legislation. For some time now, Norway has also been promoting and supporting international efforts to deal with the issue of arms brokering.

Norway's legislation dates from 1995, and includes a quite general provision, and I quote: "trading in, negotiating or otherwise assisting in the sale of military goods and technology included in the ML from one foreign country to another is not permitted for persons resident or staying in Norway or Norwegian companies, foundations and associations without permission from the Ministry of Foreign Affairs".

1. The Governments of Norway and the Netherlands have launched an initiative to improve international co-operation on eliminating the illicit brokering of small arms. The Dutch - Norwegian Initiative on the Illicit brokering of SALW (DNI) focuses on two main issues:

- brokering is by definition an international activity and effective regulation has to be based on international co-operation;**
- to eliminate illicit brokering all countries need to have the necessary legislation to distinguish between legal and illicit brokering. As of today only 18 countries have such legislation.**

The Dutch-Norwegian Initiative has approached the major regional organisations to promote co-operation on eliminating the illicit brokering of SALW and the adoption of necessary national legislation in the member states. We are at present involved in a dialogue with a number of organisations on how to do this, and are looking forward to reporting on our initiative to the next Biennial Meeting of States to Consider the Implementation of the UN Programme of Action in 2005.

2. Several organisations, including the OSCE , the EU and the Wassenaar Arrangement have already made substantial progress on the arms brokering control issue.

The OSCE Document on Small Arms and Light Weapons addresses arms brokering control, and the organisation is working on the further development of this question. Norway, in close cooperation with Germany, has signed up for a draft OSCE Best Practice Guide in the area of brokering.

During the past several years, Wassenaar Participating States have recognised the increased importance of effective arms brokering controls at national level. At the Plenary Meeting in December 2002, a Statement of Understanding on arms brokering control was adopted, stating that WA Participating States will continue discussions and information exchange for the purpose of developing a Wassenaar policy on arms brokering control. On the basis of this Statement, Norway has been working actively on and put considerable effort into developing a WA policy, based on establishment of core basic criteria.

Another major step forward is the EU common position on arms brokering control, which was adopted in June this year. This common position requires all member states to introduce ad hoc legislation in order to effectively control the activities of brokers.

3. In order to ensure a broad, effective and relevant control, international co-operation and co-ordination are of vital importance. In other words: it is essential that states agree on a certain degree of commonality through some critical basic principles in order to make it difficult for arms brokers to avoid or circumvent control by moving their business around. I will not go into the details of the discussion on such principles, but will briefly address the following subjects:

- definitions of "brokers", "brokering activities";**
- description of which arms/military materiel should be covered by the legislation;**
- establishment of a licence or authorisation requirement;**
- and adequate penal provisions;**

The principle of extra-territoriality is complex and seems difficult to apply for many countries. This has become evident with regard to the discussions which have taken place in international fora up till now.

The best option would of course be that all countries controlled their own nationals wherever they conduct their business. It does not, however, seem possible to achieve this at this stage. Therefore, a pragmatic approach seems to be the most realistic road to explore on a short term, concentrating on regulating brokering activities taking place on a country's own territory. Taking this into account, it is crucial that as many countries as possible introduce controls on arms brokering activities taking place on their own territory – in order to develop a full-scope carpet or a "no-go" area for unlawful brokering activities.

Let me sum up by saying a few words about the question of an international legal instrument on brokering. Norway, like many other countries represented at this seminar, is in favour of an international agreement in this area and worked hard during the UN Small Arms Conference to include such a commitment in the Programme of Action. We continue to support the elaboration of an international legal instrument. The pragmatic approach I have addressed in my statement here should only be seen in the framework of a long-term policy and objective leading to the establishment of an international legal instrument in the future.

However, as long as we have insufficient national experience, and divergent national approaches among those that have introduced controls, we should not expect breakthroughs at the international level. For this reason it is probably wise to try to develop a larger degree of consensus among states, and thus create a better basis for agreement on future international instruments. This means that we should give priority to national and regional efforts at this stage, but without losing sight of the need for global measures since arms brokering not infrequently involves a broker from one continent who is operating on a second continent and shipping arms to a third.

Against this background, I would like to conclude by stressing that our priority in the near future should be along two roads: first, to assist and encourage governments to adopt national legislation in accordance with the political principles which are developing internationally, pending full development of a "no-go" area for uncontrolled arms brokering. In parallel, we should work in the international arena to strengthen the understanding and cooperation between states, with the ultimate aim to establish a binding international instrument on arms brokering.

Thank you for your attention.