

Preparatory Committee for the United Nations conference to review progress made
in 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

Contribution to Cluster II

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(check against delivery)

Cluster II: Norms, regulations and administrative procedures

Mr. Chairman,

I have the honour to take the floor on behalf of the European Union. The Acceding Countries Bulgaria and Romania, the Candidate Countries Turkey, Croatia* and the former Yugoslav Republic of Macedonia, the Countries of the Stabilisation and Association Process and potential candidates Albania, Bosnia and Herzegovina, Serbia and Montenegro, the EFTA countries Iceland, Liechtenstein and Norway, members of the European Economic Area, as well as Ukraine and the Republic of Moldova align themselves with this statement.

Brokering

Brokering of arms deals is not in itself an illegal activity. However, in a large majority of States brokering is not regulated, allowing irresponsible brokers to carry out dubious transfers simply because there are no laws to break. Brokers acting illicitly play a key role in diverting weapons to illicit destinations including transfers to regions of conflict, embargoed actors, and serious human rights abusers. Illicit brokering has a cross-border nature and is a global problem that needs to be addressed by a set of global standards. There is international consensus on the need to establish national legal frameworks for the control of arms brokering. Some 40 States now have brokering regulations in place.

With the UN Programme of Action (PoA) of 2001, States have committed themselves to developing national legislation or administrative procedures to counter illicit brokering (para II.14) and to considering further steps to enhance international cooperation in preventing, combating and eradicating the phenomenon (para IV.1d). National regulation remains the cornerstone of effective action against illicit brokering. Nevertheless, and despite distinct national and regional progress since 2001, 80% of UN Member States still have no national regulation to control brokering and thus are not in conformity with their commitment under the PoA.

In the view of the European Union it is essential that national and regional efforts are complemented at the global level. Therefore, the EU welcomes General Assembly Resolutions 59/86 and 60/81 which establish a Group of Governmental Experts (GGE) on brokering to be convened as soon as possible after the Review Conference. The EU encourages the GGE to make full use of its mandate to "consider further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering" in SALW.

There is a compelling need for an enhanced multilateral approach to eradicate illicit brokering. This should lead to a common basis upon which States could build national regulations. It is essential to formulate common understandings on basic issues such as definitions of brokers, brokering and brokering related activities, options for extraterritorial controls, minimum standards for effective controls as well as international assistance and cooperation.

In its new "Strategy to combat illicit accumulation and trafficking of SALW and their ammunition" adopted in December 2005 the European Union attaches great importance to brokering controls. Particular attention is given to the fact that since the late 1990s an increasing proportion of the SALW disseminated in Africa have come from weapons stockpiles in Eastern and South-Eastern Europe. The involvement of firms and businessmen from this region in the brokering and illegal transport of such SALW has grown accordingly. In the strategy's action plan the European Union has included brokering of SALW on the agenda for all the EU's structured political dialogues with countries which are major exporters of SALW.

Marking and Tracing

Cracking down on the illegal trade of small arms and light weapons crucially depends on the possibility to systematically track weapons from their point of manufacture or importation to the point where they are diverted to illegal markets. The 2001 Programme of Action (PoA) took due account of this fact dedicating one third of its operative paragraphs to the issue of tracing and related aspects. In fact, since 2001 tracing is an issue where more progress has been achieved than in other areas.

The European Union welcomes the adoption of the "International instrument to enable States to identify and trace, in a timely and reliable manner, illicit small arms and light weapons" by the 60th UN General Assembly on 8 December 2005. This instrument constitutes the first and most significant step in implementing and strengthening the Programme of Action in that regard. It represents a positive signal from the international community to those countries most affected by this scourge. If the instrument is applied by States with the necessary political will, its content will help to discourage, and thus reduce, the illicit trafficking of SALW. The EU expects that the instrument will be effectively implemented and further strengthened into legally binding obligations in the future; these obligations should also encompass the question of peace keeping operations as well as ammunition.

In their respective legislations the European Union's Member States already apply standards generally higher than those foreseen by the new instrument. In its new "Strategy to combat illicit accumulation and trafficking of SALW and their ammunition" adopted by the European Council in December 2005 the EU prioritises issues related to marking and tracing.

Having been one of the major supporters of the instrument the European Union believes that the Review Conference should highlight both its positive aspects and its possible improvements. The EU expects the Review Conference to strongly call for a prompt, full and universal implementation of the new instrument. Furthermore, cooperation with both the United Nations and the International Criminal Police Organization (INTERPOL) should be urged.

Transfer controls

The European Union attaches great importance to improved controls over the transfer of small arms and light weapons. For many other countries all over the world, this is one of the most important issues on the SALW agenda, which is why the EU wishes to explain our thinking.

Transfer Controls are already included within the UN Programme of Action (PoA) but need further elaboration in order to provide adequate guidance to all Member States. The EU encourages the use of minimum common standards including criteria or guidelines to determine whether a proposed transfer of small arms or light weapons will aggravate conflict, repress human rights or undermine development. Such guidelines can also prevent a shipment from being diverted into the illegal market. Examples of agreed regional instruments include the 1998 EU Code of Conduct on Arms Exports and the Nairobi Protocol. Many other regions have also adopted their own agreements or have called for increased co-operation on transfer controls within the framework of the Programme of Action.

The EU also attaches great importance to the efforts of the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (WA). These efforts include promoting responsible export policies towards, and effective export controls over, small arms and light weapons in order to prevent their uncontrolled proliferation, destabilising accumulation and diversion.

Together with many partners from around the world the EU was involved in facilitating inclusive dialogue on transfer controls. At regional and subregional level, much work has already been dedicated to the issue of transfer control. Regional instruments with guidelines on transfer control have been agreed such as the Nairobi Protocol and the ECOWAS Moratorium, the EU Code of Conduct and the OSCE-Documents on SALW. Recent progress on transfer controls has been achieved in Central America, the MERCOSUR region, the Caribbean, the Great Lakes region and the Horn of Africa. Many regions have called for increased co-operation on transfer controls within the framework of the PoA.

The EU also notes the important linkages between transfer controls and brokering, where further substantive work is required. Brokering controls remain a high priority for the European Union as illicit brokering and trafficking are recognised as among the main factors fuelling the illegal trade world-wide. The question of the transfer of arms to non-state actors is another area to be duly considered. The use of Man Portable Air Defence Systems to endanger civil aviation highlights the problems caused by transfers to non-state actors.

The issue of end-use certificates (EUCs) should be dealt with in the context of transfer controls. The European Union underlines the importance of supporting the work on EUCs in fora such as the OSCE through its standard elements on SALW agreed upon in 2004 as well as the Wassenaar Arrangement, with a view to agreeing in the long term, within the UN framework, general principles on end-user certificates and best practice in the verification of the recipient.

UN PoA paragraphs II.11 and II.12 address the issue of export controls. Governments undertake to ensure effective control over the export and transit of SALW, including the use of authenticated end-user certificates and effective legal and enforcement measures. The EU aligns itself with the statement made by the president of the Security Council dated 31 October 2002, following a debate on small arms, the Council "calls on States to establish an effective national end-user certificate system and to study the feasibility as appropriate of developing an end-user certificate system at the regional and global levels as well as an information exchange and verification mechanism."

The PoA as it stands is a solid basis for international action on SALW, although, as is widely recognised, some issues to which it refers do require further clarification. This is essential to allow the full implementation of the PoA to which we are all committed.

Transfer controls is one of several PoA issues which many States believe require further clarification. For example, the PoA refers to the need for consistency with States' existing responsibilities under relevant law. Many countries, in different fora have been exploring the implications of this aspect of the PoA for transfer controls. The EU believes there should be further discussion at the Review Conference on how to develop existing provisions on transfer controls within the PoA.