

REGULATING BROKERING

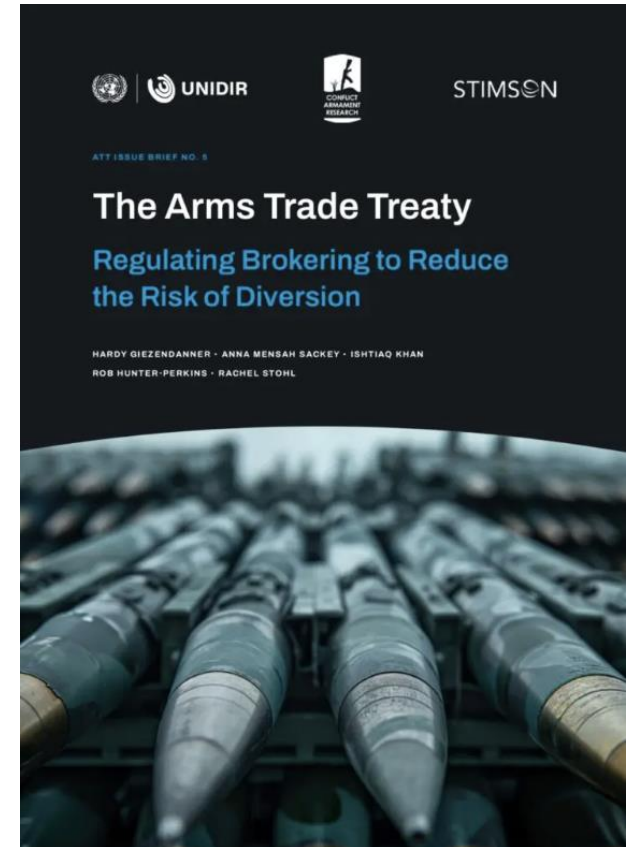


ROBERT HUNTER-PERKINS
HEAD OF RESEARCH



ATT WGETI
Geneva
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ATT RESEARCH CONSORTIUM



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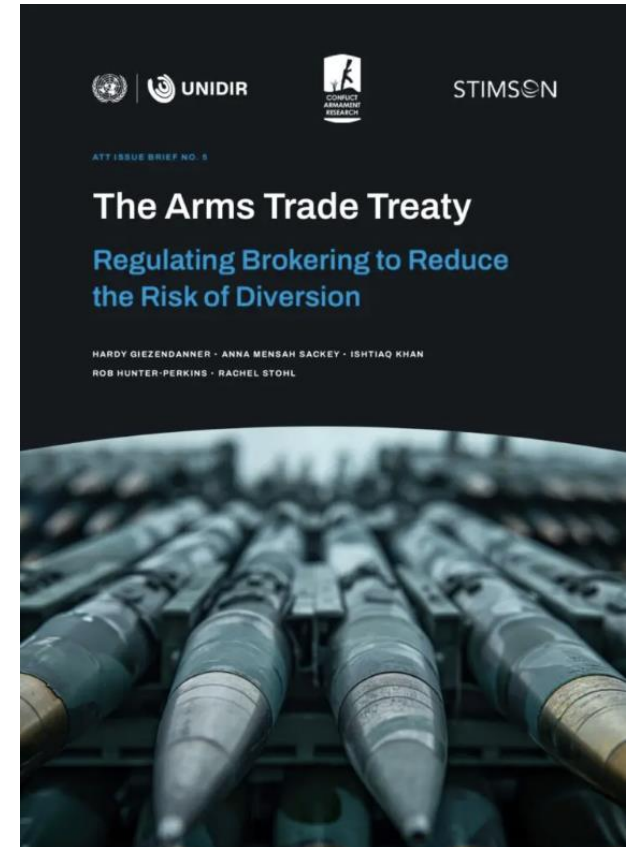


UNIDIR
UNITED NATIONS INSTITUTE
FOR DISARMAMENT RESEARCH



AGENDA

- **DEFINING BROKERING**
- **BROKERING AND ARMS DIVERSION**
- **ATT STATES PARTIES – NATIONAL PRACTICE**
- **WGETI CONSIDERATIONS**



UNDERSTANDING BROKERING

PRO/MS/ST/1
STRIPOLI
DIMP JAMAHIRIYA STR
ENTR015

WHAT IS AN ARMS BROKER?

“a person or entity acting as an intermediary that brings together relevant parties and arranges or facilitates a potential transaction of [SALW] in return for some form of benefit, whether financial or otherwise.”

Group of Governmental Experts, 2007



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REGIONAL INSTRUMENTS

INSTRUMENT	YEAR	ARTICLE	DEFINES 'BROKER'	DEFINES 'BROKERING'
ECOWAS Convention on Small Arms and Light Weapons	2006	Article 1(8)	✗	✓
EU Council Common Position on Arms Brokering	2003	Article 2(3)	✓	✓
Central African Kinshasa Convention	2010/2011	Article 2(l-m)	✓	✓
SADC Protocol on Firearms	2001	Article 1	✗	✓
OSCE Handbook & Principles on Arms Brokering	2003/2004	Part IV & Section II	✓	✓
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	Article 1	✓	✓
Organization of American States (OAS) Draft Model Regulations for the Control of Brokers of Firearms, their Parts and Components and Ammunition	2003	Article 1	✓	✓

BROKERING ACTIVITIES

Core

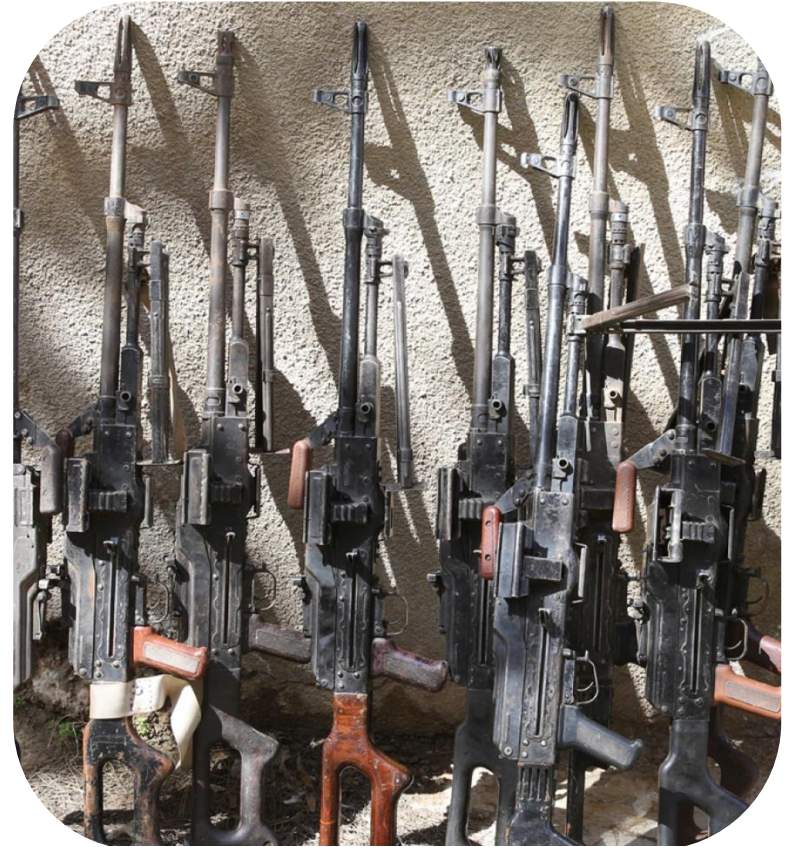
- Mediating an arms deal
- Dealing in arms and military equipment that are in the possession of the broker but do not constitute an export or import because they are to be transferred from one third country to another third country

Closely associated (or ancillary)

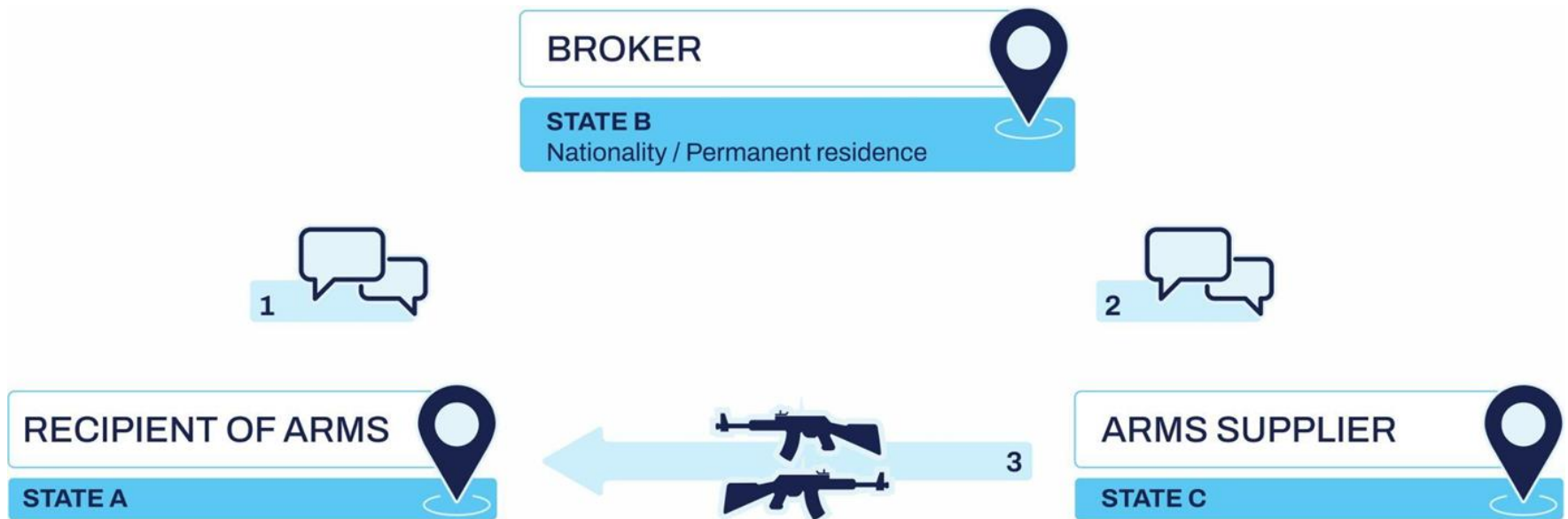
- Transportation of arms and ammunition
- Financing and insurance of an arms transfer
- Storage arrangements
- Security and maintenance

STATE PARTIES: DEFINITIONS

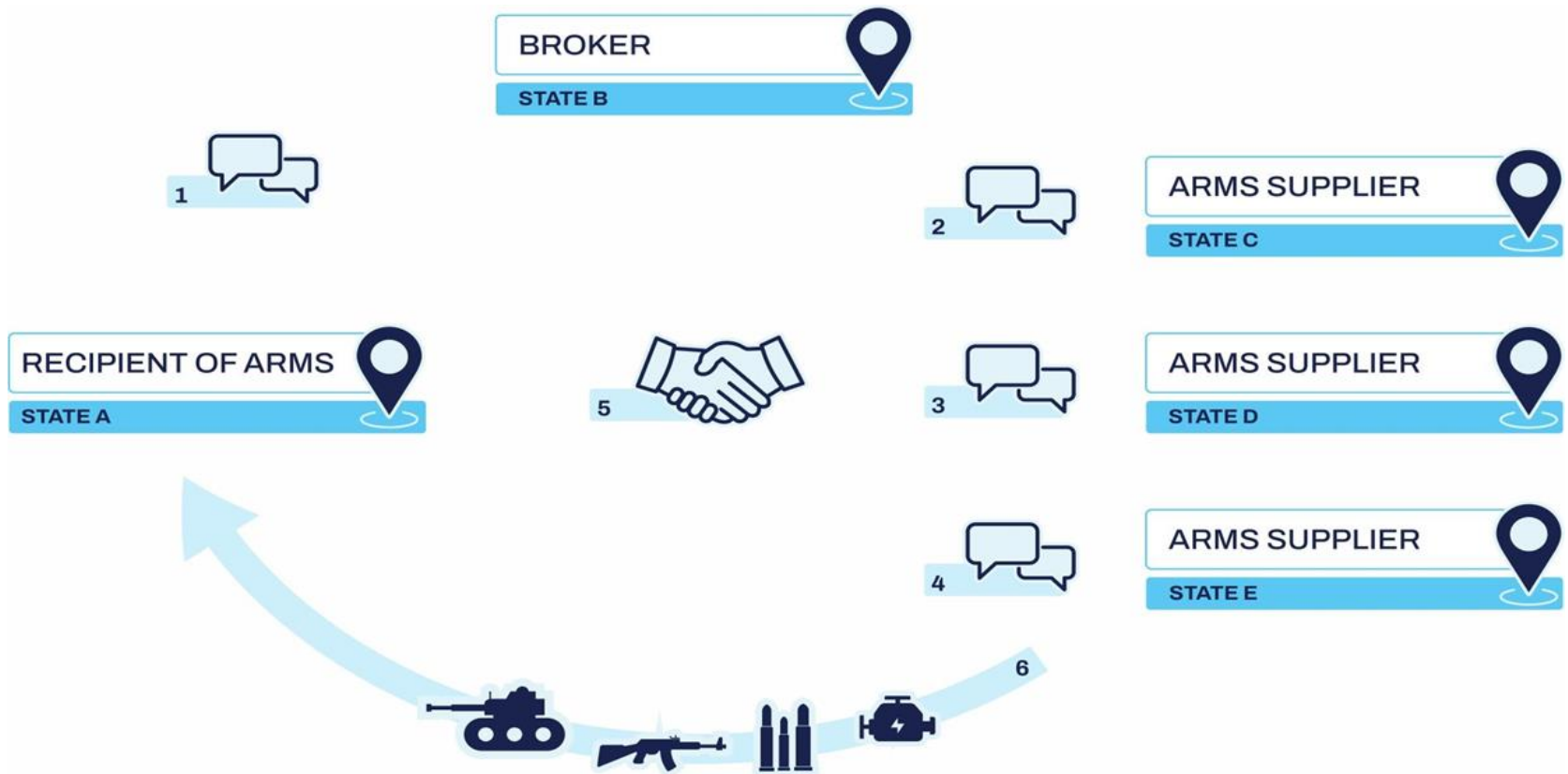
- **44** States Parties (of 70 public ATT Initial Reports) reported that their national legislation contains a definition of a broker or brokering.
- Most employ a narrow definition.
- **11** States Parties use a broader approach, including both core and closely associated activities.



SCENARIO 1: DEALING

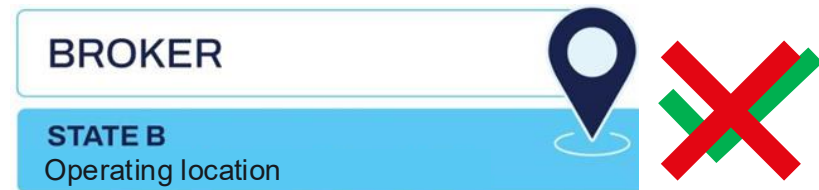


SCENARIO 2: MEDIATING



EXTRATERRITORIAL BROKERING

- National (territorial) controls and jurisdiction.
- Partial extraterritorial controls and jurisdiction (e.g. UNSC embargoes).
- Full extraterritorial controls.



BROKERING AND ARMS DIVERSION



PROVINCIALE STRIPOLI
DMP JAMAHIRIYA STR
STRIPOLI

FRONT AND SHELL COMPANIES

- Conceals ownership and control.
- Can be registered in jurisdictions with minimal oversight.
- Difficult for national authorities to unpick links behind and between entities.



CIRCUITOUS ROUTING

- Transshipment through multiple jurisdictions
- Exploiting countries with limited oversight or border controls.
- Makes detection and enforcement very difficult.



FALSIFIED TRANSFER DOCUMENTATION

- Forged or reused end-user certificates.
- Filing false travel plans.
- Mis-labelling cargo to obscure the destination or content.
- False bills-of-lading to deter inspection.



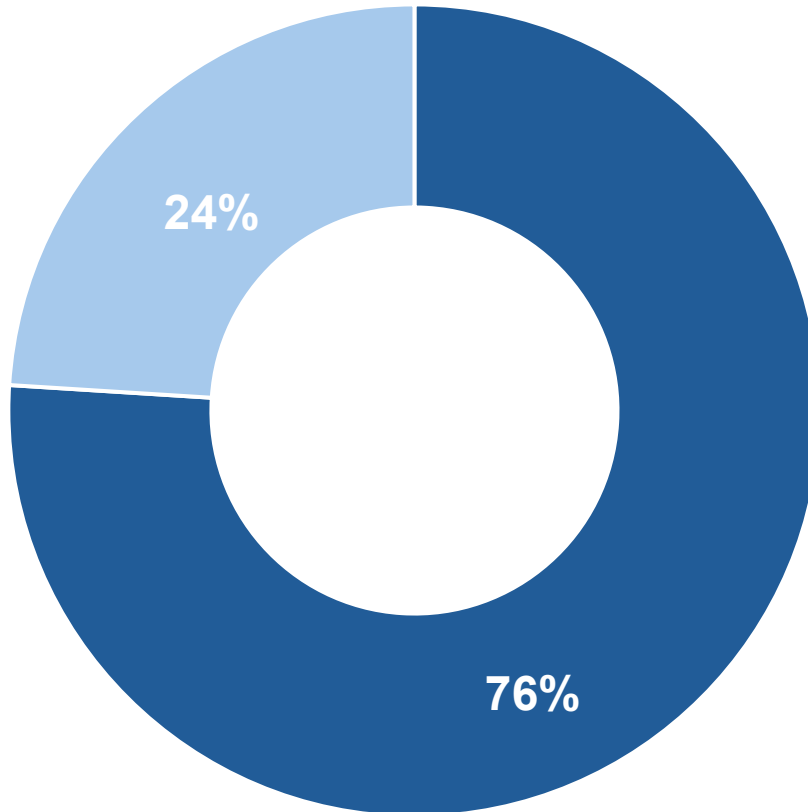
RED FLAGS

	FLAG	EXAMPLE
PRE-TRANSFER	Evidence of opaque ownership structures	Registration in jurisdictions that do not support information-sharing
	Inconsistencies or irregularities in transfer documentation	Photocopies; absence of unique key identifiers; missing fields
	Payment irregularities	Unrelated or unexplained third parties; irregular size/frequency of payments
IN-TRANSFER	Unusual proposed or actual transfer routing	Convoluted or sensitive route via unexplained third countries; changes to reported destination mid-voyage
	Aircraft/vehicle/vessel irregularities	Repeated changes of registration details; flags of convenience
	Commodity irregularities	Descriptions that are vague or do not match other documentation
POST-TRANSFER	Rapid changes in structure	Entity is dissolved or declared bankrupt quickly after transfer

NATIONAL MEASURES

PROVINCIAL
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ENTRÉE

NATIONAL IMPLEMENTATION



- National control systems include measures that allow the regulation of brokering in conventional arms
- Yet to start Art. 10 implementation

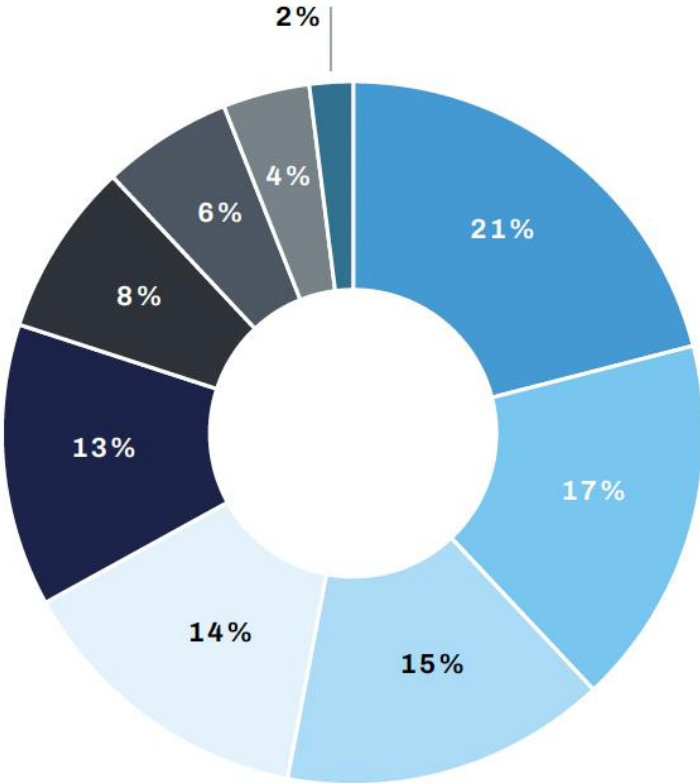
NATIONAL IMPLEMENTATION

TOTAL ATT STATES PARTIES: 59	STATES PARTIES
Registration of brokers (as the sole measure)	3 (5%)
Licensing or other forms of written, prior authorization (as the sole measure)	17 (29%)
Two-step approach (Prior registration, and subsequent licensing or other forms of written, prior authorization)	26 (44%)
Blanket Prohibition	2 (3%)

NATIONAL CONTROLS

- 10 States Parties reported **exemptions** to their brokering controls for specific transfers or destinations.
- 41 States Parties reported that they have provisions for the **maintenance of records** by the competent national authority related to brokering activities.
- 18 States Parties indicated (in PoA national reports) **assistance needs** for regulating brokering.

NATIONAL AUTHORITIES - REGULATION



- MINISTRY OF DEFENSE
- MINISTRY OF ECONOMY
- MINISTRY OF INTERIOR
- OTHERS
- MINISTRY OF FOREIGN AFFAIRS
- MINISTRY OF COMMERCE
- NATIONAL POLICE (MINISTRY OF INTERIOR)
- MINISTRY OF JUSTICE
- CUSTOMS (MINISTRY OF FINANCE OR MINISTRY OF ECONOMY)

WGETI CONSIDERATIONS



WGETI CONSIDERATIONS

REFLECTION	QUESTION
There is a good common understanding of 'core' brokering activities.	How do States Parties understand brokering?
Most reporting States Parties use a 'two-step' approach to regulating brokering – the two measures indicated in Article 10 of the ATT.	What information is required to register and license a broker? What processes exist for reassessing and revoking these licenses? What risk factors are considered?
At least 21 States Parties exercise some degree of 'extraterritorial' brokering controls.	How does your State ensure that no brokering transactions violate Article 6 prohibitions?

WGETI CONSIDERATIONS

REFLECTION	QUESTION
A mix of national authorities are involved in regulating brokering, and several countries have multiple competent authorities.	What is required for effective inter-agency cooperation in regulating brokering?
No States Parties indicated that they maintain records of brokers that have violated national law.	What types of information should ATT States Parties share on brokers and brokering activities? How can the ATT Diversion Information Exchange Forum (DIEF) be utilised?
A large number of ATT States Parties indicated assistance needs related to brokering.	What international cooperation could support more effective brokering controls?

THANK YOU

CAR WEBSITE

www.conflictarm.com

iTRACE WEBSITE

www.itrace.com

EMAIL

perkins@conflictarm.com

