Controls on licit and illicit brokering are closely linked: unless states regulate the former, they will be unable to prevent the latter.

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.

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.
Arms brokering remains a largely unregulated activity. 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.

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.