

Speeches and Presentations

Selected speeches and presentations from the conference. Unfortunately, many of the presentations have not been included as they were either made from handwritten notes or via Power Point.

The Dutch Norwegian Initiative on further steps to enhance international co-operation in preventing, combating and eradicating illicit brokering in small arms and light weapons. Oslo 22-24 April 2003

Opening Address By State Secretary Kim Traavik

Chairman, excellencies, ladies and gentlemen,

It is a great pleasure to welcome you all to Oslo and this Dutch-Norwegian conference on further steps to enhance international co-operation in preventing, combating and eradicating illicit brokering in small arms and light weapons.

Together with our Dutch friends, we have taken this initiative to foster a broader common international understanding on how illicit small arms brokering can be adequately controlled.

We appreciate the excellent co-operation that the Netherlands and Norway have established in the area of small arms and light weapons. A case in point is the seminar that we co-sponsored in Sofia last November.

Today and tomorrow, we are following up on the Sofia discussions, with a special emphasis on international cooperation with a view to controlling arms brokering. We hope the present conference will provide fresh impetus to that end.

Clearly, this summer's New York meeting to review the implementation of the Program of Action of the 2001 UN Conference on Small Arms and light Weapons will be an important event. Hence, we are privileged to have with us this morning the chair of the New York meeting, ambassador Koniko Inoguchi of Japan.

Curbing illicit trade in small arms is of course no less urgent now than two years ago. Reviewing the implementation of the 2001 Program of Action is important in and of itself. The purpose of the New York meeting is not and should not be to renegotiate the Program of Action.

But at the same time, the meeting needs to be forward-looking. It is the very essence of implementation review to pinpoint shortcomings and identify remedies.

We must not forgo this opportunity to make progress on broader issues related to international co-operation on stemming illicit trade in small arms, including the issue of arms brokering, which is at the heart of the agenda of this conference.

The Netherlands and Norway will make sure that the results of this conference are brought to the attention of the UN review meeting. To that end, there will be a side event in New York.

Illicit trade in SALW causes grave and growing humanitarian, social and economic problems. In terms of the number of lives taken, small arms and light weapons clearly are weapons of mass destruction.

Each year some five hundred thousand humans are killed with hand weapons. 57 persons are killed, every hour, every day of the year. And although it represents only a fraction of the total international trade in arms, illicit trafficking ignites or sustains a number of vicious and bloody conflicts.

Let us be blunt about it: Illicit trafficking kills. It deprives millions of children and adults of the most basic of human rights, the right to life.

There is no denying that the challenge is daunting. We certainly have our work cut out for us. Yet we can take heart from the fact that progress is clearly being made.

Over the last few years there has been a broadening and deepening of the international understanding that destabilising accumulation and uncontrolled spread of small arms and light weapons is a problem that simply has to be dealt with.

But there is no cause for complacency. Much more remains to be done.

A comprehensive strategy for the fight against the illicit trade in small arms is needed. Such a strategy should address issues related to supply and demand, as well as issues related to the problem of security and development - at regional and global level in addition to the level of the nation state.

In many cases states are among the main culprits. That is why national measures and controls are not enough.

Effective international co-operation is necessary to set norms and standards for acceptable behaviour. But of course the international community also needs to do more to fight international organized crime, which thrives on trafficking of small arms and light weapons.

The good news is that the willingness of governments as well as regional and international institutions to deal with these problems is increasing.

More and more governments adopt legislation and other measures aimed at better control. There are encouraging developments at the regional level, in particular in the OSCE area, in Africa and in Latin America.

More and more governments also adopt legislation and measures to control brokers and brokering activities. The number of governments that have done so remains modest. But it is growing. And many governments have initiated or are initiating necessary legislative processes.

The OSCE Document on small arms rightly states that regulation of brokers is a critical element in a comprehensive approach to combating arms trafficking.

The efforts being made in the EU to develop a Code of Conduct on small arms is a very significant development. Agreed EU procedures for monitoring arms brokering activities and guidelines for controlling brokering, will be the most ambitious attempt so far by an international institution to deal with this issue.

In the Wassenaar co-operation, too, participating States have recognised the importance of controlling arms brokering. There is a strong will to push on with the elaboration and refinement of criteria for effective legislation on arms brokering. The Wassenaar parties will also continue discussion of enforcement measures.

As you are aware, the 2002 plenary meeting of the Wassenaar Arrangement adopted a statement, originally proposed by Norway, which confirmed the need to bring arms brokering under control.

This statement represents a substantial political step forward. It commits the Wassenaar participating States to develop a policy on arms brokering. Building on this commitment, Norway will contribute actively to developing a list of guiding principles for arms brokering control in Wassenaar, in close co-operation with our partners.

The problem of illicit trafficking and brokering has of course also been brought to the attention of the Security Council. Not surprisingly, the focus of the Council has largely been on the effective implementation of arms embargos.

The role of arms brokers is of crucial importance in this context. The statement of the President of the Security Council on October 31 2002 rightly emphasised the importance of co-operation and sharing of information on arms traffickers that have violated arms embargos.

Ladies and Gentlemen,

To sum up: In the broad international campaign to control illicit flows of small arms and light weapons, we are facing a multi-faceted situation. There is good news, but there is also bad news. Real accomplishments and progress coexist with significant remaining challenges and problems.

On the one hand, governments, regional institutions and the UN in recent years have devoted increasing attention to the need for controlling arms brokering activities and arms brokers.

Governments have committed themselves to establishing national controls, including a system of registration of brokers and requiring authorisation for brokering. They have committed themselves to international co-operation and exchange of information. And regional organisations such as the OSCE, the EU and the Wassenaar Arrangement have initiated important work on these issues.

On the other hand it is equally clear that we are only just beginning to deal with this issue. We are still scratching the surface.

Very few governments have adopted relevant legislation. There exists no regional or global guidelines or model legislation that can ensure a uniform system of laws and regulations and avoid gaps that could be exploited by illegal brokers. This is a major challenge for the international community.

In short: We are not nearly there. The fact that small arms continue to flow into the world's trouble spots, despite all the laudable work carried out in recent years, is a stark reminder of this.

In conclusion, let me wish you every success in your important deliberations over the next two days. I am confident that the results of this meeting will be an important contribution to the success of this summer's review meeting and ultimately to the success of the next UN Conference on Small Arms and Light Weapons in 2006.

Thank you for your attention.

Dutch-Norwegian initiative on further steps to enhance international co-operation in preventing, combating, and eradicating illicit brokering.
Oslo, Norway, 22-24 April 2003

Introductory Remarks By His Excellency the Ambassador of the Kingdom of the Netherlands to Norway, Mr Erik Ader

Thank you very much Mr. Chairman.

Mr Chairman, Mr State Secretary, dear colleagues it is a privilege for me to address you at the outset of this Conference. It also a privilege for my country The Netherlands to be co-organiser of this event together with our friends from Norway. In that capacity I would especially like to welcome the distinguished Ambassador of Japan to the Conference on Disarmament Her Excellency Mrs. Kuniko Inoguchi here at the conference, who has the honourable task to chair the first biennial meeting on small arms and light weapons in New York in July this year. We wish you success and you can be assured of our full support.

In this conference we will discuss the implementation of a key element of the UN Programme of Action on small arms and light weapons we all agreed upon in July 2001 in New York, namely: “to develop adequate national legislation or administrative procedures regulating the activities of those who engage in small arms and light weapons brokering”.

Mr Chairman, when I was preparing this speech the name of a very popular television program at the moment in various countries in Western Europe crossed my mind. This programme is called “the weakest link”, it is a quiz. The idea is that the participant who is considered the weakest link by his fellow participants has to leave the show. What has this to do with small arms and light weapons or with brokering, you will think. The answer is nothing, except for the idea that it is the weakest link that determines the strength of a chain. What is true for chains is also true for global efforts to eradicate illicit trade in small arms and illicit brokering. The success of our efforts will depend on the weakest links, on the weakest control regime, on the ease with which controls can be circumvented. I will come back to this point.

As you are all aware brokering is a complicated issue. Brokering in itself is not necessarily an illegal activity. The majority of arms brokering activities are perfectly legitimate. However, as we also know, there are some arms brokers that play a key role in facilitating illegal transfers of arms to groups or persons that cannot or do not want to acquire arms legally. Unfortunately there are still examples of arms flows to embargoed states, rebels, criminals or terrorists in which brokering activities have played a crucial role.

Let me give you an example, between 1991 and 1995 a retired colonel of the Argentinean Army allegedly arranged a shipment of 6,500 tons of small arms, light weapons and ammunition from Argentina to Croatia – breaking an international arms embargo in the process, at that time. This is just one example, described in the Small

Arms Survey 2001, of how a broker took advantage of loopholes in national legislation and disguising the routes of deliveries, choosing to operate where there were loose customs, transport and financial regulations.

To prevent illicit arms flows like these to occur, it is necessary to bring brokering activities within the scope of national laws. However, this is not a problem we can solve only by having adequate national laws and controlling the situation within our own borders. The international context of illegal arms trade and brokering requires a regional or better a global approach. International co-operation in combating illicit trade is extremely important.

The Netherlands, as the present Chairman in Office of the OSCE, has chosen illicit trafficking as one of the main topics of our chairmanship. Illicit arms flows into areas of conflict or the proliferation of these weapons to insurgents, criminals or terrorists could cause great human suffering. As a young Burundian woman refugee once said: "Small Arms make big holes: holes in bodies and holes in families". And in addition to that emptiness left behind by the death of a loved-one, I can add: Holes in economic and social terms as well. It is now widely acknowledged that the wide and uncontrolled availability and use of small arms can undermine sustainable development in a country.

Illicit trafficking is wide ranging, in terms of the variety of the problems it causes, but also in terms of who it is affecting. It's not just countries in conflict who suffer from illicit trafficking in small arms. Many countries have to deal with illegal small arms. Recent research shows that between 85,000 and 125,000 illegal firearms are in circulation in the Netherlands alone, with all its negative consequences for us to deal with.

As I have already mentioned, illicit brokering can play an important role in causing these problems. Therefore we think it is important to continue to discuss the need for effective national control systems on arms brokering activities and how we can best harmonise our efforts, so as to make the weakest link as strong as possible.

Regulations and administrative procedures aimed at controlling brokers and/or their activities have to address complex issues. Questions of definitions, what are brokering activities exactly, do we include banking and shipping activities, what will be the effect on perfectly legitimate business activities, the question of jurisdiction: do we apply the rules only to brokering activities undertaken in our own country or to all brokering activities of our nationals or residents regardless where they take place. Every state that already has legislation, has had to deal with these problems

It would of course be desirable if States would find more or less similar approaches to these problems. Not only would this prevent this illicit Brokers from shopping around, it would also facilitate the development of co-coordinated international action on this issue. In this regard the Netherlands is very supportive of the development of guidelines for national legislation on brokerage within the EU. At the global level this is at this point in time perhaps not yet possible, but we think it would be extremely helpful if we could identify good practices and develop common elements of model regulations, that States can use in developing or adapting their own regulations and legislation of courses taking into account their own political and legal requirements.

It will not surprise you that one of the main goals of this conference is, to do exactly that. We are looking forward to discuss with you best practices, worst practices maybe, and learn from each other's ideas and experiences on how to best organize a control system that adequately regulates arms brokering with the aim to prevent illicit brokering activities. As the State Secretary already mentioned, we will make a summary of the discussions from this conference in a chairman's report to contribute to further considerations on this issue.

The Netherlands will make an effort, in close cooperation with Norway, to promote a more effective approach of the problem of illicit Brokering within the framework of the UN and the OSCE. We hope that representatives from other parts of the world will do the same in their own region.

Mr Chairman, The Netherlands is looking forward to work with you, representatives of all the governments and organisations being present here, today and tomorrow, to make a next step in enhancing international co-operation in preventing, combating, and eradicating illicit brokering.

Mr. Chairman, I realise that I have taken a fair amount of your time, and I do apologise for that, but the topic is very important. I wish you a very interesting and fruitful conference.

Thank you Mr Chairman.

Dutch Norwegian Initiative on Further Steps to Enhance International Cooperation in Preventing, Combating and Eradicating Illicit Brokering in Small Arms and Light Weapons

Keynote Address: Dr Peter Batchelor, Small Arms Survey, Geneva

Oslo, 23 April 2003

1. Introduction

Mr. State Secretary, Excellencies, Ladies and Gentlemen

Firstly, I would like to thank the governments of Norway and the Netherlands for taking the initiative to host this meeting.

The Small Arms Survey has been working closely with the Dutch and Norwegian governments over the last few months in preparing for this meeting, and we are pleased to be associated with this initiative to enhance international co-operation in preventing, combating and eradicating illicit brokering.

The aim of my presentation this morning is to give an overview of the issue of illicit brokering.

My presentation will focus on three specific questions:

- i) What is illicit brokering?
- ii) Why is illicit brokering a problem?
- iii) What is being done, at national and international levels, to address the problem of illicit brokering?

Before addressing these questions, I want to begin my presentation by referring you to a recent United Nations report - the report of the panel of experts appointed pursuant to Security Council Resolution 1408 (of 2002) concerning Liberia.

This report, published six months ago, provides details of the violation of the 1992 UN arms embargo on Liberia and the ECOWAS Moratorium on small arms transfers into West Africa.

It documents six air shipments carrying surplus Yugoslav arms that arrived in Liberia during the summer of 2002. These shipments comprised 210 tons of small arms, light weapons and ammunition, including 5000 automatic rifles.

These arms transactions did not simply break a few regulations. They undermined the legal authority of various governments, and involved the systematic violation of a whole spectrum of national and international laws, which relate to: end-user certificates, shipping manifests, the ban on travel by Liberian officials, and the financing of arms purchases through exports of diamonds, and other conflict goods, whose trade is also subject to UN sanctions.

More importantly, the arrival of fresh supplies of arms to combatants in Liberia coincided with intensified fighting in the ongoing civil war resulting in thousands of deaths and injuries and the displacement of large numbers of people.

One of the key issues highlighted in the report is that the arms shipments were facilitated by a number of brokers operating under the guise of five different companies that were located in the Federal Republic of Yugoslavia, Liechtenstein, Liberia, and Nigeria.

Put another way – the delivery of these arms shipments would not have been possible without the role played by brokers.

Organizing such illegal shipments of arms involves a large amount of skill, organization, preparation, and financial resources. Documents need to be forged, officials bribed, legitimate arms companies persuaded to sell their weapons, money laundered, and aircrew recruited. As the UN committee investigating sanctions breaking in Angola stated:

Landing heavy cargo planes with illicit cargoes in war conditions and breaking international embargoes requires more than individual effort. It takes an internationally organized network of individuals, well funded, well connected and well versed in brokering and logistics, with the ability to move illicit cargo around the world without raising the suspicions of the law or with the ability to deal with obstacles.³

At the heart of this network of actors are the brokers whose prime expertise lies in outwitting, evading, and breaking with impunity states' laws and regulations concerning arms transfers.

II. The problem of illicit brokering

What is illicit brokering?

Before addressing the issue of illicit brokering, it is important to define what we mean by the terms brokering and brokers.

Brokering –

Narrow definition: all activities associated with facilitating arms deals between suppliers and recipients for material gain without necessarily taking ownership or possession of the arms

Broad definition: includes other associated activities – financial, insurance, transport arrangements

Broker: defined as natural person or legal entity that carries out a brokering activity

³ *United Nations, Final Report of the Monitoring Mechanism on Angola Sanctions, Doc. No. S/2000/1225, 2001, p 32.*

Illicit brokering - defined as those activities that involve violations of national, and/or international laws.

These illicit brokering activities usually involve the supply of weapons to conflict zones, and/or to parties that cannot obtain them legally (i.e. countries under UN arms embargoes).

It is of course important to note that brokering is a perfectly legal activity. Many governments employ brokers to facilitate the transfer of arms, and other goods.

Thus we are not talking about prohibiting brokering activity. Rather we are concerned about ensuring that legal brokering activity is better controlled and regulated.

As with the illicit trade in small arms and light weapons in all its aspects, if the legal trade in small arms and light weapons is not regulated and controlled, then it will be impossible to prevent, combat and eradicate the illicit trade in small arms and light weapons.

And so it is with illicit brokering – in order to prevent, combat and eradicate illicit brokering – we need to regulate and control legal brokering.

Why is illicit brokering a problem?

Illicit brokering is a problem for at least 2 reasons:

One, because it involves the violation of national and/or international law.

Two, because it can facilitate the proliferation and supply of weapons to conflict zones, criminal groups, terrorists, authoritarian regimes, countries under embargoes etc.

These very weapons – are often implicated (directly and indirectly) in causing death and injury, displacement, human rights violations and a whole range of humanitarian impacts.

In many instances, illicit trafficking in SALW, made possible by brokers acting illegally, is connected to other criminal activities, such as drug trafficking or the smuggling of human beings and conflict goods. Illicit brokering, therefore, plays an important role in the uncontrolled spread of small arms and light weapons and in some of the criminal activities commonly associated with it.

There are a wide range of techniques used by brokers to evade national and international laws. Details of these techniques, drawing on field research in different parts of the world are provided in the NISAT book 'The Arms Fixers' and the chapter on brokers in the 2001 edition of the Small Arms Survey.

Transport agents – such as freight forwarders, air charter companies or companies operating cargo vessels, play a critical role in facilitating illicit arms deals, and also often act as brokers.

III. What is being done to deal with problem of illicit brokering?

i) National Level

Whereas most countries possess regulations on the production, import and export of SALW, arms brokering activities remain largely unregulated.

The lack of precise regulations makes it difficult to distinguish legal from illicit brokering deals.

This prevents governments from effectively prosecuting illicit brokers, since in many cases these brokers cannot be accused of having broken any law.

An early and groundbreaking study, produced by the Norwegian Initiative on Small Arms Transfers (NISAT), entitled *The Arms Fixers*, identified the lack of national and international laws and regulations governing brokering as a key weakness in national and international efforts to control arms trafficking.

A study in 2000⁴ identified only ten states with legislation that dealt explicitly with arms brokering.

Currently sixteen states have national legislation, which addresses the issue of brokering, and at least two more countries are in the process of passing similar national regulations.

However, in 4 of these 16 countries the issue of brokering is not dealt with explicitly, but is indirectly covered by provisions relating to the import and export of arms.

This raises the issue of whether legislation covering brokering should be dealt with in specific stand-alone legislation, or whether legislation covering brokering should be embedded in broader arms control legislation.

In reviewing current practice at the national level, it is clear that there are significant differences in the way in which brokering is regulated. These differences relate to issues such as: definitions, criminalisation and sanctions, and the scope of jurisdiction.

Definitions:

The definition of what activities constitute brokering activities varies across countries.

Most states define brokering narrowly, referring solely to the activity of intermediation for the conclusion of arms deals.

Very few countries use definitions, which include associated activities, such as financing, insurance and transportation.

A difference in definition obviously entails differences in the scope of legislation: who is to be considered as a broker and therefore liable for violations of national

⁴ James Coflin, *Small Arms Brokering: Impact, Options for Controls and Regulation, Canada, Department of Foreign Affairs and International Trade, May 2000. Available at < http://www.dfaif-maeci.gc.ca/arms/pdf/small_arms_brokering-e.PDF>*

regulations will depend on the legislation of the country where the relevant activity is being conducted.

Criminalisation and Sanctions

There are significant differences among countries with respect to standards for the criminalization and sanctioning of illicit brokering activities.

States, for example, have used different criteria to determine whether a violation of brokering regulations is minor or serious; the regimes for penalties and sanctions also vary accordingly.

Although most states have established pecuniary sentences (fines), only some of them have provided for the possibility of custodial sentences (prison).

Common understandings on the nature of illicit brokering activities and on appropriate sanctions and penalties might be useful for increasing the deterrent value of national controls. Linked to this is the issue of harmonisation of legislation, particularly within the framework of regional instruments.

Scope of Jurisdiction (extra-territoriality)

Finally there are significant differences in terms of the jurisdictional scope of existing legislation.

In particular, important differences exist on the validity of regulations outside a country's national territory (the issue of extra territoriality)

Most countries' controls over brokering stop at their national border, and do not cover the activities of its nationals if they are conducted abroad, or if the weapons do not enter the national territory.

This has greatly increased illicit brokers' freedom of action by de facto removing the legal constraints in which they should operate.

In a perfect world, in which all countries were able to exert complete oversight of brokering activities within their territory, conducted by all citizens and residents, extraterritorial jurisdiction would not be necessary.

However in today's globalised world, where only a handful of countries have national regulations on brokering in place, the issue of extra-territorial jurisdiction is being recognised as an important element of national and international efforts to regulate and control illicit brokering.

In general terms, strong differences in national controls on brokering open loopholes that individuals or companies can exploit for illegal transactions.

In most cases brokers are real experts in evading national legislations, and in moving their activities from countries where regulations are present and functioning, to countries where they are lax or non-existent.

With regard to the issue of scope of jurisdiction:

Dr. Walter Mapelli, an Italian Federal Prosecutor who is leading the prosecution of a prominent broker recently stated that:

"We must take into account the fact that jurisdiction is one step behind criminality today, because criminality is operating globally and continues to do so all the more."⁵

ii) International Level

What has been done at an international level to address the problem of illicit brokering?

National controls on brokering are not sufficient, because of the globalised nature of arms trafficking. Thus, international co-operation is essential to address the problem of illicit brokering.

As already mentioned by other speakers, various international and regional agreements include provisions dealing with illicit brokering.

As far back as 1999, States participating in the Second Oslo Meeting already called attention to the central role played by brokers in the illicit flows of weapons, particularly to zones of conflict and into the hands of transnational criminal organizations. The final report of the meeting also noted that differences in scope of national regulations could end up being used to create sanctuaries for illicit arms brokering deals.

The Report of the UN Group of Experts established in 1999, which was circulated as a background document of the 2001 UN Conference on small arms, examined various aspects connected with brokering of SALW. Recognizing that "Arms brokering and its related activities (...) are an intrinsic part of the legal trade in small arms and light weapons", the Report indicated various mechanisms and measures that states could adopt in order to increase scrutiny over an activity which is still largely unregulated at both the national and international levels. Regulatory options concerning licensing, registration and disclosure requirements were inserted in the Report.

Similar measures were mentioned in the Firearms Protocol, approved with GA Resolution 55/255 of June 2001, which also "encouraged" state parties that have systems of brokering authorizations in place, to keep records of brokers and transactions, and to exchange relevant information within the system established by the same Protocol.

⁵ Quoted in *Gunrunners* a 'Frontline World' documentary screened on the US PBS channel May 2002. <<http://www.pbs.org/>>

All these conclusions were reiterated in the UN Programme of Action on SALW of July 2001. In the Programme, states agreed to develop “adequate legislation or administrative procedures” at the national level to regulate activities of those engaged in the brokering of SALW deals. At the global level, they recognized the need to develop “common understandings of the basic issues and the scope of the problems related to illicit brokering”.

A number of other initiatives on brokering have been realised at the regional level:

Within the OSCE region, the Document on SALW of November 2000 states that “The regulation of the activities of international brokers in small arms is a critical element in a comprehensive approach to combating illicit trafficking in all its aspects”. In this view, States agreed to consider measures for the regulation of brokering activities, once again relating to licensing and registration systems, or to disclosure requirements.

A further step has been taken with the decision, made in July 2002, to create and circulate Best Practice Guides on brokering of SALW, that are currently being produced. In line with the desire to implement the OSCE Document on SALW, the guides aim to present states with model practices that might be used in the designing and implementation of national controls on brokering.

The European Union has elaborated a series of common guidelines for controlling brokering that could be a basis for national legislation. These guidelines are contained in the “Third Annual Report According To Operative Provision 8 Of The European Union Code Of Conduct On Arms Exports” of December 2001, whose relevant text has been circulated as part of the background materials for this meeting.

Finally, in the SADC Protocol States Parties undertook to include in national legislations, and as matter of priority, provisions regulating the brokering of firearms in their territory.

Civil society organisations such as NISAT and Fund for Peace have also been involved in this issue – from conducting research, to developing policy options (Model Convention on the Registration of Arms Brokers and the Suppression of Unlicensed Arms Brokering)

IV. Conclusion

Illicit brokering – is now a common feature of the illicit trade in small arms and light weapons.

As has been mentioned, the illicit trade has a wide range of humanitarian, developmental and human rights impacts.

Only by regulating and controlling the legal trade in small arms, including regulating brokering can we begin to address the issue of illicit brokering.

This conference is important for at least 2 reasons:

One: to help develop common international understandings of the problems associated with illicit brokering, and

Two: to identify possible options for addressing the issue, at both national, and international levels.

At the national level, there are certainly many possibilities for developing and/or strengthening existing national regulations on brokering drawing on existing national practice.

I look forward to constructive discussions on many of these issues over the next 2 days.

Regulating Brokering by Herbert Wulf⁶

1. **The role of arms brokers:** International transfer of small arms and light weapons is often facilitated by arms brokers. Governments – both potential suppliers and recipients of arms – make use of them. Usually, this role of brokers is legal, in the sense that brokers are given authority (e. g. in the form of a license) by governments to act in this area. Whether this role is legitimate is another question. At the same time brokering is a largely unregulated activity, in the sense that in most countries governments do not give or require brokers to register or apply for a license. They may operate in a “grey zone” between legal and illegal dealings.
2. **Bribes:** The use of local representatives, agents, consultants (or whatever such middlemen might be called), enables bribes to be paid out of large unspecified “fees” and commissions to key decision makers. Brokers often in concert with government officials, shroud their dealings in secrecy and use ingenious methods, like intermediary countries and agents, letter box companies and mail drops in safe havens to create a smoke-screen to hide the routes of the deliveries and the channels of payment.
3. **Legal and illicit trade in small arms and light weapons:** There is today ample evidence of arms supplies to illegitimate customers and end-users such as embargoed states, rebel groups, criminals and terrorists. However, the issue of small arms control is all too quickly associated with illicit trade. It can safely be said that the illicit trade is much smaller than licit (government sanctioned) trade. Similarly, the small arms issue is often associated with the arming of non-state actors. However, licit trade and transfers to governments also constitute a serious problem. Most illicitly held weapons were originally in the legal realm of this trade.
4. **Definition:** The UN Feasibility Study on Brokering distinguishes between core and related activities: “**Brokering and related activities**”. Individuals or

⁶ Professor Dr. Herbert Wulf, Bonn International Center for Conversion (BICC), contact: Katerkamp 12, D 25421 Pinneberg/Germany, Tel. +49-4101-71445; Fax: +49-4101-76332; e-mail: wulf.herbert@t-online.de.

companies acting as intermediaries between a supplier and a user may be performing one or more of the following roles: “dealer”, “agent acting on behalf of manufacturers, suppliers or recipients”, “broker”, “transportation agent” or “financial agent”. “**Dealers**” buy and sell quantities of arms and associated items according to the demand of users. “**Agents**” acting on behalf of manufacturers, suppliers or recipients have a mandate to represent one of them and to conclude a contract in the name of that person. “**Brokers**” bring together a supplier and a recipient and arrange and facilitate arms deals so as to benefit materially from the deals without necessarily taking ownership of the arms or acting on behalf of one of the two parties. For the purposes of this report, “**Transportation agents**” are agents involved in arrangements for the transportation of the arms and associated goods, and include shipping agents and brokers, freight forwarders and charterers.

5. **Legislation:** According to a report of the Small Arms Survey, so far only 13 to 15 countries, most of them in the OSCE area, have introduced domestic regulation of brokering activities. The absence of controls in many countries and inconsistencies and gaps in national laws and procedures among those that have introduced controls, gives brokers ample opportunity for unregulated business. The challenge is to ensure the effective introduction and enforcement of national legislation and procedures that are coordinated with like-minded states. The eventual aim should be to establish international norms of brokering regulation.
6. **Types of regulation:** Different measures have been proposed and implemented. Basically, there are three measures governments can take: registration of brokers, licensing, and monitoring through disclosure of import and export authorizations. All of three measures or a combination thereof can contribute to effective regulation of brokering.
7. **Options for specific or general legislation:** The preparatory workshop paper gives two options for implementation of brokering legislation: First, brokering regulations can be integrated in general export control legislation in order to provide a clear legal framework for brokering activities. Second, the general legislation could be complemented with provisions which explicitly cover

brokering activities. There is no general answer to which of the two options is preferable. This is very much a function of legal traditions in the various countries. As long as the activities related to brokering are explicitly covered by national legislation, it is irrelevant whether such regulations are part of arms export laws, or form separate instruments. Specific laws on brokering might be more precise in regulating this part of the trade since such regulatory regimes typically include a more or less precise definition of brokering and its related activities. On the other hand, as far as I know, in the USA, which has a specific law on brokering, nobody has been prosecuted under this law.

8. **Coverage of core and related activities:** Should brokering regulation cover only core activities such as mediating, facilitating, organizing and negotiating contracts for arms suppliers and recipients or should it also cover related and supporting activities such as transport, financing, insurance, promotion, advertising and marketing of arms? Countries have chosen different approaches: To concentrate on core activities enhances the possibilities for the authorities to cope with a small group of relevant actors. This option may avoid an inappropriately wide coverage. On the other hand if brokering explicitly includes the core and the related activities comprehensive coverage might be possible, thus avoiding problematic legal distinctions.
9. **Coverage of brokered products:** It is said in the report by the Small Arms Survey that brokering is commonly intended as the role of intermediation in the transfer of finished products. However, brokers are often involved also in the transfer of know-how or of components of weapons, as well as in facilitating license production abroad. All these elements should be borne in mind when identifying what activities should come under national scrutiny. While the Dutch Norwegian Initiative focuses on small arms and light weapons, it is probably unrealistic to focus brokering legislation exclusively on this category of weapons. In addition to difficulties of defining what is to be included, there would also be legal problems to include some and exclude other weapons purely by size.
10. **Actors or activities:** Should national legislation cover actors (brokers) or activities (brokering)? According to the preparatory paper for Workshop 1 to

focus on brokering activities has the advantage of looking at the core of the activities irrespective of how the actors are labelled or label themselves. To focus on arms brokers has the advantage that this system requires prior registration of brokers, the group of brokers is well known and their activities can be effectively monitored.

11. **Focus of attention:** See graph.

Dutch-Norwegian Initiative on further steps to enhance international co-operation in preventing, combating and eradicating illicit brokering in small arms and light weapons: Oslo, 22-24 April 2003

Regulating Brokering: the scope of controls on arms brokering and links with other legislation by Graham Zebedee⁷

Good morning. First, I would like to thank the Governments of Norway and the Netherlands for organising this conference, which focuses our the attention on what we consider to be a key issue in the Small Arms and Light Weapons agenda – brokering. The conference my government organised in January of this year at Lancaster House had a broader focus, covering brokering along with export controls and enforcement issues, so I am particularly pleased that we have a chance to address this important subject in more detail. It is also very useful that we are able to discuss these matters before the United Nations Biennial Meeting of States on the Program of Action on Small Arms and Light Weapons. Promoting progress in the context of the Program of Action was the aim at Lancaster House, and it is an important aim here.

In this short presentation I will describe the United Kingdom's proposed controls on brokering, as well as current developments at European Union level, and the likely extent of controls on brokering activities in Europe in the future.

Turning first to the situation in the United Kingdom, I should make clear that we do not yet have a law to control arms brokering. Therefore I cannot tell you our experience of the best way to enforce such a law, or what the magic formula is which will prevent illicit brokering from taking place. If we have a similar conference to this one in several years' time, I would be delighted to speak on these topics!

At present, the UK's legislation to control brokering is in draft, and indeed industry, non-governmental organisations and other interested parties have until the end of this month to tell us their views on our proposed legislation. However, I can tell you our preliminary conclusions on the most appropriate scope for brokering controls

I should first be clear that our proposed brokering legislation is not specific to Small Arms and Light Weapons. However, Small Arms were very much in our minds when considering what proposals to make. We were conscious that, although the proportion of *legal* transfers of *all* weapons which are brokered is fairly small, this percentage is probably much larger when we are considering *illicit* transfers of Small Arms. Many of us will be familiar with examples of such illicit transfers of Small Arms to West Africa in which brokers have been involved. These are often the transfers with the most serious consequences for people in the states where those weapons ultimately arrive and are misused. Although it is in the nature of illicit activities that no accurate

⁷ Counter-Proliferation Department, Foreign and Commonwealth Office, United Kingdom: graham.zebedee@fco.gov.uk

statistics exist, we do not underestimate the scale of the problem, nor the size of the international efforts needed to address it.

A key objective of our proposed legislation was to ensure that the criteria we use to judge arms exports – which are of course based on the EU Code of Conduct – are also applied to applications to broker international arms transfers. We do not want people to be able to use London, for example as a base to arrange an international arms transfer which we would not allow if it were a direct export from the UK.

Amongst other issues, we considered the following three important factors in designing our draft legislation:

First, we considered what activities should be defined as ‘brokering’. We decided that the core activity of brokering was where a person or company either:

- buys, sells or arranges the transfer of military equipment in their possession; or
- negotiates a contract between others for trade in military equipment overseas, or arranges such trade.
- does any act calculated to promote the arrangement or negotiation of a contract in return for a fee

The second case here is often referred to as trafficking, although I will use the word brokering to cover both activities today. Our initial conclusion was that it would not be appropriate to include the activities of *financing* arms transfers, nor of the pure *transport* of these weapons between one foreign country and another for all trade in all military equipment. Seeking to control those whose sole involvement in a transaction is in transportation, finance or other peripheral activities would cover an enormous amount of legitimate business, and we felt this would overwhelm our ability to effectively enforce our law. By focusing on the ‘core’ activities of brokers, we hoped to target our enforcement resources on the activities of most concern.

However, we do intend to impose controls on these ‘peripheral’ activities in three cases: where any activities facilitate the supply of any military equipment to embargoed destinations, the supply of torture equipment to any destination, or the supply of Long Range Missiles to any destination. We consider that this approach is justified where we are essentially seeking to prohibit these activities.

Second, we reflected on the right geographical scope for the controls. We knew that several countries operate a fully extraterritorial system, where all brokering transactions require a licence, regardless of the country in which they take place. We also knew that other states concluded that they could not enforce such a system. Our proposal is that where any part of the brokering activity takes place within the United Kingdom, the activity is covered by the law and so requires a licence first before the broker enters into any commitments.

In addition, the proposed law will apply outside the United Kingdom in only three cases, which are the same as those in which the type of activities covered by our

proposed controls are also wider. These are activities which we consider to be subject to universal condemnation - brokering of long-range missiles, brokering of torture equipment; and brokering military equipment to any embargoed destination.

I can confidently predict that some responses we receive to our consultation will ask for our law to apply extraterritorially to a fourth case - the brokering of Small Arms and Light Weapons. I will of course not prejudge our response to this call. However, I would note that some Small Arms transfers are legal and responsible deals, for example those connected to other countries' legitimate right of self-defence.

Third, we considered which items should be covered by these brokering controls. Our proposal is that everything on our national military list should be covered. This list of items is very similar to that agreed in the Wassenaar Arrangement. We are not proposing that dual-use goods be covered. Since this session of the conference also covers links to other pieces of legislation, I shall mention that the UK already has legislation which forbids any UK person from helping a foreign weapons of mass destruction program. However, this is largely outside the scope of this conference.

We also considered the question of regulating brokers themselves, for example by requiring them to register with the authorities before they can undertake any brokering transactions. I can say that we do not consider that maintaining a register would in itself be an effective substitute for control of brokering transactions themselves, which would be done through a licensing system. However, in this area, as in others, no final conclusions have been reached.

In all our deliberations, we wish to both effectively address the problem of irresponsible brokering and minimise unnecessary burdens on law-abiding businesses, which of course make up the vast majority.

The timescale for the introduction of this legislation has not yet been fixed, but I would hope that some aspects will come into force during 2003. When this happens, the United Kingdom will be the 6th or 7th member of the European Union to have such controls. I mention this because, as the title of this conference recognises, illicit brokering is an issue which requires an international solution. I do not want to imply that Europe is the only area of concern at this conference – however, a significant proportion of illegally-brokered arms originate from Europe, and for this reason, Europe is an ideal base for those persons carrying out illegal brokering activities. To effectively address this problem, there must be no place for such people to hide in order to carry on their trade. If there are some countries which have no legal instruments with which to prevent or disrupt the activities of illicit brokers, these countries will tend to attract this sort of activity.

Under discussion in Brussels at the moment is an agreement that all EU countries will introduce controls on brokering. The details of the agreement have not been finalised, but it is likely to conclude that an EU Member State should, as a minimum, require a licence before brokering activities take place on its territory. This will mean that, in several years' time, the European Union of 25 members has the potential to become a 'no-go zone' for illicit brokering. And I hope that this zone will be extended further, through the adoption of controls on brokering by other European countries. Indeed, the United Kingdom is already encouraging and trying to help these other countries to

develop and implement laws to counter illicit brokering. We are ready to help further wherever we can.

However, we know of course that this 'no-go zone' can only become a reality if all laws are properly enforced. This requires not only significant enforcement resources but also effective co-operation and information-sharing between national authorities. Enforcement is difficult, but we must ensure that there is no weak link in the chain. If there is, it will be exploited, and will undermine our efforts to eradicate the misuse of Small Arms and Light Weapons world-wide. Thank you.