

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
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FAIR Trade Group Remarks

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Mr. President, thank you for the opportunity to speak before you at the conference today. My name is Mark Barnes and I am an attorney as well as a registered broker under United States law. I represent the FAIR Trade Group, a U.S. trade association comprised of businesses involved in the legal import and export of firearms across international boundaries.

Our membership is concerned with the enactment of overly broad international regulatory programs that unnecessarily and adversely impact the legal trade in small arms and light weapons instead of focusing on reducing the illicit trade in small arms and light weapons. In this regard, the definitions currently utilized by the international community when referring to small arms and light weapons do not adequately distinguish between civilian and military firearms. Any policy that is considered should generally be aimed toward fully automatic military firearms; that is firearms that continuously fire so long as the trigger is depressed and held. In other words, machineguns.

The definition of brokering must also be carefully considered. The ITAR (International Traffic in Arms Regulations), the regulatory regime in the US, was recently amended to change the definition of brokering activities to include one or more predicate acts. By making it clear that simply one act, such as the financing of a defense article, constitutes brokering under U.S. law, and further, by these same regulations, stating that foreign persons "subject to U.S. jurisdiction" are captured by brokering, you can see that a wide variety of people and conduct can be subject to regulation. Is such a model really necessary at the international level and cost effective in attempting to curtail potential core problems in the small arms trade? I think not, and urge that future U.N. work in this area recommend actions which are narrowly tailored to a specific problem area.

This brings me to my next point. We must have a careful discussion of multi-jurisdictional overlap. For example, current U.S. brokering law extends U.S. jurisdiction very broadly. If Nations extend their jurisdictions in an overbroad manner, brokers will not be able to conduct transactions due to the sheer number of countries claiming jurisdiction over the broker's conduct. A broker should only be subject to the jurisdiction of the Nation of which he is a national or the Nation in which he is truly conducting brokering business.

Additionally, I would like to give my thoughts on the basis for establishing brokering norms. Before any norms can be established, it is essential that there is a basis upon which such a norm can be built. To create successful brokering norms within any

Nation, there must be effective import and export regimes established in each Nation involved in the shipment, transportation and receipt of firearms. Currently, too many Nations have weak or non-existent import and export laws. Addressing this issue before pursuing further brokering norms is key to the success of eliminating the illicit trade in small arms and light weapons.

While some believe that brokers are the primary force behind the movement of firearms, in most cases they are merely the facilitators of sales transactions between two interested parties already governed by the laws of the sending and receiving States. Therefore, brokering norms should be focused on who is able to facilitate a transaction instead of how the firearms themselves are being moved. The movement of the firearms is typically handled by the underlying parties to the transaction and is associated with a particular State. Because of this, placing the burden on brokers through the use of brokering norms will not be effective if the underlying import and export controls of each individual State are the source of the regulatory concern.

When the preliminary step of improving the import and export regimes in each Nation is accomplished, then brokering norms may be considered. Certain difficulties must be avoided though, if they are to be effective. First, the brokering norms must be reasonable. Additionally, they should not interrupt or interfere with the legal trade in small arms and light weapons, both military and sporting in nature. This necessitates that the definition of a brokering transaction be narrowly tailored to ensure that a transaction is defined as an actual transaction rather than, for example, the mere discussion of a possible future transaction.

I ask that the Group of Government Experts on brokering give serious attention to these issues during their fall meeting. I recommend that they look at the precursor steps of establishing effective import and export norms within individual States before attempting to recommend international brokering norms. Thank you Mr. President for the opportunity to make these remarks.