

The Preparatory Committee (Prepcom) of the 2006 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 (2006
Review Conference)

New York, January 12, 2006

Statement by Mark Barnes,
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"Brokering"

Mr. Chairman, thank you Mr. Chair. My name is Mark Barnes. I am an attorney who specialized, among other things, in matters having to do with the import and export of firearms. I am also here today on behalf of the FAIR Trade Group, a trade association of firearms importers.

Mr. Chair, I have reviewed the national statements given during the previous three days of this important meeting and I particularly note the importance that many place upon the issue of brokering. Today I should very briefly like to give you some insight from what could be considered the "legal" brokering community.

We are concerned that the proposed efforts to combat this illicit brokering will have too broad a scope and as a result have an unintentional negative impact on legitimate international trade. Mr. Chairman, please let us not forget that most international trade in firearms is for the civilian hunting and sport shooting market.

Brokering itself is a very complex issue, and the definitions are the essence of this issue. Currently, the brokering definitions are somewhat broad and unclear, undermining their effectiveness in curtailing illicit brokering in small arms and light weapons. The answer to this weakness in definition is for the definition of brokering to be tightened to those activities which truly represent brokering. As an individual registered under the Arms Export Control Act in the United States as a broker, and as an attorney representing brokers, I know only too well the complexity of the law. The lack of a clear understanding among nations of the important and legitimate role that brokers play in global security, arms law compliance, and facilitating commerce is leading to governmental policy efforts which are either ill-considered, or present enormous issues regarding the assertion of extraterritorial jurisdiction.

Though substantial efforts have been previously made towards understanding the extensive regulations in place and their effects on illicit brokering, there has been a fundamental flaw in this analysis. Up until now, the majority of experts consulted on this issue have been within various governments across the world. It is imperative that experts in the business of the firearms trade be consulted so that this meeting and subsequent efforts can have both the effect of limiting the illicit trade in small arms and light weapons and promoting the legitimate business transactions of companies across the world in this area. In fact, one government official recognized in brokering consultations last year that the issue of brokering is an issue of commercial law rather than disarmament policy. Moreover, some nations, like the United States, which have well-developed regulatory schemes, could provide working examples of the elements of such schemes that are adaptable in other jurisdictions, as well as elements that are not.

As such, it is essential that discussions and evaluations of brokering should include experts from the private sector since these are the individuals who deal in this area of commerce on a daily basis.

A mere expansion of brokering regulation will not result in real progress against the problems posed by the illicit trade of small arms and light weapons. In fact, if such regulation were not thoroughly evaluated, such expansion may only exacerbate the situation by making a complex area even more complex. The best method for limiting the illicit trade in small arms and light weapons is the enforcement of existing export controls paired with the narrowing and clarifying of existing definitions. These controls best act to limit the illicit trade in these weapons while promoting the legitimate trade among worldwide businesses and individuals. Mr. Chairman, there is much that can be done, but it must be done wisely and judiciously.

I come to the most important point I wish to make. Mr. Chairman, if a Group of Government Experts is to be appointed to study the issue of brokering it is imperative that the Group be made up of real experts. This is a technical field, and as one government representative observed during last year's consultations, it is as much a question of international commercial law as it is a question of any thing else. Mr. Chairman, unfortunately we have been told that a Group of Government Experts could not have members from the trade itself as members because they would not be "government experts." We hope this is not the case. The import-export industry stands willing to offer its time, resources and expertise to assist in all manners possible. Thank you.