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THE UNIVERSITY OF GEORGIA

The Characteristics of Illicit Brokering Activities

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Combating Illicit Brokering

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The Concept of Brokering in General

- **The modern day realities of international trade**
- **New actors – broader scope**
- **Strategic trade controls**
- **New responses and methods of control to address new proliferation challenges**
- **Balance between security and trade**
- **The role of brokering**
- **Legitimate versus illicit**



Brokering - an Elusive Concept

- **Difficult finding one definition**
 - Person?
 - Activity?
- **The goods in question?**
 - A broker does not necessarily have to be in physical or commercial possession of the goods
 - Neither an exporter nor an importer
- **Jurisdiction and extraterritoriality**
 - Who to prosecute and where?

Trying to capture the facilitation of a transaction



The Different Actors – Different Roles

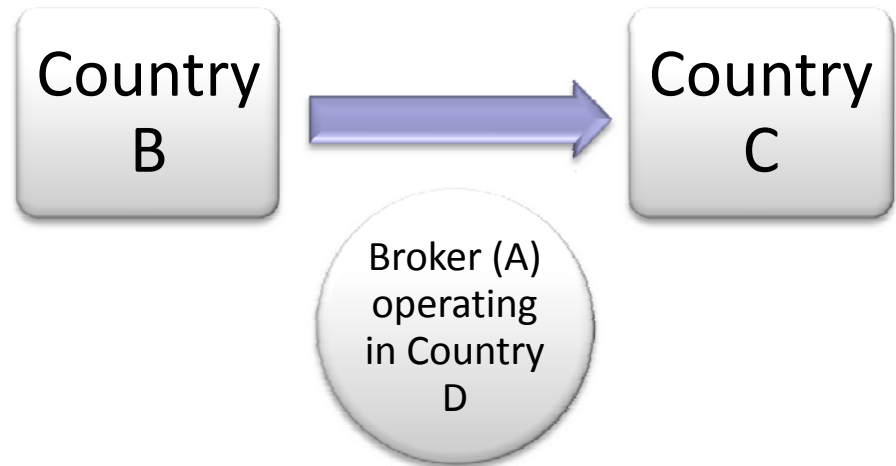
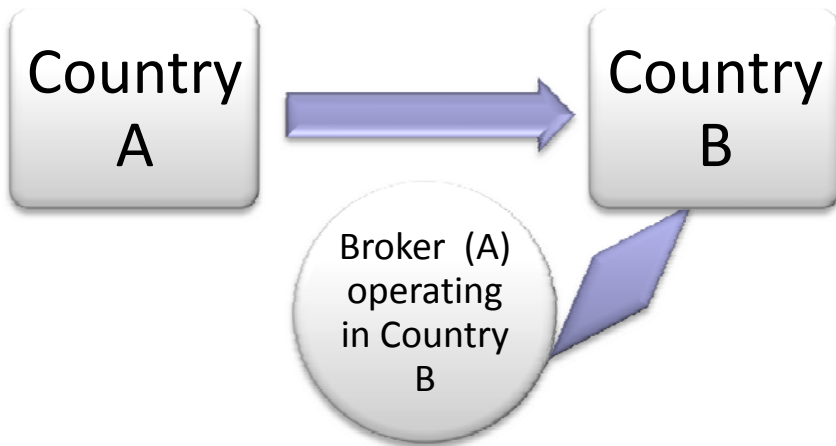
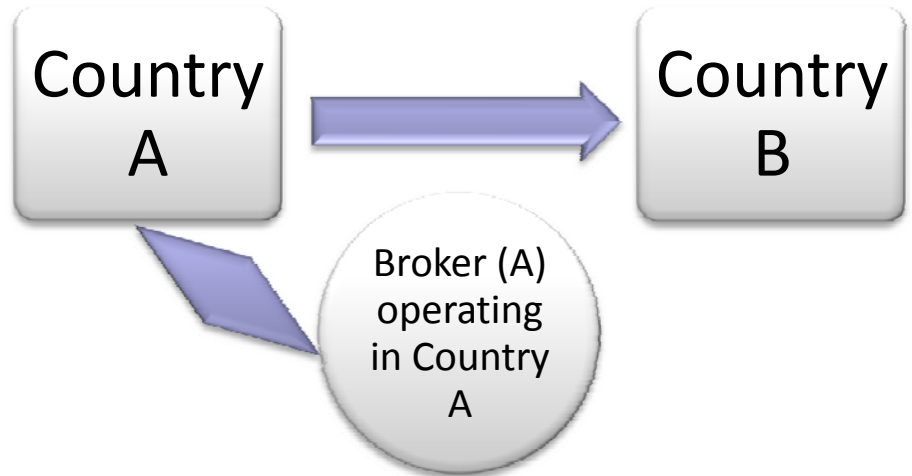
- **Broker – who?**
 - Individuals
 - The “free” agent
 - Companies
 - Brokering as a business structure
 - Freight Forwarders
 - Connecting the world’s dots
 - Delivery Services
 - The extent of the service
 - Financial Institutes
 - Facilitation through finances

The illicit “mirror”



Location, Location, Location!

- In the globalised marketplace the broker can operate from anywhere
- Illicit brokering activities take place in the jurisdictional grey zones in between





Types of Jurisdiction for Brokering Controls

- **National Jurisdiction** – includes regulations which control or prohibit brokering activities by persons residing in the country and facilitating the transfer of weapons/dual-use items from that country to a second country.
- **Extended Jurisdiction** – a more comprehensive strategy, is a set of regulations that can apply to individuals in the country who broker the delivery of weapons/dual-use items from suppliers in a second country to recipients in a third even though the weapons never cross the State's borders.
- **Extra-territorial Jurisdiction** - the widest approach, enables the State to regulate brokering activities of its citizens no matter where they reside.

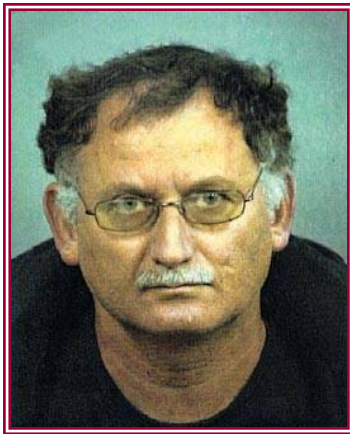


Businessmen or “Lords of War”?



Suspected Russian arms dealer Viktor Bout attends his first extradition hearing in Bangkok. Photograph: Sukree Sukplang/Reuters

Source: The Guardian Aug 13, 2009



Source: PBS Frontline World, March 2005 “the Middleman” Mark Shapiro

- Both Viktor Bout and Asher Karni had/have legitimate business models with an illicit twist
- Forum shopping for products
- Multilayer procurement – front companies, false end-user certificates, strange trade routes, false flight plans
- “Surfed/Surf” the legalistic loopholes worldwide



Examples of Initiatives to Counter Illicit Brokering

- **Conventional Arms and Munitions**

- The Wassenaar Arrangement, “*Elements for Effective Legislation on Arms Brokering*”, December 2003
- The European Union “Council Common Position 2003/483/CFSP on the Control of Arms Brokering” , June 23, 2003
- European Union “Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment”

- **Dual-Use Products and Technologies**

- UN Security Council Resolution 1540, April 28, 2004
 - Calling on all UN Member States to: “*develop and maintain appropriate effective border controls and law enforcement efforts to detect, deter, prevent and combat, including through international cooperation when necessary, the *illicit trafficking and brokering in such items.**”
- European Union “Council Regulation (EC) No 428/2009 of May 5, 2009 setting up a Community regime for the control of exports, transfers, brokering and transit of dual-use items”

UN General Assembly Resolution 63/67. “Preventing and combating illicit brokering activities “ December 2, 2008

The Challenges and Solutions to Illicit Brokering



• **Challenges**

- The legitimate broker
 - Modern day business needs the agent
- Citizenship – legal person
- The dual-use dilemma
 - How maintain control on civilian produced items and technologies?
- The jurisdictional reach

• **Solutions**

- By regulating the legitimate broker – illicit brokering will be more easy to identify
- Registration
- Acknowledging the balance between trade and security
- Universal adoption of brokering controls and information sharing will close the loopholes better



Thank you for your time and attention!

QUESTIONS?

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