

A missed opportunity: The US Helsinki Commission hearing on the illicit tobacco trade in the OSCE region

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On 19 July 2017, the US Commission on Security and Cooperation in Europe (CSCE) – also known as the ‘Helsinki Commission’ – [held a hearing](#) on the illicit tobacco trade in the Organization for Security Co-operation in Europe (OSCE) region. The Helsinki Commission, an [independent US government agency created in 1976](#) to “press governments to improve their human rights records and allow, despite Europe’s division, expanded contacts between people”, has discussed a number of important challenges, including human trafficking, anti-Semitism, treatment of ethnic minorities, weapons proliferation, corruption and terrorism. Through hearings, briefings, and official delegation visits, the Commission gathers evidence on such issues and [contributes to the formulation and implementation of US policy](#) towards the OSCE and its participating states.

To date, limited progress has been achieved on the illicit tobacco trade in the OSCE region. Globally, [illicit tobacco accounts for around 11.6% \(600 billion sticks\) of supply, and US\\$40.5 billion in lost tax revenues annually](#). Despite the size and profitability of the trade, the risk of detection is relatively low and penalties generally light. In Europe, the illicit tobacco trade is [estimated to be between 6 and 10% of overall consumption](#). Its [nature has evolved](#) from predominantly large-scale smuggling to include illegal manufacturing, including counterfeit production, cheap cigarette brands produced specifically for illicit markets overseas, and overproduction of regular cigarette brands. Overall, the illicit tobacco trade in the OSCE region reportedly stems from a murky blend of tobacco companies, including transnational tobacco companies (TTCs), and criminal elements, which both cooperate and compete for this lucrative trade. The latter includes criminal organizations which [earn substantial income, while fuelling money laundering, corruption and other illicit activities](#). From a [public health perspective](#), the illicit tobacco trade makes cigarettes more affordable and accessible, especially among youth and low-income populations, resulting in higher consumption.

In this context, a high-level public hearing by a US government agency on the issue of illicit tobacco trade is a much welcomed and timely opportunity to enhance understanding of the nature of the illicit trade in the OSCE region, the factors driving it, and the wider implications for the global community. This hearing is especially important given that the WHO Framework Convention on Tobacco Control (FCTC) Protocol to Eliminate Illicit Trade in Tobacco Products, adopted on 12 November 2012, has still to come into effect. At the time of writing, [only 29 countries are party to the Protocol](#), with 12 more needed by 2 July 2018 for it to come into force. The [US has yet to ratify the FCTC itself](#) or sign the Protocol.

Unfortunately, given the selected range of issues addressed, and how they were framed in discussions, it is doubtful whether the hearing yielded any new insights. The panel of witnesses was composed of [Louise Shelley](#), Professor of Public Policy at George Mason University, who researches transnational crime, terrorism and corruption, including the crime-terror nexus; [David Swenor](#), Adjunct Professor at the Faculty of Law, University of Ottawa, and a leading tobacco control expert whose areas of advocacy and research include extensive experience in analysing, monitoring, and litigating on, the global illicit cigarette trade; and [Mark Firestone](#), Senior Vice President and General Counsel at Philip Morris International (PMI). While Swenor and Shelley brought long standing experience in the illicit tobacco trade to the hearing, it notably did not include any representatives from law enforcement, regional experts, officials from any relevant international organization (e.g. WHO, Interpol, Europol, World Customs Organization, World Bank, United Nations Office on Drugs and Crime, or OSCE), or academics who have published relevant research on illicit tobacco. (see examples [here](#), [here](#), [here](#) and [here](#).)

The involvement of a representative of a leading transnational tobacco company in the panel seems particularly incongruous given substantial evidence of historical tobacco industry complicity in cigarette smuggling (see examples [here](#) and [here](#)) and [reports of their continued involvement](#). Tobacco companies have also generated [inaccurate estimates of the size and nature of the illicit trade](#), and overstated the role of taxation, advertising restrictions, and packaging and labelling regulations as [contributing factors](#). Further, industry lobbying against the illicit trade has focused on counterfeit products, a small portion of the total illegal cigarette market, as a distraction or means to further its [own interests](#).

Guarding against industry interference is a key provision under the FCTC. [Article 5.3](#) concerns the need for Parties to protect public health policies from “commercial and other vested interests of the tobacco industry”. Article 5.3 implementation guidelines recognise that some “interactions with the tobacco industry are necessary”, but recommends that these interactions be conducted in public, “for example through public hearings”. While the Helsinki Commission hearing was publicly held, as stated above, the odd balance of expertise, particularly the inclusion of a tobacco company representative, raises questions about industry interference.

Testimony provided raised a number of important points. Overall, however, the hearing did not adequately address four important issues. First, the complicity of the tobacco industry in the illicit tobacco trade was barely mentioned, as well as the ineffective law enforcement partnerships several tobacco companies have established with governments around the world. Instead, much of the discussion on the private sector focused on the role of new media in allowing users to post details about opportunities to purchase illicit cigarettes. Similarly, the growing role of tobacco companies independent of transnational tobacco companies, most [notably in Asia](#), positioning themselves to ‘go global’ through legal and illicit trade, was not discussed. Effective efforts to address this substantial source of illegal activity depends on better understanding this complex and changing picture.

Second, there were several instances in which tax increases were brought up as the primary driver behind the illicit tobacco trade. This is a familiar industry-led narrative despite overwhelming evidence that [this is not the case](#).

Third, there is an urgent need for independent data collection and analysis on the illicit trade. In many regions, the tobacco industry itself is the source of this information, even supplying data to public officials. Without reliable information on the scale of the problem and trends over time, it will be impossible to know how effective efforts are to curtail this illicit trade.

Finally, the importance of strengthening institutional capacity against the illicit trade was not discussed in depth. This would involve public health, customs and excise, and law enforcement agencies – with additional resources for a lead coordinating body, public awareness campaigns, and targeted enforcement along the entire production and distribution network including addressing the industry’s complicity.

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*This article was amended on 31 August 2017 to include additional details about the qualifications and experience of Louise Shelley and David Swenor.

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