

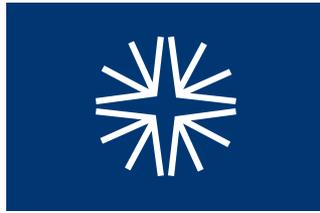


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**EAPC WORKSHOP
ON COMBATING
ILLICIT BROKERING
IN SMALL ARMS
AND LIGHT WEAPONS**

1-2 JULY 2009, NATO HEADQUARTERS, BRUSSELS, LUNS ROOM

SUMMARY REPORT



Euro-Atlantic Partnership Council

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EAPC WORKSHOP ON COMBATING ILLICIT BROKERING IN SMALL ARMS AND LIGHT WEAPONS

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Background and Aims of the Workshop

On 1-2 July, 2009, the Euro-Atlantic Partnership Council (EAPC) hosted the EAPC Workshop on Combating Illicit Brokering in Small Arms and Light Weapons at NATO Headquarters in Brussels, Belgium. The main aim of the Workshop was to foster dialogue, further facilitate cooperation and promote best practices between states regarding the issue of illicit brokering.

The Workshop aimed to achieve these objectives by providing a forum for exchanging information on achievements relevant to implementation of the UN PoA concerning SALW brokering activities, best practices and recommendations for further achievements; highlighting the current international situation on arms brokering in SALW and elucidating the challenges it poses to international security; identifying types of legislation and administrative procedures that require increased attention in combating illicit brokering activities and exploring the ways in which these types of legislation and procedures may be better enforced; updating EAPC members on measures whereby states may deepen the extent of international cooperation between them; and encouraging states to proactively engage in combating the illicit brokering in SALW.

Section II, Paragraph 14, of the United Nations 2001 Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, calls upon Member States to “develop adequate national legislation or administrative procedures regulating the activities of those who engage in small arms and light weapons brokering. This legislation or these procedures should include measures such as registration of brokers, licensing or authorization of brokering transactions as well as the appropriate penalties for all illicit brokering activities performed within the State’s jurisdiction and control.”

In 2007, the UN Group of Governmental Experts (GGE), as had been mandated by the UN General Assembly, produced a report that considered further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in SALW. The report made a number of recommendations on the issues of national legislation and administrative procedures; international cooperation on information sharing; international assistance and capacity building; promoting effective reporting and; enhancing international cooperation in preventing, combating and eradicating the illicit brokering of small arms and light weapons in violation of United Nations Security Council (UNSC) arms embargoes and sanctions. The report also set out the first agreed description of brokers and those activities which constitute brokering and illicit brokering.

During the Third Biennial Meeting of States to Consider 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 that took place 14-18 July 2008, the issue of illicit brokering in small arms and light weapons was singled out as being one of four themes that were put forward for the in-depth consideration of Member States. Subsequently, Member States reaffirmed their commitment to strengthen and implement national legislation on brokering activities where appropriate. A number of suggestions were articulated as constituting a way forward. They included, *inter alia*,

- Emphasis of the crucial importance of international cooperation in combating illicit brokering activities;
- Acknowledgement of the importance of implementing those recommendations put forward in the 2007 Report of the GGE on brokering and;
- Consideration of working to advance the process initiated by the UN General Assembly on illicit brokering in order to reach agreements and establish mechanisms to find effective solutions to the problem.

These were set out in the final outcome document of the meeting.

CONFERENCE PROCEEDINGS

Opening Session

The Workshop on Combating Illicit Brokering was opened with an introductory statement from Mr. Robert Simmons, Deputy Assistant Secretary General for Security Cooperation and Partnership within the Political Affairs and Security Policy Division of NATO followed by a statement from Mr. Evangelos Kalpadakis who represented the Greek Chairmanship in Office of the Organisation for Security and Cooperation in Europe (OSCE).

Mr. Robert Simmons emphasised the significant role that illicit brokering plays in the illicit transfer of SALW and underlined the destabilising and devastating impact that these 'real weapons of mass destruction' have on regional and international security. He stressed that in order to combat such activities, it is essential to address the very limited legislative frameworks that exist so that they may be further developed and enhanced in order to ensure their effectiveness. Mr. Simmons also stated the importance of implementing the recommendations made in the 2007 Group of Governmental Expert Report on Illicit Brokering and emphasised the profound levels of cooperation needed at the national, regional and international levels if the problem of illicit brokering in SALW is to be successfully combated.

Mr. Evangelos Kalpadakis, who was representing the Greek Chairmanship in Office of the OSCE, underlined the timeliness of the Workshop noting the recent growth of political momentum in work surrounding SALW. He emphasised the rising instability in the regions adjacent to the OSCE area and acknowledged that the uncontrolled proliferation of SALW could only add to the instability and that therefore the issue constitutes a significant politico-military threat. Mr. Kalpadakis then outlined OSCE involvement in matters pertaining to the problems of SALW, stressing the comprehensive strategy that the OSCE takes on this issue. In this regard, he highlighted the 2000 OSCE document on SALW and the OSCE Best Practice Guides on SALW, in addition referring to the Ministerial decision on SALW adopted in Helsinki last year, which exemplified the OSCE's commitment to the issue.

Session I: International Arms Brokering: The Current State of Play and the Challenges Posed

The first session of the Workshop heard presentations from five expert guestspeakers.

The first briefing was given by **Ms. Anna Gilmour** from **IHS Jane's** who provided an overview of the 'tricks of the trade' related to illicit brokering. It was noted that illicit arms trafficking is a major form of organised crime and that whilst arms trafficking may make up large portions of certain crime networks, most networks will also carry out many other forms of illegal activities in addition to arms trafficking, including human trafficking, drugs trafficking etc. Ms. Gilmour then provided the case study of Viktor Bout which gave a clear example of the complexities and sophistication required for such a network to succeed. Transport capability, excellent military contacts and clever accounting were highlighted as being three major factors that allowed Bout to operate so successfully. Subsequently, Ms. Gilmour detailed a number of possible future trends that may be encountered when dealing with illicit arms brokers. Finally Ms. Gilmour stressed that differences between jurisdictions facilitate illegal operations whilst the existing limited levels of information sharing hinder international investigations.

Mr. Michael Walleisa from the **United States Department of Justice** provided a detailed overview of US brokering laws emphasising the importance of having statutory frameworks that provide for regulatory controls, criminal penalties and civil penalties. He then detailed the US Arms Export Control Act and some of the aspects that need to be considered when trying to prosecute illicit brokers. The need to prove specific intent was highlighted as being one of the key components to a successful legal case against an illicit broker. When reviewing the elements required for a successful prosecution, foreign government assistance was highlighted with specific mention of mutual legal assistance and extradition cooperation as being particularly necessary. Mr. Walleisa then illustrated this by way of a case study of a brokering group dealing in night vision goggles (NVGs) The case effectively underlined the difficulties in successfully prosecuting illicit brokers and provided an excellent insight into the level of attention that these challenges require if they are ever to be overcome.

Torsten Wöllert gave a briefing on behalf of the **European Commission** which detailed the programmes and projects currently being undertaken by the European Union in the field of SALW, paying particular attention to its own implementation of the UNPoA. It highlighted its focus on SALW activities in Africa and the strong ties that have been established over the years. Mr Wöllert emphasised the security development nexus which frames the Commission's approach to the problem of SALW. He also took time to outline The Instrument for Stability. This is a crisis prevention instrument that allows for intervention in the name of stability, for example destruction of ammunition in BiH and other such actions can play a part in the endeavours to eliminate sources of illicitly trafficked items. Mr Wöllert also indicated the possibility of the EU providing technical assistance to the African Union to develop its own SALW strategy.

Mr. Glenn McDonald from **Small Arms Survey** gave a presentation tracing the history of UN work carried out on the subject of illicit brokering in SALW. The outline included details on, *inter alia*, sanction reports, a feasibility study, the PoA and the Group of Governmental Experts (GGE) on illicit brokering. He also provided an outline of regional and multinational brokering agreements before giving an overview of various national controls. In particular he highlighted the need for clear definitions with respect to registering, licensing, record-keeping, penalties and fines and jurisdiction. Additionally, Mr. McDonald gave information on concrete actions taken over the last years to combat illicit brokering. In conclusion, he indicated the plusses and minuses of UNPoA implementation, highlighting the need for more national action and more international cooperation, stating that significant control gaps remained.

Dr. Owen Greene from the **Centre for International Co-operation and Security Department of Peace Studies at the University of Bradford** focused on those issues that are particularly critical to the challenge of combating illicit brokering. He noted that whilst different nations have different forms of legislation on brokering, if illicit brokering is to be combated effectively, it is necessary to ensure the existence of a small set of core regulations that apply universally. He also underlined the need to regulate and criminalise some of those activities related to brokering as successfully prosecuting on the grounds of illicit brokering itself is extremely difficult. Therefore, through regulation of other related activities, it would be possible to prosecute these actors for more minor violations. Additionally, he noted that most illicit brokers are experts at circumventing the laws and regulations in place and therefore do not actually break these laws very often. This circumventational aspect needs to be considered when discussing regulation and legislation. Throughout his briefing, Dr. Greene stressed the need to be able to judge risk accurately in the pre-licensing processes. Judging whether a broker is a potential risk is or not, based solely on whether they have had previous convictions is not enough. Judicial hearings and licensing bodies should take into account the relatively small and minor violations that, despite not equating to indictable crimes on their own, can often be indicative of a much more sinister bigger picture.

There was then a panel discussion in which questions were asked including; how to encourage states that currently have no legislation and moreover, do not believe they need brokering legislation as they do not consider themselves to have a brokering problem, to implement adequate legislation; the legislation surrounding contracting law and whether or not this could be strengthened in order to create more legislation on those activities often involved in legislation etc. The panel session proved to be successful in provoking many interesting and important questions which provided the opportunity to discuss in more detail some of the issues raised during the presentations.

SESSION II: Developing and Implementing the Tools to Combat Illicit Brokering Activities

The second session incorporated three briefings which aimed to detail the existing tools and mechanisms that can be used to tackle the problem of illicit brokering.

The session was commenced by **Mr. Mark Bromley** from **SIPRI** who briefed participants on the Countering Illicit Trafficking – Mechanism Assessment Project (CIT-MAP) which is a tool designed to tackle illicit and destabilising transfers of SALW via air transport. He emphasised the significance of focusing on air transport as a way of indirectly tackling illicit brokering, noting that 80% of illicitly trafficked SALW are delivered via air. Their involvement in licit activities makes air carrying companies much easier to follow and monitor as they have to use advertising to solicit their clients. They are therefore easier to target than the arms brokers themselves. Through increased and intensified monitoring of air safety regulations and standards, it would be possible to exert the controls on these air cargo carriers and thus reduce and prevent illicit transfers. Mr. Bromley detailed the challenges involved in collecting the necessary data to ensure the legitimacy of the companies and stressed that a lack of coordination between licensing, customs and civil aviation controls often hinders the processes involved. The briefing stressed that air safety standards represent the ‘Achilles Heel’ of the air cargo companies engaged in illicit SALW transfers and illustrated this through highlighting the EU’s success in this context. He noted that the more closely the EU focused on banning particular air carriers with poor safety records, the more successful it was in capturing carriers that had been named in UN or other arms trafficking related reports.

Tracy Hite gave a briefing on behalf of **INTERPOL** which provided details on 3 major tools that are offered by INTERPOL and that are of high relevance to combating illicit brokering. They are the I24/7, the Notices and INTERPOL’s Firearms Programme. The I24/7 is a global police communications system which connects 187 states to the network. A series of databases are available to all users such as DNA bank, fingerprints etc, alongside a range of data exchanges, reports and reference tools, including Notices/Diffusions for Persons, firearms tracing and INTERPOL Firearms Reference Table. Ms. Hite then detailed the Notice Categories which include, *inter alia*, flagging for those individuals who are being sought for arrest with a view to extradition and for those who are subject to UN sanctions. Finally, she identified and outlined the Firearms Programme as being a highly useful identification tool which incorporated a tracing mechanism and ballistics network.

The final presentation of the Session was given by **Alex Vines O.B.E.** from **Chatham House**. Mr. Vines briefed participants on end-user certification documents (EUCs) and the ways in which these documents can be falsified and corrupted. He stressed that these forms of documents should make up an important component in the defence against the diversion of licit SALW to illicit SALW. However he also emphasised that this can only be the case in the context of a broader system in which licensing, verification of EUCs and their post delivery use and transfer are all incorporated effectively into a coherent regulatory system. The three main forms of illicit EUCs were then detailed as being those that are forged, those that are government issued but have no ‘follow up’ service and finally, those that are government issued and do have a ‘follow up’ service. Mr. Vines gave a series of

insightful examples which clearly illustrated the types of networks that are involved in deals and forgeries such as these and also how these documents could be corrupted. The briefing was concluded with a look at how EUCs could be made less falsifiable, noting the Swedish practices which use bank note paper for EUCs thus rendering them nearly forge-proof. Other aspects put forward included post-shipment verification and end-user monitoring.

Briefings were followed by a panel discussion where a number of issues were explored, including how to ensure that a state's sovereignty is not breached during post-delivery verification; examining how the debate should try to include data and discussions that incorporate states such as China, Brazil, and Cuba etc.

SESSION III: The Way Forward: How to Enhance Existing Efforts

The first briefing of the third session was given by **Holger Anders** from **GRIP**. His presentation focused on the ways in which the enforcement capacity relating to extraterritorial controls could be strengthened and enhanced. He stressed that controlling brokers at the national level alone is insufficient as it does not cover the extraterritorial element. He outlined the currently available control means, such as pre-licensing assessments, subsequently detailing the challenges encountered in enforcement, for instance, the limited number of staff in investigative agencies with expertise in brokering. Mr. Anders then briefed participants on the challenges faced in trying to enforce controls abroad. Finally, he outlined two types of extraterritorial controls. Firstly, the prohibition of embargo violations and secondly the process of licensing brokers when abroad for transfers to any destination. He concluded in making a set of recommendations that promoted the strengthening of existing legislation, the integration of embargoes into national exporting systems, increased vigilance by national authorities and heightened efforts to interrupt illicit brokering chains and networks.

Daniël Prins from the **United Nations Office for Disarmament Affairs (UNODA)** briefed the Workshop participants on the subject of enhancing international cooperation in combating illicit brokering. He commenced by outlining some of the key elements put forward in the GGE Report by firstly underlining the significance of the Report in agreeing on a definition of a broker. He also emphasised the importance of including 'closely associated activities' –such as brokering related transport, finance and insurance activities in the definition. Secondly, Mr. Prins highlighted some of the optional components that could be included in national legislation before examining the various aspects of operational information exchanges and the areas where improvement is still required. On the subject of assistance, Mr Prins stressed that in many cases, the capacity that is required for successfully establishing effective legislation on brokering, is often lacking and for this reason technical and financial assistance is often necessary. Participants were then briefed on various measures that could be taken at the global, regional and national levels in this context. Some of the measures outlined included; at the global level, further developing the clearing house function of the UNODA and more regular consideration of the national reporting on brokering; at the regional level, strengthening efforts to build networks of regional experts and formulating regional capacity building programmes; and at the national level, formulating national needs assessment packages and integrating these into National Action Plans. The importance of national reporting with particular reference to brokering was stressed throughout the briefing as being a highly effective way of sharing information and thus enhancing coordination and cooperation on this issue.

Mr. Anton Martynyuk from the **OSCE** outlined the OSCE experience in SALW brokering controls and accounted for the importance of the issue to the organisation. He emphasised the comprehensive approach that was taken by the OSCE and noted that the attention paid to combating illicit brokering was indicative of this approach. He gave a chronological account of the developments and projects that had been carried out by the OSCE, highlighting specific examples such as the best practices on SALW brokering controls and the OSCE Brokering Controls of 2004. He noted that many states still do not have sufficient regulations on brokering and also

that the level and scope of the existing legislation varies widely. Finally, he outlined the actions that the OSCE is hoping to pursue up until 2010, including technical assistance and capacity building projects, awareness raising and identification of assistance requirements.

Ms. Deborah Carroll from the **Office of Defence Trade Controls Compliance in the United States Department of State**, started by emphasising that despite being a highly complex and difficult issue, the question of illicit brokering is not one without solution. Participants were briefed on the different forms and trends relating to arms flows including those distinctions between those elements that characterised traditional illicit arms procurement and those that are characteristic of the modern day secondary supplier networks which have developed as a result of globalisation. Ms. Carroll then detailed the US approach to controlling brokering activities urging participants to acknowledge that if legislation does not define what is legal, then by the same token, nothing can be defined as being illegal. In detailing the Arms Export Control Act, she informed participants of how the Act establishes a legal basis for brokering activities through a series of regulations that correspond to eligibility, registration, licensing, civil and criminal penalties, congressional reporting and jurisdiction. The presentation then focused on the processes involved in registration emphasising that this, in addition to effective licensing and compliance and enforcement measures, would add significantly to the success in combating illicit brokering in SALW.

To follow, participants engaged in an active panel discussion. Subjects examined during this part of the session included issues pertaining to registration, civil and criminal litigation and the distinctions thereof, enforcement of licensing and deals involving arms embargoed states and exploring the possibilities of an international brokering instrument and whether this would be viable or effective.

The final session of the Workshop on Combating Illicit Brokering in SALW incorporated two Break Out Groups, the aim of which was to provide a more intimate setting for smaller groups to discuss openly some of the more operational aspects of the problem. Group One, which was led by Deborah Carroll, focused on the elements required for establishing effective brokering legislation and Group Two, chaired by Daniël Prins, concentrated on the establishment of National Action Plans and Self-Assessment Packages for those countries seeking assistance with brokering legislation.

Summary of the Break Out Groups:

Group One concerned itself with identifying those elements that are required for the establishment of effective brokering legislation. Ms. Carroll called upon participants of the Break Out Group to give examples and details on current regulations and laws within their own countries that tackle brokering. From the examples given, participants noted the many varied and diverse approaches that individual nations take regarding the issue. It was agreed that the UN disarmament website should contain a series of tools and references relating to brokering which could help states seeking additional information and assistance. Many of the participants recognised that in the absence of any legislation on brokering, it is often not possible to establish new laws; in this case existing laws must be used. In these situations, ensuring that extraterritorial clauses are contained within these types of legislation is crucial. Where new legislation is established, the Break Out Group took note of Croatia's experiences, whereby a series of ministerial working groups were set up to ensure coordination and harmonisation of efforts between and amongst the different ministries involved in the process. It was stressed that ensuring synergised efforts between ministries in this respect is essential to the success of implementing good legislation. It was also emphasised that legislation must be absolutely clear as to exactly which activities are criminalised and which are legal.

Group Two aimed to explore the possible ways forward on capacity building, through the creation of a model national action plan and self-assessment package. The session was chaired by Mr. Daniel Prins who highlighted that all national legislation regarding small arms brokering could be improved. The subjects raised in the course of the discussion included the need for better means of collecting information on illegal re-exports, and the possibility of including a re-export clause in transfer agreements between the exporting and importing states. National experts were encouraged to do an analysis of what must be improved in their national systems and raise the need for an international effort to do an inventory of legislation on brokering. Several representatives provided examples of the efforts underway in their capitals regarding brokering legislation, highlighting the cooperative work among the ministries involved in the implementation of the legal procedures. Participants also indicated the need to discuss wider issues among a larger group of actors, including, MFA, MOD, Ministries of Foreign Trade, Interior, Justice, Finance, and civil society. Another point of discussion was the importance of raising the need for brokering legislation at a higher national political level. Views were expressed on the importance of exposure to the problem as a means to activate the ministers and politicians, on the one hand, and the need to act pre-emptively in warning these instances in order to avoid political consequences, on the other. The group also discussed the need to work on the legislation process by providing an assessment of national needs and formulating a plan which would involve cooperation between states, regional and international organisations and the sharing of operational information among them.

Findings:

The Workshop on Combating Illicit Brokering in SALW highlighted the complex and multi-faceted nature of this issue and made it clear that in order to tackle such a problem, a series of approaches would have to be taken on a number of levels.

The issue of legislation was perhaps one of the most prominent themes throughout the Workshop. The highly complicated and uneven application of brokering legislation was highlighted and the need for brokering legislation to be further strengthened and developed at every level was emphasised as being crucial to the success of current and future efforts in combating the problem.

It was noted that the establishment of a range of penalties pertaining to brokering would result in a degree of flexibility in the legislation which would ultimately give robustness to the framework and this was therefore encouraged. The importance of clearly defining those brokering activities which could be classified as both legal and illegal was highlighted as being essential. Whilst seeming obvious, it was noted that many states have failed to implement such measures.

Clear definitions regarding, licensing and registration were also called for, in particular the subject of risk-assessment in the pre-licensing processes was highlighted as being of high importance. Creating legislation around brokering related activities was also raised on a number of occasions whereby it was noted that stricter monitoring and harsher penalties on such activities would make it much more difficult for illicit brokers to operate.

The absence of extraterritorial elements in existing brokering legislation was articulated as being a severe hindrance to successfully prosecuting illicit brokers and therefore the importance of including extraterritorial elements was stressed. International cooperation with regards to extraditions and foreign government assistance during prosecutions of illicit brokers was also called for. Effective and forge-proof end user certificates and end user verification procedures were also highlighted as being central tools in the fight against illicit brokering.

Further enhancing levels of cooperation at the national, regional and global levels was one element that was underlined as being essential in combating the problem of illicit brokering. Throughout the Workshop, a series of tools and mechanisms were promoted and highlighted as being significant in achieving these ends. INTERPOL's I-24/7 was one such instrument as was the completion and submitting of the brokering section in UN National Reports. Both were used as examples of how nations might further enhance information sharing at the international level.

At the national level, it was noted that cooperation and coordination between ministries should be bolstered, as illicit brokering is a problem which concerns numerous departments of national governments and therefore, a harmonisation of efforts is necessary if responses are to be effective.

Finally, at the regional level, the creation of regional expert groups was highlighted as a way through which information and best practices might be shared and applied, thus creating regional synergies and coordinated responses to the problem.



More photographs taken over the course of the event can be found on the CD-ROM along with the presentations and other relevant documents. After inserting the CD-ROM, if your computer does not automatically direct you to the Agenda title page, then please double click on the file entitled SALW Workshop 2009.html.

