

# WebMemo



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## The Obama Administration Makes the Wrong Call on the U.N.'s Arms Trade Treaty

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On October 14, U.S. Secretary of State Hillary Rodham Clinton announced that the United States would seek a “strong international standard” in the control of the conventional arms trade by “seizing the opportunity presented by the Conference on the Arms Trade Treaty at the United Nations.” Her announcement contained an important caveat: The U.S. will actively support negotiations only if the conference “operates under the rule of consensus decision-making needed to ensure that all countries can be held to standards that will actually improve the global situation.”<sup>1</sup> This caveat has been attacked by NGOs supporting the treaty process.<sup>2</sup>

The Administration’s decision to participate on the basis of consensus is wrong. The U.S. cannot ensure that the conference will operate on such a basis, nor can consensus guarantee that the U.S.’s export controls—which the Administration rightly lauds as the world’s “gold standard”—will form the basis for an arms trade treaty. In practice, since most of the world’s states have low standards for the export of conventional arms, the U.S.’s demand for consensus will be used to pressure the U.S. to lower its own standards or expand the treaty in ways that would conflict with the U.S. Constitution. The behavior of the U.N.’s member states demonstrates that there is no basis for consensus in the negotiation of this treaty. The pursuit of consensus, as high-minded as it may sound, will therefore produce an ineffective treaty.

**The Demand for Consensus Is Irrelevant.** The United States does not have the power to ensure

that the negotiations on an arms trade treaty operate “under the rule of consensus decision-making.” The budget of the United Nations, for example, is traditionally adopted on the basis of consensus, yet in late 2007, the U.N.’s member states abandoned that tradition and approved a budget increase of 25 percent by a vote of 142–1.<sup>3</sup> The U.S. was the state that voted no. Nothing can prevent the arms trade treaty negotiations from similarly abandoning a consensus basis as soon as it suits the majority.

Nor can the U.S., as the Administration claims, use consensus-based negotiations to ensure that any arms trade treaty adopts the U.S.’s high standards for the control of the export of conventional arms. If the U.S. insists that such standards be verifiably adopted by all the world’s states, the negotiations will go nowhere, and the U.S. will find itself isolated and once again unfairly described as unilateralist. The NGOs that support the treaty will then urge the majority of states to conclude the negotiations without U.S. approval.

**The Pursuit of Consensus Is Dangerous.** The Administration argues that consensus offers a guarantee that the negotiations will produce an effective treaty. In practice, since the U.S. has high stan-

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dards, the U.S. is itself the state most likely to disrupt the consensus of the majority of states with low standards. Far from being a weapon for the U.S. to use against recalcitrant states with low standards, the demand for consensus will be turned against the U.S. and be used to exert pressure on America to lower its own standards so that a treaty can be concluded.

The U.S. will then be in the invidious position of either resisting the consensus that it demanded or accepting a treaty that breaks with settled U.S. policy, backed by Congress for many years, of strict export controls. This outcome is foreshadowed by the NGO attacks on the U.S. demand for consensus, which indicate that these organizations desire only that a treaty be completed, regardless of its quality. Toward that end, the NGOs will strenuously resist any U.S. efforts to follow the negotiating strategy laid out by Secretary Clinton.

The behavior of the U.N.'s member states demonstrates that the pursuit of consensus is a dangerous mirage. One justification frequently offered for the treaty is that it will end the transfer of arms to terrorists. Yet the U.N. has never been able to define terrorism, because states such as Pakistan argue—in their official submission on the treaty—that “the right of peoples . . . to [resist] the illegality of aggression [and] foreign occupation” means that what the U.S. describes as terrorism is justified.<sup>4</sup>

Achieving a genuine consensus in negotiations with states holding these views is close to impossible. Any consensus will come only by adopting a treaty that has low standards, weak enforcement provisions, or both. In practice, as the U.N. itself has acknowledged, the U.N.'s member states have

achieved consensus on one demand: that any arms trade treaty must explicitly acknowledge their “right . . . to manufacture, import, export, transfer and retain conventional arms.”<sup>5</sup> No arms trade treaty can both acknowledge that all states—including those that support terrorism—have this right and simultaneously control the conventional arms trade.

The U.S. will also be pressured to adopt a treaty that will conflict with rights guaranteed by the U.S. Constitution. In 2008, the Group of Governmental Experts correctly stated that an arms trade treaty would need to respect member states' constitutional provisions, such as the Second Amendment. But the October 2008 U.N. resolution ignored this stipulation and instead stated that signatories of the treaty would have to have the “highest possible standards” to keep weapons away from all “criminal activity.” The “highest possible standards” requirement and the Second Amendment are incompatible, because there is ultimately no guarantee that any privately held gun in the U.S. will never be used in criminal activity.<sup>6</sup>

**What the U.S. Should Do.** The U.S. should:

- Support negotiations for an arms trade treaty that respect constitutional provisions,
- Reject universal membership and multilateral enforcement on the grounds that not all states are serious in pursuing the treaty's goals,
- Refuse to concede an explicit “right to buy” to dictatorships and terrorist-supporting states, and
- Adhere to President Reagan's cautious approach to arms control agreements: “Trust, but verify.”<sup>7</sup>

1. U.S. Secretary of State Hillary Rodham Clinton, “U.S. Support for the Arms Trade Treaty,” U.S. Department of State, October 14, 2009, at <http://www.state.gov/secretary/rm/2009a/10/130573.htm> (October 15, 2009).
2. Arshad Mohammed, “U.S. Reverses Stance on Treaty to Regulate Arms Trade,” Reuters, October 14, 2009, at <http://www.reuters.com/article/politicsNews/idUSTRE59E0Q920091015> (October 15, 2009).
3. Brett D. Schaefer, “Congress Should Withhold Funding for Spendthrift U.N.,” Heritage Foundation *WebMemo* No. 1786, January 29, 2008, at <http://www.heritage.org/Research/InternationalOrganizations/wm1786.cfm>.
4. Ted R. Bromund and Steven A. Groves, “The U.N.'s Arms Trade Treaty: A Dangerous Multilateral Mistake in the Making,” Heritage Foundation *Background* No. 2309, August 21, 2009, p. 8, at <http://www.heritage.org/Research/InternationalOrganizations/bg2309.cfm>.
5. *Ibid.*, p. 9.
6. *Ibid.*, p. 13.

Finally, no matter what entry into force provisions are adopted in the treaty negotiations, the treaty must not be binding on states that have not signed and ratified it. If not based on these principles, the arms trade treaty will fail to achieve its aims, damage the national interest of the United States, and subvert American sovereignty

and the export control mechanisms established by Congress.

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7. Ronald Reagan and Mikhail Gorbachev, “Remarks on Signing the Intermediate-Range Nuclear Forces Treaty,” Ronald Reagan Presidential Library, December 8, 1987, at <http://www.reagan.utexas.edu/archives/speeches/1987/120887c.htm> (July 29, 2009).