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The 2010 Preparatory Committee for the U.N. Arms Trade Treaty: Five Dangers the U.S. Must Avoid

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On July 12–23, the United Nations will hold back-to-back meetings of the Preparatory Committee for the Arms Trade Treaty. These meetings are the result of a vote in October 2009 in the First Committee of the U.N. General Assembly to establish a Diplomatic Conference to negotiate the Arms Trade Treaty. The Preparatory Committee will discuss the content of the treaty in advance of a meeting of the conference in 2012 to finalize the treaty and open it for ratification. This treaty is purportedly intended to address the “absence of commonly agreed international standards for the transfer of conventional arms,” which, it is argued, contributes to war, crime, and terrorism.¹

On October 14, 2009, 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.”² In previous years, the U.S. had opposed resolutions on the treaty in the General Assembly. But in 2009, the U.S. voted with the majority in support of the treaty process.

This process poses five serious dangers that the U.S. should avoid. If the U.S. does not do so, any arms trade treaty that comes into existence will pose a threat to U.S. liberties, to American interests, and to effective and serious diplomacy.

1. The Danger to the Second Amendment. The 2008 resolution in the General Assembly supporting the treaty called for the “highest possible stan-

dards” to keep arms away from all “criminal activity.” Because there can be no guarantee that any privately held gun in the U.S. will never be used in criminal activity, the “highest possible standards” requirement and the Second Amendment are incompatible.³

The 2009 resolution called instead for the “highest possible common international standards,” and it acknowledged the existence of “national constitutional protections on private ownership.” But it placed the existence of these protections in the context of “the right of States to regulate internal transfers of arms and national ownership,” implying that the constitutional protections must be interpreted in the context of the broader right of the state to regulate.

At the meeting of the Preparatory Committee, the U.S. should state firmly that it will neither sign nor ratify any treaty that does not explicitly and without qualification recognize the legitimacy of national constitutional protections on private firearms ownership.

2. The Danger to the First Amendment. International agreements on the control of conventional arms often recommend restricting free speech. The

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Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials—negotiated under the auspices of the Organization of American States—criminalizes the “counseling” of any of the activities that it prohibits. In other words, it seeks to restrict the freedom of speech.⁴

Similarly, the recently concluded U.N. Fourth Biennial Meeting of States on the Illicit Trade in Small Arms resulted in an agreement to emphasize “the importance of promoting dialogue and a culture of peace.” A U.N. discussion paper argued that “promoting a culture of peace” requires, among other items, the “reduction of violence in the media and in video games,” as well as “[s]ustained efforts at re-education and reorientation of [member state] citizens.”⁵

At the meeting of the Preparatory Committee, the U.S. should absolutely refuse to be party to any treaty that requires, recommends, or implies the desirability of any restrictions on rights protected under First Amendment or of any broader program of state-directed propaganda.

3. The Danger Posed by the ‘Right to Buy.’ The 2009 resolution acknowledges “the right of all States to manufacture, import, export, transfer and retain conventional arms for self-defence and security needs.” The treaty masquerades as an arms control measure, but if it were adopted with this clause intact, any supplier would be entirely within its

rights to sell any conventional weapon to Cuba, China, Syria, Venezuela, or any other dictatorship. Such a treaty would be a buyer’s and seller’s charter.

At the meeting of the Preparatory Committee, the U.S. should support recognizing the right of democracies to buy and sell weapons, but it should not accept that dictatorships possess this right, because they do not respect the inherent right of self-government and are not properly constituted states. Universalizing this right in a treaty would make it exceptionally difficult to move toward a world in which the right of import and export belongs only to democratic states.

4. The Danger Posed by Unverifiable Treaties. Over the past two decades, international arms control has increasingly been treated as a human rights issue. This is a serious error. Once arms control becomes a moral imperative, arms control treaties become statements of noble aspirations. The result is that these treaties are broad, unverifiable instruments that ill-governed states sign on to happily, because their signature substitutes for any genuine achievement. Where human rights are concerned, this is wrong. But where arms control is concerned, this is both wrong and dangerous.

At the meeting of the Preparatory Committee, the U.S. should not support any treaty that does not live up to President Reagan’s dictum of “trust, but verify.” This means that the treaty should have a limited scope, be based on reliable data from all signa-

1. U.N. General Assembly, “The Arms Trade Treaty: Revised Draft Resolution,” October 28, 2009, at <http://unbisnet.un.org:8080/ipac20/ipac.jsp?session=12D8519910W5K.28271&profile=bib&uri=full=3100001~!907643~!2&ri=1&aspect=subtab124&menu=search&source=~!horizon#focus> (July 7, 2010).
2. Ted R. Bromund, “The Obama Administration Makes the Wrong Call on the U.N.’s Arms Trade Treaty,” Heritage Foundation *WebMemo* No. 2653, October 15, 2009, p. 1, at <http://www.heritage.org/Research/InternationalOrganizations/wm2653.cfm>.
3. Ted R. Bromund and Steven Groves, “The U.N.’s Arms Trade Treaty: A Dangerous Multilateral Mistake in the Making,” Heritage Foundation *Backgrounder* No. 2309, August 21, 2009, p. 13, at <http://www.heritage.org/Research/InternationalOrganizations/bg2309.cfm>.
4. Ted R. Bromund, Ray Walser, and David B. Kopel, “The OAS Firearms Convention Is Incompatible with American Liberties,” Heritage Foundation *Backgrounder* No. 2412, May 19, 2010, pp. 8–10, at <http://www.heritage.org/Research/Reports/2010/05/The-OAS-Firearms-Convention-Is-Incompatible-with-American-Liberties>.
5. U.N. General Assembly, Department of Public Information, “Biennial Meeting on Implementation of 2001 Programme of Action Against Illicit Small Arms Trade Adopts Final Outcome Document, Concludes Session,” June 18, 2010, at <http://www.un.org/news/press/docs/2010/dc3251.doc.htm> (July 7, 2010); U.N. Fourth Biennial Meeting of States on Small Arms and Light Weapons, “Discussion Paper on Promotion of a Dialogue and a Culture of Peace by Encouraging Education and Public Awareness Programmes on the Problems of the Illicit Trade in Small Arms and Light Weapons in All Its Aspects,” 2010, at <http://www.poa-iss.org/bms4/documents/draftnonpapers/discussionpaper-cultureofpeace.doc> (July 7, 2010).

tories, be open for signature only to states that can credibly promise that such data will continue to be available and updated, and have monitoring mechanisms that will not discriminate against democratic states in general or the U.S. in particular.

5. The Danger Posed by the Quest for Consensus. Secretary Clinton's October announcement contained an important caveat: The U.S. will actively support negotiations only if the 2012 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." Unfortunately, the U.S. cannot ensure that the conference will operate on such a basis.

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. This is what happened at the recent review conference on the Nuclear Non-Proliferation Treaty: The U.S.'s desire to achieve consensus meant that the U.S. was forced to allow Iran to escape condemnation and allow the conference to focus on Israel.

At the meeting of the Preparatory Committee, the U.S. should make it clear that it will not participate in the treaty process if states such as Russia,

China, Pakistan, Iran, and Venezuela seek to use it to legitimize their *de facto* maintenance of export control standards that are lower than those of the U.S.

What the U.S. Should Do. The Obama Administration's decision to participate in the negotiations on the Arms Trade Treaty was unwise. These negotiations are based on the mistaken premise that the reason why terrorists have access to weapons is because of inadequate national legal controls on exports. In reality, terrorists have access to weapons because states, or state-dominated institutions, arm them.

The problem is not a shortage of law; it is a shortage of states that do not fulfill their existing obligations not to supply terrorists with weapons. That is the reason why the treaty will fail and why its negotiation—which must be undertaken in pretended partnership with these states—poses so many dangers to the liberties of American citizens and the interests of the U.S.

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