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U.S. Needs Red Lines for Arms Trade Treaty Negotiations

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The final Preparatory Committee (PrepCom) for the U.N. Arms Trade Treaty (ATT) in February decided that, in preparation for the July 2–27 conference in New York that will finalize the ATT, U.N. member states should by March 31 submit short statements on the provisions that they believe should define any ATT.

The U.S. should use this opportunity to establish firm red lines for the July conference and to make it clear that it will reject an unacceptable ATT that originates in either the July conference or in any other venue.

Administration's Negotiating Strategy Is Risky

The Obama Administration wants to achieve two incompatible objectives. It wants the ATT to embody what it describes as a “strong international standard.” It also wants to

avoid playing the role of treaty spoiler in the hope that this will prevent the U.S. from becoming the rallying point for the nations and activist NGOs that support an ATT. But the more the Administration urges other nations to adopt export controls on arms that are comparable to the high existing U.S. standards, the more the U.S. will be perceived as the spoiler, because it will be the nation rejecting the consensus on lower standards.

The U.S. should therefore enter the July conference with a clear understanding of the red lines that the ATT cannot cross. If it does not do so, it risks failing to make these red lines clear throughout the July negotiations and being confronted with a treaty that it cannot accept. It could still reject such a treaty by breaking consensus on the final vote, but this would almost certainly make it appear as an unprincipled spoiler.

The best way to mitigate this risk is to establish a clear and principled set of red lines now and to maintain them in public and in private through and after the July conference. The U.S. should begin to set out these red lines in the statement on ATT provisions that it can submit to the U.N. Secretary-General before March 31. This statement will form part of a background document that

will be circulated to all U.N. member states before the July conference. It is therefore an important way to build awareness that U.S. support for an ATT is not to be taken for granted.

Red Lines the U.S. Should Set

Any ATT negotiated through the U.N. will begin by assuming that dictatorships and democracies possess the same sovereign rights to buy, sell, and transfer arms. As a result, the national interests of the U.S. would be best served by having no ATT. Red lines can do no more than limit the damage that any ATT will do to U.S. interests. But an ATT negotiated without respect for the U.S.'s red lines, or outside the U.N., would be even more damaging than one that adheres to them. The necessary red lines fall into five main areas.

1. Preamble, Principles, and Goals and Objectives. The ATT's language in these areas should require signatories to adopt and enforce national-level systems that regulate the export of major conventional weapons systems in a manner analogous to that of the U.S.

The treaty should avoid making broad and unsubstantiated claims about the extent to which the arms trade is responsible for threats to international peace and security—for

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in reality, those threats derive from authoritarian U.N. member states and the terrorist organizations with which they cooperate—and it should in particular avoid language implying that support for terrorism is a legitimate aspect of the arms trade.

Finally, the treaty should not aspire to universality: Too many U.N. member states lack either the ability or the desire—or both—to fulfill the terms of a treaty with even a modest scope.

2. Scope. The treaty should be limited to major weapons systems, including tanks, military vehicles, artillery, military aircraft and helicopters, naval vessels, and missiles and missile systems. It should not include small arms, light weapons, ammunition (except for major systems), parts and components, or technology and equipment designed to develop, manufacture, or maintain either major weapons systems or small arms.

The inclusion of these items would burden the global supply chain of U.S. manufacturers, create record-keeping requirements of immense complexity, impinge on freedoms protected by the Second Amendment, and result in a treaty with such a vast scope that assessing compliance with it would be impossible.

3. Transfer Criteria. The treaty should focus solely on requiring signatories to regulate the export process for major conventional weapons. It should not attempt to set criteria that require signatories to assess the potential consequences of an arms transfer on peace and security. It is impossible to draft criteria of this sort that are genuinely immune from politicized interpretation, and it is undesirable to impose clear rules on the messy world of foreign policy,

which frequently offers only a choice between greater and lesser evils.

4. Implementation. The treaty should be implemented exclusively through effective national control systems for authorizing the export and re-export of major conventional weapons systems. The treaty should not result in any change to existing U.S. laws and regulations regarding the export of these weapons systems, nor should it impede either the current or any future revision of the U.S. export control system.

The treaty should be exclusively limited to trade that crosses international borders and should contain an explicit statement that nothing in it should be interpreted in such a way as to infringe on national constitutional protections or to require internal controls. The U.S. should announce that it intends to issue a reservation to the treaty reserving its right to engage in covert intelligence actions that include the transfer of arms.

Neither the U.N. nor any new international body should have a role in supporting or assessing the implementation of the treaty. The signatories themselves should be solely responsible for implementing the treaty, though it should not prohibit nations from providing bilateral assistance. It should not create any obligation to provide victim assistance or any other form of international assistance, to engage in a mandatory review conference, or to commit to further discussion on legally binding agreements.

Finally, implementation should be assessed by public member state reports to other treaty signatories: The U.S. should give notice that it reserves the right to regard an untruthful report as constituting a

de facto withdrawal from the treaty on the part of the reporting state.

5. Entry into Force. The recent trend has been for treaties to require fewer and fewer ratifications to enter into force. This has seriously diminished the utility and seriousness of treaties. The ATT should not enter into force until it has been ratified by a majority of U.N. member states and by all five permanent members of the U.N. Security Council. It should not require signatories to encourage other U.N. member states to ratify it; instead, it should state explicitly that it represents an agreement by its signatories to create and enforce national control systems that is binding on them alone.

In short, the ATT should not pose as international law. Rather, it should be what it in fact is: a treaty voluntarily accepted by its signatories with the intent of advancing limited, well-defined, and practical goals.

What the U.S. Should Do

The Obama Administration's decision to participate in the ATT process means that the U.S. faces a difficult task. It will be all but impossible to negotiate an ATT through the U.N. that even modestly advances the national control of exports of major conventional weapons without creating one that imposes a wide variety of requirements that would be dangerous to America's businesses, freedoms, foreign policy goals, and national interests. The only advantage of a U.N.-based process is that the U.S. has the power to say no inside it.

However, the U.S. cannot prevent other nations from breaking away from the U.N. and negotiating an ATT outside it, as they did with anti-personnel landmines and cluster

munitions. Such an ATT would not be in the U.S.'s interests.

The U.S. Should Stand on Principle

The U.S. should state clearly that it will resist any efforts by other nations to negotiate an ATT outside the U.N., just as it will not accept an unsatisfactory ATT negotiated inside the U.N. This will not be an easy course to follow, but it has the advantage of not giving U.S. sanction to an unsatisfactory treaty, no matter where it originates, and in being based on clear and consistently articulated principles that seek to protect U.S. interests, the rights of its citizens, and the responsible conduct of diplomacy.

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