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Arms Trade Treaty Risks Increasing the Threat of Armed Terrorism

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The U.N. Arms Trade Treaty (ATT) will be negotiated at a conference held July 2–27 in New York. The ATT purports to seek, in part, to reduce the ability of terrorists to acquire conventional weapons. But as the U.N. has not defined terrorism, it is at best unclear how the ATT will achieve this aim. Moreover, if the U.N. negotiations follow precedent, the ATT will include a clause that legitimates the supply of arms to terrorists.

Terrorism Frequently Cited as a Reason to Negotiate an ATT. The ATT has never focused exclusively on terrorism, but the U.N. General Assembly and influential U.N. member states have frequently asserted that one reason to negotiate an ATT is to reduce terrorists' ability to acquire conventional weapons. For example, the most recent substantive resolution in the U.N. General

Assembly on the ATT, Resolution 64/48, adopted on January 12, 2010, states that “problems relating to the unregulated trade in conventional weapons ... can fuel instability, transnational organized crime and terrorism.” In his April 16, 2012, statement of “Positions for the United States in the Upcoming Arms Trade Treaty Conference,” Assistant Secretary of State Thomas Countryman said that an ATT would “help prevent the acquisition of arms by terrorists and criminals.”

The U.N. Has Never Defined Terrorism. It would, therefore, be logical to assume that the U.N. has a definition of terrorism that will apply in the context of the ATT. But the U.N. has never adopted a definition of terrorism.

In the run-up to the 10th anniversary of the 9/11 attacks, U.N. Secretary-General Ban Ki-moon “called again for the creation of an international antiterror accord,” which “has been stymied by disagreements over what acts and which groups should be labeled as terrorist.” The Chairman of the U.N. Counterterrorism Implementation Task Force, Robert Orr, noted, “Legally, international law covers almost everything that you would want it to cover. ... [but] if someone

is accusing someone else of engaging in terrorist activities, there’s no clinical definition of whether they are or not.”¹ The ATT cannot prevent nations from arming terrorists if nations do not agree on who the terrorists are, or on what constitutes terrorism.

U.N. Security Council Has Already Addressed This Question.

The U.N.’s inability to define terrorism has not prevented it from taking action in the past. U.N. Security Council Resolution 1373, passed unanimously on September 28, 2001, in the wake of 9/11, already requires all U.N. members to take wide-ranging actions against terrorism, including “eliminating the supply of weapons to terrorists.” The council is supposedly responsible for maintaining international peace and security, and, under Chapter 5 of the U.N. Charter, has the power to back up its resolutions with armed force. The ATT, by contrast, will be based on national implementation and will not fall under Chapter 5. It will have less authority than Resolution 1373, and yet it is supposed to succeed where that resolution has palpably failed.

Relevant U.N. Declarations Regularly Legitimate Terrorism.

At best, then, the ATT would have no effect on terrorism. But it could

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easily *increase* the risk of armed terrorism. U.N. declarations regularly contain a clause to the effect that the U.N. recognizes:

the right of self-determination of all peoples, taking into account the particular situation of peoples under colonial or other forms of alien domination or foreign occupation, and ... the rights of peoples to take legitimate action in accordance with the Charter of the United Nations to realize their inalienable right of self-determination.

This quotation comes from the Chairman's Draft Paper, the closest equivalent to a draft ATT currently available.² But it is also part of many other U.N. declarations. For example, the Vienna Declaration and Programme of Action, produced by the U.N. World Conference on Human Rights in 1993, contains a nearly identical statement.³ As it is also included in the ATT's precursor, the 2001 U.N. "Programme of Action to Prevent, Combat, and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects," the precedent for its incorporation into the ATT has been clearly established.⁴

Those new to the U.N. system may not realize the meaning of this clause.

It was originally intended by African nationalists to refer to the European colonial empires, and by Islamic nations to refer to the Palestinians ("peoples under ... foreign occupation"). The African context has faded, but the coded reference to Israel—and to India, because of its dispute with Pakistan over Kashmir—has endured. In recent years, the clause has also come to be understood as a reference to the U.S. and allied presence in Iraq and Afghanistan. The entire clause, therefore, recognizes the supposed right of Hamas, Hezbollah, the Taliban, and other terrorist organizations—in the name of pursuing the "inalienable right of self-determination"—to attack Israel, India, the U.S., and its allies.

ATT Risks Becoming a "Get Out of Jail Free" Card for Terrorism's Backers. An ATT that contains this clause would give any nation that wishes to assist a terrorist organization a "get out of jail free" card. If confronted by the U.S. with the claim that their supply of weapons to terrorists constituted a violation of the ATT, they could simply reply that the ATT had recognized the right of all peoples to realize their self-determination, and that the terrorists in question represented peoples who were engaged in an armed struggle with a nation that did not respect this right. This is why

the U.N. has never been able to define terrorism: Too many U.N. member states argue that what the U.S. describes as terrorism is a legitimate struggle for self-determination.

Efforts to define terrorism have been blocked by the members of the Organization of Islamic Cooperation, which contains 56 U.N. member states and has successfully prevented the development of any definition that would apply, for example, to the terrorist organizations that attack Israel. The OIC Charter, adopted in 2008, notes that it is dedicated to supporting "the struggle of the Palestinian people, who are presently under foreign occupation."⁵ This is the same phrase that appears regularly in U.N. declarations. Since the ATT is centrally concerned with the transfer of conventional arms, it is particularly important that it does not legitimate the supply of weapons to terrorists. This will be difficult to achieve: The ATT's supporters want it to be a universal treaty, i.e., one signed and ratified by all U.N. member states, but is unlikely that the OIC members will agree to any ATT that does not include this clause.

What the U.S. Should Do. The U.S. should never sign, and the Senate should never ratify, a treaty containing a clause that legitimates terrorism. In the July negotiations, this should be a red line, and the

1. "U.N. Chief Urges Creation of International Pact Against Terrorism," *Global Security Newswire*, September 9, 2011, <http://www.nti.org/gsn/article/un-chief-urges-creation-of-international-pact-against-terrorism/> (accessed June 4, 2012).
2. "Report of the Preparatory Committee for the United Nations Conference on the Arms Trade Treaty," U.N. General Assembly, March 7, 2012, http://www.un.org/disarmament/convarms/ATTPrepCom/Documents/PrepCom4%20Documents/PrepCom%20Report_E_20120307.pdf (accessed June 4, 2012).
3. "Vienna Declaration and Programme of Action," U.N. General Assembly, July 12, 1993, <http://www.unhcr.ch/huridocda/huridoca.nsf/%28symbol%29/a.conf.157.23.en> (accessed June 4, 2012).
4. "Programme of Action to Prevent, Combat, and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects," United Nations, 2001, <http://www.poa-iss.org/PoA/poahtml.aspx> (accessed June 4, 2012). For more on the program, see Ted R. Bromund and David Kopel, "As the U.N.'s Arms Trade Treaty Process Begins, U.N.'s 'Programme of Action' on Small Arms Shows Its Dangers," Heritage Foundation *WebMemo* No. 2969, <http://www.heritage.org/research/reports/2010/07/as-the-uns-arms-trade-treaty-process-begins-uns-programme-of-action-on-small-arms-shows-its-dangers>.
5. Organisation of Islamic Cooperation, "OIC Charter," March 14, 2008, http://www.oic-oci.org/page_detail.asp?p_id=53 (accessed June 4, 2012). See also the definition offered by the OIC in 2002, in "Report of the Ad Hoc Committee Established by General Assembly Resolution 51/210 of 17 December 1996," United Nations, 2002.

U.S. should publicly state that it will break consensus on the adoption of the treaty text if any such clause—including one similar to the standard U.N. declaration—appears in it.

The U.S. should also state that an ATT that does not define terrorism cannot hope to have any effect on the ability of terrorists to acquire conventional weapons. It should announce that the only definition of terrorism it can accept is one that is fully compatible with U.S. law, which states that terrorism is “premeditated, politically motivated violence perpetrated against noncombatant

targets by subnational groups or clandestine agents.”⁶ If those who claim to support the ATT in the name of its impact on terrorism cannot accept the need for it to define terrorism, or resist a definition that is compatible with U.S. law, the treaty is not worth negotiating.

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6. “Terrorism Definitions,” National Counterterrorism Center, August 27, 2010, <http://www.nctc.gov/site/other/definitions.html> (accessed June 4, 2012).