

ISSUE BRIEF

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U.N. Arms Trade Treaty: Congress Should Show Leadership in Advance of the ATT Negotiations

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Next month, the United Nations will hold a second negotiating conference on the Arms Trade Treaty (ATT). The first conference, held in July 2012, failed to reach consensus agreement on a treaty text. Before that conference, both the Senate and House played a constructive role in the treaty process by making their wide-ranging concerns about the ATT clear to the executive branch. Congress should now show similar leadership before the negotiations resume.

Congressional Leadership Imperative. In 2009, the Obama Administration reversed the policy of the George W. Bush Administration and agreed to participate in the negotiation of an ATT. But momentum has been building for an ATT for over a decade. Driven by a few committed nations, and ultimately by a campaign by liberal nongovernment

organizations, the ATT has become a symbol, in the eyes of the true believers, of “truth and justice.” These lofty aspirations mean that, when the treaty fails to achieve its aims, its backers will not give up; they will demand an even more restrictive treaty.

Furthermore, because the ATT seeks to control the entire world’s trade in all conventional arms, it cannot be completely negotiated at one or even two U.N. conferences. It will therefore be fleshed out for years to come with best practice guidelines, implementation recommendations, and amendments.

This makes it particularly important for Congress to lead now, because—as the treaty backers know—the deeper the U.S. is pulled into this scheme, the more difficult it will be for the U.S. to extricate itself. The ATT is thus fundamentally a process that will last for years or even decades, not simply a treaty that need only be considered once.

Past Congressional Leadership Shows the Way. The Senate has the lead responsibility on treaties, while the House has a shared responsibility for any necessary implementing legislation. Furthermore, authorization for any expenditure of funds related to the treaty must originate in the House. In 2012, both the Senate and

the House constructively exercised these responsibilities by setting out the serious worries that the ATT raised for them in the realms of both foreign and domestic policy.

In the Senate, Senator Jerry Moran (R-KS) introduced the Second Amendment Sovereignty Act (S. 2205) in March. The act sought to prohibit the Administration from participating in negotiations that would in any way restrict rights protected by the Second Amendment. In July, Moran led 50 of his Senate colleagues in writing a letter to President Obama and then-Secretary of State Hillary Clinton that set out their concerns with the ATT and stated that they would oppose the ratification of any ATT that did not “explicitly recognize the legitimacy of lawful activities associated with firearms, including but not limited to the right of self-defense.”

In November, when the March negotiating conference was announced, Moran reiterated that opposition to the ATT in the Senate remained strong.¹ In January, Senator John Barrasso (R-WY), in a question for the record submitted to Secretary of State-Designate John Kerry, reiterated his concern that the ATT would create a U.N. firearms registry. Kerry, who was confirmed

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shortly thereafter, stated in reply that he would “not support a treaty that impacts domestic arms transfers or creates a U.N. gun registry.”

In the House, Representative Mike Kelly (R-PA) led 130 Members in expressing their concerns about the ATT in a July letter to President Obama and then-Secretary of State Clinton in which they pledged that they would “oppose the appropriation or authorization of any taxpayer funds to implement a flawed ATT.” In November, Kelly introduced a resolution on the ATT with 89 cosponsors that again set out a wide range of concerns with the draft text of the treaty. This resolution was particularly significant because it resolved to withhold funding for implementing any ATT until it passes through the entire ratification process.²

Together, these bipartisan efforts made it clear that both the Senate and the House were watching the negotiations carefully and that any ATT that failed to meet their concerns would meet a cold reception if submitted for the advice and consent of the Senate. Indeed, *The Economist*, a strong supporter of the ATT, regarded the Senate letter as a central reason why the July conference failed to reach consensus.³

The ATT Remains Deeply Flawed. Even its supporters acknowledge that the July treaty text is not ready for prime time. Owing to the pressures of time, it is poorly drafted and contains many

anomalies and errors. Many of these problems will likely be fixed during the March conference. But the treaty’s deeper problems are unlikely to be remedied, and it is on these problems that congressional attention should focus.

The current treaty text acknowledges in its preamble the existence of “the legitimate trade and use of certain conventional arms” by private citizens, but it does not exempt civilian firearms from its scope or recognize the individual right of personal self-defense. The ATT is supposed to be concerned only with the international trade in conventional weapons. It should therefore be able to exempt domestic, civilian firearm ownership and use, as governed by national laws and constitutions, from its scope without any damage to its intended object and purpose.

The treaty also contains, at its heart, a troubling paradox. It is supposedly based on respect for national sovereignty and implementation at the national level. But the criteria it sets out for assessing proposed transfers of conventional arms are not defined solely at the national level. The criteria are also vague and easily politicized.

Thus, the ATT is likely to restrain law-abiding democracies far more effectively than it restrains lawless dictatorships, because only the law-governed nations will take its evolving standards seriously. Precisely because—unlike many nations—the

U.S. is a law-abiding nation that actually implements treaties to which it is party, it cannot accept an ATT containing commitments that are subject to redefinition by other nations.

Finally, Congress should be aware that, under the U.S.’s understanding of customary international law, the U.S. is obliged to uphold the object and purpose of a treaty signed by the President even if it has not received the advice and consent of the Senate. This is a serious loophole in the U.S. treaty process, and Congress should state that it does not recognize that the U.S. is under any obligations from the ATT until it passes fully through the treaty ratification process, including the signature into law of any necessary implementing legislation.

Congressional Leadership Matters. The Constitution places the responsibility for negotiating treaties in the executive branch. But Congress plays a vital role in the U.S. treaty process, and its voice is heard at the U.N. and in capitals around the world. To maximize its influence, it should speak clearly before the March conference opens and make it plain that it continues to pay close attention to the negotiations.

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1. News release, “Sen. Moran Introduces Bill to Protect Second Amendment Rights from U.N. Arms Treaty,” office of Senator Jerry Moran (R-KS), March 20, 2012, <http://moran.senate.gov/public/index.cfm/news-releases?ID=0763b485-e441-4de4-b61f-eb9366f741f2> (accessed February 26, 2013); office of Senator Jerry Moran, letter to President Obama and Secretary Clinton, July 26, 2012, http://moran.senate.gov/public/index.cfm/files/serve?File_id=9cd86202-9498-47ca-8b8d-534bf60b52f7 (accessed February 26, 2013); and news release, “Sen. Moran: Senate Opposition to U.N. Arms Trade Treaty Remains Strong,” office of Senator Jerry Moran, November 15, 2012, <http://moran.senate.gov/public/index.cfm/news-releases?ID=0c9b27b5-524e-41f9-a523-a83d87fd7c52> (accessed February 22, 2013).
2. News release, “Rep. Kelly Voices Concern with U.N. Arms Trade Treaty (ATT),” office of Representative Mike Kelly (R-PA), July 2, 2012, <http://kelly.house.gov/press-release/rep-kelly-voices-concerns-un-arms-trade-treaty-att> (accessed February 22, 2013).
3. Editorial, “One More Heave,” *The Economist*, August 4, 2012, <http://www.economist.com/node/21559900> (accessed February 22, 2013).