

ISSUE BRIEF

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Congress Should Stop Implementation of the U.N. Arms Trade Treaty

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On September 25, 2013, Secretary of State John Kerry signed the U.N. Arms Trade Treaty (ATT). In the past year, the ATT has gone from bad to worse as the aims of its supporters and its failure in practice have become obvious. Yet the Obama Administration, without even transmitting the treaty to the Senate, has sought to implement it. Congress should hold hearings to reveal the extent to which U.S. policies have been shaped by the ATT and to ensure it is not implemented before it passes through the entire U.S. treaty process.

The ATT Today

The ATT will come into force for its signatories 90 days after it is ratified by the fiftieth national signatory. As of September 23, it has 45 ratifications, and it is likely to receive its fiftieth in the near future. Treaty advocates claim it is finding unprecedented international support: The reality is that all but 13 of the ratifications have come from Europe or small, impoverished islands. Outside Europe, the only major nations to have ratified are Australia, Japan, Mexico, New Zealand, and Nigeria.

Though justifications for the treaty focused on armed conflict in Africa, only four African nations have ratified the treaty. Of the top 20 arms exporters, only the eight in the European Union, plus Norway and Switzerland, have ratified or are close to doing

so. None of the world's genuinely irresponsible arms exporters has ratified the treaty.

On the assumption that the treaty will soon be ratified by another five nations, planning has begun for the First Conference of States Parties (CSP) to the ATT, which will likely be held in 2015 in Mexico. The CSP will ultimately be responsible for amending the treaty. Mexico has taken the lead in planning for the CSP and, in consultations for it, collaborated with Control Arms, the non-governmental organization (NGO) that led the campaign for the treaty, to exclude all NGOs that did not actively promote the treaty.

Mexico has long wanted an ATT that would apply to firearms legally transferred entirely inside the United States: Its leadership of the CSP and its collaboration with activist NGOs are disturbing on Second Amendment grounds. More broadly, the Obama Administration's decision to support the negotiation of the ATT through the U.N. has produced the worst of both worlds: a treaty backed by the U.N. but dominated in practice by its cheerleaders.

The Hypocrisy of the ATT's Supporters

In the past year, the democracies have wisely demonstrated that they will ignore the ATT when it is inconvenient. This month, Congress, at the request of the Administration, voted to authorize direct U.S. aid to Syrian rebels. Britain, France, Germany, and Italy, all of which have ratified the ATT, announced they are prepared to arm Kurdish fighters. France is also arming the Syrian rebels and refused for months to suspend delivery of two helicopter carriers to Russia, in spite of Russian incursions into Ukraine.¹ These actions are *prima facie* violations of Article 7 of the ATT.

This paper, in its entirety, can be found at <http://report.heritage.org/ib4278>

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The ATT's supporters, however, focused not on condemning these actions, but on a public campaign during the 2014 Gaza War designed to use the ATT to pressure the U.S. and Britain to end arms sales to Israel. Their call for a U.N. arms embargo on both sides of the conflict was disingenuous: It ignored Iran's responsibility for arming Hamas in defiance of an existing U.N. Security Council export ban.²

The U.S. Continues to Promote the ATT

In spite of its track record, the Administration has continued to champion the ATT. In October, Principal Deputy Assistant Secretary in the Bureau of International Security and Nonproliferation Vann Van Diepen asserted that, while the U.S. did not need to do anything to implement the treaty, other governments would need to take many steps, including some not specifically required by the treaty.³

This argument points out the irrelevance of the treaty, which Van Diepen noted can only work if all nations have effective legal frameworks and control their own borders. On the other hand, the argument that treaties morally (if not legally) require nations to take actions beyond those specified in the treaty text is a dangerous one that could easily be turned against the United States.

Speaking in November, Assistant Secretary of State Thomas Countryman stated that the ATT "would not require any additional export or import controls for the United States, full stop." But on January 15, 2014, the Administration announced a new conventional arms export control policy that bore a strong similarity to the criteria in the ATT.⁴ On April 23, 2014, Mr. Countryman stated explicitly that "we're already implementing the treaty."⁵ Since then, the Administration, in spite of Congressional bans on implementation funding, has continued to promote the provision of foreign aid to ATT signatories.⁶

Congressional Action Vital

The ATT is binding only on those nations that have fully ratified it, but its advocates are starting to make a new claim: that, after it receives its fiftieth ratification, it will become international law that will presumptively apply to the United States.⁷ This mirrors the broader U.N. drive to incorporate the ATT into U.N. gun control initiatives.⁸ The strategy of the activists is clear: work through the CSP and every other venue to elaborate the ATT and embed it so deeply into the international system that the U.S. will be pressured into compliance with it, and with the policies the activists prefer.

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1. Associated Press, "Germany, Italy, Ready to Send Arms to Iraqi Kurds," *The New York Times*, August 20, 2014, <http://www.nytimes.com/aponline/2014/08/20/world/europe/ap-eu-germany-iraq.html> (accessed September 23, 2014), and "France Suspends Mistral Warship Delivery to Russia," *France 24*, September 4, 2014, <http://www.france24.com/en/20140903-france-suspends-plans-deliver-first-mistral-helicopter-carrier-russia/> (accessed September 23, 2014).
 2. Control Arms Campaign, "Gaza: Stop the Arms, Stop the Killing," *Control Arms*, August 6, 2014, <http://controlarms.org/en/news/control-arms-members-call-for-an-immediate-embargo-on-arms-to-israel-hamas-and-other-palestinian-armed-groups/> (accessed September 23, 2014).
 3. Vann Van Diepen, "Next Steps in Realizing the Goals of the Arms Trade Treaty," U.S. Department of State, October 3, 2013, <http://www.state.gov/t/isn/rls/rm/2013/215427.htm> (accessed September 23, 2014).
 4. Thomas Countryman, "The Arms Trade Treaty: Just the Facts," remarks at the Stimson Center, Washington, DC, November 7, 2013, <http://www.armscontrol.org/print/6014#transcript> (accessed September 23, 2014), and Ted R. Bromund, "Arms Trade Treaty: Congress Warns White House on Backdoor Implementation," *Daily Signal*, April 3, 2014, <http://dailysignal.com/2014/04/03/arms-trade-treaty-congress-warns-white-house-backdoor-implementation/>.
 5. Thomas Countryman, "Africa and the Arms Trade Treaty," remarks at the Center for Strategic and International Studies, Washington, DC, April 23, 2014, <https://csis.org/event/africa-and-arms-trade-treaty> (accessed September 23, 2014).
 6. "The Arms Trade Treaty: Preparing for the First Conference of States Parties," Wilton Park, September 2014, https://www.wiltonpark.org.uk/conference/wp1341/#conference_introduction (accessed September 19, 2014).
 7. Anna Macdonald and Duncan Green, "Power and Change Case Study: The Arms Trade Treaty," Oxfam, August 6, 2014, <http://oxfamblogs.org/fp2p/how-did-a-global-campaign-bring-about-a-un-arms-trade-treaty/> (accessed September 23, 2014).
 8. Ted R. Bromund, "After U.S. Signature, Dangers of U.N. Arms Trade Treaty Begin to Surface," Heritage Foundation *Issue Brief* No. 4126, January 14, 2014, <http://www.heritage.org/research/reports/2014/01/dangers-of-un-arms-trade-treaty-begin-to-surface>.
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The ATT has done nothing to impede the irresponsible portions of the arms trade, and its democratic signatories have demonstrated they will ignore it when vital interests are at stake. But it is still dangerous, because its advocates seek to use it primarily against the U.S., Britain, and Israel, because it is shaping U.S. export control policy and because it is being driven forward behind closed doors by nations and activists that want to expand the scope of the treaty in ways the United States cannot accept.

The U.S. Senate, led by Jerry Moran (R-KS) and Joe Manchin (D-WV), and the U.S. House of Representatives, led by Mike Kelly (R-PA) and Collin Peterson (D-MN), have repeatedly warned the Administration that the ATT is unacceptable.⁹ These bipartisan warnings have gone unheeded. In the coming year, Congress should hold hearings to reveal the full extent of the Administration's implementation of the treaty and ensure that the U.S. is not slowly pulled into compliance with it, as the activists desire.

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9. News release, "Sens. Moran, Manchin, Inhofe and Half of Senate to White House: U.S. Will Not Be Bound by U.N. Arms Trade Treaty," Office of Sen. Jerry Moran (R-KS), October 15, 2013, <http://www.moran.senate.gov/public/index.cfm/news-releases?ID=2bf77dee-cd0b-44dd-a779-8e9183c571a5> (accessed September 23, 2014), and press release, "Rep. Kelly Sends Letter to White House Opposing Arms Trade Treaty," Office of Rep. Mike Kelly (R-PA), October 15, 2013, <http://kelly.house.gov/press-release/rep-kelly-sends-letter-white-house-opposing-arms-trade-treaty> (accessed September 19, 2014).