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The U.S. Goal at the Conference of States Parties of the Arms Trade Treaty: Keep the Treaty on Its Downward Spiral

Ted R. Bromund, PhD

The third annual Conference of States Parties (CSP3) of the Arms Trade Treaty (ATT) will be held from September 11–15, 2017, in Geneva, Switzerland. The United States has signed—but not ratified—the ATT. While the U.S. should attend the CSP as an observer state, it should do so in the clear recognition that the ATT is not in the interests of the United States and that there is no support for its ratification in the Senate.

In Geneva, the U.S. will not have a vote, but it should intervene in the debate to: (1) speak honestly about the ATT’s failures; (2) make it clear that it will make no voluntary financial contributions to support the ATT; and (3) warn the states parties against launching a propaganda campaign in support of the treaty or amending the treaty to expand its requirements. Finally, the U.S. should unsign the ATT as rapidly as possible.

The Status of the ATT

The purported purpose of the ATT is to “regulate the international trade in conventional arms by establishing the highest international standards and to prevent and eradicate illicit trade and diversion of conventional arms.”¹ The ATT opened for signature on June 3, 2014, and entered into force

on December 24, 2014. It has 130 signatories and 92 states parties. The U.S. signed the ATT on September 25, 2013.

Many of the world’s largest and most irresponsible exporters of arms, including Iran, the People’s Republic of China, and Russia, have neither signed nor ratified the ATT. Of the 75 states parties required to file a report on their treaty activities in 2016, only 42 have done so. Congress has repeatedly opposed the ratification of the ATT and banned appropriations to prevent it from being implemented in the U.S.²

The Agenda Items for CSP3

The preparatory process for CSP3 is well under way. While surprises can never be ruled out, CSP3 appears likely to focus on treaty implementation, reporting under the treaty, treaty universalization, and the treaty’s Voluntary Trust Fund (VTF).

Treaty Implementation. Treaty implementation is under discussion in a working group. Only 70 states—barely half the total number of signatories—attended the working group meeting held on February 6–7, 2017. The meeting concluded that while traditional arms-exporting states face questions about how to implement some treaty criteria “such as gender-based violence,” other nations “have to build national control systems from the ground up.”³ As the meeting report dryly notes, “This constitutes a demanding task.” The meeting found broad support for focusing on a few treaty obligations and for “leveraging the ATT sponsorship programme [the funds given to less wealthy nations to subsidize their attendance] to ensure as wide a geographical participation as possible.”⁴

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The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002
(202) 546-4400 | heritage.org

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Treaty Reporting. Although it is supposedly central to the treaty's success, reporting under the ATT has lagged badly. The relevant working group noted the need to improve reporting compliance, but explained the shortfall is due in part to what it asserts is "reporting fatigue." The working group emphasized the need for CSP3 to focus on various electronic ways of improving compliance and information sharing. It explicitly downplayed the need to address issues "related to the quality and completeness of reports."⁵

Treaty Universalization. The ATT's preamble emphasizes the "desirability of achieving universal adherence to the Treaty." In fact, after an initial rush, national signatures and ratifications have slowed to a crawl. The last nation to sign the ATT was San Marino on December 19, 2014, and only five nations have ratified it over the past 12 months. The relevant working group made few proposals to remedy this state of affairs. It did, however, suggest coordinating with pro-treaty nongovernmental organizations (NGOs) and "designing and implementing universalization outreach strategies and activities" to win over nations that have not ratified the ATT.⁶ This appears to foreshadow a U.N.-led propaganda campaign in favor of the ATT.

The Voluntary Trust Fund. According to Article 16(3) of the ATT, its states parties are obligated

to establish a VTF to "assist requesting States Parties requiring international assistance to implement" the ATT. Contributions to the VTF are voluntary. As of June 1, 2017, contributions totaling \$2.004 million had been pledged or received from 10 nations. As no national applications for assistance were received by February 16, 2017, the ATT Secretariat made a variety of promotional efforts, which resulted in 19 applications being received, of which 18 were shortlisted. Of these, nine were approved, two were approved with conditions, and seven were rejected but afforded a chance to revise and re-submit. Project budgets are capped at \$100,000.⁷

Summarizing the ATT's Weaknesses

The position of the U.S. State Department on the ATT is that the treaty provides "a basis for insisting that other countries improve national control systems for the international transfer of conventional arms," and that "United States national control systems and practices to regulate the international transfer of conventional arms already meet or exceed the requirements of the Treaty."⁸

The agenda of CSP3 demonstrates that the basis the ATT provides is, at best, an exceedingly weak one. The states parties show little interest even in improving the quality of their reporting. Indeed,

1. "The Arms Trade Treaty," The ATT Secretariat, <http://www.thearmstradetreaty.org/index.php/en/the-arms-trade-treaty> (accessed July 24, 2017).
2. Ted R. Bromund, "A Simple Plan in 2017 for the Arms Trade Treaty: Return to Sender," Heritage Foundation *Issue Brief* No. 4648, <http://www.heritage.org/trade/report/simple-plan-2017-the-arms-trade-treaty-return-sender>.
3. "Co-Chairs' Summary Report from the Meeting Held on 6-7 February," Ad Hoc ATT Working Group on Effective Treaty Implementation, February 15, 2017, http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/att/working-groups/implementation/documents/WGETI_-_Co-chairs_Summary_Report_of_first_meeting_on_6-7_February_2017.pdf (accessed July 24, 2017). The phrase "national control systems" is not, in itself, a reference to gun control. It refers to national legal, administrative, and policy systems that control the import, export, transit, trans-shipment, brokering, and diversion from lawful uses of all arms, from handguns to battleships. The U.S. already has such systems. On the other hand, many ATT proponents do support gun control.
4. Ibid.
5. "Issues Paper for the Group's Second Meeting," ATT Working Group on Transparency and Reporting, February 15, 2017, http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/att/working-groups/transparency/Documents/170214_ATT_WGTR_-_Issues_Paper_for_the_Groups_Second_Meeting.pdf (accessed July 24, 2017).
6. "Co-chairs' Summary Report of Meeting Held on 9 February 2017," ATT Working Group on Treaty Universalization, February 15, 2017, http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/att/working-groups/universalisation/Documents/WGTU_-_Co-chairs_Summary_Report_of_first_meeting_on_9_February_2017.pdf (accessed July 24, 2017).
7. "Statement by H.E. Ambassador Michael Biontino," Chairman of the Voluntary Trust Fund Selection Committee, February 16, 2017, http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/att/csp3-prep/documents/20170216_VTF_SC_Chairs_Statement_to_1st_Prep_Mtg_CSP3-2.pdf (accessed July 27, 2017), and "Statement by H.E. Ambassador Michael Biontino," Chairman of the Voluntary Trust Fund Selection Committee," June 1, 2017, http://www.thearmstradetreaty.org/images/ATT_VTF/20170601_3_PrepMtg_ATT_CSP3_-_Statement_Chair_VTF_SC-V2.pdf (accessed July 24, 2017).
8. U.S. Department of State, *Digest of United States Practice in International Law 2016, 2017*, p. 927, <https://www.state.gov/documents/organization/272127.pdf> (accessed July 24, 2017).

many states parties have not fulfilled their reporting requirements under the treaty at all. If many of these states parties need to be offered “sponsorships” merely to show up at CSPs, they clearly do not have the administrative competence to build sophisticated national control systems “from the ground up,” or to maintain them afterward. The VTF’s \$2 million will certainly not close this competence gap. The evidence of the preparations for CSP3 suggests that, for most of the world, the ATT will continue to fade into irrelevance, becoming ever more focused on issues of treaty process and demands for financial assistance.

But in spite of the State Department’s claims, the NGOs that promoted the ATT had little interest in improving control systems around the world, especially if that involved confronting undemocratic powers like Iran. Their focus was on constraining the U.S. and other Western powers. Thus, in early 2017, they mounted a legal challenge to British arms exports to Saudi Arabia. While the British government defeated this challenge, the fact remains that the NGOs behind the ATT succeeded in using it (and related U.K. legal instruments) to impose considerable administrative burdens on the British government—burdens that are likely to distort its arms export approval process going forward—and to carve out a legal foothold for future legal challenges.⁹ The emphasis the treaty implementation group gives to “gender-based violence” suggests one form such challenges may take.

In short, the ATT is the worst of both worlds—ineffective in achieving its purported end (which is a reason the U.S. should not be party to it) and constraining insofar as it concerns the U.S. and the West (which is a reason for the U.S. to oppose it). The ATT’s only saving grace is that its ineffectiveness will over time reduce the seriousness accorded to it and thus limit its ability to constrain the U.S. It should therefore be the goal of the U.S. to enhance the ATT’s growing reputation for uselessness.

What the U.S. Should Do

There are three steps the Trump Administration should take before and during CSP3:

1. Attend CSP3 as an Observer State. The Administration should notify the ATT Secretariat that it plans to attend future CSPs and other relevant meetings as an observer state and that it is willing to pay a share of CSP and other meeting expenses proportionate to the size of its delegation. The U.S. should make this commitment because, although the ATT is a failure, it is not going to go away. The U.S. therefore needs to keep an eye on it. However, the U.S. should not accept the outcome of the first CSP, which decided that CSP costs should in the future be assessed on a modified U.N. assessment scale and thereby sought to require the U.S. to pay 22 percent of the expenses. The U.S. should pay its fair share of CSP expenses—and no more.

2. Speak Honestly About the ATT and Its Failures. The U.S. will not have a vote at CSP3, but it should not therefore lose its voice. At CSP1 in August 2015, the meeting, without any public U.S. objection, adopted majority rule decision making and a funding model that relies heavily on financial assessments of the U.S.¹⁰ At CSP2 in August 2016, the U.S. delegation sat silently as Mexico hailed the ATT as part of President Barack Obama’s effort to “establish administrative measures to strengthen controls over the possession and sale of arms.”

At CSP3, the U.S. should speak out against anything that would worsen this already bad treaty. The U.S. should make it clear that it will make no voluntary financial contributions to support the ATT, and that it does not accept its purported obligation to bear a disproportionate share of the CSP’s expenses. It should reject any aspersions against its foreign or domestic policies, and, if criticized, should point out the failure of ATT states parties to meet their own obligations under the treaty. Finally, it should warn the states parties against launching a propaganda campaign in support of the ATT or of expanding it by amendment, especially if those amendments are contrary to U.S. law or policy or could be interpreted as creating grounds for private legal action to enforce the treaty.

3. “Unsign” the ATT. The Administration should formally notify the Treaty Depository—the Secretary-General of the United Nations—that the

9. Ted Bromund, “The U.K. Defeats A Legal Challenge to Its Arms Sales—Or Does It?” *Forbes*, July 24, 2017, <https://www.forbes.com/sites/tedbromund/2017/07/24/the-u-k-defeats-a-legal-challenge-to-its-arms-sales-or-does-it/#6b12e4406f3a> (accessed July 24, 2017).

10. Ted R. Bromund, “In Cancun, the U.S. Gets Played,” *Weekly Standard*, August 31, 2015, <http://www.weeklystandard.com/cancun-us-gets-played/article/1023052> (accessed July 25, 2017).

U.S. does not intend to proceed to ratification of the treaty and that it does not consider itself bound by any of the treaty's obligations. This is colloquially known as "unsigning" a treaty, and is the legally proper way to ensure that the treaty has no effect on U.S. law or policy.

Conclusion

The ATT is losing momentum. That is good, because it was never going to work. Indeed, it was never intended to work. Its advocates saw it not as a way to put pressure on the world's most irresponsible and dangerous arms exporters, but as a mechanism for creating norms (and fomenting legal challenges) that would make it harder for the West to export arms.

The ATT can only harm the ability of the United States to make foreign and security policy. The fact that many of the ATT's proponents make no secret

of their belief that gun control is a human right (and that the conditions the ATT imposes on imports and exports of firearms must be interpreted in that light) is another reason for the United States to steadfastly oppose the treaty.¹¹

The ATT is fundamentally a process, not an event. The purpose of that process is to develop and advance so-called norms that will constrain the U.S. legally and politically. At CSP3, the aim of the United States is simple: to limit the damage the ATT can cause and to do what it can to keep the ATT on the path it is already following—the path to effective oblivion.

—*Ted R. Bromund, PhD, is Senior Research Fellow in Anglo-American Relations in the Margaret Thatcher Center for Freedom, of the Kathryn and Shelby Cullom Davis Institute for National Security and Foreign Policy, at The Heritage Foundation.*

11. Stuart Casey-Maslen, Andrew Clapham, Gilles Giacca, and Sarah Parker, *The Arms Trade Treaty: A Commentary* (Oxford: Oxford University Press, 2016), p. 30.