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Key Goals for the United States at the 2018 Conference of States Parties to the Arms Trade Treaty

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The Arms Trade Treaty (ATT) was signed by then-Secretary of State John Kerry on behalf of the United States on September 25, 2013, and transmitted to the Senate by the Obama Administration on December 9, 2016. The ATT is one of several treaties in the field of conventional and nuclear weapons that seek to constrain the ability of the United States to make decisions about how it defends itself and its allies.

The fourth annual Conference of States Parties to the ATT (CSP4) will be held in Japan from August 20–24, 2018. Because the ATT is not in the interests of the United States, the Administration should “unsign” the ATT. It should attend CSP4 as an observer state—with the goal of opposing any expansion of the ATT or its Secretariat.

The Risks of the ATT

The ATT, like similar treaties, seeks to work not through verifiable commitments but through moral suasion and the promotion of constraining norms. These aspirational treaties include The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (1999); the Convention on Cluster Munitions (2008); and the Treaty on the Prohibition of Nuclear Weapons (2017).¹

These treaties are not simply tools that the U.S. can use to pressure others. They have a track record of creating pressures that constrain U.S. policymaking. This is no accident: The activists who backed these treaties support them precisely *because* they want to use political suasion, legal instruments, and international law to change U.S. policy.

The activists do not rely simply on evolving norms to advance their cause. They are also resorting to the courts. In 2017, a lawsuit involving British arms sales to Saudi Arabia went all the way to the High Court. In April 2018, a coalition of human rights organizations filed a lawsuit against the Italian government and a German firm for their purported involvement in the Saudi Arabian campaign in Yemen.² Activists are not shy about accusing the U.S. of conducting “unlawful” air strikes and of committing “war crimes”—and about implying that further legal actions will hold the U.S. and its allies “responsible for violations under international law.”³

U.S. officials who argue that the ATT is a way to encourage other nations to develop arms transfer controls, or that the U.S. signature on the ATT is useful because it allows the U.S. to participate in its meetings, should think seriously about whether they would like to find themselves being forced to testify in a lawsuit alleging that the U.S. has failed to uphold the obligations it accepted by signing the ATT. It is easy to believe this cannot happen. The evidence from Britain shows it can, and the statements of the activists demonstrate that this is their intent.

This paper, in its entirety, can be found at
<http://report.heritage.org/ib4842>

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What CSP4 Is Likely to Emphasize

Like all CSPs, CSP4 is being preceded by a series of working group and informal preparatory meetings. The first set of these meetings was held in early March; the second and final set will be held in late May and early June. Together, these meetings and the materials presented at them offer insight into the topics on which CSP4 will likely focus.

The draft agenda for CSP4, as well as the structure of the working groups, makes it clear that the substantive work of CSP4 will focus on five areas:⁴

1. Treaty Implementation. The working group on “effective treaty implementation” has focused on Article 5 (the creation of national points of contact), Articles 6 and 7 (the assessment process for exports), and Article 11 (diversion). Article 5 is harmless. Articles 6 and 7 are the core of the treaty: The Swiss “food for thought” paper on these articles emphasizes the role of non-government sources of information in assessing exports of arms, which opens the door for a formal, or at least customary, role for ATT activists in the assessment process.

This paper also implies that the level of certainty in this process should be standardized and that the working group should seek to create linkages between the ATT and a wide range of other instru-

ments.⁵ Finally, Article 11 is problematic because efforts to prevent diversion—the transfer of arms from the lawful to the illicit market or to unauthorized users—can easily focus on imposing controls on authorized users, on items such as ammunition not included in the treaty’s Article 2, or on creating harmonized forms of documentation that are not compatible with the U.S.’s federal system.⁶

2. Transparency and Reporting. The U.S. is the most transparent and consistent reporter of arms exports in the world. The March meeting of the working group on transparency and reporting found, by contrast, that “a worrying amount of States Parties...have not complied with the initial and annual reporting obligations.”⁷ Given this failure, it would be particularly foolish for CSP4 to expand reporting requirements or to seek to use the existing requirements as a way to expand the treaty as a whole, an emphasis foreshadowed by a Mexican paper proposing the creation of an “information exchange mechanism” to prevent diversion.⁸ Mexico has long wanted all firearms sales—including those inside the U.S.—to be controlled by the treaty.⁹ The U.S. must resolutely oppose such measures.

3. Treaty Universalization. Treaty universalization is code for propagandistic efforts by the U.N.

1. For a full analysis of the problems inherent in the ATT, see Ted R. Bromund, “Why the U.S. Must Unsign the Arms Trade Treaty in 2018,” Heritage Foundation *Background* No. 3287, February 22, 2018, <https://www.heritage.org/global-politics/report/why-the-us-must-unsign-the-arms-trade-treaty-2018>.
2. Ewen MacAskill, “Italian Officials and German Firm Face Legal Action Over Saudi Arms Sales,” *The Guardian*, April 18, 2018, <https://www.theguardian.com/world/2018/apr/18/italian-officials-and-german-firm-face-legal-action-over-saudi-arms-sales> (accessed April 19, 2018).
3. Amnesty International, “Trump Threat Puts European Role in Lethal U.S. Drone Strikes Under New Scrutiny,” April 19, 2018, <https://www.amnesty.org/en/latest/news/2018/04/trump-threat-puts-european-role-in-lethal-us-drone-strikes-under-new-scrutiny/> (accessed April 19, 2018).
4. Secretariat of the Arms Trade Treaty, “CSP4 Draft Agenda Items,” February 9, 2018, http://www.thearmstradetreaty.org/images/CSP4/CSP4_preparatory_process/ATT_First_CSP4_Inf_Prep_Meet_CSP4_Draft_Agenda_Items_-09_March_2018.pdf (accessed April 19, 2018).
5. Arms Trade Treaty Working Group on Effective Treaty Implementation, “Food For Thought Paper on the Topic of the Prevention of Diversion (Article 11),” Switzerland, March 2, 2018, http://www.thearmstradetreaty.org/images/CSP4/CSP4_preparatory_process/March_WG_Prep_Meetings/ATT_WGETI_CSP4_Food_for_thought_on_the_topic_of_the_prevention_of_diversion_Article_11CHE.pdf (accessed April 19, 2018).
6. Ted R. Bromund, “U.S. Goals at the 2016 Meeting of the U.N.’s Small-Arms Process,” June 1, 2016, Heritage Foundation *Issue Brief* No. 4571, June 1, 2016, <https://www.heritage.org/report/us-goals-the-2016-meeting-the-uns-small-arms-process>.
7. Arms Trade Treaty Working Group on Transparency and Reporting, “Co-Chairs’ Report of 8 March 2018 Meeting,” April 4, 2018, http://www.thearmstradetreaty.org/images/CSP4/CSP4_preparatory_process/March_WG_Prep_Meetings/ATT_WGTR_CSP4_8_March_2018_meeting_Co-chairs_report_final.pdf (accessed April 23, 2018).
8. Arms Trade Treaty Working Group on Transparency and Reporting, “Information Exchange Mechanism to Prevent Diversion of Conventional Arms to the Illicit Market,” Mexico, May 29, 2017, http://www.thearmstradetreaty.org/images/CSP3_Documents/WG_documents/WGTR_-_Mexico_proposal_-_Information_exchange_mechanism_to_prevent_diversion_of_conventional_arms_to_the_illicit_market.pdf (accessed April 19, 2018).
9. Ted R. Bromund, “Want to Know What the U.N. Thinks of ‘Democracy’? Just Look at Its Arms Trade Treaty,” Fox News, September 10, 2014, <http://www.foxnews.com/opinion/2014/09/10/want-to-know-what-un-thinks-democracy-arms-trade-treaty-is-exhibit.html> (accessed April 19, 2018).

and the ATT Secretariat to persuade nations like the U.S. that have not ratified the ATT to do so. Fortunately, the working group on treaty universalization appears to have been the least active of the three treaty working groups. Its work plan, though, does state that it views the “gun lobby” as one of the foremost obstacles to treaty universalization.¹⁰ While ATT supporters regularly assert that the ATT will have “no impact on American gun rights or the Second Amendment,” they contradict themselves by complaining that, in opposing it, the National Rifle Association has “shaped the world’s gun laws.”¹¹

4. International Assistance and Cooperation. The ATT has a voluntary trust fund to support projects related to the treaty. In 2017, this fund received 17 applications, two of which were later withdrawn. Of the remaining 15 projects, 10 reported on time, and one has a reporting date in mid-April.¹² As the U.S. is rightly not contributing to the trust fund, this area is of little interest to it.

5. Matters Pertaining to the ATT Secretariat. There is no working group or public consultative process on the Secretariat. But it is likely that an effort will be made at CSP4 to expand the size of the Secretariat. This demand will likely be justified by the purported need to assist nations in meeting the treaty’s reporting requirements. Given the fact that, as of March 8, only 40 percent of the states assessed had paid their treaty dues, and that the Secretariat is projected to run out of money in December 2018, it would be ridiculous to expand its size.¹³

What the U.S. Should Do

Mitigate the ATT’s Risks by “Unsigning” the Treaty. No matter what the U.S. does, other democratic nations will slowly change their import and export policies as a result of the ATT and will seek to restrict investment in U.S. firms that they deem have exported arms in violation of the ATT’s purported norms. But the effect of the ATT on the U.S. would only be magnified if the U.S. remains a treaty signatory. As long as it does so, the U.S. is under an obligation to apply the ATT’s evolving standards to its own policies and practices. Over time, this obligation would have an effect. For that reason, the best way to mitigate the malign effects of the treaty is for the U.S. to “unsign” the treaty by notifying the Treaty Depository—the Secretary-General of the United Nations—that the U.S. does not intend to ratify the Arms Trade Treaty, and that it does not consider itself bound by the treaty.¹⁴

Recognize the Links Between the U.N.’s PoA and the ATT. On June 18–29, 2018, the Third Review Conference (RevCon3) of the U.N.’s Programme of Action to Prevent, Combat, and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (PoA) will be held in New York City. RevCon3 is the subject of a separate paper published simultaneously with this one.¹⁵ The U.S. needs to be aware that it cannot take a position at RevCon3 without considering the effect this will have on CSP4.

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10. Arms Trade Treaty Working Group on Treaty Universalization, “Work Plan for the CSP4 Preparatory Meetings,” February 9, 2018, http://www.thearmstradetreaty.org/images/CSP4/CSP4_preparatory_process/March_WG__Prep_Meetings/ATT_WGTU_CSP4_Work_Plan.pdf (accessed April 19, 2018).
 11. Amanda Erickson, “How the NRA Has Shaped the World’s Gun Laws,” *Washington Post*, March 14, 2018, https://www.washingtonpost.com/news/worldviews/wp/2018/03/14/how-the-nra-has-shaped-the-worlds-gun-laws/?utm_term=.9f276b689e26 (accessed April 19, 2018).
 12. ATT Secretariat, “Arms Trade Treaty: Status of 2017 VTF Projects and 2018 Applications,” March 9, 2018, http://www.thearmstradetreaty.org/images/CSP4/CSP4_preparatory_process/March_WG__Prep_Meetings/180309_-_ATT_Secretariat_-_Status_of_VTF_2017_Projects_and_2018_Applications.pdf (accessed April 19, 2018).
 13. ATT Secretariat, “Arms Trade Treaty: Status of Financial Contributions,” March 9, 2018, http://www.thearmstradetreaty.org/images/CSP4/CSP4_preparatory_process/March_WG__Prep_Meetings/180309_-_ATT_Secretariat_-_Status_of_Financial_Contributions.pdf (accessed April 19, 2018).
 14. The legality of “unsigning” is clear. Curtis Bradley, “Unratified Treaties, Domestic Politics, and the U.S. Constitution,” *Harvard International Law Journal*, Vol. 48, No. 307 (2007), pp. 334–335, concludes: “As a matter of international law, there seems to be little question that a nation is entitled to declare its intention not to become a party to a treaty after signing it. In fact, Article 18 of the Vienna Convention appears to contemplate exactly this possibility when it states that a nation’s object and purpose obligation continues until the nation ‘shall have made its intention clear not to become a party to the treaty.’ Nor could this action have violated the familiar *pacta sunt servanda* rule for treaties—that is, that nations are obligated to comply with their treaty obligations in good faith—because that principle applies only to treaties that a nation has ratified.”
 15. Ted R. Bromund, “U.S. Goals at the 2018 Review Conference of the U.N.’s Programme of Action on Small Arms,” Heritage Foundation Backgrounder No. 3313, May 14, 2018, <http://report.heritage.org/bg3313>.
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Because the ATT is legally binding, whereas the PoA is merely a political instrument, it is in the U.S. interest to avoid pushing issues from the PoA to the ATT, and it is thus in the interest of the U.S. for Rev-Con3 to reach a consensus outcome—but only if that consensus outcome, embodied in an agreed outcome document, is one that the U.S. can fully support.

Attend CSP4 as an Observer State and Send a Strong U.S. Delegation. The ATT, like the U.N.'s other instruments on conventional arms, will likely sink into irrelevance in time. But it will never go away. The U.S. therefore needs to keep an eye on it by attending CSP4 and future CSPs as an observer state. It might be argued that the U.S. will have less influence as an observer than as a treaty signatory and, to some extent, this is correct. But because it has not ratified the ATT, the U.S. would not have a vote at CSP4 in any case.

Moreover, the U.S. will always have substantial influence in any discussion of conventional arms exports merely because it is a major arms exporter and importer and at the center of most of the world's democratic alliances. Fundamentally, the advantage of being a treaty signatory—which gives the U.S. some power to prevent the treaty from getting even worse—is more than outweighed by the fact that, as a signatory, the treaty is binding on the U.S. A bad treaty that is binding on the U.S. is worse for the U.S. than an even worse treaty that the U.S. has not signed and therefore is not binding on the U.S.

It would be a false economy for the U.S. to attend CSP4—or any international meeting on small arms—without bringing its most experienced technical

advisers. One of the U.S.'s comparative advantages in this realm is that, unlike most nations, it has experts who know what they are talking about. Leaving them at home would be an act of folly that would create a serious risk that U.S. diplomats would support measures that they do not understand.

Oppose Any Expansion of the ATT or Its Secretariat. CSP4 is most likely to focus on defining—and in the process expanding—treaty implementation and treaty reporting. A push to expand the size and duties of the Secretariat is also probable. The U.S. must resolutely oppose all of these steps. It must do this both at CSP4 and by monitoring and being active in its preparatory process.

CSP4 is particularly important because, in late 2020—in other words, for practical purposes, at the CSP to be held in 2021—the ATT will open for amendments. The CSPs to be held in and after 2019 are likely to focus on campaigning for and drawing up those amendments. CSP4 is likely to be the last CSP that devotes most of its time to the treaty as it currently exists, instead of looking forward to the treaty the activists hope to procure. It is therefore particularly important that the U.S. work before and at CSP4 to prevent this already bad treaty from becoming worse, because any changes made in 2018 will form the foundation for amendments in the future.

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