

How the U.S. Should Follow Up Its Unsigning of the Arms Trade Treaty

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KEY TAKEAWAYS

The U.S. was right to unsign the Arms Trade Treaty, and the Trump Administration should follow up by increasing diplomatic pressure on the treaty.

The ATT has largely proven a failure, as parties to it have increasingly failed to adhere to its reporting requirements or ensure proper funding.

The Trump Administration should work with the Senate to remove the treaty from consideration and to reduce the ATT's base of signatories and states parties.

On July 18, 2019, the U.S. notified the United Nations that it does not intend to become a party to the Arms Trade Treaty (ATT).¹ This step follows the announcement made by President Donald Trump on April 26, 2019, when he stated in the course of signing a message to the Senate that he would remove the U.S. signature, affixed by then-Secretary of State John Kerry in September 2013, from the ATT. Known as an “unsigning,” the U.S.’s notification ensures the ATT has no legal effect or standing in the United States.

The U.S. action was proper and wise. The ATT is a profoundly flawed treaty that the U.S. never should have signed. But the U.S. must still make important decisions about how to deal with the treaty from the outside and what to do about the wider structure of U.N. small arms programs, of which the ATT was a part.

This paper, in its entirety, can be found at <http://report.heritage.org/ib4995>

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Unsigning the ATT Was Legal

Article 18 of the Vienna Convention on the Law of Treaties makes it clear that treaty signatories that have not ratified a treaty have a right to withdraw from the treaty by stating that a nation that has signed a treaty has an obligation to uphold that treaty until it “shall have made its intention clear not to become a party to the treaty.”

The Vienna Convention, as well as common sense and precedent,² clearly provide that the United States could legally unsign the ATT. By formally notifying the U.N. that it does not intend to become a party to the ATT, the U.S. followed the procedure set out in the ATT’s Article 24, “Duration and Withdrawal,” which states: “Each State Party shall, in exercising its national sovereignty, have the right to withdraw from this Treaty. It shall give notification of such withdrawal to the Depositary, which shall notify all other States Parties.” Thus, the U.S. had the right to unsign the ATT and followed the proper procedure for doing so.

The ATT’s Reporting Failure

One core requirement the ATT imposes on its states parties is that they submit both an initial report on the measures they have taken to implement the treaty and an annual report on their authorized or actual exports and imports of conventional arms covered by the treaty.

Only 70 of the 94 initial reports (74 percent) that are due have been submitted. Many reports that have not been submitted are now egregiously late. Moreover, of these 74 reports, 12 are confidential, making them useless in any public effort to check whether states parties are complying with their treaty obligations.³

While the record of ATT states parties on initial reports is poor, their performance in submitting their required annual reports is even worse. For 2018, states parties have submitted a mere 52 annual reports and kept seven of these confidential, and 41 states parties are delinquent in their reporting obligations. Remarkably, even as the number of states parties has grown, the number of submitted annual reports has barely grown from 2015, when 51 states parties filed reports.

This failure to report has expanded as the number of states parties to the ATT has increased, implying that overall compliance with reporting obligations has declined, which is exactly the case. For 2015, 79 percent of states parties eventually submitted their required annual report. That figure fell to 71 percent for 2016, 64 percent for 2017, and a mere 55 percent for 2018.⁴

In short, the ATT's performance on its core reporting requirements has never been good, and it has decayed over time. Therefore, the ATT is clearly a failure on this central score.

The ATT's Budgetary Failure

The ATT is supposed to be funded by contributions from its states parties, signatory states (formerly including the U.S.), and any observer states that attend its annual conferences of states parties. In 2015/16, the ATT had a budget of \$993,102.49, of which it received \$899,540.27 (90.58 percent) of the budgeted total. By 2019, the budget had risen to \$1,084,125, but the amount received had grown to only \$912,407.27 (84.16 percent) of the total.

The budgetary shortfall is bad enough, but what really stands out upon closer examination is how many states are delinquent and how few states are carrying the majority of the ATT's budgetary burden. A total of 68 states (46 percent) are delinquent for one or more years' payment, while 80 states are not delinquent.

Of the states that are party to the treaty and therefore have a particular obligation to fund it, only 63 percent have actually paid for 2019, and the percentage of states parties paying has never topped 78 percent.⁵ In other words, while the ATT currently has 104 states parties, less than two-thirds are willing to make their promised payments to the ATT.

Under the ATT, submitting the required annual reports and making the mandated contributions to its budget are the lowest possible bar for compliance. The reports cannot be meaningfully checked or validated in any way, and the required contributions are often less than \$10,000 annually. The failure of so many ATT states parties to meet even these minimal requirements demonstrates their lack of commitment to the ATT.

Key Next Steps for the United States

To make its denunciation of the ATT more effective, the Administration should:

- **Work with the Senate.** President Trump's message to the Senate states that he has "decided to withdraw the aforementioned treaty from the Senate" and he "accordingly request[s] that it be returned to me." As the President implies, this is a request, not a command: Once a treaty has been transmitted to the Senate, as the ATT was on December 9, 2016, it remains there and is subject to the treaty processes of

which the Senate is the master. While the President's message has great political significance and establishes a valuable precedent,⁶ it cannot on its own remove the treaty from the Senate. The Administration should work with the Senate to decide how best to give effect to the return of the treaty to the executive branch.

- **Make a diplomatic push to reduce the ATT's base of signatories and states parties.** The ATT now has 104 states parties and 26 signatories. The U.S. should pressure these states to follow its lead. Many in Europe will not do so, but enthusiasm in the rest of the world for the ATT has flagged badly. In practice, the treaty seeks to limit arms exports from the developed countries to the developing world, which means that governments in the developing world will find it harder to buy arms from the West and will have to turn to China, Russia, or other non-Western suppliers. While some developing-nation governments will welcome this, others will not.

The U.S. should pay particular attention to developing nations and reassure them that U.S. arms sales and follow-on agreements will not suffer if they too unsign the ATT. It would not be prudent or right to promise arms exports as a reward for unsigning the ATT, but the U.S. would be correct to point out that it does not regard the ATT as a useful treaty or as a factor to consider as part of its Conventional Arms Transfer Policy.

- **Recognize that the ATT does not stand on its own.** The strategy of the ATT supporters was to embed it in a U.N.-led network of related institutions, to mix them all together, and to assert that the parts of this casserole that were merely political promises had, as a result, become binding on everyone, including the U.S.⁷ The U.S. should immediately end its participation in most of these institutions, including the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (PoA) and the International Small Arms Control Standards (ISACS). It should also unsign the Organization of American States's Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials (CIFTA). While the Firearms Protocol as well as the International Tracing Instrument (ITI) are part of the U.N. network, on their own they are either harmless or even beneficial, so the U.S. can continue to apply or cooperate with these instruments.

What the U.S. Should Do

President Trump’s action to unsign the Arms Trade Treaty was correct. The U.S. should be prepared for condemnations from the few nations that are still genuinely committed to the ATT and be ready to respond. By following through in the Senate, putting diplomatic pressure on the ATT, and withdrawing from the U.N. network of related institutions, the U.S. can put severe pressure on what it rightly described as a “misguided agreement.”⁸

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Endnotes

1. United Nations, "United States of America: Communication," July 19, 2019, <https://treaties.un.org/doc/Publication/CN/2019/CN.314.2019-Eng.pdf> (accessed August 19, 2019).
2. The unsigned of the Rome Statute of the International Criminal Court by President George W. Bush on May 6, 2002, which President Bill Clinton had signed on December 31, 2000.
3. Arms Trade Treaty Secretariat, "Initial Reports," May 3, 2019, <https://thearmstradetreaty.org/initial-reports.html?templateId=209839> (accessed August 19, 2019).
4. Arms Trade Treaty Secretariat, "Annual Reports," July 19, 2019, <https://thearmstradetreaty.org/annual-reports.html?templateId=209826> (accessed August 19, 2019).
5. Arms Trade Treaty Secretariat, "Status of Contributions to ATT Budgets," July 8, 2019, https://thearmstradetreaty.org/hyper-images/file/2019%2007%2008%20-%20ATT_Budgets_ReceivedContributions_Overview/2019%2007%2008%20-%20ATT_Budgets_ReceivedContributions_Overview.pdf (accessed August 19, 2019).
6. Because President Clinton did not transmit the Rome Statute of the International Criminal Court to the U.S. Senate, the ATT will apparently be the first treaty that was transmitted to the Senate and then unsigned.
7. For an example of how these institutions are mixed together, see United Nations, "About ISACS," 2019, <http://www.smallarmsstandards.org/about-isacs.html> (accessed May 15, 2019).
8. The White House, "President Donald J. Trump Is Defending Our Sovereignty and Constitutional Rights from the United Nations Arms Trade Treaty," April 26, 2019, <https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-is-defending-our-sovereignty-and-constitutional-rights-from-the-united-nations-arms-trade-treaty/> (accessed May 15, 2019).