

# The United States Should Withdraw from the U.N.'s Programme of Action on Small Arms

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## KEY TAKEAWAYS

The 2018 meeting of the U.N. Programme of Action (PoA) on the illicit trade in small arms broke both a U.S. red line and the PoA's principle of unanimity.

As its achievements are limited at best the only reason for the U.S. to participate in the PoA was to prevent it from making bad decisions and binding U.S. policy.

Now that the PoA has abandoned unanimity, the U.S. should withdraw from, and discontinue any aid through, the PoA.

In 2001, the United Nations created the Programme of Action to Prevent, Combat, and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, commonly called the Programme of Action. The PoA is not a treaty; it is a political mechanism, which is supposed to work by unanimous consent, for encouraging voluntary cooperation on suppressing the illicit arms trade. PoA meetings result in an outcome document containing conclusions that, if unanimously agreed, are politically—though not legally—binding for all participants in the PoA. PoA meetings are held jointly with meetings of the International Tracing Instrument (ITI), created in 2005, which provides a framework for cooperation on small arms tracing.

From June 15 to 19, 2020, the Seventh Biennial Meeting of States on the Programme of Action (BMS7) will be held in New York City. BMS7 will likely focus

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on issues raised at the Third Review Conference (RevCon3) of the PoA, which was held from June 18 to 29, 2018. But BMS7 is primarily important to the United States because RevCon3 did not work by unanimous consent. Moreover, RevCon3 changed its rules in order to vote through an outcome document that broke the red line on the inclusion of ammunition that the U.S. established when the PoA was created. The U.S. must therefore decide if it will continue to participate in the PoA.

The PoA is, and will continue to be, lacking in substantive achievements. The only reason for the U.S. to participate in it was to prevent bad outcomes. Now that the PoA has broken one of the U.S.'s red lines, and violated the rule of unanimous consent that allowed the U.S. to prevent bad outcomes, there is no reason for the United States to participate in the PoA. Therefore, the United States, while continuing to participate in the ITI, should take no part in BMS7.

## The Origin of the Programme of Action

The PoA originated in a U.N. General Assembly resolution of 1996 that established a Group of Governmental Experts on small arms and light weapons. The group's reports culminated in the U.N. meeting in 2001 that created the PoA. This was a contentious meeting that opened with a statement from John Bolton, then U.S. Under Secretary of State for Arms Control and International Security Affairs. Bolton laid down five red lines for the PoA:

1. No constraints on legal trading and manufacturing,
2. No promoting of propaganda by the U.N. or other related organizations,
3. No prohibition of civilian possession of firearms,
4. No limitation of the arms trade to governments, and
5. No institutionalization of the PoA process.

In 2001, as a quid pro quo for the acceptance of its other red lines, the U.S. agreed to the institutionalization of the PoA—though as a political process, not as a treaty. That has proven to be an unfortunate concession, as the PoA has outlasted its U.S. critics. But it was not the end of the story, for, after the PoA came into being, the U.S. added two additional red lines:

6. No inclusion of ammunition in the PoA, and
7. No re-opening of the text of the PoA as adopted in 2001.

These red lines have continued to define U.S. policy toward the PoA.<sup>1</sup>

## The Failure of the Programme of Action

There is widespread acceptance of the fact that the PoA's achievements are hard to assess and, at best, very limited. In 2008, the U.N. Secretary-General stated that the PoA's results were not "substantive." A 2012 survey by New Zealand's permanent representative to the U.N. acknowledged that "it is almost impossible to acquire an accurate picture of Programme of Action implementation and effectiveness." The "Chair's Summary" of the Second Meeting of Governmental Experts (MGE2) under the PoA in 2015 noted that "many" nations are not implementing the PoA. In 2018, at RevCon3, the International Committee of the Red Cross drew attention to the "gap between political commitments and actions," a polite way of saying that many governments at the PoA talk a good game but do nothing. In short, even supporters of the PoA recognize that it is making little if any contribution to its supposed aim of eliminating the illicit trafficking of small arms.<sup>2</sup>

In practice, the institutionalization of the PoA has made it harder to address the genuine issues surrounding the illicit small arms trade because it has given all of its participants an easy out: When confronted with their failings, they can simply claim that they support the PoA. In reality, what is lacking in the world, and in the small arms trade, is not commitments and rules, but nations with honest and competent governments. Moreover, the emphasis of the PoA on the illicit trade in firearms is meaningless: It is governments that define what is illegal, and the purpose of the PoA is to convince them to make more things related to small arms illegal. In short, the PoA is a self-licking ice cream cone that will never achieve its objective.

## RevCon3 Abandoned Consensus and Broke a U.S. Red Line

By early 2018, it became clear that the primary goal of many nations at RevCon3 was to produce an outcome document that included ammunition in the PoA. As many nations were already not living up to the PoA's requirements, expanding those requirements was a bad idea: If the PoA was to accomplish anything at all, it could only do so by focusing on a few simple goals, such as ensuring that nations reliably mark imported firearms.

The perennial cry of the activists seeking to expand the PoA was that the PoA could not work unless it included ammunition, on the grounds that firearms cannot function without ammunition. But it is also true that ammunition is useless without a firearm, and while firearms are relatively easy to mark and trace, ammunition is a consumable commodity that is far harder to mark and trace.

Adding ammunition to the PoA would therefore serve no useful purpose: The idea of marking and developing the ability to trace individual rounds of ammunition is simply foolish, as the resulting database would soon have trillions of entries and could only work by surveilling the purchases and ammunition use of individual firearms users.<sup>3</sup> The PoA discussed ammunition in 2001 and agreed then that trying to number, trace, and record bullets was wildly impractical.

But that did not stop the activists. By the early hours of June 30, 2018, the U.S. delegation was still standing strong against the majority and refusing to allow any substantial mention of ammunition in RevCon3's outcome document. So the meeting, by U.S. request, voted on the two paragraphs in question. The U.S. and Israel voted against both paragraphs both times, and under the rule of unanimity, these votes should have killed the paragraphs.

Instead, RevCon3, under its French chairman, simply kept the paragraphs. Madagascar then called for a vote on the draft outcome document, which was adopted as it stood, including the paragraphs on ammunition.<sup>4</sup> By themselves, these paragraphs are not unbearably toxic.<sup>5</sup> They acknowledge the existence of a U.N. General Assembly process on surplus ammunition, and state that nations that chose to apply the PoA to ammunition may proceed on that basis. But now that the U.S. red line has been breached and "ammunition" has been recognized as being in any way part of the PoA, each future PoA meeting will crack the door open a little wider.

## What the U.S. Should Do

As far as the PoA goes, this should be the breaking point. The U.S. does almost all the real, hard work of running traces on firearms, providing technical expertise, and giving aid to upgrade foreign record-keeping through the PoA and the ITI. Without the U.S., the PoA may exist in theory, but it will not exist in practice. The quid pro quo for the U.S. was that the PoA respected U.S. red lines. But if the U.S. is going to do most of the work and simultaneously have its red lines broken, there is no reason for the U.S. to participate in the PoA.

This is particularly true because the PoA was supposed to be based on consensus. The U.S. believed that if it participated, it could defend its red lines on the PoA. But RevCon3 taught the U.S. a lesson: Promises of a consensus-based outcome in the PoA provide no protection for U.S. interests, as at RevCon3 the U.N. simply changed the voting rules midstream. There is no point in trying to work inside the PoA process if that process can change its rules on the whim of the PoA's chair. It is true that, if the U.S. does not participate in it, the PoA will likely cross even more U.S. red lines. But RevCon3 shows that this can happen even if the U.S. is in the room.

The U.S. should therefore:

- **Withdraw from the PoA.** The PoA's substantive achievements are very limited. The PoA has broken one of the red lines that conditioned U.S. participation in the PoA, and the events of RevCon3 have demonstrated that the PoA is not reliably based on consensus, meaning that the U.S. has lost its ability to prevent the PoA from breaking more of its red lines in the future. The U.S. therefore has no reason to participate in the PoA. The U.S. should formally notify the PoA's chair, Ambassador Lazarus O. Amayo of Kenya, that, due to the events of RevCon3, it is withdrawing from the PoA.
- **Terminate aid associated with the PoA.** If nations in the PoA wish to make up the rules as they go along, they can get along without U.S. aid. The U.S. should announce that it is terminating all aid associated with the PoA, and should make it clear that this is a response to RevCon 3's decisions to break the U.S.'s red line on ammunition and to abandon the rule of consensus.
- **Continue to participate in the ITI.** The ITI is a modestly useful initiative that improves the U.S.'s ability to trace foreign-origin crime guns. Though it meets concurrently with the PoA, it has continued to operate by consensus. The U.S. should therefore continue to participate in the ITI by attending the portion of BMS7 that relates to the ITI.

The only reason for the U.S. to be involved in the PoA was on the theory that, by doing so, it could prevent U.S. red lines from being broken. The ultimate problem with this theory is that, while the PoA has accomplished little of substance, it seeks to create norms that are intended to enmesh and bind all of its members—especially the United States.

Progressive American legal activists openly admit that this is their strategy. Harold Koh, a former State Department Legal Adviser, has stated that he views the creation of these so-called norms as part of a process that is intended to “rope-a-dope” anyone in the U.S. who opposes progressive views. As Koh acknowledges, this strategy does not view law as a set of objective rules: It is about using law to achieve explicitly political goals, including, ultimately, restrictions on *civilian* possession of firearms.

The most effective way for the U.S. to disassociate itself from whatever norms the PoA develops is for it to refuse to be doped by withdrawing from the PoA.<sup>6</sup>

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## Endnotes

1. For a fuller history of the PoA, see Ted R. Bromund, “U.S. Goals at the 2018 Review Conference of the U.N.’s Programme of Action on Small Arms,” Heritage Foundation *Background* No. 3313, May 14, 2018, <https://www.heritage.org/global-politics/report/us-goals-the-2018-review-conference-the-uns-programme-action-small-arms>.
2. For more on the weaknesses of the PoA, see Bromund, “U.S. Goals at the 2018 Review Conference.” For the statement by the International Committee of the Red Cross, see Ted R. Bromund, “I’m Sitting Through One of the UN’s Most Useless Conferences. Here’s What’s Happening,” *The Daily Signal*, June 23, 2018, <https://www.heritage.org/firearms/commentary/im-sitting-through-one-the-uns-most-useless-conferences-heres-whats-happening>.
3. Bromund, “U.S. Goals at the 2018 Review Conference.”
4. Ted R. Bromund, “To Promote Gun Control, the UN Changes the Rules,” *The Daily Signal*, July 10, 2018, <https://www.dailysignal.com/2018/07/10/to-promote-gun-control-the-un-changes-the-rules/>.
5. United Nations, “Report of the Third United National Conference to Review Progress Made in the Implementation of the Programme of Action of Prevent, Combat, and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects,” A/CONF.192/2018/RC/3, Section 5, Paragraphs 15 and 17, [https://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/CONF.192/2018/RC/3&referer=/english/&Lang=E](https://www.un.org/en/ga/search/view_doc.asp?symbol=A/CONF.192/2018/RC/3&referer=/english/&Lang=E) (accessed February 11, 2020).
6. Bromund, “U.S. Goals at the 2018 Review Conference.”