

Policy Dialogue: The Arms Trade Treaty
Policy issues for the United States
Summary Report
June 21, 2010

Summary

On June 21, the Connect U.S. Fund convened a policy dialogue on the Arms Trade Treaty (ATT). More than 25 participants from the U.S. government, Congress, the defense industry, academia, and non-governmental organizations discussed ways in which the United States could engage in the upcoming prepcom of the United Nations ATT. Although efforts to regulate the global arms trade have been under discussion for years, in October 2009 the UN General Assembly adopted a resolution establishing a two-year timetable for developing an Arms Trade Treaty, culminating in a UN conference on the ATT in 2012. In October 2009, the Obama Administration reversed U.S. policy with its vote for the resolution and a public statement by Secretary of State Hillary Clinton supporting a strong and robust ATT.

As the U.S. delegation prepares for the July prepcom, it is seeking input from relevant stakeholders on what policy positions the United States should take in the upcoming meetings and with allies. The new support of the United States for the ATT offers stakeholders the opportunity to advance the ATT. This meeting helped identify concrete policy recommendations for the United States to consider as the UN process begins.

Background

In July 2010, States will begin the process of negotiating a legally binding treaty that governs the global trade in conventional arms. To date, conventional weapons have largely been unregulated internationally. Over the last 15 years, however, States have increased their efforts to develop international standards to regulate the trade in conventional weapons. Although some regional and multilateral agreements have been created, the lack of global controls has resulted in dangerous loopholes that have allowed arms to flow to human rights abusers and terrorists, perpetuate conflicts, and undermine development. Because the global trade in conventional arms is a legal, and integral, part of global security and international commerce, States are often unwilling to develop conditions on and criteria for the transfer of conventional weapons. However, states have now agreed to pursue such standards through the development of an Arms Trade Treaty (ATT) at the United Nations.

The United States' position on the ATT has changed under the Obama Administration. In 2006 and 2008, the United States voted against the UN General Assembly's ATT resolutions – the only state to do so. However, in December 2009, when the UN General Assembly voted to begin negotiations toward an ATT, the United States voted to support the ATT resolution. Now, as the United States develops its own ATT policy to support a strong and robust ATT, it is seeking input from relevant stakeholders. The prepcom will begin on July 12 at the UN, with a final negotiating conference set for 2012.

The June 21 policy dialogue helped identify international and domestic challenges in the development of an ATT, as well as the redlines and priorities of the United States moving into the prepcom process. In addition, the dialogue developed ATT policy objectives to help guide the formulation of U.S. policy (see Annex).

International and Domestic Challenges

Although the United Nations is beginning the process towards the negotiation of an ATT, the negotiations of the text and framework of an ATT will be challenging.

Overall, there is strong cross-regional, international support for arms trade regulation because of the devastating impact of the unregulated global trade in conventional arms. However, such views do not directly translate into strong support for an ATT for a variety of reasons. Some states believe that existing national practices are sufficient, others feel that the enforceability of such a treaty is questionable, and still others feel that an ATT could be used discriminately, such as using subjective judgments on human rights or as trade barriers for developing economies. In addition, some states lack the capacity to implement an ATT at even the most basic levels.

Domestically, several challenges also impact the United States as it enters negotiations.

1. Because the ATT does not yet exist, questions about scope remain and are not well understood by Congress and other important stakeholders.
2. The inclusion of ammunition, in particular small arms and light weapons ammunition, which is strongly favored for inclusion by many States and civil society, will be difficult for the United States to accept in an ATT. The United States maintains a complex system of laws and regulations governing ammunition, which would make it nearly impossible for the United States to comply with an ATT that includes ammunition.
3. Specific regional or country concerns, including Taiwan, China, and the Middle East create challenges for establishing criteria that can be applied without exception and fit U.S. national security interests. These concerns would make Senate ratification difficult.
4. The current export control system is in flux and it is unclear what the system will look like in two years and how it will fit in with an ATT.
5. Opponents of the ATT are extremely strong and vocal. Additionally, if the ATT is believed to be an international gun control issue, it will be difficult to achieve ratification in the Senate.
6. If the ATT is viewed to undermine the International Traffic in Arms Regulations (ITAR), the Senate will view the Treaty with great dislike, making ratification nearly impossible.
7. In order for an ATT to be accepted, the Treaty cannot be viewed as constraining U.S. industry. For Senate ratification to even be considered, an ATT could not hinder the U.S. ability to transfer arms. In addition, defense companies and global commerce need to be treated uniformly. An ATT must increase the U.S. ability to demarche countries which engage in the irresponsible transfer of arms, not lower the playing field for exporters around the world.

U.S. Redlines and Priorities

Although the United States now supports a strong and robust ATT, the United States maintains clear priorities and redlines for the negotiations. The current United States Government position holds that:

1. The Treaty process needs consensus decision-making, which some argue may lead to a lowest-common denominator ATT.
2. An ATT will not undermine Second Amendment rights or other U.S. constitutional or legal protections. An ATT will only address international transfers of arms and will not prohibit or address the internal transfers of states.
3. Small arms and light weapons ammunition will not be included in the scope of the ATT.
4. An ATT should not lower current international standards, but should not be seen as ceiling to higher standards either.
5. No international body will be developed to enforce an ATT. Instead, national systems will implement an ATT.
6. The United States will not participate in ATT negotiations outside of the UN process and will work to keep the Treaty process within the United Nations.
7. The United States is not willing to accept changes to U.S. law and practice to implement or comply with an ATT, even though U.S. law and practice has been amended in the past and the future of the U.S. export control system is unclear.
8. An ATT will be consistent with current export control reform initiatives.

Civil society proponents of an ATT also have clear priorities for a future ATT. They argue that an ATT must:

1. Be universal, robust, and raise current international standards using the strongest possible language.
2. Include a wide range of conventional arms and transactions, including ammunition (for small arms and other conventional weapons).
3. Review potential exports on a case-by-case basis and consider whether there is a substantial risk that transfer will be used to facilitate serious violations of international human rights law or international humanitarian law; undermine socioeconomic development; weaken regional security; contribute to armed conflict; or facilitate terrorist attacks or organized crime.
4. Be transparent and implemented by states at the national level. In short, an ATT must be monitored, verified, and enforceable.
5. Be open/flexible to changing U.S. laws and practice, including the ongoing export control reform.
6. Allow for the inclusion of NGO perspectives in the Treaty's development with the understanding that civil society has a role to play in educating national delegations on the benefits of an ATT.

Next steps

The policy dialogue was seen as one step in the development of U.S. policy on an ATT. Participants agreed to keep the conversation going and to continue to engage key administration officials. In addition, many believed that the number of stakeholders needed to be increased, with additional voices and perspectives joining the conversation. Finally, participants felt that in-depth review of some of the more controversial issues, such as ammunition, would be helpful as the process moves closer to the 2012 negotiating conference.

ANNEX

Arms Trade Treaty Policy Dialogue Policy Goals for a Strong and Robust Arms Trade Treaty

- **Comprehensive Scope:** An ATT should include a wide range of conventional arms and transactions.
 - Types of Weapons: A comprehensive ATT would regulate the international transfer of all conventional weapons, including small arms and light weapons, and their ammunition, parts, and components. These weapons include not only those specifically designed for offensive combat operations, but all types of military weaponry, military data-processing and communication systems, and military equipment for transport and other purposes, such as manned and unmanned aircraft, helicopters, ground and amphibious vehicles and sea vessels.
 - Types of Transfers: An ATT should also include a broad definition of the types of transfers covered, including export, import, re-export, trans-shipment, leases, loans, financing, manufacture, brokering and other intermediaries, and marking and tracing. Government-sanctioned transfers and commercial transfers should be covered by an ATT.
- **Evaluative Export Criteria and Assessment:** An ATT must require governments to assess individual exports on a case by case basis and to consider whether there is a substantial risk that transfer will be used to facilitate serious violations of international human rights law or international humanitarian law, undermine socioeconomic development, impact regional security, contribute to armed conflict, or facilitate terrorist attacks or organized crime.
- **National Implementation and Transparency:** An ATT should be implemented by states at the national level through national laws and regulations. States must submit annual reports on their implementation of the ATT to the United Nations Office of Disarmament Affairs. These reports would be posted on a secure website and publicly available.
- **Verification, Monitoring, and Enforcement:** To be effective an ATT must be monitored, verified and enforceable. The ATT must prohibit transfers that violate the export criteria described in the treaty. Enforcement of the ATT must take place at the national level. National controls must include legal provisions governing the activities covered in an ATT (including registration of those involved in international arms transfers and licensing and/or authorization of the transfers themselves) and criminal, civil, and administrative penalties for violations. Legal frameworks must include extraterritoriality to avoid exporters from transferring arms from countries with less restrictive laws and regulations. The ATT must provide regular review conferences for States to discuss effective ATT implementation, violations, and review operation of the Treaty.

- **International Cooperation and Assistance:** An ATT must contain provisions that States that do not have the technical and financial resources to implement an ATT may request assistance from those that have the expertise and means to help. The provision of such assistance would be voluntary and made on a case by case basis to help states fulfill Treaty obligations.
- **Civil Society Participation:** The Obama Administration's National Security Strategy argues that "in the 21st century, the ability of individuals and nongovernment actors to play a positive role in shaping the international environment represents a distinct opportunity for the United States." Thus, civil society has a significant role to play in the UN process and must be included in the treaty negotiations in a substantive manner, the specifics of which will be determined as that process develops, to allow them to contribute their unique perspectives and expertise.