U.S. Policy and the Arms Trade Treaty

Briefing paper

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Roundtable

Towards a Global Arms Trade Treaty (ATT)
What role for the United States?

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About this Paper

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Project Ploughshares

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Executive Summary

Unlike their nuclear counterparts, conventional weapons have been relatively unregulated in international forums. Piecemeal attempts have been made to establish controls over the international arms trade to close 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 necessary and integral part of global security and international commerce, States have been hesitant to place conditions on and criteria for the transfer of conventional weapons. Global agreements on conventional arms have existed for decades, but it is only in the past 15 years that strides have been taken to develop international standards to regulate the trade in conventional weapons. The Arms Trade Treaty (ATT) is currently being developed under the auspices of the United Nations to do just that.

Because it plays a significant role in the global arms trade, the United States has much at stake in the proposed Arms Trade Treaty. The United States is the world largest arms exporter—making nearly 70 percent of new global arms sales in 2008—and provides weapons through a variety of government and commercial programs. Control over these transfers falls to many different government agencies, with oversight responsibility given to the U.S. Congress.

The U.S. position on the ATT is rooted in the political, social, and cultural contexts in which arms trade issues operate in the United States. The United States views arms exports as a means to further political, security, and diplomatic objectives and has a strong political and cultural history around weapons. The overarching policy framework governing U.S. arms exports today is Presidential Decision Directive 34, established by President Bill Clinton in 1995, which contains specific policy goals and export criteria for arms transfer decisions. The United States also maintains comprehensive and sophisticated laws and regulations governing arms sales, particularly through the Arms Export Control Act, which is implemented by the International Traffic in Arms Regulations and the Foreign Assistance Act.

In addition to the comprehensive export control regime maintained by the United States, during the last 30 years, over 30 international, multilateral, and regional agreements have been developed on a variety of aspects of the conventional arms trade. The United States has supported these agreements to varying degrees, and has a mixed record when it comes to ratification and implementation of many of these instruments. Although ATT skeptics point to numerous existing agreements on the international arms trade, none are replacements for a potential ATT. The existing arrangements contain loopholes, as they do not include every type of transfer or activity related to the trade in arms. In addition, many are region-specific or apply to specific circumstances. And the majority of existing arrangements are voluntary, unspecific, and do not contain operative mechanisms (such as reporting, monitoring, verification, and enforcement); existing arrangements are often ambiguous, difficult to implement, and ineffective. Moreover, when global requirements are spelled out, states may not have the capacity to meet the standards or obligations, and without mandatory elements do not seek the resources to improve their systems.

During the Bush Administration, the United States was criticized for its views and approaches to the ATT. However, the first year of the Obama Administration has seen a dramatic shift in policy with regard to the ATT. Under the Bush Administration, the United States voted against UN resolutions on the ATT and was skeptical of its purpose and need. The Obama administration made its first significant public statement on the ATT in October 2009 in a short press release, “U.S. Support for the Arms Trade Treaty,” demonstrating a new approach to the ATT, and has publicly supported efforts to begin ATT negotiations at the United Nations.

The specifics of the U.S. position on the ATT are still being developed. Without a draft treaty text, it is difficult to ascertain whether U.S. law fits within the framework of an ATT. During the past 15 years, various iterations of ATT principles have been proposed. The most current is the "Global Principles for the Parameters of an ATT," published by the Arms Trade Treaty Steering Committee in July 2009. The six specific principles for States to consider when developing an ATT are derived from states' existing international obligations and global norms, including responsibilities under international humanitarian law and international human rights law. Using that framework, U.S. law and the proposed principles are quite compatible. Although a legal analysis is required to determine what would be required under U.S. law and regulations, the United States already meets the basic framework for a proposed ATT. As the process moves forward, the United States will maintain redlines—what cannot be included in an ATT (including prohibitions on civilian ownership or use of weapons or a blanket ban on arms transfers to non-state actors)—but has also indicated those areas that must be included in an ATT for the United States to take part in both negotiations and the Treaty itself, such as allowance for higher national standards and a consensus decision-making process for ATT negotiations.

Although stakeholders have begun to raise the profile of the ATT within the United States, the conventional arms trade has had little salience among U.S. government agencies, the media, and the public. As views about an ATT develop, some positions are clear. An ATT will not be a disarmament measure, nor will it ban the trade in conventional weapons. An ATT would be one tool to help States regulate the international transfer of conventional weapons. Moreover, the ATT will not address domestic or internal arms transfers, but will focus solely on international transactions, on a case-by-case basis, and will take into consideration many factors, including costs and benefits of the transfers. The ATT is intended to export sound national arms export control practice, and will include not only the physical transfer of weapons, but the entire process of international arms transfers, such as brokering, financing, and transport. To be successful, an ATT must be clear, nondiscriminatory, and enforceable, establishing clear guidelines for implementation, transparency, monitoring, compliance, and verification.

In sum, the new U.S. approach ensures that the United States has a significant opportunity to influence the ATT at its creation. With U.S. involvement in the treaty process the ATT will not adopt a lowest common denominator standard or restrict U.S. foreign policy decisions and prerogatives. In addition, the United States will insist on an ATT that allows for national implementation and high standards. The ATT is not a panacea, but will help the international community better implement global controls on international transfers of weapons.

I. Introduction: The Arms Trade Treaty

Unlike their nuclear counterparts, conventional weapons have been relatively unregulated in international forums. Piecemeal attempts have been made to establish controls over the international arms trade to close 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 necessary and integral part of global security and international commerce, States have been hesitant to place conditions on and criteria for the transfer of conventional weapons. Global agreements on conventional arms have existed for decades, but it is only in the past 15 years that strides have been taken to develop international standards to regulate the trade in conventional weapons. The Arms Trade Treaty (ATT) is currently being developed under the auspices of the United Nations to do just that.

This paper aims to put the developing U.S. position on the ATT into context. It will briefly explain the rationale for an Arms Trade Treaty and the patchwork of national, regional, and international regulations that make up the conventional arms trade control regime. The paper will outline the size and makeup of the global arms trade and the U.S. share of this more than $50-billion industry. The U.S. export control regime will be described in detail, as the U.S. system is often hailed as "the gold standard" of arms export controls. The paper will detail current U.S. obligations to existing conventional arms trade agreements and relevant international law. The shift in U.S. policy toward the ATT from the Bush administration to the nascent Obama administration will also be examined. The paper will look at U.S. law and the proposed ATT, including what the United States will require to include and exclude in an ATT. In addition, the key actors on the ATT in the United States will be described. And, lastly, the paper will provide conclusions concerning U.S. policy and the ATT.

Why is an ATT necessary?

Many may wonder why it is crucial to regulate the trade in conventional arms. A necessary part of global security and commerce, the international arms trade and its decisions may be intertwined in foreign policy and economic decisions. In some cases, these decisions, while entirely legal, may also be ill-advised. The irresponsible export of conventional arms contributes to the displacement of people, violent crime, human rights abuses, and terrorism, thereby undermining peace, reconciliation, security, stability, and sustainable development. Approximately 10 million people are denied humanitarian assistance because of high levels of violence in conflict zones. These weapons often do not originate in the countries at war. A 2007 report by Oxfam International found that armed conflict had cost Africa around $284-billion since 1990, seriously derailing development, and that at least 95 percent of Africa's most commonly used conflict weapons come from outside the continent. The foreign policy and national security of countries around the world are affected by these conflicts and are closely related to the international arms trade.

Arms sales to countries in conflict, to human rights abusers, and to undemocratic regimes can be entirely legal. Without the presence, use, verification, and monitoring of UN arms embargoes and other national sanctions, for example, arms can freely and legally flow to countries and end-users that can use them to terrorize populations and contribute to conflicts.

Recipients have many ways to acquire arms. Both small arms and heavy conventional weapons are traded on the legal, illicit, or grey markets. These trades may be handled by legitimate government authorities, by corrupt officials, and by private suppliers, known as arms brokers. All parties involved must navigate a complex patchwork of confusing, weak, and often non-existent or contradictory national, regional, and international controls. Due to the minimal

oversight granted these weapons, it is often difficult for those involved in the trade or interested observers to assess the legality and details of a particular arms transfer. A basic framework for arms transfers does exist, however. Legal transfers occur in accordance with both national and international laws and have some involvement of national governments or their authorized agents. Grey market arms transfers involve governments, their agents, or individuals that exploit loopholes or intentionally circumvent national and/or international laws, policies, or established practices. Illicit transfers directly violate national and/or international laws and occur without official government consent or control. To complicate matter, many legally produced and traded arms are diverted from the legal to the illicit market, making parts of the sale legal and other parts illicit.

Because the trade in conventional weapons is managed by national laws and nonbinding regional and international agreements and treaties, variation in standards, massive loopholes, and a lack of clarity allow unscrupulous exporters to expertly and effectively navigate the shady line between the legal and illicit market. Arms transfers can move between the two markets in a variety of ways. For example, corrupt or negligent government officials may sell weapons for their personal gain. These officials may accept bribes to overlook incomplete documentation and allow shipments to proceed without impediment. In addition, weak, or absent, national legislation and regulations governing the transfer, acquisition, and ownership of weapons may lead to the diversion of arms to the black market or allow weapons to end up in the hands of ineligible or ill-advised recipients. Advocates of an ATT claim that a strong and robust treaty would mitigate these problematic issues.

II. Background: Understanding the U.S. Role in the Global Arms Trade

The United States has arguably much at stake in the proposed Arms Trade Treaty, because of the significant role played by the United States in the global arms trade. According to the United States Congressional Research Service, global arms sales totaled over $55-billion in 2008. The United States, as it has done since the end of the Cold War, dominated the global arms market in 2008, making $37.8-billion (nearly 70 percent) of all global arms agreements. Italy was second in 2008 with $3.7-billion and Russia was third, with $3.5-billion. Together, these three nations accounted for over 80 percent of global arms agreements in 2008. Although U.S. domination of the global market is unparalleled, other suppliers maintain a smaller, but growing market shares. France, Germany, the Netherlands, China, Sweden, Israel, Brazil, and South Korea round out the top 10 global arms suppliers in 2008, and the international arms trade is becoming more and more competitive, with States vying for regular modernization contracts. New suppliers in Eastern Europe, the former Soviet Union, the Balkans, and South America are increasing their involvement in the global arms trade.

Supplying countries find eager markets, particularly in the developing world, which in 2008 was responsible for over 75 percent of all arms transfer agreements. In 2009, the top arms purchasers in the developing world[1] were Saudi Arabia, India, Venezuela, South Korea, Israel, Egypt, China, Singapore, Iraq, and Pakistan—countries that in some cases have questionable human rights and democracy practices, according to the U.S. State Department. The United States, which benefits from “well established defense-support arrangements with many weapons

[1] The developing world is defined, according to the Congressional Research Service, as “all countries except the United States, Russia, European nations, Canada, Japan, Australia, and New Zealand.”

purchasers worldwide,"[2] is able to maintain high arms sales as states upgrade their systems and introduce new costly weapons to their arsenals. For example, in 2008 alone, Morocco purchased 24 F-16s for $2.1-billion and Taiwan spent $2-billion on 30 Apache helicopters.[3]

The trade in small arms and light weapons is, from a dollar perspective, much smaller, with the legal trade conservatively estimated at no less than $4-billion dollars per year and the illicit trade anywhere from $1–$2-billion a year. And, because some small arms cost only a few hundred dollars, the numbers of weapons involved in the small arms trade can be extremely large. The Small Arms Survey, for example, believes there are at least 875-million small arms and light weapons in circulation today.[4]

The United States provides weapons in multiple ways, primarily utilizing five main programs, the largest of which are *Foreign Military Sales* (FMS) and *Direct Commercial Sales* (DCS). FMS are government-to-government sales negotiated by the Department of Defense, whereas DCS are those sales negotiated by U.S. companies and foreign buyers. In addition, leases of military equipment, excess defense articles, and emergency drawdowns of weapons stocks provide tens of billions of dollars worth of weapons to recipients around the world every year. The FMS program is run by the Defense Security Cooperation Agency (DSCA) at the Department of Defense. States interested in purchasing weapons through the FMS program must negotiate sales with the Department of Defense, which is responsible for all aspects of the sales logistics—from contracts to deliveries to servicing. If end-users prefer to work directly with the U.S. defense industry, they may chose to purchase through the DCS program, which is administered by the State Department's Directorate of Defense Trade Controls (DDTC). For the most part, U.S. companies which want to export arms through the DCS program must apply for a license from DDTC for each arms transfer. According to the most current data available, in Fiscal Year 2009, FMS totaled $37.9-billion, a new record high,[5] and in Fiscal Year 2008, DCS totaled approximately $33.5-billion.[6]

Although the United States is among the most transparent with regards to arms sales, it also transfers arms through covert means. By their very nature, the quantity and value of these sales is nearly impossible to ascertain, but policy statements have revealed that these sales are used by the United States as circumstances merit. For example, during the Cold War, the United States relied on arms sales to Central America to fight proxy wars against the Soviet Union. Indeed, the United States even supplied Soviet weapons to avoid culpability if the weapons transfers were discovered. Similarly, the United States relied on the "Afghan pipeline" between Pakistan and Afghanistan during the late 1970s to arm the *mujahedeen* forces fighting the Soviets in Afghanistan, with estimates of total U.S. military assistance during the Soviet occupation of Afghanistan reaching $7-billion. It is difficult to ascertain if covert transfers are in compliance with international standards and norms, and thus it will be difficult to determine if particular covert transfers follow potential ATT criteria. In addition, the United States maintains that it must maintain the ability to provide weapons to non-state actors and an unwillingness to have the international community dictate the tools available for conducting U.S. foreign policy. For example, after the attacks of September 11, 2001, then Secretary of Defense Donald

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[2] Richard, Grimmett, "Conventional Arms Transfers to Developing Nations, 2001-2008," Congressional Research Service, Washington, DC, September 4, 2009, p. 3
[3] Ibid.
[4] Small Arms Survey, Small Arms Survey 2007: Guns and the City (Cambridge University Press, 2007), p. 2.
[5] Report By The Department Of State Pursuant To Section 655 Of The Foreign Assistance Act Of 1961, As Amended, Direct Commercial Sales Authorizations For Fiscal Year 2008, available at http://www.fas.org/programs/ssp/asmp/factsandfigures/government_data/section655_data_FY2008/rpt655_FY08.pdf.
[6] Ibid.

Rumsfeld publicly stated that the United States would provide arms and other assistance to the Afghan Northern Alliance/United Front in order to defeat the Taliban.

The United States maintains that "lawful manufacture, trade and possession are not the problem,"[7] when referring to the uncontrolled proliferation of small arms, even though U.S. weapons have been used in deadly conflict and violent crimes around the world. Despite the best efforts of U.S. export controls, U.S.-origin weapons have been found in the deadly drug cartel killings in Mexico, have been found in crimes in Brazil, and have been used in conflicts in Iraq and Afghanistan. The United States does seek to work with law enforcement and military personnel around the world to ensure that U.S. exports remain in the intended hands, but diversion does happen. For example, when significant numbers of U.S. guns were found in Brazil in the mid-1990s, despite weapons not having been exported to Brazil, the United States Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), with the assistance of the Office of Defense Trade Controls and the U.S. State Department, worked closely with Brazilian police to trace the origins of the weapons recovered from the crime scenes. The investigation determined that the weapons had been legally transferred from the United States to Paraguay, and then illegally diverted across the Brazil-Paraguay border.[8]

III. Summary of Existing U.S. Domestic Laws, Policies, Procedures, and Practices on the Transfer of Conventional Weapons

The transfer of defense articles, defense services, military training, and economic assistance is identified as having been, and remaining "one of the primary methods used to carry out U.S. foreign and national security policy."[9] As outlined in the Defense Department manual, *Management of Security Assistance, 27th edition*, the transfer of U.S. conventional weapons "enables the U.S. to help allies and friends deter aggression, promote regional security, and increase U.S. and allied force interoperability." The manual highlights that restraint should be employed by the United States and other arms suppliers "when the transfer of weapons systems or technologies would be destabilizing or dangerous to international peace or balance of power in a region." U.S. policy also favors the "promotion of control and transparency" within varying international control regimes.[10]

The overarching policy framework governing U.S. arms exports today is Presidential Decision Directive (PDD) 34, established by President Bill Clinton in 1995. The policy's goals are:

"1) To ensure that our military forces can continue to enjoy technological advantages over potential adversaries.
2) To help allies and friends deter or defend themselves against aggression, while promoting interoperability with U.S. forces when combined operations are required.
3) To promote regional stability in areas critical to U.S. interests, while preventing the proliferation of weapons of mass destruction and their missile delivery systems.
4) To promote peaceful conflict resolution and arms control, human rights, democratization, and other U.S. foreign policy objectives.

[7] "State's Bloomfield on Illicit Small Arms Trade," 2001, http://www.usembassy.it/file2001_07/alia/a1070614.htm.
[8] Author interviews with government officials.
[9] The Defense Institute of Security Assistance Management, The Management of Security Assistance, 27th Edition, October 2007, p. A2-1, http://www.disam.dsca.mil/pubs/DR/27th%20Greenbook.pdf.
[10] Ibid., p. A2-15.

5) To enhance the ability of the U.S. defense industrial base to meet U.S. defense requirements and maintain long-term military technological superiority at lower costs."[11]

U.S. conventional arms transfer policy establishes criteria for making a determination on potential arms transfers. In addition to legal reviews, these criteria are:

- Consistency with international agreements and arms control initiatives.
- Appropriateness of the transfer in responding to legitimate U.S. and recipient security needs.
- Consistency with U.S. regional stability interests, especially when considering transfers involving power projection capability or introduction of a system which may foster increased tension or contribute to an arms race.
- The impact of the proposed transfer on U.S. capabilities and technological advantage, particularly in protecting sensitive software and hardware design, development, manufacturing, and integration knowledge.
- The degree of protection afforded sensitive technology and potential for unauthorized third-party transfer, as well as in-country diversion to unauthorized uses.
- The risk of revealing system vulnerabilities and adversely impacting U.S. operational capabilities in the event of compromise.
- The degree to which the transfer supports U.S. strategic and foreign policy interests through increased access and influence, allied burden sharing, and interoperability.
- The human rights, terrorism and proliferation record of the recipient and the potential for misuse of the export in question.
- The impact on U.S. industry and the defense industrial base whether the sale is approved or not.
- The availability of comparable systems from foreign suppliers.
- The ability of the recipient effectively to field, support, and appropriately employ the requested system in accordance with its intended end-use.
- The risk of adverse economic, political or social impact within the recipient nation and the degree to which security needs can be addressed by other means.[12]

Although codified by the Clinton Administration in 1995, the goals and criteria had been established in U.S. policy for decades. However, Clinton included one additional criteria to longstanding U.S. practice: "the impact on U.S. industry and the defense industrial base whether the sale is approved or not."[13] As such, economic considerations were given more weight—equal to national security and foreign policy considerations—than ever before. Thus, although the policy and criteria are clearly delineated, in practice, the various policy goals and criteria may conflict when determinations are being made. To help shed light on these potential conflicts, the United States uses a large body of U.S. law and regulations.

The United States maintains comprehensive and sophisticated laws governing arms sales. The two most relevant, in the context of the ATT, are the 1976 Arms Export Control Act (AECA) and the 1961 Foreign Assistance Act (FAA). In general terms, the United States has designed its laws to ensure that U.S. arms transfers are completed in accordance with U.S. policy objectives. The longstanding tenets of U.S. arms export law is to ensure that U.S. weapons transfers do not undermine regional and global security and stability, weaken democratic ideals, support military coups, escalate arms races, exacerbate ongoing conflicts, or cause regional arms buildups, and

[11] PDD 34 Fact Sheet, http://www.fas.org/irp/offdocs/pdd34.htm.
[12] White House Fact Sheet on Criteria for Decision-Making on U.S. Arms Exports, February 17, 1994.
[13] PDD 34 Fact Sheet.

are not used to commit human rights abuses. From a regulatory standpoint, the AECA is implemented by the International Traffic in Arms Regulations (ITAR). The ITAR contains the U.S. Munitions List (USML), a list of all items considered defense articles subject to control by the State and Defense Departments. In addition, the ITAR regulates commercial arms transfers, which require licenses and are managed by the State Department's Directorate of Defense Trade Controls (DDTC). Small arms and light weapons, as well as their ammunition, are also controlled through these laws and are included in categories I through IV of the U.S. Munitions List. Specific definitions for Category I – Firearms, Close Assault Weapons, and Combat Shotguns are included in the regulations.[14] The National Firearms Act also covers exports of certain types of firearms and requires an export permit from the Bureau of Alcohol, Tobacco, Firearms, and Explosives at the Department of Justice. In all cases, exporters of defense articles must be licensed and registered with the Department of State.

Although it is increasingly likely that only conventional weapons will be included in a future ATT, the United States also maintains regulations for dual-use goods—those items or technologies that can be used for weapons production and have non-military applications. Until the mid-1990s, the Export Administration Act (EAA) regulated dual-use items. The EAA was administered by the Commerce Department's Bureau of Industry and Security under the Export Administration Regulations (EAR). In comparison to the USML, the EAR contains a Commerce Control List (CCL), which defines the items subject to the regulations. Although most small arms are covered under the USML, some small arms and light weapons, specifically shotguns, are regulated by the CCL and are thus subject to Department of Commerce control procedures, rather than State Department oversight. When the EAA expired in 1994, it was not renewed, and in the intervening years congressional battles have waylaid the renewal process. As a result, until a new EAA is passed, the International Emergency Economic Powers Act (IEEPA) has been put in place to regulate the transfer of dual use goods.

It is also worth noting that, although there is a large body of U.S. law governing arms transfers, the executive branch maintains significant discretion over how to implement and apply those laws. Both the approval of transfers and the approval of licenses give the executive branch a wide berth to make their determinations. These decisions are rarely questioned by the courts, Congress, or the general public.

However, even with the executive branch prerogative, the U.S. Congress has an important role to play in the arms transfer process. By statute, under the AECA, the House Foreign Affairs Committee (HFAC) and the Senate Foreign Relations Committee (SFRC) conduct oversight responsibilities for arms export controls and the licensing process. The AECA provides dollar-value thresholds that trigger formal reviews of proposed exports by the two committees. Under current law, Congress must be notified if an export license is being considered for a transfer valued at $1,000,000 or greater. Depending on the type of sale and the recipient, Congress is given a specific timeframe in which they can disapprove the potential sale. Without a formal disapproval, the sale can proceed without Congressional interference. Currently, Congress has no direct role in reviewing individual licenses for dual-use goods.

While Congress does have a statutory responsibility to review sales, very rarely does Congress step in to stop a potential sale. To prevent a sale from proceeding, both the House and the Senate must pass identical joint resolutions of disapproval within a very short timeframe and

[14] Category I covers Firearms, Close Assault Weapons, and Combat Shotguns; Category II is Artillery Projectors; Category III covers Ammunition; and Category IV covers Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs, and Mines.

then the resolution must be signed into law by the President. A Presidential signature is highly unlikely, however, since the administration supports the sale in the first place. Therefore, the resolution of disapproval would have to be passed by a two-thirds majority to be able to override the presidential veto. Because the process is so difficult, Congress prefers to work behind the scenes, highlighting potentially troublesome sales to the administration before the formal review process. In the past, the administration has provided informal reviews to Congress to test the waters on potential sales and avoid the embarrassment of Congressional opposition.

However, in July 2006, the Bush administration decided to waive the customary 20-day pre-notification for a major arms sale. As a result, House International Relations Committee (HIRC) Chairman Henry Hyde (R-IL) expressed his outrage to Assistant Secretary of State John Hillen in a public hearing, calling the attempt a "deliberate and wholly inappropriate maneuver to diminish Congress' lawful oversight of arms sales." Hyde promised that the Congress would "take all appropriate actions to prevent the reoccurrence of the flouting of the Arms Export Control Act."[15] In fact, Rep. Hyde and ranking Democrat Tom Lantos (D-CA) introduced a bill (H.R. 5847) soon after that was intended to "reinforce longstanding oversight practices" of U.S. arms sales.[16] The hearing embarrassed the Bush administration and Pakistan, which had not wanted concerns about the sale – namely the country's poor human rights record, its questionable democratic processes, the possibility of diversion of U.S. weapons and technology to China, and the issues related to nuclear proliferator ringleader AQ Khan – to be discussed in an open setting, and forced Hillen to reveal specifics about the sale not generally made public. Such a public vetting of the displeasure of Congress over a potential arms sale is something the executive branch wants to avoid.

Thus, Congress and the executive branch generally try to work out kinks in the deal before it is made public. In addition, Congress may work to influence the budget authority of the agencies involved in the export process, request certifications or reports related to a particular export, or simply establish a law that prohibits arms sales to a specific country. For example, in November 2005, Congress placed conditions on U.S. Foreign Military Financing – grants that allow eligible states to purchase weapons, training, and other defense articles and services from the United States – and lethal military exports to Indonesia, until Indonesia undertook steps to counter international terrorism, establish military reforms, and protect human rights and punish rights violators, except in cases of national security interests. One week after Congress passed the bill, the Bush administration announced that the legislative provisions were being waived due to U.S. national security interests, allowing Indonesia to receive weapons from the United States without delay.

Although an ATT on authorized trade would, by definition, not apply to covert arms sales, there is also U.S. law addressing the transfers of U.S. weapons by covert means. The National Security Act of 1947 provides authorization for U.S. covert political and military operations, including the supplying of arms. Under this law, the President has to present a "finding that the operation is vital to U.S. national security"[17] and, under Section 505, the relevant intelligence agency must notify the relevant congressional committees (those that are responsible for U.S. intelligence oversight) of arms transfers valued at $1-million or more.[18] Although most determinations for covert sales are made on a case-by-case basis, Congress has passed legislation to prohibit

[15] Matt Schroeder, "Lawmakers Scold Administration Over F-16 Sale to Pakistan," FAS Strategic Security Blog, July 23, 2006, http://www.fas.org/blog/ssp/2006/07/lawmakers_scold_administration.php.
[16] Ibid.
[17] Lora Lumpe, "U.S. Policy and the Export of Weapons" in *Light Weapons and Civil Conflict: Controlling the Tools of Violence*, ed. Jeffrey Boutwell & Michael T. Klare (Lanham: Rowman and Littlefield, 1999), p. 78.
[18] Ibid., pp. 78-79.

specific covert supplies of weapons. This type of legislation is usually related to a particular country and a determinant timeframe. The Boland Amendment (H.AMDT.461 to H.R.2968, House Appropriations Bill for FY 1982), for example, among other issues prohibited "covert assistance for military operations in Nicaragua."[19] In addition, the Tunney Amendment, and later the Clark amendment, to Title IV of HR 9861, the Defense Department appropriations bill for FY 1976, suspended covert military aid to Angola, other than intelligence gathering.[20]

Even with this large body of U.S. law, decisions on whether to trade in arms are intertwined with political, economic, and diplomatic policies. In other words, national priorities, existing circumstances, and interpretation, often guide U.S. arms transfer decisions.

IV. The U.S. as Party to Existing International Conventional Arms Trade Agreements

During the last 30 years, over 30 international, multilateral, and regional agreements have been developed on aspects of the conventional arms trade. While many countries sign on to each new initiative regardless of the specifics, the United States traditionally takes a more cautious approach to the development of new international negotiations and agreements. The United States usually does not agree to agreements or guidelines that would require a change in U.S. law or policy or that would deny the United States the freedom to pursue its own policy objectives. Thus, participation in existing arrangements—and one could argue leadership in new agreements—is often narrowly focused and cautiously approached. It is useful, therefore, to examine existing arrangements to determine the U.S. position on an ATT. Existing instruments range from politically binding plans of action to legally binding treaties. The United States has supported these agreements to varying degrees. Below (Table 1) is a select list of existing conventional arms trade agreements and U.S. participation in and implementation of the agreement.

Table 1

Existing Arrangements	Year	Legally Binding	Non-Binding	Level of Participation	U.S. Participation
Convention on Certain Conventional Weapons	1981	x		105 States Parties	The United States is a State Party
CCW Protocol I	1983	x		103 States Parties	The United States is a State Party
CCW Protocol II	1983	x		90 States Parties	The United States is a State Party
CCW Protocol II [amended]	1996	x		89 States Parties	The United States is a State Party
CCW Protocol III	1983	x		98 States Parties	The United States is a State Party
CCW Protocol IV	1996	x		89 States Parties	The United States is a State Party
CCW Protocol V	2006	x		42 States Parties	The United States is a State Party
UN Register	1992		x	Over 170 States have participated in the Register at some point.	The United States has participated in each year of the Register.

[19] http://thomas.loc.gov/cgi-bin/bdquery/L?d098:./temp/~bdaaq72:1[1-1](Amendments_For_H.R.2968)&./temp/~bdoO06.
[20] Robert David Johnson, "The Unintended Consequences of Congressional Reform: The Clark and Tunney Amendments and U.S. Policy toward Angola," 27:2 *Diplomatic History*, April 2003, pp. 215-243.

Existing Arrangements	Year	Legally Binding	Non-Binding	Level of Participation	U.S. Participation
UN Firearms Protocol	2001	x		52 signatories, 73 States Parties	The United States has neither signed nor ratified the Protocol
UN Programme of Action on Small Arms and Light Weapons	2001		x	Open to all UN Member States, participation varies	The United States actively implements the PoA in all its aspects
UN International Tracing Instrument			x	Open to all UN Member States, participation varies	The United States fully complies with the ITI and assists others in their compliance
Mine Ban Treaty	1997	x		155 States Parties	The United States is not a State Party
Wassenaar Arrangement	1995		x	40 participating States	The United States is a participating State.
WA Best Practice Guidelines on SALW	2002 (amended 2007)		x	40 participating States	The United States is a participating State.
WA Best Practice Guidelines on MANPADS	2003 (amended 2007)		x	40 participating States	The United States is a participating State.
Inter-American Convention on Transparency in Conventional Weapons Acquisitions	1999 (entered into force 2002)	x		20 signatories, 12 ratifications (34 Member States)	The United States signed the Treaty in 1999, but has not ratified it.
CIFTA	1997 (entered into force 1998)	x		33 signatories, 27 ratifications (34 Member States)	The United States signed the Treaty in 1997, but has not ratified it.
Organization of American States Model Regulations for the Control of Firearms	1998		x	34 Member States	The United States is a participating State.
OAS Model Regulations for the Control of Brokers	2003		x	34 Member States	The United States is a participating State
Organization for Security and Co-operation in Europe Document on Small Arms	2000		x	56 Member States	The United States is a participating State
OSCE Principles Governing Conventional Arms Transfers	1993		x	56 Member States	The United States is a participating State

When the United States supports an initiative it generally implements the agreement to the full extent and offers assistance to others to ensure their implementation. The United States takes its obligations in international agreements quite seriously and thus has been criticized in the past for acting as an obstacle in preventing broad or general agreements or for not signing on to

agreements that it has no intention of implementing. The examples that follow describe the United States role in a select few of these initiatives.

The United Nations

During the Bush Administration, the United States took unpopular positions at the United Nations regarding conventional weapons, small arms in particular. At the 2001 UN Small Arms Conference the United States took a controversial role in laying out its agenda in no uncertain terms. Then Under-Secretary of State John Bolton laid out the U.S. position outlined U.S. "redlines" at the meeting. The redlines included those things the United States refused to support in a final Conference document:

- restrictions on ownership of weapons by civilians;
- restrictions on the legal trade and manufacture of small arms and light weapons;
- promotion of international advocacy by nongovernmental and international organizations;
- restrictions on the sale of small arms and light weapons to entities other than governments;
- a mandatory review conference; and
- a commitment to begin discussions on legally binding agreements.

This approach set the tone for U.S. involvement in the small arms issue at the United Nations for the next seven years, with the United States restricting the scope of small arms initiatives at the UN.[21] However, despite its vitriolic posturing, during the Bush Administration the United States came close to fully implementing the obligations in the Programme of Action and completely implemented the International Tracing Instrument, also providing assistance to other States wishing to implement the agreements.

The Obama Administration has taken a new approach to the United Nations in general, and has indicated a shift in position on arms trade issues as well. UN Ambassador Susan Rice has engaged with the United Nations on international human rights and humanitarian law issues and the President has shown a willingness to engage with and utilize the UN to foster a global cooperative agenda. And, as discussed below, the Obama Administration has begun to look at UN efforts on conventional arms and small arms in a more favorable light.

The Wassenaar Arrangement

In contrast to its approach at the United Nations, the United States has been a leader in pushing for high standards on conventional arms controls through the Wassenaar Arrangement. The United States took a leadership role in pushing for the adoption of best practices for the export of small arms and man-portable air defense systems (MANPADS) through the Wassenaar Arrangement, with the aim of limiting the ability of terrorists to acquire these weapons. In both cases, the United States pushed for the creation of norms and standards that governed the export of these weapons.

For MANPADS exports the United States supported control measures and export criteria, including taking into account the "potential for diversion or misuse in the recipient country, the recipient governments' ability and willingness to protect against unauthorized re-transfers, loss, theft and diversion, and the adequacy and effectiveness of the physical security arrangements of

[21] For a more complete discussion of the U.S. position on small arms initiatives at the United Nations, see Rachel Stohl, *US Small Arms and Global Transfer Principles*, Project Ploughshares Working Paper 06-1, March 2006, http://www.ploughshares.ca/libraries/WorkingPapers/wp061.pdf.

the recipient government for the protection of military property, facilities, holdings and inventories."[22]

The United States has also pressed the Wassenaar participants to develop best practices on small arms exports. Although the United States had proposed these best practices prior to September 11, 2001, the call for their development was reenergized as linkages were made between the conflicts fuelled by small arms and the same areas that served as breeding grounds for terrorists. The objectives for developing the best practices include "the prevention of destabilising accumulations of such arms; and the need to prevent the acquisition of conventional arms by terrorist groups and organisations, as well as by individual terrorists."[23] Among the criteria for determining if a transfer should occur is to take into account "the risk of diversion or re-export in conditions incompatible with these Guidelines, particularly to terrorists."[24] Moreover, the best practices state that Wassenaar States will avoid issuing small arms export licenses if there is a clear risk that the small arms in question might "support or encourage terrorism."[25]

The Organization for Security and Co-operation in Europe (OSCE)

The OSCE Document on Small Arms, developed in 2000, contains strict standards to "restrain transfers, secure stockpiles and remove weapons from circulation."[26] The follow-on "Handbook of Best Practices on Small Arms and Light Weapons" assists States in developing legislation and policies and programs governing small arms transfers. The United States was instrumental in the development and support for the OSCE Document and has touted the Handbook and its utility in multiple settings.

The United States also participates in the 1993 OSCE Principles Governing Conventional Arms Transfers. The Principles contains specific criteria that States should consider and take into account when making arms transfers and encourages States to avoid transfers that would undermine key principles. Included among these criteria is "respect for human rights and fundamental freedoms in the recipient country" and "the least diversion for armaments of human and economic resources." Moreover, States should avoid arms transfers that could be diverted, used for oppression, or used by terrorists, among others. In other words, the OSCE Principles already maintain some of the most basic principles under consideration for an ATT.

The Organization of American States (OAS) Convention

The United States has not ratified the OAS Convention, even though it was intimately involved in the Convention drafting, and U.S. law already meets the vast majority of the provisions in the Convention. The United States did sign the Convention in November 1997 and supports the OAS Inter-American Drug Abuse Control Commission (CICAD) Model Regulations for firearms transfers and brokering, which came out of the Treaty.[27] In 2002, the U.S. State Department said of the Convention,

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[22] "Elements for Export Controls of Man-Portable Air Defence Systems (MANPADS)," http://www.wassenaar.org/2003Plenary/MANPADS_2003.htm.
[23] "Best Practice Guidelines for Exports of Small Arms and Light Weapons," http://www.wassenaar.org/docs/best_practice_salw.htm.
[24] Ibid.
[25] Ibid.
[26] OSCE, "Press Statement: OSCE Today Launches First Governments' Manual on Combating Illicit Trade in Small Arms and Light Weapons," December 1, 2003, http://www.fas.org/asmp/campaigns/smallarms/OSCEhandbookDoSstmt.htm.
[27] In addition, the OAS has also adopted model legislation on the Marking and Tracing of Firearms and for Strengthening Controls at Export Points of Firearms, Ammunition, Explosives, and Other Related Materials. For more information, see http://www.oas.org/dsp/English/cpo_armas_claves.asp.

> The Convention will make the citizens of the hemisphere safer by helping to shut down the illicit transnational arms market that fuels the violence associated with drug trafficking, terrorism, and international organized crime.... While strengthening countries' abilities to eradicate illicit arms trafficking, the regional agreement protects the legal trade in firearms and lawful ownership and use of firearms and it is modeled on U.S. laws, regulations, and practices.[28]

However, until recently, the executive branch has done little to push the Senate toward ratification of the Treaty. Andy Fisher, a press officer for the Senate's Foreign Relations Committee, wrote to journalist Mike Ceaser, "Because the U.S. complies and cooperates with the provisions of the Convention, the Clinton and Bush administrations have not pressed for its Senate ratification."[29] Perhaps a simpler explanation has been that the treaty was signed at the end of the Clinton administration, and Clinton was politically unable to push for ratification at the end of his Presidency. Moreover, the Bush administration's inherently skeptical view of international treaties allowed the United States instead to focus on pursuing the objectives of the Convention through bilateral and multilateral U.S.-led initiatives. The Obama administration has perhaps viewed the Convention differently. In April 2009, President Obama urged the Senate to ratify the Convention. To date, however, the Senate has not acted on the Treaty.

These few examples reflect the existing large body of international agreements on conventional arms transfers. However, although there are many existing agreements on the international arms trade, none of these are replacements for a potential ATT. While some ATT skeptics may argue that if existing arrangements were strengthened there would be no need for an ATT, even if implementation were improved, the existing arrangements would continue to suffer from loopholes, as they do not include every type of transfer or activity related to the trade in arms. In addition, existing arrangements can provide insights for the development of an ATT (best practices, etc.), but cannot simply be replicated. Many are region-specific or apply to specific circumstances. In fact, over 40 States do not belong to a regional organization that maintains conventional arms trade instruments. And the majority of existing arrangements are voluntary, unspecific, and do not contain operative mechanisms (such as reporting, monitoring, verification, and enforcement); existing arrangements are often ambiguous, difficult to implement, and ineffective. Moreover, when global requirements are spelled out, states may not have the capacity to meet the standards or obligations, and without mandatory elements do not seek the resources to improve their systems.

V. The Shift in U.S. Policy toward the ATT

The U.S. position on the ATT is rooted in the political, social, and cultural contexts in which arms trade issues operate in the United States. The arms control situation in the United States is unique for many reasons. Paramount is the U.S. role as the world's dominant arms exporter and the use of arms exports to further political, security, and diplomatic objectives. In addition, the United States has a strong political and cultural history around weapons. The domestic lobby, particularly the National Rifle Association (NRA), has previously had tremendous influence on the legislative and executive branches. This influence has ranged from political access to

[28] U.S. Department of State Bureau of Political-Military Affairs, "Fact Sheet: Inter-American Convention Against the Illicit Trafficking and Manufacture of Firearms, Ammunition, Explosives, and Related Items," August 1, 2002.
[29] Mike Ceaser, "Weapons proliferate in Venezuela," *Christian Science Monitor*, July 13, 2004, http://www.csmonitor.com/2004/0713/p06s01-woam.html.

policymakers, the presence of NRA board members on the U.S. delegations at previous UN and other multilateral meetings, and the reflection of NRA principles in U.S. policy statements and speeches. Even the insistence on framing the ATT with guarantees of constitutional protections is a nod to NRA interests. In addition, the world since September 11, 2001 has amplified the U.S. perspective that the United States must ensure that allies are quickly and easily equipped to effectively fight new and emerging threats and prevent weapons from getting into the hands of terrorists. Such a position has resulted in a notable increase in U.S. arms exports[30] and led to the signing of Defense Trade Cooperation Treaties with the United Kingdom and Australia, which would allow license-free conventional arms exports. This is similar to the U.S. arrangement with Canada.[31]

Although conventional arms exports actually increased during the first year of the Obama administration, the approach to arms exports and the ATT has shifted with the new administration. During the Bush administration, the Untied States often took leadership roles on practical, rather than political, steps to address international arms transfers. In July 2003, then Assistant Secretary of State Lincoln Bloomfield highlighted U.S. participation and leadership in practical small arms measures, such as in the OAS, the Wassenaar Arrangement, and the OSCE. Further, he encouraged and supported the development of "Best Practices" in these forums to address the consequences of small arms proliferation. Indeed, for nearly a decade, the United States has been the world leader in addressing the uncontrolled proliferation of small arms and light weapons through destruction and stockpile management programs. To date, the United States, through the State Department's Office of Weapons Removal and Abatement (WRA), has destroyed more than 1.3-million weapons and more than 50,000 tons of ammunition in 36 countries. In addition, the United States has helped destroy more than 30,000 MANPADS in 29 countries.[32] The Physical Security and Stockpile Management (PSSM) program run by the Department of Defense's Defense Threat Reduction Agency (DTRA) has worked to secure stockpiles in more than 37 countries, and conducted 38 assessments and 30 seminars.[33] State and Defense often work collaboratively on evaluations and assessments to determine the most effective and cost-efficient programs and policies.

Under the Bush administration, U.S. ATT policy was murky in its specifics, but clear in its general view. Although recognizing the importance of the control of international transfers of arms, the United States was less willing to support international initiatives that derived common international standards. Indeed, the United States was the only country to vote against the 2006 and 2008 UN resolutions establishing the Group of Governmental Experts and the Open-Ended Working Group (OEWG) on the ATT.

With many different offices within the U.S. government taking leadership of the ATT portfolio at various times, it was left to the higher-level policy officials to offer a glimpse into U.S. attitudes toward the ATT.

In a November 3, 2005 speech, then Assistant Secretary of State John Hillen stated:

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[30] For a larger discussion on U.S. arms exports since September 11, 2001, see Rachel Stohl, "U.S. Post-Sept. 11 Arms Trade Policy," Center for Defense Information, January 3, 2007, http://www.cdi.org/program/document.cfm?DocumentID=1364&ProgramID=73.

[31] The Defense Trade Cooperation Treaties have not yet been ratified by the Senate, although the Obama Administration has encouraged the Senate to take up ratification quickly. Many questions about the treaties remain unanswered, including what ratification and implementation would mean for both the overarching export review being undertaken by the Obama Administration and the potential requirements for transparency of an ATT.

[32] Author interview with State Department official, January 5, 2010.

[33] Author interview with DTRA official, January 15, 2008.

> While much of our [U.S. government] work is aimed at meeting the threats posed by emerging challenges in the area of terrorism and nonproliferation, we also scrutinize potential defense exports for their effect on regional stability. And so we must recognize that international defense trade controls is not simply dependent on complementary regulatory regimes, but on common perspectives about security threats.[34]

Hillen concluded, "Given the increasingly global nature of defense trade, a key element of our defense export policy is to strengthen international export controls, which is also a major pillar of our broader nonproliferation policy."

Throughout his speech, Hillen highlighted the United States' efforts within the Wassenaar Arrangement guidelines and to help other countries bring their export control systems in line with international standards.

For the first nine months of the Obama administration, the executive branch was rather quiet on the ATT. The United States did demonstrate that it was willing to be a constructive partner in the development of a treaty by actively participating in the first session of the UN's OEWG and presenting a more favorable view of the ATT's UN process.

The Obama administration made their first significant public statement on the ATT in October 2009. In a short press release, titled "U.S. Support for the Arms Trade Treaty,"[35] Secretary of State Hillary Clinton stated that "conventional arms transfers are a crucial national security concern for the United States" and that the United States supports efforts that "control the international transfer of arms." Clinton also described the conditions the United States required for negotiations on an ATT at the United Nations. Clinton made clear that the 2012 UN Conference on the Arms Trade Treaty must operate "under the rule of consensus decision-making" to "ensure the widest possible support for the Treaty and to avoid loopholes in the Treaty that can be exploited by those wishing to export arms irresponsibly." Criticized by many governments and civil society organizations, Clinton emphasized that the U.S. position is "to ensure that all countries can be held to standards that will actually improve the global situation by denying arms to those who would abuse them." Revealing the biggest policy shift from the Bush administration, Clinton stated that "the United States is committed to actively pursuing a strong and robust treaty that contains the highest possible, legally binding standards for the international transfer of conventional weapons." This marked the first official U.S. support for the ATT within the United Nations. How the U.S. role in the negotiations plays out has yet to be determined, but the United States has made clear that it will actively engage in the UN process, including the highlighting of issues that must and must not be included in the Treaty. U.S. involvement, and perhaps leadership, in the ATT gives the process legitimacy and potential success.

Clinton's statement illuminated the U.S. approach to international arms export controls. The statement drew attention to the "extensive and rigorous system of controls that most agree is the 'gold standard' of export controls for arms transfers" that the U.S. maintains on a national basis. It also mentioned the work the United States undertakes bilaterally, through programs such as the Export Control and Border Security Program, which encourages "other states to raise their standards and to prohibit the transfer or transshipment of capabilities to rogue states, terrorist groups, and groups seeking to unsettle regions." The statement reiterates that the United States

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[34] John Hillen, Address to 18th Annual Global Trade Controls Conference, London, England, November 3, 2005, http://www.fas.org/asmp/campaigns/control/Hillen09nov05.htm.

[35] Hillary Rodham Clinton, "U.S. Support for the Arms Trade Treaty," Washington, DC, October 14, 2009, http://www.state.gov/secretary/rm/2009a/10/130573.htm.

has "consistently supported high international standards" and says that the "Arms Trade Treaty initiative presents us with the opportunity to promote the same high standards for the entire international community that the United States and other responsible arms exporters already have in place to ensure that weaponry is transferred for legitimate purposes." This backdrop makes it clear that the United States will continue to have national, bilateral, and multilateral approaches in controlling the international arms trade, but is signaling a shift to appreciation and utilization of global controls in a more comprehensive and standardized way than before.

Understanding the U.S. framework for global arms sales helps us to draw some general conclusions about U.S. policy on the ATT. In addition, it is important to note that, in general, U.S. policy has been consistent: any treaty in which the United States participates is open to U.S. interpretation, thus allowing for the clarification of U.S. viewpoints through declarations and reservations. Therefore, any Arms Trade Treaty will be subject to U.S. interpretation and the United States may have an approach to the Treaty that differs from that of other States.

VI. U.S. Law and the Proposed ATT

Without a draft text of an ATT, it is difficult to ascertain whether U.S. law fits within the framework of an ATT. However, in the past 15 years, various iterations of ATT principles have been proposed. The most current is the "Global Principles for the Parameters of an ATT" published by the Arms Trade Treaty Steering Committee in July 2009, which contains six specific principles for States to consider.

Table 2

Principle	Title	Content
1	Responsibilities of States	States with jurisdiction over any part of an international transfer of conventional arms or ammunition should ensure, on a case-by-case basis, prior to the authorization of any transfer, that it is in accordance with national laws and procedures that conform with States' obligations under international law. These obligations are summarized below. Authorization should not be granted where there is a substantial risk that the arms or ammunition will be diverted from the specifically authorized legal end-use or legal end-user, or will be retransferred contrary to the criteria set out in Principles 2 and 3 below. These key principles should be incorporated into the text of an ATT as the standards for determining the legality of an international transfer of arms and ammunition:
2	Express prohibitions	States should not authorize an international transfer of arms or ammunition that violates their expressed obligations under international law. These include: A. Obligations under the UN Charter, including: i. Binding resolutions of the Security Council, such as those imposing arms embargoes; ii. The prohibition on the threat or use of force; iii. The prohibition on intervention in the internal affairs of another State. B. Any other treaty or decision by which that State is bound, including: i. Binding decisions, including embargoes, adopted by relevant international, multilateral, regional, and sub-regional organizations to which a State is party. ii. Prohibitions on arms transfers that arise in particular treaties which a State is party to, such as the 1980 UN Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, and its Protocols. C. Universally binding principles of international humanitarian law, including: i. The prohibition on the use of arms that are of a nature to cause superfluous injury or

		unnecessary suffering; ii. The prohibition on weapons or munitions incapable of distinguishing between combatants and civilians
3	International legal obligations and global norms	States should not authorize an international transfer of arms or ammunition where there is a substantial risk that they will: A. Breach the UN Charter and customary law rules relating to the use of force; B. Be used in serious violations of international human rights law; C. Be used in serious violations of international humanitarian law; D. Be used to commit acts of genocide or crimes against humanity. E. Facilitate terrorist attacks; F. Facilitate a pattern of gender-based violence, violent crime or be used for the commission of organized crime; G. Adversely affect regional security or stability, or contribute to the excessive and destabilizing accumulation of arms; H. Seriously impair poverty reduction or socio-economic development; I. Involve corrupt practices. J. Contravene other international, regional, or sub-regional commitments or decisions made, or agreements on non-proliferation, small arms, arms control, and disarmament to which States involved in the transfer are a party.
4	Comprehensive scope	An Arms Trade Treaty should establish control mechanisms to cover all of the following: A. All conventional military, security and police armaments, weapons and related materiel of all types, including small arms and light weapons; conventional ammunition and explosives used for the aforementioned; internal security weapons, ammunition and equipment deployed in the use of force; components, expertise and equipment essential for the production, maintenance and use of the aforementioned; and dual-use items that can have a military, security and police application; B. All conventional arms and ammunition imports, exports, re-exports, temporary transfers, transit, transshipments, retransfers, state-to-state transfers; state-to-private end user transfers, commercial sales; leases; transfers of licensed foreign arms production and technology; loans, gifts or aid; or any other form of international transfer of arms and related materiel of all types; C. All transactions for the international transfer of conventional arms and ammunition by: dealers or sales agents; arms brokers; those providing for technical assistance, training, transport, freight forwarding, storage, finance, insurance, maintenance, security and other services integral to such transfers.
5	Transparency and implementation mechanisms	A. Transparency - States should submit comprehensive national annual reports on all international transfers of all arms and ammunition covered by the Treaty to an international registry, which should: (i) Analyze the data and publish a comprehensive annual report, and (ii) Provide support and guidance to state parties in the production of their national reports. B. Implementation - to monitor compliance and ensure effective functioning, an Arms Trade Treaty should include: (i) Provisions for meetings of states parties and a formal review mechanism; (ii) Mechanisms for monitoring and verifying compliance; (iii) Provisions for adjudication, dispute settlement and sanctions.
6	International cooperation and assistance	The Arms Trade Treaty should include a comprehensive framework for international cooperation and support, within which States can request and receive assistance from other interested States and relevant international, regional, and sub-regional organizations in order to facilitate full implementation of their Treaty obligations

The United States has long touted that it has the "gold standard" with regard to national regulations governing arms exports. U.S. laws, particularly those codified in the Arms Export Control Act, appear consistent with virtually every proposed principle that could be contained in the ATT.

In summary, U.S. law and the proposed principles are quite compatible. The United States does maintain laws and regulations over the majority of arms transfers, which are decided, for the most part, on a case-by-case basis. The United States maintains strict brokering, re-export, and retransfer prohibitions as articulated in Principle 1.

For the most part, U.S. law does not explicitly prohibit all arms transfers as enunciated in Principle 2. Yet, the United States takes its treaty obligations seriously, and if it has ratified treaties with express prohibitions, the United States will not export arms under those obligations. In addition, the United States adheres to UN arms embargoes—and even maintains unilateral arms embargoes against additional states—and maintains restrictions on the export of certain types of weapons.

Principle 3 outlines specific international legal obligations and global norms regarding arms transfers. Although the United States does not have laws and regulations covering each of these criteria, the Arms Export Control Act, Section 38 (a) (1), says that arms transfers will be made only in the "furtherance of world peace and the security and foreign policy of the United States." Thus, even without specific legislation, arms transfers in which the weapons might be used to commit genocide, violent crimes, or the violations of international law as expressed in Principles 2 or 3, would not be seen to be in the furtherance of world peace or the security and foreign policy of the United States, and thus would not be allowed under U.S. practice.

U.S. law and practice have a comprehensive scope covering the control of transfers of small arms and other conventional weapons and related activities (such as exports, imports, transshipments, retransfers, leases, technology transfers, and loans), as well as the brokering of such deals as outlined in Principle 4. The AECA, FAA, ITAR, EAA, and EAR all outline specific law and practice to govern conventional transfers. U.S. law does diverge from Principle 4 in its handling of small arms ammunition (see below), which could be a point of contention during Treaty negotiations.

The United States has one of the most transparent export control systems in the world and meets some of the transparency obligations outlined in Principle 5. Through public reporting, through Department of Defense (DoD) Section 655 reports, or in meeting its international obligations, the United States does provide a significant amount of data on its arms transfers. To date, however, the Section 655 report is not public and neither are certain arms transfers under particular dollar thresholds. Thus, although the United States maintains an excellent record of transparency, more may potentially need to be provided under an ATT. However, it is worth noting that the license-free arrangements with Canada, and the proposed agreements with the UK and Australia, may have implications for U.S. transparency efforts. Because those transfers are not/would not be licensed or tracked, existing policies may need to be changed to comply with potential transparency provisions in an ATT. Previous U.S. practice, such as through the Wassenaar Arrangement or OSCE, have demonstrated a willingness by the United States to adhere to formal exchanges of information and monitoring of conventional arms transfers as expressed in Principle 5.

The United States already provides significant assistance to States requesting help and support as expressed in Principle 6. The United States maintains comprehensive assistance programs in

the creation of export control legislation (through the Export Control and Related Border Security [EXBS] program), destruction (through WRA), marking and tracing (through ATF) and for stockpile management (through DoD), among others. The United States also participates fully in multilateral and regional forums, providing assistance through NATO, the OAS, the OSCE, and Wassenaar to States interested in enhancing export controls.

A 2006 report[36] found that U.S. legislation and international obligations are primarily in compliance with the proposed principles. Although a legal analysis is required to determine what would be required under U.S. law and regulations, the United States already meets the basic framework for a proposed ATT.

Beyond the legal basis for supporting the ATT, the United States maintains policies toward the ATT that are not codified into law. As with previous discussions on conventional arms control at the United Nations, the United States maintains redlines, but has also indicated those areas that must be included in an ATT for the United States to take part in both negotiations and the Treaty itself. Although the United States has not released an official policy brief, the U.S. position can be ascertained by previous and current policy statements and interventions and from web-posted fact sheets on the ATT.

Civilian Possession

The United States has consistently said that it is unwilling to allow the ATT to address the issue of civilian ownership or use of weapons or to cover the internal transfers of arms within States.

Non-State Actors

Since discussions of small arms began in the United Nations in the 1990s, the United States has been clear that it will accept no blanket prohibitions of arms transfers to non-state actors. The United States will be consistent in these views and will prevent any explicit reference to a blanket ban on arms transfers to non-state actors in a potential ATT.

Ammunition

In previous discussions surrounding an ATT, the United States has been skeptical of including ammunition within the scope of an ATT. This is in part because U.S. law prohibits or does not require marking or recordkeeping of ammunition transfers. Consequently it would not be feasible to implement end-use assurances, retransfer authorizations, or tracing of ammunition, once the shipment has been received. Moreover, the quantities involved in small arms and light weapons transfers are such that meaningful recordkeeping or marking and tracing are impossible. However, if ATT discussions surrounding ammunition focus specifically on other conventional ammunition, the United States may have a different approach.

Lowering Existing Regional and International Standards

From the outset, the United States has stated that it will not allow an ATT that undermines or interferes with existing international standards on conventional arms. The United States does not want an ATT to provide legitimacy for unwise or problematic transfers, by allowing states to argue that the transfer is in compliance with the ATT and thus follows standard practice and law. The United States is eager to ensure that the ATT is a useful tool in preventing arms transfers to human rights abusers and terrorists, among others, consistent with U.S. policy and practice.

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[36] Stohl, 2006. See Note #21.

Higher National Standards
The United States has made clear that it will not accept a treaty that precludes States from unilaterally adopting or maintaining higher national standards than those contained in the ATT. The United States has repeatedly argued that the ATT should provide guidance for the highest possible standards regarding arms exports, but that States should be invited and encouraged to do more to ensure the safety and security of their arms transfers.

Consistent with U.S. Law and National Interest
The United States argues that it has the "gold standard" when it comes to arms export controls. Thus, the United States will not allow an ATT to undermine the ITAR or EAR or require legislative or regulatory changes to these existing U.S. standards. In addition, the United States has long publicly argued for Senate confirmation purposes, the United States will insist on a Treaty that requires no amendments to existing U.S. law, which would make ratification nearly impossible, as the U.S. Congress does not makes changes U.S. law because of international pressure. Similarly, the United States will ensure that the ATT allows for transfers that the United States defines as being in its national interest and the interests of U.S. national security.

Commercial Trade in Conventional Arms
A basic principle of existing U.S. conventional arms transfer policy, under PDD 34, is that commercial interests must be taken into consideration and placed on an equal footing with national security interests when determining whether to transfer conventional weapons. Thus, the United States will be unwilling to accept an ATT that unduly hinders the commercial trade in weapons or harms U.S. economic interests. The United States believes that a fundamental principle of the entire ATT process is that international trade in conventional weapons is a legitimate economic activity.

Consensus
During the negotiations at the United Nations First Committee on the resolution that created the upcoming Prepcoms and conference process, the United States insisted that the ATT negotiations must use a consensus decision-making process. The United States claimed it required such a position to prevent certain States from undermining or hijacking the conference proceedings and to ensure that the ATT would be universal and adhered to.

VII. Summary of Key Actors in the United States

Although the ATT has been raised in profile due to the beginning of negotiations at the United Nations, as a policy issue, the conventional arms trade does not have much salience among U.S. government agencies and remains low on the agenda. Similarly, outside a very small circle of nongovernmental organizations, civil society has not been actively involved or interested in the arms trade since the 1990s efforts around an Arms Trade Code of Conduct.

U.S. Government Agencies
The State Department is the lead agency on the ATT. Currently the Bureau of International Security and Nonproliferation's Office of Conventional Arms Threat Reduction is taking the lead on the ATT. This is the same office that works on the Wassenaar Arrangement and indicates the U.S. approach to the ATT. The United States in not defining the ATT as an illicit trafficking or small arms issue; rather, the ATT is being looked at in the context of arms control. The United States is examining the regulation of items from nuclear-powered aircraft carriers to handguns. This is a much broader approach and context than had previously been taken by former

administrations. As such, there is a wider interagency process involved in the ATT discussions. The interagency review and potential delegation is made up of various representatives from the State Department, Department of Defense, Department of Justice (including ATF), Joint Chiefs of Staff, and the National Security Council, among others.

The U.S. Congress

The U.S. Congress has also been relatively silent on the ATT to date. Many Members of Congress are not educated on specific global and domestic arms trade issues and may see them as irrelevant or controversial. Because many may feel that the United States already maintains a sufficient arms regulating framework, they may see it as the national responsibility of other States to improve their own systems. Moreover, many Members have linked discussions on the ATT with domestic gun control and choose to stay out of the fray. Some Members have chosen to take a stand on the ATT, particularly in the Senate. Over the last ten years, Senator Dianne Feinstein (D-CA), along with Senator Patrick Leahy (D-VT) and Senator Daniel Akaka (D-HI) have repeatedly introduced legislation supporting small arms issues at the United Nations and have included arms provisions in a variety of Bills.

Members of Congress have also encouraged the executive branch to support ATT principles. In January 2006, 14 Senators (including then Senator Barack Obama) wrote a letter to then Secretary of State Condoleezza Rice encouraging U.S. support to include export criteria for small arms transfers in the UN Programme of Action on Small Arms. In June 2006, 17 Senators asked Rice to support the Transfer Control Initiative, a precursor to the Arms Trade Treaty at the July 2006 UN Small Arms Review Conference. In December 2006, 14 Senators sent a letter to Rice expressing their disappointment with the U.S. "no" vote on the Arms Trade Treaty resolution at the United Nations General Assembly. The House did take a significant step on the ATT and passed sense of Congress language – which creates no new law, nor is it enforceable, but put Congress on the record of supporting the ATT – in the FY 2010 Foreign Affairs Authorization Bill, encouraging the President to support an Arms Trade Treaty containing specific export criteria.

The Defense Industry

Unlike its British or other European counterparts, the U.S. defense industry has been relatively silent on the Arms Trade Treaty. Conversations with defense industry officials have made clear that the issue simply does not yet merit involvement or interest by the defense industry. Some industry representatives see the ATT as a fait accompli and are more interested in compliance and what that will mean for company business, than involvement in the treaty's development. In addition, U.S. defense industry representatives believe that because the United States already has such high standards and regulations in place, an ATT could simply even the playing field in markets around the world and wouldn't cause a dramatic change to their exporting abilities.

Civil Society Proponents of an ATT

Although some U.S. NGOs work on conventional arms trade issues, not all are active in the efforts surrounding the ATT. Thus, a very small group of NGOs in the United States are spearheading efforts to widen the circle of groups and individuals working on the ATT and related issues. Moreover, many NGOs are working to educate and inform Members of Congress, relevant government agencies, the public, and the media about the ATT to broaden the knowledge about an ATT and counter myths about its development.

The U.S. Public and Media

The U.S. public and media have also been limited in their role on the ATT. In general, the U.S public knows or cares very little about the ATT and conventional arms issues in general. The

media has run very few stories about the ATT, and editorial boards have not been receptive to making coverage of conventional arms issues and the ATT a priority. In addition, many journalists have not linked coverage of other issues—conflict, poverty, etc.—to the arms trade and are missing opportunities to broader their coverage of issues related to the arms trade. Most media stories occur around UN decisions or meetings or when an arms broker is captured or on trial.

Civil Society Opponents of an ATT

Because the ATT has been relatively low on the agenda and on the public's radar, very little has been done in terms of a pro-ATT or anti-ATT campaign within the United States. The NRA has used events on the ATT (and indeed those on the small arms process) at the United Nations as political and fundraising tools. The NRA is currently conducting surveys asking the public's views about their gun rights being taken away by the United Nations. Other civil society groups have been skeptical or opposed to the development of an ATT. For example, the Heritage Foundation has already produced two significant Papers on the topic. To date, however, Heritage and other groups have merely expressed their views in briefing papers and meetings. It remains to be seen if the NRA or other groups will undertake an organized and serious campaign to fight the ATT.

VIII. Conclusion: U.S. Leadership on an ATT?

For the first time, the United States is a supporter of the ATT process. How this plays out in the international arena has yet to be determined, but the prospect of U.S. leadership on an ATT is promising.

Although a draft treaty text has not yet been developed, within various UN processes the different elements for an ATT have been discussed. An ATT could be based on states' legal obligations and other responsibilities. An ATT could prevent international arms transfers where there is a substantial risk that arms will be diverted or used to violate UN charter obligations, such as UN arms embargoes. An ATT could prohibit international transfers of arms that could be used in serious violations of international human rights or humanitarian law; to commit acts of genocide or crimes against humanity; to facilitate terrorist attacks; to facilitate a pattern of gender-based violence, violent crime, or organized crime; to adversely affect regional security; to seriously impair poverty reduction or socio-economic development; or in corrupt practices.

Although the parameters and scope of a treaty remain open to discussion, there are some general conclusions that we can draw about the components of an ATT. An ATT will not serve as a disarmament measure, nor will it ban the trade in conventional weapons. Instead, the ATT is but one tool in a larger toolbox to help states regulate the international transfer of conventional weapons. The ATT will not address domestic or internal arms transfers, and will instead focus solely on international transactions. In addition, it is likely that arms transfer decisions will be made on a case-by-case basis and take into consideration many factors, including costs and benefits of the transfers. The ATT is intended to export sound national arms export control practice, and would include not only the physical transfer of weapons, but the entire process of international arms transfers, such as brokering, financing, and transport. And States have made it clear that an ATT must be clear, nondiscriminatory, and enforceable, establishing clear guidelines for implementation, transparency, monitoring, compliance, and verification.

With U.S. involvement in the ATT process the ATT will not adopt a lowest common denominator standard or restrict U.S. foreign policy decisions and prerogatives. In addition, the

United States will insist on an ATT that allows for national implementation and high standards. The ATT is not a panacea, but will help the international community better implement global controls on international transfers of weapons.

In the coming months, many unanswered questions about the ATT will begin to be answered. Although some may feel that there is little to do on an ATT until there is a proposed text, the United States currently has a significant opportunity to influence the ATT at its creation. The United States can ensure that outdated, weak, or meaningless standards are not adopted and that a simple, negotiable, and comprehensive ATT, which takes into account all stakeholders, will be developed.

Acronyms and Abbreviations

AECA	Arms Export Control Act
ATF	Bureau of Alcohol, Tobacco, Firearms, and Explosives
ATT	Arms Trade Treaty
CCL	Commerce Control List
CCW	Convention on Certain Conventional Weapons
CICAD	Inter-American Drug Abuse Control Commission
CIFTA	Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials
DCS	Direct Commercial Sales
DDTC	Directorate of Defense Trade Controls
DoD	Department of Defense
DSCA	Defense Security Cooperation Agency
DTRA	Defense Threat Reduction Agency
EAA	Export Administration Act
EAR	Export Administration Regulations
EXBS	Export Control and Related Border Security
FAA	Foreign Assistance Act
FMS	Foreign Military Sales
HFAC	House Foreign Affairs Committee
HIRC	House International Relations Committee
IEEPA	International Emergency Economic Powers Act
ITAR	International Traffic in Arms Regulations
MANPADS	Man-portable air defense systems
NRA	National Rifle Association
OAS	Organization of American States
OEWG	Open-Ended Working Group
OSCE	Organization for Security and Co-operation in Europe
PDD	Presidential Decision Directive
PSSM	Physical Security and Stockpile Management
SFRC	Senate Foreign Relations Committee
USML	U.S. Munitions List
WA	Wassenaar Arrangement
WRA	Office of Weapons Removal and Abatement