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Roundtable on the Arms Trade Treaty Report of Proceedings September 30, 2009

Introduction

On September 30, 2009, representatives from U.S. and foreign defense industries, the U.S. government, Congressional offices, and non-governmental organizations and think tanks were invited to discuss a potential Arms Trade Treaty (ATT). The roundtable was organized by the Arms Control Association, the Center for Industry and Security (CITS) at the University of Georgia, Oxfam America, and Saferworld. The purpose of the roundtable was to stimulate discussion on the proposed ATT among a variety of stakeholders.

On August 13, 2009 President Obama launched a new initiative intended to review the current export control system of the United States. The U.S. initiative is especially timely given the ongoing efforts to establish internationally agreed standards for arms transfer control and, in particular, the ongoing discussion of a prospective International Arms Trade Treaty (ATT) taking place within the United Nations. As the world's pre-eminent power, the largest conventional arms exporter, and indeed the country with the most comprehensive arms transfer controls, it is critical that the U.S. is properly engaged in any negotiation of an ATT, and that its position is consistent with ensuring that the highest possible standards are adopted. A weak ATT that legitimizes low standards of export controls would not serve the interests of the U.S. or its allies.

To date, the UN discussions on an ATT have been cast in general, theoretical terms. In the coming months, the UN process will move into a far more "concrete" phase, to find answers as to what a Treaty would comprise, how it would be monitored and verified, and also how it could be implemented. All states, including the United States, will need to clarify their positions on the potential scope, parameters (or criteria), monitoring and verification of an ATT. The United States was initially hesitant to engage in the UN deliberations, but has now demonstrated that it is willing to be a constructive partner in the UN process. The United States actively participated in the first sessions of the UN's Open Ended Working Group and is currently undergoing a comprehensive review of its export control system and will most likely also establish a new U.S. position on the ATT. Thus, the roundtable was organized to discuss potential opportunities and challenges for

U.S. engagement in the ATT process. The following is a summary of the presentations and discussions during the roundtable.¹

Panel One: Background and Content of Arms Trade Treaty

The two presenters described the rationale and need for an ATT, as well as what it could contain and many of the myths surrounding the concept. During the last 15 years, states, NGOs, and international organizations have tried to address the loopholes in the legal trade in conventional arms—loopholes that have allowed irresponsible arms transfers that fuel poverty, conflict, human rights abuses and that have been diverted to the illicit market. In October 1995, a group of Nobel Peace Laureates launched the International Code of Conduct on Arms Transfers Initiative, which proposed global principles for all types of conventional arms exports. Over the following decade, these ideas were further developed by NGOs. Key supporting governments, such as the United Kingdom then introduced the concept to the UN where in 2006 the General Assembly passed Resolution 61/89, entitled “Toward an arms trade treaty: establishing common international standards for the import, export and transfer of conventional arms.” The resolution called for the UN Secretary-General to seek the views of all UN member states on the “feasibility, scope and parameters for a comprehensive, legally binding instrument establishing common international standards for the import, export, and transfer of conventional arms” and established a group of governmental experts (GGE) to do so as well. More than 100 states submitted their views to the UN secretary-general and the GGE concluded its work in August 2008. The GGE recommended that the UN continue the pursuit of an ATT within the UN framework.

In December 2008, the UN General Assembly passed Resolution 63/240, which cemented future discussions towards an ATT through the establishment of an Open-Ended Working Group (OEWG). The United States was the only country to vote against the two resolutions, but has since then actively participated in the first two sessions of the OEWG in 2009. During the current meeting of the UN First Committee, states will determine if they want to continue with the remaining four sessions of the OEWG or pursue a new process that would lead to the negotiation of an ATT in 2012.

Although a draft treaty text does not yet exist, various elements for an ATT have been discussed. A potential ATT could be based on states’ legal obligations and other responsibilities and would ensure that no transfer is permitted if there is a substantial risk that it will be used to violate UN charter obligations, including UN arms embargoes, or would likely be diverted. In addition, transfers may not be allowed if they will 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.

The parameters and scope of a treaty have yet to be determined, but many myths have been perpetuated around the components of an ATT. The proposed ATT is not a

¹ The meeting was held under Chatham House Rule.

disarmament measure, rather it is a tool to regulate (not ban) the trade in conventional weapons. Furthermore the proposed ATT will not deal with domestic transfers of weapons, but rather focus on international transactions. Regarding the parameters and scope discussion there is an emerging consensus that decisions for arms transfers will be made on a case by case basis and weighed against the risk of misuse. Discussions around an ATT have centered on exporting good practice into areas where it is lacking. Such good practice would entail a list covering all conventional weapons as well as all transactions related to international arms transfers, including brokering, financing, and transport. In addition, a proposed ATT will have to be workable and enforceable and provide clear guidelines for implementation, transparency, monitoring, compliance, and verification.

Because the global nature of the arms trade requires a global response, discussion at the roundtable focused on how to ensure that an ATT would not result in states adopting the lowest common denominator standard or restrict U.S. foreign policy decisions. Participants believed that an ATT should develop the highest possible standard, and not encourage those with a higher national standard to lower their decision making threshold. Some concerns were raised that countries with a restrictive arms trade policy such as the United States could possibly be attacked for its policies under the pretense that there would be a weaker international standard in force. An ATT should apply to all states and not be used to give countries a free pass to export weapons to any end-user, simply because it was not illegal. It was noted that the ATT is but one tool to help implement global controls and should not be seen as a panacea for all arms-trade related issues.

Many questions about the content of an ATT remain, since no text has been proposed or agreed. Some stakeholders at the table felt that there is little to do on at ATT until there is a proposed text, because there are so many other priorities. Others cautioned that the development of an ATT should not use outdated or unacceptable, weak standards as examples. Others pointed out that the ATT provides an opportunity for a reduction in bureaucracy and clearer guidelines for arms exporters. Overall, participants stressed that an ATT must be simple, negotiable, and comprehensive. An ATT must take into account the concerns of industry—that some exporters could be disadvantaged—and it must be non-discriminatory and universal. In conclusion several participants pointed out that in going forward there would be a need to look at other initiatives in the international arena, such as the OSCE Handbook on Small Arms, to gather expertise and find out what could work best. Similarly all relevant actors in the trade—governments, as well as industry representatives—would need to be active in the pursuit of a solution.

Panel Two – How Could an Arms Trade Treaty Work?

As the UN begins to debate the next step in the ATT process, consensus that there is a great need for better international discourse and collaboration on these matters can no longer be disregarded. Although determining the specifics of the *what* and the *how* of a treaty remain for the future, many other questions could possibly be answered. One of the more practical of these questions is how exactly to implement an ATT once it is in place. How would it work in practice—at a national as well as international level?

Many states, including a majority of the arms and defense equipment producing nations worldwide, have already chosen to put in place national export control legislation. These standards vary widely from country to country, whereas an ATT would set a general standard, though states would still have the option to implement stricter regulations. Such an approach would accommodate both mature export control systems as well as nascent ones.

The presentation in this panel stated that an ideal outcome for an ATT would be a substantial set of guidelines married to a comprehensive control list for arms and military equipment. The guidelines or criteria would each need to be evaluated by the national authorities in case of an arms export. The list would have to include all major conventional weapons types including their components, software and technology, so as not to create a loophole for technological capability. On a national level the guidelines of an ATT would ideally be translated into a national export control law for arms and military equipment. With four components—legal framework, relevant institutions, training of officials, and outreach to industry—an ATT could be set to work in any national system regardless of size, capacity and legal tradition.

The presentation described how an ATT could facilitate governmental, commercial, and civil society interests. An ATT would promote transparency and accountability and serve as a confidence-building measure, which would promote international peace and security in the long run. Furthermore, building an internationally recognized legal framework for the legitimate arms trade would also make combating the illegal arms trade far easier. From the defense industry perspective, a system of international standard rules and regulations would make it far easier for companies operating in a globalized trade. Right now any defense company established in different markets is required to engage with several different export control systems—operating in an environment with clearer rules would therefore be of interest. Even though many defense companies are far less globalized than other industries, global production may change in the next 10-20 years and globalized controls may be more relevant and should take into account a future perspective of new threats and conflict structures. In addition, more transparency and responsibility in the arms trade will benefit civil society and the international community by building trust and promoting good governance.

The presenter argued that establishing a verification and monitoring mechanism for the proposed ATT will take time and it will be dependent on trust-building measures. Countries will naturally be hesitant to share information at an initial stage, and it will be necessary to look at reporting mechanisms in other fora to find a suitable format for an ATT reporting procedure. Capacity building and the possibility to give and receive assistance are two other themes that need to be considered. The technical complexities of the lists alongside the political consequences of an export decision bring further challenges to this endeavor, but there are good examples to use as models. UN Security Council Resolution 1540 provides one of many interesting initiatives to consider. During the discussion, participants also reflected on other existing mechanisms, such as the International Atomic Energy Agency, as a model for ATT implementation and verification.

Panel Three – The United States, the ATT and the Future: Possibilities and Challenges

Although different constituencies may define the problems associated with the conventional arms trade in different ways, the varying perspectives must feed into the development of a U.S. position on the ATT. An ATT needs to fill national security, economic, moral leadership, and the domestic political agendas of the United States. It will be essential to hear the voices of various stakeholders in order to have a substantive discussion of U.S. engagement on the ATT. More voices need to be brought to the table to discuss what works and what does not work, and how to raise the agenda of the ATT within the United States.

The different challenges related to the proposed ATT will need to be more clearly defined—what is the problem that the ATT aims to solve; what technical level of expertise will be needed; what types of list and criteria will work? Participants agreed that policymakers at the highest levels and those familiar with the political and technical complexities of the conventional arms trade need to be brought into the discussion. A clear political signal on the priority attached to the ATT process will need to be pursued. The Obama administration has made clear that its policy is engagement in the process, but what that means in practice remains to be seen and thus, more discussions on a variety of conventional arms issues need to take place.

Conclusion

The roundtable served to bring various constituencies together and begin a more substantive discussion on an ATT amongst the various stakeholder communities in the United States. Many unanswered questions remain and future discussions about an ATT will be essential. Future meetings should include various proposals for U.S. engagement in the ATT process and what an ATT should include. As the Obama administration undertakes a review of and potentially reforms its arms export control system, the ATT should be included in those discussions. A coordinated and consistent response to the different aspects of an ATT is required, but one which takes account of the various relevant voices and perspectives.