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As the U.N.'s Arms Trade Treaty Process Begins, U.N.'s "Programme of Action" on Small Arms Shows Its Dangers

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In 2001, the United Nations created the "Programme of Action to Prevent, Combat, and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects" (PoA). The PoA is not a treaty. Rather, it is a mechanism for encouraging voluntary cooperation. The fourth biennial meeting on the PoA took place June 14–18, 2010.

In 2008, the U.N. Secretary-General stated that the PoA's results as of that date were not "substantive."¹ As a voluntary mechanism, the PoA posed few dangers and offered the hope of modest gains in cooperation to address illicit arms trafficking. The 2010 biennial meeting demonstrated that these hopes are unlikely to be fulfilled. The better facets of the PoA are being weakened, while its worst aspects are receiving additional emphasis.

The United States should not yet withdraw from the PoA, but it should watch the PoA with care and be ready to withdraw if its unacceptable drift continues. This drift should be a warning to the U.S. as it embarks on the treaty process for the U.N.'s Arms Trade Treaty.

The PoA Is Going off the Rails. For believers in responsible diplomacy, the 2010 biennial meeting of the PoA was not a success. It raised dangers that the U.S., and Congress in particular, should watch with care.

The Danger of the PoA as a Treaty. The U.N. wants to turn the PoA into a binding treaty. In 2008, the Secretary-General identified as the PoA's first

weakness the fact that it "is not a legally binding instrument." In his opening remarks at the 2010 meeting, the High Representative for Disarmament Affairs, Sergio Duarte (Mexico) regretted that the PoA "proposes neither benchmarks nor cut-off dates ... [and] does not provide a specific framework to facilitate international assistance and cooperation."² If the PoA were to become a treaty, all of its existing flaws would become much more dangerous.

The Danger to the Second Amendment. The PoA's focus on "illicit manufacturing" parallels that of Inter-American Convention Against the Illicit Manufacture of and Trafficking in Firearms, negotiated under the auspices of the Organization of American States (OAS).³ The convention poses serious dangers to the Second Amendment because it defines "manufacturing" in such a way as to require nearly every gun owner to obtain a "manufacturing" license. If the PoA were to become a treaty, it could pose similar dangers. Moreover, the PoA continues to ignore—and by implication to denigrate—the existence of constitutions in three dozen nations that guarantee the right to arms, the right of self-defense, or the right to resist tyranny.⁴

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The Danger to the First Amendment. The 2010 meeting resulted in an agreement to emphasize “the importance of promoting dialogue and a culture of peace.” A U.N. discussion paper argued that “promoting a culture of peace” requires, among other items, “[t]he reduction of violence in the media and in video games” as well as “[s]ustained efforts at re-education and reorientation of [member state] citizens.” In the U.S., such efforts would be unacceptable on First Amendment grounds, as they would mandate government suppression of speech that is deemed politically incorrect by the U.N.

The Danger of Using U.S. Funding to Subsidize Terrorist States. Much of the 2010 meeting centered on what the U.N. described as “the need for resources.” This is a plea for additional funding to be distributed to member states through the U.N. The U.S. rightly provides funding for many bilateral and multilateral programs that address illicit trafficking. But it was clear that the U.N. wants to replace the PoA with a treaty in part because this would, in Duarte’s words, provide a “specific framework to facilitate international assistance and cooperation.”

It is likely that, under such a treaty, dues would be apportioned on the same basis as they are for the U.N.’s regular budget, meaning that the U.S. would be asked to pay 22 percent of the total. At the 2010 meeting, Iran was particularly insistent in its demand that “the weapon producers provide the assistance.” Any process that sought to force the U.S.

to subsidize Iran, or other dictatorships that supply arms to terrorists, would be utterly unacceptable.

The Danger That the PoA Will Lead to Other Commitments. The PoA’s supporters are also the principal backers of the U.N.’s Arms Trade Treaty, which poses many threats to U.S. interests.⁵ Though the PoA and the Arms Trade Treaty processes are legally separate, the fact that they are closely linked in practice implies the danger that one process will be used to achieve or reinforce the aims of the other.

Moreover, in a remark the U.N. thought important to quote verbatim, the U.S. representative at the 2010 meeting stated that the U.S. “agreed with and supported ‘virtually everything’” in one of the working papers.⁶ This paper endorsed both the OAS’s convention, which the Senate has not ratified, and the OAS’s model legislation for the convention, which imposes an even more onerous set of requirements, including registration of all firearms and ammunition.⁷

In short, the Administration is using the PoA to make commitments that are contingent upon the advice and consent of the Senate.

What the U.S. Should Do. The PoA is becoming a dangerous failure. Like many international initiatives for conventional arms control, it is being hijacked by true believers who refuse to distinguish between arms used for aggression and arms used for

1. United Nations Security Council, “Report of the Secretary-General to the Security Council,” para. 29, April 17, 2008, at <http://www.poa-iss.org/DocsUpcomingEvents/S-2008-258.pdf> (July 14, 2010).
2. Sergio Duarte, “Fourth Biennial Meeting of States to Consider the Implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects,” Opening Remarks, New York, June 2010, pp. 2–3, at <http://www.poa-iss.org/BMS4/Documents/BMS4-OpeningRemarks-MrDuarte.pdf> (July 14, 2010).
3. Ted R. Bromund, Ray Walser, and David B. Kopel, “The OAS Illicit Firearms Convention Is Incompatible with American Liberties,” Heritage Foundation *Backgrounder* No. 2412, May 19, 2010, at <http://www.heritage.org/Research/Reports/2010/05/The-OAS-Firearms-Convention-Is-Incompatible-with-American-Liberties>.
4. David B. Kopel, Paul Gallant, and Joanne D. Eisen, “The Human Right of Self-Defense,” *BYU Journal of Public Law*, Vol. 22, No.43, pp. 137–43 (1998).
5. Ted R. Bromund and Steve Groves, “The U.N.’s Arms Trade Treaty: A Dangerous Multilateral Mistake in the Making,” Heritage Foundation *Backgrounder* No. 2309, August 21, 2009, at <http://www.heritage.org/Research/InternationalOrganizations/bg2309.cfm>.
6. United Nations General Assembly, “Global Scourge from Illicit Trade in Small Arms Continues to ‘Wreak Havoc,’ Says UN Disarmament Head, As Meeting on 2001 Action Programme Opens,” June 14, 2010, p. 8, at <http://www.un.org/News/Press/docs/2010/dc3247.doc.htm> (July 15, 2010).
7. Bromund, Walser, and Kopel, “The OAS Illicit Firearms Convention Is Incompatible with American Liberties,” pp. 5–6.

legitimate self-defense. As a result, the PoA's modest potential for good is disappearing. This is a warning sign that the U.S. should heed as the Arms Trade Treaty process begins.

As long as the PoA ignores the fact that many U.N. member states approve of the transfers they pretend to condemn, the PoA—and especially a treaty based on it—will be counterproductive: It will limit the defensive arms of the law-abiding, while law-breaking states continue to supply arms to their proxies.

The U.S. should resist all efforts to turn the PoA into a treaty. If preparations for the 2012 meeting show that these efforts are continuing or that the

PoA will persist in wasting time on broad, controversial, or unrelated items, the U.S. should withdraw from the PoA process. If it participates, it should keep the focus on using voluntary cooperation between law-abiding democracies to facilitate control of illicit arms trafficking.

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