

National Security Group Lunch Transcript

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UN Arms Control Treaty

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DR. TED BROMUND:

I was at the UN Negotiating Conference in March that failed to conclude agreement on this treaty. The treaty was blocked for the last minute by North Korea, Syria and Iran. It was then jumped to the general assembly where it was voted through on a majority rule basis, again those three international villains voted against the treaty. There were a large number of abstainers, very significant abstainers: China, India, Russia, Egypt, many other bad and dubious actors.

So we do now finally have a treaty to discuss after several previous appearances here where I was talking about treaty drafts. I'm glad to talk about how the negotiations went down but I thought it might be more useful for me to talk about the road going forward and to talk a little bit about concerns with the treaty. So first let me talk about process going forward. The treaty will open for signature on June 3rd of this year. It will come into force 90 days after the 50th instrument of ratification is received. I think it's likely we'll get 50 ratifications this year. If we don't get them this year, we'll almost certainly get them next year.

The next issue before the US therefore is whether the US – and really individually, Secretary Kerry will actually sign the treaty. Now before the US signs the treaty, there's something called a Circular 175 process. This is led by the State Department and it's supposed to be a thorough view of any treaty's constitutional, legal and foreign policy issues. There's no timeline for completing a 175 review. If you wanted to, you could make it last 20 years. The fastest you could do it realistically is probably three months and even now I think we'd be pushing it because in addition to consulting interdepartmentally, the 175 process is supposed to consult with Congress, with industry, with civil society. So it's supposed to be really a 360 degree review.

I personally do not regard US signature on this treaty as an absolute slam dunk. The State Department attitude is this that treaty requires no changes in US procedures, which if correct raises the obvious question of how precisely it's supposed to benefit us, but they also acknowledge that the treaty is "ambiguous" and this suggests that the consultation process could be long and might not necessarily end in signature. Now, if the US does sign, only then can the treaty be transmitted to the Senate for

ratification but there are several priority treaties ahead of the Arms Trade Treaty, the Law of the Sea Treaty, Comprehensive Test-Ban Treaty, perhaps a couple of others like disabilities. So again, I think ATT arriving at the Senate and sort of being fully considered by the Senate is perhaps a little ways off.

On the other hand, once the US has signed a treaty, we are under a legal obligation not to defeat its object and purpose. I'd be happy to talk about that a little bit more. What it comes down to is sort of the grade school idea that you have to have a ratified treaty for it to have any legal effect in the United States is wrong and I'd be happy to discuss that more. It's on this point that the current resolution offered by Senator Moran and Representative Kelly of Pennsylvania is especially helpful and we'll give a shout out here to Isaac Fong who will be talking too later today about his boss's efforts on this. Tremendous – tremendously helpful work from Representative Kelly and Senator Moran and although we always give credit to members first, I want to say that nothing is done around here without staff members and Isaac – Representative Kelly doesn't have a good staffer, he's got a great staffer, so thanks to him as well for his assistance. Their concurrent resolution is really good because it points out the dangers of what could happen if the President simply – or the Secretary of State simply signs this treaty without sending it to ratification.

Let me move on briefly to substantive concerns with the treaty, a few quick points. First, it was very obvious to me in New York that the treaty went – underwent substantial revisions in the last couple of days of negotiation in an effort to get the autocracies to sign on. Lots of things that the US resisted all of a sudden approved in the final version of the treaty. It contains references now to individual end users – that's individual gun owners in the United States – it has a very bad article on diversion, which is the acquiring by unlicensed individuals of firearms. This was crafted by Mexico, translated into English by a non-native speaker and then dropped into the treaty with the result that it's not only bad, it also makes very little grammatical sense.

It contains a number of other damaging or difficult provisions such as an operative treaty principle, an operative responsibility for the US to prevent diversion, which I view as damaging and there are of course a number of other sort of risky points on that front. None of this was enough to get the autocracies on board but all of it's troubling.

Second, amendments to the treaty are allowed by a three quarters majority vote. They can start in six years after treaty comes into force. Now nations can opt-out of amendments to the treaty so no amendment adapted by majority rule would be binding on the United States, but the way international organizations work is you can opt-out of amendments all you want to, but the treaty secretariat is going to pretend that that is the way the treaty works for everyone. So I don't view the US ability to opt-out of amendments as a complete protection.

Third and really at the heart of the treaty, there are some very, very dangerous ambiguities. The treaty is based on three core elements. First, a knowledge standard, you can't transfer arms if you know or you should have known that the arms will be used for the wrong purposes. This is a second-guesser's charter. Second, the standards for transfer are based on international humanitarian law, international human rights law. These are frequently politicized terms, they are vague terms and they are not defined solely by the United States. We play some role in defining them but they're really defined by the nations of the world and unfortunately by legal scholars and NGOs. Third, the treaty also has a facilitate standard, not only can you not transfer arms that will be used to commit human rights abuses, you can't do anything that would facilitate human rights abuses as well. Well, a facilitate standard is very broad and let me just also add that all of these words are completely undefined in the treaty. The treaty contains no definitions whatsoever, which is astonishingly bad treaty practice.

So I think that the ATT really has no defined meaning. It allows for endless expansion and redefinition through the international human right standard, through the knowledge standard, which the US opposed. It sets the US up for UN investigations on the basis that we should have known that something was going to go wrong and the facilitate standard is so broad as to be meaningless. Those are really sort of the core of my concerns with the treaty.

Now there are number of sort of foundational problems, not with the tax but the very idea of the treaty which I'd be happy to discuss. I think one is particularly worth mentioning here at a Center for Security Policy event. In my view, the treaty is incompatible with the Reagan Doctrine. The State Department has already made it clear that if we want to support rebels against a totalitarian government abroad, the rebels will have to pass the same test as the government. They can't violate International Humanitarian Law. They can't violate International Human Rights Law. I think it's safe to say that no rebel group will ever be universally agreed to be abiding by all of the standards which we will rigorously enforce against ourselves but I guarantee you that Iran or Russia or China will not apply the same standards to the arms exports that it provides to the totalitarian government in question. So in my view, this treaty is basically incompatible with the Reagan Doctrine, which I would point out has been a bipartisan instrument of foreign policy since 1945.

Finally as I close, a quick note on process. The US said repeatedly and publically that the Arms Trade Treaty has to be negotiated by consensus. Everyone had to agree to it. This was partly to protect our interest but it was equally state explicitly said to ensure that all other nations – all other nations accept the same commitments that we do. Well, consensus agreement was not reached in March at the UN but we supported the jump to the General Assembly where the treaty was adopted by majority rule anyhow.

So we now have a treaty, which is not supported and in many cases is opposed by most of the world's leading illegitimate dictatorial arms traffickers. The US therefore has not met its own public red line on the treaty, which in my view is an excellent reason to be very skeptical about it and worse, it's enforced a terrible precedent: that you have multilateral negotiations based on consensus and if you can't get consensus, you jump to the General Assembly and force the treaty through on majority rule. The next time we have multilateral negotiations, they may be negotiations about global warming, they might be about drones. They might be about free speech and we have set ourselves up to accept the procedure that we have stated is totally legitimate: hold negotiations and if they don't work out, jump to the General Assembly and vote it through on a majority rule basis. This is a precedent that's going to be sided against the US diplomacy and against the bipartisan insistence on consensus and international negotiations for years to come. So I think on process grounds alone, we should have very, very substantial concerns about the way the Arms Trade Treaty has come into existence. Let me take a few questions if there are any from the audience.

MAN:

Thank you, Ted. Let me just start by asking – I read somewhere that I think something like 30 states have expressed some kind of opposition to this treaty. Is that because they see some kind of collusion with gun control efforts going on in their own states or is it more of a sovereignty issue?

DR. TED BROMUND:

No, I-I-I wish that were the reason, it's definitely not the reason. You had three distinct opponents and you had 29 states expressing at the negotiations I was at, various degrees of reservations, unhappiness skepticism but not formally voting against. So, you know, if you want to sort of say about 30 are not on board – and these are big guys, you know Russia, China, India, Pakistan voted in favor solely just to give one in the eye to India. It was obvious that they are being insincere. Their big supplier is China so they figure we can vote yes, it won't affect us.

The reason why a lot of these bad actors are against the treaty is because they think they it doesn't go far enough towards gun control. A lot of these places view the Arms Trade Treaty as sort of a coup prevention plan and what they want is for the treaty to absolutely ban the supply of weapons to non-state actors. You and I might call them rebels or freedom fighters or individuals, sort of depending on the context. So what we've got is a treaty which sort of in the last days, leading towards the autocracies to get them to sign on and therefore it became unsatisfactory to the US but didn't go far enough to get the autocracies on board. It's – it's classic United Nations.

MAN:

Questions for Dr. Berman. Christine?

CHRISTINE BRIM:

To what extent and I know this is I guess the question of local enforcement within the United States. Let's say that we sign on to it but – and it's pending for however many months or years. What kinds of activities will actually then be constrained de facto if not de jure?

DR. TED BROMUND:

Well, it's very difficult to give a definitive answer to that question because it involves deciding what the treaty's object and purpose is, which is what we're bound not to violate and I think people could, to a certain extent, have legitimate disagreements about what precisely that is. The treaty is sort of usually defended. You may have seen an op-ed in New York Times just this morning by Rachel Stoll [PH] attacking the treaty and attacking the resolution of Senator Moran and Representative Kelly, and sort of making the argument that it's all international.

Well, Rachel knows perfectly well – and I've known Rachel for a number of years that the treaty not only regulates imports and exports, it also regulates brokering and brokering is a domestic activity. The US State Department has been trying to define or rather to re-define brokering for almost 10 years now and they've been unsuccessful in doing so. So we ourselves don't really have a terribly satisfactory definition of what brokering is. If you want to be technical about it, we can violate US export regulations, you and I just by having a conversation about our desire to export arms. That's – we don't need to exchange any money even, so we have extremely restrictive laws which do in fact have no domestic inside the United States application.

When we talk about import and export, we tend to think it's just sort of you know, containers sitting in a port, coming in or leaving. The treaty is a little broader than that and that's perfectly clear if you read the relevant articles. There is domestic application here. Now, what precisely that means is going to be left up to the State Department's lawyers in this administration and the next one and the next one to determine.

MAN:

Yes, right here.

QUESTION:

Yes, Ted. The United States and Europe are going to be negotiating a free trade agreement in the latter part of this year. A lot of items will be covered under that free trade agreement. And that's a bilateral negotiation and I assume [UNCLEAR] will be a part of it, ammunitions and whatever. What's superior, what we signed with Europe or this?

DR. TED BROMUND:

I don't think that – usually arms are treated in just a different category. They are not like everything else. That's always been the US policy under every administration that normal commercial business is normal commercial business but arms are something different. I think that's the correct policy. So the Arms Trade Treaty is going to trump, you know any sort of trade agreement but ultimately – you know if we don't want to sell to someone, we're not going to sell someone, it's really as simple as that. There is not going to be any such thing as international full and free trade in firearms or battleships or aircraft carriers or something like that.

So what I'm a little bit more concerned about is the US-UK Defense Trade Cooperation Treaty and the similar treaty that we have with Australia, which creates kind of a carve-out – not an unregulated carve-out, but sort of a different realm for Britain, Australia. Canada already has such a realm. It's not fully clear that the Arms Trade Treaty sort of allows you to treat different countries in very different ways, so that's to me is – is a subsidiary concern but I think an area that states and DOD's lawyers will have to look at very carefully.

MAN:

Other questions? By the way, is Secretary Kerry as keen on this treaty as he was for Law of the Sea?

DR. TED BROMUND:

I think Secretary Kerry is keen on all treaties.

MAN:

Regardless of what the content is?

DR. TED BROMUND:

Well, I've not run into a treaty he opposes so if-if anyone's aware of something he has ever opposed, I would be very awfully glad to hear about it. Yes, he is, but I still don't regard signature as a slam-dunk. Once you got the State Department saying that the treaty content is ambiguous, a lot of people in the government especially in DOD are going to start scratching their heads about what precisely that means.