AMERICAN BAR ASSOCIATION
ADOPTED BY THE HOUSE OF DELEGATES
FEBRUARY 6, 2017
RESOLUTION

RESOLVED, That the American Bar Association urges the United States to ratify and implement the 2013 Arms Trade Treaty.
REPORT

I. INTRODUCTION
This Resolution urges the United States (“U.S.”) to ratify the 2013 Arms Trade Treaty (“ATT”). The ATT aims to prevent and eradicate the illicit trade in conventional arms and prevent their diversion.1 Ratification presents an opportunity for the United States (“U.S.”) to curb illicit international weapons transfers to war-torn countries, terrorist organizations, and murderous regimes—a benefit not only to international peace and security but also to U.S. interests. To date the United States and 129 other nations have signed the ATT.2 If ratified by the U.S., the ATT will be a critical foreign policy tool. It creates concrete obligations and oversight mechanisms. The ATT does not constrain U.S. foreign policy, contravene the Second Amendment of the U.S. Constitution, or require many—if any—changes to U.S. weapons export law.

Failure to ratify the ATT could compromise U.S. leadership in the international operation of the ATT and jeopardize universalization of the ATT. U.S. ratification would increase pressure on nations that have not yet signed or ratified the ATT to do so. This report (i) describes the ATT in general terms and how the proposed resolution is consistent with the ABA’s mission, (ii) summarizes the treaty’s key provisions, (iii) sets forth the principal arguments against ratification, and (iv) addresses those arguments by showing how the treaty would not conflict with existing United States domestic law.

I. BACKGROUND.
The ATT, adopted by the United Nations General Assembly (“UNGA”) on April 2, 2013 by a vote of 154-3-23, opened for signature on June 3, 2013.3 On September 25, 2013, the U.S. became the 91st State to sign the ATT.4 To date, 91 States have ratified the treaty, which entered into force on December 24, 2014.5 There are no international norms comprehensively regulating the international trade in conventional arms; rendering an almost unlimited supply of weapons, munitions, military and security equipment, widely available for purchase and acquisition by oppressive regimes, terrorists, militias, and others. According to the UN Office for Disarmament Affairs, the flow of illicit arms “constitute[s] a key factor in prolonging conflict and fueling regional instability.”6 Arms flows hinder the peacekeeping and peace-building process, contribute to violations of international humanitarian and human rights law, and obstruct humanitarian action.7 The lack of enforceable common standards reinforces organized crime and terrorism with devastating effects to the development of the rule of law.

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4 Id.
5 Id.
7 See generally, id.
Non-governmental organizations ("NGOs") note that every day, millions of people suffer due to the illicit arms trade.\(^8\) “War crimes, unlawful killings, torture and other serious human rights abuses . . .” occur as a direct result of armed violence.\(^9\) Moreover, the “poorly regulated arms trade impedes socio-economic development. It is estimated that armed violence costs Africa $18 billion per year.”\(^10\) “Gunrunners continue to operate with impunity on the shady fringes of this deadly trade. And, lax or non-existent reporting obligations make it almost impossible to tell in whose hands a gun, shell, bullet, or even fighter plane, will ultimately end up, or how it got there.”\(^11\)

Currently national and regional “transparency mechanisms” attempt to promote restraint in the arms trade, and the UN attempted to promote transparency in the import and export of conventional arms via the UN Register of Conventional Arms (“UNROCA”). These efforts, however, have done little to curb the illicit international arms trade.

The ATT promotes the principles of the UN Charter, the Geneva Conventions of 1949, and the Universal Declaration of Human Rights. It furthers the objectives of: United Nations Disarmament Commission Guidelines for international arms transfers in the context of UNGA resolution 46/36H of 6 December 1991; the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects; the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the UN Convention against Transnational Organized Crime, and the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons; and the UNROCA.

II. THE ATT AND THE ABA’S COMMITMENT TO THE RULE OF LAW.

ABA support of the ATT furthers the ABA’s mission and commitment to Rule of Law.\(^12\) As the national voice of the U.S. legal profession the ABA has an opportunity to clarify the ATT’s legal implications and ensure the U.S. does not fail to ratify the ATT based on misunderstood legal provisions. Additional ways in which ABA support for the ATT promotes ABA objectives are as follows:

A. Increase public understanding and respect for the rule of law, and the role of the legal profession in the U.S. and globally.

Many objections to the ATT are based on a misunderstanding of its obligations.\(^13\) The ABA has an opportunity to educate both the public and the Senate by clarifying that the obligations in the ATT coexist with fundamental U.S. constitutional protections. By ensuring that international obligations are properly interpreted and understood, the ABA promotes the rule of law and protects such law from political conflation.

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10 OXFAM INTERNATIONAL, supra note 10.
11 OXFAM INTERNATIONAL, supra note 10.
12 The core of the ABA’s mission is “to serve . . . the public by defending liberty and delivering justice as the national representative of the legal profession.” Goal IV of the Mission is entitled: “Advance the Rule of Law.” See ABA Mission and Goals, AMERICAN BAR ASSOCIATION http://www.americanbar.org/about_the_aba/aba-mission-goals.html (last visited Apr. 15, 2015).
13 See Section IV for a description of some of these concerns.
B. Hold governments accountable under law.

The ATT enhances government accountability, both for arms transfers contributing to crimes against humanity and other heinous crimes, as well as for non-criminal weapons transfers. By mandating State oversight, enhancing cooperation and developing dialogue, the ATT curtails illicit international weapons transfers, increases transparency, and creates binding obligations on States that prevent the fomentation of conflict.

C. Work for just laws, including human rights, and a fair legal process.

The ATT takes concrete steps to protect human rights by creating accountability, transparency, and codifying norms to prevent illicit transfers leading to human rights abuses.

D. Assure meaningful access to justice for all persons.

The ATT enhances accountability under the law and enhances access to justice for those victimized by such weapons by obligating national control systems and providing the legal framework for holding States accountable for their transfers.

III. SUMMARY OF KEY PROVISIONS.

A summary of the key provisions of the ATT’s twenty-eight Articles is below.14


The Preamble and Article set forth that the object of the ATT is to “establish the highest possible common international standards for regulating or improving the regulation of the international trade in conventional arms” and to “prevent and eradicate the illicit trade in conventional arms and prevent their diversion” for the purpose of “contributing to international and regional peace, security and stability; reducing human suffering; [and] promoting cooperation, transparency and responsible action by States Parties15 in the international trade in conventional arms, thereby building confidence among States Parties.”16

B. Scope: Articles 2-4.

The ATT establishes obligations with respect to the international trade in “conventional arms” (e.g. battle tanks, armored combat vehicles, large-caliber artillery systems, combat aircraft, attack helicopters, warships, missiles and missile launchers, and small arms and light weapons).17 Certain provisions of the ATT also establish obligations with respect to the export of ammunitions/munitions fired, launched, or delivered by conventional arms18 and the export of parts and components of conventional arms where the export is in a form that provides the capability to assemble the conventional arm.19 It applies to international “transfers” defined as export, import, transit, trans-shipment, and brokering.20 It does not apply to international

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14 This analysis is specific to only those key provisions within the ATT for the purpose of providing background.
15 States that become parties to the treaty regime are called “States Party,” plural “States Parties.”
16 Id., art. 1.
17 Id., art. 2(1). Article 5(3) encourages States to apply the Treaty to the broadest range of conventional arms, and to use definitions that are not narrower than those in relevant UN instruments at the time the treaty entered into force.
18 Id., art. 3.
19 Id., art. 4.
20 Id., art. 2(2).
movement of conventional arms by or on behalf of a State Party for its own use, if the arms remain under the ownership of that State Party.\textsuperscript{21}

C. Implementation: Article 5.
To meet the object and purpose of the ATT, States Parties must establish and maintain a national control system, including a national control list, to regulate the international transfer of conventional arms, ammunition/munitions, and parts and components.\textsuperscript{22} States shall designate: (1) competent national authorities to ensure an effective and transparent national control system regulating the covered items and activities and (2) designate national points of contact to exchange information on ATT implementation.\textsuperscript{23} Pursuant to their national laws, States are to notify and update national point(s) of contact and provide their national control lists to the ATT Secretariat.\textsuperscript{24}

D. Prohibitions and Export Controls: Articles 6 and 7.

i. \textit{Prohibitions}.
Article 6 prohibits the international transfer of conventional arms covered under Article 2(1), and items covered under Articles 3 and 4, if the transfer would violate the State Party’s relevant international obligations pursuant to UN Security Council measures acting under Chapter VII of the UN Charter, or international agreements to which it is a party.\textsuperscript{25} Further, the ATT states: “A State Party shall not authorize any transfer . . . if it has knowledge at the time of authorization that the arms or items would be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilians, or other war crimes defined by international agreements to which it is a party.”\textsuperscript{26}

ii. \textit{Export Risk Assessment}.
Article 7 sets forth the parameters for a risk assessment that applies only to exports of conventional arms covered under Article 2(1), and items covered under Articles 3 and 4 that are not prohibited by Article 6. In these instances, each exporting State Party must assess the potential that the arms: (1) would contribute to or undermine peace and security; (2) could be used to commit or facilitate a serious violation of international humanitarian law, international human rights law, an act that would violate international conventions or protocols relating to terrorism and transnational organized crime, to which the exporting State is a party.\textsuperscript{27}

Additionally, exporting States Parties must also assess whether there are mitigation measures that could be taken by exporting and importing states, such as confidence-building measures or joint programmes.\textsuperscript{28} If, the exporting State Party determines that there is an “overriding risk” of the “negative consequences” identified in Article 7(1), the state shall not authorize the export.\textsuperscript{29}

\textsuperscript{21} Id., art. 2(3).
\textsuperscript{22} Id., art. 5(2).
\textsuperscript{23} Id., arts. 5(5), 5(6).
\textsuperscript{24} Id., arts. 5(4), 5(6).
\textsuperscript{25} Id., arts. 6(1), 6(2).
\textsuperscript{26} Id., art. 6(3).
\textsuperscript{27} Id., art. 7(1).
\textsuperscript{28} Id., art. 7(2).
\textsuperscript{29} Id., art. 7(3).
Exporting States Parties must also take into account the risk of the conventional arms covered under Article 2(1), and items covered under Articles 3 and 4 being used to commit or facilitate serious acts of gender-based violence or violence against women and children.\textsuperscript{30}

In addition, each exporting State Party shall “take measures to ensure that export authorizations . . . are detailed and issued prior to the export” and make available appropriate information concerning the export authorization to the importing State Party or transit/trans-shipment State Party, on its request, and subject to its national laws, practices, or policies.\textsuperscript{31} If, after an authorization is granted, new relevant information comes to light, the exporting State Party is encouraged to reassess the authorization with the importing State Party.\textsuperscript{32}

E. Import, Transit/Trans-shipment, Brokering and Diversion: Articles 8-11.

When importing conventional arms under Article 2(1), and items covered under Articles 3 and 4, a State Party must take measures to ensure that appropriate and relevant information is provided, upon request and pursuant to its national laws, to enable the exporting State Party to assist the exporting State Party in conducting its export assessment required by Article 7.\textsuperscript{33} This could include end use and end user documentation.\textsuperscript{34} An importing State Party must also take measures that would allow it to regulate, where necessary, the import of conventional arms under Article 2(1), and items covered under Articles 3 and 4, under its jurisdiction.\textsuperscript{35} States Parties “involved in the transfer of conventional arms covered under Article 2(1)” must “take measures to prevent their diversion”\textsuperscript{36} and an exporting State Party must seek to prevent diversion through its national control system, by assessing the risk of diversion, and by considering the establishment of mitigation measures. Prevention measures need not be limited to these activities.\textsuperscript{37} Importing, transit, trans-shipment, and exporting States Parties must cooperate with and exchange information, pursuant to their national laws, where appropriate and feasible.\textsuperscript{38} If a State Party detects a diversion of conventional arms covered under Article 2(1), and items covered under Articles 3 and 4, it shall take appropriate measures pursuant to its national laws and in accordance with international law to address the diversion. States Parties may address diversions by alerting States Parties that are potentially affected by the diversion, examining diverted shipments and following up with investigation and law enforcement.\textsuperscript{39} These provisions do not apply to ammunition/munitions or parts and components of conventional weapons.\textsuperscript{40}

\textsuperscript{30} Id., art. 7(4).
\textsuperscript{31} Id., arts. 7(5), 7(6).
\textsuperscript{32} Id., art. 7(7).
\textsuperscript{33} Id., art. 8(1). Likewise, during the export authorization process, the importing State Party (country of final destination) may request information from the exporting state concerning specific export authorizations. Id., art. 8(3).
\textsuperscript{34} Id.
\textsuperscript{35} Id., arts. 8(2).
\textsuperscript{36} Id., art. 11(1).
\textsuperscript{37} Id., art. 11(2).
\textsuperscript{38} Id., art. 11(3). The Treaty also suggests information that States Parties could share with one another to better comprehend and prevent diversion, such as information on corruption, international trafficking routes, and other information. Id., art. 11(5).
\textsuperscript{39} Id., art. 11(4).
\textsuperscript{40} Articles 8-11 state that they apply to conventional weapons covered in Article 2(1), Articles 3 and 4, which cover ammunition/munitions and parts and components of conventional weapons, state only that States Parties should apply the provisions of Articles 6 and 7 to ammunition/munitions and parts and components of conventional weapons.
F. Record keeping and National enforcement: Article 12, and 14.
States Parties are required to maintain and keep for 10 years, national records of their export authorizations or actual exports of covered conventional arms, under Article 2(1), and items covered under Articles 3 and 4. States Parties are also encouraged to maintain records of covered conventional arms, under Article 2(1), and items covered under Articles 3 and 4 that are transited or trans-shipped through its territory or transferred to its territory as the final destination. States Parties shall take appropriate measures to enforce national laws and regulations that implement the ATT.

G. International Reporting, Cooperation, and Assistance: Articles 13, 15-16.
States Parties must provide to the ATT Secretariat an initial report outlining national implementation measures, as well as subsequent annual reports concerning authorized or actual exports and imports of covered conventional arms, under Article 2(1), and items covered under Articles 3 and 4. Additionally, States Parties are encouraged to report measures proven effective in addressing the diversion of covered conventional arms, under Article 2(1), and items covered under Articles 3 and 4.

The ATT requires States to cooperate with one another, consistent with their respective security interests and national laws, to effectively implement the ATT, and encourages consultations and information exchanges among States Parties, consistent with their security interests and national laws. Upon mutual agreement, and consistent with national laws, States are required to “afford the widest measure of assistance” to one another in investigations and judicial proceedings in connection with the violation of national implementation measures relating to the ATT. States Parties may seek assistance with implementation, including legal, legislative, capacity-building, technical, material, or financial assistance. A voluntary trust fund shall also be established to support requests for assistance.

H. Dispute Resolution: Article 19
The ATT requires States Parties to consult and, by mutual consent, cooperate to pursue settlement of disputes regarding application or interpretation of the ATT by peaceful means using dispute resolution mechanisms such as negotiation, mediation, arbitration and judicial settlement.

41 Id., arts. 12(1), 12(4).
42 Id., art. 12(2). States are encouraged to record information regarding “quantity, value, model/type,” authorized transfers, actual transfers, details of states involved in the transfer, and end users. Id., art. 12(3).
43 Id., art. 14.
44 Id., arts. 13(1), 13(3). The initial report should cover national laws, national control lists, and other regulations and administrative measures. It must be furnished within one year after the Treaty entered into force. Id., art. 13(1). Both initial and annual reports will be made available by the Secretariat to States. Id., arts. 13(1), 13(3). Reports may exclude commercially sensitive or national security information. Id., art. 13(3).
45 Id., art. 13(2).
46 Id., art. 15(1). States are encouraged to exchange information consult with one another, pursuant to national laws and security interests. Id., arts. 15(2)—(4), (6), (7).
47 Id., art. 15(5).
48 Id., art. 16(1). States may request, offer, or receive assistance on an international, regional, bilateral, or national basis. Id., art. 16(2).
49 Id., art. 16(3).
50 Id., art. 19.

A Conference of States Parties will convene within one year of the ATT entering into force, and periodically thereafter.\(^{51}\) At the first session, States Parties will adopt rules of procedure for the Conference. The Conference shall also adopt financial rules for itself and any subsidiary bodies, and financial rules governing the Secretariat.\(^{52}\) Subsequent Conference will adopt annual budgets.\(^{53}\) The Conference will review implementation, consider recommendations, amendments, issues of interpretation, tasks and secretariat budgets, establishment of subsidiary bodies, and will perform other functions.\(^{54}\) The ATT establishes a Secretariat to assist States Parties with the effective implementation of the Treaty. The Secretariat will be responsible to States Parties for receiving, making available, and distributing reports; maintaining and making available a list of national points of contact; facilitating requests for assistance, facilitating the work of the Conference of States Parties, and other duties as decided by the Conference of States Parties.\(^{55}\) The ATT allows for amendments six years after the treaty enters into force, and allows reservations only when compatible with the object and purpose of the treaty.\(^{56}\) The remaining articles of the ATT cover signature, ratification, acceptance, approval or accession; entry into force; provisional application; duration and withdrawal; reservations; relationship to other agreements; depositary; and authentic texts.\(^{57}\)

IV. SUMMARY OF VIEWS AGAINST RATIFICATION

The United States was among the nations voting in favor of the ATT at the UNGA, and it was the ninety-first nation out of 130 to sign the treaty. Advice and consent to ratification of the ATT, under Article II, Section 2 of the U.S. Constitution, will require a vote of two-thirds of the Senate. However, the President has not yet transmitted the ATT to the Senate for advice and consent for ratification. This section describes and addresses the arguments against ratification.\(^{58}\)

First, opponents argue that the treaty was not negotiated in accordance with the Administration’s original negotiation strategy. In October 2009, the Obama Administration expressed its support for “the negotiation of the treaty” at the UN only by “the rule of consensus decision-making.”\(^{59}\) Opponents maintain that the ATT failed to “achieve consensus” at the UN but was adopted by majority vote in the UNGA, (including a U.S. vote) and that this apparent “reversal” of strategy damaged U.S. diplomatic credibility.\(^{60}\) This confuses the negotiation of the ATT with its adoption: the “rule of consensus decision-making” applied to how the treaty was negotiated at the UN, not how it was adopted. This objection also does not speak to the ATT’s...
substance but merely to UN procedure, and specifically to political opposition within the U.S. Senate to the President’s broad Constitutional foreign affairs powers.

Second, opponents highlight that the “treaty allows amendment by a three-quarters majority vote,” such that the U.S. could be pressured to “comply in practice with amendments it was unwilling to accept.” 61 This objection fails to appreciate that although amendments can be adopted by a three-quarters vote if efforts at consensus fail, they only enter into force for States Parties that deposit an instrument of acceptance for those amendments. 62 If an amendment were objectionable, the U.S. could decline to deposit an instrument of acceptance and the amendment would never be binding on the U.S.

Third, opponents argue that the treaty does not recognize “lawful ownership and use of, and trade in firearms […] much less individual self-defense, as fundamental individual rights.” 63 Opponents assert that the ATT will “encourage [] governments to collect the identities of individual end users of imported firearms at the national level,” thus creating a national gun registry. 64 They add that the ATT creates a national responsibility to prevent diversion of firearms, “which could,” they argue, “be used to justify the imposition of controls […] that would pose a threat to the Second Amendment.” 65 Many of these concerns are dispelled in Section V of this report.

Fourth, opponents assert that the ATT is “ambiguous,” such that the U.S. would “be accepting commitments that are inherently unclear” and in turn the Senate “cannot effectively provide advice” concerning an ambiguous treaty, and “should never” do so. 66 The transmittal package from the President may address these elements, and Senate hearings and questions for the record may also be used to clarify any ambiguities perceived by the Senate. Moreover, to the extent that perceived ambiguities remain following Senate consideration, a State Party may clarify its understanding or perceived ambiguities by including statements in its instrument of ratification at the time it adheres to the ATT.

Fifth, opponents also argue that the “criteria at the heart of the treaty are vague and easily politicized,” and therefore the treaty “will restrict the ability of the [U.S.] to conduct [its] own foreign policy,” thus “steadily subject[ing] the [U.S.] to the influence of internationally-defined norms,” impinging on U.S. sovereignty. 67 It would “allow foreign sources of authority to impose judgment or control upon the United States” 68 They do not explain what the sources of authority are. Under this rationale, all treaties are objectionable. The ATT does not affect sovereignty differently than other treaties. Additionally, the United States is also subject to customary international law and treaty law rules, accepted as binding, that align closely with the requirements of the treaty. These treaties include the Geneva Conventions and the Genocide Convention.

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61 They believe this would also circumvent the Senate’s power of “advice and consent” on treaties. Id.
62 ATT, art. 20(4).
63 Supra, note 58.
64 Id.
65 Id.
66 Id.
67 Id.
68 Id.
Sixth, opponents assert that the ATT “could hinder the United States in fulfilling its strategic, legal, and moral commitments to provide arms to key allies.”\(^{69}\) The ATT would likely not hinder efforts to fulfill any such commitments. If it would, this should not be a wholesale bar to ratification as it expressly provides each State Party the right to make reservations.\(^{70}\) However, customary international law rules and treaty rules that are binding on the United States would still serve as a barrier to many, if not all, of the weapons transfers that are prohibited by the ATT. Many of these international law rules have been adopted as domestic law through regulations and executive action, as discussed in Section V.A.(ii)-(iii). The control procedures required by the ATT are also already enshrined in U.S. domestic law, as discussed in Section V.A(i).

V. INTERACTION BETWEEN ATT AND U.S. DOMESTIC LAW.


Ratification of the ATT will not require changes to U.S. export control law.

i. National Control System.

As relates to the national control system, the U.S. already regulates the sale of weapons and munitions under the Arms Export Control Act of 1976 ("AECA").\(^{71}\) AECA regulates the export of all of the munitions included in the ATT’s purview through the Directorate of Defense Trade Controls ("DDTC") of the State Department.\(^{72}\) The U.S. Munitions List ("USML") contained in the State Department’s International Traffic in Arms Regulations ("ITAR") already regulates defense articles and defense services, from small-caliber non-automatic firearms to major end-items, such as vessels, ground vehicles, and aircraft, and their component parts and munitions to broader defense services and training.\(^{73}\) In addition, the Commerce Control List ("CCL") lists items that require an export license.\(^{74}\) ATT Article 5(2) requires the establishment and maintenance of a national control system in order to implement the provisions of the Treaty. As the DDTC controls all items on the USML, a list which controls every category of conventional arms included in ATT Article 2(1),\(^{75}\) U.S. law is already in compliance with that aspect of the ATT. Additionally, as the U.S. control list contains both the arms and their component parts and munitions, ATT Articles 3 and 4 are satisfied by current U.S. law. The USML already exceeds the scope of coverage mandated by the ATT, which sets a floor for what defense articles are subject to export controls.

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\(^{69}\) Id.

\(^{70}\) ATT, art. 25.

\(^{71}\) 22 U.S.C. 2751, et seq. The statute grants the President the authority to regulate the import and export of defense articles and services. The President delegated this authority to the Secretary of State in Executive Order 11958, and later again in Executive Order 13637. The Secretary of State sets the export regulations that are then administered mainly by the Department of Commerce. The Department of Treasury continues to handle sanctions related export controls, mainly via the Office of Foreign Assets Control (OFAC).

\(^{72}\) The U.S. Munition List (USML) is contained in the International Traffic in Arms Regulations (ITAR). The ITAR is listed in the Code of Federal Regulations at 22 C.F.R. §120, et seq.

\(^{73}\) ITAR §121.1.


\(^{75}\) ATT Article 5(3) encourages application of “the provisions of this Treaty to the broadest range of conventional arms” with a specific coverage floor set by the United Nations Register of Conventional Arms, as of the time when the treaty entered into force (December 24, 2014). UN OFFICE FOR DISARMAMENT AFFAIRS, supra note 1. The UN Register of Conventional Arms includes seven of the main types of conventional weapons: battle tanks, armored combat vehicles, large caliber artillery systems, combat aircraft, attack helicopters, and missiles and missile launchers. Small arms are included as of 2003, but are not mandated for reporting.
If the United States ratifies the ATT, the United States will be required, pursuant to its national laws, to provide the national control list under ATT Article 5(4) to the ATT Secretariat, take measures to implement the ATT, designate appropriate authorities under ATT Article 5(5), and provide points of contact as regards implementation, required by ATT Article 5(6). As the USML is already public and updated through the Federal Register and as the State Department already has the primary responsibility for defense export controls and will likely be the point of contact, ATT Articles 5(4) through 5(6) will not introduce onerous requirements or additional bureaucracy.

**ii. Prohibited Transfers (ATT Article 6).**

Article 6 prohibits international transfers of treaty-covered arms, ammunition/munitions and component parts where the export is in a form that provides the capability to assemble the conventional arm that fall into three categories:76 (1) transfers that would violate a State Party’s obligations under measures adopted through UN Security Council acting under Chapter VII of the UN Charter; (2) transfers that would violate a State Party’s relevant international obligations under international agreements to which the State is party, in particular those relating to the transfer of, or illicit trafficking in, conventional arms, under Article 2(1), and items covered under Articles 3 and 4; (3) transfers where the State Party “has knowledge at the time of authorization” that the arms or items would be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilians, or other war crimes as defined by international agreements to which the State is a party.

The U.S. already applies sanctions passed by the UN Security Council in many circumstances against States and individuals. ITAR § 126.1(c) states that UN Security Council arms embargoes are automatically applied to defense exports for the duration of the embargo, unless a specific exception is created by the State Department. Security Council decisions create binding, mandatory international obligations on the U.S.77 The U.S. veto power on the Security Council allows the United States to prevent adoption of any Chapter VII resolution in conflict with U.S. policy.

The second prohibition, focused on transfers that violate a State’s obligations under relevant international agreements to which it the State is a party, will not require additional legislation. AECA gives broad authority to the President to control export of defense articles and services “in furtherance of world peace and the security and foreign policy of the U.S.”78 This provides the means for the State Department to execute the treaty through regulations without requiring additional Congressional action. ITAR §126.7(a)(1) allows licenses to be disapproved or revoked when “the Department of State deems such action to be in furtherance of world peace, the national security or foreign policy of the U.S., or is otherwise advisable.” The State Department already regulates export controls in accordance with the international obligations of the U.S.—and thus in accordance with U.S. foreign policy interests—the ATT should not require additional export control regulations.

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76 The Treaty is not tied to USML or U.S. export controls, but U.S. export controls are already sufficient to meet the requirements of the Treaty.
77 U.N. Charter.
78 AECA, § 2778(a)(1).
The final prohibition against authorizing a transfer of covered arms or items that would be used in the commission of genocide, war crimes and crimes against humanity creates the only novel proscriptions. However, this should not appreciably affect U.S. law. In those cases where the Security Council has not acted to prevent these crimes, it is likely that the President would have the statutory authority to act. The President, in creating the Atrocities Prevention Board, stated: “preventing mass atrocities and genocide is a core national security interest . . . of the United States.”

AECA § 2778(a)(1) allows the President to regulate arms exports “in furtherance of world peace and the security and foreign policy of the United States.” AECA § 2778(a)(2) requires that arms export decisions “take into account whether the export of an article would contribute to an arms race, aid in the development of weapons of mass destruction, support international terrorism, increase the possibility of outbreak or escalation in conflict or prejudice [the development of other arms agreements or arrangements].” Though the DDTC has not created explicit rules for denial of export licenses based on determinations of genocide, crimes against humanity, or war crimes, Presidential Policy Directive 27 issued on January 15, 2014, states that “the United States will not authorize any transfer if it has actual knowledge at the time of authorization that the transferred arms will be used to commit: genocide; crimes against humanity; grave breaches of the Geneva Conventions of 1949; serious violations of Common Article 3 of the Geneva Conventions of 1949; attacks directed against civilian objects or civilians who are legally protected from attack or other war crimes as defined in 18 U.S.C. 2441.” If the DDTC chooses to regulate in this area, it will need to include requirements for the “knowledge” requirement of the treaty, standards for determining when genocidal acts, crimes against humanity, or war crimes have taken place.

These standards are already set by customary international law and treaty law, including the Geneva Conventions and the International Law Commission’s Articles of State Responsibility, both seen as binding in the United States.

iii. Exports Not Categorically Prohibited (ATT Article 7).

In the case of exports not prohibited under Article 6, Article 7 requires that States Parties assess the potential that exported arms or items would contribute to or undermine peace and security; and whether they could be used to commit or facilitate a serious violation of international humanitarian law, international human rights law, international conventions or protocols relating to terrorism or transnational organized crime to which the exporting State is a party. If, after conducting the assessment and considering available mitigating measures, the exporting State Party determines that “there is an overriding risk” of any of the negative consequences identified above, then the State Party cannot authorize the export.


80 22 USC § 2753 requires that the President must find that the sale or lease of a defense article or service “will strengthen the security of the U.S. and promote world peace.”

81 AECA, § 2778(a)(2).


83 Until they are written and applied, it is impossible to determine whether they will be sufficient to meet the U.S.’ international obligations. As a result, this is a separate issue and is not discussed in this section. U.S. law criminalizes war crimes, see, e.g., 18 U.S.C. § 2441, and genocide, see, e.g. 18 U.S.C. § 1091, but does not criminalize crimes against humanity. A treaty is being developed by the U.S. member of the International Law Commission that would create clear rules for crimes against humanity criminalization and prosecution.

84 ATT, art. 7.
The DDTC already considers the impact that an export will have on U.S. foreign policy and national security when evaluating any license application. In addition to the prevention of mass atrocities, the United States has undertaken to respect, promote, and implement human rights and humanitarian law obligations. 85 The United States has also joined anti-terror and anti-organized crime conventions. Given the fact that these considerations, as well as anti-terror and transnational crime considerations, already play a role in the export process, 86 it is unlikely that the United States will have to change its current export controls to satisfy the requirements of Articles 7(1)-7(3). 87 Additionally, Article 7(4) specifically requires that an exporting State take into account the risk that arms or items covered by the Treaty will be used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children. The United States has committed to ending violence against women and girls and 88 U.S. policy requires that all arms transfers be consistent with our international commitments and obligations and consider the potential for misuse with respect to any proposed arms export. 89

iv. Transit and Trans-shipment under ATT, Article 9.

State Parties are required to “take appropriate measures to regulate, where necessary and feasible, the transit or trans-shipment under its jurisdiction of conventional arms, under Article 2(1), and items covered under Articles 3 and 4 through its territory in accordance with relevant international law.” 90 The United States requires issuance of temporary import permits for items that transit or trans-ship the United States. The requirements for transit or trans-shipment permits are the same as for export licenses. 91 Given that the same stringent requirements for conventional arms exports apply to these “temporary imports,” it is likely that these requirements would be sufficient to meet Article 9 requirements. 92

v. Additional Requirements for Exports.

Article 7(5) requires States Parties to take measures to ensure all authorizations for exports are detailed and issued prior to the export. ITAR § 123.1(a) requires that export licenses or other authorization be obtained before the export occurs, satisfying the ATT. Exporting States Parties must provide appropriate information about the authorization upon request by importing and transit or trans-shipment States Parties. 93 ITAR § 126.10(d)(1)-(2) allows disclosure of information about arms exports to foreign governments “for law enforcement or regulatory purposes” or “in the context of multilateral or bilateral export regimes.” Importing and transit or trans-shipment Parties will be able to access the necessary information without more regulation.

85 See generally Executive Order 13107, “Implementation of Human Rights Treaties” (1998) and PSD-10, supra note 67. See also PDD-27, supra note 70.
86 See, e.g., ITAR § 127.1(d) (on terrorism-related controls).
90 ATT, art. 9.
91 ITAR § 123.1.
92 The ATF’s procedure for importation specifically excludes trans-shipment, allowing only permanent importation. For subsequent export of an imported weapon, the importer-exporter would require an export license as required under ITAR.
93 ATT, art. 7(6).
Additionally, the ATT encourages, but does not require, consultations with the importing State Party and reassessment of export authorizations if it becomes aware of new, relevant information.\textsuperscript{94} ITAR § 126.7 (a) provides a litany of reasons why authorizations may be revoked, suspended or amended. These include, among others, that the revocation “is in furtherance of world peace, the national security or the foreign policy of the United States, or is otherwise advisable.”\textsuperscript{95}

vi. \textit{Importation Rules Under the ATT.}

The permanent importation of weapons into the United States is managed by the Department of Justice (“DOJ”) through the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”). This meets the ATT Article 8(2) requirement for each importing State Party to take measures that will allow it to regulate, where necessary, imports under its jurisdiction of conventional arms, under Article 2(1), and items covered under Articles 3 and 4 covered by the Treaty.\textsuperscript{96}

ATT Article 8(1) requires States Parties to take measures to provide appropriate and relevant information, upon request, pursuant to its national laws, to an exporting State to assist with export assessments. The ATF is able to provide import certification and delivery verification to certain governments for items on the U.S. Munitions Import List (“USMIL”),\textsuperscript{97} pursuant to agreements between foreign governments and U.S. Customs and Border Protection provides delivery certification. The import certification serves to inform exporters that import licensing procedures have been followed and that the importer is prohibited from diverting, trans-shipping or re-exporting the imported material without government approval. The ATF permitting process requires the importer to provide “[t]he specific purpose of importation, including final recipient information if different from the importer.”\textsuperscript{98} However, the ATF does not issue end user certificates to foreign exporters.\textsuperscript{99} U.S. regulations could be modified—in accordance with domestic information privacy laws—to allow the ATF to provide the end use and end user information to foreign governments in the same way it provides import certification and delivery verification. While it is possible that the end user information may be either difficult to obtain or to provide, the end use information is part of the permitting procedure for importation, and could be included as part of an import certification.

The ATT also requires reporting and record-keeping.\textsuperscript{100} The ATT allows reports that are identical to those provided to the UN Register of Conventional Arms,\textsuperscript{101} to which the U.S. already reports. Because the information is the same, there should be no need for additional rules. ATT Article 12 requires records of export authorizations to be kept of exports for ten years.

\textsuperscript{94} ATT, art. 7(7).
\textsuperscript{95} ITAR § 126.7(a)(1).
\textsuperscript{96} The importation system is governed by the rules contained in 27 C.F.R. 447.
\textsuperscript{97} The language of the USMIL mirrors that of the USML.
\textsuperscript{98} 27 C.F.R. § 447.42(v).
\textsuperscript{100} ATT, arts. 12, 13.
\textsuperscript{101} Id., art. 13(3).
vii. **Diversion Prevention.**

Per Article 11, States Parties involved in the transfer of conventional arms under Article 2(1), and items covered under Articles 3 and 4 covered by the Treaty are required to take measures to prevent the diversion of those arms, and, in cases where a State Party detects a diversion, to take appropriate measures, pursuant to its national laws and in accordance with international law, to address the diversion. States Parties are also required to cooperate and share information, pursuant to domestic laws, where appropriate and feasible, to mitigate the risk of diversion. As discussed earlier in this section, the United States places stringent limitations on imports and exports, including temporary, transiting or trans-shipped arms, and provides for cooperation and information sharing. These existing regulations meet the requirements of ATT Article 11(1), (3) and (4).

To further prevent diversion, export licenses are issued only for the specific end user and end-use. All resales, transfers, trans-shipments or dispositions that are different from what was licensed is illegal. The United States also requires that shipping documents explicitly state the licensed end user. Any change to the export license must be approved explicitly by the DDTC. When the United States finds that an export license or import permit has been violated through diversion, it may revoke that license/permit and punish violators through debarment or criminal sanctions. The United States also monitors end-use through the “Blue Lantern” program. The program ensures through random checks that licenses are followed properly. The other provisions are permissive, not mandatory, and would not require changes to U.S. law upon ratification of the treaty.

viii. **Arms Brokers.**

Persons who engage in brokering activities are required by AECA to register with the State Department, to obtain a license or other approval for almost all weapons transactions, and to report yearly to the DDTC on their activities. These registration and licensing requirements, laid out in Part 129 of the ITAR, comply with the ATT’s broad requirement of broker regulation under Article 10.

B. Interaction Between the ATT and the Second Amendment.

Some oppose the ATT on Second Amendment grounds. Opponents of the ATT argue that it will infringe upon Second Amendment Rights in two principal ways. First, they object to the inclusion of “small arms and light weapons” in the language of the ATT. They also argue that the treaty threatens individual firearm ownership with an invasive regulatory and recordkeeping...
scheme. As of the adoption of this resolution, the ATT does not infringe on Second Amendment Rights. If implementation were to interfere with Second Amendment protections, those acts of implementation or the ATT itself would be void. Issues related to domestic control of firearms are outside the scope of the agreement. The ATT only applies to the export, import, transit, transshipment, and international brokering of conventional arms within its scope. The preamble of the Treaty recognizes that it is the “sovereign right and responsibility of any State to regulate and control transfers of conventional arms that take place exclusively within its territory, pursuant to its own legal or constitutional systems.” The Second Amendment does not apply to any of the issues covered by the Treaty.

i. The Second Amendment and Small Arms and Light Weapons.

Generally, the Second Amendment does not apply to the vast majority of weapons addressed by the ATT. In District of Columbia v. Heller, the Supreme Court found that the Second Amendment applies only to firearms that are “typically possessed by law-abiding citizens for lawful purposes.” Examples of weapons not protected by the Second Amendment included: “short-barreled shotguns,” “machineguns,” and automatic “M-16 rifles.” Moreover, the Second Amendment does not apply to most of the conventional arms noted in the ATT: battle tanks, armored combat vehicles, large-caliber artillery systems, combat aircraft, attack helicopters, missiles and missile launchers. While handguns would fall under the “small arms and light weapons” category of the ATT, the Treaty provisions pose no Second Amendment concerns and can be implemented under the current U.S. legal regime.

ii. The Second Amendment and the International Trade in Small Arms

Though the amendment protects “the right of the people to keep and bear Arms,” it does not protect the right to supply arms to persons who are not themselves among “the people” of the U.S. Therefore, export provisions of the treaty pose no constitutional issues. As it pertains to imports of arms, the ATT contains clear language noting, “the legitimate trade and use of certain conventional arms, inter alia, for recreational, cultural, historical, and sporting activities and lawful ownership where such ownership and use are permitted and protected by law.” Yet, even if the ATT did not contain this language, the Second Amendment would not be affected by the ATT’s import provisions.

The Second Amendment does not provide an unfettered right to purchase weapons in the international market. In Heller, the Court “disclaimed any adverse consequences for “laws imposing conditions and qualifications on the commercial sale of arms.” Because federal courts decisions interpret the Constitution as granting the government with broad authority to control the border, regulations addressing the flow of arms into the U.S. will be given even more deference by the courts than qualifications and conditions that relate to transfers within national boundaries.

The import provisions of the ATT are consistent with the current U.S. approach that has withstood constitutional scrutiny for decades. As mentioned, those provisions of the ATT that
specifically address arms importation are found in Article 8. The United States already has legislation and a regulatory system in place to meet the Article 8 requirements. In the United States, “it is currently unlawful for any person “except a licensed importer, licensed manufacturer, or licensed dealer, to engage in the business of importing, manufacturing, or dealing in firearms, or in the course of such business to ship, transport, or receive any firearm in interstate or foreign commerce.” These entities are subject to the AECA and are regulated by the ATF. The AECA has withstood constitutional scrutiny for decades. While it has not been challenged on Second Amendment grounds, it is very likely that it would withstand such scrutiny.

### iii. Recordkeeping

Some opponents of the ATT argue that the Article 12 recordkeeping requirements could lead to a national gun registry. They argue that this would violate both the Second Amendment and the privacy provisions of the Firearms Owners Protection Act of 1986 (FOPA). Article 12 of the ATT requires all States Parties to keep records, pursuant to their national laws and regulations, of the issuance of export authorizations or its actual exports of the conventional arms covered under Article 2(1). It encourages, but does not require, each State Party to maintain records of conventional arms that are transferred to its territory as the final destination. Article 12 also encourages, but does not require, the records to include, as appropriate: the quantity, value, model or type, authorized international transfers of conventional arms, conventional arms actually transferred, details of exporting state(s), importing state(s), transit and trans-shipment state(s), and end users.

Pursuant to the FOPA, unless the specific firearms are suspected of being involved in a specific crime, no records of firearms transactions may be recorded once the weapons enter the domestic market. However, FOPA does not apply to import and export records. Those applying for a permit to import firearms must file with the ATF, listing details of the importer, the exporter, the item, and the purpose of the import, including final recipient if different than the importer. These records are kept by the Department of Justice should it be necessary to prosecute any U.S. person for illegal arms dealing. Similar import records are kept by the Customs Department when inspecting shipments entering the country. Since neither set of records covers weapons once they enter the domestic stream of commerce, the requirement to keep these records do not conflict with FOPA.

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118 See, e.g., Chi Mak v. U.S. 683 F.3d 1126 (9th Cir. 2012) (rejecting a First Amendment challenge); U.S. v. Chi Tong Kuok, 671 F.3d 931 (9th Cir. 2012) (rejecting a challenge based on the “non-delegation” doctrine); U.S. v. Hsu, 364 F.3d 192 (4th Cir. 2004) (rejecting a “vagueness” challenge).
119 Recordkeeping and gun registration is not directly a Second Amendment issue. Since Heller, federal courts have upheld restrictions like registration requirements, “because they do not impose a severe burden or affect the core rights – i.e., ‘defense of hearth and home’ by ‘law-abiding, responsible citizens.” See, e.g. U.S. v. Rene E., 483 F.3d 8 (1st Cir. 2009) (statutorily regulating juvenile access to handguns did not violate the constitutional right to keep and bear arms and was permissible on public safety grounds); Kachalsky v. County of Westchester, 701 F.3d 81 (2d Cir. 2012) (limiting handgun possession in public to those who showed special need for self-protection is not inconsistent with the Second Amendment). Limits on federal registration and recordkeeping of arms are contained in various statutes, most notable the Firearms Owners Protection Act of 1986. 18 U.S.C. § 926.
120 Id.
121 ATT, art. 12.
C. Enforcement of the ATT.

With the object and purpose of the ATT being to create “the highest possible common international standards for regulating or improving the regulation of the international trade in conventional arms . . . [and p]revent and eradicate the illicit trade in conventional arms and prevent their diversion,” 123 the ATT has sufficient enforcement mechanisms that also respect the sovereignty of States Parties. To accomplish and balance both of these goals, the ATT relies on the States Parties to do the bulwark of the enforcement through self-monitoring, self-reporting, and development of national laws and systems to regulate the sale, import, export, transit and transshipment, and diversion of conventional arms. Enforcement of the treaty regime is left primarily to State Parties under Article 14, with a dispute mechanism built into Article 19 that requires consultations and allows for other dispute resolution with the mutual consent of the disputing parties.

The ATT requires that a State Party establish and maintain “a national control system, including a national control list, in order to implement the provisions of” the ATT and to provide “its national control list to the Secretariat, which shall make it available to other States Parties.”124 Additionally, a State Party is required to take “measures necessary to implement the provisions of [the ATT] and shall designate competent national authorities in order to have an effective and transparent national control system regulating the transfer of conventional arms.”125 Lastly, all States Parties are required to “designate one or more national points of contact to exchange information on matters related to the implementation of this Treaty.”126 Each of these requirements for a State Party is a necessary aspect of the foundation for enforcement of the ATT. The establishment by the State Party of a national control list which is monitored by national authorities—to ensure the regulation of the illicit international sale, import, export, and diversion of conventional arms—allows for each State Party to develop its own system of regulations consistent with their laws and traditions, while still upholding the object and purpose of the ATT.

VI. CONCLUSION.

The ABA urges United States to ratify the Arms Trade Treaty. The ATT will have little to no effect on U.S. law, including the Second Amendment, but will allow the United States to lead in international arms controls and to work to curtail the most destructive illicit arms transfers. When combined with robust enforcement of existing U.S. arms control laws, the ATT could save countless lives by establishing common global standards for how nations import, export and transfer conventional weapons.

Respectfully submitted,

Sara Sanford
Chair, Section of International Law
February 2017

123 ATT, art. 1.
124 Id. at art. 5(4).
125 Id. at art. 5(5).
126 Id. at art. 5(6).
1. **Summary of Resolution(s).**
The Resolution calls for the ABA to urge ratification and implementation for the 2013 Arms Trade Treaty.

The Arms Trade Treaty (“ATT”) is an opportunity for the United States (“U.S.”) to help curb illicit international weapons transfers to war-torn countries, terrorist organizations, and murderous regimes, a benefit not only to international peace and security but also to U.S. interests. If ratified by the U.S., the ATT will be a critical foreign policy tool. It creates concrete, enforceable obligations and builds cooperation and oversight mechanisms.

The ATT does not constrain U.S. foreign policy, does not impinge upon the Second Amendment of the U.S. Constitution, or require changes to U.S. weapons import/export regulations. On the other hand, failure to ratify the ATT could compromise U.S. leadership in the international operation of the Treaty and jeopardize universalization and enforcement of the Treaty.

Based on these factors, the ABA should encourage ratification by issuing the R&R, adopting a professional, impartial and well-supported stance and countering untruthful and uninformed opinions about this important treaty.

2. **Approval by Submitting Entity.**
The Council of the Section of International Law approved this recommendation and resolution at its Meeting on October 18, 2016.

3. **Has this or a similar resolution been submitted to the House or Board previously?**
No.

4. **What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?**
In addition to meeting many of the Associations mission-based goals, discussed above, this policy will also enhance existing ABA policies, including:

Arms Trading Guidelines. Support proposal to ban weapons of mass destruction in the Middle East and to regulate sales of conventional weapons in the region and urge U.S. government to engage in efforts, inside and outside of the United Nations, to establish and enforce limitations on the sale or transfer of conventional arms. 8/92
Conventional Arms Reduction in Europe. Urge agreement between the NATO and Warsaw Pact countries to reduce levels of conventional arms in Europe; support the Conventional Forces in Europe (CFE) negotiations to reduce current NATO and Warsaw Pact forces levels to parity. 2/90

Disarmament and Non-Proliferation of Nuclear Weapons. Support congressional approval of Interim Agreement on Certain Measures with respect to the Limitation of Strategic Offensive Arms of 1972 and the associated Protocol," and urge prompt agreement on further measures providing for general and complete disarmament and non-proliferation. 8/72-R-5/79

Non-Proliferation of Nuclear Weapons Treaty. Urge U.S. Government to take all possible steps to obtain extension of NPT treaty: work to satisfy NPT obligation to pursue negotiations in good faith on effective measures relating to cessation of nuclear arms race and nuclear disarmament by taking certain enumerated actions. 2/85; 8/94

Human Rights. Support U.S. promotion, through the United Nations, of human rights for all people in all countries. 8/67

Genocide Convention. Support ratification of the Convention by the Senate subject to three understanding and one declaration. 2/76

Crimes Against Humanity. Urge Congress to enact legislation to prevent and punish crimes against humanity; urge adoption of a new global convention for the prevention and punishment of crimes against humanity. (14A300) 8/14

Genocide. Endorse paragraphs 138 and 139 of the World Summit Outcome Document of the 60th session of the UN General Assembly (September 2005) concerning the Responsibility to Protect doctrine; endorse the recommendations set forth in the report, Preventing Genocide: A Blueprint for U.S. Policymakers (December 2008). (09A110) 8/09

For all of these policies, the ATT will provide meaningful international obligations that will require all States Parties to develop national arms control systems akin to the system in the United States. These systems will help prevent provision or diversion of weapons that could be used to contribute to systemic violations of human rights, crimes against humanity or genocide. While nuclear and other mass destruction weapons are not the main focus of the ATT, the regulation of transfers of these weapons, their parts and their technology will be a part of the ATT’s purview, lending additional teeth to disarmament efforts in this area.

5. If this is a late report, what urgency exists which requires action at this meeting of the House?

N/A
6. **Status of Legislation.** (If applicable)
The Arms Trade Treaty has not been submitted to the Senate for advice and consent prior to the President’s instrument of ratification. The treaty has been signed by the United States.

7. **Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.**
If adopted, this policy will allow various organs of the American Bar Association to call for the submission to the Senate, for the Senate to consent to ratification, and for the President’s ratification of the treaty. Through lobby days, like the yearly Human Rights Lobby Day of the International Human Rights Committee, the Committee will have the capacity to encourage elected officials to support ratification, and will be able to use the policy to dispel misconceptions about the treaty that are addressed in the attached report.

8. **Cost to the Association.** (Both direct and indirect costs)
There are no costs associated with this R&R.

9. **Disclosure of Interest.** (If applicable)
Not applicable.

10. **Referrals.**
The R&R has been referred to the ABA’s Center for Human Rights and will be actively discussed with various sections of the ABA that have an interest in the subject matter, including, but not limited to:

    - Section for Civil Rights and Social Justice
    - National Security Standing Committee
    - Standing Committee on Armed Services
    - Export Controls Committee
    - Air Space and Defense Committee
    - Task Force on Gun Violence

The ABA’s Center for Human Rights voted in November 2016 to support the Resolution and Report.

11. **Contact Name and Address Information.** (Prior to the meeting. Please include name, address, telephone number and e-mail address)

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12. **Contact Name and Address Information.** (Who will present the report to the House? Please include name, address, telephone number, cell phone number and e-mail address.)

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EXECUTIVE SUMMARY

1. Summary of the Resolution
The Resolution calls for the ABA to urge ratification and implementation for the 2013 Arms Trade Treaty.

The Arms Trade Treaty ("ATT") is an opportunity for the United States ("U.S.") to help curb illicit international weapons transfers to war--torn countries, terrorist organizations, and murderous regimes, a benefit not only to international peace and security but also to U.S. interests. If ratified by the U.S., the ATT will be a critical foreign policy tool. It creates concrete, enforceable obligations and builds cooperation and oversight mechanisms.

The ATT does not constrain U.S. foreign policy, does not impinge upon the Second Amendment of the U.S. Constitution, or require changes to U.S. weapons import/export regulations. On the other hand, failure to ratify the ATT could compromise U.S. leadership in the international operation of the Treaty and jeopardize universalization and enforcement of the Treaty.

Based on these factors, the ABA should encourage ratification by issuing the R&R, adopting a professional, impartial and well-supported stance and countering untruthful and uninformed opinions about this important treaty.

2. Summary of the Issue that the Resolution Addresses
Arms that fuel human rights violations, genocide, war crimes and crimes against humanity are sold and shipped. Unlike the United States, many countries do not have the regulatory system or mechanisms in place to prevent weapons from being diverted into areas and conflicts where these abuses are taking place. In addition to prohibiting the sale or transfer of weapons that will be used to commit humanity's most heinous crimes or otherwise violate international law, this treaty mandates that countries build arms control regimes like those that exist in the United States. By encouraging and facilitating cooperation and creating rules that prevent sales that will exacerbate genocide and other serious crimes, this Treaty will help to curb these sales and create a more comprehensive system of laws in other countries to prevent diversion of weapons.

3. Please Explain How the Proposed Policy Position Will Address the Issue
The Arms Trade Treaty provides an opportunity for the United States to lead on the issue of arms control and to become part of a global system that prevents arms sales that will be used to commit genocide, war crimes, crimes against humanity or significant human rights violations. With the ABA’s support of this policy, the Association will be in a position to counter misinformation and misconceptions on the treaty and the associated laws.
4. **Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified**

The R&R addresses objections to the treaty, so those views are represented and addressed in the R&R’s supporting text. Recorded objections focus on political issues surrounding the tactics that the Obama Administration used to negotiate the treaty, that the treaty can be changed to bind the United States without its consent, that the treaty will infringe upon the Second Amendment and other Constitutional rights, that the treaty is ambiguous, that it might compromise U.S. sovereignty, or that it might hinder the U.S. ability to aid its allies. These objections are dealt with in the Report.