

COMMENTARY

A Healthy Dose of Treaties

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At long last, the Senate has approved five treaties that govern U.S. behavior during armed conflict and in conflict's aftermath. The Senate's action opens the door for the United States to join these widely ratified treaties, each of which makes war a little more humane, especially for civilians. But in today's atmosphere, this development is important for another reason: the symbolic value of a U.S. decision to join several more treaties that regulate armed conflict.

Last week, the Senate provided advice and consent for the United States to become a party to five treaties, four of which were negotiated within a framework called the Convention on Certain Conventional Weapons (CCW). One treaty prohibits states from using or transferring weapons whose function in combat is to cause permanent blindness. Another prohibits states from attacking civilians using incendiary weapons and limits the use of incendiaries against military targets in civilian areas. A third expands the scope of the CCW and its protocols to noninternational conflicts—the most common kind of conflict today. China, Russia, and virtually all U.S. NATO allies are parties to these treaties already.

The Senate should not have taken as long as it did to approve these treaties, which offer several advantages to the United States—and no disadvantages. First, the U.S. military already complies with the treaties in practice and will not have to alter its operations once the United States becomes a party. By ratifying these treaties, the United States will get credit for policies it already follows.

Second, becoming a party to these treaties gives the United States greater leverage to urge other states to join them and puts the United States in a better position in future negotiations. (States are understandably wary about agreeing to U.S. requests during negotiations when the U.S. record of joining the negotiated treaties is weak.)

This last aspect is important because there are ongoing negotiations on a cluster munitions treaty within the CCW. The United States is playing an important role in bridging the divide between those states that would prefer no treaty at all and those that seek extensive regulations. Ratifying four existing CCW treaties improves U.S. credibility and may help the United States persuade other states to accept its negotiating positions.

Perhaps most critically, four of these treaties contain additional rules for a type of conflict in which the rules are sparse. Most of the laws of war apply to conflicts between states; far fewer rules apply during conflicts between states and non-state actors.

One of the administration's most controversial decisions after 9/11 was that its conflict with al Qaeda was covered neither by the rules of international armed conflict nor by the rules of noninternational armed conflict. The Supreme Court rejected that conclusion in 2006, when it held that the United States was fighting a noninternational conflict with al Qaeda.

But the court's holding meant that the more limited body of rules applied. If the United States now joins these treaties, it will have taken the small but useful step of addressing the lingering perception that the United States wants to apply as few rules as possible to its conflict with al Qaeda. And it will have done so without compromising its security.

This development hardly solves all of the problems that remain in sorting through the gaps in the laws of noninternational armed conflict. U.S. and European governments have identified and discussed some of these gaps, including what kind of review procedures to give detainees and when detainees in this kind of conflict should be released. But these states have not yet fleshed out the answers to those difficult and important questions.

Some will view the Senate's action cynically, claiming that this limited step does little to resolve the most pressing issues facing the United States in its policies in the war on terror. This is true. But as a symbolic gesture indicating to friends and allies that the United States is turning its attention back to traditional laws of war and is embracing—rather than resisting—basic restrictions on war fighting, the Senate's approval is a useful first step. Let's hope the administration can employ this modest momentum as it wades into the difficult discussions that lie ahead.

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