

# WebMemo



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## The U.N. Arms Trade Treaty: Still Seriously Flawed

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On July 11–15, the United Nations held a third meeting of the Preparatory Committee for the Arms Trade Treaty. The committee discusses the content of the treaty in advance of a meeting of the conference in 2012 to finalize the treaty and open it for ratification. This treaty is purportedly intended to address the absence of commonly agreed international standards for the transfer of conventional arms, which, it is argued, contribute to war, crime, and terrorism.

Previous meetings of the committee have made it clear that the treaty as contemplated poses serious threats to American liberties and interests and to effective and serious diplomacy. The latest committee meeting has not alleviated most of those concerns. But statements by both the permanent members of the Security Council and the European Union have at least reduced the supranational danger to U.S. sovereignty.

### **Leading States Seek to Limit Reach of Treaty.**

The tone of the statements in this committee meeting was more restrained than those of past meetings. Inevitably, the corrupt, the tyrannical, and the self-interested had an opportunity to make their case, but the meeting was dominated by statements made on July 12 by France, speaking for the five permanent members (P5) of the U.N. Security Council (China, France, Russia, the United Kingdom, and the U.S.), and by the European Union.

It is inconceivable that the final conference in 2012 will adopt a treaty that the powers in these groups find unacceptable. Since Russia and China

have long been skeptical of any arms trade treaty, their willingness to support it now implies that the treaty will have no practical effect on their conduct.

The P5 statement emphasized that the treaty “is not a disarmament treaty nor should it affect the legitimate arms trade or a state’s legitimate right to self-defense. The decision to transfer arms is an exercise in national sovereignty... Domestic implementation in accordance with national legislation... would be the most practical way to address implementation” of the treaty.

The EU statement struck a similar note, stating that the “decision whether to authorize an export should be...undertaken at a national level” and that any further details “should be decided at [the] national level.”<sup>1</sup> Together, these statements make it clear that the treaty that emerges in 2012 is likely to be a general statement of obligations related to the arms trade that will be fulfilled primarily at the national level, not via a U.N.-based organization.

This rejection of a supranational authority is an important concession to sanity. Since the U.S. already has a substantial body of regulations on the arms trade, it would not—if the treaty has only general requirements—have to pass significant

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implementing legislation to comply with the treaty if the U.S. signs and the Senate ratifies it. Even more importantly, the emphasis on national responsibility reduces the opportunities for U.N. member states to use a U.N. authority to distort the treaty, apply it unfairly, or creatively reinterpret its meaning.

The U.S., and all the members of the P5 and the EU, need to remain vigilant to ensure that there is no backsliding on these vital points, but their statements offer some hope that the treaty will not create a new international organization dedicated, like so many U.N.-based treaty bodies, to offering hypocritical and self-serving criticisms of the West in general and the U.S. in particular.

**But Serious Problems Remain.** Unfortunately, the committee meeting also demonstrated that the treaty still has serious problems that it will likely not be able to overcome. Four are particularly important:

1. While the EU rejected a supranational authority, it did call for the creation of an international “Implementation Support Unit.” The EU argues that the unit’s structure “should remain minimal and concentrate on...mainly secretarial [tasks],” but it also sees the unit playing a “limited coordinating role in the provisions of assistance.” Such a “limited” role would not remain limited for long. Moreover, “assistance” implies that the treaty may seek to create an expectation, or even an obligation, that some states (presumably including the U.S.) should or must provide financial assistance to other states, to so-called victims of the arms trade, or to both. Such an obligation would be completely unacceptable, as it would be a Trojan horse that would allow the unit to grow into a supranational authority.
2. Though commonly referred to in the U.S. as the “small arms treaty,” the contemplated treaty actually seeks to regulate everything from manufacturing technology to ammunition to small arms to aircraft carriers. The vast scope of the treaty—and the many criteria it seeks to apply to arms transfers—will make any effort to honestly assess whether signatories are upholding

it an exercise in futility. It will provide endless opportunities for activists to demand additional treaties and regulations when the contemplated treaty fails to work.

3. While the draft paper to which the committee participants responded does reaffirm “national constitutional protections on private ownership,” many nations—including the U.S., Canada, Japan, and Italy—are correctly seeking to exclude sporting and hunting firearms for recreational use from the treaty. If the treaty does not do this, it could pose a serious risk to freedoms protected by the Second Amendment. For example, the draft paper requires states to “take all appropriate measures to prevent the diversion of exported arms into the illicit market,” which could be held to require internal controls on the civilian transfer and sale of firearms.
4. The treaty is still based on two fundamental and irremediable errors. First, it explicitly accepts that all states—dictatorships and democracies—have an equal right to arm themselves, and it proposes to embody this pretended right in international law. Second, it tacitly presumes that all the world’s states are well intentioned and will actually implement the treaty’s controls. But if all the world’s states were well intentioned, the treaty would not be necessary. Thus, while the treaty would do nothing to prevent states like Iran from supplying terrorists—and would actually legitimate arms sales to and from dictatorships—its ambiguous criteria would weigh heavily on the U.S. and other democracies, where activists would stigmatize any arms sale as a violation of the treaty. The end result of the treaty would be to restrict the ability of the world’s democracies to defend their interests while imposing no real restraint on the dictatorships.

**What the U.S. Should Do.** The latest meeting of the committee illustrates that while the proposed Arms Trade Treaty can be improved, it cannot be fixed. The P5 and EU rejection of a supranational authority is a positive step, but it is outweighed by the flaws—many of them inherent—in the proposed

1. See Reaching Critical Will, “Third Preparatory Committee on the Arms Trade Treaty,” at <http://www.reachingcriticalwill.org/legal/att/prepcom3/index.html> (July 20, 2011).

treaty. Any universal treaty that seeks to control the arms trade cannot work, because too many nations are not actually interested in controlling this trade.

The U.S. decision to support the negotiation of the treaty was therefore an error, and it should withdraw from the work of the committee. This is particularly essential if it becomes clear that the draft treaty will seek to create a supranational authority in embryo, impose financial obligations on the United States, embody any threat to rights protected

by the Second Amendment by not exempting sporting and hunting weapons as well as those acquired for self protection, or impose vague and damaging restraints on the conduct of U.S. foreign policy. The latest committee meeting offers no reason for optimism on any of these subjects.

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