

ISSUE BRIEF

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U.S. Must Address Critical Questions at Final Preparatory Committee on U.N. Arms Trade Treaty

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The final Preparatory Committee (PrepCom) for the U.N. Arms Trade Treaty (ATT) will be held February 13–17. The purpose of this PrepCom is to determine the rules of procedure for the U.N. Conference on the Arms Trade Treaty, which will be held in New York from July 2–27. This conference is intended to complete the negotiation of the ATT and thus open the treaty for signature and ratification. At the final PrepCom, the U.S. must address critical questions about the rules of procedure that will shape the outcome of the July conference.

The Conference’s Decision-Making Rules. When the Administration announced in 2009 that it would support the negotiation of an ATT, it did so with an important caveat: The final conference had to operate “under the rule of

consensus decision-making.” The Administration justified this requirement by claiming that it would ensure that the high standards of U.S. export controls are embodied in the ATT, implying that the U.S. would block any treaty that it deemed unsatisfactory.

It is up to the PrepCom to establish the decision-making rules for the July conference and to determine whether the conference will indeed operate by consensus. Normally, “consensus decision-making” implies that a single formal objection from any national representative to the chair on any matter of substance indicates a lack of consensus. Currently, the U.N. plans to allow two-thirds majority voting on all matters of substance except the adoption of the final treaty text, and the rules of procedure can themselves be amended by a two-thirds majority vote.¹ This is not “consensus decision-making” as the term is normally understood.

At best, these rules place the U.S. in the position of being unable to stop objectionable treaty provisions before the final vote, when it will be under intense pressure to accept them as part of the full treaty. At worst, the rules apparently open the door for a last-minute rewrite of the

consensus requirement that would allow the treaty to be adopted on a non-consensus basis. If the U.S. is to participate in the July conference, the conference must proceed strictly by consensus. In particular, the rules of procedure must not provide any mechanism that allows for departure from consensus on the final treaty text.

A consensus requirement will not protect U.S. interests if the U.S. is unwilling to break consensus when necessary. Indeed, the U.S.’s demand for consensus will likely be used to pressure the U.S. to lower its own standards or to expand the treaty in ways that would conflict with the U.S. Constitution. The U.S. must therefore define its red lines carefully and be ready to lodge repeated formal objections to all unsatisfactory elements in the draft treaty, including those having to do with the Second Amendment.²

The Conference’s Drafting and Transparency Procedures. The PrepCom will also decide how the July conference will draft the ATT. The PrepCom chairman’s draft paper, which dates from July 2011, is the closest the process has come so far to producing a treaty text, but it is very far from satisfactory. It contains many contradictory, contentious,

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and irrelevant items and seeks to apply criteria to arms transfer that are numerous, broad, and vague. The fact that the July conference will last almost four weeks—compared, for example, to the U.N.’s Rio + 20 Summit on Sustainable Development in June, which will last only three days—indicates that the U.N.’s member states recognize how much work remains to be done.

The push to finish in July will increase the pressure on the U.S. to agree to an unsatisfactory treaty. To counter this, at the PrepCom, the U.S. must continue to require that the entire conference, including all subcommittees, draft on the basis of consensus so that it is not presented with a take-it-or-leave-it deal at the final plenary session. The U.S. must also press for the entire conference to be conducted in open session so that all countries have to place their objections to precisely identified portions of the draft treaty on record and cannot hide behind any U.S. objections in the final plenary session. Currently, the U.N. plans to hold only plenary meetings and meetings of the Committee of the Whole in public.³

So far, the U.N.’s record on transparency in the context of the ATT is very poor, in spite of an explicit promise by the PrepCom chairman that the negotiations would be

“undertaken in an open and transparent manner.”⁴ The U.N. has not even officially released the chairman’s draft paper, stating only that it has been “circulated to all delegations.”

If most of the work of the July conference happens behind closed doors, the objections of other nations to parts of the ATT will not be made public, and the U.S. runs the risk of emerging at the final plenary session as the only nation that is willing to go on record with an objection to the consensus. It will then immediately be stigmatized as the lone holdout against the treaty.

What Will Happen If the July Conference Cannot Reach Consensus? If the July conference proceeds on the basis of consensus but cannot agree on a treaty, three outcomes are possible. The best outcome would be to abandon the unreal quest to negotiate a worldwide treaty on the arms trade—a treaty that would inevitably include rogue regimes such as Iran and autocracies like Russia and would therefore privilege their arms transactions by giving them the same status as arms transfers between democracies like the United States and Great Britain. This outcome is unlikely; too many governments and nongovernmental organizations (NGOs) are too heavily invested in having an ATT to give in to reality.

The second-best outcome would be for the negotiations to continue at future PrepComs and conferences. This outcome would be unsatisfactory, because it would expose the U.S. to further and increased pressure to abandon its red lines, but further negotiations would be better than adopting an unsatisfactory treaty in July.

However, the way is apparently open, through the provision in the rules of procedure allowing the consensus requirement to be rewritten by majority vote, for a third and worst outcome: an ATT that is adopted without consensus, over any and all U.S. objections.

What the U.S. Should Do. In previous years, when U.N.-led negotiations on land mines and cluster munitions have not reached agreement, groups of nations have led breakouts into separate treaty processes.⁵ This time, there will be no need for a breakout: The ATT can be adopted immediately, through the mechanism of the U.N. conference, without U.S. support.

Given the fundamental flaws in the concept of an ATT, the serious deficiencies of the current draft, the risks it poses to the Second Amendment, and the likelihood that such a treaty would impose new burdens on U.S. importers and exporters in their dealings with signatory

1. United Nations Conference on the Arms Trade Treaty, “Provisional Rules of Procedure of the Conference,” United Nations, February 6, 2012, rules 33–35 and 66, at http://www.un.org/ga/search/view_doc.asp?symbol=A/CONF.217/PC.IV/L.3&Lang=E (February 13, 2012).
2. See Ted R. Bromund, “Why the U.S. Should Be Concerned About the Domestic Effects of the U.N. Arms Trade Treaty,” Heritage Foundation *WebMemo* No. 3430, December 13, 2011, at <http://www.heritage.org/Research/Reports/2011/12/Effects-of-the-UN-Arms-Trade-Treaty-on-the-US>.
3. United Nations Conference on the Arms Trade Treaty, “Provisional Rules of Procedure of the Conference,” rule 57.
4. Ted R. Bromund, “In Unreal Session, U.N. Promises to Press Ahead with Arms Trade Treaty,” Heritage Foundation *Foundry*, October 29, 2010, at <http://blog.heritage.org/2010/10/29/in-unreal-session-u-n-promises-to-press-ahead-with-arms-trade-treaty/>.
5. See Steven Groves and Ted R. Bromund, “The Ottawa Mine Ban Convention: Unacceptable on Substance and Process,” Heritage Foundation *Background* No. 2496, December 13, 2010, at <http://www.heritage.org/research/reports/2010/12/the-ottawa-mine-ban-convention-unacceptable-on-substance-and-process>, and “The United States Should Not Join the Convention on Cluster Munitions,” Heritage Foundation *Background* No. 2550, April 28, 2011, at <http://www.heritage.org/Research/Reports/2011/04/The-United-States-Should-Not-Join-the-Convention-on-Cluster-Munitions>.

nations, this would be extremely dangerous. At the February PrepCom, the U.S. must do all it can to ensure that the rules of procedure do not allow the July conference to depict the U.S. as the sole obstacle to consensus or permit the conference to jump the tracks and adopt an ATT by majority vote.

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