

# ISSUE BRIEF

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## U.S. Must Stand Its Ground on the U.N. Arms Trade Treaty

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The final Preparatory Committee (PrepCom) for the U.N. Arms Trade Treaty (ATT) was held last week. The purpose of this PrepCom was to adopt rules of procedure for the U.N. Conference on the Arms Trade Treaty, which will be held in New York July 2–27. This conference is intended to complete the negotiation of the ATT and thus open the treaty for signature and ratification. The outcome of the PrepCom makes it even more vital for the U.S. to establish its red lines and stand its ground before and during the July conference.

**The Conference Will Make Decisions on the Basis of Consensus.** When the Obama Administration announced in 2009 that it would support the negotiation of an ATT, it did so with an important caveat: The treaty conference

had to operate “under the rule of consensus decision-making,” meaning that a formal objection from any national representative to the chair on any matter of substance prevents agreement. But the U.N.’s draft rules of procedure allowed two-thirds majority voting on all matters of substance except the adoption of the final treaty text, as well as on amendments to the rules themselves. This opened the way for the July conference to amend the rules by a two-thirds majority and then to adopt the treaty by a similar majority, over any U.S. objection.

When the PrepCom considered the draft rules of procedure, the U.S. and a number of other nations urged that all matters of substance at the July conference be subject to a strict consensus requirement, while other delegations—including Mexico—supported the U.N.’s weaker proposals. In the end, the PrepCom adopted rules that require the July conference to “take its decisions, and consider the text of the Treaty, by consensus.” In other words, the U.S. will not be limited to an up-or-down vote on the final treaty text. Instead, it will have the opportunity throughout the July conference to object to and block progress on any portion of the ATT that it finds unsatisfactory.

**The Conference Will Be Held Mostly in Closed Session.** At the July conference, the U.S. will be pressed to accept an unsatisfactory treaty. One way to counter this is to use the conference to show that the U.S. is not the only nation that has concerns about the effectiveness and scope of an ATT. But if the conference is to serve this purpose, it should be public. If it is not, other nations with concerns will be able to hide behind any U.S. objections in the final plenary session.

Before the PrepCom, the U.N. planned to hold only the conference’s plenary meetings and meetings of its Committee of the Whole in public. Unfortunately, the PrepCom did not significantly alter the relevant provisions of the draft rules of procedure, and thus most of the July conference will be open only to national delegates, intergovernmental organizations, and U.N. officials, not to nongovernmental organizations (NGOs). In general, diplomatic negotiations should not be open to NGOs, which do not have the legitimacy of representatives of democratic governments. But the closure of most of the July conference’s sessions means that the objections of most nations will receive little publicity; thus, the attacks of the activist NGOs that

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support the ATT are likely to be concentrated on the United States.

**The Dilemma the U.S. Faces in the Negotiations.** The U.S. strategy so far has been to try to avoid playing the role of treaty spoiler, on the grounds that this will prevent the U.S. from serving as a rallying point for the activist NGOs and nations that support the ATT. This strategy will be difficult to use at the July conference, where the consensus requirement and the number of closed sessions will place the U.S. in the position of having to object repeatedly and in private to unsatisfactory treaty provisions. If the U.S. does not object, the treaty will be adopted by consensus. If it does, it will be depicted as the treaty spoiler.

One press report quotes a senior U.S. official as stating that the U.S. wanted decision making by consensus so that it would have the ability to “block a weak treaty.”<sup>1</sup> If this report is accurate, then the U.S. dilemma is acute: The stronger the U.S. tries to make the treaty, the more the U.S. will have to use its power to block consensus on weaker versions, and the more it will be depicted as the spoiler. Furthermore, many nations will demand a treaty that they will characterize as strong but the U.S. will find unacceptable. For example, Mexico wants to impose a national gun and ammunition registry on the United States.

In the same report, the U.S. official also states that vetoing the final

treaty at the July conference is “the nuclear option,” i.e., the last resort. Signaling the U.S.’s unwillingness to veto is poor negotiating strategy, but, more fundamentally, the official’s statement implies that the U.S. is going to try to negotiate a treaty it can accept. This means the U.S. has to have clear red lines for the July conference, as well as the willingness to uphold them during the negotiations by breaking consensus. It will not be easy for the U.S. to get what it wants if it is unwilling to use the “nuclear option” or to play the role of spoiler.

**What the U.S. Should Do.** The PrepCom chair originally proposed that the U.N. be entrusted with the responsibility of editing the views of the member states on an ATT into a background document to be distributed in advance of the July conference. The PrepCom sensibly rejected this idea, which would have allowed the U.N. to skew the terms of the conference debate, and it has instead invited U.N. member states to submit statements of no more than 1,500 words on the provisions of an ATT by March 31. The U.N. Secretary-General is to compile these statements into a background document for the July conference.

The U.S. should use this opportunity to establish its red lines for the July conference. In particular, the U.S. should make clear in its March submission that it will not accept the inclusion of hunting and sporting

weapons or ammunition in the ATT. Nor will it accept treaty language that impinges on rights protected by the Second Amendment, requires any new internal controls, legitimates arms trafficking by dictators or terrorists, inhibits its ability to support friends and allies, or creates any additional burdens for U.S. manufacturers, importers, or exporters.

Finally, the U.S. should state clearly that if the July conference does not reach consensus on a treaty text, it will resist any effort by one or more nations to break away from the U.N. process and negotiate an ATT outside that process. The national interests of the U.S. would be best served by having no ATT, because any ATT negotiated through the U.N. will begin by assuming that dictatorships and democracies possess the same sovereign rights. The only advantage the U.N. process has is that the U.S. has the power to say no. The U.S. should use that power to limit the damage the ATT does to its interests, the rights of its citizens, and the responsible conduct of diplomacy.

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1. Louis Charbonneau, “Collapse of Arms Trade Treaty Talks Narrowly Averted,” Reuters, February 17, 2012, at <http://www.reuters.com/article/2012/02/18/us-arms-treaty-idUSTRE81H03P20120218> (February 21, 2012).