

# ISSUE BRIEF

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## Arms Trade Treaty: Problems with Substance and Process

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On April 2, the U.N. General Assembly (GA) adopted the Arms Trade Treaty (ATT) on a vote of 154 nations in favor (including the United States), 23 abstentions, and 3 against (Iran, North Korea, and Syria). The treaty will open for national signature on June 3 and will enter into force for its signatories when it has been signed and ratified by 50 nations.

The concept of the ATT is inherently flawed, and the treaty as adopted contains significant defects.<sup>1</sup> Because of these flaws, the U.S. should neither sign nor ratify the ATT. But the process by which it was adopted is even more damaging. The U.S. should in the future uphold consensus as a negotiating red line, stop supporting the transfer of failed consensus-based negotiations to the majority-rule GA, and recognize that the GA vote on the ATT is only the beginning of the process of treaty interpretation and amendment.

**The U.S. Red Line on Consensus.** The move to the GA came after the ATT negotiating conference in March failed to reach consensus agreement on a treaty. In the U.N., *consensus* means that no nation formally objects to the final outcome. The conference failed when it was blocked by the same three nations that voted against the ATT in the GA.

The U.S. had insisted that the ATT negotiations be based on consensus. According to the State Department, among its basic and non-negotiable demands were that the “ATT negotiations must have consensus decision making to allow us to protect U.S. equities.” State noted that consensus was necessary to provide “the opportunity to promote the same high standards for the entire international community.”<sup>2</sup> In the words of then-Secretary of State Hillary Clinton when she announced U.S. support for the negotiation of the ATT in October 2009:

As long as that [ATT] Conference operates under the rule of consensus decision-making needed to ensure that all countries can be held to standards that will actually improve the global situation by denying arms to those who would abuse them, the United States will actively support the negotiations. Consensus is needed to ensure the widest possible support for the Treaty and to avoid loopholes in the Treaty that can be exploited by those wishing to export arms irresponsibly.<sup>3</sup>

**The U.S. Abandoned This Red Line.** But when the conference failed, the U.S. abandoned its demand that the treaty apply to “the entire international community” and “all countries.” According to Assistant Secretary of State Thomas Countryman, the U.S. had always recognized that the negotiating conference might not be able to reach consensus:

[E]very state in this process has always been conscious of the fact that if consensus is not reached... there are other ways to adopt this treaty, including

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via...the General Assembly. And that alternative has served to focus the minds of all the states here on obtaining not a lowest common denominator treaty but actually an effective one, one that would gain the support of the majority.... [W]e always knew that this could go to the General Assembly.<sup>4</sup>

But before the conference failed, the U.S. was not seeking merely the “support of the majority.” Thus, in supporting the move to the GA when the ATT conference failed, the U.S. abandoned a key red line on which it had insisted since the start of the negotiating process.

**Widespread Lack of Support.** It might be argued that Iran, North Korea, and Syria are simply irreconcilable and that failing to secure their support is not a genuine failure to achieve consensus. But though only three nations voted against the ATT, many of the world’s most important and irresponsible arms importers and exporters—including China, Russia, India, and Egypt—abstained in the GA. The U.S. thus did not come close to its goal to “ensure that all countries can be held to [the ATT’s] standards.”

The problem with the ATT was never the idea that nations should have a system for controlling their arms exports. The U.S. is widely acknowledged to have the best such system in the world, even if it is unduly complex. The problem with the ATT was always that it would end up constraining the U.S. (and other democracies) but not the genuinely lawless and irresponsible regimes of the world. The fact that these regimes abstained or voted against the treaty is proof of that point: They have openly admitted that they have no intention of being bound by the ATT.

The Obama Administration’s strategy in the ATT negotiations prioritized not being blamed for their

failure. It has temporarily succeeded in that aim, but at a high cost. By supporting the move to the GA, the U.S. has discouraged China, India, and Russia from participating seriously in future consensus-based negotiations, because these nations now know that, if push comes to shove, the negotiators can always give up on consensus and secure a majority rule outcome in the GA. While the ATT is not the first treaty to be voted through the GA—the Comprehensive Test Ban Treaty was adopted by the GA in 1996 to circumvent India’s opposition—the ATT is a broader treaty and has much less support.<sup>5</sup>

Moreover, when a future conference fails to achieve consensus, the “international community” will be free to use the approach that the U.S. has just reinforced—i.e., demand a resort to the GA and vote a treaty through by majority rule, even if a substantial number of important states are dissatisfied with the results of consensus-based negotiations. The U.S. would have particular reason to dislike this approach if, as is often the case at the U.N., it is in the minority.

The U.S. support for consensus has long been unpopular among many nations and nongovernmental organizations, which believe that it limits their ability to pressure the U.S. into supporting the outcomes they prefer. By backing the move to the GA, the U.S. has given the opponents of consensus a victory they are free to use against it in all future negotiations.

**An Ongoing Process.** Because of its inherent flaws, its substantive defects, the U.S. failure to uphold its consensus red line, and the dangerous process by which it was adopted, the U.S. should neither sign nor ratify the ATT.

But the ATT is not just a treaty; it is a process that is designed to evolve through amendment and

1. See Ted R. Bromund, “The Arms Trade Treaty: Reactions to the Final Draft,” The Heritage Foundation, The Foundry, March 28, 2013, <http://blog.heritage.org/2013/03/28/the-arms-trade-treaty-reactions-to-the-final-draft/>, and Ted R. Bromund, “The U.S. Cannot Fix the U.N. Arms Trade Treaty,” Heritage Foundation *Backgrounder* No. 2774, March 13, 2013, <http://www.heritage.org/research/reports/2013/03/the-us-cannot-fix-the-un-arms-trade-treaty>.
2. U.S. Department of State, “Arms Trade Treaty,” 2013, <http://www.state.gov/t/isn/armstradetreaty/> (accessed April 3, 2013).
3. U.S. Secretary of State Hillary Rodham Clinton, “U.S. Support for the Arms Trade Treaty,” October 14, 2009, U.S. Department of State, <http://www.state.gov/secretary/rm/2009a/10/130573.htm> (accessed April 3, 2013).
4. U.S. Department of State, “On-The-Record Call with Thomas Countryman, Head of the U.S. Delegation to the Arms Trade Treaty,” March 28, 2013, <http://www.state.gov/t/isn/rls/rm/2013/206806.htm> (accessed April 4, 2013).
5. Rebecca Johnson, “Unfinished Business: The Negotiation of the CTBT and the End of Nuclear Testing,” U.N. Institute for Disarmament Research, 2009, <http://www.unidir.org/files/publications/pdfs/unfinished-business-the-negotiation-of-the-ctbt-and-the-end-of-nuclear-testing-346.pdf> (accessed April 3, 2013). This document summarizes the negotiations and notes, on page 141, that in the GA three nations opposed the CTBT and only five abstained on it.

interpretation in the years and decades to come. Treaty proponents are already calling it an emerging “international norm” that will affect the U.S. no matter what it does, and the president of the March conference, Australian diplomat Peter Woolcott, has stated that the treaty is “a very good framework to build on...but it is only a framework.”<sup>6</sup>

As this process proceeds, and as other negotiations begin, the U.S. should vigorously oppose

any expansion or reinterpretation of the ATT and recommit itself to the principle that consensus-based negotiations should not be transferred to the majority-rule GA when they fail to reach agreement.

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6. Neil MacFarquhar, “U.N. Treaty Is First Aimed at Regulating Global Arms Sales,” *The New York Times*, April 2, 2013, [http://www.nytimes.com/2013/04/03/world/arms-trade-treaty-approved-at-un.html?pagewanted=all&\\_r=2&](http://www.nytimes.com/2013/04/03/world/arms-trade-treaty-approved-at-un.html?pagewanted=all&_r=2&) (accessed April 3, 2013).