Written by **Joe Wolverton, II, J.D.** on October 23, 2013

50 Senators Warn Obama: We Will Not Ratify UN Arms Treaty

Fifty senators are standing together to protect the right to keep and bear arms as guaranteed by the Second Amendment.

In a letter addressed to President Barack Obama, the senators enumerated six reasons the president should refuse to present the United Nations Arms Trade Treaty (ATT) to the Senate for ratification. Among the objections raised by the senatorial signatories is the ambiguity of the treaty, as well as the grant to "foreign sources of authority" the power to "impose judgment or control on the U.S."

For many months now, Senator Jerry Moran (R-Kan.) has been the driving force behind the legislature's opposition to the Arms Trade Treaty. In a statement accompanying the letter, Moran attacked the president's plan to subvert the bipartisan will of the Congress.

"The Administration's recent signing of the U.N. Arms Trade Treaty was a direct dismissal of the bipartisan Senate majority that rejects this treaty," Sen. Moran said.

"Throughout this process," he continued, "it has been disturbing to watch the Administration reverse U.S. policies, abandon its own 'red line' negotiation principles, admit publicly the treaty's dangerous ambiguity, and hastily review the final treaty text. Today I join my colleagues in upholding the fundamental individual rights of Americans by reiterating our rejection of the ATT. The Senate will overwhelmingly oppose ratification, and will not be bound by the treaty."

Speaking at a meeting with gun-rights groups in Texas, one of the other signers of the letter opposing the ATT set forth the reasons he joined Moran and 48 more of his colleagues in contacting President Obama.

"What we learned today is that a number of manufacturers of very popular shotguns and other firearms would simply refuse to sell their product in the United States and that would deny consumers in Texas and this country the opportunity to buy those and use them for self-defense or for sporting purposes," said Senator John Cornyn (R-Texas), as reported by local media.

Cornyn warned of the potential threat to core principles of liberty posed by the UN's gun grab: "A treaty is an international obligation that trumps the domestic laws of a country. So that's the real threat here, is obviously the Constitution is the fundamental law of America and of our land, but if for some reason this treaty should be signed and then ratified by 67 senators, then it trumps American law."

In this, however, Senator Cornyn was wrong.

Regardless of presidential fervor for the disarmament of law-abiding Americans or the number of votes he and his backers can buy in the Senate, no treaty that violates the Constitution could ever become the law of the land.

When it comes to treaties — or any act passed by Congress for that matter — the analysis must begin by looking within the four corners of the Constitution.

It only makes sense that the federal government cannot enter into a treaty that would contravene the Constitution. If I tell my teenage son that he can drive my car to the movies, does that give him permission to drive it into a lake?

To put a finer point on it, Article VI of the Constitution says:

> This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

That means that in order to have any lawful effect, the object of any treaty signed by the president and ratified by the Senate must lie within their constitutional authority ("the authority of the United States").

In the case of the UN's Arms Trade Treaty, there is no doubt that many of its key provisions directly violate the Second Amendment's prohibition on government infringement of the right to keep and bear arms.

If the Congress and president were to disregard these restrictions on their power as they so often do, the mandates of the resulting treaty would not be the law of land, as Alexander Hamilton explained in *Federalist* No. 33:

> If a number of political societies enter into a larger political society, the laws which the latter may enact, pursuant to the powers intrusted [sic] to it by its constitution, must necessarily be supreme over those societies and the individuals of whom they are composed.… But it will not follow from this doctrine that acts of the larger society which are *not pursuant* to its constitutional powers, but which are invasions of the residuary authorities of the smaller societies, will become the supreme law of the land. These will be merely acts of usurpation, and will deserve to be treated as such. [Emphasis in original.]

Thomas Jefferson echoed that point specifically as it pertains to the topic of treaties. Jefferson wrote, "In giving to the President and Senate a power to make treaties, the Constitution meant only to authorize them to carry into effect, by way of treaty, any powers they might constitutionally exercise."

At another time, he reiterated this principle of constitutional construction, saying, "Surely the President and Senate cannot do by treaty what the whole government is interdicted from doing in any way."

In a letter to his colleague, collaborator, and friend, James Madison, Jefferson agreed that "the objects on which the President and Senate may exclusively act by treaty are much reduced" by application of the principle that a treaty cannot contradict the Constitution and yet still enjoy the approval of that document.

Again, my son couldn't justify crashing my car into a lake by pointing to my permission to drive it to the movies.

In defense of Senator Cornyn and the other 49 senators who signed the letter — although in reality, as proved above, treaties that violate the Constitution are *prima facie* null, void, of no legal effect — in recent years, the Supreme Court has come down on both sides of the supremacy issue.

In a pair of contradictory decisions, the Supreme Court has held that "No doubt the great body of private relations usually fall within the control of the State, but a treaty may override its power" (*Missouri v. Holland*) and "constitutional rights cannot be eliminated by a treaty" *(Reid v. Covert*).

This conflict of cases creates a situation where, as Alan Korwin wrote in 2012 at the time of the previous round of negotiations on the Arms Trade Treaty, "While some of us would surely and boldly draw the lines where they are 'supposed' to be, i.e., in line with our natural and historic rights, the forces aligned against the Second Amendment have no problem arguing vigorously for its destruction, regardless of any of these details, and therein lies the greatest threat we face."

In light of this duplicity on the part of the Supreme Court and that body's habit of usurping legislative authority, when it comes to preserving the right to keep and bear arms, letters from the Senate will not be enough to protect this most precious right. In this matter as in so many others, the states and the people will be required to uphold the liberties protected by our Constitution in the face of federal collusion with the international forces of civilian disarmament.

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