



Written by [Joe Wolverton, II, J.D.](#) on September 26, 2013

## Attn John Kerry: Treaties Violating the Constitution Are Not Law of the Land

On the morning of September 25, Secretary of State John Kerry, on behalf of President Barack Obama, [signed the United Nations' Arms Trade Treaty](#).

This treaty purports to disarm civilians and consolidate control of all weapons and ammunition in the hands of the United Nations and its approved member states.

While it is undeniable that the president and many in Congress are anxious to surrender our sovereignty to the global bureaucracy and to force Americans to hand over their guns, there are many lawmakers, particularly in the Senate, who have said they will never vote to ratify the gun grab, as would be required by the Constitution. In fact, by a vote of 53-46, in March, the Senate passed an [amendment to the budget bill](#) sponsored by Senator Jim Inhofe (R-Okla.) stating as much.



“We’re negotiating a treaty that cedes our authority to have trade agreements with our allies in terms of trading arms,” Inhofe before the vote on his amendment. “This is probably the last time this year that you’ll be able to vote for your Second Amendment rights.”

[According to a story in The Hill](#), Senator Patrick Leahy (D-Vt.) proposed his own amendment “that clarified that under current U.S. law, treaties don’t trump the Constitution and that the United States should not agree to any arms treaty that violates the Second Amendment rights.” Leahy’s amendment also passed.

A [resolution of similar intent sponsored by Senator Jerry Moran](#) (R-Kan.) is currently pending before the Senate Foreign Relations Committee.

Moran’s measure declares that it is the sense of Congress that:

the President should not sign the Arms Trade Treaty, and that, if he transmits the treaty with his signature to the Senate, the Senate should not ratify the Arms Trade Treaty; and

until the Arms Trade Treaty has been signed by the President, received the advice and consent of the Senate, and has been the subject of implementing legislation by Congress, no Federal funds should be appropriated or authorized to implement the Arms Trade Treaty, or any similar agreement, or to conduct activities relevant to the Arms Trade Treaty, or any similar agreement.

Representative Mike Kelly (R-Penn.) has offered [a companion measure in the House](#) of Representatives.

Both the Moran and Kelly resolutions declare that the Arms Trade Treaty “poses significant risks to the



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national security, foreign policy, and economic interests of the United States as well as to the constitutional rights of United States citizens and United States sovereignty.”

The measures also point out that UN gun grab “fails to expressly recognize the fundamental, individual right to keep and to bear arms and the individual right of personal self-defense, as well as the legitimacy of hunting, sports shooting, and other lawful activities pertaining to the private ownership of firearms and related materials, and thus risks infringing on freedoms protected by the Second Amendment.”

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 lay 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 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.



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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.

Finally, a word of caution.

Although in reality, as proved above, treaties that violate the Constitution are prima facie null, void, of no legal effect, 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 legislation authority, when it comes to preserving the right to keep and bear arms, 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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