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DRAFT ELEMENTS FOR A SECRETARIAT'S PROCEDURE REGARDING RULE 8 (1) D
(Reference Paper)

1. In August 2019, the Fifth Conference of States Parties (CSP5) to the Arms Trade Treaty (ATT) requested the Management Committee to prepare guidelines on the issue of "arrangements with the Secretariat in relation to the discharge of its financial obligations" (reference financial rule 8 (1)d for consideration at the Sixth Conference of States Parties" (ATT/CSP5/2019/SEC/536/Conf.FinRep.Rev1).
2. In order to gather elements for the preparation of said guidelines, the Management Committee has produced the attached draft reference paper as a basis to undertake this task. Further, the MC appreciates input from States Parties, in order refine the attached draft guidelines, as necessary.

ANNEX A. DRAFT ELEMENTS FOR A SECRETARIAT'S PROCEDURE REGARDING RULE 8 (1) D**Context**

During the ATT CSP5, the Conference expressed deep concern about the unpaid contributions of States¹ and called on States that have not done so, to address their financial obligations in a prompt and timely manner to avoid any risks to the ATT process and its activities².

The Conference requested the Management Committee (MC) to prepare guidelines on the issue of "arrangements with the Secretariat in relations to the discharge of its financial obligations" (reference Financial rule 8 (1) d) for consideration at CSP6³.

Furthermore, no State shall be prejudiced by Financial Rule 8 (1) d in applying for support from the ATT Voluntary Trust Fund or the ATT Sponsorship Programme until CSP6, when this matter will be considered⁴.

The ATT Financial Rule 8 (1) d states:

Any State Party whose contributions are in arrears for two or more years that has not entered into arrangements with the Secretariat in relation to the discharge of its financial obligations shall have its voting rights suspended, not be eligible to nominate a representative as an office-holder, nor become a member of any committee or subsidiary body of the CSP. The CSP may, nevertheless, permit such a member to vote or nominate a representative as an office-holder if it is satisfied that the failure to pay is due to conditions beyond the control of the State Party.

To date, no rule or procedure exists within the ATT framework that specifies how a State in arrears can make a financial arrangement or how the Secretariat should process a request for a financial arrangement as contemplated in Rule 8 (1) d of the ATT Financial Rules.

This paper seeks to provide first thoughts on how this gap in the application of the ATT Financial Rules particularly Section 8 (1) d may be filled in order to provide a comprehensive, commonly agreed and easily applicable decision-making procedure to the Secretariat and the Management Committee.

Background

The financial period of the ATT is the calendar year (01.01. – 31.12.); the budget as such is adopted during the relevant CSP of the previous year.

Contributions for each calendar year are due and payable in full within 90 days of the receipt of the invoice from the Secretariat. States should be notified of the amount of their contributions for a given year by 15 October of the previous year. As not all fiscal years are alike between States, each State should, as far in advance as possible of the date due for the contribution, inform the Secretariat of the projected timing of that contribution to allow for better financial oversight and planning.

¹ States referred to in this document include States Parties, Signatory States and Observer States that are also assessed for contributions.

² ATT/CSP5/2019/SEC/536/Conf.FinRep.Rev1/34

³ ATT/CSP5/2019/SEC/536/Conf.FinRep.Rev1/35

⁴ ATT/CSP5/2019/SEC/536/Conf.FinRep.Rev1/36

As in all comparable Conventions or the United Nations itself, financial problems arise when States pay late or not at all. During the past years various measures have been introduced to ease problems arising from this. With regard to the ATT, the flexibility embedded in the ATT Financial Rules has been invoked in a bid to overcome financially critical periods until payments are received.

Yet, there are situations in which contributions are not paid by States for two or more years. The United Nations General assembly introduced the restriction of rights to vote⁵, other conventions do not have specific rules, yet there is no agreed universal set of rules to be applied in this situation. The above stated ATT Financial Rule 8 (1) d foresees the application of specific measures in order to incentivize payment of contributions in arrears.

In order to address the problem of unpaid financial contributions, the rule provides that States Parties can “enter into arrangements with the Secretariat”, but does not prescribe the procedure to be followed, thus giving room for a variety of interpretations.

Potential Process

In order to develop a possible process, existing rules and procedures of the General Assembly of the United Nations and some of the existing Conventions were looked at.

Some regulations of the United Nations allow for the definition and application of multi-year payment plans as an instrument for Member States to pay contributions in arrears. These plans should not extend to more than six years, if possible, and a yearly report on the status of the relevant plan is compulsory. Although payment plans may constitute a useful tool to reduce arrears and underline the willingness of States to meet financial obligations, it should be noted that they are *absolutely voluntary* in nature.

In view of the applicability of other possible processes it appears logical, although not under all circumstances feasible, to propose a multi-year payment plan for introduction also in the ATT.

How may this be transformed into a process for the ATT framework?

1. The process starts with the issue of the invoice for the assessed contributions. According to Rule 8 (1) a, invoices are due and payable within 90 days of their receipt.
2. As per Rule 8 (1) b, each State shall, as far in advance as possible of the date due for the contribution, inform the Secretariat of the projected timing of that contribution.
3. By 1 March the Secretariat shall advise the President, who shall write to those States to impress upon them the importance of paying their respective arrears (Rule 8 (1) c) or else enter into an arrangement with the Secretariat as early as possible.
4. The next reminder for payment will come in the form of the invoice for the following year, issued in October. It will reflect all outstanding contributions (including the indicative contribution for the following year). Detailed and continuously updated information on arrears is available on the ATT website.

⁵ Charter of the United Nations, Chapter 4, Article 19: A Member of the United Nations which is in arrears in the payment of its financial contributions to the Organization shall have no vote in the General Assembly if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The General Assembly may, nevertheless, permit such a Member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the Member.

5. If arrears accumulate over a period of more than two years, it is expected that the State proceeds to contact the ATT Secretariat and enter into arrangements to discharge its financial obligations (Rule 8 (1) d). It is proposed that this should be done by means of an official document (Note verbale by the Government of the State concerned through the respective Diplomatic Mission). This letter from a country in arrears should include the conditions that lead to non-payment and / or provide details for possible ways to resolve the financial situation.
6. Due to the time required for the preparation of the necessary decisions of the respective CSP, it is recommended to send this letter not later than 30 June, of the same year period.
7. The Secretariat will inform the President of the CSP on the receipt of this letter for further deliberations. If no letter is received, the State Party that is in arrears for two or more years will experience the restrictions as laid out in Rule 8 (1) d.
8. The documentation provided by the State may include a multiyear payment plan including a payment calendar, or compelling documentation that satisfies the CSP that the failure to pay is due to conditions beyond the control of the State Party⁶. The CSP then may decide on a temporary waiver for rule 8 (1) d.
9. If a multiyear payment plan is considered and approved by the CSP, the first installment of said plan shall be made prior to the closure of the account for the respective year.
10. The Secretariat shall monitor the compliance with the financial plan and advise the President of the CSP and the MC of any non-compliance issues. In case of the latter, the President of the CSP shall send a letter to the respective State, advising of the situation and kindly requesting an explanation of the situation.
11. If no answer (NV) is received from the non-compliant State (as stated above) within 30 days upon receipt of the letter sent by the President of the CSP, the plan will be considered suspended. Following, a new financial plan will be negotiated and presented for consideration to the following CSP.

⁶ This should be based on the information regarding, inter alia, economic aggregates, government revenues and expenditures, foreign exchange resources; etc. A sole explanation of administrative delays may not be regarded as sufficient.