

Arms Trade Treaty
Sixth Conference of States Parties
Geneva, 17 – 21 August 2020
(By written procedure)

**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 produced a draft reference paper as a basis to undertake this task, which was presented to and discussed at the 1st CSP6 Informal Preparatory Meeting on 07 February 2020.
3. The Management Committee has produced the attached revised version of the draft reference paper incorporating the comments and recommendations received during the February meeting and the following intersessional period.

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

Context

The Fifth Conference of States Parties (CSP5) 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 risks to the ATT process and its activities².

The Conference 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 CSP6³.

Furthermore, the Conference decided that 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 to guide how a State in arrears for two or more years can make a financial arrangement or how the ATT 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 present a proposal on how to provide a comprehensive, commonly agreed and easily applicable decision-making procedure to the ATT Secretariat and the Management Committee.

Background

Rule 3 of the ATT Financial Rules provides that the financial period for the ATT is the calendar year (i.e. 01 January – 31 December of each year). Accordingly, the ATT budget is adopted during the relevant CSP of the previous year.

Financial contributions for each calendar year are due and payable in full within 90 days of the receipt of an invoice from the ATT Secretariat. In accordance with the stipulation of the ATT Financial Rules, 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 ATT 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 comparable Conventions or the United Nations itself, financial and liquidity problems arise when States either pay late or not at all. During previous years, various measures have been introduced to address problems arising from delayed payment or non-payment. 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.

Despite the measures referenced above, there are situations in which financial contributions are not paid by States for two or more years. In the case of the United Nations, the General Assembly has introduced the restriction of rights to vote⁵. In the context of the ATT, Rule 8 (1) d of the Financial Rules introduces measures applicable to States in arrears for two or more years, which will be applied unless the State has entered into arrangements with the Secretariat in relation to the discharge of its financial obligations. Notwithstanding this indication, the rule does not prescribe a procedure to be followed in making such an arrangement.

Potential Process

In developing a possible ATT process for making financial arrangements contemplated under Rule 8 (1) d, the existing rules and procedures of the General Assembly of the United Nations and other Conventions were considered.

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 arrears⁶. 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 underscore the willingness of States to meet their financial obligations, it should be noted that they are regarded as voluntary in nature in the context of the UN process referenced above.

In view of the applicability of some of the elements contained in the process above, consideration should be given to the introduction of a payment plan in the ATT process. This approach will provide flexibility to States in arrears to settle their financial arrears within a reasonable timeframe and in a transparent manner.

Proposed process for the ATT framework:

1. The process starts with an invoice for assessed financial contribution issued by the ATT Secretariat in accordance with Rule 8 (1) a and payable within 90 days of receipt.
2. Pursuant to Rule 8 (1) b, each State shall, as far in advance as possible of the date due for the contribution, inform the ATT Secretariat of the projected timing of that contribution⁷.

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.

⁶ For reference UNGA A/74/68 or A/74/11 may be used.

⁷ As fiscal years for individual member state may differ, it is recommended that relevant details are provided to the ATT Secretariat in time in order to avoid additional administrative efforts.

3. By 01 March of the relevant year, the ATT Secretariat shall advise the President, who shall write to those States, who have not yet paid by that date, to impress upon them the importance of paying their respective arrears. The President's consultations with such States shall be reported to the CSP at its next meeting (Rule 8 (1) c).
4. In the event of States in arrears for two or more years, the President may encourage them to consider entering into a financial arrangement with the ATT Secretariat as early as possible. As referred in Rule 8 (1) d, the respective State may, at any time, declare "conditions beyond control" for not paying the assessed contributions and trigger a decision by the following CSP⁸.
5. The next reminder for payment comes in the form of an invoice for the following year, issued in October of every year reflecting all outstanding contributions. Detailed and continuously updated information on the status of ATT contributions, including financial arrears, is posted and made available on the ATT website.
6. If arrears accumulate over a period of two or more years, the State may proceed and contact the ATT Secretariat to enter into an arrangement to discharge its financial obligations (Rule 8 (1) d). In approaching the ATT Secretariat, the State in arrears shall use an official document (Note verbale issued by the Government of the State concerned through the respective Diplomatic Mission).
7. The official document from the State in arrears should contain a proposal for a single or multi-year payment plan not exceeding six years and a payment calendar or time frame⁹.
8. Due to the time required for the preparation of necessary recommendations to a CSP, the official document requesting a financial arrangement should be submitted to the ATT Secretariat not later than 60 days before the start of a CSP, of the same year period¹⁰.
9. On receipt of the official document requesting a financial arrangement, the ATT Secretariat will inform the Management Committee and the President of the CSP so as to initiate a process for consideration of the arrangement proposed. Following this, the Management Committee and the ATT Secretariat will evaluate the proposed payment arrangement. The Management Committee will subsequently prepare recommendations thereto to a next ensuing CSP for consideration and decision-making. It is only the CSP that will take the necessary decisions regarding a proposed payment arrangement or any other financial rule related decision.
10. If no financial arrangement is entered into with a State Party in arrears for two or more years, the voting rights of said State will be suspended, neither will it be eligible to nominate a representative as an office-holder, nor will it be able to become a member of any committee or subsidiary body of the CSP, in accordance with Rule 8 (1)d.
11. If a payment plan is considered and approved by the CSP, the payment of the first instalment will initiate the arrangement.

⁸ It shall be noted that this situation is not regarded further within the context of this document, but it is mentioned as explicitly referred by Financial Rule 8 (1) d.

⁹ Elements of a Multiyear Financial Plan may vary widely, with the intention of not being overly prescriptive, it is suggested that the plan contains payment projections based on existing or projected budget streams, and a feasible calendar, taken into consideration current policy and projected economic assumptions. It is, the payment plan should reflect an appropriate duration based on the amount in arrears, and the capacity of the state to address such arrears with the agreed timeframe (i.e. no more than six years, make first installment a precondition for activation of a plan, and an open option for early settlement).

¹⁰ Timeframe reflects Rule 15 of the Rules of Procedure (ATT/CSP1/CONF/1).

12. The ATT Secretariat shall monitor compliance with the approved financial arrangement and advise the President of the CSP and the Management Committee 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, requesting for an explanation of the non-compliance and calling for an indication of mitigation measures that the State in arrears will institute to sustain the financial arrangement. The State in arrears will be required to provide the requested information within 30 days.
13. If the reply received is deemed satisfactory by the President of the CSP and the Management Committee, the financial arrangement will be upheld without any change. However, if the reply received is not satisfactory or compliance with the financial arrangement is not guaranteed by the State in arrears, the financial arrangement will be withdrawn with immediate effect. The President of the CSP will send a letter to inform the State in arrears that the temporary waiver in relation to measures contemplated in Rule 8 (1) has been withdrawn.
