

DRAFT PROPOSAL: UNPAID FINANCIAL CONTRIBUTIONS

Contents

A. BACKGROUND	2
B. THE ARMS TRADE TREATY FINANCIAL OUTLOOK.....	2
C. IMPLICATIONS OF DELAYED PAYMENT AND/OR NON PAYMENT OF CONTRIBUTIONS	2
D. UNDERSTANDING THE REASONS FOR DELAYED PAYMENT OR NON PAYMENT OF CONTRIBUTIONS	4
E. THE ATT FINANCIAL RULES AND UNPAID FINANCIAL CONTRIBUTIONS.....	7
F. OPTIONS FOR CONSIDERATION	8
(1) UNPAID CONTRIBUTIONS	8
(2) FINANCIAL LIQUIDITY	9
G. RECOMMENDATIONS	10

A. BACKGROUND

1. The Third Conference of States Parties (CSP3) to the Arms Trade Treaty (ATT) held from 11-15 September 2017, 'tasked the Management Committee to present a proposal to the Fourth Conference of States Parties that would address the root causes of the problems caused by (1) unpaid contributions; and (2) liquidity related issues (e.g. caused by different national budget cycles), and to present (i) potential solutions to resolve these problems; and (ii) recommendations for ways to ensure improved financial stability for the ATT (e.g. by investigating the possibility of a capital reserve, including its parameters). The Conference also requested the Presidency to allocate sufficient time to discuss these proposals during the informal preparatory process of the Fourth Conference of States Parties'.

2. This paper has been prepared by the Management Committee to support discussion of the question of unpaid contributions by making preliminary proposals to be considered for submission to the Fourth Conference of States Parties (CSP4) on how this matter could be addressed.

B. THE ARMS TRADE TREATY FINANCIAL OUTLOOK

3. The ATT institutional structures and mechanisms established to support the ATT process are dependent on reliable funding. The ATT Financial Rules constitute a framework that governs the ATT financial administration including revenue generation, expenditure and accounting. The Financial Rules apply to the ATT Secretariat, Conferences of States Parties and all subsidiary bodies established under the Treaty.

4. In accordance with the ATT Financial Rules, the ATT generates its revenue from states' financial contributions, which are calculated according to the assessment formula set out in Rules 5 and 6 of the ATT Financial Rules. Accordingly, States Parties, Signatory States and other states in attendance at each Conference of States Parties are, on an annual basis, issued with invoices of expected financial contributions payable in full within 90 days of receipt of invoices from the ATT Secretariat.

5. For the past two ATT financial years (2016/17 and 2017), the ATT has, on average, received 86% of its expected budget from 61% of states issued with invoices of assessed contributions. At the current rate, the ATT is building a budget deficit of about 15 % per annum. Unpaid contributions have negative consequences for the operations of the ATT and, by implication, the achievement of the objectives of the Treaty. It is with this understanding that CSP3 directed the Management Committee to look deeply into this matter and make a proposal to address this.

C. IMPLICATIONS OF DELAYED PAYMENT AND/OR NON PAYMENT OF CONTRIBUTIONS

6. The ATT Financial Rules identify assessed contributions as the source of revenue for the ATT. The routine ATT operations comprise the work of the ATT Secretariat, work of Conferences of States Parties and work of all subsidiary bodies established under the Treaty which, at this stage, include the ATT Management Committee, the Voluntary Trust Fund and all established ATT standing working groups. All work conducted by the aforementioned ATT structures are funded from financial contributions assessed from states on the basis of ATT budgets approved by Conferences of States Parties on an annual basis.

7. Some of the identifiable implications related to delayed contributions and/or unpaid contributions are discussed below.

Delayed contributions

8. For purposes of this paper, delayed contributions mean contributions that have not been paid within 90 days of receipt of an invoice from the ATT Secretariat, as contemplated in Rule 8 (1) (a) of the ATT Financial Rules, but no later than the issue of the next invoice by the ATT Secretariat. In practice, this period typically ranges from 01 February to 31 October of each year.

9. Delayed contributions bring about the following liquidity and cash flow challenges to the ATT operations:

- a. Planned preparatory work for Conferences of States Parties including venue hire, documents translation, in-session interpretation, *may not* be carried out in good time.
- b. Planned work of ATT subsidiary bodies including holding of meetings and preparation of documents for meetings *may not* be conducted in good time.
- c. Conferences of States Parties *may not* be held as planned.
- d. The ATT Secretariat's annual plans for procurement of goods and services to support the ATT process *may not* be implemented at planned times.
- e. The ATT Secretariat's overheads and staff salaries *may not* be paid on monthly basis.
- f. There may be *no guarantee* that scheduled events will take place as planned or at all.

10. The cash flow challenges resulting from delayed contributions necessitate either the deferment of planned events and transactions to a later date or the total cancellation of planned events and transactions. This may result in decisions of Conferences of States Parties not being implemented and existing ATT legal contracts not being honoured.

Non payment of contributions

11. In the context of this paper, non-payment of contributions means non payment of invoices received from the ATT Secretariat, as contemplated in Rule 8 (1) (a) of the ATT Financial Rules, until the period for the next issue of invoices by the ATT Secretariat and beyond.

12. Non payment of contributions bring about the following challenges to the ATT operations:

- a. Planned preparatory work for Conferences of States Parties *cannot* be conducted. If it is, it can only be at a very limited scale which may be inconsistent with the level of ambition of the ATT process.
- b. Planned work of the ATT subsidiary bodies *cannot* be conducted.
- c. Conferences of States Parties *cannot* be held as planned.
- d. The ATT Secretariat's annual plans for procurement of goods and services to support the ATT process *cannot* be implemented.
- e. The ATT Secretariat's overheads and staff salaries *cannot* be paid on monthly basis.

- f. States that pay their contributions can be discouraged from continuing with the practice.

13. The ATT lack of cash (budget) caused by non payment of contributions has negative consequences for the ATT process and will, if not addressed, necessitate Conferences of States Parties to review the ATT current level of ambition. This may result in the following:

- a. Not holding Conferences of States Parties on annual basis or reducing the number of days for Conferences of States Parties.
- b. Not holding preparatory meetings for Conferences of States Parties or reducing the number of preparatory meetings.
- c. Reducing the number of ATT subsidiary bodies and their scale of effort.
- d. Reviewing the ATT Secretariat's scale of effort, number of staff and their contractual arrangements.

D. UNDERSTANDING THE REASONS FOR DELAYED PAYMENT OR NON PAYMENT OF CONTRIBUTIONS

14. There are a number of causes of delayed payment or non payment of expected financial contributions. Exploring these reasons is a critical step towards finding an appropriate response to the problem.

15. Some of the reasons expressed by states for delayed payment and non payment of expected contributions are included in Table 1, as well as an indication of whether each cause could be influenced or addressed by administrative and other measures.

Table 1. Summary of causes (expressed by states) of delayed and non payment of contributions and potential measures to address such causes

	Cause of delayed or non payment	Potential to influence cause?	Measures to address or mitigate cause of delay
a.	Missions (Geneva or New York)		
1.	Delayed transmission of invoices for contributions from Missions to Capitals.	✓	<p>1. The ATT Secretariat could request that States provide the contact details (email) of the relevant person or department in capital that is responsible for paying financial contributions so the invoice is sent directly to this person/department (<i>in addition</i> to the Mission and others that may be on the ATT mailing list).</p> <p>2. National Points of Contact could be encouraged to/tasked with following up with the relevant payment department to ensure they have received the invoice.</p>
3.	Change of staff familiar with facilitating the transmission of invoices to capitals and following up on the processing of invoices in capitals.	◊	It is unlikely the ATT Secretariat would or could be alerted to such changes in staff (in a systematic or meaningful way). However, National Points of Contact could play a role in ensuring a smooth transition regarding ATT matters when changes in staff occur.
b.	Capitals		
4.	Turnover of staff familiar with facilitating payment of invoices from international conventions.	✗	
5.	Delayed transmission of invoices from offices that receive invoices (normally policy/foreign relations/legal offices) to offices that process and pay the invoices (normally finance offices).	✓	As indicated above, the ATT Secretariat could request information regarding the contact details of persons directly involved in payments; and the National Points of Contact could be encouraged to/tasked with the responsibility of following up.
6.	Delayed transmission of invoices from Foreign Ministries that receive invoices to other Ministries responsible for payment of invoices.	✓	As indicated above, the ATT Secretariat could request information regarding the contact details of persons directly involved in payments; and the National Points of Contact could be encouraged to/tasked with the responsibility of following up.

7.	Elaborate national financial rules (procedures) to be complied with before payment of invoices can be processed.	◇	Members of the Management Committee and the Bureau (including the President) could be tasked with approaching and encouraging non-paying States in their respective regions to honour their financial obligations e.g. via their embassies and through demarches.
8.	National budgeting/fiscal cycles that are inconsistent with the ATT financial cycles.	◇	Affected states could be requested to submit to the ATT Secretariat written undertakings that the contribution will be paid by a specified date (otherwise a penalty fee becomes payable).
9.	In the instance of Signatory and Observer States, national policies that do not allow for budgets to be appropriated for payment of invoices for conventions that states have not yet ratified or acceded to.		<p>The ATT Secretariat cannot affect or influence national policies that prevent a state from paying invoices relating to conventions or treaties the state has not yet joined.</p> <p>However, the ATT Secretariat can ascertain (or try to ascertain) information from each non-State Party at the time of registration for a CSP whether it has such policy in place.</p> <p>Where it is established or ascertained that a non-State Party that intends to attend a forthcoming CSP has such policy in place, the following course of action could be considered:</p> <ul style="list-style-type: none"> - The State could be refused permission to attend the forthcoming CSP; - The State could be permitted to attend the forthcoming CSP but only if it agrees/undertakes to pay interest on the 'bill' of unpaid contributions it will accumulate that will become payable if/when the State becomes a State Party.
10.	Where applicable, challenges with the role of intermediary banks in the transfer of contributions from local banks to the ATT Secretariat bank account.	×	
11.	Challenges with exchange rate fluctuations.	◇	States could, on an exceptional basis, be permitted to pay their contribution in their national currency provided the actual exchange to USD does not amount to less than e.g. 97% of the expected contribution. This solution may have financial ramifications for the ATT Secretariat, not only in terms of reduced budget but also bank fees.
12.	Change of administrations/governments.	×	
13.	Natural disasters affecting states.	×	

✓ It is possible to influence the cause; ◇ It may be possible to influence the cause; × It is not possible to influence the cause.

E. THE ATT FINANCIAL RULES AND UNPAID FINANCIAL CONTRIBUTIONS

16. As noted above, the ATT financial administration is governed by the ATT Financial Rules, which have specific provisions for financial contributions. During its deliberations, the Management Committee noted that some of the provisions of the ATT Financial Rules relating to outstanding financial contributions do not lend themselves to a common interpretation and require further elaboration and consideration in terms of how they should be applied in practice.

17. Discussed below are some of the provisions of the ATT Financial Rules that were identified by the Management Committee as needing more time for consideration and assessment before any proposal could be made:

- a. Rule 8 (1) (c)
 - i. Provides for steps (measures) that the President of Conference of States Parties should take to remind states of their outstanding contributions. The question that arises is whether these measures are adequate if viewed against the desire to improve the financial stability of the ATT.
- b. Rule 8 (1) (d)
 - i. Stipulates that any State Party whose contributions are in arrears for two or more years that have not 'entered into arrangements with the Secretariat' in relation to the discharge of its financial obligations will face certain consequences, including the suspension of voting rights. It also stipulates that the CSP may essentially waive those consequences if it is satisfied that the failure to pay is 'due to conditions beyond the control of the State Party'.
 - ii. The sanctions that could be imposed on states in arrears for two or more years (suspension of voting rights, non-eligibility to hold office etc.) that have not entered into arrangements with the ATT Secretariat do not find general acceptance. The question that arises is whether these sanctions are adequate and deterrent enough. If not, what could be the most appropriate sanctions for states with contributions outstanding for two or more years?
 - iii. Linked to paragraph 17 (b) (ii), does the ATT Secretariat have the necessary competence to make arrangements with states with outstanding contributions? Is it desirable for the ATT Secretariat to exercise powers which otherwise should reside with Conferences of States Parties or another ATT structure designated by Conferences of States Parties for this task.
 - iv. Furthermore, what types of 'arrangements' are contemplated or possible? Payment by instalments rather than a lump sum? An agreement to allow payment at the end of a State Party's financial year (if it does not coincide with the due date for contributions)? Repayment at a later date with interest accrued?
 - v. What constitutes a compelling case for Conferences of States Parties to conclude that failure to pay expected contributions is due to conditions beyond the control of affected states? Is there a need for an objective test be developed for this purpose? Should consideration be given to developing a process and criteria for assessing

whether a state's failure to pay is 'due to conditions beyond the control' of that state (i.e. natural disaster)?

- vi. How do the powers of the ATT Secretariat to make arrangements on outstanding contributions relate to a CSP power to allow states with outstanding contributions to vote or nominate a representative for ATT office?

F. OPTIONS FOR CONSIDERATION

18. Understanding the problems caused by unpaid contributions to the financial sustainability of the ATT process, CSP3 tasked the Management Committee to consider potential solutions to the problem. Reflected below are some of the options that the Management Committee is inclined to recommend to CSP4 to address the problems associated with (1) unpaid contributions; and (2) liquidity related issues.

(1) UNPAID CONTRIBUTIONS

19. With respect to Unpaid Contributions the options below could be considered as part of the further work to be conducted by the Management Committee after CSP4 with a view to making recommendation to CSP5:

- a. Review of the current measures (steps taken) to enforce the current ATT Financial Rules on delayed or unpaid financial contributions:
 - i. Are the current measures adequate?
 - ii. Are there additional measures that could be considered?
- b. Review the effectiveness or otherwise of the current sanctions imposed on states with outstanding financial contributions:
 - i. Are the current sanctions adequate?
 - ii. Are the current sanctions effective?
 - iii. Are there other sanctions that could be considered?
 - iv. What could be the legal and political implications of the above?
- c. Explore the types of 'arrangements' that could be contemplated and agreed.
 - i. Should different arrangements apply according to a state's circumstances or should all affected states be subject to the same arrangement?
 - ii. Should the type of arrangement depend on how delinquent that state is (i.e. whether it is one year in arrears, two years?)
 - iii. What considerations should apply if a state does *not* fulfil the arrangement entered into?

- d. Determine what constitutes a compelling reason for states with outstanding financial contributions to make an arrangement for an exemption from applicable sanctions under the Financial Rules.
 - i. What criteria could be applied?
 - ii. What could be legal and political implications of the above?
- e. Capacity of the Secretariat to make arrangements with states with outstanding contributions?
 - i. Does the ATT Secretariat have the necessary competence to make arrangements?
 - ii. Is it desirable for the ATT Secretariat to exercise this power?
 - iii. Which ATT structure could be designated by Conferences of States Parties for this task?

20. In conducting this further work after CSP4, the Management Committee should, *inter alia*, consider the following issues: 1) initiatives from other conventions; 2) initiatives from other relevant international organizations; and 3) legal and political implications of each initiative.

(2) FINANCIAL LIQUIDITY

21. With respect to Financial Liquidity, the establishment of a 'capital reserve' was suggested by CSP3 as one of the options to be considered by the Management Committee in terms feasibility and parameters. For reasons of technical accuracy, the term 'reserve fund' is considered to be most appropriate. In the context of this paper, a reserve fund refers to a fund established to ensure that the ATT has adequate funding (cash) to at least partially cover its operating expenses whilst awaiting payment of financial contributions from states. A reserve fund could also act as a buffer during adverse economic times or financial hardship.

22. An ATT reserve fund could be established with cash from the following sources:

- a. Uncommitted funds (assessed contributions) from the previous financial periods, which are not rolled-over to the next financial period to reduce states' contributions.
- b. A percentage (e.g. 2 - 5%) could be added to all annual contributions and money received could be deposited in the reserve fund.
- c. A penalty fee (as a lump sum or as a percentage of the contribution owed) or interest could be charged to states that do not pay on time (and that have not provided an explanation for the late payment and an undertaking to pay the contribution by a specified date). This may need to be coupled with an extension of the period to pay (currently 90 days), with consideration given to a possible adjustment of the ATT Financial Rules.
- d. Voluntary contributions.

23. The size of a reserve that an organization can maintain depends on a number of factors including its business nature, size and monthly expenses. The general practice is to keep a reserve that can cover organizations' monthly expenses for a period of 3 - 6 months.

Pros

- a. Maintaining a reserve will bring about certainty that ATT monthly expenses for, at least, 3-6 months will be covered whilst waiting for states to pay their contributions.
- b. The ATT capacity to plan and execute activities will improve.
- c. The ATT cash flow status will improve.
- d. In the future, funds in the reserve could be used for ATT capital investments.

Cons

- a. Some states may find the establishment of a reserve fund unacceptable due to their national financial policies.
- b. A reserve fund may indirectly discourage some states from paying their contributions within the 3 months set by the ATT Financial Rules.

24. Discussions within the Management Committee indicate this option is one of the most desirable option for addressing the liquidity issue caused by delayed and non-payment of contributions. The feasibility of this option will depend on States Parties' decision or agreement on the sources of cash to supply such a reserve fund, as listed in paragraph 22.

25. The Management Committee stresses that the proposed reserve fund is aimed at addressing liquidity challenges of the ATT not to absolve states from their financial obligations under the ATT. In addition, the Management Committee emphasizes that the sources of revenue for the reserve fund have been identified with a view to accommodate the different circumstances of states and that they are not exhaustive.

G. RECOMMENDATIONS

26. In light of the above discussions, observations, and findings, the Management Committee proposes to make the following recommendations to CSP4:

- a. That the ATT Secretariat and the Management Committee be mandated by CSP4 to implement the administrative measures to address some of the causes of delayed and non-payment of contributions as outlined in Table 1 of this paper.
- b. That CSP4 establishes a reserve fund drawing on the sources identified in paragraph 22 of this paper.
- c. That the Management Committee be mandated by CSP4 to undertake further work and prepare a detailed proposal to address the problem of financial contributions including possible sanctions for delayed and non-payment to be adopted at CSP5 (which may necessitate amendments to the Financial Rules).
