

# ISSUE BRIEF

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## The U.S. Must Uphold the Arms Trade Treaty's Limits at the First Conference of States Parties

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The first Conference of States Parties (CSP) to the Arms Trade Treaty (ATT) will be held in Cancun, Mexico, on August 24–27, 2015. This CSP will establish the rules of procedure for this and all future CSPs, decide how to organize and fund the treaty secretariat, adopt procedures for the reporting mandated by the treaty, and perhaps begin the campaign to amend the treaty.

At the CSP, the U.S. needs to resist efforts to set precedents and create institutions that could be used to expand or reinterpret the treaty. The U.S. delegation should respect Congress's opposition to funding the secretariat and, above all, emphasize that the treaty is the creation of U.N. member states and is to be implemented by only those states, not by the treaty secretariat or by a coalition of nongovernmental organizations (NGOs).

### The Rules of Procedure

Article 17 of the ATT requires the states party to the treaty to convene a CSP no later than one year after the ATT entered into force, which occurred on December 24, 2014. In the informal consultations and formal Preparatory Committee meetings in advance of the Cancun CSP, the drafting of the rules of procedure for the CSP has been one of the most controversial subjects.

These rules are particularly important because they will guide all future CSPs, not just the Cancun CSP. In theory, the states parties could change the rules later, but in practice, this will be difficult. The rules that are adopted at Cancun will therefore shape the outcome of the entire treaty process. In the preliminary meetings, the rules have been controversial for two reasons.

*First*, current draft rules require the CSP to “make every effort to achieve consensus on matters of substance”—in the U.N., “consensus” means no nation objects—but ultimately allow a decision by a two-thirds majority vote of the states party to the treaty. This means that a two-thirds majority could amend it after the treaty opens for amendments in December 2020. Matters of procedure are to be decided by a simple majority vote. Since the U.S. is not party to the ATT, it would not have a vote on matters of either substance or procedure.<sup>1</sup>

*Second*, the rules will govern how representatives of industry and civil society (i.e., NGOs) are allowed to participate in the CSPs. An earlier draft of the rules discriminated between “international coalitions of NGOs and associations representing industry” and individual representatives of civil society, including both NGOs and industry. International coalitions of NGOs and associations, like nations that have not signed the ATT, were allowed to attend the CSP as observers, while individual representatives were allowed only to attend plenary meetings of the CSP.

This distinction mattered because serious business is not normally conducted in plenary meetings. Those rules were designed to allow the pro-treaty Control Arms Coalition, in particular, privileged

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access to the entire CSP. The latest draft of the rules eliminates this discrimination, although it still seeks to constrain individual NGO representatives by requiring them, de facto, to work with a coalition of NGOs to be accredited to attend future CSPs.<sup>2</sup>

### **The Treaty Secretariat and the Financial Rules**

Negotiations on the treaty secretariat have not advanced far. Negotiators have not yet decided where to locate the secretariat, how to structure and fund it, or what it is to do.

The nation of Trinidad and Tobago and the cities of Geneva and Vienna have offered to host the secretariat, while France has set out possible models for the secretariat's structure. These models include anchoring the secretariat in the U.N., hosting it within an existing organization, or creating a stand-alone organization. Decisions about the secretariat's location, structure, and duties, in turn, will affect its cost.<sup>3</sup>

With so much yet to be decided about the secretariat, it is no surprise that its financial rules are also in draft. The current proposal is to charge states parties (i.e., not the U.S.) a contribution on an adjusted version of the U.N. scale of assessment, meaning that the U.S. would be asked to pay up to 22 percent of the secretariat's costs if the U.S. were to ratify the treaty.<sup>4</sup> Notably, the draft budgets the secretariat on an annual basis, which implies the need for an annual CSP to adopt a new budget.

Finally, while Article 18 of the treaty states that the secretariat is supposed to "be adequately staffed" and "have the necessary expertise" within "a minimized structure," an interpretation of its functions as specified in Article 18 has not yet been established. As a result, the first head of the secretariat will be

hired to serve only until the second CSP through a process that was nominally open to applications, although the job posting did not require applicants to have any actual knowledge of the arms trade.<sup>5</sup>

### **The Reporting Templates**

The treaty requires states party to submit an initial report on measures taken to implement the treaty and an annual report on authorized or actual exports and imports of conventional arms. Sweden has taken the lead in drafting reporting templates. The template for the annual report of imports and exports is based on the definitions in the U.N. Register of Conventional Arms, under which reporting of small arms and light weapons is voluntary.<sup>6</sup> Nations and NGOs that support the treaty will likely press at the CSP to use definitions that would require nations to report their imports and exports of small arms.

### **Treaty Proponents Seek to Control and Reinterpret the ATT**

The fundamental challenge before the U.S. in Cancun is to ensure that the CSP recognizes that the ATT is a treaty among states and that solely those states are responsible for implementing it. The NGOs that support the treaty have already engaged in an extended effort to deny skeptics the right to participate in its meetings, an effort that reflects their belief that, having secured the treaty they longed for through the U.N., they could now transform it into a political instrument under their control.

So far, this effort has not succeeded, but the distinction that the initial draft rules of procedure drew between international coalitions and individuals affiliated with a single NGO testifies that this effort has not been abandoned. By a similar token,

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1. Facilitator on Rules of Procedure, Mexico, "Draft Rules of Procedure, Arms Trade Treaty," July 8, 2015, [http://www.thearmstradetreaty.org/images/ATT\\_CSP1\\_2015\\_PM.2\\_WP1\\_Rev1.pdf](http://www.thearmstradetreaty.org/images/ATT_CSP1_2015_PM.2_WP1_Rev1.pdf) (accessed August 17, 2015).
  2. Facilitator on Rules of Procedure, Mexico, "Rules of Procedure of the Conference of States Parties of the Arms Trade Treaty, Facilitator's Report," August 5, 2015, pp. 2-3, Rules 5-7, [http://www.thearmstradetreaty.org/images/ATT\\_CSP1\\_2015\\_WP1.pdf](http://www.thearmstradetreaty.org/images/ATT_CSP1_2015_WP1.pdf) (accessed August 19, 2015).
  3. Facilitator on Secretariat, France, "Secretariat of the ATT: Points for Discussion Concerning the Various Possible Models," July 7, 2015, [http://www.thearmstradetreaty.org/images/ATT\\_CSP1\\_2015\\_PM.2\\_WP7.pdf](http://www.thearmstradetreaty.org/images/ATT_CSP1_2015_PM.2_WP7.pdf) (accessed August 17, 2015).
  4. Facilitators on Financial Rules, Ghana/Australia, "Financial Rules for the Conference of States Parties and the Secretariat," August 12, 2015, [http://www.thearmstradetreaty.org/images/ATT\\_CSP1\\_2015\\_WP3.pdf](http://www.thearmstradetreaty.org/images/ATT_CSP1_2015_WP3.pdf) (accessed August 18, 2015).
  5. Arms Trade Treaty Provisional Secretariat, "Vacancy Announcement: Head of Secretariat for the Arms Trade Treaty," July 7, 2015, [http://www.thearmstradetreaty.org/images/ATT\\_CSP1\\_2015\\_PM.2\\_4\\_Rev1.pdf](http://www.thearmstradetreaty.org/images/ATT_CSP1_2015_PM.2_4_Rev1.pdf) (accessed August 17, 2015).
  6. Facilitators on Reporting, Sweden, "Reporting Templates: Draft 4," August 12, 2015, Arms Trade Treaty, First Conference of States Parties, [http://www.thearmstradetreaty.org/images/ATT\\_CSP1\\_2015\\_WP4.pdf](http://www.thearmstradetreaty.org/images/ATT_CSP1_2015_WP4.pdf) (accessed August 18, 2015).
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basing the secretariat in Geneva, where both the Conference on Disarmament and a leading advocacy organization for the control of small arms are located, would send the incorrect message that the ATT is a disarmament treaty, not a treaty that applies to the legitimate international trade in arms.

Lastly, the option of placing the ATT Secretariat within an existing organization risks the selection of an inappropriate, NGO-dominated host, while housing it in the U.N. risks contaminating it with the U.N.'s disarmament agenda and opposition to legal private ownership of firearms. These options reflect the views of the NGOs that wish to take over and reinterpret the ATT.

### **What the U.S. Should Do**

For the U.S., limiting both the cost of the secretariat and the scale of assessments supporting it is an important objective. Particularly thanks to the leadership of Representative Mike Kelly (R-PA), Senator James Inhofe (R-OK), and Senator Jerry Moran (R-KS), the House of Representatives and Senate have repeatedly refused to fund the ATT Secretariat. It is vital to ensure that the secretariat is:

- A small, stand-alone body, based either in Trinidad and Tobago or in Vienna;
- Limited to carrying out administrative functions directly relevant to the treaty;
- Given no responsibility for treaty implementation; and
- Not allowed to engage in efforts to expand or reinterpret its mission.

By the same token, the U.S. should oppose rules of procedure that would effectively discriminate between NGO representatives that support the treaty and those that are skeptical. The same rules should apply to everyone, and no NGO representative should be placed on an equal status with U.N. member nations in the CSP or be required to collaborate with other NGOs to be accredited to a future CSP.

The U.S. should support the adoption of templates that do not mandate the reporting of information that is not required by the U.N. Register. The U.S. should discourage this CSP from discussing supposedly new developments in the arms trade or treaty amendments because amendments cannot be offered for more than five years. The U.S. should also press for a period of at least two years between CSPs.

Finally, the U.S. should push for the adoption of rules of procedure that require consensus agreement on matters of substance and a two-thirds majority on matters of procedure. The Obama Administration justified its decision to participate in the ATT negotiations on the basis that those negotiations would need to proceed by consensus. Accepting anything less than consensus on matters of substance would allow the treaty to be amended by majority rule and thus vitiate the Administration's negotiating conditions.

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