

# Towards a Secretariat for the Arms Trade Treaty<sup>1</sup>

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## I. Introduction

The Arms Trade Treaty envisions the establishment of a Secretariat to “assist States Parties in the effective implementation” of the Treaty (Article 18). Among the decisions on the implementation and management of the Treaty that will need to be made at the 1<sup>st</sup> Conference of States Parties (CSP) will be ones concerning the nature and functioning of the Secretariat itself. As the issue of the Secretariat is among the items on the agenda of the upcoming CSP preparatory meeting in Mexico City (8 – 9 September 2014), this paper is offered as a contribution to those early discussions.<sup>2</sup>

In order for well-informed decisions about the Secretariat to be made, the Conference of States Parties will need to consider and reach agreement on a number of dimensions of the Secretariat, namely its roles, structure, institutional setting, how it is to be funded, how it is to be governed, where it is to be located. This paper seeks to shed light on some of these issues. In doing so, it draws for illustrative purposes on examples from a number of international treaties and their secretariat processes, particularly the Implementation Support Units that have been established in recent years in relation to a number of arms control/disarmament processes. The paper does not look in specific geographical terms at the question of where the future ATT Secretariat should be located, a question which can best be answered once there is clarity and agreement about other directions and operational factors related to the elaboration of the purposes of the Secretariat as contained in the Treaty. It does, however, suggest some issues to be considered as States Parties make their decisions about the desirable location for the Secretariat.

## II. The roles of Secretariats in relation to international treaty mechanisms.

In considering the desirability of including within the ATT a deliberate section on a Secretariat, negotiators and interested others will have had in mind the experience of other international treaties and agreements. While usually receiving little attention compared to the more visible aspects of treaty implementation, secretariats of one sort or another are ubiquitous as a feature of international treaty mechanisms. The core responsibilities as foreseen for the ATT Secretariat resemble those of most such structures in relation to international treaties. As one observer has noted, “Secretariats are the organizational glue that holds the actors and parts of a treaty system together.”<sup>3</sup>

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<sup>1</sup> The author wishes to thank all those who spent time with him offering observations and orientations on the questions tackled in the paper. In addition, the author has drawn on a range of written materials. As this paper is primarily aimed at stimulating thought, it does not observe, except in the case of direct quotations, the normal convention of referencing for attribution to interview or written sources.

<sup>2</sup> This paper has been prepared at the request of the Swiss Federal Department of Foreign Affairs, without prejudice to specific content. It is written in the author’s own capacity as an independent expert.

<sup>3</sup> Rosemary Sandford, “International Environmental Treaty Secretariats: Stage-hands or Actors?”, *Green Globe Yearbook of International Co-operation on Environment and Development*, 1994, p. 17.

While there is a vast academic literature in the field of international relations on treaty making and implementation, there has been relatively little attention paid to “secretariats” as a feature of this. For the purposes of this paper, only a limited perusal of this literature has been possible. Much of that literature appears to have emerged in response to the proliferation of international environmental organizations over the last 40 years or so.<sup>4</sup> A more thorough study than is being attempted here would warrant a deeper examination of the findings of this research.

What the brief review undertaken here of this literature does reveal, however, is that, while there are common core dimensions of the functions of secretariats, there is also great variety among them. As two analysts have noted, “Secretariats supporting international environmental co-operation share both striking similarities and differences. On the one hand, most secretariats deal with core tasks spanning from the arranging the meetings of the Co-operating Parties (CoP) to reporting, verification, data gathering and various assistance functions to the Parties. On the other hand, they vary concerning size, additional tasks, degree of activism, and linkages to other secretariats and treaties.”<sup>5</sup>

Of particular relevance to the concerns in this paper is the attention that is paid to questions related to the functions foreseen for the secretariat. This relates to the scope of tasks laid out for the Secretariat. Some observers distinguish between what they call “cautious”/“passive”/“minimalist” Secretariats and those which are more “activist”/“maximalist”/“interventionist”. Just where a Secretariat falls in this spectrum will depend on such factors as the original mandate for the Secretariat, additional tasks as may be assigned to the Secretariat over time, the resources available to the Secretariat, the job description of the chief executive of the Secretariat and her/his interpretation of this and own competencies, the degree of trust between the Secretariat and the States Parties, and others.<sup>6</sup>

In short, while the ATT is itself a unique treaty and the current discussion about the Secretariat has its own history and context, the things States Parties will be wrestling with in the shaping of the Secretariat are little different from other treaty processes

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<sup>4</sup> Examples from this literature include: Sandford (fn 3); S. Bauer, « Does bureaucracy really matter? The authority of intergovernmental treaty secretariats in global environmental politics, *Global Environmental Politics* 6(1), pp. 23-49; S. Andresen and J. Skjaereth, “Can International Environmental Secretariats Promote Effective Cooperation?” (paper presented at the United Nations University’s International Conference on Synergies and Co-ordination between Multilateral Environmental Agreements, Tokyo, Japan, July 14-16, 1999); A. and K. Michaelowa, “Bureaucratic Influence when Secretariats grow: The example of the UNFWCCC”, University of Zurich (draft 2013); C. Downie, “Managing Complexity in International Negotiations: Is there a role for treaty secretariats?” (Australia National University, undated unpublished manuscript, [www.glogov.org](http://www.glogov.org)). One major study, *Invisible Governance: International Secretariats in Global Politics* by J. Mathiason (Kumarian Press, 2007) examines the roles of secretariats in relation to international treaty mechanisms across a broad range of global concerns.

<sup>5</sup> Andresen and Skjaereth, p. 2.

<sup>6</sup> As one scholar has noted, “A treaty secretariat is required to serve ‘two masters’, the parties and the regime. It must be seen to balance the interests of each party or coalition and never to be seen to prejudice the views of one party. At the same time it must manage the tension between supporting the ultimate objectives of the regime in which it operates and the parties to that regime that may not, in some cases, support these objectives. In other words, tightrope walking must be a stock in trade for any successful secretariat.” Downie, p. 13.

and the actual record—positive and negative—of other experiences can be instructive. One common lesson is that the elaboration and understandings achieved concerning the Secretariat require careful attention and as much clarity as possible from the outset to avoid confusion and possible conflict later.

### **III. What the Treaty says about a Secretariat: some factors to keep in mind**

The process of decision-making to give shape to the Secretariat will, of necessity, have to begin with what the Treaty actually says. It is important to remember that there was considerable debate in the Treaty negotiation process about the secretariat function in relation to the implementation of the Treaty, with a broad range of views, ranging from minimalist thinking to visions of a substantial structure with functions more akin to those undertaken by Treaty mechanisms such as the Organization for the Prohibition of Chemical Weapons (OPCW) or the Comprehensive Test Ban Treaty Organization (CTBTO). In the end, however, although the Treaty uses the term Secretariat, in fact what was agreed finally is something more akin to the Implementation Support Units that have come to characterize a number of disarmament treaty processes in recent years, such as the ISU for the Antipersonnel Mine Ban Convention (APMBC) and the more recent ISU for the Biological and Toxin Weapons Convention (BTWC). This more limited nature, as laid out in the Treaty, outlines the *basic parameters* within which the kinds of considerations looked at in this paper must be placed.

Here's what the Treaty actually says:

#### Article.18. Secretariat

1. This Treaty hereby establishes a Secretariat to assist States Parties in the effective implementation of this Treaty. Pending the first meeting of the Conference of States Parties, a provisional Secretariat will be responsible for the administrative functions covered under this Treaty.
2. The Secretariat shall be adequately staffed. Staff shall have the necessary expertise to ensure that the Secretariat can effectively undertake the responsibilities described in paragraph 3.
3. The Secretariat shall be responsible to States Parties. Within a minimized structure, the Secretariat shall undertake the following responsibilities:
  - (a) Receive, make available and distribute the reports as mandated by this Treaty;
  - (b) Maintain and make available to States Parties the list of national points of contact;
  - (c) Facilitate the matching of offers of and requests for assistance for Treaty implementation and promote international cooperation as requested;
  - (d) Facilitate the work of the Conference of States Parties, including making arrangements and providing the necessary services for meetings under this Treaty; and
  - (e) Perform other duties as decided by the Conferences of States Parties.

Some contextual elements to keep in mind:

- The fact that the need for a Secretariat to assist in the implementation of the Treaty was understood as the Treaty was being negotiated and specific language for inclusion in the Treaty was agreed offers the opportunity for States Parties to have a purposefully designed instrument at its disposal from the very start of the life of the Treaty, in contrast to other disarmament treaties where the ISU function was clarified and established by meetings of States Parties only some time into the life of the Treaty (APMBC, BTWC, the Convention on Certain Conventional Weapons (CCW), the Convention on Cluster Munitions (CCM)).
- Anticipated facilitating functions of the Secretariat are mentioned elsewhere in the Treaty: Article 5 (General Implementation), para 4, para 6; Article 13 (Reporting), para 1, para 3; Article 20 (Amendments), para 2. In addition, Article 17 (Conference of States Parties) lays out the responsibilities of the CSP in relation to the Secretariat (para 3 and para 4.c). This further illustrates the importance that negotiators put into embedding the Secretariat idea into thinking about ways to see that the Treaty is successfully implemented.
- While a realistic interpretation of Article 18 and the other Secretariat-related references in the Treaty point to a Secretariat with limited scope, size and budget, the Treaty does not box in the future of the work of the Secretariat. The Treaty anticipates in 18.3.e that, as the experience of Treaty implementation evolves in years ahead--no doubt in ways impossible to be anticipated fully at this juncture--additional "duties" could be assigned by CSPs to the work of the Secretariat.
- Without doubt the negotiating history of the ATT, including the understanding that what the Treaty actually says about the Secretariat is necessarily compromise language, will have a certain influence on forthcoming discussions in Mexico City and beyond, as preparations are made for decisions at the 1<sup>st</sup> CSP. It is perhaps worth noting, nevertheless, that Treaties that are serving the purposes for which they were established are necessarily "living" or "organic" social entities the needs of which will change over time. Keeping this in mind as States Parties seek to put flesh on the bones of the Treaty language concerning the Secretariat will help to ensure that what is designed best serves the interests of the States Parties in seeing that this much anticipated Treaty is actually "contributing to international and regional peace, security and stability; reducing human suffering; [and] promoting cooperation, transparency and responsible action by States Parties in the international trade in conventional arms, thereby building confidence among States Parties" (Article 1: Object and Purpose).

#### **IV. Core elements to be considered**

With this background in mind, this section of the paper seeks to lay out a range of elements that will need to be considered as States Parties give shape to the Secretariat. While these are dealt with serially, in fact they are highly inter-dependent: decisions on one will have an impact on others. States Parties will need to be satisfied that in the end these elements are mutually supportive and not at odds with each other, e.g. will the institutional framework chosen and financing arrangements decided upon enable the Secretariat to carry out effectively and efficiently the tasks anticipated?

### a. *Functions*

The Treaty outlines in Article 18, para 3 the core tasks to be carried out by the Secretariat. As noted, these are fairly standard responsibilities of secretariats to international treaties in general. Importantly, it is worth noting that in the language of Article 18, no monitoring/evaluation functions for the Secretariat are anticipated at this stage.

The black-and-white textual language, however, provides no real room for nuance or interpretation of how these functions are to be carried out by the Secretariat, nor does it reflect the diversity of views that probably continue among States on this. In Section II above it was noted that some scholars have observed that Secretariats can range from “passive” to “activist” in their nature. The degree of “activism” anticipated can depend on such factors as: the mandates laid out by the Treaties themselves in respect of perceived implementation support needs; the nature and demands of the meeting processes undertaken by States Parties; the needs of subsidiary bodies for specific areas related to the implementation of the Treaty as may eventually be set up by CSPs; the extent to which there are operational elements which require regular engagement with States Parties and with those representatives of States Parties with specific roles between formal meeting of States Parties processes; the degree to which the Secretariat can be seen as a mediator in sorting out conflicts and other problems that might emerge in the process of Treaty implementation; the degree to which the Secretariat is expected to respond to requests by individual States Parties for advice and support in their implementation efforts; the degree to which the pursuit of active links with related “regimes” can be seen as possibly offering synergies in enhancing implementation; among others.

While much of this is in the nature of the evolution of treaties and their implementation, States Parties in the 1<sup>st</sup> CSP will wish to keep in mind the potentially dynamic nature of the role of a Secretariat and the degree to which the CSP wishes to hold the Secretariat to a rather narrow interpretation of its essentially administrative tasks or to a vision of a more active Secretariat which sees its role as direct engagement with the promotion of the Treaty implementation with State Parties. For example, will the Secretariat be asked to develop universalization promotional activities?<sup>7</sup>

The 1<sup>st</sup> CSP will need to seek a common view on this, as the degree of “activism” presumed for the Secretariat in supporting Treaty implementation will impact with other core elements considered here, especially structure and funding, and with the ultimate decisions about the location of the Secretariat. It seems to this observer that there is a spectrum of choice that can briefly be summarized in the following way:

- At one extreme, a Secretariat that carries out the tasks outlined in the Treaty more or less to the letter, leaving the remainder of implementation engagement to the States Parties themselves. One example of this kind of Secretariat, which is actually not formally a Secretariat, is the way the Nuclear

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<sup>7</sup> In a fairly recent study of roles and influence of the secretariat of UN Framework Convention on Climate Change (UNFCCC), Axel and Katarina Michaelowa have offered the following observation in this respect: “From a normative perspective, the role the secretariats should assume . . . depends on a number of context variables, such as the complexity of the problem (that calls for knowledge of specialized experts) or the diversity of political preferences (that call for a clear predominance of the democratic decision making bodies and a less active role of the secretariat).” P. 1

Non-Proliferation Treaty (NPT) operates, with the Secretariat functions, undertaken principally by UNODA, concerned mainly with supporting the Preparatory Committee and Review Conferences functions. Similarly, UNODA's role in relation to the non-Treaty UN Programme of Action on the illicit trade in small arms and light weapons and the UN Register on Conventional Arms can be seen as this type of function. Clearly, however, it seems to this observer that a non-Secretariat Secretariat is not what is envisioned in the Treaty. Nevertheless a formal Secretariat whose work was circumscribed in this way and confined largely to administrative support functions could be what States Parties want, with the fundamental dimensions of meeting the expectations of the Treaty rest with States themselves taking appropriate actions to meet the national obligations outlined in the Treaty. One example of such a "minimalist" secretariat, at least in its origins, was the International Whaling Commission.

- The other extreme, a Secretariat that takes on major functions of treaty implementation itself—e.g. monitoring, direct involvement in decisions related to the justifiability or not of particular arms transfer decisions, verification—would seem to be ruled out both by the negotiating history of the ATT and the language of the resulting Treaty itself.
- But in the middle remains the type of Secretariat that can offer a more active engagement with the Treaty implementation process should this be wished. The experience of the APMBC and the BTWC ISUs demonstrate how, while original mandates were fairly circumscribed, over time needs defined by the States Parties themselves led to an expansion in the kinds of activities undertaken by the Secretariat. Given that the Arms Trade Treaty will be dealing with a whole area of "regulation" that has not been undertaken by the international system heretofore, that there are responsibilities that States Parties have assumed in joining the Treaty which for many will be new, that reporting by States Parties is a fundamental dimension of the Treaty against which the success or failure of the Treaty will be judged, and that cooperation and assistance to States Parties are seen as necessary parts of bringing all States Parties into full participation in the life of the Treaty, it might be anticipated that a more "activist" interpretation of the rather limited roles for the Secretariat as outlined in Article 18 will be desired by many States Parties, if not initially then perhaps over time. But it will be important that there is clarity and agreement on how far this might extend, at least in the early years of the Treaty's life, and how States Parties will wish to guarantee that any expansion of roles remains clearly within decision-making processes of the States Parties themselves, recognizing that Art 18, 3e provides CSPs with the possibility to expand or extend the nature of desired functions later.

#### b. *Structure*

Article 18 gives only minimal guidance as to what the structure for the Secretariat should be other than to say that it "shall be a minimized structure" which must be "adequately staffed", with staff with "the necessary expertise to ensure that the Secretariat can effectively undertake the responsibilities described in paragraph 3." In the coming months, the preparatory processes for the 1<sup>st</sup> CSP will need to fill this out. Clarity on the functional limits of the Secretariat and its funding will of course be critical dimensions of being able to do this, as will an understanding of institutional framework within which the Secretariat will fit. Substance will need to be given to the

meaning of a “minimized structure” and the kinds of expertise that will be required will need to be identified and defined.

Fortunately, there are many examples of small (or “minimized”) Secretariats successfully supporting a whole range of international treaty structures.<sup>8</sup> With reference to those ISUs that have been established in recent years to support international arms control and disarmament processes, we can see structures that range from a staff size of two for the Convention on Certain Conventional Weapons (CCW) ISU, to an anticipated 2.5 for the new ISU for the Convention on Cluster Munitions, to 3 for the BTWC ISU, to 4+ for the APBMC. To illustrate further what can be done with a relatively small secretariat, the Convention on Wetlands of International Importance (the Ramsar Convention), although not very well known except in environmental circles, actually has an extensive mandate (“the conservation and wise use of all wetlands through local and national actions and international cooperation, as a contribution towards achieving sustainable development throughout the world”) with a broad range of activities—well beyond what is anticipated for the ATT. Its secretariat, nevertheless, remains relatively small being made up of some 20 policy, technical, communications and administrative staff ([www.ramsar.org](http://www.ramsar.org)). Given that the functions anticipated for the Secretariat as laid out in the Treaty fall very much in line with many other international conventions, even if something of an “activist” orientation for the Secretariat were decided upon, a “minimized” structure for the ATT Secretariat of five or fewer staff could be anticipated as acceptable, particularly if the Secretariat were located in an institutional setting where some services could be provided by other actors, or there was financial capacity for buying in services as required.

The nature of the staffing required also remains to be defined. The meaning of “adequately staffed” with the “necessary expertise” will be a matter for States Parties to decide, but in relation to the nature of the ATT and what it is trying to achieve, it could be anticipated that a staff with diplomatic expertise, policy and technical expertise in a regulatory process (export control), expertise in disarmament and related matters, data management capacity for the “user friendly” handling of national reports and other IT needs, communication skills and general administrative capacity would be among the desired components in a Secretariat for the ATT, even if its remit is rather narrowly drawn. How “active” the functions of the Secretariat are perceived to be will also have an impact on the type of Director sought to manage the Secretariat.

Should States Parties decide to locate the Secretariat within a UN body, UN practices with regard to employment would automatically apply. For the sake of comparability with other bodies, especially those with which the Secretariat might be most expected to work, and sheer practicality, it could be expected that even in the case that the Secretariat were to be located outside a UN structure (see below),

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<sup>8</sup> For example, a 2010 evaluation which was done on the APBMC ISU stated the following: “The Unit has established a reputation for energetic and effective implementation of the Convention, performing multifaceted tasks from organization of meetings to practical support and advice to mine-affected Parties in the implementation of the treaty in pursuit of a major humanitarian objective, a mine-free world with all its resultant humanitarian and developmental benefits.” Tim Caughley, “Report to the Open-ended Task Force on the Implementation Support Unit,” 1 September 2010, p. 10. ([www.apminebanconvention.org/implementation-support-unit/institutional-framework/](http://www.apminebanconvention.org/implementation-support-unit/institutional-framework/)).

common employment practices for international civil servants could be used as a guide for the employment of Secretariat staff.

### c. *Institutional Framework*

The establishment of the ATT Secretariat will also require decisions about the institutional arrangements that could best suit the efficient functioning of the Secretariat and its overall contribution to the achievement of the goals of the Treaty. Here, it would seem, “efficiency” would need to extend beyond a purely bureaucratic or administrative definition to the nature of the relationship of carrying out of the designated functions to the political processes of the Treaty itself, such as the nature and frequency of meetings of States Parties. A number of possible broad models present themselves, each with advantages and disadvantages.<sup>9</sup> Variations within these models could also be imagined.

#### 1) The Secretariat functions are absorbed within an appropriate UN structure

This model is basically a non-secretariat model, in that the secretariat functions in support of implementation of the Treaty would be absorbed by the chosen UN structure and handled as part of and through its organizational and administrative practices. As noted earlier, this is the operational approach to the NPT, where UNODA provides support services for the established meeting processes of States Parties.

**Advantages:** This model could be attractive if a “minimalist” approach is taken to the understood functions of the Secretariat. Its absorption into an existing unit with connections to other functioning dimensions of coverage by the Treaty (e.g. UNROCA and UNPoA) could offer synergies. It would offer use of existing institutional structures, infrastructure and policies, including human resources. Staffing costs would be absorbed in the UN budget.

**Disadvantages:** The distinctive nature of the regulatory nature of this Treaty could become blurred if too closely associated with more traditional arms control and disarmament functions of the UN. Flexibility of evolution of responses to implementation needs might be limited. Possible politicization of senior staff choices. Perception by some State Parties of inefficiencies of UN institutional practices, including in relation to criteria for staff recruitment and UN costs. Absorption of costs into UN could be resisted by States not party to the Treaty.

**Comment:** While this model remains a possible choice, it would already seem to be ruled out both by the negotiation history of the Treaty and by the very wording of the Treaty itself, which clearly sees the establishment of a dedicated Secretariat and not simply the identification of secretariat-like functions as a goal.

#### 2) The Secretariat is anchored within an appropriate UN structure

In this model, the Secretariat would be seen as *in but not of* the UN. The Secretariat would exist as its own entity, as envisioned by the Treaty, but would be attached to

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<sup>9</sup> A more detailed examination of the spectrum of options presented here is helpfully included in the analysis undertaken by Tim Caughley in the 2010 evaluation of the APMBC ISU where he lays out alternative options for the future of the APMBC ISU institutional framework based in part on his analysis of the actual experience of the ISU having been hosted by the Geneva International Centre for Humanitarian Demining. See Caughley, pp. 62 – 72 .



an appropriate UN body that would house it. Two existing examples of this way of working are the ISUs for the BTWC and CCW, which are housed within the Geneva Branch of UNODA. A further example is the secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), which is located within UN Environmental Programme (UNEP) facility in Geneva.

**Advantages:** As a treaty negotiated within a UN process, the ATT could benefit by a identifiable relationship to related UN conventions, institutions, structures. Location as its own unit, but within the UN, a universal body, could help to reinforce the expectation of the eventual universal state participation in the ATT. It would allow for continuing “ownership” by the States Parties to the Treaty in shaping the roles and running of the Secretariat (as with the BTWC ISU). Other possible advantages: use of existing institutional structures, infrastructure and policies, including human resources; opportunities for possible synergies with other parts of the organization or department chosen and with other parts of the UN system; access to UN interpretation, translation, documentation and conference services; UN budget support for staffing costs.

**Disadvantages:** Despite separate nature, possible perceived confusion of mandates with other UN bodies, including the one into which it is anchored, or a blurring of boundaries. Additional pressures on over-stretched UN in terms of administrative support.<sup>10</sup> Perceived inefficiencies of operating within large UN bureaucracy and costs related to this. Lack of independence on staffing issues, including recruitment.

### 3) The Secretariat is hosted by a third-party institution or state

In this model, a third-party or state hosts the Secretariat within its organizational structure, the exact dimensions of which are negotiated and agreed between the States Parties and the host. Examples of third-party hosting of this sort include the hosting of the APMBC ISU within the Geneva International Centre for Humanitarian Demining (GICHD) since the creation of the ISU in 2001, with preparations underway for a similar hosting arrangement by the GICHD for the CCM ISU. Another example is the previously mentioned Ramsar Convention Secretariat, which is hosted by the International Union for the Conservation of Nature (IUCN), an interesting international body made up of more than 1200 member organizations (including states, national government agencies, international and national NGOs) and individuals. In theory, a similar “hosting” arrangement could be made within the organizational structure of a sponsoring state. One example, more akin to model one, was the original way in which the secretariat functions of the International Whaling Commission were originally formerly taken care of by the UK Agricultural Department. Today, the Secretariat of the IWC seems to be of a stand-alone nature, but continues to be located in the UK.<sup>11</sup>

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<sup>10</sup> In his evaluation of the APMBC, the consultant considered the ramifications of possible changes in the current institutional setting of the ISU from GICHD to UNODA. He noted the following: “[I]n the decision of the States Parties of the CCW to create an ISU it was noted that ‘the increased work relating to the CCW and its Protocols could benefit from a strengthened UNODA, Geneva branch.’ This rider reflects concerns about the pressures being place on UNODA especially in terms of administrative support. Implicit also is the recognition that UNODA must rely for human resources and travel support from UNOG.” Caughley, pp. 66 – 67.

<sup>11</sup> Andresen and Skjaereth, p. 13.

#### Advantages:

Being hosted by a third-party but thematically-related institution can provide important foundational legitimacy for the Secretariat and, through services provided, allow it to get on with dealing with the essential elements of its role in treaty implementation. Other advantages include: underwriting to one extent or another, depending on the hosting agreement, operating costs of the secretariat; the opportunity to make use of existing institutional structures, infrastructure and policies as well as to potentially realize synergies with other parts of the organization (e.g. the APMBC ISU in relation to the mine action expertise of the GICHD); use of host organization's human resources policies and practices (e.g. Ramsar Convention Secretariat staff, for employment purposes, receive the benefits and services that IUCN staff members do and are legally IUCN personnel); relative flexibility in relation to evolving dimensions of the implementation support work of the secretariat.

#### Disadvantages:

Possible confusion in the minds of some, including States Parties, of the identity of the Secretariat in relation to that of the host body. This has been one of the early experiences of the APMBC ISU. A similar "confusion" has been noted in the relationship between CITES and UNEP. Conformity to host organization policies and practices may not present the most direct way of getting work done and conflicts may emerge in the relationship.<sup>12</sup> For both third-party and state hosting arrangements uncertainties about the length and breadth of the host commitment may present certain difficulties in terms of strategic planning to meet States Parties' expectations. There can also be possible perceptions of undue influence by one state (either because of its direct support in hosting the secretariat or major contribution to costs of a third-party entity located within the state). It should be noted that these are not necessarily permanent features of such a third-party relationship. Many of them are largely perceptual in nature and can be overcome. In the experience of the APMBC ISU, concrete steps were taken in 2010 to provide clearer identity distinct from the GICHD, greater independent functioning of the ISU, and greater clarity on the accountability of the ISU to the States Parties which have made a difference in how the distinctive nature of the ISU is seen.<sup>13</sup>

#### 4) The Secretariat is established as a stand-alone entity

A further model for consideration is one in which the Secretariat is set up as a stand-alone entity, with its own legal personality. For any such stand-alone ATT Secretariat entity, a host country arrangement of some sort would of course be necessary. But there is considerable experience of states agreeing to host international

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<sup>12</sup> Kerry Brinkert, Director of the APMBC ISU, in a presentation on the experience of the ISU to a Geneva Forum-sponsored preparatory meeting for the 2006 BTWC Review Conference, noted the following: "Drawbacks to this model have been that, given its uniqueness, it is sometimes difficult for various actors—including some of the States Parties—to understand what it is. This unique set-up also has resulted in the need to achieve credibility and understandability with actors external to the Convention. In addition, as a part of an organization that is responsible to a set of States that is different from the organization's governing board, there is always the possibility for conflicts in internal directions." (10 March 2006).

<sup>13</sup> See the "Final Report and Recommendations of the ISU Task Force," endorsed on 3 December 2010 by the 10th Meeting of the States Parties to the APMBC, and the "Revised agreement between the States Parties and the GICHD on implementation support for the Convention, 6 September 2011. ([www.apminebanconvention.org/implementation-support-unit/institutional-framework/](http://www.apminebanconvention.org/implementation-support-unit/institutional-framework/)).

organizations or secretariats associated with international treaty bodies. These hosting arrangements can come with varying types and degrees of support.

**Advantages:**

A stand-alone Secretariat would leave no doubt as to the relationship of the Secretariat to the States Parties. Lines of responsibility and accountability would be direct and clear. “Owning” its own Secretariat could instill in States Parties an additional sense of responsibility for its direction, health and sustainability, with follow-on consequences for their own levels of commitment to fulfilling their national obligations under the Treaty. The model would present the opportunity to establish institutional structures and mechanisms tailor-made for the specific tasks of the Secretariat, including human resources provisions. This model would eliminate any tension of divided responsibility by the head of the Secretariat to the head of the hosting body and to the States Parties.

**Disadvantages:**

A decision to establish the Secretariat as a stand-alone entity could contribute to a disjuncture between this UN-based Treaty idea, which has so many links in purpose to key arms control, human rights, and development goals of the greater UN system, and that UN system itself. The establishment of a stand-alone entity would also incur opportunity and financial costs related to establishing unique structures and policies, including the invention of human resources processes and financial management procedures from scratch.

**Comment:** Given the “minimized” structure for the Secretariat envisioned in the Treaty, a stand-alone entity at first glance could appear an overly costly and inefficient approach. However, an alternative could be a “hybrid” model of a stand-alone body, accountable solely to the States Parties to the Treaty and managed independently (perhaps with the assistance of something like a Coordination Committee made up of a balanced set of States Parties), but which is located in such a way that possible synergies could be realized in terms of proximity to Treaty-based and other organizations that share elements of mandate and operation to those of the Arms Treaty and offer the possibility for the sharing of certain facilities and infrastructure. Such a set-up would require that, from the outset, the Secretariat be sufficiently resourced so that some essential services, including start-up elements, could be purchased through service arrangements with other structures. Two examples of such settings that come to mind in this respect are the UN City in Vienna or the developing Maison de la Paix in Geneva.

The ATT really provides no helpful guidance on all of this. States Parties will have to weigh the costs and benefits of different models (or some variant) in relation to the degree of independence that is desired for this Treaty implementation mechanism alongside clarity on functions and structures. Crucial, of course, to all these considerations is how whatever model is chosen can be financed.

**d. *Financing***

“As it is primarily governments which define the mandate and the scope of secretariat activities, it could . . . be argued that the level of financial and

administrative resources made available to secretariats reflects the level of commitment of the parties to the achievement of treaty objectives.”<sup>14</sup>

States Parties in their preparatory deliberations for the 1<sup>st</sup> CSP will need to establish a formula for how the costs of the Treaty, including the direct costs of financing the Secretariat, are to be met. States parties will want, it would seem, to ensure that the Secretariat can be adequately resourced to undertake the tasks designed for it from the start and that this can be done in a sustaining way.

Although much will depend on the type of institutional setting seen as most compatible, desirable and feasible, a number of general funding approaches can be seen as possible modes for the funding of the ATT Secretariat:

1) Voluntary funding. Under this mode, the funding of the Secretariat would depend for its financing principally on voluntary contributions of the States Parties. This has been the principal model of funding of the APBMC. (Other sources of finance have included major infrastructure contributions of Switzerland; the funding of the annual UN-based Meetings of States Parties and Review Conferences through assessed contributions of those states participating).

There are a number of recognized down-sides to this mode, as experienced by those secretariats that have had to rely on this means of funding. For example, the APBMC ISU has experienced such effects as: uncertainty of revenues from one year to the next; “free rider” behavior by some States Parties; changing tastes of contributing countries; the opportunity costs of staff spending time chasing funding. The Ramsar Convention is another example of where major reliance on voluntary funding has resulted in stresses over underfunding and extraordinary time of Secretariat staff spent on fundraising.

Because the ATT has built the Secretariat function into the Treaty from the beginning as a core element and because it is a Treaty that will continue to be relevant for the long haul, this mode is probably not a real option except as an initial means to get things up and running. An example of this way of working is what is currently taking place with the financing of the CCM ISU, with voluntary contributions keeping the secretarial functions of the Treaty implementation going pending final agreement on a financing structure for the Treaty at 1<sup>st</sup> Review Conference in 2015. Clearly for the ATT it would be better if the financing structure could be settled as soon as possible so that Treaty implementation work is not hamstrung by long-running debates over financing. Nevertheless, as will be seen below, voluntary contribution can still be seen as having an important role to play in funding dimensions of Treaty implementation processes.

2) Mandatory assessed contributions. This mode of financing the Secretariat would look to assessing States Parties for contributions, probably based on the UN scale of assessment adjusted to the number of States Parties. This mode has the advantage of providing a sense of ownership by States Parties, reducing the “free rider” effect, and allowing for a degree of predictability of revenues into the future. However, while the number of States Parties to the ATT remains fairly modest, this mode of financing

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<sup>14</sup> Sandford, p. 28.

could put rather heavy burdens on those who have become States Parties. If relied on exclusively this model limit the work of the Secretariat to only those functions that States Parties are prepared to pay for and the extent to which they are willing to pay up in a timely manner.

3) A “hybrid” mode of financing. In fact all of the existing models of ISUs that have been considered here have to one extent or another some “hybrid” form of financing through differing combinations of assessed contributions, in-kind contributions, and voluntary contributions. The following “hybrid” model for the ATT could be one possible mixture that could allow the Secretariat to be adequately financed from the beginning of its life:

- Assessed contributions to guarantee the core operational costs of the Secretariat, given the fact that the Secretariat, by its very concrete inclusion in the Treaty itself, is understood to be a key feature of how ATT implementation will be facilitated. Assessed contributions would also be applied to cover the necessary Secretariat support contribution to those additional elements agreed by CSPs, such as subsidiary bodies set up for specific purposes. To ease the burden put on any one state, a cap or upper threshold could be set through an agreed formula.
- Where the CSPs agree to undertake additional functions that they perceive to be contributing to the implementation of the Treaty, these could be funded, by their decision, through voluntary contributions, but the costs of any such additional activity would have to be calculated inclusive of the costs of any perceived requirements for the support of the Secretariat. For example, Article 16, para 3, commits States Parties to the establishment of a voluntary trust fund. If CSPs wish for the Secretariat to manage this fund, costs for doing so should be included in the budget of the fund and covered from funds so raised. This same approach would be applied to additional support functions as may be deemed useful to enhancing State Party implementation engagement, e.g. training workshops.
- States Parties can also provide the possibility for the Secretariat to develop activities additional to mandatory ones to be financed entirely by voluntary contributions (as is currently done with the APBMC and BTWC).
- Voluntary infrastructural contributions in the case that the choice is for a Secretariat hosted by a third-party entity (as with Swiss support for the APBMC and CCM ISUs) or a stand-alone entity could of course be made to support the operations of the Secretariat.
- Imaginative methodologies, with rules on the nature of participation, whereby States not yet Parties to the Treaty can “pay to play” in the life of the Treaty.

4) UN regular budget. One further mode of financing can be noted as part of this picture. This would be to finance the ATT and its secretariat functions purely from the UN regular budget, by embedding the Secretariat functions, as in Model 1 above, within the UN itself. While this avenue might be attractive from the standpoint of spreading the costs, it would have an impact on the already strained UN budget, where cost savings are constantly being sought. In addition, it would be unlikely to be very willingly accepted by non-States Parties who would be contributing to a treaty to which they were not party. The second reason is that this way of doing business could only be perceived as trying to accomplish the goals of the Treaty on the cheap.

As noted when examining model 1, States Parties to this point have, through the very language of the Treaty itself, indicated that they want something more robust.

e. *Governance*

The Arms Trade Treaty is profoundly a treaty of State commitment to be undertaken nationally and in relation to each other through a broad range of steps in support of its overall objectives to “establish the highest possible common international standards for regulating or improving the regulation of the international trade in conventional arms” and “prevent and eradicate the illicit trade in conventional arms and prevent their diversion.” (Article 1). It follows therefore that its Secretariat, by the very fact that is included in the text of the Treaty, is seen as a key element in helping States Parties to keep these promises to each other. Therefore the 1<sup>st</sup> Conference of States Parties will wish, it would seem, to establish clear lines of direction and accountability for the Secretariat. This will be especially important should decisions be made to have the Secretariat hosted either within the UN, as with the BTWC ISU and the CCW ISU, or with a third-party or state, as with the APMBC and the CCM. In these cases, experience has demonstrated the need for clear understandings about where and how the Secretariat relates to the hosting body and clarifying the ultimate accountability to the States Parties to the Treaty. States Parties may, for example, decide that some kind of interim processes between CSPs, for example, a Coordinating Committee or annual meetings of States Parties, or both, would help in the management of this relationship

f. *Location*

Although it was noted at the beginning of this paper that where the Secretariat should be located could best be answered once there was clarity and agreement about the other features as described in (a) to (e) above and should to some extent be a function of the way States Parties answer those questions, there are several factors related to location which also can be seen in their own right as important in the calculations of States Parties. Where the Secretariat is located in itself will impact, of course, on the manner and means of those implementation efforts that are made by the States Parties working together and through their Secretariat.

There would seem to be two basic orientations to this: locate the Secretariat in a major UN setting or locate it away from such a setting. There are advantages and disadvantages of each of these, as one would expect. A few of those that can be imagined are noted below.

1) Locate the Secretariat in a major UN setting. The United Nations maintains a number of key settings that bring together, to one degree or another, such dimensions as the co-location of UN secretariat-related bodies and specialized agencies, permanent representation to the UN of UN Member States and specialized conference and meeting facilities. Such settings are also often the magnet for a host of other bodies: NGOs, research institutions, corporate headquarters, etc.

Advantages:

- If States Parties wish for there to be something like year-round implementation action at the international level (e.g. meetings of any subsidiary bodies that might be set up, meetings of any coordinating committees, preparatory work for upcoming CSPs, meetings and consultations of States Parties between CSPs)

location of the Secretariat in a major UN setting would enable it to be actively involved in these processes and with the actors involved, including with standing delegations of States Parties with expertise and evolving competencies on ATT implementation issues.

- The inclusiveness of the implementation process will be reinforced by the number of States Parties present at a given location, including wide representation of States from the Global South.
- Location in such a setting would allow regular, focused attention on Treaty implementation by the States Parties possibly leading to early positive results towards realizing the goals of the Treaty.
- Location in such a setting would mean that other topically-relevant actors located in the setting can be drawn upon as resources.
- The availability of conference facilities capable of serving the ongoing processes of the Treaty, thus easing the organizational challenges faced by the Secretariat.
- Some reduction in meeting costs (e.g. of CSPs, if held in the location) due to presence of national delegations who would supplement or replace, as appropriate, participation from capitals.

#### Disadvantages:

- “Inside the beltway” thinking by the Secretariat and delegations, with attention too much focused on what’s happening in the setting itself as the essential work and less focused on the actual settings that the Treaty is meant to affect.
- The multi-faceted nature of such settings can mean limitations in the attention span of the actors involved, including national delegates who will need to add the ATT to an already over-filled agenda of arenas to pay attention to. This is especially a factor for small national delegations.
- Major UN settings are also expensive settings, so Secretariat costs would be higher than they would be in less expensive environments.

## 2) Locate the Secretariat outside a major UN setting.

#### Advantages:

- If located outside Europe or North America, the Secretariat could be located in a setting affected in major ways by the effects of the arms trade that the Treaty is trying to counter. This could help to keep the Secretariat “honest” by remaining focused on the people and settings that are being affected. Also, the location in such a setting could encourage fuller participation in the Treaty by States in the Global South. It could credibility to the vision of the Secretariat and consequently the Treaty by consciously moving out a “northern” setting.
- There could be distinct cost savings to having the Secretariat in such a setting.
- There is evidence of effective Treaty-based secretariats that are not located in major UN settings, even if still in the north, such as the Convention on Biological Diversity (CBD) in Montreal and the UN Framework Convention on Climate Change in Bonn, without the full panoply of what New York, Geneva, or Vienna might offer. Other possibilities, could include settings where there are the headquarters of regional organizations, which might offer some of the same advantages of a major UN setting without some of the disadvantages, or even major cities north and south that are key centres of encounter and can offer amenities supportive of the Secretariat and Treaty.
- Modern communication tools can eliminate some of the needs for Secretariat staff to be “on the spot” in the major UN setting.

**Disadvantages:**

- Settings other than major UN settings will have a more limited representation of States Parties to the Treaty, thus reducing the inclusiveness of Treaty participation in terms of those activities undertaken by the States Parties working together.
- Being located distant from a major UN setting may be less appropriate to a Treaty process that is intended to have a year-round engagement with Treaty implementation and might be better suited to a vision of a Secretariat is principally concerned fulfilling the more administrative dimensions of the core functions outlined in Article 18.
- The relative isolation of Secretariat staff from a central UN setting could involve more travel on the part of the staff in the planning and organizing of CSPs. Travel requirements for participation in CSPs and any other processes elaborated for the Convention could also require expensive travel for participants to a setting not easily served by international air travel.

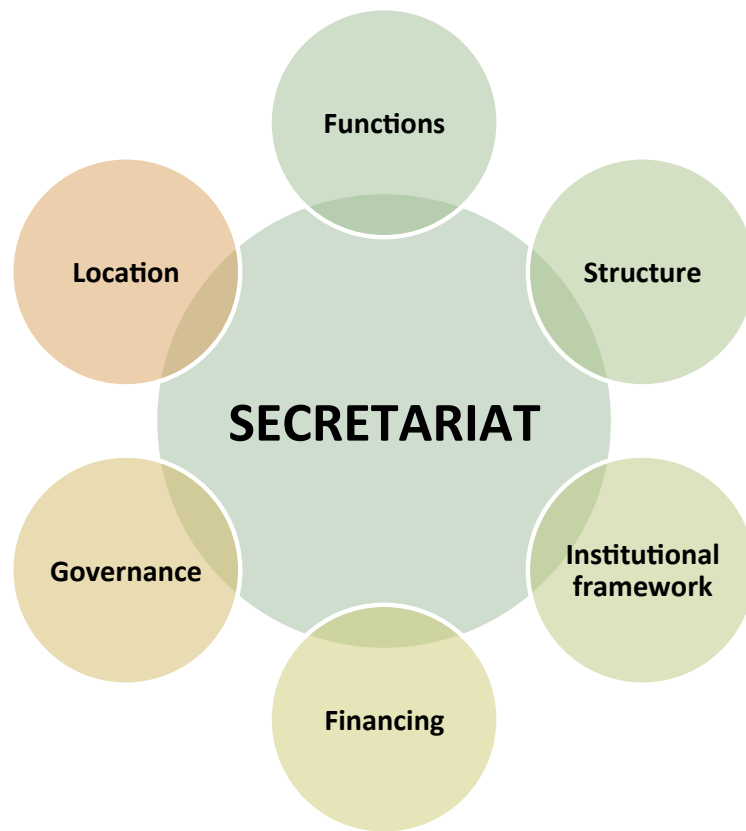
**V. Concluding thoughts: it's got to be a package deal**

Although the elements laid out in Section IV have been dealt with in a rather linear fashion, they are anything but linear in reality. Decisions on one will affect decisions on others. On balance, it has to be a package deal, with a full awareness of the consequences of the combination of choices made.

This paper has not pretended to be comprehensive in its approach. It has been prepared within a fairly short time-frame. It is really only food-for-thought, with apologies for inaccuracies or gaps. What it does do, however, is to sketch a range of things that States Parties to the Arms Trade Treaty will wish to take into account in their deliberations in preparation for the 1<sup>st</sup> CSP. Because nothing that States do together is outside the realm of politics and differing perceptions of the national interest, it can not be expected that the range of questions that States Parties will be wrestling with in the coming months will be anything other than one in which these basic factors of international relations will play a major role. Nevertheless, a laying out of options for consideration by States Parties it is hoped will help reduce the negative dimensions of this natural behavior and will help to lead to decisions that will serve the interests of all States Parties. Hopefully, they will help States Parties to keep their "eyes on the prize", which is to ensure to the extent possible the realization of the goals and objectives of this watershed treaty.

24 August 2014  
Geneva





**The “package deal” for the ATT Secretariat<sup>15</sup>**

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<sup>15</sup> Special thanks to Natacha Cornaz for the design of this diagram.