
Arms Trade Treaty
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**WORKING PAPER PRESENTED BY IRELAND TO THE CONFERENCE OF STATE PARTIES TO THE ARMS
TRADE TREATY: ARTICLE 7(4) AND GENDER BASED VIOLENCE ASSESSMENT**

1. Background

In the Preamble of the Arms Trade Treaty, States Parties agreed that “*bearing in mind that civilians, particularly women and children, account for the vast majority of those adversely affected by armed conflict, and armed violence*” to include a provision to assess the risk of gender based violence¹ in arms exports. This commitment was enshrined in Article 7(4) of the treaty wherein:

“The exporting State Party, in making this assessment, shall take into account the risk of the conventional arms covered under Article 2 (1) or of the items covered under Article 3 or Article 4 are being used to commit or facilitate serious acts of gender based violence or serious acts of violence against women and children”

With the entry into force of the ATT in 2014, Ireland and other state parties acknowledged that gender based violence is a consequence of the arms trade, its disproportionate impact on women and children², and agreed to enforce an export control regime that would incorporate risk assessments for GBV.

Article 7(4) of the Arms Trade Treaty marked the first time GBV has been explicitly recognised in an arms control treaty. Its inclusion signified a formal recognition by State Parties of the disproportionate gender impacts of armed violence and conflict, and of the evidence highlighting the

¹ *Gender Based Violence is defined as violence directed at a person based on discriminating norms and practises relating to a person’s sex or gender role in society. It recognises that violence takes places as a result of unequal power relations and discrimination in society on the basis of one’s sex or gender, and can be grouped according to sexual violence, physical violence, emotional/psychological violence and socioeconomic/structural violence (Women’s International League for Peace and Freedom (WILPF) (2016), Preventing gender-based violence through arms control: Tools and guidelines to implement the Arms Trade Treaty and UN Programme of Action, New York: 2016)*

² *The most wide spread form of GBV is violence against women and girls. Violence against women is defined by the EU as “as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life[.]”(Art. 3 a, Council of Europe Convention on preventing and combating violence against women and domestic violence) Not discounting that the vast majority of violent deaths due to conflict are composed of men, GBV is prevalent in both conflict and non-conflict states and is generally grossly underreported by victims (Small Arms Survey (2016) “Research Notes: A Gendered Analysis of Violent Deaths” Number 63; November 2016)*

strong correlations between illicit arms flows in non-conflict states and the rate of violent crimes and intimidation against women. Its inclusion rectified the lack of an explicit reference to GBV in the UN Programme of Action on small arms and aligned the ATT with UN Resolution 1325 on Women, Peace and Security.

Ireland has been committed to the development, adoption and implementation of the ATT in each Conference of State Parties and will do so again on this occasion. We regard the ATT as one of the international community's most successful achievements in recent years. Three years on from the initial adoption of the Treaty, it is imperative that we ensure this historic article is being upheld with the same conviction with which it was adopted. This will demonstrate that tangible GBV provisions can and should be included in future international agreements.

In this working paper, Ireland wishes to highlight one particular issue which has emerged relating to the implementation of Article 7(4) since the Treaty entered into force. This is the question of the feasibility of GBV related risk assessments and the subjectivity of article interpretation. The paper has been drafted with reference to the analysis of the ATT carried out by the Women's International League for Peace and Freedom and with assistance from the Irish Gender Based Violence Consortium (IGBVC).

Ireland considers the time right to reflect on the implementation of Article 7(4) of the Treaty in light of new research on the correlations between arms flows and GBV³ and our commitments under humanitarian law, human rights law, gender equality and the Women, Peace, and Security agenda.

2. Export controls and gender

The effective enforcement of export control regimes is a core component of upholding states' international obligations. As a member of disarmament and non-proliferation treaties and conventions, states have a responsibility to ensure that adequate domestic controls and export control regimes are implemented in order to prevent the proliferation of weapons of mass destruction and conventional weapons. Alongside the 'standard' risk assessments for human rights infringements and risk of diversion, the ATT is the only treaty that mandates GBV specific assessments be conducted as part of an export control regime. The manner in which countries evaluate export licenses are frequently opaque, often due to security concerns, and can vary significantly by virtue of a state's capacity and domestic industries.

In practice, Article 7(4) mandates that states assess each individual export license application for arms sales or transfer received for the risk that the products may be used or diverted to uses or end users which may use the arms for acts or to facilitate acts of "serious gender based violence or serious acts of violence against women and children". It is the only human rights concern in the Treaty to be addressed as a standalone article. Taken in tandem with Articles 6 and 7, this elevates GBV as a human rights infringement in need of specific assessment as part of the arms export control regime. If the exporting state then determines that there is "overriding risk" of gender based violence that the state party is obligated to not authorise the export, in line with the processes outlined in Article 6 and 7.

Human rights considerations have been increasingly incorporated into states export control regimes for military goods, as exemplified in the EU Common Position on Arms Exports⁴. The EU Code of

³ The Small Arms Survey (2016), "A Gendered Analysis of Violent Deaths", *Small Arm Survey Research Notes*, Number 63: November 2016, Geneva.

⁴ EU Council (2008), **COUNCIL COMMON POSITION 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment** Brussels: December 2008 - <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:335:0099:0103:EN:PDF>

Conduct on Arms (as detailed in the Common Position)⁵ sets out 8 risk assessment criteria which EU Member States must take into consideration when assessing a license application. These criteria were updated in 2015 to take into account the provisions of the ATT and Criterion Two and Three of the code of conduct explicitly relate to Human Rights considerations. These mandate that states assess the destination country with consideration of the respect of human rights in the country of final destination and “the internal situation in the final destination country”. Criterion Seven further mandates states assess the risk of diversion, either within the country of final destination or from that state to another, undesirable final destination. According to the EU User guide on the Common Position⁶:

The EU understanding of respect for human rights law and of international humanitarian law fully covers the acts referred to in Article 7 (4) of the ATT. Criterion 2 therefore fully encompasses the obligations stemming from Article 7 (4) of the ATT

The EU code of conduct is politically binding for all military licensed goods, meaning all states must evaluate all military and arms exports against these criteria. This corresponds with the maturation of International Humanitarian Law and International Criminal Law in international discourse, recognising that gross violations of gender rights and gender based violence can constitute war crimes and/or crimes against humanity

Ireland, as a matter of policy and a non-arms export state, applies the full series of checks mandated by the EU Common Position and Code of Conduct on all military *and* dual-use license applications alongside checks demanded by domestic law, including end user verification and geographic specific risk assessments.

In light of Article 7(4), questions have arisen as to whether the risk of GBV should be assessed as a standalone factor of concern, or incorporated as part of wider risk assessments.

3. The ATT

The role played by civil society in recent years has been a key element in the success of the international community in our disarmament and non-proliferation work. The inclusion of a gender article in the ATT was with thanks to years of sustained pressure from civil society partners, notably Oxfam, The International Action Network on Small Arms, Women’s International League for Peace and Freedom, Amnesty International and the International Committee of the Red Cross. However, the article has since come under scrutiny as being overly broad, unenforceable and unverifiable. As one of the states which pushed for its inclusion in the ATT, Ireland hopes to open a discussion on Article 7(4) with this working paper and put forth policy recommendations for the consideration of State Parties to ensure its effective implementation.

The article has been interpreted as female focused in light of the Preamble of the Treaty text and in the direct mention of “women and children” in the article itself. It has been argued by WILPF that the drafting of the text is diminutive, reducing the role of women in conflict to “victim” without agency, ignoring that women can be the violent actors, and neglecting the engendered violence experienced by men during conflict, most notably the forcible recruitment of young boys⁷. Further, Amnesty

⁵ Ibid.

⁶ EU Council (2015) *User's Guide to Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment*. Ref: 10858/15 COARM 172 CFSP/PESC 393, Brussels: July 2015 <http://data.consilium.europa.eu/doc/document/ST-10858-2015-INIT/en/pdf>

⁷ Women’s International League for Peace & Freedom (2015) *Women, Weapons and War: A gendered critique of multilateral instruments*, New York: 2015.

International has noted that the designation of a “serious risk of gender based violence” and “overriding risk” has been described as vague and overly subjective. Critics’ noted that the line delineating a “serious” act of GBV is unspecified and subject to country variations in meaning and scope. The means by which is it possible to assess the risk of gender based violence is also highlighted and was raised in our exchanges with the IGBVC.

Explicit measures of the prevalence of GBV in a country are hard to define. Acts of GBV are significantly underreported due to social stigma, shame, impunity, the normalisation of GBV practices, and community recourse to name but a few. Reporting or estimations from the UN, NGOs, Civil Society or news and media are the main sources of information on GBV and may be the basis for many constructed indicators of GBV. Due to the underreported nature of GBV, quantifiable indicators such as “number of reported rape cases” or “incidences of honour killings” are unreliable. GBV assessments are therefore likely to be ambiguous and based on third party reporting and general inferences from wider social conditions.

In a survey of export regimes by WILPF⁸, it was noted that no country explicitly requires GBV assurances be included as part of the end user certificates required for the export of arms. Furthermore, it was noted that most export control officers have received no specialised training in gender or gender based violence evaluation. 51 of 63 countries stated that they do assess for GBV risk, likely accounted for in terms of assessments concerning violations of International Humanitarian Law or Human Rights. Of those interviewed by WILPF, no export officials were aware of any export denials made based specifically on GBV. Officials emphasised that the risk of GBV must be specifically linked with arms exports under consideration/ and the end user. Ireland has also noted that there are no GBV requirements currently included in the ATT’s reporting mechanisms.

The feasibility of establishing GBV specific assessments in export regimes is challenging, but lessons can be drawn from the experiences of the civil society and the development sector. Members of the IGBVC commented that there is a danger in focusing on measuring risk rather than on the central principal of protection, which assumes GBV is always a risk factor in emergencies. This underscores the need for qualitative, informed assessments of export license applications, the end user, and the country of destination by trained licensing officials.

If states do not already do so, consulting databases which record the incidence of sexual and gender based violence by armed groups (such as those compiled by the Peace Research Institute Oslo) can be a strong indicator of the prevalence of GBV in a given country, alongside liaising with in-country OHCHR offices if present, and reliable NGO reporters, such as Amnesty or Human Rights Watch. Indicators currently used by Irish Aid and the Irish Department of Foreign Affairs and Trade as part of our National Action Plan on Women Peace and Security include “clear evidence of support to initiatives which promote gender sensitive political institutions” and “extent to which post-conflict structures address gender-specific legacy concerns”. A full list of possible indicators for GBV is suggested in WILPF’s report “Preventing gender-based violence through arms control”, which includes “reports of early or forced marriage”, “threats to politically active women” and the presence of laws on rape, martial rape, FGM, and human trafficking⁹. The ICRC in its analysis of the ATT¹⁰ also recommends that states consider the extent to which the recipient instructs and trains its armed and security forces to ensure such respect, its record of holding offenders accountable for violations, and

⁸ Women’s International League for Peace & Freedom (2016), *Preventing gender-based violence through arms control: Tools and guidelines to implement the Arms Trade Treaty and UN Programme of Action*, New York: 2016.

⁹ Ibid.

¹⁰ The International Committee of the Red Cross (2016), *Understanding the Arms Trade Treaty From a Humanitarian Perspective*, Geneva: September 2016.

its integration of its IHL and international human rights law obligations into its national legislation, military doctrine and training, as well as its diversion prevention measures, among other factors indicated in the ICRC's Practical Guide to Arms Transfer Decisions¹¹.

4. Policy Recommendations

Alongside establishing clear, universal indicators of GBV for states to implement, Ireland proposes a number of recommendations which State Parties could consider to enhance State Parties ability to enforce Article 7(4).

- First, we acknowledge the need for further clarity around the interpretations of the language and standards entailed in article 7(4), notably the delineation of “serious” and “overriding” risk.
- Second, we ask State Parties to be forthcoming in how they are enforcing human rights and IHL based export risk assessments, and what provisions they are making for GBV in order to facilitate learning between State Parties.
- Third, to leverage the knowledge of states, we call on the ATT Secretariat and State Parties to draft a guiding document to inform on the “best practices” for assessing GBV, alongside other Human Rights and IHL concerns.
- Fourth, we encourage State Parties and the ATT Secretariat to draw from the experiences and knowledge of the development sector to inform the construction of GBV indicators and checks.
- Lastly, we would welcome the incorporation of a GBV element into the annual returns.

The strength of the movement behind the ATT reflects the urgency and the seriousness of the issues with which it is dealing. Illegal and irresponsible flows of arms and conventional weapons are one of the greatest challenges facing our world today, fuelling and exacerbating the intractable conflicts and civil wars which are resulting in humanitarian tragedies on a scale not seen since the mid twentieth century. As the Chair of the ICRC stated in their address to the Second Conference of State Parties “if the treaty’s promise of reducing human suffering is to be fully realized, more states must adhere to the treaty and it must be implemented in good faith, with the highest possible standards of implementation”.

The successful implementation of the Arms Trade Treaty will reduce the risk of diversion, improve transparency and protect civilians by reducing the risk of weapons contributing to breaches in international humanitarian law, human rights law, and gender based violence. In ensuring Article 7(4), and its associated provisions, are effectively enforced States are signalling their commitment to reducing GBV and setting a benchmark for future Treaties.

¹¹ The International Committee of the Red Cross (2007), *Arms Transfer Decisions: Applying International Humanitarian Law Criteria*, Geneva: May 2007.