

Question & Answer Sheet:

Serious Human Rights Violations and Gender-Based Violence in the Arms Trade Treaty

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The Arms Trade Treaty (“the Treaty”) requires States Parties to conduct good-faith assessments of the likely end use of arms transfers and the effects of those transfers in destination countries. It aims to reduce human suffering; prevent the illicit trade in arms; contribute to international and regional peace, security, and stability; and promote transparency and cooperation among States Parties.

Article 7 requires exporting States Parties, when determining whether to allow an arms export, to assess the potential for the arms to be used to commit or facilitate **a serious violation of international human rights law** among other things. The risk that the arms could be used to commit or facilitate **serious acts of gender-based violence (GBV)** must be taken into account at the same time. This Question & Answer Sheet provides guidance on what constitutes a serious violation of international human rights law and how gender-based violence relates to the risk assessment.

In summary:

- Whether a violation of human rights law is serious is determined by the character or gravity of the violation and the extent of harm victims suffered. It is a relatively low threshold that requires a case-by-case, holistic assessment; importantly, violations need not be widespread to be serious.
- Serious acts of GBV always constitute serious violations of international human rights law when state actors perpetrate the GBV or when the state fails to take adequate measures to prevent GBV by private actors.
- As a result, serious acts of GBV trigger the risk assessment through which export authorities determine whether an export is prohibited under Article 7.

When are exports prohibited under Article 7?

Article 7 deals with the assessment States Parties must conduct before authorizing the export of arms covered by the Treaty. This assessment takes place only after the export authority has determined that the export is not absolutely prohibited under Article 6.

Under Article 7(1), a State Party’s export authority must, in an “objective and non-discriminatory manner,” assess two factors:

- The potential that the exported weapons would contribute to, or undermine, international peace and security (7(1)(a)); and
- The potential that the exported weapons could be used to commit or facilitate a serious violation of international humanitarian law (7(1)(b)(i)), a serious violation of international human rights law (7(1)(b)(ii)), or an offense under international conventions or protocols relating to terrorism (7(1)(b)(iii)) or transnational organized crime (7(1)(b)(iv)).

Article 7(2) requires that once a State Party determines the arms could be used to commit or facilitate one of the harms listed in Article 7(1), the State Party must then consider if there are measures that could be established to mitigate that risk. Under Article 7(3), after a State Party considers mitigating measures, it must refuse to authorize an export if there remains an overriding risk of an Article 7(1) harm.

What constitutes serious human rights violations under Article 7(1)(b)(ii)?

Practitioners and scholars have widely agreed that the term “serious violations of international human rights law” encompasses a range of violations, and is not limited to a specific subset of human rights. Determining whether a violation is serious requires assessing the character of a violation (its gravity) and the extent of the harm suffered by victims.¹ Harm need not be widespread, however. The assessment must be holistic – taking context into account, rather than focusing on an incident in isolation – and conducted on a case-by-case basis.² Breaching some international norms (called “jus cogens norms”) – such as the prohibition of torture – always amounts to a serious violation.³ Ultimately, many violations of international human rights law meet the seriousness threshold.⁴

When is gender-based violence a serious violation of international human rights law?

GBV is violence that is directed against a person on the basis of their gender or sex. It can include sexual, physical, economic, emotional, and psychological violence—all of which are severely underreported in most, if not all countries. GBV can include acts that inflict harm and threats of those acts, as well as coercion and other deprivations of liberty.

Article 7(4) requires that States Parties take the potential for the arms to be used to commit or facilitate serious acts of GBV or violence against women or children into account in their export authorization decisions. To make Article 7(4) meaningful, GBV assessments must be part of the Article 7(1) risk assessment: in other words, States Parties must assess whether GBV constitutes a serious violation of international human rights law.⁵

A number of treaties – including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the International Covenant on Civil and Political Rights (ICCPR), and the Convention on the Rights of the Child (CRC) – include obligations relevant to GBV, and multiple scholars and United Nations’ bodies have recognized that GBV and violence against women and children can constitute serious violations of international human rights law.⁶ For example, although CEDAW does not directly reference GBV, the treaty body mandated to provide guidance on its interpretation has clarified that GBV constitutes discrimination against women.⁷ International human rights law is violated not only when state actors, or those acting with the state’s authorization, carry out acts of GBV, but also when the state fails to exercise “due diligence” to prevent, investigate, and punish GBV by private actors.⁸ Because GBV seriously impairs the enjoyment of human rights, arguably all GBV can be considered serious.⁹

¹ Small Arms Survey, *The Arms Trade Treaty: A Practical Guide to National Implementation* (Sarah Parker ed., 2016), pg. 67.

² Stuart Casey-Maslen, et al, “Art. 7 Export and Export Assessment,” in *The Arms Trade Treaty: A Commentary*, para. 7.79–7.81 (2016). See also Brandes, “‘All’s Well That Ends Well’ or ‘Much Ado About Nothing’?,” Amnesty International, *Applying the Arms Trade Treaty to Ensure the Protection of Human Rights* (2015), pg. 3; Control Arms, *How to Use the Arms Trade Treaty to Address Gender-Based Violence: A Practical Guide for Risk Assessment* (2018), pg. 6.

³ Such norms are also called peremptory and non-derogable norms of customary international law. See Marlitt Brandes, “‘All’s Well That Ends Well’ or ‘Much Ado About Nothing’?: A Commentary on the Arms Trade Treaty,” *Goettingen Journal of International Law*, Vol. 5 (2014), pg. 399.

⁴ Geneva Academy, *Academy Briefing No. 6: What amounts to ‘a serious violation of international human rights law’?: An analysis of practice and expert opinion for the purpose of the 2013 Arms Trade Treaty* (2014), pg. 5.

⁵ Or international humanitarian law, which this sheet does not address.

⁶ See, e.g., Brandes, “‘All’s Well That Ends Well’ or ‘Much Ado About Nothing’?,” U.N. SCOR, S/RES/2000 (2011), [https://undocs.org/S/RES/2000\(2011\)](https://undocs.org/S/RES/2000(2011)); Amnesty International, *Applying the Arms Trade Treaty to Ensure the Protection of Human Rights* (2015), pg. 13.

⁷ CEDAW General Recommendation No. 19: Violence against women, UN Committee on the Elimination of Discrimination Against Women (CEDAW), 1992.

⁸ CEDAW General Recommendation No. 19: Violence against women. See also Report of the Special Rapporteur on violence against women, its causes and consequences, A/HRC/35/30 (2017), paras 47-54; and Amnesty International, *Applying the Arms Trade Treaty to Ensure the Protection of Human Rights*, pg. 14.

⁹ See discussion in Amnesty International, *Applying the Arms Trade Treaty to Ensure the Protection of Human Rights*, pgs. 12-13.