

Preventing armed gender-based violence: a binding requirement in the new draft ATT text

Ray Acheson, Maria Butler, and Sofia Tuvestad | Women's International League for Peace and Freedom (WILPF)

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To the question posed in the *ATT Monitor* earlier this week—*is the prevention of armed gender-based violence (GBV) important enough to screen for in export assessments?*—the answer is yes! The final draft Arms Trade Treaty (ATT) text released on Wednesday indicated that preventing armed gender-based violence is indeed important enough to be part of mandatory export assessments.

The criterion on gender-based violence (GBV) is now binding. The new article 7(4) mandates exporting states parties explicitly, as part of the risk assessment process, to take into account the risk of the weapons, ammunition, parts, or components being used to commit or facilitate serious acts of gender-based violence or violence against women and children. States shall not be permitted to authorize the transfer where there is an overriding risk of GBV when it constitutes one of the negative consequences of article 7(1)—i.e. when it is a violation of international humanitarian law (IHL) or international human rights law (IHRL), when it undermines peace and security, or when it forms part of transnational organized crime.

Having the explicit, binding criterion on preventing GBV in article 7(4) also requires states to act with due diligence to ensure the arms transfer would not be diverted to non-state actors such as death squads, militias, or gangs that commit acts of gender-based violence.

The criterion is not as strong as demanded by the 100+ delegations supporting a strengthened provision for preventing GBV. They wanted the criterion to be included in article 7(1). However, the current formulation does improve the extremely weak language in previous drafts.

The biggest problem remains that the criteria threshold is “overriding risk” rather than “substantial risk”. This weakness affects all of article 7—there is a risk that the exporting state could determine that some unidentified interest is more important than preventing violations of IHL and IHRL. Furthermore, risk assessments relating to this article will to a large extent depend on how “peace and security” is interpreted. Clear interpretative statements from governments and political pressure from civil society and others will remain crucial to ensure that the correct interpretation of the article is implemented.

A strong preamble could have helped with interpretation. Regrettably, the pre-ambular reference to gender-based violence, and its relationship with IHL and IHRL, was removed from the draft treaty text. The paragraph also does not reference women's agency and participation, despite agreed language on this in consensus-based General Assembly resolutions and other UN documents. The preamble now only refers to “women and children” as particularly affected by armed conflict and armed violence. We have written many times about the incorrect and patronizing effect of grouping together women and children and insinuating that women are inherently vulnerable. Legally we are not one group. In reality we are not one group. It's unfortunate that this trope is perpetuated in the ATT. It highlights to us all once again that our work on gender equality must continue!

WILPF, the committed ATT gender team and our partners have mobilized in New York and far beyond on the GBV aspects of the arms trade. We have called for action to make GBV prevention legally-binding. The improved criterion on preventing GBV is due to the tireless efforts of many delegations, particularly Iceland, and the 100+ states and civil society organizations that supported a stronger provision to prevent armed GBV. Our collective call has been respected, as this text makes prevention of GBV explicit and its exclusion less possible. If adopted or not, we must now build upon this historic momentum to respond to the rights of those affected by armed gender-based violence and to prevent sales of arms that would affect the countless more.