

MOVING FORWARD, LOOKING BACK— ADDRESSING GENDER IN THE ATT PROCESS



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WOMEN'S INTERNATIONAL LEAGUE FOR
PEACE & FREEDOM



TODAY'S AGENDA:

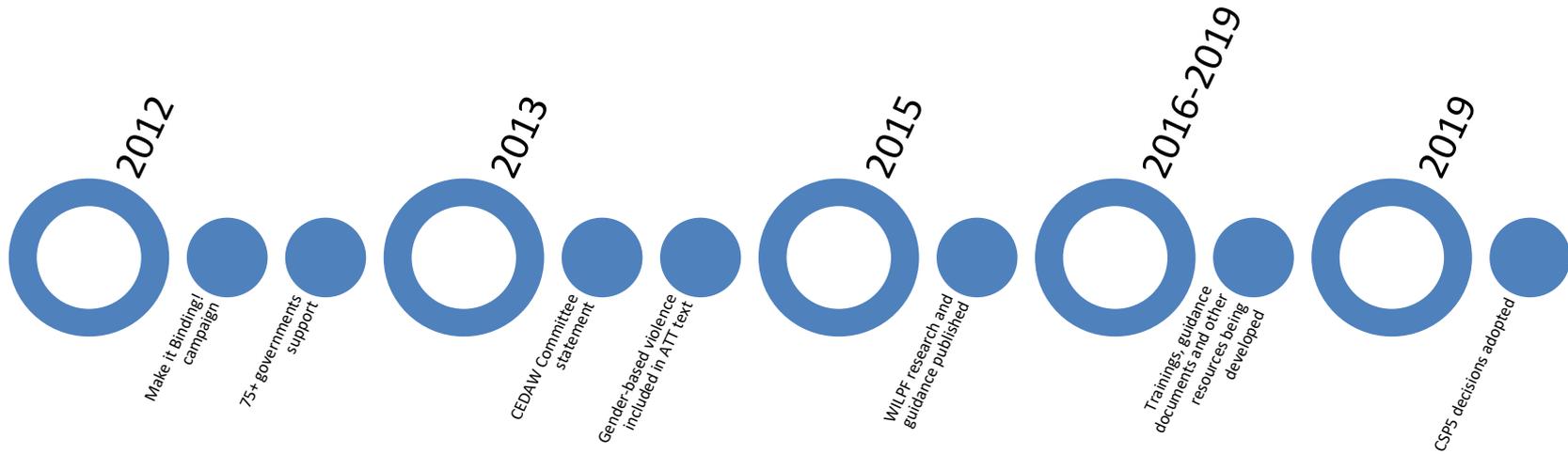
HOW DID GBV COME TO BE INCLUDED IN THE ATT?

WHAT HAPPENED AT CSP5?

WHAT IS HAPPENING IN OTHER RELEVANT FORUMS?



GENDER IN ATT PROCESS: A TIMELINE



Article 7.4

“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 being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children.”





GENDER-BASED VIOLENCE AND THE ARMS TRADE TREATY

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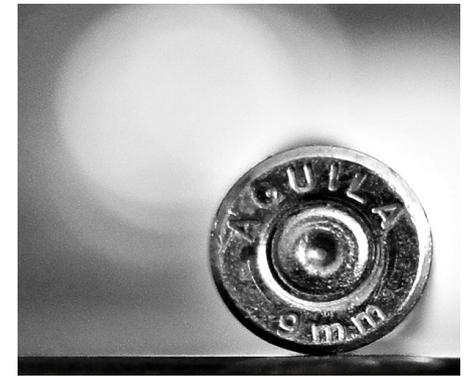


How to use the Arms Trade Treaty to address Gender-Based Violence

A Practical Guide for Risk Assessment

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Control Arms Practical Guide
August 2018



PREVENTING GENDER-BASED VIOLENCE THROUGH ARMS CONTROL

Tools and guidelines to implement the Arms Trade Treaty and UN Programme of Action

WOMEN'S INTERNATIONAL LEAGUE FOR PEACE & FREEDOM

Interpreting the Arms Trade Treaty:

International Human Rights Law and Gender-Based Violence in Article 7 Risk Assessments

April 2019

The Arms Trade Treaty (ATT) 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. It 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 and obligates States Parties to refuse authorization for certain arms transfers.

Article 7(1) of the ATT requires an exporting State Party, when determining whether to allow an arms export, to assess the potential that the arms could be used to **commit or facilitate a serious violation of international human rights law**, among other things, as well as the potential that the arms would **contribute to or undermine peace and security**. Article 7(4) requires States Parties to take into account the potential for arms to be used to **commit or facilitate serious acts of gender-based violence (GBV)** or violence against women and children when conducting this risk assessment.

Article 7(2) requires that once a State Party determines that there is a risk of an Article 7(1) harm, 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. The Article 7 risk assessment takes place only after the State Party has determined that the export is not absolutely prohibited under Article 6 (which prohibits exports when the State Party knows the arms would be used in the commission of genocide or crimes against humanity, among other things).

States Parties must consider gender and risks of GBV when they assess: the risk of serious human rights violations (or other Article 7(1)(b) harms); the effects on peace and security; and the availability of prospective mitigating measures. All of these feed into the final determination of whether an overriding risk exists.

This paper provides interpretive guidance on key terms that appear in Article 7, namely: "serious violation of international human rights law"; "serious acts of gender-based violence"; "commit or facilitate"; "peace and security"; "contribute to or undermine"; and "overriding risk." It examines how gender and risks of GBV are relevant to each part of the Article 7 risk assessment, particularly with respect to serious violations of international human rights law.

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INTERNATIONAL HUMAN RIGHTS CLINIC
HUMAN RIGHTS PROGRAM AT HARVARD LAW SCHOOL



ICRC

INTERNATIONAL HUMANITARIAN LAW AND GENDER-BASED VIOLENCE IN THE CONTEXT OF THE ARMS TRADE TREATY

International Committee of the Red Cross Working Paper
April 2019

The Arms Trade Treaty (ATT) requires States Parties to consider whether exported arms could be used to commit or facilitate serious acts of gender-based violence (GBV). The purpose of this working paper is to identify serious acts of GBV that amount to serious violations of international humanitarian law (IHL) so as to assist States in conducting the assessments required by Articles 6 and 7 of the Arms Trade Treaty (ATT).

Understanding gender and other diversity factors helps the International Committee of the Red Cross (ICRC) assess people's capabilities and needs, and address the humanitarian consequences of widespread availability and misuse of conventional arms. Against this background, the requirement in the ATT to consider the risk of exported arms being used to commit or facilitate serious acts of GBV or serious acts of violence against women and children is a commendable advance, representing the first time that a treaty links arms transfer decisions to the risk of GBV.

RISK ASSESSMENTS, SERIOUS VIOLATIONS OF IHL, AND GENDER-BASED VIOLENCE

IHL is a set of rules that apply in times of armed conflict and that are intended to protect people who are not, or are no longer, taking part in the hostilities, such as civilians and wounded, sick and captured combatants. It also aims to limit suffering by imposing restrictions on the choice of means and methods of warfare.

Violations of IHL are serious – and constitute war crimes – if they endanger protected persons (such as civilians or wounded or captured combatants) or objects (such as civilian homes or infrastructure), or if they breach important values.

Article 6(3) of the ATT prohibits a State Party from authorizing any transfer of arms, ammunition, parts or components if, among other things, it knows that the items in question would be used to commit war crimes.¹ Article 7 states that, if a proposed export is not prohibited under Article 6, the State Party must assess the risk that the arms or other items "could be used to commit or facilitate" serious violations of IHL (Article 7(1)(b)(ii)), including serious acts of GBV or serious acts of violence against women and children (Article 7(4)). The State Party must not authorize the export if, after completing its assessment and taking any risk-mitigation measures into account, it determines that there is an "overriding risk."²

In other words, States Parties have two key duties under the ATT with respect to GBV. First, Article 6 obliges them to consider whether the transferred arms or other items would be used to commit war crimes, including acts of GBV that amount to war crimes. And second, Article 7 requires them to carry out a comprehensive assessment of the risk that exported arms or other items could be used to commit or facilitate serious acts of GBV.

¹ See ICRC, Customary International Humanitarian Law Study, explanation of Rule 156: https://ihl-databases.icrc.org/customary-ihl/ohd/v1_nli_rule156, all web addresses accessed March 2020.

² This provision refers to "war crimes" as defined by international agreements to which [the State Party] is party."

³ Some States Parties interpret the term "overriding" as "substantial" or "clear", while others consider that an "overriding risk" would exist whenever any of the regular consequences listed in the treaty are more likely to materialize than not, even after mitigation measures are taken into consideration.



STIMSON



The Arms Trade Treaty's Gender-Based Violence Risk Assessment:

A QUESTIONNAIRE FOR INFORMATION SOURCES

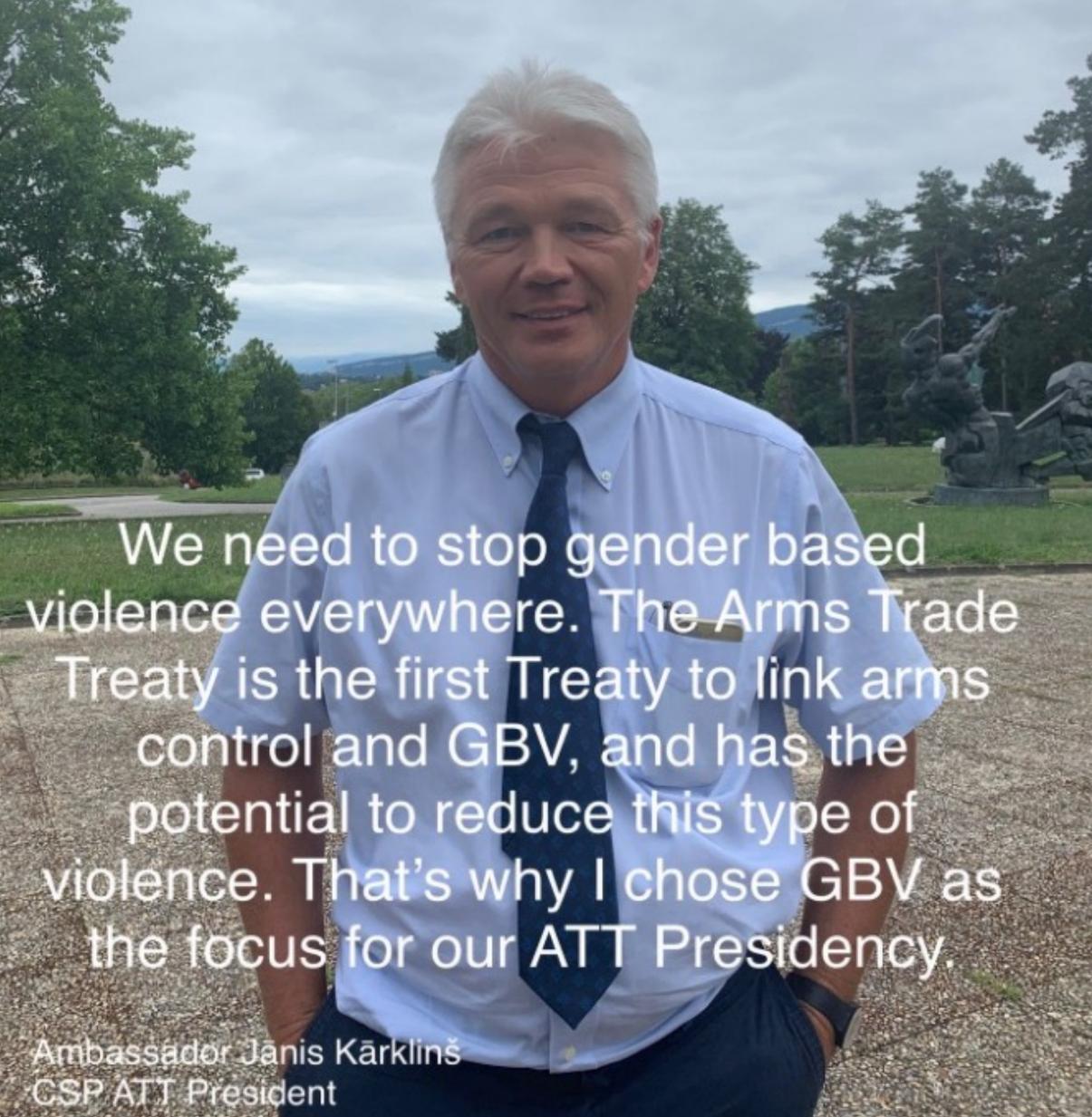
The Stimson Center and International Human Rights Clinic at Harvard Law School

February 2021



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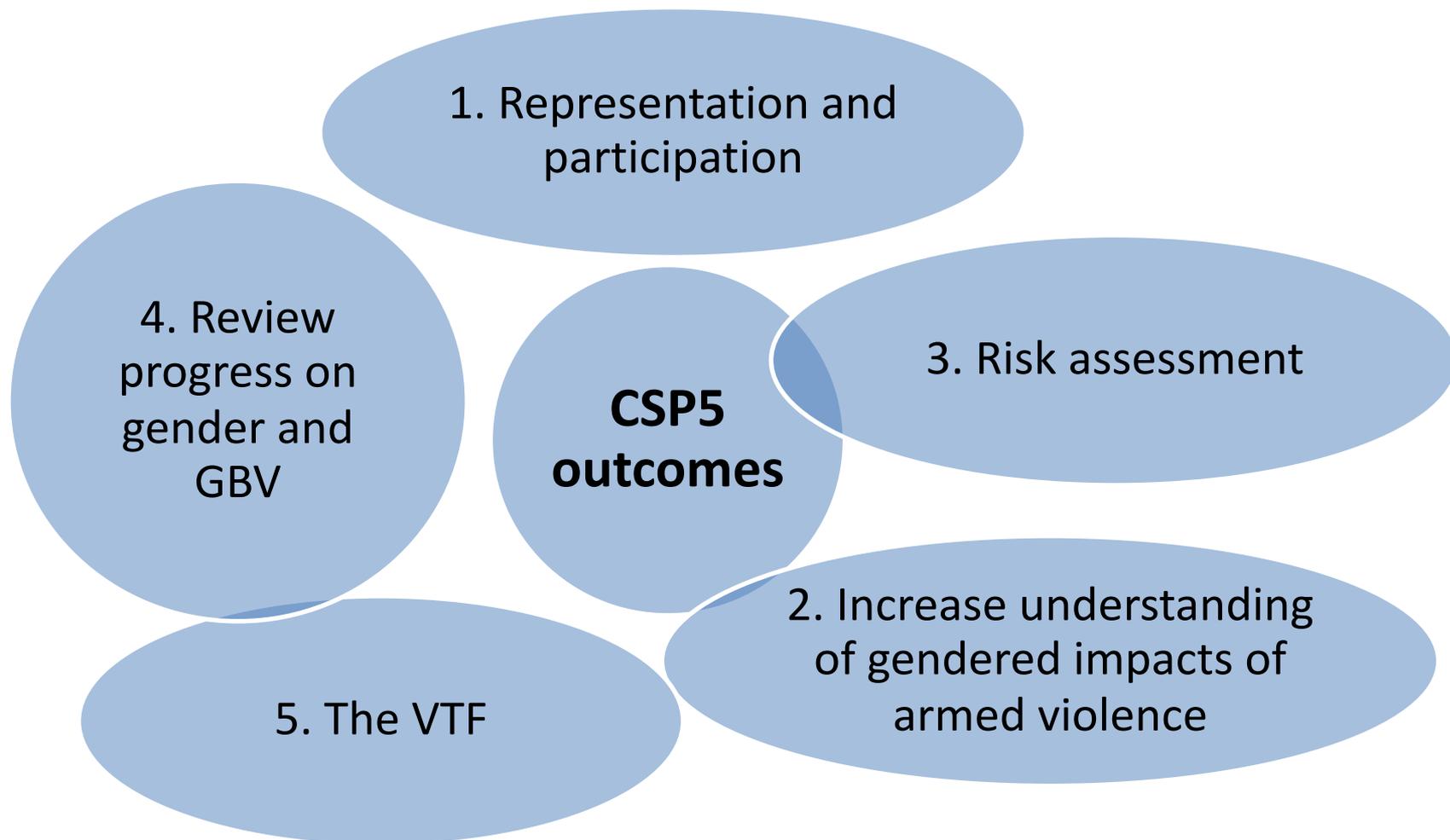


A man with short, light-colored hair, wearing a light blue short-sleeved button-down shirt and a dark tie, stands outdoors. He is smiling slightly and has his hands in his pockets. The background shows a park-like setting with green trees, a gravel path, and a large stone sculpture of a figure. The sky is overcast.

We need to stop gender based violence everywhere. The Arms Trade Treaty is the first Treaty to link arms control and GBV, and has the potential to reduce this type of violence. That's why I chose GBV as the focus for our ATT Presidency.

Ambassādor Jānis Kārklīnš
CSP ATT President

CSP5 outcomes (found in paragraph 22 of the Final Report)



CSP5— 22(a)Representation and participation in future CSP meetings:

i. States Parties, Signatory and Observer States attending ATT Working Groups, preparatory meetings and CSP itself should strive for gender balance in their delegations.

ii. The ATT Secretariat should report to CSPs on overall progress among delegations in achieving gender balance.

iii. States, civil society organizations and industry are encouraged to share with CSPs policies and practices they have adopted to achieving greater gender balance, when appropriate during formal sessions or side events.

iv. Gender balanced panels should be encouraged in plenary sessions, side events and other fora. Event organizers should strive to achieve gender balanced panels at an early stage in their planning.

v. The sponsorship programme should consider gender balance as one of its selection criteria.



CSP5—22(b) In order to increase understanding of the gendered impact of armed violence in the context of the ATT:

i. All Working Group Chairs and facilitators are encouraged to consider gender aspects in their sessions.

ii. States Parties are encouraged to collect gender disaggregated data within their national crime and health statistics, including gender disaggregated data on victims of armed violence and conflict, and make this data publicly available.

iii. States, civil society organizations and industry are encouraged to share with CSPs policies and practices they have adopted to achieving greater gender balance, when appropriate during formal sessions or side events.

iv. States are encouraged to support research that helps increase understanding of the gendered impact of armed violence in the context of the ATT. Lists of existing research and data sources should be compiled and made available to all interested stakeholders. All stakeholders, including civil society, are encouraged to work towards elaboration and explanation of gender terms, to assist States in applying and working with gender issues within the ATT context.



CSP5—22(c) On (GBV) risk assessment criteria, the WGETI should consider the following issues in conjunction with other relevant elements to enhance States Parties' ability to implement Articles 6 and 7:

i. Encourage discussion on States' practice in interpreting the language and standards entailed in Article 7(4), including "serious", "facilitate" and "overriding" risk, in order to assist States Parties in considering GBV issues in implementing the Treaty.

ii. Encourage States Parties to provide information on their national practices relating to "mitigating measures" in the context of Article. 7(4): what these can be and how they are implemented.

iii. Encourage States Parties to provide information on their national practices in GBV risk assessment in order to facilitate learning between States Parties.

iv. Elements for a voluntary training guide to assist States Parties on the issues of GBV, including best practices for risk assessment, should be developed with voluntary funding, and with the participation of all stakeholders.



22(d) CSP5—States Parties and others with planned regional meetings and projects supported by the VTF are encouraged to consider how work on gender and GBV can take place within their projects in order to make them more effective in contributing toward achievement of the object and the purpose of the Treaty.

22(e) CSP5—States Parties agreed to review progress on gender and GBV on an ongoing basis.



Gender and disarmament: in policy and practice

Gender diverse participation/women's participation in disarmament

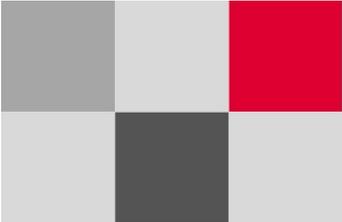
Gender-differentiated impacts of weapons, armed violence and armed conflict. GBV prevention

Challenging structural violence and militarism; problematic gender norms; militarised masculinities.



Gender Perspectives in UNGA First Committee Resolutions, 2015-2018





Gender-Based Violence

Arms Trade Treaty

Requires exporting states to assess the risk that arms could be used to commit or facilitate serious acts of gender-based violence or violence against women and children
(Article 7, para. 4)



READ

Gender in the Arms Treaty

An analysis on the links between conventional arms transfers and GBV (2018)

bit.ly/GenderATT

UN Programme of Action on SALW

The outcome report of the 3rd Review Conference of the UNPoA (2018) :

- recognized that eradicating the illicit trade in small arms and light weapons is a key part of combating gender-based violence (*Section I, para. 14*)
- recognized the need for women's participation in decision-making and to mainstream gender in their implementation efforts (*Section I, para. 15, Section II, para 65*)
- encouraged mainstreaming gender into small arms control policies and programmes (*Section II, para. 76*), and gender disaggregation of data (*Section II, para. 79*)

#CSP7 #BMS7

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WOMEN'S INTERNATIONAL LEAGUE FOR
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IANSA/WILPF BRIEFING PAPER

July 2021

ROOM FOR IMPROVEMENT:
**An analysis of “gender
considerations” in the 2020
Programme of Action national
reports.**

*Similarities between BMS7 and CSP5
outcomes: Example 1*

22(b)ii. States Parties are encouraged to collect gender disaggregated data within their national crime and health statistics, including gender disaggregated data on victims of armed violence and conflict, and make this data publicly available.

74. To take account of the differing impacts of the illicit trade in small arms and light weapons on women, men, girls and boys by collecting, where feasible, disaggregated data by sex, age and disability and utilizing analysis mechanisms to inform evidence-based gender-sensitive policy-making and programming with a view to strengthening the full and effective implementation of the Programme of Action at all levels.



*Similarities between BMS7 and CSP5
outcomes: Example 2*

22(c)(ii). Encourage States Parties to provide information on their national practices relating to “mitigating measures” in the context of Article. 7(4): what these can be and how they are implemented.

22(c)(iii). Encourage States Parties to provide information on their national practices in GBV risk assessment in order to facilitate learning between States Parties.

75. To exchange national experiences, lessons learned and good practices on the mainstreaming of gender perspectives into policies and programmes designed to combat the illicit trade in small arms and light weapons.



*Similarities between BMS7 and CSP5
outcomes: Example 3*

22(d) States Parties and others with planned regional meetings and projects supported by the VTF are encouraged to consider how work on gender and GBV can take place within their projects in order to make them more effective in contributing toward achievement of the object and the purpose of the Treaty.

76. To encourage States in a position to do so to increase funding for relevant policies and programmes, advocacy, education, training and research that take account of the differing impacts of the illicit trade in small arms and light weapons on women, men, girls and boys.



Recommendations from the OHCHR on gender and arms transfers

A/HRC/44/29

Addressing the gendered impact of arms diversion and transfers also requires the formulation and review of legislation and public policy measures on arms control through a human rights and gender lens.

42. The High Commissioner's report submitted to the Human Rights Council in 2017 contained a series of suggestions and recommendations for addressing the human rights impact of arms transfers, which included suggestions for how States and other relevant stakeholders could assess the relationship between arms transfers and human rights law. These suggestions and recommendations¹¹¹ should be considered in conjunction with the Secretary-General's Agenda for Disarmament and the call to action for human rights,¹¹² which promote equality for women and girls and set forth additional steps and measures for safeguarding their human rights. They should also be considered together with the following recommendations to States for addressing the gendered impact of diversion and unregulated or illicit arms transfers on women and girls to establish a comprehensive approach for safeguarding human rights from the negative impact of uncontrolled proliferation of arms. In this regard, States should:

(a) Systematically collect and share data, disaggregated by relevant factors, on the way that different categories of arms cause or facilitate human rights violations against women and girls, including gender-based violence, and the correlation between proliferation of arms and gender-based violence;¹¹³

(b) Accede to and/or ratify the Arms Trade Treaty and regional instruments regulating arms transfers,¹¹⁴ and the Convention on the Elimination of All Forms of Discrimination against Women¹¹⁵ and regional instruments on the human rights of women;

(c) Promote the participation of women in all arms control and disarmament processes and forums, including at global disarmament meetings;

(d) Create national control systems to ensure compliance with these instruments and other relevant provisions of international law, including the principles of due diligence¹¹⁶ and the responsibility for aiding or assisting in the commission of an internationally wrongful act, while also taking into account international standards of corporate responsibility, in particular the Guiding Principles on Business and Human Rights;

(e) Implement in a gender-responsive manner the recommendations made by United Nations and regional human rights mechanisms on ways to address the human rights impact of diversion of arms and unregulated or illicit arms transfers on women and girls, including by addressing the root causes of gender-based discrimination and violence;¹¹⁷

(f) Deny export authorizations for arms transfers after conducting comprehensive, gender-sensitive risk assessments, if there is a significant risk that the arms will be diverted;