

# Interpreting the Arms Trade Treaty:

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

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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.

## Key Conclusions

- Whether a violation of international human rights law is serious is determined by the character (i.e., the gravity) of the violation and the extent of harm victims suffer. It is a relatively low threshold that requires a case-by-case, holistic assessment.
- GBV is inherently serious in nature, and acts of GBV constitute serious violations of international human rights law when they are perpetrated by state actors or when the state fails to take adequate measures to prevent, investigate, and punish GBV by private actors.
- The use of a weapon to “commit or facilitate” a human rights violation could refer to a wide range of acts, including actions taken by non-state actors. Specifically, “facilitate” covers uses of arms that make human rights violations easier, such as when the arms are one or more steps removed from the actual violation.
- The concept of peace and security in Article 7 is broad and covers not only state security, but also human welfare. Determining whether an export would contribute to or undermine peace and security requires assessing the export’s likely effects on all aspects of peace and security, including by undertaking a gender-based analysis and considering the role of women in promoting and maintaining peace and security.
- An “overriding risk” is one that cannot be substantially reduced or eliminated using mitigating measures. Whenever a State Party has identified a clear or substantial risk of a serious human rights violation, it is difficult to imagine measures that could effectively mitigate that risk.

This paper complements Control Arms’ *Practical Guide on how to use the Arms Trade Treaty to address Gender-Based Violence*, which provides guidance on the legal and policy frameworks relevant to GBV and outlines a variety of indicators and other measures export authorities can use to identify and understand risks of GBV in different contexts.<sup>1</sup>

### ***Extracts from Article 7 (Export and Export Assessment)***

1. *If the export is not prohibited under Article 6, each exporting State Party, prior to authorization of the export of [covered arms] shall, in an objective and non-discriminatory manner, taking into account relevant factors ... assess the potential that the conventional arms or items:*
    - a) *would contribute to or undermine peace and security;*
    - b) *could be used to:*
      - i) *commit or facilitate a serious violation of international humanitarian law;*
      - ii) *commit or facilitate a serious violation of international human rights law;*

...
  2. *The exporting State Party shall also consider whether there are measures that could be undertaken to mitigate risks identified in (a) or (b) in paragraph 1, such as confidence-building measures or jointly developed and agreed programmes by the exporting and importing States.*
  3. *If, after conducting this assessment and considering available mitigating measures, the exporting State Party determines that there is an overriding risk of any of the negative consequences in paragraph 1, the exporting State Party shall not authorize the export.*
  4. *The exporting State Party, in making this assessment, shall take into account the risk of the [covered arms] being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children.*
- ....

## Interpreting “A Serious Violation of International Human Rights Law”

Assessing the potential that “a serious violation of international human rights law” could result from an arms export is a crucial element of the Article 7 risk assessment. Practitioners and scholars have widely agreed that the term “serious violation of international human rights law” covers a range of violations and is not limited to a specific subset of human rights abuses.<sup>2</sup> The term sets a relatively low threshold. No single factor is key to this determination; rather, various factors influence whether a human rights violation is serious.<sup>3</sup> Ultimately, many violations of international human rights law meet the seriousness threshold.<sup>4</sup>

Evaluating the seriousness of a human rights violation requires a careful, holistic, and context-specific inquiry conducted on a case-by-case basis.<sup>5</sup> That assessment must take into account the character of the violation (i.e., its gravity) and the extent of the harm suffered by victims.<sup>6</sup> Harm need not be widespread, however, to be serious. A holistic assessment takes context into account (for example, who is being harmed and how, in the context of the society in question and the state’s human rights record), rather than focusing on an incident in isolation.<sup>7</sup>

In some cases, it will be clear that a violation is serious. For example, breaches of certain fundamental international norms (called “jus cogens norms”<sup>8</sup>) — such as the prohibition on torture — always amount to serious violations of human rights law.<sup>9</sup> “Gross and systematic” violations — extremely severe violations that conform to a relatively consistent pattern over time — also clearly qualify as serious.<sup>10</sup> Outside these clear cases, determining whether a violation is serious requires an in-depth evaluation.

Because the seriousness inquiry is highly context-specific, general hypothetical examples are difficult to formulate. Still, authoritative commentators have noted that, for example, forced marriage, sexual violence, and kidnapping can qualify as serious violations.<sup>11</sup> Regardless, there is no comprehensive list of violations that qualify as serious. Rather, seriousness encompasses a wide range of violations and requires repeated, context-specific, case-by-case evaluation.

## Gender-Based Violence as a Serious Violation of International Human Rights Law

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 if the arms it exports could be used to commit or facilitate GBV that amounts to a serious violation of international human rights law. Scholars and UN bodies have come to recognize that GBV constitutes a violation of international human rights law.<sup>12</sup> There is growing consensus that GBV is inherently serious in all cases, as it is “a form of discrimination that seriously violates and impairs or nullifies the enjoyment by women and girls of all human rights and fundamental freedoms.”<sup>13</sup>

### International Human Rights Obligations on Gender-Based Violence

A number of widely ratified international treaties contain obligations that suggest GBV violates international human rights law.<sup>14</sup> Likewise, several regional treaties lay out obligations establishing forms of GBV as human rights violations.

Discrimination in the form of GBV is prohibited under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). While the text of CEDAW does not explicitly use the term “gender-based violence,”<sup>23</sup> the CEDAW Committee — the body of independent experts charged with monitoring global implementation of CEDAW — has clarified that GBV constitutes unlawful discrimination as it “seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men.”<sup>24</sup>

The Convention on the Rights of the Child (CRC) is also relevant because it seeks to protect children from violence, including GBV. The CRC requires States Parties to: “protect children from all forms of physical or mental violence”;<sup>25</sup> prevent the “traffic in children for any purpose or in any form”;<sup>26</sup> and ensure that no child is subjected to “cruel, inhuman or degrading treatment.”<sup>27</sup> The CRC also specifically protects children in times of conflict.<sup>28</sup> Each of these forms of violence can be gendered and therefore constitute GBV. (In any event, Article 7(4) requires an assessment of the risk of violence against women or children regardless of whether the violence is gender-based.)

Other international human rights treaties also contain obligations related to GBV.<sup>29</sup> The International Covenant on Civil and Political Rights (ICCPR), for example, requires that States Parties “ensure the equal right of men and women to the enjoyment of all civil and political rights.”<sup>30</sup> Any ICCPR State Party that discriminates on the basis of gender in its implementation of the treaty has violated its human rights obligations under the ICCPR.<sup>31</sup> Similarly, the Convention against Torture (CAT), which prohibits torture and cruel, inhumane, or degrading treatment or punishment, defines torture as including acts of severe physical or mental pain or suffering that a public official (or someone acting with the acquiescence of a public official) intentionally inflicts “for any reason based on discrimination of any kind.”<sup>32</sup> In other words, gender-based torture constitutes a distinct human rights violation, and one that is inherently serious because the prohibition on torture is a jus cogens norm.

Regional human rights treaties contain additional relevant obligations. The Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belem Do Para), for instance, lays out duties on States Parties to: ensure that state agents refrain from engaging in any act or practice of violence against women; apply due diligence to prevent violence against women; and take all appropriate measures to modify legal or customary practices that sustain the persistence and tolerance of violence against women.<sup>33</sup> Similarly, the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Maputo Protocol) requires States Parties to adopt “legislative, administrative, social and economic measures as may be necessary to ensure the prevention, punishment and eradication of all forms of violence against women.”<sup>34</sup>

### ***Arms and Gender-Based Violence***

The ATT was the first treaty to explicitly link arms exports with risks of gender-based violence (GBV).<sup>15</sup> GBV is violence that is directed against a person on the basis of their gender or sex.<sup>16</sup> It can include sexual, physical, economic, emotional, and psychological violence — all of which are severely underreported in most, if not all countries<sup>17</sup> and are often overlooked in human rights discussions.<sup>18</sup> GBV can include acts that inflict harm and threats of those acts, as well as coercion and other deprivations of liberty.<sup>19</sup>

Arms are intimately linked to gender and GBV.<sup>20</sup> For example, the majority of individuals with access to firearms are men<sup>21</sup> and guns are generally closely associated with social understandings and expressions of masculinity; further, men constitute the majority of perpetrators and victims of gun violence, while women are rarely perpetrators, but often victims.<sup>22</sup> See the Control Arms’ *Practical Guide* for further discussion on the role of arms in GBV.

## Perpetrators of Gender-Based Violence and the “Due Diligence” Obligation

Conducting the Article 7 risk assessment requires an understanding of the full scope of states’ obligations and responsibilities under international human rights law. All states must ensure that they work to respect, protect, and fulfill human rights. When state actors or individuals acting with the state’s authorization abuse human rights, the state has violated its obligations under international human rights law.<sup>44</sup> However, the state can also be responsible for actions by non-state actors — such as private individuals, companies, and armed groups — that would constitute violations if they were committed by state actors. This is the case when the state fails to meet a “due diligence” standard to prevent, investigate, and punish such actions.<sup>45</sup>

### **“Due Diligence” and Gender-Based Violence**

The Special Rapporteur on violence against women has made clear that due diligence requires states to pursue “all those means of a legal, political, administrative and cultural nature that promote the protection of human rights.”<sup>35</sup> These means must comply with four principles: non-delegation (a state cannot delegate its due diligence responsibilities); non-discrimination (the state must combat the particular form of violation as it does other violations); good faith (the state must commit to action — enacting empty legal provisions is insufficient); and grounding in empirical data (the state must collect and analyze data to inform and evaluate its efforts).<sup>36</sup>

According to the Special Rapporteur, in the GBV context, due diligence not only requires prevention, protection, and punishment, but also reparation.<sup>37</sup> Measures could include:

- *Prevention*: public education campaigns, gender sensitization programs in government agencies, collection of data on GBV and its prevalence.<sup>38</sup>
- *Protection*: ensuring the availability of counseling, health services, shelter, and financial assistance, as well as strengthening court processes that enable victims to access those protections.<sup>39</sup>
- *Punishment*: investigating and prosecuting cases of GBV, ensuring respect for the rule of law, and achieving reasonable conviction rates and appropriate sentencing guidelines and outcomes.<sup>40</sup>
- *Reparation*: making sure victims have access to resources to repair harm, such as legal remedies and rehabilitative services, as well as other measures that may additionally feed into protection or prevention.<sup>41</sup>

A state’s broader behavior also matters in assessing its compliance with the due diligence standard.<sup>42</sup> Factors that might be relevant in this assessment include the state’s ratification of human rights treaties, the presence of legal guarantees of gender equality, and data collection around GBV, among others.<sup>43</sup>

“Due diligence” requires states to work in good faith to comprehensively address the causes and effects of human rights violations through targeted interventions, as well as more general measures to ensure compliance with human rights law (such as robust legislative frameworks). Interventions must be both responsive — i.e., specifically designed to respond to the problem — and effective in impact.<sup>46</sup>

As a result, GBV constitutes a serious human rights violation when it is committed by state agents<sup>47</sup> or when the state fails to meet its due diligence obligation in preventing, investigating, and punishing GBV by private actors.<sup>48</sup> The CEDAW Committee has specifically noted that a state’s failure to comply with its due diligence obligation amounts to a human rights violation.<sup>49</sup> Other authoritative bodies have affirmed the significance of the due diligence standard in the context of GBV. For example, the Special Rapporteur on violence against women, its causes and consequences — an expert appointed by the UN Human Rights Council — has released guidance arguing that states’ obligation to prevent and respond to GBV is now a norm of customary international law — in other words, a norm binding even on those states that are not party to CEDAW.<sup>50</sup>

## Interpreting “Commit or Facilitate”

### The Meaning of “Commit or Facilitate”

The phrase “commit or facilitate” appears in Article 7(1) and (4): an export authority must “assess the potential that the conventional arms ... could be used to commit or facilitate” a violation of specified parts of international law<sup>51</sup> and “take into account the risk of the conventional arms ... being used to commit or facilitate serious acts of gender-based violence.”<sup>52</sup> Under international law, treaty terms should be interpreted in light of their ordinary meaning, the context in which they are used, and the treaty’s object and purpose.<sup>53</sup> Using this approach, commit should be interpreted as “to perpetrate or carry out” and facilitate as “to make easier.”

When there are two or more potential ordinary meaning interpretations of a term, context helps identify which meaning prevails. In this case, the ordinary meaning of “commit” as “to carry into action deliberately”<sup>54</sup> or to “perpetrate or carry out”<sup>55</sup> is the meaning that context supports. Alternative meanings, such as “to promise,” would not make sense in the context of the surrounding language in the Treaty (for example, arms could not logically be used to “promise” a serious violation of international human rights law).<sup>56</sup>

As “commit” implies directly carrying out an action, “facilitate” must mean something different.<sup>57</sup> The ordinary meaning of “facilitate” is “to make easier or less difficult; help forward”<sup>58</sup> and “to make something possible or easier,”<sup>59</sup> suggesting “facilitate” adds a broader range of conduct and arms usage that export officials should consider. Context supports this interpretation as there is only one ordinary meaning to the word “facilitate.”<sup>60</sup>

The ATT’s purposes bolster this conclusion. Two of the Treaty’s stated purposes are to “[c]ontribut[e] to international and regional peace, security, and stability” and “[r]educ[e] human suffering.”<sup>61</sup> A plain meaning interpretation of the terms “commit or facilitate” reinforces the purposes of the ATT to prevent instability and human suffering because it is broad, ensuring that export officials consider a wide range of potentially destabilizing and harmful uses of arms.

A narrow construction, such as one based in state complicity or aiding and abetting liability, would not fulfill the Treaty’s object and purpose because these standards come from legal regimes that aim to assign fault to individual actors for past actions rather than to prevent potential systemic harms.<sup>62</sup> The Article 7 risk assessment involves considering the role of the weapons in the commission of possible future violations, rather than establishing the liability of different actors for those violations.

## “Commit or Facilitate” in the Context of Gender-Based Violence

It is relatively straightforward to envisage how arms could be used to “commit” an act of GBV that amounts to a serious human rights violation. For example, state actors that use guns to kill or assault women or LGBTQI individuals because of their gender identity as part of a policy of discrimination are committing acts of GBV that amount to a serious human rights violation.<sup>63</sup>

“Facilitate” encompasses a much wider range of uses of conventional weapons than the term “commit.” Generally, conventional arms facilitate GBV and human rights violations by emboldening the weapon holder and subduing the victim<sup>64</sup> and by exacerbating the harm caused by the act.<sup>65</sup> A clear example is when state actors, such as police or military forces, use guns to facilitate rape: the threatening presence of a gun can facilitate rape by preventing resistance from victims.<sup>66</sup>

Sexual violence, including rape and genital mutilation, is especially prevalent in detention settings.<sup>67</sup> When armed guards commit sexual violence, the presence of their weapons can facilitate that violence by preventing resistance. Even when unarmed detainees perpetrate sexual violence against other detainees, the presence and use of arms by guards may still facilitate that sexual violence. For example, if prison authorities are not meeting the due diligence standard (for instance, because they have failed to put in place adequate measures to prevent, investigate, and punish sexual violence among detainees), guards’ use of arms to restrict victims’ movements could facilitate a serious human rights violation.<sup>68</sup> Likewise, if armored vehicles are used to transport detainees to a prison where GBV-related serious human rights violations are taking place, the vehicles can be said to facilitate those acts.

A broad interpretation of “facilitate” receives support from the *Oxford Commentary* on the ATT. The *Commentary* lists “weapons that could be used to round up people who are later summarily executed with other weapons or by other means” as an example of a serious human rights violation facilitated by arms.<sup>69</sup> In this example, the violation itself is the execution of victims; the arms facilitate this violation by making it easier to gather the victims by intimidating them into submission.<sup>70</sup> In other words, the use of arms “may be one or more steps removed from the actual violation” but still facilitate the violation.<sup>71</sup>

Weapons in the hands of actors unaffiliated with the state — such as private individuals, criminal gangs, and others — can also be used to facilitate serious human rights violations. Private action can implicate international human rights law if a state fails to meet its due diligence obligations. One of the most prominent examples of private acts of GBV that could amount to a serious human rights violation is domestic violence. Arms can enable and exacerbate, and therefore facilitate, private acts of domestic violence<sup>72</sup> both by escalating the level of harm in situations of domestic abuse<sup>73</sup> and by wearing down the resistance of victims, who may live in a constant state of fear.<sup>74</sup> This non-state use of arms facilitates a violation of human rights law if the state does not have responsive and effective measures in place to sufficiently address domestic violence. Similarly, the state has not met the due diligence standard if it fails to act to curb armed violence by gangs perpetrated against victims because of their gender.

## Interpreting “Peace and Security”

### The Meaning of “Peace and Security”

As part of the Article 7 risk assessment, the exporting state is required to examine the potential that the arms would “contribute to or undermine peace and security.”<sup>75</sup> The term “peace and security” should be understood as broad in scope, both geographically and substantively: a holistic interpretation requires states to consider the effect of arms exports on human welfare, especially in relation to their gendered impact, particularly on women.

The term “peace and security” in Article 7(1) is not confined to conflicts between two or more states. While references to “international” and “regional” peace and security in the UN Charter<sup>76</sup> or in other provisions of the ATT<sup>77</sup> suggest geographic limitations, Article 7(1) refers simply to “peace and security.”<sup>78</sup> As a result, the concept covers domestic peace and security concerns<sup>79</sup> as well as international or regional concerns.

Importantly, the term “peace and security” encompasses more than the absence of conflict or armed violence: it also includes an assessment of human welfare.<sup>80</sup> Both the UN General Assembly<sup>81</sup> and the Security Council<sup>82</sup> have endorsed the idea that human welfare is an integral component of sustainable peace and security.<sup>83</sup> This principle is rooted in the UN Charter, which refers to the need to protect the “material conditions of peace” to secure lasting peace and security.<sup>84</sup> The substance of human welfare is broad and not limited to the absence of physical threats to life; it includes, for example, socioeconomic welfare,<sup>85</sup> dignity,<sup>86</sup> and effective rule of law,<sup>87</sup> among other aspects. The ATT itself recognizes the link between human welfare and “peace and security” through its preambular reference to the “mutually reinforcing” relationship between human rights and peace and security.<sup>88</sup>

The connection between human welfare and peace and security is especially well-developed in the context of women, peace, and security. In particular, the Security Council has highlighted the need for a gender-based analysis of “peace and security.” In its groundbreaking Resolution 1325, the Security Council emphasized the “importance of [women’s] equal participation and full involvement in all efforts for the maintenance and promotion of peace and security,”<sup>89</sup> and the Council has further developed the concept in subsequent resolutions.<sup>90</sup> In addition, the Council has recognized the gendered impact of conflict and its relationship to peace and security,<sup>91</sup> noting that an effective response to women’s and girls’ needs can significantly advance peace and security.<sup>92</sup> The Security Council has also committed to incorporating gender-related analysis in all its discussions on peace and security.<sup>93</sup>



## The Meaning of “Contribute to or Undermine”

While the UN General Assembly and Security Council frequently refer to “threats” to peace and security,<sup>95</sup> Article 7(1) requires states to consider whether arms exports would “contribute to or undermine” peace and security.<sup>96</sup> Measures that could contribute to “peace and security” (in the state security sense) could be either responsive<sup>97</sup> — i.e., adopted during or in the wake of conflict — or preventive — i.e., adopted in the absence of conflict, and designed to prevent the onset of conflict.<sup>98</sup> For instance, among the main measures that the UN adopts to maintain peace and security, some — such as peacekeeping, peacebuilding and countering terrorism — are responsive in nature, while others — preventive diplomacy<sup>99</sup> and disarmament<sup>100</sup> — are preventive.<sup>101</sup>

The *Oxford Commentary* provides an illustrative list of potential contributions to peace and security, including arms exports that would enable a state “facing an insurgency or a terrorist threat to be able to defend itself,” “to deter or ward off external aggression,” or “to seal and control its borders to prevent infiltration by foreign terrorists or organized criminal gangs.”<sup>102</sup> Examples of exports that would undermine peace and security could include providing arms to states that may wage illegal war against other states, engage in “wanton oppression of [their] own people or a national minority,” or fuel regional arms races.<sup>103</sup> These examples envisage both domestic and international peace and security concerns, as well as human welfare considerations.

Notably, as Article 7(1)(a) uses the word “would” (i.e., the arms “would contribute to or undermine”) the threshold for certainty is higher than it is under Article 7(1)(b), which uses the word “could” (i.e., “could be used to commit or facilitate” a harm).

### **“Contribute to or Undermine”: Factors to Consider**

To determine whether an arms export would contribute to or undermine peace and security, States Parties should:

- Examine the likely effects of the proposed export on international or regional peace and security, bearing in mind that preventive measures such as disarmament and arms export restrictions can promote peace and security.<sup>94</sup>
- Consider the likely effects on domestic peace and security, such as the role the arms would play in addressing or exacerbating civil insurgencies, local unrest, and state persecution.
- Evaluate to what degree the quantity and type of arms proposed for export would make a difference to the peace and security situation.
- Throughout the assessment, explicitly assess the arms’ likely effects on human welfare, including by undertaking a gender-based analysis. For instance, if a State Party was assessing whether to export arms to a state with a poor human rights record that was facing an internal threat to domestic stability, the potential for negative consequences to human welfare to stem from the export could nullify the possibility of the arms making a contribution to peace and security, despite the internal threat.
- Recognize, as discussed below, that if a clear or substantial risk of serious human rights violations exists, the export would inherently seem unable to contribute to a concept of peace and security that encompasses considerations of human welfare.

## Interpreting “Overriding Risk”

The final step in assessing whether to authorize an export is determining whether an “overriding risk of any of the negative consequences” in Article 7(1) exists.<sup>104</sup> If there is an overriding risk, the State Party must deny the export.<sup>105</sup> Gender and GBV considerations are relevant to every part of the risk assessment, including the final determination of whether the risk is overriding.

The International Committee of the Red Cross (ICRC) has noted that interpretations of “overriding risk” as synonymous with “clear” or “substantial” risk are in line with the Treaty’s object and purpose of reducing human suffering.<sup>106</sup> Interpreting overriding risk as a risk of an Article 7(1) harm that is more likely than not to occur (even after considering mitigating measures) would likewise be consistent.<sup>107</sup>

Another way of understanding the concept is to recognize that an overriding risk exists when the potential Article 7(1) harms cannot be mitigated under Article 7(2). Mitigating measures are forward-looking steps the exporting state can take, in coordination with the importing state, to minimize or eliminate the risk(s) identified. The ICRC has noted that such measures should be “timely, robust and practical” and “assessed cautiously in terms of what is realistically achievable in the circumstances.”<sup>108</sup> An importing state’s agreement to provide gender sensitivity training to its family court judges, for example, might qualify as a mitigating measure in a state where prosecution of domestic abusers is notoriously low (although this measure alone would not in itself sufficiently mitigate the risk of GBV as a serious human rights violation).

If a State Party has identified that the risk of serious human rights violations stemming from the proposed export is clear or substantial, it is hard to imagine how that risk could be successfully mitigated. Similarly, the idea that an arms export could pose a clear or substantial risk of a serious violation while at the same time contributing to peace and security seems inherently contradictory. In such cases, because there is an overriding risk of harm, the export must be denied.

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<sup>1</sup> *How to Use the Arms Trade Treaty to Address Gender-Based Violence: A Practical Guide for Risk Assessment*, Control Arms, August 2018.

<sup>2</sup> *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*, Geneva Academy, August 2014, p. 4.

<sup>3</sup> *Ibid.*, p. 5.

<sup>4</sup> *Ibid.*

<sup>5</sup> Stuart Casey-Maslen, et al, *The Arms Trade Treaty: A Commentary*, 2016, para. 7.79-7.81. See also 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*, April 2014; *How to Apply Human Rights Standards to Arms Transfer Decisions*, Amnesty International, October 2015, p. 3; *How to Use the Arms Trade Treaty to Address Gender-Based Violence*, see note 1, p. 6.

<sup>6</sup> Casey-Maslen, et al, see note 5, para. 7.79, 7.81. See also *The Arms Trade Treaty: A Practical Guide to National Implementation*, Small Arms Survey, August 2016, p. 67; *How to Apply Human Rights Standards to Arms Transfer Decisions*, see note 5, p. 3; *How to Use the Arms Trade Treaty to Address Gender-Based Violence*, see note 1, p. 6.

<sup>7</sup> Casey-Maslen, et al, see note 5, para. 7.79–7.81. See also Brandes, see note 5; *Applying the Arms Trade Treaty to Ensure the Protection of Human Rights*, Amnesty International, February 2015, p. 3; *How to Use the Arms Trade Treaty to Address Gender-Based Violence*, see note 1, p. 6.

<sup>8</sup> Such norms are also called peremptory and non-derogable norms of customary international law. See Brandes, see note 5, p. 399.

<sup>9</sup> See, e.g., Brandes, see note 5, p. 399; *How to Use the Arms Trade Treaty to Address Gender-Based Violence*, see note 1, p. 6.

<sup>10</sup> See Brandes, see note 5; Takhmina Karimova, *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*, Geneva Academy, August 2014, p. 10; M.E. Tardu, “United Nations Response to Gross Violations of Human Rights: The 1503 Procedure Symposium International Human Rights,” *Santa Clara Law Review*, 1980, p. 582. In addition, it is worth noting that “gross and systematic” violations largely overlap with the definition of “crimes against humanity.” Because the use of weapons to commit crimes against humanity is already covered in the ATT’s Article 6(3) (albeit under a different standard of risk), and because the definitions of “gross and systematic” violations and “crimes against humanity” are similar, reading a “serious violation of international human rights law” to require that violations be “gross and systematic” would create an unnecessary redundancy within the ATT. Note that the Rome Statute defines “crimes against humanity” as “inhuman acts ... intentionally causing great suffering, or serious injury to body or to mental or physical health,” when “committed as part of a widespread or systematic attack directed against any civilian population.” Article 7, 1998 Rome Statute.

<sup>11</sup> Karimova, see note 10, Annex.

<sup>12</sup> See *CEDAW General Recommendation No. 19: Violence against women*, A/47/38, 1992, (UN Committee on the Elimination of Discrimination Against Women), para. 1, 7. See also *Convention on the Elimination of All Forms of Discrimination against Women*, G.A. Res. 34/180, 18 December 1979, (General Assembly).

<sup>13</sup> *Applying the Arms Trade Treaty to Ensure the Protection of Human Rights*, see note 7, p. 13.

<sup>14</sup> See *CEDAW General Recommendation No. 19*, see note 12, para. 1, 7; *Convention on the Elimination of All Forms of Discrimination against Women*, see note 12.

<sup>15</sup> *How to Use the Arms Trade Treaty to Address Gender-Based Violence*, see note 1, p. 3

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

<sup>20</sup> *The Arms Trade Treaty: Securing Women’s Rights and Gender Equality*, WILPF, IANSA, Amnesty International, and Religions for Peace International, June 2012, p. 2; *Preventing Gender-Based Violence Through Arms Control*, Reaching Critical Will, April 2016, p. 4.

<sup>21</sup> The majority of firearm owners and individuals in professions with easy gun access, such as police officers, are men. *Gender and SALW Control: Legislative and Policy Frameworks*, South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons (SEESAC), October 2016, p. 3.

<sup>22</sup> *Ibid.* See also *Small Arms Survey 2014: Women and Guns*, Small Arms Survey, 2014, p. 14; Barbara Frey, “The Gender Implications of Small Arms and Light Weapons in Conflict Situations,” in *The Oxford Handbook of Gender and Conflict*, December 2017, p. 2 (explaining how armed men are socially construed either as protectors of women or other vulnerable individuals or as perpetrators); *Women, Gender and Gun Violence in the Middle East*, International Action Network on Small Arms (IANSA)’s Women’s Network, October 2011, p. 9 (noting how arms represent manhood; in Lebanon, for example, when a baby boy is born, there is often a celebratory exclamation that the family “ha[s] increased by one gun”).

<sup>23</sup> 1979 Convention on the Elimination of All Forms of Discrimination against Women.

<sup>24</sup> *CEDAW General Recommendation No. 19*, see note 12, para. 7.

<sup>25</sup> Article 19, 1989 Convention on the Rights of the Child.

<sup>26</sup> *Ibid.*, Article 35.

<sup>27</sup> *Ibid.*, Article 37.

<sup>28</sup> *Ibid.*, Article 38.

<sup>29</sup> *How to Use the Arms Trade Treaty to Address Gender-Based Violence*, see note 1, p. 3. See also *Applying the Arms Trade Treaty to Ensure the Protection of Human Rights*, see note 7, pp. 9–11.

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- <sup>30</sup> Article 3, 1966 International Covenant on Civil and Political Rights.
- <sup>31</sup> *Ibid.* See also Article 4(1), 1966 International Covenant on Civil and Political Rights.
- <sup>32</sup> Article 1, 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- <sup>33</sup> Article 7, 1994 Convention of Belem Do Para.
- <sup>34</sup> Article 4(2)(b), 2003 Maputo Protocol.
- <sup>35</sup> *The Due Diligence Standard as a Tool for the Elimination of Violence Against Women*, E/CN.4/2006/61, 20 January 2006, (Report of the Special Rapporteur on violence against women, its causes and consequences), para. 30.
- <sup>36</sup> *Ibid.*, para. 34–36.
- <sup>37</sup> *Ibid.*, para. 38–55.
- <sup>38</sup> *15 Years of the United Nations Special Rapporteur on Violence against Women, Its Causes and Consequences*, 2009, (Office of the United Nations High Commissioner for Human Rights), p. 26.
- <sup>39</sup> *Ibid.*
- <sup>40</sup> *Ibid.*
- <sup>41</sup> *Ibid.*, p. 27.
- <sup>42</sup> See *The Due Diligence Standard as a Tool for the Elimination of Violence Against Women*, see note 35, para. 32.
- <sup>43</sup> *Ibid.*
- <sup>44</sup> *States Duty-Bound to Protect against Human Rights Abuses within Their Territories, Third Committee Hears during Interactive Discussions with Experts*, GA/SHC/4174, 20 October 2016, (General Assembly).
- <sup>45</sup> See *Human Rights Committee General Comment 31*, CCPR/C/21/Rev.1/Add. 1326, 29 March 2004, (Human Rights Committee), para. 8; Margot E. Salomon, *Global Responsibility for Human Rights: World Poverty and the Development of International Law*, 2007, pp. 185–186; *Velásquez Rodríguez v. Honduras*, Inter-American Commission on Human Rights, 29 July 1988, para. 172; *Zimbabwe Human Rights NGO Forum v. Zimbabwe*, African Commission on Human and Peoples' Rights, 15 May 2006, para. 143; August Reinisch, "The Changing International Legal Framework for Dealing with Non-State Actors," in *Non-State Actors and Human Rights*, 2005.
- <sup>46</sup> *15 Years of the United Nations Special Rapporteur*, see note 38, p. 26.
- <sup>47</sup> *CEDAW General Recommendation No. 19: Violence against women*, (UN Committee on the Elimination of Discrimination Against Women (CEDAW)), 1992, para. 8. See also *Applying the Arms Trade Treaty to Ensure the Protection of Human Rights*, Amnesty International, October 2015, p. 14.
- <sup>48</sup> *CEDAW General Recommendation No. 19*, see note 12, para. 9. See *Applying the Arms Trade Treaty to Ensure the Protection of Human Rights*, see note 7, p. 14.
- <sup>49</sup> *CEDAW General Recommendation No. 19*, see note 12, para. 9.
- <sup>50</sup> *The Due Diligence Standard as a Tool for the Elimination of Violence Against Women*, see note 35.
- <sup>51</sup> Article 7(1)(b), 2013 Arms Trade Treaty.
- <sup>52</sup> *Ibid.*, Article 7(4).
- <sup>53</sup> Article 31, 1980 Vienna Convention on the Law of Treaties.
- <sup>54</sup> "Commit" in *Merriam-Webster Online Edition*, 2019.
- <sup>55</sup> "Commit" in *Oxford English Living Dictionaries*, 2019. See also "commit" in *Oxford English Dictionary*, 2019.
- <sup>56</sup> Context is used to inform the ordinary meaning of treaty terms where "two or more possibilities come forward" to determine which of the possibilities is the most compelling. Richard K. Gardiner, *Treaty Interpretation*, 2015, p. 198. For example, an alternative meaning of "commit" would be to make a promise. See, e.g., "Commit," *Cambridge Dictionary*, 2019 ("to promise or give your loyalty, time, or money to a particular principle, person, or plan of action"). However, the context in which "commit" appears shows that the suggested meaning of "to carry out an action" should be preferred, as the alternative meaning would be absurd.
- <sup>57</sup> If "facilitate" had been intended to have a narrower meaning than "commit," then it would be encompassed in "commit" and therefore be superfluous. Generally, a good faith interpretation under the Vienna Convention requires that an interpretation of a treaty term that gives it meaning and role is preferred over an interpretation that does not. See Gardiner, see note 56, p. 168. *The Arms Trade Treaty: A Commentary* notes this difference, emphasizing the distinction between Article 6(3), which requires a likelihood that the weapons will be used in the "commission of" the listed offenses and does not mention facilitation, and Article 7, where showing that the weapons could be used to "commit or facilitate" would

require an export authority to deny an export (if the risk is overriding). Casey-Maslen, et al, see note 5, para. 7.35.

<sup>58</sup> “Facilitate,” in *Dictionary.com*, 2019.

<sup>59</sup> “Facilitate,” in *Oxford English Living Dictionaries*, 2019; “Facilitate,” in *Merriam-Webster Online Edition*, 2019. See also “facilitate” in *Oxford English Dictionary*, 2019

<sup>60</sup> Further, the ordinary meanings of “commit” and “facilitate” are not ambiguous or obscure nor do they lead to “manifestly absurd or unreasonable” results. As a result, recourse to supplementary sources of interpretation (such as the Treaty’s travaux préparatoires) is not necessary. Article 32, 1980 Vienna Convention on the Law of Treaties.

<sup>61</sup> Article 1, 2013 Arms Trade Treaty.

<sup>62</sup> The *Commentary* draws a parallel between the ATT’s “facilitate” language with the doctrine of “state-to-state complicity.” Casey-Maslen, et al, see note 5, para. 7.35. While some elements of complicity may shed light on practical meanings of the term, too direct of a link between “facilitate” and the fault-based standard of complicity does not logically fit with the language of the Treaty and does not best serve the purpose of the Treaty to prevent instability, violence, and suffering. First, complicity requires intentionality. See e.g., *Draft articles on Responsibility of States for Internationally Wrongful Acts*, A/56/10, 2001, (International Law Commission). Such intentionality does not appear to be a requirement of the Treaty text. See Article 7(1), 2013 Arms Trade Treaty (directing states to “assess *the potential* that the conventional arms or items . . . *could be used*” to commit or facilitate certain harms) (emphasis added). Nor would intentionality be practicable for export officials to ascertain *ex ante*. Second, “responsibility for complicity only accrues *after* the principal wrongful act is committed.” Vladyslav Lanovoy, “Complicity,” in *Max Planck Encyclopedia of Public International Law*, December 2015, ¶ 14 (emphasis added). This is in direct contrast to the inherently forward-looking and preventive nature of the ATT. See Article 7(1), 2013 Arms Trade Treaty (directing states to consider the potential that the arms “*could be used*” to commit harms) (emphasis added). The same criticisms apply to the aiding and abetting standard, which is drawn from international criminal law, and likewise assigns fault at an individual level. Because the consequences of criminal liability are severe — e.g. deprivation of liberty — a high level of certainty is required before liability attaches. Such a standard would not align with the ATT’s preventative purposes.

<sup>63</sup> Guns are not the only arms relevant to GBV. For example, there have been instances where women were forced to strip naked and act as human shields for battle tanks. *Preventing Gender-Based Violence Through Arms Control*, see note 20, p. 26.

<sup>64</sup> See, e.g., *The Arms Trade Treaty: Securing Women’s Rights and Gender Equality*, see note 20, p. 2 (“Emboldened by weapons, power and status, both State and non-State parties often perpetrate gender-based violence, disproportionately affecting women with impunity.”). See also Frey, see note 22, p. 2 (discussing how small arms used in conflict exacerbate existing gender differences in societies by increasing the social and physical power of men in the public and private spheres and exacerbate physical and social constraints upon women and girls); *Disarming Domestic Violence: A survey on proliferation and misuse of small arms and light weapons (SALW)*, International Action Network against Small Arms, 2012, p. 4 (noting that guns in the home are part of a “cycle of intimidation” in domestic violence contexts).

<sup>65</sup> E.g., Wendy Cukier, “Global Effects of Small Arms: A Gendered Perspective,” in *In the Line of Fire: A Gender Perspective on Small Arms Proliferation*, 2001, p. 16 (noting how the risk of being murdered by an intimate partner increases with the availability of firearms); see also *Disarming Domestic Violence*, see note 64, p. 4 (noting that women are three times more likely to die violently if there is a gun in the home); *The Impact of Guns on Women’s Lives*, Control Arms, 2005, p. 11 (having a gun in the home increased the overall risk of someone being murdered by 41 per cent but for women the risk increased by 272 per cent); *Gender and SALW Control: Legislative and Policy Frameworks*, see note 21, p. 3 (noting that the presence of guns in the home dramatically increases the likelihood of a lethal outcome in domestic violence settings); *Women, Gender and Gun Violence in the Middle East*, see note 22, p. 12 (noting that in certain countries the increasing availability of small arms has led to an increase in the number of honor crimes against women).

<sup>66</sup> See, e.g., David Capie, “Small arms, violence and gender in Papua New Guinea: Towards a research agenda,” *Asia Pacific Viewpoint*, April 2011, pp. 42, 45–46; *The Impact of Guns on Women’s Lives*, see note 65, p. 12; *Preventing gender-based violence through arms control* (webinar), WILPF, April 2016, <https://www.youtube.com/watch?v=DY4j09TsdOw>.

<sup>67</sup> *Sexual Violence in Detention*, International Committee of the Red Cross, February 2017, p. 2–3. See also Ilham Rawoot, “Sexual assault in jail is common and brutal,” *Mail & Guardian*, 28 March 2013 (describing that in South Africa rape “is, in fact, just part of being in prison”); Alice Speri, “Detained, Then Violated: 1,224 Complaints Reveal a Staggering Pattern of Sexual Abuse in Immigration Detention. Half of Those Accused Worked for ICE,” *The Intercept*, 11 April 2018 (noting high levels of reports of sexual violence of immigrants and asylum seekers in U.S. detention centers).

<sup>68</sup> See, e.g., *Sexual Violence in Detention*, see note 67, p. 2 (noting that detention is “essentially coercive” because individuals deprived of their liberty cannot give genuine consent to sexual matters). See also *An Emergency Human Rights Crisis: Sexual Violence in Philippine Detention Facilities*, Just Detention International, April 2009, p. 2; *Prisoner Rape is Torture Under International Law*, Just Detention International, February 2009, p. 1–2 (noting that rape in detention settings, “whether committed by corrections staff or by detainees, is recognized internationally as torture”); *Jailing Women in Turkey: Systematic Campaign of Persecution and Fear*, Stockholm Center for Freedom, April 2017, p. 3 (describing how women have been more frequent targets of imprisonment).

<sup>69</sup> Casey-Maslen, et al, see note 5, para. 7.35.

<sup>70</sup> If the conventional arms were used to execute the victims, they would be involved in the direct commission of the violation (i.e., they were used to “commit,” not necessarily “facilitate” the violation).

<sup>71</sup> Casey-Maslen, et al, see note 5, para. 7.35.

<sup>72</sup> Domestic violence disproportionately affects women, making it an act of GBV. *The Arms Trade Treaty: Securing Women’s Rights and Gender Equality*, see note 20, p. 3

<sup>73</sup> See, e.g., Cukier, see note 65, p. 16 (noting how the risk of being murdered by an intimate partner increases with the availability of firearms). See also *Disarming Domestic Violence*, see note 64, p. 4; *The Impact of Guns on Women’s Lives*, see note 65, p. 11; *Gender and SALW Control: Legislative and Policy Frameworks*, see note 21, p. 3; *Women, Gender and Gun Violence in the Middle East*, see note 22, p. 12.

<sup>74</sup> See, e.g., *Women, Gender and Gun Violence in the Middle East*, see note 22, p. 12 (in one domestic violence situation, a husband kept his guns in a glass display case to constantly send a message to his wife that he was always ready to shoot and kill her).

<sup>75</sup> Article 7, 2013 Arms Trade Treaty.

<sup>76</sup> See, e.g., Article 42, 1945 Charter of the United Nations; Pierre d’Argent and Nadine Susani, “United Nations, Purposes and Principles,” in *Max Planck Encyclopedia of Public International Law*, March 2009.

<sup>77</sup> Preamble, Principles, and Article 1, 2013 Arms Trade Treaty.

<sup>78</sup> *Ibid*, Article 7.

<sup>79</sup> Casey-Maslen, et al, see note 5, para. 7.32.

<sup>80</sup> *2005 World Summit Outcome*, A/RES/60/1, 16 September 2005, (General Assembly).

<sup>81</sup> “In order to promote international peace and security, we commit ourselves to advancing human welfare, freedom and progress everywhere, as well as to encouraging tolerance, respect, dialogue and cooperation among different cultures, civilizations and peoples.” *Ibid*. Principle 9 of the Resolution recognized “peace and security, development and human rights” as “mutually reinforcing,” and as the joint pillars of both the UN system and collective security. See also: *Transforming our world: the 2030 Agenda for Sustainable Development*, A/RES/70/1, 25 September 2015, (General Assembly); *Follow-up to paragraph 143 on human security of the 2005 World Summit Outcome*, A/RES/66/290, 10 September 2012, (General Assembly); *Follow-up to General Assembly resolution 66/290 on human security, Report of the Secretary-General*, A/68/685, 23 December 2013, (General Assembly). See also *Conclusion of the High-Level Ministerial Segment of the Economic and Social Council (28-30 June 1993)*, E/1993/102, 13 July 1993, (Economic and Social Council).

<sup>82</sup> See, e.g. *Resolution 1325 (2000)*, S/RES/1325, 31 October 2000, (Security Council); *Resolution 2122 (2013)*, S/RES/2122, 18 October 2013, (Security Council); *Resolution 1889 (2009)*, S/RES/1889, 5 October 2009, (Security Council).

<sup>83</sup> See, e.g., A/RES/60/1, see note 80; 16 September 2005 (General Assembly); A/RES/66/290, see note 81; A/RES/70/1, see note 81.

<sup>84</sup> D’Argent and Susani, see note 76.

<sup>85</sup> *Conclusion of the High-Level Ministerial Segment of the Economic and Social Council (28-30 June 1993)*, E/1993/102, 13 July 1993, (Economic and Social Council).

<sup>86</sup> *Follow-up to General Assembly resolution 66/290 on human security*, A/68/685, 23 December 2013, (General Assembly).

<sup>87</sup> A/RES/70/1, see note 81.

<sup>88</sup> Preamble, 2013 Arms Trade Treaty. See also: *ATT Working Group on Treaty Universalization Work Plan for the CSP5 Preparatory Meetings*, January 2019, p. 4. (Annex A lists “human security” first while outlining the ATT’s positive consequences for “peace and security.”)

<sup>89</sup> *Resolution 1325 (2000)*, see note 82.

<sup>90</sup> *Resolution 1889 (2009)*, see note 82 (articulating the “vital role” of women in peacebuilding, conflict resolution and conflict prevention and expressing concern over the lack of female voices in peace processes); *Resolution 1820 (2008)*, S/RES/1820, 19 June 2008, (Security Council) (emphasizing the importance of including women in all efforts for the maintenance of peace and security).

<sup>91</sup> *Resolution 1674 (2006)*, S/RES/1674, 28 April 2006, (Security Council); *Resolution 1820 (2008)*, see note 90.

<sup>92</sup> *Resolution 1889 (2009)*, see note 82.

<sup>93</sup> *Resolution 2122 (2013)*, see note 82. See also *Report of the Secretary-General on women and peace and security*, S/2013/525, 4 September 2013, (Security Council) (calling upon the Security Council to strengthen its “gender and conflict analysis,” and to discuss concerns around women, peace and security in all thematic debates, such as those on terrorism or conflict prevention).

<sup>94</sup> “Peace and Security,” *UN Global Issues*, <http://www.un.org/en/sections/issues-depth/peace-and-security/>; *UN Report of the Disarmament Commission*, A/51/42(SUPP), 22 May 1996, (General Assembly), Annex I; *National legislation on transfer of arms, military equipment and dual-use goods and technology*, A/RES/68/44, 5 December 2013, (General Assembly); *National legislation on transfer of arms, military equipment and dual-use goods and technology*, A/RES/66/41, 2 December 2011, (General Assembly); *National legislation on transfer of arms, military equipment and dual-use goods and technology*, A/RES/64/40, 2 December 2009, (General Assembly); *National legislation on transfer of arms, military equipment and dual-use goods and technology*, A/RES/60/69, 8 December 2005, (General Assembly); *National legislation on transfer of arms, military equipment and dual-use goods and technology*, A/RES/58/42, 8 December 2003, (General Assembly). See also *Resolution 1540 (2004)*, S/RES/1540, 28 April 2004, (Security Council).

<sup>95</sup> See, e.g., *Resolution adopted by the Security Council at its 942<sup>nd</sup> meeting*, S/4741, 21 February 1961, (Security Council); *Resolution 2417 (2018)*, S/RES/2417, 24 May 2018, (Security Council); *Note by the President of the Security Council*, S/23500, 31 January 1992, (Security Council); *Question of Namibia*, A/RES/ES-8/2, 14 September 1981, (General Assembly); *Resolution 1368*, S/RES/1368, 12 September 2001, (Security Council); *Resolution 2170*, S/RES/2170, 15 August 2014, (Security Council).

<sup>96</sup> Article 7, 2013 Arms Trade Treaty.

<sup>97</sup> See, e.g., Article 42, 1945 Charter of the United Nations.

<sup>98</sup> The UN Security Council has employed such expansive interpretations of “peace and security” in a range of resolutions. See, e.g., *Resolution 2122 (2013)*, see note 82; *Resolution 1889 (2009)*, see note 82; *Resolution 1325 (2000)*, see note 82. The UN Charter bolsters the view that both responsive and preventive measures can contribute toward “peace and security,” by referring to both “prevention and removal of threats to the peace.” Article 1, 1945 Charter of the United Nations; D’Argent and Susani, see note 76.

<sup>99</sup> *United Nations Conflict Prevention and Preventive Diplomacy In Action*, United Nations Department of Political Affairs, June 2018.

<sup>100</sup> *Remarks by High Representative Izumi Nakamitsu at the first meeting of the 2018 session of the United Nations Disarmament Commission*, United Nations Office for Disarmament Affairs, 2 April 2018; *UN Secretary-General’s remarks to the Conference on Disarmament*, 25 February 2019.

<sup>101</sup> In fact, preventing conflict is one of the topmost priorities of the UN Secretary-General. *Factsheet: Helping Prevent Conflict and Sustain Peace*, United Nations Department of Political Affairs, August 2017.

<sup>102</sup> Casey-Maslen, et al, see note 5, para. 7.33.

<sup>103</sup> *Ibid.*, para. 7.34.

<sup>104</sup> For a discussion of interpretations of “overriding risk,” see *Understanding the Arms Trade Treaty from a Humanitarian Perspective*, International Committee of the Red Cross, September 2017.

<sup>105</sup> In other words, Article 7(3) asks if the risks can, in fact, be mitigated, or if the risks will override potential mitigating measures. Article 7(3), 2013 Arms Trade Treaty.

<sup>106</sup> *Understanding the Arms Trade Treaty from a Humanitarian Perspective*, see note 104, pp. 36–37.

<sup>107</sup> *Ibid.*

<sup>108</sup> *Ibid.*, pp. 38–39.