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Justice for All: A Better Path to Global Firearms Control

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Human rights activists who support a binding global Arms Trade Treaty (ATT) miss an important dimension of global reality: many people the world over own firearms primarily to protect their families and communities from government-sponsored genocide and other abuses. Governments historically have been, and still are, the primary perpetrators of violence and human rights violations. The most effective long-term path towards disarmament in conflict-ridden parts of the world is to reduce demand by civilians to possess defensive arms. Rather than relying upon ineffective and counter-productive top-down measures, the better way to do so would be to promote grassroots movements dedicated to strengthening good governance and the rule of law.

INTRODUCTION

With the support of some human rights organizations, member-states of the United Nations are currently negotiating a legally binding Arms Trade Treaty (ATT), which is promised to protect human rights and reduce lethal violence We suggest that the ATT would fail to ameliorate human rights abuses because it would merely create redundant and ineffective paper controls on some instrumentalities of violence, and would not control the perpetrators of violence.

In Part I, we show that an important reason why many people own firearms is justifiable desire to protect their families and communities from government-sponsored genocide, among other abuses. Governments have been the primary perpetrators of violence and human rights violations. Accordingly human rights advocates should focus on government reform, rather than on a treaty that obfuscates the problem of poor governance.

In Part II, we argue that the proposed Arms Trade Treaty may create more arms embargoes, but that it can do nothing to make the new embargoes more effective than the many failed embargoes of the past. The record shows that the disarmament community's focus on some instrumentalities of violence has proven unproductive in controlling arms acquisition by governments, non-state-actors, and other civilians. Moreover, as long as civilians are determined to possess arms in order to defend their own lives, the black market will almost inevitably supply those arms. Unless there are major cultural changes which alter the demand, the

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same pattern of arms supply will continue.

In Part III, we suggest that the most effective long-term path towards disarmament is reducing the need of civilians to possess defensive arms. One important way to do so would be to bring the rule of law to the billions of people who currently lack it.

In a brief appendix, we examine skeptically the of-repeated claim of 740,000 global deaths per year due to armed violence.

I. GOVERNMENT-PERPETRATED HUMAN RIGHTS ABUSE

Genocide scholars have documented that governments are the leading cause of violent death. For example, Rudy Rummel, of the University of Hawaii, has demonstrated that in the twentieth century, governments killed approximately 262 million civilians.[1] The book *Lethal Laws*, together with its supplement on Rwanda, documents eight genocides perpetrated in the 20th century.[2] The authors documented the disarmament laws implemented either by the genocidal regime or a previous regime. More recently, in Ethiopia, a genocide/ethnic cleansing was perpetrated against the Anuak, after first disarming the tribe.[3]

Unfortunately, the United Nations represents governments, not people, and approximately half of the governments at the United Nations are dictatorships. Therefore, it is not surprising that U.N. gun prohibition campaigns have generally ignored the fact that the deadliest possessors of firearms are governments.

So far, the twenty-first century is not keeping pace with the twentieth century's number of deaths by government. On the other hand, the first decade of the twentieth century was much less deadly than what followed, so it would be premature to conclude that the twenty-first century will not match or exceed the twentieth century's terrible record.

Certainly there are still many human rights violations perpetrated by governments.[4] It is easy to find instances of armed governments killing large numbers of unarmed dissidents. In Ethiopia during the May 2005 elections,

1. *See* R.J. RUMMEL, THE BLUE BOOK OF FREEDOM: ENDING FAMINE, POVERTY, DEMOCIDE, AND WAR (2007); R.J. RUMMEL, CHINA'S BLOODY CENTURY: GENOCIDE AND MASS MURDER SINCE 1900 (2007); R.J. RUMMEL, POWER KILLS: DEMOCRACY AS A METHOD OF NONVIOLENCE (2002); R.J. RUMMEL, STATISTICS OF DEMOCIDE: GENOCIDE AND MASS MURDER SINCE 1900 (1999); R.J. RUMMEL, DEATH BY GOVERNMENT (1997); R.J. RUMMEL, DEMOCIDE: NAZI GENOCIDE AND MASS MURDER (1991); R.J. RUMMEL, LETHAL POLITICS: SOVIET GENOCIDE AND MASS MURDER SINCE 1917 (1990). *See also* Rummel's web site, *available at* http://www.hawaii.edu/powerkills/welcome.html, and especially his section on "20th Century Democide", *available at* http://www.hawaii.edu/powerkills/20th.htm.

2. *See* JAY SIMKIN, AARON ZELMAN & ALAN M. RICE, LETHAL LAWS 305 (1994); JAY SIMKIN, AARON ZELMAN & ALAN M. RICE, RWANDA'S GENOCIDE 1994 (1997). *See also* David B. Kopel, Book review of Aaron Zelman, et al., Lethal Laws, 15 N.Y.L. SCH. J. INT'L & COMP. L. 355 (1995), *available at* http://ssrn.com/abstract=1272846.

3. *See* David B. Kopel, Paul Gallant & Joanne D. Eisen, *The Other War in Ethiopia*, TECH CENTRAL STATION, Dec. 29, 2006, *available at* http://www.ideasinactiontv.com/tcs_daily/2006/12/the-other-war-in-ethiopia.html.

4. *See, e.g.*, Amnesty Int'l, *Human Rights Abuses with Small Arms: Illustrative Cases from Amnesty International Reports 2000-2001*, (July 2001), *available at* http://www.amnesty.org/en/library/info/POL34/007/2001/en (visited May 8, 2010).

"security" forces opened fire into a group of dissidents, killing 200.[5] In Cameroon in February 2008, as many as 100 demonstrators were killed by government forces.[6] In Nigeria in November 2008, government agents killed at least 130 people.[7] In Madagascar, on February 7, 2009, government troops shot into a crowd of dissidents, killing about 30 people.[8]

In Guinea, on September 28, 2009, government forces systematically shot at least 150 unarmed opposition demonstrators.[9] As one scholar noted, "There's been a constant predatory relationship between each post-independence government in Guinea and its people."[10] The Guinean government, a signatory of the Rome Statute,[11] and therefore under the jurisdiction of the International Criminal Court, has been nominally cooperating of the ICC's investigation of the deaths.[12] However, according to Human Rights Watch: "Unfortunately, continued economic and diplomatic support from Libya, Senegal, and China, which signed a large natural resources agreement just weeks after the September violence, threatened to undermine the otherwise united international response in favor of respect for rule of law and accountability."[13]

The U.S. Declaration of Independence affirms the universal truth that the only legitimate governments are those which protect human rights and which are based on the consent of the governed.[14] Many illegitimate governments suppress rights

5. *See, e.g.*, Helen Epstein, *Cruel Ethiopia*, N.Y. REV. BOOKS, Apr.24, 2010, *available at* http://harowo.com/2010/04/24/cruel-ethiopia-by-helen-epstein-the-new-york-review-of-books-april-24-2010/ (visited May 13, 2010).

6. *Dissident Violently Repressed in Cameroon*, AMNESTY INT'L NEWS, Jan. 29, 2009, *available at* http://www.amnesty.org/en/news-and-updates/report/dissent-violently-repressed-cameroon-20090129 (visited May 30, 2010) (Amnesty International's Deputy Director for Africa, Tawanda Hondora, stated: "Political opposition is not tolerated in Cameroon...Any dissent is suppressed through either violence or abuse of the legal system to silence critics.").

7. *Nigeria: Bringing perpetrators of mass violence to book – or not*, IRINNEWS.ORG, Apr. 13, 2010, *available at* http://www.irinnews.org/PrintReport.aspx?ReportId=88794 (visited May 13, 2010) ("the governor - accused of ordering extrajudicial shootings - was exonerated.").

8. *Madagascar violence kills 30 people, reports say*, BOSTON GLOBE, Feb. 8, 2009, *available at* http://www.boston.com/news/world/africa/articles/2009/02/08/madagascar_violence_kills_30_people_reports_say?mode=PF (visited May 16, 2010).

9. *See* HUMAN RIGHTS WATCH, BLOODY MONDAY: THE SEPTEMBER 28 MASSACRE AND RAPES BY SECURITY FORCES IN GUINEA, (2009), *available at* http://www.hrw.org/sites/default/files/reports/guinea1209webwcover_0.pdf (visited May 13, 2010).

10. *See Guinea: 'Another Strategy' Required to Deal with the Deteriorating Situation – Challenor*, All Africa.com, *available at* http://allafrica.com/stories/printable/200910131062.html (visited May 13, 1020) (quoting Dr. Herschelle Challenor, former dean of the Graduate School of International Affairs at Clark University, Massachusetts, USA).

11. *See* International Criminal Court, "Guinea," *available at* http://www.icc-cpi.int/Menus/ASP/states+parties/African+States/Guinea.htm (visited July 23, 2010) (stating that Guinea deposited its instrument of ratification July 14, 2003).

12. *See Guinea: ICC Delegation Travels to Country to Follow Up On Probe Into Killings*, UN NEWS SERVICE, May 29, 2010, *available at* http://allafrica.com/stories/printable/201005190982.html (visited June 29, 2010).

13. WORLD REPORT 2010: EVENTS OF 2009, Human Rights Watch, 2009, at 127.

14. "We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness—That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed...." THE DECLARATION OF INDEPENDENCE, ¶ 2 (U.S. 1776).

and use violence to control their citizens. When tyrants use violence to cling to power, the people of many nations are, in the words of the Universal Declaration of Human Rights, "compelled to have recourse, as a last resort, to rebellion against tyranny and oppression."[15]

For example, in April 2010, the Bakiyev government in Kyrgyzstan collapsed. With 85 dead in clashes between government and opposition groups, the International Crisis Group noted: "Bakiyev leaves behind a bankrupt state hollowed out by corruption and crime. Economic failure and collapsing infrastructure have generated deep public resentment."[16] As the ICG explained:

> By blocking all social safety valves – the media, public dissent, political discourse and the right to legal redress – the Bakiyev regime created a semblance of calm. But it was unable to control the underground currents of anger at the regime's rapacity. The closure of all other channels of change made a violent response just about the only option for an angry population.[17]

The new government did not take steps to demonstrate to citizens that it was committed to the rights and needs of the people.[18] To the contrary, the government made its perpetuation in power the top priority, calling on the people of Kyrgyzstan to surrender their arms.[19] It was ludicrous for the new regime to expect compliance with such a demand before the government had offered convincing proof that the people would never again need their arms for protection from the government.

Around the world, studies show that legitimate protection and survival is a leading reason, usually *the* leading reason, why people choose to own firearms.[20] In such circumstances, government attempts to violently confiscate guns ("coercive disarmament" is the official euphemism) often lead to government perpetration of mass murders, rapes, burning of villages, pillages, ethnic cleansing, and similar human rights atrocities.[21]

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15. Universal Declaration of Human Rights, G.A. Res. 217A, at pmbl., U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc A/810 (Dec. 12, 1948).

16. *Kyrgyzstan: A Hollow Regime Collapses*, Asia Briefing No. 2, International Crisis Group, Apr. 27, 2010, *available at* http://www.crisisgroup.org/en/regions/asia/central-asia/kyrgyzstan/B102-kyrgyzstan-a-hollow-regime-collapses.aspx (visited May 14, 2010).

17. *Id.*

18. *Id.* ("So far the provisional government's performance has not been promising.").

19. *Kyrgyz police urge people to turn in weapons*, INTERFAX: CENTRAL ASIA GENERAL NEWSWIRE, Apr. 28, 2010.

20. *See* David B. Kopel, Paul Gallant & Joanne D. Eisen, *Human Rights and Gun Confiscation*, 26 QUINNIPIAC L. REV. 385, 420-35 (2008) (data from Albania, Bosnia & Herzegovina, Brazil, Bulgaria, Canada, Croatia, El Salvador, Macedonia, Mali, Montenegro, Papua New Guinea, Serbia, Tajikistan, United States).

21. *See Id.*, at 388-409 (case studies of Uganda and Kenya); David B. Kopel, Paul Gallant & Joanne D. Eisen, *Is Resisting Genocide a Human Right?* 81 NOTRE DAME L. REV. 1275 (2006) (Darfur); David B. Kopel, Paul Gallant & Joanne D. Eisen, *The Guns of Sudan*, THE NEW LEDGER, July 7, 2009 (south Sudan), *available at* http://newledger.com/2009/07/the-guns-of-sudan/. *Cf.* David B. Kopel, Paul Gallant & Joanne D. Eisen, *Micro-Disarmament: The Consequences for Public Safety and Human Rights*, 73 UMKC L. REV. 969 (2005) (cases studies of human rights problems resulting from disarmament programs in Cambodia, Bougainville, and Albania; also studying disarmament in Panama, Guatemala, and Mali).

It becomes easy to understand why pro-control groups have been generally unsuccessful in achieving their agenda, especially in the 1990s, and in the first decade of the 21st century. As long as civilians feel abused and at risk for human rights violations, voluntary or coercive disarmament is unlikely to succeed.

II. The Road to Failure

There are two ways in which the Arms Trade Treaty could succeed in depriving human rights violators of arms. Neither ways is remotely plausible.

First, the ATT could succeed if the dictatorships which are already committing human rights abuses decide to abide by the treaty, accept the limitations on arms importation and manufacture, and—having fewer arms—are able to commit fewer violent acts against the people. Yet the record of other human rights treaties shows that many dictatorships ratify such treaties without the slightest intent of compliance.[22]

The other assumption is that the governments and other organized criminals currently engaged in illicit arms sales will suddenly decide to abandon huge profits and abide by the rule of law. ATT advocates promise that stronger controls and harsher sanctions will halt the flow of weapons, but they cannot explain exactly how this might occur.

ATT proponents expect that embargoes could be imposed without the consent of the UN Security Council. Thus, the veto power held by the five permanent members would be avoided: "Decisions to impose, or more importantly not to impose arms embargoes, are also largely guided by political considerations. Often the commercial, political or other strategic interest of any one member of the UN Security Council means a decision to impose an arms embargo on a particular regime or armed group is not tabled or agreed."[23]

So let us hypothesize that the final ATT will have some mechanism to create embargoes which are not subject *de jure* to Security Council vetoes. Let us further hypothesize that the imposition of legally-binding embargoes will somehow evade the *de facto* veto which the major UN powers (e.g., United States, China, Russia) and the major UN blocs (e.g., the Islamic bloc) have historically exercised over every legally binding power of the United Nations.

Under the very unlikely assumption that a UN entity would act without influence from UN power politics, then there would indeed be many additional arms embargoes. But would these embargoes be effective? Almost certainly not.

Everyone agrees that the arms embargoes which have been imposed by the Security Council have failed. Control Arms forthrightly acknowledges that "every

22. *See, e.g.*, David B. Kopel, Paul Gallant & Joanne D. Eisen, *The Arms Trade Treaty: Zimbabwe, the Democratic Republic of the Congo, and the Prospects for Arms Embargoes on Human Rights Violators*, 114 Penn State L. Rev. 891, 908-911 (2010).

23. Control Arms, *UN Arms Embargoes: An Overview of the Last Ten Years*, at 3 (Mar. 16, 2006), *available at* http://www.oxfam.org.uk/what_we_do/issues/conflict_disasters/downloads/bn_armsembargoes.pdf.

one of the 13 United Nations arms embargoes imposed in the last decade has been systematically violated...."[24] For example, eight national governments, *and the United Nations Department of Peacekeeping Operations*, have been complicit in arms smuggling to warlords in the eastern Democratic Republic of Congo, in violation of two Security Council embargoes.[25] Yet the mandates of the Security Council are the highest, most compelling form of international law. Under the international legal order that has prevailed since the founding of the United Nations, there is no order more powerful than a Security Council mandate. Because governments have shown that they will flout Security Council mandates and sanctions, then *a fortiori*, governments will be willing to flout mandates and sanctions from an ATT agency.

Even if we make the very unrealistic assumption that governments which violated Security Council arms embargoes will obey the ATT bureaucracy's embargoes, there is still the problem of the black market. Moisés Naím, editor-in-chief of *Foreign Policy* magazine, observed: "History and common sense say that, in the long run, market forces tend to prevail over those of governments....Today, conditions for trafficking are the best they have ever been."[26]

R.T. Naylor, economist, criminologist and historian at Montreal's McGill University, has spent much of his career studying black markets. He found that "never in history has there been a black market defeated from the supply side."[27]

Suppose we hypothesize that all governments comply with ATT embargoes, and that somehow the international black market in arms is shut down. Would the ATT then succeed in disarming the embargoed dictatorship? Probably not.

Ninety-eight nations already have their own arms production industry,[28] so they could counter an embargo by producing their own arms. As for the dictators of nations which do not currently have an arms industry, it would be easy for them to manufacture firearms domestically in case of a solid international embargo.

Even for a home hobbyist with machine tools, firearms manufacture is not difficult.[29] The personal manufacture of firearms can also take place in underdeveloped countries, notwithstanding prohibition by the government. In Uganda, the Karamojong tribespeople persecuted by the central government

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24. *Id.*, at 1.

25. Kopel et al, *supra* note 22, at 924-35 (China, Rwanda, Burundi, Uganda, Sudan, South Africa, Albania, DRC government itself).

26. Moisés Naím, Illicit: How Smugglers, Traffickers, and Copycats are Hijacking the Global Economy 222-23 (2005).

27. R.T. Naylor, Wages Of Crime: Black Markets, Illegal Finance, And The Underworld Economy 11 (2002).

28. Small Arms Survey 2002: Counting The Human Cost 9 (2002). The Small Arms Survey is a research center at the Graduate Institute of International Studies, in Geneva, Switzerland, and is funded by private and government grants. The SAS produces much research in support of international gun control. Their web site can be found at http://www.smallarmssurvey.org/

29. *See* Charles H. Chandler, *Gun-making as a Cottage Industry*, 3 J. on Firearms & Pub. Pol'y 155 (1990), *available at* http://web.archive.org/web/20080430055751/http://www.saf.org/journal/3_Chandler.html.

"broke into the schools and stole metal furniture to get steel tubing for gun barrels," and used them to make "crude firearms."[30] In the Solomon Islands, foreign military powers were able to prevent the importation of any firearms; yet according to Glenys Kinnock, one of two British Members of Parliament sent to the region in 2000, "There were armed men roaming around with home-made weapons...."[31] In Ghana, the current government, like the British colonialists, has outlawed firearms manufacture. Yet gunsmiths working in the forests with crude tools produce about a hundred thousand guns per year, including working copies of the AK-47 assault rifle.[32]

If tribespeople in Africa or the Pacific can make guns despite legal prohibitions, then *a fortiori* governments themselves are going to be able to make manufacture guns *en masse*, if they so choose.[33] And so can organized crime syndicates, warlords, and other nefarious entities—most of which have many more resources and wealth than Ghanaian forest-dwellers.

In sum, advocates of the ATT promise that, if enacted, human rights violations will be reduced because rights violators will be deprived of their weapons. To the contrary, an Arms Trade Treaty will not mitigate the illicit flow of arms, or the possession of arms by violators. The proposed ATT would merely act as a distraction from the search for workable methods for protecting human rights. There is no realistic prospect that an ATT will benefit humanity. For persons whose primary concern is the well-being of their fellow man, it is long past the time to stop wasting resources on supply-side control, and get to work on finding genuinely effective ways to reduce human rights abuses.

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30. Michael D. Quam, *Creating Peace in an Armed Society: Karamoja, Uganda, 1996*, 1 AFRICAN STUD. Q. 33, 37 (1997), *available at* http://web.africa.ufl.edu/asq/v1/1/3.pdf (visited June 27, 2010).

31. Richard Shears, *"Our escape from terror islands, by Glenys Kinnock,"* DAILY MAIL (London), June 8, 2000.

32. Emmanuel Addo Sowatey, *Small arms proliferation and regional security in West Africa: The Ghanaian case*, in 1 NEWS FROM THE NORDIC AFR. INST. 6 (Nordiska Afrikainstitutet 2005).

33. Some ATT proponents concede that for embargoes to work, they must include embargoes on materials used to make firearms. For high-quality modern firearms, this would necessarily mean embargoes on boron, chromium, copper, manganese, molybdenum, nickel, phosphorous, silicon, sulphur, and vanadium, among other materials. The ATT advocates further envision a system by which firearms materials imports would be allowed, as long as the materials were used for other purposes, rather than for arms manufacture. To the say the least, the history of the embargoes on Iraq, and the U.N.'s Oil-for-Food program, give no reason to believe that a large UN bureaucracy would be so efficient and incorruptible as to prevent major diversions of imports into weapons manufacture. Yet even if we build assumption upon assumption, and imagine that the UN's ATT bureaucracy will be able to control metals imports to prevent diversion into arms manufacture, the fact remains that the tribespeople of Ghana, Uganda, and the Solomons have demonstrated that people who have no access to the international market in strategic metals can still build themselves plenty of firearms. If tribes can, then so can governments. Significantly, embargoes that stimulate domestic production can contribute, in the long run, to international arms proliferation: "[T]he great irony that a country that built up its arms capacity to counter an international embargo, as South Africa did, celebrated its freedom from pariah status by using that capacity to plunge into export sales." *See* R. T. NAYLOR, WAGES OF CRIME: BLACK MARKETS, ILLEGAL FINANCE, AND THE UNDERWORLD ECONOMY 130 (2002). Today, South Africa is a prime supplier of arms to dictatorships such as the mass-murder regime of Robert Mugabe in Zimbabwe, even though such arms transfer are specifically forbidden by South Africa's own laws. Kopel et al, *supra* note 22, at 915-17. If the South African government will not obey South African laws, there is no reason to expect it to obey UN mandates, notwithstanding the self-righteous, dishonest, hypocritical moral posturing of South African delegations at arms control conferences.

III. Human Rights for All: The Better Route to Disarmament

Current strategies of weapons control are not leading to disarmament as expected, because of the pervasive lack of safety and security. Many researchers in the disarmament community are aware that the primary reason why people refuse to disarm is the need to retain weapons for self-defense. Those researchers also know that seeking aid from government is not an option for the poor or the persecuted. As Gary Haugen and Victor Boutros observed in a recent issue of *Foreign Affairs*: "The average poor person in the developing world has probably never met a police officer who is not, at best, corrupt or, at worst, gratuitously brutal. In fact, the most pervasive criminal presence for the global poor is frequently their own police forces."[34]

Small Arms Survey, the world's leading research center in support of firearms restrictions, concluded after conducting a survey in Burundi: "there must first be an improvement in security so that people are convinced that they can hand in their weapons without mortgaging their future protection....an improvement in the security situation remains a fundamental preoccupation for Burundians and that it is considered by many to be an essential precondition for disarmament."[35]

Saferworld, another well-known pro-restriction NGO, took a survey in Bulgaria in 2004, and learned that 86.6% of Bulgarians who would choose to own a firearm would do so to protect themselves and their families.[36] Saferworld summarized: "Voluntary collections are no substitute for anti-crime measures.... Levels of weapons possession will not drop until the state and its security providers function better."[37]

Similar results came from a 2005 Saferworld study of Albania, another study by Saferworld was conducted in 2005: "As expected, in the focus group interviews, protecting self, family (in particular among females) and property were most frequently mentioned as reasons for possessing firearms." One of their survey respondents complained: "When there is no state authority, no security, you have to provide yourself with self defence. You always hear in the news, the criminal escaped, or the police caught the criminal, but then he was set free by the court."[38]

Lawrence Doczy, then-Programme Manager for the Support to Security Sector Reform project of the United Nations Development Programme in Albania

34. Gary Haugen & Victor Boutros, *And Justice for All: Enforcing Human Rights for the World's Poor*, 89 Foreign Aff. 51, 52 (no. 3, May/June 2010).

35. Stéphanie Pézard & Savannah de Teasières, 'Insecurity is also a War': An Assessment of Armed Violence in Burundi 114 (Geneva Declaration Secretariat, 2009), *available at* http://www.genevadeclaration.org/fileadmin/docs/Geneva-Declaration-Armed-Violence-Burundi-EN.pdf.

36. Simon Rynn, Philip Gounev & Thomas Jackson, Taming The Arsenal: Small Arms And Light Weapons In Bulgaria 61, Fig. 2.6 (S.E. Eur. Clearinghouse For The Control Of Small Arms And Light Weapons, 2005), *available at* http://www.seesac.org/uploads/salwsurveys/Bulgarian_Eng_Web.pdf.

37. *Id.*, at 70.

38. Paul Holtom et al., Turning the Page: small arms and light weapons in Albania 60 (Center for Peace and Disarmament Education and Saferworld, 2005), *available at* http://www.smallarmssurvey.org/files/portal/issueareas/inventories/inventories_pdf/2005_Holtom_et_al.pdf.

summed it up: "You can imagine yourself as a villager, isolated in the mountains, out of sight of the nearest house....If you're in trouble, threatened, and the police can't come to help you because they don't have a vehicle, then you can't really be blamed for wanting to hang on to a weapon for your own protection."[39]

Many resources have been wasted on attempts at firearms prohibition or confiscation. The resources would have been better spent on efforts to guarantee the human rights enumerated by the UN's Declaration of Human Rights.

A. Reform from the Top Down

Four billion human beings have no access to the human rights protections.[40] As former U.N. Secretary-General Kofi Annan aptly said, "Although basic human rights principles enjoy universal agreement, the gap between rhetoric and reality is wide indeed. Put simply, the challenge is to close that gap. The daily litany of human suffering and inhumanity is all too familiar, with human rights denied and violated in many and varied ways."[41] The authors of the UN report *Making the Law Work for Everyone* state that "The legal empowerment agenda speaks to all these four billion. Their poverty in income terms may vary but their right to equal protection and opportunity under the rule of law does not."[42]

The path to full protection of human rights will be rocky because of the culture of corruption, kleptocracy, and impunity which is so strongly entrenched in many governments. Even so, the UN reminds us that "Legal empowerment draws upon powerful notions of freedom, fairness, and solidarity, and can, therefore, shape a compelling vision."[43]

"Ultimately," says Secretary-General Ban Ki-moon, "legal protection as the means to achieve freedom from fear and freedom from want is the most sustainable form of protection."[44] Ban's report explains that the UN is working to strengthen the rule of law at the national and international levels. He warns: "Constitutional guarantees and laws mean little without implementation. United Nations assistance thus helps to strengthen institutions, both formal and informal, to be well structured and financed, trained and equipped to make, promulgate, enforce, uphold and adjudicate the law—criminal, public or private—in a manner that

39. *See* Paul Henley, *Albania's Gun Culture Proves Hard to Shift*, BBC NEWS, Jan. 15, 2003.

40. *See* MAKING THE LAW WORK FOR EVERYONE, Report of the Commission on Legal Empowerment of the Poor, Vol. 1, at 19 (Commission on Legal Empowerment of the Poor & United Nations Development Programme, 2008), *available at* http://www.undp.org/legalempowerment/report/Making_the_Law_Work_for_Everyone.pdf (visited May 17, 2010).

41. *In larger freedom: towards development, security and human rights for all*, General Assembly Report A/59/2005/Add.3, at 1 (May 26, 2005), *available at* http://www2.ohchr.org/english/docs/A.59.2005.Add.3.pdf (visited May 21, 2010).

42. MAKING THE LAW WORK FOR EVERYONE, *supra* note 40, at 19.

43. *Id.*, at 46.

44. *Annual report on strengthening and coordinating United Nations rule of law activities*, Report of the Secretary-General. General Assembly report A/64/298, at ¶1 (Aug. 17, 2009), *available at* http://reliefweb.int/rw/RWFiles2009.nsf/FilesByRWDocUnidFilename/MYAI-7WU4RX-full_report.pdf/$File/full_report.pdf (visited May 21, 2010).

ensures protection, security and safety, and access to justice for all."[45]

When citizens are freed from the fear of violence and the traps of continuous poverty and abuse, the need for armed self-defense is reduced. Some peaceable people will still want to own firearms, but many others will put away their guns once the guns are no longer necessary for family security.

The UN is becoming ever more adamant that the rule of law at all levels is important to global peace and development:

> There is a growing consensus in the UN System and beyond that the rule of law is a precondition for sustainable peace and development at both international and national level....[46] A society where the rule of law is absent will inevitably be prone to conflict and will lack the enabling environment that is a prerequisite for sustainable development and poverty eradication....[47]

B. The Grass Roots Approach

Another approach to the problem of the lack of access to human rights is suggested by the group International Justice Mission (IJM), which works directly with victims. IJM also seeks accountability for the perpetrator of the abuse of human rights, and structural transformation of the judicial and police systems.[48] This complements the UN's approach of change at the state level. The various human rights abuses in which IJM intervenes include: sexual violence, slavery, illegal detention, police brutality, illegal property seizure, and sex trafficking.[49] Sixty-four percent of the group's financial aid is derived from individual donors.[50]

IJM President Gary Haugen and his co-author Victor Boutros point out that "The great legal reforms of the modern human rights movement often deliver only empty parchment promises to the poor."[51] This is because "the police and the judiciaries of the developing world often serve a narrow set of elite interests.... elites have little or no incentive to build legal institutions that serve the poor.... For them, a functioning public justice system might, in fact, be a problem."[52]

While firearms prohibition advocates insist that disarmament is a prerequisite

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45. *Id.*, at ¶32.

46. STRENGTHENING THE RULE OF LAW IN CONFLICT- AND POST- CONFLICT SITUATIONS 1 (U.N. Development Programme, n.d.), *available at* http://www.undp.org/cpr/documents/jssr/rule_of_law_final.pdf (visited May 21, 2010).

47. STRENGTHENING THE RULE OF LAW, at 2.

48. *See* IJM website home page, http://www.ijm.org/ (visited July 23, 2010) ("International Justice Mission is a human rights agency that secures justice for victims of slavery, sexual exploitation and other forms of violent oppression.").

49. *Id.*

50. *See* "IJM Financials," at http://www.ijm.org/whoweare/financials (visited July 23, 2010)

51. Haugen & Boutros, *supra* note 34, at 53.

52. *Id.*, at 55.

for development,[53] Haugen and Boutros emphasize the most important foundation for development is good governance:

> The absence of functioning public justice systems for the poor also jeopardizes half a century of development work, because there is no effective mechanism to prevent those in power from taking away or blocking access to the goods and services the development community is providing. Resources earmarked for aid efforts often never reach their intended beneficiaries. A World Bank study found that as much as 85 percent of aid flows are diverted away from their intended targets.[54]

But, they continue, "It is simply not true that all public authorities in the developing world are hopelessly corrupt, apathetic, and brutish." Good "partners exist; they just need political support, training, and resources."[55]

Examples were easy to find. In South Africa, on May 8, 2010, Catholic Bishops and Priests of Southern Africa spoke out against the slavery of human trafficking.[56] On May 17, the Governor of Nigeria's Edo State, Comrade Adams Oshiomhole, spoke out against the murders of journalists, and called for "partnership with Nigerian journalists for good governance."[57] In Ghana, authorities made it possible for peasants to gain easy title to their land so that it could not be stolen from them.[58]

Working in twelve countries, IJM reports that, in 2008, it helped restore stolen rights to 1,828 victims, it helped convict 96 perpetrators of human rights crimes, and in 274 presentations, it helped teach thousands of attendees how to protect themselves from violent oppression.[59]

Legal authorities in some nations are beginning to take constructive steps. Argentina is prosecuting a former secret service agent accused of perpetrating kidnapping and torture.[60] In Nigeria, projects to empower women, providing them legal services and protecting their human rights, are functioning at the grassroots

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53. *See, e.g., The Geneva Declaration on Armed Violence and Development, available at* http://www.genevadeclaration.org/fileadmin/docs/Geneva-Declaration-Armed-Violence-Development-091020-EN.pdf (visited June 23, 2010). For exploration of the issue of arms and development, *See* David B. Kopel, Paul Gallant & Joanne D. Eisen, *Does the Right to Bear Arms Impede or Promote Economic Development?* 6 ENGAGE 85 (2005, no. 1), *available at* http://davekopel.org/2A/Foreign/Development.pdf.

54. Haugen & Boutros, *supra* note 34, at 55.

55. *Id.*, at 61.

56. *See South Africa: Church to Celebrate Mass to Fight Human Trafficking*, Catholic Information Service for Africa (Nairobi), May 7, 2010, *available at* http://allafrica.com/stories/printable/201005070779.html (visited May 29, 2010).

57. *See Nigeria: Oshiomhole Decries Journalists' Killings*, THE VANGUARD, May 18, 2010, *available at* http://allafrica.com/stories/printable/201005190714.html (visited May 29, 2010).

58. *See* Gifty Mensah & Tiffany Focht, *Ghana: New Land Title Registration Takes Off*, Public Agenda (Accra), July 12, 2010.

59. *See* 2008 INTERNATIONAL JUSTICE MISSION ANNUAL REPORT, at 10, *available at* http://www.ijm.org/resources/financials/2008_AR.pdf (visited May 17, 2010).

60. *See Argentina Charges Operation Condor suspect*, BBC NEWS, May 10, 2010.

with funding from Oxfam.[61] And in Uganda, a 36-year-old man was arrested for kidnapping and impregnating a 12-year-old—a crime that is, in Uganda (as in many other nations) usually committed with impunity.[62]

Conclusion

The proposed ATT would merely repeat previous failed programs. In 2005, Robert Muggah, Jurgen Brauer, David Atwood, and Sarah Meek (all of them pro-control advocates) wrote:

> Although both supply and demand are acknowledged as integral to arms control and disarmament, in practice attention is devoted predominantly to regulating supplies, not demand....But recent experience on the ground suggests that lasting violence reduction, even prevention, depends on demand-side interventions. Ultimately, reducing the human costs of arms requires understanding and addressing factors that drive their individual and collective acquisition, not just their provision.[63]

As the authors warn, "the exclusive focus on the supply side may lead to inappropriate policies."[64]

We go a step further, and suggest that supply-side controls are nearly certain to fail, while demand-side reduction will inevitably result from better governance that protects human rights. The IJM notes that "When would-be perpetrators are afraid of the legal consequences of their abuse, the vulnerable do not need to fear them."[65] And when the vulnerable are no longer afraid, they vulnerable will no longer feel compelled to possess arms for family defense.

As R.T. Naylor wrote, "Attacking the actual trafficking seems doomed to failure....something else is desperately needed—namely, measures to reduce demand."[66]

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61. *See* Godwin Haruna, *Nigeria: Advancing the Rights of Women*, This Day (Lagos), May 12, 2010, *available at* http://allafrica.com/stories/printable/201005130323.html (visited June 26, 2010).

62. *See* Medina Tebujjakira, *Uganda: Man Held Over Kidnap, Defilement*, New Vision, May 19, 2010, *available at* http://allafrica.com/stories/201005200200.html (visited June 26, 2010).

63. *See* Robert Muggah, Jurgen Brauer, David Atwood, &Sarah Meek, *Means and Motivations: Rethinking Small Arms Demand*, in The HFG Review (Spring 2005), at 31, *available at* http://www.hfg.org/hfg_review/5/hfgsmallarms.pdf (visited June 21, 2010). *Cf.* Arghavan Gerami, *Enhancing the small arms demand reduction agenda: emerging policy/action recommendations from the 2001 International Workshop on Demand Reduction*, The Ploughshares Monitor (June 2001), *available at* http://www.ploughshares.ca/libraries/monitor/monj01d.html (visited May 31, 2010) ("The debate must move from 'state' security and a crime/arms control agenda to considerations of human cost... in order to examine security as it is actually experienced by individuals, and understand the incentives and disincentives behind the demand for weapons.")

64. *See Means and Motivations*, *supra* note 63, at 37.

65. 2008 International Justice Mission Annual Report, at 8, *available at* http://www.ijm.org/resources/financials/2008_AR.pdf (visited May 17, 2010).

66. R.T. Naylor, *The Structure and Operation of the Modern Arms Black Market*, in Lethal Commerce: The Global Trade in Small Arms and Light Weapons 55 (Jeffrey Boutwell, Michael T. Klare, & Laura W. Reed eds., 1995).

APPENDIX:
INACCURATE DATA USED TO JUSTIFY THE ARMS TRADE TREATY

Early in the 21st century, a common factoid used to promote international gun control was that small arms cause over half a million deaths annually: 300,000 from armed conflicts, plus 200,000 homicides or suicides. In a 2003 article, we suggested that the aforesaid figure might be too high; the leading reason was that the 300,000 figure included all war deaths—not just war deaths from small arms.[67]

In 2008, a different figure appeared. A report called *The Global Burden of Armed Violence* proposed 740,000 annual deaths.[68] The figure is often quoted by firearms restriction lobbyists. When we examined the GBAV report, we found that the estimates presented were not solidly supported. Here is a brief summary of the analysis from our forthcoming article in the *NYU Journal of Law & Liberty*.[69]

A. Direct and Indirect Conflict Deaths

How many direct deaths are there from armed violence in warfare every year? *The Global Burden of Armed Violence* (GBAV) says 52,000 per year. That's a figure from the upper ends of the databases cited by GBAV. The lower end could be 15,000 per year. The next question is how many "indirect deaths" there are from "conflict." For example, because of heavy combat in an area, most the crops are destroyed, so some people starve to death. The indirect deaths are, by definition, non-violent, and are usually caused by contaminated water, insufficient food, or lack of medical care. The GBAV suggests that a 4:1 ratio is plausible; four indirect deaths for every one direct death from conflict.

So the GBAV gets 200,000 indirect conflict deaths annually. On the other hand, if the GBAV had used the lower estimate from conflict deaths, then the 4:1 ratio would mean 60,000 indirect deaths.

The GBAV authors do not fully discuss the role of government and their agents in causing these deaths. In fact, the GBAV authors do not even discuss the problem of governments attacking humanitarian workers, causing the workers to withdraw and abort their efforts. Instead, GBAV instead blames "arms availability and misuse."[70]

Civilian deaths in Sri Lanka are an example of government-caused indirect conflict deaths. Reports surfaced in July 2009 of a "concentration camp." It

67. *See* David B. Kopel, Paul Gallant & Joanne D. Eisen, *Global Deaths from Firearms: Searching for Plausible Estimates*, 8 TEXAS REV. L. & POL. 114 (2003).

68. GLOBAL BURDEN OF ARMED VIOLENCE, The Geneva Declaration (2008), *available at* http://www.genevadeclaration.org/fileadmin/docs/Global-Burden-of-Armed-Violence-full-report.pdf.

69. David B. Kopel, Paul Gallant & Joanne D. Eisen, *How Many Global Deaths from Arms? Reasons to Question the 740,000 Factoid being used to Promote the Arms Trade Treaty*, 5 NYU J.L. & LIBERTY (2011, forthcoming), *available at* http://works.bepress.com/cgi/viewcontent.cgi?article=1034&context=david_kopel.

70. GLOBAL BURDEN OF ARMED VIOLENCE, *supra* note 68, at 138.

turned out to be the Manik Farm internment camp, built to contain many of the 300,000 reported Tamil refugees. In the camp, about 1,400 people per week were dying for lack of basic humanitarian services. The London *Times* reported: "News of the death rate came as the International Committee of the Red Cross revealed that it had been asked to scale down its operations by the Sri Lankan authorities, which insist that they have the situation under control." The *Times* reported that most of these deaths were caused by "water-borne diseases, particularly diarrhoea," and food and water were noted as inadequate.[71]

The indirect deaths in Sri Lanka were caused because the Sri Lankan government had a monopoly of force, and so could treat the Tamil refugees with impunity.

B. Non-Conflict Armed Violence (Ordinary Criminal Homicide)

Another component of GBAV's claim of 740,000 annual global deaths due to armed violence is that in 2004, the year with the most complete data,[72] there were 490,000 homicides worldwide.[73] The also state that 60 percent of homicides are perpetrated with firearms. The above estimates are derived from a variety of world databases. We asked the GBAV for copies of the calculations and formulas that GBAV had used to turn the raw data into the official estimates. Surprisingly, GBAV refused to do so.

This seems contrary to core rules for scientific integrity:

> The basic institutional assumption of the traditional scientific paper is that the method of investigation should be fully and accurately described within the paper itself in sufficient detail to enable a competent colleague to replicate the experiment....[74]

Here is one example of how the GBAV's refusal to disclose data prevents other researchers from replication. From 43 nations the United Nations has received data about the percentage of firearms which are used in homicides. From these nations, our calculations revealed a figure of firearm-related homicides of just fewer than 22 percent.[75] How does the GBAV thereby come up with the 60% global figure? Did they make some estimate of the percentage of firearms homicides in countries which *do not* have official data on the subject? The GBAV will not disclose how a 22 percent starting point was turned into 60 percent.

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71. Rhys Blakely, *Tamil death toll 'is 1,400 a week' at Manik Farm camp in Sri Lanka*, TIMES ONLINE, July 10, 2009, *available at* http://www.timesonline.co.uk/tol/news/world/asia/article6676792.ece (visited May 16, 2010).

72. *See Methodological Annexe* to the *Global Burden of Armed Violence*, Geneva, March 2009, at 13, *available at* http://www.genevadeclaration.org/fileadmin/docs/Global-Burden-of-Armed-Violence-Methdological-Annexe.pdf (visited Jan. 3, 2010).

73. GLOBAL BURDEN OF ARMED VIOLENCE, *supra* note 68, at 67.

74. "Scientific Writing and New Patterns of Scientific Communication," presentation at 5th International Conference on e-Social Science, Cologne, Germany, June 24-26, *available at* http://www.ncess.ac.uk/conference-09/workshopsandtutorials/scientific_communication/ (visited Feb. 22, 2010).

75. For details, *See* Kopel et al, *How Many Global Deaths from Arms?*, *supra* note 69.