

FIREARMS POSSESSION BY “NON-STATE ACTORS”:
THE QUESTION OF SOVEREIGNTY

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I. INTRODUCTION.....	374
II. ANCIENT GREECE.....	377
III. MAINLAND ASIA	381
A. <i>Cambodia</i>	382
B. <i>China</i>	384
C. <i>Japan</i>	385
IV. THE PACIFIC	386
A. <i>East Timor</i>	386
B. <i>Bougainville</i>	394
V. AFRICA	403
A. <i>Niger</i>	403
B. <i>Angola</i>	404
C. <i>Zimbabwe</i>	405
D. <i>Uganda</i>	413
VI. EUROPE.....	422
A. <i>The Warsaw Pact</i>	422
1. Afghanistan.....	422
2. 1989 Revolutions.....	423
3. Romania.....	425
B. <i>Bosnia</i>	426
VII. Conclusion.....	435

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I. INTRODUCTION

At United Nations conferences and in other international fora, many diplomats and NGOs have called for prohibiting or severely limiting firearms possession by “non-state actors.” Use of the phrase “non-state actors,” however, reveals a profound misunderstanding of the nature of sovereignty. While the phrase implies that sovereignty belongs to the government, sovereignty properly belongs to the people and is merely delegated by them to the government. In this article, we examine the connection between arms possession and sovereignty and we detail the horrible violations of human rights that have so often resulted from the prohibition of guns to “non-state actors.” From ancient Athens to modern Zimbabwe, weapons bans for “non-state actors” have often led to human rights abuses by illegitimate governments; these abuses are perpetrated against the legitimate sovereigns: the people of the nation.

When Confucius was asked what would be the first step if a government sought his advice, he answered that “[i]t would certainly be to rectify the names. . . . If the names are not correct, language is without an object.”¹

The modern push for civilian gun prohibition—for banning gun ownership by “non-state actors”—is based on the faulty premise that “the government” is equivalent to “the state.” To the contrary, as the Declaration of Independence teaches, it is a self-evident truth that governments are created by the people of a state, in order to protect the human rights of the people.² As sovereigns, the people have the authority to change the government when they determine that the government is no longer fulfilling its function of protecting the people’s rights. The people are the only true and legitimate rulers of a state, and the government is only their instrument and servant. To the extent that a government is not founded on the consent of the governed, it is illegitimate. As a United States federal district court put it, “the people, not the government, possess the sovereignty.”³

1. CONFUCIUS, THE ANALECTS OF CONFUCIUS 13:3, at 60 (Simon Leys trans., W.W. Norton 1997).

2. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

3. *Mandel v. Mitchell*, 325 F. Supp. 620, 629 (E.D.N.Y. 1971), *rev'd sub nom. on other grounds*, *Kleindienst v. Mandel*, 408 U.S. 753 (1972).

At the 2001 United Nations Small Arms Conference, Iran took the lead in promoting a ban on weapons supplies to “non-state actors.”⁴ The “non-state actors” clause would require vendors “to supply small arms and light weapons only to governments, or to entities duly authorized by government.”⁵ The clause would make it illegal, for example, to supply weapons to the Kurds or religious minorities in Iran, even if Iranian persecution or genocide drove them to forcible resistance. The clause would have made it illegal for the United States to supply arms to the oppressed Kurds and Shia of Iraq before the Saddam Hussein regime was toppled.

Had the “non-state actors” provision been in effect in 1776, the transfer of firearms to the American patriots would have been prohibited. Had the clause been in effect during World War II, the transfer of Liberator pistols to the French Resistance, and to many other resistance groups, would have been illegal.

At the U.N. Conference, the United States delegation stood firm against the “non-state actors” clause, rejecting compromise efforts to revise the language or to insert it into the preamble of the Program of Action.⁶ Although Canada pushed hard, the U.S. would not relent. U.S. Under-Secretary of State John Bolton pointed out that the proposal “would preclude assistance to an oppressed non-state group defending itself from a genocidal government.”⁷

U.N. Deputy Secretary-General Louise Frechette (of Canada) explained that in some parts of the world, an AK-47 could be obtained for \$15 or a bag of grain.⁸ Small-arms “proliferation erodes the authority of legitimate but weak governments,” she complained.⁹

4. See *Convening Of An International Conference On The Illicit Arms Trade In All Its Aspects: Report of the Secretary-General*, U.N. GAOR, 54th Sess., Prov. Agenda Item 76(f), at 12–13, U.N. Doc. A/54/260 (1999); *Draft report of the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects*, United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, at 2, U.N. Doc. A/CONF.192/L.6 (2001).

5. *Draft Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects*, U.N. Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, at 5, U.N. Doc. A/CONF.192/L.5 (2001), available at http://www.smallarmssurvey.org/source_documents/UN%20Documents/UN%202001%20Conference/A_CONF.192_L.5.pdf, revised by A/CONF. 192/L.5/Rev.1 (2001).

6. See Press Release, Statement by John R. Bolton, United States Under-Secretary of State for Arms Control and International Security Affairs, to the Plenary Session of the U.N. Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (July 9, 2001), available at http://www.un.int/usa/01_104.htm.

7. *Id.*

8. Stephen Romei, *World Bears Burden of America’s Right to Arms*, THE WEEKEND AUSTRALIAN, July 14, 2001, at 13.

9. Andrew Parker & Richard Wolffe, *UN Efforts to Curb Small Firearms Resisted by Bush Administration*, FIN. TIMES (U.K.), July 10, 2001, at 12 (quoting Ms. Frechette).

U.S. delegate Faith Whittlesey replied that the U.N. “non-state actors” provision “freezes the last coup. It favors established governments, while taking away rights from individuals. It does not recognize any value higher than peace, such as liberty.”¹⁰

According to the United Nations, any government with a U.N. delegation is a “legitimate” government. This U.N. standard conflicts with the Declaration of Independence’s standard that the only legitimate governments are those “deriving their just powers from the consent of the governed.”¹¹

Mao Zedong once observed that “[p]olitical power grows out of the barrel of a gun.”¹² American Federalist Noah Webster would have agreed. Arguing in 1787 for adoption of the proposed American Constitution, Webster urged Americans not to worry that the new federal government could become a military dictatorship, for “[b]efore a standing army can rule, the people must be disarmed.”¹³ Not all governments that have disarmed the people have become dictatorships, but dictatorship is rarely present without an attempt by the government to obtain a monopoly of arms. Let us study some examples.

10. David Kopel, *U.N. Gives Tyranny a Hand*, NAT’L REV. ONLINE, at <http://www.nationalreview.com/kopel/kopel080601.shtml> (Aug. 6, 2001). In a letter to the *New York Times*, answering a *Times* editorial criticizing the United States for not allowing the conference to be used as a tool to disarm civilians, Whittlesey elaborated:

The highest priority of freedom-loving people is liberty, even more than peace.

The small arms you demonize often protect men, women and children from tyranny, brutality and even the genocide too frequently perpetrated by governments and police forces. The world’s numerous dictators would be delighted to stem the flow of small arms to indigenous freedom fighters and civilians alike to minimize any resistance.

.....

The right of individual self-defense in the face of criminal intimidation and government aggression is a deeply held belief of the American people dating back to 1776, when small arms in the hands of private individuals were the means used to secure liberty and independence.

Faith Whittlesey, Letter to the Editor, *Small Arms in a Big Brutal World*, N.Y. TIMES, July 13, 2001, at A20 (responding to Editorial, *An American Retreat on Small Arms*, N.Y. TIMES, July 11, 2001, at A16).

11. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

12. Mao Tse-Tung, *Problems of War and Strategy* (Nov. 6, 1938), in 2 SELECTED WORKS 224 (Foreign Languages Press 1961–1965) (“Every Communist must grasp the truth, ‘Political power grows out of the barrel of a gun.’”).

13. NOAH WEBSTER, AN EXAMINATION INTO THE LEADING PRINCIPLES OF THE FEDERAL CONSTITUTION 43 (1787).

II. ANCIENT GREECE

In *The Republic*, Plato explained his theory for why societies always progress from oligarchy (rule by a small group of elite rich) to democracy (rule by the people) to despotism (rule by a single man).¹⁴ At each step, the control of arms is essential. In an oligarchy,

[t]hey next proceed to make a law which fixes a sum of money as the qualification of citizenship; the sum is higher in one place and lower in another, as the oligarchy is more or less exclusive; and they allow no one whose property falls below the amount fixed to have any share in the government. These changes in the constitution they effect by force of arms, if intimidation has not already done their work.¹⁵

Plato pointed out one of the disadvantages of oligarchy:

Another discreditable feature is, that, for a like reason, they are incapable of carrying on any war. Either they arm the multitude, and then they are more afraid of them than of the enemy; or, if they do not call them out in the hour of battle, they are oligarchs, indeed, few to fight as they are few to rule.¹⁶

Eventually, the oligarchy is supplanted by democracy, “whether the revolution has been effected by arms, or whether fear has caused the opposite party to withdraw.”¹⁷ In other words, either armed revolution or the credible threat of armed revolution causes the oligarchy to lose its power. But after a while, the people succumb to demagoguery, and a tyrant arises. The tyrant does not begin his worst abuses until after he has disarmed his victims. In *The Republic*, which is a series of teacher-student dialogues, the teacher explains:

Teacher: . . . [T]hen the parent [the people] will discover what a monster he has been fostering in his bosom; and, when he wants to drive him out, he will find that he is weak and his son [the tyrant] strong.

Student: Why, you do not mean to say that the tyrant will use violence? What! beat his father if he opposes him?

14. Plato, *THE REPUBLIC*, book VIII (Benjamin Jowett trans., Charles Scribner’s Sons 1928).

15. *Id.* at 324–25.

16. *Id.* at 325–26.

17. *Id.* at 334.

Teacher: Yes, he will, having first disarmed him.¹⁸

In Plato's ideal state, the one-man rule of a tyrant is replaced by the one-man rule of a philosopher-king. The king uses a professional military/police class, the Guardians, to keep everyone else in line. Like the people of the former Soviet Union, the common people of Plato's ideal state would be trained periodically (once a month) in use of arms, but would have no right to arms, and arms would be centrally stored in state armories.¹⁹

In Plato's Utopia, "no man, and no woman, be ever suffered to live without an officer set over them, and no soul of man to learn the trick of the doing one single thing of its own sole motion, in play or in earnest, but, in peace as in war, ever to live with the commander in sight"²⁰

Plato's most important philosophic descendent is the German, Georg Wilhelm Friedrich Hegel (1770–1831). Hegel provided the intellectual foundation for fascism, seeing the state as sacred, and the individual as absolutely subservient to the state.²¹

Aristotle, like Plato, considered arms a fundamental source of political power; however, unlike Plato, Aristotle wanted ordinary people to possess this power. In *The Politics*, Aristotle argued that each citizen should work to earn his own living, should participate in political or legislative affairs, and should bear arms.²²

Aristotle criticized the theory of another philosopher, Hippodamus, who wanted a strict division of roles between skilled labor, agriculture, and defense: "But the husbandmen have no arms, and the artisans neither arms nor land, and therefore they become all but slaves of the warrior class."²³

Aristotle considered the possession of arms synonymous with possession of political power: "when the many administer the state for the common interest, the government is called by the generic name—a constitution. . . . [I]n a constitutional government the

18. *Id.* at 353.

19. PLATO, LAWS Book IX (A.E. Taylor ed. 1966).

20. *Id.* at 335.

21. GEORG WILHELM FRIEDRICH HEGEL, HEGEL'S PHILOSOPHY OF RIGHT (T.M. Knox trans., 1942) (1821). See PAUL JOHNSON, THE BIRTH OF THE MODERN: WORLD SOCIETY 1815–1830, at 810–22 (1991); James B. Whisker, *Italian Fascism: An Interpretation*, J. HISTORICAL REV. Vol. 4, No. 1 at 5–27 (2001).

22. ARISTOTLE, THE POLITICS (Benjamin Jowett trans., Stephen Everson ed. 1988).

23. *Id.* at 37.

fighting-men have the supreme power, and those who possess arms are the citizens.”²⁴

Aristotle linked the development of democracy with military innovations making foot soldiers relevant: “But when cities increased and the heavy armed [as opposed to the cavalry] grew in strength, more had a share in the government; and this is the reason why the states which we call constitutional governments have been hitherto called democracies.”²⁵

It was inevitable to Aristotle that control of arms would lead to control of the state, “since it is an impossible thing that those who are able to use or to resist force should be willing to remain always in subjection[,] . . . those who carry arms can always determine the fate of the constitution.”²⁶

Arms were essential to any good government:

Let us then enumerate the functions of a state, and we shall easily elicit what we want. . . . [T]hirdly, there must be arms, for the members of a community have need of them, and in their own hands, too, in order to maintain authority both against disobedient subjects and against external assailants.²⁷

It was hardly surprising to Aristotle that dictators always disarmed their subjects: “As of oligarchy so of tyranny . . . Both mistrust the people, and therefore deprive them of their arms.”²⁸ Sometimes the disarmament was not accomplished directly, but instead by encouraging people to neglect arms training:

The devices by which oligarchies deceive the people . . . relate to . . . the use of arms[] and gymnastic exercises. . . . Concerning the possession of arms, and gymnastic exercises, they legislate in a similar spirit [i.e., trying to keep the poor from participating]. For the poor are not obliged to have arms, but the rich are fined for not having them; and in like manner no penalty is inflicted on the poor for non-attendance at the gymnasium, and consequently, having nothing to fear, they do not attend, whereas the rich are liable to a fine, and therefore they take care to attend.²⁹

Theorizing that the people who bear the burdens of government should be the ones who run the government, Aristotle wrote that “The

24. *Id.* at 61.

25. *Id.* at 101.

26. *Id.* at 168.

27. ARISTOTLE, *supra* note 22, at 167.

28. *Id.* at 137.

29. *Id.* at 100–01.

government should be confined to those who carry arms.”³⁰ The early American Republic essentially reflected this scheme; the group of people liable for militia duty was roughly the same as the group of people eligible to vote.

In *The Athenian Constitution*, written about 350 B.C., Aristotle gave a political history of the city-state of Athens.³¹ Rediscovered in the late 19th century, *The Athenian Constitution* provides historical evidence for Aristotle’s theory that tyrants aim to disarm the people.

In the sixth century B.C., a tyrant named Pisistratus took over Athens.³² Aristotle explained how the tyrant obtained absolute power by disarming the people of every city he controlled:

After his victory in the battle at Pallene he captured Athens, and when he had disarmed the people he at last had his tyranny securely established, and was able to take Naxos [a Greek island] and set up Lygdamis as ruler there. He effected the disarmament of the people in the following manner. He ordered a parade in full armour in the Theseum [a temple], and began to make a speech to the people. He spoke for a short time, until the people called out that they could not hear him, whereupon he bade them come up to the entrance of the Acropolis, in order that his voice might be better heard. Then, while he continued to speak to them at great length, men whom he had appointed for the purpose collected the arms and locked them up in the chambers of the Theseum hard by, and came and made a signal to him that it was done. Pisistratus accordingly, when he had finished the rest of what he had to say, told the people also what had happened to their arms; adding that they were not to be surprised or alarmed, but go home and attend to their private affairs, while he would himself for the future manage all the business of the state.³³

Pisistratus was succeeded by his son Hippias.³⁴ Hippias’s younger brother Hipparchus was assassinated.³⁵ “At first the government could find no clue to the conspiracy; for the current story, that Hippias made all who were taking part in the procession leave their arms, and then detected those who were carrying secret daggers, cannot be true, since at that time they did not bear arms in the processions, this being a

30. *Id.* at 101.

31. ARISTOTLE, *THE ATHENIAN CONSTITUTION* (Frederick G. Kenyon, trans. 1901), available at http://classics.mit.edu/Aristotle/athenian_const.html [hereinafter *ATHENIAN CONSTITUTION*].

32. *See id.* at Parts 14, 15.

33. *See id.* at Part 15. Pisistratus maintained a peaceful foreign policy, “probably because he dared not allow the Athenian citizenry to bear arms in a major war.” *Peisistratus*, in 9 *ENCY. BRITANNICA* 242–43 (15th ed. 1998).

34. *See ATHENIAN CONSTITUTION*, *supra* note 31, at Part 18.

35. *Id.*

custom instituted at a later period by the democracy.”³⁶ In other words, carrying arms during a parade was an activity of freemen in a democracy, not of the subjects of a tyrant.

After Athens’s defeat by Sparta in the Peloponnesian War, Sparta appointed the Thirty Tyrants to rule Athens in 404 B.C.³⁷ Among this group of thirty was a long-time Athenian politician Theramenes, who had negotiated the peace with Sparta, but who opposed the more extreme measures of the Thirty.³⁸ Aristotle explained how the Thirty Tyrants consolidated power, and how disarmament prepared the way for direct military rule:

Thereupon the Thirty decided to disarm the bulk of the population and to get rid of Theramenes; which they did in the following way. They introduced two laws into the Council, which they commanded it to pass; the first of them gave the Thirty absolute power to put to death any citizen who was not included in the list of the Three Thousand, while the second disqualified all persons from participation in the franchise who should have assisted in the demolition of the fort of Eetioneia, or have acted in any way against the Four Hundred who had organized the previous oligarchy [which had ruled in 411 B.C.]. Theramenes had done both, and accordingly, when these laws were ratified, he became excluded from the franchise and the Thirty had full power to put him to death. Theramenes having been thus removed, they disarmed all the people except the Three Thousand, and in every respect showed a great advance in cruelty and crime. They also sent ambassadors to Lacedaemonian [Sparta] to blacken the character of Theramenes and to ask for help; and the Lacedaemonians, in answer to their appeal, sent Callibius as military governor with about seven hundred troops, who came and occupied the Acropolis.³⁹

Let us now see if the views of Plato and Aristotle (and Mao and Webster) about the relationship of arms and sovereignty are true today.

III. MAINLAND ASIA

At the U.N. Small Arms Conference, Nguyen Thanh Chau, representing Viet Nam’s communist dictatorship, which shot its way into power, called for “a comprehensive approach to the prevention, reduction and eradication of the illicit trade in small arms and light

36. *Id.*

37. *See id.* at Part 34.

38. *See id.* at Parts 34, 36.

39. *See* ATHENIAN CONSTITUTION, *supra* note 31, at Part 37.

weapons at all levels.”⁴⁰ One of the dominos that fell during the Vietnam War illustrates what can happen when the people have no arms.

A. Cambodia

The French colonial government introduced gun control in Cambodia when the puppet kings Sisowath and Monivong, Sisowath’s son, proclaimed various Royal Ordinances. The first, in 1920, restricted gun carrying.⁴¹ A subsequent law, established in 1938, set up a rigorous system of gun licensing.⁴² By 1956, gun possession for self-defense, target-shooting, or collecting was banned.⁴³ Hunters were the only non-government individuals allowed to possess firearms, and a hunter could own only one gun.⁴⁴ The laws were apparently motivated by fears of Communist and other anti-colonial insurgencies, and remained in effect after Cambodia was granted independence in 1953.⁴⁵

When the Khmer Rouge took power in 1974, they did not enact any new gun laws; in fact, they created no laws at all, other than a new constitution.⁴⁶

As detailed in the book *Lethal Laws*, immediately after the Khmer Rouge came to power, they began to work intensively to round up firearms in private hands.⁴⁷ One Cambodian woman recalled the soldiers’ search for private arms:

Eang watched soldiers stride onto the porches of the houses and knock on the doors and ask the people who answered if they had any weapons. “We are here now to protect you,” the soldiers said, “and no one has a need for a weapon anymore.” People who said

40. Nguyen Thanh Chau (Viet Nam), on behalf of the Association of South-East Asian Nations (ASEAN), in Press Release, United Nations Conference on the Illicit Trade in Small Arms, Small Arms Conference Hears Call For Stepped-Up Control Of Illicit Trade, U.N. Doc. DC/2787 (July 10, 2001), available at <http://www.un.org/News/Press/docs/2001/dc2787.doc.htm>.

41. JAY SIMKIN ET AL., *LETHAL LAWS* 305 (1994).

42. See *id.*; Royal Ordinance No. 55 (Mar. 28, 1938), in Cambodian Penal Code Art. 324 (1956), reprinted in SIMKIN ET AL., *supra* note 41, at 319–23.

43. Cambodian Penal Code Art. 322, 323 (1956), reprinted in SIMKIN ET AL., *supra* note 41, at 318.

44. Royal Ordinance No. 55, *supra* note 42, at 320–21.

45. SIMKIN ET AL., *supra* note 41, at 305.

46. See DEMOCRATIC KAMPUCHEA CONSTITUTION (Jan. 5, 1976), available at http://www.dccam.org/Documents%20and%20Microfilm/democratic_kampuchea_constitutions.htm (last visited May 20, 2004).

47. SIMKIN ET AL., *supra* note 41, at 306.

that they kept no weapons were forced to stand aside and allow the soldiers to look for themselves.

... The round-up of weapons took nine or ten days, and once the soldiers had concluded that the villagers were no longer armed they dropped their pretense of friendliness.

... The soldier said that everyone would have to leave the village for a while, so that the troops could search for weapons; when the search was finished, they could return.⁴⁸

As soldiers forced people out of their villages and cities, the soldiers searched them thoroughly and confiscated all weapons and foreign currency.⁴⁹ To the limited extent that Cambodians owned guns through the government licensing system, the names of registered gun owners were, of course, available to the new government.⁵⁰

Cambodia's current, non-genocidal, Communist dictatorship of Hun Sen does not trust its people with arms any more than its Khmer Rouge predecessor did. At the U.N. Conference, Sar Kheng, Cambodian Minister of the Interior, called “illegally held arms”—i.e., all civilian arms—“major obstacles to efforts to reconstruct and rehabilitate the country and to the building of democracy and respect for human rights.”⁵¹ He explained:

The Government of Cambodia has designated management of all arms and explosives as its major task, and has instituted several measures, such as collecting and confiscating all arms, explosives and ammunition left by the war; instituting practical measures to reduce the reckless use of arms; and strengthening the management of weapons registration. Those who possessed weapons during the civil war wish to continue possessing them for self-protection. On the other hand, criminals have no intention of giving up their weapons, because they need them to carry out their criminal offences. However, with assistance from the European Union and from non-governmental organizations (NGOs), there has been some

48. Alec Wilkinson, *A Reporter at Large: A Changed Vision of God*, NEW YORKER, Jan. 24, 1994, at 54–55.

49. SIMKIN ET AL., *supra* note 41, at 306.

50. *Id.*

51. Sar Kheng, Deputy Prime Minister, Minister of the Interior of Cambodia, *in* Press Release, United Nations Conference on the Illicit Trade in Small Arms, Small Arms Conference Hears Call For Stepped-Up Control Of Illicit Trade, U.N. Doc. DC/2787 (July 10, 2001), available at <http://www.un.org/News/Press/docs/2001/dc2787.doc.htm>.

success in raising the awareness of the problem among a majority of Cambodians.⁵²

More than 112,000 light weapons, together with several tons of arms, explosives, and ammunition, have been collected.⁵³ Over half of those weapons and some 4,000 landmines have been crushed and burned in public ceremonies under the slogan “Flames for Peace.”⁵⁴

Although the current Cambodian government is not engaged in genocide, it is a dictatorship with a poor human rights record.⁵⁵ The United Nations and the European Union are both promoting gun-surrender programs in Cambodia, and these programs amount to neo-colonial assault on the sovereignty of the people of Cambodia, carried out (as most neo-colonial programs are) with the connivance of a local elite that holds power by force of arms.⁵⁶

B. China

After taking power at the barrel of a gun, Chairman Mao disarmed the Chinese people, while claiming to rule in their name. He thereafter perpetrated the largest mass murder in the history of world, killing approximately twenty million people.⁵⁷ The current dictatorship in China extols Mao as a “Great Leader” who made a few mistakes.

Far from being a “dictatorship of the proletariat,” since 1949 China has been a dictatorship of a self-serving, rapacious, wealthy, and hegemonic elite. The government is so afraid of common people that it never holds elections and the press is rigorously censored. China’s very repressive gun controls authorize the death penalty for “serious” cases of illegal gun sales or possession.⁵⁸

Though Germany has acknowledged the shameful horrors of the Nazi era and South Africa’s Truth Commission has investigated the

52. *Id.*

53. *Id.*

54. *Id.*

55. For details, see the Human Rights Watch reports on Cambodia, available at <http://www.hrw.org/asia/cambodia.php>. Among other things, Human Rights Watch has noted “cases of political violence, arbitrary restrictions on public rallies and party meetings, unfair and unequal access to the broadcast media, and numerous violations of the election law.” Human Rights Watch, *Coercion, Threats, and Vote-Buying in Cambodia’s National Elections* (July 2003), at <http://www.hrw.org/backgrounder/asia/cambodia/elections.htm>.

56. See Kheng, *supra* note 51.

57. See SIMKIN ET AL., *supra* note 41, at 187.

58. See Decision of the Standing Committee of the National People’s Congress Regarding the Severe Punishment of Criminals Who Seriously Endanger Public Security (Sept. 2, 1983), reprinted in SIMKIN ET AL., *supra* note 41, at 227.

apartheid era, China’s continuing failure to confront its own culture of government-sponsored violence and genocide is one reason why the thuggish Chinese “government” is not a member of the community of civilized nations.

C. Japan

Contemporary Japan demonstrates that disarmament does not necessarily lead to dictatorship or genocide. Nevertheless, Japan’s history shows that when the people are disarmed, a dangerous government can abuse not only its own people, but those of other nations as well.

As Japanese historian Hidehiro Sonoda explained, the military was able to dominate Japan in the 1920s, 30s, and early 40s partly because “[t]he army and the navy were vast organizations with a monopoly on physical violence. There was no force in Japan that could offer any resistance.”⁵⁹

The military dictatorship of the 1920s was simply following the precedent of the dictator Hidéyoshi, who disarmed Japan in 1588 with the Sword Hunt.⁶⁰ He did so because, as he put it, the possession of weapons by peasants “makes difficult the collection of taxes and tends to foment uprisings.”⁶¹ What happened after the Sword Hunt was consistent with the theory in Plato’s *The Republic* and Aristotle’s *The Politics*: when a group of people is deprived of a role in the armed defense of a society, they will eventually be deprived of any role in governing that society.⁶²

In *The Samurai: A Military History*, Stephen Turnbull wrote:

Hidéyoshi’s resources were such that the edict was carried out to the letter. The growing social mobility of peasants was thus flung suddenly into reverse.

. . . Hidéyoshi had deprived the peasants of their weapons. Iéyasu [the next ruler] now began to deprive them of their self respect. If a peasant offended a samurai he might be cut down on the spot by the samurai’s sword.⁶³

Mary Elizabeth Berry explained in her book, *Hidéyoshi*:

59. Hidehiro Sonoda, *The Imperial Army and Navy*, in SEVENTY-SEVEN KEYS TO THE CIVILIZATION OF JAPAN 200 (Tadao Umesao ed., 1985).

60. STEPHEN R. TURNBULL, *THE SAMURAI: A MILITARY HISTORY* 190 (1977).

61. *Id.*

62. *See supra* Part II.

63. TURNBULL, *supra* note 60, at 190.

The mounted magistrates who rounded up everything from muskets to daggers changed men's thoughts about themselves. Farmers had borne arms for centuries and taken part in the contests that helped fix the rights of lordship. Their military role brought political influence and obscured class boundaries. A pivotal member of his community by the warring-states era, the armed peasant symbolized opportunity. The confiscation of his weapons, far more than a "hardship," altered a condition of life.⁶⁴

Disarmed, the Japanese peasantry lost any role in governing their nation.

IV. THE PACIFIC

A. East Timor

On May 20, 2002, a new nation was born: East Timor.⁶⁵ Slightly larger than the state of Maryland, the island of Timor lies in Southeast Asia, 400 miles northwest of Australia. The Portuguese first visited the island in the early 1500s.⁶⁶ Beginning in the 18th century, the Dutch competed with the Portuguese for control of Timor.⁶⁷ In the middle of the 19th century, they divided the island between them. When the Dutch East Indies gained independence in 1949 as the nation of Indonesia, West Timor was absorbed into Indonesia and Portugal retained the eastern part of the island as its colony.

The Portuguese occupation of Timor was characterized by exploitation of its people through oppressive taxation, forced labor, and other human-rights abuses. Portugal's harsh treatment of the Timorese led to widespread resentment, and eventually, violent rebellion.⁶⁸ Although Portugal was able to suppress the rebellions, resistance continued.

The Carnation Revolution, a relatively nonviolent military coup, toppled Portugal's fascist government on April 25, 1974.⁶⁹ The new government in Lisbon was dedicated to democracy and to the decolonization of Portugal's overseas territories.⁷⁰ Thirsting for freedom, the Timorese leadership began preparing for liberation. As

64. MARY ELIZABETH BERRY, *HIDÉYOSHI* 104 (1982).

65. See Jane Perlez, *Impoverished East Timor Exults Over Independence*, N.Y. TIMES, May 20, 2001, at A6.

66. JOHN G. TAYLOR, *EAST TIMOR: THE PRICE OF FREEDOM* 3 (1999).

67. *Id.* at 4–5.

68. See *id.* at 9–12.

69. *Id.* at 25.

70. See *id.* at 25–43.

President Kay Rala Xanana Gusmão wrote of those days, “[o]ur only ideology was *ukun rasik an*, self-determination.”⁷¹ From Gusmão’s perspective, the only choice the Timorese had was between freedom and total extermination.⁷²

When Portugal abandoned its colonies in 1975, the people of Portuguese Timor (hereinafter known as “East Timor”) rapidly asserted their sovereignty, and declared independence.⁷³ But independence was to be short-lived, as there was insufficient time for the revolutionaries to gain international recognition as a nation and insufficient time for the creation of an armed force to protect its sovereignty.

Nine days after the Carnation Revolution, Indonesia annexed East Timor while claiming the tacit approval of President Gerald Ford and Secretary of State Henry Kissinger.⁷⁴ According to secret documents made public on December 6, 2001 by the National Security Archive at Georgetown University, former Indonesian President Suharto told Ford and Kissinger: “We want your understanding if we deem it necessary to take rapid or drastic action [in East Timor].”⁷⁵ Ford replied, “We will understand and will not press you on the issue.”⁷⁶

On December 7, 1975, Indonesia invaded.⁷⁷ Within six months, there were 40,000 Indonesian troops in East Timor.⁷⁸ At this point, what was the legal status of the East Timorese resistance? Were they the legitimate defending force of a sovereign country resisting invasion by another sovereign nation, or were they non-state actors resisting those who claimed to be the legitimate sovereign government? Considering that the East Timorese fighters were plainly acting to defend human rights against killers, why should their rights

71. XANANA GUSMÃO, *TO RESIST IS TO WIN* 34 (Sarah Niner ed., Jose Luis Perestrelo Botelho et al. trans., 2000).

72. *See id.*

73. *See id.* at 36–37 (“There was a need to make a unilateral declaration of independence, and it would be made public the following afternoon [Nov. 28, 1975]. It was a simple ceremony of the poor country that we were, facing a war of invasion that was burning the first pieces of our Homelands. It was a ceremony we stole from the enemy and if there was any joy it was hidden in our hearts, a treasure that was hard to share. People’s faces showed general apprehension that reflected the seriousness of the situation, and nobody asked about the future . . . I filmed the ceremony. [Australian journalist] Roger East asked if he could release the film in Australia; stupidly, I said no.”).

74. *See* Roy Eccleston, *US Supported Timor Invasion*, *THE WEEKEND AUSTRALIAN*, Dec. 8, 2001 at World 10 (describing the assent of President Ford and Secretary Kissinger to Indonesia’s invasion of East Timor, in addition to use of U.S. military equipment).

75. *Id.*

76. *Id.*

77. TAYLOR, *supra* note 66, at 200.

78. *Id.* at 80.

under international law depend on whether the label “non-state actors” was attached?

The armed occupation lasted twenty-four years. In an attempt to bring East Timor to its knees, Indonesia resorted to forced sterilization (paid by for the World Bank),⁷⁹ mass starvation, rape, murder, torture, and conventional and napalm bombing directed at isolated villages, most of which were leveled to the ground.⁸⁰ Between 1975 and mid-1999, more than 200,000 East Timorese—nearly a third of its pre-invasion population of 700,000—had been killed.⁸¹ The overwhelming majority of casualties were civilians. It is estimated that 120,000 East Timorese were killed by Indonesian troops or starved to death in just the first few years of the invasion.⁸²

United Nations resolutions quickly demanded that Indonesia withdraw all its forces from East Timor.⁸³ The resolutions were consistently ignored by Indonesia, and East Timorese civilians continued to be murdered.

Even so, Timorese resistance stiffened. In spite of the resources expended by Indonesia to prosecute the war, a cost of up to one million dollars a day, the Armed Forces for the National Liberation of East Timor (Falintil) waged a successful guerrilla campaign using weapons left over from the days of Portuguese rule, or stolen from Indonesian troops.

In the eyes of the United Nations, however, once those arms fell into the hands of Falintil, they crossed the line from what the United Nations defines as “licit” guns into “illicit” guns—for these guns were now owned by “non-state actors.” The implication is that “non-state” guns will be used in a criminal fashion, whereas “state” (actually, “government”) guns will be used properly. Yet as Charles Scheiner, National Coordinator for the East Timor Action Network, correctly pointed out: “The guns used by the Indonesian military to kill 200,000 East Timorese civilians were almost all ‘legal,’” but “the line between legality and illegality is irrelevant to the victims”⁸⁴

79. *Id.* at 158–59.

80. *See id.* at 203–07; *About East Timor and the East Timor Action Network*, 7 EAST TIMOR ESTAFETA No. 1 (Winter 2001) (describing human rights violations taking place in East Timor between 1975 and 1999) [hereinafter ESTAFETA], at <http://etan.org/estafeta/01/winter/2about.htm>.

81. ESTAFETA, *supra* note 80.

82. *See* Perlez, *supra* note 65.

83. *See* TAYLOR, *supra* note 66, at 72.

84. Charles Scheiner, Address at Guns Know No Borders Rally, Dag Hammarskjold Plaza, New York (July 17, 2001), available at <http://etan.org/et2001c/july/15-21/17etan.htm> (last visited May 20, 2004).

Transfers to “non-state actors” armed Falintil. Measured against U.N. standards, the Falintil guerrillas were in unlawful possession of the firearms they used to defend their country and their people when there was no one else to do so.

According to the U.N. Institute for Disarmament Research, “[t]he ready availability of weapons makes it far too easy for sub-state groups to seek remedy for grievances through the application of violence”⁸⁵ In other words, the United Nations was upset that it was “far too easy” for Falintil to resist Indonesia’s genocide. Although the United Nations did offer “resolutions” telling Indonesia to get out of East Timor, those words were meaningless without the force supplied by Falintil’s “illicit” arms.

James F. Dunnigan, editor of StrategyPage.com,⁸⁶ pointed out why Falintil—a guerrilla army comprised of both men and women, equipped with only small arms and support from the civilian populace—prevailed against the might of Indonesia:

The basic idea behind guerilla war is to keep your force intact, not to fight the enemy. Guerillas who keep those priorities straight are successful. The East Timor separatists used a sound strategy, and eventually, the situation became intolerable for the occupying power That was how the American Revolution was fought. Washington didn’t have to win, or even fight, battles, he just had to keep the Continental army intact until the British parliament got tired of paying for the North American war.⁸⁷

In 1999, the Indonesian government, headed by B. J. Habibie, finally agreed to an East Timorese vote on self-determination: autonomy under Indonesian rule, or complete independence.⁸⁸

Indonesia, though, had merely changed tactics. The *Sydney Herald* detailed Indonesia’s “three-pronged attempt” to sabotage the referendum process: “to first destabilise the situation in East Timor sufficiently to prevent a referendum; second, to terrorise the population sufficiently to ensure a pro-integration outcome in case a

85. Andrew Latham, *Light Weapons and Human Security—A Conceptual Overview*, in *SMALL ARMS CONTROL: OLD WEAPONS, NEW ISSUES* 13–14 (Jayantha Dhanapala et al. eds., 1999).

86. See <http://www.StrategyPage.com> (last visited May 20, 2004).

87. E-mail from James F. Dunnigan, Editor-in-Chief, StrategyPage.com, to David Kopel (Feb. 23, 2002) (on file with authors).

88. See Seth Mydans, *In Huge, Model Vote, East Timorese Choose Their Future*, N.Y. TIMES, Aug. 31, 1999, at A3.

referendum takes place; and third, to ‘Timorise’ the conflict by presenting to the world a picture of ‘warring Timorese factions.’”⁸⁹

Accordingly, the Indonesian military set about training “militias” in East Timor. These bore no resemblance to genuine militias, which consist of citizen-soldiers defending their homeland. Indonesia’s “militias” were really armed gangs of thugs targeting acts of mayhem, rape, and intimidation at anyone believed to be in support of independence.⁹⁰ While Jakarta tried to cast Falintil as the cause of continued violence in East Timor, it was evident that the Indonesian army and its “militia” thugs orchestrated the violence.⁹¹

In April 1999, Indonesian Foreign Minister Ali Alatas demanded that the East Timorese give up their arms as a pre-condition for peace.⁹² East Timor resistance leader Xanana Gusmão refused. He reiterated that Falintil guerrillas were never involved in acts of terrorism but had always acted in self-defense. They should therefore be treated as “an army of liberation and not as a band of bandits.”⁹³ Gusmão did, however, agree to a U.N.-brokered compromise between East Timor and Jakarta.⁹⁴ Falintil and the Indonesian militias were to

89. Michael Wagner, *Army in the Way of Freedom*, SYDNEY MORNING HERALD, Apr. 29, 1999, at 15.

90. Jonathan Head, *Militia Terror in Timor*, BBC News (July 10, 1999), available at <http://news.bbc.co.uk/1/hi/world/asia-pacific/391114.stm>.

91. Although the sovereign states of the world accepted the fiction portrayed by Jakarta, it was clear that Falintil and the East Timorese were indeed the victims. See *Timor Governor’s Sentence Upheld*, BBC NEWS (Apr. 12, 2004), at <http://news.bbc.co.uk/1/hi/world/asia-pacific/3619487.stm>.

The Supreme Court in Indonesia has upheld a three-year jail sentence against an ex-East Timor governor for failing to stop the violence in 1999. The verdict means he will be the first Indonesian official to be punished for the bloodshed, which swept East Timor during its vote for independence. Jose Abilio Osorio Soares is accused of crimes against humanity . . . Elements within Indonesia’s powerful military did what they could to derail East Timor’s 1999 referendum on independence. Their actions included setting up militias to try and intimidate the East Timorese into voting to stay part of Indonesia. After it became apparent that the vote was overwhelmingly in favour of independence, the militias and their sponsors went on a rampage. The United Nations estimates more than 1,000 people were killed at the time.

Id.

92. Press Release, United Nations, Transcripts of Two Press Conferences by Secretary-General Kofi Annan at Headquarters, at 6–7, U.N. Doc. SG/SM/6966 (Apr. 23, 1999), available at <http://www.un.org/News/Press/docs/1999/19990423.SGSM6966.html>.

93. *Disarming Falintil*, SYDNEY MORNING HERALD, Oct. 6, 1999, at 20.

94. See Press Release, United Nations, Transcript of Press Conference by Secretary-General Kofi Annan, Foreign Minister of Indonesia Ali Alatas, Foreign Minister of Portugal Jaime Gama, U.N. Doc. SG/SM/6980 (May 6, 1999), available at <http://www.un.org/News/Press/docs/1999/19990506.SGSM6980.html>.

refrain from carrying weapons except in designated areas called “cantonments.”⁹⁵

While Falintil remained passive in accordance with the truce, the Indonesian military continued to encourage militia misbehavior, leaving the undefended East Timorese populace easy prey.⁹⁶ Because independence depended on the referendum, which in turn depended on the cantonment of Falintil, East Timorese leaders had no choice.

On May 5, 1999, agreements were signed allowing the referendum to go forward, and on June 11, U.N. Security Council Resolution 1246 formally established the United Nations Mission in East Timor (UNAMET) for the purpose of organizing and supervising the referendum process.⁹⁷ The “responsibility . . . to maintain peace and security in East Timor . . . in order to ensure that the popular consultation [i.e., vote] is carried out in a fair and peaceful way and in an atmosphere free of intimidation,” was placed on the Indonesian government.⁹⁸

The Indonesian army and its militias, with a long record of broken promises of non-aggression, now had a monopoly of power in East Timor, and their terror campaign persisted. One knowledgeable Western security expert predicted, “[i]f independence wins, these autonomy guys will go berserk.”⁹⁹

The referendum was held on August 30, 1999. The turnout was huge, and the vote was seventy-eight percent for independence.¹⁰⁰

Falintil remained in cantonment, muzzled.

Up until the eve of the referendum, the Indonesian military and police continued to promise to curb the violence and to honor a free vote. As predicted, once East Timor voted to cut its ties with Indonesia, the Indonesian military set loose their vengeful “militia”

95. AFP, *Falintil Fighters to Keep Weapons*, THE AUSTRALIAN, Oct. 6, 1999, at 10.

96. See Linda Tennenbaum, *Australian Led ‘Peace-Keepers’ Strike Temporary Deal with Falintil in East Timor*, World Socialist Web Site (Oct. 6, 1999), at <http://www.wsws.org/articles/1999/oct1999/tim-o06.shtml>.

97. *Question of East Timor: Report of the Secretary General*, U.N. SCOR, at 1, U.N. Doc. S/1999/862 (Aug. 9, 1999), available at <http://ods-dds-ny.un.org/doc/UNDOC/GEN/N99/231/60/PDF/N9923160.pdf>.

98. S.C. Res. 1246, U.N. SCOR, 4013th mtg. at 3, U.N. Doc. S/Res/1246 (1999), available at <http://ods-dds-ny.un.org/doc/UNDOC/GEN/N99/174/13/PDF/N9917413.pdf>.

99. Mark Dodd, *Heroes of Integration Armed and Ready For War*, SYDNEY MORNING HERALD, July 26, 1999, at 9.

100. JOHN G. TAYLOR, EAST TIMOR: THE PRICE OF FREEDOM 228 (1999). According to UNAMET, 98.6% of registered voters turned out to vote. United Nations, *Transcript of Press Briefing by Carina Perelli, Chief of the Electoral Assistance Division at UN HQs and David Wilmhurst, UNAMET Spokesman* (Aug. 31, 1999) available at <http://www.un.org/peace/etimor99/bs/br310899.htm>.

gangs on a defenseless populace. They hunted down independence supporters and their families and torched villages.¹⁰¹

According to the *New York Times*, one militiaman told the reporter that his orders were “to kill anyone on the street who stood for independence.”¹⁰² And, he added, “if they could not hold onto East Timor, they would leave behind a wasteland devoid of schools, society, structure or a population.”¹⁰³

Still, Falintil remained passive.

The extraordinary restraint exhibited by Falintil during the ensuing chaos earned high praise from U.N. officials: “Throughout all this emergency they have not moved The Indonesians want them to come out and attack so they can blame the chaos on Falintil.”¹⁰⁴ But Xanana Gusmão resisted the temptation to fight back in justifiable self-defense. In a broadcast aired shortly after the vote, he said: “I appeal to all the guerrillas . . . to maintain your positions and not to react”¹⁰⁵

As the world took notice, international pressure was brought to bear on Jakarta. Three weeks after the referendum, the first wave of Australian, New Zealand, and British troops—the core of the U.N. peacekeeping force—arrived in Dili, the capitol of East Timor. Within a week, 3,000 troops had arrived, with a final target of 8,000.¹⁰⁶ Finally, the balance of power favored security for the people of East Timor.

Once again, the United Nations ordered Falintil to disarm. Again, it refused. Recognizing the high cost of confiscating Falintil’s weapons, U.N. peacekeepers backed off. On October 5, 1999, Australian Army Colonel Mark Kelly, spokesman for the international peacekeeping-force Interfet, made a face-saving statement: “The ongoing discussions we will have with the Falintil leadership will look towards the eventual disarming. We have got a requirement to disarm those people under our [U.N.] mandate.”¹⁰⁷

101. See Janine de Giovanni, *East Timor’s Aftermath*, N.Y. TIMES, Oct. 24, 1999, Sec. 6 at 70.

102. *Id.*

103. *Id.*

104. Mark Dodd, *Refugees Shot as they Starve*, SYDNEY MORNING HERALD, Sept. 14, 1999, at 9.

105. David Wurfel, *Human Security in East Timor: Xanana’s Leadership*, at <http://www.peacemagazine.org/9910/wurfel.htm> (last visited May 20, 2004).

106. Seth Mydans, *East Timorese, First Wary, Then Jubilant, Greet U.N. Troops in Village Near Capital*, N.Y. TIMES, Sept. 22, 1999, at A16.

107. Paul Daley, *Falintil Resists Move to Give Up Weapons*, THE AGE (Melbourne), Oct. 6, 1999, at 13.

By December, it was decided that Falintil would be transformed into East Timor’s “legally constituted police force.”¹⁰⁸ If the United Nations could not disarm Falintil, then it could be legitimized as far as the United Nations was concerned by morphing it into the East Timor Defence Force.

On February 1, 2001, the Falintil guerrilla force became the world’s newest internationally recognized army.¹⁰⁹ Its mission, as declared by its new commander, Brigadier-General Taur Matan Ruak, was “to guarantee the defence of our homeland, of the new sovereign state of Timor, fully respecting the new democratic institutions and the political representatives democratically elected by our people.”¹¹⁰

Clouding the future of East Timor is Regulation No. 2001/5, “On Firearms, Ammunition Explosives and Other Offensive Weapons in East Timor,” enacted into law on April 23, 2001 by the U.N. Transitional Administration in East Timor (UNTAET).¹¹¹ The United Nations’ determination to disarm civilians finally prevailed.

Incorporated in this document, which reads like an Indonesian army wish-list, is the codification of U.N. disarmament policy. If the regulation stands, it will ensure that, if unstable Indonesian politics leads the large Indonesian army into another assault against tiny and oil-rich East Timor, the Timorese civilians will be forced to sit and wait for protection from a thinly-spread national defense force consisting of only 1,500 men.

Commander Taur Matan Ruak, who has already lived through his country’s hell, recognized the great potential for continuing violence. Three months before the new firearm regulations were enacted, Ruak expressed the belief that East Timor’s “population should defend itself.”¹¹²

108. Mark Dodd, *Cosgrove Sees Falintil as a Legal Police Force*, SYDNEY MORNING HERALD, Dec. 2, 1999, at 10.

109. Mark Dodd, *Viva the Defence Force: Guerilla Veterans Join the Army*, SYDNEY MORNING HERALD, Feb. 2, 2001, at 8; FALINTIL (Armed Forces of National Liberation of East Timor), Flags of the World, at <http://www.crwflags.com/fotw/flags/tl%7Dfalin.html> (last modified June 28, 2002).

110. Dodd, *Viva the Defence Force*, *supra* note 109, at 8.

111. United Nations Transitional Administration in East Timor, *Regulation No 2001/5 on Firearms, Ammunition Explosives and Other Offensive Weapons in East Timor*, U.N. Doc. UNTAET/REG2001/5 (2001), available at <http://www.un.org/peace/etimor/untaet/reg00105E.pdf> (last visited May 20, 2004).

112. *Vigilante Groups Needed in Interior, Falintil Commander*, East Timor Action Network, at <http://www.etan.org/et2001a/february/01-03/00vigila.htm> (last visited May 20, 2004).

B. Bougainville

Struggling against international mining interests and the governments of Papua New Guinea and Australia, the people of the South Pacific island of Bougainville have long been the underdogs in a decades-long battle for sovereignty and self-determination.

Bougainville has been poisoned and plundered. Its people endured a military blockade that prevented food, medical supplies, fuel, and arms from reaching the island; the blockade alone killed nearly ten percent of the island's population.¹¹³ Most of the casualties claimed by that blockade were not armed combatants, but women and children. The world never saw pictures of the starving children of Bougainville because the blockade blocked out journalists as well.

We started investigating Bougainville when we learned that the Bougainville Revolutionary Army (BRA)¹¹⁴ had established production of a copy of the M-16 automatic rifle during its ten-year war of independence. That development was revealed to us by an anonymous source present at the U.N. Asia Pacific Regional Disarmament Conference, held in the spring of 2001.

The conference was tightly controlled and neither press nor observers were present. During off-the-cuff remarks delivered at the end of the session's fifteen-minute "discussion time," conference participants were informed that BRA insurgents had been fabricating their own guns. Though cut off from imports by the blockade and completely lacking in funds, the BRA made use of material and equipment salvaged from mining operations and materials left on the island after World War II (including machine-gun parts salvaged from wrecks and thousands of tons of ammunition). Initially, the Bougainville Revolutionary Army (many of whom were skilled

113. Plaintiffs' Complaint, *Sarei v. Rio Tinto, PLC*, 221 F. Supp. 2d 1116 (C.D. Cal. 2002) (dismissed on Act-of-State Doctrine and Political Question Doctrine grounds), *appeal docketed*, No. 02-56256 (9th Cir. 2003), ¶ 12, at 4, *available at* <http://www.hagensberman.com/files/Final%20Rio%20Tinto%20Complaint1037668347503.pdf> (last visited May 20, 2004).

The blockade prevented medicine, clothing and other essential items from reaching the people of Bougainville. Hospitals were forced to close, women died needlessly in childbirth and young children died from easily preventable diseases. Rio's top manager at Bougainville encouraged continuation of the blockade for the purpose of "starving the bastards" out. This blockade directly caused the deaths of at least 10,000 people between 1990 and 1997. . . . By the time the war ended in 1999, 10% of the population of Bougainville, approximately 15,000 civilians, were killed.

Id. In short, most of the civilian deaths in Bougainville were the result of the blockade. *See infra* text accompanying note 146.

114. *See* Dorothy Hunt, *Conflict in Bougainville - Part 2: Interview with Sam Kauona Sirivi* (June 23, 2000), *at* <http://www.nzine.co.nz/features/bville2.html> (last visited May 20, 2004).

tradesmen) manufactured crude single-shot firearms, but they soon learned to build more sophisticated guns.¹¹⁵

Any mention of Bougainville was conspicuously absent from the United Nations’ Conference on the Illicit Trade in Small Arms and Light Weapons in All its Aspects, held just a few months later.¹¹⁶ Widespread knowledge of the Bougainville “problem” and what happened there would have underscored the folly of the proposed standards’ attempting to ban gun possession by “non-state actors.”

Bougainville is an island near Papua New Guinea (PNG) with a population of approximately 200,000. Named for French sailor Captain Louis de Bougainville who established trade with the islanders in 1768, the island of Bougainville is the largest in the Solomon Islands chain.¹¹⁷

For years, Bougainville was controlled by various colonial powers. During World War II, it saw extremely fierce combat as the last Japanese stronghold in the Solomons.¹¹⁸ After the War, Bougainville was placed under Australian control as a United Nations Trust territory.¹¹⁹ Against the wishes of its people, Bougainville found itself ruled by Papua New Guinea in 1975, the year PNG gained independence from Australia,¹²⁰ despite the fact that the Bougainvilleans are more closely related to the Solomon Islanders culturally, ethnically, and geographically; PNG lies more than 900 kilometers away.¹²¹ In defiance, Bougainville declared itself the independent Republic of the North Solomons on September 1, just fifteen days before PNG gained its independence.¹²²

115. See Aziz Choudry, *Bougainville – Small Nation, Big Message*, SCOOP (Nov. 21, 2001), at <http://www.scoop.co.nz/mason/archive/scoop/stories/53/29/200111212157.5376f317.html>.

116. See *supra* Part I. See also David B. Kopel, *Score One for Bush*, NAT’L REV. ONLINE (July 30, 2001), at <http://www.nationalreview.com/kopel/kopel073001.shtml>.

117. See J.J. O’Connor & E.F. Robertson, *Louis Antoine de Bougainville*, University of St. Andrews, Scotland (July 2000), at <http://www-groups.dcs.st-and.ac.uk/%7Ehistory/Mathematicians/Bougainville.html> (last visited May 20, 2004).

118. See Parliament of Australia, Joint Standing Committee on Foreign Affairs, Defence and Trade, *Appendix D – Outline History of the Bougainville Conflict*, in BOUGAINVILLE: THE PEACE PROCESS AND BEYOND 170 (1999) [hereinafter *Appendix D*], available at http://www.aph.gov.au/house/committee/jfad/bougainville/bv_app_d.pdf (last visited May 20, 2004).

119. *Id.*

120. See *id.* at 172–73.

121. See Moses Havini & Rikha Havini, *Bougainville – The Long Struggle for Freedom*, at <http://www.eco-action.org/dt/bvstory.html> (last visited May 20, 2004).

122. *Appendix D*, *supra* note 118, at 172–73. See Parliament of Australia, Joint Standing Committee on Foreign Affairs, Defence and Trade, *Chapter 2: History of the Bougainville Conflict*, in BOUGAINVILLE: THE PEACE PROCESS AND BEYOND, *supra* note 118, ¶ 2.11, at 15 (1999) [hereinafter *Chapter 2*], available at http://www.aph.gov.au/house/committee/jfad/bougainville/bv_chap2.pdf (last visited May 20, 2004).

In 1960, copper was discovered on Bougainville, and, in 1963, the mining company that eventually evolved into what today is known as Rio Tinto commenced operations.¹²³

Land is of utmost importance to the people of Bougainville. Inheritance is maintained through the matrilineal clan system, passing from mother, who is both titleholder and custodian of the tribal land, to eldest daughter.¹²⁴

When, in January 1965, it became apparent that a large open-pit copper mine was to be established in Bougainville, local villagers protested.¹²⁵ A hearing was held in the Warden's Court in the town of Kieta,¹²⁶ and the court awarded a mining license to Conzinc Riotinto of Australia (a subsidiary of the mining company Rio Tinto).¹²⁷ Under the court's interpretation of Australian law, what is "on top of the land" belonged to the villagers, but what was underneath—the copper deposits—belonged to the government, and not to the titleholders of the land.¹²⁸ The Court's ruling ran contrary to traditional Bougainvillean ownership.¹²⁹ It was also contrary to traditional Anglo-American common law, under which subsurface and mineral rights belong to the owner of the surface land.¹³⁰ To the villagers, it was incomprehensible that, after countless generations, the land was no longer theirs.¹³¹

When the bulldozers came, Bougainvillean landowning women resisted, some laying down with their babies in front of the machines.¹³² Whereas American media rushed to report the brave, unarmed Chinese student who stood in front of a tank in Tiananmen Square, there were no journalists to document similarly brave acts in Bougainville.

Construction of the mine proceeded, accompanied by chemical defoliation of an entire mountainside of pristine rain forest (i.e. the

123. See *Chapter 2, supra* note 122, ¶ 2.4, at 13–14; Havini & Havini, *supra* note 121. Rio Tinto is a leading international mining conglomerate based in London and Melbourne. See generally <http://www.RioTinto.com/> (last visited May 20, 2004).

124. See *Chapter 2, supra* ¶ 2.18, at 17; *id.*, ¶ 2.29, at 19; Havini & Havini, *supra* note 121.

125. See Havini & Havini, *supra* note 121.

126. YAUKA ALUAMBO LIRIA, BOUGAINVILLE CAMPAIGN DIARY 61 (1993).

127. *Id.* at 62.

128. *Id.*

129. See *id.*

130. See 28 AM. JUR. 2D *Estates* § 14 (2003) (defining the proprietary interests recognized in a fee simple absolute).

131. See LIRIA, *supra* note 126, at 62.

132. Bougainville Freedom Movement, *Bougainville Fights for Freedom*, World History Archives (May 16, 1996), at <http://www.hartford-hwp.com/archives/24/047.html> (last visited May 20, 2004).

“top of the land,” which belonged to the villagers), and huge amounts of toxic mine waste were dumped onto the land and into major rivers. According to a lawsuit filed in September 2000 in the U.S. District Court for the Central District of California,¹³³ as of 1988, “the mine . . . dug a crater six kilometers long, four kilometers wide and a half a kilometer deep”¹³⁴ and had “produced over one billion tons of waste.”¹³⁵ Furthermore, the complaint stated: “vast tracts . . . are still barren and devoid of vegetation many years after closure of the mine”;¹³⁶ “[t]hirty kilometers of the river valley system was converted into moonscape.”¹³⁷ The complaint concluded, “[w]hat the people of Bougainville see is one of the worst human-made environmental catastrophes of modern times.”¹³⁸

The mine, however, turned out to be an enormous source of income for Papua New Guinea. Rio Tinto gave the PNG government nineteen percent of the mine’s profits, which, at the time, amounted to one-third of the government’s income—ample incentive for PNG to overlook environmental damage.¹³⁹

In response, Francis Ona, the son of a dispossessed village chief, formed the Panguna Landowners Association (soon to be known as the Bougainville Revolutionary Army).¹⁴⁰ On December 1, 1988, Ona and his followers used explosives stolen from the mining company to destroy a transmission tower that supplied power to the mine, shutting down the mine.¹⁴¹

In April 1990, the PNG government, with the assistance of the Australian government, imposed a total blockade of the island in an attempt to reopen the mine and prevent Ona and the BRA from acquiring arms.¹⁴² Nevertheless, it was women and children who were most affected by the blockade: pregnant women died in childbirth and young children died from easily preventable diseases.¹⁴³ The blockade

133. Plaintiffs’ Complaint, *supra* note 113. *See also* Kevin Ricketts, *PNG’s Bid to Bar Lawsuit*, P.N.G. POST-COURIER, Nov. 22, 2001, at 1 (describing Papua New Guinea government’s objection to the continuation of the suit in United States federal court, citing “potentially . . . serious social, legal, political and security implications for Papua New Guinea”).

134. Plaintiffs’ Complaint, *supra* note 113, ¶ 147, at 35.

135. *Id.*, ¶ 136, at 33.

136. *Id.*, ¶ 146, at 35.

137. *Id.*, ¶ 137, at 33.

138. *Id.*, ¶ 151, at 36.

139. *See* Plaintiffs’ Complaint, *supra* note 113, at 1.

140. *Chapter 2*, *supra* note 122, ¶ 2.38–2.39, at 21.

141. *Id.*, ¶ 2.40, at 21–22.

142. *See* Choudry, *supra* note 115.

143. Plaintiffs’ Complaint, *supra* note 113, ¶ 12, at 4.

resulted in the deaths of more than 2,000 children in just the first two years of operation.¹⁴⁴

The blockade of Bougainville—which formally ended during a 1994 ceasefire, but which, nevertheless, continued informally until 1997¹⁴⁵—was directly responsible for the deaths of an estimated 10,000 people.¹⁴⁶ Instead of forcing the populace into submission, the blockade had the opposite effect. In May 1990, Ona declared the independence of the Republic of Meekamui (“The Sacred Island”).¹⁴⁷

Meanwhile, control of Bougainville became even more important economically; an aerial survey in the late 1980s had discovered rich deposits of other minerals, including gold and the possibility of offshore oil.¹⁴⁸

The United Nations was apprised of events taking place in Bougainville at least as early as 1991.¹⁴⁹ That summer, a BRA delegation to the U.N. Committee hearing in Geneva on the Rights of Minorities and Indigenous Peoples accused the PNG government of numerous atrocities committed against the islanders. Amnesty International detailed many of these, including extrajudicial executions, “disappearances,” and ill-treatment during arbitrary arrests and detentions, including of women and children.¹⁵⁰

In his address to the parliament of Rwanda on May 7, 1998, Kofi Annan offered an apology: “All of us who cared about Rwanda . . . fervently wish that we could have prevented the genocide. . . . [I]n their greatest hour of need, the world failed the people of Rwanda.”¹⁵¹ There was no apology forthcoming for Bougainville, however—just silence, and the determination to disarm the surviving islanders.

To help neutralize the BRA, Papua New Guinea created, funded, and armed the Bougainville Resistance Force (BRF), ensuring its

144. *Id.*

145. *Chapter 2, supra* note 122, ¶ 2.48, at 23.

146. Plaintiffs’ Complaint, *supra* note 113, ¶ 12, at 4. PNG thus ranks among the more successful mass-murderers of the twentieth-century, having wiped out ten percent of the Bougainville population. *See supra* note 113.

147. *See Chapter 2, supra* note 122, ¶ 2.48, at 23.

148. Hunt, *supra* note 114.

149. LIRIA, *supra* note 126, at 191.

150. Amnesty International, *Bougainville: The Forgotten Human Rights Tragedy* (Feb. 26, 1997), at <http://web.amnesty.org/library/Index/ENGASA340011997?open&of=ENG-PNG> (last visited May 20, 2004).

151. Press Release, Secretary-General, In ‘Mission of Healing’ to Rwanda, Pledges Support of United Nations for Country’s Search for Peace and Progress, U.N. Doc. SG/SM/6552 (May 6, 1998), available at <http://www.un.org/News/Press/docs/1998/19980506.SGSM6552.html>.

loyalty to the central government.¹⁵² PNG then placed a bounty on Ona’s head.¹⁵³

The BRA, however, proved more than a match; they were not only expert guerrilla fighters, but also expert in psychological warfare. According to PNG officer Yauka Aluambo Liria who documented the early years of the Bougainville campaign, it was not long into the fighting that rumors began to spread among the PNG troops about the magical “puri puri” powers possessed by the BRA members from the inner jungles, which enabled them to change into dogs and scout PNG positions, steal weapons, and even kidnap PNG soldiers.¹⁵⁴

Despite isolation from the rest of the world, and lacking friends, funds, and sophisticated armament factories, the BRA prevailed. They outmaneuvered trained, well-armed soldiers (wielding M79 grenade launchers and mortars), who were backed up by Australian-supplied Iroquois helicopters outfitted with automatic weapons.¹⁵⁵

Having failed in the military arena, PNG switched tactics. On August 30, 2001, Bougainvilleans who had strong political ties to PNG signed an unrealistic Bougainville Peace Agreement.¹⁵⁶ Bougainvilleans loyal to revolutionary leader Francis Ona did not sign. The agreement put a formal end to hostilities, provided for the establishment of an autonomous Bougainville government, and required a referendum on full independence from PNG within ten to fifteen years.¹⁵⁷

But the most important part of the Peace Agreement (at least to PNG, Australia, and the United Nations)—and what independence is utterly contingent upon—is the Rotakas Record of May 3, 2001, an agreement that laid out a “phased weapons disposal plan,” which, upon implementation, would result in complete disarmament of the

152. *See Forum Should Address PNG Human Rights Issues, Says Amnesty New Zealand*, AGENCE FRANCE-PRESSE, Sept. 15, 1997, available at 1997 WL 13394915.

153. *Bougainville Amnesty “Not for Criminal Offences”*, P.N.G. POST-COURIER, Jan. 22, 1998, available at 1998 WL 12650223 (“The Wingti-Chan government had placed a bounty of K200,000 [kina] per head on Francis Ona . . . and others.”). *See also* Leisa Scott et al., *PNG Deal Was Contract to Kill*, THE WEEKEND AUSTRALIAN, Mar. 22, 1997 (“Official documents released yesterday prove mercenaries hired by the Papua New Guinea Government were contracted primarily to fight Bougainville rebels The contract authorizes a ‘strike force’ of 70 mercenaries to ‘conduct offensive operations’ aimed at securing the giant Bougainville copper mine and ‘rendering the BRA militarily ineffective’.”).

154. LIRIA, *supra* note 126, at 118–19.

155. *See* Choudry, *supra* note 115; Dorothy Hunt, *Conflict in Bougainville – Part 3: Interview with Sam Kauona Sirivi* (June 30, 2000), at <http://www.nzine.co.nz/features/bville3.html>.

156. Kevin Ricketts, *PNG and Bougainville Seal Peace After Decade of War*, SYDNEY MORNING HERALD, Aug. 31, 2001 at 1.

157. *Id.*

BRA.¹⁵⁸ Papua New Guinea's *Post-Courier* reported some of the Record's details:

The weapons disposal plan includes . . . collecting all weapons from ex-combatants and locking them in the containers with robust but simple padlocks. The unit commanders will retain the keys and trunks but allow UN officials to verify the exercise.

During the second stage, the weapons would be double-locked in larger containers with one key held by the local commander and one by the UN.¹⁵⁹

And from the Rotakas Record itself:

After the PNG Security Forces withdraw from each command area the Company Commanders shall deliver arms held by them to one central collection point in each command area.

. . . .
The decision on how these weapons should be finally dealt with will be made within one month of the constitutional amendments coming into effect.¹⁶⁰

In short, this means that BRA company commanders must no longer be in control of their weapons. The implied threat is if their weapons are not forthcoming, neither will be the independence referendum. As of April 2004, the referendum has not been held.¹⁶¹

What is the purpose of disarming a people who are headed toward greater autonomy and freedom? Upon independence, disarmament

158. The Rotakas Record: Joint Bougainville Ex-combatants Agreement on Weapons Disposal, May 3, 2001, *available at* <http://rspas.anu.edu.au/melanesia/PDF/Rotakas-agreement-Final.pdf> (last visited May 20, 2004).

159. *Kiwi's Supply Gun Lockers*, P.N.G. POST-COURIER, Nov. 21, 2001, at Local 1.

160. The Rotakas Record, *supra* note 158, at 3.

161. *See Bougainvilleans Plan Independence by 2013*, PACNEWS, Mar. 16, 2004 ("Mr. Havini [Moses Havini, a senior representative of the Bougainville Peoples Congress] says he is confident Bougainville will become an autonomous government in ten years' time when the island's leaders will mobilize people for a referendum on independence from PNG."). *See also* Moresi Ruah'ma, *Minister Congratulates Bougainvilleans on Arms Disposal*, THE NATIONAL (Boroko, PNG), Mar. 24, 2004, *reported in* BBC WORLDWIDE MONITORING, *available at* 2004 WL 72818857.

[F]ollowing the destruction of a further 129 guns last week, more than half of the guns put away and kept in containers under the agreed weapons disposal plan for Bougainville have now been destroyed. . . . Sir Peter [Barter, minister for inter-government relations,] said: "The process of implementing the decision made by the Peace Process Consultative Committee to destroy the weapons disposal plan is well under way in every district in Bougainville." He said that the way weapons disposal and destruction has been going "helps to lay the groundwork for early progress in implementing other important areas of the Bougainville Peace Agreement, including the preparation to hold free and democratic elections for the autonomous Bougainville government."

Id.

would be a moot point because Bougainville would then be self-governed, and the Bougainvilleans would be free to do whatever they liked, including retaining their arms.

One of the witnesses to the signing of the Bougainville Peace Agreement was New Zealand Foreign Minister Phil Goff, whose country agreed to provide two hundred containers (basically large trunks) for the storage of weapons to be handed in by Bougainvillean ex-combatants.¹⁶² As the first batch of fifteen gun lockers were flown in on November 20, 2001, Goff declared: “The challenge now lies with the Bougainvilleans, particularly ex-combatants, to show their commitment to the Weapons Disposal Plan as expressed in the Bougainville Peace Agreement.”¹⁶³

The real challenge, however, will be to convince Bougainvilleans who had used those arms to halt the plunder of their land, to disarm unilaterally. Francis Ona, whose independence movement still controlled up to twenty percent of Bougainville as of August 31, 2001, refused to participate in the peace process.¹⁶⁴ In June of 1999, a defiant Ona is quoted as stating: “There are thousands of home-made weapons hidden in the villages and they will never be handed back until Bougainville becomes independent.”¹⁶⁵

In a December 2002 story entitled *Peace Secured*, the *PNG Independent* reported that the Plan’s implementation was “gaining momentum” as 105 guns had been surrendered and locked in containers.¹⁶⁶

PNG’s lukewarm attitude about forgetting past disputes is evident in its treatment of the plaintiffs (Bougainville survivors, including Ona’s father) in the lawsuit against Rio Tinto: PNG threatened them with retribution, including hefty fines and imprisonment of up to five years.¹⁶⁷ While Rio Tinto has belatedly offered the Bougainvillean villagers \$14.5 million for reparations, the California lawsuit asks for

162. *Kiwi’s Supply Gun Lockers*, *supra* note 159.

163. *Id.*

164. *Bougainville Rebels Gather to Sign Peace Deal*, THE NEW ZEALAND HERALD, Aug. 31, 2001.

165. Damien Murphy, *Ona Refuses to Lay Down Arms*, SYDNEY MORNING HERALD, June 11, 1999, at 7.

166. Veronica Hatutasi, *Peace Secured*, PAPUA NEW GUINEA INDEPENDENT, Dec. 2002, available at <http://www.niugini.com/independent/bougainville.htm> (last visited May 20, 2004).

167. *Bougainville: Sir Mekeere Warns Bougainvilleans Suing Miner*, PACIFIC ISLANDS, Dec. 6, 2001, available at <http://www.pacificislands.cc/pm122001/pinadefault.cfm?PinaID=3248> (last visited Dec. 7, 2001) (on file with author). See Ricketts, *PNG’s Bid to Bar Lawsuit*, *supra* note 133.

a great deal more.¹⁶⁸ That settlement would do more than just compensate victims; those dollars would go a long way toward repairing the scar left in the earth by the mining operations.

A year after the lawsuit was filed, the *Post-Courier* reported that PNG was attempting to block the suit by asking the U.S. Government to intervene against the villagers.¹⁶⁹ In what has been described as “an unprecedented move,” the U.S. State Department notified presiding Judge Margaret M. Morrow for the U.S. District Court for the Central District of California that “[t]he success of the Bougainville peace process represents an important United States foreign policy objective[,] . . . [and the] continued adjudication of the [plaintiffs’] claims . . . would risk a potentially serious adverse impact on the peace process”¹⁷⁰

The process of independence moved another step forward on January 23, 2002, when the PNG parliament unanimously voted in favor of constitutional amendments relating to Bougainville.¹⁷¹ One of these amendments would permit Bougainville to become autonomous under PNG, and the other would permit Bougainville to hold its referendum for independence in ten to fifteen years.¹⁷² Bougainville would be given control of its own foreign affairs, banking system, aviation and shipping rights. Also, the “legislation allows Bougainville to have its own disciplined forces.”¹⁷³

However, the question arises: if Bougainville is to have its own “disciplined forces,” why should they have to re-acquire weapons, after the second reading in parliament turns the amendments into law? One might also question the intensity of the request that, especially, high-power weapons be turned in; after all, those arms are not being used to commit acts of mayhem upon Bougainville civilians. Those were the weapons that the rebels needed to change the balance of

168. See *Bougainville: Towards a New Autonomy Status*, UNPO NEWS, at <http://www.unpo.org/news/news2001Q2/Bougainville-2001Q2.htm> (visited Sept. 7, 2001) (on file with author) (“The company has set aside \$14.5 million for compensation to Bougainville landowners, but Rio Tinto faces a class action in San Francisco claiming billions of dollars over its conduct in Bougainville.”).

169. See Ricketts, *PNG’s Bid to Bar Lawsuit*, *supra* note 133.

170. Communication from William H. Taft IV, Legal Adviser, U.S. Department of State, to Honorable Robert C. McCallum, Jr., Assistant Attorney General, Civil Division, United States Department of Justice, Washington, D.C., Oct. 31, 2001, available at <http://www.state.gov/documents/organization/16529.pdf> (last visited May 20, 2004).

171. Thomas Kilala, *Papua New Guinea: Bougainville Bill Clears First Hurdle*, THE NATIONAL (Boroko, PNG), Jan. 24, 2002, reported in BBC WORLDWIDE MONITORING, Jan. 24, 2002, available at LEXIS, News Library, ALLNWS File.

172. *Id.*

173. *Id.*

power when PNG used helicopters to control the battlefield from above.

Finally, if peace is the real objective, why not disarm *all* combatants? Why not disarm the aggressors—the governments of Papua New Guinea and Australia—instead of only disarming the victims, who were defending themselves? Why insist on disarmament first, and postpone a referendum on independence for ten or more years, when independence is the key to a lasting peace? Why should the people of Bougainville believe that, once they are disarmed and helpless, the government of PNG will honor its promise ten or fifteen years in the future?

In sum, international attempts to disarm the people of East Timor and Bougainville have encouraged rather than prevented human rights abuses. Disarmament has aided the local governments, which are hostile to the interests of the local people. Guns for “non-state actors” were not the problem in these unhappy islands—government weapons were the real threat.

V. AFRICA

In Africa, as in the Pacific, the denial of arms to “non-state actors” endangers civilians and reinforces the power of dictatorships.

A. Niger

At the U.N. Small Arms Conference, Djbrina Moumouni, Secretary-General of the Nigerian Cabinet, called illicit weapons “a scourge” that causes “drug trafficking, mass displacement, slow economic development and recovery, and the exacerbation of conflicts.”¹⁷⁴ He continued: “The Niger has not escaped that fallout, and has suffered armed rebellion for some years now.”¹⁷⁵

The Niger delegate’s speech was a euphemistic reference to the pastoral Tuareg people of northern Niger, in the Sahara, who spent much of the 1990s fighting for their independence from Niger.¹⁷⁶ The

174. Djbrina Moumouni *in* Press Release, United Nations Conference on the Illicit Trade in Small Arms, Small Arms Conference Concludes High-Level Segment With Calls for Action on Supply, Demand Sides of Proliferation Issue, at 13, U.N. Doc. DC/2791 (July 13, 2001), available at <http://www.smallarmssurvey.org/sourcedocuments/UN%20Documents/UN%202001%20Conference/DC2791.pdf>.

175. *Id.*

176. See Bram Posthumus, *Niger: A Long History, a Brief Conflict, an Open Future*, in SEARCHING FOR PEACE IN AFRICA (Monique Mekenkamp et al. eds., 1999), available at http://www.euconflict.org/dev/ECCP/ECCPSurveys_v0_10.nsf/0/55634607A9670053C1256B2700317DF1 (last visited May 20, 2004).

Tuareg objected to the extraction of uranium from their region while profits went to people connected to the far-away central government.¹⁷⁷

As a condition for staying in Niger, the Tuareg wanted federalism and a degree of regional autonomy. Their desire to leave Niger greatly intensified when in 1984–85 the Tuareg starved en masse due largely to the Niger government's venality and incompetence.¹⁷⁸ The central government of Niger, which tends to alternate between military dictatorships and one-party civilian dictatorships, has not offered good opportunities for the people to work within the system.

A report from the European Centre for Conflict Prevention, a pro-disarmament group, describes the problems in Niger candidly, explaining that the United Nations' solution is to disarm the Tuareg:

The United Nations has not been directly involved in managing the conflict, but the organisation is dealing with a closely related issue: the proliferation of small arms in the region. In 1993, at the request of president Konaré of Mali, it set up an Advisory Mission on the issue. The mission reported its findings to the Secretary-General in 1996. It identified a variety of causes for the unfettered flow of arms, including political instability, poverty, unemployment, ethnic and religious differences and the spill-over of intra-state conflicts into other states. This was said to apply to most of the states visited during the mission, including Niger.¹⁷⁹

What the European Centre and the United Nations—and the disarmament lobby, generally—fail to understand is that in places like Niger, small arms are part of the solution, not the problem. The Niger government's treatment of the Tuareg only began to improve when the Tuareg were able to initiate an armed rebellion.¹⁸⁰ One of the reasons that the Niger government never had the opportunity to imitate the policy of the Rwanda government (perpetrating genocide against a disaffected ethnic group) was that the Tuareg were armed.

B. Angola

Gaspar Santos Rufino, Vice-Minister for Defense of Angola, presented an articulate defense of the pro-dictatorship position at the

177. *Id.*

178. See Survie Touaregue, *Tuaregs, a Threatened People*, Center for World Indigenous Studies, at <http://www.halcyon.com/pub/FWDP/Africa/tuareg.txt> (last visited May 20, 2004).

179. Posthumus, *supra* note 176.

180. See generally *id.*

Small Arms Conference that was similar to that of the Niger representative:

African leaders, in analysing the causes of the proliferation and illicit trafficking of small arms, suggest that Member States and the suppliers should be more transparent in their conduct and go beyond national interests. This means, so far as possible, to impose limits on the legal production of certain basic goods, to exercise rigorous control of their circulation, and even to destroy surplus production of goods. It should be possible to do this with small arms and light weapons, as they are not basic goods and will not be missed by our people.¹⁸¹

Mr. Rufino is the Defense Minister of a Communist dictatorship that was installed by the Cuban army’s small arms and light weapons in 1975–76, and which has permitted exactly one election (criticized by some as fraudulent) in the last quarter-century.¹⁸²

Rufino complained at the Conference: “In Angola, men with guns in their hands have opposed the legitimate Government for many years. It should be clear that it is imperative to destroy surplus arms, regulate their production in the legislation of manufacturing countries, and sell them to legally constituted and authorized entities.”¹⁸³

The “men with guns in their hands” were the men of UNITA, one of the groups that, along with Rufino’s Communist organization, fought against the Portuguese colonial regime until Portugal surrendered in 1975.¹⁸⁴ Rufino’s side would have lost the civil war which followed, but for Fidel Castro’s modern-day Hessians.

What makes Rufino’s dictatorship—created by Cuban “men with guns in their hands”—legitimate? As Rufino showed, beneath the veneer of humanitarian rhetoric, the objective of small arms prohibition is to ensure that incumbent dictatorships enjoy a monopoly of force.

C. Zimbabwe

In the 1992 book *Revolution and Genocide*, Robert Melson, a Professor of Political Science at Purdue University, enumerated

181. Gaspar Santos Rufino, Vice-Minister for Defense of Angola, in Press Release, United Nations Conference on the Illicit Trade in Small Arms, Small Arms Conference Concludes High-Level Segment With Calls for Action on Supply, Demand Sides of Proliferation Issue, at 15, U.N. Doc. DC/2791 (July 13, 2001), available at http://www.smallarmssurvey.org/source_documents/UN%20Documents/UN%202001%20Conference/DC_2791.pdf.

182. *Angola*, in 1 ENCY. BRITANNICA 412 (15th ed. 1998).

183. Rufino, *supra* note 181.

184. *See Angola*, *supra* note 182.

factors that scholars have identified as predisposing a nation towards genocide. These factors include (1) the presence of powerful, ambitious leaders with no compunctions about murdering political opponents; (2) cunning exploitation of internal strife and economic distress for political advantage; (3) use of rhetoric extolling hatred and fear; and (4) the scapegoating of potential victims in order to demonize a minority population—casting the minority as evil and in league with outsiders who are intent on overthrowing the prevailing society.¹⁸⁵

All of this is in play in Zimbabwe today.

Everywhere the handwriting is on the wall, scrawled in such big letters it is impossible to miss. This reality did not escape one unidentified farmer quoted in the April 18, 2000 London *Daily Telegraph*: “I’m so sad that they have to use us all as scapegoats. It’s almost like the beginnings of genocide.”¹⁸⁶

Until 1980, Zimbabwe was legally considered to be the British colony of Rhodesia, although a white government had declared independence and achieved *de facto* independence in 1965.¹⁸⁷ Today, black Africans comprise approximately ninety-eight percent of Zimbabwe’s population. Less than two percent of the population—approximately 70,000—are white.¹⁸⁸ The remaining population consists of “Coloreds” (people of mixed racial origins) and Asians.¹⁸⁹

According to *60 Minutes*:

There was a time when the country of Zimbabwe represented the hopes and the aspirations of the entire African continent . . . it had democratic institutions, and blacks and whites lived together in relative prosperity. . . . With independence, [Robert Mugabe] preached conciliation and convinced many whites to stay on and participate in a new democracy. But this past year, things have gone terribly wrong in Zimbabwe. For the first time, President Mugabe is facing tough political opposition and he has reacted by declaring war on the whites he once courted, and on thousands of blacks whose only crime has been to support the political party challenging him. What was once the most promising democracy in Africa is now on the verge of economic collapse and political anarchy.¹⁹⁰

185. See ROBERT MELSON, *REVOLUTION AND GENOCIDE* 5–17 (1992).

186. David Blair, *Police Search Besieged Farms for Guns*, DAILY TELEGRAPH (London), Apr. 18, 2000, at 5 [hereinafter Blair, *Police Search for Guns*].

187. *Zimbabwe*, in 12 ENCY. BRITANNICA 917 (15th ed. 1998).

188. See *id.* at 916.

189. See *id.*

190. *60 Minutes: Zimbabwe* (CBS television broadcast, Jan. 21, 2001).

Mugabe has set about killing and terrorizing white landowners and promising their land to his supporters.¹⁹¹ Genocide against the black population appears imminent.

From its inception as a recognized independent nation, only one man, Robert Mugabe, has ruled Zimbabwe, first as prime minister, and since 1987, as president.¹⁹² Mugabe handily “won” a fourth term as president in 1996.¹⁹³ No one dared oppose him in the election; he had already “browbeaten, dismissed and intimidated his rivals.”¹⁹⁴ In the 2002 elections, Mugabe did face substantial opposition, and, according to international observers, he responded by stealing the election.¹⁹⁵

In 1997, Zimbabwe’s economy “plunged into crisis, creating a need for a scapegoat.”¹⁹⁶ That need intensified when, on February 15, 2000, Mugabe suffered a “crushing . . . blow to his authority”: a constitutional referendum, which would have strengthened his power and allowed him to run the country for up to twelve more years, was defeated.¹⁹⁷ The defeat spurred calls for Mugabe to step aside as leader of his ruling party, Zanu-PF (Zimbabwe African National Union-Patriotic Front), even prior to the outcome of the country’s upcoming general elections to be held later that spring.¹⁹⁸ Despite a report in the London *Daily Telegraph* that “Mr. Mugabe’s quest for a scapegoat is expected to settle on his own MPs,” Mugabe gave “his seal of approval” just two weeks later for government confiscation of white-owned farms.¹⁹⁹

As the March 4 *Telegraph* noted, “[f]or the seven million Zimbabweans who scratch a living in overcrowded communal areas, the prospect of resettlement on rich farming land is a powerful

191. See Armstrong Williams, *Getting Rid of Mugabe*, WASH. TIMES, June 22, 2001, at A17.

192. Derek Brown, *From Peasant to President*, GUARDIAN UNLIMITED (London), Apr. 3, 2000, at <http://www.guardian.co.uk/Archive/Article/0,4273,3981683,00.html>.

193. *Id.*

194. *Id.*

195. See Reuters, *Mugabe Confident; U.S., Opposition Say Zimbabwe Ballot Is Rigged*, TORONTO SUN, Mar. 9, 2002, at 26.

196. David Blair, *Zimbabwe Crisis has Fuelled Bitter Row*, DAILY TELEGRAPH (London), Mar. 10, 2000, at 5.

197. David Blair, *Mugabe Suffers Humiliating Defeat in Poll*, DAILY TELEGRAPH (London), Feb. 16, 2000, available at 2000 WL 12384025.

198. David Blair, *Pressure Mounts for Mugabe to Quit Party Post*, DAILY TELEGRAPH (London), Feb. 18, 2000, at 20.

199. *Id.*

incentive to vote for Mr. Mugabe.”²⁰⁰ Kleptocracy—government by thieves—has always been appealing to those who are promised a share of the boodle.

One month later, Mugabe had the country’s constitution amended to allow him to confiscate farms without compensation to their owners.²⁰¹ On June 27, Mugabe emerged “victorious” in Zimbabwe’s general election.²⁰²

Mugabe’s war against Zimbabwe’s white farmers, who employ about 330,000 black workers, escalated rapidly. On March 29, 2000, he threatened them with “very, very, very severe” violence.²⁰³ Then, on April 18, he branded them “enemies of the state.”²⁰⁴ Eight months later, he declared that “an ‘evil white alliance’ was working to overthrow all the black governments of southern Africa.”²⁰⁵ Mugabe’s condemnation of Zimbabwe’s white farmers as “enemies of the state,” and his linkage of them to an alliance of British “forces of imperialism,” is strongly reminiscent of Nazi rhetoric that preceded the Holocaust, describing a supposed conspiracy of Jews preparing to take over the world.

Thumbing his nose at a November 10 ruling by Zimbabwe’s Supreme Court that his “fast track land seizures” were illegal,²⁰⁶ Mugabe defiantly declared that “nothing” would stand in the way of his land theft, which he called a “noble effort to retrieve our heritage”²⁰⁷—just as Hitler claimed to be retrieving Aryan heritage from corrupt outside influences.

By January 2001, more than 1,000 white-owned farms had been “illegally occupied,” and Mugabe had “vested all remaining hope of

200. David Blair, *Mugabe Approves Farm Invasions*, DAILY TELEGRAPH (London), Mar. 4, 2000, available at 2000 WL 21887517.

201. Anton La Guardia, *Vote Gives Mugabe a Free Rein to Seize White Farmer’s Land*, DAILY TELEGRAPH (London), Apr. 7, 2000, available at 2000 WL 18301608.

202. Anton La Guardia and David Blair, *Mugabe Still Plans to Grab White Farms: Unity Call After Narrow Election Win*, DAILY TELEGRAPH (London), June 28, 2000, available at 2000 WL 23257112.

203. David Blair, *Mugabe Warns Farmers of ‘Severe’ Violence*, DAILY TELEGRAPH (London), Mar. 30, 2000, at 19.

204. Anton La Guardia and David Blair, *‘White Farmers are our Enemy’: Mugabe Inflames Hatred as Second Zimbabwe Landowner is Killed by Invaders*, DAILY TELEGRAPH (London), Apr. 19, 2000, available at 2000 WL 18303889.

205. David Blair, *Zimbabwe’s Leader Rages at ‘Evil Whites,’* DAILY TELEGRAPH (London), Dec. 15, 2000, at 3.

206. David Blair, *Court Rules Mugabe’s Land Grab is Illegal*, DAILY TELEGRAPH (London), Nov. 11, 2000, at 22.

207. David Blair, *Farm Grab is Noble Effort, Says Mugabe*, DAILY TELEGRAPH (London), Aug. 12, 2000, available at 2000 WL 24364945.

political recovery in the seizure of 12 million acres of land from 4,000 beleaguered white farmers.”²⁰⁸

The land theft was complete by the end of 2002. Although carried out in the name of the poor people of Zimbabwe, the land confiscations were actually a mass theft for Mugabe’s cronies. For example, the *Telegraph* reported that Mugabe’s wife, Grace Mugabe, evicted an elderly couple from a large farm that she had chosen as a weekend getaway.²⁰⁹

The parallel with Hitler’s determination to let nothing stand in the way of holding absolute power by offering promises to restore the glory of the Aryan people is unmistakable. It is of no small significance that Mugabe’s right-hand man, Chenjerai Hunzvi, recently deceased, went by the nickname of “Hitler.”²¹⁰ Hunzvi dismissed the nickname as “just a name, like John.”²¹¹

Hitler Hunzvi, however, was the capable leader of a terrorist group called the Zimbabwe National Liberation War Veterans’ Association (or simply War Veterans). When asked on *60 Minutes* if Hunzvi had Mugabe’s support, Mugabe replied, “Yes, of course.” In answer to the follow-up question, “Even though he likes to refer to himself as ‘Hitler’?”, Mugabe replied, “Of course. But what is in a name?”²¹²

In this case, plenty. The London *Observer* labeled Hitler Hunzvi “the most feared man in Zimbabwe and one of the most powerful.”²¹³ According to *60 Minutes*, Hitler has threatened that “anyone who resists the farm takeovers will end up six feet under.”²¹⁴ When questioned as to why it was necessary to beat up elderly couples on their farms, Hunzvi replied: “The Zimbabwean people are taking back their land. . . . This is a war. It’s an economic war to transform the

208. David Blair, *Mugabe Told to Halt Land Grab or Face Isolation*, DAILY TELEGRAPH (London), Jan. 7, 2001, at 24.

209. Peta Thornycroft, *Mugabe’s Wife to Move Into White Couple’s Farm*, DAILY TELEGRAPH (London), Aug. 20, 2002, at 14.

210. Abel Mutsakani, *Zimbabwe: War Veterans Reportedly Issued with Weapons, Uniforms*, FIN. GAZETTE (Harare), Jan. 4, 2001, reported in BBC WORLDWIDE MONITORING, Jan. 5, 2001, available at LEXIS, News Library, ALLNWS File.

211. Anton La Guardia, *There’s No Room for Whites Here, Says ‘Hitler’ Hunzvi*, DAILY TELEGRAPH (London), Apr. 8, 2000, available at 2000 WL 18301879. Hitler Hunzvi believed that Adolf Hitler’s reputation had been tarnished by “Western propaganda,” and that it is Great Britain and its imperial legacy—not the Third Reich—that are evil incarnate. *Id.*

212. *60 Minutes: Zimbabwe* (CBS television broadcast, Jan. 21, 2001).

213. Andrew Meldrum, *They Call Him Hitler*, THE OBSERVER (Manchester), Apr. 9, 2000, at 21, available at 2000 WL 7009577.

214. *60 Minutes: Zimbabwe* (CBS television broadcast, Jan. 21, 2001).

means of production. Economic war is more bitter than political war.”²¹⁵ One of Hunzvi’s aides agreed: “There is no going back.”²¹⁶

With the help of Hitler Hunzvi, Mugabe set the stage for a continuing campaign of murder and mayhem. His thugs unleashed their terror against the country’s newspapers that dare criticize his regime, and even conspired to have the editor of Zimbabwe’s leading independent newspaper, the *Daily News*, killed.²¹⁷ That attempt was aborted at the last minute, when the assassin got “cold feet.”²¹⁸

In addition to appropriating farm land, Mugabe has threatened to nationalize the country’s mining industry, stating, “After land, now we must look at the mining sector. At the end of the day black people must be able to say ‘Ah, the resources are ours. Our people own the mines. Our people own the industry.’”²¹⁹ Not that the mining resources would really belong to “black people.” For all practical purposes, the mines, and their profits, would belong to Mugabe himself.

On January 22, 2001, the *Telegraph* reported that the Chief Justice of Zimbabwe’s Supreme Court, Anthony Gubbay, who is white, had formally requested government protection for the Court.²²⁰ Infuriated by its earlier ruling declaring Mugabe’s land grab unconstitutional, Hunzvi and his War Veterans gave the five white Supreme Court justices an ultimatum: resign, or face unspecified consequences. Gubbay’s plea was ignored, and the government responded by launching a new attack on the country’s white judges.²²¹

According to R.J. Rummel, a University of Hawaii genocide scholar, “democracy is a method of nonviolence.”²²² Rummel claims that because of the greater decentralization of power that exists in a democratic society, “[t]he more democracy, the less democide (genocide and mass murder).”²²³ Nevertheless, while Zimbabwe has been characterized as a democracy, and indeed may once have been,

215. La Guardia, *supra* note 211.

216. *Id.*

217. David Blair, *Mugabe Agency ‘Hired Assassin to Kill Editor,’* DAILY TELEGRAPH (London), Aug. 2, 2000, available at 2000 WL 24363411.

218. *Id.*

219. Andrew Meldrum & Sue Cullinan, *Storm Greets Mugabe’s Mines Threat,* THE GUARDIAN (Manchester), June 16, 2000, available at 2000 WL 22780581.

220. David Blair, *Judges in Zimbabwe Ask for Protection,* DAILY TELEGRAPH (London), Jan. 22, 2001, available at <http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2001/01/22/wzim22.xml>.

221. *Id.*

222. R.J. RUMMEL, POWER KILLS 23 (1997).

223. *Id.*

clearly that is no longer the case. Government power now resides squarely in the hands of Robert Mugabe and his close-knit cabal of tribal henchmen.

According to the human-rights group Genocide Watch, Zimbabwe is now on the verge of genocide.²²⁴ Using a model created by former U.S. State Department official Gregory Stanton, Genocide Watch has identified six stages that precede genocide.²²⁵ As Genocide Watch explains, Zimbabwe is in the final stage, Preparation, which immediately precedes genocide.²²⁶ Mass deaths and government-sponsored rapes have begun.

For example, as detailed by the *New York Times*, the *Telegraph*, and Genocide Watch, so-called “militia” (actually, terrorist gangs) of young men from Mugabe’s political party are gang-raping women and girls in villages that support the pro-freedom Movement for Democratic Change (MDC) Party.²²⁷ The gangs have kidnapped literally thousands of women and are holding them as sex slaves in government camps.²²⁸

Furthermore, stung by popular rejection in the (stolen) elections, Zimbabwe’s rulers are, according to the *Telegraph*, talking about “taking the system back to zero”—that is, killing most of the people in Zimbabwe.²²⁹ Before the independent newspapers of Zimbabwe were eliminated, writers worried that Zimbabwe was embarking on a path similar to that of Uganda under Idi Amin in the 1970s.²³⁰

In 2002, Didymus Mutasa, the organization secretary for Mugabe’s political party (Zanu-PF), announced: “We would be better off with only 6 million people, with our own people who support the liberation

224. See Gregory H. Stanton, Genocide Watch, *Genocides, Politicides, and Other Mass Murder Since 1945, With Stages in 2002*, at <http://www.genocidewatch.org/genocidetable.htm> (last visited May 20, 2004).

225. Gregory H. Stanton, *The Seven Stages of Genocide*, at <http://www.genocidewatch.org/7stages.htm> (last visited May 20, 2004). Dr. Stanton identifies the stages in the genocidal process as classification, symbolization, dehumanization, organization, polarization, preparation, and finally, extermination.

226. Stanton, *supra* note 224.

227. See, e.g., Peta Thornycroft, *Rape Gangs Targeting Whites in Zimbabwe*, DAILY TELEGRAPH (London), Feb. 2, 2004, at 17; Genocide Watch, *Women Fall Victim to ZANU-PF Militia* (July 2002), at <http://www.genocidewatch.org/Zimbabwejuly2002.htm> (last visited May 20, 2004); Michael Wines, *Reports of Rape and Torture Inside Zimbabwean Militia*, N.Y. TIMES, Dec. 28, 2003, at 3.

228. See Wines, *supra* note 227.

229. Christina Lamb, *Dora, 12, Gang-Raped by Mugabe’s Men for Four Hours*, SUN. TELEGRAPH (London), Aug. 25, 2002, at 8.

230. See *Cabinet Files: Sweet and Sour*, FIN. GAZETTE (Harare), June 20, 2002 (commenting on Zimbabwe’s harsh treatment of Indian traders living in Zimbabwe), available at 2002 WL 7255019.

struggle.”²³¹ Conveniently for the genocide planners in Zimbabwe’s government, about five or six million people in Zimbabwe are at risk of famine.²³²

The famine in Zimbabwe has little to do with the current drought there, however. During a 1992 drought, Zimbabwe still produced so much food that there was enough left over for export. Rather, the genocide appears to be the deliberate starvation of political opponents, similar to the government-induced famine in the Ukraine in the 1930s.

All of Zimbabwe’s human rights abuses, as well as the Mugabe-clique’s usurpation of the sovereignty from the people of Zimbabwe, are facilitated by strict gun controls on “non-state actors.” As one Zimbabwean farmer who requested anonymity told us in a private communication:

Police may inspect weapons and licenses any time. The big deterrent to shooting anyone, even in self-defense, is that a murder charge is automatic, and the onus is now on you to prove innocence or reduce the charge. . . . And whatever, you are in the wrong. Better to have a black security guard with a weapon. Ninety percent of black Zimbabweans are good people and just want to get on and make a living. The lunatic fringe of racist and get-rich-quickers are killing the country, and only a mass political move by the silent majority will set things right. That is what we have to hang in for.²³³

While the country’s besieged, unorganized, and essentially disarmed white farmers are forced to wait their turn to become the next victims of Mugabe’s terror squads, the government has been arming chosen supporters—another element common to pre-genocidal societies. According to the *Financial Gazette*, “Senior Zimbabwe Republic Police (ZRP) officers have clandestinely released firearms from the police armoury to independence war veterans . . . to unleash violence and terror on white-owned commercial farms and against members of the opposition.”²³⁴

In 2000, the *Telegraph* reported that the Mugabe regime set the stage for intensified oppression by rounding up firearms from future victims:

231. Michael Grunwald, *In Hungry Zimbabwe, Food Used as Political Weapon*, WASH. POST, Jan. 1, 2003, at A01.

232. See USAID Zimbabwe Mission, Humanitarian Assistance Program, *Summary*, at <http://www.usaid.gov/zw/html/HumanitarianAssistance.html> (last visited May 20, 2004) (“The United Nations estimates that more than 6 million people face extreme hunger and starvation.”).

233. Anonymous communication on file with author.

234. See Mutsakani, *supra* note 210.

Zimbabwe’s white farmers came under renewed pressure yesterday as squads of up to 20 police searched at least 200 properties for illegal weapons

. . . .
Chen Chimutengwende, the Information Minister, confirmed that police had orders to scour all 4,000 white-owned farms for unlicensed firearms . . . [and] ammunition.²³⁵

Said one farmer about such an incident on a nearby farm, “Every single square inch of the farmhouse was searched. They even looked under the knickers.”²³⁶ The *Telegraph* noted, “the police retreated looking ‘disappointed’ after failing to find any illegal weapons.”²³⁷

In Zimbabwe, the British colonial government, through the 1957 Rhodesian Firearms Act, unintentionally created the essential precondition for genocide.²³⁸ The 1957 Act closed every “loophole” for the lawful acquisition of firearms that lacked a government paper trail by requiring all transactions go through a licensed dealer. The records of all transactions—the names of licensed gun owners, and details of the firearms they own—go straight to the office of the president, Robert Mugabe.

Of course, the Rhodesian colonial government did not intend for its 1957 firearms registration law to facilitate genocide. Nor did the legislators in Germany’s Weimar Republic intend for their “moderate” gun control laws to be used later by the Nazi government to disarm all opponents of the dictatorship.

D. Uganda

Unlike Niger, Angola, and Zimbabwe, Uganda is taking significant steps towards democracy. Yet even under benign conditions, U.N.-promoted disarmament is endangering the people of Uganda.

“The Ugandan government has established a national body to combat the proliferation of illicit small arms into the country,” announced the U.N. Office for the Coordination of Humanitarian

235. Blair, *Police Search for Guns*, *supra* note 186.

236. *Id.*

237. *Id.*

238. Complete text of Rhodesian Firearms Act provided in letter from Pascal Mouhouelo, Regional Director, WHO/AFRO Library, World Health Organization, Regional Office for Africa, to Paul Gallant (Apr. 1, 2001) (on file with author) (“To make provision for regulating and controlling the possession, sale, repair and manufacture of firearms and ammunition; to restrict the possession of firearms and ammunition by Asiatics, coloured persons and Africans; to restrict the delivery of firearms and ammunition to such persons; and for matters connected therewith and incidental thereto.” Title XXIX, *Firearms and Explosives*; Preface to Chapter 308, FIREARMS (Jan. 1, 1957)).

Affairs on September 24, 2002.²³⁹ The Ugandan National Focal Point (NFP), an agency that coordinates Uganda's relations with multinational bodies, is responsible for fulfilling the country's obligation, pursuant to the March 2000 Nairobi Declaration, to reduce the demand and supply of illegal firearms in Uganda.²⁴⁰ According to Declaration, illicit small arms have had "devastating consequences . . . in sustaining armed conflict and abetting terrorism, cattle rustling and other serious problems in the region."²⁴¹ On the contrary, it has been disarmament which has been the prime facilitator of state-sponsored terrorism in Uganda.

Occupying the northeast corner of Uganda are the Karamojong pastoralists, a marginalized minority of about 100,000 people who wander with their cattle from one pasture to another.²⁴² Comprising three percent or less of the total population of Uganda, the Karamojong belong to a larger group of African peoples called Nilo-Hamites, some of whom live across Ugandan border in Kenya and Sudan.²⁴³ The remainder of the Ugandan population are Bantus.²⁴⁴ About ninety percent of the country's inhabitants live in rural areas.

At the heart of the Karamojong pastoral lifestyle is the cow. Through its milk and blood (animals are bled, especially during dry seasons when they do not produce milk), and occasionally its meat, the cow provides the major source of dietary protein.²⁴⁵ The size of one's cattle herd demonstrates one's wealth and determines one's local political power. In terms of raw purchasing power, two to three cows will buy one AK-47.²⁴⁶

239. U.N. Office for the Coordination of Humanitarian Affairs, *Uganda: National Body on Small Arms Launched*, IRINNEWS (Sept. 24, 2002), at <http://www.irinnews.org/report.asp?ReportID=30058>.

240. Nairobi Declaration: On the Problem of the Proliferation of Illicit Small Arms and Light Weapons in the Great Lake Region and the Horn of Africa (Mar. 15, 2000), available at <http://www.globalpolicy.org/security/smallarms/regional/nairobi.htm> (last visited May 20, 2004) [hereinafter Nairobi Declaration].

241. *Id.*

242. Hans van de Veen, *Uganda: Explosive Mix of Problems Could Re-Ignite Civil War*, in SEARCHING FOR PEACE IN AFRICA (Monique Mekenkamp et al. eds., 1999), available at http://www.euconflict.org/dev/ECCP/ECCPSurveys_v0_10.nsf/0/89B5ECA3A5E01272C1256B2700317DD7 (last visited May 20, 2004).

243. The Karamojong, *Karamoja, The Ethnic Groups*, at <http://www.karamoja.org/karmjong/ethnic1.htm> (last modified Mar. 25, 2001) (on file with the Texas Review of Law & Politics).

244. *Id.*

245. *They've Got Guns!*, 2 EXPLORE No. 1, at <http://www.research.ukans.edu/explore/v2n1/uganda.html> (last visited May 20, 2004).

246. *Kalashnikovs for Chickens: Small Arms Boom in East Africa*, E. AFRICAN, May 7, 2001, available at 2001 WL 7089984.

In light of the absence of a strong central government and the easily transportable nature of bovine assets, it should come as no surprise that cattle rustling (with its concomitant social violence) has been a traditional Karamojong activity.²⁴⁷

Ivory hunters and traders first introduced low-quality firearms to Karamojong society in the late 19th century, but firearms were not generally available until the fall of Idi Amin.²⁴⁸ The British, who ruled Uganda from 1894 to 1962, were successful at keeping firearms out of the hands of the indigenous population.²⁴⁹

Uganda’s first prime minister, A. Milton Obote, perpetuated British policies, including the gun-control laws.²⁵⁰ But pastoralists across the borders to the north and east had access to modern firearms, which facilitated raids on Ugandan herds. While Obote’s armed police were ineffectual in protecting the Ugandan pastoralists, they were nevertheless quite diligent about thwarting the Ugandans’ acquisition of firearms.²⁵¹

Like most African leaders of his generation, Obote led an independence movement premised on democratic self-rule, but after the movement achieved success, Obote installed himself as dictator for life. In 1966, he suspended the constitution.²⁵² On December 19, 1969, Obote used a failed assassination attempt to justify imposing a nationwide ban on the lawful possession of firearms and ammunition. Government officials and other favored individuals were, of course, exempt. Accompanying the ban on non-government-owned guns was a ban on all political parties except Obote’s government party, the Uganda People’s Congress.

In 1970, a new Firearms Act replaced the 1955 British Firearms Ordinance.²⁵³ The law imposed national firearm registration and gun-owner licensing under exceedingly stringent requirements. In practice, the law was used to make it illegal for anyone to have a firearm, except persons deemed politically correct by the Obote dictatorship.

247. Anna Borzello, *Ridding the Karamojong of Guns*, BBC NEWS (Jan. 22, 2001), at <http://news.bbc.co.uk/1/hi/world/africa/1130704.stm>.

248. Michael D. Quam, *Creating Peace in an Armed Society: Karamoja, Uganda*, 1 AFRICAN STUD. Q. No. 1 (1997), at <http://web.africa.ufl.edu/asq/v1/1/3.htm>.

249. *Id.*

250. *See id.*

251. *See id.*

252. SIMKIN ET AL., *supra* note 41, at 274.

253. *Id.*

A year later, army chief of staff Idi Amin wrested control of the country in a military coup.²⁵⁴ The ensuing genocide of the Amin regime was perpetrated against a populace whose primitive armaments did not approach the effectiveness of the murderous government. By the time the genocide ended in 1979, the estimated toll was 300,000 slaughtered Ugandans,²⁵⁵ the Karamojong suffering a disproportionately higher percentage at about 30,000 tribesmen.²⁵⁶

In response to Amin's murderous rule, the Karamojong began producing their own guns by fashioning gun barrels from the steel tubing of metal furniture.²⁵⁷ The Karamojong used these homemade guns tactically to acquire better and more powerful ones by attacking isolated police outposts where acquisition would not be terribly costly in terms of tribal lives. When the Amin government collapsed and his army fled, military firearms were traded, sold, or lost along the way to local tribesmen, who also found easy access to now-deserted weapons depots.

Firearms thus became plentiful and readily available throughout Karamoja. Inter- and intra-tribal raids—which included cross-border raiding from Kenya and Sudan—were previously fought between warrior herdsman armed with spears, but were now fought by pastoralists, many of whom were armed with AK-47s.²⁵⁸ This disturbed a centuries-old balance between previously evenly matched Ugandan tribes. The imbalance fostered the perception of an increase in violence, permitting Ugandan leaders to use the promise of reducing violence as the carrot for disarming the now powerful, albeit poor, minority.²⁵⁹

Obote, who was fortuitously out of the country when Amin took control and thus escaped being killed, was restored to power in 1979, after Amin attacked Tanzania and was toppled by the Tanzanian army.²⁶⁰ Obote again began to attempt to disarm the Karamojong.²⁶¹ Obote was too late, for the Karamojong had learned that cows and

254. Anton La Guardia, *Death of a Tyrant - Prayers But No Forgiveness for Idi Amin*, DAILY TELEGRAPH (London), Aug. 18, 2003, at 4.

255. See Michael T. Kaufman, *Idi Amin, Murderous and Erratic Ruler of Uganda in the 70's, Dies in Exile*, N.Y. TIMES, Aug. 17, 2003, at 32.

256. *A Timeline of the Karamojong People*, at <http://www.karamoja.org/karmjong/timeline.htm> (last visited Apr. 5, 2002) (on file with author).

257. See Quam, *supra* note 248.

258. See *Kalashnikovs for Chickens*, *supra* note 246.

259. See Halima Abdallah, *Govt to Resume Karimojong Disarmament*, THE MONITOR (Kampala), Jan. 13, 2004, available at 2004 WL 72628461.

260. See SIMKIN ET AL., *supra* note 41, at 279–80.

261. See Quam, *supra* note 248.

guns are equally indispensable; one needs a gun immediately at hand to protect one's herd. The Karamojong forcefully repelled Obote's efforts. The most heavily armed tribes fared the best.

Obote stole the 1980 election, driving his political rivals into rebellion. One of Obote's rivals, Yoweri Museveni, “went to the bush with 26 other young men and organised the National Resistance Movement and National Resistance Army (NRM/NRA) to oppose the tyranny that previous regimes had unleashed upon the population.”²⁶² Defeating Obote and seizing power in 1986, President Museveni reconstituted his rebel forces as the new national army.²⁶³

Like his predecessors, Museveni attempted to subdue the Karamojong. The army's tactics did not win them any friends. In *African Studies Quarterly*, Michael Quam explains that, “the soldiers misbehaved, bullying people and looting stores, and generally convincing the Karimojong that their only protection from men with guns lay in keeping guns themselves.”²⁶⁴ The Ugandan government's coercive disarmament efforts met with so much resistance that Museveni let the matter drop in 1989.

However, the United Nations soon thereafter began its program to disarm “non-state actors.” On December 2, 2001, Museveni announced a voluntary gun surrender program in Karamoja.²⁶⁵ Museveni promised the people building materials, farm implements, schools, new wells, and capital investments, all contingent on a successful outcome of the gun surrender program.²⁶⁶ Yet funds in Karamoja have a habit of being diverted before the ink has dried on the check, and government assurances were met with skepticism.²⁶⁷

262. Uganda Communication Commission, *The Executive – The President of Uganda*, District Information Portal, at <http://www.dip.go.ug/english/government/> (last visited May 20, 2004).

263. *Id.* Armed women played a major role in Museveni's revolution and today analysts look to that role as an explanation for the newly acquired high status of women in Ugandan society. See William Wallis, *Freedom Fighters Win Political Clout*, FIN. TIMES (U.K.), Apr. 15, 2003, at 6 (“Women who carry guns and fight for their country do not voluntarily head back to the kitchen, says a leading member of Uganda's administration. . . . [W]omen have achieved a status in Uganda unrivalled in much of Africa.”).

264. See Quam, *supra* note 248.

265. U.N. Office for the Coordination of Humanitarian Affairs, *UGANDA: Focus on Karamoja Disarmament/Yearender*, IRINNEWS (Jan. 10, 2002), at <http://www.irinnews.org/report.asp?ReportID=18776> [hereinafter *Focus on Karamoja Disarmament*].

266. Elizabeth Kameo, *Museveni Assures Karamoja Fighters Youth*, THE MONITOR (Kampala), Dec. 5, 2001, available at LEXIS, News Library, AFRNWS File. See also Nathan Etengu, *Karimojong Get Ploughs*, NEW VISION (Kampala), Jan. 30, 2002, available at LEXIS, News Library, AFRNWS File; *Focus on Karamoja Disarmament*, *supra* note 265.

267. Nathan Etengu, *Karamojong Fund Diverted*, NEW VISION (Kampala), July 1, 2002, available at LEXIS, News Library, AFRNWS File.

As John Robert Otto, an elder Kotido tribesman, said, at least “with the gun one would be sure of the next day’s meal.”²⁶⁸

Museveni also promised trained, armed militias (Local Defense Units, or LDUs) and army troops for Karamoja. As Uganda’s government-owned *New Vision* newspaper reported:

The Army has assured the Karimojong that the UPDF [Uganda People’s Defense Forces, Uganda’s army] would protect them against inter-tribal raids and external aggression from the Turkana of Kenya during and after the disarmament exercise.

“Don’t worry about the cross-border raids by the Turkana because we have found the medicine to that problem. Just bring the guns. We know what to do if they disturb you,” [said] the commanding officer of the 405th Brigade in Kotido, Lt. Col. Patrick Kiyingi²⁶⁹

When the voluntary gun surrender expired on February 15, 2002, and only a disappointing 7,676 guns (out of a conservatively estimated 40,000) were collected, Museveni turned up the heat.²⁷⁰ He gave the army free rein to switch roles from guardian to terrorist, and the army launched a “forcible disarmament operation” in Karamoja to get the rest of the guns.²⁷¹ Yet despite the risk of imprisonment, the remaining gun owners refused to disarm. The Ugandan government and its army should have known, as the U.N. certainly knew, that “[d]isarmament without consent is effectively a combat situation.”²⁷²

To be sure, it was. The UPDF went on a rampage, beating and torturing Ugandans, and raping and looting at will, all the while using firearm confiscation to justify the violence. On March 21, 2002, Father Declan O’Toole, a member of the Mill Hill Missionaries in Uganda, and his companions were executed by UPDF soldiers because O’Toole asked the army to be “less aggressive” in the disarmament campaign.²⁷³ The murderers were apprehended and their

268. Macrines Nyapendi, *Karimojong Fighters Appeal for Government Protection*, NEW VISION (Kampala), Feb. 7, 2002, available at LEXIS, News Library, AFRNWS File.

269. James Odong, *K’Jong Assured on Security*, NEW VISION (Kampala), Mar. 22, 2002, available at LEXIS, News Library, AFRNWS File.

270. U.N. Office for the Coordination of Humanitarian Affairs, *Army to Begin Forcible Disarmament of Karamojong*, IRINNEWS (Feb. 22, 2002), at <http://www.irinnews.org/report.asp?ReportID=22557>.

271. *Id.*

272. Jane Boulden, *Rules of Engagement, Force Structure and Composition in United Nations Disarmament Operations*, in MANAGING ARMS IN PEACE PROCESSES: THE ISSUES 167, U.N. Doc. UNIDIR/96/55 (1996).

273. *Irish Aid to Continue Despite Concern at Executions*, IRINNEWS (Apr. 2, 2002), at <http://www.irinnews.org/report.asp?ReportID=27064>. See Badru Mulumba, *UPDF Soldiers*

death sentence was carried out within days, before they could appeal it—and before they could reveal who had given them the order. Just one week after Father O’Toole’s murder, *New Vision* reported the death of an expectant mother who “died of injuries sustained when a soldier kicked her in the stomach during forceful disarmament.”²⁷⁴

Museveni’s answer was to blame the Karamojong, whose torture by the army was the basis for O’Toole’s complaint. According to an article in *New Vision*, Museveni said, “the best way to stop such incidents in [the] future is for the Karimojong to hand in their guns to eliminate any justification for the UPDF operations in the villages.”²⁷⁵

Nevertheless, the Karamojong know that security lies in their own hands. In remote Karamoja, when you discover your cattle are being raided and your wife raped, there is no 911 system to call. Indeed, what exists there is a barely functioning phone system, described as “poor and unreliable.”²⁷⁶

People who had credulously surrendered their guns were not rewarded with tranquility, but instead found themselves especially vulnerable. As *New Vision* had earlier admitted, “[m]ost of the people whose cows were taken” in a raid in the recently disarmed Bokora district “had handed in their guns to the government in the on-going disarmament exercise.”²⁷⁷

By May 2002, reports of fierce resistance from the remaining armed Karamojong began to trickle out, despite government attempts to suppress knowledge of the resistance and of the army’s brutality.²⁷⁸ The Catholic Church charges that UPDF troops displaced thousands of residents from Karamoja by torching their homes in the disarmament campaign.²⁷⁹ By mid-July, the total number of confiscated guns had reached 9,832²⁸⁰—only about twenty-five percent of the expected total.

Executed for Killing Priest, THE NATION (Nairobi), Mar. 27, 2002, available at LEXIS, News Library, AFRNWS File.

274. *Uganda; Museveni in Karamoja*, NEW VISION (Kampala), Mar. 29, 2002, available at LEXIS, News Library, AFRNWS File.

275. Nathan Etengu, *Museveni Defends Executions*, NEW VISION (Kampala), Apr. 4, 2002, available at LEXIS, News Library, AFRNWS File.

276. Aggrey Rainher Ojon, *Poor Phone Services Slowed Business Growth – Mulwana*, THE MONITOR (Kampala), Nov. 13, 2002, available at LEXIS, News Library, AFRNWS File.

277. Nathan Etengu, *Army Ordered to Recover Cattle*, NEW VISION (Kampala), Jan. 8, 2002, available at LEXIS, News Library, AFRNWS File.

278. *See Karimojong Kill 8 Soldiers*, NEW VISION (Kampala), May 17, 2002, available at LEXIS, News Library, AFRNWS File.

279. *Id.*

280. Badru D. Mulumba, *Karamojong Warriors Hide 10,000 Guns*, THE MONITOR (Kampala) July 15, 2002, available at LEXIS, News Library, AFRNWS File.

Now, however—in addition to suffering from cross-border raids from Kenya, from other local Ugandan tribes, and from an oppressive standing army—the partially disarmed Karamojong face an armed invasion by the Lord's Resistance Army (LRA), an insurgency formed two decades ago north of Uganda.²⁸¹ Based in Sudan, the LRA, under the leadership of Joseph Kony, have regularly ravaged the Ugandan countryside west of Karamoja and terrorized the people of Uganda.²⁸² Their activities have increased of late. The LRA, one of numerous movements that came into existence in opposition to Museveni, aims to overthrow him and alleges that he ascended to power through the help of many of those same Rwandans who would ultimately perpetrate Rwanda's genocide.²⁸³

To help check LRA incursions to the west, Museveni launched Operation Iron Fist in March 2002, an aggressive campaign that allowed him, with permission from Sudan (which has historically provided a safe haven for the LRA), to cross the border and take the fight to Kony's base camps.²⁸⁴ Museveni, however, needed more soldiers there, and he began to redeploy the army, as well as many Local Defense Units, west and north—out of the Karamoja region.²⁸⁵

Some of Kony's LRA rebels found relative safety in the void left by departing Ugandan troops. They also found easier pickings from a partially disarmed countryside. Reports of LRA atrocities in Karamoja included burning, looting, and castration (after which the men were left to bleed to death).²⁸⁶ Even so, the LRA claims to be a Christian organization.²⁸⁷

The assertion by firearm-prohibitionists that fewer guns lead to less violence has not proven the case in Karamoja. Even without recorded statistics, admissions of "insecurity" began to surface despite—or perhaps because of—disarmament efforts.²⁸⁸ The government-

281. See James Alfred Obita, *A Case for National Reconciliation, Peace, Democracy and Economic Prosperity for All Ugandans*, Kacoke Madit, para. 3.1–3.4, at http://www.km-net.org/conferences/KM97/papers_html/casefor.htm (last visited May 20, 2004).

282. *Id.*

283. *Id.* at para. 2.2.3.

284. See *Khartoum Extends Kony Hunt*, NEW VISION (Kampala), Apr. 24, 2002, available at LEXIS, News Library, AFRNWS File.

285. *UPDF Army Removed From Karamoja*, THE MONITOR (Kampala), July 23, 2002, available at LEXIS, News Library, AFRNWS File.

286. See *Kony Castrates Men in Karamoja*, NEW VISION (Kampala), Sept. 26, 2002, available at LEXIS, News Library, AFRNWS File.

287. See Obita, *supra* note 281.

288. E.g., Charles Opolot, *Will the Karimojong be Safe?*, NEW VISION (Kampala), Jan. 3, 2002 ("The disarmament of the Karimojong gunmen is set to enter a new phase. . . . But the question is: What will life be without guns in the hands of Karimojong pastoralists? . . . The

controlled Ugandan press acknowledged the Karamojong are now “purchasing more guns to replenish those either voluntarily handed [over] or forcefully recovered by the Government.”²⁸⁹ Many of these weapons are sold by soldiers and are the very same weapons that they originally confiscated.²⁹⁰

Because of the need for Ugandan troops to battle the LRA, the government of Uganda suspended the disarmament program in Karamoja. First Deputy Prime Minister Eriya Kategaya promised, “the disarmament exercise would, however, resume as soon as peace comes to northern Uganda.”²⁹¹

The only uncertainty about that next initiative is *when*, not *if*, since the Nairobi Declaration calls for full involvement by the U.N., and specifically for the U.N. “to draw up appropriate programmes for the collection and destruction of illicit small arms and light weapons.”²⁹² And whenever the U.N. gets down to the business of civilian disarmament, it pursues that goal relentlessly, no matter what the human or economic costs.

In an address to the African Conference on the Implementation of the U.N. Programme of Action on Small Arms in March 2002, U.N. Under-Secretary-General for Disarmament Affairs, Jayantha Dhanapala, stated: “The threats posed by these [small] arms jeopardize . . . the protection of women, children, and innocent civilians everywhere. . . . [S]o too must we ensure that the global edifice of controls over small arms rests on a foundation of solid ‘grass roots’ support.”²⁹³

Karimojong have believed for [a] long time that a gun is their only source of wealth and security.”), available at LEXIS, News Library, AFRNWS File; *Karimojong Raids Increase*, NEW VISION (Kampala), Sept. 26, 2002 (“Local councilors and sub-county chiefs have said cattle rustlers have taken the advantage of lack of security in the area to raid more often.”); Richard Otin, *Elite Karimojong Blamed for Insecurity*, NEW VISION (Kampala), Nov. 11, 2002 (“Jie county MP in Kotido district, John Achila, has blamed the increased insecurity in Karamoja on lack of active involvement of the elite Karimojong in peace mobilization. He said the elite Karimojong are engaged more in fuelling ethnic divisions than in mobilizing the local Karimojong in creating peace.”).

289. Nathan Etengu, *UPDF Check K’Jong Gun Trade*, NEW VISION (Kampala), Oct. 2, 2002, available at LEXIS, News Library, AFRNWS File.

290. Will Ross, *Guns and Drought in Karamoja*, BBC NEWS (Feb. 18, 2003), at <http://news.bbc.co.uk/1/hi/world/africa/2777059.stm>.

291. *3,000 Police to Fight Cattle Rustling*, NEW VISION (Kampala), Oct. 26, 2002, available at LEXIS, News Library, AFRNWS File.

292. Nairobi Declaration, *supra* note 240.

293. Jayantha Dhanapala, *The Role of Civil Society in the Implementation of the United Nations Programme of Action on Small Arms*, Address at the African Conference on the Implementation of the UN Programme of Action on Small Arms: Needs and Partnerships (Mar. 20, 2002), available at <http://disarmament2.un.org/speech/20Mar2002.htm> (last visited May 20, 2004).

Events in Uganda demonstrate that Dhanapala's claims run exactly contrary to reality. It was disarmament that facilitated genocide by Idi Amin, and it is the new disarmament campaigns that have brought such terrible suffering to the Karamojong.²⁹⁴

The U.N. disarmament vision is to replicate two, three, or more Ugandas all over Africa and the world.²⁹⁵ In Uganda, "disarmament" is a U.N. euphemism for war on the people's right to protect themselves from predators, including predatory governments, and if the people lose that war, then the next war may be a war of genocide.

VI. EUROPE

A. *The Warsaw Pact*

1. Afghanistan

The collapse of the Soviet empire did not begin in Grenada in 1983 or in Poland in 1980, but rather in Afghanistan in 1979. In December of that year, General Secretary Brezhnev ordered a surprise attack on the U.S.S.R.'s southern neighbor, in order to prop up a local Communist regime that was on the verge of being overthrown.²⁹⁶

The Red Army quickly seized the cities and took control of the government. Most of the world expected that the Soviet conquest would be completed in a matter of weeks, and Afghanistan itself would be absorbed into the U.S.S.R. as a Soviet "republic." Nevertheless, the Afghans, like the Swiss, are a proud and independent mountain people who have maintained their freedom for centuries through force of arms. The gun culture of Afghanistan is as strong as any on the planet. The Afghans had a long tradition of expert gunsmithing.²⁹⁷ Using tools inferior to those in the Sears catalogue, Afghan gunsmiths began turning out homemade versions of the Soviet army's Kalashnikov rifles.²⁹⁸ Pakistani gunsmiths across

294. David B. Kopel, *Lethal Laws*, 15 N.Y.L. SCH. J. INT'L & COMP. L. 355, 369-71 (1995) (reviewing JAY SIMKIN ET AL., *LETHAL LAWS* (1994)).

295. Cf. Ernesto Che Guevara, *Guevara: 'Create Two, Three, Many Vietnams'*, 60 THE MILITANT No. 36 (Oct. 14, 1996), at http://www.themilitant.com/1996/6036/6036_33.html (last visited May 20, 2004) (describing how in Guevara's Cuba and in Communist Vietnam, the people were disarmed so as to prevent resistance to Communist dictatorship).

296. See SIMKIN, *supra* note 41, at 11.

297. See William Borders, *Tribesmen in Pakistan Thrive on Making Weapons by Hand*, N.Y. TIMES, Nov. 2, 1977, at 2; JAMES WRIGHT ET AL., UNDER THE GUN: WEAPONS, CRIME AND VIOLENCE IN AMERICA 321 (1983).

298. WRIGHT, *supra* note 297.

the border found a lucrative business in selling homemade guns to the rebels.²⁹⁹ The Afghan people also knew how to use the guns. Explained one rebel commander to a *New York Times* reporter, “All tribesmen are trained in the use of guns from childhood, in their home villages.”³⁰⁰

The imperial Soviet army tried every trick in the book: carpet bombing, chemical warfare, anti-personnel explosives disguised as toys for children to pick up, crop destruction to starve the people into submission.³⁰¹ Yet the “primitive” mountain people of Afghanistan fought the mightiest army in the history of the world to a draw for seven years. When the United States finally began providing Stinger missiles to the rebels in 1986, the Soviets lost control of the air.³⁰² The Kremlin acknowledged that its imperial appetite was larger than its imperial capacity, and the Soviet withdrawal from Afghanistan began.

2. 1989 Revolutions

But it was too late for the Kremlin; the Afghan warriors had already set the dominos of the Soviet empire tumbling. In Poland in the early 1980s, the *Solidarnosc*—or Solidarity—movement began a social revolution. The Afghan rebels created the essential breathing space for *Solidarnosc*; the Soviets considered it too difficult to invade Poland while their army was engaged in Afghanistan.³⁰³ Bugged down in an unwinnable war in Afghanistan, the Soviet army was reluctant to undertake an invasion of Poland to crush *Solidarnosc*. Within the Soviet Union, the failure of the invasion of Afghanistan fanned popular resentment against a regime that had sent its young men to die for nothing. Even Communist Party *apparatchiks* began to

299. *Backroom Arms Business Booming at Pakistan Border*, L.A. TIMES, Nov. 8, 1979, at 1–2; *Gun Ownership a Blessing to Afghans*, POLITICAL GUN NEWS, Apr. 7, 1981, at 7 (report of Congressional staff briefing by Afghan rebel leaders Sayed Ahmed Gailani and Mohaddem Hakim Ayrubi).

300. Borders, *supra* note 297.

301. Jean-Francois Revel, *The Awful Logic of Genocide*, 37 NAT'L REV. 22 (Oct. 4, 1985); Rosanne Klass, *The New Holocaust*, 37 NAT'L REV. 28 (Oct. 4, 1985). See William E. Griffith, *The Real Stakes in Afghanistan*, READER'S DIG. 248 (June 1980) (describing the devastation to property and life caused by Soviet efforts to subdue the Afghan populace); Anthony Paul, *Report from Afghanistan: Will We Hear Their Cry?*, READER'S DIG. 123 (Apr. 1981). See also VLADISLAV TAMAROV, *AFGHANISTAN: SOVIET VIETNAM* (Naomi Marcus et al. trans., 1992) (collection of photographs and accompanying narrative depicting the Soviet efforts to subdue Afghani rebels between 1984–86, written by a former Soviet soldier).

302. See TAMAROV, *supra* note 301.

303. *Cold War – Episode 19: Freeze*, CNN.com, at <http://www.cnn.com/specials/cold.war/episodes/19/game/martial.html> (last visited May 20, 2004).

see that the Soviet military was not an infallible solution to Soviet problems.

In the closing months of 1989, the Soviet imperial decay reached an advanced stage when Communist governments were peacefully ousted in Poland, East Germany, Hungary, Czechoslovakia, and Bulgaria. Private gun ownership had little to do with the change of power in these countries. In each country the economy was falling apart, and when the Gorbachev regime told the Eastern European Communists that they were on their own, the Communist governments yielded to the rising tide of popular demands.

Freedom was allowed to come to Eastern Europe in 1989 thanks to the self-restraint of the Soviet army. Freedom could have come a generation ago, but the Red Army repeatedly crushed it—in East Germany in 1953,³⁰⁴ Hungary in 1956,³⁰⁵ and Czechoslovakia in 1968.³⁰⁶ One reason that the Soviet army succeeded in those bloody episodes of subjugation was that the people of East Germany, Hungary, and Czechoslovakia lacked the arms with which to fight a guerilla war. Had the Poles, Czechs, and Hungarians been as well armed as the Afghans, Eastern Europe might not have had to wait until 1989 for the Kremlin's permission to be free.

Indeed, the best testimony to the power of an armed populace is the vigor with which the Warsaw Pact dictatorships enforced gun control. When the Communists took over Bulgaria on September 9, 1944, they immediately confiscated every weapon in private possession.³⁰⁷

In East Germany, private gun ownership was outlawed, though selected members of agricultural collectives were allowed to possess hunting weapons while participating in government-organized collective hunts, under immediate government supervision.³⁰⁸

Immediately after World War II, Hungary was governed by a coalition of democrats and Communists.³⁰⁹ Preparing the way for a total Communist takeover, Laszlo Rajk, the Communist Minister of

304. *Germany: Political Consolidation and Economic Growth, 1949–69*, in 20 ENCY. BRITANNICA 127 (15th ed. 1998).

305. *Hungary*, in 6 ENCY. BRITANNICA 156 (15th ed. 1998).

306. *Czechoslovakia*, in 3 ENCY. BRITANNICA 837 (15th ed. 1998).

307. LIBRARY OF CONG., LAW LIBRARY, GUN CONTROL LAWS IN FOREIGN COUNTRIES 33 (1976).

308. See Ellen Lentz, *East Germans and the Hunt: A Serious Pair: Only Members Can Shoot*, N.Y. TIMES, Dec. 2, 1979, at 65 (describing a particular hunt under a 1953 hunting law that “permits only members of official collectives to shoot”).

309. *Hungary: Hungary Since 1945*, in 20 ENCY. BRITANNICA 711 (15th ed. 1998) (Initially, the post-WWII Hungarian “government contained only two communists; its other members were representatives of four non-communist left wing parties.”).

the Interior, ordered the dissolution of all pistol and hunting clubs, as well as of other organizations which might prove a threat to government power.³¹⁰ Rajk claimed he acted “in order to more efficiently protect the democratic system of the state.”³¹¹

Poland, on the other hand, did initially allow limited ownership of registered target guns with a license from the so-called “Citizen’s Militia.”³¹² However, in December 1981, Poland’s dictator, General Jaruzelski, decided that *Solidarnosc* had gone too far. He declared martial law, arrested all the pro-democracy leaders he could find, and ordered all firearms and ammunition be turned over to the government.³¹³

3. Romania

Nowhere was gun control fiercer than in Romania.³¹⁴ The dictatorship of Nicolai Ceausescu used registration lists to confiscate all firearms in private hands. The government also registered (but did not confiscate) typewriters.³¹⁵

The Ceausescu regime fell when the Romanian army turned against the government and refused to shoot protestors in the streets.³¹⁶ Had the Romanians been well armed, the population might not have had to endure forty-five years of brutal dictatorship, waiting until the regime alienated even the Communist army officers.

310. AP, *220 Hungarian Clubs Killed Off*, DAILY NEWS (New York), July 10, 1946.

311. *Id.*

312. LIBRARY OF CONG., *supra* note 307, at 155–56.

313. *Excerpts From Martial-Law Decree Broadcast Spelling Out Curbs on Poles*, N.Y. TIMES, Dec. 14, 1981, at A17 (BBC trans.) (“All firearms, ammunition and explosives must be handed in to the civic militia within 24 hours. The carrying of all potentially dangerous weapons is banned.”).

314. See MEHAI ION PACEPA, RED HORIZONS (1987) (high-ranking defector from Romanian secret police describing his years as a close associate of Nicolai Ceausescu).

315. *Id.* at 199. Ceausescu, the “Comrade Supreme Commander,” enjoyed bear hunting with his Holland & Holland custom British rifle. The Securitate (the secret police) manufactured all of Ceausescu’s clothes for him, including German-style hunting outfits. Each item of clothing would be worn only once, and then burned. Sportsmanship was not Ceausescu’s style. Squads of Romanian forest rangers would spend all their time preparing an area for a bear hunt. The rangers would tie down half of a dead horse near a watering hole. When a large bear began feeding there, the rangers would notify Ceausescu. He would arrive by helicopter at three A.M., and leave with a bear skin by five. *Id.* at 307. Frustrated by missing a few shots in the dark, Ceausescu had his security forces steal Western military infrared scopes, for his night-time hunting forays. High Communist party officials in other countries, such as East Germany and Czechoslovakia, also enjoyed hunting, and maintained expensive hunting lodges at government expense, while the people went short of meat and fruit. *Id.* at 370. See AP, *Czech Elite Shot Game From Limos*, ROCKY MOUNTAIN NEWS (Denver), Jan. 10, 1990.

316. David Bender, *Rumanian Insurgents Capture Ceausescu; His Police Battle with Army for Survival*, N.Y. TIMES, Dec. 24, 1989, at 1.

In the days following the revolution, Ceaucescu's secret police, the Securitate, waged a vicious counter-revolutionary campaign against the population, much like the one carried out by Manuel Noriega's "Dignity" battalions after the American invasion.³¹⁷ In December 1989, both Panamanian and Romanian citizens took up arms to defend themselves after toppling their dictatorships.³¹⁸ A fair number of Panamanian citizens already owned guns and were speedily able to form Vigilance Committees to protect their neighborhoods.

Given the complete prohibition of firearms during the decades of Communist dictatorship, it is reasonable to infer that most Romanians had never touched a gun until they picked up a Kalashnikov assault rifle from the dead hands of a Securitate soldier or from an unguarded armory. One can only speculate how many Romanian citizens the Securitate mowed down because the citizens lacked the first idea about how to fire an automatic effectively, how to clear a firing chamber jam, or how to use a rifle sight.

The people of the former Warsaw Pact have been much more successful in creating and sustaining free governments than have the people of Afghanistan. Indeed, for a period, Afghanistan fell under an extremely repressive Taliban dictatorship that worked hard to disarm the people. Today, it remains to be seen whether the people of Afghanistan can build a free society. Yet, if the people of Afghanistan had not been so heavily armed to begin with, both they and the people of Eastern Europe might even today be under the heel of a neo-colonial government subservient to Moscow.

B. Bosnia

"The spread of illicit small arms and light weapons is a global threat to human security and human rights," insisted United Nations Secretary-General Kofi Annan.³¹⁹ But it would be more accurate to say: "The U.N.'s disarmament policy is a global threat to human security and human rights." It was the U.N.'s lethal policy that was directly responsible for the deaths of thousands of innocents in Srebrenica in 1995.

For orchestrating a vicious ethnic-cleansing campaign that included the slaughter in Srebrenica, ex-Yugoslav president Slobodan

317. *Id.*

318. Lindsey Gruson, *G.I.'s in Panama Report Gains in Restoring Order*, N.Y. TIMES, Dec. 24, 1989, at 1 (Panamanian citizens forming vigilance committees).

319. Thalif Deen, *UN Declares War on Small Arms*, ASIA TIMES (Oct. 1, 2002), at http://www.atimes.com/atimes/Front_Page/DJ01Aa01.html.

Milosevic stands accused of genocide and crimes against humanity before the International Criminal Tribunal for the Former Yugoslavia (ICTY) at the Hague.³²⁰ Reuters has billed the trial, which began on February 12, 2002, and is expected to last two years or more, as “the biggest international war crimes trial in Europe since Hitler’s henchmen were tried at Nuremberg.”³²¹ Milosevic, the first head of state to face war-crimes charges, faces a maximum sentence of life imprisonment. (The tribunal has no death penalty.)

The toll in Bosnia has been estimated at 200,000 dead and one million refugees.³²² The carnage included the massacre at Srebrenica in 1995—Europe’s worst atrocity since World War II.

The massacre of more than 7,500 men and boys at Srebrenica garnered worldwide publicity after Bosnian Serb general Radislav Krstic, the senior commander charged with genocide there, was found guilty by the ICTY on August 2, 2001.³²³ As CNN explained: “Krstic planned and led a week-long rampage in July 1995 in the U.N. declared ‘safe zone’ of Srebrenica in eastern Bosnia, where Muslims had been promised protection by U.N. soldiers.”³²⁴ Krstic was given a forty-six-year prison term. (Although the terms “safe area,” “safe haven,” and “safe zone” are often used interchangeably, there are legal distinctions between them; Srebrenica was supposed to be a “safe area.”)

A large share of the blame for Srebrenica was placed on the Dutch government and ill-prepared Dutch “peacekeepers,” as detailed in an April 2002 report by the Netherlands Institute for War Documentation.³²⁵ Dutch Prime Minister Wim Kok and his entire cabinet resigned in shame a week after the report’s publication.³²⁶

Located near the eastern border of Bosnia-Herzegovina, the silver-mining town of Srebrenica was once part of the Republic of

320. William Drozdiak, *Milosevic to Stand Trial for Genocide*, WASH. POST, Nov. 24, 2001, at A1.

321. Katie Nguyen, *Croat: Milosevic Engineered Yugoslav Breakup*, WASH. POST, Oct. 2, 2002, at A18.

322. Drozdiak, *supra* note 320.

323. Press Release, Radislav Krstic Becomes the First Person to be Convicted of Genocide at the ICTY and Is Sentenced to 46 Years Imprisonment, Int’l Crim. Trib. for the Former Yugoslavia, U.N. Doc. OF/P.I.S./609e (Aug. 2, 2001), available at <http://www.un.org/icty/pressreal/p609-e.htm>.

324. *Srebrenica Genocide Trial Closes*, CNN.com (June 26, 2001), at <http://edition.cnn.com/2001/WORLD/europe/06/26/Krstic.charged/>.

325. See *Srebrenica: A “Safe” Area*, Netherlands Institute for War Documentation, at <http://194.134.65.22/Srebrenica> (last visited May 20, 2004).

326. Marlise Simons, *Dutch Cabinet Resigns Over Failure to Halt Bosnian Massacre*, N.Y. TIMES, Apr. 17, 2002, at A3.

Yugoslavia. Yugoslavia had been created by the Treaty of Versailles in 1919, and, until the country broke up in 1991,³²⁷ it was the largest nation on the Balkan peninsula, approximately the size of the state of Virginia.³²⁸

Marshal Tito turned Yugoslavia into a Communist dictatorship in 1945. When Tito died in 1980, his successors feared civil war and instituted a system by which the collective leadership of government and party offices would be rotated annually. But the new government foundered, and, in 1989, Serbian president Milosevic began re-imposing Serb and Communist hegemony. Slovenia and Croatia declared independence in June 1991.³²⁹

Although Slovenia repelled the Yugoslav army in ten days, fighting in Croatia continued until December, with the Yugoslav government retaining control of about a third of Croatia. Halfway through the Croat-Yugoslav war, the U.N. Security Council adopted Resolution 713 calling for “a general and complete embargo on all deliveries of weapons and military equipment to Yugoslavia” (meaning rump Yugoslavia, plus Croatia and Slovenia).³³⁰ Although sovereign nations are normally expected to acquire and own arms, Resolution 713 redefined such weapons as “illicit.”

It was universally understood that the Serbs were in control of most of the Yugoslavian army’s weaponry and that the embargo therefore left them in a position of military superiority. Conversely, even though the embargo was regularly breached, it left non-Serbs vulnerable. The United Nations had effectively deprived the incipient countries of the right to self-defense, a right guaranteed by Article 51 of the U.N. Charter.³³¹

Macedonia seceded peacefully from Yugoslavia in early 1992, but Bosnia-Herzegovina’s secession quickly led to a three-way civil war between Bosnian Muslims (“Bosniacs”), Serbs (who are Orthodox), and Croats (who are Roman Catholic). The Bosnian Serbs received substantial military support from what remained of old Yugoslavia

327. See *Yugoslavia*, in 12 ENCY. BRITANNICA 870–71 (15th ed. 1998).

328. See THE WORLD ALMANAC AND BOOK OF FACTS 1996, at 835–36 (Robert Famighetti, ed., Funk & Wagnalls Corp, Softcover ed. 1995). The ALMANAC lists the size of Virginia as 39,598 sq. miles, *id.* at 542; compare this with its listing for Yugoslavia prior to 1992 of 39,449 sq. miles, *id.* at 835.

329. *Croatia*, in 3 ENCY. BRITANNICA 742 (15th ed. 1998); *Slovenia*, in 10 ENCY. BRITANNICA 884 (15th ed. 1998).

330. S.C. Res. 713, U.N. SCOR, 3009th mtg., at 42, U.N. Doc. S/INF/47 (1991).

331. U.N. CHARTER, art. 51 (“Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations . . .”).

(consisting of Serbia and Montenegro, and under the control of Slobodan Milosevic).³³²

Security Council Resolution 713 now operated to make it illegal for the new Bosnian government to acquire arms to defend itself from Yugoslav aggression. The United Nations told the Bosnian Muslims that they did not need weapons of their own; instead, they would have immediate access to the upper echelons of U.N. and NATO “peacekeeping” forces.³³³ As noted in U.N. documents, Bosnia-Herzegovina president Izetbegović “was in favour of the UNPROFOR [United Nations Protection Force] proposal, which, as he understood it, meant that the Bosniacs would hand their weapons over to UNPROFOR in return for UNPROFOR protection.”³³⁴

The Bosniacs subverted the U.N. arms embargo by importing arms from Arab countries while the United States winked.³³⁵ At the same time, the Bosniacs tried to play the part of good guys, under the theory that they would garner more territory in the long run by being the party that did what the United Nations said. Not until 1995 did the Bosniacs begin to achieve arms parity with the Serbs—and it was the

332. See THE WORLD ALMANAC AND BOOK OF FACTS 1996, *supra* note 328, at 836. For further discussion of ethnic/religious differences in the region see also DAVID ROHDE, *ENDGAME: THE BETRAYAL AND FALL OF SREBRENICA* at XI–XII (1997).

333. See *Srebrenica, a “Safe” Area: Summary for the Press*, Netherlands Institute for War Documentation (2002), at http://www.srebrenica.nl/en/content_perssamenvatting.htm (last visited May 20, 2004) (“The promise made by UN general Morillon in 1993 to the people of Srebrenica that they were under the protection of the UN and would not be abandoned The proclamation of the zone as a safe area created an illusion of security for the population.”).

334. *Report of the Secretary-General Pursuant to General Assembly Resolution 53/35*, U.N. GAOR, 54th Sess., Agenda Item 42, ¶ 490, U.N. Doc. A/54/549 (1999), available at <http://www.haverford.edu/relg/sells/reports/UNSrebrenicareport.htm> [hereinafter *Report—Resolution 53/54*].

335. PHILLIP CORWIN, *DUBIOUS MANDATE: A MEMOIR OF THE UN IN BOSNIA, SUMMER 1995*, at 235–36 (1999).

With regard to lifting the arms embargo, I have heard numerous American critics say it should have been done early on in the war and that it would have allowed Bosnian government forces to defend themselves. . . . It is necessary, first of all, to ask *who* first imposed the weapons ban on all of former Yugoslavia and who refused to lift it. The answer to both questions is the UN Security Council, led by its five permanent members. The United States, which voted in favor of the original ban, later reversed itself and lobbied for repealing it, but the other four permanent members (the United Kingdom, France, Russia, and China) did not want to see the ban lifted Secondly, weapons *were* coming into Bosnia. They were being smuggled in, not in the quantities the Bosnian government wanted, but the embargo was being violated by many of the same countries that had voted for it, including the United States. The flagrant violation of the arms embargo by the United States with regard to Croatia was later to come out in the newspapers, but the United States also encouraged violations of the arms embargo in Bosnia, if only to minimize the influence of Iran, which was the Bosnian government’s main supplier.

Id.

prospect of impending parity that convinced the Serbs to make a final grand offensive to acquire as much territory as possible before losing their military advantage altogether.³³⁶ The Srebrenican massacre was one result of the final Serb offensive.

The other policy that proved disastrous was the creation of “safe areas” pursuant to Resolution 819, which was adopted by the Security Council in April 1993.³³⁷ Safe areas were “regions, which should preferably be substantially free of conflict beforehand, where refugees could be offered a ‘reasonable degree of security’ by a brigade of peacekeeping troops.”³³⁸ The concept of a “safe area,” however, was a pacifist fantasy, with little resemblance to the reality on the ground. Even the U.N. forces were not safe; they could not even protect themselves, let alone anyone else. In fact, they were taken hostage, casually, at will, without resistance, sometimes hundreds at a time.³³⁹ These U.N. hostages would then be used by the Bosnian Serbs to deter the United Nations and NATO from taking more aggressive action.

While the U.N. peacekeepers had collected some of the Bosniacs’ weapons, the Bosniacs retained the better ones. With those weapons, they attacked Bosnian Serb villages and civilians, returning afterwards to Bosnian “safe areas.” Each successive raid left the Serbs more infuriated. The United Nations was aware of these raids, and was aware that the Bosniacs had sequestered some weapons, but it took no steps to ensure the safety of Bosnian Serb civilians.³⁴⁰

336. *Report—Resolution 53/54*, *supra* note 334, ¶ 490 (“The arms embargo did little more than freeze in place the military balance within the former Yugoslavia. It left Serbs in a position of overwhelming military dominance . . .”).

337. See S.C. Res. 819, U.N. SCOR, 3119th mtg., at 42, U.N. Doc. S/RES/819 (1993).

338. B.G.J. de Graaff, *Part I: The Yugoslavian Problem and the Role of the West 1991–1994, Chapter 8: Safe Areas as Spin-Offs from Humanitarian Action, November–December 1992*, in *SREBRENICA: A ‘SAFE’ AREA: RECONSTRUCTION, BACKGROUND, CONSEQUENCES AND ANALYSES OF THE FALL OF A SAFE AREA*, at <http://213.222.3.6/srebrenica/> (last visited May 20, 2004).

339. See *Timeline of Events Leading up to and Surrounding the Srebrenica Massacre*, *Srebrenica: A Cry from the Grave*, at http://www.pbs.org/wnet/cryfromthegrave/massacre/time_line.html (last visited May 20, 2004).

340. See PHILLIP CORWIN, *DUBIOUS MANDATE: A MEMOIR OF THE UN IN BOSNIA, SUMMER 1995*, at 69 (1999) (“The Bosnian Serbs are also complaining about Bosnian government attacks against Serb villages. Concerning the attacks, there are ongoing Bosnian government assaults against Serb villages, many of them launched from UN ‘safe areas,’ Sarajevo included.”). For discussion of weapon collections and “weapon collection points,” see generally *id.* and ROHDE, *supra* note 332. See ALSO JAN WILLEM HONIG & NORBERT BOTH, *SREBRENICA: RECORD OF A WAR CRIME* (1997).

[General] Halilović staunchly refused to agree to surrender the enclave [Srebrenica] to the Serbs. He would only go so far as conceding that the Muslim forces in Srebrenica would ‘submit’ their arms to UNPROFOR. At 02.00 on 18 April,

By the summer of 1995, the population of the Srebrenica safe area had swelled with refugees. At the time of the massacre, Srebrenica was an island of Bosniacs in Bosnian Serb territory—an island the United Nations had sworn to protect.

The United Nations, however, would not honor its pledge. As the BBC later reported, “A former United Nations commander in Bosnia has told a Dutch parliamentary inquiry into the Srebrenica massacre that it was clear to him that Dutch authorities would not sacrifice its soldiers for the enclave.”³⁴¹ Indeed, on July 11, 1995, Bosnian Serb forces entered Srebrenica without resistance from Bosniac or U.N. forces; scarcely a shot was fired.³⁴² (The Bosniac general in Srebrenica had recently been recalled by his government, leaving the Bosniac forces leaderless.³⁴³) Ethnic cleansing and genocide followed.

Knowing that remaining in the U.N. “safe area” would mean certain death, some 10,000 to 15,000 Bosniac males fled into the surrounding forests, escaping to the Bosniac-held town of Tuzla. Only about 3,000 to 4,000 were armed, mostly with hunting rifles; these were the men who survived what has since become known as the six-day “Marathon of Death.”³⁴⁴ And the rest? Laura Silber and Allan Little, in their book *Yugoslavia: Death of a Nation*, describe the slaughter in the forest: “Some were killed after having surrendered, believing the UN would protect them Serb soldiers, some even dressed as UN peace-keepers driving stolen white UN vehicles, would guarantee the Muslims’ safety. Then they would shoot.”³⁴⁵ In this way, over 7,500 men and boys were killed.

[General] Mladić and Halilović reached an agreement. A ceasefire would begin at 05.00 and there would be a freezing of “all combat actions on the achieved lines of confrontation”. Canadian peacekeepers would be allowed to enter the enclave six hours later to oversee the disarming of the Muslims and facilitate the ceasefire. The Muslims had to hand in their weapons within seventy-two hours of the arrival of the Canadians in the enclave Jeremy Blade, an adviser to Owen and Thorvald Stoltenberg (who had replaced Cyrus Vance in the peacekeepers’ team), pointed out to Lord Owen that, fortunately, Mladić’s demand that Muslim soldiers surrender to the Serbs had been kept out of the agreement. But Brade feared that “the correct treatment of Muslim men” by the Serbs would remain a major problem.

Id. at 104–05.

341. Geraldine Coughlan, *Dutch Felt Srebrenica ‘Not Worth Sacrifice,’* BBC News (Dec. 6, 2002), at <http://news.bbc.co.uk/1/hi/world/europe/2550801.stm>.

342. See ROHDE, *supra* note 332, at 165–66.

343. *Id.* at 164.

344. *Id.* at 179–80. See also Mike O’Connor, *Bosnian Men Tell of Survival Deep in Serb Territory*, N.Y. TIMES, Apr. 9, 1996, at A3 (describing the dangerous escape of six Muslim men from Serb forces).

345. LAURA SILBER AND ALLAN LITTLE, *YUGOSLAVIA: DEATH OF A NATION* 345, 349–50 (2d ed. 1997).

Three months after the massacre at Srebrenica—lightning speed for the United Nations—a unanimous Security Council rescinded its arms embargo against the nations of the former Yugoslavia.³⁴⁶

The U.N. Convention on Genocide, adopted in 1948, makes “complicity in genocide” a punishable act.³⁴⁷ The United Nations’ reflexive attempt at disarmament prior to the massacre at Srebrenica might convincingly be argued to fulfill the definition of complicity: “a state of being an accomplice; partnership in wrongdoing.”³⁴⁸ Even if not legally complicit, the United Nations undeniably functioned as a facilitator of genocide.

The United Nations can hardly claim ignorance of Serb intent. Prior to Srebrenica, the international body had knowledge of other mass killings committed by the Serbs against the Bosniacs between 1991 and 1994. One of the largest of these occurred in April 1992 in the town of Bratunac, just outside Srebrenica.³⁴⁹ There, Serb paramilitaries and special police tortured and killed approximately 350 Bosnian Muslims.

Given that the United Nations was fully aware of Milosevic’s designs for a “Greater Serbia” (incorporating portions of Bosnia), and that the United Nations was fully aware of the disparity in military capabilities between Milosevic and his intended victims, the United Nations had every responsibility to defend the Muslims. If the United Nations could not defend them, it at least had a duty to withdraw the arms embargo immediately and allow Bosnia’s Muslims to defend themselves.

Nor can the United Nations claim ignorance of what happens when victims are abandoned to their oppressors. The Srebrenica scenario is reminiscent of the 1994 genocide in Rwanda, when promises by the United Nations to protect Rwandan civilians proved just as empty.³⁵⁰ There, too, U.N. personnel knew that the victim groups had been previously disarmed—in this case, by laws enacted in 1964 and

346. Press Release, Security Council Decides on Phased Lifting of Arms Embargo Against Former Yugoslavia by Vote of 14 to None, With Russian Federation Abstaining, U.N. SCOR, U.N. Doc. SC/6127 (1995), available at <http://www.un.org/News/Press/docs/1995/19951122.sc6127.html>.

347. *Convention on the Prevention and Punishment of the Crime of Genocide*, Dec. 9, 1948, art. 3, X U.N.T.S. 277, 280.

348. AMERICAN COLLEGE DICTIONARY 247 (C.L. Barnhart, ed., Random House 1966).

349. See Gendercide Watch, *Case Study: The Srebrenica Massacre, July 1995*, at http://www.gendercide.org/case_srebrenica.html (last visited May 20, 2004).

350. See JAY SIMKIN ET AL., RWANDA’S GENOCIDE: SUPPLEMENT TO LETHAL LAWS 11 (1994).

1979.³⁵¹ Early on in the genocide, thousands of Rwandan civilians gathered in areas where U.N. troops had been stationed, thinking they would be protected. They were not. If the Rwandans had known the U.N. troops would withdraw, they would have fled, and some might have survived. “The manner in which the troops left, including attempts to pretend to the refugees that they were not in fact leaving, was disgraceful,” an independent inquiry later concluded.³⁵²

In short, the United Nations was aware of Milosevic’s propensity for ethnic cleansing and had ample reason to know its actions would create a situation ripe for genocide. The atrocities at Srebrenica could not have been perpetrated by the Serbs on such a grand scale had not the U.N. and its policies first prepared an enclave of victims, most of them disarmed.

Radislav Krstic has already been sentenced to jail, and the trial of Slobodan Milosevic is proceeding at the Hague³⁵³—yet upper-echelon U.N. policymakers have escaped accountability for their role in the tragedy. Kofi Annan, who had served during this period as Under-Secretary-General for Peacekeeping Operations, was presented with the Nobel Peace prize on December 10, 2001; it would have been more appropriate, from a strictly legal viewpoint, if he had been indicted for complicity in genocide. Likewise unscathed is Boutros Boutros-Ghali, Secretary-General at the time of the Srebrenica massacre.

In 1998, three years after the Srebrenica massacre, Kofi Annan offered an apology:

[The United Nations] failed to do our part to help save the people of Srebrenica from the Serb campaign of mass murder. . . .

In the end, the only meaningful and lasting amends we can make to the citizens of Bosnia and Herzegovina who put their faith in the international community is to do our utmost not to allow such horrors to recur. When the international community makes a solemn promise to safeguard and protect innocent civilians from massacre, then it must be willing to back its promise with the necessary means. Otherwise, it is surely better not to raise hopes and

351. *Id.* at 6–7.

352. Report of the Independent Inquiry into the Actions of the United Nations during the 1994 Genocide in Rwanda, *reprinted in* Letter Dated 15 December 1999 from the Secretary-General Addressed to the President of the Security Council, U.N. SCOR, at 46, U.N. Doc. S/1999/1257 (1999), *available at* <http://ods-dds-ny.un.org/doc/UNDOC/GEN/N99/395/47/IMG/N9939547.pdf>.

353. See Charles M. Sennott, *Doubt Aired on Genocide Case Against Milosevic*, BOSTON GLOBE, Feb. 26, 2004, at A22 (noting the progress of the prosecution of former Yugoslavian leaders charged with war crimes).

expectations in the first place, and not to impede whatever capability they may be able to muster in their own defence.³⁵⁴

Just months after this show of contrition, Kofi Annan and the United Nations were back at work preventing prospective genocide victims from defending themselves. This time, the victims were the people of East Timor. Left unprotected because their firearms had been sequestered at the behest of the United Nations, the Timorese were attacked by the Indonesian military.³⁵⁵

The fraud of U.N. “protection” was underscored yet again in May 2000. As Dennis Jett explains in *Why Peacekeeping Fails*, Sierra Leone “nearly became the UN’s biggest peacekeeping debacle” when rebels of the Revolutionary United Front (RUF) took hostage 500 U.N. peacekeepers.³⁵⁶ Human Rights Watch has described the RUF as a “barbarous group of thugs” who “lived off the country’s rich diamond fields and terrorized the population with its signature atrocity of chopping off arms and hands of men, women and often children.”³⁵⁷

Jett continues: “The RUF troops are unspeakably brutal to civilians, but will not stand up to any determined military force. Yet the UN peacekeepers, with few exceptions, handed over their weapons including armored personnel carriers and meekly became prisoners.”³⁵⁸ It was only the deployment of Britain’s troops to the former colony that saved civilian lives and averted a “complete UN defeat.”³⁵⁹

It would be difficult to find an organization whose work has facilitated government mass murder of more people, in more diverse locations around the world, than the United Nations has in the last decade. And the United Nations’ current campaign to disarm the world’s peoples suggests that the genocides of the previous decade are to be repeated in many other places in the years to come.

An e-mail we received from a U.S. soldier encapsulates the horrific consequences of the United Nations’ program to disarm non-state actors:

354. *Report—Resolution 53/54*, *supra* note 334, ¶ 503, 504.

355. *See supra* Part III.A.

356. DENNIS C. JETT, *WHY PEACEKEEPING FAILS* xii (2001).

357. Kenneth Roth, *International Injustice: The Tragedy of Sierra Leone*, WALL ST. J. EUR., Aug. 2, 2000, at 6.

358. JETT, *supra* note 356, at xii.

359. *Id.*

In 1999 I spent a year with the peacekeeping mission in Bosnia. I was stationed in the former “safe” area Gorazde. I learned a lot about that war and how the civilians were massacred. One day we were discussing guns and private ownership. In response to the statement that the U.N. believes only the police and military should have guns, a Bosnian exasperatedly asked: “Who do you think slaughtered everyone?”³⁶⁰

Severe restrictions on gun possession by “non-state actors” were a *sine qua non* for genocide in Bosnia. Such restrictions helped maintain Soviet neo-colonial hegemony in Eastern Europe—hegemony that might not have been displaced but for the many guns owned by “non-state actors” in Afghanistan.³⁶¹

VII. CONCLUSION

Like Saudi Arabia’s global funding and promotion of Wahabist indoctrination and concomitant intolerance of all other religions,³⁶² the United Nations’ disarmament campaign springs from a sincere belief that some restrictions on civil liberties are in the best interests of the people being restricted. The Wahabis do not trust the world’s people to make religious choices, and the disarmament lobby does not trust the world’s people to make choices about owning a firearm. The result of the Wahabbi campaign and the disarmament campaign is widespread murder by governments and by terrorist groups, and the suppression of human rights.

The explicit principle that sovereignty inheres in the people, not in the government, is at least as old as the great Confucian philosopher Mencius. In contrast to the Legalist philosophers popular in the imperial palaces, Mencius considered the people more important than the state. Mencius wrote: “Heaven sees as the people see; Heaven hears as the people hear.”³⁶³ Accordingly, the dissatisfaction of the people could remove the mandate of Heaven from a ruler, and place it on another ruler. The Encyclopædia Britannica notes that Mencius

360. E-mail from anonymous U.S. Soldier to Dave Kopel (Jan. 2003) (on file with author).

361. *See supra* Part VI.A.1.

362. *See* MICHAEL A. LEDEEN, THE WAR AGAINST THE TERROR MASTERS: WHY IT HAPPENED. WHERE WE ARE NOW. HOW WE’LL WIN. 33–35, 197–200, 207 (2002) (“The Wahhabi Poison has penetrated very deeply into the body of [Saudi Arabia].” *Id.* at 207.); ISLAMIC FUNDAMENTALISM 225 (Abdel Salam Sidahmed & Anoushiravan Ehteshami eds., 1996); LOUIS ALEXANDER OLIVIER DE CORANCEZ, HISTORY OF THE WAHABIS (Eric Tabet trans., 1995).

363. MENCIUS 66 (W.A.C.H. Dobson trans., Oxford U. Press 1963)

believed that revolution in severe cases is not only justifiable, but is a moral imperative.³⁶⁴

The American political philosopher Theodore Schroeder explained that removing tyranny is not illegitimate rebellion. Rather, tyrannical “government is in rebellion against the people.”³⁶⁵

In the years leading up to the American Revolution, Patriots and Tories alike began to use the term “Body of the People” to mean “a majority of the people,” and eventually, “the united will of the people.” Legitimate sovereignty, Americans said, flowed not from “the Crown,” but from the “Body of the People.” Locating sovereignty in the People, and not in the Crown, meant locating the power to enforce the law in the People as well.

Removing arms from “non-state actors” is too often a formula for removing the sovereignty of the people, placing them at the mercy of whoever happens to be running the government. Some of these governments may be benign, but many are not. The Thirty Tyrants of Athens were not benign, nor is Robert Mugabe, nor are the many other dictatorships whose illegitimate power would be strongly enhanced by prohibition of firearms for “non-state actors.” The people are the only legitimate sovereigns of a nation. An international agenda for the protection of human rights should work to ensure the widespread ownership of firearms by the lawful rulers of a state (that is, the people) while seeking to deprive the real “non-state actors” (that is, the dictatorships) of their monopoly of force.

364. *Mencius*, in 8 ENCY. BRITANNICA 3 (15th ed. 1998) (“When a ruler no longer practices benevolence . . . and righteousness . . . , the mandate of Heaven . . . has been withdrawn, and he should be removed.”).

365. THEODORE SCHROEDER, *FREE SPEECH FOR RADICALS* 105 (1969) (1916).