

MICRO-DISARMAMENT: THE CONSEQUENCES FOR PUBLIC SAFETY AND HUMAN RIGHTS

David B. Kopel,^{*} Paul Gallant^{**} & Joanne D. Eisen^{***}

INTRODUCTION

“Micro-disarmament” is a term of art in the small arms prohibition community, referring to the disarmament of the civilian population in a particular country. Advocates of micro-disarmament argue that the success of micro-disarmament in particular countries demonstrates that reducing or eliminating the prevalence of firearms reduces violence. Micro-disarmament successes are touted as proof of the desirability of ever-broader campaigns to disarm civilian populations worldwide. This article examines six case studies of micro-disarmament: Cambodia, Bougainville, Albania, Panama, Guatemala, and Mali.

In each of these six countries, we argue, micro-disarmament has failed or has not been nearly as successful as firearms prohibitionists have claimed. We suggest that the emphasis on disarming civilians as the key to peace is mistaken, because, as these six case studies demonstrate, true and lasting peace must be based on protection of human rights. When human rights are secure, violence will diminish; conversely, when human rights are denied, many people will refuse to surrender the tools necessary to defend their lives and liberties.¹

^{*} Research Director, Independence Institute, Golden, Colorado, at <http://www.davekopel.org>. Author of *The Samurai, the Mountie, and the Cowboy: Should America Adopt the Gun Controls of Other Democracies?* (Prometheus Books 1992). Co-author of *Gun Control and Gun Rights* (NYU Pr. 2002). Editor-in-Chief of the *Journal on Firearms & Public Policy*.

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^{**} Senior Fellow, Independence Institute, at <http://www.independenceinstitute.org>.

^{***} Senior Fellow, Independence Institute, at <http://www.independenceinstitute.org>. Co-author (with Kopel and Gallant) of numerous articles on international gun policy in publications including the *S.A.I.S. Review*, *Texas Review of Law & Politics*, *National Review Online*, and *Brown Journal of World Affairs*.

¹ For example, in the Ivory Coast, the cause of the October 2002 rebellion against government was laws that disenfranchised 30 percent of the populace. See *Restoring Peace to Ivory Coast*, N.Y. TIMES, Jan. 17, 2003, at A26. See also *Positive Signs at Ivory Coast Talks*, BBC NEWS, Jan. 19, 2003, available at <http://news.bbc.co.uk/1/low/world/africa/2672435.stm>.

In the summer of 2004, Ivory Coast President Gbagbo agreed at a summit in Accra, Ghana, to revise Article 35 of his country’s Constitution in order to return rights to its disenfranchised population. However, the peace process stalled and UN Security Council President Ambassador Juan Antonio Yañez-Barnuevo spoke on behalf of the Security Council, calling on Gbagbo “to do everything in his power to ensure the revision of Article 35 of the Constitution, as he committed himself in Accra.” *Security Council Urges Côte d’Ivoire Leader Gbagbo to Act on Peace Pledges*, UN NEWS SERVICE, Sept. 27, 2004. The Security Council also “exhorted the [opposition] Forces Nouvelles to start as soon as possible before 15 October, and without preconditions, the

I. HUMAN RIGHTS AND DISARMAMENT

The United Nations has recognized that the preservation of fundamental human rights is essential to avoiding armed conflict. According to the preamble of the UN's Universal Declaration of Human Rights, adopted in 1948, "Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law."² According to Article 8 of the Universal Declaration, "Everyone has the right to an effective remedy."³

Thus, the Declaration recognizes that when a government destroys human rights and all other remedies have failed, the people are "compelled to have recourse, as a last resort, to rebellion against tyranny and oppression."⁴ Because "[e]veryone has the right to an effective remedy," the people necessarily have the right to possess and use arms to resist tyranny, if arms use is the only remaining "effective remedy."⁵

demobilization, disarmament and reintegration process to which they committed themselves in Accra." *Id.* (emphasis added).

But because the government refused to implement the promised re-enfranchisement, the rebels refused to disarm. President Laurent Gbagbo has not restored civil rights, human rights, or land ownership rights to the disenfranchised population. Extrajudicial murders by the government continue. *Ivory Coast Rejects 'Death Squad' Claims*, BBC NEWS, Feb. 6, 2003, available at <http://news.bbc.co.uk/2/hi/africa/2731599.stm>. See *Côte d'Ivoire Peace Process Still Mired in Stalemate – Report to UN*, UN NEWS SERVICE, Oct. 19, 2004, available at <http://www.globalsecurity.org/military/library/news/2004/10/mil-041019-unnews03.htm>; *Restoring Peace to Ivory Coast*, N.Y. TIMES, Jan. 17, 2003 at A26.

Although the rebels were supposed to disarm on October 15, Guillaume Soro, the rebel leader, explained, "Nothing is going to happen on 15 October. We are still armed, the country is divided and parliament has not voted through the reforms . . . So long as there is not a minimum level of confidence . . . we are not going to talk about DDR (disarmament, demobilization and rehabilitation)." See *Côte d'Ivoire: Government Appeals for Calm as Disarmament Fails to Start*, UN INTEGRATED REGIONAL INFORMATION NETWORKS, Oct. 15, 2004 (parenthetical in original);

The Ivoirian government's failure to hold the militias and security forces accountable for these abuses has only strengthened their impunity in Abidjan and the rural areas. On Nov. 7, Gbagbo appealed to the militias to return home. But the next morning, his political pundits were back on state radio and the boys were back on the streets. If Gbagbo won't control the militias, the UN peacekeepers must step in to protect civilians.

Corinne Dufka, *Now, Protect Ivoirian Civilians*, THE INTERNATIONAL HERALD-TRIBUNE, Nov. 16, 2004, available at <http://www.hrw.org/english/docs/2004/11/17/cotedi9688.htm> (Dufka is a West Africa Researcher with Human Rights Watch).

² *Universal Declaration of Human Rights*, G.A. Res. 217A (III), U.N. GAOR (1948), available at <http://www.un.org/Overview/rights.html> [hereinafter Human Rights Declaration].

³ *Id.*

⁴ *Id.*

⁵ It seems clear from the Declaration's Articles 1-3 that all the protected rights, including the right to armed self-defense as a last-resort defense of other rights, belong to individuals:

The Universal Declaration followed the same logic as did William Blackstone in his *Commentaries*, the most influential legal treatise written in English, which has had enormous influence in every nation which has adopted the Common Law. In detailing the Common Law's protection of human rights, Blackstone first set forth the three primary rights: personal security, personal liberty, and private property.⁶

Blackstone then turned to the auxiliary rights, such as the right to petition the government for redress of grievances, which protected the primary rights.

The fifth and last auxiliary right of the subject, that I shall at present mention, is that of having arms for their defence suitable to their condition and degree, and such as are allowed by law. . . . [A]nd it is indeed a public allowance, under due restrictions, of the natural right of resistance and self preservation, when the sanctions of society and laws are found insufficient to restrain the violence of oppression.⁷

So according to Blackstone, humans have “the natural right of resistance and self preservation, when the sanctions of society and laws are found insufficient to restrain the violence of oppression.”⁸ Likewise, the Universal Declaration affirms the right, as “a last resort, to rebellion against tyranny and oppression.”⁹

In 2001, the UN pointed to a practical application of the Universal Declaration's right to rebellion against oppression: the decades-long war fought by the African National Congress and other violent groups against the apartheid regime in South Africa.¹⁰

Article 1. All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3. Everyone has the right to life, liberty and security of person.

Id.

⁶ 1 WILLIAM BLACKSTONE, COMMENTARIES *125 (1765).

⁷ *Id.* at *139.

⁸ *Id.*

⁹ Human Rights Declaration, *supra* note 2, at pmbl.

¹⁰ *Declaration*, 2001 World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Agenda item 9 U.N. Doc. A/CONF.189/12 (Durban South Africa, Sept, 8, 2001) (“Drawing inspiration from the heroic struggle of the people of South Africa against the institutionalized system of apartheid”), available at [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.Conf.189.12.En?Opendocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/A.Conf.189.12.En?Opendocument).

Although arms possession as “a last resort” protection for human rights is implied by the Universal Declaration of Human Rights, the United Nations has, oddly, begun promoting disarmament, even in countries where arms possession is the last resort available to protect human rights.

Following the Cold War, the UN turned its attention away from nuclear disarmament and toward the issue of small arms and light weapons (“SALW”). In 1992, then-Secretary-General Boutros Boutros-Ghali coined the term “micro-disarmament,” explaining, “[b]y this I mean practical disarmament in the context of the conflicts the United Nations is actually dealing with and of the weapons, most of them light weapons, that are killing people in the hundreds of thousands.”¹¹ He also acknowledged that the solution to conflict “lies in commitment to human rights with a special sensitivity to those of minorities, whether ethnic, religious, social or linguistic.”¹²

The United Nations is not really composed of “nations,” but is instead composed of members of the governments of various nations. The “nation” and the “government” are not necessarily synonymous. Few people would argue the Pol Pot regime represented the Cambodian people, that Saddam Hussein represented the people of Iraq, or that the Duvalier regimes represented the people of Haiti. Almost all governments, especially dictatorial governments, are concerned foremost with their own political stability. Hence, the government-centric United Nations manifests an instinctive bias in favor of controlling insurgencies by controlling the arms of the insurgents, rather than by addressing the oppressive conditions that created the insurgencies.¹³

According to UN Secretary-General Kofi Annan, “[o]ver the past decade, the destabilizing accumulation of illicit small arms and light weapons has emerged as a major concern of the international community These arms

¹¹ *Supplement to an Agenda for Peace: Position Paper of the Secretary-General on the Occasion of the Fiftieth Anniversary of the United Nations*, U.N. Doc. A/50/60-S/1995/1, at ¶ 60 (1995) (“Micro-disarmament” and “practical disarmament” are used interchangeably by the disarmament community.), available at <http://www.un.org/Docs/SG/agsupp.html#DISARM>.

¹² *An Agenda for Peace, Preventive Diplomacy, Peacemaking and Peace-Keeping*, Report of the Secretary General, U.N. Doc. A/47/277-S/2411, at ¶18 (1992), available at <http://www.un.org/Docs.SG.agpeace.html>.

¹³ Andrew Latham, Assistant Professor at Macalester College and member of the Canadian delegation to the “Inhumane Weapons Convention” (1994/95), perfectly articulated the U.N. perspective, “The ready availability of weapons makes it far too easy for substate groups to seek remedy for grievances through the application of violence.” 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). See also Sami Faltas, *Weapons Collection Programmes: Questions to Answer and Challenges to Face*, at ¶ 3 (Bonn International Center for Conversion, 1998) (“Ultimately, the ownership of arms should not be left to the personal choice of individuals. The state needs to preserve its monopoly of the legitimate use of force. So sanctions against the illegal possession and use of arms are necessary and should be imposed.”), available at http://www.iansa.org/documents/2003/weapons_collections.htm. Sami Faltas is the researcher in charge of the Bonn International Center for Conversion’s Surplus Weapons program.

fuel, intensify and contribute to the prolongation of conflicts.”¹⁴ When Annan and other disarmament advocates complain about destabilization, they are in effect advocating for the status quo of existing dictatorships.

Annan has recognized that government abuse of human rights is a major, direct cause of armed conflict: “Efforts to prevent armed conflict should promote a broad range of human rights, including not only civil and political rights but also economic, social and cultural rights, including the right to development.”¹⁵ But what Annan elides is the fact that the “last resort” that forces a government to stop human rights abuses is the ability of the victim population to use arms to protect itself from the government. To deprive the victims of their defensive arms would deny them “the right to an effective remedy,” as guaranteed by the Universal Declaration of Human Rights.¹⁶

Arms prohibitionists claim that arms possession leads to human rights abuses. Peter Herby, a legal specialist with the International Committee of the Red Cross, writes, “as highly lethal arms become diffused throughout a population, the conditions for violations of humanitarian law increase.”¹⁷ Prohibitionists argue that arms possession causes not only apolitical violent crime, but also civil conflict. The greater the number of weapons in the hands of “non-state actors” (the prohibitionists’ term for anyone not deemed politically reliable by the government), the greater the destabilization.¹⁸

¹⁴ *Small Arms*, Report of the Secretary-General, U.N. SCOR, U.N. Doc. S/2002/1053, at Summary (2002).

¹⁵ *Prevention of Armed Conflict*, Report of the Secretary-General, U.N. GAOR, 55th Sess., Agenda Item 10, at ¶ 94, U.N. Doc. A/55/985-S/2001/574 (2001), available at <http://www.reliefweb.int/library/documents/2001/un-conflprev-07jun.htm>.

¹⁶ Human Rights Declaration, *supra* note 2, at art. 9.

¹⁷ See Peter Herby, *Arms Transfers, Humanitarian Assistance, and Humanitarian Law*, in *LIGHT WEAPONS AND CIVIL CONFLICT: CONTROLLING THE TOOLS OF VIOLENCE* 198 (Jeffrey Boutwell & Michael T. Klare, eds., 1999).

¹⁸ The “weapons effect” hypothesis suggests that guns can psychologically control people and cause them to be violent. Although the “weapons effect” hypothesis permeates the disarmament literature, social science research does not support the hypothesis. See Paul Gallant & Joanne D. Eisen, *Trigger-Happy: Re-thinking the ‘Weapons Effect’*, 14 *J. ON FIREARMS & PUB. POL’Y* 89 (2002), available at <http://www.saf.org/jfpp/jfpp14.pdf>.

However, the prohibitionists have misunderstood the issue of causation.¹⁹ The confusion between association and causality is rampant throughout the disarmament literature. Despite the premise behind the name of the United Nations Trust Fund for the Consolidation of Peace through Practical Disarmament,²⁰ weapons do not cause conflict; hence, reducing the number of weapons does not necessarily reduce conflict. As this Article details, voluntary weapons collection programs have often failed to disarm the perpetrators of violence and to bring peace. Indeed, a typical result is increased violence.

II. CAMBODIA

When Cambodia was a French colony, from 1863 to 1953, the French rulers passed many laws to prevent the Cambodian peasants from arming.²¹ On April 17, 1975, a revolutionary war brought the Cambodian communist party to power,

¹⁹ See JANE L. GARB, UNDERSTANDING MEDICAL RESEARCH 53 (1996):

Once spurious association (bias and confounding) and chance have been ruled out as explanations for an association between a risk factor and an outcome in a study, several criteria should be considered in order to establish that the association is causal (i.e., that the risk factor caused the outcome.) The presence of strength, consistency, biological plausibility, temporal correctness, or specificity gives evidence of a causal association. Although it is not necessary that all five elements exist to establish causality, the more that are present, the greater the likelihood that an association is causal.

Id.

For a thorough discussion of causality and the reason why bad arguments are sometimes convincing, see JERRY CEDERBLUM & DAVID W. PAULSEN, CRITICAL REASONING ch. 6 (1990). See also Don B. Kates & Daniel D. Polsby, *Long-Term Nonrelationship of Widespread and Increasing Firearm Availability to Homicide in the United States*, 4 HOMICIDE STUD. 185 (2000) (discussion of causality with regard to violence and weapons); Gary Kleck & David J. Bordua, *The Factual Foundation for Certain Key Assumptions of Gun Control*, 5 L. & POL'Y Q. 271 (1983).

²⁰ See Graciela Uribe de Lozano, *The United Nations and the Control of Light Weapons*, in LIGHT WEAPONS AND CIVIL CONFLICT 161-71 (Jeffrey Bortwell & Michael T. Klare eds. 1999) (history of UN disarmament programs). See also *Assistance to States for Curbing the Illicit Traffic in Small Arms and Collecting Them: Report of the Secretary-General*, U.N. Res. 182, U.N. GAOR, 56th Sess., U.N. Doc A/56/182 (2001) (origin of the United Nations Trust Fund for the Consolidation of Peace through Practical Disarmament and the objectives of the Fund); *General and Complete Disarmament*, U.N. Res. 75, U.N. GAOR, 49th Sess., at Part G, U.N. Doc. A/RES/49/75 (1994); *Assistance to States for Curbing the Illicit Traffic in Small Arms and Collecting Them*, U.N. Res. 33, U.N. GAOR, 55th Sess., at Part F, U.N. Doc. A/RES/55/33 (2000).

For UN recognition of the difficulty of forcible disarmament, see Jane Boulden, *Rules of Engagement, Force Structure and Composition in United Nations Disarmament Operations*, in MANAGING ARMS IN PEACE PROCESSES: THE ISSUES 135, 167 (UN Institute for Disarmament Research 1996) ("Disarmament without consent is effectively a combat situation."); John Hillen, BLUE HELMETS: THE STRATEGY OF UN MILITARY OPERATIONS 217-19 (2000).

²¹ Measures included the Royal Ordinance of 27 January 1920, Royal Ordinance of 8 July 1927, Royal Ordinance of 26 April 1929, and Royal Ordinance of 1 July 1935. The most comprehensive was Royal Ordinance No. 55 of 28 March 1938, which provided for a licensing system. See JAY SIMKIN, AARON ZELMAN & ALAN M. RICE, LETHAL LAWS 305 (1994). Royal Ordinance No. 55 was expanded on May 29, 1953.

and the state of Democratic Kampuchea came into existence. The new government of Pol Pot and his Khmer Rouge perpetrated a reign of terror against unarmed civilians, resulting in the deaths of at least one million people.²²

On December 25, 1978, an invasion by Vietnam ended Pol Pot's regime. A period of internecine factional fighting ended on October 23, 1991, when the four warring factions²³ signed the Paris Peace Agreements²⁴ and invited the UN to help restore peace and normalcy and to supervise free elections in the country.²⁵ The Paris Agreements gave the UN a broad mandate to disarm and demilitarize the warring factions, and to improve human rights.²⁶ UNTAC, the United Nations Transitional Authority in Cambodia, was created.²⁷

The terms of the Paris Agreements stipulated that troops from all four factions would be disarmed and demobilized by the UN. This meant collecting more than 300,000 conventional weapons from an estimated 425,000 combatants (203,300 regular army and 220,290 militia).²⁸ In theory, when this goal was reached, there would be peace and a "neutral security environment as a prelude to activities aimed at creating a neutral political environment,"²⁹ thereby enabling Cambodians to vote in national elections without coercion. This would represent a major step toward democratization and a humanitarian climate.

However, the Khmer Rouge ("PDK") refused to disarm from the start, and the remaining factions grew reluctant to proceed with their own disarmament. One cannot fault the response of the remaining factions, because only the PDK would benefit from a unilateral disarmament. The phenomenon of "decaying

²² See SIMKIN, ZELMAN & RICE, *supra* note 21, at 14; Ben Kiernan, *Introduction: Conflict in Cambodia, 1945-2002*, 34 CRITICAL ASIAN STUD. 483, 493 (2002) (estimating that the genocide claimed 1.7 million lives).

²³ These were the Cambodian People's Armed Forces ("CPAF"), the National Army of Democratic Kampuchea ("NADK", the armed forces of the PDK or Khmer Rouge), the Armée Nationale pour un Kampuchea Indépendent ("ANKI"), and the Khmer People's National Liberation Armed Forces ("KPNLAF"). See JIANWEI WANG, *MANAGING ARMS IN PEACE PROCESSES: CAMBODIA* 35, Table 1 (UN Institute for Disarmament Research 1996).

²⁴ These were formally known as the "Agreements on a Comprehensive Political Settlement of the Cambodian Conflict." See GRANT CURTIS, *TRANSITION TO WHAT? CAMBODIA, UNTAC AND THE PEACE PROCESS* 11 (UN Research Institute for Social Development 1993).

²⁵ See STEVEN R. RATNER, *THE NEW UN PEACEKEEPING* 140-48 (1995).

²⁶ As Roberts noted, "The UN operation in Cambodia was the largest ever conducted by the international organization, lasting from November 1991 to September 1993." David Roberts, *Democratization, Elite Transition, and Violence in Cambodia, 1991-1999*, 34 CRITICAL ASIAN STUD. 520, 523 (2002).

²⁷ UN Security Council Res. 745 (1992) established UNTAC, which became operational on March 15 of that year. S.C. Res. 745, U.N. SCOR (1992), available at <http://www.un.org/documents/sc/res/1992/scres92.htm> (last visited May 20, 2005). UNTAC consisted of four distinct components: The Military Component, The Electoral Component, the Civil Administration Component, and the Repatriation Component. See CURTIS, *supra* note 24, at 12-13.

²⁸ See WANG, *supra* note 23, at 35, Table 1.

²⁹ *Id.* at 34.

consent” has occurred before in disarmament programs.³⁰ Leaders of warring factions may sign an agreement, but ground forces may refuse to adhere to those agreements when doing so appears detrimental to their own survival. U.S. criminologist Franklin Zimring posed the question “[i]f unilateral disarmament is rational, why do people not give up their guns voluntarily . . . ?”³¹ The answer is simple: unilateral disarmament is contrary to the survival instinct and, as UNTAC discovered, the instinct is overcome only with great difficulty.

The UNTAC program is the only known instance in which there was an attempt to record empirical data using weapon injuries as an outcome measure after micro-disarmament. David Meddings and Stephanie O’Connor compared the incidence of weapon injuries before and after the UNTAC disarmament.³² They estimated that “around 25-50%” of Cambodia’s combatants were “believed to have been disarmed” during the peacekeeping operation, and although a stable government was left in place at the time of departure of the UN, “[t]he annual incidence of weapon injuries was higher than the rate observed before the peacekeeping operation.”³³ If weapons cause violence, then at least some

³⁰ Decaying consent is defined by the UN as “a pulling back from willingness to abide by an agreement because circumstances are not working out as hoped or envisioned.” Donald C. F. Daniel, *Is There a Middle Option in Peace Support Operations? Implications for Crisis Containment and Disarmament*, in *MANAGING ARMS IN PEACE PROCESSES: THE ISSUES* 60 (UN Institute for Disarmament Research 1996). For a general discussion about varieties of consent as part of the peace process, see *id.* at 60-61; RATNER, *supra* note 25, at 2 (“the consent of the parties to the UN’s presence. This consent is the first principle of all peacekeeping . . .”);

The operation risks almost immediate paralysis if it interprets consent so strictly as to freeze or retrench after even minor infractions by a party and then pin its hope on negotiation for compliance to resume At this early stage of the new peacekeeping, it would appear that the international community is prepared to characterize an operation as peacekeeping [as opposed to the more aggressive process of peace enforcement] and continue with its implementation as long as most of the principal actors within the affected states voice their commitment to the process and do not so interfere with it as to render it a mere farce.

Id. at 37-41.

³¹ Franklin E. Zimring, *Gun Control*, CRIME FILE STUDY GUIDE (U.S. Dept. of Justice, National Inst. of Justice, 1985) (NCJ 97224). Although Zimring was referring to American gun-owners, weapons possession as a means to survival may be a universal instinct. See, e.g., WANG, *supra* note 23, at 75 (“An interview with journalists, soldiers, policemen, schoolboys, women and doctors found that nobody thought the elimination of guns was a good idea. . . . This was also a necessity under constant military and bandit attack. Most homes had at least one weapon.”)

³² David R. Meddings & Stephanie M. O’Connor, *Circumstances Around Weapon Injury in Cambodia after Departure of a Peacekeeping Force: Prospective Cohort Study*, 319 BRIT. MED. J. 412, 412-13 (1999).

Meddings and O’Connor used data from the International Committee of the Red Cross-supported Mongkol Borei hospital in northwestern Cambodia. Land mine and other weapon injuries, in addition to firearm injuries, were included in the study. Approximately one-third of the victims were injured in non-combat situations, and of that category, civilian intentional firearm-related injuries comprised the largest category. *Id.*

³³ The authors found:

decrease in violence should have resulted from removal of 25-50% of the weapons.

A great deal has been written about UNTAC, and it is generally agreed that the disarmament process was a failure.³⁴ We believe that, in terms of disarmament, 25-50% is quite an accomplishment. What UNTAC actually achieved, however, was the creation of more victims.

Because of continued violence, the UN issued another disarmament imperative just prior to the 1993 election. Yasushi Akashi, the Secretary-General's Special Representative to Cambodia, issued a directive that rendered unlicensed civilian weapon possession illegal, as of March 18, 1993, although the Paris Agreements had given UNTAC no legal authority to issue such a decree. Penalties for violation of the UN directive included confiscation of the weapon and imprisonment for a period of six months to three years.³⁵

Five years after the UN imposed gun licensing law, violent crime was still rising in Cambodia.³⁶ Gun-rights advocates often argue that gun licensing or registration laws can set the stage for gun confiscation, since the government will know where to find all legally-owned guns. In Cambodia, gun confiscation did follow the UN's gun-licensing fiat. In 1999, the Cambodian government, with UN support, banned all firearms, blaming the nation's crime problem on "the large number of guns in circulation, thought to be about half a million"³⁷

30% of weapon injuries occurred in contexts other than interfactional combat. Most commonly these were firearm injuries inflicted intentionally on civilians. Civilians accounted for 71% of those with non-combat injuries, 42% of those with combat related injuries, and 51% of those with weapon injuries of either type. . . . The incidence of weapon injuries remained high when the disarmament component of a peacekeeping operation achieved only limited success. Furthermore, injuries occurring outside the context of interfactional combat accounted for a substantial proportion of all weapon injuries, were experienced disproportionately by civilians, and were most likely to entail the intentional use of a firearm against a civilian.

Id. at 412.

³⁴ *E.g.*, WANG, *supra* note 23, at 4 (UNTAC failed one of its major tasks: disarming and demobilizing the warring parties).

³⁵ *Id.* at 75-76.

[T]here would be a three-week grace period to allow people either to surrender their weapons or to get their papers in order. Gun holders were supposed to surrender their arms at the local UNTAC, CIVPOL, or military contingent where they would be given a receipt for their weapon and would face no legal action. Those who wished to retain their weapons could apply to the police force of the relevant authorities for a firearm licence.

Id.

³⁶ See Sitra Sivaraman, *Violent Crime Thrives in Wounded Society*, INTER PRESS SERVICE, Aug. 25, 1998 (quoting Mouen Chhean Nariddh: "While the world focuses on the human rights and political situation in Cambodia, silent but steady violent crime is emerging as one of the country's biggest killers.").

³⁷ See *UN Ban Starts in Cambodia*, BBC NEWS, Apr. 7, 1999; SMALL ARMS SURVEY 2002: COUNTING THE HUMAN COST 296 (2002) ("Three decades of internal armed conflict have left

Eventually, the *BBC News* reported, there would be house-to-house searches and a ban on all weapons, including firearms previously registered and even arms carried by off-duty police and soldiers.³⁸

At the 2001 UN Conference on the Illegal Trade in Small Arms and Light Weapons in All its Aspects, Sar Kheng, Cambodian Minister of the Interior, said that “illegally held arms” (i.e., all non-government arms) were “major obstacles to efforts to reconstruct and rehabilitate the country and to the building of democracy and respect for human rights.”³⁹ 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 success in raising the awareness of the problem among a majority of Cambodians.⁴⁰

As of February 2002, 112,562 of Cambodia’s SALW had reportedly been confiscated.⁴¹

Although the current Cambodian government is not engaged in genocide, it nevertheless has a poor human rights record and is attempting to eliminate the political opposition with threats of violence.⁴² The UN/European Union (EU) gun surrender programs could be seen as another neo-colonial assault on the

Cambodia with a huge number of small arms and light weapons: anywhere from 500,000 to one million, according to most estimates, with a very large proportion in civilian hands.”)

³⁸ See *UN Ban Starts in Cambodia*, *supra* note 37.

³⁹ Press Release, United Nations Conference on the Illicit Trade in Small Arms, Small Arms Conference Hears Call For Stepped-Up Control Of Illicit Trade: But Several States Insist on Right to Acquire Arms for Security Purposes (U.N. Doc. DC/2787, July 10, 2001) (3d meeting), available at <http://www.un.org/News/Press/docs/2001/dc2787.doc.htm>.

⁴⁰ *Id.*

⁴¹ See SMALL ARMS SURVEY 2002, *supra* note 37, at 296; Working Group for Weapons Reduction (“WGWR”), *Small Arms Reduction and Management*, at http://www.ngoforum.org.kh/Development/Docs/ngo_2002/36.htm. See also Neil Wilford, *World View: Clearing Away the Weapons*, Campaign Against Arms Trade (2002), at <http://www.caat.org.uk/information/magazine/1102/cambodia.php> (“58,000 weapons have been destroyed by burning since 2001 in ceremonies called Flames of Peace which provide spectacular symbols of the shift to a culture of peace, raising local, national and international awareness.”).

⁴² See Human Rights Watch, *Cambodia: Freedom of Expression Under Attack* (Feb. 11, 2003), at <http://www.hrw.org/press/2003/02/cambodia021103.htm>; Human Rights Watch, *Cambodia: Prosecute Perpetrators of Political Violence* (May 1, 2002), at <http://hrw.org/press/2002/05/cambodia0501.htm>; Human Rights Watch, *Human Rights Watch World Report 2002: Cambodia*, at <http://www.hrw.org/wr2k2/asia3.html>.

sovereignty of the people of Cambodia, carried out, as most neo-colonial programs are, with the connivance of a local élite which holds power by force of arms.

Today in Cambodia, about 3 percent of rural families are mired in land disputes against public officials and the military.⁴³ The root of these disputes traces back to the communist regime when all land became state property.⁴⁴ Oxfam's Song Vannsin described the current situation: "[d]isputes over land arising from abuse of power and the absence of a map-based land titling system are clogging up the courts and *causing widespread civil unrest*."⁴⁵ According to opposition leader Sam Rainsy, land confiscation is "a potentially explosive issue that affects no less than 10,000 families."⁴⁶ Continued civil unrest is ensured by government policies that try to squelch protest against continuing land theft. Ironically, the government has complained that the act of protesting land theft "can affect security and order."⁴⁷

Abusive, criminal behavior of the Cambodian regime is not limited to property confiscation.⁴⁸ As the UN admitted in its International Drug Control

⁴³NGO FORUM ON CAMBODIA, NGO STATEMENT, 2000 CONSULTATIVE GROUP MEETING ON CAMBODIA, LAND REFORM UPDATE at #7, at http://www.ngoforum.org.kh/Development/Docs/ngo_statement_2000/land_reform.htm.

⁴⁴ CURTIS, *supra* note 24, at 6 ("Under Khmer Rouge rule most of the country's economic and social infrastructure was dismantled. Private property was confiscated. Factories, vehicles, industrial equipment and goods were destroyed. All economic activity became part of the state apparatus.")

⁴⁵ Song Vannsin, *Recent Experience of Oxfam GB-Cambodia Land Study Project in the Land Reform in Cambodia* (presented at the International Conference on Access to Land: Innovative Agrarian Reforms for Sustainability and Poverty Reduction (Mar. 19-23, 2001)) (emphasis added). See also Human Rights Watch, *Human Rights Watch World Report 2001: Cambodia: Landmark Indigenous Land Rights Case to be Heard in Ratanakiri Provincial Court: Background Briefing Memo*, at <http://www.hrw.org/backgrounder/asia/landrights-bck.htm> ("Using fraud and forgery of official documents, district officials in Ratanakiri province and intermediaries of Royal Cambodian Armed Forces Gen. Nuon Phea are attempting to force nearly one thousand indigenous minority villagers to give up rights to 1,250 hectares of land that their families have lived on for generations."); Im Chhun Lim, *Land Issues: Results to Date and Proposed Future Strategies of the Royal Government*, Consultative Group Meeting, Tokyo Jun. 11-13, 2001 (analysis by Minister of Land Management, Urban Planning and Construction); Bertil Lintner, *Building a Future is Hard to Do*, FAR E. ECON. REV., May 25, 2000 ("influential people are forcibly evicting farmers from their land.") Although the Universal Declaration of Human Rights affirms that everyone has a right to an effective remedy, the Cambodian judicial system does not provide such remedies for peasants whose land has been stolen by the government. See *Human Rights Watch World Report 2002: Cambodia*, *supra* note 42 ("Cambodia's judicial system remained weak and far from independent, with numerous court decisions influenced by corruption or apparent political influence.")

⁴⁶ See *Opposition to Go Ahead with Land-Dispute Rally*, CAMBODIA DAILY, Oct. 2-4, 1999, available at <http://cambodia.ahrchk.net/mainfile.php/news199910/233/?print=yes>.

⁴⁷ *Id.*

⁴⁸ David Roberts, *Democratization, Elite Transition, and Violence in Cambodia, 1991-1999*, 34 CRITICAL ASIAN STUD. 520, 520 (2002) ("various elites, dominated by Hun Sen in particular, have

Programme report, Cambodia has become a center for “illicit drug production and trafficking, smuggling and exploitation of human beings, kidnappings, prostitution, illegal gambling, arms trafficking and extortion,” and much of this criminal behavior is “protected by Cambodian officials.”⁴⁹ The government’s involvement in the international crime of the trafficking of women for sexual exploitation is an extreme violation of human rights.⁵⁰

Although the French were fairly successful in disarming the colonial Cambodian civilian population, several factors have changed. Despite UNTAC’s shortcomings, the UN “did manage to create an awareness of human rights that had hitherto been non-existent. . . .”⁵¹ Thus, the people were sensitized to the illegitimacy of abusive treatment. The Cambodian people have suffered decades of political and criminal violence. Many Cambodians have personally learned how to use arms for protection against criminals, including government criminals. It seems doubtful that disarmament plans, even those enforced by government coercion, will persuade the populace to surrender all their weapons.⁵² As the Working Group for Weapons Reduction in Cambodia (“WGWR”) survey recently noted, “it is increasingly common in Cambodian society for people to believe that weapons are needed to protect businesses and homes.”⁵³ And weapons are widely available and relatively cheap.⁵⁴

Even while the Cambodian government refuses to improve its treatment of its own citizens, the government begs for funds from donor countries, not to aid the people, but to disarm them.⁵⁵ The same Cambodian government promotes

viewed the legitimacy of opposition in a political culture characterized by elite authoritarianism, narrow vested interests, and deeply entrenched systems of patronage and clientelism.”).

⁴⁹ Bertil Lintner, *Drugs and Politics*, FAR E. ECON. REV., Feb. 7, 2002; Craig Skehan, *Thais Run Huge Arms Trade*, SYDNEY MORNING HERALD, Aug. 14, 1999 (“smuggling is largely controlled by corrupt military officers”).

⁵⁰ E.g., *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime*, G.A. Res. 25, Annex II, U.N. GAOR, 55th Sess., Supp. No. 49, at 60, U.N. Doc. A/45/49 (2001).

⁵¹ P.F. Wynnyk, *The UN Intervention in Cambodia: A Glass Half Empty or a Glass Half Full?* (2001) (Research Paper Prepared for the Advanced Military Studies Course #4, Canadian Forces College, Oct. 29, 2001). See also International Crisis Group, *Cambodia: The Elusive Peace Dividend* (Aug. 11, 2000), available at <http://www.wccpd.org/news/news67.html> (“Economic inequalities are increasing, and are being met more frequently with public protests . . .”).

⁵² Faltas, *supra* note 13 ¶ 2.3 (“It is rarely possible to collect all weapons that one would like to retrieve.”).

⁵³ See Bonn International Center for Conversion, *Help Desk for Practical Disarmament: Cambodia*, at <http://www.bicc.de/helpdesk/stories/cambodia.html>; *UN Ban Starts in Cambodia*, *supra* note 37 (“many Cambodians remain skeptical, saying they keep weapons precisely because they have little faith in the public institutions that are meant to maintain law and order.”)

⁵⁴ See SMALL ARMS SURVEY 2002, *supra* note 37, at 66, Table 2.1 (the black-market price of an AK-47 in Cambodia was approximately \$40 US in 2001).

⁵⁵ Mao Chandara, Director of Staff Department of the Cambodian National Police, in a 2003 speech to potential donors in Bonn, Germany, stated that Cambodia:

[I]n 1998 decided to launch a national campaign against the widespread possession of small arms and to work towards a weapons-free society. The same year it

pedophile tourism in their country.⁵⁶ As long as foreigners in Cambodia may purchase the right to commit government-sanctioned atrocities upon Cambodian children, it is wrong for international agencies to deprive families of the firearms which may be the only practical means of preventing the girls in the family from being abducted and forced into a life of daily rape. The authors of Small Arms Survey 2002 admitted, “Most people, while broadly supportive of the weapons collection process, remain reluctant to participate in it themselves so long as the rule of law is not fully established in the country and there is a lack of public trust in the security forces.”⁵⁷

strengthened the legal basis for this campaign by issuing Sub-Decree 38, which effectively made the possession of weapons by private citizens illegal. Searches took place and checkpoints were set up. Illegal weapons found on people and in cars and houses were confiscated.

Mao Chandara, *Peace-Building in Cambodia: Experiences on the Way to a Weapons Free Society 2*, available at http://www.eu-asac.org/media_library/speeches/maoChandaraApril2003.pdf. Chandara also bragged that in symbolic “Flames of Peace Ceremonies,” more than 105,000 weapons were destroyed between May 1999 and April 2003. *Id.* at 3.

⁵⁶ See Kritaya Archavanitkul, *Combating the Trafficking in Children and their Exploitation in Prostitution and Other Intolerable Forms of Child Labour in Mekong Basin Countries*, Appendix E, The Case of Cambodia §V (Thailand: Inst. for Population and Social Research 1998), available at <http://www.seameo.org/vl/combat/appendix.htm>:

[T]he report stated that there is another, uglier reason for the flourishing sex trade. . . . The authorities cannot help stop the trade because they are involved. Too many people are making too much money for it to stop. . . . In 1998 the Cambodia Daily news stated, “Many civil servants are involved in trafficking. . . . Some police—not all, but some—are involved with the traffickers. Police are often protectors and enforcers for the brothels. And there is increasing evidence that they are involved in buying and selling kidnapped girls, or at least willing to turn a blind eye.”

Id. See also Donna M. Hughes, Laura Joy Sporcic, Nadine Z. Mendelsohn & Vanessa Chirgwin, *Factbook on Global Sexual Exploitation, Cambodia—Facts on Trafficking and Prostitution*, (Coalition Against Trafficking in Women), available at <http://www.uri.edu/artsci/wms/hughes/cambodia.htm> (last visited May 20, 2005).

Prostituted girls, most of them aged 15 to 18 years of age, are found in the Svay Pak red-light district of Cambodia. Many girls are much younger. Most of them are smuggled in from Vietnam . . .

. . . .

A trafficking network, operating under protection from local authorities, was discovered by human rights workers in Cambodia.

Id. See also *Cambodia—Child Prostitution* (Australian Broadcasting Corp. News Television Broadcast Sept. 18, 2002), available at <http://www.abc.net.au/foreign/stories/s675196.htm> (“[T]he police who are meant to be closing down the brothels are not only corrupt—they’re on the payroll.”).

⁵⁷ SMALL ARMS SURVEY 2002, *supra* note 37, at 296. The Small Arms Survey may have been naïve in concluding that most Cambodians support the weapons collection program in theory; when speaking to foreigners or in public, Cambodians may be reluctant to go on record contradicting the government. It would not be unreasonable to fear that voicing disagreement with the weapons confiscation program would be a quick way to have one’s home put at the top of the list for searching by the government.

As John Locke explained, the foundation of the people's political sovereignty is their God-given property right to their own bodies.⁵⁸ Accordingly, when Cambodians choose to retain their arms so that they may defend themselves and their families against programs of commercial rape and other government-sanctioned violent crimes, the Cambodian people are, in effect, choosing to retain their sovereignty. The root of the crime problem in Cambodia is the criminal government that steals land from peasants, cooperates with organized crime, and enriches itself by participating in the sex-trade enslavement of women and children. It is entirely reasonable for the Cambodian people to want firearms to protect their families from government criminals, and to guard against the recurrence of a genocide like the one that took place the last time the Cambodian people were disarmed.⁵⁹

Sadly, yet another disarmament program is being instituted in Cambodia. On January 13, 2003, the Japanese government announced it would provide up to \$3.6 million (US) to implement the euphemistically-named "Peace Building and Comprehensive Small Arms Management Program in Cambodia."⁶⁰ The new disarmament program, in the Bakan district, pays for public works construction of medical clinics, schools, roads, or bridges, if the locals surrender a sufficient number of firearms.⁶¹ In other words, if a community does not surrender its only practical means of protecting itself from genocide, common criminals, and government-sponsored criminals, the government will not build any schools, clinics, roads, or bridges.

The rationale for the latest disarmament program is that "small arms have been sometimes used for criminal objectives, which severely harm the security and social stability of Cambodia, and thus the reduction of arms has been considered as one of the first prioritized social actions toward sustainable peace in Cambodia."⁶²

⁵⁸ JOHN LOCKE, *TWO TREATISES OF GOVERNMENT* (Cambridge, England: Cambridge Univ. Pr., 1963) (1690).

⁵⁹ For a detailed account of how the Khmer Rouge thoroughly disarmed the Cambodian people before beginning the genocide, and how such disarmament almost always is completed before genocide begins, see AARON ZELMAN & RICHARD W. STEVENS, *DEATH BY "GUN CONTROL": THE HUMAN COST OF VICTIM DISARMAMENT* (2001). See also David B. Kopel, *Book Review: Lethal Laws*, 15 N.Y.L. SCH. J.INT'L & COMP. L. 355 (1995).

⁶⁰ *Japan Provides Aid to Help Cambodia's Small Arms Management*, WorldSources, Inc., Jan. 13, 2003, available at <http://static.highbeam.com/x/xinhuachina/january132003/japanprovidesaidtohelpcambodiassmallarmsmanagement/index.html>. This program evolved into Japan Assistance Team for Small Arms Management in Cambodia ("JSAC") in April 2003. See generally JSAC website, <http://www.bigpond.com.kh/users/adm.jsac/jsacENG.html>.

⁶¹ Press Release, Embassy of Japan, Japanese ODA News, Signing of Grant Contracts for the Japanese Grant Assistance for Grass-roots Projects (HUSANONE) (Mar. 16, 2001), available at <http://www.bigpond.com.kh/users/eojc/pressrelease/p010315z.htm>. See also Senior Minister HOR Namhong Signs Exchange of Notes with Japanese Ambassador, Kingdom of Cambodia, Ministry of Foreign Affairs and International Cooperation; JSAC Achievement as of September 2004

⁶² *Japan Provides Aid to Help Cambodia's Small Arms Management*, *supra* note 60.

To the contrary, the reduction of civilian arms in Cambodia was the *sine qua non* for the Khmer Rouge genocide,⁶³ and continuing efforts to disarm Cambodia's citizens have contributed to the continuing criminal victimization of the Cambodian people by the Cambodian government. The international disarmament programs in Cambodia are not just failures at attempts to do good; the programs have been actively harmful to the Cambodian people.

III. BOUGAINVILLE

On the Pacific island of Bougainville, the people had no arms until they were driven to rebellion by many years of human rights abuses perpetrated by the kleptocratic colonial government of Papua New Guinea.⁶⁴ The Bougainville Revolutionary Army ("BRA") brought the PNG government to a standstill with homemade weapons and battlefield acquisitions.⁶⁵

⁶³ See *supra* note 59.

⁶⁴ Among the rights violated were: Universal Declaration of Human Rights, art. 17, Human Rights Declaration, *supra* note 2, at art. 17 ("Everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property."); International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, at 52, U.N. Doc. A/6316 (1966) [hereinafter International Covenant] ("All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence."); Permanent Sovereignty over Natural Resources, G.A. Res. 1803 (XVII), U.N. GAOR, 17th Sess., Supp. No.17, at 15, U.N. Doc. A/5217 (1962). Not only was the people's property (their mineral reserves) stolen by the PNG government, but the island suffered immense environmental degradation from the mining.

During the civil war, the government of PNG instituted a total blockade of the island, which impacted on the civilian non-combatants, depriving them of humanitarian aid, food, and medicine. In addition, the expressed desire of the people for self-determination was denied.

After World War II, Bougainville was placed under Australian control as a United Nations Trust territory. When Papua New Guinea gained independence from Australia in 1975, Bougainville was given to PNG as a colony, against the wishes of its people, who are closer to the Solomon Islanders culturally, ethnically, and geographically. See Moses Havini & Rikha Havini, *Bougainville—The Long Struggle for Freedom* (1995), available at <http://www.eco-action.org/dt/bvstory.html>. Fifteen days before PNG gained independence, Bougainville declared itself the independent Republic of the North Solomons. See Parliament of Australia, Joint Standing Committee on Foreign Affairs, Defence and Trade, *Bougainville: The Peace Process and Beyond*, ch. 2 ¶ 2.11 (1999), available at http://www.aph.gov.au/house/committee/jfadt/bougainville/bv_chap2.htm. Forcing the people of Bougainville to unwillingly become subjects of the alien PNG state may have been a violation of the Universal Declaration of Human Rights, Article 15, Human Rights Declaration, *supra* note 2, at art. 15 ("(1) Everyone has the right to a nationality. (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.").

⁶⁵ See Dave Kopel, Paul Gallant & Joanne Eisen, *Little Island that Roared*, NAT'L REV. ONLINE, Feb. 6, 2002, at <http://www.nationalreview.com/kopel/kopel020602.shtml>.

The Bougainville Peace Agreement⁶⁶ was signed on August 30, 2001. The Agreement ended formal hostilities, provided for the establishment of an autonomous Bougainville government, and promised a referendum on full independence from PNG to be held within 10 to 15 years. Yet, rather than moving forward expeditiously with a referendum on independence, the UN is obsessing with its intricate, failing weapons disposal program.⁶⁷

After the signing of the peace agreement, a total of 1,639 weapons were registered and placed into locked containers; but, when it became obvious that the PNG government would not obey the peace agreement, at least two break-ins occurred where the sequestered weapons were stored.⁶⁸ The first time, 110 weapons were removed. After the second break-in an additional 360 were discovered missing. As Philip Alpers and Conor Twyford pointed out, “With so much energy being directed at weapons disposal, potential existed for community-wide resentment to develop as other needs were not met, or were met more slowly than expected.”⁶⁹ That is exactly what came to pass.⁷⁰

It has become clear that both the Australian and the PNG governments are loathe to hold the promised referendum on the future of the islanders. This is a violation of the Universal Declaration of Human Rights, which requires that, “The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.”⁷¹ The kleptocracy’s theft of the resources of the Bougainvilleans, and consequent impoverishment of the people, appears to violate Article 25 of the Universal Declaration:

(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and

⁶⁶ Bougainville Peace Agreement, signed at Arawa Aug. 30, 2001, *available at* <http://www.unpo.org/Downloads/BougainvillePeaceAgreement29Aug01.pdf>.

⁶⁷ See Philip Alpers & Conor Twyford, *Small Arms in the Pacific*, SMALL ARMS SURVEY OCCASIONAL PAPER NO. 8 83-85 (Mar. 2003). The Rotakas Record of May 3, 2001, was one of the key portions of the Bougainville Peace Agreement; it laid out the stages for a “weapons disposal” plan for the complete disarmament of the BRA.

⁶⁸ See *Report of the Secretary-General on the United Nations Political Office in Bougainville*, UN Security Council, U.N. SCOR S/2003/345, ¶ 16 (2003), *available at* <http://www.un.dk/doc/s2003345.pdf> (“The predecessor of the Bougainville Peace Agreement, the Lincoln Agreement, did call for rehabilitation and reintegration, but this aspect has not kept pace with weapons disposal.”); *PMG Out*, POST-COURIER, July 1, 2003 (promised funds for Bougainville development were not provided); *Tanis: Gov’t is Not Serious*, POST-COURIER, Feb. 24, 2004 (“the autonomous Bougainville government establishment grant had been used for purposes other than the one it was meant for”).

⁶⁹ Alpers & Twyford, *supra* note 67, at 87.

⁷⁰ See *B’ville Restoration not Moving Ahead*, POST-COURIER, May 29, 2003; *Services Collapse in Bougainville*, POST-COURIER, May 30, 2003.

⁷¹ Human Rights Declaration, *supra* note 2, art. 21 ¶3.

medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.⁷²

Unfortunately, the collection of weapons—rather than the restoration of human rights, or attention to basic human needs—is the first priority of the UN mission on Bougainville. As actually administered, the current “peace” program in Bougainville, like its predecessors, is relentlessly focused on removing weapons from the hands of civilians and is indifferent to improving the lives of former combatants and the rest of the population, including women and children.⁷³

IV. ALBANIA

One of the most dramatic illicit gun transfers in recent history occurred in Albania during March 1997. The transfers were caused by the collapse of several elaborate pyramid schemes in November and December 1996, which impoverished the Albanian people, many of whom lost their entire life savings.⁷⁴ The result was widespread anarchy and the toppling of the Sali Berisha administration.⁷⁵ During the anarchy, “virtually all inmates escaped from the

⁷² *Id.* art 25. See also International Covenant, *supra* note 64 arts. 1 & 25 (“the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources”).

⁷³ See *Disarmament Through Peaceful Means, Practical Skills and a Community Participatory Process, World Vision Bougainville Sustainable Livelihood Project*, IANSA NEWSLETTER, July 2002, at 29, available at http://www.iansa.org/oldsite/mission/newsletter/july_newsletter/World%20Vision%20Bougainville.pdf (“The disarmament program “is a top-down time and resource-consuming process which may continue to breed uncertainty, mistrust and fear, and it is tightly bound around political agendas.”). The IANSA authors still supported disarmament, noting,

The health and well-being of people and the very essential need to live in a peaceful environment are at the heart of this mission. We believe that it could create a positive impact on the political, economical, social and cultural life of the Bougainville community as it links with the ongoing Government-initiated Disarmament Programme.

Id. at 29. But how could a “peaceful environment” develop when the government creates “uncertainty, mistrust and fear”? See *id.*

⁷⁴ *Berisha and Nano: Albania's Rivals*, BBC NEWS, Sept. 13, 1998, available at <http://news.bbc.co.uk/1/hi/world/europe/170543.stm> (“An estimated 90% of Albania’s population invested around \$2bn in the get-rich-quick schemes, and lost the best part of their money—often their life savings—when the crisis came.”); See also Alexander Koliandre, *Slovakia Falls Prey to Investment Scam*, BBC NEWS, Mar. 1, 2002, available at <http://news.bbc.co.uk/1/hi/business/1846516.stm> (general discussion of the Balkan pyramid schemes).

⁷⁵ *Albanian Pyramid Scheme Boss Arrested*, BBC NEWS, Apr. 29, 1998; *Picking up the Pieces in Albania*, BBC NEWS, May 6, 2000, available at <http://news.bbc.co.uk/1/hi/world/>

Albanian prisons.”⁷⁶ The combination of a sudden upsurge in violence⁷⁷ and mistrust of government⁷⁸ caused civilians to loot 1,300 armories,⁷⁹ removing more than 550,000 weapons and millions of rounds of ammunition, as well as explosives, according to government estimates.⁸⁰ However, both the International Monetary Fund and the British Broadcasting Corporation reported

europe/85645.stm. See also Pyramid Power, Online NewsHour, (PBS Television Broadcast, Mar. 10, 1997), available at http://www.pbs.org/newshour/bb/europe/jan-june97/albania_3-10.html.

For the past week Albania, western Europe’s poorest country, has been under a state of emergency. It’s [sic] southern half has been seized by opposition groups, spurned on by a populace who have lost their life savings in failed pyramid schemes. Albania, still emerging from years as the most isolated and autocratic nations on the continent, became a democracy in 1991, but has seen that advance slide in the past few years.

Id.

⁷⁶ Georgios A. Antonopoulos, *Albanian Organized Crime: A View from Greece*, CRIME & JUST. INT’L, Nov./Dec. 2003, at 7.

⁷⁷ Jolyon Naegele, *Albania: Weapons-Collection Program Meets with Mixed Results*, Radio Free Europe Radio Liberty (2001), available at <http://www.rferl.org/nca/features/2001/10/10102001111812.asp> (an increase in accidental shootings was also reported).

⁷⁸ See Arban Hasani, *Legal Process Against State Corruption in Pyramid Firms to Begin Soon—Minister*, ALBANIAN TEL. AGENCY, Sept. 2, 1997, at 3, available at <http://www.hri.org/news/balkans/ata/1997/97-09-02.ata.html> (quoting Albanian Minister of Finance Arben Malaj about “state corruption in pyramid firms”).

⁷⁹ See Support to Security Sector Reform (SSSR)—The United Nations Development Programme (UNDP), *Albania, Background*, § 1, available at <http://www.undp.org.al/salwc/?background> (last visited May 20, 2005). We note that the weapons stolen during the Albanian upheaval were stored in government armories, not in civilian homes and closets; thus, the stolen weapons had been secured under what the disarmament community would consider “safe-storage” conditions.

The claim is often made by firearm-prohibitionists that civilian gun stocks serve as “piggy-banks” for criminals, and therefore restrictive legislation concerning civilian ownership and use of firearms is necessary to prevent criminal acquisition from civilian sources. For example, Canadian prohibition advocate Wendy Cukier has stated, “Diversion of civilian held small arms also fuels the illicit supply.” Wendy Cukier, *Small Arms and Light Weapons: A Public Health Approach*, 9 BROWN J. WORLD AFF. 261, 272 (2002).

Concerns about the civilian gun stock being used as a depot of firearms just waiting for criminals to carry them off should be placed into proper perspective. Incidents abound in which corrupt government officials have provided weapons to civilians and civilian criminals for financial gain, even weapons formerly confiscated during “disarmament” programs. For example, UN-sponsored disarmament in Uganda was undermined by government employees participating in the arms trade. See, e.g., *Government Forces Accused of Involvement in Arms Trade*, UN INTEGRATED REGIONAL INFORMATION NETWORKS, Feb. 18, 2002, <http://allafrica.com/stories/200202180494.html> (“The Ugandan government has defended itself against criticisms by Amnesty International to the effect that the Ugandan police and army are linked to a flourishing illegal arms trade in the country.”); Will Ross, *Guns and Drought in Karamoja*, BBC NEWS, Feb. 18, 2003, available at <http://news.bbc.co.uk/1/hi/world/africa/2777059.stm> (“In December 2001 the Ugandan Government started to disarm the Karamojong . . . [One Karamojong] warrior, carrying his tiny wooden stool or ekicolong, accused the Ugandan army of selling the guns back to the population . . .”). See generally Dave Kopel, Paul Gallant & Joanne Eisen, *Disarming Uganda*, NAT’L REV. ONLINE, Dec. 11, 2002, <http://www.nationalreview.com/kopel/kopel121102.asp>.

⁸⁰ See Afrim Krasniqi, *Demilitarizing Communities in Albania*, CHOICES, Dec. 2002, at 14, available at <http://www.undp.org/dpa/choices/2002/december/Pages14-15.pdf>.

that the figure was closer to one million weapons; the Organization for Security and Cooperation in Europe reported that 1.5 million weapons were looted by civilians.⁸¹

Although 75,548 weapons were quickly recovered by government agents in 1997,⁸² in February 1998 the Albanian government deemed it necessary to request aid from the UN to retrieve the balance of the missing weapons. Jayantha Dhanapala, Under-Secretary-General for Disarmament Affairs, led a fact-finding mission in Albania in mid-June 1998. The two initial proposals were: (1) the creation of a paramilitary force that would carry out house-to-house searches and confiscation, or (2) a compensated gun surrender program, which the UN expected would create an increase in black market gun trafficking into the region.⁸³

Instead, the innovative solution was a voluntary weapons collection program that would be linked to building community development projects such as roads, schools, and communications systems, and strengthening the capabilities of local police in order to improve security. This program was similar to the Japanese program currently being implemented in Cambodia.⁸⁴

⁸¹ See Christopher Jarvis, *The Rise and Fall of Albania's Pyramid Schemes*, 37 FIN. & DEV. 46, 48 (Mar. 2000), available at <http://www.imf.org/external/pubs/ft/fandd/2000/03/jarvis.htm> (International Monetary Fund quarterly reports, "By March 1997, Albania was in chaos . . . Many in the army and police force had deserted, and 1 million weapons had been looted from the armories."); *Timeline: Albania*, BBC NEWS, Mar. 26, 2003, available at <http://news.bbc.co.uk/1/hi/world/europe/1004984.stm> ("Up to a million weapons are looted from army stores as angry mobs take to the streets."); Chris Smith, *Illegal Arms in Albania and European Security*, Speech at Seminar on Contemporary Arms Control and Disarmament, Geneva, Switzerland, Sept. 16, 1998, available at http://www.geneva-forum.org/Reports/salw_vol1/19980916.pdf (Between January 1997 and March 1997, "an estimated 750,000 – 1 million light weapons were stolen from government armories (the OSCE [Organization for Security and Co-Operation in Europe] estimates a figure of 1.5 million). The state lost approximately 80 per cent of its weaponry stock, in addition to 1.5 billion pieces of ammunition."); Frank Viviano, *Kosovo War Leaves Drug, Arms Traffic Up for Grabs*, S.F. CHRON., May 11, 1999 ("In the free-for-all that ensued, looters carried off an estimated 2 million pounds of explosives and 750,000 to 1,000,000 Kalashnikov rifles. The Albanian government says that fewer than 10 percent of the looted weapons have been recovered."); *Analysis: The Second Coming in Albania*, UNITED PRESS INT'L, Nov. 19, 2001 ("Mobs looted 700,000 guns from the armories of the army and the police and went on a rampage, in bloody scenes replete with warlords, crime and 1,500 dead.").

Even the above figures may be a significant underestimate; we were told by a former weapons trafficker, who wished to remain anonymous, that the total of looted weapons could have been between two and four million firearms.

⁸² E-mail from Lawrence Doczy, SSSR Programme Manager, to Paul Gallant (Sept. 6, 2003) (on file with author).

⁸³ Jan Wahlberg, *Weapons for Development: The Economic, Social and Political Context* (on file with the authors).

⁸⁴ UNDP, Gramsh Pilot Programme, *Weapons in Exchange for Development, Progress Report*, Feb. 23, 1999 (copy on file with the authors). For the Japanese program, see text at notes 60-63.

There would also be an intense public information and education campaign, including TV and radio spots, posters, T-shirts, and musical concerts.⁸⁵ The pilot project would not use coercion, but would support the government's new law on weapons collection.⁸⁶ It would be located in Gramsh,⁸⁷ one of Albania's thirty-six districts, where officials estimated that ten thousand weapons could be collected.⁸⁸

The UN was extremely pleased with the results of the Gramsh voluntary disarmament program. UN Under-Secretary-General for Disarmament Affairs Dhanapala declared, "The project was considered a success: some 6,000 weapons and 137 tons of ammunition were collected, and the number of violent crimes involving the use of small arms fell dramatically."⁸⁹ Secretary-General Annan was even more enthusiastic, "In spite of the relatively modest quantity of weapons collected . . . Gramsh had been declared a weapon-free area, with no reports of illegal or criminal activities involving weapons in the district for the last 15 months."⁹⁰

Did the weapons collection cause the drop in crime? A social scientist would classify the Gramsh data as an "interrupted time series study." In such a study, the scientist looks at the rate of some variable before the "interruption", and then at the rate of the variable after the interruption.

⁸⁵ UNDP, Gramsh Pilot Programme, *supra* note 84.

⁸⁶ See Ylli Pata, *Parliament Approves Law on Weapons Collection, Ammunition*, ALBANIAN TEL. AGENCY, June 29, 2003, at 9, available at <http://www.hri.org/news/balkans/ata/1998/98-08-05.ata.html>. See generally *Weapons for Development*, Report of the UNDP Mission for an Arms Collection Pilot Programme in the Gramsh District – Albania, Sept. 4, 1998, available at http://www.iansa.org/documents/development/weapons_for_dev.htm.

⁸⁷ See *Weapons for Development*, *supra* note 86, ¶ 3 ("The Gramsh district consists of 1 municipality (Gramsh), 9 communes and 91 villages. The total population is about 56,000 (10,000 families) of which 40% is located in and around Gramsh municipality."). See also *Albania: Short Mission Report*, South Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons, June 27-29, 2002, available at <http://www.seesac.org/target/Albania.pdf>. The Gramsh Pilot Project evolved into the Weapons in Exchange for Development ("WED") Project in Elbasan and Dibra, and later into the Small Arms and Light Weapons Control Project ("SALWC").

⁸⁸ UNICEF, *Call to Action: Weapons Collection Programmes, Taking Aim at Small Arms: Defending Children's Rights*, available at <http://www.volumesquared.com/unicef/smallArms/html/sa05/weapons.html> (last visited May 20, 2005).

⁸⁹ Jayantha Dhanapala, *Making Peace Last: Disarmament as an Essential Element*, NGO Committee on Disarmament, Peace and Security Workshop, DPI/NGO Conference, Sept. 10, 2002, available at <http://disarmament2.un.org/speech/10sept2002.htm>. See also Jayantha Dhanapala, Remarks to DPI/NGO Conference, Session on "Demobilizing the War Machines: Making Peace Last," DPI/NGO Conference, Sept. 11, 2002, available at <http://www.un.org/dpi/ngosection/dhanapala.pdf> ("The project resulted in the collection of thousands of arms and rounds of ammunition, and registered a noticeable decline in armed conflict and other armed violence in the district.").

⁹⁰ *Assistance to States for Curbing the Illicit Traffic in Small Arms and Collecting Them*, *supra* note 20, ¶ 11.

The problem with drawing social science conclusions from Gramsh is that we have only two data points. The first data point (before the interruption) comes from 1997, a point when the violence rate was artificially elevated because of the worst political and social instability that Albania had suffered for decades.⁹¹ No prior information is available to indicate whether the decline of crime from 1997 was simply a return to normal levels, following the end of the pyramid schemes crimes. There is no further information beyond the fact that crime diminished. It may well be that the crime decline was long-lasting, but without more data, we do not know.⁹²

The other great challenge in conducting an interrupted time series study is excluding the effect of other variables. Imagine, for example, that a social scientist wishes to test the hypothesis that tobacco consumption makes people violent. Since tobacco consumption declined after New York City significantly raised its tobacco taxes in 2002, the scientist conducts an interrupted time series study of homicide rates in New York City. His two data points are 2001 and 2003. He collects the data, and finds that homicide in New York City was much lower in 2003 than in 2001. Has the social scientist proven that reduced tobacco consumption leads to reduced homicide?

Of course not. The scientist failed to account for other variables that changed between 2001 and 2003. Most significantly, in 2001, New York City suffered many homicides as the result of terrorism; in 2003, New York City suffered no such homicides. The change in the uncontrolled variable (terrorism prevalence) overwhelmed whatever change might be attributed to the variable (homicide) which the social scientist was studying.⁹³

In Gramsh, Albania, while the weapons collection program was going on, there was a great improvement in the standard of living.⁹⁴ The UN Pilot Project

⁹¹ See *Small Arms and Light Weapons Control Programme*, South Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons, Albania, United Nations Development Programme, Sustainable Human Development (“[C]rime rose dramatically. The end of 1997 left behind more than 1600 people killed by gun-related violence.”) (on file with the authors). See also UNDP Albania, *Small Arms and Light Weapons Control Project, Background*, at <http://undp.org.al/salwc/?background> (last visited May 20, 2005) (“Over 1,500 murders occurred in 1997 (down to 208 in 2001).”) [hereinafter *Albania: Background*].

⁹² See Wahlberg, *supra* note 83 (“The crime rate has gone down considerably, but for how long?”).

⁹³ See GARB, *supra* note 19, at 42 (“Confounding is present when a third factor (confounder) is related to both the risk factor and the outcome and thereby biases the degree or direction of the association between the risk factor and the outcome.”); GARY KLECK, *TARGETING GUNS* 352 (1997) (Interrupted time series study can be flawed by “the failure to adequately establish ceteris paribus conditions, i.e. to control for other variables that can affect violence rates . . .”).

⁹⁴ In the 1990s, Albania was in economic decline, with large scale unemployment. See UNICEF, *Call to Action: Weapons Collection Programmes, Taking Aim at Small Arms: Defending Children’s Rights*, at <http://www.unicef.org/smallarms/exhibit/html/sa05/weapons.html> (last visited May 20, 2005). Because of poverty and a lack of job opportunities, many Albanians were forced to emigrate. See Lotte Jorgensen, *Giving Up Arms for Progress*, CHOICES (Dec. 1999), available at <http://www.undp.org/dpa/choices/december99/arms.htm>. (magazine of the United Nations

brought one million dollars into the district of Gramsh.⁹⁵ The funds were used to create local infrastructure and to give jobs to the local populace to build needed roads and bridges, schools, and telephone lines.⁹⁶ The effect on crime rates from variables such as employment-generating projects, improved infrastructure, and last, but not least, helpful attention paid to peoples' problems by government and UN officials, appears to have been overlooked. We are unaware of any acknowledgement in UN-sponsored literature that these variables might account for much, or all, of the decline in violence that the UN credits to the weapons collection program. U.S. criminologist Gary Kleck explains:

Univariate interrupted time series studies of crime, which merely note shifts in the level of crime at a particular point in time, are worthless for judging *why* the crime rate changed. It is impossible to say whether the crime rate in Albania would have declined anyway, even in the absence of the arms collection program. And given that many other things changed at the same time as the program, it is impossible to tell whether the arms collection program had any effect at all, above and beyond the effects of those other factors.⁹⁷

We are not denying that the arms collection in Gramsh may have been one of the reasons why the crime rate declined; our point is that the evidence does not support the claim that the arms collection was definitely a cause of all, or a significant part of, the change in the crime rate—particularly because focusing only on the arms collection ignores dramatic improvements in the job situation and other social needs. The UN deserves credit in Gramsh, but attributing all the credit for the change in the crime rate to the weapons collection program does not seem supportable.

Because of the success of the Gramsh Pilot Project, the Weapons in Exchange for Development (“WED”) programs in the districts of Elbasan and Dibra were undertaken in 2000.⁹⁸ We know that the WED program was

Development Programme). See also UNDP, *Light Weapons and the Proliferation of Armed Conflicts*, available at http://www.undp.org/bcpr/archives/brochures/small_arms/small_arms.pdf (last visited May 20, 2005).

⁹⁵ According to UNDP's public awareness information officer, Nora Kushti, “\$1 million were invested in Gramsh's roads, bridges, street lighting, and telephone lines.” See Naegele, *supra* note 77.

⁹⁶ “Most projects [in Gramsh] are labour-intensive infrastructural repairs, which help generate employment in the local area” See *Light Weapons and the Proliferation of Armed Conflicts*, *supra* note 94, at 5. Dhanapala described the “community-based employment-creating and income-generating development incentives, particularly for the youth,” and “upgraded community infrastructure and service, such as better lighting and telecommunications system, renovated post office and new roads and bridges.” Jayantha Dhanapala, Keynote Address at the Regional Seminar, *International Security Issues: A Call for Regional Cooperation*, Dec. 14, 2001.

⁹⁷ E-mail from Gary Kleck, Professor of Criminology, Florida State University, to Paul Gallant (June 29, 2003) (on file with author).

⁹⁸ *Assistance to States for Curbing the Illicit Traffic in Small Arms and Collecting Them*, *supra* note 20, ¶¶ 11-12 (2001).

considered a success because it led to the Small Arms and Light Weapons Control (“SALWC”) Project in 2002.⁹⁹ However, we are unaware of any claims made of a reduction in violence in Elbasan or Dibra.

Concomitant with the UN’s Weapons in Exchange for Development program in 2000, the Albanian government created a task force of 250 police, to visit every household in the country and request the surrender of weapons.¹⁰⁰ During the visit, the head of the family would be expected to hand over all arms. He would sign a document that his home was weapons-free. If he were later found to possess arms or ammunition, he would be subject to arrest, prosecution, and incarceration for up to seven years.¹⁰¹

Lawrence Doczy was Manager of the SALWC project and later of the SSSR (Support to Security Sector Reform) Programme, which introduced community-based policing in five pilot communities. Doczy estimated that approximately 200,000 weapons were recovered by the Albanian government between 1997 and the Spring of 2003; of these, 25,000 were recovered with help from the UN weapons collection programs.¹⁰² Doczy explained, “It is widely believed that [of the originally looted government estimate of 550,000 weapons] approximately 150,000 had been trafficked out of the country during the Kosovo crisis and the unrest in Macedonia, leaving an estimated 200,000 still in the hands of the civilians.”¹⁰³ He added, “I think that the full disarmament of the population is a myth. It will NEVER happen . . . Our plan from the beginning was to try to skim off all that we can and subsequently recommend to the

⁹⁹ See *Albania: Background*, *supra* note 91.

¹⁰⁰ *U.N. Arms Control of a Different Type Gets Promising Results in Albania*, ASSOCIATED PRESS, Aug. 31, 2002, available at <http://209.157.64.200/focus/f-news/742498/posts> (“‘Up until 1999, only 16,000 weapons were collected,’ said Todi Grazhdani, who oversaw a nationwide weapons-collection effort that at one point involved 250 officers.”)

¹⁰¹ ERIC ROMAN FILIPINK, SALW ISSUES AND OSCE FIELD MISSIONS: THE EXPERIENCE OF THE PRESENCE IN ALBANIA (Joint Azerbaijani-Swiss Workshop, 21-22 June 2001), at http://www.isn.ethz.ch/pfpdc/documents/2001/06-01_baku/filipink.htm; *U.N. Arms Control of a Different Type Gets Promising Results in Albania*, *supra* note 100. It is clear that, despite the intimidation factor of police officers visiting homes to ensure they were firearm-free, and the police program’s success in collecting weapons relative to the WED program, many weapons still remained in civilian homes. That is, a large number of civilians disobeyed the law and took the risk of severe punishment for unlawful possession.

¹⁰² E-Mail from Lawrence Doczy, Manager of the Support to Security Sector Reform Programme, to Paul Gallant (July 15, 2003) (on file with author).

¹⁰³ E-Mail from Lawrence Doczy, Manager of the Support to Security Sector Reform Programme, to Paul Gallant (Sept. 6, 2003) (on file with author). See also *U.N. Arms Control of a Different Type Gets Promising Results in Albania*, *supra* note 100.

As many as 150,000 weapons are believed to have been spirited out of Albania and into the hands of ethnic Albanian militants fighting in neighboring Kosovo and Macedonia. Although Albania’s government has collected about 200,000 weapons and significant amounts of other ordnance, police say at least 200,000 other weapons and countless rounds of ammunition remain in private hands.

Id.

government to modify the law and go for the registration of the remaining weapons to bring them under control.”¹⁰⁴

The Weapons in Exchange for Development (“WED”) program expired in July 2002, as did the amnesty period for voluntary surrender of weapons. Yet an estimated 200,000 weapons were still unaccounted-for among the civilian population.¹⁰⁵ So a few months before WED was set to expire, the Albanian government enthusiastically embraced another weapons collection program aided by the UN. On March 12, 2002, the United Nations Development Programme (“UNDP”) approved the new Small Arms and Light Weapons Control (“SALWC”) program. Targeting eighteen districts, or about half the country, the program aimed for “the surrender and collection of the greatest number of weapons.”¹⁰⁶ Due to a shortage of funding, the SALWC project tried to foster competition in weapons surrenders; only the locales most successful in collecting weapons would earn public works projects. A new feature of SALWC was “development and establishment of a pilot database project as the basis for a centralized, government-operated weapons control system.”¹⁰⁷

Johan Buwalda, program manager for UNDP’s Weapons in Exchange for Development Program, commented, “It is not only weapons collection. It is also weapons control. So we will assist the police in setting up a database, storing these data, managing the data. . . .”¹⁰⁸

The prior UN role in weapons collection in Albania, SALWC, evolved into the current SSSR (Support to Security Sector Reform) and was expected to extend until the end of 2005.¹⁰⁹ The stated objective was gradually to cease direct support for weapons collection and to introduce community-based policing in five pilot communities, in order to improve safety and security for the populace and to improve police accountability. In addition, a component of the program will computerize the handwritten gun registration system.¹¹⁰ The UN hopes that, as the people in Albania become more secure and more trusting of their police, they will register their weapons.

Alfred Moisiu, President of Albania, observed that many Albanians were reluctant to disarm, noting, “Most people are not agreeing to hand over the arms, the weapons, because the situation is still not secure here in our country.” Moisiu

¹⁰⁴ E-Mail from Lawrence Doczy, Manager of the Support to Security Sector Reform Programme, to Paul Gallant (July 16, 2003) (on file with author) (emphasis in original). See also Paul Henley, *Albania’s Gun Culture Proves Hard to Shift*, BBC NEWS, Jan. 15, 2003, available at <http://news.bbc.co.uk/1/hi/world/europe/2660853.stm>.

¹⁰⁵ As of August 4, 2002, the government admitted that “200,000 weapons still remain in hands of civilians.” UNDP: Albania, *SALWC 2002-2003, Results and Current Situation, Situation after 4 Aug 2002*, available at <http://undp.org.al/salwc/?salwc> (last visited June 29, 2003).

¹⁰⁶ *Albania: Background*, supra note 91, at 6.

¹⁰⁷ *Id.*

¹⁰⁸ Naegele, supra note 77.

¹⁰⁹ UNDP, *Support to Security Sector Reform Programme*, Quarterly Report No. 2, April-June 2004, § 1.5, available at <http://www.sssr.undp.org.al/download/reports/qr/2004/2.pdf>.

¹¹⁰ *Id.*

acknowledged that his countrymen believed that unilateral disarmament endangered law-abiding citizens who surrendered their weapons, because criminals always will be able to acquire weapons.¹¹¹

Citizens may be reluctant to participate in the UN-sponsored gun registration program because laws later could be changed to prohibit possession of those registered weapons.¹¹² After all, in Cambodia, the UN-mandated gun licensing program was followed a few years later by a UN-supported gun confiscation program.¹¹³

It is not unreasonable for Albanians to be skeptical about trusting the government. As Human Rights Watch reported, in Albania, there is “impunity for police abuse, failures of various government branches to uphold the rule of law, trafficking in human beings, and widespread violations of children’s rights . . .”¹¹⁴ Organized crime syndicates have trafficked more than 20,000 Albanian women to Greece for sexual exploitation. Albanian children are also trafficked for what amounts to *de facto* slavery for the crime syndicates, “to be used in labour, to beg in public places or clear car windows at traffic lights. In other cases, Albanian criminal networks have trafficked babies, which according to the police authorities are sold for US \$200.”¹¹⁵ To state the obvious, government complicity in human trafficking is a major violation of human rights and international law.¹¹⁶

¹¹¹ Naegele, *supra* note 77. See also *Socio-Economic Analysis and Impact Assessment*, SALWC Project, Centre for Rural Studies, at 26, available at <http://undp.org.al/salwc/?reports> (last visited Sept. 23, 2003) (“The main reason for having a weapon is self/family protection for more than 73.7% of the respondents. . . .”) The researchers explained that although many Albanians said they would be willing to disarm, “many of them would like to keep one weapon (with the reason to protect himself and his family and business) as the others still have weapons.” *Id.*

¹¹² Hughes-Wilson and Wilkinson readily acknowledged the UN’s intentions concerning civilian firearm ownership. See John Hughes-Wilson and Adrian Wilkinson, *Safe and Efficient Small Arms Collection and Destruction Programmes: A Proposal for Practical Technical Measures*, UNDP (May 2001), at 16, ¶ 4.1.2, available at http://www.undp.org/bcpr/smallarms/docs/sa_prac_meas.pdf.

It may be possible to start a programme of weapon registration as a first step towards the physical collection phase. . . . The advantage to the local community is that they can retain their weapons until they feel that the security environment is sufficiently safe to allow for weapons surrender. . . . Assurances must be provided, and met, that the process of registration will not lead to *immediate* weapons seizures by security forces.

Id. (emphasis added).

¹¹³ See *supra* notes 35-38 and accompanying text.

¹¹⁴ HUMAN RIGHTS WATCH, ALBANIA, HUMAN RIGHTS WATCH WORLD REPORT 2003, at <http://www.hrw.org/wr2k3/europe1.html>. It may take many years before that trustworthiness of Albania’s police is established sufficiently for the populace to choose to register their weapons. One author (J.D.E.) still recalls tales by her grandfather of arbitrary police abuses, and arrests by secret police in the middle of the night, that took place more than a century ago in Hungary.

¹¹⁵ Antonopoulos, *supra* note 76, at 6.

¹¹⁶ See *supra* note 50 and accompanying text.

Even in Canada, a wealthy country where people do trust their government, firearms registration has been an abysmal waste of resources; the program was supposed to cost two million dollars (Canadian), but is well over one billion, and on its way to two billion.¹¹⁷ Now Canada is a country where spending eighty-five million dollars, or a great deal more, on an unproductive government program will still leave a great deal of money for the government to spend on social needs. But wasting even a few million dollars in Albania¹¹⁸ can mean that very urgent public needs will go unmet.

Nevertheless, the Albanian population can look forward to more attempts at weapons control. There was yet to be another amnesty.¹¹⁹ The Albanian

¹¹⁷ Auditor General of Canada, *Costs of Implementing the Canadian Firearms Program* (2002), available at <http://www.oag-bvg.gc.ca/dominio/reports.nsf/html/20021210ce.htm>; Gary A. Mauser, *The Failed Experiment: Gun Control and Public Safety in Canada, Australia, England and Wales*, 71 PUB. POL'Y SOURCES 4 (2003), available at <http://www.fraserinstitute.ca/admin/books/files/FailedExperiment.pdf> ("The final costs are unknown but, if the costs of enforcement are included, the total cost could easily reach \$3 billion."); Jason Fekete, *Redirect Gun Registry Funds*, THE OTTAWA CITIZEN, July 8, 2003, available at http://lufa.ca/news/news_item.asp?NewsID=2226 ("The federal government should abolish the \$2-billion firearms registry for long guns and redirect the tax dollars to municipalities, health care, education and law enforcement, says a report to be presented to a city committee.").

¹¹⁸ We note optimistically that the UN is proceeding in a slow and careful manner in the Albanian gun registration project. Lawrence Doczy told us:

We have now purchased the equipment and software and have put these at the disposal of the Ministry of Public Order computer people who have received the necessary training and have developed the initial software for this purpose. The initial step will be the inputting of the data of all weapons currently in the custody of the MoPO (police). We have installed the equipment at HQ in Tirana and also in one of the Police Directorates in Tirana to test the replicability and communication between the centre and a satellite. Once debugged we will present a plan for the entire country and go back to the donors for funding.

E-Mail from Lawrence Doczy, Manager of the Support to Security Sector Reform Programme, to Paul Gallant (July 16, 2003) (on file with author).

¹¹⁹ See *Albania: Background*, supra note 91, at 15:

In stressing the date of 4 August as the deadline for the voluntary surrender of weapons, the PAI [educational component] activities are faced with the fact that the Government had extended the deadline twice in the past and the population expects another extension. Consequently the challenge of the PAI activities is to convince the population that this time the Government is serious and will not grant another extension.

Id. See also United Nations Development Programme, *Evolving from Small Arms and Light Weapons Control Project to Support to Security Sector Reform Programme in Albania*, available at <http://www.undp.org/al/salwc>; United Nations Development Programme, *Hundreds of People Give in Their Weapons—UNDP Small Arms and Light Weapons Control Paved the Way to a Weapons Free Society*, NEWS AND EVENTS, Apr. 5, 2004, available at <http://www.undp.org/?news,0,46>:

Following the expiration of the amnesty law on 4 August 2002, the SALWC project staff worked relentlessly with the government to ensure the reestablishment of and [sic] amnesty law, the necessary legal framework, to

government's disarmament programs likely will continue, although UN funding may be running out.¹²⁰ The Albanian government faces the task of confiscating or registering the remaining weapons—at least 200,000, but perhaps as many as 700,000.¹²¹

Rather than persisting in a futile attempt to disarm the public, it would be more effective for government to control police abuses, to pay better attention to fundamental human rights, to spend its resources on required infrastructure, and to reduce the civilian need for arms by protecting the people against slave traffickers.

V. PANAMA

A typical voluntary weapons collection program (“VWCP”) occurred in the city of San Miguelito, Panama, during 1998.¹²² William Godnick's thorough discussion of the 1998 program sets forth the assumptions of the disarmament community: there is a causal relationship between violence and the number of arms in the hands of the public (even in non-criminal hands); further, “[t]here is a wide consensus among supporters of VWCP that the symbolism of collecting and destroying the tools of violence provides enormous intangible benefits to post-war society.”¹²³ Despite the feelings about intangible benefits, Godnick recognized that the challenge “is to find tangible and quantifiable evidence that these programs improve social wellbeing.”¹²⁴

In San Miguelito, a community of 300,000 poor people, the Arms Exchange program offered people a choice of food, construction materials, small appliances, or employment opportunities, in exchange for guns. The program also included increased police enforcement in a crime-ridden area where police presence formerly had been minimal. The program collected 108 illegal firearms during 1998; additionally, the National Police (PN) collected another 97 firearms,

allow for weapons collection activities to resume. A new law was in fact established in March 2003

Id.

¹²⁰ *Support to Security Sector Reform Programme*, *supra* note 109 ¶ 2.7.1 (“The Albanian Government is serious with respect to the continuation of weapons collection activities. . . . However at this point SSSR is no longer supporting directly the weapons collection and is not obtaining WC figures, mainly due to lack of funding.”).

¹²¹ The figure depends on the various estimates of the number of weapons looted from government armories, the number of weapons sold outside the country, the number of weapons recovered, and the number of weapons originally in civilian hands. Accounts vary; *see supra* at notes 85, 107.

¹²² WILLIAM H. GODNICK, VOLUNTARY WEAPONS COLLECTION IN PANAMA: THE ARMS EXCHANGE PROGRAM IN SAN MIGUELITO § I (Program for Arms Control, Disarmament and Conversion, Monterey Institute of International Studies, January 1999), *available at* <http://sand.miiis.edu/research/1999/jan1999/panama.PDF>. San Miguelito is located at the edge of Panama City. “It was one of the areas within Panama where the greatest quantities of arms were distributed leading up to the United States military invasion of Panama in 1989 (Operation Just Cause).” *Id.* at § II.

¹²³ *Id.* at § I.

¹²⁴ *Id.*

for a total of 205. The total cost per weapon was averaged at \$200 (US).¹²⁵ Godnick noted, “According to San Miguelito Mayor Cano Gonzalez the violent crime rate has been reduced by 75% since the implementation of Arms Exchange.”¹²⁶

As in Gramsh, Albania,¹²⁷ social conditions significantly improved after the implementation of the arms collection program. Was the collection of arms the main cause of the improvements?

Perhaps not. Mayor Gonzalez acknowledged that youths in certain hotspots committed 60% of San Miguelito’s crimes.¹²⁸ Mayor Gonzalez offered employment opportunities to these youths, in exchange for the surrender of their weapons. In other words, the San Miguelito program did not just get guns off the streets; it got the criminals off the streets, and into jobs. As Godnick stated, “the focus of providing employment opportunities in the individual’s home community is worth re-examining.”¹²⁹

Godnick acknowledged that a dramatic decrease in crime, due to the removal of only 205 weapons, might be implausible.¹³⁰ Godnick’s caution is bolstered by the observation of Under-Secretary-General for Disarmament Affairs, Jayantha Dhanapala, that, in Central America, for every firearm collected by a disarmament program, one hundred weapons remain in circulation.¹³¹ Even if the San Miguelito program removed 10% of the guns (instead of just 1%), their removal might be expected to be less significant than the removal of the criminals responsible for 60% of the crime. And perhaps the willingness of the youthful criminals to get real jobs, and give up their guns, was significantly enhanced by the much-increased police presence.

Godnick posed the question, “Is the program cost of US \$200 per firearm turned in a good social investment? The answer is clearly yes.”¹³² He is clearly right, regarding the guns surrendered by the criminals. But the broader implication of the San Miguelito success is not that crime can be stopped by spending \$200 per gun for gun surrender programs. Rather, the evidence suggests that crime can be stopped by much more expensive programs:

¹²⁵ *Id.* at § I.

¹²⁶ *Id.* at § III.

¹²⁷ *See supra* Part IV.

¹²⁸ GODNICK, *supra* note 122, at § II.

¹²⁹ *Id.*

¹³⁰ *Id.* at § VI.

The organizers of the Arms Exchange program claim that the violent crime rate has decreased by 75% since implementation. I have no reason to doubt this claim, but as a policy analyst by trade, I realize that statistics can be interpreted in any variety of ways. Political oppositions will question program success when the implementing institution is closely affiliated with its evaluators.

Id.

¹³¹ Dhanapala, *supra* note 89 (“In Central America it was estimated that for every 1,000 weapons collected some 100,000 remained in unaccounted circulation.”).

¹³² GODNICK, *supra* note 122, at § V.

significantly increased police, and a jobs program for unemployed youths. The \$200 per gun program was built on top of these expensive, and worthwhile, investments. The San Miguelito story does not offer evidence that \$200 per gun, in isolation, would have succeeded.

San Miguelito does, however, prove that UN-affiliated micro-disarmament programs do not necessarily have to foster violations of human rights. No matter how one parcels out the credit to the various elements of the San Miguelito program, the program was a success at improving the lives of the people of San Miguelito. The San Miguelito program did not foster the violation of human rights—unlike the harmful micro-disarmament programs in Cambodia, in Bougainville, and in Albania (after the initial success in Gramsh). San Miguelito offers at least the hope that all of the UN's disarmament resources might eventually be used only for projects that do not harm human rights.

VI. GUATEMALA

The Mayan Indians of Guatemala have suffered a long history of *de facto* slavery, starting with their conquest by the Spanish in 1524.¹³³ Guatemala remained under Spanish rule until 1821 when the Spanish withdrew, and the country became a republic in 1839. Its history has been replete with political turmoil.

The country's first major restrictive gun law, Decree Number 36, was enacted in 1871. Many more gun laws followed.¹³⁴ These regulations rendered lawful firearm acquisition and possession beyond the financial means of the average Guatemalan.

When the Mayan Indians, generally unarmed,¹³⁵ became more active in political affairs in 1960, the response of government was violent suppression. The result was a thirty-six-year-long civil war, the longest in Latin American

¹³³ See SIMKIN, ZELMAN & RICE, *supra* note 21, at 231; GLOBAL EXCHANGE, GUATEMALA: A BRIEF HISTORY, available at <http://www.globalexchange.org/countries/americas/guatemala/history.html> (last visited May 21, 2005).

The Mayans have not accepted their fate lightly. A study of their history shows that in every generation since the invasion of the Spaniards, the Mayans have risen up in rebellion, armed only with rocks and machetes. Every generation, these slave revolts have been quickly crushed by the well armed forces of the oligarchy.

Id.

¹³⁴ SIMKIN, ZELMAN & RICE, *supra* note 21, at 230-33.

¹³⁵ EDWARD J. LAURANCE AND WILLIAM H. GODNICK, WEAPONS COLLECTION IN CENTRAL AMERICA: EL SALVADOR AND GUATEMALA (2000), at 23, available at http://sand.miiis.edu/research/2000/jan2000/bicc_elsgua.pdf.

history,¹³⁶ that claimed approximately 200,000 lives, in what some have labeled a genocide.¹³⁷

Although small bands of armed insurgents were active, most of the Mayan population did not have arms, and therefore did not involve itself in the insurrection. The government was so determined to crush the insurrection that there appeared to be no limits on killing anyone; according to the BBC News, the zeal of the army to eliminate just one small group of only 100 insurgents in 1966 resulted in the deaths of 10,000 people.¹³⁸

The Mexico Accord, signed on April 26, 1991, emphasized human rights and the rights of indigenous people. It was followed by the Comprehensive Agreement on Human Rights, of March 29, 1994, which paved the way for establishment of a UN presence in Guatemala, called MINUGUA (United Nations Observer Mission in Guatemala).¹³⁹

MINUGUA was a peacekeeping mission created by the Security Council in 1997 “to verify agreement on the definitive ceasefire between the Government of Guatemala and the *Unidad Revolucionaria Nacional Guatemalteca* (“URNG”).”¹⁴⁰ Among its objectives was the demobilization and disarmament of URNG combatants.¹⁴¹

¹³⁶ INFOPLEASE ONLINE ALMANACS, Guatemala, at <http://www.infoplease.com/ipa/A0107596.html>.

¹³⁷ *Guatemala Mayans Still ‘Wronged’*, BBC NEWS, Sept. 12, 2002, available at <http://news.bbc.co.uk/1/hi/world/americas/2253273.stm> (“Left-wing Mayan guerillas waged a 36-year-long civil war in which about 200,000 people were killed in what the UN has described as genocide.”); *Guatemala ‘Genocide’ Probe Blames State*, BBC NEWS, Feb. 25, 1999, available at <http://news.bbc.co.uk/1/hi/world/americas/286402.stm>; Victoria Sanford, *The Inter-American Court Condemns Guatemalan Government for 1982 massacre and for the First Time in its History Condemns a Member State for Genocide*, Genocide Watch website, available at <http://www.genocidewatch.org/GuatemalaCourtCondemnsStateforGenocide23july2004.htm> (last visited May 21, 2005).

¹³⁸ *Guatemala ‘Genocide’ Probe Blames State*, *supra* note 137. For an elaborate discussion on why armed conflicts, especially guerrilla conflicts, result in the intentional deaths of large numbers of non-combatant civilians, see Benjamin Valentino, Paul Huth, and Dylan Balch-Lindsay, *Draining the Sea: Mass Killing, Genocide, and Guerilla Warfare*, 58 INT’L ORG. 375 (2004). See also PATRICK BALL, PAUL KOBRACK, AND HERBERT F. SPIRER, STATE VIOLENCE IN GUATEMALA, 1960-1996: A QUANTITATIVE REFLECTION, available at <http://shr.aaas.org/guatemala/ciidh/qr/english/part1.html> (“During Guatemala’s 36-year armed conflict, the State killed hundreds of thousands of citizens and displaced a million more.”) (Ball is Deputy Director of the Science and Human Rights Program for the American Association for the Advancement of Science.).

¹³⁹ STEPHEN BARANYI, THE CHALLENGE IN GUATEMALA: VERIFYING HUMAN RIGHTS, STRENGTHENING NATIONAL INSTITUTIONS AND ENHANCING AN INTEGRATED UN APPROACH TO PEACE (The Centre for the Study of Global Governance, London School of Economics 1995) (copy on file with the authors).

¹⁴⁰ United Nations Peacekeeping Operations, United Nations Verification Mission in Guatemala: MINUGUA, Mission Profile, available at <http://www.un.org/Depts/DPKO/Missions/minugua.htm>.

¹⁴¹ See United Nations Verification Mission in Guatemala: MINUGUA, available at http://www.un.org/Depts/dpa/prev_dip/americas_europe/guatemala/fr_guatemala_background.htm; MINUGUA’s 9th and Final Report on Fulfillment of the Peace Accords in Guatemala, Aug. 30,

But the disarmament was incomplete. Godnick stated, “It is recognized that United Nations sponsored disarmament programs have not been able to recover a fraction of the weapons in circulation. The 1,800 weapons collected from the guerrillas in Guatemala after the conclusion of more than three decades of conflict is a prime example of this.”¹⁴² In addition, 642 URNG combatants did not comply with the program.¹⁴³

The Guatemalan government did not continue with the disarmament process and did not institute formal civilian weapons collection programs at that time.¹⁴⁴ Despite the surrender of 1,800 URNG weapons, observers noted that “Guatemala is experiencing increased crime and violence. . . .”¹⁴⁵

Laurance and Godnick, who also observed the increase in violence after the ceasefire and weapons collection,¹⁴⁶ pointed out that the increased violence occurred in the cities, rather than in the Mayan-populated countryside.¹⁴⁷ And, they further acknowledged that, in general, the Mayan people still remain unarmed.¹⁴⁸

2004, available at http://www.nisgua.org/articles/minugua_Final_Report_Aug2004.htm; Mission Profile, *supra* note 140.

¹⁴² WILLIAM H. GODNICK, *ILLCIT ARMS IN CENTRAL AMERICA* (Program for Arms Control, Disarmament and Conversion at the Monterey Institute of International Studies 1998) (Prepared for an international workshop of the British American Security Information Council (“BASIC”), “Small Arms and Light Weapons: An Issue for the OSCE,” Vienna, November 9-10, 1998), available at <http://sand.mii.edu/research/documents/gnick-osce.pdf>.

¹⁴³ See LAURANCE & GODNICK, *supra* note 135, at 26.

¹⁴⁴ Alexander Chloros, et al., *Breaking the Cycle of Violence: Light Weapons Destruction in Central America*, Basic Papers, Number 4 (Dec. 1997) (“Weapons collection programs have not formed a part of the Guatemalan government’s reconstruction process, although the police have been carrying out raids to confiscate weapons which are not registered under the Interior Ministry’s new more restrictive ownership laws.”).

¹⁴⁵ *Id.*

¹⁴⁶ LAURANCE & GODNICK, *supra* note 135, at 23. See generally CAROLINE MOSER & CATHY MCILWAINE, *VIOLENCE IN A POST-CONFLICT CONTEXT: URBAN POOR PERCEPTIONS FROM GUATEMALA* 41 (2001) (quoting a group of women from Sacuma, Huehuetenango, “instead of signing peace, they signed violence.”).

¹⁴⁷ LAURANCE & GODNICK, *supra* note 135, at 23. Some vigilantism has occurred in the Mayan-populated rural areas, with 176 lynchings between 1996 and 2000. It does appear that the Mayan community is attempting to control criminal activities, in an extra-judicial manner. See William Godnick, et. al., *Stray Bullets: The Impact of Small Arms Misuse in Central America*, Small Arms Survey, Occasional Paper No. 5 (Oct. 2002), at 19, available at <http://www.basicint.org/pubs/Papers/BP24.htm>; Human Rights Watch, *Human Rights Watch World Report 1999: Guatemala: Human Rights Developments*, at <http://www.hrw.org/worldreport99/americas/guatemala.html>:

[T]he failure to curb common crime prompted many citizens to take justice into their own hands. MINUGUA calculated that between March 27, 1996, and April 1, 1998 there was an average of more than one lynching per week. According to MINUGUA, most lynchings occurred in rural areas with little police presence

Id.

¹⁴⁸ LAURANCE & GODNICK, *supra* note 135, at 23.

Could the remaining weapons be the cause of all this violence? Could 642 armed, URNG ex-combatants have migrated to the city and been responsible for the crime wave?¹⁴⁹

Although there is no dispute over the fact of increased violence in the cities, there is question about the number of weapons present in Guatemala. Godnick and Vázquez report 181,051 legally registered weapons, and 1.5 million illegal weapons, making Guatemala “the most highly armed country in the sub-region.”¹⁵⁰

The present Guatemalan government is part of the problem. There is rampant government corruption¹⁵¹ and a continuing pattern of human rights abuses¹⁵² and social inequality.¹⁵³ Human Rights Watch reported, “Charges of government corruption produced violent reprisals in several instances. . . . In February, a witness in one high-profile corruption case, César Augusto Rodas Furlán, was shot dead in Guatemala City.”¹⁵⁴ Human Rights Watch documented many acts of intimidation against human rights defenders. The perpetrators possessed the kind of information that “had traditionally been the domain of military intelligence.”¹⁵⁵

Guatemalans do not believe that criminals will be dealt justice.¹⁵⁶ It is no wonder, since the government is so busy defending its own power structure and protecting itself from the “destabilizing” effects of those who seek legitimate redress of civil rights grievances.

According to Waszink, “The *maras* [delinquent drug gangs] are responsible for assaults on buses and other criminal acts. In Guatemala City each major bus

¹⁴⁹ Chloros, et al., *supra* note 144 (“Guatemala is experiencing increased crime and violence resulting from internal security threats and the presence of surplus weapons.”); Camilla Waszink, *Small Arms and Violence in Guatemala*, SAND Brief: Guatemala (May 2000), available at <http://sand.miiis.edu/research/2000/may2000/guatebrief.pdf> (“The proliferation of small arms has an adverse impact on Guatemalan society. The abundance of weapons has created a ‘culture of violence’ . . .”)

¹⁵⁰ See William Godnick & Helena Vázquez, *Small Arms Control in Central America*, Latin America Series No. 2 (English Version) (June 2003), at 22, available at http://www.iansa.org/regions/camerica/documents/iaca_eng.pdf. Earlier, Godnick had written, “Scholars and researchers estimate that up to 2 million military weapons remain in Central America.” GODNICK, *supra* note 142. Obviously the high end of the Guatemala figure (2 million) and the total Central America estimate of two million cannot both be correct.

¹⁵¹ See Godnick, et al., *supra* note 147, at 34; *Populist President Takes Over in Guatemala*, BBC NEWS, Jan. 14, 2000, available at <http://news.bbc.co.uk/1/hi/world/americas/604184.stm>.

¹⁵² *Guatemala Mayans Still ‘Wronged’*, *supra* note 137; *Guatemala Rights Urged*, BBC NEWS, July 5, 2001, available at <http://news.bbc.co.uk/1/hi/world/americas/1424371.stm>.

¹⁵³ See Godnick, et al., *supra* note 147, at 34.

¹⁵⁴ Human Rights Watch, *Human Rights Watch World Report 2003, Guatemala*, at <http://hrw.org/wr2k3/americas6.html>.

¹⁵⁵ *Id.*

¹⁵⁶ INSTITUTE FOR TEACHING SUSTAINABLE DEVELOPMENT, *SMALL ARMS IN GUATEMALA* (2003), at 6, available at <http://www.iepades.org/docs/SmallArms.pdf>. “The increase of violence and criminal rate, the availability of arms and ammunitions, the lack of reaction on the part of the State, have pushed the population to acquire arms to protect themselves and their families.” *Id.* at 4.

company experiences an average of 3-4 assaults daily.”¹⁵⁷ With crime increasing in the cities, and with assault and kidnapping for ransom an everyday occurrence,¹⁵⁸ it is not surprising that Guatemalans are arming for self-defense, or that private security is a growth industry. Although the constitution of Guatemala guarantees the human right of civilians to possess weapons,¹⁵⁹ the bureaucratic requirements to own firearms can disarm some people whose lives may be in danger, and push some of them into the black market.¹⁶⁰

¹⁵⁷ See Waszink, *supra* note 149.

¹⁵⁸ See Godnick & Vázquez, *supra* note 150, at 12.

¹⁵⁹ CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE GUATEMALA, art. 38 (1985, with the reforms of 1993):

ARTICULO 38.- Tenencia y portación de armas. Se reconoce el derecho de tenencia de armas de uso personal, no prohibidas por la ley, en el lugar de habitación. No habrá obligación de entregarlas, salvo en los casos que fuera ordenado por el juez competente. Se reconoce el derecho de portación de armas, regulado por la ley.

(Article 38. - Possession and carrying of arms. The right of possession of arms for personal use not prohibited by the law, is recognized, in the home. There will be no obligation to surrender them, except in cases which are ordered by a competent judge. The right of carrying of arms is recognized, regulated by the law.)

Id. (authors' translation).

¹⁶⁰ GUATEMALA, OVERVIEW, available at http://www.research.ryerson.ca/SAFER-Net/regions/Americas/Gua_MY03.html (last modified May 16, 2003).

Article 38 of the Constitution provides protection for the right to possess firearms in the home. Specific issues are dealt with by the Law of Arms and Ammunition (Decree 38-89), the Reform Decree (74/90), and the Statute of Law and Ammunition (16 July 1991). The Department of Arms and Ammunition Control of the Ministry of Defence (DECAM) is responsible for all issues related to firearms including regulation and the granting of permits.

Licensing Requirements: Licences to carry a firearm may be issued for sporting, collection, and defensive purposes to persons 25 and over. Permissible defensive arms include revolvers, semi-automatic pistols of any calibre, pump shotguns, and rear- and side-loaded semi-automatics, with barrels not more than 56 cm (Art. 5, Decree 339/89). Licences can apply to a maximum of 3 firearms and are generally valid for 1 year. 3-year licences may be granted to holders who have not committed a crime or violation for 3 years.

Article 73 of Statute Governing Accord 424/91 states that purchasers of firearms must present the seller with:

- a legal photocopy of the identification card;
- a certification of no prior arrests;
- proof of employment and/or certification of income.

The seller must then send this documentation to the DECAM, and if the sale is authorized, the seller will present the relevant receipt.

Registration Requirements: Article 74 of Statute 424/91 states that the buyer must register with DECAM within 3 days of purchase, and:

- present firearms;

The crime problem has provoked some Guatemalans to argue against more stringent weapons control and collection laws. One pro-gun civilian group, the Guardianes del Vecindario, used billboards around the country to advertise messages such as “Thieves and Murderers Prefer Unarmed Victims.”¹⁶¹ Another group, the Association for the Constitutional Right to Bear Arms, protested with newspaper advertisements against new regulations and against international interference with Guatemalans’ natural right to self-defense.¹⁶²

Guatemala has a multitude of problems that might tend to foster a culture of violence. Furthermore, the country is geographically situated to function as a conduit for smuggling drugs and other contraband. After the settlement of the civil war, it appears that about three-fourths of the rebels obeyed the disarmament agreement.

There is still widespread lawlessness; in 2003, local media reported that “murders, assaults and kidnappings increased by more than 150%.”¹⁶³ Perhaps the reason is that, according to Secretary-General Kofi Annan, “There are wide-ranging social inequalities. Discrimination across ethnic, cultural and linguistic lines remains disturbingly prevalent. And Guatemala has fallen short of its obligations to pay reparations to war victims and to substantially increase tax revenues to pay for much-needed social investments.”¹⁶⁴

Although the United Nations Verification Mission has completed its job and is leaving Guatemala, the UN and Guatemala have agreed on the opening of “an Office of the High Commissioner for Human Rights and for the creation of a special body to investigate clandestine groups.”¹⁶⁵

As a public relations response to the continuing problem of violent crime, the government of Guatemala has implemented a goods-for-guns program. According to the *BBC News*, Guatemalan President Oscar Berger acknowledged, “It would not produce major results in the short term . . . but together we will resolve, little by little, the problems of violence in Guatemala.”¹⁶⁶

present property title;
and submit two bullets for a ballistics test.

Id. In particular, the age requirement of 25, and the requirement that a gun licensee have a job may put young people and poor people at risk of being unable to protect themselves from violent criminals.

¹⁶¹ See LAURANCE & GODNICK, *supra* note 135, at 29.

¹⁶² *Id.* (“At the same time, another pro-firearm group the Association for the Constitutional Right to Bear Arms (ACEPTAR) published a full page newspaper advertisement condemning proposed reforms to the law on arms and munitions and criticizing MINUGUA [United Nations Observer Mission in Guatemala] and other international institutions for meddling in sovereign domestic affairs.”).

¹⁶³ See *UN to Help Guatemala Fight Crime*, BBC NEWS, Jan. 8, 2004, available at <http://news.bbc.co.uk/2/hi/americas/3378739.stm>.

¹⁶⁴ Kiernan Prendergast, Under-Secretary-General, *Secretary-General’s Message to the Closing Ceremony of the United Nations Verification Mission in Guatemala (MINUGUA)* (Nov. 15, 2004), available at <http://www.un.org/apps/sg/sgstats.asp?nid=1179>.

¹⁶⁵ *Id.*

¹⁶⁶ *Guatemala Swaps Guns for Bicycles*, BBC NEWS, July 10, 2004, available at <http://news.bbc.co.uk/1/hi/world/americas/3883023.stm>.

VII. MALI

Mali has been touted by the disarmament community as a showcase success. But the events in Mali do not support such claims.

Mali, an inland country in West Africa, is among the world's ten poorest nations.¹⁶⁷ Mali attained independence from France in 1960 and is twice the size of modern-day France. Ten percent of the Malian population live as nomads in the country's northern desert, which accounts for seventy percent of Mali's total territory.¹⁶⁸ The country's southern inhabitants are more agriculturally inclined.¹⁶⁹

Among the minority groups in Mali are the Tuareg, whose current population is estimated at approximately 500,000.¹⁷⁰ They live not only in the north of Mali, but also in Algeria, Libya, Niger, and Burkina Faso.¹⁷¹ Severe droughts of the late 1960s through the mid-1970s, and again between 1980 and 1985, destroyed the social fabric and the economy of the north.¹⁷²

But the national capital in Bamako did not offer aid or relief; the entrenched culture of central government kleptocracy was unchanged.¹⁷³ As a result of the droughts and the economic upheaval, many young men were forced to emigrate, and many of them were welcomed into Muammar Khaddafi's Libyan army. Not

¹⁶⁷ *Mali Election: Candidates and Issues*, GLOBAL NEWS WIRE – ASIA AFRICA INTELLIGENCE WIRE, Apr. 27, 2002; Gaoussou Traore, *Maliens Prepare to Elect New President Sunday*, PANAFRICAN NEWS AGENCY (PANA) DAILY NEWSWIRE, Apr. 26, 2002.

¹⁶⁸ Stefan Sperl, *International Refugee Aid and Social Change in Northern Mali*, THE J. OF HUMANITARIAN ASSISTANCE, Working Paper No. 22 (2001), available at <http://www.jha.ac/articles/u022.htm>.

¹⁶⁹ Kalifa Keita, *Conflict and Conflict Resolution in the Sahel: The Tuareg Insurgency in Mali* (1998), at 2, 5, available at <http://www.carlisle.army.mil/ssi/pdf/PUB200.pdf>.

¹⁷⁰ See Survival International, *Desert Dwellers Fight On*, available at <http://www.survival-international.org/pdf/tuaregbg.pdf> (“Estimates of the total number of Tuareg vary . . . and probably half a million in Mali.”); Cf. Keita, at 6 (Tuareg population of Mali may be in excess of 600,000).

¹⁷¹ See Survival International, *Desert Dwellers Fight On*, available at <http://www.survival-international.org/pdf/tuaregbg.pdf>.

¹⁷² Keita, *supra* note 169, at 12. See also ROBIN-EDWARD POULTON & IBRAHIM AG YOUSOUF, A PEACE OF TIMBUKTU 43 (1998):

Many Touareg chiefs lost their herds and were forced into exile. Those who stayed found that they were weakened in their moral authority. Society began to disintegrate. In this “culture of controlled violence” where every man carries a sword and owns a gun with which to protect his herd, his honour and his family, social controls began to fail.

Id.

¹⁷³ *Id.*

International aid destined for the hungry populations of the North was stolen by army colonels to build luxurious villas in Bamako, known as ‘the castles of drought.’ It is sometimes said that the sons and brothers of those who starved to death in Kidal and Boureissa in 1974, returned in 1990 to take their revenge on Moussa Traore.

Id. at 26.

only were they trained and armed, but they were exposed to the religious, social, political, and economic ideas in Khaddafi's *Green Book*.¹⁷⁴

The series of uprisings in Mali that occurred during the early 1990s were almost inevitable; they were led by only about 3,000 angry young men with guns and fueled by government paralysis and by atrocities committed by an incompetent and abusive Malian army.¹⁷⁵

Poulton and Youssouf described many incidents where the army failed to accept the rule of law. In one incident, Tuareg leaders called to negotiations in Léré were murdered.¹⁷⁶ In October 1994, the Swiss Consul met a similar fate.¹⁷⁷ Although Alpha Oumar Konaré, the president democratically elected in 1992, had earnest intentions of ending the civil strife that had plagued northern Mali, peace was not forthcoming until 1995. In late 1994, the government gained control of its army. Colonel Siraman Keita was brought in as Chief of the General Staff of the Malian army, and Boubacar Sada Sy was installed as Minister of Defence. The military in the north, which had been guilty of excessive use of force and abuse of the civilian population, was withdrawn and sent south. In effect, the war against the people of Mali was ended by the Konaré government and by the new leadership of the army, terminating their policy of violence against civilians.

There was much more to the peacemaking than just the withdrawal of a renegade army. Another factor that led to peace was a series of meetings that were held in 1994-95,¹⁷⁸ led by Kare Lode, a representative of Norwegian Church Aid ("AEN").¹⁷⁹ The armed ex-combatants became convinced that the peace effort was in earnest. Lode said, "Even the organizing of the meeting was a positive factor: in may [sic] cases armed robbery in the area had stopped completely by the time the meetings were held, and the local market reopened immediately afterwards."¹⁸⁰

At the *end* of this process, disarmament finally began.¹⁸¹ The process for the "cantonment" of arms was not implemented until November 15, 1995.

¹⁷⁴ MU'AMMAR AL-QADHAFI, *THE GREEN BOOK* (Tripoli, Libya: Public Establishment for Publishing, Advertising and Distribution) (3 vols.) English translation *available at* http://www.qadhafi.org/the_green_book.html.

¹⁷⁵ For an extensive discussion of the intricate political turmoil, *see generally* POULTON & YOUSOUF, *supra* note 172.

¹⁷⁶ *Id.* at 62.

¹⁷⁷ *Id.* at 74.

¹⁷⁸ In the summer of 1994, a series of conferences (called Regional Concertations) produced "a national consensus in favour of equal treatment for all the populations of the North, which reinforced the Government's position and opened the way for northern peacemakers to begin the process of consulting, and then of mobilizing civil society." POULTON & YOUSOUF, *supra* note 172, at 75.

¹⁷⁹ *Id.* at 117.

¹⁸⁰ POULTON & YOUSOUF, *supra* note 172, at 117.

¹⁸¹ As Garb points out, "temporal correctness" is essential to determining causality. *See* GARB, *supra* note 19, at 53. If B occurs after A, then it is illogical to say that B caused A. The claims that

According to Poulton and Youssouf, “At first there was barely a trickle of candidates, larger numbers arrived later as confidence was built.”¹⁸²

Although the cantonment process was expected to last four weeks, it was extended until January 10, 1996. A total of 10,000 ex-combatants surrendered, 3,000 of whom gave up their weapons.¹⁸³ Those 3,000 weapons were burned on March 27, 1996, in the dramatic ceremony now known as the Flame of Peace.¹⁸⁴

Lt. Col. Kalifa Keita of the Army of the Republic of Mali estimated that some 3,000 Tuareg combatants¹⁸⁵ had been successfully and productively integrated directly into the army and other government positions. Poulton and Youssouf reported that a total of 1,479 ex-combatants were integrated into the uniformed forces, with an additional 149 placed in civilian administrative positions.¹⁸⁶ Sophie Boukhari, a *UNESCO Courier* journalist, reported in 2000 that “[a]bout 2,400 ex-combatants were absorbed into the army and the civil service.”¹⁸⁷ Kouca and Ecawell reported the “integration of 2,540 ex-combatants within the army, the gendarmerie, the frontier guards, the customs, the forestry and the civil administration.”¹⁸⁸ Alhassane reported “Some 2,390 ex-combatants in all the movements have been integrated into the armed forces of the State and 150 into the public service.”¹⁸⁹

In 1996, the UN implemented another program, PAREM (Programme d’Appui à la Réinsertion socio-économique des Ex-combatants du nord Mali),

disarmament in Mali caused peace in Mali are temporally incorrect, and therefore illogical. In Mali, peace came first, and disarmament followed.

¹⁸² POULTON & YOUSOUF, *supra* note 172, at 117.

¹⁸³ *Id.* at 116.

¹⁸⁴ *Id.* at 77, 120. Poulton and Youssouf further noted, “The Flame of Peace became a defining moment in Malian history. It has burned into the mythology of peace-making across Africa. Far more valuable than the financial cost of the weapons, is the symbol of national cleansing which the Flame represents.”

¹⁸⁵ Keita, *supra* note 169, at 18 (“As of early 1998, some 3000 Tuareg combatants—probably more than ever were in the field as rebels at any one time—have been integrated into the various Malian security forces and civil service.”). *See also id.* at 34, Table 4, Integration into the Civil Service, October 1996, which lists 120 ex-combatants. Since 120 of the ex-combatants would enter civil service and not require weapons to carry out their duties, according to Keita’s figures, 2,880 ex-combatants would soon be re-armed.

¹⁸⁶ POULTON & YOUSOUF, *supra* note 172, at 119. According to Poulton and Youssouf, 1,479 combatants would soon be re-armed.

¹⁸⁷ Sophie Boukhari, *Mali: A Flickering Flame*, THE UNESCO COURIER, Jan. 2000, 26-28, available at http://www.unesco.org/courier/2000_01/uk/dossier/txt06.htm. Because 150 of the ex-combatants would enter civil service and not require weapons to carry out their duties, according to Boukhari’s figures, 2,250 ex-combatants would soon be re-armed. *Id.*

¹⁸⁸ Bintou Snana Kouca and Sicave Ag Ecawell, *A History of Armed Conflict*, in COMPREHENDING AND MASTERING AFRICAN CONFLICTS 213 (Adebayo Adedeji ed., 1999). Because 150 of the ex-combatants would enter civil service and not require weapons to carry out their duties, according to Kouca and Ecawell, 2,390 ex-combatants would soon be re-armed.

¹⁸⁹ Aghatam Alhassane, *Democracy and the Peace Process*, in COMPREHENDING AND MASTERING AFRICAN CONFLICTS, at 217. According to Alhassane’s figures, 2,390 ex-combatants were integrated into the military.

for the re-integration of ex-combatants who had not been given government jobs in the military or in another position.¹⁹⁰ As Poulton and Youssouf noted:

“there are tricky political matters of judgement concerning ‘who is an ex-combatant’ . . . The Government decided to be flexible . . . In any case, who cares if they are getting a little bit extra? Songhoy, Fulani, Bozo, Arab or Tamacheq [minority groups in Mali], they all deserve a better start in life than has been possible during the past 5 years of insecurity, following 25 years of drought and 100 years of repression.”¹⁹¹

The central government kept its word about decentralization. The Konaré government recognized the legal authority of 682 villages in the North (there were only 19 legally-recognized villages prior to decentralization), which would now control how their own funding would be spent.¹⁹²

UN authors Poulton and Youssouf admit that the weapons are not all gone from Mali and can be easily replaced:

While nobody believes that we are rid of every illicit gun in Mali, making a start on disarmament mattered enormously. The number and quality of the weapons are unimportant: anyone can obtain another weapon, for guns are all too easily available from nearby flash-points like Chad and Liberia. The important thing is that the Flame of Peace symbolizes the end of ethnic violence in Mali . . . a[n] island of peacemaking in the continent of civil disturbance.¹⁹³

Mali is the shining example of the success of micro-disarmament, according to the international gun prohibition community. But the prohibitionists have forgotten what actually happened in Mali. Peace broke out in Mali in 1995

¹⁹⁰ POULTON & YOUSOUF, *supra* note 172, at 123.

¹⁹¹ *Id.* at 124-25. See also *Trickle Up to Develop 1,000 Microenterprises, and Start 40 New Revolving Savings Groups*, Trickle Up Program Press Release, Sept. 4, 2003, available at http://www.trickleup.org/pubmedia_nr_detail.asp?ID=25. While PAREM-style programs are still present, donor funding is limited; the Trickle Up Program has available only \$100,000 for its first year of support for Northern Mali.

¹⁹² Boukhari, *supra* note 187, at 27. See also Alhassane, *supra* note 189, at 219:

The take-off of the decentralization programme and institutional reforms in Mali is, in fact, a great attempt through which the authorities of the third republic wish to put up a societal project of a new dimension which adapts itself to Malian realities . . . In the wake of the crises of the north, culminating in the signing of the National Pact [April 11, 1992], decentralization proved to be the best political solution to the special status provision of the northern region.

See also POULTON & YOUSOUF, *supra* note 172, at 103 (“Unlike the tentative measures seen in some countries—which resemble rather the ‘deconcentration’ of administrative power—the Malian government appears to be serious about the transfer of power in 1998 to 682 locally elected rural *Communes* and 19 urban *Communes*. . .”)

¹⁹³ POULTON & YOUSOUF, *supra* note 172, at 121.

because the central government completely reformed its policies. The first, and essential, policy in Mali that President Konaré implemented was a change in the oppressive nature of Mali's central government, along with greater respect for the human rights of Mali's citizens. This was manifested in President Konaré's willingness to "destabilize" his own government by changing and devolving the existing power structure. Unlike so many leaders in Africa and other places where tyranny flourishes, President Konaré realized that his nation would enjoy greater stability in the long run if the government became the ally of the people, rather than their cruel master.

The surrender of 3,000 weapons began at the end of 1995, *after* the Konaré government had been proving for months that it really was serious about human rights reform. Before the disarmament began, government aid for schools, jobs, animal re-stocking programs, and other programs already had replaced government repression. The surrender of the weapons and the decision of many rebels to join the military, or to accept another government job, was the result of the peace that broke out in 1995, not a cause of the peace.

The people of Mali certainly had every right to enjoy the Flames of Peace as a symbol of the newly peaceful conditions in their nation. But it was not the burning of the guns that brought peace; it was peace that created the conditions that made people willing to give up their guns.

There is an additional lesson that Mali illustrates: sometimes armed rebellions are justified, and sometimes those armed rebellions succeed. The kleptocracy of the old central government in Mali literally starved Northerners to death. The Northerners had a right, "as a last resort, to rebellion against tyranny and oppression."¹⁹⁴ And the rebellion succeeded. The government in Bamako did not decide to start treating the Northerners like human beings because the government, after a century of oppression, suddenly developed a conscience. To the contrary, the Northerners fought a war for five years that the central government plainly could not win. The central government was wise enough to change its policies and to begin respecting human rights. And, once human rights were respected, the problem of weapons disappeared.

In November 1999, Konaré announced he would not seek re-election in 2002. Toumani Touré was elected president of Mali in 2002. There are indications that Malian government reforms have not been sustained. World Bank data from 2002 suggest that extensive corruption and financial crimes are raking off over ten million dollars of government revenue every year.¹⁹⁵ Reporting on the 2002 Presidential election, the Associated Press wrote, "Amid a chaotic and disputed presidential vote count this month . . . many were left

¹⁹⁴Human Rights Declaration, *supra* note 2, at pmb1.

¹⁹⁵ Traore, *supra* note 167 (supplying figure of 6.5 billion FCFA). "FCFA" is an acronym for "Franc de la Communauté française africaine." Based on exchange rates from the summer of 2004, it took 656 FCFA to buy one Euro, and 545 FCFA to buy one U.S. dollar.

fearing that Mali—West Africa’s model—had become only the latest promising young African democracy to slide back into old, corrupt ways.”¹⁹⁶

Mali’s UN delegation touted the supposed benefits of disarmament.¹⁹⁷ Mali’s government is accepting aid from a European Union program to disarm the people of Mali and to implement a moratorium on the import of weapons into the region.¹⁹⁸ But as Mugumya acknowledged, the people of Mali still retain their weapons for defensive purposes.¹⁹⁹ The weapons helped the tribes of

¹⁹⁶ Ellen Knickmeyer, *After Decade of Promising Start, Some Young African Democracies Sliding Back to Old Ways*, ASSOCIATED PRESS, May 6, 2002, available at <http://www.globalpolicy.org/nations/launder/regions/2002/0502mali.htm>.

¹⁹⁷ See GEOFFREY MUGUMYA, PRACTICAL DISARMAMENT FOR ENHANCING HUMAN SECURITY, PARTICIPATORY ASSESSMENT OF WEAPONS COLLECTION: A SUMMARY OF THE LESSONS LEARNED FROM UNIDIR’S WEAPONS FOR DEVELOPMENT PROJECT (Mali Case Study, paper presented at the First Biennial conference of the United Nations Programme of Action on Small Arms, N.Y., July 9, 2003); Amadou Toumani Touré, *Preface*, in GEOFFREY MUGUMYA, EXCHANGING WEAPONS FOR DEVELOPMENT IN MALI: WEAPON COLLECTION PROGRAMMES ASSESSED BY LOCAL PEOPLE (United Nations Institute for Disarmament Research 2004), at ix:

Because of these weapons’ [SALW] devastating effects on people’s livelihood and on the communities’ abilities to build peace and pursue development, durable solutions to curbing the problem are urgently needed. Increasingly, the international community has favoured weapon collection programmes as a means of alleviating the world’s most conflict-embroiled regions of the tools used to perpetuate armed violence.

Id.

¹⁹⁸ See Joseph P. Smaldone, *Mali and the West African Light Weapons Moratorium*, in LIGHT WEAPONS AND CIVIL CONFLICT, *supra* note 17, ch. 7; *The Chronicle Interview: Ibrahima E. Sall*, UNITED NATIONS CHRONICLE ONLINE EDITION, 2003, at <http://www.un.org/Pubs/chronicle/2003/issue2/0203p57.html>; *West African Arms Moratorium*, NISAT Projects, available at <http://nisat.org/west%20africa/african.htm>; West African arms moratorium, Oct. 31, 1998 (official text from ECOWAS, the Economic Community of West Africa, an international organization of sixteen West African states), available at <http://www.nisat.org/west%20africa/news%20from%20the%20region/ecowas%20ministers%20contract.htm>.

¹⁹⁹ MUGUMYA, *supra* note 197, at 34-35:

Armed burglary had become a daily activity, particularly in urban centres. This led those people targeted by armed robbery to acquire guns as well, in order to protect their lives and property. At the same time, communities located in the interior of the country were forced to acquire weapons because of the failure of the government to provide them adequate security . . . Mali is one of the largest countries in Africa, and shares borders with several countries. The National Guard and Gendarmerie possess insufficient capacity to protect all of Mali’s borders; the country has virtually no control over its northern frontier.

Id.

Although violence has greatly diminished, Mali is still not a crime-free nation, and self-preservation with the best tools available is a universal desire. See Sophie Boukhari, *Mali: A Flickering Flame*, THE UNESCO COURIER, Jan. 2000, at 26, available at http://www.unesco.org/courier/2000_01/uk/dossier/txt06.htm (“Malian President Alpha Oumar Konaré is committed to a culture of peace. But crime has been rising in Mali for several years now and the political climate is getting worse.”).

northern Mali assert their human rights in the early 1990s. Who can foresee the future so clearly as to assure the Malians that they will never again need to exercise their right “as a last resort, to rebellion against tyranny and oppression”?

The UN, as well as the entire disarmament community, has trumpeted Mali as a disarmament success story. But it is becoming increasingly clear that disarmament has had nothing to do with any of the successes achieved in Mali. The gun-burning at the Flames for Peace was symbolically important, but the reason that Mali became peaceful was that the government began respecting human rights. Voluntary disarmament of the Tuareg was a result, not a cause, of the changed human rights situation in Mali. Indeed, the cause of the government’s human rights reforms was the fact that the Tuaregs were armed and were conducting a successful war against the government which had been violating their human rights, sometimes by starving them, for a century. Mali vindicates the teaching of the Universal Declaration of Human Rights that rebellion is the last resort against tyranny and oppression.

CONCLUSION

Greg Puley, a disarmament project coordinator in Central America, set forth the proper standard for judging disarmament programs, “[T]he only way to measure progress—the only way—is to ask ourselves, ‘have we made people safer?’”²⁰⁰ Puley’s approach is much superior to the claims of some disarmament advocates that success can be judged merely by counting weapons.²⁰¹

We have examined six nations, including the crown jewels of the international gun prohibition movement. In each of the six nations, disarmament programs did succeed in collecting some weapons, sometimes a large number of weapons. In each of these six countries, evidence suggests that there are still many weapons in the hands of citizens, and that citizens are refusing to surrender the firearms that they view as necessary for their protection against common criminals or criminal governments. In none of the six countries are firearms difficult to obtain on the black market. Citizens seem determined to possess firearms, notwithstanding the risk of extreme penalties, because firearms possession is literally a matter of life and death.

²⁰⁰ Greg Puley, *Towards the Elaboration of an International Convention on International Arms Transfers?*, Address before the International Action Network on Small Arms (“IANSA”) and Réseau d’action international sur les armes légères (“RAIAL”) Conference (Oct. 5-6, 2001), available at <http://www.grip.org/bdg/g1866.html>.

²⁰¹ See, e.g., Michael Geary & Nick Miller, *Critics Blast Gun Logic in Wake of Shootings*, MORDIALLOC-CHELSEA NEWS (Victoria), Aug. 24, 1998 (“The [Australian] Federal Government has admitted it is not measuring the results of its \$342 million gun buy-back scheme. Kevin Donnellan, spokesman for Justice Minister Senator Amanda Vanstone, said the success of the scheme was measured by the number of guns handed in—about 640,000 across Australia—and not whether gun-related deaths have fallen.”).

The disarmament programs in Gramsh, Albania; San Miguelito, Panama; and Mali were accompanied by positive results. The evidence suggests that the positive results had a great deal to do with government attention to social needs (such as jobs and infrastructure) and better government treatment of the public, and fairly little to do with the removal of weapons.²⁰² To tout disarmament as the primary cause of these success stories is inconsistent with the evidence.

The disarmament program in rural Guatemala was followed by an urban crime wave. Although there does not appear to be evidence that the disarmament made people safer, neither does the evidence suggest that the disarmament caused the crime wave, or deprived people of arms for lawful self-defense.

The expanded disarmament program in Albania, the disarmament program in Cambodia, and especially the disarmament program in Bougainville appear to have harmed human rights. In Albania, the UN is attempting to deprive people of their only means of defense against criminal gangs.²⁰³ In Bougainville, the UN actively interfered with the people's national self-defense against an illegitimate, anti-democratic, and oppressive colonial power.²⁰⁴ In Cambodia, the UN failed in the 1970s to protect the people from genocide; in the 1990s, a UN official imposed gun licensing by bureaucratic fiat, and a few years later, the UN used the licensing forms to find guns to confiscate, thereby rendering the Cambodian people defenseless against sex-trade kidnappers who operate with government support, and also defenseless against the risk of another round of Khmer Rouge genocide.²⁰⁵ The sad stories of Albania, Bougainville, and Cambodia are the A-B-Cs of UN-sponsored gun confiscation turning into a direct assault on human rights. The confiscation programs violate Article 3 of the Universal Declaration of Human Rights, which affirms, "Everyone has the right to life, liberty and security of person."²⁰⁶

The coercive disarmament programs, such as military-style house-to-house search-and-seizure, are a further assault on human rights. They are characteristic of a police state and have sometimes been precursors of genocide.²⁰⁷ Such

²⁰² See text at notes 83-95, 122-32, 175-99.

²⁰³ See text at notes 111-16.

²⁰⁴ See text at notes 64-73.

²⁰⁵ Human Rights Declaration, *supra* note 2, at art. 3.

²⁰⁶ *Id.* See also International Covenant, *supra* note 64, art. 6, ¶ 1 ("Every human being has the inherent right to life."), art 8 ("1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited. 2. No one shall be held in servitude. 3. (a) No one shall be required to perform forced or compulsory labour."); art. 9, ¶ 1 ("Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.").

²⁰⁷ As Kates has noted, "The case of the Cambodian genocide illustrates how encouraging governments to limit small arms ownership can have terrible consequences. As the killing began, Cambodian soldiers undertook an extraordinary house-to-house search to confiscate weapons people could have used to defend themselves. A witness recounts that the soldiers would:

house-to-house military invasions violate Article 12 of the Universal Declaration of Human Rights, which states, “No one shall be subjected to arbitrary interference with his privacy, family, [or] home . . . Everyone has the right to the protection of the law against such interference or attacks.”²⁰⁸

Less coercive programs, such as community-arms surrenders, are also, in many cases, contrary to the Universal Declaration. A corrupt government that profits from the kidnapping of teenage girls for slavery in the sex trade is grotesquely violating the Universal Declaration, including Article 4 (“No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.”); Article 9 (“No one shall be subjected to arbitrary arrest, detention or exile.”); Article 13 (“Everyone has the right to freedom of movement and residence within the borders of each state.”); Article 16 (“The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”); and Article 23 (“Everyone has the right . . . to free choice of employment . . . Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity”).²⁰⁹

In community gun-surrender programs, wealthy foreign organizations tell people, in effect, “We will build you a bridge—if you give up your ability to protect your daughters from sex-trade kidnappers,” or “if you give up your ability to protect your families against the genocide and tyranny that occurred here not too long ago.” It is difficult to see how offering such choices is consistent with respect for human rights.

Even if one adopted the perverse value system that taking guns away from people was more important than protecting their explicit rights under the Universal Declaration (not to mention the Declaration’s implicit right to arms for protection against tyranny and oppression), it is difficult to claim that disarmament is really successful. As Godnick acknowledged:

The jury is still out as to whether or not weapons collection programs in any context contribute to tangible, measurable reductions in the illegal proliferation and misuse of small arms. In fact, it is very difficult to isolate the variables to measure their effectiveness, even in the United States where years of historical data is available.²¹⁰

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 any more.” People who said that they kept no weapons were [nevertheless] forced to stand aside and allow the soldiers to look for themselves.

Don B. Kates, *Democide and Disarmament*, 23 SAIS REV. 305, 305 (2003) (quoting Alec Wilkinson, *A Changed Vision of God*, NEW YORKER, Jan. 24, 1994, at 54-55.)

²⁰⁸ Human Rights Declaration, *supra* note 2.

²⁰⁹ *Id.* For the major international human rights documents pertaining to sex trafficking, see note 50.

²¹⁰ WILLIAM GODNICK, THE ORGANIZATION OF AMERICAN STATES AND THE 2001 UNITED NATIONS CONFERENCE ON THE ILLICIT TRADE IN SMALL ARMS AND LIGHT WEAPONS IN ALL ITS ASPECTS:

Although the United States experience differs in many ways from the countries discussed in this article, the U.S. data also suggest that gun surrender programs meet with poor results.²¹¹

There is rarely a shortage of excuses for failed disarmament programs; the program did not have enough money, or the program in one country was thwarted by the lack of strong inter-regional and international controls.²¹² But it might make sense to also ask if too many disarmament programs are built on false premises.

In all the countries studied in this article, civilians refused to disarm because they were unwilling to trust in government for their safety and well-being and to thereby leave themselves vulnerable to violence in an uncertain and unstable world.

TACKLING THE ILLICIT TRADE IN SMALL ARMS AND LIGHT WEAPONS 15 (Jan. 2002), available at <http://www.international-alert.org/pdf/pubsec/Oas-eng.pdf>. See also GODNICK, *supra* note 122, at VI (“measuring the impact of a weapons collection program is challenging if not impossible.”).

²¹¹ See Robin Yurk, et al., *Educating the Community about Violence Through a Gun Turn-In Program*, 26 J. OF COMMUNITY HEALTH 331, 332 (2001) (“Gun Turn-In programs have been developed and implemented in many communities, but have demonstrated very little impact on other community indicators such as firearm injuries, deaths, and crimes.”), available at http://www.ncbi.nlm.nih.gov/entrez/query.fcgi?cmd=Retrieve&db=PubMed&list_uids=11554497&dopt=Abstract; Peter Slavin, *Buying Back Safer Streets?*, WASH. POST, May 19, 2000:

‘Buybacks remove generally no more than 1 or 2 percent of the guns estimated to be in the community,’ said Garen Wintemute, director of the Violence Prevention Research Program at the University of California at Davis. ‘The guns that are removed from the community do not resemble the guns used in crimes in that community. There has never been any effect on crime results seen.’

Id.; *Few Objections Over End of Gun-Buyback Program*, JOIN TOGETHER ONLINE, Aug. 8, 2001 (Violence Policy Center executive director Josh “Sugarmann said that gun owners would often turn in broken firearms and use the funds to purchase new and better guns.”), available at <http://www.jointogether.org/gv/news/summaries/reader/0%2C1030%2C545201%2C00.html>.

²¹² See, e.g., BASIC PUBLICATIONS, BASIC PAPERS, AFRICA: THE CHALLENGE OF LIGHT WEAPONS DESTRUCTION DURING PEACEKEEPING OPERATIONS (1997), available at <http://www.basicint.org/pubs/Papers/BP23.htm>.

[I]n most cases, the actual disarming of combatants has been at best half-hearted.

....

[T]he collection and destruction of light weapons have not been sufficiently prioritized . . . collection and destruction of weapons, particularly vital for sustainable peace, has often been overlooked or carried out unsystematically.

....

Regional and international support can be enhanced, especially in the following areas:

Controlling arms transfers to the country and/or region of conflict through sanctions, moratoria or other means;

Blocking illicit light weapons to the country and/or region of conflict through international border and customs co-operation

....

Controlling the production and transfer of ammunition . . . monitoring of cross-border arms trafficking, and interdiction of grey and black market weapons traffickers.

Id.

In an Albanian survey conducted as part of the UN disarmament project in 2002, “self/family protection” was cited by 73.7 % of total respondents as their primary reason for owning a weapon.²¹³ As Lawrence Doczy reported:

You can imagine yourself as a villager, isolated in the mountains, out of sight of the nearest house If you’re in trouble, threatened, and the police can’t come to help you because they don’t have a vehicle, then you can’t really be blamed for wanting to hang on to a weapon for your own protection.²¹⁴

In Guatemala, the *ladino* community uses arms to defend itself because the central government will not defend it.²¹⁵

Even in Mali, where political peace ensued (at least for several years), the people refused to surrender all their weapons because they wanted to protect life and property. In a UN book summarizing the micro-disarmament experience in Mali, Geoffrey Mugumya observed, “If the state is unable to offer security to its people, then citizens will use their own means to protect themselves and their property.”²¹⁶ Mugumya explained that among the factors hindering weapons collection was that “persistent fear from past experiences may cause people to be reluctant in coming forward to turn in their weapons.”²¹⁷

The Mali experience, especially, clearly demonstrates that armed rebels may force a government to seek peace terms that end the abuse of human rights. Although the gun prohibition movement attempts to invoke Mali as its great example, the real story of Mali is that justice leads to peace, and peace leads to the abandonment of weapons. The firearms necessary to start a war for justice may become unnecessary once the warriors succeed.

Bougainville also shows that using arms to fight for national self-determination may be effective in forcing colonial governments and their international allies to take at least preliminary steps toward respecting a people’s right to govern themselves and to control their natural resources.

Disarming both sides at the end of a civil war is not a bad idea. Disarming ordinary citizens to prevent them from being able to resist criminal gangs or criminal governments is a terrible idea. It is all very well to pay for t-shirts, radio advertisements, and famous musicians at the national gun-burning ceremony.

²¹³ SALWC PROJECT: SOCIO-ECONOMIC IMPACT SURVEY, UNITED NATIONS DEVELOPMENT PROGRAMME (UNDP) ALBANIA (2002), *available at* <http://undp.org.al/salwc/download/reports/socsurv.zip>.

²¹⁴ Henley, *supra* note 104.

²¹⁵ See MOSER & MCILWAINE, *supra* note 146, at 7. *Ladinos* are people of a mixed European and native descent.

²¹⁶ MUGUMYA, *supra* note 197, at 43-44.

²¹⁷ See *id.* at 106; POULTON & YOUSOUF, *supra* note 172, at 100 (“‘We have to realize that the Flame of Peace is only the start of the peace process’, ICRC Representative Suzanne Hofstetter told us in March 1996, ‘If the refugees return to poverty and destitution, they may want to take up arms again to steal what they cannot earn.’”).

But the fact is, many people will not burn their own guns, because they will never surrender their sovereign, inherent, God-given right and duty to protect their families.

Imagine a world in which every government obeyed the Universal Declaration of Human Rights. People do not form governments in order to destroy their own individual human rights. Governments that violate human rights are, therefore, inherently unstable; such governments are often adamantly opposed to firearms possession by ordinary citizens. As the Universal Declaration of Human Rights acknowledges, as long as “tyranny and oppression” persist, then life-saving arms will be “a last resort.”²¹⁸

Too often, the international gun prohibition community fails to acknowledge that firearms “in the hands of non-state actors” can contribute part of the solution to violations of human rights, may sometimes be necessary for ending the false “peace” of tyranny, and can therefore help build the only kind of peace that can really endure.²¹⁹ As the Universal Declaration affirms, “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.”²²⁰

²¹⁸ Human Rights Declaration, *supra* note 2, at pmb1.

²¹⁹ *See, e.g.*, United Nations, Economic and Social Council, U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities, *Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights, Annex*, UN Doc E/CN.4/1985/4 ¶ 32 (1985) (“The systematic violation of human rights undermines true national security and may jeopardize international peace and security.”).

²²⁰ Human Rights Declaration, *supra* note 2, at pmb1.