GLOBAL DEATHS FROM FIREARMS: SEARCHING FOR PLAUSIBLE ESTIMATES

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I. INTRODUCTION

Advocates of firearms prohibition and other restrictive laws often state that every year around the world, five hundred thousand people are killed by small arms and light weapons (SALW)—most of which are owned by civilians.[1] According to Jayantha Dhanapala, U.N. Under-Secretary-General for Disarmament Affairs, "Small arms are responsible for over half a million deaths per year, including 300,000 in armed conflicts

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1 SMALL ARMS SURVEY 2002: COUNTING THE HUMAN COST 10 (Peter Batchelor & Keith Krause eds., 2002) [hereinafter SMALL ARMS SURVEY 2002]. The Small Arms Survey 2002 defined "small arms" as "revolvers and self-loading pistols, rifles and carbines, assault rifles, sub-machine guns, and light machine guns." *Id.* "Light weapons" are "heavy machine guns, hand-held under-barrel and mounted grenade launchers, portable anti-tank and anti-aircraft guns, recoilless rifles, portable launchers of anti-tank and anti-aircraft missile systems, and mortars of less than 100mm caliber." *Id.*

However, definitional inaccuracies and ambiguities abound, and the distinctions between types of weapons are often blurred or obliterated. As Small Arms Survey 2002 pointed out: "This is an issue that was deliberately avoided at the 2001 UN Small Arms Conference. . . ." *Id.* at 65. Further, "The *Survey* uses the terms 'small arms,' 'firearms,' and 'weapons' interchangeably. Unless the context dictates otherwise, no distinction is intended between commercial firearms (e.g. hunting rifles), and small arms and light weapons designed for military use (e.g. assault rifles)." *Id.* at 10.

Canadian activist Wendy Cukier pointed out the political advantage gun control advocates gain by conflating "firearms" with "small arms." Wendy Cukier, *Small Arms and Light Weapons: A Public Health Approach*, 9 BROWN J. WORLD AFF. 261, 263 (2002) [hereinafter *Small Arms and Light Weapons*]. "Despite the domestic concerns of the United States and of many Americans writing on the issue, small arms-affected regions have insisted that eroding artificial boundaries between small arms and firearms are critical . . . suggesting that 'firearm' be used instead to encompass the full range of weapons." *Id.*

Thus, Cukier in another article used "firearms" as a term for all SALW:

[T]he total mortality from firearms is believed to exceed 500,000 deaths per year worldwide. . . . This article will focus on exploring the global health effects of firearms including handguns, rifles, shotguns and military weapons. The UN Panel of Governmental Experts on Small Arms has defined firearms as: "Revolvers and self-loading pistols; rifles and carbines; submachine-guns; assault rifles; light machine guns." For the purposes of this paper, the term small arms will be considered synonymous with firearms.

Wendy Cukier & Antoine Chapdelaine, *Small Arms: A Major Public Health Hazard*, 7 MED. & GLOBAL SURVIVAL 26 (2001) [hereinafter *Small Arms*].

Cukier's unusual definition creates the false impression that all SALW deaths are caused by small arms (which she calls "firearms"), even though academic estimates of SALW deaths also include deaths from light weapons, such as anti-aircraft missiles and mortars.

and 200,000 more from homicides and suicides."[2] The figure is ubiquitous in the public statements of international anti-gun

2 Jayantha Dhanapala, *Multilateral Cooperation on Small Arms and Light Weapons: From Crisis to Collective Response*, 9 BROWN J. WORLD AFF. 163 (2002) [hereinafter *Multilateral Cooperation*]. These figures have been extensively repeated in different configurations. For example, according to Aaron Karp, "[t]he last decade saw small arms emerge as a major issue in international affairs, acknowledged as the cause of over 500,000 needless deaths every year." Aaron Karp, *Small Arms: Back to the Future*, 9 BROWN J. WORLD AFF. 179 (2002) [hereinafter *Back to the Future*]. Karp also claimed that "there are over 550 million guns in circulation . . . [and they] cause over 300,000 deaths every year." Aaron Karp, *Laudable Failure*, 22 SCH. OF ADVANCED INT'L STUDIES REV. 177 (2002). Furthermore, Rachel Stohl stated that "the use of small arms leads to an estimated 500,000 deaths every year." Rachel Stohl, *Relevant Now More than Ever*, 22 SCH. OF ADVANCED INT'L STUDIES REV. 219 (2002).

   According to Cukier,

      The global toll of small arms is substantial, probably in excess of 500,000 per year. Calculating the deaths from small arms in conflict zones is difficult because of the lack of data, but it has been estimated at 300,000 per year . . . murders, suicides, and "accidents" involving small arms in areas not at war are probably in excess of 200,000.

Small Arms and Light Weapons, *supra* note 1, at 263. Cukier and Chapdelaine state: "An estimated three million people have been killed with small arms in conflict over the past 10 years—about 300,000 per year. . . . Another 200,000 per year are killed with firearms in murder, suicide, and 'accidents,' often in countries that are, at least nominally, at peace." *Small Arms*, *supra* note 1, at 27.

   According to the 2001 Small Arms Survey, "[e]ven conservative estimates suggest that well over half a million lives are lost to them (small arms and light weapons): some 300,000 in armed conflict and another 200,000 from gun-inflicted homicides and suicides." SMALL ARMS SURVEY: PROFILING THE PROBLEM 197 (2001) [hereinafter SMALL ARMS SURVEY 2001]. SMALL ARMS SURVEY 2002 also claimed: "Every year, at least 500,000 men, women, and children are violently killed as a result of small arms." SMALL ARMS SURVEY 2002, *supra* note 1, at 192.

   According to London think tank Saferworld, "300,000 deaths per year are caused by firearms in conflict situations (an additional 200,000 deaths in 'peaceful' countries)." *Statistics: Arms*, *at* http://www.saferworld.co.uk/media/stats.htm (last visited Dec. 11, 2003)

   In Canada, the Coalition for Gun Control claimed that "[i]t has been estimated that 3 million people have been killed with small arms in conflict over the past 10 years, about 300,000 per year. What is less well-known is that a comparable number, 200,000 per year, are killed with firearms in murder, suicide and accidents." *International Context: Small Arms/Firearms Effects*, Coalition for Gun Control, Toronto, *at* http://www.guncontrol.ca/Content/International.html (last visited Dec. 11, 2003).

   According to Neil Arya, "small arms were unarguably the primary cause of death in wars in the 1990s, accounting for about 300,000 deaths a year." Neil Ayra, *Confronting the Small Arms Pandemic*, 324 BRIT. MED. J. 990, 991 (Apr. 27, 2002), *available at* http://bmj.com/cgi/content/full/324/7344/990.

   Gun prohibition activist Rebecca Peters stated that "in terms of actual deaths the real weapons of mass destruction are small arms, which kill 300,000 people every year." Rebecca Peters, *Weapons of Mass Destruction: A Plague of Small Arms*, INT'L HERALD TRIB., Oct. 28, 2002, at 8. According to the International Physicians for the Prevention of Nuclear War, "[i]n recent armed conflicts, small arms have been used to kill an estimated 300,000 people per year . . . they have claimed approximately 200,000 additional lives per year in non-combat related homicides, suicides, and accidents." Press

activists. For example, Neil Arya, president of Physicians for Global Survival, repeated this claim in pronouncing his prescription for a safer world: "Whole classes of weapons could be banned from civilian possession," and we must promote "international norms that stigmatize the possession of guns."[3]

Edward Laurance and Rachel Stohl explained that the figure of "500,000 deaths occurring annually from these weapons" was "cited as prime evidence" for the existence of the International Action Network on Small Arms (IANSA).[4] The *Small Arms Survey 2002* announced that "It is essential that we recall the human devastation directly attributable to small arms on an annual basis: more than 200,000 deaths from homicide and suicide in the industrialized world, and at least 300,000 killed during armed conflicts in developing countries."[5]

The statistic of half a million people killed by "firearms" or by SALW is the most widely cited statistic by advocates of international weapons control.[6] Such advocates promise that disarming civilians will dramatically reduce these deaths.[7] For

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Release, International Physicians for the Prevention of Nuclear War, Nobel Physicians to Convene World Conference on Gun Violence (Aug. 1, 2001) [hereinafter IPPNW], *available at* http://www.jointogether.org/gv/news/alerts/reader/0,2061,268 129,00.html. On October 3, 2001, the gun control website and newswire *Join Together Online* wrote: "According to IPPNW, small arms, light weapons, and firearms have claimed roughly a half million lives a year in recent years—200,000 of them not related to combat." *Physician Group Calls for Response to Global Gun Violence* (Oct. 3, 2001), *at* http://www.jointogether.org/gv/news/features/reader/0,2061, 546008,00.html. *See also* Ivan A. Hadar, *Strict Control on Small Arms Urgent*, JAKARTA POST, Nov. 20, 2002, *available at* http://www.thejakartapost.com/yesterdaydetail.asp? fileid=20021120.E02 (noting that "[e]ach year, some 500,000 people are killed by small arms; eighty-four percent of them are civilians, mostly women and children"); Thalif Deen, *Politics: U.N. Seeks to Clamp Down on Illegal Light Weapons*, INTER-PRESS SERVICE, Sept. 27, 2002 (quoting Kofi Annan as saying "[t]he spread of illicit small arms and light weapons is a global threat to human security and human rights" and citing a U.N. report that said "at least 500,000 people die every year from small arms and light weapons. Of the estimated four million war-related deaths during the 1990s, about ninety percent of those killed were civilians, and eighty percent were women and children, 'mostly victims of the misuse of small arms and light weapons.'"); Joe Lauria, *UN Struggles for Agreement on Small Arms: U.S. Opposition Dooms Pact to Curb Weapons Trade*, OTTAWA CITIZEN, July 21, 2001, at G8 (noting that "[s]mall arms and light weapons kill at least 500,000 people a year worldwide").

3 Arya, *supra* note 2, at 991.

4 Edward Laurance & Rachel Stohl, *Making Global Public Policy: The Case of Small Arms and Light Weapons* 33 (Occasional Paper No. 7, Graduate Institute of International Studies, Geneva) (Dec. 2002).

5 SMALL ARMS SURVEY 2002, *supra* note 1, at 155.

6 *See supra* note 2 and accompanying text.

7 *See supra* note 2 and accompanying text.

many advocates, government-owned weapons are not a concern; as Aaron Karp stated, it "seems clear that state-owned small arms—those of the armed forces, police, and other government agencies—are neither the most numerous nor the ones most likely to be used."[8] Thus, Sami Faltas of the Bonn International Center for Conversion, Germany argued that "it is the exclusive responsibility of the government to control the supply of small arms."[9]

When one carefully examines the data behind the "500,000" factoid, however, the issue appears more complex. First of all, the data simply does not support the "half a million" factoid. This myth has gained strength through repetition, but following the claim to its origin leads to the same observation that Gertrude Stein made about Oakland: "there is no there there."[10]

Moreover, the simplistic agglomeration of all SALW into a single total, with all deaths in that total presumed to be caused by overabundance of firearms in civilian hands, evades consideration of essential policy issues on firearms control. For example, how many deaths from "armed conflicts" are the result of aggression against civilians by governments and government agents? How many of these deaths result from resistance to government abuse by innocent citizens fighting to protect their human rights? How many deaths from homicides and suicides in "peaceful" countries would have been prevented if civilian access to small arms could be reduced, or even eliminated?[11]

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8 *Back to the Future*, *supra* note 2, at 189.

9 Sami Faltas, Glenn McDonald & Camilla Waszink, *Removing Small Arms from Society: A Review of Weapons Collection and Destruction Programmes*, SMALL ARMS SURVEY 2001, *supra* note 2, at 10; Jasjit Singh, *National, Regional and Global Measures for Controlling Light Weapons*, *in* SMALL ARMS CONTROL: OLD WEAPONS, NEW ISSUES 279, 283 (Jayantha Dhanapala et al. eds., 1999).

> States need to undertake a serious and objective review of their current laws with the ultimate goal being to ban the manufacture, possession, trade and use of small arms and light weapons except by the military and specified armed police forces of the recognized governments. Yet small arms have traditionally been used by populations for sport and personal security. The US tradition represents an extreme case.

Id.

10 GERTRUDE STEIN, EVERYBODY'S AUTOBIOGRAPHY 289 (Vintage Books 1973) (1937).

11 *See Media Centre: Useful Statistics* (Dec. 4, 2001), *at* http://www.saferworld. co.uk/usefu.htm (noting 300,000 deaths per year caused by firearms in conflict situations and another 200,000 deaths in "peaceful countries").

II. THE STATISTICS OF ARMED CONFLICT

A. *How Many Deaths Annually?*

Obtaining an accurate assessment of the number of deaths from armed conflicts is a difficult task. Monty Marshall, the compiler of *Major Episodes of Political Violence: 1946-1999*, acknowledged that the "the numbers listed here reflect the median or mean of often widely disparate estimates listed in the various sources and are provided solely as a referent point."[12]

It is often claimed that, in the decade of the 1990s, in excess of 300,000 deaths resulted each year from "armed conflicts" around the world.[13] What is the source of this statistic? According to *Human Development Report 2002*, published for the United Nations Development Programme,[14] "[n]early 3.6 million people were killed in wars within states in the 1990s."[15] Marshall[16] was cited as the source reference, with calculations on Marshall's data performed by the Human Development Report Office.[17]

Our examination of Marshall's data reveals approximately 1.5 million deaths from conflicts that started in the 1990s.[18] Marshall did not provide annual estimates; instead, he reported only the total estimate of war deaths for each conflict.[19] The remaining 2.1 million deaths that comprise the 3.6 million figure are presumed to represent deaths from conflicts that began earlier than 1990 and continued into the decade. The problem of deriving accurate annual mortality data for those earlier conflicts is complicated by the fact that the number of deaths

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12 Monty G. Marshall, *Major Episodes of Political Violence, 1946-1999*, Center for Systemic Peace [hereinafter *Major Episodes of Political Violence*], *at* http://members.aol.com/CSPmgm/warlist.htm (last modified May 25, 2003).

13 SMALL ARMS SURVEY 2001, *supra* note 2, at 197; *Multilateral Cooperation*, *supra* note 2, at 163; *Small Arms and Light Weapons*, *supra* note 1, at 263.

14 The United Nations Development Programme (UNDP), *at* http://www.undp.org (last visited Dec. 11, 2003). The UNDP is "the UN's global development network, advocating for change and connecting countries to knowledge, experience and resources to help people build a better life." *Id.*

15 SAKIKO FUKUDA-PARR ET AL., HUMAN DEVELOPMENT REPORT 2002: DEEPENING DEMOCRACY IN A FRAGMENTED WORLD 11 (2002) (citing *Major Episodes of Political Violence*, *supra* note 12) [hereinafter HUMAN DEVELOPMENT REPORT 2002].

16 *Major Episodes of Political Violence*, *supra* note 12.

17 HUMAN DEVELOPMENT REPORT 2002, *supra* note 15.

18 *Major Episodes of Political Violence*, *supra* note 12.

19 *Id.*

from any particular conflict is not evenly distributed; one cannot simply prorate the deaths of any single conflict equally throughout the duration of that conflict. So how did U.N. statisticians arrive at their figure of 3.6 million deaths for the decade of the 1990s? We asked the U.N.'s Development Program Office for clarification of the methods used in their statistical analysis, but, as of this writing, have not yet received their promised report.

The second estimate of deaths from armed conflict is from the *World Report on Violence and Health* [hereinafter *World Report*], a publication of the World Health Organization [hereinafter *WHO*].[20] Their annual figure is 310,000 deaths per year "caused by war-related injuries."[21] Because equally prorating the 3.6 million deaths from the 1990s would yield an annual figure of 360,000 deaths, rather than the figure of 310,000 deaths, they apparently give less statistical weight to deaths that occurred earlier in the decade. But *World Report* does not disclose the methods used, and we believe that their figure for the end of the decade is an overestimate.

In Marshall's tabulation of political violence, he identified sixty-one armed conflicts that commenced between 1990 and 1999 that resulted in 1,542,500 deaths.[22] Examination of the data in five-year intervals reveals that thirty-eight armed conflicts commenced between 1990 and 1994.[23] These resulted in 1,273,500 deaths and accounted for 82.6% of the total deaths that occurred in the 1990s from armed conflicts that commenced during that decade.[24]

From 1995 to 1999, only twenty-three armed conflicts commenced, resulting in an additional 269,000 deaths.[25] Thus, only 37.7% of armed conflicts occurred during the last five years

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20 WORLD HEALTH ORGANIZATION, *World Report on Violence and Health* 282 (Etienne G. Krug et al. eds., 2002) [hereinafter *World Report*]. The inside cover of this report states: "The World Health Organization was established in 1948 as a specialized agency of the United Nations serving as the directing and coordinating authority for international health matters and public health." *Id.*

21 *Id.*

22 *Major Episodes of Political Violence, supra* note 12.

23 *Id.*

24 *Id.*

25 *Id.*

of the decade, and these conflicts accounted for only about 17.4% of the total deaths that occurred in the 1990s from armed conflicts that started during that decade. (Admittedly, not all deaths from these armed conflicts would have been tallied by the time Marshall's paper was published, making it likely that the total would be somewhat higher.)

Other researchers have noted a dramatic decline in the number and magnitude of armed conflicts in the late 1990s.[26] Gurr predicted a continuation of this decline, suggesting a shift away from confrontation and toward accommodation.[27] We take note of the fact that the U.N. lowered its total figure in 2001 for "estimated mortality caused by war-related injuries" to 229,598,[28] down from the earlier figure of 310,000 attributed to the year 2000.[29] But we believe this to be still an inflated figure.[30] The war death figure may rise or fall in the near future, and no one can say for sure. But we can say that the 300,000 figure does not appear to be consistent with the late 1990s and very early Twenty-First Century, the very period during which this statistic has been used so relentlessly.

B. *Are All War Deaths Caused by Firearms?*

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26 Ted Robert Gurr et al., *Peace and Conflict 2001: A Global Survey of Armed Conflicts, Self-Determination Movements, and Democracy*, CTR. FOR INT'L DEV. AND CONFLICT MGMT. 5 (2000), *available at* http://www.cidcm.umd.edu/inscr/PC01Web.pdf (last visited Dec. 11, 2003). A statistical analysis that does not take this trend into account will result in a gross overestimation of annual deaths, when applied to the current decade.

27 Ted Robert Gurr, *Ethnic Warfare on the Wane*, FOREIGN AFF. 79, May-June 2000. "[T]he trends are there: a sharp decline in new ethnic wars, the settlement of many old ones, and proactive efforts by states and international organizations to recognize group rights." *Id.*

28 *Global Burden of Disease 2001*, World Health Organization, *available at* http://www3.who.int/whosis/menu.cfm?path=evidence,burden,burden_estimates &language=english (last visited Dec. 11, 2003).

29 *Global Burden of Disease 2000*, World Health Organization, *available at* http://www3.who.int/whosis/menu.cfm?path=evidence,burden,burden_estimates&language=english (last visited Dec. 11, 2003); *World Report*, *supra* note 20, at 282.

30 *See* Peter Wallensteen & Margareta Sollenberg, *The End of International War? Armed Conflict 1989-95*, 33 J. PEACE RES. 353, 353-70 (1996) (examining armed conflict occurring between 1989 and 1995, Wallensteen and Sollenberg identified a downward trend, both with regard to the number of armed conflicts, as well as their intensity. *Id.* It is clear from Marshall's data that the dramatic decline in the number of conflicts and the intensity of those conflicts noted by Wallensteen and Sollenberg continued to the end of the decade.

Wartime deaths come from many different causes, such as bombers, fighter planes, tanks, heavy land-based artillery, and naval vessels. However, none of these sources of casualties are "small arms and light weapons." Tanks, aircraft, and so on are anything but "small" or "light." Yet astonishingly, the U.N. implicitly claims that *all* the 300,000 annual deaths from armed conflict are due to small arms and light weapons.[31]

This preposterous claim has important policy implications. Recall the assertions of firearms prohibitionists that small arms and light weapons deaths are mostly caused by the fact that firearms are possessed by people other than the government.[32] But heavy weaponry and other non-SALW weapons (e.g., heavy artillery, naval vessels firing long-range missiles, air force bombers and fighters, chemical warfare agents) are owned almost exclusively by governments. It is illogical to attribute to "firearms" or to SALW the huge number of casualties caused by government possession and use of bombers, navies, and chemical weapons.

Cukier noted that "the deaths in armed conflicts are not differentiated according to the instrument of death as they are in other contexts."[33] But the data show that wartime deaths from small arms usually account for less than half of all wartime deaths. For example, deaths of those killed in action by small arms during World War II are estimated at 31.9%; the corresponding estimate for the Korean War is 33%.[34] In Vietnam, "gun-shot or small arms fire" resulted in 31.8% of the casualties.[35] These are confirmed by statistics from the International Committee of the Red Cross.[36] Military scholar James Dunnigan suggested that firearms casualty rates in some

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31 *Multilateral Cooperation, supra* note 2.

32 *See supra* notes 1-2 and accompanying text.

33 *Small Arms and Light Weapons, supra* note 1, at 263.

34 Frank A. Reister, *Battle Casualties and Medical Statistics: U.S. Army Experience in the Korean War,* Office of Medical History of the Office of the Surgeon General, *available at* http://history.amedd.army.mil/booksdocs/korea/reister/ch3.htm (last visited Dec. 11, 2003).

35 *Vietnam War Casualties Cause: Hostile & Non-Hostile,* The American War Library, *available at* http://members.aol.com/WarLibrary/vwc1.htm (last visited Dec. 11, 2003).

36 Robin M. Coupland, *Towards a Determination of Which Weapons Cause Superfluous Injury or Unnecessary Suffering, available at* http://ippnw.org/MGS/ V5N1Coupland.html (last visited Feb. 11, 2003) (on file with author).

modern conflicts in Africa or Kashmir may be as high as fifty percent.[37] Another study estimated that small-caliber ammunition often accounts for over seventy percent of battlefield deaths.[38] Using Dunnigan's fifty percent in conjunction with the latest WHO estimates of annual war deaths (230,000) leads to about 115,000 annual deaths from firearms in war, worldwide. This is quite different from the oft-quoted figure of 300,000.

III. DOES DISARMING CIVILIANS EMPOWER MURDEROUS GOVERNMENTS?

Would worldwide civilian disarmament prevent the approximately 115,000 (not 300,000) deaths that are caused by firearms? We suggest just the opposite: disarming civilians may not only fail to reduce violence, but may place vulnerable populations at even greater risk of death and injury.

A. *Genocide*

In *Why Genocide?*, Florence Mazian noted that "genocide is so massive in scope that it cannot be accomplished without a high level of advanced planning and organization."[39] Thus, civilians by themselves can very rarely perpetrate genocide—a strong central authority (government) is required to provide the structure that Mazian deemed essential. Harff and Gurr concurred, saying that "by our definition, genocides and politicides are the promotion and execution of policies by a *state*

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37 E-mail from James F. Dunnigan to David B. Kopel, Research Director, Independence Institute (Feb. 11, 2003) (on file with author). Dunnigan is the editor of Strategy Page.com, at http://www.strategypage.com/fyeo/howtomakewar/default.asp (last visited Dec. 11, 2003), and is the author of numerous books on military history and strategy, including HOW TO MAKE WAR (1993).

38 BEAT SELLIER & KARL KNEUBEHL, WUNDBALLISTIK UND IHRE BALLISTSCHEN (Grundlagen: Springer-Verlag 2001), *cited in* SMALL ARMS SURVEY 2002, *supra* note 1, at 157.

39 FLORENCE MAZIAN, WHY GENOCIDE? 251 (1990).

or its agents which result in the deaths of a substantial portion of a group."[40]

However, Rwanda's genocide has been used as a dramatic example of the misuse of firearms by civilians. For example, in *Small Arms Survey 2001*, the authors declared, "It is not only the availability of arms—it is the arms themselves that condition violence."[41] The authors implicated the vast number of small arms and other weapons sold to the Rwandan government as the cause of the genocide there, noting that "just before the killing began, peacekeepers estimated that 85 tons of weapons . . .[were] distributed throughout the country."[42]

The insinuation is that mobs of armed civilians were crazed by their proximity to edged weapons, mortars, rocket-propelled grenades, assault rifles, sub-machine guns, and millions of rounds of ammunition, and commenced killing each other. But such a scenario perversely redefines the events that occurred. The reality in Rwanda was that firearms and other weapons were not evenly available to all segments of the population.[43] The victim segment had almost no firearms—having been disarmed by laws enacted in 1964 and 1979.[44] The firearms and machetes were purchased by the government and issued only to the police, the army, and "trusted civilians."[45] Had the victims been better armed—for the price of a chicken[46] or a goat[47]—a village and all its women and children might have been saved.[48] The genocide in Rwanda might have been averted, or at

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40 Barbara Harff & Ted Robert Gurr, *Toward Empirical Theory of Genocides and Politicides: Identification and Measurement of Cases Since 1945*, 32 INT'L STUDIES Q. 359, 360 (1988) (emphasis added).

41 SMALL ARMS SURVEY 2001, *supra* note 2, at 205.

42 *Id.* at 207.

43 AARON ZELMAN & RICHARD STEVENS, DEATH BY GUN CONTROL: THE HUMAN COST OF VICTIM DISARMAMENT 123-32 (2001) [hereinafter DEATH BY GUN CONTROL].

44 *Id.*

45 *Id.*

46 Mark Malloch Brown & Jayantha Dhanapala, *Let's Go out into the World and Gather up the Small Arms*, INT'L HERALD TRIB., Jan. 26, 2000 (noting that "[i]n parts of Africa, an AK-47 assault rifle can be had for the price of a chicken").

47 Jim Anderson, *Turning Back the Tide: Trying to Control World Gun Trade* (Feb. 29, 2000), *available at* http://www.iansa.org/news/2000/feb_00/worldguntradero card.htm (noting that in Africa, "an AK-47 assault rifle can be picked up at a village market for the price of one goat").

48 Alex Shoumatff, *Flight from Death*, THE NEW YORKER, June 20, 1994, at 50. A former resident of Rwanda recalls that during the genocide, a mob armed with heavy machetes

least the magnitude of the violence might have been reduced, had those weapons been in the hands of the victims.

Between 1991 and 1994, at least 200,000 people died in Eastern Europe, the result of political violence after the breakup of the former Republic of Yugoslavia. With the Serb military possessing most of the weapons, and the Serb leaders now on trial at the International Criminal Tribunal for the Former Yugoslavia at The Hague,[49] the reasonable assumption is that those deaths were committed by the warring armies, and not by individual civilians.[50] Again, the U.N. classified the calamity as "genocide," and this statistic comprises part of the deaths attributed to "armed conflicts."[51]

It is misleading to include genocide statistics in the category of armed conflict, especially if the effect is to shift the blame for these deaths to armed civilians. Genocide—almost exclusively a government program—certainly does not prove the case that civilians need to be disarmed. To the contrary, almost every genocide in the last century was carried out by armed governments against disarmed civilian populations. The actual behavior of governments over the last century suggests that an armed populace may be an important deterrent to genocide.[52]

B. *Armed Resistance to Kleptocracy*

One of the risk factors enumerated by the World Health Organization for "collective violence" is "the ready availability of small arms or other weapons in the general population."[53] But

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attacked a parochial school, but "one of the priests had given a rifle to a student whose father was in the Army and knew how to shoot, and the student had driven off the attackers, killing one." *Id.*

49 Dave Kopel, Paul Gallant & Joanne Eisen, *When Policy Kills* (Jan. 27, 2003), *at* http://www.nationalreview.com/kopel/kopel012703.asp.

50 Jano Terzi et al., *Children War Casualties During the 1991-1995 Wars in Croatia and Bosnia and Herzegovina*, 42 CROAT. MED. J. 156 (2001). Research by Terzi et al. indicates that children were not being shot by crazed adults in possession of lethal weapons, but that "[m]ost children were wounded during shelling/bombing . . . and by leftover explosive devices." *Id.*

51 HUMAN DEVELOPMENT REPORT 2002, *supra* note 15.

52 For a more-detailed explanation of this argument, see Samuel C. Wheeler III, *Arms as Insurance*, 13 PUB. AFF. Q. 111 (1999); DEATH BY GUN CONTROL, *supra* note 43; David B. Kopel, *Book Review of Aaron Zelman, et al.,* Lethal Laws, 15 N.Y.L. SCH. J. INT'L & COMP. L. 355 (1995).

53 *World Report, supra* note 20, at 221.

often, it has been government abuse that has precipitated insurgencies. The American Revolution, for example, would not have been possible without widespread possession of arms by American civilians. As the Declaration of Independence explains, the Americans had a right to attempt an armed revolution after all attempts to redress their grievances peacefully had failed. Likewise, the Greeks had a right to revolt against the Ottoman Empire, and other freedom-seeking peoples throughout the centuries have had a right to fight for their own freedom. To classify the deaths from legitimate wars of national liberation (against tyrants, foreign or domestic) as one of the problems caused by small arms, and as a problem that should be eliminated by more stringent international weapons laws, is to say that no tyrant should ever again be overthrown by an armed populace.

Let us consider a few examples of some of the kleptocracies that amount to little more than well-organized gangs of robbers.[54] These gangs steal far more from "their" people than George III or the Caliphate took from the Americans and the Greeks, respectively. For example, on the island of Bougainville in the South Pacific, the government of Papua New Guinea appropriated territory containing a valuable deposit of copper.[55] In that conflict, one thousand people died as a direct result of war.[56] In addition, the Papua New Guinea government instituted a military blockade of the island, and it is estimated that 15,000-20,000 Bougainvilleans—ten percent of the population—died as a direct result of the blockade.[57] It is noteworthy that the

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54 EDWIN R. GOODENOUGH, THE JURISPRUDENCE OF THE JEWISH COURTS OF EGYPT 230-31 (1929). Philo of Alexandria was great scholar of Jewish law in Alexandria, Egypt, under the Roman Empire. *Id.* He observed that there is, in principle, no difference between a solitary thief, a tyrant who steals a nation's resources, and a state that plunders another. *Id.*

55 Aziz Choudry, *Bougainville–Small Nation, Big Message* (Nov. 21, 2001), *at* http://www.scoop.co.nz/mason/archive/scoop/stories/53/29/200111212157.5376f317. html (last visited Dec. 11, 2003). In 1965, Conzinc Rio Tinto of Australia discovered a huge copper ore deposit in the Panguna Valley. *Id.* In 1972, its subsidiary, Bougainville Copper Party Limited, CRA, began mining activities at Panguna. *Id.* After 17 years of petitions to CRA and the PNG government to cease operation, a small group of villagers forcibly shut down the mine in 1989. *Id.*

56 *Major Episodes of Political Violence*, *supra* note 12.

57 Dave Kopel, Paul Gallant & Joanne D. Eisen, *Little Island that Roared* (Feb. 6, 2002), *at* http://www.nationalreview.com/kopel/kopel020602.shtml.

Bougainvillean insurgents were armed only with knives and spear-guns when the rebellion began, and had no access to the world's black market—they were not "awash" in guns. It was neither civilian possession of firearms, nor "proliferation" of firearms via the black market, that initiated and fueled this conflict—the precipitating factor was outrage against kleptocracy.[58]

In the Indonesian province of Aceh, violence from rebellion against the Indonesian government has lasted twenty-six years.[59] Again, the root cause of the conflict has not been the presence of firearms, but instead, the government theft of the resources of the people.[60] To date, an estimated ten thousand civilians have died as a result.[61] A BBC reporter interviewed Indonesian Brigadier General Djali Yusaf in April 2002, and asked him: "Does the military intend to kill every last Acehnese?" The general's reply was, "Not every last Acehnese. But we will do what we have to do."[62]

Thirty years ago in Sri Lanka, government oppression of the minority Tamil group prompted peaceful sit-ins.[63] When government responded with violence, civilians had no choice but to arm and rebel. The civil war that ensued has claimed sixty thousand casualties on both sides of the conflict.[64]

Ten years ago, fighting broke out in Sudan.[65] Government theft of petroleum resources has been the major cause of a conflict that has directly killed an estimated 100,000 people, with two million dead from all causes.[66] Peace remains elusive; it was recently reported that "government soldiers and militia

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58 *Id.*

59 *Aceh Peace Hopes Build* (Jan. 3, 2003), *at* http://news.bbc.co.uk/2/hi/asia-pacific/2625259.stm.

60 *Id.*

61 *Id.*

62 *Viewpoint: Aceh's Brutal Conflict* (Apr. 22, 2002), *at* http://news.bbc.c.uk/1/hi/world/asis-pacific/1939173.stm.

63 Seth Mydans, *Sri Lankan Rebels Yield on State Demand*, N.Y. TIMES, Sept. 19, 2002, at A14.

64 *Id.*

65 *Sudan: Sides Accuse Each Other of Violating Peace Deal*, United Nations Integrated Regional Information Network (Jan. 3, 2003), *at* http://www.cidi.org/humanitarian/irin/hafrica/03a/ixl0.html.

66 *Id.*

forces had launched surprise attacks on the rebel-held town of Tam" in violation of a peace-agreement signed earlier.[67]

In Ivory Coast, the cause of the latest rebellion against government there might outwardly appear to be the "proliferation of firearms," leading to armed gangs of poor youths following local warlords. But the cause is much more mundane: laws enacted by the government of Ivory Coast have disenfranchised thirty percent of the populace, creating a pool of fear and resentment with no outlet short of violent rebellion.[68]

What would *you* do if you saw your own children being marginalized and their freedom plundered? Would you rise up in "armed conflict" with no guarantee of prevailing, knowing that you and your own children might die? Or, would you surrender your weapons and trust the government not to kill your family? Is violence in defense of one's children a reasonable and moral option? The implicit answer of the organizations that want to eliminate small arms so as to eliminate resistance to tyranny is "no." We suggest that this answer is absolutely incompatible with the Universal Declaration of Human Rights, and with the fact that many of the world's current "governments" are merely kleptocracies lacking popular consent or any other legitimate authority to govern.

As the Declaration of Independence observed, people do not readily rise up against their government. But if we are going to look for the causes of lives lost as a result of resistance to government, we need to recognize that the root cause is government tyranny, rather than civilian possession of the means of resistance.

The international disarmament proposal that should be universally embraced by human rights advocates is not the disarming of victims, but rather Hussein Solomon's proposal for "an international ban on the transfer of arms to authoritarian

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67 *Id.*

68 *Restoring Peace to Ivory Coast*, N.Y. TIMES, Jan. 17, 2003, at A26; *Positive Signs at Ivory Coast Talks* (Jan. 19, 2003), *at* http://news.bbc.co.uk/1/hi/world/africa/ 2672435.stm; *Scores Injured, Some Die, Following Air Attacks–NGOs*, United Nations Integrated Regional Information Network (Apr. 18, 2003), *at* http://www.irinnews. org/report.asp?ReportID=33581&SelectRegion=West_Africa&SelectCountry=COTE_D_I VOIRE.

governments."[69] Hussein correctly points to authoritarian governments as the root cause for the cycle of arms proliferation in many countries.[70]

IV. FIREARM DEATHS IN "PEACEFUL COUNTRIES"

A. *No Data Supports a Claim of 200,000 Non-War Firearms Deaths*

We are told that, each year, there are over 200,000 deaths in "peaceful countries" from small arms and light weapons, but we are never given the raw data to substantiate the claim.[71] Not only has this figure been incorrectly subdivided into homicide and suicide, but the exact percentages of each are not known and estimates vary widely. According to the *World Report on Violence and Health* (2002), the most current data available (tabulated from 45 countries, with almost all of the data taken from the very late 1990s) show an annual number of firearm-related deaths of 44,862.

Total Annual Firearm-Related Deaths:	*44,862*
Total Suicides:	25,632
Total Homicides:	16,607
Total Firearm Suicides + Homicides:	42,239
Firearm Deaths from Other Causes:	2,623

TABLE 1: World Firearm-Related Deaths[72]

This leaves 155,138 firearm deaths, worldwide, unaccounted for annually. Where do they come from? If they come from all the countries not included in the list of 45 designated in the *World Report*, where are the data from these other countries? If the data are available, why don't these deaths appear in the *World Report*? If the sources from which these missing data were

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69 Hussein Solomon, *Controlling Light Weapons in Southern Africa*, *in* LIGHT WEAPONS AND CIVIL CONFLICT: CONTROLLING THE TOOLS OF VIOLENCE 156 (Jeffrey Boutwell & Michael T. Klare eds., 1999).

70 *Id.*

71 *See supra* note 2 and accompanying text.

72 *See supra* note 2 and accompanying text.

significant, would not the figures be published? According to Kara McGee of the WHO,[73] "In terms of firearms mortality, I believe the most recent data is what is in the World Report on Violence and Health."[74]

Another WHO report contained fully aggregated data from a 52-country dataset, and contradicted information in the 2002 *World Report*.[75] When we asked for a comment on this contradiction, no response was forthcoming from Dr. Kenji Shibuya of the Global Programme on Evidence for Health Policy at the World Health Organization, who is the lead researcher for much of this information. We also asked WHO for an account of the methodology used to estimate the global annual figure they state as 200,000 homicides and suicides, based on the known total of annual firearm-related deaths of 44,862, given in Table A.10 of the 2002 *World Report*. But no answer to that question was forthcoming, either. However, Dr. Shibuya did state: "the WHO's estimate was solely based on the limited data from 45 countries where good vital registration records were available for 'intentional and unintentional injuries (including homicides and suicides) caused by fire arms'. . . the estimate is very conservative and there is certainly an underestimation of mortality due to fire arms globally (i.e., we are missing the data in the other 147 member states)."[76]

In view of the persistent and unanswered questions about the sources of cited data and the methodology used in their analyses, it is impossible to assess the credibility of these data and the validity of the conclusions drawn from them.

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73 E-mail from Kara McGee, Department of Injuries and Violence Prevention, World Health Organization, to David B. Kopel, Research Director, Independence Institute (Jan. 31, 2003) (on file with author).

74 *World Report, supra* note 20, at 322-23, Table A.10.

75 *Small Arms and Global Health: WHO Contribution to the UN Conference on Illicit Trade in Small Arms and Light Weapons*, World Health Organization (2001), *available at* http://www5.who.int/violence_injury_prevention/download.cfm?id=0000000158 (last visited Dec. 11, 2003). Etienne Krug et al. appear to have used this data source, as well: "During the one-year study period, 88,649 firearm deaths were reported (from the 36 countries which supplied firearm mortality data)." Etienne Krug et al., *Firearm-Related Deaths in the United States and 35 Other High- and Upper-Middle-Income Countries*, 27 INT'L J. EPIDEMIOLOGY 214 (1998).

76 E-mail from Dr. Kenji Shibuya, Global Programme on Evidence for Health Policy, World Health Organization, to David B. Kopel, Research Director, Independence Institute (Feb. 3, 2003) (on file with author).

Accordingly, using these data to extrapolate to a figure of 200,000 non-war firearms deaths seems to be scientifically questionable. The 200,000 figure appears to be almost a pure guesstimate, and not an especially reliable one.

B. *Extrapolation from Existing Data Cannot Support a Claim of 200,000*

It would be ideal if the WHO would explain—either in its own publications, or in response to questions from researchers—how the leap is made from about 45,000 non-war firearms deaths in 45 countries to about 200,000 such deaths worldwide. In the absence of such an explanation from WHO, we offer data suggesting that an extrapolation of this magnitude is unsupported.

According to *Small Arms Survey 2002*, there are an estimated 638,900,000 firearms globally.[77] There are more than 250,000,000 guns in America,[78] with about 98% of these in private hands.[79] The *Small Arms Survey* estimates that globally, civilians possess about 378 million arms.[80] Thus, the U.S. possesses about 2/3 of the total global supply of civilian firearms.

According to Table A.10 of WHO's *World Report*, the U.S. accounts for 68.7% of non-war firearm fatalities.[81] The remaining 32.2% of the known firearm fatalities come from the other 44 countries listed. Considering that many of the other countries listed are prosperous countries with relatively high rates of gun ownership (such as Canada, Australia, France, and Italy), it seems clear that the 45 countries in Table A.10 account for an overwhelming share of the world's civilian gun ownership.[82] Table A.10 does not include Brazil, Mexico, and Colombia—three countries with very high rates of firearms homicide and very restrictive gun laws.[83] But it seems implausible

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77 SMALL ARMS SURVEY 2002, *supra* note 1, at 104.

78 JAMES B. JACOBS, CAN GUN CONTROL WORK? 38 (2002).

79 *Back to the Future, supra* note 2, at 189.

80 SMALL ARMS SURVEY 2002, *supra* note 1, at 104.

81 *World Report, supra* note 20, at 322-23, Table A.10.

82 *Id.*

83 *Id.*

to claim that countries that hold only a tiny fraction of the world's civilian firearms account for *over three times* as many non-war firearms deaths as do the countries possessing the vast majority of civilian guns.

On the other hand, if evidence was presented that a very few countries with a small percentage of the world's total gun supply account for a grossly disproportionate share of firearms homicides, the result would suggest that firearms *per se* are not a problem—rather, social conditions in a few unusual countries would be the root cause.

Nowhere have we found a justification for the factoid of 200,000 firearms deaths in "peaceful" countries.

C. *Suicides*

Non-war deaths from firearms in peaceful countries amount to more than 45,000 annually, and very likely to fewer than 100,000.[84] To what extent would the prohibition policies favored by some scholars and advocates save these lives? Let us consider the various major forms of firearms mortality. According to the *World Report on Violence and Health*, 57.1% of the 44,862 firearm-related deaths result from suicides.[85] How many suicides would actually be prevented through civilian disarmament? Many researchers have concluded that total suicide rates remain the same regardless of the type of lethal instruments that are accessible. An editorial in the 1999 *British Medical Journal* reiterated this, noting that "systematic reviews have found that no interventions have reliably been shown to prevent suicide."[86]

In contrast, the WHO argues that no substitution occurs when one lethal means of suicide is removed.[87] Among the studies cited is a 1972 article from the *British Journal of Preventive and Social Medicine*; the *World Report* authors stated: "In England, suicides from poisoning with domestic gas began to decline soon after carbon monoxide was removed from domestic gas."[88] However, in 1989, David Lester (a researcher WHO cites

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84 *Id.*

85 *Id.*

86 *Suicide and Homicide by People with Mental Illness*, 318 BRIT. MED. J. 1225-26 (1999).

87 *World Report, supra* note 20, at 202.

88 *Id.*

extensively but selectively) noted that "it now appears that the rate of suicide using car exhaust fumes eventually began to rise, suggesting that those who might have used domestic gas now use car exhaust for suicide."[89]

According to WHO, "fencing in high bridges" and "limiting access to the roofs and high exteriors of tall buildings"[90] will reduce total suicide deaths.[91] Also according to WHO, reducing access to firearms will reduce total suicide mortality.[92] Yet as Lester noted in 2000, "as firearms became less common in Canada from 1970 to 1995, possibly as a result of the passage of a strict firearm control law in 1977, the use of firearms for suicide and homicide became less common, while the use of other methods became more commonplace. This might indicate that people switched methods for suicide and homicide."[93]

In 2001, Killias used international data to examine the question of substitution.[94] He concluded that "The results show very strong correlations between the presence of guns in the home and suicide committed with a gun . . . [however] no significant correlations with total suicide or homicide rates were found, leaving open the question of possible substitution

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89 David Lester, *Gun Ownership and Suicide in the United States*, 19 PSYCHOL. MED. 519 (1989).

90 *World Report, supra* note 20, at 205.

91 Some researchers have estimated that nineteen million Americans suffer from clinical depression each year. *Clinical Depression: What You Need to Know*, National Mental Health Association, *at* http://www.nmha.org/ccd/index.cfm (last visited Dec. 11, 2003). This segment of the population is therefore at elevated risk for suicide. Confining them to controlled environments where knives, belts, shoelaces, carbon monoxide, poisons, roofs of high buildings, and so on, and so forth, are inaccessible might save some of them, at least until their confinement terminated, or their illnesses were cured. However, more than just their freedom of movement would need to be eradicated under such circumstances. In view of the possibility of hyponatremic encephalopathy—the cause of death to marathon runners who imbibe excessive fluids—such confinement would mandate control over every aspect of a person's life, as well as require the presence of full-time caretakers. Encephalopathy was recently publicized as the cause of death of twenty-eight-year-old runner Cynthia Lucero in this year's Boston Marathon. Stephen Smith, *Marathon Runner's Death Linked to Excessive Fluid Intake*, BOSTON GLOBE, Aug.   13,   2002,   *available   at*   http://www.remembercynthia.com/ Hyponatremia_BostonGlobe.htm.

92 *World Report, supra* note 20, at 202.

93 David Lester, *Gun Availability and the Use of Guns for Suicide and Homicide in Canada*, 91 REVUE CAN. DE SANTÉ PUBLIQUE 186 (2000).

94 Martin Killias et al., *Guns, Violent Crime, and Suicide in 21 Countries*, 43 CAN. J. CRIM. 429 (2001), *available at* http://www.ccja-acjp.ca/en/cjc43a4.html#one (last visited Dec. 11, 2003).

effects."[95] Kleck's extensive analysis of U.S. and international data came to the same conclusion.[96]

Despite the findings of Lester, Killias, and Kleck, some scholars might argue that—at least in some marginal cases—removal of one means of suicide might result in a net saving of lives. It hardly seems plausible, however, for WHO to claim that eliminating firearms would eliminate *all* firearms suicides. The best evidence seems to suggest that total firearms prohibition would have, at most, a marginal effect on the total number of lives lost through firearms suicides.

D. *Criminal Homicide*

According to the *World Report on Violence and Health,* thirty-seven percent of the 44,862 firearm-related deaths are the result of homicide.[97] Undoubtedly, some homicides that are currently perpetrated with firearms would, in the absence of firearms, be perpetrated with edged weapons, clubs, bare hands, and so on. It is reasonable to suggest that at least some firearms homicides might not be replaced with other homicides if firearms were not available. The scenario is especially plausible when the homicide is perpetrated by a physically weak person who would not be able to overcome his adversary in hand-to-hand combat (e.g., a scrawny fifteen-year-old who shoots a store owner during a robbery).

Just as a relatively small number of criminal governments (e.g., Stalin's USSR, Mao's China, Hitler's Germany, and some others) are responsible for almost all genocide deaths, a small number of criminal civilians are responsible for most firearms homicides. It would be illogical and unfair to disarm every government because a few depraved governments used their weapons to perpetrate genocide. It would be equally inappropriate to disarm every civilian because a tiny fraction of hardened criminals use firearms to perpetrate homicide. Although homicides are occasionally committed by people that

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95 *Id.*

96 *See* GARY KLECK, TARGETING GUNS: FIREARMS AND THEIR CONTROL ch. 8 (1997) (analyzing the use of alternative methods of suicide when the availablility of firearms is limited).

97 *World Report, supra* note 20, at 322-23, Table A.10.

have no prior criminal record, the criminological literature is replete with evidence that the most accurate predictor of violent behavior is previous violent behavior.[98] The promise of reduced murder rates through disarming the non-violent segment of society is a false one, because, while it is possible to disarm the law-abiding, it is much more difficult to disarm criminals— particularly criminals with access to the black market.

The prohibition of firearms would, at least in the United States, raise enforcement issues and social conflicts at least as profound as those resulting from drug prohibition. An examination of the failures of drug prohibition underscores the challenge of gun prohibition, and also offers an alternative strategy for reducing homicide.

A 1999 U.S. Department of Justice (DOJ) report noted that most of the violent crime and firearm-related homicides occur in small, circumscribed areas called "hotspots," often limited to just "a small number of city blocks."[99] The DOJ explained that "The risk of being killed is 60 times greater among young gang members than in the general population and in some cities, far higher."[100] For example, in a small area in St. Louis, Missouri, researchers reported that the youth gang homicide rate is 1,000 times higher than the U.S. homicide rate.[101]

Rather than focusing (as Cukier and others urge) on disarming the non-criminal segment of society, perhaps we should more closely examine these relatively few inner-city blocks. Most of the victims and perpetrators in these hotspots resemble each other: young males involved in gangs and in the black market drug trade. Blumstein suggested that they carry firearms for protection and to resolve territorial disputes.[102] Miron explained: "In a black market, participants cannot resolve

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98 *See generally* KLECK, *supra* note 96, ch. 7 and citations.

99 *Promising Strategies to Reduce Gun Violence*, U.S. Department of Justice (1999), *available at* http://ojjdp.ncjrs.org/pubs/gun_violence/contents.html (last visited Dec. 11, 2003).

100 *Id.*

101 SCOTT H. DECKER & BARRIK VAN WINKLE, LIFE IN THE GANG: FAMILY, FRIENDS, AND VIOLENCE 173 (1996).

102 *See generally* Alfred Blumstein, *Youth Violence, Guns, and the Illicit-Drug Industry*, 86 J. CRIM. L. & CRIMINOLOGY 10 (1995) (noting that youths involved in gang-related activities do not rely on police to settle disputes, but rather rely on violence and street credibility).

commercial disputes using lawsuits or battle over market share using advertising; they are thus likely to use violence instead. This means that the prohibition of drugs potentially causes increased levels of violence, even if prohibition reduces drug use and drug use itself causes violence."[103]

Blumstein described 18,600 "excess murders" (the increase in the number of homicides committed between 1986 and 1992 by youths in the age group 15-22) resulting from introduction of crack cocaine and the increasingly vigorous enforcement of drug laws.[104] Accordingly, Blumstein demonstrated how we can drive the homicide rate up or down by assuming that the increase in the juvenile homicide rate is a direct consequence of the operation of drug markets.[105]

How would the elimination of the "war on drugs"—or even the elimination of drug prohibition laws entirely—affect the homicide rate?[106] We know that fear of violation of the law is a deterrent that may prevent some drug use, but we also know that illegal drugs are available from the middle school years and up.[107] If we re-legalize drugs, and remove the legal deterrent effect against drug use, would we see an increase of drug overdose deaths that would more than balance the decrease we could expect in Blumstein's "excess murders?" Is it moral for a government to protect potential drug abusers from their own folly, at the price of the lives of some people who do not abuse

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103 Jeffrey A. Miron, *Violence, Guns, and Drugs: A Cross-Country Analysis*, 44 J. LAW & ECON. 615, (2001), *available at* http://80-www.journals.uchicago.edu.content.lib. utexas.edu:2048/JLE/journal/issues/v44nS2/012211/012211.html (last visited Dec. 11, 2003).

104 Blumstein, *supra* note 102, *at* 19; *Thai Drug Deaths Toll Rises* (Apr. 16, 2003), *at* http://news.bbc.co.uk/2/hi/asia-pacific/29535333.st (noting that "[i]n the 10 weeks since the Thai government initiated a crackdown on drugs, the death toll was 2,275; 51 shot by police, the others among drug dealers"); Marwaan Macan-Markar, *The Cost of Thailand's Drug War 'Victory,'* ASIA TIMES, May 7, 2003, *available at* http://www.atimes.com/atimes/ Southeast_Asia/ EE07Ae02.html. "These drug-related killings, which average more than 25 a day, are stark when set against Thailand's average murder toll per month, which is about 400, according to available records. In 2001, close to 300 murders were recorded every month in Thailand." *Id.* Thus, Thailand's war on drugs drove the death toll up to more than double the pre-war rate.

105 *See generally* Blumstein, *supra* note 102, at 26-31.

106 *See also* Jeffrey A. Miron, *Violence and the U.S. Prohibitions of Drugs and Alcohol*, 1 AM. L. & ECON. REV. 78 (1999) ("[T]he homicide rate [in the U.S.] is currently 25-75% higher than it would be in the absence of drug prohibition.").

107 *Id.*

drugs? The end of alcohol prohibition in the United States substantially lowered the homicide rate, while allowing an increase in deaths to alcohol abuse, such as from liver cirrhosis. If the United States made the right choice with respect to alcohol prohibition, would the same choice be right with respect to drug prohibition?

Alternatively, homicide reduction via gun prohibition faces several serious obstacles. First, as noted above, some but not all firearms homicides would be replaced by other homicides. Second, as discussed above, the general disarmament of the vast majority of the civilian population does little to reduce firearms homicide, because it does not touch the tiny percentage of hard-core criminals in the population who perpetrate most firearms homicides. Third, near-total gun prohibition in Jamaica and elsewhere has been an abject and counterproductive failure— and is likely to remain so as long as governments possess firearms (which can re-supply the black markets) and civilians possess workshop tools (which can also re-supply firearms to willing buyers).[108]

E. *Justifiable Firearm Deaths*

Is there a moral or social value distinction between the following two acts?

- Two robbers take the money being carried by a pair of children, and then kill the children so as to eliminate witnesses;
- A policeman sees the above robbery-murder taking place, and shoots the two robbers just before the children would have been killed.

In both cases, there are two homicide victims. According to the law of every civilized country, the first scenario is a criminal homicide, while the second scenario is a justifiable homicide.

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108 David B. Kopel et al., *Jamaica Farewell* (Sept. 10, 2001) [hereinafter *Jamaica Farewell*], *at* http://www.nationalreview.com/kopel/kopel091001.shtml. *See also* Kanis Dursin, *Worried Governments Target Small Arms Trade*, ASIA TIMES, May 12, 2000, *available at* http://www.atimes.com/ se-asia/BE12Ae01.html. Even in Japan, which has had a notoriously severe gun control regime for many centuries, organized criminals (the Yakuza gangs) are bringing individual gunsmiths into Japan, in the guise of tourists, contract workers and other legitimate visitors. *Id.* These gunsmiths manufacture illegal guns in Japan. *Id.*

The homicides in the second scenario were net gains for society—it was better for the two robber-murderers to die than for the two innocent children to die.

The "200,000 firearm deaths" factoid, however, fails to distinguish justifiable homicides from criminal ones. This is a distinction of large importance in the United States, where, by some estimates, five to thirteen percent of total homicides are legal defensive homicides by civilians—about four times higher than the rate of lawful defensive homicides by police.[109]

Homicide data for the United States are quite detailed compared to data from most other countries, so it is understandable that there are few transnational statistics for justifiable homicides by civilians or police. However, the failure of firearms prohibition advocates to acknowledge that a non-insignificant number of firearms homicides are the result of justifiable defense of self or others (by civilians or by police) suggests a hostility to such lawful defensive measures. The public, however, cannot be well informed when statistics about drive-by shootings are put in the same category as resistance to gang rape.

Firearms prohibition advocates tend to see few problems with guns in government hands, and to ascribe firearms misuse to non-government guns. In the context of homicide data, this position is doubly wrong. First, it ignores the fact that in many countries, a very large fraction of the homicides are perpetrated by the police or the government. Second, in some of these countries, many of the police or government homicides may be murders, rather than legitimate law enforcement. For both reasons, it is incorrect to include such homicides in the "200,000" firearms deaths that would supposedly be prevented by disarming civilians in "peaceful" countries.

For example, in 1995, the *New York Times* reported that the Nigerian military had been involved in what amounted to a war against its own people who happened to live atop oil reserves in

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109 DON B. KATES, JR. & GARY KLECK, THE GREAT AMERICAN GUN DEBATE 199 (1997). According to Kates and Kleck, the 1994 estimated total civilian legal defensive firearm homicides in the U.S. ranged from 1,273 to 2,849; the number of justifiable firearm homicides by police reported to the FBI was 461. *Id.*

the Niger River Delta.[110] The peaceful community had become angered and politically active because of environmental degradation and pollution of their land, stemming from careless oil recovery by Shell Petroleum Development Company of Nigeria, in contract with the Nigerian government.[111] The landowners who were not compensated had nevertheless refrained from violence.[112] The *New York Times* described "repeated attacks on Ogoni villagers, gang rapes of women and burning of homes."[113] One Nigerian soldier stated, "When we arrived, they told us to shoot everyone who crossed our path . . . I followed my orders . . . ."[114] More recently, soldiers attacked a village in Benue State and killed more than 200 unarmed civilians.[115] In Nigeria's capital city of Lagos in the year 2000, as many as 387 people were killed by police.[116]

Jamaica's rate of lethal police shootings of civilians is among the highest in the world.[117] At 5.38 per 100,000 population, the homicide-by-police rate is higher than the *overall homicide rate* in many American states, and in most European nations.[118]

"Up to ninety percent of people shot dead in Kenya last year were victims of police . . . ." reported the BBC News.[119] The story noted that during the last five years, Kenyan police have killed more people than criminals have.[120] Extrajudicial killings have been reported in India[121] and Nepal.[122] In Papua New Guinea,

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110 Howard W. French, *Nigeria Accused of a 2-Year War on Ethnic Group*, N.Y. TIMES, Mar. 28, 1995, at A12.

111 *Id.*

112 *Id.*

113 *Id.*

114 *Id.*

115 *Nigerian Leader Sorry for Army Massacre* (Jan. 2, 2003), *at* http:new.bb.co.uk/1/hi/Africa/2621999.stm.

116 *Nigeria's Trigger Happy Police* (May 11, 2001), *at* http:news.bbc.co.uk/2/hi/Africa/1322017.stm.

117 *Jamaica Farewell, supra* note 108.

118 *Id.*

119 *Police are Kenya's Top Killers* (Jan. 14, 2002), *at* http://news.bbc.co.uk/1/hi/world/africa/1759421.stm.

120 *Id.*

121 *India: Dangerous Precedent in Halting Investigation into Police Killings*, Amnesty International (Jan. 24, 1996), *at* http://www.amnesty.org/library/eng-ind/new&start=91.

122 *Nepal*, AMNESTY INTERNATIONAL (2001), *available at* http://web.amnesty.org/web/ar2001.nsf/webasacountries/NEPAL?OpenDocument (last visited Dec. 11, 2003).

"paramilitary police fired automatic weapons at protesters."[123] In the Dominican Republic, hundreds of people are killed by security forces each year,[124] just as they are in the Federal Republic of Yugoslavia.[125]

We do not know how many of the people killed by police were criminals, or how many were mistaken for criminals, or how many were victims of police vendettas. In any case, a policy of prohibiting civilian guns that ignores government guns is ill-suited to reducing the significant number of firearms deaths caused by governments in "peaceful" countries.

V. CONCLUSION

The *Small Arms Survey 2002* accurately observed that "The relief and development communities frequently generate inaccurate and inflated numbers, whether out of ignorance or intentionally, to justify programmatic interventions and to mobilize public opinion."[126] Some examples include bogus assertions that ninety percent of small arms casualties in war are civilians, and eighty percent of them are women and children.[127]

People around the world rely on the United Nations and the World Health Organization for reliable data about health issues. By extensively publicizing a figure of 500,000 annual deaths due to SALW, the UN and the WHO have not lived up to their duty to supply the public with transparent data.

Responsible researchers share their data with other researchers and explain the procedures they use to process these data. Only with such transparency can conclusions and policy implications be debated in a rational, objective manner.

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123 *Papua New Guinea: Investigate Police Killings*, Amnesty International (Jul. 18, 2001), *at* http://www.amnesty.org/library/Index/ENGASA340012001?open&of-ENG-PNG.

124 *Dominican Republic: Killings by Security Forces*, Amnesty International (Aug. 1, 2000), *at* http://www.amnesty.org/library/Index/ENGAMR270012000?open&of =ENG-D.

125 *Federal Republic of Yugoslavia: A Human Rights Crisis in Kosovo Prince*, Amnesty International (Jun. 30, 1998), *at* http://www.amnesty.org/library/Index/ENGEUR70035198?open&of=Eng-2EU.

126 SMALL ARMS SURVEY 2002, *supra* note 1, at 158.

127 *Id.*

Unfortunately, WHO's violence data is quite opaque.[128] It is not broken down country-by-country, or by instrumentality. No other details are accessible. The rationales for the extreme extrapolations are unjustifiably withheld from the public.

Many governments of U.N. members have been affected by armed conflict.[129] Many of those conflicts involved uprisings by oppressed civilians. It is easy to understand why the non-democratic governments that comprise a majority of the General Assembly might wish to prevent forceful challenges to incumbent governments. Yet as Zwi points out: "there are occasions when such conflicts yield desirable social change, such as the anti-colonial struggles, or where they are necessary for protecting the victims of inequitable social and political processes."[130] The incessant repetition of the "500,000" factoid by the UN/WHO and their allied NGOs and academics ignores this essential moral point—a point that is crucial to resistance to tyranny, to deterrence of genocide, and to reduction of murder-by-police.

Currently available data support the claim that small arms in the hands of civilians do not cause 500,000 needless deaths each year. Moreover, firearms prohibition would prevent only a small fraction of deaths caused by civilian-owned firearms. Firearms prohibition would worsen the balance of power between oppressive governments and victim populations.

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128 *Global Burden of Disease 2001*, World Health Organization, *at* http://www3.who.int/whosis/menu.cfm?path=evidence,burden,burden_estimates &language=English (last visited Feb. 12, 2003) (on file with author).

129 Anthony B. Zwi, *Numbering the Dead: Counting the Casualties of War, in* DEFINING VIOLENCE 99 (Hannah Bradby ed., 1998).

130 *Id.*