

# Issues of Global Justice: Is the Global Arms Trade Violating the Human Rights?

## Introduction

After centuries of moral discussions on issues as war and peace, a new wave of thinking in the international relations became the main focus of concern. Once the interdependence between states and actors in the international arena strengthened accompanied by the erosion of sovereignty, and after witnessing the horrendous crimes of the WWII, new standards began to develop in the moral thinking, in the sense that equal treatment for human beings was expected to be guaranteed for everyone on the planet.

This development considers minimum standards at the institutional level that aim to be implemented everywhere in the world for every citizen in and outside the country. The Universal Declaration of Human Rights (UDHR) is such a standard, upon the majority of the world states adhered. The European Union (EU) and the United Nations (UN) along with other international organizations were invested with a part of the national sovereignty of the member states in order to take more equitable measures of governance, create supranational institutions and limit the powers of the individual states. Other global developments such as worldwide protests, non-governmental organizations (NGOs), technological developments, transnational labor, climate change, biodiversity, and trade required the need to open new ethical measures and discussions in order to keep track of the ethics of the new paradigm; these discussions reflect a struggle for Global Justice everywhere in the world. Issues such as poverty, inequality, extended injustices and the responsibility of governments, corporations and individuals are brought to the table in academic debates, a proper ground of creating equitable principles.

Human rights are now of great importance, being regarded by many advocates as universal and inalienable, yet despite their wide acceptance, many injustices and violations are still taking place under the same institutional architecture in which some others are doing more than well. The 67 richest people are as wealthy as the world's poorest 3.5 billion,<sup>1</sup> 1,020 million<sup>2</sup> people are chronically undernourished, and 2.5 billion<sup>3</sup> lack access to basic sanitation, while 2,000 million do not have access to essential drugs<sup>4</sup>. 18 million<sup>5</sup> die annually from poverty related causes, half of them being children under the age of 5.

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<sup>1</sup> Moreno, "The 67 People As Wealthy As The World's Poorest 3.5 Billion"

<sup>2</sup> FAO, "1.02 Billion People Hungry" in Pogge, 2010, p. 11

<sup>3</sup> WHO and UNICEF, 2013, p. 5 in Pogge, 2010, p. 11

<sup>4</sup> Fogarty International Center, "Strategic Plan" in Pogge, 2010, p. 11

<sup>5</sup> In 2004, there were about 59 million human deaths. The main causes highly correlated with poverty were (with death tolls in thousands): diarrhea (2,163) and malnutrition (487), perinatal (3,180) and maternal conditions (527), childhood diseases (847 – measles accounting for about half), tuberculosis (1,464), malaria (889), meningitis (340), hepatitis (159), tropical diseases (152), respiratory infections (4,259 – mainly pneumonia), HIV/AIDS (2,040) and sexually transmitted diseases (128) (WHO, Global Burden of Disease, table A1, pp. 54–9). To be sure, some deaths from these causes would still have occurred even in the absence of

As an issue of Global Justice, this paper is analyzing the global arms trade that is responsible of grave violations of human rights, but also has consequences and implications in causing poverty and preventing the international development to take place properly. I will use an institutional approach to human rights and the arms trade, rather than an interactional approach (actions between individuals). The research question is whether the citizens of the affluent countries are in any way responsible for the catastrophic effects that arms trade has upon the most vulnerable and how this situation can be changed. I will take a further step to connect the decisions that the governments of the affluent countries take when they impose unjust international standards upon the poorest countries to the extent of the idea that they represent the citizens' (of the affluent ones) acceptance of such impositions.

Moreover, the responsibility is seen as a negative duty not to harm which is more stringent and powerful than the positive duty of helping or protecting someone's rights. The arms trade is a good example of this distinction from the perspective of the participants in the global institutional architecture.

The approach of this paper is shaped by the non-ideal theory which focuses on the question of what makes the actual system unjust, rather than the ideal theory concerned with the question, what a perfectly ideal system should look like; starting with the current institutional order and what can be modified in order to fulfill the minimum standard of the basic rights for everyone.

The aim and scope of this work is to understand the paradigm shift brought by the phenomenon of globalization as a starting point for finding pragmatic solutions for this important change that is continuously taking place based on philosophical moral arguments. The idea of Global Justice is to help address avoidable current global issues in such a manner that the following evolutions in alleviating world poverty and human rights violations to be aligned with today world's needs. The SDGs that are about to be implemented starting with 2015, for example, are aimed to respond to the failures of the previous actions in this respect, are an example of some Global Justice efforts.

The significance of this approach is to address an issue of Global Justice that is insufficiently studied, which only gained more importance in the last decade, namely the global arms trade and the unjust system that governs it. Undertaking this direction of study is crucial because the global arms trade is tightly linked with systemic poverty.

To make a short overview, I will further summarize the structure and I will explain why I chose this specific order of the chapters.

Chapter 1 starts with the first three articles of the UDHR, which, as the reader will notice throughout the paper, are not fulfilled for a large part of the world's population in the context of arms trade, through direct or indirect effects of this global activity. It continues with a historical and a literature review of human rights and several ways of understanding them from a philosophical perspective. I used Gewirth's theory of Principle Absolute, Pogge's alternative understanding of human rights from the moral cosmopolitanism perspective and Rawls' approach of a minimum set of rights in the interaction between states.

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poverty. But these are greatly outnumbered by the contribution that poverty makes to deaths from globally common causes such as cancer, cardiovascular disease, traffic accidents, and violence. It is likely then that rather more than one third of all human lives are substantially shortened by severe poverty.' (Pogge, 2010, p. 205, n. 10)

Chapter 2 is explaining why and how the global arms trade is responsible for human rights violations, addressing a structural problem that is caused by the very rules meant to prevent a malfunctioning of this sector. The International Law (IL) is not properly built to prevent genocides, atrocities and civil wars – I will explain why in a detailed analysis of the loopholes in the Arms Trade Treaty (ATT), and also why the peremptory customary law of *jus cogens* fails to be respected. The negative duty approach is helping us to determine why IL is not suitable when it comes to arms trade because it is mostly based on the positive duty – the Responsibility to Protect (R2P).

Chapter 3 explains the concept of responsibility and makes the transition from the idea of states' responsibility alone to the responsibility of citizens from affluent countries in facilitating grave human rights violations, by contributing through votes, taxes and tacit acceptance of the unjust system that is governing the circulation of arms around the world.

Chapter 4 shows the horrific fear that vulnerable people and societies are constantly living with and why it is of great importance to eliminate it as soon as possible, so the personal and social development of the affected ones can start taking place.

## **1. Preliminary Thoughts on Human Rights**

*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.*

(UDHR)

First and foremost we need to understand what human rights mean and what the difference between norms and rules is. Norms refer to what is ought to be done through the rules, the rules are merely the instruments of applying the norms. We can look at human rights as the norms to be applied through the rule of law. “Law has incorporated human rights in a way that points beyond itself: to a normativity that does not depend on the law for its existence and cannot be revised or repealed by legislative or judicial fiat or by other law-making mechanisms such as treaties or international custom.” (Pogge, 2011, p. 7) This means that regardless the way the law is conceived, human rights remain *inalienable*. Human rights should constitute the minimum base of law and morality.

*Human rights are norms that help to protect all people everywhere from severe political, legal, and social abuses. Examples of human rights are the right to freedom of religion, the right to a fair trial when charged with a crime, the right not to be*

*tortured, and the right to engage in political activity. These rights exist in morality and in law at the national and international levels.* (Nickel, 2013)

They appear in different forms not merely after the WWII, when the Universal Declaration on Human Rights (1948) was signed, but even before, in many philosophical writings and other sources/documents such as Magna Carta Libertatum in 1215, when the first official document was imposed upon a king of England in order to legally limit his power and protect the barons' lives. Historically, other attempts to regulate and protect the rights of the people, related to human rights are also The English Bill of Rights adopted in 1689, The French Declaration of the Rights of Man and the Citizen which was signed in 1789, and the Bill of Rights incorporated in the United States Constitution of 1791. In philosophy, a great deal of literature on human rights began as early as in the 16<sup>th</sup> century with Francisco Suarez, continuing with Hugo Grotius, Samuel Pufendorf, John Locke and Immanuel Kant in the 18<sup>th</sup> century.

The main features of human rights as emphasized in the *Stanford Encyclopedia* are:

- 1) *Human rights are rights* – they impose duties and responsibilities related to freedom, protection, status, these duties require actions such as: protection, facilitation and provision.
- 2) *Human rights are plural* – they are aimed at a variety of problems such as: fair trial, slavery, education, genocide and so on.
- 3) *Human rights are universal* – all living persons are included.
- 4) *Human rights have high-priority* – ‘If human rights did not have high priority they would not have the ability to compete with other powerful considerations such as national stability and security, individual and national self-determination, and national and global prosperity.’ (Nickel, 2013)

Even though the human rights are universally recognized, there are still major difficulties in fulfilling them. Genocides, wars, coups, large scale poverty, enormous inequalities and so on. Annually 18 million<sup>6</sup> people die from poverty related causes, half a million<sup>7</sup> die from causes related to small arms and light weapons, a significant number of people live in constant fear, terror and insecurity, while a great number is facing severe and extreme poverty. Is then, the institutional order imposed on everybody on the planet just? How is it possible that in the same world, under the same rules, some are better off than others? – a question that the philosopher Thomas Pogge is analyzing in his *World Poverty and Human Rights* book and it helps to the present analysis.

The philosophical debates on human rights are concerned with whether there are absolute rights or not, or regarding the universality of the rights. Gewirth is arguing that there are absolute rights. An absolute right means that ‘it cannot be overridden in any circumstances, so that it could never be justifiably infringed and it must be fulfilled without any exception.’ (Gewirth, 1981, p. 2) The validity of this type of rights is given by the principle of morality named Principle Absolutism that states: ‘Agents and institutions are absolutely prohibited from degrading persons, treating them as if they had no rights or

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<sup>6</sup> The World Game Institute, “What The World Wants Project”

<sup>7</sup> Anup Shah, “Small Arms – they cause 90% of civilian casualties”

dignity. The benefit of this prohibition extends to all persons, innocent or guilty.’ (Gewirth, 1981, p. 9) Nevertheless in contrast with the consequentialists that say there are no absolute rights, for example if there is a risk of catastrophe, it is morally acceptable to infringe basic rights of one person in order to prevent more victims, Gewirth argues that the absolutism of some of the basic rights (i.e. the right to life) is given by the Kant’s Universalism Principle. ‘The principle prohibits using persons merely as means for the well-being of other persons’, being founded on the equality of rights for everyone. (Gewirth, 1981, p. 17) To be sure, not every human right mentioned in the UNHR can be considered absolute, some argue that political and civil rights are not absolute, they can be suspended in case of emergency, for example the right to free movement.

Rawls also argues the importance and urgency of an internationally agreed set of human rights calling them ‘a special class of human rights’ with high priority considering them as plural and universal. For Rawls in *The Law of Peoples*, human rights must be a part of a normative structure of the global system. (Rawls, 1999) The structure that Rawls proposes in his book is relevant for this paper since it is not referring to interpersonal relations between individuals and how they respect each other’s human rights, but rather about a just institutional structure that constitutes the international law and the role each state and individual plays under it.

Thomas Pogge refers to the human rights in his book *World Poverty and Human Rights*, when he describes how a moral cosmopolitan society should function. Pogge’s variant of moral cosmopolitanism is formulated in terms of human rights with straightforward aggregation: “a minimal conception of human rights, one that rules out truly severe abuses, deprivations and inequalities, while still being compatible with a wide range of political, moral, and religious cultures” – as a worldwide overlapping consensus. (Pogge, 2008, p. 300, n. 270) The question is whether a variant of moral cosmopolitanism would be suitable to change the global order so to be brought closer to the ideal of legal cosmopolitanism. All cosmopolitan positions share three elements:

- 1) Individualism: human beings are ultimate units of concern
- 2) Universality: every human being is regarded equally
- 3) Generality: persons are ultimate units of concern for everyone

Pogge explains the difference between the interactional approach and the institutional approach which is that the latter connects everybody’s duties and responsibilities in respect to human rights in a sense that, for example, rich people could not see themselves anymore as disconnected to the harm they produce against people in other countries. In an interactional approach they would only be guilty on direct violations of human rights (like enslaving someone without a third party’s involvement). For Pogge the institutional approach is the way of making human rights accessible to everybody.

Thus, in the institutional approach our negative duty means: not to cooperate in unjust coercive institutions and to promote reforms of institutions that enhance the fulfillment of everyone’s human rights.

The counter argument that is often brought is that we cannot affect the institutions beyond our borders in which we are citizens, but this does not stand given the fact that *the global*

*institutions are neither natural, nor god-given*, but they are supported by stronger governments and by other actors coordinated by them like the EU, NATO, UN, WTO, OECD, World Bank and IMF. Hence, it means that “at least the more privileged and influential citizens of the more powerful and approximately democratic countries bear then a collective responsibility for their governments’ role in designing and imposing this global order and for their governments’ failure to reform it toward greater human rights fulfillment.”

Two main strategies to **attempt to limit the practical importance of shared responsibility** are often brought in the global justice debates, well debunked by Pogge:

- 1) The current global institutional order does not promote human rights violations (it forbids them) and it should be accounted only for deprivations it *establishes*. Hence there is no violation of the negative duty on our part.

This is implausible for Pogge, arguing that we cannot build reforms or institutions with no **regard to the consequences** they cause.

Creating parity between established deprivations and engendered consequences would also be irrational. (e.g. authorized assaults by police against criminals with the same severity as the criminals’ against citizens). A plausible conception of human rights would incorporate these differentiations – avoiding the “kind of purely recipient-oriented view of deprivations that is embodied in the consequentialist and contractualist (veil-of-ignorance) theorizing”. (Recipient-oriented assessment of social institutions: established deprivations are equal engendered deprivations.) (Pogge, 2008, p. 180)

- 2) The “location” argument: in the same institutional arrangement some countries are rich, some are poor; some have conflicts, some do not, thus this institutional order has nothing to do with the human rights underfulfillment.

This is invalid, says Pogge, we don’t have a comparison to any other institutional scheme, be it historic or a current observable alternative. A macroexplanation doesn’t explain why some countries are better off than others in terms of human rights, but it explains why so few are, while so many are not. There is a high probability to create a feasible alternative global regime that would engender lower rates of deprivation.

## **2. The arms trade and human rights**

The arms trade is especially of concern because of its direct implications in violating human rights, it is a mechanism that makes the rich richer, keeps the poor away, is extremely corrupt and has tremendous consequences. This sector of business is also responsible for encroaching upon the most basic principles of customary law between states such as *jus cogens* which is a peremptory norm from which no derogation is permitted. *Jus cogens* includes maritime piracy, the prohibition of genocide, torture, slavery, slave trade, wars of aggression or territorial aggrandizement – all of them still alive and ubiquitous under the lack of clearly prohibiting many of the current arms transfers. (Bassiouni, 1996, p. 68)

According to the 1948 Genocide Convention there are two main ways of looking at the arms trade: either complicity in genocide, either the obligation to prevent genocide. As the Article III (e) of the Convention mentions, the responsibility in case of genocide could be

both for states and for individuals who provide aid (for example) and facilitate the act. The ICJ recognizes and states (e.g. in the case of *Bosnia and Herzegovina v. Serbia*) that ‘complicity always requires that some positive action has been taken to furnish aid or assistance to the perpetrators of genocide’ and therefore that ‘complicity results from commission’. (Bellal, 2012, p. 460)

I would go even further on the complicity line with the following question: are the citizens of the ‘responsible’ states facilitators too? Are they, through the representatives they vote and the institutional order they take part in responsible for these grave violations of human rights? As long as the ‘democracy’ argument used frequently by the politicians, namely that they represent the desiderata of the voters, is brought often and theoretically legit on the table, then the institutional order shouldn’t be impossible to change, and if it is not changing that could mean the people are in fact responsible. The citizens from affluent countries are accepting different forms of injustices their governments do in other countries, believing that aid is a sufficient form of being morally responsible for others. It is not the case. If we talk about violations of human rights the paradigm is referring to the negative duty not to harm which is different and more stringent than the positive duty to give and is morally universal. The citizens of affluent countries are indirectly accomplices to the harms their governments produce, by accepting this harms and by taking advantage of it. (e.g. the arms trade in terms of money and power).

Some improvements have been made regarding the arms trade in terms of international humanitarian law and human rights by approving the Arms Trade Treaty (ATT) which is supposed to be able to stop any arms transfer that could lead to the violation of some human rights. The EU has the merit to be an important supporter of the treaty due to its intensive NGO involvement in the law making process, thus it implemented the EU Code of Conduct on Arms Exports that limits arms transfers, for example violation of the UN Charter or other arms control agreements, risks for internal oppression or extended armed conflict or a clear risk of aggression on another state, *et al.* (Bellal, 2012, p. 460)

The important aspect to be mentioned as a progress by implementing the Code of Conduct is that it became legally binding since 2008. It also prevents the transfers or licenses on items that can be used for torture (like electric shock devices).

The ATT, that created much controversy, required a long period of meetings and debates, was finally adopted on the 2<sup>nd</sup> of April, 2013. The human rights aimed to be protected by the treaty are the following: the right to life (from assassinations to genocide); the right to freedom from torture and other forms of cruel, inhuman, or degrading treatment; the rights to liberty and security of the person; the right to freedom from slavery; the right to freedom of thought, conscience and religion; the right to recognition as a person before the law; the right to protest and the complementary rights to health, education, food and housing.

Even though a few steps have been made in the IL, the ATT, which is not ratified yet<sup>8</sup> by the 50 states necessary for its implementation, has important flaws that worth a lot of critical attention.

The Arms Trade Treaty (ATT) is an attempt to regulate the conventional weapons, combat aircraft and ships, to prevent human rights abusers and violators of the law of war,

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<sup>8</sup> By now 17<sup>th</sup> of May 2014, only 31 states ratified the ATT, it was signed by 188 states.

curbing their supplies of arms, and to prevent gangs, pirates and warlords to have access to them.

But is the ATT actually regulating in a just way all of these matters? Is it created in such a manner in which the human rights (related to violence and others) could be fulfilled if it is going to be ratified?

Art. 7 (4) ATT stresses:

*The exporting State Party, in making this assessment, shall take into account the risk of the conventional arms covered under Article 2 (1) or of the items covered under Article 3 or Article 4 being used to commit or facilitate serious acts of genderbased violence or serious acts of violence against women and children.*

Through the expression “serious acts of violence against women and children” we can observe that it is *a priori* created in unjust terms – If I shoot a child in his left arm is it considered a serious act of violence? Or should it be more serious than that to overcome the acceptability level? Is any kind of violence acceptable? Any kind of shooting in the presence of a child could be a serious trauma, or can maim that person for the rest of her life, preventing her to have access to education, security – and from the very beginning she is deprived of the chance to equal opportunities.

In the affluent countries there is a punishment even for verbal violence – imposed by the very same governments and institutions that are violating the HR of the poor in developing countries. But another difference is that those children in rich countries have better chances since they are born, and even when they suffer a trauma, they have access to therapy, counseling and proper medical care.

In this respect we may start to ask ourselves: are human rights to dignity and integrity less valuable for persons in less developed countries? Why are the norms and the laws we create and vote not considerate regarding the lives of other supposedly equal human beings?

*The human rights are not merely part of the law but also a moral standard that all law ought to meet and a standard that is not yet met by much existing law in many countries.*  
(Pogge, 2011, p. 7)

The ATT ought to be a treaty aiming to meet the moral standards that humanity must benefit of, in a world where peace is more achievable than it has ever been before. An international treaty that regulates the tools of death and doesn't meet, in the way that it is formulated, these criteria, lowers the potential of a globally achieved peace, affecting everyone on the planet. Our rights are annulled when it comes to GWOT or national security, for example.

*Law has incorporated human rights in a way that points beyond itself: to a normativity that does not depend on the law for its existence and cannot be revised or repealed by legislative or judicial fiat or by other law-making mechanisms such as treaties or international custom. This point is articulated in the legal separation from customary international law of *ius cogens*, a set of norms whose validity is understood to transcend the discretion of states. *Ius cogens* is generally taken to include at least norms*



*prohibiting aggressive war, genocide, slavery, torture, military aggression, and piracy.*  
(Pogge, 2011, p. 7)

In this sense, when we closely compare the compliance of the current international law in regulating arms (ATT for instance) having a closer look at the *jus cogens* we can easily identify that they do not follow the norms that ought to be the basis of their construction. *Jus cogens* has a very low standard, in which case, non-compliance with it means grave violations. Inadequately controlled arms transfers can easily conduct to slavery, torture, military aggression or genocide. For example, in the underdeveloped regions with diamond resources or the so called ‘blood diamonds’, mined during the civil wars in countries like Angola, Côte d’Ivoire, Sierra Leone, many people are or were forced to do slavery work, they are tortured and aggressed by diverse authorities or armed groups and exploited for years. The United Nations recognized the connection between illicit transactions of rough diamonds and armed conflicts and the fact that diamonds are crucial factors in prolonging wars.<sup>9</sup> It is curious though, that the UN reached the conclusion that blood diamonds are fueling conflicts and demanded transparency, but did not manage to implement a binding transparency treaty on arms transfers yet.

The case of child soldiers is also problematic and in accordance with the thesis that arms proliferation is out of control and must be regulated properly. It is a situation where children are used as tools of war or as tools for forced labor and exploitation. An AK-47 is so easy to assemble, that even for a 10 years old it creates no difficulty. The United Nations estimates that around 250,000-300,000 children<sup>10</sup> are exploited as soldiers in armed conflicts around the world, some of them even as young as 7-8 years old. The Child Soldiers International estimates that are 120,000 child soldiers<sup>11</sup> found in Africa alone, many of them aged 7. More than two thirds of the population of African cities is between ages 12 to 25 years old, many of those people living in informal settlements without the necessary facilities, services and security.<sup>12</sup>

Also, counting the toll of deaths and losses among children in conflict zones, brings up to incredibly high numbers – two million children were killed in conflict zones in the last two decades<sup>13</sup>, another 6 million were maimed or remained with lifetime disabilities and an uncountable number of them remained orphans, were kidnapped, deprived from education and medical care in deep emotional traumas. (Gillis, 2012, p. 5) The numbers are evidently not the real numbers, because many of the harmed people were not even counted. An uncountable number of deprived children are among the refugees that were forced to flee their homes and they are not even statistics. I will elaborate the refugee problem in one of the further chapters.

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<sup>9</sup> United Nations Department of Public Information, 2000

<sup>10</sup> The exact number of child soldiers is unknown. Current UNICEF estimates are approximately 300,000 child soldiers. Ambiguity and the dynamics of conflict zones make accurate accounting problematic. For more info, visit: <http://www.unicef.org/emerg/files/childsoldiers.pdf>

<sup>11</sup> Human Rights Watch, “More than 120.000 child soldiers fighting in Africa”

<sup>12</sup> Child Soldiers International, 2008

<sup>13</sup> Security Council Report, 2008, p. 2

### 3. Responsibility – A Change of Paradigm

The responsibility to protect HR is consistently emphasized in the International and Humanitarian Law. Even though the intentions are oriented towards protection, they are not sufficient, in times of globalization, a change of paradigm is compelling in understanding and creating more effective laws in order to fulfill the human rights. The realist-post-Cold-War approach is not functioning anymore, and maybe the remaining mentality of that period is webbing the fast-changing geopolitics and limits the measures that need to be taken. Changing directly the rules, or the binding law focusing straight on the issues humanity is confronting with, may not be the wisest way of resolving them. A change of paradigm, norms and mentality should begin with a theoretical approach that addresses real problems, real solutions beyond the veil of pessimism, false beliefs, and futility. The minimum base as I mentioned earlier in this thesis, ought to be the moral values and the human rights. Starting with that base, the first attitude we should have is that of not harming the others. ‘The others’ refer not merely to the close ones, but strangers from every corner of the planet. Everyone is equal in humanity as our co-nationals are, and no one is allowed to prevent others from benefiting the human rights – namely we ought to create rules that are respecting the negative duty of not to harm which is more powerful than the positive duty to protect. It is a big difference between hitting a person and not protecting her from a hit for example.

The responsibility to protect is a value agreed by the states, but this is a positive duty to which the member states are “in charge” to comply. The main focus, even though the term of International Community is brought in the discussion, is actually still on sovereign states.

*The Secretary General produced a report summarizing and setting forth a strategy for implementing the R2P. The strategy is three-pillared. Pillar one addresses the responsibility of the state to protect its population; pillar two addresses the international community’s duty to assist states fulfill their responsibility to prevent and protect; and pillar three addresses the international community’s responsibility to take timely and decisive responses through peaceful means, and should that fail through other more forceful means, in a manner consistent with international law. Pillars one and two constitute crucial elements in the effective prevention of mass atrocity crimes again placing the emphasis on prevention. (Rosenberg, 2009, p. 445)*

This sounds very close to the realist approach of IR – the states are self centered autonomous actors, but through a peace treaty or convention, they rationally agree to cooperate within the limits of their disposal and willingness to help, in terms of a positive duty to protect. The main issue here is that a positive duty in this context can be viewed rather as an act of “charity” or goodwill on behalf of the states, but it doesn’t emphasize a moral obligation greater than that, in the sense that weaker states would be protected only if the other states decide that this is the case. The powerful states could easily prefer not to help because this would imply costs on their behalf. On the other hand, it should not be a matter of choice whether to harm or not. If I choose not to feed a hungry person on the street, I don’t directly harm that person; I just don’t manifest goodwill to give, or a positive duty to protect their right to live. (I might even feel that I gave something that was legitimately mine.) On the

contrary, if I pay someone to constrain a hungry person in a cage and limit their access to food, I am encroaching upon the negative duty of not to harm. That makes me the facilitator of the harm, hence I have a greater moral responsibility and also a stronger moral obligation to readdress the issue and stop the harm. This negative duty approach brings into attention that not merely the states are causing these harms, but also the other agents involved in creating a certain institutional order. The realist theory fails to explicate the complexity of the web of international organizations, governments, multinational corporations, international law, which is undergoing a continuous process of radical change into a supra-national order of values with a universal ethical basis (Furger, 2012, p. 271) and the role of individuals in this picture that are all involved in the creation of the current global institutional arrangement and the seek for global justice. The case of SALW proliferation is an empirical proof that borders are almost irrelevant in this continuously globalizing world (arms transfers can take place very easily). Hence, the international agenda stresses this issue as being an urgent measure to be taken in regard to global security; this step being taken, it only remains to recognize the universality of HR and create strong legally binding regulations in the IL that would correspond with the negative duty not to harm.

The realist approach of the IL that gives each state the responsibility to protect its citizens is not taking into consideration the reality. We can take as examples the states that are governed by autocrats, keeping the power by force with large amounts of arms at their disposal, which are taking loans in the name of the citizens – siphoning huge amounts of money in their private bank accounts and burdening the citizens to pay the debt after they are not in power anymore. We cannot expect from this kind of states to behave reasonably towards their populations and therefore wonder why they are not complying with the international norms.

In the actual context, several rules ought to fulfill global security fail to obtain it because they are imposed by institutional arrangements that are created unfairly. They are created by human agents, which cause institutional violations<sup>14</sup>, such as unjust arms control.

These actors could easily change the direction of facilitation. They are still facilitators, but instead of facilitating unnatural deaths and other human rights violations – they could facilitate respecting the human rights by promoting and voting the just rules for everybody, in order to stop harming others, or by not collaborating with this institutional violations.

*We have a duty not to collaborate in the design of imposition of social institutions that foreseeably cause a human-rights deficit that is reasonably avoidable through better institutions – unless we fully compensate for our fair share of the avoidable human rights deficit.* (Pogge, 2011, p. 32)

Thomas Pogge makes the distinction between non-fulfillment of several rights, meaning that their fulfillment would be a positive duty of others to contribute to, and the negative right not to be harmed, which means that the others have a duty not to harm<sup>15</sup>. By playing even an indirect role of reducing other people's access to their rights' fulfillment, it

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<sup>14</sup> "This understanding of a human rights violation includes not only interactional violations (perpetrated directly by human agents), but also institutional violations (caused by human agents through the imposition of institutional arrangements)". Pogge, 2011, p. 1

<sup>15</sup> Pogge, 2011

means we are not respecting the negative duty not to harm, especially when the harms are foreseeable and avoidable.

We might not be aware of the fact that the international community, states and citizens, by supporting the current institutional order and voting for leaders that are involved in creating these harms are themselves *facilitators* of the Human Rights violations produced by the effects of the arms trade. For example, if one pays someone else to kill a person that makes him the *facilitator* of the murder. In the case of arms trade, the harm is *additive* and also *multiplicative* – in this sense, by curbing the current flow of weapons the harm could be reduced, and eventually stopped. Thus, given the above criteria, any party that consents with producing these harms is a *facilitator*<sup>16</sup>.

The system of small arms trade is slippery; the arms manufactured and sold legally reach the hands of violators through many types of transfers. For example, in the case of states, they initiate sales directly to other governments complying with the legal process required; they can also license sales by private companies which are in number approximately 600 in over 95 countries (Frey, 2003, paragraph 51). Taking advantage of the loopholes in the law, as well as of the secrecy around this industry, there are several situations when states used arms brokers, including former employees of state defense forces and security agencies, to provide cover for their shipments into the hands of human rights violators. ‘Brokers, who may reside far from the manufacturer or end users, can arrange shipments of small arms from conflict to conflict, using secret bank accounts, front companies and fraudulent end-user certificates.’ (Frey, 2003, par. 51) Transnational corporations, which are interested in the economic wealth with the cost of human rights have also been involved in the sale or transfer of small arms to states and armed groups that violate human rights.<sup>17</sup> (Frey, 2003, par. 51)

The lack of awareness regarding the effects we unconsciously produce on vulnerable people is firstly due to the old fashioned way of understanding human security – which only for a couple of decades started a tendency to orientate at humanizing the IL (International Law) by focusing also on the individual, not only on the national security (Humanitarian Law etc.). An explanation could be the recent shift in the international realm from a state-centered perspective of security to an idea of global security which is not yet completely integrated in this accelerated shift of events by laws that actually keep up with it. It is interesting how international security is more and more oriented towards individual security and how a person gained the right to appeal to an international court if her rights were violated by the state. Of course we are far from fully achieving the human security a human being really needs.

#### **4. The Freedom from Fear**

Thomas Pogge’s “Freedom from Poverty as a Human Right” brings into attention Franklin Roosevelt’s speech in the State of the Union Address on January 6, 1941, when he proclaims that “freedom means the supremacy of the human rights everywhere” – the guiding

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<sup>16</sup> The Latin word for "easy," is *facilis*. You can see this origin in *facilitation*, which means "the act of making something easier." (<https://www.vocabulary.com/dictionary/facilitation>)

<sup>17</sup> Shell Oil Company admitted to providing private security forces in Nigeria with weapons used to suppress minority groups, including the Ogoni people, in the 1990s. (Barbara Frey, 2003, par. 48)

principle of a post-fascist world “attainable in our own time and generation”. It sounds as an utopia, but these are really basic freedoms that anyone on the planet should have.

1. *The freedom of speech and expression everywhere in the world.*
2. *The freedom for every person to worship God in his own way everywhere in the world.*
3. *The freedom from want that “translated in world terms means economic understanding which will secure for every nation a healthy peacetime life for its inhabitants – everywhere in the world.”*
4. *The freedom from fear “which translated into world terms means a worldwide reduction of armaments to such a point in such a thorough fashion that no nation will be in the position to commit an act of physical aggression against any neighbor anywhere in the world.”*  
Currently, the contraire is happening – the arms sales are rising at an alarming rate in a world that supposedly is peaceful.

Thomas Pogge in his book is referring to Roosevelt’s third freedom, freedom from want as a human right. I will analyze the fourth freedom – the freedom from fear and refer to it as a human right which is tightly related to the freedom from want. Where the freedom from fear is not achieved, freedom from want is less likely to be fulfilled or viceversa, if you are not free from want, most likely you will live in constant fear.

If natural catastrophes like tsunamis, hurricanes, floods are often beyond our power to control – and they contribute to fear, insecurity, and instability for human life – the armed violence depends exclusively on human agents and the decisions they make. Any violent conflict takes place over: someone’s decision to achieve a goal, a group of individuals who are convinced of that specific cause, and the most important, the instruments to fight with: small arms and light weapons, as the most common instruments used to start a conflict. Small Arms and Light Weapons are primary contributors to most human unnatural deaths, they even cause more deaths than Hiroshima and Nagasaki together, and in this sense many experts refer to them as ‘weapons of mass destruction’.

To make a clearer image about the association of small arms and weapons of mass destruction I will present some of the most relevant facts: small arms kill an estimated half a million people every year<sup>18</sup> – nearly one person every minute. The access to them is so easy to get, that for example in Africa you can trade a goat, a bag of grains or a chicken for a rifle or AK-47, these arms are even national symbols for countries like Mozambique that has even incorporated the symbol of AK-47 in its own flag. The approximate number of SALW is 875 million worldwide<sup>19</sup> – which means one for every ten persons on Earth. In countries like Colombia, Sudan, Afghanistan, Mexico, Guatemala, Liberia, Somalia and Philippines the gun related death rate is also concerning; armed struggling, civil wars, organized crime, terrorism and gun ownership data is showing that the demand for guns is very high. The widespread availability and the lack of transparency of small arms trade is very concerning – data shows that nearly 1 million out of 7-8 million of arms produced every year is lost or stolen.<sup>20</sup> This happens because the arms circulation is having an itinerary from legal production and sales to illegal buying or stealing, because the arms are not monitored for their entire life cycle, from

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<sup>18</sup> World Health Organization, 2002; Muggah and Griffins, 2002.

<sup>19</sup> Small Arms Survey, “Weapons and Markets”

<sup>20</sup> Oxfam International, “Why we need global arms trade treaty?”

the manufacturing to their destruction. Small arms are also hard to track for the entire life cycle because they have a long life span, for example an AK47 can be used after buried in sand or dropped into water and functions longer than a human life.

SALW have a devastating impact, and their weak control causes many casualties. Still, these are not the only arms that should be considered. Heavy weapons are as well very harmful and very costly. United States are in the forefront of arms sales and production since the WWII because of its capabilities in terms of technology, research and manufacturing power (SIPRI). It is interesting to make a comparison between how much the US donates for development and how much do they earn from exporting arms in developing countries in a given period. In 2011, the US arms exports to developing countries accounted for \$66.8bn (in agreements and deliveries)<sup>21</sup>, while the ODA offered to developing countries by the United States in 2011 amounted for \$30.78 billion<sup>22</sup>, thus it is rational to concede that the harm produced and the costs paid by developing countries on arms compared to the aid received is, sometimes very disproportionate.

Considering the information I presented above, it becomes evident that many people around the world are living their lives in constant fear, terror, lack of access to education, physical and psychological traumas, unsafe homes, and poverty caused by violence and conflict.

The development of these regions needs more time to take place, more resources during conflicts and post-conflict reconstruction instead of maintaining peace and investing more in the political, economic and health improvement.

The freedom from fear is strongly related to human security. While national security means security within a state, human security means security for individuals (Stohl & Grillot, 2009, p. 118). Even if they are normally dependent of one another, experience has taught us that securing the border of a nation state doesn't mean that the citizens of that territory are safe. The two types of security are complementary though. Recently, in the post Cold-War thinking appears this new correlation between security and development.

Security is strictly related to conflict and the access to weapons - Rachel Stohl also writes about the consequences of conventional weapons on development which are relatively intuitive: unnatural deaths and injuries as a direct effect, but also the negative impact on development of certain regions – the latter is not that obvious and it takes years to observe. The examples that Stohl and Grillot are giving in their book are: “the weapon injuries placed on the medical system, the thwarting of educational opportunities, the denial of humanitarian aid, the increase of refugees and populations of internally displaced people, the development of cultures of violence, the use of child soldiers, the threats on humanitarian workers and peacekeepers and the slowing of economic development” (Stohl & Grillot, 2009, p. 119-120).

The fear caused by conventional arms is also represented by psychological traumas that many people are enduring – even in countries at peace data shows 200.000 deaths in gun violence<sup>23</sup>, many more in wars, and also street violence produced by gangs in the poorest regions, in Brazil or Mexico for example. Fear is a trigger of more violence, fear of oppression leads to civil wars, fear of wars leads to forced relocation etc.

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<sup>21</sup> Grimmett and Kerr, 2012, p. 3-4

<sup>22</sup> OECD, “ODA trends”

<sup>23</sup> Small Arms Survey, “Indirect Conflict Deaths”

*Fear of death and wounds disposeth to the same, and for the same reason. On the contrary, needy men and hardy, not contented with their present condition, as also all men that are ambitious of military command, are inclined to continue the causes of war and to stir up trouble and sedition: for there is no honour military but by war; nor any such hope to mend an ill game as by causing a new shuffle.* (Hobbes, 1651, p. 61)

In a Hobbesian perspective, everyone is inclined to go to war when they feel that are insecure and vulnerable, but as a being with reason there is no other way than to sign the social contract and give a part of your personal sovereignty to the Leviathan, which is the state, in order to have access to peace and protection. Otherwise every man would be in a constant war with every other man. What Hobbes fails to picture is the idea of a global Leviathan, which he considers to be impossible since every state is sovereign and a sovereign has the highest power, so the jealousy between them and the desire to maintain the power will prevent them to sign an agreement. Today, a sort of Kant's perpetual peace is already happening, and the peace and humanitarian treaties are already signed, but curiously, there are still wars and violent conflicts which create great suffering among many peoples and individuals which according to Hobbes among the miseries 'worst of all is continual fear, and the danger of violent death' (Hobbes, 1651, p. 78).

The freedom from fear can be seen as a human right that is related to the right to live, the right to dignity, the right to basic needs and physical integrity, the right of access to education, and also *the negative right – not to be harmed*. It is the case to mention some implications of the small arms and light weapons use in extra-legal and illegal activities such as torture, threat, extra-judicial executions, and rapes under gun threat, violating the human rights in many different ways. Through coercion, dictators from several states use arms supplies to maintain their power over populations, violating their political rights: the freedom of speech, suffrage, association, and access to the country's resources. Abduction and hostage-taking is another way of power abuse, for example the case of child soldiers and organized crime related cases. Through torture, aggressive authorities are taking advantage of their position to abuse unprotected citizens, do arbitrary arrests, traumatize civilians under gun threat, and protect criminals that legitimately should be convicted; also, under gun threat, many victims, most of them coming from poor families, are forced to drop accusations (charges) against aggressors. Sexual violence and psychological impact: UN reported 12,000 rapes in the first half of 2006 under gun threat, not including the unreported ones (Stohl & Grillot, 2009, p. 121). The traumas caused by arms use are sometimes unbearable, leading to disastrous consequences on the quality of life (i.e. dropping off school, inability of social integration, life-time fear, inability to protect their families, and even suicide). Forced relocations represent multiple harms towards innocent people; women and children are the first victims internally or externally displaced by conflicts and armed violence; 45.2 million people worldwide were forcibly displaced by the end of 2012, most of them coming from Afghanistan, Iraq, Somalia, Syria and Sudan (more than 55%)<sup>24</sup>. Hence, all these people lose

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<sup>24</sup> UNHCR, 2013, p. 2-3

their homes and the access to basic needs, such as schooling, adequate shelter, clothing, medical care etc.

*A particular human right of some particular person is unfulfilled when this person lacks secure access to the object of that human right. This object is whatever the human right is a right to: for example, freedom of movement, equal political participation, basic education, or freedom from assault. (Pogge, 2011, p. 3)*

These many examples of violence have in common two main objects, one is metaphysical, and the other is empirical: fear and guns.

In the case of any kind of weapons use, in any conflict area, the access to all the rights a human being is entitled to is sometimes completely limited – but is this the only way to look at the easy access to weapons left improperly regulated by the current institutional order?

Thomas Pogge makes the distinction between non-fulfillment of several rights, meaning that their fulfillment would be a positive duty of others to contribute to, and the negative right not to be harmed, which means that the others have a duty not to harm (Pogge, 2011). By playing even an indirect role of reducing other people's access to their rights' fulfillment, it means we are not respecting the negative duty not to harm, especially when the harms are foreseeable and avoidable.

Conflicts can be reduced and avoided in those problematic regions by acting pragmatically in reducing the deadly arms trade to such a level, that we can be at least close to achieve the freedom from one of the worst miseries – fear.

## **Conclusion**

Despite the controversy around the human rights and their universality and inalienability, from a humane point of view in the context of global justice, and considering the data that reflects grave violations against human life, integrity and dignity, we can agree that globally, there are enormous problems that have to be readdressed. The current institutional architecture was not created to cover the most vulnerable percent of the world population, coercing them to remain in severe poverty and besides that in zones of violent conflicts where the chances to flourish are almost inexistent.

Among the most problematic institutions/industries in the world is the global arms trade, which through its nature, abuses the most basic human rights. By its imposition and acceptance of this institution we are not merely neglecting the positive duty to protect, but also we are not respecting the more powerful negative duty not to harm. Any taxpayer of an affluent country is contributing to the atrocities, civil wars, armed conflicts and their consequences around the world when his country is transferring armament. The regime must be compliant with the normativity of human rights, therefore the arms trade should be greatly reduced. The negative duty of not to harm should be understood compared with any positive duty as follows: there is the positive duty which fades away with the distance – my duty to feed a hungry person across the ocean is not as strong as my positive duty in my own family or country to feed a person in need. The negative duty is more powerful and stronger: if I



drive drunk and I kill a person in my neighborhood has the same moral significance as killing a complete stranger in Africa.

Another problem with agreeing with the global arms trade is the immoral set of rules that governs it: *Jus cogens* which is the lowest standard of customary international law is not fulfilled; the use of arms cannot end in anything else than a human rights violations, being it intimidation, torture, shooting etc.; the system is very secretive and that makes the stealing of the illegal cover more effective – many governments are involved in selling guns under legally classified information that end up in the hands of oppressive leaders, or through the loopholes in the law system (like security agencies). The recent treaty adopted at the UN, namely the ATT, has many morally problematic approaches to limit the arms transfers, such as forbidding an arms transfer if there is an ‘overriding risk’ of violence, meaning that any other transfers are allowed. The term used is very vague and lets the gates open for interpretation.

Recently, after the Cold War, the conflicts started to be more intrastate rather than interstate, civil wars being encouraged to the arms trade and the corruption in the arms trade. There are speculations that on the one hand Russia was providing arms to Bashar’s regime, while on the other hand the US was providing unofficially arms to the rebels, so the conflict can continue. Corruption in the arms trade can be reduced greatly through tough laws, if today 50% of the arms trade is corrupt, by addressing this issue, we would probably save at least 50% of the suffering that it produces.

Any conflict in any region has radiating consequences, from the epicenter to the neighboring areas; it is not affecting merely the direct victims involved, or the collateral victims in a territory, but all the neighboring countries. There is a big problem of development. The system in the conflict area is completely destroyed, if there was poverty before, after a conflict there is nothing functional left, the entire medical care system, law, institutions, education, economy etc. must be rebuild. The expenditures are supported by the international community through ODA and the post conflict reconstruction takes enough years so a child can lose any opportunity to live a decent life. The development problem interferes with the development of the neighboring countries in the sense that they are probably poor as well, and they are forced by the circumstances to integrate a great number of refugees and adapt their society to the problem. The human rights compliance enters again into the picture, now the recipient country has to treat the refugees with the same respect as their own citizens, but the reality is not always favorable.

The range of actors and the technological revolution that transformed the world into a more complex environment, where states are not the only actors in the international realm, should bring us to the conclusion that an institutional reform is necessary and urgent. The evolution of international institutions, the transnational and international law, individuals with divergent interests and sometimes power, corporations and markets facilitated the proliferation of SALW and heavy weapons. The web between mafia, terrorism and gangs is now more connected than ever before. The distances do not have the same significance as in the past which makes small arms more difficult to track and also to control. Terrorism became an institution with franchised organizations such as Al-Quaeda, which paradoxically is using the tools of globalization to fight the idea of globalization. It is not a coincidence that the international security seems so fragile when the UK and US governments are fighting a war

on terror that requires hundreds of billions of dollars, gives them the right to encroach upon any human rights under the label of security, but still the arms are so easy to circulate, to buy and to sell.

Fear is the psychological tool used to justify the war on terror among the tax payers, but the real fear is among the world's poorest people that see their children dying of hunger, exploited or maimed, while the affluent that benefits from their resources are spending money on fighting against a ghost phenomenon.

In this framework I conclude that at least two things can compose a solution to this urgency in the human security aspect:

1) Global security now requires norms and regulations that are adequate with this recent shift of relations between many different actors. When it comes to arms trade, soft laws have very little effect and the rapid flux of circulation of danger requires strong and just international rules. Global security does not mean that some powerful governments have no limits in interfering with everyone's privacy and basic rights, while the exact same governments earn huge profits by selling weapons. In the contemporary world security means freedom from fear for everyone, secured basic rights for everyone and more responsible system of international law that takes into account the consequences that engenders. International law connects every person on the planet and it must be reconsidered in order to treat everyone equally with great respect for human rights, as the minimum basis of normativity.

2) The Sustainable Development Goals (SDG's) are about to be implemented after 2015, learning lessons from the failures of the MDGs, addressing structural causes of poverty and among other reform goals, states shall commit to pay a tax on arms exports to the Human Development Fund. A goal concerning security means also an adequate standard of living and equal opportunities, as well as physical and psychological safety. This more adequate approach to human security requires compensation to the harm that is brought by the arms trade and the arms industry especially to the most vulnerable by imposing major taxation. Because it is a deadly industry and its activity provokes great suffering, taxing arms can be compared with the taxation of tobacco proportionally to the harm that inflicts. A change of laws regarding the arms trade has the same feasibility with the tobacco situation, that was easily implemented in a very short period with great effectiveness.

*Arms exports to the developing world fuel conflicts, civil wars and violent repression. To help deter such sales and offset the harm they produce, arms-exporting countries shall agree to pay a share of the value of such exports into the Human Development Fund. This share would be 5 percent in 2016, rising to 40 percent in 2030, raising an amount rising from approximately \$1.4 billion to \$10 billion annually. (Pogge, 2013, p. 1)*

This method of arms export taxation would help to diminish the arms sales, especially in developing countries that are losing billions over this business through directly buying arms or through merely using them. The arms trade will be gradually reduced, as the bad habit of smoking, leading to a significant reduction of casualties and victims, while it is helping to prioritize investments in development over investments in weapons.

The two solutions I presented above, are responding to the question of what can be changed in the current world from the point where it stands right now, and how can the injustices be reduced, rather to what would be the perfect theory for an ideal world. Thus, it is a foreseeable that we can achieve at least two positive outcomes: first, the human rights would be closer to be universally respected by reducing multileveled suffering produced by the uncontrolled arms trade. And second, we would set a starting point for poverty alleviation, accelerating the process of reaching a just global society.

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