

Washington University Law



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WRITTEN STATEMENT OF THE HARRIS INSTITUTE FOR THE HEARING ON “REGULATION OF GUN SALES AND SOCIAL VIOLENCE IN THE UNITED STATES”

**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
167TH EXTRAORDINARY PERIOD OF SESSIONS**

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INTRODUCTION

The Whitney R. Harris World Law Institute at Washington University School of Law welcomes this opportunity to appear before the Inter-American Commission on Human Rights. The Commission has expressed deep concern over the issue of gun violence in the United States and encouraged the State to redress gun violence through effective gun control policies in multiple press statements over the past two years.¹ Our testimony focuses on the lack of domestic efforts to protect Americans from violent death by firearms and the failure of the United States government to exercise due diligence with respect to preventing and reducing gun-related violence. In our view, the failure of the U.S. government to act in the face of repeated mass shootings and high levels of gun-related deaths raises serious questions regarding its compliance with the American Declaration of the Rights and Duties of Man, other international human rights instruments, and customary international law.

Gun violence in the United States has reached epidemic proportions. It not only affects the United States but also contributes to gun violence in other American States. More than 33,000 people are killed by guns in the United States every year: 60.5% from suicide, 35.9% from homicide, 1.3% from legal intervention, and 1.6% from unintentional (accidental) deaths.² Mass shootings in schools, at concerts, and in theaters take place with alarming frequency,³ creating a climate of fear and uncertainty.⁴ School shootings are especially problematic since they occur with relative frequency and victimize a population that is young, helpless, and captive, as most children

are required to attend school by law, and shootings have occurred in public schools that are operated by the state. Just recently, on February 14, 2018 a nineteen-year-old killed seventeen people in his former high school in Parkland, Florida.⁵ The Parkland shooting has led to a public outcry and to renewed demands for legislative action at both the state and federal levels. Yet government authorities have not been responsive to public demands: the Florida legislature refused to consider an assault weapons ban just days after the shooting and President Trump's primary suggestion to stop school shootings was to arm teachers. These non-solutions offered by U.S. leaders have given rise to a feeling of hopelessness and futility in the United States that, as with previous mass shootings,⁶ nothing effective will be done even though there is clear evidence that gun control laws can reduce gun violence.

GUN VIOLENCE AND GUN CONTROL LAWS IN THE UNITED STATES

On average, ninety-two deaths occur in the United States from gun violence every day.⁷ From 2007 to 2016, the most recent years for which data is available from the U.S. Centers for Disease Control and Prevention (CDC), 333,890 people died from firearm-related injuries.⁸ Mortality rates from firearm violence have increased since the 1950s,⁹ while mortality rates from motor vehicle accidents have continuously declined.¹⁰ As of February 14, 2018, there have been 1,607 mass shootings killing 1,846 people¹¹ since the 2012 Sandy Hook Elementary School shooting in Newtown, Connecticut, which killed twenty children and seven adults, including the gunman himself.¹² Indeed, in both 2015 and 2017, it was estimated that there had been more than one mass shooting per day.¹³ Within the United States, gun ownership is the leading contributor among the factors strongly associated with the risk of death from gun violence.¹⁴ While there is a popular belief that mental illness is the chief culprit in gun violence, the relationship between mental illness and gun violence is far from clear. Moreover, the United States does not appear to have higher levels of mental illness than other countries, suggesting that it is easy access to guns, not mental illness, which drives the country's high fatality rates.¹⁵

In the United States, guns are regulated by both federal and state law. At the federal level, the primary statutes are the Gun Control Act of 1968¹⁶ and the National Firearms Act (NFA)¹⁷ which are enforced by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF).¹⁸ While the Brady Handgun Violence Prevention Act, adopted in 1993, mandated federal background checks on gun purchasers and implemented the National Instant Criminal Background Check System (NICS),¹⁹ the statute only requires background checks when buying guns from a licensed gun dealer²⁰ which creates a loophole for private transactions.²¹ Moreover, during the past decades, federal gun laws have become increasingly lax, leading to an increase in gun-related deaths. The recent Parkland shooting is emblematic of how federal gun control laws are woefully inadequate. The gunman in the Parkland shooting used an AR-15 semi-automatic rifle, which is similar to the weapon used in the Sandy Hook shooting.²² While certain models of AR-15 rifles were banned by the Federal Assault Weapons Ban from 1994 to 2004,²³ on September 13, 2004 Congress allowed the Assault Weapons Ban to expire.²⁴ These weapons are particularly pernicious as they can fire many rounds and cause wounds that are almost inevitably fatal.²⁵ Even assuming mental health issues have a connection to the U.S. gun violence epidemic,²⁶ on February 28, 2017, President Trump signed H.J. Res. 40 into law²⁷ which repealed the Implementation of the NICS Improvement Amendments Act of 2007. This law would have required more stringent background

checks for gun purchases by people with severe mental illness.²⁸ These steps suggest a complete failure at the federal level to protect Americans from gun violence.

At the state level, the situation is more complicated. In *District of Columbia v. Heller*, the United States' Supreme Court struck down provisions of District of Columbia's Firearms Control Regulation Acts of 1975,²⁹ which found stricter requirements for guns kept at home to be unconstitutional and held that "the Second Amendment [of the Constitution] conferred an individual right to keep and bear arms."³⁰ In interpreting that right, the Court held that bans on handguns in the home as well as prohibitions on using a firearm in one's home for immediate self-defense violated the Second Amendment.³¹ While *Heller* applied the Second Amendment only to the federal government, in a subsequent decision, *McDonald v. City of Chicago*,³² the Supreme Court incorporated the Second Amendment interpretation of *Heller* into the Fourteenth Amendment Due Process Clause thereby making the *Heller* ruling effective against the states. This jurisprudence has handicapped state efforts to enact stricter gun control laws. Because *Heller* left many open questions about what regulations will now pass muster under the Second Amendment,³³ a large number of cases have been filed in the lower federal courts challenging the constitutionality of state gun control laws.³⁴ While most state gun laws, including Maryland's assault weapons ban,³⁵ have been upheld by the federal courts, the *Heller* decision has led some courts to overturn others, including an Illinois law which banned carrying loaded handguns in public.³⁶

Despite the failure to adopt gun control measures at the federal level and the roadblock created by *Heller*,³⁷ some states have made progress. Several states including Colorado,³⁸ Connecticut,³⁹ Delaware,⁴⁰ New York,⁴¹ and Oregon⁴² have made background checks a universal requirement for gun purchases thereby closing the federal law loophole. New York has made significant efforts to regulate ammunition purchases,⁴³ and Maryland law requires handgun purchasers to be fingerprinted and complete a training class.⁴⁴ Other states have moved in the opposite direction, however, loosening or repealing their gun control laws. In 2007, Missouri repealed its 1921 permit-to-purchase (PTP) handgun law which required all handgun purchasers to have a valid PTP license to purchase handguns.⁴⁵ The repeal of the PTP law has been correlated with a 25% increase in gun homicide rates in Missouri.⁴⁶ Likewise, in 2013, Kansas revised its state laws to allow carrying of concealed guns in public buildings.⁴⁷ This is despite the findings that states with stricter gun control laws have lower rates of gun violence.⁴⁸

State gun laws like Kansas' concealed-carry statute are of particular concern as a new "Concealed Carry Reciprocity Act"⁴⁹ is currently pending in the United States Senate. This legislation, which passed the U.S. House of Representatives on December 6, 2017,⁵⁰ requires concealed carry permits issued in one state to be honored by all states in the country. The effect of lax federal gun control laws combined with the heterogeneity of state gun laws exposes U.S. citizens to a high risk of gun violence and gun death.

U.S. EXPORT OF GUN VIOLENCE

U.S. gun laws may also be influencing gun violence elsewhere in the Americas. From 2014 to 2016, 50,133 U.S.-sourced guns were recovered in criminal investigations across fifteen

American States.⁵¹ It is estimated that approximately 213,000 guns are smuggled across the United States-Mexico border each year.⁵² Over 70% of guns recovered by Mexican law enforcement since 2007 have been traced to the United States, and 80-90% of guns in the Bahamas and Jamaica come from the United States.⁵³ The gun-related homicide rate in Latin America exceeded the global average by over 30% in 2010, and the United Nations Office on Drugs and Crime reported that easy access to guns is the major contributing factor.⁵⁴ It is troubling that the United States is one of only three countries not to have ratified the 1997 Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials (CIFTA),⁵⁵ whose purpose is “to prevent, combat, and eradicate the illicit manufacturing of and trafficking in firearms, ammunition, explosives, and other related materials.”⁵⁶

In addition, while the United States signed the U.N.’s Arms Trade Treaty (ATT) in 2013,⁵⁷ the Senate has not yet ratified it, most likely influenced by the National Rifle Association, a powerful U.S. gun lobby.⁵⁸ The treaty entered into force in 2014 and now has 130 signatories and 94 States Parties.⁵⁹ The treaty has as its aim the establishment of “the highest possible common international standards for regulating or improving the regulation of the international trade in convention arms; and [to] prevent and eradicate the illicit trade in conventional arms and prevent their diversion.”⁶⁰ These objectives are intended to contribute to “international and regional peace, security and stability; reduc[e] human suffering; [and] promot[e] cooperation, transparency and responsible action . . . in the international trade in conventional arms.”⁶¹ U.N. Secretary-General Ban Ki Moon stated that “it [is] critical that we continue to promote universal participation in the ATT, by encouraging all States, particularly major arms exporters and importers,⁶² to join” He “call[ed] on those States who have not yet done so, to accede to it without delay.”⁶³

CAN GUN CONTROL LAWS BE SUCCESSFUL? THE INTERNATIONAL CONTEXT

The United States is an outlier in terms of gun-related deaths. Rates of gun deaths (both homicide and suicide) are substantially greater compared to other industrialized nations in the Organization for Economic Cooperation and Development (OECD).⁶⁴ For example, based on data from 2014, the United States has nine times as many gun deaths as Australia per 100,000 persons.⁶⁵ Another gun-related statistic in which the United States outnumbers other nations concerns civilian gun ownership.⁶⁶ While constituting only 4.4% of the world’s population, 42% of civilian-owned guns in the world are found in the United States.⁶⁷

The experience of other countries demonstrates that gun control laws work. A number of countries have implemented strict gun control laws in response to mass shootings and public safety concerns and have uniformly seen reductions in gun violence.⁶⁸ For example, the Australian government adopted the National Firearms Agreement (NFA) in 1996 following the Port Arthur massacre.⁶⁹ Since the implementation of the NFA, there has not been a single mass shooting in Australia.⁷⁰ Likewise, in 1997, following the 1996 Dunblane shooting, the United Kingdom adopted two Firearm (Amendment) Acts,⁷¹ banning all handguns.⁷² Since then, there have been no mass shootings involving handguns in the United Kingdom, and, in 2012, there were only a total of thirty-two gun homicides,⁷³ compared to 11,622 in the United States.⁷⁴ Finally, Japan has one of the strictest gun control laws in the world,⁷⁵ and the gun violence rate in Japan is close to zero.⁷⁶ While Switzerland and Israel are often cited by gun advocates as countries that have low rates of

gun violence despite having permissive gun control laws,⁷⁷ this is misleading. Both Switzerland and Israel have stricter gun control laws and lower civilian gun ownership rates than the United States, as well as much lower rates of gun-related deaths and injuries.⁷⁸

HUMAN RIGHTS OBLIGATIONS

As the Commission noted in *Saldaño v. United States*, the United States has been a member of the Organization of American States since June 19, 1951, the date upon which it deposited its instrument of ratification of the Organization of American States (OAS) Charter.⁷⁹ For this reason, it is required to respect and guarantee the rights protected in the OAS Charter and the American Declaration of the Rights and Duties of Man. Under Article I of the American Declaration, “Every human being has the right to life, liberty and the security of his person.”⁸⁰ This right is non-derogable.⁸¹ With an average of ninety-two deaths every day, the United States is arguably failing to protect this right.⁸²

The gun violence epidemic in the United States also implicates other rights guaranteed by the Declaration. The climate of fear and the sense of hopelessness that pervades U.S. society, particularly in the wake of mass shootings affects “the right to take part in the cultural life of the community, to enjoy the arts, and to participate in the benefits that result from intellectual progress,”⁸³ the right to an education⁸⁴ and the right to health.⁸⁵ Mass shootings that take place in schools, movie theaters, and public places generate anxiety in individuals who are attempting to exercise their right to an education or their right to participate in community life. When a State does not protect the human rights of its citizens, it falls short of its OAS obligations.⁸⁶

U.N. bodies have also expressed concern about the human rights issues raised by the gun violence epidemic in the United States. The U.N. High Commissioner for Human Rights released a report detailing the human rights concerns associated with the private purchasing, possession and use of guns,⁸⁷ finding that “[f]irearms-related violence and insecurity [] pose direct risks to the rights to life, security and physical integrity, and also affect other civil, political, social, economic and cultural rights such as the rights to health, education, an adequate standard of living and social security and the right to participate in cultural life.”⁸⁸ The report called for States to protect their citizens from the right-depriving violence associated with the sale and use of guns.⁸⁹ The High Commissioner specifically highlighted the U.S. failure to regulate the sale and use of guns after a particularly horrific mass shooting in Orlando, Florida,⁹⁰ stating, “[i]t is hard to find a rational justification that explains the ease with which people can buy firearms, including assault rifles, in spite of prior criminal backgrounds, drug use, histories of domestic violence and mental illness, or direct contact with extremists – both domestic and foreign.”⁹¹ He asked: “How many more mass killings of school-children, of co-workers, of African-American churchgoers . . . will it take before the United States adopts robust gun regulation?”⁹² Unfortunately, the answer always seems to be, at least one more.

The United States is a party to the International Covenant on Civil and Political Rights (ICCPR), which safeguards the right to liberty and security of person,⁹³ the right of peaceful assembly,⁹⁴ and the right of every child to have measures of protection required by his or her status as a minor, “on the part of his [or her] family, society and the State.”⁹⁵ Daily gun violence and

mass shootings deprive U.S. citizens of their rights under the ICCPR. The Human Rights Committee has found in relation to the United States that “the obligation to effectively protect also requires efforts to curb violence that include the continued pursuit of legislation requiring background checks for all private firearm transfers.”⁹⁶ The report further stated that, “the Committee is concerned about the proliferation of such laws which are used to circumvent the limits of legitimate self-[defense] in violation of the State party’s duty to protect life (arts. 2, 6, and 26).”⁹⁷ This Commission can, and has, used other human rights instruments like the ICCPR to aid in its interpretation and implementation of the Declaration as it is “necessary to consider the provisions of the American Declaration in the broader context of both the inter-American and international human rights systems.”⁹⁸ Here, the international instruments mentioned above all point in the same direction: the gun violence epidemic in the United States is depriving U.S. citizens of their human rights.

Finally, although more than 98% of U.S. shootings are perpetrated by non-State actors,⁹⁹ this may nevertheless engage the State’s responsibility, as the Commission has often noted.¹⁰⁰ The jurisprudence of the Inter-American Court of Human Rights takes this view as well.¹⁰¹ With 33,000 deaths per year, a significant number of which could be prevented through the enactment of sensible gun control laws, it appears that the United States is failing to live up to its obligations under the OAS Charter, the American Declaration, and international human rights law more generally.

CONCLUSION

We commend the Commission’s decision to hold this hearing and are grateful for the Commission’s past expressions of deep concern over the issue of gun violence in the United States. We urge the Commission to consider holding a thematic hearing on this issue pertaining not just to the crisis in the United States, but elsewhere in the Americas. In this regard, we request the Commission to urge the United States to become a party to the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials, and the American Convention on Human Rights. The United States is the only one of the twenty-one founding members of the OAS not to have become a party to this fundamental human rights treaty.

We also request that the Commission urge the United States to adopt international best practices with respect to the sale and regulation of firearms, including: adopting immediate restrictions on the sale and possession of assault weapons such as the AR-15 rifle, used in the Parkland school shooting; the repeal of the Dickey Amendment, banning CDC funding for gun-related research;¹⁰² implementing stricter background checks for the purchase of firearms; and eliminating the private gun transaction loophole. We request that the Commission urge the United States to reject the adoption of the proposed Concealed Carry Reciprocity Act and instead encourage states to follow the lead of those jurisdictions that have been successful at adopting stricter gun control laws. Similar gun control measures have proven effective in other countries, both in terms of stopping mass shootings and reducing death and injury from gun violence.

We also request that the Commission prepare a study on gun violence in America with a special focus on school shootings. Since 2013, there have been approximately 300 school shootings in the United States, an average of about one a week. Gun violence, in general, in America has reached crisis proportions, and the fact that our schools have become theaters of violence deserves your immediate attention.

Please do not hesitate to contact us for further information.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Leila Nadya Sadat', written in a cursive style.

Leila Nadya Sadat
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Endnotes

¹ IACHR Condemns Mass Shooting at a Gay Bar in the United States, Press Release No. 076/16 (June 14, 2016), http://www.oas.org/en/iachr/media_center/preleases/2016/076.asp; IACHR Condemns Mass Shooting in the United States, Press Release No. 154/17 (Oct. 6, 2017), http://www.oas.org/en/iachr/media_center/PReleases/2017/154.asp; IACHR Condemns Mass Shooting in United States and Calls on the State to Adopt Measures to Prevent Future Tragedies, Press Release No. 182/17 (Nov. 16, 2017), http://www.oas.org/en/iachr/media_center/PReleases/2017/182.asp.

² CENTERS FOR DISEASE CONTROL AND PREVENTION (CDC), WEB-BASED INQUIRY STATISTICS QUERY AND REPORTING SYSTEM (WISQARS), <https://www.cdc.gov/injury/wisqars/index.html> [hereinafter CDC Reporting System].

³ Under federal law, “mass killings” mean “three or more killings in a single incident” under the Investigative Assistance for Violent Crimes Act of 2012 § 2(a)(2)(i)(I), Pub. L. No. 112-265, 126 Stat. 2435 (2013), available at <https://www.congress.gov/112/plaws/publ265/PLAW-112publ265.pdf>. The FBI defines mass murder as “four or more victims” slain, in one event, in one location – not including the offender(s). See William J. Krouse & Daniel J. Richardson, *Mass Murder with Firearms: Incidents and Victims, 1999-2013*, CONGRESSIONAL RESEARCH SERVICE 2 (July 30, 2015), available at <https://fas.org/sgp/crs/misc/R44126.pdf>. Although federal law does not formally define “mass shooting,” the term more commonly used in public discourse, the Congressional Research Service defines “mass shooting” as a “multiple homicide incident in which four or more victims are murdered with firearms... within one event, and in one or more locations relatively near one another.” *Id.* A “mass public shooting” is “a multiple homicide incident in which four or more victims are murdered with firearms... within one event, in one or more public locations, such as a workplace, school, restaurant, house of worship, neighborhood, or other public setting.” *Id.* at 3. As the report notes, the national dialogue on gun violence focuses upon mass public shootings, but mass murders involving domestic violence and gang and drug-related shootings occur frequently as well. Organizations compiling gun violence use some variant of this definition; some include “domestic, gang, and drug-related shootings,” see generally GUN VIOLENCE ARCHIVE, <http://www.gunviolencearchive.org/>, whilst others exclude them. Even excluding them, however, the rate of mass shootings tripled during the period of 2011 to 2014. *Mass Shootings Becoming More Frequent*, HARV. SCH. PUB. HEALTH (2014), <https://www.hsph.harvard.edu/news/hsph-in-the-news/mass-shootings-becoming-more-frequent/>.

⁴ See, e.g., Sarah R. Lowe and Sandro Galea, *The Mental Health Consequences of Mass Shootings*, 18 TRAUMA, VIOLENCE & ABUSE 62 (2017) (review of 49 empirical studies finding that mass shootings are associated with a variety of adverse psychological outcomes in not only survivors and members of affected communities but also indirectly exposed populations).

⁵ Robin Lindsay and Sarah Stein Kerr, *Filming a Rampage: Students Capture Florida School Attack*, N.Y. TIMES (Feb. 14, 2018), https://www.nytimes.com/2018/02/15/us/florida-shooting.html?emc=edit_na_20180215&nl=breaking-news&nid=66995365&ref=headline.

⁶ Allen Rostron, *A New State Ice Age for Gun Policy*, 10 HARV. L. & POL’Y REV. 327, 332-35 (2016) (reviewing the failure of Congress to act following every mass shooting since the 2012 Sandy Hook incident).

⁷ CDC Reporting System, *supra* note 2.

⁸ *Id.*

⁹ Garen J. Wintemute, *The Epidemiology of Firearm Violence in the Twenty-First Century United States*, 36 ANNUAL REV. PUBLIC HEALTH 5, 6 (2015).

¹⁰ *Id.*

¹¹ Lexington, *The Banality of Mass Murder: America's Latest School Slaughter*, THE ECONOMIST (Feb. 15, 2018), <https://www.economist.com/blogs/democracyinamerica/2018/02/banality-mass-murder>.

¹² *Id.*

¹³ See Christopher Ingraham, *We're now averaging more than one mass shooting per day in 2015*, WASH. POST (Aug. 26, 2015), <https://www.washingtonpost.com/news/wonk/wp/2015/08/26/were-now-averaging-more-than-one-mass-shooting-per-day-in-2015/>; John Haltiwanger, *There have been more mass shootings in the U.S. in 2017 than days*, NEWSWEEK (Aug. 29, 2017), <http://www.newsweek.com/there-have-been-more-mass-shootings-days-2017-656681>.

¹⁴ See Lisa M. Hepburn and David Hemenway, *Firearm availability and homicide: A review of the literature*, 9 AGGRESSION AND VIOLENT BEHAVIOR 417 (2004) (review of most-cited and representative empirical studies).

¹⁵ See Jeffrey W. Swanson et al., *Mental illness and reduction of gun violence and suicide: bringing epidemiologic research to policy*, 25 ANNALS EPIDEMIOLOGY 366, 368 (2015).

¹⁶ 18 U.S.C. § 921, *et seq.*

¹⁷ 26 U.S.C. § 5801, *et seq.*

¹⁸ BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES (ATF), *see generally* <https://www.atf.gov/>.

¹⁹ 18 U.S.C. § 921-22 (2012).

²⁰ *Id.* § 922(t) (“(t)(1) Beginning on the date that is 30 days after the Attorney General notifies licensees under section 103(d) of the Brady Handgun Violence Prevention Act that the national instant criminal background check system is established, a licensed importer, licensed manufacturer, or licensed dealer shall not transfer a firearm to any other person who is not licensed under this chapter...”).

²¹ See BRADY CTR. TO PREVENT GUN VIOLENCE, NO CHECK. NO GUN. WHY BRADY BACKGROUND CHECKS SHOULD BE REQUIRED FOR ALL GUN SALES 12-20 (2009), <http://www.bradycampaign.org/sites/default/files/no-check-no-gun-report.pdf>.

²² Lindsay & Kerr, *Filming a Rampage*, *supra* note 5. Julie Vitkovskaya and Patrick Martin, *4 Basic Questions about the AR-15*, WASH. POST (Feb. 16, 2018), https://www.washingtonpost.com/news/checkpoint/wp/2018/02/15/4-basic-questions-about-the-ar-15/?utm_term=.c8d987d78991 (explaining the AR-15 stands for the Armalite rifle, named after the company that developed the weapon, and first used during the Vietnam War. It is the civilian counter-part to the military’s M-16 and is semiautomatic — the user needs to pull the trigger to fire each shot. “The AR was designed for quick reloading in combat situations, and it can fire dozens of rounds in seconds. The butt of the rifle, or the stock, has a large internal spring that absorbs the shock of each firing. The low recoil makes it easier to shoot and is more accurate than earlier military weapons. It can also be easily customized by adding scopes, lasers and more.”).

²³ Violent Crime Control & Law Enforcement Act of 1994, Pub. L. No 103-322, § 110102, 108 Stat.1796 (1994).

²⁴ *Id.* § 110105(2); Brad Plumer, *Everything You Need to Know about the Assault Weapons Ban, in One Post*, WASH. POST. (December 17, 2012), https://www.washingtonpost.com/news/wonk/wp/2012/12/17/everything-you-need-to-know-about-banning-assault-weapons-in-one-post/?utm_term=.b444e18979fc.

²⁵ Heather Sher, *What I Saw Treating the Victims From Parkland Should Change the Debate on Guns*, THE ATLANTIC (Feb. 22, 2018), <https://www.theatlantic.com/politics/archive/2018/02/what-i-saw-treating-the-victims-from-parkland-should-change-the-debate-on-guns/553937/>.

²⁶ For example, there is evidence that the Florida shooter exhibited signs of mental health issues, Richard Fausset and Serge F. Kovalski, *Nikolas Cruz, Florida Shooting Suspect, Showed ‘Every Red Flag,’* N.Y. TIMES (Feb. 15, 2018), <https://www.nytimes.com/2018/02/15/us/nikolas-cruz-florida-shooting.html>.

²⁷ H.J. Res. 40, Pub. L. No. 115-8, 131 Stat. 15 (2017).

²⁸ Implementation of the NICS Improvement Amendments Act of 2007, 20 C.F.R. pt. 421 (2016); Ashley Killough and Ted Barrett, *Trump signs bill nixing Obama-era guns rule*, CNN (Feb. 28, 2017), <http://www.cnn.com/2017/02/28/politics/guns-mental-health-rule/>.

²⁹ D.C. Code Ann. §7-2501, *et seq.* (2017).

³⁰ District of Columbia v. Heller, 554 U.S. 570, 595 (2008).

³¹ *Id.* at 635.

³² McDonald v. City of Chicago, 561 U.S. 742, 791 (2010).

³³ Heller, *supra* note 30, at 626.

³⁴ See Adam Liptak, *Supreme Court Gun Ruling Doesn’t Block Proposed Controls*, N.Y. TIMES (Dec. 18, 2012), <http://www.nytimes.com/2012/12/19/us/gun-plans-dont-conflict-with-justices-08-ruling.html>.

³⁵ See Kolbe v. Hogan, 849 F.3d 114, 140 (4th Cir. 2017) (upholding Maryland’s Firearm Safety Act of 2013 banning assault weapons and large-capacity magazines as constitutional).

³⁶ See Moore v. Madigan, 702 F.3d 933, 939-40 (7th Cir. 2012) (holding that Illinois law banning individuals from carrying loaded guns in public was unconstitutional).

³⁷ Heller, *supra* note 30, at 570.

³⁸ COLO. REV. STAT. § 18-12-112 (West, Westlaw through the First Reg. Sess. of the 70th General Assemb. (2015)).

³⁹ See CONN. GEN. STAT. § 29-36(1) (West, Westlaw through General Statutes of Connecticut, Revised to Jan. 1, 2016).

⁴⁰ DEL. CODE § 1448B (West, Westlaw through 80 Laws 2015, ch. 194).

⁴¹ N.Y. GEN. BUS. LAWS § 898 (West, Westlaw through L.2016, ch. 1).

⁴² OR. REV. STAT. ANN. §166.433 (West, 2015).

⁴³ N.Y. PENAL LAW § 400.03 (West, Westlaw through L.2016, ch. 1).

⁴⁴ MD. CODE ANN., PUB. SAFETY § 5-117.1 (West, Westlaw through Ch. 1 to 6 of the 2016 Reg. Sess. of the Gen. Assemb.).

⁴⁵ Daniel Webster et al., *Effects of the Repeal of Missouri’s Handgun Purchaser Licensing Law on Homicides*, 91 J. URBAN HEALTH 293, 294 (2014).

⁴⁶ *Id.*

⁴⁷ 2013 Kan. Sess. Laws ch. 105, § 2.

⁴⁸ Eric W. Fleegler et al., *Firearm Legislation and Firearm-Related Fatalities in the United States*, 173 JAMA INTERNAL MED. 732, 734 (2013).

⁴⁹ Concealed Carry Reciprocity Act of 2017, H.R. 38, 115th Cong. (1st Sess. 2017).

⁵⁰ *Id.*

⁵¹ Chelsea Parsons & Eugenio Weigend, *Beyond Our Borders: How Weak U.S. Gun Laws Contribute to Violent Crime Abroad* 1, CTR. FOR AMERICAN PROGRESS (Feb. 2, 2018), <https://www.americanprogress.org/issues/guns-crime/reports/2018/02/02/445659/beyond-our-borders/>.

⁵² *Id.*

⁵³ Julia Sweig, *A Strategy to Reduce Gun Trafficking and Violence in the Americas* 1-2, COUNCIL ON FOREIGN RELATIONS (July 29, 2013), <https://www.cfr.org/report/strategy-reduce-gun-trafficking-and-violence-americas>.

⁵⁴ UNITED NATIONS OFFICE ON DRUGS AND CRIME, *Global Study on Homicide* 43-44 (2011), https://www.unodc.org/documents/congress/background-information/Crime_Statistics/Global_Study_on_Homicide_2011.pdf.

⁵⁵ OAS, INTER-AMERICAN CONVENTION AGAINST THE ILLICIT MANUFACTURING OF AND TRAFFICKING IN FIREARMS, AMMUNITION, EXPLOSIVES, AND OTHER RELATED MATERIALS (A-63), Jul. 1, 1998, http://www.oas.org/en/sla/dil/inter_american_treaties_A-63_illicit_manufacturing_trafficking_firearms_ammunition_explosives.asp. 31 of the 34 American States have ratified CIFTA, with only the United States, Canada and Jamaica remaining outside the treaty. *See* OAS, CIFTA SIGNATORIES AND RATIFICATIONS, <http://www.oas.org/juridico/english/sigs/a-63.html>.

⁵⁶ CIFTA, *supra* note 55, art. II. The preamble states that the purpose of the treaty is not to “discourage or diminish lawful leisure or recreational activities such as travel or tourism for sport shooting, hunting, and other forms of lawful ownership and use recognized by the States Parties.” *Id.* preamble, cl. 11. The Convention also “does not commit States Parties to enact legislation or regulations pertaining to firearms ownership, possession, or trade of a wholly domestic character.” *Id.* preamble, cl. 12.

⁵⁷ *Id.* ARMS TRADE TREATY, Sept. 25, 2013, U.N.T.S. I-52373, https://treaties.un.org/doc/Treaties/2013/04/20130410%2012-01%20PM/Ch_XXVI_08.pdf.

⁵⁸ *See, e.g., Obama Administration Signs United Nations Arms Trade Treaty*, NRA-ILA (Sept. 25, 2013), <https://www.nraila.org/articles/20130925/obama-administration-signs-united-nations-arms-trade-treaty>; Peter Finn, *NRA opposes U.N. arms treaty*, Wash. Post. (Mar. 16, 2013), *available at* https://www.washingtonpost.com/world/national-security/us-nra-square-off-over-small-arms-treaty/2013/03/16/ae495dae-8d76-11e2-b63f-f53fb9f2fcb4_story.html?utm_term=.963a2fc62590.

⁵⁹ *See* UNITED NATIONS TREATY COLLECTION, STATUS OF TREATY, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVI-8&chapter=26&clang=_en.

⁶⁰ ATT, *supra* note 58, art. 1 (object and purpose).

⁶¹ *Id.*

⁶² The United States is both a major arms importer and exporter. *See* Parsons & Weigend, *supra* note 51, at 3-10.

⁶³ UNITED NATIONS SECRETARY-GENERAL, STATEMENT BY THE SECRETARY-GENERAL ON THE ENTRY INTO FORCE OF THE ARMS TRADE TREATY (Dec. 23, 2014), <https://www.un.org/sg/en/content/sg/statement/2014-12-23/statement-secretary-general-entry-force-arms-trade-treaty>.

⁶⁴ Philip Alpers et al., *Guns in the United States: Rate of Gun Suicide per 100,000 People*, Sydney Sch. of Pub. Health, GUNPOLICY (Feb. 22, 2018), http://www.gunpolicy.org/firearms/compare/194/rate_of_gun_suicide/66.]

⁶⁵ Wintemute, *supra* note 9, at 15 fig. 11.

⁶⁶ SMALL ARMS SURVEY GENEVA, SMALL ARMS SURVEY 2007: GUNS AND THE CITY 47 (2007).

⁶⁷ See Kim Hjelmggaard, *Americans Really Like Their Guns. They Own 42% of 650 Million Civilian Firearms Worldwide*, USATODAY (Oct. 3, 2017), <https://www.usatoday.com/story/news/world/2017/10/03/americans-really-like-their-guns-they-own-42-650-million-civilian-firearms-worldwide/726321001/>; Max Fisher & Josh Keller, *What Explains U.S. Mass Shootings? International Comparisons Suggest an Answer*, N.Y. TIMES (Nov. 7, 2017), <https://www.nytimes.com/2017/11/07/world/americas/mass-shootings-us-international.html>.

⁶⁸ See generally REDUCING GUN VIOLENCE IN AMERICA: INFORMING POLICY WITH EVIDENCE AND ANALYSIS (Daniel W. Webster & Jon S. Vernick eds., 2013).

⁶⁹ *Id.* at 196-201; Michael J. Dudley et al., *The Port Arthur Massacre and the National Firearms Agreement: 20 Years On, What are the Lessons?*, 204 MED. J. AUSTL. 381, 381-383 (June 6, 2016), https://www.mja.com.au/system/files/issues/204_10/10.5694mja16.00293.pdf.

⁷⁰ Webster & Vernick, *supra* note 68, at 202.

⁷¹ Firearms (Amendment) Act 1997, http://www.legislation.gov.uk/ukpga/1997/5/pdfs/ukpga_19970005_en.pdf; Firearms (Amendment) (No. 2) Act 1997, http://www.legislation.gov.uk/ukpga/1997/64/pdfs/ukpga_19970064_en.pdf.

⁷² Michael J. North, *Gun Control in Great Britain after the Dunblane Shootings in REDUCING GUN VIOLENCE IN AMERICA: INFORMING POLICY WITH EVIDENCE AND ANALYSIS* 185, 185 (Daniel W. Webster & Jon S. Vernick eds., 2013).

⁷³ *Id.*

⁷⁴ See Wintemute, *supra* note 9, at 8.

⁷⁵ See David B. Kopel, *Japanese Gun Control*, 2 ASIA PAC. L. REV. 26, 26-27 (1993).

⁷⁶ See Max Fisher, *A Land without Guns: How Japan Has Virtually Eliminated Shooting Deaths*, THE ATLANTIC (July 23, 2012), <https://www.theatlantic.com/international/archive/2012/07/a-land-without-guns-how-japan-has-virtually-eliminated-shooting-deaths/260189/>.

⁷⁷ See, e.g., David Lampo, *Gun Control: Myths and Realities*, CATO INSTITUTE (May 13, 2000), <https://www.cato.org/publications/commentary/gun-control-myths-realities>. But see Ezra Klein, *Myth Busting: Israel and Switzerland Are not Gun Toting Utopias*, WASH. POST (Dec. 14, 2012), <https://www.washingtonpost.com/news/wonk/wp/2012/12/14/mythbusting-israel-and-switzerland-are-not-gun-toting-utopias/>.

⁷⁸ Janet E. Rosenbaum, *Gun Utopias? Firearm Access and Ownership in Israel and Switzerland*, 33 J. PUB. HEALTH POL. 46 (2012).

⁷⁹ Victor Saldaño v. United States, Case 12.254, Inter-Am. Comm'n H.R., Report No. 24/17, OEA/Ser.L/V/161, doc. 31 rev. ¶ 76 (2017).

⁸⁰ American Declaration of the Rights and Duties of Man, art. 1, May 2, 1948 [hereinafter American Declaration].

⁸¹ See Michael Domingues v. United States, Case 12.285, Inter-Am. Comm'n H.R., Report No. 62/02, ¶ 85 (2002) (finding that a *jus cogens* norm can be non-derogable, even if a State has not signed a treaty explicitly protecting such a norm); Restrictions to the Death Penalty (Arts. 4(2) and 4(4) American Convention on Human Rights), Advisory Opinion OC-3/83, Inter-Am. Ct. H.R. (ser. A) No. 3, ¶ 61 (Sept. 8, 1983) (“Article 27 of the Convention allows the States Parties to suspend, in time of war, public danger, or other emergency that threatens their independence or security, the obligations they assumed by ratifying the Convention, provided that in doing so they do not suspend or derogate from certain basic or essential rights, among them the right to life guaranteed by Article 4.”) (emphasis added).

⁸² CDC Reporting System, *supra* note 2.

⁸³ *Id.* art. XIII.

⁸⁴ American Declaration, *supra* note 80, art. XII.

⁸⁵ *Id.* art. XI.

⁸⁶ See, e.g., González et al. (Campo Algodonero) v. Mexico, Preliminary Objection, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶ 181 (Nov. 16, 2009) (finding a failure on the part of a State to act with due diligence to protect an OAS right); Velásquez-Rodríguez v. Honduras, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No.4, ¶ 156-60 (July 29, 1998) (finding that States have a responsibility to protect one’s citizens and prevent the violation of human rights); Jessica Lenahan (Gonzalez) et al. v. United States, Case 12.626, Inter-Am. Comm’n H.R., Report No. 80/11, OEA/Ser.L/V/II, doc. 69 rev. ¶ 128 (2011) (finding that the State has an obligation to “prevent and respond to the actions of non-state actors and private persons.”).

⁸⁷ Rep. of the United Nations High Comm’r for Human Rights, Human Rights and the Regulation of Civilian Acquisition, Possession and Use of Firearms, U.N. Doc. A/HRC/32/21, ¶ 10 (April 15, 2016) [hereinafter Rep. of OHCHR 2016].

⁸⁸ *Id.* ¶ 52.

⁸⁹ *Id.* ¶ 53.

⁹⁰ *In Wake of Mass Shooting, UN Rights Chief Urges US to Consider Robust Gun Control*, UN NEWS (June 14, 2016), <https://news.un.org/en/story/2016/06/532022-wake-mass-shooting-un-rights-chief-urges-us-consider-robust-gun-control>.

⁹¹ *Id.*

⁹² *Id.*

⁹³ International Covenant on Civil and Political Rights art. 9 (Dec. 16, 1966) [hereinafter ICCPR].

⁹⁴ *Id.* art. 21.

⁹⁵ *Id.* art. 24.

⁹⁶ Rep. of OHCHR 2016, *supra* note 87 (citing Human Rights Committee, concluding observations on the fourth periodic report of the United States of America, CCPR/C/USA/CO/4, ¶ 10 (Apr. 23, 2014)) [hereinafter Human Rights Committee, Concluding Observations 2014].

⁹⁷ *Id.* ¶ 10.

⁹⁸ Undocumented Workers (United States of America), Case 12.834, Inter-Am. Comm'n H.R., Report No. 50/16, OEA/Ser.L/V/II.159, doc. 59 ¶ 68 (2016).

⁹⁹ CDC Reporting System, *supra* note 2.

¹⁰⁰ *See, e.g.*, Jessica Lenahan (Gonzalez), et al. v. United States, *supra* note 86.

¹⁰¹ *See, e.g.*, González et al. (Campo Algodonero) v. Mexico, *supra* note 86.

¹⁰² Omnibus Consolidated Appropriations Act, Pub. L. No. 104-208, 110 Stat. 3009 (1996).