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## Jus Commmercium Armis: Amidst the Abyss of Arms

<https://www.e-ir.info/2021/01/19/jus-commercium-armis-amidst-the-abyss-of-arms/>

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Weapons are taking the centre-stage in the ever-changing nature of conflict and warfare. Shrinking boundaries and increasing connectivity bring up new ethical dilemmas around weapons and armaments. This paper uses the principle of *jus commercium armis* – just trade of arms, to refer to the ethical conundrums around the trade of weapons and armaments, especially in areas of conflict. Weapons and armaments can be classified into conventional and unconventional weapons or weapons of mass destruction (WMDs) (Joenniemi, 1976). This paper focuses on ‘Small Arms and Light Weapons’[1] – a subclass of conventional weapons. SALWs consist three major sub-divisions namely – small arms, light weapons and ammunition and explosives[2] (Kumar, 2008). Their characteristics make them the top choice of states in combat and account for their ubiquitous presence in every conflict. Their low-cost, easy use and maintenance, increased efficiency and lethality, portability and concealability make them popular not only amongst state actors but also non-state actors[3]. These qualities pose an ethical dilemma of whether their trade is morally justified or no – something that this paper seeks to explore. Before delving into this question, the paper will first establish the meaning of arms trade, its operation from different levels of analyses, followed by the purpose and the methods with which it is practiced. Later, using a case study of the Central African Republic Civil War, it will explore arms trade from political, economic and legal angles and various theoretical concepts. In conclusion, through these arguments, the paper will build on the complex and contextual nature of the principle of *jus commercium armis*, which it seeks to theorise.

### Arming Up!

Arms trade cannot be thought of as universal or something that exists in the similar shape or form everywhere. Rather, it can be looked at using three levels of analyses, i.e. the individual, the inter-state or sub-systemic and the systemic (Singer, 1961). The individual[4] level of analysis looks at the trade carried out inside the sovereign borders of a state. The internal actors involved here include national and state police and local Private Military Contractors (PMCs). The sub-systemic level looks at the trade amongst a few state or non-state[5] actors. Rebels, terrorist outfits, international PMCs are also included in the list of these external actors. However, trades amongst them are generally very covert or “hush trades”. Lastly, the systemic level encompasses arms trade amongst regional and international multi-lateral organisations and alliances such as the United Nations, African Union, European Union, North Atlantic Treaty Organisation, etcetera. Procurement of arms by the police, brings its own problems of increased police brutality, racialised exploitation and a sort of war against the underclass (Daryl, 2006). Trade of arms with private individuals, PMCs and mercenaries brings forth concerns around increasing street gang violence, crime (LaFollette, 2000), privatisation of war and culpability (Machairas, 2014). Similarly, other concerns are associated with arms trade with external actors. Monopoly of certain states over arms trade and corruption (Kapstein, 1994), leads to similar technology ending up with all parties, making it increasingly difficult to distinguish between the “allies” and the “adversaries”.

This categorisation is important in understanding arms trade because of varying degree of legitimacy associated with each of these, especially external actors[6]. Majority ethical arguments are based on the idea of legitimacy[7] of the involved actors. Legitimacy seems to coexist with the idea of intimacy, home, familiarity and the way they shape state or individual identity (Bulley, 2010). The other is viewed as illegitimate, without any consideration of the (possible legitimate) context they are embedded in. Hence, legitimacy is accredited to certain actors in a biased way making categorisation necessary to understand various legs of arms trade.

# Jus Commercium Armis: Amidst the Abyss of Arms

Written by Deepanshu Singal

The purposes behind arms trade significantly vary with different levels. While at the first level arms trade is broadly justified on the pretence of national security, the trade abroad has a different story. Apart from conflict being the main reason behind arms trade, it can be approached in a utilitarian[8] or a deontological[9] way. The utilitarian approach builds on the two concepts of dependence and deterrence. States may indulge in arms trade to increase their buyer's dependency on them, while the buyers are fooled into believing in false notions of power and political influence that seem to come along with them. These vulnerabilities can then be manifested into political or other gains. Military dependence may also translate into cultural, linguistic and ethnic support for the supplier state. However, such an agenda has to be read from in between the lines. States may supply arms with an aim to deter conflict in a particular region and bring more peace and stability (Vox, 2018). The Just War theory[10] (Asad, 2009) can be tweaked to justify arms trade with external rebel groups fighting a "just war" as it falls in line with the R2P[11] of the supplier states (Pattison, 2015). However, questioning the decision of terming an armed rebellion as "just" is enough to problematise this argument. Furthermore, the deontological approach asserts that arms trade with any kind of rebellion is wrong. However, it does argue that states inherently have a right to defend themselves for which arms trade is justified, though it proscribes their resale to "oppressive regimes" or any rebel groups overthrowing them, even when that would ensure greater protection of their own citizens (Christensen, 2015). Nevertheless, this argument neglects that poorer economies would then not have access to defence because of lack of affordability of arms. This briefly describes the contrasting purposes of arms trade and their justifications at different levels.

## Where is the Arms Fair?

The processes involved in arms trade are significant to the understanding of *jus commercium armis*. Arms are viewed as the materialisation of state capabilities. The libido attached to power translates into a strong desire for arms and the immense degree of gratification that comes with their possession. This is fetishization of arms. The craving for arms, fuelled by conflict, hunger for money, power and political affinity, leads to a vying arms race. This makes arms trade appear like a fair where interested parties shop for the arms of their choice in clandestine and non-clandestine ways, alongside by being "entertained" by their live shows.

Intra-national movements of arms usually include easy transfer of ownership amongst the parties to the trade (The Illicit Market in Firearms 2019). However, things get more complicated on going international. States often indulge in arms trade through Inter-Governmental Agreements (IGAs) and formal, diplomatic procurement procedures. These contracts are often placed in advance and the arms are tailor-made as per the buyer's requirements. States might also "trade" numbers of troops and arms on the systemic level[12]. Trades involving illegitimate non-state actors like rebels and terrorists happen as "hush trades". They include cross-border smuggling of arms through illicit grey and black-market channels (The Illicit Market in Firearms 2019) as explained later in the paper. Popular culture shows PMCs and private arms manufacturers putting up literal "Arms Fairs" for selling their products. Despite the lack of enough evidence this possibility is not dismissible. Hence, the diversity in the manner of execution of arms trade further nuances the principle of *jus commercium armis*.

## Central African Republic

Central African Republic (CAR) is a small landlocked state located in the heart of the African continent. It has rich reserves of gold, diamonds and timber (*Inside a Civil War Most People Have Never Heard Of* 2017). It gained independence from France in 1960. Since then, it has had a turbulent past painted with bloodshed and multiple military coups. The nature of conflict in the region has been quite inconsistent. The most recent and ongoing civil war broke out in late 2012 when the new Séléka group[13] started overturning the northern and central CAR. They ousted President Bozize's government in March 2013 and Séléka leader Michel Djotodia was sworn in as the president in August that year (Central African Republic profile – Timeline 2018). Djotodia suspended the constitution and dissolved the parliament of CAR, causing "total breakdown of law and order" as exclaimed by then UN Secretary General Ban Ki-moon (Central African Republic profile – Timeline 2018). In October 2013, the UN Security Council approved the deployment of the UN Peace Keeping Forces (UNPKF) to support the AU and French troops already on ground. Djotodia resigned in January 2014 over criticism of his inability to control sectarian violence amongst the rivals. The Muslim Séléka and the Christian Anti-Balaka forces agreed to having ceasefire talks in July 2014. The UN launched a peacekeeping mission MINUSCA[14], (CFR, 2020) deploying more troops in CAR alongside the French.

# Jus Commmercium Armis: Amidst the Abyss of Arms

Written by Deepanshu Singal

However, things only got worse.

Amidst all the bloodshed, there were several atrocities and crimes against humanity committed in the region. The armed groups together controlled about 70 percent of CAR (HRW, 2019). The UN accused the Anti-Balaka group of ethnic cleansing and kidnappings by the Lords Resistance Army (LRA) increased significantly. Sexual violence is used as a weapon against women and children of the other sectors to get back on the adversaries (HRW, 2020). There are about 2.9 million people in need of humanitarian assistance and 581,362 civilians estimated to be internally displaced (CFR, 2020). CAR ranked 188 out of 189 countries for life expectancy, income and education (*An Escalating Crisis in Central African Republic* 2019). In 2015, France carried out investigations into the alleged child abuse by French soldiers deployed in the region to protect the civilians (Central African Republic profile – Timeline 2018). In an incident, a large number of innocent civilians, manipulated and armed by the militants, were killed in a confrontation with the UNPKF (Kokopakpa, 2018). These amongst hundreds of others, reflect the dire state in which citizens of CAR live. Humanity is pushed to the ultimate edge. The protectors of the land are themselves becoming perpetrators of countless horrendous crimes. This enunciates the pathetic situations and the apathetic approach of governments and organisations towards the actual impact and human costs of the conflict.

The war and the atrocities are fuelled by the arms trade in this region. Such a trade might not appear ethical. Yet, it can be turned around. Without policing and interventions by foreign actors, everything could be worse off. For example, after the withdrawal of the Ugandan forces fighting the LRA for almost five years, in April 2017, there was a sudden upsurge in violence, killing several UNPKF personnel and carrying out attacks on convoys and bases (Central African Republic profile – Timeline 2018). Hence, a constant flow of arms to resist the violent rebel groups, might now sound morally permissible. Nevertheless, procurement of similar arms technology by the rebels makes the ethical trade challenging. Despite scores of arms embargoes, rebel groups and other non-state actors procure advanced arms through variety of illicit grey and black-market channels (The Illicit Market in Firearms 2019), “ant trade”[15] (*Illicit Trafficking* 2018) and corrupt state actors. During 2013, Sudan provided the new Séléka government with military supplies, as it did for the preceding governments. Chinese and possibly Iranian origin arms have also been re-directed to the Séléka government through Sudan though this stands in direct violation of the Chinese end-user agreement. It is alleged that the anti-balaka rebels have been armed by Spanish, Italian and Cameroonian arms (*Non-State Armed Groups In The Central African Republic* 2015). In December 2017, Russia sought UN’s permission to supply arms to CAR despite the embargo for “peaceful purposes”. However, it was seen as a Russian attempt to buff up its existing multibillion-dollar arms trade with Africa (WPR, 2018). China and the US have also provided military vehicles and arms to the CAR government to boost their military capabilities and use them for humanitarian good (Kelly, 2019). Nevertheless, it is worth remembering that the very government is formed by a rebel group. The described arms are withal the thousands of troops already stationed in CAR. The ubiquity of multi-level arms trade makes CAR a perfect case study to analyse various theoretical concepts and the principle of *jus commercium armis* from an empirical lens.

## The Truth of *Jus Commmercium Armis*

The principle of *jus commercium armis* cannot be thought of as a monolithic binary of right or wrong. Arms trade is an intricate system. The earlier parts of the paper describe certain ethical approaches taken towards certain aspects of arms trade. Now, it will focus on arms trade as a whole. Given the context of the CAR Civil War, arms trade can be looked at from political, economic and legal viewpoints.

Arms are seen as material manifestation of state’s capabilities and hence found synonymous to power. This is a very one-dimensional view of politics of power[16] i.e. as a coercive strategy (Lukes, 2005). However, that is not the case. With sizeable dominance over arms trade and supply, states exercise politics of power multidimensionally. Arms can be used to exercise two-dimensional political power[17] and make the other formulate policies favourable to the supplier. Additionally, supporting rebel groups, in their formation of a new government, through arms trade, might lead to the creation of a soft corner towards the supplier state. This finally actualises the third-dimension power. While looking at the politics of arms trade, its influence on the governance of bodies must not be forgotten. By making certain arms available, arms trade aids thanatopolitics[18]. It allows production of killable bodies based on their “other” ethnicity, religion or political allegiance (Joronen, 2016). Subjugation of life of CAR citizens to the power and

# Jus Commercium Armis: Amidst the Abyss of Arms

Written by Deepanshu Singal

death by arms opens the floor for necropolitics to operate. Necropolitics is pushing certain bodies closer to death through various means. Incidences like the manipulation and arming up of innocent civilians confers them with the status of 'the living dead' – living bodies, treated like disposable corpses. Under the constant threat of being killed, CAR nationals constantly live on the edge (Mbembé and Meintjes, 2003). On the contrary, notions of biopolitics[19] also seem to flow out of arms trade (Joronen, 2016). The presence of arms with the "right" authority safeguards the civilian lives and helps them come out of this mess. Hence, the political view of arms trade can in no sense be seen as monochromatic.

The economic viewpoint of arms trade points into the direction of marketisation of arms. An entire economy of arms is created upon the fetishization of arms and is governed by market forces. This indicates a shift towards neo-liberal notions of globalisation, privatisation and financialization of arms. Just as any other trade markets, arms trade markets can also be thought of in supply and demand terms. Intuitively, suppliers dictate the market during excess demand[20] and vice versa. However, suppliers, when faced by demand shortages, may fuel dormant conflicts to incite demand (The Illicit Market in Firearms 2019). Supply takes care of the production and distribution of arms withal slipping them from 'legal' to 'illegal'. This shady work is often liked to infamous private dealers and "rogue states" (Schroeder et al., 2006). The demand of arms is motivated by several obvious factors such as money, hard power, influence, etcetera. However, factors such as "patriotism[21], conflict mentality[22] and gun culture[23]" also significantly influence the demand and supply chains of arms (J. Arsovska et al., 1970).

Nonetheless, this neo-liberal market model can be easily problematised. Defence is a classic example of a public good that must be provided by the state to all its citizens (P. Levine et al., 1997). Privatisation of this responsibility creates potential risk of exclusion, marginalisation of certain communities and increased precarity of life. Moreover, this denies the poorer states, who cannot afford to participate in such elitist markets, their right to security. This often leads to the dumping of outdated arms technologies in such states at low rates, thus compromising their security. The beauty of this neo-liberal framework lies in the fact that it attempts to solve this issue by advocating FDIs[24] in military infrastructure to make states self-reliant. However, it remains unclear how do poor, conflict-ridden states like the CAR fit into this model, where even the basic necessities for survival aren't guaranteed. Hence *jus commercium armis* might hold true while talking about ethical consumption of arms (which in itself is highly problematic[25]) in legitimate markets albeit it fades away when markets become partial to certain states and societies.

Several legal frameworks regulate and restrict arms trade and proliferation on the domestic and international levels though their prime focus are the non-state actors. States have varying domestic laws on gun control and arms trade. On the international level, the Arms Trade Treaty[26] (ATT) (United Nations, 2013) is seen as a milestone act towards better regulation and eradication of illicit arms trade. Other frameworks like the International Humanitarian Law, Geneva Convention lay down behavioural and participatory guidelines for PMCs in armed conflicts. Several arms embargoes are placed by various nations and bodies like the UN on conflict-ridden regions. Recently, on 28<sup>th</sup> July 2020, the United Nations unanimously extended sanctions and arms embargoes against CAR till 31<sup>st</sup> August 2021 (United Nations Security Council, 2020). Despite extensive legislations, the line between legal and illegal trade is difficult to draw. These laws run into hundreds of pages and humdrum details and exceptions. They can be circumvented by governments or non-state actors, giving birth to grey-markets. Arms traded here are often labelled as 'misplaced, lost or forgotten' (The Illicit Market in Firearms 2019). Black-markets clearly violate international laws and trade in illegally procured arms without governmental consent, through various ways (The Illicit Market in Firearms 2019) (Jackson, 2010). Moreover, non-state actors like PMCs are considered as extra-judicial actors due to their rare, if not lack of, mention in international conventions. The non-binding nature of international laws helps them escape any legal accountability of arms. Even during mediation, the role of multilateral organisations is limited due to their lack of jurisdictional powers. In January 2015, the CAR government rejected the ceasefire deal struck between two militia groups simply because it was not at the table (Central African Republic profile – Timeline 2018). The situations are worse in conflict-ridden regions where there is almost a vacuum for state-capacity. The reality might not be as grim, if state-capacities could be enhanced and better domestic laws could be enforced. Yet, this remains a utopian idea due to lack of legitimacy of domestic governments formed in conflict-ridden regions.

Theorising involves creation of suitable categories. They put concepts and events into certain tailor-made categories in order to explain them better. This paper also uses several categories to illustrate and simplify arms trade.

# Jus Commmercium Armis: Amidst the Abyss of Arms

Written by Deepanshu Singal

Exclusions are created as an epiphenomenon to category creation. The interaction between these zones of exclusion and the categories highlights structural differences, which get institutionalised and produce asymmetrical hierarchies. These hierarchies give birth to zones of neediness (Stump, 2020). In context to CAR, neediness could be understood as the need for peace, stability and security. The zone of exclusion i.e. CAR, when comes in contact with the free western world, leads to the creation of CAR as a zone of neediness. This need can only be fulfilled only by ethical interventions in several forms including arms trade. This endorses *jus commercium armis*. However, the synthesis of categorical boundaries is embedded in the context where they are produced. Hence, it would be wrong to identify categories as universal.

Without categories, everything appears in liminal spaces. Liminal spaces can be thought of as intermediary grey areas where binaries fuzz into spectrums (Perugini & Gordon, 2017). By virtue of being in liminal spaces, more emphasis is laid on the contextual, rather than absolute nature of things. This also affects the embodiment of arms trade (Wilcox, 2016). Arms can be embodied as tangible and affectual notions. Trade of tangible arms that include machinery, personnel, technology, etcetera is easy to determine. However, weaponization and proliferation of affectual notions like the emotional toll of conflict, sexual abuse, trauma, etcetera is hard to chalk out and often goes unnoticed. Affectual notions are also thought of as equals to the tangible embodiment of arms in liminal spaces. This is also because, affectual embodiment of arms is also highly racialised and gendered, with over-representation of marginalised races and genders. The moment various modes of embodiment interact with the realist and positivist context, tangible empirics are privileged over the affectual notions. This reiterates the complexity involved in the ethical theorization of arms trade.

## Conclusion

In conclusion, by looking at various levels at which arms trade operates, several approaches towards purposes and methods of arms trade, tying it in the context of the CAR, this paper explored how the ethics of the arms trade can be looked from contrasting political, economic, legal and theoretical viewpoints. After a robust analysis of the situations and connecting them with theoretical concepts it argues that the notion of *jus commercium armis* is highly contextual. Amidst the abyss of arms, it exists in a liminal space where any construction of category embeds it in a context in which it's truth or falsity may be argued. Nevertheless, the paper provides a starting point while setting onto an exhilarating journey to explore the ethics of arms trade.

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Written by Deepanshu Singal

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Written by Deepanshu Singal

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[1] Hereby referred to as "SALWs" or "arms".

[2] Kumar describes "small arms" as weapons which can be usually carried by one or two persons and includes rifles, pistols, revolvers, sub-machine guns (SMGs), etcetera. He uses the term "light weapons" to refer to heavier machine guns, hand grenades, grenade launchers, anti-aircraft or anti-tank guns and missile systems, rocket propelled grenades (RPGs), etcetera. Ammunition and explosives include cartridges and shells and missiles for small arms and light weapons respectively.

[3] State actors include governments of internationally recognised states. On the other hand, non-state actors refer to any influential organisations or individuals, not affiliated to any state.

[4] According to Singer's argument, the individual level of analysis sees the individual head of state as a key influencer of state behaviour. It particularly looks at state behaviour being formulated by the policy mindset of the head of state who in turn is might be influenced by personal factors or domestic politics inside the state. This paper uses that definition and looks at individual level of analysis of arms trade as the internal (domestic) trade affecting the states' larger standpoint on arms trade.

[5] Generally, the sub-systemic level of analysis only focuses on two to a few state actors. However, in the discussion around arms trade, the definition can be extended to non-state actors as well, given their significant role.

# **Jus Commmercium Armis: Amidst the Abyss of Arms**

Written by Deepanshu Singal

[6] In this paper, external actors include actors at both sub-systemic and systemic levels of analyses.

[7] An actor can be viewed as legitimate if they confer to the rules and laws applicable. Additionally, legitimacy also comes from the ability of justifying one's actions or behaviour.

[8] Utilitarianism or consequentialism is an approach to rationalising coined by a philosopher Jeremy Bentham. It judges actions by their utility or consequence. Simply put, according to it, ends justify the means. Actions for greatest happiness of greatest numbers can be justified through this approach.

[9] Deontology is a school of thought for approaching ethical dilemmas coined by a German philosopher Immanuel Kant. It refers to a universalised approach to morals where anything wrong is wrong despite its outcomes or intentions. According to it, one can act morally only when they adhere to the universalised principles.

[10] Just War theory operates on two principles – *jus ad bellum* and *jus in bello*. These refer to just actions before going to war and just actions during war respectively. Each of these principles enumerate certain provisions that a state must refer to while planning to intervene or launch a war. They also act as a guide for states to have a just conduct when at war.

[11] R2P (Responsibility to Protect) is the moral responsibility of a state to protect citizens of any state against oppressive states which inflict violence and mass suffering and commit crimes against humanity.

[12] States contribute to the peacekeeping forces of international or regional organisations in varied capacities. This contribution can also be looked at as the “trade of personnel” on an international level because in the end, they are deployed in a particular state on peacekeeping missions.

[13] Séléka is an alliance of rebel militia groups that sought control over the CAR in March 2013 under the leadership of their leader Michel Djotodia. Members of this group are almost all Muslims.

[14] UN Multidimensional Integrated Stabilisation Mission in CAR.

[15] Ant-trade refers to the process where numerous small deliveries of arms that get accumulated overtime as illicit arms by unauthorised users.

[16] Steven Lukes in his book “Power: A Radical View” describes three-dimensional approaches of power. To simplify. The one-dimensional view sees power as coercive. Essentially state A exercises power over state B when it makes state B not do or do something that B would otherwise may or may not want to do. According to the two-dimensional view of power, A sets the agenda of discussion and does not give B the platform to bring up any conflicts it might have with A in any form. The third dimensional view of power is the structural form of power where B does not even realise that it has a conflict or a potential conflict with A.

[17] Power is politicised and used to achieve political motives and authority. This way, it translates into political power and hence is used interchangeably.

[18] Thanatopolitics is the management or governance of death which entails the sovereign right to kill by providing characteristic (often seen as pathological) justifications making certain bodies killable.

[19] Biopolitics is the governance of citizen lives and constantly improve the standards of living.

[20] Supply does not meet the demand causing prices to go up.

[21] Values and devotion to one's own nation state which glorifies its possession of arms.

[22] Feeling of fear, hostility, insecurity and distrust that prevails in the minds of people after prolong conflict or socio-



## **Jus Commmercium Armis: Amidst the Abyss of Arms**

Written by Deepanshu Singal

economic stresses.

[23] Notion of glory, attachment, power and pride attached to possession and use of arms.

[24] Foreign Direct Investments are investments made by a state into another state to uplift particular sectors of the economy of the other state.

[25] The idea of ethical consumption refers to the use of product that is righteous depending on how they are marketed. However, such an argument effaces the exploitative or immoral processes involved in its manufacturing or distribution.

[26] Adopted by the United Nations General Assembly in 2013 and came into force on 24 December 2014. It has been ratified by 109 states and further 32 states have signed, but not ratified it.

*Written at: Ashoka University*

*Written for: Professor Ananya Sharma*

*Date written: August 2020*