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RESTRICTIONS UNDER INTERNATIONAL LAW TO BUILD UP MILITARY DEFENCE CAPABILITY

Hikmahanto Juwana

Fakultas Hukum Universitas Indonesia, humashukumui@gmail.com

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Restrictions Under International Law to Build Up Military Defence Capability

HIKMAHANTO JUWANA

This article discusses Military Defence Capability (MDC) from the perspective of international law. It is argued here that international law places restrictions when State builds its MDC. The article then carefully lists and discusses the restrictions. In the end, the article comes up with the conclusion that it is important for States to observe these restrictions. This observation is highly significant if we are to properly distinguish military build-up for defensive purpose from that of the offensive.

INTRODUCTION

In his book entitled "The Rise and Fall of the Great Powers," Paul Kennedy observes the following with respect to international affairs over the past five centuries:

[G]iven the anarchic and competitive nature of rivalries between nations, the history of international affairs over the past five centuries has all too frequently been a history of warfare, or at least of preparation for warfare—both of which consume resources which societies might use for other "goods," whether public or private.¹ (emphasis added)

Preparation for warfare indeed has dominated relations amongst States, either for defensive or offensive purposes.

Despite the end of the Cold War,² the possibility of war has remained high. Recognising this fact, and having realised that international law is not a foolproof protec-

tion for preventing the occurrence of war,³ each and every member of the international community has in practice equipped itself with defence capability.

A defence capability is not at all novel. States with defence capability have been present for many centuries. China, for example, built the "Great Wall" in order to defend itself from the invasion of the so-called barbarians. Most of the castles in Europe were surrounded by fortifications and lakes for the very purpose of defending the kingdoms from any outside intrusion.

Over the decades defence capability has considerably evolved from its traditional form of walls, fortifications and lakes into its present form of sophisticated military weaponry, such as battle tanks, frigates, missiles, fighter aircraft, and even atomic bombs. In this sense, the present form of defence capability may also become offensive capability.

Defensive capability, however, should be distinguished from offensive capability. One way is by restrictions. State in its defensive military activities has to abide with the restrictions.

It is the aim of this article to describe how international law can restrict the behaviour of State in its military activities for defensive purposes.

DEFINITION AND CHARACTERISTICS

The term "self-defence" has commonly been used (by government officials, scholars, and others) to describe two different situations. First, it is used to describe a situation whereby a State may legally resort to force. Second, to justify a situation whereby a State in peacetime prepares means to counter armed attack.⁴ Although the two situations have similar objective, which is to negate armed attack, nevertheless they are different. The first situation refers to a condition that a State has to fulfil in order to legally use force (*jus ad bellum*), whilst the second situation refers to the instrument being employed to counter armed attack.

The present article is concerned with the second situation of self-defence. To not confuse it with the first situation, here it will be referred to as Military Defence Capability (hereinafter abbreviated as "MDC").⁵

Here, MDC will be defined as military establishment maintained by State in peacetime to enable such State, in view of its inherent right of self-defence, to repel armed attack from other State. Hence, MDC is not concerned with the conduct of hostilities.

There are at least three main characteristics inherent in MDC. First it has the characteristic of rendering sense of security.⁶ Most States would feel vulnerable from attack by outsiders if they do not maintain MDC. In this context, MDC resembles weaponry maintained by individuals in fifteenth century Europe. The weaponry not only symbolised the privilege and the occupation of those individuals, but also denoted that every free individual had the right to ensure his or her personal safety.⁷ The second characteristic implies that MDC is irreplaceable by any other means. Once force is used by other State, the attacked State may not have any other alternative but to employ its MDC. The third characteristic is MDC needs to be established and constantly built up. The establishment involves many things from procurement of weaponry to recruitment. These activities may not be accomplished overnight. In addition, MDC requires modernisation and expansion (the activities of modernising and expanding will be referred to as "build up"). Without building up MDC, a State would definitely be vulnerable of being outstripped by other State who poses as threat.

RESTRICTIONS ON MDC

Why Restrict and Not Abolish?

The occurrence of war is widely regarded by the international community as responsible of bringing human suffering. If it is indeed an act which is detested by all and considered to be bringing the world closer to absolute destruction,⁸ why then is the ability to wage war, not to be abolished once and for all?⁹ Such a question, naive as it may seem, emanates from the fact that

the occurrence of war is the consequence of two or more military capabilities being used against each other. Hence, the only logical way to prevent war from perpetually happening is by abolishing those military capabilities, which in turn, will incapacitate the ability of States to wage war. A total abolition of military capabilities would be plausible, and would not be a difficult goal to attain, only if the international community as a whole has a strong commitment to the idea.¹⁰

The point at issue, however, is not whether or not such a goal can be attained, but whether the international community agrees to the idea. Unfortunately, the majority of States do not and will not readily accept the idea of abolishing such an important instrument. Today only a small number of States do not maintain military capability. Yet, their abandonment is surely not due to their coming to terms with the consequences of war. Some do not maintain military capability because they have traditionally been without one, such as Monaco.¹¹ Some, like Western Samoa, Tuvalu, Nauru¹² and other so-called Pacific Islands countries, being aware of their small size as State may have thought that it would be pointless to have any military organisation. Others, like Norway and Switzerland, maintain the capability but prefer not to be considered as having "real" military capability.

Those that maintain military capability appear to give ample reasons to justify their position in rejecting the idea of complete abolition. One argument contends that in the absence of superior authority, to uphold the existence and survival as a State from threat of another State it is a pre-

requisite for each and every State to maintain some form of MDC. Another reason is by making reference to history to which humankind can never be separated from war. Furthermore, the ineffectiveness of the United Nations (UN) has also been pointed out as reason for maintaining MDC. Relying solely on the UN for national security, in the present and foreseeable future, is seen by many States as impractical and ludicrous.¹³

International community would oppose to the idea of abolishing MDC in exchange of the absence of war consequences. States do not wish to make choice one over another. That is why restricting the right to build up MDC is the solution. Restricting is by no means the same as abolishing military capability. Having restrictions means parameters are imposed on a State as to how far it can build up its MDC.

Restrictions on MDC Build Up

In a community of individuals, to achieve collective order, peace and tranquillity, each of the individuals' rights within the said community has to be restricted to some extent. Each individual has to accept this in exchange for a life in an orderly, peaceful and tranquil community. This idea is also applicable to State in the international community. The restrictions serve to limit what State can or cannot do even if it has the rights.

There are, at least, three restrictions, which a State has to observe. They are domestic constraints, international relations restraints, and international law limitations.

Domestic constraints plays a role in situations whereby the government has to obtain approval from its people, or their representatives, prior to undertaking any military related policies.

The second parameter is the international relations aspect. This applies in a situa-

mitations on military capability that the former Axis States may maintain.¹⁵ The limitations on the maintenance of Axis members' military capability, presumably, was intended to eradicate the potential ability of those States in waging aggressive war once again.

ively as provided under Article 51. The second instance is when the UN Security Council calls upon the member States of the UN to make available armed forces for its military operations. Of the two instances, all States will justify their build up of MDC under the first instance.

The question with respect to Article 51 is whether the article gives any reference to the permitted size of military capability for defensive purposes. The first sentence of Article 51 contains two phrases state as follows,

Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.

Based on this paragraph, there seems to be two interpretations in answering the question.

The first interpretation is by focusing only on the first phrase of the first sentence of Article 51, while the second phrase is to be regarded as only complimentary. This means the UN Security Council has the option, as opposed to obligation, to take measures. In the event of the Security Council takes certain measures, the right of self-defence will cease to exist. On the contrary, if the Security Council were not to take any measures or, as experience has shown, were incapable of taking any measures, the right of self-defence would not be lost and State has the right by its own to completely negate the armed attack.

Under this interpretation there seems to be no limit to the size of MDC. A State may build up its MDC to the extent considered fit to counter future armed attack, provided that the necessary resources are available. The logic at work here is simply that to match the military strength and capabilities of the State perceived as a threat, parity is first must be achieved. If this interpretation is followed, "security dilemma" will prevail, and in the end, the situation will lead to arms race.

The second interpretation derives from the argument that, under the Article 51, exists an obligation for the UN Security Council to take measures. Under this interpretation, similar to the first interpretation, a State is legally authorised to maintain military capability. However, different from the first interpretation, the second interpretation sets limit on the military capability being maintained. The limit lies in the fact that, instead of completely negating the armed attack, the MDC being maintained is used for countering the armed attack, in the words of Article 51, "until the Security Council has taken measures necessary to maintain international peace and security."

Based on this interpretation, it may be possible to draw some references, which serve as limitations on the permitted size of MDC. First, different from the first interpretation, the size of military capability should not depend on the military capability of other State perceived as threat. Second, since the capability is intended to temporarily repel the armed attack, the size of MDC may not exceed what is necessary for such purposes.

The limitation is of course too abstract to be applied in practical terms. However, it should be noted that it is not the purpose of this particular limitation to be applied in practical terms. The limitation should be applied in terms of policy when a State is exercising its right to establish and build up.

From the two interpretations that have been discussed, the trend that States have adopted may be distinguished into two different eras. The first era is when the Cold War still existed. In such an era, it appeared that the predominant interpretation adopted by most States was the first interpretation. There are two reasons why this was the case. First, the second interpretation was not satisfactory for the then prevailing situation. States were very suspicious of one another, in particular the so-called Western and Eastern blocs. Secondly, the first interpretation was adopted because the Security Council had not functioned as expected in handling international crisis.¹⁸ No one could really tell the time length of armed attack that a State would have to endure before the Security Council took the necessary measures. In addition, in a situation where nuclear war was lurking, States reasonably questioned what Security Council could do if they were attacked by means of nuclear weapons.

Meanwhile, the second era began when the Cold War finally came to an end. During this era, there has been a promising tendency toward the abandonment of the adoption of the first interpretation. Instead, more and more states start to use the second interpretation. As a result, it is encouraging to note that States have welcomed the

assertive role played by the Security Council. There is a growing tendency toward the view that collective security contemplated under the UN Charter may actually work in practical terms.¹⁹

b. Limitation on the Possession of Non-Conventional Weapons

Weapons for fighting wars have undergone overwhelming evolution. The process has evolved so immensely that at the current stage, humankind is faced with weapons with distinct characteristic of mass destruction. This mass destructive characteristic implies that non-conventional weapons of today have the capability of taking the lives, not only of those fighting the war (combatants), but also of those who are beyond the theatre of war (non-combatants).²⁰

The weapons are, indeed, not conventional since rare materials are used. They have been developed based on very complicated scientific theories. In addition, the weapons require a substantial amount of funds as compared to most weapons.

At present state of technology, there are three weapons that qualify as non-conventional weapons, namely, nuclear, biological and chemical weapons.

Prohibition on the Possession of Nuclear Weapons

The possession of nuclear weapons by States has become a deep concern for the international community. By late 1950s there were a number of States who had succeeded in developing and testing nuclear weapons. At this stage there was a concern

that more and more States would follow the trend to acquire and possess nuclear weapons.

On 12 June 1968, the General Assembly in its twenty second meeting adopted resolution 2372 attaching the Treaty on the Non-Proliferation of Nuclear Weapons (hereinafter referred to as "Non-Proliferation Treaty" and abbreviated as the

In 1925 an agreement was concluded which forbade biological and chemical weapons as methods of warfare. The agreement is referred to as the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare (hereinafter referred to as the "1925 Geneva Protocol")²⁴ which to date has been ratified by 145 States. Regretfully, the 1925 Geneva Protocol has not been succe

The use of chemical weapons in warfare has been prohibited together with biological weapons under the 1925 Geneva Protocol. However, agreement to prohibit chemical weapons stockpiling was produced in 1992 referred to as Convention on the Prohibition, stockpiling and Use of Chemical Weapons and their Destruction (hereinafter referred to as the "Chemical Weapons Convention" and abbreviated as CWC).²⁷

The CWC can be considered to be the most comprehensive agreement amongst the three non-conventional weapons agreements. Different from the NPT and BWC, the CWC established organisation responsible for carrying out the verification activities.

c. The Reduction of the Possession of Conventional Weapons

During the Cold War there were many arms control agreements concluded which would limit the right of a State to acquire or possess conventional weapons. Unfortunately, the copious agreements on weapons reduction were nothing more than a symbolic achievement. The agreements had never been realised. As the Cold War diminished and relations between States improved, there was the promising possibility of States realising reductions in conventional weapons.

To accomplish the reductions in conventional weapons, there are, at least three approaches being employed. First is the bilateral approach, whereby two States, usually those referred to as the superpowers, conclude between themselves an agreement that would restrict their capa-

cities to possess conventional weapons. The second approach is the regional approach, whereby States in a certain region conclude an arms control agreement amongst themselves. Third is the global approach, whereby all States become a party to certain multilateral agreement intended for arms reduction.

d. Obligation to Disclose Military Related Information

Under the system of the League of Nations there had been an obligation assumed by its members to disclose information concerning their military capabilities.²⁸ A similar provision, unfortunately, may not be found in the UN Charter. Nevertheless, the UN General Assembly has been concerned with what was contemplated under Article 8 (6) of the Covenant. As far back as 1946 the General Assembly under Resolution 42 (1946) had called upon the Security Council, to determine the information State members of the UN should furnish.²⁹ Since then there were numerous UN General Assembly resolutions of similar vein, such as Resolution 502 (1952) which requested the Disarmament Commission to prepare proposals to regulate and limit the armed forces and armaments which will be embodied in a certain treaty.³⁰

To date there has not yet been any agreement specifically drawn which places obligations upon States to disclose their military related information.

It should be noted here that there are a number of States that make available their military data on the grounds of domestic law requirements. As part of its respon-

sibility endowed to the government toward its taxpayer, the government has the obligation to disclose the nation's military data. Such data are usually published in the yearly defence white paper.

In line with this, there are several independent private organisations that collect and survey military information of every country in the world. The works of the organisations, such as the Stockholm International Peace Research Institute (SIPRI) and the London-based Institute for International Strategic Studies (IISS), have to a certain extent made the military data of States more transparent. Nevertheless the data provided in the yearly white paper and publication of independent private organisations may not be complete and accurate. Thus, the data may not be used to ascertain the real military strength of a particular State.

B. The Lex Ferenda Limitations

a. Prohibition on the Development and Possession of New Weapons of Mass Destruction

It is arguable to say that human inventions have been unstoppable. Continued scientific and technological advancement creates new opportunities for the application of science and technology, not only for peaceful purposes, but also for military purposes. There has been an ongoing trend for States to develop new weapons, including those with a mass destruction effect, in order to overpower the weapons owned by perceived threats. Cognizant of this fact, it appears there is a need to confine research and development activities by States so as

not to permit further development of new mass destruction weapons.

Nonetheless, despite the UN's strenuous effort to prohibit the development and manufacture of new types of weapons of mass destruction and new systems for such weapons, there has been no agreement to such an effect. Due to the complexities in dealing with this matter, it may take several years before a draft agreement is ready for conclusion.

b. The Distinction between Offensive and Defensive Weapons

On many occasions, the international community has tried to make the distinction between offensive and defensive weapons. Hence, under the provisions of the Peace Treaties it seems that a distinction between offensive and defensive weapons, without giving any definition, has been made. For example, under Article 51 of the Peace Treaty between Allied and Associated Powers with Italy, it was provided that,

Italy shall not possess, construct, or experiment with (i) any atomic weapon, (ii) any self propelled or guided missiles or apparatus connected with their discharge (other than torpedo and torpedo-launching gear comprising the normal armament of naval vessels permitted by the present Treaty), (iii) any guns with a range of over 30 kilometres, (iv) sea mines or torpedo of non-contact types actuated by influence mechanisms, (v) any torpedo capable of being manned.³¹

Those mentioned weaponry may be considered by the Allied and Associated Powers as offensive weapons. By prohibiting Italy from maintaining such weapons,

they may stop Italy from initiating aggressive war(s) again in the future. In addition, there had been an attempt to classify offensive weapons as those that have projection capability, such as aircraft carrier,³² or fighter aircraft that can be refuelled in mid-air.

Nevertheless, the distinction made was very subjective and relative. There are two reasons to why no exact formula existed to distinguish offensive weapons from defensive ones. First, a defensive weapon may be used for offensive purposes, on the other hand an offensive weapons is not precluded from being used for defensive purposes. Second, most weapons are

possibly waged against them. Such a predicament, in particular during the Cold War era, had harmful effects on world peace and security. In this sense, maintaining MDC is the same as maintaining a military capability for offensive purposes: the expenditure for defensive purposes would always be equal to the expenditure for the offensive purposes.

Having realised this fact, there are two points that have been given serious attention. The first point is with regard to the reductions of military spending, of which a formula to limit spending is of significance. The second point is with respect to transparency on State military expenditure.

UN has tried to dwell on the above two points, but it seems that in the short term agreement that would place obligation on States to reduce and transparentise their

designed and manufactured without taking into account whether it is for offensive or defensive purposes.

In sum, it can be concluded that it is very

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ENDNOTES

¹ Paul Kennedy, *The Rise and Fall of the Great Powers* (Great Britain: Unwin Hyman Ltd., 1988), p. 536.

² There was high expectation that with the end of the Cold War, States could live more peacefully. One writer contends that "(I)n the aftermath of the Cold War, there is a real possibility of eliminating war as an option for settling disputes between nations, at least within Europe." See: Mary Kaldor, "Do Modern Economies Require War of Preparations for Warfare?" In: Robert A. Hinde (ed.), *The Institution of War*, (London: Macmillan Academic and Professional Ltd., 1991), p. 178. However, this has not proven to be the case. Potential conflicts which did not erupt to become a war in the Cold War era, have erupted (Gulf War, US intervention in Panama and the recent US attack on Iraq).

³ Oppenheim wrote in his book, "(T)hat International Law, if it could forbid war altogether, would be a more perfect law than it is at present there is no doubt." See: L. Oppenheim, *International Law A Treatise*, Vol. II, (London: Longmans, Green, and Co., 1906), p. 56.

⁴ Carl von Clausewitz, a prominent figure in the study of war, advocated in his book a term known as 'preparation for war'. He had the following to say, "... the activities belonging to war divided themselves into two principal classes, into such as are only 'preparations for war' and into the 'war itself'. This division must therefore also be made in theory (emphasis added)." He went on to say, "The knowledge and application of skill in the preparations for War are engaged in the creation, discipline, and maintenance of all the military forces; what general names should be given to them we do not enter into, but we see that artillery, fortification, elementary tactics, as they are called, the whole organization and administration of the various armed forces, and all such things are included." Carl von Clausewitz, *On War*, trans. J.J. Graham (Great Britain: Penguin Books, 1983), p. 178.

⁵ MDC is also referred under various terms, such as military establishment, defence organization, defence system, the armed forces, or simply the army.

⁶ It is interesting to note Friedmann's view in which he has said that one of the objectives of war whether between tribes, city republics or modern nation States, has been the attainment of greater security. See Wolfgang Friedmann, *The Changing Structure of International Law*, (London: Stevens & Sons, 1964), p. 12.

⁷ Andre Corvisier, *Armies and Societies in Europe 1494-1789*, (Bloomington: Indiana University Press, 1976), p. 2.

⁸ There is considerable evidence showing the feeling of the international community towards war and the desire to put an end to it. For example, the first two paragraphs in the preamble to the UN Charter states as follows, "We the peoples of the United Nations determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought, untold sorrow to mankind, ... And for these ends to practise tolerance and live together in peace with one another as good neighbours, and to unite our strength to maintain international peace and security, and to ensure, by the acceptance principles and the institution of methods, that armed force shall not be used, ..." See: UN Charter.

⁹ This kind of question has been raised and discussed extensively in the area of nuclear weapons. Some scholars have proposed the idea of "zero nuclear weapons." See generally: Regina Cowen Karp, *Security Without Nuclear Weapons?* (Oxford: Oxford University Press, 1992).

¹⁰ According to Wright, "[t]heoretically, therefore, it is possible to conceive a self-executing treaty which would stabilize the balance of power and reduce the probability of war, although it dealt with nothing but the armament programs of the States and a system of inspection." See: Quincy Wright, *A Study of War* (2nd ed.) (USA: The University of Chicago Press, 1965), p. 801.

¹¹ France retains responsibility for the defence of Monaco. Monaco maintains only a palace guard and ceremonial troops. See: *Defense & Foreign Affairs Handbook* (USA: Copley & Associates, S.A., 1981), p. 410.

¹² These States do not maintain any formal defence structure and regular armed forces. In a study prepared for UNITAR it is reported that the security of such States is guaranteed by the United Nations.

¹⁴ Cowen wrote that, "[The former] West Germany's defence obligations under its NATO commitments had been clearly defined: the [former] Federal Republic was to establish an army of half-a-million troops within three years between 1955-1958." See: Regina Cowen, "West Germany," in: G.M. Dillon (ed.), *Defence Policy Making*, (Great Britain: Leicester University Press, 1988), p. 124.

¹⁵ For example, Under Article 9 of the Peace Treaty with Bulgaria it is stated that, "The maintenance of land, sea and air armaments and fortifications shall be closely restricted to meeting tasks of an internal character and local defence of frontiers. In accordance with the foregoing, Bulgaria is authorized to have armed forces consisting or not more than: (a) A land army, including frontier troops, with a total strength of 55,000 personnel; (b) Anti-aircraft artillery with a strength of 1,800 personnel; (c) A navy with a personnel strength of 3,500 and a total tonnage of 7,250 tons; (d) An air force, including any naval air arm, of 90 aircraft, including reserves, of which not more than 70 may be combat types of aircraft, with a total personnel strength of 5,200. Bulgaria shall not possess or acquire any aircraft designed primarily as bombers with internal bomb-carrying facilities. These strength shall in each case include combat, service and overhead personnel." See: Treaty of Peace between the Allied and Associated Powers with Bulgaria signed on 10 February 1947, 4 *Bevans* 429.

¹⁶ In line with this view, Mullerson argued that, "[M]odern international law differs from the old law by prohibiting the threat or use of force, whereas the old international law envisaged the right to war—*ius ad bellum*. See: Mullerson R. A., "The Principle of Non-Threat and Non-Use of Force in the Modern World," In: W.E. Butler (ed.), *The Non-Use of Force in International Law* (The Netherlands: Kluwer Academic Publishers, 1989), p. 29.

¹⁷ It should be noted here that there is no clear definition of what purports to be an act of self defence.

Grenada (1983) and Panama (1989) by the US and the raid of Entebbe by Israel (1976). Self defence has also been invoked to justify a State acquiring and possessing nuclear weapons, such as the US and former Soviet Union during the Cold War era. There are also numerous legal scholars who suggest that self defence should not to be interpreted in a very restricted manner, such as Waldock, Schachter and also Pogany. Pogany even use *Caroline Incident* to contend that "... customary international law, ..., was widely recognised as permitting recourse to anticipatory self defence, in accordance with the strict requirements of the *Caroline*," See: Istvan Pogany, "Nuclear Weapons and Self Defence in International Law," In: Istvan Pogany, *Nuclear Weapons and International Law*, (Great Britain: Avebury Gower Publishing Co. Ltd., 1987), 71; However, such views seem to be contradicted by the judgment of ICJ in the *Nicaragua case* of which self defence under Article 51 of the UN Charter has been interpreted in a very restricted manner where the existence of an armed attack is essential before the right of self defence could be exercised. For a general discussion on the *Nicaragua case* in connection with the right of the self defence concept, see: G.M. Danilenko, "The Principle of Non-Use of Force in the Practice of the International Court of Justice," in: Id. (W.E. Butler) at p. 101-110.

¹⁸ In this regard McCoubrey and White said the following, "[U]nfortunately, it cannot be said that the Security Council has fulfilled the expectations everyone had of it in 1945. The Council, with its mandatory powers, has, for most of its life, been hamstrung by the Cold War." See: Hillaire McCoubrey and N.D. White, *International Law and Armed Conflict* (Great Britain: Dartmouth Publishing Co., 1992), p. 23.

¹⁹ Janis contended that, "[T]he relaxation of East-West tensions after 1989 and the successful prosecution of the Persian Gulf War in 1990-1991 have raised the possibility that the United Nations may be poised to assume more responsibility for maintaining and resorting international peace and security." See: Mark W. Janis, *An Introduction to International Law* (2nd ed.) (USA: Little, Brown and Company, 1993), p. 202.

²⁰ This is despite of the existent of an established norm under international law known as the "Martens Clause" which is found under the preamble of the Convention with respect to the Laws and Customs of War on Land or known as the 1899 Hague Convention. The clause stated as follows, "[U]ntil a more complete code of the laws of war can be issued, the High Contracting Parties think it expedient to declare that in cases not included in the Regulation

adopted by them, *populations and belligerents remain under the protection and the rule of the principles of law of nations*, as they result from their usages established between civilized nations, from the laws of humanity, and the requirements of the public conscience." In addition, it is an established rule that belligerent State does not have unlimited right to adopt the means of injuring the enemy. This rule can be found in Article 22 of the annex of the 1899 Hague Convention. For the complete text on the conventions, see: A. Pearce Higgins, *The Hague Peace Conferences*, (Cambridge: the University Press, 1909), pp. 207-255.

²¹ 729 UNTS 10485; also 7 I.L.M. 809.

²² The extension was adopted on 9 May 1995 in New York. For a complete document see: 34 I.L.M. 959.

²³ According to the Dictionary of Modern Defence and Strategy, the essence of biological warfare is simple in that, "[I]t involves taking a highly infectious virus which occurs naturally and developing it so that its lethality is enormously increased. This would make it possible to infect large populations or large territorial areas with very small samples. Thus, a war would be fought by deliberately infecting the enemy's armies or civilian population with deadly diseases, some of which, in their scientifically enhanced form, could kill in minutes. see: David Robertson, *A Dictionary of Modern Defence and Strategy*, (London: Europa Publications Limited, 1987), p. 40.

²⁴ 26 UST 571.

²⁵ 26 UST 585; also 11 I.L.M. 309.

²⁶ The statistic is based on the Sussex/Harvard Information Bank on Chemical and Biological Warfare Armament and Arms Limitation as quoted by Robinson, see: J.P. Perry Robinson, "Origins of the Chemical Weapons Convention," in: Benoit Morel and Kyle Olson, *Shadows & Substance: The Chemical Weapons Convention* (USA: Westview Press Inc., 1993), pp. 42-43.

²⁷ 32 I.L.M. 800.

²⁸ According to Article 8 (6) of the Covenant it is stipulated that, "[T]he Members of the League undertake to interchange full and frank information as to the scale of their armaments, their military, naval and air programmes and the condition of such of their industries as are adaptable to war-like purposes. (emphasis added)"

²⁹ UN General Assembly resolution 42 (1946), see: 1 *Djonovich* 54.

³⁰ UN General Assembly resolution 502 (1952). For the complete text, see: 3 *Djonovich* 169.

³¹ Article 51 of the Peace Treaty with Italy.

³² Under Article 59 (2) of the Treaty Peace with Italy it is provided that, "No aircraft carrier, submarine or other submersible craft, motor torpedo boat or specialised types of assault craft shall be constructed, acquired, employed or experimented with by Italy."