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# The Initiation, Suspension, and Termination of War

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**T**HIS ESSAY WILL DEAL WITH THE PROGRESSION OF HOSTILITIES in an inter-State war.<sup>1</sup> More specifically, the various modes for the initiation, suspension and termination of hostilities will be addressed.

## I. The Initiation of War

### (a) War in the Technical Sense

War in the technical sense starts with a declaration of war. A declaration of war is a unilateral and formal announcement, issued by the constitutionally competent authority of a State, setting the exact point at which war begins with a designated enemy (or enemies). Notwithstanding its unilateral character, a declaration of war “brings about a state of war irrespective of the attitude of the state to which it is addressed.”<sup>2</sup>

According to Article 1 of Hague Convention (III) of 1907 Relative to the Commencement of Hostilities,

The contracting Powers recognize that hostilities between themselves must not commence without previous and explicit warning, in the form either of a

declaration of war, giving reasons, or of an ultimatum with a conditional declaration of war.<sup>3</sup>

Article 1 explicitly mentions that reasons for a declaration of war must be given. But the causes of wars cannot be seriously established on the basis of a self-serving unilateral declaration. The main value of a declaration of war is derived from the fact that it pinpoints the precise time when a state of war enters into force.

An ultimatum may take one of two forms: (i) a threat that, if certain demands are not complied with, hostilities will be initiated; or (ii) a warning that, unless specific conditions are fulfilled by a designated deadline, war will commence *ipso facto*.<sup>4</sup> Article 1 requires an ultimatum of the second type, incorporating a conditional declaration of war. Britain and France dispatched such ultimatums to Germany in September 1939.<sup>5</sup> An ultimatum of the first category is not deemed sufficient by itself under Article 1, and it must be followed by a formal declaration of war. Only the subsequent declaration, rather than the preliminary threat, would be in conformity with Hague Convention (III).<sup>6</sup>

An ultimatum, almost by definition, entails a lapse of time (brief as it may be) providing an opportunity for compliance with the demands made. Hostilities are not supposed to begin unless that period has expired and the response is considered unsatisfactory.

Insofar as an outright declaration of war is concerned, Hague Convention (III) does not insist on any meaningful interval before combat starts.<sup>7</sup> Article 1 does prescribe that the declaration must be made "previous" to the commencement of hostilities, and even refers to it (on a par with an ultimatum) as a warning. However, it is significant that a proposed amendment of the Article, to the effect that 24 hours must pass between the issuance of the declaration and the outbreak of hostilities, was defeated in the course of the Hague Conference.<sup>8</sup> The upshot is that fire may be opened almost immediately after the announcement has been made.<sup>9</sup> A declaration of war under the Convention constitutes merely a formal measure, and it does not necessarily deny the advantage of surprise to the attacking State.

Hague Convention (III) cannot be considered a reflection of customary international law.<sup>10</sup> Before the Convention, most wars were precipitated without a prelude in the form of a declaration of war.<sup>11</sup> The practice of States has not changed substantially since the conclusion of the Convention. Some hostilities are preceded by declarations of war, but this is the exception rather than the rule. There are many reasons for the contemporary reluctance to engage in a declaration of war. Some of these reasons are pragmatic, stemming, for

instance, from a desire to avert the automatic application of the (international no less than domestic) laws of neutrality activated during war. The paucity of declarations of war at the present juncture is also linked, paradoxically, to the illegality and criminality of wars of aggression. The contemporary injunction against war has not yet eliminated its incidence. Nevertheless, the prohibition has definitely created a psychological environment in which belligerents prefer using a different terminology, such as “international armed conflict.”<sup>12</sup> Since States are indisposed to employ the expression “war,” they naturally eschew declarations of “war.”

Even when a declaration of war is issued, in many instances this is done after the first strike, so that the act constitutes no more than an acknowledgement of a state of war already in progress; occasionally, the declaration is articulated by the State under attack, and it merely records that the enemy has launched war.<sup>13</sup> Of course, a post-attack declaration of war (by either party) is not in accordance with Hague Convention (III).

When enunciated, a declaration of war does not require “any particular form,” although it must be authorized by a competent organ of the State.<sup>14</sup> Lack of prescribed form should not be confused with rhetorical flourish. It must be appreciated that not every bellicose turn of phrase in a harangue delivered by a Head of State before a public gathering can be deemed a declaration of war. In the *Dalmia Cement* International Chamber of Commerce arbitration of 1976, P. Lalive held that a broadcast aired by the President of Pakistan in 1965—in which a statement was made that Pakistan and India were “at war”—did not amount to a declaration of war pursuant to international law, inasmuch as it “in no way was, or purported to be, a ‘communication’ to India.”<sup>15</sup> The insistence on the transmittal of an official communication to the antagonist may be exaggerated, but surely a declaration of war—in whatever form—must (at the very least) be publicly announced in an explicit and lucid manner. One cannot accept the assertion by a United States Federal District Court in 1958, in the *Ulysses* case, that Egypt had declared war (consonant with international law) against Britain and France, in November 1956, in a public speech made by President Nasser before a large crowd in Cairo.<sup>16</sup> The Court admitted that the speech had been misunderstood or disregarded at the time, but it relied on the fact that a subsequent official Egyptian statement confirmed that it had been intended as a declaration of war.<sup>17</sup> However, the very misunderstanding of the purport of the speech at the point of delivery weakens the Court’s position. President Nasser’s speech was simply “neither definite nor unequivocal” enough as a declaration of war.<sup>18</sup> If it is to have any value at all, a declaration of war must impart an unambiguous signal to all concerned.

(b) War in the Material Sense

War in the material sense unfolds irrespective of any formal steps. Its occurrence is contingent only on the actual outbreak of comprehensive hostilities between two or more States. Hence, war in the material sense commences with an invasion or another mode of an armed attack. In the past, an air raid (*à la* Pearl Harbor) or an artillery bombardment would be emblematic. In the future, a devastating computer network attack (with massive lethal consequences) is equally likely to occur.<sup>19</sup> Actual hostilities may begin (i) without a declaration of war ever being made; (ii) prior to a declaration of war, which follows afterwards; (iii) simultaneously with a declaration of war; or (iv) subsequent to a declaration of war. Moreover, war in the material sense (*viz* active hostilities) may not commence at all, notwithstanding a declaration of war. This is what transpired between a number of Latin American countries and Germany during World War II.<sup>20</sup>

When the outbreak of comprehensive hostilities does not coincide with a declaration of war (especially when the declaration lags behind the inception of the actual fighting and, more particularly, when it is issued by the State under attack), there is likely to be some doubt as to whether war was triggered by the action or by the declaration.<sup>21</sup> In such a setting, it is quite possible that different dates for the outbreak of the war will be used for disparate purposes, such as the status of enemy nationals and the application of neutrality laws.<sup>22</sup>

Article 2 of Hague Convention (III)<sup>23</sup> stipulates that the existence of a state of war must be notified to neutral States without delay, and it shall not take effect in regard to them as long as the notification has not been received. All the same, the article lays down that, if a neutral country is in fact aware of the state of war, it cannot rely on the absence of notification. Under modern conditions, since a state of war habitually gets wide coverage in the news media, any special notification to neutrals may well be redundant. Still, should there be any doubt whether the hostilities qualify as an all-out war or are short of war, the communication to neutral countries (or the absence thereof) is of practical importance even in the present day.

## II. The Termination of War

(a) Treaties of Peace

*i. The Significance of a Treaty of Peace*

The classical and ideal method for the termination of inter-State war is the conclusion of a treaty of peace between the belligerents. Traditionally, treaties

of peace have had an extraordinary impact on the evolution of international law, from Westphalia (1648) to Versailles (1919). The series of treaties of peace signed at the close of the World War I even encompassed, in their first part (Articles 1-26), the Covenant of the League of Nations<sup>24</sup> (the predecessor of the United Nations). Despite their unique political standing, treaties of peace are no different juridically from other types of inter-State agreements, and they are governed by the general law of treaties.<sup>25</sup>

After World War II, and as a direct consequence of the “Cold War,” no treaty of peace could be reached with the principal vanquished country (Germany), which was divided for 45 years. It was only in 1990, following a sea change in world politics, that a Treaty on the Final Settlement with Respect to Germany<sup>26</sup> could be formulated. The Preamble of this instrument records the fact that the peoples of the contracting parties (the United States, the USSR, the United Kingdom, France and the two Germanies) “have been living together in peace since 1945.”<sup>27</sup> In Article 1, a united Germany (comprising the territories of the Federal Republic of Germany, the German Democratic Republic and the whole of Berlin) is established, and “the definitive nature” of its borders—especially with Poland—is confirmed.<sup>28</sup> The 1990 Treaty may be deemed a final peace settlement for Germany.<sup>29</sup>

Treaties of Peace with five minor Axis countries—Italy, Bulgaria, Hungary, Romania, and Finland—were concluded already in 1947 at Paris.<sup>30</sup> The Western Allied Powers arrived at a Treaty of Peace with Japan in San Francisco in 1951.<sup>31</sup> The USSR was not a contracting party to the latter instrument. Instead, a Joint Declaration was adopted by the USSR and Japan, in 1956, whereby the state of war between the two parties was brought to an end.<sup>32</sup> The Joint Declaration sets forth that negotiations aimed at a treaty of peace will continue.<sup>33</sup> However, since it proclaims that the state of war is ended, and that peace, friendship, and good neighborly relations are restored,<sup>34</sup> including diplomatic and consular relations,<sup>35</sup> the Declaration already attains most of the objectives of an ordinary treaty of peace.

In the international armed conflicts of the post-World War II era, States commonly try to avoid not only the term “war” but also its corollary “treaty of peace.” Two outstanding exceptions are the Treaties of Peace concluded by Israel with Egypt (in 1979),<sup>36</sup> and with Jordan (in 1994).<sup>37</sup>

The hallmark of a treaty of peace is that it both (i) puts an end to a preexisting state of war and (ii) introduces or restores amicable relations between the parties. Two temporal matters are noteworthy in this context. The first relates to the fixed point in time in which the conclusion of war is effected (the *terminus ad quem*). Upon signing a treaty of peace, the parties—at

their discretion—may choose to employ language indicating that the termination of the war has either occurred already in the past, is happening at the present moment, or will take place in the future. The Israeli practice illustrates all three options. In the Treaty of Peace with Egypt, Article I(1) resorts to future language:

The state of war between the Parties will be terminated and peace will be established between them upon the exchange of instruments of ratification of this Treaty.<sup>38</sup>

That is to say, the state of war between Israel and Egypt continued even after the signature of the Treaty of Peace (in March 1979), and its termination occurred only upon the subsequent exchange of the instruments of ratification (the following month).

A different legal technique characterized the peace process between Israel and Jordan. Article 1 of the Treaty of Peace between the two countries (signed at the Arava in October 1994) proclaims:

Peace is hereby established between the State of Israel and the Hashemite Kingdom of Jordan (the “Parties”) effective from the exchange of the instruments of ratification of this Treaty.<sup>39</sup>

But as for the state of war, the Preamble of the Treaty reads:

Bearing in mind that in their Washington Declaration of 25<sup>th</sup> July, 1994, they [Israel and Jordan] declared the termination of the state of belligerency between them.<sup>40</sup>

The Washington Declaration of July 1994 incorporates the following clause:

The long conflict between the two states is now coming to an end. In this spirit, the state of belligerency between Israel and Jordan has been terminated.<sup>41</sup>

The upshot is that, whereas peace between Israel and Jordan was established only upon the ratification of the Arava Treaty of October 1994, the state of war between the two countries had ended already in July of that year (the date of the Washington Declaration, which was not subject to ratification).

Unlike the future tense (used in the Treaty of Peace with Egypt) and the present tense (employed in the Washington Declaration with Jordan), there is also recourse to the past tense in the Israeli practice. This occurred in the abortive Treaty of Peace between Israel and Lebanon,<sup>42</sup> which was signed in May

1983 (at Qiryat Shemona and Khaldeh) but never entered into force since Lebanon declined to ratify it.<sup>43</sup> The instrument is significant only because it sets forth in Article 1(2) that

The Parties confirm that the state of war between Israel and Lebanon has been terminated and no longer exists.<sup>44</sup>

It is clear that at Khaldeh and Qiryat Shemona, Lebanon and Israel did not terminate the war between them at the moment of signature (using the present tense) or undertake to end it upon ratification (in the future): they confirmed that the state of war had already ended at some indeterminate stage (in the past), and that it therefore no longer existed. In contradistinction to the termination of war in the present or in the future—which, in both instances, is a constitutive step—the notation that the war has already ended in the past is merely a declaratory measure.

The second temporal matter is that the dual cardinal aspects of the establishment of peace—the termination of war and the normalization of relations—need not be synchronized. Thus, under Article I of the Egyptian-Israeli Treaty of Peace, while the state of war between the parties is to be terminated (as shown) upon ratification, “normal and friendly relations” are to be effected only after a further interim period of three years.<sup>45</sup> The gradual time-table is a marginal matter. The decisive element is that a treaty of peace is not just a negative instrument (in the sense of the negation of war); it is also a positive document (regulating the normalization of friendly relations between the former belligerents).<sup>46</sup> Normalization produces repercussions in diverse areas, ranging from diplomatic to cultural exchanges, from navigation to aviation, and from trade to scientific cooperation. The quintessence of a treaty of peace is writing *finis* not only to the armed phase of the conflict between the parties, but to the conflict as a whole. Hence, in appropriate circumstances, the conclusion of a treaty of peace constitutes an implied recognition of a contracting party as a State.<sup>47</sup>

Patently, a treaty of peace is no guarantee of lasting peace. If the root causes of the war are not eradicated, another armed conflict may erupt in time. In addition, the same treaty of peace which closes one war can lay the foundation for the next one: the Treaty of Versailles is a prime example of this deplorable state of affairs. But notwithstanding any factual nexus linking the two periods of hostilities, the interjection of a treaty of peace signifies that legally they must be viewed as separate wars. Of course, new bones of contention, not foreseen at the point of signature of a treaty of peace, may also become catalysts to another

war. When a treaty of peace is acclaimed as a “final” settlement, and statesmen indulge in high-sounding prognostications as to its power of endurance, it is advisable to recall that most wars commence between parties that have earlier engaged themselves in treaties of peace. The life expectancy of an average treaty of peace does not necessarily exceed the span of a generation or two. Each generation must work out for itself a fresh formula for peaceful coexistence.

*ii. Peace Preliminaries*

Prior to the entry into force of a definitive treaty of peace, the parties may agree on preliminaries of peace. Such a procedure generates the following results:

a. In the past, the peace preliminaries themselves might have brought hostilities to an end,<sup>48</sup> whereas the ultimate treaty of peace would focus on the process of normalizing relations between the former belligerents. Nowadays, the function of peace preliminaries of this type will usually be served by an armistice agreement (see *infra*, (b)).

b. At the present time, peace preliminaries generally represent a mere “*pactum de contrahendo* on the outline of a prospective peace treaty.”<sup>49</sup> Unless and until the projected treaty of peace actually materializes, the final curtain is not drawn on the war. As an illustration, one can draw attention to the two Camp David Framework Agreements of 1978 for Peace in the Middle East and for the Conclusion of a Peace Treaty between Egypt and Israel.<sup>50</sup> Here the parties agreed on certain principles and some specifics, designed to serve as guidelines for a peace settlement. However, as mentioned, the war between Egypt and Israel was terminated only by dint of the Treaty of Peace (concluded, after further negotiations, in 1979).

*iii. The Legal Validity of a Treaty of Peace*

As long as war was regarded as a lawful course of action in international affairs, a treaty of peace was considered perfectly valid, even when imposed on the defeated party by the victor as an outcome of the use of force.<sup>51</sup> As soon as the use of inter-State force was forbidden by international law, some scholars began to argue that a treaty of peace dictated by an aggressor ought to be vitiated by duress.<sup>52</sup> This doctrinal approach has been endorsed in Article 52 of the 1969 Vienna Convention on the Law of Treaties:

A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations.<sup>53</sup>



Article 52 reflects customary international law as it stands today. In 1973, the International Court of Justice held, in a dispute between the United Kingdom and Iceland, in the *Fisheries Jurisdiction* case:

There can be little doubt, as is implied in the Charter of the United Nations and recognized in Article 52 of the Vienna Convention on the Law of Treaties, that under contemporary international law an agreement concluded under the threat or use of force is void.<sup>54</sup>

The International Law Commission, in its commentary on the draft of Article 52, explained that the clause does not operate retroactively by invalidating treaties of peace procured by coercion prior to the development of the modern law banning the use of force by States.<sup>55</sup> The Commission expressed the opinion that the provision is applicable to all treaties concluded at least since 1945 (the entry into force of the Charter of the United Nations).<sup>56</sup>

Article 52 does not affect equally all treaties of peace. The text makes it plain that “only the *unlawful* use of force . . . can bring about the nullity of a treaty.”<sup>57</sup> It follows that Article 52 invalidates solely those treaties of peace which are imposed by an aggressor State on the victim of aggression. As regards the reverse situation, Article 75 of the Convention proclaims:

The provisions of the present Convention are without prejudice to any obligation in relation to a treaty which may arise for an aggressor State in consequence of measures taken in conformity with the Charter of the United Nations with reference to that State’s aggression.<sup>58</sup>

The invalidity of a treaty of peace concluded under duress does not result from “vitiating consent”: it is a sanction against an internationally unlawful and even a criminal act.<sup>59</sup> Hence, there is nothing legally wrong in a treaty of peace leaning in favor of a State which was the target of aggression (assuming that it has prevailed militarily).<sup>60</sup> In the words of Sir Humphrey Waldock, “[c]learly, there is all the difference in the world between coercion used by an aggressor to consolidate the fruits of his aggression in a treaty and coercion used to impose a peace settlement upon an aggressor.”<sup>61</sup> Only “unlawful coercion” invalidates a treaty.<sup>62</sup>

Article 44(5) of the Vienna Convention does not permit any separation of the provisions of a treaty falling under Article 52.<sup>63</sup> This means that a treaty procured by coercion is void in its entirety: none of its parts may be severed from the remainder of the instrument, with a view to being saved from abrogation. The general rule would apply, *inter alia*, to a treaty of peace accepted

under duress by the victim of aggression. But one must be mindful of the fact that such a treaty is not always confined to undertakings advantageous to the aggressor. Indeed, the most momentous clause in the text will presumably be the one terminating the war. If the whole juridical slate is swept clean by nullity, the section devoted to ending the war would also be wiped off. Is it to be understood that the former belligerents are put again on a war footing? The answer, as furnished by Article 43 of the Vienna Convention, is that the invalidity of a treaty does not impair duties embodied therein if these are independently binding on the parties by virtue of general international law.<sup>64</sup> All States must comply with the contemporary prohibition of the use of inter-State force, and the abrogation of a particular treaty of peace does not alter this basic position.

Article 52 refers to a treaty procured by unlawful use or threat of force as "void." The expression is expounded by Article 69(1), which states that the "provisions of a void treaty have no legal force."<sup>65</sup> The concept underlying Article 52 is one of "absolute nullity."<sup>66</sup> It is true that a party invoking a ground for impeaching the validity of a treaty must take certain steps enumerated in Article 65.<sup>67</sup> The obligation to observe the procedure set out in Article 65 might suggest that, should the aggrieved party (for reasons of its own) refrain from contesting the validity of the treaty, nullification would not take place.<sup>68</sup> However, if that were the case, the instrument would really be voidable rather than void. If a treaty of peace dictated by an aggressor is genuinely void, it must be tainted by nullity automatically and *ab initio*. Therefore, any competent forum should be authorized to recognize the treaty as void, even if no attempt to invoke invalidity has been made by the State directly concerned.<sup>69</sup>

#### (b) Armistice Agreements

Under orthodox international law, an armistice was construed as an interlude in the fighting, interchangeable in substance with a truce or a cease-fire (see *infra*, section III). It is characteristic that Articles 36 to 41 of the Hague Regulations, annexed to Hague Convention (II) of 1899 and (IV) of 1907 Respecting the Laws and Customs of War on Land, employ the expression "armistice" when the subject under discussion is the suspension of hostilities.<sup>70</sup> By contrast, in the current practice of States, an armistice chiefly denotes a termination of hostilities, completely divesting the parties of the right to renew military operations under any circumstances whatever. An armistice of this nature puts an end to the war, and does not merely suspend the combat.

The transformation undergone by "armistice" as a legal term of art had its origins in the armistices which brought about the termination of World War I.<sup>71</sup> A close look at the most famous armistice—that of November 11, 1918,

with Germany—discloses that, although concluded at the outset for a duration of only 36 days<sup>72</sup> (a period later extended several times<sup>73</sup>), its far-reaching provisions (obligating the German armed forces, *inter alia*, to surrender their arms, to withdraw from occupied territories as well as from certain areas within Germany itself, etc.) barred the possibility of resumption of hostilities by the vanquished side. Only the victorious allies reserved to themselves the option of resorting to force again in case of breach of the Armistice's conditions by Germany. This reading of the text is reinvigorated by the formulation of the last extension of the Armistice (without an expiry date) in February 1919.<sup>74</sup>

The innovative trend of terminating war by armistice continued, and became clearer, in the armistices of World War II, which resemble peace preliminaries (of the first category).<sup>75</sup> Significantly, in the Armistices with Romania (1944) and Hungary (1945), these two countries declared that they had “withdrawn from the war” against the Allied Powers.<sup>76</sup> Romania specifically announced that it “has entered the war and will wage war on the side of the Allied Powers against Germany and Hungary,”<sup>77</sup> and Hungary agreed to the condition that it “has declared war on Germany.”<sup>78</sup> Likewise, Italy—which concluded an armistice with the Allies in September 1943<sup>79</sup>—declared war against Germany in October of that year. The Preamble to the 1947 Paris Treaty of Peace with Italy directs attention to the fact that (as a result of the declaration of war) Italy “thereby became a co-belligerent against Germany.”<sup>80</sup> For a traditionalist, adhering to the notion of an armistice as a mere suspension of hostilities, “Italy’s co-belligerency created a highly anomalous situation juridically, and one which to some extent defies legal analysis and classification.”<sup>81</sup> After all, if the war between the Allied Powers and Italy did not end until the Treaty of Peace of 1947, Italy—the armed forces of which were fighting, after 1943, alongside Allied formations against a common foe (Germany)<sup>82</sup>—was the co-belligerent of its enemies! Yet, once it is perceived that an armistice signifies the termination of war, there is no anomaly in the status of Italy during World War II. Earlier, Italy was a co-belligerent with Germany against the Allies. Following the termination of its war with the Allies—by virtue of the 1943 Armistice—nothing prevented Italy from declaring war against Germany and becoming a co-belligerent with the Allies. The same is true of Romania and Hungary.

The evolution in the perception of armistice reached its zenith at a later stage, with a series of General Armistice Agreements signed in 1949 between Israel, on the one hand, and Egypt, Lebanon, Jordan, and Syria, on the other,<sup>83</sup> followed by the 1953 Panmunjom Agreement Concerning a Military Armistice in Korea.<sup>84</sup> These Armistice Agreements terminated the Israeli War of Independence and

the Korean War, respectively, although they did not produce peace in the full meaning of the term. Typically, the Panmunjom Agreement states as its objective the establishment of an armistice ensuring "a complete cessation of hostilities and of all acts of armed force in Korea until a final peace settlement is achieved."<sup>85</sup> The thesis (advanced in 1992) that "the Korean War is still legally in effect"<sup>86</sup> is untenable.

A closer look at the Israeli Armistice Agreements may illuminate the special features and the problematics of armistice as a mechanism for ending wars. The first article of all four Agreements prescribes that, with a view to promoting the return to permanent peace in Palestine, the parties affirm a number of principles, including a prohibition of resort to military force and aggressive action.<sup>87</sup> In keeping with these principles, the parties are forbidden to commit any warlike or hostile act against one another.<sup>88</sup> The Agreements clarify that they are concluded without prejudice to the "rights, claims and positions"<sup>89</sup> of the parties in the ultimate peaceful settlement of the Palestine Question.<sup>90</sup> The purpose of the armistice is described in terms of a transition from truce to a permanent peace<sup>91</sup> (in the case of Egypt, the Armistice Agreement expressly supersedes a previous General Cease-Fire Agreement.)<sup>92</sup> Above all, the Agreements lay down that they will remain in force until a peaceful settlement between the parties is achieved.<sup>93</sup>

The "without prejudice" formula (so popular among lawyers) was introduced to forestall future claims of estoppel in the course of peace negotiations. The formula must not obscure the salient point that the parties reserve only their right to reopen all outstanding issues when they eventually get to negotiate an amicable settlement of the conflict. During the intervening time, the conflict continues, but it is no longer an armed conflict. The thrust of each Agreement is that both parties waive in an unqualified manner any legal option that either of them may have had to resume hostilities and to resolve the conflict by force. The Agreements can be considered transitional, inasmuch as they were intended to be ultimately replaced by definitive peace treaties; yet, there is nothing temporary about them.<sup>94</sup>

Article V(2) of the Agreement with Egypt avers that the Armistice Demarcation Line "is not to be construed in any sense as a political or territorial boundary" and, again, that the line is drawn "without prejudice."<sup>95</sup> This clause is not replicated in the other Agreements, although a more diluted version has been inserted into Article VI(9) of the Agreement with Jordan<sup>96</sup> and Article V(l) of the Agreement with Syria<sup>97</sup> (there is no counterpart in the Agreement with Lebanon). Once more, the disclaimer may be taken as lip-service. An analysis of the Agreements in all their aspects shows that "the armistice

demarcation lines can be regarded as equivalent to international frontiers, with all the consequences which that entails."<sup>98</sup> When a line of demarcation between States is sanctioned in such a way that it can be revised only by mutual consent (and not by force), it becomes a political or territorial border.<sup>99</sup> The line may not be deemed "final," but the frontiers of no country in the world are impressed with a stamp of finality. All international frontiers can be altered by mutual consent, and history shows that many of them undergo kaleidoscopic modifications through agreements.<sup>100</sup>

It is noteworthy that when the United Nations Security Council, in 1951, had to deal with an Israeli complaint concerning restrictions imposed by Egypt on the passage of ships through the Suez Canal, the Council adopted Resolution 95 pronouncing that the armistice between the two countries "is of a permanent character" and that, accordingly, "neither party can reasonably assert that it is actively a belligerent,"<sup>101</sup> It emerges from the text of the Resolution, and the thorough discussion preceding it, that the Council totally rejected an Egyptian contention that a state of war continued to exist with Israel after the Armistice.<sup>102</sup>

The Israeli Armistice Agreements carry in their titles the adjective "General." This was done against the backdrop of Article 37 of the Hague Regulations,<sup>103</sup> which sets side by side a general and a local armistice (meaning suspension of hostilities (see *infra*, section III)). The Panmunjom Armistice Agreement already omits the adjective. The omission is consistent with the modern meaning of an armistice agreement as an end to war, for a local termination of war is an oxymoronic figure of speech. An authentic termination of war must be general in its scope.

No doubt, an armistice agreement is never the equivalent of a treaty of peace. When it brings war to a close, an armistice is like the first category of preliminaries of peace (*supra*, section II (a) ii). Whereas a treaty of peace is multi-dimensional (both negating war and providing for amicable relations), an armistice agreement is restricted to the negative aspect of the demise of war. To the extent that a distinction is drawn between associative and dissociative peace (the latter amounting to "the absence of war, a peace defined negatively"),<sup>104</sup> an armistice has to be marked as a dissociative peace.

Comparatively speaking, the negation of war is of greater import than the introduction or restoration of, say, trade or cultural relations. Still, when such relations are non-existent, a meaningful ingredient is missing from the fabric of peace. That is why the mere conclusion of an armistice agreement does not imply recognition of a new State. Furthermore, notwithstanding an armistice, diplomatic relations need not be established or reestablished. The frontiers (the Armistice Demarcation Lines) may remain closed, and, in general,

relations between the former belligerents will probably be strained. After all, the armed phase of the conflict is over, but the conflict itself may continue unabated.

As a result, even after an armistice agreement, the conclusion of a treaty of peace remains a high priority item on the agenda. The armistice ends the war, but the consummation of a fully-fledged peace requires a lot more. When the advent of a treaty of peace in the post-armistice period is delayed, as has been the case both in the Arab-Israeli conflict and in Korea, the chances of another conflagration always loom large on the political horizon. Nevertheless, should any of the former belligerents plunge again into hostilities, this would be considered the unleashing of a new war and not the resumption of fighting in an on-going armed conflict.

There is entrenched resistance in the legal literature to any reappraisal of the role assigned to armistice in the vocabulary of war.<sup>105</sup> *Pace* this doctrinal conservatism, the terminology has to be adjusted to fit the modern practice of States.<sup>106</sup> Scholars must open their eyes to the metamorphosis that has occurred over the years in the legal status of armistice.

### (c) Other Modes of Terminating War

A war may be brought to its conclusion not only in a treaty of peace or in an armistice agreement. It may also come to an end in one of the following ways:

#### *i. Implied Mutual Consent*

When belligerents enter into a treaty of peace or an armistice agreement, war is terminated by mutual consent expressed in the instrument. It is not requisite, however, that the mutual consent to end a war be verbalized by the parties. Such consent can also be inferred by implication from their behavior: a state of war may come to a close thanks to a mere termination of hostilities on both sides.<sup>107</sup>

An examination of the legal consequences of the absence of warfare must be conducted prudently. The fact that all is quiet along the front line is not inescapably indicative of a tacit consent to put paid to hostilities. A lull in the fighting, or a formal cease-fire, may account for the military inactivity. War cannot be regarded as over unless some supplemental evidence is discernible that neither party proposes to resume the hostilities.<sup>108</sup> The evidence may be distilled from the establishment or resumption of diplomatic relations.<sup>109</sup>

To give tangible form to the scenario of a state of war continuing despite a lengthy hiatus in the fighting, one can take the case of Israel and Iraq. Iraq is one of the Arab countries that invaded Israel in 1948. Unlike its co-belligerents

(Egypt, Lebanon, Jordan, and Syria), Iraq took advantage of the fact that it has no common border with Israel and refused to sign an armistice agreement (simply pulling its troops out of the combat zone). After prolonged periods of avoiding a military confrontation, Iraqi and Israeli armed forces clashed again in June 1967 and in October 1973.<sup>110</sup> In 1981, Israeli aircraft destroyed an Iraqi nuclear reactor (under construction), which apparently had the capacity of manufacturing nuclear weapons.<sup>111</sup> In this writer's opinion, the only plausible legal justification for the bombing of the reactor is that the act represented another round of hostilities in an on-going armed conflict. In 1991—in the course of the Gulf War—Iraq launched dozens of Scud missiles against Israeli objectives (mostly, centers of population), despite the fact that Israel was not a member of the American-led coalition which had engaged in combat to restore the sovereignty of Kuwait. The indiscriminate bombardment of civilians, by missiles or otherwise, is unlawful under the *jus in bello*.<sup>112</sup> While the *jus* is the same in every *bellum*, it is useful to single out the relevant framework of hostilities. The Iraqi missile offensive against Israel must be observed in the legal context not of the Gulf War but of the war between Iraq and Israel which started in 1948 yet continues to this very day.<sup>113</sup> That war is still in progress, unhindered by its inordinate prolongation since 1948, for hostilities flare up intermittently.

ii. *Debellatio*

*Debellatio* is a situation in which one of the belligerents is utterly defeated, to the point of its total disintegration as a sovereign nation. Since the war is no longer inter-State in character, it is terminated by itself. Even though the extinction of an existing State as a result of war is not to be lightly assumed, there comes a time when it can no longer be denied.<sup>114</sup>

*Debellatio* necessarily involves effective military occupation of the local territory by the enemy, but it goes beyond that: all organized resistance has to disappear, and the occupied State must be “reduced to impotence.”<sup>115</sup> The three basic parameters of *debellatio* are as follows: (i) the territory of the former belligerent is occupied in its entirety, no remnant being left for the exercise of sovereignty; (ii) the armed forces of the erstwhile belligerent are no longer in the field (usually there is an unconditional surrender), and no allied forces carry on fighting by proxy; and (iii) the Government of the former belligerent has passed out of existence, and no other Government (not even a Government in exile) continues to offer effective opposition.<sup>116</sup> Kuwait was saved from *debellatio* in the Gulf War, notwithstanding its total occupation by the Iraqi armed forces, because its Government went into exile and a large coalition soon came to its aid militarily.

The phenomenon of *debellatio* has been recognized in many instances in the past.<sup>117</sup> Some commentators contend that a *debellatio* of Germany occurred at the end of World War II,<sup>118</sup> following the unconditional surrender of the Nazi armed forces.<sup>119</sup> However, the legal status of Germany in the immediate post-War period was exceedingly complicated.<sup>120</sup> The position was so intricate that, in the same Allied country (the United Kingdom), different dates were used for different legal purposes to mark the termination of the war with Germany.<sup>121</sup>

### *iii. Unilateral Declaration*

Just as war can—and, under Hague Convention (III), must—begin with a unilateral declaration of war, it can also end with a unilateral declaration.<sup>122</sup> In this way the United States proclaimed, in 1951, the termination of the state of war with Germany.<sup>123</sup>

The technique of a unilateral declaration can be looked upon not as an independent mode for bringing war to a close, but as an offshoot of one of the two preceding methods. State A can impose war on State B by a unilateral declaration or act. Just as State B is unable to prevent State A from submerging them both in war, State B cannot effectively terminate the war when State A is bent on continuing it. A unilateral declaration by State B ending the war is an inane gesture, if State A is able and willing to go on fighting. "For war can be started by one party, but its ending presupposes the consent of both parties, if the enemy state survives as a sovereign state."<sup>124</sup> A unilateral declaration by State B promulgating that the war is over has a valid effect only if State A is either completely defeated (undergoing *debellatio*) or is willing to abide by the declaration.<sup>125</sup> If both State A and State B exist at the end of the war, both must agree to finish it. Yet, such an agreement may consist of a formal declaration by State B and the tacit consent of State A (or vice versa).<sup>126</sup>

## III. The Suspension of Hostilities

### (a) Different Types of Suspension of Hostilities

A suspension of hostilities may evolve *de facto* when no military operations take place. A respite of this nature may endure for a long period of time. But since neither belligerent is legally committed to refrain from resuming hostilities, the fighting can break out again at any moment without warning.<sup>127</sup>

More importantly, belligerents may assume an obligation *de jure* to abstain from combat in the course of a war (which goes on). A number of terms are used to depict a legal undertaking to suspend hostilities: (i) truce, (ii)



cease-fire, and, in the past, (iii) armistice. As noted above, the last term—armistice—has undergone a drastic change in recent years and now principally conveys a termination, rather than a suspension, of hostilities. The current usage of the term “cease-fire,” in lieu of “armistice,” must be recalled when one examines the aforementioned Articles 36 to 41 of the Hague Regulations.<sup>128</sup> These clauses do not employ the phrase “cease-fire.” Instead, they refer to “armistice,” commensurately with the vocabulary prevalent at the turn of the century. However, since their avowed aim is to govern the suspension of hostilities, they must be deemed applicable to present-day cease-fires (as opposed to modern armistices).

The expression “truce” is embedded in tradition and history. It acquired particular resonance in the Middle Ages, in the form of the Truce of God (*Treuga Dei*). This was an ecclesiastical measure by which the Catholic Church suspended warfare in Christendom on certain days of the week, as well as during Lent and church festivals.<sup>129</sup> The phrase “cease-fire” has been introduced into international legal parlance in the present (post-World War II) era. Although some scholars ascribe to truce and cease-fire divergent implications, the present practice of States—for the most part—treats them as synonymous.<sup>130</sup> As examples for an indiscriminate use of the two terms, it is possible to adduce successive resolutions adopted by the Security Council during Israel’s War of Independence in 1948.<sup>131</sup>

A cease-fire (or truce) may be partial or total in scope. Article 37 of the Hague Regulations differentiates between a general cease-fire (originally, “armistice”) suspending all military operations everywhere, and a local cease-fire suspending such operations only between certain units at particular locations.<sup>132</sup>

#### *i. Local Cease-Fire Agreement*

A cease-fire (or truce) may apply to a limited sector of the front, without impinging on the continuation of combat elsewhere. The object of such a local suspension of hostilities is to enable the belligerents to evacuate the wounded, bury the dead, conduct negotiations, and so forth. A local cease-fire may be agreed upon on the spot by military commanders (who can be relatively junior in rank), without the involvement of their respective Governments. The agreement would then be informal, and it does not have to be in writing.<sup>133</sup>

Article 15 of Geneva Convention (I) of 1949 for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field stipulates that, whenever circumstances permit, a suspension of hostilities is to be arranged (generally or locally) so as to facilitate the removal, exchange, and

transport of the wounded left on the battlefield or within a besieged or encircled area.<sup>134</sup> The article employs the term “armistice,” but what is actually meant in current terminology is a cease-fire.

*ii. General Cease-Fire Agreement*

Belligerents may enter into an agreement suspending hostilities everywhere within the region of war. The duration of a general cease-fire (or truce) may be predetermined in the agreement or it may be left open.

A general cease-fire agreement is normally made in writing by (or with the approval of) the Governments concerned. In that case, it has the status of a treaty under international law.<sup>135</sup> The essence of a general cease-fire is a detailed agreement on the conditions under which hostilities are suspended. There are two *sine qua non* specific elements: time (at which the cease-fire is due to enter into force on all fronts; there can also be different times for different geographic sectors) and place (fixing the demarcation line between the opposing military formations, with or without a buffer demilitarized zone).<sup>136</sup> However, nothing prevents the parties from appending to a general cease-fire agreement other clauses which transcend the technicalities of the suspension of hostilities and relate to such matters as the immediate release of prisoners of war. Semantically, this is liable to produce a result which may sound strange. Should the general cease-fire agreement set a date for release of prisoners of war, and should a belligerent extend their detention beyond that date, the act would constitute a cease-fire violation although no fire has been opened.

*iii. Cease-Fire Ordered by the Security Council*

The Security Council, performing its functions under Chapter VII of the Charter of the United Nations,<sup>137</sup> may order belligerents to cease fire. Unequivocal language to that effect is contained, for example, in Resolution 54 (1948),<sup>138</sup> adopted at the time of Israel’s War of Independence. Under Article 25 of the Charter, UN members are legally bound to accept and carry out mandatory decisions of the Security Council.<sup>139</sup> However, the Council does not rush to issue direct orders. Ordinarily, it shows a proclivity for milder language. In the Falkland Islands War of 1982, the Council only requested the Secretary-General “to enter into contact with the parties with a view to negotiating mutually acceptable terms for cease-fire.”<sup>140</sup> On other occasions, the Council called upon the parties to cease fire,<sup>141</sup> and less frequently demanded a cease-fire.<sup>142</sup> As long as the Council is merely calling for a cease-fire, its resolution has the hallmark of a non-binding recommendation. The parties are then given an opportunity to craft a cease-fire agreement of their choosing. But if

they fail to reach an agreement, the Council may be driven in time to ordain a cease-fire. In the Iran-Iraq War, the Security Council issued a call for a cease-fire in 1982,<sup>143</sup> demanding it only in 1987.<sup>144</sup> The text and the circumstances clearly imply that “the change in the wording from *calling* for a cease-fire to *demanding* one” conveyed a shift from a recommendation to a binding decision.<sup>145</sup>

The most peremptory and far-reaching cease-fire terms ever resorted to by the Security Council were imposed on Iraq in Resolution 687 (1991),<sup>146</sup> after the defeat of that country by an American-led coalition (with the direct blessing of the Council) in the Gulf War. Resolution 687 “is unparalleled in the extent to which the Security Council” was prepared to go in dictating cease-fire conditions (especially where disarmament is concerned).<sup>147</sup> Nevertheless, as the text of the Resolution explicitly elucidates, it brings into effect no more than “a formal cease-fire.”<sup>148</sup> A labelling of Resolution 687 as a “permanent cease-fire”<sup>149</sup> is a contradiction in terms: a cease-fire, by definition, is a transition-period arrangement. The suggestion that “despite the terminology used in Resolution 687, it is clearly more than a mere suspension of hostilities”—for the substance “is that of a peace treaty”<sup>150</sup>—is not only completely inconsistent with the plain text of the resolution, it is also counterfactual, given subsequent history. At various points since 1991, and almost on a routine basis after December 1998, coalition (mostly U.S. and UK) warplanes have struck Iraqi military targets (especially in so-called “no-fly zones”). The air campaign must be seen as a resumption of military operations in the face of Iraqi violations of the cease-fire terms.<sup>151</sup> These are continued hostilities in a war, which commenced when Iraq invaded Kuwait in August 1990.

The General Assembly, too, may call upon belligerents to effect an immediate cease-fire. This is what the General Assembly did in December 1971,<sup>152</sup> after the outbreak of war between India and Pakistan (ultimately culminating in the creation of the independent State of Bangladesh). When such a resolution is passed by the General Assembly, it can only be issued as a recommendation and can never be binding. As a non-mandatory exhortation, the resolution may be ignored with impunity, just as India disregarded the resolution in question.<sup>153</sup>

In recent years, most cease-fires have come in the wake of Security Council resolutions. Either the parties carry out a mandatory decision of the Council or they arrive at an agreement at the behest of the Council. Even during the “Cold War,” as long as the Council was not in disarray owing to the exercise or the threat of a veto, a cease-fire resolution became almost a conditioned reflex in response to the outbreak of hostilities. Generally speaking, the Council has tended to act as a fire brigade, viewing its paramount task as an attempt to extinguish the blaze rather than dealing with all the surrounding circumstances.

A cease-fire directive by the Council, like an agreement between the belligerents, may be limited to a predetermined time frame. A case in point is Resolution 50 (1948), adopted in the course of Israel's War of Independence, which called upon all the parties to cease fire for a period of four weeks.<sup>154</sup> When the prescribed time expired, fighting recommenced. More often, the Council avoids setting specific terminal dates for cease-fires, preferring to couch them in an open-ended manner.

(b) The Nature of Cease-Fire

The suspension of hostilities must not be confused with their termination.<sup>155</sup> A termination of hostilities means that the war is over—the parties are no longer belligerents, and any subsequent hostilities between them would indicate the outbreak of a new war. Conversely, a suspension of hostilities connotes that the state of war goes on, but temporarily there is no actual warfare. Psychologically, a protracted general cease-fire lasting indefinitely is a state of no-war and no-peace. Legally, this is a clear-cut case of war. The state of war is not terminated, despite the absence of combat in the interval.

Renewal of hostilities before a cease-fire expires would obviously contravene its provisions. Nonetheless, it must be grasped that hostilities are only continued, after an interruption, and no new war is started. For that reason, a cease-fire violation is irrelevant to the determination of armed attack and self-defense. That determination is made exclusively on the basis of the beginning of a new armed conflict. The reopening of fire in an on-going war is not germane to the issue.<sup>156</sup>

A cease-fire provides "a breathing space for the negotiation of more lasting agreements."<sup>157</sup> It gives the belligerents a chance to negotiate peace terms without being subjected to excessive pressure, and to turn the suspension into a termination of hostilities. But no indispensable bond ties cease-fire and peace. On the one hand, a treaty of peace may not be preceded by any cease-fire.<sup>158</sup> On the other hand, a cease-fire may break down, to be followed by further bloodshed.

The pause in the fighting, brought about by a cease-fire, is no more than a convenient juncture for peace negotiations. Even a binding cease-fire decree issued by the Security Council may prove "too brittle to withstand the strains between the parties" over a protracted period.<sup>159</sup> Should the parties fail to exploit the opportunity, the period of quiescence is likely to become a springboard for additional rounds of hostilities (perhaps more intense). This is only to be anticipated. A cease-fire, in freezing the military state of affairs extant at the moment when combat is suspended, places in an advantageous position that party which gained the most ground before the deadline. While the guns are

silent, the opposing sides will rearm and regroup. If no peace is attained, the belligerent most interested in a return to the *status quo ante* will look for a favorable moment (militarily as well as politically) to mount an offensive, in order to dislodge the enemy from the positions acquired on the eve of the cease-fire. A cease-fire in and of itself is, consequently, no harbinger of peace. All that a cease-fire can accomplish is set the stage for negotiations or any other mode of amicable settlement of disputes. If the parties contrive to hammer out peace terms, success will be due more to the exercise of diplomatic and political skills than to the cease-fire as such.

The Arab-Israeli conflict is a classical illustration of a whole host of cease-fires, either by consensual arrangement between the parties or by fiat of the Security Council, halting hostilities without bringing them to an end. Thus, if we take as an example the mislabelled "Six Days War" (sparked in June 1967 and proceeding through several cycles of hostilities), the Council insisted on immediate cease-fire, e.g., in June 1967<sup>160</sup> and in October 1973.<sup>161</sup> Israel and Egypt negotiated a cease-fire agreement, e.g., in November 1973.<sup>162</sup> Israel and Syria agreed on a cease-fire, e.g., in May 1974.<sup>163</sup> In none of these cases did the cease-fire, whether initiated by the parties or by the Council, terminate the war. In the relations between Israel, on the one hand, and Egypt and Jordan, on the other, the "Six Days War" ended only upon (or on the eve of) the conclusion of Treaties of Peace in 1979 and 1994 respectively (see *supra*, section II (a) i). In the relations between Israel and Syria, the "Six Days War" is not over yet, after more than three decades, since the bilateral peace process has not yet been crowned with success. A number of rounds of hostilities between Israel and Egypt or Syria (most conspicuously, the so-called "Yom Kippur War" of October 1973) are incorrectly adverted to as "wars." Far from qualifying as separate wars, these were merely non-consecutive time-frames of combat, punctuated by extended cease-fires, in the course of a single on-going war which had commenced in June 1967.

### (c) Denunciation and Breach of Cease-Fire

Under Article 36 of the Hague Regulations, if the duration of a suspension of hostilities is not defined, each belligerent may resume military operations at any time, provided that an appropriate warning is given in accordance with the terms of the cease-fire (originally, "armistice").<sup>164</sup> The language of Article 36 seems to this writer to be imprecise. It is submitted that a general cease-fire, if concluded without specifying a finite date of expiry, ought to be read in good faith as if it were undertaken for a reasonable period. Within that (admittedly flexible) stretch of time, none of the parties can be allowed to denounce the

cease-fire unilaterally. Hence, it is not legitimate for a belligerent (relying on Article 36) to flout the cease-fire shortly after its conclusion. Only when a reasonable period has elapsed does the continued operation of the agreement depend on the good will of both parties, and the cease-fire can be unilaterally denounced at will.

Article 36 contains an obligation to give advance notice to the adversary when denunciation of a cease-fire agreement occurs. But the specifics depend on what the cease-fire agreement prescribes. It appears that when the agreement is silent on this issue, hostilities may be “recommenced at once after notification.”<sup>165</sup> If fire can be opened at once, the practical value of notification becomes inconsequential.<sup>166</sup>

Cease-fire (originally, “armistice”) violations are the theme of Articles 40 and 41 of the Hague Regulations. Article 41 pronounces that, should the violations be committed by private individuals acting on their own initiative, the injured party would be entitled to demand their punishment or compensation for any losses sustained.<sup>167</sup> Under Article 40, a serious violation of the cease-fire by one of the parties empowers the other side to denounce it and, in cases of urgency, to resume hostilities immediately.<sup>168</sup>

Articles 40 and 41 posit, in effect, a three-pronged classification of cease-fire violations: (i) ordinary violations, not justifying denunciation of the cease-fire (assuming that denunciation is not otherwise permissible under Article 36); (ii) serious violations, permitting the victim to denounce the cease-fire, but requiring advance notice before the recommencement of hostilities; and (iii) serious violations pregnant with urgency, enabling the victim to denounce the cease-fire and reopen hostilities immediately (without advance notice).<sup>169</sup>

The three categories of cease-fire violations are not easily applicable in reality. The question of whether a breach of the cease-fire is serious, or whether any urgency is involved, seldom lends itself to objective verification. It must not be overlooked that a violation considered a minor infraction by one party may assume grave proportions in the eyes of the antagonist.<sup>170</sup> At the same time, the emphasis placed by Article 40 on serious cease-fire violations is consistent with the reference to a “material breach” appearing in Article 60(1) of the 1969 Vienna Convention on the Law of Treaties (in the general context of termination of bilateral treaties).<sup>171</sup>

#### IV. Conclusion

The three separate stages in the course of war—its initiation, suspension and termination—are easy to tell apart in the abstract. Yet, frequently,

international lawyers sharply disagree with one another about the interpretation of international instruments, and the consequences of actions taken by belligerents, when expressions such as declarations of war, truces, cease-fires and armistices are employed. To some extent, the lack of consensus is due to the linguistic evolution of modern international law since its inception some 350 years ago. The passage of time has brought about alterations in international legal terms of art.

The purpose of the present essay is to shed some light on the correct meaning of the contemporary vocabulary of war. This vocabulary is bound to develop further in the years ahead. However, at the end of the second millennium, its definitional range can be fairly settled against the background of the recent practice of States. Terminological exactitude is not merely a matter of fastidiousness. It gives rise to a better understanding of the implications and ramifications of what States do in the world of reality.

This essay is a revised and updated version of Chapter 2 of the author's *WAR, AGGRESSION AND SELF-DEFENCE* 31–58 (2<sup>nd</sup> ed., 1994).

#### Notes

1. For a definition of war, see Y. DINSTEIN, *WAR, AGGRESSION AND SELF-DEFENCE*, 15–16 (2<sup>nd</sup> ed., 1994).

2. M. GREENSPAN, *THE MODERN LAW OF LAND WARFARE* 38 (1959).

3. Hague Convention (III) Relative to the Opening of Hostilities, 1907, *THE LAWS OF ARMED CONFLICTS: A COLLECTION OF CONVENTIONS, RESOLUTIONS AND OTHER DOCUMENTS* 57, 57–58 (D. Schindler & J. Toman eds., 3<sup>rd</sup> ed., 1988).

4. See N. Hill, *Was There an Ultimatum before Pearl Harbor?* 42 *AMERICAN JOURNAL OF INTERNATIONAL LAW* 355, 357–358 (1948).

5. See *ibid.*, 358.

6. See *ibid.*, 358–359. Security Council Resolution 678 of November 1990 [45 *RESOLUTIONS AND DECISIONS OF THE SECURITY COUNCIL* 27 (1990)] is referred to by some commentators as an ultimatum to Iraq. M. Voelckel, *Faut-il Encore Déclarer la Guerre?* 37 *ANNUAIRE FRANÇAIS DE DROIT INTERNATIONAL* 7, 21 (1991). But this is not the case, inasmuch as the Gulf War had already been in progress since the Iraqi invasion of Kuwait in August 1990.

7. See E.C. Stowell, *Convention Relative to the Opening of Hostilities*, 2 *AMERICAN JOURNAL OF INTERNATIONAL LAW* 50, 53–54 (1908).

8. See A.P. HIGGINS, *THE HAGUE PEACE CONFERENCES* 204 (1909).

9. See T.J. LAWRENCE, *THE PRINCIPLES OF INTERNATIONAL LAW* 326 (7<sup>th</sup> ed., by P.H. Winfield, 1923).

10. See G. SCHWARZENBERGER, *THE LAW OF ARMED CONFLICT* 65–67 (1968).

11. See P.M. Brown, *Undeclared Wars*, 33 *AMERICAN JOURNAL OF INTERNATIONAL LAW* 538, 539 (1939).

12. The coinage "international armed conflict," rather than war, is currently fashionable also in international legal instruments. A prime example is Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1977, [1977] UNITED NATIONS JURIDICAL YEARBOOK 95.

13. See C. Eagleton, *The Form and Function of the Declaration of War*, 32 AMERICAN JOURNAL OF INTERNATIONAL LAW 19, 32-33 (1938).

14. E. CASTRÉN, THE PRESENT LAW OF WAR AND NEUTRALITY 98 (1954).

15. Dalmia Cement Ltd. v. National Bank of Pakistan (1976), 67 INTERNATIONAL LAW REPORTS 611, 616.

16. *Navios Corporation v. The Ulysses II et al.* (1958), 161 F. Supp. 932, 942-943. The judgment, and the reasons given therein, were affirmed by the U.S. Court of Appeals (4th Circuit) (260 F.2d 959).

17. *Ibid.*, *id.*

18. G.O. Fuller, *Note*, 57 MICHIGAN LAW REVIEW 610, 612 (1958-1959).

19. On this subject, see Y. Dinstein, *Computer Network Attacks and Self-Defense*, in *COMPUTER NETWORK ATTACK AND INTERNATIONAL LAW* (M. Schmitt & J. Pottorff eds., forthcoming 2001).

20. See J. STONE, LEGAL CONTROLS OF INTERNATIONAL CONFLICT 306 (1954).

21. Cf. E. Borchard, *When Did the War Begin?* 47 COLUMBIA LAW REVIEW 742-748 (1947); C. Eagleton, *Acts of War*, 35 AMERICAN JOURNAL OF INTERNATIONAL LAW 321, 325 (1941).

22. See M.O. Hudson, *The Duration of the War between the United States and Germany*, 39 HARVARD LAW REVIEW 1020, 1021 (1925-1926).

23. Hague Convention (III), *supra* note 3, at 58.

24. Covenant of the League of Nations, 1919, 1 INTERNATIONAL LEGISLATION 1, *id.* (M.O. Hudson ed., 1931).

25. See G. Schwarzenberger, *Peace Treaties before International Courts and Tribunals*, 8 INDIAN JOURNAL OF INTERNATIONAL LAW 1, *id.* (1968).

26. Treaty on the Final Settlement with Respect to Germany, 1990, 29 INTERNATIONAL LEGAL MATERIALS 1186, 1187 (1990).

27. *Ibid.*, *id.*

28. *Ibid.*, 1186-1189.

29. See J.A. Frowein, *The Reunification of Germany*, 86 AMERICAN JOURNAL OF INTERNATIONAL LAW 152, 157 (1992).

30. Paris Treaty of Peace with Bulgaria, 1947, 41 UNITED NATIONS TREATY SERIES 21; Paris Treaty of Peace with Hungary, 1947, *ibid.*, 135; Paris Treaty of Peace with Romania, 1947, 42 *ibid.*, 3; Paris Treaty of Peace with Finland, 1947, 48 *ibid.*, 203; Paris Treaty of Peace with Italy, 1947, 49 *ibid.*, 3.

31. San Francisco Treaty of Peace with Japan, 1951, 136 UNITED NATIONS TREATY SERIES 45.

32. USSR-Japan, Joint Declaration, 1956, 263 UNITED NATIONS TREATY SERIES 112, *id.* (Article 1).

33. *Ibid.*, 116 (Article 9).

34. *Ibid.*, 112 (Article 1).

35. *Ibid.*, 114 (Article 2).

36. Egypt-Israel, Treaty of Peace, 1979, 18 INTERNATIONAL LEGAL MATERIALS 362 (1979).

37. Jordan-Israel, Treaty of Peace, 1994, 34 INTERNATIONAL LEGAL MATERIALS 43 (1995).

38. Egypt-Israel, Treaty of Peace, *supra* note 36, at 363.

39. Jordan-Israel, Treaty of Peace, *supra* note 37, at 46.



40. *Ibid.*, 46.
41. Washington Declaration, July 25, 1994, 54 *FACTS ON FILE YEARBOOK* 526, *id.* (1994).
42. The text is published in 7 *MIDDLE EAST CONTEMPORARY SURVEY* 690 (1982–1983).
43. The requirement of ratification of the instrument—as a condition precedent to its entry into force—appears in Article 10(1), *ibid.*, 692.
44. *Ibid.*, 691. See also 43 *FACTS ON FILE YEARBOOK* 359, *id.* (1983).
45. Egypt-Israel, Treaty of Peace, *supra* note 36, at 363. See also *ibid.*, 364 [Article III(3)], 367 (Annex I, Article I).
46. On the distinction between positive and negative peace, see H. Rumpf, *The Concepts of Peace and War in International Law*, 27 *GERMAN YEARBOOK OF INTERNATIONAL LAW* 429, 431–433 (1984).
47. Express recognition is specifically agreed upon in Article III of the Egyptian-Israeli Treaty of Peace, *supra* note 36, at 363–364. But there is every reason to believe that recognition would have been implied from the treaty in any event. Cf. H. LAUTERPACHT, *RECOGNITION IN INTERNATIONAL LAW* 378 (1947).
48. See L. OPPENHEIM, 2 *INTERNATIONAL LAW* 607 (7th ed., by H. Lauterpacht, 1952).
49. W.G. Grewe, *Peace Treaties*, 4 *ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW* 102, 105 (R. Bernhardt ed., 1982).
50. Egypt-Israel, Camp David Agreements, 1978: A Framework for Peace in the Middle East, 17 *INTERNATIONAL LEGAL MATERIALS* 1466 (1978); Framework for the Conclusion of a Peace Treaty between Egypt and Israel, *ibid.*, 1470.
51. See LORD MCNAIR, *THE LAW OF TREATIES* 207, 209 (1961).
52. See H. LAUTERPACHT, 1 *INTERNATIONAL LAW* 354 (E. Lauterpacht ed., 1979).
53. Vienna Convention on the Law of Treaties, 1969, [1969] *UNITED NATIONS JURIDICAL YEARBOOK* 140, 153.
54. Fisheries Jurisdiction Case (Jurisdiction of the Court), [1973] *I.C.J. REPORTS* 3, 14.
55. Report of the International Law Commission, 18th Session, [1966] *II YEARBOOK OF THE INTERNATIONAL LAW COMMISSION* 172, 247.
56. *Ibid.*, *id.*
57. I. SINCLAIR, *THE VIENNA CONVENTION ON THE LAW OF TREATIES* 180 (2nd ed., 1984).
58. Vienna Convention, *supra* note 53, at 159.
59. P. REUTER, *INTRODUCTION TO THE LAW OF TREATIES* 140 (J. Mico & P. Haggenschmacker trans., 1989).
60. See L. OPPENHEIM, 1(2) *INTERNATIONAL LAW* 1292 (9th ed., by R. Jennings & A. Watts., 1992).
61. H. Waldock, *Second Report on the Law of Treaties*, [1963] *II YEARBOOK OF THE INTERNATIONAL LAW COMMISSION* 36, 52.
62. H.G. de Jong, *Coercion in the Conclusion of Treaties*, 15 *NETHERLANDS YEARBOOK OF INTERNATIONAL LAW* 209, 227 (1984).
63. Vienna Convention, *supra* note 53, at 152.
64. *Ibid.*, *id.*
65. *Ibid.*, 158.
66. See SINCLAIR, *supra* note 57, at 160–161.
67. Vienna Convention, *supra* note 53, at 157.
68. See C.L. Rozakis, *The Law on Invalidity of Treaties*, 16 *ARCHIV DES VÖLKERRECHTS* 150, 168–169 (1973–1975).
69. See E. Jiménez de Aréchaga, *International Law in the Past Third of a Century*, 159 *RECUEIL DES COURS* 1, 68 (1978).

70. Regulations Respecting the Laws and Customs of War on Land (Annexed to Hague Conventions (II) of 1899 and (IV) of 1907), THE LAWS OF ARMED CONFLICTS, *supra* note 3, at 2, 69, 87–88.

71. The texts of all the armistices of World War I are reproduced in 1 A HISTORY OF THE PEACE CONFERENCE OF PARIS, Appendix V (H.W.V. Temperley ed., 1920).

72. Conditions of an Armistice with Germany, 1918, *ibid.*, 459, 469 (Article XXXIV).

73. See *ibid.*, 476–481.

74. *Ibid.*, 480.

75. See A. Klafkowski, *Les Formes de Cessation de l'Etat de Guerre en Droit International*, 149 RECUEIL DES COURS 217, 248–250 (1976).

76. Armistice Agreement with Rumania, 1944, 9 INTERNATIONAL LEGISLATION 139, 140 (M.O. Hudson ed., 1950) (Article I); Armistice Agreement with Hungary, 1945, *ibid.*, 276, 277 [Article I(a)].

77. *Ibid.*, 140 (Article 1).

78. *Ibid.*, 277 [Article 1(a)].

79. Conditions of an Armistice with Italy, 1943, *ibid.*, 50.

80. Paris Treaty of Peace with Italy, *supra* note 30, at 127.

81. G.G. Fitzmaurice, *The Juridical Clauses of the Peace Treaties*, 73 RECUEIL DES COURS 259, 272 (1948).

82. See Department of State, *Commentary on the Additional Conditions of the Armistice with Italy*, 1945, 40 AMERICAN JOURNAL OF INTERNATIONAL LAW, Supp., 18, *id.* (1946).

83. Israel-Egypt, General Armistice Agreement, 1949, 42 UNITED NATIONS TREATY SERIES 251; Israel-Lebanon, General Armistice Agreement, 1949, *ibid.*, 287; Israel-Jordan, General Armistice Agreement, 1949, *ibid.*, 303; Israel-Syria, General Armistice Agreement, 1949, *ibid.*, 327.

84. Panmunjom Agreement Concerning a Military Armistice in Korea, 1953, 47 AMERICAN JOURNAL OF INTERNATIONAL LAW, Supp., 186 (1953).

85. *Ibid.*, 186–187 (Preamble).

86. G. VON GLAHN, LAW AMONG NATIONS 727 (6th ed., 1992).

87. General Armistice Agreements, *supra* note 83, at 252–254 (Egypt), 288–290 (Lebanon), 304–306 (Jordan), 328–330 (Syria).

88. *Ibid.*, 254 (Egypt, Article II), 290 (Lebanon, Article III), 306 (Jordan, Article III), 330 (Syria, Article III).

89. For the origin of this formula, cf. Article 40 of the UN Charter (regarding provisional measures taken by the Security Council). Charter of the United Nations, 1945, 9 INTERNATIONAL LEGISLATION 327, 343 (M.O. Hudson ed., 1950).

90. General Armistice Agreements, *supra* note 83, at 268 (Egypt, Article XI), 290 (Lebanon, Article II), 306 (Jordan, Article II), 330 (Syria, Article II).

91. *Ibid.*, 268 (Egypt, Article XII), 296–298 (Lebanon, Article VIII), 318 (Jordan, Article XII), 340 (Syria, Article VIII).

92. *Ibid.*, 270 [Egypt, Article XII(5)].

93. *Ibid.*, 268 (Egypt, Article XII), 296–298 (Lebanon, Article VIII), 318 (Jordan, Article XII), 340 (Syria, Article VIII).

94. See S. ROSENNE, ISRAEL'S ARMISTICE AGREEMENTS WITH THE ARAB STATES 82 (1951).

95. General Armistice Agreements, *supra* note 83, at 256 (Egypt).

96. *Ibid.*, 312 (Jordan).

97. *Ibid.*, 332 (Syria).

98. ROSENNE, *supra* note 94, at 48.
99. A distinction between armistice demarcation lines and other international boundaries is made in the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. General Assembly Resolution 2625 (XXV), 25 RESOLUTIONS ADOPTED BY THE GENERAL ASSEMBLY 121, 122 (1970). It is submitted that this distinction is no longer valid in most cases.
100. See J.H.W. VERZIJL, 6 INTERNATIONAL LAW IN HISTORICAL PERSPECTIVE 459–553 (1973).
101. Security Council Resolution 95, 6 RESOLUTIONS AND DECISIONS OF THE SECURITY COUNCIL 10, 11 (1951).
102. See N. FEINBERG, STUDIES IN INTERNATIONAL LAW 87–92 (1979).
103. Hague Regulations, *supra* note 70, at 87.
104. B.V.A. Röling, *International Law and the Maintenance of Peace*, 4 NETHERLANDS YEARBOOK OF INTERNATIONAL LAW 1, 7 (1973).
105. See, e.g., H.S. Levie, *The Nature and Scope of the Armistice Agreement*, 50 AMERICAN JOURNAL OF INTERNATIONAL LAW 880, 881–886 (1956). Cf. Italian-United States Conciliation Commission, Mergé Case (1955), 11 REPORTS OF INTERNATIONAL ARBITRAL AWARDS 236, 241.
106. See STONE, *supra* note 20, at 641–642, 644. Cf. M.W. Graham, *Armistices—1944 Style*, 39 AMERICAN JOURNAL OF INTERNATIONAL LAW 286, 287 (1945).
107. See C.C. Tansill, *Termination of War by Mere Cessation of Hostilities*, 38 LAW QUARTERLY REVIEW 26–37 (1922).
108. See J.M. Mathews, *The Termination of War*, 19 MICHIGAN LAW REVIEW 819, 828 (1920–1921).
109. See L. KOTZSCH, THE CONCEPT OF WAR IN CONTEMPORARY HISTORY AND INTERNATIONAL LAW 251 (1956).
110. See U. Shoham, *The Israeli Aerial Raid upon the Iraqi Nuclear Reactor and the Right of Self-Defense*, 109 MILITARY LAW REVIEW 191, 206 n. 67 (1985).
111. See *ibid.*, 191, 207–210.
112. Protocol I, *supra* note 12, at 114 [Article 51(4)-(5)]. Cf. P. Bretton, *Remarques sur le Jus in Bello dans la Guerre du Golfe* (1991), 37 ANNUAIRE FRANÇAIS DE DROIT INTERNATIONAL 139, 149 (1991).
113. See L.R. Beres, *After the Gulf War: Israel, Pre-Emption, and Anticipatory Self-Defense*, 13 HOUSTON JOURNAL OF INTERNATIONAL LAW 259, *id.* (1990–1991).
114. See J. CRAWFORD, THE CREATION OF STATES IN INTERNATIONAL LAW 418–420 (1979).
115. C. PHILLIPSON, TERMINATION OF WAR AND TREATIES OF PEACE 9 (1916).
116. See GREENSPAN, *supra* note 2, at 600–603.
117. See J.H.W. VERZIJL, 3 INTERNATIONAL LAW IN HISTORICAL PERSPECTIVE 361–362 (1970).
118. See SCHWARZENBERGER, *supra* note 10, at 467, 730. Cf. H. Kelsen, *The Legal Status of Germany according to the Declaration of Berlin*, 39 AMERICAN JOURNAL OF INTERNATIONAL LAW 518–526 (1945).
119. Act of Military Surrender of Germany, 1945, 9 INTERNATIONAL LEGISLATION 312 (M.O. Hudson ed., 1950).
120. See OPPENHEIM, *supra* note 60, at 699–700.
121. See F.A. MANN, FOREIGN AFFAIRS IN ENGLISH COURTS 33 (1986).

122. See Anonymous, *Judicial Determination of the End of the War*, 47 COLUMBIA LAW REVIEW 255, 258 (1947).

123. This was done in a Proclamation by President Truman pursuant to a joint resolution by Congress. Termination of the State of War with Germany, 1951, 46 AMERICAN JOURNAL OF INTERNATIONAL LAW, Supp., 12 (1952).

124. J.L. Kunz, *Ending the War with Germany*, 46 AMERICAN JOURNAL OF INTERNATIONAL LAW 114, 115 (1952).

125. See D. Ottensooser, *Termination of War by Unilateral Declaration*, 29 BRITISH YEAR BOOK OF INTERNATIONAL LAW 435, 442 (1952).

126. See F.C. Balling, *Unconditional Surrender and a Unilateral Declaration of Peace*, 39 AMERICAN POLITICAL SCIENCE REVIEW 474, 476 (1945).

127. See M. Sibert, *L'Armistice*, 40 REVUE GÉNÉRALE DE DROIT INTERNATIONAL PUBLIC 657, 660 (1933).

128. Hague Regulations, *supra* note 70.

129. See *God, Truce of*, 5 THE NEW ENCYCLOPAEDIA BRITANNICA 319, *id.* (15th ed., 1998).

130. See P. Mohn, *Problems of Truce Supervision*, 478 INTERNATIONAL CONCILIATION 51, 53–57 (1952).

131. Security Council Resolutions 49, 50, 53, 54, 56, 59, 61 and 62 (all of 1948), 3 RESOLUTIONS AND DECISIONS OF THE SECURITY COUNCIL 19–30 (1948).

132. Hague Regulations, *supra* note 70, at 87.

133. See L. OPPENHEIM, *supra* note 48, at 550.

134. Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 75 UNITED NATIONS TREATY SERIES 31, 40–42.

135. See R.R. Baxter, *Armistices and Other Forms of Suspension of Hostilities*, 149 RECUEIL DES COURS 353, 371–372 (1976). The author did not differentiate between the terms “cease-fire” and “armistice”.

136. See S. Bastid, *The Cease-Fire*, 6(1) RECUEILS DE LA SOCIÉTÉ INTERNATIONALE DE DROIT MILITAIRE ET DE DROIT DE LA GUERRE 31, 37 (1973).

137. Charter of the United Nations, *supra* note 89, at 343–346.

138. Security Council Resolution 54, *supra* note 131, at 22.

139. Charter of the United Nations, *supra* note 89, at 339. See also Article 48(1) of the Charter, *ibid.*, 345–346.

140. Security Council Resolution 505, 37 RESOLUTIONS AND DECISIONS OF THE SECURITY COUNCIL 17, *id.* (1982).

141. See, e.g., Security Council Resolution 233, 22 RESOLUTIONS AND DECISIONS OF THE SECURITY COUNCIL 2, *id.* (1967).

142. See, e.g., Security Council Resolutions 234 and 235, 22 RESOLUTIONS AND DECISIONS OF THE SECURITY COUNCIL 3, *id.* (1967).

143. Security Council Resolution 514, 37 RESOLUTIONS AND DECISIONS OF THE SECURITY COUNCIL 19, *id.* (1982).

144. Security Council Resolution 598, 42 RESOLUTIONS AND DECISIONS OF THE SECURITY COUNCIL 5, 6 (1987).

145. M. Weller, *Comments: The Use of Force and Collective Security*, THE GULF WAR OF 1980–1988, 71, 85 (I.F. Dekker & H.H.G. Post eds., 1992).

146. Security Council Resolution 687, 30 INTERNATIONAL LEGAL MATERIALS 847–854 (1991).

147. D.M. Morriss, *From War to Peace: A Study of Cease-Fire Agreements and the Evolving Role of the United Nations*, 36 VIRGINIA JOURNAL OF INTERNATIONAL LAW 801, 891–892 (1995–1996).

148. Security Council Resolution 687, *supra* note 146, at 854 (Section I).

149. J. Lobel & M. Ratner, *Bypassing the Security Council: Ambiguous Authorizations to Use Force, Cease-Fires and the Iraqi Inspection Regime*, 93 AMERICAN JOURNAL OF INTERNATIONAL LAW 124, 148 (1999).

150. C. Gray, *After the Cease-Fire: Iraq, the Security Council and the Use of Force*, 65 BRITISH YEAR BOOK OF INTERNATIONAL LAW 135, 144 (1994).

151. See R. Wedgwood, *The Enforcement of Security Council Resolution 687: The Threat of Force against Iraq's Weapons of Mass Destruction*, 92 AMERICAN JOURNAL OF INTERNATIONAL LAW 724, 726 (1998).

152. General Assembly Resolution 2793 (XXVI), 26 RESOLUTIONS ADOPTED BY THE GENERAL ASSEMBLY 3, *id.* (1971).

153. See P. Bretton, *De Quelques Problèmes du Droit de la Guerre dans le Conflit Indo-Pakistanaï*, 18 ANNUAIRE FRANÇAIS DE DROIT INTERNATIONAL 201, 211 (1972).

154. Security Council Resolution 50, *supra* note 131, at 20.

155. For an illustration of such confusion, see V.A. Ary, *Concluding Hostilities: Humanitarian Provisions in Cease-Fire Agreements*, 148 MILITARY LAW REVIEW 186, 187–192 (1995).

156. Vindication of the air campaign against Iraq is sometimes sought by invoking the right of self-defense. See, e.g., S.M. Condron, *Justification for Unilateral Action in Response to the Iraqi Threat: A Critical Analysis of Operation Desert Fox*, 161 MILITARY LAW REVIEW 115–180 (1999). But the legitimacy of self-defense (in response to an armed attack) was fixed already in August 1990.

157. S.D. Bailey, *Cease-Fires, Truces, and Armistices in the Practice of the UN Security Council*, 71 AMERICAN JOURNAL OF INTERNATIONAL LAW 461, 469 (1977).

158. See C. ROUSSEAU, LE DROIT DES CONFLITS ARMÉS 202 (1983).

159. Morriss, *supra* note 147, at 815.

160. Security Council Resolutions 233–235, *supra* notes 141–142, at 2–3.

161. Security Council Resolution 338, 28 RESOLUTIONS AND DECISIONS OF THE SECURITY COUNCIL 10 (1973).

162. Egypt-Israel, *Cease-Fire Agreement*, 1973, 12 INTERNATIONAL LEGAL MATERIALS 1312 (1973).

163. Syria-Israel, *Agreement on Disengagement between Forces*, 1974, 13 INTERNATIONAL LEGAL MATERIALS 880 (1974).

164. Hague Regulations, *supra* note 70, at 87.

165. OPPENHEIM, *supra* note 48, at 556.

166. The *lex specialis* of Article 36 of the Hague Regulations apparently overrides the *lex generalis* of Article 56(2) of the Vienna Convention on the Law of Treaties (*supra* note 53, at 154), which requires a twelve months minimum notice of the intention to denounce a treaty.

167. Hague Regulations, *supra* note 70, at 88.

168. *Ibid.*, 87.

169. See OPPENHEIM, *supra* note 48, at 556.

170. See R. Monaco, *Les Conventions entre Belligérants*, 75 RECUEIL DES COURS 277, 337–338 (1949).

171. Vienna Convention, *supra* note 53, at 155. Cf. Baxter, *supra* note 135, at 386.