Article 26: The Security Council and Disarmament

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In considering the need to reform and strengthen the United Nations to better meet its obligations to provide for international peace and security, special attention should be given to Article 26 of the U.N. Charter. There are probably very few people in the world today familiar with this article. Consequently, the Security Council has been able to ignore one of its most important responsibilities for more than 50 years.

Article 26 states:

In order to promote the establishment and maintenance of international peace and security with the least diversion for armaments of the world's human and economic resources, the Security Council shall be responsible for formulating, with the assistance of the Military Staff Committee referred to in Article 47, plans to be submitted to the members of the United Nations for the establishment of a system for the regulation of armaments.

The language of Article 26 is simple and straightforward. It is not possible to mistake the intent of its directive. The Security Council is given the responsibility for "formulating...a system for the regulation of armaments."

The United Nations Charter was signed 50 years ago. In the intervening period of time, the Security Council has failed to carry out this responsibility to the members of the United Nations and through them to the people of the world. In 50 years the Security Council has done exactly nothing to fulfill its Article 26 obligation.

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Under Article 26, the regulation of armaments is not optional for the Security Council. The Article says unambiguously that the Security Council "shall" formulate such a plan. The members of the Security Council have thus breached a solemn duty to the people of the world. Since the non-permanent members of the Security Council rotate at two year intervals, they cannot be held primarily responsible for failing to meet this obligation. It is the five permanent members of the Council -- the United States, Russia, Britain, France, and China -- that have been in violation of their Article 26 obligation for 50 years.

The reason that the permanent members of the Security Council have been remiss in fulfilling their obligation under Article 26 is not difficult to identify. After all, these states have been the greatest developers, producers, promoters, and sellers of arms. They have profited enormously by the sale of arms throughout the world, and they continue to do so. To fulfill their Article 26 obligation by formulating plans for the regulation of armaments would disadvantage them economically. Their behavior provides clear evidence that they would prefer to promote rather than regulate armaments.

The Military Staff Committee referred to in Article 26 is described in Article 47 as being composed of "the Chiefs of Staff of the permanent members of the Security Council or their representatives." The purpose of the Military Staff Committee is "to advise and assist the Security Council on all questions relating to the Security Council's military requirements for the maintenance of international peace and security, the employment and command of forces placed at its disposal, the regulations of armaments, and possible disarmament."

The Military Staff Committee is also in breach of its obligation to "advise and assist" the Security Council in carrying out its Article 26 responsibility for formulating plans for the regulation of armaments. Since the Military Staff Committee is composed of representatives of the military forces of the five permanent members of the Security Council, their breach of duty is a further violation of the duty of the five permanent members.

The United Nations Charter lists as its first purpose to "maintain international peace and security," and it gives the primary responsibility for carrying out this purpose to the Security Council. When the Security Council fails in meeting its responsibilities, including its responsibility under Article 26, it is the people of the world who suffer. The Council's failure to formulate plans for the regulation of arms under Article 26 has left the world awash in dangerous arms that take their toll daily against opposing military forces as well as innocent civilians and the environment.

When a nation signs the United Nations Charter it enters into a solemn treaty obligation. In essence, it makes a contract by which it agrees to be bound. While
the five permanent members of the Security Council do have special privileges under the Charter, they do not have the privilege of violating the Charter with impunity. When they ignore the provisions of the Charter, as they have done by failing to meet their obligations under Article 26, they are in violation of international law. In simple terms, they have broken the law. Each day that passes without the formulation of plans by the Security Council for the regulation of armaments is an additional day of illegality for the permanent members.

For 50 years the permanent members of the Security Council have flaunted their illegality with respect to Article 26. They continue to develop, manufacture, promote, and sell armaments of all levels of sophistication throughout the world. They daily demonstrate by their actions and omissions their lack of respect for the law and for their solemn obligations. Day in and day out they place economic benefit and military power ahead of their legal obligations.

Article 26 stands in silent testimony to the lawlessness of the five permanent members of the Security Council. Article 26 reminds those of us who know of its existence of the disgraceful behavior of the most powerful nations on Earth in failing to meet their legal obligations under the Charter and, in doing so, setting themselves above the law.

Under the United States Constitution, treaty law is the law of the land. When the United States government signs and ratifies a treaty, it becomes bound by its provisions, and the obligations become part of the United States law. Thus, in its continuing failure to meet its obligations under Article 26, the United States government is in violation not only of the United Nations Charter but U.S. law as well. The buck stops with the president of the United States and the chairman of the Joint Chiefs of Staff. By their failure to even attempt to formulate a plan with the other members of the Security Council, they demonstrate daily contempt for the law, both international and domestic.

For those who attack the United Nations for its short-comings, of which there are all too many, Article 26 should be a powerful reminder that the United Nations can succeed only if the nations that are its members live up to their legal duties under the Charter. When nations fail to do so and threaten international peace and security, it is the Security Council, with the advice and assistance of the Military Staff Committee, that is charged with preserving the peace. When the Security Council fails to fulfill its obligation to regulate armaments, it is called upon to remedy the consequences of its inaction.

When the permanent members of the Security Council fail to meet their obligations to the United Nations, it is the General Assembly that must call them to account. If the General Assembly fails to act, it is the people of the world who must step forward and demand that the permanent members of the Security
Council fulfill their obligations. A particular responsibility rests with the people of the nations that have permanent seats on the Security Council to call their governments to account and demand that they fulfill their legal obligations to formulate a system for the regulation of armaments under Article 26.

Four of the five permanent members of the Security council make claim to being democracies, and in these societies ultimate responsibility for government logically rests with the citizenry. Citizens in these states must be educated about Article 26 and must pressure their governments to act legally and responsibility to develop a plan for the worldwide regulation of armaments as called for in Article 26.

At the same time, other states must also demand that the Security Council fulfill its obligation under Article 26. The failure to regulate armaments has resulted in the escalation of death and destruction in warfare and made the world far more dangerous and deadly.

It is past time for the Security Council to act decisively on Article 26.