THE SIX-DAY WAR AND ISRAELI SELF-DEFENSE

The war fought in June 1967 between Israel and Arab states was widely taken to have been forced upon Israel, to fight to prevent the annihilation of its people by Arab armies hovering on Israel’s borders. Period documents declassified by key governments now give reason to question that view of this war. The four major powers all knew that the Arab states were not in attack mode. The major powers tried feverishly to dissuade Israel from attacking. In later years, the June 1967 war was seized upon as a precedent for allowing an attack on a state that is expected to attack. The precedent has been used to justify even an attack on a state whose own expected attack is well in the future. In a number of instances, a state using force has contrived facts to make its use of force appear to be defensive. The June 1967 war in fact can serve as no precedent in such circumstances, because evidence is lacking that it was waged on Israel’s side in anticipation of an attack by Arab states. A flawed perception of the June 1967 war holds sway in governmental and academic circles, despite the declassified documents. Additionally, and also negatively, Israel-Palestine peace efforts are hampered by the persistence of the view that Israel acted in lawful self-defense in 1967. This book seeks to provide a corrective on the character of the June 1967 war.

John Quigley is the President’s Club Professor in Law at the Moritz College of Law at the Ohio State University. After earning his A.B., LL.B., and M.A. degrees at Harvard University, he was Research Associate at Harvard Law School before taking up his teaching post, where his focus is public international law. He has authored several books and several hundred scholarly articles on the law of armed conflict and on legal aspects of the Arab-Israeli conflict.
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The Six-Day War and Israeli Self-Defense

QUESTIONING THE LEGAL BASIS FOR PREVENTIVE WAR

John Quigley
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Preface

A mystery to be solved. When war broke out in the Middle East in June 1967, I was just finishing a year at the Faculty of Law of Moscow State University. US President Dwight Eisenhower had negotiated a cultural exchange treaty, and I was some of the culture being exchanged. My first source for news of the war was the Communist Party newspaper Pravda. Egypt was the victim of aggression. Israel had invaded for no good reason. Pravda translates as “truth.” Was this the truth? When I returned soon after to the United States, the “truth” was quite different. Egypt had threatened to invade, forcing Israel to protect itself. The disconnect between the Western and Soviet media accounts could not have been greater. After a year in Moscow, I was accustomed to black being white, and white being black, depending on which side of the Cold War was doing the talking. So I was not surprised at the disparity. Pravda was short on detail to back its view, but so too was the Western press. From the information available in the public sphere, there was little basis for choosing one version over the other.

The question of responsibility for the 1967 war remains as controversial today as it was in 1967. I first wrote about it, albeit briefly, in 1990, in a book titled Palestine and Israel: A Challenge to Justice. I argued – in opposition to most expert opinion – that Israel’s action in the war was not justifiable as self-defense. As of 1990, publicly available information about the genesis of the war was hardly greater than it had been in 1967. It was still too close to the event for governments to open their store of cable traffic and intelligence analyses.

Since 1990, documents that were classified on security grounds in 1967 have been opened for public inspection by the four outside powers that were heavily involved diplomatically in the run-up to the war: France, the United Kingdom, the United States, and Russia. The British
government posted electronically the minutes of cabinet meetings for 1967. The French government published a volume for the year 1967 in its series *Documents Diplomatiques Français*. The US government published documents for the year 1967 in its series *Foreign Relations of the United States*. The Russian government opened access to the Russian National Archives for documents of the period. This newly available information illuminates the steps that led to the war, and in particular the unsuccessful efforts made by the four powers to prevent it.

To date, this documentation has not been used to analyze the conflicting claims about the resort to force. Opinions based on previously available information have continued to be published. The failure, particularly in legal analyses, to utilize these new sources has two continuing consequences, both negative. Both became apparent in the first decade of the twenty-first century. As Israel-Palestine peace negotiations stalled, a continuing issue in controversy was whether Israel had any claim to Arab territory it occupied in the war and still held. Theories asserting the propriety of such a claim have been based on a particular analysis of the legalities of the 1967 war.

Second and more universally, the June 1967 war came to be invoked as backing for new ideas of the propriety of war waged preventively. If Israel went to war in 1967 because it expected an attack from Egypt, and if a principle is accepted to allow use of force in such a situation, how immediate must the expected attack be? Might one extrapolate so that a state may go to war even if the expected attack remains some considerable distance in the future? May a state go to war to prevent another state from developing weapons as yet in the planning stage?

Both these issues – Israel’s possible claim to territory and the legality of preventive war – raise the need for proper analysis of the self-defense issue in the June 1967 war. This book aims to provide that analysis, along with analysis of other legal arguments that have been made relating to the outbreak of that war. This book, it must be stressed, is limited to responsibility for the use of force that initiated the war. It does not explore aspects of that war that have drawn the attention of historians, such as psychological motivations of leadership figures or policy differences inside the different governments. Some of those aspects are referenced in this book, but what matters for a legality analysis is the action taken by a state as a corporate body. The fact that a state may have come to a decision only after soul-searching, or only over internal opposition, is not central. A historian may make a judgment about the June 1967 war by saying, as some do, that Egyptian President Nasser should have realized that
his actions were leading Israel to war, or that it was a war “that nobody wanted,” meaning that the two sides reacted to steps taken by the other in a way that heightened tension finally to the breaking point. Such analyses may have some validity, but for a legal analysis, the judgment rests rather on the situation at the moment of initiation of hostilities, and on whether the initiating party had a lawful basis. A legal analysis may seem sterile for discounting the richer fabric of the situation.

I am indebted to Dr. Anis F. Kassim for valuable comments he made on a draft of this book. I am grateful to the staff of the Law Library of the Moritz College of Law of The Ohio State University for assistance in gaining access to sources. I am further grateful to the college itself for a supportive physical and intellectual environment, and in particular for a research leave that provided time to parse the declassified documents. I am grateful to the students who have endured my Middle East seminar. Their perspectives have helped me think through issues. Joel Lund, J.D. 2011, at the college, researched the June 1967 war in the seminar and alerted me to key documentation. Finally, I am grateful to Susan Edwards, of the college staff, for preparation of the manuscript for publication, in particular the Index. Some passages quoted in the book are from sources in languages other than English. When English appears in the text from a source in another language, the translation is the responsibility of the author.

John Quigley
Columbus, Ohio
Note on Official Documents

Much information in this book is taken from documents of the United Kingdom, United States, France, Russia, and the United Nations. These documents can be accessed in hard copy or electronic databases, following the citations given in endnotes.

I. UNITED KINGDOM

The National Archives is a department of the government of the United Kingdom. It maintains paper documents available in London. It also maintains a website, currently www.nationalarchives.gov.uk/documentsonline. By entering “Middle East war,” one accesses “cabinet papers” that give the minutes of cabinet meetings relating to the June 1967 war. Citations use “CC” for Cabinet Conclusions followed by “67” for the year 1967.

II. USSR

Note on Official Documents

III. FRANCE

*Documents Diplomatiques Français* is a publication (hard copy only) of the Commission of Diplomatic Archives of the Ministry of Foreign Affairs of France. Each issue covers a particular time period. The issue cited in this book is 1967, volume 1 (January 1 to June 30). This volume was published in 2008 by a commercial publisher, P. I. E. Peter Lang, Brussels. Citations in this book are given as *DDF*. Quotations from these documents are given in English, as translated by the author.

IV. UNITED STATES OF AMERICA

*Foreign Relations of the United States* is a publication (hard copy only) of the Department of State of the United States of America. Each set covers a particular time period. One set covers 1964–1968. Within that set, individual books bear a volume number. The only volumes from the 1964–1968 set cited in this book are volume 18, titled *Arab-Israeli Dispute 1964–1967*, published in 2000, and volume 19, titled *Arab-Israeli Crisis and War, 1967*, published in 2004. Citations in this book are given as *FRUS 1964–1968*, followed by either vol. 18 or vol. 19 and a page number. The page number is the number of the first page of the given document. A potential source of confusion is that frequent reference is made in the documents cited in this book to two US officials, both surnamed Rostow. The two were brothers. Walter Rostow was Special Assistant to President Lyndon Johnson. Eugene Rostow was Under Secretary of State for Political Affairs.

V. UNITED NATIONS

United Nations documents are typically cited with a document number and a date. A document number beginning with “A” is a document of the General Assembly. A document number beginning with “S” is a document of the Security Council. The cited UN documents are available in hard copy. Many are posted electronically in one of two UN databases accessible from the home page of the UN website (www.un.org). These databases are United Nations Information System on Palestine (UNIS-PAL) and Official Document System (ODS). Some document citations, in addition to the document number, bear a reference to the UN hard-copy publication in which the document appears. These publications are typically cited as SCOR (Security Council Official Records) or GAOR.
Note on Official Documents

(General Assembly Official Records). Meetings of the Security Council are cited by S/PV followed by the number of the meeting, plus the date of the meeting. Meetings of the General Assembly are cited by A/PV followed by the number of the meeting, plus the date of the meeting. “PV” stands for “provisional verbatim” record of a given meeting.
Abbreviations

A Assembly (used in documents of the UN General Assembly)
A/CN One of the several commissions of the UN General Assembly
AJIL *American Journal of International Law*
A/PV. Provisional Verbatim Record of a meeting of the UN General Assembly. This abbreviation is followed by the number of the meeting. Meetings are numbered consecutively from the founding of the General Assembly. Numbers from 1525 through 1545 are meetings of the General Assembly’s Fifth Emergency Special Session held June–July 1967.
BFSP British and Foreign State Papers (UK documents)
C Committee (used in documents of committees of UN General Assembly), also Cabinet (used in documents of the British cabinet)
CAB Cabinet (used by UK National Archives in its designation for documents of the British cabinet)
CC Cabinet Conclusions (British cabinet), followed by a two-digit number in parentheses for the year, then the number of the cabinet meeting for that year (beginning with “1” for the first meeting each year)
Cmd. Command Paper (United Kingdom, Parliamentary Paper)
CN Commission (of an organ of the United Nations)
DDF *Documents Diplomatiques Français* (France)
DSB Department of State Bulletin (USA)
EDT Eastern daylight time (summer time, East Coast, USA)
ES Emergency Special Session (of the UN General Assembly)
FCO Foreign and Commonwealth Office (UK)
### Abbreviations

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<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>FO</td>
<td>Foreign Office (UK)</td>
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<tr>
<td>FRUS</td>
<td><em>Foreign Relations of the United States</em> (US Department of State publication)</td>
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<td>GA</td>
<td>General Assembly (UN)</td>
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<tr>
<td>GAOR</td>
<td>General Assembly Official Records (UN)</td>
</tr>
<tr>
<td>ICJ</td>
<td>International Court of Justice</td>
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<tr>
<td>ICJ Rep.</td>
<td>ICJ, Reports of Judgments, Advisory Opinions and Orders</td>
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<tr>
<td>IDF</td>
<td>Israel Defense Force</td>
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<tr>
<td>MP</td>
<td>Member of Parliament (UK)</td>
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<tr>
<td>NYT</td>
<td><em>New York Times</em></td>
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<tr>
<td>OAU</td>
<td>Organization of African Unity</td>
</tr>
<tr>
<td>PV</td>
<td>Provisional Verbatim Record of a meeting (UN)</td>
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<td>Res.</td>
<td>Resolution</td>
</tr>
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<td>S</td>
<td>Security. See SC (used in documents of the Security Council)</td>
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<td>SC</td>
<td>Security Council (UN)</td>
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<td>SCOR</td>
<td>Security Council Official Records (UN)</td>
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<td>SPC</td>
<td>Special Political Committee of the UN General Assembly</td>
</tr>
<tr>
<td>S/PV.</td>
<td>Provisional verbatim record of a meeting of the UN Security Council. This abbreviation is followed by the number of the meeting. Meetings are numbered consecutively from the founding of the Security Council.</td>
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<tr>
<td>SR</td>
<td>Summary Record (of a meeting of a UN organ)</td>
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<tr>
<td>ST</td>
<td>Secretariat (used in documents of the UN Secretariat)</td>
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<tr>
<td>TIAS</td>
<td>Treaties and Other International Acts Series (USA)</td>
</tr>
<tr>
<td>UK</td>
<td>United Kingdom of Great Britain and Northern Ireland</td>
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<tr>
<td>UN</td>
<td>United Nations</td>
</tr>
<tr>
<td>UNESCO</td>
<td>United Nations Economic, Social and Cultural Organization</td>
</tr>
<tr>
<td>UNTS</td>
<td>United Nations Treaty Series</td>
</tr>
<tr>
<td>UNTSO</td>
<td>United Nations Truce Supervision Organization</td>
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<tr>
<td>US or USA</td>
<td>United States of America</td>
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