

Cambridge University Press

978-1-107-03206-4 - The Six-Day War and Israeli Self-Defense: Questioning the Legal Basis for Preventive War

John Quigley

Frontmatter

[More information](#)

## 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.

Cambridge University Press

978-1-107-03206-4 - The Six-Day War and Israeli Self-Defense: Questioning the Legal Basis for Preventive War

John Quigley

Frontmatter

[More information](#)

---

### Other Books by John Quigley

*Basic Laws on the Structure of the Soviet State*

*The Soviet Foreign Trade Monopoly*

*Law After Revolution*

*Palestine and Israel: A Challenge to Justice*

*The Ruses for War: American Interventionism Since World War II*

*Flight into the Maelstrom: Soviet Immigration to Israel and Middle East Peace*

*Genocide in Cambodia: Documents from the Trial of Pol Pot and Ieng Sary*

*The Case for Palestine: An International Law Perspective*

*The Genocide Convention: An International Law Analysis*

*Consular Law and Practice*

*The Law of Consular Access: A Documentary Guide*

*The Statehood of Palestine: International Law in the Middle East Conflict*

Cambridge University Press

978-1-107-03206-4 - The Six-Day War and Israeli Self-Defense: Questioning the Legal Basis for Preventive War

John Quigley

Frontmatter

[More information](#)

# The Six-Day War and Israeli Self-Defense

QUESTIONING THE LEGAL BASIS  
FOR PREVENTIVE WAR

**John Quigley**

Ohio State University, Moritz College of Law



**CAMBRIDGE**  
UNIVERSITY PRESS

Cambridge University Press

978-1-107-03206-4 - The Six-Day War and Israeli Self-Defense: Questioning the Legal Basis for Preventive War

John Quigley

Frontmatter

[More information](#)

CAMBRIDGE UNIVERSITY PRESS

Cambridge, New York, Melbourne, Madrid, Cape Town,  
Singapore, São Paulo, Delhi, Mexico City

Cambridge University Press

32 Avenue of the Americas, New York, NY 10013-2473, USA

[www.cambridge.org](http://www.cambridge.org)

Information on this title: [www.cambridge.org/9781107610026](http://www.cambridge.org/9781107610026)

© John Quigley 2013

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2013

Printed in the United States of America

*A catalog record for this publication is available from the British Library.*

*Library of Congress Cataloging in Publication data*

Quigley, John B.

The Six-Day War and Israeli self-defense : questioning the legal basis for preventive war / John Quigley.

p. cm.

Includes bibliographical references and index.

ISBN 978-1-107-03206-4 (hardback) – ISBN 978-1-107-61002-6 (pbk.)

1. Israel-Arab War, 1967 – Law and legislation. 2. Self-defense (International law)

I. Title.

KZ6795.A72Q85 2013

956.04'6–dc23 2012024938

ISBN 978-1-107-03206-4 Hardback

ISBN 978-1-107-61002-6 Paperback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party Internet websites referred to in this publication and does not guarantee that any content on such websites is, or will remain, accurate or appropriate.

Contents

<i>Preface</i>	<i>page</i> vii
<i>Note on Official Documents</i>	xi
<i>Abbreviations</i>	xv
PART ONE A WAR IS GENERATED	
1 Who Was to Blame and Why It Matters	3
2 The Syrian Connection	6
3 Egypt Flexes Its Muscle	15
4 Historical Opportunity for Israel	27
PART TWO COLD WAR TOGETHERNESS	
5 Britain Has a Plan	39
6 Southern Passage: Aqaba as Cause for War	46
7 “The Americans Will Not Sit <i>Shiva</i> ”	59
8 How to Attack: “We Have to Be the Victims”	67
PART THREE THE FIRST VICTIM OF WAR	
9 Turkey Shoot	75
10 Cover-up in the Security Council	83
11 Security Council “in the Dark”	90
12 Cover-up in the General Assembly	101

Cambridge University Press  
978-1-107-03206-4 - The Six-Day War and Israeli Self-Defense: Questioning the Legal Basis for Preventive War  
John Quigley  
Frontmatter  
[More information](#)

vi Contents

PART FOUR RALLYING ROUND SELF-DEFENSE	
13	How to Read the Silence on Aggression 115
14	The Experts Fall in Line 120
15	No Threat? No Matter 128
PART FIVE WAR WITHOUT LIMIT?	
16	War by Mistake 141
17	Defending in Advance 149
18	A New Doctrine of Preventive War 162
PART SIX PEACE SIDELINED	
19	Permanent Takeover? 177
20	Blocking the Path to Peace 185
	Notes 193
	Bibliography 245
	Index 257

Cambridge University Press

978-1-107-03206-4 - The Six-Day War and Israeli Self-Defense: Questioning the Legal Basis for Preventive War

John Quigley

Frontmatter

[More information](#)

## 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

Cambridge University Press

978-1-107-03206-4 - The Six-Day War and Israeli Self-Defense: Questioning the Legal Basis for Preventive War

John Quigley

Frontmatter

[More information](#)

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



Cambridge University Press

978-1-107-03206-4 - The Six-Day War and Israeli Self-Defense: Questioning the Legal Basis for Preventive War

John Quigley

Frontmatter

[More information](#)*Preface*

ix

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

Cambridge University Press

978-1-107-03206-4 - The Six-Day War and Israeli Self-Defense: Questioning the Legal Basis for Preventive War

John Quigley

Frontmatter

[More information](#)

---

Cambridge University Press

978-1-107-03206-4 - The Six-Day War and Israeli Self-Defense: Questioning the Legal Basis for Preventive War

John Quigley

Frontmatter

[More information](#)

## 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](http://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

Soviet documents relevant to this book have not been digitized or published in any official source. They are kept in the Foreign Policy Archive of the Russian Federation, in Moscow. Many documents have been published in V. V. Naumkin, ed., *Dokumenty: Blizhnnevostochnyi konflikt: Tom 2: 1957–1967: iz dokumentov Arkhiva vneshnei politiki Rossiiskoi Federatsii* (Moscow: Democracy International Fund and Yale University Press, 2003). The title translates as *Documents: The Middle East Conflict: Volume 2: 1957–1967: From Documents of the Foreign Policy Archive of the Russian Federation*. Quotations from these documents are given in English, as translated by the author.

Cambridge University Press

978-1-107-03206-4 - The Six-Day War and Israeli Self-Defense: Questioning the Legal Basis for Preventive War

John Quigley

Frontmatter

[More information](#)

## 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](http://www.un.org)). These databases are United Nations Information System on Palestine (UNISPAL) 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

Cambridge University Press

978-1-107-03206-4 - The Six-Day War and Israeli Self-Defense: Questioning the Legal Basis for Preventive War

John Quigley

Frontmatter

[More information](#)

---

*Note on Official Documents*

xiii

(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.

Cambridge University Press

978-1-107-03206-4 - The Six-Day War and Israeli Self-Defense: Questioning the Legal Basis for Preventive War

John Quigley

Frontmatter

[More information](#)

---

Abbreviations

A	Assembly (used in documents of the UN General Assembly)
A/CN	One of the several commissions of the UN General Assembly
AJIL	<i>American Journal of International Law</i>
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	<i>Documents Diplomatiques Français</i> (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)

xvi *Abbreviations*

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



Cambridge University Press

978-1-107-03206-4 - The Six-Day War and Israeli Self-Defense: Questioning the Legal Basis for Preventive War

John Quigley

Frontmatter

[More information](#)

---

THE SIX-DAY WAR AND ISRAELI SELF-DEFENSE

Cambridge University Press

978-1-107-03206-4 - The Six-Day War and Israeli Self-Defense: Questioning the Legal Basis for Preventive War

John Quigley

Frontmatter

[More information](#)

---