

## Israel's Legality in Beginning the Six Day War

*"Even as the cannons roar we shall not cease from longing for peace. Our only desire is to remove from our borders any threat of sabotage and every danger of aggression, to safeguard our security and the fullness of our rights."  
-Israeli Prime Minister Levy Eshkol, June 5, 1967<sup>1</sup>*

As the sun rose on the morning of June 5<sup>th</sup>, 1967, the Israeli Air Force took flight in order to attack the Egyptian airfields and officially begin the 1967 Six Day War. Under the command of Minister of Defense Moshe Dayan and Air Force Major General Mordechai Hod, the Israeli Defense Force was able to launch a very successful start to the battle. As its name indicates, the war ended after only six days of intense battle, and it resulted in Israel gaining control of the Sinai Desert, the Golan Heights, and its current capital city: Jerusalem. While the facts are clear that Israel made the first strike to officially begin the Six Day War, there were many events and tensions leading up to this from Israel's enemies. Therefore, it is difficult to determine who is legally responsible for starting the war. Were Israel's actions in the Six Day War legitimate self-defense according to International Law?

The solution to this complicated question begins with International Law itself. According to the Charter of the United Nations – which is a binding international treaty - article 2(4), “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”<sup>2</sup> What this article is trying to state is simply that since the Charter's creation in 1945, it is no longer lawful to use force against another state for any reason. There are only two exceptions to this prohibition on force. The first exception is that the Security Council may suggest the use of force in order to *keep the peace* as provided under chapter VII of the charter.<sup>3</sup> If

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<sup>1</sup> Levi Eshkol. *Broadcast to the Nation by Prime Minister Eshkol*. 1-2. Israel Ministry of Foreign Affairs (1967).

<sup>2</sup> U.N. CHARTER art. 2, para. 4

<sup>3</sup> U.N. CHARTER art. 39

the council feels there is a threat to World peace or a crime against humanity, it has the authority to grant permission and suggest that a country attack the violating country in question. Notice that it only has the power to *suggest* this use of force, and the country or countries being asked have the right to refuse to take action. The second exception is Charter article 51, which was created to give the inherent right of self-defense. “Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations...”<sup>4</sup> This article clearly states that every country has an understood right to self-defense, and if an armed attack occurs, she is allowed to exercise said right. However, at what point is it appropriate for a state to exercise this inherent right? Does a country need to wait for its opposition to attack before she is allowed to retaliate?

Two forms of self-defense during times other than war are cited in order to give light to this issue. The first form is known as preemptive self-defense. This is where a state preemptively attacks an enemy in order to stop her from potentially harming the state in the future. This type of defense is illegal according to international law.<sup>5</sup> An example of this is when Israel attacked the Iraqi nuclear reactor in 1981. The Israeli Air Force destroyed the reactor on a Sunday to create minimal casualties and was careful to only harm the reactor itself. Even though the operation was carried out well, the United Nations Security Council still formally condemned Israel for taking illegal actions. The Council voted unanimously that this act violated United Nations article 2(4) by not abiding by its prohibition of force<sup>6</sup>. Israel had no legal right to attack the reactor just because she felt that it might be a threat to her safety in the future.

The other form of self-defense available is anticipatory self-defense. This is where one country attacks another in order to stop the other country from attacking her first. This is similar to preemptive self-defense, so there are limitations here to show how anticipatory the attack can be and what makes it legal. These criteria were defined in the Caroline Test of 1837. This was a case where Canadian militia, on orders from the British, seized an American Steamship, the Caroline, in American waters. They set the

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<sup>4</sup> U.N. CHARTER art. 51

<sup>5</sup> Sean D. Murphy, *The Doctrine of Preemptive Self-Defence*, 50 VILL. L. REV. 699 (2005)

<sup>6</sup> U.N. CHARTER art. 2, para. 4

ship on fire, and sent it falling over the Niagara Falls. In the end it was decided that this act was legitimate. This decision established a precedent that self-defense is acceptable when not already at war if the following three criteria are met.<sup>7</sup> Firstly, all alternative means of attempting to avert war or the threat of war must have been exhausted until it is unavoidable and immediate. Secondly, the exercise of the anticipatory right of self-defense must be proportional to the provocation. This specifically was defined as “inflicting no more damage than that inflicted by the initial injury of the offending state, or as remaining within the confines of moral notions of human rights.”<sup>8</sup> Finally, there is a need to demonstrate the immediacy of the threat. This event established the framework for anticipatory self-defense, which is considered legal according to international law.<sup>9</sup> This anticipatory self-defense is the category that Israel falls into with her actions in the Six Day War. Leading up to this war there were clear signs from the opposition that an attack was both imminent and immediate. Israel then reacted with proportional self-defense. There were four main triggers to this situation that prove this defense.

The first trigger for the Six Day War was the withdrawal of the United Nation’s peacekeeping forces from the Sinai Peninsula on May 14<sup>th</sup>. These forces were known as the First United Nations Emergency Force (UNEF I). They were placed in the desert as an international guarantee of safety for Israel. Their job was to make sure that no violations of international law were occurring. In order for the forces to be placed in the Sinai desert, both Egypt and Israel had to agree to place them there. They were to serve as a neutral observer and keeper of order and peace. Either side was able to remove the forces whenever she wished, since this force was acting under charter chapter VI, which says that the peacekeeping force is only there under the acceptance of both sides, and they are not forced to be there in a similar form as Charter chapter VII.<sup>10</sup> As soon as Egyptian President Gamal Abd Al-Nasser decided that he wanted to remove the UNEF I force from the area, they had no choice but to obey Egypt’s wishes. However, this act served as a sort of tripwire to alert Israel that something was wrong. If Egypt had

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<sup>7</sup> Louis-Philippe Rouillard, *The Caroline Case: Anticipatory Self-Defence in Contemporary International law*, 1 MISKOLC J. OF INT’L L. 104, 120 (2004).

<sup>8</sup> *Ibid.* at 110

<sup>9</sup> *Ibid.* at 112

<sup>10</sup> U.N. CHARTER art. 33 para. 1

intended on remaining peaceful in the Sinai and maintaining peace with Israel, she would have no reason to withdraw the force. Therefore, since the forces were being removed, it was safe for Israel to assume that Egypt had questionable intentions. This was further proven by quotes given by the President to his people such as this quote from Netanel Lorch's novel *One Long War*, "We aim at the destruction of the State of Israel. The immediate aim: perfection of Arab military might. The national aim: the eradication of Israel."<sup>11</sup> This trigger adds to the claim that an attack was imminent. With quotes such as President Nasser's here and his act of removing a peacekeeping force, an attack was clearly in the making.

A second important trigger to the Six Day War was the blockade of the Straits of Tiran and Suez Canal on May 18<sup>th</sup>.<sup>12</sup> This came again from Egyptian President Nasser. This act was detrimental to Israel. It was the only way for Israel to ship goods and supplies from the Southern Hemisphere up to her major ports along the Mediterranean Sea. Israel considered the closure of this vital straight to be an act of war according to international law. This is because when the resolution about the straights was drafted in 1956, there were many criteria that were to be met by the two parties. The first of these was the criterion that "there should be free and open transit through the Canal without discrimination, overt or covert..."<sup>13</sup> By violating this resolution, and deciding to close the transit of Israeli ships through the canal, Egypt had broken this formal international agreement and gone against the United Nations resolution that it had agreed to only eleven years earlier.

The third trigger to the war was the movement of countless army divisions around all of Israel's borders. Proving to be Israel's most apparent enemy, Egypt again was at the head of this movement. On May 15<sup>th</sup> Egypt became the first country to assemble, moving seven army divisions and 600 tanks to the Sinai border with Israel.<sup>14</sup> Five days later, on May 20<sup>th</sup>, Hafez Al-Assad of Syria added that his forces were ready to destroy the Jewish Israeli presence in the Arab homeland. He made it known that his army was united and

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<sup>11</sup> Netanel Lorch, *ONE LONG WAR*, 110 (1976).

<sup>12</sup> UN Security Council Resolution 118, October 13, 1956, Israel-Egypt.

<sup>13</sup> *Ibid.* at 7

<sup>14</sup> Kenneth Pollack, *Arabs at War: Military Effectiveness 1948-1991*, UNIVERSITY OF NEBRASKA PRESS 61, 81 (2002)

ready for what was soon coming.<sup>15</sup> Five days after Syria was mobilized, on May 30<sup>th</sup>, Nasser went on to claim that the armies of Egypt, Jordan, Syria and Iraq were poised and ready to begin fighting with Israel. With these armed forces surrounding Israel's border, not only was an attack imminent, but it was also now an immediate threat that appeared to have no alternative solution other than war.

The fourth and final trigger to the Six Day War was the military alliance formed against Israel. On June 4<sup>th</sup> Iraq became the last of four countries to sign this alliance between herself, Jordan, Syria, and Egypt.<sup>16</sup> This was a treaty that claimed to be for mutual defense, saying that the countries would defend one another if attacked. The alliance provided first that Jordanian armed forces would be placed under the command of Egyptian General Abdel Munim Riad, and second, Hussein agreed to the entry into Jordan of troops from Egypt, Syria, Iraq, and Saudi Arabia.<sup>17</sup> Similar events occurred with each member of the alliance. With this alliance formed, it was clear that the four countries were now armed and in line with one another. They were now prepared to go forth and begin waging war with Israel. Now the imminent and immediate attack was knocking at Israel's door. Israel was backed into a corner and decided to go on the defensive by means of an offensive attack. The very next morning the Israeli Air Force set off for Egypt and attacked her airfields to officially begin the Six Day War.

Returning to the criteria of anticipatory self-defense, some opposition tries to make the claim that Israel's acts were not fitting to this category, and rather, she acted illegally under preemptive self-defense. This side argues that there was no immediate or imminent threat of danger to Israel leading up to the Six Day War. Although the removal of UNEF I personnel was a tripwire to alert Israel, they claim she had no right to assume the worst. Also, they say that the alliance and movement of troops were not preparation for an armed attack, but rather preparing in case Israel should choose to attack them. As mentioned in the previous paragraph, the military alliance was rather phrased as a *treaty for mutual defense*.<sup>18</sup> Therefore, they say that Israel launching a preemptive attack on the

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<sup>15</sup> Anoushiravan Ehteshami & Raymond A. Hinnebusch, SYRIA & IRAN: MIDDLE POWERS IN A PENETRATED REGIONAL SYSTEM (1997).

<sup>16</sup> Avi Shlaim, LION OF JORDAN: THE LIFE OF KING HUSSEIN IN WAR AND PEACE, 237 (2007).

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*

Egyptian air force was uncalled for, and they did so simply as a military tactic and not out of self-defense.

However, upon taking a closer look, it is obvious here that Israel's actions during the Six Day War met all three of the criteria and did qualify as anticipatory self-defense. The attack was surely an imminent threat that had no other means of being solved. The peacekeeping forces were removed from the Sinai border, the Suez Canal – Israel's only strait to transport goods from the southern hemisphere – had been blocked, and the Arab leaders had come out and officially expressed their interest in destroying Israel. This issue also needed to be dealt with immediately and Israel had no time to waste. All of Israel's borders were lined with enemy armies, and a military alliance was signed by the four Arab nations. If their only intention was defense then why were they assembled and ready to attack at any moment's notice along Israel's borders? Finally, after the attack by Israel had begun, we could see that the defense was proportionate. The army began by attacking enemy airplanes and advancing their way through the Sinai to re-open the Suez Canal. They then moved through the Golan Heights to fend off the Syrian, Jordan, and Iraqi armies and gain the higher ground. According to Louis-Philippe Rouillard in his published law article, these military actions were certainly “inflicting no more damage than that inflicted by the initial injury of the offending state, or as remaining within the confines of moral notions of human rights.”<sup>19</sup>

In conclusion, Israel – although having fired the first shot – reacted legally to a very long and clear set of triggers prompted by its bordering Arab countries. Her actions met all of the necessary criteria to qualify for anticipatory self-defense, and they were legal according to the United Nations Charter article 51, the inherent right of self-defense.

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<sup>19</sup> Louis-Philippe Rouillard, *supra*, note 2.