

DOES A DOUBLE STANDARD EXIST AT THE UNITED NATIONS?: A FOCUS ON IRAQ, ISRAEL AND THE INFLUENCE OF THE UNITED STATES ON THE UN

CARLOS ORTIZ

INTRODUCTION

The past forty years has seen the United Nations (“U.N”) frequently address Iraq and Israel and their forceful occupation of neighboring territories. The different method in which the U.N. has addressed these two nations and their unlawful occupations of other sovereignties is strong evidence that a double standard exists at the U.N. Although both countries violated international law through their invasions and occupations of foreign countries,¹ Israel has been permitted to remain in defiance of Security Council resolutions while Iraq has been forcefully reprimanded. The difference in treatment has been attributed to the theory that Iraq’s invasion of Kuwait was an act of aggression,² while Israel acted in self-defense during the 1967 six day war.³ Despite these attempts to distinguish the differences in treatment, the fact remains that both countries were in violation

¹ Israel, through its forceful occupation of Palestinian and other Arab territories, continues to be in violation of Security Council resolutions 242, 262, 267, 338, 446 and 465. Resolution 242, required the withdrawal of Israeli troops from the Arab Territories it occupied in the 1967 six day war. Resolutions 262 and 267 require that Israel rescind its annexation of greater east Jerusalem. Resolution 338 makes resolution 242 legally binding. Resolutions 446 and 465 require that Israel evacuate all of its illegal settlements on occupied Arab lands. Stephen Zunes, *U.N. Resolutions: The Double Standard*, Sept. 16, 2002, available at <http://www.mercurynews.com/mld/mercurynews/news/opinion/4084843.html>. Iraq was in violation of U.N. Resolution 1441 because of its refusal to completely disarm after its invasion of Kuwait in 1990. S.C. Res. 242, U.N. SCOR, 22d Sess. 1382d mtg., at 8, U.N. Doc. S/INF/22/Rev. 2 (1968); S.C. Res. 1441, U.N. SCOR, 57th Sess., 4644th mtg., at 11, 13–14, U.N. Doc S/INF/47 (2002).

² The U.N. Security Council found Iraq guilty of aggression in its occupation of Kuwait. S.C. Res. 660, U.N. SCOR, 45th Sess., 2932d mtg., at 1, U.N. Doc. S/RES/660 (1990).

³ With Israel’s invasion, the U.N. made no finding of aggression. Malvina Halbertam, *The Myth That Israel’s Presence in Judea and Samaria is Comparable to Iraq’s Presence in Kuwait*, 19 SYRACUSE J. INT’L L. & COM. 1–3 (1993).

of U.N. resolutions.⁴ Therefore, there must be something more that can explain the differences in treatment. That difference can be best described as the affect of the United States.

Within the past fifty years Israel has been permitted to invade and attack numerous neighboring countries without any true consequences from the U.N.⁵ The invaded countries include Egypt, Jordan, Iraq, Syria, Lebanon and Tunisia.⁶ Despite all the unrest that these invasions have caused in the Middle East, the UN has never forcefully acted against Israel. This inaction on the U.N.'s behalf can be best explained by the forty vetoes that the United States has made when the U.N. has attempted to address the Israeli-Palestinian conflict.⁷ Consequently, Israel has received preferential treatment from the U.N. which violates the preamble to the U.N. Charter ("Charter").⁸

This preferential treatment is perhaps best seen by comparing the U.N.'s policy in addressing the unlawful behavior of Iraq and Israel. Because both countries did not comply with U.N. resolutions, both countries should be dealt with in the same manner.⁹

Iraq's invasion of Kuwait in 1990 resulted in severe consequences for Iraq. When Iraq first invaded Kuwait, Iraq's president, Sadaam Hussein stated that he would discuss withdrawing from Kuwait only in the context of negotiations for Israel's withdrawal from the Arab Territories.¹⁰ Relating the two events

⁴ Israel continues to violate international law. Even though one may argue that Israel's situation was not as urgent as the situation with Iraq, the fact remains that Israel has been in violation of thirty-six years.

⁵ Elias Davidsson, *The U.N. Security Council's Obligations of Good Faith*, 15 FLA. J. INT'L L. 541, 554-55 (2003).

⁶ *Id.* at 555.

⁷ *Id.*

⁸ The preamble of the U.N. Charter includes the pledge of U.N. members to reaffirm faith in the equal rights of nations large and small. Article 2(1) of the U.N. Charter also places a duty upon both the United Nations and its members to act in accordance with the principle of the sovereign equality of all its Members. *Id.* at 544.

⁹ See U.N. CHARTER arts. 39-41 (authorizing the U.N. Security Council to take appropriate action if a country does not lawfully comply).

¹⁰ Nick B. Williams, Jr., *Baghdad Seeks to Tie Any Dialogue to 'Outstanding Issues in the Arab Region,' Including Palestine. The U.S. Has Rejected Such a Linkage*, L.A. TIMES, Dec. 2, 1990, at A1.

presented an opportunity to remove Iraq from Kuwait without the use of military force, and to end the Israeli occupation of Palestinian and other Arab territories.¹¹ Although an effort by the U.N. Security Council to come to a non-military solution to the Iraq-Kuwait situation by attempting to convene the International Peace Conference on the Middle East was made, the United States refused to permit any conference because it felt that the Israel-Palestine situation did not constitute a threat to international peace.¹² As a result, Resolution 681, addressing the Palestinian-Israeli conflict, was silent on the topic of a Middle East peace conference.¹³

Turning back to Israel, the 1967 Six Day War, in which it captured the West Bank and Gaza, was largely seen as a “defensive war.”¹⁴ Security Council Resolution 242 called for an Israeli withdrawal, but also acknowledged the right of all parties “to live in peace within the secure and recognized boundaries free from threats or acts of force.”¹⁵ Thus, while Iraq was threatened with military action in order for it to leave Kuwait and to comply with the U.N.,¹⁶ Israel was simply told to remove its troops from the occupied Territories – an order that Israel has disobeyed for thirty-six years. Thus, it appears that the U.N. has applied a double standard by treating Iraq severely while issuing only verbal injunctions to Israel.

The purpose of this article is to argue that the U.N. should have acted against Israel as strongly as it did against Iraq. Both countries were and continue to be in violation of U.N. mandates. If Israel cannot be convinced through negotiation to withdraw from the Gaza Strip and the West Bank, the U.N. is obliged under the Charter to take economic and diplomatic sanctions to

¹¹ These territories included the Gaza Strip, West Bank and the Golan Heights.

¹² Davidsson, *supra* note 5, at 555.

¹³ S.C. Res. 681, U.N. SCOR, 45th Sess., 2932d mtg., at 1, U.N. Doc. S/RES/681 (1990).

¹⁴ Halberstam, *supra* note 3, at 2–3.

¹⁵ FRANCIS A. BOYLE, PALESTINE PALESTINIANS AND INTERNATIONAL LAW (2003).

¹⁶ Resolution 678 authorized action by U.N. Member States to force Iraq to comply with prior Security Council resolutions, which included, prominently, a resolution demanding that Iraq withdraw from Kuwait. John Quigley, *The United Nations Security Council: Promethean Protector or Helpless Hostage?*, 35 TEX. INT’L L.J. 129, 152 (2000) [hereinafter Quigley, *UN Security Council*].

force Israel out.¹⁷ If such sanctions fail, then the U.N. should apply military sanctions.¹⁸

This article is divided in the following way: Part I describes the circumstances leading to Iraq's invasion of Kuwait. Part II describes the conditions that sparked Israel's participation in the 1967 Six Day War. Part III describes the influence the United States has had on the Iraq and Israeli-Palestine situations. Finally, Part IV argues that Iraq and Israel should be treated similarly for their U.N. violations.

I. THE REASONING BEHIND IRAQ'S INVASION OF KUWAIT

The Iraqi rationale for invading Kuwait originated from economic and territorial claims.¹⁹ Kuwait had loaned money to Iraq to support Iraq in its war with Iran and upon which Iraq sought a waiver of repayment.²⁰ Iraq's argument for a waiver of repayment was two-fold. First, it alleged that Kuwait had profited at Iraq's expense through picking up Iraqi oil sales that had been reduced by wartime destruction.²¹ Second, it alleged when the fighting between Iran and Iraq finally ended, Kuwait, instead of cutting production to let Iraq recoup some of its losses, pumped more oil than the quota agreed upon in the Organization of Petroleum Exporting Countries (OPEC) and thereby drove the price of fuel increasingly down.²²

From a territorial standpoint, Iraq sought improved access to the Gulf. Iraqi territory was connected to the Gulf only by a narrow stretch of water and thirty miles of coastal marshland.²³ In order to remedy this problem, Iraq claimed two uninhabited marshland islands that belonged to Kuwait - Warbah and Bubiyan.²⁴ When the opportunity arose for Kuwait to resolve

¹⁷ U.N. CHARTER arts. 39-41.

¹⁸ *Id.* art. 42.

¹⁹ John Quigley, *The United Nations Action Against Iraq: A Precedent for Israel's Arab Territories?*, 2 DUKE J. COMP. & INT'L L. 195, 198 (1992) [hereinafter Quigley, *UN Action Against Iraq*].

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

these issues with Iraq it refused. Kuwait confidently declined to make concessions on these territorial issues, because it was assured of United States intervention if Kuwait experienced trouble with Iraq.²⁵

A. THE INVASION

On August 2, 1990, Iraq invaded Kuwait. Prior to the invasion, Kuwait showed little willingness to discuss Iraq's financial and territorial claims.²⁶ One commentator theorizes that the invasion could have been prevented had Kuwait agreed to formal or informal negotiations.²⁷

After the successful invasion of Kuwait, Iraq announced the formation of a new government in Kuwait that ceded to Iraq certain strategic territories within Kuwait.²⁸ According to one commentator, this action suggested that Iraq's initial goal may have been to get concessions on the territory it considered strategic in exchange for withdrawing from the rest of Kuwait.²⁹ It was not until the United States troops arrived in the Middle East that Iraq announced its intention to incorporate Kuwait in its entirety as a new province of Iraq.³⁰ The U.N. Security Council, through Resolution 660, condemned the annexation by Iraq and demanded that Iraq withdraw immediately and unconditionally from Kuwait.³¹

As the U.N. Security Council concluded, Iraq acted unlawfully by invading Kuwait. The invasion and forceful occupation of Kuwait constituted aggression.³²

B. THE REACTION TO THE INVASION

Resolution 678 authorized action by U.N. Member States to force Iraq to comply with prior Security Council resolutions, which included a resolution demanding that Iraq withdraw from

²⁵ *Id.*

²⁶ *Id.* at 200.

²⁷ *Id.* at 200–01.

²⁸ *Id.* at 201.

²⁹ *Id.*

³⁰ *Id.*

³¹ Halberstam, *supra* note 3, at 10–11.

³² *Id.* at 2.

Kuwait.³³ Under Article 39 of the Charter, however, the Security Council is obliged to recommend peaceful means to resolve conflicts between warring parties.³⁴ In this instance, where territorial and financial disputes are at issue between Iraq and Kuwait, the Council must promote negotiation.³⁵ Ultimately, the U.N. Security Council acted contrary to Article 39 by moving to impose economic sanctions against Iraq.³⁶ Thus, in dealing with Iraq's aggressive occupation of Kuwait, the U.N. virtually ignored outstanding issues between the two parties and proceeded quickly first to economic, and then to military sanctions.³⁷

II. ISRAEL'S INVOLVEMENT IN THE 1967 WAR

Israel, for its 1967 occupation of the West Bank, the Gaza Strip, the Sinai Peninsula, and the Golan Heights, has asserted reasoning that was quite different from Iraq's rationale for occupying Kuwait. Israel claimed that it was attacked by Egypt, and that it had responded in self-defense.³⁸ In the opinion of one commentator, Israel's claim of self-defense justified a weaker U.N. reaction to Israel in 1967 than that taken toward Iraq in 1990.³⁹ What is more, assuming that Israel did act in self-defense, its behavior would be lawful under international law and effectively place it in a more favorable light than Iraq. Article fifty-one of the Charter provides that nothing in the Charter "shall impair the inherent right of self-defense."⁴⁰

But did Israel actually act in self-defense? Commentators disagree on the answer to that question. Therefore, Israel's claim of self-defense requires further scrutiny. Before the self-defense claim can be considered an overview of the Israeli-Palestinian conflict is required in order to place the self-defense in context.

³³ Quigley, *UN Security Council*, *supra* note 16, at 152.

³⁴ Quigley, *UN Action Against Iraq*, *supra* note 19, at 202.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ Halberstam, *supra* note 3, at 3.

³⁹ *Id.* at 3-4.

⁴⁰ *Id.* at 3.

A. HISTORICAL BACKGROUND OF THE ISRAELI-PALESTINIAN CONFLICT

Palestinians have endured many years of foreign rule. From the sixteenth century onward, Palestinians were subject to Ottoman rule.⁴¹ After World War I, Palestine, along with what is now recognized as Israel and Jordan were given over to the victorious Allies pursuant to the Treaty of Sèvres.⁴² Great Britain then took control over the land that was received in the Treaty of Sèvres.⁴³ Promises made to Arab leaders in the McMahon correspondence⁴⁴ to establish an independent Arab State, which would include Palestine in exchange for support in World War I, were in conflict with the British promises to Zionists to establish a Jewish homeland in Palestine.⁴⁵

The demographics of the territory during Britain's rule are of significance. In 1917, over ninety percent of the population was Arab Muslim.⁴⁶ The Jewish population was relatively small, but after Hitler's rise to power in 1933 Jewish immigration to Palestine increased land purchases and settlements.⁴⁷ The Arab revolt from 1936 through 1939 reflected the unease connected with the increasing Zionist settlements.⁴⁸ Ultimately, this Arab uprising was not successful as it was countered by the dual forces of Britain and Zionist militia.⁴⁹

The tension between Israelis and Palestinians continued to increase and in 1948 the first ever Arab-Israeli war commenced.⁵⁰ This war was likely triggered when Zionist leaders declared a

⁴¹ Richard A. Falk & Burns H. Weston, *The Relevance of International Law to Palestinian Rights in the West Bank and Gaza*, 32 HARV. INT'L L.J. 129, 132 (1991).

⁴² Eugene V. Rostow, *The Perils of Positivism: A Response to Professor Quigley*, 2 DUKE J. COMP. & INT'L L. 229, 235 (1992).

⁴³ *Id.*

⁴⁴ Letter from Sir Henry McMahon to Ali ibn Husain (Oct. 24, 1915), available at <http://www.fordham.edu/halsall/mod/1915mcmahon.html> (last updated July 1998).

⁴⁵ Kathleen A. Kavanaugh, *Selective Justice: The Case of Israel and the Occupied Territories*, 26 FORDHAM INT'L L.J. 934, 936-37 (2003).

⁴⁶ *Id.* at 937.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

portion of Palestine as the new State of Israel.⁵¹ In the wake of this war, Palestine was divided into three parts: Israel assumed control over seventy-seven percent of the territory, Jordan annexed East Jerusalem and the area that is now referred to as “the West Bank”, and Egypt took control over the Gaza Strip.⁵² As a result of the 1948 war, the State of Israel was created and over one million Palestinians fled or were expelled.⁵³ These events only worked to increase tensions and set the groundwork for the next conflict in 1967.

B. THE 1967 WAR

The country that sparked the 1967 War is at dispute. Proponents of the Israeli anticipatory self-defense theory believe that Israel’s entry into the West Bank resulted from the use of self-defense against Arab forces such as Egypt.⁵⁴ According to this self-defense theory, tensions between Israel and Egypt had already been high and once Egypt moved its military near Israel’s border, Israel was led to believe that Egypt was preparing to attack.⁵⁵ Alternatively, opponents of this theory hold that the military action that began the 1967 war was ordered by the Israeli cabinet on June 4 of that year.⁵⁶ At dawn on June 5, the Israeli air force bombed Egyptian fighter aircraft, parked at their home bases.⁵⁷ Israel demolished almost 300 of Egypt’s 340 combat aircraft.⁵⁸ Israel ultimately destroyed the air war capacity not only of Egypt, but also of Jordan, Syria, and Iraq.⁵⁹ On the ground, Israeli forces attacked Egypt, moving quickly through the Gaza Strip and into the Sinai Peninsula.⁶⁰

⁵¹ *Id.* As one commentator states, Israelites’ ties to areas of Palestine are understandable considering that the area has historic and religious value. Halberstam, *supra* note 3, at 4–5.

⁵² Kavanaugh, *supra* note 45, at 937–38.

⁵³ *Id.* at 938.

⁵⁴ Halberstam, *supra* note 3, at 1–2.

⁵⁵ *Id.*

⁵⁶ Quigley, *UN Action Against Iraq*, *supra* note 19, at 203.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.* at 203–04.

⁶⁰ *Id.* at 204.

Israel defended its actions by claiming that it had operated under anticipatory self-defense. Israeli Foreign Minister Abba Eban told the Security Council:

On the morning of June fifth, when Egyptian forces engaged us by air and land, bombarding the villages of Kisufim, Nahal-Oz and Ein Hashelosha we knew that our limit of safety had been reached, and perhaps passed. In accordance with its inherent right of self-defense as formulated in Article fifty-one of the Charter, Israel responded defensively in full strength.⁶¹

Eban added that “approaching Egyptian aircraft appeared on our radar screens.”⁶²

C. ISRAEL’S CLAIM OF ANTICIPATORY SELF-DEFENSE.

As stated above, the legality of Israel’s actions at the onset of the 1967 War has been questioned. If Israel did act in self-defense, its actions were arguably in compliance with international law.⁶³ There is, however, evidence that is contrary to Israel’s self-defense claim.⁶⁴ Therefore, an understanding behind the theory of anticipatory self-defense and an analysis of Israel’s claim is necessary.

1. *The Theory of Anticipatory Self-Defense*

Anticipatory self-defense is the use of force to stop an attack that has not actually commenced but which is reasonably believed to be imminent.⁶⁵ This doctrine recognizes that no state can be expected to await an initial attack which may destroy the state’s capacity to resist the attack.⁶⁶ In customary international

⁶¹ *Id.*

⁶² *Id.*

⁶³ See Halberstam, *supra* note 3, at 3.

⁶⁴ See Quigley, *UN Action Against Iraq*, *supra* note 19, at 204–11.

⁶⁵ David Brown, *Use of Force Against Terrorism After September 11th: State Responsibility, Self-Defense and Other Responses*, 11 CARDOZO J. INT’L & COMP. L. 1, 37 (2003).

⁶⁶ *Id.*

law, anticipatory self-defense originated through the *Caroline* case.⁶⁷

The *Caroline* case occurred in 1837 when a British colonial force in Canada destroyed a private American vessel.⁶⁸ The American vessel was being used to deliver personnel and arms to rebel forces who intended to invade Canada.⁶⁹ Great Britain explained its actions by claiming that it was acting in self-defense. According to Daniel Webster, the Secretary of State, a legitimate claim of self-defense required a showing that the need for self-defense was instant, overwhelming, leaving no choice of means, and no moment for deliberation.⁷⁰ Today, this formula is held as the standard upon which anticipatory self-defense is based.⁷¹

Anticipatory self-defense has five elements. First, an armed attack must be launched, or be imminent, against a state's territory, nationals and/or forces.⁷² Second, an urgent necessity to defend against the attack must exist.⁷³ Third, the absence of no practical alternative to self-defense must exist.⁷⁴ Fourth, the scope of self-defense must be limited to those necessary to stop or prevent the attack.⁷⁵ Fifth, if there is a collective self-defense, the victim state must request assistance.⁷⁶

The Charter does not expressly speak to the right of self-defense. The right of self-defense is inherent; hence it is restricted only by the limitations stated in the Charter.⁷⁷

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.* at 38.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.* The only mention of self-defense in the U.N. Charter is that it be invoked against an armed attack. *Id.*

2. *The Theory of Anticipatory Self-Defense Applied to the War of 1967*

As discussed above, there are competing claims regarding the lawfulness of Israel's actions at the beginning of the 1967 War. Davis Brown believes that Israel's actions at the beginning of the 1967 War exemplified the purest example of anticipatory self-defense.⁷⁸ Brown states "although Israel was the first to actually strike, a number of factors taken together lead to the reasonable conclusion that an armed attack on Israel was imminent."⁷⁹ According to Brown, those factors included the peremptory expulsion of the U.N. peacekeeping force from the Sinai, the unprecedented massing of Egyptian forces along the border, the closure of the Straits of Tiran, the inflammatory language of the Egyptian president,⁸⁰ and the sudden alliances of Jordanian and Iraqi forces under Egyptian control.⁸¹ In sum, Brown states that these factors were sufficient to put Israel on "indefinitely high alert" and at a "significant tactical advantage if Israel did not strike on its own terms."⁸²

Professor John Quigley believes that Israel's behavior was not in self-defense and was therefore unlawful. Professor Quigley argues that Article fifty-one of the Charter permits the use of force in self-defense only "if an armed attack occurs."⁸³ According to Professor Quigley, "most commentators read the clause in Article fifty-one to permit defensive force only in response to an armed attack that has already begun, or at least is so imminent as to be obvious."⁸⁴ Professor Quigley holds that Egypt did not initiate an attack, nor were its forces making obvious

⁷⁸ *Id.* at 39.

⁷⁹ *Id.*

⁸⁰ In 1967 Egyptian president, Gamel Abdul Nasser, stated that "our basic objective will be the destruction of Israel. The Arab people want to fight. The mining of Sharm El Sheikh is a confrontation with Israel. Adopting this measure obligates us to be ready to embark on a general war with Israel." Halberstam, *supra* note 3, at 4.

⁸¹ Brown, *supra* note 65, at 39.

⁸² *Id.*

⁸³ Quigley, *UN Action Against Iraq*, *supra* note 19, at 206.

⁸⁴ *Id.*

preparations for an imminent attack when Israel opened hostilities against it.⁸⁵

Professor Quigley cites a number of Israeli officials who contradicted Israel's Prime Minister Levi Eshkol's claim that Israel acted in self defense.⁸⁶ For example, the Israeli Chief of Staff, General Itzhak Rabin, stated that he did not believe that Egyptian President Gamel Abdul Nasser wanted war.⁸⁷ General Rabin felt that the two divisions that Nasser sent into Sinai on May 14th would not have been enough to unleash an offensive against Israel.⁸⁸ General Rabin claimed that both Egypt and Israel knew that was the case.⁸⁹ Another member of Israel general staff, General Matitiahu Peled, stated the General Staff never told the government that the Egyptian military threat represented any danger to Israel or that Israel was unable to crush Nasser's army.⁹⁰

Menachem Begin, a former Israeli Prime Minister and a member of the cabinet which voted to attack Egypt, said that "in June 1967, we again had a choice. The Egyptian Army concentrations in the Sinai approaches do not prove that Nasser was really about to attack us. We must be honest with ourselves. We decided to attack him."⁹¹ Begin stated that Israel attacked Egypt for the purpose to "take the initiative and attack the enemy, drive him back, and thus assure the security of Israel and the future of the nation."⁹²

Professor Quigley continues his analysis of Israel's claim on anticipatory self-defense by addressing and dismissing what he considers to be Israel's justifications for starting the war in 1967. According to Quigley, Israel relied upon four Egyptian actions to claim self-defense: Egypt's President Nassar's verbal threats about Israel,⁹³ the partial closure of the Straits of Tiran to Israeli-

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.* at 207.

⁹² *Id.*

⁹³ *See supra* note 80.

flag vessels; the movement of Egyptian troops up to the Israeli-Egyptian border; and, Egypt's request that the U.N. withdraw peacekeeping forces stationed on the Egyptian side of the Egyptian-Israeli border.⁹⁴

Quigley argues that Israel's rationale for anticipatory self-defense is unreasonable and can be easily dismissed as unsubstantiated excuses. According to Quigley, President Nasser did make threatening statements toward Israel, but they were conditioned upon an Israeli invasion of Syria.⁹⁵ Israel's second complaint regards Egypt's decision on May 22, 1967 to partially close the Straits of Tiran to Israeli-flag vessels. Quigley explains that Egypt's action was in response to Israel's threats against Syria and a presumed Israeli troop build-up facing Syria.⁹⁶

Third, in response to Israel's argument that Egypt had moved troops to the Israel-Egypt 1949 armistice line, Quigley states that Egypt announced that the troop movements were intended only to deter an Israeli attack on Syria.⁹⁷ Fourth, in response to Israel's claims that Egypt's May 18th request to the U.N. to withdraw the U.N. forces from the Egyptian-Israeli border gave it reason to expect an attack, Quigley argues that the U.N. troops were moved because of the belief that Israel was prepared to invade Syria.⁹⁸ According to Quigley, the U.N. commander reported that Egypt said it was preparing for "action against Israel, the moment it might carry out any aggressive action against any Arab country."⁹⁹ For Quigley this suggested that Egypt planned to attack Israel only if Israel invaded Syria.¹⁰⁰

Whether Israel had a legally valid anticipatory self-defense claim is unclear. Brown and Professor Quigley make arguments on both sides of the issue which require more in order to be conclusive. Nevertheless, the most important factor remains to be

⁹⁴ *Id.*

⁹⁵ *Id.* .

⁹⁶ *Id.*

⁹⁷ *Id.* at 208.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

Israel's continued defiance of international law through its unlawful occupation of Arab Territories. This issue will be discussed in Section IV of the article.

III. THE EFFECT OF THE UNITED STATES

Commentators have stated that ending Israel's occupation of the Arab Territories will lead to future peace and stability in the Middle East, as well as comport with requirements of international law and justice.¹⁰¹ There can be little doubt that the Israeli-Palestinian conflict is responsible for a great deal of unrest in the Middle East. So why has the U.N. not taken action to resolve the threat to the peace? Although there may be other factors at play, the relationship that Israel has with the United States as its ally has had a major impact on the U.N.'s inability to properly address the Israeli-Palestinian conflict.¹⁰²

The ability for the United States to have significant influence on the U.N. derives from its position as a permanent member of the Security Council.¹⁰³ As discussed above, since 1967, the United States has vetoed over forty attempts by the Security Council to address the Israeli-Palestinian conflict.¹⁰⁴ Professor Quigley provides a detailed explanation of a 1993 agreement between Israel and Palestine that was spoiled by the United States.¹⁰⁵

In 1993, [Israel and Palestine] reached an agreement under which the Palestine Liberation Organization (PLO) set up an agency to administer certain portions of the Gaza Strip and the West Bank of the Jordan River. . . . Under the 1993 agreement, the parties would agree within five years on a final settlement between them. In 1967, the Security

¹⁰¹ Falk & Weston, *supra* note 41, at 131.

¹⁰² See Davidsson, *supra* note 5, at 556–57.

¹⁰³ Quigley, *UN Security Council*, *supra* note 16, at 162.

¹⁰⁴ Davidsson, *supra* note 5, at 557. As Davidsson notes, “even modest attempts to reduce the level of violence in the area, such as through an international monitoring mechanism, have been vetoed by the United States.” *Id.*

¹⁰⁵ See Quigley, *UN Security Council*, *supra* note 16, at 161.

Council had . . . called on Israel to withdraw from the Palestinian territory it occupied. The 1993 Israel-PLO agreement referred to that resolution as a basis for the anticipated negotiations.

The United States and Soviet Union assumed the role of overseers of the negotiation process that began in 1991, but the United States soon became, effectively, the only overseer. One of the stipulations made by the United States in this role was that the U.N. Security Council should have no involvement as the parties worked through the process. . . . When Israel confiscated land and built new housing for its settlers in Palestinian territory, the international community . . . viewed this activity as a threat to the negotiation process. The issue of the Israeli settlers in Palestinian territory was one of the most difficult matters remaining to be negotiated, and by adding new settlers, Israel both exacerbated the problem and gave notice that it intended a solution to that problem in a manner that was not likely to be acceptable to the Palestinian side.

Most states viewed the matter as sufficiently serious to require Security Council action in order to pressure Israel to stop housing construction. Alone among the major powers, the United States took the view, . . . that the Security Council should take no action. Draft resolutions criticizing Israel enjoyed overwhelming support in the Council, but the United States defeated one after another by exercising its right of veto, explaining that it objected not to the substance of the draft resolutions but to the idea that the Security Council should become involved while the bilateral negotiation process was proceeding.

Other Council members viewed stopping Israel's housing construction as critical to preserving the legal position of the two parties, and thus to ensuring that an eventual accommodation would accord with internationally recognized standards. The United Kingdom told the Security Council that Israel should 'refrain from taking actions which seek to change the status quo on this most sensitive of all issues before the conclusion of the final-status negotiations.' . . . Thirteen Council members voted in favor of the draft resolution, but the United States vetoed it. The United States delegate explained the veto by saying that

the United Nations was not the 'proper forum' for discussion, and that 'the parties themselves are those that should deal with these very, very important issues.' . . .

The result of the vetoes was that Israel was able to continue unlawful conduct that significantly reduced the possibility that the Palestinian-Israeli conflict would ever be solved on just and lasting terms.¹⁰⁶

While the United States strongly advocated against forcing Israel into compliance with international law, the United States, to the contrary, advocated strongly for punishing Iraq for its invasion of Kuwait in 1991.¹⁰⁷ The United States position was that Israel should be asked to withdraw only in the context of an overall Middle East peace settlement.¹⁰⁸ The United States explained its pro-linkage position on the grounds that achievement of an overall settlement would be the only way to guarantee long-term peace in the Middle East.¹⁰⁹ In contrast, when the argument was made in 1990 that long-term peace could be assured only by resolving outstanding differences between Kuwait and Iraq, the United States insisted that Iraqi withdrawal was the only issue.¹¹⁰

In fact, the Security Council stood by and permitted the United States to make the world community's policy on Iraq during the 1990's.¹¹¹ The Security Council's inaction lends support to the self-perception of the United States as superior to the U.N. and international law.

Davidsson offers an example by Noam Chomsky of how the United States overly asserts the primacy of its national self-interest over global collective security.¹¹² Davidsson pens:

According to Chomsky the United States' position was forthrightly articulated by Secretary of State Madeleine Albright, then U.N. Ambassador, when she informed the

¹⁰⁶ *Id.* at 161–63.

¹⁰⁷ *Id.* at 163.

¹⁰⁸ Quigley, *UN Action Against Iraq*, *supra* note 19, at 223.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ Quigley, *UN Security Council*, *supra* note 16, at 156.

¹¹² Davidsson, *supra* note 5, at 563.

Security Council during an earlier U.S. confrontation with Iraq that the U.S. will act 'multilaterally when we can and unilaterally as we must,' because 'we recognize this area as vital to U.S. national interests' and therefore accept no external constraints. Albright reiterated that stand when U.N. Secretary-General Kofi Annan undertook his February 1998 diplomatic mission to Iraq: 'We wish him well,' she stated, 'and when he comes back we will see what he has brought and how it fits with our national interest,' which will determine how we respond. When Annan announced that an agreement had been reached, Albright repeated the doctrine: 'It is possible that he will come with something we don't like, in which case we will pursue our national interest.'¹¹³

The approach taken by the United States and the Security Council renders useless the mechanisms that are established by the Charter to deal with matters of international peace. If we ignore violations about the fundamental principles in the Charter regarding fairness and equality and simply focus on the power granted by the Charter, we find that this power is not granted to just one country, but to the entire Security Council.¹¹⁴ The Security Council and the United States need to remember that power should be shared and used for the improvement of the international world, not to fit the national interest of one country.

IV. IRAQ AND ISRAEL SHOULD BE TREATED SIMILARLY FOR THE VIOLATIONS THEY BOTH COMMITTED

As discussed above, the preamble of the Charter entitles U.N. members to be treated equally.¹¹⁵ Regardless of whether Israel acted lawfully in its occupation of Arab Territories during the 1967 War, it is clear that Israel's continued occupation is unlawful. When Iraq unlawfully occupied Kuwait, it was hit with economic and military sanctions. If Israel refuses to act in accordance with international law, it should be treated with the same force as Iraq was treated, for purposes of fairness. Moreover,

¹¹³ *Id.* at 563-54.

¹¹⁴ Quigley, *UN Security Council*, *supra* note 16, at 156.

¹¹⁵ Davidsson, *supra* note 5, at 544.

requiring that Israel end its unlawful occupation of Arab Territories will arguably decrease the tension in the Israeli-Palestinian conflict significantly. Unless the U.N. acts, Israel will continue to be in violation of Resolution 242 and the Geneva Convention.

A. RESOLUTION 242

There has been a great deal of debate over what Resolution 242 requires of Israel. Resolution 242 calls for Israel's withdrawal of the territories it captured in 1967.¹¹⁶ The dispute is over exactly when Resolution 242 requires Israel to depart the territories it is occupying.¹¹⁷ Specifically, commentators believe the Security Council left it unclear whether Israel was obliged to withdraw only after settlement with its neighbors or whether it was required to withdraw independently of such a settlement.¹¹⁸

Proponents of the former view¹¹⁹ see Resolution 242 as a recognition of Israel's right to remain in the territories it occupied during the 1967 War until the Arab states terminate all claims or states belligerency with Israel, respect and acknowledge Israel's sovereignty, and its right to live in peace within secure and recognized boundaries free from threats or acts of force.¹²⁰ The reasonableness of this interpretation must be questioned, however. It is doubtful whether any country would ever have the luxury of freedom from threats or acts of force. In the post 9/11 era, not

¹¹⁶ Halberstam, *supra* note 3, at 9–10.

¹¹⁷ Resolution 242 provides:

That the fulfillment of Charter principles requires the establishment of a just and lasting peace in the Middle East which should include the application of both the following principles:

- (i) Withdrawal of Israel armed forces from territories occupied in the recent conflict;
- (ii) Termination of all claims or states of belligerency and respect for and acknowledgment of the sovereignty, territorial integrity and political independence of every State in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force.

Id. at 9.

¹¹⁸ Quigley, *UN Action Against Iraq*, *supra* note 19, at 218.

¹¹⁹ The former view is that Israel would be obligated to withdraw only after settlement with all of its neighbors.

¹²⁰ Halberstam, *supra* note 3, at 10.

even the United States has this luxury. Moreover, commentators see Resolution 242 as a call from the Security Council for an overall peace settlement between Israel and its Arab neighbors.¹²¹ Certainly, peace could not be expected without Israel first ending its occupation of the Arab Territories.¹²²

Proponents of the latter view hold that the Security Council viewed Israel's obligation to withdraw independently of other outstanding issues in the region.¹²³ In fact, Professor Quigley writes that the U.N. General Assembly has repeatedly and clearly called for an unconditional Israeli withdrawal.¹²⁴ For example, a 1983 General Assembly resolution stated "that the acquisition of territory by force is inadmissible under the Charter of the United Nations," and that "Israel must withdraw unconditionally from all the Palestinian and other Arab territories occupied by Israel since 1967, including Jerusalem."¹²⁵

In further support of his position, Professor Quigley cites a number of U.N. resolutions that condemned Israel's activity, including its annexation of East Jerusalem¹²⁶ and the Golan Heights,¹²⁷ as well as the designation of Jerusalem as Israel's capital city.¹²⁸ Professor Quigley also notes a U.N. General Assembly resolution¹²⁹ regarding Israel's occupation, which called for an end to economic and military aid to Israel as perhaps the sternest example of the U.N.'s position.¹³⁰ The question must then be asked, "Why is Israel still permitted to continue its occupation of Arab Territories?" This difficult question is explained best by the affect and domination of the United States in the U.N.

¹²¹ Quigley, *UN Action Against Iraq*, *supra* note 19, at 218.

¹²² See Falk & Weston, *supra* note 41, at 131.

¹²³ *Id.*

¹²⁴ Quigley, *UN Action Against Iraq*, *supra* note 19, at 218.

¹²⁵ *Id.* at 218–19.

¹²⁶ S.C. Res. 267, U.N. SCOR, 23d Sess., 1485th mtg., at 3, U.N. Doc. S/INF/24/Rev.1 (1969).

¹²⁷ S.C. Res. 497, U.N. SCOR, 36th Sess., 2319th mtg., at 6, U.N. Doc. S/INF/37 (1982).

¹²⁸ S.C. Res. 478, U.N. SCOR, 35th Sess., 2245th mtg., at 14, U.N. Doc. S/INF/37 (1982).

¹²⁹ G.A. Res. 180(D), U.N. GAOR, 38th Sess., Supp. No. 47, at 52, U.N. Doc. A/38/47 (1984).

¹³⁰ Quigley, *UN Action Against Iraq*, *supra* note 19, at 219.

B. THE GENEVA CONVENTION AND THE LAWS OF WAR

Israel's continued violations of both the Geneva Convention and the laws of war provide the U.N. with another justification for some sort of meaningful action against Israel. As the occupying power of the Arab Territories, Israel is legally bound to adhere to both the Geneva Convention and the 1907 Hague Convention Respecting the Laws and Customs of War on Land ("Hague Regulations").¹³¹

Under the laws of war, as expressed in the Hague Regulations and the Geneva Convention, there are four legal principles customarily held to govern belligerent occupation.¹³² First, the occupier exercises *de facto*, not *de jure* authority over the territory.¹³³ Second the occupier does have the power to take measures to maintain security; however, it must act in a manner that proportionately weighs its military objectives and requirements with the needs of the local peoples.¹³⁴ Third, the occupation of the territory is temporary and whatever rights exercised by the occupier in relation to the territory during this period are ephemeral.¹³⁵ Therefore, the occupier must preserve and respect existing laws and administration.¹³⁶ Fourth, the occupier must not exercise its rights to further its own needs or interests or those of its own peoples.¹³⁷

The Hague Regulations have been interpreted as placing an obligation on the occupying force to sustain the pre-occupation character of all facets of civilian life, respecting the dignity and well-being of the occupied people as much as possible.¹³⁸ Israel has abundantly failed to comply with this interpretation and has, furthermore, failed to uphold international human rights of Palestinians. Documented violations include the settlement of more than 90,000 of Israel's Jewish citizens in the West Bank and

¹³¹ Cavanaugh, *supra* note 45, at 943–44.

¹³² *Id.* at 944.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ Falk & Weston, *supra* note 41, at 142.

Gaza; the refusal to repatriate thousands of Palestinians displaced during the 1967 War; the summary deportation of Palestinians; systematic arbitrary arrests; detentions and the denial of procedural rights with respect to security violations; the imposition of collective punishments, especially in the form of the destruction of family residences; and the mistreatment of detainees.¹³⁹

Israel denies that its activities are governed under the Hague Regulations.¹⁴⁰ Instead, Israel has adopted the theory called the “missing revisioner.” Under this theory, Israel claims that the Hague Regulations presuppose the displacement of a “legitimate sovereign.”¹⁴¹ In order to be a legitimate sovereign, lawful control of a contested territory would have to revert to this party upon termination of the hostilities.¹⁴² Israel argues that neither Jordan in the West bank nor Egypt in Gaza were legitimate sovereigns in 1967 because of their acts of alleged unlawful aggression during Israel’s war for independence in 1948 through 1949.¹⁴³ Therefore, Israel argues, it is not bound by the rules governing belligerent occupation, as expressed in the Geneva Convention.¹⁴⁴ Israel, furthermore contends that its presence in the West Bank and Gaza Strip is not an “occupation” that displaced a sovereign power, but an “administration” in the absence of a sovereign, unaccountable to the Hague Regulations.¹⁴⁵

The missing revisioner theory is considered to be invalid under international law.¹⁴⁶ Not only does this theory require a method of treaty interpretation unknown to international law, it is also unsupported by authority or practice.¹⁴⁷ Thus, there can be little doubt that Israel is governed by the Hague Regulations. Furthermore, it has violated the Hague Regulations through its

¹³⁹ *Id.* at 134.

¹⁴⁰ *Id.* at 138.

¹⁴¹ Cavanaugh, *supra* note 45, at 944.

¹⁴² *Id.*

¹⁴³ Falk & Weston, *supra* note 41, at 138.

¹⁴⁴ Cavanaugh, *supra* note 45, at 945.

¹⁴⁵ Falk & Weston, *supra* note 41, at 138.

¹⁴⁶ *Id.* at 140.

¹⁴⁷ *Id.*

harsh treatment of Palestinians, by establishing its own settlements and by the excessive length of its occupation.¹⁴⁸

C. THE DOUBLE STANDARD

When Iraq invaded Kuwait, the Security Council immediately made a finding of aggression and called on the parties to negotiate their differences. Alternatively, when Israel attacked its Arab neighbors, the Security Council made no such finding of aggression and waited five months to call on the parties to negotiate their differences.¹⁴⁹ The Security Council has demanded that Israel withdraw, but it has not yet moved to economic or military sanctions to ensure Israeli compliance with this demand.¹⁵⁰ What is more, the Security Council's inaction relating to the Israeli occupations has given Israel time to establish itself in the occupied Territories in a way that has made it increasingly difficult for the Security Council to secure an Israeli withdrawal.

The Security Council remains obligated to meaningfully address the Israeli-Palestinian conflict. First, the U.N. can initiate action under Article 39, which will bring economic sanctions, and then, if necessary, to military sanctions under Article 42.¹⁵¹ International pressure is essential to secure an end to Israel's occupation.¹⁵² This point is obvious considering Israel's lack of attention to Resolution 242 and an unlawful occupation that has persisted for thirty-seven years. Israel's size and dependence on foreign commerce and foreign markets makes it an ideal target for economic sanctions.¹⁵³ Therefore, the likelihood of a need to move to Article 42 military sanctions is remote.¹⁵⁴

CONCLUSION

There is a double standard at the U.N. This conclusion is exemplified in the starkly different methods the U.N. has instituted to address Iraq's invasion of Kuwait and Israel's invasion of

¹⁴⁸ *Id.* at 144.

¹⁴⁹ Quigley, *UN Action Against Iraq*, *supra* note 19, at 221.

¹⁵⁰ *Id.*

¹⁵¹ *Id.* at 224.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

Arab Territories. Both Israel and Iraq made legal arguments to justify their military actions in 1967 and 1990, respectively. These justifications are not in accordance with international law.

The role of the United States in the two situations is the key. As an ally to the United States, Israel has been permitted to remain in violation of international law. Iraq, on the other hand, was swiftly punished for its actions. Given the action taken against Iraq, there is no reason for the U.N. not to meaningfully address the Israeli-Palestinian conflict. This conflict is the source of a great deal of unrest in the Middle East. If the U.N. is to maintain credibility as a body committed to international peace, it must not permit one country to make the rules for the world. Instead, it needs to address similar situations consistently. The U.N. must meaningfully address Israel's continuing and unlawful occupation.

