

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.

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Who Was to Blame and Why It Matters

Responsibility for wars of the past may seem an inconsequential matter. But the consequences of wars need to be sorted out, and how a war started may be key to an appropriate resolution. Beyond the particular conflict, the manner in which one war is fought may set a precedent for future wars. A war may be rationalized in a way that stretches the legal basis for military action. The UN Charter indicates that when the UN Security Council takes military action, it should be by national forces seconded to the UN operating under UN command.¹ But in 1950, leading member states wanted military action in support of South Korea but were unwilling to second troops to UN control. So the Security Council adopted a resolution in which it “recommended” to member states that they provide assistance to South Korea. No command structure or method of coordination was specified.² That same technique of, in effect, farming the operation out to individual member states was used again in 1990 for military action against Iraq, following its occupation of Kuwait,³ and again in 2011 for military action in Libya.⁴ While one can agree or disagree with the Security Council’s approach, the effect was to broaden the bases on which military action might be taken under UN auspices.

The June 1967 Middle East war was fought not under UN auspices but on the strength of the power of individual states to resort to war. Under the UN Charter, states may not initiate war against another.⁵ Force may, however, be used in defense in the event of an “armed attack.”⁶ Egypt, as we shall see, charged aggression, and self-defense was invoked by Israel. According to Israel, Egypt had attacked by land and by air on the morning of June 5, 1967, and Israel responded. Eventually, however, as we shall also see, the propriety of the war’s initiation came to be contested on defending not against an actual attack, but against an anticipated attack. Israel would make the legal claim that force may be used in anticipation

of an attack by the other state, and the factual claim that Egypt was about to attack it.

No such claim had been made by a state as a basis for use of force against another state since the adoption of the UN Charter, although some analysts had urged such an interpretation of self-defense. As arguments would be made in later decades for the lawfulness of defensive force where an adversary had yet to strike, the June 1967 Middle East war would be invoked as a precedent. In the first years of the twenty-first century, certain governments and analysts would argue for the permissibility of use of force well in advance of action by an adversary. A state that was preparing weaponry for eventual use in an “armed attack” might lawfully be attacked in self-defense, on the rationale that defeating it may be more feasible prior to its acquisition of the weaponry. These arguments would expand self-defense, even beyond what was asserted by Israel in relation to the June 1967 war. Nonetheless, these arguments built on Israel’s assertion.

Significantly, these arguments accepted the validity not only of Israel’s legal theory, but of its factual assertions as well. Yet, as will shortly become clear, Israel’s factual assertions did not go unchallenged. The parties to the June 1967 conflict differed sharply in their assessment of the circumstances preceding the outbreak. To Israel, the war was forced upon it by reckless neighbors bent on immediate attack. Israel had to fight to keep its population from being driven into the Mediterranean Sea. To Egypt and its allies, on the other hand, the war was perpetrated by an aggressive Israel, which had been in no danger.

If Israel’s version of facts is correct, those who assert a broad scope for self-defense have a respectable precedent in their arsenal. If Egypt’s version of facts is correct, those who assert a broad scope for self-defense are building their case on a precedent that does not serve their cause. The invocation of self-defense against an adversary who is at a significant distance from attacking may be seen as a dangerous doctrine, one subject to manipulation by a state that asserts facts that are not true. One’s view of the facts of the June 1967 war thus makes a difference in whether that war suggests the propriety of use of force in anticipation of force by an adversary.

A second reason that the question of responsibility in the 1967 Middle East war matters is the current situation in the Middle East itself. If Israel acted in self-defense, the measured response that, as we shall see, was taken by the international community might have been in order. If Israel acted aggressively, action against it should perhaps have been sharper. In

the immediate aftermath of the June 1967 war, the states dealing with it in the UN Security Council, and then in the UN General Assembly, were, in the main, uncertain which version to believe. That uncertainty kept the United Nations from adopting stronger measures that might have brought a reversal of the territorial changes that accompanied the war.

If the international community acted on faulty information in the war's immediate aftermath, its handling of the war is open to question. The issue has continuing relevance, since the consequences of the June 1967 war have yet to be resolved. If the international community continues to act on faulty information, then its current approach to the Israel-Palestine conflict is based on less than a full understanding of how that conflict was generated.

The June 1967 war is the subject of disagreement even as to its name. To Israel, it was the "Six-Day War," an appellation that highlighted Israel's military superiority for winning in a short time. To Arab states, for whom the war ended less than gloriously, it was the "1967 war" or the "June 1967 war," a designation that carried no emotional baggage. Since the war is generally known in the West as the Six-Day War, that name is used in the title of this book. The Arab designation, being more neutral, is used in the text.