

The Right to Self-Defence

United Nations and the International Court of Justice

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United Nations Charter - Article 51

"Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security."

Article 51 of the UN Charter clearly recognizes "the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations" **by anyone**. That is, the language of Article 51 does not identify or stipulate the kind of aggressor or aggressors against whom this right of self-defence can be exercised ... and certainly does not limit the right to self-defence to attacks by State only!

International Court of Justice (ICJ) attempt to qualify the use of self-defence under Article 51 as aggression committed by a **state only** is clearly an attempt to evade international law. The Court opinion engages in some highly questionable interpretations not only of its own mandate, but also of the UN Charter's article on the right to self-defence, or in the case of Israel, the lack of the right to self-defence.

The Court purposely ignores repeated acts of terrorism from 'Palestine'¹ as emanating from non-state entities and therefore inadmissible to the issue of the security fence.

The ICJ writes in paragraph 139 of the opinion:

“Under the terms of Article 51 of the Charter of the United Nations:

“Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.

“Article 51 of the Charter thus recognizes the existence of an inherent right of self-defence in the case of armed attack by *one State against another State*. However, Israel does not claim that the attacks against it are imputable to a foreign State. ... Consequently, the Court concludes that *Article 51 of the Charter has no relevance in this case.*” [italics by author]

Judge Rosalyn Higgins, member of the Court (Today the President of the ICJ) had this to say in her separate opinion:

“I do not agree with all that the Court has to say on the question of the law of self-defence. In paragraph 139 the Court quotes Article 51 of the Charter and then continues ‘Article 51 of the Charter thus recognizes the existence of an inherent right of self-defence in the case of armed attack by one State against another State.’ There is, with respect, nothing in the text of Article 51 that *thus* stipulates that self-defence is available only when an armed attack is made by a State.

In addition to, and apart from, the provisions of Article 51, the ICJ also ignores the fact that Palestinian warfare is “Strictly regulated by the customs and provisions of the law of armed conflict, referred to here as international humanitarian law (IHL).”

“The authoritative commentary of the International Committee of the Red Cross (ICRC) to the Fourth Geneva Convention justifies applying the provision to *non-state actors*, saying [t]here can be no drawbacks in this, since the Article in its reduced form, contrary to what might be thought, *does not in any way limit the right* [E.H., to self-defence] *of a State to put down rebellion*, [Not necessary a State] nor does it increase in the slightest the authority of the rebel [in this case the Palestinian Authority].” [italics by author]

The ICJ ignores the Palestinian Authority (PA) violations of their assumed responsibility, such as the Oslo Accords, that required the Palestinian Arabs to abide by internationally recognized human rights standards. The Israeli Palestinian interim agreement of September 28 1995 stated:

“Israel and the Council [Palestinian Interim Self-Government Authority, i.e., the elected Council,] hereinafter ‘the Council’ or ‘the Palestinian Council’ shall exercise their powers and responsibilities pursuant to this Agreement with due regard to internationally-accepted norms and principles of human rights and the rule of law.”

Israel’s right to self-defence under Article 51 cannot be more apparent according to both international humanitarian law and the ‘Oslo Accord.’

Nothing can be more ludicrous than the ICJ conclusion that because “Israel does not claim that the attacks [by Palestinian terrorists] against it are imputable to a foreign State,” it *lost* its right to act in self-defence.

It is worth noting that the UN and its organs have compromised even the Geneva Convention’s protocols, by selective politicization to single out Israel.² The High Contracting Parties never met to discuss Cambodia’s killing fields or the 800,000 Rwandans murdered in the course of three months in 1994.³ *Israel is the only country in the Geneva Convention’s 60-year history to be the object of a country-specific denunciation.*

ICJ lacks the Authority to ‘Amend’ or ‘Interpret’ Article 51

There is no foundation for ‘adding restrictions,’ narrowly interpreting Article 51’s meaning, or simply making any changes to the UN Charter.

It is rather strange that the ICJ, of all bodies, takes liberties to change what Article 51 clearly states. This ICJ also failed to review its own past writings on the subject of *attempting to interpret* UN Charter Articles. Elsewhere in the opinion, the ICJ quotes its 1950 ruling on South West Africa (Namibia) regarding Article 80 of the same UN Charter, saying that Articles of the UN Charter were carefully penned and should be strictly read in a direct manner ‘as is’:

“The Court considered that if Article 80 paragraph 2 had been intended to create an obligation ... such intention would have been *expressed in a direct manner*”⁴ [italics by author].

The ICJ Bench zig-zags from strict construction to loose construction, coupled with biased *interpretation*, to deny Israel the fundamental right to defend its citizens from terrorism.

Writing on the subject of the *legal effect of Resolutions and Codes of Conduct of the United Nations*, Professor, Judge Stephen M. Schwebel, the former president of the International Court of Justice, notes:

“What the terms and the *travaux* (notes for the official record) of the Charter do not support can scarcely be implemented.”⁵

Ironically, in December 2004, the UN High-level Panel on Threats, Challenges and Change, published the much anticipated report entitled “*A more secure world: Our shared responsibility.*” Paragraph 192 of this report states:

“We do not favour the rewriting or reinterpretation of Article 51.” [Bold in the original]

The same is true of the International Court of Justice, an organ of the United Nations, which lacks the mandate to ‘amend’ Article 51.

When Use of Force is Lawful

UN Charter Article 51 is not the only UN sanction of self-defence to be disregarded by the ICJ. The Court also chooses to ignore a number of highly relevant United Nations Resolutions, passed by the General Assembly and the Security Council, addressing the legitimate and lawful use of force in self-defence by Member States.

For instance, the rationale behind General Assembly Resolution 3314 – “Definition of Aggression” – is highly relevant to the case at hand. It states:

“Deeply convinced that the adoption of a definition of aggression ought to have the effect of deterring a potential aggressor, would simplify the determination of acts of aggression and the implementation of measures to suppress them and would also facilitate the protection of the rights and lawful interests of, and the rendering of assistance to, the victim.”⁶

The ICJ speaks repeatedly of the “inadmissibility of the acquisition of territory by war.” What does this phrase mean in the framework of international law? The ICJ’s use of this important principle is selective, misplaced, misleading and totally out of context.

The Bench chooses to quote Article 2, paragraph 4, of the UN Charter, which says:

“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.”

But the Bench chooses to ignore Article 5, paragraph 3, of UN GA Resolution 3314 which states:

“No territorial acquisition or special advantage *resulting from aggression* is or shall be recognized as lawful.” [italics by author]

That is, the inadmissibility of the acquisition of territory by war cannot and should not be viewed as a blanket statement. Rather, it hinges on acquisition being the result of aggression. Arab countries acted aggressively against Israel in 1948 and 1967.⁷ Israel was not the aggressor in either the 1948 War of Independence or in the 1967 Six-Day War, and therefore legally occupies the territories of Judea, Samaria.

In the same manner, the ICJ quotes *selectively* from the 1970 General Assembly Resolution 2625 (“Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States.”)⁸ In paragraph 87 of the ICJ opinion, the Bench notes that Resolution 2625:

“Emphasized that ‘No territorial acquisition resulting from the threat or use of force shall be recognized as legal.’”

It hides from the reader that the same Resolution subsequently clarifies that:

“The territory of a State shall not be the object of military occupation *resulting from* the use of force in contravention of the provisions of the Charter” [italics by author].

The same Resolution continues:

“Nothing in the foregoing paragraphs shall be construed as enlarging or diminishing in any way the scope of the provisions of the Charter concerning *cases in which the use of force is lawful*” [emphasis by author].

Judge Schwebel explains that the principle of “acquisition of territory by war is inadmissible” must be read together with other principles:

“Namely, that no legal right shall spring from a wrong, and the Charter principle that the Members of the United Nations shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State.”⁹ Simply stated, illegal Arab aggression against the territorial integrity and political independence of Israel cannot be rewarded.

Had the Charter forbidden use of force in any and all circumstances, it would not need to use the words “resulting from.” The Resolution would have simply read: “The territory of a State shall not be the object of military occupation by another State.” Period.

It is relevant at this juncture to recall again Professor, Judge Lauterpacht’s explanation on this important issue, a point also cited by Judge Schwebel in his writing:

“Territorial change cannot properly take place as a result of the ‘unlawful’ use of force. But to omit the word ‘unlawful’ is to change the substantive content of the rule and to turn an important safeguard of legal principle into an aggressor’s charter. For if force can never be used to effect lawful territory change, then, if territory has once changed hands as a result of the unlawful use of force, the illegitimacy of the position thus established is sterilized by the prohibition upon the use of force to restore the lawful sovereign. This cannot be regarded as reasonable or correct.”¹⁰

That is, there are situations involving *lawful* use of force and there are *lawful* occupations in the course of repelling aggression. Article 51 addresses the right to self-defence and the lawful use of force when one faces an aggressor.

The Security Council is the only UN body authorized to label a Member State (or non-State entity) an aggressor. In the Preamble of Resolution 3314 (“Definition of Aggression”) it says:

“Recalling that the Security Council, in accordance with Article 39 of the Charter of the United Nations, shall determine the existence of any threat to the peace, breach of the peace or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.”

Palestinian Arab Terrorism is an Act of Aggression.

The United Nations defines aggressor as an entity that was first to start hostility by using armed force. In this regard the Security Council has never labeled Israel an aggressor in its entire history.

The International Court of Justice fails to identify Palestinian terrorism, the root cause of the construction of the security barrier, and what one may and may not do to combat it.

The UN legislation clearly defines terrorism and ‘who is a terrorist,’ declaring, for the first time, that:

“The States Members of the United Nations solemnly reaffirm their unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, *wherever* and by *whomever* committed” [italics by author].

This text is clear: regarding *any* act of terrorism, the ends do not justify the means.

Article 2 of the *International Convention for the Suppression of Terrorist Bombings* defines a terrorist as:

“Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally delivers, places, discharges or detonates an explosive or other lethal device in, into or against a place of public use, a State or government facility, a public transportation system or an infrastructure facility:

- (a) With the intent to cause death or serious bodily injury; or
- (b) With the intent to cause extensive destruction of such a place, facility or system, where such destruction results in or is likely to result in major economic loss.”¹¹

There is no *escape clause* in this piece of international law that exempts “struggles for self-determination” from anti-terrorism resolutions. In fact, the *Convention* clarifies in Article 11 that:

“None of the offences set forth in article 2 shall be regarded ... as a political offence or as an offence connected with a political offence or as an offence inspired by political motives.”

ICJ Fault Interposition of Security Council Resolutions

Resolutions 1368,¹² 1373¹³ (September 2001) and Resolution 1377¹⁴ (November 2001) leave no room to question Israel’s right to defend itself against systematic and sustained Palestinian terrorist attacks launched since September 2000 – an onslaught per capita, equivalent to 17 September 11th attacks.¹⁵

With regard to terrorism, Resolution 1368 clarifies and 1373 reconfirms in a broader form that the Security Council:

“*Reaffirms* the inherent right of individual or collective self-defence as recognized by the Charter of the United Nations as reiterated in Resolution 1368 (2001),

“*Reaffirming* the need to combat by all means, in accordance with the Charter of the United Nations, threats to international peace and security caused by terrorist acts.”

The UN term “by all means” clearly includes a passive, non-lethal physical barrier to impede the movement of such perpetrators, in addition to more *forceful responses*.

Resolution 1377, passed two months later:

“*Declares* that acts of international terrorism constitute one of the most serious threats to international peace and security in the twenty-first century,

“*Reaffirms* its unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, regardless of their *motivation*, in all their *forms* and *manifestations*, *wherever* and *by whomever* committed” [italics by author].

Terrorist attacks that blow up and destroy public buses, religious celebrations such as a Passover *seder* and bat mitzvah, young people at cafes and discos, families at supermarkets and restaurants, and that murder youth at boarding schools, school outings, and families in their homes and on the road, clearly fall within the confines of this definition.

After all has been said and done, how is it that *nowhere* in the opinion does the ICJ weigh Israel’s security threat or even mention terrorism as a factor in the case? The ICJ did not even have to *depend* on Israeli sources. There is, for instance, a well-documented 170-page Human Rights Watch report on suicide bombings against Israelis since September 2000 – *Erased in a Moment: Suicide Bombing Attacks Against Israel Civilians* – available ‘in the public domain’ at the click of a computer mouse. The report concluded: “The scale and systematic nature of these [E.H., terror] attacks in 2001 and 2002 meet the definition of a *crime against humanity*.”

Security Council Resolution 1368, passed the day after the September 11th attack, clearly specified who was accountable for such a terrorist act and called for:

“Bring[ing] to justice the perpetrators, organizers and sponsors of these terrorist attacks and stresses that *those responsible for aiding, supporting or harbouring* the perpetrators, organizers and sponsors of these acts *will be held accountable*” [italics by author].

Security Council Resolution 1456 – adopted in January 2003 – further clarified:

“Any acts of terrorism are criminal and unjustifiable, regardless of their motivation, whenever *and by whomsoever committed* and are to be unequivocally condemned, especially when they *indiscriminately target or injure civilians*”¹⁶ [italics by author].

Again, the International Court of Justice sees no relevance in the definition of terrorism and culpability set forth in Resolution 1456, despite the fact that Israel has been the target of aggression with 80 percent of the Israelis killed being non-combatants, with women and girls accounting for 31 percent of the fatal casualties, including 51 American citizens and a score of foreign laborers.¹⁷

ICJ Ignores Relevant Bilateral Treaties, Including the Oslo Accords.

In paragraph 77 of the ICJ opinion, ten years of Palestinian autonomy marked by broken promises to recognize Israel by abolishing anti-Israel clauses in the

Palestinian National Covenant and to replace denunciation of terrorism with negotiation, is reduced by the ICJ to one sentence:

“A number of agreements have been signed since 1993 between Israel and the Palestine Liberation Organization imposing various obligations on each party.”

ICJ Fault Interpretation of the Content of the Oslo Accords

The ICJ claiming: “Those agreements *inter alia* required Israel to transfer to Palestinian authorities certain powers and responsibilities exercised in the Occupied Palestinian Territory by its military authorities and civil administration.”

In fact, this is a doctored interpretation: Had the members of the ICJ read the Accords, the Bench would have found that Israel only recognized the PLO as the representative of the Palestinian people in the exchange of letters between both sides:

“In response to your [Arafat] letter of September 9 1993, I [Yitzhak Rabin, Prime Minister of Israel] wish to inform you that, in light of the PLO *commitments* included in your letter, the Government of Israel has decided to *recognize the PLO as the representative of the Palestinian people* and commence negotiations with the PLO within the Middle East peace process.”¹⁸

Israel never recognized the claim that the autonomy to be granted to Palestinian Arabs pertained to ‘Occupied Palestinian Territories.’ In fact, at no point in the Accords is the West Bank or Gaza labeled ‘occupied territory.’ The ICJ simply **fabricated** this and lamely concludes:

“Such transfers have taken place, but, as a result of subsequent events, they remained partial and limited.”

This abridged sentence sanitizes the history of the Oslo peace process, and doesn’t so much as hint at what “subsequent events” disrupted the peace process – events that have taken by that time the lives of 1366 Israeli victims of terrorism, mostly civilians.¹⁹

In short, a corrupt logic holds that Israel is solely in charge in a said area, but it is forbidden to take any effective actions in that given area.

The ICJ blithely argues with no reference to international law:

“The situation is thus different from that contemplated by Security Council resolutions 1368 (2001) and 1373 (2001), and therefore Israel could not in any event invoke those resolutions in support of its claim to be exercising a right of self-defence. Consequently, the Court concludes that Article 51 of the Charter has no relevance in this case.”

The ICJ’s **baseless denial** of Israel’s right to act under Resolution 1373 is particularly grave. Resolution 1373 was adopted by the Security Council under Chapter VII of the UN Charter (“Threats to Peace, Breaches of the Peace and Acts of Aggression”) that invests the Security Council with the power to issue stringent resolutions *requiring all* nations to comply with the terms set forth in Resolution 1373, citing:

“the need to combat *by all means*, in accordance with the Charter of the United Nations, threats to international peace and security caused by terrorist acts” [italics by author].

The ICJ lacks the authority and power over the Security Council to adopt, amend or **alter** any and all United Nations resolutions or to exclude Israel, a Member State of the UN, from its rights and obligations under Resolution 1373.

The ICJ’s position pretends that a decade of Palestinian autonomy never existed and Palestinians have no margin of control whatsoever over their lives. The threats from suicide bombers and other terrorist acts are magically transformed into an ‘internal problem,’ so that the Security Council Resolutions passed after September 11th, which allow countries to compromise the sovereignty of other polities to combat terrorism, become inapplicable. Elsewhere in the opinion the ICJ denies Israel the right to take anti-terrorism measures anywhere beyond the Green Line because the same territory ‘belongs’ to an entity called ‘Palestine.’

Even the British judge on the Bench [Today the President of the Court], Rosalyn Higgins, felt compelled to note in a separate opinion that:

“Palestine cannot be sufficiently an international entity to be invited to these proceedings, and to benefit from humanitarian law, but not sufficiently an international entity for the prohibition of armed attack on others to be applicable.”²⁰

Yet, this and numerous other reservations did not prevent Higgins from voting in favor of adopting the opinion as written.

As far as the ICJ is concerned, Palestinian society lacks any semblance of social organization or self-rule, either on a local or national level that can be held accountable for terrorism. Yet, at the same time, this same Court holds that Palestinians are such a sustainable entity as to deserve *immediate self-determination*.

The ICJ patently ignores the other clauses in Oslo II²¹ which gives the Palestinian Authority full responsibility for Gaza, Jericho and seven major Palestinian cities on the West Bank, including internal security and public order, a responsibility it abrogated by using control of the civil machinery in 450 towns throughout the West Bank to incite the population, including children. It also included turning densely populated areas under full Palestinian control, such as Ramallah and Jenin, into bomb-making factories and staging areas for suicide bombers.

Human Rights Watch – a non-governmental organization (NGO) – is far more thorough in its report on suicide bombings. It doesn’t gloss over Palestinian commitments (and complicity) or hide behind the Palestinian Authority’s non-state status. It has the courage to say:

“Although it is not a sovereign state, the Palestinian Authority has explicit security and legal obligations set out in the Oslo Accords, an umbrella term for the series of agreements negotiated between the government of Israel and the PLO from 1993 to 1996. The PA obligations to maintain security and public order were set out in

articles XII to XV of the 1995 Interim Agreement on the West Bank and Gaza Strip. These responsibilities were elaborated further in Annex I of the interim agreement, which specifies that the PA will bring to justice those accused of perpetrating attacks against Israeli civilians. According to article II (3) (c) of the annex, the PA will ‘apprehend, investigate and prosecute perpetrators and all other persons directly or indirectly involved in acts of terrorism, violence and incitement.’”²²

The ICJ bases its ‘conclusion’ on General Assembly Resolution 58/163 that “reaffirms the right of the Palestinian people ... to their independent State of Palestine.”²³ The General Assembly, of course, has no authorization to ‘hand out’ politics any more than the ICJ has the right to give this bogus right a legal ‘stamp of approval’ because neither body has actual legislative or executive powers.

Under the Law of Nations, rights go hand-in-hand with responsibilities. Entitlement is irrevocably tied to accountability. The entire opinion penned by the International Court of Justice speaks time and again of Palestinian rights, but *not once* about Palestinian responsibilities. If Palestinians are unable to behave in a manner in keeping with the most fundamental principles of the law of nations – attacking their neighbors as opposed to peaceful negotiation of differences – then surely Israel has the right to defend such an onslaught of its national security. But, alas, the entire issue of terrorism is considered immaterial to the security barrier question, which the ICJ brands a political ploy that merely grabs Palestinian land and abridges Palestinian rights.

Report of the UN High-Level Panel on Threats, Challenges and Change

On December 2 2004, the UN Secretary-General released a report entitled *A more secure world: Our shared responsibility*.²⁴

This report, more than one year in the making, acknowledges the global threats of terrorism, and clearly contradicts the ICJ’s Advisory Opinion on some of the core issues regarding terrorism and self-defence, stating that the:

“Biggest security threats we face now, and in the decades ahead, go far beyond States waging aggressive war. They extend to ... terrorism. ... The threats are *from non-State actors* [E.H., such as the Palestinian Arabs] as well as States [E.H., such as Syria, Saudi Arabia, Iran], and to human security as well as State security” [italics by author].

The report continues to challenge the Court assertion that Resolution 1373 is not applicable to Israel [E.H., as the court did without reference to law, or other supportive source] by stating:

“Security Council resolution 1373 (2001) imposed uniform, mandatory counter-terrorist obligations on *all States* ...” [italics by author].

It proceeds to explain that the response to the use of force by a non-State has been inadequate:

“159. The norms governing the use of force by non-State actors have not kept pace with those pertaining to States. ... Legally, virtually all forms of terrorism are prohibited by one of 12 international counter-terrorism conventions, international customary law, the Geneva Conventions or the Rome Statutes. Legal scholars know this. ... The United Nations must achieve the same degree of normative strength concerning non-State use of force as it has concerning State use of force.” And that “There is *nothing* in the fact of occupation that justifies the targeting and killing of civilians [italics by author].

“161. ... Attacks that specifically target innocent civilians and non-combatants must be condemned clearly and unequivocally by all.”

Self-Defence Invoked Against “All Perpetrators”

UN General Assembly and Security Council Resolutions, including the *International Convention for the Suppression of Terrorist Bombings*²⁵, call for specific actions to be taken by *all States* and underscore repeatedly that terrorism must be fought by *all parties*, by *all means*, at *all times*, by *whomever* and against *all perpetrators*. None of these requirements are cited by the ICJ, neither in its discussion of Article 51 and the right of Israel to self-defence, nor in any other similar context within the ICJ’s opinion.

ICJ: Israelis Have to Face Deadly Acts of Violence, and Lack the Right for Self-Defence

In paragraph 141 of the ICJ Opinion, the Court concludes that:

“The fact remains that Israel *has to face* numerous indiscriminate and deadly acts of violence against its civilian population” [italics the author].

The Court’s use of the expression *has to face* rather than ‘faces’ [deadly acts], has the ring of a ‘court order.’ The Court doesn’t condemn the attacks; instead it ‘sentences’ Israel to a form of cruel and unusual punishment.

The Court recognizes Israel’s predicaments, while being careful not to use the “T” word (terrorism) or bring itself to classify Palestinian’s acts as “*crimes against humanity*,”²⁶ for to do so would imply that Israel’s plight comes under the umbrella of Resolutions and International Conventions safeguarding universal human rights.

The Court that in paragraph 141 suggests that Israel “has the right, and indeed the duty, to respond in order to protect the life of its citizens” is the same Court that in paragraph 142 leaves Israel powerless; denies it the right for self-defence and rules against building a non-lethal security barrier that saves lives, in favor of Palestinian inconvenience and Palestinian terrorism.

¹ Palestine is a geographical area, not a nationality or a country.

² For the text of the February 9 1999 resolution “Illegal Israeli actions in Occupied East Jerusalem and the rest of the Occupied Palestinian Territory,” see: www.mefacts.com/cache/html/un-resolutions/11124.htm. (11124)

³ See Associated Press report “More Than One Million Rwandans Killed in 1990’s,” The New York Times, February 16 2002 at: www.mtholyoke.edu/acad/intrel/bush/rwandadeaths.htm. (10731)

⁴ See International status of South-West Africa. Advisory Opinion of 11 July 1950 at: www.icj-cij.org/icjwww/idecisions/isummaries/isswasummary500711.htm. (10954)

⁵ Professor, Judge Stephen M. Schwebel, *The Legal Effect of Resolutions and Codes of Conduct of the United Nations in Justice in International Law*, Cambridge University Press, 1994. Opinions quoted in this critiques are not derived from his position as a judge of the ICJ.

⁶ See UN General Assembly Resolution 3314 (XXIX). <http://middleeastfacts.org/content/book/18-aggression-nm-010504.doc>. (10495)

⁷ Israel’s Enemies Fail to Label Israel the Aggressor. Draft resolutions attempted to brand Israel as aggressor and an illegal occupier as a result of the 1967 Six-Day War, were all defeated by either the UN General Assembly or the Security Council: A/L.519, 19 June 1967, submitted by the Union of Soviet Socialist Republics. “Israel, in gross violation of the Charter of the United Nations and the universally accepted principles of international law, has committed a premeditated and previously prepared aggression against the United Arab Republic, Syria and Jordan ...”

A/L. 521, 26 June 1967, submitted by Albania. “Resolutely condemns the Government of Israel for its armed aggression against the United Arab Republic, the Syrian Arab Republic and Jordan, and for the continuance of the aggression by keeping under its occupation parts of the territory of these countries;”

A/L. 522/REV.3*, 3 July 1967, submitted by: Afghanistan, Burundi, Cambodia, Ceylon, Congo (Brazzaville), Cyprus, Guinea, India, Indonesia, Malaysia, Mali, Pakistan, Senegal, Somalia, United Republic of Tanzania, Yugoslavia and Zambia. “Calls upon Israel to withdraw immediately all its forces to the positions they held prior to 5 June 1967.”

A/L.523/Rev.1, 4 July 1967, submitted by Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Trinidad and Tobago and Venezuela.

“Israel to withdraw all its forces from all the territories occupied by it as a result of the recent conflict;”

⁸ See “Declaration on principles of international law concerning friendly relations and cooperation among states in accordance with the charter of the united nations” at: www.un.org/documents/ga/res/25/ares25.htm. (11488)

⁹ Professor, Judge Schwebel in “What Weight to Conquest?” in *Justice in International Law*, Cambridge University Press, 1994.

¹⁰ Professor, Judge Sir Elihu Lauterpacht, *Jerusalem and the Holy Places*, Pamphlet No. 19 (London, Anglo-Israel Association, 1968).

¹¹ 52/164 International Convention for the Suppression of Terrorist Bombings. 15 December 1997. Adopted without a vote.

¹² UN Security Council Resolution 1368 (2001). See: <http://www.mefacts.com/cache/pdf/un-resolutions/10574.pdf>. (10574)

¹³ UN Security Council 1373 (2001) September 28 2001. (10838)

¹⁴ UN Security Council Resolution 1377 (2001) November 12 2001. (10837)

¹⁵ Between September 1993 (the signing of the Oslo Accords) and February 2003 (prior to completion of the first leg of the fence) more than 1,004 Israelis lost their lives to Palestinian terrorists.

¹⁶ UN Security Council Resolution 1456 (2003), [1/20/2003]. (10843)

17 “Shin Bet report: 1,017 Israelis killed in intifada,” Haaretz, September 27 2004. This report also cites 70% of the fatalities (1,017 persons) and 82% of the wounded (5,598 persons) were civilians during four years of violence (September 2000-September 2004).

18 PLO-Israel Letters of Mutual Recognition. Exchange of Letters between PLO Chairman Yasser Arafat & Israeli Prime Minister Yitzhak Rabin. September 9 1993. See: http://www.palestine-un.org/peace/p_b.html. (10420)

19 As of December 3 2004, and since September 1993, 1,366 Jews have been murdered by Palestinian’s terror. For an updated listing by name see: <http://www.masadazoo.org/oslo.html>.

20 See Judge Higgins at: <http://www.icj-cij.org/icjwww/idocket/imwp/imwpframe.htm>.

21 The Israeli-Palestinian Interim Agreement on the West Bank And the Gaza Strip, Washington, D.C. September 28 1995. Full text see: http://www.mefacts.com/_cache/html/oslo/10944.htm. (10944)

22 HUMAN RIGHTS WATCH. Erased In A Moment: Suicide Bombing Attacks Against Israeli Civilians, October 2002. Obligations of the Palestinian Authority and Armed Palestinian Groups, at: <http://www.hrw.org/reports/2002/isrl-pa/ISRAELPA1002-4.htm#TopOfPage>. (11262)

23 UN General Assembly - 58/163. A/RES/58/163. 77th plenary meeting. December 22 2003. The right of the Palestinian people to self-determination. See:

<http://domino.un.org/UNISPAL.NSF/o/e5eaf52d1c576d0785256e6d0055b152?OpenDocument>. (11319)

24 UN General Assembly Fifty-Ninth Session, 2 December 2004. (11550)

25 Adopted without a vote, December 15 1997. See: www.un.org/ga/documents/gares52/res52164.htm. (10899)

26 See “Element of Crimes” at the Rome Statue of the International Criminal Court, at [http://www.icc-cpi.int/library/about/officialjournal/basicdocuments/elements\(e\).pdf](http://www.icc-cpi.int/library/about/officialjournal/basicdocuments/elements(e).pdf). (11456)