Israel and Iraq: United Nations Double Standards – UN Charter Article 25 and Chapters VI and VII

Gerald M. Adler [*] ***LLM, JSD*** ***(Yale)***

Executive Summary

Since the inception of Gulf War II, observers of the Middle East conflict allege that the UK and US governments treat the respective failures of Israel and Iraq to comply with UN Security Council resolutions in a discriminatory fashion. Israel, they claim, is treated more leniently in that resolutions are not enforced against it in the same way as they are against Iraq. In the opinion of such critics, Article 25 of the UN Charter makes all Security Council Resolutions equally binding on UN Members. They reject any distinction in the binding effect of UN Security Council resolutions passed against Israel under Chapter VI of the UN Charter from those passed against Iraq under Chapter VII. Even if the two types of resolution can be differentiated, it is argued that the Security Council should have condemned Israel for its aggressive behaviour towards the Arabs and the Palestinians in the same manner as it condemned Iraq for its aggression.

A close analysis of the UN Charter and of the various Security Council Resolutions show however, that there is indeed a valid distinction between the powers of the Security Council under Chapter VI of the Charter in contrast with those it possesses under Chapter VII. Furthermore Israel can demonstrate a good record of compliance with UN resolutions, as opposed to Iraq, even in circumstances where the UN itself can be shown to have acted prejudicially against Israel.

Under Chapter VI, the Security Council's role is that of a facilitator, supporting the parties to resolve their conflict by pacific means of their own choice. Resolutions passed under Chapter VI are therefore recommendations- which by definition are not binding. All resolutions relative to Israel were passed under Chapter VI.

Chapter VII Resolutions are justified only where there is a threat to international peace, a breach of that peace, or acts of aggression, a much graver situation than that envisaged under Chapter VI. Most of the resolutions passed against Iraq are under Chapter VII, which are binding. Any failure to comply may lead to economic and political sanctions. Military action can be employed as a last resort. While UN Charter Article 25 does indeed require all UN Members to carry out decisions of the Security Council, such decisions must be made in accordance with the other provisions of the Charter.

In determining whether a Security Council decision is binding on a member, the International Court of Justice has declared that Council decisions must be interpreted in accordance with their exact wording, the intent of the Council, and context in which they were passed. The exact wording of UN Security Council Resolutions 242 and 338, for

* Hove, England.
Adjunct Professor of Law (1968-1983), Technion – Israel Institute of Technology
Formerly Barrister-at-Law, Ontario; Advocate, Israeli Bar; Solicitor, England. & Wales

example, do not demand that Israel withdraw from all the territories it occupied in 1967, and the drafting history of these decisions shows that this is no accident. The Israeli-Jordanian armistice of 1949 also unequivocally states that it does not in any way serve to reject or accept either party's ultimate claim or position regarding the disputed territories.

Those who quote Security Council resolutions relative to Jerusalem or Jewish settlement activity, as examples of Israeli breaches or violations overlook the fact that these resolutions have been superseded, at least partially if not completely, by the Oslo Peace Accords of 1993–1994 between Israel and the Palestinians. Other examples of supposed breaches of UNSC resolutions relate to Israel's failure to take action to protect the civilian population of the West Bank. In fact Israel can be shown to have taken appropriate action. In one such case action was taken even before the resolution was passed, making it redundant at best, and opportune for Arab criticism at worst.

Certain observers of the Middle East conflict complain that, unlike Iraq, Israel has never been condemned under UN Chapter VII for its aggression against neighbouring states. What is overlooked is that Israel has always acted in self-defence in accordance with UN Charter Article 51. A brief review of the circumstances surrounding Israel's wars points to the obvious defensive nature of each of the campaigns.

Significantly, in the first of these campaigns, the Arab invasion of Jewish designated territory in Palestine following the 1948 UN partition plan that created the State of Israel is the only example of member countries going to war against UN decisions**.** Such actions are in themselves breaches of the UN Charter, which requires member states to settle their international disputes by peaceful means.

Although UN Security Council resolutions since the outbreak of the 'Al-Aqsa Intifada' seem to ignore Oslo entirely, those accords clearly give Israel the right to take steps to stop terrorist acts. In order to safeguard Israel's internal security, military action is sanctioned even if it requires re-entering territory under the jurisdiction of the Palestinian Authority. One particular UN Security Council resolution, Resolution 1405, of which Israel is alleged to be in breach, called for an investigation into the events which occurred in Jenin in April 2002. This resolution initially met no objection from Israel. However, once it became clear that the UN was not acting in good faith regarding the scope of the investigation and the composition of the investigating team, the Israeli government asked for some clarifications. The UN Secretary General eventually decided to cancel the inquiry.

The claims that a double standard is in effect do seem to be true, but not relative to the US and the UK's treatment of Iraq and Israel. Rather, it appears that the UN itself holds Israel to a different standard than it holds Israel's Arab neighbours. The question that critics of Israel should perhaps be asking of themselves is why Israel is the focus of so much UN attention when there are greater threats to world peace elsewhere.

Introduction

Critics of Israel's alleged non-compliant attitude towards United Nations Security Council Resolutions claim that the British and American governments apply a double standard to violators of UN resolutions in the Middle East.[1] They assert that all resolutions should be applied without discrimination and allege that a higher standard of compliance is applied to Iraq than to Israel, whose non-compliance is virtually ignored.

An unprejudiced examination of Israeli implementation of UN resolutions, however, shows a good record of compliance, especially when the context and precise wording of the resolutions are understood as intended.

A relatively recent study by Stephen Zunes published in October 2002[2] provides the basis for criticising Israel's apparent non-compliance. Prof. Zunes presents a long series of UN Security Council resolutions, which he asserts are "currently being violated by countries other than Iraq." Israel is at the top of the list.

This however raises the question as to whether all resolutions passed by the Security Council are binding and enforceable against states to whom they are directed. It is argued that UN Charter Article 25 requires ***all*** decisions of the Security Council to be implemented by members of the UN. As a corollary, therefore, there can be no difference between Israel's obligations to comply with resolutions written under Chapter VI of the UN Charter, from those passed against Iraq under Chapter VII.

Even if there is a difference between the Chapters, critics of Israel contend that a second double standard is applied in that the Security Council has failed to condemn Israel's aggression under Chapter VII in the same way as it has against Iraq.

An examination of a number of the Resolutions cited by Zunes and the provisions of Articles 2(a), 25, and 51 of the UN Charter demonstrates, however, the invalidity of these claims.

Chapters VI and VII – Is There Really No Difference?

Consistent with the principle of sovereign equality among states,[3] members of the UN are required to settle their international disputes by peaceful means.[4] The Charter clearly places an obligation initially upon the parties to resolve international disputes, and not

---

[1] Stephen Zunes, ***United Nations Security Council Resolutions Currently Being Violated by Countries Other than Iraq***, Foreign Policy in Focus, October 2002; David Morrison***, Israel - Iraq Double Standards***, Labour and Trade Union Review, January 2003; Owen Bowcott, ***US Accused of Double Standards at UN***; Guardian, September 12, 2002; Ian Williams ***Double Standards, U.N. Style***, Globalvision News Network February 3, 2003. See also ***Iraq, Israel and the United Nations: Double Standards,*** The Economist, October 10, 2002; Dore Gold, ***Baseless Comparisons:UN Security Council Resolutions on Iraq and Israel,*** JCPA, September 24, 2002; Michael Jordan, ***UN's Two Standards Under Fire***, Christian Science Monitor, September 27, 2002.

[2] *ibid* http://www.fpif.org
[3] Article 2(1)
[4] Article 2(3)

upon UN institutions.[5] The Charter envisages the resolution of such disputes by "pacific means" of negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, "or other peaceful means of [the parties'] own choice "[6]

Chapter VI: The Power to Recommend

The Security Council's responsibility under Chapter VI generally, and under Article 33 in particular, is to assist the parties in reaching their own agreement by pacific means. To this end, if the parties so request, the Security Council may make ***recommendations*** for the pacific settlement of their dispute.[7] If they fail to reach agreement, then the UN Charter requires the parties to refer the matter to the Council. If the Council deems it necessary, it has the authority, on its own motion, to call upon the parties to settle their dispute by such peaceful means.

Even when the parties are already engaged in negotiation or other peaceful methods of conflict resolution, the Security Council may intervene by making recommendations as to appropriate procedures or methods of adjustment.[8] In so doing, the Council should take into consideration the procedures that the parties have already adopted,[9] and generally refer legal disputes, as opposed to political disagreements, to the International Court of Justice.[10]

If the above process fails to resolve the conflict, or if the Security Council deems that the continuance of the dispute is in fact ***likely to endanger international peace and security***, the Council must decide whether to recommend appropriate terms of settlement, or whether to employ the provisions of Article 36. This Article restricts the Council to making recommendations alone, and does not include authority to impose sanctions of any sort.

One of the most important powers of the Security Council under Chapter VI is the right to investigate any dispute or situation which might lead to international friction, in order to determine whether the situation is likely to endanger international peace and security[11]. The use of this power is of crucial importance in enabling the Security Council to determine whether to exercise its powers under Chapter VII.

Chapter VII: The Power to Take Action

In contrast, under Chapter VII, the Security Council is empowered to take action and impose sanctions if there are "***threats to the peace, breaches of the peace, or acts of aggression***"—a much graver situation than that envisaged under Chapter VI. Before passing a resolution under Chapter VII, the Security Council must first make an initial determination as to whether the conditions contemplated under this chapter exist. After doing so, Article 39 then authorizes the Council to "make recommendations" or "decide on what measures are to be taken," to maintain or restore international peace and

---

[5] Chapter VI, Articles 33–38
[6] Article 33
[7] Article 38
[8] Article 36
[9] Article 36(2)
[10] Article 36(3)
[11] Article 34

security.

These measures initially may include economic and communications boycotts and the severance of diplomatic relations[12]. Only if the Council considers such measures to be inadequate or they have been proved such, can it then take military action and expect support and contribution from all UN members.

In summary, therefore, Chapter VI places upon the parties to a dispute, the main responsibility for resolving it themselves by ***pacific*** means, while the Security Council plays a supportive role in making ***recommendations only***—and these cannot include sanctions. By definition, the addressee may or may not decide to follow a recommendation, which contains an element of choice. On the other hand, Chapter VII resolutions are binding, in the sense that the addressee must comply with the measures directed by the Council.[13] It is important, therefore, to examine with care the actual text of any resolution to determine the scope of the response demanded, and especially whether a directive to one party is dependent upon a concurrent, parallel, or sequential response by another.[14]

Understanding UN Charter Article 25

It may appear on a first reading Article 25, that Chapter VI resolutions have the same binding effect as those passed under Chapter VII.

Article 25 provides:

> *"The members of the United Nations agree to accept and carry out the decisions of the Security Council* ***in accordance with the present Charter."*** *(emphasis gma)*

Some writers, placing their emphasis solely on the word "decisions"[15] conclude, mistakenly, that all "decisions" are binding - regardless of whether they were passed under Chapters VI or VII. While there are grounds for such an assumption, this approach overlooks two important points.

First, consideration must be given to the qualifying words that appear at the end of Article 25**.** The obligation of members is to accept and carry out a Council decision "***in accordance with the present Charter."*** Since the Security Council only has the power to make recommendations under Chapter VI, it cannot direct a state to refrain from acting or to take a particular course of action. Under Chapter VI, the Council also has no power to impose sanctions against a state for failing to comply with a resolution.

Article 25 must be read in conjunction with Article 33 which, as explained above, imposes on the parties to a dispute the primary responsibility for reaching their own resolution. Consequently, if the Security Council expresses views in a mandatory fashion

[12] Article 40

[13] See Economist, supra note 1

[14] Except perhaps under Article 34 to order a state to permit the Council to investigate whether a Chapter VII situation exists.

[15] See Morrison, supra note 1

under Chapter VI, those views may not be "in accordance with the Charter," but rather an expression of a political position or opinion which the addressee is free to adopt or not.

Secondly, in a 1971 advisory opinion rendered by the International Court of Justice,[16] the Court made it clear that in determining the binding force of a Security Council decision, the following matters must be considered: ***the wording of the decision; the provisions of the charter upon which it is based; the intent of the Council as documented; and the context in which the decision is taken.***

It is therefore unacceptable for readers to be presented, as Zunes has done, with a long list of Security Council resolutions accompanied by a blanket statement that they have not been complied with. In ignoring both the limitations imposed on the Security Council's authority and the International Court of Justice guidelines, Israel's integrity has been unjustifiably impugned and the Security Council's differential treatment of Iraq and Israel has not been satisfactorily explained.

The Wording of Resolutions – Examining Text and Intent

Resolution 242

One of the most salient of all Security Council resolutions that has been misinterpreted by opponents of Israel is Resolution 242.

Passed after extensive debate on November 22, 1967 under Chapter VI of the UN Charter, the Security Council called for:

"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 [June 1967] conflict; [and]*

(ii) Termination of all claims or states of belligerency and respect for and acknowledgement of the sovereignty, territorial integrity and political independence of ***every State in the area*** *and their right to live in peace within secure and recognised boundaries free from threats or acts of force." (emphasis gma)*

Since the resolution requires interdependent Israeli and Palestinian compliance some commentators have excluded Resolution 242 from their list of Israeli violations[17], others however, have not done so. Somewhat cynically, it has been suggested[18] that Resolution 242 should be included among the resolutions of which Israel is alleged to be in breach, on the assumption that she will refuse to comply even if there is an appropriate response from the Palestinians. The inclusion of subparagraph (ii), it is argued, has given Israel the excuse not to implement (i) and withdraw ***from the territories it occupied since 1967***" (emphasis gma).

This misinterpretation of the scope of Resolution 242 is not unique and is reflected

[16] International Court of Justice, Advisory Opinion South African - Namibia dispute (ICJ Reports 1971).

[17] see Zunes supra note 1

[18] see Morrison, supra note 1

constantly in the popular press as demanding of Israel the fulfilment of an obligation greater than that required both by the text of the resolution and the intent of the Security Council.

First: Israel has complied with the terms of Resolution 242 insofar as it is within her power to do so. She has withdrawn from Sinai and Lebanon, and has concluded peace treaties with Egypt and Jordan, respectively, in accordance with this Resolution. Furthermore, she has, consistent with Resolution 242, entered into the Interim Agreement with the Palestinians as part of the Oslo peace process initiated in the 1990's.

Second: In respect of Judea, and Samaria (known as the West Bank) and the Gaza Strip, Resolution 242 makes no reference whatsoever to "Palestine" or any "Palestinian" jurisdiction. It merely requires Israeli withdrawal. It is theoretically conceivable, therefore, that some Jewish populated settlements could remain in the territories under whatever jurisdiction is established (presumably Palestinian)[19] and become subject to that law, just as many Arab villages exist peaceably within Israel proper and are subject to Israeli law.

Third: It is clear that Resolution 242 (together with UN Security Council Resolution 338 passed on October 22, 1973 after the Yom Kippur War), requires the parties to negotiate the solution to their conflict, the outcome of which will determine which portion of the territories in dispute will eventually become "Israeli territory," and which portion will be retained by Israel's Arab neighbours. The resolution does not require Israel to retreat to the 1967 boundaries.

Two Not So Little Words

The sponsors of Resolution 242 intentionally omitted the significant words "***all the***" before the word "territories." Successive British Foreign Secretaries, Michael Stewart, in November 17, 1969, and George Brown, on January 19, 1970, both confirmed to Parliament that these words were intentionally omitted from the text of the resolution after extensive negotiation and that Israel was not required to retreat to the boundaries in effect before 1967 (1949 Armistice lines).[20] Lord Carrington, who was responsible for the drafting of the Resolution and for negotiating it through the Security Council confirmed that the Armistice lines of 1949 were not intended to be the permanent boundaries. In an interview reported in the Beirut Daily Star on June 12, 1974, he stated:

> *"It would have been wrong to demand that Israel return to its positions of June 4, 1967, because these positions were undesirable and artificial. After all, they were just the places where the soldiers on each side happened to be on the day the fighting stopped in 1948. They were just armistice lines. That's*

[19] In July 1988 King Hussein relinquished all Jordanian claims to sovereignty over the West Bank territories

[20] It is also important to view Resolution 242, as finally approved, in contrast to four rejected drafts that were more demanding of Israel. Two of them, in particular, employed language that the Palestinians continue to declare as being the UN's intention. Yugoslavia introduced GA A/L 522 which called for Israel to withdraw behind the lines established in the General Armistice Agreements [of 1949], while GA Resolution A/L 523, submitted by the Latin-American Nations, required Israel to withdraw "from **all the** territories." Neither resolution received the necessary two-thirds majority vote to become effective. However, the text of these drafts indicates that the UN certainly debated and considered the scope of Israel's withdrawal, and ultimately rejected a return to the 1949 Armistice lines.

why we didn't demand that the Israelis return to them, and I think we were right not to."

The 1949 Israeli-Jordanian Ceasefire

In any case, an involuntary Israeli retreat to the pre-1967 borders is not justified by the terms of the Armistice Agreement between Israel and Jordan of 1949. The provisions of that Agreement are still of significance today for a proper understanding of Resolution 242.

Article II of the Agreement states:

> *"With a specific view to the implementation of the resolution of the Security Council of 16 November 1948, the following principles and purposes are affirmed:*
>
> 1. *The principle that no military or political advantage should be gained under the truce ordered by the Security Council is recognised;*
> 2. *It is also recognised that* ***no provision of this Agreement shall in any way prejudice the rights, claims and positions of either Party hereto in the ultimate peaceful settlement of the Palestine question****, the provisions of this Agreement being dictated exclusively by military considerations." (emphasis gma)*

This agreement specifically denies any claim that the 1949 ceasefire lines constitute a determination of the territorial rights and jurisdiction over the disputed territory. It therefore cannot form a legal basis for the demand that Israel return to them.

A failure to examine the background history of Resolution 242 results in a gross misinterpretation of its text and leads one to expect an Israeli response to the resolution greater in scope than expressed by its language, and the intention of the Security Council.

When History Bypasses UN Resolutions

In claiming differential treatment between Israel and Iraq, it is important to examine whether the resolutions of which Israel is alleged to be in breach still have efficacy, or have been overtaken by events. Many of these decisions were passed before 1993. Since then, Israel and the Palestinians have entered into the Oslo Accords. The very existence of these accords and their partial implementation by the parties has changed the factual basis upon which many of the resolutions were predicated. Compliance may no longer be relevant. If it is relevant, the response required may be of a different nature to that originally contemplated.

Two main topics appear in the list of resolutions allegedly violated by Israel: The control and annexation of Jerusalem (Resolutions 252, 267, 271, 298, 592, and 799), and the presence of Jewish settlements in the disputed territory of Judea and Samaria, also known as the West Bank (Resolutions 446, 452, and 465).

The Oslo Accords

Despite the many Palestinian breaches of Oslo, the impact of the accords is virtually irreversible politically and militarily. In the Declaration of Principles (DOP) signed on September 13, 1993 (Oslo I), the PLO purported to recognise Israel and forswore the use of violence as a means of realising and giving expression to Palestinian nationalistic desires for self-determination. Israel, for its part, recognised the PLO as the sole representative of the Palestinian people in that quest.

Following Oslo I, the parties entered into an extensive Interim Agreement on September 24, 1995 (Oslo II), which applied to the whole of Judea and Samaria (the West Bank) and the Gaza Strip, but excluded Jerusalem. This replaced an earlier, more limited interim agreement dated May 24, 1994, covering only Jericho and the Gaza strip

Israel, relying on the PLO undertakings contained in the earlier limited agreement, permitted Arafat and his supporters, on July 1, 1994, to enter the West Bank and Gaza from Tunisia, where they had been in exile after having been expelled from Lebanon.

In both the Declaration of Principles (Article V (3)) and the Interim Agreement (Articles XI, XVII, and XXXI (5)), the parties clearly stipulated that the issues of Jerusalem, refugees, settlements, security arrangements, and borders would be settled in the final status negotiations.

Notwithstanding the earlier UN Security Council resolutions, neither Arab nor Jewish settlement activity is proscribed by Oslo; questions of sovereignty and legal jurisdiction over the land upon which settlements are built and over its residents, are left open temporarily. Article XXXVI of Oslo II stipulates: “neither side shall initiate or take any step that will change the ***status*** of the West Bank and the Gaza Strip pending the outcome of the permanent status negotiations.” The “Status” of the territories, as “occupied” (as claimed by the Palestinians) or “disputed” (as claimed by Israel) would be affected by a declaration of Statehood by the Palestinians, its annexation by Israel or the application of Israeli law. Construction upon such land, however, and its subsequent utilization, does not affect its ***status.*** For Israel, settlement in the West Bank is legally justifiable under Articles 6 and 11 of the British Mandate. This authorises Jewish settlement on waste or State lands not required for public purposes. In establishing the settlements, Israel has carefully avoided encroaching on privately held Arab land. Whether such settlement activity is politically wise in the long run is another matter. From a legal perspective, however, Oslo II, Article XXXVI (6) and (7) make it clear that settlement activity (as well as other matters) shall not prejudice or pre-empt the outcome of the negotiations on the permanent status. Neither party is deemed, by having entered into the Oslo II Agreement, to have renounced or waived any of its existing rights, claims, or positions.

As a consequence, pre-1993 UN resolutions dealing with these issues, particularly Jerusalem and the settlements have little relevancy and must now be read in light of Oslo. The action directed by the Security Council under those resolutions, not to mention the many General Assembly resolutions on the subject, have now been replaced by the parties' own agreement to settle matters by negotiation. It is misleading and disingenuous to assert that Israel is in breach of these resolutions. If they have not been entirely superseded by Oslo I and II, such resolutions at least require re-examination to determine their present scope of application. These agreements have had such a far-reaching effect

that they must be taken into account when evaluating the extent of Israeli compliance with Security Council demands.

The Context of the Resolutions

Another block of resolutions to which Israel allegedly fails to adhere (471, 605, 607, 608, 636, 641, 672, 673, 681, 694, 726, 1073, and 1322) relate to Israel's responsibility to act in accordance with the Geneva Convention in its role as an occupying power of the civilian population of the territories, and to refrain from deporting the local population.

Let us examine the background and context of the first of the resolutions, Resolution 471, which was passed in 1980—before Oslo—to determine whether Israel did in fact comply.

The Attacks on the West Bank Mayors and Resolution 471

On June 2, 1980, unidentified assailants planted bombs in the cars of the mayors of Nablus, Ramallah and El-Bireh. The mayor of Nablus lost both legs; the mayor of Ramallah lost a foot; an Israeli sapper dismantling the device in the car of the mayor of El-Bireh lost his eyesight when the device exploded. Some Israelis had reason to believe that the perpetrators of the crime were Arab terrorists, intent on preventing cooperation between the Israeli authorities and the local Palestinian leadership, while Arabs claimed that Jewish settlers were the responsible parties. Prime Minister Begin, speaking in the Knesset, Israel's Parliament, that same afternoon, called the attacks "crimes of the most serious type" and committed Israel to an "intensive investigation" which was immediately instigated.[21]

Despite Begin's statement, the Security Council passed Resolution 471 on June 5, 1980, in which it condemned the attempted murder of the three West Bank mayors; called for the immediate apprehension and prosecution of the perpetrators of the crimes, and expressed deep concern over what it termed Israel's failure to "provide adequate protection" for the civilian population in the territories. The U.S. abstained; its representative, Ambassador McHenry, declared that since the resolution failed to mention PLO terror, it was one-sided and unbalanced.

The Security Council did not need to condemn the crimes or demand that Israel would conduct an intensive investigation and bring the perpetrators of the crimes to justice. Since Israel had already responded to the incident even before the Security Council acted, this Resolution hardly falls into the category of resolutions ignored by Israel.

UN Charter Article 51: Israel's Inherent Right of Self Defence

Critics of Israel allege that the UN unjustifiably applies an additional double standard in

[21] Begin stated: "As long as we do not have even *prima facie* evidence, we must not cast suspicions on anyone. Only after we have proof will the suspects be arrested, investigated, and brought to trial, and the court will judge them. As a human being, I want to express sorrow to all the people who were hurt in these criminal acts and commiserate with the families. I call from the Knesset rostrum to all the residents of Judea, Samaria, and the Gaza district, both Arabs and Jews, to preserve law, order, and quiet. I have instructed the army not to tolerate any violations of law and order. Let the defence forces conduct and conclude their investigation. The guilty ones will be brought to justice and will pay for their crimes."

Israel's favour. Unlike Iraq, such critics complain that the UN has never condemned Israel under Chapter VII for her "many acts of aggression against neighbouring states." These are exemplified[22] by the major military conflicts in which Israel has been involved: Israel's 1948 War of Independence, which resulted in her gaining control of territory in excess of that "assigned" by the recommended Partition Plan contained in UNGA 181(II); the "use of force against" Egypt, Jordan, and Syria in the 1967 Six Day War; and Israel's incursion into Lebanon in 1982, which resulted in the exile of Arafat and the PLO to Tunisia.

Any comparison between Iraqi and Israeli military operations that results in Security Council differential use of Chapter VI and Chapter VII powers must be viewed in terms of the respective Israeli and Iraqi potential threats to world peace. Security Council condemnation of Israel under Chapter VI, rather than Chapter VII, has to be viewed against a background of Israeli defensive military action against Arab aggression in five wars and against the peace process between Israel and the Palestinians ending for the present in the Oslo Agreements and the Road Map. In contrast, Iraq's conflict is not confined to one or two adversaries with whom she can resolve her disagreements, but she is at odds with the United Nations at large who fear, with some justification, the irresponsible spread of weapons of mass destruction by Iraq to "rogue states" and to terrorist groups.

It is alleged that Israeli aggression contravenes Article 2 (4) of the UN Charter, which requires that "member states refrain from the use of force against the territorial integrity of other states." Such Israeli aggression presumably requires a Security Council response under Chapter VII. However, in applying the terms of Article 2(4), one must examine the context in which these wars were fought. In particular reference must be made to the inherent right of self-defence to which every state is entitled and which is recognised under Article 51 of the UN Charter. This provides:

> *"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…"*

Looking very briefly at the incidents of Israeli aggression alleged by critics of Israel to be in contravention of Article 2(4), it is clear that in each and every case, Israel acted in self-defence against Arab aggression:

Israel Defends Itself from Attack

The establishment of the State of Israel was supported by a vote of more than two-thirds of the United Nations on November 29, 1947. During the British withdrawal from Palestine, Israel proclaimed its independence on May 14 1948 and was immediately invaded by five Arab armies intent on annihilating the nascent Jewish state.

Egyptian, Syrian, Lebanese, and Jordanian forces advanced deep into Palestine, encroaching on territory assigned to Israel under UNGA Resolution 181(II) before being

[22] See Morrison, supra note 1

repulsed (***War of Independence***). Jerusalem, instead of becoming a *corpus separatum* as envisaged by the partition plan, ended up being under the divided control of Israel and Jordan.

This attack was not only against Israel, but also against international legitimacy and the UN plan for a two state solution in Palestine. There is no other example of UN member countries going to war against a specific UN resolution other than the Arab wars against Israel**.**[23]

In the ***1956 Suez conflict***, Israel acted in self-defence to prevent constant incursions of "fedayeen" murder groups into her territory. These were not isolated incidents, but military actions organised and implemented with the knowledge and co-operation of Arab Governments generally, and with Egypt's Nasser in particular;

Israel's pre-emptive self-defensive action in the ***Six Day War*** of June 1967 was justified by the following causa belli, among others: [24]

1. Egypt illegally blockaded Israeli shipping in the international waters of the Straits of Tiran;
2. Egypt demanded, and UN Secretary General acquiesced in the removal of the UN peace-keeping force from Sinai;
3. Syrian, Egyptian and Jordanian troops massed on the Israel-Arab cease fire lines established in 1948-1949 while the UN Security Council failed to take action to prevent the Arab aggression;
4. After being persuaded by Arab pressure and by Egyptian propaganda to join the conflict, Jordanian initiated an artillery barrage on targets within Israel at 11:00 hours on June 5, 1967.

In self-defence, Israel retaliated. Jordan ultimately lost control of the "West Bank," including East Jerusalem, within 36 hours. Both sides accepted a cease-fire at 20:00 hrs on June 7, 1967.

Attempts by Israel to negotiate a peace with Arabs and return the West Bank to their control was met with rejection by the Arab summit on September 1, 1967.[25] Consequently, until the Oslo Accords in 1993, Israel retained total control of the West Bank and East Jerusalem.

Lebanon: Israel's war against PLO terrorism in the 1980s resulted in the foray into Lebanon, in order to prevent attacks directed at Israeli civilian population centres in Kiryat Shmona and Ma'alot. Kiryat Shmona was subjected to daily terrorist incursions and Katyusha rocket attacks, while Ma'alot unfortunately made world headlines on May 15, 1974, when PLO terrorists disguised in Israeli uniforms (perfidy in international law) infiltrated from Lebanon, and attacked a group of sleeping school children on a field trip. When the incident was over, the terrorists were dead, but so were 21 children, who had

[23] Shlomo Avineri, *A Blueprint for International Stability,* Jerusalem Post, July 17, 2003
[24] See Michael B. Oren, ***Six Days of War,*** Penguin Books, 2003, especially "The Context**"** pp.1-169
[25] This historically came to be known as the three "noes" of the Khartoum Conference: No negotiation with Israel; no recognition of Israel; no peace with Israel.

been murdered by the PLO.[26]

An Unholy Tradition Continues: The Al-Aqsa Intifada

Finally, despite the Oslo commitment to eschew violence, the **Al-Aqsa Intifada** and the suicide bombing by Islamic extremists based in Jenin, Ramallah, and other West Bank Arab towns caused Israel to take pre-emptive defensive action against terrorist organisation leaders known to be responsible for the recruiting, training, and dispatching of suicide bombers into Israeli civilian centres. In "Operation Defensive Shield," Israel re-entered territory it previously vacated and transferred to Palestinian Authority control under Oslo II.

This defensive operation has provided the backdrop for the latest group of Security Council resolutions—Resolutions 1402, 1403, and 1435—which call for Israel to withdraw from Palestinian cities. According to critics of Israeli policy,[27] Israel has failed to adhere to those resolutions. In Israel's opinion, however, reoccupation in these circumstances is justified both as an expression of self-defence under Article 51 of the UN Charter, and as a direct result of the PLO's failure to comply with the obligations it assumed under the Oslo Accords of 1993-1995.

Before considering the effects of Oslo on the Security Council resolutions, it is worth examining the implications flowing from Resolutions 1402 and 1435.

Resolution 1402, passed on March 30, 2002,

> *[c]alls upon both parties [Palestinians and Israelis] to move immediately to a meaningful ceasefire; calls for the withdrawal of Israeli troops from Palestinian cities, including Ramallah; and calls upon the parties to cooperate fully with Special Envoy Zinni, and others, to implement the Tenet security work plan as a first step towards implementation of the Mitchell Committee recommendations, with the aim of resuming negotiations on a political settlement.*

The drafting of this resolution shows clearly that Israeli withdrawal was not expected to be unilateral, but as part of a total process which requires the active co-operation of the Palestinians in the immediate cessation of all acts of violence, including all acts of terror, provocation, incitement, and destruction.

Israel has repeatedly demonstrated its intention and interest to withdraw from territories previously transferred to PA control, but has been unable to do so because of continued Palestinian terror and incitement.[28] As a matter of self-defence, Israel cannot be expected to withdraw its troops from Palestinian cities unless there is a meaningful cease-fire.

Resolution 1435, passed on September 24, 2002, is in the same vein, and within the same context. This resolution failed to place the same degree of responsibility equally upon the

---

[26] See Chaim Herzog, *The Arab-Israeli Wars*, Arms and Armour Press, London, 1982.

[27] Morrison, supra note 1

[28] A recent example occurred just a few days after the publication of the "Road Map" and the Aqaba summit of June 2003. Initial hopes for moves towards peace were shattered when Palestinians killed five Israeli soldiers. Palestinian leaders, led by Abdel Aziz Rantisi, openly vowed to continue terror relentlessly.

parties for the violence of the past two years, and the U.S. consequently abstained in the vote on the resolution. Significantly, however, the Security Council mentioned the Palestinian terrorist attacks in a resolution for the first time, calling for them to end and for the Palestinian Authority to meet its expressed commitments to bring those responsible for terrorist acts to justice. It is worth remembering, however, that previously when terrorists were "arrested" by the Palestinian Authority, put on trial, found guilty and incarcerated, the PA quickly released them under its "revolving door" policy. Even during their "imprisonment," prisoners were allowed to receive and entertain "guests" in their quarters and make use of cellular phones. This enabled terrorist leaders to maintain contact with the rank and file and continue to plan further attacks on Israeli civilian targets.[29]

Whether the July 2003 "hudna" (temporary three-month ceasefire) will be honoured and maintained is questionable.[30] It is clear, however, that so long as the terrorist groups are encouraged or permitted to continue their activities, and incitement to violence in the mosques, media, and schools continues unabatedly, the Palestinians cannot demand that Israel implement UN Security Council resolutions, while ignoring their own lack of compliance.

If observers of the Middle East scene were truly concerned about the UN's double standard, the question they should be asking is why is Israel the constant focus for UN criticism, while the failure of the Palestinians to comply with their obligations under the "peace process" is constantly ignored.

Israel's Right to Re-enter Palestinian Territory Under Oslo (II)

Palestinian supporters, who claim that Israel has not implemented the above Security Council Resolutions 1402, 1403, and 1435, disregard the existence and validity of the Oslo Accords.

As mentioned earlier, Israel and the PLO recognised one another in Oslo I, and the PLO forswore the use of violence and incitement as a valid means of achieving their objectives. In implementing Oslo I, the Interim Agreement (Oslo II) provided for the withdrawal and redeployment of Israeli forces, the transfer of authority, and the establishment of the Palestinian Authority. For its part, Israel redeployed its forces and withdrew from all the major Palestinian towns and the majority of the West Bank territory. This left the Palestinian Authority to assume almost all of the functions that the Israeli Civilian Administration had previously performed.

As an integral part of Oslo II, the Palestinians took responsibility for internal security over Palestinian towns and other areas from which Israel withdrew its forces, so as to assume jurisdiction and control over approximately 95% of the Palestinian population. To this end, Oslo II authorised the setting up of a strong, but lightly armed and

[29]See the abstracts of the Palestinian documents captured during Operation "Defensive Shield" www.idf.il/6880045/english/main_index.stm

[30] Gutman and Dudkevitch, report that the Hamas is utilising the three months cease fire to regroup after their losses in Operation Defensive Shield and to build more than 1000 Kassam rockets capable of penetrating 15-20 km. into Israeli territory. ***Hamas Building 1,000 Kassams*** Jerusalem Post July 21,2003

numerically limited Palestinian Police Force, whose task was to maintain internal security and to combat the terrorist groups, which were freely operating in the West Bank. Unfortunately the Force not only failed in this latter task but, in clear breach of the Interim Agreement, the Palestinian Authority increased the size of the force beyond its agreed complement, encouraged it to participate in terrorist activities, as well as permitting it to arm itself and others with proscribed weapons.

Despite the violence and actual motives behind the Al-Aqsa Intifada,[31] and the many Palestinian breaches of the Interim Agreement, Oslo cannot be disregarded as if it never occurred. The violence initiated and orchestrated by the Palestinian Authority constitutes a fundamental breach of its obligations and violates the very raison d'etre of the accords—to "renounce the use of terrorism and other acts of violence" and "resolve all outstanding issues through negotiation."[32] The violence continued unabated until Israel took action, in Operation Defensive Shield.

Specifically, Article I (1) of Oslo II stipulates that "Israel shall continue to exercise powers and responsibilities [of government] not transferred." Amongst those powers is Article X (3), which reiterates:

"**Israel shall continue to carry responsibility for external security as well as overall security of Israelis for the purpose of safeguarding [Israel's] internal security and public order."**

To facilitate these responsibilities, Article XII also provides that Israel shall have "all powers to take steps necessary to meet this responsibility."

Israel's "Right to Engage"

To this end, a Security Annex—Annex 1 "Protocol Concerning Redeployment and Security Arrangements"—is attached to the Agreement, and provides the detailed legal framework for the effective implementation of these responsibilities. Annex I, Article IV(1)(f) requires the PA to combat "terrorism and violence, and prevent incitement to violence," and includes the obligation, among many others, of making known "its policy of zero tolerance for terror and violence" [33]

Israel is permitted under Article IX of Annex 1 to close the crossing points to Israel and

---

[31] In a speech delivered in March 2001 at the Ein Al-Hilweh refugee camp in Lebanon, PA Minister Imad al-Falouji said the following about the catalyst for the present Intifada: "Whoever thinks that the Intifada broke out because of the despised Sharon's visit to the Al-Aqsa Mosque is wrong...This Intifada was planned in advance, ever since President Arafat's return from the Camp David negotiations, where he turned the table upside down on President Clinton."

Even the Oslo Accords, according to some Arab leaders, are considered merely a part of a long-term, ultimate objective of replacing Israel with an Arab-Palestinian state. The Palestinians' strategic goal, according to an interview given by the late Faisal Husseini on June 24, 2001, is the liberation of Palestine from the Jordan River to the Mediterranean Sea. (See "The Oslo Accords were a Trojan Horse," 'Al-Arabi, June 24, 2001; documents from Arafat's compound, inciting Israeli Arabs to join the Intifada, and showing Arafat's unwillingness to recognise Israel's right to exist, http://www.idf.il/gilui/site/english/main_index.stm, from the IDF Spokesperson's Office, April 13 2002; and "Arafat's Nakba Day Speech," the special dispatch series - No. 515, June 3, 2003, http://memri.org/bin/articles.cgi?Page=archives&Area=sd&ID=SP51503, from the Middle East Media Research Institute.) Notwithstanding the latest "hudna"(temporary ceasefire), there are few indications to show that this objective has been abandoned

[32] Arafat's letter to Rabin, September 9, 1993

[33] Wye River Memorandum II.A.1.

to prohibit or limit entry into Israel of persons and of vehicles from the West Bank and the Gaza Strip for reasons of security and safety. Article XI goes even further and authorises Israeli military authorities to take "engagement" steps (defined as "immediate response to an act constituting a danger to life or property that is aimed at preventing or terminating such act or apprehending its perpetrators") **even if this occurs "within the territory under the security responsibility of the [Palestinian] Council**." This provision, independent of Article 51 of the UN Charter, clearly justifies Israel's right to re-enter and take defensive action against Palestinian terrorist attacks emanating from those areas transferred to the Palestinian Authority under the Oslo Accords.

There is, therefore, no legal basis for the unconditional demands emanating from some quarters that Israel end its incursions into Palestinian territory. Such steps are all the more justified when such attacks against Israeli civilian population, whether within Israel's 1949 armistice borders, or in the territories outside of it, have been perpetrated by terrorists under the control of and encouraged by the PA, and with the full knowledge of PA Chairman Arafat. The failure of Israel's critics to recognise or even acknowledge this situation or to view a large number of the Security Council resolutions in this context, does not support claims that Israel enjoys any advantage in the UN vis-à-vis either the Palestinians or Iraq.

All the UN Security Council Resolutions passed after the commencement of the Al-Aqsa Intifada totally ignore the Oslo Accords and the Interim Agreement. It appears that in dealing with the Israeli-Palestinian conflict, the Security Council has chosen to ignore the obligations undertaken by ***both*** of the parties, especially the Palestinian obligation to suppress terrorism and prevent the incitement to violence and hate.[34]

Until the conclusion of the outstanding political permanent status issues, Oslo II, as modified by the Road Map, still constitutes the basis of Israel's military jurisdiction, presence and authority in the territories. It also provides the legal and moral underpinning for her re-entry into Palestinian territory and authorises the conduct of defensive military operations against terrorist attacks on Israel's citizens.

Why has the Security Council ignored the Oslo Accords? Can there perhaps be a question of a lack of good faith at the UN, where 21 Arab Islamic states are lined up against a single Jewish state in a conflict over a small parcel of land the size of Wales?

Rather than concluding that the Security Council applies a double standard in favour of Israel, observers of the Middle East scene should be asking themselves why the UN applies a double standard against Israel vis-à-vis the Palestinians. Is it perhaps a matter of ensuring the continuing supply of oil by saving the face of the Arab nations from their humiliation at having been defeated by Israel militarily? Or is it prejudice where, notwithstanding the repeal of the infamous UN General Assembly Resolution 3379, Zionism is still viewed at the UN as racism, rather than as a valid political and social

[34] The failure of the Security Council to relate to the Oslo Accords is particularly disturbing since they have been viewed internationally as an implementation of UNSC Resolutions 242 and 338 passed under Chapter VI of the Charter. This chapter places upon the parties to the conflict the initial responsibility for finding their own solution by pacific means, of which Oslo is a clear expression. To the extent that the Security Council does intervene under Article 36 (2) of the Charter, it is supposed to take into consideration any procedures for settlement that the parties have previously adopted for the settlement of their dispute. The Interim Agreement fulfills this function

expression of Jewish self-determination?

UN Actions: Good Faith or Bad Blood?

In pursuit of the objectives of the United Nations, and to ensure that all members enjoy the rights and benefits accruing from membership, Article 1(2) of the Charter requires members to fulfil in good faith the obligations they assume in accordance with the Charter. It is in this context UN Security Council Resolution 1405 must be viewed as an expression of the UN's prejudicial double standard against Israel.

This resolution called for UN inspectors to investigate the Jenin "massacre."

It was clear from news reports at the time, and from the accusations made by the UN Special Envoy to the Middle East, Terje Roed-Larsen, that the findings of any investigation by the UN were already a forgone conclusion.[35] Israel initially made no objection to the resolution, Article 2 of which stated:

> *"The Security Council welcomes the initiative of the Secretary General **to develop accurate information** regarding recent **events in the Jenin refugee camp** through a **fact-finding team**, and requests him to keep the Security Council informed." (emphasis gma)*

Within a few days of the passing of the resolution, this narrowly drafted mandate became fogged and alterations were made to the ground rules of the fact-finding mission.

The intention of those who drafted the Resolution was that ***all the events in the refugee camp were to be investigated***, both Jewish and Arab; both the fact that the Palestinians had turned it into an armed terrorist encampment, as well as the resulting reaction by Israel in having to deal with the extensive armed nature of the refugee camp.

From statements, position papers, and press releases issued within a few days of the Resolution, it became clear that the scope of this mandate was being widened and extended well beyond the terms of reference set out in Resolution 1405.

After Israel had shown that its own heavy casualties were the result of the meticulous way in which her ground forces entered Jenin (rather than resorting to aerial bombardment), and the care which they took in trying to avoid civilian casualties, it became apparent that a UN independent investigation, extended beyond the original mandate, was unlikely to be carried out in good faith

The Fact-finding Team: Fact or Fiction?

In view of the nature of the fighting in Jenin between the Israeli military and the Palestinian terrorists and militants, it was important to include persons with military experience in urban guerrilla warfare as part of the team. Such experts would be capable of assessing whether Israel had used reasonable military force in the circumstances. A team compromised solely of humanitarian experts (as initially conceived by the Secretary General) would see only the destruction in the camp. In reality, the intense firefight

[35] BBC Interview Thursday, April 18, 2002; see also "International Hypocrisy," www.onejerusalem.org/ItemDetail.asp?Language=English&ItemID=1190.)

demanded a military assessment.

Matters were exacerbated by the prejudicial appointment of Dr. Helena Ranta, a Finnish pathologist, as a technical adviser to the three-man investigating team. Her reports on a purported "massacre" which had taken place in the Kosovo village of Racak in January 1999 and her references to the deaths as a "crime against humanity," with charges that the "victims" were "unarmed civilians" were subsequently shown to be false.[36] In light of Ranta's controversial record, the absence of a military assessor in the team and the ever-widening scope of the fact-finding mission, Israel for all practicable purposes was faced with a war crimes investigation.

Under these circumstances, Israel asked the Secretary General to clarify the terms of reference and the various basic components of the fact-finding mission— the composition of the team, the modes of interviewing people,[37] and the way in which the findings would be handled, presented, and shown to the sides. All of these matters are standard procedure in the United Nations' practice in detailing the mandate. The UN made no response to Israeli requests for clarification, but there is little doubt that Israel would have co-operated with the fact-finding team had it been sent.[38] As is now known, there was in fact no "massacre" in the Jenin refugee camp, and the Secretary General decided not to proceed with the investigation.

Conclusion

The impression remains that the UN employs a double standard against Israel when evaluating its conduct relative to the Arab world in general, and the Palestinians in particular.[39] In their faulty analysis of international legal material, Israel's critics have misled their readers into the unwarranted conclusion that Britain and the US have applied a double standard in attacking Iraq for its failure to comply with UN Security Council resolutions, while failing to act against Israel for her alleged breaches. While Israeli behaviour is by no means perfect, any criticism of Israeli compliance with UN Security

---

[36] see Aleksandr Pavic, "*Jenin Inquiry a Witch Hunt?*" http://www.worldnetdaily.com/news/article.asp?ARTICLE_ID=27423,

[37] Aaron Lerner ***Cabinet puts arrival of UN team on hold Date*** 30 April 2002.
Of particular concern was the UN's refusal to recognise and honour Israel's position that she alone should determine who should testify on her behalf. Israel's apprehension is that radical interpretations of human rights laws, if applied to the testimony of military witnesses, would result in the exposure of soldiers to criminal charges before an international court.
Under such radical interpretation, it is only permissible **to act against a target at the very moment that the target has opened fire.** Action before or after that "window" is considered under the radical interpretation to be prohibited no matter how this flies in the face of operational logic.

[38] Alan Baker, Legal Advisor, Ministry of Foreign Affairs, Press Conference, April 24, 2002.
[39] See Arnold Beichman, "***U.N. Lynching of Israel***," Hoover Institution, May 2, 2002, http://www.tampabayprimer.org; "***Don't Appease the United Nations***," Weekly Standard, May 11, 2002; Mitch Albom, "***Terror, Mideast and Hypocrisy***," Detroit Free Press, April 14, 2002; Stanley A.Weiss, "***A Charade of Bullies Feigning Decency***," International Herald Tribune, May 17, 2002; Anne Bayefsky, "***2000 UN Vote on Israel Part of a Pattern***," National Post, November 3, 2000; David Harsanyi, "***The United Nation's War Against Israel,***" Capitalism Magazine, May 27, 2002, http://www.capmag.com/article.asp?ID=1617).

Council resolutions must take into account those guidelines set out by the International Court of Justice in the *South Africa and Namibia* case, an exercise which this paper has attempted to do.