Part 1 The Cold War Era (1945–89), 28 Israel's Airstrike Against Iraq's Osiraq Nuclear Reactor—1981

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I. Facts and Context

On 7 June 1981, a team of eight F-16 and six F-15 fighter jets of the Israeli air force carried out an airstrike on Iraqi territory.[1] The target of the attack was the 'Osiraq' nuclear reactor at the Tuwaitha research centre near Baghdad. The Osiraq reactor was one of two research reactors being built pursuant to a French–Iraqi framework agreement and subsequent contracts.[2] The two-minute airstrike—which was reportedly carried out before the reactor was loaded with 12.5 kg of enriched uranium, to be supplied by the French[3]—effectively destroyed the $275 million Osiraq reactor. Four persons, including one French technician, were killed in the attack. Both the UN Security Council (UNSC) and the UN General Assembly (UNGA) formally condemned the operation.

II. The Positions of the Main Protagonists and the Reaction of Third States and International Organizations

The Osiraq raid marked the first deliberate destruction of a nuclear reactor and the first time a country openly attacked the nuclear facilities of another.[4] Israel justified its conduct as a case of so-called 'anticipatory' self-defence. To support this position, it drew attention to the hostile attitude of Iraq, which had refused to recognize Israel's right to exist and remained technically at war with Israel. In an open challenge to the existing non-proliferation regime, Israel moreover claimed that, notwithstanding International Atomic (p. 330) Energy Agency (IAEA) monitoring, the reactor was designed to produce atomic bombs. In spite hereof, the raid was widely condemned throughout the international community.

On 8 June 1981, the day after the attack, Israel reported to the UNSC that it had destroyed the Osiraq reactor, which 'despite its camouflage, [was] designed to produce atomic bombs. The target for such bombs would be Israel'.[5] According to Israel, Iraqi President Saddam Hussein had stressed that the reactor was being constructed against Israel (although it was later demonstrated that this quote was taken out of context[6]). Furthermore, Israel submitted that the reactor would soon be completed and be put into operation. Confronted with 'a mortal danger to the people of Israel progressively [arising]', Israel had chosen to act in defence of its citizens. Israel stressed that, had the airstrike been postponed until after the reactor would have become operational and 'hot', this would have 'brought about a massive, radioactive, lethal fallout over the city of Baghdad, and tens of thousands of its innocent residents would have been hurt'.[7] The letter also emphasized that the operation had been timed for Sunday in order to avoid loss of life among the foreign experts employed at the reactor.[8]

In subsequent UN meetings,[9] Israel emphasized that Iraq had consistently refused to recognize Israel's right to exist and declared itself to have been in a state of war with Israel since 1948.[10] Israel further insisted that, in spite of the officially 'peaceful' nature of Iraq's nuclear programme, Iraq was in reality seeking to obtain nuclear weapons. To substantiate its accusations, Israel referred to statements by Iraqi officials stressing the need for the Arab states to produce an atomic bomb.[11] It also drew attention to, inter alia, Iraq's refusal (vis-à-vis France) to be supplied with alternative combustibles for the reactor other than weapons-grade nuclear fuel,[12] as well as to the fact that Iraq had no need for nuclear energy given its abundant oil supplies.[13] While acknowledging that Iraq was a party to the nuclear Non-Proliferation Treaty (NPT) and that its nuclear reactors had been inspected periodically by the IAEA, Israel insisted that there were serious loopholes in the non-proliferation safeguards system that could easily be exploited by a country, such as Iraq, determined to obtain a nuclear weapon.[14] As Israel's 'public and diplomatic efforts', including calls for a nuclear-weapon-free zone in the Middle East, went unheeded,[15] and the Osiraq reactor was about to go 'hot'—making it impossible to attack it without blanketing Baghdad with massive radioactive fallout—Israel had acted to protect the lives of its citizens. In particular, in destroying the reactor, Israel had exercised 'its inherent and natural right to self-defence, as

understood in general international law and well within the meaning of Article 51 [of the

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(p. 331) UN Charter]'.[16] Referring to the *Caroline* affair[17] and quoting scholars such as Waldock, Bowett, Schwebel, and McDougal,[18] Israel took the view that the right of self-defence did not require a state to suffer the first, and possibly fatal, blow. According to Israel, the concept of self-defence had 'broadened with the advance of man's ability to wreak havoc on his enemies. Consequently, the concept took on new and far wider application with the advent of the nuclear era.[19] Thus, Israel argued, 'the concepts of "armed attack" had to be read in conjunction with … the present-day criteria of speed and power, and placed within the context of the circumstances surrounding nuclear attack'.[20]

Iraq, for its part, strongly condemned the 'clear-cut act of premeditated aggression' committed against it, stressing that:[21]

> [t]he attack carried out by Israel against Iraq is clearly an act of aggression in accordance with the provisions of the Charter as expounded on in the Definition of Aggression in General Assembly resolution 3314 (XXIX). The Israeli allegation that it acted in legitimate self-defence is totally unfounded, in fact and in law.

What is more, throughout a series of debates within the UNSC[22] and the UNGA,[23] third states levelled the Israeli arguments to the ground. One after the other, member states pointed out that the target being attacked was a peaceful research facility, and that, contrary to Israel itself[24]—which had refused to accede to the NPT and was widely believed to have clandestinely acquired nuclear weapons—Iraq was a party to the NPT and had always complied with the IAEA inspection regime.[25] Of considerable importance were the positions of France, which had been closely involved in the construction of the facility, and of the IAEA. France firmly rejected the Israeli allegations that the reactor was intended to produce atomic bombs,[26] insisting instead that its sole purpose was scientific research. France dismissed as groundless Israeli allegations pertaining to the risk of diversion of enriched uranium and the production of plutonium.[27] It stressed that Iraq had

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(p. 332) entered into all the necessary implementation agreements with the IAEA and that France itself had also made sure 'that no measure would be neglected to guarantee the use of the supplies [of nuclear fuel] for exclusively peaceful purposes'.[28] IAEA Director-General Eklund affirmed before the Security Council that the two Iraqi reactors had been subject to periodical inspections, and that these inspections had revealed that no nuclear material had been diverted from peaceful purposes.[29] The last inspection had taken place in January 1981. Another inspection had been scheduled to take place later in June 1981. The IAEA stressed that, due to the design of the facility and the fuel elements, diversion of fuel elements for non-peaceful purposes would have been easily detected.[30] In addition, it was asserted that, contrary to what Israel had argued, the IAEA was well aware of the existence of a vault under the Osiraq reactor, and that this space could not be used to produce plutonium.[31]

Numerous UN members stressed that all states—including oil-producing states—had the right to develop nuclear technology for peaceful purposes.[32] Several, including the United States, insisted that if Israel had had doubts about the peaceful nature of Iraq's nuclear programme, it should have pursued peaceful measures, for instance, by raising the matter before the Security Council or the IAEA.[33] Israel's attack on a reactor subject to IAEA inspections was widely deemed to undermine the international non-proliferation regime (a view shared by the IAEA itself).[34] Dozens of states denounced Israel's conduct as a (premeditated) act of aggression,[35] or at least as a serious violation of the UN Charter.[36] *All* states intervening in the debates condemned the strike—albeit that the United States offered a rather mild rebuke (essentially condemning Israel's failure to exhaust peaceful means).[37]

Interestingly, several UN members explicitly discarded Israel's invocation of the right of self-defence. Thus, the suggestion that self-defence could be exercised 'preventively' against future, non-imminent threats, was widely denounced. Numerous states from all regions warned that such a broad reading of the right of self-defence had no basis in

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(p. 333) international law; that it would leave it up to states themselves to decide at their discretion whether recourse to force was suited to tackle a hypothetical security threat; and that it would replace the Charter rules with the 'law of the jungle'.[38] Because of the 'obvious dangers' involved, the European Community, for instance, refused to accept that Article 51 should be interpreted far more widely 'to allow a pre-emptive strike by one State against what it alleges to be the nuclear-weapon development programme of another, potentially hostile, State'.[39] Sweden, like many others, agreed that the proposed interpretation of self-defence meant that the concept could be extended 'almost limitlessly to include all conceivable future dangers, subjectively defined'.[40]

A number of states intervening in the debates acknowledged (explicitly or implicitly) the permissibility of some of form of anticipatory self-defence, but were quick to stress that Israel's actions did not meet the imminence requirement. The United Kingdom noted that 'there was no instant or overwhelming necessity for self-defence'.[41] Sierra Leone similarly declared that 'the plea of self-defence is untenable where no armed attack has taken place *or is imminent*'.[42] Comparable statements were made, for instance, by the representatives of Niger and Oman.[43]

Several others insisted that Israel's defence claim had to be rejected, since the exercise of the right of self-defence was contingent upon the occurrence of an (actual) armed attack, and no such attack had taken place.[44] According to China, for example, the Charter was 'precise and clear: the right to self-defence can be exercised only "if an armed attack

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(p. 334) occurs against a Member of the United Nations" '.[45] In a similar vein, Mexico, stressed that 'it is inadmissible to invoke the right to self-defence when no armed attack has taken place'.[46]

On 12 June 1981, the Board of Governors of the IAEA adopted a resolution 'strongly condemn[ing] Israel for [its] premeditated and unjustified attack on the Iraqi nuclear research centre, which is covered by Agency safeguards', while expressing its concern over the harm caused by the Israeli strike to the IAEA safeguards regime.[47] One week later, the Security Council unanimously adopted Resolution 487 (1981), which 'strongly condemn[ed] the military attack by Israel in clear violation of the Charter'; 'call[ed] upon Israel to refrain in the future from any such acts or threats thereof'; labelled the attack 'a serious threat to the entire safeguards regime of the [IAEA]'; and 'fully recognize[d] the inalienable sovereign right of … all States … to develop their economy and industry for peaceful purposes'.[48] On 13 November 1981, the

General Assembly, by 109 votes against 2 (Israel and the United States), with 34 abstentions, adopted a resolution which not only copied the aforementioned findings of the Security Council Resolution, but also added an explicit condemnation of the Israeli 'aggression', called upon all states to cease any provision of arms to Israel, and requested the Security Council to take effective enforcement action against Israel.[49] The IAEA General Conference similarly adopted a resolution condemning the Israeli 'act of aggression'.[50]

III. Questions of Legality

Having examined the justifications put forward by Israel and the reaction of third states at the UN level, the present section further examines the legality of the Israeli operation and its treatment in legal doctrine. The analysis first focuses on the anticipatory self-defence argument which Israel itself put forward (section 1). Subsequently, section 2 explores alternative justifications that have been suggested in legal scholarship, such as the argument that the raid against the Osiraq reactor did not amount to a breach of Article 2(4) of the UN Charter.

1. The right of self-defence

According to D'Amato, international scholars were 'nearly unanimous' in agreeing that Israel's Osiraq raid violated international law.[51] Israel's self-defence claim indeed met with little sympathy in legal doctrine. A distinction can be made between those scholars insisting that Article 51 of the UN Charter permits the exercise of self-defence only in

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(p. 335) reaction to a prior armed attack, on the one hand, and those accepting the permissibility of some form of anticipatory self-defence, on the other hand.[52]

In the eyes of the former group, absent 'armed attack' against Israel, reliance on self-defence was obviously excluded. Thus, according to Fischer, the strike 'had nothing to do with legitimate self-defence, which is possible only in reaction to an armed attack'.[53]

Yet, supporters of anticipatory self-defence were also generally of the opinion that the Israeli strike was unlawful, because Israel was not acting pursuant to an 'imminent' threat. Mallison and Mallison, for instance, observed that only Israel claimed that the Osiraq reactor was used for non-peaceful purposes.[54] This claim moreover rested upon unverified assumptions and inaccurate statements that were proven to be erroneous or misleading.[55] According to the authors, Israel had failed to meet the peaceful procedures requirement for anticipatory self-defence.[56] Reference was also made to the fact that the attack had long been planned by Israel and was clearly premeditated, further indicating that the threat was not imminent.[57] Fischer, while nonetheless dismissive of anticipatory self-defence, similarly emphasized that the strike was premeditated, and that Israel itself had acknowledged that Iraq would not have been able to obtain nuclear weapons until 1985 at the earliest.[58] On a different note, Fischer also observes that expert opinions were divided as to the risk of exposure to radioactive fall-out for the inhabitants of Baghdad in case the strike had been postponed until after the reactor became operational.[59]

Nydell's analysis is somewhat different. Contrary to the previous authors, Nydell appears to accept that Israel credibly believed that Iraq sought to obtain nuclear weapons and that it had the nuclear material, the knowledge, and the technological equipment to do so.[60] In addition, he argues that Israel had no reasonable expectation that it could peacefully prevent Iraq from developing a nuclear arsenal.[61] While acknowledging that Israel had relied on unfounded or misquoted Iraqi statements, Nydell further finds that Iraq was openly committed to the destruction of Israel.[62] In spite hereof, Israel acted, not in order to prevent an imminent (nuclear) attack against it, but rather to prevent Iraq 'from obtaining substantial political and military power in the future'.[63] Nydell thus arrives at the same conclusion as the aforementioned authors, notably that Israel's raid could not qualify as anticipatory self-defence 'because the action was taken before an imminent threat was posed'.[64]

A rare example of a scholar embracing Israel's broad 'preventive' self-defence claim,[65] Kaplan has nonetheless argued that, '[a]lthough a surprise nuclear attack upon Israel was not imminent', Israel plausibly could have perceived that Iraq was using the Osiraq reactor to produce nuclear weapons and that it had the intention to bomb Israel.[66] Since such an attack—even if not imminently forthcoming—could have extinguished Israel's very (p. 336) existence, the threat posed by Iraq was grave, and Israel's 'defensive action did not extend beyond the scope of meeting that specific threat'.[67]

In the end, it is hardly surprising that Israel's self-defence claim has been widely dismissed in legal doctrine.[68] First, as suggested before, legal doctrine has long been divided on the question as to whether international law permits anticipatory self-defence at all. The present author, for one, finds unconvincing the argument that, notwithstanding the clear text of Article 51 of the UN Charter (which refers to the right of self-defence 'if an armed attack occurs'), a pre-existing customary right of anticipatory self-defence has survived the adoption of the UN Charter.[69] This is not to say that Article 51 of the UN Charter prohibits states from 'intercepting' an armed attack that has been set in motion, even if its consequences have not yet materialized.[70] Yet, it does suggest that, for mere threats of attack to trigger the right of self-defence, it must be demonstrated by reference to convincing evidence in post-war state practice that the 'anticipatory self-defence' thesis has gradually come to be accepted.[71]

Second, even if one accepts the permissibility of anticipatory self-defence as a matter of principle, this doctrine has traditionally been construed along the lines of the *Caroline* doctrine, as being confined to situations where there is an overwhelming necessity, 'leaving no choice of means and no moment for deliberation'.[72] Crucial in this context is the need for an 'imminent' armed attack.[73] While an impending surprise nuclear attack might well qualify in this context,[74] such imminent attack was manifestly lacking in the present case. This is so even if one were to accept Israel's claim that Iraq was seeking to obtain nuclear weapons and that it was nearing that goal (notwithstanding the fact Israel's allegations were contradicted by the IAEA and by France, and discounting the fact that several of its statements were proven wrong or misleading). Indeed, the mere development of a nuclear weapons programme by another state cannot simply be equated to an imminent threat of an armed attack.[75] As former US Legal Adviser Taft recognized in 2003—in

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(p. 337) a piece defending the legality of the 2003 Iraq war—'[o]ne may not strike another merely because the second might someday develop an ability and desire to attack it'.[76] It is worth recalling in this context that, even if the Security Council has occasionally labelled the proliferation of nuclear, chemical, and biological weapons a threat to international peace and security,[77] there is *de lege lata* no rule in general international law which prohibits a state from developing and/or possessing nuclear weapons per se.[78] Moreover, from a military-strategic perspective, nuclear weapons are in principle not offensive weapons, but rather 'safety devices' intended to deter large-scale attacks against the possessing state. Put differently, states presumably do not seek to acquire nuclear weapons to carry out concrete attacks, but rather to

shift the strategic and geopolitical balance to their advantage. Every Head of State is aware that a first use of nuclear weapons would not only make it a pariah in the international community, but would most likely entail a massive military response.[79] In Charter terms then, the fight against nuclear proliferation comes within the framework of collective security, rather than that of self-defence.

2. Alternative legal bases

If Israel's self-defence claim must be rejected, some scholars have sought alternative legal bases to defend the legality of the Osiraq raid. D'Amato, for instance, while dismissing the anticipatory self-defence plea, suggested that the Israeli strike did not qualify as a use of force against Iraq's 'territorial integrity or political independence' in the sense of Article 2(4) of the UN Charter.[80] Since Israel's purposes did not go beyond the destruction of the nuclear reactor, the argument goes, Iraq's territory remained integral, and its political independence was not compromised. D'Amato's argument nonetheless flies in the face of accepted wisdom—corroborated by the *travaux préparatoires* of Article 2(4) of the UN Charter[81] and the ICJ's *Corfu Channel Case*[82]—that Article 2(4) encompasses a broad,

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(p. 338) all-inclusive prohibition, which also extends to more small-scale operations that do not lead to any form of territorial loss or to regime change.[83]

Alternatively, a few scholars—including, most prominently, Yoram Dinstein—have argued that the Israeli operation could be justified by the technical 'state of war' which characterized the relations between Israel and Iraq at the time of the events.[84] However, as others have rightly observed, this argument must again be rejected.[85] The 'state of war' is a concept that is not recognized in the UN Charter and, consequently, cannot prevail over the prohibition on the use of force.[86] When two states are not (or no longer) actually engaged in active hostilities (bringing into play the law of armed conflict), the mere absence of a peace treaty or formal armistice does not mean that Article 2(4) of the UN Charter does not apply between them. As Quigley notes, '[t]he view taken consistently by the international community, including the U.N. Security Council has been that actions by Israel and the Arab states against each other are to be assessed against the broader standards of the U.N. Charter on use of force and self-defense'.[87] This approach is confirmed by the treatment of the Osiraq raid. Thus, Israel did not claim that the 'state of war' with Iraq meant that Article 2(4) of the UN Charter was inapplicable, but instead sought to frame its actions as an exercise of the right of self-defence.[88] In the debates at the UN, no state regarded the existence of a 'state of war' as a credible legal basis to justify a recourse to force, and some explicitly discarded the possibility that it did.[89]

Inasmuch as none of the alternative arguments put forward in legal doctrine provide a credible legal basis, it must be concluded that the Osiraq raid constituted a violation of international law, and, more specifically, infringed the prohibition on the use of force.

IV. Conclusion: Precedential Value

Israel's airstrike against the Osiraq reactor constituted the first time a country openly attacked another state's nuclear facilities. As the attack was directed against facilities that were subject to IAEA monitoring, it also constituted an open challenge to the existing non-proliferation regime. A number of scholars have suggested that, while the reactor was

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(p. 339) ostensibly used for peaceful purposes, the raid may actually have had the paradoxical effect of strengthening the nuclear ambitions of the Arab states.[90] By contrast, when in the aftermath of the 1990–91 Gulf War[91] UN inspectors discovered a complex of buildings serving as Saddam Hussein's covert nuclear weapons programme, some scholars saw this as a vindication of Israel's erstwhile position.[92]

When assessing the precedential value of the Osiraq raid, the key question is to what extent the universal condemnation of the raid amounts to a principled rejection of the legality of anticipatory self-defence by the international community. One possible interpretation is that the widespread disapproval was simply due to the apparent lack of evidence that Iraq was developing a nuclear weapons programme, and should accordingly not be taken for a rejection of anticipatory self-defence. This account is, however, incomplete.

As discussed above, it is clear that, in defending its actions before the UN bodies, Israel deliberately put forward a novel and expansive reading of the right of self-defence, departing from the traditional interpretation of anticipatory self-defence along the lines of the *Caroline* formula. According to Israel the doctrine of anticipatory self-defence had to be adapted 'with the advent of the nuclear era'.[93] In particular, it had to be adjusted to take into account 'the present-day criteria of speed and power'.[94] The Israeli argument bears striking similarities to a plea formulated more than two decades later, when the Bush administration published its 2002 US National Security Strategy, asserting that:[95]

> [w]e must adapt the concept of imminent threat to the capabilities and objectives of today's adversaries … The greater the threat … the more compelling the case for taking anticipatory action to defend ourselves, even if uncertainty remains as to the time and place of the enemy's attack.

Just as the international reaction to the Bush administration's attempt to broaden the doctrine of anticipatory self-defence to cover certain 'non-imminent' threats was widely negative,[96] Israel's attempt to carve out an exception from the 'imminence' requirement in the nuclear context met with strong opposition at the UN level. To paraphrase Abram Chayes' comments on the 1962 Cuban missile crisis, the general feeling was that Israel's concept of 'preventive' self-defence would essentially make the occasion for action in self-defence 'a question for unilateral national decision that would not only be formally unreviewable, but not subject to intelligent criticism either'.[97] In other words: it would open the door to the 'law of the jungle'.

Israel's Osiraq raid is not the only case of a military intervention inspired by another state's alleged attempt to clandestinely obtain military weapons. Nor is it the only example of an air strike against a presumed nuclear facility. As is well-known, in 2003, the United States led a coalition of the willing into Iraq, resulting in the overthrow of Saddam (p. 340) Hussein, primarily because Iraq was suspected of developing weapons of mass destruction (WMD) in contravention of the Security Council resolutions adopted in the wake of the 1990–91 Gulf War.[98] Interestingly, in spite of the adoption of the aforementioned US National Security Strategy only one year earlier, the United States did not justify the intervention as a case of (anticipatory) self-defence—as Israel did in 1981—but instead sought to claim (unconvincingly) that the intervention was authorized by pre-existing Security Council resolutions.[99] The allegations pertaining to Saddam Hussein's WMD programme later turned out to be incorrect: in September 2004, the Iraqi Survey Group declared that it had not 'found evidence that Saddam possessed WMD stocks in 2003'.[100] Again, in September 2007, Israel carried out an airstrike in Syria (Operation Orchard[101]), which

anonymous sources suggested destroyed a presumed nuclear facility.[102] (While the features of the strike appear to resemble those of the 1981 Osiraq raid, it is worth observing that Israel did not report the strike to the Security Council as a case of anticipatory self-defence. Instead, it refused to publicly comment on the nature or target of the operation, and refrained from offering any legal justification.[103])

It follows from the Osiraq precedent that concerns that another state may be developing or acquiring nuclear weapons (or other weapons of mass destruction) cannot, of themselves, trigger other states' right of self-defence. Indeed, while the threat of WMD proliferation should not be underestimated, the proper way to address it is through multilateral negotiations, the IAEA, and the UNSC. To carve out a broad right of 'preventive' self-defence vis-à-vis nuclear threats—as Israel unsuccessfully pleaded in 1981—would essentially accord powerful states a blank cheque to decide unilaterally which states would be permitted to develop nuclear weapons and which would not—all the while maintaining and upgrading their own nuclear arsenals. Such approach is hard to reconcile with the acknowledgment by US President Obama, in his 2009 Cairo speech, that '[n]o single nation should pick and choose which nations hold nuclear weapons'.[104]

On a final note, the question remains to what extent the Osiraq raid constitutes a relevant precedent affirming the legality or illegality of anticipatory self-defence in response to 'imminent' threats of attack. Given the fact that no imminent threat existed and that (p. 341) not a single state expressed support for the raid, it is hard to see how the raid could plausibly qualify as a useful precedent affirming the permissibility of anticipatory self-defence (as some have nonetheless suggested).[105] At the same time, and in all fairness, the broad condemnation of the raid should not automatically be equated to a principled rejection by states of the doctrine of anticipatory self-defence. First, it may well be that, in light of the assurances of the IAEA and the lack of compelling proof put forward by Israel, to paraphrase the ICJ's *Nicaragua* case, many states found that 'the lawfulness of a response to the imminent threat of armed attack had not been raised',[106] and accordingly chose not to express themselves on that issue. Second, it is recalled that several states explicitly or implicitly accepted the exercise of self-defence in reaction to 'imminent' threats of armed attack (see above). Others, by contrast, appeared to insist that the exercise of self-defence presupposed the occurrence of an actual armed attack. In the end, the only conclusion that can safely be drawn from the UN debates (apart from the categorical rejection of 'preventive' self-defence) is that they reveal a crack in states' *opinio juris* when it comes to the legality of anticipatory action in response to 'imminent' threats.

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Footnotes:

1 Further, see: Georges Fischer, 'Le bombardement par Israël d'un réacteur nucléaire irakien' (1981) 27 Annuaire français de droit international 147; Neil J Kaplan, 'The Attack on Osirak: Delimitation of Self-Defense under International Law' (1982) 4 New York Law School Journal of International and Comparative Law 131; W Thomas Mallison and Sally V Mallison, 'The Israeli Attack on June 7, 1981, Upon the Iraqi Nuclear Reactor: Aggression or Self-Defense?' (1982) 15 Vanderbilt Journal of Transnational Law 417; Anthony D'Amato, 'Israel's Air strike upon the Iraqi Nuclear Reactor' (1983) 77 American Journal of International Law 584; Matt S Nydell, 'Tensions Between International Law and Strategic Security: Implications of Israel's Preemptive Raid on Iraq's Nuclear Reactor' (1983–84) 24 Virginia Journal of International Law 459; Timothy LH McCormack, *Self-defense in International Law: The Israeli Raid on the Iraqi Nuclear Reactor* (St Martin's Press 1996); US Senate, *The Israeli Air Strike: Hearings Before the Committee on Foreign Relations United States Senate* (US Government Printing Office 1981).

2 For a detailed overview of the French–Iraqi cooperation, see: Fischer (n 1) 147–51.

3 ibid 149, 151.

4 Nydell (n 1) 461. Note: in September 1980, shortly after the outbreak of the Iran–Iraq war (see Chapter 27, 'The Iran-Iraq War—1980–1988' by Andrea de Guttry in this volume), two planes unsuccessfully attacked the Iraqi nuclear installations. While the attacks were carried out by planes bearing Iranian markings, it was speculated that the raid was a covert operation by Israel. ibid 461, note 10. Reference can also be made to prior events in France. In April 1979, the core of the reactor destined for Iraq was destroyed by an explosion thought by some to be the work of the Israeli secret service. And in June 1980, an Egyptian technician working for the Iraqi nuclear programme was assassinated in Paris. Fischer (n 1) 150.

5 Letter dated 8 June 1981 from the Permanent Representative of Israel to the United Nations addressed to the President of the Security Council (8 June 1981) UN Doc S/14510.

6 See, eg, UNSC Verbatim Record (16 June 1981) UN Doc S/PV.2284 [95ff] (Iraq). See also n 54.

7 UN Doc S/14510 (n 5).

8 Although the Israeli letter stressed that '[n]o foreign experts were hurt', one French technician was later reported to have been killed during the attack.

9 See UNSC Verbatim Record (12 June 1981) UN Doc S/PV.2280 [55]–[117]; UN Doc S/PV.2284 (n 6) [84]–[88]; UNSC Verbatim Record (19 June 1981) UN Doc S/PV.2288 [38]–[98], [188]–[195]; UNGA Verbatim Record (11 November 1981) UN Doc A/36/PV.52 [30]–[71]; UNGA Verbatim Record (12 November 1981) UN Doc A/36/PV.55 [181]–[182].

10 UN Doc S/PV.2280 (n 9) [59]–[67]; UN Doc S/PV.2284 (n 6) [85]; UN Doc S/PV.2288 (n 9) [79].

11 UN Doc S/PV.2280 (n 9) [73].

12 ibid [44ff], [78].

13 UN Doc S/PV.2284 (n 6) [84].

14 See, in particular, UN Doc S/PV.2288 (n 9) [62]–[75] (Israel drew attention to various 'loopholes', including, eg, the need for advance notice for routine inspections, the fact that inspectors are always accompanied by representatives of the state concerned, the possibility to block inspections for a certain period, etc).

15 UN Doc S/PV.2280 (n 9) [93], [108]–[109]; UN Doc S/PV.2288 (n 9) [95].

16 UN Doc S/PV.2280 (n 9) [97].

17 UN Doc S/PV.2288 (n 9) [80]. On the *Caroline* incident, see further Chapter 2 'The Caroline Incident—1837' by Michael Wood in this volume.

18 UN Doc S/PV.2280 (n 9) [98]–[100], [58] (referring to the right of self-defence 'as preserved' in Article 51 of the UN Charter); UN Doc S/PV.2288 (n 9) [81]–[84]; UN Doc A/36/PV.52 (n 9) [63]–[64].

[19] UN Doc S/PV.2288 (n 9) [85].

[20] UN Doc A/36/PV.52 (n 9) [63].

[21] UN Doc S/PV.2280 (n 9) [48]–[51].

[22] UNSC Verbatim Records (12–19 June 1981) UN Doc S/PV.2280-8.

[23] UNGA Verbatim Records (11–13 November 1981) UN Doc A/36/PV.52-6.

[24] Drawing attention to Israel's own nuclear programme at the Dimona reactor and its refusal to sign up to the NPT regime, see, eg, UN Doc S/PV.2280 (n 9) [25]–[35], [44]–[46] (Iraq), [177]–[178] (Sudan), [199], [208], [219] (Jordan); UNSC Verbatim Records (13 June 1981) UN Doc S/PV.2281 [9] (Kuwait), [82] (Bulgaria), [103] (League of Arab States); UNSC Verbatim Records (15 June 1981) UN Doc S/PV.2282 [26]–[28] (Uganda), [67] (German Democratic Republic); UNSC Verbatim Record (15 June 1981) UN Doc S/PV.2283 [19] (Ireland), [67] (Soviet Union), [103] (Egypt), [171] (Mongolia); UN Doc S/PV.2284 (n 6) [49] (Yemen); UNSC Verbatim Record (16 June 1981) UN Doc S/PV.2285 [12] (Morocco), [101] (Czechoslovakia), [119] (Bangladesh); UNSC Verbatim Records (17 June 1981) UN Doc S/PV.2286 [12] (Guyana); UNSC Verbatim Record (17 June 1981) UN Doc S/PV.2287 [61]–[64] (League of Arab States); UN Doc S/PV.2288 (n 9) [12]–[13] (Uganda).

[25] Stressing the peaceful nature of Iran's nuclear programme see, eg, UN Doc S/PV.2280 (n 9) [147] (Algeria), [196]–[197] (Jordan); UN Doc S/PV.2281 (n 24) [9] (Kuwait), [33] (India), [50] (Cuba), [69] (Pakistan), [82] (Bulgaria); UN Doc S/PV.2282 (n 24) [24]–[25] (Uganda), [48]–[56] (France), [65] (German Democratic Republic), [83] (Spain); UN Doc S/PV.2283 (n 24) [18], [20] (Ireland), [66] (Soviet Union), [84]–[85] (Egypt), [169] (Mongolia), [178] (Zambia); UN Doc S/PV.2284 (n 6) [11], [14] (Niger), [24] (Philippines), [45] (Yemen); UN Doc S/PV.2285 (n 24) [9]–[10] (Morocco), [118] (Bangladesh), [140] (Poland); UN Doc S/PV.2286 (n 24) [71] (Italy); UN Doc S/PV.2287 (n 24) [22] (Indonesia), [32] (Malaysia).

[26] UN Doc S/PV.2282 (n 24) [48]–[54] (France).

[27] ibid [50]–[53] ('To conclude this technical aspect, it would be absurd for a country wishing to manufacture a nuclear bomb to build a reactor such as the Tamuz reactor to get material for military purposes. As everybody knows, there are simply ways to achieve that goal: the purchase of centrifuges for the enrichment of uranium, or the construction of natural uranium reactors for making plutonium, for example.').

[28] ibid [54].

[29] UN Doc S/PV.2288 (n 9) [6]–[15] (IAEA).

[30] ibid [13]. In a similar vein, it was asserted that the refurbishing of the core of the reactor with a view to producing plutonium would have been easily detected. ibid [14].

[31] ibid [15].

[32] See, eg, UN Doc S/PV.2280 (n 9) [37]–[40] (Iraq), [133] (Tunisia); UN Doc S/PV.2281 (n 24) [33] (India), [48]–[49] (Cuba); UN Doc S/PV.2282 (n 24) [85] (Spain); UN Doc S/PV.2283 (n 24) [47] (Yugoslavia), [122] (Romania); UN Doc S/PV.2284 (n 6) [29] (Philippines), [38] (Panama); UN Doc S/PV.2285 (n 24) [123] (Bangladesh); UN Doc S/PV.2286 (n 24) [11] (Guyana), [30], [39] (Somalia); UN Doc S/PV.2287 (n 24) [9] (Nicaragua), [43] (Sri Lanka); UN Doc S/PV.2288 (n 9) [124] (Mexico). Note: some countries drew attention to the fact that oil is a depletable, non-renewable energy source, implying that oil-producing countries might also have a vested interest in pursuing nuclear energy.

[33] See, eg, UN Doc S/PV.2282 (n 24) [95] (Japan); UN Doc S/PV.2283 (n 24) [149] (Sierra Leone); UN Doc S/PV.2284 (n 6) [6] (Philippines); UN Doc S/PV.2288 (n 9) [30], [157] (United States).

[34] See, eg, UN Doc S/PV.2280 (n 9) [49] (Iraq); UN Doc S/PV.2282 (n 24) [55] (France), [68] (German Democratic Republic), [108] (United Kingdom); UN Doc S/PV.2283 (n 24) [15] (Ireland), [47] (Yugoslavia); UN Doc S/PV.2284 (n 6) [50] (Yemen); UN Doc S/PV.2286 (n 24) [75] (Italy); UN Doc S/PV.2287 (n 24) [20] (Indonesia); UN Doc S/PV.2288 (n 9) [18]–[19] (IAEA), [121]–[122] (Mexico).

[35] See, eg, UN Doc S/PV.2280 (n 9) [48], [51] (Iraq), [153]–[154] (Algeria), [176], [180] (Sudan), [188] (Jordan); UN Doc S/PV.2281 (n 24) [7] (Kuwait), [30]–[31] (India), [44] (Cuba), [66]–[67] (Pakistan), [84] (Bulgaria); UN Doc S/PV.2282 (n 24) [21] (Uganda), [64] (German Democratic Republic), [88] (China); UN Doc S/PV.2283 (n 24) [63] (Soviet Union), [96] (Egypt), [114] (Romania), [138] (Vietnam), [150] (Sierra Leone), [164] (Mongolia); UN Doc S/PV.2284 (n 6) [22] (Philippines), [42] (Yemen), [62] (Syria); UN Doc S/PV.2285 (n 24) [17] (Morocco), [97] (Czechoslovakia), [112] (Bangladesh), [135] (Poland), [146] (Islamic Group); UN Doc S/PV.2286 (n 24) [10] (Guyana), [27]–[28] (Somalia), [46] (Turkey); UN Doc S/PV.2287 (n 24) [5] (Nicaragua), [20] (Indonesia); UN Doc S/PV.2288 (n 9) [112] (Mexico).

[36] See, eg, UN Doc S/PV.2286 (n 24) [4] (Philippines, speaking on behalf of the Association of South-East Asian Nations).

[37] UN Doc S/PV.2288 (n 9) [30], [157]; UNGA Verbatim Record (12 November 1981) UN Doc A/36/PV.54 [20].

[38] See, eg, UN Doc S/PV.2280 (n 9) [157]–[163](Algeria: 'The new theory of "preventive" aggression is the very negation of law and morality … [It] would in future authorize any State to attack another for whatever reason it considers valid'); UN Doc S/PV.2281 (n 24) [39] (Brazil), [70] (Pakistan), [79] (Bulgaria); UN Doc S/PV.2282 (n 24) [12]–[19] (Uganda), [77]–[78] (Spain: 'The Charter does not allow for … any right to preventive action by which a Member State could set itself up as judge, party and policeman in respect to another country'), [89] (China); UN Doc S/PV.2283 (n 24) [22]–[31](Ireland: '[S]uch a definition of self-defence would replace the basic principle of the Charter … by a virtually unlimited concept of self-defence against all possible future dangers, subjectively assessed'), [46] (Yugoslavia), [63]–[64] (Soviet Union), [117] (Romania), [146]–[149](Sierra Leone), [167] (Mongolia); UN Doc S/PV.2284 (n 6) [28] (Philippines), [47]–[48] (Yemen), [64]–[65] (Syria); UN Doc S/PV.2286 (n 24) [15]–[16] (Guyana), [31] (Somalia); UN Doc S/PV.2287 (n 24) [8] (Nicaragua); UN Doc S/PV.2288 (n 9) [115] (Mexico), 141 (Uganda); UN Doc A/36/PV.53 (n 22) [121] (Syria), [131], [142] (China), [152] (Turkey); UN Doc A/36/PV.54 (n 37) [2] (India), [9] (German Democratic Republic), [30] (Austria, warning that the doctrine 'would replace the legitimacy of defence against armed aggression … by an unlimited and uncontrolled concept of armed retaliation against all possible future dangers on the basis of a very subjective and unilateral assessment of those dangers'), [40] (Tunisia), [65] (Bulgaria), [79] (Soviet Union); UN Doc A/36/PV.55 (n 9) [24]–[32] (United Arab Emirates), [39]–[40] (Oman), [52] (Romania); UNGA Verbatim Record (13 November 1981) UN Doc A/36/PV.56 [4] (Guyana), [62] (Spain), [80] (Chile).

[39] UN Doc A/36/PV.53 (n 22) [92].

[40] UN Doc A/36/PV.56 (n 38) [119].

[41] UN Doc S/PV.2282 (n 24) [106].

[42] UN Doc S/PV.2283 (n 24) [147]–[149], emphasis added. 'As for the principle of self-defence, it has long been accepted that, for it to be invoked or justified, the necessity for action must be instant, overwhelming and leaving no choice of means and no moment for deliberation. The Israeli action was carried out in pursuance of policies long considered … and was plainly an act of aggression'.

[43] UN Doc S/PV.2284 (n 6) [11] ('there was aggression, because Israel was in no way facing an *imminent* attack, irrefutably proved and demonstrated', emphasis added); UN Doc A/36/PV.55 (n 9) [39]. Consider also: UN Doc S/PV.2282 (n 24) [15] (Uganda, citing the *Caroline* doctrine); UN Doc S/PV.2283 (n 24) [25]–[26] (Ireland); UN Doc A/36/PV.55 (n 9) [27] (United Arab Emirates).

[44] See, eg, UN Doc S/PV.2282 (n 21) [19] (Uganda: 'Article 51 is explicit in stating that the right of ... self-defence is only permissible in response to an armed attack. Since there was no armed attack against Israel ... how, then, can Israel take refuge under Article 51?'), [78] (Spain: 'Article 51 ... limits that right to a case of armed attack'); UN Doc S/PV.2284 (n 6) [65] (Syria); UN Doc S/PV.2286 (n 24) [15] (Guyana); UN Doc S/PV.2288 (n 9) [141] (Uganda: '[A]s has been stated by many members, in order to bring [the] case under [the] umbrella [of self-defence], the Israeli representative had to prove an armed attack'); UN Doc A/36/PV.54 (n 37) [40] (Tunisia); UN Doc A/36/PV.55 (n 9) [39] (Oman); UN Doc A/36/PV.56 (n 38) [4] (Guyana), [80] (Chile, confirming that Article 51 only allows for self-defence 'in the case of prior armed aggression').

[45] UN Doc A/36/PV.53 (n 22) [142].

[46] UN Doc S/PV.2288 (n 9) [115].

[47] Telegram dated 12 June 1981 from the Director-General of the International Atomic Energy Agency addressed to the President of the Security Council (15 June 1981) UN Doc S/14532.

[48] UNSC Res 487 (19 June 1981) UN Doc S/RES/487. In its Preamble, the resolution makes reference to the documents adopted by the IAEA. It also notes that, contrary to Israel, Iraq has been a party to the Non-Proliferation Treaty, and that the IAEA has testified that the safeguards on nuclear activity 'have been satisfactorily applied to date'.

[49] UNGA Res 36/27 (13 November 1981) UN Doc A/RES/36/27. For voting records, see: (1981) Yearbook of the United Nations 282–83.

[50] IAEA General Conference, 'Military attack on Iraqi nuclear research centre and its implications for the agency', Resolution adopted during the 237th plenary meeting on 26 September 1981, GC(XXV)/RES/381. The resolution was adopted by 51 votes against 8, with 27 abstentions.

[51] Anthony D'Amato, 'Israel's Air Strike Against the Osiraq Reactor: A Retrospective', (1996) 10 Temple International & Comparative Law Journal 259, 260.

[52] For an overview of the arguments invoked by both camps, See, eg, Tom Ruys, *'Armed Attack' and Article 51 of the UN Charter* (CUP 2010) 255–67.

[53] Fischer (n 1) 163 (our translation).

[54] Mallison and Mallison (n 1) 427. See also the comments by Mallison in US Senate (n 1) 220ff.

[55] An investigation by the US Congressional Research Service showed that several Iraqi statements invoked by Israel were taken out of context or could not be found. CRS, 'Quotations regarding Iraqi nuclear intentions' (15 June 1981), reprinted in US Senate (n 1) 58–69. According to the *Washington Post*, '[a]t least six of [Israeli Prime Minister] Begin's specific claims ... turned out [to be] erroneous or misleading or have been disputed by French or U.S. officials' (17 June 1981) A22, cols 1–2.

[56] Mallison and Mallison (n 1) 429.

[57] ibid 430–31.

[58] Fischer (n 1) 163, 165.

[59] Fischer (n 1) 165.

[60] Nydell (n 1) 474–78.

[61] ibid 482.

[62] ibid 472.

[63] ibid 488.

[64] ibid 471, 483.

[65] Also accepting this claim, see the statement of Arthur J Goldberg before the US Senate Committee on Foreign Affairs, in US Senate (n 1) 37. See also the comments by John Moore in ibid 251–52.

[66] Kaplan (n 1) 155–56.

[67] ibid 156.

[68] See, eg, authors rejecting the idea that the strike was a lawful exercise of self-defence: Yoram Dinstein, *War, Aggression and Self-Defence* (5th edn, CUP 2011) 199; John Quigley, 'Israel's Destruction of Iraq's Nuclear Reactor: A Reply' (1995) 9 Temple International & Comparative Law Journal, 441, 441; Avra Constantinou, *The Right of Self-Defence under Customary International Law and Article 51 of the UN Charter* (Bruylant 2000) 118.

[69] This argument goes against the equal normative power of treaty and customary law and the *lex posterior* principle. Further: Ruys (n 52) 7–19, 259–60.

[70] On the concept of 'interceptive' self-defence, see ibid 265–67. Crucially, 'interceptive' self-defence does not settle with the *capacity* and professed *intention* to initiate an armed attack, but presupposes that these elements are accompanied by actual measures of implementation.

[71] The present author acknowledges that there has been a major shift post-9/11 in states' *opinio juris* as well as in legal doctrine towards a greater acceptance of the legality of self-defence against imminent threats of attack. See: Ruys (n 52) 305–67. In a similar vein: Georg Nolte and Albrecht Randelzhofer, 'Article 51' in Bruno Simma, Daniel-Erasmus Khan, Georg Nolte, and Andreas Paulus (eds), *The Charter of the United Nations: A Commentary* vol 2 (3rd edn, OUP 2012) 1423. At the same time, several scholars contend that international law does not permit any form of anticipatory self-defence. See, eg, Olivier Corten, *Le droit contre la guerre* (2nd edn, Pedone 2014) 662–717.

[72] See further the Chapter 2, 'The *Caroline* incident—1837' by Michael Wood.

[73] Note: in the Security Council debates, Iraq drew attention to the fact that Israel's quote from Sir Humphrey Waldock was incomplete and falsely left out the need for an imminent armed attack. UN Doc S/PV.2288 (n 9) [199]–[201].

[74] Accepting self-defence in the face of a surprise nuclear attack, see, eg, Louis Henkin, *How Nations Behave: Law and Foreign Policy* (2nd edn, Columbia University Press 1979) 140–44.

[75] In a similar vein, see, eg, Quigley (n 68) 441. Drawing attention to the relevance of a second-strike capability, see Nolte and Randelzhofer (n 71): 'the limitation on the possibility of anticipatory self-defence embodied in Art. 51 is compatible with the strategy of nuclear powers only as long as States are able to defend themselves against a pre-emptive strike launched against them. Should this so-called second-strike capability fall away, the limitation on the possibility of anticipatory self-defence would not be removed, but its observance by States would nevertheless likely be diminished.'

[76] William H Taft IV and Todd F Buchwald, 'Preemption, Iraq and International Law' (2003) 97 American Journal of International Law 557. Note: the authors (response to Legal Adviser and Assistant Legal Adviser with the US State Department) justified the 2003 Iraq war by reference to existing Security Council resolutions, rather than by relying on the right of self-defence. On the 2003 Iraq war, see further Chapter 49 by Marc Weller in this volume.

[77] See, eg, UNSC Res 1540 (28 April 2004) UN Doc S/RES/1540.

[78] See, eg, Ruth Wedgwood, 'The Fall of Saddam Hussein: Security Council Mandates and Preemptive Self-defense' (2003) 97 American Journal of International Law 576, 585. Note: the ICJ previously held that '[t]here is in neither customary nor conventional international law any comprehensive prohibition of the threat or use of nuclear weapons as such', *Legality of the threat or use of nuclear weapons*, Advisory Opinion [1996] ICJ Rep 226, 266. *A fortiori*, one might add that there is no comprehensive prohibition of the possession of such weapons (save in respect of states that have ratified the 2017 Treaty on the Prohibition of Nuclear Weapons).

[79] Consider, eg, Condoleezza Rice, 'Promoting the National Interest' (2000) 79(1) Foreign Affairs 45, 61 (suggesting that if Iraq or North Korea were to acquire WMD, 'their weapons will be unusable because any attempt to use them will bring national obliteration'). In a similar vein: Robert S McNamara, 'The Military Role of Nuclear Weapons: Perceptions and Misperceptions' (1983–84) 62 Foreign Affairs 59, 79 ('[N]uclear weapons serve no military purpose whatsoever. They are totally useless – except to deter one's opponent from using them'). Further: Phillip Bobbitt, *Terror and Consent: The Wars for the Twenty-First Century* (Penguin 2008) 8: 'It is now possible for the U.S. to determine within seconds the origin of any ballistic missile launch within an accuracy of ten meters. The leadership of a State that ordered such an attack would face the certainty of an immediate and annihilating retaliatory response.'

[80] D'Amato, 'Israel's Air Strike Against the Osiraq Reactor: A Retrospective' (n 1) 585. According to D'Amato, the Israeli action was legal under international law, but Israel nonetheless owed monetary compensation to Iraq for the actual damage to the nuclear facility and for the four lives that were lost (ibid 584, note 2). In a later article, D'Amato instead adopts the view that the Osiraq raid was permissible under international law because 'Israel acted as a proxy for the international community'. See: D'Amatao (n 50) 262. The reader is nonetheless left to wonder how this argument finds a basis in positive law.

[81] United Nations, *Documents of the Conference on International Organization*, vol 6, 304, 334–35, 556–58. See also: Thomas Franck, *Recourse to Force: State Action Against Threats and Armed Attacks* (CUP 2002) 12.

[82] *Corfu Channel* (*Albania v United Kingdom*) [1949] ICJ Rep 35.

[83] See, eg, Ian Brownlie, *International Law and the Use of Force by States* (OUP 1963) 265–68; Dinstein (n 68) 90; Albrecht Randelzhofer and Oliver Dörr, 'Article 2(4)' in Bruno Simma, Daniel-Erasmus Khan, Georg Nolte, and Andreas Paulus (eds), *The Charter of the United Nations: A Commentary* vol 2 (3rd edn, OUP 2012) 215 (with references (note 79); observing that this is the 'dominant view'); Ruys (n 52) 56–57.

[84] Dinstein (n 68) 199; Louis René Beres and Yoash Tsiddon-Chatto, 'Reconsidering Israel's Destruction of Iraq's Nuclear Reactor' (1995) 9 Temple International & Comparative Law Journal 437, 438; Louis René Beres, 'Preserving the Third Temple: Israel's Right of Anticipatory Self-Defense under International Law' (1993–94) 26 Vanderbilt Journal of Transnational Law 111, 118–22.

[85] Fischer (n 1) 162; Mallison and Mallison (n 1) 433; D'Amato (n 51) 261–62. See also US Senate (n 1) 37–38 (Michel: 'The United States consistently has denied that such assertions of belligerency give the Arab states any right to use force beyond the right of self-defense recognized in the U.N. Charter. We think the same reasoning would apply to Israel') and 239 (Moore).

[86] It is worth recalling in this context that Article 3 of the UN General Assembly Definition of Aggression clarifies that the provision applies 'regardless of a declaration of war'. Annex to UNGA Res 3314 (XXIX) (14 December 1974) UN Doc A/RES/3314 (XXIX).

[87] Quigley (n 68) 444.

[88] The existence of a state of war was mentioned only as a subsidiary argument, to demonstrate the threat allegedly posed by Iraq. See, eg, UN Doc S/PV.2288 (n 9) [79]. It may also be noted that, in relation to the 1951 conflict between Egypt and Israel on the right of passage through the Suez Canal, Israel explicitly rejected the possibility of invoking belligerent rights on the basis of a technical state of war, as did most of the UN Security Council members. See, eg, UNSC Verbatim Record (26 July 1951) UN Doc S/PV.549 [32], [40]–[41] (Israel); UNSC Verbatim Record 16 August 1951) UN Doc S/PV.552 [21], [30] (France).

[89] See UN Doc S/PV.2280 (n 9) [22] (Uganda), [149] (Algeria); UN Doc S/PV.2288 (n 9) [116] (Mexico); UN Doc A/36/PV.52 (n 22) [24] (Iraq); UN Doc A/36/PV.56 (n 38) [18]–[19] (Algeria).

[90] In this sense, see, eg, Mallison and Mallison (n 1) 443; Fischer (n 1) 167 (according to Fischer, it wasn't until after the strike that President Saddam Hussein called for support to the Arab States so that they might acquire nuclear weapons as a counterweight to Israel's nuclear capacity (ibid 152)).

[91] On the 1990–91 Gulf War, see Chapter 38, 'The Gulf War—1990–1991' by Erika de Wet in this volume.

[92] Beres and Tsidon-Chatto (n 84) 439–40 (stating that '[h]ad it not been for the brilliant raid at Osiraq, Saddam's forces might have been equipped with atomic warheads in 1991', and referring to an 'heroic and indispensable act of law enforcement'); Louis René Beres, 'A Rejoinder' (1995) 9 Temple International & Comparative Law Journal 445, 447–48.

[93] UN Doc S/PV.2288 (n 9) [85].

[94] UN Doc A/36/PV.52 (n 9) [63].

[95] US President, *The National Security Strategy of the United States of America* (September 2002), available at <http://www.state.gov/documents/organization/63562.pdf> 15.

[96] See Ruys (n 52) 322–42; Nolte and Randelzhofer (n 71) 1423.

[97] Abram Chayes, *The Cuban Missile Crisis* (OUP 1974) 65–66.

[98] See Chapter 38 by Erika de Wet in this volume.

[99] See: Letter dated 20 March 2003 from the Permanent Representative of the United States to the United Nations addressed to the President of the Security Council (21 March 2003) UN Doc S/2003/351. See also the similar justifications in the British and Australian letters to the Security Council of the same day (UN Doc S/2003/350; UN Doc S/2003/352).

[100] US Central Intelligence Agency, *Comprehensive Report of the Special Advisor to the DCI on Iraq's WMD* (30 September 2004), available at <https://www.cia.gov/library/reports/general-reports-1/iraq_wmd_2004>. See also: *Report of the Iraq Inquiry*, HC 264, July 2016, available at <http://www.iraqinquiry.org.uk/the-report/>, vol 4.

[101] See further Chapter 50 'Israeli Air Strikes in Syria—2003 and 2007' by Lindsay Moir in this volume.

[102] See, eg, Tim Butcher, 'US Confirms Israeli Air Strike on Syria' *The Telegraph* (London, 12 September 2007); Hugh Naylor, 'Syria Tells Journalists Israeli Raid Did Not Occur' *New York Times* (New York, 11 October 2007).

Note: Syria denied that it was engaged in a covert nuclear weapons programme and instead claimed that the target was a disused military building. See: Identical letters dated 9 September 2007 from the Permanent Representative of the Syrian Arab Republic to the United Nations addressed to the Secretary-General and the President of the Security Council (10 September 2007), UN Doc S/2007/537 (condemning the Israeli actions as 'aggression').

[103] Note: this did not prevent the non-aligned movement from 'condemn[ing] the Israeli attack against a Syrian facility on September 6, 2007 which constitutes a flagrant violation of the UN Charter'. See 16th Summit of Heads of State or Government of the Non-Aligned Movement, Tehran, Islamic Republic of Iran, 26–31 August 2012 (31 August 2012) NAM2012/Doc.1/Rev.2, [176].

[104] US President Obama, Speech at Cairo University (4 June 2009), available at <https://obamawhitehouse.archives.gov/blog/NewBeginning/transcripts>.

[105] In this sense: Christopher Greenwood, 'International Law and the Pre-emptive Use of Force: Afghanistan, Al-Qaida, and Iraq' (2003) 4 San Diego International Law Journal, 7, 15; Terry D Gill, 'The Temporal Dimension of Self-Defense: Anticipation, Pre-emption, Prevention and Immediacy' in Michael N Schmitt and Jelena Pejic, *International Law and Armed Conflict: Exploring the Faultlines: Essays in Honour of Yoram Dinstein* (Martinus Nijhoff 2007) 113, 140. Authors questioning/rejecting the precedential value of the Osiraq strike: eg Corten (n 70) 710, 714;

Louis-Alexandros Sicilianos, *Les réactions décentralisées à l'illicite: des contre-mesures à la légitime défense* (Librairie générale de droit et de jurisprudence 1990) 401–02; Tarcisio Gazzini, *The Changing Rules on the Use of Force in International Law* (Manchester University Press 2005) 150–51; Antonio Cassese, 'Article 51' in Jean-Pierre Cot and Alain Pellet, *La Charte des Nations Unies* (3rd edn, Economica 2005) 1338.

[106] *Case concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)* (Merits), [1986] ICJ Rep 14, [194].