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Iran's legal right to attack Israel

By Kaveh L Afrasiabi

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PALO ALTO, California - After years of living in the shadow of an Israeli military strike, Iran is now openly contemplating the idea of pre-emptive strike, in light of Israel's preparedness for imminent attack on Iran's nuclear facilities. Citing a right to anticipatory self-defense, the Iranian argument is that instead of waiting for its Zionist adversary to make a move, Iran should take the offensive and cripple Israel's ability to deliver on its threatened assault.

Iran's plan to initiate a pre-emptive strike on Israel is perfectly legal under customary international law, according to several Tehran political analysts specializing on Iran's foreign affairs. "Under the UN Charter, Iran has the inherent right of self-defense that in this case translates into the right to respond to the clear and present danger of imminent attack by the state of Israel in clear violation of international law," says a Tehran University political scientist who spoke to the author on the condition of anonymity.

In a nutshell, Tehran's legal argument in defense of a pre-emptive strike on Israel centers on several inter-related elements.

First, under Article 51 of the UN Charter, Iran has the right to strike Israel because Israel has already engaged in overt hostile acts including the assassination of Iran's nuclear scientists, sabotage, and life-threatening cyber-warfare, not to mention Israeli political and military leaders' open declarations of intent to attack Iran in the immediate future.

Second, these illegal acts combined with the declarations of intent constitute an imminent

national security threat to Iran, defined under customary international law in terms of "outward hostile acts" of one state against another.

Third, Iran has already exhausted all the diplomatic means for deterring an Israeli strike, such as by repeatedly complaining to the UN Security Council, to no avail as the Security Council has turned a blind eye.

Fourth, Israel's stated intention to attack Iran violates international law for a number of other reasons:

- Iran has never threatened to use its nuclear capability to attack Israel.
- There is a legal bar against any attack on Iran's civilian nuclear facilities, in light of the Resolution 533 of International Atomic Energy Agency (IAEA), which prohibits any such attack and deems it a violation of international law.
- Iran is a signatory to the Non-Proliferation Treaty (NPT), its leadership has formally renounced nuclear weapons, there is an absence of any treaty constraint barring Iran's possession of a nuclear fuel cycle, and to this date after extensive inspection of Iran's nuclear facilities, the IAEA has never detected any diversion of nuclear material to military purposes.
- Evidence, including reports in Washington Post citing the opinion of US Defense Secretary Leon Panetta, suggests Israel is well beyond the "preparatory stages" of an attack on Iran and is gearing up to implement this plan within the next several months.

Taken together, these arguments make a potent legal case for Iran's anticipatory strike on Israel, irrespective of whether or not Iran moves forward with it or has the actual capability for a successful pre-emptory attack to disable its ardent enemy. According to Iranian media reports, Iran has some 11,000 missiles able to hit targets throughout Israel. The issue of military capability aside, within Iran's legal discourse, the unlawfulness of Israel's hostile intention and the lawfulness of Iran's right to attack Israel first are basically two sides of the same coin. Even the UN sanctions on Iran, let alone US and or Israeli war on Iran, should be viewed as illegal under international law.

According to the International Law Commission's Draft Articles, an intentionally wrongful act of a state comprises two elements (Article 3): the objective element consisting in an action or omission contrary to an international obligation, and the subjective element having to do with intentions of a state. Neither element can be found with respect to Iran's nuclear program.

The absence of any evidence of diversion of nuclear material to military activities, based on extensive inspection of Iran's facilities by the IAEA, together with explicit renunciation of nuclear weapons on political and moral and religious grounds by Iran's leadership, constitute a bar to the application of both sanctions as well as threats of war on Iran. [1] This is a reminder to a number of international observers who have hailed United States President Barack Obama's recent criticisms of "irresponsible drumbeats of war on Iran," overlooking that Obama's explicit threat of keeping the "military option" constitutes a violation of UN Charter, that forbids such threats by UN member states.

The fact is that Obama, a former professor of constitutional law, continues to get it wrong on Iran by insisting that once all diplomatic channels are exhausted, then the US may resort to the

final option of attacking Iran's nuclear facilities. As a number of sane US pundits, such as Yale law professor Bruce Ackerman, in his recent opinion piece in Los Angeles Times, have rightly pointed out, any such strike would be illegal from the prism of international law.

To add to Ackerman's argument, pro-Israel pundits legitimizing an Israeli attack on Iran have willfully distorted the meaning and purview of the right to self-defense, by advancing a dubious understanding that harks back to the George W Bush administration's ill-fated attempt to extend the definition of "anticipatory self-defense," which was thankfully defeated at the UN. [2]

A historical *deja vu*, the present pro-Israel discourses on attacking Iran, are strikingly similar to the ones heard prior to US's "proxy war" on Iraq nine years ago, which was fully rationalized by the whole army of Israel propagandists swarming the Western media. The big question is whether or not the international community has learned any lesson from the Iraq fiasco and, more important, whether voices of reasons can prevail over voices that thirst for another calamitous conflict in the Middle East? By all indications, the next several months will hold the answer to this critical question.

Notes:

1. Security Council and Iran's Legal Rights, A Rejoinder.
2. UN Management Reform (2012).