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Israel's Survival Imperatives: The Oslo Agreements in International Law and National Strategy

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The Oslo Accords between Israel and the PLO are in violation of international law.¹ Moreover, the Accords codify a condition of strategic inferiority for Israel that could bring the Jewish state into a genuinely catastrophic war. It follows that on both legal and strategic grounds, the Oslo Accords – now carrying existential threats to Israel's survival – should be promptly abrogated. With this in mind, the following two-pronged analysis proceeds sequentially along both jurisprudentially and strategic tracks to identify (1) the intrinsic unlawfulness of the Oslo Accords; and (2) the associated military dangers to essential Israeli security (deterrence and defense) policies .

The Oslo Accords are non-treaty agreements. Taken by itself, this fact, that the Oslo Accords do not constitute authentic treaties under the Vienna Convention² – because they link a state with a non-state party – does not call for abrogation.³ But as the non-state party in this case just happens to be a terrorist organization whose leaders must be punished for their egregious crimes, any agreement with this party that offers rewards rather than punishments is entirely null and void. Significantly, in view of the peremptory expectation known in law as *Nullum crimen sine poena*.⁴ (“No crime without a punishment”), the state party in such an agreement – here the State of Israel – violates international law by honoring the agreement.

According to Principle I of the binding Nuremberg Principles: “Any person who commits an act which constitutes a crime under international law is responsible therefore and liable to punishment.”⁵ It is from this

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principle, which applies with particular relevance to *Hostes humani generis* (“Common enemies of humankind”)⁶ and which originates in three separate passages of the Torah, that each state’s obligation to seek out and prosecute terrorists derives. Hence, for Israel to honor agreements with terrorists – agreements that require, among other pertinent violations – the release of thousands of other terrorists – is to dishonor the very meaning of international law.⁷

Is Yasser Arafat personally a terrorist? In the US case of *Klinghoffer V. Palestine Liberation Organization*, the court answered in the affirmative.⁸ In the Israeli courts, a petition to charge Yasser Arafat with terrorist crimes was submitted to Israel’s High Court of Justice in May 1994. This petition, filed by Shimon Prachik, an officer in the IDF reserves, and Moshe Lorberbaum, who was injured in a 1978 bus bombing carried out by the PLO, called for Arafat’s arrest. The petition noted that Arafat, *prima facie*, had been responsible for numerous terror attacks in Israel and abroad, including murder, airplane hijacking, hostage-taking, letter-bombing and hijacking of ships on the high seas. The petitioner’s allegation of Arafat’s direct personal responsibility for terrorism was seconded and confirmed by Dr. Ahmad Tibi, Arafat’s most senior advisor: “The person responsible on behalf of the Palestinian people for everything that was done in the Israeli-Palestinian conflict is Yasser Arafat,” said Dr. Tibi on July 13, 1994, “and this man shook hands with Yitzhak Rabin.”⁹

But what of the argument that international law now permits insurgent force that is directed toward support of fundamental rights and rules? It is certainly correct that international law has consistently proscribed particular acts of terrorism. Yet, it has, at the very same time, entitled insurgents to the right to use certain levels and types of force against a regime that represses their peremptory human rights,¹⁰ especially “self-determination”, “independence”, and “national liberation”. Isn’t Fatah, therefore, an authentic national liberation movement, one that has therefore been operating within the boundaries of permissibility under international law?

To answer this question, two criteria must be examined: just cause and just means.¹¹

These criteria allow us to distinguish a lawful insurgency from terrorism in all cases. The principle of just cause maintains that an insurgency may exercise law-enforcing measures under international law. To qualify as lawful insurgents, however, this group must also display appropriate respect for humanitarian international law – i.e., just means. In order to determine whether a particular group satisfies the requirements of a lawful insurgency, its resort to force must be tested against the expectations of discrimination, proportionality, and military necessity. Terrorism is underway whenever a group engages in campaigns of force directed against broad segments of the general population, campaigns that blur the essential distinction between combatants and non-combatants. Similarly, the group becomes terroristic once it begins to apply force to the fullest possible extent, restrained only by the limits of available weaponry.

This suggests that national liberation movements that fail to meet the settled and codified restraints of the laws of war between states, every use of force by insurgents must be judged twice: Once with regard to the justness of the objective, and once with regard to the justness of the means used in pursuit of the objective. This means that even if we were to concede to Fatah a just cause, Arafat’s long term disregard for just means necessarily makes his organization a terrorist group.

In an August 1997 special report of the IINS news service, “The Terrorist Infrastructure”, the suicide bombers who carried out the July 30, 1997 attack against a Jerusalem marketplace¹² reportedly came from a “well-organized infrastructure of Islamic militants in both Gaza and the West Bank that operates without serious interference from Mr. Arafat’s government”.¹³ Indeed, the report continues:

...the Palestinian Authority sometimes encourages and assists the terrorists... hundreds of known terrorists roam freely through territory controlled by the Palestinian Authority, where they continue planning and directing terrorist attacks. The Israeli Government reports that several months ago Mr. Arafat himself ordered 120 known terrorists freed from jail. Israeli intelligence officials further claim that some two dozen terrorists responsible for killing or wounding more than 200 Israelis, including the masterminds of suicide bombings, actually serve as

paid agents of Mr. Arafat's security forces. Those forces, incidentally, now number 45,000, some 27,000 more than allowed under the Oslo Accords.

Mr. Arafat has not even tried to hide his support for terrorists, routinely praising Islamic militants to throngs of cheering supporters.¹⁴ In January 1996, before thousands of supporters in Hebron, Mr. Arafat glorified Yecchi Ayyash, the Islamic terrorist known as "The Engineer", a man who had orchestrated the deaths of more than 70 Israelis and two Americans, as a "sacred martyr". A month before, according to a report in the **Palestinian Press** (emphasis added), Mr. Arafat signed an agreement with Hamas stipulating that it could initiate attacks against Israelis from areas not directly under Mr. Arafat's control... Mr. Arafat's government has been directly implicated in terrorist attacks on Israelis. In the past month (July 1997), Israeli police arrested several Palestinian policemen who were on an operation to kill Israelis. Confessions by one of the participants and electronic intercepts show, according to a senior Israeli official, that the men were dispatched in a stolen Israeli car and provided with weapons directly by Gen. Ghazi Jabali, Commander in Chief of the Palestinian police.¹⁵

There is a long history of Arafat's terrorist activity. On March 5, 1975, eight members of Arafat's Fatah attacked the Hotel Savoy in Tel Aviv, a terrorist assault that left eight hostages killed, including a Dutch boy of fifteen, a German national, a Swiss, and a Somali. The Fatah group's objective, according to the operation's leader, was to sabotage talks between Israel and Egypt that were then about to get underway.

On November 13, 1975, a 23 pound bomb exploded in front of a Jerusalem coffeehouse, killing seven and injuring 40. Arafat's Fatah took credit for the attack, announcing that it was "commemorating" Arafat's UN address one year before. Also being "celebrated" by the terrorist bombing was the passage of three pro-Palestinian resolutions in the United Nations, including the infamous "Zionism = Racism" resolution.

On March 11, 1978, Fatah terrorists¹⁶ used a raft to land on a northern coast Israeli beach, seized a tour bus filled with women and young children, and left 46 dead and 85 wounded before being stopped. Earlier in the operation, before taking the bus, the terrorists shot and killed an American woman walking on the beach. Thereafter, halting a taxi, they killed all the passengers, justifying the multiple murders with the usual quotes from the Koran. This operation had been approved and conducted by Yasser Arafat.¹⁷

The explicit application of codified restrictions of the laws of war to non-international armed conflicts dates back only as far as the four Geneva Conventions of 1949. Recalling, however, that more than treaties and conventions comprise the laws of war, it is clear that the obligations of *jus in bello* (justice in war) comprise part of "the general principles of law recognized by civilized nations" and bind all categories of belligerents. Indeed, the Hague Convention IV of 1907 declares in broad terms that in the absence of a precisely published set of guidelines in humanitarian international law concerning "unforeseen cases", the preconventional sources of international law govern all belligerency.

Terrorist crimes, as part of a broader category called *crimen contra omnes* (crimes against all) by the lawyers, mandate universal cooperation in apprehension and punishment. In this connection, as punishers of "grave breaches" under international law, all states and state-like authorities are expected to search out and to prosecute, or extradite, individual perpetrators. Regarding Israel and the Palestinian Authority (PA), the latter's obligation under law to extradite terrorists to Israel would obtain even if there were no Oslo Accords. Hence, there is really no need to probe incessantly the precise language of the Accords; the PA's multiple violations of extradition expectations under international law exist independently of Oslo.¹⁸

The principle of universal jurisdiction is founded upon the presumption of solidarity between sovereigns in the fight against crime. The case for universal jurisdiction is strengthened whenever extradition is difficult or impossible to achieve, and it is built into the four Geneva Conventions of August 12, 1949. Traditionally, piracy and slave trading were the only offenses warranting universal jurisdiction. Following World War II, however, states have generally recognized an expansion of universal jurisdiction to include crimes of war; crimes against peace; crimes against humanity; torture; genocide; and crimes of terrorism. For the most part, this jurisdictional expansion has its origins in certain multilateral conventions, in customary international law, and in certain pertinent judicial decisions.

Terrorism¹⁹ is not the only crime in which Arafat and many of the released Palestinian prisoners are complicit. Related Nuremberg-category crimes, including crimes of war and crimes against humanity, were also committed by these persons. In this connection, we may recall that units of the Palestine Liberation Army (PLA) served with Saddam Hussein's forces in occupied Kuwait, making them, and Yasser Arafat personally (the legal principle of command responsibility is known as respondeat superior, or "Let the Master Answer") responsible for multiple crimes of extraordinary horror and ferocity. And if these offenses were not enough of an affront to world law, many of the terrorists now being released from Israeli jails in furtherance of the Oslo Accords are immediately accepting high positions in the Palestine Authority's security forces.

Even if the non-state party to the Oslo Accords were not a terrorist organization, Israel would have entered into an agreement of unequal obligations, an agreement where the PLO might not be held, under international law, to the same standards of accountability. Several recent federal court decisions in the United States reaffirm that agreements between non-state and state parties impose asymmetrical compliance expectations. For example, in a concurring statement in the case of *Tel-Oren v. Libyan Arab Republic*, a 1981 civil suit in US Federal Courts in which the plaintiffs were Israeli survivors and representatives of persons murdered in a terrorist bus attack in Israel in 1978, Circuit Judge Harry T. Edwards stated: "...I do not believe the law of nations imposes the same responsibility or liability on non-state actors, such as the PLO, as it does on states and persons acting under color of state law."

The PLO, of course, is a terrorist organization, and Israel has no right to honor the Oslo Accords' requirement to release convicted members of that organization. No government, in fact, has the right to lawfully pardon or grant immunity to terrorists with respect to criminally sanctionable violations of international law. In the United States, it is evident from the Constitution, that the President's power to pardon does not encompass violations of international law, and is limited to "Offenses against the United States". This limitation derives from a broader prohibition that binds all states including Israel, namely the overriding claims of pertinent peremptory rules stemming from Higher Law or the Law of Nature.²⁰ These claims are identified in Blackstone's *Commentaries*, which acknowledge that all law "results from those principles of natural justice, in which all the learned of every nation agree".²¹

In its pre-Oslo apprehension and incarceration of terrorists, Israel acted, however unintentionally, not only for itself, but on behalf of the entire community of states. Moreover, because some of the jailed terrorists had committed crimes against other states as well as against Israel, the government in Jerusalem cannot possibly pardon these offenses against other sovereigns. The Jewish state, therefore, possesses absolutely no right to grant immunity for terrorist violations of international law. No matter what might be permissible under its own Basic Law and the Oslo Accords, any freeing of terrorists is legally incorrect. By its freeing of terrorists, Israel is guilty of what is known in law as a "denial of justice".

Israel's obligation to abrogate the Oslo Accords, as we have seen, stems from certain peremptory expectations of international law. Israel, however, has substantial rights of abrogation here apart from such expectations. These rights derive from the doctrine of *Rebus sic stantibus*. Defined literally as "So long as conditions remain the same", this doctrine of changed circumstances now augments Israel's obligations to cease compliance with Oslo. This is because Israel's traditional obligations to the accords ended promptly when a fundamental change occurred in those circumstances that existed at the effective dates of the accords and whose continuance formed a tacit condition of the Accords' ongoing validity. This change, of course, involved multiple material breaches by the PLO, especially those concerning control of anti-Israel terrorism and extradition of terrorists. In short, *Rebus sic stantibus* has become pertinent for Israeli abrogation because of the profound change created by the PLO in the very circumstances that formed the cause, motive and rationale of consent.

According to Oslo expectations, Arafat should be actively committed to control of anti-Israel terrorism. Yet, as *The Jerusalem Post* pointed out early, in a mid-March 1996 editorial, "Arafat not only shelters terrorists;

he lets them incite, recruit, organize, train, arm, raise funds, and launch operations from areas under his control. This is now indisputable.”²²

The “head of the snake”, admitted former Prime Minister Shimon Peres, “is in Gaza.”²³ And it is in Gaza, PLO-controlled Gaza, that Hamas – allegedly at odds with PLO – is fomenting its terror campaign against Israel. It is the Palestinian security services that sustain this Hamas campaign. In the words of *The Jerusalem Post*:

It was the Hamas leadership in Gaza which decided on terrorist strikes and issued operational orders for the bus bombings. It was in Gaza that the Hamas military organization trained suicide bombers and assembled explosives. It was in Gaza that “the engineer” Yihye Ayyash found shelter until he was killed, and where his successor Mohammed Dief has been living openly. It was in Gaza that Arafat’s Preventive Security chief was negotiating with Dief – a close friend – both before and after the first bus bombing. He knew of Dief’s involvement in the bombing and did nothing either to detain him or prevent the next outrage.

Israel’s obligation to terminate the Oslo Accords stems also from a related principle of national self-preservation. Under this peremptory norm, any agreement may be terminated unilaterally following changes in conditions that make performance of the agreement injurious to fundamental rights, especially the rights of existence and independence. Known in law as “rights of necessity”, this norm was explained with particular lucidity by none other than Thomas Jefferson. In his “Opinion on the French Treaties”, written on April 28, 1793, Jefferson stated that when performance, in international agreements, “becomes impossible, nonperformance is not immoral. So if performance becomes self-destructive to the party, the law of self-preservation overrules the laws of obligation to others.”²⁴ Later, in that same document, Jefferson wrote: “The nation itself, bound necessarily to whatever its preservation and safety require, cannot enter into engagements contrary to its indispensable obligations.”²⁵ Israel, the reader should recall, has an “indispensable obligation” to endure.

How, exactly, do the Oslo Accords impair this obligation? Here is what *The Jerusalem Post* had to say about the expected consequences of Oslo II:

...the implementation of Oslo II signals the relinquishment of Israel’s security control over the territories and the assumption of such control by the PLO. For the first time, there will be a large PLO army on the outskirts of Israel’s major population centers, and it will be in control of strategic areas which dominate Israel’s heartland. Soon, Israel will be able to control neither the influx of Palestinians from refugee camps in neighboring countries nor the importation of arms. To expect such an arrangement to bring anything but unrest, terrorism and ultimately war, is to live in a world of make believe.²⁶

To better understand this “world of make believe”, it is instructive to consider the Charter of Hamas, another related terrorist organization that is central to current difficulties in implementing “peace”. According to this Charter:

Peace initiatives, the so-called peaceful solutions, and the international conferences to resolve the Palestinian problem, are all contrary to the beliefs of the Islamic Resistance Movement. For renouncing any part of Palestine means renouncing part of the religion; the nationalism of the Islamic Resistance Movement is part of its faith, the movement educates its members to adhere to its principles and to raise the banner of Allah over their homeland as they fight their Jihad. ...There is no solution to the Palestinian problem except by Jihad... In order to face the usurpation of Palestine by the Jews, we have no escape from raising the banner of Jihad... We must imprint on the minds of generations of Muslims that the Palestinian problem is a religious one, to be dealt with on this premise... “I swear by that who holds in His Hands the Soul of Muhammad! I indeed wish to go to war for the sake of Allah! I will assault and kill, assault and kill, assault and kill.”²⁷

Regarding relationships with the Palestine Liberation Organization (PLO), the Hamas Charter offers the following: “The PLO is among the closest to the Hamas, for it constitutes a father, a brother, a relative, a friend. Can a Muslim turn away from his father, his brother, his relative or his friend? Our homeland is one, our calamity is one, our destiny is one and our enemy is common to both of us...”²⁸ On the primacy of hatred toward Judaism, not Israel (i.e., Israel is despised because it is Jewish), the Hamas Charter states: “Israel, by

Virtue of its being Jewish and of having a Jewish population, defies Islam and the Muslims. ‘Let the eyes of the cowards not fall asleep.’²⁹

After the assassination of terrorist Yechya Ayyash, known widely as “The Engineer”, Yasser Arafat delivered a eulogy in Dura, near Hebron. Speaking before a large crowd of Hamas supporters, Arafat praised all “Palestinian martyrs”, including those who had murdered Israeli women and children in schools, buses, and homes. Referring to the imminent takeover of Jerusalem from the Jews, Arafat expressed confidence that, “in a few months, we will pray together at the Al-Aksa mosque”, adding that “those who don’t like it can go and drink the water of the Dead Sea.”³⁰

At a eulogy given on June 15, 1995, for Abed Al Karim Al Aklok, a former PLO official, Arafat remarked: “We are all seekers of martyrdom in the path of truth and right toward Jerusalem the capital of the State of Palestine.... We will continue this difficult Jihad, this long Jihad, this arduous Jihad,³¹ in the path of martyrs – via death – the path of sacrifice....”³² On January 30, 1996, speaking to 40 Arab diplomats at the Grand Hotel in Stockholm, Sweden, Arafat’s topic was: “The Impending Total Collapse of Israel”. Said Arafat, “We Palestinians will take over everything, including all of Jerusalem.... All the rich Jews who will get compensation will travel to America.” Further:

We of the PLO will now concentrate all our efforts on splitting Israel psychologically into two camps. Within five years we will have six to seven million Arabs living on the West Bank and in Jerusalem... You understand that we plan to eliminate the State of Israel and establish a purely Palestinian state... I have no use for Jews; they are and remain Jews. We now need all the help we can get from you in our battle for a united Palestine under total Arab-Moslem domination.³³

Regarding the Oslo Accords and Israel’s growing vulnerability to war, Israeli security is now increasingly dependent upon nuclear weapons and strategy.³⁴ Faced with a codified and substantial loss of territories – a loss that might still be enlarged by transfer to Syria of the Golan Heights³⁵ – the Jewish state will have to decide on how to compensate for its diminished strategic depth. While this shrinkage does not necessarily increase Israel’s existential vulnerability to unconventional missile attack, it surely does increase that state’s susceptibility to attacking ground forces and to subsequent enemy occupation. And the loss of strategic depth will almost certainly be interpreted by enemy states as a significant weakening of Israel’s overall defense posture, an interpretation that could lead to great enemy incentives to strike first.

Should Israel’s sacrifice of strategic depth occasioned by the Oslo Accords result in a Palestinian state, which now seems certain, the geostrategic victory of the Islamic world would be complemented by something less tangible but no less critical: an Arab and Iranian³⁶ perception of an ongoing and unstoppable momentum against the Jewish state, a jihad-centered perception of military inevitability that would reiterate the policies of war. Recognizing such perceptions, Israel could be forced to take its bomb out of the “basement”,³⁷ and/or it could have to accept a greater willingness to launch preemptive strikes against enemy hard targets.³⁸

For their part, certain Arab states and/or Iran would respond to such Israeli decisions. Made aware of Israel’s policy shifts – shifts that would stem from both Israel’s Oslo-generated territorial vulnerabilities and from its awareness of enemy perceptions spawned by the Oslo-generated creation of Palestine, these enemy states could respond in more or less parallel fashion. Here, preparing openly for nuclearization and aggression against Israel, these states would illustrate dramatically certain far-reaching results of the Oslo Accords – results that are still generally unrecognized and that provide, together with other above-listed rationales, a fully authoritative basis for permissible abrogation. Let there be no mistake about it. However much Prime Minister Netanyahu may deny it, or perhaps even oppose it, Palestinian statehood³⁹ is now very likely.⁴⁰ New attention is thus being focused on the alleged advantages, for Israel, of demilitarization. Would a demilitarized Palestinian “entity”⁴¹ located in Judea/Samaria (West Bank) and Gaza represent a serious security threat to Israel?

The answer to this question reflects directly upon our overriding scholarly concern in this article, i.e., the effects of the Oslo Accords upon Israel’s security and survival. Supporters of these Accords point to the

demilitarization option as another way of saying “Oslo is good for Israel.” Opponents of the Accords point to this option as yet another reason why “Oslo is bad for Israel.” What, then, can be ascertained about the likely consequences for Israeli security of proposed Palestinian demilitarization?

From a purely tactical and political perspective, the fragility of the pro-demilitarization argument is well-known. The hidden dangers of demilitarization are clear and compelling. If there were to be a Palestinian state in these lands, its threat to the Jewish state would not only lie in the presence or absence of a national armed force, but also in the many other Arab armies and terrorists⁴² that would inevitably compete for power in the new country.

But there is another reason why a demilitarized “Palestine” would present Israel with a substantial security threat: International law would not necessarily expect Palestinian compliance with agreements concerning armed force. From the standpoint of international law, enforcing demilitarization upon any form of a sovereign Palestine would be problematic. As an “autonomous” entity, Palestine might not be bound by any pre-independence compacts,⁴³ even if these agreements included US guarantees. Because treaties can be binding only upon states,⁴⁴ an agreement between a non-state PLO⁴⁵ and one or more states would be of no real authority and little real effectiveness.⁴⁶

But what if the government of Palestine were willing to consider itself bound by the prestate, non-treaty agreement, i.e., to treat this agreement as if it were an authentic treaty? Even in these relatively favorable circumstances, the new Arab government would have ample pretext to identify various grounds for lawful treaty termination. It could, for example, withdraw from the “treaty” because of what it regarded as a “material breach” (an alleged violation by Israel that undermined the object or purpose of the treaty). Or it could point toward what international law calls a “fundamental change of circumstances” (*rebus sic standibus*).⁴⁷ In this connection, should a small but expanding Palestine declare itself vulnerable to previously unforeseen dangers perhaps from the forces of other Arab armies – it could lawfully end its codified commitment to remain demilitarized.

There is another factor that explains why a treaty-like arrangement obligating a new Palestinian state to accept demilitarization could quickly and legally be invalidated after independence. The usual grounds that may be invoked under domestic law to invalidate contracts also apply under international law to treaties. This means that “Palestine” could point to errors of fact or to duress as perfectly appropriate grounds for termination.

Moreover, any treaty is void if, at the time it was entered into, it was in conflict with a “peremptory” rule of general international law (*ius cogens*) – a rule accepted and recognized by the international community of states as one from which “no derogation is permitted.”⁴⁸ Because the right of sovereign states to maintain military forces essential to “self defense”⁴⁹ is certainly such a rule.⁵⁰ Palestine could (depending upon its particular form of authority) be entirely within its right to abrogate any treaty that had compelled its demilitarization.

Thomas Jefferson, a President of the United States already discussed above, had read Epicurus, Cicero and Seneca, as well as Voltaire, Montesquieu, Holbach, Helvetius, and Beccaria. Something of a philosopher, he wrote as follows about obligation and international law:

The Moral duties which exist between individual and individual in a state of nature, accompany them into a state of society and the aggregate of the duties of all the individuals composing the society constitutes the duties of that society towards any other, so that between society and society the same moral duties exist as did between the individuals composing them while in an unassociated state, their maker not having released them from those duties on their forming themselves into a nation. Compacts then between nation and nation are obligatory on them by the same moral law which obliges individuals to observe their compacts. There are circumstances however which sometimes excuse the non-performance of contracts between man and man; so are there also between nation and nation.⁵¹

Here it must also be remembered that, historically, demilitarization is a principle applied to various “zones”,⁵² not to still-emergent states in their entirety.⁵³ Hence, a new state of Palestine might have yet

another legal reason not to comply with pre-independence commitments to demilitarization. As, it could be alleged, *inter alia*, that these commitments are inconsistent with traditional bases of authoritative international law – bases found in treaties and conventions; international custom⁵⁴; the general principles of law recognized by “civilized nations”, etc.⁵⁵ – they are commitments of no binding character.

Now, it is certainly possible (albeit unnecessary) that a state of Palestine would act contrary to its legal commitments on demilitarization. Here the demilitarization “remedy” could prove no less injurious to Israel. One can easily imagine what would happen if – following a clear breach of the Palestinian demilitarization commitment – Israel would be compelled to act militarily. In such circumstances, the entire global community, including the United States,⁵⁶ would likely respond to imperative Israeli self-defense/law enforcement⁵⁷ actions with both private pressures and public denunciations of Israel in the UN Security Council. Additionally, there would be a great deal of internal pressure within Israel, with the Israeli Left claiming yet again that this or that Palestinian violation⁵⁸ is not a clear and present danger to Israel’s survival. If further evidence is needed of the plausibility of this scenario, one need only recall that although Gaza and certain portions of Judea/Samaria already under Palestinian control do not yet fall under Palestinian sovereign authority, Israel has not had effective capacity since Oslo to combat violence and terrorism from these areas.

It follows from all this, that Israel should take little comfort from the legal promise of Palestinian demilitarization.⁵⁹ Indeed, should the government of a Palestinian state choose to invite foreign armies or terrorists on to its territory (possibly after the original government authority had been displaced or overthrown by more militantly Islamic anti-Israel forces), it could do so not only without practical difficulties but also without necessarily violating international law. Ironically, if the original PLO government of Palestine saw itself threatened by aggression⁶⁰ from outside Arab forces, demilitarization could even produce a Palestinian invitation to Israel, an invitation to protect Palestine from mutual enemies.

The prospect of such an invitation is not as strange as it seems. And as acceptance would likely be seen to be in Israel’s own best interests, Jerusalem’s requested military involvement in “Palestine” could surely happen. Significantly, this involvement could bring Israel into a much wider and potentially catastrophic war, into exactly the intolerably dangerous kinds of conditions that a demilitarized Palestinian entity was intended to prevent in the first place. That such an outcome could be the result of an Israeli attempt to stabilize a new and demilitarized Arab neighbor would add yet another irony to tragedy, a tragedy based in part upon misunderstanding of pertinent international law.

Of course, the overriding danger to Israel of Palestinian demilitarization, more practical than jurisprudential, would stem from Israel’s self-inflicted abrogation of its own essential security role. In the final analysis, this Oslo-driven abrogation derives from a profound and willful misunderstanding of Palestinian goals and expectations. While Israeli supporters of Oslo II continue to believe in a “Two State Solution”⁶¹ and in an associated mutuality of interest in coexistence, the PLO/PA has other beliefs.⁶² Significantly, these beliefs, which are essentially genocidal⁶³ with respect to Israel, are often stated openly and unambiguously.⁶⁴

Here are some recent examples of statements by Palestinian officials that are not only in obvious violation of the Oslo Accords, but are also illustrative of sentiments which exclude mutuality of interest in peace with Israel:

O our beautiful land imprisoned in a cage and surrounded by wolves, My shaded garden, the tormentors have destroyed you, and the dogs have settled in you, O Jerusalem, O my city, With my notebook and pencil and the fire of my rifle I will shatter the cage, I will kill the wolves and plant the flag, the dogs will not bark in the heroic cities.⁶⁵

I now see the walls of Jerusalem, the mosques of Jerusalem, the churches of Jerusalem. My brothers! With blood and with spirit we will redeem you, Palestine! Yes, with blood and with spirit we will redeem you, Palestine!⁶⁶

Israel is attempting to obstruct peace. If Israel continues to succeed in this approach, then she is destroying the peace process. The only option remaining for us will be an alternative option...war. Allow me to say that it takes only one side to start a war. At the end of the path on which Israel is proceeding, a declaration of war awaits.⁶⁷

We shall always stand against them, threaten their future, and not permit them to expand. We shall stand with all our might against any attempted settlement effort. If they do not implement the agreement, we shall determine what the essential locations are in each settlement, and we will turn the lives of the settlers into hell.⁶⁸

All options are open for defending the land of the Palestinian people.⁶⁹

The Zionist entity exists on seized land. The Jews remain enemies because they expropriate lands, build settlements and pay high sums to buy properties. They are the greatest enemies of us Muslims.⁷⁰

The struggle we are waging is an ideological struggle and the question is: Where has the Islamic land of Palestine gone? Where is Haifa and Jaffa, Lod and Ramle, Acre, Safed and Tiberias? Where is Hebron and Jerusalem?⁷¹

We did not pay with the dear blood of thousands of martyrs so that the Israeli government could establish settlements on our land in the name of peace. We have sacrificed in the past and we will be ready to sacrifice again in the future for the sake of liberating our land and returning it to the bosom of the Palestinian nation and for the sake of establishing an independent Palestinian state whose capital is Jerusalem.⁷²

A Palestinian state is now being erected by an authority that will brook no form of demilitarization and that rejects altogether a two-state solution. Empirically, it is evident that the Palestinian Authority is committed to a strategy founded upon unhindered control over the instruments of violence. If Israeli government leaders prepare to accept the emerging Palestinian state because such a state would presumably be demilitarized, they would be making an uninformed and potentially fatal mistake. It follows that those who support Oslo from the standpoint of improved Israeli security via Palestinian demilitarization must now seek alternative bases of support .

III

Israel's Oslo supporters also draw comfort from the presumed power of the country's overall defense posture. They reason that nothing conceded because of Oslo can in any way impair Israel's extraordinary capacity for nuclear deterrence and even (if necessary) for nuclear warfighting. But Israel's record and defense and deterrence can be read in different ways. There is, incontestably, substantial evidence of prior security shortfalls.

When, on October 6, 1973, Egyptian and Syrian surprise attacks came close to jeopardizing the Third Commonwealth, it was because of a monumental intelligence failure. Similarly, when at 01:43 on January 18, 1991, the scream of air-raid sirens could be heard in every corner of Israel, the Iraqi Scuds that slammed through Tel Aviv and Haifa neighborhoods caught the country – in the words of a former Intelligence chief – “with its pants down”. In the latter case, the only thing that saved Israel were Iraq's remarkably benign warheads. If they had not been so benign, Israel would have suffered terribly.

In good measure, A'man's (IDF Intelligence Branch) record of intermittent failure is noteworthy. Israel's endurance has not always been the outcome of successful defense and deterrence policies. It has, on several significant occasions, only been lucky.

At this time in its history, Israel is confronted especially by Iranian nuclearization, a developing menace of potentially unprecedented import.⁷³ Although Israel's leaders maintain that this menace is unrelated to the Oslo Accords, they may be entirely incorrect. While Iran will soon have the capacity to launch missiles

against Israel from its own territory – and will not need the strategic advantages of a cooperative state of Palestine (the state now being created by Israel) – its willingness to launch will surely be enhanced by Oslo’s dismemberment of Israel. This is the case because the overall effect of such dismemberment will be to weaken the country generally, including its basic will to resist and because Oslo will preclude any essential Israeli preemptions.

Israel, in the fashion of an individual organism, is a system. Here, the weakening of constituent “organs” may not be life-threatening by itself, yet – taken together – such weakening might portend “death”. While particular territorial surrenders might not, in and of themselves, produce national annihilation, they may, over time, drain the lifeblood from the country. In response, enemy states, sensing the progressive deterioration of a still-hated Jewish state, will poise for the kill. This is precisely what is being calculated in Damascus, Teheran, Baghdad, Cairo, and, of course, in Gaza.

Israel, in the past, has resorted with astounding success to preemptive destruction of enemy military assets, to what international lawyers call “anticipatory self-defense”. Within the next year or two, Israel may have to undertake similar actions against Iranian unconventional assets and infrastructure or forever risk chemical/biological/nuclear aggressions from Teheran. The Government, its generals and some of the professors will say “not to worry”. There is no need for preemption. Israel has, in its “basement”, a “nuclear deterrent”. Israel is working diligently on the Arrow, the Hetz, and on associated forms of anti tactical ballistic missile defense. Even the Americans are helping. Oslo is still good for Israel.

The requirements of nuclear deterrence are extraordinarily complex. This fact is not widely understood in Israel.⁷⁴ Rather, one hears, again and again, that Israel will be protected by something called “multilayered active defenses”, an integrated network of warning/interception systems to augment retaliatory threats. But unless Iran were to believe that Israel could and would retaliate with “unacceptably destructive” reprisals, it might not be dissuaded from striking first. Moreover, if Iran were willing to absorb an Israeli reprisal in order to fulfill Islamic expectations of jihad, it might strike regardless of anticipated destructiveness. As for the Arrow and similarly integrated systems, deployment is still years away. Under the most optimal conditions, deployment will be inadequate.⁷⁵ In the interim, Iran will have a heightened incentive to strike first. And this says nothing about the policy consequences of Israel’s persistent preference for “deliberate ambiguity” over nuclear disclosure (a preference that should at least be periodically reexamined).

Friends of Israel now sometimes routinely assume⁷⁶ that Israel’s essential security from enemy missile attack⁷⁷ is ensured by nuclear deterrence. The problem with this very hopeful assumption is that such a strategy of dissuasion depends upon many complex conditions and perceptions.⁷⁸ Taken by itself, Jerusalem’s possession of nuclear weapons⁷⁹ – even if it were fully disclosed⁸⁰ – can never bestow real safety.

By definition, a rational state enemy of Israel will accept or reject a first-strike option by comparing the costs and benefits of each alternative.⁸¹ Where the expected costs of striking first are taken to exceed expected gains, this enemy will be deterred. But where these expected costs are believed to be exceeded by expected gains, deterrence will fail. Here, Israel will be faced with enemy attack, whether as a “bolt from the blue” or as an outcome (anticipated or unanticipated) of crisis-escalation .

The immediate task for Israel, therefore, (although, as we shall see, by no means the only task) is to strengthen nuclear deterrence such that an enemy state will always calculate that a first-strike upon the Jewish state would be irrational. This means, of course, taking steps to convince enemy states that the costs of such a strike will always exceed the benefits. To accomplish this objective, Israel must convince prospective attackers that it maintains both the willingness and the capacity to retaliate with nuclear weapons. Where an enemy state considering an attack upon Israel would be unconvinced about either one or both of these essential components of nuclear deterrence, it might well choose to strike first, depending upon the particular value or utility it places upon the expected consequences of such an attack.

We begin to see the dangers of Israeli dependence upon nuclear deterrence. Regarding willingness, even if Jerusalem were prepared to respond to certain attacks with nuclear reprisals, enemy failure to recognize such

preparedness could provoke an attack upon Israel. Here, misperception and/or errors in information could immobilize nuclear deterrence. It is also conceivable that Jerusalem would, in fact, lack willingness to retaliate,⁸² and that this lack were perceived correctly by enemy decision-makers. In this case, Israeli nuclear deterrence would be immobilized not because of “confused signals” but because of signals that had not been properly distorted.

Regarding capacity, even if Jerusalem maintains a substantial arsenal of nuclear weapons, it is essential that enemy states believe these weapons to be distinctly usable. This means, *inter alia*, that if a first-strike attack is believed capable of destroying Israel’s arsenal, the Jewish state’s nuclear deterrent will be immobilized. Moreover, even if Israel’s nuclear weapons were configured such that they could not be destroyed by an enemy first-strike, enemy misperceptions or misjudgments about Israeli vulnerability could still occasion the failure of nuclear deterrence. A further complication here concerns enemy deployment of anti-tactical ballistic missile defenses, which might contribute to an attack decision against Israel by lowering the attacker’s expected costs.⁸³

Should Israel seek to reduce the perceived vulnerability of its nuclear deterrent forces by some intentionally detectable combination of multiplication/dispersion/hardening, enemy states could come to believe, erroneously, that Jerusalem were preparing for first-strike attacks. Such erroneous beliefs would be even more likely if Israel should seek simultaneously further reduced force vulnerabilities via appropriate forms of active and passive defenses. Ironically, in seeking to stabilize deterrence by signaling an enemy/enemies that its own nuclear forces were not vulnerable to disarming first-strikes, i.e., that these forces were exclusively second-strike forces with “assured destruction” capability, Israel could create the impression that it was preparing to strike first. Here, Israel’s attempts to convince enemy states that it was not preparing for preemption could backfire, offering new incentives to these enemy states to “preempt” themselves.

The alternative, for Israel, would be to deliberately disguise efforts at nuclear force protection from enemy states, making these efforts less detectable, but such subterfuge would almost certainly be self-defeating and would carry additional and possibly intolerable risks. After all, should Israel’s enemies calculate that Jerusalem’s nuclear forces were vulnerable to first-strike attacks, they would want to exploit current but potentially transient Israeli weakness. Moreover, because too great an Israeli force vulnerability could encourage Israel to strike first, and because Israel’s enemies understand this calculation, Israel’s enemies would have compelling reasons to launch prompt “preemptive” attacks.

What about the precise nature of pertinent nuclear weapons? The question of “usable” nuclear weapons must be examined from the standpoint of probable harms. Should Israel’s nuclear weapons be perceived by a would-be attacker as very high-yield, indiscriminate, “city-busting” (countervalue) weapons, rather than minimal-yield, war-fighting (counterforce) weapons, they might not deter. Contrary to the uninformed conventional wisdom on the subject, successful nuclear deterrence may actually vary inversely with perceived destructiveness. It follows that Israeli nuclear deterrence requires not only secure second-strike forces, but also forces that could be reasonably used in war.⁸⁴

IV

No discussion of Israeli nuclear deterrence would be complete without careful consideration of the “disclosure” issue. From the beginning, Israel’s bomb has been “in the basement”.⁸⁵ For the future, however, it is by no means certain that an undeclared or “opaque”⁸⁶ nuclear deterrent will be capable of meeting Jerusalem’s security goals or that it will even be equal in effectiveness to an openly declared nuclear deterrent.

At first glance, the issue appears inconsequential. After all, everyone knows that Israel has the bomb. What, then, would be the purpose of belaboring the obvious? Indeed, might not such unnecessary saber-rattling

even be unduly provocative, occasioning Arab and/or Iranian⁸⁷ first-strikes that might not otherwise have been contemplated?

The point here is that disclosure would not be intended to reveal the obvious, i.e., that Israel has a “bomb”, but rather to heighten enemy perceptions of Jerusalem’s capable nuclear forces and/or Jerusalem’s willingness to use these forces in reprisal for certain first-strike attacks. What, exactly, are the plausible connections between an openly-declared nuclear weapons capacity and enemy perceptions of Israeli nuclear deterrence? One such connection concerns the relation between disclosure and perceived vulnerability of Israel’s nuclear forces to preemptive destruction. Another such connection concerns the relation between disclosure and perceived capacity of Jerusalem’s nuclear forces to penetrate the attacking state’s active defenses.⁸⁸

To the extent that removing the bomb from the basement, or disclosure, would encourage enemy views of an Israeli nuclear force that is sufficiently invulnerable to first-strike attacks and/or is capable of piercing enemy active defense systems,⁸⁹ disclosure would represent a rational and prudent option for Israel. Here, the operational benefits of disclosure would accrue from deliberate flows of information about dispersion, multiplication, hardening, speed, and evasiveness of Israel’s nuclear weapon systems and about some other pertinent technical features of certain nuclear weapons. Most importantly, such flows would serve to remove enemy doubts about Israel’s nuclear force capabilities, doubts which, left unchallenged, could undermine Israeli nuclear deterrence.

Removing the bomb from Israel’s basement might also heighten enemy perceptions of Jerusalem’s willingness to make good on its nuclear retaliatory threats. For example, by releasing information about its nuclear forces that identifies distinctly usable forces, Israel could remove any doubts about Jerusalem’s nuclear resolve. Here, a prospective attacker, newly aware that Israel could retaliate without generating intolerably high levels of civilian harms (possibly because of enhanced radiation and/or sub-kiloton weapons⁹⁰) would be more apt, because of Jerusalem’s disclosure, to believe Israel’s nuclear threats.

Until now, our assessment of Israeli nuclear deterrence has assumed a rational state adversary. Significantly, however, the assumption of rationality is itself problematic. There is, in fact, no reason to assume that prospective attackers of the Jewish state will always choose among possible options according to careful comparisons of expected costs and expected benefits.⁹¹ As long as such enemies are increasingly capable of missile attacks upon Israel⁹² and Jerusalem is unable to intercept these attacks with near-perfect (or possibly even perfect) reliability,⁹³ this means that Israeli dependence upon nuclear deterrence alone could have altogether catastrophic consequences.

Ovo Vadis? Where does Israel go from here? Even with the Oslo Accords (or perhaps especially because of these agreements), Jerusalem must now seek security beyond the protections afforded by nuclear deterrence. Without in any way diminishing its essential effort to confront enemy states with nuclear weapons capacity and resolve, Israel must now also prepare vigorously and completely for preemptive attacks against enemy hard targets,⁹⁴ especially unconventional missile capabilities and associated infrastructures.⁹⁵ Failing such preparations,⁹⁶ Israel – even if it has done everything humanly possible to strengthen nuclear deterrence⁹⁷ – would be vulnerable to devastating first-strikes.⁹⁸ Today, such vulnerability would be especially high from Iran.

In the perhaps not-too-distant future, the Islamic leadership in Teheran, unless suitably prevented in a timely fashion, could strike at Israel with unconventional forces irrespective of anticipated Israeli counterstrikes. Immobilized by Iranian irrationality,⁹⁹ Israeli nuclear deterrence will have been unable to safeguard the state.¹⁰⁰ Notwithstanding Israel’s “successful” deployment of nuclear weapons in survivable modes, the capacity of these weapons to penetrate Iranian active defenses and Jerusalem’s clear willingness to retaliate, Iran will have decided to launch against “infidels”.¹⁰¹

Israel must do what is needed to prevent such a launch. Abandoning the self-defeating policy of total reliance upon nuclear deterrence – a policy strongly encouraged by Oslo supporters – and wary of coerced nonnuclear membership in the Nonproliferation Treaty (NPT) Regime,¹⁰² Jerusalem must now prepare

expeditiously for all life-saving forms of preemption.¹⁰³ The critical questions to be addressed are those concerning tactics, i.e., questions of timing, targeting and configuration of ordnance. As for the legality of such preemptive measures,¹⁰⁴ they could be entirely consistent with the right of anticipatory self-defense under international law.¹⁰⁵ At the same time, they are effectively precluded by the climate established under Oslo.

Optimally, Israel would be able to rely upon the currently fashionable notion of a “multilayered active defense”,¹⁰⁶ but such reliance would reflect a potentially lethal disposition to hope too much. Hence, Israeli military planners, considering the pertinent tactical issues, should now look very closely at the following Iranian threat dimensions: (1) expected probability of Iranian first-strikes over time; (2) expected disutility of Iranian first-strikes over time (itself dependent, *inter alia*, upon the nature of Iranian unconventional weaponry, projected Iranian targeting doctrines, and multiplication/dispersion/hardening of Israeli unconventional forces); (3) expected collaborative prospects between Iran and other enemy states; (4) expected schedules of Iranian unconventional weapons deployments; (5) expected efficiency of Iranian active defenses over time; (6) expected efficiency of Israeli active defenses over time; (7) expected efficiency of Israeli hard-target counterforce operations over time; and, of course, (8) expected world community reactions to Israeli preemptions.

Now, further to #8 (above), Israel faces a unique dual-preemption imperative. It must, in effect, preempt its own military preemption of certain Iranian mass-destruction weapons assets with a far-reaching public-relations preemption of expected global condemnation. Unless the second preemption action precedes the first, and does so in a timely and convincing fashion, the defensive destruction of Teheran’s developing nuclear capacity by Israel, however indispensable to national survival, would elicit uniformly critical reactions all over the world. Recognizing such expected reactions, an Israel that had failed to prevent them with prior public education might even allow Iranian nuclearization to proceed without interference.

This does not mean, however, that Iran’s nuclear threat to Israel’s entirely contingent upon Iranian nuclearization. In fact, an Iranian conventional attack directed against certain Israeli nuclear reactor facilities could bring variable nuclear harms to the Jewish state. Following a conventional attack upon Israeli nuclear reactors, released radioactivity could contaminate hundreds or even thousands of square miles. Moreover, such contamination could occasion occupation restrictions that would last for decades. Should certain of Israel’s reactors be clustered together, the dangers would be enlarged if the contents of more than one were discharged and/or if there were a release of the inventories of spent fuel (inventories that could be located at reactor sites).¹⁰⁷

There is also the matter of conventional deterrence. Enemy states contemplating conventional attack upon Israel, especially upon the truncated Jewish state already emerging from the “Peace Process”, might be dissuaded only by the threat of a strong conventional retaliation. Hence, inasmuch as a conventional war could quickly escalate into an unconventional war, Israel’s conventional deterrent could prove indispensable in offering protection against chemical/biological/nuclear war as well as against conventional war. A persuasive conventional deterrent is a sine qua non of Israel’s security, irrespective of the persuasiveness of Jerusalem’s nuclear deterrent or the availability of its preemption options.

Since the end of the 1991 Gulf War, Israel’s conventional deterrent has become increasingly problematic. Regarding Syria, IDF Deputy Chief of General Staff Maj. Gen. Matan Vilna’i has expressed serious concern about the lack of training by Israeli combat troops for a possible conventional war with that Arab enemy. In an interview published in mid-June 1996 in the London-based *Jane’s Defense Weekly*, Vilna’i noted that while the emphasis in IDF planning is toward anti-terrorism and “over-the-horizon” operations (countering mass-destruction missile weapons) the danger of a conventional war with Syria cannot be discounted:

The Syrian army has some special forces in Lebanon and some bridges on the Golan Heights border. Except for these units, all of their army is sitting in their barracks and training all the time. My concern is that at the same time, most IDF combat troops spend less time training for conventional war, being occupied with anti-terrorist and other duties. Israel must be ready to fight the next major conventional war...the absence of a peace

agreement with Syria means that we need to maintain and modernize our armored formations, our jets and our navy.¹⁰⁸

The growing Syrian threat has also been documented and examined by BESA strategist Gerald M. Steinberg:

Syria has also continued to increase its conventional military capability. (It should be noted that both Syria and Egypt maintain sizable chemical warfare stockpiles as well.) Syria has spent approximately \$2 billion since 1991 to purchase hundreds of T-72 and T-80 tanks, as well as advanced Russian aircraft and other weapons.¹⁰⁹

The dangers from Egypt must also be identified. In April 1996, Washington announced that Cairo will buy at least one billion dollars in American weapons, including 21 F16 jet fighters, improvements to F16s which are already in Egyptian arsenals (so that they can shoot advanced laser guided missiles and missiles against boats), three frigates to improve Egypt's capacity for antisubmarine warfare, 24 advanced torpedoes, 1,000 Hellfire missiles for use with Apache helicopters, 20 sea-sea Harpoon missiles, 180 Hawk anti-aircraft missiles, 8,500 anti-tank TOW missiles, improvements for Hawk missiles, 400 armored carriers, 350 terrain vehicles and 31 M-1 tanks.¹¹⁰

Professor Steinberg, noting that Egypt has been leading the Arab campaign to get Israel to abandon its nuclear weapons, notes also that while pressing Israel to join the Nonproliferation Treaty (NPT) regime, Cairo has been steadily increasing its conventional capabilities:

Technological improvements include the addition to its arsenal of a large number of F-16 combat aircraft and the licensed production of American M-1 A-1 battle tanks. In other areas, such as electronics and avionics, the Egyptian military has also made significant progress. Since Egypt has no significant military foes and maintains two-thirds of its large army in the eastern part of the country near the demilitarized Sinai peninsula, the continued growth in sophisticated Egyptian weaponry is a source of concern for Israel. With the increasing instability in Egypt, the possibility exists that the current government could be replaced by a radical regime with an interest in resuming open conflict.¹¹¹

Reciprocally, Israel's conventional and nuclear deterrences are interrelated. For the foreseeable future, any enemy states that would launch an exclusively conventional attack upon Israel would almost surely have multiple unconventional weapons capabilities in reserve. This means that even if Israel can rely upon conventional deterrence as a "first line" of protection, that line will necessarily be augmented by Israeli nuclear deterrence to prevent intrawar escalation that might be initiated by certain enemy states.

Uncomfortable truths are not easily received by states, especially on matters of such existential import. To this point, friends of Israel have been seemingly content with the problematic wisdom of academic strategists. Where it is taken as evidence of serious strategic thought, this "wisdom" would cloud the more complex vision that is indispensable for Israel to endure. Real hope, therefore, lies largely in breaking away from erroneous discourse while there is still time, and in supplanting elegantly-disguised foolishness¹¹² with intelligence and courage.

Yet, there are no assurances that any discourse will suffice. It is even conceivable that while Israel now needs to get beyond reliance upon nuclear deterrence, the essential requirements of preemption are beyond satisfaction. This is perhaps the true dilemma of Israeli security, the prospect that no single strategy or configuration of strategies will be capable of preserving the Third Commonwealth. If this is indeed the case, and such a dilemma is certainly plausible in Oslo's aftermath, it is now immediately incumbent upon Israel's leaders and planners to prepare for survival within the pertinent structural and behavioral constraints.

V

If nuclear deterrence were to fail, and Israel had failed to implement timely preemptive measures (a failure that could be due in part to Oslo expectations), the Jewish state could face conventional attacks and/or unconventional attacks, including – in the future – nuclear aggression. In either case, the net result could be

one form or another of nuclear war. What might be the consequences of such a war? This is an important question, one that must be raised simultaneously with our considerations of Oslo legality and of Israeli nuclear deterrence and preemption.

Perhaps the first genuinely large-scale and authoritative study of nuclear war consequences was a 1975 study titled: *Long Term Worldwide Effects of Multiple Nuclear Weapons Detonations*. Prepared in the United States by a special committee of the National Research Council, National Academy of Sciences, its point of departure was nothing less than

...a horrendous calamity; a hypothetical exchange involving the detonation of many nuclear weapons. In the worst case considered, about half of all nuclear weapons in current strategic arsenals, viz., 500 to 1,000 weapons of yield 10 to 20 megatons each, and 4,000 to 5,000 lesser (sic) weapons with yields of 1 or 2 megatons each, i.e., a total of 10,000,000,000 tons of TNT equivalent are exchanged among the participants. No report can portray the enormity, the utter horror which must befall the targeted areas and adjoining territories.¹¹³

Of course, the scale of this Report's assumptions is vastly greater than that which concerns us here, namely a plausible nuclear war scenario for Israel in the Middle East. Nevertheless, the likely kinds of physical and biological effects are still pertinent to our present inquiry. Some of these effects concern temperature changes; contamination of foods by radionuclides; disease epidemics in crops and in domesticated animals due to ionizing radiation; shortening of growing seasons; irreversible injuries to aquatic species; long-term carcinogenesis due to inhalation of plutonium particles; radiation-induced developmental anomalies in persons in utero at the time of detonations; increase in skin cancers; and increased incidence of genetic disease that would not be limited to the offspring of the exposed generation, but would extend over many generations.

Significantly, in assessing the likely effects of a nuclear war involving Israel, it will be important to look beyond individual effects in isolation. This means that the interactions between individual effects could produce calamitous and still unforeseen consequences. Recognizing this some years ago, a publication of the US Arms Control and Disarmament Agency, *Worldwide Effects of Nuclear War...Some Perspectives*, concluded as follows:

In attempting to project the after-effects of a major nuclear war, we have considered separately the various kinds of damage that could occur. It is also quite possible, however, that interactions might take place among these effects, so that one type of damage would couple with another to produce new and unexpected hazards. For example, we can assess individually the consequences of heavy worldwide radiation fallout and increased solar ultraviolet, but we do not know whether the two acting together might significantly increase human, animal or plant susceptibility to disease. We can conclude that massive dust injection into the stratosphere, even greater in scale than Krakatoa (the volcanic eruption) is unlikely by itself to produce significant climatic and environmental change, but we cannot rule out interactions with other phenomena, such as ozone depletion, which might produce utterly unexpected results. We have come to realize that nuclear weapons can be as unpredictable as they are deadly in their effects.¹¹⁴

But what, specifically, would be the likely effects of a "limited" nuclear war, a war of the sort that should concern Israeli planners? To answer this question, we must first subdivide this category into at least three possibilities: (1) exclusively counterforce attacks against Israeli hard targets; (2) exclusively countervalue attacks against Israeli civilian populations; and (3) mixed counterforce/countervalue attacks. Moreover, in comparing the plausibility of these three possible nuclear attacks, it will first be necessary to (a) differentiate between objectives and capabilities of pertinent enemy states; and (b) prepare a comprehensive "strategic dialectic" in which Israel anticipates enemy state reactions to its own relevant nuclear strategies and deployments.

The advantages of a new Israeli strategic dialectic¹¹⁵ will depend, in part, upon the coherence of the overall academic enterprise. Israel does not face a random set of discrete and wholly separate military threats. Rather, there is a general threat environment within which discrete threat components fit. The task for Israeli strategists is not to figure out in advance each and every specific threat component (although this is a task of certain government intelligence analysts), but to identify a strategy that will accommodate the understanding

of a broad variety of possible threats. This means, *inter alia*, an obligation to fashion a strategic “master plan”, a body of generalized and interrelated propositions from which specific policy options could be derived. Such a plan would not contain all or even most of the “answers”, but it would offer a comprehensive and informed framework within which all of the important questions might be addressed. Such a plan would never be “completed”. It would serve those who oversee Israel’s security needs continually, incrementally, and directly, as an ongoing and expanding set of purposeful guidelines. The need for such a plan is enlarged rather than reduced by the expectations of Oslo.

Returning to our more specific discussion of strategic dialectic for Israel, planners now need to identify in broad outline certain of the expected consequences that would be more or less common to each pertinent scenario. Medically, the most widespread and potentially problematic type of injury in a nuclear attack would be burns. On this injury, Israeli planners should consider that in the United States, at the Massachusetts General Hospital – one of the very best in the country – only 15 beds are available at any one time for the acute care of burn victims. Just to keep one such patient alive taxes this exceptional facility to the limit. No amount of advanced preparation could provide the human and material resources required for the care of even a few such patients hospitalized simultaneously in any city of the United States. Yet we must assume that at least tens of thousands of such casualties would result in every Israeli city hit by a nuclear weapon.

There can be no meaningful medical response to the overwhelming health problems that would follow a nuclear attack upon Israel. These problems would extend far beyond the uncontrollable consequences of prompt burn injuries. A burden of cancer and genetic defects would afflict survivors and future generations. Radioactivity would make blast areas uninhabitable for at least many months. Most area water supplies, sanitation resources, transportation capacities and industrial production would be destroyed. Where would the survivors, in their pitiful state, go?

From what we already know about Hiroshima, it is evident that even the most limited nuclear exchange between Israel and certain enemy states would spell utter catastrophe. The immediate effects of the explosions – thermal radiation, nuclear radiation and blast damage would cause wide swaths of death and destruction. Victims would suffer flash and flame burns.

Retinal burns would occur in the eyes of persons at distances as great as several hundred miles from the explosion. People would be crushed by collapsing buildings and torn to shreds by flying glass. Others would fall victim to raging firestorms and conflagrations. Fallout injuries would include whole-body radiation injury, produced by penetrating, hard gamma radiation; superficial radiation burns produced by soft radiations; and injuries produced by deposits of radioactive substances within the body.¹¹⁶

In the aftermath, those few medical facilities that might (miraculously) still exist would be taxed beyond endurance. Water supplies would become unusable as a result of fallout contamination. Housing and shelter would become unavailable for hundreds of thousands, perhaps millions, of survivors. Transportation and communication would break down to the most rudimentary levels. Severe food shortages would be inevitable.

Israel’s complex network of interlocking and interdependent exchange systems would be shattered. Virtually everyone would be deprived of the basic means of livelihood. Emergency police and fire services would be decimated and stressed to wholly ineffectual levels. All systems dependent upon electrical power would cease to function. Severe trauma would occasion widespread disorientation and psychological disorders for which there would be no therapeutic services.

Normal society would cease to function. The pestilence of unrestrained murder and banditry would augment the pestilence of plague and epidemics. With the passage of time, many of the survivors would expect an increased incidence of degenerative diseases and various kinds of cancer. They would also expect premature death, impairment of vision, and increased sterility. Among the survivors of Hiroshima, for example, an increased incidence of leukemia and cancer of the lung, stomach, breast, ovary, and uterine cervix has been widely documented.¹¹⁷

Many of the most delicately balanced relationships in nature would be upset by the extensive fallout. In this connection, Israelis who would survive the nuclear exchange would likely have to deal with enlarged and voracious insect populations. According to biologist Tom Stonier:

Mushrooming insect populations are likely to spread from the radiation-damaged areas in which they arose, and, like the locusts of biblical times, wreak havoc in previously undamaged areas. Accompanying the insect plagues would be the plant diseases transmitted by insects, particularly those diseases which attack plants that have been injured or weakened by insect or radiation damage. The combined assault of radiation, insects, disease and fire could temporarily strip off the plant cover of vast areas. If the attack is sufficiently widespread, it is conceivable that a few years later almost all the forests would have been destroyed, and most of the countryside would have become converted into marginal grasslands, if not actually stripped, leaving a naked earth to be ravaged by the ever-present forces of erosion.¹¹⁸

Herbert Abrams and William E. Von Kaenel, in the November 1981 issue of *The New England Journal of Medicine*, also present an assessment of burgeoning insect populations that is stark and sobering:

Insects are generally more resistant to radiation than are human beings. This fact, along with the prevalence of corpses, waste and untreated sewage, the depletion of birds, and the destruction of insecticide stocks and production, will engender a huge increase in insect growth. Mosquitoes would multiply rapidly after an attack... The fly population would explode... Most domestic animals and wild creatures would be killed. Trillions of flies would breed in the dead bodies. Uncontrolled growth in the insect population... may sharply limit the capacity to control such diseases as typhus, malaria, dengue fever, and encephalitis.¹¹⁹

Certain of the biological and ecological effects of a nuclear war would be felt by other states in the region. Radioactive fallout does not respect political boundaries. Because of the manner in which nuclear explosions behave in the atmosphere, the altitude reached by the mushroom-shaped cloud would depend upon the force of the explosion. For yields in the low-kiloton range, the cloud would remain in the lower atmosphere, and its effects would be entirely local. That is, these effects would not extend beyond the boundaries of the combatant states. But for yields exceeding 30 kilotons, part of the cloud of radioactive debris would "punch" into the stratosphere, affecting non-combatant states as well.¹²⁰

Throughout the Middle East region affected by nuclear exchanges, an enormous health threat would be created by tens of thousands of rotting, unburied corpses. In many areas radiation levels would be so high that corpses could remain untouched for weeks or even months. With transportation destroyed, survivors weakened and myriad post-war reconstruction tasks to be performed, corpse disposal would be remarkably difficult. And in order to bury the dead, areas much larger than Israel's now destroyed cities could be required for the cemetery.

An enemy state might launch a nuclear first-strike against Israel. In such an event, Jerusalem would certainly respond, to the extent possible, with a nuclear retaliatory strike. If the enemy state's first-strikes were to involve other forms of unconventional weapons (i.e., chemical and/or biological weapons) Israel might launch a nuclear reprisal. This would depend, in large measure, upon Jerusalem's expectations of follow-on aggression¹²¹ and on its associated calculations of comparative damage-limitation.

Should Israel absorb a massive conventional attack by enemy states, a nuclear retaliation could not be ruled out, especially if: (a) The aggressor were perceived to hold nuclear or other unconventional weapons in reserve; or (b) Israel's leaders were to believe that non-nuclear retaliations could not prevent destruction of the Third Commonwealth.

Israel could feel compelled to preempt enemy state aggression with conventional forces. Should it undertake such a preemptive move, the targeted state's response would largely determine Jerusalem's next moves. If this response were in any way nuclear, Israel would assuredly undertake nuclear counterretaliation. If this retaliation were to involve chemical or biological weapons, Israel might also feel compelled to take the escalatory initiative. This, in turn, would depend upon Jerusalem's judgment of enemy intent and its calculations of essential damage-limitation.

If, however, the enemy state's response to Israeli preemption were limited to hard-target conventional strikes, it is most improbable that the Jewish state would resort to nuclear counterretaliations. Alternatively, if the enemy state's conventional retaliation were an all-out strike directed toward Israel's civilian populations as well as to military targets, an Israeli nuclear counterretaliation could not be ruled out. Such a counterretaliation could be ruled out only if the enemy state's conventional retaliation were entirely proportionate to Israel's preemption, confined exclusively to Israeli hard-targets, circumscribed by the legal limits of "military necessity", and accompanied by explicit and verifiable assurances of non-escalatory intent.

It is extremely improbable that Israel would ever decide to preempt enemy state aggression with a nuclear strike. Although circumstances could arise where such a strike would be completely rational, it is unlikely that Israel would ever allow itself to reach these circumstances. An Israeli nuclear preemption could be expected only: (a) Where Israel's state enemies had acquired nuclear or other unconventional weapons judged capable of destroying the Third Commonwealth; (b) Where these enemy states had made clear that their intentions paralleled their capabilities; (c) Where these states were believed ready to begin a "countdown to launch"; and (d) Where Israel believed that Israeli non-nuclear preemptions could not achieve needed minimum levels of damage-limitation – that is, levels consistent with preservation of the Third Commonwealth.

Should nuclear weapons be introduced into a conflict between Israel and its enemies, nuclear warfighting, at one level or another, could ensue. This would be the case so long as: (a) Enemy state first-strikes against Israel would not destroy Jerusalem's second-strike nuclear capability; (b) Enemy state retaliations for Israeli conventional preemption would not destroy Jerusalem's nuclear counterretaliatory capability; (c) Israeli preemptive strikes involving nuclear weapons would not destroy enemy state second-strike nuclear capabilities; and (d) Israeli retaliation for enemy state conventional first-strikes would not destroy enemy state nuclear counterretaliatory capability. It follows from Israel's strategic requirements that Jerusalem should now take steps to ensure the likelihood of (a) and (b) above, and the unlikelihood of (c) and (d).

Both Israeli nuclear and nonnuclear preemptions of enemy unconventional attacks could lead to nuclear exchanges. This would depend, in part, on the effectiveness and breadth of Israeli targeting, the surviving number of enemy nuclear weapons, and the willingness of enemy leaders to risk Israeli nuclear counterretaliations. In any event, the likelihood of nuclear exchanges would appear to be greatest where pertinent enemy states (primarily Iran) are allowed to deploy ever-greater numbers of increasingly destructive unconventional weapons without some form of timely Israeli preemptive interference.

Should such deployment take place, Israel could effectively forfeit the non-nuclear preemption option, and be forced to choose between a no-longer-timely nuclear preemption and waiting to be struck first. It follows that the risks of Israeli nuclear preemption, of nuclear exchanges with an enemy state, and of enemy nuclear first-strikes could all be reduced by timely Israeli non-nuclear preemptions – directed at critical hard targets and/or at "regimes". This would contradict the conventional wisdom that associates any prospective Israeli preemptive strike with aggression and with expanded harms.

There is one last point here relating to expectations of the "Peace Process". Israel need not be unduly "deterred" from life-saving forms of preemption for fear of eliciting Oslo-generated condemnation from the United States. Washington has already an announced policy of rejecting the right of certain countries to have nuclear weapons¹²² and even an associated policy of "forcible nonproliferation". In an unclassified briefing, Maj. Gen. Robert Linhard, director of plans and policy at the Strategic Command, identified "rollback of proliferation where it has occurred" as one of DoD's "counterproliferation objectives".¹²³ General Linhard's elaboration of US preemption rationales likely drew in part upon the statement made by then Secretary of State Warren Christopher in January 1993: "...We must work assiduously with other nations to discourage proliferation through improved intelligence, export-control incentives, sanctions and even force when necessary (emphasis added)."

How are Israel's strategic requirements related to the "Samson Option"?¹²⁴ Many students of strategy and war identify the "Samson Option" as an essential core of Israeli nuclear strategy. Although this is certainly an error, as the primary mission of Israel's nuclear weapons must always be to preserve the Jewish state, and not to wreak post-apocalyptic vengeance in a purposeless spasm of last-resort violence, preparations for a Samson Option could be decidedly purposeful. This is because such preparations could enhance Israel's nuclear deterrence, preemption, and warfighting capabilities.

Regarding contributions to Israeli nuclear deterrence, preparations for a Samson Option could help to convince enemy states that aggression would not prove gainful. This is especially true if Israeli Samson preparations were coupled with some apt level of nuclear disclosure, if Israel's pertinent Samson weapons appeared sufficiently invulnerable to enemy first-strikes, and if these weapons were identifiably countervalue in mission function. In view of what strategists sometimes refer to as the "rationality of pretended irrationality" (a concept exemplified by Herman Kahn's "chicken metaphor" of teen-aged auto racers), Samson could also aid Israeli nuclear deterrence by demonstrating a willingness to take considerable risks, but this would hold only if last-resort options were not tied definitionally to certain destruction. To a considerable extent, the nuclear deterrence benefits of pretended irrationality would depend upon enemy state awareness of Israel's countervalue targeting.

Regarding contributions to preemption, Israeli preparations for a Samson Option could convince Israel's leadership that defensive first-strikes would be undertaken with reduced expectations of unacceptably destructive enemy state retaliations. This would depend, of course, upon antecedent Israeli decisions on disclosure, on Israeli perceptions of the effects of disclosure on enemy state retaliatory prospects, on Israeli judgments about enemy perceptions of Samson weapons vulnerability, and on enemy state awareness of Samson's countervalue force posture. As in the case of Samson and Israeli nuclear deterrence, last-resort preparations could assist Israel's preemption options by displaying a willingness to take certain existential risks. But Israeli leaders must be mindful here of pretended irrationality as a double-edged sword. Brandished too "irrationally", Israeli preparations for a Samson Option could even encourage enemy state preemptions.

Regarding contributions to Israel's nuclear warfighting options, preparations for a Samson Option could help to convince enemy states that a clear victory over Israel would be impossible to achieve; that is, that even after overwhelming the Jewish state and its military forces these states would face their own destruction. But it would be vital here for Israel to communicate to potential attackers the following understanding: Israel's countervalue-targeted (Samson) weapons are additional to (not at the expense of) its counterforce-targeted (warfighting) weapons. In the absence of such communication, preparations for a Samson Option could effectively impair rather than reinforce Israel's nuclear warfighting options.

VI

Left to themselves, insufficiently deterred or preempted, certain of Israel's prospectively nuclear state adversaries could threaten to bring the Jewish state face to face with the considered torments of Dante's Inferno, "Into the eternal darkness, into fire, into ice." It is essential, therefore, that Israeli planners and political leaders recognize immediately the obligation to strengthen their country's nuclear deterrence posture and to take steps to ensure that a failure of nuclear deterrence will not necessarily occasion nuclear warfare. Our insistence herein upon facing the graphic consequences of a regional nuclear war has stemmed not from any ill-conceived faith in the Nonproliferation Regime, a now-fashionable configuration of formal rules highlighted by the Nonproliferation Treaty, but from the imperative understanding that Israel's survival depends entirely upon purposeful self-reliance and that such reliance, in turn, requires (1) A multifaceted nuclear strategy involving deterrence, preemption and warfighting capabilities; and (2) A corollary conventional strategy that is similarly comprehensive and undiminished by territorial losses occasioned by an unlawful and destabilizing "Peace Process".

In regard to this corollary conventional strategy, about which little has thus far been said, Israel must understand that nuclear war could arrive not only as a “bolt-from-the-blue” missile attack, but also as a result (intended or inadvertent) of escalation. If, for example, enemy states were to commence conventional attacks upon Israel, Jerusalem could respond, sooner or later, with nuclear reprisals. Or if these enemy states were to begin conventional attacks upon Israel, Jerusalem’s conventional reprisals could be met with enemy nuclear counterstrikes. A persuasive Israeli conventional deterrent, to the extent that it would prevent enemy state conventional attacks in the first place, could reduce Israel’s risk of escalatory exposure to nuclear war.

But why would Israel need a conventional deterrent at all? Wouldn’t enemy states desist from launching conventional attacks upon Israel simply out of a well-reasoned fear of nuclear retaliation? Not necessarily! Aware that Israel would cross the nuclear threshold only in very extraordinary circumstances, these states could be convinced (rightly or wrongly) that so long as their attacks remain fully conventional, Israel’s response would also be nonnuclear. This would mean, correspondingly, that the only way for Israel to deter large-scale conventional attacks could be by maintaining visibly large-scale conventional capabilities. Of course, enemy states contemplating first-strike attacks using chemical and/or biological weapons are apt to take far more seriously Israel’s (disclosed or undisclosed) nuclear deterrent. A strong conventional capability is needed by Israel essentially to deter or preempt conventional attacks, strikes that could, if they were undertaken, lead quickly via escalation to various forms of unconventional war. As we have already seen, Oslo expectations significantly impair Israel’s strategic depth and its consequent conventional capability.

This brings us back, again, to the “Peace Process”. Insofar as this Process involves, by definition, the incremental surrender of strategic depth by Israel, it makes Israel’s conventional deterrent more and more problematic. Over time, especially if territorial surrender extends to the Golan,¹²⁵ Israel’s conventional capacity to ward off enemy attacks will effectively disappear. This could mean, paradoxically, if enemy states perceive Israel’s own sense of expanding weakness and desperation, a strengthening of the Jewish state’s nuclear deterrent. If, however, pertinent enemy states did not perceive such a “sense” among Israel’s decision-makers, these states – animated by Israel’s conventional force deterioration – could be encouraged to attack. The result here, spawned by Israel’s failure to maintain strong conventional deterrence, could be (1) Defeat of Israel in a conventional war; (2) Defeat of Israel in an unconventional (chemical/biological/nuclear) war; (3) Defeat of Israel in a combined conventional/unconventional war; or (4) defeat by Israel in an unconventional war. For Israel, even the “successful” fourth possibility could be altogether intolerable. As we have just seen, the consequences of a nuclear war (or even a chemical/biological war) could be calamitous for the victor as well as for the vanquished. Indeed, in such exceptional conditions of belligerency, the traditional notions of victory and defeat could lose all serious meaning.

Israel needs a strong nuclear deterrent, but it cannot rely entirely upon this one base of national security any more than it can rely upon only conventional deterrence. Rather, it must rely upon complementary nuclear and conventional forces, and upon the continuing and associated availability of critical preemption options. Taken together, preferably with suitably observable preparations for a Samson Option, these multiple bases of security could endow Israel with the essential requirements of survival into the next millennium. Without all of these interrelated security foundations, Israel’s future could be founded upon altogether vain hopes, an apocalyptic future that might ultimately include the palpably nightmarish visions of a regional nuclear war.

What if critical preemption options were no longer available to Israel? After all, it is entirely plausible that this is already the case, especially with regard to Iran. Shall the nation’s leaders say simply, “*Yihyeh B’Seder*”. “It will be OK!” Or will they conclude, as one retired IDF Major General suggested to me recently in a private communication, that it might be time “to start praying”?

Israel can not welcome a *Shma Israel* scenario.¹²⁶ Although it is undeniable that any state, even with the most prescient planning, could find itself facing such a scenario, the task for each state – including the State of Israel – is to maintain strategic control to the fullest possible extent. What, exactly, does this mean for the Third Temple Commonwealth as it now approaches the end of the Second Millennium?

More than anything else, perhaps, the imperative to maintain control suggests that there can be no perfect security condition for Israel, and that its leaders must choose from a range of decidedly imperfect options. Hence, while nuclear deterrence is problematic and preemption prospects may be fading, there are more or less gainful ways to configure combinations of deterrence and preemption. In certain circumstances, preemptive strikes against enemy hard targets (the only sort of preemption I am discussing) could be expected to elicit substantially destructive reprisals (possibly even against Israeli civilian populations), yet these reprisals could be less harmful than the expected costs to Israel of relying entirely upon nuclear deterrence (i.e., the costs of resisting preemption).

For the foreseeable future, Israel's only security choices are among unattractive options. To act rationally and lawfully, Jerusalem must choose, in each case, the least unattractive option. While this is indeed a distressing state of affairs, and while – in the best of all possible worlds – Israel could fall back upon authentic political settlements this is the starkly adversarial context within which Jerusalem must operate. There is no other context. There is no better world. Political settlements such as the Oslo Accords would be nice if they were supported by all parties, but, for the moment, they cannot be regarded as productive of national security concerns.

One last word about preemption: Critics of such a policy bring up, quite reasonably, that it rests upon an infinite regress dilemma. In other words, there is always the next danger, always the next hard target. At some point, for a combination of strategic and political reasons, preemption becomes infeasible.

All of this is certainly true. But imperfect and problematic as preemption happens to be, whether as a minor or major component of Israeli defense policy, these negatives need always to be compared to the expected costs of all reasonable alternatives. And if these costs entail existential risks of national annihilation, as well they might, the downside (tactical and legal) of Israeli preemption may seem comparatively minor. Moreover, the upside of preemption for Israel could include generalized enemy perceptions of greater Israeli power, perceptions that could “feedback” productively into Israeli nuclear deterrence and reduce risks of enemy state aggressions.¹²⁷

Israel, in the fashion of every other state in our decentralized world legal order, must always build its security upon altogether realistic assessments of danger. It should not base its pertinent policies upon false hopes, or upon the manifestly destabilizing implications of a “Peace Process”. Recognizing that perfect security is unattainable, and that no single mode of security-creation can succeed by itself, its leaders will now have to identify those precise configurations of nuclear deterrence, defense and preemption¹²⁸ that are optimally purposeful. There can be no more law-enforcing action under international law.

We have seen, along both jurisprudential and strategic dimensions, that the “Peace Process” codified by the Oslo Accords fully subverts Israel’s survival imperatives and raises the prospects of region-wide conflict. Violating peremptory¹²⁹ norms of international law while simultaneously jeopardizing Israel’s security (and possibly the security of other states in the Middle East), these Accords serve to hasten Israel’s violent removal from the world community via attrition (terrorism) and annihilation (war).¹³⁰ To prevent such removal,¹³¹ The government in Jerusalem – and its allies wherever else they might be – should now act expeditiously to abrogate Oslo and sustain the Jewish state. Such action would be entirely consistent with the rules and principles of international law.

Notes

¹ Oslo I, known generally as the Declaration of Principles, was concluded and signed in Oslo on Aug. 19, 1993 and resigned in Washington DC on Sep. 13, 1993. Oslo II was signed in Washington on Sep. 28, 1995. For a complete compendium of the documentary record, up to the signing of Oslo II, see: Institute for Palestine Studies: The Palestinian-Israel Peace Agreement (rev. 2nd ed., 1994).

² According to the Vienna Convention on the Law of Treaties, a treaty is always an international agreement “concluded between States...” See *Vienna Convention on the Law of Treaties*, Done at Vienna, May 23, 1969.

- ³ International law recognizes that insurgent organizations may, in certain residual circumstances, enter into valid agreements with states. See, for example: H. Lauterpacht, *International Law: Collected Papers*, Vol. 11, 1975, pp. 494-495; Brownlie, *Principles Of Public International Law*, 4th edition, 1990, Part II, pp. 65-66; and Chen, *Recognition*, 1951.
- ⁴ Early examples of *Nullum crimen sine poena* may be discovered in the Hammurabi Code (ca. 1728-1686 B.C.E.), the Laws of Eshnunna (ca. 2000 B.C.E.), the still-earlier code of Ur-Nammu (ca. 2100 C.E.) and the *Lex Talionis* or law of exact retaliation.
- ⁵ See: Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis Powers, Aug. 8, 1945, 59 Stat. 1544, 82 U.N.T.S. 279 (entered into force for the United States on Sep. 10, 1945). (
- ⁶ See Harvard Research in International Law: Draft Convention on Jurisdiction with Respect to Crime, 29 *Am. J. Int'l L.*, 435, 566 (Supp. 1935)(quoting Coke, C.J. in *King v. Marsh*, 3 Bulstr. 27, 81 E.R. 23 (1615) “a pirate *est hostes humani generis*”).
- ⁷ What is more, the ancient Hebrews viewed the shedding of blood by criminals as an abomination that required not only punishment, but also expiation by a parallel shedding of blood: “You shall not desecrate the land, the land can have no atonement for the bloodshed on it except through the blood of him who shed it.” Numbers, 35:33.
- ⁸ See *Klinghoffer v. S.N.C. Achille Lauro*, 739 F. Supp. 854, 857 (S.D.N.Y., 1990).
- ⁹ See Joel Greenberg, “Israelis Keep Arafat Aides Out of Gaza”, *The New York Times*, Jul. 14, 1994, p.1.
- ¹⁰ On the human rights regime under international law, see especially: Universal Declaration of Human Rights, GA Res. 2170 (III)A, UN Doc. A/810 (1948); International Convention on the Elimination of All Forms of Racial Discrimination, GA Res. 2106 (XX), 20 UN GAOR Supp. (No.14), UN Doc. A/6014 (1966); International Covenant on Economic, Social and Cultural Rights, GA Res. 2200 (XXI), 21 UN GAOR Supp. (No.16) at 49, UN Doc. A/6316 (1967); and International Covenant on Civil and Political Rights, GA Res. 2200 (XXI), 21 UN GAOR Supp. (No. 16) at 52, UN Doc. A/6316 (1967). (
- ¹¹ On the principle of “just means”, see: Hague IV, arts. 22-28 (defining what are unacceptable means of injuring the enemy).
- ¹² The marketplace bombing, directed at murder of primarily Jewish women and children, was widely celebrated throughout the Arab and Islamic world. In a column in Amman al-Maid (Arabic) on Aug. 4, 1997 (p. 12) prominent columnist Fahd al-Rimawi rejoiced: “Hurrah to last Wednesday’s heroic double bombing that ripped through the Jerusalem Mahane Yehuda market. Let us rejoice and applaud the operation mounted by two Palestinian mujahidin with the sweetest of songs and ululations (sic) for having claimed 13 Jewish lives and wounded 150. We greet that act of ingenuity with the sweetest of chants and we bid farewell to our bold martyrs who have lit the night of Jerusalem.
- ¹³ See *The Terrorist Infrastructure*, IINS News Service, 8/4 *Wall Street Journal Interactive Edition*.
- ¹⁴ Under the terms of the Oslo Accords, the Palestinian Authority (PA) is obligated to refrain from incitement against Israel and to take measures to prevent others from engaging in it. In his exchange of letters with Prime Minister Yitzhak Rabin on Sep. 9, 1993, Arafat wrote: “The PLO renounces the use of terrorism and other acts of violence and will assume responsibility over all PLO elements and personnel in order to assure their compliance, prevent violations and discipline violators. The Interim Agreement (Oslo 2) of Sep. 28, 1995 (Article XXII) states that Israel and the PA “shall seek to foster mutual understanding and tolerance and shall accordingly abstain from incitement, including hostile propaganda, against each other...”
- ¹⁵ Id.
- ¹⁶ Regarding the criminal responsibility of the individual Fatah perpetrators of all these terrorist crimes committed under Arafat’s direction, the principle is well-established that orders pursuant to “domestic law” (in these cases, by analogy, Fatah “law”) are no defense to violations of international law. See Vienna Convention on the Law of Treaties, Doc. A/CONF. 39/27, May 23, 1969, reprinted in 8 I.L.M. 679 (1969). (
- ¹⁷ For these terrorist attacks, see: Aryeh Y. Yodfat and Yuval Arnon-Ohanna, *PLO Strategy and Tactics* (NY: St. Martin’s Press, 1981). On the principle of command responsibility, or *respondeat superior*, see: *In re Yamashita*, 327 US 1 (1945); The High Command Case (The Trial of Wilhelm von Leeb) 12 *Law Reports of Trials of War Criminals* 1, 71 (United Nations War Crimes Commission Comp. 1949); See: Parks, “Command Responsibility for War Crimes”, 62 *Mil Law Rev.* 1 (1973); O’Brien, *The Law of War, Command Responsibility and Vietnam*, 60 *GEO L J* 605 (1972); Us Dept Of The Army: Army Subject Schedule No. 27-1 (Geneva Conventions of 1949 and Hague

Convention No. IV of 1907) 10 (1970). The direct individual responsibility of Yasser Arafat for Fatah crimes is unambiguous in view of the London Agreement of Aug. 8, 1945, which denies defendants any right of the act of state defense, a right that would in any event be inadmissible for the leader of a non-state insurgent group.

- ¹⁸ The responsibility to extradite from one criminal jurisdiction to another is deducible from the expectations of *Nullum crimen sine poena*. Existing since antiquity, this responsibility has roots in both natural law (especially Jean Bodin, Hugo Grotius and Emmerich de Vattel) and positive law. See: Christopher L. Blakesley, *Terrorism, Drugs, International Law and the Protection of Human Liberty* (Ardsley-on-Hudson, NY: Transnational Publishers, 1992).
- ¹⁹ For those readers who wish to probe the authoritative inventory of particular offenses that comprise the crime of terrorism, it can be found at the *European Convention on the Suppression of Terrorism*, Done at Strasbourg, Nov. 10, 1976. Entered into force, Aug. 4, 1978. Europ. T.S. No. 90, reprinted in 15 I.L.M. 1272 (1976).
- ²⁰ On the idea of Natural Law, see: Louis René Beres, "International Law, Personhood and the Prevention of Genocide", *Loyola of Los Angeles International and Comparative Law Journal*, Vol. 11, No. 1, 1989, pp. 25-65.
- ²¹ See William Blackstone, *Commentaries on the Laws of England*, adapted by Robert Malcolm Kerr (Boston: Beacon Press, 1962), Book IV, "Of Public Wrongs", p. 62.
- ²² See "Arafat's 'No-Lose' Game", *The Jerusalem Post*, Mar. 14, 1996.
- ²³ Id.
- ²⁴ See Jefferson's "Opinion on the French Treaties", Apr. 28, 1793, in Merrill D. Peterson, ed., *The Political Writings of Thomas Jefferson* (Thomas Jefferson Memorial Foundation, 1993), pp. 113-114.
- ²⁵ Al., p. 115.
- ²⁶ See *The Jerusalem Post*, "A Palestinian State", Sep. 27, 1995, p. 10.
- ²⁷ See *The Charter of Allah: The Platform of the Islamic Resistance Movement (HAMAS)*, tr. by Raphael Israeli, Harry Truman Research Institute, The Hebrew University of Jerusalem, *Israel Affairs*, Vol. 2., No. 1., Autumn 1995, pp. 273-293. Hamas is the acronym for the Islamic Resistance Movement – Harakat Muqawarna Islamiyya – meaning, literally, "enthusiasm", "zeal", "fanaticism".
- ²⁸ Id., p. 287.
- ²⁹ Id., p.288.
- ³⁰ See *Judean Voice*, News service from Israel, Jan. 9, 1996.
- ³¹ Jihad, or holy war, is discussed by Robert S. Wistrich, *Antisemitism: The Longest Hatred* (NY: Pantheon Books, 1991), especially Chapter 16 ("Conspiracies and Holy Wars"). For fundamentalist Muslims, says Wistrich, "...peace with Israel was and still remains nothing less than a poison threatening the life-blood of Islam, a symptom of its profound malaise, weakness and decadence."
- ³² See "Arafat Speaks to the Arabs", *The Caucus Current*, Oct. 1995, p. 16.
- ³³ See *Hebron Today*, From Arutz 7, News Service, Feb. 15, 1996. See also: Avrohom Shmuel Lewin, "Arafat Urges 'Destroy Israel'", *The Jewish Press*, Week of Feb. 9-Feb. 15, 1996, p. 1.
- ³⁴ See, by this author: Louis René Beres, "The Argument for Israeli Nuclear Weapons", *Midstream*, May 1995, pp. 2-6. See also: Louis René Beres, "Power and Survival: Why Israel Needs Nuclear Weapons", *International Journal for the Study of Group Tensions*, Spring 1996.
- ³⁵ See Louis René Beres and Zalman Shoval, "On Demilitarizing a Palestinian Entity and the Golan Heights: An International Law Perspective", *Vanderbilt Journal Of Transnational Law*, Vol. 28, No. 5, Nov. 1995, pp. 959-971. Zalman Shoval is Israel's former Ambassador to the United States .
- ³⁶ For detailed consideration of the Iranian threat to Israel, by this author, see: Louis René Beres, "Israel, Iran and Prospects for Nuclear War in the Middle East", *Strategic Review*, Vol. XXI, No. 2., Spring 1993, pp. 52-60; Louis René Beres, *Israel, Iran and Nuclear War: A Tactical and Legal Assessment*, Survey of Arab Affairs, Jerusalem Center for Public Affairs, Nov. 1993; and Louis René Beres, "The Iranian Threat to Israel: Capabilities and Intentions: Preliminary Sketches for a Strategic Dialectic", *International Journal of Intelligence and Counterintelligence*, Dec. 1995.
- ³⁷ See Louis René Beres, "Israel's Bomb in the Basement: A Revisiting of 'Deliberate Ambiguity' vs. 'Disclosure'", *Israel Affairs*, Vol. 2, No. 1, Autumn 1995, pp. 112-136.
- ³⁸ For earlier writings by this author on the impact of a Palestinian state on Israel's nuclear strategy, see: Louis René Beres, "The Oslo Accords and Israel's Nuclear Strategy", *Jerusalem Letter*, Jerusalem Center for Public Affairs,

Nov. 1995; Louis René Beres, "A Palestinian State and Israel's Nuclear Strategy", *Crossroads: An International Socio-Political Journal*, No. 31, 1991, pp. 97-104; Louis René Beres, "The Question of Palestine and Israel's Nuclear Strategy", *The Political Quarterly*, Vol. 62, No. 4, Oct.-Dec. 1991, pp. 451-460.

³⁹ In an interview with Independent Media Review & Analysis (IMRA) on May 28, 1997, Jerusalem Fatah leader Ahmad Qreia (Abu Ala), Speaker of the Palestinian Legislative Council (PLC), expressed the following: "The last date in the Interim Agreement is May 4, 1999, and both sides agree that the interim period should not exceed that. Since one cannot exceed that day, everything should be finalized by then. Otherwise nothing is to stop us from declaring a Palestinian state. I am confident that the international community will recognize us and support us." See: Aaron Lerner, "We Will Declare State After Interim Period", IMRA, May 28, 1997; imra@netvision.net.il.

⁴⁰ Some pertinent background documents to the Oslo Agreement (Sep. 13, 1993) include: United Nations General Assembly Resolution No. 181(II) of Nov. 29, 1947; United Nations General Assembly Resolution No. 194 (III) of Dec. 11, 1948; United Nations Security Council Resolution No. 242 (1967) of Nov. 22, 1967; Joint US-USSR Working Paper, Fundamental Principles (The Rogers Plan), Oct. 8, 1969; and United Nations Security Council Resolution No. 338 (1973) of Oct. 22, 1973.

⁴¹ This notion of a Palestinian "entity" is an ironic inversion of the term by which most of the Arab world continues to describe the State of Israel. In both cases there is an attempt to redesign realities by linguistic solution.

⁴² Terrorism is a "conglomerate" crime under international law. For current conventions in force on this crime, see: Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents, adopted Dec. 14, 1973, 28 U.S.T. 1975, 1037 U.N.T.S. 167.

⁴³ In this connection, international law imposes unequal obligations on state and non-state parties to agreements. In a concurring statement in the case of *Tel-Oren v. Libyan Arab Republic*, a 1981 civil suit in US federal courts (where plaintiffs were Israeli survivors and representatives of persons murdered in a terrorist bus attack in Israel in 1978), Circuit Judge Harry T. Edwards stated: "I do not believe the law of nations imposes the same responsibility or liability on non-state actors, such as the PLO, as it does on states and persons acting under color of state law." Regarding the validity of Oslo under international law, this statement reveals that the Palestinian Authority (PA) that is the non-state party to Oslo I and II cannot be held jurisprudentially to the same standards of accountability as the State of Israel – a point to keep in mind when assessing the prospective viability of Palestinian demilitarization.

⁴⁴ For the requirements of statehood under international law, see Convention on the Rights and Duties of States, Dec. 26, 1933, 49 Stat. 3097, 165 L.N.T.S. 19.

⁴⁵ See Convention on the Rights and Duties of States, supra, at 20. See also *Klinghoffer v. S.N.C. Achille Lauro*, 739 F. Supp. 854 (S.D.N.Y. 1990).

⁴⁶ Technically, an agreement on demilitarization under international law must always be "between states". Hence, any agreement on demilitarization that would include a non-state party would be *prima facie null and void*. See, for example, the definition of "demilitarized zone" in the *International Military and Defense Encyclopedia*: "Demilitarized zone is a term used in international law to designate an area in which, according to a formal treaty or an informal agreement between states, the maintenance of military forces and installations is prohibited." See article by Karl Liko, in Trevor N. Dupuy, ed., *International Military and Defense Encyclopedia*, Vol.2., Washington, DC: Brassey's, 1993, p. 736.

⁴⁷ Defined literally as "so long as conditions remain the same", the doctrine of *rebus sic stantibus* has a long history. In the traditional view, the obligation of a treaty terminates when a change occurs in those circumstances that exist at the effective date of the agreement and whose continuance forms a tacit condition of the ongoing validity of the treaty. The function of the doctrine, therefore, is to execute the shared intentions of the errors of fact. *Rebus sic stantibus* becomes operative when there is a change in the circumstances that formed the cause, motive or rationale of consent. For an informed scholarly treatment of this doctrine, see: Arie E. David, *The Strategy of Treaty Termination* (New Haven: Yale University Press, 1975), pp. 3-55.

⁴⁸ See Vienna Convention, supra, at art. 53. Even a treaty is subordinate to peremptory expectations: "A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law." (Id.)

⁴⁹ This right extends to both the customary right of anticipatory self-defense and to the codified right of post-attack self-defense. Regarding the right of anticipatory self-defense, states do not always have to wait until after an attack has been absorbed before embarking upon self-defense. Rather, where the threat is sufficiently imminent in point of time, they can choose to strike first, providing, of course, that the strike is within the parameters of discrimination, proportionality and military necessity. Regarding the codified right of post-attack self defense, see: *Charter of the*

United Nations, Done at San Francisco, Jun. 26, 1945. Entered into force, Oct. 24, 1945; for the United States, Oct. 24, 1945. 59 Stat. 1031, T.S. No.993, 3 Bevans 1153, 1976 Y.B.U.N. 1043; at art. 51.

- ⁵⁰ A theory, following Hegelian ideas, is that any treaty obligation may be terminated unilaterally following changes in conditions that make performance of the treaty injurious to fundamental rights, especially the rights of existence, self-preservation and independence. These rights have been summarized in law as “rights of necessity”. See David, *supra*, p.19; and Harvard Research, “Law of Treaties”, 29 *American Journal of International Law*, 666, 1100 (Supp. 1935).
- ⁵¹ See Jefferson’s “Opinion on the French Treaties” (Apr. 28,1793) in Merrill D. Peterson, ed., *The Political Writings of Thomas Jefferson* (Thomas Jefferson Memorial Foundation, 1993), pp. 113-114. Later, Jefferson concludes: “As every treaty ought to be made by a sufficient power, a treaty pernicious to the state is null, and not at all obligatory; no governor of a nation having power to engage things capable of destroying the state, for the safety of which the empire is trusted to him. (Id., p.115).
- ⁵² The Additional Protocol to the Geneva Conventions of Aug. 12, 1949 and relating to the protection of victims of international armed conflicts (Protocol I) contains detailed provisions on demilitarized zones.
- ⁵³ After World War I, Germany, as a consequence of the Versailles Treaty, had to demilitarize the Rhineland. Permanent demilitarized zones have been created in the Straits of Magellan (by the border treaty of 1881 between Argentina and Chile); in the Aaland Islands belonging to Finland (according to the Aaland Islands Convention of 1921 between Finland, Sweden and other European powers); and in Norway’s Svalbard Archipelago and Bear Island (by terms of the Svalbard (Spitsbergen) Treaty of 1920 between Norway, the United States and the former Soviet Union).
- ⁵⁴ Article 38(1)(b) of the Statute of the International Court of Justice describes international custom as “evidence of a general practice accepted as law”. Statute of the International Court of Justice, July 26, 1945, art. 38(1)(b), 59 Stat. 1055, 1060. Norms of customary international law bind all states regardless of whether or not a state has ratified pertinent codifying instruments or conventions.
- ⁵⁵ These authoritative bases of international law are drawn, of course, from Article 38 of the Statute of the International Court of Justice. See Statute, Done at San Francisco, Jun. 26, 1945. Entered into force, Oct. 24, 1945; for the United States, Oct. 24, 1945. 59 Stat. 1031, T.S. No.993, 3 Bevans 1153, 1976 Y.B.U.N. 1052.
- ⁵⁶ Under the Supremacy Clause of the United States Constitution, international law forms part of the law of the United States. (US Constitution, art. VI). This incorporation is reaffirmed and broadened by various US Supreme Court decisions. See: *The Paquete Habana*, 175 US 677, 700 (1900). See also: *Te-Oren v. Libyan Arab Republic*, 726 F. 2d, 774, 781, 788 (D.C. Cir. 1984.).
- ⁵⁷ The term “law enforcement” applies here because of the persistently Westphalian (decentralized) nature of international law and its derivation from underlying natural law. According to Blackstone, the Law of Nations (International Law) is deducible from natural law and is therefore binding upon all individuals and states. Each state is expected “to aid and enforce the law of nations, as part of the common law; by inflicting an adequate punishment upon offenses against that universal law...”. See: 2 William Blackstone, *Commentaries on the Laws of England*, Book 4, “Of Public Wrongs”.
- ⁵⁸ The documentation of PLO violations of Oslo Accords is now extensive and exhaustive. An especially egregious violation concerns persistent PLO/PA refusal to comply with Israeli Government request for transfer of terror suspects (many of whom are now serving in the Palestinian Security Forces). The Interim Agreement (Oslo II) states that Israel may request from the Palestinian Authority (PA) the transfer (“extradition”) of any individual located in the autonomous areas who is suspected of an offense that falls under Israeli criminal jurisdiction (Annex IV, Art. 2., Par. 7b).
- ⁵⁹ A related demilitarization issue concerns disposition of the Golan. Israel could decide to return the strategically important heights on condition of Syrian demilitarization. Here the legal meaning of “demilitarization” would be more traditional than in its use regarding concessions by a still-nonexistent state (Palestine), but the consequences of a Golan demilitarization could be no less injurious to Israel.
- ⁶⁰ See *Resolution on the Definition of Aggression*, G.A. Res. 3314, UN GAOR, 29th Sess., Supp. No.31 at 142, UN Doc. A/9631 1975) reprinted in 13 I.L.M. 710 (1974).
- ⁶¹ Regarding the one-sided acceptance of a “Two State Solution”, the Palestinian Minister of Justice, Freh Abu Medejn – in a May 1997 televised statement – spoke in support of killing Israeli Arabs who sell land to Jews. What this reveals, *prima facie*, is that the PLO/PA openly considers Israel as part of “Palestine”.

- ⁶² Conventional wisdom often maintains that PLO/PA opposes Hamas, and that the two organizations are altogether separate and discrete. This “wisdom” is contradicted by available evidence. According to the Sep. 1995 PLO – Hamas Understanding, Hamas commits itself to refrain from terrorism only in PLO/PA controlled areas. Arafat, in turn, recognizes Hamas, Islamic Jihad, the PFLP and DFLP as legitimate, reaffirming the predominance of inter-Palestinian solidarity over PLO/PA-Israel relations. See: Yoram Ettinger, “The PLO-Hamas Connection”, *The Jewish Political Chronicle*, Mar./Apr. 1996, p. 17.
- ⁶³ The PLO is obligated under Oslo to cancel the articles in its Covenant calling for the annihilation of Israel. Yet, at its meeting on April 24, 1996, the only resolutions passed were about “amending the National Covenant by cancelling the articles that contradict the exchange of letters between the PLO and the Israeli Government on 9 and 10 September 1993”. What the resolutions accomplished is as follows: “The Palestinian National Council charges the legal committee with redrafting the National Covenant and bringing the new text to the central council at its first meeting.” No redrafting has ever taken place, and no text delivered to the central council. See: Yehoshua Porat, “The Covenant Was Not Canceled”, *Ma’ariv*, May 7, 1997, B7.
- ⁶⁴ War and genocide need not be mutually exclusive under international law. Rather, war might well be the means whereby genocide is operationalized. According to Articles II and III of the Genocide Convention, which entered into force on Jan. 12, 1951, genocide includes any of several acts “committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such...”. (See: Convention on the Prevention and Punishment of the Crime of Genocide, Done at New York, Dec. 9, 1948. Entered into force, Jan. 12, 1951. 78 U.N.T.S. 277.) This means that where Israel is recognized as the institutionalized expression of the Jewish People (an expression that includes national, ethnical, racial and religious components), acts of war intended to destroy the Jewish state could assuredly be genocidal.
- ⁶⁵ Poem read on the Voice of Palestine, official radio station of the Palestinian Authority, on May 22, 1997, during the morning news program “A New Day”. It was read as part of a series of “Songs of the Homeland”. The same poem was read on the Voice of Palestine during the Sep. 1996 riots, in which 85 Israelis and Palestinian Arabs were killed.
- ⁶⁶ PA Chairman Yasser Arafat, addressing a crowd in Tulkarem; Voice of Palestine, Apr. 28, 1997.
- ⁶⁷ PA Minister for Jerusalem Affairs Feisal Husseini; in a newspaper interview (*Al-Ittihad*) on May 18, 1997.
- ⁶⁸ Imad Mazen Izz al-Din, the PA’s Political Instructor for National Guidance (*Al-Hayat Al-Jadeeda*, Apr. 30, 1997).
- ⁶⁹ PA Planning Minister Nabil Shaath, at a forum in Khan Yunis (*Al-Hayat Al-Jadeeda*, Apr. 30, 1997).
- ⁷⁰ PA Mufti Ikrama Sabri in an interview with *The New York Times*, May 18, 1997.
- ⁷¹ Yusuf Abu Sneineh, preacher at Al-Aqsa Mosque, Friday prayer sermon; Voice of Palestine, May 23, 1997.
- ⁷² From statement issued by the PA cabinet in Nablus on May 16, 1997 (Voice of Palestine, May 17, 1997). All of the above quotations are also cited by a May 29, 1997 communication from the Israel Government Press Office, “Senior Palestinian Officials Continue to Incite Against Israel in Violation of Oslo”, imra@netvision.net.il .
- ⁷³ Several years ago, at a conference held at the BESA Center for Strategic Studies, I discussed the Iranian threat with Aharon Yariv. On that occasion, after a panel which he chaired – and on which I presented a paper – General Yariv asked me to walk with him to his car. Familiar with my writings on Iranian nuclearization (he had invited me to speak several times at TAU’s Jaffee Center), the late former Chief of A’mal remarked: “René, you may be right. I smell fire!”
- ⁷⁴ The author makes this statement based upon an extensive acquaintance with Israel’s military, political and intelligence communities. Professor Beres has been an invited lecturer at the National Security College (IDF); the Jaffee Center for Strategic Studies; the BESA Center for Strategic Studies; the Dayan Forum; the Likud Chamber, the Likud Security Group, etc.
- ⁷⁵ This is not meant to suggest that Iran is the only state now posing Israel with the threat of existential harms. During the summer of 1997 increasing evidence has surfaced of an Islamic “Eastern Front” against Israel, especially with steadily improving relations between Iran, Iraq, Syria, and the Palestinian Authority. Some developments, cited by *The Jerusalem Post* in Jul. 1997, include secret meetings between Yasser Arafat and Iraqi officials; the joint statement issued by Syria and Iran on Aug. 1, 1997 (“Iran and Syria call for an end to Israeli occupation of all Arab lands, including the Golan Heights, southern Lebanon, and Palestinian territories, and support the struggle by Israel...”); the report in Iran’s IBRAR that “Iranian-Syrian and Iranian-Iraqi cooperation can be the basis for a larger system which could include coordination with Sudan, Libya, and other nations.”

- ⁷⁶ In the aftermath of the Gulf War, this assumption is vastly more problematic regarding safety from “minor” conventional attacks. Because an enemy state is unlikely to calculate that a minor attack upon Israel will elicit a nuclear response, nuclear deterrence, as we will see, can effectively serve the Jewish state, to a greater or lesser extent, only with reference to more substantial conventional or unconventional (chemical/biological/nuclear) harms. This will be discussed more completely below.
- ⁷⁷ Early in October 1991, Israel announced its agreement to formally join the Missile Technology Control Regime (MTCR). Conceived in April 1987, MTCR seeks to control the transfer of highly-sensitive missile technology from industrialized states to the Third World.
- ⁷⁸ For insightful critiques of deterrence theory in general, see: Richard Ned Lebow, *Between War and Peace: The Nature of International Crisis* (Baltimore: The Johns Hopkins University Press, 1981); Robert Jervis, Richard Ned Lebow, and Janice Gross Stein, eds., *Psychology and Deterrence* (Baltimore: The Johns Hopkins University Press, 1985); Richard Ned Lebow, “Deterrence: A Political and Psychological Critique”, in Paul C. Stern, Robert Axelrod, Robert Jervis, and Roy Radner, eds.
- ⁷⁹ See, for example, Shlomo Aronson, *The Politics and Strategy of Nuclear Weapons in the Middle East: Opacity, Theory and Reality, 1960-1991* (Albany: State Univ. of New York Press, 1992); Frank Barnaby, *The Invisible Bomb: The Nuclear Arms Race in the Middle East* (London: I.B. Tauris, 1989); McGeorge Bundy, *Danger and Survival: Choices About the Bomb in the First Fifty Years* (New York: Random House, 1988); Yair Evron, *Israel's Nuclear Dilemma* (Tel Aviv: Hakibbutz Hameuchad, 1987); Pierre Pean, *Les Deux Bombes* (Paris: Arthem Fayard, 1982); Taysir Nashif, *Nuclear Warfare in the Middle East: Dimensions and Responsibilities* (Princeton NJ: The Kingston Press, 1984).
- ⁸⁰ Concerning disclosure, from 1965 to the present, Israel has adopted the cautious formula: “Israel does not have nuclear weapons and will not be the first to introduce them into the region.” Presumably, however, this formula is not meant to suggest that Israel will sit idly by if its enemies “go nuclear”. In this connection, Yigal Allon’s comment is instructive: “Israel will not be the first to introduce nuclear weapons into the Middle East, but neither will it be second.” For a careful and comprehensive consideration of the entire disclosure issue, see this writer’s *Security or Armageddon: Israel’s Nuclear Strategy* (Lexington MA: Lexington Books, 1986). Shimon Peres seems to have undermined Israel’s long-standing commitment to deliberate ambiguity only weeks after he succeeded Rabin. In a meeting with Israeli editors on Dec. 22, 1995, Peres was asked about prospective changes in Israel’s nuclear policy. According to *The Jerusalem Post* reporter Steve Rodan, Peres “replied without hesitation”. “Yes. Give me peace and we’ll give up the atom. That’s the whole story. If there’s regional peace, I think we can rid the Middle East of the nuclear threat.” See: Steve Rodan, “Clear and Present Option”, *The Jerusalem Post*, Jun. 29, 1996, p. 18.
- ⁸¹ In keeping with standard definitions of rational behavior in world politics, we assume a unitary, value-maximizing decision-maker with one set of specified goals, one set of perceived options and a single estimate of the consequences that ensue from each alternative. Here, the decision-maker evaluates alternatives in the strategic environment on the basis of preferences among them; operates according to a preference-ordering that is consistent and transitive; and always chooses the preferred alternative. One problem with basing nuclear deterrence postures upon an assumption of rationality is that this assumption concerns only preference-maximizing intentions. It follows that a state enemy of Israel might indeed meet all of the stated requirements of rational decision-making, but commit errors in information that undermine deterrence logic.
- ⁸² Such a lack of willingness might stem from an asymmetry between the provocation (e.g., a “minor” Gulf War-type conventional attack) and a nuclear response. It might also stem from counter-deterrent threats made by the attacker to unleash substantial forms of counterretaliation. In essence, this second explanation would display the dynamic whereby the deterrent (Israel) is deterred.
- ⁸³ The “flip side” of this calculation is the effect of Israel’s own active defense system. At present, Jerusalem is developing the (Arrow) anti-tactical ballistic missile (ATBM) with American cooperation. Should a would-be attacker believe this system would display an appropriately high degree of effectiveness, once it were actually deployed in about five or six years, such belief could discourage an attack decision against Israel by lowering the attacker’s expected benefits.
- ⁸⁴ There now exists a considerable literature dealing authoritatively with the expected consequences of nuclear warfare. For works by this author, see: Louis René Beres, *Apocalypse: Nuclear Catastrophe in World Politics* (Chicago: The University of Chicago Press, 1980); Louis René Beres, *Mimicking Sisyphus: America’s Countervailing Nuclear Strategy* (Lexington MA: Lexington Books, 1983); Louis René Beres, *Reason and*

Realpolitik: US Foreign Policy and World Order (Lexington Books, 1984); and Louis René Beres, *Security Or Armageddon: Israel's Nuclear Strategy* (Lexington Books, 1986).

- ⁸⁵ Here an interesting and crucial question arises: To what extent, if any, would Israel's removal of the bomb from the "basement" affect its inclination to abandon nuclear deterrence in favor of preemption? Moreover, an antecedent question asks the following: To what extent, if any, might transformation of the territories into an independent "Palestine" encourage such removal? For the moment, Israel – still buffered from a hot eastern border by Judea/Samaria – can possibly better afford to keep its bomb in the basement. If, however, this territory were to become Palestine, Israel would likely feel compelled to move from "deliberate ambiguity" to disclosure, a shift that could substantially improve the Jewish state's nuclear deterrence posture, but could also enlarge the chances of a nuclear war should this posture fail.
- ⁸⁶ On the concept of nuclear "opacity", see: Shlomo Aronson, *The Politics and Strategy of Nuclear Weapons in the Middle East: Opacity, Theory and Reality, 1960-1991, An Israeli Perspective* (Albany: State University of New York Press, 1992).
- ⁸⁷ The particular strategic dangers to Israel from Iran were recognized by Prime Minister Netanyahu in his Jul. 10, 1996 address to a Joint Session of the US Congress: "The most dangerous of these (regional dictatorships) is Iran, that has wed a cruel despotism to a fanatic militancy. If this regime, or its despotic neighbor Iraq, were to acquire nuclear weapons, this could presage catastrophic consequences, not only for my country, and not only for the Middle East, but for all mankind. I believe the international community must reinvigorate its efforts to isolate these regimes, and prevent them from acquiring atomic power."
- ⁸⁸ For the moment, Israeli nuclear forces could surely penetrate the active defenses of any enemy attacker after the Jewish state had absorbed a first-strike. This could change, in the future, if there is substantial enemy progress on appropriate forms of anti-tactical ballistic missile (ATBM) defense and/or an enemy state or states is allowed to achieve a devastating first-strike capability, i.e., one that effectively precludes an Israeli reprisal. This second prospect is itself dependent, in part, upon Israel's developing ATBM capabilities and upon Israel's configuration of nuclear retaliatory forces. There is, quite plausibly, a synergistic relationship between Israeli/Iranian/Arab ATBM developments, one that constantly increases arms race momentum, both defensive and offensive. From the standpoint of nuclear deterrence, this interactive relation suggests perpetual instability and yet another reason why Israeli security must be founded upon more than threat system dynamics.
- ⁸⁹ Region-wide commitments to active defense measures would heat up the area arms race, occasioning all sides to accelerate their offensive weapons capabilities. Theoretically, a region-wide ATBM agreement could prevent or slow down such offensive developments (by initiating a moratorium or outright cessation of active defense measures), but – as a practical matter – it would stand no chance of success. Recognizing uncertainty and distrust as givens in the Middle East strategic equations, Jerusalem has little choice but to continue full-speed with the Arrow Project and with its ongoing search for hard-target kill capabilities.
- ⁹⁰ On such low-yield nuclear weapons, see the excellent article by Thomas W. Dowler and Joseph S. Howard II, "Countering the Threat of the Well-Armed Tyrant: A Modest Proposal for Small Nuclear Weapons", *Strategic Review*, Vol. XIX, No. 4., Fall 1991, pp. 34-40. Although the authors are concerned with US nuclear strategy in the new security environment, I have adapted their thesis to Israeli security needs.
- ⁹¹ But an enemy state could remain fully rational while pretending irrationality. This "rationality of irrationality" strategy was explored interestingly by Herman Kahn many years ago, who described the "Chicken Game" played by teenaged automobile drivers. Here, the two competing cars drive toward each other at high speed along a deserted stretch of highway. The object of the game is to have the opposing driver "chicken out" first. Of course, this objective can be achieved only if a collision is successfully avoided. The Chicken Game may display the "rationality of pretended irrationality" concept to the extent that one or both players tries to win by feigning self-destructive behavior, thereby prodding the other player to be "chicken". An example, first offered by Herman Kahn, would be one wherein a player pretends drunkenness and/or throws a spare steering wheel out of the window during the contest.
- ⁹² Regarding such attacks, outgoing Israel Air Force Commander Maj. Gen. Herzl Bodinger recently warned: "The most significant development in our region has been the obtaining of ground-to-ground missiles by Arab countries, including their ability to produce such missiles themselves", he said at a late June 1996 news conference marking his retirement. "For the first time since 1948, Arab countries have the ability to hit any point within Israel. If there were to be a total war against Israel, we would be hit by hundreds of ground-to-ground missiles." See: "Deputy

Chief of Staff: IDF May Not be Prepared for Conventional War with Syria”, *The Jerusalem Post*, International Edition, Jun. 29, 1996, p. 32.

- ⁹³ The requirement of a fully perfect interception capability derives from the understanding that a single incoming nuclear warhead could produce unacceptable damage. As such interception capability is essentially impossible, at least for the foreseeable future, Israel has little choice but to maintain and prepare tactically for the preemption option.
- ⁹⁴ This imperative to prepare for preemption seems to be implicit in Prime Minister Netanyahu’s aforementioned affirmation, before the US Congress (*supra*) that “...the international community must reinvigorate its efforts to isolate these regimes, and prevent them for acquiring atomic power.”
- ⁹⁵ It is worth noting that such preparation would likely be in the interest of a more peaceful world order. This is the case because appropriate nonnuclear preemptions would almost certainly reduce the risk of regional nuclear warfare. This follows from the assumption that if Israel should wait for its enemies to strike first, such strikes might be nuclear, or – even if they were confined to conventional weapons – Israel would have no choice but to resort to nuclear retaliation.
- ⁹⁶ Here it is important, from the standpoint of international law, to distinguish preemptive attacks from preventive ones. Preemption is a military strategy of striking an enemy first, in the expectation that the only alternative is to be struck first oneself. A preemptive attack is launched by a state that believes enemy forces are about to attack. A preventive attack, however, is launched not out of concern for imminent hostilities, but for fear of a longer-term deterioration in the pertinent military balance. Hence, in a preemptive attack, the length of time by which the enemy’s action is anticipated is very short, while in a preventive strike the interval is considerably longer. A problem for Israel, in this regard, is not only the practical difficulty, of determining imminence, but also the fact that delaying a defensive strike until imminence is plausible could be fatal.
- ⁹⁷ One possibility here would be to include an element of “regime-targeting”, i.e., announcing a strategy to undermine an enemy state’s capacity to wage war by threatening to smash its leadership as well as by threatening to destroy its hard military assets. Regime-targeting, however, need not serve Israel exclusively as a component of deterrence. It could also serve Jerusalem as part of a plausible preemption strategy. For example, should Israeli planners conclude that deterrence can never succeed and that preemptive destruction of pertinent enemy hard targets is tactically infeasible, annihilating enemy leadership could prove to be the only viable option. For an excellent article on regime-targeting, see: David Rodman, “Regime-Targeting: A Strategy for Israel”, *Israel Affairs*, Vol. 2, No. 1, Autumn 1995, pp. 153-167.
- ⁹⁸ Regarding such vulnerability, should Israel refrain from striking first until enemy states had acquired nuclear weapons, these new nuclear powers could implement protective measures that would pose additional hazards to the Jewish state. Designed to guard against preemption, either by Israel or by other regional enemies, these measures could involve the attachment of “hair trigger” launch mechanisms to nuclear weapon systems, and/or the adoption of “launch on warning” policies, possibly coupled with predelegations of launch authority. This means, in essence, that Israel would be increasingly endangered, *inter alia* by steps taken by its nuclear enemies to prevent preemption. Optimally, Israel would do everything possible to prevent such steps, especially because of the expanded risks of accidental or unauthorized attacks against its armaments and populations. Yet, if such steps become a fait accompli, Jerusalem might still calculate, correctly, that a preemptive strike would be both legal and cost-effective. This is because the expected enemy retaliation, however damaging, might still appear more tolerable than the expected consequences of enemy first-strikes – strikes most likely occasioned by the failure of “anti-preemption” steps.
- ⁹⁹ See, on this source of immobilization, Ayatollah Khomeini, “Program for the Establishment of an Islamic Government”, 1970, in *Islam and Revolution: Writings and Declarations of Imam Khomeini*, Berkeley, 1981; see also Robert S. Wistrich, *Antisemitism: The Longest Hatred*, NY: Pantheon Books, 1991, p. 219. Perhaps the best distillation of Islamic thought concerning Israel and rationality foundations of nuclear deterrence is the following statement about Jews: “The race (sic.) is corrupt at the root, full of duplicity, and the Muslims have everything to lose in seeking to deal with them; they must be exterminated.” (See Gilles Kepel, *The Prophet and Pharaoh: Muslim Extremism in Egypt*, London: 1985, p. 112).
- ¹⁰⁰ Irrationality, it must be understood, does not mean “crazy”. It means simply a departure from specified rules (defined earlier herein). Indeed, Israeli nuclear deterrence could also be immobilized by Iranian behavior that is entirely rational but reflective of what would ordinarily be judged a fanatical preference ordering. For example, Iran could conceivably act upon a preference ordering that values the destruction of the Jewish state and the fulfillment of presumed Islamic expectations more highly than any other value or combination of values.

- ¹⁰¹ From Teheran's point of view, any sort of peace settlement with Israel is seen as an intolerable affront to Islam and as a negation of Iran's Islamic identity. As for territorial compromise over "Palestine", this, too, is out of the question. Because a Muslim land in the heart of dar-al-Islam (the abode of Islam) can only be ruled properly by a Muslim authority, Israel's "usurpation" of any Arab land must be met with jihad or holy war. Described by the current Islamic leadership in Teheran as a "cancerous growth in the Middle East", Israel is approached as a malignancy not because of its particular policies, but because it exists.
- ¹⁰² In this connection, the comments by Efraim Karsh and Martin Navias are instructive: "The alleged linkage between Israel's nuclear programme and similar programmes in the region, let alone outside the Middle East, is a false one. So is the notion that the unilateral dismantling of Israel's nuclear arsenal will lead to either peace or general disarmament in the Middle East. Quite the reverse in fact: it is Israel's perceived possession of a substantial nuclear arsenal that, more than anything else, has underscored the Arabs' inability to destroy the Jewish state and has consequently driven them to the political path; should Israel be deprived of this capability, the foundations of the present peace process will be undermined." See: "Israeli Nuclear Weapons and Middle East Peace", *Israel Affairs*, Vol. 2, No. 1, Autumn 1995, p. 76.
- ¹⁰³ Although it cannot be ruled out that an Israeli non-nuclear preemption might still lead to nuclear exchanges (this would depend, in part, on the effectiveness and breadth of Israeli targeting, the surviving number of enemy nuclear weapons and the willingness of enemy leaders to risk Israeli nuclear counter-retaliations), such exchanges appear more likely if Syria and/or Iran are allowed to deploy ever-greater numbers of unconventional weapons without interference. Should such deployment ever take place, Israel could even confront a rationally-irresistible incentive to undertake nuclear preemption. In the very worst-case scenario for Jerusalem, where nuclear deterrence had failed to protect Israel, and where the Jewish state had undertaken nuclear preemption without success (i.e., without destroying the essential number of enemy missiles), survival of the Third Temple would rest upon active defense. Here, Israel would likely benefit from an anti-tactical ballistic missile (ATBM) carrying a "mininuke" warhead of approximately 100 ton yield. Designated to destroy incoming warheads in flight, a small nuclear weapon fired by Israel could provide the needed defensive margin.
- ¹⁰⁴ We may recall here Pufendorf's argument in *On The Duty of Man and Citizen According to Natural Law*: ... where it is quite clear that the other is already planning an attack upon me, even though he has not yet fully revealed his intentions, it will be permitted at once to begin forcible self-defense, when admonished in a friendly spirit, he may put off his hostile temper; or if such admonition be likely to injure our cause. Hence, he is to be regarded as the aggressor, who first conceived the wish to injure, and prepared himself to carry it out. But the excuse of self-defense will be his, who by quickness shall overpower his slower assailant. And for defense, it is not required that one receive the first blow, or merely avoid and parry those aimed at him." See Samuel Pufendorf, *On the Duty of Man and Citizen According to Natural Law*, Vol. 11, tr. by Frank Gardner Moore, NY: Oceana Publications, Inc., 1964, p. 32.
- ¹⁰⁵ For scholarly elucidation by this author of the concept of anticipatory self defense under international law, with special reference to Israel, see: Louis René Beres and (COL./IDF/Res.) Yoash Tsiddon Chatto, "Reconsidering Israel's Destruction of Iraq's Osiraq Nuclear Reactor", *Temple International and Comparative Law Journal*, Vol. 9., No. 2., 1995, pp. 437-449; Louis René Beres, "Preserving the Third Temple: Israel's Right of Anticipatory Self-Defense Under International Law", *Vanderbilt Journal of Transnational Law*, Vol.26, No.1., April 1993, pp. 111-148.
- ¹⁰⁶ The essential components of such a multilayered approach would include space-based surveillance, boost-phase intercept, wide-area coverage, and terminal point defense systems. Sea-based systems, primarily because of their mobility/deployability, could provide more-or-less effective wide-area ballistic missile defense (BMD) coverage.
- ¹⁰⁷ For an informed and comprehensive consideration of reactor attack effects, see: Bennett Ramberg, *Destruction Of Nuclear Energy Facilities In War* (Lexington MA: Lexington Books, 1980); and Bennett Ramberg, "Attacks on Nuclear Reactors: The Implications of Israel's Strike on Osiraq", *Political Science Quarterly*, Winter 1982-83; pp. 653-669.
- ¹⁰⁸ See "Deputy Chief of Staff: IDF May Not Be Prepared for Conventional War with Syria", *The Jerusalem Post*, International Edition, Jun. 29, 1996, p. 32.
- ¹⁰⁹ See: Gerald M. Steinberg, "Israel, Egypt and Nuclear Policy", *Jerusalem Letter/Viewpoints*, Jerusalem Center for Public Affairs, Jun. 15, 1995, p. 5.
- ¹¹⁰ See: *Haaretz*, Apr. 22, 1996.

¹¹¹ Supra, p. 5.

¹¹² An expression of such foolishness, of course, is the subject of this article: the so-called “Peace Process” codified by the Oslo Accords. See, for more on this issue: Louis René Beres, “The ‘Peace Process’ and Israel’s Nuclear Strategy”, *Strategic Review*, Winter 1995, pp. 35-47; and Louis René Beres, “The Oslo Accords and Israel’s Nuclear Strategy”, *The Georgetown Compass*, Vol. V, No. 1., Winter 1995/1996, pp. 74-81.

¹¹³ From letter of transmittal by Dr. Philip Handler, President of the NAS, which is contained at the beginning of the Report, *Long Term Worldwide Effects of Multiple Nuclear Weapons Detonations*, National Academy of Sciences, Washington, DC, 1975.

¹¹⁴ See *Worldwide Effects Of Nuclear War...Some Perspectives*, A Report of the US Arms Control and Disarmament Agency, not dated, but produced after the 1975 NAS report, pp. 23-24.

¹¹⁵ Here it must be noted that the Israeli strategic dialectician must learn to recognize the overwhelming advantages of private as opposed to collective thought. Let him/her be reminded of Aristotle’s view: “Deception occurs to a greater extent when we are investigating with others than by ourselves, for an investigation with someone else is carried on quite as much by means of the thing itself.” Understood in terms of Israeli strategic planning, this suggests some serious limitations to “teamwork”, “group projects”, “centers for strategic studies”, “expert collaboration”, etc. It is not that these forms of collective investigation are per se inappropriate, but that they must be tempered by very sober private thinking.

¹¹⁶ See Tom Stonier, *Nuclear Disaster* (NY: Meridian, 1964), p. 54.

¹¹⁷ See Stonier, supra, p. 112.

¹¹⁸ Ibid, p. 135.

¹¹⁹ See p. 1228.

¹²⁰ See *Worldwide Effects of Nuclear War...Some Perspectives*, A Report of the US Arms Control and Disarmament Agency, p. 7.

¹²¹ Since World War II, aggression has typically been defined as a military attack, not justified by international law, directed against the territory of another state. The question of defining aggression first acquired particular significance with the Draft Treaty of Mutual Assistance of 1923 (see Report of the Permanent Advisory Commission of the League of Nations, LNO 7, Spec. Supp. No.16, 1923). A year later, the Geneva Protocol of 1924 provided that any state which failed to comply with the obligations to employ procedures of peaceful settlement in the Protocol or the Covenant was an aggressor. By a resolution of Nov. 17, 1950, the UN General Assembly decided to refer a proposal of the USSR concerning the definition of aggression to the International Law Commission. (See Resolution 378B, V, Soviet Proposal; Off. Recs. Gen. Assbly., 5th Sess., Annexes, agenda item 72, p. 4; A/C 1/608). An authoritative definition of aggression was adopted without a vote by the UN General Assembly as Resolution 3314 (XXIX) on Dec. 14, 1974. Article I is based on UN Charter Article 2(4), enjoining members to refrain from “the threat or use of force against the territorial integrity or political independence of any state... It also emerges in the definition that the first use of armed force represents -“prima facie” evidence of unlawful conduct, but that “other relevant circumstances” may also be taken into account. The requirement that the first use of force, to qualify as aggression, must be “in contravention of the Charter”, clarifies that there may exist some first use of force that is entirely lawful or even law-enforcing. It follows, inter alia, that any use of force, to qualify as aggression, must be carried out to achieve a prohibited objective, i.e., that *animus aggressionis* is an essential element of the offense.

¹²² According to former Secretary of Defense Les Aspin: “We have a policy that has been consistent from the very beginning, and that is...nuclear weapons in the hands of North Korea is not acceptable.”

¹²³ See: Robert Linhard, “Counterproliferation Strategies”, Appendix A (briefing charts), in *Counterproliferation: Deterring Emerging Nuclear Actors*, Compendium of Proceedings of the Strategic Options Assessments Conference, US Strategic Command, Offutt AFB, Nebraska, Jul. 7-8, 1993; sponsored by the Defense Nuclear Agency (Arlington VA: Strategic Planning International Inc. 1993).

¹²⁴ The Samson Option refers to an Israeli nuclear strategy based upon the threat of overwhelming nuclear retaliation for an enemy aggression that threatens national annihilation. The point of the Samson Option is not to communicate the availability of a graduated Israeli nuclear deterrent or an Israeli warfighting potential, but rather the “promise” of a massive countervalue (countercity) reprisal. Hence, the Samson Option per se is unlikely to deter any aggressions short of altogether massive first strike attacks. More than anything else, its overriding rationale is to say to potential

attackers: “We may have to die, but we won’t die alone.” For this reason, the Samson Option can serve Israel far better as an essential adjunct to deterrence and preemption options than as a centerpiece of nuclear security policy. For more on the Samson Option by this author, see: Louis René Beres, “Israel and Samson: Some Tenuously Biblical Reflections on Strategy”, *Jerusalem Letter/Viewpoints*, Feb. 15, 1996, Jerusalem: Jerusalem Center for Public Affairs, 6pp.

¹²⁵ See: Louis René Beres and (AMB.) Zalman Shoval, “On Demilitarizing a Palestinian ‘Entity’ and the Golan Heights: An International Law Perspective”, *Vanderbilt Journal of Transnational Law*, Vol. 28, No. 5, Nov. 1995, pp. 959-971.

¹²⁶ In my aforementioned private communication with the prominent IDF (Res.) Major-General, he recalls a story during Israel’s pre-state days: “At the final stages of a Hagana NCO course, one of the outside VIP’s who visited the future squad-commanders volunteered to present a tactical problem: ‘You are moving with your ten men squad and someone opens fire upon you, from the direction of your movement. What do you do?’ ‘Well, we stand still and I deploy three men to face the enemy on my front.’ ‘Fine. But now someone opens fire from your left side. What do you do?’ ‘I deploy another team of three to my left, facing the new enemy.’ ‘Fine again. Now you also face fire on your right. What do you do?’ ‘Well, I deploy my last team of three to face the new enemy.’ ‘Well, here comes my last problem. You also face fire from your rear. What do you do now?’ ‘Sir. Now I start praying Shma Israel...’”

¹²⁷ The obligation to use armed force in a world of international anarchy forms the central argument of Realpolitik from the Melian Dialogues of Thucydides (see above) to Cicero, to Machiavelli, to Locke, to Spykman, to Kissinger: “For what can be done against force without force?” asks Cicero in one of his Letters. Later, in our own century, Nicholas Spykman replies: “In a world of international anarchy, foreign policy must aim above all at the improvement or at least the preservation of the relative power position of the state.” Recalling that international law continues to operate in a Westphalian system, the arguments of Realpolitik may not only be entirely lawful, but also distinctly law-enforcing.

¹²⁸ Regarding a direct nuclear preemption by Israel, it is now widely believed, in US military circles, that “smart” conventional weapons can destroy virtually every hard target that used to be assigned exclusively to nuclear weapons. Extrapolating from such generic reasoning to the Israeli case in particular, it would appear that dramatic advances in sensors, electronics and software might argue persuasively for Israeli reliance upon purely conventional counterforce capabilities. But it may be too soon to become convinced of the prospect of successful nonnuclear attacks against enemy nuclear assets. Discussions of Automatic Target Recognition (ATR) in the context of cruise missile guidance technology, suggest that prospects for a conventional counterforce capability against mobile systems are still very remote. Weapons with the range and payload to attack hardened targets will have to be extremely large and expensive and will have to penetrate the ground at very high speed. Superhard silos and command centers, designed to withstand multimegaton near misses, will likely remain invulnerable to conventional counterforce attacks.

¹²⁹ According to Article 53 of the Vienna Convention on the Law of Treaties: “A peremptory norm of general international law... is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.” Vienna Convention on the Law of Treaties, May 23, 1969, art. 53, 1155 U.N.T.S. 344 (entered into force, Jan. 27, 1980), reprinted in 8 I.L.M. 679 (1969). (

¹³⁰ Traditionally, a war of attrition is a condition of belligerency that is designed to wear down an enemy by constant pressure in order to weaken, exhaust or destroy that enemy’s forces. The word “attrition” derives from the Latin *attēre* (to weaken) that comes from *terrēre* (to rub). In the particular sense of current Arab/Islamic war against Israel, the objective of exhausting or destroying Israel’s armed forces (IDF) is only an intermediate goal. The overriding objective of this war is annihilation of the State of Israel. For more specialized treatment of the concept, war of attrition, see: Dermot Bradley, War of Attrition, in 6 *Int’l Military and Defense Encyclopedia*, 2902-06 (Trevor N. Dupuy, ed., 1993). In the traditional military sense, the term annihilation “is not synonymous with its nonmilitary sense of complete destruction.” Rather, it means “to take action that causes an enemy force to be totally incapable of further resistance.” See: Id. at 2902. In the particular context of Arab/Islamic war against Israel, however, annihilation is synonymous with the nonmilitary meaning of complete and utter devastation. It is such devastation, not “merely” the incapacitation of Israel’s armed forces, that Israel’s enemies (state and non-state) seek.

¹³¹ This removal of Israel via attrition and annihilation has its doctrinal foundation in the PLO’s “Phased Plan” of Jun. 9, 1974. Here, in its 12th Session, the PLO’s highest body, the Palestinian National Council, reiterated the PLO’s aim as being to achieve “their rights to return and to self-determination on the whole of their homeland.” However,

departing from its previous strategy which called for the immediate elimination of Israel and the establishment of a Palestinian state over all of “Palestine”, the Phased Plan was adopted as follows: FIRST, “to establish a combatant national authority over every part of Palestinian territory that is liberated” (Art. 2); SECOND, “to use that territory to continue the fight against Israel” (Art. 4); and THIRD, “to start a pan-Arab War to complete the liberation of the all-Palestinian territory, i.e., to eliminate Israel” (Art. 8). For the full text of the Phased Plan, as drawn up in Cairo, see: *B'tzedek*, supra, Appendix.