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SECURITY THREATS AND EFFECTIVE REMEDIES: ISRAEL'S STRATEGIC, TACTICAL, AND LEGAL OPTIONS

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Part I: Israel's Predicament

Rationale

Reduced to its essential dimensions, Israel's security problem is clear: a small state, indeed a microstate, surrounded by much larger, steadily militarizing enemy states and by relentlessly hostile insurgent forces, seeks security via credible deterrence postures. But because deterrence can be immobilized by various developments or conditions – for example, by enemy perceptions of Israeli unwillingness or incapacity to retaliate; by irrationality of enemy leadership – Jerusalem must plan for various forms of preemption and/or for pertinent active defenses. Yet defensive first strikes by Israel would also be fraught with strategic and diplomatic risks (and may in fact already be infeasible), while ballistic missile defenses can likely never achieve sufficient “soft point” reliability.

The Jewish state is apt to conclude, therefore, that its best options are altogether unrealistic. Of course, if realistic hopes could be placed on the “peace process”, the bleakness of Israel's security options would certainly be ameliorated. But no such hopes are warranted. Indeed, the Oslo agreements with the PLO remain altogether counterproductive to Israel's security needs. These agreements (namely, Oslo I, known generally as the Declaration of Principles, concluded and signed in Oslo on August 19, 1993, re-signed in Washington, DC, on September 13, 1993; Oslo II, signed on September 28, 1995) are not even authentic treaties under international law, since treaties, by definition, can be entered into only by *states*. According to the governing document:

“Treaty” means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.¹

For the moment, Israel's only course is to choose the least unattractive option or configuration of options. This is barring, of course, the potentially catastrophic prospect of Israel's “philosophic” reluctance to use its available military resources. As Jonathan Bloch, the Israeli philosopher, observed (an observation that can be extended to the Jew in macrocosm):

...all the Jew wanted was to serve his God and make a decent living. More recently, all he wanted was to nurture the community dedicated to the fostering of authentic human relationships and the settlement of the land. In any event, what he always wanted was to avoid the rough and tumble, the wretchedness and glory of political life, and to reject sovereignty with its inextricable component of awfulness. *Hence the Jew is reluctant to accept the consequences of his own strength; he moves over; he wants less; always less* – and in his heart is the burning belief, which is also the arrogant presumption, that he is entitled to a morally better existence.² (emphasis added)

If Israel, however, resists such temptations, then its task consists of: (1) replacement of ad hoc, reactive strategic policies with a precise, broadly conceived strategic “blueprint” or “master plan”; and (2) identification of specific policies/options via proper derivation from this master plan. Until now, scholars and planners of Israeli security have largely been operating backward, often waiting for disaster to strike before recommending needed policy directions. This characterization will be especially unpopular among academic strategists in Israel; but to call things by their right names always invites anger and censure – as Giacomo Leopardi observed, it is “*a crime mankind never pardons... Men are willing to suffer almost anything from each other or from heaven itself, so long as true words do not touch them*”

(emphasis added).³ In any case, in drawing various lessons from the disasters that have befallen Israel, such recommendations ignore the *big picture* that is essential to long-term survival. Inevitably piecemeal and partial, these recommendations obscure, by definition, those security threats to Israel that remain latent but overwhelming – possibly even genocidal.⁴

Israel must look forward, not backward. This entails a distinctly dialectical orientation, where each thought about pertinent capabilities/intentions (see Part III) presents a complication that moves onward to the next thought. Instead of drawing limited policy opportunities from the bounded universe of what has already taken place, Israel must now consider and confront the complete universe of what is still possible – emphatically including the prospect of nuclear and other higher-order forms of terrorism.⁵ Frightening and perhaps even terrifying, this more complete universe may elicit great uneasiness and anxiety, but that would be far better, and more productive, than false contentment spawned by unwarranted feelings of safety.

What follows, therefore, is a comprehensive “master plan” from which policymakers, scholars, and strategists may suitably and systematically extract appropriate security directions. I am careful to avoid the term “experts”; what is required are analysts with perspective, with cultural as well as intellectual endowments, with real breadth of understanding.⁶ To be sure, the master plan does not contain all or even most of the “answers”. But it does offer an inclusive and informed framework within which all of the most important questions can be addressed. Such a framework is especially important in the aftermath of Israel’s ill-advised agreements with the PLO of September 1993, in which, effectively conceding defeat in the intifada, Israel made additional territorial surrenders inevitable. This means, most unfortunately, an *expanded* and compensatory reliance on nuclear deterrence and nuclear weapons, as well as a heightened incentive for Israel to rely on strategies of preemption.⁷

It is my intention that this plan will never be “completed”; rather, it will, if properly understood, serve those who oversee Israel’s security needs continually, incrementally, and directly. In other words, it is a plan fashioned *from the start* with a view to Israel’s *particular* security needs. Astoundingly, virtually all strategists (Israeli as well as others) who deal today with Israeli security matters normally operate by extrapolation from more generic and general principles of conflict. Hence, to better understand what may happen in the Middle East theater, scholars typically start with the bipolar “balance of terror” that operated between the superpowers from 1945 to the present, extracting “lessons” from this relationship for Israel and its enemies. Such analyses are fundamentally backward, and must be replaced with analyses that are appropriately forward-looking. This does not mean analyses that are essentially inductive rather than deductive. There is nothing wrong with deductions per se (on the contrary, they are a *requirement* of authentic theory); instead, the problem lies in drawing inferences from insufficiently particular premises. My plan is meant to supply an ongoing, coherent, and expanding set of detailed options and guidelines.

On the Need for an Avant-Garde in Israeli Strategic Studies

In a particularly well-known work of contemporary philosophy and social science, **The Structure of Scientific Revolutions**, Thomas S. Kuhn articulates the vital idea of “paradigm”. By this idea, which has obvious parallels in the arts, Kuhn refers to certain examples of scientific practice that provide *models* for further inquiry – Ptolemaic or Copernican astronomy, Aristotelian dynamics, Newtonian mechanics, and so on. At any given moment in history, we learn, the prevailing paradigm within a given discipline defines the

basic contours of all subsequent investigation. The transformations of these paradigms, transformations occasioned by the essential opposition of new “facts” and empirical findings to the dominant orthodoxy, are “scientific revolutions”, and the transition from one paradigm to another represents the very manner in which science is able to progress.

Strategic studies are no exception. In the fashion of all other fields of inquiry, this very old and important area of scholarship can progress only to the extent that new paradigms arise to help articulate a constantly changing consciousness of war and peace. Ironically, however, the emergence of such new paradigms has been remarkably scant in recent years, leading to an ossification of strategic studies that is already having negative intellectual and policy consequences.⁸

What is to be done? *And what is to be done for Israeli strategic studies in particular?* I propose to argue in this master plan that the benefits of Kuhn's useful concept of paradigm could be enhanced by pertinent reference to the world of art. In this world, creative “advance” is achieved via ongoing and persistent challenges to dominant orthodoxies, what Kuhn would call the dynamic of “paradigm shifts”. Significantly, in the world of art, these entirely revolutionary transformations of prevailing epistemologies are fostered by an always emergent *avant-garde*, by an indispensable “vanguard” for the *new*.

That is exactly what is needed in Israeli strategic studies today. We altogether lack the idea and the presence of an *avant-garde*. As a result, the field continues to be dominated by aging and increasingly irrelevant paradigms, by static models of military thinking that are often incapable of shaping purposeful military policies.

One of the major “beat” poets of the 1950s titled a poem, “This Is Not a Poem” (this title may have been drawn from a paradigm-busting painting by Rene Magritte, *Ceci n'est pas une pipe*, “This is not a pipe”). In so doing he sought, through irony and paradox, to confront and to alter the prevailing norms of poetry. It is via the constant tension between orthodoxy and *avant-garde* that art advances. This is also true of all academic disciplines. Yet, in the genre with which we are concerned, the field we call Israeli strategic studies, we are witnessing nary a new challenge to the now-sanctified mainstream still defined by Clausewitz, Sun-Tzu, Brodie, Schelling, Liddell-Hart, Harkabi, and so on.

What is to be done? Let me offer an example from the world of art. To recognize the origins of modern art, a contemporary manifestation of which was the “beat” movement, we must look at the revolutionary romanticism of Blake and the revolutionary classicism of David. So, too, must we consider the historical idealism of Delacroix (to Cezanne always “*le grand maitre*”). The realism of Courbet and Manet; the expressionism of Van Gogh and Munch; the symbolism of Emile Bernard and Gauguin – all of these precede and even predetermine the specifically modern movements of Fauvism, Cubism, Constructivism, and Surrealism.

Let us look more closely at Surrealism. In June 1936, the International Surrealist Exhibition broke over London, electrifying the dry intellectual atmosphere, and stirring sluggish minds and sluggish brushes to unaccustomed wonder, enchantment, and *redefinition*. Of course, the Exhibition also stirred *derision*, but this can assuredly be a most positive and productive emotion as well.

Surrealist art was intended to shock the viewer into a different and new kind of awareness. The paintings of Dali and Magritte, the frottages of Max Ernst, Picabia's mechanistic pictures, and the abstract sculpture of Jean Arp – all were timely expressions of revolt against a dull and timeworn orthodoxy. All were expressions of a much-needed *avant-garde*.

And there is the related movement known as Dada. More than anything else, Dada represented a revolt against existing art by artists. Even today, Dada stands outrageously for an exaggerated individualism, for universal doubt, and for an appropriately aggressive iconoclasm. Debunking the prevailing canons of reason, taste, and hierarchy, of order and discipline, of an artistic inspiration controlled by rationality, Dada emphasized the arbitrary, the power of chance, of the unconscious, of the primitive. Always Dada delighted in the shock effect of its new-paradigm blasphemies among those who were “right-thinking” artists.

This brings us back to Israeli strategic studies. Like art, our genre cannot progress without an ever-present and ever-emergent *avant-garde*. Indeed, this requirement was not always neglected by the general field of strategic studies. For the transition in paradigm from war histories to war studies, we need only consider the seminal works of Marshal de Saxe, Chevalier de Folard, Guibert, Count Raimondo Montecuccoli, Henry Lloyd, and Frederick the Great. We may also consider the reactions to and reformations of those principles contained in Thucydides, and – later – in manuals on warfare such as Maurice's **Strategicon**, Leo VI's **Tactica**, and even Machiavelli's **The Art of War**. From Vegetius's **De Re Militari** to Baron de Jomini's **The Art of War**, from Helmuth von Moltke to Giulio Douhet's **Command of the Air**, a strategic avant-garde is evident in our field that countered the rigor mortis of academicism with the sheer vitality of creative intellect and *art*.

But we are at a different stage today. While benefiting from the crucial paradigm-challenges offered by Andre Beaufre and Alfred Thayer Mahan, by Col. Trevor Dupuy and Thomas Schelling, Israel is now very much in a deep intellectual rut. Generally mimicking the prevailing paradigm, rather than challenging it in any imaginative or systematic way, those who toil in the vineyards of Israeli strategic studies are less and less able to make productive policy recommendations.

Let me be more specific. Many of the principal assumptions associated with current Israeli strategic studies need to be challenged by a new intellectual vanguard, by an eager avant-garde. One such assumption is the idea of *rationality* in strategic calculations. Insofar as the functioning of nuclear deterrence is contingent on this assumption, the field tends to look away from circumstances in which rationality might not operate. As a result, Israeli strategic studies do little if anything to prepare national policymakers for confrontations with enemy states whose leaders do not conform to the pertinent rules of rational decision-making.

Another problematic assumption of Israeli strategic studies (paralleling strategic studies in general) concerns the alleged immutability of human nature. Regarding behavioral factors as fixed and nonvariable in strategic calculations, the discipline of Israeli strategic studies focuses entirely (and therefore narrowly) on manipulations of force structures, power balances, governments, and other *institutions* in world affairs. Here it would be sobering to reconsider the observation of Immanuel Kant: “Out of timber so crooked as that from which man is made, nothing entirely straight can be built.”⁹ Newly aware that structural manipulations in strategic studies are always epiphenomenal, ignoring the root causes of war in favor of their symptomatic expressions, Israel-focused scholars and policymakers could craft from this paradigm-challenge a more adaptive and more promising field.

Still another needed paradigm-shift in Israeli strategic studies concerns the requirement of what I shall call a “strategic dialectic”. Presently, our field of study is thoroughly static, rather than dynamic. Instead of reasoning toward conclusions by asking and answering questions, it generally offers little more than reportorial summaries of relative force structures and inventories of weapons systems. Not surprisingly, this absence of dialectical reasoning has

prevented the development of a highly-predictive system of theory, the very kind of system that should be the core element of Israeli strategic studies.

We require an avant-garde to advance a distinctly dialectical series of strategic thoughts, where each thought presents a complication that moves inquiry onward to the very next thought. Contained in this strategic dialectic is an obligation to *continue thinking*, an obligation that can never be fulfilled altogether (because of what is traditionally called the “infinite regress problem”), but that must still be attempted as fully and as competently as possible. Without such an attempt, Israeli strategic studies will continue to focus narrowly on discrete moments in time, on “still photos” rather than on “moving pictures”, or – to switch metaphors – on what pathologists call “frozen sections” rather than on actual pathogenesis.

But there will need to be *courage* in Israel, the sort of courage that enables an individual to accept serious professional risks. “Whenever the new Muses present themselves”, says Ortega y Gasset, “the masses bristle.”¹⁰ Those who would now challenge mainstream Israeli strategic studies as a crucial avant-garde will, like their counterparts in the world of art, need to endure some measure of opprobrium and ridicules from institutions such as the Jaffee Center (Tel Aviv University), the BESA Center (Bar-Ilan University), and so on. Will they be ready?

In leveling their intellectual challenges against a stultifying orthodoxy, the challengers will have to confront the “experts”, and they will have to take care not to become “experts” themselves. The problem, in Israeli strategic studies as well as in a great many other fields, is that the *expert* has now replaced the thinker (largely because society always pays for the expert and not for the thinker) and the expert is usually incapable of serious strategic analysis. Oriented to the “wisdom” of television sound-bites, and not to the exhausting discipline of long and lonely intellectual work, the Israeli strategic expert remains largely what Ortega identified generically in 1932, “a learned ignoramus, which is a very serious matter, as it implies that he is a person who is ignorant, not in the fashion of the ignorant man, but with all the petulance of one who is learned in his own special line”. Indeed, continues Ortega, the expert symbolizes, and to a great extent even embodies, “the actual domination of the masses... Furthermore, he affords the clearest, most striking example of how the civilization of the last century, *abandoned to its own devices*, has brought about the rebirth of primitivism and barbarism.”¹¹

There are, of course, many other areas of Israeli strategic studies wherein avant-garde challenges must be mounted. One of these areas concerns the need for intellectual *creativity*, especially in regard to the formation of concepts and to the fashioning of promising hypotheses. Another concerns the long-forgotten rules of *science*, the obligation to begin every inquiry with a sound hypothesis and to examine this hypothesis according to apt forms of deductive elaboration and by correct sensitivity to apt modes of inference. Still another area concerns the idea of *system*, a once-fashionable notion that now needs to be revived both in reference to each individual state and to the entire world arena within which these states interact.

Like the artist who revolts against existing conventions in order to create new conventions more consistent with an emerging consciousness, the Israel-oriented strategist must cease to accept all prevailing orthodoxy as valid and timeless. It is in the dialectical opposition between conventions and in their eventual synthesis that art *evolves* and in that it evolves with *originality*. Similarly, it is in the dialectical opposition between orthodoxy and avant-garde that Israeli strategic studies can now find serious answers to its most vital military questions. The polarity in art occasions a rhythmic alternation of styles, creating unresolved dialectical contradictions and ultimately new forms and genres. The polarity in Israeli strategic studies

that I have been arguing for in this master plan – a polarity spawned by the steady “vanguard” of change and transformation discoverable in art – could become the starting point for the new paradigms of national survival Israel now so desperately requires.

Israel’s Security Situation: An Overview

Israel's security conditions (the “New World Order”¹² and the “New Middle East” notwithstanding) continue to deteriorate. Major threats issue from Syria and Iran¹³ – especially both countries' development of enhanced missile capabilities, chemical/biological weapons and, for the future, nuclear weapons. The year 1992 marked the twentieth anniversary of the Biological Weapons Convention, which bans the development or production of agents and toxins as well as the means to deliver them “for hostile purposes or in armed conflict”. Yet the line between civilian and military purposes is often vague, and the treaty permits activities that are justifiable for “prophylactic, protective or other peaceful purposes”. Moreover, states can avoid the constraints imposed by the BWC by simply not becoming full parties to the agreement. Iraq, for example, signed the BWC in 1972, but never ratified it.

The Syrian/Iranian threat is also manifested *indirectly* through their state sponsorship of anti-Israeli terrorism (largely in southern Lebanon, but also in the still-remaining territories and within the Green Line. Moreover, as the territories will soon *become* another enemy state (an outcome of Oslo and Wye River), “Palestine”¹⁴ will generate multiple new dangers to the Third Temple Commonwealth. Israel may sooner or later have little choice but to strike first, however inadequately, against pertinent hard targets in selected enemy states.

When would preemption against enemy military assets be strategically and tactically cost-effective? This, of course, would depend on a number of critical variables, including: (a) expected probability of enemy first strikes; (b) expected disutility of enemy first strikes (itself dependent on the nature of enemy weaponry, projected enemy targeting doctrine, and multiplication/dispersion/hardening of Israeli nuclear forces); (c) expected schedule of enemy nonconventional weapons deployment; (d) expected efficiency of enemy active defenses over time (anti-tactical ballistic missile system developments); (e) expected efficiency of Israeli active defenses over time; (f) expected efficiency of Israeli hard-target counterforce operations over time; and (g) expected world community reactions to Israeli preemptions.

Efficient enemy active defenses could also pose a “psychological” hazard to Israeli security. This is because enemy perceptions of such efficiency could prompt first-strike attacks against Israel. On the other hand, it is conceivable that these perceptions could occasion feelings of security from Israeli first strikes, thereby reducing enemy incentives to move against the Jewish state. Depending on Israel's own “objective” assessments of enemy ATBM (anti-tactical ballistic missile) efficiency and of enemy perceptions of this efficiency, Jerusalem may or may not decide to preempt. Flipped over, these arguments suggest that efficient *Israeli* active defenses could be helpful or harmful to Israel. This is because Israeli perceptions of such efficiency could prod preemptive attacks against enemy states. On the other hand, again, these perceptions could occasion feelings of security from enemy first strikes, thereby reducing Jerusalem's incentives to move first against enemy states. Should these feelings of security prove false, Israel will have forgone an essential opportunity for preemption. Should they prove correct, Israel will have avoided a needlessly destructive and costly engagement. Depending on enemy states' own “objective” assessments of Israel's ATBM efficiency and of Israel's perceptions of this efficiency, these states may or may not decide to preempt.

The major surface-to-surface missile (SSM) threat to Israel is from missiles equipped with chemical or nuclear warheads. Until it becomes possible to reliably intercept SSMs in flight, the Jewish state will have to focus on destroying them while they are still on the ground. Should this preemption option be undertaken in the near term, it could not be complemented by effective ATBM defenses. If, however, it could be undertaken by early in the present decade, it could be reinforced by Arrow missiles that are integrated into a multistage system for in-flight interception. Nevertheless, recalling the extraordinary destructiveness of even a single nuclear missile that would defy interception, it is unlikely that an Israeli deferral of preemption would be cost-effective. Unless the Arrow were judged nearly 100% effective (an inconceivable judgment) and unless Israel's enemies were judged *certain* not to attack until Jerusalem's ATBM deployment was complete (an *impossible* determination), near-term preemption (for all of its political and military costs) would appear to be more rational.

These are precisely the sorts of variables that need to be examined by users of this master plan. The point of this plan is not to examine such pertinent variables themselves, but to identify these variables. Analysts who undertake the necessary examinations, of course, would provide the essential *facts* – facts that would vary not only from one analyst to another, but from time to time. For example, assessments of expected probability of enemy first strikes would depend on the particular individual(s) performing the assessment, and on the particular moment(s) of assessment.

Israel's dilemma is this: should it plan for anticipatory self-defense¹⁵ attacks against enemy nonconventional forces at all, and – if it should – precisely *when* should these attacks be mounted? Where it is assumed that enemy states will only be adding to their chemical/biological/nuclear arsenals, and that these additions will make effective Israeli preemptions more and more problematic, rational strategy would seem to compel Jerusalem to act defensively *as soon as possible*. If, however, it is assumed that there will be no significant enlargement/deployment of enemy nonconventional weapons over time, or if it is already too late, this *may* suggest a diminished rationale for Israel to strike first. Critical considerations here would include Israeli assumptions about enemy rationality; expectations about costs to Israel of enemy aggression in the near term; comparisons of costs to Israel of enemy near-term aggression¹⁶ with those of enemy reprisals to Israeli preemption; and projected efficacy over time of Israeli and enemy ATBM operations. Note that, whereas the IDF has always relied on its intelligence services to provide at least twenty-four hours' warning of enemy attack, in all likelihood this is no longer possible, since attack may take the form of one or several missiles fired from secret locations in Syria, Iraq, or Iran. Hence, in the absence of its own ATBM operations, Israel's incentive to preempt could become overwhelming.

Israel's decisions on preemption must take into careful account the relative vulnerability and size of its own and enemy nuclear weapons and associated command and control systems, with particular reference to projections over time. All nuclear powers are *not* the same. There *are* important differences between such powers based not only on yield and destructiveness, but also on size/durability/survivability. Recalling Leo Szilard's phrase about nuclear powers equipped only with “the sting of the bee” (the bee dies after it has stung), Israel's inclination to strike first would be greatest where enemies are limited to “bee sting” nuclear capacity and Israel is *not* so limited.¹⁷ An enemy's preemption option, therefore, would be most compelling where Israel displays “bee sting” capacity and the enemy is not so limited. This means, among other things, that Jerusalem must now do what it can to: (a) ensure that enemy states are prevented from *ever* achieving more than a “bee sting” nuclear capability; and (b) ensure that Israel is prevented from *ever* being reduced to a “bee sting” status.

It is possible, of course, that Israel could find itself with only a “bee sting” capacity and discover that enemies have developed beyond such limitations. Here the rationality of Israeli preemption could not be ruled out, in spite of Israel's marked strategic inferiority, especially if an enemy first strike is expected with a high degree of probability. Although the costs of such an Israeli preemption would, by definition, be overwhelming, they might be *less overwhelming* than the costs of not preempting. Similarly, if an enemy should find itself with only a “bee sting” capacity and recognize that Israel is not so constrained (a far more plausible scenario than the preceding), it might decide – quite rationally – to strike first. Expecting an Israeli preemption under such conditions of relative inferiority, the enemy state would anticipate extraordinary harms, but possibly *less* extraordinary than the expected harms of not striking first. It follows from all this that Jerusalem must: (a) do whatever possible to convince enemy states that it is not preparing for preemption (a very complex requirement, since many of the steps needed to prepare for enemy first strikes are the same steps needed to prepare for preemption); and (b) do whatever possible to prepare for preemption. Here, analysts must determine exactly what constitutes “whatever possible”; in broad terms, this entails identifying optimal configurations of hard-target weaponry, counterforce targeting (including possible “decapitation” attacks), and active/passive defenses.

What is Israel to do?¹⁸ The options, not necessarily mutually exclusive, are readily identifiable. No single available option, or combination of options, is altogether attractive. Hence, Israel faces, like it or not, the need to choose the least unattractive option or configuration of options.

Options Presently Available to Israel

1. *Do nothing further that is extraordinary on the diplomatic or military front; continue to rely on historical methods of deterrence (thereby assuming both enemy rationality and an acceptably low likelihood of enemy first-strike attacks, and/or substantial capacities for active defense and intrawar deterrence should these methods fail).*

This option lends itself to further subdivision: (1a) continue as usual/keep bomb “in the basement”;¹⁹ (1b) continue as usual/take bomb “out of the basement”. Of course, even additional subdivisions are possible here; for example, with the bomb “out of the basement”, what declared nuclear strategies (“counterforce” or “countervalue”) would be adopted? And whatever the decision on the “bomb in the basement”, what should be done to minimize those substantial harms generated by sorely misconceived Oslo/Wye agreements concerning the territories/Palestine?

To function successfully, Israel's deterrent, even after being removed from the “basement”, would have to be secure from preemptive strikes. Moreover, Israel must also be wary of “decapitation”, of losing the “head” of its military command and control system because of enemy first strikes. Should Israel's enemies be unpersuaded by Jerusalem's move away from deliberate ambiguity, they might direct such strikes as could effectively immobilize Israel's order of battle.

Whether or not a shift from ambiguity to disclosure would actually enhance Israeli deterrence would depend on several complex factors, including the types of weapons involved, the reciprocal calculations of Arab/Iranian leaders, the effects on rational decision-making processes by these enemy leaders, and the effects on both Israeli and enemy command/control/communications operations. If, for example, bringing Israel's “bomb in the basement” out into the light were to result in Arab/Iranian predelegations of launch authority

and/or new launch-on-warning procedures, the likelihood of unauthorized and/or accidental wars – including, in the future, nuclear wars – would be increased.

Counterforce strategies are those that target an adversary's strategic military facilities and supporting infrastructure. Such strategies may be dangerous not only because of the “collateral damage” they might produce, but also because they may heighten the likelihood of first-strike attacks. In this connection, collateral damage refers to the damage done to human and nonhuman resources as a consequence of strategic strikes directed at enemy forces or at military facilities. This “unintended” damage could involve large numbers of casualties and fatalities. Countervalue strategies refer to the targeting of an enemy's cities or industries – in effect, the targeting of civilian populations. From the standpoint of international law, such targeting is, *prima facie*, unlawful. Yet as a practical matter, it could reduce the incentives to preempt in unstable circumstances, thereby *greatly reducing* the prospect of catastrophic war.

Why take the bomb out of the “basement” in the first place? Is not Israel's nuclear weapons status generally recognized and assuredly substantial? Might it not even be needlessly provocative for Jerusalem to go beyond the apparent benefits of “deliberate ambiguity” to open declarations of nuclear capability?

To answer these questions, it will be useful for Israeli planners to return to a conceptual understanding of nuclear deterrence. Such an understanding should concern would-be attackers' perceptions of both nuclear capability and the willingness to employ such capability. It follows that removing the bomb from Israel's basement will enhance Israel's nuclear deterrence posture to the extent that it heightens 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 are the plausible connections, if any, between an openly declared nuclear capability and enemy perceptions of Israel's nuclear deterrence? One such connection, important but seldom examined, concerns the relation between disclosure and perceived vulnerability of Israel's nuclear forces from preemptive destruction. Another such connection concerns the relation between disclosure and perceived capacity of Israel's nuclear forces to penetrate the attacking state's active defenses.

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, disclosure would represent a rational and prudent option for Israel. Here, the operational benefits of disclosure would accrue from deliberate flows of information about such matters as dispersion, multiplication, and hardening of nuclear systems and about some other pertinent technical features of certain nuclear weapon systems. Most important, such flows would serve to remove enemy doubts about Israel's nuclear force capabilities, doubts that, if unchallenged, could undermine Israel's 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” (as opposed to Armageddon-type) forces, Israel could remove enemy 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 subkiloton weapons), would be more apt – because of Jerusalem's disclosure – to believe Israel's nuclear threats.

Should an enemy ever launch a nuclear first strike against Israel, Jerusalem would certainly respond, to the extent possible, with a nuclear retaliatory strike. If enemy first strikes were to involve other forms of nonconventional weapons – i.e., chemical and/or biological weapons – Israel *might* launch a nuclear reprisal (depending, in large measure, on Jerusalem's expectations of follow-on aggression and on its associated calculations of comparative damage-limitation). If Israel absorbed a massive conventional attack, a nuclear retaliation could not be ruled out, especially if: (a) the aggressor were perceived to hold nuclear and/or other nonconventional weapons in reserve; and/or (b) Israel's leaders were to believe that nonnuclear retaliations could not prevent destruction of the Third Temple Commonwealth. A nuclear retaliation by Israel could be ruled out only in circumstances where enemy aggression was clearly conventional, “typical” (i.e., consistent with previous instances of Arab attacks in degree and intent), and hard-target directed.

2. Take *further extraordinary steps on the diplomatic front/seek political settlements*.

This option, including creation of a security regime, could be adopted in conjunction with “bomb in the basement” considerations included in 1a or 1b (above), and with decisions concerning nuclear strategy. Moreover, depending on the primary focus of political settlement, this option might lend itself to further subdivision: (2a) political settlements with enemy states/further settlement with Palestinians; (2b) political settlements with enemy states/no further settlement with Palestinians; (2c) no political settlements with enemy states/ further settlement with Palestinians; (2d) no political settlements with enemy states/no further settlement with Palestinians (conceptually, this is an “empty box”, as it does not reveal “further extraordinary steps on the diplomatic front/wider political settlements”).

According to Robert Jervis, a security regime refers to “those principles, rules, and norms that permit nations to be restrained in their behavior in the belief that others will reciprocate. This concept implies not only norms and expectations that facilitate cooperation, but a form of cooperation that is more than the following of short-run self interest.”²⁰ An effective security regime, thus, would overcome the so-called “tragedy of the commons”²¹ in world politics, that is, the problem of decision that arises among states when the prospective benefits of cooperation are contingent on the expectation of generalized reciprocity. Yet, stemming from the cumulative effects of uncertainty and mistrust, this is a tragedy that is especially evident and resilient in the Middle East.

Nevertheless, at the moment certain variants of option 2 seem obviously desirable both for reasons of feasibility and because Oslo/Wye settlements with the Palestinians have degraded Israeli security without in any way reducing Arab-state and/or Iranian incentives to war. Moreover, any political settlement with enemy states (including Palestine) would also have to be appraised from the counterterrorism perspective,²² and from the standpoint of synergistic or interactive effects with Israeli arms control concessions.

Regarding political settlements as an Israeli option, one must not forget that international law is not a suicide pact. No peace settlement that would place the Third Temple Commonwealth in serious jeopardy could conceivably be cost-effective. Although it is noteworthy in principle that states must comply in good faith with their treaty obligations – i.e., they are bound by the norm of *pacta sunt servanda*²³ – in fact this norm would be immobilized by considerations of *Realpolitik*. The problem with this peremptory norm²⁴ is that it reflects erroneous assumptions about cooperation and comity in world affairs. It goes without saying that such assumptions are particularly erroneous in the Middle East.

Treaties and other forms of international legal agreement certainly have their place. But before any state can be expected to bind itself to agreements that place national self-

preservation in outside hands, those hands – whether of another state or alliance of states, or of a collective-security body such as the United Nations – must be capable and trustworthy.

Where are such hands today for the state of Israel? Are they to be found in promises from Washington,²⁵ which have historically proved to be largely contradictory and considerably confused? Or are they likely to be extended from the United Nations, an organization that has rarely been motivated by Israeli security concerns and that, in any event, lacks the capacity to back up its commitments with credible military options?

The state of nations remains in the state of nature. Since the end of the Thirty Years War and the Peace of Westphalia in 1648, the states in world politics have coexisted uneasily without a specially created world government. As a result, each state, in the final analysis, continues to depend on expressions of national power in order to survive. Without such expressions, which are at the heart of *Realpolitik*,²⁶ weaker states can endure only at the pleasure of the strong.

General Yitzhak Rabin, on the eve of the Yom Kippur War, assured his countrymen that the Arabs would not attack. This view, derivative from the similarly misconceived assessment of then-Defense Minister Moshe Dayan, has come to be known in Israel as the *konseptsia*, “the concept”, the erroneous idea that the enemy was not preparing for war. A scant twenty-four hours before the attack, the official estimate of Israeli Military Intelligence on the probability of war was “low”. Today, Israel could face another *mehdal* – an omission, oversight, foul-up – with vastly more catastrophic potential. This time “the concept” could produce an existential threat to the Third Temple Commonwealth. This time the problem stems from a persistent underestimate of what the Oslo/Wye accords do to weaken Israel and to strengthen Israel's Islamic enemies.

3. *Plan for nonnuclear preemptive attacks against pertinent Arab and/or Iranian hard targets.*

Such plans could take place together with all variants of option 2, or without the concurrent search for political settlements. Moreover, such plans could be constructed with or without the “bomb in the basement” (see option 1), depending on antecedent judgments concerning the likely costs/benefits of disclosure for: (a) precluding the resort to preemption altogether; and (b) enhancing intrawar deterrence. Furthermore, plans for nonnuclear preemption would require parallel development of “usable” counterforce-targeted low-yield nuclear weapons, not for the initial defensive attacks but for intrawar deterrence (to dissuade the target state from responding to the preemptive strike) and (if necessary) for counterretaliatory use.

Should Israel feel compelled to preempt enemy aggression with conventional weapons, the response of the target state(s) would largely determine Jerusalem's next moves. If this response were in any way nuclear, Israel would assuredly resort to nuclear counterretaliation. If this retaliation were to involve chemical and/or biological weapons, Israel might also feel pressed to take the escalatory initiative (again, depending on Jerusalem's judgments of enemy intent and its calculations of essential damage-limitation). Should the enemy response to Israel's preemption be limited to hard-target conventional strikes, it is most unlikely that the Jewish state would move on to nuclear counterretaliations. If, however, the enemy conventional retaliation were all-out and directed at civilian populations as well as at military targets, an Israeli nuclear counterretaliation could not be ruled out. It would appear that such a counterretaliation *could* be ruled out only if the enemy conventional retaliation were entirely proportionate to Israel's preemption, confined exclusively to Israeli hard targets, circumscribed by the jurisprudential limits of military necessity, and accompanied by explicit assurances of nonescalatory intent. From the point of view of international law, preemptive strikes may be permissible or even law-enforcing so long as: (a) the danger posed is “instant,

overwhelming, leaving no choice of means and no moment for deliberation” (the *Caroline* case of 1837);²⁷ and (b) the use of force is consistent with the *jus in bello* (or Laws of War) expectations of humanitarian international law (discrimination, proportionality,²⁸ and military necessity). Preemption has, indeed, long been established as a customary right under international law, with its modern origins in the *Caroline* incident, and is in fact especially critical today, when the spread of nuclear weapons may make it suicide for a state such as Israel to wait for an actual act of aggression to occur.

Preemption has often figured importantly in Israeli strategic calculations. This is especially apparent in the wars of 1956 and 1967, and in the destruction of the Iraqi nuclear reactor in 1981. Significantly, it was essentially the failure to preempt in October 1973 that contributed to heavy Israeli losses on the Egyptian and Syrian fronts during the Yom Kippur War, and – indeed – almost brought about Israeli defeat. Avraham Tamir, recalling Golda Meir’s fateful decision not to preempt against enemy force concentrations and other vital targets on Yom Kippur day (Chief of Staff Dan Elazar, Tamir reports, had requested permission for a preemptive attack), explains the problem correctly as one of tension between strategic requirements and political sensitivities. “The decision to strike first”, Tamir notes, “is always a difficult and risky one, involving a delicate balance between military and political factors.” Nevertheless, it is a decision that Israel will continue to make: “A small country like Israel, lacking in strategic depth and surrounded by enemies, can never forego the possibility of a preemptive strike against an imminent threat.”²⁹ Efraim Inbar has introduced a further strategic refinement into the issue of preemption, distinguishing between a “preemptive strike” and a “preventive strike”. According to Inbar, who argues that the 1956 war was “preventive” whereas the 1967 war was “preemptive”, the distinction is this: “A preventive strike is launched to destroy the potential threat of the enemy, while a preemptive strike is launched in anticipation of immediate enemy aggression.”³⁰

From the point of view of tactical considerations,³¹ preemptive attacks would need to be timely (launched before the target state becomes capable of exacting unacceptably damaging retaliation; preferably before deployment of mass-destruction weapons). Timeliness, in turn, requires antecedent definitions of what would constitute “unacceptable damage”. Without such a prior definition, Israel would have no standard by which to measure the tolerability of possible and expected enemy reprisals.

4. *Plan for nuclear preemptive attacks against pertinent Arab and/or Iranian hard targets.*

As with planning for nonnuclear preemptive attacks, such plans could take place together with all variants of option 2, or without the concurrent search for political settlements. Moreover, such plans could be prepared at the same time as plans for nonnuclear preemptions and with or without taking the bomb “out of the basement”. In this connection, the reasonableness of nuclear disclosure would depend, in part, on the expected implications for successful deterrence. From the point of view of international law, nuclear preemption, even where confined to exclusively hard targets, would almost surely be illegal.³² Tactically, it could conceivably be cost-effective only in such cases where reliable intelligence indicates that a *nuclear-armed* adversary of Israel is planning to strike the Jewish state, and where decision-makers in Jerusalem believe they are already listening to a “countdown to launch”. Even in such “Third Temple” circumstances, however, the rationality of nuclear preemption would be contingent on the presumption that the expected enemy reprisal would be less damaging to Israel than an expected enemy first strike. Moreover, reliable intelligence is always, of course, problematic, as in the above-noted case of “the concept”.³³

As even a “successful” Israeli nuclear preemption would produce *enormously negative* political reactions throughout the world – irrespective of the fact that such action represented Israel's only way to survive – this option should certainly be avoided at all costs barring imminent threat of annihilation. This means ensuring that enemy states remain appropriately distanced from nuclear weapons of all kinds and especially from actual deployment of such weapons. It also means ensuring that these enemy states refrain from adopting launch-on-warning strategies, an objective that is far easier stated than implemented. Launch-on-warning refers to a doctrine that calls for the launch of bombers and/or missiles on receipt of warning (from satellites or other early-detection systems) that a missile attack is under way. This doctrine, which requires launch *before* the attacking warheads reach their intended targets, is sometimes called “launch on positive or confirmed notification of attack” to distinguish between possible and actual attack. In crisis situations, it could be enormously destabilizing.

Although either form of preemptive strike, nonnuclear or nuclear, could produce very harmful reprisals, possibly against Israeli centers of population and culture (countervalue reprisals), this does not necessarily rule out the rationality of preemption. This is the case because the expected harms that would be elicited by preemption would always have to be *compared* to the expected harms of permitting enemy first strikes.

Finally, plans for nuclear preemptive attacks would have to be fashioned together with plans for “usable” counterforce-targeted low-yield nuclear weapons, both to carry out the initial preemptive strike and, if necessary, for counterretaliatory use.³⁴ Should such plans take into account the desirability of discouraging enemy reprisals for the Israeli preemption (thereby precluding the need for nuclear counterretaliation), Jerusalem might be well advised to prepare countervalue strategies and weapons as well. Of course, there would be a great difference here between the threat of countervalue attacks, as a deterrent, and the actual execution of such attacks, which would in all cases be grievously illegal.

Should nuclear weapons be introduced into conflict between Israel and its enemies, nuclear warfighting, at one level or another, would ensue. This would hold true so long as: (a) enemy first strikes against Israel would not destroy Jerusalem's second-strike nuclear capability; (b) enemy retaliations for Israeli conventional preemption would not destroy Jerusalem's nuclear counterretaliatory capability; (c) Israeli preemptive strikes involving nuclear weapons would not destroy enemy second-strike nuclear capabilities; and (d) Israeli retaliation for enemy conventional first strikes would not destroy enemy nuclear counterretaliatory capability. It follows, from Israel's strategic requirements, that Jerusalem should now act to ensure the likelihood of (a) and (b), and the unlikelihood of (c) and (d). This means, among other things, strengthening the hard-target kill capacity of its survivable nuclear forces; exactly how to achieve such strengthening is a task for analyst-users of this master plan.

5. *Disavow nuclear weapons for actual warfighting altogether, but rely on them (declared or undeclared) for deterrence.*

This option would share features of options 1 and 2, but would differ from them in its absolute rejection of nuclear weapons as arms to be *used*. This does not mean, however, a parallel rejection of counterforce weapons and strategies, insofar as such weapons/strategies could prove optimal to successful nuclear deterrence. From the standpoint of international law, this option would be least problematic. At the same time, should deterrence fail, Israel could be faced with only two choices: (1) rejecting its policy of disavowal; or (2) accepting military defeat. This assumes, of course, that not even the most refined efforts at active defense (e.g., Arrow/“Hetz”) could reliably prevent enemy ballistic missile penetration.

To fully understand the risks of Israeli reliance on nuclear weapons for deterrence, one must first understand the inherent logic of that method of producing national security. To deter enemy attack, Israel must be able to prevent that enemy, by threat of an unacceptably damaging reprisal, from deciding to strike. Here, security would be sought by convincing the prospective attacker that the costs of a considered attack will exceed the expected benefits. Assuming that Israel's enemies (1) always value self-preservation more highly than any other preference or combination of preferences; and (2) always choose rationally between alternative options, they will always refrain from attacking an Israel that is believed willing and able to deliver an appropriately destructive response.

Two factors must justify such belief. First, in terms of *ability*, there are two essential components: *payload* and *delivery system*. It must be successfully communicated to the prospective attacker by Israel that the Jewish state's firepower and means of delivering that firepower are capable of wreaking unacceptable levels of destruction after a first-strike attack. This means that Israel's retaliatory forces must *appear* sufficiently *invulnerable* and sufficiently elusive to *penetrate* the prospective attacker's active and civil defenses. It need not be communicated to the potential attacker that such firepower and/or means of delivery are *superior*. The capacity to deter need not be as great as the capacity to win.

The second factor of communication for Israel is *willingness*. How may Israel convince potential attackers that it possesses the resolve to deliver an unacceptably destructive retaliation? The answer to this question lies, in part, in the demonstrated strength of the commitment to carry out the threat. That is, Israel can enhance the credibility of its threat by committing itself in advance to fulfill that threat.

These, then, are the basic features of “deadly logic”, the system of security through deterrence on which Israel may choose to depend. It is, however, a system that should provide little cause for complacency in Jerusalem. This is because the ingredients of a credible nuclear deterrence posture are extraordinarily complex and problematic.

A nuclear weapons capability, defined to include nuclear explosives, associated delivery vehicles, and supporting infrastructure, does not necessarily imply a credible deterrence posture. In fact, there exists no automatic connection between the two.

In spite of the enormous devastation that nuclear weapons can inflict, threats of their retaliatory use will not always be believed. The persuasiveness of a retaliatory threat rests not only on the anticipated level of destruction, but also on the perceived willingness or resolve to carry it out. Such willingness may not always be a feature of Israel's nuclear threat.

Another problem of Israeli reliance on nuclear deterrence concerns the appearance of secure retaliatory forces. A secure Israeli retaliatory force is an essential precondition of “assured destruction”. Yet there is no reason to believe that a would-be attacker will always be prepared to make such a judgment. Where a prospective attacker perceives vulnerable retaliatory forces, it might judge the first-strike option to be entirely cost-effective. This means, among other things, that Israel's intelligence estimates must always keep close watch on enemy perceptions, and that where these estimates determine enemy perceptions of Israeli retaliatory-force vulnerability, Israel's own preemption option may become compelling. It also follows, of course, that Israel must always do whatever possible to encourage enemy perceptions that its nuclear force is invulnerable. This imperative could include enhanced active defenses; for instance, systems such as the Arrow can be configured to protect forces as well as populations. In the United States, current plans for theater missile defense (TMD) and national missile defense (NMD) are designed for dual protection; for Israeli analysts and planners, these and related systems may be pertinent to ensuring the survivability of Israel's

retaliatory forces.³⁵ The imperative regarding enemy perceptions could also include, among other things, taking the bomb out of the “basement”.

Significantly, however accurate or inaccurate the attacker's judgment turns out to be regarding the vulnerability of Israel's retaliatory forces, the decision to attack would signify the failure of Israeli deterrence. Here, Israel's deterrent would prove unsuccessful even though the Jewish state had actually possessed a secure nuclear weapons capability.

A more immediate problem, of course, is that this capability might not be sustainable. Because of its notably small size, Israel might not be able to secure its nuclear forces within the limited parameters of the country's Green Line. Recognizing this, Israel is apt to explore all available opportunities for sea-basing a portion of its nuclear deterrent forces. But even such prudent efforts at strengthening deterrence will not safeguard Israel from enemies that do not conform to the rules of rationality in world politics. Faced with such enemies, Jerusalem's deterrence logic would, by definition, be immobilized, leaving few reasonable alternatives to prompt preemption against menacing hard targets, and/or to certain other options discussed herein.

In any case, Israel, in making its nuclear choices, will have to confront a paradox: credible nuclear deterrence, essential to security and survival (especially in a world made more dangerous by the creation of Palestine), would require “usable” nuclear weapons. If, after all, these weapons were obviously inappropriate for any reasonable objective, they would not deter. At the same time, the more usable the weapons become in order to enhance nuclear deterrence, the more likely it is that, at one time or another, they will actually be fired. Although this paradox would seem to suggest the rationality of deploying the least-harmful forms of usable nuclear weapons, the fact that there would be no coordinated agreements with enemy states on deployable nuclear weapons points to a different conclusion – namely, that unless Israel calculates that the more harmful weapons would produce greater hazards for *its own* population as well as for target countries, there would be no tactical benefit to opting for the least injurious usable weapons.

6. *Plan for assassination of enemy (state and nonstate) leaders as part of a general strategy of deterrence.*

Such planning could be construed as an enlargement of the general strategy or as a distinct alternative to standard forms of military preemption or retaliation. In either case, the essential rationale would be dissuasion, rather than actual killing/removal. Hence, such a plan would draw its *raison d'être* from being well publicized, at least among prospective victims.

Although such politically inspired killing normally appears *prima facie* unlawful, there are, as we shall see below, occasions when all other alternatives would be manifestly more destructive of preemptory norms.

7. *Plan for assassination of enemy (state and nonstate) leaders not as part of a general strategy of deterrence, but as an actual action of “removal”.*

Such planning, which could be undertaken together with preparation for option 6, would represent an alternative to (or addition to) standard or nonstandard military forms of preemption. Jurisprudentially, we are speaking here of an instance of anticipatory self-defense (albeit an eccentric instance). It follows, among other things, that to be consistent with international legal expectations, such assassination would need to be undertaken when the danger posed to Israel is “instant, overwhelming, leaving no choice of means and no moment for deliberation”.

Although assassination could also be considered as a possible form of *ordinary* self-defense, there are at least two serious problems here: first, in today's Middle East with its ongoing proliferation of extraordinarily destructive weapons technologies, waiting to resort to ordinary self-defense could be very dangerous if not fatal; second, assassination will likely be much less useful in mitigating further harm once an attack has been launched.

8. *Plan for use of positive sanctions (rewards rather than punishments) in dealing with Arab/Iranian enemies.*

Such planning, which could be conducted together with, or in lieu of, other stated options, would be most appropriate within the context of diplomatic initiatives toward political settlements (option 2). However, exclusive Israeli reliance on this option would prove exceedingly dangerous, since failure of this strategy could leave the Jewish state without essential military alternatives.

Conclusion

Centuries of warfare in the Middle East conspire against the prospect of timely and durable peace processes between Israel and its many enemies. Examining all available options, Israel must now choose with clear, unhindered views of what is possible and what is probable, detached from the illusion that genocide is necessarily a phenomenon of the past and that the Third Temple Commonwealth is eternal. Indeed, from the very beginnings of the state Ben-Gurion and some of his advisers feared that Israel could ultimately be overwhelmed by enemy demographic and economic advantages. Leaders of the Barak government must learn to navigate between the smooth, sheer rock of Scylla and the whirlpool of Charybdis. Understood in terms of Israel's immediate policy imperatives, this means an uninterrupted willingness to explore every conceivable avenue to peace, but also a coincident obligation to couple such willingness with an altogether uncompromising commitment to essential security and national survival.

"In a dark time", says the poet Roethke, "the eye begins to see." Embedded in this ironic observation is an important, even vital lesson for Israel: not to be lulled into complacency by intermittent promises of regional cooperation, by occasional flashes of "light", by the self-defeating dynamics of a so-called peace process. Instead, Israel must take courage, counsel, and vision from the prospect of protracted conflict. The idea of Israel as a state embedded in protracted conflict is not new. Yitzhak Rabin coined the term "dormant war" in the 1960s to describe Israel's situation when not engaged in active hostilities. Amnon Rubinstein wrote: "It is Israel's *fate* to live in a hostile world that refuses to accept her and to see her as part of the Middle East reality."³⁶ The dreary darkness is certainly difficult to bear; yet it illuminates (however faintly) Israel's *only* reasonable paths toward real safety and endurance.

How shall Israel receive this needed illumination? There is no formula answer, no "textbook" source of authority. On the contrary – indeed, by definition – needed insight can arise only *because* it sidesteps formulas. Although a great deal may still be done to improve the conduct of inquiry within the overall structure of Israeli strategic studies, the light that could spark such inquiry in the first place cannot be "improved". Nor can it be self-consciously generated by dedicated and purposeful methods that would follow on formal study.

Does this mean that flashes of light in our area of concern will occur only when they "choose" to do so on their own – that scholarly attention to these issues by interested strategists would represent little more than an esoteric waste of time? Not at all! To generate illumination, these strategists must first nurture a willingness to challenge all dominant orthodoxies in the field.

Leaving aside all of the clichéd “wisdom” with which they have been plied so assiduously for years, these students of Israel's survival could then prepare themselves to receive new and far more promising ideas.

Paradoxically, it is *irreverence* that is needed, an irreverence for strategic thinking that has generally been taken for granted and for thoughts that are generally quite mistaken. What is required immediately is a far-reaching disrespect for prevailing academic authority, not as an end in itself, to be sure, but as an essential *beginning* of more productive analyses and investigations. Once the standard commentaries on war, terrorism, and deterrence (just to name a few pertinent areas of concern characterized by increasing intellectual sterility) have been subjected to authentically critical scrutiny, the air will have been cleared for vastly more informed commentaries, for illuminating insights spawned by the remorseless expectations of new notions.

Lest this sound far too dramatic, consider the following: In the critical years ahead for Israel, the state's fundamental stance on matters of war and peace and terrorism will be fashioned in conformance with antecedent strategic theorizing. Should this developing body of theory turn out to be only more of the same, a ritualized synthesis of drivel and dogma that simply does not recognize the sharp discontinuities of contemporary world politics and the associated violent transformations, Israel's policy will be timeworn and self-destructive. If, on the other hand, this theory should offer something very different, something that recognizes the strategic consequences for Israel of growing, chaotic decentralization in the world, of unstoppable weapons proliferation and irrationality among its enemies, Israel's policies could be timely and self-protective.

We have already seen that Israel's incessant and expanding security problems require a prior transformation of Israeli strategic studies. These studies, as an acknowledged field of academic inquiry, remain mired in generally unimaginative, low-level, and nontheoretic research, a methodological/epistemological quicksand that effectively “drowns” all serious strategic thought. What is needed right away as a corrective is a far-reaching refinement of Israeli strategic studies with particular reference to conceptual creativity, dialectical inquiry, and inductive-deductive paradigms of theoretical investigation.

Today, a glance at the scholarship in this vitally important genre reveals little more than methodical comparative inventories of weapon systems, historical accounts of prior successes and failures, and quantitative calculations of “military balance”. There is usually little or no evidence of imaginative understanding of critical power configurations and essentially no formal structure of relevant hypotheses or of careful analytic investigations of such hypotheses. Not surprisingly, Israeli strategic studies are still an intellectually underdeveloped field, one that is largely unable to foster the creation of purposeful security policy for an existentially endangered Jewish state.

To remedy this substantial deficiency, a small number of capable and dedicated scholars now need to fashion themselves into an available “brain trust” – a sophisticated and theory-oriented body of *real thinkers* who could combine their considerable intellectual resources in a way that would provide Israel with promising policy guidance. This brain trust, operating under the extraordinary imperatives and exigencies of a country in profound jeopardy, would go well beyond the routinely reactive style of extant Israeli strategic studies to an authentically proactive search for optimal security remedies. Unlike existing think tanks, which often are unable to provide sustained and serious scholarship, and which also are normally beholden to particular parties and agendas, this group would function independently and according to the very highest standards of academic inquiry.

This group of real thinkers would need to operate according to a serious model of investigation. The model would begin with a statement of appropriate *values* (e.g., security from nonconventional war; security from conventional terrorism; security from nonconventional terrorism); *hypotheses* (e.g., propositions linking various policies, such as Oslo, to various conditions of security); *models* (e.g., images of Israel functioning under different conditions of security); and *recommendations* (e.g., informed suggestions stemming directly from the structured investigation of stipulated hypotheses). Taken together, these four essential phases of Israeli strategic studies could constitute the beginning of auspicious new theories of Jewish national survival.

Nothing is more pragmatic than good theory! Without good theory – in medicine, in engineering, in architecture – there would be no purposeful healing, no operational aircraft, no stable or cost-efficient buildings. Israeli strategic studies are no exception. They, too, need antecedent investigations based on creative conceptualization, plausible hypotheses, and a combining of both inductive and deductive modes of inference. (The so-called scientific method is sometimes referred to as the inductive-deductive method.)

Science is a method of reaching conclusions. Although those who work on Israeli strategic studies fancy their efforts to be generally scientific, they are generally wrong. Before they can be correct, they first need to be reminded of what, exactly, is entailed by science. There is much to be done and very little time left.

The foregoing Part I of the “master plan” points toward these reasonable paths. So, too, do the following Parts II and III. Considered together, these integral parts of a coherent document can now assist Israel's government planners to bring the Third Temple Commonwealth safely into the new millennium. Regarding this journey to safety, there is – of course – *no alternative*.

Part II:

On “Peace”, Nuclear Weapons and Other Vital Issues

On Enemy Capabilities and Intentions

Looking back over the various options available to Israel, the analyst must distinguish between enemy capabilities and enemy intentions. These components of threat, however, are never entirely discrete. Indeed, they are often not only interpenetrating and interdependent but also *interactive*. This means that: (1) capabilities affect intentions and vice-versa; and (2) the combined effects of capabilities and intentions may be *synergistic*, producing policy outcomes that are greatly accelerated and/or are more than the simple sum of these effects. Understood in terms of growing enemy threats to Israel, especially from Iran and possibly from Syria, these relationships between capabilities and intentions warrant particularly close attention.

In the case of Iran, those who would downplay this threat currently argue that Teheran's nonconventional capabilities remain problematic and/or that its willingness to attack Israel – fundamentalist ideologies/motivations notwithstanding – is very low. Yet over the next several years, that country's development of chemical/biological/nuclear weapons could be substantial, creating conditions wherein a first strike against Israel might be construed as altogether rational. Whether correct or incorrect in its calculations, an Iranian leadership that *believes* it can strike Israel with impunity or near-impunity – that it can preemptively destroy Israel's nuclear retaliatory capacity – could be strongly motivated to undertake such a strike. Such motivation would be heightened to the extent that Iran remained uncertain about

Jerusalem's own preemption plans. Here, Iranian capabilities would affect, possibly even determine, Iranian intentions.

The Iranian threat to Israel might, on the other hand, originate from a different direction. Here, Iran's intentions toward the Jewish state, irremediably hostile and perhaps even authentically genocidal, could animate Teheran's development of nonconventional military capabilities. Representing genuinely far-reaching international hatreds rather than mere bluster and propagandistic bravado, Iranian diatribes against Israel would ensure the production/deployment of extraordinarily destructive forces, weapons, and postures that could threaten the Third Temple itself. In these circumstances, Iranian intentions could affect, possibly even determine, Iranian capabilities.

What if Iran's intentions toward Israel were *not* irremediably hostile or genocidal? What if its public bombast were not an expression of genuinely belligerent motivations, but a position designed entirely for political consumption? The short answer to these questions is that such shallow and contrived intentions would not affect Iranian capabilities vis-à-vis Israel. On reflection, however, it is altogether likely that even inauthentic expressions of intent could, over time, *become* authentic, that repeated again and again over several years, such expressions could become self-fulfilling. Those who might doubt such a transformation, one wherein Iranian leaders would begin to believe their own rhetoric in spite of themselves – incrementally and unwittingly – need only recall the history of the Cold War. It follows that it would be premature for Israel to draw comfort from the argument that Iranian intentions are effectively harmless. Instead, such intentions, it should be understood, could affect capabilities *over time*.

The most complex relationships between Iranian capabilities and intentions, and potentially the most consequential to Israeli security and survival, concern *synergy*. Here the issue is not whether or to what extent one threat component affects the other, but instead how certain of their various combinations might: (a) produce an ongoing series of interactions that moves relentlessly, through its own unstoppable, *dialectical* momentum, toward war; or (b) produce a wholly new effect, an effect of which either capability or intention is individually incapable. An example of (a) would be an Iranian “bolt-from-the-blue” attack against Israel that is launched only because of the particularly synergistic way in which capabilities and intentions feed on each other. In the fashion of a human pathology that is hastened by the interactive effects of two individually potent carcinogens, for example, alcohol and tobacco, such an attack (metaphorically, a pathogenic intrusion into the Israeli “organism”) would be accelerated and perhaps even made possible because of the specific way in which “carcinogenic” capabilities and intentions continuously transform and enlarge each other. An example of (b) would be any Iranian attack against Israel – bolt-from-the-blue or product of escalation; conventional or nonconventional – that would not otherwise have taken place. This example is plausible to the extent that one believes Iran would never strike first against Israel, irrespective of Iran's singular intentions and capabilities, unless these two threat components were judged mutually reinforcing. Returning to our metaphor, the pathogenic intrusion into the Israeli “organism” in this example would produce a distinctly different “disease”, one that could not have been produced independently by either individual “carcinogen”, and one that could be either more or less injurious than the other synergistic outcome.

On Why Israel Needs Nuclear Weapons

Following the Indian and Pakistani nuclear tests of May 1998 and the world community's generally uninformed reactions, it is time for Israel to assess its own nuclear posture.

Although much has been written about the alleged configuration of Israel's nuclear arsenal, and about the rationale of such frightful weapons, not a single systematic examination of this rationale has ever been undertaken publicly. Hence, both supporters and opponents of Israel's presumed nuclear force appear to share a naive view that the sole purpose of this force is as a last-resort operation, as an instrument of vengeance to be activated only when the Third Temple Commonwealth is already beyond rescue. As the present master plan makes clear, however, this view is certainly mistaken. Although the "Samson option"³⁷ has its proper place in Israel's nuclear posture, it is a relatively minor place, overshadowed by the far more essential requirements of deterrence and preemption.

It should, again, be underlined that fulfilling these requirements could be entirely consistent with international law. The adequacy of international law in preventing a nuclear war in the Middle East will depend not only on certain treaties, customs, and general principles but also on the success or failure of particular countries' strategies in the region. If Israel's strategy should reduce the threat of nuclear war, either because of successful forms of nuclear deterrence or because of essential nonnuclear preemptive strikes supported by nuclear weapons, such a strategy must be considered as a vital *component* of international law.

Israel, then, needs nuclear weapons for the following fundamental reasons:

1. Israel needs nuclear weapons to *deter* large conventional attacks by enemy states.

The effectiveness of such Israeli nuclear deterrence will depend, among other things, on: (a) perceived vulnerability of Israeli nuclear forces; (b) perceived destructiveness of Israeli nuclear forces; (c) perceived willingness of Israeli leadership to follow through on nuclear threats; (d) perceived capacities of a prospective attacker's active defenses; (e) perceptions of Israeli targeting doctrine; (f) perceptions of Israel's probable retaliatory response when there is an expectation of nonnuclear but chemical and/or biological counterretaliations; (g) disclosure or continued nondisclosure of Israel's nuclear arsenal; and (h) the emergence of Palestine.
2. Israel needs nuclear weapons to *deter* all levels of nonconventional (chemical/biological/nuclear) attacks. The effectiveness of these forms of Israeli nuclear deterrence will also depend on (a) to (h) above. In this connection, Israel's nuclear weapons are needed to deter enemy *escalation* of conventional warfare to nonconventional warfare and of one form of nonconventional warfare to another (i.e., escalation of chemical warfare to biological warfare, biological warfare to chemical warfare, or biological/ chemical warfare to nuclear warfare).
3. Israel needs nuclear weapons to *preempt* enemy nuclear attacks. This does not mean that Israeli preemptions of such attacks would *necessarily* be nuclear (more than likely, they would, in fact, be nonnuclear), but only that they *could* be nuclear. Of course, should Israel ever need to use its nuclear forces for such a purpose, it would signify the failure of these forces as a *deterrent* (as per no. 2, above). Significantly, such failure is increasingly plausible because of the problematic nature of nuclear deterrence in general and in the particular circumstances of the Middle East.
4. Israel needs nuclear weapons to support conventional preemptions against enemy nuclear assets. With such weapons, Israel can maintain, explicitly or implicitly, a threat of nuclear counterretaliation. Without such weapons, Israel, having to rely entirely on nonnuclear forces, might not be able to deter enemy retaliations for the Israeli preemptive attack.

5. Israel needs nuclear weapons to support conventional preemptions against enemy nonnuclear (conventional/chemical/biological) assets. With such weapons, Israel can maintain, explicitly or implicitly, a threat of nuclear counterretaliation. Without such weapons, Israel, having to rely entirely on nonnuclear forces, might not be able to deter enemy retaliations for the Israeli preemptive attack.
6. Israel needs nuclear weapons for nuclear warfighting.³⁸ Although, in the best of all possible worlds, this need will never have to arise, it cannot be discounted. Instead, it must be taken seriously by Israeli planners and decisionmakers. Among the probable paths to nuclear warfighting are the following: enemy nuclear first strikes against Israel; enemy nonnuclear first strikes against Israel that elicit Israeli nuclear reprisals, either immediately or via incremental escalation processes; Israeli nuclear preemptions against enemy states with nuclear assets; Israeli nonnuclear preemptions against enemy states with nuclear assets that elicit enemy nuclear reprisals, either immediately or via incremental escalation processes. Other pertinent paths to nuclear warfighting include accidental/unintentional/inadvertent nuclear attacks among Israel and regional enemy states and even the escalatory consequences of nuclear terrorism against the Jewish state. So long as it can be assumed that Israel is determined to endure, there *are* conditions, as we have already noted, where Jerusalem could resort to nuclear warfighting.
7. Israel needs nuclear weapons for the “Samson option”. Although such a use of nuclear weapons, by definition, would be profoundly catastrophic, Israel apparently understands that it would be better to “die with the Philistines” than to die alone. This understanding is much more than a matter of Jewish honor and of a refutation of the so-called “Masada complex” (suicide without punishment of the aggressor). It *could* (depending on awareness by enemy states) represent an integral and indispensable element of Israel's nuclear deterrent. Moreover, the biblical analogy is somewhat misleading. Samson chose suicide by pushing apart the temple pillars, whereas Israel, using nuclear weapons as a last resort, would not be *choosing* “suicide” or even necessarily committing it. For states, the criteria of “life” and “death” are hardly as clear-cut as they are for individuals. Finally, it is essential that Israel's leaders, in considering possible uses of nuclear weapons, regard the Samson option as one to be precluded by correct resort to all other nuclear options. Stated differently, a resort to the Samson option would imply the complete failure of all other options and the failure of Israel's nuclear weapons to provide essential national security.

Deterrence Options

We have seen (nos. 1-2 above) that Israel needs nuclear weapons, among other purposes, to deter large conventional attacks and all levels of nonconventional attack by enemy states. Yet the effectiveness of nuclear weapons in meeting these needs is limited and exceedingly problematic. Indeed, even if Jerusalem should move toward partial or full disclosure of its nuclear weapons, Israel cannot reasonably rely on nuclear deterrence for survival.

Aware of these limitations, Israel must nonetheless seek to strengthen nuclear deterrence such that an enemy state will always calculate that a first strike on the Jewish State would be irrational. This means taking steps to convince the enemy state that the costs of such a strike will always exceed the benefits. To accomplish this important objective, Israel must convince prospective attackers that it maintains both the *willingness* and the *capacity* to retaliate with nuclear weapons. As noted earlier, where an enemy state considering an attack on Israel

would be unconvinced about either one or both of these essential components of nuclear deterrence, it might choose to strike first, depending on the particular value or utility it places on the expected consequences of such an attack.

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 on 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, and that this lack would be 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 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-state deployment of anti-tactical ballistic missile defenses, which might contribute to an attack decision against Israel by lowering the attacker's expected costs.

The importance of “usable” nuclear weapons must also 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” weapons, rather than minimal-yield, warfighting weapons, they might not deter. Contrary to the uninformed conventional wisdom on the subject, successful nuclear deterrence, to the extent possible, 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 used productively in war.

All this brings to mind the crucial connections between disclosure, doctrine, and deterrence. To the extent that Israel's strategic doctrine actually identifies nuanced and graduated forms of reprisal – forms calibrating Israeli retaliations to particular levels of provocation – disclosure of such doctrine (at least in its broadest and most unspecific contours) could contribute to Israel's nuclear deterrence. Without such disclosure, Israel's enemies will be kept guessing about Jerusalem's probable responses, a condition of protracted uncertainty that *could* serve Israel's security for a while longer, but – at one time or another – might fail altogether.

In looking over nuclear weapons and nuclear deterrence, Israeli planners must also pay close attention to the assumption of rationality. Assessments of Israeli nuclear deterrence always assume a rational-state enemy. But the assumption of rationality is enormously problematic. There is, in fact, absolutely 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. So long as such enemies are increasingly capable of missile attacks on Israel and so long as Jerusalem is unable to intercept these attacks with near-perfect or possibly even perfect reliability, this means that Israeli dependence on nuclear deterrence could have altogether catastrophic consequences.

Where should Israel go from here? Recognizing the fatal limitations of any so-called peace process, the Jewish state *must* now seek security beyond the protections offered by nuclear deterrence. It must, as we shall now see, prepare for preemption against pertinent military targets. Although many will find even such preparation “aggressive” or “uncivilized”, the alternative may well be to accept destruction of the Third Temple Commonwealth as

inevitable.³⁹ Moreover, as I have expounded in professional law journals,⁴⁰ the right of preemption is well established under international law.

Preemption Options

We have seen that among other purposes, Israel needs nuclear weapons to undertake and/or to support various forms of preemption. In making its preemption decisions, Israel must determine whether such essential defensive strikes, known jurisprudentially as expressions of anticipatory self-defense,⁴¹ would be tactically cost-effective. As noted previously, this would depend on a number of critical variables, including: (a) expected probability of enemy first strikes; (b) expected cost of enemy first strikes; (c) expected schedule of enemy nonconventional weapons deployment; (d) expected efficiency of enemy active defenses over time; (e) expected efficiency of Israeli active defenses over time; (f) expected efficiency of Israeli hard-target counterforce operations over time; (g) expected reactions of unaffected regional enemies; and (h) expected US and world-community reactions to Israeli preemptions.

Israel's inclinations to strike preemptively in certain circumstances could be affected by the steps taken by prospective target states to guard against Israeli preemption. Should Israel refrain too long from striking first, enemy states could implement protective measures that would pose additional hazards to Israel. These measures include the attachment of certain launch mechanisms to nuclear weapon systems, and/or the adoption of "launch-on-warning" policies. Such policies would call for the retaliatory launch of bombers and/or missiles on mere receipt of warning that a missile attack is under way. Requiring launch before the attacking warheads actually reached their intended targets, launch-on-warning would clearly carry grave risks of error.

Ideally, Israel would do everything possible to prevent such measures from being installed in the first place, especially because of the expanded risks of accidental or unauthorized attacks against its armaments and population centers. Yet, if such measures should become fact, Jerusalem might still calculate that a preemptive strike would be cost-effective. This is because an expected enemy retaliation, however damaging, might still appear *less unacceptable* than the expected consequences of enemy first strikes.

Perhaps the single most important factor in Israeli judgments on the preemption option will be the *expected rationality* of enemy decision-makers. If, after all, these leaders could be expected to strike at Israel with nonconventional forces irrespective of anticipated Israeli counterstrikes, deterrence, as we have already seen, would not work. This means that enemy strikes could be expected even if enemy leaders understood that Israel had "successfully" deployed its own nuclear weapons in survivable modes, that Israel's weapons were entirely capable of penetrating enemy active defenses, and that Israel's leaders were altogether willing to retaliate.

An important factor in our prior discussion of intentions, capabilities, and preemption options is the increasingly problematic "peace process". Conventional wisdom has been quick to assert that this process, by demonstrating and codifying Israel's commitment to peaceful settlement of disputes, diminishes the enemy-state threat. After all, would not world public opinion uniformly condemn an Arab/Islamic state for aggression against Israel? And would not, therefore, aggressive intentions be reduced or even removed, a change that could decelerate enemy states' pertinent nonconventional militarization and consequently reduce the overall danger to Israel from those states?

Probably not! The conventional wisdom may be wrong, or merely partial. Following the Oslo/Wye agreements, Israel's inclination to preempt enemy aggression has likely been

diminished. After all, the entire global community would frown on such preemption in the midst of an ongoing, incremental search for “peace” in the region.

There is more. If Iran or another enemy state should recognize these effective inhibitions on Israeli preemption options (and there is every reason to believe that they *would* recognize these inhibitions), that enemy state could calculate as follows: “Since our militarization will be less threatened by Israeli preemptive attack during the ‘peace process’, we should *increase* our capabilities – especially our nonconventional weapons capabilities – as quickly as practicable.” Such a calculation, as we now know, could augment enemy-state intentions to attack Israel and could render hostile actions that would not otherwise even have been considered, or even have been possible, cost-effective.

As the “peace process” produces a Palestinian state, the effects on enemy capabilities and intentions, and therefore on Israeli preemption options, will be significant.⁴² Here, Israel’s substantial loss of strategic depth may be recognized by enemy states as a significant military liability for Jerusalem. Such recognition, in turn, could heat up enemy intentions against Israel, occasioning an accelerated search for capabilities and consequently a heightened risk of war.

Israel could foresee such enemy calculations and seek to compensate for the loss of territories in a number of different ways. Jerusalem could decide that it was time to take its bomb out of the “basement” as a deterrence-enhancing measure,⁴³ but this might not be a sufficiently effective strategy. Jerusalem could, therefore, assume a heightened willingness to launch preemptive strikes against enemy hard targets, strikes backed up by Israeli nuclear weapons. Made aware of such Israeli intentions, intentions that would derive from Israel’s new territorial vulnerabilities, enemy states could respond in a more or less parallel fashion, preparing more openly and more quickly for nuclearization and/or for first-strike attacks against the Jewish state.

Taken by itself, a Palestinian state would affect the capabilities and intentions of both Israel and its enemies. But if such a state were created at the same time that Israel reduced or abandoned its nuclear weapons capabilities, the impact could be even more substantial. This scenario should not be dismissed out of hand. Depending on Israeli government responses to Egyptian and other demands, it could become *very* real.

What would happen if Israel were to relinquish its nuclear options by acceding to enemy demands and by accepting a Palestinian state? Under such circumstances, Israel would not only be vastly more vulnerable to enemy first strikes, it would also be deprived of its essential preemption options. This is the case because Israeli counterretaliatory deterrence would be immobilized by reduction or removal of its nuclear weapons potential and because Israeli preemptions could not possibly be 100% effective against enemy nonconventional forces. A less than 100% level of effectiveness could be tolerable if Israel had an operational ATBM capability, but such a capability is presently unavailable and prospectively doubtful.

Nuclear Warfighting Options

However much we may wish to deny it, Israel needs nuclear weapons, among several other essential purposes, for actual nuclear warfighting. Should nuclear deterrence options and/or preemption options fail, Israel’s “hard target” capabilities could be critical to national survival. These capabilities, of course, would depend, in part, on appropriate nuclear weapons.

What, exactly, would be “appropriate”? Instead of “Armageddon”-type weapons (see the next subsection), Israel needs to develop precision, low-yield nuclear warheads that could reduce collateral damage to acceptable levels and hypervelocity nuclear warheads that could

overcome enemy active defenses. Israel would also benefit from radio-frequency weapons. These are nuclear warheads that are tailored to produce as much electromagnetic pulse as possible, destroying electronics and communications over wide areas.

Regarding the nuclear weapons needed by Israel for nuclear warfighting, Jerusalem requires an intermediate option between capitulation on the one hand and resorting to inappropriately large nuclear weapons on the other. To define and better understand this intermediate option, Israeli planners could extrapolate productively from an excellent study by two well-informed target planners and theater-force analysts at Los Alamos National Laboratory. Although directed toward US nuclear strategy only, the compelling arguments presented by Thomas W. Dowler and Joseph S. Howard II pertain instructively to the problem at hand, i.e., Israeli security and nuclear warfighting options.⁴⁴

In their analysis, Dowler and Howard evaluate nuclear weapons with very low yields ranging from 10 to 1000 tons. Seeking nuclear weapons whose power is “effective but not abhorrent”, the authors detail the particular benefits of “micronukes” (weapons with a yield on the order of 10 tons of high explosive); “mininukes” (weapons with a yield of about 100 tons); and “tinynukes” (weapons with a yield of about 1000 tons or one kiloton). For Israel, a *micronuke* employed as an earth-penetrating warhead (EPW) could destroy all but the hardest command bunkers. Deliverable by gravity bomb, tactical cruise missile, or tactical surface-to-surface missile, a micronuke EPW could also be used effectively to neutralize enemy airfields.

Of course, all such discussion will be objectionable to people of feeling and sensitivity. It would, after all, be far better to speak of nuclear arms control or sustainable nuclear deterrence than of nuclear warfighting. Yet the Middle East remains a particularly dangerous neighborhood, and failures to confront the most terrible possibilities could bring the most terrible harms. For Israel, a state that yearns for peace and security more than any other in this neighborhood – a state born out of the ashes of humankind's most terrible crime – genocide looms both as a memory and as an expectation. Resisting the short-term temptations of “security regimes” and “confidence-building measures”, its leaders must always plan accordingly.

The Samson Option

We have seen that Israel needs nuclear weapons, in addition to the other essential rationales already discussed, for “last resort” purposes. Although this is certainly the least important need – since, by definition, actual resort to the Samson option would reveal the failure and collapse of all essential security functions – it is not unimportant. This is because Israeli *preparation* for last-resort operations could play a role in enhancing Israeli nuclear deterrence, preemption, and warfighting requirements, and because such preparation would show the world that the post-Holocaust Jewish state had kept its faith with those previous Jewish resisters who sleep in the dust.

In terms of prospective contributions to Israeli nuclear deterrence, preparation for a Samson option could help to convince would-be attackers that aggression would not prove beneficial. This is especially the case if Israeli preparation were coupled with some level of *disclosure*, if Israel's pertinent Samson weapons appeared to be sufficiently invulnerable to enemy first strikes, and if these weapons were identifiably “countervalue” in mission function. Indeed, the Samson option would by definition be executed with countervalue-targeted nuclear weapons; last-resort operations would come into play only after all Israeli counterforce options had been exhausted. In view of what strategists sometimes call the “rationality of pretended irrationality”, Samson could also aid Israeli nuclear deterrence by demonstrating a willingness

to take existential risks, but this would hold only if last-resort options were not tied definitionally to *certain* destruction.

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

In terms of prospective contributions to Israel's nuclear warfighting options, preparation for a Samson option could convince enemy states that a clear victory would be impossible to achieve. But here it would be important for Israel to communicate to potential aggressors 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.

Whether the world likes it or not, Israel needs nuclear weapons. These weapons are required to fulfill essential deterrence options, preemption options, warfighting options, and even the Samson option. Such weapons should not be negotiated away in formal international agreements, especially in the midst of any so-called peace process. It follows as well that particular nuclear weapons choices should be made in cumulative conformance with the seven pertinent options that have been discussed and, more broadly, with the ever-changing strategic environment of regional and world power configurations. In the final analysis, regrettable as it may appear, the ultimate structure of Israeli security will be built largely on the foundations of nuclear weapons, not on "peace processes", "security regimes", or "confidence-building measures". Should these foundations be constructed carefully, with due regard for underlying theoretical soundness, they could help assure that nuclear weapons will never actually be used in the Middle East.

On the Peace Process and Nuclear Terrorism

Locked in a potentially lethal embrace with a still ongoing peace process, Israel *will* experience more terrorism. This violence may be generated largely by unrealized expectations – for example, by dashed Palestinian hopes for Jerusalem as a national capital. This violence could conceivably take the form of *nuclear terrorism*.

Jihad seeks to produce genocide. According to Articles II and III of the Genocide Convention, which entered into force on January 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". It follows 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 *jihad* intended to destroy the Jewish state could assuredly be genocidal. In confronting its Islamic terrorist enemies, Israel will need to look carefully behind the news, behind all of the usual discussions of weapons and tactics. When it does, it

will discover that the greatest dangers of nuclear terrorism now stem from the orientation of these particular enemies to *freedom from death*. Believing that escalating violence against the Jewish state can buy such freedom, especially if that violence is suicidal, Hamas and related groups could be effectively immune to orthodox strategies of preemption, deterrence, and reprisal.

This point must not be lost on Israel's government. For certain of their terrorist enemies, death is the real prototype of injustice (not the alleged concerns about "land") and liberation from death is linked directly to "martyrdom". Paradoxically, therefore, dying offers the only conceivable path to immortality for Islamic terrorists, but only where the dying is "two-sided", that is, where it takes place together with the purposeful *killing of Jews*.

Seeking to rid themselves of the insufferable terrors of flesh-and-blood mortality, certain Islamic enemies of Israel could soon turn to nuclear terrorism as a remedy. In the end, by paradoxically linking their own deaths to a promise of life everlasting, these terrorists would accept a perfectly zero-sum vision of holy war. By their nuclear suicides, a double victory would be achieved: a personal victory over death and a collective victory over a despised (Israeli) adversary.

Israel's Islamic terrorist enemies can no longer be confronted exclusively by business-as-usual conceptions of strategy and tactics. Instead, they must now be confronted, at least in large part, by policies that are constructed on the prior awareness that suicide is presently a great philosophical problem for Israel; not, of course, in the sense of Israeli suicides, but in the sense of terrorist exchanges of "temporary" life for eternal life, and of temporary individual Islamic life for permanent collective Jewish extermination.

As a practical matter, Israel must now do whatever it can, in those diminishing territories still under its control, to counter ongoing genocidal incitement. The idea here would be to counter those propagandistic urgings that give rise to anti-Israeli terrorism, possibly even nuclear terrorism, before they are heard. Such efforts must be additional to the usual arsenal of operational remedies, augmenting usual (but increasingly ineffectual) measures with unusual (but potentially effectual) ones.

Here it should also be noted that the Genocide Convention criminalizes not only various acts of genocide, but also (Article III) *conspiracy to commit genocide* and *direct and public incitement to commit genocide*. Articles II, III, and IV of the Convention are fully applicable in all cases of such direct and public incitement. For the Convention to be invoked, it is sufficient that any one of the state parties call for a meeting, through the United Nations, of all the state parties (Article VIII). Although this has never been done, Israel and/or the United States should consider very seriously taking this step while there is still time. The Genocide Convention is not the only authoritative criminalization that could be invoked against ongoing and illegal Palestinian calls for mass murder of Jews; the 1965 International Convention on the Elimination of All Forms of Racial Discrimination could also come into play. This treaty condemns "all propaganda and all organizations which attempt to justify or promote racial hatred and discrimination in any form", obliging, at Article 4(a), state parties to declare as "an offense punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons". Article 4(b) affirms that state parties "shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offense punishable by law". Further authority for curtailing and punishing Yasser Arafat's and other Palestinian calls for genocidal destruction of Jews

can be found at Article 20(2) of the International Covenant on Civil and Political Rights: “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”.

In the final analysis, there is little point in Israel’s protecting itself from nuclear terrorism by seeking to effect doctrinal changes in the Islamic world. Such changes, focusing on Israel’s place in the Islamic world and/or the presumed immortality benefits of anti-Israeli terrorism, would be far beyond the limits of possibility. But if Israel could somehow *stand between* unchanging doctrine and prospective Islamic nuclear terrorists, thereby distancing or even detaching the lethal message from a broad audience of potentially willing believers, that message could fall largely on deaf ears. *Since this strategy would require substantial control over critical territories, more effective Israeli counter-nuclear terrorism would require a prompt and far-reaching disengagement from the peace process.*

On the Peace Process, Terrorism, and the IDF Military Commander

For the Israeli commander on the ground, the meaning of terrorism has become increasingly vague and contradictory because of the peace process. This problem is both generic and Israel-specific. Generically, the question of how to purposefully define terrorism now plagues all societies that confront destabilizing insurgencies. Covering forms of both guerrilla and irregular warfare against military targets and criminal attacks on noncombatants, the term is losing all operational precision.

Predictably, the planning and executing of counterterrorism operations are becoming confused and very difficult. To improve these circumstances in a timely fashion, it will be necessary for the present government of Israel to recognize the centrality of definition. The “bottom line” is this: before Israel’s military forces can be expected to cope effectively with terrorism, including nuclear terrorism, they must, at minimum, be able to identify exactly what it is that constitutes terrorism. It is up to this government, informed by sound scholarship, to present authoritative guidelines for such identification.

With the onset of the peace process, Israel’s military commanders have been understandably perplexed. What were once described unambiguously as terrorist enemies of the Jewish state were and are now still sometimes characterized as our “Palestinian partners”. As for the arch-terrorist, Yasser Arafat, he remains the government’s principal ally in “counterterrorism”.

For the IDF commander in particular, the meaning of terrorism presents special difficulties. Constrained by the obligations of the peace process, these military commanders must now balance objective legal assessments against operative political realities. Moreover, such effectively proterrorist balancing is made even more problematic by the Rabin-Peres government’s own acceptance of Palestinian claims that anti-Israeli insurgency (intifada) constitutes a perfectly legitimate expression of “national liberation”, and by that government’s codified cooperation in providing terrorists with security in the “autonomous areas”.

In southern Lebanon, the problems are substantially different. Although terror groups in that region are assuredly encouraged by the peace process, and by corollary IDF weaknesses in the territories and within the Green Line (there are synergistic interdependencies between Israel’s several theaters of counterterrorist operation), the IDF commander has fewer legal or political constraints to worry about in this particular theater. From the standpoint of international law, Lebanese failure to control their own territory and to prevent Hizbullah and other groups from mounting anti-Israeli terror permits Israel considerable latitude in the exercise of national self-defense.

From the standpoint of politics, the IDF commander in southern Lebanon need not worry that his government now regards portions of the terrorist enemy as its “partner in peace”. So long as he remains well within the settled standards of humanitarian international law (discrimination, proportionality, and military necessity), his use of force against terrorism in this theater should be restrained only by operational criteria of strategy and tactics. Unencumbered by formal ties between Israel and a terrorist organization (e.g., the ties created by the Oslo accords) or by informal Israeli-terrorist alignments and interpenetrations, the Israeli commander fighting terrorists in southern Lebanon can ordinarily confine his attention to the essential exigencies of war.

Of course, there are occasions of confusion and complexity. A case in point is the April 18, 1996, incident at Kfar Kana, in the midst of Israel's Operation Grapes of Wrath. In this incident, an Israeli self-defense action struck a UN-protected site housing Lebanese civilians, killing almost a hundred persons.

Israel launched Operation Grapes of Wrath early in 1996 in response to persistent Katyusha bombardments from southern Lebanon. These terrorist bombardments, unleashed by Hizbullah fighters, had made life in northern Israeli cities and towns almost unbearable. In the wake of rocket attacks fired deliberately at Israeli civilians during the Grapes of Wrath operation, many inhabitants of Kiryat Shmona were forced to evacuate altogether.

From the standpoint of international law, responsibility for the tragic Israeli bombardment of UN-protected civilian refugees in Lebanon lay preeminently with Hizbullah and with its Islamic-state mentors, Syria and Iran, as well as with Lebanon. To an extent, some responsibility must also be borne by the United Nations, for failing to ensure that Hizbullah not be allowed to fire Katyushas from a site some 350 meters from the UN Headquarters in Kfar Kana. Although it is certainly true that the Laws of War are intended, among other things, to protect all noncombatants from the sort of Israeli shelling that killed and wounded so many innocents on April 18, 1996, these Laws also make it perfectly clear that responsibility for such actions must ultimately rest with the side that engages in “perfidy”.

Deception can be an essential and acceptable virtue in warfare, but there is a meaningful distinction between deception or ruses and perfidy. The Hague Regulations in the Laws of War allow ruses, but disallow perfidy. The prohibition of perfidy is reaffirmed in Protocol I of 1977, and it is widely and authoritatively understood that these rules are binding on the basis of general and customary⁴⁵ international law.

Perfidy is committed when combatants shield military targets from attack by placing or moving them into densely populated areas or when civilians are purposely moved near military targets. Indeed, it is generally agreed that such treachery represents an especially serious violation of the Laws of War – possibly a “grave breach”.⁴⁶ The legal effect of such perfidy – the practice engaged in by Hizbullah in southern Lebanon – is as follows: exemption (in this case, for the state of Israel) from the normally operative rules on targets and from humanitarian rules generally. Even if the Hizbullah had not intentionally engaged in treachery, any link between protected persons and military activities would have been legal cause for permissible Israeli disruption of the protective regime.

“Just wars”, we learn from Hugo Grotius, “arise from our love of the innocent.” Recognizing this, the state of Israel – confronted by Hizbullah terrorists who seek to soften the Jewish state for larger forms of aggression – should continue to use all applicable military force within the parameters of humanitarian international law. Although perfidious provocations by Hizbullah could elicit Israeli actions that bring harms to noncombatant populations, it is these provocations, not Israel's responses, that would be in violation of pertinent legal rules.

International law is not – as mentioned earlier – a suicide pact! Faced with a terrorist adversary that follows a strategy of attrition as a prelude to one of annihilation, Jerusalem cannot permit egregious Hizbullah manipulations of civilians to preclude essential defensive uses of force. Instead, it must now make the United Nations and the international community fully aware that perfidy is a crime under international law, and that it is the practitioners of perfidy, not those who are disadvantaged by such practice, that should be identified not only as criminals but as *hostes humani generis*, as “common enemies of mankind”.

Now, what of fighting terrorism within the Green Line? Here the IDF commander and pertinent police authorities will be affected by the tactical advantages afforded terrorists by the peace process, but they will not have to be concerned about conformance with the international law of belligerent occupation (as possibly in the remaining disputed territories) or with questions of sovereignty and territorial integrity (as in southern Lebanon). Within Israel proper, terrorism means largely what Israeli domestic law says it means, and counterterrorism against primarily Hamas and Islamic Jihad can and should be waged according to the appropriate survival needs of the Jewish state.

There is one last cautionary note about the meaning of terrorism for the IDF commander. To the extent that the military officer within the Green Line is expected to respect the Laws of War, he must make immediate judgments concerning whether the terror groups operating in Israel are acting as ordinary criminals or as agents of a sustained “armed conflict”. Ordinary criminals, i.e., those terrorists who are involved “only” in isolated internal disturbances, riots, and specific acts of violence, are not subject to protection by the Laws of War. Other terrorists, i.e., those who are engaged in sustained political violence, remain, according to the Geneva Conventions of August 12, 1949, “under the protection and authority of the principles of humanity and from the dictates of public conscience”.

In cases where terrorists are identified as being engaged in armed conflict, IDF commanders may face an additional legal obligation to extend the privileged status of prisoner-of-war to such persons when they are taken captive. Regrettable as it may seem, especially after such horrors as the Tel Aviv and Jerusalem bus and market bombings, this additional obligation is unaffected by terrorist disregard for humanitarian international law. Although all combatants are obliged to comply with the Laws of War, applicable in armed conflict, violations of these rules do not automatically deprive an insurgent of his/her right to protection equivalent in all respects to that accorded to prisoners of war. This right, codified by the Geneva Conventions, is now complemented and enlarged by the two 1977 Protocols to those Conventions. In this connection, and in particular reference to Geneva Protocol I, terrorists captured after launching direct attacks on Israeli citizens could be treated as prisoners of war rather than as ordinary criminals, but should then be prosecuted for the commission of war crimes. *Under no circumstances, however, is it lawful for any government of Israel to free terrorists in the fashion that is currently operational under the expectations of Oslo.*⁴⁷

On the Peace Process and the Samson Option

As we have seen, Israel needs nuclear weapons, among other things, to fulfill needs for the “Samson option”. Although such use of nuclear weapons would, by definition, be catastrophic for Israel, Jerusalem is apt to prefer Samson to Masada. Such a preference, however particular scholars might feel about it, *could* – where it would be stated openly and in advance – represent an integral element of Israel's other required functions for nuclear weapons.

The peace process will increase Israel's dependence on nuclear weapons to fulfil “Samson” requirements. This is because the generally corrosive territorial effects of this process on Israel's security will make last-resort options increasingly important. The effects of this process will also make the other six nuclear weapons functions increasingly important. Exactly *how* important these functions are likely to become is an important question to be examined further in connection with pertinent guiding hypotheses.

How might Israel's commitment to the peace process affect the country's capacity to meet expectations of the Samson option? This will depend, at least in part, on the impact of relevant territorial concessions on the other and logically prior nuclear weapons functions *and* on the precise manner in which the peace process might encourage or discourage last-resort military options. Israeli *preparations* for last-resort operations could play a decisive role in enhancing Israel's nuclear deterrence, preemption, and warfighting requirements.

Israeli planners should now begin to examine closely the effects of Oslo on Samson-option credibility from the standpoint of enhanced nuclear deterrence, enhanced preemption capabilities, and enhanced warfighting potential. As part of this examination, these planners must also consider a related question: to what extent, if any, does the peace process encourage enemy-state preemptions against the state of Israel? Should, for example, Israeli leaders, responding to the enlarged security risks generated by Oslo, seek to reduce the perceived vulnerability of Israel's nuclear forces (probably by some combination of multiplication/dispersion/hardening), enemy-state leaders might come to believe, erroneously of course, that Jerusalem was preparing for first-strike attacks. Such erroneous beliefs could become even more likely if Israel should simultaneously seek further reductions in force vulnerabilities via apt forms of active and passive defenses.

There are clear ironies here. In seeking to stabilize deterrence by signaling an enemy/enemies that its own nuclear forces are not vulnerable to disarming first strikes – i.e., that these forces are exclusively for second-strike, “assured destruction” purposes – Israel could create the impression that *it* was preparing to strike first. In this situation, 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.

An alternative strategy for Israel would be to deliberately disguise efforts at nuclear force protection from enemy states, making these efforts less detectable. Such subterfuge, however, would almost certainly be self-defeating, and would carry substantial added risks. Should Israel's enemies calculate that Jerusalem's nuclear forces were vulnerable to first-strike attacks, they would likely want to exploit current but potentially transient Israeli weakness. Also, because too great an Israeli force vulnerability – a vulnerability occasioned at least in part by the peace process – could encourage *Israel* to strike first, and because Israel's enemies would understand this calculation, Israel's enemies could have compelling reasons to launch prompt “preemptive” attacks.

On the Peace Process and Palestinian/Golan Demilitarization

Supporters of the peace process maintain that security risks to Israel from a Palestinian state could be reduced through apt forms of demilitarization. Similar arguments are offered about the Golan Heights. Yet, jurisprudential assurances notwithstanding, Israel would face substantial dangers from a demilitarized “Palestine” and from a demilitarized Golan.⁴⁸

From a tactical and political standpoint, the fragility of these pro-demilitarization arguments is easy to identify. The dangers for Israel of such enemy demilitarization are clear and

compelling. As a Palestinian state would emerge, its threat to the Jewish state would lie not only in the presence or absence of a national armed force, but also in the many other Arab/Islamic enemies and terrorists that would inevitably compete for power in the new state.

There is also another reason why a demilitarized Palestine would present Israel with a grave security threat: international law would not necessarily require Palestinian compliance with agreements concerning armed force. From the perspective of international law, enforcing demilitarization on any form of Palestine would be problematic. As an autonomous, sovereign unit, Palestine might not be bound by any pre-independence compacts, even if these agreements included US guarantees. Because treaties can be binding only on states, an agreement between a non-state Palestinian Authority and one or more states would have no real authority and little real effectiveness.

What if the government of an emergent Palestine *were* willing to consider itself bound by the prestate, nontreaty agreement? Even in these relatively favorable circumstances (for Israel), the new Arab government would have ample pretext to identify various grounds for lawful “treaty” termination. It could, for example, withdraw from the agreement because of what it would regard as a “material breach”, a violation by any of the other state parties that undermines the object or purpose of the “treaty”. Or it could point to what international law calls a “fundamental change of circumstances” (*rebus sic stantibus*). In this connection, if a small but expanding Palestine were to 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 method by which a treatylike arrangement obligating a new Palestinian state to accept demilitarization could quickly and *legally* be invalidated after independence. The grounds that may be invoked under domestic law to invalidate contracts apply as well under international law to treaties and treaty-like agreements. This means that the new Palestinian state could point to *errors of fact* or to *duress* as perfectly appropriate grounds for terminating the agreement.

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

Israel, therefore, should see little or no benefit from the *legal* promise of Palestinian demilitarization. Indeed, should the government of a Palestinian state choose to invite foreign armies or terrorists onto its territory (possibly after the original Palestinian government is displaced or overthrown by more militantly Islamic, anti-Israeli forces), it could do so without practical difficulties and without necessarily violating international law. Ironically, if the original PLO government of Palestine perceived a threat of aggression from outside Arab forces, Palestinian demilitarization could result in Palestine inviting Israel to protect the new Arab state from mutual enemies.

The prospect of such an invitation is not as odd as it may seem. Because acceptance of such an invitation could well be perceived by Israel as being in its own interests, Jerusalem's requested military involvement in Palestine could occur. This involvement could bring Israel into a much wider and potentially catastrophic war, one that would represent exactly the sort of dangerous situation that demilitarization had intended to prevent. In the final analysis, of

course, the principal danger to Israel of Palestinian demilitarization stems from the Rabin-Peres governments' misjudgments, from those governments' self-inflicted abrogation of national security requirements.

A related demilitarization issue concerns disposition of the Golan. Israel could decide to transfer the strategically important Heights on condition of Syrian demilitarization. Although here the legal meaning of demilitarization would be more traditional than in its use regarding concessions by a still emergent Palestine, the consequences of a Golan demilitarization could be no less injurious to Israel.

The Israeli government is considering a withdrawal from the Golan in order to reach a peace agreement with Syria. Such a withdrawal, from an area less than 1% of Syria's total size, would leave the northern part of Israel open to Syrian, Iraqi, and/or Iranian invasions via the Jordan Valley. Such a withdrawal would also entail uprooting and destroying thirty-two Golan Jewish communities and jeopardizing a third of Israel's water supply.

Leaving aside the importance of the Golan in Jewish history, the cardinal issue is *security*. A number of remedies have been proposed to compensate Israel for "returning" the Golan, such as providing Israel with a broad variety of technical means, with US military presence in the area, or both. In this regard the basic quid pro quo for Israel is *demilitarization* of the plateau.

The problem with such demilitarization, as with the previously discussed demilitarization proposals for a Palestinian state, is that it would not work. Unlike the problem of Palestinian demilitarization, however, the issue here has nothing to do with the transforming "legal personality" of one of the parties, as both parties to a Golan withdrawal agreement would be states. Instead, the problem would involve more traditional concerns over the obligations of "good faith" (*pacta sunt servanda*) and associated issues of enforcement. Furthermore, the problem of Golan demilitarization would stem, in part, from the predictable shortcomings of international guarantees in a world where the very idea of "international community" is self-contradictory.

A Golan agreement with Syria might permit Israel to operate its essential early-warning stations. Syria has repeatedly objected to this, but in any case, these facilities would not be an adequate substitute for effective defense. Moreover, in order to obtain such permission, Syria might be offered certain reciprocal ground station opportunities. In July 1995, then-Prime Minister Rabin offered the Syrians stations of their own within pre-1967 Israel as compensation.

For real security, the IDF must retain its positions on the Golan for constant surveillance of the Syrian army. Pre-1967 warning stations do not have a clear line of sight deep into Syrian territory. A demilitarized Golan with early warning based on an expanded US role or even on the most technologically advanced systems would not be enough.

What, then, of US troops on a demilitarized Golan? Stationed in a very small area, such deployment would likely place these troops in grave danger from well-armed terrorists and from proxies of hostile regimes. Thus, US forces would probably be drawn into both inter-Arab and Arab-Israeli disputes. Soon thereafter, the US public would demand the return of its soldiers. Moreover, Israel's military dependence on the United States could grow to unmanageable levels. And Syria might come to view such a strong US presence as an affront to its own sovereignty. In that event, President Assad or his successor could be expected to push for the removal of US forces, similar to Egypt's 1967 demand for UN withdrawal from the Sinai – the demand that led to the Six Day War.

On May 15, 1967, Israel's 19th Independence Day, the then-chief of staff, Lt. Gen. Yitzhak Rabin, forecast years of quiet for the state of Israel. Two days later, Egypt's President Nasser proceeded to move large forces through Cairo en route to the Sinai. Within a few days, by May 20, 1967, approximately 100,000 Egyptian troops, organized in seven divisions, together with 1,000 tanks, were concentrated along Israel's southwestern border. On May 17, Nasser demanded the withdrawal of the United Nations Emergency Force, and the UN secretary-general, U Thant, acceded to the request only two days later.

Evidently, a demilitarized Golan could not assure Israel's basic security. In the words of four Israeli reserve generals:

Israel's presence on the Golan Heights constitutes the optimal strategic balance with Syria and insurance against a massive Syrian attack. The IDF's proximity to Damascus is also a guarantee against a Syrian missile launch into Israel's rear. Any change in this balance would lessen Israel's deterrent against potential Syrian aggression and jeopardize the quiet and stability that have characterized the Golan since 1974.⁴⁹

As for the use of US troops: Involving US troops on the Golan Heights, whether as "monitors" or "peace keepers" or in some other role, would be a blunder. The Golan Heights is entirely unlike the broad, empty Sinai Desert, in which US forces currently participate in the Multinational Force Organization.⁵⁰

Demilitarization, both of an emergent Palestinian state and of the Golan Heights, can never be consistent with Israel's security requirements. From the standpoint of international law, both expressions of demilitarization would cause great strategic problems for Israel. Recognizing this, the present government of Israel should ensure that the security of the Jewish state be protected by means other than demilitarization, especially by the refusal to enter into any further agreements that would require surrender of Israeli territory to enemy forces.

On Pakistan and the "Islamic Bomb"

Pakistan's formal entry into the nuclear club in the spring of 1998 created a potential "Islamic bomb". Although Islamic nuclear threats to Israel are already emerging independently of Pakistani atomic developments, largely because of Russian and Chinese assistance to Iran,⁵¹ Jerusalem now confronts an acceleration and enlargement of these threats. Moreover, Israel now faces the additional danger posed by Pakistani direct transfer of nuclear assets to certain regional enemies.

How shall Israel prepare for the unprecedented hazards created by the Islamic bomb? Are these hazards likely to be magnified by a so-called Middle East peace process? What precise synergies exist between Oslo and the Islamic bomb? How should Israel adjust its presumed obligations to sustain the Oslo accords?

And what if there should be an actual nuclear war on the Indian subcontinent? What would such a war imply for the Middle East? Would there be a corresponding lowering of the nuclear threshold in Israel's own neighborhood? Would there be a lifting of the nuclear "taboo"? If so, would such a lifting be to Israel's overall security advantage or disadvantage?

There are many questions that need to be explored, quickly, fully, and insightfully, by *informed* friends of Israel. One particularly important set of questions should deal with US strategy and policy. How will the Clinton administration (or its successor) propose to deal with the weaponization of Pakistan's nuclear capability? How will it assist India and Pakistan in reducing fears and conditions that heighten the prospect of a nuclear exchange in South

Asia? Can Washington deal effectively with the dangers of Indian-Pakistani nuclear war created by mechanical accident, miscalculation, or inadvertence? What about war risks associated with shaky command/control procedures and unauthorized commands? And what would be the consequences of an American failure in this realm for Israeli security and survival?

There are many problems to be considered. Does the appearance of an Islamic bomb indicate the need for more rapid Israeli development of anti-tactical ballistic missile (ATBM) defenses? Or would such development merely accelerate the development of new *offensive* ballistic missiles to be used against Israel? It was, of course, this fear – that defense in the nuclear age encourages arms racing – that first led to anti-ballistic missile treaties and protocols decades ago.

Should Israel speed up its efforts to deploy the Arrow (Hetz) ATBM, or would the Jewish state be better served by a policy of strengthened nuclear deterrence and/or selective nonnuclear preemptions? Can Israel rely on the nonproliferation regime of treaties, national laws, and declarations, or is the primacy of *Realpolitik* over international law now overwhelming, incontestable, and irreversible? Should Jerusalem rely more on promises for safety from Washington, or – in view of recent events – rely even less on such promises? Can nuclear deterrence serve Israel if the Jewish state is faced with irrational nuclear adversaries, or would such irrationality immobilize the dynamics of nuclear deterrence? If Israel does need to undertake various forms of preemption, can it do so entirely with conventional weapons, or will it need to use nuclear weapons to ensure destruction of very hardened enemy targets? If the latter, could Israel continue to endure in the community of nations after embracing such an unpopular (however indispensable) strategic option?

To lower the nuclear threshold in the Middle East, should Israel, confronting the consequences of an Islamic bomb, concentrate on improving its *conventional* deterrent? Facing constant pressure from the Arab world, especially Egypt, to denuclearize altogether, should Israel prepare to give up the bomb – an idea once considered publicly by Shimon Peres – or would it be better for Israel to multiply, harden, and disperse further its pertinent nuclear forces? In view of the May 1998 explosions in South Asia, should Israel maintain its stance of “deliberate ambiguity”, or would it be better to bring the bomb out of the “basement”? If it chooses to bring the bomb out of the basement, should this be done merely by careful sorts of disclosure, or should Israel follow the recent testing examples of India and Pakistan?

The questions are daunting. The answers are elusive. But for Israel, the time for questions and answers can no longer be postponed. For Israel it is time to embark on a broadly conceived strategic dialectic in which capable scholars and officials ask and answer hard questions, again and again and again, until the full complexity of issues can be understood and taken into account. For Israel, the Islamic bomb exploded by Pakistan in May 1998 is more than just another warning. It may be the Final Warning.

On the Assassination of Terrorists

Over the years, Israel – like the United States – has, on occasion, resorted to assassination as a remedy for terrorism. In certain circumstances, such assassinations could even be judged *law-enforcing* according to international law.

Normally, assassination is evidently a crime under international law, both in times of war⁵² and times of peace. The question of whether or not a condition of war actually exists between states is often, however, unclear under international law.⁵³ Presently, a declaration of war may

be tantamount to a declaration of criminality because international law prohibits aggression;⁵⁴ hence a state may compromise its own legal position by formally declaring war. A state of belligerency may, however, exist without formal declarations of war, but only if there exists an armed conflict between two or more states and/or at least one of them considers itself “at war”. As for situations where two states are clearly at peace, assassination is normally treated by international law as one or more of the following crimes: aggression, terrorism, or intervention.⁵⁵

On the other hand, punishment of violent crime is always at the very heart of justice,⁵⁶ and in our decentralized system of world law, self-help by individual nations is often the only available path. Ultimately, the judgment that assassination can in some instances be properly construed as law-enforcing is based on the persistently Westphalian logic of world law, on the multiple sources of international law identified at Article 38 of the Statute of the International Court of Justice, and on the frequently irreconcilable nature of competing peremptory norms. Indeed, in the absence of assassinations, terrorists like those who bomb Israeli buses and marketplaces would remain altogether free. Immune to the proper expectations of extradition and prosecution – the preferred mechanism of enforcement under international law⁵⁷ – these terrorists would continue to murder innocent men, women, and children without interference. And while it is true that custody over terrorists may be achieved by forcible abduction⁵⁸ and subsequent trial in domestic courts, this remedy may cost a great many more innocent lives, both in the operation itself and in the generation of additional terrorism.

For the moment, our world legal order still lacks an international criminal court with jurisdiction over individuals. Only the courts of individual countries can provide the judicial context for trials of terrorists. It follows that where nations harbor such criminals and refuse to honor extradition requests, the only decent remedies for justice available to victim societies may lie in unilateral enforcement action. Here, even extrajudicial execution may be essential to justice.

Assassination is not always a crime. Instead, it can constitute an effort on behalf of the entire community of civilized nations to compensate for the absence of strong central world authority with essential self-help. When, in domestic law, a policeman shoots a fleeing felon after witnessing a violent crime, society distinguishes between that crime and the policeman's use of force. Legally and morally, they are assuredly not on the same plane.

By the standards of contemporary international law, terrorists are known as *hostes humani generis*,⁵⁹ common enemies of humankind. In the fashion of pirates, who were “to be hanged by the first persons into whose hands they fall” (from the distinguished eighteenth-century legal scholar Emmerich de Vattel), terrorists are international outlaws who fall within the scope of “universal jurisdiction”. The principle of universal jurisdiction, which is founded on the presumption of solidarity between states in the fight against crime,⁶⁰ is especially pertinent whenever extradition is difficult or impossible to obtain, and is built into the four Geneva Conventions of August 12, 1949. Traditionally, piracy and slave-trading were the only offenses warranting universal jurisdiction; since World War II, however, states have generally recognized an expansion of universal jurisdiction to include, among other things, terrorist crimes.

In his 1758 classic, *The Law of Nations*, Vattel stated: “Men who are by profession poisoners or incendiaries may be exterminated wherever they are caught; for they direct their disastrous attacks against all nations, by destroying the foundations of their common safety.”⁶¹ Later, when the Nuremberg Tribunal was established in 1945, the court ruled that in certain exceptional circumstances, literal adherence to due process of law (the court was referring to

the question of retroactivity and crimes against humanity)⁶² could represent the greatest *injustice*. Concluding that retroactivity need not always be unjust, the Tribunal affirmed: “So far from it being unjust to punish [an offender], it would be unjust if his wrongs were allowed to go unpunished.”⁶³

Assassination, like retroactivity, is normally an illegal remedy under international law. Yet support for a limited right to assassination can be found in Aristotle's *Politics*, Plutarch's *Lives*, and Cicero's *De Officiis*. According to Cicero:

Grecian nations give the honors of the gods to those men who have slain tyrants. What have I not seen at Athens? What in the other cities of Greece? What divine honors have I not seen paid to such men? What odes, what songs have I not heard in their praise? They are almost consecrated to immortality in the memories and worship of men. And will you not only abstain from conferring any honors on the saviour of so great a people, and the avenger of such enormous wickedness, but will you even allow him to be borne off for punishment? He would confess – I say, if he had done it, he would confess with a high and willing spirit that he had done it for the sake of the general liberty; a thing which would certainly deserve not only to be confessed by him, but even to be boasted of.⁶⁴

Should the civilized community of nations ever reject this right altogether, it will have to recognize that it would be at the expense of justice and, quite possibly, effective counterterrorism. Lacking any central institutions of global authority to interpret and enforce the rules against terrorism, the existing law of nations must continue to rely on even the most objectionable forms of self-help. We may note, in this connection, the principle: *Ubi cessat remedium ordinarium, ibi decurritur ad extraordinarium*, “Where the ordinary remedy fails, recourse must be made to an extraordinary one.”

Nullum crimen sine poena, “No crime without a punishment,” is a “sacred” principle of international law. Where crimes are especially egregious, as in the case of terrorism, this principle is absolutely overriding. This means that where known perpetrators of such crimes cannot be punished by “normal” judicial remedy, i.e., extradition and prosecution, the effective choice must be to leave the perpetrators unpunished or to punish them extrajudicially. Here, assassination, subject of course to the applicable constraints of discrimination, proportionality, and military necessity, may be the least costly form of extrajudicial punishment. Moreover, where crimes are still *ongoing*, the permissibility of assassination may even be greater. This is the case because our post-Nuremberg⁶⁵ world legal order is obligated to protect human beings from clear and terrible infringements of their irreducible and immutable rights.⁶⁶

It must be stressed again: international law is not a suicide pact. Israel, in the fashion of every other state in world politics, has not only the authority but the obligation to protect its citizens' most basic human right – the right to *live*. Major legal theorists over the centuries, especially Bodin, Hobbes, and Leibniz, always understood that the provision of security is the first obligation of the state. “The obligation of subjects to the sovereign”, says Hobbes in the Chapter 21 of *Leviathan*, “is understood to last as long, and no longer, than the power lasteth by which he is able to protect them.” In this connection, Jerusalem maintains not only the generic post-attack right of self-defense now codified at Article 51 of the UN Charter, but also the customary right of anticipatory self-defense, a preemptive right that applies to attacks by terrorists as well as by enemy states. As an expression of such anticipatory self-defense, assassination – to the extent that it fulfills the rules of the law of armed conflict – may be distinctly law-enforcing for yet another reason.

In the best of all possible worlds, states could dispense with violence altogether, choosing instead to rely on *reason* to settle disagreements. The importance of reason to legal judgment was, indeed, prefigured in ancient Israel, which accommodated reason within its system of revealed law.⁶⁷ But we do not live in this best of all possible worlds, and the disutilities of assassination should not be evaluated apart from alternative options. Instead, such disutilities must always be *compared* to those expected of these other options. If the prospective costs of assassination appear less than the costs of the alternative options (e.g., war or military intervention), then, in a utilitarian sense, assassination would emerge as the rational choice. However odious it might appear in isolation, assassination, in such circumstances, could represent the least injurious path to improved safety from terrorism.

The utilitarian view is that human actions should always be evaluated in light of their expected consequences, and that only this consequentialist approach will enable us to deal with complex moral and legal issues in a rational manner. The principle of utility, which has its origins with Jeremy Bentham, is “that principle which approves or disapproves of every action whatsoever, according to the tendency which it appears to have to augment or diminish the happiness of the party whose interest is in question...to promote or to oppose that happiness”.⁶⁸ This principle offers a sound argument against those who would claim that assassination is impermissible because it is somehow, by its very nature, uniquely revolting. Bentham rejects all claims that “approve or disapprove of certain actions, not on account of their tending to augment the happiness of the party whose interest is in question, but merely because a man finds himself disposed to approve or disapprove of them; holding up that approbation or disapprobation as a sufficient reason for itself, and disclaiming the necessity of looking out for any extrinsic ground”.⁶⁹

Furthermore, Bentham continues in a fashion that would be perfectly supportive of assassination as both punishment and anticipatory self-defense:

If we could consider an offense which has been committed as an isolated fact, the like of which would never recur, punishment would be useless. It would only be adding one evil to another. But when we consider that an unpunished crime leaves the path open, not only to the same delinquent, but also to all those who may have the same motives and opportunities for entering upon it, we perceive that the punishment inflicted on the individual becomes a source of security to all. That punishment which, considered in itself, appeared base and repugnant to all generous sentiments, is elevated to the first rank of benefits, when it is regarded not as an act of wrath or of vengeance against a guilty or unfortunate individual who has given way to mischievous inclinations, but as an indispensable sacrifice to the common safety.⁷⁰

Whether as an expression of pure punishment⁷¹ (fulfilling the expectations of *Nullum crimen sine poena*) or of anticipatory self-defense, Israeli assassination of terrorists would likely elicit considerable worldwide indignation. After all, living, as we do, in the “modern” age of comity and culture, how else should decent people react to the idea of killing as remediation and/or deterrence? Yet the civilizational promise of modernity is far from realized, and imperiled states must inevitably confront choices between employing assassination in very specific circumstances or renouncing such employment at the expense of justice and safety. In facing such choices, these states, including Israel, will discover that all viable alternatives to the assassination option also include violence and that these alternatives may, in fact, exact a much larger toll in human life and suffering.

Part III: Reflections

Those who place hopes in outside protection for Israel, primarily from the United States, assume – more or less – a continuation of traditional international relations. Yet it is altogether likely that we will live in an era of total fragmentation and disunity, a worldwide anarchy that will give new meaning to “Westphalian” international relations and reinforce, rather than reduce, the self-help imperative. Hence, if this presumption of further global disintegration is to be taken seriously by Israeli planners, they will have to accept, however reluctantly, the *obligation* to face overriding dangers *alone*. One is reminded here of William Butler Yeats’s poem “The Second Coming”:

Turning and turning in the widening gyre
 The falcon cannot hear the falconer;
 Things fall apart; the centre cannot hold;
 Mere anarchy is loosed upon the world,
 The blood-dimmed tide is loosed, and everywhere
 The ceremony of innocence is drowned;
 The best lack all conviction, while the worst
 Are full of passionate intensity.



All world politics, and all global strategy, move in the midst of death. To truly understand calculations of war, deterrence, and defense, Israeli planners need to understand (1) enemy orientations to death, both individual and collective; and (2) Israeli orientations to death, both individual and collective.



Heinrich von Treitschke, in his published lectures on *Politics*, approvingly cites Fichte: “Individual man sees in his country the realization of his earthly immortality.” Such “seeing” among Israel’s current enemies is a source of *particular*, even existential, danger. The danger is exacerbated by lack of symmetry with “individual man” in Israel, who most assuredly sees such “realization” much less in his own country.



There is great danger for Israel in presuming too much Reason in enemy decision-making and world affairs. Today the use of violence within and between states is often self-propelled and self-rewarding, effectively supplanting Clausewitz with de Sade. The argument has been made most convincingly by Milan Kundera in his book *The Art of the Novel*. Describing a sheer force of violence that wills to assert itself as force, he speaks of this force as “naked, as naked as in Kafka’s novels... The aggressivity of force is thoroughly disinterested; unmotivated; it wills only its own will; it is pure irrationality.” If Kundera is correct, what is Israel to do about its enemies? What shall it assume about enemy decisionmaking processes? Should not Israeli planners throw out the handbooks of political scientists and strategic theorists in favor of Kafka and Kundera? And what, exactly, can they learn from the “fiction” writers?



The Romanian (French) playwright Eugene Ionesco died in April 1994. In his only novel, *The Hermit*, Ionesco claims: “People kill and are killed in order to prove to themselves that life exists.” Although a broad philosophical reflection, rather than an immediately useful strategic

maxim, it says much about intentions of Israel's enemies and, by extension, about Israel's prospective responses.



To understand and predict global responses to Israeli actions in world affairs, Israeli planners must never forget that their country is always the Jew in macrocosm. For the world, macrocosm and microcosm are indistinguishable and indissoluble. Hence, for Israeli planners to expect global responses to Israeli actions to be detached from millennia of prejudicial hatreds is foolish in the extreme. Israel is not just another state, one among many others. It is unique, *sui generis*, not in the sense that it is believed to warrant greater justice (a post-Holocaust conclusion one might expect in a world dominated by Reason) but in the sense that it allegedly deserves less, always less, than every other state. Israel and justice cannot be uttered in the same breath for the same reason that Jews and justice cannot be uttered in the same breath. Israel, the Jew in macrocosm, will always be despised, will always be kept distanced from justice. Israeli decision-makers *must* always plan accordingly.



With further regard to Israel and considerations of justice (again, a paradoxical conjunction of terms), it must be recalled that histories of victimization have never conferred survival on a people or a state, least of all on the Jewish people. Such recollection stands in marked contrast to the oft-stated wish that terrible suffering, as in the matter of the Holocaust, cannot possibly be in vain. Ionesco, for example, offers the following quotation from Andre Gide's *Journal*, dated January 29, 1932: "The idea that so much suffering can be in vain is intolerable to me, it kept me awake all night." As a "good Westerner", continues Ionesco, "Andre Gide couldn't help but think that suffering was the price of happiness, that suffering has to be rewarded." Yet Israeli planners must not forget that the world hardly ever pities those who suffer; all the more those who suffer greatly. Often, suffering creates *scorn*. So it is today with Jewish suffering, Holocaust genocide, and the state of Israel.



Israeli planners are not usually philosophers. But they should recall Horace's recipe: "*Si vis me flere dolendum est primum ipsi tibi*": "If you want me to weep, you must first grieve yourself." Before Israel can expect concern from the world, for its past and for its future, its own population must "first grieve" itself; must care, deeply and profoundly and publicly, for its own history and its own essential continuity; for *surviving* at all costs. Paradoxically, current government policies of sequential concessions and territorial "compromise" display the very opposite of such needed "grief", suggesting an unwarranted degree of "understanding" and inflated national self-confidence. Furthermore, private sentiments, now widespread throughout Israel, that collective meaning for the post-Holocaust Jewish state is more discoverable in Los Angeles than in enduring Jewish values, also reject essential forms of "grief".



Regarding judgments of rationality and deterrence, Israeli planners must never fail to put themselves in the shoes of enemy decision-makers. What will affect these decision-makers, and therefore Israel's safety, will not be Israeli perceptions or even some "objectively correct" set of facts, but only what *they* perceive as real. Hence, what may well appear prudent and rational in Tel Aviv could be taken as cowardly and irrational in Teheran or Damascus. I have in mind, particularly, different views on Israel's decision not to retaliate for thirty-nine Iraqi Scud missile attacks in 1991. What will be the long-term effects of this decision on Israel's

overall deterrence posture? This is an important question, one that needs to be asked again and again and again.



Israeli planners focus, of course, on enemy capabilities and intentions. But do they focus on each variable as separate and discrete, or rather as interdependent and synergistic? As one can affect the other, only the latter orientation is correct and productive.



The phrase “Death to Israel,” like the phrase “Death to the Jews,” is always uttered in chorus. A hater of Israel, like a hater of individual Jews, is always attached to a crowd or a mob. In such hatreds, one cannot be alone. It is this communal tradition of hatred, more than anything else, that draws adherents – both among the nations and among peoples within nations. There is little point in seeking to transform this tradition, which is deeply embedded in a generically human desperation to *belong*. Instead, those who are responsible for Israeli safety and security from enemy attacks should now focus exclusively on what *can* be changed.



Regarding the legal right to preemption, Israel's planners may wish to recall the authoritative jurisprudential argument of Hugo Grotius in his *Commentary on the Law of Prize and Booty*:

Now, as Cicero explains, this [justification for anticipatory self-defense] exists whenever he who chooses to wait [for formal declarations of war] will be obliged to pay an unjust penalty before he can exact a just penalty; and, in a general sense, it exists whenever matters do not admit of delay. Thus it is obvious that a just war can be waged in return, without recourse to judicial procedure, against an opponent who has begun an unjust war; nor will any declaration of that just war be required... For, as Aelian says, citing Plato as his authority, any war undertaken for the necessary repulsion of injury, is proclaimed not by a crier nor by a herald but by the voice of Nature herself.



Israel's military planners must consider important, complex relationships between C3I (Command, Control, Communications) vulnerability and predelegations of launch authority. To reduce the risks of “decapitation”, an objective as essential to Israeli nuclear deterrence as protection of the weapons themselves, Jerusalem might consider increasing the number of authoritative decision-makers who would have the right to launch under certain carefully defined contingencies. But because the deterrence value of such an increase would require that prospective enemies learn (however indirectly and incompletely) that Israel had taken these decapitation-avoidance predelegations (after all, without such learning, enemies would be more apt to calculate that first-strike attacks are cost-effective), those enemies might feel increasingly compelled to “preempt”. These preemption incentives would derive from new enemy-state fears of a fully intentional Israeli first strike and/or new fears of accidental, unauthorized, or unintentional nuclear strikes from Israel. Aware of these probable enemy reactions to its predelegations of launch authority, predelegations that might or might not be complemented by launch-on-warning measures, Israel, reciprocally, could feel compelled to actually strike first, a preemption of preemptive attack that may or may not prove to be net-gainful and that may or may not have been avoided by antecedent resistance to predelegations of launch authority. Significantly, this entire scenario could be “played” in the other direction. Here, Iran or an Arab- state enemy seeking to reduce its decapitation risks would implement predelegations of launch authority, thereby encouraging Israeli preemptions and, as a consequence, Iranian and/or Arab- state “preemptions of Israeli preemption”. If all of this

sounds dreadfully complicated, it is because this is a dreadfully complicated business. Those who do not feel comfortable with dreadful complications should not be in the planning business. Israel does not need simplifiers. It does not need more “experts”. It needs *broadly educated* planners who are willing to fashion an indispensable strategic dialectic, a nuanced genre that goes well beyond the purely journalistic/reportorial “expertise” of current academic strategists.



The destructiveness of nuclear weapons continues to pose conceptual problems for Israeli planners (military and civilian) and academic strategists. Fearful of association with such terrible weapons, these planners and strategists too often dance around the most urgent questions. As a result, nuclear war involving Israel may become more likely and security benefits that might have been identified in advance may be lost forever.



Israel's planners should be reminded of Unamuno's instructive remark about Hegel: “Hegel made famous his aphorism that all the rational is real and all the real rational; but there are many of us who, unconvinced by Hegel, continue to believe that the real, the really real, is *irrational*, that reason builds upon irrationalities”. For Israel, faced with the prospect of nonconventional aggression from enemy states, especially Iran, it would be prudent to “build upon irrationalities”, i.e., upon the expected irrationalities of an increasingly formidable enemy.



In considering the operation of nuclear deterrence and associated matters of nuclear strategy, including preemption, Israeli planners may recall that such operation affects and determines the adequacy of pertinent international law. For example, the adequacy of international law in preventing nuclear war in the Middle East will depend not only on certain treaties (e.g., the Nonproliferation Treaty), customs, and general principles of jurisprudence, but also on the success or failure of particular country strategies in the region. Hence, if Israel's strategy should reduce the threat of nuclear war, either because of successful forms of deterrence or because of essential nonnuclear preemptive strikes, such strategy would have to be considered an essential component of international law.



Even if it could be assumed, by Israeli planners, that enemy-state leaders will always be rational, a problematic assumption to be sure, this would say nothing about the *accuracy of information* used in making rational calculations. Rationality, we must recall, refers only to the *intention* of maximizing specified values or preferences. It says nothing at all about whether the information used is correct or incorrect. Hence, rational enemy-state leaders may make errors in calculation that lead to war against Israel.



I am aware that the juxtaposition of Israel and Jewish extermination inherent in references to “destruction of the Third Temple” is so dreadful that it borders on sacrilege. Yet it is a juxtaposition that should not be ignored or disregarded. Should Israeli planners fail to take it seriously, the concentration of millions of post-Holocaust Jews in an area smaller than a large *county* in California could prove a blessing to those among Israel's enemies who would refashion genocide as war. But if we do take seriously the connections between Zionist objectives and Jewish vulnerability in the Third Commonwealth, we will have taken the first

critical steps toward ensuring Israeli security, toward making certain that Jewish liberation does not become Jewish misfortune.



Applied to Israel and the Middle East, the fashionable concepts of “security regime” and “confidence-building measures” are sheer nonsense, the deleterious fabrications of academics dedicated to looking away from an uncomfortable reality. Exploiting Israeli frustration and fatigue, such concepts appear enormously tempting. They are, however, unforgivably dangerous, generating faith in a “peace process” that points only to Israel's dismemberment and eventual disappearance.



For Israel, the future cannot be separated from the past. They are indissolubly interconnected. To prepare for the future, Israel's leaders must look *closely* at the past, not only from 1948 onward, but for five thousand years. The point is more than the clichéd imperative to learn the “lessons of history”. It is to understand that Jewish history is altogether *sui generis*, that Israel's history is an integral part of this Jewish history, and that an erroneous “cosmopolitanism” (i.e., “Jews are just another people in the worldwide community of humankind”) could be a particularly serious mistake.



The term “dialectic” originates from the Greek expression for the art of conversation. Today, a common meaning is that dialectic is a method of seeking truth via correct reasoning. From the standpoint of our concerns, the following operations may be identified as essential but nonexclusive components of a strategic dialectic: (1) a method of refutation by examining logical consequences; (2) a method of division or repeated logical analysis of genera into species; (3) logical reasoning using premises that are probable or generally accepted; (4) formal logic; and (5) the logical development of thought through thesis and antithesis to a synthesis of these opposites.



Dialectic likely originated in the fifth century BCE, as Zeno, author of the *Paradoxes*, was recognized by Aristotle as its inventor. In the middle dialogues of Plato, dialectic emerges as the supreme form of philosophical/analytic method. In one of these dialogues, Plato describes the dialectician as someone who knows how to ask and to answer questions. This is what should now be transposed to the study of Israeli security matters. We need, in these all-important matters, to know how to ask and to answer questions. *This* knowledge must precede compilations of facts, figures, and power “balances”.



The dialectician needs to recognize the advantages of private as opposed to collective thought. Here we are 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 analysis, this suggests some serious limitations to “teamwork”, “group projects”, “centers for strategic studies”, “expert collaboration”, and so on. It is not that these forms of investigation are inappropriate per se, but that they must be tempered by sober *private* thinking.



The advantages of a new Israeli strategic dialectic will depend, in part, on the coherence of the overall academic enterprise. Israel does not face a random set of discrete and wholly separate military threats. Instead, there is a general threat environment within which discrete

threat components fit. The task for Israeli academic strategists is not to figure out in advance each and every specific threat component (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, among other things, an obligation to fashion a strategic “master plan”, a body of generalized and interrelated propositions from which specific policy options can be derived.



“In the areas with which we are concerned”, wrote Walter Benjamin, “insight only occurs as a lightning bolt. The text is the thunder-peal rolling long behind.” For us, such an “area” is Israeli strategic studies. It is an area that will be ill-served by standard thinking and texts. It is an area that can only be served productively by flashes of understanding that defy (and quite probably contradict) mainstream assessments and analyses.



The current and ongoing disintegration of the world is creation in reverse. For Israel, the Jewish state, there are therefore special lessons to be learned from this disintegration. The geometry of chaos, in a strange and paradoxical symmetry, reveals both sense and form. How shall they be discovered? This is an *important* question, one that goes far beyond the usual sorts of **On War** and **Transformation of War** queries. It must not be ignored.



Israel, it seems, can contemplate the end of the Third Temple Commonwealth every day, and yet persevere quite calmly in its most routine and mundane affairs. This should not be the case if Israel could begin to contemplate the *moment* of its collective disappearance. It follows that Israel must begin immediately to replace reassuringly abstract conceptualizations of End Times with unbearably concrete imaginings of catastrophe. Only then could the leaders of Israel take the steps needed to survive into the third millennium.



There exists, among Israel's enemies, a voluptuousness all their own; the voluptuousness of conflict against the Jewish state *as such*. It is in Israel's strategic interest not to lose sight of this voluptuousness. Israel's enemies, in good part, do not read Clausewitz. They are, in good measure, animated by more primal needs and expectations.



E.M. Cioran, the most dazzling and devastating French philosophical voice since Paul Valery (and an original thinker in the tradition of Kierkegaard, Nietzsche, and Wittgenstein), writes of the Jews as a “people of solitaries”, a people, for all of its recognized lucidity, that “readily sacrifices to illusion: it hopes, it always hopes too much... With so many enemies, any other people, in its place, would have laid down its arms; but this nation, unsuited to the complacencies of despair, bypassing its age-old fatigue and the conclusions imposed by its fate, lives in the delirium of expectation, determined not to learn a lesson from its humiliations.” How true, how *especially* true is this observation of a “nation” for the state of the Jews, the state of Israel.



When Pericles delivered his “Funeral Oration” and other speeches, with their praise of Athenian civilization, his perspective was largely military. Recorded by Thucydides, a historian whose main interest was to study the growth and use of power for military objectives, the speeches of Pericles express confidence in ultimate victory for Athens, but they also express grave concern for self-imposed setbacks along the way: “What I fear more

than the strategies of our enemies is our own mistakes.” Although Pericles exaggerated the separateness of enemy strategies and Athenian mistakes (they were, of course, interrelated and even synergistic), there is an important lesson here for Israel. *In observing enemy preparations for war, do not forget that the effectiveness of these preparations will always depend on Israel's particular responses.*



Under contemporary international law, the right of self-defense is not confined to postattack circumstances. Instead, it extends, under carefully defined conditions, to preemptive or “anticipatory” strikes. In this connection, Israel's leaders and planners should recall Pufendorf's authoritative argument in his **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, and to anticipate him who is preparing mischief, provided there be no hope that, 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.



A passage in **The Odyssey** speaks of two gates, one of horn and one of ivory. Through the ivory gate false dreams pass to humankind, and through the gate of horn go only the true and prophetic dreams. At this moment in its always precarious history, Israel is sorely tempted by the ivory gate, choosing to base preservation of the Third Temple on fanciful visions of a “peace process”, “confidence-building measures”, and “security communities”. Israel would be far better off, however, to pass instead through the gate of horn, preparing to use military force selectively and preemptively in order to endure. This decision will likely occasion greater pain and uncertainty in the short run, but it would base preservation of the Third Temple on altogether sober assessments of *Realpolitik* and would affirm, rather than reject, the essential obligations of international law.



According to **al-Da'wa** (The Mission), an Islamic publication, the status of Israel is identical to the status of the individual Jew. What is this status? “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.” Historically, the Islamic world's orientation to extermination of the Jews has not been limited to phrasemaking. Even before Israel came into existence in May 1948, on November 28, 1941, the Grand Mufti of Jerusalem, Haj Amin, met in Berlin with Adolf Hitler. The declared subject of their meeting was nothing less than “the final solution of the Jewish question”. This meeting, which followed Haj Amin's active organization of Muslim SS troops in Bosnia, included the Mufti's promise to aid German victory in the war. Later, after Israel's trial and punishment of Adolf Eichmann in 1961, Iranian and Arab newspapers described the mass murderer of Jews as a “martyr”, congratulating him posthumously for having “conferred a real blessing on humanity” by liquidating six million “subhumans”.



Regarding American orientations to genocide in the Middle East, Israel would do well to recall the Reagan and Bush administrations' indifference to extermination of the Kurds. Iraqi

documents seized during the Kurdish uprising in March and April 1991 detail mass slayings of civilians, including videotapes of executions, beatings, and torture. US authorities, for years, encouraged Kurdish revolt, and then betrayed this unfortunate people to genocidal destruction. During the late 1980s, the United States stood by silently as Saddam Hussein's regime systematically demolished Kurdish villages and towns, and forcibly transferred a half million or more Kurds into specially created concentration camps. In March 1991, after encouraging the Iraqi Kurds to rise up against the Baghdad regime, the Bush administration did nothing to prevent new crushing, genocidal blows against the Kurds by the Iraqi army.



From the standpoint of international law, we must distinguish preemptive attacks from *preventive* ones (a distinction, as noted earlier, made by Efraim Inbar). Preemption represents a 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, whereas in a preventive strike the interval is considerably longer. A problem for Israel, in this regard, is not only the practical difficulty in determining imminence, but also the fact that delaying a defensive strike until imminence is plausible could be fatal.



In the strict jurisprudential sense, because a state of war exists between Israel and Iran (at Iran's particular insistence), the Jewish state does not need to meet the requirements of anticipatory self-defense. Instead, since there can be no authentic preemption in an ongoing belligerency, an Israeli "first strike" against Iran would need only to fulfill the expectations of the Laws of War, i.e., the rules of discrimination, proportionality, and military necessity. A legal state of war can exist between two states irrespective of the presence or absence of ongoing hostilities between national armed forces. The principle affirming that the existence of a legal state of war depends on the *intentions* of one or more of the states involved, and not on "objective" phenomena, is known variously as the "state of war doctrine", "*de jure* war", "war in the legal sense", and "war in the sense of international law".



Confronting what he calls "our century of fear", Albert Camus would have us all be "neither victims nor executioners", living not in a world in which killing has disappeared ("we are not so crazy as that!"), but one wherein killing has become illegitimate. This is a fine expectation, to be sure, yet unless it is fashioned with a promising view toward effective nonlethal measures of preserving order and justice, the result will certainly be an enlargement of pain and terror. Deprived of the capacity to act as lawful executioners, states facing aggression would be forced by Camus's reasoning to become victims. Why is Camus so sorely mistaken? Where, exactly, has he gone wrong? The answer, it would seem, lies in his presumption, however implicit, of a natural reciprocity among human beings and states in the matter of killing. More specifically, we are asked to believe that as greater numbers of people agree not to be executioners, still greater numbers will follow on the same course. In time, the argument proceeds, the number of those who refuse to sanction killing will become so great that there will be fewer and fewer victims. The problem, of course, is that Camus' s presumed reciprocity does not exist. The will to kill, as we have learned from so many for so long, is unimpressed by particular commitments to "goodness". It follows that executioners may have their rightful place in world politics, and that without them there would only be more victims.



In the realm of world politics, executioners sometimes function as assassins. Although such functioning is almost always an instance of wrongful execution, there are certain carefully circumscribed cases where it may be rightful, permissible, and even distinctly law-enforcing. Understood in terms of Israel's security needs, this points to the option of assassination as a form of anticipatory self-defense. In determining whether or not a particular instance of assassination would qualify as such a form under international law, the act: (1) must not be designed to achieve a prohibited objective, but only to forestall destruction of Israel's land and people; and (2) must meet the legal test known to international lawyers as the *Caroline* – i.e., the danger that gives rise to the preemptive attack by Israel must be judged “instant, overwhelming, leaving no choice of means and no moment for deliberation”. Thus, if the assassination is undertaken only to destroy the *potential* threat of the enemy (as a *preventive* action), it would not qualify as permissible under international law. If, however, the assassination were undertaken in anticipation of immediate enemy aggression (as a *preemptive* action), it *could* qualify as an instance of anticipatory self-defense. There are several problems here. First, in the real world, judgments concerning the immediacy of anticipated aggression are exceedingly difficult to make. Second, even where such judgments are ventured, it can never be altogether clear whether the degree of immediacy is sufficient to invoke preemption rather than prevention. Third, in meeting the above-stated legal requirements of defensive intent (no. 1 above), Israel may have to act preventively rather than preemptively (because waiting to allow a threat to become more immediate could have decisively negative strategic/tactical consequences). And fourth, the actual state-preserving benefits that might accrue to Israel from assassination of enemy leaders are apt to be contingent on *not waiting* until the danger posed is “instant, overwhelming, leaving no choice of means and no moment for deliberation”. Assessments of the lawfulness of assassination as anticipatory self-defense must also include comparisons with alternative forms of preemption. If, for example, the perceived alternative to assassination is large-scale uses of force taking the form of defensive military strikes, a utilitarian or “balance of harms” criterion could surely favor assassination. Such a choice may well have to be made sometime soon in Jerusalem, especially as the territories are transformed into a Palestinian state. Here, deprived of strategic depth, Israel could calculate that it had only three real options: (1) do nothing, rely entirely on deterrence, and hope that enemy states remain dissuaded from striking first; (2) strike preemptively with military force against selected hard targets in enemy states, and hope that substantial reprisals are prevented by persuasive intrawar deterrence, i.e., by compelling Israeli threats of unacceptably damaging counterretaliation; or (3) strike preemptively by assassination, and hope that this will reduce the overall threat to Israel without escalating into full-fledged military encounters. Although impossible to determine in the abstract, option 3 might well prove to be the most cost-effective one available to Israel in certain circumstances.



Jurisprudentially, of course, it would be reasonable to examine assassination as a possible form of *ordinary* self-defense, i.e., as a forceful measure of self-help short of war that is undertaken *after* an armed attack occurs. Tactically, however, there are at least two serious problems with such an examination. First, in view of the ongoing proliferation of extraordinarily destructive weapons technologies among Israel's enemies in the Middle East, waiting to resort to ordinary self-defense could be very dangerous, if not altogether fatal. Second, assassination, while it may prove helpful in preventing an attack on Israel in the first place, is far less likely to be useful in mitigating further harm once an attack has already been launched.



Martin Van Creveld writes, in **The Transformation of War**, that as the lines between political violence and criminal violence become blurred, assassination of enemy leaders will become more fashionable: “Over the last three centuries or so, attempts to assassinate or otherwise incapacitate leaders were not regarded as part of the game of war. In the future, there will be a tendency to regard such leaders as criminals who richly deserve the worst fate that can be inflicted upon them.” From the standpoint of international law, a case in point is Saddam Hussein. Based on the peremptory principle of law known as *Nullum crimen_sine poena*, “No crime without a punishment,” leaving Saddam in power, unpunished, was altogether unjust. At Nuremberg, the words used by the court, “So far from it being unjust to punish him, it would be unjust if his wrong were allowed to go unpunished,” represented an authoritative reaffirmation of this principle. The earliest statements of *Nullum crimen sine poena* can be found in the Code of Hammurabi (c. 1728-1686 BCE), the Laws of Eshnunna (c. 2000 BCE), the even-earlier code of Ur-Nammu (c. 2100 BCE), and, most significantly for Israel, the *Lex Talionis* or law of exact retaliation, presented in three separate passages of the Torah. For ancient Hebrews, when a crime involved the shedding of blood, not only punishment, but punishment involving a reciprocal bloodletting, was required. Shedding of blood is an abomination that must be expiated, “for blood pollutes the land, and no expiation can be made for the land, for the blood that is shed in it, except by the blood of him who shed it” (Num. 35:33).



Israel, the Jew in macrocosm, has become uncomfortable with the use of power, especially that form of power based on armed force. In a world of growing international anarchy, this development represents a serious liability. Left unchecked, it could become fatal.



The *obligation* to use armed force in a world of international anarchy forms the central argument of *Realpolitik* from the Melian Dialogues of Thucydides and Cicero to Machiavelli, Locke, Spykman, and 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.” Such arguments are assuredly not incorrect, but it is likely that, today, they have become markedly trivial. The anarchy we confront in world politics today is vastly different from its predecessors; it is more far-reaching, extending not only between states but within them. It is almost primordial, the anarchy of William Golding's *Lord of the Flies*; it is *sui generis*. What does this suggest about Israel's particular security options? How should Israel's leadership plan in the face of this new kind of anarchy? How will Israel be affected by anarchy amid its enemies? And how will it be affected by anarchy among its “friends”?



Van Creveld's **Transformation of War** is right on the mark in underscoring humankind's seemingly irrational delight in the use of armed force, an authentic joy in the spirit of war. This observation is an indispensable corrective to the popular notion that everyone is always agreed on the undesirability and unattractiveness of war, a notion with origins in the poetry of the classical age, the poetry of Pindar: “Sweet is war to him who knows it not, but to those who have made trial of it, it is a thing of fear.” Similar expressions are found in the less-than-exultant tone of the herald's tale of victory in the **Agamemnon**; the harsh words of Euripides for that same victory in the **Troades**; the poignant words of Pericles regarding those who had

perished in Samos: “It was as if the spring had been taken from the year.” Yet, even before Van Creveld, Michael Howard pointed out: “In Western Europe until the first part of the seventeenth century, warfare was a way of life for considerable sections of society, its termination was for them a catastrophe, and its prolongation, official or unofficial, was the legitimate objective of every man of spirit.” In the eighteenth century, war was accepted by many as an essential element of social life; one needed to combat what Kant called “mere commercial spirit, and with it a debasing self-interest”.



There is a dramatic affinity between war and the personal fear of death. Although it is unlikely that Israeli planners will read Lucretius's great poem **On the Nature of Things**, the message of the Epicurean text has serious implications for Israeli security. What the young Virgil, citing Lucretius, called fear of “the doom against which no prayer avails” leads humankind to destroy life. Because the individual fails to understand the balance between destructive and creative forces, he/she is anxious about personal dissolution. This individual, to use the mythical terms set forth by Lucretius himself, will be on the side of Mars rather than Venus, reaching out to the rest of the world aggressively rather than compassionately. Persons, and therefore collectivities of persons known as states, have an incorrect attitude toward death that turns them to the terrible pleasures of violence. The very last scene of Lucretius's poem is a bloody battle that would not have occurred if individuals had understood death. Humankind surrenders to death and dismemberment precisely because it fears death and dismemberment. How characteristic and insightful, indeed prophetic, are these ancient observations in relation to current Islamic thought about war, terrorism, and “infidels”. Israel should take note!



“Men as a rule willingly believe what they want to believe!” So says Caesar in Chapter 18 of the **Gallic War**. For Israel, the import of Caesar's insight became evident on October 5, 1973, with the start of the Yom Kippur War. Until then, the country had been committed to something known generally as “the concept”, the *konseptsia*, the contrived idea that the Arabs were unwilling and incapable of renewing hostilities against the Jewish state. Military Intelligence's overall assessment of enemy designs, lasting until October 5, 1973, was that war was “highly improbable” or “improbable”. It was this fundamentally incorrect assumption that created a monumental intelligence blunder – the *mehdal* in postwar Hebrew parlance. This is a blunder that could be repeated at far greater cost in the future. At the moment, the principal source of such a prospective blunder is the sentiment that sustains the September 13, 1993, Israel-PLO agreement.



The Oslo accords and Wye agreement are null and void according to international law. All states are obligated by international law to seek out and prosecute the perpetrators of crimes of war, crimes against peace, and crimes against humanity. The same obligation extends to crimes of terrorism. Derived from the peremptory norm of *Nullum crimen sine poena*, this obligation was flagrantly violated by Israel's agreement with a terrorist organization. Indeed, recognizing that, according to Article 53 of the Vienna Convention on the Law of Treaties, any agreement “is void, if at the time of its conclusion, it conflicts with a peremptory norm of general international law”, the Oslo/Wye agreements *should be disregarded*. Conflicting with a peremptory or *jus cogens* norm, a norm that, according to the same Article 53, is “a norm accepted and recognized by the international community of states as a whole as a norm from

which no derogation is permitted”, the agreements confer no jurisprudential responsibilities of any kind.



The Palestine Liberation Organization was treated as a terrorist group in the *Klinghoffer v. Palestine Liberation Organization (PLO)* suit. Here, the court determined, among other things, that the federal court have jurisdiction over the PLO. In this civil action, which alleged that “the owner and charterer of the Achille Lauro, travel agencies and various other entities” failed to thwart the attack, jurisdiction was proffered on the basis of the Death on the High Seas Act (46 USC App. Secs. 761-767; 1982), diversity of citizenship, and state law.



It is generally (but erroneously) believed that the peace treaty in force between Israel and Egypt constrains the latter from joining with other Arab states against the former. But a Minute to Article VI, paragraph 5, of the Israel-Egypt Peace Treaty provides that it is agreed by the parties that there is no assertion that the Peace Treaty prevails over other treaties or agreements, or that other treaties or agreements prevail over the Peace Treaty. (See Treaty of Peace, March 26, 1979, Egypt-Israel, Minute to Art. VI[5], 18 I.L.M., 362, 392.)



In all world politics, but especially in the Middle East, we are present at the gradual unveiling of a secret, but the nucleus of meaning, the essential truth of what is taking place, is *what is not said*. For the immediate future, the enemies of Israel will continue their preparations for chemical/biological/nuclear war. Altogether unaffected by parallel public commitments to “peace process”, “self-determination”, “regional coexistence”, “security regimes”, and “confidence- building measures”, these preparations will proceed on their own track, culminating, if unobstructed, in new and substantially more portentous aggressions against Israel. It follows that Israel must not close its eyes to such enemy preparations or to the associated and synergistic dangers of a Palestinian state, one-sided denuclearization, and one-sided peace settlements.



In the aftermath of the 1991 Gulf War, Israel – intrawar threats notwithstanding – decided not to respond with any retaliatory strikes to Iraq's thirty-nine missile attacks. If Israel had decided to respond, presumably against Baghdad's pertinent military assets, this response could have been characterized by Jerusalem as any one of the following: (1) reprisal; (2) self-defense; or (3) anticipatory self-defense. Alternatively, Israel could have argued persuasively that: (4) a condition of war had existed between the Jewish state and Iraq since 1948 at Iraq's insistence, and that Israel's latest military strikes were not measures of self-help short of war (i.e., not instances of reprisal, self-defense, or anticipatory self-defense) but rather just one more legitimate use of force in an ongoing conflict. In the final analysis, the lawfulness of Israel's counterstrike and the reasonableness of its characterization would have depended on such facts as general moves toward peace under way in the region, amount of time elapsed between Iraq's aggression and Israel's response, and the level of continuing danger to Israel from the Baghdad regime. If Jerusalem had opted for no. 4 above, its military counterstrike would have been *prima facie* lawful so long as it had fulfilled the settled preemptory criteria of the Laws of War – namely, the expectations of discrimination, proportionality, and military necessity.



Uncomfortable truths travel with great difficulty. Among these truths, one of the most distressing concerns the certain failure of the so-called nonproliferation regime. Highlighted by the Nonproliferation Treaty, which entered into force in 1970, this body of authoritative norms under international law is incapable of preventing the spread of nuclear weapons throughout the world. This means that reliance on such a body of rules, however “prudent” and well intentioned, will likely hasten rather than inhibit the onset of nuclear war. What shall Israel do? Should it accede to the treaty, it would trade off critical safety for favorable world public opinion. Of course, it could also do what Iraq and other Islamic states have always done, i.e., sign the treaty but act as if no obligations whatever had been incurred – but such hypocrisy has never been Israel's style, nor should it be. It should also be recalled here that Israel has never obstructed diplomatic remedies to regional security. In addition to the Oslo/Wye agreements, note the following: In January 1993, Israel became a charter signatory of the Chemical Weapons Convention (CWC), whereas Egypt, Syria, and most other states in the region rejected the treaty. Israel ratified the Limited Test Ban Treaty in 1964. It is a member of the International Atomic Energy Agency (IAEA) and has safeguards agreements for several minor facilities. It has consistently supported the concept of a Nuclear Weapons Free Zone for the Middle East (MENWFZ).



In calculations of strategic deterrence, Israel's planners must always recall that what matters is whether a prospective attacker *perceives* secure Israeli retaliatory forces. Where a prospective attacker perceives vulnerable retaliatory forces, it might judge the first-strike option against Israel to be entirely cost-effective. This means, among other things, that Israel's intelligence estimates must always keep close watch on enemy *perceptions*, and that when these estimates determine enemy perceptions of Israeli retaliatory-force vulnerability, Israel's own preemption option may become more compelling. It also follows, of course, that Israel must always do whatever possible to encourage enemy perceptions of Israeli nuclear force invulnerability, an imperative that could include not only enhanced active defenses but also, among other things, removing the bomb from the “basement”.



An interesting 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 prompt preemption? An antecedent question is the following: to what extent, if any, might ongoing transformation of the territories into 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. As, however, this territory becomes Palestine, Israel will almost surely 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 increase the chances of a nuclear war should this posture fail.



Israel's enemies might be judged irrational, but this does not necessarily mean that they are “crazy”. Indeed, Israeli nuclear deterrence could be immobilized by enemy behavior that is entirely rational, but reflective of what would ordinarily be construed as a fanatical preference ordering. For example, Iran could conceivably act on 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. Here Iran would neither be irrational nor crazy.



Truly, reading accounts of genocide in Rwanda, one loses altogether the distinction between sane and crazy. For the most part, the perpetrators of this genocide, like virtually all genociders in history, are perfectly sane. Perhaps this suggests that Israeli planners would do best to draw their strategic theories and inferences from the genre of the absurd, from the “preposterous” theater of Beckett, Ionesco, Adamov, Genet, and Albee. Can Israel endure in a *sane* world?



I am thinking about the apparent contradiction between Herman Kahn and Yehoshafat Harkabi. Kahn, in his **Thinking about the Unthinkable in the 1980s**, says: “It is unacceptable, in terms of national security, to make nonuse of nuclear weapons the highest national priority to which all other considerations must be subordinated. It is immoral from almost any point of view to refuse to defend yourself and others from very grave and terrible threats.” Harkabi, in **The Bar Kokhba Syndrome**, draws this “operative guidance” from the Bar Kokhba Rebellion: “In choosing a style of fighting, be wary of warfare in which the reaction required of the enemy, from the enemy's point of view, may lead to an action detrimental for you... This is an important lesson in nuclear circumstances: refrain from a provocation for which the adversary may have only one response, nuclear war.” The contradiction arises because Kahn demands a willingness to maintain the nuclear option whereas Harkabi sees just such willingness, among other things, as an invitation to disaster (as “unrealistic”). The contradiction would disappear if it could be assumed that nuclear weapons use by Israel would not provoke nuclear war, but this would happen only if Israel's pertinent enemy were nonnuclear or lacked second-strike capability. Also, Kahn speaks of nuclear weapons in terms of “defense”, a reference that could make sense within the context of certain ATBM systems, but that strays from the more usual context of deterrence. Depending on the breadth of Kahn's meaning of defense, the contradiction with Harkabi will be more or less substantial.



Elsewhere Harkabi is virtually incoherent. At one point he argues as follows: “The nuclear era thus generates *terminal situations for decision making*. But the mutuality of threat and of destiny moderates the situation and perhaps will, over the course of years, prevent nuclear war” (emphasis in original). Why “mutuality”? Whose “destiny”? What evidence for “moderation”? Such anti-thought dramatizes the requirement for a new strategic dialectic.



Harkabi's marked descent into incorrect reasoning continues. Consider the following:

Nuclear war is absurd, for no national gain could offset the damage such a war would cause. What is the point in attempting to keep a certain asset by threatening to use nuclear weapons, if, as a result of their use, all assets will be lost? The threat to launch a nuclear war is not reasonable, and, thus, not credible. The threat is nevertheless effective because there inheres a residue of doubt that, despite its irrationality, it may be carried out. These contradictions become even more severe, for, even if nuclear war is absurd, it is not absurd for the nuclear powers to plan for such warfare. That is, the preparation of the means to realize the absurd is not absurd. These difficulties lead to a situation where the great powers today are unsuccessful in developing for themselves cohesive doctrines of nuclear strategy, for the absurdity of nuclear war spills over into the extravagances of the strategy of such warfare.

It is difficult to imagine a more incoherent elucidation of nuclear strategy and nuclear war. Not only are the separate components of the “argument” intrinsically (and *prima facie*) wrong, they invalidate one another.



I return, again and again, to Eugene Ionesco, the Romanian-born playwright whose journal, **Present Past/Past Present: A Personal Memoir**, bears comparison with Pascal's *Pensées*. In July 1967, he permitted himself this important observation:

...in the end, very few people accord the state of Israel the right to exist. This country bothers everybody: it bothers the Russians, it bothers the Americans, it bothers the French...it bothers the Jews who must take a stand...it bothers everybody because the existence of something strong, powerful, unarguable always creates insoluble problems”.

Shall Israel become less of a “bother”? I hope not!



“We are often asked”, said the late Italian Jew and survivor Primo Levi in **The Drowned and the Saved**, “as if our past conferred a prophetic ability upon us, whether Auschwitz will return”. However we choose to answer so terrible but unavoidable a question, our past seems to have conferred precious little in the way of prophetic abilities. On the contrary, by persistently deluding ourselves that not seeing is a way of not knowing, we have distanced ourselves from the most indispensable forms of warning. Israel take notice!



Israel is macrocosm. Like the individual Jew surrounded by mobs of would-be murderers, the Jewish state stands encircled among a crowd of other states that cries fervently for its extinction. Where it stands stubbornly and defiantly for survival, the Diaspora Jew will have a proud and unparalleled incentive to endure. And wherever the Diaspora Jew chooses to endure, Israel will be prodded to face its own precarious future with open eyes.



Jews don't like to be bearers of harm; until now, we have been victims rather than executioners. But much as we should like to be “neither victims nor executioners” (to borrow a phrase again from Albert Camus's essay of the same name), this is simply not possible. The will to mass murder of Jews, as we have learned from so many for so long, is unimpressed by persistent expressions of Jewish goodness. It follows, regarding both Israel and the Diaspora, that Jewish “executioners” have their rightful place and that without this place there would be not diminished pain, but only whole legions of new Jewish *and non-Jewish* sufferers.



Endnotes

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- ¹ See Vienna Convention on the Law of Treaties. Done at Vienna, May 23, 1969. Entered into force, January 27 1980. UN Doc. A/CONF.39/27 at 289 (1969), 1155 U.N.T.S. 331, *reprinted in* 8 I.L.M. 679 (1969).
 - ² See Jochanan Bloch, “Die unpolitische Politik der israelischen Regierung”, in **Evangelische Zeitstimmen**, Vol. 61, No. 2, 1972, p. 75, cited in Rael Jean Isaac and Erich Isaac, “By What Right?”, **Judaism**, Vol. 26, No. 2, 1977, p. 147.
 - ³ Giacomo Leopardi, **Pensieri**, trans. W.S. Di Piero, (New York: Oxford University Press, 1981), p. 33.
 - ⁴ For works by this author on the subject of genocide, see: Louis René Beres, “Genocide, Death and Anxiety: A Jurisprudential/Psychiatric Analysis”, **Temple International and Comparative Law Journal**, Vol. 10, No. 2, 1996, pp. 281-312; Louis René Beres, “Justice and Realpolitik: International Law and the Prevention of Genocide”, **American Journal of Jurisprudence**, Vol. 33, 1988, pp. 123-

- 159; Louis René Beres, "Genocide, Law and Power Politics", **Whittier Law Review**, Vol. 10, No. 2, 1988, pp. 329-351; Louis René Beres, "Genocide and Power Politics: The Individual and the State", **Bulletin of Peace Proposals**, Vol. 18, No. 1, 1987, pp. 73-79; Louis René Beres, Reason and Realpolitik: International Law and the Prevention of Genocide", **Chitty's Law Journal**, Vol. 30, October 1982, pp. 223-242; 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; Louis René Beres, "Genocide, State and Self", **Denver Journal of International Law and Policy**, Vol. 18, No. 1, 1989, pp. 37-57; Louis René Beres, "After the Gulf War: Iraq, Genocide and International Law", **University of Detroit Mercy Law Review**, Vol. 69, No. 1, 1991, pp. 13-31; Louis René Beres, "Punishing Genocide and Crimes against Humanity after the Gulf War: Iraqi Crimes and International Law", PSIS Occasional Papers, No. 1/1990, Graduate Institute of International Studies, Geneva (41 pp.); Louis René Beres, "Genocide and Genocide-Like Crimes", in M. Cherif Bassiouni, ed., **International Criminal Law**, Vol. 1, **Crimes** (Dobbs Ferry, NY: Transnational Publishers, 1986), pp. 271-279; Louis René Beres, **Reason and Realpolitik: US Foreign Policy and World Order**, (Lexington, Mass.: Lexington Books, 1984); Louis René Beres, **America outside the World: The Collapse of US Foreign Policy** (Lexington, Mass.: Lexington Books, 1987).
5. For extant writings by this author on the particular threat to Israel, see: Louis René Beres, "Israel after Fifty: The Oslo Agreements, International Law and National Survival", **Connecticut Journal of International Law**, Vol. 14, Fall 1998; Louis René Beres, "Israel, the 'Peace Process', and Nuclear Terrorism: A Jurisprudential Perspective", **Loyola of Los Angeles International and Comparative Law Journal**, Vol. 18, No. 4, September 1996, pp. 767-793; Louis René Beres, "Israel, the 'Peace Process', and Nuclear Terrorism: Recognizing the Linkages", **Studies in Conflict and Terrorism**, Vol. 21, No. 1, 1998, pp. 59-86; Louis René Beres, "Attrition, Annihilation and the End of Israel: A Strategic and Jurisprudential View", **University of Detroit Mercy Law Review**, Vol. 73, No. 3, 1996, pp. 479-498. For writings by this author on the prospect in general, see: Louis René Beres, "Facing the Ultimate Nightmare: Preventing Nuclear Terrorism against the United States", **Brown Journal of World Affairs**, Winter/Spring 1998, pp. 1-21; Louis René Beres, "Preventing Nuclear Terrorism against the United States", **Special Warfare (Dod)**, Vol. 9, No. 3, 1996, pp. 22-29; Louis René Beres, "Preventing the Blood-Dimmed Tide: How to Avoid Nuclear Terrorism against the United States", **Strategic Review**, Spring 1996, pp. 76-80; Louis René Beres, "Confronting Nuclear Terrorism", **Hastings International and Comparative Law Review**, Vol. 14, No. 1, 1990, pp. 129-154; Louis René Beres, "The United States and Nuclear Terrorism in a Changing World: A Jurisprudential View", **Dickinson Journal of International Law**, Vol. 12, No. 2, 1994, pp. 327-366; Louis René Beres, "On International Law and Nuclear Terrorism", **Georgia Journal of International and Comparative Law**, Vol. 24, No. 1, 1994, pp. 1-36; Louis René Beres, **Terrorism and Global Security: The Nuclear Threat**, 2nd ed., revised and updated (Boulder, Col.: Westview Press, 1987).
6. On the subject of "experts", see Jacques Barzun, **The House of Intellect** (Chicago: University of Chicago Press, 1959); **Madmen and Specialists**, a play by the Nigerian playwright Wole Soyinka, (New York: Hill & Wang, 1971).
7. See, by this author: Louis René Beres, "Israel's Survival Imperatives: The Oslo Agreements in International Law and National Strategy", Policy Paper No. 25, Ariel Center for Policy Research, Shaarei Tikvah, Israel, 1998 (74 pp.); Louis René Beres, "Why the Oslo Accords Should Be Abrogated by Israel", **American University Journal of International Law and Policy**, Vol. 12, No. 2, 1997; Louis René Beres, "The 'Peace Process' and Israel's Nuclear Strategy", **Strategic Review**, Winter 1995, pp. 35-47; Louis René Beres, "Power, Preemption and the Middle East Peace Process", **Midstream**, December 1995, pp. 2-4; Louis René Beres, "The Oslo Accords and Israel's Nuclear Strategy", **Georgetown Compass**, Winter 1995/96, pp. 74-80; Louis René Beres, "The Security and Future of Israel: An Exchange", **Midstream**, June/July 1995, pp. 15-23 (a debate on the peace process with Maj. Gen. Shlomo Gazit, former chief of IDF Intelligence Branch).
8. A notable exception to this trend is Martin van Creveld's **The Transformation of War** (New York: Free Press, 1991), but even this relatively imaginative work does not really offer an alternative

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- paradigm to what has evolved from Clausewitz and Liddell-Hart.
9. “Aus so krummem Holze, als woraus der Mensch gemacht ist, kann nichts ganz Gerades gezimmert werden.”
 10. See Jose Ortega y Gasset, **The Dehumanization of Art and Other Essays on Art, Culture, and Literature** (Princeton: Princeton University Press, 1948), p. 7.
 11. See Jose Ortega y Gasset, **The Revolt of the Masses** (1932), Ch. 12, “The Barbarism of ‘Specialisation’”.
 12. Although brought into fashion by the Bush administration, the concept of “world order” as an organizing dimension of inquiry and as a normative goal of global affairs has its contemporary intellectual origins in the work of Harold Lasswell and Myres McDougal at the Yale Law School, Grenville Clark and Louis Sohn's **World Peace through World Law** (Cambridge, Mass.: Harvard University Press, 1966), and the large body of writings of Richard A. Falk and Saul H. Mendlovitz. For works by this author, who was an original participant in the World Law Fund's World Order Models Project, see esp.: Louis René Beres and Harry R. Targ, **Constructing Alternative World Futures: Reordering the Planet** (Cambridge, Mass.: Schenkman, 1977); Louis René Beres and Harry R. Targ, eds., **Planning Alternative World Futures: Values, Methods and Models** (New York: Praeger, 1975); Louis René Beres, **People, States, and World Order** (Itasca, Ill.: F. E. Peacock, 1981); Louis René Beres, **Reason and Realpolitik: US Foreign Policy and World Order** (Lexington, Mass.: Lexington Books, 1984).
 13. There is now a considerable literature examining and documenting Iranian development of nonconventional weapons, including nuclear weapons. In the December 1998 issue of **Jane's Intelligence Review** (as reported by Arieh O'Sullivan in the **Jerusalem Post**, December 13, 1998), it is stated that Western Europe will come under the threat of Iranian attack from intercontinental rockets within five years. For a comprehensive analytic consideration by this author of the literature concerning Iran, see: Louis René Beres, “Israel, Iran and Nuclear War: A Jurisprudential Assessment”, **UCLA Journal of International Law and Foreign Affairs**, Vol. 1, No. 1, 1996, pp. 65-97; Louis René Beres, “The Iranian Threat to Israel: Capabilities and Intentions”, **International Journal of Intelligence and Counterintelligence**, Vol. 9, No. 1, 1996, pp. 51-61; Louis René Beres, “Israel's Bomb in the Basement: A Second Look”, **Israel Affairs**, Vol. 2, No. 1, 1995, pp. 112-136; Louis René Beres and Maj. Gen. Shlomo Gazit, “The Security and Future of Israel: An Exchange”, **Midstream**, June/July 1995, pp. 15-23; Louis René Beres, “Israel, Iran and Prospects for Nuclear War in the Middle East”, **Strategic Review**, Vol. 21, No. 2, 1993, pp. 52-60; Louis René Beres, “Power, Preemption and the Middle East Peace Process”, **Midstream**, December 1995, pp. 2-4; Louis René Beres, “The Argument for Israeli Nuclear Weapons”, **Midstream**, May 1995, pp. 2-5.
 14. As acknowledged by Member of Knesset Yossi Beilin in early August 1996, the Labor government had been prepared to accept the creation of a Palestinian state. For a comprehensive account of this incomprehensible preparation, see Evelyn Gordon, “Israel Was Ready to Accept Palestinian State”, **Jerusalem Post International Edition**, week ending August 10, 1996, p. 32.
 15. For elucidation by this author of anticipatory self-defense, with particular reference to Israel, see: 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, 1993, pp. 111-148; Louis René Beres, “After the Gulf War: Israel, Preemption and Anticipatory Self-Defense”, **Houston Journal of International Law**, Vol. 13, No. 2, 1991, pp. 259-280; Louis René Beres, “Striking ‘First’: Israel's Post-Gulf War Options under International Law”, **Loyola of Los Angeles International and Comparative Law Journal**, Vol. 14, No. 1, 1991, pp. 1- 24; Louis René Beres, “Israel and Anticipatory Self-Defense”, **Arizona Journal of International and Comparative Law**, Vol. 8, 1991, pp. 89-99; Louis René Beres, “After the SCUD Attacks: Israel, ‘Palestine’, and Anticipatory Self-Defense”, **Emory International Law Review**, Vol. 6, No. 1, 1992, pp. 71-104. For an examination of assassination as a permissible form of anticipatory self-defense by Israel, see Louis René Beres, “On Assassination as Anticipatory Self-Defense: The Case of Israel”, **Hofstra Law Review**, Vol. 20, No. 2, 1991, pp. 321-340.

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16. Since World War II, aggression has typically defined a military attack, not justified by international law, directed against the territory of another state. The question of defining aggression first acquired 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 that failed to comply with the obligation to employ procedures of peaceful settlement in the Protocol or the Covenant was an aggressor. By a resolution of November 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. Assembly, 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 December 14, 1974. Art. 1 is based on UN Charter Art. 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 be aggression, must be “in contravention of the Charter”, clarifies that there may exist some first use of force that is entirely lawful. 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.
17. See Leo Szilard, “The Sting of the Bee in ‘Saturation Parity’”, **Bulletin of the Atomic Scientists**, March 1965, p. 8ff.
18. In answering this question, Israeli leaders must not lose sight of the fact that, formally, a state of war continues with all Arab states except Egypt and Jordan. The agreements that put an end to the first Arab-Israeli war (1947-1949) were general armistice agreements negotiated bilaterally between Israel and Egypt on February 24, 1949 (42 U.N.T.S. 251-70, 1949); Israel and Lebanon on March 23, 1949 (42 U.N.T.S. 287-98, 1949); Israel and Jordan on April 3, 1949 (42 U.N.T.S. 303-20, 1949); and between Israel and Syria on July 20, 1949 (42 U.N.T.S. 327-40, 1949). Pursuant to these agreements, the Security Council, on August 11, 1949, issued a Resolution that, *inter alia*, “noted with satisfaction the several Armistice Agreements”, and “Finds that the Armistice Agreements constitute an important step toward the establishment of permanent peace in Palestine and considers that these agreements supersede the truce provided for in Security Council resolutions 50 (1948) of 29 May and 54 (1948) of 15 July 1948. (See “Security Council Resolution Noting the Armistice Agreements and Reaffirming the Order to Observe an Unconditional Cease-Fire Pending a Final Peace Settlement”, August 11, 1949, S.C. Res. 73, 1949, 4 UN SCOR, Resolutions and Decisions of the Security Council 1949, at 8, 1965, UN Doc. S/1376, II, 1949.) With the exception of Egypt and Jordan, none of the above-listed armistice agreements has been superseded by an authentic peace treaty. A general armistice is a war convention, an agreement or contract concluded *between belligerents*. Such an agreement *does not result in the termination of a state of war*. The 1907 Hague Convention IV Respecting the Laws and Customs of War on Land, stipulates, at the Annex to the Convention, that “An armistice suspends military operations by mutual agreement *between the belligerent parties*” (emphasis added). (See Convention No. IV Respecting the Laws and Customs of War on Land, with Annex of Regulations. Done at The Hague, October 18, 1907. Entered into force, January 26, 1910. 36 Stat., 2277, T.S. No. 539, 1 Bevans 631, at Chapter V, Art. 36.) The courts of individual states have also affirmed the principle that an armistice does not end a war (see, e.g., *Kahn v. Anderson, Warden*, United States, Supreme Court, 1921, 255, US 1). Indeed, throughout history, armistices have normally envisaged a resumption of hostilities. It follows from this that since no treaties of peace obtained between Israel and the Arab states with which it negotiated armistice agreements in 1949 (again, with the prominent exceptions of Egypt and Jordan), a condition of belligerency continues to exist between these states and Israel. (For pertinent documents and commentary on Israeli-Arab agreements, see Rosalyn Higgins, **United Nations Peacekeeping 1946-1967**, Vol. 1, **The Middle East**, New York: Oxford University Press, 1969, a study issued under the auspices of the Royal Institute of International Affairs.) For pertinent commentary and documents on the historic status of relations between the Arab states and Israel, see Colonel Trevor N. Dupuy (US Army, Ret.), **Elusive Victory: The Arab-Israeli Wars, 1947-1974**

- (New York: Harper & Row, 1978), esp. Ch. 12; John Norton Moore, ed., **The Arab-Israeli Conflict**, Vol. 3, **Documents** (Princeton, N.J.: Princeton University Press, 1974), esp. Part II.
19. The question of the “bomb in the basement” is examined exhaustively in Louis René Beres, ed., **Security or Armageddon: Israel's Nuclear Strategy** (Lexington, Mass.: Lexington Books, 1986). For more recent works, see: Louis René Beres, “Israel's Nuclear Strategy: Ambiguity, Disclosure, Doctrine”, **Denver Journal of International Law And Policy**, Vol. 26, No. 2, 1998, pp. 209-233; Louis René Beres, “Israel's Bomb in the Basement: A Second Look”, **Israel Affairs**, Vol. 2, No. 1, 1995, pp. 112-136.
 20. See Robert Jervis, “Security Regimes”, in Stephen D. Krasner, ed., **International Regimes** (Ithaca: Cornell University Press, 1983), p. 173.
 21. See Garret Hardin, “The Tragedy of the Commons”, **Science**, 162, December 1968, pp. 1243-48.
 22. For works by this author on terrorism, see: Louis René Beres, “Terrorism, Law and Special Operations: Legal Meanings for the SOF Commander”, **Special Warfare**, Winter 1998, pp. 28-39; Louis René Beres, “Terrorism and the Israeli Military Commander”, **Midstream**, April 1997, pp. 2-5; Louis René Beres, “Law and Politics in Israel: What Terrorism Means for the IDF Commander”, **Brown Journal of World Affairs**, Vol. 4, No. 2, 1997, pp. 257-276; Louis René Beres, “On the Assassination of Terrorists”, **Midstream**, April 1996, pp. 2-4; Louis René Beres, “The Legal Meaning of Terrorism for the Military Commander”, **Connecticut Journal of International Law**, Vol. 11, No. 1, 1995, pp. 1-28; Louis René Beres, “Israel's Freeing of Terrorists Is Contrary to International Law”, **University of Detroit Mercy Law Review**, Vol. 73, No. 1, 1995, pp. 1-10; Louis René Beres, “The Meaning of Terrorism for the Military Commander”, **Comparative Strategy**, Vol. 14, No. 3, 1995, pp. 287-300; Louis René Beres, “The Meaning of Terrorism: Jurisprudential and Definitional Clarifications”, **Vanderbilt Journal of Transnational Law**, February 1995; Louis René Beres, “*Hic Sunt Dracones*: The Nuclear Threat of International Terrorism”, **Parameters: Journal of the US Army War College**, Vol. 9, No. 2, 1979, pp. 11-19; Louis René Beres, “Terrorism, Insurgency and Geopolitics: The Errors of US Foreign Policy”, **California Western International Law Journal**, Vol. 17, No. 1, 1987, pp. 161-174; Louis René Beres, “Becoming an Outlaw: United States Foreign Policy and Central America”, **International Journal**, Vol. 40, No. 3, 1985, pp. 510-529; Louis René Beres, “Ignoring International Law: US Policy on Insurgency and Intervention in Central America”, **Denver Journal of International Law and Policy**, Vol. 14, No. 1, 1985, pp. 76-86; Louis René Beres, “Confronting Nuclear Terrorism”, **Hastings International and Comparative Law Review**, Vol. 14, No. 1, 1990, pp. 129-154; Louis René Beres, “Terrorism and International Law”, **Florida International Law Journal**, Vol. 3, No. 3, 1988, pp. 291-306; Louis René Beres, **Apocalypse: Nuclear Catastrophe in World Politics** (Chicago: University of Chicago Press, 1980); Louis René Beres, **Terrorism and Global Security: The Nuclear Threat** (Boulder, Col.: Westview Press, 1987); Louis René Beres, **America outside the World: The Collapse of US Foreign Policy** (Lexington, Mass.: Lexington Books, 1987); Louis René Beres, “Responding to the Threat of Nuclear Terrorism”, in Charles W. Kegley, Jr., **International Terrorism: Characteristics, Causes, Controls** (New York: St. Martin's, 1990), pp. 228-240.
 23. According to Art. 26 of the Vienna Convention on the Law of Treaties: “Every treaty in force is binding upon the parties to it and must be performed by them in good faith.” Yet, according to Art. 65 of the Convention, whether the agreement is in force or not depends on the parties' acting in good faith. This evident circularity calls into question the value of treaties as a method of conflict resolution and war avoidance.
 24. According to Art. 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.”
 25. On the distressing history of such promises, see Ezra Sohar, **A Concubine in the Middle East** (Dvir, 1994).

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26. See Louis René Beres, **Reason and Realpolitik: US Foreign Policy and World Order** (Lexington, Mass.: Lexington Books, 1984).
27. The *Caroline* was an American steamboat accused of running arms to Canadian rebels. A Canadian military force crossed over into the United States and set the ship ablaze, killing an American citizen in the process. A Canadian was arrested in New York for the murder, and the British government protested. See 2 J. Moore, **Digest of International Law** 409-14 (1906). The text of Webster's comment can be found in Barry E. Carter and Phillip R. Trimble, **International Law** (Boston: Little, Brown, 1991), p. 1223.
28. The principle of proportionality has its origins in the biblical *Lex Talionis* (law of exact retaliation), i.e., "eye for eye, tooth for tooth". In contemporary international law, the principle can be found in the traditional view that a state offended by another state's use of force can, if the offending state refuses to make amends, take "proportionate" reprisals. See Naulilaa Arbitration, 1928, 2 RIAA 1013; Air Services Agreement Arbitration, 1963, 16 RIAA 5; cited by Ingrid Detter De Lupis, **The Law of War** (Cambridge: Cambridge University Press, 1987), p. 75; see also United Nations Covenant on Civil and Political Rights of 1966 (Art. 4); European Convention on Human Rights, Art. 15; American Convention on Human Rights, Art. 27(1).
29. Avraham Tamir, **A Soldier in Search of Peace: An Inside Look at Israel's Strategy** (New York: Harper & Row, 1988), p. 197.
30. See Efraim Inbar, "The 'No Choice War' Debate in Israel", **Journal of Strategic Studies**, March 1989, p. 35. For more on Israel's commitment to preemption/prevention, see Gerald M. Steinberg, "The Middle East in the Missile Age", **Issues in Science and Technology**, Vol. 5, No. 4, 1989, pp. 35-40.
31. For earlier discussion of such considerations by this author, see, e.g.: Louis René Beres, "The Real Bases of Middle East Instability", **Midstream**, June-July 1992, pp. 9-10; Louis René Beres, "After the SCUD Attacks: Israel, 'Palestine', and Anticipatory Self-Defense", **Emory International Law Review**, Vol. 6, No. 1, 1992, pp. 71-104; Louis René Beres, "Striking 'First': Israel's Post-Gulf War Options under International Law", **Loyola of Los Angeles International and Comparative Law Journal**, Vol. 14, No. 1, 1991, pp. 1-24; Louis René Beres, "Israel's Destruction of Iraq's Nuclear Reactor", **Midstream**, November 1991, pp. 8-9; Louis René Beres, "After the Gulf War: Israel, Palestine and the Risk of Nuclear War in the Middle East", **Strategic Review**, Vol. 19, No. 4, 1991, pp. 48-55; Louis René Beres, "The Question of Palestine and Israel's Nuclear Strategy", **Political Quarterly**, Vol. 62, No. 4, October-December 1991, pp. 451-460; Louis René Beres, "A Palestine State and Israel's Nuclear Strategy", **Crossroads: An International Socio-Political Journal**, No. 31, 1991, pp. 97-104; Louis René Beres, "Israel, Palestine and Regional Nuclear War", **Bulletin of Peace Proposals**, Vol. 22, No. 2, 1991, pp. 227-234; Louis René Beres, "A Palestinian State: Implications for Israel's Security and the Possibility of Nuclear War", **Bulletin of the Jerusalem Institute for Western Defense**, Vol. 4, No. 3, 1991, pp. 3-10; Louis René Beres, "Israeli Security in a Changing World", **Strategic Review**, Vol. 18, No. 4, 1990, pp. 11-22; Louis René Beres, "Palestine and Nuclear War", **Jerusalem Report**, August 1, 1991, p. 45; Louis René Beres, "Israeli Nuclear Strategy", **International Studies Notes**, Spring 1990; Louis René Beres, "The Growing Threat of Nuclear War in the Middle East", **Jerusalem Journal of International Relations**, Vol. 12, No. 1, 1990, pp. 1-27; Louis René Beres, "Staring Down the Specter of Nuclear War", **Israeli Democracy**, Vol. 2, No. 2/3, 1988, pp. 44-48; Louis René Beres, "Perils of Nuclearism", **Present Tense**, September/October 1988, p. 60; Louis René Beres, "Nuclear Weapons and Nuclear War in the Middle East", **Transnational Perspectives**, Vol. 12, No. 1, 1986, pp. 8-13; Louis René Beres, "Israel, Force, and International Law: Assessing Anticipatory Self-Defense", **Jerusalem Journal of International Relations**, Vol. 13, No. 2, June 1991, pp. 1-14; Louis René Beres, "Israeli Security and Nuclear Weapons", PSIS Occasional Papers, No. 1/1990, Graduate Institute of International Studies, Geneva (41 pp.).
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- Princeton University, 1981; John H.E. Fried, "First Use of Nuclear Weapons: Existing Prohibitions in International Law", **Bulletin of Peace Proposals**, January 1981, pp. 21-29; Matthew Lippman, "Nuclear Weapons and International Law: Towards a Declaration on the Prevention and Punishment of the Crime of Nuclear Humancide", **Loyola of Los Angeles International and Comparative Law Journal**, Vol. 8, No. 2, 1986, pp. 183-234; Burns Weston, "Nuclear Weapons and International Law: Illegality in Context", **Denver Journal of International Law and Policy**, 1983; I. Brownlie, "Some Legal Aspects of the Use of Nuclear Weapons", **International and Comparative Law Quarterly**, Vol. 14, 1965; Francis A. Boyle, "The Relevance of International Law to the 'Paradox' of Nuclear Deterrence", **Northwestern University Law Review**, Vol. 80, No. 6, 1986, pp. 1407-1448; James A. Stegenga, "Nuclearism and International Law", **Public Affairs Quarterly**, Vol. 4, No. 1, 1990, pp. 69-80; Geoffrey Best, **Humanity in Warfare** (New York: Columbia University Press, 1980); James Turner Johnson, **Just War Tradition and the Restraint of War** (Princeton: Princeton University Press, 1981); Istvan Pogany, ed., **Nuclear Weapons and International Law** (New York: St. Martin's, 1987); Daniel J. Arbess, "The International Law of Armed Conflict in Light of Contemporary Deterrence Strategies: Empty Promise or Meaningful Restraint?" **McGill Law Journal**, Vol. 30, 1984, pp. 89-142; E. D. Thomas, "Atomic Bombs in International Society", **American Journal of International Law**, Vol. 39, October 1945, pp. 736-744; E.C. Stowell, "Laws of War and the Atomic Bomb", **American Journal of International Law**, Vol. 39, October 1945, pp. 784-788; John Norton Moore, "Nuclear Weapons and the Law: Enhancing Strategic Stability", **Brooklyn Journal of International Law**, Vol. 9, No. 2, 1983, pp. 263-268; Eugene V. Rostow, "The Great Nuclear Debate", **Yale Journal of World Public Order**, Vol. 8, 1981, pp. 87-102; Elliott L. Meyrowitz, "The Opinions of Legal Scholars on the Legal Status of Nuclear Weapons", **Stanford Journal of International Law**, Vol. 24, No. 1, pp. 111-177; Burns H. Weston, "Nuclear Weapons versus International Law: A Contextual Reassessment", **McGill Law Journal**, Vol. 28, No. 3, 1983, pp. 543-590; John H. E. Fried, "The Nuclear Collision Course: Can International Law Be of Help?" **Denver Journal of International Law and Policy**, Vol. 14, No. 1, 1985, pp. 97-120; Francis A. Boyle, "The Criminality of Nuclear Weapons", Nuclear Age Peace Foundation, Booklet #27, Waging Peace Series, Santa Barbara, Calif., April 1991 (13 pp.)
33. For questions about Israel's intelligence community, see Yossi Sarid, "Learning What We Didn't Know", **Jerusalem Post International Edition**, March 16, 1991, p. 25. Sarid, an MK of the Citizens Rights Movement, member of the Knesset Foreign Affairs and Defense Committee, and currently minister of education, writes in this article about the "Law of Total Surprise", which he defines as follows: "If there is going to be trouble, it will turn up sooner or later (mostly sooner); it will take us by surprise and will develop from merely trouble into an ongoing disaster."
34. An excellent study of such weapons, with much applicability to Israel's case (see below), has been offered by two target planners and theater force analysts at Los Alamos National Laboratory. See Thomas W. Dowler and Joseph H. Howard, II, "Countering the Threat of the Well-Armed Tyrant: A Modest Proposal for Small Nuclear Weapons", **Strategic Review**, Vol. 19, No. 4, 1991, pp. 34-40.
35. See Les Aspin, Secretary of Defense, "Report on the Bottom-Up Review", Section V, "Modernization: Ballistic Missile Defense", Department of Defense, Washington, D.C., October 1993, pp. 43-48.
36. On these views, see Efraim Inbar, "Attitudes toward War in the Israeli Political Elite", **Middle East Journal**, Vol. 44, No. 3, 1990, pp. 431-445.
37. See Louis René Beres, "Israel and Samson: Some Tenuously Biblical Reflections on Strategy", **Jerusalem Letter/Viewpoints**, No. 329, Jerusalem Center for Public Affairs, February 1996 (6 pp.).
38. For discussion by this author of the expected consequences of nuclear warfighting, see: Louis René Beres, **Apocalypse: Nuclear Catastrophe in World Politics** (Chicago: University of Chicago Press, 1980); Louis René Beres, **Mimicking Sisyphus: America's Countervailing Nuclear Strategy** (Lexington, Mass.: Lexington Books, 1983); Louis René Beres, **Reason and Realpolitik: US Foreign Policy and World Order** (Lexington, Mass.: Lexington Books, 1984); Louis Rene Beres, **Security or Armageddon: Israel's Nuclear Strategy** (Lexington, Mass.: Lexington Books, 1986).
39. For authoritative support of the particular reasonableness of anticipatory self-defense in the nuclear age,

- see: Louis Henkin et al., **International Law: Cases and Materials** (1980), p. 933 (citing Wolfgang Friedmann, **The Threat of Total Destruction and Self-Defense**, 1964, pp. 259-260); Joseph M. Sweeney et al., **The International Legal System: Cases and Materials**, 3rd ed. (1988), pp. 1460-61 (citing Myres McDougal, "The Soviet-Cuban Quarantine and Self-Defense", **American Journal of International Law**, Vol. 57, 1963, pp. 597, 598).
40. See Louis René Beres and 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.
41. For scholarly examination of anticipatory self-defense by this author, with particular reference to Israel, see: Louis René Beres, "In Support of Anticipatory Self-Defense: Israel, Osiraq and International Law", **Contemporary Security Policy**, Vol. 19, No. 2, 1998, pp. 111-114; Louis René Beres, "Israel, Iran and Preemption: Choosing the Least Unattractive Option under International Law", **Dickinson Journal of International Law**, Vol. 14, No. 2, pp. 187-206; 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, 1993, pp. 111- 148; Louis René Beres, "After the Gulf War: Israel, Preemption and Anticipatory Self-Defense", **Houston Journal of International Law**, Vol. 13, No. 2, 1991, pp. 259-280; Louis René Beres, "Striking 'First': Israel's Post-Gulf War Options under International Law", **Loyola of Los Angeles International and Comparative Law Journal**, Vol. 14, November 1991, pp. 1-24; Louis René Beres, "Israel and Anticipatory Self-Defense", **Arizona Journal of International and Comparative Law**, Vol. 8, 1991, pp. 89-99; Louis René Beres, "After the SCUD Attacks: Israel, 'Palestine', and Anticipatory Self-Defense", **Emory International Law Review**, Vol. 6, No. 1, 1992, pp. 71-104; Louis René Beres, "Israel, Force, and International Law: Assessing Anticipatory Self-Defense", **Jerusalem Journal of International Relations**, Vol. 13, No. 2, 1991, pp. 1-14. For an examination of assassination as a permissible form of anticipatory self-defense by Israel, see Louis René Beres, "On Assassination as Anticipatory Self-Defense: The Case of Israel", **Hofstra Law Review**, Vol. 20, No. 2, 1991, pp. 321-340.
42. For earlier writings by this author on the impact of a Palestinian state on Israeli strategies, see: Louis René Beres, "The Oslo Accords and Israel's Nuclear Strategy", **Georgetown Compass**, Vol. 5, No. 1, 1995/96, pp. 74-80; 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", **Political Quarterly**, Vol. 62, No. 4, 1991, pp. 451-460; Louis René Beres, "Israel, Palestine and Regional Nuclear War", **Bulletin of Peace Proposals**, Vol. 22, No. 2, 1991, pp. 227-234; Louis René Beres, "A Palestinian State: Implications for Israel's Security and the Probability of Nuclear War", **Bulletin of the Jerusalem Institute for Western Defense**, Vol. 4, No. 3, 1991, pp. 3-10; Louis René Beres, "Israeli Security and Nuclear Weapons", PSIS Occasional Papers, No. 1/1990, Graduate Institute of International Studies, Geneva, 1990 (41 pp.); Louis René Beres, "After the Gulf War: Israel, Palestine and the Risk of Nuclear War in the Middle East", **Strategic Review**, Vol. 19, No. 4, 1991, pp. 48-55.
43. See, by this author: Louis René Beres, **Security or Armageddon: Israel's Nuclear Strategy** (Lexington, Mass.: Lexington Books, 1986); Louis René Beres, "Israel's 'Bomb in the Basement': A Second Look", **Israel Affairs**, Vol. 2, No. 1, 1995, pp. 112-136.
44. See 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. 19, No. 4, 1991, pp. 34-40.
45. Art. 38(1)(b) of the Statute of the International Court of Justice describes international custom as "evidence of general practice accepted as law" (59 Stat. 1031, T.S. No. 993, June 26, 1945). Norms of customary international law bind all states irrespective of whether a state has ratified the pertinent codifying instrument or convention. International law compartmentalizes apparently identical rights and obligations arising both out of customary law and treaty law: "Even if two norms belonging to two sources of international law appear identical in content, and even if the states in question are bound by these rules both on the level of treaty-law and that of customary international law, these norms retain a separate existence." See: *Military and Paramilitary Activities (Nicaragua v. US)*, 1986 I.C.J. Rep. 14,

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- para. 178 (June 27).
46. As defined at Art. 147 of Geneva Convention IV, Relative to the Protection of Civilian Persons in Time of War (6 U.S.T. 3516, signed on August 12, 1949, at Geneva). Reference to grave breaches can also be found in the Interim Report of the Commission of Experts, United Nations Document, S/25274, January 2, 1993, at Sec. 3, Art. 47.
 47. See Louis René Beres, "Israel's Freeing of Terrorists Is Contrary to International Law", **University of Detroit Mercy Law Review**, Vol. 73, No. 1, 1995, pp. 1-10.
 48. See, on these issues, 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, 1995, pp. 959-971.
 49. See "Statement: Israeli (Res.) Generals View Security Issues", July 17, 1995. The generals are: Maj. Gen. (res.) Yehoshua Saguy, Adm. (res.) Micha Ram, Brig. Gen. (res.) David Hagoel, and Brig. Gen. (res.) Aharon Levran.
 50. *Ibid.*
 51. See Louis René Beres, "The Iranian Threat to Israel", **Midstream**, September/October 1998.
 52. According to Art. 23(b) of the regulations annexed to Hague Convention IV, October 18, 1907: "It is especially forbidden...to kill or wound treacherously individuals belonging to the hostile nation or army." (See Convention IV, Respecting the Laws and Customs of War on Land, With Annex of Regulations, October 18, 1907, Art. 23(b), 36 Stat. 2277, T.S., No. 539.) US Army Field Manual 27-10, "The Law of Land Warfare" (1956), incorporates this prohibition and authoritatively links Hague Art. 23(b) to assassination (see Department of the Army, "The Law of Land Warfare", Art. 31, Army Field Manual No. 27-10, 1956, Washington, D.C.).
 53. Traditionally, a "formal" war was said to exist only when a state issued a declaration of war; the Hague Convention III codified this position in 1907 (see Hague Convention III on the Opening of Hostilities, October 18, 1907, Art. 1, 36 Stat. 2277, 205 Consol. T.S. 263).
 54. See Treaty Providing for the Renunciation of War as an Instrument of National Policy, August 27, 1948, Art. 1, 46 Stat. 2343, 94 L.N.T.S. 57 (also called Pact of Paris or Kellogg-Briand Pact); Nuremberg Judgment, 1 I.M.T. Trial of the Major War Criminals 171 (1947), *portions reprinted* in B. H. Weston et al., **International Law and World Order** (1980) pp. 148, 159; UN Charter, Art. 2(4).
 55. Regarding *aggression*, Art. 1 of the UN General Assembly Resolution on the Definition of Aggression defines this crime, *inter alia*, as "the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations, as set out in this Definition" (see G.A. Res. 3314, UN GAOR, 29th Sess., Supp. No. 31 at 142, UN Doc. A/9631, 1975). For current conventions in force on *terrorism*, a "conglomerate" crime under international law, see: Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, Including Diplomatic Agents, adopted December 14, 1973, 28 U.S.T. 1975, 1037 U.N.T.S. 167; Vienna Convention on Diplomatic Relations, April 18, 1961, 23 U.S.T. 3227, 500 U.N.T.S. 95; Convention on Offenses and Certain Other Acts Committed on Board Aircraft, September 14, 1963, 20 U.S.T. 2941, 704 U.N.T.S. 219; Convention for the Suppression of Unlawful Seizure of Aircraft, December 16, 1970, 22 U.S.T. 1641, 860 U.N.T.S. 105; Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, September 23, 1971, 24 U.S.T. 564, 10 I.L.M. 1151; International Convention against the Taking of Hostages, opened for signature, December 18, 1979, T.I.A.S. No. 11091, 18 I.L.M. 1456; European Convention on the Suppression of Terrorism, opened for signature, January 27, 1977, Europ. T.S. No. 90, 15 I.L.M. 1272, entered into force, August 4, 1978. Regarding *intervention*, see: UN Charter, Art. 2(7); see also Declaration of Principles of International Law Concerning Friendly Relations and Cooperation among States, G.A. Res., 2625, UN GAOR, 25th sess., Supp. No. 28, at 121, UN Doc. A/8028 (1971); Declaration on the Inadmissibility of Intervention in the Domestic Affairs of the States and the Protection of Their Independence and Sovereignty, G.A. Res. 2131, UN GAOR, 20th Sess., Supp. No.

- 14, at 11, UN Doc. A/6014 (1966).
56. See Robert C. Solomon and Mark C. Murphy, **What Is Justice? Classic and Contemporary Readings** (Oxford: Oxford University Press, 1990). As we shall see below in the text, in law the pertinent principle is known as *Nullum crimen sine poena*, “No crime without a punishment.”
57. According to Emmerich de Vattel: “If the sovereign of the country in which the crimes of this nature [crimes involving *hostes humani generis*] have been committed requests the surrender of the perpetrators for the purpose of punishing them, they should be turned over to him as being the one who has first interest in inflicting exemplary punishment upon them; and as it is proper, that the guilty should be convicted after a trial conducted with due process of law, we have another reason why criminals of this class are ordinarily delivered up to the states in which the crimes have been committed.” See Vattel, **The Law of Nations, or the Principles of Natural Law**, trans. Charles G. Fenwick (Carnegie Institution of Washington, 1916(1758)), p. 93.
58. In 1986, President Reagan authorized procedures for the forcible abduction of suspected terrorists from other states for trial in US courts (see John Walcott, Andy Pasztor, and David Rodgers, “Reagan Ruling to Let CIA Kidnap Terrorists Overseas Is Disclosed”, **Wall Street Journal**, February 20, 1987, sec. 1, at 1, col. 6). See also Act on the Prevention and Punishment of the Crime of Hostage-Taking, 18 U.S.C. Sec. 1203 (1992); G. Gregory Schuetz, “Apprehending Terrorists Overseas under United States and International Law: A Case Study of the Fawaz Younis Arrest”, **Harvard International Law Journal**, Vol. 29, 1988, pp. 499, 501; “Fighting the War on Drugs in the ‘New World Order’: The *Ker-Frisbie* Doctrine as a Product of Its Time”, Note in **Vanderbilt Journal of Transnational Law**, Vol. 24, No. 3, 1991, pp. 535-570.
59. See “Harvard Research in International Law: Draft Convention on Jurisdiction with Respect to Crime”, **American Journal of International Law** 29, 435 (Supp. 1935) at 566 (quoting Coke, C.J. in *King v. Marsh*, 3 Bulstr. 27, 81 E.R. 23(1615) (“*a pirate est hostes humani generis*”)).
60. See, generally, Hugo Grotius, **The Law of War and Peace**, trans. Francis W. Kilsey (1925); Emmerich de Vattel, **The Law of Nations, or the Principles of Natural Law**, trans. Charles G. Fenwick (Carnegie Institution of Washington, 1916(1758)), p. 93).
61. See **The Law of Nations**, *ibid.*
62. For definition of crimes against humanity, see Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis Powers and Charter of the International Military Tribunal, done at London, August 8, 1945, 59 Stat. 1544, 82 U.N.T.S. 279 (entered into force, August 8, 1945).
63. Cited in A.P. d’Entrevès, **Natural Law** (London: Hutchinson University Library, 1964), p. 110.
64. This speech in defense of Milo was a speech on behalf of an instance of alleged tyrannicide committed by Milo, leader of Lanuvium. See “The Speech of M.T. Cicero in Defense of Titus Annius Milo”, in **Select Orationes of M.T. Cicero**, trans. C. D. Yonge (New York: Harper & Bros., 1882), p. 208.
65. See Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis Powers, August 8, 1945, 59 Stat. 1544, 82 U.N.T.S. 279; Charter of the International Military Tribunal, annexed to the Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis Powers; Affirmation of the Principles of International Law Recognized by the Charter of the Nuremberg Tribunal. G.A. Res. 95, UN GAOR, 1st Sess., at 1144; UN Doc. A/236(1946); G.A. Res. 171 (II), adopted on November 21, 1947; Principles of International Law Recognized in the Charter and Judgment of the Nuremberg Tribunal, UN GAOR, 5th Sess., Supp. No. 1, at 11, UN Doc. A/1316(1950)(Nuremberg Principles).
66. The cornerstone of the pertinent human rights regime is the UN’s Universal Declaration of Human Rights, G.A. Res. 217A, UN Doc, A/810, at 71 (1948). This document, together with the following authoritative codifications, constitute what is generally called an International Bill of Rights: International Covenant on Economic, Social and Cultural Rights, 6 I.L.M. 360 (entered into force, January 3, 1976); and International Covenant on Civil and Political Rights, 6 I.L.M. 368 (entered into force, March 23, 1976).

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- ⁶⁷. In the words of **Ecclesiasticus** 32.23, 37.16, 13-14: “Let reason go before every enterprise and counsel before any action. . . And let the counsel of thine own heart stand. For a man's mind is sometimes wont to tell him more than seven watchmen that sit above in a high tower.”
- ⁶⁸. See Jeremy Bentham, “An Introduction to the Principles of Morals and Legislation”, in **Principles of Morals and Legislation** 125 (W. Harrison, ed., 1979).
- ⁶⁹. *Ibid.*, at 138-139.
- ⁷⁰. See Jeremy Bentham, **Principles of Penal Law: The Works of Jeremy Bentham**, 396 (J. Bowring, ed., 1962).
- ⁷¹. See, on this concept of retributive justice, Immanuel Kant. Writing in **Philosophy of Law**, Kant identifies the mode and measure of punishment as follows: “This is the right of retaliation [*justalionis*], and properly understood, it is the only principle which in regulating a public court...can definitely assign both the quality and the quantity of a just penalty” (Immanuel Kant, “Public Right”, in **Philosophy of Law**, trans. Hastie, 1887). On the retributive view generally, see: M. Cherif Bassiouni, **Substantive Criminal Law** 91-139 (1978); Sir Walter Moberly, **The Ethics of Punishment** 96-120 (1968); C. L. Ten, **Crime, Guilt and Punishment** 38-65 (1987); Robert Nozick, **Philosophical Explanations** 363-397 (1981); John Kleinig, **Punishment and Desert** (1973); D. J. Galligan, “The Return to Retribution in Penal Theory”, in C. Tapper, ed., **Crime, Proof and Punishment** 154-157 (1981); Igor Primoratz, **Justifying Legal Punishment** 67-110 (1989); Ted Hondereich, **Punishment: The Supposed Justifications** 22-51 (1969); G. Paton and Durham, eds., **A Textbook of Jurisprudence** 320-326 (1964); Heinrich Oppenheimer, **The Rationale of Punishment** (1975); Mary Margaret MacKenzie, **Plato on Punishment** 21-33 (1981).