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NON-PROLIFERATION AGREEMENTS, TERRITORIES, AND REGIONAL NUCLEAR WAR

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Will the Nuclear Non-Proliferation Treaty Protect Israel? / Arms Control Carries Intolerable Risk / Living in a State of Nature / The Resultant Dangers of Territorial Withdrawal / Maintaining the Option of Preemption

Will the Nuclear Non-Proliferation Treaty Protect Israel?

Despite the extraordinary failure of the Nuclear Non-Proliferation Treaty in the case of Iraq (and, for that matter, North Korea), the treaty continues to be widely favored as a promising means to reduce the growing risk of nuclear war in the Middle East. From the standpoint of Israeli security, perhaps even Israeli survival, this legalistic preference holds considerable danger. Left to the tender mercies of diplomatic agreements rather than to more pragmatic forms of self-reliance, the Jewish state might effectively surrender its remaining opportunities to endure. Such surrender would be all the more likely to the extent that it involved any limitations on Israel's nuclear deterrent and on essential control of vital territories.

What, then, is Israel to do? When, at the Vienna Review Conference in 1995, Jerusalem is pressured to join the NPT, how should it respond? If it should resist, the global community of "civilized nations" would surely be aroused, declaring

that, once again, Israel had refused to follow the codified and settled rules of international law. Should it accede to the Treaty, however, Israel could wind up trading critical safety in exchange for favorable world public opinion. Of course, it could also do what Iraq and other Arab states have always done, i.e., sign the Treaty but act as if no obligations whatever had been incurred. Yet such hypocrisy has never been Israel's style, nor should it be.

None of this is to suggest that Israel has in any way ever obstructed diplomatic remedies to regional security. On the contrary, in January 1993, Israel became a charter signatory of the Chemical Weapons Convention (CWC), while Egypt, Syria, and most other states in the area 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).

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And on September 13, 1993, it signed a formal peace agreement with the Palestine Liberation Organization.

In 1987, the United States and six other industrialized states formed the Missile Technology Control Regime (MTCR). Nevertheless, MTCR did nothing to prevent Iraq from upgrading its Scud-B missiles, with technology and help from such signatories as Germany, Great Britain, and the United States. Moreover, as Gerald M. Steinberg has pointed out, U.S. policies may already have impacted Israeli capabilities adversely.

In 1990, after the U.S. Congress enacted the Missile Technology Control Act, creating penalties for foreign firms that violate MTCR guidelines, the Bush Administration's first target was not North Korea, Syria, Iran or Iraq, but Israel. Under the threat of sanctions, Israel has been forced to accept the terms of the MTCR with no comparable limits on the threat which Israel faces. Moreover, Israel has also been excluded from receiving any of the benefits that go with membership in the MTCR system. (No sanctions were imposed on Germany and other Western European states that allowed shipments of missile technology to Iraq.)¹

One structural aspect of MTCR that is problematic for Israel is its definition of nuclear-capable missiles. The regime focuses narrowly on those missiles having a range of at least 300 km. and a payload capability of at least 500 kg. In the Middle East, however, enemy states are very close together, making shorter-range missiles strategically significant.

There are other problems as well. At this moment, the recent Israel-PLO agreement notwithstanding, every Arab state, excluding Egypt, is in a legal state of war with the Jewish state. So, too, is Iran, which is currently progressing daily in its development of ballistic missile and nuclear warhead capabilities. As for Egypt, the survivability of Mubarak's regime, in the face of a growing fundamentalist assault, is increasingly doubtful. Should Mubarak be toppled, the successor regime, probably one with distinct similarities to the regime in Teheran, would almost certainly return to a condition of belligerency with Israel.

It is hard to imagine that Jerusalem could identify reasonable security benefits in negotiated non-proliferation agreements with enemy states. Indeed, at least one of these states, Iran, still openly declares its objective to "annihilate" and "exterminate" the "Zionist cancer." Another formidable enemy, Syria, is substantially more cautious in its language, but proceeds just as feverishly

with its missile and unconventional weapons programs.

Arms Control Carries Intolerable Risk

For Israel, arms control remedies in the Middle East are fraught with intolerable risk. Although the Jewish state is assuredly committed to the control of force through law, it must temper this commitment with an overriding obligation to survive. International law is not a suicide pact.

Pacta sunt servanda is a doctrine of international law requiring that states must comply in good faith with their treaty obligations. The problem with this doctrine is that it reflects altogether erroneous assumptions about cooperation and comity in world affairs. Such assumptions are especially erroneous in the Middle East.

Before any state can be expected to bind itself to treaties or other forms of international legal agreement that place national self-preservation in outside hands, those hands — whether of another state or alliance of states, or of a collective security operation such as the United Nations — must be trustworthy and capable.

Where are such "hands" today for the State of Israel? Are they to be found in promises from Washington, which have historically proven to be largely problematic? Or are they likely to be extended from the UN, an organization that has rarely been motivated by Israeli security concerns and which, in any event, lacks the capacity to back up its expectations with credible military options?

Living in a State of Nature

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 upon expressions of national power in order to survive. Without such expressions, which are at the heart of what is commonly known as *realpolitik*, weaker states can endure only at the pleasure of the strong.

From its very beginnings, Israel has learned the lessons of *realpolitik*. Although it has been quick to seize upon peace-making and negotiation whenever possible, it has also recognized that unenforceable treaty expectations may carry no binding obligations and that international legal remedies may include all forms of self-defense. On occasion, these remedies have taken the form of anticipatory self-defense, of preemptive military strikes that are the only alternative to new and potentially genocidal enemy attack.

For the indefinite future, such strikes must remain a viable option for the Jewish state. Faced with a steadily nuclearizing Middle East and with proposed treaty remedies that would have no inhibiting effects upon its enemies, Jerusalem has no choice but to plan systematically and carefully for the preemptive destruction of pertinent hard targets, especially nuclear weapons, associated ballistic missiles and supporting infrastructures. To do otherwise, to accept promises from enemy states that remain sworn to Israel's extermination and that would be violated with impunity, would be to accept disappearance.

The Resultant Dangers of Territorial Withdrawal

An important related matter involves Israel's further disposition of the administered territories. Should additional portions of these lands be transferred to some form of Palestinian control, possibly even to create a full-fledged Palestinian state, Israel's overall vulnerability to enemy attack would become much greater. It follows that Jerusalem's inclination to strike first, i.e., to act according to the principle of anticipatory self-defense under international law, would become greater as well. But should Israel relinquish its nuclear option by acceding to the NPT *and* accept roll-back to pre-1967 lines, the preemption option could become moot.

Ironically, even though Israel would have no effective alternative to defensive first strikes in the aftermath of NPT membership/territorial roll-back, such strikes might still not protect the Jewish state. This is the case because Israeli counterretaliatory deterrence would be immobilized by removal of its nuclear weapons potential and because Israeli preemptions could not possibly be 100 percent effective against enemy unconventional forces. Of course, a less than 100 percent level of effectiveness could be tolerable if Jerusalem had an operational anti-tactical ballistic missile capability, a ballistic missile interception capability of the kind sought by the Arrow (Hetz) project, but such a capability is still not in the offing.

There is, also, a terrible synergy between probable NPT conditions and loss of territories, an interactive effect that would degrade doubly Israel's essential security. By disarming the Jewish state while simultaneously reducing its strategic depth, this synergy would undermine regional security in general, producing not a more peaceful Middle East but more extreme forms of militarism, war, and possibly even genocide. To avoid such a corrosive synergy, Israel must not accede to toothless international agreements, whether oriented toward "land for peace" proposals or toward non-

proliferation measures.

Should Israel be able to resist pressures to accede to Non-Proliferation Treaty measures, Palestinian self-rule in Gaza will still create substantially increased hazards of terrorism, probably in the Tel Aviv area, and a transnational staging area for fundamentalist fighters based in Iran and Egypt. Indeed, if Mubarak falls to fundamentalist insurgent forces, as now seems plausible, the successor regime in Cairo would likely exploit its ties to an autonomous Gaza by placing regular military assets in that strategic area. Taken together with roughly parallel military and insurgent placements in and around an autonomous Jericho, such exploitation could reduce overall IDF capabilities to dangerously low levels.

Should Israel be unable to resist pressures to become a party to the NPT, Palestinian self-rule in Gaza and Jericho, as the first step in a withdrawal from all of Judea and Samaria, could be the beginning of the end of the Jewish Commonwealth. Deprived of its nuclear deterrent and incapable of nuclear warfighting, and coupled with the recognition by enemy states, especially by Iran and Syria, of Israel's substantial loss of strategic depth, the Jewish state would assuredly be attacked from several fronts if it did not attack first itself. But as a preemptive conventional strike by a denuclearized Israel would carry no clear prospects of success, Jerusalem would face only unsatisfactory and intolerable options after Israel's loss of essential territories. These options, of course, would be even more intolerable if Jerusalem had made concessions to Syria over the Golan.

Palestinian self-rule in Gaza and portions of Judea/Samaria, whatever its consequences in and of itself, could become altogether catastrophic if coupled with NPT concessions. Without such concessions, Jerusalem could still prepare for productive preemptions, deterring the target states from escalatory reactions by convincing threats of counterretaliation. With such concessions, however, enemy states whose unconventional weaponry might be destroyed preemptively by Israel would have little or no reason to sit idly by. Rather, newly aware that a denuclearized Israel faced a distinctly unfavorable balance of forces, these states would have every incentive to respond to Israeli defensive strikes with "total war." Anticipating this awareness, an Israel shackled by the NPT could be expected not to preempt.

Non-proliferation concessions, then, would add greatly to the security costs occasioned by territorial concessions. Similarly, NPT concessions, overwhelm-

ingly dangerous in themselves, would be entirely insufferable if coupled with further territorial surrenders of the sort currently under consideration as part of the still ongoing "peace process." Although an Israel that retains control of remaining vital territories could be vulnerable to enemy missile attacks, possibly even attacks with unconventional warheads, the missile danger is apt to be still greater were it to originate from far closer ranges. Even more importantly, perhaps, enemy missiles fired from existing sites in other states could do little if anything to facilitate military takeover of Israel proper unless accompanied by ground attacks. In such a case the location of borders could be critical.

Maintaining the Option of Preemption

All things considered, Israel needs to do whatever is required to maintain a satisfactory preemption option, i.e., an option that could effectively destroy enemy unconventional weapons and associated infrastructures. Even if the Jewish state were unimpeded by NPT expectations, its nuclear forces, whether openly declared or still in the "basement," might not bestow a credible nuclear deterrence posture upon Israel. Impeded by NPT expectations, as we have already noted, Israel would effectively forfeit the preemption option.

Without assurance of a credible nuclear deterrent, the State of Israel must hold on to the preemption option. But why should its nuclear arsenal be unable to confer such a deterrent? Consider the following: A rational state enemy of Israel will accept or reject an attack option by comparing the costs and benefits of each alternative. Where the expected costs of striking first are taken to exceed expected gains, this enemy will be deterred. But where these expected costs are believed to be exceeded by expected gains, deterrence will fail. Hence, Israel will be faced with enemy attack, whether as a "bolt from the blue" or as an outcome, anticipated or unanticipated, of crisis-escalation.

Israel, therefore, must seek to strengthen nuclear deterrence such that an enemy will always calculate that a first-strike attack upon the Jewish state would be irrational. This means taking steps to convince enemy states that the costs of such a strike will always exceed the benefits. To accomplish this objective, Israel must convince prospective attackers that it maintains both the willingness and the capacity to retaliate with nuclear weapons. Where an enemy state considering an attack upon Israel would be unconvinced about either one or both of these essential components of nuclear deterrence, it might well choose to strike first, depending

upon the particular value it places upon the expected consequence of such an attack.

We begin to see the dangers of Israeli dependence upon nuclear deterrence. Regarding willingness, even if Jerusalem were prepared to respond to certain attacks with nuclear reprisals, enemy failure to recognize such preparedness could provoke an attack upon Israel. Here, misperception and/or errors in information could undermine nuclear deterrence. It is also conceivable that Jerusalem would, in fact, lack willingness to retaliate, and that this lack was 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 confused.

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, among other things, that if a first-strike attack is believed capable of destroying Israel's arsenal, the Jewish state's nuclear deterrent will be removed. Moreover, even if Israel's nuclear weapons were configured such that they could not be destroyed by an enemy first-strike, enemy misperceptions or misjudgments about Israeli vulnerability could still occasion the failure of nuclear deterrence. A further complication here concerns enemy deployment of anti-tactical ballistic missile defenses, which might contribute to an attack decision against Israel by lowering the attacker's expected costs.

The importance of "usable" nuclear weapons must also be examined from the standpoint of probable harm. Should Israel's nuclear weapons be perceived by a would-be attacker as very high-yield, indiscriminate, "city-busting" (countervalue) weapons, rather than minimal-yield warfighting (counterforce) weapons, they might not deter. Contrary to uninformed conventional wisdom, successful nuclear deterrence may actually vary inversely with perceived destructiveness. It follows that Israeli nuclear deterrence requires not only secure second-strike forces, but also forces that could be reasonably used in war.

To this point our assessment of Israel's nuclear deterrent has assumed a rational state enemy. Yet the assumption of rationality is itself a problem. There is, in fact, no reason to assume that prospective attackers of the Jewish state will always choose among possible options according to careful comparisons of expected costs and expected benefits. As long as such enemies are increasingly capable of missile attacks upon Israel, and Israel remains unable to intercept these attacks with

near-perfect (or possibly even perfect) reliability, Israeli dependence upon nuclear deterrence could have altogether catastrophic consequences.

In conclusion, Israel must always maintain its preemption option; yet, NPT concessions and/or further territorial surrenders could destroy this option altogether. For those who believe in the preservation of the Third Jewish Commonwealth, this means, quite simply, an obligation to oppose such concessions and surrenders.

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Note

1. Gerald M. Steinberg, "Arms Control and Israeli

National Security: A Realistic Approach," *Nativ*, Center for Policy Research, Policy Paper No. 9 (Tel Aviv, May 1993), p. 8.

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