

ARTICLES

ISRAELI NUCLEAR DETERRENCE AND INTERNATIONAL LAW: CALCULATING EFFECTS OF POWER POLITICS AND PANDEMICS¹

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1. In principle, at least, these effects, which might be singular or interrelated, could sometimes manifest as benign or salutary, rather than “malignant” or destabilizing.

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INTRODUCTION

“The fox knows many things, but the hedgehog knows one big thing.”

Archilochus, *Fragments*²

For Israel, constantly challenged by many changing “things” in the Middle East, it is most important to know “one big thing.” Accordingly, even after implementing new U.S.-brokered pacts with the UAE, Sudan, Morocco, and Bahrain—agreements that more formally align Jerusalem with certain Sunni Arab opponents of Shiite Iran—nuclear deterrence should occupy a place of priority in Tel Aviv.³ To be sure, Israel will be tempted to believe that Iran’s nuclear threat is now diminishing in consequence of the new agreements, but that belief could prove erroneous. It would be based upon a too-optimistic view of “countervailing” Sunni power.⁴

Also, worth bearing in mind for Israeli military planners and policy-makers is that incremental growth of Sunni Arab power, however achieved, might not necessarily be in the overall security interests of the Jewish State.⁵ In time, Saudi Arabia, Egypt, and perhaps a smaller Gulf Arab country could decide to “go nuclear.” Whether any such development would be a net plus or net negative for Israel’s security is presently too tricky to predict. In the worst-case scenario, some allegedly “pro-Israel” Sunni Arab states would no longer offer Israel a plausibly purposeful anti-Shiite bloc but, instead, represent a genuinely unwelcome adversarial coalition.

Even if there were no Sunni Arab nuclear proliferation issues to consider, Israel’s presumptive nuclear forces and strategy could remain relevant to

2. ISAIAH BERLIN, *THE HEDGEHOG AND THE FOX: AN ESSAY OF TOLSTOY’S VIEW OF HISTORY* (Simon & Schuster eds., 1953) (quoting the Greek poet, Archilochus).

3. See Daniel Klapper, *Israel Cabinet Unanimously Approves UAE Peace Agreement*, JURIST (Oct. 12, 2020, 11:36 AM), <https://www.jurist.org/news/2020/10/israel-cabinet-unanimously-approves-uae-peace-agreement/> [<https://perma.cc/XD48-63UW>].

These pacts with the four listed states, known collectively as the “Abraham Accords,” were negotiated and signed under the aegis (“good offices”) of the Trump administration. In typical diplomatic discourse, that is what is meant by “brokered.” See The Abraham Accords, *On the Abraham Accords*, U.S. DEPT. OF STATE, <https://www.state.gov/the-abraham-accords/> (last visited Apr. 13, 2021).

4. See generally LOUIS R. BERES, *MIMICKING SISYPHUS: AMERICA’S COUNTERVAILING NUCLEAR STRATEGY* (1983).

5. An intervening factor here (an “intervening variable”) would be the persistence of Palestinian nationalism and Palestinian terrorism. For the moment, at least, it would appear that the recent Abraham Accords have exacerbated Palestinian fears and certain corollary intentions. See, e.g., Jay Malwade & Pooja Mehta, *Israel’s Threat of Annexation: Turning a Blind Eye to International Law*, JURIST (Oct. 1, 2020 11:30 PM), <https://www.jurist.org/commentary/2020/10/malwade-mehta-israel-annexation/> [<https://perma.cc/EN3C-VR7R>].

conventional war avoidance.⁶ Although counterintuitive and widely unrecognized, nuclear weapons could ultimately offer substantial benefits to Israel for deterring non-nuclear weapons of certain enemies. Here, too, the relevant Arab adversary could include a sub-state enemy or a “hybridized” (state-sub-state) foe.⁷

ANALYSIS

One big question emerges: *How shall Israel best ensure a viable and suitably comprehensive nuclear deterrence posture?*⁸ First, military assessments of any individual state’s nuclear deterrence posture must focus on a number of different and complementary elements. These elements concern “pertinent weapons” (both offensive and defensive), “weapon system infrastructures,” and variously related issues of “threat credibility.” In the specific case at hand, the case of Israel, the analytic focus has generally highlighted the small country’s presumptive “missile and anti-missile capabilities”⁹ and its expected “willingness to launch” under

6. See Louis R. Beres, *Israel’s Nuclear and Conventional Deterrence*, BESA CENTER (Apr. 29, 2018), <https://besacenter.org/perspectives-papers/israel-nuclear-deterrence/> [<https://perma.cc/9EKF-BZJD>]; Louis R. Beres & Zalman Shoval, *Creating a Seamless Strategic Deterrent: An Israel Case Study*, MOD. WAR INST. (May 13, 2019), <https://mwi.usma.edu/creating-seamless-strategic-deterrent-israel-case-study/> [<https://perma.cc/QY5U-CSFK>].

7. In this connection, the Palestinian Authority should come promptly to mind, especially because it looks with strong disfavor upon the recent Israel-UAE-Bahrain pacts. All prospective Palestinian terror would have early and formal roots in the *Palestinian National Covenant*. Calling officially for sustained Arab violence against Israel, this document was adopted in 1964, three years before the 1967 Six Day War. This means that the PLO’s core guidance on terror was first published—together with its explicit references to the annihilation of Israel—three years *before* there were any “occupied territories.” For the Palestinian Authority, which until October 2015, had still officially agreed to accept a “Two-State Solution,” the underlying position of protracted war was part of a broader strategy of incorporating Israel into “Palestine.” This irredentist incorporation was already codified on all PA maps. The most unambiguous Palestinian call for the removal of Israel remains the PLO’s “Phased Plan” of June 9, 1974. Under the authoritative laws of war, this *Plan* represents an unhidden commitment to carry out various certifiable *crimes against humanity*.

8. Ultimately, as I have written in other places, the prospective success of Israeli nuclear deterrence vis-à-vis *any* pertinent enemy aggressions, whether nuclear or non-nuclear, must remain contingent upon the immutable core assumption of enemy *rationality*. At the same time, as an intriguing corollary, it could prove useful for Israel itself, on occasion, to pretend or feign irrationality. See, e.g., Louis R. Beres, *Israel, Playing the Role of ‘Mad Dog’*, U.S. NEWS (Mar. 31, 2016 3:10 PM), <https://www.usnews.com/opinion/blogs/world-report/articles/2016-03-31/case-for-irrationality-in-israels-nuclear-deterrence-and-defense-strategy> (last visited May 12, 2021); Louis R. Beres & John Chain, *Living with Iran: Israel’s Strategic Imperative*, BESA CENTER (May 28, 2014), <http://besacenter.org/wp-content/uploads/2014/05/Loius-Rene-Beres-and-General-John-T-Chain-Living-with-Iran-PP249-May-28.pdf> [<https://perma.cc/N2XM-UHMR>].

9. Israel’s anti-missile defense shield has four layers: The *Iron Dome* system for intercepting

widely assorted enemy threat narratives.

A more refined assessment is now to reinforce Israel's nuclear deterrence posture best. This improved focus should be directed, like a laser beam, at *world system context*—an obligation that brings forth both geo-strategic and jurisprudential foci. At times, these “foci” may be strongly interdependent or overlapping; then, at other times, they may be “force-multiplying.”¹⁰ Foci is a common term among military strategists, meaning that when several pertinent factors intersect or overlap, the overall effect is enhanced. This effect, moreover, can be either desired or undesired and contain certain core elements of “synergy.”¹¹

For all competent investigators, various dire questions will need to be raised and answered sequentially, capably, and dialectically.¹² How should interested analysts best proceed? The single most revealing expression of the current world legal system context is easy to identify. In essence, this expression encompasses all variables now being shaped or coalesced as “Cold War II.”¹³ This is not because always-transient U.S.-Russian rivalry is necessarily more significant than the fundamentally anarchic system structure originally bequeathed at the Peace of Westphalia in 1648.¹⁴ Rather, such recurrent rivalry, unlike the historically

short-range rockets; *David's Sling* for medium-range rockets; *Arrow-2* against intermediate-range ballistic missiles; and *Arrow-3* for deployment against ICBM's and (potentially) satellites. See LOUIS RENÉ BERES, *SURVIVING AMID CHAOS: ISRAEL'S NUCLEAR STRATEGY* (2016).

10. This is a common term among military strategists, meaning that when several pertinent factors intersect or overlap, the overall effect is enhanced. This effect, moreover, can be either desired or undesired, and contain certain core elements of “synergy.” See *Surviving Amid Chaos: Israel's Nuclear Strategy*, ISRAELDEF. (Sept. 26, 2016), <https://www.israeldefense.co.il/en/content/surviving-amid-chaos-israels-nuclear-strategy> [<https://perma.cc/3C4R-ZU82>].

11. See generally LOUIS RENÉ BERES, *supra* note 9.

12. Dialectical thinking originated in Fifth Century BCE Athens, as Zeno, author of the *Paradoxes*, had been acknowledged by Aristotle as its inventor. Further, in the middle dialogues of Plato, dialectic emerges as the supreme form of philosophic/analytic method. The dialectician, says Plato, is the special one who knows how to ask and then answer vital questions. From the standpoint of a necessary refinement in Israeli strategic planning, this knowledge should never be taken for granted.

13. See Louis René Beres, *Israeli Security in a Second Cold War*, THE HILL (Dec. 16, 2015, 7:30 AM), <https://thehill.com/blogs/pundits-blog/international/263398-israeli-security-in-a-second-cold-war> [<https://perma.cc/J9KL-TX8A>].

14. See Münsterscher Friedensvertrag [Münster Peace Treaty], Oct. 24, 1648, 1 Consol. T.S. 271; Osnabrücker Friedensvertrag [Osnabrück Peace Treaty], Oct. 24, 1648, 1 Consol. T.S. 119. This “Westphalian” *anarchy* stands in stark contrast to the legal assumption of solidarity between all states in the presumably common struggle against aggression and terrorism. Such a *peremptory* expectation (known formally in international law as a *jus cogens* assumption), is already mentioned in Justinian, *Corpus Juris Civilis* (533 C.E.); HUGO GROTIUS, 2 DE JURE BELLI AC PACIS LIBRI TRES 461-521 (Francis W. Kelsey, trans., 1925) (1690); 1 LE DROIT DES GENS 100-09 (1758). My point here is not any verifiable assertion of fact, but rather an author's, as a specialist's, comparison of a dominant bilateral relationship (U.S.-Russia) with world system anarchy. See Louis René

underlying system of geopolitics or decentralized power balancing,¹⁵ is still potentially remediable or manipulable.

With little reasonable cause for accepting any informed dissent or disagreement, the present system of world politics is coming to resemble or replicate certain earlier bifurcations of “Cold War I.” This transformation—or perhaps “retransformation”—applies with evident regard to the two still-prevailing adversarial superpowers. “Classic” bipolar antagonism between the United States and Russia is most recognizable amid (1) a steadily expanding nuclear arms race—now highlighted by the American president’s unilateral dismantling of the law-based arms control regime; (2) various specific points of more-or-less apparent geopolitical disagreement (e.g., China, India, and the Middle East); (3) continually expanding differences¹⁶ regarding worldwide human rights;¹⁷ and (4) an unprecedented worldwide disease epidemic or “plague.”¹⁸ Perhaps, even by definition, this last “biological” factor is most problematic and potentially most consequential.¹⁹

To assess the prospective impact of these four complex factors, analysts and

Beres, *Israeli Security in a Second World War*, *supra* note 13.

15. Historically, the idea of a *balance of power*—an idea of which the nuclear-age *balance of terror* is a current variant—has never really been more than a facile metaphor. In fact, it has never had anything to do with ascertaining any true equilibrium. As such a balance is always a matter of individual and more-or-less subjective perceptions, adversary states can never be sufficiently confident that identifiable strategic circumstances are “balanced” in their favor. In consequence, each side perpetually fears that it will be left behind, and the continual search for balance produces ever wider patterns of insecurity and disequilibrium.

16. Sometimes there is little actual or tangible difference between the Trump Administration’s “pragmatic” view of human rights and that of the Kremlin. In Syria, lamentably, they coincide “perfectly.”

17. In essence, postulating the emergence of “Cold War II” means expecting that the world legal system is becoming increasingly *bipolar*. See generally Louis René Beres, *Bipolarity, Multipolarity, and the Reliability of Alliance Commitments*, 25 W. POL. Q. 702, 702-10 (1972); Louis René Beres, *Bipolarity, Multipolarity, and the Tragedy of the Commons*, 26 W. POL. Q. 649, 649-58 (1973); Louis René Beres, *Guerillas, Terrorists, and Polarity: New Structural Models of World Politics*, 27 W. POL. Q. 624, 624-36 (1974).

18. See generally Harley Schlanger, *Will the Trump Administration Fight the Coronavirus or China?*, MOD. DIPL. (May 25, 2020), <https://modern diplomacy.eu/2020/05/25/will-the-trump-administration-fight-the-coronavirus-or-china/> [<https://perma.cc/89UH-Z6RC>].

19. In contrast to U.S. President Donald J. Trump, Tedros Adhanom Ghebreyesus, the Director General of the World Health Organization (“W.H.O.”), spoke modestly, intelligently and purposefully:

COVID-19 does not discriminate between rich nations and poor, large nations and small. It does not discriminate between nationalities, ethnicities, or ideologies. Neither do we,” he said. “This is a time for all of us to be united in our common struggle against a common threat, a dangerous enemy. When we’re divided, the virus exploits the cracks between us.

scholars will have to account for specific starkly bewildering interactions between them. On occasion, these interactions could be expressly “synergistic.” Synergistic represents an always-daunting quality in which the “whole” of any single identified effect is greater than the calculable sum of its constituent “parts.”²⁰ These hard-to-predict expectations will require exceptional and capable evaluations.²¹ Included in such synergies would be the anticipated effects of Covid-19 on adversarial decision-makers (state and sub-state) and on the considering country’s (here Israel) own principal decision-makers. To a greater or lesser extent, of course, such hard-to-quantify effects would be filtered by appropriate and sometimes “peremptory” considerations of international law.²²

There is more. For Israeli military planners and some others who might also be interested in Israel’s nuclear strategy, core U.S.-Russian antagonisms must be studied together with Israel’s relevant weapon systems and its presumptive nuclear threat credibility. For refined analysts, these system-defining antagonisms are in constant flux and are changing (simultaneously) in both foreseeable and unforeseeable ways.

Going forward, superpower antagonisms, tempered or buffered by international law, could become increasingly vital or even determinative for Israeli nuclear deterrence. In part, these critical antagonisms could themselves be impacted by the “biological variable” that is the Covid-19 pandemic. Asymmetrical levels of success in dealing with the plague could make one side or the other more or less venturesome/aggressive.²³ Here, of course, any actual and accurate recognition of asymmetries would be an integral part of the “equation.”

Furthermore, a great deal will ultimately depend upon the precise manner in which the resurrected or reborn bipolar rivalry may impact this equation and, derivatively, on the critical, underlying elements of Israel’s strategic posture.²⁴

20. See Schlanger, *supra* note 18.

21. See Louis R. Beres, *Threat Convergence: What to Do When the Adversarial Whole is Greater than the Sum of Its Parts*, MOD. WAR INST. (Apr. 18, 2019), <https://mwi.usma.edu/threat-convergence-adversarial-whole-greater-sum-parts/> [<https://perma.cc/453Q-MML5>].

22. According to the Vienna Convention on the Law of Treaties art. 53: “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.” See Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331, 8 I.L.M. 679 (entered into force Jan. 27, 1980).

23. Reciprocally, almost by definition, it could have an opposite effect upon the adversarial state or terror group.

24. One core issue here would concern Israeli reliance upon a steadily weakening US for “extended deterrence.” *Inter alia*, going forward, Israel could sometime find itself lined up more closely on certain issues with Moscow than with Washington. See Louis R. Beres, *Staying Strong: Enhancing Israel’s Essential Strategic Options*, HARV. J. NAT’L SEC. (Jun. 13, 2014), <https://harvardnsj.org/2014/06/staying-strong-enhancing-israels-essential-strategic-options-2/> [<https://perma.cc/KQ3T-JN83>].

This discoverable “manner of impact” could depend considerably upon Jerusalem/Tel Aviv’s multiple and overlapping national nuclear power alignments with Russia or the United States, or (conceivably) with both.

Antecedent to any such starkly complex considerations, some of which could include pandemic assistance from Moscow and Washington, much will depend upon (1) the expected rationality or non-rationality of each national nuclear power; and (2) the plausible interactions or synergies detectable between these particular nuclear adversaries and their respective alliance partners or clients.

Regarding the first concern, Israel’s planners will always need to bear in mind the timeless wisdom of German philosopher Karl Jaspers’ *Reason and Existence* (1935): “The rational is not thinkable without its other, the non-rational, and *it never appears in reality without it.*”²⁵ This compelling assumption exhibits a rudimentary understanding for almost anyone engaged in strategic nuclear threat analyses. “Everything is very simple in war,” counsels Carl von Clausewitz in *On War*, “but even the simplest thing is difficult.”²⁶ This generally valuable insight remains persuasively valid during periods of active conflict and in those unsteady periods of “latent hostility”—i.e., Thomas Hobbes’ “state of war”²⁷—that obtain between still-possible or still-impending “wars of aggression.”²⁸

Going forward, all relevant analysts will need to take continuous heed of the pandemic, a microbial variable that could prove determinative for a variety of different reasons, including its potential effects upon decisional rationality. Such effects would need to be explored among friends as well as foes and would necessarily make each adversarial party (state and sub-state) wary of others’ “pretended irrationality.” By definition, *inter alia*, the pandemic variable could make “normally” complex decisional calculations even more dense and difficult to decipher.

Those considerations of operational difficulty may obtain during “only” a “cold war” that seventeenth-century English philosopher Thomas Hobbes had already forecast. In his classic analytic text, *Leviathan* (1651), this early political thinker (who had been widely read by the founding fathers of the United States, especially Jefferson) opines that a condition of war exists not only during periods

25. KARL JASPER, *REASON AND EXISTENCE* (1935), *reprinted in* EXISTENTIALISM FROM DOSTOYEVSKY TO SARTRE 158 (Walter Kaufman ed., 1956) (emphasis added).

26. This statement refers to the unpredictable effects of errors in knowledge and information concerning intra-Israel (IDF/MOD) strategic uncertainties; on Israeli and Iranian under-estimations or over-estimations of relative power position; and on the unalterably vast and largely irremediable differences between theories of deterrence, and enemy intent “as it actually is.” See CARL VON CLAUSEWITZ, *Über das Leben und den Charakter von Scharnhorst*, HISTORISCH-POLITISCHE ZEITSCHRIFT (1832), in Barry D. Watts, CLAUSEWITZIAN FRICTION AND FUTURE WAR 9 (1996).

27. See THOMAS HOBBS, *LEVIATHAN OR THE MATTER, FORME AND POWER OF COMMONWEALTH, ECCLESIASTICALL AND CIVILL* 83 (University Press 1904).

28. For the specific crime of aggression under international law, see G.A. Res. 3314 (XXIX), at 142-43 (Dec. 14, 1974).

of “actual fighting,” but also whenever there exists *merely* “a known disposition thereto.”²⁹ Today, such a “disposition” is instantly recognizable throughout the Middle East, but—conceivably—in different and variously confusing ways at a time of “plague.”

In principle, at least, the conspicuously common global interest in fighting pandemic could sometimes become overriding, thereby rendering the already dissembling Hobbesian “war of all against all” more rather than less tolerable.³⁰

Even during the expansive pre-nuclear era in world law and politics, a precarious logic of deterrence had obtained within the global *state of nature*. Already, there had been operative a fearful condition of raw competition, corrosive violence, and seemingly perpetual anarchy. Despite considerable nuance from century to century, from year to year, this balance of power had been obtained since the seventeenth-century Peace of Westphalia (1648). In legal terms, this “Westphalian” system is generally thought of as a decentralized or “horizontal” system of international law.³¹

Long before the advent of nuclear weapons, the worst “state of war” (including ones without any “actual fighting”) would have been characterized by a “dreadful equality.” Here, world politics would have taken place within a broadly chaotic *bellum omnium contra omnes*, a vastly confusing context wherein “the weakest has strength enough to kill the strongest.”³² In such opaque circumstances, especially ones where “dreadful equality” would coincide with expanding disease epidemics, the potential sources of decision-making bewilderment could quickly multiply.

In any such worst-case configuration—most apparent today wherever nuclear proliferation would manage to continue without any meaningfully correlative legal inhibitions—the life of individual human beings and entire states must inevitably be “solitary, poor, nasty, brutish and short.”³³ For Israel, the shifting parameters of Cold War II and certain related issues of enemy rationality could soon have indeterminate or foreseeable effects upon its presumptive nuclear doctrine and strategy. This includes the plainly diverse issues surrounding any still-upcoming policy choices between “nuclear ambiguity” and “nuclear disclosure.”³⁴

29. HOBBS, *supra* note 27, at 81-86.

30. *Id.*

31. In this connection, noted Sigmund Freud:

Wars will only be prevented with certainty if mankind unites in setting up a central legal authority to which the right of giving judgment upon all shall be handed over. There are clearly two separate requirements involved in this: the creation of a supreme agency and its endowment with the necessary power. One without the other would be useless.

Collected Papers, in LOUIS R. BERES, *THE MANAGEMENT OF WORLD POWER: A THEORETICAL ANALYSIS* 27 (1973).

32. HOBBS, *supra* note 27, at 81.

33. *Id.* at 84.

34. See Louis R. Beres, *Changing Direction? Updating Israel's Nuclear Doctrine*, 17 STRATEGIC ASSESSMENT 93, 93-106, INST. NAT'L. SEC. STUDIES (Oct. 2014), <https://www.inss.gov.il>.

For Israel, a state sorely lacking in strategic depth,³⁵ the former posture has prevailed unchallenged, at least until today. This problematic stance is sometimes referred to commonly and metaphorically as Israel's "bomb in the basement."³⁶ Still, as a bipolar axis of conflict is now being reaffirmed in world politics by the principal superpowers, and as prospects for enemy irrationality are arguably greater than ever before,³⁷ Jerusalem/Tel Aviv will have to make appropriate modifications to its nuclear deterrence doctrine and posture. Of necessity, included here would be assorted policy considerations of preemption or (as described in international law) "anticipatory self-defense."³⁸

org.il/publication/changing-direction-updating-israels-nuclear-doctrine/ [https://perma.cc/EX49-9YEQ].

35. A great deal has been written on pertinent questions of "strategic depth." The heart of this issue was addressed as early as June 29, 1967, when a U.S. Joint Chiefs of Staff memorandum specified that returning Israel to pre-1967 boundaries would drastically increase its vulnerability. The then Chairman of the JCS, General Earl Wheeler, concluded that for *minimal* deterrence and defense, Israel must retain Sharm el Sheikh and Wadi El Giral in the Sinai; the entire Gaza Strip; the high ground and plateaus of the mountains in Judea and Samaria; and the Golan Heights, east of Quneitra. See Gail Winston, *Israel's Chief of Staff Cites U.S. Joint Chiefs of Staff on Israel's Defensible Borders*, THE CAUCUS CURRENT 24-25 (Sept. 1993).

36. See Zeev Eytan, *A Nuclear or Conventional Defense Posture?*, in LOUIS RENÉ BERES, SECURITY OF ARMAGEDDON: ISRAEL'S NUCLEAR STRATEGY 89 (1986); Stephen A. Cimbala, *An Israeli Nuclear Deterrent: Implications for U.S.-Soviet Strategic Policies*, in SECURITY OF ARMAGEDDON: ISRAEL'S NUCLEAR STRATEGY 133-42 (1986); Robert A. Friedlander, *The Armageddon Factor: Terrorism and Israel's Nuclear Option*, in SECURITY OF ARMAGEDDON: ISRAEL'S NUCLEAR STRATEGY 151-58 (1986).

37. In genuinely scientific terms, of course, there are no reliably accurate ways to appraise these unprecedented prospects as true and ascertainable probabilities.

38. This permissible option can be found not in the conventional law (the U.N. Charter art. 51 supports only post-attack expressions of individual or collective self-defense), but in customary international law. The precise origins of *anticipatory self-defense* in such customary law lie in the *Caroline*, a case that concerned the unsuccessful rebellion of 1837 in Upper Canada against British rule. Following this case, the serious threat of armed attack has generally justified certain militarily defensive actions. In an exchange of diplomatic notes between the governments of the United States and Great Britain, then U.S. Secretary of State Daniel Webster outlined a framework for self-defense that did not require an antecedent attack. Here, the jurisprudential framework permitted a military response to a *threat* so long as the danger posed was "instant, overwhelming, leaving no choice of means, and no moment for deliberation." See Beth M. Polebaum, *National Self-defense in International Law: An Emerging Standard for a Nuclear Age*, 59 N.Y.U. L. REV. 187, 190-91 (1984) (noting that the *Caroline* case had transformed the right of self-defense from an excuse for armed intervention into a legal doctrine). See Hugo Grotius, *Of the Causes of War, and First of Self-Defense, and Defense of Our Property*, in 2 CLASSICS OF INTERNATIONAL LAW 168-75 (Carnegie Endowment Trust Ed. 1925) (1625); Emmerich de Vattel, *The Right of Self-Protection and the Effects of the Sovereignty and Independence of Nations*, in 3 CLASSICS OF INTERNATIONAL LAW 130 (Carnegie Endowment Trust Ed. 1916) (1758). See also SAMUEL PUFENDORF, THE TWO

Until today, in principle, at least, Israel's national nuclear doctrine and posture have remained determinedly ambiguous. At the same time, in effect, traditional ambiguity had already been ostentatiously breached at the highest possible level by two of Israel's prime ministers, first, by Shimon Peres, on December 22, 1995, and then again by Ehud Olmert on December 11, 2006. Peres, speaking to a group of Israeli newspaper and magazine editors, had then affirmed publicly: "give me peace, and we'll give up the atom. That's the whole story." When Olmert later offered similarly general but also revelatory remarks, they were widely (but perhaps wrongly) interpreted as "slips of the tongue."

Today, as Moscow and Washington once again become more recognizably adversarial—in part regarding their different positions and involvements throughout the Middle East—a fundamental question should be resurrected in Jerusalem:

*Is comprehensive nuclear secrecy in the best survival interests of the Jewish State?*³⁹

To respond appropriately to this multi-layered question, Israel must begin with the problematic assumption that in any such complex strategic matters, "truth" could be counterintuitive. A beneficial answer to this challenging query must be grounded in the tangible expectations and exigencies of formal strategic doctrine. Whatever else Jerusalem/Tel Aviv may already have in mind concerning such doctrine, its response ought never to be merely a series of incremental *ad hoc* decisions or otherwise unreflective "seat-of-the-pants" policies, that is, positions that are casually invented or re-invented from one beleaguering national security crisis to the next.

In principle, fashioning Israeli strategic doctrine should never consist of disjointed or *ad hoc* calculations. Any purposeful loosening of Israeli nuclear ambiguity would need to be subtle, nuanced, more-or-less indirect, and visibly incremental. Contrary to the often parodied views of any such prospective disclosure that may be found in popular news stories or on television, this loosening would not have to take the expressly provocative form of openly forthright or otherwise official Israeli policy pronouncements. Instead, it could be allowed to "leak out" or "spill out" on its own, thereby allowing a crucial point to be made without precipitating any immediate sense of crisis or misfortune.

Among other things, formal doctrine, consistent with law, would represent the vital framework from which any gainfully pragmatic Israeli nuclear policy of ambiguity or disclosure could most suitably be extrapolated. In all military institutions and traditions, such doctrine must describe the tactical or operational

BOOKS ON THE DUTY OF MAN AND CITIZEN ACCORDING TO NATURAL LAW 32 (Frank Gardner Moore, trans., 1927) (1682).

39. The actual security benefits to Israel of any explicit reductions in nuclear secrecy would remain dependent, more or less, upon Clausewitzian "friction." This refers to the inherently unpredictable effects of errors in knowledge and information concerning intra-Israel (IDF/MOD) strategic uncertainties; on Israeli and Iranian under-estimations or over-estimations of relative power position; and on the unalterably vast and largely irremediable differences between theories of deterrence, and enemy intent "as it actually is." See CLAUSEWITZ, *supra* note 26.

manner in which designated national forces ought to fight in various plausible combat situations, the prescribed “order of battle,” and all manner of corollary operations. Appropriately, the literal definition of “doctrine” derives from Middle English, from the Latin *doctrina*, which means “teaching, learning, and instruction.”⁴⁰

Furthermore, the central importance of codified Israeli military doctrine lies not only in the particular way it can animate, unify and optimize national military forces, but also in the expectedly efficient manner it can transmit desired “messages” to an enemy state, enemy states, sub-state proxies or state-sub-state “hybrids.”⁴¹ Understood in terms of Israel’s strategic nuclear policy, any indiscriminate, across-the-board ambiguity could prove net-injurious to the country’s national security. In this regard, it could unwittingly jeopardize certain protective functions of international law.⁴² This is likely the case because any truly effective deterrence and defense could sometimes call for a military doctrine that is at least partially recognizable by adversary states and by certain sub-state insurgent/terrorist group foes.

In any routine military planning by Israel, having available options for strategic surprise could prove helpful (if not fully prerequisite) to successful combat operations. Successful *deterrence*, however, is another matter entirely. In order to persuade would-be adversaries not to strike first in these circumstances, a manifestly complex effort of *dissuasion such as* projecting too much secrecy could (at least on occasion) prove counterproductive.

In the matter of Israel and its enemies, both new and historic, optimal military success must lie in credible deterrence, not in any actual war-fighting.⁴³ Examined in terms of ancient Chinese military thought offered by Sun-Tzu in *The Art of War*, “Supreme excellence consists of breaking the enemy’s resistance without fighting.” For Israel, there are times when successful deterrence policies could

40. Melyn, “*Doctrina*” *Latin to English Translation*, LATIN MEANING (Mar. 3, 2015), <http://latinmeaning.com/doctrina-latin-to-english-translation/> [<https://perma.cc/2FEV-VS78>].

41. See EHUD EILAM, ISRAEL’S MILITARY DOCTRINE (2018).

42. No state on earth, including Israel, is under any *per se* legal obligation to renounce access to nuclear weapons; in certain distinctly residual circumstances, moreover, the actual resort to such weapons could still be lawful. See generally *The Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 1997 I.C.J. (July 8). The final paragraph of this Opinion, concludes, *inter alia*:

The threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law. However, in view of the current state of international law, and of the elements of fact at its disposal, the Court cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defense, in which the very survival of a State would be at stake.

43. This was a major conclusion of this author’s *Project Daniel* Report (2003) to then Prime Minister Sharon. See Louis R. Beres, *Israel’s Strategic Future*, NATIV ONLINE (Apr. 2004), <http://www.acpr.org.il/ENGLISH-NATIV/03-ISSUE/daniel-3.htm> [<https://perma.cc/8WTT-NR8X>].

require the deliberate “loosening” of information that had formerly been tightly held with this worthy dictum in mind. In essence, such information would concern Israel’s capabilities, its intentions, or both of these complex qualities taken together.

Looking to Cold War II, such information would also need to be rendered compatible with Jerusalem’s preferred and specific superpower alignments. More than likely, these alignments will still favor ties to Washington over Moscow, but it is no longer inconceivable that a U.S.-generated incoherence within relevant American foreign policy arenas could sometimes temper (or perhaps even reverse) this usual preference.⁴⁴

Back to basics: strategic truth may be counterintuitive. There are, after all, foreseeable circumstances wherein ordinary secrecy could be *too much secrecy*, thereby undermining any particular country’s national security.

In this connection, we may recall, a popular Cold War I-era movie in which *Dr. Strangelove*—an “eccentric” strategic advisor to the American President (and also the name of the film)—to his horror discovers that the existence of America’s “doomsday machine” had not been made known in advance to the Soviets. “The whole point of the doomsday machine is lost,” complains Dr. Strangelove, “if you keep it a secret.” To have been suitably deterred, the film then instructs, and not too subtly, that the Soviets ought to have been given sufficient prior warnings of the “doomsday machine.” This device had been designed to ensure the perceived automaticity of America’s nuclear retaliatory response. Remembering the commonly-held strategic posture known as MAD, this response would have been instantly recognizable to the Kremlin as “massive” and “assuredly destructive.”

It follows from all this, and the more general expectations of the laws of war, Israel’s nuclear weapons must remain oriented to deterrence *ex ante*, not to war-fighting or revenge *ex post*. As designated instruments of a law-based deterrence system, nuclear weapons can succeed only in their prolonged non-use. Once they have been employed for any tangible “battle,” deterrence, by definition, will have failed.⁴⁵

44. See Louis R. Beres, *Surviving Donald Trump: Israel’s Strategic Options*, BESA CENTER (Feb. 2018), <https://besacenter.org/wp-content/uploads/2018/02/144-Monograph-Beres-Surviving-Donald-Trump-cover-and-text.pdf> [<https://perma.cc/WKA5-DQMT>].

45. There could also be attendant and possibly unprecedented crimes of war. Moreover, criminal responsibility of leaders under international law is not *limited to* direct personal action or *limited by* official position. On this peremptory principle of “command responsibility,” or *respondeat superior*, see generally *In re Yamashita*, 327 U.S. 1 (1945); The U.N. War Crimes Comm., *The Trial of Wilhelm von Leeb*, 12 L. REP. OF TRIALS OF WAR CRIMS. 1 (1949). See also William Parks, *Command Responsibility for War Crimes*, 62 MIL L. REV. 1 (1973); William O’Brien, *The Law of War, Command Responsibility and Vietnam*, 60 GEO. L. J. 605 (1972); U.S. DEP’T OF ARMY, FIELD MANUAL 6-27, THE COMMANDER’S HANDBOOK ON THE LAW OF LAND WARFARE (Aug. 2019). The direct individual responsibility of leaders is also unambiguous in view of the London Agreement, which denies defendants the protection of the act of state defense. See Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis art. 7, Aug. 8, 1945, 59 Stat. 1544, 82 U.N.T.S. 280.

Also worth noting, once nuclear weapons are used, any traditional meanings of “victory” instantly become moot.⁴⁶

Cold War I is over, and Israel’s emerging deterrence relationship to a prospectively nuclear Iran is not reasonably analogous or comparable to the historic American-Soviet “Balance-of-Terror.”⁴⁷ Still, there are crucial elements of Cold War II superpower antagonisms that will necessarily and substantially impact Israel’s nuclear strategic choices. In other words, Israel should never construct its own nuclear strategic doctrine and policy apart from various comparative assessments of U.S.-Russian relations.⁴⁸

There are certain Cold War I deterrence lessons to be learned and adapted by the Jewish State during Cold War II. More precisely, any unmodified continuance of total nuclear ambiguity concerning Israel’s (a) strategic targeting doctrine; (b) secure basing modes; and (c) capacity to penetrate a designated enemy’s active air defenses, which could cause a newly-nuclearizing or still-nuclearizing enemy state (e.g., Iran) to critically underestimate Israel’s retaliatory capacity or resolve.

As a subsidiary but still urgent nuclear concern, Israeli planners will need to continually assess the capability and intentions of Pakistan, an already-nuclear Islamic state and one that has openly declared a “nuclear war fighting” concept of national nuclear deterrence. Returning to the formative lexicon of Cold War I, this non-Arab Islamic state has already undertaken a formal shift from “mutual assured destruction” to “nuclear utilization theory.” This represents an overt shift from mutual assured destruction (“MAD”) to nuclear utilization theory (“NUT”) in the specialized discourse and parlance of all orthodox nuclear strategic theory.⁴⁹ Any such shift, by definition, could have profound legal consequences

46. On “victory” in a nuclear war, see Louis R. Beres, *Who is “Victorious?”: Transformed American Meanings of War and Power*, OXFORD UNIV. PRESS BLOG (Apr. 21, 2016), <https://blog.oup.com/2016/04/war-political-victories/> [<https://perma.cc/86CM-RGWP>]; Louis R. Beres, *Seeking American Victories via Escalation Dominance*, ISRAEL DEF. (Mar. 21, 2017), <https://www.israeldefense.co.il/en/node/28931> [<https://perma.cc/A7YN-B5PZ>].

47. Recalling the Roman Stoic philosopher and statesman, Marcus Cicero said, “For what can be done against force, without force?” MARCUS CICERO, LETTERS TO HIS FRIENDS (1468). During the nuclear age, the traditional term, “balance of power” has sometimes been replaced with a more technologically appropriate “balance of terror.” For the conceptual origins of this historic replacement, see Albert Wohlstetter, *The Delicate Balance of Terror*, 37 FOREIGN AFFS. 211-34 (1959).

48. In this connection, Jerusalem must always ensure that it does not enter into any agreements that might threaten its overall physical survival. Thomas Jefferson, third president of the United States, wrote about this core obligation as generic for all nations. Writing in his *Opinion on the French Treaties* (April 28, 1793), Jefferson opined: “The nation itself, bound necessarily to whatever it’s preservation and safety require, cannot enter into engagements contrary to its indispensable obligations.” MERRILL D. PETERSON, THE POLITICAL WRITINGS OF THOMAS JEFFERSON 115 (1993).

49. Several of this author’s earlier books deal expressly with the pertinent distinctions. See e.g., LOUIS R. BERES, THE MANAGEMENT OF WORLD POWER: A THEORETICAL ANALYSIS (1973);

concerning both the presumed likelihood of a nuclear conflict (*probability*) and the presumed injuriousness of such a conflict (*disutility*).

Going forward during Cold War II, various uncertainties surrounding the presumed components of Israel's nuclear arsenal could lead enemy states to reach the "wrong" conclusion. In part, this is because Israel's willingness to make good on any threatened nuclear retaliation could then be seen, widely perhaps, as inversely related to weapon system destructiveness. Ironically, if Israel's nuclear weapons were sometimes believed to be too destructive, *too apocalyptic*,⁵⁰ they might *not* credibly deter. In these cases, and more or less unwittingly, such beliefs would underscore various basic expectations of humanitarian international law or the law of armed conflict. These are the core expectations of *discrimination* (aka *distinction*), *proportionality*, and *military necessity*.

In the future, any continuing Israeli policy of complete ambiguity could cause an already nuclear enemy state to overestimate the first-strike vulnerability of Israel's nuclear forces. In part, at least, this overestimation could be the result of a too-complete silence concerning measures of protection that had been deployed to safeguard Israeli nuclear weapons and launch platforms. Such silence, in turn, could be the product of Israel's perceived alignments with one or the other current superpower by any then-relevant regional foe.

A related problem could represent the product of certain Israeli doctrinal obfuscations regarding the country's defense potential, a silence that enemy states could mistakenly take as an indication of inadequate Israeli Ballistic Missile Defense ("BMD"). To be maximally useful, certain relevant strengths and capabilities of *Arrow3* and other interrelated and multi-layered elements of active defense would need to be revealed, perhaps in previously unimaginable contours of operational detail.

Going forward, some aspects of strategic truth—especially in such wholly unprecedented contextual circumstances—could prove counterintuitive.

The then-prevailing conditions of Cold War II could expect to have specific, distinctly meaningful impacts upon any such considered revelations.

Furthermore, to best understand the utility and legal content of Israeli strategic nuclear doctrine and posture, analysts must first clearly identify for

LOUIS R. BERES, *APOCALYPSE: NUCLEAR CATASTROPHE IN WORLD POLITICS* (2nd ed. 1982); LOUIS R. BERES, *REASON AND REALPOLITICK: US FOREIGN POLICY AND THE WORLD ORDER* (1984); LOUIS R. BERES, *MIMICKING SISYPHUS: AMERICA'S COUNTERVAILING NUCLEAR STRATEGY* (1983); LOUIS R. BERES, *SECURITY OR ARMAGEDDON: ISRAEL'S NUCLEAR STRATEGY* (1986); LOUIS R. BERES & BARRY R. McCAFFREY, *ISRAEL'S NUCLEAR STRATEGY AND US NATIONAL SECURITY* (2016).

50. The underlying idea here of some palpable apocalypse seems to have been born in ancient Iran (Persia), specifically, with the Manichaeism of the Zoroastrians. Interestingly, at least one of these documents, *The War of the Sons of Light Against the Sons of Darkness*, found in a Qumran cave, is a comprehensive description of Jewish military tactics and regulations at the end of the Second Commonwealth. In essence, the "Sons of Light" were expected to prevail in battle against the "Sons of Darkness" before the "end of days," and the later fight at Masada was widely interpreted as an apocalyptic struggle between a saintly few and the wicked many.

themselves the various core foundations of Israeli nuclear deterrence. These foundations concern prospective attackers' perceptions of Israel's nuclear capability, and any selective telegraphing of Israel's strategic nuclear doctrine could potentially enhance Israel's nuclear deterrence posture and thereby support both peace and international law. It would accomplish this enhancement by heightening enemy state perceptions of Israel's capable nuclear forces and by its announced willingness to use these forces in reprisal for certain designated first-strike or retaliatory attacks.

To deter an enemy attack, or a post-preemption retaliation against Israel,⁵¹ Jerusalem/Tel-Aviv must always prevent a *rational* aggressor, by the threat of an unacceptably damaging retaliation or counter-retaliation, from deciding to strike. Here, Israel's national security would be sought by convincing the potential rational attacker (irrational state enemies could, of course, pose an altogether different and possibly insurmountable problem) that the costs of any considered attack will always exceed the expected benefits. Assuming that Israel's state enemies (1) value self-preservation most highly and (2) choose rationally between all alternative options, they will necessarily refrain from any attack on an Israel that is believed both willing and able to deliver an unacceptably destructive response.

These enemy states might also be deterred by the plausible prospect of a more limited Israeli attack, one that would be directed only at national leaders. In the usual parlance adopted by military and intelligence communities, this particular prospect refers to more-or-less credible threats of "regime targeting." Whether credible or incredible, any such threats could be severely problematic in specifically legal terms.⁵²

Two factors must combine to communicate such potentially essential beliefs. First, there are two critical components in terms of capability: *payload* and *delivery system*. It must be successfully communicated to any calculating attacker that Israel's firepower and available means of delivering that firepower are invariably capable of inflicting unacceptable levels of destruction. Israel's retaliatory or counter-retaliatory forces must always appear sufficiently *invulnerable* to enemy first-strikes and aptly *elusive* to penetrate the prospective attacker's active and civil defenses. It may or may not need to be communicated to a potential attacker that such firepower and delivery vehicles are in any way superior to those of the relevant adversary.

51. Regarding preemption, the obvious Israeli precedents for any such defensive moves would be *Operation Opera* directed against the *Osiraq* (Iraqi) nuclear reactor on June 7, 1981, and later (though lesser known) *Operation Orchard* against Syria on September 6, 2007. In April 2011, the U.N.'s International Atomic Energy Agency (the "I.A.E.A.") confirmed that the bombed Syrian site in the Deir ez-Zoe region of Syria had indeed been a developing nuclear reactor. In this writer's judgment, both preemptions were lawful assertions of Israel's "Begin Doctrine."

52. Louis R. Beres, *Assassination and Targeted Killing: A Timely Jurisprudential Brief*, JEWISH BUS. NEWS (Jan. 30, 2019), <https://jewishbusinessnews.com/2019/01/30/assassination-and-targeted-killing-a-timely-jurisprudential-brief/> [https://perma.cc/QEB7-SY7B].

Israel's planners must continuously bear in mind that deterrence is never about "victory." Significantly, the capacity to deter may or may not be as great as the capacity to "win."⁵³ As a suitable current example, Israeli planners could think about North Korea and the United States. In this increasingly problematic dyad of international adversaries, the Americans are superior in all of the usual expressions of hardware and battle-readiness. However, the North Koreans could still bring terrible harm to U.S. armed forces and potentially to portions of the American mainland. This is to say nothing about parallel or corollary damages that might be visited upon U.S. allies in South Korea or Japan.

Israel's strategic nuclear forces and doctrine sometimes conclude, rightly or wrongly, that a first-strike attack or post-preemption reprisal would be cost-effective. Nevertheless, where relevant, Israeli doctrine made more plainly obvious to enemy states contemplating an attack—evident in that Israel's nuclear assets seemingly met both its indispensable payload and delivery system objectives—Israel's nuclear forces could then better serve their existential security functions.

The second factor of nuclear doctrine for Israel concerns *willingness*. How may Israel convince any potential nuclear attackers that it possesses the *resolve* to deliver an appropriately destructive retaliation or counter retaliation? Again, the answer to this question lies largely in *doctrine*, that is, in Israel's demonstrated strength of commitment to carry out such an attack and in the nuclear ordnance that would presumably be made available to its forces. Here, too continued ambiguity over nuclear doctrine could wrongfully create the impression of an unwilling Israel. Conversely, any doctrinal movement toward some as-yet-undetermined level of disclosure could meaningfully heighten the impression that Israel was, in fact, willing to follow through on its now explicit nuclear threats.

There are determinedly persuasive connections between any incrementally more "open" or disclosed Israeli strategic nuclear doctrine and certain enemy state perceptions of Israeli nuclear deterrence. One such connection centers on the expected relationship between prospectively greater openness and the perceived vulnerability of Israeli strategic nuclear forces to preemptive destruction. Another such connection concerns the relation between greater openness and the perceived capacity of Israel's nuclear forces to penetrate the offending state's active defenses reliably.

To be deterred by Israel, a newly-nuclear Iran⁵⁴ or any other newly nuclear adversary (i.e., potentially, one of the major Sunni Arab states also worried about

53. See Louis R. Beres, *An American President's Perilous Misunderstanding of War, Strategy and Survival*, JURIST (Jun. 26, 2020, 2:42 PM), <https://www.jurist.org/commentary/2020/06/louis-beres-winning-war/> [<https://perma.cc/3FGT-LY7E>].

54. See Louis R. Beres & John T. Chain, *Could Israel Safely Deter a Nuclear Iran?*, THE ATLANTIC (Aug. 9, 2012), <https://www.theatlantic.com/international/archive/2012/08/could-israel-safely-deter-a-nuclear-iran/260947/> [<https://perma.cc/8RMN-8W3B>]; Louis R. Beres & John T. Chain, *Israel and Iran at the Eleventh Hour*, OXFORD UNIV. PRESS (Feb. 23, 2012), <https://blog.oup.com/2012/02/israel-iran-nuclear/> [<https://perma.cc/8DEV-P7XX>].

Iran) would need to believe that at least a critical number of Israel's retaliatory forces would successfully survive any enemy first-strike and that these forces could not subsequently be stopped from hitting their pre-designated targets in Iran or elsewhere. Regarding the "presumed survivability" component of such an adversarial belief, Israel's reliable sea-basing (submarines) could prove a relevant case in point.

Carefully articulated, expanding doctrinal openness or partial nuclear disclosure could represent a distinctly rational option for Israel, at least to the extent that pertinent enemy states were made appropriately aware of Israel's nuclear capabilities. The presumed operational benefits of any such expanding doctrinal openness would accrue from deliberate flows of information about various matters of dispersion, multiplication, and hardening of its strategic nuclear weapon systems and about other technical features of these systems. Most important, doctrinally controlled and orderly flows of information could serve to remove any lingering enemy state doubts about Israel's strategic nuclear force capabilities and plausible intentions. Left unchallenged, such doubts could literally and lethally undermine Israeli nuclear deterrence and, correspondingly, certain war-avoiding elements of pertinent international law.

A key problem in purposefully refining Israeli strategic nuclear policy on deliberate ambiguity issues has to do with what the Prussian military thinker, Carl von Clausewitz, famously calls "friction." No military doctrine can ever fully anticipate the actual pace of combat activity or, as a corollary, the precise reactions of individual human commanders under fire. It follows that Israel's nuclear doctrine must somehow be encouraged to combine adequate tactical flexibility with a selective doctrinal openness. To understand how such seemingly contradictory objectives can be reconciled, Jerusalem and Tel-Aviv now present a distinctly primary *intellectual* challenge to Israel's national command authority.⁵⁵

In the end, Israeli planners must think about plausible paths to a nuclear war that also include relevant risks of inadvertent or accidental nuclear war. It is entirely possible (even plausible) that risks of any deliberate nuclear war involving Israel would be minimal, but that the Jewish State might still be vulnerable to such a war occasioned by a mechanical, electrical, or computer malfunction on one side or another and by assorted decisional errors in related reasoning (e.g., miscalculation).

RECOMMENDATION

To properly assess the different but intersecting risks between a deliberate nuclear war and an inadvertent or accidental nuclear war should now be regarded in Jerusalem/Tel Aviv as an overriding obligation. These risks, including various

55. See GUILLAUME APOLLINAIRE, *THE NEW SPIRIT AND THE POETS* (1917) ("It must not be forgotten . . . that it is perhaps more dangerous for a nation to allow itself to be conquered intellectually than by arms.").

corollary legal implications, could exist independently of one another or could be impacted in various ways by Cold War II alignments. Moreover, like the much larger United States, Israel must continuously prepare to deal with issues of cyber-attack and cyber-war. Such bewildering issues should now be considered together with the unpredictably destabilizing advent of “digital mercenaries.”

There is one more core conceptual distinction that warrants mention at this concluding point of assessment. This distinction references the difference between inadvertent and accidental nuclear war. By definition, any accidental nuclear war would need to be inadvertent. Conversely, however, an inadvertent nuclear war would not necessarily be accidental. False warnings, for example, which could be generated by various types of technical malfunction or sparked by third-party hacking/digital mercenary interference—that might or might not have something to do with the dynamics of Cold War II—would not be included under causes of an unintentional or inadvertent nuclear war. Instead, they would represent cautionary narratives of an *accidental* nuclear war.

Most critical among the plausible causes of any inadvertent nuclear war would be errors in calculation by one or both (or several) sides. The most blatant example would involve misjudgments of either enemy intent or enemy capacity that would emerge and propagate as any particular crisis would escalate. Such consequential misjudgments could stem from an understandably amplified desire by one or several parties to achieve “escalation dominance.”

As always, in any such projected crisis condition, all rational sides would likely strive for calculable advantage without too severely risking total or near-total destruction. Where one or several adversaries would not be rational, all of the usual deterrence “bets” would immediately be “off.” Where one or several sides would not be identified as rational by Israel, Jerusalem would then need to input various unorthodox sorts of security options, including some that could derive in whole or in part from certain prevailing Cold War II alignments.

Still, other causes of an inadvertent nuclear war involving Israel could include (1) flawed interpretations of computer-generated nuclear attack warnings; (2) an unequal willingness among adversaries to risk catastrophic war; (3) overconfidence in deterrence and defense capabilities on one or several sides (including Israel); (4) adversarial regime changes; (5) outright revolution or *coup d'état* among adversaries; and (6) poorly-conceived pre-delegations of nuclear launch authority among apparent foes.

Markedly severe overconfidence problems could be aggravated by successful tests of a nation's missile defense operations, whether by Israel itself or by any of its relevant adversaries. These problems could also be encouraged by too-optimistic assessments of Cold War II alliance guarantees. An example might be an intra-crisis judgment in Jerusalem that Washington stands firmly behind its every move during an ongoing crisis, up to and including certain forms of reprisal that are more plausibly imagined than genuine.

Reciprocally, an enemy of Israel could similarly mistake the seriousness and commitment of its own preferred Cold War II guarantor (whether Russian or American).

A potential source of inadvertent nuclear war during Cold War II could be the “backfire” effect from strategies of “pretended irrationality.” A rational enemy

of Israel that had managed to convince Jerusalem of its own decisional irrationality could spark an otherwise avoidable Israeli military preemption. Conversely, an enemy leadership that had begun to take seriously any hint of decisional irrationality in Jerusalem could then be frightened into striking first. Regarding this second scenario, it should also be remembered that many years back, General Moshe Dayan, then Israel's Minister of Defense, had argued that "Israel must be seen as a mad dog, too dangerous to bother."

Nightmare! According to the etymologists, the root is *niht mare* or *niht maere*, the demon of the night. Dr. Johnson's dictionary says this corresponds to Nordic mythology—which regarded nightmares as the product of demons. This would make it a play on, or a translation of, the Greek *ephiates* or the Latin *incubus*. In any event, in all such interpretations of "nightmare," the non-rational idea of demonic origin is central. The demons of nuclear strategy and nuclear war would take very different forms. For the most part, their mien is not frightful but (hopefully) "rational" and ordinary. If they are thought to be sinister, it is not because their national leaders necessarily crave wanton bloodshed and carnage, but because they seek maximum safety for their own nations amid a growing cacophony of global chaos.

CONCLUSION

While the specific principle of "*military necessity*" has been defined authoritatively as follows: "Only that degree and kind of force, not otherwise prohibited by the law of armed conflict, required for the partial or complete submission of the enemy with a minimum expenditure of time, life, and physical resources may be applied."⁵⁶ The state of nations has always been in the "state of nature,"⁵⁷ at least since the seventeenth century and the Peace of Westphalia (1648), current conditions of nuclear capacity and worldwide anarchy portend a uniquely dangerous amalgam of law-violating circumstances.

Among other things, the reasons for such dire portents lie in the indispensability of rational decision-making to operationally viable nuclear deterrence. In the subtly interpenetrating fact, rational decision-making may sometimes become subject to corrosive modifications or complete disappearance. Although not readily discernible or predictable, these significant impacts upon enemy rationality could be derived from the ever-changing dynamics of Cold War II. A pertinent future example of what is being described here would be any strategic nuclear decisions in Tehran based in whole or in part upon that enemy country's particular interpretations or assessments of Cold War II.

56. See U.S. DEP'T OF NAVY, THE COMMANDER'S HANDBOOK ON THE LAW OF NAVAL OPERATIONS, NWP 1-14M 5-1 (Oct. 1995).

57. See HOBBS, *supra* note 27 ("But though there had never been any time wherein particular men were in a condition of war one against another, yet in all times, Kings and Persons of Sovereign Authority, because of their Independency, are in continual jealousies, and in the state and posture of Gladiators, having their weapons pointing and their eyes fixed on one another.").

With still largely unpredictable enlargements of Cold War II, Israeli decision-makers must systematically prepare for progressively “rough seas.” To avoid being pushed “out to sea” altogether, they will first have to prepare capably for unprecedented levels of world-systemic upheaval and transformation and, correspondingly, for seemingly unfathomable levels of decisional complexity. Moreover, in some cases, these decision-maker calculations will even have to assume varying levels of enemy irrationality that could obtain among state, sub-state, or “hybridized” adversaries.

Of necessity, for Israel, a country smaller than America’s Lake Michigan, ultimate survival tasks will be profoundly intellectual and require utterly durable victories of “mind over mind.”⁵⁸ These analytic victories, in turn, will depend upon prior capacities to fully understand the many-sided elements of Cold War II. In principle, such prior capacities could sometimes lead Israel to consider certain preemption options seriously. Any final decisions regarding such residual options would be most properly based upon (a) expectations of enemy rationality or irrationality; (b) expected likelihood of enemy first-strikes; (c) expected costs or disutilities of enemy first-strikes; (d) expected schedule of enemy nuclear (or biological) weapons deployments; (e) expected efficiencies of enemy active defenses over time; (f) expected efficiencies of Israel’s active defenses over time; (g) expected efficiencies of Israeli hard-target counterforce operations over time; (h) expected reactions of unaffected regional enemies; and (i) expected US, Russian and world community reactions to the Israeli preemptions.⁵⁹

At some point, in Jerusalem and Tel Aviv, there will be “higher-waves” pushing the Israeli ship of state “out to sea,” but these “oceanic” forces could remain subject to purposeful national and law-based control. Among the many qualities examined above, what will be most critically required of Israel is a determined national willingness to face the bewildering complexities of world

58. FRANK EZRA ADCOCK, *THE GREEK AND MACEDONIAN ART OF WAR* (1957).

59. For early scholarly commentary by this author on anticipatory self-defense under international law, with special reference to Israel, see generally Louis R. Beres & Yoash Tsiddon Chatto, *Reconsidering Israel’s Destruction of Iraq’s Osiraq Nuclear Reactor*, 9 *TEMPLE J. INT’L & COMP. L.* 437, 437-49 (1995); Louis R. Beres, *Preserving the Third Temple: Israel’s Right of Anticipatory Self-Defense Under International Law*, 26 *V.U. J. TRANSNAT. L.* 111, 111-48 (1993); Louis R. Beres, *After the Gulf War: Israel, Preemption and Anticipatory Self-Defense*, 13 *HOUS. J. INT’L. L.* 259, 259-80 (1991); Louis R. Beres, *Striking First: Israel’s Post Gulf War Options Under International Law*, 14 *LOY. L.A. J. INT’L & COMP. L.* 1-24 (Nov. 1991); Louis R. Beres, *Israel and Anticipatory Self-Defense*, 8 *ARIZ J. INT’L. & COMP. L.* 89, 89-99 (1991); Louis R. Beres, *After the SCUD Attacks: Israel, Palestine, and Anticipatory Self-Defense*, 6 *EMORY INT’L. L. REV.* 71, 71-104 (1992). For an examination of assassination as a permissible form of anticipatory self-defense by Israel, see Louis R. Beres, *On Assassination as Anticipatory Self-Defense: The Case of Israel*, 20 *HOFSTRA L. REV.* 321, 321-40 (1991). For more general assessments of assassination as anticipatory self-defense under international law by this author, see Louis R. Beres, *The Permissibility of State-Sponsored Assassination During Peace and War*, 5 *TEMPLE J. INT’L & COMP. L.* 231, 231-49 (1991); Louis R. Beres, *Victims and Executioners: Atrocity, Assassination and International Law*, 7 *CAM REV. INT’L AFF.* 1, 1-11 (1993).

politics with more than just a perfunctory nod to Cold War II⁶⁰ and/or to its subsidiary or corollary impacts. Looking ahead to increasingly complex elements of international relations and international law, including the largely unpredictable factor of widening disease epidemic, this continuously resurrecting expression of superpower bipolarity will incrementally define the systemic context within which Israel's evolving nuclear strategy must assume its characteristic form.

In shaping this all-important strategy, Israel must strive systematically to consider “many things” but also to understand these singular factors as components or constituent parts of “one big thing.” In matters that are expressly life or death, to be a “hedgehog” rather than a “fox,” Israel has a new and unforeseen opportunity. I.e., to approach the continuing COVID-19 pandemic as a valuable source of expanded international cooperation⁶¹ and not just another regrettable focal point of belligerent nationalism.⁶² Indeed, though initially, any such suggestion will be greeted with derision or even execration, nothing could eventually prove to be more realistic.⁶³

In the final analysis, all human beings—as this current COVID-19 “plague” makes evident—are creatures of biology. To draw upon this universal commonality as “Higher Law”⁶⁴ could allow Israel to transform the proliferating

60. A long-studied passage in *The Advancement of Learning* by Francis Bacon explains that earlier Scholastics were like spiders, weaving webs out of their own heads without any consideration of surrounding facts. FRANCIS BACON, *THE ADVANCEMENT OF LEARNING* (1605). While these webs were inherently admirable on account of their workmanship and “fineness of thread,” they were nonetheless lacking in any true explanatory substance. *Id.* (I, iv., 5.) Presently, in explaining Israel's nuclear doctrine amid historical structural anarchy, it is important to construct dialectical arguments upon well-reasoned analytic foundations, and not on any diaphanous constructions of modern-day Scholastics.

61. See Louis R. Beres, *Empathy and Survival in a Time of Plague*, *JURIST* (Apr. 21, 2020, 1:05 AM), <https://www.jurist.org/commentary/2020/04/louis-beres-trump-empathy/> [<https://perma.cc/DFJ9-A6SC>].

62. Opting for such a misconceived focal point; i.e., for endlessly corrosive and competitive nationalism, has been the conspicuous policy of US President Donald J. Trump. His decision to detach America from the World Health Organization and remain committed to fully zero-sum conceptions of world politics has contributed mightily to America's grievously bad coronavirus outcomes.

63. Or “more law-enforcing,” one might add here. See EMMERICH DE Vattel, *THE LAW OF NATIONS* (1758) (“The first general law, which is to be found in the very end of the society of Nations, is that each Nation should contribute as far as it can to the happiness and advancement of other Nations.”). The statement is not intended by the eighteenth century Swiss jurist to be a sign of naive idealism or charitable disposition, but rather as a pragmatic path to maximizing a commendable *general interest*.

64. Under international law, the idea of a Higher Law—drawn originally from the ancient Greeks and ancient Hebrews—is contained, *inter alia*, within the principle of *jus cogens* or peremptory norms. In the language of pertinent Vienna Convention on the Law of Treaties art. 53:

horrors of disease into blessings of reconciliation and an expanded legal commitment to *Reason*.⁶⁵ Perhaps because we are speaking expressly of Israel, it is worth recalling the following passage from *Talmud*, which is itself a component of a more conspicuously universalized *Higher Law*: “The dust from which the first person was made was gathered in all four corners of the earth.”⁶⁶

A peremptory norm of general international law . . . is a norm accepted and recognized by the international community of States as a whole, as a norm from which no derogation is permitted, and which can be modified only by a subsequent norm of general international law having the same character.

Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331, 8 I.L.M. 679 (entered into force Jan. 27, 1980).

65. The critical importance of Reason to all legal judgment was prefigured in ancient Israel, which prominently accommodated the core concept within its special system of revealed law. Jewish theory of law, insofar as it displays the evident markings of a foundational Higher Law, offers a transcending order revealed by the divine word as interpreted by human reason. In the words of ECCLESIASTICUS 32:23, 37:16, and 37:14: “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.”

66. The most fundamental principle of Jewish Law is that the revealed will of God is the only proper source of justice. In the derivative Talmudic position, “Whatever a competent scholar will yet derive from the Law, that was already given to Moses on Mount Sinai.” See JERUSALEM TALMUD MEGILLAH IV, 74d.