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Israel, The "Peace Process," and Nuclear Terrorism: A Jurisprudential Perspective

Louis René Beres*

C'est beau, n'est-ce pas, la fin du monde?
Giraudoux, Sodome et Gomorrhe

I. INTRODUCTION

Imaginings of the end of the world are often accompanied by visions of a terrible beauty. It is as if wholly catastrophic destruction were much more than the regrettable death and suffering of individuals, but actually an altogether appropriate instance of divine justice. With such apocalyptic imaginations, logic inevitably yields to passion, and technology can make the surrender ominously complete.

Little did anyone realize before the dawn of the nuclear age that destructive technology would eclipse the dimming voice of logic. Today, technology has unlocked the atom's secrets, and terrorists, as well as particular states, may exploit it.

The Middle East has grown steadily inured to the pain and anguish of "others." Among Israel's Islamic enemies in the Middle

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2. On this "dimming voice," compare FYODOR DOSTOYEVSKY, NOTES FROM UNDERGROUND 25 (Robert G. Durgy ed. & Serge Shishkoff trans., Thomas Y. Crowell Co. 1969) ("a "man in every place and time, no matter who he was, liked to do what he wanted and absolutely not what reason and his advantage indicated, and one can want something opposed to one's own advantage, and sometimes one even positively must . . .").

3. From an international law standpoint, any use of nuclear explosives or radiation by a terrorist group would represent an egregious violation of the laws of war. These laws have been brought to bear upon non-state actors in world politics by Article 3, common to the four Geneva Conventions of August 12, 1949, and by the two protocols to the conventions.
East, members of certain groups are willing to die in order to inflict harms on Israel. In light of today's technology, the prospect of nuclear terrorism against Israel should not be underestimated.  

Considering the potential for nuclear terrorism, Part II of this Article discusses the prospect of such terrorism against Israel and Israel's potential counter-terrorism tactics. Parts III, IV and V describe the Peace Process and analyze its potential impact on Israel's counter-terrorism efforts.  

Further, this Article details the interaction between various potential Israeli strategies and the Peace Process within the pertinent international law framework.


5. The core of this "Peace Process" is the Israel-PLO Agreement, known widely as the Declaration of Principles, concluded and signed in Oslo on Aug. 19, 1993, and signed again in Washington, D.C. on Sept. 13, 1993. According to authoritative international law, this agreement is entirely null and void. For a jurisprudential assessment of the agreement's invalidity, see Louis René Beres, International Law Requires Prosecution, Not Celebration, of Arafat, 71 U. DET. MERCY L. REV. 569 (1994) [hereinafter Beres, International Law Requires Prosecution]. The Peace Process, which assuredly undermines Israeli security and survival, excludes Iran, a state that seeks an independent nuclear capability against Israel and that is a plausible supporter of anti-Israel nuclear terrorism. See generally Iran Hails Toughened Arab Stand Against Israel, AGENCE FR.-PRESSE, July 15, 1996, available in WESTLAW, 1996 WL 3887251.
II. THE PROSPECT OF NUCLEAR TERRORISM AGAINST ISRAEL

A. Israel's Islamic Terrorist Enemies

On December 12, 1995, in an address at a U.S. Congressional Joint Session, former Prime Minister Shimon Peres proclaimed, "[f]undamentalism with a nuclear bomb is the nightmare of our age." Today, various Islamic fundamentalist organizations, especially Hamas, Hezbollah and Islamic Jihad, are committed to the total destruction of Israel. Significantly, Yasser Arafat and his Palestin-
ian Authority\textsuperscript{8} support this commitment and have not yet deleted sections of the Palestine Liberation Organization (PLO) covenant calling for \textit{jihad},\textsuperscript{9} or holy war, against Israel.\textsuperscript{10}

8. After the assassination of terrorist Yechya Ayyash, generally known as “The Engineer,” Yasser Arafat delivered a eulogy in Dura, near Hebron. Speaking before a large crowd of Hamas supporters, allegedly at odds with the Palestinian Authority, Arafat praised all “Palestinian martyrs,” including those who had murdered Israeli women and children in schools, buses and homes. See Judean Voice, News Service from Israel, Jan. 9, 1996. Referring to the imminent takeover of Jerusalem from the Jews, Arafat expressed confidence that “in a few months, we will pray together at the Al-Aksa mosque,” adding that “those who don’t like it can go and drink the water of the Dead Sea.” See id.

On June 15, 1995, at a eulogy given for Abed Al Karim Al Aklok, a former PLO official, Arafat remarked, “We are all seekers of martyrdom in the path of truth and right toward Jerusalem the capital of the State of Palestine . . . We will continue this difficult \textit{Jihad}, this long \textit{Jihad}, this arduous \textit{Jihad}, in the path of martyrs—via death—the path of sacrifice . . . .” Arafat Speaks to the Arabs, CAUCUS CURRENT, Oct. 1995, at 16.

On January 30, 1996, Arafat spoke to 40 Arab diplomats at the Grand Hotel in Stockholm, Sweden on the topic of “The Impending Total Collapse of Israel.” Arafat stated, “[w]e Palestinians will take over everything, including all of Jerusalem . . . . All the rich Jews who will get compensation will travel to America.” Avrohom S. Lewin, Arafat Urges ‘Destroy Israel,’ JEWISH PRESS, Feb. 9-15, 1996, at 1. He added:

We of the PLO will now concentrate all our efforts on splitting Israel psychologically into two camps. Within five years we will have six to seven million Arabs living on the West Bank and in Jerusalem.

\ldots \textit{You understand that we plan to eliminate the State of Israel and establish a purely Palestinian State} . . . . I have no use for Jews; they are and remain Jews. We now need all the help we can get from you in our battle for a united Palestine under total Arab-Moslem domination.

\textit{Id.}

9. For a discussion of \textit{Jihad}, see ROBERT S. WISTRICH, \textsc{Antisemitism: The Longest Hatred} 222-39 (1991). Wistrich stated that, for fundamentalist Muslims, “peace with Israel was and still remains nothing less than a poison threatening the life-blood of Islam, a symptom of its profound malaise, weakness and decadence.” \textit{Id.} at 227. According to Islamic orthodoxy, the Prophet has predicted a final war to annihilate the Jews. \textit{Id.} at 230 n.23 (citing \textsc{Arab Theologians on Jews and Israel: Extracts from the Proceedings of the Fourth Conference of the Academy of Islamic Research} 49-50 (D.F. Green ed., 1976)). Mohammed reportedly stated, “‘The Hour [i.e., salvation] will not come, until you fight against the Jews; and the stone would say, ‘O Muslim! There is a Jew behind me: come and kill him.’” \textit{Id.} at n.24.

10. For a discussion of this covenant, which calls for the physical annihilation of Israel, see Howard L. Adelson, \textsc{The Bleak Future of Appeasement}, JEWISH PRESS, Feb. 2, 1996, at 14. Regarding the Arab world’s alleged growing acceptance of Israel’s legitimacy, it is significant that not one map of the Middle East produced in any Arab state indicates a country named “Israel.” On these maps, the territory from the Jordan River to the Mediterranean Sea is designated as “Palestine.” Although Yasser Arafat, in a written commitment attached to the Oslo I Accord of September 1993, declared himself ready to annul 28 of the 33 sections of the PLO covenant calling for Israel’s destruction, he remains unwilling to carry out this requirement. See Beres, \textsc{International Law Requires Prosecution}, supra note 5. Similarly, the Arab League’s “phased plan” for the physical destruction of Israel, which was implemented on August 8, 1974, remains in force, and Arafat says that it “will never be annulled.” See Sol Modell, \textsc{Some Important Questions for Supporters of}
In supporting jihad, Israel’s enemies in the Middle East may be prompting genocide. Jurisprudentially, jihad and genocide are not mutually exclusive. Jihad may in fact become the very means to undertake genocide against Israel. According to Articles II and III of the Genocide Convention, 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 . . . .” Because Israel is recognized as the Jewish people’s institutionalized expression, which includes national, ethnical, racial and religious components, jihad’s intentional actions to destroy the Jewish State may in fact become genocidal.

Further equating jihad to genocide is the fact that Islamic groups committed to jihad make absolutely no distinctions among Jews, Judaism and Israel. All Jews, wherever they may be, are “part of a global conspiracy to create an alien body in the heart of the Muslim world . . . .” Islam’s hatred for Israel derives

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2. See WISTRICH, supra note 9, at 223.
3. In the strict Islamic view, the Jewish State is always the individual Jew in macrocosm. This state must be despised because of this relationship and because of the allegedly innate “evil” of the individual Jew. This is a far cry from the view that Jews should be despised because they are associated with Israel. Exactly the opposite view prevails. Hence, the Israeli must be despised not because he is an “occupier” or because of his “expansionist” policies, but because he is a Jew. Moslem author Dr. Lufti Abd al-Azim writes:

The first thing that we have to make clear is that no distinction must be made between the Jew and the Israeli, which they themselves deny. The Jew is a Jew, through the millennia . . . in spurning all moral values, devouring the living and drinking his blood for the sake of a few coins. The Jew, the Merchant of Venice, does not differ from the killer of Deir Yasin or the killer of the camps. They are equal examples of human degradation. Let us therefore put aside such distinctions, and talk about Jews.


The Jews are always the same, every time and everywhere. They will not live save in darkness. They contrive their evils clandestinely. They fight only when they are hidden, because they are cowards . . . . The Prophet enlightened us about the right way to treat them, and succeeded finally in crushing the plots that they had planned. We today must follow this way and purify Palestine from their filth.

Id. at 218-19. Parroting this hatred, the Ayatollah Khomeini remarked that “[t]he Islamic
movement was afflicted by the Jews from its very beginning, when they began their hostile activity by distorting the reputation of Islam, and by defaming and maligning it. This has continued to the present day." Id. Further evidencing the Islamic hatred for Jews, Moslem author Dr. Yahya al-Rakhawi stated:

[W]e are all - once again - face to face with the Jewish Problem, not just the Zionist problem; and we must reassess all those studies which make a distinction between "the Jew" and "the Israeli." [A]nd we must redefine the meaning of the word "Jew" so that we do not imagine that we are speaking of a divinely revealed religion, or a minority persecuted by mankind. Every word has an origin, a development and a history, and it seems that the word "Jew" today has changed its content and meaning. We thus find ourselves face to face with the essence of a problem which has recently donned the gown of religion and concentrated itself on a piece of land. In this confrontation we cannot help but see before us the figure of the great man Hitler, may God have mercy on him, who was the wisest of those who confronted this problem . . . and who, out of compassion for humanity, tried to exterminate every Jew, but despaired of curing this cancerous growth on the body of mankind.

Id. at 231-32.


17. See 1 HUGO GROTBIUS, THE LAW OF WAR AND PEACE 70 (William Whewell trans., London, John W. Parker 1853) (1625). Grotius is widely recognized as the founder of modern international law.

18. This refrain is reminiscent of an earlier European fascist expression. On October 12, 1936, during a speech by the nationalist general Millan Astray at the University of Salamanca in Spain, the hall thundered with the general's favorite motto, "Viva la Muerte!" or "Long live death!" MIGUEL DE UNAMUNO, TRAGIC SENSE OF LIFE 1954 (J.E. Crawford Flitch trans., 1921). When the speech was over, Miguel de Unamuno, the University's Vice-Chancellor, rose and said: "Just now I heard a necrophilous and
Our goal is to die for the sake of God, and if we live we want to humiliate Jews and trample on their necks."19

To confront its Islamic terrorist enemies, Israel must look carefully behind the news; in other words, Israel must look beyond all the usual weapons and tactics discussions. It will discover that nuclear terrorism’s greatest danger stems from Israel’s enemies’ orientation toward freedom from death. Certain groups among Israel’s Islamic enemies believe that escalating violence against the Jewish State can buy freedom from death, especially if that violence is suicidal. Thus, Hamas and related groups are potentially immune to orthodox preemption, deterrence and reprisal strategies.20

For some of Israel’s terrorist enemies, death is the real prototype of injustice, and freedom from death is linked directly to “martyrdom.” Paradoxically, therefore, dying offers the only conceivable path to immortality, but only if the dying is “two-sided,” that is, if it is linked to a purposeful killing of Jews.

“There is but one truly serious philosophical problem and that is suicide.”21 Today, this observation is particularly applicable to the Middle East, where Israel’s terrorist enemies commit jihad-

senseless cry . . . this outlandish paradox is repellent to me.” Id. Yet the very cry that was repellent and senseless to the philosopher became the passion of the Falangist and is today, in the Middle East, the lurid and decisive undertone of Islamic terrorism against Israel. Id.


20. Such strategies, with the possible exception of reprisal, are all permissible under international law. Generally, reprisal is the forcible taking by one nation of a thing that belonged to another nation in retaliation for an injury committed by the latter. BLACK’S LAW DICTIONARY 1302 (6th ed. 1990). The U.N. Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States identifies explicitly and categorically the problem with using reprisal to justify states’ use of force: “States have a duty to refrain from acts of reprisal involving the use of force.” Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations, G.A. Res. 2625, U.N. GAOR, 25th Sess., Supp. No. 28, at 121, U.N. Doc. A/8028 (1971), reprinted in 9 I.L.M. 1292, 1294 (1970). For the most part, the prohibition of reprisals is deducible from the broad regulation of force in article 2(4), the obligation to settle disputes peacefully in article 2(3), and the general restrictions on permissible force by states to self-defense. Id. A total ban on reprisals, however, presupposes a degree of global cohesion that simply does not exist. Circumstances may likely arise where the resort to reprisals as a form of self-help would be distinctly permissible and law-enforcing, especially where reprisals are undertaken for prior acts of terrorism.

inspired suicide to accomplish Israeli genocide. Seeking to rid themselves of the flesh and blood consequences of mortality and its insufferable terrors, some of Israel’s Islamic enemies may soon turn to nuclear terrorism as a remedy. Ironically, by linking their own deaths to a promise of everlasting life, these terrorists accept a zero-sum vision of holy war. Their suicides are intended to achieve a double victory, a personal victory over death and a collective victory over a despised adversary. Could anything be more gainful or easier to understand?

B. Israel’s Counterterrorism Policies

In the face of potential genocide, Israel can no longer use ordinary strategies and tactics to confront its Islamic terrorist enemies. Rather, it must construct policies based upon an awareness that suicide is presently a philosophical and existential problem for Israel, not 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.

So what counterterrorism policies should Israel construct? Theoretically, Israel should encourage its Islamic terrorist enemies: (1) not to “aspire to immortal life,” and/or (2) not to associate their Israel-directed suicides with immortality or their own personal deaths with the destruction, possibly mass nuclear destruction, of Israel. With regard to the first option, Israel’s success is surely impossible. The second option, however, may have some possibilities. If Israel’s Islamic terrorist enemies see no connection between freedom from death and the killing of Jews/Israelis, their rationale for violence against the Jewish innocent may largely disappear.

As a practical matter, Israel must counter ongoing radical Islamic preachings that call for jihad against Israel. Such efforts must supplement the usual arsenal of operational remedies, thus augmenting typical, but increasingly ineffectual, measures, with unusual, but potentially effectual, ones.

Ultimately, Israel cannot protect itself from nuclear terrorism by trying to affect doctrinal changes in the Islamic world. Such changes, focusing upon Israel’s place in the Islamic world and/or

22. Here, it may be noted: Ubi cessat remedium ordinarium, ibi decurriur ad extraordinarium, or “Where the ordinary remedy fails, recourse must be had to an extraordinary one.” BLACK’S LAW DICTIONARY 1520 (6th ed. 1990).
the presumed immortality benefits of anti-Israel terrorism, are not possible. If, however, Israel can somehow stand between unchanging doctrine and prospective Islamic nuclear terrorists, thereby distancing or even detaching the violent message from a broad audience of potentially willing believers, the lethal message could fall largely upon deaf ears. Because this strategy requires substantial control over critical territories, Israel must promptly disengage from the Peace Process.

III. THE PEACE PROCESS

A. Territorial Transfers and Surrenders

The Peace Process produces territorial transfers and surrenders to an expanding Palestinian authority, a nascent Palestinian state, and to existing Arab states. Gradually, such transfers will assuredly shrink Israel's strategic depth and create inviolate Palestinian sanctuaries for terrorist preparations. If the Peace Process leads to nuclear terrorist acts against Israel, some of Israel's Islamic state enemies may be more inclined to initiate war,23 and possibly even unconventional war, against the Jewish State. Conversely, if the Peace Process encourages these state enemies to initiate war24 before a nuclear terrorist act against

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23. The question of whether conditions of war actually exist between states may be ambiguous under international law. Traditionally, a formal war declaration was necessary before a "war" could exist. For example, Hugo Grotius divided wars into declared wars that were legal and undeclared wars that were not legal. See 3 GROTIUS, supra note 17, at 630-40, 658-62, 722-44. By the beginning of the twentieth century, a conclusive war declaration by one of the parties had become a codified requirement in Hague Convention III Relative to the Opening of Hostilities. See Hague Convention III Relative to the Opening of Hostilities, Oct. 18, 1907, 36 Stat. 2259. More precisely, this convention stipulated that hostilities must not commence without "previous and explicit warning" in the form of a declaration of war or an ultimatum. Id. art. 1, 36 Stat. at 2271. Currently, war declarations may be tantamount to admissions of international criminality because of the criminalization of aggression by authoritative international law. Thus, it may be a jurisprudential absurdity to tie a state of war to formal declarations of belligerency. It follows that a state of war may exist without formal declarations, but only if there is an armed conflict between two or more states and/or at least one of these states considers itself at war.

Israel, such war may itself give rise to nuclear terrorist attack. In that situation, the Peace Process would *indirectly* generate nuclear terrorism, not as an immediate consequence of lost territories, but as the result of war occasioned by enemy state calculations of cost-effectiveness.

**B. Legitimization of Terrorist Groups**

In addition, the Peace Process may generate nuclear terrorism against Israel through its ongoing legitimization of terrorist groups. For example, when the Clinton Administration prodded Jerusalem to enter into the Peace Process and hosted Israel’s formal agreement with the PLO on September 13, 1993, it instantly transformed Yasser Arafat and his terrorist network into a jurisprudentially and politically acceptable organization. Such diplomatic actions give aid and comfort to terrorist groups, making it much easier for them to ultimately gain access to the essential implements of nuclear terrorist attack. Moreover, awarding the Nobel Peace Prize to a terrorist leader does nothing to alleviate the devastating potential of terrorism.

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*belligerents.* BLACK’S LAW DICTIONARY 108 (6th ed. 1990). Such an agreement, however, does not result in the termination of a state of war; it simply halts military operations. See *id.* The 1907 Hague Convention (IV) Respecting the Laws and Customs of War on Land stipulates that “[a]n armistice suspends military operations by mutual agreement between the belligerent parties.” See Convention (IV) Respecting the Laws and Customs of War on Land, Oct. 18, 1907, art. 36, 36 Stat. 2277 (entered into force for the United States on Jan. 26, 1910) (emphasis added).

Individual states’ courts affirmed the principle that an armistice does not end a war. See, e.g., Kahn v. Anderson, 255 U.S. 1, 9 (1921) (citing Hamilton v. Kentucky Distilleries Co., 251 U.S. 146 (1917)). Throughout history, armistices have normally envisaged a resumption of hostilities. A condition of belligerency continues to exist between Israel and Lebanon, and Israel and Syria, as none of these states have come to an agreement on peace treaties. Although Israel has entered into formal treaties with Egypt and Jordan, Arab states may, nonetheless, still be preparing for major war against the Jewish State. For pertinent documents and commentary on Israel-Arab agreements, see 1 ROSALYN HIGGINS, ROYAL INST. OF INT’L AFFAIRS, UNITED NATIONS PEACEKEEPING, 1946-1967, at 1-220 (1969). For salient commentary and documents on the historical status of relations between the Arab states and Israel, see TREVOR N. DUPUY, ELUSIVE VICTORY: THE ARAB-ISRAELI WARS 1947-1974, at 112-16 (1978); THE ARAB-ISRAELI CONFLICT 257-419 (John N. Moore ed., 1974).

25. At the talks for this formal agreement, the PLO was treated respectfully despite the fact that it was formerly treated as a terrorist group in the *Klinghoffer v. Palestine Liberation Organization* (PLO) suit. See Klinghoffer v. S.N.C. Achille Lauro, 739 F. Supp. 854, 857 (S.D.N.Y. 1990).

26. For a critical editorial on the Arafat award, see Louis René Beres, *No Peace—or Prize—Without Justice,* USA TODAY, Oct. 17, 1994, at 10A.
C. Release of Convicted Terrorists

Israel's release of convicted terrorists under the Peace Process may also lead to nuclear terrorism against Israel. Every state has an obligation under international law to seek out and prosecute terrorists. This obligation derives from a long-standing principle known as *Nullum crimen sine poena*, "No crime without a punishment." This principle is codified in many different sources and is also deducible from the binding Nuremberg Principles. According to Principle I, "[a]ny person who commits an act which constitutes a crime under international law is responsible therefore..."
and liable to punishment.”

Terrorism is an established crime under international law. Thus, Israel’s release of large numbers of convicted terrorists as part of the Peace Process is in direct contravention of international law.

The Oslo Accords, upon which Israel bases its terrorist releases, are invalid under international law, effectively multiplying the lawlessness of these releases. This invalidity is based upon three principles: (1) the illegality of any agreement between a state and a terrorist organization; (2) the expectations of Nullum crimen sine poena, which the acceptance of Yasser Arafat as a signatory
especially violates; and (3) every state’s obligation to self-preservation, an obligation that Israel’s critical strategic depth surrender and willful expansion of terrorist opportunity, including nuclear terrorism, patently undermine.

No government has the right to lawfully pardon or grant immunity to terrorists with respect to criminally sanctionable violations of international law. In the United States, the presidential power to pardon does not encompass violations of international law, but is limited to “offenses against the United States.” This limitation derives from a broader prohibition against pardoning terrorists, that binds all states, including Israel.


35. This principle is deducible from, inter alia, the peremptory expectations of comity in international law. “Since Nations are bound mutually to promote the society of the human race . . . , they owe one another all the duties which the safety and welfare of that society require . . . .” Albert De Lapradelle, Introduction to 3 DE VATTEL, supra note 30, at xii.


37. For more than two thousand years, the idea of a Higher Law has served as the ultimate jurisprudential standard of right and wrong and as the final determinant of true law, as opposed to edicts based solely upon raw power. Readily apparent in Sophocles’ Antigone and Aristotle’s Ethics and Rhetoric, this idea, tied closely to theology for many centuries, has effectively placed law above lawmakers. See SOPHOCLES, ANTIGONE (Andrew Brown ed. & trans., Aris & Phillips Ltd. 1987); ARISTOTLE, ETHICS (J.A.K. Thomson trans., Penguin Books Ltd. 1955) [hereinafter ARISTOTLE, ETHICS]; ARISTOTLE, RHETORIC (Lane Cooper trans., Appleton-Century-Crofts, Inc. 1932). Humankind, however, has not only been indifferent to Higher Law, but has often coupled this indifference with adherence
In originally apprehending and punishing terrorists, who in the future could choose to "go nuclear," Israel acted not only for itself but also on behalf of all states. In releasing these terrorists, Israel now acts against all states. The Jerusalem government may not pardon offenses against other sovereigns. Israel possesses absolutely no right to grant any sort of immunity for any international law violations, especially for egregious terrorist violations. Regardless of what may be permissible under its own Basic Law and/or its Oslo Accords with the PLO, Israel's release of terrorists is legally inoperative. Indeed, by virtue of such a release, as an expression of pardoning criminals, the state assumes responsibility for past criminal acts and even for future ones. Shall Israel,

to undiscovered "laws" that reject justice. In this connection, we may recall Pascal's observation, "It is odd, when one thinks of it, that there are people in the world who, having renounced all the laws of God and nature, have themselves made laws which they rigorously obey..." A.P. D'ENTREVES, NATURAL LAW: AN INTRODUCTION TO LEGAL PHILOSOPHY 4 (1951) (quoting Pascal).

38. In international law, the idea of a Higher Law is contained within the principle of jus cogens or peremptory norms. According to Article 53 of the Vienna Convention on the Law of Treaties, "a peremptory norm of general international law... is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character." Vienna Convention on the Law of Treaties, May 23, 1969, art. 53, 1155 U.N.T.S. 331, 344.


40. See, e.g., United States v. La Jeune Eugenie, 26 F. Cas. 832, 847 (C.C.D. Mass 1822) (No. 15,551) (regarding "an offence against the universal law of society... no nation can rightfully permit its subjects to carry it on, or exempt them"). Although there have been treaties granting amnesty after a war, no bilateral treaty may ever grant pardon for egregious crimes under international law. See Jordan J. Paust, Aggression Against Authority: The Crime of Oppression, Politicide and Other Crimes Against Human Rights 18 CASE W. RES. J. INT'L L. 283, 284-85 (1986).

[A] bilateral treaty granting a pardon or amnesty for war crimes or acts of genocide should be no more valid than a bilateral treaty agreeing that signatories can commit war crimes or acts of genocide which are offenses not against a single nation-state, but against humankind. The same follows at least with respect to all criminally sanctionable violations of customary international law (obligatio erga omnes).

Paust, supra note 36, at 54 n.10.

In this case, the arbitrators recognized the "well established principle... that, by pardoning a criminal, a nation assumes the responsibility for his past acts." Id. at 96. (quoting Cotesworth & Powell Case (Gr. Brit. v. Colom.) (1872), reprinted in JOHN B.
therefore, now assume responsibility for possible future nuclear terrorist acts?

Under the pertinent international law, Israel's release of terrorists, effectively comparable to massive criminal pardoning, implicates that state for a "denial of justice." Such implication has profound pragmatic consequences. Although it is unclear that punishment, which is central to justice and human rights,

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MOORE, 2 HISTORY AND DIGEST OF THE INTERNATIONAL ARBITRATIONS TO WHICH THE UNITED STATES HAS BEEN A PARTY 2050, 2082, 2085 (1898). See also RESTATEMENT OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 711 reporters' note 2B (Tentative Draft No. 6, 1985).

42. See Paust, supra note 36, at 55.

43. Ironically, the ancient Hebrews viewed the shedding of blood as an abomination that always required expiation, "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." Numbers, 35:33. The Hebrew belief in "pollution" parallels that of the ancient Greeks. The Erinyes do for the Greeks what Yahweh does for the ancient Hebrews: they demand the blood of homicides. MARVIN HENBERG, RETRIBUTION: EVIL FOR EVIL IN ETHICS, LAW, AND LITERATURE 77 (1990). Pre-Socratic philosophers, especially Anaximander, Heraclitus and Parmenides, displayed a metaphysical view of retributive justice as inherent in the very cosmos. See 1 WERNER JAEGGER, PAIDEIA: THE IDEALS OF GREEK CULTURE 150-169 (Gilbert Hight trans., 2d ed., Oxford Univ. Press 1945); HUGH LLOYD-JONES, THE JUSTICE OF ZEUS 80-81 (1971); Gregory Vlastos, Solonian Justice, in 41 CLASSICAL PHILOLOGY 65 (1946). Aeschylus provides a good sense of the Greek view of punishment. In his The Libation-Bearers, the chorus intones, "The spirit of Right cries out aloud and extracts atonement due: blood stroke for the stroke of blood shall be paid. Who acts, shall endure. So speaks the voice of the age-old wisdom." Aeschylus, The Libation-Bearers 310-14 (1952). At the Nuremberg trials, which concluded with an explicit reaffirmation of Nullum crimen sine poena, the court based its sentencing not on reformation or deterrence, but on retribution. See generally SIR WALTER MOBERLY, THE ETHICS OF PUNISHMENT (1968). In the words of Sir Walter Moberly, "The principle really embodied at Nuremberg was the principle of retribution. At the time of the trial public opinion in the victorious countries undoubtedly demanded and acclaimed it. Rightly or wrongly, public opinion saw punishment as not only allowable and expedient, but an imperative duty." Id. at 103. This particular instance of retributive justice, which was undertaken because the malefactors so clearly deserved punishment, served to ensure that, henceforth, the most abominable perpetrators of international crimes could reasonably expect enforcement of Nullum crimen sine poena. See id. This precedent makes Israel's Oslo-inspired unwillingness to punish terrorists an indisputable jurisprudential failure.

44. See DE VATTEL, supra note 30, at 135.

Justice is the foundation of all social life and the secure bond of all civil intercourse. Human society, instead of being an interchange of friendly assistance, would be no more than a vast system of robbery if no respect were shown for the virtue which gives to each his own. Its observance is even more necessary between Nations than between individuals, because injustice between Nations may be followed by the terrible consequences involved in an affray between powerful political bodies, and because it is more difficult to obtain redress.

An intentional act of injustice is certainly an injury. A Nation, has, therefore, the right to punish it . . . . The right to resist injustice is derived from the right of
also deters future crimes, the far-reaching release of terrorists undermines the obligation to incapacitate these particular criminals and preclude them from future terrorist acts. Such a release may also encourage others to commit terrorist offenses in the future, including nuclear terrorism, against Israel and/or against other states.

IV. THE EFFECT OF THE PEACE PROCESS ON ISRAEL'S COUNTER-NUCLEAR TERRORISM EFFORTS

In the worst of all possible worlds for Israel, worldwide legitimization of terrorist groups, currently led by Israel, would parallel loss of Israel's strategic depth. In this situation, terrorists could draw encouragement both from a palpable weakening of Israel's power, a weakening that could inspire death-blow forms of higher-order terrorist attack, and from the idea that their ends justified their means, an idea that world elites sustain notwithstanding the laws of war.46

The Peace Process may result in a genuine Palestinian state. Simultaneously, nuclear terrorist threats against Israel would likely increase because, tactically, the sanctuary benefits of "Palestine" would make it easier to plan and carry out a nuclear terrorist self-protection.

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46. Violations of the laws of war, or war crimes, are defined authoritatively in Article 6(b) of the August 8, 1945 Charter of the International Military Tribunal (London Charter) as follows:

War crimes: namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder; ill-treatment or deportation to slave labor or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder or public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity.

Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis and Charter of the International Military Tribunal, Aug. 8, 1945, art. 6(b), 59 Stat. 1544, 1547, 82 U.N.T.S. 279, 288.
operation and regain all "lost territories." After all, "core" Palestine was fashioned from West Bank (Judea/Samaria) and

47. Contrary to widely disseminated, but wholly erroneous, allegations, a Palestinian sovereign state did not exist before 1948 or 1967, and authoritative U.N. Security Council Resolution 242 did not promise a Palestinian state. Indeed, a state of Palestine has never existed. As a non-state legal entity, Palestine ceased to exist in 1948, when Great Britain relinquished its League of Nations mandate. During the 1948-1949 War of Independence, when Judea/Samaria and Gaza came under the illegal control of Jordan and Egypt respectively, these aggressor states did not put an end to an already-existing state. From the Biblical Period (ca. 1350 B.C.E. to 586 B.C.E.) to the British Mandate (1918-1948), non-Palestinian elements exclusively controlled the land named by the Romans after the ancient Philistines, a nomenclature chosen to punish and demean the Jews. Significantly, however, a continuous chain of Jewish land possession was legally recognized after World War I at the San Remo Conference of April 1920. At the conference, a binding treaty was signed in which Great Britain assumed mandatory authority over Palestine, the area that had been ruled by the Ottoman Turks since 1516, to prepare it to become the "national home for the Jewish People." Palestine, according to the treaty, comprised territories encompassing what are now the states of Jordan and Israel, including Judea/Samaria and Gaza. Present-day Israel, including Judea/Samaria and Gaza, constitutes only 22% percent of Palestine as defined and ratified at the San Remo Peace Conference. In 1922, Great Britain unilaterally and illegally split off 78% of the lands promised to the Jews—all of Palestine east of the Jordan River—and gave it to Abdullah, the non-Palestinian son of the Sharif of Mecca. Eastern Palestine now took the name Transjordan, which it retained until April 1949, when it was renamed Jordan. From the moment of its creation, Transjordan was closed to all Jewish migration and settlement, a clear betrayal of the British promise in the Balfour Declaration of 1917 and a contravention of its mandatory obligations. On July 20, 1951, a Palestinian assassinated King Abdullah for his hostility to Palestinian nationalist aspirations. In 1947, several years prior to Abdullah's killing, the newly-formed United Nations enacted a second partition, rather than designate the entire land west of the Jordan River as the Jewish national homeland. Ironically, although this second fission again gave unfair advantage to the Arabs, Jewish leaders accepted the painful judgment while the Arab states did not. On May 15, 1948, exactly one day after the State of Israel came into existence, Azzam Pasha, Secretary General of the Arab League, declared to a tiny new nation founded upon the ashes of the Holocaust, "This will be a war of extermination and a momentous massacre . . . ." This declaration, of course, has been and remains at the heart of all Arab policies toward Israel. In 1967, almost 20 years after Israel's entry into the community of nations, the Jewish State, as a result of its stunning military victory over Arab aggressor states, gained unintended control over Judea/Samaria and Gaza. Although the idea of the inadmissibility of territory acquisition by war is enshrined in the U.N. Charter, there existed no authoritative sovereign to whom the territories could be "returned." Israel could hardly have been expected to transfer these territories back to Jordan and Egypt, nations that had exercised unauthorized and cruel control since the Arab-initiated war of extermination in 1948-1949. Moreover, the idea of Palestinian "self-determination" was only just beginning to emerge after the Six Day War and was not even codified in U.N. Security Council Resolution 242, which was adopted on November 22, 1967. For their part, the Arab states convened a summit in Khartoum in August 1967, concluding: "No peace with Israel, no recognition of Israel, no negotiations with it . . . ."
Gaza, so why not “recover” what has been called Israel since 1948?48 Such an argument, of course, goes against the conventional wisdom of Peace Process supporters. These supporters believe, inter alia, that surrendering the territories will defuse Arab/Islamic hostilities toward the Jewish State, thereby reducing risks of war, nuclear war, terrorism and even nuclear terrorism.

Although territorial loss may enhance Israel’s nuclear deterrence of enemy states, it would assuredly not extend to deterrence of terrorist enemies. While territorial loss would make the Jewish State vastly more dependent upon nuclear weapons and more likely to use such weapons, further territorial loss would have no positive effect on Israeli counter-nuclear terrorism. Because such counter-terrorism cannot be undertaken with nuclear weapons, territorial loss under the Peace Process would have an entirely negative effect on Israel’s capacity to protect itself from nuclear terrorism.

Even if a direct relationship between territorial loss and terrorist inclinations to unleash nuclear events does not exist, an important indirect relationship warrants some consideration. Israel is best understood as a system. Thus, the integrity and durability of the whole “organism” is always dependent upon the integrity and durability of each “organ” component. Although certain “pathological insults” to the organism, by themselves, are minor and not life-threatening, together, they can be enormously debilitating, even fatal.

For the moment, the Israeli “organism” is still able to deal with ongoing, conventional terrorist attacks without suffering existential levels of harm. By themselves, these attacks, however odious and demoralizing, do not portend enemy victory. Over time, however, these attacks may occasion such far-reaching levels of apprehension, instability and despair within Israel that the State itself would begin to become “unglued.” If this happens, the cumulative impact of non-life-threatening instances of anti-Israel terror may become life-threatening. Aware of the Peace Process’ “productive” consequences, Israel’s Islamic terrorist enemies may

48. The Palestinian National Covenant was adopted in 1964, three years before the Six Day War. Hence, the PLO’s guiding document was first published, with all of its references to the annihilation of Israel, three years before Israel came into possession of the so-called “occupied territories.” This means that the Israel that the PLO seeks to destroy was and still remains Green-Line Israel.
calculate that their resort to nuclear terrorism had become distinctly cost-effective.

Finally, in assessing the Peace Process’ probable effects on anti-Israel nuclear terrorism, interested scholars should be exceedingly attentive to pertinent intervening variables that could affect hypothesized relationships. Examples of such intervening variables include: (1) changes in the configuration of state and non-state participants in the Peace Process; (2) changes in the nuclear status of state participants in the Peace Process; (3) changes in the number of nuclear adversary states in the region, whether or not these states are participants in the Peace Process; (4) changes in Israel’s willingness to continue with territorial surrenders; (5) changes of leadership in enemy terrorist groups; (6) changes in relationships among enemy terrorist groups; (7) changes of leadership in enemy states, whether or not these states are participants in the Peace Process; (8) changes in the incidence and/or intensity of anti-Israel terrorism; and (9) changes in the deployment of enemy state nuclear weapons.

Regarding this last “intervening variable,” the Peace Process may allow enemy states, once they have developed deployable nuclear weapons, to place their weapons and launchers in areas that would be extremely close to Israel’s most populous cities and towns. Recognizing the placement’s strategic advantages, enemy states and terrorist groups may forge formal or informal alignments against the Jewish State, stipulating joint and collaborative nuclear action. Nuclear terrorism may give rise to nuclear war; nuclear war may give rise to nuclear terrorism; or nuclear terrorism and nuclear war may be undertaken against Israel simultaneously, a “synergistic” attack or set of attacks with potentially existential harms.

V. NUCLEAR TERRORISM AGAINST ISRAEL

To undertake nuclear terrorist acts against Israeli targets, a terrorist group would require access to nuclear weapons or to Israel’s nuclear reactor or nuclear waste storage facilities.

A. Nuclear Weapons

1. Access to Nuclear Weapons Through Acquisition or Manufacture

A terrorist group may seek to acquire an assembled nuclear
weapon from any of the national arsenals around the world, including those in the successor states to the Soviet Union. Moreover, because the number of nuclear weapons states is likely to grow, terrorists are destined to have a steadily enlarging arena of opportunity. In the absence of the recent Gulf War, the list of potential suppliers may also have included Iraq. Yet, even after the Gulf War, Iraq may become a member of the nuclear club in a few years. Furthermore, Iran, now “nuclearizing” at a frenetic pace, will likely provide an especially attractive supplier for Israel’s terrorist foes.

49. See Louis René Beres & Yoash Tsiddon-Chatto, The Past as Prologue: Looking Again at Osirak, 41 MIDSTREAM 9 (1995); Beres & Tsiddon-Chatto, supra note 34, at 437.


52. Regarding Iraqi and Iranian commitments to genocide against Israel, we may consider the pertinent insights of Emmerich de Vattel. Vattel extends the notion of Hostes humani generis, common enemies of humankind, from individuals to states, insisting that state wrongdoers be dealt with exactly in the same fashion.
If they seek to manufacture their own nuclear weapons, anti-Israel terrorists will require both strategic special nuclear materials and the expertise to convert these materials into bombs or radiological weapons. Both requirements are now well within the range of pertinent terrorist capabilities. Again, many new opportunities have opened because of the Soviet Union’s disintegration, which may not prove to be the blessing to Israeli security that military “experts” first predicted.

2. Types of Nuclear Weapons

a. Nuclear Explosives

The low-technology nuclear explosives that anti-Israel terrorists may manufacture could range from a few hundred tons to several kilotons in yield. The explosives’ destructive potential depends on such variables as construction type, population density, prevailing wind direction, weather patterns, and the target area’s characteristic features. Such potential would be manifested in terms of three primary effects: blast (measured in pounds per square inch of over-pressure); heat (measured in calories per square centimeter); and radiation (measured in Radiation Effective Man (REM), a combined measure that includes the Radiation Absorbed Dose (RAD) and the Radiation Biological Effectiveness (RBE) or the varying biological effectiveness of radiation types).

Relatively crude nuclear explosives with yields equivalent to about 1000 tons of high explosive would probably be far easier to fabricate than explosives with yields equivalent to about 10 kilotons of high explosive. Nevertheless, explosives yielding only one-tenth of a kiloton could pose significant destructive effects. A nuclear

Nations which are always ready to take up arms when they hope to gain something thereby are unjust plunderers; but those who appear to relish the horrors of war, who wage it on all sides without reason or pretext, and even without other motive than their savage inclinations, are monsters, unworthy of the name of men. They should be regarded as enemies of the human race, just as in civil society persons who follow murder and arson as a profession commit a crime not only against the individuals who are victims of their lawlessness, but against the State of which they are the declared enemies. Other nations are justified in uniting together as a body with the object of punishing, and even of exterminating, such savage peoples.

See DE VATTEL, supra note 30, at 93.

53. For more detailed examination of these requirements, see BERES, TERRORISM AND GLOBAL SECURITY, supra note 4. This book, in its first edition, was the January 1980 Featured Selection of the MacMillan Library of Political and International Affairs.

54. See id.
explosive in this limited range could annihilate the Knesset and everyone in and around the building. An even smaller yield of 10 tons of explosive could kill several thousands of people attending an outdoor rally or athletic event or simply sitting in outdoor restaurants and cafes.

Nuclear explosions are typically more damaging than chemical explosions of equivalent yields because nuclear explosions produce energy in the form of penetrating radiations, gamma rays and neutrons, as well as blast waves and heat. Moreover, a nuclear explosion on the ground, which is the type of nuclear explosion that terrorists would most likely use against Israel, produces more local fallout than a comparable explosion in the air.

b. Radiological Weapons

Radiological weapons, although not as widely understood as nuclear explosives, may be equally ominous in their effects. Placed in terrorists' hands, such nuclear weapons could pose lethal hazards in many different circumstances and contexts. Radiological weapons are devices designed to disperse radioactive materials that have already been produced a substantial time before their dispersal. Terrorists may choose to use radiological weapons against Israeli targets such as concentrations of people inside buildings, on urban streets or at sporting events, urban areas with a high population density as a whole, and agricultural areas. Such weapons may take the form of plutonium dispersal devices, where only 3.5 ounces of plutonium could prove lethal to everyone within a large office building or factory, or devices designed to disperse other radioactive materials. In principle, the dispersal of spent nuclear reactor fuel and the fission products separated from reactor fuels would create grave hazards in a populated area, but the handling of such materials would also be hazardous to the terrorists themselves. It is more likely, therefore, that would-be terrorist users of radiological weapons would favor plutonium over radioactive fission products.

Conceivably, the threat of anti-Israel nuclear terrorism exploiting radiological weapons is potentially more serious than the threat involving nuclear explosives because terrorists may achieve

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55. See id.
nuclear capability more easily with radiological weapons. Consequently, such weapons could also be the subject of a more plausible hoax than nuclear explosives, which could itself result in substantial and far-reaching Israeli concessions.

B. Sabotage of Israeli Nuclear Reactor Facilities

Nuclear terrorism against Israel could also take the form of nuclear reactor sabotage. Installations with large radioactive inventories that can be released represent potential nuclear weapons of mass destruction. Even when they are constructed with great care, nuclear reactors are vulnerable to willful destruction through disruption of the coolant mechanisms both inside and outside the containment structure. Moreover, it is likely that Israeli reactor vulnerability would be increased to the extent that terrorists might acquire precision-guided munitions and associated forms of shoulder-fired weaponry.

In comparison with a low-yield nuclear explosion, a reactor core meltdown and containment breach would release radiation in small amounts. The consequences of such an event could still involve leakage of an immense amount of gaseous radioactive material that would expose neighboring populations to immediate death, cancer and genetic defects.

From the standpoint of radiation discharged, the consequences of a successful terrorist attack upon Israeli nuclear reactors could equal those of the worst-case accidental meltdown. The radioactivity emission from nuclear reactors cannot always be calculated reliably. Unlike conventional or nuclear weapons effects, reactor emissions are subject to particular variables, including among others, the quantity, composition and rate of material deposition. A moderate release of 800 megawatts of electricity from a reactor that is the size of Three Mile Island in the United States and has been operating for three months could contaminate 500 square miles. A major release could affect 3 to 5000 square miles, occasioning occupation restrictions lasting decades. As reactors might be clustered together, the dangers would be enlarged if the contents of more than one reactor were discharged and/or if inventories of spent fuel were released.\(^57\)

\(^{57}\) For an informed and comprehensive consideration of the effects of attacks on nuclear reactor, see BENNETT RAMBERG, DESTRUCTION OF NUCLEAR ENERGY FACILITIES IN WAR (1980); Bennett Ramberg, Attacks on Nuclear Reactors: The Implications of
Regardless of the form of nuclear terrorism against Israel—nuclear weapons or nuclear reactor sabotage—it would have social, political, biological and physical effects. In the aftermath of a nuclear terrorist event, both the Israeli government and the pertinent terrorists could be confronted with mounting pressures to escalate to still higher order uses of violence. Indeed, the event’s state sponsors/supporters would also experience such pressures.

VI. CONCLUSION

Amidst all that may madden and torment, nuclear terrorism occupies a place of special horror. If Israel fails to prevent it, the Jewish State may never be the same again. Twisting and turning to rid themselves of human language, the immediate survivors would come to know an altogether unique form of anguish. The fate of the Third Commonwealth itself would depend upon such factors as the range and degree of destruction and the likelihood that various enemy states would join against Israeli forces. Thus, Israel must prevent nuclear terrorism at all costs, and pertinent hypotheses, especially those regarding the Peace Process’ probable effects, must now be stipulated and investigated expeditiously.

As hypotheses are advanced and investigated, scholars must recall not only Israel’s Islamic terrorist enemies’ “beautiful” end-of-the-world images, but also the mortality of the Jewish State. Much truth can emerge only through paradox, and timely recollections of Israel’s mortality could encourage indispensable Israeli steps toward protection from nuclear terrorism. Recognizing that fear and reality go together naturally, Israel must now actively cultivate intimations of nuclear disaster in order to prevent such disaster.

In the fashion of many of its enemies, especially Islamic terrorist groups, Israel imagines for itself only everlasting life. But unlike these groups, Israel does not see itself achieving immortality, individually or collectively, by killing its enemies. Rather, at least for the most part, it sees its collective survival as the product of reasoned diplomatic settlements. The resultant asymmetry between Israel and its more radical enemies, however much more humane and decent is Israel’s posture, places the Jewish State at a notable and foreseeably catastrophic strategic disadvantage.

While Israel’s enemies manifest their “positive” expectations

for immortality, individual and collective, by the intended slaughter of Jews, doctrinally, the nexus between these expectations and such slaughter is inextricable.\(^{58}\) Israel’s Jews display their particular expectations for collective immortality by incremental surrenders of vital territories, i.e., by their participation in the “Peace Process.” In the end, the inevitable clash in the Middle East between Islamic terrorist believers in violence and Israeli believers in diplomacy will almost surely favor the former. Unless new and far-reaching Israeli imaginations of existential disaster, which nuclear terrorism would bring about, replace the prevailing asymmetry, the Jewish believers in diplomacy, if they are lucky, will be forced to exit yet again from the Promised Land.

Since the onset of the Peace Process, Israelis have been subject to a substantially greater number of terrorist attacks. While these attacks, most prominently suicide bus bombings in Tel Aviv, Ramat Gan and Jerusalem, were painful and costly, they pale in comparison to the possibilities. From the standpoint of potential harms, these sorts of bus bombings cannot begin to compare to the prospect of nuclear terrorism.

Why consider such terrible possibilities? Because, over time, Israel’s terrorist enemies may come to realize that they can do “more” in order to achieve their objectives. Logic may spawn new passions that, in turn, may reinforce logic. Combining careful cost-benefit calculations with Islamic frenzy, the terrorists may reason that bus bombings have become old-fashioned and that “adequate” levels of Israeli fear call for new and higher forms of destructiveness. Unless the authorities have anticipated such escalations of violence and are prepared to dominate the resultant escalatory processes, the number of Israeli victims could become insufferably

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\(^{58}\) Citing a well-known hadith, an Arabic term that refers to the oral tradition by which sayings or deeds attributed to the prophet Mohammed have been handed down to Muslim believers, King Sa’ud once informed a British visitor to his court, “Verily, the word of God teaches us, and we implicitly believe it, that for a Muslim to kill a Jew, or for him to be killed by a Jew, ensures him an immediate entry into Heaven and into the august presence of God Almighty.” WISTRICH, supra note 9, at 233. Israel’s Islamic radical widely accept this sort of doctrinal premise today. See generally id. Significantly, and generally misunderstood, is that King Sa’ud’s remarkable hatred of Jews paralleled the Christian core of antisemitism. “Our hatred for the Jews dates from God’s condemnation of them for their persecution and rejection of Icy (Jesus Christ), and their subsequent rejection of His chosen Prophet.” Id. at 232. In other words, Islamic hatred of Jews, which leads doctrinally to obligatory killing of Jews, is also tied to Jewish “interference” with promises of immortality.
Nuclear terrorism's danger may become great even in the absence of logic. This danger might be even greater if Hamas et al become more oriented exclusively towards crimes of passion. Animated only by the call of jihad and operating beyond the rules of rationality in weighing decisional alternatives, the terrorists may opt for nuclear destruction apart from any considered calculations of advantage. Mass violence would be celebrated for its own sake, and a numbing irrationality would immobilize all Israeli hopes for terrorist restraint. Deterrence of nuclear terrorist attack would be fruitless by definition.

To avoid immobilization, Israelis must quickly learn to imagine the qualitative difference between bus bombings and the lethal irradiation of tens of thousands of Tel Avivians or Jerusalemites. Although it is certainly conceivable that a terrorist resort to nuclear weapons would prove to be counterproductive, this does not necessarily suggest a corresponding terrorist reluctance to undertake such an escalation. After all, if they are "logical," the terrorists may not foresee such counterproductiveness, and if they are "passionate," they may not care.

Writing about that species of fear that arises from tragedy, Aristotle emphasized that such fear "demands a person who suffers undeservedly" and that it must be felt by "one of ourselves." This fear, or terror, has little or nothing to do with our private concern for an impending misfortune to others, but rather arises from our perceived resemblance to the victim. We feel terror on our own behalf; we fear that we may become the objects of commiseration. Terror, in short, is fear referred back to ourselves. Naturally, therefore, the quality of this terror is at its highest point when this fear is especially acute and where acute suffering is especially likely. And what could possibly create more acute fear of probable victimization than the threat of nuclear terrorism?

Israel must take prompt heed. Facing certain terrorist crimes of logic, it must communicate to pertinent Islamic groups that Jerusalem is prepared to dominate escalation and that terrorist excursions into nuclear destructiveness would elicit anything but capitulation. Facing certain terrorist crimes of passion, it must confront the enemy in advance. Insofar as an increasingly

59. ARISTOTLE, ETHICS, supra note 37, at 23.
impassioned terrorist enemy armed with nuclear weaponry might not be susceptible to deterrent threats, the only reasonable course for the Jewish State would lie in some forms of permissible preemption. International law is not a suicide pact! Although this would seem apparent enough, it is presently implausible that Israeli government officials would authorize such efforts at anticipatory self-defense against terrorism in the midst of a Peace Process. Proceeding with this Process may thus upgrade the quality of anti-Israel terrorism into nuclear forms and render the quality of Israeli counter-nuclear terrorism altogether impotent.