THE IRANIAN NUCLEAR THREAT:
ISRAEL’S OPTIONS UNDER INTERNATIONAL LAW

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Abstract

Few question the conventional wisdom that Iran is well on its
way to building a nuclear weapon. Yet even fewer acknowledge
that once Iran masters the nuclear fuel cycle, the so-called “point
of no return,” this path will be irreversible. Among the
consequences that would follow, this Article focuses on the two
particular threats that a nuclear-armed Iran would pose to
Israel: the existential threat of a nuclear strike and the threat of
an undeterrollable and relentless escalation in anti-Israel
terrorism. International efforts to stop Iran have nevertheless
ignored the point of no return, relying instead on strategies that
offer, at best, the possibility for results in the long term, such as
negotiations, sanctions and regime change.

As the country most threatened by a nuclear Iran, Israel may
have no choice but to pursue a preventative strike that could
forestall nuclear progress in the short term. Traditional
international law would nevertheless prohibit such action, and
this Article therefore uses Israel’s predicament as a means of
evaluating alternative legal models for an era in which
anticipatory self-defense principles must adapt to terrorist and
I. INTRODUCTION

The subtle but palpable shift towards normalized Arab-Israeli relations, fueled by the Gaza withdrawal and the U.S.-led war on terrorism, has isolated Iran as the key remaining opponent to Israel’s existence. Amidst this isolation, Iran’s president has called for Israel to be “wiped off the map,” and so it is with alarm that Iran has been accused of developing nuclear weapons with the potential to destroy Israel in a single stroke. Iran maintains that it seeks nuclear power only for civilian energy, but a record of concealment and duplicitous diplomacy has laid this claim open to distrust. Israel is widely acknowledged to be the country most directly threatened by a nuclear-armed Iran, which would be capable of annihilating Israel by missile strike or intensifying its terrorist attacks on Israel with impunity.

Military force lies at one end of a long spectrum of options open to Israel and others threatened by the prospect of a nuclear Iran. Yet beyond an international consensus that something must be done, diplomats have yet to settle on a common course. Since the long-awaited referral of the matter from the United Nations’ atomic energy watchdog to the Security Council in February 2006, sanctions, regime change, and military force have been proposed but not acted upon. This Article catalogues the arguments for and against these options, and concludes that while none are palatable, the military option may be necessary.

1. See Nazila Fathi, Iran’s New President Says Israel ‘Must Be Wiped Off the Map,’ N.Y. TIMES, Oct. 27, 2005, at A8 [hereinafter Fathi, Iran’s New President]. Syria is the other vocal opponent of Israel but is distinguishable as openly willing to trade peace for Israel’s relinquishment of the Golan Heights. Coalitions of the Unwilling, ECONOMIST, Oct. 21, 2006, at 28.

2. Fathi, Iran’s New President, supra note 1.
as a short-term measure to prevent an Iranian nuclear weapon from becoming inevitable.

Perhaps sharing this conclusion—or perhaps out of rhetorical bravado—Israeli officials have responded to Iran’s genocidal threats, sponsorship of anti-Israel terrorism, conduct of open war on the Lebanese border through a terrorist vassal, and concomitant efforts to build a nuclear bomb by threatening preventative destruction of Iran’s nuclear capacity. Therefore, this Article addresses whether Israel would be justified, under international law, in acting in preventative self-defense.

Part I documents Iran’s pursuit of nuclear weapons and its success in forestalling international intervention. Part II traces Iranian-Israeli relations and describes the multifaceted threat that a nuclear-armed Iran would pose to Israel. Part III examines potential international responses to the Iranian threat, concluding that in Israel’s case, force may be the only viable option. Accordingly, Part IV uses three prevalent legal standards to evaluate the legality of an Israeli preventative strike. The Article ultimately seeks to determine whether, should Israel choose to act in self-defense, it should be forced to do so under a veil of illegitimacy.

II. IRAN’S PURSUIT OF NUCLEAR WEAPONS

The war of words over the legitimacy of Iran’s nuclear research is more than diplomatic banter. Underlying the conflict are threshold issues such as the science behind nuclear weapons, the sordid history of Iran’s nuclear program, and the nature of its negotiations with the international community to maintain that program. Though evidence that Iran’s program is directed at a bomb is not conclusive, in all likelihood the only open question is when Iran will be armed with nuclear weapons.3

A. A Primer on Nuclear Technology and the Nuclear Non-Proliferation Treaty

Although the science behind nuclear weapons is beyond the scope of this Article, a brief detour into the phases of nuclear power development is warranted. First, uranium ore is mined, crushed, and reconstituted in solid form as “yellow cake.” This intermediate substance is then enriched in centrifuges in order to increase the proportion of more powerful atoms within the uranium particles. The nuclear fuel cycle thus takes years to master because of both the requisite experimentation and the need to build up a store of enriched uranium. The enriched uranium can then be fed into a nuclear reactor to create electricity for civilian usage. Finally, spent fuel from the reactor is reprocessed to divide potentially valuable uranium, as well as plutonium (a different kind of nuclear fuel), from nuclear waste.

Mastering this process does not, however, surmount all the obstacles to a nuclear weapons program: building up a store of nuclear material (uranium and plutonium), making bombs with that material, and constructing missiles to deliver those bombs to a target are difficult hurdles to the state in search of a nuclear weapon. Even states that have invested years in mastering the nuclear fuel cycle and building up stockpiles of weapons-grade uranium and plutonium are likely to need even more years to create a controlled nuclear explosion. Further, missile capability is critical—while radioactive material can simply be combined with explosives to create a “dirty bomb,”


these are far less destructive than a conventional nuclear weapon.\(^8\)

The enrichment and reprocessing phases pose the highest risk that nuclear material will be diverted from civilian to military use.\(^9\) During enrichment, uranium can be enriched to a higher degree to form the basic ingredients of a uranium bomb.\(^10\) During reprocessing, leftover uranium and plutonium can be diverted to bomb-making instead of back into the production of civilian energy.\(^11\) Therefore, nuclear technology is generally considered “dual use,” and much of the concern over nuclear proliferation stems from the ability to run a covert nuclear weapons program within a broader civilian nuclear energy program.\(^12\)

The Nuclear Non-Proliferation Treaty (NPT) was designed precisely to reduce diversion. The NPT distinguishes between nuclear weapon states and nonnuclear weapon states, committing the former not to transfer their technology and the latter to undertake research only for peaceful purposes and to accept safeguards.\(^13\) Thus, while nonnuclear weapon signatories are granted the “inalienable right . . . to develop research, production and use of nuclear energy for peaceful purposes,” they are required to submit to an inspections and compliance regime set out in an individualized agreement negotiated with the International Atomic Energy Agency (IAEA) subsequent to

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12. See id.

13. Treaty on the Non-Proliferation of Nuclear Weapons arts. II, III, opened for signature July 1, 1968, 21 U.S.T. 483, 729 U.N.T.S. 161. Russia, China, the United States, Britain, and France were the only nuclear weapons states as of 1967. Pakistan, India, and Israel have since joined the club, and North Korea claims to be on the verge.
their ratification of the NPT. These “safeguards” are intended to prevent diversion, slow the spread of nuclear technology, and reduce the chances of a Chernobyl-like nuclear accident. However, in a gaping loophole, any signatory is permitted to withdraw from the NPT and its supplemental agreements with only ninety days notice.

B. Iran’s Covert Nuclear Efforts

Iran ratified the NPT in 1970, during a period in which its Shah enjoyed good relations with the West, although it launched a parallel, clandestine nuclear weapon program at the same time. This was in stark violation of the agreement that Iran had signed with the IAEA, which requires that Iran disclose all of its nuclear research, permit IAEA inspections of its facilities, and generally ensure that its civilian research will not be diverted to military purposes. So in August 2002, when an Iranian opposition group disclosed the existence of secret uranium enrichment facilities, Iran’s nuclear portfolio—already a concern to many for some time—vaulted to the top of the international community’s watchlist.

It is now clear that the Islamic fundamentalist regime ruling Iran has aggressively sought nuclear technology since

14. Id. arts. III, IV.
15. See id. pmbl.
16. Id. art. X.
17. ABBAS MILANI, MICHAEL MCAFUL, & LARRY DIAMOND, BEYOND INCREMENTALISM: A NEW STRATEGY FOR DEALING WITH IRAN 6 (2005).
19. Id. art. 9.
20. Id. arts. 18–19.
22. In fact, the IAEA knew about these facilities for some time but lacked investigational authority to determine the extent of Iran’s work. Id. at 258. The intersection of the opposition group’s revelations with the election of a vocally hardline government brought the Iranian nuclear portfolio to the world’s attention. Reuel Marc Gerecht, Coming Soon: Nuclear Theocrats?, WKLY. STANDARD, Jan. 30, 2006, available at http://www.weeklystandard.com/Content/Public/Articles/000/000/006/617pwzlq.asp.
coming to power in 1979. The regime enlisted the aid of Dr. Abdul Qadeer Khan, a renegade Pakistani nuclear scientist who provided detailed drawings and lists of equipment to be procured from nuclear states.\textsuperscript{23} Under Khan’s guidance, the Iranians embarked on an impressive scheme to evade export controls on dual use technology.\textsuperscript{24} Bartering with its vast oil reserves, the Iranians enlisted the aid of France, China, and Germany in building their nuclear facilities.\textsuperscript{25} The regime was successful in luring many scientists living in exile to return and work on its nuclear enterprise.\textsuperscript{26} Of course, the discrete and severable nature of these and other steps that Iran has taken toward nuclear status has given it deniability.\textsuperscript{27}

While there is no smoking gun evidence of Iran’s true motives for nuclear research, many doubt that the world’s fourth largest exporter of oil would so aggressively pursue nuclear power for energy purposes.\textsuperscript{28} A 2003 IAEA investigation of Iran confirmed the existence of at least two processing plants capable of producing materials for nuclear arms.\textsuperscript{29} Subsequent investigations revealed at least seven secret nuclear sites and traces of uranium concentrated at levels that belie Iranian assertions.\textsuperscript{30} U.S. intelligence has uncovered Iranian drawings of a subterranean tunnel designed for an underground atomic test, as well as a laptop computer, allegedly stolen from Iranian operatives, containing plans for a secret, small-scale facility to enrich uranium and build a ballistic missile capable of accommodating a nuclear warhead.\textsuperscript{31} Finally, Iran’s longstanding investment in a long-range missile—the “Shahab”—that is most effectively used with a nuclear,

chemical, or biological warhead, is "corroborating evidence about Tehran's nuclear weapons intentions."\(^{32}\)

Iran has clearly created a dual-track research process: its civilian energy efforts lag so far behind its nuclear weapon efforts that its claims of a single track of peaceful research are simply not credible.\(^{33}\) If all Iran wanted was civilian energy, it would not refuse a longstanding Russian offer to provide a permanent supply of low-grade nuclear fuel, thereby allowing Iran to skip the second (and most diversion friendly) phase of nuclear technology.\(^{34}\) Ultimately, Iran's focus on super-enrichment, its history of concealment, and its virtually limitless supply of oil leave most experts convinced that it is in fact seeking a nuclear weapon.\(^{35}\)

Not only has Iran failed to live up to its obligations under its NPT-based agreement with the IAEA, it has actively obstructed IAEA investigations by using front companies to conceal relationships between its nuclear facilities and its military.\(^{36}\) In one instance, the Iranians razed a previously undisclosed uranium enrichment facility, identified via satellite, and sanitized the surrounding soil prior to IAEA testing.\(^{37}\) And rather than offering even token confidence-building measures, the Iranians have uncompromisingly asserted their NPT-based "inalienable right" to peaceful nuclear research, dismissing the considerable evidence arrayed against their claims that the research is for peaceful purposes.\(^{38}\)

C. Negotiations with the International Community

The "unsettling Iranian record of concealment, lies, and obfuscation," set off a flurry of diplomatic activity, catching Iran

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32. Milani et al., supra note 17, at 8.
33. Timmerman, supra note 21, at 287.
35. See Richard Bernstein, Atomic Agency Delays Action on Iran, N.Y. Times, Nov. 25, 2005, at A24 (quoting the British delegate to the Atomic Energy Agency who, while speaking "on behalf of the European Union and several other countries," said that Iran's activity "has no application other than the production of nuclear warheads").
36. Timmerman, supra note 21, at 258.
37. Id. at 286.
38. Milani et al., supra note 17, at 8.
off-guard and red-handed by the revelation of its nuclear progress.  

Wary of antagonizing a Bush Administration already at its doorstep in neighboring Iraq and Afghanistan, in December 2003 Iran agreed to suspend enrichment activities and sign the Additional Protocol to the NPT that provides for “anytime-anywhere” IAEA inspections. Since then, Iran has negotiated primarily with France, Germany, and Britain (collectively, the “EU3”) for the right to continue its nuclear research. The United States has generally stayed on the fringes of the talks because it lacks formal diplomatic relations with Iran and rejects the negotiations’ presupposition that Iran’s research is only for peaceful purposes. Fulfilling the Americans’ prophecy, and in a tactic it would employ repeatedly, Iran announced in January 2004 that it would breach the agreement and resume the prohibited activities.

Negotiations continued, but the Iranians repeatedly maintained a blanket right to nuclear technology while leading the EU3 along with vague hints of potential compromise. In May 2005, Iran once again agreed to suspend its activities, this time in exchange for incentives to be forthcoming from the EU3. By August of that year, Iran had lost patience and announced that it would again breach the agreements and resume its research. In September, Iran’s president went before the United Nations and brazenly rejected any

40. Id. at 29.
41. Id. at 29–31 (discussing the many stages of negotiations between Iran and the EU3).
42. See Condoleezza Rice, U.S. Sec’y of State, Press Conference on Iran (May 31, 2006) (transcript available at http://www.state.gov/secretary/rm/2006/67103.htm) (discussing the United States’ lack of formal relations with Iran and its doubt that Iran’s purposes are peaceful).
43. Donovan, supra note 39, at 29.
44. Id. at 30–31.
compromise over his nation’s right to nuclear power. While a subsequent IAEA resolution decried an “absence of confidence that Iran’s nuclear program is exclusively for peaceful purposes,” it failed to lay the groundwork for referral to the U.N. Security Council.

The Iranian parliament nevertheless responded with a law that would bar any inspections of the country’s facilities in the event of referral. Three days before the IAEA was to meet again, referral was taken off the table. Nevertheless, on the eve of their inaction, IAEA member states acknowledged substantial evidence indicating Iran’s ulterior motive for nuclear research. Negotiations continued through January 2006, but Iran refused to yield to international demands for full disclosure of its efforts and pledged to “continue until they master nuclear energy.” The Iranians summoned the IAEA to remove seals from their enrichment plants—seals that had likely been nothing more than symbolic—and boldly announced the resumption of their nuclear program.

In February, the United States made its strongest push for referral yet and succeeded in extending its coalition beyond the EU3: Russia and China, surprised by Iran’s continuing obstinacy, agreed to vote for referral, but only on the condition that no formal action be taken before March. This delay was

54. Id.
55. Sciolino, World Nuclear Panel Meets, supra note 52. As a legal matter, the IAEA resolution only “reported” Iran to the Security Council, a concession the Russians and Chinese demanded. Id. Further, it made no mention of Iran’s noncompliance with its IAEA agreement, thereby avoiding automatic referral. Id.
designed to give Iran time to reintroduce its moratorium on uranium enrichment and thereby comply with its IAEA obligations.\textsuperscript{56} However, the follow-up IAEA report that laid the groundwork for the March 2006 IAEA board meeting reported that Iran still failed to reveal the “scope and nature” of its nuclear program, making it impossible to prove that its program was exclusively for civilian energy.\textsuperscript{57} On the eve of the meeting, Iran sought a last minute reprieve from the EU3.\textsuperscript{58} Once this ploy failed, the Iranians reversed course and proclaimed that if they were formally referred, they would escalate their activities from mere “research” to large scale enrichment.\textsuperscript{59} The March 2006 meeting did result in referral to the Security Council, however that body has since failed to stop Iran’s march towards a nuclear weapons program.\textsuperscript{60}

Meaningful Security Council action was first forestalled by yet another European incentives package, offered on June 6, which the Iranians inexplicably refused to respond to before August 22.\textsuperscript{61} In the interim, the Iranian proxy Hizbullah launched a war against Israel, a move many believe was calculated to divert the world’s attention from Iran.\textsuperscript{62} The Iranians were only partially successful in this regard—on July 31, the Security Council succeeded in passing a resolution demanding the suspension of nuclear activities by August 31.\textsuperscript{63} The resolution failed, however, to make noncompliance an

\textsuperscript{56} Id.
\textsuperscript{57} Molly Moore & Dafna Linzer, IAEA: Iran Advancing Uranium Enrichment, WASH. POST, Feb. 28, 2006, at A10.
automatic trigger for diplomatic and economic sanctions, and instead did no more than open the door to nebulous “appropriate measures.”

1. Iranian Negotiating Tactics

Iranian negotiator Ali Larijani, whose predecessor took a more conciliatory approach to Western condemnation, has won praise in Tehran for proving the mantra that “if you stand up to the West, they’ll buckle.” Pursuing a strategy that emanates from Iran’s Supreme Leader Ayatollah Ali Khamenei, Larijani “whittled away the suspension [of uranium enrichment] step by step, testing the EU while establishing ‘facts on the ground’ ahead of any future settlement.” This negotiating strategy is an elaborate shell game: the Iranians compromise just enough to keep their counterparts interested, breach the compromise either out of impatience or simply because they perceive weakness in their counterparty, and finally, contritely promise to adhere to a new compromise if allowed to return to the negotiating table.

If those promises are insufficient, the Iranians use threats—such as barring inspections, withdrawing from the NPT, or even raising the price of its oil exports—in order to draw their counterparts back into negotiation. There is also evidence that Iran has gone as far as to order terrorist attacks and foment Muslim unrest in countries that oppose its nuclear program.

64. Id.
65. Karl Vick, Iran Plans to Build Two More Reactors, WASH. POST, Dec. 6, 2005, at A22 (quoting Abbas Milani, an Iran analyst at the Hoover Institution at Stanford University).
67. Nazila Fathi, Bracing for Penalties, Iran Threatens to Withdraw from Nuclear Treaty, N.Y. TIMES, Feb. 12, 2006, at A16 [hereinafter Fathi, Bracing for Penalties].
68. Id.
70. See Mansoor Ijaz, Terrorists Going Nuclear, NAT’L REV. ONLINE, Jan. 31, 2006, http://www.nationalreview.com (follow “Search” hyperlink; then follow “NRO Authors” hyperlink; then follow “Ijaz, Mansoor Archive” hyperlink; then follow “Terrorists Going Nuclear” hyperlink) (arguing that the London transport bombings, the New Delhi terrorist attacks, and last summer’s civil unrest in France “were all executed at a time
 Thus, the Iranians “skate[] right at the edge of controlled pugnaciousness.”

2. Relying on Russia and China

The Iranians have also drawn on their relationships with Russia and China to delay resolution of their nuclear portfolio. Both have sold substantial amounts of nuclear technology to Iran, have significant economic relationships with Iran (China relies on Iran for oil and Russia for billions in defense contracts), cast important votes at the IAEA, and maintain veto power in the Security Council. Although both ultimately voted in favor of reporting Iran to the Security Council in February 2006, they were behind the watering down of the resolution and have continuously blocked any meaningful Security Council action.

The Russians have held separate negotiations with the Iranians over a proposal to process Iran’s nuclear fuel and thereby prevent diversion, fully aware that the negotiations were going nowhere, the Russians are alleged to have made them appear credible in order to delay Security Council action. Iranian officials gave conflicting signals about the proposal,

soon after each country had exerted significant pressure on Tehran to give up its nuclear ambitions.”). Muslim unrest over political cartoons satirizing the prophet Mohammad have similarly been blamed on Iran trying to divert attention from its nuclear crisis. David E. Sanger, Bush Urges Nations to End Violence; Rice Accuses Syria and Iran, N.Y. TIMES, Feb. 9, 2006, at A14. Finally, France and Italy have become hesitant to take on Iran in light of the fact that their troops are vulnerable to Iranian attack (via Hizbullah) in Lebanon. Making Uranium While the Sun Shines, ECONOMIST, Oct. 7, 2006, at 53.

71. Sanger, Why Not a Strike on Iran?, supra note 69.
72. Timmerman, supra note 21, at 69–70, 72.
74. U.N. Charter art. 23, para. 1; see Colum Lynch, No Support from China or Russia on Iran Measure, WASH. POST, Mar. 14, 2006, at A16.
75. See infra Part IV.B.
76. See infra Part IV.A.
77. Peter Finn, Iran’s Delay on Enrichment Deal Seen as Bid to Avoid Sanctions, WASH. POST, Feb. 22, 2006, at A10.
fueling suspicion that they were just “stalling for time.” In fact, at one point the two parties even announced a compromise on the matter, only to have Iranian officials announce hours later that the compromise did not curb their right to autonomous nuclear research. Iran has “merely used talks about such talks to try to divide Russia and China from Europe and America” in the hopes of delaying countermeasures long enough to “build up a civilian nuclear infrastructure under the protection of the [NPT], and then convert it to military use [after] abandon[ing] the treaty” by use of the 90-day withdrawal loophole described above.

As of this writing, though the August 31 deadline has long passed, Iran has forestalled any Security Council action by continuing to float compromise proposals that disappear days later and by insisting on holding talks about talks.

D. Is an Iranian Bomb Inevitable?

Despite the virtual consensus that the Iranians are pursuing a nuclear bomb, there is little, if any, consensus on how far down that path they have proceeded. That path is marked by three milestones: mastering the nuclear fuel cycle, amassing sufficient nuclear fuel for multiple bombs, and determining how to trigger a nuclear explosion within a missile capable of hitting a predetermined target. Israel estimates that Iran will master the fuel cycle in the immediate future. The United States and the EU3 do not dispute this, but instead focus on the second milestone.

80. A Rare Diplomatic Unity, ECONOMIST, Feb. 4, 2006, at 11.
81. Fathi, Bracing for Penalties, supra note 67.
82. Making Uranium While the Sun Shines, supra note 70.
83. See Kerr, supra note 7.
84. Elliot Jager, Iran: All That We Don’t Know, JERUSALEM POST, Jan. 16, 2006, at 13 (predicting six months to a year).
85. Simon Tisdall & Ian Traynor, Iran is Only Months Away from Bomb Technology, GUARDIAN (London), Mar. 10, 2006, at 16 (reporting that British Foreign Office officials have admitted that “while it could take Iran several years to build a
the EU3 estimate nuclear weapons are five years away, while the United States believes the range is six to ten years. The U.S. estimation may overcompensate for U.S. intelligence failures in Iraq. Yet “most forecasters acknowledge that secret Iranian advances or black market purchases could produce a technological surprise,” not unlike the Russian, Chinese, Pakistani, and Indian nuclear breakthroughs that have surprised U.S. intelligence over the last sixty years.

Israel estimates that Iran could be as few as four years away from a nuclear bomb, but contends that in any case, the appropriate milestone to focus on is the first—the so-called “point of no return”—beyond which “it is simply a matter of time until Iran is nuclear-armed.” Focusing on the second milestone permits Iran to string out negotiations long enough to reach the first—when Iran will have irreversibly secured the fundamental knowledge to build a bomb. If the goal is to prevent Iran from possessing nuclear weapons—a goal to which the IAEA is allegedly committed—then the first phase of nuclear research must be the metric that guides international efforts.

This conclusion is bolstered by three realities. First, the Iranians could delay an announcement of successful completion of the second phase until they have enough nuclear fuel to make a large nuclear arsenal. Second, once Iran completes the second phase, it will have a substantial head-start on the third because it has already designed, tested, and marched the Shahab missile (capable of reaching Israel) through the streets of Tehran.

Serviceable nuclear weapon, it might gain the technical knowhow within months”.

86. Steven Erlanger, Israel Wants West to Deal More Urgently with Iran, N.Y. Times, Jan. 13, 2006, at A8.
87. Id.
89. Erlanger, supra note 86.
90. Broad & Sanger, As Crisis Brews, supra note 88, at A11.
Third, once Iran completes the first phase and has enough enriched uranium to bring a nuclear reactor online, any preventative strike could cause massive collateral damage and have “far-reaching effects on too many innocents.”

The U.S./EU3 analysis may simply reflect resignation to the proposition that a nuclear-armed Iran is inevitable. Israel, however, is the nation most threatened by a nuclear-armed Iran, and cannot fatalistically accept nuclear weapons in the hands of a state that has threatened to use those very weapons to destroy it. This is the subject of Part III.

III. IRAN’S ANTI-ISRAEL AGGRESSION

Iran and Israel shared a détente during much of the Cold War due to a common fear of Russia. After its Islamic Revolution, Iran’s leading clerics were determined to position their country as a hegemon in the Middle East, and set out to prove their sincerity with anti-Israel rhetoric. The Iranians have since embarked on an ambitious campaign against Israel, leading, training, and funding terrorist groups such as Islamic Jihad, Hamas, and Hizbollah.

Iran has thus become a de facto player in the Middle East peace process, using financial support for Palestinian terrorists to forestall a two-state solution recognizing Israel’s right to exist. A “martyr foundation” has been established in Tehran to...


93. See Steven R. Weisman, Rice is Seeking $85 Million to Push for Changes in Iran, N.Y. TIMES, Feb. 16, 2006, at A14 (hereinafter Weisman, Rice is Seeking) (citing a resignation to a nuclear-armed Iran among key Bush Administration officials).


97. See id. at 2–4.
recruit suicide bombers to attack Israel.\textsuperscript{98} Iran’s efforts also extend to terrorist training at facilities in Iran and Lebanon and an annual conference convening anti-Israel terrorist groups.\textsuperscript{99} The success of the Iranians’ efforts is most visibly demonstrated by the draw to which its proxy, Hizbullah, was able to fight Israel in their most recent conflict on the Lebanese border.

All of Iran’s support is contingent on an unrelenting assault against Israel designed to obstruct its progress toward normalization with the Arab world.\textsuperscript{100} When donors cut off aid to the Palestinian Authority in the wake of Hamas’ electoral victory, and when Lebanon needed reconstruction financing after its war with Israel, Iran filled the void,\textsuperscript{101} reaffirming its control over both the Palestinian Authority and Lebanon.\textsuperscript{102}

It was in this context, and with an eye to Iran’s nuclear ambitions, that world leaders viewed with alarm the Iranian threat to annihilate Israel, made in October 2005 as the nuclear crisis was coming to a head.\textsuperscript{103} The long history of Iran’s anti-Israel hostilities is therefore used here as the backdrop for an analysis of the political ascension of the current regime, which concludes that the rhetoric may well be nothing more than an outward expression of an internal policy that has long been pursued. Ultimately, although neither Iran’s anti-Israel aggression nor its pursuit of nuclear weapons is new to the Middle East, each has reached a crescendo and converged to make Iran a unique threat to Israel.


\textsuperscript{99}\textit{Iranian State Sponsorship}, supra note 96, at 5–6, 8 (testimony of Matthew A. Levitt).

\textsuperscript{100} See id. at 3.


\textsuperscript{102} Herb Keinon, \textit{Iran Wants to Turn Hamas into Hizbullah}, JERUSALEM POST, Feb. 26, 2006, at 1; Slackman, \textit{Ruined Towns Look to Beirut}, supra note 101.

\textsuperscript{103} Mary Jordan & Karl Vick, \textit{World Leaders Condemn Iranian’s Call to Wipe Israel ‘Off the Map’}, WASH. POST, Oct. 28, 2005, at A16.
A. Mahmoud Ahmadinejad: Escalating or Perpetuating the Status Quo?

Mahmoud Ahmadinejad was elected as President of Iran in June 2005 following an era of moderation in Iran led by reformist president Mohammed Khatami. Ahmadinejad, a hardline religious conservative, won a surprisingly decisive victory with promises to end public corruption and share Iran's oil revenues with its poor. He also advocated, albeit less prominently, a return to the fundamentalist principles of the Islamic Revolution. Although there is no reason to believe that voters elected Ahmadinejad in order to escalate the Iran-Israel conflict, this is precisely what he has done.

In October 2005, Ahmadinejad called for Israel to be “wiped off the map,” telling an audience of terrorist groups that “very soon, this stain of disgrace . . . will be purged from the center of the Islamic world—and this is attainable.” He has stood by his threat despite worldwide condemnation. The threat has since become the Iranian mantra, though it should be noted that the very same phrase was used as far back as 1998, when it adorned Iranian missiles in a military parade staged in Tehran. Two months later, Ahmadinejad again threatened Israel by openly proclaiming the Holocaust a Western lie perpetuated to justify the creation of a Jewish state and calling for Israeli Jews to be “moved” to Europe. For many, his comments evoked images of a Nazi Germany that strove for similar goals just last century.

105. Id.
106. Id.
107. Fathi, Iran’s New President, supra note 1.
109. See Herb Keinon, Israel Tries to Build Improbable Coalition to Oust Iran from UN, JERUSALEM POST, Oct. 28, 2005, at 1.
110. TIMMERMAN, supra note 21, at 205.
The prevailing view is that Ahmadinejad’s positions are an escalation from those of his predecessors. Experts point to the more moderate Khatami’s reign as president during which Iran made intermittent attempts to establish a détente with the West, and they see Ahmadinejad as a throwback to the era of the revolution “when Iran’s leaders competed to sound outrageous.” Khatami himself has publicly criticized Ahmadinejad’s denial of the Holocaust, calling it a “massacre of innocent people, among them many Jews.” And there is no questioning the fact that Ahmadinejad’s threats are the first time an Iranian president has so explicitly called for Israel’s annihilation. Though his style has clearly rankled the mullahs and the old guard, Ahmadinejad’s success in using anti-Semitism to stir up nationalism and in boldly challenging the West to stop the country’s march to nuclear arms have won grudging praise.

There is also evidence that Ahmadinejad’s most visible predecessors—Ali Akbar Hashemi Rafsanjani and Khatami—were no less threatening to Israel. Rafsanjani, a longtime proponent of Iran’s nuclear program, reminded an audience in December 2001 that “the use of an atomic bomb against Israel would destroy Israel completely, while [the same] against the world of Islam would only cause damages. Such a scenario is not inconceivable.” Ahmadinejad is reputed to be “on the same page” as Rafsanjani. For his part, Khatami

113. Fathi, Iran’s New President, supra note 1.
120. TIMMERMAN, supra note 21, at 236.
121. Gerecht, supra note 22.
called Israel an “illegal entity”\textsuperscript{122} and an “extension of fascism,”\textsuperscript{123} and is said to be capable of “sound[ing] like a faithful child of [the] Ayatollah when talking about Zion [and] the Jews.”\textsuperscript{124} From this view, Ahmadinejad’s positions are distinct only as compared to “the tendency of Iranian political elites to give speeches pleasing to Western ears one day then say something different in Farsi after coming home,”\textsuperscript{125} known as \textit{taqqiyah} in Arabic.\textsuperscript{126} After all, Iranian aggression against Israel did not abate during either of Rafsanjani and Khatami’s tenures.\textsuperscript{127} In point of fact, they may themselves be responsible for the prevailing view, having “orchestrated a campaign of character assassination against Ahmadinejad in recent months designed to paint him as a delusional figure.”\textsuperscript{128}

Whether Ahmadinejad is an escalator or perpetuator of the status quo, the reality is that Iran’s anti-Israel aggression runs deeper than any one president. It is Iran’s unelected Supreme Leader, currently Ayatollah Ali Khamenei, who “controls the armed forces and makes decisions on security, defense and major foreign policy issues.”\textsuperscript{129} The Supreme Leader, in turn, appoints half of the so-called Guardian Council, which has veto power over all candidates for elective office and all legislation.\textsuperscript{130} These forces have ultimate responsibility for Iran’s anti-Israel hostility—it was the first Supreme Leader, Ayatollah Ruhollah

\textsuperscript{122} Martin Phillips \& Mel Hunter, \textit{Why Do They Hate Us?}, \textit{SUN} (London), Sept. 13, 2001, at 10.

\textsuperscript{123} TIMMERMAN, \textit{supra} note 21, at 209 n.\textsuperscript{*}.

\textsuperscript{124} Gerecht, \textit{supra} note 22.


\textsuperscript{126} Gerecht, \textit{supra} note 22.


\textsuperscript{128} Gartenstein-Ross, \textit{supra} note 125.


Khomeini, who first called for Israel to be destroyed— and their most recent _fatwa_, permitting the use of nuclear weapons against the nation’s enemies, suggests that they have not changed their orientation on the matter since the 1979 Revolution.

**B. The Convergence of Iran’s Nuclear and Anti-Israel Agendas**

In the words of one prominent editorial board:

> [While] every new addition to the roster of nuclear weapons states significantly raises the odds that nuclear weapons will be used in war . . . those dangers are especially acute in the case of Iran [because] . . . it has called for the elimination of Israel and maintains close ties with groups that have embraced terrorism.

Others acknowledge the convergence of Iran’s nuclear ambitions with its anti-Israel stance and have echoed this fear. Today more than ever, the threat posed by a nuclear Iran is not abstract, but rather concretely oriented to “disrupting Arab-Israeli negotiations, undermining and demoralizing Israeli society, and threatening Israel’s major population centers.”

Although Iran has been pursuing a nuclear bomb for thirty years, it could use a weight on the geopolitical scales today more than ever. As a result of the demise of longtime Israeli nemesis Saddam Hussein, Israel’s withdrawal from the Gaza Strip and

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134. _They Need Us On That Wall_, supra note 92 (“Iran with the bomb is not the same as, say, Luxembourg with the bomb [because it is controlled] by a belligerent, fanatical Islamic regime that can’t be trusted not to attack Israel with an atomic weapon.”).


136. Hussein’s downfall leaves Iran as the primary opponent to Israel’s existence. _Id._
attendant diplomatic inroads, and an increasing sense in the Middle East that normalization with Israel can help avoid the spotlight of the U.S.' war on terrorism, Iran has been isolated and forced to escalate its war against Israel. Even the Arab boycott, once the paradigmatic example of the Arab-Israeli rift, is a dying animal, pursued vigorously only by Iran, Syria, and Lebanon.

Ahmadinejad is said to envision himself as the head of a new Caliphate, a Pan-Islamic coalition arrayed against Israel and, more generally, the West, causing his Arab contemporaries to fear that a nuclear-armed Iran would stir up Shiite minorities amongst their populations and radically shift the balance of power away from Saudi Arabia, Turkey, Egypt, and Jordan, all of which are fighting radical Islam amongst their populations. This would likely have the collateral effect of disrupting the peaceful relationship that Israel maintains with these countries. It is also believed that a nuclear-armed Iran could set off an arms race in the Middle East, one never triggered by Israel’s own nuclear weapons because they have not once been brandished. The same Arab leaders fear that an Iranian strike

137. Ben Lynfield, Muslim World Warms to Israel, S. CHINA MORNING POST, Oct. 26, 2005, at 16 (reporting that Pakistan, Malaysia, and Afghanistan are among many nations initiating ties with Israel as the “iron curtain” between the Arab states and Israel is lifted).

138. Id. (reporting that Indonesia and Tunisia have both warmed to Israel in order to improve their relations with the United States).


140. Orly Halpern, Arab Boycott Largely Reduced to Lip Service, JERUSALEM POST, Feb. 28, 2006, at 10. Syria—and by extension, Lebanon—remains allied to Iran only to the extent it wants the Golan Heights back; it does not espouse radical Islam, and is openly willing to trade land for peace. See Coalitions of the Unwilling, supra note 1, at 28.


143. Misreading Iran, ECONOMIST, Jan. 14, 2006, at 16 (noting that Saudi Arabia, Egypt, Syria, and Turkey would be compelled to follow Iran down the nuclear path).

144. Tom Wright, Israel Not to Blame for Iran’s Nuclear Blackmail, IRISH TIMES, Feb. 14, 2006, at 18.
on Israel could cause collateral damage to Palestinians or miss Israel entirely and hit their own populations.  

While Ahmadinejad is pinned against a geopolitical wall by U.S. influence in the region, he is all too aware that now is the time to add nuclear weapons to his arsenal: “[Ahmadinejad’s] ascension came at a time when the region was in turmoil, with Iraq bogged down in a violent insurgency, Islamic groups like Hamas in Gaza and the Muslim Brotherhood in Egypt emerging as powerful political forces, . . . ” and with the price of oil reaching new heights.  It cannot be forgotten that the last Arab leader to bridge the Shia-Sunni divide and stir up nationalism on the Arab street was Gamal Abdel-Nasser, who used two wars against Israel to further his objectives.

C. The Threats Posed to Israel by a Nuclear-Armed Iran

Israel is widely acknowledged to be “[t]he country with the most to lose from a nuclear Iran . . . .” A nuclear-armed Iran would threaten Israel’s existence in two ways.

1. The Threat of a Nuclear Strike

An Iranian nuclear warhead could indeed “wipe Israel off the map,” given Israel’s size and population density. The Iranians are fully aware of this reality. Indeed, the Iranians would not even have to fire a nuclear warhead; merely arraying them along Iran’s southwestern border—where its missiles
already sit, aimed at Israel—would be sufficient to blackmail Israel with its life, or at least make day-to-day life impossible.

There is, however, an “unspoken European notion” that “a nuclear-armed Iran would indeed have to be irrational to strike Israel with such weapons.” These apologists argue that Ahmadinejad’s genocidal rhetoric is nothing more than an attempt to divert voters’ attention away from domestic problems. They also note that Iran must be aware that any nuclear strike on Israel would have a return address, and that Israel’s allies could respond harshly. Moreover, given that Israel is widely believed to maintain its own arsenal of nuclear weapons for defensive purposes, nuclear blackmail would not be a one-way street.

The threat of a nuclear strike cannot, however, be dismissed outright when the accompanying rhetoric threatens annihilation; there is no misreading Ahmadinejad’s statement that Israel should be “wiped off the map,” the way that Khrushchev’s “we will bury you” was misinterpreted by the United States as an existential rather than economic threat. From this perspective, incredulity at the thought of an Iranian nuclear strike on Israel is predicated on an ignorance of Israel’s

152. See Timmerman, supra note 21, at 292.
154. Sneh, supra note 150.
155. The Iranian Threat, supra note 53.
156. Misreading Iran, supra note 143.
158. Posen, supra note 149 (“[A] nuclear attack on a nuclear power is to become a nuclear target.”). Whether Israel would be able to respond depends on its second strike capability. See, e.g., Sam Ser, Tangling with Tehran, Jerusalem Post, Sept. 29, 2006, at 15 (suggesting that a complete collapse of the state following a nuclear attack would render Israel second-strike capability meaningless).
159. Although its official position on the matter is implicit denial, Israel is widely thought to have a nuclear reactor and approximately 200 warheads in the Negev desert. Greg Myre, Israel Is Lifting the Veil on Its Nuclear Program, Int’l Herald Trib., July 6, 2005, at 8.
situation.\textsuperscript{161} The rhetoric must be viewed in the context of the war that Iran has carried out against Israel for the last twenty-five years and the decisive role that nuclear weapons could play in it.\textsuperscript{162} As an Israeli general put it, “history prevents us from ignoring people who say publicly what they want to do to us.”\textsuperscript{163} Ultimately, while the threat of a nuclear strike should not be exaggerated, it cannot be dismissed.

2. \textit{Terrorism with Impunity}

The second threat posed to Israel by a nuclear-armed Iran is universally recognized: Iran would be capable of “increas[ing] its support for terrorism with impunity.”\textsuperscript{164} Iranian terrorism has already cost Israel thousands of casualties and limits Israel’s ability to function as a sovereign state in the Middle East.\textsuperscript{165} While superficially tame relative to a nuclear warhead hitting a major population center, terrorism orchestrated by an enemy with no reason to fear you—and much to gain from your demise—is a very real threat, particularly when that enemy has already been responsible for the murder of thousands of your civilians.\textsuperscript{166} The nature of this threat has been driven home by

\textsuperscript{161} See Rafael D. Frankel, \textit{Combatting Iranian Nukes}, JERUSALEM POST, Jan. 23, 2006, at 2 (quoting Sir Michael Quinlan, “Iran using a nuclear bomb on Israel is absurd. Although[,] I can say that sitting safely in the UK.”).

\textsuperscript{162} Asmus, \textit{supra} note 148 (“It would be a mistake to dismiss . . . Ahmadinejad’s rantings about Israel as mere posturing or a bluff. One lesson from September 11 is that we should not limit our strategic imagination or underestimate our enemies in the Middle East. When someone says he wants to wipe you off the map, he might just mean it.”).

\textsuperscript{163} Frankel, \textit{supra} note 161, at 2 (quoting Major General Isaac Ben-Israel).

\textsuperscript{164} \textit{The Iranian Threat}, \textit{supra} note 53.


\textsuperscript{166} See \textit{The Iranian Threat}, \textit{supra} note 53 (comparing the impact of a nuclear bomb in Israel to the impact of a nuclear bomb in New York, London, Paris, Sydney, or Los Angeles); Israel Ministry of Foreign Affairs, \textit{supra} note 165.
the recent Hizbullah-Israeli conflict, in which Iranian rockets, training, and funding wrought destruction and death in northern Israel.\textsuperscript{167} One need not imagine how much more destructive Hizbullah would be with nuclear technology.

The nexus between a nuclear-armed Iran and terrorism with impunity could also be established by the use of a “dirty bomb.”\textsuperscript{168} In such a scenario, Iran would arm terrorists, instead of warheads, with nuclear material.\textsuperscript{169} Terrorists so armed are not subject to the same rationality constraints assumed by some to rein in Tehran.\textsuperscript{170} The destructive potential would be far less than a nuclear warhead, but substantially greater than the current combination of TNT and anticoagulants used in suicide bombs.\textsuperscript{171} And Iran would be able to maintain deniability because the attacks would not leave a precise return address.\textsuperscript{172}

The threat of terrorism with impunity renders meaningless the apologist assertion—typically used to dismiss the threat of a nuclear strike—that “Iran’s ideological opposition to Israel has been manifested in its support for Palestinian terrorists, not in the development of nuclear weapons.”\textsuperscript{173} As Ahmadinejad has

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\item \textsuperscript{168} Anne Penketh, \textit{UN Chief Urges West and Iran to Cool Brinkmanship Over Nuclear Programme}, INDEPENDENT, Dec. 5, 2005, at 25.
\item \textsuperscript{170} See Penketh, supra note 168 (quoting IAEA head Mohammed ElBaradei: “The deterrence concept does not apply in the case of terrorists. That is the most critical danger we are facing now because there is a lot of nuclear material and nuclear facilities that need to be adequately protected.”).
\item \textsuperscript{172} Theoretically, the radioactive residue of a dirty bomb could be traced to a particular reactor. Susan Ladika, \textit{Nuclear Proliferation: Tracing the Shadowy Origins of Nuclear Contraband}, 292 SCIENCE 1634 (2001), available at http://www.sciencemag.org/cgi/content/full/292/5522/1634?ck=nck.
\end{itemize}
communicated to his Palestinian counterparts, “[t]he Palestinian-Israeli conflict . . . was the ‘focal point of the final war’ between Islam and the West, and [Hamas] could count on Iran’s full support.” Indeed, nuclear-emboldened terrorism would threaten the tenuous détente that Israel has achieved with neighbors like Lebanon, and would remove any incentive for Palestinians to negotiate a two-state solution to their conflict with Israel. And in this war, a nuclear-armed Iran would be virtually immune to reprisal or invasion.

IV. POTENTIAL RESPONSES TO THE IRANIAN THREAT

Given Israel’s lack of diplomatic relations with Iran, the United States and EU3 have taken the lead in handling Iran’s nuclear ambitions. The United States has chosen a two-track course: threatening sanctions if Iran does not halt uranium enrichment and pushing regime change over the long term. The United States has also left military force on the table, but acknowledges it is highly unlikely. The EU3 has stuck to nonconfrontational diplomacy, preferring incentives to sanctions and ruling out military force. Russia and China have publicly supported a halt of Iranian uranium enrichment, but have put little diplomatic weight behind the demand and are likely to veto any coercive measures in the Security Council. In short, particularly in the wake of the poorly executed and much criticized preemptive invasion of Iraq, there is little support for anything but continued negotiations.

Israel, for its part, has focused on keeping the issue front and center and on dispelling the perception that Iran is exclusively its problem. Israel believes that Iran has abused

175. See Takeyh & Gvosdev, supra note 173, at 42 (arguing that Iran wants nuclear weapons as a means of deterring a U.S. invasion).
176. See Weisman, Rice is Seeking, supra note 93; Steven R. Weisman, U.S. Makes Offer to Meet Iranians on Nuclear Plan, N.Y. TIMES, June 1, 2006, at A1.
178. See infra text accompanying note 188.
179. See Hoge, supra note 60.
180. Erlanger, supra note 86 (reporting that Israeli officials are “careful not to
negotiations to buy time for covert research, and instead advocates tough economic sanctions as the best way to prevent Iran from crossing the point of no return, after which coercive measures will be useless. Although it remains a last resort, Israel is also preparing for the possibility that military force will be the only way to stop Iran from obtaining nuclear weapons.

As a step towards evaluating the legitimacy of an Israeli preventative strike, what follows is a broad canvassing of the options being pursued by the international community: negotiations, sanctions, regime change, and deterrence. Finally, the feasibility and potential for success of military force is examined.

A. International Negotiations Aimed at Keeping Iran Within the NPT

Iranian officials repeatedly resort to their “inalienable right” to enrich uranium, but the NPT grants this right only in exchange for a broad-ranging compliance, disclosure, and monitoring regime intended to prevent diversion, proliferation abroad, and nuclear accidents. Iran forfeited this right when it breached its agreement with the IAEA, and three years after the revelation of its breach, Iran still has not fully disclosed the contents of its nuclear portfolio, choosing instead to play cat-and-mouse with IAEA inspectors. Iran’s deception has created a situation in which its continued “operation of an enrichment plant is neither safeguardable nor economically defensible.”

 react too strongly to the violently anti-Semitic comments of the Iranian president . . . ‘[because he] is trying to turn the Iranian nuclear issue into the problem of Israel . . . ’).  


182. See Frankel, supra note 161.

183. See supra Part II.A.


The EU3 has tried to bring Iran into NPT compliance by offering incentives such as trade deals, World Bank loans, and membership in the World Trade Organization. Yet not only has the EU3 been strung along, it has been subjected to an Iranian “shakedown . . . to extort more perks from the free world in return for fewer[,] weaker and patently worthless promises regarding its nuclear plans.” The defeat of the incentives approach is now widely acknowledged. At this point, even though the EU3 is out of ideas, it continues to hold out the prospect of diplomatic resolution—publicly vowing “no wish to isolate Iran”—much to the consternation of the Israelis, who see this as giving the Iranians “wiggle room.”

The Russians have proposed enriching Iran’s uranium on Russian soil, thereby mitigating the risk of diversion or super-enrichment. Given that the Russians are substantially responsible for the continued evolution of the Iranian nuclear program, they would benefit from international confidence in its peaceful nature. The United States and EU3 encouraged the proposal, and the Israelis sent a delegation to Moscow to

187. Gerecht, supra note 22.
188. Editorial, Belligerent Iran, JERUSALEM POST, Aug. 15, 2005, at 13. Indeed, the negotiations may have just bought Iran more “time to further advance its nuclear weapons ambitions.” Editorial, Iran’s New President, N.Y. TIMES, June 30, 2005, at A24.
192. Id.
193. See TIMMERMAN, supra note 21, at 69–70 (showing past Russian involvement in Iranian nuclear programs including weaponry). The Russians have obstinately refused to stop equipping Iran’s nuclear facilities, and in an apparent rebuke of any progress that has been made in the last year, Iran announced that it would break ground on two new reactors in 2006, one of which will be funded by Russia. Hilary L. Krieger, Iran to Build 2 New Reactors, JERUSALEM POST, Dec. 3, 2005, http://www.jpost.com/servlet/Satellite?cid=1132475673325&pagename=JPost/JPArticle/ShowFull.
support the effort. 195 The Iranians spoke favorably of this compromise, but contradictorily rejected its core premise by refusing to halt nuclear enrichment on their own soil. 196 Indeed, Iran rejected a very similar proposal, made by France, at the outset of their nuclear research in the 1970s 197 and have since refused other anti-diversion, confidence-building measures, such as a global initiative to downgrade Iran’s reactors below weapons-grade capability. 198 The closest the Iranians came to accepting the Russians’ proposed offer was giving up large-scale uranium enrichment while maintaining their right to perform the very experimental enrichment that is on the pathway to mastery of the fuel cycle. 199 In any case, there are doubts about the extent to which proposal would actually shackle Iranian research, 200 and moreover, whether Russia can be trusted with the task. 201

Without Iranian cooperation, there is no technologically feasible way to ensure that Iran stays within the NPT and does not cross the point of no return on the military track of its nuclear program. Though the United States had been pumping money into remote sensor technology since the Cold War, there was no sense of urgency to replace other forms of intelligence-

196. Peter Finn, Russia, Iran End Talks Without Nuclear Deal, WASH. POST, Mar. 2, 2006, at A15.
197. See Mark Fitzpatrick, Time is Running Out to Halt Iran’s Nuclear Ambitions, FIN. TIMES, Jan. 11, 2006, at 19.
198. See GAO, DOE NEEDS TO CONSIDER OPTIONS TO ACCELERATE THE RETURN OF WEAPONS-USABLE URAM FROM OTHER COUNTRIES TO THE UNITED STATES AND RUSSIA 6 (2004), http://www.gao.gov/new.items/d0557.pdf. The United States and Russia have undertaken a joint initiative to modify the reactors they service around the world so that those reactors are only capable of producing the lower grade uranium used for nuclear energy. Frank Von Hippel, A Comprehensive Approach to Elimination of Highly-Enriched Uranium From All Nuclear-Reactor Fuel Cycles, 12 SCI. & GLOBAL SECURITY 137, 137–38 (2004).
199. Herb Keinon, Israel ‘Hopeful’ IAEA will Refer Iran to Security Council, JERUSALEM POST, Mar. 6, 2006, at 3 [hereinafter Keinon, Israel ‘Hopeful’].
200. Valerie Lincy & Gary Milhollin, Russia’s Sweetheart Deal for Iran, N.Y. TIMES, Feb. 1, 2006, at A25 (arguing that the deal would only cover commercial scale enrichment equipment and would do nothing to prevent Iran from building smaller-scale enrichment facilities on its own).
gathering until the Iraq debacle.\textsuperscript{202} The technology is therefore still in the experimental phase, and there is evidence that the Iranians have already put countermeasures in place.\textsuperscript{203}

Although Israel initially supported negotiations as a means to resolve the crisis, it has concluded that “too much time has been wasted, and there is now a significant gap between Iran’s development and the diplomatic efforts to stop it.”\textsuperscript{204}

\textbf{B. Sanctions}

Implicit in Iran’s February 2006 referral to the Security Council was the threat of sanctions.\textsuperscript{205} Many believe that “[p]utting economic pressure on governments we hope to influence or change a potentially useful addition to the diplomatic tool kit.”\textsuperscript{206} In Iran’s case, sanctions are reported to fall into three categories.\textsuperscript{207} Least severe measures include cutting off IAEA technical assistance to Iran’s nuclear program, barring Iranian scientists from participating in IAEA scientific conferences, and prohibiting Iranian students from studying nuclear-related subject matter at schools abroad.\textsuperscript{208} However, given Iran’s proximity to mastery of the nuclear fuel cycle, there is no evidence that such sanctions would be useful.\textsuperscript{209}

\begin{itemize}
\item \textsuperscript{203} Id.
\item \textsuperscript{204} Keinon, \textit{Israel ‘Hopeful,’} supra note 199.
\item \textsuperscript{208} Id. Such sanctions appear to be the strongest that the United States can afford to suggest at the moment, yet the Russians have threatened to veto them and have insisted on continuing their role in building a nuclear power plant in southwest Iran. See Helene Cooper & Thom Shanker, \textit{Draft Iran Resolution Would Restrict Students}, N.Y. TIMES, Oct. 26, 2006, at A6; Colum Lynch & Glenn Kessler, \textit{U.S., European Allies at Odds on Terms of Iran Resolution}, WASH. POST., Oct. 27, 2006, at A20.
\item \textsuperscript{209} See Iran Moves to Prevent Sanctions Over Nuclear Program, CBC News, Apr. 29, 2006, http://www.cbc.ca/story/world/national/2006/04/29/iran-nuclear060429.html. That said, such sanctions would almost certainly scuttle a British university’s
\end{itemize}
More severe measures include denying visas to Iranian scientists and top government officials, closing embassies in Tehran and withdrawing diplomatic staff, and limiting Iran’s diplomatic representation abroad.\textsuperscript{210} These measures are “likely to be imposed only ad hoc” as countries with stronger diplomatic ties to Tehran will continue to engage it.\textsuperscript{211} Some argue that travel and political sanctions could still work because “[u]nlike the North Koreans, who seem not to mind their isolation, Iranians take pride in their growing contacts around the world and are keen to be accorded the status and respect they feel their ancient civilization deserves.”\textsuperscript{212} Inasmuch as President Ahmadinejad’s policies are the target, however, such sanctions might be ineffective due to his personal distaste for “being feted in European capitals.”\textsuperscript{213}

Maximally severe measures would be economic, including trade embargos and an oil embargo.\textsuperscript{214} Israel strongly favors these as potentially “very effective.”\textsuperscript{215} Oil sanctions are effectively off the table because “at a time of tight energy markets, no one is interested in restricting Iranian oil sales.”\textsuperscript{216} Other economic sanctions are on the table, however:

[I]f there is such a thing as a non-oil-related intimidating sanction against the Islamic Republic—and there might possibly be, depending on how much the ruling Iranian elite fears that the country’s precarious economic state could be significantly hurt by European sanctions—the doom and gloom need to be convincing from the start. Dribbling out little 

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recently announced plan to train Iran’s nuclear engineers. Gareth Walsh, \textit{Birmingham to Train Iranian Engineers}, Australian, Mar. 8, 2006, at 25.
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\item \textsuperscript{210} Keinon, \textit{Israel Sure of Russia’s Vote on Iran}, supra note 207.
\item \textsuperscript{211} Leverett, \textit{supra} note 145.
\item \textsuperscript{212} \textit{When the Soft Talk Has to Stop}, supra note 34, at 31.
\item \textsuperscript{213} Leverett, \textit{supra} note 145.
\item \textsuperscript{214} Keinon, \textit{Israel Sure of Russia’s Vote on Iran}, supra note 207.
\item \textsuperscript{215} Frankel & Klass, \textit{supra} note 141, at 1.
\item \textsuperscript{216} Leverett, \textit{supra} note 145; \textit{see also} Phillips, et al., \textit{supra} note 131, at 6 (“An international ban on the import of Iranian oil is a non-starter.”).
\end{itemize}
sanctions—the likely product of three years of U.S.-EU-3 cooperation—won’t do it.\footnote{Gerecht, supra note 22; see also Iran and the Bomb, supra note 133 (“[T]hanks to its ample oil reserves, [Iran] has the means to withstand all but the most sweeping and universally enforced sanctions.”).}

The threshold obstacle to a broad economic sanctions regime is that the Russians and Chinese have ruled it out\footnote{Dariush Zahedi & Omid Memarian, A Firebrand in a House of Cards, N.Y. Times, Jan. 12, 2006, at A31 (noting that Russia recently agreed to sell Iran $1 billion in (allegedly) defensive weapons, and that China relies “on Iran as a key producer of oil and gas not beholden to the United States . . .”).} since they, along with the Indians and the Japanese, are “reluctant to put their oil and gas contracts and their pipeline projects at risk.”\footnote{When the Soft Talk Has to Stop, supra note 34, at 31.} Iran is aware that “if push comes to shove, Russia and China will never back words with sanctions to enforce them.”\footnote{A Rare Diplomatic Unity, supra note 80.}

The United States has had sanctions in place against Iran since the 1979 Revolution,\footnote{See U.S. DEPT OF THE TREASURY, OFFICE OF FOREIGN ASSETS CONTROL, WHAT YOU NEED TO KNOW ABOUT U.S. ECONOMIC SANCTIONS: AN OVERVIEW OF O.F.A.C. REGULATIONS INVOLVING SANCTIONS AGAINST IRAN 3 (2003), available at http://treas.gov/offices/enforcement/ofac/programs/iran/iran.pdf.} so EU3 sanctions have been proposed as a potential escalation.\footnote{Phillips, et al., supra note 131, at 4.} However, many question the extent to which the Europeans can implement such sanctions because of their “fragile welfare state economies.”\footnote{See Key Nations’ Stances on Iran, BBC News, Mar. 30, 2006, http://news.bbc.co.uk/1/hi/world/middle_east/4662676.stm#germany.} Germany, for instance, relies heavily on trade with Iran, having exported $4.4 billion worth of goods there in 2004.\footnote{Babbin, supra note 223.} Further, Iran has already begun preparing for this contingency, calling for a cut in OPEC oil production,\footnote{See Fareed Zakaria, Time to Face Reality on Iran, NEWSWEEK, Jan. 30, 2006, at 31 (reporting that Iran has “tens of billions of dollars in surplus cash” to help it withstand economic sanctions).} using its oil to build up domestic cash reserves,\footnote{Babbin, supra note 223.} and moving its assets out of Europe to avoid seizure.\footnote{Babbin, supra note 223.} In sum, Western threats are “no longer
credible,” because “[t]he Iranians know that the United States has already put all the sanctions on Iran that it can . . . [and] [t]hey seriously doubt that the Europeans will ever impose sanctions.”

Though no sanctions appear capable of coercing Iran into abandoning its pursuit of nuclear weapons, they could still serve an important role in isolating Iran as a pariah state. On this theory, even the least coercive of sanctions, such as barring Iran from the 2008 Summer Olympics, for example, can have an impact if the sanction carries the support of the international community, speaking in a loud, unified voice. However, symbolic sanctions would still require the support of Russia and China, without whom Iran would be able to continue to cast the issue as one of East versus West. And there is not even a consensus for such sanctions amongst Western nations: both Britain and France have committed themselves to a “step-by-step approach,” allowing Iran to respond “at every stage.” If it takes years to build a solid international coalition against something that could be a foregone conclusion in months, the effort will have been for naught.


229. See DAVID A. BALDWIN, ECONOMIC STATECRAFT 63 (1985) (“Economic sanctions may have diplomatic, psychological, political, military, or other effects even when their economic effect is nil.”).

230. See W. Michael Reisman, When are Economic Sanctions Effective? Selected Theorems and Corollaries, 2 ILSA J. INT’L & COMP. L. 587, 589 (1996) (“[S]ymbolic or cosmetic economic sanction programs may have important functions and may be deemed to have been effective in terms of those functions, despite the fact that they did not secure adjustments in the policies of the target State.”).


Moreover, the Iranian leadership does not appear vulnerable to symbolic sanctions. In fact, it might thrive on them:

[Ahmadinejad] has used Western opposition to Iran’s nuclear program to generate national unity and purpose. Those dynamics have compelled even people who oppose him to give him room to maneuver. Stop Iranians on any street in any neighborhood and they are likely to demand that Iran be allowed to pursue a nuclear energy program, a sentiment that has served as a launching platform for Mr. Ahmadinejad’s firebrand politics.

Therefore, comparisons to the effective isolation of South Africa that ended Apartheid are considered inapposite: “[T]he ruling whites in South Africa were Western and among themselves democratic, and thus much more subject to the ethical and spiritual pressure from being ostracized by the rest of Western civilization. The ruling elite in Iran suffers no similar angst.” Instead, sanctions could boomerang and bolster Ahmadinejad’s support among Iranians, given that he has already used the issue to “rally round the flag,” calling on his countrymen to prepare for a long, hard slog to the nuclear finish line. He has succeeded in making nuclear power a sovereign right in the eyes of many Iranians—even a religious right—and sanctions of any kind may only embolden this view.

C. Regime Change

Iranian resistance groups have struggled against the regime since it came to power in 1979. The conventional wisdom on the Iranian people’s yearning for democracy was most famously

233. Slackman, A New Face, supra note 117.
234. Gerecht, supra note 22.
236. Baldwin, ECONOMIC STATECRAFT, supra note 229, at 137; see also Editorial, There is Just a Chance to Avoid Iran Conflict, FIN. TIMES, Feb. 6, 2006, at 16 (“[T]he nuclear controversy [has become] a God-given issue around which to rally the nation.”).
237. Fathi, Bracing for Penalties, supra note 67.
239. Timmerman, supra note 21, at 9.
espoused by U.S. President Bill Clinton:

[Iran is the only country,] including the United States, including Israel, including you name it, where the liberals, or the progressives, have won two-thirds to 70 percent of the vote in six elections . . . . In every single election, the guys I identify with got two-thirds to 70 percent of the vote. There is no other country in the world I can say that about, certainly not my own. 240

Nevertheless, Ahmadinejad currently appears immune to efforts of both the clerics and the reformists to restrain him. His brand of populism has ensnared even those who disfavor radical Islam, and there is no sign that criticism from abroad is helping his opposition. There is evidence that Iranians across the political spectrum—even those who despise the mullahcracy—support their country's right to nuclear technology. 241 Those not swayed by the potential of nuclear technology may be swayed instead by the handouts that Ahmadinejad has promised them. 242

Some resistance groups point to a recent bus drivers’ strike in Tehran and protests by textile workers in a northern province as signs that the regime’s grip is weakening. 243 There is also the inevitability of the point at which Ahmadinejad will be unable to deliver on his promises to put oil “onto people’s tables.” 244 Indeed, some believe that Iran’s “well-defined . . . territory, culture, and history,” as well as its undisputed national borders (it was not, as some of its neighbors were, created out of whole

240. Id. at 236.

241. Ilan Berman, Pre-empting Iran’s Ambitions, WASH. TIMES, Mar. 3, 2006, at A23 (“Iran’s atomic drive is by all indications a wildly popular domestic issue, supported both by ordinary Iranians and by regime hardliners (albeit for very different reasons). This sentiment, moreover, appears to cut across both ethnic and cultural lines.”).

242. The President Gets Stronger at Home, supra note 235 (“Nationalism is easier on a full stomach and Mr [sic] Ahmadinejad is the rare and fortunate president who expects to receive, over the coming Iranian year, some $36 billion in oil export revenues to help buy loyalty.”); Slackman, A New Face, supra note 117, at A1, A10 (Ahmadinejad “has so far visited five provinces and one city with his cabinet, walking the streets, shaking hands, kissing local people and promising a bevy of development projects.”).


244. Petersen, supra note 104.
cloth), make it ripe for democratization.\textsuperscript{245}

Even if the regime was vulnerable, there are reasons to believe that it will not fall victim to a speedy and bloodless coup such as those that have recently befallen Eastern Bloc dictators. Iran lacks a democratic constitution upon which to build a revolution; to the contrary, its political development has been stunted by the Supreme Leader and Guardian Council.\textsuperscript{246} Its democratic movement is demoralized, having failed to capitalize on the reign of the moderate Khatami to achieve reform.\textsuperscript{247} Most of “Iran’s resistance leaders are practically never heard of,”\textsuperscript{248} and Iran’s “history of authoritarian regimes” may make it impossible for such a figure to survive long enough to mount a challenge.\textsuperscript{249} Finally, paramilitary forces and fundamentalist terrorist groups have pledged their support to the regime and would ruthlessly stifle any domestic opposition.\textsuperscript{250}

Having forecasted the failure of negotiations and the inability to reach an international consensus on sanctions, the United States has made regime change the first priority of its two-pronged strategy on Iran, investing in nongovernmental organizations, opposition groups in exile, and Farsi-language broadcasting.\textsuperscript{251} The goal is to draw lines “between people and government, rather than within the regime between ‘reformists’ and hardliners,”\textsuperscript{252} yet even this limited effort has been criticized as altogether ineffectual,\textsuperscript{253} or worse, likely to backfire and embolden the regime.\textsuperscript{254} Further, one wonders whether the United States has any credibility amongst Iranians given its

\begin{thebibliography}{99}
\bibitem{245} Milani et al., \textit{supra} note 17, at 18–19.
\bibitem{246} \textit{Id.} at 23.
\bibitem{247} \textit{Id.} at 24.
\bibitem{250} \textit{See} Milani et al., \textit{supra} note 17, at 23.
\bibitem{251} \textit{Toppling Tehran Isn’t a Tea Party, supra} note 249, at 8.
\bibitem{252} Gartenstein-Ross, \textit{supra} note 125.
\bibitem{253} \textit{See} Baker & Kessler, \textit{supra} note 177, at A12 (quoting the president of the Council on Foreign Relations calling U.S. regime change policy “more like a hope than a strategy . . . ”).
\bibitem{254} Milani et al., \textit{supra} note 17, at 22.
\end{thebibliography}
involvement in the coup removing Mohammed Mossadegh from power there in 1953 and in the more recent, but just as disastrous, invasion of Iraq.255

A more forceful approach would involve stirring up resistance among Iran’s subjugated minorities: the two million Arabs in the oil-rich province of Khuzestan, the Kurds, the Baluchs, and the Azeris dispersed around the country.256 Iran’s paranoia-fueled claim that U.S. and British forces in Iraq were behind October 2005 explosions in southern Iran, allegedly part of a CIA/MI6 plot to arm Iranian dissidents, suggests that the regime feels particularly vulnerable to this type of domestic unrest.257 Yet the threat that Iran made in response—to attack Israel or coalition forces in Iraq—requires the United States to tread carefully in its efforts, particularly given the ethnic and sectarian strife already gripping Iraq.258 For his part, “Mr. Ahmadinejad very likely believes that the best way to guard against regime change from without is to . . . swiftly advance[ ] Iran’s nuclear capacity.”259

Ultimately, regime change can only be a long-term strategy, working in parallel with short-term measures, such as targeted strikes on Iran’s nuclear facilities or some other forced suspension of its domestic uranium enrichment, to forestall Iran’s nuclear progress.260 However, given the advanced stage of Iran’s nuclear program, “[Israel] no longer has the luxury of waiting for a more pro-U.S. government to come to power in Iran.”261

D. Deterrence

A deterrence strategy presumes that Iran will possess nuclear weapons and instead focuses on preventing their use.262

255. See id. at 22, 25.
256. Zahedi & Memarian, supra note 218.
258. See id.
259. Zahedi & Memarian, supra note 218.
260. See MILANI ET AL., supra note 17, at 4. See generally Ijaz, supra note 70.
261. Takeyh & Gvosdev, supra note 173, at 33.
262. See Asmus, supra note 148.
Owing perhaps to the thousands of miles that separate its shores from Iran, the United States appears to be relying on deterrence as a fallback to the aforementioned options. Indeed, both the United States and the EU3 can rely on this strategy insofar as the NATO alliance counts multiple nuclear states among its membership. Only a minority believes that the West cannot rely on Cold War-style deterrence against Iran.

Deterrence is a less enticing proposition for Israel, however. While Israel’s own nuclear weapons arsenal should outmatch Iran’s for the foreseeable future, Israel lacks second-strike capability given its size and concentrated military resources. Further, deterrence would require that Israelis bet everything on Iran’s instinct for self-preservation, a risky bet given that “Ahmadinejad’s genocidal rhetoric has demonstrated the futility of hopes for a stable deterrence relationship...” Although President Bush has publicly guaranteed Israel’s security against Iran despite the lack of formal military alliance between Israel and the United States, some have urged that Israel seek security guarantees, or perhaps even membership, from NATO. As there are no indications of such a pact in the near

263. See Milani et al., supra note 17, at 9 (“A direct nuclear attack on American soil is not a serious threat.”).
264. See Asmus, supra note 148.
265. Id.
266. See, e.g., Wright, supra note 144.
267. See Myre, supra note 159, at 8 and accompanying text (noting Israel’s ability to respond to any Iranian attempt at nuclear blackmail).
268. Sneh, supra note 150, at A4. Indeed, Iran has already threatened to preventatively attack Israel in order to forestall a preventative attack on itself. See Nazila Fathi, Iran Says It May Pre-empt Attack Against Its Nuclear Facilities, N.Y. Times, Aug. 19, 2005, at A4.
269. Wright, supra note 144, at 18.
270. Gerald M. Steinberg, Analysis on Iran: Little Time Left for Sanctions, JERUSALEM POST, Dec. 2, 2005, at 3. See also Iran’s Nuclear Goals Must Be Frustrated, ALBUQUERQUE J., Nov. 2, 2005, at A12 (“[N]uclear capability added to the Iranian mix of religious zealotry and ethnic hatred is a more volatile mixture. The threat of Israeli retaliation might not be enough to deter Iran.”).
future, Israel is preparing to defend itself alone, with a missile defense system (never tested in battle) that is theoretically capable of shooting down a nuclear warhead.

It is not clear whether Israel can deter the second threat posed by a nuclear-armed Iran: terrorism with impunity. Israel’s nuclear weapons arsenal has done nothing to deter the Iranians from the war they have waged against Israel since the 1979 Revolution, and there is no reason to believe that the predicted escalation in Iranian terrorism—or even Iranian sponsorship of Hizbullah’s war against Israel—would legitimize an Israeli nuclear strike in reprisal. To the contrary, as discussed above, Iran seeks nuclear weapons precisely to deter any meaningful Israeli response to its attacks.

E. Military Force

The United States has publicly threatened military force as a last resort and is reported to be drawing up contingency plans for a strike, but the Bush Administration is simply not in a position to open up another front in the Middle East. Israel, the state most threatened by a nuclear-armed Iran, does not suffer from these constraints. Nevertheless, Israel has expended a great deal of diplomatic capital to push for the most aggressive forms of the aforementioned courses of action, urging

273. See Kessler, supra note 271, at A18.


275. See Fathi, Iran’s New President, supra note 1 (stating that Israel and Iran have been bitter enemies since 1979). See generally Keinon, Iran Wants to Turn Hamas Into Hizbullah, supra note 102 (Hizbullah “is nothing less than a ‘delivery system’ for Iranian weapons.”); John Yoo, Using Force, 71 U. CHI. L. REV. 729, 736–41 (2004) (discussing international law governing the use of force); Timothy McCormack, Self-Defense in International Law: The Israeli Raid on the Iraqi Nuclear Reactor 30–34 (1996) (reviewing the legality of Israel’s actions).


278. Sanger, Why Not a Strike on Iran?, supra note 69, at 1.

279. Id.
uncompromising negotiations, strong economic sanctions, and aggressive efforts at regime change. However, given the apparent unlikelihood that any of the prevailing forms of these options will slow Iran's nuclear progress in the short term, military force remains a necessary option for Israel and may be more feasible than the pundits indicate.

1. The Last Resort: Withering International Criticism or Military Force?

Should Iran master the nuclear fuel cycle within the immediate future, it is sure to obtain nuclear weapons at some point thereafter. No one is under the illusion that negotiations or sanctions will have a meaningful impact within that time frame; these measures will be escalated slowly and, even when fully in place, could take years to coerce Iran. Moreover, there is no reason to believe that regime change will happen any time soon either. Some other short-term solution is necessary. Indeed, Iran’s delay tactics at the negotiating table are predicated on this reality.

A number of pundits have reached the same conclusion and offer some variant on withering international criticism. The notion is that if Iran refuses to operate within the NPT framework, if sanctions are insufficiently coercive, and if regime change is too speculative, “plain talk and a united stand” are all that is left. In reality, the proposal’s defenders are more than likely resigned to the prospect of a nuclear-armed Iran because it could only work in the long term and will in any case fail for the same reason that negotiations and sanctions already have: the international coalition against Iran is weak. In contrast,

281. See Jager, supra note 84, at 13.
282. See supra Part IV.A-B.
283. See supra Part IV.C.
286. See Jonathan Landay, Iran Threatens U.S. with ‘Harm and Pain,’ KNIGHT
military force could forestall Iran’s mastery of the nuclear fuel cycle long enough to allow other, longer-term solutions to work.

2. The Necessity and Feasibility of an Israeli Strike

Israel does not have the means for a full-scale land invasion of Iran, so a surgical strike using missiles launched from the air and sea is the oft-mentioned approach. Israel’s air force has been considered one of the best since its strike on Iraq’s nuclear reactors in 1981. Of course, Iran has since dispersed and fortified its facilities (some are even underground), which are separated from Israel by hundreds of miles of third party airspace. However, Israel has taken the risk of traversing such airspace before, and has recently purchased aircraft capable of reaching Iran on one tank of gas and bombs capable of penetrating heavy fortifications. Moreover, Israel is reported to have taken advantage of the U.S. occupation of Iraq to establish a forward base of sorts on the Iran border from which to narrow down potential targets. Israeli submarines deployed in the region are being armed with missiles capable of striking Iranian territory. Covert operations and sabotage are also being considered.

The conventional wisdom is that while Israel’s preventative strike on Iraq’s nuclear reactors in 1981 may have delayed Saddam Hussein’s acquisition of nuclear weapons, in the long

RIDDER NEWSPAPERS, Mar. 8, 2006 (Russia and China); Burke, supra note 257 (Britain).


288. Id.

289. Babbin, supra note 223.


292. See IDF Forces Operating in Iran, supra note 59.

293. Frankel & Klass, supra note 141, at 1 (“... Israel had modified American-made Harpoon cruise missiles in order to launch them from submarines...”).

run, it only accelerated Iraqi efforts. Accordingly, while no show of force short of a complete occupation could definitively and permanently quell Iran’s nuclear weapons ambitions, “the goal is not to stop the plan, since that is almost impossible . . . . [Israel] need[s] to delay it by five years and hope that within that period the current Iranian government will be overturned” or coerced into a suspension of its program. As a result, Israel’s contingency plans for a strike are aimed at the “bottlenecks” in Iran’s nuclear program in order to undermine it in the short term.

Of course, any Israeli action carries serious risks. First, there is the potential for the outbreak of full-scale war: Iran has already threatened unrelenting retaliation for a preventative strike. Yet Iran already seeks Israel’s destruction, so the choice is not between a state of calm and threatened escalation of Iranian terrorism, but between Iranian terrorism and Iranian terrorism with impunity. Second, there is a substantial risk of collateral damage, given that Iran intentionally built many of its nuclear research facilities in heavily populated areas or adjacent to structures of cultural or historical significance. This risk is lessened substantially—if not eliminated entirely—when the targeted reactors are not live and loaded with enriched uranium, which is of course another reason Iran is so eager to cross the point of no return. Third, a strike could induce Iran to


296. Sanger, Why Not a Strike on Iran?, supra note 69.


299. See Frankel, supra note 161, at 2.

300. Id.

301. See Thom Shanker, Eric Schmitt & David E. Sanger, U.S. Wants to Block Iran’s Nuclear Ambition, But Diplomacy Seems to Be the Only Path, N.Y. TIMES, Dec. 12, 2004, at A8; MILANI ET AL., supra note 17, at 10–11 (predicting that a strike could “kill hundreds if not thousands of innocent Iranians and destroy ancient buildings of historical and religious importance to the Persian people”).

302. See supra text accompanying note 92.
redouble its nuclear research. However, scientific evidence, as well as the character of Iranian negotiation, suggests that Iran is already driving as hard toward nuclear weapons as it possibly can. Finally, a strike could further entrench the ruling regime by inflaming nationalist sentiment and lending credence to the notion of nuclear power as a right that the West seeks to deny Iran. It is not at all clear, however, that this would put Israel in a worse position than it is in currently, with Iran marching towards a nuclear bomb without significant internal or external obstacles in its path. Rather, if the alternative short-term strategies offer no hope of stopping Iran from crossing the point of no return, further entrenchment of the regime is a risk that may have to be reckoned with in the long run. However, this risk pales in comparison to the immediate threats that a nuclear-armed Iran would pose to Israel.

V. THE LEGALITY OF ISRAELI PREVENTATIVE ACTION AGAINST IRAN

Long before the more recent events recounted in this Article, one scholar conclusorily posited that an Israeli preventative strike on Iran’s nuclear facilities “would meet the expectations of anticipatory self-defense under international law.” This Part evaluates this claim by resort to the principles of international law, using the U.N. Charter (the “Charter”) as a baseline, Professor Yoo’s balancing of probability of attack and magnitude of potential harm, and Polebaum’s reasonable nation standard—which objectively evaluates the legitimacy of a purportedly preventative strike. Even if Israel ultimately chooses to act without regard for international law, these analyses can help determine whether other nations in its position should be forced to do so.

303. McFaul & Milani, supra note 295.
304. See supra Part II.
305. Sanger, Why Not a Strike on Iran?, supra note 69, at 1 (predicting that a military strike would “probably make firm enemies out of many Iranians who have come to dislike their theocratic government”).
A. The Charter and Traditional International Law

Article 2(4) of the Charter bars member states from “the threat or use of force against the territorial integrity or political independence of any state . . . .” Article 39 nevertheless permits the Security Council to authorize the use of force where it finds a “threat to the peace, breach of the peace, or act of aggression . . . .” Three of the five veto-wielding permanent members of the Security Council have publicly forsworn force as an option in Iran, so U.N.-sponsored force is out of the question. Alternatively, Article 51 separately preserves the right of national self-defense in the event that a member state is subjected to an “armed attack.” However, the Charter was designed to reduce the overall amount of armed conflict; therefore Article 51 leaves very little room for preventative action. Traditionally, the Charter’s definition of an “armed attack” needed to trigger the right of self-defense has been understood to require temporal imminence, necessity, and proportionality.

Temporal imminence is the primary obstacle that Israel would face in striking Iran preventatively under this standard: until Iran actually possesses nuclear weapons, neither a nuclear attack nor terrorism with impunity can be considered imminent. The Charter does not account for the fact once Iran masters the nuclear fuel cycle, a nuclear weapon will be inevitable; inevitability simply is not imminence. Nor is it necessity, which is strictly construed with respect to the need to prevent an attack rather than to prevent an enemy from

308. Id. art. 39.
309. Landay, supra note 286 (Russia and China); Burke, supra note 257 (Britain).
310. U.N. Charter art. 51. The extent to which Article 51 was intended to merely restate an inherent right of national self-defense, as opposed to circumscribing that right, is beyond the scope of this Article.
311. See Yoo, supra note 275.
314. See Jager, supra note 84 and accompanying text.
equipping itself with the means to attack.\textsuperscript{315}

Iran’s proximity to the point of no return, past which an attack would cause massive civilian casualties and be futile, might establish proportionality—insofar as any strike beyond it would be disproportionate\textsuperscript{316}—but if read to satisfy the Charter’s necessity and imminence requirements would leave those criteria hollow.\textsuperscript{317} In short, although the Charter might be stretched to permit action before a nuclear warhead is actually sitting on a launcher,\textsuperscript{318} given the alternative threat of terrorism with impunity, the Charter does not take analytical notice of the threat posed by nuclear weapons possession\textsuperscript{per se}. In reconciling recent preventative attacks with traditional international law, Professor Walzer argues that the strict requirement of a predicate attack should be slackened to permit action where “failure to do so would seriously risk [a country’s] territorial integrity or political independence.”\textsuperscript{319} While there is no doubt the escalation in terrorism that could result from a nuclear-armed Iran would certainly compromise Israel’s geopolitical position, Walzer’s proposal may not aid the Israelis in their current predicament. First, Walzer admits this constitutes a “major revision” of traditional international law,\textsuperscript{320} one unlikely to be accepted at a time when the doctrine of preemption has been “discredited” by the failure to find weapons of mass destruction in Iraq.\textsuperscript{321} Second, Walzer bases his standard

\begin{itemize}
  \item \textsuperscript{315} Yoo, supra note 275, at 736.
  \item \textsuperscript{316} See id. at 757. An attack past these thresholds would cause disproportionate harm in that it would be useless in erasing Iran’s nuclear know-how. “If a nation can use force to prevent an attack that is further from fruition, it may well be able to use force more precisely or less destructively.” Id.
  \item \textsuperscript{317} Cf. id. at 751 (“[T]he current approach to self-defense under international law leaves nations ill-equipped to handle . . . new types of threats [posed by rogue nations and terrorism].”).
  \item \textsuperscript{318} Cf. MCCORMACK, supra note 275, at 106–07 (“Israel had no definite guarantee of its security in the face of this threat, and so decided to take unilateral action.”).
  \item \textsuperscript{319} MICHAEL WALZER, JUST AND UNJUST WARS 85 (Basic Books 2000) (1977) (emphasis added).
  \item \textsuperscript{320} Id.
\end{itemize}
largely on Israel’s preemptive strike in the Six-Day War.\textsuperscript{322} While in the long term Israel might be as vulnerable to Iran as it was to the Egyptian-led armies amassed at its borders in 1967, Egypt was undoubtedly poised to strike, and Israel’s action was therefore preemptive, not preventative.\textsuperscript{323} In the days preceding the 1967 strike, Israel was paralyzed by the threat surrounding it, a state of affairs that Israel arguably will not reach vis-à-vis Iran until the latter brandishes its first nuclear warhead, notwithstanding the impending point of no return.\textsuperscript{324}

Two arguments remain, outside the context of anticipatory self-defense. First, Ahmadinejad’s recent call for Israel’s annihilation is arguably a threat of force—a violation of Article 2(4).\textsuperscript{325} However, the view that one state’s violation of Article 2(4) can alone be the predicate for another’s preventative strike is held only by a minority of scholars.\textsuperscript{326} The predominant view is that Article 51’s “armed attack” is required as well; where an aggressor is physically incapable of fulfilling his threat of “armed attack,” one cannot say that an “armed attack” has occurred without rendering the phrase meaningless.\textsuperscript{327}

Alternatively, it could be argued that Iran’s anti-Israel terrorism has created a de facto state of war between the two countries such that Israel would be constrained not by the rules of anticipatory self-defense but by the rules of war.\textsuperscript{328} That Iran’s nuclear ambitions are directed in part at ratcheting up this very war lends further credibility to this view. Moreover, the force of

\textsuperscript{322} See Walzer, supra note 319, at 82–85 (covering details of the Six-Day War beyond the scope of this Article).


\textsuperscript{324} See Walzer, supra note 319, at 84 (discussing the atmosphere in Israel in the weeks leading up to war with Egypt).

\textsuperscript{325} Cf. Alon Ben-Meir, Outside View: Ominously Misguided, United Press Int’l, Oct. 31, 2005 (calling Ahmadinejad’s statement “tantamount to a declaration of war”).


\textsuperscript{327} Cf. McCormack, supra note 275, at 238 (discussing the view that Article 51 only permits force as self-defense to an “armed attack”).

\textsuperscript{328} This would hinge on the distinction between \textit{jus in bello} and \textit{jus ad bellum}. For further explanation of this argument, see Beres, Israel, Iran and Nuclear War, supra note 306, at 90.
Iran’s aggression—on display just this past summer in Lebanon—may be distinct enough to avoid creating troublesome precedent for situations in which the aggressor state’s terrorism is ambiguous or is less clearly directed at the defending state.\footnote{329}{Cf. McCormack, supra note 275, at 291 (noting that some scholars have argued that “it was not possible under Article 2(4) . . . to justify forceful measures on the basis of a continuing ‘state of war’ in the absence of a credible threat to the state’s sovereignty”).}

As a legal matter, however, the extent to which state-sponsored terrorism can establish a predicate for a state of war is seriously disputed.\footnote{330}{Roy S. Schondorf, Extra-State Armed Conflicts: Is there a Need for a New Legal Regime?, 37 N.Y.U. J. INT’L L. & POL. 1, 22–26 (2004).}

There is also the political reality that if Israel relies on a de facto state of war rather than on forestalling Iran’s nuclear progress, a missile strike on Iran could be viewed as a radical, indefensible escalation over its traditional reprisal against Iran’s proxies themselves.\footnote{331}{See generally Tal Becker, Terrorism and the State: Rethinking the Rules of State Responsibility 112–16 (2006) (discussing in detail the legality behind various state responses). After all, Israel never bombed Tehran even though it effectively directed this summer’s war on the Lebanese-Israeli border.}

In sum, the convergence of Iran’s pursuit of nuclear weapons with its anti-Israel aggression is insufficient to meet the bright line test for temporal imminence required by the Charter. The Charter’s singular focus on Iranian nuclear weapons capability at this exact cross-section of time—neglecting the impending point of no return and Iran’s anti-Israel aggression—fails to establish an immediate threat that is legitimately preventable. Contextualizing the threat within a longstanding state of war circumvents the obstacles posed by the law of anticipatory self-defense, but would cast an Israeli preventative strike as a radical escalation of that war.

B. John Yoo’s Probability/Magnitude Model

Professor Yoo took direct aim at the temporal imminence requirement for anticipatory self-defense when he formulated a balancing test that hinges on the probability of an attack, the degree to which such probability is increasing, and the magnitude of harm threatened.\footnote{332}{Yoo, supra note 275, at 751.} Yoo argues that this
reconceptualization of anticipatory self-defense will account for the realities of modern warfare, where rogue states can arm faster than ever before and single strikes can decimate a population. Particularly in light of the multipronged threat posed to Israel by a nuclear-armed Iran, Yoo’s model is perhaps the most permissive of an Israeli preventative strike.

Applying Yoo’s standard to the facts at hand, the probability of an Iranian nuclear attack on Israel is the hardest factor to measure. Of course, short of intervention to forestall Iran’s mastery of the nuclear fuel cycle, its possession of nuclear weapons is only a matter of time, and imminence is in any case not required in Yoo’s calculation. Yet the probability that Iran would launch nuclear warheads at Israel is not as high, no matter how genocidal Ahmadinejad’s rhetoric and no matter how much aggression Iran has shown Israel in the past. Assuming that Iran would be deterred at least to some extent by Israel’s nuclear weapons and those of its allies, the probability of a nuclear strike on Israel might best be judged as moderate to low.

By contrast, the probability that a nuclear-armed Iran would substantially ratchet up its anti-Israeli terrorism is exceedingly high. “Hamas needs Iran to pursue its goal of destroying Israel, while Iran needs Hamas to extend its sphere of influence,” a particularly dangerous alliance given Hamas’ recent ascension to control over the Palestinian Authority. The same concern arises out of Iran’s relationship with Hizbullah. Israel has not been able to deter Iranian-sponsored terrorism in the past, and its deterrent capabilities will only diminish once a nuclear-armed Iran is immune to invasion or even reprisal. There is also the possibility that Iran would arm its terrorist vassals with “dirty bombs,” though its probability is in dispute.

333. Id.
334. See id. at 753.
335. See Steinberg, supra note 270, at A12.
336. Susser, supra note 174, at 12.
337. See id.
338. Compare Posen, supra note 149 (noting the improbability of an arms race in Iran), with Graham Allison, Nuclear Dangers in the Middle East: Threats and Responses,
The analysis of the magnitude of harm thus becomes dual-pronged. The threat of a moderate to low probability nuclear attack poses the possibility of mass destruction even higher than the typical nuclear attack because of Israel's size and concentration.\textsuperscript{339} The higher probability threat of terrorism with impunity is less existential in nature, but would impose more of the very real harm that Iranian terrorism has already imposed on Israel over the years. Moreover, the likelihood of either threat materializing is increasing, given the international community's inability to reach a consensus on short-term measures to stop Iran from crossing the point of no return.

The Yoo model's higher tolerance for preventative action is based on the notion of regional stability as a public good.\textsuperscript{340} While the Charter is unconcerned with intangible geopolitical considerations, Yoo accounts for the possibility that a nuclear Iran could destabilize the Middle East, without firing a shot, by stirring up Shia minorities, starting an arms race and emboldening terrorist groups in the region.\textsuperscript{341} This consideration cannot stand alone because permitting every state challenged by the geopolitical ascendancy of its enemies a right of preventative action could cause more armed conflict than it would prevent.\textsuperscript{342} This is at best a third threat posed by a nuclear-armed Iran, one controversial in legal analysis, but nonetheless relevant.

In abandoning the Charter's temporal imminence rule, Professor Yoo acknowledges that its decision costs (to accurately identify threats) are low, but argues that its error costs (caused by failures to strike) are unacceptably high.\textsuperscript{343} He admits that his model increases decision costs by bringing probability and magnitude of harm into the analysis, but argues that it reduces error costs by preventing threats from materializing or by

\textsuperscript{339} Sneh, supra note 150.
\textsuperscript{340} Yoo, supra note 275, at 785–86.
\textsuperscript{341} See id. at 788.
\textsuperscript{342} See id. at 785–87. Yoo states that his model "promote[s] conduct that encourages stability-enhancing uses of force, rather than seeking to reach a zero level of violence." Id. at 786.
\textsuperscript{343} Id. at 759–61.
avoiding errant preventative strikes.\textsuperscript{344} The relevance of this methodology to Israel’s assessment of Iran’s nuclear progress is striking. Further, Yoo acknowledges the danger of giving individual nations the discretion to evaluate the threats they face, but hopes that nations will realize that sharing such discretion with others will result in a more legitimate and more accurate decision-making process.\textsuperscript{345} This is undoubtedly the weak link in his model because it provides no objective measure for exhaustion of non-force, consensus-based alternatives. Israel, for its part, has emphasized that it prefers a consensus among the EU3 and the United States on the nature of the Iranian threat to a unilateral assertion of Iran’s ulterior motives.\textsuperscript{346} Moreover, Israeli officials have been clear that a unilateral strike is their last preference,\textsuperscript{347} though this may have more to do with feasibility and avoiding back-end political fallout than with avoiding exploitation of the loophole in Yoo’s model.

C. Polebaum’s Reasonable Nation Standard

Starting from the premise that nations need a realistic standard of anticipatory self-defense, Polebaum argues that “[a] nation that reasonably determines that nuclear weapons are about to be used against it should be entitled to act upon that perception and defend itself.”\textsuperscript{348} She proposes a series of objective criteria to measure the reasonableness of a nation’s ex ante belief in the necessity of defensive action, criteria which constrain the discretion of the defending nation.\textsuperscript{349}

First, Polebaum requires a clear threat, of which the defending nation must be aware.\textsuperscript{350} Israel is acutely aware of the threat posed by Iran’s aggression against it, of the threats posed

\begin{itemize}
\item \textsuperscript{344} Id. at 760.
\item \textsuperscript{345} Id.
\item \textsuperscript{346} See Steinberg, supra note 270, at 3; Hilary Leila Krieger, Sharon: Israel ‘Can’t Accept’ a Nuclear Iran, JERUSALEM POST, Dec. 2, 2005, at 1 [hereinafter Krieger, Sharon].
\item \textsuperscript{347} See Krieger, Sharon, supra note 346, at 1.
\item \textsuperscript{349} Id. at 209.
\item \textsuperscript{350} Id. at 210.
\end{itemize}
by a nuclear Iran, and of the impending convergence between the two. Polebaum’s focus was on the threat of an actual nuclear strike, and not on nuclear-embroiled terrorism, yet she argues that the criteria are “general principles... applicable to a host of situations involving the threat of force.” Her language implies that the proportionality requirement, which she borrows from the Charter’s rule, is capable of bridging the conceptual gap between the threat of terrorism with impunity and the more conventional threat of an actual strike.

On this view, preventative strikes on nuclear facilities are justified as long as they are proportional to the specific threat posed by their completion. The preventative strike proposed here would not differ as between the two threats posed by a nuclear-armed Iran, insofar as a proportional Israeli strike, as planned, would do no more than forestall the point of no return past which both threats will inevitably materialize. Moreover, Israel is well aware of the hostility that any preventative strike would provoke and is unlikely to cause any more damage than necessary. Indeed, Israel took great care in its strike on Iraq’s nuclear reactors to abide by the proportionality requirement.

Second, Polebaum requires an ongoing evaluation of the technological credibility of the threat. Though the United

351. See Steinberg, supra note 270, at A12 (“The recent shrill statements by... Ahmadinejad threatening to ‘wipe Israel off the map’ and the cross-border attacks by Hizbullah, Iran’s Lebanon-based ally, have heightened awareness of the dangers [of Iran’s nuclear program].”). Polebaum notes that “past acts may indicate whether the threatening nation has shown a sufficient disregard for the threatened nation’s integrity and civilian life to persuade it to take the nuclear threats seriously.” Polebaum, supra note 348, at 210.

352. Polebaum, supra note 348, at 199.

353. Id. at 212 (“Proportionality must be measured not by the degree of force threatened, since the force proportionate to nuclear force is always excessive, but by the force needed to eliminate the danger.”).

354. See id. at 226.

355. See Abedin, supra note 290 (“[A military strike is unlikely because the Israelis know it would elicit a ferocious response from the Iranians.”).

356. Cf. McCormack, supra note 275, at 106 (discussing Israel’s strategic timing of a raid on Iraq to minimize resultant damage); Claire, supra note 290, at 198–99 (noting only one French fatality in the raid that was carried out on a Sunday to avoid more casualties).

357. See Polebaum, supra note 348, at 210–11.
States and Israel were once alone in distrusting Iran’s intentions for nuclear power, the world has increasingly come around to the belief that Iran is indeed seeking nuclear weapons. Furthermore, Israel’s intelligence agencies are sufficiently attuned to the Iranian threat that it would be able to wait out diplomatic alternatives without allowing Iran to cross the nuclear threshold. Finally, the Israeli personnel reportedly stationed at an American base on the Iraq/Iran border may be in a position to gauge which facilities of those spread across Iran pose the greatest technological threat.

Third, Polebaum evaluates whether the defending nation waited until the last possible moment to act preventively. The recent election of a hardline president who has threatened to annihilate Israel and the end of the diplomatic road without any international consensus on Iran are both perceptible changes in the status quo that suggest that the time to act may be now. While this criterion is necessarily backward-looking, in this context it appears to be satisfied by Israel’s assurances that it would not act until it believed Iran was about to cross the point of no return. Moreover, Israel has publicized the nature of the Iranian threat in order to stimulate action by the international community that would forestall the need for a preventative strike and is working closely with the United States to keep the issue on the diplomatic agenda.

The fourth objective criterion Polebaum offers is whether the defending nation exhausted alternative means of resolving the

358. Cf. IDF Forces Operating in Iran, supra note 59 (outlining worldwide response to Iran’s claims of nuclear program development).
360. See Report: IDF Forces Operating in Iran, supra note 59.
361. Polebaum, supra note 348, at 211.
362. Steinberg, supra note 270.
363. Id. ("[A] unilateral operation would only be launched as a last resort, when every other avenue has failed.").
364. Polebaum, supra note 348, at 210. Polebaum requires such publicization “so that the threatening nation’s intent can be debated in international fora and pressure exerted to defuse a nuclear crisis.” Id.
conflict. Though Israel cannot negotiate directly with Iran, it has made credible efforts to urge action by the United States, the EU3, and the Security Council. Israel has also negotiated directly with Iran’s nuclear patron, Russia. While these non-force alternatives have only given Iran more time to become a self-sufficient nuclear power, Israel has steadfastly maintained that it will wait them out as long as is possible.

Like Professor Yoo, Polebaum’s standard distinguishes itself from the Charter by taking account of threats to regional stability, a relevant consideration given that, as noted above, Iran could use nuclear weapons to its regional advantage without ever arming a warhead. Moreover, although Israel’s fear of a nuclear Iran cannot be divorced from its historical (but fading) role as a pariah in the Middle East, it appears that Israel can satisfy Polebaum’s objective criteria without resort to “factors such as national ideology, psychological motives, or unique historical experience . . . .” Rather, the threat that Iran poses to Israel is “objectively verifiable” by the international community—perhaps accounting for the particularly broad condemnation of Ahmadinejad’s verbal threat—and the only difference remaining between Israel and the EU3 is over the

366. Polebaum, supra note 348, at 212.
367. See, e.g., David E. Sanger, Sharon Asks U.S. to Pressure Iran on Nuclear Arms, N.Y. TIMES, Apr. 13, 2005, at A1 (hereinafter Sanger, Sharon Asks U.S.) (reporting that Israeli Prime Minister Ariel Sharon urged President Bush “to step up pressure on Iran.”).
368. Herb Keinon, Russia: Iran Not a Nuclear Threat, JERUSALEM POST, Oct. 27, 2005, at 2 (“While Israel and the US [sic] are interested in seeing the Iranian question taken to the U.N. Security Council for possible sanctions as soon as possible, [Foreign Minister Sergei] Lavrov made it clear that Moscow was in no great hurry.”). Polebaum sets a very high bar here, criticizing Israel for not delaying its 1981 preventative strike on Iraq in order to consult the new President of France to detect an impending policy change with respect to his country’s support of Iraq’s nuclear efforts. Polebaum, supra note 348, at 225–26. However, despite Israel’s efforts in this regard vis-à-vis Iran, Russia has insisted on moving ahead with its sponsorship of the Iranian program. See Zahedi & Memarian, supra note 218, at A31.
369. See Krieger, Sharon, supra note 346 (Prime Minister Ariel Sharon stated, “[B]efore exercising [military force,] every attempt should be made to pressure Iran into stopping its activity.”).
370. Polebaum, supra note 348, at 214.
371. Id. at 212.
372. Id.
viability of options besides force.

Given its specific focus on nuclear threats, Polebaum’s standard encompasses many of the circumstances of this conflict, grafting an objective reasonableness inquiry onto the narrow imminence/alternative means/proportionality inquiry of traditional international law while relaxing these criteria far less than Professor Yoo. And although second-strike capability may be of no help to Israel, its inclusion as a factor in the Polebaum analysis gives the analysis more backing against those who see Israel as the nuclear aggressor in the Middle East. Moreover, rather than simply hoping that threatened nations will share their discretion to preventatively strike with a broader coalition (as Professor Yoo does), Polebaum puts internal, objective limitations on that discretion, and so it is perhaps reassuring that her standard would endorse an Israeli preventative strike.

VI. CONCLUSION

The facts behind Iran’s nuclear program demonstrate that Iran is on the path to nuclear weapons. Once Iran masters the nuclear fuel cycle, the so-called “point of no return,” this path will be irreversible. A nuclear-armed Iran would change the landscape of anti-Israel aggression in the Middle East by posing two concrete threats: the existential threat of a nuclear strike and the threat of an undeterrable and relentless escalation in anti-Israel terrorism. As the country most threatened by Iran’s ascension to the nuclear club, Israel has steadfastly supported negotiations, sanctions, and regime change as solutions to the crisis, but may soon have to consider the use of force in order to protect itself.

International efforts to stop Iran have ignored the point of no return, relying instead on strategies that offer, at best, the possibility for results in the long term. A preventative strike, by contrast, could forestall nuclear progress in the short term, with little or no guarantees in the long term. Force may simply be the only way to give other avenues the time to work without making a nuclear-armed Iran a foregone conclusion.

Rather than prescribe a new standard for anticipatory self-defense, this Article has evaluated the legality of a hypothetical
Israeli strike using existing standards, affording the opportunity for a useful, if limited, commentary on them. The Charter seems ill-equipped to deal with the nuclear paradigm, in which rogue states can convert rhetoric into concrete threats overnight. Therefore, some believe that for nations like Israel to adhere to traditional international law in this context would be suicidal. Professor Yoo’s balancing test perhaps overcompenses, however, putting no external, objective constraints on a nation’s discretion to preventatively defend itself. The Polebaum reasonable nation standard constrains that discretion but may be so objective as to strip individual nations of their ability to evaluate threats from their own perspective, isolated from the international politics attendant to threat evaluation. Perhaps the right balance is to leave more room for a subjective perspective while punishing those nations whose perspectives are deemed objectively unreasonable after the fact. Under such a standard, Israel could act based on its perception of the Iranian threat, but would be held accountable if an ex post, objective analysis of its perception found the threat insufficient to legitimize the extreme precaution of a preventative strike.

Perhaps relying on a similar analysis, the Bush Administration has noted that Israel may be required to act in its own defense against Iran—to the benefit of all states that oppose nuclear weapons for Iran—despite the “diplomatic mess” that would have to be cleaned up afterwards. Were Israel to act preventatively, should it be forced to do so under a veil of illegitimacy? In spite of—or perhaps because of—the inclination of some that Israel should protect itself without regard to the law, international law will lose currency if it fails to comport with commonly-held expectations of a state’s right to defend

373. See Yoo, supra note 275, at 756, n.84 (making this argument and citing other authors in support).


itself. Any reevaluation of anticipatory self-defense principles in the wake of an Israeli strike on Iran should therefore strive to reduce armed conflict while offering states a credible and realistic way to defend themselves preventatively.

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377. Yoo supra note 275, at 730–31 (scholarly machinations notwithstanding). Professor Yoo criticizes scholars who “attempt to fold armed conflicts into an evolving system of law . . . .” Id. Polebaum argues that “[i]nternational law should seek to establish rules to guide future crises; it should not merely evolve in their wake.” Polebaum, supra note 348, at 208.