

1995

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Recommended Citation

Louis R. Beres and Zalman Shoval, On Demilitarizing a Palestinian "Entity" and the Golan Heights: An International Law Perspective, 28 *Vanderbilt Law Review* 959 (2021)
Available at: <https://scholarship.law.vanderbilt.edu/vjtl/vol28/iss5/1>

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VANDERBILT JOURNAL OF TRANSNATIONAL LAW

VOLUME 28

NOVEMBER 1995

NUMBER 5

On Demilitarizing a Palestinian “Entity” and the Golan Heights: An International Law Perspective

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*Zalman Shoval***

ABSTRACT

*With the signing of the Oslo II Accord*** at the White House on September 28, 1995, Israel and the Palestine Liberation Organization codified the expansion of Palestinian self-rule in Judea and Samaria. Authors of this Accord argue that the security risks to Israel from the nascent Palestinian state could be reduced through appropriate forms of demilitarization. Similar arguments are being offered in relation to the Golan Heights, a strategic plateau currently in dispute between Israel and Syria. In this very timely and important Article, Professor Beres and Ambassador Shoval examine demilitarization in both contexts. They conclude,*

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*** Oslo II was signed at the White House on September 28, 1995. Oslo I was signed at the same venue on September 13, 1993. Together, they comprise the core of what has generally been described as the “Middle East Peace Process.”

jurisprudential assurances notwithstanding, that Israel would face substantial dangers from a demilitarized "Palestine" and from a demilitarized Golan.

The authors begin by discussing the hidden dangers to Israel of entering into an agreement that would create a demilitarized, independent Palestinian state. The authors argue, inter alia, that a demilitarized Palestine would be vulnerable to attacks from militant Islamic factions from within and outside its borders. Under such circumstances, the new Palestinian government could be within its rights, under international law, to disregard any demilitarization agreement. In the end, the authors argue, the newly formed Palestinian government could even be forced to ask Israel to reenter and defend Palestine, ironically embroiling Israel in a potentially catastrophic war.

Professor Beres and Ambassador Shoval also discuss the Israeli government's announced willingness to consider withdrawal of its troops from the Golan Heights. The authors argue that such a withdrawal could be disastrous to the security of Israel. By transferring the Golan to Syria, Israel would be sacrificing a crucial early-warning and defense posture to any future Syrian attack. The authors conclude that, in order to secure the safety of the Jewish state, the government of Israel must avoid placing faith in any demilitarization agreements that would require the surrender of strategically important Israeli territory to enemies of Israel.

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I. WHY A DEMILITARIZED PALESTINIAN "ENTITY" WOULD NOT REMAIN DEMILITARIZED

Now that an agreement on expanding Palestinian autonomy is being implemented,¹ attention will be focused on the alleged

1. Some pertinent background documents to the Oslo I Agreement (September 13, 1993) include: Palestine Partition Plan, G.A. Res. 181 (II), U.N. GAOR, 2d Sess., at 131, U.N. Doc. A/519 (1947); G.A. Res. 194(III), 3 U.N. GAOR, pt. 1, at 21, U.N. Doc. A/810 (1948); S.C. Res. 242, U.N. SCOR, 22d Sess., 1382d mtg. at 8, U.N. Doc. S/INF/22/Rev.2 (1967); *Joint U.S.-U.S.S.R. Working Paper, Fundamental Principles* (The Rogers Plan, October 28, 1969), in

advantages, for Israel, of *demilitarization*. Would a demilitarized Palestinian "entity" located in Judea/Samaria (West Bank) and Gaza represent a serious security threat to Israel? Not at all, say supporters of this remedy to a seemingly endless intercommunal conflict. Surely, argue proponents of this position, such an entity would likely be the weakest military force on earth.

From a purely tactical and political perspective, the fragility of this argument is well-known. The hidden dangers of demilitarization are clear and compelling. As a Palestinian entity emerges in these lands, its threat to the Jewish state will lie not only in the presence or absence of a national armed force, but also in the many other Arab/Islamic armies and terrorists² that will inevitably compete for power in the newly organized state.

But there is another reason why a demilitarized nucleus of "Palestine" would present Israel with a substantial security threat: international law would not necessarily require Palestinian compliance with agreements concerning armed force. From the standpoint of international law, enforcing demilitarization upon any form of a sovereign Palestine would be problematic. As an "autonomous" entity, Palestine might not be bound by any preindependence compacts, even if these agreements included U.S. guarantees. Because treaties can be binding only upon states,³ an agreement between a nonstate Palestinian Liberation

INSTITUTE FOR PALESTINE STUDIES, PALESTINIAN-ISRAELI PEACE AGREEMENT: A DOCUMENTARY RECORD (1994); S.C. Res. 338, U.N. SCOR, 28th Sess., 1747th mtg., at 10, U.N. Doc. S/INF/29 (1973).

2. Terrorism is a "conglomerate" crime under international law. For current conventions in force on this crime, see Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents, Dec. 14, 1973, 28 U.S.T. 1975, 1037 U.N.T.S. 167; Vienna Convention on Diplomatic Relations and Optional Protocol on Disputes, Apr. 18, 1961, 23 U.S.T. 3227, 500 U.N.T.S. 95; Convention on Offenses and Certain Other Acts Committed on Board Aircraft, Sept. 14, 1963, 20 U.S.T. 2941, 704 U.N.T.S. 219; Convention for the Suppression of Unlawful Seizure of Aircraft, Dec. 16, 1970, 22 U.S.T. 1641, 860 U.N.T.S. 105; Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, Sept. 23, 1971, 24 U.S.T. 564, 974 U.N.T.S. 177, *reprinted in* 10 I.L.M. 1151; International Convention Against the Taking of Hostages, *opened for signature*, Dec. 17, 1979, T.I.A.S. No. 11,081, 18 I.L.M. 1456; and European Convention on the Suppression of Terrorism, *opened for signature*, Jan. 27, 1977, Europ. T.S. No. 90, 15 I.L.M. 1272 (entered into force Aug. 4, 1978).

3. A treaty is always an international agreement "concluded between states . . ." Vienna Convention on the Law of Treaties, May 23, 1969, art. 2(1)(a), 1155 U.N.T.S. 331, 8 I.L.M. 679 [hereinafter Vienna Convention]. For the requirements of statehood under international law, see Convention on the Rights and Duties of States, Dec. 26, 1933, art. 1, 49 Stat. 3097, 165 L.N.T.S. 19.

Organization (P.L.O.)⁴ and one or more states would have no real authority and little real effectiveness.⁵

But what if the government of an emergent Palestine *were* willing to consider itself bound by the prestate, nontreaty agreement (i.e., were willing to treat this agreement as if it were an authentic treaty)? Even in these relatively favorable circumstances, the new government would have ample pretext to identify various grounds for lawful treaty termination. It could, for example, withdraw from the "treaty" because of what it regards as a "material breach," a violation by any of the other state parties that undermines the object or purpose of the treaty. Or it could point toward what international law calls a "fundamental change of circumstances" (*rebus sic stantibus*).⁶ In this connection, if a small but expanding Palestine declares itself vulnerable to previously unforeseen dangers—perhaps from the forces of other Arab armies—it could *lawfully* end its codified commitment to remain demilitarized.

There is another method by which a treaty-like arrangement obligating a new Palestinian entity to accept demilitarization could quickly and *legally* be invalidated after independence. The usual

4. See Convention on the Rights and Duties of States, *supra* note 3, art. 1. See generally *Klinghoffer v. S.N.C. Achille Lauro*, 739 F. Supp. 854 (S.D.N.Y. 1990) (discussing the P.L.O.'s status as a state). In seeking a favorable classification for litigation in *Klinghoffer*, the P.L.O. requested that the court accept its self-description as a state. *Id.* at 858. More precisely, the P.L.O. characterized itself as "the nationhood and sovereignty of the Palestinian people . . ." *Id.* at 857. The court, however, found the P.L.O. to be an "unincorporated association." *Id.* at 858. It determined that the P.L.O. lacked the key elements of statehood as articulated by long-settled norms of international law. *Id.* (citing *National Petrochemical Co. of Iran v. M.T. Stolt Sheaf*, 860 F. 2d 551, 553 (2d Cir. 1988), *cert. denied*, 489 U.S. 1091 (1989) and quoting RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES, § 201 (1987)).

5. Technically, an agreement on demilitarization under international law must always be "between states." Hence, any agreement on demilitarization that would include a nonstate party would be *prima facie* null and void. See, e.g., Karl Liko, *Demilitarized Zone*, in 2 INTERNATIONAL MILITARY AND DEFENSE ENCYCLOPEDIA 736, 736 (Trevor N. Dupuy ed., 1993) (defining "demilitarized zone" as "a term used in international law to designate an area in which, according to a formal treaty or an informal agreement *between states*, the maintenance of military forces and installations is prohibited." (emphasis added)).

6. Defined literally as "so long as conditions remain the same," the doctrine of *rebus sic stantibus* has a long history. For an informed scholarly treatment of this doctrine, see generally ARIE E. DAVID, *THE STRATEGY OF TREATY TERMINATION* 3-55 (1975). In the traditional view, the obligation of a treaty terminates when a change occurs in those circumstances that existed at the effective date of the agreement and the continuance of which formed a tacit condition of the on-going validity of the treaty. *Id.* The function of the doctrine therefore is to execute the shared intentions of the parties. *Id.* *Rebus sic stantibus* becomes operative when there is a change in the circumstances that formed the cause, motive, or rationale of consent. *Id.*

grounds that may be invoked under domestic law to invalidate contracts also apply under international law to treaties. This means that the new Palestinian state could point to *errors of fact* or to *duress* as perfectly appropriate grounds for terminating the agreement.

Moreover, any treaty is void if, at the time it was entered into, it conflicted with a "peremptory" rule of general international law (*jus cogens*)—a rule accepted and recognized by the international community of states as one from which "no derogation is permitted."⁷ Because the right of sovereign states to maintain military forces essential to "self defense"⁸ is certainly such a peremptory rule,⁹ Palestine, depending upon its particular form of authority, could be entirely within its right to abrogate any treaty that had compelled its demilitarization.

Thomas Jefferson, an early President of the United States who had read Epicurus, Cicero, and Seneca, as well as Voltaire, Montesquieu, Holbach, Helvetius, and Beccaria (and who became something of a *philosophe* himself), wrote the following about obligation and international law:

The Moral duties which exist between individual and individual in a state of nature, accompany them into a state of society & the aggregate of the duties of all the individuals composing the society constitutes the duties of that society towards any other, so that between society & society the same moral duties exist as did between the individuals composing them while in an unassociated state, their maker not having released them from those duties on their forming themselves into a nation. Compacts then between nation & nation are obligatory on them by the same moral law which obliges individuals to observe their compacts. There are circumstances however which sometimes excuse the non-

7. See Vienna Convention, *supra* note 3, art. 53. Even a treaty is subordinate to peremptory expectations: "A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law." *Id.*

8. This right extends to both the customary right of anticipatory self-defense and to the codified right of post-attack self-defense. Regarding the right of anticipatory self-defense, states do not always have to wait until after an attack is absorbed before embarking upon self-defense. See *infra* note 44 (anticipatory self defense). Rather, where the threat is sufficiently imminent in point of time, they can choose to strike first, provided, of course, that the strike is within the parameters of discrimination, proportionality, and military necessity. *Id.* Regarding the codified right of post-attack self-defense, see U.N. CHARTER, art. 51.

9. One theory is that any treaty obligation may be terminated unilaterally following changes in conditions that make performance of the treaty injurious to fundamental rights, especially the rights of existence, self-preservation, and independence. Some areas of law summarize these rights as "rights of necessity." See DAVID, *supra* note 6, at 19. See generally LAW OF TREATIES, art. 28 Doctrine section, in 29 AM. J. INT'L L. 653, 1100-02 (Supp. 1935) (presenting the doctrinal background for article 28, entitled "Rebus Sic Stantibus," in this draft convention prepared for the codification of international law).

performance of contracts between man & man: so are there also between nation & nation. When performance, for instance, becomes *impossible*, non-performance is not immoral. So if performance becomes *self-destructive* to the party, the law of self-preservation overrules the laws of obligation to others.¹⁰

Here it must also be remembered that, historically, demilitarization is a principle applied to various "zones,"¹¹ not to the entirety of still-emergent states.¹² Hence, a new state of Palestine might have yet another legal ground upon which to evade compliance with preindependence commitments to demilitarization. It could be alleged, *inter alia*, that these commitments are inconsistent with traditional bases of authoritative international law—bases found in treaties and conventions, international custom, and the general principles of

10. Thomas Jefferson, *Opinion on the French Treaties (April 28, 1793)*, in THE POLITICAL WRITINGS OF THOMAS JEFFERSON 113-14 (Merrill D. Peterson ed., 1993). Later, Jefferson concludes:

As every treaty ought to be made by a sufficient power, a treaty pernicious to the state is null, & not at all obligatory; no governor of a nation having power to engage things capable of *destroying* the state, for the safety of which the empire is trusted to him. The nation itself, bound necessarily to whatever its preservation & safety require, cannot enter into engagements contrary to it's [sic] indispensable obligations.

Id. at 115.

11. For a source containing detailed provisions on demilitarized zones, see Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, *opened for signature* Dec. 12, 1977, 1125 U.N.T.S. 3, 16 I.L.M. 1391 (Protocol I).

12. Examples of demilitarized zones appear throughout history. See Liko, *supra* note 5, at 736-37. In 348 B.C., a treaty between Rome and Carthage included a provision for neutralization of Corsica, a neutral zone "in the middle." *Id.* ("*Corsica esset media inter Romanos et Carthaginenses.*"). The Treaty of Radzin in 1681 between the Russian and Ottoman empires created a vast buffer zone between both parties south of Kiev. *Id.* at 737. More modern forms of demilitarization were developed in the 19th century from measures that prohibited fortifications in designated areas, normally imposed by the victor upon the vanquished. *Id.* After World War I, as a consequence of the Versailles Treaty, Germany had to demilitarize the Rhineland. *Id.* Permanent demilitarized zones have been created in the Straits of Magellan (by the border treaty of 1881 between Argentina and Chile); in the Aaland Islands belonging to Finland (according to the Aaland Islands Convention of 1921 between Finland, Sweden, and other European powers); and in Norway's Svalbard Archipelago and Bear Island (by terms of the Svalbard (Spitsbergen) Treaty of 1920 between a number of states, including Norway, the United States, and the former Soviet Union). *Id.* The Outer Space Treaty of 27 January 1967 demilitarized the moon and other celestial bodies (prohibiting the stationing and the testing of nuclear weapons and other weapons of mass destruction). *Id.* Antarctica was demilitarized by the Antarctic Treaty of 1 December 1959. *Id.*

law recognized by "civilized nations,"¹³—and that therefore they are commitments of no binding character.

It follows from all this that Israel should take little comfort from the *legal* promise of Palestinian demilitarization, whether in Gaza/Jericho or in the territories generally.¹⁴ Indeed, should the government of a Palestinian entity choose to invite foreign armies or terrorists onto its territory (possibly after the original government authority is displaced or overthrown by more militantly Islamic, anti-Israel forces), it could do so without practical difficulties and without necessarily violating international law. Ironically, if the original P.L.O. government of Palestine perceived a threat of aggression¹⁵ from outside Arab forces, demilitarization could result in Palestine inviting Israel to protect the new Arab state from mutual enemies.

The prospect of such an invitation is not as strange as it seems. Because acceptance of such an invitation could likely be perceived by Israel as being in its own best interests, Jerusalem's requested military involvement in "Palestine" could likely occur. Significantly, this involvement could bring Israel into a much wider and potentially catastrophic war, which is exactly the intolerably dangerous kind of condition that a demilitarized Palestinian entity would be intended to prevent in the first place. If such an outcome results from the Israeli attempt to stabilize a new and demilitarized Arab neighbor, it would add yet another irony to the tragedy, a tragedy based in part upon a misunderstanding of pertinent international law. In the final analysis, of course, the overriding danger to Israel of Palestinian demilitarization is more practical than jurisprudential and stems from Israel's self-inflicted abrogation of its own critical security role in essential territories.

13. These authoritative bases of international law are drawn, of course, from Article 38 of the Statute of the International Court of Justice, June 26, 1945, 59 Stat. 1055, T.S. No. 993.

14. A related demilitarization issue, as this article will now demonstrate, concerns disposition of the Golan. Israel could decide to return the strategically important heights on condition of Syrian demilitarization. Here the legal meaning of "demilitarization" would be more traditional than in its use regarding concessions by a still nonexistent state (Palestine), but the consequences of a Golan demilitarization could be no less injurious to Israel.

15. See Resolution on the Definition of Aggression, G.A. Res. 3314, U.N. GAOR, 29th Sess., Supp. No. 31 at 142, U.N. Doc. A/9631 (1974), *reprinted in* 13 I.L.M. 710 (1974).

II. WHY GOLAN DEMILITARIZATION WOULD NOT WORK

The Rabin government is currently considering a withdrawal from the Golan Heights in order to reach a peace agreement with Syria.¹⁶ Such a withdrawal, from an area less than one percent of Syria's total size, would leave the northern region of Israel open to Syrian, Iraqi, or Iranian invasions through the Jordan Valley.¹⁷ Moreover, such a withdrawal would destroy and uproot thirty-two Golan Jewish communities and threaten a third of Israel's water supply.¹⁸

Leaving aside the importance of the Golan in Jewish history,¹⁹ the immediate issue is one of *security*. In this connection, a number of remedies are proposed to compensate Israel for "returning" the Golan to Syria, such as providing Israel with a broad variety of technical means, with U.S. military presence in the area, or both. Thus, the quid pro quo for Israel here is, in essence, a *demilitarization* of the plateau, which is roughly the size of New York City's borough of Queens. The problem with such demilitarization, as with the previously discussed demilitarization proposals for a Palestinian state, is that it would not work. Unlike the problem of Palestinian demilitarization, however, the issue here has nothing to do with the transforming "legal personality"²⁰ of one of the parties (as states, both parties to a Golan withdrawal agreement would, of course, possess full legal personality), but rather with more traditional concerns over the obligations of "good faith" (*pacta*

16. Before the general election in 1992, Yitzhak Rabin said, "It is inconceivable that we withdraw from the Golan Heights even in peace. [Anyone] who considers withdrawing from the Golan Heights forsakes the security of Israel." See GOLAN SETTLEMENTS COMMITTEE, *THE GOLAN COMMUNITIES 2* (May 1994) (local publication from Qazrin, Israel; copy on file with authors).

17. *Id.*

18. *Id.* (section entitled "Security * Water * Communities").

19. For a very complete discussion of the historically Jewish character of the Golan, see Erich Isaac, *The Golan in Jewish History*, *OUTPOST*, June 1995, at 3. In the course of recorded history, more than 60 assaults on the Land of Israel west of the Jordan were launched from, or through, the Golan. *Id.* The Golan, the name of a town in the Bashan (today Sahm el Jaulan), was a part of the "Promised Land" divided among Gad, Reuben, and the half-tribe of Menasseh. *Id.* at 4.

20. Legal personality is the authoritative capacity that accompanies certain entitlements and obligations under international law. See Convention on the Rights and Duties of States, *supra* note 3 (concerning the status of states as international persons, and setting forth, as the name indicates, some of the rights and duties of states). Such personality is a property of states and of certain international organizations, nongovernmental organizations, and corporations within a state. See, e.g., Convention on the Privileges and Immunities of the United Nations, Feb. 13, 1946, art. 1, 21 U.S.T. 1418, 1 U.N.T.S. 15 (stating that the "United Nations shall possess juridical personality").

sunt servanda)²¹ and associated issues of enforcement. Further, the problem of Golan demilitarization stems, in part, from the predictable shortcomings of international guarantees in a world where the very idea of an "international community" is self-contradictory.²²

A Golan agreement with Syria could permit Israel to operate its essential early-warning stations. Syria has repeatedly objected to this, but, in any case, these facilities would not be an adequate substitute for an effective defense. Moreover, in order to get such permission, Syria might be offered certain reciprocal ground station opportunities.²³ Indeed, in July 1995, Prime Minister Rabin offered the Syrians stations of their own within pre-1967 Israel as compensation.²⁴

For real security, the Israel Defense Force (IDF) must retain its positions on the Golan for constant surveillance of the Syrian army.²⁵ Pre-1967 warning stations do not have a clear line of sight deep into Syrian territory.²⁶ Not surprisingly, a large number of former Israeli intelligence officers, regardless of party affiliation, oppose any Israeli dependence upon third parties for information concerned with survival decisions.²⁷ A demilitarized Golan with early warning based upon an expanded United States role or even the most technologically advanced systems, including satellites, or both, would not be enough.²⁸ In the event of a warning failure, which is always possible (e.g., the 1973 Yom Kippur aggression), Syrian tanks might proceed into Israel unopposed.²⁹

What about U.S. troops on a demilitarized Golan? Stationed in a very small area, such deployment would likely place U.S. troops in grave danger from well-armed terrorists and proxies of

21. See Vienna Convention, *supra* note 3, art. 26 ("Pacta Sunt Servanda: Every treaty in force is binding upon the parties to it and must be performed by them in good faith.").

22. Consider, for example, the reactions of the "international community" in Rwanda and Bosnia.

23. The Syrians are certainly aware that Israel gave up its early-warning station in Sinai, at Umm Khashiba, moving all its facilities into the Negev. Now, some 16 years after the Treaty of Peace, March 26, 1979, Egypt-Israel, 18 I.L.M. 362 [hereinafter Peace Treaty-1979], the Syrians do not want to settle for less than did the Egyptians.

24. See Dore Gold, *Forewarned is Forearmed*, JERUSALEM POST, INTERNATIONAL EDITION, July 29, 1995, at 7.

25. See generally *id.* (discussing and evaluating Israel's security options).

26. *Id.* (providing a visual aid for understanding the terrain).

27. *Id.*

28. Cf. *id.* (demonstrating why various alternatives fall short of Israeli national security needs).

29. See *id.*

hostile regimes. United States forces probably would be drawn into both inter-Arab and Arab-Israeli disputes. Soon thereafter, the United States public would demand the return of its soldiers. Further, Israel's military dependence upon the United States would likely grow to unmanageable levels. Syria might come to view such a strong U.S. presence as an affront to its own sovereignty. In that event, President Assad or his successor could be expected to push for removal of U.S. forces, a demand similar to Egypt's³⁰ 1967 demand for U.N. withdrawal from the Sinai³¹—the demand that led to the Six-Day War.³²

For these reasons, as well as the aforementioned liabilities of early-warning systems in the hands of non-Israelis, a demilitarized Golan could not assure Israel's basic security. According to a recent statement by four retired Israeli generals,

Israel's presence on the Golan Heights constitutes the optimal strategic balance with Syria and insurance against a massive

30. Egypt, of course, entered into a formal treaty of peace with Israel in 1979. Peace Treaty-1979, *supra* note 23. Contrary to widespread belief, however, and potentially pertinent to the present consideration of an Israel-Syria agreement on disposition of the Golan, this treaty does not constrain Egypt from joining other Arab states against the Jewish state. A minute to Article VI, paragraph 5, of the Israel-Egypt Peace Treaty provides: "It is agreed to by the Parties that there is no assertion that this Treaty prevails over other treaties or agreements or that other Treaties or agreements prevail over this Treaty." *Id.* Minute to Art. VI(5), 18 I.L.M. at 392.

31. After the withdrawal of the U.N. Emergency Force, *The Voice of the Arabs* proclaimed, on May 18, 1967, "As of today, there no longer exists an international emergency force to protect Israel. We shall exercise patience no more. We shall not complain any more to the [U.N.] about Israel. The sole method we shall apply against Israel is total war, which will result in the extermination of Zionist existence." See ISI LEIBLER, *THE CASE FOR ISRAEL* 60 (1972) cited in MITCHELL G. BARD & JOEL HIMELFARB, *MYTHS AND FACTS: A CONCISE RECORD OF THE ARAB-ISRAELI CONFLICT* 62 (1992). Two days later, an enthusiastic echo came from Hafez Assad, then Syria's Defense Minister and now the President to whom Rabin would surrender the Golan Heights: "Our forces are now entirely ready . . . to initiate the act of liberation itself, and to explode the Zionist presence in the Arab homeland The time has come to enter into a battle of annihilation." *Id.*

32. On May 15, 1967, Israel's 19th Independence Day, then Chief of Staff, Lt. General Yitzhak Rabin, now Prime Minister, forecast years of quiet for the State of Israel. See CHAIM HERZOG, *THE ARAB-ISRAELI WARS* 149 (1982) (recounting chronological events). Only two days later, however, Egypt's President Nasser proceeded to move large forces through Cairo en route to Sinai. *Id.* Within a few days, by May 20, 1967, approximately 100,000 Egyptian troops, organized in 7 divisions, together with 1,000 tanks, were concentrated along Israel's southwestern border. *Id.* On May 17th, Nasser demanded the withdrawal of the United Nations Emergency Force, and the U.N. Secretary-General, U Thant, acceded to the request two days later. *Id.* For an account of chronological events from the perspective of the United Nations, see *RESOLUTIONS AND STATEMENTS OF THE UNITED NATIONS SECURITY COUNCIL (1946-1989)* at 446 (Karel C. Wellens ed., 1990).

Syrian attack. The IDF's proximity to Damascus is also a guarantee against a Syrian missile launch into Israel's rear. Any change in this balance would lessen Israel's deterrent against potential Syrian aggression and jeopardize the quiet and stability that have characterized the Golan since 1974.³³

As for the use of U.S. troops:

Involving [U.S.] troops on the Golan Heights, whether as "monitors" or "peace keepers" or in some other role, would be a blunder. The Golan Heights is entirely unlike the broad, empty Sinai Desert, in which [U.S. forces] currently participate in the Multinational Force Organization.³⁴

The Golan, which ranges up to a height of 2,300 feet, dominates the Jordan Valley, the lowest point on earth. On this strategic plateau, there are only two natural terrain bottlenecks. The choke points are defensible. But, with the Golan in Syrian hands, however "demilitarized," thousands of enemy tanks, backed by missiles and aircraft, could still overrun Israel.³⁵ This could be the case even if, in the best case demilitarization scenario, Israel were allowed to operate its own early-warning assets, which is a highly improbable scenario.³⁶

Finally, any Israeli agreement to Golan demilitarization would be exceedingly problematic under Israeli law. In 1981, the

33. STATEMENT: ISRAELI (RES.) GENERALS VIEW SECURITY ISSUES (July 17, 1995) (prepared statement; copy on file with authors) [hereinafter STATEMENT]. This July 17, 1995 statement delivered at a Washington, D.C. conference was signed by Major General (res.) Yehoshua Sagui, Admiral (res.) Micha Ram, Brigadier General (res.) David Hagoel, and Brigadier General (res.) Aharon Levran. *Id.* For further details concerning this conference, attended by retired U.S. and Israeli generals, see *U.S. and Israeli Military Experts Skeptical of High Tech Solutions for Israeli Security*, SECURITY AFF., Aug./Sept. 1995, at 4.

34. STATEMENT, *supra* note 33.

35. Regarding Syria's overall military capability, Damascus possesses more chemical warheads (primarily nerve gas) than any other state in the region. *Syria's Puzzling Drive*, JERUSALEM POST (International Edition), June 10, 1995, at 10 (editorial). Syria also maintains a sophisticated delivery system, including Sohoi-22, Sohoi-24, and MiG-23 bombers designed to carry chemical bombs, and 100-200 warheads for Scud-B missiles. *Id.* Recently, Syria began to produce long-range Scud-C missiles, and it may already have begun production of M-9 missiles, in cooperation with North Korea, Western, and Iranian sources. *Id.*

36. See, for example, the statement by Major General (res.) Shlomo Gazit, *The Real Red Line*, JERUSALEM POST (International Edition), June 17, 1995, at 12. Gazit is the former Chief of the IDF Intelligence Branch and currently a senior research fellow at Tel Aviv University's Jaffee Center for Strategic Studies. According to Gazit, the threat of a Syrian military offensive can be overcome only if "over the course of time, Israel maintains its absolute deterrent power, even after an agreement is signed and implemented." *Id.* Further, another condition is "the preservation of Israel's deterrent intelligence capability. As long as there are no credible substitutes—airborne, satellite, or inside Israeli territory—we cannot give up manning warning stations located on 'sovereign' Syrian soil." *Id.*

Knesset³⁷ adopted a revised penal code.³⁸ Chapter 7, titled "Security of the State, Foreign Relations and Official Secrets," includes paragraphs that were incorporated verbatim from earlier revisions of the penal code adopted in 1957.³⁹ Paragraph 97b reads as follows: "Anyone who does something with the intention of removing territory from the sovereignty of the state or making that territory part of the sovereignty of a foreign state or has performed an act that is likely to bring this about—the penalty is death or life imprisonment."⁴⁰

The Golan Plateau (unlike Judea and Samaria, which, except for eastern Jerusalem and its environs, were never incorporated into Israel) is an integral part of Israel's sovereign territory, annexed by the Knesset on December 14, 1981.⁴¹ The Law of Ramat HaGolan, adopted on that date, says: "The law and jurisdiction and administration of the state will apply to the territory of Golan."⁴² When certain Israeli opponents of the annexation argued that application of Israeli law did not apply sovereignty, the Israeli Supreme Court ruled against them.⁴³ The Court stated: "Wherever in the law it says Israel or the state of Israel, Ramat HaGolan is included."⁴⁴

Demilitarization, both of the emerging Palestinian state and the Golan Heights, can never be consistent with Israel's compelling security needs. From the standpoint of international law,⁴⁵ both expressions of demilitarization would cause great

37. The Knesset is Israel's parliament.

38. Rael Jean Isaac & Erich Isaac, *Should None Dare Call It Treason?*, *OUTPOST*, Dec. 1994, at 3, 4.

39. *Id.*

40. *Id.* This means, *inter alia*, that Rabin's intention to give up the Golan to Syria could be in violation of Israeli law. See *id.* at 3-4. Moreover, in providing the death penalty, in a state that has virtually no death penalty (except for Nazi war criminals), Israeli law now recognizes such treason as the most serious of transgressions.

41. *Id.* at 4.

42. *Id.*

43. *Id.*

44. *Id.*

45. From this jurisprudential standpoint, Israel always retains, *inter alia*, as does every other state in world politics, the long-standing right of recourse to anticipatory self-defense. On this right, see Louis René Beres & Yoash Tsiddon-Chatto, *Reconsidering Israel's Destruction of Iraq's Osiraq Nuclear Reactor*, *TEM. INT'L & COMP. L.J.* (forthcoming Fall 1995); Louis René Beres, *Preserving the Third Temple: Israel's Right of Anticipatory Self-Defense Under International Law*, 26 *VAND. J. TRANSNAT'L L.* 111 (1993); Louis René Beres, *After the Gulf War: Israel, Preemption and Anticipatory Self-Defense*, 13 *HOUST. J. INT'L L.* 259 (1991); Louis René Beres, *Striking "First": Israel's Post Gulf War Options Under International Law*, 14 *LOY. L.A. INT'L & COMP. L.J.* 1 (1991); Louis René Beres, *Israel and Anticipatory Self-Defense*, 8 *ARIZ. J. INT'L & COMP. L.* 89 (1991); Louis René Beres, *After the SCUD Attacks: Israel, Palestine and Anticipatory Self-Defense*, 6 *EMORY INT'L L. REV.*

strategic difficulties for Israel. Recognizing this, it is now up to the government of Israel to ensure that the security of the Jewish state be protected by means other than demilitarization, primarily by the refusal to enter into any further agreements that would require surrender of Israeli territory to enemy populations.

71 (1992); Louis René Beres, *Israel, Force and International Law: Assessing Anticipatory Self-Defense*, 13 JERUSALEM J. INT'L REL., No. 2, 1991, at 1; Louis René Beres, *Striking Preemptively: Israel's Post Gulf War Options Under International Law*, in ARMS CONTROL WITHOUT GLASNOST: BUILDING CONFIDENCE IN THE MIDDLE EAST 129 (Avi Becker ed., 1993) (special publication of the Israel Council on Foreign Relations).

