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I. AGGRESSION OR SELF-DEFENSE?

On June 7, 1981, the State of Israel conducted an aerial attack on the Iraqi nuclear reactor known as Tamuz I located near Baghdad.[1] The attack was carried out by F15 and F16 aircraft supplied by the United States. The reactor was damaged severely and three Iraqi civilians and one French technician were killed.[2] On June 8 Israel announced the attack and described it as an act of legitimate self-defense, claiming Iraq planned to construct nuclear weapons. On the same day the Republic of Iraq requested an urgent meeting of the United Nations Security Council to consider what it described as an act of aggression in violation of the United Nations Charter.

The United Nations General Assembly adopted a definition of aggression by consensus in resolution 3314 (XXIX) of 14 December 1974. It states in article 1 that aggression is "the use of armed force by a State against the sovereign integrity or political inde-

1. For a factual description of the aerial attack, see Russell, *Attack—and Fallout: Israel Blasts Iraq's Reactor and Creates a Global Shock Wave,* TIME, June 22, 1981, at 24; N.Y. Times, June 9, 1981, at A1, col. 4. For an analysis of the event, see, e.g., Rubin, *That Israeli Raid on the Iraqi Reactor: The Facts—and Deeper Issues,* Christian Sci. Monitor, June 24, 1981, at 12.

2. Interview with Iraqi President Saddam Hussein, *Issues and Answers* (June 28, 1981) (Television Broadcast by American Broadcasting Company).

pendence of another State," and adds in article 2 that "the first use of armed force by a State in contravention of the Charter shall constitute *prima facie* evidence of an act of aggression . . . ." In all legal formulations, self-defense is considered lawful, in contrast with aggression, which is considered unlawful.[3] Consequently, the issue to be resolved is whether the fact situation should be appraised, according to the criteria of law, as aggression or self-defense.

II. THE LEGAL REQUIREMENTS FOR SELF-DEFENSE

A. *The Basic International Law Criteria*

The international law setting forth the criteria for self-defense and distinguishing it from aggression has been enunciated and developed by the community of states over a considerable period of time. The objective of these legal doctrines is to protect all states' inclusive interests or values in promoting peaceful settlement of international disputes and deterring acts of aggression. Self-defense is most clearly justified in law in response to an armed attack. The legal criteria, however, also permit reasonable and necessary anticipatory self-defense.[4] Anticipatory self-defense is regarded as a highly unusual and exceptional action that may be employed only when the evidence of a threat is compelling and the necessity to act is overwhelming.[5] "Reasonable and necessary" means the exact opposite of arbitrariness in decision.[6]

Customary law prescribes the use of peaceful procedures, if they are available, as the first requirement of self-defense. The second requirement is actual necessity, as opposed to a sham or pretense, for the use of force in responding coercion. The third is proportionality in responding coercion. The second and third requirements always have been applied with more rigor to a claim of anticipatory self-defense than to a claim of defense against an

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3. *E.g.*, [1980] YEARBOOK OF THE INT'L LAW COMMISSION, vol. 2, part 2, art. 34, 52-53 (1981).

4. *See, e.g.*, 12 M. WHITEMAN, DIGEST OF INTERNATIONAL LAW 47 (1971); M. MCDOUGAL & F. FELICIANO, LAW AND MINIMUM WORLD PUBLIC ORDER 231-32 (1961). The doctrine of anticipatory self-defense was examined in 1 TRIAL OF THE MAJOR WAR CRIMINALS BEFORE THE INTERNATIONAL MILITARY TRIBUNAL AT NUREMBERG 205-09 (1947) [hereinafter cited as JUDGMENT AT NUREMBURG].

5. M. WHITEMAN, *supra* note 4; JUDGMENT AT NUREMBURG, *supra* note 4, at 205-09.

6. M. MCDOUGAL & F. FELICIANO, *supra* note 4, at 218.

armed attack.[7] Even if the requirement of actual necessity is met, the response must be proportional to the character of the initiating coercion. An example of an application of the proportionality requirement is provided by the wide community rejection of Nazi Germany's claimed right of military response to alleged, but trivial, incidents on the Polish border. Under no legal authority could the massive land, air, and sea assault upon Poland in September 1939 be justified as proportional to the alleged Polish threat against Germany.[8]

The United Nations Charter provides a codification of the requirements of the customary law. The customary law stipulation of peaceful procedures as the first step, except in the response to an armed attack, is enunciated in article 2(3) of the Charter:

> All members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

Paragraph 4 of the same article prohibits aggression:

> All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.

Article 51 of the Charter incorporates the customary law of self-defense in the following words:

> Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs . . . .

Because claims of self-defense must be examined in the light of the most accurate interpretation of the article, it is significant that the phrase "armed attack" in the English text should not be read in its narrow sense. The negotiating history at the San Francisco Conference reveals that article 51 was intended to incorporate the entire customary law or "inherent right" of self-defense.[9] The comprehensive incorporation of the customary law includes reasonable and necessary anticipatory self-defense since this has always been a part of the customary law. This negotiating history governs the meaning of the article in any of the five official languages of the Charter. The French text, which uses the broad

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7. *Id.* at 231.
8. JUDGMENT AT NUREMBURG, *supra* note 4, at 198-204.
9. *See* 12 U.N.C.I.O. Docs. 680 (1945).

term "aggression armee," encompassing the conception of "armed attack" but not limited to it, is a more accurate reflection of the negotiating history than the English text if the latter is read out of the context of the negotiating history.[10]

Maintenance of public order is the most basic task of any legal system, whether domestic or international. The responsibility of a domestic order system is to exercise effective community control over private violence. By analogy, the responsibility of a world legal order is to exercise effective community control of violence and coercion exercised by national states. The world legal order protects the values of all states and of all peoples by promoting peaceful procedures and deterring aggression. Article 2(3) and (4), and article 51 of the U.N. Charter establish a world legal order system.

B. *The Specific International Law Criteria for Anticipatory Self-Defense*

One of the leading instances in which the legal principle of anticipatory self-defense, which is part of the "inherent right" referred to in article 51 of the Charter, has been applied is the famous *Caroline* incident,[11] which involved a steamer of that name employed in 1837 to transport personnel and equipment from United States territory across the Niagara River to Canadian rebels on Navy Island and then to the mainland of Canada. Great Britain (then the sovereign in Canada) apparently expected that the United States would stop the military assistance to the rebels, but the latter was either unwilling or unable to do so, and the *Caroline* remained a threat to Canada. Thereafter, Canadian troops crossed the Niagara River into United States territory, and after a conflict in which at least two United States nationals were killed, they set the *Caroline* afire and it was wrecked on Niagara Falls. In the ensuing controversy, Great Britain claimed its actions were justified as reasonable and necessary anticipatory self-defense. The United States did not deny that circumstances might exist in which Great Britain lawfully could invoke such

10. The Inter-American collective defense system preceded the U.N. Charter and the latter was drafted to be consistent with the former. *See* Mallison, *Limited Naval Blockade or Quarantine Interdiction: National or Collective Defense Claims Valid Under International Law;* 31 GEO. WASH. L. REV. 335, 366-71 (1962).

11. 2 J. MOORE, DIGEST OF INTERNATIONAL LAW 409-14 (1906).

self-defense, but denied that they existed in this situation. Nevertheless, the controversy was terminated, following a British diplomatic apology, but, significantly, without any British assumption of legal responsibility for the deaths of the two Americans, the wounding of others, and the destruction of the *Caroline*. The absence of further legal claims by the United States should be interpreted as tacit acquiescence in the lawfulness of the British action.

The *Caroline* case is best known for Secretary of State Webster's formulation of the requirements of self-defense as involving a "necessity of self-defence, [which is] instant, overwhelming, leaving no choice of means, and no moment for deliberation."[12] The quoted wording concerning "no choice of means, and no moment for deliberation" is misleading because when actual necessity exists, international law requires a state invoking anticipatory self-defense to go through a process of deliberation resulting in the choice of lawful, that is, proportional, means of responding coercion. The British responding coercion was proportional to the threat posed by the ship.

A more recent example arose during the Second World War.[13] Following the Vichy French Government armistice with Germany in June 1940, many vessels of the French Navy took refuge in Alexandria, Egypt, Oran, French North Africa, or Martinique in the West Indies. In early July the British presented the French naval commander in each location with proposals setting forth alternatives concerning the disposition of French naval vessels, any one of which was designed to prevent the vessels from coming under German control. The first and preferred proposal was for the French naval vessels to join the Royal Navy and continue the war against Germany. The second alternative involved the complete demilitarization of the French vessels so that they would be of no use to Germany. The third alternative, which the British emphasized would be used only with great reluctance if the first two were rejected, was that Great Britain would attack and sink the vessels. At Alexandria and Martinique the French naval commanders accepted the second alternative. At Oran the first two alternatives were rejected and after further fruitless negotiations, British naval and air forces attacked and sunk or severely dam-

12. Letter from Mr. Webster to Mr. Fox, April 24, 1841, 29 BRITISH AND FOREIGN STATE PAPERS 1129, 1138 (1840-41) [hereinafter cited as STATE PAPERS].

13. 1 L. OPPENHEIM, INTERNATIONAL LAW 303 (H. Lauterpacht 8th ed. 1955).

aged the French warships.

If a realistic appraisal is made of the grim realities confronting Great Britain, the British attack on the warships of its former ally and accompanying incursions into French territorial waters and airspace were justified as anticipatory self-defense. Very little other than British naval and air power stood between the victorious German armies and successful invasion of the United Kingdom. Acquisition of major elements of the French Navy probably would have made a German invasion possible. The applicable principles of international law did not require the British to defer action until after the French warships were incorporated into the German Navy. There is no record of disapproval of the British action except from Axis sources. Respected international legal authority has appraised the British action as lawful anticipatory self-defense.[14]

The Cuban Missile Crisis of 1962[15] provides another recent example. A threat to the United States was revealed by photographic evidence of intercontinental missile sites placement in Cuba. When Ambassador Stevenson made them available, these photographs were decisive in changing the climate of opinion, first in the Security Council and then in the world. The missiles and launching sites were being installed in secret and in the face of Soviet diplomatic assurances that no offensive weapons would be placed in Cuba. There is no reason to believe that further diplomatic discussions with the Soviet Union would have changed its determination to install these weapons with nuclear potential, and accompanying launching sites, in Cuba. Among the alternative recommendations presented to President Kennedy was the proposal to bomb the missile sites. Some international lawyers thought this would be fully justified in law because of the great danger to the entire Western Hemisphere caused by this Soviet attempt to drastically upset the nuclear balance of power.[16] President Kennedy, however, selected a limited naval blockade or quarantine-interdiction as the method to prevent the introduction of further offensive weapons and to bring about the removal of those present. This method permitted the use of diplomatic means at the United Nations and elsewhere and ultimately re-

14. *Id.*

15. *See generally* Mallison, *supra* note 10.

16. Former Secretary of State Acheson was one such lawyer. R. KENNEDY, THIRTEEN DAYS: A MEMOIR OF THE CUBAN MISSILE CRISIS 37-38 (Signet ed. 1969).

sulted in the Kennedy-Khrushchev agreement that terminated the missile crisis and led to the withdrawal of the missiles from Cuba.

A national state is entitled to invoke national self-defense and the United States did this on October 22d. In appraising whether each of the legal requirements has been met in an invocation of anticipatory self-defense, it is highly significant that on October 23d the Organ of Consultation of the Organization of American States invoked collective self-defense on behalf of the inter-American community. The regional decision-makers dealt with the same fact situation that the United States dealt with on the previous day and came to the same conclusion that there existed an actual necessity for anticipatory self-defense.[17] The Organ of Consultation also approved the specific measures undertaken by the United States, and by the time the limited naval blockade or quarantine-interdiction ended, ships from a number of Latin American navies were participating in the enforcement of the blockade.[18]

The severely limited military measures employed by the United States amounted to the least possible use of the military instrument of national policy. If it had not been successful, more coercive use of military power could have been justified under international law. The legal consequence of the restricted use of military force is that the proportionality test in even its most rigorous and extreme form was met easily. In addition to the approval of the United States measures by the Organization of American States, the measures met with wide approval within the United Nations.[19]

III. The Application of the International Law Requirements for Self-Defense to the Attack of June 7

If the Israeli claim of lawful self-defense can be justified, it must on the basis of necessary and reasonable anticipatory self-defense. Consequently, Israel must meet the stringent requirements of anticipatory self-defense rather than the less demanding requirements of self-defense in response to an actual armed attack.

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17. Mallison, *supra* note 10, at 378-79.
18. *Id.* at 392-94.
19. *Id.* at 340-43.

A. *The Participants-Claimants and Their Objectives*

The State of Israel is the preeminent military power in the Middle East region. Its efficient armed forces are supplied with the most modern equipment and munitions. In addition, Israel has a substantial nuclear program. In the early part of President Eisenhower's Atoms for Peace Program, the United States entered into a research reactor agreement with Israel which involved a substantial money grant but the transfer of only small quantities of enriched uranium.[20] During the summer and early fall of 1957, President Eisenhower and Chairman Strauss of the United States Atomic Energy Commission were eager to enter a power reactor agreement with Israel authorizing the transfer of substantial quantities of enriched uranium as well as requiring inspection to prevent diversion of the uranium to military purposes. At the outset, inspection was to be done by the United States and subsequently by the International Atomic Energy Agency (IAEA) when its inspection procedures became operative.[21]

At that time Israel had a nuclear energy agreement with the French Republic, which had been its ally in the tripartite attack upon Egypt in 1956. Insofar as the United States was aware, there were no requirements of peaceful uses or inspection of any kind involved in the French-Israeli agreement.[22] The objective of the United States, with the realization that Israel was the state with the greatest nuclear weapons potential in the region, was to prevent or at least delay as long as possible the introduction of nuclear weapons into the Middle East. The efforts of the United States to involve Israel in a controlled and inspected cooperation agreement were unsuccessful. Israel is neither a state-party to the Non-Proliferation Treaty (NPT),[23] nor have its nuclear facilities ever been subjected to IAEA inspection.[24]

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20. Agreement for Cooperation Concerning Civil Uses of Atomic Energy, July 12, 1955, United States-Israel, 6 U.S.T. 2641, T.I.A.S. No. 3311, 219 U.N.T.S. 185.

21. W.T. Mallison served on the United States Atomic Energy Commission with responsibility for the negotiation of Atoms for Peace Agreements in the Asian-African area (1957-58).

22. The terms of this former agreement were not known and it was assumed in the United States Atomic Energy Commission that the agreement was secret.

23. Treaty on the Non-Proliferation of Nuclear Weapons, March 5, 1970, 21 U.S.T. 483, T.I.A.S. 6839, 729 U.N.T.S. 161.

24. Article 3 of the Non-Proliferation Treaty obligated non-nuclear weapons states to have I.A.E.A. inspection. By refusing to become a party to the Non-

Iraq is the other major participant. In common with other oil exporting countries, Iraq has been making a significant effort to broaden its economic base through technology and education. The Tamuz I research reactor, one of two supplied by France for Tuwaitha as part of a 1975 agreement for cooperation in the peaceful uses of nuclear energy, was an important part of this development program.[25] French cooperation in the establishment of a "nuclear university" to train Iraqi scientists and technicians in nuclear technology is also anticipated. Iraq is a state-party to the NPT and has had its nuclear installations inspected on a regular basis by the IAEA.[26]

In appraising the claims of the participants, it is necessary to inquire whether the objective of a particular claimant is only its exclusive interests or broader inclusive interests shared by others.[27] In the present fact situation, Israel appears to have acted solely for its own perceived interests or values. Prime Minister Begin made the point explicitly in response to a question concerning the Arab reaction to the June 7 attack: "I don't care about the Arab world. I care about our lives."[28] Unfortunately, from the standpoint of genuine Israeli national interests, this approach fails to take into account the factual interdependencies which exist in the real world, the consequent mutuality of meaningful national security, and the indivisibility of regional peace.

In contrast, Iraq, in addition to asserting its own right to national security, has recognized wider community interests, including freedom from aggression and coercion. The Iraqi interest in applying the legal order system of the United Nations serves the inclusive interests or values of the world community. This is confirmed by the comprehensive community support given the Iraqi claims in the Security Council.

Proliferation Treaty, Israel avoided such inspection.

25. Donnely & Pilat, *Nuclear Energy: Iraq's Nuclear Energy Program and Intentions*, CONGRESSIONAL RESEARCH SERVICE (Issue Brief IB 81001) (1981), at 1.

26. U.N. Doc. S./P.V. 2280 at 37-60 (1981) (statement of Mr. Eklund, Director-General of I.A.E.A.) [hereinafter cited as S./P.V. 2280] (The *Provisional Verbatim Records* present statements as delivered and the *Security Council Official Records*, when subsequently issued, sometimes contain minor variations from the texts as delivered.).

27. *See generally* M. MCDOUGAL & F. FELICIANO, *supra* note 4, at 222-24 (emphasizing the juridical importance of this inquiry).

28. Washington Post, June 9, 1981, at A11, col. 1.

The central purpose of the customary or "inherent" right of self-defense, which is incorporated by reference in article 51 of the United Nations Charter, is the conservation of the values, both human and material, of a defending state. As a basic rule the doctrine of self-defense does not permit extension of the defender's values.[29] In the same way, damage or destruction of another's values may not be undertaken except when all the requirements of lawful self-defense have been met. Both the *Caroline* and Oran incidents involved the destruction of militarily significant values under conditions in which the acts were legally justified.

The destruction of the *Caroline* and of the French ships at Oran provide the most likely possible legal authority, through the use of analogy, for the Israeli attack on June 7. The persuasiveness of an analogy, however, depends upon the similarity between the factual context and the values involved in the analogy and those of the event to be appraised in law. At the outset, it is acknowledged that the vessels at Oran were warships which, after the failure of peaceful methods, became military objects of attack. The *Caroline* was not a legally commissioned warship, but the military activity in which it was employed assimilated it to that status. It is neither logical nor lawful to use a merchant ship for offensive military operations and then to claim its immunity from counter-attack.[30] In the Security Council, only Israel claimed that the Tamuz I reactor was a military facility. Consequently, analogies involving the destruction of military values cannot serve as valid legal authority for the Israeli action, which involved the destruction of both human and material civilian values. Other features indicating a basic lack of similarity between the Israeli June 7 attack and the *Caroline* and Oran incidents include the Israeli failure to make adequate use of peaceful procedures and the ensuing lack of international community support for the Israeli position.

B. *The Requirement of Peaceful Procedures*

Assuming for the purpose of legal analysis that Israel perceived a danger in the Iraqi nuclear program, it is clear that it undertook, at most, very limited peaceful procedures or diplomatic

29. M. McDougal & F. Feliciano, *supra* note 4, at 181-82.
30. W. Mallison, Studies in the Law of Naval Warfare 106-23 (1966).

measures to deal with the threat. There is no evidence of direct or indirect diplomatic contacts with Iraq. Israel was not reassured by whatever inquiries or protests it made to France. This is suprising because the character of French nuclear assistance changed drastically following the intense June 1967 hostilities in the Middle East. At that time France terminated all military assistance to Israel, as it stated it would do with respect to any state which commenced hostilities.[31] Since then French nuclear assistance has emphasized peaceful development and excluded military uses.

In the circumstances claimed by Israel, it had ample time to present a complaint to the Security Council, which would not be expected to react with indifference to a nuclear menace. In addition, other measures could have been taken. A genuine concern about the adequacy of International Atomic Energy Agency inspection procedures could be addressed to the IAEA, which has a strong interest not only in maintaining the integrity of its procedures, but in improving them whenever possible. Moreover, the great powers and the parties to the Non-Proliferation Treaty, as well as all of the states in the Middle East, including Israel, have a legitimate national security interest in efficient IAEA inspection procedures. It may be suggested on behalf of Israel that it did not use this type of response to an assumed actual necessity because no effective changes in terms of improved inspection procedures or adherence to the NPT would have resulted. If this were a problem, Israel could have greatly enhanced the prospects of success by becoming a party to the NPT and opening its own nuclear installations to IAEA inspection. It would have at least been difficult, and probably impossible, for Iraq to refuse additional international inspection had Israel agreed to the same inspection for itself. Of course, effective international inspection would not be consistent with the development of nuclear weapons by any state. In the event of evidence of Iraqi violation of its obligations under the NPT, this would be a matter for the world community including the state-parties to the NPT to deal with and not a matter for unilateral state action. In view of these circumstances, it is clear

31. *See* SENATE COMM. ON FOREIGN RELATIONS, 91ST CONG., 1ST SESS., A SELECT CHRONOLOGY AND BACKGROUND DOCUMENTS RELATING TO THE MIDDLE EAST 263-66 (Legislative Reference Service, rev. ed. 1969) (Statement of French policy concerning the Middle East conflict by Pres. DeGaulle in his press conference, Nov. 27, 1967) [hereinafter cited as SELECT CHRONOLOGY].

that Israel did not meet the peaceful procedures requirement for anticipatory self-defense.

C. *The Significance of a Threat of Attack as the Basis for Establishing Necessity*

Because no actual attack upon Israel by Iraq is involved in the fact situation, it is necessary to examine the character of the alleged threat against Israel to determine if the threat establishes the necessity for anticipatory defensive coercion. There is no legal authority empowering a state to employ coercion against a speculative or non-imminent threat. The most authoritative source as to the Israeli claimed character of the threat is the Government of Israel. Mr. Yehuda Blum, the Permanent Representative of Israel at the United Nations,[32] described the perception in these terms, *inter alia*, in the Security Council on June 12, 1981:

> A threat of nuclear obliteration was being developed against Israel by Iraq, one of Israel's most implacable enemies.[33]
>
> * * *
>
> In recent years, Iraq has been the most active Arab State in the nuclear field. Its goal has been the acquisition of a military nuclear option.[34]
>
> * * *
>
> No amount of bluster can hide one simple, basic fact: Iraq's nuclear programme has, beyond a shadow of doubt, just one aim — to acquire nuclear weapons and delivery systems for them.[35]

One conclusion which follows from the stated Israeli claims is that no claim was made that Iraq possessed nuclear weapons. Another is that the imputation to Iraq of the objective of acquiring nuclear weapons was based upon unverified assumptions. Still another is that the alleged Iraqi objective was to be carried out at some time in the future, after Tamuz I became critical or "hot." Israel also claimed that after the assumed future events took place, Israel would be the target of an Iraqi nuclear attack. This was a presumption in spite of the dangers such an attack would present to Israeli and Arab civilians living in Israel, in the occupied territories, and in neighboring Arab states, as well as the im-

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32. S./P.V. 2280, *supra* note 26, at 37-60 (statement of Mr. Yehuda Blum, Permanent Representative of Israel at the United Nations).

33. *Id.* at 38-40.

34. *Id.* at 46.

35. *Id.* at 48-50.

mediate hazard of nuclear retaliation by Israel.

In the Hearings on the June 7 attack conducted by the United States Senate Foreign Relations Committee[36] shortly after the attack, Mr. Roger Richter, who resigned from the staff of the International Atomic Energy Agency in order to appear before the Committee, presented testimony. He stated that one of his principal purposes was to identify IAEA deficiencies and the other was to explain his belief that the Iraqi nuclear program had the purpose of developing a weapons capability "over the next several years."[37] He presented a hypothetical plan involving many stages by which Iraq could construct nuclear weapons in the future. He stated: "During these years when the plutonium stockpile is growing, Iraq could master the techniques of fabricating the plutonium configurations required for a nuclear weapon."[38] In other words, he does not believe that Iraq has even the knowledge of necessary techniques at the present time. Should one agree with his assumption, contrary to substantial evidence, the Richter view provides no support for the Israeli claim of a present need to use responding coercion because the alleged capability was to be developed in future years.

The *Caroline* and Oran incidents, as well as the Cuban Missile Crisis, involved the factually ascertained capability and probability of armed attack in the immediate or near future, which resulted in the necessity for responding coercion. In contrast, the alleged Iraqi threat claimed to be perceived by Israel was neither supported by factual evidence nor thought to be in the near future. In short, the Israeli claims, as stated by Mr. Blum, fail to establish legal justification because they are both speculative and non-imminent. Such claims have not provided grounds for the legal conclusion of necessity in the past and cannot do so now.

A long period of planning for an attack also indicates that the threat was not imminent. There is evidence that in the winter of 1979 Israel initiated a "combat file" concerning the proposed re-

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36. *The Israeli Air Strike: Hearings Before Senate Committee on Foreign Relations*, 97th Cong., 1st Sess. (1981).

37. *Id.* at 108.

38. *Id.* at 111. Other portions of Mr. Richter's testimony concerning the methods by which a nuclear weapons capability could be developed were inconsistent with the French and Italian scientific evidence presented in the Security Council. *See infra* text accompanying notes 80-88.

actor site and an attack on it originally was planned for November 1980.[39] As a matter of law, the attack, which was delayed until June 7, 1981, must be characterized as premeditated on the basis of these facts.

The claims advanced by Israel as grounds for an actual necessity for anticipatory self-defense have been further weakened by a number of inaccurate statements made by Prime Minister Begin. After these errors were exposed, the *Washington Post* stated, "[A]t least six of Begin's specific claims have turned out [to be] erroneous or misleading or have been disputed by French or U.S. officials."[40] The six claims referred to were that: (1) Iraq had refused to allow the IAEA to inspect the reactor (the reactor was inspected last January and another inspection was scheduled for June); (2) according to the Baghdad newspaper *Al Thawra*, Iraqi President Saddam Hussein stated last October that the nuclear reactor was intended for use against Israel, not against Iran (Mr. Begin's office and the Israeli Foreign Ministry admitted subsequently that the quote never existed); (3) a secret underground chamber forty meters (later said to be four meters) below the reactor had been built to avoid detection by the IAEA inspectors (French nuclear experts denied the existence of such a chamber); (4) Israel was informed by United States intelligence officials that Iraq was preparing to build a nuclear bomb (Israel's chief of military intelligence admitted that no such information was given to Israel by the United States); (5) the Iraqi reactor would become critical, or "hot," in early July or early September at the latest and Israel could not postpone bombing it for fear of scattering radioactivity (according to French nuclear experts, it would not have become critical until the end of 1981); (6) United States Defense Secretary Weinberger advocated cutting off economic and military aid to Israel because of the bombing (Weinberger denied this). These misstatements strongly indicate that Israel was not in possession of facts to support its claims.

D. *The Requirement of Proportionality in Responding Defensive Measures*

Because the Israeli claim of actual necessity has not met the criteria of international law, it is not necessary to inquire about

39. Russell, *supra* note 1, at 26.
40. Washington Post, June 17, 1981, at A22, cols. 1-2.

the proportionality of the armed attack. Nevertheless, it may be useful to assume for purposes of analysis that the requirements of actual necessity, at least concerning the future Iraqi attack claimed by Israel, were met, and to consider the proportionality aspect of the aerial attack. The proportionality doctrine appraises the character and quantum of responding coercion in relation to the threat presented to the defending state. Thus the quantum of the responding measures must be proportional, both in kind and amount, to the character of the threat.[41] Secretary of State Webster, in what are probably among his least known and most valuable statements made during the *Caroline* incident, summarized the requirements of proportionality in these terms: "[N]othing unreasonable or excessive [is permitted], since the act, justified by the necessity of self-defence, must be limited by that necessity and kept clearly within it."[42]

The threat, as stated by Mr. Blum, was twofold: to manufacture nuclear weapons, and to use them against Israel, with both to be done in the future. A present armed attack in response to an assumed future but not imminent armed attack, even if the latter is deemed to be nuclear, cannot meet the requirement of proportionality in even its most liberal formulation. This, however, is exactly what Israel claimed to be legally justified. Neither the legal precedents of the customary law nor the provisions of the United Nations Charter provide any authority to support such a claim.

E. *The Significance of the Claimed State of War*

In addition to Israeli attempts to find legal justification for its claims of self-defense, it has made an alternative argument that the June 7 bombing was justified by an existing state of war with Iraq. On June 12, 1981, Mr. Blum stated in the Security Council, "Iraq declares itself to have been in a state of war with Israel since 1948."[43] He added: "Iraq has missed no opportunity to make it clear that it will not abide by international law in respect to Israel and that it reserves its freedom of action with regard to Israel."[44] Although the quoted statement by Mr. Blum referred to Iraqi "freedom of action" concerning Israel, it was used to at-

41. M. McDOUGAL & F. FELICIANO, *supra* note 4, at 217-18, 241-44.
42. STATE PAPERS, *supra* note 12, at 1138.
43. S./P.V. 2280, *supra* note 26, at 42.
44. *Id.*

tempt to justify Israeli freedom of action against Iraq, which is regarded by him as authorized by the "state of war" concept. In the Israeli view, the wide freedom of action permitted by the claimed "state of war" justified the June 7 attack.

There may be reason, however, to doubt the existence of the "state of war" as a concept describing the legal relations between Israel and Iraq. Responding to an inquiry from Dr. Ralph Bunche, the United Nations Acting Mediator for Palestine, Iraq stated through its Minister for Foreign Affairs on February 13, 1949: "I have the honour to inform you that the terms of armistice which will be agreed upon by the Arab States neighbours of Palestine namely Egypt, Transjordan, Syria and Lebanon will be regarded as acceptable to my Government."[45] This Iraqi statement of position was transmitted by Dr. Bunche to the President of the Security Council. The consequence of the Iraqi response is a legal condition of non-belligerent armistice.

The "state of war" concept is not recognized in the United Nations Charter and, consequently, cannot prevail over the limitations of the Charter. The Charter mentions the word "war" only once and this is in the context of the need "to save succeeding generations from the scourge of war."[46] All of the other provisions of the Charter use terms having a factual connotation. Examples include "threat or use of force,"[47] "any dispute, the continuance of which is likely to endanger the maintenance of international peace and security,"[48] and "breach of the peace, or act of aggression."[49]

Of far more importance than a "state of war" as a legal concept or theory is a state of war as a factual condition. An empirical inquiry reveals that Iraq and Israel have not been involved in active hostilities, which indicate a factual state of war, since 1973. The reality of the situation since that time has been a condition of non-belligerency. It also may be accurately described as a de facto cease-fire. Under either term it could have been used as the indispensable first step to a meaningful peace with justice. The Israeli attack has ruled out that positive opportunity because it indicates that Israel claims freedom to attack even after a long

45. SELECT CHRONOLOGY, *supra* note 31, at 123.
46. U.N. Charter preamble, para. 1.
47. *Id.* art. 2(4).
48. *Id.* art. 33(1).
49. *Id.* art. 39.

period of non-belligerency or cease-fire.

IV. The Application of the International Law Requirements by the Security Council, June 12-19, 1981

The consideration of the Iraqi claims in the Security Council provides evidence of the way in which the world community appraised the situation and the relevant international law. The Security Council is the authorized organ of the world community to maintain international peace and security. It began to meet on Friday, June 12, in response to the Iraqi request for a meeting based upon Iraq's complaint against Israel.

A. *The Iraqi Claims*

Foreign Minister Saadoun Hammadi presented the Iraqi complaint.[50] After briefly recounting the well known facts of the June 7 attack, Mr. Hammadi described the Israeli nuclear development program and contrasted it with the Iraqi program. He emphasized that the Israeli program at Dimona had never been subjected to any kind of international inspection. He pointed out that in spite of "the basic imbalances and discrimination which are found in the Treaty on the Non-Proliferation of Nuclear Weapons,"[51] Iraq became a state-party to it and since that time the Iraqi nuclear program has been subjected to regular inspection by the International Atomic Energy Agency. Mr. Hammadi concluded his presentation by stating that "a mere condemnation of this act of Israeli aggression"[52] would be insufficient, and by making four requests of the Security Council. These requests were:[53] (1) the right of all states to develop peaceful nuclear programs should be reaffirmed; (2) mandatory sanctions under the provisions of chapter VII of the United Nations Charter should be imposed upon Israel to remove the existing menace to international peace and security; (3) it should be decided that all states, and particularly the United States, should refrain from providing Israel with military materials or technical cooperation or assistance; (4) the Council should demand that all Israeli nuclear installations be open to inspection and subjected to the safeguards system of the

50. S./P.V. 2280, *supra* note 26, at 16-37.
51. *Id.* at 26.
52. *Id.* at 36.
53. *Id.*

International Atomic Energy Agency.

B. *The Israeli Counter-Claims*

The Israeli position was presented by its Permanent Representative, Mr. Blum,[54] who is on leave from his position as Professor of International Law at the Hebrew University of Jerusalem. Mr. Blum repeatedly emphasized the character of the Israeli attack as "self-defense." He also indicated that several Middle Eastern states were "sleeping more easily" in the knowledge that the Iraqi "nuclear arms potential" had been smashed.[55] In support of the self-defense argument, Mr. Blum said the Iraqi reactor had "less than a month to go before" it "might have become critical."[56] He stated that Israeli diplomatic efforts to terminate European nuclear cooperation with Iraq had been unsuccessful and that consequently, "Israel was left with an agonizing dilemma."[57] In his view, once the Iraqi reactor had become "hot," "any attack on it would have blanketed the city of Baghdad with massive radioactive fallout," resulting in lethal or grievous harm to "tens of thousands" at the least.[58] He did not suggest that Iraq would have nuclear weapons in its possession either before or after the reactor became critical or "hot."

Mr. Blum provided several brief quotations concerning self-defense from international law writers including the late Sir Humphrey Waldock,[59] then the President of the International Court of Justice. These quotations established the existence of a doctrine of anticipatory self-defense in international law. Following his use of the international law writers, he concluded: "So much for the legalities of the case."[60] He did not attempt to apply the doctrines of anticipatory self-defense to the facts of the attack.

Another branch of the Israeli argument emphasized the claimed hostile intentions of Iraq toward Israel. In this context he concluded: "In brief, this Council is now confronted with an absurd situation. Iraq claims to be at war with Israel. Indeed it prepares

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54. *Id.* at 37-60.
55. *Id.* at 38-40.
56. *Id.* at 56.
57. *Id.* at 52.
58. *Id.*
59. *Id.* at 53-55.
60. *Id.*

for atomic war. And yet it complains to the Security Council when Israel, in self-defense, acts to avert nuclear disaster."[61] Mr. Blum charged Iraq with doing four things in order "to build up the reserves of uranium needed to obtain self-sufficiency":[62] "(a) it has bought weapons-grade enriched uranium on the international black market; (b) it has acquired uranium through bilateral deals; (c) it has obtained enrichment facilities; and (d) it has begun an intensive search for uranium on its own territory."

In the conclusion of his initial presentation, Mr. Blum stated that "Israel has always held the conviction that no international conflict can be solved by the use of force."[63] He charged Iraq and other states with "unrestrained and unending aggression" against Israel and accused the international community of "apathy and appeasement."[64]

In a subsequent presentation on June 16, Mr. Blum stated that other speakers in the Security Council had heaped a "barrage of abuse" upon Israel as well as a "flood of distortion and deception."[65] He then set forth a list of several questions which implied that Iraq had no need for a peaceful nuclear energy program because of its "abundant oil supplies" and that the principal purpose of its program was the development of nuclear weapons.[66]

In a further statement on June 19, Mr. Blum devoted considerable attention to a criticism of the International Atomic Energy Agency's inspection procedures.[67] On the same day, in connection with the self-defense issue, he rejected the relevance of the *Caroline* incident which "occurred precisely 108 years before Hiroshima."[68] He also stated: "To assert the applicability of the *Caroline* principles to a State confronted with the threat of nuclear destruction would be an emasculation of that State's inherent and natural right of self-defense."[69] Thereafter he added: "Indeed, the concept of a State's right to self-defense has not changed throughout recorded history . . . ", but "the concept took on new

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61. *Id.* at 46.
62. *Id.* at 47.
63. *Id.* at 58.
64. *Id.*
65. U.N. Doc. S./P.V. 2284 at 36 (1981) [hereinafter cited as S./P.V. 2284].
66. *Id.* He repeated the same questions on June 19. U.N. Doc. S./P.V. 2288 at 19-21 (1981) [hereinafter cited as S./P.V. 2288].
67. S./P.V. 2288, *supra* note 66, at 27-32.
68. *Id.* at 32.
69. *Id.*

and far wider application with the advent of the nuclear era."[70]

C. *The Iraqi Responses*

On June 12 Mr. Kittani, the Permanent Representative of Iraq and subsequently the President of the General Assembly during its Thirty-Sixth Session, responded to two of the points raised by Mr. Blum the same day.[71] He expressed astonishment that Iraq was charged with searching "for uranium on its own territory" because he assumed that a state has a right to search for minerals within its own territory.[72] He also expressed incredulity concerning Mr. Blum's statement that Israel had held the conviction that "[n]o international conflict can be solved by the use of force." He added: "Now if the members of the Council can believe that, they can believe anything."[73]

On June 16 Foreign Minister Hammadi called the Council's attention to the unanimous resolution of the Islamic Group of states.[74] This resolution, *inter alia*, condemned "the premeditated and unprovoked aggression by Israel" and demanded "that Israel pay prompt and adequate compensation for the damages suffered by Iraq."[75]

D. *The United States*

Mrs. Kirkpatrick, the Permanent Representative of the United States, spoke on June 19 of her government's commitment to a just and enduring peace in the Middle East[76] and to Israel, which she described as an "important and valued ally."[77] Mrs. Kirkpatrick referred to Israel's destruction of the Iraqi nuclear facility as the most recent in a series of acts of violence including the invasion of Afghanistan, the war between Iraq and Iran, the Libyan invasion of Chad, and the frequent violation of the territory and sovereignty of Lebanon.[78] She also stated:

> [T]he means Israel chose to quiet its fears about the purposes of

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70. *Id.* at 36.
71. S./P.V. 2280, *supra* note 26, at 106-08.
72. *Id.* at 107.
73. *Id.* at 108.
74. U.N. Doc. S./P.V. 2285 at 61-62 (1981).
75. *Id.*
76. S./P.V. 2288, *supra* note 66, at 12-17.
77. *Id.* at 16.
78. *Id.* at 13.

> Iraq's nuclear programme have hurt, and not helped, the peace and security of the area. In my Government's view, diplomatic means available to Israel had not been exhausted and the Israeli action has damaged the regional confidence that is essential for the peace process to go forward.[79]

E. *France and Italy*

Mr. Leprette, the Permanent Representative of France, presented the French appraisal on June 15.[80] It can best be understood by considering his summaries of points, which were developed in more detail:

> My Government rejects the allegations of the Israeli Government that the Tamuz reactor "was intended to produce atomic bombs." This mixing of peaceful and military uses of nuclear energy is inadmissible. The sole purpose of the Tamuz reactor was—and is—scientific research, and the agreements between France and Iraq exclude any use of it—even indirectly—for military purposes.[81]
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> * * *
>
> To conclude this technical aspect, it would be absurd for a country wishing to manufacture a nuclear bomb to build a reactor such as the Tamuz reactor to get material for military purposes. As everybody knows, there are simple ways to achieve that goal: the purchase of centrifuges for the enrichment of uranium, or the construction of natural uranium reactors for making plutonium, for example.[82]
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> * * *
>
> Where would we end up if a State were to proclaim itself judge of the intentions of another State even though the latter was complying with the rules and disciplines of the international community in so sensitive an area as nuclear energy? More serious, perhaps, is the scorn shown for the rules of international law.[83]

In conclusion, Mr. Leprette reaffirmed the French attachment to Israeli security and pointed out that this could not be achieved by resort to force.[84] He added that the resolution to be adopted by

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79. *Id.* at 16.
80. U.N. Doc. S./P.V. 2282 at 13-21 (1981) [hereinafter cited as S./P.V. 2282].
81. *Id.* at 16.
82. *Id.* at 17.
83. *Id.* at 18-20.
84. *Id.* at 21.

the Council should contain these basic elements: "First, condemnation of the Israeli military action; secondly, a solemn appeal to Israel to cease such military actions; and thirdly, equitable reparation for the destruction and damage for which Israel has publicly acknowledged responsibility."[85]

On June 17 Mr. La Rocca, the Permanent Representative of Italy, presented his government's appraisal.[86] He rejected the Israeli allegations in regard to the character of the nuclear cooperation between Italy and Iraq.[87] Stressing the importance of the Non-Proliferation Treaty and Iraq's compliance with its obligations under it, he added: "The conclusions of the work of this Council should convey to Israel a clear signal that such behaviour cannot be condoned by the international community. Morever, we believe that the Government of Iraq is entitled to compensation for the damage inflicted on the nuclear installations."[88]

Mr. Blum had stated on June 16 that Israel would not make such reparations. He said:

> Did the Allies pay reparations for the Nazis' atomic plants at Peenemuende and elsewhere which they destroyed during the Second World War? Let me assure this Council that Israel will pay precisely the same sum as what those who made this bizarre suggestion paid after the Second World War, and not one brass farthing more.[89]

F. *The International Atomic Energy Agency*

Mr. Sigvard Eklund, then the Director-General of the International Atomic Energy Agency, presented a scientific appraisal of the Iraqi nuclear program on June 19 and came to the same conclusions previously stated by the representatives of France and Italy.[90] He concluded his statement with a consideration of the larger implications of the Israeli attack:

> In fulfilling its responsibilities the Agency has inspected the Iraqi reactors and has not found evidence of any activity not in accordance with the Non-Proliferation Treaty. Nevertheless, a non-NPT country has evidently not felt assured by our findings

85. *Id.*
86. U.N. Doc. S./P.V. 2286 at 31-33 (1981).
87. *Id.* at 32.
88. *Id.*
89. S./P.V. 2284, *supra* note 65, at 37.
90. S./P.V. 2288, *supra* note 66, at 6-12.

> and by our ability to continue to discharge our safeguarding responsibilities effectively. In the interest of its national security, as was stated by its leaders, it has felt motivated to take military action. From a point of principle, one can only conclude that it is the Agency's safeguards system that has also been attacked. This, of course, is a matter of grave concern to the International Atomic Energy Agency and has to be pondered well.[91]

G. *The Security Council Decision*

The unanimous Security Council Resolution 487 of 19 June 1981[92] provided support for two of the four requests made by Foreign Minister Hammadi on June 12. It recognized "the inalienable sovereign right of Iraq" and of other states, "especially the developing countries," to establish peaceful nuclear programs.[93] It also called upon Israel "urgently to place its nuclear facilities under IAEA safeguards."[94] It did not impose mandatory sanctions on Israel under the provisions of chapter VII of the Charter nor did it decide that all states, and especially the United States, shall refrain from providing Israel with military materials or technical cooperation or assistance. It was widely recognized that the threat of a negative vote by the United States prohibited the Council from meeting either of these Iraqi requests.

On June 19, following the unanimous resolution of the Security Council, Mr. Al-Qaysi, the Legal Adviser of the Iraqi Foreign Ministry, called the attention of the Council to the high degree of selectivity, and consequent inaccuracy, in the quotation from Sir Humphrey Waldock which Mr. Blum had twice provided to the Council.[95] Mr. Blum's quotation read exactly as follows: " . . . it would be a travesty of the purposes of the Charter to compel a defending state to allow its assailant to deliver the first and perhaps fatal blow. . . . To read Article 51 otherwise is to protect the aggressor's right to the first strike."[96] Mr. Al-Qaysi supplied the entire Waldock quotation which provides:

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91. *Id.* at 12.

92. S.C. Res. 487, 36 U.N. SCOR (2288th mtg.) (1981), U.N. Doc. S/Res/487 (1981) is set forth in the Appendix.

93. *Id.* para 4.

94. *Id.* para. 5.

95. S./P.V. 2288, *supra* note 66, at 72-73.

96. S./P.V. 2280, *supra* note 26, at 53-55, *repeated in* S./P.V. 2288, *supra* note 66, at 33.

> The Charter prohibits the use of force except in self-defence. The Charter obliges Members to submit to the Council or Assembly any dispute dangerous to peace which they cannot settle. Members have therefore an imperative duty to invoke the jurisdiction of the United Nations whenever a grave menace to their security develops carrying the probability of armed attack. But if the action of the United Nations is obstructed, delayed or inadequate and the armed attack becomes manifestly imminent, then it would be a travesty of the purposes of the Charter to compel a defending State to allow its assailant to deliver the first and perhaps fatal blow. If an armed attack is imminent within the strict doctrine of the Caroline, then it would seem to bring the case within Article 51. To read Article 51 otherwise is to protect the aggressor's right to the first stroke.[97]

The position of Iraq as put forth by Mr. Hammadi on June 12 was supported fully by the statements of the International Atomic Energy Agency, of France and Italy, and, indeed, by all who made statements to the Council except the United States, which provided something less than full support. The supporters included the other permanent members of the Security Council, Great Britain,[98] the Soviet Union,[99] and the People's Republic of China,[100] as well as the members elected for a term of years. The latter are the German Democratic Republic, Ireland, Japan, Niger, Panama, Philippines, Spain, Tunisia, Uganda, and Mexico, with the Mexican Permanent Reprentative, Mr. Munoz Ledo, serving as President of the Council during June 1981.[101] Similarly, the representatives of other states and public organizations which were invited to make presentations supported the basic elements of the Iraqi complaint.[102] No appraisal supported the position advanced by Israel.

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97. *The Regulation of the Use of Force by Individual States in International Law*, 81 HAGUE RECUEIL DES COURS 455, 498 (vol. 2, 1952), *quoted in* 5 M. WHITEMAN, DIGEST OF INTERNATIONAL LAW 986 (1965).

98. S./P.V. 2282, *supra* note 80, at 41-45.

99. S./P.V. 2283 at 21-30 (1981).

100. *Id.* at 31-36.

101. The other appraisals presented to the Security Council are found in S./P.V. 2280, *supra* note 26, through S./P.V. 2288, *supra* note 66.

102. *Id.*

V. The Effects of the June 7 Attack

A. *The Effects Upon the State of Israel*

The Government of Israel claimed its national interests were at stake and it is appropriate to consider these interests. The same government regularly claims its national security is endangered. One significant causal factor in this situation is the heavy overemphasis upon military methods which is seen by an increasing number of thoughtful Israelis as counter-productive to national security. Among the most important requirements of law set forth in this study is that a unilateral determination by a state's decision-makers concerning claimed defensive measures is subject to authoritative review by the community of states. The central point was made in the context of criminal law by the International Military Tribunal at Nuremberg. After holding that the Nazi invasions of Norway and Denmark were not justified by the law concerning anticipatory self-defense,[103] the court stated:

> It was further argued that Germany alone could decide, in accordance with the reservations made by many of the Signatory Powers at the time of the conclusion of the Kellogg-Briand Pact, whether preventive action was a necessity, and that in making her decision her judgment was conclusive. But whether action taken under the claim of self-defense was in fact aggressive or defensive must ultimately be subject to investigation and adjudication if international law is ever to be enforced.[104]

A number of individuals whose commitment to Israel is unquestioned have raised fundamental matters concerning basic Israeli national interests. The only surviving founding father of the State of Israel is Dr. Nahum Goldmann, a past president of the World Zionist Organization and the World Jewish Congress and a close associate of Dr. Chaim Weizmann, first President of the State of Israel. Dr. Goldmann has become a critic of Israeli policy and practice and has strongly recommended that Israel assume a neutral status. In an important statement, he wrote:

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103. Judgment at Nuremburg, *supra* note 4, at 204-09.

103.1. After the initial text of this Article went to press, Dr. Goldmann passed on in August 1982.

104. *Id.* at 208. The Kellogg-Briand Pact was an attempt to improve the world legal order. It lacked the doctrinal specifications and the sanctions provisions of the U.N. Charter. *See* The Kellogg-Briand Pact, Aug. 27, 1928, 94 L.N.T.S. 57.

> Israel is increasingly isolated politically and faces a growing danger of losing the support of world public opinion. The greatest threat to Israel today is not Arab arms and the lack of financial means but the slow erosion of world sympathy, particularly among the progressive nations that have always supported Israel.[105]

Israel's continuing lack of concern for the consensus of the world community, as well as for the advice of friendly critics, is manifested by its repeated attacks on civilians and civilian targets in Southern Lebanon and elsewhere. It conducted a massive air attack on an urban area of Beirut, resulting in more than a thousand civilian casualties, on June 17, 1981, while the Security Council was still considering the June 7 attack on the Iraqi reactor.

The late Moshe Sharett was the first Foreign Minister and the second Prime Minister of the State of Israel. Since his death, his carefully written and thoughtful diary, not intended for publication, has been published in Israel; more recently, portions of it have become available in the United States.[106] His diary recounts numerous Israeli military incursions which he states were misrepresented as acts of self-defense. He states: "What shocks and worries me is the narrow-mindedness and the short-sightedness of our military leaders. They seem to presume that the State of Israel may—or even must—behave in the realm of international relations according to the laws of the jungle."[107]

It should be mentioned that in a particularly significant respect Prime Minister Begin probably has achieved the opposite of his stated objective concerning the June 7 air attack. The attack and the ensuing claims and counterclaims emphasized to the Arab states the importance of developing a nuclear weapons capability as a deterrent to Israel's nuclear threat. The only certain way to prevent further proliferation of nuclear weapons in the Middle East is for the world community, including the United States, to force Israel to become a state-party to the NPT and to place its nuclear establishment under IAEA inspection.

General Mattiyahu Peled, a retired officer of the Israeli Army,

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105. *True Neutrality for Israel*, FOREIGN POL'Y no. 37 at 133, 140-41 (1979-80).

106. *See* L. ROKACH, ISRAEL'S SACRED TERRORISM: A STUDY BASED ON MOSHE SHARETT'S PERSONAL DIARY AND OTHER DOCUMENTS (1980).

107. *Id.* at 21.

commented upon the June 7 attack from a military perspective.[108] In his view, the military purpose of destroying a potential Iraqi nuclear weapons capability has not been, and cannot be, accomplished. He points out that Iraq, like Egypt following the deep-penetration Israeli air attacks, is being forced to construct an efficient air defense system. This will result in the Iraqi ability to rebuild its nuclear establishment without interference and with no Israeli capability to attack it successfully.

Former United States Secretary of Commerce Philip M. Klutznick, who served as president of the World Jewish Congress, is well known as a consistent and thoughtful supporter of Israel. He has raised fundamental questions and reached disturbing conclusions in an article in which he wrote:

> Why did Israel act at this time and without consultations with the United States, thus endangering present regional peace while claiming to safeguard Israeli security in years ahead?[109]
>
> Having accepted an arms dependency relationship with the U.S., can Israel reasonably insist on taking actions unacceptable and unexplainable to many and which threaten American regional interests?[110]

B. *The Effects Upon the World Legal Order*

The Israeli aerial attack on the Iraqi reactor is symptomatic of a much larger problem. The problem, stated in its simplest form, is whether Israel should be allowed to continue its course of unilateral military methods in violation of the standards of international law and the world legal order system. Another portion of the article by Mr. Klutznick quoted above emphasizes the effects of the June 7 attack on the world legal order:

> The greater fears that deeply concern me are the long-term implications for world order of Israel's action. . . . Tomorrow, Iraq or some other unfriendly nation can indulge in a "suicide mission" on Israel's Dimona reactor, or India can turn on Pakistan, the Soviet Union on China. Israel has totally avoided this discussion as if only Israel's interests are vital, only Israel's existence threatened. Yet, in effect, Israel has breached the long and worrisome efforts to secure a measure of restraint in the nuclear age, with Israel's unilat-

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108. *The Baghdad Adventure*, Ha'aretz, June 11, 1981, *translated into English in* Israeli Mirror, June 18, 1981, at 1-2 (London).

109. Christian Sci. Monitor, June 19, 1981, at 23, col. 1.

110. *Id.* col. 2.

eral act creating a sense of anarchy and permissiveness hitherto beyond acceptability.[111]

[T]he devil of preemptive attack has been loosed—all the worse for Israel having acted without clearly exhausting all opportunities for reaching a general peace in the region, which is surely the only way in the long term to safeguard Israel's security.[112]

In view of the existing nuclear weapons capability of Israel,[113] a continuation of the unlimited support provided by the United States will most likely lead to nuclear disaster. The only certain way to prevent this is for the community of states to require Israel to dismantle its nuclear weapons capability and become a state-party to the NPT. This will require mandatory sanctions under chapter VII of the United Nations Charter.

President Eisenhower made the essential world order point in early 1957 following the tripartite attack upon Egypt and the initial refusal of Israel to withdraw from the then occupied territories:

If we agree that armed attack can properly achieve the purposes of the assailant, then I fear we will have turned back the clock of international order. We will, in effect, have countenanced the use of force as a means of settling international differences and through this gaining national advantages.[114]

President Eisenhower, acting in support of the United Natons legal order, forced Israeli withdrawal from the territories it occupied. The probable dangers confronting the Middle East and the

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111. *Id.* col. 2-3.

112. *Id.* col. 4.

113. "[T]he group of Experts wishes to emphasize that they do not doubt that Israel, if it has not already crossed that threshold, has the capability to manufacture nuclear weapons within a very short time." Report of the U.N. Secretary-General, Israeli Nuclear Armament 27, U.N. Doc. A/36/431 (1981). "For at least two years the United States Government has been conducting its Middle East policy on the assumption that Israel either posesses an atomic bomb or has component parts available for quick assembly." Smith, *U.S. Assumes the Israelis Have A-Bomb or Its Parts*, N.Y. Times, July 18, 1970, at 1, col. 6.

"The Israeli-French announcements in Paris confirmed earlier reports that the reactor used natural uranium as a fuel and heavy water as a moderator and coolant. This type of reactor, the same as the one employed by the United States at its large plant at Savannah River, South Carolina, is particularly well suited for producing the fissionable plutonium used in nuclear bombs." Finney, *U.S. Misled at First on Israeli Reactor*, N.Y. Times, Dec. 20, 1960, at 1, col. 2, continuation at 15, col. 3.

114. 36 DEP'T ST. BULL. 387, 389 (1957).

world today are much more severe than those present in 1956 and 1957. The alternative to enforcement of the world legal order now is a nuclear war in the future. The Middle East, and possibly the world, now lives under the potential of nuclear obliteration brought on by the actions of the Government of Israel.

APPENDIX

RESOLUTION 487 (1981)

Adopted by the Security Council at its 2288th meeting on 19 June 1981

The Security Council,

Having considered the agenda contained in document S/Agenda/2280,

Having-noted the contents of the telegram dated 8 June 1981 from the Foreign Minister of Iraq (S/14509),

Having heard the statements made to the Council on the subject at its 2280th through 2288th meetings,

Taking note of the statement made by the Director-General of the International Atomic Energy Agency (IAEA) to the Agency's Board of Governors on the subject on 9 June 1981 and his statement to the Council at its 2288th meeting on 19 June 1981,

Further taking note of the resolution adopted by the Board of Governors of the IAEA on 12 June 1981 on the "military attack on the Iraq nuclear research centre and its implications for the Agency" (S/14532)

Fully aware of the fact that Iraq has been a party to the Treaty on the Non-Proliferation of Nuclear Weapons since it came into force in 1970, that in accordance with that Treaty Iraq has accepted IAEA safeguards on all its nuclear activities, and that the Agency has testified that these safeguards have been satisfactorily applied to date,

Noting furthermore that Israel has not adhered to the non-proliferation Treaty,

Deeply concerned about the danger to international peace and security created by the premeditated Israeli air attack on Iraqi nuclear installations on 7 June 1981, which could at any time explode the situation in the area, with grave consequences for the vital interests of all States,

Considering that, under the terms of Article 2, paragraph 4, of the Charter of the United Nations: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations",

1. *Strongly condemns* the military attack by Israel in clear violation of the Charter of the United Nations and the norms of

international conduct;

2. *Calls upon* Israel to refrain in the future from any such acts or threats thereof;

3. *Further considers* that the said attack constitutes a serious threat to the entire IAEA safeguards regime which is the foundation of the non-proliferation Treaty;

4. *Fully recognizes* the inalienable sovereign right of Iraq, and all other States, especially the developing countries, to establish programmes of technological and nuclear development to develop their economy and industry for peaceful purposes in accordance with their present and future needs and consistent with the internationally accepted objectives of preventing nuclear-weapons proliferation;

5. *Calls upon* Israel urgently to place its nuclear facilities under IAEA safeguards;

6. *Considers* that Iraq is entitled to appropriate redress for the destruction it has suffered, responsibility for which has been acknowledged by Israel;

7. *Requests* the Secretary-General to keep the Security Council regularly informed of the implementation of this resolution.

S.C. Res. 487, 36 U.N. SCOR (2288th mtg.) (1981), U.N. Doc. S/Res/487 (1981)