ON INTERNATIONAL LAW AND NUCLEAR TERRORISM

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It’s farewell to the drawing-room’s civilised cry,
The professor’s sensible whereto and why,
The frock-coated diplomat’s social aplomb,
Now matters are settled with gas and with bomb.

W.H. Auden, Danse Macabre

Little did the poet Auden realize, just before the dawn of the Nuclear Age,¹ how completely the technology of destruction would come to outshout the dimming voice of reason.² Today, this technology includes the unlocked secrets of the atom and can be exploited by terrorists as well as by states. Taken together with a world that has grown steadily inured to the pain of others—a world that has become anesthetized to anguish as it has fled from rationality—the prospect of nuclear terrorism should not be underestimated. With this in mind, we will now consider this prospect with particular respect

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¹ There now exists a huge literature dealing with the expected consequences of a nuclear war. For works on these consequences by this author see LOUIS R. BERES, APOCALYPSE: NUCLEAR CATASTROPHE IN WORLD POLITICS (1980); LOUIS R. BERES, MIMICKING SISYPHUS: AMERICA'S COUNTERVAILING NUCLEAR STRATEGY (1983); LOUIS R. BERES, REASON AND REALPOLITIK: U.S. FOREIGN POLICY AND WORLD ORDER (1984); SECURITY OR ARMAGEDDON: ISRAEL’S NUCLEAR STRATEGY (1986).

² On this “dimming voice,” we may consider also Dostoyevsky’s comment, “man, always and everywhere, prefers to act in the way he feels like acting and not in the way his reason and interest tell him, for it is very possible for a man to feel like acting against his interests and, in some instances, I say that he positively wants to act that way. . . .” FYODOR DOSTOYEVSKY, NOTES FROM UNDERGROUND.
to its effective prevention by international law.³

I. WHO ARE THE TERRORISTS?

Before the world legal order⁴ can cope with the risk of nuclear terrorism, our leaders must understand the difference between lawful and unlawful


⁴ Although brought into fashion by the Bush administration, the concept of “world order” as an organizing dimension of inquiry and as a normative goal of global affairs has its contemporary intellectual origins in the work of Harold Lasswell and Myres McDougal at the Yale Law School, GRENVILLE CLARK & LOUIS SOHN, WORLD PEACE THROUGH WORLD LAW (2d ed. 1960) and the large body of writings of Richard A. Falk and Saul H. Mendlovitz. For works by this author who was an original participant in the World Law Fund's World Order Models Project, see LOUIS R. BERES & HARRY R. TARG, CONSTRUCTING ALTERNATIVE WORLD FUTURES: REORDERING THE PLANET (1977); PLANNING ALTERNATIVE WORLD FUTURES: VALUES, METHODS AND MODELS (Louis R. Beres & Harry R. Targ eds., 1975); LOUIS R. BERES, PEOPLE, STATES AND WORLD ORDER (1984); LOUIS R. BERES, REASON AND REALPOLITIK: U.S. FOREIGN POLICY AND WORLD ORDER (1984).
insurgencies. And this understanding must be based upon more than the
selective intuitions of geopolitics. Specifically, it must rest upon well-
established jurisprudential standards that reflect international law.⁵

What, exactly, are these standards? International law has consistently
proscribed particular acts of international terrorism.⁶ At the same time,

⁵ These standards, in turn, are rooted in natural law, the classic expression of which is
found in Cicero's DE REPUBLICA:

True law is right reason, harmonious with nature, diffused among all,
constant, eternal; a law which calls to duty by its commands and restrains
from evil by its prohibitions. . . . It is a sacred obligation not to attempt
to legislate in contradiction to this law; nor may it be derogated from nor
abrogated. Indeed, by neither the Senate nor the people can we be
released from this law; nor does it require any but oneself to be its
expositor or interpreter. Nor is it one law at Rome and another at Athens;
one now and another at a late time; but one eternal and unchangeable law
binding all nations through all time.

CICERO, DE REPUBLICA. Of course, Cicero's notion of true law is premised upon human
reason, a premise which, at least upon empirical grounds, we (in the fashion of Dostoyevsky,
above) have good reason to question.

⁶ See Convention on the Prevention and Punishment of Crimes Against Internationally
1977); Vienna Convention on Diplomatic Relations, done at Vienna, Apr. 18, 1961, 23 U.S.T.
3227, 500 U.N.T.S. 95 (entered into force for the United States Dec. 13, 1972); Convention
on Offenses and Certain Other Acts Committed on Board Aircraft, done at Tokyo, Sept. 14,
1969) (also known as the Tokyo Convention); Convention for the Suppression of Unlawful
the United States Oct. 14, 1971) (also known as the Hague Convention); 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 (entered into force for the United States Jan. 26, 1973) (also known
as the Montreal Convention); International Convention Against the Taking of Hostages, Dec.
17, 1979, T.I.A.S. No. 11081, 18 I.L.M. 1456 (entered into force June 3, 1983) (entered into
force for the United States Dec. 7, 1984); European Convention On the Suppression of
Terrorism, Jan. 27, 1977, Europ. T.S. No. 90, 15 I.L.M. 1272 (entered into force Aug. 4,
1978). On December 9, 1985, the U.N. General Assembly unanimously adopted a resolution
condemning all acts of terrorism as "criminal." Never before had the General Assembly
adopted such a comprehensive resolution on this question. Yet, the issue of particular acts
that actually constitute terrorism was left largely unaddressed, except for acts such as
hijacking, hostage-taking, and attacks on internationally protected persons that were
criminalized by previous custom and conventions. See United Nations Resolution on
however, it has permitted certain uses of force that derive from

the inalienable right to self-determination and independence

of all peoples under colonial and racist regimes and other

forms of alien domination and the legitimacy of their

struggle, in particular, the struggle of national liberation

movements, in accordance with the purposes and principles

of the Charter and the relevant resolutions of the organs of

the United Nations.

This exemption, from the 1973 General Assembly Report of the Ad Hoc Committee on International Terrorism, is corroborated, of course, by Article 7 of the UN General Assembly's 1974 Definition of Aggression:7

Nothing in this definition, and in particular, article 3 (inventory of acts that qualify as aggression) could in any way prejudice the right to self-determination, freedom and independence, as derived from the Charter, of peoples forcibly deprived of that right and referred to in the Declaration of Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, particularly peoples under colonial and racist regimes or other forms of alien domination; nor the right of these peoples to struggle to that end and to seek and receive support, in accordance with the principles of the Charter and in conformity with the above-mentioned Declaration.  

International law has also approved certain forms of insurgency that are directed toward improved human rights where repression is neither colonial nor racist. Together with a number of important covenants, treaties, and declarations, the UN Charter codifies many binding norms for the

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9 This calls to mind the related concept of natural law. For more than two thousand years, the idea of natural law has served as the ultimate standard of right and wrong, as the final determinant of true law as opposed to edicts based upon raw power. Already apparent in the ANTIGONE of Sophocles and the ETHICS AND RHETORIC of Aristotle, this idea—tied closely to theology for many centuries—has effectively placed law above lawmaking. At the same time, it is obvious that humankind has not only been indifferent to the law of nature, but has often even coupled this indifference with adherence to undiscovered “laws” that reject justice. In this connection, we recall Pascal’s observation: “It is odd, when one thinks of it, that there are people in the world who, having renounced all the laws of God and nature, have themselves made laws which they rigorously obey . . .,” quoted in A.P. D’ENTREVES, NATURAL LAW: AN INTRODUCTION TO LEGAL PHILOSOPHY (1952).

10 See generally, U.N. CHARTER.
protection of human rights. Comprising a well-defined "regime," these rules of international law are effectively enforceable only by the actions of individual states and/or by lawful insurgencies.\(^{11}\)

\(^{11}\) See Universal Declaration of Human Rights, December 10, 1948, U.N.G.A. Res. 217A (III), U.N. Doc. A/810, at 71; International Convention on the Elimination of All Forms of Racial Discrimination, 5 I.L.M. 352 (1966); International Covenant on Economic, Social and Cultural Rights, 6 I.L.M. 360 (1967); International Covenant on Civil and Political Rights, 6 I.L.M. 368 (1977). The origins of the current human rights regime lie in ancient Greece and Rome. From Greek Stoicism and Roman law to the present, the *jus gentium* (law of nations) and modem international law have accepted the right of individuals to overthrow tyrants and to oppose, forcefully if necessary, tyrannical regimes. This acceptance can be found primarily in international custom, the general principles of law recognized by nations, UN General Assembly resolutions, various judicial decisions, specific compacts and documents (e.g., the Magna Carta, 1215; the Petition of Right, 1628; the English Bill of Rights, 1689; the Declaration of Independence, 1776; and the Declaration of the Rights of Man and of the Citizen, 1789), the writings of highly-qualified publicists (e.g., Cicero; Francisco de Vitoria; Hugo Grotius and Emmerich de Vattel), and, by extrapolation, from the convergence of human rights law with the absence of effective, authoritative institutions in world politics.

\(^{12}\) Recalling that the sources of international law (according to Article 38 of the Statute of the International Court of Justice) are found also in international custom, the general principles of law recognized by civilized nations, judicial decisions and the writings of highly qualified publicists, additional support for the lawfulness of certain forms of insurgency can be identified at non-treaty sources. For example, the American Declaration of Independence, as an expression of natural law, is an authoritative instance of the "the general principles of law recognized by civilized nations," and therefore sets limits on the authority of every government. Since justice, according to the Founding Fathers, must bind all human society, the rights articulated by the Declaration cannot be reserved only to Americans. To deny these rights to others would be illogical and self-contradictory, since it would undermine the permanent and universal law of nature from which the Declaration derives. This understanding was represented by Thomas Paine (THE RIGHTS OF MAN 151, 1792, Everyman ed.), who affirmed: "The Independence of America, considered merely as a separation from England, would have been a matter of but little importance, had it not been accompanied by a Revolution in the principles and practices of Governments. She made a stand, not for herself only, but for the world, and looked beyond the advantages herself could receive." Indeed, in view of the longstanding support for various forms of insurgency in multiple sources of positive and natural law, it is reasonable to argue that a peremptory norm of general international law (a *jus cogens* norm) has emerged on this matter. According to Article 53 of the Vienna Convention on the Law of Treaties (23 May 1969), "a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character." Even a treaty that might seek to criminalize forms of insurgency protected by this peremptory norm would be invalid. According to Article 53 of the Vienna Convention, "A treaty is void
Where it is understood as resistance to despotism, insurgency also has roots as permissible practice in the Bible and in the writings of ancient and medieval classics. Support for such insurgency is not the creation of modern international law. It can be found, for example, in Aristotle's *Politics*, Plutarch's *Lives* and Cicero's *De Officiis*.

This brings us to the first jurisprudential standard for differentiating between lawful insurgency and terrorism, one commonly known as "just cause." Where individual states prevent the exercise of human rights, insurgency may express law-enforcing reactions under international law. For this to be the case, however, the *means* used in that insurgency must be consistent with the second jurisprudential standard, commonly known as "just means."

In deciding whether a particular insurgency is an instance of terrorism or law-enforcement, therefore, states must base their evaluations, in part, on judgments concerning *discrimination*, *proportionality*, and *military*
necessity. Once force is applied broadly to any segment of human population, blurring the distinction between combatants and noncombatants, terrorism is taking place. Similarly, once force is applied to the fullest possible extent, restrained only by the limits of available weaponry, terrorism is underway.

The legitimacy of a certain cause does not legitimize the use of certain forms of violence. The ends do not justify the means. As in the case of war between states, every use of force by insurgents must be judged twice; once with regard to the justness of the objective, and once with regard to the justness of the means used in pursuit of that objective.16

calls: hurting a pregnant woman, perjury, and guarding Yahweh’s altar against defilement. In contemporary international law, the principle of proportionality can be found in the traditional view that a state offended by another state’s use of force can, if the offending state refuses to make amends, take “proportionate” reprisals. (See Naulilaa Arbitration, 1928, 2 RIAA 1013; Air Services Agreement Arbitration, 1963, 16 RIAA 5; cited in Ingrid Detter De Lupis, THE LAW OF WAR 75 (1987). Evidence of the rule of proportionality can also be found in the United Nations Covenant on Civil and Political Rights of 1966 (Article 4). Similarly, the European Convention on Human Rights provides at Article 15 that in time of war or other public emergency, contracting parties may derogate from the provisions, on the condition of rules of proportionality. And the American Convention on Human Rights allows at Article 27 (1) such derogations in “time of war, public danger or other emergency which threaten the independence of security of a party” on condition of proportionality. In essence, the military principle of proportionality requires that the amount of destruction permitted must be proportionate to the importance of the objective. In contrast, the political principle of proportionality states that a war cannot be just unless the evil that can reasonably be expected to ensue from the war is less than the evil that can reasonably be expected to ensue if the war is not fought. See Douglas P. Lackey, THE ETHICS OF WAR AND PEACE 40 (1985).

16 The means criterion has important implications for extradition. For an inventory of extradition agreements in force between the United States and other countries, see INTERNATIONAL TERRORISM: A COMPILATION OF MAJOR LAWS, TREATIES, AGREEMENTS AND EXECUTIVE DOCUMENTS, A Report Prepared for the Committee on Foreign Affairs, U.S. House of Representatives, by the Congressional Research Service, Library of Congress, 100th Cong., 1st Sess., 239-326 (1987). One problem in such agreements has been the “political offense exception” to extradition, a provision that extradition need not or shall not be granted when the acts with which the accused is charged constitute a political offense or an act connected with a political offense. The Reagan administration addressed the problem of the “political offense exception” in the context of the Supplementary Treaty Concerning the Extradition Treaty between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland. Recognizing that there exist egregious examples of overbroad applications of the exception and that claims of immunity from extradition based on “relative” political offenses have always been
Significantly, from the point of view of international law, any use of nuclear weapons by an insurgent group would represent a serious violation of the laws of war.17 These laws have been brought to bear upon non-state actors in world politics by Article 3, common to the four Geneva Conventions of August 12, 1949, and by the two protocols to the conventions. Protocol 1 makes the law concerning international conflicts applicable to conflicts fought for self-determination against alien occupation and against colonialist and racist regimes. A product of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts that ended on June 10, 1977, the protocol (which was justified by the decolonization provisions of the UN Charter and by resolutions of the General Assembly) brings irregular forces within the full scope of the law of armed conflict. Protocol 2, also additional to the Geneva Conventions, concerns protection of victims of non-international armed conflicts. Hence, this protocol applies to all armed conflicts that are not covered by Protocol 1 and that take place within the territory of a state between its armed forces and dissident armed forces.

17 See SAMUEL PUFENDORF, ON THE DUTY OF MAN AND CITIZEN, for an early expression of limits under the law of war: "As for the force employed in war against the enemy and his property, we should distinguish between what an enemy can suffer without injustice, and what we cannot bring to bear against him, without violating humanity. For he who has declared himself our enemy, inasmuch as this involves the express threat to bring the worst of evils upon us, by that very act, so far as in him lies, gives us a free hand against himself, without restriction. Humanity, however, commands that, so far as the clash of arms permits, we do not inflict more mischief upon the enemy than defense, or the vindication of our right, and security for the future, require." See PUFENDORF, ON THE DUTY OF MAN AND CITIZEN ACCORDING TO NATURAL LAW (De Officio Homonis et Civis Juxta Legem Naturalem Libri Duo), Vol. II, 139 (Frank Gardner Moore, trans., 1864).
In support of the principle that foreign intervention is unlawful unless it is understood as an indispensable corrective to gross violations of human rights, most major texts and treatises on international law (an authoritative source of international law according to article 38 of the Statute of the International Court of Justice) have long expressed the opinion that a state is forbidden to engage in military or paramilitary operations against another state with which it is not at war. Today, the long-standing customary prohibition against foreign support for lawless insurgencies is codified in the United Nations Charter and in the authoritative interpretation of that multilateral treaty at article 1 and article 3(g) of the General Assembly’s Definition of Aggression (1974).

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18 Under international law, the question of whether or not a state of war actually exists between states is somewhat ambiguous. Traditionally, it was held that a formal declaration of war was a necessary condition before “formal” war could be said to exist. Hugo Grotius, for example, divided wars into declared wars, which were legal, and undeclared wars, which were not. See Hugo Grotius, The Law of War and Peace, Bk. III, chs. III, V, and XI. By the beginning of the twentieth century, the position that war obtains only after a conclusive declaration of war by one of the parties, was codified by the Hague Convention III. More precisely, this convention stipulated that hostilities must not commence without “previous and explicit warning” in the form of a declaration of war or an ultimatum. See Hague Convention III Relative to the Opening of Hostilities, 1907, 3 NRGT, 3 series, 437, article 1. Currently, of course, declarations of war may be tantamount to declarations of international criminality (because of the criminalization of aggression by authoritative international law), and it could be a jurisprudential absurdity to tie a state of war to formal declarations of belligerency. It follows that a state of war may exist without formal declarations, but only if there is an armed conflict between two or more states and/or at least one of these states considers itself at war.

19 In the United States, these codifications are supported by various elements of federal law. Under the terms of the Foreign Assistance Act of 1961 As Amended (PL 87-195); the Agricultural Trade Development and Assistance Act of 1954 (title IV); the Peace Corps Act, 22 U.S.C. 2501-23 (1988 & Supp. IV 1992); the Export-Import Bank Act of 1945, 12 U.S.C. 635-635Z (1988 & Supp. IV 1992); and the Arms Export Control Act (Title 22), the U.S. shall not provide any assistance to any country “which the President determines (1) grants sanctuary from prosecution to any individual or group which has committed an act of international terrorism, or (2) otherwise supports international terrorism.” See Foreign Assistance Act of 1961 As Amended, Chapter 8—Antiterrorism Assistance—Sec. 620A, PROHIBITION ON ASSISTANCE TO COUNTRIES SUPPORTING INTERNATIONAL TERRORISM. Significantly, according to Sec. 620A (b): “The President may waive the application of subsection (a) to a country if the President determines that national security or humanitarian reasons justify such waiver.” In other words, U.S. support for international law concerning state assistance to terrorists can be reversed where the President determines that “national security or humanitarian reasons” dictate overriding support for the terrorists and/or
The legal systems embodied in the constitutions of individual states are an
interest that all states must normally defend against aggression. This
peremptory principle was expressed by Hersch Lauterpacht. According to
Lauterpacht, the following rule concerns the scope of state responsibility for
preventing acts of insurgency or terrorism against other states: "International
law imposes upon the State the duty of restraining persons within its territory
from engaging in such revolutionary activities against friendly States as
amount to organized acts of force in the form of hostile expeditions against
the territory of those States. It also obliges the States to repress and
discourage activities in which attempts against the life of political opponents
are regarded as a proper means of revolutionary action."  

Lauterpacht's rule reaffirms the Resolution on the Rights and Duties of
Foreign Powers as Regards the Established and Recognized Governments in
Case of Insurrection adopted by the Institute of International Law in 1900.
His rule, however, stops short of the prescription offered by Emmerich de
Vattel. According to Vattel's The Law of Nations, states that support
terrorism directed at other states become the lawful prey of the world
community: "If there should be found a restless and unprincipled nation,
ever ready to do harm to others, to thwart their purposes, and to stir up civil
strife among their citizens, there is no doubt that all others would have the
right to unite together to subdue such a nation, to discipline it, and even to
disable it from doing further harm."  

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20 Here it is instructive to recall Vattel's argument at Chapter V of The Law of Nations
or the Principles of Natural Law on The Observance of Justice Between Nations:
"Justice is the foundation of all social life and the secure bond of all civil
intercourse. Human society, instead of being an interchange of friendly
assistance, would be no more than a vast system of robbery if no respect
were shown for the virtue which gives to each his own. Its observance
is even more necessary between Nations than between individuals,
because injustice between Nations may be followed by the terrible
consequences involved in an affray between powerful political bodies, and
because it is more difficult to obtain redress. . . . An intentional act of
injustice is certainly an injury. A Nation has, therefore, the right to
punish it. . . . The right to resist injustice is derived from the right of
self-protection."

E. De Vattel, The Law of Nations or the Principles of Natural Law, Vol. 3, 135

21 Id.

22 Id.
States also have an obligation to treat captured insurgents in conformity with the basic dictates of international law. Although this obligation does not normally interfere with a state’s right to regard as common or ordinary criminals those persons not engaged in armed conflict (that is, persons involved merely in internal disturbances, riots, isolated and specific acts of violence, or other acts of a similar nature), it does mean that all other captives (according to the Geneva Conventions of August 12, 1949) “remain under the protection and authority of the principles of humanity and from the dictates of public conscience.”

In cases where captive persons are engaged in armed conflict, it may mean an additional obligation of states to extend the privileged status of prisoner of war (POW) to such persons. This additional obligation is unaffected by insurgent respect for the laws of war of international law. While all combatants are obliged to comply with the rules of international law applicable in armed conflict, violations of these rules do not automatically deprive an insurgent combatant of his right to protection equivalent in all respects to that accorded to prisoners of war. This right, codified by the Geneva Conventions, is now complemented and enlarged by the two protocols to those conventions.

II. WHAT IS THE THREAT?

To undertake acts of nuclear terrorism, insurgent or revolutionary groups would require access to nuclear weapons, nuclear power plants or nuclear waste storage facilities. Should they seek to acquire an assembled weapon, terrorists could aim at any of the tens of thousands of nuclear weapons deployed in the national or alliance arsenals of the United States, portions of the former Soviet Union, France, England, India, Israel, Pakistan and China. Moreover, because the number of nuclear weapons states is certain to grow, such terrorists are destined to have an enlarged arena of opportunity.

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23 This so-called Martens clause, named after the Russian delegate at the first Hague Conferences, is included in the Preamble of the 1899 and 1907 Hague Conventions, and is designated a higher status in the 1977 Protocol I, where it is included in the main text of Article I. In Protocol II, however, the Martens clause is again moved to the Preamble. The Martens clause purposefully extends the law of armed conflict to all types of liberation wars.

24 This suggests that the non-proliferation regime of treaties, resolutions, and statutes represents an essential impediment to nuclear terrorism. In this connection, see TREATY ON THE NON-PROLIFERATION OF NUCLEAR WEAPONS, July 1, 1968, 21 U.S.T. 483, T.I.A.S. No. 6839, 729 U.N.T.S. 161, 7 I.L.M. 811 (1968); TREATY FOR THE PROHIBITION OF NUCLEAR
Regarding successor states to the Soviet Union, this arena is already worrisome. Here a particular problem lies in the "small" battlefield nuclear weapons. Because these weapons are more amenable to clandestine removal, and because custodians of these weapons are generally in economic distress, there is considerable risk of black market sales to terrorist groups. This risk could intensify to the extent that Islamic militants might identify sympathetic custodial authorities in such successor states, especially Kazakhstan.

Should they seek to manufacture their own nuclear weapons, terrorists would require both strategic special nuclear materials and the expertise to convert them into bombs or radiological weapons. Both requirements are now well within the range of terrorist capabilities. Some 260 commercial nuclear power plants are operating in the non-Western world today, each with the capacity to produce bomb-capable plutonium. And approximately twenty plants in seventeen countries can now process plutonium from spent reactor fuel.

Significantly, the amounts of nuclear materials present in other countries will probably expand further. Pilot reprocessing plants to extract weapons-useable plutonium from spent reactor fuel rods signal dangerous conditions. Unless immediate and effective steps are taken to inhibit the spread of plutonium reprocessing and uranium enrichment facilities to other countries, terrorist opportunities to acquire fissionable materials for nuclear-weapons purposes could reach very high levels.25

25 In this connection, although the nuclear states have attempted to limit the export of nuclear-weapons related materials and equipment through formal agreements, a new challenge has emerged: a "gray market" in which nuclear material and information are obtained through smuggling, exploitation of loopholes in nuclear export controls, and fraud. For information on this "nuclear netherworld," see Leonard S. Spector, "The Nuclear Netherworld," Issues in Science and Technology, Vol. II, No. 4, 96-101 (1986).
Disposing of plutonium is already a major problem for the United States. In sixteen concrete bunkers that were built by the Army during World War II, this country has begun to assemble about fifty tons of plutonium. According to the U.S. Department of Energy, the bunkers—each about the size of a two-car garage—will be used for interim storage, i.e., six or perhaps seven years.26

The Energy Department stopped making plutonium for bombs in the 1980s, but the stockpile is growing because the United States is currently dismantling obsolete nuclear warheads. Although Energy Department officials argue that fire, flood and explosion are not significant hazards, others are not so sure.27 Should terrorists wish to exploit such hazards, by deliberate actions, both probabilities and disutilities could become uncomfortably high.

To manufacture its own nuclear weapons, a terrorist group would also require expertise. It is now well-known that such expertise is widely available. In 1977, the Office of Technology Assessment (OTA) produced a report titled Nuclear Proliferation and Safeguards. After a general description of the two basic methods of assembling fissile material in a nuclear explosive (the assembly of two or more subcritical masses using gun propellants and the achievement of supercriticality of fissile material via high explosive), the report stated that "militarily useful weapons with reliable nuclear yields in the kiloton range can be constructed with reactor-grade plutonium, using low technology." Indeed, it continued, "given the weapons material and a fraction of a million dollars, a small group of people, none of whom had ever had access to the classified literature, could possibly design and build a crude nuclear explosive device."28

Another path to nuclear capability by terrorists could involve the sabotage of nuclear reactor facilities. It is now apparent that such acts could pose monumental problems for responsible government authorities. This is especially apparent in the aftermath of the Soviet nuclear accident at Chernobyl in the spring of 1986, which revealed the particular dangers involved, and of the breach of security at Three Mile Island on February 7, 1993, which revealed the continuing inadequacy of U.S. safeguards.

27 Id.
When a former mental patient crashed his car into the Three Mile Island plant, the plant’s owners (GPU Nuclear) and the Nuclear Regulatory Commission (NRC) conceded multiple failures. Strangely, the NRC’s security inspection program failed even to anticipate the scenario of vehicular assault on a nuclear plant. Only after the incident, in which the perpetrator crashed his Plymouth station wagon through a chain-link fence and through an aluminum door adjacent to the control room and reactor building, did GPU Nuclear begin to secure its plant against vehicular intrusions.29

The February 7, 1993 event demonstrated a number of consequential threats. First, a not-especially astute intruder, acting alone and without a coherent plan or objective, could penetrate a U.S. nuclear reactor facility and bring his vehicle within the close distances required to inflict “unacceptable damage” with a “relatively small charge.”30 Second, such an event might occur without any advance warning. And third, substantial time might elapse before it could even be determined whether or not explosives were being carried in a vehicle that had breached security barriers.31

29 See Matthew L. Wald, Study Finds Gap in Security at Nuclear Plants, N.Y. TIMES, April 8, 1993, at A7. Concern over the possibility of vehicular intrusions had prompted the Washington-based Nuclear Control Institute and the Committee to Bridge the Gap to submit a Petition for Rulemaking on January 11, 1991 (PRM-73-9) (Tab A), seeking an upgrade of the design basis threat for radiological sabotage of nuclear reactors. That petition was denied on June 11, 1991 (56 Fed. Reg. 26782) (Tab B). Continuing to believe that meaningful corrective action was needed, the two organizations subsequently filed a Request for Action pursuant to 10 C.F.R. § 2.206 on September 4, 1991, supplemented on September 20, 1991, seeking an Individual Plant Examination (IPE) program, requiring nuclear power plant licensees to evaluate their plant’s ability to withstand safeguards events beyond the design basis (Tab C). On December 31, 1991, that Request was also denied (DD-91-08) (Tab D). See Letter from Paul Leventhal, President, Nuclear Control Institute and Daniel Hirsch, President, Committee to Bridge the Gap, to Commissioner Ivan Selin, Chairman, U.S. Nuclear Regulatory Commission (Feb. 19, 1993).

30 These are terms used in a Sandia National Laboratories study, requested by the NRC, which concluded that domestic nuclear facilities were vulnerable to truck bomb attack. See Letter from Robert F. Burnett, Director, Division of Safeguards, NMSS (Jan. 27, 1984); Letter from George W. McCorkle to Robert F. Burnett (Apr. 26, 1984), in Oversight Hearing, Threat of Sabotage and Nuclear Terrorism to Commercial Nuclear Power Plants: Oversight Hearing Before the Subcomm. on General Oversight and Investigations of the House Comm. on Interior and Insular Affairs, 100th Cong., 2nd Sess. 190, 192 (March 9, 1988).

These threats seem even greater in the aftermath of the truck bomb explosion in the garage of the World Trade Center almost three weeks later. This explosion demonstrated the credibility of terrorist truck bomb assaults, whether against nuclear or any other public facilities. Initially, however, the NRC response was hesitant. On February 28, two days after the World Trade Center attack, NRC did not instruct its licensees to review their short-term truck bomb contingency plans, let alone implement them. According to a senior NRC official, commenting on February 28: "We just don't see the threat. We don't see the justification for escalation of security measures." However, on March 1, acknowledging that a serious review of plant security was needed, the NRC sent a directive to its Executive Director, stating: "In light of the recent intrusion at the Three Mile Island and the apparent bomb event in New York City, the Commission believes it is an appropriate time for the NRC to reevaluate and, if necessary, update the design basis for vehicle intrusion and the use of vehicular bombs." At the same time, the NRC issued a statement directing nuclear power plant operators to "review their truck bomb contingency plan in coordination with the NRC inspectors in the event that the NRC decides to require implementation of the plan.

What can be done to protect against sabotage of nuclear reactors by terrorists? According to the "Report Of The International Task Force On Prevention Of Nuclear Terrorism," a project of the highly-esteemed Nuclear Control Institute in Washington, D.C.:

1. Denial of access to nuclear facilities should be the basic consideration in protecting against sabotage.
2. Thorough vigilance against the insider threat is needed.
3. Guard forces should be thoroughly trained and authorized to use deadly force.
4. The basis used for designing physical protection of nuclear plants should be reviewed to ensure that it accurately reflects the current threat.
5. Power reactors should have adequate security provisions against terrorists.

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33 Id.
34 Id.
6. Research reactors should have adequate security provisions against terrorists.
7. Reactor safety designs should be reexamined to protect against an accident caused by terrorists.
8. IAEA (International Atomic Energy Agency) physical protection guidelines should be reviewed and updated.
9. Protection standards should be spelled out unambiguously.35

More recently, the two watchdog groups—the Nuclear Control Institute and the Committee to Bridge the Gap—argue that, inter alia, “[v]igorous oversight from Congress and the public will be required to ensure that the process stays on track and expeditiously produces a real improvement in protection against the threat of radiological sabotage.”36 More specifically, in order to minimize the vulnerability of licensed reactors to unforeseen intrusions of the sort experienced at Three Mile Island and the World Trade Center, these informed organizations recommend that the NRC proceed with a two-stage plan: (1) The design basis threat for radiological sabotage should be amended to include the use of a vehicle (a change, already in place, allowing highest priority on installation of permanent barriers and perimeter denial systems); and (2) an extensive review of additional elements of the design basis threat regulations that might need upgrading.37 Of course, by definition, even full acceptance of these recommendations by NRC—indeed, even total success with such measures within the United States—will not produce worldwide safety from nuclear terrorism.

In the end, moreover, efforts at “hardening the target” will not be enough. Although physical security measures are indispensable, and need to be implemented internationally, an all-consuming preoccupation with guards, firearms, fences, protective barriers and space-age protection devices would be counterproductive. A behavioral strategy of counter-nuclear terrorism, one that is directed toward producing certain changes in the decisional calculi of terrorist groups and their sponsor states, is a prerequisite.

36 See Greenberg, supra note 31.
37 Id.
A behavioral strategy must be based upon a sound understanding of the risk calculations of terrorists. Until the special terrorist stance on the balance of risks that can be taken in world politics is understood, we will not be able to identify an appropriate system of sanctions. Although terrorists are typically apt to tolerate higher levels of death and injury than states, there is a threshold beyond which certain costs become intolerable.

To understand this threshold, we must first recall that there is no such thing as "the terrorist mind." Rather, there are a great many terrorist minds, a broad potpourri of ideas, methods, visions, and objectives. To seek a uniformly applicable strategy of counter-nuclear terrorism, therefore, would be foolhardy.

Yet, in spite of the obvious heterogeneity that characterizes modern terrorism, it would be immensely impractical to formulate myriad strategies which are tailored to particular groups. What must be established is a limited and manageable number of basic strategies that are formed according to the principal types of terrorist group behavior. By adopting this means of "blueprinting" effective counter-nuclear terrorist action, policy makers can be presented with a decision-making strategy in which options are differentiated according to the particular category of risk-calculation involved.

This is not to suggest that each terrorist group is comprised of individuals who exhibit the same pattern of behavior, i.e., the same stance on the balance of risks that can be taken in pursuit of particular preferences. Rather, each terrorist group is made up, in varying degrees, of persons with disparate motives. Since it is essential, from the point of view of creating the necessary decisional strategy, that each terrorist group be categorized according to a particular type of risk-calculation, the task is to identify and evaluate the leadership strata of each terrorist group in order to determine the predominant ordering of preferences.

In deciding upon what, exactly, constitutes a suitable configuration of sanctions, governments will have to be especially discriminating in their manner of brandishing threats of physical punishment. In this connection, it is worth noting that threats of mild punishment may have a greater deterrent effect than threats of severe punishment. From the vantage point of the terrorist group's particular baseline of expectations, such threats—when threats of severe punishment are expected—may even appear to have positive qualities. Catching the terrorist group by surprise, such threat behavior is also less likely to elicit the high levels of anger and
intractability that tend to override the inhibiting factor of expected punishment. Moreover, the threat of mild punishment is less likely to support the contention of official repression, a contention that is often a vital part of terrorist group strategies for success.

If the apparent danger is great enough, governments may feel compelled to resort to a "no holds barred" counter-terrorist campaign. In such cases, governments must be aware that the inclination to escalate violence would signify the erosion of power. Violence is not power. Where the latter is in jeopardy, the former is increased. Understood in terms of anti-terrorism measures, this suggests that the imprudent escalation of violence by public authorities can destroy power. Taken to its outermost limits, such escalation can lead to rule by sheer violence and the substitution of "official" terror for insurgent terror.

Counter-nuclear terrorist strategies within states require differentiating sanctions according to the particular type of terrorist group involved. However, since nuclear terrorism might take place across national bound-

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38 One such circumstance would exist where the prospective users of nuclear terrorism fail to meet the usual political criteria of rationality, i.e., to choose among alternative courses of action on the basis of carefully-calculated expected consequences. A probable example of a retreat from rational strategic calculations is the growing influence of Islamic fundamentalism. Throughout the Islamic world, fundamentalists are challenging incumbent regimes, competing for power and calling for a new assertiveness. Unlike more moderate Moslems, these fundamentalists are disinterested in political compromise and are willing, in many cases, to place the obligations of "submission" (the term "Islam," in Arabic, means "submission to the will of God") above the requirements of personal or collective survival. Moreover, their power grows daily as a number of Arab states are increasingly unable to surmount substantial social, medical, and economic problems. In Egypt, the palpable reassertion of Muslim piety is directed toward a day when all irreligious leaders are deposed and the Ummah (total community of Muslims) is united under a universal Caliphate, a fully legitimate government ruled by an elected leader of irreproachable integrity. Whereas Iran's faith is drawn primarily from the minority Shi'a branch of Islam, Egypt's fundamentalists look forward to an alliance with over 130 million Sunni Muslims in the rest of the Middle East and North Africa (there are now nearly one billion Muslims in the world). Such an alliance, led by the so-called Jaamat Islamiya (Islamic societies) and including Al-Jihad (Holy War) could lead to a position of "no compromise" with infidels, especially if it is heavily informed by the Manichean type dualism of Sayyid Qutb (1906-66), a leading ideologue of the Brotherhood who was hanged by Nasser.

39 Grotius cites Cicero's observation (from the latter's Defense of Milo) that "the act [of homicide] is not only just but even necessary, when it represents the repulsion of violence by means of violence." Grotius, Commentary On The Law Of Prize And Booty 67 (G.L. Williams trans., 1964) (1604).
aries, the basic principles of these strategies must also be applied internation-
ally.  

Of course, there are special difficulties involved in implementing behavioral measures of counter-nuclear terrorism internationally. These difficulties center on the fact that certain states sponsor and host terrorist groups and that such states extend the privileges of sovereignty to insurgents on their land. While it is true that international law forbids a state to allow its territory to be used as a base for aggressive operations against another state with which it is not at war, a state which seeks to deal with terrorists hosted in another state is still in a very difficult position.

To cope with these difficulties, like-minded governments must create special patterns of international cooperation. These patterns must be based upon the idea that even sovereignty must yield to gross inversions of the norms expressed in the United Nations Charter; the Universal Declaration of Human Rights; the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the Convention on the Prevention and Punishment of the Crime of Genocide; the European Convention for the Protection of Human Rights and Fundamental Freedoms; the American Convention on Human Rights; the Nuremberg Principles; and the 1949 Geneva Conventions. They must, therefore, take

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40 The principle of universal jurisdiction is founded upon the presumption of solidarity between states in the fight against crimes. It is mentioned in the Corpus Juris Civilis; in Grotius' De jure belli ac pacis (Book II, Chapter 20); and in Vattel's Le droit des gens (Book I, Ch. 19). The case for universal jurisdiction (which is strengthened wherever extradition is difficult or impossible to obtain) is also built into the four Geneva Conventions of August 12, 1949, which unambiguously impose upon the High Contracting Parties the obligation to punish certain grave breaches of their rules, regardless of where the infraction was committed or the nationality of the authors of the crimes. See Art. 49 of Convention No. 1; Art. 50 of Convention No. 2; Art. 129 of Convention No. 3; and Art. 146 of Convention No. 4. In further support of universality for certain international crimes, see M.C. Bassiouni, International Extradition in US Law and Practice (Vol. II, Ch. 6, 1983). See also Restatement of the Foreign Relations Law of the United States, Tentative Draft No. 5 (1984), § 402-04, 443; 18 U.S.C. sec. III 6 (c).

41 Jurisprudentially, such inversions could represent "crimes against humanity." For definition of such crimes, see Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis Powers and Charter of the International Military Tribunal, done at London August 8, 1945, 59 Stat. 1544, 82 U.N.T.S. 279 (entered into force, August 8, 1945) (entered into force for the United States, Sept. 10, 1945). The principles of international law recognized by the Charter of the Nuremberg Tribunal and the judgment of the Tribunal were affirmed by the U.N. General Assembly as Affirmation of the Principles of International Law Recognized by
the form of collective defense arrangements between particular states\(^4\) which promise protection and support for responsible and law-enforcing acts of counter nuclear terrorism.

Such arrangements must entail plans for cooperative intelligence gathering on the subject of terrorism and for exchange of the information produced; an expanded and refined tapestry of agreements on extradition of terrorists;\(^4\) multi-lateral forces to infiltrate terrorist organizations and, if necessary, to take action\(^4\) against them;\(^4\) concerted use of the media to publicize

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\(^4\) From the standpoint of international law, as well as international political history, these "particular states" should be led by the most powerful ones. The jurisprudential argument for special Great Power responsibility here is based on codifications expressed in major 19th and 20th century peace settlements and international organizations, especially the role of "permanent members" of the U.N. Security Council. It is also deducible from the more or less persistently-decentralized authority structure of "Westphalian" international law.

\(^4\) One major problem with extradition processes is that certain states invoke a political offense exception to extradition in spite of the fact that this exception does not apply to terrorists. See Report of the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, Annex, Agenda Item 9, at 190, U.N. Doc. A/CONF.144/28 (1990). For examples of U.S. courts inappropriately recognizing a political offense exception to extradition in matters concerning terrorism, see U.S. v. Mackin, 668 F.2d 122 (2d Cir. 1981) (refusing to extradite IRA member who allegedly shot British policeman); In re Doherty, 599 F.Supp. 270 (S.D. N.Y. 1984) (refusing to extradite IRA member charged with murdering British soldier); In re Mackin, 80 Cr.Misc. 1 (S.D.N.Y. 1981), appeal dismissed sub nom.; In re McMullen, No. 3-78-1899 MG (N.D. Cal. May 11, 1979) (refusing to extradite IRA member charged with bombing death of British charwoman). In general, U.S. courts do not allow the political offense exception to bar extradition of terrorists, but prominent exceptions do occur. U.S. courts frequently adopt the standard established in Eain v. Wilkes, 641 F.2d 504 520-21 (7th Cir. 1981): a political offense exception applies only if the offense was "incidental" to a political action.

\(^4\) In this connection, an integral problem of assassination under international law concerns the "beyond a reasonable doubt" standard, an evidentiary doctrine associated with arrest, pretrial examination and grand jury indictment in the Anglo-American criminal justice system. Just how certain, prospective sponsors of assassination as anticipatory self-defense must ask,
terrorist activities and intentions; and even counter-terrorism emergency medical networks. Such arrangements might also entail limited and particular acts directed toward effective counter-nuclear terrorism.

International arrangements for counter-nuclear terrorist cooperation must also include sanctions for states which sponsor or support terrorist groups and activities. As in the case of sanctions applied to terrorists, such sanctions may include carrots as well as sticks. Until every state in the world system calculates that support of counter-nuclear terrorist measures is in its own interests, individual terrorist groups will have reason and opportunity to escalate their violent excursions.

The contemporary international legal order has tried to cope with transnational terrorism since 1937, when the League of Nations produced two conventions to deal with the problem. These conventions proscribed acts

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is it that intended victims are actually "guilty" of preparations for terrorist warfare "beyond a reasonable doubt?" Whereas judgments of "probable cause" in municipal legal settings are made after the crime in the context of arrest and search standards, within the international legal order these judgments would be arrived at, before the terrorist crime, in an extrajudicial setting. Moreover, the judgments made in the extrajudicial setting would lead not to indictment and prosecution, but to assassination.

The problem of reprisal as a rationale for the permissible use of force by states is identified explicitly and categorically in the U.N. Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States: "States have a duty to refrain from acts of reprisal involving the use of force." Declaration On Principles Of International Law Concerning Friendly Relations And Cooperation Among States In Accordance With The Charter Of The United Nations, G.A. Res. 2625, U.N. GAOR, 25th Sess., Supp. No. 28, at 121, U.N. Doc. A/8028 (1971), 9 I.L.M. 1292, 1294 (1970). For the most part, the prohibition of reprisals is deducible from the broad regulation of force in Article 2(4) of the U.N. Charter, the obligation to settle disputes peacefully in Article 2(3), and the general limiting of permissible force by states to self-defense. At the same time, a total ban on reprisals presupposes a degree of global cohesion that simply does not exist, and circumstances may clearly arise wherein the resort to reprisal as a form of self-help would be distinctly law-enforcing. This is especially the case in matters where reprisals are undertaken for prior acts of terrorism.

Although reprisal and self-defense are both forms of the same generic remedy of self-help, an essential difference lies in their respective aim or purpose. Coming after the harm has already been absorbed, reprisals are punitive in character and cannot be undertaken for protection. Self-defense, on the other hand, is by its very nature intended to mitigate harm.

The Council of the League of Nations had been requested to conduct an inquiry into the circumstances which led to the assassination of King Alexander of Yugoslavia and L. Berthou, Foreign Minister of the French Republic, in October, 1934. The League Council, appreciating that the existing international law concerning the repression of terrorist activity was not sufficiently precise to guarantee effective international co-operation in this matter,
of terror-violence against public officials, criminalized the impairment of property and the infliction of general injuries by citizens of one state against those of another, and sought to create an International Criminal Court with jurisdiction over terrorist crimes. The advent of the second World War, however, prevented the ratification of either document.

An International Criminal Court is unlikely to come into being. But there are other measures under international law that could and should be used in the arsenal of international counter-nuclear terrorism measures.

decided to establish a committee of experts to study this question. The 1937 Convention for the Prevention and Punishment of Terrorism was concluded on the basis of the draft prepared by this Committee. The scope of this Convention was however limited to terrorism of an international character only. See Proceedings of the International Conference on the Repression of Terrorism, League of Nations Doc. C.94. M.47. 1938 V at 49-50 (1938 V.3).

47 The five traditional bases of jurisdiction under international law were defined, in 1935, by Harvard Research in International Law, as Territory, Nationality, Protective, Passive Personality, and Universality. Harvard Research in International Law, Introductory Comment to Draft Convention on Jurisdiction with Respect to Crime, 29 AM. J. INT'L L. 435, 445 (Supp. 1935) (research represented part of an effort by the American Society of International Law to codify international law).


49 One function of such a court would be fulfillment of the idea of "desert." A classical supporter of "retributive justice" was Immanuel Kant. Writing in Philosophy of Law, Kant identifies the mode and measure of punishment as follows: "This is the Right of Retaliation (justalionis), and properly understood, it is the only Principle which in regulating a Public court ... can definitely assign both the quality and the quantity of a just penalty." KANT, PHILOSOPHY OF LAW, Part II, "Public Right (Hastie trans., 1887). On the retributive view generally, see M. CHERIF BASSIOUNI, SUBSTANTIVE CRIMINAL LAW 91-139 (1978); SIR WALTER MOBERLY, THE ETHICS OF PUNISHMENT 96-120 (1968); C. L. TEN, CRIME, GUILT, AND PUNISHMENT 38-65 (1987); ROBERT NOZICK, PHILOSOPHICAL EXPLANATIONS 363-97 (1981); JOHN KLEINIG, PUNISHMENT AND DESERT (1973); D. J. Galligan, "The Return to Retribution in Penal Theory," in CRIME, PROOF AND PUNISHMENT 154-157 (C. Tapper, ed.) (1981); IGOR PRIMORATZ, JUSTIFYING LEGAL PUNISHMENT 67-110 (1989); TED HONDERICH, PUNISHMENT: THE SUPPOSED JUSTIFICATIONS 22-51 (1960); GEORGE WHITECROSS PATON, A TEXTBOOK OF JURISPRUDENCE 320-326 (1964); HEINRID OPPENHEIMER, THE RATIONALE OF PUNISHMENT (1975); MARK MARGARET MACKENZIE, PLATO ON PUNISHMENT 21-33 (1981). For a broader but fascinating treatment, see also MARVIN HENBERG, RETRIBUTION: EVIL FOR EVIL IN ETHICS, LAW, AND LITERATURE (1990).
1) The principle of aut dedere aut punire (extradite or prosecute)\textsuperscript{50} needs to be applied appropriately to terrorists. And the customary excepting of political offenses as reason for extradition must be abolished for genuine acts of terrorism.\textsuperscript{51} Although such abolition would appear to impair the prospects of even those legitimate rights to self-determination and human rights, persons proclaiming such rights cannot be exempted from the prevailing norms of humanitarian international law. At the moment, the ideological motives of the accused are still often given too much weight by states acting upon extradition requests. While ideological motive should be considered as a mitigating factor in the imposition of punishment,\textsuperscript{52} it should not be regarded as the basis for automatic immunity.

2) States must creatively interpret the Definition of Aggression approved by the General Assembly in 1974. As we have seen, this definition condemns the use of "armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State," but supports wars of national liberation against "colonial and racist regimes or other forms of alien domination."\textsuperscript{53} Where it is interpreted too broadly, such a distinction leaves international law with too little leverage in counter-nuclear terrorist strategies. But where it is interpreted too narrowly, it places international law in the position of defending the status-quo at all costs.

The problem, of course, is allowing international law to serve the interests of national and international order without impairing the legitimate objectives of international justice. But who is to determine the proper balance? Like

\textsuperscript{50}This expectation is itself deducible from the norm: \textit{Nullum crimen sine poena} (No crime without a punishment). For an excellent and comprehensive scholarly elucidation of extradition and prosecution under international law, see \textsc{Christopher L. Blakesley}, \textsc{Terrorism, Drugs, International Law and the Protection of Human Liberty} (1992).

\textsuperscript{51}Here it must be recalled that terrorists are examples of \textit{hostis humani generis}, or common enemies of humankind. This is the case even though, under traditional international law, the term was applied to pirates. According to Blackstone's \textsc{Commentaries On The Laws Of England}: "The crime of piracy, or robbery and depredation upon the high seas, is an offence against the universal law of society; a pirate being, according to Sir Edward Coke, \textit{hostis humani generis}." \textsc{William Blackstone, Of Public Wrongs} (Book IV) 66, 72 (Robert Malcolm Kerr ed., 1962) (1803).

\textsuperscript{52}Punishment is, quite plausibly, the original meaning of justice, and is assuredly one of its most essential components. For comprehensive consideration of these concepts, and their interdependence, see \textsc{Robert C. Solomon and Mark C. Murphy}, \textsc{What is Justice? Classic and Contemporary Readings} (1990); \textsc{Justice in Punishment}, 25 Isr. L. Rev. 3, 4 (1991).

\textsuperscript{53}See supra note 7.
all things human, force wears the Janus face of good and evil at the same time.\textsuperscript{54} It is an age-old problem, and one not adequately answered by identifying the institutional responsibility of the Security Council. The deliberate vagueness of the language in the Definition of Aggression is less of an obstacle than an opportunity if states can see their way clear to sensible \textit{ad hoc} judgments.\textsuperscript{55}

But how can they make such judgments? What criteria can be applied to distinguish between lawful claims for human rights and/or self-determination, and unlawful acts of terror? Given the context of a decentralized system of international law, individual states must bear the ultimate responsibility for

\textsuperscript{54} Janus was the ancient Roman god of doors and gates, hence, of all \textit{beginnings}. His symbol is the double-faced head. Janus is usually represented with two heads placed back-to-back so that he might look in two directions simultaneously.

\textsuperscript{55} Citizens of the United States have a judicial remedy for opposing their government's judgments. In this connection, they can participate in nonviolent protests of current foreign policies and can defend such permissible acts of civil resistance in U.S. courts on the basis of international law. International law is already a part of U.S. domestic law. According to Article VI of the \textit{Constitution}: "All treaties made . . . under the authority of the United States shall be the supreme law of the land . . . ." U.S. \textsc{Const.} art. VI. It follows that even those who would deny the binding quality of general international law on U.S. foreign policy must acknowledge the specific obligations that have been incorporated into domestic law. These obligations flow not only from Article VI (the so-called Supremacy Clause) but also from the U.S. Supreme Court's decision in \textit{Paquete Habana}, 175 U.S. 677 (1900) (which brought customary international law into U.S. domestic law). Further, in \textit{United States v. Belmont}, 301 U.S. 324 (1937) and \textit{United States v. Pink}, 315 U.S. 203 (1942), the U.S. Supreme Court held that other types of international agreements concluded by the U.S. Government that have not received the formal advice and consent of the Senate are nonetheless protected by the Supremacy Clause. Two criminal cases that have recently produced a major breakthrough in U.S. courts are \textit{People v. Jarka} (Circuit Court of Lake County, Waukegan, Illinois) and \textit{Chicago v. Streeter} (Circuit Court of Cook County, Chicago, Illinois). Here, the defendants were acquitted by invoking the traditional common law defense known as "necessity." This defense, which erases criminal liability for conduct that would otherwise be an offense (if the accused was without blame in creating the situation and reasonably believed such conduct was necessary to avoid a public or private injury greater than that which might reasonably result from his/her own conduct) has broad applicability concerning crimes against peace, crimes against humanity, war crimes, grave breaches of the Geneva Conventions, violations of the U.N. Charter, the O.A.S. Charter, among many offenses against the law of nations. Because of the \textit{Jarka} and \textit{Streeter} acquittals, attorneys representing individuals who engage in acts of nonviolent civil resistance against elements of U.S. foreign policy may invoke these cases as appropriate precedents for defense. For an up-to-date and authoritative study of guidelines for defending civil resistance protesters under principles of international law, see \textsc{Francis A. Boyle}, \textit{Defending Civil Resistance Under International Law} 378 (1987).
distinguishing between terrorists and "freedom fighters." At a minimum, the principles of "just cause" and "just means" should inform their judgments.

IV. NUCLEAR TERRORISM: RECOGNIZING FORMS AND EFFECTS

A. Nuclear Explosives

The low-technology nuclear explosives that might be manufactured by terrorists could range anywhere from a few hundred tons to several kilotons in yield. The destructive potential of such explosives would depend on such variables as type of construction, population density, prevailing wind direction, weather patterns, and the characteristic features of the target area. Such potential would be manifested in terms of three primary effects: blast (measured in pounds per square inch of over-pressure), heat (measured in calories/cm$^2$), and radiation (measured in Radiation Effective Man—REM—a combined measure that includes the Radiation Absorbed Dose—RAD—and the Radiation Biological Effectiveness—RBE—or the varying biological effectiveness of different types of radiation).

Relatively crude nuclear explosives with yields equivalent to about 1,000 tons of high explosives would be far easier to fabricate than explosives with yields equivalent to about 10 kilotons of high explosives. Nonetheless, explosives with a yield of only one-tenth of a kiloton would pose significant destructive effects. A nuclear explosive in this limited range could annihilate the Capitol during the State of the Union Address or knock down the World Trade Center towers in New York City. An even smaller yield of 10 tons of TNT could kill everyone attending the Super Bowl.

In assessing the destructiveness of nuclear explosions, it is important to remember that such explosions are typically more damaging than chemical explosions of equivalent yields. This is the case because nuclear explosions produce energy in the form of penetrating radiations (gamma rays and neutrons) as well as in blast wave and heat. Moreover, a nuclear explosion on the ground—the kind of nuclear explosion most likely to be used by terrorists—produces more local fallout than a comparable explosion in the air.

B. Radiological Weapons

Radiological weapons are not as widely understood as nuclear explosives, but they may be equally ominous in their effects. Placed in the hands of
terrorists, such weapons could pose a lethal hazard for human beings anywhere in the world. Even a world already dominated by every variety of numbing could not fail to recoil from such a prospect.

Radiological weapons are devices designed to disperse radioactive materials that have been produced a substantial time before their dispersal. The targets against which terrorists might choose to use radiological weapons include concentrations of people inside buildings, concentrations of people on urban streets or at sporting events, urban areas with a high population density as a whole, and agricultural areas. The form such weapons might take include plutonium dispersal devices (only 3.5 ounces of plutonium could prove lethal to everyone within a large office building or factory) or devices designed to disperse other radioactive materials. In principle, the dispersal of spent nuclear reactor fuel and the fission products separated from reactor fuels would create grave hazards in a populated area, but the handling of such materials would be very dangerous to terrorists themselves. It is more likely, therefore, that would-be users of radiological weapons would favor plutonium over radioactive fission products.

The threat of nuclear terrorism involving radiological weapons is potentially more serious than the threat involving nuclear explosives. This is because it would be easier for terrorists to achieve nuclear capability with radiological weapons. Such weapons, therefore, could also be the subject of a more plausible hoax than nuclear explosives.

C. Nuclear Reactor Sabotage

It is more than a little ironic that many years after concern was first voiced about security at nuclear power plants, little has been done to reduce the risk of a terrorist-induced reactor core-meltdown. Indeed, in the aftermath of a February 1993 incident, in which a former mental patient sped past the guard shack at the Three Mile Island nuclear plant near Harrisburg, PA, crashing his station wagon through a metal door and sixty feet inside the turbine hall, it appears that such an event is as plausible as ever. Not surprisingly, on March 19, 1993, Ivan Selin, chairman of the U.S. Nuclear Regulatory Commission, testified before a Senate subcommittee on Environment and Public Works, that it was time for his agency to rethink its security regulations.56

In comparison with a low-yield nuclear explosion, a reactor-core meltdown and breach of containment would release a small amount of radiation. However, the consequences of such an event would still involve leakage of an immense amount of gaseous radioactive material that could expose neighboring populations to immediate death, cancer, or genetic defects. To better understand the nature of the threat, we must first try to understand the fundamentals of nuclear reactors.

Essentially, these reactors may be characterized as giant tea kettles that turn water into steam. The steam is piped to large turbines that turn generators. When a typical teakettle is operating at full power, the radioactivity in its fuel core can reach 17 billion curies, enough—in principle—to kill everyone on the planet. Within the uranium fuel rods in the core, the fission reaction can unleash energy to drive the temperature above 4,000 degrees Fahrenheit—a temperature hot enough to melt through all protective barriers.

From the standpoint of radiation discharged, the consequences of a successful conventional attack upon nuclear reactors could equal those of the worst accidental meltdown. This form of nuclear terrorism could result in moderate to major releases of radioactivity into the environment. Additional problems would arise through release of the inventories of spent fuel customarily located at reactor sites. Early fatalities are possible, although late cancers and genetic effects would dominate. In densely populated countries deaths could number in the tens of thousands.

Whatever form nuclear terrorism might take—nuclear explosives, radiological weapons, or nuclear reactor sabotage—its effects would be social and political as well as biological and physical. In the aftermath of a nuclear

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57 On June 6, 1986, Dr. Jack Geiger, president of Physicians for Social Responsibility, visited Moscow Hospital No. 6 “to see some of the still-surviving victims of the disaster at Chernobyl, to review their medical care, and to learn of their prognoses.” A Day For Peace, Letter from Physicians for Social Responsibility, July 1986. Here is what he observed: “I saw young men with dreadful radiation burns, peering out at me from behind the plastic shields that protected them from the certainty of death by infection. I saw others who had not been seriously burned, who had not had their bone marrow destroyed, who were visibly healthy. Yet, these were victims too—men in apparent good physical health who must live that portion of life yet left to them never knowing if, or when, their lives would be brought to premature ends by radiation-induced leukemia and other cancers. . . . There were perhaps 300 patients from Chernobyl at Moscow Hospital No. 6. Yet, this very limited nuclear accident had strained to the breaking point the medical resources of the entire Soviet Union.” Id.
terrorist event, both governments and insurgents would be confronted with mounting pressures to escalate to higher-order uses of force. With terrorists more inclined to think of nuclear weapons as manifestly “thinkable,” both governments and terrorists would find themselves giving serious consideration to striking first.

V. EVALUATING THE PREEMPTION OPTION

In view of the enormously destructive consequences of nuclear terrorism, governments may have to resort to strategies of preemption in certain cases. Where the terrorist group functions within the target state, the authorities must be concerned with the protection of civil liberties. Where the terrorist group operates from the territory of one or more sympathetic host states, the authorities in the prospective target state must be concerned with the normative constraints of international law, specifically the parameters of anticipatory self-defense.

58 Let us recall, here, Pufendorf’s argument in ON THE DUTY OF MAN AND CITIZEN ACCORDING TO NATURAL LAW: “... where it is quite clear that the other is already planning an attack upon me, even though he has not yet fully revealed his intentions, it will be permitted at once to begin forcible self-defense, and to anticipate him who is preparing mischief, provided there be no hope that, when admonished in a friendly spirit, he may put off his hostile temper; or if such admonition be likely to injure our cause. Hence, he is to be regarded as the aggressor, who first conceived the wish to injure, and prepared himself to carry it out. But the excuse of self-defense will be his, who by quickness shall overpower his slower assailant. And for defense, it is not required that one receive the first blow, or merely avoid and parry those aimed at him.” SAMUEL VONPUFENDORF, supra note 17, at 32.

59 An interesting question here is whether or not assassination can, in certain instances, be defended as a permissible form of anticipatory self-defense under international law. Normally, of course, the presumption obtains that assassination of officials in other states represents a prima facie violation of international law. Where no state of war exists, such assassination would generally exhibit the crime of aggression and/or the crime of terrorism.

Regarding aggression, Article 1 of the Resolution on the Definition of Aggression defines this crime as “... the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations, as set out in this Definition.” RESOLUTION ON THE DEFINITION OF AGGRESSION, G.A. Res. 3314, U.N. GAOR, 29th Sess., Supp. No. 31, at 143, U.N. Doc. A/9631, 13 I.L.M. 710 (1974). In view of the peremptory norm of nonintervention codified in the Charter that would ordinarily be violated by transnational assassination, such killing would generally qualify as aggression. Moreover, assuming that transnational assassination constitutes an example of “armed force,” the criminalization, as aggression, of
such activity may also be extrapolated from Article 2 of the Definition of Aggression:

"The first use of armed force by a state in contravention of the Charter shall constitute prima facie evidence of an act of aggression although the Security Council may, in conformity with the Charter, conclude that a determination, that an act of aggression has been committed would not be justified in the light of other relevant circumstances. . . ."


The European Convention on the Suppression of Terrorism reinforces the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons. According to Article 1 (c) of the Convention, one of the constituent crimes of terror violence is "a serious offence involving an attack against the life, physical integrity or liberty of internationally protected persons, including diplomatic agents. . . ." [EUROPEAN CONVENTION ON THE SUPPRESSION OF TERRORISM, Jun. 27, 1977, Europ. T.S. No. 90, 15 I.L.M. 1272 (1976) (entered into force Aug. 4, 1978).]

And, according to Article 1 (e), another constituent terrorist crime is "an offence involving the use of a bomb, grenade, rocket, automatic firearm or letter or parcel bomb if this use endangers persons. . . ." [Id.

When a condition of war *does* exist between states, transnational assassination is normally considered as a war crime under international law. According to Article 23 (b) of the regulations annexed to the Hague Convention IV of October 18, 1907, respecting the laws and customs of war on land, "[i]t is especially forbidden . . . to kill or wound treacherously, individuals belonging to the hostile nation or army. . . ." [CONVENTION (NO. IV) RESPECTING THE LAWS AND CUSTOMS OF WAR ON LAND, WITH ANNEX OF REGULATIONS, Oct. 18, 1907, 36 Stat. 2277, T.S. No. 539, 1 Bevans 631, 648 (entered into force, Jan. 26, 1910).]

U.S. Army Field Manual 27-10, THE LAW OF LAND WARFARE (1956), which has incorporated this prohibition, authoritatively links Hague Article 23 (b) to assassination at Paragraph 31: "This article is construed as prohibiting assassination, proscription or outlawry of an enemy, or putting a price upon an enemy's head, as well as offering a reward for an enemy 'dead or alive.'"

With respect to our current concern, whether or not transnational assassination may constitute a permissible form of anticipatory self-defense under international law, we must consider only those circumstances in which *no* state of war is said to exist. After all, where
International law is not a suicide pact. The right of self-defense by forestalling an armed attack was already established by Hugo Grotius in Book II of *The Law of War and Peace* (Chapter I. "Of the Causes of War-Defense of Person and Property") in 1625. Recognizing the need for "present danger" and for threatening behavior that is "imminent in a point of time," Grotius indicates that self-defense is to be permitted not only after an attack has already been suffered but also in advance, where "the deed may be anticipated." Or, as he says a bit further on in the same chapter, "[i]t be lawful to kill him who is preparing to kill. . . ."60

A similar position is taken by Emmerich de Vattel. In Book II of *The Law of Nations* (1758), Vattel argues: "The safest plan is to prevent evil, where that is possible. A nation has the right to resist the injury another seeks to inflict upon it, and to use force and every other just means of resistance against the aggressor. It may even anticipate the other’s design,

belligerency already obtains, states are not concerned with measures of self-help short of war (of which all forms of self-defense are an example) but with remedies that must be evaluated exclusively according to the law of war. It follows that the assassination of public officials in another state may be a lawful instance of anticipatory self-defense in the aforementioned circumstances to the extent that it fulfills the general criteria for this particular measure of self-help, both those of *jus ad bellum* and *jus in bello.*

60 In another context, Cicero, in his speech in defense of Milo, says: "But if there be any occasion on which it is proper to slay a man—and there are many such—surely that occasion is not only a just one, but even a necessary one, when violence is offered, and can only be repelled by violence." And later in the same text:

["w"]hat is the meaning of our retinues, what of our swords? Surely it would never be permitted to use to have them if we might never use them. This, therefore, is a law, O judges, not written, but born with us—which we have not learned, or received by tradition, or read, but which we have taken and sucked in and imbibed from nature herself; a law which we were not taught, but to which we were made—which we were not trained in, but which is ingrained in us—namely, that if our life be in danger from plots, or from open violence, or from the weapons of robbers or enemies, every means of securing our safety is honorable. For laws are silent when arms are raised, and do not expect themselves to be waited for, when he who waits will have to suffer an undeserved penalty before he can exact a merited punishment.

*See* The Speech of M.T. Cicero In Defense of Titus Annius Milo, in *SELECT ORATIONS OF M.T. CICERO*, at 177-78 (C.D. Young, trans., 1882). Although, strictly speaking, Cicero speaks not of anticipatory self-defense by states, but by endangered individuals, the argument not only applies to state action, but applies especially in that context. If, after all, individuals have such great latitude in protecting their personal lives, how much greater is the latitude of a state in preserving its collective "life?"
being careful, however, not to act upon vague and doubtful suspicions, lest it should run the risk of becoming itself the aggressor."\(^{61}\)

The customary right of anticipatory self-defense has its modern origins in the \textit{Caroline} case,\(^{62}\) which concerned the unsuccessful rebellion of 1837 in Upper Canada against British rule (a rebellion that aroused sympathy and support in the American border states). Following this case, a serious threat of armed attack has generally been taken to justify militarily defensive action. In an exchange of diplomatic notes between the governments of the United States and Great Britain, then U.S. Secretary of State Daniel Webster outlined a framework for self-defense which did not require an actual attack. Here, military response to a threat was judged permissible so long as the danger posed was "instant, overwhelming, leaving no choice of means and no moment for deliberation."\(^{63}\)

Today, some scholars argue that the customary right of anticipatory self-defense articulated by \textit{Caroline} has been overridden by the specific language of Article 51 of the UN Charter. In this view, Article 51 fashions a new and far more restrictive statement on self-defense, one that relies on the literal qualification contained at Article 51, "if an armed attack occurs."\(^{64}\) But this interpretation ignores the fact that international law cannot reasonably compel a state to wait until it absorbs a devastating, or even lethal, first strike before acting to protect itself. Moreover, in the nuclear age—when waiting to be struck first may be equivalent to accepting annihilation—the right of anticipatory self-defense is especially apparent.\(^{65}\)

\(^{61}\) \textsc{Emmerich De Vattel}, \textit{The Law of Nations, Book II} (1758) (see Chapter IV, "The Right of Self-Protection and the Effects of the Sovereignty and Independence of Nations").

\(^{62}\) The \textit{Caroline} was an American steamboat accused of running arms to Canadian rebels. A Canadian military force crossed over into the United States and set the ship ablaze, killing an American citizen in the process. A Canadian was arrested in New York for the murder and the British government protested. \textit{See} 2 J. Moore, \textit{Digest of International Law} 409-14 (1906).

\(^{63}\) \textit{Id.}

\(^{64}\) \textsc{U.N. Charter} art. 51.

\(^{65}\) Here it must be noted that one possible consequence of nuclear terrorism may be war, even war involving chemical or nuclear weapons. If, for example, a terrorist group carried out an act of nuclear terrorism against Israel, especially one that involved substantial casualties and/or disruption of Jerusalem's military preparedness, certain Arab states in the region, sensing a unique opportunity, might begin full-scale attacks themselves.
This right may include assassination. Although the idea of assassination as a remedy is normally dismissed as an oxymoron under international law, there are circumstances wherein it would be decidedly rational and humane. If, for example, the perceived alternative to assassination as anticipatory self-defense is large-scale uses of force—activities taking the form of defensive military strikes—a utilitarian or balance-of-harms criterion could surely favor assassination.

In the final analysis, the residual permissibility of assassination as a counter nuclear terrorism preemption option derives from the persistently Westphalian logic of international law, from the multiple sources of international law identified at Article 38 of the Statute of the International Court of Justice, and from the frequently irreconcilable nature of competing norms. Were the world legal order more centralized, all forms of anticipatory self-defense, including assassination, could be strenuously and correctly condemned. But in the absence of a capable supranational authority, self-help is often the only available means of law enforcement—including self-help via the use of force.

As for the multiple sources of international law, this suggests that in spite of many codifications that criminalize assassination, other sources—including peremptory or jus cogens norms—may be used to justify assassination.


67 Such logic, however, is fully consistent with the principle of Nullum crimen sine poena, "No crime without a punishment." This principle is articulated at the Nuremberg Judgment (1946). See RICHARD A. FALK, GABRIEL KOLKO AND ROBERT JAY LIFTON, CRIMES OF WAR 97 (1971). It can also be found in the INTERNATIONAL MILITARY TRIBUNAL FOR THE FAR EAST, Part A, Chapter II, (a) Jurisdiction of the Tribunal, reprinted in BENJAMIN B. FERENCZ, DEFINING INTERNATIONAL AGGRESSION: THE SEARCH FOR WORLD PEACE, VOL. 1, 546 (1975).

An example are those incontrovertible norms supporting the right of self-defense against terrorism.

VI. REDEFINING NATIONAL INTERESTS: PLANETIZATION AND FREEDOM FROM NUCLEAR TERRORISM

In the final analysis, the effectiveness of international strategies of counternuclear terrorism will depend upon the tractability of pro-terrorist states. Real effectiveness, therefore, requires commitment by all states to unity and relatedness. To realize this commitment, all states will have to work toward the replacement of our fragile system of realpolitik with a new world politics of globalism.

Preventing nuclear terrorism must thus be seen as one part of an even larger strategy, one that is geared to the prevention of all forms of international violence. It would be futile to try to tinker with the prospect of

69 A starting point for such a commitment should be a greater seriousness about the imperative to punish terrorist crimes. As we have already seen, the generic imperative to punish crimes was reaffirmed at Principle I of the Nuremberg Principles (1946): "Any person who commits an act which constitutes a crime under international law is responsible therefore and liable to punishment." Clearly, this obligation applies especially to crimes of terrorism. The Nuremberg Principles were later formulated by the International Law Commission, at the request of the General Assembly, in June-July 1950. See also, Draft Code of Offences Against the Peace and Security of Mankind, U.N. GAOR, 3rd Sess., Supp. No. 9, U.N. Doc. A/2693, art. 1. ("Offenses against the peace and security of mankind, as defined in this code, are crimes under international law, for which the responsible individuals shall be punished.").

70 Such work, of course, will have to contend with the decentralized structure of global power and authority that began at the Peace of Westphalia. This Peace, which ended the Thirty Years' War in 1648, consecrated the emergence of the modern state system. After the Peace, which signalled the end of the medieval Holy Roman Empire, power and sovereign authority were no longer concentrated in the hands of the Hapsburg emperor, but were decentralized among the imperial princes.

71 A related form of international violence would be terrorism using chemical and/or biological weapons. And just as the prospect of nuclear terrorism is linked to the spread of nuclear weapons and technology among states, so is the risk of chemical/biological terrorism linked, inter alia, to the spread of CBW weapons and technology among states. In this connection, there already exists a regime of international treaties, declarations and agreements designed to control chemical and biological weapons. See Declaration on the Prohibition of Chemical Weapons, Jan. 11, 1989, DEP’T ST. BULL., Mar. 1989, at 9, 28 I.L.M. 1020 (adopted by the Conference on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, Apr. 10, 1972, 26 U.S.T. 583, 11 I.L.M. 310 (entered into force Mar. 26, 1975); and Protocol for
nuclear terrorism without affecting the basic structure of modern world politics. This structure is integral to all possibilities of an atomic apocalypse, and its re-visioning and reformation are central to all possibilities for survival.

The capacity to prevent nuclear terrorism is inseparable from a new consciousness by our national leaders. Amidst the precarious crosscurrents of global power relations, states must undertake prodigious efforts to resist the lure of primacy, focusing instead on the emergence of a new sense of global obligation. And these efforts must be undertaken very soon.

What is required, then, is a nuclear regime which extends the principles of nuclear war avoidance to the problem of nuclear terrorism. The centerpiece of this universal regime must be the cosmopolitan understanding that all states, like all people, form one essential body and one true community. Such an understanding, that a latent oneness lies buried beneath the manifold divisions of our fractionalized world, need not be based on the mythical attractions of universal brotherhood and mutual concern. Instead, it must be based on the idea that individual states, however much they may dislike each other, are tied together in the struggle for survival.

The problem, of course, is that while the idea is certainly correct, it is an idea that figures unimportantly in the decisional calculi of states. This is because the judgments of national decision makers throughout the world are informed by a broad variety of factors, many of which have little or nothing to do with state survival. Before this can change, and states can begin to move *rationally* toward a "security regime" based upon general coopera-

the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, June 17, 1925, 26 U.S.T. 571, 94 L.N.T.S. 65, 14 I.L.M. 49 (entered into force Feb. 8, 1928).

72 According to Robert Jervis, a security regime refers to "those principles, rules, and norms that permit nations to be restrained in their behavior in the belief that others will reciprocate. This concept implies not only norms and expectations that facilitate cooperation, but a form of cooperation that is more than the following of short-run self interest." Robert Jervis, *Security Regimes, in International Regimes* 173 (Stephen D. Krasner, ed., 1983). It follows from this definition that an effective security regime will have overcome the so-called "tragedy of the commons" in world politics, i.e., the problem of decision which arises among states when the prospective benefits of cooperation are contingent on the expectation of generalized reciprocity. This "tragedy" was popularized by Garrett Hardin in *The Tragedy of the Commons*, 162 SCIENCE 1243 (1968). Stemming from the cumulative effects of uncertainty and mistrust, it is a tragedy that is especially evident and resilient in the Middle East. Resembling the case of the hunter in Rousseau's parable of the stag hunt, Israel, Iran and the Arab states are always tempted to "grab for the hare." Hence, the more desirable
tion, the individual human beings who act on behalf of states will have to identify their own private values with those of national safety. More than anything else, the path to such identification offers the "answer" to the threat of nuclear terrorism in the unsteady years ahead.

A system of regime security (the stag in Rousseau's parable) will almost inevitably be permitted to "get away." And this outcome is likely even if every pertinent state in the region were to agree in advance that security would be obtained more satisfactorily on a cooperative "regime" basis than on a private one. The parable offered by Rousseau in his DISCOURSE ON THE ORIGIN OF INEQUALITY describes a situation where five hungry men agree to cooperate in a stag hunt. But as a hare happens to cross the path of one of them during the hunt, he grabs it. In so doing, the stag is left to escape and the would-be benefits of cooperation are lost to the other hunters.