

THE SUN SETS ON TAMUZ 1: THE ISRAELI RAID ON IRAQ'S NUCLEAR REACTOR

On Sunday, June 7, 1981, eight F-16 fighter-bombers and six F-15 interceptors¹ flew eastward over Jordan, Saudi Arabia and Iraq.² Shortly after 6:30 p.m., Baghdad time,³ each F-16 dropped two 2,000-pound bombs⁴ over a nuclear installation near Baghdad, Iraq.⁵ Within two minutes,⁶ the operation was completed with "brilliant surgical precision."⁷ Tamuz 1, the target of the attack, was demolished.⁸

The Israeli government immediately claimed responsibility for the destruction of Tamuz 1.⁹ Menachem Begin, Israel's Prime Min-

1. N.Y. Times, June 10, 1981, § A, at 12, col. 1. The F-16 is designed for "[a]ir superiority," and has a secondary role of interdiction. This aircraft was created by General Dynamics (a United States company) and holds a crew of one. The F-16 has a length of 14.32 meters, a wingspan of 9.14 meters, and an empty weight of 6330 kilograms. See NATIONAL STRATEGY INFORMATION CENTER, INC., ARMS, MEN AND MILITARY BUDGETS 176-77 (1976). The principal role of the F-15 is "[i]nterception/air superiority," with a secondary purpose of interdiction. This aircraft, which was designed in the United States by McDonnell Douglas, also holds a crew of one. The length of the F-15 is 19.5 meters, the wingspan is 13.1 meters, and the empty weight is 11860 kilograms. *Id.*

2. *The Israeli Air Strike: Hearings Before the Senate Comm. on Foreign Relations*, 97th Cong., 1st Sess. 1 (1981) (statement of Sen. Charles Percy) [hereinafter cited as *Hearings: Israeli Air Strike*].

3. N.Y. Times, June 9, 1981, § A, at 8, col. 5.

4. N.Y. Times, June 10, 1981, § A, at 12, col. 3. See also *Two Minutes Over Baghdad*, NEWSWEEK, June 22, 1981, at 23.

5. Warren Donnelly of the Congressional Research Service, Library of Congress, submitted a report on behalf of the Foreign Affairs and National Defense Division. This account is entitled *The Israeli Raid into Iraq* and was included in the materials for *Hearings: Israeli Air Strike*, *supra* note 2, at 68 [hereinafter cited as Donnelly].

6. N.Y. Times, June 10, 1981, § A, at 12, col. 4.

7. *Hearings: Israeli Air Strike*, *supra* note 2, at 213 (statement of Rep. Tom Lantos). Reconnaissance photos revealed an absence of craters in the vicinity of the installation; each bomb was therefore a direct hit. N.Y. Times, June 10, 1981, § A, at 12, col. 3.

8. *Hearings: Israeli Air Strike*, *supra* note 2, at 213 (statement of Rep. Tom Lantos). See *infra* text accompanying notes 61-68.

9. *Israeli Attack on Iraqi Nuclear Facilities: Hearings Before the Subcomm's on International Security and Scientific Affairs on Europe and the Middle East and on International Economic Policy and Trade of the House Comm. on Foreign Relations*, 97th Cong., 1st Sess. 1 (1981) (statement of Rep. Clement J. Zablocki). The Tamuz 1 attack has been one of many incidents in a history of animosity between Israel and Iraq. It should be noted that "Iraq has maintained a state of war with Israel since Israel was founded in 1948; Iraq has never recognized Israel's right to exist; . . . Iraq has on three occasions sent military forces to participate in a pan-Arab war against Israel." *Hearings: Israeli Air Strike*, *supra* note 2, at 52 (statement of Sen. Alan Cranston). Additionally, "Iraq . . . has refused to ascribe to Security Council

ister, declared that Iraq planned to utilize this facility for the development of nuclear weapons which were to be used against Israel.¹⁰ The Israeli government stated that the reactor was scheduled to become operative within a few months;¹¹ destruction of the installation at a later time would have produced a fatal radioactive fallout.¹² Israel also emphasized that the raid was conducted on a Sunday evening, with the intent to minimize the probability of the presence of workers at Tamuz 1.¹³

On June 12, 1981, the United Nations Security Council held an emergency session to discuss the raid.¹⁴ At this meeting, Dr. Saadun Hammadi, Foreign Minister of Iraq, denounced the Israeli attack as "a clear-cut act of premeditated aggression."¹⁵ Yehuda Blum, Israeli Ambassador to the United Nations, also addressed the Security Council. Ambassador Blum declared that the raid was an act of self-preservation,¹⁶ and that Israel could not passively endure the "nightmare" of a pending nuclear assault by Iraq.¹⁷

Resolutions 242 and 338, and rejected the Camp David Accords and has not played a constructive role in the peace process." *Id.* at 5 (statement of Walter J. Stoessel, Jr., Acting Secretary of State).

10. Donnelly, *supra* note 5, at 68. See also N.Y. Times, June 10, 1981, § A, at 1, col. 6. Begin cited an October, 1980, statement which appeared in Al Thawra, an official Baghdad newspaper. The declaration asserted that Iranians should not fear the Tamuz 1 installation, as the reactor was intended for use against "the Zionist enemy." N.Y. Times, June 10, 1981, § A, at 12, col. 5.

11. *Hearings: Israeli Air Strike, supra* note 2, at 3 (statement of Walter J. Stoessel, Jr.). See also N.Y. Times, June 9, 1981, § A, at 1, col. 6.

12. Donnelly, *supra* note 5, at 75. Research has indicated that if conventional bombs were to have destroyed Tamuz 1 when operational, the possible hazard of lethal radioactivity in Baghdad would be "most unlikely." This information appears in an additional report by Warren Donnelly, entitled *Possible Contamination of Baghdad from Bombing of the Iraqi Reactor* on behalf of the Environment and Natural Resources Policy Division. This account was also included in *Hearings: Israeli Air Strike, supra* note 2, at 156.

13. Donnelly, *supra* note 5, at 75. One hundred and fifty French technicians worked at the Tamuz 1 installation. One French technician, Damien Chausspied, who had remained at the reactor site on June 7, 1981, was killed as a result of the attack. N.Y. Times, June 10, 1981, § A, at 14, col. 3.

14. N.Y. Times, June 13, 1981, § A, at 1, col. 3. Iraq was a charter member of the United Nations. See U.N. CHARTER. See also Doc. 1191, G/128, 15 U.N.C.I.O. Docs. 1191 (1945). The State of Israel was created pursuant to a resolution of the United Nations General Assembly. See G.A. Res. 197, 3(1) U.N. GAOR, at 30-36 (1948). Israel subsequently became a member of the United Nations on May 11, 1949. See G.A. Res. 273, 3(2) U.N. GAOR, at 18 (1949). U.N. CHARTER, art. 34, states that "[t]he Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security."

15. N.Y. Times, June 13, 1981, § A, at 1, col. 3.

16. *Id.*

17. *Id.*, at 6, col. 4.

On June 19, 1981, the United Nations Security Council adopted a resolution which strongly condemned the Israeli raid.¹⁸ This resolution demanded that Israel refrain from such conduct in the future and place Israeli nuclear facilities under the safeguards of the International Atomic Energy Agency (IAEA or Agency).¹⁹ The Security Council also stated that Iraq was entitled to "appropriate redress" for injuries suffered.²⁰ The resolution further recognized the right of all countries to pursue nuclear development for peaceful purposes.²¹

In September, 1981, The IAEA General Conference elected to terminate immediately all technological assistance to Israel.²² Additionally, the Israeli government was requested to open all nuclear facilities in Israel for IAEA inspection within one year.²³ Israel failed to comply, and in September, 1982, the IAEA General Conference considered whether to suspend Israel from the Agency.²⁴ A motion for Israel's suspension, which required a two-thirds majority, did not carry; a simple majority then passed a resolution not to recognize the credentials of the Israeli delegation to the twenty-sixth annual session of the IAEA General Conference.²⁵

18. 36 U.N. SCOR (2288th mtg.) at 10, U.N. Doc. S/INF 37 (1981) [hereinafter cited as U.N. SCOR]. Art. 39 of the U.N. CHARTER provides that "[t]he Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken . . . to maintain or restore international peace and security."

19. U.N. Doc. S/RES/487 (1981). IAEA is an acronym for the International Atomic Energy Agency. The principal objective of the Agency is to encourage the development of atomic energy for peaceful purposes and worldwide prosperity. The IAEA has a relationship agreement with the United Nations. F. KIRGIS, JR., *INTERNATIONAL ORGANIZATIONS IN THEIR LEGAL SETTING* 14 (1977). For a description of IAEA safeguards procedures, see *infra* text accompanying notes 34-42.

20. U.N. SCOR, *supra* note 18. "Appropriate redress," in this context, meant compensation for damages inflicted by the attack. N.Y. Times, June 19, 1981, § A, at 1, col. 1.

21. U.N. SCOR, *supra* note 18.

22. IAEA Doc. GC (XXV)/RES/381 (1981). Israel and Iraq are both members of the IAEA. As a prerequisite to IAEA membership, a country must be a member of either the United Nations or a specialized agency of the United Nations. All nuclear facilities within a member State need not be subject to Agency safeguards. *Hearings: Israeli Air Strike, supra* note 2, at 175 (statement of Myron Kratzer, International Energy Associates, Ltd., Washington, D.C.).

23. IAEA Doc. GC (XXV)/RES/381 (1981). Israel is not a party to the Non-Proliferation Treaty, and is therefore not required to open Israeli nuclear installations for IAEA inspection. See *infra* text accompanying notes 43-50.

24. N.Y. Times, Sept. 25, 1982, § A, at 6, cols. 4 & 5.

25. IAEA Doc. GC (XXVI)/RES/404 (1982). The IAEA General Conference convenes annually for approximately a week of meetings. N.Y. Times, Sept. 25, 1982, § A, at 1, col. 5. The Iraqi delegation introduced the resolution to recognize the credentials of all delegations to the 1982 session of the IAEA General Conference with the exception of the cre-

This Comment will explore whether the Israeli attack on Iraq's nuclear installation was justified under the principles of international law. Essential to this analysis is an understanding of the obligations incurred by States which are parties to the Treaty on the Non-Proliferation of Nuclear Weapons.²⁶ The examination will continue with an overview of nuclear developments within Iraq and Israel. The activities of Iraq (a party to the treaty) will be contrasted with the conduct of Israel (a non-signatory of the treaty). Israel's violation of treaty provisions and customary international law resulting from the Tamuz 1 attack will then be addressed. A discussion of those concepts of international law which might justify Israel's actions will follow. The role of the IAEA in the controversy and the actions which the Agency has taken against Israel will also be considered. The analysis will reveal that the issue of whether Israel was justified in conducting this raid involves undetermined facts. However, the threat of nuclear proliferation, as illustrated by the Tamuz 1 attack, is a problem which is capable of resolution. A workable proposal which would combat this danger could be achieved through the strengthening of IAEA policies and the negotiation of an agreement among those countries with the potential to supply assistance in the field of nuclear energy.

I. PRELUDE TO THE TAMUZ 1 ATTACK

A. *The Non-Proliferation Treaty*

The Treaty on the Non-Proliferation of Nuclear Weapons (Non-Proliferation Treaty)²⁷ provides that parties to this international agreement may research, develop and utilize nuclear energy for peaceful purposes.²⁸ Those States that possess nuclear weapons pledge not to distribute these armaments to countries which do not have such products.²⁹ The latter party nations, in turn, must agree not to develop nuclear grade weapons.³⁰

Each party to the Non-Proliferation Treaty is obligated to

dentials of the Israeli delegation. *Id.* at 6, col. 4. This vote occurred as the 1982 session was drawing to a close. *Id.* at 1, col. 5.

26. Treaty on the Non-Proliferation of Nuclear Weapons, *opened for signature* July 1, 1968, 21 U.S.T. 483, T.I.A.S. No. 6839, 729 U.N.T.S. 161 [hereinafter cited as Non-Proliferation Treaty].

27. *Id.*

28. *Id.* art. IV.

29. *Hearings: Israeli Air Strike, supra* note 2, at 105 (statement of Dr. Herbert Kouts, Chairman, Department of Nuclear Energy, Brookhaven National Laboratory, Upton, N.Y.).

30. *Id.*

enter into a safeguards agreement with the IAEA.³¹ During the period in which this accord is negotiated, the Agency may conduct *ad hoc* inspections of the nuclear facilities of the party State.³² These investigations are virtually unlimited in terms of scope and frequency.³³

Once the IAEA and the party State have completed the safeguards agreement, the freedom of the Agency to examine the country's facilities is sharply curtailed.³⁴ Nuclear installations are investigated a specified number of times each year by representatives of the IAEA.³⁵ Generally, the Agency will give several weeks' notice prior to the inspection.³⁶ The nation whose facilities are to be examined may veto the choice of individuals who have been assigned to conduct the investigation.³⁷ The inspection consists of three tasks: (1) reviewing a list of declared materials to confirm that the accounting balance is precise,³⁸ (2) measuring new, irradiated fuel,³⁹ and, (3) completing a standard report.⁴⁰ An inspector may not search for concealed operations,⁴¹ as the purpose of the IAEA investigation is to gather information concerning the activities of countries which have made commitments to develop peaceful uses for nuclear energy.⁴²

Those States which have not ratified the Non-Proliferation Treaty are not required to enter into safeguards agreements with the IAEA.⁴³ A nation which has not declared potential nuclear capabilities is characterized as a "non-nuclear weapons State,"⁴⁴

31. Non-Proliferation Treaty, *supra* note 26, art. III, para. 1.

32. *Hearings: Israeli Air Strike*, *supra* note 2, at 169 (statement of Myron Kratzer).

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.* at 109 (statement of Roger Richter, former inspector, Middle East Region, International Atomic Energy Agency). See also N.Y. Times, June 20, 1981, § A, at 4, col. 6.

37. *Hearings: Israeli Air Strike*, *supra* note 2, at 109 (statement of Roger Richter).

38. *Id.* at 110. See also N.Y. Times, June 18, 1981, § A, at 18, col. 1.

39. *Hearings: Israeli Air Strike*, *supra* note 2, at 112 (statement of Roger Richter).

40. *Id.* All reports are kept confidential. *Id.* at 195 (statement of Rep. Edward J. Markey). See also Boffey, *Nuclear Cheating: Why the Experts are Worried*, N.Y. Times, Dec. 22, 1981, § C, at 1, col. 1.

41. *Hearings: Israeli Air Strike*, *supra* note 2, at 110 (statement of Roger Richter). See also N.Y. Times, June 18, 1981, § A, at 18, col. 2.

42. *Hearings: Israeli Air Strike*, *supra* note 2, at 12 (statement of Sen. John Glenn). See also N.Y. Times, June 18, 1981, § A, at 18, col. 1.

43. *Hearings: Israeli Air Strike*, *supra* note 2, at 106 (statement of Dr. Herbert Kouts). These countries include Israel, Argentina, Pakistan, Brazil, South Africa, China and India. N.Y. Times, June 14, 1981, § IV, at 3, col. 4.

44. *Hearings: Israeli Air Strike*, *supra* note 2, at 151 (statement of Roger Richter).

despite the fact that this country may indeed possess nuclear armaments.⁴⁵ If such a nation were to become a party to the Non-Proliferation Treaty, the government would face the alternatives of either not producing nuclear weapons or violating treaty commitments.⁴⁶ Many countries which are considered to possess nuclear armaments have elected to avoid this choice by simply not signing the Non-Proliferation Treaty.⁴⁷ The decision to remain a non-party to this international agreement is frequently interpreted as a declaration which "rings an alarm bell."⁴⁸

B. *Israel's Nuclear Development*

Israel is not a party to the Non-Proliferation Treaty⁴⁹ and therefore is not obligated to adhere to IAEA safeguards.⁵⁰ Israel is known to possess two nuclear installations.⁵¹ IRR-1 is a small research reactor which Israel acquired from the United States;⁵² this nuclear facility is inspected by representatives of the IAEA.⁵³

Israel's second nuclear installation, Dimona, was constructed by France.⁵⁴ Dimona is a 26-megawatt natural uranium reactor.⁵⁵ A former IAEA inspector observed, "It is likely that they [Israel] are producing nuclear weapons there [at Dimona]."⁵⁶ This opinion is substantiated by a report published by the Central Intelligence Agency in 1978.⁵⁷ This account declared that American intelligence officials had determined in 1974 that Israel had developed

45. *Id.*

46. *Id.* at 106 (statement of Dr. Herbert Kouts).

47. *Id.* at 151 (statement of Roger Richter).

48. *Id.* at 106 (statement of Dr. Herbert Kouts).

49. *Id.* at 3-4 (statement of Walter J. Stoessel, Jr.). See also *Begin's Bombshell*, N.Y. Times, June 14, 1981, § IV, at 1, col. 1.

50. *Hearings: Israeli Air Strike*, *supra* note 2, at 130 (statement of Roger Richter). See also *Begin's Bombshell*, N.Y. Times, June 14, 1981, § 4, at 1, col. 1.

51. *Hearings: Israeli Air Strike*, *supra* note 2, at 39 (statement of John Boright, Acting Deputy Assistant Secretary for Nuclear Affairs, Bureau of Oceans and International Environmental and Scientific Affairs).

52. *Nuclear Facilities in the Middle East*, submitted by the Department of State and included in the materials for *Hearings: Israeli Air Strike*, *supra* note 2, at 40 [hereinafter cited as *Nuclear Facilities*].

53. *Hearings: Israeli Air Strike*, *supra* note 2, at 130 (statement of Roger Richter).

54. *Nuclear Facilities*, *supra* note 52, at 40. See also N.Y. Times, June 9, 1981, § A, at 9, col. 2.

55. *Hearings: Israeli Air Strike*, *supra* note 2, at 40 (statement of John Boright). See also N.Y. Times, June 9, 1981, § A, at 9, col. 2.

56. *Hearings: Israeli Air Strike*, *supra* note 2, at 130 (statement of Roger Richter).

57. N.Y. Times, June 9, 1981, § A, at 9, col. 2.

nuclear weapons at Dimona.⁵⁸ This facility is not subject to Agency inspections,⁵⁹ as Israel is not required to conform to IAEA safeguards.⁶⁰

C. Iraq's Nuclear Installation

As a party to the Non-Proliferation Treaty, Iraq's nuclear installations are investigated by representatives of the IAEA.⁶¹ In January, 1981, Agency inspectors visited Tamuz 1 and determined that all nuclear material was accounted for, according to applicable inspection guidelines.⁶² At the time of this investigation, Tamuz 1 was not operational,⁶³ and was still under construction when destroyed by the Israeli raid.⁶⁴

Iraq acquired Tamuz 1, a 70-megawatt Osiris-type reactor,⁶⁵ pursuant to a 1975 agreement with France.⁶⁶ Additionally, the French contracted to supply Iraq with 200 kilograms of uranium, enriched to 93 percent.⁶⁷ This type of fuel is capable of producing plutonium, a substance frequently used in the development of nuclear weapons.⁶⁸ In 1978, Italy agreed to furnish Iraq with four research laboratories.⁶⁹ The function of one laboratory, known as the "hot cell," is to separate irradiated fuel and extract plutonium.⁷⁰

When the United States government became aware of these agreements, representatives of the administration attempted to dissuade France from supplying Iraq with highly enriched uranium.⁷¹

58. *Id.*

59. *Nuclear Facilities*, *supra* note 52, at 40.

60. *Begin's Bombshell*, N.Y. Times, June 14, 1981, § 4, at 1, col. 1. *See also Hearings: Israeli Air Strike*, *supra* note 2, at 130 (statement of Roger Richter).

61. Non-Proliferation Treaty, *supra* note 26, art. III, para. 1.

62. Donnelly, *supra* note 5, at 70. *See also* N.Y. Times, June 18, 1981, § A, at 18, col. 2.

63. Donnelly, *supra* note 5, at 68.

64. *Hearings: Israeli Air Strike*, *supra* note 2, at 3 (statement of Walter J. Stoessel, Jr.). *See also* N.Y. Times, June 9, 1981, § A, at 1, col. 6.

65. Donnelly, *supra* note 5, at 68.

66. N.Y. Times, June 9, 1981, § A, at 9, col. 1.

67. Donnelly, *supra* note 5, at 68. Additionally, French technicians were to work at the nuclear installation through 1989. N.Y. Times, June 18, 1981, § A, at 1, col. 1.

68. Donnelly, *supra* note 5, at 68. *See also* N.Y. Times, June 11, 1981, § A, at 15, col. 1.

69. *Hearings: Israeli Air Strike*, *supra* note 2, at 110 (statement of Roger Richter). *See also* N.Y. Times, June 9, 1981, § A, at 9, col. 2.

70. *Hearings: Israeli Air Strike*, *supra* note 2, at 110 (statement of Roger Richter). *See also* N.Y. Times, June 18, 1981, § A, at 18, col. 2.

71. *Hearings: Israeli Air Strike*, *supra* note 2, at 16 (statement of John Boright). *See also* N.Y. Times, June 11, 1981, § A, at 15, col. 1. The United States government also expressed concerns regarding the contracts between Iraq and Italy, and approached the Italian government, as well. N.Y. Times, June 9, 1981, § A, at 9, col. 2.

In 1979, France offered to substitute a low-grade, enriched caramel fuel⁷² in place of the 93 percent enriched uranium originally promised.⁷³ Iraq rejected the French proposal to alter the contract.⁷⁴

Iraq has described Tamuz 1 as a "vast and ambitious program of development."⁷⁵ Israel maintained that the scope of the Iraqi project extended beyond the production of nuclear energy for peaceful purposes.⁷⁶ The United States government also "had serious misgivings regarding the ultimate character and direction of the Iraqi nuclear program."⁷⁷ Members of the United States Senate Committee on Foreign Relations were briefed regarding the development of Tamuz 1 in closed committee sessions.⁷⁸ Senator Howard Baker, a member of the committee, stated that the Iraqi nuclear project had generated great concern among his colleagues in the Senate,⁷⁹ across the United States,⁸⁰ and throughout the world.⁸¹

As one commentator has suggested, however, these anxieties may have been unfounded.⁸² A desire to manufacture nuclear weapons is not the only reason that a country such as Iraq would acquire sensitive substances and sophisticated facilities.⁸³ National pride and a desire for international recognition might motivate a government to pursue such a program.⁸⁴ A country might develop sources of nuclear energy in order to remain self-sufficient.⁸⁵ The materials might be used as educational tools in order to achieve

72. Donnelly, *supra* note 5, at 68. Caramel fuel is a substance with a lower enriched uranium quality. The amount of enriched uranium is adequate to provide fuel for a nuclear reactor, such as Tamuz 1, yet is not of a degree sufficient to create nuclear weapons. N.Y. Times, June 11, 1981, § A, at 15, col. 1.

73. Donnelly, *supra* note 5, at 68.

74. *Hearings: Israeli Air Strike*, *supra* note 2, at 24 (statement of Sen. Rudy Boschwitz). See also N.Y. Times, June 11, 1981, § A, at 15, col. 1.

75. Speech of Dr. Saadun Hammadi, Foreign Minister of Iraq, before the United Nations Security Council (June 12, 1981). Dr. Hammadi maintained that the Iraq nuclear program was devoted to peaceful purposes only. N.Y. Times, June 13, 1981, § A, at 6, col. 3.

76. See *supra* text accompanying note 10.

77. *Hearings: Israeli Air Strike*, *supra* note 2, at 17 (statement of Sen. Paul Sarbanes). See also *id.* at 4 (statement of Walter J. Stoessel, Jr.); N.Y. Times, June 9, 1981, § A, at 9, col. 2.

78. *Hearings: Israeli Air Strike*, *supra* note 2, at 17 (statement of Sen. Howard Baker).

79. *Id.*

80. *Id.* at 18.

81. *Id.* See also N.Y. Times, June 19, 1981, § A, at 10, col. 2.

82. *Hearings: Israeli Air Strike*, *supra* note 2, at 161 (statement of Albert Carnesale, John F. Kennedy School of Government, Harvard University, Cambridge, Mass.).

83. *Id.*

84. *Id.*

85. *Id.*

proficiency in the field of nuclear research.⁸⁶ Additionally, surrounding circumstances might encourage a nation to develop nuclear capabilities. Iraq's enemy is believed to possess nuclear weapons;⁸⁷ Iraq simply might have desired to keep a weapons option available.⁸⁸

The Israeli attack, however, destroyed the potential for nuclear advancement which Iraq sought through Tamuz 1. Iraq's progress in the field of nuclear energy has been temporarily halted.⁸⁹ At present, the Iraqi government merely possesses a claim that Israel violated international law on June 7, 1981.

II. ISRAEL'S VIOLATION OF INTERNATIONAL LAW

A. Territorial Sovereignty of States

As subjects of international law, States possess certain rights and duties which are regarded as fundamental.⁹⁰ One such concept is sovereignty: the entitlement of a country to self-government⁹¹ and freedom from the control of other nations, yielding only to the dictates of international law.⁹²

Sovereignty encompasses several legal consequences,⁹³ including territorial jurisdiction,⁹⁴ which is defined as the right of the sovereign State to control all persons and objects within its territorial limits.⁹⁵ A nation may also exercise dominion over all bodies of water located within its boundaries.⁹⁶ Finally, spatial jurisdiction extends to the vital appendages of a country,⁹⁷ such as the airspace.⁹⁸

Airspace is comprised of the air above the territory of a na-

86. *Id.*

87. *Id.* See also *supra* text accompanying notes 56-58.

88. *Hearings: Israeli Air Strike, supra* note 2, at 161 (statement of Albert Carnesale).

89. France agreed to rebuild the reactor if Iraq would continue to adhere to IAEA safeguards. N.Y. Times, June 17, 1981, § A, at 18, col. 3.

90. H. Kelsen, *PRINCIPLES OF INTERNATIONAL LAW* 245-46 (2d ed. 1966).

91. H. JACOBINI, *INTERNATIONAL LAW: A TEXT* 69 (rev. ed. 1968).

92. W. LEVI, *CONTEMPORARY INTERNATIONAL LAW: A CONCISE INTRODUCTION* 89 (1979). See also H. Kelsen, *supra* note 90, at 250.

93. W. LEVI, *supra* note 92, at 89.

94. *Id.* at 131. Territorial jurisdiction is also known as "spatial jurisdiction."

95. J. BRIERLY, *THE LAW OF NATIONS* 162 (6th ed. 1963). See also H. JACOBINI *supra* note 91, at 91.

96. W. LEVI, *supra* note 92, at 136.

97. J. FAWCETT, *THE LAW OF NATIONS* 63 (1968).

98. W. GOULD, *AN INTRODUCTION TO INTERNATIONAL LAW* 390 (1957). The term "vital appendages" also encompasses the marginal sea. H. JACOBINI, *supra* note 91, at 91.

tion.⁹⁹ A sovereign State possesses exclusive control over this region.¹⁰⁰ Consequently, a foreign aircraft¹⁰¹ must obtain permission in order to enter a country's airspace.¹⁰² A State may deny admittance by determining that the foreign aircraft might threaten national safety or prosperity.¹⁰³

As a sovereign State, Iraq possesses the right to control those persons and objects within Iraqi boundaries and airspace.¹⁰⁴ In destroying Tamuz 1, Israel, in effect, exercised control over a structure located within Iraqi territory.¹⁰⁵ Iraq was therefore denied the power to regulate all property within Iraqi boundaries.¹⁰⁶ Additionally, Israeli planes flew over Iraq in a surprise attack: foreign aircrafts entered the airspace of a sovereign State without permission.¹⁰⁷ Hence, Iraq was also denied the right to maintain control over Iraqi airspace, a legal claim flowing from the right to sovereignty.¹⁰⁸

Israel's actions were a defiance of Iraq's rights as a sovereign State, as provided by customary international law.¹⁰⁹ Furthermore, Israel violated several provisions of the Charter of the United Nations.¹¹⁰

B. *Charter of the United Nations*

Article 2(3) of the United Nations Charter mandates that disagreements between member States must be resolved through peaceful methods.¹¹¹ Article 2(4) provides that members of the United Nations may not violate the territorial jurisdiction of any country through the threat or actual use of force.¹¹²

99. J. FAWCETT, *supra* note 97, at 63.

100. *Id.* at 81. *See also* W. LEVI, *supra* note 92, at 129.

101. J. FAWCETT, *supra* note 97, at 81. This principle applies to both civil and military aircrafts.

102. *Id.*

103. W. GOULD, *supra* note 98, at 390.

104. *See supra* text accompanying notes 93-98.

105. *See supra* text accompanying notes 4-8.

106. *See supra* text accompanying note 95.

107. *See supra* text accompanying notes 1-8.

108. *See supra* text accompanying notes 99-103.

109. *See supra* text accompanying notes 90-108.

110. *See infra* text accompanying notes 111-26.

111. U.N. CHARTER, art. 2, para. 3 states that "[a]ll Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered."

112. U.N. CHARTER, art. 2, para. 4 provides that "[a]ll Members shall refrain in their international relations from the threat or use of force against the territorial integrity or polit-

Israel and Iraq are both members of the United Nations.¹¹³ As such, these countries are required to comply with the United Nations Charter.¹¹⁴ In obliterating Tamuz 1, Israel did not resolve a perceived threat through peaceful means: the launching of sixteen 2,000-pound bombs encompassed the actual use of force.¹¹⁵ By entering Iraqi airspace without permission and destroying an object located within Iraq's boundaries, Israel infringed upon Iraq's territorial jurisdiction.¹¹⁶ The Israel attack would therefore be characterized as the "use of force against the territorial integrity . . . of . . . [another] [S]tate," in violation of the Charter of the United Nations.¹¹⁷

The United Nations Charter also states, in Article 33, that members must utilize peaceful methods for the resolution of disagreements which might threaten international peace and security.¹¹⁸ These modes include "negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of . . . [a member's] choice."¹¹⁹ Article 37 asserts that if these attempts prove ineffective, the problem must be called to the attention of the United Nations Security Council.¹²⁰

The Israeli government's efforts to deal with the threat of Tamuz 1 through peaceful means were limited to inquiries and protests made to France regarding French promises to provide nuclear assistance to Iraq.¹²¹ If Israel's fears could not be assuaged through the alternative methods enumerated in Article 33,¹²² the Israeli gov-

ical independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."

113. See *supra* note 14.

114. U.N. CHARTER, art. 2, para. 2 mandates that "[a]ll Members . . . shall fulfill in good faith the obligations assumed by them in accordance with the present Charter."

115. See *supra* text accompanying notes 4-5.

116. See *supra* text accompanying notes 92-108.

117. See *supra* note 112 and accompanying text.

118. U.N. CHARTER, art. 33, para. 1 states that "[t]he parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by . . . peaceful means. . . ."

119. U.N. CHARTER, art. 33, para. 1.

120. U.N. CHARTER, art. 37, para. 1 provides: "Should the parties to a dispute . . . fail to settle it . . . by the means indicated [in Article 33] . . . they shall refer it to the Security Council."

121. *Hearings: Israeli Air Strike, supra* note 2, at 223 (statement of William T. Mallison, Professor of Law and Director of the International and Comparative Law Program, George Washington University, Washington, D.C.). For details of French-Iraqi agreements, see *supra* notes 66-68 and accompanying text.

122. See *supra* text accompanying note 119.

ernment had the duty to submit the problem to the United Nations Security Council.¹²³ Israel, however, did not attempt to pursue this course of action.¹²⁴ In electing to destroy the Iraqi nuclear reactor, Israel did not fulfill the obligation to comply with the procedures described in the Charter of the United Nations.¹²⁵

An examination of the applicable provisions of customary international law and the United Nations Charter indicates that Israel acted in violation of the responsibilities incurred by sovereign States and members of the United Nations.¹²⁶ However, certain principles of customary international law and statements in the Charter of the United Nations might justify Israel's actions.

III. ISRAEL'S JUSTIFICATION FOR THE RAID

In examining those legal theories which would justify the Tamuz 1 attack, a fundamental issue of fact remains unresolved: whether Iraq intended to produce nuclear weapons for use against Israel. Although the Iraqi government made commitments to the development of nuclear energy for peaceful purposes,¹²⁷ this country's nuclear program generated significant concern in the international community.¹²⁸ Tamuz 1 has been destroyed,¹²⁹ consequently, the answer to this inquiry may be impossible to determine.

Therefore, each alternate contingency will be considered. The analysis will first address Israel's justification for the raid if Iraq's objectives in acquiring Tamuz 1 included the development of nuclear weapons for use against Israel. The examination will then proceed on the assumption that Iraq intended to utilize the reactor solely for peaceful purposes.

A. *Tamuz 1: If Built for the Development of Nuclear Weapons*

1. *State of War.* Israel has sought to justify the Tamuz 1 at-

123. See *supra* note 120 and accompanying text.

124. See *supra* text accompanying note 121. The explanation has been offered that, in order to promote Arab views, the U.S.S.R. has frequently vetoed Security Council resolutions. Israel therefore considers United Nations Security Council procedures ineffective in protecting Israeli interests. *Hearings: Israeli Air Strike, supra* note 2, at 247 (statement of John N. Moore, Walter L. Brown Professor of Law and Director, Center for Law and National Security, University of Virginia, Charlottesville, Va.).

125. See *supra* text accompanying notes 111-24.

126. See *supra* text accompanying notes 90-125.

127. See *supra* note 75 and accompanying text.

128. See *supra* text accompanying note 81.

129. See *supra* text accompanying note 8.

tack by contending that Iraq and Israel were in a state of war on June 7, 1981.¹³⁰ If these countries were, in fact, in a state of war at that time, Israel was bound to adhere to those principles of international law which apply to nations at war.¹³¹ In order to determine whether the state of war premise would justify the Tamuz 1 attack, two issues must be resolved. First, did a state of war prevail between Israel and Iraq on June 7, 1981? Second, if a state of war did exist between these nations, did the Israeli raid conform to those regulations which govern the conduct of States during a time of war?

The temporal scope of a state of war is delineated by the commencement and the termination of war, which is defined as "a condition of armed and/or formal hostility between states."¹³² In 1907, the Hague Convention Relative to the Opening of Hostilities mandated two methods through which nations might enter into a state of war.¹³³ First, a State might officially declare war upon another country.¹³⁴ Second, a nation might deliver an ultimatum announcing that the alternative to compliance would be war.¹³⁵ In actuality, additional modes of commencing war have been acknowledged: a country might either proclaim that the conduct of another nation has resulted in a state of war or commit hostile acts with the intent to wage war.¹³⁶ The universal acknowledgment that Israel and Iraq have fought as adversaries in numerous wars may be interpreted as sufficient manifestation of the hostile acts required to create a state of war.¹³⁷

The crucial inquiry is therefore whether a state of war between

130. *Hearings: Israeli Air Strike*, *supra* note 2, at 3 (statement of Walter J. Stoessel, Jr.).

131. H. JACOBINI, *supra* note 91, at 295. See generally W. LEVI, *supra* note 92, at 325: "It may appear paradoxical that war for most states as members of the United Nations is no longer permitted, yet rules of war continue in force."

132. H. JACOBINI, *supra* note 91, at 278.

133. G. VON GLAHN, *LAW AMONG NATIONS* 559-60 (2d ed. 1970).

134. H. JACOBINI, *supra* note 91, at 284.

135. G. VON GLAHN, *supra* note 133, at 560. In the case of an ultimatum, a State will present a demand to another country, and will generally give a time limit for a response.

136. H. JACOBINI, *supra* note 91, at 284.

137. See, e.g., H. SICHERMAN, *The Yom Kippur War: End of Illusion?*, 4 FOREIGN POL'Y PAPERS (1976). See also H. HASSOUNA, *THE LEAGUE OF ARAB STATES AND REGIONAL DISPUTES* 278-83 (1975) for recognition that Iraq participated in wars with Israel, and H. SACHAR, *A HISTORY OF ISRAEL* 327-28, 642, 771 (1976) for Israeli acknowledgment. For detailed descriptions of Iraqi involvement in the 1967 Arab-Israeli Six Day War, see *FACTS ON FILE, INC., ISRAEL & THE ARABS: THE JUNE 1967 WAR* 66-74 (1968), and E. O'BALLANCE, *THE THIRD ARAB-ISRAELI WAR* 75-76 (1972). See C. HERZOG, *THE WAR OF ATONEMENT* 135-43 (1975) for specifics of Iraq's role in the 1973 Arab-Israeli war.

Iraq and Israel terminated before June 7, 1981. According to customary international law, a state of war may be ended through one of three methods: (1) a treaty of peace; (2) subjugation; or, (3) a cessation of hostilities.¹³⁸

The most common manner through which to terminate war is the peace treaty.¹³⁹ This document returns the parties to a state of peace¹⁴⁰ and resolves all remaining disputes between the countries.¹⁴¹ Iraq and Israel have never signed a peace treaty.¹⁴² Therefore, the two nations have not ended a state of war through a treaty of peace.¹⁴³

In order to terminate a state of war through subjugation, a country must obliterate the enemy's status as a sovereign State.¹⁴⁴ Israel and Iraq both exist as sovereign States,¹⁴⁵ therefore, a state of war between these nations has not ceased through subjugation.¹⁴⁶

Finally, a state of war may end through a cessation of hostilities: the governments may issue a proclamation stating that the nations are no longer at war,¹⁴⁷ or the countries may simply stop fighting.¹⁴⁸ If a state of war is terminated on this basis, each State will retain the property occupied at the time that hostilities cease.¹⁴⁹ Neither Iraq nor Israel has announced that the two countries are no longer at war; on the contrary, both nations have declared that a state of war continues to exist.¹⁵⁰ Israel and Iraq had, in fact, sus-

138. G. VON GLAHN, *supra* note 133, at 572.

139. W. GOULD, *supra* note 98, at 663. The peace treaty is the typical and most preferable method of ending war. G. VON GLAHN, *supra* note 133, at 576.

140. H. JACOBINI, *supra* note 91, at 287.

141. W. GOULD, *supra* note 98, at 663.

142. *Hearings: Israeli Air Strike*, *supra* note 2, at 241 (statement of John N. Moore).

143. *See supra* text accompanying notes 137-42.

144. 2 G. SCHWARTZENBERGER, *INTERNATIONAL LAW: ARMED CONFLICT* 730 (1968). "Subjugation" means the firm military conquest of the enemy state following *debellatio*, the disintegration and eventual disappearance of its government, and the total absence of organized resistance by citizens and soldiers of the defeated state." G. VON GLAHN, *supra* note 133, at 572-73.

145. U.N. CHARTER, art. 4, para. 1 states: "[m]embership in the United Nations is open to all . . . peace loving states. . . ." Israel and Iraq are both members of the United Nations, and therefore exist as sovereign States. *See supra* note 14. *See also supra* text accompanying notes 90-92.

146. *See supra* text accompanying notes 144-45.

147. W. GOULD, *supra* note 98, at 662.

148. *Id.* at 661. The requisite duration of this time period is not absolute. H. JACOBINI, *supra* note 91, at 287.

149. H. JACOBINI, *supra* note 91, at 287.

150. *See Hearings: Israeli Air Strike*, *supra* note 2, at 3 (statement of Walter J. Stoessel, Jr.) for Israeli assertion that Iraq and Israel are in a state of war. *See id.* at 52 (statement of Sen. Alan Cranston) for similar declarations by Iraq. *See also supra* note 9.

pending fighting for a substantial time period.¹⁵¹ However, the existence of a cessation of hostilities must be determined with regard to surrounding circumstances.¹⁵² Israel and Iraq have frequently stated that the two nations are at war.¹⁵³ These pronouncements indicate that hostilities between these countries were merely dormant,¹⁵⁴ and that a cessation of hostilities had not occurred on June 7, 1981.¹⁵⁵ Iraq and Israel, by asserting that a state of war prevailed, have met the essential requirement for war—"a condition of formal hostility."¹⁵⁶ Under the principles of international law, Israel and Iraq were therefore in a state of war on June 7, 1981.¹⁵⁷

The second issue which must be addressed is whether Israel conformed to those regulations which govern countries at war.¹⁵⁸ The rules of war utilize three techniques to distinguish between lawful and unlawful conduct: *ratione loci* (the distinction between places),¹⁵⁹ *ratione instrumenti* (the distinction between weapons)¹⁶⁰ and *ratione personae* (the distinction between persons).¹⁶¹ In order to adhere to the regulations of war, a State must conform to the principles established in each category.¹⁶²

The first classification, *ratione loci*, indicates that certain geo-

151. *Hearings: Israeli Air Strike*, *supra* note 2, at 10 (statement of Sen. Richard Lugar).

152. H. JACOBINI, *supra* note 91, at 287.

153. *See supra* note 150 and accompanying text.

154. *Hearings: Israeli Air Strike*, *supra* note 2, at 10 (statement of John Boright).

155. *See supra* text accompanying notes 151-54.

156. H. JACOBINI, *supra* note 91, at 178. *See also supra* note 150 and accompanying text.

157. *See supra* text accompanying notes 132-56.

158. Although many rules of war have been codified (*see, e.g.*, Hague Conventions of 1899 and 1907), these documents are not comprehensive. J. FAWCETT, *supra* note 97, at 131. Many codified rules have become archaic due to modern technology and have not been updated. G. VON GLAHN, *supra* note 133, at 583. Regulations of war in the air have not been successfully codified. *Id.* at 594-96. The Hague Convention IV with Respect to the Laws and Customs of War on Land, October 18, 1907, 32 Stat. 1803, T.S. No. 403 [hereinafter cited as Hague Convention IV] stated, in the preamble, that general principles of international law which have evolved through customary use and ideals of humanitarianism should govern those situations which are not controlled by the Convention. These concepts are applied to warfare in the air. W. LEVI, *supra* note 92, at 326. However, the various forms of war (land, air, and sea) have increasingly tended to interrelate. *Id.* Therefore, this Comment will apply relevant treaty provisions, by analogy, in instances where customary international law is silent.

159. G. SCHWARTZENBERGER, *supra* note 144, at 109. *See also* G. VON GLAHN, *supra* note 133, at 590.

160. G. SCHWARTZENBERGER, *supra* note 144, at 109. *See also* W. LEVI, *supra* note 92, at 327.

161. G. SCHWARTZENBERGER, *supra* note 144, at 110. *See also* H. JACOBINI, *supra* note 91, at 302.

162. G. SCHWARTZENBERGER, *supra* note 144, at 109.

graphical areas and structures are excluded from the zones of war.¹⁶³ The lawful scope of combat is limited to the land and marine territory of the countries engaged in war, the high seas, and the airspace above these regions.¹⁶⁴ In addition, certain property must remain intact.¹⁶⁵ An enemy nation must strive to protect "buildings dedicated to religion, art, science, or charitable purposes . . . provided . . . [these buildings] are not being used at the same time for military purposes."¹⁶⁶ A nuclear installation such as Tamuz 1 would be characterized as a structure "dedicated to . . . science."¹⁶⁷ If Iraq had acquired this reactor in order to produce nuclear weapons, the facility would have been "used at the same time for military purposes."¹⁶⁸ Tamuz 1 therefore would not have been protected by the *ratione loci* distinction and would have been a lawful target for destruction.¹⁶⁹

The *ratione instrumenti* classification outlaws the use of those weapons which produce needless suffering.¹⁷⁰ The sole dispute regarding the armaments which Israel used in the Tamuz 1 attack has centered on whether conventional bombs or precision-guided bombs were utilized.¹⁷¹ Reports of these discussions do not consider whether either type of weapons would have been proscribed by the *ratione instrumenti* requirements.¹⁷² Therefore, there is not enough information to make this issue a sufficient area for inquiry.

Finally, the *ratione personae* distinction mandates that warfare should be waged among combatants:¹⁷³ a country should not in-

163. *Id.* See also H. JACOBINI, *supra* note 91, at 314.

164. G. VON GLAHN, *supra* note 133, at 590.

165. G. SCHWARTZENBERGER, *supra* note 144, at 112.

166. H. JACOBINI, *supra* note 91, at 314. See Hague Convention IV, *supra* note 158, art. 27.

167. See *supra* note 166.

168. *Id.*

169. See *supra* text accompanying notes 163-68.

170. G. SCHWARTZENBERGER, *supra* note 144, at 109. See also H. JACOBINI, *supra* note 91, at 313.

171. N.Y. Times, June 10, 1981, § A, at 12, col. 3. See also *Two Minutes Over Baghdad*, NEWSWEEK, June 22, 1981, at 23.

172. N.Y. Times, June 10, 1981, § A, at 12, col. 3. Conventional bombs were customarily used in World War II. 4 C. WEBSTER & N. FRANKLAND, *THE STRATEGIC AIR OFFENSIVE AGAINST GERMANY 1939-1945*, at 30-36 (1961). Precision bombs are more sophisticated weapons which provide guidance systems and tend to avoid indiscriminate destruction. R. PRANGER & D. TAHTIEN, *IMPLICATIONS OF THE 1976 ARAB-ISRAELI MILITARY STATUS* 20-21, 36-37 (1976). If conventional bombs, which operate indiscriminately, are not deemed illegal, then bombs with guidance systems which do not operate as indiscriminately would also not be prohibited under the *ratione instrumenti* classification.

173. G. SCHWARTZENBERGER, *supra* note 144, at 110. Two additional classifications in

volve non-combatants in hostilities.¹⁷⁴ An exception applies to those non-combatants who are situated within the proximity of belligerent operations.¹⁷⁵ These individuals are subject to the same risks as combatants.¹⁷⁶ If Iraq intended to utilize Tamuz 1 in order to develop nuclear weapons, then the reactor, a military installation, would have been a lawful target for the Israeli attack.¹⁷⁷ One non-combatant, a French technician at the reactor site, was killed in the raid.¹⁷⁸ As a civilian in the vicinity of a belligerent operation, this individual was not entitled to the special protection which international law generally provides to non-combatants.¹⁷⁹ Israel therefore did not violate the *ratione personae* requirements.¹⁸⁰

Assuming that Iraq's goals for Tamuz 1 included the production of nuclear weapons, the Israeli attack conformed to the rules of war: Israel destroyed a lawful target, sought to minimize the casualties of those individuals in the vicinity of the installation and utilized weapons which were not deemed illegal.¹⁸¹ If a state of war did not, in fact, exist between Israel and Iraq on June 7, 1981, Israel could attempt to justify the raid on an alternative theory: self-defense.

2. *Self-Defense*. Assuming that Iraq's goals for Tamuz 1 included the production of nuclear weapons for use against Israel, the principle of self-defense might also justify the Israeli attack. Self-defense is described as "the forcible rejection of an illegal existing or impending interference, usually by force, with a [S]tate's rights."¹⁸² Article 51 of the United Nations Charter states: "[n]othing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs."¹⁸³ The elements of the right of self-defense are not enumerated in the

the *ratione personae* category become operative if an individual is found on enemy territory: the distinctions "between members of armed forces and civilians and between lawful and unlawful combatants."

174. 2 H. LAUTERPACHT, INTERNATIONAL LAW, PART 1: INTERNATIONAL LAW IN GENERAL 160 (1975). A military attack may not be directed toward a civilian population. See also W. GOULD, *supra* note 98, at 643.

175. G. SCHWARTZENBERGER, *supra* note 144, at 115.

176. *Id.*

177. See *supra* text accompanying notes 163-69.

178. See *supra* note 13 and accompanying text.

179. See *supra* text accompanying notes 173-76.

180. See *supra* text accompanying notes 173-79.

181. See *supra* text accompanying notes 159-80.

182. W. LEVI, *supra* note 92, at 314.

183. U.N. CHARTER, art. 51.

Charter of the United Nations.¹⁸⁴ Customary international law, however, provides a definition of this principle.¹⁸⁵

Customary international law specifies the following requirements for the legitimate use of self-defense. First, the State must be the target of the hostile activities of another country.¹⁸⁶ Second, the defending nation must reasonably decide that some force is necessary in order to maintain the inherent right of sovereignty.¹⁸⁷ Third, the degree of force utilized in exercising the right of self-defense must be proportionate to the needs of the defending nation.¹⁸⁸

According to customary international law, the first element of the right to self-defense was fulfilled if the defending State were the target of an actual or impending attack.¹⁸⁹ Thus, anticipatory self-defense (the use of force to prevent an impending attack) was recognized as legitimate.¹⁹⁰ The United Nations Charter, however, mandates that States may invoke the right of self-defense "if an armed attack occurs."¹⁹¹ The question of whether Article 51 permits anticipatory self-defense has been an issue of extensive controversy.¹⁹²

The restrictive interpretation of Article 51 would limit the exercise of self-defense to those situations in which an armed attack had actually occurred.¹⁹³ The United Nations Charter explicitly permits self-defense "if an armed attack occurs."¹⁹⁴ Article 51 is silent on the issue of whether the right of self-defense may be invoked in the face of threatened aggression by another country.¹⁹⁵ Furthermore, the United Nations Charter authorizes members to

184. *Id.*

185. *See infra* text accompanying notes 186-88.

186. McDougal, *The Soviet-Cuban Quarantine and Self-Defense*, 57 AM. J. INT'L L. 597-98 (1936), *reprinted in* 5 M. WHITEMAN, DIGEST OF INTERNATIONAL LAW 973 (1965).

187. *Id.*

188. *Id.*

189. THOMAS & THOMAS, THE HAMMARSKJOLD FORUMS: THE DOMINICAN REPUBLIC CRISIS 1965 (1967), *reprinted in* 12 M. WHITEMAN, DIGEST OF INTERNATIONAL LAW 193 (1967) [hereinafter cited as THOMAS].

190. H. JACOBINI, *supra* note 91, at 70. *See also* THOMAS, *supra* note 189, at 193.

191. *See supra* text accompanying note 183.

192. H. JACOBINI, *supra* note 91, at 70.

193. THOMAS & THOMAS, NON-INTERVENTION 123-24 (1956), *reprinted in* 5 M. WHITEMAN, DIGEST OF INTERNATIONAL LAW 987 (1965) [hereinafter cited as THOMAS & THOMAS]. *See also* H. JACOBINI, *supra* note 91, at 70-71.

194. *See supra* text accompanying note 183.

195. *See* U.N. CHARTER, art. 51.

exercise the "inherent right" of self-defense.¹⁹⁶ According to customary international law, the "inherent" right of self-defense is described as the power to take action against an actual attack.¹⁹⁷ Self-defense measures which are launched as a result of threatened aggression are characterized as "permissive."¹⁹⁸ Article 51 does not provide that a member State may exercise general powers of self-defense, nor does the Charter mention the permissive right of self-defense: a member is authorized to invoke the "inherent" right of self-defense.¹⁹⁹ This limited interpretation of Article 51 would therefore permit a State to act in self-defense only if an actual assault had occurred.²⁰⁰ Israel destroyed Tamuz 1 in response to a perceived threat, as Iraq had not attacked Israel.²⁰¹ Therefore, within the confines of this interpretation of Article 51 of the United Nations Charter, Israel was not entitled to exercise the right of self-defense.²⁰²

The prevailing interpretation of Article 51 would permit member States to act in anticipatory self-defense.²⁰³ The negotiating history of the Charter of the United Nations supports this position.²⁰⁴ Additionally, the French text of Article 51 describes "armed attack" as "aggression armée," encompassing the concepts of both actual and threatened armed attacks.²⁰⁵ The right of anticipatory self-defense is also substantiated by numerous legal precedents.²⁰⁶ Moreover, one must consider the right of self-defense

196. See *supra* text accompanying note 183.

197. THOMAS & THOMAS, *supra* note 193, at 987.

198. *Id.*

199. See *supra* text accompanying note 183.

200. H. LAUTERPACHT, OPPENHEIM'S INTERNATIONAL LAW 156 (7th ed. 1952), reprinted in 5 M. WHITEMAN, DIGEST OF INTERNATIONAL LAW 987 (1965).

201. *Hearings: Israeli Air Strike*, *supra* note 2, at 240 (statement of John N. Moore).

202. See *supra* text accompanying notes 193-201.

203. H. JACOBINI, *supra* note 91, at 71. See also *Hearings: Israeli Air Strike*, *supra* note 2, at 220 (statement of William T. Mallison), and at 238 (statement of John N. Moore).

204. *Hearings: Israeli Air Strike*, *supra* note 2, at 220 (statement of William T. Mallison).

205. H. JACOBINI, *supra* note 91, at 71. See also *Hearings: Israeli Air Strike*, *supra* note 2, at 220 (statement of William T. Mallison).

206. H. JACOBINI, *supra* note 91, at 71. See also *Hearings: Israeli Air Strike*, *supra* note 2, at 221 (statement of William T. Mallison), citing the *Caroline* case. In 1837, the British destroyed the *Caroline*, an American ship which supplied insurgent Canadians with armaments during the Canadian rebellion against Great Britain. The legal doctrine of self-defense was first introduced in correspondence connected with the *Caroline* case, in which the British raid was justified as a precautionary measure in order to prevent future attacks. See Jennings, *The Caroline and MacLeod Cases*, 32 AM. J. INT'L L. 82-92 (1938). Professor Mallison also discussed two fairly recent examples of legitimate anticipatory self-defense. One incident occurred during World War II, after Germany and the Vichy Government of France had agreed to an armistice. Great Britain, concerned that German forces would

against the backdrop of modern technology:²⁰⁷ a defending State may be obliterated by the enemy's first strike.²⁰⁸

According to the prevailing interpretation of Article 51 of the United Nations Charter, a member State is permitted to exercise the right of self-defense if threatened with an impending attack.²⁰⁹ If Iraq intended to utilize nuclear weapons produced at Tamuz 1 against Israel, then Israel would have been the target of an armed attack. Therefore, the first element required in order to invoke the right of self-defense would have been present.²¹⁰

The second component of the legitimate exercise of self-defense is necessity: the act of self-defense must be the sole recourse available to the defending State.²¹¹ Aside from communications with France, Israel did not attempt to deal with the threat of an Iraqi attack through diplomatic channels.²¹² Although peaceful means for resolution of the problem may have proven ineffective,²¹³ the necessity element of self-defense requires that the defending nation must first exhaust all viable alternatives before resorting to the use of force.²¹⁴ Israel failed to adhere to this obligation and therefore did not satisfy the necessity demand of legitimate self-defense.²¹⁵

In order to conform to the third element of self-defense, which is proportionality, the defending State's actions must not be excessive²¹⁶ and must be terminated once the self-defense needs are ful-

utilize French warships, declared that the vessels would be destroyed unless the French would either incorporate these ships into the British Navy or demilitarize the crafts. The French commander in Oran (North Africa) refused to comply with either alternative, and Great Britain carried out the ultimatum. The British destruction of the French vessels was regarded as lawful: commentators generally agreed that the British were not required to postpone an attack until the French vessels were transformed into German warships. Additionally, many international lawyers advocated the destruction of Cuban missile sites, during the Cuban Missile Crisis, as a legitimate exercise of anticipatory self-defense. President Kennedy, however, utilized alternative means to eliminate the perceived danger.

207. H. JACOBINI, *supra* note 91, at 71.

208. BOWETT, SELF-DEFENCE IN INTERNATIONAL LAW 191-92 (1958), *reprinted in* 5 M. WHITEMAN, DIGEST OF INTERNATIONAL LAW 989 (1965).

209. *See supra* text accompanying notes 203-08.

210. *See supra* text accompanying note 186.

211. W. LEVI, *supra* note 92, at 315.

212. *See supra* text accompanying note 121.

213. *See supra* note 124 and accompanying text.

214. *Id.* *See also* W. LEVI, *supra* note 92, at 315; *Hearings: Israeli Air Strike*, *supra* note 2, at 223 (statement of William T. Mallison).

215. *See supra* text accompanying notes 211-14.

216. THOMAS, *supra* note 189.

filled.²¹⁷ The scope of the Israeli raid was confined precisely to the site of Tamuz 1, and the attack was completed within two minutes.²¹⁸ In limiting the bombing to the swift destruction of the source of the threat,²¹⁹ Israel conformed to the principle of proportionality.²²⁰

Despite the fact that Iraq may have intended to develop nuclear weapons for use against Israel, the Israeli raid could not be justified as a legitimate act of self-defense. By disregarding peaceful methods for resolution of the threat of an Iraqi attack, Israel's actions did not satisfy the standard of necessity required for the lawful exercise of self-defense.²²¹ A more effective argument for Israel to advance would be that Iraq and Israel were in a state of war and that the Israeli raid conformed to the rules of war.²²²

B. *Tamuz 1: If Built for Peaceful Purposes*

1. *State of War*. Assuming that Iraq intended to utilize Tamuz 1 solely for peaceful purposes, and further assuming that a state of war existed between Israel and Iraq on June 7, 1981,²²³ the rules of war would be applied in analyzing the Israeli attack on Iraq's reactor. A former IAEA inspector noted that French technicians remained at Tamuz 1 "except perhaps during a period of military operations."²²⁴ This statement reveals that Tamuz 1 was at times used for military purposes. Additionally, French technicians and Iraqi military personnel may have worked simultaneously at the installation. The fact that a French technician was at the site of the facility during the raid does not preclude the possibility that military operations were conducted at Tamuz 1.²²⁵ The question of whether the reactor was used for military as well as scientific purposes on June 7, 1981, is an unanswered issue of fact.²²⁶

The *ratione loci* distinction²²⁷ mandates that a scientific edifice is not a lawful enemy target unless the building is simultaneously

217. *Id.*

218. *See supra* notes 6-8 and accompanying text.

219. *See supra* text accompanying notes 203-09.

220. *See supra* text accompanying notes 216-19.

221. *See supra* text accompanying notes 211-15.

222. *See supra* text accompanying notes 130-81.

223. *See supra* text accompanying notes 132-57.

224. *Hearings: Israeli Air Strike, supra* note 2, at 131 (statement of Roger Richter).

225. *Hearings: Israeli Air Strike, supra* note 2, at 131 (statement of Roger Richter). *See supra* note 13 and accompanying text.

226. *See supra* text accompanying note 224.

227. *See supra* text accompanying note 163.

used for military purposes.²²⁸ If military and scientific operations were concurrently conducted at Tamuz 1, then the reactor would have been a lawful target:²²⁹ the *ratione loci* classification does not extend protection to a scientific structure which is also utilized for military activities.²³⁰ Additionally, Israel would have complied with the *ratione personae* distinction: the casualty, a non-combatant, was within the proximity of military operations.²³¹

In the alternative, if the installation did not maintain a connection with Iraq's military forces, then Tamuz 1 would have been a building devoted to science and, therefore, protected property.²³² Israel would also have had a duty not to kill the French technician: as a civilian in the vicinity of an unlawful target, this individual warranted the protection afforded to non-combatants.²³³

If Tamuz 1 did not provide a site for Iraqi military affairs on June 7, 1981, Israel would be unable to justify the attack by asserting that Israeli actions conformed to the rules of war.²³⁴ Conversely, if military operations were conducted at the installation, Israel might successfully argue that the raid was justified.²³⁵

2. *Self-Defense.* In order to exercise the right of self-defense, the defending country must be the target of the belligerent conduct of another country.²³⁶ Assuming Tamuz 1 was constructed solely for peaceful purposes, Israel would not have been the object of Iraqi aggression. Israel would therefore lack a basis for any claims of self-defense.²³⁷

The Israeli raid would be difficult to justify if Iraq intended to utilize Tamuz 1 exclusively for peaceful operations.²³⁸ When the IAEA considered the ramifications of the Tamuz 1 attack, the Agency operated on the assumption that Iraq did not intend to produce nuclear weapons for use against Israel.²³⁹ The IAEA concluded that the Israeli raid caused "considerable damage to the safeguards regime and could seriously jeopardize the development

228. *See supra* text accompanying note 166.

229. *See supra* text accompanying notes 225-28.

230. *See supra* text accompanying note 166.

231. *See supra* text accompanying notes 173-76.

232. *See supra* text accompanying note 166.

233. *See supra* text accompanying notes 173-76.

234. *See supra* text accompanying notes 227-28 and 232-33.

235. *See supra* text accompanying notes 227-31.

236. *See supra* text accompanying note 186.

237. *Id.*

238. *See supra* text accompanying notes 223-37.

239. *See infra* note 240 and accompanying text.

of nuclear energy for peaceful purposes," and elected to take actions against Israel.²⁴⁰

IV. THE ROLE OF THE IAEA

As a member of the IAEA, Israel must comply with the dictates of the Agency's Charter.²⁴¹ Article XIX of the IAEA Charter declares that a member which violates the provisions of the Charter may be denied the privileges and rights of membership in the Agency.²⁴² Two questions therefore arise. First, did Israel violate the terms of the IAEA Charter? Second, did the Agency adhere to the Charter in taking actions against Israel?

The IAEA Charter enumerates several Agency objectives. These aspirations include the research and development of atomic energy for peaceful purposes²⁴³ and the administration of safeguards in nuclear facilities.²⁴⁴ In obliterating Tamuz 1, Israel prevented Iraq from using this facility for the production of nuclear energy for peaceful purposes.²⁴⁵ The IAEA Charter encourages the

240. IAEA Doc. GC(XXV)/RES/381 (1981). The IAEA General Conference based these decisions on several factors, including the fact that Iraq has subscribed to IAEA safeguards procedures, while Israel has repeatedly refused to open unsafeguarded Israeli nuclear facilities for IAEA inspection. The Agency also referred to a resolution adopted by the IAEA Board of Governors on June 12, 1981, which "strongly condemned" Israel for the attack and recommended that the General Conference "consider all implications of the attack, including suspending the exercise by Israel of the privileges and rights of membership." IAEA Doc. GC(XXV)/643 (1981). The General Conference also cited the United Nations Security Council's condemnation of the raid. See U.N. SCOR, *supra* note 18.

241. IAEA CHARTER, art. IV, sec. C states that "[t]he Agency is based on the principle of the sovereign equality of all its members, and all members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with this Statute."

242. IAEA CHARTER, art. XIX, sec. B mandates that: "[a] member which has persistently violated the provisions of this Statute or of any agreement entered into by it pursuant to this Statute may be suspended from the exercise of the privileges and rights of membership by the General Conference . . . voting upon recommendation by the Board of Governors."

243. IAEA CHARTER, art. III, sec. A states that "[t]he Agency is authorized: 1. To encourage and assist research on, and development and practical application of, atomic energy for peaceful uses. . . ."

244. The IAEA Charter also provides:

A. The Agency is authorized:

5. To establish and administer safeguards designed to ensure that special fissionable and other materials, services, equipment, facilities, and information made available by the Agency or at its request or under its supervision or control are not used in such a way as to further any military purpose; and to apply safeguards, at the request of the parties, to any bilateral or multilateral arrangement, or at the request of a State, to any of that State's activities in the field of atomic energy. . . .

IAEA CHARTER, art. III, sec. A, para. 5.

245. See *supra* note 89 and accompanying text.

pursuit of this goal.²⁴⁶ Furthermore, it has been interpreted that in destroying this safeguarded installation, Israel communicated the belief that the IAEA safeguards system could not adequately assure the development of nuclear energy solely for peaceful purposes.²⁴⁷ Such a position would run counter to Israel's obligation to support the safeguards system of the Agency.²⁴⁸ In frustrating the development of nuclear energy and disaffirming the administration of safeguards, Israel violated the IAEA Charter.²⁴⁹

As a result of Israel's defiance of the Agency's Charter, the General Conference had the power, as provided in Article XIX, to deny Israel the rights and privileges of membership.²⁵⁰ This plenary body elected to terminate all technological assistance to Israel as of September, 1981, and refused to recognize the credentials of the Israeli delegation to the twenty-sixth annual session of the General Conference in September, 1982.²⁵¹ Both the status of having credentials recognized by the IAEA and the ability to receive assistance from the Agency can be characterized as "privileges and rights of membership."²⁵² The General Conference, therefore, expressly followed the terms of the IAEA Charter in electing to take these actions against Israel.²⁵³

A poignant aspect of the resolution of the General Conference

246. See *supra* note 243 and accompanying text.

247. *Hearings: Israeli Air Strike*, *supra* note 2, at 12 (statement of Sen. John Glenn). Senator Glenn observed that the Israeli raid represented "the first gigantic vote of no confidence in the international non-proliferation regime, including the IAEA safeguards."

248. See *supra* notes 241 & 244 and accompanying text.

249. See *supra* text accompanying notes 241-48.

250. See *supra* note 242 and accompanying text.

251. See *supra* text accompanying notes 22-25. For details of IAEA procedures for recognition of credentials, see Rules of Procedure of the General Conference, Rules 27-29, IAEA Doc. GC (XIX)/INF/152, at 10-11. The IAEA General Conference first utilized the practice of withdrawing credentials in 1979. N.Y. Times, Sept. 25, 1982, § A, at 6, col. 4. In that year, this plenary body resolved not to accept the credentials of the South African delegates to the Agency's twenty-third annual General Conference Session. IAEA Doc. GC (XXIII)/OR/211, paras. 21-26. The IAEA was one of several international organizations which refused to recognize the status of delegates from South Africa. See F. KIRGIS, INTERNATIONAL ORGANIZATIONS IN THEIR LEGAL SETTING 98-99 (1981 Supp.). Generally, resolutions to reject credentials remain in effect only for the duration of the current session; a new resolution, in the subsequent annual meeting, would be required to invalidate the credentials of a delegation for the following year. *Id.* For example, the rejection of the credentials of the Israeli delegation remained operative merely during the September 1982 meetings of the twenty-sixth annual IAEA General Conference. N.Y. Times, Sept. 25, 1982, § A, at 6, col. 5. This resolution was among the final measures adopted as the week-long 1982 session neared completion. N.Y. Times, Sept. 25, 1982, § A, at 1, col. 5.

252. IAEA CHARTER, art. XIX, sec. B. See *supra* note 242.

253. See *supra* text accompanying notes 251-52.

in September, 1981, was the demand that the Israeli government open all nuclear facilities in Israel for IAEA inspection.²⁵⁴ The Agency emphasized the significance of the IAEA safeguards regime, yet Iraq's safeguarded facilities generated anxieties throughout the world.²⁵⁵ Critics have argued that the current safeguards system contains numerous loopholes and is therefore ineffective in eliminating the threat of nuclear proliferation.²⁵⁶ Commentators have also maintained that even the most comprehensive safeguards regime would be insufficient to control this danger.²⁵⁷ Proposals to eliminate the threat of nuclear proliferation should be considered in light of these opinions.

V. PROPOSAL

The Israeli raid on Iraq's nuclear reactor has presented two problems for resolution. The first is the issue of whether the principles of international law justify the Tamuz 1 attack. The answer to this query is dependent upon unknown facts and, therefore, a conclusive determination of this dispute cannot be reached. The second question concerns the underlying problem of the Israeli raid; specifically, what action can be taken in order to eliminate the threat of nuclear proliferation?

A. *Obstacles to Universal Approaches*

The threat of nuclear proliferation is omnipresent; therefore, a solution which would effectively eradicate this danger would necessarily involve all countries in the international community. Any approach which would be universally applied, whether simplistic or complex, would pose several obstacles.

For example, commentators have suggested that in order to eliminate the threat of nuclear proliferation, all fuel with the capacity to produce nuclear-grade weapons should be placed under international ownership.²⁵⁸ Several countries are currently attempting to establish such a regime through the IAEA.²⁵⁹ In order to obtain

254. *See supra* text accompanying note 23.

255. *See supra* text accompanying notes 76-81.

256. *Hearings: Israel Air Strike, supra* note 2, at 129 (statement of Roger Richter). *See also id.* at 195 (statement of Sen. Rudy Boschwitz); *id.* at 22 (statement of Sen. Alan Cranston).

257. Boffey, *supra* note 40, at 1, col. 1. *See also Hearings: Israeli Air Strike, supra* note 2, at 162 (statement of Albert Carnesale).

258. *Hearings: Israeli Air Strike, supra* note 2 at 160 (statement of Albert Carnesale).

259. *Id.*

highly enriched uranium or plutonium, a country would have the burden of demonstrating in advance a legitimate need for the materials.²⁶⁰ All documents and reports concerning the use of plutonium and enriched uranium would be published.²⁶¹

A more elementary suggestion would be that all countries should ratify the Non-Proliferation Treaty. Parties to this treaty are required to utilize nuclear energy for peaceful purposes only.²⁶² Consequently, all nations would be obligated not to use nuclear energy in furtherance of the production of nuclear weapons.

Although the ratification of a treaty appears to be far less burdensome an undertaking than the former project, these alternatives share a problem which is threefold. First, any universal agreement of this sort is entered into on a voluntary basis. Although an international organization or various foreign governments may recommend that a particular State become a party to such a project, the ultimate decision rests with each country. Some nations might not wish to make commitments which would legally foreclose all options. A case in point is Israel's refusal to sign the Non-Proliferation Treaty.²⁶³

Second, even those States which would approve such a universal approach actually would possess an alternative: a nation might elect to violate this accord. Therefore, the threat of nuclear proliferation would not be eliminated through the endorsement of an agreement.

Third, problems might also arise if a nation were to adhere to treaty obligations. Surrounding circumstances might lead other countries to believe that a particular State is violating international commitments. These countries might perceive the threat of nuclear proliferation, despite the fact that no such danger actually exists.

The Iraqi nuclear project presents an ideal scenario through which the latter two obstacles can be illustrated. Iraq would have been violating the Non-Proliferation Treaty by preparing to develop nuclear weapons. In that case, the second shortcoming would have been manifested. In the alternative, if Iraq actually were adhering to the Non-Proliferation Treaty and did not intend to produce such armaments, the Iraqi nuclear program, nevertheless,

260. *Id.*

261. *Id.*

262. *See supra* text accompanying notes 28-30.

263. *See supra* text accompanying notes 43-49.

generated tremendous concern throughout the world.²⁶⁴ The third obstacle would then have become operative, as the threat of nuclear proliferation would not have been eliminated. Despite these shortcomings, however, the suggested universal approaches remain goals which should not be discarded.

B. A Workable Proposal at The Present Time

Although definitive solutions for the elimination of the threat of nuclear proliferation might not currently exist, some action must be taken to reduce this problem. The following proposal consists of three components. The first two sections concern changes within the IAEA system, and the third segment involves cooperation among individual nations.

Commentators have noted that despite various flaws, the IAEA safeguards regime is an extremely useful system and should not be abandoned.²⁶⁵ Safeguards should continue to exist, yet the scope of this program must be developed in two respects.

First, all countries which receive technological aid from the IAEA would be required to adhere to Agency safeguards. Under the current regime, member States (such as Israel) which were not subject to comprehensive IAEA safeguards could nevertheless qualify for assistance from the Agency.²⁶⁶ The proposed agreements between the IAEA and these nations would be negotiated on a *quid pro quo*²⁶⁷ basis. The State would receive technological aid in return for opening all nuclear facilities for Agency investigation.

Second, the actual inspections must be far more extensive than current procedures. At present, countries enjoy considerable freedom in controlling the parameters of the examination process, including the time and frequency of inspections, the selection of inspectors, and the areas within the facility to be inspected.²⁶⁸ This

264. See *supra* text accompanying notes 75-81.

265. *Hearings: Israeli Air Strike*, *supra* note 2, at 161 (statement of Albert Carnesale). Mr. Carnesale concluded, "There is one message I want to leave with you: Do not throw out the baby with the bath water. . . . There is room for improvement of safeguards but because they are not perfect in some kinds of facilities, let us not badmouth them too much and find ourselves without them."

266. See *supra* note 22 and accompanying text. Israel received technological aid from the IAEA until the General Conference resolved to terminate assistance to Israel in September, 1981.

267. *Quid pro quo* is defined as: "What for what; something for something. Used in law for the giving one valuable thing for another," *reprinted in* BLACK'S LAW DICTIONARY 1123 (5th ed. 1979).

268. See *supra* text accompanying notes 34-42.

proposal would expand these procedures to encompass "roaming rights," whereby inspectors could visit nuclear installations at any time, with all parts of the reactors open to investigation.²⁶⁹ Inspections would also occur more frequently²⁷⁰ and inspectors would initiate surprise visits. A State would not have the power to veto the choice of IAEA representatives who are to examine the nuclear facilities. The Agency would select independent and disinterested inspectors who would conduct fair and impartial investigations. Additionally, all inspection reports would be published.²⁷¹

Finally, those nations which have the potential to provide nuclear assistance must negotiate an agreement. This accord would establish criteria for providing a recipient State with materials and technology. Naturally, all potential supplier nations might not elect to become parties to such an agreement. A lack of absolute participation, however, is not a sufficient reason to oppose the negotiation of this accord. Any degree of involvement will, at least, reduce the threat of nuclear proliferation. Moreover, the ramifications of continued unrestricted sales could be catastrophic.

The threat of nuclear proliferation is actual and acute. As countries continue to supply nuclear materials and technological assistance without strict limitations, the threat of nuclear proliferation will increase. As the supply of nuclear weapons intensifies, all nations may one day face the horror of nuclear destruction.

VI. CONCLUSION

The construction of Tamuz 1, Iraq's 70-megawatt nuclear reactor, engendered worldwide concern.²⁷² Representatives of the IAEA who inspected this facility concluded that Iraq conformed to the safeguards agreement which this nation had negotiated with the Agency.²⁷³ Israel, however, declared that Iraq intended to develop nuclear weapons at this installation.²⁷⁴ On June 7, 1981, Israel obliterated Tamuz 1.²⁷⁵

Various legal principles and treaty commitments determine whether the Israeli attack violated international law. By flying in Iraqi airspace and destroying an object situated within Iraq's

269. *Hearings: Israeli Air Strike*, *supra* note 2, at 177 (statement of Sen. John Glenn).

270. *Id.* at 160 (statement of Albert Carnesale).

271. *Id.* at 177 (statement of Sen. John Glenn).

272. *See supra* text accompanying notes 75-81.

273. *See supra* text accompanying note 62.

274. *See supra* text accompanying note 10.

275. *See supra* text accompanying notes 1-9.

boundaries, Israel denied Iraq the fundamental right of a sovereign State to maintain territorial jurisdiction.²⁷⁶ As a member of the United Nations, Israel did not comply with the obligation to resolve disputes with other countries through peaceful methods.²⁷⁷

Two concepts of international law might justify Israel's actions. The analysis of these issues, however, is dependent upon the question of whether Iraq planned to produce nuclear weapons at the installation.²⁷⁸ Assuming that Iraq intended to develop nuclear weapons, the Tamuz 1 attack could be justified by the theory that Israel was in a state of war with Iraq and complied with the rules of war.²⁷⁹ An alternative contention, the legitimate exercise of self-defense, would not be as persuasive. Israel, in failing to pursue peaceful means of settlement, would be unable to demonstrate the necessity of resorting to the use of such force.²⁸⁰ Assuming that Iraq intended to utilize the reactor for peaceful purposes only, Israel would again fail to justify the attack on the grounds of self-defense, as Israel would not have been the target of Iraqi nuclear activity.²⁸¹ Furthermore, Israel could successfully argue adherence to the rules of war only if Tamuz 1 was simultaneously used for scientific and military operations.²⁸² However, this analysis has been based on assumptions of unknown facts; an absolute conclusion, therefore, cannot be determined.

The practical implications of the Tamuz 1 attack, which are capable of resolution, concern the threat of nuclear proliferation. The IAEA acted within its authority in electing to impose sanctions upon Israel.²⁸³ Solutions to the threat of nuclear proliferation which would involve universal commitments are recognized as goals for which to strive.²⁸⁴ A workable proposal to reduce the threat of nuclear proliferation at the present time would consist of: (1) requiring that all nations which receive IAEA assistance open nuclear facilities for Agency inspection;²⁸⁵ (2) strengthening the IAEA safeguards system;²⁸⁶ and, (3) establishing criteria for pro-

276. See *supra* text accompanying notes 90-109.
277. See *supra* text accompanying notes 110-26.
278. See *supra* text accompanying notes 127-28.
279. See *supra* text accompanying notes 130-81.
280. See *supra* text accompanying notes 182-221.
281. See *supra* text accompanying notes 236-37.
282. See *supra* text accompanying notes 227-35.
283. See *supra* text accompanying notes 239-57.
284. See *supra* text accompanying notes 258-64.
285. See *supra* text accompanying notes 266-67.
286. See *supra* text accompanying notes 268-71.

viding recipient countries with sensitive materials and technological assistance. The proposed scheme is aimed toward the prevention of a future Tamuz 1 episode.

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