

Halakhah and Omnicide: Legality of Tactical Nuclear Weapons under Jewish Law

Written by Jonah Brody

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JONAH BRODY, JAN 6 2023

On June 13, 2021, Naftali Bennett became the first Orthodox Jewish prime minister in the history of Israel. His election to the prime minister's office highlighted the ever-shrinking balance in Israel between religion and liberal democracy. Israel's ultra-orthodox parties traditionally served the interests of their communities in the Knesset. However, through their "growing appetite" for power, these parties have gone on to implement domestic policies that mold everyday life for Israelis more within the confines of Jewish law.[1] This growing religious influence appears not just within domestic policy: the Israeli government is also using religion to realize its national security goals.[2]

The expanding body of literature on national security and religion has not yet provided a theory on how religion influences the formulation and implementation of national security strategies.[3] Still, Jewish and Israeli scholars have investigated the legality of certain Israeli security policy decisions vis-à-vis Jewish law.[4] These studies include research on the question of nuclear weapons and their legality under Jewish law.[5] Notwithstanding, this literature focuses entirely on the potential Israeli use of strategic nuclear weapons, ignoring the question of a possible Israeli tactical nuclear arsenal and its compatibility with Jewish law. Given the rise of nuclear posture reviews calling for the deployment of tactical weapons, this study seeks to fill that literature gap.[6]

As such, this study examines the following question: would an Israeli tactical nuclear strike be permissible under Jewish law? In answering this question, this paper will first define what tactical nuclear weapons are and the role they would fill in Israel's nuclear arsenal. Second, it will establish a threshold of the most likely scenario in which Israel would use a tactical nuclear weapon against an adversary. Finally, it will test the established scenario from section two against the parameters Jewish law regulates for warfare conduct to determine if such a strike would be permissible.

Tactical Nuclear Weapons

Tactical nuclear weapons are not new in the nuclear arena. During the Cold War, both the U.S. and the Soviet Union deployed these tactical nuclear weapons for use in the field during a conflict. After the Cold War, both sides eliminated tactical weapons from their arsenals, opting for conventional weapons to secure their security needs. However, relations between Russia and the West soured in the 2010s, and nuclear threats were back on the table. Debates about the potential use of tactical nuclear weapons hit a new stride in early 2018 when the Trump Administration released its Nuclear Posture Review. The administration's NPR included plans to deploy low-yield nuclear warheads in order "to enhance the flexibility and responsiveness of U.S. nuclear forces." [7]

More recently, the February 2022 Russian invasion of Ukraine reignited new fears of the possible use of tactical weapons given Russia's apparent belief that "limited nuclear first use, potentially including low yield weapons" can provide "a coercive advantage in crises and at lower levels of conflict." [8] How the current news cycle treats tactical nuclear weapons highlights how misunderstood these weapons are. Some pundits offer a one-size-fits-all definition of what these weapons are. [9] In reality, Hans Kristensen attests that "there is no universally-accepted definition for 'tactical' nuclear weapons." [10] Thus, it is essential to fully understand what constitutes a tactical nuclear weapon.

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Defining Tactical Nuclear Weapons

A frequent mistake analysts make when defining tactical nuclear weapons is defining them as any nuclear weapon used within a short range or with a low yield. This definition limits what constitutes a tactical nuclear arm for two reasons. First, the end of the Cold War showed that the “range of the delivery vehicle does not always correlate with the types of targets” associated with the warhead carried on that system.[11] The U.S. and Russia have retired many short- and medium-range delivery vehicles, electing for longer-range delivery systems to carry-out tactical strikes. Moreover, Hans Kristensen and Matt Korda argue that some nuclear-armed states have strategic weapons with low-yield options and some tactical weapons with high-yield options.[12]

The most inclusive definition for tactical nuclear weapons relies on the nature of a given mission’s strategy. The nature of the target or implications of the conflict, not the yield or delivery vehicle, forms the parameters for a tactical strike. As defined by the Department of Defense (DoD) Dictionary of Military Terms, a strategic mission is:

Directed against one or more of a selected series of enemy targets with the purpose of progressive destruction and disintegration of the enemy’s war-making capacity and will to make war. Targets include key manufacturing systems, sources of raw material, critical material, stockpiles, power systems, transportation systems, communication facilities, and other such target systems.[13]

In contrast to strategic missions, the DoD Dictionary of Military Terms defines the *tactical* use of nuclear weapons as “the use of nuclear weapons... against opposing forces, supporting institutions, or facilities, in support of operations that contribute to the accomplishment of a military mission of limited scope, or in support of the military commander’s scheme of maneuver, usually limited to the area of military operations.”[14] This paper prefers the DoD Dictionary of Military Terms’ definition of tactical nuclear weapons and will use it to define tactical weapons within the Israeli arsenal.

Tactical Weapons in the Israeli Arsenal

While analysts can primarily pinpoint the strategies of nuclear-armed states vis-à-vis tactical weapons, Israel stands alone as an enigma. The Jewish State began its nuclear program in the mid-1950s and is generally considered to have acquired a usable arsenal around 1967.[15] However, Israel has maintained its policy of nuclear ambiguity. This policy is meant to obscure whether Israel maintains a nuclear arsenal and, if so, how its arsenal is operationalized.[16] The Office of the Military Censor forbids any media references, largely removing any public accountability and debate within the country.[17] While some Israeli politicians have publicly alluded to a nuclear weapon arsenal, very little general information is available. Most Western governments do not include Israel in their descriptions of nuclear-armed states.

Interviews with Mordechai Vanunu, a former nuclear technician and whistleblower, have given some insight into Israel’s nuclear capabilities. Author Seymour Hersh concluded from Vanunu’s leaked information that Israel was “capable of manufacturing one of the most sophisticated weapons in the nuclear arsenal – a low-yield neutron bomb.”[18] Besides possibly having low-yield weapons, Israel has long had nuclear-capable aircraft and land-based ballistic missiles, and in the late 1990s, it acquired its first submarine capable of launching nuclear cruise missiles.[19] Despite all this, Keir Lieber and Daryl Press write that “there is no available evidence to suggest that Israel has developed tactical nuclear weapons for limited escalation on the battlefield.”[20] When using the delivery vehicle and warhead yield definition for tactical weapons, it appears Israel does not have such an arsenal.

However, as mentioned, this paper prefers the strategy of the mission definition of what constitutes a tactical nuclear weapon launch. This definition shines a light on what could constitute a tactical first use by the Israelis since many analysts have agreed on the strategy behind Israel’s strategic arsenal. The Jewish State’s nuclear arsenal was founded on the concept of a strategic arsenal. Israel’s founding father, David Ben-Gurion, feared the country could be annihilated by the Arab states, leading to a second Holocaust.[21] He obsessed with developing nuclear weapons to guarantee state security. Thus, Israel acquired its nuclear arsenal as an insurance policy against defeat in a conventional war against its Arab adversaries.

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Analysts believe Israel would use nuclear weapons to maintain the nation's existential well-being and have aptly named this strategy of the "Samson Option." Defined by Ofer Israeli, the Samson Option is "Israel's strategy of massive nuclear retaliation against adversaries that jeopardize its existence as a Jewish state through a military attack, to be used only as a last resort."^[22] This option would cause "the aggressor to be totally destroyed,"^[23] in line with DoD the definition that strategic attacks have the "purpose of progressive destruction and disintegration of the enemy's war-making capacity and will to make war."^[24] Against this backdrop, this paper classifies a potential Israeli tactical strike as any first use of nuclear weapons outside of the framework of the "Samson Option."

An Israeli Tactical Strike, But Where and Why?

As mentioned, a tactical nuclear strike is the use of nuclear weapons against "opposing forces, supporting institutions, or facilities, in support of operations that contribute to the accomplishment of a military mission of limited scope, or in support of the military commander's scheme of maneuver."^[25] This definition leaves two main possibilities of use: a strike during a conventional conflict or a strategic first strike on military or strategic targets. This section will briefly assess why and how an Israeli tactical strike could come to fruition.

Since the end of the 2006 Lebanon War, Israel's principal conventional threat has been Iran and its attempts to build up non-state actors.^[26] According to Israeli Lieutenant General Aviv Kochavi, Israel's civilian population is increasingly threatened by the rise of Iran and its technology sharing with Hezbollah and Hamas.^[27] Israel has tried to contain the threats posed by Iran, launching attacks against Iranian proxies. More recently, Israel and Iran have begun to face off in the ocean, adding a new front to the escalation.^[28]

While the two sides are unlikely to engage in direct military conflict over the existence of Iranian proxies, their mutual animosity has reached a dangerous tipping point due to another reason: the presence of the Iranian nuclear program. Isolated globally, Iran sees its nuclear program as a useful deterrent against a hostile attack. Shahram Chubin asserts that Iran wants "to guard against a future surprise analogous to Iraq's repeated use of chemical weapons."^[29] Nuclear deterrence is a logical defense mechanism for Iran from a realist point of view.^[30]

Notwithstanding, Iran has not helped itself convince Israel its nuclear program is strictly for defensive purposes. Iran continuously uses harsh rhetoric about Israel. For example, Ayatollah Khamenei's quote that Israel "will not see [the] next 25 years" and "heroic and jihadi morale will leave no moment of serenity for Zionists" has raised fears in Israel about receiving a possible nuclear attack.^[31] Iran has also continued to enrich uranium above the 3.67 percent threshold set by the 2015 Joint Comprehensive Plan of Action, giving the illusion Tehran has no interest in following the agreement.^[32] This Israeli distrust of Iran's nuclear ambitions has, ironically, led to military threats against Iran. Reports attribute the targeted killing of Iran's top nuclear scientist and the cyberattack on the Natanz nuclear plant to the Israeli government.^[33] Moving forward, it is apparent that as Iran continues to pursue its nuclear ambitions, Israel will continue to strike. Naftali Bennet has reiterated that Israel will resort to any actions necessary against Iran "in order to block its nuclear program."^[34]

This Israeli behavior of targeted strikes against an adversary's nuclear facilities is not new. These strikes are part of a broader national security strategy set forth by the "Begin Doctrine." As defined by Amos Yadlin, the Begin Doctrine "instructs that countries that are hostile to Israel and that call for its destruction must not be allowed to develop a nuclear military capability" that could be used against Israel.^[35] As such, Israel must do all it can to prevent its adversaries from acquiring nuclear weapons. The Begin Doctrine helps explain why Israel attacked and destroyed nuclear reactors under construction in Iraq and Syria.

Given the geography, the Israeli air-to-ground strike missions that destroyed the Iraqi and Syrian nuclear reactors were substantially more accessible than a potential mission against Iran could be. A pilot carrying out an air-to-ground strike mission would have to cover a more significant distance, deal with aerial refueling, and avoid detection by Turkey, Syria, and the United States.^[36] Such a strike against Iran would seemingly have to be perfect, as the pilot might only have one chance to strike the intended target. Another difference between the strikes in Iraq and Syria and the hypothetical one in Iran is the nature of the target. The nuclear reactors Israel targeted in Iraq and Syria were soft targets, while the Iranian nuclear reactor in Natanz is "hardened" below ground.^[37] One small mission

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aiming to go undetected from radar and air defenses would not be large enough to inflict substantial damage.[38]

However, a tactical nuclear strike could offset this issue if Israel truly wanted to destroy the Iranian nuclear facility. As stated, Israel has a fleet of Dolphin-Class Submarines and Jericho II/III Ballistic Missiles that could fire a nuclear warhead well into Iran, destroying the intended target. Moreover, Israel could launch a tactical nuclear strike against Iranian nuclear facilities deeply buried underground, as these weapons would be more effective than conventional ones.[39] Some reports state such a plan already exists,[40] and analysts at the Center for Strategic and International Studies have claimed this attack could be likely and effective.[41] Therefore, there does indeed exist a likely scenario for an Israeli tactical nuclear strike, taking the form of one against an Iranian nuclear facility.

Tactical Nuclear Weapons and Jewish Law

Thus far, this paper has outlined how tactical nuclear weapons might fit into the Israeli arsenal and the most likely situation of their use. A strike against an Iranian nuclear reactor remains the most likely scenario given Israel's "Begin Doctrine" and fears of Iran's nuclear program. The central question remains: would a tactical strike against an Iranian nuclear reactor be permissible under Jewish law?

Jewish Law

Judaism combines a structure of law and ethics that dictates every aspect of human action. As such, Jewish law, known as Halakhah, denotes the entire subject matter of the Jewish legal system pertaining to public, private, and ritual law.[42] Halakhah does not merely stipulate what is legal or illegal but also that which is ethical. Halakhah often concludes that certain activities are entirely legal but not ethically correct.[43]

Jewish law categorizes armed conflict into three categories: mandatory war, discretionary war, and societal application of the "pursuer" rationale.[44] Discretionary wars are also known as expansionary wars. In the Jewish tradition, King David's wars to "expand the border of Israel" would be discretionary.[45] Since Israel would not use a tactical strike against Iran for expansionary gain, this paper will focus on the "pursuer" rationale and mandatory wars.

The "Pursuer" Rationale

Jewish law based on the pursuer rationale is simply the application "of the general field of Jewish ethics relating to stopping one who is an evildoer from killing an innocent person." [46] According to Jewish law, the critical aspect of this situation is the notion of self-defense. The Talmud instructs Jews that "[i]f someone comes to kill you, rise up and kill [them] first." [47] Jewish law stipulates that the pursuer must be killed "even though [they have] not yet performed the act." [48] If credible intelligence relayed that Iran enriched enough uranium at the Natanz fuel enrichment plant and planned to use it in a nuclear weapon against an Israeli civilian target, Jewish law would allow for an attack that destroyed the uranium stockpile before its use against Israelis.

While self-defense in this situation allows for the killing of "a person or group of people who are seeking to kill one who is innocent," there are still specific parameters the pursued, being Israel, must follow.[49] For instance, the pursued may not kill an innocent third party, compel a person to risk their lives to save another's, kill the pursuer after their evil act is over as a form of punishment, or use more force than minimally needed.[50] A tactical nuclear weapon would compromise the first and last stipulations laid out by Jewish law.

Two separate simulations of an Israeli attack on the Natanz reactor highlight that, through a tactical strike, innocent civilians would die unnecessarily and that alternative, lower-force methods exist.[51] Launching a 20-kiloton nuclear weapon in the exact location would result in an estimated 1,720 fatalities and 530 injuries. Therefore, there were seven and a half times more deaths from the nuclear option than from the conventional option in the immediate aftermath. Radioactive fallout would also result in many more deaths in the following days and weeks.

Conversely, if Israel deployed an air-to-surface Delilah missile on the Natanz facility, there would be an estimated 230 fatalities and 210 injuries. The collateral damage would stay within the facility's confines, sparing those not

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connected with the nuclear program. There would not be nuclear fallout from the strike since Delilah is a conventional weapon. As such, one can conclude that a tactical nuclear strike would not be permissible under the pursuer rationale as other, less lethal options exist.

Mandatory Warfare

The pursuer model has inherent weaknesses to it. Brody argues that the pursuer rationale is not comprehensive enough for military action and is more suitable for police action.[52] To better understand what constitutes a proper “license to kill,” it is better to look at mandatory warfare under Jewish law.

There are three types of mandatory wars in the Jewish tradition: Joshua’s war against the seven biblical Canaanite nations, the war against the biblical Amalek, and defensive wars against an attack in progress.[53] Moses Maimonides, the twelfth-century legal scholar, argued in his writing that the first case of mandatory war is only historical in interest as the Canaanite nations lost their identity in ancient times and ceased to exist.[54] He also renders the second case defunct by comparing them to the Canaanites and their lost identity.[55] Only the third category of defensive wars remains intact for mandatory warfare.

Jewish legal scholars have expanded on the third category. Menachem Meiri, a thirteenth-century scholar, argued a preemptive strike is mandatory against an enemy who is feared to attack or who is known to be preparing for one.[56] Therefore, the strategy of a preemptive attack on Iran’s nuclear facilities could be legitimized as mandatory if Israel feared Iran would attack or prepare to attack once it had enriched enough uranium. Even if this would constitute mandatory warfare, there are still guidelines Israel would have to follow before launching a tactical nuclear strike.

Seeking Peace Before Preempting

Jewish law mandates that, as a first step, peace between two parties must be sought before one could carry out a military operation. The Torah lays out this notion in Deuteronomy 20:10 by stating: “[w]hen you approach a town to attack it, you shall offer it terms of peace. If it responds peaceably and lets you in, all the people present there shall pay taxes to you and be subservient. If it does not surrender to you, you shall wage war and lay siege to it.”[57] Rabbi Jesse Hagalili also wrote: “[h]ow meritorious is peace? Even in a time of war, one must initiate all activities with a request for peace.”[58] Thus, it is evident that military action is strictly prohibited without the search for a peaceful resolution. This mandate not only helps both parties plan for the cost of war and the prospect of peace, but it also seeks to keep “national vendettas” from becoming justifications for war.[59]

If Israel currently believed Iran was close to enriching enough uranium for nuclear warheads and that Iran would soon attack, it would first have to seek a peaceful resolution with Iran before it could launch preempt with a tactical nuclear strike. Israel has no intention to seek peace with the Iranians vis-à-vis the nuclear issue. Israel is firmly against the revival of the JCPOA, the peaceful agreement ensuring Iran’s civilian nuclear program could not develop weapons-grade uranium. Moreover, Neftali Bennett, Israel’s prime minister, has mentioned Israel will not be bound by the agreement and “will retain the freedom to act against Iran.”[60] As long as Israel balks at this step, a tactical nuclear strike will fail to be permissible under Jewish law.

Standard of Conduct of Obligatory Warfare

The diplomatic options Israel could take to prevent further escalation are outside the scope of this paper. Yet, let us imagine that Israel took the proper diplomatic steps to settle the nuclear issue with Iran. Here, Israel still finds itself in a situation where using a tactical nuclear weapon is still a legitimate policy of preemption in line with the notion of obligatory war. The final test to determine if a tactical nuclear strike is permissible is to compare the outcome of a strike to the conduct of obligatory warfare.

When one begins their military operation, they must ensure civilian populations can flee from the conflict zone and that they avoid wanton destruction. Maimonides wrote two critical passages that codified these aspects. First, regarding civilian protection, he stated: “[o]ne must leave a place for inhabitants to flee for all those who wish to

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abscond to save their lives.”[61] Second, regarding the prohibition on wonton destruction, he asserted: “[a]lso, one who smashes household goods, tears clothes demolishes a building, stops up a spring, or destroys articles of food with destructive intent, transgresses the command ‘You shall not destroy.’”[62]

Any use of tactical nuclear weapons would not give civilian populations a chance to flee from the incoming strike. For conventional strikes, Israel has warned civilians in conflict zones that they have an hour to evacuate before a missile strike.[63] However, Israel would not want to warn Iran of an impending strategic strike as Iran could hypothetically transport its enriched uranium to another location. Civilians would only know of the incoming strike once Iran tracked the incoming missile and would remain susceptible to the strike’s fallout.

Analysts might argue that tactical nuclear weapons are only used on the battlefield or against strategic targets away from civilian locations.[64] This argument is void in the Iran case. As mentioned previously, the Natanz reactor is not far enough removed from civilian populations for Israel to minimize the fire, overpressure, and fallout consequences for civilians.[65] Moreover, Israel could not possibly predict or ensure that wind speed and direction would not blow fallout toward an unpopulated region rather than toward a large city like Qom to the northwest. As long as fallout reaches the civilian population, wonton destruction is imminent. Consequently, even if Israel were to preface a tactical nuclear strike as obligatory, it is evident that carrying out such a strike would not be acceptable under the framework of Jewish law.

Conclusion

This study aimed to determine whether a hypothetical tactical nuclear weapon attack could be permissible under Jewish law. In answering this question, this paper first produced two fundamental notions. First, it outlined tactical nuclear weapons and how they might fit within the Israeli nuclear arsenal. For Israel, strategic nuclear weapons are not determined by their yield size but rather by the nature of the given strategy. As such, this paper classified a potential Israeli tactical strike as any first use of its nuclear arsenal outside of the Samson Option. Second, it established the most likely Israeli use of tactical weapons. Israel would be more likely to launch a tactical strike against an Iranian nuclear facility rather than on the battlefield in direct conflict with Iran.

By comparing a tactical strike against an Iranian nuclear facility to two different battlefield frameworks of Jewish law, this paper determined that such an operation would not be permissible in any situation. For Israeli leaders who base their politics on religious principles, these findings could cause them to think twice before launching a strike with tactical nuclear weapons. While this study focuses on Jewish law and its first use, more work remains to be done regarding Jewish law and global disarmament initiatives.

Notes

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