

# CHAPTER 5

## Another Gap in the NPT: How Israel and Others Get Outside Nuclear Help

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Germany's supply to Israel of advanced submarines designed to launch long-range nuclear cruise missiles exemplifies a gap in the international effort to control the spread of nuclear weapons. There are other examples of this problem, involving other sets of countries, but this is the clearest one.

Germany is a member of the Nonproliferation Treaty (NPT), but the Treaty, routinely described as the “cornerstone” of the so-called nonproliferation regime, does not cover this kind of transaction.<sup>1</sup> Nor is there any other mechanism analogous to, say, the Nuclear Suppliers Group that deals with worrisome civil nuclear energy transactions, to control it.

The Treaty prohibits the five “legitimate” nuclear-weapon states—the United States, Russia, Britain, China, and France—from giving nuclear weapons to *any* other states, or to “assist, encourage,

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1. The first sentence on the State Department NPT web page is: “The Treaty on the Nonproliferation of Nuclear Weapons is the cornerstone of the nonproliferation regime.” U.S. Department of State, “Nuclear Nonproliferation Treaty,” available from <http://www.state.gov/t/isn/npt/>, accessed on February 23, 2016. The UN’s web page on the 2015 NPT Review Conference states: “Since its entry into force, the NPT has been the cornerstone of global nuclear non-proliferation regime.” United Nations, “2015 NPT Review Conference,” available from <http://www.un.org/en/conf/npt/2015/>, accessed on February 23, 2016.

or induce” any such state to get such weapons.<sup>2</sup> The other Treaty members may not receive or make weapons, or seek or obtain assistance to make them, but the Treaty does not prohibit them from helping countries that are not Treaty members with their nuclear weapons programs.

There was a certain logic to this formulation. The Treaty drafters were narrowly fixed on controlling actual warheads, as opposed to, say, delivery vehicles. If a Treaty member aside from the five weapon states had nuclear weapon technology to offer others, it would already have been in violation of the Treaty, and so an additional provision covering this possibility was unnecessary. The trouble is, this narrowly-focused approach on what is impermissible reflects an overly simplistic view of the danger of nuclear weapon spread and what it takes to prevent it.

On the civil nuclear power side, the main technology suppliers recognized after the 1974 Indian bomb explosion that international security required a degree of control over nuclear energy technology transfers—in particular those relating to production of fuels that are also nuclear explosives—to supplement the narrowly drafted prohibitions of the NPT. More recently, on the weapon side, a 2004 United Nations Security Council Resolution acknowledged that the dangers of nuclear proliferation were exacerbated by more than transfer of warheads and directly related technology. It added the “spread of the means of delivery” to the items that “constitute a threat to international peace and security.”<sup>3</sup> The Security Council

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2. Article 1 of the Nonproliferation Treaty, International Atomic Energy Agency, “Treaty on the Non-Proliferation of Nuclear Weapons,” April 22, 1970, p. 2.

3. Resolution 1540 (2004) Adopted by the Security Council on April 28, 2004. The NPT preamble recognizes that nuclear weapons and means of delivery go together by coupling the need to eliminate “means of delivery” of nuclear weapons with eliminating the weapons themselves. It seems reasonable to read this as an intermediate step toward the distant goal of general and complete disarmament, rather than something that had to wait for the lion to lie with the lamb:

Desiring to further the easing of international tension and the strengthening of trust between States in order to facilitate the

made the point again in a 2009 Resolution, which while primarily dealing with threats from non-state groups, reaffirmed the general proposition that “proliferation of weapons of mass destruction, and their means of delivery, constitutes a threat to international peace and security.”<sup>4</sup>

The Security Council’s definition of “means of delivery” lists missiles and rockets and the like, rather than planes or ships.<sup>5</sup> But the German-supplied subs are specifically designed with extra-large torpedo tubes to be the firing mechanism for the nuclear-tipped cruise missiles. Submarine and missile are integrally connected in terms of hardware and mission, so it is reasonable to include the German-supplied so-called Dolphin-class submarines in the “means of delivery” category.

The procurement process started in the late 1980s. Israel first contemplated construction in a U.S. naval yard but turned to Germany when that country agreed to pay for the first two submarines. Germany’s position vis-à-vis Israel had become especially awkward after the first Gulf War when it came to light that German firms had helped Saddam’s missile program. Some 35 such missiles reached Israel. Germany’s contribution was cast as a continuation of the reparations process for the WWII murder of millions of Jews.<sup>6</sup>

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cessation of the manufacture of nuclear weapons, the liquidation of all their existing stockpiles, and the elimination from national arsenals of nuclear weapons and the means of their delivery pursuant to a Treaty on general and complete disarmament under strict and effective international control.

See United Nations Security Council, “Resolution 1540 (2004),” April 28, 2004.

4. United Nations Security Council, “Resolution 1887 (2009),” September 24, 2009.

5. United Nations Security Council, “Resolution 1540 (2004),” April 28, 2004.

6. Alona Ferber and Judy Maltz, “The Surprising Story Behind Israel’s Complicated Love Affair With Germany,” *Haaretz*, May 12, 2015, available from <http://www.haaretz.com/israel-news/premium-1.655332>.

The connection of the submarines with a nuclear mission should have been clear to Germany from the start of the procurement process in 1990, but in any case not much later. Israel was clearly motivated by its perceived need to respond to what seemed to it an impending Iranian nuclear weapon. Other countries, including the United States, could also not have missed what was going on. The information about the submarines' nuclear mission has been reported in the Israeli press (with suitable qualifications that the information comes from foreign sources) at least since the late 1990s, and increasingly so.<sup>7</sup> To jump to recent years, a 2011 story on *Ynetnews.com* reports an interview with the submarine fleet's commander, who is said to be "privy to the State of Israel's deepest secrets."<sup>8</sup> The article headline was, "Doomsday weapon: Israel's

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7. Ha'aretz June 9, 1998, stated: At the beginning of 1999, when the navy will bring into active service the first of three Dolphin submarines constructed at German shipyards, the Middle East arms race will take on new proportions. [The reference is to the expectation at the time, based on Israeli intelligence estimates, that Iran would soon obtain nuclear weapons.] Yossi Melman, "Swimming with the Dolphins," *Ha'aretz*, June 9, 1998, available from <http://fas.org/nuke/guide/israel/sub/internatl1-1.html>. A July 1, 1998, Washington Times story, "Israel buying 3 submarines to carry nuclear missiles," stated, "Israel is buying three large submarines from Germany capable of carrying nuclear-armed cruise missiles, with the reported goal of deterring any enemy [Iran] from trying to take out its nuclear weapons with a surprise attack." Similar accounts appeared in the Arab press. Martin Sieff, "Israel buying 3 submarines to carry nuclear missiles," *The Washington Times*, July 1, 1998, available from <http://fas.org/nuke/guide/israel/sub/internatl1.html>; Recently, from Haaretz, September 23, 2014, "Israel's Fourth Dolphin-Class Submarine Docks at Haifa":

According to reports in foreign media, the German-made submarines can carry cruise missiles with a range of thousands of kilometers, and can be equipped with nuclear warheads. According to these reports, the Israeli submarine fleet is meant to allow for a "second strike" in the event of a nuclear attack.

"Israel's Fourth Dolphin-class Submarine Docks in Haifa," *Haaretz*, September 23, 2014, available from <http://www.haaretz.com/israel-news/premium-1.617543>.

8. Alex Fishman, "Doomsday weapon: Israel's submarines," *Ynetnews*, October 9, 2011, available from <http://www.ynetnews.com/articles/0,7340,L-4120185,00.html>.

submarines.” It left little to the imagination.

The subject has been aired in the German press. A 2012 series on the subject in *Der Spiegel* put it this way:

Research SPIEGEL has conducted in Germany, Israel and the United States, among current and past government ministers, military officials, defense engineers and intelligence agents, no longer leaves any room for doubt: With the help of German maritime technology, Israel has managed to create for itself a floating nuclear weapon arsenal: submarines equipped with nuclear capability.<sup>9</sup>

It included the following:

Insiders say that the Israeli defense technology company Rafael built the missiles for the nuclear weapons option. Apparently it involves a further development of cruise missiles of the Popeye Turbo SLCM type, which are supposed to have a range of around 1,500 kilometers (940 miles) and which could reach Iran with a warhead weighing up to 200 kilograms (440 pounds).

Despite these reports, the German government has stuck to its position that it knew nothing about an Israeli nuclear weapons program (as does the U.S. government). German Chancellor Angela Merkel has repeatedly said she feels a special obligation to Israel’s security, in light of the Holocaust committed by the Nazis.<sup>10</sup>

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9. “Operation Samson: Israel’s Deployment of Nuclear Missiles on Subs from Germany,” *Der Spiegel*, June 4, 2012, available from <http://www.spiegel.de/international/world/israel-deploys-nuclear-weapons-on-german-built-submarines-a-836784.html>.

10. For example, in 2008 when Chancellor Merkel addressed the Israeli parliament she stated “Israel’s security is never negotiable.” See Alona Ferber and Judy Maltz.

Any shred of doubt about Israel's possession of nuclear weapons, and in particular about the presence of long-range nuclear missiles on the German-supplied submarines, got erased at the January 12 ceremony celebrating the arrival in Haifa of the *Rahav*, the fifth of six submarines to come from its German shipyard. The *Rahav* is a highly advanced diesel-electric boat that in certain respects is superior to nuclear-propelled ones. The three most modern Dolphins are equipped with air-independent propulsion—they carry their own oxygen supply—and so can stay beneath the surface for weeks. They are quieter than nuclear submarines.

Israel relaxed its otherwise extremely tight censorship over nuclear weapon deployment precisely because its long-range nuclear weapons are no longer weapons of last resort, to be used only *in extremis*; they are now Israel's deterrent force, integrated into its overall strategy. At the January 12 ceremony, Israeli Prime Minister Benjamin Netanyahu said the “submarine fleet is used first and foremost to deter our enemies who strive to extinguish us. . . They must know that Israel is capable of hitting back hard against anyone who seeks to hurt us. . . Israel's citizens need to know that it is a very strong state.”<sup>11</sup>

For a deterrent to work, the antagonist (read, Iran) has to be aware of it, ergo the nuclear force has to be publicized, even flaunted. That the word “nuclear” is left out doesn't detract from the point, one that no one can miss. The omission highlights an advantage to Israel of its so-called opacity policy. Such is the nature of human psychology that advertising its nuclear weapons, while omitting the word “nuclear,” both puts adversaries on notice and allows Israel's suppliers and supporters to maintain their hypocritical stance. If Prime Minister Netanyahu blurted out the truth, very likely Germany could not continue to supply Israel with submarines intended to carry nuclear weapons.

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11. Ofira Koopmans, “Israel's Fifth German Submarine Arrives at Haifa Port,” *Haaretz*, January 12, 2016, available from <http://www.haaretz.com/israel-news/1.697061>.

Israel doesn't similarly publicize its ground-based nuclear missiles because it fears they may be vulnerable to ground or missile attack, whereas the submarines are securely hidden in the ocean. There isn't much doubt at whom the sea-based missiles would be pointed at: For years Prime Minister Netanyahu has been warning that Iran is intent on getting nuclear weapons that it intends to use against Israel.<sup>12</sup>

The long and short of this account is that the German government, which paid for a good part of the cost of the submarines, has not only known their real mission, but supported it deliberately. As *Der Spiegel* put it:

The German government has always pursued an unwritten rule on its Israel policy, which has already lasted half a century and survived all changes of administrations, and that former Chancellor Gerhard Schröder summarized in 2002 when he said: "I want to be very clear: Israel receives what it needs to maintain its security."<sup>13</sup>

What are we to make of this? Supplying the submarines, even knowing their primary mission was to be platforms for nuclear weapons, is not itself a violation of the NPT because, as we have seen, the Treaty does not put restrictions on supply of weapon-related technology or materials from non-nuclear-weapon states. Nevertheless, supplying an NPT holdout, even one with historical claims, with the critical delivery vehicles for its nuclear force would seem to violate the spirit of the Treaty.<sup>14</sup>

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12. For example, Netanyahu's January 2015 remark: "The ayatollahs in Iran, they deny the Holocaust while planning another genocide against our people." Peter Beinart, "Iran Is Not an 'Existential' Threat to Israel - No Matter What Netanyahu Claims," *Haaretz*, August 7, 2015, available from <http://www.haaretz.com/opinion/1.670097>.

13. "Operation Samson," *Der Spiegel*.

14. Germany also had to have known that Israel illegally slipped 200 tons of

There is something ludicrous about a nonproliferation regime that prevents Germany, among other technology suppliers, from providing Israel with enrichment or reprocessing technology, or even a power reactor, but permits it to supply integral components of Israel's strategic nuclear forces.

The U.S. government (USG) has obviously been aware of the German-Israeli sub deal and what it was really about and has been silent on it. Like the German government, the USG pretends it knows nothing about any nuclear weapons in Israel. At the same time, it has done everything it can diplomatically to protect Israel from any criticism, or in fact, any inquiry, on this subject. It may have done more. The U.S. Army Corps of Engineers' Europe District has done extensive military and naval construction in Israel, including at the Haifa Navy Base, the homeport of the Dolphin-class submarines. The Europe District maintains a Project Office at the Haifa Navy Base.<sup>15</sup> It would not be surprising if the Army Engineers did work on the Dolphin-class submarines' docks.

While Germany's supply of submarines for nuclear missions may strictly speaking be permissible under the NPT rules, any U.S. participation in Israel's nuclear weapon activities falls in a different category. The United States is subject to the strictures of the Treaty's Article I, under which it undertakes "not in any way to assist, encourage, or induce any non-nuclear-weapon State to manufacture or otherwise acquire nuclear weapons . . ." <sup>16</sup> The truth is that

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uranium out of the European Community in 1968 in what has become known as Operation Plumbat.

15. It is one of three U.S. Army Corps of Engineers Europe District Project Offices in Israel.

16. Article I applies to the five nuclear-weapon states, and yet Russia assists India to develop a nuclear submarine force that includes ballistic missile subs, China assists Pakistan's nuclear weapon program, and the United States assisted India's nuclear weapon program by arranging for it the largest gift of all—a waiver for India from the nuclear trade sanctions imposed because of its refusal to join the NPT, and in fact its decades long opposition to it. *Quis custodiet ipsos custodes?*



while U.S. proclaimed policy is that *all* countries should become members of the NPT (which they would have to do as non-nuclear-weapon states), the real policy is different.

Any issue relating to Israel is heavily laden with U.S. domestic political considerations. Touching on Israel's nuclear forces is in Washington the no-no of no-noes. Everyone in Washington understands that it is no way to advance one's career. The U.S. government does not even acknowledge the existence of Israeli nuclear weapons and refuses to discuss the subject, apparently even internally on a classified basis. The United States has consistently protected Israel's nuclear monopoly in the Middle East, in part by vetoing efforts by other countries to raise the subject in international arenas. An argument in favor of this approach is that given that Israel has nuclear weapons, it is better that they be secure, to avoid situations in which Israel might be tempted to use them for fear of losing them. But there is another side to the argument.

Israel, and in fact all the NPT holdouts—India, Israel, North Korea, and Pakistan—are the most likely countries to use nuclear weapons against their adversaries.<sup>17</sup> All four are involved in bitter disputes. While they all speak of using their weapons for deterrence, they do not rule out use of the weapons in response to non-nuclear provocation. For example, Pakistan is now boasting of having introduced a class of battlefield weapons, which they intend to use to ward off Indian incursions into Pakistani territory (which India threatened in response to its claim of Pakistani-inspired terrorism on Indian territory).<sup>18</sup> Israel describes its nuclear force (omitting

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17. In 1969, in considering the possibility of Israeli nuclear weapons, Henry Kissinger wrote President Nixon about the danger—that if the Israelis had them (which they were in the process of doing), they would be the most likely country to use them. David Stout, "Israel's Nuclear Arsenal Vexed Nixon," *The New York Times*, November 29, 2007, available from [http://www.nytimes.com/2007/11/29/world/middleeast/29nixon.html?\\_r=0](http://www.nytimes.com/2007/11/29/world/middleeast/29nixon.html?_r=0).

18. Ankit Panda, "Pakistan Clarifies Conditions for Tactical Nuclear Weapon Use Against India," *The Diplomat*, October 20, 2015, available from <http://thediplomat.com/2015/10/pakistan-clarifies-conditions-for-tactical-nuclear-weapon-use>

“nuclear,” of course), at least the sea-based leg of its triad, as a secure second-strike force. But a second-strike force in a tiny country that can be effectively eliminated by one nuclear weapon is a very different thing than such a force in a country with strategic depth. One has the impression that Israel’s second-strike force is a very forward-leaning one, and that in Israeli thinking its “second strike” will arrive before the adversary’s first one, and possibly before its adversary even has the wherewithal for a first one. It makes for a dangerous state of affairs.

There are depths below depths in the nuclear weapons world and countries that have some nuclear weapons may in time get a great many. Those with tens may get hundreds, and those with hundreds could decide to get thousands. That may not make a lot of sense, but our Cold War experience should guard us against optimism on this score. The work of non-proliferation regarding the NPT holdouts should not stop because they have nuclear weapons. We should not give up on constraining these nuclear weapon programs.

Insofar as Israel is concerned, the most effective step in this direction, and one without which no progress is possible, is to force the U.S. government and European Community to acknowledge Israel’s nuclear weapons. Forcing democratic governments to end their pretense would lance the current policy of pretending to support universal application of the NPT but at the same time engaging in trade and practices that undermine the Treaty. The entire world is aware of this hypocrisy, resulting in a cynical view of the so-called nonproliferation regime.

There remains the more general problem created by the gap in application of the NPT—the lack of a prohibition on non-nuclear-weapon Treaty members from supplying other states with essential components of nuclear weapon systems. These other states could be non-members, as in the example covered in this paper, but they could also be member states with apparent nuclear weapon am-

bitions. Amending Article II of the Treaty is of course out of the question. But one could contemplate an organization ancillary to the Treaty, perhaps one analogous to the Nuclear Suppliers Group, before which specific weapon technology transfers—primarily technology related to nuclear weapons delivery—would be brought for discussion and resolution. Above all, we should not give in to the world-weary sophistication that there is nothing to be done.