

For a Narrow U.S.-Israel Defense Pact: Paper and Draft Treaty



JINSA's Gemunder Center U.S.-Israel Security Policy Project - July 2019
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The Jewish Institute for
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Introduction

Under the leadership of former NATO Supreme Allied Commander Adm. (ret.) James Stavridis, our U.S.-Israel Security Policy Project at the Jewish Institute for National Security of America (JINSA) released a May 2018 report recommending policies to bolster the U.S.-Israel security relationship to meet the growing Iranian threat. This included consideration of a bilateral U.S.-Israel mutual defense treaty similar to, but more narrowly defined than, existing U.S. arrangements with 50 countries on five continents.¹

Recent press reports that the U.S. and Israeli governments are discussing a bilateral defense pact have prompted us to release this separate brief paper addressing the topic, and describing what sort of pact would be in the best interests of both countries. Our paper includes draft text of such a treaty to serve as a basis for domestic and bilateral discussion.

The primary purpose of a U.S.-Israel mutual defense pact is to add an extra layer of deterrence to Israel's strategic position, and to America's position in the Middle East, and ultimately a last line of defense. We arrived at a set of principles and provisions for a narrow formal treaty alliance which, unlike existing U.S. defense treaties stating unequivocally that an attack on one is an attack on all, would cover only a defined set of exceptional circumstances that would place either country in extreme peril. Namely: the threat or use of weapons of mass destruction; major armed attack by a powerful regional or global power, or coalition of powers; an assault threatening vital lines of air and sea communication; an attack undermining Israel's qualitative military edge; or an urgent request from either government.

While balancing each country's concerns about freedom of action and overextension, and committing no American troops to Israel, we believe a narrowly defined mutual defense pact would advance U.S. interests and help prevent an extraordinary conflict that could threaten Israel's strategic and economic vitality and viability.

Strategic Landscape

Since its inception four decades ago the Islamic Republic of Iran has sought to dominate the Middle East, including annihilating Israel. Recently its ambitions accelerated with America's diminishing regional presence, combined with sanctions relief and new legitimacy for Iran's nuclear ambitions under the Joint Comprehensive Plan of Action (JCPOA). Sanctions relief fueled Iran's advancing ballistic missile program and regionwide proliferation of sophisticated weaponry. The looming expiration of U.N. weapons embargoes on Iran will worsen these challenges.

Iran is consolidating its predominance over the strategic heart of Middle East, giving it a direct path through Iraq and Syria to Hezbollah-dominated Lebanon and Israel's borders. Meanwhile the Syrian regime, backed ruthlessly by Tehran and Moscow, reintroduced chemical warfare to the Middle East. Further, despite the JCPOA's fundamental deficiencies, U.S. withdrawal from the agreement in 2018 raises the near-term prospects of a revitalized Iranian nuclear weapons program. There is no U.S.-Russia understanding on how to limit this combustible situation.

These developments threaten the security and existence of Israel and America's Sunni Arab allies, as well as other regional U.S. interests, even as America remains reluctant to confront these rising threats. There are real prospects of a significant Iranian-Israeli clash over Syria, Iraq and/or Lebanon, which would likely involve Hezbollah and its more than 120,000 rockets and missiles that alone threaten to overwhelm Israel's defenses and cause catastrophic damage. Syria could also try to deploy its chemical weapons against Israel. And Israel would face great danger if Turkey moved beyond hostile rhetoric to active military engagement against Israel, alone or as part of a coalition. Further, a renewed Iranian nuclear push could lead it to achieve a robust nuclear weapons capability, or prompt an Israeli preemptive strike and consequently major Iranian retaliation.

Against long odds, Israel has proven exceptionally capable of defending itself by itself throughout its history, if provided proper assets. Yet, any of these conflicts – some more likely than others – could severely threaten vital U.S. interests by proving especially fierce and destructive for Israel and other U.S. regional allies, including potentially involving weapons of mass destruction. Indeed, these ongoing regional developments create the potential for high-level conflict on a scale that Israel alone could struggle to deter or defeat. This would jeopardize the commitment under a 2008 U.S. law to help Israel defend itself by ensuring Israel's "ability to counter and defeat conventional military threats ... while sustaining minimal damage and casualties," known as Israel's "qualitative military edge" (QME).²

A U.S. security pledge to Israel, enshrined in a congressionally endorsed treaty, could alter the dynamics in such extraordinary crises and bolster Israel's QME. The range of U.S. actions to fulfill this pledge could include verbal warnings to an aggressor, interpositioning of U.S. naval vessels, deploying U.S. air or ground assets, firing warning shots and small demonstration strikes or escalatory steps further up the ladder to kinetic action.

The threat of such U.S. responses could deter Iran or others from initiating a large-scale attack on Israel – and others from joining in – or mitigate or curb the scope of enemy action. Indeed, credible U.S. military threats have reliably influenced Iran's decision-making in the past. In 1988, Supreme Leader Ayatollah Khomeini did the unthinkable by agreeing to end the

interminable Iran-Iraq War amid escalating U.S. military support for Iran's adversaries. In 2003, Tehran voluntarily suspended nuclear enrichment out of fear its regime would be the next to be toppled by the United States after the Taliban and Saddam Hussein.

Any number of these actions might suffice, but certainly the deployment of the U.S. military's unparalleled power projection capabilities – including forces in the region and a preponderance of long-range strike assets – would pose a uniquely grave challenge to Iranian forces or those of others directly threatening Israel. U.S. forces could also degrade or eliminate much of Iran's military, nuclear and related economic infrastructure at home and elsewhere around the region, potentially undermining the regime itself. Reminding Tehran and other potential aggressors that the United States has a wide range of options to fulfill its mutual defense commitment would powerfully add to U.S. and Israeli deterrence across a range of conceivable conflict scenarios.

At stake in such extraordinary circumstances would be not only Israel and its historically close bonds with the United States, but America's global credibility. Other allies around the world with weaker historical ties would view U.S. neglect of Israel in its time of dire peril as a signal that America would not support them either when it counts. Certain U.S. allies already have shared such doubts over the past decade. Furthermore, the United States likely could be drawn into a major regional conflict even absent any formal commitment – as it was in Lebanon in 1958, the Iran-Iraq War, the first Persian Gulf War and the war against Islamic State – giving it strong incentive to deter such a conflict in the first place.

U.S. and Israeli Concerns

Policymakers in Israel and the United States might well be wary of a mutual defense treaty. Israel has long been apprehensive about such a pact for two main reasons. First, Israelis have a deeply ingrained conviction not to rely on others, based on the Holocaust and various times in Israel's brief history where the United States and other allies failed to keep their commitments to it. Israel has always insisted it will defend itself by itself and has never asked Americans to give their lives on its behalf. Second, Israeli officials do not want their hands tied by any expectation they would need U.S. approval for critical national security decisions – including the need often to act preemptively in self-defense – or any expectation that such a treaty would be linked as a “reward” for Israeli concessions on the peace process or regional security issues.

A mutual defense pact poses challenges for the United States as well. During the Cold War American policymakers were driven by a keen understanding that the country's isolationism prior to World War II not only did not shield it from the world's major crises but might even have abetted them. At the outset of the Cold War, they therefore pursued a network of mutual defense alliances among dozens of countries that successfully contained the growing threat from the Soviet bloc. However, for the past decade the United States has been eager to reduce overseas commitments, and extremely reluctant to expand them. Thus, many Americans could be concerned a U.S.-Israel security treaty would drag them into unnecessary and unending conflicts – given frequent attacks on Israel's homeland – or at least make America automatically appear to share responsibility for unilateral Israeli military actions.

Addressing Concerns

Existing U.S. mutual defense treaties with 50 countries on five continents can provide a framework for a U.S.-Israel pact and help address concerns about Israel's strategic freedom and America's overextension. At the same time, whereas existing U.S. defense pacts uniformly treat an attack on one party as an attack on all parties, to address both allies' concerns a U.S.-Israel treaty alliance would be confined to address only a narrow set of exceptional threats.

The United States has multilateral pacts with 28 mostly European countries (NATO), 16 Latin American countries ("Rio Pact") and Australia and New Zealand (ANZUS), as well as bilateral pacts with Japan, Philippines, South Korea and Thailand – all of which were agreed in 1947-60 to bolster deterrence against expanding Soviet-led threats.

Circumscribed and flexible by the standards of treaty commitments, these documents are careful to limit their parties' formal obligations even while offering a credible deterrent to adversaries. They are activated only if one or more of the parties has been attacked in the cases specified in the treaty, usually an attack on an ally's homeland or its military forces. For instance, in Article V of the NATO Treaty "the Parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all." In Article V of the Japan-U.S. Security Treaty, "each Party recognizes that an armed attack against either Party in the territories under the Administration of Japan would be dangerous to its own peace and safety and declares that it would act to meet the common danger within its constitutional provisions and processes" – language that is replicated in U.S. mutual defense treaties with other Asia-Pacific allies.³

By declaring each member will "act to meet the common danger in accordance with its constitutional processes" if another is attacked – a provision in the NATO Treaty and many other U.S. mutual defense treaties – these agreements explicitly recognize each ally's sovereign right to decide how an attack on one should be treated as an attack on all. Such flexibility avoids tying hands unnecessarily in advance.

Whether activated or not, these treaties do not give allies a vote or veto in each other's strategic decision-making, nor have they obligated treaty partners to support or become involved in the others' military activities. Indeed, the United States and its treaty allies have long histories of pursuing independent security policies, even as they remain committed fundamentally to one another's defense.

British and French NATO membership imposed no external obstacles to their policies in Malaya, Vietnam, Suez, Algeria or the Falklands, among other places, nor did U.S. membership in NATO create any obligation to support them. Similarly, more than a dozen different treaty allies at various times joined U.S.-led interventions in Korea, Vietnam, Balkans, Iraq, Libya and Syria, but alliance commitments neither compelled them to do so nor hindered the United States in responding to these threats at the time and place of its choosing. Only the 9/11 attacks on the U.S. homeland required the rest of NATO to invoke the alliance's collective defense provision, but even then each member determined for itself how to implement collective defense – including whether or not to join the United States in Afghanistan.

Without compelling the parties to take any specific action, mutual defense pacts create uncertainty in the minds of potential aggressors and allow allies to respond to aggression in the manner most advantageous to themselves and most costly to their adversary. Thereby, mutual security pacts bolster deterrence and lower the scale of potential conflict.

To address U.S. and Israeli concerns, a mutual defense treaty should only activate under certain extraordinary circumstances that already would threaten each ally's fundamental security interests. Such a pact would be more circumscribed in the threats it seeks to prevent, compared to existing U.S. defense treaties which unequivocally treat an attack on one as an attack on all. Israel experiences regular direct attacks on its homeland, such as mortar or rocket fire from Gaza, and the United States could not be expected to come to Israel's defense in each such incident, nor would Israel seek it.

A formal alliance with Israel could be expected to entail fewer burdens than other such U.S. agreements. Israel already does what the Obama and Trump administrations called on allies to do – namely, shoulder a fair share of collective defense and assume a greater role in defending itself.⁴ Thus, unlike with some of its existing alliances, the United States would not automatically be expected to provide – nor would Israel be likely to accept – commitment of U.S. forces as a tripwire on Israeli soil. Additionally, the two countries already have many of the same coordinating structures as formal alliances, including defense planning forums, intelligence sharing, prepositioned weapons stockpiles and extensive regular joint exercises.

Moreover, Israel already has many responsibilities of a close relationship with the United States. Israel is unlikely now to conduct a major military action to defend itself against a looming dire strategic threat, which could unintentionally put U.S. military assets at risk, without consulting or informing the United States in advance. A mutual defense pact, therefore, would not necessarily impose new constraints upon Israeli action, while it would provide the important benefit of an added layer of deterrence.

Principles

A formal U.S.-Israel mutual defense treaty would be limited strictly to exceptional circumstances where Israel would struggle to defend itself by itself. Specifically, a treaty should affirm three principles.

1. Israel will seek a mutual defense treaty with the United States only to address conditions of extreme peril threatening its existence, its strategic or economic viability, or its ability to defeat a major armed attack. In such extraordinary conditions, the United States will make every possible effort to provide necessary military, intelligence and other means of support to ensure Israel's security, and will look favorably upon Israeli requests for such assistance.
 - 1.1. U.S. policy will be to release to Israel any intelligence pertaining to Israeli security that is releasable to members of the UKUSA Agreement on signals intelligence cooperation, often referred to as the "Five Eyes" alliance.
2. In implementing principle #1, a treaty should circumscribe the cases under which a direct threat or attack on Israel would be considered an attack on the United States, to include only:
 - 2.1. A threat or use of chemical, biological or nuclear weapons of mass destruction by another power against Israel;
 - 2.2. A major armed attack by a powerful regional or global Power such as Iran, or by a coalition of Powers, on the territory of Israel, its armed forces, public vessels or aircraft, where Israeli capability to respond appropriately will be more limited;
 - 2.3. An assault threatening the vital lines of air and sea communication upon which Israeli society and economic viability depend;
 - 2.4. An attack against Israel achieving technological or strategic surprise that destabilizes the military balance and threatens Israel's Qualitative Military Edge;
 - 2.5. A circumstance of great criticality not included in the above that gives rise to an urgent request from the Government of Israel.
3. Drawing directly on experiences from the bilateral U.S.-Israel relationship and existing U.S. mutual defense treaties, the provisions of a formal U.S.-Israel mutual defense treaty also should explicitly acknowledge Israel's acute concerns for its strategic independence and U.S. concerns for its strategic overextension. Accordingly, a treaty also should affirm:
 - 3.1. In recognition of each country's sovereignty and strategic independence, each party declares it would act to meet such threats or attacks, including the use of armed force, only in accordance with its constitutional provisions and processes;
 - 3.2. Israel will not be expected to make diplomatic or other concessions as a price for a mutual defense treaty, nor will there be any linkage between a mutual security pact and any issues outstanding between Israel and other states or entities;

3.3. Israel's intention to defend itself by itself, and America's ongoing commitment to ensure Israel has the means necessary for self-defense, particularly by maintaining Israel's Qualitative Military Edge, as required by U.S. law; and

3.4. Neither party will allow a defense treaty to constrain its freedom of action in self-defense. While each country will endeavor to keep the other informed about developing threats and responses, as they do already, neither will be expected to provide prior notification, nor will either be obligated to have prior approval from the other, for actions it considers urgent and necessary for its defense.

Draft Treaty

The High Contracting Parties to this Treaty (“the Parties”) reaffirm their desire to live in peace with all peoples and all governments. They are determined to safeguard the freedom, common heritage and civilization of their peoples, founded on the principles of democracy, individual liberty and the rule of law. They seek to promote stability and well-being in the Middle East region, which is vital to the security of the world and the high national interests of the Parties. They desire to promote conditions of security and well-being in their countries, including through closer economic and intelligence cooperation between them.

The High Contracting Parties to this Treaty are resolved to unite their efforts for collective defense and for the preservation of peace and security. They declare publicly and formally their common determination to defend themselves against exceptional armed attack on either or both Parties, so that no potential aggressor could be under the illusion that either Party stands alone in the Middle East region. They therefore agree to this Treaty of Mutual Security Against Exceptional Threats in the Middle East, independently of any diplomatic and political issues between either Party and a Third Party.

Article 1

The Parties undertake, as set forth in the Charter of the United Nations, to settle any international dispute in which they may be involved by peaceful means in such a manner that international peace and security and justice are not endangered, and to refrain in their international relations from the threat or use of force in any manner inconsistent with the purposes of the United Nations.

Article 2

In order more effectively to achieve the objectives of this Treaty, the Parties, separately and jointly, by means of continuous and effective self-help and mutual aid, will maintain and develop their individual and collective capacity to resist armed attack. Each Party undertakes to help ensure that the other has the means to defend itself by itself against all known threats in the Middle East, and the United States considers Israel’s capacity for self-reliance to be an anchor of stability in the Middle East. The United States acknowledges that Israel’s ability to defend itself by itself depends upon the maintenance of secure and defensible borders as well as its Qualitative Military Edge that enables it to counter and defeat possible military threats while sustaining a viable society and economy.

Article 3

Each Party affirms it does not seek the intervention of the other Party in all possible conflicts, but only when Exceptional Circumstances arise threatening its strategic or economic viability or its very existence. In such extraordinary conditions, each Party affirms it will make every possible effort to provide necessary military and other means of support to ensure the other Party’s security, and will look favorably upon the other Party’s requests for such assistance.

Exceptional Circumstances threatening Israel's strategic and economic viability are deemed to include:

- The use, credible threat of imminent use or the preparation for use of chemical, biological or nuclear weapons of mass destruction by another Power against Israel;
- A major armed attack by a powerful regional or global Power such as Iran, or by a coalition of Powers, on the territory of Israel, its armed forces, public vessels or aircraft, where Israeli capability to respond appropriately will be more limited;
- An assault threatening the vital lines of air and sea communication upon which Israeli society and economic viability depend;
- An attack against Israel achieving technological or strategic surprise that destabilizes the military balance and threatens Israel's Qualitative Military Edge; or
- A circumstance of great criticality not included in the above that gives rise to an urgent request from either Power.

The Parties will consult together whenever, in the opinion of either or both of them, any of these Exceptional Circumstances are deemed to obtain, or when the territorial integrity, political independence or security of either or both of the Parties is threatened.

Article 4

It shall be the policy of the United States to release to Israel any intelligence pertaining to Israeli security that is releasable to members of the UKUSA Agreement on signals intelligence cooperation.

Article 5

The Parties agree that, in the event of any Exceptional Circumstance(s) defined in Article 3, the attack shall be considered an attack against both Parties to this Treaty. In such Exceptional Circumstances, the Contracting Party will assist the Party so attacked by taking forthwith such action as it deems necessary, including the use of armed force, to restore and maintain the security of the Middle East in exercise of the inherent right of individual or collective self-defense recognized by Article 51 of the Charter of the United Nations. On the request of the Party directly attacked the Contracting Party may determine the immediate measures which it may take individually in fulfillment of the obligations contained in this Treaty, including the use of armed force, in accordance with its constitutional practices.

Article 6

Each Party declares that none of the international engagements now in force between it and any Third Party is in conflict with the provisions of this Treaty, and undertakes not to enter into any international agreement in conflict with this Treaty.

Article 7

Nothing in this agreement shall limit in any way the freedom of either Party to take such actions as it deems necessary to exercise in any way its inherent right of individual or collective self-defense recognized by Article 51 of the Charter of the United Nations.

Article 8

The Parties will contribute toward the further development of peaceful and friendly international relations, and toward maintaining and developing their individual and collective capacity to resist attack, by encouraging economic and technological cooperation between them.

Endnotes

1. JINSA Gemunder Center U.S.-Israel Security Task Force, *Atlas Supported: Strengthening U.S.-Israel Strategic Cooperation* (May 2018), <http://www.jinsa.org/atlas-supported-strengthening-us-israel-strategic-cooperation>
2. The term “Qualitative Military Edge” is defined in Section 205 of the Naval Vessel Transfer Act of 2008, which was signed into law on October 15, 2008. See: Jeremy M. Sharp, “U.S. Foreign Aid to Israel,” Congressional Research Service, April 10, 2018, p. 2.
3. “The North Atlantic Treaty,” North Atlantic Treaty Organization, available at: https://www.nato.int/cps/ie/natohq/official_texts_17120.htm; Ministry of Foreign Affairs of Japan, “Japan-U.S. Security Treaty,” available at: <https://www.mofa.go.jp/region/n-america/us/q&a/ref/1.html>.
4. “Obama’s Aipac speech – read the full text,” *The Guardian*, March 4, 2012; Eric Cortellessa, “Amid Iranian missile barrage, US says Israel has right to defend itself,” *Times of Israel*, May 10, 2018.



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