

# Reverberations from Trump's Jerusalem Move

One ironic benefit from Donald Trump's presidency is that the world is showing more independence against U.S. edicts, such as the recent rebuff of Trump's decision to move the U.S. embassy in Israel to Jerusalem, as Dennis J Bernstein reports.

By Dennis J Bernstein

The U.N. General Assembly's rebuff of overt threats of economic retaliation from President Trump – in the overwhelming repudiation of his decision to move the U.S. embassy in Israel to Jerusalem – marked a rare show of independence from Washington. Despite President Trump's threats, the vote against the U.S. position was 128 to 9, with 35 abstentions.

I spoke about the significance of the vote with Professor Francis Boyle, a scholar and long-time pro-Palestinian activist, who has been deeply engaged in the Mideast peace process and various negotiations over the last 30 years. Boyle is a professor of international law at the University of Illinois' College of Law. He served as a legal advisor to the Palestinian Liberation Organization.

Dennis Bernstein: Before we jump into this, I would like people to know a little bit more about your background, because you're the perfect person to hit this subject at this time. Just say a little bit more about your work with the Palestinians.

Francis Boyle: Right. Well, starting in 1987, at [the Palestinians] request, I made a speech at the United Nations on the 20th anniversary of the Six-Day War. And, in this speech, I outlined to them an agenda for establishing their statehood, including, at some point, invoking the Uniting for Peace Resolution.

So, they liked what I had to say and asked me to write it up in a memo, which I did. You can read it in my book "Palestine, Palestinians and International Law." And they then carried out my recommendation in their Declaration of Independence of 15 November, 1988. And I was their legal advisor on all of that. My memorandum became their position paper. And I've worked with them since then.

Today, the State of Palestine is recognized du jour by 136 states, the last time I looked. And it also has U.N. observer state status now at the United Nations along the lines that Switzerland had before it became a full-fledged U.N. member

state.

[...] And certainly the Palestinians have publicly stated that they can, at some point in the future, invoke the Uniting for Peace Resolution to obtain their admission to the United Nations as a full-fledged U.N. member state. They said that's next on the agenda. I guess we have to see what happens here. I really can't say, but they said they're renewing that struggle in January [2018], after the dust settles here.

DB: Okay, now let's talk about the significance of the vote today [Dec. 21], which has a lot to do with Jerusalem. And, talk about it, if you will, in the context of the Uniting for Peace procedure because this gives it more power or more of a focus.

FB: Well, that is correct. When Uniting for Peace started out, back during the days of the Korean War, the Soviet Union proceeded to exercise a veto. And the United States under Secretary of State Dean Acheson – back in those days we controlled the General Assembly – put forward the Uniting for Peace Resolution in the General Assembly to circumvent the Soviet veto. And then [the US] used it to impose fairly terrible economic sanctions against North Korea that continue until today.

And, over the years, the Uniting for Peace procedure was approved by the International Court of Justice in the [Unclear 05:48] advisory opinion in 1962. And I did, I was the one who informed the Palestinians about the Uniting for Peace procedure and that we need to go forward and use it. And they have used it.

And [the vote on Dec. 21] was yet another example. The mainstream news media is dismissing this as nothing more than symbolic. You know, Dennis, if it were nothing more than symbolic then why did Nikki Haley get up there and threaten to break the legs of everyone in the world, if they voted for it, and likewise, Trump make his thuggish threat, as well, at his last cabinet meetings? So it's far more than symbolic.

Under Uniting for Peace the General Assembly cannot require states to do anything. But they can certainly authorize them. And what happens here with this resolution under Uniting for Peace is that it really solidified the international consensus on Jerusalem. As you note, we discussed this before, when Trump announced his new policy, and invited other states to follow moving the U.S. embassy to Jerusalem and recognizing Jerusalem as the capital of Israel, which it definitely is not, whether west Jerusalem or east Jerusalem.

And, this vote today really solidifies that international consensus. So that is

a positive thing, but, obviously it's going to have to be followed up by more steps by the Palestinians. Again, my advice is the next stage here is to use United for Peace to have Palestine admitted to the U.N. itself. But, that's under consideration. We'll have to see what they do.

DB: And what, exactly, did that resolution say? It was reinforcing earlier Security Council resolutions. What exactly are we talking about here?

FB: Well, the way the United States government set it up under Secretary of State Dean Acheson, was that in the event there is a matter affecting international peace and security, and at least one of the permanent members at the Security Council exercises a veto power over a resolution on that matter, when the resolution is introduced in the Security Council, the matter is then turned over to the United Nations General Assembly for action, for the General Assembly to decide what to do about it, in accordance with a two-thirds vote. So, the United States government originally introduced this. We conceived it and we applied it, regretfully, to North Korea.

And those economic sanctions are still strangling North Korea today, as we talk. And Trump is trying to escalate them. But in any event, sauce for the goose is sauce for the gander. I think it's only history, sort of cosmic blowback here, that a generation later the Palestinians and most of the rest of the world are using Uniting for Peace against the United States. This is our baby, as it were, and they are sticking it back to us.

DB: Alright, now let's just talk a little bit about Jerusalem and what's at stake here. Last we spoke, one of the things you said, and it's very concerning and absolutely true, is that you were now fearing the deaths again of more Palestinians in this fight for liberation.

FB: And, it's true, Dennis, [...] in fairness, that Jews might die too.

DB: Yes. And things have been happening, clearly Palestinians have been dying. There have been attacks in the Gaza Strip. There have been some incidents from Palestinians coming at Jews, that's a fact as well. But, always, it's the Palestinians that lead the dying. And what I want you to talk about here is, because people still do not get it: What is at stake in Jerusalem here? What exactly is this about? And why will this be the line of resistance?

FB: Because, as you know, Jerusalem is the headquarters for the three great monotheistic faiths: Islam, Judaism, Christianity. And, especially, for the Muslims the Haram al-Sharif, the Noble Sanctuary, it's the plateau over there. And that plateau is considered to be sacred. They have on there the Al-Aqsa Mosque, where Muslims used to direct their prayers before Mecca Medina. There is

the Dome of the Rock where it is said Mohammed ascended into Heaven. And then you have the El Burka, which is the sort of “stand on the side” where Mohammed is said to have tied up his horse, when he miraculously flew from Arabia to Jerusalem, to make his ascent into Heaven.

So, on the Jewish side, you have the Wailing Wall. And, despite when everything is said, this is still Palestinian. It is protected under the Geneva Conventions, and also there’s a 1953 convention to which Israel is a party, protecting cultural religious sites in times of war. Although, I believe, that could easily be negotiated by simply setting up an easement so that Jews could go worship at the Wailing Wall. I don’t think Palestinians have any great desire to stop that, one way or the other. And then Christianity, of course, you have all the holy sites there, the Nativity, the Church of the Nativity, the Holy Sepulchre, etc.

So, it’s really the flashpoint for these three religions. Although, again, I did devise a proposal for the Palestinians that was approved by the PLO, on sharing Jerusalem as a capital between both Israel and Palestine, the two states. That would have to be subject to approval by the Security Council because Jerusalem still has a separate status under international laws of *corpus separatum*. But that would probably be approved.

And you can read that proposal that did have the approval of the PLO in my book “Palestine, Palestinians and International Law” along with the original memorandum I did for them going back to 1987. And then the Chair of the Palestinian delegation to the Middle East peace negotiations, my client and friend, the late, great Dr. Haidar Abdel-Shafi, instructed me to draw up the counter offer to Israel’s Oslo Bantustan [the Oslo Accords of 1993], which I did do. And that is published in there with Dr. Abdel-Shafi’s permission.

It was clear at the beginning that Oslo was pretty much a Bantustan, and so I advised all the Palestinians to that effect. And Abdel-Shafi then instructed me to come up with their counter offer which I did do. But that position did not prevail. Dr. Abdel-Shafi and I fought against Oslo to the bitter end. Then we lost, so there you go.

DB: Now, staying with Jerusalem, I think the statement made by Trump, even though it’s obviously a continuum of U.S. policy – Obama’s ambassador [Dan Shapiro] was no better, if not worse—but what’s going on on the ground in Jerusalem in the context of this statement, in other words, the continuing expansion of house demolitions, the attempt to put security devices, and set up a place to block Muslims from going to pray before making them go through a metal detector..that was going on in the recent past. The heat on this situation in Jerusalem has been high before this announcement. So, this is just sort of

pushing it right at the edge, isn't it?

FB: Right. Dennis, it's really emboldening Netanyahu and his religious fanatics over there, who, by the way were complicit in the assassination of Prime Minister [Yitzhak] Rabin. Who was first and, so far, the only Prime Minister they've had over there who was interested in negotiating peace with the Palestinians and Syria, which is why they murdered him.

So, yeah, this simply emboldens these people. And the real flashpoint is... Netanyahu permitting these fanatical, racist settlers to go onto Haram Al-Sharif [Temple Mount] itself, and storm Al-Aqsa Mosque. And, that is happening repeatedly. And it's extremely dangerous and highly provocative. Because, at the end of the day, these people want to destroy Al-Aqsa and build their so-called third temple. And it would be a total catastrophe if this happens, because you'd have 1.5 billion Muslims in the world rising up in unison over this.

But that's the real danger right now, I think, is the emboldenment of Netanyahu and these fanatical religious extremists, settlers that now believe they have a blank check to do whatever they want to do. And especially in Jerusalem and particularly the Haram Al-Sharif and the Al-Aqsa Mosque, yeah.

DB: And, I guess it should be of concern that Jared Kushner has a foundation that funds the building of settlements in the West Bank. I would think that that would be of concern to anybody thinking about any kind of negotiation, whatsoever. Not to mention the fact that Netanyahu would stay with the family at the Kushner house when he was in the U.S.

FB: Well, that's correct. Kushner is aiding and abetting, by means of his foundation, he is aiding and abetting more crimes under the Hague Regulations of 1907, to which the United States government is a party, a violation of the Geneva Conventions of 1949, the four Geneva Conventions to which the United States is a party. And crimes against humanity as defined by the statute of the International Criminal Court. And the prosecutor, the International Criminal Court, is currently investigating war crimes, and crimes against humanity because of these settlements.

So, it's impossible to think that a guy like Kushner could possibly serve as some type of mediator here, and it does look now, the Palestinians have decided to turn to Russia and China, and the United Nations to serve as mediators. Although I have to point out, Dennis, that I was involved as legal advisor to the Palestinian delegation to the Middle East Peace Negotiations right from the very beginning there in Washington, D.C. in the fall of 1991, convened by President Bush, Sr., and the United States government has never served as an honest broker. They've always supported the Israeli position.

And, indeed, I think as I mentioned it before, Bush, Sr. put three American Jews in charge of the process, [Dennis] Ross, [Aaron David] Miller and [Daniel] Kurtzer. And they basically functioned as Israel's lawyer. And, I believe, two of them were, still are, orthodox. I don't think Ross is. And here we are, all these years later, now 2017 – that was 1991 – and nothing has changed because Trump has put Kushner, [David] Friedman and [Jason] Greenblatt as the so-called negotiators.

And here all three of them are orthodox. So, this situation is completely preposterous. How do you expect any negotiations to go on here – reasonable, fair negotiations? It's not going to happen.

DB: And, I guess, that takes us back to Nikki Haley's threatening statements today sounding like a bit of a mafioso captain warning any nation that would vote – I guess they didn't have much of an impact on the vote – but clearly it's got to be frightening if you're a little nation that lives or dies based on U.S. aid and they're saying you vote for this resolution in support of the Palestinians then we're going to kill you. This is also not a good sign.

FB: Right, well without the Haley/Trump threats, I suspect the Palestinians would have also picked up the 35 abstentions, and maybe the no-shows. It appears several states just didn't show up, because of these threats. So, basically it probably would have been – what, there's 193 U.N. member states – so it probably would have been 185 to 9. But under United for Peace all they needed was two-thirds of those voting and abstentions didn't count. So, there you are.

They have the votes, and indeed, they do have the votes to be admitted as a full-fledged U.N. member state based on this vote here. And the Trump/Haley threats, it does appear to me, they've got the votes to get admitted to the U.N., hopefully starting in January [2018]. There's been a statement made that they will be submitting another resolution on their admission to the Security Council sometime in January. And, assuming the U.S. vetoes it, which it probably will under Trump, they can again invoke Uniting for Peace, and put it before the General Assembly.

Because, at the end of the day, in accordance with the terms of the United Nations charter, the Security Council only makes a recommendation on admission, not any decision. There's a big difference between recommendations and decisions. And, also, under the terms of the United Nations charter, at the end of the day, it is the General Assembly that admits a member state, not the Security Council.

I had advised the Palestinians years ago, they can do this, that they did try in 2012. And, at that point they decided just to go for observer state status.

They're going one step at a time, and we'll have to see what their next step is.

I also noticed that, although I don't have a list, but [Palestinian] President Abbas just exceeded to about 22 different treaties. I still haven't gotten the names of those treaties. But that also goes back to our previous conversation on Jerusalem here on a legal intifada.

They will use their memberships in all these international organizations to further solidify and promote their statehood. And, the bottom line is, I think that's positive, one, because even [Noam] Chomsky has pointed out, if the Palestinians keep going this way, at the end of the day you'll have two states over there.

Otherwise, I'm afraid we're just going to have total chaos, and the Palestinians will be getting nothing more than a collection of little Bantustans. You remember, back in the days, Dennis, when we used to fight apartheid in South Africa. We had Transkei, Ciskei, and Bophuthatswana that weren't even connected with each other. They were little bitty plots of land. And that's pretty much what Israel has in mind here.

DB: And it is important to note those who fought that war against apartheid in South Africa are among the strongest supporters of the Palestinians. And they now say, and I pushed them on this, because I want to know if we're talking hyperbole here, and they now say that the Palestinian situation is way worse, particularly in Gaza. Way worse than they ever had it in terms of the Bantustans that you were just referring to.

FB: That's correct. And indeed, my friend, Professor John Dugard, who had been Special Rapporteur on Palestine is from South Africa. And he was one of a handful of white, international law professors over there with the courage, integrity and principles to oppose apartheid in South Africa, at risk to his life. And Dugard has said the same thing. If you want to look at... do a google on his name DUGARD.

And Dugard has said, and as you point out, other ANC leaders have said, that what the Palestinians are up against is far worse than what we were up against in the struggle against apartheid. You were involved, I was involved, many of us fought apartheid in South Africa. And we're fighting apartheid over there [Palestine] today as well. The legal principles are pretty much the same.

DB: The legal principles are the same, but the uh... sort of the history and the details, or the situation, are quite a bit different. Israel and its lobby controls U.S. policy so they're... all those anti-apartheiders have been fairly silent, wouldn't you say?

FB: Well, we have the BDS campaign...

DB: Well, yes... no, no, this is the silver lining but I mean all those politicians, and all those civil rights activists, and all those folks... and you know I can go down the list, do not see... if you even bring that up, either the subject disappears or you're considered an idiot, or a conspiracy theorist, over the top, whatever. When you make that parallel structure. I haven't heard it on NPR, have you?

FB: You mean National Propaganda Radio, Dennis? But, look, I set up the Israeli divestment/disinvestment campaign, in November of 2000, because of my involvement in the divestment/disinvestment campaign here against apartheid South Africa, that was called for by a black lawyer who was ahead of me at Harvard Law School, Randal Robinson.

And looking into the situation, I concluded that the legal principles are the same. And, when I did this, I remember the president of Harvard, Larry Summers, condemned me, because I was involved in the Harvard divestment/disinvestment campaign, and accused me of being anti-semitic.

And WBUR, which is the NPR affiliate out there in Boston asked me to debate Summers and I said I would. And Summers did not have the courage, integrity or principles to debate me. As you know, eventually Harvard fired him because he publicly stated women are dumber than men when it comes to math and science. So, fine.

So I debated Alan Dershowitz on this, as far back as 2002. And, we had a debate and I won that debate. I clobbered Dershowitz. And in 2005 then-Palestinian civil society leaders contacted me and said "We really want to set up a BDS campaign, modeled on what the world did against apartheid South Africa. Boycott, divestment and sanctions, would you go in with us?" I said, "Sure." So, I sort of surrendered the initiative to them.

But we've made an enormous amount of progress in these years. And, yes, the forces against us are substantial, and I guess more substantial than in apartheid South Africa.

Although thereto, as you note, the United States government fully supported apartheid South Africa, except during President Jimmy Carter. But all the rest of them supported it, up through and including Reagan, and the collapse of apartheid. So, when I set this thing up in 2000 I knew the forces against us would be formidable.

But the only progressive ... change we've ever seen in this country, Dennis, in my lifetime, going back to the struggle for civil rights for black people, which I

also supported, has come from the people, and grassroots movement. It has never come from Washington, D.C. And it certainly hasn't come from the judiciary. It hasn't come from Congress. It hasn't come from the executive branch.

So, I think we've done a pretty good job in the BDS campaign, not just in this country, but worldwide. And it's going to take more time. Israel is fighting it tooth and nail, as you know. They even set up a separate ministry over there, to counteract BDS. [Sheldon] Adelson is putting millions of dollars into the campaign.

But I think everyone who looks at it realizes they are losing, because we have truth and justice on our side. So we're just going to have to keep plucking away, Dennis. People want to have peace with justice there for both Palestinians and Jews. It can be done. But we have a lot more work to do.

DB: Beautiful. Alright, well, Professor Boyle, as always we appreciate the good information, and the discussion about an issue that is really at the core, whether there's going to be peace in this world.

FB: I do want to make one more point here which I think is very important. Back in 1991, I was advising both the Palestinian delegation and the Syrian delegation. And the Jordanians were prepared for peace but they couldn't go first. And at that time Lebanon was occupied by Syria, so they basically did whatever the Syrians told them. So I was advising, at the same time, the two key actors here.

And I can assure you that if Israel had wanted peace back in 1991, with the Palestinians and with the Syrians, we could have had it. Because I knew the Palestinian bottom line, and I knew the Syrian bottom line, and I was drafting their documents. And, regretfully, they started under [former Israeli Prime Minister Yitzhak] Shamir, whose strategy was stall and delay. Then came Rabin, and he negotiated a comprehensive peace plan, agreement with Syria, full peace for full withdrawal. And he also did the Oslo Accord with the Palestinians. And then he was murdered.

DB: He was murdered by settlers. Let's remind people. He was murdered by crazy....

FB: Extremist settlers. And Netanyahu came to power and there's been no peace, peace process to speak of, since then. Now that's 1995. And here we are today. But I can say, based on my inside personal knowledge that peace was at hand, back at that point, at this early point. And, regretfully, we're pretty far from it today.

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