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Palestine, Palestinians and International Law

A Review of Francis Boyle's book

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In-depth Report: PALESTINE

Francis Boyle is a distinguished University of Illinois law professor, activist, and internationally recognized expert on international law and human rights. He also lectures widely, writes extensively, and authored many books, including the subject of this review: "Palestine Palestinians and International Law." In addition, he's represented, advised and/or testified pro bono in numerous cases involving anti-war protesters and activists, the death penalty, human rights, war crimes and genocide, nuclear policy and bio-warfare, Canada's Blackfoot Nation, the Nation of Hawaii, and the US Lakota Nation.

Boyle is currently a leading proponent of an effort to impeach George Bush, Dick Cheney and other administration figures for their crimes of war, against humanity and other grievous violations of domestic and international law. Earlier in 1987 he was the Palestinian Liberation Organization's (PLO) legal advisor in the drafting of its 1988 Declaration of Independence. Then from 1991 – 1993, he served in the same capacity for the Palestinian Delegation to the Middle East Peace Negotiations in the run-up to the Oslo process.

Palestine Palestinians and International Law reviews his work during that period, prior 1980s and earlier events that led to it, and what followed in its aftermath. Like all Boyle's work, it's rich in international law and makes a powerful, easy to follow case for Palestinian self-determination. Relevant events and the law are reviewed:

— from the 1922 League of Nations Mandate;

— to the 1947 UN Partition Plan;

— to the 1987 first Intifada;

— to the 1988 Palestinian Declaration of Independence;

— to around 130 nations diplomatically recognizing the Palestinian state;

–to the UN granting Palestine all rights as a member state except to vote;

— to Oslo's betrayal;

— to the second Intifada and shortly thereafter over the book's timeline through 2002.

Standing in Solidarity with the Palestinian People

It's been true about Boyle for over 20 years for a man who's "not Arab….not Jewish….not

Palestinian….(and) not Israeli." He's an international law expert and a powerful advocate for enforcing it. As a student nearly 40 years ago, he became convinced that:

> — "the world had inflicted a terrible injustice upon the Palestinian people in 1947 – 1948;
>
> — there would be no peace in the Middle East until this injustice was somehow rectified; and
>
> — the Palestinian people were certainly entitled to an independent nation state of their own."

He notes how prominent people like himself are treated – like "the proverbial skunk at (a) garden party" but cites the early influence of others – the University of Chicago's Professor Leonard Binder, his Harvard doctoral supervisor Professor Stanley Hoffman and others who've proudly supported Palestinian rights.

After Israel invaded Lebanon in 1982, Boyle tried to organize what little opposition there was among international law professors. Few had the courage to speak out the way Boyle always does. He also wrote an essay included in a later book: "Dissensus Over Strategic Consensus." It was a comprehensive critique of the Reagan administration's Middle East policy from an international law perspective. In other writings as well he covered Reagan's bogus "war against international terrorism" with special emphasis on the Middle East.

Little has changed to the present with all administrations since Reagan supporting Israel's "serial massacres upon the Palestinian people." Boyle recounts how two decades after the June 1967 war he and Ramsey Clark were invited to a scheduled UN 20th Anniversary Commemorative Session. They both spoke on the Palestinians' right to declare an independent state under international law and practice. It's the first step before creating a Palestinian government, and Boyle addressed it in a Memorandum of Law for the PLO to consider. He completed it just as the first Intifada erupted in December 1987, titled: "CREATE THE STATE OF PALESTINE."

It lay dormant until the PLO UN Mission discussed it in July 1988. Boyle was asked: "Why should the PLO create an independent Palestinian state?" His answer: If you don't, "you will forfeit the moral right to lead your People." On November 15, 1988, the Palestine National Council (PNC) adopted Boyle's Memorandum and "proclaimed the existence of the new independent state of Palestine." Immediately after the Reagan denied Yasser Arafat a visa to attend the UN General Assembly. Instead, he spoke at a Special Session in Geneva. It was called so he could address the world body as an official head of state. Further, this was "the real start of the Middle East Peace Process – by the Palestinian people themselves."

In addition, Boyle's prediction came true. Palestine was an "instantaneous success" and eventually achieved de jure diplomatic recognition from about 130 states. It also became a de facto, not de jure, UN member, but it's "only a matter of time."

Creating the State of Israel

The material below reviews Boyle's "CREATE THE STATE OF PALESTINE" Memorandum of Law. In March 1988, he presented it to the PLO, and it's now a public document. He believes that without Israeli and American acquiescence, the rest of the international community can

play a positive role in creating and preserving a legal and political status quo conducive to a final peace settlement based on a two-state solution. He cites the 1946 precedent when South Africa illegally and unsuccessfully tried to annex South West Africa (SWA), now known as Namibia.

Just as the League of Nations awarded Britain the Mandate for SWA in 1920, it did as well for Palestine in 1922. In his 1918 Fourteen Points Address, Woodrow Wilson addressed the issue of world peace and the importance of granting newly liberated territories self-determination to preserve it. The Paris Peace Conference and Treaty of Versailles focused on Central and Eastern Europe. People in Africa, the Middle East and Far East "would have to wait."

Article 22 of the Covenant of the League of Nations established a mandate system – in three categories:

> — Class A: sufficiently developed states to be provisionally recognized as independent nations; Palestine was later included;
>
> — Class B: needing further development; included were Western and Central African states; and
>
> — Class C: included South West Africa to be "administered under the laws of the Mandatory as integral portions of its territory."

The League of Nations Council had jurisdiction over Mandatories while the actual Mandates were international treaties between the Council of the League and mandatory powers. This system remained in place until the end of WW II and creation of the UN. Article 77 (1)(a) of its Charter provided that League mandated territories be placed under UN trusteeship via an agreement between the mandatory power and General Assembly.

Such agreements for the SWA and Palestine Mandates were never concluded. South Africa refused the former, and Britain let the UN General Assembly take over and adopt its 1947 Partition Plan. It was never implemented because conflict intervened and became Israel's 1948 "War of Independence."

As for SWA, the General Assembly adopted Resolution 2145 in 1966. It declared the Mandate terminated and that South Africa had no legal right to administer the territory. It also decided SWA would become independent according to the wishes of its people. In 1968, General Assembly Resolution 2372 affirmed it by redesignating the new nation Namibia. In a June 1971 advisory opinion, the World Court held that South Africa's continued presence in the country was illegal and its occupation must end.

In 1973, the General Assembly recognized the South West African People's Organization (SWAPO) as the Namibian people's legitimate representative. Finally in September 1978, the Security Council adopted Resolution 435 establishing the implementing independence machinery for the country. Following UN supervised elections, Namibia should have been free and independent. However, the Reagan administration blocked it. It took a 20 year war of independence before it was achieved in 1990. Based on the Namibian precedent, Boyle proposed in the 1980s that "the Palestinian people proceed forthwith to create the state of Palestine."

He states certain characteristics must be in place for the world community to recognize it:

— “a determinable territory;” it doesn’t have to be fixed and determinate; its borders may be negotiated; the new state is comprised of Gaza, the West Bank and East Jerusalem; Palestinians have lived there for millennia; they’re entitled to it as their nation state;

— a fixed population;

— a functioning government; in 1988, Yasser Arafat declared the PLO as Palestine’s Provisional Government; and

— the capacity to enter into relations with other states; about 130 nations recognize Palestine; others haven’t because it lacks effective “control” of its territory; still others disagree and say Israel isn’t in control; it’s an occupier; on December 15, 1988, The General Assembly recognized Palestine’s legitimacy and accorded it UN observer status;

Palestine can easily satisfy these criteria, and all UN Charter states (including the US and Israel) have provisionally recognized Palestinians an independent in accordance with UN Charter article 80(1) and League Covenant article 22(4). Further, as the League’s successor, the General Assembly has exclusive legal authority to designate the PLO as the Palestinian peoples’ legitimate representative.

The Palestine National Council (PNC) is the PLO’s legislative body and is empowerered to proclaim the existence of Palestine. According to the binding 1925 Palestine Citizenship Order in Council, Palestinians, their children and grandchildren are automatically citizens of the new state. In addition, diaspora Palestinians no longer would be stateless. Those living in Israel and Jordan would have dual nationalities, and those in the Occupied Territories would remain “protected persons” according to the Fourth Geneva Convention – until a final peace settlement is reached.

The Proclamation of Independence must then create the Government of Palestine (GOP). As a final step, it should direct the GOP to claim the right of Palestine and its people to UN membership. It requires approval by both the Security Council and General Assembly according to five conditions. Applicants must be:

— a state;

— peace loving;

— accept the Charter’s obligations;

— be able to carry them out; and

— be willing to do it.

The US has provisionally recognized Palestine as an independent nation. According to UN Charter Article 80(1), it’s barred from reversing its position by vetoing a Security Council Resolution calling for Palestine’s UN admission. Any veto would be illegal and subject to further Security Council action under the Charter’s Chapter VI. Ultimately, the Security Council only recommends admissions. The General Assembly affirms them by a two-thirds majority.

It can go further as well by enacting a complete international legal regime for the new state

and require all members refrain from recognizing Israel's illegal occupation. Boyle suggests even harsher measures – Charter Article 41 authorized sanctions against the Israeli government.

Then there's the right to vote as a member state. The UN Charter Article 80(1) and League Covenant Article 22(4) mandates the General Assembly to let Palestinians participate in UN activities as a member. Voting rights should follow.

The original Mandate also is relevant. Under UN Charter Article 80(1), several of its articles empower the General Assembly to recognize the Palestinian state and take all necessary measures to end Israel's illegal occupation. The Mandate contemplated the creation of the state and Palestinian government and the right of its people to live freely therein.

Boyle envisions a two-state solution with a "special status for Jerusalem." The process began on November 15, 1988 with the Palestinian Declaration of Independence in Arabic. The PLO's Executive Committee would then serve as its Provisional Government. It was a "remarkable opportunity for peace" because the PNC also accepted the UN's 1947 Partition Plan (Resolution 181) – for Jewish and Arab states and an international trusteeship for Jerusalem. Today it'll accept much less based on the 1967 boundaries of Gaza, the West Bank and East Jerusalem as well as provisions of UN Resolutions 242 and 338.

The Declaration is Palestine's foundational document. It's "determinative, definitive, and irreversible." UN bureaucracy willfully sabotaged the original English translation so the PLO prepared its own. The US Declaration of Independence was its model. It's four pages long and published in Boyle's book.

The International Legal Right of the Palestinian People to Self-Determination and an Independent State of Their Own

Following the December 1987 first Intifada outbreak, its Unified Leadership asked the PLO to proclaim a new state of Palestine – "in recognition of the courage, suffering, and bravery of the Palestinian people living under Israeli occupation." It became inevitable after Jordan's King Hussein ended all forms of administrative and legal ties to the West Bank. Then on November 15, 1988, the PNC acted as explained above.

As far back as 1919, the League of Nations provisionally recognized Palestinian statehood in its League Covenant Article 22(4) and its 1922 Mandate for Palestine – awarded to Britain. After its 1988 proclamation, the PNC began working for a comprehensive peace settlement. Its Declaration of Independence accepted the General Assembly's 1947 Partition Plan so as to reach an historic accommodation for a good faith two-state solution.

It also declared:

> — its commitment to the UN Charter's purpose and principles; the Universal Declaration of Human Rights (UDHR), policy, and principles of nonalignment;
>
> — its natural right to defend the Palestinian state and to reject "the threat or use of force, violence and intimidation against its territorial integrity and political independence or those of any other state;"
>
> — its willingness to accept UN supervision on an interim basis to terminate Israel's occupation;

— its call for an International Peace Conference on the Middle East based on UN Resolutions 242 and 338;

— its asking for Israel's withdrawal from occupied Palestinian lands – since 1967, including East Jerusalem;

— its willingness to accept a voluntary confederation between Jordan and Palestine; and

— its "rejection of terrorism in all forms, including state terrorism…;" that got the Reagan administration to begin dialogue on December 14, 1988; in June 1990, the Bush administration suspended it alleging that the PLO violated its pledge; from then until now, US administrations call self-defense "terrorism" even though it's an inherent (individual and state) right under "customary international and humanitarian law:"

— Article 51 of the UN Charter;

— the four 1949 Geneva Conventions; and

— the 1907 Hague Regulations on Land Warfare.

The PNC accepts them. Israel doesn't and won't observe fundamental laws to which it's a signatory. Other nations are also culpable. Under common article 1 of the Geneva Conventions, all countries are obliged to pressure Israel to comply. America is especially culpable as Israel's co-conspiratorial supplier of weapons, equipment, supplies, many billions in loans and grants, and various other benefits generously provided. Without them, Israel couldn't wage aggressive wars or be strong enough to intimidate the region. Today no country threatens Israel (or America) despite claims to the contrary.

On the same day the General Assembly recognized Palestine it called for a UN-sponsored Middle East Peace conference based on the following principles:

— ending Israel's occupation of Gaza, the West Bank and East Jerusalem;

— guaranteeing security for all regional states;

— resolving the Palestinian refugee problem;

— dismantling illegal Israeli settlements;

— placing Palestine under interim UN supervision; and

— requesting the Security Council to consider measures to convene an International Peace Conference on the Middle East.

The PLO was very receptive and expressed willingness to cooperate and negotiate in good faith. It agreed to be flexible, including over Jerusalem's final status. The 1947 Partition Plan called for an international trusteeship administered separately from Jewish and Arab territories.

Israel and Washington were obstructionist from the start. They're deterrents to regional peace, and without their cooperation they'll be none. This must end. The world community must no longer tolerate it. The fate of millions of Palestinians and Arab peoples are at stake.

As UN Ambassador in 1971, GHW Bush endorsed the position of his predecessor, Charles Yost, who considered East Jerusalem "occupied territory and hence subject to the provisions of international law governing the rights and obligations of an occupying power." The Fourth Geneva Convention requires it, and apparently it meant something back then.

Bush supported what later became Security Council Resolution 298 in September 1971.

> — it affirmed that "acquisition of territory by military conquest is inadmissable;"
>
> — it deplored "the failure of Israel to respect the previous resolutions by the UN (regarding) the status of the City of Jerusalem;"
>
> — it confirmed that "all legislative and administrative actions taken by Israel to change (Jerusalem's status) are totally invalid…; and
>
> — urgently calls upon Israel to rescind all previous measures and actions and take no further steps…"

Like other resolutions it opposes, Israel ignored this one. With US help, the Security Council never enforced it. So far, however, Washington maintains its embassy in Tel Aviv and not the Jewish capital. Yet the Israeli Lobby got Congress to pass the Jerusalem Embassy Act of 1995 that states in section 3:

— as a statement of US policy, "Jerusalem should be recognized as the capital of the State of Israel;" and

— the "US Embassy in Israel should be established in Jerusalem no later than May 31, 1999."

The Constitution's Article 1, Section 10, Clause 1 empowers presidents to perform diplomatic recognition functions. No president thus far moved on the Jerusalem Embassy Act. The Embassy remains in Tel Aviv. The battle for Jerusalem continues. Boyle proposed a solution:

> — withdraw the Israeli army from the city;
>
> — replace it with a UN peacekeeping force;
>
> — Israel and Palestine may both press their claims for the city or portions thereof; Palestine may claim it as its sovereign territory and capital; it could construct its parliament and capital district in East Jerusalem;
>
> — city residents would either be Israeli or Palestinian citizens or could hold dual nationalities; they'd be issued UN identity cards authorizing their right to live in the city; and
>
> — Jerusalem would be free, open and undivided; neither side would surrender its rights; the UN would retain control for an indefinite period, and historical precedents are many – Vatican City and the District of Columbia to cite two; if both sides agree, workable solutions are possible and decades of conflict can end – at least on this issue.

Before Oslo was finalized on August 20, 1993, Boyle prepared a confidential memorandum for the Palestinian Delegates to the Middle East Peace Negotiations – delivered on December 1, 1992, months ahead of the September 13, 1993 White House lawn signing ceremony. Boyle reproduced it in his book, titled: "The Interim Agreement and International Law." It's lengthy, covered 30 pages and for good reason. It included numerous potential legal traps Israeli and American negotiators would likely set. Unless prepared to counter them, Palestinians would be hopelessly ensnared in a web of deceit and betrayal. As things turned out, that's precisely what happened because Arafat and others in Tunis rejected Boyle's advice. The Memorandum is briefly reviewed below.

In late October 1992, Dr. Haidar Abdul Shaffi approached Boyle to consult on legal issues related to the so-called Interim Agreement (IA). His Memorandum of Law followed. Nearly everything he feared, in fact, happened. His advice is discussed below:

> — place no trust in Israeli and American assurances; they're worthless and won't be honored;
>
> — America is racist and deceptive; neither they nor Israelis will abide by their commitments; "they are not and could never be 'honest brokers' for peace;"
>
> — as part of a Palestinian strategic vision, it's vital to reject the (1978) Camp David approach – to these or any future negotiations;
>
> — don't count on a written "interconnection" between an IA and a Final Settlement for protection; based on how Camp David was negotiated, it's very doubtful they'll ever be a Final Settlement; Israelis and Americans will "stall, drag out, and indefinitely postpone and delay it" while they continue to occupy your territory, kill your people, destroy your homes, and steal your land;
>
> — the IA should be negotiated as though it's the Final one; the Palestinian Interim Self-Government Authority (PISGA) must have independent legislative authority to build a Palestinian state;
>
> — UN Resolution 242 must be preserved – to establish a "just and lasting (Middle East) peace (and) withdrawal of Israeli armed forces from territories occupied in the recent conflict;"
>
> — Resolution 242's deceptive language must be addressed; otherwise Israel will exploit it to its advantage; their negotiators thrive on ambiguity; at best, only partial withdrawal may be achieved, and they'll be no assurances it won't be reinstated on whatever pretexts Israel employs;
>
> — Resolution 242's actual text must be considered; its literal language doesn't protect the Palestinian people, and therein lies its trap; Israeli negotiators will exploit it;
>
> — to preserve 242's claims, demand two co-sponsors (the US and Russia) secure a new UN resolution expressly recognizing 242's validity; 338 as well; Israel will be legally bound under UN Charter Article 25; if the US balks, it will be an expression of bad faith by a dishonest broker;
>
> — Letters of Invitation and Assurances are no guarantee of protection once an IA is approved; Israel and America can work around them;
>
> — Palestinians must act independently without Jordan or other outside parties;

they should deal solely with Israel; Letters of Invitation and Assurances assure this right;

— once an IA is drafted, submitting it for PNC debate and approval comes next; Israel may do the same in the Knesset; if both sides approve, UN registration is next – as a treaty or international convention; technical matters must be handled properly; otherwise formal diplomatic recognition may be lost;

— under any IA, Fourth Geneva Convention rights must be preserved; Israel will argue a state of belligerency no longer exists; it's one of many traps to avoid;

— Fourth Geneva's Article 6, paragraph 6 clarifies the importance of protecting one's rights; otherwise too little will be accomplished and justifiable claims will be lost;

— nothing should be done to jeopardize international consensus support for Fourth Geneva rights; Palestine already ratified the four Geneva Conventions; they affirm Palestinian rights under them;

— handling jurisdiction, laws, and Israeli Military regulations is crucial; nothing should be signed that "regularizes" or "legalizes" them; Israel is a belligerent occupier; no action should be taken to affirm it; "otherwise, you will never get rid of them;"

— how to do it? through customary and conventional laws of belligerent occupation; one publication covers them – the Department of the Army Field Manuel 27-10, The Law of Land Warfare (July 1956); Geneva and Hague required it be produced; it can be used to end the occupation – a district-by-district withdrawal to Israeli military bases on Palestinian lands; they'll be "effectively" confined there; those lands will thus be "liberated;" any further incursion will be illegal;

— consider the "awesome implications" of one FM 27-10 sentence: "If, however, the power of the (occupier) is effectively displaced for any length of time, its position towards the inhabitants is the same as before occupation;" it means international law will recognize pre-1967 Palestine and the right of its people to self-government;

— ending Israeli control depends on "absolute guarantees" that Israeli forces will be confined to their bases and barred from reentering Palestinian lands;

— if accomplished, Palestine will be liberated; its pre-1967 laws and institutions reestablished; and Palestinian self-government will be restored; the PISGA will be empowered; it's crucial it not be a puppet government under international law; that's precisely what Israelis want (and got under Oslo through today); they want the same arrangement the Nazis set up throughout occupied Europe; avoid it at all costs; "let the Israelis do their own dirty work;" gain agreement among the Palestinian people; avoid any chance for civil war; it's Israel's "final solution;"

— resolution of a Final Settlement must be agreed on; success depends on it; Israel and America will fight it; don't give in; otherwise Israel will maintain control indefinitely;

— the PISGA must have independent powers – over all pre-1967 laws, institutions, councils, administrative bodies, courts, everything;

— Israelis and Americans will devise ways to deceive you; be sure PISGA's power comes from general elections and from independent legislative

authority over Palestinian lands and the people;

— PISGA must be empowered to enact laws; its legislature authority will be the progenitor of Palestinian sovereignty;

— settlers may be given permanent resident alien status or the equivalent of a "green card" in America; Palestinian citizenship as well without renouncing other citizenship held;

— no Israeli "settlements should be allowed;" henceforth; Israelis on Palestinian lands would be subject to its laws; however, they should be allowed to live anywhere and not be forced to move;

— Israeli military bases on Palestinian lands won't come under local laws or courts as long as its forces remain confined; the IDF will maintain jurisdiction on them for both military and civilian personnel; under no circumstances should they have jurisdictional authority over liberated Palestinian lands and its people;

— in theory, it's possible that the IDF may withdraw to some existing settlements and establish military bases there; however, allowing it risks losing sovereignty;

— refuse to defer Jerusalem's status for a Final Settlement; it's a trap because the 1989 US-Israel Land-Lease and Purchase Agreement calls for the transfer of the US Embassy from Tel-Aviv to Jerusalem by July 1996; there must be an "iron-clad" guarantee this won't happen until a Final Settlement is negotiated, approved, ratified, implemented and accepted by both sides.

Boyle's document was profound, detailed and crucially important at the time. Had it been adopted, 15 years of pain and betrayal might have been avoided. We'll never know.

From the Oslo Accords to the Al Aqsa Intifada

In all negotiations, going back to pre-Oslo, Israel never bargained in good faith. Nor does it now. When he was Legal Advisor to the Palestinian Delegation to Middle East Peace Negotiations (from 1991 – 1993), Boyle was asked his opinion on the "closest historical analogue" to Israel's offer. "A bantustan" that followed from the disingenuous Camp David Accords, he replied. It offered autonomy for the Palestinian people, not Palestinian land. Even worse, Israel wanted the Palestinian interim self-goverment to function as its enforcer, an extension of the IDF to do its dirty work, and it got it.

Under Dr. Haidar Abdul Shaffi's chairmanship, the Palestinian Delegation rejected Israel's proposal and asked Boyle to draft an alternative. "Do whatever you want," he said. "But do not sell out our right to our State." Boyle assured him he wouldn't despite enormous PLO pressure to give in.

Boyle's alternative was reviewed in the preceding section. The Palestinian Delegation to the Middle East Peace Negotiations approved it. At first, so did the PLO leadership. In the end, however, Arafat accepted Oslo even though he was "fully informed and properly advised" against it. Dr. Abdul Shaffi boycotted the signing ceremony. He abhorred Oslo and wanted nothing to do with it.

Boyle is kinder to Arafat than this writer in past articles – that he sold out and chose Oslo as his get-out-of-Tunis free pass plus whatever benefits accrued to the leadership. They were

substantial. Boyle believes Arafat took what he could get and hoped to "prove that the Palestinians were willing to live in peace and harmony with Israel" throughout a five-year test period. One can only guess if he felt that would lead to an independent Palestinian State within pre-1967 borders. However, given past Israeli – Palestinian relations, he was either foolish, disingenuous, or ill advised by those around him in Tunis even though Oslo promised final status negotiations on all unresolved issues. Fifteen years later, they're still unresolved and not even discussed.

Oslo I led to Oslo II in Taba, Egypt in September 1995, then countersigned in Washington four days later. It made things worse, not better, but that's how Israel negotiates. It called for further Israeli troop deployments and divided the West Bank into Areas A, B and C plus a fourth area for Greater Jerusalem. It gave Israel total control and furthered its settlement expansion.

The Sharm el-Sheikh Memorandum came next on September 4, 1999. It implemented Oslo II and other agreements since Oslo I, including a 1994 Protocol on Economic Relations; a Cairo Agreement on Gaza and the Jericho Area the same year; a (1994) Washington Declaration and Agreement on Preparatory Transfer of Powers and Responsibilities; and a 1995 Protocol on Further Transfer of Powers and Responsibilities.

"Permanent status" Camp David talks followed in July 2000. Clinton, Arafat and Ehud Barak attended. Once again, betrayal was certain, yet the major media called Barak's offer "generous" and "unprecendented," and that Arafat spurned peace for conflict. Barak insisted he sign a "final agreement," declare an "end of conflict," and give up any legal basis for additional land. There was no formal offer in writing, and no documents or maps were presented.

Barak again offered a bantustan; the West Bank would be divided into four isolated cantons; placed under Palestinian administration; and surrounded with expanding settlements and other Israeli-controlled land. The deal was duplicitous. It dashed any hope for peace. Arafat had to reject it. Nonetheless, he was unfairly blamed and paid dearly for it.

His trouble began on September 28, 2000. Before becoming prime minister, Ariel Sharon was the main instigator. Accompanied by over 1000 Israeli troops and police, he staged a provocative visit to Islam's third holiest site – the Haram al-Sharif sacred shrine and Al-Aqsa Mosque. It ignited uncontainable violence and second Intifada the following day.

On October 7, The Security Council responded (14 – 0 with the US abstaining) with Resolution 1322. Its paragraph 1 stated that the SC "Deplores the provocation carried out at Al-Haram al-Sharif (and) subsequent violence." It was substantial and Israeli-provoked. Its paragraph 3 "Calls upon Israel, the occupying power, to abide scrupulously by its legal obligations and its responsibilities under the Fourth Geneva Convention." Israel ignored the resolution and continued to commit extreme acts of violence against Palestinian civilians.

Throughout the five year Intifada, the toll was horrific. Many thousands of Palestinians were killed, injured, maimed, disabled, extra-judicially assassinated and imprisoned. In addition, many homes were destroyed, over two million dunums of land were confiscated, an illegal Separation Wall was built, and over a million trees were uprooted. Under international law, these are crimes of war and against humanity. They continue daily to the present. Washington is equally culpable as Israel's main supporter – in billions of annual grants and loans, the latest in modern weapons and technology, and more. As long as the partnership

continues, chances for a viable and lasting Middle East peace are impossible. It appears both countries want it that way.

Preserving the Rule of Law in the War Against International Terrorism

The US Code defines "international terrorism," and many writers and scholars do as well. They boil down to wholesale or retail, the former by far the more important. Retail is by individuals or groups and generally minor in nature. States, in contrast, are wholesale perpetrators. According to Boyle: "the overwhelming majority of "terrorist" acts – whether in number or in terms of sheer human and material destructiveness – have always been committed by strong states against weak (ones), as well as by all governments against their people." America and Israel have the "dubious distinction" of being the world's leading "terrorist" states. Events post-9/11 underscore it.

The Geneva Declaration of Terrorism (for which Boyle served as Rapporteur) states that "Terrorism originates from the statist system of structural violence and domination that denies the right of self-determination to peoples…." It manifests itself in:

> — police state practices;
>
> — introducing or transporting nuclear weapons through the territory or territorial waters of other states or international waters;
>
> — conducting military exercises or war games near another state to threaten it;
>
> — an armed attack that threatens civilians in another state;
>
> — creating or supporting armed mercenaries to subvert the sovereignty of another state;
>
> — plots, assassinations or attempted ones against officials of other states or national liberation movements;
>
> –covert intelligence operations to destabilize another state;
>
> — state disinformation campaigns;
>
> — arms sales in support of regional wars;
>
> — subverting civil liberties, constitutional protections and the rule of law on the pretext of countering terrorism; and
>
> — developing, testing and deploying nuclear and space-weapons capable of inflicting genocide and ecocide.

America is culpable on all counts. Israel as well except perhaps for not introducing or transporting nuclear weapons as above described.

After taking office in January 1981, the Reagan administration declared war on "international terrorism" as the keystone of its foreign policy and more. It supported repressive regimes and redefined terrorism to justify its actions. It also drastically changed US Middle East policy with respect to Israel.

Prior to Reagan, Washington generally sought stability through peaceful settlements of international disputes. Even during the Vietnam years, that approach was never entirely abandoned. Israel, in contrast, opts for retaliation and reprisal even though international law prohibits them. On matters of self-defense, the Reagan administration was much like Israel. Succeeding ones as well, but none more flagrantly than GW Bush.

Like Israel, it practices military retaliation and reprisal, "preemptive, preventive" and "pro-active" attacks, kidnapping suspected terrorists, hijacking aircraft in international airspace, destabilizing governments, fomenting military coups, assassinations, and indiscriminate bombings of civilian areas. It made Americans vulnerable to what the CIA called "blowback" in 1954 – the unintended consequences of our hostile acts like those enumerated above.

In contrast, the UN Charter explains under what conditions violence and coercion (by one state against another) are justified. Article 2(3) and Article 33(1) require peaceful settlement of international disputes. Article 2(4) prohibits force or its threatened use. And Article 51 allows the "right of individual or collective self-defense if an armed attack occurs against a Member….until the Security Council has taken measures to maintain international peace and security." In other words, justifiable self-defense is permissible. Charter Articles 2(3), 2(4), and 33 absolutely prohibit any unilateral threat or use of force not specifically allowed under Article 51 or authorized by the Security Council.

Three General Assembly resolutions (Boyle calls "seminal") concur and absolutely prohibit "non-consensual military intervention:"

> — the 1965 Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty;
>
> — the 1970 Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations; and
>
> — the 1974 Definition of Aggression.
>
> Despite clear principles of international law, most terrorism acts are by strong states against weak ones. What can be done? Boyle cites several institutions and procedures to prevent, regulate and reduce international threats and use of force:
>
> — the UN Security Council;
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> — "enforcement action" by appropriate regional organizations acting with authorization of the Security Council under Article 53 and Chapter VIII of the Charter;
>
> — peacekeeping operations and monitoring forces under Chapter VI of the Charter;
>
> — General Assembly authorized peacekeeping operations;
>
> — peacekeeping operations and monitoring forces from relevant regional organizations;
>
> — the "good offices" of the UN Secretariat;
>
> — the International Court of Justice;

— the Permanent Court of Arbitration; and

— numerous other institutions and bodies as well.

Reagan and GW Bush spurned peace to pursue “radical, extreme and excessive policies” with no heed to the rules and spirit of international laws and norms. The Clinton administration was also culpable in numerous ways. Most flagrantly by the repressive sanctions that killed over 1.5 millions Iraqis (including one million children) during the 12 years they were operative, mostly during his tenure.

Today “apocalyptic military aggression” is possible under George Bush’s first strike nuclear attack policy. America is the greatest threat to world peace and the “sole ‘rogue elephant’ of international law and politics. (For humanity’s sake, this administration) must be restrained (along with its Israeli partner). Time is of the essence” even with its scant six months left in office.

What Is To Be Done?

Israel is a serial aggressor, a rogue state, operating outside the law. Palestinians and others pay dearly. The world community must no longer tolerate it. Boyle suggests “new directions.”

(1) Suspend Israel from all UN organs and bodies, including the General Assembly; its legal basis is simple; its UN admission basis was conditional on its accepting General Assembly Resolution 181 – the 1947 Partition Plan; Israel repudiated 181 and 194 as well – granting Palestinian refugees the right of return among other provisions; Israel chooses violence and spurns peace; the UN exists to maintain and enforce it; warrior states have no place in it; the General Assembly has UN Charter powers under Chapter IV; it must use them to expel Israel and send a message to other rogue states as well, one in particular.

(2) Peace depends on strict observance of international law; the General Assembly must demand it and require Resolutions 181 and 194 to be the basis for further Israeli – Palestinian negotiations; also other appropriate Security Council resolutions, the Third and Fourth Geneva Conventions, the 1907 Hague Regulations, and other relevant international law.

(3) America functions as a dishonest broker; it has no place in Middle East negotiations; it can resolve the Israeli-Palestinian conflict if it wishes; it never has and never will.

(4) The General Assembly should adopt “comprehensive economic, diplomatic, and travel sanctions” against Israel according to the terms of the 1950 Uniting for Peace Resolution.

(5) The General Assembly should establish an International Criminal Tribunal for Palestine (ICTP) to prosecute Israeli war criminals; it can be done by majority vote under Charter Article 22; Boyle doubts the ICC will do it and notes that the Bush administration has done everything possible to sabotage it; its authorizing Rome Statute established the Court in July 1998; it became operative in July 2002; as of June 2008, 106 states are members; America is not; Israel first rejected the Rome Statute, then signed it, but in 2002 informed the UN it would not ratify the treaty using similar evasive language as the US.

(6) The Palestinian government must sue Israel in the International Court of Justice (ICJ) – for

acts of genocide in violation of the 1948 Genocide Convention; after six decades of crimes of war and against humanity, Palestine's claims are valid; Israel has willfully tried to destroy the Palestinian people and deny them any hope for a viable sovereign state; for aiding and abetting Israel, America is equally culpable; in Boyle's judgment, taking action would send a powerful message and be "a severe defeat for Israel in the court of world public opinion;" for America also.

(7) World governments and people of conscience should organize a comprehensive economic divestment and disinvestment campaign against Israel; it can be modeled after the successful anti-apartheid one; the 1973 International Convention on the Suppression and Punishment of the Crime of Apartheid is the standard; it applies to Israel; it defines apartheid as a "crime against humanity" and guilty parties international criminals; a grassroots campaign is already underway but it needs strengthening and official worldwide government support.

Since the inception of the Israeli Divestment/Disinvestment Campaign, Boyle has advised students on tactics. He recommends they replicate efforts their predecessors used against apartheid South Africa. He also explains how pro-Israeli administrators will treat them – with "punitive, repressive, vindictive, and retaliatory tactics....including criminal prosecutions and student disciplinary" actions. The risks are considerable, legal rights notwithstanding. Against "Israel's genocidal apartheid regime," academic freedom, tenure, rights and due process won't apply. Justice won't come easily, but it's up to people of conscience to fight for it. How much longer can they wait?

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