

This is a draft of "Introduction: Standing in Solidarity with the Palestinian People" to the book, *Palestine, Palestinians & International Law* by Francis A. Boyle, *Clarity Press, Inc.*, 2003, 205 pp. The following is mirrored from its source at: <http://www.derechos.org/human-rights/mena/doc/boyle3.html> with extensions to enhance its utility.

Palestine, Palestinians and International Law

by Francis A. Boyle

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Human Rights in the Middle East and North Africa

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I am not Arab. I am not Jewish. I am not Palestinian. I am not Israeli. I am Irish American. Our People have no proverbial "horse in this race." What follows is to the best of my immediate recollection:

The Big Lie

Growing up in the United States during the late 1950s and early 1960s while strongly supporting the just struggle of African Americans for civil rights, I was brainwashed at school as well as by the mainstream news media and popular culture to be just as pro-Israel as everyone else in America. Then came the 1967 Middle East War. At that time, my assessment of the situation was that Israel had attacked these Arab countries first, stolen their lands, and then driven out their respective peoples from their homes. I then realized that everything I had been told about Israel was "The Big Lie." Israel was Goliath, not David.

I resolved to study the Middle East in more detail in order to figure out what the Truth really was.

Of course by then I had already figured out that everything I was being told about the Vietnam War also constituted The Big Lie. The same was true for U.S. military intervention into Latin America after the Johnson administration's gratuitous invasion of the Dominican Republic. The same for the pie-in-the-sky "Camelot" peddled by the Kennedy administration after the Bay of Pigs invasion/fiasco and its self-induced Cuban Missile Crisis that was a near-miss for nuclear Armageddon. So I just added the Middle East to the list of international subjects that I needed to pay more attention to in my life.

Chicago

I entered the University of Chicago as an undergraduate in September of 1968 after having just attended the tumultuous Chicago Democratic Convention. Because of the heavy common-core requirements there, I could not take a course on the Middle East until the next academic year. Then I signed up for a course on "Middle East Politics" taught by Professor Leonard Binder. To his great credit, Professor Binder was most fair and balanced in his presentation of the Palestinian and other Arab claims against Israel during the course of his classroom lectures. In addition, his massive reading list forced me to go through everything then written in English that was favorable to the Palestinian People, as well as reading the standard pro-Israel sources. By the end of Professor Binders course in the Winter of 1970, I had become convinced of three basic propositions: (1) that the world had inflicted a terrible injustice upon the Palestinian People in 1947-1948; (2) that there will be no peace in the Middle East until this injustice was somehow rectified; and (3) that the Palestinian People were entitled to an independent nation state of their own. I have publicly maintained these positions for the past three decades at great cost to myself.

In particular, I have been accused of being everything but a child molester because of my public support for the Palestinian People. I have seen every known principle of Academic Integrity and Academic Freedom violated in order to suppress the basic rights of the Palestinian People. In fact, there is no such thing as Academic Integrity and Academic Freedom in the United States of America when it comes to asserting the rights of the Palestinian People under international law.

In any event, the University of Chicago has always had a first-rate Center for Middle East Studies that I have heartily recommended over the years to many prospective students all over the world seeking my advice on where to study that subject. By comparison, Harvard's Center for Middle East Studies was then basically operating as a front organization for the C.I.A. and probably the Mossad as well. No point anyone wasting their time studying Middle East Politics at Harvard.

Nevertheless, I entered Harvard in September of 1971 in order to pursue a J.D. at the Harvard Law School and a Ph.D. in Political Science at the Harvard Graduate School of Arts and Sciences, Department of Government. The latter was the same doctoral program that had produced Henry Kissinger, Zbigniew Brzezinski, Samuel Huntington, and numerous other Machiavellian war-mongers trained by Harvard to "manage" the U.S. global empire. In other words, Harvard trained me to be one of these American Imperial Managers: "There but for the Grace of God go I!"

For the next seven years at Harvard I was quite vocal in my support for the Palestinian People, including and especially their basic human rights, their right to self-determination, and their right to an independent nation state of their own. Although I felt like a distinct Minority of One among the Harvard student body at the time, I did receive the support and encouragement for my pro-Palestinian viewpoints from several of my teachers. At the Harvard Law School were Roger Fisher (The Williston Professor of Law), Louis Sohn (Bemis Professor), Richard Baxter (Hudson Professor), Clyde Ferguson (Stimson Professor), and Harold Berman (Ames Professor). At the Government Department was my doctoral dissertation supervisor, Stanley Hoffmann, who has always been most sympathetic to the tragic plight of the Palestinian People. He is now a University Professor, Harvard's highest accolade, and well deserved.

While in residence as an Associate at the Harvard Center for International Affairs (CFIA) from 1976-1978, I also came into contact with Walid Khalidi. I was present for the dramatic off-the-record confrontation between him and Shimon Peres at the standing CFIA Seminar on "American Foreign Policy" then conducted by Stanley Hoffmann at their old headquarters on 6 Divinity Avenue. Peres refused to budge even one inch no matter how flexible Khalidi was. A harbinger for the Middle East Peace Negotiations over a decade later.

As a most loyal and grateful Harvard alumnus (J.D. magna cum laude, A.M., Ph.D.), I must nevertheless state that it is shameful and shameless that Harvard never granted a tenured full professorship to Walid Khalidi because he is a Palestinian despite the fact that he is universally recognized as one of the world's foremost experts on the Middle East. This gets back to my previous observation that there is no point studying Middle East Politics at Harvard. Walid and I would later meet again at the Middle East Peace Negotiations in Washington, D.C. during the Fall of 1991

Entebbe Lecture

Soon after my graduation from Harvard Law School in June of 1976, the very first public Lecture I ever gave was at the invitation of the Harvard International Law Society. I decided to speak on the subject of The Israeli Raid at Entebbe, during which I analyzed many of the legal and political problems surrounding this raid that had just been so unanimously applauded by the U.S. news media. Roger Fisher was kind and gracious enough to show up at this my first public Lecture on anything. He also offered some words of support when I was attacked by another professor for discussing the political motivations behind the Entebbe hijacking by the PFLP. I had expressed my opinion that the PFLP/PLO political claims can, must, and should be negotiated. We even got into a little debate about who was the real "terrorist" here.

Obviously, these were not a very popular point of view to take back in the Fall of 1976 at Harvard. Clyde Ferguson would later inform me that my pro-Palestinian viewpoints prevented him from reporting my dossier out of the Harvard Law School Appointments Committee (upon which he then sat) despite his best efforts to get me hired there.

In any event, I decided to take my "Entebbe Show" on the road and to use it as my standard job interview lecture in order to get hired somewhere as an Assistant Professor of Law. Not

surprisingly, I was rebuffed at the very top law schools. But in December of 1977, I received an offer to become an Assistant Professor of Law at the University of Illinois College of Law in Champaign, which had just been semi-officially ranked the Number Eleven law school in the country by an American Association of Law Schools Report. So I moved back to Illinois on July 14, 1978 with the hope and expectation that someday I would be able to make a positive contribution to the most desperate plight of the Palestinian People.

The American-Israel Society of International Law and Power

Around the same time, Clyde Ferguson was to become the first African American President of the American Society of International Law and would preside over their 75th Anniversary Convocation in 1981. Clyde decided to put me on their Concluding Plenary Panel that he would personally chair: "I want you to get up there and send those people a message!," Clyde enjoined me. And so I did, as indicated by the text of my Speech set forth herein, *The American Society of International Law: 75 Years and Beyond, 75 Am. Socy Intl L. Proc. 270* (1981). In particular, I publicly supported the right of the Palestinian People to self-determination and the fact that the PLO was their sole and legitimate representative. I also severely criticized Israel's grievous mistreatment of the Palestinian People as a violation of international humanitarian law, and soundly condemned Israel's criminal practices in Lebanon.

After my Speech, I was thenceforth treated by the Members of the so-called Society as the proverbial skunk at their yearly garden party. For the next decade I would vigorously speak out in support of, and publicly debate, the rights of the Palestinian People at American Society of International Law Conventions against innumerable pro-Israel supporters. But after ten years of banging my head against this wall, I concluded that I was wasting my time. I have not returned since, and doubt that I ever will again return to this American-Israel Society of International Law and Power.

Standing in solidarity with the Palestinian People

The very next year, when Israel again invaded Lebanon in 1982, I immediately tried to organize what little academic opposition there was among professors of international law. I drafted a Statement condemning this invasion in no uncertain terms, and then proceeded to call up about 35 professors of international law here in the United States to see if they would sign it. Not unexpectedly, I could only "round-up the usual suspects": Roger Fisher, Clyde Ferguson, Stanley Hoffmann, Richard Falk, and Tom Mallison.

George Ball personally contributed \$1000 out of his own pocket to help publicize our stand. But I could not even get this Statement published anywhere in the United States. Tom Mallison eventually got it published in Britain as *Violations of International Law, Middle East International*, September 3, 1982, reprinted here. It was a very sad and telling commentary that only a handful of American international law professors possessed the fortitude of soul to soundly condemn Israel's egregious invasion of Lebanon, and support the basic rights of the Palestinian People under international law. And this by a group of professors allegedly committed to the Rule of Law in international relations. Intellectual, moral, and professional cowardice and hypocrisy of the worst type. Not much has changed during the past two decades.

Soon thereafter, I found myself speaking, writing, and lecturing all over the country against the Israeli invasion of Lebanon and in support of the basic rights of the Palestinian People under international law. I would later sum these viewpoints up in an essay entitled *Dissensus Over Strategic Consensus*, reprinted here from my *Future of International Law and American Foreign Policy* (Transnational Publishers: 1989). This essay sets forth a comprehensive critique of the Reagan administration's foreign policy toward the Middle East from an international law perspective.

Written around the same time and in similar vein was my *Preserving the Rule of Law in the War Against International Terrorism*, reprinted here from my *Future of International Law and American Foreign Policy* (Transnational Publishers: 1989). This essay provided a detailed critique of the Reagan administration's self-styled "war against international terrorism" from an international law perspective, with a special emphasis on the Middle East. Not much has changed two decades later with the Bush Jr. administration's bogus "war against international terrorism." *Plus ca change, plus, ca reste la meme chose* -- especially when it comes to American foreign policy towards the Middle East.

Suing for Sabra and Shatilla

Leading the legal charge against the Israeli invasion of Lebanon would ultimately result in my filing a lawsuit against Israeli General Amos Yaron, who bore personal criminal responsibility for the massacre of about 2,000 completely innocent and unarmed Palestinian women, children and old men at the Sabra and Shatilla refugee camps in Lebanon. To the best of my knowledge, this was the first time ever that any Lawyer had attempted to hold an Israeli government official accountable for perpetrating a massacre against the Palestinian People. I lost. But for historical purposes my key court papers are reproduced here from *5 Palestine Yearbook of International Law* (1989).

Not surprisingly, when General Ehud Barak became Israeli Prime Minister, he appointed Yaron to serve as Director-General of the Israeli "Ministry of Defense." Truly Orwellian! But of course only fitting for Israel to have a major war criminal and genocidaire serve in this high-level capacity in order to inflict more heinous war crimes against the Palestinian People during Israel's repression of the Al Aqsa Intifada that was instigated on 28 September 2000 by General Ariel Sharon, the architect of the 1982 Israeli invasion of Lebanon. From this demented perspective, it made perfect sense for the genocidaire Sharon to continue the appointment of the genocidaire Yaron when he became Prime Minister of Israel. Needless to say, the United States government under Reagan/Bush, Clinton, and Bush Jr. fully supported Begin/Sharon/Yaron, Barak/Yaron and then Sharon/Yaron in perpetuating their serial massacres upon the Palestinian People. Some things never change.

Creating the Palestinian State

Two decades after Israel launched the June 1967 Middle East War that first sparked my concern for the plight of the Palestinian People, the U.N. Committee on the Exercise of the Inalienable Rights of the Palestinian People scheduled a 20th Anniversary Commemorative Session at U.N. Headquarters in New York for June of 1987. The PLO asked former U.S. Attorney General Ramsey Clark and me to speak on their behalf. Seated right next to us at

the speakers podium was Professor Ibrahim Abu-Lighoud, while behind us sat the entire Palestinian Delegation at that time: Ambassador Zuhdi Terzi; his Deputy, now Ambassador Nasser Al-Kidwe; and Counsellor Riyad Mansour. The rest of the hall was occupied by Ambassadors from supposedly pro-Palestinian U.N. member states.

After Ramsey spoke, I proceeded to state quite forthrightly that the time had now come for the Palestinian People to unilaterally proclaim their own independent nation state under international law and practice. I then proceeded to sketch out precisely why and how this could be done. I argued that the Palestinians must not go to any International Peace Conference to ask the Israelis to give them their State. Rather, the Palestinians must unilaterally proclaim their own independent nation state, and then attend an international peace conference where they would simply ask Israel to evacuate from Palestine.

Etc.

I spoke for about half an hour along these lines. Needless to say, Abu-Lighoud stared at me throughout this period as if I had just descended on a spaceship from Mars. At that point in time the most the PLO had contemplated was to declare themselves a "government-in-exile." By contrast, I was explaining to the PLO and to the United Nations Organization both why and how the Palestinians must unilaterally create their own independent nation state, and then have Palestine become internationally recognized, including by the United Nations itself. There must be a Palestinian State first before there could be a Palestinian government-something I had learned from Louis Sohn's final examination in his United Nations Law course at Harvard Law School back during the 1974-75 academic year. And less than eighteen months after my U.N. speech, the Palestine National Council would determine that the Executive Committee of the PLO constitutes the Provisional Government of the State of Palestine -- not a so-called "government-in-exile." But that is jumping ahead of the story.

Sparring with Jordan

After I had concluded my U.N. speech, the Jordanian Deputy Ambassador immediately demanded from the President of the Conference the so-called "right of reply." He reprimanded me that as a professor of international law I should know better than to publicly propose the dismemberment of a U.N. member state at U.N. Headquarters in New York. Of course he was referring to the West Bank and East Jerusalem, which had been illegally occupied and annexed by Jordan after the partition of the Palestine Mandate up until the 1967 war, when the West Bank and East Jerusalem were then illegally occupied and the latter illegally annexed by Israel.

Since I was speaking at the United Nations Headquarters as a guest of the PLO, I had to be most diplomatic in my response to the Jordanian Deputy Ambassador. So I chose my words quite carefully: "Jordan has been as helpful as it can to the Palestinian People -- under the circumstances. But the entire world knows these lands are Palestinian." Abu-Lighoud chuckled at my diplomatic formulation since he knew full well that I was never one to mince words. There was some more diplomatic sparring back and forth between the Jordanian

Deputy Ambassador and me about the right of the Palestinian People to unilaterally establish their own independent nation state on the West Bank and Gaza Strip, with East Jerusalem as their Capital. But eventually he gave up the ghost arguing with me -- just as his boss King Hussein later would in July of 1988.

The Intifada

Immediately after my U.N. speech, the members of the Palestinian Delegation asked me a large number of questions about why and how they could go forward and unilaterally proclaim their own independent nation state under international law and practice. Zuhdi Terzi then asked me to prepare a formal Memorandum of Law on this entire matter for formal consideration by the Palestine Liberation Organization. I readily agreed to do so -- and free of charge. Standing in solidarity with the Palestinian People.

I spent the entire summer researching and drafting this Memorandum of Law. In the Fall, I gave it to my incoming research assistant in order to research, document, and add the footnotes for the Memorandum. He returned the footnoted draft Memorandum to me in December of 1987 -- just on time for the outbreak of the first Palestinian Intafada in Gaza.

This original Intifada was a spontaneous uprising by the Palestinian People living under the boot of Israel's racist, colonial, and genocidal occupation. The PLO leadership then headquartered in Tunis were taken completely unaware by the outbreak of the Intifada in occupied Palestine. The PLO did not order the Intifada, the PLO did not direct the Intifada, and the PLO had to constantly scramble in order to try to keep up with the Intifada. Quickly the leaders of the Intifada living in occupied Palestine established their own Unified Leadership of the Intifada. And in the late Winter of 1988, the Unified Leadership of the Intifada issued a Communiqui in which they demanded that in recognition of the courage, bravery, and suffering of the Palestinian People living in occupied Palestine during the Intifada, the PLO must create an independent nation state for all Palestinians around the world. It was just about at that time when I transmitted my revised Memorandum of Law to the PLO on this precise subject, which was entitled "Create The State Of Palestine!" Then nothing happened on this project for several months. There was a deafening silence from the PLO.

It was clear that the creation of a Palestinian State would generate too many internal political problems for the PLO, which at that time operated upon the principle of consensus. Back in those days the Palestinian Independence Movement was a genuine democracy. The creation of a Palestinian State would have forced the PLO to make some very difficult political decisions that could have produced a terrible division among the different groups composing the Palestinian Independence Movement at the very time when the Palestinian People were being massacred by the Israeli Army. So I bided my time in silence.

On July 31, 1988 I was teaching Summer School when King Hussein of Jordan announced that he was severing all forms of legal and administrative ties between Jordan and the West Bank. Later that afternoon in class, my students asked me what I thought would happen as a result of this decision: "Honestly speaking, I really do not know." When I returned to my office at the end of teaching that very class, there was a message sitting on my desk from

Zuhdi Terzi asking me to come to New York immediately in order to discuss my Memorandum of Law.

In attendance as this meeting convened at the PLO Mission to the United Nations in New York were Zuhdi Terzi, Nasser Al-Kidwe, and Ramsey Clark, as well as Tom and Sally Mallison. Since I had already drafted a comprehensive Memorandum of Law on how to create a Palestinian State, I had to do a good deal of the talking. The Palestinians had a list of questions from PLO Headquarters in Tunis that they wanted us to answer for transmission back to the PLO Leadership. The first question was: "Why should the PLO create an independent Palestinian state?" My answer was characteristically blunt and succinct: "If you do not create this State, you will forfeit the moral right to lead your people!"

So that there was no misunderstanding during the process of transmission, I personally faxed that message to the highest levels of the PLO in Tunis. At the end of this meeting, I agreed to serve as Legal Advisor to the Palestine Liberation Organization on the creation of the state of Palestine -- again free of charge. *Pro bono publico* in the true sense of that hallowed legal tradition. Once again, standing in solidarity with the Palestinian People.

My Memorandum of Law would serve as the PLO's position paper for their right to create the Palestinian State. Although originally provided to the PLO under attorney-client confidence, Ibrahim Abu-Lighoud arranged to have my Memorandum published in *American-Arab Affairs*, Number 25 (Summer 1988). It is reprinted here from my book *The Future of International Law and American Foreign Policy* (Transnational Publishers; 1989), together with some additional explanatory background materials.

The Palestinian Declaration of Independence

On November 15, 1988, the Palestine National Council meeting in Algiers proclaimed the existence of the new independent state of Palestine. On that same day, after the close of prayers at Al-Aqsa Mosque in Jerusalem, the crowd came out of the Mosque into the Great Courtyard in front of the Dome of the Rock, where Mohammed (May Peace Be Upon Him) had ascended into heaven. Then one man got up and read the Palestinian Declaration of Independence right there in front of the assembled multitude.

It was my advice to the PLO that the Palestinian State must also be proclaimed from their own capital in Jerusalem; that since this State would be proclaimed "In the Name of God" (which it was), the State must be proclaimed in the Grand Courtyard in front of the Al-Aqsa Mosque -- the third Holiest site in Islam -- at the close of prayers on Independence Day. I told the PLO that although I would very much like to be the person to do this job, it would be inappropriate for me because I was not a Palestinian. I likewise declined their request to write a first draft of the Palestinian Declaration of Independence for similar reasons. But some of my suggestions can be found there and in the attached Political Communique. So much for a "government-in-exile." We had Leadership on the ground in Palestine!

As a tribute to the leading role played by Palestinian Women during this original Intifada, the Palestinian Declaration of Independence established full legal equality between women and men. But upon my return to Palestine in 1997, I was told by two Palestinian feminist human

rights leaders from Gaza and the West Bank, respectively, that male-chauvinist Palestinian judges had dis-interpreted this basic requirement of international human rights law to be non-self-executing and thus non-enforceable in court. We will have to countermand this patriarchal chicanery in the Constitution for the Republic of Palestine.

Moving the Mountain

Immediately after 15 November 1988, Palestinian President Yasser Arafat sought to travel to the United Nations General Assembly in New York in order to explain these extraordinary developments to the entire world at its Official Headquarters. But the Reagan Administration illegally deprived President Arafat of the requisite visa. Abu-Lighoud called to ask my advice: "If Mohammed can not come to the mountain, then bring the mountain to Mohammed. Have the General Assembly adjourn, and then reconvene at U.N. Headquarters in Geneva." So it was done. President Arafat addressed the U.N. General Assembly meeting in a Special Session at Geneva. This was the real start of the Middle East Peace Process -- by the Palestinian People themselves, not by the United States government, and certainly not by Israel.

As I had predicted to the PLO, the creation of Palestinian State became an instantaneous success. Palestine would eventually achieve *de jure* diplomatic recognition from about 130 states. The only regional hold-out was Europe and this was because of massive political pressure applied by the United States Government. Nevertheless, even the European States would afford the Palestinian State *de facto* diplomatic recognition.

Furthermore, following the strategy I had worked out for the PLO, the Provisional Government of the State of Palestine would repeatedly invoke the U.N. General Assembly's Uniting for Peace Resolution (1950) to overcome U.S. vetoes at the Security Council in order to obtain for Palestine all the rights of a U.N. member state except the right to vote. In other words, Palestine eventually became a *de facto*, though not yet a *de jure*, U.N. member state. The votes were and still are there for Palestine's formal admission to U.N. membership. Only the illegal threat of a veto by the United State Government at the Security Council has kept the State of Palestine out of formal *de jure* U.N. membership. That latter objective is only a question of time -- and unfortunately more bloodshed by the Palestinian People.

On Their Own

I summarized all of these legal, political, and diplomatic developments in my essay *The International Legal Right of the Palestinian People to Self-Determination and an Independent State of Their Own*, which was accepted for publication by the exact same *American-Arab Affairs* around the early Summer of 1990. And then Iraq invaded Kuwait. The Provisional Government of the State of Palestine refused to join the so-called Coalition put together by President Bush Sr. to attack Iraq, but instead did its best working in conjunction with Libya and Jordan to produce a peaceful resolution of this dispute. For this policy of principle and peace, the Palestinian People were and still are unjustly but predictably vilified by the world news media.

While the crisis over Iraq was unfolding in the Fall of 1990, I corrected the page-proofs for my essay that was then scheduled to be the lead article in the next issue of *American-Arab Affairs* coming out around the turn of the new year. Then I received a notification from the *American-Arab Affairs* editorial office that the issue was at the printer and would soon be distributed. The next thing I heard was that the executive director of their parent organization had resigned. It was well known that *American-Arab Affairs* and its parent organization were heavily subsidized by Gulf Arab funds.

The next thing I knew I was informed that this entire issue of *American-Arab Affairs* with my essay as the lead article had been suppressed, withdrawn, and would never be published. This issue never saw the light of day. Apparently the Gulf Arab funders of *American-Arab Affairs* and its parent organization did not want to see a lead article arguing that the Palestinian People had a right to self-determination and an independent nation state on the verge of their war against Iraq without the support of the Palestinians. I would later get this essay published in Volume 12 of the *Scandinavian Journal of Development Alternatives* (June-September 1993), from which it is reprinted here.

Of course during the past 25 years of my public advocacy of the rights of the Palestinian People under international law, I have lost track of the number of times when my lectures, panels, publications, and appearances have been killed outright. But this was the first time that my pro-Palestinian viewpoints had been suppressed by an Arab source. It would not be the last time. This inexcusable instance of anti-Palestinian censorship by a leading Arab-American organization should make it crystal clear how truly desperate the plight of the Palestinian People really is. The Palestinian People have been repeatedly abandoned and betrayed by Arab Leaders. The Palestinians are on their own, and they know it full well.

Middle East Peace Negotiations?

This suppressed essay provided an excellent snapshot of the legal, political, and diplomatic situation that confronted the Palestinian People just before the United States and its so-called Coalition launched their genocidal war against Iraq. In order to get the support of the Arab Leaders for that slaughter, U.S. Secretary of State James Baker promised them that when the war was over the United States Government would do something for the Palestinians.

Eventually the Middle East Peace Negotiations would open in Madrid in the Fall of 1991. At that time I was invited by the PLO to come to Tunis in order to speak at a Conference being held there in support of and in solidarity with the Palestinian Delegation then in Madrid. I also conducted consultations with PLO leaders in Tunis who had been illegally barred from the Middle East Peace Negotiations by the United States acting in conjunction with Israel despite the fact that the United Nations had long ago recognized the PLO as the sole and legitimate representative of the Palestinian People.

Upon my return home, I was asked to serve as Legal Advisor to the Palestinian Delegation to the Middle East Peace Negotiations headed by Dr. Haidar Abdul-Shaffi. He is a person of great courage, integrity, and principle. I would fight the devil himself for Dr. Abdul-Shaffi. The work that I did as the Lawyer for Dr. Abdul-Shaffi and the Palestinian Delegation can be

found here in my unpublished essay *The Al Aqsa Intifada and International Law* (30 August 2001). A substantially revised and edited revision of this essay was published as *Law and Disorder in the Middle East*, 35 *The Link*, No. 1 (Jan.-Mar. 2002), by the *Americans for Middle East Understanding* (AMEU).

Dr. Abdul-Shaffi expressly waived all attorney-client confidences with respect to my work as Legal Advisor to the Palestinian Delegation to the Middle East Peace Negotiations in the hope and expectation that it might do some good for me to substantiate the fact that the so-called Oslo Agreement of 13 September 1993 called for the imposition of a Palestinian Bantustan.

The Oslo Bantustan

It is a matter of public record that the Oslo Agreement was signed at the White House against the most vigorous objections by Dr. Abdul-Shaffi acting in reliance upon my advice and counsel. Indeed, a year prior thereto, Dr. Abdul-Shaffi had instructed me to draw up the Palestinian counteroffer to Israel's Bantustan Proposal. This I did in a Memorandum of Law entitled *The Interim Agreement and International Law*, which was later published in 22 *Arab Studies Quarterly*, Number 3 (Summer 2000), that is reprinted here. My Memorandum of Law was approved by the Palestinian Delegation to the Middle East Peace Negotiations as well as by the Leadership of the PLO then headquartered in Tunis. In other words, my Memorandum of Law was the Palestinian alternative to Oslo, which is now dead as a dodo bird. Nevertheless, after the Oslo Bantustan was signed, I bided my time in silence for the next four years.

Then, it was only fitting and appropriate that I had the opportunity to return to Palestine in December of 1997 in order to commemorate the 10th Anniversary of the original Intifada. I visited the very street where the Intifada had commenced. I then gave a Lecture before a Human Rights Conference convened by the Palestine Center for Human Rights headquartered in Gaza. The title of my lecture was *Palestine Must Sue Israel for Genocide Before the International Court of Justice!*, which is reprinted here from 20 *Journal of Muslim Minority Affairs*, Number 1 (2000). My thanks to the Institute of Muslim Minority Affairs for permission to reprint this article here.

I then personally met with President Arafat in his recently bombed-out headquarters in Gaza. I discussed this proposed World Court Lawsuit against Israel for genocide with him. I then personally placed my written proposal for this World Court Lawsuit against Israel for genocide into President Arafat's hands. Since our last meeting in December of 1997, I have repeatedly asked for his authority to file this lawsuit for genocide against Israel on behalf of Palestine and the Palestinian People before the International Court of Justice in The Hague. Perhaps some day I shall receive this authorization -- Inshallah!

Jerusalem

One of the most important issues I have dealt with repeatedly for the Palestinian People is Jerusalem. For example, I helped to launch a campaign to prevent the United States Government from illegally moving the United States Embassy from Tel Aviv to Jerusalem. In order to head off this abomination, I prepared Memoranda of Law on the U.S.-Israel Land-Lease and Purchase Agreement of 1989, which I sent to Congressman Lee Hamilton who was then Chairman of the Subcommittee on Europe and the Middle East of the Committee on Foreign Affairs of the U.S. House of Representatives. These Memoranda are reprinted here from *American-Arab Affairs*, Number 30 (Fall 1989). The Israel Lobby and its supporters in Congress are still attempting to pressure the United States government to move the U.S. Embassy from Tel Aviv to Jerusalem. Of course this would be a political, legal, and diplomatic disaster.

To be sure, there would certainly be no problem under international law and practice for the United States government to move its Embassy from Tel Aviv to Jerusalem as part of a comprehensive Middle East Peace Settlement whereby the Embassy would be simultaneously accredited to Israel and Palestine, with Jerusalem being recognized as the shared Capital of both States. Why and how this can be done is fully explained in my essay *The Al Aqsa Intifada and International Law*, which has already been commented upon above. Years ago the PLO had approved my proposal set forth therein on the Final Status of Jerusalem. But Israel wants this entire Baby for itself. And the United States has never been solomonic when it comes to Palestine and the Palestinian People.

U.S. Mideast Policy v. International Law

During the past two decades I have written many other publications dealing with Palestine, Palestinians, and International Law. For obvious reasons I do not have the space to reprint them all here. But in order to facilitate research into these heavily censored and outrightly suppressed subjects, I have included an incomplete Bibliography on this and some of my other writings on the "Middle East and International Law" in general. These other topics include Iran, Iraq, Lebanon, Libya, and Syria, inter alia. For reasons that should be obvious by now, it is almost impossible to get published on these subjects here in the United States of America -- "the land of the free, and the home of the brave. . . ." It has been a real struggle for me just to get these meager offerings into print somewhere.

But summing them all up into a nutshell it can be fairly said that U.S. Mideast Foreign Policy has not shown one iota of respect for international law. Of course the same can be said for the rest of American Imperial Policy around the world. In order to substantiate that latter proposition, the reader will have to consult the rest of my opera that are not listed here. But to return to Palestine, Palestinians, and International Law.

Right after General Sharon instigated the Al Aqsa Intifada on 28 September 2000, the United Nations Human Right Commission condemned Israel for inflicting a war crime and a crime against humanity upon the Palestinian People. The Nuremberg crime against humanity is the historical and legal precursor to the international crime of genocide as defined by the 1948 Genocide Convention.

Historically, Israel's criminal conduct against the Palestinians has been financed, armed, equipped, supplied, and politically supported by the United States. Nevertheless, the United States is a founding sponsor of, and a contracting party to, both the Nuremberg Charter and the Genocide Convention, as well as the United Nations Charter. But these legal facts have never made any difference to the United States when it comes to its criminal mistreatment of the Palestinian People.

The world has not yet heard even one word uttered by the United States and its NATO allies in favor of "humanitarian intervention" against Israel in order to protect the Palestinian People from Israeli war crimes, crimes against humanity, and genocide. The United States, its NATO allies and the Great Powers on the U.N. Security Council would not even dispatch a U.N. Charter Chapter 6 "monitoring force" to help protect the Palestinians, let alone even contemplate any type of U.N. Charter Chapter 7 "enforcement action" against Israel. Shudder the thought! The doctrine of "humanitarian intervention" clearly proves itself to be a joke and a fraud when it comes to stopping the ongoing Israeli campaign of genocide against the Palestinian People.

As a matter of fact, in the case of Israel, genocide has paid quite handsomely to the tune of about \$5 billion per year by the United States government, the U.S. Congress, and the U.S. taxpayers, without whose munificence this instance of genocide would not be possible. Proving the validity of the proposition that genocide pays so long as it is done at the behest of the United States and its *de facto* or *de jure* allies.

Dishumanitarian Intervention by the United States of America against Palestine and the Palestinians.

Just before the September 13, 1993 Oslo Agreement signing on the White House Lawn, I commented to a high-level official of the P.L.O.: "This document is like a straight-jacket. It will be very difficult to negotiate your way out of it!" This P.L.O. official readily agreed with my assessment of Oslo: "Yes, you are right. It will depend upon our negotiating skill."

I have great respect for Palestinian negotiators. They have done the very best they can negotiating in good faith with an Israeli government that has been invariably backed up by the United States. But there has never been any good faith on the part of the Israeli government either before, during, or after Oslo. The same is true for the United States.

Even if Oslo had succeeded, it would have resulted in the permanent imposition of a Bantustan upon the Palestinian People. But Oslo has run its course! Therefore, it is my purpose here to sketch out a New Direction for the Palestinian People and their supporters around the world to consider as an alternative to the Oslo process.

- **First:** We must immediately move for the *de facto* suspension of Israel throughout the entirety of the United Nations system, including the General Assembly and all U.N. subsidiary organs and bodies. We must do to Israel what the U.N. General Assembly has done to the genocidal rump Yugoslavia and to the criminal apartheid regime in South Africa. Here the legal basis for the *de facto* suspension of Israel at the U.N. is

quite simple:

As a condition for its admission to the United Nations Organization, Israel formally agreed, *inter alia*, to accept General Assembly Resolution 181 (II) (1947) (on partition and Jerusalem trusteeship) and General Assembly Resolution 194 (III) (1948) (Palestinian right of return). Nevertheless, the government of Israel has expressly repudiated both Resolution 181 (II) and Resolution 194 (III). Therefore, Israel has violated the conditions for its admission to U.N. membership and thus must be suspended on a *de facto* basis from any participation throughout the entire United Nations system.

- **Second:** Any further negotiations with Israel must be conducted on the basis of Resolution 181 (II) and the borders it specifies; Resolution 194 (III); subsequent General Assembly resolutions and Security Council resolutions; the Third and Fourth Geneva Conventions of 1949; the 1907 Hague Regulations; and other relevant principles of public international law.
- **Third:** We must abandon the fiction and the fraud that the United States government is an "honest broker" in the Middle East. The United States government has never been an "honest broker" since from well before the formal outset of the Middle East peace negotiations in 1991. Rather, the United States has invariably sided with Israel against the Palestinians, as well as against the other Arab States. We need to establish some type of international framework to sponsor these negotiations where the Palestinian negotiators will not be subjected to the continual bullying, threats, intimidation, lies, bribery, and outright deceptions perpetrated by the United States working at the behest of Israel.
- **Fourth:** We must move to have the U.N. General Assembly adopt comprehensive economic, diplomatic, and travel sanctions against Israel according to the terms of the Uniting for Peace Resolution (1950). Pursuant thereto, the General Assembly's Emergency Special Session on Palestine is now in recess just waiting to be recalled.
- **Fifth:** The Provisional Government of the State of Palestine must sue Israel before the International Court of Justice in The Hague for inflicting acts of genocide against the Palestinian People in violation of the 1948 Genocide Convention.
- **Sixth:** We must pressure the Member States of the U.N. General Assembly to found an International Criminal Tribunal for Palestine (ICTP) in order to prosecute Israeli war criminals, both military and civilian, including and especially Israeli political leaders. The U.N. General Assembly can set up this ICTP by a majority vote pursuant to its powers to establish "subsidiary organs" under U.N. Charter article 22. This International Criminal Tribunal for Palestine should be organized by the U.N. General Assembly along the same lines as the International Criminal Tribunal for the Former Yugoslavia (ICTY) that has already been established by the U.N. Security Council.
- **Seventh:** Concerned citizens and governments all over the world must organize a comprehensive campaign of economic disinvestment and divestment from Israel along the same lines of what they did to the former criminal apartheid regime in South

Africa. This original worldwide disinvestment/divestment campaign played a critical role in dismantling the criminal apartheid regime in South Africa. For much the same reasons, a worldwide disinvestment/divestment campaign against Israel will play a critical role in dismantling its criminal apartheid regime against the Palestinian People living in occupied Palestine as well as in Israel itself.

During the course of a public lecture at Illinois State University in Bloomington-Normal on 30 November 2000, I issued a call for the establishment of a worldwide campaign of disinvestment/divestment against Israel, which I later put on the internet. In response thereto, Students for Justice in Palestine at the University of California at Berkley launched a divestment campaign against Israel there. Right now the city of Ann Arbor Michigan is also considering divesting from Israel. And just recently the Palestinian Students at the University of Illinois at Urbana-Champaign (whom I am privileged to advise) launched an Israeli divestment campaign here. This movement is taking off.

[See The Divest from Israel Campaign: Join People of Conscience - DIVEST NOW! (at www.divest-from-israel-campaign.org) including its listing of 23 (as of 6/14/03) active divestment/disinvestment university/college campaign websites. --ratitor]

These seven steps taken in conjunction with each other should provide the Palestinian People with enough political and economic leverage needed to negotiate a just and comprehensive peace settlement with Israel. By contrast, if the Oslo process is continued, it will inevitably result in the permanent imposition of a Bantustan upon the Palestinian People living in occupied Palestine, as well as the final dispossession and disenfranchisement of all Palestinian People living in their diaspora. Consequently, I call upon all Palestinian People living everywhere, as well as their supporters and friends around the world, to consider and support this New Direction that is sketched out here.

Free Palestine.

F.A.B.

Good Friday 2002

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- Mandate entrusted to the Secretary-General on the situation in occupied Palestine.
- Mandate entrusted to the Secretary-General on human rights in the occupied Syrian Golan.
- Special Committee to Investigate Israeli Practices affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories.
- Special Rapporteur of the Commission on Human Rights on the situation of human rights in the occupied Palestinian territories.

- UN Information System on the Question of Palestine (UNISPAL).
Access to U.N. Resolutions on the Question of Palestine
(Security Council, General Assembly, Resolutions of some other UN Bodies)
- Current and recent UN documents on the conflict and access to the latest Security council resolutions.
- Resolution 2002/1 "Situation of human rights in the occupied Palestinian territory". UN Commission on Human Rights.

- Hague Conventions of 1907:
 - Hague I - Pacific Settlement of International Disputes, 18 Oct 1907
 - Hague II - Limitation of Employment of Force for Recovery of Contract Debts, 18 Oct 1907
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 - Hague XI - Restrictions With Regard to the Exercise of the Right of Capture in Naval War, 18 Oct 1907
 - Hague XIII - Rights and Duties of Neutral Powers in Naval War, 18 Oct 1907

- Charter of the United Nations, 26 June 1945
- Nuremberg Charter of the International Military Tribunal, 8 August 1945
- Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948
- Third Geneva Convention Relative to the Treatment of Prisoners of War, 12 August 1949
- Fourth Geneva Convention Relative to the Protection of Civilian Persons in a Time of War, 12 August 1949

- Middle East Peace Process Documents: Camp David Accords, Madrid Peace Conference, Palestinian-Israeli Agreements
- The Al Aqsa Intifada and International Law, by Francis A. Boyle, 30 November 2000