

The Middle East Is Heating Up ~ Again: An Interview With Richard Falk



Prof.em. Richard Falk

The Middle East is heating up again, in part due to President Trump's decision to recognize Jerusalem as Israel's capital. The Trump administration has also incited upset with its unconditional support for Israel's aggressive policies, which violate basic principles of international law and threaten the region with the eruption of military confrontations. For an assessment of the latest developments in the Middle East, C.J. Polychroniou spoke to Richard Falk, a professor emeritus of international law at Princeton University, former UN special rapporteur for Palestinian human rights and author of scores of books and hundreds of academic articles on international relations and international law.

C.J. Polychroniou: Richard, let's start with Donald Trump's decision to officially recognize Jerusalem as Israel's capital and to move the US embassy there by May of this year. First, is this legal from the standpoint of international law, and second, what are likely to be the long-term effects of the US recognition of Jerusalem as Israel's capital on the region as a whole?

Richard Falk: There is no question that Trump's Jerusalem policy relating to recognition and the move of the American embassy is provocative and disruptive, underscoring the abandonment by Washington of even the pretense of being a trustworthy intermediary that can be relied upon by both sides to work for a sustainable peace between the two peoples. Some critics of the initiative are saying that the US is free to situate its embassy in Jerusalem, but it isn't Israel, as

the status of the city is undetermined and East Jerusalem, where the “Old City” is located, is considered to be an “occupied territory” in international humanitarian law.

Recognition of Jerusalem as the capital of Israel is a clear violation of international humanitarian law, which rests on the central proposition that an occupied territory should not be altered in any way that changes its status and character without the consent of the occupied society. It also is a unilateral rejection of a near universal consensus, endorsed by the United Nations, that the future of Jerusalem should be settled by negotiations between the parties as a part of a broader peacemaking process. Israel had already violated both international law and this international consensus by annexing an enlarged Jerusalem, and declared that the whole city, within expanded boundaries, would be the “undivided, eternal capital” of Israel. It is notable that the UN General Assembly on December 21, 2017, approved by an overwhelming majority of 128-8 (35 abstentions) a strong condemnation of the US move on Jerusalem, with [the US’s] closest allies joining in this vote of censure.

It is difficult to predict the long-term consequences of this diplomatic rupture. It depends, above all, on whether the US government manages to restore its claim to act as a conflict-resolving intermediary. The Trump administration continues to insist that it is working on a peace plan that will require painful compromises by both Palestine and Israel. Of course, given the unconditional alignment of Washington with Prime Minister Benjamin Netanyahu’s Israel, and the orientation of those entrusted with drafting the plan, it is highly unlikely that even President Mahmoud Abbas and the Palestinian Authority will be inclined to enter a diplomatic process that is virtually certain to be weighted so heavily in favor of Israel. Yet as many have come to appreciate, nothing is harder to predict than the future of Middle Eastern politics. At the same time, Jerusalem has an abiding significance for both Islam and Christianity that makes it almost certain for the indefinite future that there will be formidable regional and international resistance to subsuming Jerusalem under Israeli sovereign control.

Israel appears bent on restricting Iran’s rising influence as a regional power in the Middle East. How far do you think the US can go in assisting Israel to contain Tehran’s strategy for empowering Shias?

Israel and Saudi Arabia are both, for different reasons, determined to confront

Iran, and quite possibly, initiate a military encounter with widespread ramifications for the entire region, if not the world. A quick glance at the Syrian conflict suggests how complex and dangerous is this effort to destabilize the Iranian governing process, with the dual objectives of destabilizing the governing process mixed with the more ambitious goal of causing civil strife of sufficient magnitude as to produce a civil war, and ideally, regime change.

The Israeli adherence to this recklessness seems partly motivated by its overall security policy of seeking to weaken any country in the region that is hostile to its presence and has the potential military capability to threaten Israeli security in a serious manner. Israel has been so far successful in neutralizing each of its credible adversaries in the region (Saudi Arabia, Egypt, Syria) with the exception of Iran. In this sense, Iran stands out as the last large unfinished item on Israel's geopolitical agenda. The question of Israel's real intentions [is] hard to pin down, as the alleged Iranian threat is also frequently manipulated by Netanyahu and other Israeli leaders to mobilize domestic support for sticking with an aggressive foreign policy. In this latter context, Israeli security specialists express an appreciation of the risks of an actual military confrontation with Iran.

Saudi motivations are quite different, associated with a fierce regional rivalry that is articulated in terms of the clash between Shia and Sunni Islam, aggravated by the fear that Iran's influence increased as a result of the Iraq and Syrian Wars, which both seem to have outcomes favorable to Tehran. The sectarian rationale of the conflict seems intended to disguise the more real explanation, which is that there is a power struggle between these two sovereign states to determine which one will achieve regional ascendancy. The sectarian explanation was somewhat undermined by the intensity with which the Saudis and other gulf monarchies used their financial and diplomatic resources to crush the Muslim Brotherhood in Egypt despite its strong Sunni identity. It is also no secret that, from the time of the Iranian Revolution in 1979, Tehran looked upon the monarchy governing Saudi Arabia as corrupt and decadent in the same manner as the Shah's dynastic rule in Iran that was risen up against.

Your focus on how far the US can go in restricting Iran's influence is difficult to assess at this point. Trump's virtual repudiation of the agreement on Iran's nuclear program seems to express a commitment to join with Israel and Saudi Arabia to engage in coercive diplomacy, consisting of intensifying sanctions, covert operations to encourage internal opposition and a variety of military

threats. Where this will lead, if indeed it goes forward in defiance of the other parties to the agreement and most important UN members, is anybody's guess, but it is a highly irresponsible diplomatic gambit that risks a deadly "war of choice."

Trump's regional diplomacy, such as it is, has been most notable for giving even greater emphasis to the "special relationships" with Israel and Saudi Arabia than earlier American leaders. Even previously, under Obama, George W. Bush and prior presidents, American strategic interests and national values were subordinate to this posture of unquestioning support, which is the concrete meaning of designating these links as special relationships.

Syria's civil war continues unabated and the country has become a battlefield for the spread of the influence of various powers in the region, including Turkey and Russia. Do you see a way out of this mess?

The Syrian War is among the most complex conflict patterns in the history of warfare. Not only is there an internal struggle for control of the Syrian state that has been waged by not one, but by several insurgent movements that are not even compatible with one another. There is also a regional proxy war pitting Saudi Arabia, the United Arab Emirates and Qatar against Iran, with Turkey playing a confusing role that sometimes seems guided by anti-Damascus goals but at other times is preoccupied with curtailing the Kurdish challenge. The various national struggles of the Kurds for autonomous rights, possibly independent political communities, threaten the territorial integrity of several Middle Eastern states, as well as Syria. In addition to all of this, there are major multi-faceted and fluid Russian and American involvements on opposite sides, although not even this opposition is clear-cut and consistent. For a time, there was an almost collaborative effort to defeat ISIS (also known as Daesh) and obtain a Syrian cease-fire, although the basic involvement has been to put Russia on the side of the Damascus government and the US as aligned with the insurgencies.

Because the anti-ISIS dimension of the conflict is at odds with the anti-Damascus dimension, depending on the priority accorded to one rather than the other, alignments are contradictory and shifted over time. Sometimes precedence has been given to achieving regime-change in Damascus by removing Syrian President Bashar al-Assad from power, and in such contexts, it was acknowledged silently that ISIS was the most effective military challenge on the ground being

mounted against the Syrian government. At other times, the counterterrorist campaign against ISIS was given uppermost prominence, and there [were] even high-level indications that Washington was willing to live with the Assad regime, a position given added credence recently due to the success of the Syrian government in quelling its opposition, making continued opposition futile politically, and irresponsible ethically. Whenever pragmatism gained the upper hand, Russia and Iran were accepted as partners in these efforts to defeat and destroy ISIS.

All wars eventually come to an end, and I am sure Syria will not be an exception. Yet it is difficult at present to project a solution that brings about more than a cease-fire, and even this kind of ending ... is highly elusive, as each of the many parties to the conflict jockey violently for minor positional advantages to improve its bargaining leverage when the conflict enters some kind of negotiating phase.... Internal wars of this kind, especially with such complex regional and international aspects, can simmer for decades with no clear winner or loser as has been the case in the Philippines and Colombia. It seems as if at present the Syrian government believes it is on the verge of victory and is pressing for an outcome in East Ghouta and Idlib such that it will not be expected to make significant concessions.

The best hope, which has been the case for several years, is that the various parties will recognize that the situation is indeed a mess that is causing mass suffering and widespread devastation without producing political gains. Yet translating that recognition into a formula that produces an end to the violence has so far proved futile and frustrating as each party sees the conflict from its partisan perspective of gain and loss.

With the two-state solution having ceased long ago being a viable alternative, what are the most likely prospects for the future of Israeli-Palestinian relations?

The safest response is to anticipate a persistence of the present status quo, which involves continuing Israeli expansionism by way of the settlements and the persistence of the Palestinian ordeal, with some resistance in the occupied West Bank, Gaza and East Jerusalem, and a growing global solidarity movement exerting pressure on Israel in the form of the Boycott, Divestment and Sanctions (BDS) campaign. There may be some attention given to a variety of proposals to end the conflict by revived diplomacy. Trump's blustery promise of "a deal of the

century” has received skeptical attention, but its likely one-sidedness makes it almost certain to be a non-starter, especially as the Israeli government feels insufficient pressure to produce a peaceful solution based on a genuine political compromise and the Palestinian Authority remains unwilling to accept a demilitarized statelet as a token Palestine state, or even to participate in negotiations that are so obviously stacked against it. For public relations reasons, the international consensus clings to the two-state solution even though, as your question suggests, its viability has long been superseded by Israeli expansionist policies intended to fulfill the Zionist goal of making the boundaries of Israel coterminous with the whole of the Jewish biblical conception of the “promised land.”

There are other outcomes that are possible. [Right-wing historian] Daniel Pipes has been promoting what he dubbed “the victory caucus,” which posits Israel as the victor in the struggle to establish a Jewish state and Palestine the loser. Pipes argues that diplomacy has failed to resolve the conflict after years of effort, and hence ... the only alternative is for one side to win and the other to lose if peace is to be established. He encourages Israel to escalate pressure on the Palestinians to make them see the light, accept the reality of a Jewish state and move on. Such an initiative is distasteful to those who support the Palestinian struggle, and it seems oblivious to the claims of international law and international morality as these are generally understood in the 21st century when colonialism and ethnic nationalism are illegitimate forms of political control and the right of self-determination has become universally accepted as an inalienable right of an oppressed people in the circumstances of the Palestinians.

In my view, neither the two-state nor a consensual one-state outcome of the struggle is currently within the realm of political feasibility. We are necessarily speculating about future political scenarios within the domain of “political impossibility.” Yet the impossible sometimes happens. Colonialism was successfully challenged, the Soviet Union collapsed, South Africa renounced apartheid, the Arab Spring erupted. In none of these cases did such occurrences seem possible except in retrospect. After the events, as expected, experts appeared who explained why these impossible developments were, if closely considered, inevitable.

In this spirit, I think it useful to acknowledge the limits of rational assessment, and either remain silent, or offer for consideration, a solution that is “impossible,”

yet “desirable” from the perspective of humane values, which in this case involves a secure, equitable and sustainable peace for both peoples that is, above all, sensitive to their equality and to their distinct, yet legitimate, claims to self-determination. I find it unimaginable to realize such a peace within the current structure of the Middle East, which consists of a group of artificial and autocratic states held together by varying mixtures of coercion, corruption and external military assistance. An Israel-Palestine peace cannot unfold in a benevolent manner without a structural return to the Ottoman framework of regional unity and ethnic community, and possibly an Islamic caliphate adapted to post-colonial realities. Such a stateless Middle East would reverse the harm inflicted on the region by the imposition of European territorial states through the infamous Sykes-Picot diplomacy.

South Africa’s former apartheid system has been employed analytically by many to describe the current status of the state of Israel with regard to its treatment toward Palestinians. Indeed, it is from such a comparison that the BDS movement was born, but to what extent are the two cases compatible? South Africa was pretty much isolated by the early 1980s, but the same cannot be said about Israel today. In fact, Israel has even managed to expand recently its network of allies with Greece and the Sunni states. So, what are your thoughts on the comparison between the former South African apartheid regime and Israel and the effectiveness of the strategy of BDS?

Your question raises two distinct issues: Is Israel responsibly regarded as an “apartheid state?” If so, is Israeli apartheid similar to South African apartheid?

Prior to responding to these questions, it seems helpful to clarify the status of the international crime of apartheid as it has evolved in international law, taking particular note of the fact that although the name and core idea is based on the specific condemnation of South African racism, the international crime is detached from this precedent. The essence of the international crime is any form of discriminatory domination by one race over another that relies on “inhuman acts” to sustain its purposes. In this important sense, Israeli forms of domination over the Palestinian people may be quite different than the domination of whites over Blacks in South Africa, and yet constitute the international crime of apartheid. Treating apartheid as an international crime is based both on the 1973 International Convention on the Suppression and Punishment of the Crime of Apartheid and on the 2002 Rome Statute governing the operations of the

International Criminal Court that categorizes “apartheid” in Article 7 as one of 11 types of crimes against humanity.

In a study commissioned by the UN Economic and Social Commission, Virginia Tilley and I concluded that the policies and practices of Israel toward the Palestinian people *as a whole* satisfy the requirements of the international crime of apartheid. Our conclusion is based on the view that Israel, to maintain an expanding Jewish state, has subjected the Palestinian people to structures of subjugation and victimization that are sustained by excessive violence and other inhuman means. It was our judgment that Jews and Palestinians are distinct “races” as the term is understood in international law. The scope of Israeli apartheid is based on coherent strategies designed to subjugate the Palestinian people whether they are living under occupation, the most obvious case, or as a discriminated minority within Israel, or as residents in refugee camps in neighboring countries, or living in a global diaspora as involuntary exiles. Each of these domains is connected with the Israeli efforts to ensure not only the prevalence of a Jewish state, but also a secure Jewish-majority population that could only be achieved by a *process* of dispossession, dispersion and fragmentation, as well as by the denial of any right of return.

South African apartheid was very different in its operation as compared to Israeli apartheid. For one thing, white South Africa was a minority demographic in the country and critically dependent on Black labor. For another, the South African concept of law, citizenship and democracy was delineated along racial lines, while Israel claims to be an inclusive democracy, although is more accurately understood to be an ethnocracy. Despite these fundamental differences, the core reality of “inhuman acts” and “discriminatory structures of domination” are present, although distinctly enacted, in both national settings.

Finally, it should be understood that such allegations of Israeli apartheid are made on the basis of academic study, and while they may be persuasive morally and politically, it is also true that until a valid tribunal passes judgment on such allegations, the *legal* status of the allegations remains unresolved and is, of course, feverishly contested by Israel and its supporters.

Overall, what are the prospects for restored stability and a positive future for the countries in the Middle East?

Without the intervention of unanticipated developments, the prospects are poor. On one level, the extreme turmoil in countries such as Syria, Yemen, Iraq and neighboring Libya are likely to continue and could spread to additional states. On a second level, the regional rivalries between Iran and a Saudi-led coalition on the one side and Israel on the other, seem likely to intensify. On a third level, there is no plausible scenario for establishing a sustainable peace between Israel and the Palestinian people. On a fourth level, with the reassertion of Russian engagement and the US pursuit of a strategic agenda related to Israel, oil, political Islam, Iran and nuclear nonproliferation, the region has, as in the Cold War, become a site of dangerous geopolitical maneuver and confrontation. On a fifth level, perhaps less serious than the others, is the sort of intra-regional tensions that have given rise to the Gulf Crisis centered upon the relations of Qatar to other gulf countries, and to the role of Turkey as partner and antagonist, especially in relation to the continuing search of the Kurdish peoples for self-determination. Finally, on a sixth level, there is almost certain to be new expressions of internal strife and various extremisms that strike against the West, inviting retaliation, which will probably be accompanied by further migratory flows that aggravate relations between the Middle East and Europe.

The drastic and prolonged victimization of the Middle East also exhibits the failure of the West to understand, much less address, the root causes of conflict and chaos that have produced mass suffering and material deprivations throughout the region. These root causes can be traced back at least a century to the imposition of European style states on the region, reflecting colonial ambitions, in the aftermath of World War I and by way of a colonial pledge to the world Zionist movement to support the establishment of a Jewish homeland in Palestine, then inhabited by a Jewish minority not larger than 6 percent. The other principal root cause related to the abundance of oil in several parts of the Middle East, which created rentier mentalities in development contexts and provided strong strategic motivations for intervention and control by global political actors.

In the end, this complexity joining the historical past to the tormented past creates a dismal set of prospects for the future of the Middle East. At this point, only paradoxical, although unrealistic, hopes for prudence and moderation can make the portrayal of the situation less gloomy than the evidence and trajectory suggest.

Note: The transcript of this interview has been lightly edited for length and clarity.

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