

Testimony of

John R. Bolton

On

**The Implications for Moving the U.S. Embassy in Israel to
Jerusalem**

Before the

House Committee on Oversight and Government Reform

Subcommittee on National Security

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2247 Rayburn House Office Building,

Washington, D.C.

Chairman DeSantis, Ranking Member Lynch, and members of the Subcommittee on National Security, I appreciate the opportunity to appear before you this morning to discuss whether to move the U.S. Embassy in Israel from Tel Aviv to Jerusalem. This is an important and timely topic, well worth the Subcommittee's continuing consideration.

I. Executive Summary

I believe that recognizing Jerusalem as Israel's capital city and relocating our Embassy there on incontestably Israeli sovereign territory would be sensible, prudent and efficient for the United States government. Indeed, fully regularizing the American diplomatic presence in Israel will benefit both countries, which is why, worldwide, the U.S. Embassy in virtually every other country we recognize is in the host country's capital city.

Relocating the Embassy would not adversely affect negotiations over Jerusalem's final status or the broader Middle East peace process, nor would it impair our diplomatic relations among predominantly Arab or Muslim nations. In fact, by its honest recognition of reality, shifting the Embassy would have an overall positive impact for U.S. diplomatic efforts. Over the years, as with so many other aspects of Middle Eastern geopolitics, a near-theological and totally arid scholasticism has developed here and abroad about the impact of moving the Embassy. Now is in fact the ideal time to sweep this detritus aside, and initiate the long-overdue transfer.

II. Diplomatic Effectiveness and Efficiency

It stands to reason that America's diplomats posted abroad should be located near the seat of government to which they are accredited. Proximity to host-government political leaders; major government institutions; and representatives of domestic political, economic and social interests all argue for the common-sense decision that U.S. representatives to a foreign state should be at that state's center of government. There may be logistical reasons for temporary deviations from this principal (such as where a government relocates its capital city, and time is necessary before an embassy relocation can be effected), but there is no compelling diplomatic-business reason to wait nearly seventy years, as has been the case in Israel.

Given Israel's geography, certain key national-security institutions, such as the Ministry of Defense, are located in Tel Aviv, which means that legitimate considerations will dictate that a U.S. Embassy annex should remain there. But cost, efficiency and effectiveness considerations also compel the conclusion that the bulk of our Embassy's personnel should follow the example of their colleagues in virtually the entire rest of the world, and be moved to Israel's capital. Modern transportation and telecommunications capabilities notwithstanding, distance still impose costs, both in time and resources, not to mention aggravation, on our diplomats in Israel. Moreover, there is still no substitute to personal contact, face-to-face communications and easy accessibility, especially in times of crisis, with key host-government officials and political leaders. Moreover, security concerns, especially in the volatile Middle East, are always major factors in decisions to move existing diplomatic facilities to new locations within existing capitals where physical conditions are better suited to address contemporary risk assessments.

Budgetary issues concerning both existing operations and the costs of a new Embassy are perfectly legitimate for Congress to raise. Here, the verdict is already clear. Over twenty years ago, Congress staked out its position by enacting the Jerusalem Embassy Act of 1995, 109 Stat. 398, Public Law 104-45), with overwhelming majorities in both Houses. President Clinton opposed the legislation, but allowed it to become law without his signature rather than veto it in the face of a near-certain Congressional override. The Act provided that the Embassy must be relocated to Jerusalem by May 31, 1999, or the Department of State's overseas building funds would be cut by half. President Clinton and his successors have uniformly used Section 7(a) of the Act to waive its relocation requirement by invoking "the national security interests of the United States." Legislation designed to augment the Act has been introduced frequently, including earlier this year. President Trump signed the most recent waiver this past June 1.

I believe the Act's waiver procedures, and particularly, the waiver's serial invocation by successive Presidents, are entirely Constitutional. Indeed, efforts to more completely restrict Executive authority in this area would almost surely violate the President's Article II foreign-affairs powers and responsibilities. The Supreme Court's recent decision in *Zivotofsky v. Kerry*, 576 U.S. ---, 135 S. Ct. 2076 (2015), regarding Jerusalem's status in passport matters certainly points in that direction. If Congress wishes to challenge the Executive Branch's near-plenary power in this field, it must assert one of its own express Constitutional authorities, namely through the appropriations process. The Jerusalem Embassy Act threatened such a response, but the legislation's waiver authority vitiated its impact. Whether Congress chooses to go further is obviously up to Congress, but the more prudent and regular order would be for an unambiguous Executive Branch decision to make the necessary political decisions.

Locating and building a new Embassy in indisputably Israeli sovereign territory would be neither difficult nor notably more contentious than any other property transaction in Israel. The government of Israel has designated a site in Jerusalem's Talpiot neighborhood, held in Israeli

hands since its independence, for a new U.S. embassy.¹ While construction is underway, the U.S. Consulate General on 18 Agron Street, which now serves both as the residence for the Consul General and the location of several of its important offices, could be redesignated as an Embassy annex.

III. The Effects Beyond Israel's Boundaries

Despite the overwhelming diplomatic and managerial advantages to the United States of relocating its Embassy, numerous political contentions have been advanced for keeping the Embassy in Tel Aviv. I will address these in turn. Some of these arguments are offered in good faith, including by those who wish Israel no harm. But let's be honest: many are argued for precisely the opposite reason: to continue to deny to Israel the acknowledgment that it is a legitimate state with a legitimate capital. Among all of these arguments, there is a sense that perhaps repetition over time can make them more persuasive than their underlying merits. Falling prey to such false concreteness is a fatal mistake in diplomacy, where confusing the world of rhetoric for the real world leads to missed opportunities with sometimes tragic consequences.

The United States can and should treat with respect the legitimate opinions of those affected by foreign-policy decisions such as the Embassy move. But it should not -- indeed, must not -- be held hostage to the misconceptions of those who wish neither us nor the Israelis well. We should not underestimate or ignore our ability to explain and justify our actions, even in the face of propagandists who might attempt to falsify and distort our intentions and our integrity. Succumbing to threats and verbal abuse for decades shows precisely the opposite about the character of our nation. It shows us susceptible to intimidation on one issue -- the location of the Embassy -- and, therefore, potentially susceptible to intimidation on others as well. By so behaving, we are compromising our own interests, and the larger interests of a peaceful and secure Middle East. Where the U.S. locates its Embassy in Israel is a matter for America and Israel to decide.

The first argument against moving the U.S. Embassy is that so doing would prejudice the final status negotiations over Jerusalem. This argument is, at best, disingenuous, since no serious proposal has ever suggested building Embassy facilities anywhere east of the Green Line. This

¹ "Jerusalem of Trump: Where the president-elect might put the US embassy," *Times of Israel*, December 13, 2016, <https://www.timesofisrael.com/jerusalem-of-trump-where-the-president-elect-might-put-the-us-embassy/>

is territory that Israel will hold unless its most ardent opponents get their wish, and the State of Israel is eliminated entirely. Ironically, despite being the first country to recognize the new State of Israel in 1948, no American President has formally recognized Israeli sovereignty over any part of Jerusalem. Unfortunately, ambiguity over the U.S. position whether West Jerusalem is sovereign Israeli territory, whether Jerusalem is even Israel's capital, let alone whether our Embassy should be there, is helping to keep alive a dangerous misconception of the true facts on the ground.

Indeed, U.S. unwillingness to acknowledge that the Israeli state has an actual physical capital city undercuts the idea that Israel is truly a state. Under any recognizable definition of "statehood" under customary international law, an entity has a capital city and carries out the normal functions of government, all of which Israel manifestly does. Acting as though we are uncertain what Israel's capital is, or that somehow we can't find it, or that we are too timid to accept the palpable reality of Jerusalem as that capital, is demeaning to both the United States and Israel.

The origin of the opposition to establishing foreign embassies in Jerusalem stems from UN General Assembly Resolution 181, adopted on November 29, 1947, creating three entities out of what remained of the United Kingdom's Palestinian Trusteeship: an Arab State, a Jewish State and "the Special International Regime for the City of Jerusalem." Under Resolution 181 (and as further elaborated shortly thereafter in General Assembly Resolution 194), Jerusalem was designated as a *corpus separatum*, to be under the authority of the UN Trusteeship Council, the body established by the UN Charter to administer, among other things, former Mandatory Territories under the League of Nations.

Today, just a few weeks before Resolution 181's seventieth anniversary, it and its successor Resolutions are dead letters. Whatever else Jerusalem's final status may be, there is no serious advocacy that Jerusalem be internationalized, and no real-world possibility that it will happen. Nonetheless, the lingering effects of the internationalization idea persist in the contention that uncertainty exists over whether any part of Jerusalem will ultimately become Israel's capital city.

Earlier this year, on April 6, the Russian Federation's Foreign Ministry announced that: "We reaffirm our commitment to the UN-approved principles for a Palestinian-Israeli settlement, which include the status of east Jerusalem as the capital of the future Palestinian state. At the same time, we must state that in this context we view west Jerusalem as the capital of Israel."² To be sure, Russia's broad position on Israeli-Palestinian issues, as the Ministry's statement

² "Foreign Ministry statement regarding Palestinian-Israeli settlement," April 5, 2017 at 10:40 A.M., accessed at http://www.mid.ru/en/web/guest/foreign_policy/news/-/asset_publisher/cKNonkJE02Bw/content/id/2717182

indicates, is not the same as Israel's or the United States, Nonetheless, Moscow's frank acknowledgement of Jerusalem's status as Israel's capital, and the near-total absence of reaction around the world, especially in the Middle East, should tell us something about the reality into which a U.S. decision to relocate its Embassy would fall. If Russia can explain its position on Jerusalem as Israel's capital without massive blowback, then surely the United States can do so as well.

The second argument against relocating the U.S. Embassy, expanding on the narrower issue of Jerusalem's status, is the assertion that the broader Middle East peace process would be adversely impacted. For example, Palestinian negotiator Saab Erekat said in December, 2016, during the Presidential Transition, that moving the Embassy would cause the "destruction of the peace process as a whole."³ Surely, quite apart from being the kind of threat the United States should treat with disdain, this argument proves too much. Given the amount of bilateral economic and military assistance that the United States government has supplied to Israel over the years, not to mention the huge amounts of private donations and humanitarian assistance that U.S. citizens have provided, one might think that American sentiments on the permanence of the modern Israeli state would hardly be surprising.

Moreover, looking at the enormous, world-historical events affecting the Middle East that have occurred since the modern State of Israel's independence in 1948, the issue of acknowledging Israel's capital and moving the U.S. Embassy pales into insignificance. If the Middle East peace process is such a delicate snowflake that the location of the U.S. Embassy in Israel could melt it, one has to doubt how viable it is to begin with. This question calls for realism, not the overheated rhetoric that we have heard too often. Washington's role as an honest broker in the peace process will not be enhanced or reduced in the slightest by moving its Embassy to Jerusalem. To say otherwise is to mistake pretext for actual cause. Moving the Embassy may produce new talking points for those who have never reconciled themselves to Israel's existence in the first place, but it will not "cause" any change in the existing geopolitical state of play.

Finally, we hear constantly the variation that concedes an eventual decision to relocate the Embassy, but pleads that "right now" is not the correct time. This approach argues for a supposedly temporary deferral of the move, but curiously, "temporary" deferral has now lasted for nearly seventy years. We hear it still today. When I served in the Department of State, there was a standing joke that on the word processors in the Near East Bureau, one needed to strike only a single key to produce the phrase "at this particularly delicate point in the Middle East peace process" on the computer screen, so often did it appear in NEA memos and cables.

³ David Smith, "Republican senators introduce bill to move US embassy in Israel to Jerusalem," *The Guardian*, January 3, 2017. <https://www.theguardian.com/world/2017/jan/03/us-embassy-israel-jerusalem-republican-bill>

The Trump Administration has been exploring whether potentially profound changes in the Middle East now provide an auspicious moment to make progress in the peace process. These diplomatic efforts, like all previous ones since 1948, have their ups and downs. But with respect to a possible decision to move the Embassy, saying at an optimistic point that “we don’t want to risk the progress we’re making,” or saying at a pessimistic point, “this could completely doom our efforts,” means there is never a good time. This is why in diplomatic circles, “not now” often means “not ever.” I applaud the Administration’s efforts, but I see them as only coincidentally connected to the Embassy issue.

The effective management of America’s bilateral relations with Israel; consistency with international geopolitical realities; and plain common sense all argue that the United States should acknowledge Jerusalem as Israel’s capital and relocate our embassy to indisputably Israeli sovereign territory in West Jerusalem. The political arguments against following U.S. diplomatic interests to their natural conclusions are overblown, misguided, and outdated. We should treat the Israel Embassy issue as we have treated it in essentially every other country in the world with which we have diplomatic relations.

Mr. Chairman, let me once again express my appreciation for the opportunity to appear before the Subcommittee, and I would be pleased to try to answer the Subcommittee’s questions.

John R. Bolton was appointed as United States Permanent Representative to the United Nations on August 1, 2005 and served until his resignation in December 2006. Prior to his appointment, Ambassador Bolton served as Under Secretary of State for Arms Control and International Security from May 2001 to May 2005.

Throughout his distinguished career, Ambassador Bolton has been a staunch defender of American interests. While Under Secretary of State, he repeatedly advocated tough measures against the nuclear weapons programs of both Iran and North Korea, and the proliferation of weapons of mass destruction worldwide. He led negotiations for America to withdraw from the 1972 Anti-Ballistic Missile Treaty so that the Bush Administration could proceed with a national missile-defense program.

Ambassador Bolton has spent many years of his career in public service. Previous positions he has held include assistant secretary for International Organization Affairs at the Department of State, 1989-1993; assistant attorney general, Department of Justice, 1985-1989; assistant administrator for Program and Policy Coordination, U.S. Agency for International Development, 1982-1983 and general counsel, U.S. Agency for International Development, 1981-1982.

Ambassador Bolton is an attorney. Currently, he is of counsel at Kirkland & Ellis LLC with a focus on counseling domestic and international clients in complex corporate, litigation, internal investigations, regulatory and competition matters. From 1974-1981, he was an associate at Covington & Burling in Washington, where he returned as a partner in the firm from 1983-1985.

Ambassador Bolton is the author of *Surrender is Not an Option: Defending America at the U.N. and Abroad*, published by Simon and Shuster (November 2007) and *How Barack Obama is Endangering our National Sovereignty*, published by Encounter Books (April 2010).

Ambassador Bolton currently serves as a senior fellow at the American Enterprise Institute (AEI), a contributor to FOX News Channel and FOX Business Network, and his op-ed articles are regularly featured in *The Wall Street Journal*, *The New York Times* and *The Los Angeles Times*. AEI is a nonprofit public policy center dedicated to preserving and strengthening the foundations of freedom through research education and open debate.

Ambassador Bolton was born in Baltimore, Maryland. He graduated with a Bachelor of Arts degree, summa cum laude, Phi Beta Kappa, from Yale College in 1970, and received his Juris Doctor from Yale Law School in 1974. He currently resides in Maryland with his wife, Gretchen. They have one daughter, Jennifer Sarah, who also graduated from Yale College, and received her MBA and SM degrees from MIT in 2014 and is currently a senior manager at Nissan's manufacturing facility in Mississippi.

**Committee on Oversight and Government Reform
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Pursuant to House Rule XI, clause 2(g)(5) and Committee Rule 16(a), non-governmental witnesses are required to provide the Committee with the information requested below in advance of testifying before the Committee. You may attach additional sheets if you need more space.

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Name of Entity	Your relationship with the entity				
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2. Please list any federal grants or contracts (including subgrants or subcontracts) you or the entity or entities listed above have received since January 1, 2015, that are related to the subject of the hearing.					
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Signature J R Belta

Date: 10/31/17

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