



# Research Report

## International Court of Justice

Relocation of the United States Embassy to  
Jerusalem  
(Palestine v. United States of America)

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## Introduction

On 6 December 2017, Donald Trump, the President of the United States of America, officially announced the recognition of the Holy City of Jerusalem as the capital of Israel. In an announcement he ordered the planning of the relocation of the US Embassy in Israel from Tel Aviv to Jerusalem. In mid-October 2018, the United States Secretary of State, Mike Pompeo, announced that the Embassy in Jerusalem would be merging the US Consulate-General into a single mission. The Embassy opened at its Jerusalem location on May 14 2018. The move came 23 years after the passage of the Jerusalem Embassy Act of the US on 23 October 1995, which set the deadline as 31 May 1999 for the move. Despite this, the Clinton, Bush and Obama administrations all deferred the move. The decision for moving the US embassy has led to a lot of controversy. On the one hand the decision has been welcomed by Israel's government, and is strongly supported by Israeli Jews, but on the other many Palestinians are very unhappy about it.



## The Committee

The International Court of Justice is the principal judicial organ of the United Nations. Established in the 1945 by the UN Charter, the court began work in 1946 as the successor to the Permanent Court of International Justice. The ICJ settles legal disputes between member states and gives advisory opinions to authorized UN organs and specialized agencies. It comprises a panel of 15 judges elected by the General Assembly and Security Council for nine-year terms. During the MUNA conference the ICJ will consist of 16 delegates, of which 8 are judges and 8 are advocates. The ICJ is seated in the Peace Palace in the Hague, Netherlands.

The rules of procedure of the ICJ are quite distinct from the other committees in the MUNA conference. It is therefore important for the advocates to go over the rules of procedure of the ICJ, which can be found under conference → downloads on the MUNA website. Important to note from this document is that the four advocates of a state create a charge or a few clauses before the conference so that they can be discussed during the indoor lobbying. A sample charge can also be found in this document. Because the ICJ is not part of the General Assembly there will not be a plenary session.

## Keywords

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**Arab** A family of cultures referring to the people originating from the Arabian peninsula and, nowadays, including various cultural families from across the whole Middle East and Northern Africa. The term is independent of religious beliefs.

**Zionism** according to the Jewish Virtual Library: the national movement for the return of the Jewish people to their homeland and the resumption of Jewish sovereignty in the Land of Israel.

**Palestine (state)** It is the *de jure* sovereign state in Western Asia claiming the West Bank and Gaza Strip with Jerusalem as the designated capital, although its administrative centre is currently located in Ramallah.

**Palestine (region)** Palestine is a geographical region including modern-day Israel, the Gaza Strip and the West Bank.

**Palestinians** The modern descendants of the people who have lived in Palestine through the ages. These people are culturally mostly Arab and, in their majority but not in their entirety, Muslim. This term encompasses Arab Israelis who identify culturally with this group, Palestinians in the West Bank and Gaza, Palestinians in refugee camps and other Palestinians around the Globe.

**Israel (state)** The State of Israel is a United Nations recognised country in Western Asia located on the south eastern shore of the Mediterranean Sea.

**Hamas** An organisation with military and political wings born during the 1980s whose main objective is to liberate the Palestinian people of 'Zionist' occupation and to establish an Arab state in place of Israel.

## Overview

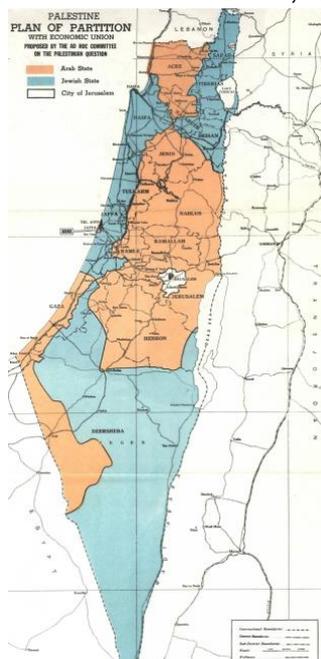
One of the largest misconceptions of the Palestine-Israel conflict is that it has been going on for many centuries. It is said that this conflict is about ancient religious beliefs, but in fact this conflict has only been going on since the early 20<sup>th</sup> century. Furthermore, despite religion playing a role in the conflict, the conflict is mostly about two groups of people both claiming the same area of land. Around 1900 the area of land we now call Israel-Palestine fell under the Ottoman Empire. It used to be a religiously diverse area of land including mostly Muslims and Christians and a smaller number of Jews, who lived generally in peace. This state of peace changed because of a growing sense of nationalism. In the area a group of people started developing a sense that they were not just Arabs but a distinct national identity called Palestinians. On the other hand, at around the same time, a movement started developing where Jews were joining a movement called Zionism. The main principle of this movement was that Judaism was not only a religion, but also a nationality which deserved a nation of its own. After centuries of prosecution many Jews believed that the Palestine-Israeli state was to be their only place of safety and therefore their new homeland. And so in the first decade of the 20<sup>th</sup> century tens of thousands of European Jews moved into this area.

After World War I the Ottoman Empire collapsed. The British and French empires carved up the Middle East, whereby the British took over the region and called it The British Mandate for Palestine, shortened to Palestine. The British firstly allowed the

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ongoing Jewish immigration, but as the number of Jewish immigrants grew tensions grew between the Jews and Arabs. By the 1930s the British started limiting Jewish immigration to the area. In response, Jewish militias formed to fight both the local Arabs and to resist British rule. During the holocaust of World War II many Jews were prosecuted by the German Nazis, leading to an increase in the immigration of Jews to British Palestine, and hereby galvanizing much of the world in support of a Jewish state.

In 1947, as sectarian violence between Arabs and Jews grew, the United Nations approved a plan to divide British Palestine into two separate states: one for Jews; Israel and one for Arabs; Palestine. The city of Jerusalem, where Jews, Muslims and Christians all have holy sites, was to become a special international zone. The plan was meant to give Jews a state, to establish Palestinian independence, and to end the sectarian violence that the British could no longer control. The Jewish accepted the plan and declared independence as Israel, but Arabs throughout the region saw the UN plan as just more European colonialism trying to steal their land. Many of the Arab states, who had just recently won independence themselves, declared war on Israel in an effort to establish a unified Arab Palestine where all of British Palestine had been. This war is known as the Arab-Israeli war between December 1947 and January 1949. The new state of Israel won the war. But in the process, they pushed well past their borders under the UN plan, taking the western half of Jerusalem and much of the land that was to have been part of Palestine. They also expelled huge numbers of Palestinians from their homes, creating a massive refugee population whose descendants today number about 7 million. At the end of the war, Israel controlled all of the territory except for Gaza, which Egypt controlled, and the West Bank, named because it is west of the Jordan River, which Jordan controlled. This war was the beginning of the decades-long Arab-Israeli conflict. Then something happened which transformed the conflict. In 1967, Israel and the neighbouring Arab states fought another war; the six-days war. When it ended, Israel had seized the Golan Heights from Syria, the West Bank from Jordan and both Gaza and the Sinai Peninsula from Egypt. Israel was now occupying the Palestinian territories, including all of Jerusalem and its holy sites. This left Israel responsible for governing the Palestinians – a people it had fought for decades. In 1978 Israel and Egypt signed the US-brokered Camp David Accords and shortly after that, Israel gave Sinai back to Egypt as part of a peace treaty. At the time this was hugely controversial in the Arab world. Egyptian president Anwar Sadat was assassinated, in part because of outrage against it. But it marked the beginning of the end of the wider Arab-Israeli conflict. Over the next few decades, the other Arab states gradually made peace with Israel, even if they never signed formal peace treaties. But Israel's military was still occupying the Palestinian territories of the West Bank and Gaza, and this was when the conflict became an Israeli-Palestinian struggle. The Palestinian Liberation Organization, which had formed in the 1960s to seek a Palestinian state, fought against Israel, including through acts of terrorism. Initially, the PLO claimed all of what had been British Palestine, meaning it wanted the end of the state of Israel entirely. Fighting between Israel and the PLO went on for years, even including a 1982 Israeli invasion of Lebanon to expel the group from



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Beirut. The PLO later said it would accept dividing the land between Israel and Palestine, but the conflict continued. As all of this was happening, something dramatic was changing in the Israeli-occupied Palestinian territories: Israelis were moving in. These people are called settlers, and they made their homes in the West Bank and Gaza whether Palestinians wanted them to or not. Some moved for religious reasons, some because they wanted to claim the land for Israel, and some just because housing was cheap – and often subsidized by the Israeli government. Some settlements are cities with thousands of people; others are small communities deep into the West Bank. The settlers have soldiers to guard them whilst the growing settlements force Palestinians off their land and divide communities. In the short-term, they make the occupation much more painful for Palestinians. In the long-term, by dividing up Palestinian land, they make it much more difficult for the Palestinians to ever have an independent state. Today there are several hundred thousand settlers in occupied territory even though the international community considers them illegal.

By the late 1980s, Palestinian frustration exploded into the first intifada, which is an Arabic word for uprising. It began with mostly protest and boycotts but soon became violent, and Israel responded with heavy force. A couple of hundred Israelis and over a thousand Palestinians died in the first Intifada. Around the same time, a group of Palestinians in Gaza, who considered the PLO too secular and too compromise-minded, created Hamas, a violent extremist group dedicated to Israel's destruction. By the early 1990s, it had become clear that Israelis and Palestinians had to make peace, and leaders from both sides signed the Oslo Accords of 1993. This was meant to be the significant first step towards Israel maybe someday withdrawing from the Palestinian territories, and allowing an independent Palestine. The Oslo Accords established Palestinian Authority allowing Palestinians a little bit of freedom to govern themselves in certain areas. Hard-liners on both sides opposed the Oslo Accords. Members of Hamas launched suicide bombings to try to sabotage the process. The Israeli right protested peace talks, with protesters calling Prime Minister Yitzhak Rabin a traitor and a Nazi. Not long after Rabin signed the second round of Oslo Accords, a far-right Israeli shot him to death in Tel Aviv. This violence showed how the extremists on both sides can use violence to derail peace, and keep a permanent conflict going as they seek the other side's total destruction. That's a dynamic that has existed ever since. Negotiations meant to hammer out the final details on peace have dragged on for years, and an important Camp David Summit in 2000 came up empty. Palestinians came to believe that peace was unattainable, and rose up in a Second Intifada, this one much more violent than the first. By the time it wound down a few years later, about 1000 Israelis and 3200 Palestinians had died. The Second Intifada really changed the conflict. Israelis became much more sceptical that Palestinians would ever accept peace, or that it would even be worth trying. Israeli politics shifted right, and the country built walls and checkpoints to control Palestinians' movements. They are not really trying to solve the conflict anymore, just manage it. The Palestinians have been left feeling like negotiating hasn't worked and violence hasn't worked, and that they will remain under an ever-growing occupation. Since then, Israel has withdrawn from Gaza. Hamas has gained power but split from the Palestinian Authority in a short civil war, dividing Gaza from the West Bank. Israel put Gaza under a suffocating blockade and unemployment has risen to 40%. This is the state of the conflict, as we know it today.

## **Arguments**

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Under US law signed by President Clinton, the US had to relocate its embassy from Tel Aviv to Jerusalem unless the president waived the requirement on national security grounds. All presidents since Clinton have issued the waiver saying Jerusalem's status is a matter for Israelis and Palestinians to negotiate. Now, as then, President Trump faced significant resistance from his top national security advisers saying the move would pose a danger to American diplomats and troops stationed in the Middle East. The US also face legal constraints: recognizing Jerusalem as Israel's capital could run foul of UN Security council resolutions. Namely, In the application of the current case (28 September 2018) which can also be found on the official website of the ICJ, it states that the State of Palestine "request the Court to declare that the relocation, to the Holy City of Jerusalem, of the United States embassy in Israel is in breach of the Vienna Convention on Diplomatic Relations". Under the subheading IV/LEGAL GROUNDS FOR THE CLAIMS of this official document it is very carefully explained how this is the case. In summary this is the case because the diplomatic mission of a sending State must be established on the territory of the receiving state. The relocation of the US Embassy in Israel to Jerusalem is in breach of the provisions of the Convention on Diplomatic Relations as well as "other rules of general international law".

On the other hand, according to The Jerusalem Post, if the opening of the Embassy violates international law "this would make Israel the only country in the world that is not allowed to determine its own capital and the United States the only nation not allowed to decide where to place its own embassies". On 18 December 2017, due solely to the veto of the United States of America, the concerned party to the dispute, the Security Council failed to adopt a resolution reiterating that "any decisions and actions which purport to have altered, the character, status or demographic composition of the Holy City of Jerusalem have no legal effect, are null and void and must be rescinded in compliance with relevant resolution of the Security Council". Again according to the Jerusalem Post: "Some critics point to a General Assembly Resolution last December condemning the Embassy move and calling changes in Jerusalem "null and void". This is not law. Only resolutions passed under Chapter 7 of the United Nations Charter have the force of international law, coming from the Security Council. General Assembly resolutions passed under Chapter 4, are essentially only international suggestions."

### Timeline of Events

**29 November 1947** United Nations partition plan for Palestine (resolution 181 (II))

**5-10 June 1967** Six-day war

**late 1980s** Palestinian frustration exploded into the first intifada

**1993** the Oslo Accords

**23 October 1995** the passage of the Jerusalem Embassy Act of the US

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- 6 December 2017** the announcement of the plan for the relocation of the US Embassy to Israel from Tel Aviv to Jerusalem
- May 14 2018** the opening of the Embassy at its Jerusalem location
- 28 September 2018** the state of Palestine submits their application to the ICJ

## Resolution

During the conference there will be time for indoor lobbying. During this time it is suggested that the advocates of the states merge their clauses into one single charge. The punishments for the opposing state should be stated in this charge. For example, in this specific case the United States of America should therefore create a charge in which they find a solution for the case in favour of their state and vice versa. Because of the controversial nature of this issue it is difficult to reach a middle ground solution. Despite this, it is suggested that the advocates try to settle this argument in a peaceful manner.

## Links and sources

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[https://en.wikipedia.org/wiki/State\\_of\\_Palestine](https://en.wikipedia.org/wiki/State_of_Palestine)