

Forum: The International Court of Justice

Issue #08-01: Palestine v. the United States of America

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The Case in Context

The State of Palestine accuses the United States of America of violating the Vienna Convention on Diplomatic Relations in a greater context. More specifically, Article 48 of the Convention. Palestine also accuses the United States of violating a number of UN Resolutions, specified below.

The principal subject of this case is the relocation of the Embassy of the United States of America in Tel Aviv to the city of Jerusalem. The status of Jerusalem in terms of Israel and Palestine's perspective was internationally agreed upon with the United Nations Security Council Resolution 181 concerning "Independent Arab and Jewish states and the Special International Regime for the City of Jerusalem." This resolution was introduced in 1947 and called for the partition of Palestine (at the time occupied by Great Britain) into Jewish and Arab states, and the city of Jerusalem as a "*corpus separatum*" (a separate entity) "to be governed by a separate international regime" (Encyclopedia Britannica). The resolution further proposed the creation of a separate committee solely dedicated to this issue. Thus, the United Nations Special Committee on Palestine (UNSCOP) was created. This committee was composed of members from 11 countries, and ultimately, a conclusion was reached. The majority of the committee proposed that Palestine would be partitioned into two separate states, both sharing control of Jerusalem. The minority

of the committee proposed the creation of a single state made up of Arab and Jewish citizens. The Arab world rejected both solutions while the Jewish people living in Palestine accepted the first scenario. The Arab Higher Committee, an organ of the Arab league created in 1945 to supervise the governance of Palestine, denounced both solutions and demanded that the rights of Palestinian Arabs to control Jerusalem were “self-evident” and should be recognized by the UN charter. The first proposal of the UNSCOP was put to vote as Resolution 181 on November 29, 1947, and after a period of lobbying by Zionists and other pro-Jewish groups, the resolution passed and was later recognized as the foundation and legal basis for the existence of the State of Israel.

Side A: Palestine

It is important to understand that Palestine's aim is to revert the decision of the United States, not to force any actions regarding its status as a state under Israeli occupation. The government of Palestine believes that the city of Jerusalem is endowed with “unique spiritual, religious, and cultural dimensions”. Their belief is also that Resolution 181 must be protected, and that Jerusalem must be vacated by Israeli troops. This side considers that by acknowledging Jerusalem as Israel's capital and relocating their embassy to that city, the United States has violated Resolution 181 and the Vienna Convention on Diplomatic Relations. Their position is that by occupying Jerusalem and the West Bank, Israel is illegally imposing administrative and legal measures upon the city, and by moving their embassy to Jerusalem, the United States is essentially approving of this.

Side B: The United States of America

The United States of America is one of the most important supporters of Israel. It was

the first country to recognize Israel as an independent state in May of 1948. More importantly to the context of this case, it recognized Jerusalem as the capital of Israel on December 6, 2017. It later moved its embassy to Jerusalem, which was inaugurated on May 14, 2018. The United States agrees that while this may be an inflammatory decision, it is committed to preserving peace in the Middle East, and to find an agreement that is “acceptable to both sides”, according to U.S. President Donald Trump. The United States is the defendant in this case, meaning that advocates must use evidence to prove that it has not violated any UN resolutions or international laws. The United States maintains that it is innocent and its decision is simply an acknowledgment of Israel as a sovereign state.

Stipulations¹

In 1947, the United Nations approved **Resolution 181** which advocated for the establishment of a Jewish and an Arab state from the British Mandate of Palestine. The resolution stated that “The City of Jerusalem shall be established as a *corpus separatum* under a special international regime” which meant that the city would not have a legal owner. Hostilities between Arabs and the Jews began following the approval of the resolution. The war resulted in Israel annexing most of the Palestinian territories as well as west Jerusalem, which was a violation of Resolution 181. The resolution was formally approved but its plans were never implemented.

Israel occupied the West Bank and Gaza Strip in 1967 during the Six-Day War. In 1980, Israel adopted the Jerusalem Law. The law stated that “Jerusalem, complete and united, is the capital of Israel”. This effectively meant that eastern Jerusalem was

¹ These are the facts and laws agreed upon by both parties. For the delegates' convenience, the chairs have decided on these and describe them in this section.

now fully integrated into the state of Israel, which opposed the international community's previous agreement. The United Nations strongly opposed the "basic law" of Israel, which led to the adoption of **Resolution 478**. The resolution declared that any Israeli attempt at altering "the character and status of Jerusalem" was not going to be recognized. Since the United Nations did not recognize Jerusalem as the capital of Israel, the resolution stated that all states must withdraw their diplomatic missions from the city.

In December of 2017, **Resolution ES-10/19** was approved by the General Assembly. The resolution reiterates its original point from Resolution 478 by mentioning "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 resolutions of the Security Council".

In 2017, a resolution was drafted by the Security Council to reiterate its position on Jerusalem. The **draft of Resolution S/2017/1060** stated 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" as a response to the United States recognizing the city as the capital of Israel. The draft also called for all countries to refrain from establishing diplomatic missions, including embassies and consulates, in Jerusalem. Fourteen members of the Security Council voted in favour of this resolution but it was vetoed by the United States. As such, the resolution did not pass but it announced the position of the United Nations in regards to the case.

Bibliography

"Latest Developments: Relocation of the United States Embassy to Jerusalem (Palestine v. United States of America): the International Court of Justice." *Latest Developments | Relocation of the United States Embassy to Jerusalem (Palestine v. United States of America) | International Court of Justice*, www.icj-cij.org/en/case/176.

"Basic Law: Jerusalem, Capital of Israel." *Knesset.gov.il*, www.knesset.gov.il/laws/special/eng/basic10_eng.htm.

"Resolution Adopted by the General Assembly on 30 November 2017." *United Nations*, 2017, undocs.org/A/RES/72/15.

"Resolution 478." *United Nations*, 1980, [undocs.org/S/RES/478\(1980\)](http://undocs.org/S/RES/478(1980)).

Britannica, The Editors of Encyclopaedia. "United Nations Resolution 181." *Encyclopædia Britannica*, Encyclopædia Britannica, Inc., www.britannica.com/topic/United-Nations-Resolution-181.

"Israel's War of Independence (1947-1949)." *Mfa.gov.il*, mfa.gov.il/mfa/aboutisrael/history/pages/israels%20war%20of%20independence%20-%201947%20-%201949.aspx.

"S/2017/1060." *Security Council Report*, www.securitycouncilreport.org/un-documents/document/s20171060.php.

Shapiro, Daniel B. "So You Want to Move the U.S. Embassy to Jerusalem? Here's How." *Foreign Policy*, Foreign Policy, 7 Feb. 2017, foreignpolicy.com/2017/01/31/so-you-want-to-move-the-u-s-embassy-to-jerusalem-heres-how/.

"8. Optional Protocol to the Vienna Convention on Consular Relations Concerning the Compulsory Settlement of Disputes." *United Nations Treaty Collection*, United Nations, treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=II-8&chapter=3&clang=_en.

"Statement by President Trump on Jerusalem." *The White House*, The United States Government, 6 Dec. 2017, www.whitehouse.gov/briefings-statements/statement-president-trump-jerusalem/.

"U.S. Relations With Israel - United States Department of State." *U.S. Department of State*, U.S. Department of State, 14 May 2018, www.state.gov/u-s-relations-with-israel/.