

**Forum:** International Court of Justice (ICJ)

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

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## Introduction

On December 6, 2017, the president of the United States, Donald Trump, publicly recognized Jerusalem as the capital of Israel and demanded the relocation of the U.S. embassy to the Israeli capital. While Benjamin Netanyahu, the prime minister of Israel, highly approved and praised such acknowledgement, Trump faced numerous backlash from the international community. The repercussion of Trump's action was not a surprise. Jerusalem, a city of spiritual, religious, and cultural importance, has long been a disputed city due to its special political status in the middle-east, specifically between Israel and Palestine. Palestine, in response, soon expressed its discontent and disagreement with Trump's action, considering it as a violation of the Optional Protocol to the Vienna Convention, an international convention which both the U.S. and Palestine are contracting members. As a result, on September 28, 2018, the State of Palestine filed an application to the International Court of Justice (ICJ) on the *Relocation of the United States Embassy to Jerusalem*, demanding the ICJ to proclaim the claim from the U.S. as illegal under the Vienna Convention, and asks the Court to demand the U.S. to withdraw its diplomatic mission from Jerusalem.

## Background Information

The topic of Jerusalem has long been an essential issue regarding the conflict between Israel and Palestine. On November 29, 1947, the UN General Assembly adopted a Partition Plan for Palestine (Resolution 181 (II)) that established Jerusalem "as a *corpus separatum* under a special international regime". Under the resolution, Jerusalem was administered under UN sovereignty and all residents in Jerusalem would become "the citizen of Jerusalem" unless they opt for citizenship from either Israel or Palestine. The resolution also called for the withdrawal of British armed force on the boundaries between the two states and Jerusalem. As soon as the British withdrew, however, there was a power vacuum and the Arab-Israeli War broke between the Arab nations and Israel. Consequently, by the end of the war, Israel gained control of West Jerusalem and Jordan controlled East Jerusalem. Although the UN kept pushing for the special status of Jerusalem through resolution 194, which tried to implement international

sovereignty in Jerusalem, UN intervention was ineffective and the tension between Israel and the Arab states remained high. In 1967, the Six-Day War, Israel occupied East Jerusalem. Afraid that Israeli occupation would alter the status of the city, the General Assembly passed resolution 2253 that called all action taken by Israel to change the status of Jerusalem as “invalid”, while the Security Council passed Resolution 252 that denied any change of the legal status of Jerusalem made by Israel. In 1980, the Knesset, the national legislature of Israel, passed the “Basic Law” that claimed Jerusalem as the “capital of Israel”, which was rejected by the UN Security Council 478, calling it “null and void.” On December 18, 2017, right after Trump unilaterally recognized Jerusalem as Israel’s capital and called for the relocation of the U.S. embassy to Jerusalem, the Security Council tried to adopt a resolution that reiterates the null effect of any alter in character, status, or demographic composition of Jerusalem, which was vetoed by the U.S. This eventually led the General Assembly to hold another emergency session that rejected the validity of the claims made by the U.S. and called for the reaffirmation of Security Council Resolution 478 in 1980.

## Major Parties Involved and Their Views

### The State of Palestine

The State of Palestine is a de jure sovereign state officially recognized by 137 UN member states, notably with countries such as the United States and Israel not acknowledging its statehood. It claims territories including the Gaza Strip and the West Bank, with Jerusalem as its capital.

On September 28, 2018, the State of Palestine instituted proceedings against the United States before the ICJ, claiming that the US had violated the Vienna Convention on Diplomatic Relations (VCDR) when it relocated its embassy to Jerusalem. In particular, its case revolves around article 3, which requires the functions of the diplomatic missions be performed “in the receiving state.” In the eyes of Palestine, Jerusalem is not Israeli territory, and therefore moving the embassy there meant that it was not established in the receiving state—thus violating the VCDR.

Palestine’s case rests on several important considerations. For one, the statehood of Palestine itself may be disputed, and this concerns whether or not Palestine even has access to the ICJ in the first place. It also needs to take into account the ICJ’s Monetary Gold jurisprudence, which holds that the Court must not adjudicate on claims which involve the legal interests of non-consenting third parties, which, in this case, would be Israel’s interest in Jerusalem.

### The United States of America

As one of the foremost players in international relations, the actions of the United States are bound to have significant implications. The US sees the State of Israel as one of its foremost allies in the Middle East and has a long history of backing the country militarily and diplomatically. In December 2017, the President of the US recognize Jerusalem as the capital of Israel, and The American Embassy in Jerusalem was then inaugurated on May 14, 2018.

As the defendant, the US has several possible ways to fend against Palestine's case. First, it could dispute the statehood of Palestine, though this debate is heavily muddled with politics. Second, it could dispute the basic legal premise of the VCDR argument that diplomatic missions must be performed within the physical territories of the receiving state, for it is perfectly usual that the ambassador to one country is also the ambassador to another without being physically present. Third, it could use the ICJ's Monetary Gold jurisprudence to its advantage, interpreting the case as also determining the status of Jerusalem, which Israel would clearly not consent to.

## Timeline of Relevant Resolutions, Treaties and Events

June 15, 1954	<b>The Monetary Gold principle was established with the judgment in the 1954 Monetary Gold case.</b>
April 18, 1961	<b>The Vienna Convention on Diplomatic Relation was signed by 192 state parties, including the US and Palestine.</b>
December 6th, 2017	<b>US President Donald Trump formally recognized Jerusalem as the capital of Israel and announced a plan to move the US embassy from Tel Aviv to the Holy City.</b>
May 14th, 2018	<b>The US Embassy was officially inaugurated at Jerusalem.</b>
September 28th, 2019	<b>The State of Palestine institutes ICJ proceedings against the United States of America.</b>

## Relevant UN Treaties and Events

- Vienna Convention on Diplomatic Relations, 18 April 1961.
- Resolution 181 (II). *Future government of Palestine*, 29 November 1947 **(A/RES/181(II))**
- Resolution 303 (IV), *Palestine: Question of an international regime for the Jerusalem area and the protection of the Holy Places*, 9 December 1949 **(A/RES/303(IV))**
- UN General Assembly, *Measures taken by Israel to change the status of the City of Jerusalem*, 4 July 1967 **(A/RES/2253)**
- Resolution 252 (1968), *Question of Palestine*, 21 May 1968 **(S/RES/252)**
- Resolution 476 (1980), *Question of Palestine*, 30 June 1980 **(S/RES/476)**
- Resolution 478 (1980), *Question of Palestine*, 20 August 1980 **(S/RES/478)**
- Resolution 2334 (2016), *The situation in the Middle East*, 23 December 2016 **(S/RES/2334)**

## Evaluation of Previous Attempts to Resolve the Issue

### United Nations

After President Trump's announcement to relocate the US embassy in Israel from Tel Aviv to Jerusalem, the international community outraged over the United States' decision. Shortly before Trump's announcement, the General Assembly voted on a resolution in Jerusalem which stated that "any actions by Israel, the occupying Power, to impose its laws, jurisdiction, and administration on the Holy City of Jerusalem were illegal and therefore null and void." It further stressed the need for the parties to refrain from provocative actions, especially in areas of religious and cultural sensitivity, and called for respect for the historic status quo at the holy places of Jerusalem. Later on, after Trump's announcement, the UN Security Council voted on December 7, 2017, to condemn the US. However, the resolution failed after getting vetoed by the US. On December 21, 2017, the General Assembly voted for Resolution ES-10/L.22 by 128-9 to condemn the US declaration on the status of Jerusalem as Israel's capital and enjoin other states to refrain from setting up diplomatic offices in Jerusalem. However, even after all the UN debates around the relocation of the US embassy in Israel, little action was done in terms of resolving this issue. The resolutions passed were all condemning the US's action, not discussing potential solutions for the issue. Therefore, no agreements or consensus were reached between the US and the Palestinian Authorities. It is then up to the judges to determine whether the International

Court of Justice has the jurisdiction of resolving this case and to adjudge which party should win this case.

## Bibliography

All citations must be in MLA format. You may use [www.noodletools.com](http://www.noodletools.com) or [www.easybib.com](http://www.easybib.com) to create your bibliography. Please ensure that all entries in this section are '**left-justified**' – as this paragraph is set out. Also, any websites cited must be in **hyperlinks**. Put the **most useful links in bold**.

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The State of Palestine, "Application Instituting Proceedings in the International Court of Justice (State of Palestine v. The United States of America)." ICJ, ICJ, 28 Sep. 2017, <https://www.icj-cij.org/files/case-related/176/176-20180928-APP-01-00-EN.pdf>

## Appendix or Appendices

[Vienna Convention On Diplomatic Relations 1961](#)

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