



**Relocation of the United States embassy to
Jerusalem (Palestine v. USA)**

International Court of Justice

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Introduction

On December 6, 2017, Donald J. Trump, the US president, confirmed that Jerusalem was the capital of Israel, and stated that the US embassy should move from Tel Aviv, Israel to Eastern Jerusalem, Israel. The embassy officially moved to Jerusalem on May 14, 2018.

Trump believed moving the US embassy to Jerusalem would create peace as a recorded message from the White House states, "our greatest hope is for peace,". He stated that he would keep all of his promises of peacekeeping if the US embassy moved. This peace plan would also help prevent violence in the Israeli-Palestinian Conflict. However, this decision of moving the US embassy by Trump's initiative has caused many different reactions from the Israelis, Palestinians, and other people around the world. Israel strongly supported the move of the Embassy since it reinforced their legitimacy and strengthened their power over Palestinian territories. Additionally, the move of the embassy paved the way for other countries to follow the US's initiative, hence, increasing Israel's international presence. On the other hand, the Palestinian Authorities strongly disagree with the move as they claim it limits their autonomy and control of their citizens.

The state of Jerusalem has been disputed for a long time as it contains sites that are sacred to both Israel and Palestine. To date, there is no decision as to whether Jerusalem is the legitimate capital of Israel. Embassies in Israel have therefore been located in Tel Aviv, per the advice of the United Nations, to prevent politicians from making impetuous decisions without proper negotiations which would increase tensions in the region.

Definition of Key Terms

Embassy

An embassy is a group of government officials who represent their own country and government in a foreign country. The ambassador is usually in charge of the embassy, and the building in which they work is also called an embassy.

Two state solution

A proposed agreement to resolve the Israeli-Palestinian conflict by creating two states. These two states would be Israel and Palestine. In 1993, this agreement was put into action, and a plan was created. The two-state solution was part of the Oslo Accords, and eventually became part of the Palestinian Authority (PA). This solution was created due to many historical events. As a result of the fall of the Ottoman Empire, affirmations were created for both Jews and Arabs to have the right of self-determination in Palestine. In 1948, the dividing of the land to create Israel and Palestine failed. An Israeli state was created however, there was no Palestinian state and the West Bank and Gaza Strip were under the rule of Egyptians and Jordanians. Israel occupied the West Bank, the Gaza Strip and other Arab areas during the Six-



Day War of 1967. Due to this, the Israelis believed they could exchange land with the Palestinians which they hoped would eventually create peace and stability.

Palestinian National Authority

Commonly known as the Palestinian Authority (PA). It is a government body controlled by Fatah which has control over areas in the West Bank as a result of the 1993-1995 Oslo Accords.

Oslo Accords

Agreements made by the Government of Israel and the Palestine Liberal Organization (PLO) to sustain peace due to the Israeli-Palestinian conflict. There are two Oslo Accords: Oslo I Accord and Oslo II Accord. Oslo I Accord was signed in Washington DC, the US in 1993. Oslo I Accord was formed to find a solution to the Israeli Palestinian Conflict. Oslo II Accord was signed in Taba, Egypt in 1995. This Accord was also an agreement to sustain peace in this conflict.

Oslo Process

The Oslo Accords eventually formed the Oslo Process. This process was created to create a peace treaty in regards to the Israeli-Palestinian conflict. This peace treaty would be based on United Nations Security Council Resolutions 242 and 338. This peace treaty would also aim to create Palestinian people to have the right to self-determination.

De facto

Practices that are not legally recognized although they exist in the status quo. The Turkish Republic of Northern Cyprus is an example of a de facto state since it illegally occupies Cyprus and is only recognized by Turkey.

De jure

Practices that are legally recognized, regardless of what happens in the status quo. An example of this is the state and local Jim Crow Laws enforced in the 1950s in the United States that enabled racial segregation to happen.

Corpus separatum

A state whereby a city or region's political and legal status differs from that of the country surrounding it. The United Nations has claimed in numerous General Assembly and Security Council resolutions that Jerusalem is a corpus separatum however, this has never happened.

Jus cogens

A legal principle that identifies laws from which no derogation is legitimate. Examples of such laws include prohibitions against genocide. In accordance with article 38 of the Statute of the ICJ, the court may consider such principles which are not codified as well as international law.

Burden of Proof

The obligation of one side to put more weight on a point being argued to prove it.

Fatah

There are two main political groups in Palestine, the first being Fatah, formerly known as the Palestinian National Liberation Movement. The Party was formed on October 10 1959, 1959, in Kuwait and despite its diminishing popular support, it remains key in

the peace negotiations as it is the party leading Palestine, and is therefore widely recognized.

Hamas

Hamas was created in the late 1970s and consisted of activists in the Islamist Muslim Brotherhood who established institutions in the Gaza Strip and West Bank. It is a religious faction of the PLO and now acts independently which has led to conflict within the PLO as well as Israel. After the Aqsa intifada, a period of extreme violence between Israel and Palestine in 2000, Hamas became more moderate with their views regarding negotiations. Such views were prominent in peace talks in Madrid in 1991, and in Norway in 1993, enabling Israel and Palestine's mutual recognition to grow, and helping Palestine receive governing functions in the West Bank and Gaza Strip. Israel, the United States of America, the United Kingdom and the European Union have all declared that they consider Hamas a terrorist group.

West Bank

It is an area of the former British mandated territory of Palestine which is west of the Jordan River. It was claimed to be part of the Hashemite Kingdom of Jordan from 1949 to 1988 however, it was eventually occupied by Israel in 1967.

General Overview

The geographic location of areas in Israel

In the picture, you can see a map of Israel. The West Bank is a region administered by Israel however, 42% of its land is ruled by the Fatah-run Palestinian Authority. The Gaza region is ruled by Hamas, a Palestinian Sunni-Islamic, fundamentalist, nationalist and militant organization.



Jerusalem

Since Israel was established in 1948, many nations, including the US, have not seen any sovereignty over Jerusalem, a capital, which is holy to Jews, Muslims, and Christians. Jerusalem is claimed to be the capital of Israel by the Israeli government. The Palestinian National Authority (commonly referred to as the Palestinian Authority, PA) claims that East Jerusalem is the Palestinian territory. Despite this, Israel has built many settlements in East Jerusalem and there are 200,000 Jewish citizens living there. The United Nations Security Council believes it is an occupied Palestinian territory.





Israeli-Palestinian Conflict

The Israeli-Palestinian Conflict began in 1947 when the United Nations created the Partition Plan. Due to this plan, the British mandate of Palestine was divided into Arab and Jewish states.

From May 14 1948 until 1949, the Israel State was created which caused the first Arab-Israeli War in 1948. The war saw a victorious Israel, 750.000 displaced Palestinians, and the division of the country into the State of Israel, the West Bank, and the Gaza Strip.

In 1987, the first intifada, an uprising against oppression, happened. Thousands of Palestinians who lived on the West Bank and the Gaza Strip rose against the Israeli government. In 1993, the Oslo I Accords were created. This granted Palestine a degree of autonomy in the West Bank and Gaza and allowed for distinguished recognition between the Palestinian Authority and the Israeli government. In 1995, the Oslo II Accords were created. This agreement made Israelis remove 6 cities and 450 towns from the West Bank. From September 2000 to 2005, there was a second intifada by the Palestinians. Because of this, the Israelis built a barrier wall around the West Bank in 2002 despite dissent from the International Court of Justice.

On July 28 2013, there were diplomatic negotiations between the State of Israel and the Palestinians with the help of the US. These agreements would allow a final agreement to be achieved over the following nine months. In 2014, the Palestinian Authority's ruling party in the West Bank, Fatah, created a government that has different political beliefs and values from Hamas.

In the summer of 2014, there was a military confrontation between the Israeli military and Hamas. In this military confrontation, Hamas fired around three thousand rockets into the State of Israel, and in response Israel attacked Gaza. This violence ended in late August 2014 with a ceasefire which was conducted by Egypt. However, this was done after 7 Israelis and 2251 Palestinians were killed.

In 2015, the Palestinian President called Mahmoud Abbas, decided to stop following the divisions of territory created by the Oslo Accords. In March and May 2018, there were protests by the Palestinians at the border between the Gaza Strip and Israel in regards to the territorial divisions. There was also more violence between Hamas and the Israeli military before a ceasefire was created. In Gaza, there were over one hundred rockets fired into Israel by militants. The response of Israel was to fire even more rockets than Gaza did. This was done within twenty-four hours.

Trump's Peace Plan

The Trump administration wanted to create an Israeli-Palestinian deal, which would be considered a foreign policy aim. Relocation of the US embassy in eastern Jerusalem, a desirable US policy, caused the Trump administration to stop funding from the UN Relief and Works Agency which gave help to Palestinian refugees. He believed that creating this peace deal by moving the US embassy would help towards the Israeli-Palestinian Conflict, and cause the negotiations between the Palestinians and Israelis to be resolved. Moving this embassy would show that Trump is willing to help and protect the citizens in Jerusalem, and resolve their problems.



Furthermore, Trump's peace plan was to create an independent Palestinian State and allow Israeli sovereignty to be recognized. This plan of creating sovereignty would include a map that would show the territorial agreements Israel is willing to make. This map would be more than double the Palestinian territory and would also allow the Palestinians to have their capital in eastern Jerusalem.

The Palestine Liberation Organization (PLO) believed that Trump's plan would allow them to control over 15% of "historic Palestine." Trump's peace plan would also allow Jerusalem to remain an "undivided city of Israel".

However, Israel and Palestine have both wanted to claim this holy city of Jerusalem. Palestine is willing to make Jerusalem part of the Palestinian state; however, this will not happen as it has been formally occupied by Israel in the 1967 Middle East War.

Additionally, Trump disclosed that he would like to allow Palestine to have an independent state whilst the existing Jewish settlement in the West Bank, owned by the Israelis, would remain. He announced that the territory allocated to the Palestinians would remain the same for 4 years.

Major Parties Involved

United States of America

Israel, alongside Egypt, was the first country to be designated as a major non-NATO ally by the USA in 1987. Although the USA has very good relations with Israel, it has also been determined to find diplomatic solutions that suit both states equally. The Jerusalem Embassy Act, introduced during the term of Bill Clinton, was the first time in history where US presidents avoided moving the US Embassy to Jerusalem. Many Presidents, including Barack Obama, claimed that moving the Embassy would render any peace talks between Israel and Palestine impossible. Despite this long-standing belief, Donald Trump became the first US president to develop the plans in the Jerusalem Embassy Act and within four months of his inauguration, the US Embassy was opened in Jerusalem. The US Government remains committed to bringing peace to both Israel and Palestine, an attempt was seen through the creation of the Palestinian Affairs Unit (PAU) in the Embassy in Israel which operates under the aim of creating long-standing peace in the region.

The move of the US embassy in Israel exacerbated the already strained relations between Palestine and the USA. Palestine is not recognized by the USA as a de jure state however, the USA acknowledges that the PLO acts on behalf of the Palestinian people. The territories that the PA governs under the Oslo Accords are also recognized as legitimate by the USA. After Trump's defeat in the 2016 presidential election, Biden pledged to improve relations with Palestine, he has also expressed the importance of finding a two-state solution and the need to decrease tensions between Israel and Palestine. Biden aims to reinstall ties with Palestine and increase autonomy by progressing the plans to reopen the US consulate in Israel despite vocal dissent from Israeli Prime Minister Naftali Bennett.



Israel

The State of Israel, established on May 4, 1948, has participated in a 54-year conflict with Palestine. This conflict is one of the most endured to this day. The Israeli government was extremely satisfied by the recognition of Jerusalem as the country's capital and supported the move of the US Embassy. Benjamin Netanyahu was the preceding Prime Minister of Israel from 2009-2021. He succeeded Ehud Olmert, but his plans regarding Palestine differed greatly. Because of his refusal to pick up where the negotiations of 2008 left off, the conflict has lengthened and casualties have increased since both sides are often unable to cooperate. Netanyahu's term ended on the 23rd of March of 2021 and the current Prime Minister is Naftali Bennett, an ultranationalist right-wing politician.

Palestine

Palestine is a crucial region in the middle east because it is situated at a junction between Africa and Asia. The geographical location of Israel and Palestine makes them extremely prone to conflict since they hold importance for many different religions such as Islam and Judaism. Mechanization of this can be seen through the rumours cultivated by extremists with regards to the 'Jewish Plans' to demolish the al-Aqsa mosque in Jerusalem. This is not a lone example, as there are many conflicts in the region that stem from religion. Palestine is against the relocation of the US embassy as they claim it undermines their autonomy and harms their citizens, hence why they are the appellants in this case.

Palestine has two major parties: Fatah and Hamas both of whom remain influential in the Palestinian region. Mahmoud Abbas is currently the president of the state of Palestine and the Palestinian National Authority. He has been chairman of Fatah since the 11th of November, 2004. Abbas has played a major role in the peace talks and reforming the negotiation strategy of Palestine. Abbas has also fought for the self-determination of Palestine, in September 2011, he requested that the Security Council admit an independent Palestinian state to the UN. Even though this was opposed by the United States of America and Israel. Abbas was successful in passing a draft resolution that upgraded Palestine's status from "permanent observer" to "non-member observer state". Additionally, in April 2015, Palestine was admitted to the International Criminal Court despite vocal opposition from Israel.

Ismail Haniyeh is the leader of Hamas and was prime minister of the Palestinian Authority in 2006-2007. Due to the inter-factional fighting between Fatah, an autonomous administration was created in the Gaza strip, of which Haniyeh was the de facto leader in 2017. Haniyeh played a significant role in the conflict as he advocated for the release of more than 1000 Palestinian soldiers in Israel and was considered successful in drawing out compromises.

Timeline of Key Events

May 4, 1948	The USA became the first country to recognize Israel as independent
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March 28, 1949	James Grover McDonald becomes the first US ambassador to Israel
1987	Israel declared a major non-NATO ally by the USA
October 30 - November 1, 1991	Madrid Conference. Attempt to revive the peace negotiations, talks led to the signing of the Oslo accords and the exchange of letters.
1993	Oslo accords. The peace process began in 1993 and led to a series of negotiations and agreements. Due to the failure of the Camp David summit in 2000, the process ended.
October 23, 1995	Jerusalem Embassy Act set the deadline for the move of the Embassy of Israel to Jerusalem to May 31, 1999.
September 2016	Donald Trump promised Benjamin Netanyahu that he would move the Embassy of the USA to Jerusalem if he was elected.
December 6, 2017	Donald Trump officially recognizes Jerusalem as the capital of Israel
May 14, 2018	57 Palestinians died during the opening of the US Embassy.
June 4, 2018	Trump signed an executive order to postpone the move of the embassy. The building had already moved but Trump had to sign the Jerusalem embassy act before the embassy could begin to function properly.
October 18, 2018	Mike Pompeo announced that the US Embassy would merge with the US Consulate-General in Jerusalem into a single mission.

Previous attempts to resolve the issue

Past attempts to resolve the issue have been limited due to the inability to reach a consensus between the parties involved. However, some of these attempts are still able to have some impact if negotiations continue, this is something that the United Nations has promised to do.

One attempt to resolve the issue was the effort to implement a Two-State solution. Such a solution would grant both Israel and Palestine equal sovereignty and resolve the issue due to the fact that the embassy in Israel would no longer be representing Palestinian people and would lead to the creation of a separate US Embassy in Palestine. This plan was not put in place due to the failure of the Camp David summit in 2000.

A more recent attempt at resolving this issue was the creation of the Palestine Affairs Unit in the US Embassy. This aims to increase the recognition of Palestine in a manner that can benefit the citizens and the PA. The goal of the PAU is to find an equitable and enduring answer for the Israeli-Palestinian struggle. Arguably, the PAU increases



Palestinian legitimacy in the region and ensures the continuation of relations between Israel and Palestine.

Possible Solutions

This case is extremely complicated due to the numerous parties involved. The constantly changing nature of the Israeli-Palestine conflict makes it essential that the issue be resolved in a manner that abides by international law. Henceforth, we are looking for a solution where concrete legal evidence supersedes any moral material that may be introduced by the advocates. It is therefore important that judges are not swayed by moral claims despite how easy it may be to judge the contentious case solely on moral terms. This case specifically requires judges to differentiate between de facto and de jure actions as well as differentiate between other key legal concepts so that they can be appropriately applied to the arguments presented by the advocates. One of the vital aspects to consider when coming up with your verdict is the precedent the decision will set and how it will shape the conflict in the future. As a judge in the ICJ, your verdict should consider consequences that may arise in the future since the influence of the ICJ goes further than resolving a conflict between two states.

A solution should aim to either increase the autonomy of the Palestinian people since that is ultimately what the PA wants and why the relocation of the US embassy to Israel was so controversial. This may look like the expansion of the PAU so that there is more representation of the Palestinian people or even the relocation of the embassy to Tel Aviv once again. If throughout the conference it is made clear through the relocation of the embassy was legitimate and that the action should not be overturned, this may result in a series of negotiations to find a bilateral peace agreement to aid with the cooperation and functioning of the US embassy in Israel.

Arguments and research for advocates

Advocates must attend to be realistic within their cases. A solution should compromise with the beliefs of major entities involved and should be sustainable. Even though this case is between Palestine and the USA, advocates on either side must consider the incentives and beliefs of Israel. Ultimately, without unanimous consensus between Israel and Palestine, no agreement made will be long lasting, simply creating a period of increased tensions and violence. For advocates to find arguments for either side it is crucial that they research and utilize relevant UN resolutions and international law which apply to the case. Examples of key information can be found in the appendix below.

Questions to consider

1. How do previous ICJ cases such as the contentious case of Portugal v Australia and the advisory case regarding the Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965 influence the deciding factors in this case?
2. Does Palestine have the grounds to legitimately claim East Jerusalem?



3. How does the previous precedence set by the ICJ affect the case?
4. How do the terrorist actions by Palestine influence the case?
5. Should the designation of Hamas as a terrorist organization factor into the case? If not, why?
6. Why might the legal principle of jus cogens be important in this case?
7. What international law may assist the Appellants' case?
8. What international law may assist the Respondents' case?

Appendix/Appendices

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