

**APPLICATION
INSTITUTING PROCEEDINGS
IN THE INTERNATIONAL COURT OF JUSTICE**

STATE OF PALESTINE

v.

UNITED STATES OF AMERICA

28 SEPTEMBER 2018

To the Registrar of the International Court of Justice.

1. The undersigned, duly authorized by the Government of the State of Palestine, has the honour to submit to the International Court of Justice, in accordance with Security Council Resolution 9 (1946) and Article 35 (2) of the Statute of the Court, this Application instituting proceedings against the United States of America.

2. By the present Application, the State of Palestine requests the Court to settle the dispute it has with the United States of America over the relocation of the embassy of the United States of America in Israel to the Holy City of Jerusalem. In so doing, it places its faith in the Court to resolve the dispute in accordance with its Statute and jurisprudence, based on the Vienna Convention on Diplomatic Relations (VCDR) read in appropriate context.

I/ FACTUAL AND LEGAL BACKGROUND

3. The subject of the dispute being the relocation of the United States Embassy in Israel to the Holy City of Jerusalem, it is essential to explain the factual and legal context in which the decision to relocate the United States Embassy and its implementation took place.

4. The Holy City of Jerusalem is endowed with unique spiritual, religious and cultural dimensions. This special character of the city continues to prompt the United Nations to adopt numerous resolutions that aim to protect and preserve its unique and special status.

5. As early as 29 November 1947, the United Nations General Assembly adopted the Partition Plan in Resolution 181 (II), *Future Government of Palestine* providing for “Independent Arab and Jewish States and the Special International Regime for the City of Jerusalem” in Palestine. It further specified that:

“The City of Jerusalem shall be established as a *corpus separatum* under a special international regime.

[...]

The City of Jerusalem shall include the present municipality of Jerusalem plus the surrounding villages and towns, the most eastern of which shall be Abu Dis; the most southern, Bethlehem; the most western, Ein Karim (including also the built-up area of Motsa); and the most northern Shu'fat.”

6. The principles underlying this resolution, in particular, the need to protect the special character of the City and the recognition of a specific status within the set boundaries of the City, have continued to serve as a solid foundation for all subsequent resolutions relating to Jerusalem since then.

7. Despite the clear special protected status of the City of Jerusalem, Israel, the occupying power, adopted a set of illegal policies to gradually acquire control over the territory, including by the illegal use of force and by imposing illegal administrative and legislative measures, in an attempt to annex the city.

8. During the war that lasted between December 1947 and January 1949, Israeli Forces occupied West Jerusalem, in violation of Resolution 181. The Armistice agreement of 3 April 1949 led to the *de facto* division of the city between East and West Jerusalem; meanwhile, the UN continued to advocate for the special status of the City.

9. On 9 December 1949, the General Assembly adopted Resolution 303 (IV), *Palestine: Question of an international regime for the Jerusalem area and the protection of the Holy Places*, in which it restated

“its intention that Jerusalem should be placed under a permanent international regime, which should envisage appropriate guarantees for the protection of the Holy Place, both within and outside Jerusalem, and to confirm specifically the following provisions of General Assembly resolution 181 (II). (1) the City of Jerusalem shall be established as a *corpus separatum* under a special international regime and shall be administered by the United Nations”.

10. In June 1967, Israel occupied the Gaza Strip and the West Bank, including East Jerusalem. Thereafter, Israel took a number of legislative and administrative measures in an attempt to extend its jurisdiction over the city of Jerusalem. It initially utilized local legislation to change the legal status of the entire area of Jerusalem.

11. In response, on 4 July 1967, the General Assembly held its fifth Emergency Special Session during which it adopted resolution 2253 (ES-V), *Measures taken by Israel to change the status of the City of Jerusalem*. In this resolution, the General Assembly, deeply concerned “at the situation prevailing in Jerusalem as a result of the measures taken by Israel to change the status of the City”, considered that these measures were “invalid” and further

called upon “Israel to rescind all measures already taken and to desist forthwith from taking any action which would alter the status of Jerusalem”.

12. Subsequently, both the Security Council and General Assembly, while consistently reaffirming the inadmissibility of the acquisition of territory by use of force,¹ and the overriding necessity of the withdrawal of Israel’s armed forces from occupied territories,² censured in the strongest terms all measures taken to change the status of the City of Jerusalem.

13. On 21 May 1968, the Security Council adopted Resolution 252 in which it *inter alia* stated that, “all legislative and administrative measures and actions taken by Israel, including expropriation of land and properties thereon which tend to change the legal status of Jerusalem are invalid and cannot change that status”. The Security Council maintained its position and reaffirmed Resolution 252 in Resolutions 267 of 3 July 1969, 271 of 15 September 1969 and 298 of 25 September 1971.

14. In 1980, the Security Council, in the wake of and then by way of a response to Israel’s adoption of the “Basic Law” that proclaims Jerusalem to be the “complete and united capital of Israel,” adopted two very important resolutions concerning the status of the Holy City of Jerusalem. Resolution 476 (1980):

“3. *Reconfirms* that all legislative and administrative measures and actions taken by Israel, the occupying Power, which purport to alter the character and status of the Holy City of Jerusalem have no legal validity and constitute a flagrant violation of the Geneva Convention relative to the Protection of Civilian Persons in Time of War and also constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East;

4. *Reiterates* that all such measures which have altered the geographic, demographic and historical character and status of the Holy City of Jerusalem are null and void and must be rescinded in compliance with the relevant resolutions of the Security Council;

5. *Urgently calls* on Israel, the occupying Power, to abide by the present and previous Security Council resolutions and to desist forthwith from persisting in the policy and measures affecting the character and status of the Holy City of Jerusalem.”

¹See, Security Council (‘SC’) Resolutions 242 (1967), 252 (1968), 267 (1969), 298 (1971), 476 (180), 478 (1980), and 2334 (2016); General Assembly (‘GA’) Resolutions 2628 (XXV), 2799 (XXVI), and 2949 (XXVII).

² See, SC Resolutions 242 (1967), 476 (180), GA Resolutions 2628 (XXV), 37/86 and 41/162.

15. Shortly later, the Security Council, in resolution 478, *noting* that Israel had not complied with resolution 476 (1980) *decided*

“(…) not to recognize the ‘basic law’ and such other actions by Israel that, as a result of this law, seek to alter the character and status of Jerusalem”

and, besides, called upon

“(a) All Member States to accept this decision;
(b) Those States that have established diplomatic missions at Jerusalem to withdraw such missions from the Holy City”.

16. It is particularly worth noting that all those States that had in the meantime established their embassies in Jerusalem, decided to relocate them elsewhere, in compliance with that Security Council resolution.³

17. Chile, Ecuador and Venezuela had announced their decision to withdraw their diplomatic missions from Jerusalem, and at the time of the resolution’s adoption, between 22 August and 9 September, Bolivia, Colombia, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Haiti, the Netherlands, Panama, and Uruguay informed the Secretary General they had decided to also withdraw their respective embassies from Jerusalem.

18. Most recently, the Republic of Paraguay, who had decided to move its embassy to Jerusalem at the same time the decision was taken by the United States, rescinded its decision and moved its embassy back to Tel Aviv on 5 September 2018. The Republic of Paraguay noted that it took this decision in line with its constitutional commitments to respect international law.⁴

19. In its more recent Resolution 2334 of 23 December 2016, the Security Council *inter alia* had reaffirmed its previous resolutions concerning Jerusalem, including resolution 478 (1980).

20. Both the General Assembly and the Security Council have consistently stated that actions or decisions purporting to alter the character, status or demographic composition

³ *Yearbook of the United Nations*, 1980, Part 1, Section 1, Chapter 12: Questions relating to the Middle East, p.405.

⁴ Statement on the location of the Embassy of the Republic of Paraguay to the State of Israel, 5 September 2018, available at: http://www2.mre.gov.py/index.php/download_file/view/9576/3622.

of the Holy City of Jerusalem are deprived of legal effect and are null and void under international law.

II/ STATEMENT OF FACTS

21. On 6 December 2017, the President of the United States of America unilaterally recognized the Holy City of Jerusalem as the capital of Israel and announced the relocation of the United States Embassy in Israel from Tel Aviv to the Holy City of Jerusalem.⁵

22. On 18 December 2017, due solely to the veto of the United States of America, the concerned party to the present 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 resolutions of the Security Council”.⁶

23. The Security Council’s failure to discharge its responsibilities on behalf of all the Member States to maintain international peace and security⁷ led the General Assembly to hold an Emergency Special Session, in which it adopted Resolution ES-10/19 and affirmed

“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, and in this regard calls upon all States to refrain from the establishment of diplomatic missions in the Holy City of Jerusalem, pursuant to Council resolution 478 (1980)”.

and further called upon

“all States to refrain from the establishment of diplomatic missions in the Holy City of Jerusalem, pursuant to Council resolution 478 (1980)”.

⁵ Annex 5.

⁶ See, the meeting record of the Security Council meeting held on 18 December 2017, *The Situation in the Middle-East, including the Palestinian Question* (S/PV.8139) and the press release issued the same day (SC/13125). During this meeting, the Draft resolution S/2017/1060 was vetoed by the United States of America, there was no abstention during this vote and the 14 other States composing the Security Council voted in favour of the adoption.

⁷ Mechanisms established by the United Nations General Assembly in Resolution 377 (V), *Uniting for Peace*, adopted on 3 November 1950.

24. On 14 May 2018, the United States of America inaugurated its embassy in the Holy City of Jerusalem.⁸

III/ JURISDICTION OF THE COURT

25. The Court has jurisdiction over the issues addressed in this Application under Article 1 of the Optional Protocol to the Vienna Convention on Diplomatic Relations concerning the Compulsory Settlement of Disputes.⁹

26. The State of Palestine acceded to the Vienna Convention on Diplomatic Relations on 2 April 2014 and to the Optional Protocol on 22 March 2018 whereas the United States of America has been a party to both these instruments since 13 November 1972.

27. Article VII of the Optional Protocol provides that it

“(…) shall remain open for accession by all States which may become Parties to the Convention”.

28. As for the Vienna Convention on Diplomatic Relations itself, its Article 48 provides that the Convention

“(…) shall be open for signature by all States Member of the United Nations or of any of the specialized agencies or Parties to the Statute of the International Court of Justice, and by any other State invited by the General Assembly of the United Nations to become a Party to the Convention”.

29. Article 50 of the Vienna Convention on Diplomatic Relations in turn further provides that

“[t]he present Convention shall remain open for accession by any State belonging to any of the four categories mentioned in Article 48.”¹⁰

⁸ See the Press Statement issued by the Secretary of State of the United States of America Mike Pompeo, issued on 14 May 2018, available at: <https://www.state.gov/secretary/remarks/2018/05/282066.htm>.

⁹ Annex 2.

¹⁰ It ought to be noted in that regard that the State of Palestine became a member of UNESCO effective 31 October 2011, UNESCO being such specialized agency within the meaning of Article 57 of the Charter of the United Nations.

30. The State of Palestine submitted on 4 July 2018, in accordance with Security Council Resolution 9 (1946) and Article 35 (2) of the Statute of the Court, a ‘Declaration recognizing the Competence of the International Court of Justice’ for the settlement of all disputes that may arise or that have already arisen covered by Articles I and II of the Optional Protocol.¹¹

31. Article I of the Optional Protocol concerning the Compulsory Settlement of Disputes provides that:

“Disputes arising out of the interpretation or application of the Convention shall lie within the compulsory jurisdiction of the International Court of Justice and may accordingly be brought before the Court by an application made by any party to the dispute being a Party to the present Protocol.”

32. This provision covers any dispute related to the interpretation or application of the Convention on Diplomatic Relations to which, as stated above, both the State of Palestine and the United States of America are contracting parties.

33. Article II of the Optional Protocol concerning the Compulsory Settlement of Disputes provides that:

“The parties may agree, within a period of two months after one party has notified its opinion to the other that a dispute exists, to resort not to the International Court of Justice but to an arbitral tribunal. After the expiry of the said period, either party may bring the dispute before the Court by an application.”

34. Prior to the implementation of the decision to move the embassy, through a Note Verbale, dated 14 May 2018, the State of Palestine formally informed the State Department of the United States of America of its position that any steps taken to relocate the embassy constitute a violation of the VCDR, read in conjunction with the relevant UNSC resolutions and requested that the United States inform the State of Palestine of “any steps the United States is considering to ensure that its actions are in line with the Vienna Convention on Diplomatic Relations”.¹²

¹¹ Annex 4.

¹² Annex 3.

35. Not having been informed of any steps taken as requested, the Ministry of Foreign Affairs and Expatriates of the State of Palestine¹³ notified the State Department of the United States of America, through a Note Verbale dated 4 July 2018, of the existence of a dispute between the two Parties, pursuant to Articles I and II of the Optional Protocol concerning the Compulsory Settlement of Disputes, arising out of the interpretation or application of the Vienna Convention on Diplomatic Relations,¹⁴ read in conjunction with relevant Security Council resolutions on the alteration of the status of the Holy City of Jerusalem, specifically resolution 478 (1980) adopted on 20 August 1980.

IV/ LEGAL GROUNDS FOR THE CLAIMS

36. The relocation of the United States embassy in Israel to the Holy City of Jerusalem constitutes a breach of the Vienna Convention on Diplomatic Relations of 18 April 1961. It is undeniable that the Convention was conceived as a tool for the pacification of international relations. This is clear from the Preamble of the Convention in which the States Parties declare:

“Having in mind the purposes and principles of the Charter of the United Nations concerning the sovereign equality of States, the maintenance of international peace and security and the promotion of friendly relations among nations”

and

“Believing that an international convention on diplomatic intercourse, privileges and immunities would contribute to the development of friendly relations among nations, irrespective of their differing constitutional and social systems”

37. Article 3, paragraph 1, of the Convention provides that:

“1. The functions of a diplomatic mission consist, *inter alia*, in:

- (a) Representing the sending State in the receiving State;
- (b) Protecting in the receiving State the interests of the sending State and of its nationals, within the limits permitted by international law;
- (c) Negotiating with the Government of the receiving State;
- (d) Ascertaining by all lawful means conditions and developments in the receiving State, and reporting thereon to the Government of the sending State;

¹³ Annex 3.

¹⁴ Annex 1.

(e) Promoting friendly relations between the sending State and the receiving State, and developing their economic, cultural and scientific relations”.

38. It is clear from this article that one of the main functions of a diplomatic mission consists in “[r]epresenting the sending State *in the receiving State*”.¹⁵ The very wording of subparagraph (a) is self-explanatory and leaves no doubt on the fact that the representational function of any diplomatic mission should be performed on the territory of the receiving State.

39. In addition to that, out of the four other functions of diplomatic missions enumerated in Article 3 of the Vienna Convention on Diplomatic Relations, two functions are to be performed “in the receiving State”.

40. This is true with regards to subparagraph (b), which deals with the function consisting in

“[p]rotecting *in the receiving State* the interests of the sending State and of its nationals, within the limits permitted by international law”,¹⁶

as well as with regards to subparagraph (d) which provides that one of the functions of a diplomatic mission consists in

“[a]scertaining by all lawful means conditions and developments *in the receiving State*, and reporting thereon to the Government of the sending State”.¹⁷

41. The only functions of a diplomatic mission that are not specifically required to be performed “in the receiving State” are the negotiation function of subparagraph (c) and the promotion of friendly relations with the receiving State mentioned in subparagraph (e).

42. The formula “in the receiving State” is not only used in Article 3 of the Vienna Convention on Diplomatic Relations. It is present in twelve other provisions of the Convention. This highlights the fact that the diplomatic mission of a sending State must be established on the territory of the receiving State.

¹⁵ Emphasis added.

¹⁶ Emphasis added.

¹⁷ Emphasis added.

43. The fact that the sending State can only establish a diplomatic mission on the territory of the receiving State is confirmed by Article 21, paragraph 1, of the Convention which provides that

“[t]he receiving State shall either facilitate the acquisition *on its territory*, in accordance with its laws, by the sending State of premises necessary for its mission or assist the latter in obtaining accommodation in some other way”.¹⁸

44. A diplomatic mission may have to perform various functions on the territory of the receiving State, whether or not these functions are mentioned in the article. Nonetheless, there are clear limitations to the actions of such a mission, both under the Vienna Convention on Diplomatic Relations and general international law to which the Convention refers.

45. Subparagraphs (b) and (d) of Article 3, paragraph 1, of the Convention provide further limitations for the diplomatic mission of the sending State in performing specific functions that are expressly required to be performed “in the receiving State”.

46. Thus, when a diplomatic mission protects the interests and the nationals of the sending State “in the receiving State”, it may and must only do so “within the limits permitted by international law” as stated in subparagraph (b).

47. In a similar manner, when a diplomatic mission ascertains conditions and developments in the receiving State, it is bound to only use “all lawful means” as required by subparagraph (d).

48. Besides these specific limitations, Article 41, paragraph 3, of the Convention provides a general limitation and a framework for the action and purpose of a diplomatic mission. This article reads as follows:

“The premises of the mission must not be used in any manner incompatible with the functions of the mission as laid down in the present Convention or by other rules of general international law or by any special agreement in force between the sending and the receiving State”.

¹⁸ Emphasis added.

49. It is clear from the above provisions that the Convention on Diplomatic Relations requires the sending State to establish a diplomatic mission “in the receiving State” to perform its functions and demands that the diplomatic mission performs its functions while respecting the rule of law, especially international law.

50. The relocation of the US Embassy in Israel to the Holy City of Jerusalem is in breach of the provisions of the Convention on Diplomatic Relations mentioned above as well as, more generally, of its object and purpose and of “other rules of general international law” to which the Convention refers, including rights reiterated by the Court’s Advisory Opinion of 4 July 2014.

V/ DECISION REQUESTED

51. By the present Application, the State of Palestine therefore requests 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.

52. The State of Palestine further requests the Court to order the United States of America to withdraw the diplomatic mission from the Holy City of Jerusalem and to conform to the international obligations flowing from the Vienna Convention on Diplomatic Relations.

53. In addition, the State of Palestine asks the Court to order the United States of America to take all necessary steps to comply with its obligations, to refrain from taking any future measures that would violate its obligations and to provide assurances and guarantees of non-repetition of its unlawful conduct.

VI/ RESERVATION OF RIGHTS

54. The State of Palestine reserves its rights to supplement or amend the present Application.

VII/ APPOINTMENT OF AGENT AND CO-AGENT

55. The State of Palestine hereby designates as its Agent Ambassador Ammar Hijazi, assistant Minister for Multilateral Affairs of the State of Palestine, and as its Co-Agent Ambassador Rawan Sulaiman, Head of the Palestinian Mission to the Kingdom of the Netherlands, Permanent Representative of the State of Palestine to the ICC, PCA and OPWC.

VIII/ AD HOC JUDGE

56. In accordance with the provisions of Article 31(3) of the Statute of the Court, and Article 35(1) of the Rules of the Court, the State of Palestine declares its intention to exercise its right to choose a judge *ad hoc*.

Respectfully submitted,



Dr. Riad Malki
Minister of Foreign Affairs
and Expatriates
State of Palestine

ANNEXES

Annex 1. Vienna Convention on Diplomatic Relations, 18 April 1961.

Annex 2. Optional Protocol to the Vienna Convention on Diplomatic Relations, concerning the Compulsory Settlement of Disputes, 18 April 1961.

Annex 3. Note Verbale of the Ministry of Foreign Affairs of the State of Palestine addressed to the Department of State of the United States of America, 14 May 2018.

Annex 4. Note Verbale of the Ministry of Foreign Affairs of the State of Palestine addressed to the Department of State of the United States of America, 4 July 2018.

Annex 5. Declaration recognizing the Competence of the International Court of Justice, 4 July 2018.

Annex 6. Presidential Proclamation Recognizing Jerusalem as the Capital of the State of Israel and Relocating the United States Embassy to Israel to Jerusalem, 6 December 2017.