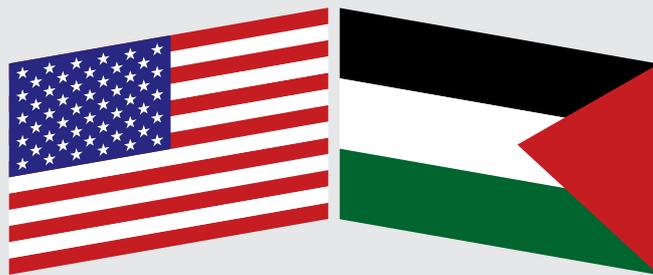




STATE OF PALESTINE  
PALESTINE LIBERATION ORGANIZATION  
NEGOTIATIONS AFFAIRS DEPARTMENT

# US FOREIGN POLICY AND PALESTINE



**RE-ENGAGING  
TOWARDS  
ENDING ISRAEL'S  
OCCUPATION OF  
PALESTINE**

October 2020



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## EXECUTIVE SUMMARY

Established US foreign policy for Palestine and Israel in the early 1990s laid the foundation for a Middle East Peace Process that was initially intended to end the Israeli occupation of Palestine and come to a just and lasting peace, whereby two states would live side by side in peace, security, and prosperity. The Norwegian-brokered Oslo Accords in 1993 set in motion a negotiation process with that objective, to achieve the two-state solution and the end of the occupation.

With Prime Minister Rabin's assassination in late 1995 and PM Peres's failure to win the next election, Israeli leaders showed less support for two states, and after Camp David (July 2000) and a new Israeli election in February 2001, a new right-wing Israeli government imposed a more oppressive occupation and even refused to acknowledge its obligations under the Accords. During this time, the US asked Israel to return to the negotiations table and finalize an agreement consistent with its professed two-state policy, but the US avoided applying pressure on Israel to commit to achieving this objective, deferring time and again to the decisions of Israel's leaders.

When Donald Trump became President in January 2017, he proceeded dramatically to act in support of Israel's right-wing government, while claiming that his foreign policy may favor a "two-state solution". US actions under President Trump negated former US policies favoring a bilateral negotiation toward achieving the two-state solution and promoted a US-based unilateral and coercive approach to the peace process.

Trump's actions have included the transfer of the US Embassy from Tel Aviv to Jerusalem, recognition of Jerusalem as the capital of Israel, defunding humanitarian assistance for refugees and from Palestinian hospitals, schools and basic infrastructure, support of Israel's illegal settler movements, and others – all measures that have signaled that Palestine can no longer look to the US to be an objective and honest broker for peace.

Trump's unilateral moves have resulted in severe repercussions for Palestinians, the consequences of which are uncertainty and frustration for Palestine and an undermining of the rules-based international order for years to come.

Unless the broader international community takes an active role in supporting and organizing an effective peace process, or until the US reverses its pro-annexation policies and acts in a balanced and unbiased manner, Palestine and Israel will sink into a dark era marked by settler-colonialism, racist and discriminatory policies, and an irreversible settlement expansion that can only result in a single Israel with two systems of economic, legal, political, and social strata favoring the Israeli Jewish population.

This publication seeks to inform and highlight how current US foreign policy and actions affect Palestine and Israel, and to provide guidance on moving away from unilateralism at the international level toward a multilateral approach to achieve the just and lasting peace that Palestinians, Israelis, and the rest of the region deserve.

# 1. Introduction

Since the current US Administration has been in office, it has taken severe and deleterious foreign policy steps to hinder, rather than help achieve, an end to the Israeli occupation of the State of Palestine. Most significantly, these measures include the recognition of Jerusalem as the capital of Israel in direct contradiction of international law and agreements; legitimizing illegal Israeli settlements on occupied Palestinian land; further marginalizing and exposing an already vulnerable refugee population to further threat and danger by stopping US aid to the UN Relief and Works Agency for Palestine Refugees (UNRWA) and attempting to dismantle the organization; recognizing Israeli annexation/ sovereignty over the occupied Arab Syrian Golan; and shuttering the doors of the PLO Mission to the US.

These are only a few of the significant measures the US has taken against the Palestinian people in an attempt to shred a decades-long mission of peace and replace those efforts with a Middle East policy that as a consequence is creating instability and uncertainty, and ultimately chaos.

While these efforts have deleteriously impacted Palestine and the rest of the region (the consequences of which will only be even more tangible and clear as time passes), current US foreign policy across the globe has seriously harmed the image and reputation of the US. Indeed, under the Trump Administration, US policies have shifted dramatically and negatively impacted international peace and security through efforts to end the US's relationship with multilateral agencies such as the UN Human Rights Council (UNHRC), UNESCO, the World Health Organization (WHO), and the Paris Agreement on climate change. Moreover, the current US

administration's continued desire to severely criticize or withdraw from other organizations and agreements, such as NATO, the Iran Nuclear Deal, numerous trade agreements and the WTO, plus reinstating sanctions on countries following years of work toward reconciliation, and undermining and inciting against leading human rights organizations, will only bring further uncertainty, frustration, confrontation and instability.

Despite near-certainty that the current US administration's actions will further agitate global conflicts, it appears that US actions in the Middle East at large, and Palestine specifically, are designed to impose a new reality in the Middle East. This new reality of reinforcing an already fragmented region through proxy warfare and sectarian rifts are being manipulated to draw attention away from Israel's occupation of Palestine and distract from a root cause of regional strife.

In September 2019, President Trump addressed the UN General Assembly and called on Arab States to normalize their relationships with Israel pending his so called "vision for peace." This so-called peace plan was a non-starter and contradicted all agreements signed between Palestine and Israel, as well as contradicted the Arab Peace Initiative and all UNSC resolutions. Indeed, the current US president publicly announced a plan that he referred to as "a vision of peace in the Middle East" without meaningful engagement with those affected most, the Palestinians. Palestine refers to it as the "annexation plan." This plan is a modern form of colonialism with a dollar sign as a smokescreen.

The Arab Peace Initiative (API), proposed by late King Abdallah of Saudi Arabia and supported



unanimously at the Arab Summit in Beirut in 2002, called on Israel to end its occupation of Palestine that began in 1967 and to accept a just and agreed upon solution to the refugee issue based on UNGA resolution 194, in return for full Arab and Muslim Country normalization of relations with Israel. Contrary to this Arab peace initiative, the so-called Trump 'deal of the century'<sup>1</sup> tries to undermine and bypass Arab resolve and consensus to achieve, together with help from the current Israeli Prime Minister, a colonial vision of Israeli domination at the expense of Palestinians and the region at large. The Trump "deal" has only further alienated any peaceful relations.

Despite efforts led by then Secretary of State James Baker under President George H.W. Bush in the

early 1990s, and in the years to follow during the Presidencies of Bill Clinton, George W. Bush, and Barak Obama, US efforts have never been fruitful. However, all these US administrations prior to President Trump maintained a strong public commitment to a US foreign policy unchanged towards achieving a just and lasting peace in Palestine, Israel, and the entire Middle East.

This publication underlines how the measures and policies taken by previous US administrations in general, and the current US administration in particular, have impacted not only the peace process aimed at the Two State Solution, but also key issues such as Jerusalem, Borders, and Refugees that were left for a negotiated agreement between the currently occupied State of Palestine and Israel.

1 New York Times, "Trump Releases Mideast Peace Plan That Strongly Favors Israel", 28 January 2020, available at: <https://www.nytimes.com/2020/01/28/world/middleeast/peace-plan.html>

## 2. US Foreign Policy and its Consequences on the State of Palestine

### 2.1 The Two State Solution and Current US Administration's Vision

Since the beginning of the Oslo process, US policy explicitly supported the establishment of the State of Palestine living side by side in peace and security with the State of Israel. This established policy was accepted by Palestine and generally supported by Israel even though later on PM Netanyahu and other Israeli leaders began to qualify and detract from what was meant by a "Palestinian state." The Quartet (the US, EU, Russia and the UN), the peace process organizers and mediators, also based their mandates on the objective to encourage the parties to work toward a final peace agreement in negotiations. While not publicly changing this accepted US policy initially, the US administration under President Trump initiated a more unilateral, Israel-oriented process as it developed and announced the infamous 'Peace to Prosperity' vision. This vision, as it took shape through US-Israeli negotiations and finally surfaced in a 'deal of the century' proposal, imposed heavy conditions on Palestine to coerce them to abandon core issues in favor of Israeli dominance and colonial control of Palestinian land, resources, and even daily life.

Taking a step back, it is imperative to outline the framework of the Two State Solution and explain what is meant by Final Status issues.

The internationally endorsed Two State Solution means the end of the Israeli occupation that began in 1967. The Madrid Conference of 1991, established the beginning of the Middle East Peace Process (MEPP), was based on UNSC resolutions 242 and 338 that reiterate the inadmissibility of the

acquisition of land through the use of force. This opened the door to a round of negotiations and the agreed Declaration of Principles on Interim Self-Government Arrangements, or the Oslo Accords (1993), in the context of reaching a peace agreement with Palestine, Israel would withdraw military and administrative control from territory occupied in 1967, namely the West Bank, including East Jerusalem, and the Gaza Strip. The Oslo Accords, along with the more detailed Interim Agreement in 1995, established a series of final status issues, which would be negotiated over a 5-year period and lead to the transfer of all Israeli military and administrative control of the land of the State of Palestine back to the Palestinians.

These final status issues include negotiations on the City of Jerusalem (with East Jerusalem as the capital of the State of Palestine), the question of Palestinian refugees in line with UN Resolution 194, withdrawal of Israeli settlements and settlers from Palestine, the water rights of Palestine, a joint security agreement, and an agreed final border between the two states and corresponding air, sea, and land ports of entry and exit. The basis of negotiations of these final status issues was to implement UN Security Council Resolutions 242 and 338. Resolution 242 established that Israel must withdraw from all territory it occupied, and Resolution 338 established a cease fire between Israel and Arab States in the region.

Two decades after the deadline for which the Oslo Accords were to be implemented, Israel has refused to execute its obligations, and Palestine remains under belligerent Israeli military occupation. Despite this, in 2012, the United Nations General Assembly passed Resolution 67/19, which



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recognized the State of Palestine as a non-Member observer State. While the State of Palestine has recognized the State of Israel, the State of Israel has refused to recognize the State of Palestine. Two states exist, with one state occupying the other, and without a peaceful, just solution.

Palestine and the international community made great efforts to encourage negotiation of these final status issues in order to cease further Israeli encroachment on Palestinian land and violation of its rights. However, one month after the Trump Administration took office, at a joint press conference with President Donald Trump and Prime Minister Benjamin Netanyahu, without consultation with Palestine, the new President thwarted all peace negotiation efforts.<sup>2</sup> When asked whether he was “ready to give up the notion of a two-state solution that was adopted by previous administrations,” President Trump stated:

“So I’m looking at two-state and one-state, and I like the one that both parties like. I’m very happy with the one that both parties like. I can live with either one. I thought for a while the two-state looked like it may be the easier of the two. But honestly, if Bibi and if the Palestinians — if Israel and the

Palestinians are happy, I’m happy with the one they like the best.”<sup>3</sup>

During that same press conference, the Israeli Prime Minister made his intentions clear: Israel would remain in full control of Palestine and that he would not accept anything less. In fact, PM Netanyahu stated:

“Palestinians must recognize the Jewish state; and in any peace agreement, Israel must retain the overriding security control over the entire area west of the Jordan River.”<sup>4</sup>

Since then, the US position has watered down to a proposed “mirage Palestinian State,” absent sovereignty and viability, tailored to Israel’s Prime Minister’s demands, and endorsing Israel’s colonial ambitions and narrative. Today’s Israeli annexation policies, coupled with the so-called ‘deal of the century,’ is intended to end a negotiated peaceful resolution to the Israeli occupation of Palestine and put a final end to the Two State Solution. Undeniably, Israel refuses to accept the State of Palestine as declared on 15 November 1988, and endorsed internationally by UNGA Resolution 67/19 on 29 November 2012. The US Administration by its actions has only added fuel to the fire and rebuffed

<sup>2</sup> White House website, “Remarks by President Trump and Prime Minister Netanyahu of Israel in Joint Press Conference”, 15 February 2017, available at: <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-prime-minister-netanyahu-israel-joint-press-conference/>

<sup>3</sup> Ibid

<sup>4</sup> Ibid.

international law and Palestinian rights of self-determination and sovereignty.

By most accounts, the current US administration has failed to address the core problem during its almost four years in office. President Trump's vision of 'peace to prosperity,' rather than being grounded in international legal parameters and consensus, is founded on the personal whims of Trump and Netanyahu. If Trump's assumption was that this vision would bring peace, all indicators underscore the reverse.

The reality on the ground for Palestinians is a single state with two systems of administration and controlled by an oppressive Israeli military occupation, creating an existence even darker than the darkest days of Apartheid in South Africa. The many draconian policies and practices implemented by Israel include the Annexation Wall, which was deemed a violation of international law by the International Court of Justice in 2004<sup>5</sup>, and which has further annexed an additional 9.4% of the West Bank. In addition, Israel's illegal settler population in the occupied West Bank including East Jerusalem has ballooned in recent years and has nearly tripled from the time of the Oslo Accords with a population of over 690,000<sup>6</sup>.

To house and support these illegal settlers, Israel has created a web of roads, infrastructure and restrictions that has swallowed up Palestinian land and natural resources and made it impossible for Palestinians to use their own resources or build on their own lands. To complicate things further, Israel unveiled its 'Nation State Law', enacted and approved by the Israeli Knesset in July 2018, to further disenfranchise Palestinians, create a separate legal regime applicable to the 1.6 million Palestinian citizens of Israel – nearly 20% of Israel's population, and to ensure a subjugated legal status based on ethnicity. Additionally, this law affirms Israel's illegal annexation of occupied East Jerusalem (and the Latrun Valley) and the Arab Syrian Golan, denies the right of return for Palestine refugees, and negates the principle of self-determination of the Palestinian people by affirming that the 'land of Israel' is exclusive to the Jewish people.

Similar to the Madrid Conference, the international community is now requested to take an active role. The role of multilateralism on the basis of international law is an alternative to the unilateralism imposed by the current US administration, and Palestine supports all authentic and legitimate efforts toward peace and democracy.



Cutting down olive trees for the expansion of Israel's settlement enterprise ©Shutterstock/Ryan Rodrick Beiler

<sup>5</sup> The ICJ issued an advisory opinion in 2004 on the legal consequences of the construction of the Wall, available at: <https://www.un.org/unispal/document/auto-insert-178825/>

<sup>6</sup> Colonization and Wall Resistance Commission Violations Report, January 2020.



## 2.2 Borders: Israel's Illegal Settlement Enterprise and the Threat of Annexation

As illegal Israeli settlements and settler populations increase, so does the likelihood of having a single state with two administrative and legal systems based on race and ethnicity – or in other words, apartheid. In fact, in 1993, during the time of the Oslo Accords, the settler population stood at around 269,000<sup>7</sup> – the majority of whom were in and around East Jerusalem. By 2000, the number of illegal settlers had doubled and expanded throughout the West Bank. Throughout the past 27 years, Israeli settler-colonial policies were not abated and this has contributed to the increase of that settler population to 690,000 today.

For context, the total Palestinian population in the West Bank, including East Jerusalem, is just under 3 million, living in about 700 towns and villages. Illegal Israeli settlers make up less than one-quarter of the Palestinian population and cover over 300 illegal settlements and colonial installations.<sup>8</sup>

These settlements are not merely residential areas or suburbs; they are heavily fortified military installations that control over 60% of the West Bank, swallow up approximately 25,000 acres of Palestinian agricultural land, with an additional 250 miles of roads to connect them to each other as well as to Israel. If the total land mass of the West Bank is approximately 2,187 square miles,<sup>9</sup> and 690,000 Israeli settlers control more than half of that, which leaves the entire Palestinian population of close to 3 million with only 875 square miles in which to live and develop. Even then, Israel has denied Palestinians the right to build and administer these lands to a limited area of approximately 360 square miles.<sup>10</sup> To further complicate the matter, these 360 square miles are severely fragmented by Israeli checkpoints and settlements, whereby direct access from one Palestinian city to another is difficult and can suddenly be blocked, making travel between cities time-consuming and difficult. Then Secretary of State John Kerry called this calamitous reality of fragmented Palestinian land “Swiss cheese”.<sup>11</sup> Imagine a short drive from Washington, DC to Arlington, VA – a distance of about 5 miles – taking two hours. This is the reality that Palestinians face daily.

<sup>7</sup> Around 150,000 of those are within East Jerusalem, available at:

[https://web.archive.org/web/20081118071827/http://fmep.org/settlement\\_info/settlement-info-and-tables/stats-data/israeli-settler-population-1972-2006](https://web.archive.org/web/20081118071827/http://fmep.org/settlement_info/settlement-info-and-tables/stats-data/israeli-settler-population-1972-2006)

<sup>8</sup> Colonization and Wall Resistance Commission Violations Report, January 2020.

<sup>9</sup> The land area of the West Bank is 5664.5 sq. meters or 2187 square miles.

<sup>10</sup> The Oslo Accords designated the West Bank into three areas: (1) Area A: under Palestinian civil and administrative control; (2) Area B: under Palestinian civil control and Israeli security control; and (3) Area C: under full Israeli administrative and security control. Area A is approximately 18% of the West Bank while Area C is approximately 63% of the West Bank and Palestinians are denied by Israel the right to develop or build in Area C.

<sup>11</sup> Remarks by Secretary of State John Kerry regarding Middle East Peace, 28 December 2016, available at:

<https://2009-2017.state.gov/secretary/remarks/2016/12/266119.htm>



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It is no wonder that a main obstacle to the peace process is the presence and ongoing expansion of these illegally constructed Israeli settlements on occupied Palestinian land, together with the associated settlement infrastructure. Recognized as a cause of permanent harm to the occupied Palestinian population, the establishment and nurturing of such settlements amounts to war crimes under the Rome Statute of the International Criminal Court.<sup>12</sup>

Since the beginning of the Oslo peace process, the US has warned Israel from taking unilateral actions that might prejudice the shape and outcome of final status negotiations. Indeed, as early as 1991, then Secretary of State James Baker, reiterating President Bush's stance on the Israeli settlement policy, stated that settlement expansion is a de facto annexation and is changing the facts and circumstances on the ground: "[T]he best thing for Israel to do is keep its commitment...not to go in and build further settlements." Again in 1997, Secretary of State Madeline Albright stated before the National Council Club that unhelpful unilateral acts need to be halted as they prejudice issues reserved for final-status negotiations. By the end of 2016, in his final remarks regarding Middle East peace, Secretary of State John Kerry warned

of a bleak future if Israel did not stop its settlement policies:

"The truth is that trends on the ground – violence, terrorism, incitement, settlement expansion and the seemingly endless occupation – they are combining to destroy hopes for peace on both sides and increasingly cementing an irreversible one-state reality that most people do not actually want."<sup>13</sup>

A change in US policy towards Israeli settlements occurred under President Trump, when Secretary of State Mike Pompeo announced on 18 November 2019<sup>14</sup> the reversal of four decades of US policy on the legality of the Israeli settlements. His announcement came in the midst of President Trump's recognition of Jerusalem, including occupied East Jerusalem, as Israel's capital and the recognition of the occupied Arab Syrian Golan as part of Israel. Simultaneously, the US Ambassador in Israel, David Friedman, a champion among the Israeli settler movement, supported Israel's annexation plans and repeatedly criticized as an illusion the Two State Solution for resolving the Palestinian-Israeli conflict. After almost three years of negotiating the plan with its Israeli partners, the Trump administration revealed its 'Peace to

<sup>12</sup> The Rome Statute of the ICC of 1988 (Article8(b)(iii)) defines "the transfer directly or indirectly by the Occupying Power of parts of its civilian population into the territory it occupies" as a War Crime.

<sup>13</sup> Remarks on Middle East Peace available at <https://unispal.un.org/DPA/DPR/unispal.nsf/0/1211D26653561F3E85258097006F724B>

<sup>14</sup> New York Times, "In Shift, U.S. Says Israeli Settlements in West Bank Do Not Violate International Law", 18 November 2019, available at: <https://www.nytimes.com/2019/11/18/world/middleeast/trump-israel-west-bank-settlements.html>

Prosperity' plan and offered verbal support to Israel to extend its sovereignty across significant areas in the West Bank.

According to the proposed vision and its conceptual map, the US will recognize Israel's illegal settlements as legal entities and recognize Israeli sovereignty over 30% of the area of the West Bank. Since 2015, the Israeli government has proposed more than 60 annexation bills to justify its own illegal actions. These annexation bills were the basis that the US administration used to determine the areas where Israeli sovereignty in the West Bank should be implemented. The identified area to be annexed to Israel as per Israeli annexation plans is to include all settlement areas, including their planned areas of jurisdiction, most of the Jordan Valley, and the road and infrastructure networks, as well as the Dead Sea and its coastal areas. In terms of area, the annexation could reach 60%<sup>15</sup> (3,398 km<sup>2</sup> ~ 1,312 mile<sup>2</sup>) of the West Bank. This 60% is the area that supports the Palestinian economy because it is where the bulk of the agricultural and economic resources exist, as well as where the majority of Palestinian natural resources are located.

Water is one of the most important natural resources available for Palestinians. Palestinian water rights include water in the Jordan River, which is a transboundary watercourse shared with Jordan, Syria and Lebanon as well as Israel, the Mountain and Eastern Aquifers in the West bank and the Coastal Aquifer that extends underneath Gaza Strip. Palestinian water rights are defined by international law as being an equitable and reasonable allocation of these shared surface and underground resources, as well as a sound and comprehensive joint management. These rights and share should be secured in term of access and right of the way.

With Israel controlling 60% of the West Bank, the State of Palestine is denied riparian status and a legitimate share of the Jordan River and the Dead Sea. Accordingly, Palestine would lose the rights to over 250 Million Cubic Meters of river and Dead Sea water.<sup>16</sup> Moreover, President Trump's vision would further undermine Palestine's access to water and enhance Israel's control over Palestinian water

resources and infrastructure. This denial of access amounts to a loss of more than 200 Million Cubic Meters.

Additionally, should Israeli annexation plans be implemented, the West Bank would be totally fragmented, with East Jerusalem totally isolated from the rest of the West Bank, and the Palestinians would have lost lands that are their source of agricultural livelihood. Annexation, if approved, undermines international law and, if accepted, would end the possibility of achieving the Two State Solution and halt all efforts for peace and security for Palestine, Israel, and the entire region.

This US policy shift in support of annexation supports Israel's violations of customary international law, including both the 1997 UN Convention on the Non-Navigable Uses of International Watercourses, which requires riparian states to share transboundary waters equitably and reasonably, and Article 49 of the Fourth Geneva Convention, which forbids an occupying power from transferring its civilian population into the territory it occupies.

Moreover, support for annexation eliminates US efforts in the Middle East peace process by going against decades-long established US positions within international organizations, such as the United Nations, and reversing its own stance in regard to UNSC Resolutions 242, 2334, and others. UN resolution 2334, adopted by the Security Council in 2016, reaffirmed that the "establishment by Israel of settlements in the Palestinian territory occupied since 1967, including East Jerusalem, has no legal validity and constitutes a flagrant violation under international law and a major obstacle to the achievement of the two-State solution and a just, lasting and comprehensive peace."<sup>17</sup>

In addition, Israel has used its illegal settlement enterprise to undermine US efforts to bring peace closer between Israel, Palestine and the Arab States. In the words of Secretary James Baker, who knew the danger of Israeli settlement expansion: "I don't think there is any bigger obstacle to peace than the settlement activity that continues not only unabated but at an enhanced pace."<sup>18</sup>

15 Area of WB is 5664.5 sq. km. Area of WB and Gaza and Palestinian share in Dead Sea is in total 6210 sq. km

16 Moreover, Palestine loses the amount currently used by illegal settlers in the Eastern Aquifer (subaquifer of the Mountain Aquifer). This entails more than 50 Million Cubic Meters used by settlers in the Jordan Valley and the valley uphill within the West Bank.

17 UNSC Resolution 2334 (December 23, 2016) available at <https://www.un.org/webcast/pdfs/SRES2334-2016.pdf>

18 Parsons, Nigel (2012) *The Politics of the Palestinian Authority: From Oslo to Al-Aqsa*. Routledge: P. Page 201.



## 2.3 Jerusalem

On 6 December 2017, President Trump made a brazen announcement that has had broad repercussions for Palestine. Going against decades-long established US policy, he announced that the United States recognized Jerusalem as the capital of Israel and moved the US Embassy in Israel from Tel Aviv to Jerusalem. The decision to move its embassy to Jerusalem has drawn international condemnation and sparked a wave of protests, as East Jerusalem is occupied Palestinian territory and recognized widely as the future capital of the State of Palestine.

Following the US announcement, new developments have taken place on the ground. These developments include the dissolving of the US Consulate, established in 1844, which handled US relations with the Palestinians; Israel's adoption of its racist 'Nation-State Law' in July 2018; the opening by the US ambassador of an illegal tunnel<sup>19</sup> running under Silwan, a Palestinian neighborhood south of the Old City; in addition to the promotion of Israeli annexation plans that include the 'Greater Jerusalem' colonial project which proposes to extend Israeli sovereignty to large illegal Israeli settlements around the City of Jerusalem from north, east and south.

In 1995, the Jerusalem Embassy Act (JEA) was passed by Congress during the Clinton Administration,

which stated that Jerusalem should be recognized as the capital of the State of Israel, the United States Embassy in Israel should be established in Jerusalem no later than 31 May 1999, and that Jerusalem should remain an undivided city.<sup>20</sup> Yet, when the JEA passed, President Clinton refused to implement it, citing both US Constitutional restrictions of the legislative branch to interfere with the president's foreign relations powers, as well as the Presidential Waiver clause within the JEA which specifically cited the president's power to suspend the act (Sec. 7). President Clinton, as well as every successive sitting US president since, has renewed the waiver so that the Act was not implemented – a requirement that the waiver be signed every 6 months. However, that year was the first year since the Act was passed that it was not renewed, and it ushered in a new era of US foreign policy in Palestine that been allowing for the further violation of Palestinian rights.

In January 2020, President Trump announced the vision of 'Peace to Prosperity'. Unfortunately, the US vision is much less than even the most basic Palestinian expectations for East Jerusalem as their capital, with the indication that all of Jerusalem will be the sovereign capital of the State of Israel, and that it should remain an undivided city, leaving out any reference to the Israeli occupation of East Jerusalem that began in 1967. Additionally, it redefines the 1967 borders based on Israel's illegal

<sup>19</sup> This tunnel is part of the continuous illegal Israeli excavations under the Old City of Jerusalem  
<sup>20</sup> Jerusalem Embassy Act of 1995, Sec. 3(a), Public Law 104-45, 8 November 1995, available at:  
<https://www.congress.gov/104/plaws/publ45/PLAW-104publ45.pdf>.

Annexation Wall<sup>21</sup> that was constructed in the occupied State of Palestine starting in 2002 and has in fact isolated the city of Jerusalem from the rest of the West Bank. The approach of this vision is to keep Jerusalem 'united' under Israeli sovereignty and perpetuating a stateless status on Palestinians living in Jerusalem.

The official Palestinian position, on the other hand, is in conformity with international law and as stated in the Declaration of Principles, all of Jerusalem (and not only East Jerusalem) is subject to permanent status negotiations. With respect to East Jerusalem, because it remains part of the territory occupied since 1967, Israel has no right to any part of it. As the political, economic and spiritual heart of Palestinian nation, there can be no Palestinian state without East Jerusalem, and in particular the Old City and the surrounding area, as its capital.

Palestine is committed to respecting the freedom of worship at, and access to, all religious sites within East Jerusalem for everyone in accordance with the historic Status Quo agreement<sup>22</sup>.

International law recognizes East Jerusalem as occupied Palestinian territory. This has been reiterated by numerous UN Security Council and General Assembly resolutions and is the position of international bodies, individual States, as well as for the United States itself under earlier administrations. In fact, there have been seven UNSC resolutions condemning Israeli attempts to annex East Jerusalem in violation of international law. Following the Israeli occupation of Jerusalem in 1967, subsequent UN resolutions spoke to the matter of Jerusalem, both directly or indirectly, referencing lands occupied by Israel as being Palestinian land, including such relevant UN resolutions as UNSC 242 (1967), UNSC 338 (1973), and others up to UNSC 2334 (2016).

In 1980, Israel attempted to change the status of Jerusalem in its Basic Law. Article 1 of the Basic Law states: "Jerusalem, complete and united, is the capital of Israel." In response, the UN Security Council on 20 August 1980 adopted UNSC

Resolution 478 (votes 14 to none, with the US abstaining), as a direct response to Israel's action. In addition to condemning the change in Israel's Basic Law, the UNSC affirmed the continued application of international law on Jerusalem as occupied territory, rejected any recognition of the Basic Law by the UN, declared any "measures and actions taken by Israel" to alter the character of Jerusalem "null and void", and specifically that any Member States "that have established diplomatic missions at Jerusalem to withdraw such missions from the Holy City [.]"<sup>23</sup>

The US Administration under President Obama continued to hold to the position that East Jerusalem is occupied territory, as reiterated by US Secretary of State John Kerry in remarks on 28 December 2016:

"Now, you may have heard that some criticized this resolution for calling East Jerusalem occupied territory. But to be clear, there was absolutely nothing new in last week's resolution on that issue. It was one of a long line of Security Council resolutions that included East Jerusalem as part of the territories occupied by Israel in 1967, and that includes resolutions passed by the Security Council under President Reagan and President George H.W. Bush. And remember that every U.S. administration since 1967, along with the entire international community, has recognized East Jerusalem as among the territories that Israel occupied in the Six-Day War."<sup>24</sup>

However, since 2017, the US under President Trump has recognized Jerusalem as the capital of Israel and moved the US Embassy to Jerusalem and has endorsed Israeli settler-colonization of Palestine, both of which have empowered the Israeli government to enforce an apartheid regime on the ground. Unless reversed, this deviation from the formerly established US foreign policy on Jerusalem will only further entrench Israeli intransigence and lead to a continued breakdown of Palestinian-US relations, pushing the peace process even further out of reach.

21 The ICJ issued an advisory opinion in 2004 on the legal consequences of the construction of the Wall, available at: <https://www.un.org/unispal/document/auto-insert-178825/>

22 PLO Negotiations Affairs Department, Palestinian official position on Jerusalem, available at: <https://www.nad.ps/en/our-position/jerusalem>

23 UNSC Res. 478 (1980).

24 Time Magazine "Read John Kerry's Full Speech on Israeli Settlements and a Two-State Solution" available at <https://time.com/4619064/john-kerrys-speech-israel-transcript/>



## 2.4 Refugees

The year 1948 marks the Palestinian Nakba, or catastrophe. A catastrophe it was indeed, as the newly established State of Israel managed to expel more than 950,000 indigenous Palestinians from their homes, villages and ancestral land. This meant that almost two-thirds of the Palestinian population at the time became refugees. Since 1948 until today, Israel has prohibited Palestinian refugees from returning to their homes in Israel, meanwhile allowing for continuous Jewish immigration to Israel through various legal mechanisms.<sup>25</sup> This inequality and discrimination has been highlighted numerous times by the UN Committee on the Elimination of Racial Discrimination (CERD) and the UN Committee on Economic, Social and Cultural Rights (CESCR).<sup>26</sup>

The right of return is not unique to the Palestinian refugee issue. In December 1948 UNGA Resolution 194(III) was adopted, stating:

“[R]efugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible [.]”<sup>27</sup>

The right of return was also reasserted in subsequent UN Resolutions, inter alia, UNGA Resolutions 2452, 2535, 2963, and UNGA Resolution 3236, which affirmed the right of return as an inalienable right.<sup>28</sup>

The right of return is as unique as it is an individual and a collective right. As an individual right, it is based on the individual choice of each refugee to return to his or her original home, in what is now called Israel, or be resettled elsewhere, including the right to compensation and reparations as provided under UNGA Resolution 194. The right of return is also a collective right of all Palestinian refugees. In fact, the exercise of the Palestinian right of return is a critical component of their inalienable right to self-determination.<sup>29</sup>

Palestinian refugees are those “persons whose normal place of residence was Palestine during the period of 1 June 1946 to 15 May 1948, and who lost both their home and means of livelihood as a result of the 1948 conflict.”<sup>30</sup>

In 1949, the US encouraged and endorsed the establishment of the UN Relief and Works Agency (UNRWA). From 1950 to 2018, the official US government position was supportive of the work of UNRWA, the organization whose mandate is to support ongoing relief efforts for Palestinian refugees. In 2018, however, under the Trump Administration, the US completely withdrew

25 This is possible through Israel’s 1950 law of Return and 1952 Citizenship Law, which facilitates the exclusive right of return to Jewish immigrants, and grants them automatic Israeli citizenship.

26 Joint Parallel Report to the United Nations Committee on the Elimination of Racial Discrimination on Israel’s Seventeenth to Nineteenth Periodic Reports, 10 November 2019, P. 9, available at: <http://mezan.org/en/uploads/files/1573555716491.pdf>

27 UN General Assembly Resolution 194(III), A/RES/194 (III), 11 December 1948, para. 11.

28 W. Thomas Mallison and Sally V. Mallison, The Right of Return, *Journal of Palestine Studies*, 1980, Vol.9, No.3, P. 133, available at: <https://www.jstor.org/stable/2536553?seq=1>.

29 BADIL, Resource Center for Palestinian Residency and Refugee Rights, available at: <http://www.badil.org/en/publication/faq.html>

30 UNRWA, Who are Palestine Refugees, available at <https://www.unrwa.org/palestine-refugees> (UNRWA was established pursuant to UNGA Resolution 302 (IV) of 1949 to perform direct relief works programs for Palestinian refugees, available at: <https://www.unrwa.org/palestine-refugees>)

its support of UNRWA, a major reversal of US foreign policy and American commitment to aiding Palestinian refugees.

UNRWA was greatly affected by this decision, as the US contribution allowed for aid to schools, healthcare centers, humanitarian assistance, and emergency aid to more than 5.4 million registered and vulnerable Palestinian refugee population. The US decision to cut funding to UNRWA is an attack on the fundamental rights of Palestinian refugees, negating their claims and their narrative, and contravening established international practice. This means excepting Israel from its historic responsibility towards Palestine refugees, redefine their refugee status, and thus free Israel from having to respond to their legitimate rights and interests.

## 2.5 Financial Assistance to Palestinians

When the Palestine Liberation Organization signed the Declaration of Principles (DOP) with the State of Israel in 1993, President Clinton's administration pledged substantial funding and aid to projects as support for Palestinian development to encourage the peace process. In that regard and up until 2018, the US provided both economic and humanitarian support to the Palestinians. The US Agency for International Development (USAID), in particular, has been a significant contributor to humanitarian and social assistance programs. Following the signing of the Oslo Accords, USAID began to implement programs in various sectors in the West Bank and Gaza. After 2000, the US provided direct financial assistance to the Palestinian National Authority. Following the internal Palestinian political division in 2007, US aid broadened in scope and size to include various sectors including governance, security, emergency relief, social services, economic development and infrastructure. Between 1994 and 2018, US bilateral assistance has totaled more than \$5 billion.<sup>31</sup>

In August 2018, the Trump administration again shifted its stance on established US foreign policy and significantly reduced US assistance to the Palestinian people.<sup>32</sup> As a means of enforcing that decision, President Trump signed into law the Anti-Terrorism Clarification Act (ATCA) in October 2018. The Act allows US courts to extend personal jurisdiction on foreign entities so as to resolve jurisdictional issues under the Anti-Terrorism Act (ATA). The ATA with the ATCA fix is so broad in scope that jurisdiction can be extended to any foreign entity that has accepted US assistance, since accepting such assistance will have been "deemed to have consented" to US jurisdiction.<sup>33</sup> As a result of ATCA, the Palestine Liberation Organization was forced to announce its refusal to receive any further US aid.

In the beginning of February 2019, USAID officially ceased its operations in the occupied State of Palestine. The ATCA received a high level of bipartisan support, ultimately passing through Congress, fast-tracked without debate under a process known as "hot-lining". Members of the Senate Judiciary Committee did not have time under the "hot-lining" procedures to analyze the legislation and foresee its consequential impact. Signing the ATCA led to a complete halt of US aid assistance to the Palestinians by February 2019, including the nonlethal US security assistance for the Palestinian security forces that amounted to about \$60 million a year.<sup>34</sup>

At the same time as the ATCA was adopted, the US government also took a series of punitive measures against the Palestinians. A series of cuts in 2018 deprived Palestinians of hundreds of millions of dollars in funding for essential services and humanitarian needs that included healthcare and support for refugees.<sup>35</sup> Included in such cuts were the reprogramming of \$232 million of economic assistance for the West Bank and Gaza, including \$25 million for hospitals in East Jerusalem, ending

31 US Foreign Aid to the Palestinians, Jim Zanotti, Congressional Research Service, 12 December 2018, available at: <https://crsreports.congress.gov/product/pdf/RS/RS22967>

32 NPR News, "U.S. Cuts More Than \$200 Million In Aid To Palestinians", 24 August 2018, available at: <https://www.npr.org/2018/08/24/641689522/u-s-cuts-more-than-200-million-in-aid-to-palestinians>

33 Al-Shabaka, "Dangerous Bill in Congress to Crush the PLO and PA", by Zaha Hassan, 13 August 2019, available at: <https://al-shabaka.org/memos/dangerous-bill-in-congress-to-crush-the-plo-and-pa/>

34 Tony Blair Institute for Global Change "Fiscal Impacts of Counter-Terrorism Measures on the Palestinian Authority: A Preliminary Assessment", 7 March 2019, available at: <https://institute.global/sites/default/files/articles/Fiscal-Impacts-of-Counter-Terrorism-Measures-on-the-Palestinian-Authority-A-Preliminary-Assessment.pdf>

35 al-Shabaka, "Why cutting aid will help Palestinians and peace", by Jeremy Wilderman and Alaa Tartir, 6 February 2019, available at: <https://al-shabaka.org/op-eds/why-cutting-us-aid-will-help-palestinians-and-peace/>



Augusta Victoria Hospital in occupied East Jerusalem©Web

US humanitarian contributions to UNRWA,<sup>36</sup> and additionally halting USAID-funded programs in Palestine.

The US decision to enforce punitive measures against Palestinians with regard to cutting of aid has significantly constrained the State of Palestine's ability to finance its budget deficit. The US-enforced measures created an additional deficit in 2019 of about \$60 million in the security budget in addition to lowering external financing of development expenditures. With the decline in US aid added to the already reduced clearance revenues withheld by Israel, the Palestinian government budget deficit will reach about \$800 million in the 2019-2020 fiscal year.<sup>37</sup> As a consequence of such a deficit, the Palestinian government has been forced to reduce its public expenditures, requiring substantial cuts in salaries and in social transfers. Cuts in public-sector expenditures will cause the West Bank's GDP to decline significantly and unemployment to rise.

President Trump's decision to cease all US aid to the Palestinian people as of 2018-2019 is unprecedented and signals a strategic reversal of the decades-long US position of its international responsibilities and its role as a sponsor of the Middle East Peace Process. Opposition to this US decision was communicated to the Trump administration in September 2018 by

a letter from 34 US senators urging the President to reverse his funding cuts. The senators stated in this letter that the cuts will prevent nearly 140,000 Palestinians from receiving emergency food aid, 3,000 children and their caregivers from receiving healthcare, up to 71,000 Palestinians from receiving access to clean water, 800 Palestinians from receiving rehabilitation services for cerebral palsy, and 16,000 Palestinian women from receiving clinical breast cancer treatment. Adding to those specific losses, the risks resulting from UNRWA cuts will affect more than 525,000 children and will affect food assistance to 1 million residents in Gaza, in addition to heightened public health risks for the refugee population, including vaccinations.<sup>38</sup> Within the Palestinian society, the sectors affected by the decline of financial assistance include health, education and socio-economic programs. Those Palestinians affected by the cuts are already a vulnerable segment of the population, namely the impoverished refugees in camps located in the occupied State of Palestine, Jordan, Lebanon and Syria. The punitive US financial measures against Palestinians have taken their toll at the same time as the US continues to support Israel's use funds to coerce the Palestinian people. It is worth noting that Israel receives approximately one-third of the total US foreign assistance budget, currently receiving \$3.8 billion annually as part of US military aid.<sup>39</sup>

36 In 2018, the US contribution to UNRWA amounted to \$65 million, compared with \$359 million in 2017.

37 Tony Blair Institute for Global Change "Fiscal Impacts of Counter-Terrorism Measures on the Palestinian Authority: A Preliminary Assessment", 7 March 2019, available at:

<https://institute.global/sites/default/files/articles/Fiscal-Impacts-of-Counter-Terrorism-Measures-on-the-Palestinian-Authority-A-Preliminary-Assessment.pdf>

38 US Foreign Aid to the Palestinians. Jim Zanotti, Congressional Research Service, 12 December 2018, available at:

<https://crsreports.congress.gov/product/pdf/RS/RS22967>

39 US Foreign Aid to Israel, Congressional Research Service, 7 August 2019, available at: <https://fas.org/sgp/crs/mideast/RL33222.pdf>

## 3. Current US Administration's Stance on International Law vis-à-vis Israeli Violations

### 3.1 US Support of Israeli Violations

The stable international world order is built on international law, the principles of peace, justice, and equality, and the actions of the many international organizations, including the United Nations. It is only natural that the maintenance of this order depends on respect for, and actions consistent with, international law and its principles. Hence, when a violation of international law occurs, it is not only a violation against that nation, but also a violation against all nations of the international community combined.

For over 50 years, the State of Palestine has faced grave breaches of international human rights and international humanitarian law as a result of the prolonged belligerent Israeli military occupation. This situation has only been exacerbated and worsened as a result of recent actions of the current US administration, which has not only allowed grave breaches of internationally accepted rules, but also embolden Israeli occupation forces in their various violations of international law.

On 6 December 2017, the US officially recognized Israel's illegal annexation of occupied East Jerusalem, and later on 25 March 2019, recognized Israel's illegal annexation of occupied Arab Syrian Golan. Both recognitions by the US are in direct violation of their legal obligations under international law, the obligation to accord non-recognition of a violation of a peremptory norm of international law. Annexation, which is the acquisition of territory through the use of force, is illegal under international law (Article 49, Fourth Geneva Convention and customary international law), as well as a breach of the United Nations Charter,

of the laws of occupation, and of a fundamental principle of international law that the consensus of states in the international community permits no derogation. Most importantly, annexation impedes the national right of the Palestinian people to self-determination.

Despite universal consensus that the State of Palestine has been occupied since 1967, the US State Department's annual human rights report in 2018 dropped the word "occupation" from its report on the occupied Palestinian territory, signaling a reversal of decades-long policy. This reversal ignores the fact that until this day, the Israeli occupation still exists, with all its violations of national and individual rights and its effect on the daily lives of Palestinians. Such a move by the US administration merely enables Israel to perpetrate comfortably its oppressive occupation.

For the last almost forty years the US has acted in organs of the United Nations to protect Israel from any condemnation for actions that gravely violate international human rights law and international humanitarian law. From 1972 until December 2019, in the UN Security Council alone, the US has blocked a total of 44 resolutions that aim to condemn illegal Israeli actions. This US position has made it possible for Israel, as an occupying Power, to continue its illegal policies and practices in the occupied State of Palestine, contributing to the culture of impunity which Israel operates under today.

It was quite telling when, without support from prominent international legal authorities, US Secretary of State Mike Pompeo announced that illegal colonial settlements in occupied territory

are “... not, per se, inconsistent with international law.”<sup>40</sup> In a related move, the US took divisive action against the United Nations Human Right Council (OHCHR) when OHCHR published a list of companies profiting from working in the illegal settlement industrial complex. While the OHCHR was clear on the intentions of the companies – all of whom were notified of their violations of customary international law – that it was a tool to help rectify their illegal dealings and fulfill their human rights obligations under international law, the US administration interpreted this action as a tool to boycott Israel, and withdrew its support for the organization. This US move signaled to Israel that regardless of its violations of its obligations under international law, the US would support Israel’s illegal actions.

Such support has detrimental consequences on the daily lives of the Palestinian people and on decades of efforts which aim for a just and lasting peace, as well as being an attack on respect for international law as the fundamental support for international order, and world peace and stability.

### 3.2 International Responsibility

Countries have a legal obligation not to recognize illegal situations as legal, or to provide aid or assistance to an illegal situation.<sup>41</sup> These ‘norms’ have become an integral part of international law and have been codified as customary international law in various legal instruments and treaties. Not only do they apply to Israel and Palestine, but also to the United States and every country across the globe, whether or not they have ratified those instruments and treaties.

In a nutshell, international law states that where there is an illegal situation created by a country (or State), other countries may not legitimize bad actors by supporting the illegal actions. Such support can be in the form of direct financial assistance, or indirectly through recognizing the bad actor’s actions as legal. For example, when Israel passed its Basic Law in 1980 declaring that Jerusalem is

the undivided capital of Israel and subsequently illegally annexed the occupied portion of the city, the United Nations Security Council responded by adopting a resolution condemning Israel’s illegal action and declaring that the UN would not recognize the resulting the annexation. Specifically, UNSC Resolution 478 declared that any actions by Israel to “seek to alter the character and status of Jerusalem” are considered “null and void.”<sup>42</sup> This obligation was also reiterated in UNSC Resolution 2334 of 2016 where the UN “Underlines that it will not recognize any changes to the 4 June [1967] lines, including with regard to Jerusalem, other than those agreed by the parties through negotiations.”<sup>43</sup> The legal obligation of non-recognition and non-assistance or aid was very clear in UN General Assembly Resolution 47/70 of 1993. Paragraph 15 of the resolution states:<sup>44</sup>

“...calls upon all States, in particular those States parties to the Convention, in accordance with article 1 thereof, and upon international organizations, including the specialized agencies, not to recognize any changes carried out by Israel, the occupying Power, in the occupied territories and to avoid action, including those in the field of aid, that might be used by Israel in its pursuit of the policies of annexation and colonization or any of the other policies and practices referred to in the present resolutions.”

Most importantly, in 2004 the legal obligations of third States were once again highlighted in the decision of the International Court of Justice in its Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory. The Court concluded that “All States are under an obligation not to recognize the illegal situation resulting from the construction of the wall and not to render aid or assistance in maintaining the situation created by such construction.”<sup>45</sup>

It is evident that the international community recognizes third State responsibility in regard to unlawful situations. Thus, in order to assist States

40 Al-Jazeera, “Pompeo: US no longer considers Israeli settlements illegal”, 19 November 2019, available at:

<https://www.aljazeera.com/news/2019/11/pompeo-israeli-settlements-inconsistent-int-law-191118192156311.html> .

41 Annie Bird, Third State Responsibility for Human Rights Violations, European Journal of International Law, Volume 21, Issue 4, November 2010, P. 883-900, available at: <https://academic.oup.com/ejil/article/21/4/883/418145>.

42 S/RES/ 478 (1980), available at: <https://unispal.un.org/DPA/DPR/unispal.nsf/0/DDE590C6FF232007852560DF0065FDDB> .

43 S/RES/2334 (2016), available at: <https://www.un.org/webcast/pdfs/SRES2334-2016.pdf>

44 /RES/ 47/ 70 (1993), available at: <https://undocs.org/en/A/RES/47/70> .

45 Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I. C. J. Reports 2004, Para. 163, available at: <https://www.icj-cij.org/public/files/case-related/131/131-20040709-ADV-01-00-EN.pdf>



to fulfill their legal obligations under international law, and stemming from their obligations of non-recognition and non-assistance, the Human Rights Council adopted on 24 March 2016 resolution 31/36 titled “Israeli settlements in the Occupied Palestinian Territory including East Jerusalem, and in the occupied Arab Syrian Golan,” which was the basis of the released database on business enterprises involved in the illegal Israeli colonial settlement enterprise.<sup>46</sup>

On 12 November 2019, the European Court of Justice took a step closer to fulfilment of the responsibilities of EU States under international

law by concluding that it is mandatory to properly label products originating from illegal colonial-settlements in the occupied Palestine with correct and appropriate certifications of origin in an effort to avoid assisting Israeli violations of international law.<sup>47</sup>

While US foreign policy shifts have increased US support for illegal Israeli actions against Palestinians and highlighted US violations of international law, these shifts have also perpetuated the Israeli occupation of Palestine and increased the risk of regional instability and violence rather than provide support for a more peaceful future.

<sup>46</sup> A/HRC/RES/31/36 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/082/57/pdf/G1608257.pdf?OpenElement>

<sup>47</sup> Al-Haq, “EU takes a step forward with CJEU ruling in favor of accurate labelling”, 19 December 2019, available at: <http://www.alhaq.org/advocacy/16316.html>

## 4. Conclusion

The United States has historically assumed a role of sponsoring negotiations between Israel and Palestine, as well as between Israel and Arab States. However, rather than acting as an effective mediator to address the historic asymmetry between an occupying power and the occupied population, the US has deviated from aligning with the internationally adopted two-state formula and international law. According to Martin Indyk,<sup>48</sup> former US envoy for the 2013-2014 bilateral negotiations between Israel and Palestine, the US has never acted neutrally in the negotiations with Israelis and Palestinians. He noted that the US position is in fact not consistent with being an honest broker and went further to say that there were times that the US played a role as Israel's lawyer.

Today, the current US administration is playing the roles of Israel's agent and partner, supporting its illegal policies, practices, and plans in the occupied State of Palestine.

After President Trump's first presidential visit to Palestine and Israel in May 2017, the US administration began to engage intensively. President Abbas met with President Trump twice, and the Palestinian team met Trump's team, headed by Trump's son-in-law Jared Kushner, over 30 times. Over the course of the meetings, the Palestinian team explained time and again the Palestinian position vis-à-vis negotiations and the final status issues. Despite being told by President Trump that the US did not plan on moving its embassy from Tel Aviv to Jerusalem, just one week after the Palestinian delegation's last meeting with the US delegation, the Embassy Waiver was not signed and put into a motion the transfer of the embassy.

Indeed, the unwavering and lavish financial military aid to Israel, the impunity and deceit in its dealings with Palestinians, and the broad support of Israeli decisions and actions despite knowing of Israel's gross human rights violations have defined the United States' special relationship with Israel and the Israeli-Palestinian conflict. This special relationship has empowered Israel's right-wing government and entrenched its belligerent colonial occupation of the State of Palestine and Arab territory.

By all accounts, President Trump's vision of 'Peace to Prosperity' was very generous toward Israel. It even exceeded Israeli law-makers' ambitions in their desire to control the occupied Palestinian territory and catered to religious dogmas and trends among the colonial ideologues. It has become clear to the Palestinians that the Trump Administration is not a fair player and could not be an honest and unbiased broker in a peace process. While the official position of the State of Palestine aims at implementation and respect of international law and democracy, such deviation from long accepted rules and principles of international law by a country such as the United States has been a deep disappointment, weakening a rules-based international order that states rely on to bring stability and peace to the world community. With the US now acting as a partner with Israel in its military occupation of Palestine, it is time for change in the rules of engagement for a peace process. The State of Palestine does no longer accept the United States as a sole third party and mediator in the negotiations process. Other countries and international organizations, such as the EU, China, Russia, France, Germany, the UN and perhaps others, could and should assist in launching a

<sup>48</sup> Mondoweiss, "Israeli settlements 'screwed up' Kerry peace talks, Indyk says—but U.S. is still Israel's lawyer!", 13 May 2016, available at: <http://mondoweiss.net/2016/05/settlements-screwed-israels/>

genuine and legitimate mediated negotiation process in a multilateral forum, a process whose objective would be to resolve all outstanding issues between Palestine and Israel and end the Israeli occupation. For the US to return as one of the honest brokers in such a peace process, it is no longer enough that the US reverse its punitive actions against Palestine and Palestinian refugees, but it must also to take active measures to ensure that it is intent on becoming a legitimate partner for a just peace.

On 20 February 2018, when President Mahmoud Abbas addressed the world at the United Nations Security Council, he presented an honest, open, just, and realistic vision for peace based on international law and legitimacy. This vision was confirmed in the President's speech at the United Nations General Assembly General Debate on 25 September 2020. President Abbas called on the International community to organize a peace conference on the basis of international law. In fact, President Abbas's multilateral approach can be a tool that can change the paradigm and the current dynamics, rather than the unilateral US-Israeli approach which has failed consistently over the years.

It is regrettable that after years of efforts towards peace, the current US administration, through its biased approach and its deviation from international law, supports illegal and discriminatory policies and practices of an occupying and colonialist Power. By these actions the US has sabotaged decades of efforts to achieve a just and lasting peace.

Today we stand at a very dangerous juncture. Yet, throughout all of these concerning developments, the State of Palestine remains adamant on approaching its negotiations for peace with Israel on the principles of international law, legitimacy and democracy. The State of Palestine urges the United States to align its position in regard to the peace process, once again with international law and legitimacy so that Palestinians and Israelis can live side by side in peace and security.

With less than a week before the US Presidential elections, Palestinians and the citizens of many other States will be paying attention to the outcome of the American political campaign and vote. Regardless of the election results, the Palestinian people will expect an American administration in 2021 that recognizes the legitimate national and human rights of the people of Palestine.





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## 5. Appendix: US Positions from 1989- 2018

	GEORGE H. W. BUSH 1989 - 1993	BILL CLINTON 1993 - 2001	GEORGE W. BUSH 2001 - 2009
<b>TWO STATE SOLUTION/ END OF OCCUPATION</b>	<p><b>Supports the principle of land for peace based on UNSC resolutions 242 and 338, fulfilment of the political rights of the Palestinian people</b></p> <p>In the letter of assurances delivered to the Palestinian delegation attending the Madrid Peace Conference, Secretary James Baker stated the US position of achieving a comprehensive peace based on UNSC Resolutions 242 and 338. It called for the fulfilment of the political, security and identity rights of the Palestinian people<sup>49</sup>.</p> <p>During the Madrid Conference the US endorsed the principles of land for peace (meaning to provide for Israel's security and its recognition, and for legitimate political rights for Palestinians).<sup>50</sup></p>	<p><b>Supports the principle of land for peace based on UNSC resolutions 242-338, including a sovereign Palestinian State</b></p> <p>The Clinton Administration largely continued the positions of the previous administration. By the end of his term, President Clinton issued what was known as the "Clinton Parameters", or "Compromise Proposal" that included a sovereign Palestinian state<sup>51</sup>.</p>	<p><b>Supports the principle of land for peace based on UNSC resolutions 242-338, including a sovereign Palestinian State</b></p> <p>In the Words of George W. Bush "There should be an end to the occupation that began in 1967"<sup>52</sup>. As for the two State solution this administration held the view that "...there has always been a vision in our thinking, as well as in previous administrations' thinking, that there would be a Palestinian state that would exist at the same time that the security of the state of Israel was also recognized, guaranteed and accepted by all parties."<sup>53</sup></p>
<b>ISRAELI SETTLEMENTS</b>	<p><b>Opposed settlements</b></p> <p>This administration opposed settlement activity in the occupied territory since 1967<sup>54</sup> and considered such settlements as an obstacle to peace and a violation of US policy.<sup>55</sup> Furthermore, Israel which was regarded by this administration as the "occupying Power" to be governed by the 1907 Hague Regulations and the 1949 Geneva Conventions.<sup>56</sup></p>	<p><b>Opposed settlements</b></p> <p>The Clinton Administration opposed Israeli settlements in line with previous administrations, though it watered down previous statements describing settlements as illegal. In one occasion the administration referred to settlements as "a complicating factor"<sup>57</sup>.</p>	<p><b>Opposed settlements</b></p> <p>George W. Bush: "Our position on settlements, I think, has been very consistent, very clear. The secretary expressed it not too long ago. He said settlement activity has severely undermined Palestinian trust and hope, pre-empts and prejudices the outcome of negotiations, and in doing so, cripples chances for real peace and prosperity. The U.S. has long opposed settlement activity and, consistent with the report of the Mitchell Committee, settlement activity must stop."<sup>58</sup></p> <p>The "Road Map for Peace", approved in 2001, called for a full cessation of Israeli settlement activities, including "natural growth".</p>

49 James Baker's Letter of Assurances to the Palestinians, October 18, 1991.

[https://www.usip.org/sites/default/files/file/resources/collections/peace\\_agreements/letter\\_of\\_assurance.pdf](https://www.usip.org/sites/default/files/file/resources/collections/peace_agreements/letter_of_assurance.pdf)

50 James Zog, Bush's move, April 30, 1991, [https://www.washingtonpost.com/archive/opinions/1991/04/30/bushs-move/a422042c-15a2-4d7d-b15e-1242e1d1ce07/?utm\\_term=.574afdb81c6a&noredirect=on](https://www.washingtonpost.com/archive/opinions/1991/04/30/bushs-move/a422042c-15a2-4d7d-b15e-1242e1d1ce07/?utm_term=.574afdb81c6a&noredirect=on)

51 William B. Quandt "Clinton and the Arab-Israeli Conflict: The Limits of Incrementalism" in Journal of Palestine Studies, Vol. 30, No. 2 (Winter 2001), pp. 26-40.

52 Tim Butcher, Bush demands end to Israeli 'occupation', January 10, 2008,

<https://www.telegraph.co.uk/news/worldnews/1575175/Bush-demands-end-to-Israeli-occupation.html>

53 Glenn Kessler, Talking Points Aside, Bush Stance on Palestinian State Is not a first, October 5, 2005,

<http://www.washingtonpost.com/wp-dyn/content/article/2005/10/04/AR2005100401410.html>

54 Jerusalem Media and Communications Centre, US Letter of Assurance on the Terms of the Peace, 1991, Assurance to the Palestinian Side, Washington, October 18, 1991, May 14, 2009, <http://www.jmcc.org/Documentsandmaps.aspx?id=342>.

55 Thomas Friedman, Baker Cites Israel for Settlements, 1991, <https://www.nytimes.com/1991/05/23/world/baker-cites-israel-for-settlements.html>.

56 Daniel Kurtzer, Do Settlements Matter? An American Perspective, spring, 2009, <http://www.mepc.org/journal/do-settlements-matter-american-perspective>.

57 Donald Neff (1995) Fallen Pillars: US Policy Towards Palestine and Israeli since 1945. Institute for Palestine Studies. Page 165.

58 Stop Israeli settlements in Arab territories, [http://www.liberationgraphics.com/ppp/Stop\\_Israeli\\_Settlements.html](http://www.liberationgraphics.com/ppp/Stop_Israeli_Settlements.html)

	<b>BARACK OBAMA 2009 - 2017</b>	<b>DONALD TRUMP 2017 - NOW (2020)</b>
<b>TWO STATE SOLUTION/ END OF OCCUPATION</b>	<p><b>Supports the principle of land for peace based on UNSC resolutions 242-338, including a sovereign Palestinian state</b></p> <p>The Obama Administration ratified its support for an independent Palestinian State: “In our discussions today, I reaffirmed to President Abbas that the United States remains committed to realizing the vision of two states, which is in the interests of the Palestinian people, and also in the national security interest of Israel, the United States, and the world. We seek an independent, a viable and contiguous Palestinian state as the homeland of the Palestinian people.”<sup>59</sup></p>	<p><b>Rejects the concepts of “Palestinian State” or “two-state solution” as agreed by the international community, rejects the concept of Palestinian rights; pushes for a ‘Peace to Prosperity’ vision based on a ‘realistic’ Two-State-Solution that deviates from international law as well as the Palestinian position and rights while endorsing Israeli positions and narrative; his ambassador to Israel claimed that there is no occupation in the West Bank;</b></p> <p><b>The US administration closed down the PLO office in Washington as a result of Trump decision not to renew the waiver and Certification of Statutory Provisions regarding PLO office<sup>60</sup></b></p> <p>His first statement was that the US will support a Two State solution only if the two parties agree.<sup>61</sup></p> <p>Trump’s State Department announced that it will no longer call West Bank ‘occupied’ in annual report on human rights violations and will include no comment on the status of the occupied territory.<sup>62</sup> In January 2020 the US administration proposed a vision under the name ‘Peace to Prosperity’<sup>63</sup> that is an American packaged endorsement of Israeli plans to annex occupied Palestinian territory.</p>
<b>ISRAELI SETTLEMENTS</b>	<p><b>Opposed settlements</b></p> <p>On the issue of settlements the Secretary of State at the time, Hilary Clinton stated “And yes, I underscored the longstanding American policy that does not accept the legitimacy of continued settlements. As Israel’s friend, it is our responsibility to give credit when it is due and to tell the truth when it is needed.”<sup>64</sup></p> <p>As for the US Ambassador to the United Nations at the time, Susan Rice: “For more than four decades, Israeli settlement activity in territories occupied in 1967 has undermined Israel’s security and corroded hopes for peace and stability in the region. Continued settlement activity violates Israel’s international commitments, devastates trust between the parties, and threatens the prospects for peace.”<sup>65</sup></p>	<p><b>Doesn’t oppose settlements</b></p> <p>Secretary of State Mike Pompeo announced on 18 November 2019<sup>66</sup> the reversal of four decades of US policy on the illegality of the Israeli settlements.</p> <p>Trump administration revealed its ‘Peace to Prosperity’ plan, in January 2020, supporting Israel to formally declare the annexation in vast areas of the Occupied West Bank as well as normalizing Israel’s illegal colonial-settlement enterprise.</p>

59 Haaretz, Full Text of President Obama’s Speech in Ramallah, March 22, 2013,

<https://www.haaretz.com/the-full-text-of-president-obama-s-speech-in-ramallah-1.5235192> .

60 <https://www.un.org/unispal/document/auto-insert-207706/>

61 Haaretz, Full Text: U.S. Vice President Mike Pence’s Speech at Israel’s Knesset, January 22, 2018,

<https://www.haaretz.com/israel-news/full-text-u-s-vice-president-mike-pence-s-speech-at-the-knesset-1.5751264> .

62 Id.

63 <https://www.whitehouse.gov/wp-content/uploads/2020/01/Peace-to-Prosperity-0120.pdf>

64 Voltaire, Remarks by Hillary Clinton at the 2010 AIPAC Policy conference, March 22, 2010, <http://www.voltairenet.org/article164630.html>

65 Margaret Besheer, US Votes UN Resolution On Illegality of Israeli Settlements, February 17, 2011,

<https://www.voanews.com/a/us-vetoes-un-resolution-on-illegality-of-israeli-settlements-116518158/135243.html>

66 <https://www.nytimes.com/2019/11/18/world/middleeast/trump-israel-west-bank-settlements.html>

	<b>GEORGE H. W. BUSH 1989 - 1993</b>	<b>BILL CLINTON 1993 - 2001</b>	<b>GEORGE W. BUSH 2001 - 2009</b>
<b>JERUSALEM</b>	<p><b>The US did not recognize Israel's Annexation of Jerusalem</b></p> <p>The US did not recognize Israel's annexation of East Jerusalem or the application of Israeli law on EJ, furthermore they did not recognize the expansion of Jerusalem's municipal boundaries.<sup>67</sup></p>	<p><b>The US did not recognize Israel's Annexation of Jerusalem</b></p> <p>Under the Clinton Administration the US position on Jerusalem remained the same as with previous administration. Nevertheless President Clinton hinted at moving the US embassy to Jerusalem after the Camp David Summit in 2000<sup>68</sup>.</p>	<p><b>The US did not recognize Israel's Annexation of Jerusalem</b></p> <p>President George Bush did not change the official US policy on Jerusalem. He stated: "Israel should not undertake any activity that contravenes road map obligations or prejudice final status negotiations with regard to Gaza, the West Bank and Jerusalem."<sup>69</sup></p>
<b>REFUGEES</b>	<p><b>Called for a Just solution to the refugee issue</b></p> <p>This administration would refer to "a just solution" for the refugee problem.<sup>70</sup></p>	<p><b>Refugee issue should be resolved through final status negotiations.</b></p> <p>This administration voted against the annual renewal of resolution 194, and explained that such an issue should be resolved through negotiations and not through a resolution.<sup>71</sup></p>	<p><b>Refugee issue should be resolved through negotiations</b></p> <p>This administration addressed the refugee problem as being solved through an "agreed, just, fair, and realistic solution."<sup>72</sup></p>

67 Jerusalem Media and Communications Centre, supra note 7.

68 Ibid from William Quandt. Page 33.

69 US Department of State, Archive, President Bush Meets with Palestinian President Abbas, May 26, 2005, <https://2001-2009.state.gov/p/nea/rls/rm/46824.htm>.

70 Arafat Shoukri, What will the Trump era bring for Palestinian refugees?, March 13, 2018, <https://www.aljazeera.com/indepth/opinion/trump-era-bring-palestinian-refugees-180313104415009.html>.

71 Id.

72 Id.

	BARACK OBAMA 2009 - 2017	DONALD TRUMP 2017 - NOW (2020)
JERUSALEM	<p><b>The US did not recognize Israel's Annexation of Jerusalem</b></p> <p>President Obama kept the same position on Jerusalem as his predecessors: "Now you have heard that some criticize this resolution for calling East Jerusalem occupied territory. But to be clear, there was absolutely nothing new in last week's resolution on that issue. It was one of a long line of Security Council resolutions that included east Jerusalem as part of the territories occupied by Israel in 1967, and that includes resolutions passed by the Security Council under President Reagan and President George H. W. Bush. And remember that every U.S. administration since 1967, along with the entire international community, has recognized east Jerusalem as among the territories that Israel occupied in the Six-Day War."<sup>73</sup></p>	<p><b>The US recognized Israel's illegal annexation of Jerusalem. Opening of US Embassy in Jerusalem</b></p> <p>On December 6, 2017 US President Donald Trump unilaterally declared that Jerusalem is the capital of the state of Israel. He then went on to explain that the exact sovereign borders of Jerusalem are regarded as a final status issue which should be negotiated between the two parties.<sup>74</sup></p> <p>The US moved its embassy to Jerusalem on May 14<sup>th</sup>, 2018. The move was made in violation of UNSC Resolution 478.</p> <p>The US Consulate in Jerusalem, funded as a diplomatic mission in 1844, was closed and replaced with a "Palestinian Affairs Department" as part of the US Embassy to Israel.</p>
REFUGEES	<p><b>Refugee issue should be resolved through negotiations</b></p> <p>This administration expressed the idea that Palestinian refugees would not be returned to Israel but to a future Palestinian State when/if established.<sup>75</sup></p>	<p><b>Attempts at dismantling UNRWA in order to take off the refugee issue from any future negotiations.</b></p> <p>On August 31, 2018, the US State Department announced their decision to cut aid to UNRWA.<sup>76</sup> This decision implies that the new US policy does not only intend to take Jerusalem off the negotiating table, but also take off the issue of Palestinian Refugees from future negotiations.</p>

73 Sarah Begley, Read John Kerry's Full Speech on Israeli Settlements and Two- State Solution, December 28, 2016, <http://time.com/4619064/john-kerrys-speech-israel-transcript/> .

74 Statement by President Trump on Jerusalem, December 6, 2017, <https://www.whitehouse.gov/briefings-statements/statement-president-trump-jerusalem/> .

75 Id.

76 U.S. Department of State, On U.S. Assistance to UNRWA, <https://www.state.gov/r/pa/prs/ps/2018/08/285648.htm> .

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