Chapter 8, Problem III

Since the ICJ issued its Wall opinion, there has not been real progress on the Israeli-Palestinian situation. Israel has increased its settlement activity in the West Bank, despite near-universal diplomatic condemnation, and continues to face sporadic violence from the occupied territories. Meanwhile, U.S. policy toward Israel has fluctuated over the past few years.

In the last month of the Obama administration, the United States abstained from UN Security Council Resolution 2334, which passed by a vote of 14-0. In the resolution, the Council:

1. **Reaffirms** 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;

2. **Reiterates** its demand that Israel immediately and completely cease all settlement activities in the occupied Palestinian territory, including East Jerusalem, and that it fully respect all of its legal obligations in this regard;

3. **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;

4. **Stresses** that the cessation of all Israeli settlement activities is essential for salvaging the two-State solution, and calls for affirmative steps to be taken immediately to reverse the negative trends on the ground that are imperiling the two-State solution;

5. **Calls** upon all States, bearing in mind paragraph 1 of this resolution, to distinguish in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967;

   ... 

8. **Calls upon** all parties to continue, in the interest of the promotion of peace and security, to exert collective efforts to launch credible negotiations on all final status issues in the Middle East peace process. . . ;

9. **Urges in this regard** the intensification and acceleration of international and regional diplomatic efforts and support aimed at achieving, without delay a
comprehensive, just and lasting peace in the Middle East on the basis of relevant United Nations resolutions, the Madrid terms of reference, including the principle of land for peace, the Arab Peace Initiative and the Quartet Roadmap and an end to the Israeli occupation that began in 1967.

The United States had previously vetoed or threatened to veto other draft resolutions condemning Israel for its settlement policies. Obama administration officials said that they changed the U.S. stance because of increased settlement activity and a lack of progress toward a peace agreement. They explained that they abstained, instead of voting for Resolution 2334, because the resolution focuses too narrowly on the settlements. The Trump administration has been considerably less critical of Israel’s settlement policy.

In December 2017, the United States decided to move the U.S. Embassy to Israel from Tel Aviv to Jerusalem. The move is significant because the status and boundaries of Jerusalem have been contested since Israel’s founding; there is now a widespread consensus that such issues must be resolved through an international process that involves both the Israelis and the Palestinians. The U.S. Embassy was, like the embassies of all other countries, located outside of Jerusalem in order to avoid prejudicing the result of that process. The worry was that having an embassy in Jerusalem might suggest a recognition of Israeli sovereignty there.

As one justification for the move, President Trump invoked a 1995 Act of the U.S. Congress: the Jerusalem Embassy Act (Public Law 104-45). The Act includes the following “Statement of the Policy of the United States”:

(1) Jerusalem should remain an undivided city in which the rights of every ethnic and religious group are protected;
(2) Jerusalem should be recognized as the capital of the State of Israel; and
(3) The United States Embassy in Israel should be established in Jerusalem no later than May 31, 1999.

The Act limits the use of appropriated funds for the acquisition or maintenance of U.S. buildings abroad, unless either the U.S. embassy is opened in Jerusalem or the President finds that suspending that requirement “is necessary to protect the national security interests of the United States.” The Clinton, Bush, and Obama administrations consistently used the national security exception to avoid moving the U.S. Embassy to Jerusalem.

President Trump changed the U.S. Executive Branch’s policy in a December 6, 2017, Proclamation. He “determined that it is time for the United States to officially recognize Jerusalem as the capital of Israel” and “that the United States will relocate
our Embassy to Israel from Tel Aviv to Jerusalem.” As for the relevance of these determinations to the status and boundaries of Jerusalem, the Trump Proclamation states:

Today’s actions . . . do not reflect a departure from the strong commitment of the United States to facilitating a lasting peace agreement. The United States continues to take no position on any final status issues. The specific boundaries of Israeli sovereignty in Jerusalem are subject to final status negotiations between the parties. The United States is not taking a position on boundaries or borders.

But in other settings, President Trump seems to have retreated from those statements. He has suggested that the United States might have taken a position on Jerusalem’s status or boundaries. Most notably, he asserted in a joint press conference with Israeli Prime Minister Netanyahu, “We took Jerusalem off the table, so we don’t have to talk about it anymore.”

The global reaction to the Trump Proclamation was overwhelmingly negative. On December 20, 2017, the UN General Assembly passed a resolution, by a vote of 128–9–35 that is extremely critical of Israel’s conduct in the occupied territories. The resolution “[s]tresses that the wall and settlements being constructed by Israel in the Occupied Palestinian Territory, including in and around East Jerusalem, are contrary to international law.” Among those voting in favor of the resolution were the United Kingdom, France, Germany, Japan, Korea, and Switzerland.

Despite the diplomatic blowback, the United States opened its new embassy in Jerusalem on May 14, 2018. That day was reported to be the deadliest day in Gaza in years—a culmination of weeks of mass demonstrations in the Gaza strip near the fence separating it from Israel. The two sides have offered different accounts of the extent to which the protesters themselves had turned violent. Some of them plainly did; others did not. But in any event, by the end of the period in question, Israeli officials killed over 100 Palestinian and injured thousands more with non-lethal riot control measures. The European Union and a number of other states called on the parties to exercise restraint, but none of these outside actors took meaningful action to improve the situation on the ground.

The United States has continued to support Israel’s claims over occupied territories. In April 2019, it recognized Israel’s sovereignty over the Golan Heights, a small strip of land that Israel seized from Syria during the 1967 Israeli-Arab War. As a matter of international law, the territory still belongs to Syria, even though it has been occupied by Israel for decades. In the immediate aftermath of this recognition decision, U.S. Secretary of State Mike Pompeo was asked to defend it. He explained, “The Trump administration sees the world as it is, not as we wish it to be.”
Did the move of the Embassy or the recognition of Israeli sovereignty over the Golan Heights violate the international law of occupation? For an assessment of the complexities of the Jerusalem issue, click here. The bulk of the Embassy site is land that has been part of Israel since the 1949 armistice (i.e., not occupied territory), but parts of it appear to be in the so-called No-Man’s Land, territory designated in the armistice as demilitarized and belonging to neither Israel nor Jordan, but conquered by Israel in the 1967 war and eventually annexed by Israel. For an analysis of the legal status of the land, click here.