

International Law

Academic year 2018-2019

The Israeli-Palestinian Conflict

DI104 - Printemps - 6 ECTS

Course Description

The roots to the Israeli-Palestinian conflict can be traced back to more than a century ago. It is a conflict that has deeply marked international relations during the last decades. This seminar, while essentially following - but not exclusively adopting - a legal perspective, aims at analysing the key issues of the conflict, namely: the mandate regime and its end; the UN involvement; the creation of states; the Arab-Israeli wars; the cease-fire and peace agreements and their impact on the conflict; military occupation; territorial sovereignty and boundaries; refugees; terrorism; security and peace proposals.

> PROFESSOR

Kohen Marcelo
(Marcelo.Kohen@graduateinstitute.ch)

[Office hours](#)

> ASSISTANT

Najib Messhi
(Najib.Messihi@graduateinstitute.ch)

[Office hours](#)

Syllabus

Organisation and evaluation

This seminar's attendance capacity is limited to 40 students. The seminar will be given in English. However, following the Institute's bilingual policy, French will also be accepted (and some of the reading material is indeed in French). The seminar is accessible to students from the international law department and the interdisciplinary programmes.

The first 3 seminar sessions will be led by the Professor and will introduce the lenses through which the conflict will be apprehended and will level the knowledge of participants. From week 4 onwards, students will submit short essays discussing the session's topic from both the Israeli and Palestinian perspectives, based on assigned readings on the topic. Students have to submit essays for the 3 sessions to which they subscribed at the outset of the term and are expected to participate actively in the discussion of those sessions. Essays should have a maximum length of 1500 words and be submitted by email on Tuesday 8:00 am prior to the session to the assistant Najib Messihi.

The 3 essays will account for 75% of the final grade while class participation will account for the remaining 25%.

Reading materials

The readings indicated in the schedule will be made available online through the class Moodle page (moodle.graduateinstitute.ch). Students are expected to read the materials before the sessions, whether they have subscribed for an essay or not. (Further readings are optional.)

Schedule and indicative bibliography

Session 1	Wednesday 20 February 2019
THEME	
A. Introduction to the seminar and to the method of work B. The long road to the recognition of the Other: an introductory overview from the origin of the conflict until today (first part)	
READINGS	
a) Kohen, Marcelo, "La longue marche vers la reconnaissance territoriale de l'autre", in W. Ossipow (ed.), <i>Israël et l'Autre</i> , Geneva, Labor et Fides, 2006, pp. 13-39. b) United Nations, <i>The origins and evolution of the Palestine problem 1917-1988</i> , United Nations, New York, 1990, pp. 1-146, available at http://unispal.un.org/UNISPAL.NSF/0/57C45A3DD0D46B09802564740045CC0A	

Session 2	Wednesday 27 February 2019
THEME	
The long road to the recognition of the Other: an introductory overview from the origin of the conflict until today (second part)	
READINGS	
a) Kohen, Marcelo, "La longue marche vers la reconnaissance territoriale de l'autre", in W. Ossipow (ed.), <i>Israël et l'Autre</i> , Geneva, Labor et Fides, 2006, pp. 39-74. b) United Nations, <i>The origins and evolution of the Palestine problem 1917-1988</i> , United Nations, New York, 1990, pp. 147ff, available at http://unispal.un.org/UNISPAL.NSF/0/57C45A3DD0D46B09802564740045CC0A	

Session 3	Wednesday 6 March 2019
THEME	
The advisory opinion of the International Court of Justice on the Legal Consequences of the Construction of a Wall on Occupied Palestine Territory	
READINGS	

- a) Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004, p. 136
- b) Kohen, Marcelo, 'The advisory opinion provides the legal framework for the Israeli-Palestinian Conflict', United Nations International Meeting on the Question of Palestine, United Nations Office at Geneva, 8 and 9 March 2005, pp. 62-65.
- c) Wedgwood, Ruth, 'The ICJ Advisory Opinion on the Israeli Security Fence and the limits of self-defense', 99 AJIL 2005, pp. 52-61.

Session 4	Wednesday 13 March 2019
------------------	--------------------------------

THEME

Palestine at the aftermath of the First World War

- A. Palestine under Ottoman sovereignty
- B. Zionism and the Jewish National Home
 - 1. Theodor Herzl's *Der Judenstaat* (1896)
 - 2. The Basel Programme of the First Zionist Congress (29 August 1897)
 - 3. The Balfour Declaration (2 November 1917)
 - 4. *British commitments towards Arab leaders*

READINGS

- a) Herzl, Theodor, *Der Judenstaat* (The Jewish State, text available in English and French translations), Chapter 2 "The Jewish Question"
- b) The Basel Programme of the First Zionist Congress (29 August 1897)
- c) The Balfour Declaration (2 November 1917)
- d) Correspondence between Sir Henry McMahon and Sherif Hussein of Mecca (14 July-24 October, 1915)
- e) Hogarth Message to Sharif Hussein of Mecca (January 1918)
- f) British Declaration to the Seven Arab Spokesmen (June 1918)
- g) Agreement between Emir Feisal and Dr. Chaim Weizmann (3 January 1919)
- h) UN General Assembly Resolution 3379 (XXX) (10 November 1975)
- i) UN General Assembly Resolution 46/86 (16 December 1991)

Session 5	Wednesday 20 March 2019
------------------	--------------------------------

THEME

The British Mandate under the League of Nations

- A. Status of the territory
- B. Geographical scope
- C. Goals of the Mandate
- D. *Positions of the actors*

READINGS

- a) Article 22 of the Covenant of the League of Nations
- b) The Mandate for Palestine (confirmed by the Council of the League of Nations, 22 July 1922)
- c) Memorandum by the British Government relating to the application of the Mandate to Transjordan (approved by the Council of the League of Nations on 16 September 1922)
- d) Correspondence between the Colonial Office and the Palestine Arab Delegation and the Zionist Organisation (21 February-29 June, 1922)
- e) Article 16 of the Treaty of Peace with Turkey signed at Lausanne (24 July 1923)
- f) Report of the Palestine Royal Commission (The Peel Commission) (22 June 1937) (excerpts)
- g) Resolution of the Council of the League of Nations concerning the Status of Palestine (16 September 1937)
- h) Resolution of the Assembly of the League of Nations concerning the Problem of Palestine (30 September 1937)
- i) Palestine Statement of Policy: The British White Paper (The MacDonald White Paper) (17 May 1939)
- j) Report of the League of Nations Permanent Mandates Commission to the League of Nations Council concerning the Statement of British Policy in Palestine (29 June 1939) (excerpts)
- k) Declaration adopted by the Extraordinary Zionist Conference, (Biltmore Declaration) (New York, 11 May 1942)
- l) Pact of the League of Arab States, Annex on Palestine (Cairo, 22 March 1945)
- m) Memorandum by His Britannic Majesty's Government presented to the United Nations Special Committee on Palestine: political history of Palestine under British administration (July 1947)

Session 6	<i>To be determined</i>
THEME	
<i>The Palestine Mandate under the United Nations and the Partition Plan</i>	
<ul style="list-style-type: none"> A. The discussion on Palestine within the UN B. The unilateral end of the Mandate by the British Government C. <i>The Partition Plan by General Assembly Resolution 181 (II)</i> 	
READINGS	
<ul style="list-style-type: none"> a) UN General Assembly Resolution 106 (II) establishing UNSCOP (15 May 1947) b) Report of the United Nations Special Committee on Palestine (3 September 1947) (excerpts) c) UN General Assembly Resolution 181 (II) (29 November 1947) d) UN Palestine Commission, First monthly progress report to the Security Council (Doc. A/AC.21/7) (29 January 1948) e) UN Security Council Resolution 42 (1948) (5 March 1948) f) UN Security Council Resolution 43 (1948) (1 April 1948) 	

- g) UN Security Council Resolution 44 (1948) (1 April 1948)
- h) UN Security Council Resolution 46 (1948) (17 April 1948)

Session 7	Wednesday 3 April 2019
THEME	
<p><i>The first Arab-Israeli War</i></p> <ul style="list-style-type: none"> A. The war from a legal perspective B. The armistice agreements: its consequences C. The annexation of the West Bank by Transjordan 	
READINGS	
<ul style="list-style-type: none"> a) Cablegram to the United Nations from the Secretary-General of the League of Arab States (15 May 1948) b) UN Security Council Resolution 50 (1948) (29 May 1948) c) Progress Report of the United Nations Mediator in Palestine (16 September 1948) d) UN Press Release: Arabs, Jews reject Mediator's Report on Palestine (7 October 1948) e) UN Security Council Resolution 62 (1948) (16 November 1948) f) Law of the State of Israel: Area of Jurisdiction and Powers Ordinance (22 September 1948) g) Cablegram from the Premier and Acting Foreign Secretary of the All-Palestine Government to the Secretary-General concerning the constitution of the All-Palestine Government (28 September 1948) h) General Armistice Agreement between Israel and Egypt (24 February 1949) i) General Armistice Agreement between Israel and Lebanon (23 March 1949) j) General Armistice Agreement between Israel and Jordan (3 April 1949) k) General Armistice Agreement between Israel and Syria (20 July 1949) l) Working Paper prepared by the Secretariat, UN Commission for Palestine: The future of Arab Palestine and the question of partition (30 July 1949) m) Documents on the annexation of the West Bank by Transjordan 	

Session 8	Wednesday 10 April 2019
THEME	
<p><i>The 1967 Six Day War and the 1973 Kippur/Ramadan War</i></p> <ul style="list-style-type: none"> A. Matters concerning the legality of the use of force B. Belligerent Occupation vs Contested Territories 	

READINGS

- a) UN Security Council Resolution 242 (1968)
- b) Resolution of the Arab Summit Conference (Khartoum, 1 September 1967)
- c) UN Security Council Resolution 338 (1973) (22 October 1973)
- d) Geneva Convention IV on (12 August 1949) (excerpts)
- e) Israel, Ministry of Foreign Affairs, Disputed Territories: Forgotten Facts About the West Bank and Gaza Strip, February 2003, available at: <http://www.mfa.gov.il>

Further readings:

- ⤴ Blum, Yehuda Z.; "The Missing Reversioner: Reflections on the Status of Judea and Samaria". *Israel Law Review*, 1968, Vol. 3, pp. 279-301.
- ⤴ Lapidot, Ruth; "Security Council Resolution 242 at Twenty-Five". *Israel Law Review*, 1992, Vol. 26, pp. 295-318.
- ⤴ Roberts, Adam; "Prolonged Military Occupation: The Israeli-Occupied Territories since 1967". *A.J.I.L.*, 1990, Vol. 84, pp. 44-103.

Session 9

Wednesday 17 April 2019

THEME

The Declarations of Independence or Statehood

- A. The declaration of independence by Israel
- B. The declaration of the establishment of a Palestinian State (Palestine National Council, Alger, 15 November 1988)

READINGS

- a) Declaration of the Establishment of the State of Israel (14 May 1948)
- b) Letter of the Permanent Observer of the Palestine Liberation Organization to the United Nations addressed to the Secretary-General (9 December 1988)
- c) Declaration of the establishment of a Palestinian State (15 November 1988)
- d) UN General Assembly Resolution 43/177 (15 December 1988)

Further readings:

- ⤴ Crawford, James, "Israel (1948-1949) and Palestine (1988-1999) : Two Studies in the Creation of States", in: G. Goodwin-Gill et S. Talmon (eds), *The Reality of International Law. Essays in Honour of Ian Brownlie*, Oxford, Clarendon Press, 1999, pp. 95-124.

Session 10

To be determined

THEME

The legal status of the main actors

- A. The legal status of Israel
 - a) The creation of the State of Israel and its existence

- b) The Basic Law: Israel as the Nation-State of the Jewish People, 19 July 2018 (7th Av, 5778), available at: <https://knesset.gov.il/laws/special/eng/BasicLawNationState.pdf>
- B. The legal status of the Palestinian People
 - a) The PLO
 - b) The Palestinian Authority
 - c) The State of Palestine

READINGS

- a) Letter from Israel's Foreign Minister to the UN Secretary-General concerning Israel's application for admission to membership of the UN (29 November 1948)
- b) UN General Assembly Resolution 273 (III), admission of Israel to membership of the UN (11 May 1949)
- c) Palestinian National Charter issued by the Palestinian Liberation Organisation (17 July 1968)
- d) UN General Assembly Resolution 3210 (XXIX) (14 October 1974)
- e) UN General Assembly Resolution 3236 (XXIX) 22 November 1974
- f) Jordan: statement concerning disengagement from the West-Bank and Palestinian self-determination (31 July 1988) 27 ILM 1637 (1988)
- g) UN Security Council Resolution 1397 (2002)
- h) Application of Palestine for admission to membership in the United Nations, General Assembly (A/66/371) and Security Council (S/2011/592), 23 September 2011
- i) Prime Minister Benjamin Netanyahu, Remarks at the Start of the Weekly Cabinet Meeting, 18 September 2011 (available at http://www.mfa.gov.il/MFA/Government/Communiques/2011/PM_Netanyahu_Cabinet_18-Sep-2011.htm)
- j) Report of the Committee on the Admission of New Members concerning the application of Palestine for admission to membership in the United Nations (S/2011/705), 11 November 2011.
- k) Update on Situation in Palestine, Office of the Prosecutor, International Criminal Court (3 April 2012)
- l) UNGA Resolution 67/19 of 29 November 2012 according Palestine non-member observer State status in the United Nations.
- m) Status of Palestine in the United Nations, Report of the Secretary-General (A/67/738) 8 March 2013.
- n) Report on Preliminary Examination Activities 2013, Office of the Prosecutor, International Criminal Court (November 2013), pp. 53-54, available at: http://www.icc-cpi.int/en_menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/comm%20and%20ref/Pages/Report-on-Preliminary-Examination-Activities-2013.aspx
- o) Statement by PLO Executive Committee Member Dr. Saeb Erekat on Palestine's accession to international treaties, 31 December 2014.
- p) Israel Ministry of Foreign Affairs, Cabinet communique, 4 January 2015.
- q) The Prosecutor of the ICC opens a preliminary examination of the situation in Palestine (16 January 2015).
- r) Prime Minister Netanyahu on decision of the ICC Prosecutor (17 January 2015).
- s) State of Palestine, Application instituting proceedings against the United States of America

in the case concerning the Relocation of the United States Embassy to Jerusalem, 28 September 2018, available at: <https://www.icj-cij.org/files/case-related/176/176-20180928-APP-01-00-EN.pdf>

- t) International Court of Justice, Relocation of the United States Embassy to Jerusalem (Palestine v. United States of America), Order of 15 November 2018, available at: <https://www.icj-cij.org/files/case-related/176/176-20181115-ORD-01-00-EN.pdf>

Session 11	Wednesday 8 May 2019
THEME	
<p><i>Personal and property status, settlements</i></p> <p>A. Personal status</p> <p style="padding-left: 20px;">a) Nationality during the Mandate regime</p> <p style="padding-left: 20px;">b) Israeli nationality</p> <p style="padding-left: 20px;">c) Palestinian nationality</p> <p style="padding-left: 20px;">d) Personal status in the occupied Palestinian territory</p> <p>B. Property</p> <p>C. Settlements</p>	
READINGS	
<p>a) Palestine Citizenship Order (24 July 1925)</p> <p>b) Law of the State of Israel, Emergency Regulations (Registration of Inhabitants Ordinance) (5 November 1948)</p> <p>c) Law of the State of Israel, Emergency Regulations (Foreign Travel Ordinance) (19 November 1948),</p> <p>d) UN General Assembly Resolution 194 (III) (11 December 1948)</p> <p>e) UN General Assembly Resolution 212 (III) (19 November 1948)</p> <p>f) Law of the State of Israel, Emergency Land Requisition (Regulation) Law (14 November 1949)</p> <p>g) Law of the State of Israel, Absentee's Property Law (14 March 1950)</p> <p>h) Law of the State of Israel, Law of Return (5 July 1950)</p> <p>i) Law of the State of Israel, Nationality Law (1 April 1952)</p> <p>j) UN Security Council Resolution 446 (1979) (22 March 1979)</p> <p>k) UN Security Council Resolution 465 (1980) (1 March 1980)</p> <p>l) Law of the State of Israel: Citizenship and Entry into Israel Law- Temporary Order (31 July 2003)</p> <p>m) UN General Assembly Resolution 58/94 (17 December 2003)</p> <p>n) Palestine 2003 Amended Basic Law and 2003 Draft Constitution (excerpts)</p> <p>o) UN Security Council Resolution 2334 (2016) (23 December 2016)</p>	

Session 12	Wednesday 15 May 2019
THEME	
<i>The Legal status of Jerusalem</i>	
READINGS	
<ul style="list-style-type: none"> a) UN Trusteeship Council, Statute for the City of Jerusalem (4 April 1950) b) Letter from Israel to the Secretary-General of the United Nations concerning the Status of Jerusalem (10 July 1967) c) UN Security Council Resolution 252 (1968) (21 May 1968) d) Basic Law of Israel: Jerusalem, Capital of Israel (30 July 1980) e) UN Security Council Resolution 478 (1980) (20 August 1980) f) UN, Committee on the exercise of the inalienable right of the Palestinian People, Division for Palestinian Rights, The Status of Jerusalem, UN Doc. 97-24262, 1997. g) Law of the Palestinian Authority: Law of the Capital (5 October 2002) <p>Further readings:</p> <ul style="list-style-type: none"> ⤴ Blum, Yehuda Z.; <i>The Juridical Status of Jerusalem</i>. Jerusalem, Papers on Peace Problems n° 2, The Hebrew University of Jerusalem, 1974, 32 p. ⤴ Cassese, Antonio; "Legal Considerations on the International Status of Jerusalem". <i>Palestinian Yearbook of International Law</i>, 1986, Vol. III, pp. 13-39. ⤴ Lauterpacht, Elihu; <i>Jerusalem and the Holy Places</i>. London, Anglo-Israel Association, 1968, 87 p. ⤴ Levine, Alan; "The Status of Sovereignty in East Jerusalem and the West Bank". <i>New York University Journal of International Law & Politics</i>, 1972, vol. 5, pp. 485-502. 	

Session 13	Wednesday 22 May 2019
THEME	
<i>Questions related to terrorism, resistance and self-defence</i>	
<ul style="list-style-type: none"> A. Terrorism and resistance B. Self-defence C. The construction of a wall/security barrier 	
READINGS	
<ul style="list-style-type: none"> a) UN Security Council Resolution 605 (1987) (22 December 1987) b) Covenant of the Islamic Resistance Movement (Hamas) (18 August 1988) c) Letter from Israeli Ambassador Gad Yaacobi to the United Nations regarding measures to eliminate international terrorism (10 April 1995) d) UN Security Council Resolution 1402 (2002) 30 March 2002 e) UN Security Council Resolution 1435 (2002) 24 September 2002 f) Legal Consequences of the Construction of a Wall on Occupied Palestine Territory. Written statements of Israel, Palestine and Malaysia (available at: http://www.icj-cij.org/docket/index.php?p1=3&p2=4&code=mwp&case=131&k=5a) 	

- g) Beit Sourik Village Council v. The Government of Israel and Commander of the IDF Forces in the West Bank, HCJ 2056/04, 30 May 2004 (Supreme Court of Israel).
- h) Zaharan Yunis Muhammad Mara'abe et al v. The Prime Minister of Israel et al, HCJ 7957/04, 15 September 2005 (Supreme Court of Israel).
- i) Regional Council, Coast of Gaza v. Knesset of Israel, HCJ 1661/05, 9 June 2005, (Supreme Court of Israel).

Session 14	Wednesday 29 May 2019
THEME	
<p>The Peace process</p> <ul style="list-style-type: none"> A. The Oslo Agreements and its consequences B. The Road Map C. Peace proposals (Clinton, Abdallah/Arab League Proposal, the "Geneva Accord") <p>Conclusions</p>	
READINGS	
<ul style="list-style-type: none"> a) Egypt/Israel, Framework for peace in the Middle East agreed at Camp David, 17 September 1978 b) Egypt/ Israel, Peace treaty of 26 March 1979 (excerpts) c) Declaration of Principles on Interim Self-Government Arrangements; Israel-PLO, Washington D.C., 13 September 1993. I.L.M., 1993, vol. 32, p. 1525 (traduction française in: R.G.D.I.P., 1994, t. 98, p. 264) d) Israel/Jordania, Peace treaty of 26 October 1994 (excerpts) e) Israel-Palestine Liberation Organization; Agreement on the Gaza Strip and the Jericho Area, Cairo, 4 May 1994; in I.L.M., 1994, vol. 33, p. 626 f) Israel-Palestine Liberation Organization; Agreement on Preparatory Transfer of Powers and Responsibilities. Erez, 29 August 1994; in I.L.M., 1995, vol. 34, p. 457 g) The Palestinian-Israeli Interim Agreement on the West Bank and Gaza Strip, Washington, 28 September 1995 in http://www.mfa.gov.il h) Wye River Memorandum, 23 October 1998 i) The Israel-Palestine Liberation Organization: The Sharm El-Sheikh Memorandum, 4 September 1999, I.L.M. 1999, vol. 38, pp. 1465-1468 j) Trilateral Statement on the Middle East Peace Summit at Camp David (25 July 2000) k) Clinton Parameters to Palestinian and Israeli negotiators (23 December 2000) l) Israeli-Palestinian Joint Statement of the Status Negotiations between Israel and the Palestinian Authority at Taba (27 January 2001) m) European Union non-paper on the Taba Conference (2001) n) UN Security Council Resolution 1397 (2002) (12 March 2002) o) UN Security Council Resolution 1515 (2003) (19 November 2003) p) Arab Peace Initiative, Beirut, 28 March 2002 q) Nusseibeh-Ayalon Agreement (6 August 2002) r) The Geneva Accord (October 2003) 	

- s) Israel Disengagement Plan (18 April 2004) and Government Resolution concerning the Disengagement Plan (6 June 2004)
- t) UNSC Draft Resolution submitted by Jordan, 30 December 2014, S/2014/910.
- u) 7354th meeting of the UNSC, 30 December 2014, S/PV.7354.

Bibliography and Documentation

A very useful guide for the use of primary sources:

- ◆ Bassiouni, M. Cherif and Ben Ami, Shlomo (eds), *A Guide to Documents on the Arab-Palestinian/ Israeli Conflict 1897-2008* (Leiden, M. Nijhoff, 2009), 247p.

Collection of selected documents:

- ◆ Bassiouni, Ch. (ed), *Documents on the arab-israeli conflict* (Ardsley NY, Transnational, 2005)
- ◆ Lapidoth, R. and Hirsch, M. (eds), *The Jerusalem question and its resolution : selected documents* (Dordrecht : Martinus Nijhoff, 1994)
- ◆ Moore, J.N. (ed) *The Arab-Israeli conflict* (Princeton: Princeton Univ. Pr., 1991)