



# The United States and the “World Court”

October 17, 2018

The Trump Administration [recently announced](#) plans to reevaluate the United States’ role before the International Court of Justice (ICJ)—[commonly called](#) the “World Court.” This year, Iran and the Palestine Liberation Organization (PLO, designated as “Palestine” or “State of Palestine” within the U.N. system) [initiated](#) separate [proceedings](#) against the United States at the international tribunal. After the ICJ made a [preliminary determination](#), over the United States’ objections, that it had jurisdiction to hear Iran’s claims, the Trump Administration [announced](#) that the United States will withdraw from the treaties on which both the Iran and PLO cases are based. The Administration also stated that it will review all other international agreements “that may still expose the United States” to ICJ jurisdiction.

Some prior presidential Administrations have taken similar actions to narrow the ICJ’s jurisdiction. Several decades ago, the Reagan Administration [withdrew](#) U.S. recognition of the ICJ’s compulsory jurisdiction over a broad range of international legal disputes. And, in 2005, the George W. Bush Administration [withdrew](#) from an [international agreement](#) giving the ICJ jurisdiction over disputes between the United States and other parties to a [consular convention](#). This Legal Sidebar reviews the most recent ICJ proceedings against the United States by Iran and the PLO and the implications for Congress of the Trump Administration’s withdrawal decision.

## Background on the ICJ

The ICJ is the “[principal judicial organ](#)” of the United Nations. The tribunal’s functions are governed by the [ICJ Statute](#)—an annex to and “[integral part](#)” of the U.N. Charter. Under [Article 93](#) of the Charter, which the United States ratified in 1945, all member-nations of the United Nations also are parties to the ICJ Statute.

Although the ICJ is part of the U.N. system, it does not have jurisdiction over all disputes between U.N. member-states. With the exception of “[advisory opinions](#),” which are non-binding, the ICJ may only resolve [legal disputes](#) between nations that voluntarily agreed to its jurisdiction. Some countries have submitted [declarations](#) submitting to the court’s compulsory jurisdiction in a wide array of matters outlined in [Article 36\(2\)](#) of the ICJ Statute. The United States submitted such a [declaration](#) in 1946. But it [withdrew that declaration](#) in 1985 after the ICJ accepted jurisdiction over a dispute with Nicaragua that the Reagan Administration argued was an “[inherently political problem](#)” inappropriate for judicial resolution.

While the United States is no longer subject to the ICJ’s broad compulsory jurisdiction, individual treaties may contain clauses that give the ICJ jurisdiction on a treaty-by-treaty basis. A [2008 study](#) found that the

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United States was a party to more than 80 international agreements with ICJ clauses. This treaty-based jurisdiction is at issue in the Iran and PLO cases, but the Trump Administration's most recent withdrawal announcement does not automatically terminate the ICJ proceedings in either case. Based on [prior ICJ jurisprudence](#), the ICJ's jurisdiction is determined at the time of filing, and, once established, is not terminated by withdrawal from the jurisdiction-creating instrument.

### **Iran v. United States**

Iran [instituted](#) proceedings at the ICJ in July 2018 after President Trump [announced](#) the United States' [plan](#) to re-impose sanctions that had been lifted pursuant to the Joint Comprehensive Plan of Action (JCPOA), commonly called the "Iran nuclear deal." The JCPOA is [not a binding international agreement](#) and does not have an ICJ jurisdiction clause. Thus, rather than cite a violation of the nuclear deal itself, Iran contends that reinstatement of U.S. sanctions violates the United States' obligations under a 1955 bilateral Treaty of Amity, Economic Relations, and Consular Rights ([Treaty of Amity](#)) to, among other things, allow freedom of commerce and navigation between the two nations. [Article XXI](#) of the Treaty of Amity grants the ICJ jurisdiction over disputes concerning the treaty's interpretation and application.

The United States objected to the ICJ's jurisdiction, [arguing](#) that the true nature of Iran's claims arose from the JCPOA, not the Treaty of Amity. And even if U.S. sanctions were relevant to the Treaty of Amity, the U.S. [asserted](#), the sanctions were permitted by [Article XX](#) of that treaty, which authorizes both nations to protect their "essential security interests." In a [preliminary ruling](#) the ICJ sided with Iran and concluded that the Treaty of Amity appeared, at least on a preliminary basis, to provide it jurisdiction (although the "essential security interests" clause may be a defense on the merits). The ICJ also [granted](#) certain "provisional measures"—or temporary relief pending a final decision—but its award falls far short of the relief Iran requested. Whereas Iran [asked](#) that the ICJ order the United States to lift *all* sanctions that had been withdrawn under the JCPOA, the ICJ only directed the United States to allow trade in certain ["goods required for humanitarian needs"](#) and financial services necessary to facilitate such trade.

This is not the first time the ICJ has heard a case over the Treaty of Amity. In 1980, the ICJ [concluded](#) that Iran violated the treaty by failing to protect U.S. nationals during the Iran hostage crisis (discussed [here](#)). In the 1992 [Oil Platforms](#) case, which Iran filed after U.S. forces allegedly attacked Iranian oil rigs used to mine the Persian Gulf, the ICJ [rejected](#) both Iran's claims and the United States' counter-claims arising out of the Treaty of Amity. And in a [still-ongoing case](#) initiated in 2016, Iran [contends](#) that the U.S. violated the treaty by allowing U.S. courts to attach certain Iranian assets to satisfy civil judgments awarded to victims of terrorism. Given this history and the contentious state of U.S.-Iran relations (discussed [here](#)), Secretary of State Pompeo [announced](#) that the United States will withdraw from the Treaty of Amity.

### **"Palestine" (PLO) v. United States**

The PLO [instituted proceedings](#) at the ICJ in September 2018, claiming that the United States violated the 1961 Vienna Convention on Diplomatic Relations (VCDR) by [moving its embassy](#) from Tel Aviv to Jerusalem. The VCDR creates an international legal framework governing the rights and duties of diplomatic officials and missions, and an [Optional Protocol](#) to the convention grants the ICJ jurisdiction to resolve disputes that arise out of the interpretation or application of the VCDR.

The PLO [argues](#) that the VCDR requires a diplomatic mission to perform its functions within the territory of a "receiving state." According to the PLO, Jerusalem is not part of Israeli territory because it is subject to international administration under earlier [U.N. General Assembly](#) and [Security Council resolutions](#). Therefore, the PLO argues, the U.S. Embassy in Israel is not in the territory of the "receiving state," as mandated by the VCDR.

While the ultimate result of the suit depends on a number of factors and cannot be predicted with certainty, the United States possesses a number of potential counter-arguments and defenses. When the

PLO provided notification that it would become a party to the VCDR and its Optional Protocol, the U.S. Mission to the United Nations [objected](#), stating: “the Government of the United States of America believes that the ‘State of Palestine’ is not qualified” to join to the treaties. Thus, it appears that the United States may challenge whether “Palestine” has achieved international legal status for statehood necessary to enforce the VCDR at the ICJ. The United States also might argue that, regardless of the status of Palestinian statehood, only the receiving state (here, Israel) has sufficient “[legal right or interest](#)” in the VCDR’s provisions concerning embassy location to confer standing at the ICJ.

Earlier [ICJ jurisprudence](#) suggests that the international tribunal may not adjudicate claims that involve the legal interests of third-party nations without those nations’ consent. Because the PLO’s suit implicates Israel’s territorial claims to Jerusalem, the ICJ may refrain from resolving the case without Israel’s approval. Finally, the United States might challenge the merits of the PLO’s interpretation of the VCDR. The PLO argues that the treaty requires embassies to be located within the territory of the receiving state, but [commentators disagree](#) on whether this reading is consistent with the treaty’s text and state practice.

No proceedings have been held in the PLO case thus far, and the ICJ has not submitted any preliminary rulings. On October 3, 2018, the Trump Administration [announced](#) that it would withdraw from the Optional Protocol which creates ICJ jurisdiction, but it will remain a party to the VCDR itself.

### **Implications for Congress**

Whereas the ICJ cases raise complex policy questions over the role of international tribunals in foreign affairs, the Trump Administration’s treaty termination decisions may implicate constitutional concerns over the separation of powers. The executive branch ratified the Treaty of Amity and the Optional Protocol to the VCDR only after receiving the Senate’s consent; yet, it appears to have announced its withdrawal from those agreements without seeking formal approval from the legislative branch. As detailed in this [Report](#), the termination of treaties typically involved joint action by the executive and legislative branches until the 20th century when unilateral termination by the Executive became the norm. Some Members of Congress [have contested](#) unilateral executive authority in the past, but judicial challenges have been dismissed, often on grounds that they raise nonjusticiable questions left to the political branches to resolve. The Trump Administration’s recent withdrawals—and any future withdrawals resulting from its review of all treaties with ICJ clauses—could establish additional historical precedent for unilateral executive withdrawal power.

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