

## **Understanding the Dispute About the U.S. Reopening its Consulate in Jerusalem to Manage Diplomatic Relations with the Palestinian Authority**

An ongoing dispute between regarding U.S. plans to reopen a diplomatic office in Jerusalem has largely been set aside for the time being. This office, known as a Consulate, would provide services and oversee diplomacy with Palestinians in eastern Jerusalem, the West Bank and Gaza.

The Biden Administration sees the move as a return to how diplomatic relations with Palestinians had worked for decades, until 2019. That year, the U.S. Consulate was closed by the Trump Administration and merged with the U.S. Embassy to Israel. The Embassy had been moved to Jerusalem in 2018, after the U.S. officially recognized the unified city as Israel's capital. In this context, Israel believes that reopening the U.S. Consulate in Jerusalem would undermine Israeli sovereignty and has called for it to be located in Ramallah or another Palestinian city instead.

### **History of the U.S. Consulate in Jerusalem**

- According to international law, embassies and consulates are technically the territory of a foreign country within the sovereign borders of a host country. Host countries waive their sovereignty over the land in which the foreign state's diplomatic mission is located. A foreign state must seek the permission of a host state to open an embassy or consulate.
- The Consulate General of the United States in Jerusalem operated from 1844-2019.<sup>1</sup> In 1844, the Ottoman Empire ruled Jerusalem. The U.S. Consulate was originally established just outside the Old City, where the major Jewish, Christian, and Muslim holy sites are located. In 1912, the Consulate was moved to its most recent location on Agron St. – an area that would later become western Jerusalem.
- During Ottoman rule, the Consulate focused on working with American Christians who had set up colonies in the region and building up economic ties with the Ottomans. The Consulate's relationships with Jewish, Muslim, and Christian residents varied, depending on which American diplomat was in charge.<sup>2</sup>
- After Israel's Declaration of Independence and the 1948 War, Jerusalem was divided. Israel was attacked by Palestinian forces and surrounding Arab armies, including troops from Jordan who occupied the eastern half of the holy city until 1967. Western Jerusalem became part of Israel, and was officially declared the capital of the new state in 1950.
- The U.S. did not recognize Jerusalem as Israel's capital and established its embassy to Israel in Tel Aviv in 1949. The U.S. Consulate in Jerusalem remained in place and became responsible for reporting on the situation in western Jerusalem (the Israeli side), eastern Jerusalem (the Jordanian side), and the West Bank (also occupied by Jordan).<sup>3</sup>
- From 1949-1967, Jordan occupied eastern Jerusalem, destroyed many synagogues, and refused to allow Jews to visit or pray at their holiest sites in violation of the 1949 Armistice agreements that Jordan signed.
- During the 1967 War, Jordan attacked Israel, despite Israeli diplomats urging Jordanian leaders not to do so. In response, Israel pushed Jordanian forces out and took control of eastern Jerusalem and the West Bank. The U.S. Consulate continued to operate in a similar way, but with more freedom to move between different parts of the newly united city.

- After Israeli and Palestinian leaders signed the Oslo Accords in 1993, the Palestinian Authority (PA) was established to govern the vast majority of Palestinians in the West Bank and Gaza. At that point the U.S. Consulate took on a new responsibility – leading U.S. diplomatic relations with the PA.

## **The U.S. Embassy Move and Closure of the U.S. Consulate in Jerusalem**

- In 1995, the U.S. Congress passed the Jerusalem Embassy Act, recognizing the city as Israel's capital and requiring the U.S. to move its embassy there by 1999. However, the bill gave the U.S. president the ability to delay by issuing a "national security waiver." For over two decades, presidents issued this waiver in hopes that this would help promote Israeli-Palestinian peace negotiations. Unfortunately, multiple rounds of negotiations failed, with Palestinian leaders rejecting major peace offers in 2000 and 2008.
- In 2017, the US officially recognized Jerusalem as Israel's capital and moved its embassy from Tel Aviv to Jerusalem the following year. In 2019, the U.S. Consulate officially closed and was replaced by the Palestinian Affairs Unit (PAU) at the U.S. Embassy to Israel.
- While the PAU was meant to take over from the Consulate, Palestinian leaders expressed outrage and PA President Mahmoud Abbas prohibited PA officials from meeting with its staff. They viewed the move as a diplomatic downgrade.
- After the new U.S. Administration took over in 2021, the PA engaged primarily with the U.S. Deputy Assistant Secretary for Israel and Palestinian Affairs, Hady Amr.<sup>4</sup>

## **Planned Reopening of the Jerusalem Consulate by the U.S.**

- In May 2021, Secretary of State Anthony Blinken announced that the Administration is planning to reopen the U.S. Consulate in Jerusalem to manage relations with the PA.<sup>5</sup> The PA welcomed this announcement, but the new Israeli government was strongly opposed.
- The U.S. has acknowledged that according to U.S. and international law, Israel must approve the reopening of the Consulate.<sup>6</sup>
- After Israeli Prime Minister Naftali Bennett and Foreign Minister Yair Lapid told the U.S. that their diverse and fragile governing coalition could fall apart over this issue, the two parties reportedly formed a joint team to resolve the dispute discreetly.<sup>7</sup> The Administration also agreed to wait until after November 2021 to make any moves.<sup>8</sup>
- By law, the Israeli government had to either approve a budget or dissolve and go to another round of elections by November 2021. In Israel, the process of passing a national budget involves intense political negotiations and compromises, to ensure all parties in the government will vote in favor. Israeli leaders were concerned that external factors like a controversy over the U.S. Consulate could derail this crucial vote. On November 4th, 2021, Israel officially approved its budget, creating more government stability.
- On December 15, 2021, it was reported that the United States will hold off on reopening the consulate for now, partly because the PA has quietly ended its boycott and resumed communications with the PAU at the U.S. Embassy. The PAU has begun independently reporting back to Washington, as the U.S. Consulate used to do. Additionally, the U.S. is focused on nuclear deal negotiations with Iran and reportedly wants to avoid other sources of tension with Israel.<sup>9</sup>

## Understanding the Controversy and Conflicting Perspectives

- The Biden Administration wants to reopen the Consulate because they view it as a low-cost way to return to a previous *status quo* and rebuild U.S.-Palestinian diplomatic ties. *Times of Israel* reported that according to a U.S. official, “the lack of a consulate hampered on-the-ground engagement with the Palestinians leading up to and during the May war with Gaza.”<sup>10</sup>
- Israeli leaders believe reopening the U.S. Consulate in Jerusalem would send a misleading and damaging message that in the future the city may not remain Israel’s undivided capital. They have expressed concerns that other states will follow the U.S. and also demand to open diplomatic missions to the PA in Jerusalem, further undermining Israeli sovereignty.
- Prime Minister Bennett and Foreign Minister Lapid have proposed that the U.S. open the Consulate in Ramallah or Abu Dis – a Palestinian neighborhood close to Jerusalem.<sup>11</sup> Palestinian leaders have publicly rejected this idea and insisted the Consulate must be in Jerusalem, because this would strengthen their claim to the city.<sup>12</sup>
- Republican Members of Congress introduced a bill, “Upholding the 1995 Jerusalem Embassy Law Act of 2021,” which would, “prevent the U.S. administration from relaunching the de facto mission to the Palestinians in Israel’s capital.”<sup>13</sup> Congressman Josh Gottheimer, a Democrat, said in a statement that, “Any decision on this issue should be made with Israel’s consent and must recognize that Jerusalem is Israel’s undivided capital.”<sup>14</sup>
- The previous U.S. Ambassador to Israel, David Friedman, argues that reopening the Consulate is a, “crystal clear message that the United States favors a division of Jerusalem into an Israeli capital and a Palestinian capital.” Former U.S. Ambassador Daniel Kurtzer, who served from 2001-2005, argues the opposite: “It doesn’t signal that we support anything other than opening up a consulate to deal with the Palestinians.”<sup>15</sup>
- Matan Vilnai, a former minister and IDF general and current chairman of Commanders for Israel’s Security, sent a letter to Israeli lawmakers urging them to support reopening the Consulate in Jerusalem. He argued that this would strengthen the PA’s ability to govern and maintain security in the West Bank, and help “shrink the conflict.”<sup>16</sup>
- Israel’s Regional Cooperation Minister, Issawi Frej, said he has no problem with the move and is in favor of it. Frej is a member of the progressive Meretz party, which is part of Israel’s politically diverse governing coalition.<sup>17</sup>
- Jerusalem Mayor Moshe Lion said that while he opposes the Consulate reopening and is optimistic it won’t happen, he would not deny it services to operate.<sup>18</sup> Jerusalem’s previous mayor, Nir Barkat, has travelled to the U.S. multiple times to lobby against the move, arguing that it would promote a division of the city.<sup>19</sup>
- Einat Wilf, a Professor at Georgetown University and former Member of Knesset (Israel’s parliament), argues that reopening the Consulate at its old location in the western part of the city, “would send a terrible message that this part of Jerusalem is somehow contested.” However, moving it to a Palestinian neighborhood deep in eastern Jerusalem, away from Jewish holy sites and other key areas, could be a win-win that resolves this dispute.<sup>20</sup>

**StandWithUs will update this factsheet as this situation develops.**

<sup>1</sup> U.S.-Israel relations. History of the U.S. Consulate in Jerusalem. (n.d.). Retrieved November 29, 2021, from <https://www.jewishvirtuallibrary.org/history-of-the-u-s-consulate-in-jerusalem>

<sup>2</sup> Dreams and diplomacy in the holy land: American consuls in Jerusalem in the 19th century. Shapell. (2018, July 2). Retrieved November 29, 2021, from <https://www.shapell.org/historical-perspectives/exhibitions/dreams-diplomacy-holy-land-american-consuls-jerusalem-19th-century/>

<sup>3</sup> U.S. diplomatic missions in Jerusalem: Background to the Jerusalem Embassy Decision. The Washington Institute. (n.d.). Retrieved November 29, 2021, from <https://www.washingtoninstitute.org/policy-analysis/us-diplomatic-missions-jerusalem-background-jerusalem-embassy-decision>

<sup>4</sup> Magid, J. (2021, October 9). Despite formal boycott, PA engages with officials from US Embassy in Jerusalem. The Times of Israel. Retrieved October 29, 2021, from <https://www.timesofisrael.com/pa-engaging-with-us-embassy-in-jerusalem-despite-official-boycott-of-mission/>

<sup>5</sup> Federman, J. (2021, May 25). Blinken seeks to fix Palestinian ties on Maiden Mideast Trip. AP NEWS. Retrieved October 29, 2021, from <https://apnews.com/article/israel-middle-east-government-and-politics-26fb1b8f7aaa1556004f310c824a4bb5>

<sup>6</sup> Spiro, A. S., & Magid, J. (2021, October 28). US State Dept. official acknowledges Israel must approve consulate reopening. The Times of Israel. Retrieved October 29, 2021, from <https://www.timesofisrael.com/us-state-dept-official-acknowledges-israel-must-approve-consulate-reopening/>

<sup>7</sup> Ravid, B. (2021, October 20). Scoop: U.S. and Israel to form team to solve consulate dispute. Axios. Retrieved November 30, 2021, from <https://www.axios.com/us-israel-to-form-team-consulate-dispute-38bb78ce-fe07-475e-8efd-b52b91360713.html>

<sup>8</sup> Yerushalmi, S. (2021, September 28). *Bennett suggested Biden Reopen Consulate in Ramallah or Abu Dis, US said no*. The Times of Israel. Retrieved October 29, 2021, from <https://www.timesofisrael.com/bennett-suggested-biden-reopen-consulate-in-ramallah-or-abu-dis-us-said-no/>

<sup>9</sup> Magid, J. (2021, December 15). US holding off on reopening Jerusalem consulate amid strong pushback from Israel. The Times of Israel. Retrieved December 16, 2021, from <https://www.timesofisrael.com/us-freezes-bid-to-reopen-jerusalem-consulate-amid-strong-pushback-from-israel/>

<sup>10</sup> Magid, J. (2021, October 22). Dragging out consulate reopening, Biden does Israel a favor, but not himself. The Times of Israel. Retrieved October 29, 2021, from <https://www.timesofisrael.com/dragging-out-consulate-reopening-biden-does-israel-a-favor-but-not-himself/>

<sup>11</sup> Yerushalmi, S. (2021, September 28). Bennett suggested Biden Reopen Consulate in Ramallah or Abu Dis, US said no. The Times of Israel. Retrieved October 29, 2021, from <https://www.timesofisrael.com/bennett-suggested-biden-reopen-consulate-in-ramallah-or-abu-dis-us-said-no/>; TOI Staff. (2021, November 6). Bennett, Lapid in united front: 'No place for US consulate in Jerusalem'. The Times of Israel. Retrieved December 3, 2021, from <https://www.timesofisrael.com/bennett-lapid-in-united-front-no-place-for-us-consulate-in-jerusalem/>

<sup>12</sup> Balousha, H. (2021, November 11). Palestinian PM hopeful that US Consulate will reopen in Jerusalem. Arab News. Retrieved December 3, 2021, from <https://www.arabnews.com/node/1965831/middle-east>

<sup>13</sup> Marc Rod, October 27, 2021. (2021, October 27). Senate GOP bill seeks to block Jerusalem Consulate reopening. Jewish Insider. Retrieved October 29, 2021, from <https://jewishinsider.com/2021/10/senate-gop-jerusalem-consulate/>

<sup>14</sup> Magid, J. (2021, November 16). Group of ex-IDF generals urges MKs to back US reopening of Jerusalem consulate. Times of Israel. Retrieved December 7, 2021, from <https://www.timesofisrael.com/group-of-ex-idf-generals-urges-mks-to-back-us-reopening-of-jerusalem-consulate/>

<sup>15</sup> Keinon, H. (2021, November 11) US, Israel play chicken over Jerusalem consulate for Palestinians. Jerusalem Post. Retrieved December 7<sup>th</sup>, 2021, from <https://www.jpost.com/israel-news/us-israel-play-chicken-over-jerusalem-consulate-for-palestinians-684768>

<sup>16</sup> Magid, J. (2021, November 16). Group of ex-IDF generals urges MKs to back US reopening of Jerusalem consulate. Times of Israel. Retrieved December 7, 2021, from <https://www.timesofisrael.com/group-of-ex-idf-generals-urges-mks-to-back-us-reopening-of-jerusalem-consulate/>

<sup>17</sup> TOI Staff. (2021, November 30). Minister says he supports US plan to reopen Jerusalem consulate serving Palestinians. Times of Israel. Retrieved December 7, 2021, from [https://www.timesofisrael.com/liveblog\\_entry/minister-says-he-supports-us-plan-to-reopen-jerusalem-consulate-serving-palestinians/](https://www.timesofisrael.com/liveblog_entry/minister-says-he-supports-us-plan-to-reopen-jerusalem-consulate-serving-palestinians/)

<sup>18</sup> i24NEWS, I.-R. (2021, October 26). Jerusalem mayor says he won't shun US consulate. I24news. Retrieved October 29, 2021, from <https://www.i24news.tv/en/news/israel/1635262532-jerusalem-mayor-says-he-won-t-shun-us-consulate>

<sup>19</sup> Berman L. (2021, September 24) In Washington, ex-Jerusalem mayor lobbies against consulate reopening. Times of Israel. Retrieved December 7, 2021, from <https://www.timesofisrael.com/in-washington-ex-jerusalem-mayor-lobbies-against-consulate-reopening/>

<sup>20</sup> Wilf, E. (2021, November 16). An American consulate in East Jerusalem would preserve a two-state solution. The Hill. Retrieved December 7, 2021, from <https://thehill.com/opinion/international/581395-an-american-consulate-in-east-jerusalem-would-preserve-a-two-state?rl=1>