



Commentary

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# Counting the Costs of U.S. Recognition of Jerusalem as Israel's Capital

*President Donald J. Trump on 6 December 2017 declared U.S. recognition of Jerusalem as Israel's capital, breaking decades of precedent even while saying the U.S. was not "taking a position of any final status issues". In this Q&A, Ofer Zalzberg and Nathan Thrall, Senior Analysts for Israel/Palestine, examine what the decision means for Israelis, Palestinians and the future of their conflict.*

## **Has President Trump endorsed Israel's position on the status of Jerusalem?**

Not precisely, although many are understanding it that way. In policy terms, a central question is what President Trump recognised as Israel's capital. Was it West Jerusalem, thereby leaving open the possibility that East Jerusalem would be the capital of a future state of Palestine? Was it present-day municipal Jerusalem within its unilaterally expanded borders, thereby essentially pre-empting the final status of the city? Or was it some third variant? His statement was not clear.

On the one hand, Trump specifically cited the Jerusalem Embassy Act as the basis of his decision, which refers to the "undivided" Jerusalem that Israel considers to be under its sovereignty. In justifying his decision, he mentioned locations not just within West Jerusalem (the parliament, Supreme Court, and prime minister's residence) but also within the occupied Old City, including Al-Aqsa Mosque, without stating that he was or was not recognising Israeli sovereignty in the East.

Nor did he say anything about Palestinian rights to East Jerusalem. On the other hand, he specifically said that the U.S. is "not taking a position of any final status issues including the specific boundaries of the Israeli sovereignty in Jerusalem or the resolution of contested borders. Those questions are up to the parties involved". He added that his announcement was "nothing more or less than a recognition of reality". And, in background briefings, senior U.S. officials insisted that nothing in the statement defined the borders of Jerusalem.

Because of these ambiguities, there has been widespread confusion about what U.S. policy is. While it is clear that the U.S. believes that the final boundaries of Jerusalem are to be negotiated in a peace agreement, it is not at all clear what part of Jerusalem the U.S. recognises as sovereign Israeli territory today. Prior to Trump's declaration, U.S. policy was to treat Israel as sovereign within the 1949 armistice lines, except in West Jerusalem. This is why, when President Obama attended the funeral of former Israeli president Shimon Peres in West Jerusalem, the White House amended its transcript of President Obama's eulogy to strike out "Israel" from the Jerusalem dateline.

Following Trump's declaration, one would assume that in the future the U.S. will treat all of West Jerusalem as sovereign Israeli territory. But what about the rest of municipal Jerusalem, the "unified" capital of which the 1995 Jerusalem Embassy Act speaks? Will the ambassador to Israel be permitted to visit East Jerusalem, including the Western Wall, in his

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official capacity? Will U.S. officials be permitted to meet Israelis at ministries in East Jerusalem? Will passports of U.S. citizens born in East Jerusalem say “Israel” on them? Will settlement construction within municipal Jerusalem be treated differently? Can Netanyahu take Trump to the tower of David, the Western Wall, and the Church of the Holy Sepulcher on the U.S. president’s next visit? Can U.S. military personnel visit the Israel Defense Forces (IDF) at Central Command headquarters in Neve Yaakov, in occupied East Jerusalem, without special dispensation?

Under UN Security Council Resolution 2334, all states must “distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967”. Is the U.S. going to be in violation of this resolution, by treating part or all of East Jerusalem as Israel? Whatever flexibility the administration may have wished to express about U.S. openness to Israelis and Palestinians negotiating Jerusalem’s final borders in a peace agreement, the U.S. government will need to put in place a set of directives for its staff concerning the borders of Jerusalem, as the U.S. now sees them, until a peace agreement is reached. There, ambiguity will be harder to preserve.

Unsurprisingly, from Israel to Palestine to Europe and the U.S., many political figures have interpreted the U.S. declaration to be a recognition of Israeli sovereignty over all of Jerusalem. Among Palestinians, there is fear that this sets a precedent of U.S. recognition of Israeli annexation of occupied territory.

In any event, for most of the world – and in particular for Palestinians and the Arab world more generally – parsing such nuances misses the point. Against the backdrop of the Trump administration’s vocal support for Israel, the president’s refusal to explicitly support Palestinian statehood, and Israel’s warm reception of the president’s statement, violating the international norm of non-recognition and agreeing

to move the embassy are actions that seem to speak for themselves. Given Trump’s omission of any reference to Palestinian aspirations for a capital of their own in the city, and the reality of Israel’s absolute control over the city, the degradation of its Arab neighbourhoods, and the inability of the vast majority of Palestinians to access the city and its holy sites, Trump’s caveats came off as meaningless. Trump’s justification that this move will enhance chances of peace, and his stated logic that absence of peace so far means that moving the embassy will increase the chance of attaining it in the future only added insult to the injury. More important, the U.S.’s perceived willingness to grant legitimacy to Israel’s annexation of occupied East Jerusalem leaves Palestinians wondering whether the U.S. might do the same in other occupied areas that Israel may choose to annex.

#### **What will the Palestinian reaction be?**

The Palestinian leadership is highly reluctant to use what little power it has against the U.S. and Israel, since resort to any such options could trigger painful responses at a time when the Palestinian question has been marginalised in global affairs, the European Union (EU) is divided on this issue, and a weak, divided and distracted Arab world offers little support. Options include a refusal to engage with the U.S., withdrawal from the framework set by the Oslo Accords, revoking recognition of Israel, refusing future U.S. mediation in Israeli-Palestinian negotiations, and/or dismantling some of the core functions of the Palestinian Authority. The leadership also could pursue a much more assertive and confrontational approach: armed or unarmed resistance, prosecution of Israeli officials in the International Criminal Court and pursuit of boycotts, divestment and sanctions against Israel and entities complicit in what are generally agreed to be violations of international law. Or it could reorient

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internally, pursuing closer cooperation than we have seen to date between Hamas and Fatah.

But none of these are the kind of things one does in response to a discrete provocation; they are the kinds of things you do when you decide to change your political approach. There is little in the history of this leadership that indicates a proclivity for such radical steps, though it rarely has been cornered the way it is today.

Most of the debate has focused on whether Palestinians will launch attacks, either collectively or individually, in reaction to the U.S. declaration. The Palestinian Authority and its security forces are almost certain to oppose any violence, greatly limiting the potential for, and possible impact of, any attacks, though protest can always spiral out of control.

The more salient issue, therefore, might well be how it feeds into broader trends. Over the long term, U.S. recognition of Jerusalem as Israel’s capital will be but one more factor demonstrating that U.S.-mediated negotiations have lost relevance and may even be undesirable and harmful to peace, and thus one more factor demonstrating that the Ramallah leadership has erred by banking on the U.S. to deliver Israel. Even before Trump’s announcement, faith in the two-state solution had been sharply declining. His decision to go ahead will inflict further damage.

### **What has the reaction been in the Arab world more generally?**

U.S. recognition of Jerusalem is embarrassing for the leaders of Arab states who have thrown in their lot with the Trump administration. Today’s announcement exposes their failure to deal with the Palestinian issue and to effectively pressure Washington. Despite, for instance, Palestine being the first topic in every summit

the Gulf Cooperation Council (GCC) has ever held, including this week, Riyadh’s close relationship with the president and his son-in-law went hand in hand with one of the U.S.’s most dramatic, and, from an Arab point of view, negative, shifts in policy on this issue.

That said, most leaders in the Gulf, Egypt and elsewhere are likely to make do with rhetorical expressions of opposition. They have bigger fish to fry and will not sacrifice their good relationship with the U.S. for the sake of Palestine, especially when it comes to, say, combatting Iranian influence or maintaining pressure on the Muslim Brotherhood. Their public remonstrations aimed at the Trump administration are more likely aimed at preempting public protests, which they might not be able to contain.

Arab publics probably don’t expect anything else from their leaders by this point. Popular anger is likely to be limited and short-lived, unless we see something dramatic like an uprising in Israel or the West Bank. There is always the chance that various local groups, whose space for public protest has been constrained by security crackdowns in the wake of the Arab uprisings, latch onto the Palestine issue as a legitimate justification for launching a public protest. But in the current climate, marked by fatigue over and fear of the chaos of the post-Arab uprisings, the protests are unlikely to amount to much. State repression will do the rest.

A partial exception could be Jordan. King Abdullah declared himself the custodian of Jerusalem’s holy sites – particularly Al-Aqsa Mosque, Islam’s third holiest per the Quran – and in its 1994 peace agreement with Jordan, Israel vowed to respect the “special role of the Hashemite Kingdom of Jordan in Muslim Holy shrines in Jerusalem”. Recognition of Israeli sovereignty over the city could be portrayed as the king’s personal failure, opening a door to public protest in a majority-Palestinian country that could prove more difficult to quell than elsewhere, increasing his vulnerability

and giving additional ammunition to groups opposed to the monarchy. A resumption of operations in Israel's embassy in Amman – Jordan has refused to allow the entry of Israel's ambassador until Israel takes legal action against an embassy guard who shot two Jordanians when attacked by one of them – has now become even more difficult.

As for the pro-Iranian camp and Salafi-jihadist groups, they will seize on this symbolic defeat to delegitimise, discredit and challenge Arab governments and make gains in Arab public opinion. Turkey, currently chair of the Executive Committee of the Organisation of Islamic Cooperation, will seek a prominent role in coordinating Muslim reactions to the U.S. move.

### **How has Europe responded?**

Europe so far has been wedded to the two-state paradigm and is the stakeholder most likely to react with diplomatic moves. EU member states have grown apart since consolidating the EU consensus in the European Council conclusions of December 2009, which called for a resolution of the conflict with “Jerusalem as the future capital of two states”. On the one hand, U.S. recognition of Jerusalem as Israel's capital could reenergise the move to have European governments recognise Palestine, this time potentially with the specific statement that East Jerusalem is its capital. Countries like Ireland may take the lead on this. On the other hand, countries that are close to Israel and the U.S. could emulate the U.S. move, as the Czech Republic already has in its own way.

Differences among European states are minor compared to commonalities, however. It is significant that Czech recognition was explicitly limited to West Jerusalem and coupled with a statement that “The Czech Republic ... considers Jerusalem to be the capital of both states, meaning the State of Israel and the Future State of Palestine”. Thus Israel's best friend in Europe maintains the position that the Old City is occupied territory and its status can be

resolved only in agreement with the Palestinians. Were U.S. recognition phrased this way, Palestinians and Arabs would most probably have lauded it, and the sentiment in Israel would have been one of disappointment.

### **Since Israel has claimed Jerusalem as its capital since it was established, why hadn't any states recognised this before?**

The last internationally accepted agreement regulating the status of the city was UN General Assembly Resolution 181, adopted in November 1947, which called for the partition of Palestine, then under the British mandate, into two states, one Arab, one Jewish. The plan specified that the Jerusalem area – the Jerusalem municipality and several surrounding towns, including Bethlehem – would comprise a corpus separatum, under a Special International Regime.

War broke out within Palestine immediately after the resolution was passed. By war's end, Israel had expanded its boundaries well beyond those of the 1947 plan, into the corpus separatum, including the western half of Jerusalem. Jordan, which took control of the West Bank, declared a second capital (after Amman) in East Jerusalem, which included the entirety of the Old City of Jerusalem and most of its holy sites. In 1950, Israel's parliament declared a capital in the part of Jerusalem under its control. Most of the country's governing institutions were built there.

The UN and the international community rejected Israel's unilateral declaration and remained committed to the idea of a Special International Regime for Jerusalem, and thus refused to recognise West Jerusalem as Israel's capital. Following the 1967 war, Israel occupied the eastern half of Jerusalem, including the Old City (which includes the Holy Esplanade, or Haram al-Sharif/Temple Mount), then, again unilaterally, expanded the city's municipal boundary to include its eastern half and several surrounding West Bank villages. In 1980, Israel's parliament legislated a Basic Law declaring

that “Jerusalem, complete and united, is the capital of Israel”.

In the absence of an international agreement enshrining these boundaries, no country has offered legal recognition of Jerusalem as Israel’s capital. Over a dozen nations have had embassies in Jerusalem at one time or another, but all subsequently relocated them, with the final exits following Israel’s 1980 Basic Law and a UN Security Council resolution (478), adopted in response to it on 20 August 1980, that decided not to recognise the Basic Law and called on “those States that have established diplomatic missions at Jerusalem to withdraw such missions from the Holy City”. The position of the international community remains that no sovereignty should be recognised in any part of Jerusalem until a peace agreement has been reached.

For Israel, the failure to recognise Jerusalem as its capital is a denial of reality. For the international community, especially so long as Israel does not distinguish the city’s west from its occupied east, recognition of Israeli sovereignty in Jerusalem would constitute an endorsement of unilateral Israeli actions concerning territory seized through military conquest. Recognition of sovereignty in such circumstances could make less likely various potential resolutions of the Jerusalem issue, including an international regime, a shared capital and two capitals in Jerusalem. That is why countries house their embassies to Israel in Tel Aviv.

The U.S. long shared this perspective and held that the status of Jerusalem should be determined in a peace agreement between Israel and its neighbours. The U.S. Congress altered this consensus by passing the Jerusalem Embassy Act of 1995, which mandated moving the U.S. embassy to Jerusalem – describing the city as “united” and calling for it to remain “undivided” – unless the president invoked a national security waiver. Every successful presidential candidate since then has supported moving the embassy, though each

suspended the move once elected – until yesterday. Under President Clinton and President Obama, the U.S. put forward peace proposals under which both Israel and the state of Palestine would have a capital in Jerusalem, though the U.S. did not formally declare this to be its position. Trump has thus broken with 70 years of tradition.

### **Is this a win for Israel?**

For Israel, the U.S. declaration is a mixed blessing. While U.S. recognition by itself is clearly a considerable diplomatic win – and a personal one for Prime Minister Netanyahu – it is possible that over time it will be offset by losses. These include: difficulty in restarting Israeli-Palestinian negotiations, a process that is deemed useful at least by some Israelis in managing the conflict, including many who are opposed to Palestinian statehood; the possibility that other nations will now recognise not only the state of Palestine but also as having its capital in East Jerusalem (the latter of which no European states have done so far); greater determination on the part of Palestinians and their supporters to confront Israeli violations of international law, including by pushing for boycotts of Israeli and other companies doing business in the occupied territories, including East Jerusalem; a setback in Israel’s efforts to slowly normalise relations with Arab states under the cover of U.S.-led negotiations (Arab states will find it harder to be part of a U.S.-led peace process now); diminishment in Palestinian support for a two-state solution, coupled with increasing support for equality in a single state; and undermining the strategy and legitimacy of President Abbas, whose continued rule, despite dwindling legitimacy, is still Israel’s best bet for stability in the West Bank.

If the losses are indeed limited, many Israelis, especially on the right wing, will conclude that the predictions of a diplomatic tsunami were wrong and that, just as Israel could contain the fallout from this, it could weather the repercussions of annexing the West Bank in its

entirety. If, however, the losses as a result of the U.S. declaration outweigh the positives for Israel, in the long run there could be more of a debate within Israel about the costs of eventual annexation once rally-around-the-flag sentiment runs its course.

In the meantime, the ambiguity around Trump's declaration, in particular over whether the U.S. has recognised Israeli sovereignty in occupied East Jerusalem, leaves a chance for the administration to issue clarifying

statements that could perhaps help lower tensions and leave open the possibility of restoring relations with the Palestinian Authority. If, by contrast, the U.S. were to behave as though it recognises Israeli sovereignty beyond West Jerusalem, it will have sabotaged its own diplomatic plans, set back the possibility of a peace agreement, needlessly introduced yet more instability to the Middle East and endangered the lives of Palestinians and Israelis.