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JERUSALEM AND THE TRUMP ADMINISTRATION  
**TRANSFORMING THE  
STATUS QUO**

MOUIN RABBANI

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#### **COVER PHOTO**

Palestinian and Israeli protesters wave flags in front of Damascus Gate on May 8, 2013.  
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## CURRENT ISSUES IN DEPTH

# JERUSALEM AND THE TRUMP ADMINISTRATION TRANSFORMING THE STATUS QUO

MOUIN RABBANI

# INTRODUCTION

IN DECEMBER 2017, the administration of US president Donald Trump upended seventy years of US policy by recognizing Jerusalem as the capital of Israel. In doing so, it also effectively recognized Israel's sovereignty over the city. Subsequent months have seen several other reversals of long-standing US Middle East policy. These include Washington's stance on Palestinian refugees; diplomatic representation of the Palestine Liberation Organization in Washington; US aid to the Palestinian Authority and to the UN Relief and Works Agency, which provides basic services to Palestinians living in refugee camps; and Israel's annexation of the Golan Heights.

Amid repeated delays in the unveiling of the Trump administration's much-ballyhooed diplomatic initiative, these radical steps have already revealed the basic lineaments of the purported "deal of the century." They not only expose the pro-Israeli and anti-Palestinian biases of the Trump administration in even more blatant form than is routine for US policy-makers; they also constitute the administration's wholesale adoption of virtually all the basic theses of the right-wing forces that have dominated Israeli politics since 1977.

In light of such policy shifts, launched in close coordination with the government of Benjamin Netanyahu, the Trump administration has to all intents and purposes already publicized and implemented the main principles of its initiative. What remains is for Israel and the US to determine how much Palestinian land Israel will annex, where and to what extent Palestinians can exercise severely limited forms of autonomy, and how much they will be offered to renounce their basic human and political rights. With the exception of its authors, there is virtually universal unanimity that this initiative is stillborn and can only produce further conflict.

The recognition of Jerusalem as Israel's capital was the Trump administration's opening salvo in the process of transforming longstanding US policy on Palestine. As such, it merits more attention and deeper analysis than it has received. This monograph, published by the Institute for Palestine Studies as part of its *Current Issues in Depth* series, attempts to fill that gap. It provides the historical background necessary to understand the policies of previous US administrations regarding Jerusalem, and where and how the Trump administration has departed from them.





MENACHEM KAHANA/AFP/GETTY IMAGES

*Palestinian and Israeli protesters wave flags in front of Damascus Gate on May 8, 2013.*

In this monograph, IPS senior fellow Mouin Rabbani shows why the international consensus on Jerusalem that is rooted in international law—and of which the US until recently formed a part—is so important. He argues that a unilateral disposition of the question of Jerusalem entirely in line with Israeli desiderata, now with Washington's unequivocal support, has profound implications for the possibility of enduring peace and reconciliation between Israelis and Palestinians. Indeed, he suggests that it makes such a peace impossible. On the one hand, it puts paid to the possibility of a Palestinian state, which is inconceivable without Jerusalem as its capital, while prefiguring in Israel's favor the resolution of questions of sovereignty over other areas of Palestine. On the other hand, by placing the rights and interests of Israelis, both individual and collective, above those of Palestinians, the recognition of Jerusalem as Israel's capital, and thus Israeli sovereignty over the city, renders impossible any alternative durable solution.

The disregard for international law and for basic principles of equity and indeed the lack of a “decent respect to the opinions of mankind” that have characterized the Trump administration's foreign policy globally were on full view in the decision regarding Jerusalem. As Rabbani shows, for over seven decades there has been a solid global consensus based on the rejection of unilateral steps by any party regarding the Holy City. The shattering of this consensus by the US and the absence of any robust response—whether Palestinian, Arab, or international—is an ominous sign for a rules-based international order, as well as for the future of a just and lasting peace in the Middle East.

# JERUSALEM AND THE TRUMP ADMINISTRATION TRANSFORMING THE STATUS QUO

ON 6 DECEMBER 2017, the United States government formally recognized Jerusalem as the capital of the state of Israel and in the process effectively recognized Israel's claim of exclusive sovereignty over the Holy City. The Trump administration rationalized its departure from longstanding US positions and its dramatic rupture with the international consensus on Jerusalem, as an overdue endorsement of the sovereign right of Israel to determine the location of its capital city and an expression of the sovereign right of the United States to determine the location of its diplomatic missions to foreign states. President Trump further stated that the United States was merely conferring belated recognition upon a longstanding political reality and, by so doing, was facilitating rather than complicating the search for Israeli-Palestinian peace.

If the diplomatic principles cited by the United States to justify its decision appear self-evident, it is equally the case that in order to obtain legitimacy, these principles must be applied within the framework of international law and diplomatic convention. Israel's claim to sovereignty over Jerusalem and US recognition and actions in support of such claims, singularly fail to meet this test. This reality has been at least formally recognized by every previous US administration, all of which refused to endorse Israel's position on Jerusalem, and each of which either helped forge or acted to maintain the prevailing international consensus on the Holy City. More recently, this reality was once again emphasized in the United Nations Security Council when, on 18 December 2017, 14 of its 15 members, including Washington's closest allies, supported a draft resolution, vetoed by the United States, that rejected the Trump declaration.

That every US president from Truman to Obama, including those who as candidates pledged to align US policy on Jerusalem with Israel's, consistently refrained from defying the international consensus on Jerusalem ultimately reflects their recognition of the unique status of the Holy City and of the catastrophic consequences of permitting Israel to unilaterally determine its future. Simply put, Israeli-Palestinian coexistence in any form is inconceivable without a mutually satisfactory disposition of Jerusalem. Additionally, without a capital in East Jerusalem there can be no Palestinian state and thus no two-state settlement. At the same time, and to a greater extent than any other issue, the fate of Jerusalem is central not only to the Israeli-Palestinian conflict but to the Arab-Israeli one as well. No other city on earth is simultaneously held sacred by the three Abrahamic faiths and their various denominations or holds a greater capacity for unleashing religious and sectarian strife.

The Trump administration initially sought to ameliorate the significance and impact of its actions by asserting that it was not taking a position on the territorial scope of Israeli sovereignty over Jerusalem, that it continued to support a negotiated Israeli-Palestinian agreement on the status of the Holy City, and that the relocation of the US Embassy from Tel Aviv to Jerusalem would not commence for at least several years. Yet, President Trump subsequently, and repeatedly, claimed that his measures had taken "Jerusalem off the table, so we don't have to talk about it

## **Simply put, Israeli-Palestinian coexistence in any form is inconceivable without a mutually satisfactory disposition of Jerusalem.”**

anymore”,<sup>1</sup> while the US embassy in Jerusalem was inaugurated less than five months after the proclamation of recognition. If the United States is not explicitly supporting Israel’s claim

of exclusive sovereignty over the entirety of Jerusalem, the rest of the world — Israel and the Palestinians included — has responded on the basis that the United States has taken a decisive turn in this direction.

In view of the extraordinary threat a disintegration of the international consensus on Jerusalem has for Palestinian rights, the prospects for Arab-Israeli peace, global religious co-existence, and indeed international peace and security, and the unrivalled capacity of the United States to challenge this consensus, this publication reviews the historical and diplomatic record in order to provide a better understanding of longstanding US and international policy on Jerusalem. In so doing, it seeks to emphasize the importance of ensuring that the status of Jerusalem is resolved on the basis of established diplomatic principles and international law, and to highlight the concomitant dangers of empowering Israel’s illegal and illegitimate assertions of exclusive sovereignty over, and associated activities within, the Holy City.

### **Historical Synopsis**

The available archeological and historical record suggests that humans first settled in the area of present-day Jerusalem during the fourth millennium BCE and, by approximately 3000 BCE, it came to be continuously inhabited.<sup>2</sup> Like much of the Levant, Jerusalem has experienced numerous local and foreign rulers through the ages and in the process absorbed a continuous procession of demographic and cultural influences.

Its subsequent religious significance and prominence in scripture notwithstanding, Jerusalem was in ancient times peripheral rather than central to the region’s political and socio-economic development; evidence that it ever served as a significant metropolis or imperial capital is notably absent. Rather, it, along with its surroundings, was continuously dominated by more powerful neighbors such as the Egyptians, Babylonians, and Assyrians, or incorporated into the realms of regional powers like Persia, Greece, and Rome.<sup>3</sup>

Among the earliest to rule Jerusalem were the Jebusites, a Canaanite tribe who during their tenure gave their name to the city. In approximately 1000 BCE, Jebus, as it was then known, was conquered by the Israelites, who contemporary scholarship suggests also initially emerged from Canaanite stock. The Israelites would rule intermittently over the next several centuries, like their predecessors and successors, largely as vassals of more substantial powers.<sup>4</sup> In a more enduring legacy they also laid the basis for Jerusalem’s centrality to the Jewish faith, out of whose womb Christianity would emerge. The latter would develop a similar devotion to the Holy City, on account of both its role in the Old Testament and prominence in the ministry of Jesus.

By the 7th century CE the population of Jerusalem, previously consisting of Jews and various polytheists collectively derived from an array of ethno-linguistic and tribal backgrounds, had become predominantly Christian under Byzantine rule. Rather than being the result of genocide or mass expulsion, conflict and migration played only a secondary role in this transformation; it primarily reflected the process of conversion to the new state religion and cultural assimilation by the local population.<sup>5</sup>

A similar trajectory over the next several centuries resulted in the gradual Arabization and Islamization of Jerusalem's inhabitants. While there had been an expanding Arab presence in the Levant since at least Roman times, Palestine experienced a further influx of peninsular Arabs after the Muslim conquest in 638 CE. However, it would be a mistake to conclude that the new arrivals displaced or outnumbered the native population, which gradually adopted their language and culture, and grafted these upon its own.<sup>6</sup>

As with their Jewish and Christian forebears, Muslims also venerated Jerusalem and assigned it sacred status. In the words of Walid Khalidi:

*Because of the perception by Islam of an intimate kinship with Judaism and Christianity, much that is holy to Judaism and Christianity is holy to Islam as well. And much of that is centered in Jerusalem. In addition, Jerusalem is holy for purely Muslim reasons. Thus, for Islam, Jerusalem is thrice holy.<sup>7</sup>*

One can either accept that each of these religions claims a unique and privileged bond with the Holy City and recognize the importance of achieving coexistence and mutual understanding, or engage in polemics designed to demean and delegitimize the existence and aspirations of one community in order to promote the exclusivist ambitions of another. The Crusades, with their attendant bloodshed and destruction over a period of several centuries, are a powerful example of the latter.<sup>8</sup>

With the defeat of the Crusades Jerusalem reverted to Muslim rule, in the form of the Ayyubids, Mamluks, and, commencing in 1516, the Ottomans.<sup>10</sup> During the latter era, which spanned more than four hundred years and ended only with the First World War, Jerusalem acquired many of its current geographic features. For example, the Old City's iconic walls date from a massive mid-sixteenth century public works project sponsored by the Ottoman Sultan, Sulaiman the Magnificent, to rejuvenate the Holy City. During this prolonged historical period Jerusalem's diverse inhabitants generally coexisted peacefully. Although concepts such as citizenship and equality before the law did not begin to make an appearance until the second half of the nineteenth century, governance and administration was highly decentralized. Ottoman subjects were classified according to their religious (and, where relevant, denominational) rather than ethnic or linguistic affiliation, and within this framework individual communities were granted significant autonomy, bearing responsibility for matters including taxation, education, public charity, faith, and dispute resolution.<sup>11</sup>

Growing competition over ownership, rights, and responsibilities with respect to religious sites in Jerusalem and Bethlehem, primarily between different Christian denominations and to a lesser extent between Christians, Jews, and Muslims, led the Ottoman authorities to attempt to codify the numerous and at





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*The Old City of Jerusalem from east ca. 1937.*

times overlapping entitlements. A 1757 Ottoman edict (firman), which ratified existing rights and privileges without further defining them, proclaimed that none could be amended without the unanimous consent of interested parties. This laid the basis for what has come to be known as the Status Quo. Confirmed by a number of further edicts during the next century, and again in both the 1856 Treaty of Paris and 1878 Treaty of Berlin, it has persisted as convention and an international point of reference for Jerusalem to this very day.<sup>12</sup>

Nineteenth-century Jerusalem was affected by a number of additional developments. These included significant population growth and urbanization, resulting from improvements in medical care, public hygiene, and infrastructure; geographic expansion into new neighborhoods outside the walls of the Old City (known as the New City); increasing efforts by European powers (particularly Great Britain, France and Russia) to acquire a recognized, formal role in the affairs of the Holy City; the development of Arab, Palestinian, and Turkish nationalism; and, towards the end of the century, the emergence of the Zionist movement and growth of European Jewish immigration. Seeking to strengthen its sovereignty and control, the Ottoman government administratively detached Jerusalem (and much of the remainder of Palestine) from the province of Syria into which it was previously incorporated and made it directly subordinate to Istanbul.<sup>13</sup>

The abovementioned developments were accompanied by demographic changes. At the beginning of the nineteenth century Jerusalem's population, even as it was consistently augmented by foreign religious pilgrims, consisted primarily of Ottoman subjects who were mainly Arab Muslim, along with their Arab Christian and Jewish neighbors, as well as Armenians, Ethiopians, and Greeks, who constituted the main non-Arab communities. By the end of the First World War this remained true for the Jerusalem district as a whole, while urban Jerusalem saw a substantial growth in its foreign Jewish population as a result of Zionist immigration.

The conclusion of the First World War brought about the dissolution of the Ottoman Empire and replaced it with Franco-British domination of the Middle East. Various negotiations were conducted over the future status of the region, including both Palestine and Jerusalem; some of these effectively recognized the right to national self-determination of the existing population, while others, like the Balfour Declaration of 1917, were expressly designed to circumvent it. Also among the latter was the 1916 Sykes-Picot agreement, which divided the Middle East between Britain, France, and Czarist Russia. Unable to reach agreement on the status of Jerusalem, they allotted it to an "international administration", the form of which was to be decided on the basis of consultations with the victorious powers and the Arab leadership.<sup>14</sup>

In 1917, the Bolsheviks seized power in Russia and renounced this agreement as an illegitimate imperial venture, and Great Britain, which occupied Palestine at the conclusion of the Great War, outmaneuvered France to establish sole suzerainty over Jerusalem in the context of a League of Nations mandate. In what is broadly interpreted as a confirmation of the Status Quo, Article 13 of the League of Nations Mandate for Palestine endowed the Mandatory power with,

*All responsibility in connection with the Holy Places and religious buildings or sites in Palestine, including that of preserving existing rights and of securing free access to the Holy Places, religious buildings and sites and the free exercise of worship, while ensuring the requirements of public order and decorum [...]*<sup>15</sup>

Article 14 called upon the Mandatory power to establish a "special commission" to "study, define and determine the rights and claims in connection with the Holy Places and the rights and claims relating to the different religious communities in Palestine."<sup>16</sup> That it was never implemented by the British reflects the enormous difficulties of translating the Status Quo into a detailed, consensual document.

During the Mandate (1923-1948) Great Britain actively promoted the ascendancy of the Zionist movement, which sought to transform Palestine into a Jewish state. In ensuing developments that in significant part reflected British decisions to exclude nearby Palestinian localities but incorporate more distant Jewish ones within the municipal boundaries of the city, Jewish immigrants, residing predominantly in the New City, would come to number more than half of the population of urban Jerusalem.<sup>17</sup>

In this context, religious sites, particularly in Jerusalem, acquired increasingly political and nationalist significance and symbolism. In 1929, for example, an attempt by Zionist militants to revise the Status Quo at the Haram al-Sharif/Temple Mount in their favor — the first of many in a process that continues to this day — provoked riots in which over 250 people were killed in the space of a week.<sup>18</sup>

Presaging such tensions, the British High Commissioner in Palestine's first report to the League of Nations in 1925 had stated:

*All the chief shrines sacred to Christendom are here; Islam sends pilgrims to mosques in Palestine which rank next only to the Kaaba at Mecca and the Tomb at Medina; there are spots round which are entwined the strongest affections of Judaism. The access to these places, their ownership and care, have given rise to controversies through the centuries. Local disputes have often caused disturbances; the support, given by great Powers, to one party or another, has been a factor in diplomacy, and sometimes a contributory cause of enmity and of war.<sup>19</sup>*

## **The International Consensus on Jerusalem**

In early 1947, Britain decided it could no longer sustain the Palestine Mandate. Instead of ceding sovereignty to the people as had transpired with the termination of other mandates in the Middle East, London called upon the newly-formed United Nations to determine the political status of Palestine. Although the world body was not yet a global one, as many peoples remained under colonial domination and were thus unrepresented, on 15 May 1947 it established a Special Committee on Palestine (UNSCOP), comprised of representatives from eleven member states that included four from Europe, Australia, Canada, three from Latin America, only two from Asia, and none from Africa to study the matter. UNSCOP then appointed a sub-committee to examine issues relating to Jerusalem and Palestine's holy sites.

In September 1947, UNSCOP produced a majority report recommending partition with economic union, and a minority one proposing a federal union with Jerusalem as its capital.<sup>20</sup> The majority report laid the basis for UN General Assembly Resolution 181 "Recommending the Partition of Palestine," adopted on 29 November 1947.<sup>21</sup> Pursuant to this resolution, and in line with the UNSCOP majority report, neither of the proposed states would exercise sovereignty over or within Jerusalem. Rather, the Holy City and its environs would form a neutral, demilitarized *corpus separatum* ("separate body") governed by a "special international regime" to be administered by the UN Trusteeship Council on behalf of the world body. Although distinctly governed, Jerusalem would, in this scheme of things, enjoy open borders with the proposed Arab and Jewish states and be fully integrated with the economic union encompassing the two new states.

Among the main justifications provided for the internationalization of Jerusalem was that maintenance of the peace in the Holy City would be essential to preventing further conflict within and between the proposed Arab and Jewish states, and that, in light of the "unique"<sup>22</sup> significance of Jerusalem to Christians, Muslims, and Jews the world over, "[d]isturbances in the Holy City would have far-reaching consequences, extending perhaps beyond the frontiers of Palestine."<sup>23</sup> As such, UNGA Resolution 181 additionally re-confirmed and vowed to uphold the Status Quo concerning holy sites.

According to Resolution 181's terms, the special international regime for Jerusalem would govern the city for an initial period of ten years, at which point it would be subject to "re-examination" by the UN Trusteeship Council "in the light

**...unilateral assertions of sovereignty over Jerusalem in addition to being illegal under international law thwart the search for peace, mutilate the prospects for religious coexistence within and beyond the region, and thus form an explosive threat to international peace and security."**

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of the experience acquired with its functioning," and amenable to "possible modification" by means of a "referendum" conducted among the city's residents.<sup>24</sup>

However, conflict erupted within Palestine immediately after the passage of the resolution by the UN General Assembly. The militarily superior Zionist movement, having conquered and ethnically cleansed large

swathes of territory allotted to both the Arab and Jewish states as well as the Jerusalem *corpus separatum* prior to the end of the British Mandate, unilaterally proclaimed the establishment of the state of Israel on 14 May 1948, although without declaring its borders then or since. By the conclusion of the ensuing 1948-1949 Arab-Israeli War, Israel occupied most neighborhoods of the New City north and west of the Old City (which subsequently came to be known as West Jerusalem), while Jordanian forces were in possession of all of the Old City and several adjacent neighborhoods to its north and east (since known as East Jerusalem).

Six months after the war erupted, UN General Assembly Resolution 194 of 11 December 1948 resolved to uphold the Status Quo "in accordance with existing rights and historical practice"; re-confirmed that "in view of its association with three world religions, the Jerusalem area ... should be accorded special and separate treatment from the rest of Palestine and should be placed under effective United Nations control"; called upon the Security Council "to ensure the demilitarization of Jerusalem at the earliest possible date"; and established the United Nations Conciliation Commission for Palestine (UNCCP) to promote a peaceful settlement of the conflict. This new body, consisting of the United States, Turkey, and France, was instructed to, *inter alia*, produce "detailed proposals for a permanent international regime for the Jerusalem area which will provide for the maximum local autonomy for distinctive groups consistent with the special international status of the Jerusalem area".<sup>25</sup>

With respect to the recently dispossessed residents of Palestine, including those from (West) Jerusalem,<sup>26</sup> Resolution 194 furthermore resolved that,

*refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible;*<sup>27</sup>

In September 1949, in accordance with its instructions, the UNCCP presented a document tantamount to a constitution for the establishment and governance of a special international regime for Jerusalem. Consistent with the aforementioned



resolutions and other provisions, it once again confirmed the centrality of upholding the Status Quo, and called for extending the practice that “[n]o form of taxation shall be levied in respect of any Holy Place, religious building or site which was exempt from such taxation on 14 May 1948”.<sup>28</sup>

The principles enunciated in Resolutions 181 and 194 during the late 1940s form the continuing legal and diplomatic basis for the international community’s collective refusal to recognize the sovereignty of any state over any part of the Holy City. In practice, the United Nations and its member states have taken the position that the conclusion and implementation of a peace treaty endorsed by the international community forms the only acceptable alternative to a *corpus separatum* and special international regime for Jerusalem. This reflects the longstanding conviction that unilateral assertions of sovereignty over Jerusalem, in addition to being illegal under international law, thwart the search for peace, damage the prospects for religious coexistence within and beyond the Holy City, and thus form an explosive threat to international peace and security. Recognition of such claims in the absence of a peace agreement that resolves the question of Jerusalem and other aspects of the conflict has, in this context, been viewed as willfully pouring oil onto the fire. As such, international rejection of Israel’s assertions of sovereignty regarding Jerusalem precedes its 1967 occupation and annexation of East Jerusalem and has been applied equally to West Jerusalem since 1948.

Cognizant of this solid international consensus and with its application to join the United Nations pending, Israel initially located its seat of government in Tel Aviv. When Israel’s parliament on 23 January 1950 proclaimed (West) Jerusalem as its capital, none of the states that had previously recognized Israel, including its closest international allies, accepted its declaration. In fact, the United States, among others, initially “imposed a boycott” on American officials conducting business there.<sup>29</sup> Similarly, Jordan’s annexation of the West Bank that same year, which included a provision that after Amman, (East) Jerusalem would function as the Kingdom’s “alternative capital”, was largely rejected by the international community. The few states which did recognize Jordanian sovereignty over the West Bank, such as the United Kingdom, specifically excluded East Jerusalem from its terms.<sup>30</sup> To the extent that states engaged with the Israeli and Jordanian governments in Jerusalem, they explicitly and consistently did so on a *de facto* rather than *de jure* basis.

Israel’s 1967 military occupation of East Jerusalem and subsequent annexation as a result of the war it launched on 5 June of that year, threw up an additional set of challenges for the international community. Not only was Israel deemed to be in further violation of the existing global consensus on Jerusalem as detailed above, but its actions in East Jerusalem were additionally judged to be in flagrant violation of the laws of war and international law with respect to the inadmissibility of the acquisition of territory by war and the administration of occupied territory. Israel has also repeatedly modified and continuously challenged the Status Quo.<sup>31</sup>

Among the first actions Israel took in 1967 was to dissolve the East Jerusalem municipal council, absorb its territory into the Israeli municipality of West Jerusalem, and further extend its boundaries through the incorporation of additional West Bank territory. This extension of Israeli law into occupied territory, tantamount





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*Damascus Gate from north, circa 1932*

to an act of annexation, was immediately and overwhelmingly condemned by General Assembly Resolutions 2253, which termed Israel's actions "invalid", called upon it to "rescind" its measures and "to desist forthwith from taking any action which would alter the status of Jerusalem".<sup>32</sup> Similarly, the following year, the Security Council, in Resolution 252, determined that "all legislative and administrative measures and actions taken by Israel ... which tend to change the legal status of Jerusalem are invalid and cannot change that status", and demanded that Israel "rescind all such measures already taken and ... desist forthwith from taking any further action which tends to change the status of Jerusalem".<sup>33</sup>

In the decades since 1967, Israel has sought to fundamentally alter the geography and demography of East Jerusalem,<sup>34</sup> primarily through the systematic establishment and expansion of settlements within and surrounding East Jerusalem in an effort to fragment and encircle the (Palestinian) Arab city. Various United Nations organs, international organizations, and human rights groups have repeatedly condemned its manifold violations of international law, including activities — such as settlement — which, pursuant to the 1949 Fourth Geneva Conventions, are defined as "grave breaches", the Convention's equivalent of war crimes.<sup>35</sup> More recently, Israel's conduct has been referred to the International Court of Justice, which issued a landmark ruling in 2004 re-affirming the principle that all measures undertaken by Israel since 1967 to change the character of East Jerusalem have no legal validity and are null and void.<sup>36</sup> Israel's activities have since also been referred to the International Criminal Court in The Hague for evaluation and potential prosecution.

Of particular note are Security Council Resolutions 465 and even more so 478, both adopted in 1980 in response to Israel's escalating campaign to establish permanent sovereignty over East Jerusalem. Resolution 465, adopted with US concurrence, in relevant part:

5. *Determines that all measures taken by Israel to change the physical character, demographic composition, institutional structure or status of the Palestinian and other Arab territories occupied since 1967, including Jerusalem, or any part thereof, have no legal validity and that Israel's policy and practices of settling parts of its population and new immigrants in those territories constitute a flagrant violation of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War and also constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East;*
6. *Strongly deplores the continuation and persistence of Israel in pursuing those policies and practices and calls upon the Government and people of Israel to rescind those measures, to dismantle the existing settlements and in particular to cease, on an urgent basis, the establishment, construction and planning of settlements in the Arab territories occupied since 1967, including Jerusalem;*
7. *Calls upon all States not to provide Israel with any assistance to be used specifically in connexion with settlements in the occupied territories;*<sup>37</sup>

Resolution 478 — passed (with a US abstention) in response to the Israeli parliament's 30 July 1980 adoption of a Basic Law proclaiming that “Jerusalem, complete and united, is the capital of Israel” — not only “[c]ensures [Israel's Basic Law] in the strongest possible terms”; it additionally determines:

*[A]ll legislative and administrative measures and actions taken by Israel, the occupying Power, which have altered or purport to alter the character and status of the Holy City of Jerusalem, and in particular the recent "basic law" on Jerusalem, are null and void and must be rescinded forthwith.*<sup>38</sup>

Of crucial importance to the present moment, the resolution further requires “[t]hose States that have established diplomatic missions at Jerusalem to withdraw such missions from the Holy City”.<sup>39</sup> In response, the thirteen states which maintained embassies in Jerusalem (none of which recognised Israeli sovereignty over the Holy City), relocated their missions to Tel Aviv.<sup>40</sup>

In essence, the origins of the international consensus on Jerusalem pre-date the Arab-Israeli conflict by more than a century. It initially emerged as an initiative by the Ottoman authorities to regulate competing claims over holy sites in Palestine between various Christian denominations and rival European powers who promoted such claims in order to achieve geopolitical advantage, and to a lesser extent between the three Abrahamic faiths. A recognition by the European powers of the capacity of even minor religious altercations in Jerusalem to provoke international conflict led them, during the nineteenth century, to endorse the Status Quo and consecrate it in various international treaties.

The Arab-Israeli conflict subsequently contributed an additional, national dimension that simultaneously expanded the potential for religious strife, this time primarily between Jews on the one hand and Christians and Muslims on the other. The international community, acting through the United Nations, in 1947 responded to the dangers inherent in this reality by proposing to transform Jerusalem into a *corpus separatum* with a special international regime, and has since consistently rejected

unilateral declarations of sovereignty over the Holy City. Formulated with the active participation of the United States, it retains the power of international law as well as longstanding diplomatic convention, and has been adopted by UN member states and regional organizations such as the European Union alike.

Since 1948, the international community has additionally endorsed, and at times actively promoted, a diplomatic resolution of the Arab-Israeli conflict that would entail shared sovereignty over the Holy City. Since 1967, such proposals have generally provided for Israeli sovereignty in West Jerusalem and Arab sovereignty in East Jerusalem in the context of an open city, and with arrangements that guarantee religious access to holy sites.

As the Palestinians became the central Arab protagonists in the conflict after 1967, the international consensus during the 1970s shifted towards adoption of a two-state settlement, in which an independent, sovereign Palestinian state, with its capital in East Jerusalem, would be established on the territories occupied by Israel in 1967 on the basis of mutual recognition with Israel inside its pre-1967 boundaries. Given the national centrality of Jerusalem to the Palestinian people, its religious centrality to the Christians and Muslims of Palestine and the Arab world as a whole, as well as the imperatives of international law regarding the illegitimacy of the acquisition of territory by force, it is considered self-evident that without East Jerusalem Palestinian statehood, and by extension Israeli-Palestinian peace, is essentially a meaningless fiction. Not only is East Jerusalem geographically central to the West Bank and the occupied Palestinian territories, it has since 1967 also been central to the socio-economic, cultural, and political life of the occupied territories. As such, every significant initiative to implement a two-state settlement has emphasised shared sovereignty over Jerusalem, with various proposals to ensure open borders between East and West and freedom of religious access.<sup>41</sup>

## **US Policy on Jerusalem, 1948-2017**

Until the advent of the Trump administration, successive US governments consistently upheld the international consensus on Jerusalem. Forming more than a concession to its international partners and Arab sentiment, this above all reflects the instrumental role Washington played in crafting foundational UN resolutions on the status of Jerusalem during the late 1940s. Thus, as with so much else that emerged in the aftermath of the Second World War, the international consensus on Jerusalem bears a distinctively American imprint and reflects the US conception of its national security interests in a vital geopolitical region.

The above notwithstanding, Washington's commitment to the policy has changed over the decades as the political situation in both the Middle East and within the United States underwent important transformations. Until 1967, successive American administrations refused to make concessions to Israel, Jordan, or for that matter the pro-Israel lobby with respect to the status of Jerusalem as formulated by the UN with US participation.

In the aftermath of the 1967 War, and what might be characterized as Washington's elevation of UN Security Council Resolution 242 of 1967 at the expense of the 1947 UN General Assembly Resolution 181, the United States began

to adopt shared sovereignty as an alternative to international administration. On the one hand, Washington rejected Israel's annexation of East Jerusalem on the grounds that its status cannot be determined by unilateral action,<sup>42</sup> and characterised it as part of the occupied Palestinian territories rather than of Israel. At the same time, Secretary of State William Rogers in 1969 formulated a new US policy pursuant to which the status of Jerusalem was to be jointly determined by Israel and Jordan. Rogers further stated that both states should play a role in "the civic, economic, and religious life of the city"; that it should be unified; and that the resolution of its status should form part of a comprehensive Arab-Israeli peace settlement.<sup>43</sup>

With Rogers effectively renouncing the US commitment to a *corpus separatum* under international administration and adopting a policy objective of shared sovereignty on the basis of a negotiated political settlement, discussion commenced over how a city could remain unified under such circumstances. In 1980, Rogers's successor Cyrus Vance clarified to the Senate Foreign Relations Committee that from the US perspective this simply meant that Jerusalem should not again be divided by barbed wire as it had been between 1948 and 1967.<sup>44</sup> This would, in various iterations, remain US policy until the 1993 Israeli-Palestinian Oslo Accords. In presenting his 1982 initiative, for example, President Ronald Reagan stated:

*[T]he United States will not support the establishment of an independent Palestinian state in the West Bank and Gaza, and we will not support annexation or permanent control by Israel ... [I]t is the firm view of the United States that self-government by the Palestinians of the West Bank and Gaza in association with Jordan offers the best chance for a durable, just and lasting peace. We base our approach squarely on the principle that the Arab-Israeli conflict should be resolved through the negotiations involving an exchange of territory for peace. This exchange is enshrined in United Nations Security Council Resolution 242, which ... remains wholly valid as the foundation-stone of America's Middle East peace effort. It is the United States' position that - in return for peace - the withdrawal provision of Resolution 242 applies to all fronts, including the West Bank and Gaza ... Finally, we remain convinced that Jerusalem must remain undivided, but its final status should be decided through negotiations.*<sup>45</sup>

As the United States gradually came to view Palestinians as legitimate participants in negotiations about their own future, including with respect to East Jerusalem, Secretary of State James Baker conveyed the following in his Letter of Assurance to the Palestinian delegation to the 1991 Madrid Middle East Peace Conference:

*The United States understands how much importance Palestinians attach to the question of east Jerusalem ... It remains the firm position of the United States that Jerusalem must never again be a divided city and that its final status should be decided by negotiations. Thus, we do not recognize Israel's annexation of east Jerusalem or the extension of its municipal boundaries, and we encourage all sides to avoid unilateral acts that would exacerbate local tensions or make negotiations more difficult or preempt their final outcome ... And, the United States supports the right of Palestinians to bring any issue, including east Jerusalem, to the table.*<sup>46</sup>





FAIZ ABU RMELEH/ACTIVESTILLS

*Muslim worshippers praying outside the Dome of the Rock on July 13, 2015*

If there is ambiguity in the above and in similar official US statements prior to 1993, these notably called for a negotiated resolution of the status of “Jerusalem” rather than of “East Jerusalem”, and did so within a context of continued US rejection of Israel’s annexation of the latter. Seen in historical context, such declarations should therefore be primarily understood as representing a shift in US policy from support for international administration as formulated by the United Nations, towards the promotion of shared sovereignty resulting from a political settlement, rather than endorsement of shared sovereignty over East Jerusalem. This interpretation is also consistent with a US Cold War agenda that sought to position Washington as the sole mediator between Israel and the Arab states, and in so doing displace the international community and the Soviet Union in particular. Similarly, US support for an “undivided” Jerusalem in the context of its simultaneous endorsement of shared sovereignty can reasonably be inferred as a policy preference for an open city as opposed to support for exclusive Israel control of the Holy City.

While it is unambiguously the case that successive US governments became increasingly uncritical of Israeli policies in East Jerusalem, and went to extraordinary lengths to shield the occupation authorities from international criticism and accountability, there is at the same time no record of US efforts to promote Israel’s claims for sovereignty over East Jerusalem. Thus, the United States exercised its veto on at least eight occasions since 1976 to prevent the adoption of UN Security



Council resolutions that specifically censured Israel for measures that sought to alter the status of the Holy City, change the status quo at the Haram al-Sharif, or for settlement activities that contributed to the transformation of the demography and topography of East Jerusalem.

Indeed, US support for and/or acquiescence in Israel's settlement project in East Jerusalem and its environs has been critical to its continuation and expansion during the past half century. This included not only diplomatic support but also, for example, permitting US organisations to funnel resources to such settlements and giving them tax-free status under US law.

It was only in the aftermath of the 1993 Oslo Agreements — to which the US was a witness and which explicitly characterized Jerusalem as an issue to be resolved by negotiations — that Washington began to support Israel's position that East Jerusalem and indeed the occupied Palestinian territories in their entirety are negotiable. Thus, President Bill Clinton formulated the following proposal in 2000 as part of what came to be known as the Clinton Parameters:

*The general principle [regarding sovereignty in East Jerusalem] is that Arab areas are Palestinian and Jewish ones are Israeli. This would apply to the Old City as well.*

*Regarding the Haram/Temple Mount ... I add to these two additional formulations...*

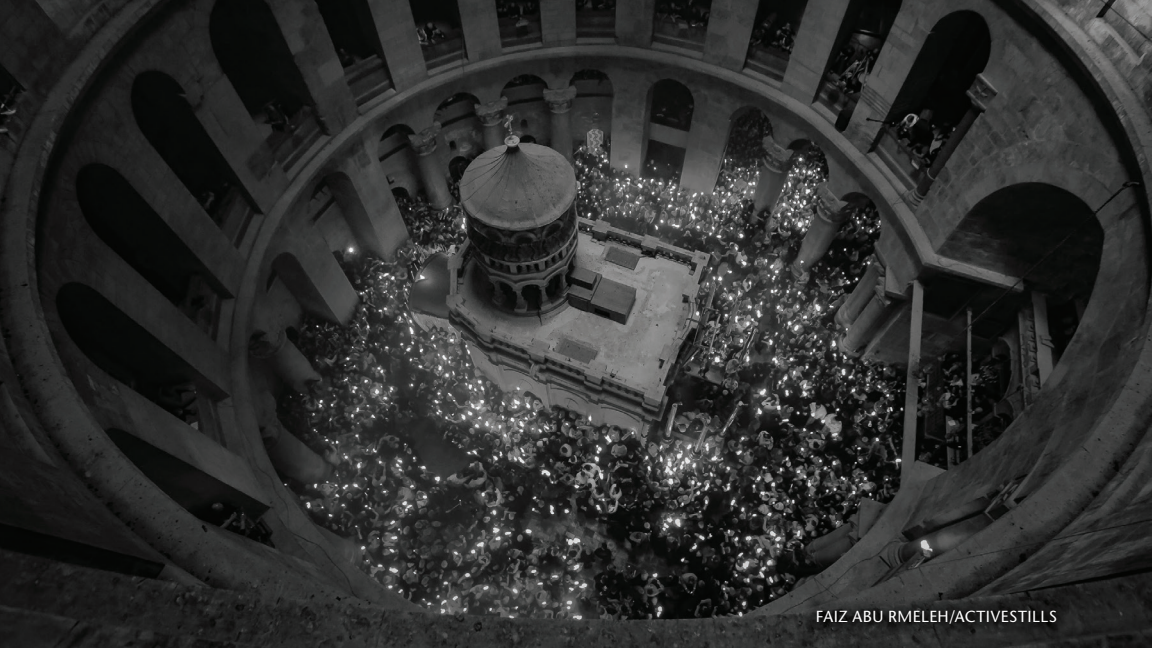
1. *Palestinian sovereignty over the Haram and Israeli sovereignty over a) the Western Wall and the space sacred to Judaism of which it is a part or b) the Western Wall and the Holy of Holies of which it is a part.*

*There will be a firm commitment by both not to excavate beneath the Haram or behind the Wall.*

2. *Palestinian sovereignty over the Haram and Israeli sovereignty over the Western Wall and shared functional sovereignty over the issue of excavation under the Haram and behind the Wall such that mutual consent would be requested before any excavation can take place.*

While representing an unprecedented US promotion of Israeli claims over East Jerusalem, and an endorsement of its illegal settlement enterprise in the Holy City, this statement introduced the prospect of further Israeli excavations below the Haram al-Sharif that have been a critical Palestinian concern since 1967,<sup>47</sup> Washington nevertheless continued to withhold formal recognition of Israeli sovereignty over Jerusalem, East or West, in the absence of a negotiated peace. The same principles guided the policies of the George W. Bush and Barrack Obama administrations. Perhaps reflecting the consistent US failure to achieve a diplomatic breakthrough, Secretary of State John Kerry in his musings on the Israeli-Palestinian conflict shortly before departing office offered the following assessment:

*Provide an agreed resolution for Jerusalem as the internationally recognized capital of the two states, and protect and assure freedom of access to the holy sites consistent with the established status quo. Now, Jerusalem is the most sensitive issue for both sides, and the solution will have to meet the needs not only of the parties, but of all three monotheistic faiths. That is why the holy sites that are sacred to billions of*



FAIZ ABU RMELEH/ACTIVESTILLS

Christian worshippers inside of the Church of the Holy Sepulcher on Easter Sunday April 15, 2017.

*people around the world must be protected and remain accessible and the established status quo maintained. Most acknowledge that Jerusalem should not be divided again like it was in 1967, and we believe that. At the same time, there is broad recognition that there will be no peace agreement without reconciling the basic aspirations of both sides to have capitals there.*<sup>48</sup>

If US presidents, including those who as candidates pledged to recognize Israeli sovereignty over Jerusalem, had to contend with the world beyond Israel in formulating policies on Jerusalem, the US Congress developed a habit of prioritising Israeli interests over US relations with other states. Beginning in the 1980s, a series of non-binding congressional resolutions supporting Israel's claims to sovereignty over Jerusalem passed, either unanimously or overwhelmingly, and culminated in the 1995 Jerusalem Embassy Act. Replete with references to "King David's entry" to Jerusalem, "the 25th anniversary of the [1967] reunification of Jerusalem", "our democratic friend and strategic ally, the State of Israel", the Jerusalem Embassy Act was drafted by the pro-Israel lobby at the height of the Oslo era as part of a coordinated campaign with opposition leader Binyamin Netanyahu to scuttle peace prospects.<sup>49</sup> The Act called upon the US government to officially recognize Jerusalem "as the capital of the State of Israel", instructed the government to relocate the US embassy in Israel from Tel Aviv to Jerusalem no later than 1999, and stipulated a schedule of financial sanctions targeting the State Department budget should it fail to comply.<sup>50</sup> Adopted with Soviet-style majorities in both the Senate and House of Representatives, it did however permit the president to sign a waiver suspending implementation at six month intervals. As expected, every president, up to and including Donald Trump, has utilised this loophole.<sup>51</sup> The legislative act did however eventually achieve its objectives, both by providing the immediate backdrop to Trump's 2017 change of policy and the subsequent Palestinian boycott of US diplomatic initiatives.

## The Jerusalem Policies of US Allies and International Partners

The policies of key US allies and international partners on Jerusalem have traditionally formed part of the international consensus and evolved along with it. The changes that have transpired over time are in turn linked to significant developments in the region and often take their cue from resulting UN resolutions.

These changes can be divided into three periods. The first, from 1947 to 1967, was characterised by support for a *corpus separatum* under international administration as initially set forth in UN General Assembly Resolution 181. The second, commencing in 1967 and based on UN Security Council 242, promoted a comprehensive Israeli withdrawal from the territories occupied during the 1967 War and a comprehensive Arab-Israeli peace, resulting in shared Israeli-Jordanian sovereignty over the Holy City. The third and present phase, which commenced during the 1980s and was solidified after 1993, witnessed a decisive turn towards a two-state settlement in which a Palestinian state with its capital in East Jerusalem is established alongside Israel with its capital in West Jerusalem. Various proposals have furthermore been formulated to ensure that Jerusalem is an open city with religious access for all.

The European Union did not adopt a unified policy on Jerusalem until 1980, when the Venice Declaration committed member states to oppose any unilateral measures affecting the status of the Holy City.<sup>52</sup> More recently, among the first resolutions adopted by the EU after the 2009 Lisbon Treaty established a common foreign policy, was a statement of formal support for the position that Jerusalem should be the capital of two states.<sup>53</sup> Rather than reflecting a change of policy by EU member states, it functioned as a statement of their collective position.

Although the Arab states rejected the partition of Palestine in 1947 and subsequently refused to recognize Israel, most came to informally support the internationalisation of Jerusalem during the subsequent two decades. During the 1980s, the League of Arab States adopted resolutions that all but explicitly endorsed the two-state settlement.<sup>54</sup> Since 2002, when the Arab League adopted the Arab Peace Initiative, it has effectively subscribed to shared Israeli-Palestinian sovereignty over Jerusalem.<sup>55</sup> Similarly, the Organization of the Islamic Conference (OIC), which established a Jerusalem Committee after 1967 to defend Arab/Muslim rights in the Holy City, has since 1981 taken the position that East Jerusalem should be the capital of a Palestinian state.<sup>56</sup>

Elsewhere, significant international actors like Russia, China, and Japan each have policies that stipulate that West Jerusalem should be the capital of Israel and East Jerusalem the capital of an independent Palestinian state in the context of a negotiated settlement.<sup>57</sup> As Trump took office in January 2017 and unleashed his “peace team” on the Middle East, the international community stood united in its position on the present and future status of Jerusalem, both East and West.

## The Trump Administration and Jerusalem

On 6 December 2017, the Trump Administration uprooted seventy years of US policy by formally recognizing “Jerusalem” as “the capital of Israel” and announcing its intention to relocate the US Embassy in Israel from Tel Aviv to “Jerusalem” — a process which commenced in May 2018. Explaining his decision, President Trump cited, among other factors, the 1995 Jerusalem Embassy Act and its recent re-affirmation by the US Senate;<sup>58</sup> his campaign pledge to undertake the measures at hand; the failure to achieve Israeli-Palestinian peace and his conviction these policy changes would facilitate successful diplomacy; Israel’s purported right to freely determine the location of its capital city; and the location of Israeli government agencies in Jerusalem as well as the regularity of meetings US officials conduct there with their Israeli counterparts.<sup>59</sup> To these reasons most independent observers added Trump’s desire to keep his evangelical Christian supporters mobilized, persistent lobbying by his son-in-law Jared Kushner and other members of the self-styled US peace team; and the fulfilment of a commitment to his most significant donor, the hard-line Zionist casino magnate Sheldon Adelson and his Israeli wife Miriam.<sup>60</sup>

That same day Trump also signed his second presidential waiver under the Jerusalem Embassy Act, a requirement to avoid financial penalties because the US government had not yet commenced with the process of relocating its embassy.

Although Trump in his oral statement and written declaration pointedly avoided any reference to Palestinian rights or aspirations, or to the existence of East and West Jerusalem, or the geographic contours of his act of recognition, he nevertheless stated that “We are not taking a position on any final status issues, including the specific boundaries of Israeli sovereignty in Jerusalem, or the resolution of contested borders.”<sup>61</sup>

In what quickly developed into a game of intra-administration ping pong, Secretary of State Rex Tillerson, the following day, declared that the final status of Jerusalem remained a matter for the parties to resolve through negotiations,<sup>62</sup> only to be contradicted the following month by Trump’s statement, issued during a joint press conference in Switzerland with Israeli Prime Minister Binyamin Netanyahu, that “the hardest subject they had to talk about was Jerusalem. We took Jerusalem off the table, so we don’t have to talk about it anymore.”<sup>63</sup> In February, Tillerson again declared that the final status of Jerusalem was for the parties to decide, and in March Trump retorted that Jerusalem was “off the table”.<sup>64</sup> That the US had affixed its signature on the 1993 Israeli-Palestinian agreement that explicitly identified Jerusalem as a permanent status issue subject to negotiation between the parties went unmentioned.

Given the absence of clarity, excess of contradiction, and generous helpings of confusion, for many it is difficult to discern the current US position on the final status of Jerusalem beyond the reality that Washington has recognized it as the capital of Israel and done so prior to the commencement of negotiations the Trump “peace team” was said to be preparing.

**“Trump, by contrast, has unilaterally sought to legitimize Israeli *faits accomplis*, and in so doing emboldened it to continue and expand its violations of international law and the international consensus with impunity.”**

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Yet, as is often the case in such matters, the refusal of the US to provide further details or place any limitations on the nature and scope of its act of recognition, in the continued absence of any official statement on Palestinian rights to Jerusalem, has been interpreted as an unconditional US recognition of Israel's defini-

tion of its sovereign claims over Jerusalem and an endorsement of Israel's claim to exclusive sovereignty over the entirety of the Holy City.

Particularly when placed alongside the Trump administration's persistent failure to contradict maximalist Israeli interpretations of the new US policy, related US policy initiatives such as the inauguration of an embassy that straddles the boundary of East and West Jerusalem, and a State Department decree to cease referring to the occupied Palestinian territories as occupied territories,<sup>65</sup> the suspicion that the Trump administration has wilfully embraced Israel's position on Jerusalem without reservation while declining to state this explicitly is difficult to avoid. In this respect, it also merits mention that the leadership of the Democratic Party, in sharp contrast to its position on other foreign and domestic policy matters, has largely applauded Trump's declaration of recognition and the May 2018 inauguration of the US Embassy in Jerusalem, and has only criticized it for not coming soon enough.<sup>66</sup>

Of particular concern with regard to Trump's explanations for his administration's policies on Jerusalem is the claim that “This is nothing more, or less, than a recognition of reality.”<sup>67</sup> It is a statement that may well have further, and critical, implications, not only within and around Jerusalem, but throughout the occupied Palestinian and indeed Arab territories, where during the past half century Israel has systematically altered the legal, administrative, demographic, and physical reality. It is certainly true that the phenomenon of recognizing realities illegally created by Israel was not pioneered by Trump; George W. Bush, for example, in 2004 stated that “realities on the ground” — i.e. Israeli settlements in the West Bank — would have to be taken into account in any Israeli-Palestinian agreement. Objectionable as this endorsement of illegitimate Israeli policies undoubtedly is, there is nevertheless the crucial difference that Bush withheld formal recognition pending the conclusion of an agreement. Trump, by contrast, has unilaterally sought to legitimize Israeli *faits accomplis*, and in so doing emboldened it to continue and expand its violations of Palestinian rights, international law, and the international consensus with impunity.<sup>68</sup>



## The Regional and International Response

Within two weeks of the Trump declaration, the UN Security Council convened to vote on a draft resolution that can only be described as a pointed slap in the face of American diplomacy. With the exception of the US, every Security Council member — including three NATO and four EU members, Japan, and a number of US client states including Egypt and Ukraine — voted for the draft, with no abstentions. The motion failed only because the US as a permanent member has veto power.

The draft resolution, which is appended to this document, provides a powerful restatement of the international consensus on Jerusalem and rejects the US measures and explanations virtually line by line.

Several days later the General Assembly, meeting in an emergency session, passed a similar resolution 128-9 with only Guatemala, Honduras, Israel, Marshall Islands, Federated States of Micronesia, Nauru, Palau, Togo, and the United States voting against.<sup>69</sup> In her subsequent banquet to reward those states which stood with the Washington, US Permanent Representative to the United Nations Nikki Haley felt compelled to also invite thirty-five delegates who abstained on the vote. Separately, the EU, League of Arab States, Organization of the Islamic Conference and a majority of their member states also rejected the Trump declaration.<sup>70</sup>

The global outrage reflected a series of concrete concerns. Among these are that:

- The United States, as a permanent member of the UN Security Council had wilfully violated international law and the international consensus on Jerusalem, pursuant to which no sovereignty within any part of the Holy City will be recognized in the absence of a negotiated political settlement;
- The United States had wilfully violated Security Council resolutions that explicitly prohibit member states from maintaining diplomatic missions in Jerusalem;
- The United States, which under President Trump had taken, at best, an agnostic position on the international consensus for a two-state settlement of the Israeli-Palestinian conflict, dealt a seemingly deliberate body blow to a central pillar of this framework because a Palestinian state without a capital in East Jerusalem is inconceivable;
- The Trump declaration on Jerusalem spoke only to Israeli interests and aspirations in Jerusalem, and made no mention of Palestinian rights and aspirations, as if these are non-existent;
- In a situation where Israel is already putting both the prospects for an end to the occupation of East Jerusalem and the Status Quo at Jerusalem's most sacred locations under continuous pressure, the Trump declaration is tantamount to pouring oil on a growing fire, with unforeseen consequences at a time when the region is already consumed by conflict and instability;
- The Trump declaration dealt a severe blow to the already moribund prospects for meaningful Israeli-Palestinian negotiations;
- The Trump declaration establishes an extremely dangerous precedent since it can use its power and influence to persuade other states to mimic its policies

and apply the same approach to other core issues in the Israeli-Palestinian and Arab-Israeli conflicts.

The absence of anticipated eruptions of popular outrage throughout the Arab and Muslim worlds in the immediate aftermath of the Trump declaration led the US, Israel, and other proponents of US policy to proclaim that concerns about security and stability in the region and beyond were highly exaggerated, if not illusory. Yet those drawing such conclusions primarily betrayed their shallow understanding of politics, militancy and — as the Gaza marches in the spring of 2018 demonstrated — Israel's seemingly limitless capacity to fan the flames of Palestinian indignation. Furthermore, at the leadership level, the Palestinians repudiated further diplomatic engagement with a US administration that they correctly viewed as incapable of serving as an effective arbiter. Effectively, Trump left them with no other political option.

## Conclusion

It is not inconceivable that a determination to dismantle the rules-based international system, in this instance represented by the international consensus on Jerusalem, played a role in the Trump administration's rupture with precedent and partner. Be that as it may, the United States has now presented the international community with a moment of truth.

At one level, Trump has performed the valuable if unintended service of conclusively demonstrating to those who still believed otherwise that the existing diplomatic framework for resolving the Israeli-Palestinian conflict, of bilateral negotiations between the occupier and occupied under exclusive US auspices, cannot and should not be resurrected.

More importantly, it presents the international community with a challenge. Not primarily one of reversing the Trump policy, which at least in the short term enjoys the enthusiastic support of the Democratic Party leadership. But rather, one of constructing alternatives to an obsolete approach which looks to Washington for leadership and salvation. As Israel actively asserts its sovereignty over the whole of Jerusalem through laws, development projects, and further displacement of the Palestinian population, such alternatives begin with a firm commitment to existing principles and a refusal to compromise them in the forlorn hope of enticing this American administration to modify its position. It entails putting principles that are often enunciated as the pre-requisites for Israeli-Palestinian co-existence into political practice, and beginning the process of replacing Israeli impunity with accountability.

In the immediate term, the international community, and particularly those who wield influence in the region, will need to expend considerable effort to ensure the maintenance of the Status Quo at the Holy City's holy sites. At the same time, they will need to devise firewalls that can prevent Washington from applying its policy approach to Jerusalem to other aspects of the Israeli-Palestinian conflict and prepare plans to ameliorate the consequences if it does. Within the larger scheme of things, this community must develop the will and capacity to act in the defense of its own interests. Pursued correctly, the prospects for obtaining American popular and elite support for such a program may be growing better. In due course, such preferences can percolate into the political arena.

## Endnotes

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3. See, for example, Ilene Beatty, “The Land of Canaan”, in Walid Khalidi (ed.), *From Haven to Conquest: Readings in Zionism and the Palestine Problem Until 1948* (Washington, DC: Institute for Palestine Studies, 2005), pp. 8-9.
4. Beatty, *op.cit.* pp. 16-17.
5. For example, John Wilkinson, “Jerusalem under Rome and Byzantium, 63 BC - 637 AD” in Asali, *op. cit.*, pp. 77-78. Wilkinson (p. 88) notes that the Romans around 130 CE issued a decree prohibiting Jews from residing in Jerusalem, but that in practice “there must have been a lot of exceptions” to its implementation.
6. See, for example, Abdul Aziz Duri, “Jerusalem in the Early Islamic Period, 7<sup>th</sup>-11<sup>th</sup> Centuries AD”, in Asali, *op. cit.*, p. 109.
7. Walid Khalidi, “Islam, The West, and Jerusalem”, Occasional Papers (Washington, DC, Georgetown University Center for Contemporary Arab Studies & Center for Muslim Christian Understanding, 1996), p.5.
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11. See, for example, Donald P Little, “Jerusalem under the Ayyubids and Mamluks, 1197 – 1516 AD”, in Asali, *op. cit.*, pp. 177-199; K J Asali, “Jerusalem under the Ottomans, 1516-1831 AD”, in Asali, *op. cit.*, pp. 200-227.
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23. United Nations, Special Committee on Palestine, *Official Records of the Second Session of the General Assembly: Supplement No. 11 (Report to the General Assembly, Volume 1)* A/364 (3 September 1947), Article VI.G.III.4 Available at: <https://unispal.un.org/DPA/DPR/unispal.nsf/0/07175DE9FA2DE563852568D3006E10F3>.
24. United Nations, General Assembly, *Resolution 181 (II)*, *op. cit.*
25. United Nations, General Assembly, *Resolution 194 (III). Palestine — Progress Report of the United Nations Mediator* A/RES/194 (III) (11 December 1948), Articles 7 and 8. Available at: <https://unispal.un.org/DPA/DPR/unispal.nsf/0/C758572B78D1CD0085256BCF0077E51A>.
26. Palestinians in 1948 did not only suffer wholesale expulsion from West Jerusalem. Their very extensive property holdings and other assets were also seized by the new Israeli state. See further Salim Tamari (ed.), *Jerusalem 1948: The Arab Neighborhoods and Their Fate in the War* (Washington, DC: Institute for Palestine Studies, 1999).
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# JERUSALEM AND THE TRUMP ADMINISTRATION TRANSFORMING THE STATUS QUO

MOUIN RABBANI

THIS THIRD INSTALLMENT of the Current Issues in Depth series by Mouin Rabbani covers the historical and political background of the status of Jerusalem and places the Trump administration's decision to move the US Embassy to Jerusalem, and its de facto recognition of Israeli sovereignty, in its proper context. The author demonstrates the rupture this decision created, not only with the international consensus on Jerusalem, but also with long-standing US policy and practice. He concludes by highlighting the actual and potential consequences of the US administration's decision on Jerusalem.

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