



## Potential Legal and Political Effects if the U.S. Relocates Its Embassy to Jerusalem

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*U.S. President Donald Trump has stated he would like to see the American embassy in Israel moved from Tel Aviv to Jerusalem. Such a move would be discordant with international law and more than four decades of policy of his predecessors. It would bring negative political consequences for the U.S., Israel, the Middle East and the European Union, even if it were well received by some Israelis and American members of Congress.*

**Status of Jerusalem.** After World War I, the city of Jerusalem came under the administration of the United Kingdom through a League of Nations' mandate on Palestine. At the end of World War II, given the British intention to give up the mandate and withdraw from Palestine, the United Nations undertook to provide a future solution for the region and for Jerusalem itself. UN General Assembly Resolution 181, adopted in November 1947, is based on the premise that Jerusalem would be placed under special international supervision. However, the outbreak of the first Arab-Israeli war in 1948 frustrated the implementation of the resolution. The fighting left the city divided in two: a western part occupied by Israel and an eastern part held by Jordan. In 1949, Israel moved most government institutions and parliament (the Knesset) from Tel Aviv to Western Jerusalem. The Knesset then adopted a resolution declaring Jerusalem to be the capital of Israel.

In June 1967, during the Six Day War, Israel captured East Jerusalem. Within a month, it extended Israeli rule over the city, including administration and judiciary. This move was opposed by the UN Security Council (UNSC) in Resolution 252 issued in May 1968. The resolution stated that the acquisition of territory by military conquest is "inadmissible," declared that all actions taken by Israel to change the status of Jerusalem are invalid, and called upon Israel to rescind measures already taken. Despite this, in July 1980, the Knesset passed a constitutional act according to which Jerusalem, "complete and united" according to the text, was to be the capital of Israel and the seat of its president, government, parliament and Supreme Court. In response, the UNSC in August 1980 adopted Resolution 478, which re-emphasised the legal nullity of Israel's actions and condemned the adoption of the act by the Knesset, calling it a violation of international law and refusing to recognise it. The resolution also called upon all states that had established diplomatic missions in Jerusalem to withdraw them from the city.

Before the adoption of Resolution 478, the attitude of other states to the question of Jerusalem was not uniform. A clear majority of UN members, including the U.S., had consistently maintained diplomatic missions in Tel Aviv and its surroundings. However, from the mid-1950s to 1980, more than 20 countries, almost exclusively African and Latin American ones, maintained missions in West Jerusalem, at least for a while. Resolution 478 prompted 13 states with embassies in Jerusalem to transfer them to Tel Aviv or other locations. Of the 82 states with diplomatic missions in Israel today (including Poland), only two have ever violated the resolution's call: Costa Rica (in 1982–2006) and El Salvador (1984–2006).

**Legal Consequences.** Resolution 478 is non-binding because it was not adopted under Chapter VII of the UN Charter. However, in the resolution, the UNSC explicitly identified the annexation of East Jerusalem as a violation of international law. It is clear from UN practice, such as UNSC responses to the creation of "Rhodesia" and the "Turkish Republic of Northern Cyprus" as well as the annexation of Namibia by South Africa, that such appraisals made by the

Council are generally honoured by the UN's members. This was confirmed in 1971 by the International Court of Justice (ICJ) advisory opinion on Namibia. It held that although the examined UNSC Resolution 276 (1970) contesting the legality of the annexation of Namibia had not been adopted under Chapter VII of the UN Charter, UN members were obliged to treat the annexation as illegal and refrain from actions that might suggest it had accepted the South African claims. Among the unacceptable actions the ICJ mentioned were establishing and maintaining diplomatic missions in the disputed area, even though Resolution 276, unlike Resolution 478, did not mention that expressly.

President Trump's apparent decision to move the U.S. embassy to Jerusalem would therefore breach established international law, namely the obligation not to recognise illegal territorial acquisitions. Given the context of the UN call in Resolution 478 not to maintain diplomatic missions in Jerusalem, even in the western part, this unilateral U.S. move might be construed as acceptance of Israel's actions to change the international status of the city.

**Political Consequences.** The status of Jerusalem is one of many contentious issues in the Israeli-Palestinian and, more broadly, the Israeli-Arab conflict. Palestinians want to see their future capital established in the eastern part of the city. All Arab League member states support this. The relocation of its embassy to Jerusalem would mean that the U.S., until now the chief negotiator between the Palestinians and the Israelis, explicitly considers Jerusalem to be the capital of Israel, even before the parties to the conflict have agreed its status. According to the Palestinians and its Arab partners, this change would amount to unequivocally siding with Israel. In the short term, the embassy's relocation could trigger demonstrations in the Arab and Muslim world, and in the long term could radicalise many Palestinians. Some of their leaders have already threatened to revoke the recognition of Israel granted in the Oslo Accords, while the Palestinian chief negotiator has warned that the fury of Arabs and Muslims would be so visible and demonstrations so great that the U.S. may have to shut down all its embassies in the region. Palestinian mosques have likewise been instructed to actively oppose the relocation.

All Muslims consider Jerusalem one of Islam's three holiest places. The decision to move the embassy would boost anti-Americanism in the Middle East. It would also endanger relations with Egypt and Jordan, key American and Israeli partners in the Middle East. The security of Israel depends in part on peaceful relations with both. Under public pressure, the governments of Egypt and Jordan would have to react negatively to the U.S. decision. Most Jordanians have a Palestinian background. If the relocation of the U.S. embassy causes upheavals in the Arab world, Jordan would be destabilised first. This scenario is particularly worrisome for Israel, which has close security cooperation with Jordan. If the governments of Jordan, Egypt and Saudi Arabia do not respond strongly enough against the U.S. move, Iran would win support from the popular anti-American sentiment in the region. The strengthening of Iran would be equally unwelcome to Israel and the U.S.

Trump's executive order temporarily banning nationals from seven Muslim-majority countries from entry to the U.S. and the administration's approval of settlements in Israeli-occupied Palestinian territory have already resulted in strong and negative public reaction. The American policies lend credence to jihadist arguments that Islam is under attack by the West and could fuel recruitment to radical groups. This is one of the key claims of Islamic State (IS/ISIS/ISIL), which grew in number and capabilities in the aftermath of what it calls the "war on Islam" (U.S. and coalition military actions in 2001–2008).

Cognisant of the political and legal costs of relocating foreign embassies to Jerusalem, Israel will not exert significant pressure in this matter. Ever since it was first mentioned in the recent U.S. presidential campaign, the Israeli reaction has been limited. Prime Minister Benjamin Netanyahu only briefly noted that all embassies should be in Jerusalem. In the first Trump-Netanyahu phone call, the Israeli side did not press relocation. American and Israeli advocates of moving the embassy to Jerusalem cite the Jerusalem Embassy Act of 1995, enacted by the U.S. Congress, which stipulates that the embassy be moved. The bill, however, was introduced and supported by Republicans and the pro-Israel lobby as an argument against then-Israeli Prime Minister Yitzhak Rabin and President Bill Clinton, who both were working with PLO Chairman Yasser Arafat to end the Israeli-Palestinian conflict (Oslo Accords). Every two years at the start of the new Congress, Presidents Clinton, George W. Bush and Barack Obama would postpone the embassy's relocation to Jerusalem, citing the need to "protect the national security interests of the United States."

**Conclusions.** By announcing the intention to move the U.S. embassy to Jerusalem, Trump wants to distance himself from the Obama policy toward the Israeli-Palestinian conflict. The political and legal consequences of the decision for the U.S. and Israel make it unviable. It is likely that it would destabilise the occupied Palestinian territories and Jordan—the main Arab ally of Israel—along with strengthening Iran and boosting recruitment of Sunni jihadists. Further destabilisation of the region would not only affect the U.S. but also Israel and Europe. The relocation of the embassy to Jerusalem would violate international law and serve as a pretext for other states to disregard the prohibition on the acquisition and recognition of illegal territorial gains. For example, Russia could then argue the legal standing of its involvement in Ukraine, including undermining that country's territorial integrity.

If the Trump administration moves forward with relocating the embassy, the EU should explicitly state its position against the change in order to project the image of an international body that both respects the law and is able to maintain an independent Mid-East policy from the U.S.