

## Trump's Challenge: What can the EU do to Prevent Escalation in Jerusalem?

19. June 2018 by [Hugh Lovatt](#)

Jerusalem has seemingly forever been at the epicentre of conflicts in the Middle-East. The Israeli-Palestinian conflict has proven no different. Sovereignty over Jerusalem remains deeply contested between Israelis and Palestinians with both sides laying claim to the Haram al-Sharif / Temple Mount. Despite successive rounds of failed peace negotiations, the City's religious and territorial dimensions have made it one of the most intractable final status issues between the two sides.

The City and its religious sites have often served as catalysts for violence and instability. In September 2000, a provocative visit by soon-to-be Israeli Prime Minister Ariel Sharon to the Mount – described by then Palestinian leader Yasser Arafat as a 'dangerous action' against Muslim holy sites<sup>1</sup> – sparked the Second Intifada. Intermittent protests and violence has continued in Jerusalem since then, most recently in July 2017 over perceived Israeli attempts to alter the status quo governing the Mount by installing metal detectors at its entrance. This triggered large scale popular protests which were only defused after international intervention forced Israeli authorities to back down.

Alongside this, Israel has sought to alter the demographics of East Jerusalem (which it occupied in June 1967 and subsequently annexed in 1980) through a concerted policy of Palestinian house demolitions and expulsions coupled with an expansion of Jewish settlements. Today there are over 200,000 Israeli settlers living in East Jerusalem, alongside 300,000 Palestinians. While most live within new Israeli settlements, some, with the support of the Israeli authorities and settler organisations, have taken control of properties within Palestinian neighbourhoods, evicting their Palestinian occupants, and establishing a number of settlement compounds.<sup>2</sup> Israel has reportedly revoked the residency of at least 14,595 Palestinian Jerusalemites since 1967.<sup>3</sup> Israel has also sought to squeeze out vulnerable Palestinian communities in strategic West Bank areas subsumed within Jerusalem's Israeli drawn municipal boundaries. The most recent example is its intention to demolish the Bedouin village of Khan al-Ahmar located within the E1 Area of the Ma'ale Adumim settlement. These actions are considered by the international community to amount to Israeli violations of international law and UN Security Council resolutions.

The issue of Jerusalem was again in the headlines following President Trump's announcement in December 2017 that the US would henceforth recognise the city as Israel's capital. Trump's announcement set the stage for the transfer of the US embassy from Tel Aviv to Jerusalem in May 2018. Although motivated largely by domestic political considerations, Trump touted his move as a reflection of realities on the ground that brought peace closer. The Palestinian leadership and much of the international community (including the EU) has taken a diametrically opposing view, warning that such measures undermine international positions aimed at achieving a peace agreement based on a two-state solution along with US credibility.

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<sup>1</sup> Joel Greenberg, "Sharon Touches a Nerve, and Jerusalem Explodes", 29 September 2000, available at: <https://www.nytimes.com/2000/09/29/world/sharon-touches-a-nerve-and-jerusalem-explodes.html>.

<sup>2</sup> "Humanitarian impact of settlements in Palestinian neighbourhoods in East Jerusalem: evictions and displacements", UN OCHA Monthly Humanitarian Bulletin, May 2018, available at: <https://www.ochaopt.org/content/humanitarian-impact-settlements-palestinian-neighbourhoods-east-jerusalem-evictions-and>.

<sup>3</sup> "Israel: Jerusalem Palestinians Stripped of Status", Human Rights Watch, 8 August 2017, available at: <https://www.hrw.org/news/2017/08/08/israel-jerusalem-palestinians-stripped-status>.

Meanwhile, Trump's decision has fed increasing instability and volatility in the Occupied Palestinian Territory (OPT), particularly in Gaza which saw weeks of large scale protests resulting in the death of over 126 Palestinians, injuring 13,000<sup>4</sup> and sparked mass protests from Casablanca to Amman. The move has also ruffled relations with traditional Arab allies who urged the White House not to follow through, in particular Jordan's King Abdullah who reportedly 'visited Washington four times in 2017, reminding the Trump administration of Jordan's longstanding loyalty and Hashemite custodianship over Jerusalem's holy sites.'<sup>5</sup> The Palestinians too warned against the move, with their chief peace negotiator Saeb Erekat warning Trump's son-in-law and Middle East envoy Jared Kushner that 'you will have disqualified yourselves from playing any role in the peace process.'<sup>6</sup> Since then, US-PLO relations have reached their lowest point since President George W Bush pushed for the isolation and removal of then Palestinian President Yasser Arafat in 2002. Finally, although Trump's decision provoked only a mild reaction from Gulf states, it has momentarily slowed efforts to advance Israeli-Gulf normalisation – a key US objective.<sup>7</sup>

### **The pillars of international consensus**

For over seventy years, the international community has remained united behind UN General Assembly Resolution (UNGAR) 181 (November 1947) which called for Jerusalem to 'be established as a corpus separatum under a special international regime...administered by the United Nations'. While the idea of an internationalised City under UN auspices has disappeared from the negotiating agenda, UN members have nevertheless still refrained from acknowledging either side's sovereignty over Jerusalem. This position was re-affirmed by the Trump administration as recently as May 2017.<sup>8</sup> With few exceptions, states have therefore chosen to keep their embassies in Tel Aviv in order to uphold UNGAR 181.<sup>9</sup>

Since the 1967 Israeli-Arab war and Israel's occupation of the West Bank (including East Jerusalem) a second set of considerations have come into play based on international humanitarian law (IHL) and the 1945 UN Charter which prohibits the acquisition of territory through the use of force. This led to the UN Security Council Resolution (UNSCR) 242 (November 1967) which called for the 'withdrawal of Israel armed forces from territories occupied in the recent conflict'. Since then, the UN Security Council has repeatedly affirmed its view that the West Bank (including East Jerusalem) is occupied Palestinian territory and its non-recognition of Israel's annexation of Palestinian East Jerusalem in 1980, deeming its administrative and legislative actions in this regard to be 'null and void'.<sup>10</sup> This was re-affirmed in UNSCR 2334 (December 2016).

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<sup>4</sup> UN OCHA Monthly Humanitarian Bulletin, May 2018, available at:

<https://www.ochaopt.org/content/monthly-humanitarian-bulletin-may-2018>.

<sup>5</sup> Sean Yom, "Jordan struggles for survival strategy in shadow of US-Israeli-Saudi axis", Middle East Eye, 5 June 2018, available at: <http://www.middleeasteye.net/columns/wither-shi-crescent-jordans-geopolitics-and-survival-598000388>.

<sup>6</sup> Adam Entous, "Donald Trump's New World Order", New Yorker, 18 June 2018, available at: <https://www.newyorker.com/magazine/2018/06/18/donald-trumps-new-world-order>

<sup>7</sup> See: Adam Entous, "Donald Trump's New World Order", New Yorker, 18 June 2018, available at: <https://www.newyorker.com/magazine/2018/06/18/donald-trumps-new-world-order>.

<sup>8</sup> Jordan Schachtel, "Trump admin: No state has sovereignty over the city of Jerusalem", 17 May 2017, available at: <https://www.conservativereview.com/news/trump-admin-no-state-has-sovereignty-over-the-city-of-jerusalem>.

<sup>9</sup> C.f.: David Green, "Trump, Take Note: How Jerusalem Went From Hosting 16 Embassies to Zero", Haaretz, 14 May 2018, available at: <https://www.haaretz.com/israel-news/.premium-trump-take-note-how-jerusalem-went-from-hosting-16-embassies-to-zero-1.5627682>.

<sup>10</sup> UN Security Council Resolution 478 (August 1980) refers to "Palestinian and other Arab territories occupied since June 1967, including Jerusalem."

These two considerations stemming from 1947 and 1967 – upholding both the corpus separatum and internationally legal considerations relating to Israel’s occupation – continue to shape the Middle East Peace Process (MEPP) and the international final status parameters that have been shaped through successive negotiations. Accordingly, the international community has repeatedly stressed that the status of Jerusalem should be resolved during negotiations in a manner that allows for the establishment of East Jerusalem as the Palestinian capital, based on the pre-June 1967 lines.

Given its religious significance, international mediation efforts have been premised on the assumption that a special arrangement would be negotiated with regards to the Haram al-Sharif / Temple Mount and Western Wall. For example, in his December 2000 parameters, President Clinton suggested possible modalities for ‘guaranteeing Palestinian effective control over the Haram while respecting the conviction of the Jewish People.’<sup>11</sup> Other formulations have also been explored over the years. As an ECFR Track II working group on final status parameters elaborated in summer 2016, this could include ‘special arrangements or a special regime ... to guarantee the religious, historic and cultural integrity of Jerusalem’s holy and historic sites, and to further guarantee freedom of worship and freedom of access to sites held sacred by Jews, Christian and Muslims based on the established status quo. The equities of all stake holders – including the Hashemite Kingdom of Jordan and indigenous and faith communities – will be rigorously protected.’<sup>12</sup>

### **Trump’s challenge to the international order**

Trump’s actions towards Jerusalem represent a direct and unilateral challenge to international consensus positions based on international law and successive UNSCRs. By recognising Jerusalem as Israel’s capital and subsequently moving its embassy to Jerusalem, he broke not only with decades of US policy, but also international consensus on the corpus separatum by prompting similar moves by Guatemala and Paraguay, with other states likely to follow.

In congressional testimony given prior to becoming NSC Director, John Bolton outlined some of the thinking that seems to have been behind the US decision, explaining that “Resolution 181...and its successor Resolutions are dead letters. Whatever else Jerusalem’s final status may be, there is no serious advocacy that Jerusalem be internationalized, and no real-world possibility that it will happen. Nonetheless, the lingering effects of the internationalization idea persist in the contention that uncertainty exists over whether any part of Jerusalem will ultimately become Israel’s capital city.”<sup>13</sup>

But, the lack of any territorial distinction within Trump’s December 2017 declaration means that the US has not yet specified which parts of Jerusalem it now views as Israel’s capital – whether its recognition is limited to West Jerusalem, or includes East Jerusalem, or even the broader Jerusalem municipality as defined by Israel. Despite repeated requests for clarifications, the US State Department has been unable to clarify its position.<sup>14</sup> This contrasts with Russia and the Czech Republic which have both made such a distinction when they recognised West Jerusalem as Israel’s capital in April 2017 and December 2018 respectively.

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<sup>11</sup> For the text of the December 2000 Clinton parameters, see: <http://www.jewishvirtuallibrary.org/the-clinton-peace-plan>.

<sup>12</sup> ECFR Working Group final status parameters, Summer 2016 (unpublished).

<sup>13</sup> Testimony of John R. Bolton On The Implications for Moving the U.S. Embassy in Israel to Jerusalem Before the House Committee on Oversight and Government Reform Subcommittee on National Security, 8 November 2017, available at: [https://oversight.house.gov/wp-content/uploads/2017/11/Bolton\\_Testimony\\_11082017.pdf](https://oversight.house.gov/wp-content/uploads/2017/11/Bolton_Testimony_11082017.pdf).

<sup>14</sup> See for example: Briefing With Acting Assistant Secretary David M. Satterfield, 7 December 2017, available at: <https://www.state.gov/r/pa/prs/ps/2017/12/276349.htm>.

For now, the United States seems to have stopped short of formally recognising Israeli sovereignty over Jerusalem. But a future determination to this effect cannot be discounted. Should that happen, it would have far reaching consequences. From an international law perspective it would further undermine UNGAR 181 and the idea of a corpus separatum. Recognition of Israel's annexation of East Jerusalem would also legitimise Israel's violations of the UN Charter. Domestically, this would have other far reaching consequences, altering US maps and passports, as well as its trading and regulatory practices which currently distinguish between Israel and the occupied territory.<sup>15</sup>

However, in several ways the international law positions that have traditionally underpinned US policy determinations towards the conflict are already being rolled back. This has become evident through the US State Department's removal of the term 'occupied' from its reporting on the human rights in the Palestinian territory and the Golan, and its ambiguity over the legal status of Israeli settlements. The US's pro-settlement ambassador to Israel, David Friedman, has been a key driving force behind this. As Friedman explained recently: 'there are two different issues. One is the nomenclature, the other is the policy. So far, what has changed is the nomenclature, and I was certainly in support of that (...) The policy is for the president and the State Department to make.'<sup>16</sup>

### **What Jerusalem tells us about a Trump peace plan**

Beyond his undermining of international law-based positions towards the conflict, Trump is also challenging the internationally endorsed parameters that have attempted to sketch out the contours of peace agreement acceptable to both sides. But in taking Jerusalem 'off [the negotiating] table'<sup>17</sup>, as he described it, Trump appears to be unilaterally pre-empting the outcome of one of the most delicate final status issues in the conflict. The US announcement in January 2018 that it would be severely reducing its funding to UNRWA could be seen as a similar effort to take the issue of Palestinian refugees and their right of return to Israel (another extremely sensitive final status issue) off the table as well.

The contents of Trump's much anticipated peace plan remain under wraps. But the developments outlined above seem to back up informed speculation that a future US diplomatic initiative will side-line the long standing international positions that have underpinned the two-state solution. In their place may come explicit US support for Israeli sovereignty over Jerusalem and Israeli settlements in the West Bank, alongside a Palestinian state with only limited sovereignty under continued Israeli control, with interim (or undefined) borders and its capital in Abu Dis (a village east of Jerusalem).<sup>18</sup>

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<sup>15</sup> See: Judy Maltz, Noa Landau and The Associated Press, "Despite Trump's Announcement, 'Jerusalem, Israel' Won't Appear on U.S. Passports", Haaretz, 8 December 2017, available at: <https://www.haaretz.com/us-news/jerusalem-israel-won-t-appear-on-u-s-passports-1.5628113>.

<sup>16</sup> Raphael Ahren and David Horovitz, "Ambassador David Friedman: Republicans support Israel more than Democrats" Times of Israel, 31 May 2018, available at: <https://www.timesofisrael.com/ambassador-david-friedman-republicans-support-israel-more-than-democrats>.

<sup>17</sup> Noa Landau and Amir Tibon, "We Took Jerusalem Off the Negotiating Table, Trump Says Alongside Netanyahu in Davos", Haaretz, 25 January 2018, available at: <https://www.haaretz.com/us-news/premium-trump-netanyahu-meet-in-davos-1.5766434>.

<sup>18</sup> The Abu Dis option was previously floated by Israel and the Clinton Administration during the 2000 Camp David negotiations, and rejected by the PLO at that time.



Trump's reasoning that after more than two decades of failed peace talks 'it would be folly to assume that repeating the exact same formula would now produce a different or better result'<sup>19</sup> is not without merit. In fact, such statements reflect the belated assessment of the Obama administration after its own failed attempts. And indeed, as I argued with Omar Dajani in July 2017, 'unless structural flaws in the Oslo process are corrected, any new talks brokered by the US seem sure to end in failure once again.'<sup>20</sup>

But while Trump seems to be systematically demolishing the main pillars of the Oslo Middle East Peace Process and the conflict management system it has put in place, the US has so far not been able to replace it with alternative conflict resolution model. If anything, Trump's actions so far appear to be the first steps towards the fulfilment of an Israeli right wing vision for dealing with the Palestinian issue. This outcome has previously been termed by Israeli Prime Minister Netanyahu as representing a Palestinian 'state minus'<sup>21</sup> and by the EU's HR/VP Federica Mogherini as 'a one-state reality of unequal rights, perpetual occupation and conflict.'<sup>22</sup>

Moreover, given the emotive significance of Jerusalem to Palestinians (and the broader Arab and Muslim world), it is unlikely that a US peace plan that undermines Palestinian and Muslim claims to East Jerusalem could gain any traction in Ramallah or regional capitals. As Abbas's spokesperson warned: 'any talks about the "the deal of the century" would not lead to any if the proposal skip[s] over the issues of Jerusalem and the Palestinian refugees.'<sup>23</sup> And while Gulf leaders have shown unprecedented willingness to improve relations Israel, their ability to do so remains dependent on Arab public opinion and progress on the Palestinian issue.

As such, it is difficult to see how a Trump peace plan that is so closely aligned to Israeli positions, and that seeks to impose on Palestinians what would in effect be the continuation of the occupation, could provide a lasting solution to the conflict, nor open the way for a more public set of Israeli-Gulf relations. As past developments have shown, the US approach on Jerusalem (and refugees) also risks feeding further volatility and violence on the ground and increasing diplomatic fracturing at the international level.

### **The 'status quo' defender**

Caught in the middle of this has been the European Union which has sought to prop up international consensus on long standing international positions relating to the status of

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<sup>19</sup> Julian Borger and Peter Beaumont, "Defiant Donald Trump confirms US will recognise Jerusalem as capital of Israel", Guardian, 7 December 2017, available at: <https://www.theguardian.com/us-news/2017/dec/06/donald-trump-us-jerusalem-israel-capital>.

<sup>20</sup> Omar Dajani and Hugh Lovatt, "Rethinking Oslo: How Europe can promote peace in Israel-Palestine", ECFR, 26 July 2017: available at: [http://www.ecfr.eu/publications/summary/rethinking\\_oslo\\_how\\_europe\\_can\\_promote\\_peace\\_in\\_israel\\_palestine\\_7219](http://www.ecfr.eu/publications/summary/rethinking_oslo_how_europe_can_promote_peace_in_israel_palestine_7219).

<sup>21</sup> "Netanyahu says Palestinians can have a 'state minus'", Times of Israel, 22 January 2017, available at: <https://www.timesofisrael.com/netanyahu-says-palestinians-can-have-a-state-minus>.

<sup>22</sup> "Statement by High Representative/Vice-President Federica Mogherini on the "Regularisation Law" adopted by the Israeli Knesset", EEAS Press Release, 7 February 2017, available at: [https://eeas.europa.eu/headquarters/headquarters-homepage\\_en/20104/Statement%20by%20High%20Representative/Vice-President%20Federica%20Mogherini%20on%20the%20%22Regularisation%20Law%22%20adopted%20by%20the%20Israeli%20Knesset](https://eeas.europa.eu/headquarters/headquarters-homepage_en/20104/Statement%20by%20High%20Representative/Vice-President%20Federica%20Mogherini%20on%20the%20%22Regularisation%20Law%22%20adopted%20by%20the%20Israeli%20Knesset).

<sup>23</sup> President Abbas's spokesperson Nabil Abu Rudeineh quoted in: Jack Khoury and Amir Tibon, "Palestinians to U.S.: No 'Deal of the Century' if Jerusalem Not Addressed", Haaretz, 14 June 2018, available at: <https://www.haaretz.com/us-news/palestinians-to-u-s-no-deal-of-the-century-without-jerusalem-1.6175003>.

Jerusalem and the broader Middle East Peace Process. This can be said to reflect the EU's role as a defender of the political 'status quo' within the conflict. But its ability to do so is limited by latent divisions amongst its members – a weakness that was once again exposed by Washington's actions.

EU Member States have tended to coalesce into two 'like-minded' groups on MEPP issues. The first is centred around mostly western states relatively sensitive to EU positions and obligations based on international law, and the need to advance measures to preserve the space for a two-state solution. The second group of 'like-minded' is made up predominantly of eastern members which out of a mixture of ideology and geopolitics, have been more supportive of Israeli positions, including those that violate international law.

On the surface, Brussels has so far managed to maintain a veneer of Member State consensus in support of established EU positions on Jerusalem. As Mogherini re-affirmed following the US decision: 'We believe that Jerusalem shall be the capital of two states: West Jerusalem for the state of Israel and East Jerusalem for the state of Palestine. [...] This is the position of the entire European Union and this is what all 28 Foreign Ministers said yesterday morning to Prime Minister Benjamin Netanyahu, one by one, in full unity. [This] is based on the Oslo Accords between Israeli and Palestinian leaders and on the international consensus embodied in UN Security Council Resolution 478.'<sup>24</sup>

This comes amidst US and Israeli pressure to peel off eastern Member States from the EU consensus in favour of their own positions. US-Israeli efforts seemed on the verge of delivering when only a few hours after the US announcement, the Czech Republic declared that it would recognise West Jerusalem as Israel's capital. This was followed by speculation fuelled by the Czech President that his country would also move its embassy to Jerusalem, and reports that Romania too may follow suit. But despite all of this, the delicate EU Member State consensus has continued to hold for now.

As a result, the EU's High Representative was able to issue a full-throated declaration of EU unity on the issue following Prime Minister Netanyahu's visit to Brussels in December 2017: 'I know that Prime Minister Netanyahu mentioned a couple of times that he expects others to follow President Trump[s] decision to move the embassy to Jerusalem. He can keep his expectations for others, because from the European Union Member States side this move will not come.'<sup>25</sup> 'The voice of the European Union has been heard loud and clear in all corners of the world after President Trump's announcement on Jerusalem. Our position is built on the most solid foundations...Our partners know very well where we stand and we have made it very clear – always, and during these last very difficult days.'<sup>26</sup>

Other EU leaders have been equally outspoken, in particular French President Emmanuel Macron who warned that such a unilateral move was counter-productive: 'Experience shows that whether you like it or not, things like that provoke violence in response... this leads to

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<sup>24</sup> "Speech by HR/VP Federica Mogherini at the European Parliament plenary session on US President Trump's announcement to recognise Jerusalem as capital of Israel", 12 December 2017, available at: [https://eeas.europa.eu/headquarters/headquarters-homepage/37336/speech-hrvp-federica-mogherini-european-parliament-plenary-session-us-president-trumps\\_en](https://eeas.europa.eu/headquarters/headquarters-homepage/37336/speech-hrvp-federica-mogherini-european-parliament-plenary-session-us-president-trumps_en).

<sup>25</sup> "Netanyahu realised there is full EU unity on Jerusalem, Mogherini says after EU Foreign Affairs Council", 12 December 2017, available at: [https://eeas.europa.eu/topics/middle-east-peace-process/37249/netanyahu-realised-there-full-eu-unity-jerusalem-mogherini-says-after-eu-foreign-affairs\\_en](https://eeas.europa.eu/topics/middle-east-peace-process/37249/netanyahu-realised-there-full-eu-unity-jerusalem-mogherini-says-after-eu-foreign-affairs_en).

<sup>26</sup> "Speech by HR/VP Federica Mogherini at the European Parliament plenary session on US President Trump's announcement to recognise Jerusalem as capital of Israel", 12 December 2017, available at: [https://eeas.europa.eu/headquarters/headquarters-homepage/37336/speech-hrvp-federica-mogherini-european-parliament-plenary-session-us-president-trumps\\_en](https://eeas.europa.eu/headquarters/headquarters-homepage/37336/speech-hrvp-federica-mogherini-european-parliament-plenary-session-us-president-trumps_en).

people dying.<sup>27</sup> German Chancellor Angela Merkel and British Prime Minister Theresa May have voiced similar opposition and concern, with May calling Trump's decision 'unhelpful to prospects for peace in the region.'<sup>28</sup>

EU Member States have also joined an international broadside against Trump's decision at the United Nations. This started in December 2017 with the support of all 5 EU members of the UN Security Council (France, Netherlands, Poland, Sweden and United Kingdom) for a resolution re-affirming international positions on Jerusalem and expressing 'deep regret' over the US's move.<sup>29</sup> There was broad European support for a similar UN General Assembly resolution (tabled following the US's veto of the UNSCR). While some EU states abstained, none came out in support of the US move.

Speaking on behalf of those EU members voting in favour the UNGAR, the Estonian representative reiterated their collective continued respect for the international consensus embodied in Security Council resolution 478 (1980) until Jerusalem's final status was resolved.<sup>30</sup>

While no EU Member joined the US in voting against the December 2017 UN General Assembly resolution, six eastern Member States did abstain. These were Latvia, Poland, Czech Republic, Hungary, Romania and Croatia. Hungary's abstention – and its justification that it 'did not comment on the foreign policy decisions of the United States' – indicates that in addition to the ideological or geo-political considerations underpinning their support for Israel, some states seem motivated by a desire to minimising sources of friction with the Trump administration, even if this comes at the sake of EU unity.

The threat made before the UNGA vote by the US's Ambassador to the UN Nikki Haley that the US 'will remember it when so many countries come calling on us, as they often do, to pay even more and to use our influence for their benefit' will no doubt have resonated with eastern EU Members like Poland which are keen to secure continued US military support in defence of their eastern borders against potential Russian threats. If a desire to keep on the right side of Washington was indeed a motivating factor, then it seems to have paid off, with those 35 states abstaining in the UNGA vote being invited to a private 'thank you' reception hosted by Haley.<sup>31</sup>

## **EU policy responses and dilemmas**

A determined US effort to re-write the MEPP rules and discard international law – as exemplified by its shift on Jerusalem – poses real challenges for the EU in terms of balancing its defence of international positions on Jerusalem, while at the same time preserving member status unity, and containing a widening trans-Atlantic breach with Washington.

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<sup>27</sup> Rina Bassist: "Macron: It Is Impossible To Rejoice Over U.S. Embassy Relocation", Jerusalem Post, 6 June 2018, available at: <https://www.jpost.com/Israel-News/Macron-It-is-impossible-to-rejoice-over-US-Embassy-relocation-559252>.

<sup>28</sup> Harriet Agerholm, "Theresa May calls Donald Trump's recognition of Jerusalem as Israel's capital 'unhelpful for peace prospects'", Independent, 6 December 2017, available at: <https://www.independent.co.uk/news/uk/home-news/jerusalem-theresa-may-trump-response-latest-news-statement-a8095986.html>.

<sup>29</sup> "Middle East: Security Council fails to adopt resolution on Jerusalem", UN News, 18 December 2017, available at: <https://news.un.org/en/story/2017/12/639772-middle-east-security-council-fails-adopt-resolution-jerusalem>.

<sup>30</sup> "General Assembly Overwhelmingly Adopts Resolution Asking Nations Not to Locate Diplomatic Missions in Jerusalem", UN, 21 December 2017, available at: <https://www.un.org/press/en/2017/ga11995.doc.htm>.

<sup>31</sup> Matt Peterson, "Nikki Haley's New Best Friends at the UN", Atlantic, 22 December 2017, available at: <https://www.theatlantic.com/international/archive/2017/12/un-vote-jerusalem-allied-nations/549119>.

The recent speech by Germany's Foreign Minister Heiko Maas on how his country and the EU should respond to Trump's 'America First policy' and US undermining of the international order would indicate greater willingness amongst some EU states to confront the US on key international issues. While the emphasis is for now placed primarily on free trade and other foreign policy issues such as the Iranian nuclear agreement, the Israeli-Palestinian conflict also figures on this list, albeit somewhat further down the list of EU priorities.

As noted above, a desire to maintain Member unity will, however, limit the scope and appetite for EU action. Nor is there any desire on the part of the EU or its Member States to replace the US as the main arbiter of peace talks. Nevertheless, the EU seems at least to be moving away from its traditional role cheerleading US efforts towards a more prominent political role in defending the international positions on which the two-state solution is based. As Mogherini has put it: 'I can say very clearly there is no initiative, no peace initiative, no attempt to restart peace talks between the Israelis and the Palestinians that can happen without an engagement from the US, but there can be no illusion from the US side that the US initiative alone would be successful.'<sup>32</sup>

Based on these constraints, EU action will likely remain limited to a more defensive posture, defending established EU positions and the relevancy of the final status parameters and international law as indispensable elements in achieving a just and lasting solution to the Israeli-Palestinian conflict. But given US backsliding this is still an important EU contribution, and something it is well suited to do thanks to its international standing and normative power.

Even if the US embassy move is now a reality and will not be reversed, the EU should continue to mobilise international consensus in support of previous UNSCRs and international law-based positions relating to the non-recognition of Israeli sovereignty over East Jerusalem. At the same time, European leaders should challenge the US to demonstrate support for the two-state solution by explicitly limiting its recognition to West Jerusalem, and committing to a Palestinian state based on the 1967 line with its capital in East Jerusalem.

Defending international consensus positions should, however, not mean defending a broken conflict resolution model or preclude fresh thinking. Nor should criticism of Trump's unilateralism preclude a more independent EU policy in support of two-states. It is particularly worth bearing in mind that while the US's decision to recognise Jerusalem as Israel's capital has pushed the prospect of peace even further away, the Oslo-configured peace process was already dead in all but name before this.

### **Time to rethink the corpus separatum?**

As concerns Jerusalem, there should be an assessment on the continued relevancy of the corpus separatum principal enshrined in UN General Assembly Resolution 181 (November 1947). Rather than witnessing its gradual erosion as states emulate US actions, the EU could re-claim initiative by exploring how they can give practical effect to their position that Jerusalem should be the capital of two states.

It could do this, for example, by indicating willingness to recognise West Jerusalem as Israel's capital alongside a Palestinian capital in occupied East Jerusalem. This sort of policy rethink could create an opening for constructive engagement with the United States to clarify its own positions along the same lines, and would echo a similar move by Russia. This could head off

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<sup>32</sup> "Netanyahu realised there is full EU unity on Jerusalem, Mogherini says after EU Foreign Affairs Council", 12 December 2017, available at: [https://eeas.europa.eu/topics/middle-east-peace-process/37249/netanyahu-realised-there-full-eu-unity-jerusalem-mogherini-says-after-eu-foreign-affairs\\_en](https://eeas.europa.eu/topics/middle-east-peace-process/37249/netanyahu-realised-there-full-eu-unity-jerusalem-mogherini-says-after-eu-foreign-affairs_en).



far more damaging unilateral moves that could eventually legitimise Israeli claims over East Jerusalem, and keep alive the prospects for a two-state solution for a bit longer. The EU could add that member states embassies to Israel will not move to West Jerusalem so long as Israel denies the PLO political representation in East Jerusalem. Importantly though, re-examining the corpus separatum principal should not mean discarding international law positions relating to Israel's occupation of Palestinian territory in 1967.

### **Supporting Palestinian sovereignty building**

In parallel, the EU should focus on preserving Palestinian national identity in East Jerusalem. For example, the EU should continue to push for the return of PLO institutions to East Jerusalem and to help safeguard Palestinian national identity and cultural heritage. As a more immediate practical step, the EU could explore ways to provide financial support to Palestinian schools and other public, as well as non-governmental, institutions in East Jerusalem. Palestinian schools are particularly vulnerable, given that their receipt of Israeli state funds is now conditioned on the adoption of textbooks approved by the Israeli government.<sup>33</sup>

Alongside this, the EU should step up its efforts to preserve a Palestinian socio-economic presence, and protect vulnerable Palestinian communities in East Jerusalem and the E1 Area from Israeli actions that are illegal under international law and contravene its responsibilities as the occupying power. This could include strengthening EU financial and political support for legal assistance to Palestinian residents facing confiscations, demolitions, and eviction orders, in line with recommendations made in the 2016 EU heads of mission report on Jerusalem. EU Member States should also be more supportive of international accountability mechanisms in response to Israeli violations of international law, including supporting ICC action.

### **Bringing in Jordan**

Finally, the EU should increase its coordination with Jordan on the MEPP file. The Hashemite Kingdom has a stake in all the Palestinian final status issues, including the fate of Jerusalem given its custodianship over the Haram al-Sharif. King Abdullah has also played an important role in helping de-escalate previous confrontations relating to the Mount. A coordinated EU-Jordanian stance could help defuse future flashpoints in Jerusalem and allow for more effective joint engagement with the Trump administration on the middle east peace process.

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<sup>33</sup> For more, see: Hugh Lovatt, "Occupation and Sovereignty: Renewing EU Policy in Israel-Palestine", ECFR, 21 December 2017, available at: [http://www.ecfr.eu/publications/summary/occupation\\_and\\_sovereignty\\_renewing\\_eu\\_policy\\_in\\_israel\\_palestine](http://www.ecfr.eu/publications/summary/occupation_and_sovereignty_renewing_eu_policy_in_israel_palestine).