

The EU and Jerusalem: a Palestinian Perspective

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Introduction

In May 2018, the US moved its embassy from Tel Aviv to Jerusalem, setting a dangerous precedent that simultaneously encouraged Israel to continue its annexation and colonisation of Palestinian land and invited third states to join in violating their obligations under international law. Although condemned by many states, others, including Guatemala and Paraguay, followed suit and acquiesced by opening embassies in Jerusalem merely ten days after. The normalisation of the US move was relatively swift, with various states, including the United Kingdom (UK) announcing that they would attend meetings in the new embassy.

The European Union took a clear position on this latest political manoeuvre. Prior to the move, the head of the EU delegation to the United Nations stated unequivocally that it continues to uphold the international consensus on Jerusalem. This includes the refusal to locate diplomatic missions in Jerusalem until its final status has been resolved. This was reiterated by individual EU Member States including France, who issued a statement following the move stating that it contravened international law. Yet a joint EU statement condemning the US's move was blocked by the Czech Republic, Hungary and Romania, all of whom attended the opening ceremony of the embassy.

These latest political maneuverings in Jerusalem are worrisome, but they follow a deteriorating trajectory for the Palestinians in the city. The international community has long been impotent with regard to securing Palestinian legal and historic rights in both East and West Jerusalem. These include the right of return for refugees, restitution of property, and full political rights. This failure to go beyond rhetoric and statements of condemnation and to implement international law has allowed Israel to entrench its control over the Palestinian people and their land. The recent normalisation of Israeli sovereignty over all of Jerusalem by the US and others is particularly dangerous; it yet again sends a message to Israel that it faces no consequences for annexing Palestinian land and, more generally, for violating international law. With this in mind, this paper addresses the role of the EU in Jerusalem and offers some recommendations to go beyond rhetoric.

Jerusalem in international law

The worsening situation in Jerusalem and the continued erosion of international law¹ with regards to Palestine must be understood in historical context. The founding of the British Mandate of Palestine in 1923, as directed by the League of Nations, established a legal basis for Palestinian sovereignty. The mandate was to serve as a temporary arrangement that would come to an end with the establishment of an independent Palestinian state (Cattan 1980, p.5). Yet, several decades later, the United Nations General Assembly passed Resolution 181 on November 29, 1947, that put forward a different proposal for the future of Palestine. It recommended that the country be divided into an Arab state and a Jewish state. The former would be established in 45 percent of historic Palestine despite the fact that the Arab Palestinians composed of over two-thirds of the population and owned the majority of the land. Within this resolution, it recommended that Jerusalem would become a 'corpus separatum' under international administration. This resolution was put forward in the context of a worsening situation in Palestine between Palestinian Arabs and Jewish Zionist settlers.

¹ International law refers to both International Humanitarian Law (IHL) and international practice and norms as manifested in the UN General Assembly and UN Security Council Resolutions.

All the while, the British Mandatory administration had completely failed in its objective to facilitate the establishment of a sovereign Palestinian state.

Following the resolution, various Arab delegates made a formal request that before implementation of partition, the International Criminal Court be asked for its opinion on various issues. This included asking whether or not partition was consistent with the objectives of the mandate and if the UN had the authority to implement partition of a country without the consensus of the majority population (Khalidi 1997, p.9). The counter-resolution which proclaimed that the UN *did* have the authority to implement such a plan was only carried by a margin of one vote. The Jewish Agency accepted the partition plan whilst the Palestinian leadership, recognizing the injustice of such a monumental proposal, rejected it. Following this, violence resumed once again around the country and led to the eventual victory of the Zionist forces and the establishment of the State of Israel in May 1948 in 78 per cent of historic Palestine. The creation of the new state resulted in the mass expulsion of over 750,000 indigenous Palestinians (known as the Nakba in Arabic), including from West Jerusalem, where some 60,000 Palestinian inhabitants were forced to flee. Jerusalem was now divided between East and West, with the former being administered and maintained by the Kingdom of Jordan.

In 1967, Israel occupied the Golan Heights, the Gaza Strip, and the West Bank. East Jerusalem was immediately annexed by Israel which positioned the move as a reunification of the city. The international community clearly condemned the unlawful move and the UN General Assembly passed a unanimous resolution on July 4 calling for Israel to rescind all measures carried out during the illegal takeover. Later that year, the UN Security Council also unanimously passed Resolution 242 in November calling on Israel to withdraw from occupied territory. In May of 1968, Resolution 252 passed calling for Israel to cancel all of its activities in Jerusalem and to 'desist from taking any further action which tends to change the status' of the city. Up until today, the UN and much of the international community have consistently condemned the annexation of Jerusalem and occupation of the 1967 territories. Israel, on the other hand, has continued to cement its control over the city both on the ground and through legislation. The Israeli government has maintained de facto control over the city since 1967, and on June 30, 1980, the Knesset enacted the Jerusalem Law which established de jure annexation of Jerusalem. The law states that a 'complete and united Jerusalem is the capital of Israel' and incorporates the illegal unification into Israel's Basic Law, which effectively functions as the state's constitution.

Under international law and international consensus, Jerusalem has been illegally annexed by Israel, the occupying power. Any attempts to change the status quo of Jerusalem is unlawful, yet Israel has continuously transferred its population into East Jerusalem and established settlements, drastically altering the landscape. In addition, it has systematically authorised the forcible transfer of the Palestinian population out of Jerusalem and into areas behind the annexation wall. The policy has resulted in the decline of Palestinian social, economic, and cultural life in the city. This continuous process of de-Palestinianisation has sought to maintain both a demographic Jewish majority and Israeli governmental control over the entire city. This runs contrary to the international consensus, which remains wedded to the two-state solution and agrees that, within a peace settlement, West Jerusalem will be the capital of Israel while East Jerusalem will be the capital of a Palestinian State.

Although international consensus divides the city between Palestinians and Israelis, it is important to note that this does not and cannot negate the rights of Palestinians in *all* of Jerusalem. A number of these rights are enshrined in UN General Assembly Resolution 194, adopted in December 1948, which resolved the following:

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 equity, should be made good by the Governments or authorities responsible.

Despite this affirmation of the Palestinian right to return and the right to property restitution or compensation, the international community, at the institutional level, has been limited to fighting for 1967 borders. The international community is not only failing to fulfill Palestinian rights within the material realm, but also in the discursive realm.

A system of dominance

In order to dominate and disrupt the Palestinian fabric of Jerusalem, Israel has systematically destroyed Palestinian economic, political, cultural, and social life. Israel has stifled the tourism sector, suffocated trade in the Old City, and marginalised the provision of services, leaving the Palestinian economy on the brink of collapse. This has also been exasperated with the construction of the annexation wall which began in 2002 and is now about 712 km long. The wall has isolated East Jerusalem from the rest of the West Bank resulting in a decline of Palestinian trade and commerce in the city. The wall has also had drastic social implications for the Palestinian residents of Jerusalem where communities have been cut off from one another and travel to the other major cities in the West Bank such as Ramallah and Bethlehem has been greatly hindered. Palestinian political and cultural life in Jerusalem has also long been under attack and facing serious decline. In 2001, the Israeli police raided and shut down permanently the only PLO institution in Jerusalem, the Orient House. This building not only housed research archives, photographs, and important diplomatic documents, but it was also the sole Palestinian political representation in the city and was recognised as such by the international parties at the Madrid Peace Conference in 1991. Various other Palestinian cultural institutions also have faced attack over the years including the Palestinian national theatre, Al-Hakawati, which was shut down on several occasions.

Another major component of Israeli dominance in Jerusalem is the identification regime that it imposes on Palestinians in East Jerusalem. Most Palestinians in the city are classified as permanent residents, a designation that subsequently confers them fewer rights than their Jewish Israeli counterparts who enjoy citizenship. Permanent residency entitles Palestinians to some social benefits such as health insurance or the ability to vote in municipal elections. However, residency status does not allow access to full citizenship rights including the right to vote in national elections and the right to live anywhere in the country. Palestinians with East Jerusalem residency are limited to living within Jerusalem. Meanwhile, the so-called center of life policy dictates that permanent residents must be able to prove that they live in Jerusalem or risk losing their residency. Since 1967, Israel has revoked over 14,000 Jerusalem residencies from Palestinians. Such revocation amounts to forcible transfer, a crime under international law. Israel also declares the right to revoke the permanent residency of Palestinians who live abroad for more than seven years and those who acquire citizenship from another country. In this way, Palestinians often have to make the difficult decision between living in an increasingly difficult environment or leaving forever.

In addition to being forcibly expelled from their Jerusalem homes, the structures themselves are at risk of being demolished. Israel practices a highly discriminative planning policy which routinely denies Palestinians permits to build or for land zoned to legally build on. In the face of a growing population and limited housing, Palestinians have no choice but to build without Israeli-issued permits. These homes are considered by Israel as illegal, despite the fact that Israel has no jurisdiction within occupied territory in which to make such an assessment. Yet,

since 1967 a total of 5000 Palestinian homes have been demolished at the hands of the Israeli authorities. Meanwhile today, a third of all Palestinians homes in East Jerusalem, housing over 100,000 people, are at risk of being demolished.

At particular risk are the rural Bedouin communities in the outskirts of Jerusalem, whose communities lie within an area Israel has dubbed 'E1', some of which fall in Area C of the West Bank. This strategic corridor of land running between Jerusalem and the illegal settlement of Ma'ale Adumim would cut the West Bank into northern and southern halves. Israel has plans to build an urban settlement block that would expand Greater Jerusalem, linking to nearby settlements. Khan Al Ahmar, home to 173 people, is one of the many Bedouin communities facing imminent demolition in this area. It lacks basic infrastructure and services, such as water and electricity which the Israeli authorities refuse to provide. In 2009, Italy, Belgium and the European Union funded a school built to serve the educational needs of the children of Khan al Ahmar and surrounding Palestinian Bedouin communities. Activists managed to secure a high-court injunction to delay its immediate demolition, but the destruction of this community looms. In recent weeks the plight of Khan al Ahmar has become the focal point of many diplomatic statements, including the EU High Representative, Federica Mogherini. Mogherini warned that the 'consequences of a demolition of this community and the displacement of its residents, including children, against their will, would be very serious.'

Inaction and complicity

Statements such as the one above by Mogherini is consistent with the EU practice to condemn Israeli violations of international law in Jerusalem. The EU has taken a clear discursive line on Jerusalem, keeping with both international law and international consensus. Its statement on the day of the US embassy move is demonstrative of that;

The EU remains firmly committed to continue working with both parties and with its partners in the international community towards a resumption of meaningful negotiations aimed at a two-state solution, based on the 4 June 1967 lines and with Jerusalem as capital of both. The European Union has a clear, consolidated position on Jerusalem, which was reaffirmed in numerous Foreign Affairs Council conclusions. The EU will continue to respect the international consensus on Jerusalem embodied in, inter alia, UN Security Council Resolution 478, including on the location of diplomatic representations until the final status of Jerusalem is resolved.

Yet such statements have not amounted to any action which would hold Israel accountable for its violations. Similarly, last year, following an Israeli government announcement of thousands of new settlement units across the West Bank, the EU issued a statement asking for 'clarifications' and asked them to 'reconsider these decisions'. This unfortunately meek statement characterises the situation where there is a total lack of will by third states to uphold their responsibilities and challenge Israel's violations of international law. Meanwhile, Palestinians continue to be forced out of Jerusalem and denied their fundamental rights.

Not only are EU Member States culpable for abnegating their third state obligations, the EU itself is complicit in Israeli violations through its various trade and funding links with Israel. Since 1995, various Israeli initiatives have been allowed to access EU research funds. More recently this has included funds from Horizon 2020, a research and innovation programme with a total budget of 80 billion euros. Horizon 2020 funds over 200 Israeli projects, including with the companies Elbit Systems and Israeli Aerospace Industries who have been accused of complicity in Israeli war crimes. Although funds are purportedly only for projects with civilian applications, the 'dual use' clause allows for these funds to go towards items which

could also have military functions such as drones and robotics. In other words, companies can access EU funding for a 'civilian' project and then later develop it for the military sector. This is highly problematic, particularly because Israel is at the vanguard of military technologies and is guilty of war crimes against the Palestinian people.

In addition to helping fund Israel's war industry, Horizon 2020 is also aiding the legitimacy of the Israeli annexation of East Jerusalem. Both the Israeli Science Ministry and the Israeli Antiquities Authority benefit from Horizon 2020 funds. These two ministries are located in East Jerusalem, yet an EU briefing for the funding in 2013 stressed specifically that this does 'not obstruct the signature of agreements'. Similarly the Hebrew University in East Jerusalem, which is expanding onto land occupied in 1967- namely from the Palestinian village of Issawiyeh, is also benefiting from EU funding. By allowing Israel to access this funding while operating on illegally annexed land not only contradicts international law but also challenges the EU's own principles and stance when it comes to Jerusalem.

Opportunities for Actions

The US embassy move has set an ominous tone for the situation of Palestinian rights in Jerusalem. It has accelerated and legitimized a process of de-Palestinianisation of the city that began over seven decades ago. In the absence of concrete pressure, Israel will continue to violate the fundamental rights of the Palestinian people in Jerusalem and the rest of historic Palestine, with the full support and encouragement of the Trump administration and its far right allies.

Despite the inaction described earlier and the global political shift to the right, the EU remains one of the few spaces left to pursue Palestinian human rights in the international political arena. This is in part due to strong European popular support for Palestinian rights and sovereignty that has allowed for grassroots solidarity networks to grow, but because the EU is based in international law and human rights, as stated by its strategic framework;

The European Union is founded on a shared determination to promote peace and stability and to build a world founded on respect for human rights, democracy and the rule of law. The EU will continue to throw its full weight behind advocates of liberty, democracy and human rights throughout the world.

As explained above, the EU has been consistent in publishing statements of condemnation at Israeli violations of international law. Yet, the EU's potential with regards to realizing Palestinian rights lies in the fact that it has the capability to hold Israel to account through its previously mentioned economic, cultural and scientific cooperation. This would mean sending a clear message to Israel that its behaviour will no longer be tolerated through a variety of actions on the ground.

In an attempt to send such a message, in 2015 the EU issued new guidelines for the labelling of settlement produce from illegal Israeli settlements (including those in East Jerusalem) emphasising the EU's commitment to the 1967 borders. These guidelines are part of an effort dubbed 'differentiation' which seeks to enforce the exclusion of settlement produce or settlement related activities from bilateral relations between the EU and Israel. Differentiation and the labelling guidelines were considered a big win for many of those working for Palestinian rights in the EU arena. However unfortunately, not only is there a lack of implementation on a local retail level, the labelling of settlement produce also relegates the issue of settlement produce to independent consumer choice rather than a third state obligation. It thus falls short of meeting EU obligations under international law and in achieving Palestinian fundamental rights. This stands in contrast to an Irish bill known as the 'Control of Economic Activity (Occupied Territories)' bill which was passed by the Irish

Seanad in July (parliamentary upper house). It calls for a total ban on the import and sale of illegal settlement produce. Although it has to pass through several more legislative procedures before it becomes law, this is an example of an EU Member State upholding its domestic law and obligations under international law. It holds Israel to account for its profiteering of the 1967 occupation and the theft of land and resources. If it becomes law, it is likely to have economic repercussions on Israel and provides an example to other EU Member States wanting to take action on an individual and collective level.

To be sure, the EU does face challenges in this regard. Some EU Member States such as Poland and Hungary have authoritarian governments that are closely allied with Israel, while others, including France, Germany and the UK, have avoided putting pressure on Israel to end its violations of Palestinian rights in favour of maintaining good diplomatic relations. Undoubtedly, the lack of will to take action has been at the expense of Palestinian rights and challenges the integrity of international law. In this regard, the following policy recommendations are a starting point for the EU to uphold its commitments to the Palestinian people – and to the international legal framework it seeks to uphold.

Immediate Steps for EU Action

1. In light of the blocked joint statement, the EU should encourage its 28 Member States to issue independent statements condemning the US embassy move and highlighting the detrimental effect it will have on achieving Palestinian sovereignty and basic human rights.
2. The High Representative of the Union for Foreign Affairs and Security should reiterate that EU Member States must uphold their third state responsibilities to not aid or abet Israeli war crimes or US violations of international law. This includes stressing that Member States should not attend diplomatic meetings or functions at the site of the new US embassy.
3. The EU must reassess its Horizon 2020 guidelines which are inherently complicit in Israel war crimes through the 'dual use' clause. Additionally, it should insist that no Israeli body or institution based or operating in East Jerusalem has access to such funds.
4. The EU and its Member States must enforce international non-recognition of Israeli sovereignty over Jerusalem and take a strong stance to ensure they are not implicated in Israeli or US violations of international law. This includes condemning European events held in Jerusalem such as the cycling race Giro d'Italia and next year's planned Eurovision song contest. Such events are an important part of Israel's attempts to normalise its sovereignty over the city.
5. Following the precedence of eight EU countries last year who sought compensation from Israel for the confiscation of EU-funded solar panels from a Bedouin community, the EU and EU Member States independently should take legal action and build cases for financial compensation from Israel when it destroys such construction or projects that they fund. A collective campaign to demand compensation could act as a deterrent for the immediate threat of demolition.
6. EU Member States must also both collectively and independently assert Palestinian legal and historic rights in both East and West Jerusalem. It must support Palestinian resistance and attempts to reclaim sovereignty without depoliticising them. An important step in this regard would be facilitating the return of PLO institutions to Jerusalem, such as Orient House, and supporting grassroots organisation.