The Dedication of the U.S. Embassy in Jerusalem & its Ramifications

By Prof. Yitzhak Reiter

In Jerusalem on May 14, a ceremony will take place, dedicating the United States Embassy in its new location in Jerusalem, in the Consulate building in the Arnona neighborhood, which has been converted for this purpose. The date of the ceremony was set to coincide with the 70th anniversary of the declaration of independence of the State of Israel. A small diplomatic staff, including Ambassador David Friedman, will work in the Consulate building, which has been temporarily converted to serve as the Embassy until the completion of a new, permanent building. The fact that most of the Embassy's work will continue to be carried out in Tel-Aviv does not diminish the symbolism nor the significance of the inauguration of the U.S. Embassy in Jerusalem.

On the day after the Embassy's dedication, May 15, the Palestinians will mark 70 years since the Nakba ("Catastrophe") that befell them in 1948, which will be accompanied by a large-scale demonstration along the border of the Gaza Strip and additional demonstration activities, some organized and some presumably spontaneous. The timing of the Embassy move is likely to heighten Palestinian demonstrations and increase violence on "Nakba Day" and the day after.

In the following paper, I will briefly survey exchanges pertaining to the approach of the United States' and the international community's approach vis-à-vis Jerusalem under Israeli rule and the process that brought about the relocation of the U.S. Embassy to Jerusalem, and I will discuss the possible ramifications of this action on the future of the peace process in our region.

Exchanges Pertaining to the Status of Jerusalem & the Policies of Israel, the U.S. and the International Community

U.S. policy regarding Jerusalem has come quite a way since 1948. Three political realms have influenced U.S. policy: domestic U.S. politics, especially that of American Jewry, and the support bases of American

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parties, domestic Israeli politics and inter-Arab and Muslim politics in the Middle East.

The United Nation's Resolution 181, which was passed in November 1947, stated that Jerusalem would be part of a *corpus separatum* ("separated body") under an international regime. Yet, at the end of the War of Independence in 1948, Jerusalem was divided between Israel and Jordan, both of which opposed the city's internationalization and declared its own sovereignty over the areas it controlled. In 1950, the Government of Israel took the practical step of setting Jerusalem as the nation's capital and the seat of the Knesset (Parliament), Supreme Court and government ministries. The relocation of Israel's Ministry of Foreign Affairs to Jerusalem in 1953 generated strong international criticism, and Israel was forced to leave a branch of the ministry in Tel-Aviv until 1962. Foreign diplomats were careful to emphasize that their arrival for official meetings in Jerusalem was not tantamount to recognizing Israel's sovereignty in Jerusalem. Despite this, a number of countries still chose to locate their embassies in Jerusalem, among them the Netherlands, Chile, Columbia and Venezuela.

When Israel expanded its administration and jurisdiction to East Jerusalem in June 1967, the position of the international community, including that of the U.S., intensified its opposition to the recognition of Jerusalem as the capital of the State of Israel, with the expectation that the status of Jerusalem would be determined through political negotiations.

Israel's Basic Law and International Response

On July 30, 1980, the Knesset enacted "Basic Law: Jerusalem, Capital of Israel," which determined that Jerusalem, complete and united, is the capital of Israel and the seat of the President of the State, Knesset, Government and Supreme Court. The Basic Law also stated Israel's obligation to protect Jerusalem's holy places for all religions and that Jerusalem will receive a special budget to do this called the "Capital City Grant." In response, on August 20, 1980, U.N. Security Council Resolution 478 was passed, stating that Israel's Basic Law on Jerusalem is "null and void and must be rescinded forthwith" and called upon the nations of the world to relocate their embassies from the Holy City. The United States chose to abstain from voting and did not utilize its right of veto, determining that the

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issue of Jerusalem must be resolved through peace negotiations rather than unilateral declarations.

Following the resolution, all 13 countries that at that time had embassies in Jerusalem moved their embassies to other cities in Israel. In 1984, Costa Rica and El Salvador decided to return their embassies to Jerusalem. The relocation of their embassies to Jerusalem did not manifest official recognition of Jerusalem as the capital of Israel, but rather *de facto* recognition that Jerusalem is the center of Israeli government. In 2006, after the Second Lebanon War, the two countries decided to move their embassies to Tel-Aviv with the aim of improving their relations with Arab countries.

It should be noted that more than 20 countries' Consulates General are located in Jerusalem, some in east Jerusalem and some in west Jerusalem, and their activities do not manifest recognition of Jerusalem as the capital of Israel. Moreover, the Consulates General, including that of the U.S., are directly subordinate to their country's foreign ministries, rather than to their embassies in Israel. Nonetheless, most official meetings of foreign leaders with Israeli heads of state take place in Jerusalem, and foreign ambassadors submit their writs of appointment to the President of Israel at his residence in Jerusalem.

Changing U.S. Policy Regarding East Jerusalem

U.S. policy has frequently shifted in accordance with the approach of each changing administration. Until the start of the 1980s, the U.S. Government maintained the position that East Jerusalem is occupied territory. Government representatives refused to visit East Jerusalem and the U.S. prevented Prime Minister Menachem Begin from moving to an office in a new government center in Sheikh Jarrah in East Jerusalem. The traditional American position that was formed in the eighties was that Jerusalem must remain a united city, the holy places must remain accessible to the members of all religions and that the city's final status will be determined in negotiations between the parties. The approach shifted during the second term of President Ronald Regan (1984-1988), in that official government representatives visited East Jerusalem. During the same period, there was a first attempt in Congress to enact a law that would oblige the U.S. Government to move the U.S. Embassy to Jerusalem, but the attempt failed. The approach again shifted during the period of the

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First Intifada, when U.S. Secretary of State George Shultz met with Palestinian figures in East Jerusalem in an attempt to advance his peace plan. President George H. W. Bush declared in 1990 that the Jewish neighborhoods in East Jerusalem are in his view settlements in every manner of speaking and as such he forbade American government representatives from entering Israeli government offices in Sheikh Jarrah. In contrast, the administration of President Clinton ceased viewing East Jerusalem as occupied territory.

U.S. Congress Passes the Jerusalem Embassy Act of 1995

The treaty between Israel and the PLO (the "Oslo Accords") signed in September 1993 left Jerusalem as one of the issues for discussion between the parties in the framework of a final peace agreement. Consequently, both the Palestinians and Israelis tried to establish facts on the ground that would advance them in negotiations. This further heightened tensions around Jerusalem.

In Republican Party circles, a legislative initiative developed to move the U.S. Embassy to Jerusalem, in order to embarrass President Clinton and damage his image as pro-Israeli. This initiative evolved into a bill by two New York Senators, Republican Alfonse D'Amato and Democrat Daniel Moynihan, which became U.S. Law on October 23, 1995 under the name the Jerusalem Embassy Act of 1995. The Democrats' joining the initiative softened the original bill draft and instead of stipulating the Embassy's immediate relocation it stipulated a deadline, which was the deadline set by the Oslo Accords for concluding negotiations over a permanent peace agreement – May 31, 1999. President Clinton was left the option, by Presidential Decree, to delay the Embassy's relocation by invoking a six-month waiver of the application of the law and reissue the waiver every six months on "national security" grounds. From Clinton's point of view, this stipulation defanged the bill, making it solely declarative. For political reasons, Clinton did not veto the bill, rather expressed his objection by allowing it to become law without his presidential signature.

Notwithstanding the threats from Arab figures in the lead-up to the law's enactment and the dissenting reactions after its enactment, violence did not erupt against the backdrop of the Act, the Act did not harm U.S. relations with its allies in the Arab world and the Arab reactions were left merely in the realm of objection. Yitzhak Rabin, who was Prime Minister at

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the time, had initially opposed the bill that was supported by the Likud Party, over concern that the Act would have a negative impact on the chances of negotiations with the Palestinians and concern over increased terrorism, and this was also the position held by some of the Jewish organizations in the U.S., but when the law was enacted, Rabin was forced to express his gratitude to the American government. The Act recognized Jerusalem as the capital of the State of Israel and called for Jerusalem to remain an undivided city.

Broad bipartisan support for the Act (93–5 in the Senate and 374–37 in the House of Representatives), gave it domestic and international legitimacy. The Act's accelerated legislation was intended to enable the completion of the move before the 'Jerusalem 3000 Years' celebrations in Washington, D.C., two days later, on October 25, 1995, with the participation of Prime Minister Yitzhak Rabin and Jerusalem Mayor Ehud Olmert.

Presidents Stall Embassy Move

Following the failure of the peace talks at the Camp David Summit in July 2000, President Clinton placed the blame on the Palestinians and declared his support for the U.S. Embassy's relocation to Jerusalem. However, when the time came, he signed an additional waiver. His successor, Republican President George W. Bush, also continued the policy of periodically waiving application of the law, despite his pledge during the election campaign to move the Embassy to Jerusalem. Presidents George W. Bush, Clinton and Obama were forced to contend with repeated legislative initiatives by Congressmen, meant to force the law's application and the recognition of Jerusalem as the capital of Israel, with all its ramifications. The initiatives increasingly grew in number, so long as elections for Congress were in the horizon.

The American presidents' reasoning for not relocating the Embassy to Jerusalem was to avoid taking steps that would intensify moderate Arab countries' positions and to advance their integration in the peace process; to avoid supplying ammunition to extreme Muslim countries and organizations; and primarily to safeguard the position of the U.S. as a "fair mediator" between the sides.

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U.S. Congress Reinforces the Jerusalem Act

In September 2002, about a month prior to elections for the House of Representatives, the Congress presented a broad legislative bill that also included an article calling for the application of the Jerusalem Embassy Act of 1995 and subordination of the Consulate General in Jerusalem to the Ambassador in Tel-Aviv. President George W. Bush chose to approve, with his signature, the legislative bill. Albeit, in order to avoid causing fierce anger in the Arab world leading up to a possible strike on Iraq, he hinted that once again there would not be a switch from declarations to practical steps. The President emphasized that the new move does not symbolize a shift in U.S. policy regarding Jerusalem.

In June 2007, marking the 40th anniversary of the Six Day War, the U.S. Congress passed a decision praising Israel for its management of the city, which "should remain undivided," calling upon the President to apply the 1995 law relocating the Embassy to Jerusalem. A similar bill was proposed in 2011 but was not passed by the Congressional Foreign Affairs Committee.

President Donald Trump: The New U.S. Approach

In September 2016, Republican presidential candidate Donald Trump met with the Prime Minister of Israel, Benjamin Netanyahu, announcing in his presence that Jerusalem has already been the eternal capital of the Jewish people for 3,000 years, that the United States under the Trump's government will fulfil the mandate of the Congress to recognize Jerusalem as Israel's united capital, and as part of this recognition the U.S. Embassy in Israel will be moved to Jerusalem as its capital. Secretary of State John Kerry at that time reacted with a statement that such a decision is liable to cause the eruption of violence in the region. Condemnation also came from Jordan and from the Head of the Palestinian Authority.

In December of the same year, the U.N. Security Council passed Resolution 2334, reiterating that it will not recognize any changes in the June 4, 1967 lines, including any changes in the Jerusalem context, except those changes to be agreed upon by the parties through negotiations. President Obama decided not to exercise his right to veto the resolution.

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At the start of Trump's term as President in January 2017, three Republican senators sponsored a bill in Congress that would force the President to relocate the U.S. Embassy in Israel from Tel-Aviv to Jerusalem. On June 5, 2017, the Senate unanimously passed a law marking 50 years since the unification of Jerusalem and approving the Jerusalem Embassy Act of 1995. There were domestic pressures on the President to fulfill his election promise.

Trump Makes Embassy Move Official

On December 6, 2017, U.S. President Donald Trump gave an address, his "Jerusalem Speech," in which he declared that the U.S. recognizes Jerusalem as the capital city of the State of Israel and that he orders the State Department staff to begin preparing to move the U.S. Embassy in Israel from Tel-Aviv to Jerusalem. On February 23, 2018, the U.S. State Department announced that the Ambassador will move its seat to the Consulate General complex in Jerusalem on May 14, 2018, in honor of the 70th Independence Day of the State of Israel. The announcement also stated that the new Embassy will initially be located in the Arnona neighborhood in southern Jerusalem, in the complex that presently houses the U.S. Consulate General in Jerusalem. At least at the first stage, U.S. Ambassador to Israel David Friedman and a small diplomatic staff will work out of the U.S. Embassy building.

The new embassy building is located in the Israeli area of the demilitarized zone established in the armistice agreements after the 1948 War. The "demilitarized zone" was divided into three areas: an Israeli area, west of the British Government House or Armon Hanatziv; a Jordanian area, east of Armon Hanatziv; and a UN area around Armon Hanatziv itself. The area was open to civilians but no military forces were allowed in the area. The Israeli area consists of a hotel called "HaYozem," which was established and later changed its name to the Diplomat Hotel, an educational-farm, and some agricultural lands of the nearby Kibbutz Ramat Rachel.

It should be noted that in 1988, the U.S. government leased a 31 dunam (7.7 acre) plot of land known as "the Allenby Camp" in the Baqʿa neighborhood of Jerusalem from the Israeli government for a period of 99 years. The plot had served during the British Mandate period as the Allenby Camp army base, and later as an IDF base until it was abandoned. As a result, the

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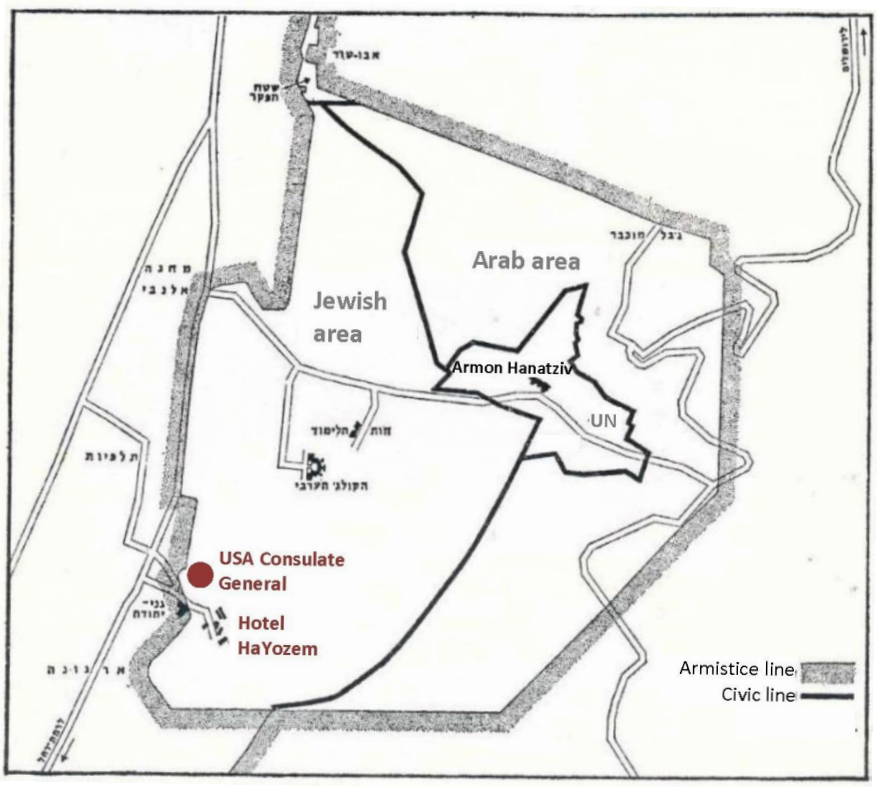
Jerusalem Municipality restricted construction in the surrounding area. Palestinian speakers claimed that some of the plot was past Waqf land that Israel had declared "absentees' property." It now appears that the American government abandoned the use of the plot for the construction of the Embassy.



Source: U. Narkis, Jerusalem is one, Tel Aviv: Am Oved, p. 44

According to a November 2017 Myers JDC Brookdale Institute survey, most of the American public did not support Trump's decision. However, 49% of Republican Party voters supported it, while 44% opposed. An American Jewish Congress survey indicated that even the majority of American Jewry did not support the decision.

Trump's Political Motivations

President Trump's motives are apparently an aggregate of several factors: delivering on his election promise, satisfying voters from his political support base and among House representatives, satisfying the Prime Minister of Israel who had supported and who continues to support him and satisfying Israel, the assessment that the action would not spark violence as his predecessors expected and that, in the end, the world will get used to

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the fact that the status of the U.S. is so strong that no better strong arbiter of the Middle East conflict could be found. It should be noted that the present conditions in the Middle East are different than those in the past. Splitting and political silence in Arab countries and the Palestinian Authority, the defeat of Al-Qaeda and the Islamic State and the dependence of Sunni countries on the U.S. given the conflict with Shiite Iran moderate the fear of igniting large scale opposition in the Arab world.

International Response

Reactions to President Trump's declaration quickly arrived. The Prime Minister of Israel, Benjamin Netanyahu, said that this is a "great day for the Jewish people," adding that the decision to move the U.S. Embassy to Jerusalem will make Israel's 70th Independence Day celebrations even greater." The Palestinians, as expected, reacted with outrage. PLO Executive Committee Secretary General Saeb Erekat reacted with a statement that "the government's decision to relocate the Embassy precisely during the month that the Palestinians are marking Nakba manifests a clear violation of international law and the decisions of the international community, leads to the destruction of the two state solution and is damaging to the sensitivities of all Arabs and Muslims." Erekat added that "the decision proves that the American government can no longer be the mediator of the peace process. In making these decisions, the government becomes part of the problem and cannot take part in the solution." He was further quoted as saying "if it were not enough that they spit in our faces, now in order to complete the humiliation they are moving the Embassy on the day of Nakba and are poking us and President Abu Mazen in the eye." Palestinian Authority Head Mahmoud Abbas met with Jordanian King Abdullah II bin Al-Hussein and the two agreed on a series of steps that will be taken in reaction. Fatah Deputy Chairman Mohmud al-Alul announced an initiative to organize the Palestinians to mark 'Days of Outrage,' to take violent action. Even Abu Mazen's circles conveyed the intention to organize an alternative ceremony to which representatives of the international community opposing the American move would be invited. Hamas spokesperson Sami Abu Zuhry also published a statement that "the relocation of the American Embassy to Jerusalem is a declaration of war on the Arab nation and Islam." Another spokesperson on behalf of Hamas Abad al- Latif al-Kanu', responded with a statement that "the Embassy move will be the wick that ignites an outbreak against the occupation."

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Ramifications for Israeli-Palestinian Negotiations

Some are convinced that American recognition of Jerusalem as Israel's capital and relocation of the Embassy to Jerusalem, when Israel insists that all parts of Jerusalem fall under its sovereignty as a united city, is recognition of Israel's position that Jerusalem is not subject to negotiations. President Trump's words in Davos in January 2018, in which he states that "we took Jerusalem off the table," reinforce this view. Nevertheless, in his original address, Trump emphasized that the Embassy relocation will not influence the future status of Jerusalem, which will be determined through negotiations between the parties, and in his own words: "We are not taking a position of any final status issues, including the specific boundaries of the Israeli sovereignty in Jerusalem or the resolution of contested borders. Those questions are up to the parties involved." Recently, published details from the developing American plan for Israeli–Palestinian negotiations suit the latter remark. According to published reports which are uncorroborated by official U.S. figures, the government intends to propose transferring a number of Arab neighborhoods in Jerusalem to the Palestinian Authority, meaning if and when a Palestinian State is established, it will be able to establish its capital in any of those neighborhoods.

It seems that the American government can put negotiations between the parties in motion while using the latter aforementioned remark and adding the following: the Palestinians will be able to establish their capital in any area transferred to its sovereignty through negotiations between the parties and when the location of the Palestinian capital is decided, a U.S. Embassy will be established there. As such, the relocation of the U.S. Embassy to Jerusalem does not obstruct the continued peace negotiations between Israel and the Palestinians.

Ramifications for the U.S. as a Mediator of Israeli-Palestinian Negotiations

Palestinian Authority spokespersons responded to the steps taken and President Trump's expressions with the statement that the U.S. exposed its one-sided position in favor of Israel and as such can no longer serve as a "fair broker" between the parties. And U.S. Ambassador David Friedman's

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association with the Jewish settlement movement in the territories to the Palestinians' lack of trust in the present government.

In my opinion, the Embassy's relocation statements by the President and government figures indeed damage the Palestinian Authority's trust in the present American government. That is sufficient for the Head of the Palestinian Authority to postpone the return to the negotiating table. At the same time, everyone knows that there is currently only one party capable of applying pressure on the Government of Israel, and the U.S. President is its leader. A Palestinian return to an American-mediated negotiating table currently depends solely on the details of the "deal" between the parties being woven by the American government in consultation with key Arab countries. If the government offers the Palestinians the minimum necessary from their point of view, they will join the negotiating table despite the U.S. Embassy's relocation to Jerusalem.

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