

Intelligence Community to disrupt numerous plots against our citizens at home and our warfighters abroad, and it has unquestionably saved American lives.²⁴

In hopes of assuaging concerns expressed by privacy advocates, he further underscored that Section 702 only permits the surveillance targeting of “foreigners located abroad” and not U.S. citizens.²⁵

STATE DIPLOMATIC AND CONSULAR RELATIONS

President Trump Recognizes Jerusalem as the Capital of Israel

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On December 6, 2017, President Trump officially recognized Jerusalem as Israel’s capital city. This decision reflects Trump’s “new approach to conflict between Israel and the Palestinians.”¹

In a proclamation titled “Recognizing Jerusalem as the Capital of the State of Israel and Relocating the United States Embassy to Israel to Jerusalem,” Trump wrote:

I have determined that it is time for the United States to officially recognize Jerusalem as the capital of Israel. This long overdue recognition of reality is in the best interests of both the United States and the pursuit of peace between Israel and the Palestinians. . . .

Today’s actions—recognizing Jerusalem as Israel’s capital and announcing the relocation of our embassy—do not reflect a departure from the strong commitment of the United States to facilitating a lasting peace agreement. The United States continues to take no position on any final status issues. The specific boundaries of Israeli sovereignty in Jerusalem are subject to final status negotiations between the parties. The United States is not taking a position on boundaries or borders.

Above all, our greatest hope is for peace, including through a two-state solution, if agreed to by both sides. Peace is never beyond the grasp of those who are willing to reach for it. In the meantime, the United States continues to support the status quo at Jerusalem’s holy sites, including at the Temple Mount, also known as Haram al Sharif. Jerusalem is today—and must remain—a place where Jews pray at the Western Wall, where Christians walk the Stations of the Cross, and where Muslims worship at Al-Aqsa Mosque.²

²⁴ Trump Signing Statement, *supra* note 1.

²⁵ *Id.*

¹ Donald J. Trump, Remarks on Signing a Proclamation on Recognizing Jerusalem as the Capital of the State of Israel and Relocating the United States Embassy to Israel to Jerusalem, 2017 DAILY COMP. PRES. DOC. 1 (Dec. 6, 2017) [hereinafter Dec. 6 Trump Remarks].

² Proclamation No. 9683, 82 Fed. Reg. 58,331 (Dec. 6, 2017); *see also* U.S. Dep’t of State Press Release, Briefing with Acting Assistant Secretary David M. Satterfield (Dec. 7, 2017), at <https://www.state.gov/r/pa/prs/ps/2017/12/276349.htm> [<https://perma.cc/JE69-BABH>] (emphasizing that Trump recognized Jerusalem as Israel’s capital, but “[w]ith respect to boundaries of sovereignty, borders, geography, those are matters for final status negotiations between the party [sic] . . .”).

Nearly fifty years prior to Trump's declaration, President Truman formally acknowledged Israel as a foreign sovereign.³ Nonetheless, neither Truman nor any later president recognized Israel's sovereignty over Jerusalem due to the charged political posture of such a move.⁴

Trump's decision now aligns the White House with the long-standing position taken by the U.S. Congress. In 1995, Congress passed the Jerusalem Embassy Act.⁵ That Act instructs the executive branch to relocate the U.S. embassy from Tel Aviv to Jerusalem,⁶ but every sitting president since its passage has repeatedly invoked its waiver provision, which is renewable at six-month intervals. This provision allows the U.S. embassy to remain in Tel Aviv "to protect the national security interests of the United States."⁷ In 2002, Congress once again emphasized "its commitment to relocating the United States Embassy in Israel to Jerusalem" and instructed the State Department to allow U.S. citizens born in Jerusalem to be able to list "Israel" as their country of birth on their passports.⁸ The George W. Bush administration and later the Obama administration refused to comply on the grounds that the recognition power is exclusively vested in the president as a matter of constitutional law, and the U.S. Supreme Court upheld this position in its 2015 decision in *Zivotofsky v. Kerry*.⁹

In the speech accompanying his proclamation, President Trump acknowledged that "through all of these years, presidents representing the United States have declined to officially recognize Jerusalem as Israel's capital." He noted that

[a]fter more than two decades of waivers [of the embassy relocation], we are no closer to a lasting peace agreement between Israel and the Palestinians. It would be folly to assume that repeating the exact same formula would now produce a different or better result.¹⁰

Trump continued:

But today, we finally acknowledge the obvious: that Jerusalem is Israel's capital. That is nothing more, or less, than a recognition of reality. It is also the right thing to do. It's something that has to be done.

That is why, consistent with the Jerusalem Embassy Act, I am also directing the State Department to begin preparation to move the American embassy from Tel Aviv to Jerusalem. This will immediately begin the process of hiring architects, engineers, and planners so that a new embassy, when completed, will be a magnificent tribute to peace.¹¹

³ Statement by the President Announcing Recognition of the State of Israel, Public Papers of Harry S. Truman (May 14, 1948), at <https://www.trumanlibrary.org/publicpapers/index.php?pid=1623&st=israel&st1=>.

⁴ *Zivotofsky v. Kerry*, 135 S. Ct. 2076, 2081 (2015).

⁵ Pub. L. No. 104-45, 109 Stat. 398 (1995) (also stating in § 3(a)(2) that "Jerusalem should be recognized as the capital of the State of Israel").

⁶ *Id.* § 3(a)(3).

⁷ *Id.* § 7.

⁸ Pub. L. No. 107-228 § 214, 116 Stat. 1350, 1365–66 (2002).

⁹ *Zivotofsky*, 135 S. Ct. at 2082–83, 2094.

¹⁰ Dec. 6 Trump Remarks, *supra* note 1.

¹¹ *Id.*

The same day Trump made this statement, however, he too authorized the national security waiver like his predecessors,¹² thus providing time for the embassy's transition.¹³

Immediately after Trump announced his decision, European and Arab leaders, including many U.S. allies, voiced their resistance to this stark departure from U.S. foreign policy and international consensus. UN Secretary-General Antonio Guterres reiterated his position "against any unilateral measures that would jeopardize the prospect of peace for Israelis and Palestinians" and reaffirmed that "there is no alternative to the two-state solution."¹⁴ Guterres continued:

Jerusalem is a final status issue that must be resolved through direct negotiations between the two parties on the basis of the relevant Security Council and General Assembly resolutions, taking into account the legitimate concerns of both the Palestinian and the Israeli sides.¹⁵

Unsurprisingly, Israeli and Palestinian leaders had diametrically opposing reactions. Palestinian President Mahmoud Abbas described Trump's decision as "a deliberate undermining of all peace efforts,"¹⁶ and Palestinians engaged in widespread protests.¹⁷ On the other hand, Prime Minister Benjamin Netanyahu of Israel appreciatively tweeted, "We're profoundly grateful for the President for his courageous and just decision to recognize Jerusalem as the capital of Israel and to prepare for the opening of the US embassy here."¹⁸

Two days after Trump's announcement, the UN Security Council held a special meeting, called for by eight of the fifteen countries on the Council.¹⁹ Each member of the Security Council other than the United States signaled disapproval of Trump's decision.²⁰ Several countries referred to Resolution 478, passed in 1980, which had disapproved of an Israeli basic law proclaiming Jerusalem in its entirety as the capital of Israel.²¹ In defending Trump's decision, U.S. Ambassador to the United Nations Nikki Haley reiterated that the

¹² Presidential Determination No. 2018-02 of December 6, 2017, 82 Fed. Reg. 61,127 (Dec. 6, 2017).

¹³ Mark Landler, *Trump Recognizes Jerusalem as Israel's Capital and Orders U.S. Embassy to Move*, N.Y. TIMES (Dec. 6, 2017), at <https://www.nytimes.com/2017/12/06/world/middleeast/trump-jerusalem-israel-capital.html>.

¹⁴ UN Statements, Secretary-General's Statement on the Middle East Peace Process [as delivered] (Dec. 6, 2017), at <https://www.un.org/sg/en/content/sg/statement/2017-12-06/secretary-general%E2%80%99s-statement-middle-east-peace-process-delivered>.

¹⁵ *Id.*

¹⁶ David M. Halbfinger, Mark Landler & Isabel Kershner, *Trump Calls Jerusalem Plan Step Toward Peace, but It Puts Mideast on Edge*, N.Y. TIMES (Dec. 6, 2017), at <https://www.nytimes.com/2017/12/06/world/middleeast/jerusalem-trump-embassy.html>.

¹⁷ Isabel Kershner, *Jerusalem Largely Calm as Region Protests Trump Move*, N.Y. TIMES (Dec. 8, 2017), at <https://www.nytimes.com/2017/12/08/world/middleeast/israel-jerusalem-trump.html> (also noting that "the enormous wave of violence that had been feared . . . did not immediately materialize").

¹⁸ Office of the Prime Minister of Israel (@IsraeliPM), TWITTER (Dec. 6, 2017, 10:37 AM), at <https://twitter.com/israelipm/status/938477546768920581>.

¹⁹ UN SCOR, 72d Sess. 8128th mtg., UN Doc. SC/13111 (Dec. 8, 2017), at <https://www.un.org/press/en/2017/sc13111.doc.htm> [<https://perma.cc/WHT6-JUMY>] [hereinafter Council Minutes] (noting that the meeting was called for by Bolivia, Britain, Egypt, France, Italy, Senegal, Sweden, and Uruguay).

²⁰ *Id.*

²¹ *Id.* (stating that Egypt, France, and Uruguay referenced Resolution 478 and other related Security Council resolutions); see also SC Res. 478 (1980) (determining Israel's basic law on Jerusalem to be "null and void" and calling upon member states "that have established diplomatic missions at Jerusalem to withdraw such missions from the Holy City").

United States had not specified the borders of Jerusalem and remained open to a two-state solution.²²

On December 18, the UN Security Council considered a draft resolution proposed by Egypt.²³ The text of the resolution stated:

[A]ny decisions and actions which purport to have altered the character, status or demographic composition of the Holy City of Jerusalem have no legal effect, are null and void and must be rescinded in compliance with relevant resolutions of the Security Council, and in this regard, calls upon all States to refrain from the establishment of diplomatic missions in the Holy City of Jerusalem, pursuant to resolution 478 (1980) of the Security Council.²⁴

Notwithstanding the resolution's support from the rest of the UN Security Council, the United States blocked its passage with a veto.²⁵ Haley described the action in the Security Council as "an insult," vowing that "[i]t won't be forgotten."²⁶

The same day, Yemen as chair of the Arab Group and Turkey as chair of the Summit of the Organization of the Islamic Cooperation called on the president of the UN General Assembly to resume the tenth emergency special session of the General Assembly in accordance with the "Uniting for Peace" procedure.²⁷ In response to this request, Haley took to Twitter:

At the UN [the United States] is always asked to do more & give more. So, when we make a decision, at the will of the American [people, about] where to locate OUR embassy, we don't expect those we've helped to target us. On Thurs[day] there'll be a vote criticizing our choice. The US will be taking names.²⁸

At a cabinet meeting, Trump commended Haley's warnings.²⁹ He stated that it was the "right message" to send to nations who vote against the United States.³⁰ Trump reaffirmed:

²² Council Minutes, *supra* note 19.

²³ *Middle East: Security Council Fails to Adopt Resolution on Jerusalem*, UN NEWS (Dec. 18, 2017), at <https://news.un.org/en/story/2017/12/639772-middle-east-security-council-fails-adopt-resolution-jerusalem> [hereinafter *Middle East: Security Council Fails to Adopt Resolution on Jerusalem*].

²⁴ Text of UN Security Council Draft Resolution on Jerusalem, UN WATCH (Dec. 17, 2017), at <https://www.unwatch.org/text-uns-c-draft-resolution-jerusalem>.

²⁵ *Middle East: Security Council Fails to Adopt Resolution on Jerusalem*, *supra* note 23.

²⁶ U.S. Mission to the UN Press Release, Explanation of Vote Following the Veto of a Draft UN Security Council Resolution on Jerusalem (Dec. 18, 2017), at <https://usun.state.gov/remarks/8222> [<https://perma.cc/434L-248W>].

²⁷ Letter from Permanent Rep. of Yemen to the UN and Permanent Rep. Turkey to the UN to President of the General Assembly (Dec. 18, 2017), available at <https://www.un.org/pgal/72/wp-content/uploads/sites/51/2017/12/ESS-letter-by-the-PGA-with-attachment-for-distribution.pdf> [<https://perma.cc/6CT5-J8A8>]. The "Uniting for Peace" procedure allows the General Assembly to consider a matter "if the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, or act of aggression." GA Res. 377, para. 1 (Nov. 3, 1950).

²⁸ Nikki Haley (@nikkihaley), TWITTER (Dec. 19, 2019, 2:08 PM), at <https://twitter.com/nikkihaley/status/943241599953309696?lang=en>.

²⁹ *Trump Holds Cabinet Meeting Before Tax Revote*, CNN, 17:12–39 (Dec. 20, 2017), at <https://www.cnn.com/videos/politics/2017/12/20/trump-tax-bill-cabinet-full.cnn>.

³⁰ *Id.* at 17:42–45.

All of these nations that take our money and then they vote against us at the Security Council or they vote against us, potentially, at the Assembly, they take hundreds of millions of dollars and even billions of dollars and then they vote against us. Well, we're watching those votes. Let them vote against us. We'll save a lot. We don't care.³¹

On December 21, the General Assembly adopted by an “overwhelming” majority the “Status of Jerusalem” resolution, considered by the Security Council less than a week earlier.³² Of the 193 member states that comprise the General Assembly, 128 states voted in favor of the resolution, thirty-five states abstained, and nine states—Guatemala, Honduras, Israel, Marshall Islands, Federated States of Micronesia, Nauru, Palau, Togo, and the United States—voted against it.³³ Undeterred, Haley reiterated that “America will put its embassy in Jerusalem.”³⁴

A few weeks later, Trump indicated that the United States might scale back aid to Palestinians if they would not enter into peace negotiations.³⁵ Trump tweeted:

[W]e pay the Palestinians HUNDRED [sic] OF MILLIONS OF DOLLARS a year and get no appreciation or respect. They don't even want to negotiate a long overdue . . . peace treaty with Israel. We have taken Jerusalem, the toughest part of the negotiation, off the table, but Israel, for that, would have had to pay more. But with the Palestinians no longer willing to talk peace, why should we make any of these massive future payments to them?³⁶

Each year the United States provides the Palestinians with about \$700 million in aid through the United States Agency for International Development and the United Nations Relief and Works Agency (UNWRA).³⁷ On January 16, 2018, U.S. State Department spokeswoman Heather Nauert stated that the United States was withholding \$65 million of its planned \$120 million contribution to UNWRA “for future consideration.”³⁸

According to the State Department, the United States intends to open its embassy in Jerusalem in May of this year.³⁹ The embassy will initially be housed in the existing U.S. consulate building in Jerusalem.⁴⁰

³¹ *Id.* at 17:17–34.

³² UN Meetings Coverage and Press Releases, General Assembly Overwhelmingly Adopts Resolution Asking Nations Not to Locate Diplomatic Missions in Jerusalem (Dec. 21, 2017), at <https://www.un.org/press/en/2017/ga11995.doc.htm>.

³³ *Id.*

³⁴ *Id.*

³⁵ Donald J. Trump (@realDonaldTrump), TWITTER (Jan. 2, 2018, 2:37 PM), at <https://twitter.com/realDonaldTrump/status/948322497602220032>.

³⁶ *Id.*

³⁷ Loveday Morris & Ruth Eglash, *Israelis Voice Warnings, Palestinians Talk of 'Blackmail' in Wake of Tweets by Trump*, WASH. POST (Jan. 3, 2018), at https://www.washingtonpost.com/world/israelis-voice-warnings-palestinians-talk-of-blackmail-after-trump-threatens-to-cut-funding/2018/01/03/7ca137a8-f078-11e7-b390-a36dc3fa2842_story.html?utm_term=.e8e463686e49.

³⁸ U.S. Dep't of State Press Release, Department Press Briefing (Jan. 16, 2018), at <https://www.state.gov/t/pa/prs/dpb/2018/01/277473.htm> [<https://perma.cc/Z734-F9FS>].

³⁹ U.S. Dep't of State Press Release, Opening of U.S. Embassy Jerusalem (Feb. 23, 2018), at <https://www.state.gov/t/pa/prs/ps/2018/02/278825.htm> [<https://perma.cc/8HCD-R87P>].

⁴⁰ *Id.*