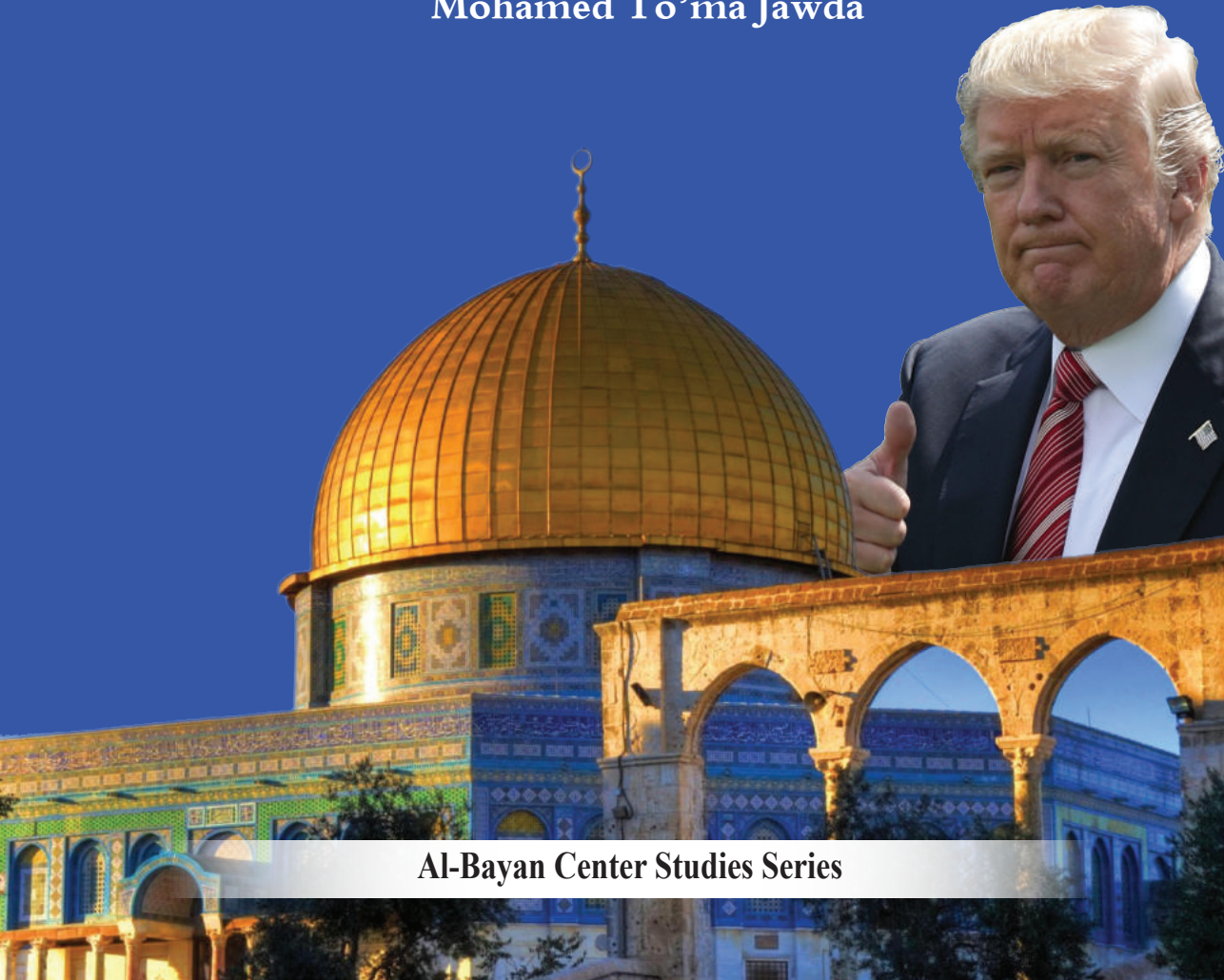




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Mohamed To'ma Jawda *

Al Quds or Jerusalem is a city that captivates you with its beauteous majesty, splendour, and heritage. It has a special place in the hearts of Muslims; its land is holy, and blessed in texts of the Holy Quran. In it lies the Al Aqsa Mosque, the second mosque ever built by man on earth to worship God, and towards which Muslims initially turned for prayers,. The Prophet Mohammed (peace be upon him) was miraculously transported there from the Sacred mosque in Mecca; and it is the land where many of God's prophets lived and were buried.

The city of Jerusalem holds great significance in Israeli minds, for both religious and historical reasons. Half a century before the declaration on the establishment of "Israel", Theodor Herzl, founder of the World Zionist Organization, said that: "If we get the city of Jerusalem, and I am still alive and it is within my power to do something, I would remove from it everything not sacred to the Jews, and burn all traces of the past centuries." Half a century after Israel seized the entire city of Jerusalem in 1967, Israeli leaders of today do not think any differently from their predecessors. At the reception of US President Donald Trump during his first trip to Israel after taking office, Israel's president, Reuven Rivlin, addressed Trump saying: "We are proud to welcome

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you to Jerusalem at a time when we are celebrating the 50th anniversary of Jerusalem Day. We are pleased that our greatest ally recognizes the importance of Jerusalem to the Jewish people. Jerusalem is the beating heart of the Jewish people, as it has been for three thousand years.”

At the height of the anticipation by all concerned of what was to be the deal of the century and adopted by the Trump administration from their predecessors, which many relied on to end the Arab–Israeli conflict, the President instead announced his decision to fulfil the promise he made during his campaign days, by bringing into force the JERUSALEM EMBASSY ACT OF 1995 recognizing Jerusalem, both East and West, as the undivided capital of Israel; which also mandates the transfer of the US Embassy from Tel Aviv, the capital of “Israel”, to Jerusalem.

To shed light on the compatibility or otherwise of Trump’s declaration on Jerusalem as the capital of Israel within the framework of international law with a degree of objectivity, it is necessary to take a look at the legal status of the city of Jerusalem from the point of view of international law and the concomitant ramifications. We can then assess the legitimacy of the Trump declaration and its compatibility with the principles of international law. We will conclude with assessing the potential fallout from an illegal declaration. Accordingly, we will examine the topic from four different angles:

The first angle: The legal status of Jerusalem

The issue of Jerusalem began on 29, November 1947, when the United Nations General Assembly adopted Resolution 181 on the partition of Palestine into two states: and Arab state over 45% of the land of Palestine and a Jewish state over 54% of the land and the remaining 1% designated as international zone for the city of Jerusalem. The Resolution did not place Jerusalem within the borders of either of the two states, but designated it as an international zone under the Trusteeship of the United Nations, to be administered by and under the supervision of the UN. Subsequently, the 1948 war broke out between the Arab armies and “Israel”, and which ended, as everyone knows, with the seizure by “Israel” of more Palestinian territory, and in the process acquiring the equivalent of 78% of the land of Palestine, including the western part of the city of Jerusalem. It occupied the West of the city in the 1948 war, and seized over 84% of the area of the city of Jerusalem (16.45 km²). This part was henceforth designated as West Jerusalem (J2), while the remaining 1.5% of the area of Jerusalem, including the Old City (2.25 km²) in which the Al-Aqsa Mosque was under the control of the Jordanian forces, became known as East Jerusalem (J1). The situation continued until 1967.

In the Six Day War of 1967 (the July Setback), Israel annexed East Jerusalem, which was under Jordanian control, and which was part of the West Bank that Israel occupied in that war. Israel announced the unification of the two parts of Jerusalem under Israeli administration

on 27, June 1967, and on 30, July 1980, Israel enacted the “Basic Law: Jerusalem, Capital of Israel”, deeming a united Jerusalem as the eternal capital of Israel.

Despite ongoing international appeals to “Israel”, it continues to Judaize Jerusalem through a stream of successive and gradual measures and practices, in particular the continuation of settlement construction in Jerusalem, whether by approving plans to expand existing settlements or by approving plans to establish new ones; both inside and outside the city limits of the so-called “Greater Jerusalem, the eternal capital of Israel.” All this being achieved through a set of laws and procedures pursued by “Israel” to implement this strategy.

Israeli activities in the city of Jerusalem have provoked international reaction, denouncing the illegality of Israeli actions in the Occupied Palestinian Territories, including East Jerusalem, which is part of the occupied West Bank. The international community, represented by the United Nations, have passed numerous Resolutions condemning the unilateral actions by the Occupying Israeli authorities in the city, declaring them to be contrary to the rules of international law, and an encroachment upon the provisional authorities prescribed by international law for the occupying authority. Through a stream of Resolutions passed over the course of the past five decades since 1967, the UN has called on “Israel” to bring an end to all these measures, considered to be null and void and not capable of changing the true legal status of the City.

In accordance with United Nations resolutions, the city of East Jerusalem and its environs, as well as the West Bank of the Jordan River, are considered to be occupied by “Israel”. This has been affirmed by UN General Assembly resolutions, including but not limited to: Resolution No. 2253 of 1967; Resolution 2535 of 1969; Resolution No. 2787 of 1971; resolution 3237 of 1974; Resolution 3379 of 1975; resolution 35/207 of 1980; Resolution 7/4 of the emergency special session of 1982 and other resolutions adopted each year regarding the occupied Palestinian territories.

These resolutions have reiterated – after their condemnation of “Israel” in the strongest terms – the call to “Israel” to withdraw completely from all the occupied territories. These resolutions have further affirmed the right of the Palestinian people to armed struggle and to exercise their right to self-determination. These resolutions have further reaffirmed that the measures taken by “Israel”, especially the law unifying Jerusalem and declaring it as the capital of “Israel” in 1980, do not materially change the legal status of the city as occupied territory.

In addition to the above, the Security Council has adopted several resolutions confirming that the West Bank, including East Jerusalem, are occupied territory, and called on “Israel” to withdraw from them and to end the military occupation. These resolutions have declared illegal all measures taken and laws passed and settlements built by “Israel” which aim at changing the character of Jerusalem and to repeal them. It

is not possible to change the legal status of the city of Jerusalem as long as it is occupied land. These resolutions also stressed that land cannot be seized by force, for example: Resolution 242 of 1967; Resolution 465 of 1980; Resolution 476 of 1980; Resolution 478 of 1980; Resolution 636 of 1989; Resolution 904 of 1994; Resolution 1322 of 2000, and many others, the most recent of which is Resolution 2334 of 2016, which was adopted under the guidance of the Obama administration.

The International Court of Justice ended the debate over the legal status of East Jerusalem when it gave its Advisory Opinion in 2004 on the separation wall after the General Assembly requested it to rule on the legality of Israel's construction of the separation wall in the Palestinian territories occupied since 1967. The Court concluded that the West bank, including East Jerusalem and the Gaza Strip, are occupied territories and not disputed territory as "Israel" claims.

The Court also concluded that the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; and the Convention on the Rights of the Child which "Israel" had signed; and the Fourth Geneva Convention of 1949 to which "Israel" was a party, and the Hague Regulations of 1907, by which "Israel" is bound by virtue of being Customary International Law; all apply to the the Occupied Palestinian Territories. The Court also noted that many resolutions of the General Assembly and the Security Council reiterated the applicability of the Geneva Conventions to the Occupied Palestinian Territories, including East

Jerusalem. The Court affirmed the fundamental principle referred to by both the General Assembly and the Security Council, in their special resolutions on Palestine which affirm “the illegality of occupation of land by force.”

The Court stressed that the General Assembly and the Security Council should consider any other necessary measures to end the illegal Israeli occupation of those areas. The Court in its advisory opinion recommended an end to all measures taken by “Israel” on the ground aimed at changing the geographical and demographic reality, as well as violations stemming from the application of Israeli law. The Court restated the fact that the measures adopted by “Israel” do not change the legal status of those territories as occupied land.

This opinion is of great legal value, especially after the adoption by the General Assembly of Resolution DAT 10/15 of 20 July 2004, by an overwhelming majority, in support of the Opinion, and which considered all aspects of the Palestinian cause.

It should be noted that on 18, October 2016, UNESCO held a meeting in the French capital Paris, where it adopted a resolution denying the religious affiliation of the Jews to the Al-Aqsa Mosque and Al-Buraq Wall, which they considered to be of pure Islamic heritage. In response to this resolution, both “Israel” and the United States withdraw from the organization.

The question that arises here is: what are the consequences of describing the city of Jerusalem as an occupied land?

The second angle: the consequences of the legal status of the city of Jerusalem:

There are legal rules in international law regulating the status of military occupation, which are binding on all States, whether accepted or not, because they are peremptory norms that cannot be violated or resiled from. These are the Laws of Occupation. They do not legitimise occupation; rather, these laws seek to achieve several purposes, amongst them: establishing the actual temporary situation of occupation; determining the rights of the occupying power, and focusing on the humanitarian measures which the military occupying power must put in place in its dealings with the occupied territory and its inhabitants.

Accordingly, the city of Jerusalem is an occupied territory, and the rules and principles of occupation should be applied to it. One of the most important principles governing occupation is: the illegality of annexing the occupied territory or part of that territory by the unilateral will of the occupying power. The illegality of annexation is a well-established fundamental principle governing occupation. The occupying power's control over certain areas of jurisdiction is only temporary and does not grant them any right to make any changes in the status of the occupied territory. This principle imposes on other countries the duty not to recognize any case of illegal annexation.

Third angle: The legitimacy of Trump's declaration and its compatibility with international law:

It goes without saying that "Israel" is under a duty not to annex the territory and to end the occupation in accordance with international law. The international community, represented by the United Nations and its organs, has, over a long period of time, issued resolutions obliging the occupying power to end the occupation and not to annex the occupied territory (namely the City of Jerusalem). The city of Jerusalem is an inseparable part of the West Bank, and its isolation by "Israel" from the West Bank in 1967, and its annexation by a unilateral decision of the Israeli authorities, is contrary to the rules of international law and to many resolutions of the United Nations, which has condemned all the measures taken by "Israel" in Jerusalem and pronounced them null and void. The UN has repeatedly stated that "Israel" cannot change the legal status of the city, not least in the recent resolution of the General Assembly, which encompassed the widest representation of members of the international community and truest expression of its attitudes and policies.

The General Assembly held its emergency meeting within the framework of the Tenth Emergency Special Session, on 21 December 2017, convened after the veto by the United States in the Security Council of a similar draft resolution submitted by Egypt; and adopted resolution No. A/ES-10/L22, of 21 December 2017 deeming illegitimate any measures intended to alter the character, status or demographic

composition of the City of Jerusalem; and as having no legal effect, and considered null and void and must be rescinded in compliance with the relevant Security Council resolutions. The resolution also affirmed that the question of Jerusalem is an issue of final status to be resolved through negotiations in accordance with relevant Security Council resolutions.

In its aforementioned resolution, the General Assembly expressed its deep regret at the recent decisions concerning the status of Jerusalem and called on all States “to refrain from establishing diplomatic missions in the city of Al-Quds Al-Sharif pursuant to Security Council resolution 478 of 1980,” and called upon all States to comply with Security Council resolutions regarding the city of Jerusalem, and not to recognize any measures or steps contrary to those resolutions. The General Assembly reiterated its call for the elimination of the negative trends on the ground that hinder the two-State solution and for the intensification of international and regional efforts and international and regional support aimed at achieving a comprehensive, just and lasting peace in the Middle East without delay.

Therefore, any support for Trump’s unlawful declaration also amounts to a violation of the rules of international law. In its declaration, the United States has committed a violation of international law and of legally binding resolutions to which we have referred; not only by failing to assist the UN in the implementation of these resolutions; but also by aiding an occupying power with its recognition of a state

of affairs deemed illegal under international law and which has been condemned by the international community.

In making this declaration, the United States appears to be contradicting itself, its past claims and its own beliefs. It is apt, for present purposes, to recall the doctrine enunciated by of US Secretary of State, Stimson, who sent an identical message to both China and Japan following the outbreak of armed conflict between these two countries in 1932, after Japan's capture of the Chinese province of Manchuria. "The United States Government cannot admit the legality of any situation de facto nor does it intend to recognize any treaty or agreement which may impair the sovereignty, the independence, or the territorial and administrative integrity of the Republic of China." It is worth noting that American policy – before its recent volte-face on Jerusalem – strongly favoured the policy of division which lifts Jerusalem out of the conflict and guarantees its internationalization. In the early 1950's, the State Department issued a memorandum setting out the legal status of the city of Jerusalem and refusing to recognise "Israel's" occupation of West Jerusalem and protested against the transfer there of the Knesset, the Foreign Ministry, the Cabinet Office and the Workers Union. Following the Israeli aggression of 1967, the US representative in the Security Council reiterated the same position, as well as the United States' non-recognition of the occupation of East Jerusalem, a position confirmed by the now famous Security Council Resolution 242 of 1967.

Thus, President Trump's declaration on the recognition of Jerusalem as the capital of "Israel" is in direct violation of relevant international resolutions on the subject, in particular the resolutions of the General Assembly of the United Nations, the Security Council, the Advisory Opinion of the International Court of Justice and the institutions of the United Nations; as well as being contrary to established international practice, founded on international customary law, and disseminated through the positions of states, the European Union and other international and regional organizations such as the League of Arab Nations. It is also in contravention of the doctrine of non-recognition of the unlawful regional status and even contrary to the Oslo Accords signed in Washington DC by "Israel" and the Palestinian Authority in 1993, in which the issue of Jerusalem was postponed to the final status negotiations, which were supposed to take place within five years from the date of the signing of the Accord, but which have yet to take place.

The fourth angle: the fallout from Trump's unlawful declaration on Jerusalem:

1. President Trump's declaration does not alter the legal status of the city as occupied Arab territory, especially after the international community flatly rejected its legitimacy, and was not even supported by the closest allies of the United States.

2. The US administration is obliged to reverse this decision because it was taken unilaterally and contravenes US obligations

under international treaties such as The Hague Conventions of 1907, the 1949 Geneva Conventions and the Protocols thereto. It is also in contravention of its obligations under the Charter of the United Nations and its relevant resolutions, and violates its role as an intermediary and sponsor of the peace process.

3. The implication of the illegality of this declaration is that the United States can no longer be considered an impartial mediator or an honest broker in the peace process which the Palestinians have relied on since 1993 and may lead the Palestinians to withdraw from their United States-sponsored commitments, such as the Oslo Accords.

4. All States are under an obligation not to recognize the illegal status resulting from this declaration, to refrain from providing aid or assistance to perpetuate this illegal situation, to cooperate with a view to ending the situation, and to refrain from participating in the commission of internationally wrongful acts by failing to fulfil the obligations referred to above.

5. The illegality of this declaration poses for the United Nations an unprecedented challenge and obliges it to assume its responsibilities in the maintenance of international peace and security, the development of cooperation among nations on the basis of equality and respect for human rights and the right of the Palestinian people to exercise their inalienable right to self-determination and the right to establish a Palestinian State with East Jerusalem as its capital.