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The US Embassy in Israel has been located in Tel Aviv since 1948. Every single US president, whether Republican or Democrat, has refused to move it to Jerusalem as doing so would violate longstanding US policy not to recognise any state's sovereignty over the Holy City. PHOTO: AGENCE FRANCE-PRESSE

Why moving the US Embassy to Jerusalem is a bad idea

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For The Straits Times

President-elect Donald Trump's nominee for ambassador to Israel, his bankruptcy lawyer, Mr David Friedman, recently said in a statement to the press that he is looking forward to doing the job "from the US Embassy in Israel's eternal capital, Jerusalem".

Mr Friedman was evidently speaking tongue-in-cheek, for the United States does not have an embassy in Jerusalem. It only has a consulate-general there, which is responsible for US affairs with the Palestinians. The US Embassy is located in Tel Aviv, where it has been since 1948.

Moving the US Embassy to Jerusalem would violate longstanding US policy, which is not to recognise any sovereign in the Holy City. Every single US president, whether Republican or Democrat, from Mr Harry Truman to Mr Barack Obama, has refused to move the US Embassy to Jerusalem. Even the adoption by Congress of the Jerusalem Embassy Act in 1995 calling on the administration to move its embassy to Jerusalem failed to move presidents Bill Clinton, George W. Bush and Mr Obama, who refused to move the embassy by signing presidential waivers on national security grounds.

There are scores of United Nations resolutions refusing to recognise Israel's annexation of Jerusalem. One of the most important is Security Council Resolution 478 that was passed following the adoption in July 1980 of an Israeli law that declared Jerusalem Israel's capital. Israel's legislature passed the law during the autonomy negotiations between Israel and Egypt which were brokered by US President Jimmy Carter. The law greatly upset Egyptian President Anwar Sadat, who suspended the negotiations, and angered Mr Carter, who had invested much time in the process.

Resolution 478 also came on the heels of complaints from Europe and the Vatican about Israel's settlement policy in Jerusalem. The resolution declared that Israel's law making Jerusalem its capital was "null and void". In the same resolution, the Security Council called upon "those states that have established diplomatic missions at Jerusalem to withdraw such missions from the Holy City". Following the adoption of this resolution, 13 countries that had diplomatic missions in Jerusalem moved them to Tel Aviv.

Should Mr Trump not sign the presidential waiver and move the US Embassy to Jerusalem, not only would he prejudice peace negotiations, but he could land the US in legal hot water. Given the overwhelming international consensus that Israel's annexation of Jerusalem is null and void, the UN General Assembly could request an advisory opinion from the International Court of Justice questioning the legality of locating the US Embassy in Jerusalem.

More recently, the Security Council passed Resolution 2334 (on Dec 23 last year). Resolution 2334 reiterates the Security Council's view that it will "not recognise any changes to the June 4, 1967, lines, including with regard to Jerusalem, other than those agreed by the parties through negotiations". Israel occupied East Jerusalem on June 4, 1967, but note that Resolution 2334 refers to "Jerusalem", not East Jerusalem nor West Jerusalem. This is because no state has sovereignty over Jerusalem, neither East nor West.

In June 2015, the US Supreme Court gave judgment in a case that addressed US policy towards Jerusalem. The court admonished congressional attempts to force the executive branch to confer recognition on Israel's claims to sovereignty over Jerusalem through a provision in an Act of Congress that sought to oblige the State Department to record the place of birth of US citizens born in Jerusalem as "Israel" on their American passports. This is because this policy would imply Jerusalem is sovereign Israeli territory, even though this is contrary to longstanding US policy that no state has sovereignty in Jerusalem.

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Finally, moving the US Embassy to Jerusalem would alienate key US allies. The kingdoms of Jordan, Morocco and Saudi Arabia, for instance, all claim to be custodians of Muslim holy places in Jerusalem. They would not take kindly to the US moving its embassy to Jerusalem unless this was also reciprocated by establishing an embassy to Palestine in the same city. The 57-member Organisation of Islamic Cooperation (OIC) was specifically established to safeguard Muslim holy places in Jerusalem following an arson attack on Al-Aqsa in 1969. In 2013, former OIC secretary-general Ekmeleddin Ihsanoglu warned that its members could cut ties with any state that recognised Jerusalem as the capital of Israel or that moves its embassy to Jerusalem.

Moving the US Embassy to Jerusalem without also recognising Palestinian rights could potentially offend Christians and Muslims for whom Jerusalem also holds special reverence. Given these sensitivities, Mr Trump would be wise to avoid any further controversies.

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