



## Stacking the Deck: Implications of the U.S. Embassy Relocation<sup>1</sup>

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The recent Arafat-Clinton summit underlines the precariousness of the stage reached in the final status negotiations between the Israelis and the Palestinians. Of all the major outstanding issues, that of Jerusalem perhaps looms largest, inasmuch as it is not only a bilateral issue between

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the Israelis and the Palestinians but one between the Israelis and the Arab and Muslim worlds—an issue in which Arafat's leeway as a Palestinian leader is more circumscribed than in the other final status issues.

Three actions by the U.S. administration and Congress in the last decade have immensely compounded the complexity of the issue and stacked the cards against the Palestinians and Arafat.

- The Helms Amendment of 1988, paving the way for the transfer of the U.S. Embassy from Tel Aviv to Jerusalem by providing for the simultaneous establishment of two "diplomatic facilities" in Tel Aviv and Jerusalem, while giving the president the option of deciding which of these two should become the actual embassy.

- The 18 January 1989 Lease Agreement between Israel and the U.S. providing for the lease of a plot of land in West Jerusalem for the building of "a diplomatic facility" for \$1 per annum for 99 years renewable. The land in question was a 31,250 square meter plot (about 7.8 acres) in what used to be known during the British Mandate over Palestine as "Allenby Barracks," housing the British Army's Jerusalem garrison.

- Public Law 104-45 of October 1995 mandating the relocation of the U.S. Embassy from Tel Aviv to "united Jerusalem" by 31 May 1999. It allocated \$100 million for building the embassy and included a punitive clause reducing by half the State Department's housing and maintenance budget worldwide until the embassy opened. It also granted the

president the right to waive this clause if he found it in the "national security interests of the United States" to do so.

The combination of the Relocation Act and the Lease Agreement constitute a Sword of Damocles poised over the head of the Palestinian negotiators, although President Clinton has exercised his waiver right to suspend punishment of the Department of State (DOS) pending the outcome of the final status negotiations between the Israelis and the Palestinians. The Relocation Act is an extraordinary example of the folly of foreign policy making by domestic legislation and was indeed at the time declared by Secretary of State Warren Christopher to be "unconstitutional" because of its invasion of presidential prerogative.

Rumors about the ownership of the embassy site, including the involvement of a Muslim *waqf* (trust) in it, began to circulate almost immediately after the lease was signed. In June 1989, Lee Hamilton, chairman of the House Subcommittee on Europe and the Middle East, relayed to the State Department a letter raising questions about the site ownership that he had received from Michael Saba, president of the Arab-American Attiyeh foundation. In a reply to Mr. Hamilton dated 28 June 1989, Ms. Janet G. Mullins, Assistant Secretary of Legislative Affairs, indicated that while DOS was aware that the *waqf* claimed an interest in the site, the Department had been unable "to locate any record of or support for this claim during a thorough title search completed by us." In a subsequent letter on 6 September 1989, Mullins repeated the assertion about the

*waqf* claim and added the DOS was "unaware of any other possible 'private claims.'"

Since that time, intensive research has been carried out by a group of Palestinians into the ownership of the site. This research—greatly complicated by the fact that the State Department long refused to release the map showing the actual embassy site within the far larger Allenby Barracks, and by the fact that the Israeli government renumbered the original parcels of the Allenby site and changed the parcel sizes and their configuration—took over four years. It was conducted in the United Nations archives in New York (the UN Conciliation Committee on Palestine), the Public Records Office in London, containing the records of the British Colonial and Foreign Offices, the Jerusalem Municipality and its Land Registry records (the TAPU), and with tens of heirs of the original owners. As a result of this research, there is no longer any question concerning the precise ownership of the embassy site.

The documented research shows that while 29.47 percent of the site was purchased by the Israeli government from the British government in the mid-1960s for 140,000 pounds sterling, the remainder—over 70 percent—was privately held Palestinian land. About a quarter of the total was *waqf* and the rest belonged to individual Palestinians. On 15 May 1948, the last day of the British Mandate, the number of beneficiaries of the *waqf* and the private owners was 76. These 76 owners belonged to 19 families (4 Christian and 15 Muslim) and constituted a

veritable Who's Who of Arab Jerusalem. The British army paid rent to all these owners until the last day of the Mandate. Some arrears were paid as late as 1951.

The living heirs of the original 76 owners now number in the hundreds. Though the original owners were all Palestinians, at least 90 of the current heirs have been identified as U.S. citizens, while some 43 have British, Canadian, Swiss, Belgian, French, German, and Austrian nationalities. The large number of American citizens is interesting in light of the 1996 Helms-Burton Act (Public Law 104-114) concerning the "wrongful confiscation or taking of property belonging to U.S. nationals by the Cuban government and the subsequent exploitation of this property at the expense of the rightful owners." But the Act, passed a year after the Embassy Relocation Act, anticipates the obvious parallel with the Palestinian case by exempting property that is a "facility or installation used by an accredited diplomatic mission for official purposes."

In June 1995, as the research on the site ownership got underway, the American Committee on Jerusalem (ACJ) was established to include the major Arab American organizations and other organizations concerned about the future of Jerusalem. On 28 October 1999, a letter was addressed on their behalf to Secretary of State Albright by George Salem, an attorney with the Washington law firm Akin, Gump and Strauss, outlining the results of their research and requesting a meeting to share their findings with the State Department. When over six weeks passed without a response, a follow-up

letter was sent on 17 December 1999. On 28 December, Ms. Beth Jones, principal deputy assistant secretary of state for Near Eastern affairs, replied to the effect that (a) the 1989 lease had not been "entered into," and (b) any data that the group had should be communicated to the Department "to be kept on file." Jones's claim that the lease had not been "entered into" flies in the face of the wording of the lease itself, and is also belied by the State Department's payment of the \$1 rental, as reported by the Congressional Research Service.

Given the grave implications of the embassy issue for the peace process and the credibility of the United States, the ACJ felt as a result of this correspondence that it had no alternative but to go public.

The Relocation Act impinges on five major aspects of the final status negotiations: Jerusalem, the refugees, the settlements, the future of the West Bank, and the size of an eventual Palestinian state. On Jerusalem, by mandating that it remain undivided, it unilaterally accords recognition to Israeli sovereignty not only in West Jerusalem but also in East Jerusalem. On refugees, by calling for the construction of the embassy on confiscated refugee property, it legitimizes the wholesale Israeli confiscation of all refugee properties since 1948. On settlements, by recognizing East Jerusalem as part of "undivided Jerusalem," it legitimizes the Israeli settlements built there. On the West Bank, given the Israeli concepts of Greater and Metropolitan Jerusalem, it legitimizes the Israeli occupation and annexation of vast expanses of West Bank territory. By the same token, it contributes to

predetermining the size of a future Palestinian entity. For all these reasons, the Act—and the Lease Agreement which has become, retrospectively, its instrument—gravely compromises the declared American role as an honest broker. It contradicts and repudiates the commitments and assurances of all previous U.S. administrations.

With all that Jerusalem connotes, it is, to say the least, unbecoming for the United States' future embassy in that city to be built on land that is, to put it bluntly, stolen property. Absent an equitable and honorable solution, the Israeli government would be hard put to find an alternative site in Jerusalem, or indeed to find sites for the embassies of other countries, that are free of the encumbrances pertaining to the Allenby Barracks site. Within the municipal boundaries of West Jerusalem as they were extended since 1948, Jewish property does not exceed 15 percent of the total. As for East Jerusalem, Jewish land ownership prior to 1948 was under 3 percent of the total.

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