



## The U.S. Embassy Move and Arab Property in West Jerusalem

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Graham Usher

The view from the presidential suite of the Palestinian Authority's new Parliament Building in Abu Dis takes in a landscape of an entirely Arab East Jerusalem. Through the still unpaned window frame you can see the walls of the Old City and the greenery and gold of the Dome of the Rock. But you cannot see the quietly spreading Jewish settlement on the other side of Ras al-Amud. Indeed, the only Jewish presence is that which lies sleeping beneath the cemetery on the Mount of Olives.

It is a reassuring illusion—which a ten-minute car ride dispels. Take the road out

of Abu Dis, pass the Israeli army checkpoint and Border Police station at Ras al-Amud, go down past the Garden of Gethsemane, around the walled road that separates the Jewish Quarter from Silwan, and you spill out onto the bustling, hectic drag of the Hebron Road.

Here the ambience is palpably Israeli—captured not only in the billboards for the latest Denzel Washington movie or in the cars that flash by with 1999 registration plates, but also by the orthodox woman in hat and mid-length dress who pushes a pram to the other side of the road. Yet this too—in its way—is illusory. For behind the woman you see the unmistakable Arab architecture of a house with red tiles and arched windows. Then a second, then another, then entire streets of some of the estimated 10,000 Palestinian homes that "fell" into Jewish hands between March and June 1948.

This is what Salim Tamari describes as the "phantom city" of Arab West Jerusalem. Talbiya, Qatamon, ʿAyn Karim, Lifta and Upper Baqʿa—all "destroyed communities and deserted villages within Jerusalem's western neighborhoods that seem to have been overlooked by history" and certainly yet to be absolved by it. Today Upper Baqʿa is residence to some of Israel's most liberal Jewish intellectuals and a precious real estate for new apartments and construction sites, hurriedly throwing up yet more office space.

Amid this old/new metropolis, you come across an incongruously vacant lot of grassland and pine trees. Until May 1948, it housed the Allenby barracks, the largest British army base in Jerusalem during the

Mandate. After that and until 1997, it served muster as the headquarters for Israel's Border police until this too left for the greener pastures of Sheikh Jarrah in "Arab" East Jerusalem. Today the lot lies empty and overgrown—in waiting perhaps for its destiny as the site for the new American embassy in "united" Jerusalem, "the eternal, undivided capital of Israel."

### **The Responsiveness of an Ally**

The 7.8 acres of land in what was Upper Baqʿa was leased by the Israeli government to the U.S. for the purpose of establishing "diplomatic facilities" at a rent of one dollar per annum for 99 years renewable. The lease was signed on 18 January 1989, the last full day of the Reagan presidency and was—in the view of Palestinian historian Walid Khalidi, who has been documenting this case over the last several years—"the musk that sealed the relationship of Israel to the U.S. and said goodbye to the Arab world."

It has been solidifying and waving goodbye ever since. In August 1994—in what was then an abrupt departure from traditional U.S. policy—the then U.S. ambassador to the UN (and now Secretary of State) Madeline Albright voted against all General Assembly resolutions pertaining to the status and sovereignty of Jerusalem, settlements and Palestinian refugees. This—she instructed her colleagues—was because "such resolutions prejudge the outcome of the ongoing peace process, which should be solved by direct negotiations."

Even this semblance of a negotiated approach to Jerusalem's fate was overthrown by Congress's Public Law 104-

45. Passed in October 1995, this mandated the U.S. President to "relocate" the U.S. Embassy from Tel Aviv to "united Jerusalem" no later than 31 May 1999, the then deadline of the Oslo agreement's five year "interim period." The law set aside \$100 million for building the embassy on the Allenby site. It also carried a punitive clause of reducing by 50 percent the State Department's budget for the "maintenance and habitat of U.S. embassies throughout the world" should the "Jerusalem Embassy Relocation Act" not be implemented in the set period.

Even by the cavalier foreign policy of the Israeli lobby in the Congress and Senate this last stipulation was pretty remarkable, admits Khalidi. "Have you ever heard of a situation where a parliament punishes its own state in the interests of another?" he asks—rhetorically, of course. As remarkable—Khalidi also points out—is the way the Relocation Act adopts without question Israel's exclusivist vision of the religious significance of Jerusalem. In the law's preamble it is noted that "for 3,000 years Jerusalem has been the central focus of Jewish worship." As for the importance of Jerusalem for the Christian and Muslim faiths, the preamble notes—as an afterthought—"Jerusalem is also a holy city for other religions."

On 18 June 1999, President Clinton invoked his right to waive the Relocation Act "to protect our critical national security interests, most crucially by preserving the prospects for a comprehensive, just and lasting peace" in the Middle East.

But Clinton only waived the law; he did not use his veto as constitutionally was his

right given the law's effective circumvention of presidential authority in the making of foreign policy. Nor was there much chance he would do so. Arguably the most pro-Israel President ever, Clinton (and his wife Hilary) is on record as stating that Jerusalem is "the eternal capital of Israel." As for the administrations he has led, these have been without peer "in their clear, open, direct and specific position on the principle of an undivided Jerusalem," in the view of outgoing Senator for New York, Patrick Moynihan. It is a view only the most messianic of the Israeli lobby could gainsay.

Thus whether for a Democratic President or a Republican Congress it seems it is now less a question of if the U.S. Embassy will be "relocated" to "united" Jerusalem than when. After all—commented the then House Speaker, Newt Gingrich, in January 1995—"it is absurd for us to single out Israel as a country where we define what we think the capital should be. It's the right of Israel to define its capital, and we as an ally should in fact be responsive."

### **"Upper Baq'a is not central Kansas"**

The problem with such responsiveness is that it runs afoul not only of an international legality on Jerusalem which (still) defines Israel as in military occupation of the eastern part of the city and in only "de facto" control of the western. The relocation of the embassy to the particular plot of land in Upper Baq'a may also be a violation of U.S. law.

Following the leasing agreement in 1989, talk quickly spread among the Palestinian-American community that the land in question may have been illegally

confiscated from part of a family *waqf* estate in Jerusalem belonging to Muhammed bin al-Khalili. Acting on behalf of several old Palestinian Jerusalem families, in 1995 Khalidi undertook a study that would clarify the legal status of the land once and for all. Five years on—he says—"there is no longer any question about the precise ownership of the embassy site."

It was unveiled at a press conference in Jerusalem on 18 April this year by the President of the National Association of the Arab American-Anti Discrimination committee, Khalil Jahshan, and an attorney working for the American Jerusalem Committee, George Salem. On the bases of their study, they found that nearly 30 percent of the site had been confiscated by the British government during the Mandate and then sold to the Israeli government in the mid-1960s. The remaining 70 percent belonged either to the family *waqf* or to individual Palestinians. On the day of Israel's establishment on 15 May 1948, these owners numbered 76 Palestinians from 19 Arab Jerusalem families. Today their descendants—and heirs to the property—"number hundreds," including "at least 90" who are U.S. citizens, says Khalidi.

"It is clear that the Israeli government misled the U.S. regarding the status of land in the 1989 agreement," Salem told the conference on 19 April, since a condition for the lease is that the land be "free from any encumbrances and third party claims." In Salem's opinion, this deception alone renders the lease "null and void as a matter of law."

In October 1999, Salem conveyed this opinion in a letter to the U.S. State Department. After two months—and another letter from Salem—the State Department replied that Salem's "data" once turned over would be "kept on file" and that the 1989 lease agreement had not been "entered into." The first answer was an exercise in White House extemporizing. The second was disingenuous. As Khalidi notes, a congressional Research Service report has recorded that the yearly dollar rent has been paid on the lease.

For now, the owners are awaiting a "clear answer" from the U.S. administration on its view of the status of the land, said Jahshan. Should this not be forthcoming, "we are ready to go to court to get a preventive order stopping the lease." It is less clear whether they can win.

Almost certainly mindful of the U.S. Embassy Relocation Act, the 1996 Helms-Burton Act concerning the "wrongful confiscation or taking of property belonging to U.S. nationals by the Cuban government" wisely exempts property "used by an accredited diplomatic mission for diplomatic purposes." Despite this, Hassib Nashashibi—who works with the LAW human rights organization in Jerusalem and assisted with the Khalidi study—believes that there are still at least three counts on which a U.S. citizen could challenge the embassy move.

"First, any U.S. citizen can invoke the article in the Constitution which says the U.S. government cannot use private property or land of a religious or historical nature," he says. "Then we have to prove that the land for the embassy site was

confiscated against the owners' will. And that is proved, since not even the Israelis make any pretence that they purchased the land from its owners—Israel's position is that its acquisition of Palestinian properties in West Jerusalem was an outcome of a war for which it was not responsible. Finally, there have been a number of cases in recent years where Palestinians have reclaimed their properties in West Jerusalem on the grounds that they were foreign nationals of non-hostile countries to Israel on 15 May 1948. There are a number of Palestinian owners of the Upper Baq'a land who fall into this category."

In other words, should the U.S. administration not annul the 1989 lease agreement, "there will be a legal move against it," predicts Nashashibi.

Whatever the legal rights and wrongs, it is clear that the 7.8 acres of land in West Jerusalem slated as the site for the future U.S. Embassy could turn into a political minefield for U.S. diplomacy, particularly during what is a "sensitive" stage in the peace process. "We clearly would not want to build anything on disputed land," comments an official at the U.S. Consulate in Jerusalem. Was the U.S. government aware that the land covered by the 1989 lease agreement might include confiscated Palestinian properties? "I don't know if the administration was aware at the time. It is certainly aware now," the official adds with a grim smile.

As for the prospect of Palestinian claims being raised in U.S. courts the official is honest to the point of blunt. "Look, I'm not a lawyer. But my understanding is that if I have a house that the government wants,

the state has legal instruments to acquire it, so long as I get compensation. I can appeal the decision of course, but it can be overruled. Then again," the official adds with some finality, "Upper Baq'a is not central Kansas."

### **The File on West Jerusalem**

Given the inordinate domestic role Israel plays in U.S. politics, Upper Baq'a is likely to deliver a constituency of considerably greater import than central Kansas. Presidential hopefuls George Bush junior and Al Gore have already stated their intention to implement the "Jerusalem Embassy Relocation Act" if and when elected. Gore has gone one better, single-handedly renouncing before an AIPAC meeting last year the validity of UN Resolution 181 to the status of Jerusalem. Resolution 181 defines Jerusalem as a "corpus separatum" or "International City" and remains—legally at least—the definition of the city held by the international community, including the U.S.

PLO officials at their Jerusalem headquarters in Orient House are quietly convinced that Bush junior will turn out as pragmatic as his father once he views the city from the Oval Office. The greater fear is that Gore may actually mean what he says.

For now, however, there is to be no show of panic. "If Resolution 181 is no longer relevant according to Mr. Gore, then he needs to explain why until now the U.S. Embassy is in Tel Aviv and the U.S. Consul-General is in Jerusalem. Of course 181 remains relevant," says PLO executive member with responsibility for Jerusalem,

Faisal Hussein. "We will hear a lot of noises and promises on the campaign trail. I'm not worried by them," though of course were the U.S. to take challenger Gore at his word and actually build its embassy in West Jerusalem it would "effectively be deciding the future of Jerusalem before the negotiations had ended between us and the Israelis."

Rather, says Hussein, one must view the U.S. Presidential elections through the prism of two sets of interests. "The first interest is the pursuit of votes, and this is where whoever is the presidential candidate will aim to 'please' the Israeli lobby. The second are the permanent interests of the U.S. These do not appear on any campaign agenda, but will be on the agenda of whoever is eventually the President."

This is not to say that the Palestinians are blasé about what is said in the race for the White House. "What Gore or Bush say is very important. But what they say now will not be what determines the final decision on whether or not the embassy will be moved to West Jerusalem. It can hurt that decision, create problems around it. But the decision will ultimately be taken in light of what serves the U.S.'s permanent interests in the region."

On the contrary, any undue campaign focus on the embassy move will only highlight an issue long obscured in the final status negotiations on Jerusalem—that of the restitution of Palestinian properties in West Jerusalem. "We have an entire file on this question that we intend to put on the negotiating table in the near future," says Hussein. "So our campaign will not only be against the move of the embassy to Jerusalem. It will be in the context of all

our demands for Jerusalem, including all the properties owned by Palestinians in West Jerusalem."

That file is burgeoning. Based on research done by Orient House and several Palestinian NGOs and independent scholars, the current estimate is that some 40 percent of all West Jerusalem properties are privately owned by Palestinian families, with another 36 percent belonging to the Islamic Waqf, Christian churches or the British mandatory government. Only 24 percent belong to Jewish families or trusts.

The Palestinian private properties are the patrimony of the roughly 90,000 Palestinians made refugee in 1948 from Jerusalem's urban neighborhoods and the 39 Palestinian villages of the city's rural hinterland. Today these and their descendants number nearly 200,000 people, with about 90,000 living in East Jerusalem and the West Bank, and some within eyesight of their former homes. For Salim Tamari, who published a book recently on the subject of Palestinian property in West Jerusalem,<sup>1</sup> these are the Palestinians that haunt the phantom city of West Jerusalem. Nor can they be vanquished, whatever the political compromises the PLO has been forced to make on Jerusalem.

"Most Israelis think that the Palestinian leadership, by accepting East Jerusalem as the future capital of Palestine, has given up any claim to West Jerusalem. But ... accepting Palestinian sovereignty in the

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<sup>1</sup> The book is *Jerusalem 1948: The Arab Neighbourhoods and their Fate in the War*, ed. Salim Tamari (Jerusalem: Institute of Jerusalem Studies and Badil Resource Center, 1999).

eastern part of the city in no way compels the Palestinian leadership to forget property claims and the Palestinians' right to return to the western part of the city."

### **"They are wasting their time"**

It is an oblivion Israel will seek to maintain in any impending agreement on Jerusalem, be it final or "interim." Whatever the specific dispensation, most liberal or progressive Israelis believe (or rather hope) the basic "ingredients" or contours will be similar to the "understandings" on the city reached in October 1995 between Israel's current Justice Minister Yossi Beilin and the PLO's Secretary-General, Mahmoud Abbass (Abu Mazen).

Unable to agree on the final status of the city, Beilin described the "understanding" on Jerusalem as "a maintenance of the status quo but with an agreement to change the status quo in the future." In the meantime, Palestinian residents of East Jerusalem would be granted citizenship of a Palestinian state, a borough municipality would be set up for Palestinian areas in East Jerusalem and a Palestinian authority would be the "dominant power" in the Haram al-Sharif. In return, the Palestinians would recognize West Jerusalem as the capital of Israel and give up the right of return to "sovereign Israel," though not to the territories of a Palestinian state.

This would certainly ease the headache of the move of the U.S. Embassy to Upper Baq'a. But it would leave Palestinian refugees—including those from West Jerusalem (which for Beilin is an integral part of "sovereign Israel")—bereft of all rights save that of compensation. And it is

utterly unacceptable, says Tamari.

"The Beilin-Abu Mazen document ... is very troubling, partly because of the way it was reached and partly because it does not address the fate of the refugees themselves or of their properties. Palestinians are not raising issues such as their forced removal from West Jerusalem because they are 'weepers' or people who dwell on past grievances, but precisely because the conditions of the refugees are still there. The people are still there, their homes are still there, and their homes have been taken over by people who at the same time are claiming Jewish properties in East Jerusalem. This is the intolerable situation that the alleged Beilin-Abu Mazen document does not address."

Israel's present Minister for Jerusalem, Haim Ramon, has floated a variant of the Beilin-Abu Mazen deal as his preferred solution for Jerusalem. This too would defer the issue "for a few years" in return for new interim arrangements in the city. It is grounded on the belief that neither his nor any imaginable future Israeli government is going to give up on the claim that Jerusalem must be "united" under "Israeli sovereignty." Nor will Ramon be drawn on the "interim arrangements" he has in mind until and unless the Palestinians "accept the principle of deferral."

Whatever the arrangements, for Tamari they cannot perpetuate what Ramon calls the "status quo almost as it is," neither in East Jerusalem nor in the West.

"What is not acceptable or doable is the contradictory notion that Israel will still have the right to make claims on former

Jewish abodes in East Jerusalem. This will not wash—that Israel can claim properties in territories conquered in 1967 but deny Palestinians their right to recover the vast tracts of land they owned in West Jerusalem, which amount to more than 40 percent of the land there today. Of course, they can impose this solution, but it will not have judicial legitimacy. And I don't think the Palestinian leadership can agree to give in on this point."

Ramon has no objection to an "international initiative" aimed at solving the humanitarian "misery and tragedy of the Palestinian refugees." But he balks at Palestinian demands of restitution and repatriation that admit even a partial Israeli political and moral responsibility for the fate of the refugees, whether in West Jerusalem or anywhere else. If the Palestinians believe they will eventually extract such an Israeli recognition, "they are wasting their time," says Ramon. Nor, unlike Jerusalem, does he want the refugee question deferred. He wants it closed, now, in the Framework Agreement.

"And I'll tell you why. If we postpone the refugee issue, we are not ending the conflict. And if we recognize the right of return, we are in effect recognizing a Palestinian right not just to the 1967 borders but to all the state of Israel. Look, a peace treaty is not a verdict in the court of history as to who was responsible. They say we are responsible—we say them. That's not the issue. A peace treaty is an agreement for reconciliation. If you want history to dictate the future of your children, it means the future of your children will be the same as your history."

### **"I'd return there today, this minute"**

It is precisely because Palestinian refugees—whether in Abu Dis or Ain al-Helweh—do not want the next fifty-two years to be "the same" as the last that they are likely to scorn Ramon's take-it-or-leave-it ultimatum, as would any Palestinian leadership that claims to represent them.

It is certainly not a "reconciliation" acceptable to Ibrahim Mattar, an "absentee" from West Jerusalem and "resident" of the Israeli part of Ezariyyeh. He shows me the beautiful turn-of-the-century Arab houses of his wife's grandfather, Nakliḥ Cattān, and that of his son, the Palestinian writer, Henry Cattān. They sit in a plush Jewish residential area on the eastern side of the Hebron Road, a mere stone's throw from the Allenby Barracks. "My mother-in-law still has the deeds to these properties," he says, with a shake of the head. "The Israelis call us absentees, not refugees. I don't know what we are. I do know we want our homes back."

Nor does Ramon's desire for "closure" carry much weight with Yousef Raheel, a newspaper distributor and "resident" of Shu'fat in East Jerusalem. It was his aunt, Latifah, who rented her parcel of land in Upper Baq'a to the British Army, "in the 1920s I think—I don't know, it was before I was born."

But Raheel is less forgetful about the home in 'Ayn Karim he and twenty-five members of his family fled one night in April 1948 in the wake of the Deir Yassin massacre—"that bloody Deir Yassin," he says reproachfully. "It was a very nice house," he recalls. "Two floors, eight rooms



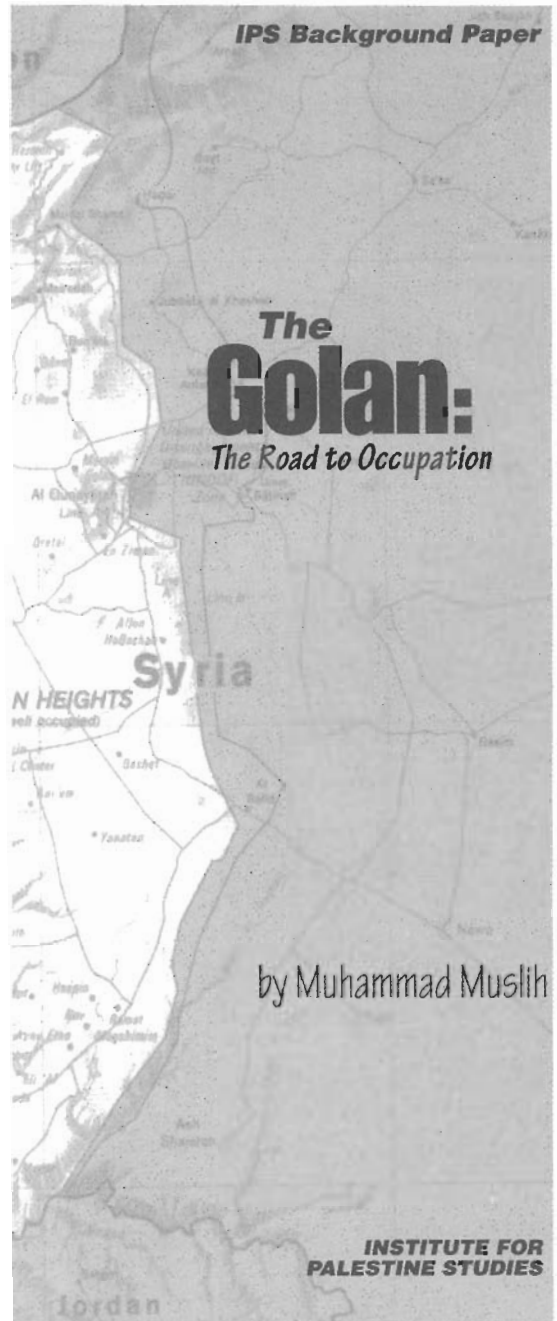
with a garden-right in the center of 'Ayn Karim, near the churches." Today it is a Biblical museum. "I wouldn't accept compensation for that house," he says. "Nor would I return to it tomorrow. I'd return there today, this minute—and so would most of the other families from 'Ayn Karim."

Present, absentee, refugee, resident—the Palestinians of West Jerusalem may be all these or none, but they are not ghosts. On the contrary, as the day nears when the fate of the their city is decided or again deferred they are ready to make a case for their properties in West Jerusalem based on real histories, real ownership deeds, real rights and a real, living people. It may turn out to be a claim of more durable reality than those political illusions that believe a freshly minted and foreign funded Parliament will persuade Palestinians to "mistake" Abu Dis for sovereignty in East Jerusalem. Or that a move of U.S. "diplomatic facilities" to Upper Baq'a or anywhere else in Jerusalem can "unite" a city whose life and land is disputed in the west, occupied in the east and fractured at the heart.

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## The U.S. Embassy Move



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