

The Ownership of the U.S. Embassy Site in Jerusalem

Walid Khalidi

Editors' note: When the issue of moving the U.S. embassy to Jerusalem first emerged in the 1990s, the noted Jerusalem historian Walid Khalidi wrote a study on the ownership of the proposed site. Since the topic surfaced now again, JQ is republishing key portions of the study as a reminder that the proposed location is contested.

The UN General Assembly Partition Resolution of 29 November 1947 envisaged the creation of a Jewish and a Palestinian state and a *corpus separatum* under UN trusteeship for Jerusalem and its environs. The Jerusalem *corpus separatum* was not to be part of either the Jewish or the Palestinian state. Indeed, the Latin American countries, which constituted the largest single bloc of members of the General Assembly at the time, set as a condition for their agreement to partition Palestine (in other words, for their agreement to the creation of a Jewish state in Palestine) that the *corpus separatum* of Jerusalem *not* be a part either of the Jewish or the Palestinian states. The *corpus separatum*, which extended beyond the municipal boundaries of Mandatory Jerusalem, had a population of 100,000 Jews and 105,000 Palestinians, while Jewish property ownership within the *corpus separatum* was 6.6 percent.¹ Within Mandatory municipal Jerusalem itself, overall Jewish ownership had not exceeded 24 percent. As a result of the fighting in the last months of the Mandate, however, Jewish forces succeeded in capturing 84.13 percent of Mandatory municipal Jerusalem – what became known as West Jerusalem – within which Jewish land ownership approached 30 percent.²

What was left in Arab hands – East Jerusalem – constituted 11.48 percent of what had been municipal Jerusalem under the Mandate. The balance, 4.39 percent of the total, was a no-man's-land between the two sectors during the period 1949–1967, i.e., between the Israel-Jordan Armistice Agreement and the conquest of East Jerusalem in the June 1967 war.³

U.S. policy between 1949 and 1967 shifted from support of the *corpus separatum* under UN trusteeship to the de

facto acceptance of the partition of Jerusalem into the western sector occupied by Israel and the eastern sector occupied by Jordan. There was, however, no formal recognition of the sovereignty of either state in the sector under its occupation.

Soon after the 1967 war, Israel expanded municipal East Jerusalem from 6 km² to 73 km² of West Bank land. Since then, Jewish colonization of East Jerusalem and its environs has taken place within three concentric circles: an innermost circle comprising the 73 km² within the extended municipal boundaries (Municipal Jerusalem) and a middle and an outer circle comprising 330 km² and 665 km² of the West Bank and known as Greater and Metropolitan Jerusalem, respectively.⁴ The number of Jewish colonists inside the innermost circle has risen since 1967 from zero to about 180,000 today, which is approximately the current number of Palestinian residents within the same area. The number of Jewish colonists in the two outer circles combined has risen since 1967 from zero to about 60,000. Although Israel has not formally annexed the Jewish colonies in these two outer circles, blocs of these colonies have been brought under the jurisdiction of the Israeli Jerusalem Municipality and have been linked to it infrastructurally and through bypass roads and tunnels reserved for exclusive use by Jews.

Since 1967, Israel has tirelessly proclaimed its determination to keep “united” East and West Jerusalem as its “eternal capital.” This objective has been backed by resolutions of all the World Zionist Congresses that have met in Jerusalem since 1967, i.e., the twenty-seventh Congress in 1968 through the thirty-fourth Congress in 1998. The delegates to the World Zionist Congress are 38 percent Israeli and 29 percent American Jewish, with the balance being from the rest of the world.

Conversely, the international community, through more than one hundred resolutions in the UN General Assembly and the Security Council and through the European Union and the Vatican, has consistently rejected Israel’s unilateral measures in East Jerusalem and has repeatedly affirmed the applicability of the Fourth Geneva Convention and the laws of belligerent occupation to East Jerusalem. Until the Clinton administration, successive U.S. administrations also consistently refused to recognize Israeli sovereignty over East Jerusalem and have endorsed the applicability of the Fourth Geneva Convention and the laws of belligerent occupation to it. The Clinton administration, on the other hand, has repeatedly declared that the fate of Jerusalem, both East and West, is subject to the outcome of final status negotiations between the Palestinians and the Israelis, but it has also been deafeningly silent on the applicability of the Fourth Geneva Convention to East Jerusalem.

It is within the context of Israel’s claim to “united Jerusalem” that pressure has been mounting on the United States to transfer its embassy from Tel Aviv to Jerusalem. Until now, only two countries – Costa Rica and El Salvador – have relocated their embassies there; these are the only countries that have officially recognized Israeli sovereignty over West Jerusalem. Indeed, even the U.S. administration has to date not recognized Israeli sovereignty over West Jerusalem.

Starting from the early 1970s, the main pro-Israel lobbying group in the United States, the American Israel Public Affairs Committee (AIPAC), has vigorously lobbied the U.S.

Congress on the embassy issue. But up until 1988, the U.S. Congress, while repeatedly passing resolutions indicating its support for transferring the embassy to Jerusalem, was unable to reach agreement on legislation mandating it. With the so-called Helms Amendment of 26 July 1988, which in October 1988 became part of Public Law (PL) 100-459, the path was opened for two “diplomatic facilities” to be built simultaneously in Tel Aviv and Jerusalem, either of which could be used as the U.S. embassy subject to the discretion of the president.

Within a few months, on 18 January 1989, on the basis of the Helms Amendment, an agreement was signed between Israel and the United States according to which a plot of land in West Jerusalem, 31,250 m² (7.7 acres) in size, was leased to the U.S. government for a rent of \$1 per annum for ninety-nine years renewable. The fifteen-page “Land Lease and Purchase Agreement” referred only to “the Jerusalem property,” but almost immediately reports surfaced – later confirmed – that the land in question was located in what was known as Allenby Barracks, the site of the British army’s Jerusalem garrison during the Mandate.

Further progress on the embassy soon snagged on differences between the United States and Israel on the stated purpose of the “diplomatic facility” in Jerusalem: the United States wanted it to remain vague, while Israel demanded a clear stipulation “that the project will become an embassy.” It was thus that the entire issue remained stuck in Israel’s Planning Committee as of 1992. With breakthroughs on the Palestinian-Israeli negotiating track, however, Prime Minister Yitzhak Rabin decided in the fall of 1994 that the disagreements over the issue were unimportant and that the two sides should move forward.⁵

Then, on 8 May 1995, Senator Robert Dole, speaking at an AIPAC meeting, dramatically announced his intention to introduce a bill in the Senate the following day providing for the relocation of the U.S. embassy to Jerusalem. On 9 May 1995, the Senate passed the bill, which became the Jerusalem Embassy Relocation Act (PL 104-45) on 23 October 1995.

Public Law 104-45 recognized Jerusalem as the “undivided,” “united,” and “reunited” capital of Israel and ordained the opening of the embassy no later than 31 May 1999. According to the law, as of FY 1999, the State Department’s maintenance and building budget worldwide would be cut by half until the embassy had opened; \$100 million were allotted for the building of the embassy. The president was granted a waiver authority to suspend the punishment of the State Department for periods of six months each if he found it in the “national security interests of the United States” to do so. At the time of its passage, Secretary of State Warren Christopher declared the act “unconstitutional” because of its invasion of presidential prerogative.⁶ Indeed, the Clinton administration has exercised its waiver authority on the grounds that the immediate relocation of the embassy would prejudice the outcome of negotiations ongoing between the Palestinians and the Israelis.

Questioning the U.S.-Israeli Lease

Ever since the signature of the 1989 lease agreement and the insistent reports linking the site to the Allenby Barracks, Palestinian circles have questioned the lease's legality on the grounds that the site of the envisaged embassy was Palestinian refugee property confiscated by the Israeli authorities, along with other refugee properties, since 1948. More particularly, it was alleged that the site was part of an Islamic *waqf*.

The first formal challenge came on 31 May 1989, when Michael Saba, president of the Arab-American Attiyeh Foundation, wrote to the Hon. Lee Hamilton, chairman of the House Subcommittee on Europe and the Middle East, pointing out that the lease agreement was a tacit admission on the part of the United States that Israel had title to this land. He also expressed concern that the agreement might constitute a change of U.S. policy on the final status of Jerusalem. Hamilton passed Saba's letter on to the State Department, and on 28 June 1989, Janet G. Mullins, assistant secretary of state for legislative affairs, wrote to Hamilton making inter alia the following points: (1) The property was located within the portion of the city administered by Israel prior to 1967 and was formerly used by the British army as barracks and in more recent times by the Israeli police. (2) The State Department was "aware of claims that Islamic Trust (Waqf) holds an interest in a portion of the agreed site in Jerusalem," but they have not been able "to locate any record of or support for this claim *during a thorough title search completed by us.*"⁷ (3) The issue of moving the embassy would be addressed "only in the context of a negotiated settlement of the West Bank and Gaza."

On 21 July 1989, Francis A. Boyle of the University of Illinois sent Hamilton a memorandum on the legal implications of the lease agreement, arguing that international laws of belligerent occupation, not Israeli domestic law, were applicable to Jerusalem; that the expropriation of *waqf* or private property in Jerusalem was illegal; that the lease agreement itself was illegal; and that Congress must not provide funds for the implementation of the agreement and should hold public hearings on it as soon as possible. Again, Hamilton passed Boyle's memorandum on to Mullins, who responded on 6 September 1989. Mullins indicated that the United States "has not accepted the sovereignty of any state over any part of Jerusalem and has opposed unilateral acts by any state in the area to change the status of Jerusalem." She noted, however, that the United States "acknowledged the practical necessity of administration of West Jerusalem, pending the settlement of its status" and that the long-standing position of the United States "is that the law of belligerent occupation applies to East Jerusalem, which was occupied by Israel in 1967." As to the *waqf* claim, she repeated that "a thorough title search" had been conducted, and "we have located no record of or support for a Waqf claim." As to possible private claims, "we are unaware of such claims." The government of Israel "would be obligated under Israeli law to compensate any private claimants presenting valid pre-existing claims to interests in the property." This correspondence, with supporting documentation, was subsequently published by Anis F. Kassim in the *Palestine Yearbook of International Law*.⁸

After the passage of the Jerusalem Embassy Relocation Act of 1995, the issue was

taken up again by a group of Palestinians, including Rashid Khalidi, Issam Nashashibi, Philip Mattar, and this writer. At an early stage, information concerning *waqf* ownership of the site was communicated to columnists Rowland Evans and Robert Novak, who published a comment on the subject under the title “Another Time Bomb in Jerusalem.”⁹ But many details concerning the site required investigation, and a general plan of action was drawn up by this writer involving research in the archives of the United Nations Conciliation Committee on Palestine (UNCCP) at the United Nations, the State Department, the National Archives (TNA) of the United Kingdom in London, the Land Registry Records (Tapu) in Jerusalem, and the family papers of the heirs of the owners of the site who could be identified.

Locating the Embassy Site

As already noted, the lease agreement referred to the prospective site of the embassy in Jerusalem only as the “Jerusalem property” and indicated that annex A to the agreement would more particularly describe the property in question. But while the text of the agreement had been obtained early on thanks to the persistent efforts of Gene Bird of the Council for the National Interest, annex A was not released, and Bird’s repeated requests to the State Department and resort to the Freedom of Information Act did not immediately bear fruit.

Nonetheless, given the confirmation in Assistant Secretary for Legislative Affairs Mullins’s June 1989 letter that the embassy site was within the Allenby Barracks, the Institute for Palestine Studies commissioned the Israeli Palestinian scholar Nur Masalha to research the subject in the TNA in London. Masalha’s research revealed that (1) the greater part of the Allenby Barracks was occupied by bloc 30113 in the Mandate’s land records;¹⁰ and (2) bloc 30113 was subdivided into eight parcels numbered 10, 11, 17, 18, 19, 20, 21, and 22. Maps found by Masalha indicated the locations, sizes, and configuration of these eight parcels within bloc 30113.

In addition, Masalha’s research at the TNA demonstrated that with the exception of parcel 17, all the other parcels were described in the British maps as “hired land” (leased land). Parcel 17 was described as “War Department, freehold.” The size of parcel 17 was given as 32,246 m². The maps providing this information were not dated but were clearly executed after the 1949 Israel-Jordan Armistice Agreement, since they showed the armistice lines. The TNA documents revealed lengthy negotiations on parcel 17 between the British and Israeli governments during the 1950s and 1960s, with Israel claiming ownership as the successor government to the British in Palestine, and Britain insisting that parcel 17 belonged to the War Department in London and not to the Palestine Mandatory Administration. Britain finally prevailed, and Israel agreed in April 1965 to pay the sum of £140,000 for the purchase of parcel 17.¹¹

It should be noted that parcel 17 is shown in the Jerusalem Land Registry Records to have been part of an Islamic *waqf* when it was requisitioned by the British high commissioner of Palestine on 27 September 1930.¹² On 24 November 1942, the British

high commissioner transferred parcel 17 to the ownership of the War Department in London by “sale without consideration” (i.e., for nothing). It is therefore very moot whether the ownership by the War Department of parcel 17 and its subsequent “purchase” by Israel from the British government had any leg in equity or international law to stand on. Nonetheless, for the sake of simplicity in this report, we shall assume that parcel 17 was War Department “freehold.”¹³

Meanwhile, additional information on the constituent parcels of 30113 was being culled from the records of the UNCCP. This body had been created under the 11 December 1948 UN General Assembly Resolution 194 (iii). The United States had voted in favor of the resolution and was one of the three permanent members of the UNCCP, along with France and Turkey. The committee was charged, inter alia, with political conciliation and with implementing the section of Resolution 194 relating to the return and/or compensation of the Palestinian refugees.¹⁴

It was in this context that the British Mandatory government had turned over to the UNCCP at the UN headquarters in New York all its land records for Palestine, including records inherited from the Ottoman government. These land records were analyzed by a technical committee formed by the UNCCP in 1950, a task that took about ten years and was accompanied by visits of the committee’s experts to Israel and the Middle East. The data compiled by the technical committee identified Palestinian properties, including Palestinian refugee property, in all those areas of Palestine, including West Jerusalem, occupied by Israel at the time of the 1949 armistice agreements. Of particular relevance to our research were the so-called RP/I forms compiled by the technical committee in the tens of thousands. The RP/I forms, entitled “Arab refugee property in Israel: Valuation form for individual holding in urban/rural areas,” included for each parcel of land the following categories: (a) subdistrict, (b) town or village, (c) bloc number, (d) parcel number, (e) owner/owners, (f) share, (g) area in dunams or square meters (1 dunam = 1,000 m²), and (h) estimated value. Copies of this archival material (i.e., the land records, plus the completed RP/I forms) were also made available to some Arab countries (e.g., Jordan) and later to the PLO, whose set was kept in Damascus.

After lengthy negotiations with the UN Secretariat in New York, the Institute for Palestine Studies gained access to the UNCCP archives, including, of course, the data on parcels 10, 11, 17, 18, 19, 20, 21, and 22 of bloc 30113.¹⁵ These records were scrutinized, while at the same time parallel documents in the PLO’s UNCCP set in Damascus were inspected by Issam Nashashibi. The findings with regard to these parcels were then collated.¹⁶

It was from the UNCCP archives and from deeds and records provided by heirs that the precise size of each of the parcels 10, 11, 17, 18, 19, 20, 21, and 22 was established. The sizes of these parcels constituting bloc 30113 were as follows: Parcel 10: 2,570 m²; Parcel 11: 2,738 m²; Parcel 17: 32,246 m²; Parcel 18: 1,516 m²; Parcel 19: 6,715 m²; Parcel 20: 10,492 m²; Parcel 21: 3,102 m²; Parcel 22: 50,395 m²

It will be noted that the constituent parcels of bloc 30113 add up to 109,774 m², whereas the embassy site within the bloc was less than a third of that, or 31,250 m². The question, then, was how to determine the precise nature of the impingement of the proposed embassy

site within bloc 30113. The research during this next phase was conducted with the help of Issam Nashashibi, Nadim Majaj, and particularly Usama Halabi.

The declassification and release of annex A on 16 January 1996 – seven years after the lease agreement and nine weeks after the Jerusalem Embassy Relocation Act became law – provided more clues concerning the exact location of the embassy site but did not resolve the matter. The State Department map – which was released in four sections that had to be assembled¹⁷ – did formally confirm through a legend in Hebrew that a plot of 31,250 m² within bloc 30113 was set aside for a “diplomatic facility.” But the bloc had apparently been reparcelled – neither the configuration nor the numbers bore any relation to the old Mandate parcels. More disappointing was the fact that the map indicated no borders of the embassy site.

The State Department map did, however, contain several clues for locating the site. The map showed a new east-west road cutting across the southern part of bloc 30113. By comparing the State Department map with the TNA map showing the Mandatory parcels, it became evident from landmarks on both maps that the road separated parcels 18 and 19 and the southern portion of parcel 17 from the rest of bloc 30113. In other words, parcels 10, 11, 20, 21, 22, and part of parcel 17 all lay north of the road. Just north of the road, too, and clearly marked in silhouette and in Hebrew script in the State Department map, was the headquarters of the Border Police – an important clue since Janet Mullins had indicated in her correspondence to Lee Hamilton that the site of the U.S.-Israeli lease agreement had been used by the Border Police. An additional clue was provided by a Hebrew legend in the map’s lower right-hand corner, that indicated that a rezoning plan 2954A was being finalized according to which “parcels 5, 6 of bloc 30113” just south of the east-west road had been allotted to the Center of the Economic Organization. From their location on the map, these new parcels clearly corresponded to Mandate parcels 18 and 19. Thus, since these parcels had been allotted to the Center of the Economic Organization, and since the remaining parcels of bloc 30113 as well as the Border Police headquarters lay to the north of the new east-west road, the inference was unavoidable that the embassy site lay north of the east-west road and around the Border Police headquarters. Nevertheless, even if the southern border of the embassy site was congruent with or close to the edge of the east-west road, it still was unclear where the northern border of the site lay within 30113 and how precisely and in what quantities and proportions it impinged on old parcels 10, 11, 17, 20, 21, and 22.

A key to the solution of this problem came with the discovery in Israeli archives of a map dated 1988 clearly showing the reparcelation of bloc 30113 in accordance with plan 2954A – a reparcelation that had not been discernible in the State Department map. Equally important, a Hebrew legend in the upper left-hand corner of the map listed all the new parcels of bloc 30113 and their sizes. Bloc 30113 was now divided into eleven parcels instead of the original eight, though two of the new parcels were very tiny (94 m² each). The new parcels were as follows: Parcel 1: 52,189 m²; Parcel 2: 5,995 m²; Parcel 3: 7,278 m²; Parcel 4: 9,943 m²; Parcel 5: 5,775 m²; Parcel 6: 3,927 m²; Parcel 7: 17,030 m²; Parcel 8: 14,288 m²; Parcel 9: 8,492 m²; Parcel 10: 94 m²; Parcel 11: 94 m²

The area north of the east–west road was divided into six parcels numbered 1, 2, 3, 4,

10, and 11 in counterclockwise sequence. By far the largest was parcel 1. Parcels 2 and 3 were roughly of equal size, whereas 4 was larger than the last two but much smaller than parcel 1. Parcel 11, at the southeast corner of parcel 4, and parcel 10, just west of it, were so small as to be almost invisible on the map.¹⁸ Though it seemed clear that the embassy site was located on these parcels, we knew neither their precise relationship to the old Mandate parcels nor the extent of the site’s impingement on either the new or the old parcels.

It was only with the unearthing of yet another map, as well as the Israeli certificates of registration relating to the parcels in question, that the picture began to clarify. This map, dated 1995, reflected yet another rezoning of the area of bloc 30113 in accordance with a new plan 2954B modifying the earlier plan 2954A. A Hebrew legend on the map indicated that a new consolidated parcel 1, exactly 31,278 m² in size, had been created specifically for use by a “diplomatic facility” out of portions of 1988 parcels 1, 2, 3, 4, and 11 of bloc 30113. The “consolidated parcel” was shown on the map as a striped area around the Border Police headquarters and north of the east-west road. The legend on the map further stated how many dunams in each of the constituent parcels had been used for the embassy site.

The certificates of registration issued by the Israeli Ministry of Justice, Land Registry Department, provided the key for correlating the Mandate parcels with the 1988 Israeli parcels. Summarizing the data in the Land Registry Records with regard to the status of the parcels in question, the certificates specifically mentioned the corresponding parcels in the Mandate registries: parcel 1, for example, was made up of parcel 22 and parcel 11, parcel 2 was made up of parcels 21 and 10, and so on.

The following table shows the relationship between the Israeli and the Mandate parcels, as well as the percentages of the Mandatory parcels used to make the embassy site. Given the impossibility, in view of the available data, of exactly correlating the old and new parcels, the overlap between some old parcels and the embassy site must be expressed as a range.

New 1988 Parcel number (size in m ²)		Old Parcel number (size in m ²)	No. of Dunams of New 1988 Parcel Allotted to Embassy Site	Old Parcel as a % of Embassy Site min.–max.*
1 (52,189)	.	22 (50,395)	11,042	35.29–26.55
	.	11 (2,738)		8.75–0.01
2 (5,995)	...	21 (3,102)	5,005	9.92–7.79
	<i>which is made up of parts of...</i>	10 (2,570)		8.22–6.08
3 (7,278)	.	20 (10,492)	6,013	19.22
4 (9,943)	.	17 (32,246)	9,203	29.47
11 (94)	.	17 (32,246)	15	
Total size of embassy site			31,278	

Table 1: New 1988 Israeli Parcels, Old British Mandatory Parcels, and Their Relationship to the U.S. Embassy Site (1995 Israeli Parcel 1)

The rezoning of the area of Allenby Barracks by Israel since 1948 appears to have taken

place in two major steps. The first was on 16 August 1988 (less than a month after the Helms Amendment paved the way for the embassy transfer), when all the parcels in question were registered, in whole or in parts, in the name of the Israeli Development Authority (IDA) and renumbered in accordance with plan 2954A. The second took place in July 1995, two months after Senator Dole introduced in Congress the bill that was to become the Jerusalem Embassy Relocation Act, when the parcels in question were combined to form the new consolidated parcel 1 – the site of the embassy. The latter rezoning step was undertaken in accordance with plan 2954B “modification 1/89 to local Plan 2954A.”

Efforts to find the history of the parcels’ transfer of ownership uncovered data only for old parcels 10, 21, and 22, the records of the other parcels having been reported as “unavailable.” Nonetheless, the available data are interesting for the light they shed on the Israeli penchant for legal formalities:¹⁹

- Old Parcel 10/New [1988] 2: “sold” on 26 December 1954 by the Custodian of Absentee Property to the IDA.
- Old Parcel 21/New [1988] 2: “sold” on 13 September 1965 by the Custodian of Absentee Property to the IDA.
- Old Parcel 22/New [1988] 1: “requisitioned for public benefit” on 6 February 1969; transferred to the Custodian of Absentee Property on 6 February 1985; registered in the name of the IDA as of 16 August 1988.

All the parcels in question, viz., 1988 parcel 1 (old parcels 22 and 11), 1988 parcel 2 (old parcels 21 and 10), and 1988 parcel 3 (old parcel 20), were submitted en bloc in accordance with plan 2954B (and a variant of it designated plan BM/2954G) to the following committees *concurrently* on the following dates, respectively:

- Building Committee for Housing and Industry, Jerusalem District: 24 April 1995;
- District Planning and Building Committee, Jerusalem: 30 November 1995;
- Local Planning and Building Committee, Jerusalem: 10 December 1996.

It will be noted that the first en bloc submission preceded the Jerusalem Embassy Relocation Act (23 October 1995), while the second and third submissions immediately followed it.

* In the cases of 1988 parcels 1 and 2, the Israeli certificates of registration do not indicate how much land was taken from each old parcel to form the new parcels, only which old parcels were affected. Similarly, while the 1995 map tells how much land was taken from each 1988 parcel to create the embassy site, it does not indicate the amounts taken from the constituent old parcels. Because of these gaps, it is only possible to determine upper-bound and lower-bound figures for old parcels 10, 11, 21, and 22 as percentages of the embassy site. What is unquestionable is that lands from parcels 11 and 22 together make up 35.30 percent of the embassy site, and lands from parcels 10 and 21 together make up 16 percent. Also note that in the case of 1988 parcel 1, the entire 11,042 m² used for the embassy site could not have been taken from old parcel 22 alone, since the certificate of registration for 1988 parcel 1 explicitly states that it was made up of old parcels 22 and 11.

Ownership of the Site

Once the embassy site was determined to impinge on Mandatory parcels 10, 11, 17, 20, 21, and 22 of bloc 30113, it was easy to establish through the UNCCP and Land Registry data the names and shares of the owners of the parcels on 15 May 1948 – the last day of the British Mandate. Before proceeding further, however, a few general observations are in order.

Parcel 17, as we have seen, was purchased by the Israeli government from Great Britain in 1965. For the sake of argument, this parcel – 29.47 percent of the embassy site, as indicated on table 1 – has been assumed to be War Department “freehold.” The rest was “hired land” – rented by the British government from private Palestinian owners until the last day of the Mandate. The first important conclusion, then, is that 70.52 percent of the embassy site is confiscated refugee land.

It will be recalled that the signing of the lease in 1988 was followed by persistent allegations that the Allenby Barracks was on Islamic *waqf* land. In fact, as it turns out, only a portion of the “hired land” was *waqf*. As we have seen, parcel 17 had been *waqf* prior to its requisition by the British government in 1930, and parcel 22 continues to be *waqf*. Both parcel 17 and parcel 22 were part of a *waqf* established on the first of the Muslim month of Shaban of the Hijra year 1139 corresponding to the year A.D. 1724 by Shaykh Muhammad Bin al-Shaykh Muhammad al-Khalili.²⁰

Shaykh Muhammad, born in Hebron (hence his name, Khalil being the Arabic name for Hebron and an epithet of the Prophet Abraham), was the leader of the Qadiri Sufi Brotherhood and perhaps the most famous “holy man” of his time in Palestine. He died in Jerusalem, where he is buried near the Haram al-Sharif. His *waqf* deed, registered in the Muslim Land Registry Records in Jerusalem, stipulates that his Jerusalem property remain the property of his descendants generation after generation, to be shared first by his progeny (male and female) descended from the male line. Should the male line become extinct, the property was to belong generation after generation to his progeny (male and female) from the female line. Should these latter become extinct, the property would revert to the maintenance of the “Muhammadan Oratory” (*zawiya*) in the al-Aqsa Mosque in the Haram al-Sharif, and its proceeds put at the disposal of the poor and the religious students dwelling in the vicinity of the mosque. The shaykh called upon the Almighty to visit anger and retribution upon those who contravene his deed.²¹

Five generations of Shaykh Muhammad al-Khalili’s heirs had succeeded to the inheritance of his *waqf* by the end of the Mandate on 15 May 1948. By that time, only three of the Khalili *waqf*’s beneficiaries were descended from Khalili males; all the others were descended from the female line. With the death in East Jerusalem on 2 October 1993 of Tuham al-Khalili, the last descendant from the male line, all the Khalili heirs are descended from the female line – in other words, of the scores of heirs of the Khalili *waqf* today, not a single one bears the Khalili name.

As noted above, despite the possible irregularities of parcel 17’s requisition by the British government and transfer to the War Department, for the sake of argument we are considering parcel 17 as freehold and no longer *waqf* land. But parcel 22 is indisputably

waqf land and is the largest single parcel of the proposed embassy site. Given the uncertainty as to the exact correspondence of the Mandate and Israeli parcellation, anywhere from 26.55 to 35.29 percent of the embassy site is *waqf* land (or 37.64 to about 50 percent of the “hired land”).²²

All the parcels of bloc 30113 were registered in the Land Registry in accordance with the law regulating the land category to which each belonged. Except for parcel 22, all the parcels belonged to the Ottoman category of “*miri*” land. *Miri* land may be held jointly by two or more shareholders so long as the shares are defined, and it devolves by inheritance to statutory heirs. Unlike *waqf* land, it can be sold. Much of Palestinian land under the Mandate, and, indeed of land in most Arab countries, is *miri* land.²³ As for parcel 22, it belonged to the categories both of “*miri*” and “*waqf*” – the land was *waqf*, and therefore inalienable, but the proceeds were *miri*. As such, parcel 22 was designated in the Land Registry Records and other documents as “*miri mawkufa*,” a term denoting the combination.

In terms of specific ownership, research conducted in the UNCCP archives and the Land Registry Records in the Land Registry Department in Jerusalem showed that parcels 10, 11, 20, 21, and 22 belonged to nineteen Jerusalem families.²⁴ Almost all these families lived in “New Jerusalem,” outside the Old City, mostly in West Jerusalem, occupied by Jewish forces in April–May 1948 before the end of the British Mandate and before the intervention of the Arab regular armies. Of these nineteen families, fifteen were Muslim Arab and four were Christian Arab. Eight of the fifteen Muslim families were beneficiaries of the Khalili *waqf*.

The number of the individual owners of these parcels (as recorded in the Register of Deeds, in certificates of registration, in rental agreements with the British, and in the UNCCP RP/I forms) up to and including 15 May 1948 was seventy-six. Of these seventy-six, twenty-four were beneficiaries of the Khalili *waqf*. Given the Muslim law of inheritance, the total number of the heirs of the original owners today is estimated to be at least 1,000.²⁵

The ownership of each of the parcels affected was vested 100 percent in the names of the recorded owners. A detailed schedule was compiled indicating the specific details of ownership for each of the seventy-six, including the number of shares owned in the parcel in question, the total number of shares involved, the percentage of ownership in the parcel, the size of the share in square meters/dunams, and the supporting documents and their dates. In most cases, genealogies were also compiled.

In addition to the foregoing, personal contacts were made through friends, intermediaries, and family connections to trace the heirs of the owners.²⁶ These contacts yielded further documentation, including (a) “hiring agreements” between the British Mandatory government (represented by the British district commissioner for Jerusalem or the British army) and owners of the parcels in question; (b) correspondence between the two parties (the British government or army and owners), including offers of rental payments made by the British to owners; (c) requests by owners to the British for payment of rental arrears; (d) receipts of rental payments made by the British; (e) certificates of registration based on the Ottoman and British Mandatory Registers of Deeds; and (f)

maps (Ottoman and British) of the site of Allenby Barracks.

The hiring agreements and related correspondence covered the period from the late 1930s until the end of the British Mandate on 15 May 1948. Some British rental payments were made as late as 11 July 1951. Manifestly, the British acknowledged the ownership of the “hired” parcels of bloc 30113: collation between the RP/I forms and this additional documentation left little doubt regarding the ownership status of parcels 10, 11, 18, 19, 20, 21, and 22 of bloc 30113 at the end of the British Mandate.

So far it has been possible to identify about ninety U.S. nationals as heirs of the owners of bloc 30113 including their dependents as well as forty-three with Canadian or European (Austrian, Belgian, British French, German, and Swiss) nationalities. The following table summarizes this data. These figures are expected to rise upon further investigation.

New Parcel Number	Old Parcel Number	No. of Owners on 15 May 1948	No. of U.S. Heirs	No. of Canadian & European Heirs
1	22	24	26–28	1
	11	1	4	9
2	21	47	46–48	26
	10	3	7–8	
3	20	1	5	7–8
Total		76	88–93**	43–44***

Table 2: Original Owners and Their Living U.S., Canadian, and European Heirs and their Immediate Dependents (as of 31 January 2000).

The large number of American citizens is interesting in light of the 12 March 1996 Helms-Burton Act (PL 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.” This act, passed barely six months after the Jerusalem 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.” It is a monument to the cynicism of Senator Jesse Helms and to the folly of foreign policy making by domestic legislation.

Implications

In June 1995, as the research on the site ownership got underway, the American Committee on Jerusalem (ACJ) was established thanks to the generosity of Hasib Sabbagh to include the major Arab-American organizations and other groups concerned about the future of Jerusalem. On 28 October 1999, a letter was addressed on their behalf to Secretary of State Madeleine Albright by George Salem, an attorney with the Washington law firm

** Of this total, the principal heirs number 24–25.

*** Of this total, the principal heirs number 26–27.

Location of proposed U.S. Embassy site in relation to the Old City of Jerusalem

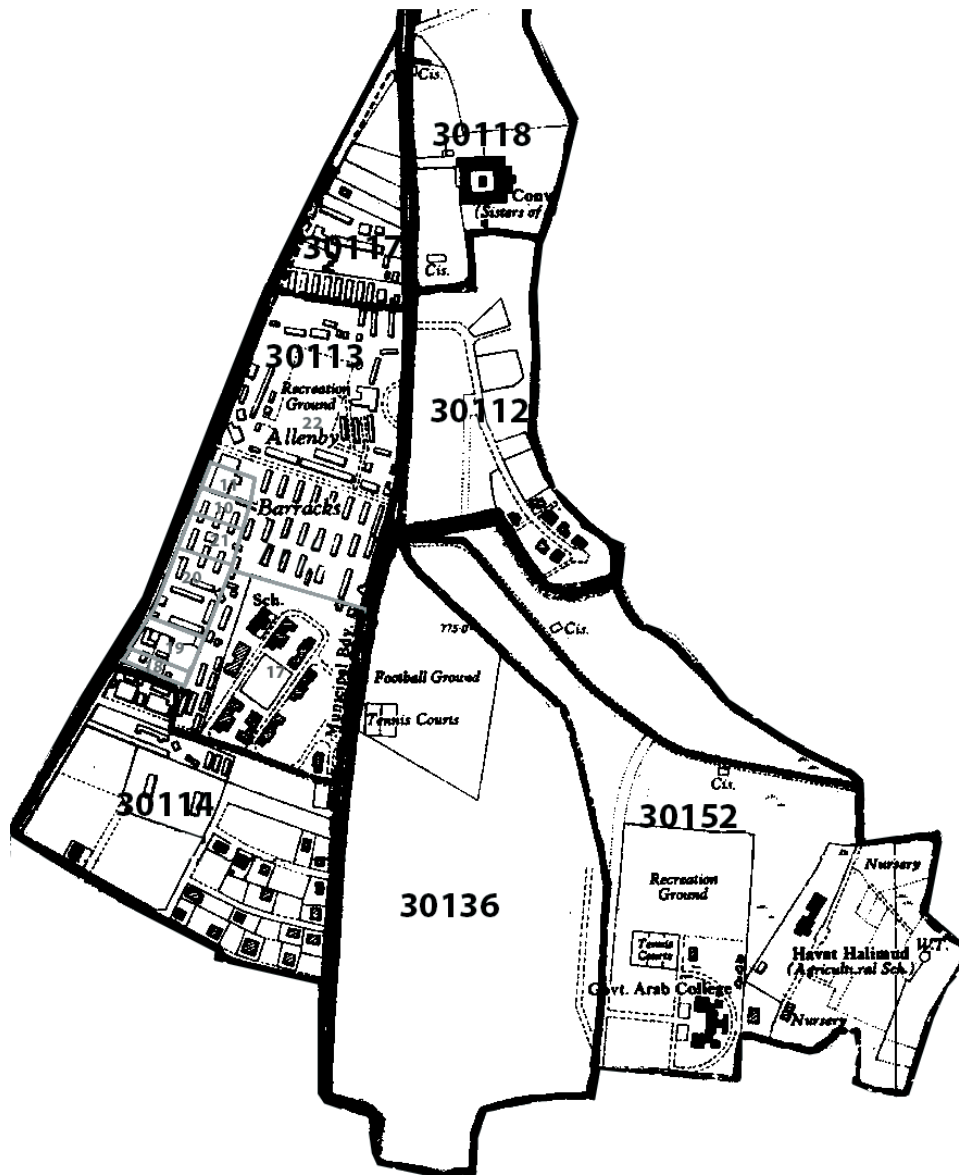


Akin, Gump, Strauss, Hauer, and Feld, outlining the results of this research and requesting a meeting to share the findings with the State Department. When over six weeks passed without a response, a follow-up letter was sent on 17 December 1999. On 28 December, Beth Jones, principal deputy assistant 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 State 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 itself²⁷ and is also belied by the State Department’s payment of the \$1 rental, as reported by the Congressional Research Service.²⁸

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.

For the United States to build its embassy in Jerusalem on confiscated refugee land has implications far beyond the embassy site itself. It impinges on four major aspects of the final status negotiations: Jerusalem, the settlements, refugees, and the size of an eventual

Mandate parcels of Bloc 30113, with surrounding Blocs



Parcels 10, 11, 17, 18, 19, 20, 21, and 22 of Bloc 30113 of Allenby Barracks and the blocs surrounding the barracks during the Mandate. Based on a map with original scale of: 1/10000, re-sized here to fit printing.

Palestinian state. On Jerusalem, the transfer of the embassy to what the Jerusalem Embassy Relocation Act calls “undivided” and “reunited” Jerusalem endorses Israeli sovereignty over West and East Jerusalem. On settlements, it legitimizes the ones Israel has built there. On refugees, it retroactively endorses the wholesale confiscation of Palestinian refugee property throughout Israel since 1948. Finally, it contributes to predetermining the size of a future Palestinian entity by implicitly endorsing Israel’s ever-expanding delineations of Greater and Metropolitan Jerusalem at the expense of West Bank territory. For these reasons, the embassy move gravely undermines the integrity of the American

role in the Middle East peace process, especially since 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 municipal boundaries of West Jerusalem as they have been extended since 1948, pre-1948 Jewish property does not exceed 15 percent of the total. As for East Jerusalem (within the 73 km² of its expanded 1967 borders), pre-1948 Jewish property is under 2 percent of the total.

Walid Khalidi, a founder and trustee of the Institute for Palestine Studies, has taught at Oxford University, the American University of Beirut, and Harvard University. He is an American Academy of Arts and Sciences Fellow.

Endnotes

- 1 Jewish-owned land in the *corpus separatum* amounted to 12,500,000 m² out of a total of 187,000,000 m². Jewish National Fund, *Jewish Settlements in Palestine* (Jerusalem: Jewish National Fund, 1948), ii.
- 2 Sami Hadawi, *Map of Jerusalem* (New York: Palestine Arab Refugee Office, ca. 1951). Hadawi, who had been a senior official in the Mandatory Department of Land Settlement, reproduced an original 1946 British Mandatory map showing the ownership of urban blocs (Arab, Jewish, and mixed) and added a legend spelling out the Jewish and Arab ownership based on Palestine survey maps and Mandatory taxation records.
- 3 Hadawi, *Map of Jerusalem*.
- 4 See Jan de Jong, *Greater Jerusalem: A Special Report* (Washington: Foundation for Middle East Peace, Summer 1997).
- 5 Amnon Barzilay, "What Is the United States Building on the Allenby Base?" *Ha'Aretz*, 25 October 1994, translated in FBIS, 26 October 1994.
- 6 In his letter dated 20 June 1995 to Senator Robert Dole, majority leader, Secretary of State Warren Christopher wrote: "My opposition to this legislation is also strongly rooted on constitutional grounds. The Justice Department's Office of Legal Counsel has issued an opinion to the White House Counsel concluding that the bill would unconstitutionally invade exclusive Presidential authorities in the field of foreign affairs. Because the bill would seek to compel the President to build and open an embassy at a particular site for foreign political reasons, it is incompatible with the separation of powers under the Constitution. This is the same position taken by this and previous administrations on comparable legislative efforts to dictate the location of diplomatic and consular facilities. Accordingly, I would be remiss if I did not counsel the President to protect against the unconstitutional infringement of the prerogatives of his office."
- 7 Emphasis added.
- 8 Anis F. Kassem, ed., *Palestine Yearbook of International Law, Volume 5 (1989)* (Cyprus: al-Shaybani Society of International Law, 1990), 325ff.
- 9 Rowland Evans and Robert Novak, "Another Time Bomb in Jerusalem," *Washington Post*, 2 February 1995, online at www.washingtonpost.com/archive/opinions/1995/02/02/another-time-bomb-in-jerusalem/ff848405-607b-4852-9a17-655f3089f50c/?utm_term=.f22e3cbdfdd9 (accessed 6 June 2017).
- 10 Under The Mandate, Jerusalem was given what was known as an "urban boundary" was divided into 168 "blocs" numbering from 30001 to 30168. These blocs were used by the British administration for taxation purposes and for the identification of properties. The blocs were of varying sizes, and each bloc was divided into parcels, likewise of varying sizes, shapes, and configurations.
- 11 *Exchange of Notes between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Israel on the Settlement of Outstanding Financial Matters*, Treaty Series No. 53 (1965) (London: Her Majesty's Stationary Office, 1965), 12, online at treaties.fco.gov.uk/docs/pdf/1965/TS0053.pdf (accessed 6 June 1967).
- 12 Parcel 17 was part of the Khalili *waqf* (see above). The land was requisitioned from Sa'd al-Din al-Khalili in his capacity as the custodian (*mutawalli*) of the *waqf*.
- 13 Considering that the requisition by the British high commissioner of this parcel in September 1930 would have been for the "public benefit" – i.e., for the benefit of the people of Palestine – it

- is not easy to see how this benefit was achieved between (a) the transfer of ownership to London and (b) the pocketing by London of £140,000.
- 14 The relevant section of UN General Assembly Resolution 194 (iii) mandated that “the refugees wishing to return to their homes and live at peace with their neighbors should be permitted to do so at the earliest practicable date and that compensation should be paid for the property of those choosing not to return and for loss or damage to property.”
 - 15 Because of regulations of the United Nations, access to the files could only be granted through an official member of or observer to the UN; this request was made on the Institute for Palestine Studies’ behalf through the PLO mission in New York. Philip Mattar, Michael Fischbach, Salim Nasr, and Maurice Saadeh were particularly helpful during this stage of the research.
 - 16 Prof. and Mrs. Amr Jaroudi were very helpful in this collation.
 - 17 The map was of bloc 30113 and parts of the adjacent blocs: 30114 to the south and 30136 and 30152 to the East.
 - 18 Parcel 7 lay just south of the east–west road and to the east of parcels 5 and 6; parcel 8 was the road skirting the western boundary of bloc 30113; parcel 9 was the east–west road traversing bloc 30113; and parcel 10 was just to the west of parcel 11.
 - 19 The following details were gathered with the help of Usama Halabi from the Land Registry Records (Jerusalem).
 - 20 *Waqf* property, which is governed by Islamic religious law and then, having been dedicated in perpetuity by a specific deed to a particular purpose, either charitable or familiar, is irrevocable. It can be leased but cannot be disposed of by sale or gift.
 - 21 Ishaq Musa al-Husayni and Amin S. Abu Layl, eds, *Wathiqa madisiyya tarikhiyya: tahtawi ‘ala tarjamat al-Shaykh Muhammad al-Khalili wa bahth fi al-waqf wa al-hikr wa al-khuluw, wa thabata bi-kutub al-Shaykh al-Khalili, wa ahwal al-Quds fi al-qarn al-thamina ‘ashara al-miladi* [A Jerusalem Historical Document: Containing the Biography of Shaykh Muhammad al-Khalili and Research on the Waqf, Quitrent, and Khuluw as Established in the Books of Shaykh al-Khalili, and the Conditions of Jerusalem in the Eighteenth Century A.D.] (Jerusalem: al-Quds University, 1979).
 - 22 Given that 1988 Israeli parcel 1 comprises Mandate parcels 22 and the far smaller parcel 11, the *waqf* share (parcel 22) would be 26.55 percent of the site if all of parcel 11 were used and would increase as the percentage used of parcel 11 decreases to zero. The same principle would apply to calculating the percentage of old parcels 21 and 10.
 - 23 For *miri* land, see Government of Palestine, *Survey of Palestine*, vol. 1 (Jerusalem: His Majesty’s Stationery Office, 1946; reprint, Washington: Institute for Palestine Studies, 1991), 229ff.
 - 24 The input of Issam Nashashibi with regard to parcel 22 and of Usama Halabi with regard to the other parcels was particularly useful.
 - 25 To give just one example; from the twenty-four beneficiaries of the Khalili *waqf* at the end of the Mandate, one of the three heirs descended from the male line was Amira Khalili, who married Raghbi al-Khalidi. When she died in the early 1950s, her share passed to her six sons and one daughter, and upon their deaths to their thirty-six children. The one share in 1948 has thus become thirty-six shares today.
 - 26 Particularly helpful in this detective work were Camille Abusuwan; Hanna Batatu; Nasib Bulos; Aysha, Nabil and Shukri Dajani; Rashid, Kamil, and Daud Khalidi; Musa Khoury; Afif Safiyeh; George Hishmeh; Maurice Tabri; Issam Nashashibi; Salim Tamari; and Saleh Shibl.
 - 27 The preamble of the lease agreement states: “Whereas the Government of the United States wishes to construct new diplomatic facilities in Jerusalem and in the Tel Aviv region; and whereas the Government of the United States has requested the Government of Israel to allocate lands for this purpose; and whereas the Government of Israel wishes to facilitate the construction of the diplomatic facilities. . . . Now therefore the parties *hereby enter* [emphasis added] into the following Land Lease and Purchase Agreement.”
 - 28 Clyde Mark, “Jerusalem: The U.S. Embassy and PL 104-45,” Congressional Research Service, 22 September 1999, 1, online at digital.library.unt.edu/ark:/67531/metacrs993/m1/1/high_res_d/RS20339_1999Sep22.pdf (accessed 7 June 2017).