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Jerusalem: The U.S. Embassy and P.L. 104-45

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Summary

Section 3(a) of P.L. 104-45 of November 8, 1995, states that it is the policy of the United States that the U.S. embassy in Israel should be moved from Tel Aviv to Jerusalem by May 31, 1999. Section 3(b) bans the expenditure of 50% of the State Department's FY1999 appropriation for "Acquisition and Maintenance of Buildings Abroad" until the Secretary of State notifies Congress that the U.S. embassy has opened in Jerusalem. Section 7 authorizes the President to waive Section 3(b) for two 6-month periods if such a waiver is necessary for national security interests. The President exercised the waiver on June 18, 1999, and the embassy remains in Tel Aviv. This report will be updated as needed.

Status of the U.S. Embassy in Israel

Public Law 104-45, effective November 8, 1995, states that it is the policy of the United States that the U.S. embassy to Israel should be moved from Tel Aviv to Jerusalem by May 31, 1999. To date, the United States embassy in Israel remains in Tel Aviv. According to State Department sources, there is no immediate plan to move the embassy or to begin construction of a new embassy.

As part of a plan to replace the current old and inadequate embassy, the United States and Israel signed an agreement on January 18, 1989, that calls for Israel to provide two sites, one in Tel Aviv and one in Jerusalem, suitable for a U.S. embassy and a consulate. In return, the United States will give Israel the Tel Aviv site of the present embassy. The United States will purchase the new Tel Aviv site, and will lease the Jerusalem site for 99 years at \$1 per year (renewable for another 99 years at \$1 per year). Israel has offered a Tel Aviv site, but the United States rejected the site because of security considerations. Also, Israel has made available the so-called Allenby tract in southwest Jerusalem (within the pre-1967 Israeli boundaries of the city of Jerusalem) for the construction of an embassy. According to the terms of the 1989 agreement, the United States has been paying \$1 per year to lease the 7.75-acre Allenby site. But the site has been rejected by the United States as unsuitable for a U.S. embassy because of security considerations. (Unofficial reports suggest that other buildings on higher ground bordering the Allenby tract would

look down on the embassy and compromise its security.) Also, Arab owners of the Jerusalem tract claim that it is part of a religious trust (a Waqf) that cannot be transferred to another party, although the State Department disputes the Waqf claim.

Background

In November 1947, the United Nations General Assembly recommended in Resolution 181 that Palestine be partitioned into an Arab state and a Jewish state. Resolution 181 also recommended that the city of Jerusalem not be included in either state and become a “corpus separatum” because of its religious significance to Muslims, Christians, and Jews. In April 1948, the U.N. Trusteeship Council drafted a statute for the international city. But in the course of the 1948-1949 war, the Jews of Israel seized the western portion of the city and the Arabs of Jordan seized the eastern portion. In December 1948, the United Nations passed Resolution 194, and in December 1949 passed Resolution 303, both of which reconfirmed that Jerusalem should be an international city. But Israel declared Jerusalem its capital in 1949, and Jordan annexed the West Bank, including east Jerusalem, in 1950. Israel annexed the eastern portion of the city following the 1967 war. Only Pakistan and the United Kingdom recognized Jordan’s annexation of the West Bank and east Jerusalem in 1950, and no country recognized Israel’s annexation of Jerusalem in 1967. Four countries have embassies in the Jerusalem area; other embassies are in Tel Aviv, Ramat Gan, or Jaffa.

Israel claims that Jerusalem is its capital, and that the city will not be redivided as it was between 1949 and 1967. Palestinian Arabs seek an Israeli withdrawal from the eastern portion of the city seized in 1967, and want to establish the capital of a Palestinian state there. The Palestinians and Israel agreed in the 1993 Declaration of Principles that Jerusalem, along with Israeli settlements in the occupied territories, boundaries, and refugees, would be among the subjects of permanent status negotiations. The permanent status negotiations reopened on September 13, 1999, with the Israeli and Palestinian stated aim of completing an agreement within one year.

United States Policy Toward Jerusalem

The United States voted for United Nations General Assembly Resolutions 181 and 194 but voted against Resolution 303 that reaffirmed the corpus separatum because the United States believed that the corpus separatum was no longer feasible after Israel and Jordan had established a political presence in their respective halves of the city. The United States opposed Israel’s moving its capital from Tel Aviv to Jerusalem in 1949, opposed Jordan’s 1950 announced intention to make Jerusalem its second capital, and opposed Israel’s 1967 annexation of the eastern portion of the city.

Following the 1967 war, in which Israel seized the eastern half of the city from Jordan, the United States proposed that the future of Jerusalem should be the subject of a negotiated settlement. Subsequent U.S. administrations have adhered to the same policy, that Jerusalem’s future should be negotiated and not be the subject of unilateral actions. Consequently, the United States has avoided any action, such as moving the U.S. Embassy from Tel Aviv to Jerusalem, that could prejudice the negotiations.

Congressional Actions Toward Jerusalem

Over the years, Congress generally has supported Israeli claims to sovereignty over all of the city and has opposed the policy of avoiding actions that might prejudice negotiations. In 1984, Congress passed H.Con.Res. 352 stating the sense of Congress that the U.S. embassy should be moved from Tel Aviv to Jerusalem. The Senate attached an amendment to the Diplomatic Security Act in 1985 stating that a new U.S. embassy serving Israel could be built only in Jerusalem. But House-Senate conferees could not agree on legislative language, and subsequently struck a compromise by banning site acquisition, development, or construction of any diplomatic facilities in Jerusalem, the West Bank, or Israel (Section 414 of P.L. 99-399, 27 August 1986, and repeated the next year in Section 130 of P.L. 100-204, December 22, 1987). In 1988, Congress reversed itself, and authorized funding for construction of two facilities, one in Jerusalem and one in Tel Aviv, with the understanding that the President would select which of the two would be the embassy (Section 305 of P.L. 100-459, October 1, 1988).¹

Congress passed S.Con.Res. 106 and H.Con.Res. 290 in 1990, stating that Jerusalem is the capital of Israel and that the city should remain undivided. A similar resolution, S.Con.Res. 113, passed both houses in 1992. In 1993, the House and Senate passed H.R. 3474 stating that the United States should veto any United Nations resolutions that called Jerusalem “occupied territory,” but the section was deleted in conference. In addition to legislation, Members of Congress have sent letters to the President voicing their opinion about Jerusalem. On October 5, 1994, 260 House Members wrote to President Clinton stating their belief that Jerusalem is the capital of Israel, and 93 Senators wrote to Secretary of State Warren Christopher on March 20, 1995, urging that the embassy be moved from Tel Aviv to Jerusalem. 84 Senators voiced a similar opinion to the President in a July 23, 1999 letter.

Section 725 of S. 886, the foreign relations authorization bill for FY2000, 2001: (1) authorizes \$50 million each year for FY2000 and FY2001 for construction of a U.S. embassy in Jerusalem, (2) prohibits use of funds for a U.S. consulate in Jerusalem unless the consulate is under the authority of the U.S. Ambassador to Israel, (3) states that publications funded by the bill that list countries and capitals must name Jerusalem as the capital of Israel, and (4) provides for passports issued to U.S. citizens born in Jerusalem to list their birthplace as Israel. S. 886 passed the Senate in June and is awaiting conference with H.R. 2415 as of September 15, 1999.

P.L. 104-45: A Summary

The most significant legislation dealing with Jerusalem is P.L. 104-45, which became law on November 8, 1995, without the President’s signature.

- Section 3(a) states that it is the policy of the United States that Jerusalem should be undivided with protection for religious and ethnic rights, that Jerusalem should be recognized as Israel’s capital, and that the U.S. embassy should be moved to Jerusalem by 31 May 1999.

¹ See: Congressional Record, vol.134, part 13, July 26, 1988, p. 18739.

- Section 3(b) states that not more than 50% of FY1999 funds appropriated to the Department of State for acquisition and maintenance of buildings abroad may be obligated until the U.S. embassy in Jerusalem is opened.
- Section 4(a) sets aside \$25 million in FY1996 for construction and other costs of the embassy in Jerusalem, and Section 4(b) sets aside \$75 million in FY1997 for construction and other costs of an embassy in Jerusalem.
- Section 5 directs the Secretary of State to submit a report to Congress detailing phases in construction of an embassy in Jerusalem and an estimate of the costs. Section 6 directs the Secretary to report progress toward establishing the embassy in Jerusalem every six months.
- Section 7 (a)(1) gives the President the authority to waive Section 3(b) for 6 months providing the suspension is necessary to protect the U.S. national security interests.

Exercising the Waiver

On June 18, 1999, the President signed Presidential Determination 99-29, exercising the waiver in Section 7(a) of P.L. 104-45 to suspend Section 3(b) of P.L. 104-45 for a period of six months. Section 3(b) of P.L. 104-45 says: "Not more than 50 percent of the funds appropriated to the Department of State for fiscal year 1999 for "Acquisition and Maintenance of Buildings Abroad" may be obligated until the Secretary of State determines and reports to Congress that the United States Embassy in Jerusalem has officially opened." The Presidential Determination released the FY1999 funds and is interpreted by many to have side-stepped the responsibility stated in Section 3(a) to move the embassy from Tel Aviv to Jerusalem.

Interpretation of P.L. 104-45

The U.S. embassy remained in Tel Aviv after the May 31, 1999 deadline stated in Section 3(a) of P.L. 104-45. Some argue that the waiver authority in Section 7 of the Act includes the obligation to move the embassy stated in Section 3(a) as well as the funding restriction in Section 3(b), and that the waiver released the funding constriction and temporarily released the President from the obligation of moving the embassy. Others argue that Section 3(a) does not say the President **must** move the embassy, only that U.S. policy **should be** to move the embassy. But some argue that the intent of Congress is clear and that the President is bound to move the embassy regardless of the waiver. Finally, some argue that Congress does not have the authority to compel the President to site an embassy in a particular location. The issue, in short, involves questions both of statutory interpretations and of congressional and executive authority over the conduct of foreign relations.

Problems in Moving the U.S. Embassy From Tel Aviv to Jerusalem

The Clinton Administration, similar to previous Administrations, maintains that there are several reasons why it may be difficult to establish an embassy in Jerusalem as required in P.L. 104-45.

Diplomatic Considerations. The United States recognizes that there are competing claims to the city, political claims between Israel and the Palestinians, and religious claims among Jews, Muslims and Christians. The United States maintains the position that the future status of Jerusalem must be the subject of negotiations among the interested parties, and that unilateral actions by any government that might predetermine the future of the holy city are unacceptable. In keeping with that policy, the United States opposed Jordanian and Israeli actions regarding Jerusalem. Successive U.S. Administrations have maintained that moving the embassy from Tel Aviv to Jerusalem would support Israel's claim to all of the city and would undermine the negotiations intended to resolve the future of the city.

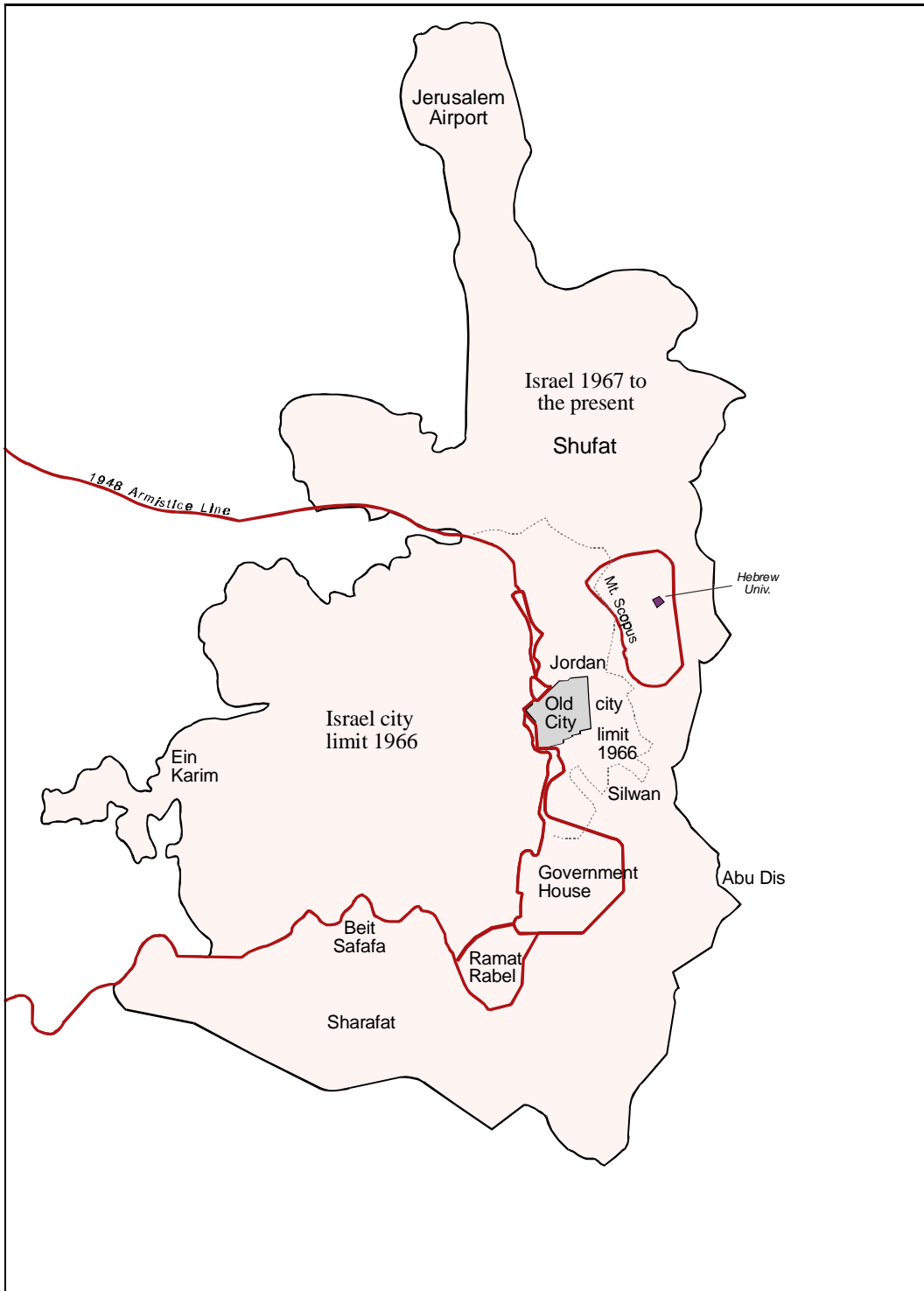
Time. The Department of State estimates that construction of an embassy will take a minimum of 6 years and a maximum of 10 years from first steps (architect/engineering drawings, soil testing, preliminary planning) through all the stages to the final finishing and occupancy. P.L. 104-45 became law on November 8, 1995, and called for the U.S. embassy to be relocated to Jerusalem by 31 May 1999, three and one half years later, too short a period to construct an embassy. With construction of a new embassy an unlikely prospect, the Department of State was left with the options of buying or leasing an existing facility, exchanging the present facility in Tel Aviv for an existing facility in Jerusalem, or converting the existing Jerusalem consulate into an embassy. The time allowed for the relocation might not allow for extensive renovations to an existing facility (the primary renovations needed would be security related). According to the semi-annual reports to Congress, the Department of State has been investigating the availability of property, both for purchase and for rent, that might serve as an embassy, and that a move could be accomplished "quickly."

Land. More than 9% of the land in Israel, including land in western Jerusalem, is owned by the state or by the Jewish National Fund, a charitable institution that holds land in perpetuity solely for the benefit of the Jewish people. Consequently, none of the government-owned or JNF-owned land may be sold, only leased. The U.S.-Israel agreement of January 18, 1989, provided for an exchange of sites in Tel Aviv and for a 99-year lease of the Allenby tract in Jerusalem on which the United States could build an embassy. Israel offered the United States a Tel Aviv property in exchange for the present embassy site, but the United States rejected the new site because of security flaws. Israel has not offered a replacement.

Security. One set of problems faced by the United States in selecting an embassy site is the security of the building and its occupants. According to the Department of State, the Allenby tract offered by Israel in southeast Jerusalem poses such problems. Although the Department will not discuss publicly the specific nature of the problems, one problem appears to be the construction or location of nearby structures that overlook the Allenby tract, thereby posing a potential security threat to an embassy built there.

Conflicting Claims. Palestinians claim that the Allenby Tract is "Waqf" land; that is, land donated to a religious trust for the benefit of all Muslims. The Palestinians claim that Israel had no right to lease the land to the United States for an embassy. Department of State spokesmen say that they do not believe the Waqf claim has merit, but recognize that there is a conflicting and as yet unresolved claim to the land.

Jerusalem Under Israeli Occupation



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