



9.A.4
S/S/S
United States Department of State

Washington, D.C. 20520

TEAM
#8918450

SEP 6

Dear Mr. Chairman:

I am writing in response to your letter of August 4, 1989 enclosing a memorandum from Professor Francis A. Boyle concerning our agreement with the Government of Israel to lease property in Jerusalem. The Secretary has asked me to reply to your inquiry.

Professor Boyle's memorandum first argues that the lease agreement "can only be interpreted as a last-minute attempt by the Reagan administration to lock its successors into a policy of moving the United States Embassy from Tel Aviv to Jerusalem...." The Department disagrees with this assertion. The Helms Amendment specifically provides that the two new facilities shall both be capable of housing the Ambassador or Consul General "consistent with United States policy." Senator Helms' statements acknowledge that the legislation preserves Presidential discretion concerning the location of our embassy. In that regard, United States policy has not changed: We will address the issue of whether to move our embassy to Jerusalem only in the context of a negotiated settlement of the status of the West Bank and Gaza.

In addition, Professor Boyle's memorandum expresses concern that the Islamic Trust (Waqf) may have a claim to an interest in a portion of the agreed site in Jerusalem. As stated in the letter to you of June 28, 1989, we have conducted a thorough title search with respect to the property, and we have located no record of or support for a Waqf claim. Questions have also been raised about possible private claims for the land in question. We are aware of no such claims. As stated, 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.

Professor Boyle argues that this statement is disturbing because it reflects an assumption that Israeli domestic law has some applicability in Jerusalem. In fact, he argues that the entire lease agreement is in violation of international law. His view is based on his premise that the law of belligerent occupation applies to all of Jerusalem, including West Jerusalem.

The Honorable
Lee H. Hamilton, Chairman,
Subcommittee on Europe
and the Middle East,
House of Representatives.



The United States does not accept this view. The longstanding position of the United States is that the law of belligerent occupation applies to East Jerusalem, which was occupied by Israel in 1967. 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. We have, however, acknowledged the practical necessity of administration of West Jerusalem pending the settlement of its status. Accordingly, the United States has accepted the administration by Israel of West Jerusalem, including the application of Israeli law, just as the United States accepted Jordanian administration of East Jerusalem from 1948 to 1967. The United States has never taken the position that the status of East Jerusalem should be settled apart from West Jerusalem. In fact, the United States has consistently taken the position that the status of Jerusalem should be settled through negotiation in the context of a comprehensive peace settlement.

I hope the above information is helpful to you, and I thank you again for your interest in this matter. If I can be of any further assistance, please do not hesitate to contact me.

Sincerely,

Jm/ls
Janet G. Mullins
Assistant Secretary
Legislative Affairs

Enclosure:
Correspondence returned.