

Some Arab leaders recognize that whatever its political utility, illegal construction has deleterious effects on the daily life of the residents, especially in the Arab neighborhoods. For example, Azam Abu Saud, the Director General of the Office of Arab Commerce in Jerusalem, spoke to this issue in the newspaper *Al Quds*. Abu Saud reasoned that ignoring the planning law encourages violence and injures the rights of others, as failing to leave the proper space between buildings and by building on roadbeds. At the risk of deviating publicly from the Palestinian Authority's position,⁷⁰⁷ he recommended pulling down illegal structures.⁷⁰⁸

Conclusions

Modern cities have a right, indeed a need, to plan. They must do this for their residents, present and future. They must do this to make delivery of public services manageable and affordable. They must do this to protect the environment. In some parts of the world, including Jerusalem, they must do this to preserve their historical, architectural, and archeological heritage. Certainly every effort should be made to secure input from the different sectors of the population. Nevertheless, professional planners have no choice but to continue their work, even where such input is extremely limited from the minority sector.

The tipping point has been crossed. Illegal construction is fast becoming the norm throughout Jerusalem. Without knowing the exact number, it is fair to estimate that a thousand illegal living units are built each year in the Arab neighborhoods of the City. As Hatem Abed El-Khader Eid, member of the Palestinian Legislative Council representing the Jerusalem district proudly announced, the municipal enforcement is totally ineffective. To reiterate, he stated that over a four-year period the Palestinians have erected 6,000 homes without building permits, out of which only 198 were demolished.⁷⁰⁹ Eid declared, "we in the Palestinian Authority are willing to build ten homes for every house demolished by Israel."⁷¹⁰ Clearly, there is almost no deterrence in the current enforcement policy. The magnitude of the problem is most pronounced in the Arab neighborhoods where thousands of illegal units, many of them substantial structures, are scattered across the landscape, frequently on land that does not even belong to the builder. Common wisdom blames it all on poverty, cultural factors, historical circumstances, and discrimination and manipulation by the City of Jerusalem and the State of Israel. Overlooked are factors that, in recent years, have grown to become the two cardinal reasons for today's illegal building epidemic. First, illegal construction enjoys widespread economic and political support of the Palestinian Authority and various foreign entities including Arab states and, indirectly, the European Union. Second, substantial illicit profits accrue to those who build illegally.⁷¹¹

The conventional wisdom, in bold below, deserves a through review. Taking a fresh look at the matrix of issues surrounding illegal building, of which demolitions are merely the most visible aspect, this author believes that a more complex, and quite dissimilar, reality emerges.

⁷⁰⁷ Apparently to protect himself, Abu Saud directed his criticism at illegal building in Area B, where there is joint Israeli-Palestinian authority. However, the real problem of illegal construction, as Abu Saud well knows, is in the Arab neighborhoods of Jerusalem. He also knows well which political forces and whose money supports those who build illegally.

⁷⁰⁸ Azam Abu Saud, *AL-QUDS*, May 13, 2001.

⁷⁰⁹ Hagai Hoberman, *In the Heat of the Palestinian Real Estate Battle in East Jerusalem*, HA'TSOFEH, Jan. 11, 2002, pp. 9, 10.

⁷¹⁰ Khaled Abu Tuwama, *A Representative of the Jerusalem District in the Palestinian Legislative Council: "We Built 6,000 Houses Without Permits,"* JERUSALEM (weekly Hebrew newspaper), May 25, 2001. Interview with Shalom Goldstein, Advisor to Mayor of Jerusalem Municipality for East Jerusalem Affairs, in Jerusalem (Dec. 6, 2001). See also Nadav Shragai, *PA Vows they Won't Stop Building in Jerusalem*, HA'ARETZ (English newspaper), Jan. 17, 2002.

⁷¹¹ Another factor that is often overlooked in the case of Jerusalem is the impact of limited resources, a nearly universal problem of cities.

Misconception: The Municipality is to blame for the disparity between the level of public services in Jewish versus Arab neighborhoods. The 35-year-long boycott of municipal politics by the Palestinian leadership has, perhaps more than any other single factor, prejudiced the prospects of the Arab neighborhoods of Jerusalem receiving budgetary allocations for public services and infrastructure on par with the Jewish neighborhoods. Their leadership's myopia, and ready use of intimidation against would-be candidates for municipal office, prevents the 200,000 Jerusalem Arabs from capitalizing on the essence of municipal politics. That essence has nothing to do with questions like the existence and borders of a state of 'Palestine.' Rather it is about more mundane matters like the building and funding of good schools, the paving of streets, furnishing public transportation, and the allocation of tax assessments.

This boycott of City politics, compounded by the extremely poor infrastructure that Israel inherited from Jordan in 1967, the Arab sector's lower average income, and the impact of foreign donors' projects on the Jewish areas, together have resulted in the unfortunate gap which exists today. The City, particularly since the election of Mayor Olmert has undertaken initiatives to close this gap, but much more needs to be achieved.⁷¹² Obviously, the ongoing *Intifada*, which has weakened Jerusalem's economic base, will not make this formidable task any easier.

Misconception: Israeli urban plans for Jerusalem's Arab neighborhoods are nonexistent or inadequate. Although after the reunification of Jerusalem there were no official plans for the Arab neighborhoods, for the most part by the 1980s this was no longer the case. The Municipality invested considerable resources in drafting plans for the Arab areas of Jerusalem. Moreover, in the context of Jerusalem as a whole there is no distinction made between the Jewish and Arab neighborhoods. Furthermore, these plans are in accordance with international norms on urban development that stress sustainable development.

Jerusalem's professional planners strive, in very difficult objective circumstances, to adhere to internationally accepted principles regarding preserving open land for future generations and avoiding urban sprawl. The media and NGOs should clearly state that Jerusalem, like other cities, has a right, indeed a need, to plan. Cities must do this for the social and economic wellbeing of their residents, present and future. They must do this to make delivery of public services affordable. They must do this to protect the environment. In some parts of the world, including Jerusalem, they must do this to preserve their historical, architectural, and archeological heritage.

Misconception: illegal building is a result of local grass-roots needs. Illegal building harms the public. Illegal building in the Arab neighborhoods is not simply or primarily an economic or cultural choice made by individuals. Rather, it is stimulated and financed by Palestinian political forces as a means to create political facts on the ground, which are intended to influence the political future of the City.

Misconception: official discrimination, poverty and Arab culture are the causes of illegal building. In addition to blaming the supposed antipathy of the Municipality toward its Arab residents, it is asserted that poverty and cultural inclinations are the major causes for illegal building. While poverty and culture undeniably play a role in illegal construction there are two more substantial causes. First, the Palestinian Authority is at the center of a well-organized and financed campaign to frustrate the Municipality's planning efforts. Second, illegal construction is extremely lucrative.

⁷¹² It should not be forgotten that even in the most affluent countries, cities typically have pronounced inequalities in infrastructure and public services.

Whatever the Arab Jerusalemites (and their leadership) think about the political future of the City, it is myopic in the extreme to think that illegal building serves their long-term interests. Given the chasm of mutual animosity that separates Israelis and Palestinians, political jockeying for position is to be expected, but it should not be at the price of turning Arab neighborhoods into slums. Particularly refreshing in this regard was Nusseibeh's forthright statement that the "gangs that build illegally on land that does not belong to them should be thrown into jail."⁷¹³ He added, "Nobody in their right mind is in favor of illegal building."

Misconception: there is a systematic policy to 'Judaize' Jerusalem. Rather than a methodical effort by the Municipality to manipulate planning so as to 'Judaize' Jerusalem, it is clear that the non-Jewish component of Jerusalem's population is increasing and has been since 1967.⁷¹⁴ Indeed, it is projected that this percentage will further expand from 31.7% in 2000 to 37.8% in 2020.⁷¹⁵

Misconception: Arab residents of Jerusalem are not issued building permits. There is no discrimination against Arabs in the issuance of building permits. This Study has demonstrated (in Appendix 6F) that the fervent denunciations of the Municipality for supposedly hindering the issuance of building permits to Arabs and/or charging them exorbitant fees are completely unsubstantiated. Quite to the contrary, the relevant data shows that the approval rate, which is very high, does not differ significantly from that of the Jewish sector.⁷¹⁶ Likewise, the procedures and costs associated with the permit process are identical in Jewish and Arab neighborhoods. Furthermore, the City has actually devoted efforts to encourage Arab residents to abide by the planning law. Indeed, in a number of related respects the City actually discriminates in favor of, rather than against, the residents of Arab neighborhoods, i.e., certain building code violations are overlooked, improvement taxes are not collected, and professional advice is provided free of charge.

Misconception: the City is 'callous' and 'ubiquitous' in its use of demolitions in the Arab neighborhoods. The Municipality uses administrative demolition cautiously and as a tool of last resort against structures, typically uninhabited, which could never be granted a permit, even retroactively. The senior political and civil service echelons are acutely aware of the unpopularity of this measure, both locally and internationally. Consequently, they seek to avoid demolition if another viable option exists. Sometimes, however, the authorities are left with no alternative.

Few take the trouble to contemplate the professional reasons underlying the City's action when the Municipality demolishes a structure in an Arab neighborhood. Instead it is portrayed by the NGOs and in the media as an Israeli affront to Palestinian nationalism.⁷¹⁷ Similarly, the NGOs and media express scant interest in the administrative and judicial safeguards that protect against abuse of this measure, making mistakes infrequent. Also ignored is the use of demolition in Jewish neighborhoods of Jerusalem and elsewhere in Israel.

A lack of deterrence pervades the enforcement policies of the Municipality. This follows from the inadequate number of building inspectors assigned to the Arab

⁷¹³ Interview with Dr. Sari Nusseibeh, President of Al Quds University and Palestinian Authority Political Commissioner for Jerusalem Affairs, in Jerusalem (Jan. 30, 2002).

⁷¹⁴ See Appendix 7A.

⁷¹⁵ See appendix 6A.

⁷¹⁶ Appendix 6F.

⁷¹⁷ Planning Policy, the Jerusalem Municipality Department for Planning Policy, Inter-Ministerial Committee on Illegal Building, Background, Conclusions and Recommendations, pp. 2-4 (2000). There are interest groups that manipulate demolitions to serve the Palestinian nationalist cause, even when the demolition is justified from a professional standpoint. *Ibid.*, p. 4.

neighborhoods, the sluggish handling of cases by the overburdened courts and the failure to enforce many of the court injunctions (to stop-work) that are issued to illegal builders. Enforcement of the planning law in the Arab neighborhoods of Jerusalem is further complicated by numerous factors. It is often difficult to identify the party engaged in illegal building, as his name does not appear in the Land Registry Office.⁷¹⁸ Another difficulty - often extended families provide the labor force and they work on holidays and weekends, when the inspectors are off duty.⁷¹⁹ Also, since the onset of the current *Intifada*, City building inspectors do not frequently venture into the Arab neighborhoods, or do so when they can secure at least two armed policemen as escorts.⁷²⁰ Given the other pressing security burdens on the police in Jerusalem, it is very difficult to secure the necessary protective personnel.⁷²¹

Misconception: the Municipality is violating international law in its policies regarding illegal construction. The public, which has little experience with international law, lacks the tools to filter out the plethora of bogus 'international law' standards that NGOs have contrived to facilitate their attacks on the Municipality and the State of Israel. Might this explain the attraction of such tactics to the NGOs?

NGOs, often appropriating the propitious title "human rights organizations," reiterate their condemnations of Israeli policy *ad nauseam*. These include claims that the City's legal machinations make it virtually impossible for Arabs to comply with the Planning and Building Law; that it systematically rejects most Arab applications for building permits; that the Arabs have no choice but to build illegally to accommodate their large families; that the Municipality is 'zealous' in enforcing the law - but only against Arabs; and that Israel is in flagrant violation of international human rights and humanitarian law, particularly as regards its use of demolition. The critics' prolific narrative continues that the damage caused by what they deem to be 'discrimination' is simultaneously the result of, and compounded by, denying the Arab residents the opportunity to participate in the decision-making processes by which their neighborhoods are planned. They also complain of discrimination in the delivery of public services and amenities, which is also attributed to malevolent intent. The critics evince a nefarious design behind these policies - the 'Judaization' of Jerusalem via demographic manipulation. They variously impute to the City, its Mayor, and/or the State of Israel a plot to force Arab residents to emigrate from Jerusalem and ignore the fact that despite all the critics' complaints, thousands of new illegal Arab migrants arrive yearly from the West Bank.⁷²² Finally, these accusations are couched in the terminology of human rights law, humanitarian law, and international law, while failing to inform the public that the law they reference is soft (less than authoritative), ambiguous, and/or actually supports the Municipality's planning enforcement actions.

In summation, illegal building severely mortgages Jerusalem's future. People who love this City, regardless of their political views, ethnicity, or nationality, should unite to turn the tide against those who undermine Jerusalem's quality of life with illegal building. They should show zero tolerance for this dysfunctional scourge, wherever it manifests itself.

⁷¹⁸ Report by Eitan Meir, Deputy Director General of the Jerusalem Municipality, *Building Inspection in Jerusalem* (Hebrew), Oct. 28, 1996, p. 5.

⁷¹⁹ Report by Eitan Meir, Deputy Director General of the Jerusalem Municipality, *Building Inspection in Jerusalem* (Hebrew), Oct. 28, 1996, p. 5.

⁷²⁰ Telephone interview with Israel Ben-Ari, Deputy Manager of Licensing and Inspection Department of Jerusalem Municipality, in Jerusalem (June 30, 2002).

⁷²¹ Telephone interview with Israel Ben-Ari, Deputy Manager of Licensing and Inspection Department of Jerusalem Municipality, in Jerusalem (June 30, 2002).

⁷²² Nissim Salomon, Deputy Director General and Head of City Administration of Jerusalem Municipality, in Jerusalem (June 3, 2002).