

Illegal Construction in Jerusalem: A Variation on an Alarming Global Phenomenon

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Introduction

The struggle for sovereignty in Jerusalem remains a dispute of the first order. Interwoven with this controversy are issues relating to Israel's use of urban planning, particularly as it affects the Arab residents of Jerusalem. Palestinian and other critics of the Municipality City (hereinafter upper case whenever referring to the Municipality of Jerusalem) insist, *alta voce*, that application and enforcement of the Israeli Planning and Building Law, places Arab residents of the City in an impossible situation. This accusation asserts that they are denied the opportunity to participate in the decision-making process by which their neighborhoods are planned. It follows that planning law is manipulated, to their detriment, by systematically rejecting their applications for building permits. According to the narrative, they have no choice but to build illegally (without a building permit or in violation of the terms thereof), and, as a consequence, they run the risk of being snared by the Municipal inspectors. Those caught by the inspectors face economic catastrophe, not to mention psychological trauma, if City (hereinafter upper case whenever referring to the City of Jerusalem) bulldozers demolish their unlicensed houses. The argument continues to the effect that Arab Jerusalemites (residents of the City), many of which are poor, are discriminated against in the delivery of public services and amenities such as sewage, garbage collection, public parks and playgrounds. All of the aforementioned discriminatory treatment, so the argument goes, is premeditated - aimed at 'Judaizing' Jerusalem via demographic manipulation. Thus, the Municipality stands accused of using the artifice of the planning law to force the Arab residents of Jerusalem, and their expanding families, to abandon the City.

This multi-pronged indictment of the planning process and of the Municipality of Jerusalem has gained wide public acceptance via an abundance of media coverage. Much of the interest in this controversy is due to the non-governmental organizations (NGOs)¹ that have taken the lead in placing their versions of this narrative on the global political agenda. Many members of the public have come to see the planning/enforcement controversy as an obstacle to broader peacemaking efforts and/or as a litmus test for aligning their sympathies with the Palestinians. Unlike urban land use controversies in other parts of the world, that hardly ever engender international involvement, the dispute over planning/illegal building/demolition/demographic manipulation in Jerusalem regularly generates political controversy and antagonism that washes across national boundaries.

Regrettably, despite intense interest, the complexities of the planning/illegal building/demolition/demographic manipulation controversy have never been thoroughly analyzed - not by a scholar, not by an NGO, nor even by the Municipality itself. This Report will address this unending controversy and attempt to expose the underlying reality behind the constant barrage of contentious accusations.

Urban planning is not something unique to Jerusalem or Israel, but a burgeoning, worldwide trend. In fact, urban development, in the modern sense, requires painstaking

¹ NGOs include a wide variety of organizations, including those with overtly political agendas. Gerald Steinberg, *Propaganda Has Taken Over for Humanitarianism*, AUSTRALIAN FINANCIAL REVIEW, June 7, 2002, p. 75.

urban planning.² One American judge described the planning process as bringing to bear "the insights and the learning of the philosopher, the city planner, the economist, the sociologist, the public health expert and other professions concerned with urban problems."³ A brief description may be helpful in grasping the magnitude of the task that faces those who conscientiously plan Jerusalem's future, aware of the City's special meaning to millions of people everywhere. They must study what exists - infrastructure, housing, roads, topography, open areas, the commercial sector, industrial areas, etc. Next, they must predict future needs. They must take care to preserve open space, in particular the valleys and the green belt around the Old City's walls, priorities inherited from the British officials who preceded them. Also, attention must be paid to preserving historical structures, holy sites, archaeological excavations, and vistas.⁴ Overriding security and budgetary constraints too must be factored in. Still more problematic, the already composite planning process in Jerusalem, which is inherently value-laden in nature, has become entangled in the Israeli-Palestinian conflict.

Major hurdles hindered the Jerusalem Municipality's efforts to deal with the Arab sector's urgent needs in the post-1967 era. For example, an essential prerequisite for planning is to determine to whom each parcel of land belongs.⁵ Most of the Arab neighborhoods had developed as villages, where one or several extended families owned most of the land. This resulted in many parcels of real property being claimed by various descendants of the original owner. On top of that, the records in the Land Registry Office, as inherited from Jordan in 1967, were incomplete.⁶ The Municipality had to undertake expensive, laborious and time consuming steps in its attempts to ascertain ownership. These included modernizing the land registration system and performing extensive surveying.

The residents of the Jewish neighborhoods of Jerusalem are accustomed to having parts of their parcels taken (with compensation) for the infrastructure. They also accept, albeit grudgingly,⁷ the need to pay the high City real estate tax (*arnona*) and improvement assessments (when their road is paved or widened, their sidewalks improved, etc). By contrast, the Municipality faces challenges in applying modern planning principles to the Arab neighborhoods. For example, the Arab residents of Jerusalem traditionally regard private or family interests as paramount, rather than those of the neighborhood or the City.⁸ They exhibit scant understanding for the need to expropriate a percentage of their land for the public infrastructure. The reluctance some of them have to paying *arnona*⁹ may have evolved from the fact that they did not pay for municipal public services during the pre-1967 (Jordanian) period. Likewise, they never had to pay assessments for improvements to their streets/sidewalks, etc.

In the post-1967 years Israel has made substantial investments in the physical infrastructure in Arab neighborhoods.¹⁰ For example, the decaying infrastructure of the Old City, in particular its water and sewage systems, was restored and renovated.¹¹ Schools,

² Interview with Z. Uri Ullmann, Director of Division for Strategic Planning and Research of Jerusalem Municipality, in Jerusalem (Nov. 25, 2001).

³ Udall v. Haas, 21 N.Y.2d 463, 235 N.E.2d 897, 900, 288 N.Y. 888, 893 (1968).

⁴ Interview with Uri Bar Shishat, Director of Policy Planning Department of City Engineer of Jerusalem Municipality, in Jerusalem (Nov. 25, 2001).

⁵ Chaos would result (and lawsuits would be brought) if the City were to issue building permits to persons other than the *bona fide* landowner.

⁶ Interviews with Adrian Goldstein, Deputy Manager of Licensing Department of Jerusalem Municipality, in Jerusalem (Dec. 6, 2001, June 30, 2002); interview with Uri Bar Shishat, Director of Policy Planning Department of City Engineer of Jerusalem Municipality, in Jerusalem (June 4, 2002). Even today less than half of the Arab neighborhoods are fully registered in the Land Registry Office. Interviews with Adrian Goldstein, Deputy Manager of Licensing Department of Jerusalem Municipality, in Jerusalem (Dec. 6, 2001, June 30, 2002).

⁷ Stuart Winer, *Irate Over City Rates*, IN JERUSALEM, Oct. 11, 2002, pp. 1, 3, 4.

⁸ Interview with Uri Bar Shishat, Director of Policy Planning Department of City Engineer of Jerusalem Municipality, in Jerusalem (June 4, 2002).

⁹ Stuart Winer, *Irate Over City Rates*, IN JERUSALEM, Oct. 11, 2002, p. 1. The City manages to collect 96.5 percent of the real property taxes owed by residents of the Jewish neighborhoods as compared with 84 percent in the Arab neighborhoods. Stuart Winer, *Irate Over City Rates*, IN JERUSALEM, Oct. 11, 2002, pp. 1, 4.

¹⁰ Interview with Ehud Olmert, Mayor of Jerusalem Municipality, in Jerusalem (Dec. 31, 2001).

¹¹ MICHAEL ROMANN & ALEX WEINGROD, *LIVING TOGETHER SEPARATELY: ARABS AND JEWS IN CONTEMPORARY JERUSALEM* 60 (1991).

playgrounds and community centers dot the landscape of Jerusalem's Arab neighborhoods.¹² That said, the considerable public investments made in the Arab neighborhoods have fallen far short of closing the infrastructure gap, as will be discussed below.

Looking at the bigger picture, Jerusalem's professional planners deserve recognition for their role in the post-1967 era. Notable planning successes¹³ throughout the City include:

- renovation of the old marketplaces;
- rehabilitation of the Jewish Quarter of the Old City;
- major expansion of two university campuses;
- establishment of a park around the walls of the Old City, thereby preserving the view that the whole world identifies with Jerusalem;¹⁴
- planting and maintenance of numerous public gardens;
- founding of institutions forming a 'cultural mile';
- opening of dozens of archaeological tourist attractions;
- construction and expansion of world-class hospitals;
- preservation of old neighborhoods;
- preservation and renewal of buildings of historical or architectural importance;
- revival of the old commercial center of the city;
- construction along the seam between what had been the Jordanian and Israeli sectors; and
- development of high tech industrial parks.¹⁵

It is important, at the outset, to delineate what will not be covered by this Study. First, other than a very brief synopsis of the history of Jerusalem, this Study will not attempt to trace the roots of the opposing Israeli and Palestinian claims to the City. Second, to keep the length of this Study within reasonable limits, it will not focus on the Israeli Ministry of Interior's role in addressing the illegal construction issue in Jerusalem.¹⁶ Third, this Study will not dwell on the political aspects of the Israeli and Palestinian claims

¹² See illustrative photographs in Appendix 3 images 11, 20, 30, 33, 51 and 56.

¹³ Many of these achievements were underwritten by the contributions of Jewish donors in the Diaspora. THE JERUSALEM FOUNDATION, booklet, n.d.

¹⁴ The idea of creating a park around the Old City was first proposed in the 1922 British Mandatory plan of Guddas-Ashbee. A decision to implement this concept was finally adopted in 1967 by Israel. Interview with Z. Uri Ullmann, Director of Division for Strategic Planning and Research of Jerusalem Municipality, in Jerusalem (Nov. 25, 2001).

¹⁵ See MERON BENVENISTI, CITY OF STONE: THE HIDDEN HISTORY OF JERUSALEM 162 (1996).

¹⁶ The Israeli National Unit for Building Inspection, operates to enforce the planning and building laws in the Ministry of Interior's regional districts. The Unit devises proposals for a policy to enforce the law and conducts inspections in the problematic areas where most of the illegal building takes place. It prioritizes areas which have building violations that need to be addressed such as building on agricultural land, building on land owned by the National Government, building in violation of a urban plan and building on public land. The Unit is charged with coordinating with the Israeli Police, the Israel Land Authority, and other inspection bodies responsible for carrying out enforcement action and demolition orders. The Unit also makes sure that the Local Committees for Planning and Building enforce the law and steps in when the Committee fails to act. Ministry of Interior Internet Website, The National Unit For Building Inspection, March 14, 2001 (visited Feb. 3, 2002) <http://www.moin.gov.il/Apps/PubWebSite/GeneralInfo.nsf/OpenFrameset?OpenAgent&button=13&lang=heb&unit=6..>

to Jerusalem.¹⁷ Fourth, it will not address the extensive Arab or Jewish construction adjacent to, but outside, the Municipal boundaries. Fifth, and finally, although Jerusalem is widely understood as the lynchpin of Israeli-Palestinian antagonism,¹⁸ this Study will not address the various proposals for settling the larger conflict between the Palestinians and Israelis.¹⁹ Indeed, in the opinion of this author, the chosen topic, "Illegal Construction in Jerusalem: a Variation on an Alarming Global Phenomenon," is significant regardless of any developments in peace making. Simply put, whether Jerusalem remains the undivided capital of Israel, or is politically/geographically bisected as the Palestinian leadership demands, illegal construction will need to be thoroughly addressed. For if it is allowed to continue, rampant illegal building will incur a high price for decades, even generations, to come.

Section I of this Study discusses relevant Jerusalem history and the differing Israeli and Palestinian visions for the City's future. Section II focuses on the disparity in the level of public services provided to the Arab neighborhoods as compared with the Jewish neighborhoods. Israeli planning law and the causes and effects of illegal construction in different sectors of the City are considered in Section III. Section IV addresses allegations that Jerusalem is being 'Judaized.' Section V juxtaposes the alleged, and actual, factors behind illegal construction in the City's Arab neighborhoods. Section VI considers the controversy over building permits. Also examined are the arguments surrounding the use of administrative demolition as a tool of planning enforcement and the coverage of these issues by the media and NGOs. Finally, this Section treats the 'Tipping Point' theory as it applies to illegal building in Jerusalem. The long-term consequences of illegal building are forecast in Section VII. Section VIII places illegal building in Jerusalem in its proper global perspective. This Study ends with the Author's Conclusions, emphasizing the misconceptions that are inherent in the conventional wisdom about illegal building.

I. Relevant Jerusalem History

Over the past century competition for control of Jerusalem has taken many forms, including demographic maneuvering,²⁰ political rivalry, neighborhood residential patterns, economic development, land use practices, collection of taxes, allocation of budgets, and episodic outbreaks of inter-communal violence.

As a result of the fighting in and around the City during the 1948 War, Jerusalem was divided between Israeli and Jordanian sectors. Following the cessation of hostilities, a seam of mines, barbed wire and sniper positions divided the City.²¹ Western Jerusalem was developed as Israel's capital, while the smaller, Jordanian sector (including the Old City)

¹⁷ See Enrico Molinaro, *Alternative Definitions of Sovereignty: an Analysis of Coexisting National and Religious Identities in Jerusalem*, in *POLITICS, ECONOMICS AND THE SEARCH FOR MEDITERRANEAN STABILITY* 103-30 (Stefania Bazzoni & May Chartouni-Dubarry eds., 2001); WHITHER JERUSALEM? PROPOSALS AND POSITIONS CONCERNING THE FUTURE OF JERUSALEM (Moshe Hirsch, Deborah Housen-Couriel & Ruth Lapidot, eds. 2001); Dore Gold, *An Israeli Jerusalem for All*, NEW YORK JEWISH WEEK, Sept. 1, 2000, available at New York Jewish Week Internet Website (visited Apr. 11, 2002) <<http://www.thejewishweek.com/wcurr.exe>>.

¹⁸ The Final Clauses section of the Oslo II interim peace agreement states, "Permanent status negotiations ...shall cover remaining issues, including: Jerusalem, refugees, settlements, security arrangements, borders, relations and cooperation with other neighbors, and other issues of common interest." Interim Agreement on the West Bank and Gaza Strip, Sept. 28, 1995, Isr.-P.L.O., art. XXXI; see Enrico Molinaro, *Alternative Definitions of Sovereignty: an Analysis of Coexisting National and Religious Identities in Jerusalem*, in *POLITICS, ECONOMICS AND THE SEARCH FOR MEDITERRANEAN STABILITY* 103, 123-28 (Stefania Bazzoni & May Chartouni-Dubarry eds., 2001). Jerusalem's presence on the negotiating table, during the final status talks, precipitated a subtle Israeli-Palestinian battle to strengthen their hold on the City. Editorial, *Untimely Crisis*, THE JERUSALEM POST, Apr. 29, 1999, p. 8.

¹⁹ MERON BENVENISTI, *INTIMATE ENEMIES: JEWS AND ARABS IN A SHARED LAND* 46-51 (1995).

²⁰ Nabil Al-Sahly, *The Demographic Conflict Between the Arabs and the Jews in Jerusalem Since the Basel Conference in 1897*, available at Internet Website (visited Nov. 7, 2001) <<http://www.palestine-info.co.uk/question/demographic.htm>>; MERON BENVENISTI, *CITY OF STONE: THE HIDDEN HISTORY OF JERUSALEM* 173 (1996); SAWI F. MUSALLAM, *A PROGRAMME FOR ACTION FOR PEACE* 9 (1996).

²¹ See MICHAEL ROMANN & ALEX WEINGROD, *LIVING TOGETHER SEPARATELY: ARABS AND JEWS IN CONTEMPORARY JERUSALEM* 12 (1991).

was largely neglected by the leadership of Jordan.²² According to surveys of the Jordanian Central Bureau of Statistics, the Jerusalem district had a negative immigration rate, as more Arabs moved out than moved into the City.²³ Jordan focused its development efforts on its capital, Amman.²⁴

The 1967 War commenced with a barrage of Jordanian small arms and artillery fire directed at the Israeli residential and commercial areas, followed by the Jordanian army's occupation of the U.N.'s Government House.²⁵ The tide turned against Jordan, however, as Israel's campaign of self-defense captured the Arab-populated sector, including the Old City of Jerusalem.²⁶ When the guns fell silent, Israel took down the remains of the nearly two-decade old physical partition of the City, reconnecting roads, sewage lines, and telephone grids.²⁷

In the aftermath of the 1967 War, Israel undertook a major geographical expansion of the City on the recommendation of a committee of military and civilian experts. Among the five alternatives that were considered, the Municipal boundaries were determined primarily on the basis of security needs (i.e., the range of artillery, the topography and the location of Jordanian Legion outposts).²⁸ Prior to the 1967 War, the Jordanian Municipality of Jerusalem encompassed only 6 square-kilometers, comprising the Old City and the inner core of the Arab sector,²⁹ and the Israeli municipality encompassed 38.1 square-kilometers.³⁰ The Municipal area of Jerusalem has grown to its current size of 126 square-kilometers in area³¹ in several stages, the most dramatic being its expansion to 108 square-kilometers just after the 1967 War.³²

Following *de facto* Israeli control over Jerusalem's Old City, the Arab commercial sector and various Arab-populated villages on the periphery were given legal foundation by the Knesset (parliament) on June 28, 1967.³³ On that date the Knesset enacted a law that extended Israeli jurisdiction and civil administration over the expanded Municipal area. This law stated, in relevant part:

- Jerusalem, complete and united, is the capital of Israel.

²² ISRAEL KIMHI, ARAB BUILDING IN JERUSALEM 12 (CAMERA Monograph Series, 1997).

²³ Many of the emigrants sought economic opportunity on the east bank of Jordan or in Arab oil-producing states. ISRAEL KIMHI, ARAB BUILDING IN JERUSALEM 12 (CAMERA Monograph Series, 1997).

²⁴ ISRAEL KIMHI, ARAB BUILDING IN JERUSALEM 12 (CAMERA Monograph Series, 1997); MICHAEL ROMANN & ALEX WEINGROD, LIVING TOGETHER SEPARATELY: ARABS AND JEWS IN CONTEMPORARY JERUSALEM 19 (1991).

²⁵ ABRAHAM RABINOVICH, THE BATTLE FOR JERUSALEM: JUNE 5-7, 1967, pp. 89, 100-02 (1987).

²⁶ MICHAEL ROMANN & ALEX WEINGROD, LIVING TOGETHER SEPARATELY: ARABS AND JEWS IN CONTEMPORARY JERUSALEM 12 (1991).

²⁷ MERON BENVENISTI, CONFLICTS AND CONTRADICTIONS 101 (1986). The hope was that with the removal of physical barriers the mental barriers would also come down and reconciliation between Jews and Arabs would follow. MERON BENVENISTI, CONFLICTS AND CONTRADICTIONS 101 (1986). It is important to keep in mind that Jerusalem is at least 3000 years old. MERON BENVENISTI, CITY OF STONE: THE HIDDEN HISTORY OF JERUSALEM 49 (1996). During this long history it was divided into 'east' and 'west' Jerusalem for only 19 years.

²⁸ MERON BENVENISTI, INTIMATE ENEMIES: JEWS AND ARABS IN A SHARED LAND 53 (1995); see MERON BENVENISTI, CITY OF STONE: THE HIDDEN HISTORY OF JERUSALEM 65-66 (1996).

²⁹ ISRAEL KIMHI, ARAB BUILDING IN JERUSALEM 17 (CAMERA Monograph Series, 1997).

³⁰ Jerusalem - Geographical Data: Table I/1 - Municipal Area of Jerusalem, in STATISTICAL YEARBOOK OF JERUSALEM: 2000, No. 18, p. 3 (Maya Choshen & Naama Shahar eds. 2001).

³¹ STATISTICAL YEARBOOK OF JERUSALEM: 2000, No. 18, p. 3 (Maya Choshen & Naama Shahar eds. 2001); interview with Z. Uri Ullmann, Director of Division for Strategic Planning and Research of Jerusalem Municipality, in Jerusalem (Apr. 8, 2002). The armistice line from the end of the 1948 War was not a recognized border in the conventional sense. MERON BENVENISTI, CITY OF STONE: THE HIDDEN HISTORY OF JERUSALEM 33, 101 (1996).

³² Jerusalem - Geographical Data: Table I/1 - Municipal Area of Jerusalem, in STATISTICAL YEARBOOK OF JERUSALEM: 2000, No. 18, p. 3 (Maya Choshen & Naama Shahar eds. 2001).

³³ MERON BENVENISTI, CITY OF STONE: THE HIDDEN HISTORY OF JERUSALEM 33, 101 (1996). In a special session of the UN, convened in 1967 to discuss the problem of Jerusalem, Israeli Ambassador Abba Eban said, "This is a concept which lies beyond and above, before and after all political and secular considerations. The eternal link between Israel and Jerusalem [is] a link more ancient, more potent and more passionate than any other link between any people and any place." MERON BENVENISTI, CONFLICTS AND CONTRADICTIONS 93-94 (1986). The frequently recited Jewish prayer, "next year in Jerusalem," unified Jews everywhere. MERON BENVENISTI, CONFLICTS AND CONTRADICTIONS 94 (1986).

- Jerusalem is the seat of the President of the State, the Knesset, the Government and the Supreme Court.
- The Holy Places shall be protected from desecration and any other violation and from anything likely to violate the freedom of access of members of the different religions to the places sacred to them or their feelings towards those places.³⁴

To reinforce its position, with the aim of creating facts on the ground that would prevent the City from being re-divided,³⁵ Israel³⁶ undertook a major construction campaign that resulted in the rapid creation of substantial new Jewish neighborhoods³⁷ in areas in which Jews had been forbidden to live by the Jordanian government from 1949-1967.³⁸ To that end it erected new Jewish neighborhoods on uninhabited land which had previously either been used for emplacements by the Jordanian army, situated in no-man's land, owned by Arabs (with compensation offered³⁹), or in some cases, owned by Jews.⁴⁰ For

³⁴ Basic Law: Jerusalem, Capital of Israel, 34 Laws of the State of Israel 209 (1979-80).

³⁵ MICHAEL ROMANN & ALEX WEINGROD, *LIVING TOGETHER SEPARATELY: ARABS AND JEWS IN CONTEMPORARY JERUSALEM* 33 (1991).

³⁶ Mayor Olmert notes that the Municipality did not build these new neighborhoods, it merely provided the infrastructure for them. Interview with Ehud Olmert, Mayor of Jerusalem Municipality, in Jerusalem (Dec. 31, 2001).

³⁷ Under Israeli law, Jerusalem Arabs are permitted to buy/rent apartments in Jewish neighborhoods and vice-versa. Interview with Ehud Olmert, Mayor of Jerusalem Municipality, in Jerusalem (Dec. 31, 2001). Yet, with few exceptions, Jerusalem's Jewish majority and the Arab minority, prefer to live in separate neighborhoods. This stems from several factors including a sense of insecurity, a desire of each group to control its neighborhoods and the underlying political conflict. MERON BENVENISTI, *CONFLICTS AND CONTRADICTIONS* 113 (1986); MICHAEL ROMANN & ALEX WEINGROD, *LIVING TOGETHER SEPARATELY: ARABS AND JEWS IN CONTEMPORARY JERUSALEM* 27-28, 61, 71 (1991). Then-Mayor Kollek wrote:

We don't have integrated Arab-Jewish neighborhoods. But there is no segregation between Jews and Arabs in the law. There is nothing to prevent an Arab from buying or renting an apartment in an otherwise Jewish building or vice versa. It just does not work like that. If an Arab has children, he will want to send them to an Arab neighborhood school, and he and his wife will want to be near their friends, their mosque, the markets, the very smells and sounds they know. The same is true not only for Jews, but also for Armenians and all other sects and ethnic groups as well.

MERON BENVENISTI, *CONFLICTS AND CONTRADICTIONS* 113 (1986). By contrast, many Jerusalem workplaces are fully or substantially integrated. MICHAEL ROMANN & ALEX WEINGROD, *LIVING TOGETHER SEPARATELY: ARABS AND JEWS IN CONTEMPORARY JERUSALEM* 126-29 (1991). From the Author's experience, even without an overriding political conflict, what amounts to voluntary segregation in residential patterns is readily apparent in numerous other democratic countries. People choose to live in homogeneous neighborhoods based on a perceived sense of common religious/ethnic/national origins.

³⁸ Cf. SAMI F. MUSALLAM, *A PROGRAMME FOR ACTION FOR PEACE* 9, 126 (1996).

³⁹ Arab owners usually, but not always, refuse compensation when their land is taken by the government. This refusal is often based on fear that they might be perceived as willfully selling their land to Jews or Israel, which would make them a candidate for assassination by the Palestinian nationalist elements. See MICHAEL ROMANN & ALEX WEINGROD, *LIVING TOGETHER SEPARATELY: ARABS AND JEWS IN CONTEMPORARY JERUSALEM* 33, n. 1, 57 (1991). See Ministry of Foreign Affairs, Israel's Response to Report Submitted Pursuant to United Nations General Assembly Resolution ES-10/2 (Document A/ES/-10/6; S/1997/494), para. 18 (1998). The depth of this problem was revealed in the announcement by then-Palestinian Authority Justice Minister Freih Abu Medein that Palestinians selling "even one inch" of land to Jews or Israelis would be extra-judicially executed. See Associated Press, *Israel: Arafat's Guard Murdered Land Broker*, May 13, 1997, available at IRIS Internet Website (visited Oct. 14, 2002) <<http://www.io.com/~jewishwb/iris/archives/585.html>>. Abu Medein's announcement was seconded by the Palestinian Authority-appointed Mufti of Jerusalem, Ikrameh Sabri, who added a religious edict that such persons were infidels and could not be buried in Moslem cemeteries. See Nabil Atallah, *Fatwa on Land Deals*, JERUSALEM TIMES (weekly newspaper), May 16, 1997, p. 2. Shortly thereafter, two Palestinian land dealers were kidnapped and murdered gangland-style by Force 17, Arafat's personal bodyguard. See Jon Immanuel, *Death of a Land Salesman*, JERUSALEM POST, May 23, 1997, p. 8; Hillel Kuttler, *Gilman Slams PA Death Penalty for Selling Land to Jews*, JERUSALEM POST, May 14, 1997, p. 2; no byline, *Land Kill Angers Israel*, COURIER-MAIL, June 2, 1997, p. 15. The U.S. State Department called the decree "reprehensible." No byline, *Independence Without Freedom*, JERUSALEM POST, May 23, 1997, p. 4; Ministry of Foreign Affairs, Israel's Response to the Report Submitted Pursuant to United Nations General Assembly Resolution ES-10/2 (Document A/ES/-10/6; S/1997/494), para. 18 (1998).

⁴⁰ MICHAEL ROMANN & ALEX WEINGROD, *LIVING TOGETHER SEPARATELY: ARABS AND JEWS IN CONTEMPORARY JERUSALEM* 32-33 (1991). In expanding the Municipal boundaries of Jerusalem in 1967, the City obtained tracts of land by purchase and by expropriation. Only 26 percent of this land was expropriated pursuant to government orders under the Acquisition for Public Purposes Ordinance (1943), which was originally enacted by the British Mandatory authorities. ISRAEL KIMHI, *ARAB BUILDING IN JERUSALEM* 23 (CAMERA Monograph Series, 1997). The following principles were observed in matters involving expropriation:

- no church land or holy places were expropriated (even the Temple Mount was left in the hands of the Islamic Religious Endowment (Waqf) (MERON BENVENISTI, *CITY OF STONE: THE HIDDEN HISTORY OF JERUSALEM* 186 (1996));
- no built-up area housing Arabs was expropriated and not a single person was moved from his home, excepting the Arab residents of the Jewish Quarter of the Old City, most of whom were squatters (ISRAEL KIMHI, *ARAB BUILDING IN JERUSALEM* 23 (CAMERA Monograph Series, 1997));
- no farmed land was expropriated (MERON BENVENISTI, *CITY OF STONE: THE HIDDEN HISTORY OF JERUSALEM* 155 (1996));
- remuneration at the then current value of the land was offered to all landowners whose property was expropriated (see MICHAEL ROMANN & ALEX WEINGROD, *LIVING TOGETHER SEPARATELY: ARABS AND JEWS IN CONTEMPORARY JERUSALEM* 33, n. 1, 57 (1991)); and
- inhabited houses in the middle of an expropriated tract were left in the hands of their owners, along with any adjacent land. ISRAEL KIMHI, *ARAB BUILDING IN JERUSALEM* 23-24 (CAMERA Monograph Series, 1997).

Much of the remaining land that was obtained had been in the possession of the Jordanian army. Jordan had seized this land from private owners and constructed military emplacements that were used to initiate aggressive attacks on Israel. Hence, when Israel captured these

various political and practical reasons,⁴¹ only two housing projects earmarked for Arabs were constructed with government sponsorship in Jerusalem.

Though in the post-1967 period many Jerusalem workplaces have become fully or substantially integrated, with Arabs and Jews working side-by-side,⁴² most Arabs and Jews continue to live in ethnically homogeneous neighborhoods, as had been the case since the Arab riots of 1929.⁴³ Largely as a consequence of the construction of post-1967 Jewish neighborhoods, a residential pattern of interspersed Jewish and Arab neighborhoods developed, differing in key characteristics.⁴⁴ In general the former are intensively developed, with many multi-floor buildings and modern infrastructure.⁴⁵ Areas with a predominant Arab population, by contrast, are characterized by individual family structures,⁴⁶ low-density occupation of space, and a lower level of infrastructure.⁴⁷ The urban planners have had to cope with these fundamental differences.

The planners have undertaken the tremendous challenge of incorporating Arab neighborhoods that resembled villages (note aerial photographs from 1967 in Appendix 4) into a modern urban plan.⁴⁸ Prior to 1967 the local councils in Jordanian areas issued building permits hastily, without employing modern planning procedures.⁴⁹ Consequentially, little thought was given to long-term planning or to what would be necessary for providing public services to future generations.⁵⁰ Further complicating the situation, the Arab sector, or large parts of it, lacked many basic components of infrastructure such as running water and a centralized sewer system. Many homes were not connected to the electricity grid and garbage was collected by donkey-cart.⁵¹ Most roads were not paved, the schools were inadequate, and the medical facilities were not up to date.⁵²

In all, Jerusalem has undergone a revolution since 1967 - developing from a rather small town into Israel's largest city and united capital. Although the City's Arabs have benefited from the resultant economic and other opportunities, the political implications of this dramatic transformation have aroused deep-seeded opposition from the Palestinian leadership, as will be analyzed below.

military emplacements in the 1967 War, ownership of the land was transferred to the State. ISRAEL KIMHI, ARAB BUILDING IN JERUSALEM 23-24 (CAMERA Monograph Series, 1997). Additional land that was obtained by Israel had been owned by Jews, was jointly owned by Arabs and Jews, was owned by the Jordanian government or had been in no-man's land. The creation of these neighborhoods was viewed with a jaundiced eye by the Palestinian leadership. SAMI F. MUSALLAM, A PROGRAMME FOR ACTION FOR PEACE 65 (1996).

⁴¹ See, e.g., ISRAEL KIMHI, ARAB BUILDING IN JERUSALEM 32-33 (CAMERA Monograph Series, 1997).

⁴² MICHAEL ROMANN & ALEX WEINGROD, LIVING TOGETHER SEPARATELY: ARABS AND JEWS IN CONTEMPORARY JERUSALEM 126-89 (1991).

⁴³ Segregation was not forced upon the Arabs by the Jews, as Edward Said has falsely claimed. Before the Arab riots of 1929, there were many integrated neighborhoods in Jerusalem. Arab violence, however, was the major factor in prompting Jews to flee to predominantly Jewish neighborhoods. Even those who believe that the Arab violence, and the accompanying economic boycott, were justified, should acknowledge that the Arabs share in the blame for the segregated residential pattern in the City. MERON BENVENISTI, CONFLICTS AND CONTRADICTIONS 86-87 (1986). The segregation of the Arab neighborhoods continued from 1949 to 1967, largely due to the imposition, by the Jordanian government, of the death penalty on anyone convicted of selling land or buildings to Jews. MERON BENVENISTI, CITY OF STONE: THE HIDDEN HISTORY OF JERUSALEM 198 (1996). Jews who have attempted to rent apartments in Arab neighborhoods have generally been forced to leave by the hostile reception they received. *Ibid.*

⁴⁴ MICHAEL ROMANN & ALEX WEINGROD, LIVING TOGETHER SEPARATELY: ARABS AND JEWS IN CONTEMPORARY JERUSALEM 34 (1991).

⁴⁵ MICHAEL ROMANN & ALEX WEINGROD, LIVING TOGETHER SEPARATELY: ARABS AND JEWS IN CONTEMPORARY JERUSALEM 46 (1991).

⁴⁶ Frequently an extended family lived in the house, rather than a nuclear family.

⁴⁷ MICHAEL ROMANN & ALEX WEINGROD, LIVING TOGETHER SEPARATELY: ARABS AND JEWS IN CONTEMPORARY JERUSALEM 47 (1991).

⁴⁸ Appendix 4 contains, for the sake of comparison, aerial photographs of many of the Arab neighborhoods. Note the diffuse, low-density, village-style of the housing in the earliest photographs from 1967. Dramatic increases in population density and a construction boom is apparent in the more recent aerial images, from 1992 and 2000, with most pronounced increase during the years of the Oslo peace process, from 1993 onward. Frequently additional apartments are added atop of existing ones, often doubling or tripling the number of living units. However, this vertical growth is not readily apparent in these photographs.

⁴⁹ During the years 1949-1967, no new urban plan was formally adopted in the Jordanian-occupied sector. Interview with Z. Uri Ullmann, Director of Division for Strategic Planning and Research of Jerusalem Municipality, in Jerusalem (Nov. 25, 2001).

⁵⁰ ISRAEL KIMHI, ARAB BUILDING IN JERUSALEM 22 (CAMERA Monograph Series, 1997).

⁵¹ MERON BENVENISTI, CITY OF STONE: THE HIDDEN HISTORY OF JERUSALEM 125 (1996). Israel sought, after 1967, to improve and integrate the public services of the Arab neighborhoods. This was accomplished to a large degree, although in the latter years of Kollek's tenure the gap in the level of public services widened. MERON BENVENISTI, CITY OF STONE: THE HIDDEN HISTORY OF JERUSALEM 125 (1996).

⁵² Interview with Shalom Goldstein, Advisor to Mayor of Jerusalem Municipality for East Jerusalem Affairs, in Jerusalem (Apr. 15, 2002).

A. The Israeli Vision: A Reunited City as Israel's Eternal Capital

Israelis across virtually the entire political spectrum⁵³ insist that Jerusalem remain its united and exclusive capital, for all eternity.⁵⁴ Israelis characterize the capture of the Jordanian-occupied sector in the 1967 War as its 'liberation.' Many Israelis who accept territorial compromise on the West Bank or Gaza Strip, in the context of a viable peace process, are unwilling to forfeit control over any part of Jerusalem.⁵⁵ Thus, exclusive Israeli authority over Jerusalem is overwhelmingly considered "not only legitimate; it symbolizes the Jews' aspirations to independence and control of their destiny."⁵⁶

To further complicate the national tensions surrounding Jerusalem, the City is holy, originally to Jews, but thereafter as the site of shrines central to Christianity and Islam. As Professor Swig Werblowsky explained, "[f]or the Jewish people Jerusalem is not [merely] a city containing holy places or commemorating holy events. The City as such is holy."⁵⁷

Jerusalem Mayor Ehud Olmert and a number of the senior civil service and political employees of the Municipality were interviewed for this Study.

B. The Arab Vision: A Palestinian State with Jerusalem as its Capital

Contrary to the naïve hopes of Israelis, the Arabs residents did not accept the annexation of the Arab neighborhoods and the Old City with equanimity.⁵⁸ More important still, the Palestinian leadership regards Israel's annexation as illegal, and bans participation in Municipal elections so as not to grant implied recognition to Israeli assertions of sovereignty over the entire City.⁵⁹ They view 'their' area as 'occupied territory,' no different than the West Bank and Gaza Strip.⁶⁰ Further, the Palestinians assert, "[we] consider Jerusalem the capital of our prospective Palestinian state, the center of our society and the heart of our history and culture."⁶¹ PLO and Palestinian Authority Chairman Yasser

⁵³ See AMIR S. CHESHIN, BILL HUTMAN & AVI MELAMED, *SEPARATE AND UNEQUAL: THE INSIDE STORY OF ISRAELI RULE IN EAST JERUSALEM* 240 (1999); Editorial, *Untimely Crisis*, JERUSALEM POST, Apr. 29, 1999, p. 8.

⁵⁴ MERON BENVENISTI, *INTIMATE ENEMIES: JEWS AND ARABS IN A SHARED LAND* 44-45 (1995). As then-Mayor Kollek put it, "[w]e must be firm in declaring that the unity of Jerusalem, the capital of Israel, is beyond recognition. See AMIR S. CHESHIN, BILL HUTMAN & AVI MELAMED, *SEPARATE AND UNEQUAL: THE INSIDE STORY OF ISRAELI RULE IN EAST JERUSALEM* 242 (1999). Even one year into the original intifada Kollek still supported the theme that Jerusalem must remain united at all costs (*ibid.* p. 244), preferring to believe that it would take 100 years for the Arabs to acquiesce. MERON BENVENISTI, *INTIMATE ENEMIES: JEWS AND ARABS IN A SHARED LAND* 43 (1995). The position of the United States has been that Jerusalem should remain united but that its status should be determined by negotiations. See AMIR S. CHESHIN, BILL HUTMAN & AVI MELAMED, *SEPARATE AND UNEQUAL: THE INSIDE STORY OF ISRAELI RULE IN EAST JERUSALEM* 246-47 (1999); MERON BENVENISTI, *CITY OF STONE: THE HIDDEN HISTORY OF JERUSALEM* 39-40, 46 (1996). The one notable deviation from the consensus was former Prime Minister Ehud Barak's last-ditch efforts to save the Oslo Peace Process by grasping at a final status deal at the Camp David and subsequent summits. Saul Singer, *Who's Fault was the Failure of Camp David*, JERUSALEM VIEWPOINTS (a newsletter of the Jerusalem Center for Public Affairs), Mar. 15, 2002, pp. 3, 5, 6-7.

⁵⁵ MERON BENVENISTI, *INTIMATE ENEMIES: JEWS AND ARABS IN A SHARED LAND* 45, 56 (1995). Palestinians also view Jerusalem as the most difficult issue in the peace process. Riziq Shuqair, *Jerusalem: Its Legal Status and the Possibility of a Durable Settlement*, published by Al-Haq, p. 1 (1996).

⁵⁶ MERON BENVENISTI, *INTIMATE ENEMIES: JEWS AND ARABS IN A SHARED LAND* 45 (1995).

⁵⁷ MERON BENVENISTI, *CITY OF STONE: THE HIDDEN HISTORY OF JERUSALEM* 53 (1996). A similar attitude exists for Muslims, but as regards Mecca - not Jerusalem. Considerable historical research supports this historical understanding of the City. Daniel Pipes, *The Muslim Claim to Jerusalem*, MIDDLE EAST QUARTERLY, Fall 2001 (visited Nov. 23, 2001) <http://www.meqquarterly.org/0104jer.shtml>. This Study will not, however, evaluate this highly contentious controversy.

⁵⁸ Israelis hoped that, even if the Arabs did not share in their emotional delight at a reunited Jerusalem, they would be pleased with the material benefits such as running water. Others anticipated that the Arabs, tired of war, would accept the Israeli rule as a fait accompli. MERON BENVENISTI, *CONFLICTS AND CONTRADICTIONS* 94-96 (1986). Many liberal Israelis reasoned that the Arabs would not demand self-determination because since the mid-19th century there had always been a Jewish majority in Jerusalem. MERON BENVENISTI, *CONFLICTS AND CONTRADICTIONS* 96 (1986). Others reasoned that Islam regards Jerusalem as its 3rd holiest city while for Judaism it ranks highest on the scale of sanctity. MERON BENVENISTI, *CONFLICTS AND CONTRADICTIONS* 96 (1986). These, and other arguments, however have proven to be self-delusions. MERON BENVENISTI, *CONFLICTS AND CONTRADICTIONS* 97-100 (1986).

⁵⁹ No byline, *Kollek Ousted as Jerusalem's Mayor*, FACTS ON FILE WORLD NEWS DIGEST, Nov. 11, 1993, p. 854E2.

⁶⁰ MICHAEL ROMANN & ALEX WEINGROD, *LIVING TOGETHER SEPARATELY: ARABS AND JEWS IN CONTEMPORARY JERUSALEM* 12-13 (1991).

⁶¹ Riziq Shuqair, *Jerusalem: Its Legal Status and the Possibility of a Durable Settlement*, published by Al-Haq, p. 1 (1996).

Arafat has periodically proclaimed his intent to "declare an independent Palestinian state and its capital in noble Jerusalem."⁶²

Faisal Hussein was Arafat's first lieutenant in Jerusalem over the years. Hussein was also, in his own right, a prominent political activist from a leading Palestinian family. Until his recent death, Hussein represented himself as the *de facto* mayor of the Arab neighborhoods of Jerusalem.⁶³ In 1996, Hussein, whose official title was 'Member of the PLO Executive Committee in Charge of the Jerusalem Portfolio,'⁶⁴ and the six other Jerusalemites who were elected to the Palestinian Legislative Council, called on Israel to relinquish control of the Arab neighborhoods of Jerusalem, declaring that sector to be the Palestinian capital.⁶⁵ Thus, Hussein struggled to re-divide Jerusalem - to enable it to serve simultaneously as the capital of two states, with two police forces, two customs departments and checkpoints monitoring transit from the Arab to the Jewish areas.⁶⁶ He sought to create a Palestinian municipality, to govern the Arab neighborhoods and adjacent parts of the West Bank, alongside an Israeli municipality that would be reduced to controlling only west Jerusalem. Connecting the two municipalities, according to the Palestinian rendering, would be a coordinating body, comprised of Palestinians and Israelis, to look after the common interests of both peoples.⁶⁷

Following Hussein's death in 2001, Arafat appointed Dr. Sari Nusseibeh, a leading Palestinian intellectual, also from an illustrious family, to fill the post previously occupied by Hussein.⁶⁸ Apparently for the sake of continuity, Issaha Kassilieh, a former Assistant to Hussein, remains at the right hand of Nusseibeh. Nusseibeh and Kassilieh were interviewed for this Study.

II. Impediments to Providing Quality Public Services in the Arab Neighborhoods of Jerusalem

A common complaint directed at the Jerusalem Municipality relates to the unequal public services provided to the Arab neighborhoods as compared with the Jewish neighborhoods. The Municipality is frequently faulted for providing sub-standard municipal services to the city's Arab population. In this narrative, these residents are usually depicted

⁶² See, e.g., Guy Bechor et al., *Arafat: We Will Soon Announce Establishment of Palestinian State, with Jerusalem as its Capital*, HA'ARETZ (Hebrew newspaper), June 6, 1996, p. A1. Israeli political leaders, from the Prime Minister on down, have responded emphatically "never," stressing that Jerusalem would at no time be re-divided. Saul Singer, *Who's Fault was the Failure of Camp David*, JERUSALEM VIEWPOINTS (a newsletter of the Jerusalem Center for Public Affairs), Mar. 15, 2002. Recently, in the aftermath of the arrest of a Jerusalem-based Hamas ring accused of a series of deadly terrorist attacks including one on the campus of Hebrew University, former Mayor Kollek urged that Israel hand over certain parts of the City to the Palestinian Authority. Ramit Plushnick-Masti, *East Jerusalem Arabs Torn*, AP, Aug. 23, 2002, at 2:27 AM ET.

⁶³ ANNE LATENDRESSE, *JERUSALEM: PALESTINIAN DYNAMICS OF RESISTANCE AND URBAN CHANGE, 1967-94*, p. 5 (1995). Hussein even held a secret meeting with Kollek in 1993, dedicated to opening communication lines and dealing with local problems. AMIR S. CHESHIN, BILL HUTMAN & AVI MELAMED, *SEPARATE AND UNEQUAL: THE INSIDE STORY OF ISRAELI RULE IN EAST JERUSALEM 88-89* (1999). The Palestinians, however, were never heard from again on the issue of cooperation as the secret talks that led to the Oslo peace process were underway. *Ibid.*, p. 89.

⁶⁴ Mifta, *A Great Loss to Palestine*, THE NEWS FROM WITHIN, May 4, 2001, p. 3. A memorial tribute to Hussein described him as having "served the Palestinian cause in general and Jerusalem in particular. He fought and worked endlessly to regain Jerusalem and make it the capital of the state of Palestine." *Ibid.* Hussein's title was sometimes referred to as the "Political Commissioner of Jerusalem Affairs." He was listed on the Palestinian Authority Internet website as the "Minister for Jerusalem Affairs." Editorial, *Untimely Crisis*, JERUSALEM POST, Apr. 29, 1999, p. 8.

⁶⁵ Extremist views are often voiced by religious officials, as when the Palestinian Authority's Deputy Minister of Islamic Endowments, Sheikh Youseff Salama, recently declared, "Jerusalem is an Arab Muslim city, with no Jewish claim to it." Imad Al-Ifranji, *Jerusalem Under Threat*, JERUSALEM TIMES (weekly newspaper), Nov. 16, 2001, p. 10.

⁶⁶ Norm Guthartz, *City Officials Urge Palestinians to Get Involved*, JERUSALEM POST, Nov. 2, 1990, p. 5. Just before of his death due to a heart attack while on a visit to Kuwait, Hussein gave a highly controversial interview to an Egyptian newspaper. In it he described the Oslo peace process as a "Trojan horse," stating that the "Oslo agreement, or any other agreement, is just a temporary procedure, or just a step towards something bigger." Hussein continued, "if we agree to declare our state over what is now only 22 percent of Palestine, meaning the West Bank and Gaza - our ultimate goal is [still] the liberation of all historical Palestine from the [Jordan] River to the [Mediterranean] sea, even if this means that the conflict will last for another thousand years or for many generations." Interview of Faisal Hussein, Member of the PLO Executive Committee in Charge of the Jerusalem Portfolio, in *El-Aharam Al-Arabi* (Egyptian magazine), June 24, 2001. A similar formulation was enunciated by the Director of Yasser Arafat's Jericho office. SAMI F. MUSALLAM, *A PROGRAMME FOR ACTION FOR PEACE 125* (1996).

⁶⁷ Interview with Dr. Sari Nusseibeh, President of Al Quds University and Palestinian Authority Political Commissioner for Jerusalem Affairs, in Jerusalem (Jan. 30, 2002).

⁶⁸ Nusseibeh is better known as a scholar and as the President of Al Quds University.