

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.

as victims that pay taxes and fees but are denied the public services that normally accrue therefrom. It is natural to inquire why, 35 years after the 1967 War, the Jewish neighborhoods continue to enjoy a higher level of public services, and underlying infrastructure, than the Arab areas.

The conventional wisdom lays the blame at the foot of unequal budgetary allocations and the 'policy of Judaization.' This falls short of factoring in the complexities of the political and planning process within Jerusalem. The reality is much more complex. This Section will examine in depth the *realpolitik* of the planning process in the Arab areas of Jerusalem from three generally overlooked points of view.

A. The Palestinian Boycott of the Municipal Political Process

Little attention has been paid to understanding precisely why the residents of the Arab neighborhoods have been unable to obtain parity in municipal services. A pre-requisite for influence in any City's planning process is political clout. When Israel declared sovereignty over united Jerusalem in 1967, the overwhelming majority of Arab residents elected to remain citizens of Jordan, declining the offer of Israeli citizenship.⁶⁹ In the years that followed, many have engaged in various kinds of resistance to Israeli rule, ranging from non-cooperation,⁷⁰ not voting in municipal elections,⁷¹ evading municipal taxes,⁷² to occasional street violence.⁷³ The Palestinian leadership has shown no interest in bettering the position of the Arab residents within the Israeli system. Instead, it seeks only to "liberate" them from their involuntary incorporation into Israel. Most important for the purpose of this Study, they refrained from pursuing the political power that would normally accrue to a minority comprising approximately a quarter to a third of the population.⁷⁴

Due to Palestinian leadership's policy of non-cooperation⁷⁵ or, as it is called in Arabic, *samud*,⁷⁶ Jerusalem Arabs do not present themselves as candidates for the City Council. Only a miniscule percentage vote in the Municipal elections.⁷⁷ Most refuse to cooperate with the Israeli Municipal administration, either because they reject any act that might be construed as submitting to Israeli rule or because others have intimidated them.⁷⁸ Indeed, the PLO and the Palestinian Authority strive to coerce Jerusalem's Arabs to observe

⁶⁹ MICHAEL ROMANN & ALEX WEINGROD, *LIVING TOGETHER SEPARATELY: ARABS AND JEWS IN CONTEMPORARY JERUSALEM* 21 (1991).

⁷⁰ In 1967 Arab teachers, municipal workers, judges and others went on strike. Arab lawyers refused to argue cases before Israeli courts. Arab professional organizations refused to merge with their Israeli counterparts.

MICHAEL ROMANN & ALEX WEINGROD, *LIVING TOGETHER SEPARATELY: ARABS AND JEWS IN CONTEMPORARY JERUSALEM* 23, 201-03, 206 (1991).

⁷¹ MERON BENVENISTI, *INTIMATE ENEMIES: JEWS AND ARABS IN A SHARED LAND* 44 (1995); MICHAEL ROMANN & ALEX WEINGROD, *LIVING TOGETHER SEPARATELY: ARABS AND JEWS IN CONTEMPORARY JERUSALEM* 206-08 (1991).

⁷² AMIR S. CHESHIN, BILL HUTMAN & AVI MELAMED, *SEPARATE AND UNEQUAL: THE INSIDE STORY OF ISRAELI RULE IN EAST JERUSALEM* 76-77 (1999). During the period from 1948-1967, the government of Jordan based in Amman provided and paid for the public services in the part of Jerusalem it occupied. MERON BENVENISTI, *CITY OF STONE: THE HIDDEN HISTORY OF JERUSALEM* 125 (1996). This is a factor in the difficulty the post-1967 united Municipality has in collecting real estate taxes.

MICHAEL ROMANN & ALEX WEINGROD, *LIVING TOGETHER SEPARATELY: ARABS AND JEWS IN CONTEMPORARY JERUSALEM* 213 (1991).

⁷³ BBC Internet Website, *Violence Erupts at Jerusalem Holy Site*, July 29 2001,

(visited July 17, 2002) <http://news.bbc.co.uk/1/hi/english/world/middle_east/newsid_1462000/1462823.stm>.

⁷⁴ MICHAEL ROMANN & ALEX WEINGROD, *LIVING TOGETHER SEPARATELY: ARABS AND JEWS IN CONTEMPORARY JERUSALEM* 22 (1991).

⁷⁵ Bill Hutman, *Jerusalem Arabs Asked Not to Vote in Mayoral Poll*, *JERUSALEM POST*, Oct. 29, 1993, at 12;

⁷⁶ The Arabic word "*samud*" translates to "steadfastness" in English. MICHAEL ROMANN & ALEX WEINGROD, *LIVING TOGETHER SEPARATELY: ARABS AND JEWS IN CONTEMPORARY JERUSALEM* 58 (1991).

⁷⁷ For example, of the 100,000 eligible Arab voters in the municipal elections in the early 1990s, only 8,000 cast their votes. MERON BENVENISTI, *INTIMATE ENEMIES: JEWS AND ARABS IN A SHARED LAND* 44 (1995); MICHAEL ROMANN & ALEX WEINGROD, *LIVING TOGETHER SEPARATELY: ARABS AND JEWS IN CONTEMPORARY JERUSALEM* 206-08 (1991). Another report indicated that some 12 percent of the eligible Arab voters actually cast their votes in the Municipal elections held in the early 1990s. Amy Klein & Mohammed Najib, *Leaflets Denounce Arab Candidate as Traitor*, *JERUSALEM POST*, Sept. 25, 1998, at 3.

⁷⁸ For example, Hamas distributed leaflets during the 1993 elections that threatening violence against Arab Jerusalemites who cast ballots. Bill Hutman, *Hamas Leaflet Attacks Kollek, Threatens Arab Voters in Jerusalem*, *JERUSALEM POST*, Nov. 2, 1993, p. 2; see also Bill Hutman, *Jerusalem Arabs Asked not to Vote in Mayoral Poll*, *JERUSALEM POST*, Oct. 29, 1993, p. 12. During the 1998 Municipal elections a poll conducted by the Arabic language newspaper the *Jerusalem Times* found that nearly 54 percent of the Arabs in Jerusalem opposed participating in the election. Yet over 50 percent of those polled thought that the Palestine National Council should leave it up to the individual to decide whether to vote. Amy Klein & Mohammed Najib, *Leaflets Denounce Arab Candidate as Traitor*, *JERUSALEM POST*, Sept. 25, 1998, at 3.

their policy of total non-cooperation.⁷⁹ Consequently, the City's Arab residents have abdicated any direct role in the democratic political process by which the City is governed.⁸⁰ This inevitably impacts the level of services they receive.

Meanwhile, other interest groups, that do present themselves for election, compete vociferously for the limited funds available. In any democratic system, it is not surprising that a group, which chooses to absent itself from the Municipality, will stand to lose out when the budgets are carved up.

Both mayors since 1967, Kollek⁸¹ and Olmert,⁸² have publicly encouraged Arab involvement in the political process. Indeed, many City officials have repeatedly urged the City's Arabs to get involved in local government.⁸³ Most recently, Olmert, who was elected in 1993⁸⁴ and re-elected in 1998,⁸⁵ ran on a platform of improving the living conditions for the Arabs in Jerusalem.⁸⁶ Despite this, there is a widespread belief among the Arabs that the Municipality is disinterested in helping them on matters concerning neighborhood planning and building permits.

Yossi Cohen, Jerusalem Mayor's Advisor for Neighborhoods, has made inroads in addressing this long-standing problem, with the help of neighborhood committees. Thus far, groups of residents from several Arab neighborhoods have turned to the Municipality for assistance in completing the planning for their neighborhoods. The City heralds these contacts as demonstrating the Arabs' interest in cooperating in with the City by becoming involved in planning their own neighborhoods.⁸⁷ This cooperation is an anathema to the

⁷⁹ Thus, during the 1998 Municipal elections pamphlets denouncing an Arab candidate were distributed in the Arab neighborhoods. The pamphlets referred to the candidate as a "traitor" and threatened to start a new *Intifada*. Simultaneously an editorial published in the pro-Palestinian Authority newspaper *Al-Ayyam* called on Arabs to boycott the elections. This intimidation persisted despite the fact that the candidate who was targeted, Mussa Alayan, stressed that his candidacy "has nothing to do with political issues like control of Jerusalem, which is all the responsibility of the Palestinian Authority." He added that his party intended to deal with "day-to-day issues, such as improving living conditions in Arab neighborhoods." Amy Klein & Mohammed Najib, *Leaflets Denounce Arab Candidate as Traitor*, JERUSALEM POST, Sept. 25, 1998, at 3. The pro-Palestinian academic Anne Latendresse uses a creative euphemism to disguise the naked intimidation frequently practiced by the PLO, stating that the Arab population of Jerusalem "adopted a quasi-consensual policy of total non-cooperation with the Israeli authorities (national and municipal)." ANNE LATENDRESSE, JERUSALEM: PALESTINIAN DYNAMICS OF RESISTANCE AND URBAN CHANGE, 1967-94, p. 6 (1995). "Quasi-consensual" indeed.

⁸⁰ The vacuum caused by their absence has, to some extent, been filled by certain Jewish members of the City Council who champion Arab rights (Tamar Hausman, *Down and Out in Our Eternal Capital*, JERUSALEM POST, May 25, 2000, visited Dec. 29, 2001), the *Mukhtars* (MICHAEL ROMANN & ALEX WEINGROD, *LIVING TOGETHER SEPARATELY: ARABS AND JEWS IN CONTEMPORARY JERUSALEM 198-200*, 206 (1991); AMIR S. CHESHIN, BILL HUTMAN & AVI MELAMED, *SEPARATE AND UNEQUAL: THE INSIDE STORY OF ISRAELI RULE IN EAST JERUSALEM 74-75* (1999)), the neighborhood committees (MICHAEL ROMANN & ALEX WEINGROD, *LIVING TOGETHER SEPARATELY: ARABS AND JEWS IN CONTEMPORARY JERUSALEM 241* (1991)), the village committees, the Mayor's Advisor for Neighborhoods, and the Mayor's Advisor on Arab Affairs (now called 'The Mayor's Advisor on East Jerusalem Affairs'). Israel treats the *Mukhtars* as VIPs. They are issued special ID cards with certain privileges and receive a small monthly stipend. They are also provided with a special stamp, which together with their signature, is required on virtually every document an Arab resident of Jerusalem submits to the Israeli authorities. AMIR S. CHESHIN, BILL HUTMAN & AVI MELAMED, *SEPARATE AND UNEQUAL: THE INSIDE STORY OF ISRAELI RULE IN EAST JERUSALEM 74-75* (1999). Nevertheless, various difficulties arose out of false statements some of them made to the authorities regarding ownership of particular parcels of land. Interview with Adrian Goldstein, Deputy Manager of Licensing Department of Jerusalem Municipality, in Jerusalem (Dec. 6, 2001).

⁸¹ Kollek was Mayor from 1965 until 1993. He advocated "peaceful coexistence" as the goal for Jerusalem. Particularly during his early years, Kollek sought to "do everything possible" to reduce the inequalities in Municipal and social services between the Jewish majority and the Arab minority within the framework of Israeli sovereignty over the City. MICHAEL ROMANN & ALEX WEINGROD, *LIVING TOGETHER SEPARATELY: ARABS AND JEWS IN CONTEMPORARY JERUSALEM 195-96* (1991). The first *Intifada*, and in particular the extent of Arab violence in Jerusalem, convinced many that although Jerusalem's physical space was unified in 1967, the psychological space did not merge with it. MERON BENVENISTI, *INTIMATE ENEMIES: JEWS AND ARABS IN A SHARED LAND 23-26* (1995).

⁸² Olmert has been Mayor since he defeated Kollek in the 1993 election. See e.g. Norm Guthartz, *City Officials Urge Palestinians to Get Involved*, JERUSALEM POST, Nov. 2, 1990, p. 5.

⁸³ See e.g. Norm Guthartz, *City Officials Urge Palestinians to Get Involved*, JERUSALEM POST, Nov. 2, 1990, p. 5.

⁸⁴ No byline, *Kollek Ousted as Jerusalem's Mayor*, FACTS ON FILE WORLD NEWS DIGEST, Nov. 11, 1993, p. 854E2. Olmert received 60 percent of the votes cast while Kollek garnered only 34 percent. Kollek's chances of election were hurt by a low turnout of Arab voters, only about 10 percent cast ballots. No byline, *Kollek Ousted as Jerusalem's Mayor*, FACTS ON FILE WORLD NEWS DIGEST, Nov. 11, 1993, p. 854E2. Palestinian leaders contemplated running a slate of candidates to support Kollek in this election. After extensive deliberations, however, they decided to boycott the elections as they had traditionally done, fearing that an Arab minority on the City Council would be seen as legitimizing Israeli annexation. MERON BENVENISTI, *CITY OF STONE: THE HIDDEN HISTORY OF JERUSALEM 112* (1996).

⁸⁵ Howard Goller, Reuter & AP, *Jerusalem Mayor Winning*, THE GAZETTE (Montreal), Nov. 11, 1998, p. B8. Incumbent Mayor Olmert received 66 percent of the vote; his opponent received 24 percent.

⁸⁶ Election Appeal of Mussa Alayan v. Jerusalem Election Committee to the City Council, H.P. 662/98, Jerusalem District Court, Dec. 7, 1998; interview with Shalom Goldstein, Advisor to Mayor of Jerusalem Municipality for East Jerusalem Affairs, in Jerusalem (Dec. 20, 2001).

⁸⁷ Interview with Yossi Cohen, Advisor to Mayor of Jerusalem Municipality for Neighborhoods, in Jerusalem (Apr. 18, 2002).

Palestinian Authority. For example, a poster distributed by Yasser Arafat's Fatah faction in the 1998 elections states that, "not recognizing legitimacy of the Israeli occupation is more important than our day-to-day services.... We in the Fatah movement call our holy people to boycott the elections and to fight a war of existence and identity...."⁸⁸ Indeed, this poster expresses the calculation that the struggle for equal, day-to-day public services is trumped by larger Palestinian political objectives. Unfortunately, this premeditated refusal to participate in running the City inevitably impacts the quality of public services in the Arab sector.

It is interesting to examine how the Palestinian leadership reacted in the two instances, over the past 35 years, when daring individuals decided to run as candidates for Municipal office. In 1987, the Arab newspaper publisher Hanna Siniora considered running for mayor at the head of a list of Arab candidates for the City Council.⁸⁹ Then-Mayor Kollek (1965-1993) warmly welcomed Siniora's initiative stating, "we have always wanted Jerusalem's Arabs as our partners in running the united city."⁹⁰ Siniora's trial balloon was quickly deflated, however, as arsonists torched his two cars, and his home was daubed with graffiti warning him to discontinue his "involvement with the [Z]ionist enemy plans." This intimidation, at the hands of the Popular Front for the Liberation of Palestine,⁹¹ prompted Siniora to withdraw his candidacy.⁹² Kollek was forthright in blaming the Arabs' unwillingness to work within the system on "PLO threats against even the most patriotic Arab moderates who would dare in any way to lend the semblance of legitimacy to Israeli rule."⁹³

In the most recent Municipal elections (in 1998), a group of ten Palestinian rights⁹⁴ organizations⁹⁵ published a Press Release condemning the Independent Arab List [of candidates for the City Council], that was headed by an Arab insurance agent named Mussa Alayan. Palestinian leaders called a boycott of the election but Alayan, an insurance agent, sought to be the first Arab elected to the City Council in the post-1967 period. Alayan, an Israeli citizen and resident of Bet Safafa, campaigned on a platform of advancing the interests of the Arab residents of Jerusalem. He was first on the list of candidates known as the Independent Arab List. In polls taken up until two days before the election, Alayan's list was forecast to win at least two seats on the City Council. Ultimately, however, he received only 2,977 votes out of a total 175,294 cast. The figure 2,977 constituted 53 percent of the votes cast in the Arab neighborhoods.⁹⁶

Alayan filed a legal challenge against the results in the Jerusalem District Court. He alleged, *inter alia*, that Palestinian activists from the Fatah and other PLO factions carried

⁸⁸ Appendix 8F.

⁸⁹ Norm Guthartz, *City Officials Urge Palestinians to get Involved in Government*, JERUSALEM POST, Nov. 2, 1990, p. 5.

⁹⁰ David Landau, *Pro-PLO Journalist to Run for Jerusalem Council*, TORONTO STAR, June 5, 1987, p. A15.

⁹¹ See No byline, *PLO Faction Claims Responsibility for Burning Siniora's Car*, XINHUA GENERAL OVERSEAS NEWS SERVICE, June 21, 1987; see also Carol Rosenberg, *Arsonists Strike at Controversial Palestinian Editor's Home*, U.P.I., June 22, 1987.

⁹² Norm Guthartz, *City Officials Urge Palestinians to get Involved in Government*, JERUSALEM POST, Nov. 2, 1990, p. 5. Ironically, Arafat recently designated Siniora to serve as the next PLO Ambassador to the United States. Khaled Abu Toameh, *Siniora Confirmed as PLO Ambassador to US*, JERUSALEM POST, Oct. 8, 2002, p. 3.

⁹³ MERON BENMENISTI, *CONFLICTS AND CONTRADICTIONS* 112 (1986).

⁹⁴ They call themselves "human rights organizations."

⁹⁵ The Press Release was signed by: the Lobby for Human Rights in Jerusalem, Adameer, Al Haq, BADIL Resource Center/Arab Thought Forum, Jerusalem Center for Women, Palestine Human Rights Information Center, Women's Affairs Technical Committee, Women's Center for Legal Aid and Counseling. Perhaps the 'logic' underlying the peculiar message of the 10 rights groups lies in the fact that there is nothing democratic about Yasser Arafat (See SAID ABU RISH, *ARAFAT: FROM DEFENDER TO DICTATOR*, 262-325 (1998)), the PLO (See NEIL C. LIVINGSTONE & DAVID HALEVY, *INSIDE THE PLO* (1990); see DAVID MAKOVSKY, *MAKING PEACE WITH THE PLO: THE RABIN GOVERNMENT'S ROAD TO THE OSLO ACCORD* (1996); Joel S. Fishman, *The Broken Promise of the Democratic Peace: Israel and the Palestinian Authority*, JERUSALEM VIEWPOINTS, (a newsletter of the Jerusalem Center for Public Affairs), May 2002; Daniel Polisar, *The Myth of Arafat's Legitimacy*, AZURE, No. 13, Summer 2002, pp. 29-87), or the Palestinian Authority; see Justus R. Weiner, *An Analysis of Oslo II Agreement in Light of the Expectations of Shimon Peres and Mahmoud Abbas*, 17(3) MICHIGAN JOURNAL OF INTERNATIONAL LAW 667, 678-85 (1995). Nor does Yasser Arafat have use for the trappings of democracy, other than as a rhetorical cliché to attract Western political support and/or funding. This may explain the self-defeating Palestinian policy, pursued without interruption since the 1967 War, 35 years ago, of boycotting Jerusalem's Municipal elections.

⁹⁶ Interview with Shalom Goldstein, Advisor to Mayor of Jerusalem Municipality for East Jerusalem Affairs, in Jerusalem (Dec. 20, 2001).

out an aggressive public relations campaign against his candidacy. Alayan further claimed that his election workers were beaten and harassed. On the day of the election the lives and property of those who came to vote were threatened and masked men obstructed access to the polls in Arab neighborhoods. The polling places in Arab neighborhoods were attacked with sound bombs to intimidate prospective voters. Jerusalem Arabs were threatened that if they voted they would be regarded as traitors to the Palestinian cause and would be punished with an iron fist. Apparently many Arabs were frightened as a very low turnout (even compared with the previous elections) was noted. The end result was that Alayan fell short of the threshold needed to win even one seat on the City Council.⁹⁷

This Press Release featured such hyperbole as, “[t]he candidacy and the support for the ‘Arab List’ violates all international law and norms,⁹⁸ and seriously undermines the prospects for a successful struggle of the Palestinian people to liberate their capital Jerusalem.”⁹⁹ While this Press Release acknowledged that the independent Arab candidates had rallied around the issues of discrimination and human rights violations, they went so far as to “call upon...the Palestinian leadership [presumably the PLO or Palestinian Authority] to take the responsibility for preventing this candidacy.”¹⁰⁰ This euphemism, immediately understood by anyone familiar with Palestinian politics, invites intimidation (if not assassination).¹⁰¹ Such coercion, which continues until today, has been a major factor in the very low turnout of Arab voters in every Municipal election since 1967.¹⁰² Hence the lower standard of Municipal services in the Arab neighborhoods is a consequence of, not the cause for, the boycott of the political process dictated by the Palestinian leadership.

B. A Comparison with the Ultra-Orthodox Impact on the Municipality

In accordance with democratic principles, as residents of the City, Israel has entitled Arab residents to cast ballots and seek office in the Municipal elections.¹⁰³ It would be legitimate for the Arabs, or their leaders, to use politics to demand a larger slice of the Municipal budget. It is instructive to compare the Jerusalem Arabs with the ultra-Orthodox Jewish community, which is similar in population and socioeconomic characteristics to the Arab sector.¹⁰⁴ Former Jerusalem Deputy Mayor Meron Benvenisti notes that although on one hand the ultra-Orthodox reject the secular political system (since it is not based on Jewish law), most of them recognize that “without their participation in the never-ending haggling over public resources that goes on in the political arena, the interests of the ultra-Orthodox community as a whole and of each and every one of its individual members would be seriously compromised.”¹⁰⁵ Benvenisti describes this the compromise they make “between absolute principles and everyday needs” to assure their community’s “continued control of their physical space, of receiving a hefty slice of the welfare and education budgets, which are vitally important to them.”¹⁰⁶ Following their voting as a bloc to support Olmert in the 1993 elections, they received “key portfolios” and were enabled to “obtain additional land for the construction of...neighborhoods.”¹⁰⁷

⁹⁷ Election Appeal of Mussa Alayan v. Jerusalem Election Committee to the City Council, H.P. 662/98, Jerusalem District Court, Dec. 7, 1998; interview with Shalom Goldstein, Mayor’s Advisor for East Jerusalem Affairs, in Jerusalem (Dec. 20, 2001).

⁹⁸ The authors failed to mention even one international law or customary norm to back up this incredible, even nonsensical, claim.

⁹⁹ LOBBY FOR HUMAN RIGHTS IN JERUSALEM, PRESS RELEASE: CALL FOR ARAB BOYCOTT ON THE JERUSALEM MUNICIPALITY ELECTIONS 1 (Oct. 7, 1998).

¹⁰⁰ LOBBY FOR HUMAN RIGHTS IN JERUSALEM, PRESS RELEASE: CALL FOR ARAB BOYCOTT ON THE JERUSALEM MUNICIPALITY ELECTIONS 1 (Oct. 7, 1998).

¹⁰¹ This paradox boggles the mind: so-called “human rights” groups banding together to boycott free and fair elections and even to threaten those who partake in the democratic process. Imagine the outrage if this went on anywhere else in the world.

¹⁰² See MERON BENVENISTI, CITY OF STONE: THE HIDDEN HISTORY OF JERUSALEM 112 (1996); MICHAEL ROMANN & ALEX WEINGROD, LIVING TOGETHER SEPARATELY: ARABS AND JEWS IN CONTEMPORARY JERUSALEM 217 (1991).

¹⁰³ MERON BENVENISTI, CITY OF STONE: THE HIDDEN HISTORY OF JERUSALEM 132 (1996). MICHAEL ROMANN & ALEX WEINGROD, LIVING TOGETHER SEPARATELY: ARABS AND JEWS IN CONTEMPORARY JERUSALEM 23 (1991).

¹⁰⁴ See Tovah Lazaroff, *Poorest Cities: Bnei Brak, Jerusalem*, JERUSALEM POST, Dec. 11, 2001, p. 3; Tova Lazaroff, *East Jerusalem Not Part of Poverty Report*, JERUSALEM POST, Dec. 11, 2001, p. 3.

¹⁰⁵ MERON BENVENISTI, CITY OF STONE: THE HIDDEN HISTORY OF JERUSALEM 181-82 (1996).

¹⁰⁶ *Ibid.* p. 182.

¹⁰⁷ *Ibid.* p. 183.

The striking difference, however, is that the Arab community has not used the political process to obtain benefits for its members.¹⁰⁸ This lack of influence is the direct consequence of a strategic decision by the Palestinian leadership to penalize any Arabs who openly cooperate with the Municipality. Regardless of questions concerning their ultimate national allegiance, Arab politicians could have made their mark in Municipal politics just as the ultra-Orthodox Jews have in Jerusalem,¹⁰⁹ and disadvantaged minority groups have done in democracies elsewhere. Municipal politics is not an effective forum for national political issues. The Palestinian leadership's myopia fails to capitalize on the essence of municipal politics - the building and funding of good schools, paving streets, furnishing public transportation, allocating tax assessments, and the like. Instead the day-to-day needs of the Arab residents of Jerusalem are subordinated to the Palestinian leadership's attempts to import national issues, like sovereignty and borders, into municipal politics.

Imagine the influence that the Arabs, a bloc of some 25 percent of the eligible voters, could have exercised within the fractious coalition politics¹¹⁰ of the City Council.¹¹¹ With their current population, assuming the same percentage of eligible voters cast votes as in the overall Jewish sector, they could elect 7 or 8 members to the City Council. Such a bloc could well cast the swing votes on many issues. Juxtaposed with the ultra-Orthodox Jewish community, which effectively uses the democratic political process to obtain benefits for its constituents,¹¹² the Arab residents ought to question whether their decades-long boycott of the Municipality has really served their interests.

Yet, to this day, the Palestinian leadership maintains a boycott of the democratic process. According to Dr. Sari Nusseibeh, generally regarded as a moderate, from the 1980s onward it "wasn't possible" for a Palestinian to run for City Council. From a legal standpoint there is no impediment whatsoever. When asked whether an Arab could now run for the City Council he equivocated, referring to it as "an academic solution,"¹¹³ implying that it would not work in the real world. Issaha Kassilieh, said that running for City Council is "one of our options."¹¹⁴ Nusseibeh corrected him, stating that in the context of a solution to the overall conflict, running for City Council would be a valid option, but in the absence of a solution, all these suggestions remain on an academic level.¹¹⁵

It is ironic that the Palestinian leadership, having opted out, year after year, election after election, even to the point of intimidating Arabs who awoke to the obstinacy

¹⁰⁸ MICHAEL ROMANN & ALEX WEINGROD, *LIVING TOGETHER SEPARATELY: ARABS AND JEWS IN CONTEMPORARY JERUSALEM* 231 (1991).

¹⁰⁹ Michael Yudelman, *North Tel Aviv Betrayal, Jerusalem's Haredi Revenge*, JERUSALEM POST, Nov. 5, 1993, p. 3.

¹¹⁰ The City Council is comprised of 31 elected members and the Mayor. See AMIR S. CHESHIN, BILL HUTMAN & AVI MELAMED, *SEPARATE AND UNEQUAL: THE INSIDE STORY OF ISRAELI RULE IN EAST JERUSALEM* 29 (1999). In the most recent elections the voters chose between 25 different lists of candidates, offering a very wide range of issues and personalities. Jerusalem Municipality Internet Website, 1998 Elections of the City of Jerusalem, (visited Aug. 26, 2002) <http://www.jerusalem.muni.il/jer_sys/elections/mifligot_results.asp>. It took approximately 6,000 voters to elect a member on the City Council.

¹¹¹ In Haifa, the northern Israeli coastal city, Arabs constitute 8.6 percent of the population., less than one-third of their presence in Jerusalem. Yet active participation in Municipal politics has resulted in their achieving 9.7 percent representation on the City Council. Interview with Z. Uri Ullmann, Director of Division for Strategic Planning and Research of Jerusalem Municipality, in Jerusalem (Apr. 8, 2002).

¹¹² Currently the ultra-Orthodox parties have 12 seats on the 31 member City Council. Tamar Hausman, *Down and Out in Our Eternal Capital*, JERUSALEM POST, May 25, 2000, available at Jerusalem Post Internet Website (visited Dec. 29, 2001) <<http://www.jpost.com/Editions/2000/02/25/Features/Features.3190.html>>; MICHAEL ROMANN & ALEX WEINGROD, *LIVING TOGETHER SEPARATELY: ARABS AND JEWS IN CONTEMPORARY JERUSALEM* 231 (1991). The ultra-Orthodox further magnified their political clout by registering the highest election-day turnout (over 80 percent) of any sector of the City's population in the 1998 elections. The turnout in of the rest of the Jewish electorate was 40 percent. Only one percent of the eligible Arabs cast vote. See No byline, *Losing the People*, JERUSALEM POST, Nov. 12, 1998, p. 8.

¹¹³ Interview with Dr. Sari Nusseibeh, President of Al Quds University and Palestinian Authority Political Commissioner for Jerusalem Affairs, in Jerusalem (Jan. 30, 2002).

¹¹⁴ Interview with Issaha Kassilieh, Senior Official of the Orient House and former Assistant to the late Faisal Hussein, in Jerusalem (Jan. 30, 2002).

¹¹⁵ Interview with Dr. Sari Nusseibeh, President of Al Quds University and Palestinian Authority Political Commissioner for Jerusalem Affairs, in Jerusalem (Jan. 30, 2002).

of their leadership's boycott,¹¹⁶ to place full responsibility on the City for not providing the Arab neighborhoods with full public services at the standard delivered in the Jewish sector. If they had a positive vision of engagement, rather than of boycott, the current reality would certainly be different.

C. The Impact of the Development Environment

A second viewpoint is to understand the intricacies of the development environment, which was radically different in the eastern and western parts of the city prior to the 1967 War.¹¹⁷ On the one hand, per capita expenditure for public services in the western sector was almost five times that spent in the Arab neighborhoods by the ousted Jordanian administration.¹¹⁸

On the other hand, the low-density pattern of housing in the Arab neighborhoods escalates the cost of delivering public services to their residents.¹¹⁹ This stems from the cultural tendency of the Arab residents of Jerusalem to build scattered, low-density structures, without regard for its effect on the cost of providing the infrastructure. Unchecked building of thousands of illegal, free-standing structures on open land dramatically increases the City's costs in bringing electricity, water, paving roads, sidewalks, parking, etc. to the dispersed living units.

The converse is also true. That is, building units densely, in compliance with modern planning priorities, generates economies of scale in furnishing public services. The inefficiencies inherent in low-density illegal construction become obvious if one juxtaposes the aerial photograph of the Jewish neighborhood of Har Nof (Appendix 5), with photographs from Arab neighborhoods like Um Tuba and Hod El Tabel (Appendix 4). Yet, if the City does not connect the scattered, low-density living units to public services, the resident who built, purchased, or rented an illegal unit, can claim he is the victim of discrimination. In actuality, the resident is reaping the consequences of living in an illegal unit.

D. Differential Funding Patterns

In Jerusalem *arnona* remittances form the largest source of municipal revenue.¹²⁰ The residents of Jerusalem, both Arab and Jewish, are not, on average, affluent.¹²¹ This

¹¹⁶ Independent Arab journalist Daoud Kuttub has voice misgivings regarding the effects of the boycott of Municipal politics. He stated, "What is needed to move forward is to depoliticize Jerusalem and to think of ways of making Jerusalem's people a priority, rather than politics. Our leaders can do this without giving up our goals and aspirations." Daoud Kuttub, *A Dilemma Avoided - This Time*, JERUSALEM POST, Nov. 5, 1998, p. 8.

¹¹⁷ AMIR S. CHESHIN, BILL HUTMAN & AVI MELAMED, *SEPARATE AND UNEQUAL: THE INSIDE STORY OF ISRAELI RULE IN EAST JERUSALEM 14-28* (1999). The Kendall plan from 1944 was the last plan that included the entire City (within its then fixed boundaries). It remained the only valid city plan for Arab neighborhoods of Jerusalem between 1948-1967. During these years very few changes were made to the plan. Parallel to this official plan; two additional plans were proposed by the Jordanian authorities. In 1962-63 Anthony and Shechter prepared a new plan. This document was not legally binding, it gave recommendations and general suggestions. In 1964 another plan entitled "recommendations for planning Jerusalem (Jordan) and its surroundings" was prepared by Kendall. This document was used as a guideline for city plans that received legal status, such as for Shoafat and Beit Hanina.

¹¹⁸ MERON BENVENISTI, *CITY OF STONE: THE HIDDEN HISTORY OF JERUSALEM 125* (1996).

¹¹⁹ Jerusalem Municipality, *Report by the Committee for Analyzing Municipal Services in East Jerusalem 1-2* (Nov. 1994). See Section VII of the text below.

¹²⁰ Nissim Salomon, Deputy Director General and Head of City Administration of Jerusalem Municipality, in Jerusalem (June 3, 2002).

¹²¹ According to the 2001 Poverty Report issued by the (Israeli) National Insurance Institute and the (Israeli) Ministry of Labor and Social Affairs, Jerusalem is the second most impoverished city in Israel with more than 23 percent of the families living below the poverty line. The City would likely have achieved the dubious distinction of being the poorest had its Arab residents been included in the Report's calculations. Lauren Gelfond, *The Poverty Cover-Up*, in JERUSALEM, Nov. 15, 2002, p. 12; Tovah Lazaroff, *Poorest Cities: Bnei Brak, Jerusalem*, JERUSALEM POST, Dec. 11, 2001, p. 3; see Teddy Kollek, *The Importance of Independence*, JERUSALEM POST, Dec. 22, 1998, at 8. In the words of former Mayor Kollek:

Early during my first term as mayor, I was visited by some American friends who asked me whether I was aware how poor Jerusalem was. They pointed out that it would be virtually impossible to finance new projects, such as research or building programs, out of the city's regular operating budget, and strongly advised me to set up a separate foundation to raise funds for such projects. That's how the Jerusalem foundation was born.

fact limits the City's ability to raise *arnona* rates.¹²² By and large the residents of Arab neighborhoods are assessed at the lowest Municipal tax rates and/or have low enough income to be entitled to a reduced rate.¹²³ For reciprocal reasons higher *arnona* taxes are applicable in most Jewish neighborhoods in West Jerusalem.¹²⁴ In this respect Jerusalem does not differ from many other metropolitan areas - it has difficulties, budgetary and others, delivering quality public services to disadvantaged neighborhoods. This is true not only of Jerusalem, but also of more affluent cities like London and New York. Clearly public services are markedly better in London's upper class neighborhoods like Kensington and Mayfair, as juxtaposed with distressed areas like Brixton and Tower Hamlets. Likewise in New York, residents of Madison and Park Avenues on the Upper East Side enjoy cleaner streets, enhanced cultural institutions, better schools, and cleaner public parks than New Yorkers living in the South Bronx or Harlem.

However, Jerusalem has been the beneficiary of an immense amount of charitable donations and bequests from outside the country. The inequality is partially attributable to the abundant financial support of projects in the Jewish neighborhoods by foreign donors, many of them Jewish. The Jerusalem Foundation, perhaps the foremost conduit for such largess, has contributed in excess of \$710 million (U.S.) to the development of the City, implementing thousands of projects that impact every neighborhood in the City.¹²⁵ One of the reasons the Foundation has been so successful in attracting donors is that it links them to particular projects, enabling them to identify with the project.¹²⁶ This goes a long way in explaining the disparity¹²⁷ in infrastructure. Consequently, many investments in infrastructure, especially in the Jewish neighborhoods, do not come out of the Municipal budget. Indeed, these projects are not even the result of budgetary allocations.¹²⁸ As even a cursory glance at the plaques that adorn many public facilities and amenities in Jerusalem will testify, most of the parks,¹²⁹ the museums, schools, universities, promenades, hospitals and even the City Hall Plaza were financed by foreign donors.¹³⁰

The Arab world has not come close to matching these fund raising efforts to finance projects in the Arab neighborhoods. This is not to say that the Palestinian leadership has not been successful in fundraising. The enormous oil wealth of the Arab world finds other causes, such as financing the well-documented excesses of the Palestinian leadership.¹³¹ King Fahd, among others, could certainly afford to help. And why not the European states,

Ibid.

¹²² Recently the Deputy Head of the Jerusalem Municipality's *arnona* division, Mohammed Muchsaid, was arrested by the police and charged with deleting the tax bills (or offering large discounts) in return for sexual relations with a number of women. Etgar Lefkovits, *Tax Breaks for Sexual Favors*, IN JERUSALEM, Nov. 15, 2002, p. 8.

¹²³ Low-income families are given a discount on their *arnona*. Telephone interview with Moshe Levy, Director of Taxation and Collections Department of Jerusalem Municipality, in Jerusalem (Oct. 10, 2002).

¹²⁴ Approximately 8.5 percent of the *arnona* revenues are collected from the Arab neighborhoods. Telephone interview with Moshe Levy, Director of Taxation and Collections Department of Jerusalem Municipality, in Jerusalem (June 3, 2002).

¹²⁵ THE JERUSALEM FOUNDATION, booklet, n.d. Funds by the Jerusalem Foundation have also erected projects in the Arab neighborhoods of the City, such as the Sheikh Jarrah Medical Clinic. Other projects, such as the Tisch Family Biblical Zoo and the Bloomfield Science Museum, were built in Jewish areas but serve the entire population of the Municipality. Teddy Kollek, *The Importance of Independence*, JERUSALEM POST, Dec. 22, 1998, at 8.

¹²⁶ Teddy Kollek, *The Importance of Independence*, JERUSALEM POST, Dec. 22, 1998, at 8.

¹²⁷ The process of raising and allocating funds to improve conditions in the Arab neighborhoods, since 1967, has been beset with a range of complexities, some of which are discussed in Section II of the text above. Regrettably it is beyond the scope of this Study to give this matter the attention that it warrants.

¹²⁸ See Teddy Kollek, *The Importance of Independence*, JERUSALEM POST, Dec. 22, 1998, at 8.

¹²⁹ Over the years some 350 parks and playgrounds have been built by the Jerusalem Foundation. Teddy Kollek, *The Importance of Independence*, JERUSALEM POST, Dec. 22, 1998, at 8.

¹³⁰ See Teddy Kollek, *The Importance of Independence*, JERUSALEM POST, Dec. 22, 1998, at 8.

¹³¹ See generally SAID ABU RISH, *ARAFAT: FROM DEFENDER TO DICTATOR* (1998). During the 1980s a contribution from Jordan to A-Tur was channeled through the Municipality. Interview with Shalom Goldstein, Advisor to Mayor of Jerusalem Municipality for East Jerusalem Affairs, in Jerusalem (Dec. 20, 2001).

that frequently place their political weight behind the Palestinian cause?¹³² Worse still, hundreds of millions of U.S. dollars have been pledged, and millions of dollars handed over, to reward the families of Palestinian suicide bombers.¹³³ And as will be discussed below, similar sums fund the illegal construction of the Palestinian Authority. Yet, when it comes to 'quality of life' projects for the Arab residents of Jerusalem, foreign donors are close-fisted.

The Municipal administrations have concluded that outside funding would have to be secured to invest and achieve parity in the infrastructure and public services of the Arab neighborhoods. They have attempted, by various methods, to do precisely that. Most significantly, repeated efforts have been made to secure funding from the national government,¹³⁴ with intermittent success.¹³⁵ In the aftermath of the 1967 War, the national government financed the effort to repair the damage caused by the heavy fighting in Jerusalem.¹³⁶ This initial generosity, however, lost momentum during the long tenure of Mayor Teddy Kollek, reaching a point of virtual neglect.¹³⁷ When Mayor Olmert entered office in 1993, he asked his predecessor about City plans for infrastructure projects in the Arab neighborhoods Jerusalem. Kollek's answer was that there were none.¹³⁸

Olmert felt obliged to improve relations between the Arab and Jewish sectors."¹³⁹ Shortly after taking office, Olmert convened a conference to discuss the ways in which the Municipality would deal with the issue of urban services in the Arab neighborhoods of Jerusalem. The Mayor acknowledged that a huge gap existed between the level of infrastructure in the Arab areas as compared to the Jewish areas.¹⁴⁰ The Mayor expressed his aspiration to provide equal standards for both sectors of the City.¹⁴¹

As a first step towards closing the gap, the City's 1995 budget prioritized developing and expanding social and physical services in the Arab neighborhoods.¹⁴² The Mayor appointed Ilan Cohen, then-Managing Director of the Jerusalem Municipality, to head a Committee to map and survey the services provided by the Municipality in the Arab neighborhoods. The Committee sought to make practical recommendations on how to close the gaps, to assist the Mayor in decision-making, and to bring the City's need for assistance to the attention of the national government.¹⁴³ The study identified two types of shortcomings - those that could be resolved with existing Municipal resources and those which would require funding by the national government.¹⁴⁴ The study also identified the low-density pattern of housing in the Arab neighborhoods as an aggravating factor that increases the cost of providing municipal services to the residents. It concluded that a total of 520 million NIS (new Israeli shekels; approximately \$130 million U.S.) would be needed to close the gap.¹⁴⁵

¹³² Confidential interview, with senior civil servant at the Jerusalem Municipality, in Jerusalem, June 4, 2002. It was suggested that the reason why European countries, in particular Germany, are not forthcoming is that they view their extending assistance to the Arab neighborhoods of Jerusalem as helping Israel. *Ibid.*

¹³³ Iraq has announced that it is budgeting one billion euros to support the Palestinian uprising, of which 300 million euros is allocated to support the families of "martyrs." News in Brief, *Iraq Allocates 1b.Euros for Palestinians*, JERUSALEM POST, Dec. 10, 2000 p. 2.

¹³⁴ Gerald Steinberg, *Jerusalem: Where Two Halves Make an Awkward Whole*, review of AMIR CHESHIN, BILL HUTMAN AND AVI MELAMED, SEPARATE AND UNEQUAL: THE INSIDE STORY OF ISRAELI RULE IN EAST JERUSALEM, JERUSALEM POST, July 2, 1999, p. 12B; interview with Ehud Olmert, Mayor of Jerusalem Municipality, in Jerusalem (Dec. 31, 2001); MERON BENVENISTI, CONFLICTS AND CONTRADICTIONS 114 (1986); MERON BENVENISTI, INTIMATE ENEMIES: JEWS AND ARABS IN A SHARED LAND 35-36 (1995).

¹³⁵ See Section II. D of the text above.

¹³⁶ MERON BENVENISTI, CITY OF STONE: THE HIDDEN HISTORY OF JERUSALEM 125-26 (1996).

¹³⁷ MERON BENVENISTI, CITY OF STONE: THE HIDDEN HISTORY OF JERUSALEM 126-27 (1996).

¹³⁸ Interview with Ehud Olmert, Mayor of Jerusalem Municipality, in Jerusalem (Dec. 31, 2001).

¹³⁹ MERON BENVENISTI, CITY OF STONE: THE HIDDEN HISTORY OF JERUSALEM 126-27 (1996).

¹⁴⁰ Jerusalem Municipality, *Report by the Committee for Analyzing Municipal Services in East Jerusalem* 1 (Nov. 1994).

¹⁴¹ Interview with Ehud Olmert, Mayor of Jerusalem Municipality, in Jerusalem (Dec. 31, 2001).

¹⁴² Jerusalem Municipality, *Report by the Committee for Analyzing Municipal Services in East Jerusalem* 1 (Nov. 1994).

¹⁴³ Jerusalem Municipality, *Report by the Committee for Analyzing Municipal Services in East Jerusalem* 1-2 (Nov. 1994).

¹⁴⁴ Jerusalem Municipality, *Report by the Committee for Analyzing Municipal Services in East Jerusalem* 4 (Nov. 1994).

¹⁴⁵ Jerusalem Municipality, *Projects for Developing Infrastructure in East Jerusalem Between the Years of 1999-2000* (Oct. 1999).

Little progress was made until late-1996, when the City, in negotiation with the Ministerial Committee for Jerusalem Affairs of the Netanyahu Government reached an agreement on sharing costs. This arrangement specified that 130 million NIS would be budgeted for improving infrastructure in the Arab neighborhoods of Jerusalem. This sum was to be comprised of 60 million NIS from the Ministry of Finance, 53 million NIS from various other ministries, and 17 million NIS from the Municipality. The Municipality understood this to reflect a four-year commitment on the part of the national government, and drew up plans for projects totaling 520 million NIS.¹⁴⁶

In May 1997 the Municipality began various infrastructure projects in the Arab neighborhoods of Jerusalem, including roads, schools, drainage systems, playgrounds, public gardens, and community centers. Believing that sums¹⁴⁷ would be forthcoming annually from the various ministries of the national government,¹⁴⁸ the City was soon disappointed. Although the Municipality fully honored its pledge of 17 million NIS,¹⁴⁹ the Finance Ministry and other government ministries furnished only 51 million NIS, less than half what had been promised for the first year. As a result, many projects were left uncompleted.¹⁵⁰

In 1998-99 many meetings took place between the Municipality and various national ministries regarding what the City insisted was a four-year commitment. However, instead of investing the amount of 130 million NIS per year, over the course of an additional three years, as of February 26, 1997, a total sum of only 207.8 million NIS had been invested in developing infrastructure in the Arab neighborhoods.¹⁵¹ Thereafter Ehud Barak's Government did not fund infrastructure projects for the Municipality.¹⁵² In 2001, however, the Government of Prime Minister Ariel Sharon funded 65 million NIS for improving the infrastructure in Jerusalem's Arab areas.¹⁵³ The City supplemented this sum with 11.5 million NIS from its budget.¹⁵⁴ As of the end of 2001 a total of 76.5 million NIS was made available for infrastructure projects.¹⁵⁵ Half this sum was earmarked to complete the unfinished projects. The remainder will fund, in consultation with the neighborhood community councils,¹⁵⁶ projects that the City can afford to complete.¹⁵⁷ In the meantime, the gap between the Jewish and Arab neighborhoods of Jerusalem has grown. The current estimate is that an additional 780 million NIS (\$160 million U.S.) is required to bring the Arab areas up to parity with Jewish neighborhoods in infrastructure and public services.¹⁵⁸

¹⁴⁶ Jerusalem Municipality, *Projects for Developing Infrastructure in East Jerusalem Between the Years of 1997-1998*, booklet 1 (Jan. 1998).

¹⁴⁷ The four-year commitment was approved by the Netanyahu Government with the assistance of Dan Meridor, then-Minister of Finance. However, when the issue was brought up again for funding the following year (1998), Yakov Neeman, the new Minister of Finance, claimed that the multi-year commitment was no longer valid. Interview with Nissim Salomon, Deputy Director General and Head of City Administration of Jerusalem Municipality, in Jerusalem (Dec 31, 2001).

¹⁴⁸ Among the ministries involved are Finance, Housing, Education and Transportation. Interview with Nissim Salomon, Deputy Director General and Head of City Administration of Jerusalem Municipality, in Jerusalem (Dec 31, 2001).

¹⁴⁹ The current exchange rate is 4.9 NIS for \$1 U.S.

¹⁵⁰ Jerusalem Municipality, *Projects for Developing Infrastructure in East Jerusalem Between the Years 1997-1998*, booklet 1 (Jan. 1998).

¹⁵¹ Jerusalem Municipality, *Projects for Developing Infrastructure in East Jerusalem Between the Years 1997-1998*, (Jan. 1998).

¹⁵² Olmert even criticized the national government for failing to invest in the Arab areas of Jerusalem because, "it intends to transfer portions of it to the Palestinian Authority." MERON BENVENISTI, *CITY OF STONE: THE HIDDEN HISTORY OF JERUSALEM* 127 (1996).

¹⁵³ Interview with Ehud Olmert, Mayor of Jerusalem Municipality, in Jerusalem (Dec. 31, 2001); interview with Nissim Salomon, Deputy Director General and Head of City Administration of Jerusalem Municipality, in Jerusalem (Dec 31, 2001).

¹⁵⁴ Interview with Nissim Salomon, Deputy Director General and Head of City Administration of Jerusalem Municipality, in Jerusalem (June 3, 2002).

¹⁵⁵ The Municipality's share was 11.5 million NIS, the Ministry of Housing's share was 40 million NIS, and the Ministry of Transport's share was 25 million NIS. Interview with Nissim Salomon, Deputy Director General and Head of City Administration of Jerusalem Municipality, in Jerusalem (June 3, 2002); Jerusalem Municipality, *A Summary Report on the Advancement of Proper Conditions for Building in East Jerusalem* (Dec. 1998).

¹⁵⁶ Community councils are discussed in Section VI. D of the text below.

¹⁵⁷ Interview with Zeev Givon, Assistant to Deputy Director General of Jerusalem Municipality, in Jerusalem (Jan. 17, 2002).

¹⁵⁸ Interview with Nissim Salomon, Deputy Director General and Head of City Administration of Jerusalem Municipality, in Jerusalem (June 3, 2002); Jerusalem Municipality, *A Summary Report on the Advancement of Proper Conditions for Building in East Jerusalem* (Dec. 1998).

Mayor Olmert states that he is interested in providing the City's Arab population with services equal to those in the Jewish sector. Olmert believes this can be achieved when the Government of Israel furnishes the Municipality with the full amount requested, 980 million NIS,¹⁵⁹ over a five year period.¹⁶⁰ Unfortunately, from the Mayor's perspective, the various national governments have never made available the full sums requested. Apparently, they expect the Municipality to cope with this problem without much outside help.¹⁶¹

In sum, the Municipality, with limited help from successive national governments, has attempted to close the infrastructure gap between the Arab and Jewish neighborhoods. This effort has achieved only limited local success, in part due to the dispersed, low-density construction patterns common in the Arab sector.

III. Israeli Planning Law and Illegal Building

Israeli planning law differentiates between legal (licensed) and illegal (unlicensed) building. It is helpful to describe the standards and procedures applied throughout Israel, and the controversy that arises when they are applied in the Arab areas of Jerusalem. The nature and scope of illegal construction in Jerusalem is discussed in the following subsections, each of which addresses one of the four primary causes of illegal building: poverty, cultural factors, political factors, and illicit profit.

A. Israeli Planning Law

Planning in Jerusalem began during the three decades of the British Mandate. As in other historic cities, planning schemes must balance preservation against development.¹⁶² From the outset, the objective of the planners was to preserve Jerusalem's special character and flavor.¹⁶³ This is accomplished by dictating the limits of an individual's rights regarding his/her land.¹⁶⁴ Simply put, private rights have to be weighed against public needs.¹⁶⁵ This is true as well in Jewish neighborhoods, where planning is also a protracted endeavor that sometimes takes years.¹⁶⁶ Among the most misunderstood features of the Planning and Building is the requirement that every resident wishing to build (including by constructing permanent additions) must comply with certain standards and obtain a permit. In short, nobody is allowed to build in Jerusalem at will.

The requirement to secure a permit from the planning department is identical in all parts of the City, although enforcement issues vary from neighborhood to neighborhood. These enforcement difficulties, which will be examined below, are manipulated by critics

¹⁵⁹ Interview with Nissim Salomon, Deputy Director General and Head of City Administration of the Jerusalem Municipality, in Jerusalem (Dec 31, 2001).

¹⁶⁰ Interview with Ehud Olmert, Mayor of Jerusalem Municipality, in Jerusalem (Dec. 31, 2001). Elsewhere Olmert claimed that \$500,000,000 U.S. is needed from international bodies and governments to modernize the infrastructure in the Arab neighborhoods. Letter from Ehud Olmert, Mayor of Jerusalem Municipality, to Shimon Peres, Foreign Minister of Israel (Apr. 23, 2001).

¹⁶¹ In an effort to raise outside funds, the Municipality produced a brief informational video aimed at attracting infrastructure capital from foreign sources. The video made it known that the Municipality would cooperate with foreign investors, even from countries that do not have diplomatic relations with Israel. Letter from Ehud Olmert, Mayor of Jerusalem Municipality to Shimon Peres, Foreign Minister of Israel (Apr. 23, 2001). To the best of the Author's knowledge, the video did not achieve its intended objective.

¹⁶² A major consideration in Israeli planning was to provide housing and employment for new immigrants. MERON BENVENISTI, CITY OF STONE: THE HIDDEN HISTORY OF JERUSALEM 141 (1996).

¹⁶³ MERON BENVENISTI, CITY OF STONE: THE HIDDEN HISTORY OF JERUSALEM 138 (1996). Critics have objected to the political *ibid*, financial, ego and aesthetic mistakes, which have been made, none of which are easily or quickly reversible.

¹⁶⁴ MERON BENVENISTI, CITY OF STONE: THE HIDDEN HISTORY OF JERUSALEM 138-39 (1996).

¹⁶⁵ See MERON BENVENISTI, CITY OF STONE: THE HIDDEN HISTORY OF JERUSALEM 138 (1996).

¹⁶⁶ ISRAEL KIMHI, ARAB BUILDING IN JERUSALEM 32 (CAMERA Monograph Series, 1997).