

As in the case of the Palestinian Authority's subsidies, not one of the NGOs has identified the preeminent motivation of old-fashioned criminal greed that underlies the illegal building epidemic. Why are they silent? Can the NGOs be unaware of the *Kol Ha'ir* expose disclosing the Palestinian Authority's backing of a criminal gang of Arab builders? Why don't the NGOs echo Nusseibeh's forthright statement that gangs that build illegally, on land that does not belong to them, should be thrown into jail, rather than allowed to persist in illegal conduct?<sup>395</sup> Where are the NGOs that ignore this organized criminal conspiracy? One City official complained that the NGOs only get involved at a much later stage. That is, when the Municipality commences the process of administrative demolition, the criminals complain to the NGOs and the media, hoping they will stigmatize and stymie the law enforcement process.

## VI. The Controversy Over Building Permits

### A. Allegations that the Municipality Does Not Issue Building Permits to Arabs

One of the primary accusations leveled at the Municipality is its alleged unwillingness to grant building permits to its Arab residents. This accusation is widely considered factual, and seen as justification for illegal building.

The historical roots of this accusation deserve consideration. The chaotic planning situation in existence when Israel captured the Jordanian-occupied sector in 1967, was the major factor that delayed applying modern urban planning concepts for decades. That is, the adjoining Arab villages had no planning schemes, no modern infrastructure, and the construction there was disordered.<sup>396</sup> It was therefore particularly difficult for the Municipality, within the limits of its budget, to incorporate these villages into the modern city plans.

After abolishing the outdated Jordanian plans in the aftermath of the 1967 War,<sup>397</sup> the reunited Municipality's initial planning effort was directed at the inner core of the Arab sector. It was known as Plan 9 *Mem/Ayin*. However, due to the fact that this Plan was to a scale of 1/5000, it lacked sufficient detail to serve as a basis for granting building permits. Furthermore, after 1967, the Arab residents had to become accustomed to abiding by more rigorous Israeli planning law. This explains why during the first few years after 1967, most Arab residents of Jerusalem did not file requests for building permits. During the years of 1974-1975, however, more Arab residents began to file requests for building permits,<sup>398</sup> adding urgency to the preparation of local outline schemes for Jerusalem's Arab neighborhoods.<sup>399</sup> At that time, due to bureaucratic difficulties, the process for obtaining a construction permit frequently did take years, was complicated and relatively expensive. Although it is beyond the scope of this Study to scrutinize that period and in particular the bureaucratic difficulties faced by the City's Arab residents, it is clear that it was the perception of many Arabs that the Planning and Building Law discriminated against them.<sup>400</sup> The Arab public's negative attitude toward the planning process likely has its roots, in part, in this period.

---

<sup>395</sup> Interview with Dr. Sari Nusseibeh, President of Al Quds University and Palestinian Authority Political Commissioner for Jerusalem Affairs, in Jerusalem (Jan. 30, 2002).

<sup>396</sup> Interview with Yossi Cohen, Mayor's Advisor for Neighborhoods of Jerusalem Municipality, in Jerusalem (Nov. 26, 2001).

<sup>397</sup> The British Mandatory authorities prepared the original macro plans for the urban development of Jerusalem. The Jordanian sector of Jerusalem continued to apply the 1944 Kendall plan until the 1967 War, with only minor amendments. In parallel with the Kendall plan, the Jordanians drafted two new master plans that were never fully adopted: Anthony and Schecter (1962-3), and Kendall (1964). See Section II. C of the text above and the accompanying notes.

<sup>398</sup> Appendix 6B.

<sup>399</sup> Interview with Micha Bin-Nun, Director of Licensing and Inspection Department of Jerusalem Municipality, in Jerusalem (Dec. 31, 2001).

<sup>400</sup> It is beyond the scope of this Study, which focuses on the present, to evaluate the merit of those claims.

During the following years, until the planning schemes received approval from the City Engineer, the City made use of a loophole in the law to grant building permits in the Arab neighborhoods.<sup>401</sup> This provision states, “[u]pon the publishing of notice according to article 77, the authorized planning institution... may prescribe conditions on which building permits, permits for the use of land, or approval of a plan for the partition of land, shall be granted in respect of the area of the scheme or variation, and such conditions shall be in force until the approval of the scheme.”<sup>402</sup> This stopgap measure, known as *Taba* 2189,<sup>403</sup> made it possible to issue permits even during the period when there were no detailed plans for the Arab areas.

By the 1980s however, the Municipality began to work on detailed plans for Arab neighborhoods.<sup>404</sup> The creation of detailed plans for Silwan, Ras al Amud, Abu Tor, A Sheikh, Aswani, and A-Tur required the Municipality to undertake field studies, in-depth research, and extensive efforts to ascertain land ownership. This effort entailed considerable expense.<sup>405</sup>

Currently, thousands of residents of the Arab neighborhoods do not even bother to request a permit and, by definition, build illegally. Remember, it is not that they apply for a permit and are denied, but rather that they never initiate an application. In recent years the City has made considerable efforts to identify land that is eligible for building, and to increase its availability, particularly in the Arab sector.<sup>406</sup> Contrary to the repeated claims that it is impossible for Arabs to build legally in Jerusalem, the attached map<sup>407</sup> provides clear evidence that the opposite is true. The approved plans in more than 90 percent<sup>408</sup> of the Arab neighborhoods, marked in yellow on the map (Appendix 1), authorize the issuance of in excess of 33,000 permits for new housing units in the Arab sector,<sup>409</sup> depending, in some cases, on the resolution of unification and reparceling, and the availability of infrastructure.<sup>410</sup> This translates to a potential that exceeds the anticipated population growth.<sup>411</sup> All that is required to actualize this potential is for the owners of the land to request and receive permission under the routine procedures that apply throughout the City.

---

<sup>401</sup> Interview with Hassan Abu Assleh, Engineer in City Planning Department of Jerusalem Municipality, in Jerusalem (Dec. 31, 2001).

<sup>402</sup> Planning and Building Law (1965), 19 Laws of The State of Israel, 330, 350, art. 77-78, as amended.

<sup>403</sup> *Taba* is the Hebrew acronym for *tochnit binyan ir*, that translates to ‘city plan.’ Interview with Z. Uri Ullmann, Director of Division for Strategic Planning and Research of Jerusalem Municipality, in Jerusalem (Nov. 25, 2001).

<sup>404</sup> Jerusalem Municipality Policy Planning Department, *Planning in the Arab Sector in Jerusalem: 1967-1996*, n.d., p. 4.

<sup>405</sup> This effort was begun during the Jordanian period. It is a protracted and costly process. Even today, in some Arab neighborhoods land registration is incomplete. This could be because the owner(s) live abroad, because title is fragmented among many owners, or because the owner(s) wish to avoid paying the Municipal land tax.

<sup>406</sup> Letter from Ehud Olmert, Mayor of Jerusalem Municipality to Shimon Peres, Foreign Minister of Israel (Apr. 23, 2001). A private company by the name Yeadim was commissioned by the City to conduct a survey. It subsequently issued a report on this subject. See Gidon Hochfeld & Shmaryahu Cohen, *Advancing Conditions for Building in East Jerusalem*, Oct. 13, 1998 (Hebrew).

<sup>407</sup> See Appendix 1.

<sup>408</sup> Even in those few areas without an approved city plan, the Municipal Committee for Planning and Building can issue a permit pursuant to an application under Articles 76-78 of the Planning and Building Law. Interview with Shalom Goldstein, Advisor to Mayor of Jerusalem Municipality for East Jerusalem Affairs, in Jerusalem (Nov. 15, 2001).

<sup>409</sup> Appendices 1 and 2.

<sup>410</sup> Until recently, despite the Legal Advisor’s recommendation against it, for the purposes of issuing building permits land ownership was typically proven by either: 1) the records in the Land Registry Office; 2) by proof that the applicant has paid property taxes on the plot; 3) by the written opinion of the *Mukhtar*, corroborated by the neighboring landowners that the land in question was owned by the applicant. Micha Bin-Nun, Director of the Jerusalem Municipality Department of Licensing and Inspection, Protocol of Meeting, Topic: Proving Ownership as a Condition for Opening a File to Receive a [Building] Permit, Feb. 24, 2002.

This previous method of proving land ownership resulted in serious problems. For example, in one instance the City issued a building permit to someone who was *not* the true owner of a plot. Advocate George Saaman represented the actual owner in a successful damages lawsuit against the Municipality. Given the far-reaching consequences of issuing building permits to persons who do not own the land, senior City officials have realized that they have no alternative but to follow the advice of the Legal Advisor. Interview with Shalom Goldstein, Advisor to Mayor of Jerusalem Municipality for East Jerusalem Affairs, in Jerusalem (Nov. 15, 2001). As a consequence, when requesting a building permit the applicant must present proof of ownership from the Land Registry Office (many Arab neighborhoods are not registered or only partially registered) or that the applicant has paid the Property Tax on the plot. Where no land registration exists, the Legal Advisor will assess the alternative of informing the public of the application for a variance, via publishing the application to build in an Arabic newspaper, so that any rival claimants have the opportunity to raise objections. Interview with Yossi Cohen, Mayor’s Advisor for Neighborhoods of Jerusalem Municipality, in Jerusalem (Nov. 26, 2001).

Let us now return to the allegation that the Municipality of Jerusalem discriminates against its Arab residents in the issuance of building permits. The details of the allegation include that the City never (or seldom) issues permits enabling them to build legally, even when their ownership of the land is not in dispute. Hence, the Arabs are understood to flout the permit process 'as a last resort.' These themes are typified in a report of the Palestinian rights organization, Al-Haq. It accuses Israel of "refusing to grant them building permits,"<sup>412</sup> "violating international laws and conventions,"<sup>413</sup> and ultimately "[pursing a policy aimed at] altering the ethnic composition of ...Jerusalem."<sup>414</sup> Israel is also charged with "strangulation of Palestinian development"<sup>415</sup> and "creating a nation of homeless and dispossessed."<sup>416</sup> Similar accusations appeared in the English language Palestinian weekly *The Jerusalem Times*,<sup>417</sup> claiming the "building laws in effect...pose a serious obstacle in the face of Palestinians wishing to obtain building permits," alleging that the cost of such permits "reach[es] upward of \$30,000[U.S.]." This article further asserts that the number of permits granted is "no more than a few dozen annually, granted after a wait of one to three years."<sup>418</sup> Not one of these baseless accusations is true.

These claims are rebutted by the facts. First, contrary to the claim regarding "a few dozen annually," the average number of permits issued to Arabs annually during the past five years is 183,<sup>419</sup> and the waiting period (for simple applications) is four to six weeks, not "one to three years."<sup>420</sup> Further, an unfortunate result of the Palestinian Authority-enforced boycott of the Jerusalem Municipality is that many Arabs do not file applications. Moreover, the percentage of applications that result in the issuance of a building permit is virtually identical in Arab and Jewish neighborhoods.<sup>421</sup> Second, the fees for a building permit consist of three components, two of which are based on the City's efforts to recoup some of the expenses it incurs in connecting a residence to the water supply and sewage lines.<sup>422</sup> For a typical housing unit in the Arab areas of Jerusalem measuring 72-square-meters (the approximate size of an average living unit<sup>423</sup>) on a 250-square-meter plot of land, the following charges are assessed:

- connection to the water system fee of 5,917 NIS (\$1,220 U.S.);<sup>424</sup>

<sup>413</sup> Apparently the international law sources referred to is Article 7 of the Universal Declaration of Human Rights, which states, "[a]ll are equal before the law and are entitled without discrimination to equal protection of the law." Universal Declaration of Human Rights, approved Dec. 10, 1948, G.A. Res. 217A, U.N. Doc. A/810 at 56 (1948). Here Al-Haq claims that "Jewish settlers" who build illegally are permitted to obtain building permits retroactively - creating a double standard that clearly violates international law. AL-HAQ, HUMAN RIGHTS ISSUES: HOUSE DEMOLITIONS AS HUMAN RIGHTS VIOLATIONS 1 (n.d.). Without going into the situation of Jewish settlers, the identity of which is not clear from Al-Haq's Report, it can be stated with certainty that Arabs who build illegally in east Jerusalem are routinely granted permits retroactively once they meet the requisite standards. See interviews with Advocate Einat Ayalon, Legal Advisor's Office of the Jerusalem Municipality, in Jerusalem (Dec. 12, 2001, July 2, 2002).

<sup>414</sup> AL-HAQ, HUMAN RIGHTS ISSUES: HOUSE DEMOLITIONS AS HUMAN RIGHTS VIOLATIONS 1 (n.d.).

<sup>415</sup> Riziq Shuqair, *Jerusalem: Its Legal Status and the Possibility of a Durable Settlement*, published by Al-Haq (1996).

<sup>416</sup> AL-HAQ, HUMAN RIGHTS ISSUES: HOUSE DEMOLITIONS AS HUMAN RIGHTS VIOLATIONS 1 (n.d.).

<sup>417</sup> Al-Awda, *A Tool Called House Demolition*, JERUSALEM TIMES (weekly newspaper), Dec. 28, 2001, p. 7.

<sup>418</sup> Al-Awda, *A Tool Called House Demolition*, JERUSALEM TIMES (weekly newspaper), Dec. 28, 2001, p. 7.

<sup>419</sup> See Appendix 6B.

<sup>420</sup> Interview with Adrian Goldstein, Deputy Manager of Licensing Department of Jerusalem Municipality, in Jerusalem (Dec. 6, 2001).

<sup>421</sup> See Appendix 6G.

<sup>422</sup> Interview with Adrian Goldstein, Deputy Manager of Licensing Department of Jerusalem Municipality, in Jerusalem (Dec. 6, 2001).

<sup>423</sup> This calculation does not include the housing stock in the Shoafat Refugee Camp and the part of the Kalandia Refugee Camp within the Municipal limits. Accurate figures for these areas are not available to the City. Telephone interview with Moshe Levy, Director of Taxation and Collections Department of Jerusalem Municipality, in Jerusalem (June 3, 2002).

<sup>424</sup> Some of the Arab neighborhoods in the northern half of Jerusalem, from Tel al-Ful to Atarot, receive their water supply from the Albira Enterprise in Ramallah, a Palestinian-run entity. As a consequence, the residents of areas serviced by Albira are exempt from paying the water fee when applying for a building permit. The rest of the Arab neighborhoods receive their water supply from the Gichon Water and Sewage Enterprises Ltd. (of the Municipality) that also supplies all of west Jerusalem. Telephone interview with Aharon Rozenberg, Deputy to the Managing Director on Water Matters of Gichon Ltd, in Jerusalem (Apr. 14, 2002).

Israel undertook an initiative to connect all neighborhoods to the pipelines of the Gichon Ltd., to raise the standards of service to the level enjoyed in the Jewish neighborhoods of Jerusalem. This initiative fell through, apparently for political reasons. Interview with Shalom Goldstein, Advisor to Mayor of Jerusalem Municipality for East Jerusalem Affairs, in Jerusalem (Apr. 14, 2002). Individual water consumers, who are dissatisfied with the service they receive from the Albira Enterprise, may request to be hooked up to the pipelines of Gichon Ltd. Such requests are granted where the proper infrastructure exists. In these instances, the consumer enjoys the benefits of a more reliable water

- building fee of 1,290 NIS (\$266 U.S.);<sup>425</sup> and
- sewage connection fee of 10,285 NIS (\$2,120 U.S.).<sup>426</sup>

The total for these fees comes to 17,493 NIS (\$3,607 U.S.), approximately one-tenth the sum cited in the above-mentioned *Jerusalem Times* article. The fees are collected according to a sliding scale, applied equally in all of the neighborhoods of Jerusalem, whether Arab or Jewish.<sup>427</sup>

Third, far from “strangling” Arab development, or in the words of Al Haq’s fantastic accusation that Israel is “creating a nation of homeless and dispossessed,” the City expends considerable effort to facilitate the routine issuance of building permits to those Arab residents who apply, as discussed in this Section VI. A and B of this Study.<sup>428</sup> Al Haq’s ludicrous claim about strangulating Arab development is readily disproved by even a cursory look at aerial photographs in Appendix 4, not to mention the fact that since 1967 Arab building has outpaced Jewish building in the City, as discussed above.<sup>429</sup> Fourth, their unsupported foray into international law will be addressed below in Sections VI. C 3 and 4 of this Study. Fifth and finally, Appendices 2, 6B, and 6G of the Study demonstrate that if the Arab residents who build illegally were to first try obtaining a permit, their prospects would be excellent.

Actually, the City expends considerable efforts in assisting Arab residents who wish to build legally. Architects, engineers, entrepreneurs, and lawyers who prefer not to practice their profession in Hebrew, or who have difficulty doing so, can rely on an Arabic-language planning brochure,<sup>430</sup> the Municipality’s Arabic Internet website,<sup>431</sup> and individual assistance from Arabic-speaking City employees.<sup>432</sup> Similarly, twenty-three of the City’s neighborhood plans were translated into Arabic, by professional translators, hired by the City.<sup>433</sup> Additionally, with the help of the neighborhood committees,<sup>434</sup> Yossi Cohen, the Jerusalem Mayor’s Advisor for Neighborhoods, has made inroads into addressing the mistaken belief among some Arabs, that the Municipality is not interested in helping them with planning and building permits. Thus far, significant groups from at least four neighborhoods, Isawiya, Sur Baher, A-Tur, and Jabel Mukaber have approached the

---

system without having to pay the customary water hook-up fee retroactively. According to Irit Dermer, Director of Planning and Development of the Municipal Water System, many others would request service from Gichon Ltd. but for intimidation by the Palestinian leadership. Telephone interview with Irit Dermer, Director of Planning and Development of Municipal Water System of Gichon, Ltd., in Jerusalem (Mar. 18, 2002).

<sup>425</sup> In nearly all areas of east Jerusalem either a sewage system is in place, or plans exist to construct a sewage system. Only four neighborhoods do not, as yet, have plans for a sewage system: Walage, A-Tur, northern Shoafat, and central Beit Hanina. Residents of these four areas requesting a building permit from the City are exempt from paying the sewage hook-up fees. However, they are required to sign a commitment that, in the future when plans for a sewage system are completed, they will pay the required fee. Geographic Information Systems, Sewage and Drainage Solutions in East Jerusalem, prepared by Yaron Cohen, (n.d.); telephone interview Loey Nebolsi, Director of the Technical Department of Gichon Ltd., in Jerusalem (Apr. 14, 2002).

<sup>426</sup> Table Specifying the Taxes Due to Receive a Building Permit, Inspection and Licensing Department, Jerusalem Municipality (Dec. 6, 2001); Study of Urban Density in Jerusalem by Sector, Department of Planning Policy, Jerusalem Municipality, (Dec. 6 2001).

<sup>427</sup> Interviews with Adrian Goldstein, Deputy Manager of Licensing Department of Jerusalem Municipality, in Jerusalem (Dec. 6, 2001, June 30, 2002).

<sup>428</sup> Uri Bar Shishat, Director of the Policy Planning Department of City Engineer, insists that any Arab requests for large-scale building projects are given priority by City’s planners. Three substantial development projects for Jerusalem Arabs have been approved in recent years - one sponsored by the Arab Teachers’ Association, another by the Employees of the Islamic Religious Endowment (Waqf) and a the third, approved on January 17, 2002, is know as the Arab Doctors’ Project. One such project, for 400 living units, was approved by Urban Plan 2302a in September 1999. It failed, however, apparently due to lack of demand by the Arab public. Interviews with Uri Bar Shishat, Director of the Policy Planning Department of City Engineer of the Jerusalem Municipality, in Jerusalem (Nov. 25, 2001, Jan. 10, 2002).

<sup>429</sup> See Section IV. A of the text above.

<sup>430</sup> The brochure appears as Appendix 6A of this Study.

<sup>431</sup> Jerusalem Municipality Internet Website [http://www.jerusalem.muni.il/jer\\_main/fl\\_main.asp?lng=3](http://www.jerusalem.muni.il/jer_main/fl_main.asp?lng=3).

<sup>432</sup> Israel Ben-Ari, the Deputy Manager of Licensing and Inspection Department of Jerusalem Municipality, stated that the City does not discriminate in hiring on ethnic or religious lines. Recently he interviewed four applicants for openings as Municipal building inspectors. Two of the Arab applicants, trained as engineers, were hired. Three of the inspectors, who work in the Jewish neighborhoods, are Arabs. Telephone interview with Israel Ben-Ari, Deputy Manager of Licensing and Inspection Department of Jerusalem Municipality, in Jerusalem (Jan. 27, 2002).

<sup>433</sup> Interview with Yossi Cohen, Mayor’s Advisor for Neighborhoods of Jerusalem Municipality, in Jerusalem (May 5, 2002).

<sup>434</sup> Approximately eleven Arab neighborhoods currently have neighborhood committees. In addition, various subcommittees exist. Interview with Yossi Cohen, Advisor to Mayor of Jerusalem Municipality for Neighborhoods, in Jerusalem (June 30, 2002).

Municipality for assistance in completing their neighborhood plans,<sup>435</sup> notwithstanding the risk of being accused of collaborating with Israel.<sup>436</sup>

It is clear that the core assertion of the critics - that the City will not issue building permits to Arabs - has been shown to be tendentious. Applying for and obtaining a building permit is both simple and routine for those who are willing to make the effort. However, based on the limited number of applications for building permits in recent years,<sup>437</sup> the Arab residents of the City have not taken full advantage of the potential that exists.<sup>438</sup> Simultaneously however, the number of Arab violations of the Planning and Building Law has skyrocketed. In 1988 an internal memorandum presented to then-Mayor Kollek warned that "[t]he situation is fast getting out of control."<sup>439</sup> In 1991 a department memorandum warned, "[t]he situation is deteriorating from day to day."<sup>440</sup> Additional internal warnings were sounded in 1993 and 1994.<sup>441</sup> In the mid-1990s the Municipality formed a high-level team to analyze the difficulties encountered in the enforcement of planning schemes. In 1996 this team issued a detailed study known as the Eitan Meir Report that considered, *inter alia*, the impact of illegal building on the quality of life.<sup>442</sup>

During the period 1996-2001, City inspectors reported nearly 4,000 violations in the Arab neighborhoods.<sup>443</sup> Experts who study aerial photographs believe this number represents only 30 percent of this phenomenon.<sup>444</sup> Other authorities have come up with various estimates of the extent of the problem. For example, Uri Bar Shishat, the Director of Policy Planning Department of the City Engineer, estimates that in recent years 2,000 to 3,000 illegal living units have been erected in the Arab neighborhoods of Jerusalem.<sup>445</sup> Israel Ben-Ari,<sup>446</sup> the Deputy Manager of the Licensing and Inspection Department of the Jerusalem Municipality, made a study using aerial photographs of the Arab neighborhoods, comparing images from the end of the year 2000 with similar photographs taken one year earlier. He identified 1,000 new illegal buildings that had been erected during that twelve-month period. Ben-Ari noted that some buildings contained only one living unit, while others had between four and ten units. It stands to reason that if the average number of units per building was five, then the additional illegal housing constructed, during that one-year interval, was 5,000 units. This estimate is close to the number 6,000 proclaimed by Hatam Abdel Khadir Eid, a member of the Palestinian Legislative Council, although he was not specific as to the time frame he was referring to.<sup>447</sup> In sum, the knowledgeable sources all agree that thousands of illegal units are going up. Extrapolating from the assessments, the number might well exceed 10,000 if the deluge began five or ten years ago.

---

<sup>435</sup> Interview with Yossi Cohen, Advisor to Mayor of Jerusalem Municipality for Neighborhoods, in Jerusalem (June 30, 2002).

<sup>436</sup> Interview with Yossi Cohen, Advisor to Mayor of Jerusalem Municipality for Neighborhoods, in Jerusalem (Apr. 18, 2002).

<sup>437</sup> Appendix 6G.

<sup>438</sup> Letter from Ehud Olmert, Mayor of Jerusalem Municipality to Shimon Peres, Foreign Minister of Israel (Apr. 23, 2001).

<sup>439</sup> Bill Hutman, *East Jerusalem Building Boom Flouts the Law*, JERUSALEM POST, Mar. 3, 1995, p. 14.

<sup>440</sup> Bill Hutman, *East Jerusalem Building Boom Flouts the Law*, JERUSALEM POST, Mar. 3, 1995, p. 14.

<sup>441</sup> Bill Hutman, *East Jerusalem Building Boom Flouts the Law*, JERUSALEM POST, Mar. 3, 1995, p. 14.

<sup>442</sup> Report by Eitan Meir, Deputy Director General of the Jerusalem Municipality, *Building Inspection in Jerusalem* (Hebrew), Oct. 28, 1996, p. 2.

<sup>443</sup> See Appendix 6F. To be fair, not all of these cited violations involved entire living units. Report by Eitan Meir, Deputy Director General of the Jerusalem Municipality, *Building Inspection in Jerusalem* (Hebrew), Oct. 28, 1996, p. 2.

<sup>444</sup> Letter from Ehud Olmert, Mayor of Jerusalem Municipality to Shimon Peres, Foreign Minister of Israel (Apr. 23, 2001).

<sup>445</sup> Interview with Uri Bar Shishat, Director of the Policy Planning Department of City Engineer of the Jerusalem Municipality, in Jerusalem (June 30, 2002).

<sup>446</sup> Telephone interview with Israel Ben-Ari, Deputy Manager of Licensing and Inspection Department of Jerusalem Municipality, in Jerusalem (Dec. 6, 2001).

<sup>447</sup> Eid did not specify the time frame in which the 6,000 units he referred to were constructed. Khaled Abu Tomah, *Representative of the Jerusalem District in the Palestinian Legislative Council: "We Built 6,000 Homes Without Permits,"* JERUSALEM (weekly Hebrew newspaper), May 25, 2002; Nadav Shragai, *PA Vows they Won't Stop Building in Jerusalem*, HA'ARETZ (English newspaper), Jan. 17, 2002.

## B. The Process of Obtaining a Building Permit

It is not difficult for Arabs to apply for and receive a building permit in Jerusalem. This author visited the City's permit office and walked through the process of obtaining a permit with the guidance of an official who handles such applications. According to Adrian Goldstein,<sup>448</sup> Deputy Manager of the Licensing Department, Arab and Jewish applicants are treated equally. As mentioned above,<sup>449</sup> the fees charged are uniform for units identical in size on the same size plot, regardless of the ethnicity of the applicant. In Arab neighborhoods as in Jewish neighborhoods, architects and construction engineers must be issued a building permit prior to commencing construction for their clients. Adrian Goldstein further stated that the process for receiving a building permit is not difficult. Applicants request and receive 'kits',<sup>450</sup> consisting of the forms to be filled in and relevant information that is needed to initiate the licensing process. An Arabic speaking Licensing Inspector, Salem Abu Hadid, is available to furnish assistance.<sup>451</sup>

Most applications are of a simple nature. This means they do not exceed the local planning limitations as to built area, number of floors, etc.<sup>452</sup> In such cases, the process for receiving a permit is routine. Indeed, once the applicant demonstrates that he/she owns the land he/she wishes to build on, the Department of Information can usually give a preliminary ruling on the spot in the City Engineer's office.<sup>453</sup> Adrian Goldstein expressed amazement why more builders do not take advantage of this service before they invest time and money erecting an unlicensed structure that may ultimately risk being demolished.<sup>454</sup>

After completing the necessary forms, the applicant makes a down payment amounting to 20 percent of the building fee that will be payable if the application is approved. Then a meeting is held with one of the licensing inspectors. The purpose of this meeting is to submit the 'kit' containing the completed forms (i.e., a drawing of the building, the measurements of the surveyor) and to deliver the receipt confirming that the down payment has been made.<sup>455</sup> The inspector then submits the file to a local committee, which in turn reviews the case and determines if the conditions for issuing a building permit have been met. The typical turnaround time is a month to six weeks.<sup>456</sup> The waiting period for building permit applications in England is comparable in length.<sup>457</sup>

If the application for a building permit embodies a request for a variance (i.e., additional density or floors), the application procedure is lengthier. Such an application takes longer to process for several reasons, including the need under Articles 149 (A) (1), (2) of the Planning And Building Law to publicize the intended variance to give the neighbors an

---

<sup>448</sup> Interview with Adrian Goldstein, Deputy Manager of Licensing Department of Jerusalem Municipality, in Jerusalem (Dec. 6, 2001).

<sup>449</sup> Interviews with Adrian Goldstein, Deputy Manager of Licensing Department of Jerusalem Municipality, in Jerusalem (Dec. 6, 2001, June 30, 2002).

<sup>450</sup> The kit is received from a clerk in the lobby on the 4<sup>th</sup> floor in Building One of the Jerusalem Municipality. It consists of a list of the necessary documents needed to open "a request for a permit" file: a) the requirements needed for preparing plans; b) guidelines for those preparing a request for a permit; c) an agreement to do work that requires a building permit; d) a written declaration from the engineer in charge of creating the building (frame) or the addition; e) a written declaration made by the planning engineer; f) proof that the land is registered the Land Registry Office or that the applicant has paid the property tax on the parcel; g) and a written declaration of the owner/lessee of the living unit in an apartment house regarding a building permit that isn't just for making internal modifications. Interview with Adrian Goldstein, Deputy Manager of Licensing Department of Jerusalem Municipality, in Jerusalem (Dec. 6, 2001).

<sup>451</sup> Salam Abu Hadid is a Licensing Inspector. Interview with Adrian Goldstein, Deputy Manager of Licensing Department of Jerusalem Municipality, in Jerusalem (Dec. 6, 2001).

<sup>452</sup> An application that is within the allowances of the city plan as pertains to the neighborhood where it is situated. Interview with Uri Bar Shishat, Director of the Policy Planning Department of City Engineer of the Jerusalem Municipality, in Jerusalem (Nov. 25, 2001). Planning and Building Law (1965), 19 Laws of the State of Israel 330, art. 145 (D), 158 (G)

<sup>453</sup> Interview with Adrian Goldstein, Deputy Manager of Licensing Department of Jerusalem Municipality, in Jerusalem (Dec. 6, 2001).

<sup>454</sup> *Ibid.*

<sup>455</sup> Interviews with Adrian Goldstein, Deputy Manager of Licensing Department of Jerusalem Municipality, in Jerusalem (Dec. 6, 2001, June 30, 2002).

<sup>456</sup> Interview with Adrian Goldstein, Deputy Manager of Licensing Department of Jerusalem Municipality, in Jerusalem (Dec. 6, 2001).

<sup>457</sup> Interview with Charles Kohn, Principal Planner in Policy Planning Department of Jerusalem Municipality, in Jerusalem (Nov. 25, 2001).

opportunity to object.<sup>458</sup> The process following publication is then the same as in simple (expedited) applications. Yet when substantial building projects involving a requested variance are proposed in the Arab sector, the City works with the applicant to advance the application process. Thus the builder Atman Halk's project in Beit Hanina was licensed. Likewise the housing projects of the Association of Arab Teachers, also in Beit Hanina, and that of the employees of the Waqf, in Sawahna (Wadi Joz), have also been granted permits.<sup>459</sup>

### C. Administrative Demolitions by the Jerusalem Municipality

#### 1. Media Coverage of the Demolitions

Demolitions offer a dramatic opportunity for critics of the Municipality to create street theatre. For the benefit of the media audience they emphasize this one particular component of enforcement/deterrence. Television cameras and print journalists gravitate to demolitions because a structure being knocked down produces compelling footage, as a cordon of soldiers and police are jeered or pelted with stones by neighbors. This drama is conveniently translated into the image of a large, poor Arab family, forced out of their house in the middle of a rainy winter, on the order of the Mayor. It is therefore easy for the poorly informed public to align its sympathies with the 'victims' of the uncaring Municipal bulldozers. Why should the media, international or even Israeli, search to find the deeper causes and motives bound up in this enigma? Other components of this controversy, such as the daily brick-on-brick expansion of illegal construction, attract almost no coverage, even as it is simultaneously going on across the street.

Many of the problems and political dynamics inherent in the illegal building controversy are seen in a recent, rather typical article, from the *Jerusalem Post*. This subsection does not purport to analyze systematically media coverage of this issue, but rather to offer one vivid example of the stance that media outlets, ranging across the political spectrum, are projecting. The *Post*, which is a mainstream publication with a right-of-center Zionist editorial perspective, reported the recent demolition of nine structures in Isawiya. The article featured the attack on Mayor Olmert by Member of Knesset Gal-On, from the left-wing Meretz party. Gal-On predictably called upon Olmert to stop demolitions in Isawiya.<sup>460</sup> Next came Sari Nusseibeh, who described the demolitions as "politically motivated."<sup>461</sup> An official from the Israeli NGO B'Tselem told the journalist that the government's policy leaves non-Jewish residents no choice but to build without licenses, alleging that it is nearly impossible for Arabs to receive building permits from the Municipality.<sup>462</sup> Next, the article mentions that the Israeli Committee Against House Demolitions had filed petitions in court on behalf of seven buildings slated for demolition.<sup>463</sup> Lest the critics be denied the opportunity to present their narrative, the *Jerusalem Post* article quoted a resident of the neighborhood who claimed that "Israel behaves towards its non-Jewish citizens as the Nazis behaved towards the Jews in Europe."<sup>464</sup>

All but lost amidst this chorus of condemnation served up by the *Post* were three critical facts: 1) all the demolished structures in question were built illegally; 2) only two of

<sup>458</sup> Interview with Uri Bar Shishat, Director of the Policy Planning Department of City Engineer of the Jerusalem Municipality, in Jerusalem (Jan. 10, 2002). If the applicant requests a major change in the urban plan he/she will have to prepare a pinpoint urban plan that meets the satisfaction of the Planning Department. This can add a year or two to the process. Interviews with Adrian Goldstein, Deputy Manager of Licensing Department of Jerusalem Municipality, in Jerusalem (Dec. 6, 2001, June 30, 2002).

<sup>459</sup> Interview with Shalom Goldstein, Advisor to Mayor of Jerusalem Municipality for East Jerusalem Affairs, in Jerusalem (Nov. 15, 2001).

<sup>460</sup> Margot Dudkevitch and news agencies, *9 Buildings in Isawiya Demolished*, JERUSALEM POST, Jan. 15, 2002, p. 3.

<sup>461</sup> Margot Dudkevitch and news agencies, *9 Buildings in Isawiya Demolished*, JERUSALEM POST, Jan. 15, 2002, p. 3.

<sup>462</sup> Margot Dudkevitch and news agencies, *9 Buildings in Isawiya Demolished*, JERUSALEM POST, Jan. 15, 2002, p. 3.

<sup>463</sup> Margot Dudkevitch and news agencies, *9 Buildings in Isawiya Demolished*, JERUSALEM POST, Jan. 15, 2002, p. 3.

<sup>464</sup> Margot Dudkevitch and news agencies, *9 Buildings in Isawiya Demolished*, JERUSALEM POST, Jan. 15, 2002, p. 3.

them were even inhabited, and; 3) and most astonishingly, one of them had been erected on land designated to be developed as a school for the Arab children in the neighborhood. The school in question has since begun construction under the auspices of Israeli officials,<sup>465</sup> and the process can be viewed in Appendix 3, images 31 and 32. What's more, the legal and planning policy justifications for the demolitions, and those who could enunciate them, were nowhere to be found, at least not by the reporter for the *Jerusalem Post*. And if this was the coverage in the *Post*, it is not hard to imagine the selective factual references, invidious comparisons, and tendentious labeling in other media less sympathetic to Israel such as *The Observer* (London).<sup>466</sup> Moreover, the many media critics of demolition have failed to come forward with a viable alternative that, as a final backstop, would protect the future livability of Jerusalem.

## 2. Palestinian Objections to Demolishing Illegal Structures

The Palestinian leadership offers various objections to the controversial practice of demolishing illegal structures. In his interview, Nusseibeh did not specifically address whether he agreed with the Municipality's use of demolition, and if so, in which circumstances. Still, his statement regarding the "disastrous" effect of illegal construction could not have been clearer.<sup>467</sup>

Questioned regarding demolitions, Kassilieh complained "when the Israelis do it [a demolition] it symbolically separates us from our land, from our houses." Furthermore, he views it as "a symbol of occupation" and asserted, "they do it in a very rude way." Yet, when pressed, Kassilieh acknowledged that in exceptional cases he would consider demolishing a structure, although he added two ambiguous stipulations. These provisos were that demolition should only be employed "when it served to benefit of the people," and when "the illegal structure will prevent the creation of proper infrastructure."<sup>468</sup>

## 3. Analysis of the Criticism of Demolitions by NGOs

Local and international NGOs have led the efforts to stigmatize the Municipality for enforcing its planning law. Unlike the nuanced approach of the Palestinian leadership, as typified by Nusseibeh, the NGOs are doctrinaire in their opposition to demolitions. This subsection of the Study will examine the claims and allegations made by Amnesty International, B'Tselem, the Israeli Committee Against House Demolitions, and Ir Shalem.<sup>469</sup> At the outset it should be observed that many NGO press releases and studies depict atypical examples of demolitions, rather than presenting a systematic or representative overview of the overall planning process.<sup>470</sup> Comparisons to other countries that use

<sup>465</sup> Margot Dudkevitch and news agencies, *9 Buildings in Isawiya Demolished*, JERUSALEM POST, Jan. 15, 2002, p. 3.

<sup>466</sup> Phil Reeves, *Israel Sends in its Death Squads and More Bulldozers*, INDEPENDENT (London), Jan. 15, 2002, available at Independent Internet Website (visited July 28, 2002) <<http://www.independent.co.uk/story.jsp?story=114509>>.

<sup>467</sup> In this author's opinion, it follows that, at least in certain circumstances, demolition offers the best, or only, remedy for illegal construction. It should be cautioned, however, that Nusseibeh avoided making any such direct statement.

<sup>468</sup> Interview with Issaha Kassilieh, Senior Official of the Orient House and former assistant to the late Faisal Hussein, in Jerusalem (Jan. 30, 2002).

<sup>469</sup> In addition to those mentioned above, NGOs which have joined this cause include the Palestinian Society for the Protection of Human Rights and the Environment, the Palestinian Human Rights Information Center, the Association for Civil Rights in Israel, the Palestinian Agricultural Relief Committees, the Society of St. Yves, the Applied Research Institute Jerusalem, the Land Defense Committees, Bat Shalom, the American-Arab Anti-Discrimination Committee, Human Rights Watch, the Jerusalem Center for Social and Economic Rights, the Alternative Information Center, the Palestinian Center for Human Rights, Al Haq, and the Palestinian Independent Commission for Citizen's Rights. Even this list is apparently incomplete as some 40 organizations and individuals have been listed as supporting rebuilding demolished homes in one Internet website. Right to a Home and a Homeland, Internet Website of the Global Campaign to Rebuild Palestinian Homes (visited Oct. 28, 2002) <<http://www.rebuildinghomes.org>>.

<sup>470</sup> See e.g. Anthony Coon, *Demolition and Dispossession: the Destruction of Palestinian Homes*, Israel and the Occupied Territories, AI-index MDE 15/059/1999, Dec. 8, 1999, p. 2, available at Amnesty International Internet Website (visited June 1, 2002) <[http://www.amnestyusa.org/countries/israel\\_and\\_occupied\\_territories/reports/demolition\\_summary.html](http://www.amnestyusa.org/countries/israel_and_occupied_territories/reports/demolition_summary.html)> ; Al Haq, *Al-Haq Condemns Israel's Demolition of 14 Homes in Shu'afat Refugee Camp*, July 9, 2001, available at Alternative Information Center Internet Website (visited May 23, 2002) <<http://www2.alternativenews.org/display.php?id=118>>; *Injustice in the Holy City*, Btselem Journal, December 1999, available at B'Tselem Internet Website (visited July 22, 2002) <<http://www.btselem.org>>.



demolitions are avoided. The NGOs seem willing to include any incidents that might be viewed as outrageous behavior by the Municipality of Jerusalem or the State of Israel. These misrepresentations are frequently based on unverified accusations of unnamed, politically-motivated sources. Palestinian and pro-Palestinian sources recite alarming accusations, *seriatim*, many of them hearsay, that are relied upon by the NGOs as fact. Even when particular facts they assert are correct, the NGOs do not adequately contextualize the environment in which the Municipal planning mechanism and the Israeli judicial system function. They minimize the objective difficulties facing the Municipality and the State of Israel while serving up inflammatory and misleading generalizations.<sup>471</sup>

International law, which is ordinarily held in awe by the general public, is degraded by the NGOs' manipulations. The general public, not having studied law, lacks the tools to filter out the plethora of bogus 'international law' accusations that NGOs have contrived to find the Municipality and the State of Israel wanting. For example, fifteen critics stood up at a City Council meeting to show off tee shirts which read, "Olmert=Discrimination, Racism, Lie" and "Olmert to The Hague," suggesting that the Mayor should be tried for war crimes.<sup>472</sup> Elsewhere the Palestinian Society for the Protection of Human Rights and the Environment made the wild accusation that "Israel's policies are aimed at the ethnic cleansing of Palestinians."<sup>473</sup> Regardless of these irresponsible accusations, if the conduct of the Municipality were arguably in violation of existing, hard, international law standards then it deserves to be censured. This is not the case, despite the cloud of suspicion that now exists, due to the repeated forays of the NGOs.

Typically ignoring or misrepresenting the use of demolition in Jerusalem's Jewish neighborhoods, the NGOs have repeatedly presented one-sided, inaccurate and even tendentious accusations against the Municipality, the Mayor and the State of Israel. Moreover, had they considered the wider perspective, they would also examine the many cities, in various countries, that suffer from problems relating to housing. Has Amnesty International,<sup>474</sup> or any of the other prolific NGOs, ever criticized the Belfast municipality for the notoriously segregated, explosively violent, residential patterns in that city?<sup>475</sup> Why not investigate the housing and demographic patterns in other divided cities torn by political conflict? How about Nicosia (Cyprus)?<sup>476</sup> Or Pristina (in the disputed Yugoslavian province of Kosovo)?<sup>477</sup> Or Sarajevo (Bosnia and Herzegovina)?<sup>478</sup> Or Colombo (Sri Lanka)?<sup>479</sup> Or Beirut,

<sup>471</sup> Margret Wente, *Call it Sham-nesty International, an Apologist for Terror*, THE GLOBE AND MAIL, May 9, 2002, p. A15.

<sup>472</sup> Eyal Hareuveni, *Ha'Dakhburim Docharim Rak Mizrakha* [The Bulldozers Only Dig East], KOL HA'IR (weekly Hebrew newspaper), Feb. 8, 2002, p. 35.

<sup>473</sup> Palestinian Society for the Protection of Human Rights and the Environment, *Two House Demolitions in One Day*, June 21, 1999, available at Palestinian Society for the Protection of Human Rights and the Environment Internet Website (visited June 6, 2002) <[http://www.blythe.org/nytransfer-subs/99mid/TWO\\_HOUSE\\_DEMOLITIONS\\_IN\\_ONE\\_DAY](http://www.blythe.org/nytransfer-subs/99mid/TWO_HOUSE_DEMOLITIONS_IN_ONE_DAY)>.

<sup>474</sup> This author attempted to locate any such reports by searching the "Library" of Amnesty International's documents via that organization's Internet website. The effort was complicated by the absence of a full text search capability. Still, in searching various countries where controversies have arisen, no documents turned up indicating that Amnesty International has ever published a single report regarding housing problems elsewhere (aside from Jerusalem) in the world. Amnesty International Internet Website (visited July 12, 2002) <<http://www.amnesty.org/ailib/index.html>>. A second search method used by this author was by "theme." The difficulty here was that none of the various theme categories provided by Amnesty International was remotely connected to disputes over planning/illegal building/demolition/demographic manipulation, suggesting that Amnesty International's much touted "universality" leaves something to be desired. Amnesty International Internet Website (visited July 12, 2002) <<http://www.amnesty.org/ailib/index.html>>.

<sup>475</sup> See Frederick W. Boal, *Urban Ethnic Segregation and the Scenarios Spectrum* Internet Website (visited July 12, 2002)

<<http://www.lincolinst.edu/courses/segreg/boal.doc>>; Paul Doherty and Michael A. Poole, *Ethnic Residential Segregation in Belfast*, Center for the Study of Conflict, available at University of Ulster Internet Website (visited July 11, 2002) <<http://cain.ulst.ac.uk/csc/reports/apartbel.htm#conclude>>

<sup>476</sup> See CIA Internet Website, *Cyprus*, CIA Fact Book (visited July 12, 2002) <<http://www.cia.gov/cia/publications/factbook/geos/cy.html>>; Karl Nerenberg, *The Practitioner's Page: Lellos Demetriades of Cyprus: A Federal Constitution for Cyprus?* FEDERATIONS, Nov. 2002, pp. 13-16.

<sup>477</sup> See Steve Nettleton, *Kosovo Winter: Kosovars Witness Continued Terror Even as they Fight to Survive*, available at CNN Internet Website (visited July 12, 2002); <http://www.cnn.com/SPECIALS/2000/kosovo/stories/present/situation.report>. Today there are only about 300 Serbs living in Pristina as compared with a pre-war total of some 30,000, that comprised some 30 percent of the population. Concurrently the Albanian population of the city has tripled to almost 400,000. International efforts to facilitate the return of the Serbian refugees to Pristina have been unsuccessful. *Ibid.*

<sup>478</sup> See International Helsinki Federation for Human Rights Internet Website, *Report by International Helsinki Federation for Human Rights, Protection of Ethnic Minorities*, (visited July 13, 2002) <http://www.ihf-hr.org/reports/9804prot.htm>; telephone interview with Vladimir Nestic,

during the Lebanese civil war?<sup>480</sup> Or Berlin, during the Cold War?<sup>481</sup> Or the example, mentioned above, of houses destroyed by Palestinian Authority bulldozers in Gaza?<sup>482</sup> Or the frequent demolitions of structures in countries like Lebanon, India, Pakistan, and the Philippines? Moreover, it is striking, but not surprising, that not one of the NGOs which has entered this fray has publicly identified either of the two predominant motivations for illegal construction: namely the abundant political and economic support the Palestinian Authority and its backers provide for those who build illegally, and the builders' willingness to use illegal methods, including land theft, to gain illicit profits quickly.

Israeli attorney Daniel Seidemann is perhaps the most active, and effective, individual in the campaign against Municipal efforts to enforce the planning law. In 1998, Seidemann, as the lead counsel and a founding member of an NGO (ironically) called 'Ir Shalem'<sup>483</sup> published an article entitled "Ehud Olmert: Jerusalem and the Facts." The article appeared in the *Jerusalem Quarterly File*, a journal affiliated with the Institute for Palestine Studies.<sup>484</sup> Seidemann asserted emphatically:

In recent months, Jerusalem's Mayor Ehud Olmert has been engaged in a well-oiled public relations campaign geared to set the stage for the 'demolition derby' planned by himself in East Jerusalem. Mr. Olmert intends to demolish tens, if not hundreds of illegally built homes in the Palestinian sector of the city.<sup>485</sup>

Four years later, the "well-oiled public relations campaign" has yet to register any impression on the press or the public. Virtually every instance in which a demolition by the Municipality has been covered by journalists, even by the Israeli press, has focused on the allegations against the City by the Arab residents, Palestinian leadership, and/or their Israeli and NGO sympathizers.<sup>486</sup> As for Seidemann's allegation, that a "demolition derby" was imminent, his crystal ball was cloudy. It is instructive to compare the total number of demolitions before and after Seidemann's 1998 article:

- 1993-94: 28 demolitions
- 1995-96: 22 demolitions
- 1997-98: 62 demolitions

---

First Councillor in the Yugoslavian Embassy in Tel Aviv, in Tel Aviv (Nov. 15, 2002). Currently there are only a few thousand Serbs living in Sarajevo as compared with a pre-war total of some 120,000, that comprised approximately one-third of the population. The government has set a target of enabling 12,000 Serbian refugees to return. Telephone interview with Vladimir Nestic, First Counsellor in the Yugoslavian Embassy in Tel Aviv, in Tel Aviv (Nov. 15, 2002).

<sup>479</sup> Interview with Anura Rajakaruna, Counsellor in the Sri Lankan Embassy in Israel, in Tel Aviv (Nov. 18, 2002).

<sup>480</sup> Michael F. Davie, A Post-War Urban Geography of Beirut, 1993 European Association for Middle East Studies Conference Internet Website (visited July 12, 2002) <<http://almashriq.hiof.no/lebanon/900/902/MICHAEL-Davie/Post-War.html>>.

<sup>481</sup> See Cold War, Internet Website (visited July 12, 2002) <<http://www.geocities.com/Athens/Rhodes/6916/cold.htm#two>>.

<sup>482</sup> See Section VII. B. 3 of the text below.

<sup>483</sup> Ir Shalem Report, East Jerusalem - The Current Planning Situation: A Survey of Municipal Plans and Planning Policy, n.d. The Hebrew expression *Ir Shalem* translates to 'whole city.' Ir Shalem's Report on planning in East Jerusalem, which lists Seidemann as its "Advisor," expresses its appreciation for "the generous help" of the European Commission. Palestinian Liberation Organization, Negotiation Affairs Department, *Fact Sheet: Israeli Occupied East Jerusalem*, Palestinian Liberation Organization Internet Website (visited July 23, 2002) <[www.nad-plo.org/fact\\_sheets\\_faq/factsh2.html](http://www.nad-plo.org/fact_sheets_faq/factsh2.html)>. Thereafter Seidemann left Ir Shalem and founded another non-profit entity known as the 'Pro-Jerusalem Society.' American Committee on Jerusalem Internet Website (visited May 31, 2002) <[http://www.acj.org/april/april\\_11.htm](http://www.acj.org/april/april_11.htm)>.

<sup>484</sup> Jerusalem Quarterly File Internet Website (visited Jan. 15, 2001) <<http://www.jqf-jerusalem.org>>. Thus far only 13 issues of this publication have appeared.

<sup>485</sup> Daniel Seidemann, *Ehud Olmert: Jerusalem and the Facts*, JERUSALEM QUARTERLY FILE, Issue 1, 1998, available at Jerusalem Quarterly File Internet Website (visited Nov. 23, 2001) <http://www.jqf-jerusalem.org>.

<sup>486</sup> See, e.g., Margot Dudkevitch and news agencies, *9 Buildings in Isawiya Demolished*, JERUSALEM POST, Jan. 15, 2002, p. 3; Wael Tabari, *New Demolition Policy*, THE PALESTINE MONITOR, Dec 28, 2001, p. 1.

- 1999-2000: 26 demolitions
- 2001: 46 demolitions.<sup>487</sup>

Even according to the figures published by the Palestinian Authority's Central Bureau of Statistics, the number of demolished structures in Arab areas, excluding what they call "tents and barracks," for the years 1997, 1998, and 1999 were 28, 31, and 36 respectively.<sup>488</sup> Seidemann's alarmist forecasts of "tens if not hundreds" of "homes"<sup>489</sup> being demolished, somehow concealed by a "well oiled public relations campaign," bears no relation to reality. More important, Seidemann, both by accusations and by omissions, misinforms the public as what is at stake in the City's efforts to cope with the epidemic of illegal construction. Indeed, if there is any "well-oiled public relations campaign" it is that of NGOs' categorical denunciation of any, and every, attempt by the Municipality to enforce the planning law.<sup>490</sup>

The leading Israeli NGO, B'Tselem has original reasons for opposing administrative demolitions by the Jerusalem Municipality. Attorney Yael Stein, Research Coordinator from B'Tselem, openly acknowledges its political point of departure. Stein states that if the Municipality did everything possible to protect the interests of the residents of east Jerusalem, then it would be possible to justify demolition of illegally built structures.<sup>491</sup> Stein's *a la carte* approach to the rule of law fails to acknowledge that the City does strive to protect the long-term interests of the Arab residents of Jerusalem, in very difficult objective political and economic circumstances. Applying Stein's logic to the actual facts, B'Tselem ought to support the use of demolition?

B'Tselem argues "the Israeli authorities have choked development and building for the Palestinians."<sup>492</sup> B'Tselem credits Ir Shalem, as the source of its statistics on the percentage of land in east Jerusalem which is eligible for residential construction, which it claims (erroneously<sup>493</sup>) has the total potential for only an additional 5,000 housing units.<sup>494</sup> This is but one example of the beguiling effect of NGOs piggybacking on each other's investigations,<sup>495</sup> either because they cannot be troubled to do independent research or because it is tempting to rely on ready 'data' that supports their preconceived orientation. B'Tselem concludes that, "[I]nadequate planning and the restrictions on building for the City's Palestinian population leave many Palestinians with no choice but to build their homes without obtaining building permits." This sounds familiar. Ir Shalem's founder, Daniel Seidemann wrote, "Palestinian residents of the city...in their desperation, resort to illegal means in order to provide themselves and their families with a basic living

<sup>487</sup> Interview with Israel Ben-Ari, Deputy Manager of Licensing and Inspection Department of Jerusalem Municipality, in Jerusalem (June 9, 2002).

<sup>488</sup> Palestinian Central Bureau of Statistics, Demolished Houses by Selected Indicators, 1997-1999.

<sup>489</sup> While this misnomer may be useful to those attempting to rally opposition to the Municipality's planning enforcement measures, most of the structures that have been administratively demolished are not "houses" in the conventional sense - structures with people residing in them. Interview with Shalom Goldstein, Advisor to Mayor of Jerusalem Municipality for East Jerusalem Affairs, in Jerusalem (Nov. 15, 2001).

<sup>490</sup> Imagine the condemnation the NGOs would serve up if the City enforced the law against illegal building to its full extent.

<sup>491</sup> According to Stein, B'Tselem's opposition to demolitions focus on cases in which the house belongs to someone that was unable to get a permit and objectively felt that he/she had no other option. Stein claimed that B'Tselem's opposition to demolition is not specific to particular instances but rather directed at the general policy of the Municipality. Stein also expressed opposition to illegal building carried out by criminals on stolen land, stating they should be punished. She does, however, acknowledge that in some cases the residents of east Jerusalem themselves complain to the City regarding illegal construction and request demolition be carried out. Telephone interview with Yael Stein, Research Coordinator for B'Tselem, in Jerusalem (Mar. 3, 2002).

<sup>492</sup> B'Tselem Internet Website, *Discrimination in Planning, Building and Land Expropriation* (visited Dec. 12, 2001) <[http://www.btselem.org/files/site/english/jerusalem/discriminating\\_policy.asp](http://www.btselem.org/files/site/english/jerusalem/discriminating_policy.asp)>.

<sup>493</sup> See Section VI. A and B of the text below; see Appendices 1 and 2.

<sup>494</sup> B'Tselem Internet Website, *Discrimination in Planning, Building and Land Expropriation* (visited Dec. 12, 2001) <[http://www.btselem.org/files/site/english/jerusalem/discriminating\\_policy.asp](http://www.btselem.org/files/site/english/jerusalem/discriminating_policy.asp)>.

<sup>495</sup> See, e.g., Alternative Information Center Internet Website, *Al-Haq Condemns Israel's Demolition of 14 Homes in Shu'afat Refugee Camp*, July 9, 2001 (visited May 23, 2002) <<http://www2.alternativenews.org/display.php?id=118>>.

environment.”<sup>496</sup> Is Ir Shalem ghostwriting for B’Tselem or vice versa? Either way, in actuality, the overall planning is more than adequate,<sup>497</sup> although it could no doubt be improved if the Palestinian leadership were to end their boycott of the Municipality.

Amnesty International is exaggerating, but not by much, when it refers to the “other organizations too numerous to mention” that have taken on the Municipality.<sup>498</sup> What Amnesty International neglects to mention is that some of these impressive sounding entities involve only one, or a few, activists/members. Indeed, a handful of activists/members may simultaneously enroll in more than one organization that addresses this cause. Still other entities, like Hanthala Palestine,<sup>499</sup> are ‘virtual’ rather than corporeal. The frequent practice of these NGOs borrowing or cribbing from each other, whatever the intellectual drawbacks, would be less damaging if the information being replicated were accurate. Often it is not. Moreover, in other cases the ghostwritten ‘facts’ may be ‘correct,’ but they are employed to distort, misrepresent or mislead.

A variation on the political approach of B’Tselem has been adopted by Jeff Halper, the Coordinator of the Israeli Committee Against House Demolitions. Halper, who peppers his attacks on Israel with charges like “apartheid,”<sup>500</sup> and equated Israel’s legal system with the Nazi Nuremberg laws,<sup>501</sup> alleges that Israeli zoning and building regulations are not ordinary laws, like similar provisions in effect in other developed nations. Instead he castigates these Israeli provisions as designed to “restrain Palestinians from building, to confine them in small ghettos in east Jerusalem.”<sup>502</sup>

NGOs criticize the Municipality for the “overcrowded” conditions in the Arab neighborhoods of Jerusalem.<sup>503</sup> Yet, according to two of the three measurements<sup>504</sup> of density, the ultra-Orthodox Jewish population lives in the densest conditions of any sector of Jerusalem’s population. Indeed, in living units per dunam the ultra-Orthodox live almost four times more densely than the non-Jewish (predominantly Arab) population.<sup>505</sup> Similarly, in persons per dunam the ultra-Orthodox density is three times that of the non-Jewish sector.<sup>506</sup> These statistics ought not surprise anyone as the ultra-Orthodox are mostly poor and have large families. Yet this author is unaware of a single NGO that has launched a campaign or published a study detailing their plight. Nor have the demands, needs or preferences of the ultra-Orthodox been sympathetically covered in the media, electronic or print. Nor, for that matter, have any of the City’s incessant critics published a word of criticism against the governments in all parts of the world that also use demolition, often in quite similar circumstances. What does this say about the objectivity and balance of the NGOs and the media? It will be interesting to see if this active disinterest continues.

NGOs such as Halper’s Committee challenge an additional standard. Former Jerusalem Deputy Mayor Meron Benvenisti wrote in 1986, “[i]f one repudiates a system he

---

<sup>496</sup> Daniel Seidemann, *Ehud Olmert: Jerusalem and the Facts*, JERUSALEM QUARTERLY FILE, Issue 1, 1998, available at Jerusalem Quarterly File Internet Website (visited Nov. 23, 2001) <<http://www.jqf-jerusalem.org>>.

<sup>497</sup> See Sections III and V of the text above.

<sup>498</sup> Anthony Coon, *Demolition and Dispossession: the Destruction of Palestinian Homes*, Israel and the Occupied Territories, AI -index MDE 15/059/1999, Dec.8, 1999, p. 2, available at Amnesty International Internet Website (visited June 1, 2002) <[http://www.amnestyusa.org/countries/israel\\_and\\_occupied\\_territories/reports/demolition\\_summary.html](http://www.amnestyusa.org/countries/israel_and_occupied_territories/reports/demolition_summary.html)>.

<sup>499</sup> Hanthala Palestine Internet Website, *Fifty Reasons to Condemn Israel’s Human Rights Record* (visited June 7, 2002) <<http://hanthala.virtualave.net/hanthala.html>>.

<sup>500</sup> Interview with Irwin Cotler, Professor of International Law and member of the Canadian House of Commons, in Jerusalem (July 1, 2002).

<sup>501</sup> Judy Lash Balint, *Trouble in the Holy Land*, visited June 12, 2002, available at WorldNet Daily Internet Website (visited Aug. 3, 2002) [www.worldnetdaily.com/news/article.asp?ARTICLE\\_ID=23437](http://www.worldnetdaily.com/news/article.asp?ARTICLE_ID=23437).

<sup>502</sup> Andrea Levin, *Truth Demolition in an Anti-Israel Road Show*, ON CAMERA, Feb. 3, 2000, p. 1.

<sup>503</sup> See e.g. Press Release, B’Tselem, *Injustice in the Holy City: House Demolitions*, p. 1, n.d.

<sup>504</sup> These measurements are living units per dunam, persons per dunam and square-meters per person.

<sup>505</sup> Appendix 6C. The dunam is the traditional Middle Eastern unit used for measuring land area. Approximately four dumans equal one acre.

<sup>506</sup> Appendix 6D.

does not seek redress within it.”<sup>507</sup> This is no longer the case. Many of today’s NGOs that support or defend illegal building in the Arab neighborhoods apparently want it both ways. That is, they express arguments of the civil-libertarian genre, demanding equal public services, while simultaneously insisting on liberating the Arab neighborhoods of Jerusalem from the Israeli framework.

Not surprisingly, some of the NGOs have benefited from the largess of the European Commission, the executive branch of the European Union.<sup>508</sup> Thus, for example, following upon the decisions reached at a meeting on September 29, 1999, the sum of 250,000 euros was earmarked for the Committee Against House Demolition and 250,000 euros was given to Ir Shalem.<sup>509</sup> It is not clear to what objectives these quite substantial sums were dedicated, although some of the grant received by Ir Shalem funded the printing of a study on planning in Jerusalem.<sup>510</sup> When last checked in August 2002,<sup>511</sup> Ir Shalem had not submitted a report of its financial activities to the Israeli Registrar of Non-Profit Organizations, as required by law. As a consequence, the Registrar sent Ir Shalem two strongly worded letters criticizing it for failing to file proper documents pursuant to Article 38 of the Non-Profit Organizations Law, threatening to have it dissolved.<sup>512</sup> Thereafter the Registrar appointed a certified public accountant who is currently conducting an in-depth investigation of Ir Shalem.<sup>513</sup>

The Committee Against House Demolition’s accountant belatedly filed a report that dealt with the years 1999 and 2000. The balance sheet it filed with the Registrar listed the annual contributions it had received for the years 1999, and 2000 as 150,530 NIS and 162,184 NIS respectively.<sup>514</sup> As mentioned above, the European Commission, however, was to have donated 250,000 euros to the Committee during that period. At the current exchange rate this translates to approximately 1,180,000 NIS. The author’s efforts to confirm the extent of the grant actually received by the Committee and the date the sum(s) were transferred were unavailing, despite repeated telephone and email contact with the Press Officer, the Director of the Jerusalem Office, and with one of his senior staff people. According to the relevant grant rules interim and final reports describing a projects must be submitted by all grant recipients. Presumably such reports were submitted by Ir Shalem and the Committee Against House Demolition. Despite this author’s requests, in writing and telephone conversations, for copies of all such submissions they were not forthcoming in a timely fashion.<sup>515</sup>

---

<sup>507</sup> MERON BENVENISTI, CONFLICTS AND CONTRADICTIONS 111 (1986).

<sup>508</sup> It should be remembered that most of the European Union countries enjoy extensive trade relationships with the Arab and Islamic states. Their long-term dependency on imported oil, most of it exported from Arab countries, also lurks as a question mark in the background of their posture on Israeli-Palestinian issues. Reluctance to provoke a backlash of Islamist terrorism by taking a position that could be labeled ‘pro-Israeli,’ could also be a factor. See Yoav Itzhak, *EU Interferes with the Internal Affairs of Israel*, MA’ARIV (Hebrew newspaper), June 22, 2001. Acting in open disregard of the maxim that sovereigns should refrain from interfering in the internal affairs of other States, the EU even makes efforts to frustrate Israeli building in places where the Palestinians would like to build. Interview with Shalom Goldstein, Advisor to Mayor of Jerusalem Municipality for East Jerusalem Affairs, in Jerusalem (Apr. 15, 2002).

<sup>509</sup> Note to the File from Peter Zangl, Chair of the Ad-hoc Committee for People/Permanent Status Issues Projects in Support of the Middle East Peace Process, *et. al.*, REFLEX/FZ/NK D(99), of the European Commission Directorate General External Relations, Oct. 29, 1999, pp. 6, 8. See also Yoav Itzhak, *EU Interferes with the Internal Affairs of Israel*, MA’ARIV (Hebrew newspaper), June 22, 2001; see email letter from David Kriss, Press Officer, Delegation of the European Commission, to Jerusalem Center for Public Affairs, Aug. 22, 2002 (on file with author). These sums were to be disbursed pursuant to a program that is now called Partnership for Peace. David Kriss, Press Officer, Delegation of the European Commission, to Jerusalem Center for Public Affairs, Aug. 22, 2002 (on file with author).

<sup>510</sup> Telephone interview of David Kriss, Press Officer, Delegation of the European Commission, in Tel Aviv (Nov. 28, 2002); IR SHALEM, EAST JERUSALEM; THE CURRENT PLANNING SITUATION: A SURVEY OF MUNICIPAL PLANS AND PLANNING POLICY 57 (n.d.).

<sup>511</sup> Interview of Tal Bialostocki, Research Assistant at the Jerusalem Center for Public Affairs, in Jerusalem (Aug. 10, 2002).

<sup>512</sup> Letter from Ruth Zaken of the Registrar of Non-Profit Organizations to Ir Shalem, Jan. 8, 2002 (Hebrew).

<sup>513</sup> Letter from Gavriel Issac, CPA, to Ir Shalem, July 14, 2002 (Hebrew); telephone interview of Mili Ansbacher, accountant at the Israel Registrar for Non-Profit Organizations, in Jerusalem, Dec. 3, 2002.

<sup>514</sup> Letter from Eitan H. Shaki, CPA to the Committee Against House Demolition, Mar. 11, 2002, p. 3 (Hebrew).

<sup>515</sup> Telephone interviews of David Kriss, Press Officer, Delegation of the European Commission, in Tel Aviv (Nov. 15 and 28, and Dec. 2, 2002). To date the Author has received no substantive reply from the European Commission as regards his questions on its financial and project relationship with Ir Shalem and the Committee Against House Demolition. Letter from Justus Weiner to David Kriss, Press Officer, Delegation of the European Commission, in Tel Aviv (Nov. 20, 2002).

NGO reports are frequently characterized by factual inaccuracies, the misuse of legal authority, critical omissions, groundless insinuations of official misconduct, untruths, and unfair and unsubstantiated 'evidence.' They offer one-sided presentations that disregard proportion and context, ignoring the two major causes for illegal building in the Arab neighborhoods: a political tool in the hands of the Palestinian Authority, and a means for criminal profit at the expense of others.

#### 4. Additional Objections to Demolitions by Amnesty International

Amnesty International is the world's largest private human rights organization. Amnesty International insists that it adheres to universal standards in its criticism of various governments. Therefore it may surprise readers to learn that Amnesty International invented a human rights 'norm' by which it condemns just one country - Israel - from among the approximately 200 countries in the world today. In 1995, under the vague and misleading rubric "grave violations,"<sup>516</sup> Amnesty International commenced the process by which it added its voice to the numerous local NGOs that condemn the City's planning enforcement policies. Despite the diverse countries that demolish illegal housing, this author's search of the Amnesty International website reveals that it has yet to criticize even one other country for breaching Amnesty International's newly-minted 'norm.' Apparently their standard is so precisely tailored to find fault with Israel, a perennial target of Amnesty International's ire,<sup>517</sup> that the organization's claim of impartiality is compromised.

Indeed, NGOs frequently couch their condemnation of the Municipality's planning policies in the terminology of human rights law, humanitarian law, and international law. Over-arching Amnesty International's misuse of international law is a more fundamental question - why does Amnesty International, originally dedicated to combating what it regards as major human rights violations (i.e., the death penalty, torture, and imprisonment of persons who have neither used nor advocated violence) even bother with the issue of demolitions? Even if one takes a worst-case perspective, and accepts as fact every one of the allegations of Amnesty International and the other NGOs, this is hardly a human rights issue of the first order, among the many that clamor for attention. Might it be that the organization modified its terms of reference to find still another subject where it could break new ground by censuring Israel?<sup>518</sup>

Amnesty International has published tendentious accusations that are fundamentally flawed and fail to reflect the political impartiality that should be the hallmark of the world's largest private human rights organization. For example, its 1999 report entitled "Demolition and Dispossession: the Destruction of Palestinian Homes," makes inflammatory and false accusations. This report states, "[h]ouse demolitions ostensibly occur because the homes are built 'illegally' - without a permit."<sup>519</sup> This loaded insinuation is demonstrably false. Moreover, it should be borne in mind that most of the structures that the Municipality demolishes are not (yet) "house[s]," since they are not yet livable.

---

<sup>516</sup> Anthony Coon, *Demolition and Dispossession: the Destruction of Palestinian Homes*, Israel and the Occupied Territories, AI -index MDE 15/059/1999, Dec.8, 1999, p. 2, available at Amnesty International Internet Website (visited June 1, 2002) <[http://www.amnestyusa.org/countries/israel\\_and\\_occupied\\_territories/reports/demolition\\_summary.html](http://www.amnestyusa.org/countries/israel_and_occupied_territories/reports/demolition_summary.html)>.

<sup>517</sup> See, e.g. UZI AWIT-KOHN ET AL., ISRAEL, THE 'INTIFADA' AND THE RULE OF LAW 236 (1993); Justus Reid Weiner, *Human Rights in the Israeli Administered Areas During the Intifada: 1987-1990*, 10 WISCONSIN INTERNATIONAL LAW JOURNAL 185, 254-58 (1992); Justus R. Weiner, *Human Rights in Limbo During the Interim Period of the Israeli-Palestinian Peace Process: Review, Analysis, and Implications*, 27(4) NEW YORK UNIVERSITY JOURNAL OF INTERNATIONAL LAW AND POLITICS 761, 833-35 (1995).

<sup>518</sup> See, e.g., Justus Reid Weiner, *Human Rights in the Israeli Administered Areas During the Intifada: 1987-1990*, 10 WISCONSIN INTERNATIONAL LAW JOURNAL 287, 254-258 (1992); Justus R. Weiner, *Human Rights in Limbo During the Interim Period of the Israeli-Palestinian Peace Process: Review, Analysis and Implications*, 27 NEW YORK UNIVERSITY JOURNAL OF INTERNATIONAL LAW AND POLITICS 761, 833-35 (1995).

<sup>519</sup> Anthony Coon, *Demolition and Dispossession: the Destruction of Palestinian Homes*, Israel and the Occupied Territories, AI -index MDE 15/059/1999, Aug, 12 1999, available at Amnesty International Internet Website (visited June 1, 2002) <[http://www.amnestyusa.org/countries/israel\\_and\\_occupied\\_territories/reports/demolition\\_summary.html](http://www.amnestyusa.org/countries/israel_and_occupied_territories/reports/demolition_summary.html)>. (emphasis added).

Amnesty International's characterization of the process of administrative demolition is no less problematic. For example, a Amnesty International press release asserts that the residents of buildings that are about to be torn down are "often given only 15 minutes to gather their possessions and leave."<sup>520</sup> This inflammatory falsehood fails to provide essential context. In instances in which furniture or other valuables need to be removed from the structure before the demolition is carried out, the City hires a professional moving crew to remove these items and place them aside, out of harm's way, where their owner(s) can claim them.<sup>521</sup> As a consequence, the residents do not need even "15 minutes to gather their possessions,"<sup>522</sup> since that is done for them by professional movers.

Moreover, in its "15 minute" accusation, Amnesty International omits the lengths to which the Municipality goes in its efforts to protect the interests of, and avoid inconvenience to, even those who build illegally. First, to make it possible for the builder of a structure threatened with demolition to petition a court for an injunction, the Municipality of Jerusalem posts a notice in a visible place on the illegal structure, days, weeks or sometimes as much as a month in advance of the carrying out of the order. If more than a month passes between posting the notice and carrying out the demolition, a new notice must be posted.<sup>523</sup> Second, every effort is made to catch illegal structures at the earliest possible point, to minimize the financial loss of the person who has begun construction.<sup>524</sup> If people inhabit the structure for more than 30 days, the City's general policy is not to demolish it.<sup>525</sup> Thus, often what is being destroyed is not a lived-in home, but rather a cement slab, sometimes with a few pillars. While the misnomer "home" may be useful to those attempting to promote resistance to the City's enforcement measures, most of the structures that have been administratively demolished are not "homes" in the conventional sense - structures with people residing in them.<sup>526</sup> Third, the actual demolition is carried out in a manner that as much as possible avoids provoking violence. Thus, the security compliment of soldiers and policemen that accompanies the demolition crew is there to prevent demonstrations from erupting into violence.<sup>527</sup> Fourth, anyone moved out of a demolished structure by the Municipality can, if they need a temporary residence, be put up in a hotel at the City's expense.<sup>528</sup> Once again Amnesty International sensationalizes this topic by failing to place its allegations in context.

Worse still, Amnesty International makes specious accusations, such as:

---

<sup>520</sup> Anthony Coon, *Demolition and Dispossession: the Destruction of Palestinian Homes*, Israel and the Occupied Territories, AI -index MDE 15/059/1999, Aug, 12 1999, p.1, available at Amnesty International Internet Website (visited June 1, 2002) <[http://www.amnestyusa.org/countries/israel\\_and\\_occupied\\_territories/reports/demolition\\_summary.html](http://www.amnestyusa.org/countries/israel_and_occupied_territories/reports/demolition_summary.html)>. Looking at the title of this report an even more basic question ought to be asked: how can the enforcement of the law against illegally built structures be termed "dispossession" by Amnesty International? When the court takes back or penalizes (by a fine) what a private person has seized illegally, this ought not be labeled "dispossession." Rather it seeks to undo unjust enrichment.

<sup>521</sup> B'Tselem, for example, issued a Press Release featuring the highly emotive "testimony" of interested parties, such as an Arab father of 13 children from Beit Hanina who claims his extended family was forced to live in tents after his [illegally constructed] house was demolished and his furniture and possessions damaged or destroyed when police officers threw out everything that was inside. Press Release, B'Tselem, *Injustice in the Holy City: House Demolitions*, n.d.

<sup>522</sup> Anthony Coon, *House Demolitions - Palestinians Given "15 Minutes to Leave..."*, Israel, AI index: MDE 15/078/1999, Dec. 8, 1999, available at Amnesty International Internet Website (visited June 1, 2002)

<<http://web.amnesty.org/802568F7005C4453/0/CC62E1E028FA1D1C80256900006931FA?Open&Highlight=2,coons>>.

<sup>523</sup> Interview with Israel Ben-Ari, Deputy Manager of Licensing and Inspection Department of Jerusalem Municipality, in Jerusalem (June 9, 2002).

<sup>524</sup> Interview with Israel Ben-Ari, Deputy Manager of Licensing and Inspection Department of Jerusalem Municipality, in Jerusalem (June 9, 2002).

<sup>525</sup> Interview with Israel Ben-Ari, Deputy Manager of Licensing and Inspection Department of Jerusalem Municipality, in Jerusalem (June 9, 2002).

<sup>526</sup> Interview with Shalom Goldstein, Advisor to Mayor of Jerusalem Municipality for East Jerusalem Affairs, in Jerusalem (Nov. 15, 2001).

<sup>527</sup> Demolitions by the government, sometimes provoking violent response from their builders or owners, have also occurred elsewhere in Israel. In one case 100 enraged squatters in the Pardess Katz area squared off against a similar number of police. Larry Derfner, *Squatters Fight Police as Sheds Razed* JERUSALEM POST, Aug. 21, 1990, p. 2. Bill Hutman, *Political Party Favors for Haredim* JERUSALEM POST, Nov. 5, 1993, p. 2B.

<sup>528</sup> Interview with Israel Ben-Ari, Deputy Manager of Licensing and Inspection Department of Jerusalem Municipality, in Jerusalem (June 9, 2002).

House demolitions ostensibly occur because the homes are built 'illegally' - without a permit. Officials and spokespersons of the Israeli government have consistently maintained that the demolition of Palestinian houses is based on planning considerations and is carried out according to the law.... But the Israeli policy has been based on discrimination. Palestinians are targeted for no other reasons (sic) than that they are Palestinians.<sup>529</sup>

As to the accusation that "Palestinians are targeted for no other reasons [sic] than that they are Palestinians," why does not Amnesty International acknowledge that they are targeted because they built illegally? Amnesty International makes no mention of the fact that had the individuals in question applied for and received building permits, their structures would have never been targeted for fines or demolition. It should not be forgotten that the City also demolishes Jewish-owned illegal structures in Jerusalem.<sup>530</sup> Likewise various countries around the world, including democracies, frequently use demolition for a variety of reasons including eminent domain.<sup>531</sup>

Amnesty International claims that, "[I]n pursuit of this Israeli officials have ignored the Fourth Geneva Convention which requires the occupying power to *protect the welfare of the people* in the areas it has occupied and international human rights law which recognizes the right of everyone to an *adequate standard of living including housing*"<sup>532</sup> (emphasis added). As for the assertion that the Fourth Geneva Convention requires "the occupier to protect the welfare of the people," it is peculiar that Amnesty International's researcher fails to cite any of the 159 Articles of that Convention. While it is undoubtedly desirable for occupiers to protect the welfare of civilians, this author's review of the Fourth Geneva Convention failed to reveal any provision that posits such a requirement. In any event, it so happens that the welfare of the people is served, not harmed, by administrative demolitions. Such demolitions deter the sprawl that increases the difficulties and costs of providing public services to the Arab neighborhoods. If the Municipality neglected to demolish illegal structures that harm the welfare of the residents, would it not be in violation of any "protect the welfare of the people" provision? In the case of dangerous structures that do not comply with the building code, as for example, if the number of metal rods in a cement wall is below specification, the administrative demolition of illegal building serves the welfare of the people.

Amnesty International's researcher's unattributed norm of an "adequate standing of living including housing," appears to paraphrase Article 25 of the 1948 UN Universal Declaration of Human Rights.<sup>533</sup> Even if one ignores the fact that the UN Declaration was originally passed by the General Assembly and not the Security Council, and as such, according to the internal rules of the UN, has no force of law,<sup>534</sup> it is peculiar indeed for Amnesty International to imply that their ambiguous "adequate standard of living" clause

---

<sup>529</sup> Anthony Coon, *Demolition and Dispossession: The Destruction of Palestinian Homes, Israel and the Occupied Territories*, AI-Index: MDE 15/059/1999, Aug. 12, 1999, p. 1, available at Amnesty International Internet Website (visited June 1, 2002) <<http://web.amnesty.org/802568F7005C4453/0/5B00A8DA48F0655180256900006931EC?Open&Highlight=2,coons.>>.

<sup>530</sup> See Appendix 3, images 59, 60, 63, 64, and 65.

<sup>531</sup> See Section VII. B 1 and 2 of the text below.

<sup>532</sup> Anthony Coon, *Demolition and Dispossession: The Destruction of Palestinian Homes, Israel and the Occupied Territories*, AI-Index: MDE 15/059/1999, Dec. 8, 1999, available at Amnesty International Internet Website (visited June 1, 2002) <<http://web.amnesty.org/802568F7005C4453/0/5B00A8DA48F0655180256900006931EC?Open&Highlight=2,coons.>>.

<sup>533</sup> Universal Declaration of Human Rights, approved Dec. 10, 1948, G.A. Res. 217A, U.N. Doc. A/810 at 56 (1948).

<sup>534</sup> Some publicists view the UN Declaration on Human Rights, or at least certain of its Articles, as having over the decades, become recognized as reflective of customary international law. See INTERNATIONAL HUMAN RIGHTS: LAW, POLICY AND PROCESS 16, 144 (Frank Newman and David Weissbrodt eds., 2d ed. 1996).



imposes a positive law obligation on the government of Israel?<sup>535</sup> Should not Amnesty International have, in order to put the paraphrased 'norm' in context, as could have been done by drawing attention to Articles 29(2) which states, "everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society."<sup>536</sup> Is not "public order and the general welfare in a democratic society" served by making everyone subject to the urban planning standards? Indeed, if Amnesty International wants to apply the "protect the welfare" clause, why does it do so for the benefit of the illegal builders and not for the good of their law abiding neighbors? Do not those who suffer from illegal construction have legal rights worthy of governmental protection? If Amnesty International is truly concerned that this population should enjoy "an adequate standard of living," it should be appreciative of the City's efforts to enforce the planning law.<sup>537</sup>

A still more fundamental question is raised by the NGOs efforts to apply, in addition to the humanitarian provisions of the law of war, various human rights standards that were initially intended to apply in times of peace and thus are temporarily substituted by the humanitarian laws of war.<sup>538</sup> Thus there is considerable doubt whether the much-referenced UN Universal Declaration of Human Rights, for example, applies in time of war/occupation.<sup>539</sup> Regrettably, no mention of these doubt regarded the legal relevancy of the proffered authority appears, in even a footnote, in any of the NGO reports that condemned Israeli conduct as contrary to the UN Universal Declaration of Human Rights.

The well-known practice of making erroneous use of 'international law' to stigmatize Israel is nothing new. NGOs make frequent irresponsible assertions of this kind, typically combining factual inaccuracies with seemingly authoritative references to 'international law.' A closer inspection of the instruments that constitute the body of international law reveals three problems. The NGOs do not distinguish 'soft law'<sup>540</sup> from 'hard law.' Soft law consists of agreements on principles, even solemn declarations, but constituting mere recommendations to states.<sup>541</sup> Indeed, many international lawyers consider 'soft law' to be a misnomer because it has no binding authority as is. Although it may express noble aspirations, and may, over time, become recognized as reflecting customary international law, or even stimulate sovereign states to promulgate or negotiate legislation or conventions, by definition 'soft law' lacks authority to bind states. 'Soft law' is to be distinguished from its counterpart - 'hard law'<sup>542</sup> - the legally binding bilateral and multi-lateral agreements entered into and ratified by sovereign entities.<sup>543</sup> Various NGOs

<sup>535</sup> If such a positive law obligation exists, why does Amnesty International ignore that, since the Arab neighborhoods came under Israeli control in 1967, the housing quality and quantity have improved immeasurably? Is this just another example of Amnesty International's conspicuous single entry accounting system? That is, the City's perceived shortcomings are totaled while its credits are ignored altogether.

<sup>536</sup> Universal Declaration of Human Rights, G.A. Res. 217 A (III), adopted by the U.N. Doc. A/810 (Dec. 10, 1948) 23, art. 29(2).

<sup>537</sup> Amnesty International also omits mention of another provision, Article 30 which states, "Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein." Clearly illegal construction on a massive scale, as exists in the Arab neighborhoods of Jerusalem, harms various protected "rights and freedoms," such as the right to an education as provided in Article 26, when an illegal structure is erected on land designated for a new school. Universal Declaration of Human Rights, G.A. Res. 217 A (III), adopted by the U.N. Doc. A/810 (Dec. 10, 1948) 23, art. 26, 30.

<sup>538</sup> See e.g. YORAM DINSTEIN, HUMAN RIGHTS IN ARMED CONFLICT: INTERNATIONAL HUMANITARIAN LAW IN HUMAN RIGHTS IN INTERNATIONAL LAW 345, 350-52 (T. Meron ed., 1985); but see John Quigley, *The Relation Between Human Rights Law and the Law of Belligerent Occupation: Does the Occupied Population Have a Right to Freedom Assembly and Expression?*, 12 BOSTON COLLEGE INTERNATIONAL AND COMPARATIVE LAW REVIEW 1 (1989).

<sup>539</sup> EYAL BENVENISTI, THE INTERNATIONAL LAW OF OCCUPATION 187-89 (1993).

<sup>540</sup> Book Review and Note, COMMITMENT AND COMPLIANCE: THE ROLE OF NONBINDING NORMS IN THE INTERNATIONAL LEGAL SYSTEM (Dinah Shelton ed., 2000), in 95 AMERICAN JOURNAL OF INTERNATIONAL LAW 709 (2001).

<sup>541</sup> See Prof. Dr. Ruud Lubbers Internet Website (visited July 4, 2002) <<http://www.globalize.kub.nl/lexicon.asp?term=Soft%20Law>>.

<sup>542</sup> Prosper Weil, *Towards Relative Normativity in International Law?*, 77 AMERICAN JOURNAL OF INTERNATIONAL LAW 413, 414-18 (1983).

<sup>543</sup> This principle was expressed in the famous Lotus judgment of the Permanent Court of International Justice:

International law governs the relations between independent States. The rule of law binding on States therefore emanate from their own free will as expressed in conventions or by usages generally accepted as expressing principles of law and established in order to regulate between

have made a veritable crusade out of their opposition to the Jerusalem Municipality's planning policies. Of course, these groups are free to determine their priorities and methodologies, at least within the limits their donors will tolerate. This freedom, however, is often abused by taking advantage of the gullibility of the public regarding accusations couched in the terminology of 'human rights law,' 'humanitarian law,' and 'international law.'

Amnesty International's indictment deserves further criticism. To reiterate, it states that "[I]n pursuit of this Israeli officials have ignored the Fourth Geneva Convention, which requires the occupying power to protect the welfare of the people it has occupied, and international human rights law, which recognizes the right of everyone to an adequate standard of living including housing."<sup>544</sup> The first half of this criticism relies on the Fourth Geneva Convention, which by its own terminology ("the territory of a High Contracting Party")<sup>545</sup> and in the opinion of leading commentators, is not applicable to Jerusalem and/or, for that matter, to any of the territories captured by Israel in 1967.<sup>546</sup> Jerusalem is regarded by Israel as its capital, rather than as occupied territory.<sup>547</sup> Successive Israeli governments since 1967 - Labor, Likud, and National Unity - have taken the position that the Geneva Conventions of 1949, which Israel ratified in 1951, are not *de jure* applicable to its administration of the areas captured in the 1967 War.<sup>548</sup> Of course Amnesty International is free to disagree with Israel's position, and that of leading commentators, but it is disingenuous for this organization to simply ignore more than 30 years of scholarship and jurisprudence on this controversial issue.<sup>549</sup>

---

these co-existing independent communities or with a view to the achievement of common aims.

Restrictions upon the independence of states cannot therefore be presumed.

S.S. "Lotus" (Fr. v. Turk.), 1927 PCIJ (ser. A) No. 10, p. 18 (Sept. 7); see H. L. A. Hart, *Positivism and the Separation of Law and Morals*, 71 HARVARD LAW REVIEW 593, 606-15 (1958); HANS KELSEN, *PURE THEORY OF LAW* (Max Knight trans. 1967) (1960); Ian Brownlie, *The Rights of Peoples in Modern International Law*, in *THE RIGHTS OF PEOPLES 1* (James Crawford ed., 1988); Jan Klabbbers, *The Redundancy of Soft Law*, 65 NORDIC JOURNAL OF INTERNATIONAL LAW 167 (1996); JAN KLABBERS, *THE CONCEPT OF TREATY IN INTERNATIONAL LAW* (1996); GENNADY M. DANILENKO, *LAW-MAKING IN THE INTERNATIONAL COMMUNITY* (1993); but see, Louis B. Sohn, *The New International Law: Protection of the Rights of Individuals Rather than States*, 32 AMERICAN UNIVERSITY LAW REVIEW 1 (1982).

<sup>544</sup> Anthony Coon, *Demolition and Dispossession: the Destruction of Palestinian Homes, Israel and the Occupied Territories*, AI-index MDE 15/059/1999, Dec. 8, 1999, p. 1, available at Amnesty International Internet Website (visited June 1, 2002) <[http://www.amnestyusa.org/countries/israel\\_and\\_occupied\\_territories/reports/demolition\\_summary.html](http://www.amnestyusa.org/countries/israel_and_occupied_territories/reports/demolition_summary.html)>.

<sup>545</sup> See the continuation of this subsection.

<sup>546</sup> Yehuda Blum, *The Missing Revisioner: Reflections on the Status of Judea and Samaria*, 3 ISRAEL LAW REVIEW 279 (1968); compare also EYAL BENVENISTI, *THE INTERNATIONAL LAW OF OCCUPATION* 108-15 (1993); Eugene Rostow, *Letter to the Editor*, 84 AMERICAN JOURNAL OF INTERNATIONAL LAW 717 (1990); but see Yoram Dinstein, *Zion Shall Be Redeemed by International Law*, 27 HAPRAKLIT 5 (1971) (Hebrew).

<sup>547</sup> The Fourth Geneva Convention of 1949 is the leading source of conventional international law concerning relations between the residents of an occupied territory and the occupying government. GEORG SCHWARZENBERGER, 2 *THE LAW OF ARMED CONFLICT* 165-66 (1968).

<sup>548</sup> The rejection of claims that the Fourth Geneva Convention is *de jure* applicable to the territories captured by Israel in the 1967 War has been clearly enunciated by various senior Israeli government officials over the years. They have included then-Foreign Minister Moshe Dayan and then -United Nations Ambassador Chaim Herzog. See Nissim Bar-Yaakov, *The Applicability of the Laws of War to Judea and Samaria (the West Bank) and to the Gaza Strip*, 24 ISRAEL LAW REVIEW 485-87 (1990); compare also EYAL BENVENISTI, *THE INTERNATIONAL LAW OF OCCUPATION* 108-15 (1993).

<sup>549</sup> Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287, [Fourth Geneva Convention]. As a threshold issue, the Israel Supreme Court has held that the Geneva Conventions of 1949, which constitute conventional international law, do not automatically become part of the binding municipal law of Israel in the absence of a process of legal adoption (enactment) by the Knesset (parliament). *Affo v. IDF Commander of Judea and Samaria*, (HCJ 785/87; 845/87; 27/88) 42(2) Piskei Din 4, 38 (1988); (unofficial translation, The Ruling of the Israel High Court of Justice on the Expulsion of Palestinian Agitators 36 (April 1988)). The United Nations Security Council holds the view that the Fourth Geneva Convention applies on a *de jure* basis to Jerusalem and other areas captured by Israel in the 1967 War. See, e.g., S.C. Res. 726, UN SCOR, 47th Sess., 3026th mtg. p. 5, UN Doc S/Res/726 (1992); S.C. Res. 694, UN SCOR, 46th Sess., 2989th mtg. p. 2, UN Doc S/Res/694 (1991). Most Israeli scholars (and many other observers) tend to discount the United Nations' assessments of matters involving Israel. Michael Curtis, *International Law and the Territories*, HARVARD INTERNATIONAL LAW JOURNAL 457, 451 (1991); see HARRIS O. SCHOENBERG, *A MANDATE FOR TERROR: THE UNITED NATIONS AND THE PLO* 251-327 (1989). The Security Council, the General Assembly and many United Nations agencies have maintained a blatantly hostile attitude toward Israel for some three decades. Another critic of the world body noted:

In spite of the multitude of wars, atrocities, and terrorist acts, many of which have been sponsored by terrorist states, the UN Security Council has still managed to devote some 30 percent of its meetings, and a full one-third of its resolutions to Israel. Strangely, until the time of the recent Gulf War, the Security Council had never warned, censured, or condemned a single Arab state. ... To this point the UN Security Council has issued 31 expressions of concern, seven warnings, and 49 condemnations against Israel.

J. Gerrish, *The Myth of UN Fairness to Israel*, 17 JERUSALEM DISPATCH 2 (3rd Quarter 1990). Even with the repeal of the resolution equating Zionism with racism in 1991 the UN still has evidenced a less than objective attitude towards Israel. G.A. Res. 46/86, UN GAOR, 46th Sess., UN Doc A/Res/46/86 (1991) (repealing General Assembly Resolution 3379 (1975) determining "that zionism is a form of racism and racial discrimination").

While serving as the Attorney General of Israel, (the later Supreme Court President) Meir Shamgar announced in 1971 that the government's administration of the territories would be in accordance with the humanitarian provisions of the Convention on a *de facto* basis.<sup>550</sup> Indeed, on various occasions since 1967, Israeli governments have voluntarily undertaken to comply with the "humanitarian" provisions of the Fourth Geneva Convention.<sup>551</sup> While uncertainty exists regarding the limits of the humanitarian provisions, as distinct from purely technical provisions, it is worth noting that among the many states that have occupied territory in recent decades,<sup>552</sup> to the best of this author's knowledge, only Israel has applied the Fourth Geneva Convention's humanitarian terms, even on a *de facto* basis.<sup>553</sup>

The Fourth Geneva Convention's threshold test of applicability, contained in Article 2, is not met. This follows from the language of the Article, which states that "[t]he present convention shall apply to cases of partial or total occupation of the territory of a High Contracting Party." The Arab neighborhoods of Jerusalem that were captured in the 1967 War were not "the territory of a High Contracting party."<sup>554</sup> Moreover, from a positive law standpoint, there was never any need to delve into the meaning of this provision. The independent and liberal Supreme Court of Israel has repeatedly determined that its provisions are conventional international law and not declaratory of any rules of customary international law.<sup>555</sup>

Failing the applicability of the Fourth Geneva Convention, it is also useful to consider Article 43 of the Hague Regulations of 1907, the leading source of customary international law pertaining to occupation of territory.<sup>556</sup> Article 43 embodies the following core principle, "[t]he authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore and ensure, as

<sup>550</sup> In 1971 then-Attorney General (later President of the Supreme Court) Meir Shamgar stated the government's position to the International Committee of the Red Cross:

The territorial position is thus *sui generis*, and the Israeli government tried before to distinguish between theoretical juridical and political problems on the one hand, and the observance of the humanitarian provisions of the Fourth Geneva Convention on the other hand. Accordingly, the Government of Israel distinguished between the legal problem of the applicability of the Fourth Geneva Convention to the territories under consideration, which, as stated, does not in the Author's opinion apply to these territories, and decided to act *de facto* in accordance with the humanitarian provisions of the Convention.

Meir Shamgar, *The Observance of International Law in the Administered Territories*, 1 ISRAEL YEARBOOK ON HUMAN RIGHTS, 262 (1971). Also, Jean Pictet, the Official Commentator on the Geneva Conventions of 1949, mentions in his discussion of Article 147 that, "most national penal codes punish the unlawful... misappropriation of property," implying that, when it demolishes illegal structures erected on stolen land, the Municipality is not violating the norms in most countries. COMMENTARY ON THE IV GENEVA CONVENTION RELATIVE TO THE PROTECTION OF CIVILIAN PERSONS IN TIME OF WAR 601 (Jean Pictet ed. 1958). Likewise, Pictet states as regards Article 27, "what is essential is that the measures of constraint they [the occupier] adopt should not affect the fundamental rights of the persons concerned. As has been seen, those rights must be respected even when measures of constraint are justified." Since there cannot be a fundamental right to build illegally it follows that it is within the authority of the occupier to constrain those who would otherwise do so. COMMENTARY ON THE IV GENEVA CONVENTION RELATIVE TO THE PROTECTION OF CIVILIAN PERSONS IN TIME OF WAR 207 (Jean Pictet ed. 1958). Further, Article 50 of the Convention states, "[t]he Occupying Power...facilitate the proper working of all institutions devoted to the care and education of children." Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287, art. 50. This in fact was the case when the City demolished an illegal structure on land designated for a school addition in Isawiya. See Appendix 3, image 32.

<sup>551</sup> UZI AMIT-KOHN ET AL., ISRAEL, THE 'INTIFADA' AND THE RULE OF LAW 21-22 (1993).

<sup>552</sup> These include a variety of occupations in the states of the former Yugoslavia and the former Soviet Union, the Russian and U.S. occupations of Afghanistan, the U.S. occupations of Grenada, Lebanon, Panama, Grenada and Iraq, Iraq's occupation of Iran, China's occupation of Tibet, the Vietnamese occupation of Kampuchea, the Indian occupation of territories that became Bangladesh, the Turkish occupation of northern Cyprus, the Indonesian occupation of East Timor the Moroccan occupation of Western Sahara, Libya's occupation of Chad and the Syrian occupation of Lebanon. See EYAL BENVENISTI, THE INTERNATIONAL LAW OF OCCUPATION 182 (1993); Michael Curtis, *International Law and the Territories*, HARVARD INTERNATIONAL LAW JOURNAL 457, 479 (1991).

<sup>553</sup> EYAL BENVENISTI, THE INTERNATIONAL LAW OF OCCUPATION 182-83 (1993); see Yoram Dinstein, *Girush Roshay Ha'arim Meyehuda* [Expulsion of Mayors from Judea], 8 TEL AVIV LAW REVIEW 158, 167-68 (1981)(Hebrew); Oliver M. Ribbelink, *Palestinian Higher Education in the West Bank: Academic Freedom and Int'l Law*, AMSTERDAM INTERNATIONAL STUDIES 12, 17 (1990).

<sup>554</sup> Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287, art. 2(2).

<sup>555</sup> *Kawasme v. Minister of Defense* (HCJ 693/80) 35(1) Piskei Din 617 (1981) (*Kawasme II*), opinion of the President of the Supreme Court Landau, pp. 627-28 and the concurring opinion of Justice Kahan pp. 647-48, but see dissenting opinion of Justice Cohn pp. 638-45); compare EYAL BENVENISTI, THE INTERNATIONAL LAW OF OCCUPATION 102-13 (1993).

<sup>556</sup> UZI AMIT-KOHN ET AL., ISRAEL, THE 'INTIFADA' AND THE RULE OF LAW 22 (1993).

far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.”<sup>557</sup> In the opinion of this author, “public order and safety” are well served by the selective use of demolition against illegally constructed buildings that degrade the environmental order (i.e., by not connecting with sewage lines and failure to provide parking spaces) and threaten public safety (i.e., by failure to comply with the construction safety codes).<sup>558</sup>

The then-ongoing Oslo peace process offered Amnesty International the opportunity to indulge in a gratuitous *non sequitur*, that “[t]he signing of the peace agreements between the government of Israel and the Palestine Liberation Organization (PLO) since 1993 has not halted this process [of demolitions in the Arab neighborhoods of Jerusalem].”<sup>559</sup> Amnesty International should cite a specific commitment before implying that Israel is in some way derelict in meeting its obligations under the interim peace agreements. It cannot, however, because at no time was any such provision included in any of the eight interim Oslo agreements between Israel and the Palestinian Authority.

Kurt Goering, the Senior Deputy Executive Director of Amnesty International’s United States section escalated the rhetoric and injected politics into the controversy, by stating that the U.S. government “should use its considerable influence with Israel to urge the [then] Barak Administration to halt the deplorable practice of destroying the homes of innocent Palestinian families.”<sup>560</sup> Goering slammed planning enforcement as “cold-hearted and abhorrent.”<sup>561</sup> It is difficult to imagine what unused adjectives remain in Goering’s vocabulary for truly outrageous human rights violations, such as genocide or torture, now that knocking down a small number of illegal structures has been condemned with such superlatives.

Perhaps Amnesty International’s stance has a simple explanation - the political views of its author. Among the universe of experts on town planning, Amnesty International chose to employ one, a Mr. Anthony Coon, whose demonstrated commitment to defending illegal Palestinian building predated his selection by Amnesty International.<sup>562</sup> Coon previously worked for two years as an employee of the Palestinian rights organization Al Haq.<sup>563</sup> Lest it be considered a coincidence that Amnesty International selected a former Al-Haq employee to write its report, it should be noted that, in at least one earlier instance Amnesty International also picked a researcher who had worked for Al-Haq to write one of their reports critical of Israel.<sup>564</sup> Despite the political dimension of the topic in question and

<sup>557</sup> The dramatic growth in population and size of Jerusalem made the outdated British plans, intermittently adhered to by the Jordanians, increasingly inadequate for the needs of the City. Annex to Hague Convention (IV) Respecting the Laws and Customs of War on Land, Oct. 18, 1907, art. 43, 36 Stat. 2277, T.S. No. 539 [Hague Regulations] (emphasis added).

<sup>558</sup> As for the proviso “while respecting, unless absolutely prevented, the laws in force in the country,” the previous Jordanian planning regime in Jerusalem was totally inadequate to meet the needs of the residents.

<sup>559</sup> Anthony Coon, *Demolition and Dispossession: The Destruction of Palestinian Homes*, Israel and the Occupied Territories, AI-Index: MDE 15/059/1999, Dec. 8, 1999, p.1, available at Amnesty International Internet Website (visited June 1, 2002) <<http://web.amnesty.org/802568F7005C4453/0/5B00A8DA48F0655180256900006931EC?Open&Highlight=2,coons>>

<sup>560</sup> Press Release, Israel and the Occupied Territories, New Amnesty International Report Finds Barak Administration Brings No Respite in Israeli Demolition of Palestinian Homes, Dec. 8, 1999, p. 1.

<sup>561</sup> Press Release, Israel and the Occupied Territories, New Amnesty International Report Finds Barak Administration Brings No Respite in Israeli Demolition of Palestinian Homes, Dec. 8, 1999, p. 1.

<sup>562</sup> Coon was employed by Amnesty International to research and write its Press Release “Israel: House Demolitions - Palestinians Given ‘15 Minutes to Leave...’” and the accompanying Report “Israel and the Occupied Territories, Demolition and Dispossession: the Destruction of Palestinian Homes.” Anthony Coon, *House Demolitions - Palestinians Given ‘15 Minutes to Leave...’*, Israel, AI index: MDE 15/078/1999, Dec. 8, 1999, available at Amnesty International Internet Website (visited June 1, 2002) <<http://web.amnesty.org/802568F7005C4453/0/CC62E1E028FA1D1C80256900006931FA?Open&Highlight=2,coons>>; Anthony Coon, *Demolition and Dispossession: The Destruction of Palestinian Homes*, Israel and the Occupied Territories, AI-Index: MDE 15/059/1999, Dec. 8, 1999, p. 1, available at Amnesty International Internet Website (visited June 1, 2002) <<http://web.amnesty.org/802568F7005C4453/0/5B00A8DA48F0655180256900006931EC?Open&Highlight=2,coons>>.

<sup>563</sup> Reuter, *Israel Assailed Over Palestinian Housing*, TORONTO STAR, July 11, 1991, p. A15.

<sup>564</sup> Joost Hilteerman was employed by Al-Haq for 5 years, during which he authored the following publications in English: Israel’s Deportation Policy in the Occupied West Bank and Gaza; Occasional Paper No. 2, 1986; Al-Haq’s Response to the Chapter on Israel and the Occupied Territories in the U.S. State Department’s “Country Report on Human Rights Practices for 1984”; and Al-Haq Internet Website, *Response to the Chapter on Israel and the Occupied Territories in the U.S. State Department’s “Country Report on Human Rights Practices for 1986”* (visited

Coon's widely publicized views thereon, Amnesty International apparently saw nothing wrong with employing him. Amnesty International's Press Release announced that their "delegation, include[ed] Anthony Coon, an independent expert on international town planning."<sup>565</sup> So much for his "independence" and for theirs.

## 5. The Demolition Process

Precise and demanding procedures precede the issuance of an administrative demolition order. The exact same procedures apply in Arab neighborhoods of Jerusalem as elsewhere in Israel. According to a policy decision of Mayor Olmert, the Municipality only issues a demolition order when it is not possible, even retroactively, to receive a building permit under the urban plans in effect.<sup>566</sup> In this manner the City attempts to bring the individual, who has not complied with the law, inside the system.<sup>567</sup> Despite Olmert's forgiving policy, demolition is set into motion if, for example, the structure is built on a roadbed, a green area, on land stolen from an absentee, or on government land intended for a school or other public facility. According to the Planning and Building Law an administrative demolition order may be issued:

If a nonconforming building for which there is no permit, or which deviates from a permit or scheme was built, or if such a building has begun to be erected, then the chairman of a Local Commission may order in writing that the building ... shall be demolished, dismantled or removed on condition that an affidavit signed by the engineer of the local authority or by another engineer or architect, one of whom he authorized for that purpose was submitted to him, stating that -

- 1) the building was erected without a permit or is a non-conforming building and how it is non-conforming;
- 2) erection of the building has not been completed or was completed not more than 60 days before the date the affidavit was submitted;
- 3) on the date on which the affidavit was submitted, the building in respect of which the order is applied for is not inhabited, or that it has been inhabited for a period of not more than 30 days;

The Planning and Building Law has built-in safeguards to protect the rights of the public. Three signatures are required for issuing an administrative demolition order: of an engineer or architect who spotted the violation, a legal advisor of the local authority, and

---

June 1, 2002) <[http://www.alhaq.org/NWS\\_NEW.htm](http://www.alhaq.org/NWS_NEW.htm)>. Hilterman was subsequently retained by Amnesty International to research and write their report on selective contentious objection to service in the Israeli army. Thereafter Hilterman wrote a retrospective entitled "Al-Haq Internet website, Al-Haq: The First Twenty Years," available at Al Haq Internet Website (visited June 1, 2002) <[http://www.alhaq.org/NWS\\_NEW.htm](http://www.alhaq.org/NWS_NEW.htm)>.

<sup>565</sup> Anthony Coon, *House Demolitions - Palestinians Given "15 Minutes to Leave..."*, Israel, Al index: MDE 15/078/1999, Dec. 8, 1999, available at Amnesty International Internet Website (visited June 1, 2002) <<http://web.amnesty.org/802568F7005C4453/0/CC62E1E028FA1D1C80256900006931FA?Open&Highlight=2,coon>>. Coon was the only delegate mentioned by name in Al's Press Release. *Ibid.*

<sup>566</sup> Telephone Interview with Israel Ben-Ari, Deputy Manager of the Licensing and Inspection Department of Jerusalem Municipality, in Jerusalem (Dec. 6, 2001); interview with Shalom Goldstein, Advisor to Mayor of Jerusalem Municipality for East Jerusalem Affairs, in Jerusalem (Nov. 15, 2001).

<sup>567</sup> Interview with Shalom Goldstein, Advisor to Mayor of Jerusalem Municipality for East Jerusalem Affairs, in Jerusalem (Nov. 15, 2001).

the chair of the local commission (the mayor in the case of Jerusalem).<sup>568</sup> Significantly, the Jerusalem Municipality has set for itself still more stringent requirements. Thus five signatures are required before an administrative demolition order is carried out. In addition to the three required by statute, the deputy manager of the licensing and inspection department and the managing director of the City must also sign.<sup>569</sup> The owner of the structure then has the opportunity to instruct his/her lawyer to lodge an appeal with the local court. If such an appeal is filed, the court will stay the demolition order until the matter is decided.<sup>570</sup>

According to the express terms of the Planning and Building Law there are only two grounds on which the court may cancel or suspend an administrative demolition order: if it is proven the structure is built in compliance with the law or if there is no risk the structure will be (illegally) completed and occupied, thus frustrating enforcement. As stated in the Planning and Building Law, "[t]he court shall not cancel or suspend an administrative demolition order, unless it was proven to it that the building operation, in respect of which the order was made, was performed lawfully, or unless the implementation of the order is not required to prevent a *fait accompli*."<sup>571</sup> The public interest is the Municipality's foremost concern when an administrative demolition order is carried out, as for example when it is used to demolish the frame of a structure being erected on the Eastern Ring Road or on land intended for a much-needed school addition in an Arab neighborhood.<sup>572</sup>

## 6. The Role of the Courts

Many attorneys representing illegal builders in Arab neighborhoods file frivolous<sup>573</sup> delaying actions in court.<sup>574</sup> They resort to a wide range of stratagems to prevent or delay the carrying out of an administrative demolition order. The judges, aware of what is going on, have remarked that the illegal builders are using the law to break it.<sup>575</sup> Even if the judges ultimately rule against their claims, it still serves the objectives of those who build illegally to drag out their cases in court, to buy time, to create work for the judges, and to impose political pressure and added expense on the Municipality and the Israeli judicial system.<sup>576</sup> The tactics have included:

- questioning the validity of the signatures on the administrative demolition order;<sup>577</sup>

---

<sup>568</sup> Planning and Building Law (1965), as amended, translated to English by Aryeh Greenfield, art. 238A. In the case of Jerusalem, the mayor signs in the place of the chair of the local commission. See Interview with Ehud Olmert, Mayor of Jerusalem Municipality, in Jerusalem (Dec. 31, 2001).

<sup>569</sup> Telephone interview with Danni Libman, Chief City Prosecutor in Legal Department of Jerusalem Municipality, in Jerusalem (Apr. 14, 2002).

<sup>570</sup> Telephone interview with Israel Ben-Ari, Deputy Manager of the Licensing and Inspection Department of Jerusalem Municipality, in Jerusalem (Dec. 6, 2001).

<sup>571</sup> Planning and Building Law, translated to English by Aryeh Greenfield (1965, as amended), 238(A) (h),

<sup>572</sup> See Appendix 3, images 31 and 32. Telephone interview with Israel Ben-Ari, Deputy Manager of Licensing and Inspection Department of Jerusalem Municipality, in Jerusalem (Dec. 6, 2001).

<sup>573</sup> Frivolous delaying actions have virtually no chance to succeed from a legal standpoint, but are typically filed with the unspoken intent of postponing the ultimate judicial ruling against the illegal builder. Delaying tactics include first requesting a stay in the administrative demolition order in the Local Court, then possibly appealing an adverse decision to the District Court and in some cases, even to the Supreme Court of Israel. Confidential interview with a senior official of the Municipality of Jerusalem, in Jerusalem, (Mar. 5, 2002). This author is not questioning the right of (even illegal) builders to legal representation or to due process in the courts. Rather the Author is critical of the bad faith use of the courts by those who bring frivolous appeals, whose only utility is to cause delay and tie up the legal system.

<sup>574</sup> Illegal builders in Jewish neighborhoods frequently use the same legal tactics as their counterparts in Arab neighborhoods. Their claims are usually thrown out by the courts, but they too succeed in delaying a final demolition for months or even years. In one such case 14 separate hearings have been held over a period of three years, each before a different judge who had to study the case anew. The courts usually oblige the illegal builders to pay the Municipality's attorneys' fees as well as court costs. See, e.g., H.C. Criminal Appeal 3990/00 Deganit Serbi *et al.* v. Chairman of the Local Committee for Planning and Building in Jerusalem *et al.*, computer database file 2000(3), 1561; H.C., rehearing 1/84 Avraham Dweik *et al.* v. Mayor of Jerusalem Municipality *et al.*, 38(1) P.D. 494 (1984). In the Dweik case the Supreme Court ruled that it would not interfere with the lower court's decision to impose a stop-work injunction against an illegal builder. *Ibid.*

<sup>575</sup> Confidential interview with a senior official of the Municipality of Jerusalem, in Jerusalem, (Mar. 5, 2002).

<sup>576</sup> Confidential interview with a senior official of the Municipality of Jerusalem, in Jerusalem, (Mar. 5, 2002).

<sup>577</sup> See Miriam Bene v. Jerusalem Municipality, Jerusalem District Court, (Intermediate Appeal (Jerusalem) 1241/97) not published; Sabach Hamdan & Rabchi Achmad Dari & Achmad Darwish v. Jerusalem Municipality (Criminal Appeal, Jerusalem District Court 238/95) not published.

- insisting, in bad faith, that their client's request for a retroactive building permit is being processed by the Municipality and will result in the issuance of a permit;<sup>578</sup>
- falsely claiming that the structure has been completed and occupied for over 30 days;<sup>579</sup>
- falsely asserting that the administrative demolition order is no longer valid because the 30 day period from the time the order was issued has expired;<sup>580</sup>
- falsely claiming that the property in question is not within the Municipality's jurisdiction;<sup>581</sup> and
- appealing to a higher court, without offering any new arguments, except that the law allows an appeal.<sup>582</sup>

In one instance, the appellant claimed that he had no choice but to build illegally, falsely asserting there was no urban plan for his Jerusalem neighborhood.<sup>583</sup>

When an administrative demolition order is challenged in court, frequently the judge will issue a judicial injunction (stop-work order), pending the culmination of the proceedings. Such orders, however, are often ignored by the illegal builders.<sup>584</sup> District Court Judge Yehudit Tsur stated, "[t]he petitioners took the liberty to hoot at the law and to keep building [ignoring the stop-work order] and [in the interim] the structure that was only 500-square-meters was expanded to 2000-square-meters."<sup>585</sup>

The attorneys who bring these frivolous delaying actions are recurrently portrayed by NGOs and by the media as serving the interests of not only their clients, but of the Arab sector generally. Although this may be true as regards the pecuniary interests of their clients, in actuality these lawyers are prejudicing and undermining the long-term interests of the City's Arab neighborhoods and their residents, not to mention the rule of law. The former President of Supreme Court Meir Shamgar addressed, in *dicta*, the abuse of the legal process by lawyers representing illegal builders. Shamgar explained, "[b]uilding illegally is a phenomenon that not only undermines the proper planning process, but the outcome is far more damaging: it is among the most obvious phenomena that injure the rule of law. Anyone who creates his own legality, harms the rule of law...."<sup>586</sup>

Many of the structures their clients have erected would not meet any modern planning standards.<sup>587</sup> By frustrating the planning schemes, these attorneys, and their

<sup>578</sup> See Pinchasi v. Sate of Israel (Criminal Appeal, Jerusalem District Court 002116/00) not published. Judge Ezra Kama refused the appeal of a Jewish builder who claimed that he was going to be issued a retroactive building permit when in fact the City required that the builder demolish his illegal structure and to thereafter build in compliance with a permit.

<sup>579</sup> See Shukri Muhamad Shaker et. al. v. Director Of Local Committee for Planning and Building in Jerusalem (Administrative Petition, Jerusalem District Court 286/01) not published.

<sup>580</sup> See Bagatz 305/84, Achmad Abulafia v. Mayor of Tel Aviv/Jaffa, computer data base file 84(2), 1514; Anas Atun v. Chairman of Local Committee for Planning and Building in Jerusalem (Criminal Appeal, Jerusalem District Court 2373/00) not published.

<sup>581</sup> See Basam Travak et. al. v. Chairman of Local Committee for Planning and Building in Jerusalem (Intermediate Appeal (Jerusalem) 4751/97, 4752/97, 1302/98, 1303/98) not published.

<sup>582</sup> See Anas Atun v. Chairman of Local Committee for Planning and Building in Jerusalem (Criminal Appeal, Jerusalem District Court 2253/00 not published; Ibrahim Muhamad Yasser v. Local Committee for Planning and Building (Intermediate Appeal (Jerusalem) 1611/00 not published.

<sup>583</sup> H.C. M. rehearing 5331/94, Iyob Yossef Shikrat v. Jerusalem Municipality, computer database file 1994 (3), 1369.

<sup>584</sup> Interview with Yossi Cohen, Mayor's Advisor for Neighborhoods of Jerusalem Municipality, in Jerusalem (Nov. 26, 2001).

<sup>585</sup> See Shukri Muhamad Shaker et. al. v. Director Of Local Committee for Planning and Building in Jerusalem (Administrative Petition, Jerusalem District Court 286/01) not published.

<sup>586</sup> 1/84 Avraham Dweik et. al. v. Mayor of Jerusalem Municipality et.al, 38(1) P.D. 494, 500 (1984). Note that this case did not pertain to illegal building in the Arab neighborhoods of Jerusalem. *Ibid*.

<sup>587</sup> Telephone interview with Uri Bar Shishat, Director of Policy Planning Department to City Engineer of the Jerusalem Municipality, in Jerusalem (Dec. 24, 2001).

clients deface the City's landscape for the indefinite future, in a manner reminiscent of examples from other countries, illustrated in Section VIII. B 1 and 2 of this Study below.

#### D. Palestinian Attitudes Regarding 'Treaties' and the Eastern Ring Road

A recent Municipal initiative aimed at giving the Arab residents of Jerusalem a stake in the planning process is known as the 'treaty,' an informal agreement that City officials make with the residents of particular neighborhoods who request it.<sup>588</sup> These treaties arose out of a history of widespread illegal construction that, had the provisions of the Planning and Building Law been enforced, would have prompted the demolition of thousands of illegal structures.<sup>589</sup>

Yossi Cohen, the Mayor's Advisor for Neighborhoods,<sup>590</sup> suggested these treaties could function as a way to involve the Arab residents of Jerusalem in preparing their own city plans by creating a channel of communication between the Municipality and the residents.<sup>591</sup> The first use of a treaty was in the semi-rural neighborhood of Hod El Tabel (northern Beit Hanina), which had not, at that time, been the subject of urban planning. In November 1999, the Chairman of the Beit Hanina Community Development Association turned to Cohen, requesting the assistance of the Municipality in approving an urban plan that the Community Development Association would draft.<sup>592</sup> The City Engineer agreed.<sup>593</sup> Most of the residents of Hod El Tabel signed a treaty (in Arabic) with the Municipality despite pressure and threats that emanated from the Palestinian Authority.<sup>594</sup> The treaty stated, *inter alia*, that until permits could be issued under the forthcoming plan, the Municipality would refrain from demolishing illegal structures.<sup>595</sup> Concurrently, the signatories from Hod El Tabel<sup>596</sup> agreed to stop building illegally. Pursuant thereto, within two years an up-to-date urban plan was approved for the neighborhood that incorporated the input of the residents. This plan raised the building percentages and authorized issuing permits to construct in excess of 1,000 new housing units in Hod El Tabel.<sup>597</sup> In addition, it provided for the construction of two schools and eight kindergartens.<sup>598</sup>

The first major violators of the Hod El Tabel treaty were residents of the Palestinian Authority-controlled areas who sought to be recognized as residents of Jerusalem. By proving that they live and conduct their lives in the Municipality, they could apply for Jerusalem residency permits, which carry with them various economic and political advantages. Soon these would-be immigrants were joined by criminal elements from outside Beit Hanina that squatted on the land and rapidly erected new structures.<sup>599</sup> Some

<sup>588</sup> Interview with Yossi Cohen, Mayor's Advisor for Neighborhoods of Jerusalem Municipality, in Jerusalem (Nov. 26, 2001).

<sup>589</sup> Interview with Yossi Cohen, Mayor's Advisor for Neighborhoods of Jerusalem Municipality, in Jerusalem (Nov. 26, 2001).

<sup>590</sup> Interview with Yossi Cohen, Mayor's Advisor for Neighborhoods of Jerusalem Municipality, in Jerusalem (Nov. 26, 2001).

<sup>591</sup> Some Arab neighborhoods have established community councils. Each community council has its own physical coordinator and the larger ones like Beit Hanina have an architect as well. The Municipality hoped that via these organizations it would no longer rule the Arab neighborhoods from a distance. Today there are at least 11 neighborhood community councils in Jerusalem. An additional two councils are being established in Isawiya and Um-Tuba - Sur Baher. The City has declared its goal to establish community councils for all the neighborhoods in Jerusalem. The representatives in the community council are elected democratically. Interview with Yossi Cohen, Advisor to Mayor of Jerusalem Municipality for Neighborhoods, in Jerusalem (Nov. 26, 2001).

<sup>592</sup> City Plan Number 6671.

<sup>593</sup> The Area designated for this purpose is named Hod El Tabel, 630 dunams (dunams are a local measurement unit of a quarter of an acre (MERON BENVENISTI, CITY OF STONE: THE HIDDEN HISTORY OF JERUSALEM 155 (1996)) the reason for this being that no land here needs to be expropriated for unification and reparceling. Interview with Yossi Cohen, Advisor to Mayor of Jerusalem Municipality for Neighborhoods, in Jerusalem (Nov. 26, 2001).

<sup>594</sup> Appendix 8C.

<sup>595</sup> Treaty Between the Chairman of the Beit Hanina Community Development Association and the Representatives of the Municipality of Jerusalem, n.d.; interview with Yossi Cohen, Advisor to Mayor of Jerusalem Municipality for Neighborhoods, in Jerusalem (Nov. 26, 2001).

<sup>596</sup> Most of the residents of Hod El Tabel, 83 in all, signed the treaty. Treaty Between the Chairman of the Beit Hanina Community Development Association and the Representatives of the Municipality of Jerusalem, n.d.; interviews with Yossi Cohen, Advisor to Mayor of Jerusalem Municipality for Neighborhoods, in Jerusalem (Nov. 26, 2001, June 30, 2002).

<sup>597</sup> Interviews with Yossi Cohen, Advisor to Mayor of Jerusalem Municipality for Neighborhoods, in Jerusalem (Nov. 26, 2001, June 30, 2002).

<sup>598</sup> Interviews with Yossi Cohen, Advisor to Mayor of Jerusalem Municipality for Neighborhoods, in Jerusalem (Nov. 26, 2001, June 30, 2002).

<sup>599</sup> Interview with Yossi Cohen, Advisor to Mayor of Jerusalem Municipality for Neighborhoods, in Jerusalem (Apr. 18, 2002).



of their construction was on land earmarked for public use, such as roads, a new school, and sidewalks.<sup>600</sup> To further complicate matters, the Palestinian Authority subsidized illegal building in the neighborhood in order to disrupt the implementation of the city plan.<sup>601</sup>

The frenzy of illegal building spread fear among the normally law-abiding residents of Hod El Tabel, some of whom complained to the City only after persons building illegally rejected their entreaties to stop.<sup>602</sup> The residents fully intended to honor the treaty, but the spiral of illegal building forced them to erect cement walls around the perimeter of their land to defend it against encroachment.<sup>603</sup> As a result, the once scenic and rural Hod El Tabel has become a virtual maze of bare cement fences, scarring the environment, and denoting the diminished prospects for enforcing the approved city plan.<sup>604</sup>

On a larger scale, the City's failure to enforce the Hod El Tabel treaty has caused it to lose credibility in the eyes of Jerusalem's Arab residents. In the opinion of one senior City official, who prefers to remain anonymous, this entire breakdown could have been avoided had the Municipality rigorously enforced the terms of the treaty, and immediately demolished the first few newly erected illegal structures.<sup>605</sup> However, due to inaction on the part of the authorities, a message was perceived in the Arab sector that building illegally is unlikely to be punished, even when it violates a signed treaty.<sup>606</sup> Despite this uncertainty, Arab residents in other neighborhoods have petitioned the Municipality in the hope of concluding a 'treaty' to facilitate their participation in the planning process.<sup>607</sup> Another example of the willingness of Arab residents to work with the Municipality for their mutual benefit can be seen in the request for a treaty by the residents of Jabel Mukaber.<sup>608</sup> Not surprisingly, Nusseibeh views the treaty agreement between the Municipality and the residents of Hod El Tabel as "excellent." When asked to explain his opinion, Nusseibeh stated:

We have a joint interest in having a City that is livable and peaceful and that is special. In order to do this, I think we have a joint interest to see ways and means of doing this together. How to do that in the absence of an [overall] solution still has to be worked out. I am sure ways and means can be worked out. Maybe the neighborhood committees could be one of them.

The neighborhood committees do, indeed, show promise in that they give the City's Arabs a significant voice in the planning process.<sup>609</sup> Olmert claims that the majority of the City's Arab population is willing to cooperate with the Municipality via the treaties because it understands the injurious impact of illegal building on their quality of life. Nusseibeh acknowledged their utility by stating, "[t]he treaty should certainly be assessed further, but it seems to have had a positive effect."<sup>610</sup> He added, "I would wish to have an input in the overall planning and development of the City." Nusseibeh's constructive approach reflects

---

<sup>600</sup> Confidential interview with a senior official of the Municipality of Jerusalem, in Beit Hanina, (May 5, 2002).

<sup>601</sup> Interviews with Yossi Cohen, Advisor to Mayor of Jerusalem Municipality for Neighborhoods, in Jerusalem (Nov. 26, 2001, June 30, 2002).

<sup>602</sup> Interview with Yossi Cohen, Advisor to Mayor of Jerusalem Municipality for Neighborhoods, in Jerusalem (Nov. 26, 2001).

<sup>603</sup> Interview with Yossi Cohen, Advisor to Mayor of Jerusalem Municipality for Neighborhoods, in Jerusalem (Nov. 26, 2001).

<sup>604</sup> See Appendix 3, images 27 and 28.

<sup>605</sup> Confidential interview with a senior official of the Municipality of Jerusalem, in Beit Hanina (Nov. 25, 2001).

<sup>606</sup> Confidential interview with a senior official of the Municipality of Jerusalem, in Jerusalem (Jan. 10, 2002).

<sup>607</sup> These neighborhoods include Jabel Mukaber, Isawiya, Tel Humus (Sur Baher-Um Tuba), Sawahra, Al-Walajah and A-Tur. Interview with Yossi Cohen, Mayor's Advisor for Neighborhoods of Jerusalem Municipality, in Jerusalem (Jan. 10, 2002).

<sup>608</sup> Ultimately these negotiations were unsuccessful in reaching an agreement. Interview with Yossi Cohen, Mayor's Advisor for Neighborhoods of Jerusalem Municipality, in Jerusalem (May 5, 2002).

<sup>609</sup> Interview with Yossi Cohen, Mayor's Advisor for Neighborhoods of Jerusalem Municipality, in Jerusalem (May 5, 2002).

<sup>610</sup> Interview with Dr. Sari Nusseibeh, President of Al Quds University and Palestinian Authority Political Commissioner for Jerusalem Affairs, in Jerusalem (Jan. 30, 2002).

a marked departure from those of his predecessor, Hussein. When Hussein was in charge, Orient House initiated a campaign (Appendix 8C) to prevent the residents of Hod El Tabel from signing the treaty. This pressure sought to transform signing the treaty into a political statement.

To the best of this author's knowledge, not a single one of the NGOs' reports dealing with this matrix of issues has so much as mentioned the Hod El Tabel treaty or the negotiations to reach similar agreements initiated by the residents of other Arab neighborhoods. The NGOs are much too active in addressing the controversy to consider these omissions a mere oversight. Could it be that the nascent cooperation between the City and the Arab neighborhoods challenges the narrative of the overbearing Municipality and the Arab victims that the NGOs seek to retail?

Another example of actual cooperation, for mutual benefit, can be observed in the planning of the Eastern Ring Road, a major highway that promises to benefit to the Arab residents of Jerusalem. Indeed, the Eastern Ring Road is a regional project since it will contribute to economic development of both Israel and the Palestinian Authority. Nusseibeh recognized the desirability of this cooperation on this project by stating that, "[w]e as the University were engaged in talks with the Municipality on this subject [planning of the Eastern Ring Road]."

In order to protect the roadbed of the Eastern Ring Road from illegal builders, the Municipality found it necessary to demolish the following illegal structures:

- a one story structure in the Wadi Kadum neighborhood,<sup>611</sup> which was demolished on August 14, 2000;<sup>612</sup>
- concrete fences in Wadi Kadum belonging to Rabach Kosami, which were demolished on March 12, 2001;<sup>613</sup>
- a concrete slab in Wadi Kadum belonging to Abdallah Munir Slaima, which was demolished on March 8, 2000,<sup>614</sup>
- Abdallah Munir Slaima rebuilt the slab demolished on March 8, 2000, forcing the City to demolish it a second time on October 23, 2001;<sup>615</sup>
- an illegal addition to a two story structure in Wadi Kadum, owned by Muhammed al-Tawil, that was demolished on August 14, 2000;<sup>616</sup>
- a one-story structure in Wadi Kadum owned by Muhammad Id Slaima, which was demolished on October 23, 2001;<sup>617</sup>
- concrete fences in Wadi Kadum, of unknown ownership, that were demolished on October 11, 1999;<sup>618</sup>

---

<sup>611</sup> Wadi Kadum is part of the Ras Al Amud neighborhood.

<sup>612</sup> Offence File no. 99/5606, Licensing and Inspection Department of the Jerusalem Municipality.

<sup>613</sup> Offence File no. 00/5031, Licensing and Inspection Department of the Jerusalem Municipality.

<sup>614</sup> Offence File no. 00/3292, Licensing and Inspection Department of the Jerusalem Municipality.

<sup>615</sup> Offence File no. 01/4635, Licensing and Inspection Department of the Jerusalem Municipality.

<sup>616</sup> Offence File no. 99/5607, Licensing and Inspection Department of the Jerusalem Municipality. See discussion of tactics used to protect a structure from demolition, above in Section VI. C 6 of the text above.

<sup>617</sup> Offence File no. 00/4580, Licensing and Inspection Department of the Jerusalem Municipality.

<sup>618</sup> Offence File no. 99/6283, Licensing and Inspection Department of the Jerusalem Municipality.

- a one-story structure in A Tur, belonging to Khaid Baradat, that was demolished on January 1, 2001.<sup>619</sup>

It is difficult to envision how any municipal government, desirous of providing its residents with the added transportation safety and convenience that a ring road facilitates, could act otherwise.

### E. The 'Tipping Point' Theory as Applied to the Epidemic of Illegal Building

Why do major changes in society, like the epidemic in illegal construction in Jerusalem, happen suddenly and unexpectedly, rather than gradually and incrementally? Noted author and journalist Malcolm Gladwell compared them to outbreaks of infectious diseases. Epidemics are not linear. Likewise, social change can be nonlinear as the most modest events may trigger enormous effects. Gladwell observed that just as one sick person can start a flu epidemic, so can a few graffiti artists start a crime wave in the subway. Gladwell chose the term 'tipping point' from the world of epidemiology, describing when a virus reaches critical mass, when the line on the graph starts to shoot almost straight upwards or downwards.<sup>620</sup>

Gladwell's tipping point theory is built on the prior scholarship of others.<sup>621</sup> In 1982, criminologists James Q. Wilson and George L. Kelling published a groundbreaking article proposing a link between disorder and crime, using the metaphor of the "broken window." In their view if, in an urban setting, a broken window is left unrepaired soon the adjoining windows will be broken because people will get the idea that nobody is in charge, that anything goes. And if all the windows were left broken, this became a symbol to other offenders that this area is a place where disorder is tolerated.<sup>622</sup> The thesis of Wilson and Kelling's Broken Window Theory states that human behavior is strongly influenced by symbols of order and disorder. Hence, the way to prevent street crime is to prevent the first window from being broken, to prevent the first graffiti marks, or to prevent the first drunkard from a public display.<sup>623</sup> Applying Gladwell's terminology, the first broken window becomes the tipping point.

It is also useful to consider the experiment of Stanford University psychologist, Philip Zimbardo, on preventing violence, known as the "broken window hypothesis."<sup>624</sup> Zimbardo parked a car on the street of the affluent suburb Palo Alto. It sat untouched for a week. At the same time he parked an identical car in a slum neighborhood in the Bronx, only in this instance the license plates were removed and the hood was propped open. Within three hours, as the result of 23 separate acts of vandalism, the car in the Bronx was stripped. Then Zimbardo smashed one window of the car he had parked in Palo Alto with a sledgehammer. He found that once started, observers shouted encouragement and finally joined in, completely wrecking the car.<sup>625</sup> Zimbardo realized that disorder invites even

<sup>619</sup> Offence File no. 00/4541, Licensing and Inspection Department of the Jerusalem Municipality.

<sup>620</sup> MALCOLM GLADWELL, *THE TIPPING POINT: HOW LITTLE THINGS CAN MAKE A BIG DIFFERENCE* 8-11 (2000).

<sup>621</sup> Among others, who will not be discussed in this Study, are George Glaster of the Urban Institute in Washington, D.C. and Richard Dawkins, the geneticist who invented the word MEME for the unit of cultural transmission. Memetics is the science of how ideas achieve mindshare.

<sup>622</sup> GEORGE L. KELLING & CATHERINE M. COLES, *FIXING BROKEN WINDOWS: RESTORING ORDER AND REDUCING CRIME IN OUR COMMUNITIES* 20 (1998); MALCOLM GLADWELL, *THE TIPPING POINT: HOW LITTLE THINGS CAN MAKE A BIG DIFFERENCE* 141 (2000).

<sup>623</sup> Rebecca Williams, *Philip Zimbardo: A Psychologist's Experience with Deviance*, *CRIMINAL THEORY*, Summer 1998, Internet website (visited Aug. 28, 2002) <<http://www.criminology.fus.edu/crimtheory/zimbardo.htm>>. This led to Neighborhood Watch programs and increased foot patrols by police. *Ibid.* See MALCOLM GLADWELL, *THE TIPPING POINT: HOW LITTLE THINGS CAN MAKE A BIG DIFFERENCE* 141 (2000).

<sup>624</sup> Gladwell Internet Website, p. 7 (visited Jan. 11, 2002) <<http://gladwell.com>>.

<sup>625</sup> Craig Haney, Curtis Banks & Philip Zimbardo, *Interpersonal Dynamics in a Simulated Prison*, 1 *INTERNATIONAL JOURNAL OF CRIMINOLOGY AND PENOLOGY* 73 (1973).

<sup>625</sup> Rebecca Williams, *Philip Zimbardo: A Psychologist's Experience with Deviance*, *CRIMINAL THEORY*, Summer 1998, Internet website (visited Aug. 28, 2002) <<http://www.criminology.fus.edu/crimtheory/zimbardo.htm>>.

greater disorder and that small deviations from the norm can set into motion a cascade of vandalism and criminality.<sup>626</sup>

Gladwell's concept, Wilson and Kelling's theory, and Zimbardo's hypothesis are commonly understood as justification for proactively protecting urban public space by cracking down on minor, "quality of life" crimes like public urination,<sup>627</sup> public drunkenness, and subway turnstile jumping. Putting their scholarship into practice, William J. Bratton, then-Transit Police Chief of New York City explained that this is the same awareness can be marshaled to reverse crime trends.<sup>628</sup> Chief Bratton reasoned that the main reason for the historic and rapid decline in crime and disorder in the subways<sup>629</sup> and streets<sup>630</sup> of New York City in the early 1990s was the decision of the police to focus their efforts on controlling illegal behavior that many regarded as insignificant,<sup>631</sup> such as fare-beating on the subways,<sup>632</sup> panhandling,<sup>633</sup> graffiti,<sup>634</sup> squeegeeing,<sup>635</sup> breaking windows, and prostitution. The idea was to make the streets less inviting to criminals. The means employed was called "quality of life enforcement."<sup>636</sup>

In the opinion of this author, the tipping point and related theories are highly relevant to understanding the burgeoning epidemic of illegal building in Jerusalem. Using Zimbardo's metaphor, the widespread, highly visible manifestations of illegal building in the Arab neighborhoods of Jerusalem entices new, larger waves of illegal construction. Reasoning along the lines of Wilson and Kelling, by leaving most of these illegal structures standing, the City is sending the signal that it tolerates illegal building and the illicit profits generated there from.

If one looks at the chart of the number of building violations cited by Municipal inspectors in the Arab neighborhoods (Appendix 6F), the acceleration in illegal construction has unquestionably crossed the tipping point. To be fair, it is impossible to know precisely when, or for what combination of reasons, the tipping point was passed. It is clear, however, that the current situation is completely out of control. What started small has expanded to virtually swallow up entire neighborhoods such as Beit Hanina.

## VII. The Long-term Consequences of Illegal Building

If there is no substance to the 'Judaization' charge, discussed above in Section IV, being fully aware of the negative publicity generated by demolitions, why does the Municipality feel obliged to implement this measure? The consequences of unfettered illegal building are extremely grave for the quality of life, the environment, and public safety not only in the City's Arab neighborhoods, but for the entire region. It retards regional economic development and capital accumulation. Thus, for example, demolitions

---

<sup>626</sup> Gladwell Internet Website, p. 7 (visited Jan. 11, 2002) <<http://gladwell.com>>. The key to combating crime is to prevent the kind of decay that allows the development of a criminal culture. Thus, the existence of broken windows acts as a signal to criminals that they can move in. See generally WILLIAM BRATTON & PETER KNOBLER, TURNAROUND: HOW AMERICA'S TOP COP REVERSED THE CRIME EPIDEMIC (1998) see William Bratton and William Andrews, *What We've Learned About Policing*, CITY JOURNAL, Spring 1999, p. 25.

<sup>627</sup> MALCOLM GLADWELL, THE TIPPING POINT: HOW LITTLE THINGS CAN MAKE A BIG DIFFERENCE 146 (2000).

<sup>628</sup> MALCOLM GLADWELL, THE TIPPING POINT: HOW LITTLE THINGS CAN MAKE A BIG DIFFERENCE 137, 141 (2000).

<sup>629</sup> See MALCOLM GLADWELL, THE TIPPING POINT: HOW LITTLE THINGS CAN MAKE A BIG DIFFERENCE 137-39 (2000).

<sup>630</sup> Bratton later became Chief of the New York City Police. WILLIAM BRATTON & PETER KNOBLER, TURNAROUND: HOW AMERICA'S TOP COP REVERSED THE CRIME EPIDEMIC (1998).

<sup>631</sup> MALCOLM GLADWELL, THE TIPPING POINT: HOW LITTLE THINGS CAN MAKE A BIG DIFFERENCE 145 (2000).

<sup>632</sup> MALCOLM GLADWELL, THE TIPPING POINT: HOW LITTLE THINGS CAN MAKE A BIG DIFFERENCE 144-45 (2000).

<sup>633</sup> MALCOLM GLADWELL, THE TIPPING POINT: HOW LITTLE THINGS CAN MAKE A BIG DIFFERENCE 141 (2000).

<sup>634</sup> MALCOLM GLADWELL, THE TIPPING POINT: HOW LITTLE THINGS CAN MAKE A BIG DIFFERENCE 144 (2000).

<sup>635</sup> MALCOLM GLADWELL, THE TIPPING POINT: HOW LITTLE THINGS CAN MAKE A BIG DIFFERENCE 146 (2000).

<sup>636</sup> WILLIAM BRATTON & PETER KNOBLER, TURNAROUND: HOW AMERICA'S TOP COP REVERSED THE CRIME EPIDEMIC (1998); MALCOLM GLADWELL, THE TIPPING POINT: HOW LITTLE THINGS CAN MAKE A BIG DIFFERENCE 146 (2000).