



Jerusalem Center for Public Affairs
המרכז הירושלמי לענייני ציבור ומדינה

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



Justus Reid Weiner

Jerusalem Center for Public Affairs

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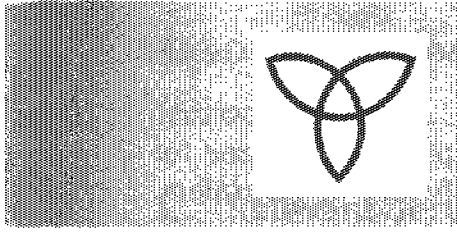
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Dedication

For Delsa, in heartfelt appreciation of the confidence she placed in me, and for Amidan and Ma'ayan, who inspire my concern for the future of Jerusalem.

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Front cover: Aerial photograph of the Isawiya neighborhood of Jerusalem (2002) with red dots indicating illegal construction.

Back cover: Photograph of author by Joel Fishman © 2002.

Back cover: Photograph of luxury building in the Shoafat neighborhood of Jerusalem; upper floors (encircled) that are an illegal addition.

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

Executive Summary*

Impediments to Providing Quality Public Services in Jerusalem's Arab Neighborhoods / Claims that Jerusalem is Being 'Judaized' / Israeli Planning Law / Identified Causes for Illegal Building in Jerusalem's Arab Neighborhoods / Extensive Palestinian Authority Subsidies for Widespread Illegal Building / Illicit Profit: The Role of Criminal Elements in Illegal Building / The Controversy over Building Permits / The City has Authorized Plans (Exceeding the Demands of Faisal Hussein and Sari Nusseibeh) that Meet the Housing Needs of the Arabs Until the Year 2020 / The Controversy over Administrative Demolitions / The Controversy over 'Treaties' / Long-term Consequences of Illegal Building / The Global Epidemic of Illegal Building and Demolitions / Conclusions

The struggle for sovereignty in Jerusalem remains among the most contentious of the many disputes that exacerbate the Palestinian-Israeli conflict. Interwoven with this struggle are issues relating to Israel's use of urban planning, particularly as it affects the Arab residents of Jerusalem. Palestinian and other critics of the Municipality insist, *alta voce*, that the application and enforcement of the Israeli Planning and Building Law (1965), as amended, places Arab residents of the City in an impossible situation. This accusation asserts that they are denied the opportunity to participate in the decision-making process by which their neighborhoods are planned. It follows, so it is claimed, that the Israeli urban planners exploit the law to the detriment of the Arab residents, by systematically rejecting their applications for building permits. According to the narrative, they have no choice but to build illegally, and, as a consequence, they run the risk of being snared by the Municipal inspectors. Those caught by the inspectors face economic catastrophe, not to mention psychological trauma, if City bulldozers demolish their unlicensed houses. The argument continues to the effect that Arab Jerusalemites (Arab residents of the City who reject Israeli citizenship), many of whom are poor, are discriminated against in the delivery of public services and amenities. All of the aforementioned discriminatory treatment, so the argument goes, is premeditated - aimed at 'Judaizing' Jerusalem. Thus, the Municipality stands accused of using the artifice of the planning law to force the Arab residents of Jerusalem, and their growing families, to abandon the City.

Surprisingly, despite the importance of Jerusalem, the complex matrix of the planning/illegal building/demolition/demographic manipulation issues has never been thoroughly analyzed - not by a scholar, not by an NGO, not even by the Municipality itself. Moreover, this oversight is emphasized by the chorus of condemnation emanating from NGOs in regard to demolitions carried out by the Jerusalem Municipality, juxtaposed with their silence concerning demolitions in numerous countries throughout the world. This Study will address this controversy and attempt to expose the underlying reality behind the constant barrage of contentious accusations.

* Readers interested in the documentation for this Executive Summary can refer to the accompanying Study and its Appendices.

Impediments to Providing Quality Public Services in Jerusalem's Arab Neighborhoods

Before examining the causal factors behind illegal building, it is necessary to explore the oft-misunderstood and ignored antecedents that influence and stimulate illegal building. This background includes the sources for funding infrastructure projects and the enforced Arab boycott of City politics.

A good place to start is with the disparity in budgetary allocations between Jerusalem's Arab and Jewish neighborhoods and the widespread complaint that the Jerusalem Municipality furnishes an inferior level of public services to the Arab neighborhoods. This problem is long-standing in nature and ***grew out of the differential development prior to the 1967 War, when the per capita expenditure for public services in the western sector was almost five times that spent in the Arab neighborhoods by the ousted Jordanian administration.***

However, 35 years after the 1967 War, the Jewish neighborhoods continue to enjoy a higher level of public services, and underlying infrastructure, than do the Arab areas, prompting the claim of continued discrimination. One obvious reason is that the citizens and residents of Jerusalem are not, on the whole, affluent, which limits their ability to pay the City real estate taxes (*arnona*). *Arnona* remittances form the largest source of Municipal revenue. The Municipal administrations of Mayors Teddy Kollek and Ehud Olmert concluded that outside funding would have to be secured to address the infrastructure deficiencies in the Arab neighborhoods. Attempts have been made, by various methods, to do precisely that. Most productively, repeated efforts have been made to secure funding from the national government, with some success. Nevertheless, according to Mayor Olmert's projections, an additional 780 million NIS (New Israeli Shekels) of outside funding, over a five-year period, is required to raise the level of public services in the Arab neighborhoods to parity with the Jewish neighborhoods.

The second preliminary issue that needs to be discussed is the long-standing Arab boycott of the Municipal political process at the behest of the Palestinian Authority and formerly, the Palestine Liberation Organization. The Arab residents of Jerusalem are frequently portrayed as victims that pay City taxes and fees but are denied the necessities and amenities that normally accrue therefrom. The reality is much more complex. Omitted from this narrative is a decisive antecedent - the Arab residents' lack of political influence. Indeed, the 35-year-long boycott of Municipal politics by the Palestinian leadership has, perhaps more than any other single factor, prejudiced the prospects of the Arab neighborhoods of Jerusalem receiving budgetary allocations for public services and infrastructure on a par with the Jewish neighborhoods.

Significantly, as residents of the City, Israel has entitled the Arabs to cast ballots and seek office in the Municipal elections. Playing by the rules of a democracy, it would be legitimate for the Arab Jerusalemites, or their leaders, to use politics to demand a larger slice of the Municipal budget. ***Regardless of their ultimate national allegiance, Arab politicians could have made their mark in Municipal politics just as the ultra-Orthodox Jews have in Jerusalem, and disadvantaged minority groups have done in democracies elsewhere.*** With their current population, assuming the same percentage of eligible voters cast votes as in the overall Jewish sector, ***they could elect seven or eight members to the City Council.*** Such a bloc could well cast the swing votes on many issues. Trapped by their leadership's myopia, the Arab Jerusalemites have never capitalized on the essence of municipal politics - the building and funding of good schools, paving streets, furnishing public transportation, allocating tax assessments, and the like. The day-to-day needs of the Arab residents of Jerusalem are subordinated to the Palestinian leadership's attempts to import national issues, like sovereignty and borders, into Municipal politics.

Due to the Palestinian leadership's policy of non-cooperation or, as it is often called, steadfastness, Jerusalem Arabs do not present themselves as candidates for the City Council.

Consequently, they have had no *direct* role in the democratic political process by which the City is governed. The vacuum caused by their enforced absence has, to some extent, been filled by certain individuals: certain Jewish members of the City Council who champion Arab rights; the *Mukhtars*; the neighborhood committees; the village councils; the Mayor's Advisor for Neighborhoods; and the Mayor's Advisor on Arab Affairs (recently renamed 'The Mayor's Advisor on East Jerusalem Affairs'). Most Arabs, however, refuse to participate openly in or cooperate with the Municipal administration, either because they reject any act that might be construed as submitting to Israeli rule or because others have intimidated them.

Any cooperation with the Municipality is an anathema to the Palestinian Authority. Its methods and aspirations were summed up in a poster distributed by Yasser Arafat's Fatah faction in the 1998 Municipal elections. It states that, "***not recognizing legitimacy*** of the Israeli occupation is ***more important than our day-to-day services....*** We in the Fatah movement call our holy people to boycott the elections and to fight a war of existence and identity" (emphasis added). Indeed, this poster expresses the Palestinian Authority's calculation that the struggle for equal, day-to-day public services is trumped by their national political objectives. Unfortunately, this premeditated refusal to cooperate in running the City inevitably impacts the quality of public services in the Arab sector.

Claims that Jerusalem is Being 'Judaized'

The core accusation leveled at the City is that the alleged discriminatory planning policy is motivated by a furtive objective - to 'Judaize' Jerusalem. Consequently, the veracity of this charge needs to be ascertained before discussing the specific issues of illegal building. It is claimed that the entire planning scheme of the Municipality is geared to increase, or at least maintain, the Jewish percentage of the City's population. Denunciations from across the Arab and Islamic worlds refer to this as the 'Judaization' of Jerusalem. Upon examination, however, it is clear that there is no factual basis for these claims and, indeed, the reverse is true. ***The Jewish population has, since 1967, actually decreased as a percentage of Jerusalem's population.***

For more than 25 years the 'plot to Judaize Jerusalem' has rendered various political opponents of Israel apoplectic. A few examples will suffice. As far back as 1978, UNESCO condemned Israel for "continuing to Judaize" Jerusalem. During the original *Intifada*, the Unified National Leadership of the Uprising issued a leaflet that warned against "the systematic attempts to Judaize Jerusalem." Subsequently this claim, repeated often by Yasser Arafat, has become a chorus, repeated in many forums far from the Middle East. For example, Arafat's charges regarding Israel's 'Judaization' of Jerusalem were covered in the January 24, 1998, *Los Angeles Times* and in his July 29, 1998, speech to the Organization of the Islamic Conference's Jerusalem Committee. ***Arafat stated, "We shall...save holy Jerusalem from the Judaizing monster"*** (emphasis added). Likewise, the Palestinian intellectual Edward Said published an opinion piece in the English newspaper *The Observer*, which accused Israel of attempting "to 'Judaize' what was formerly Palestinian about East Jerusalem." Finally, despite the fact that Jordan is a country at peace with Israel, on September 10, 2001, the Secretary General of Jordan's Royal Committee for Jerusalem Affairs condemned the "Judaization of Jerusalem."

Before considering the accuracy of these claims it is important to grasp that during the entire 100-year period that preceded the emergence of the modern State of Israel, Jews constituted the largest component of Jerusalem's population. By the 1880s, all sources acknowledged that Jews constituted a majority in the City. Data from the British Mandatory period, between the world wars, reflected the Jews comprising approximately 60 percent of the total population in the City, with the remainder divided almost equally between Muslims and Christians. According to the (separate) Jordanian and Israeli censuses of 1961, in their respective zones, the City's aggregate population was comprised of 72 percent Jews, 22 percent Muslims, and 5 percent Christians.

The frequent assertion that Israel uses the planning law and, in particular, the purported refusal to grant construction permits and the demolition of illegal structures to discourage Arabs from living in the City makes no sense ***even if, for the sake of argument***, one assumes such a demographic policy exists. Had there been an Israeli policy to rid Jerusalem of its Arab inhabitants, or to discourage them from building, the Municipality could have turned to much simpler (and quieter) inducements. Measures *not* taken were to refuse to connect them to the Israeli water network and/or not to extend the rights of residency to those Jerusalem Arabs that declined Israeli citizenship.

Most importantly, despite the persistence and vehemence of the 'Judaization' claim, demographic information since 1967 belies this indictment. ***Indeed, the non-Jewish component of Jerusalem's population has steadily increased since 1967 when it stood at 26.6 percent, to 31.7 percent in 2000*** (Appendix 7A). Further, it is projected that this percentage will continue to expand, reaching 37.8 percent in 2020 (Appendix 6A). This is the consequence of a number of factors including the higher fertility rate of Arab residents, net out-migration of 7,000 to 8,000 secular Jews per year, and employment opportunities that have attracted many Palestinians from the West Bank. According to Israel Kimhi, a former Municipal City Planner, "paradoxically, the Arab population of Jerusalem and its environs increased more rapidly over the past 30 years under Israeli rule than during any other period in the twentieth century." Moreover, ***since 1967 new Arab construction has outpaced Jewish construction***.

To the surprise, or delight, of those who have publicly campaigned against the presumed shift in favor of the City's Jewish majority, ***the actual divergence has been in favor of the rapidly growing Arab minority***. Might it be that the pace of this transformation has not satisfied those who campaign regularly against the supposed 'Judaizing' of Jerusalem?

Israeli Planning Law

As in other countries, Israeli planning law differentiates between legal (licensed) and illegal (unlicensed) building. It is helpful to briefly describe the standards and procedures that apply throughout Israel and how controversy arose when they were applied in the Arab neighborhoods of Jerusalem.

Planning in Jerusalem began during the three decades of the British Mandate. As in other historic cities, planning schemes must balance preservation against development. From the outset, the objective of the planners was to preserve Jerusalem's special character and flavor. This is accomplished by dictating the limits of an individual's rights with regard to his/her land. Simply put, private rights have to be weighed against public needs. Among the most misunderstood features of the Israeli Planning and Building Law is the requirement that ***every resident*** wishing to build (including by adding permanent additions) ***must comply with certain standards and obtain a permit***.

To understand how urban plans are created in Jerusalem, it is necessary to look at the overall tiered structure that is formulated in the Planning and Building Law. There are four levels of plans. The overall plan is known as the 'national outline scheme.' Its function is to lay down the planning for the whole of the area of the State. The next level of planning is known as the 'district outline scheme.' Its object is to determine details necessary for the implementation of the 'national outline scheme' in each district and any matters of general importance to the district. The third level of planning is known as the 'local outline scheme.' Its purpose is to monitor the development of land within the local planning area, while safeguarding the assignment of agricultural purposes to suitable lands. The fourth level of planning and the one of interest for this Study is known as the 'detailed scheme.' The 'detailed scheme' specifies what land can be used for residential construction and what is set aside for other uses. It also details the maximum

height, setbacks, and building percentages in residential construction. When the local outline scheme doesn't have appropriate provisions, a detailed scheme may enact provisions.

Before a permit to construct a building can be issued by the Municipality, Israeli law requires approval of a statutory plan by the Jerusalem District Authority. A statutory plan includes the third and fourth levels of planning mentioned above. An 'urban plan' refers specifically to the third tier of planning (local outline scheme). The colloquial term 'urban planning' refers generally to the collective impact of the various levels of planning within a particular area.

Urban planning is not something unique to Jerusalem or Israel, but a burgeoning, worldwide trend. In fact, urban development, in the modern sense, requires painstaking urban planning. *One American judge described the planning process as bringing to bear "the insights and the learning of the philosopher, the city planner, the economist, the sociologist, the public health expert and other professions concerned with urban problems."* A brief description may be helpful in grasping the magnitude of the task that faces those who conscientiously plan Jerusalem's future, aware of the City's special meaning to millions of people everywhere. They must study what exists - infrastructure, housing, roads, topography, open areas, the commercial sector, industrial areas, etc. Next, they must predict future needs. They must take care to preserve open space, in particular the valleys and the green belt around the Old City's walls, priorities inherited from the British planners who preceded them. Also, attention must be paid to preserving historical structures, holy sites, archaeological excavations, and vistas. Planners must factor in the risk of natural (i.e., earthquakes) and man-made (shellfire, explosions, and terrorist attacks) disasters, and protect the public against structures that are insufficiently strong to bear the load (i.e., the Versailles wedding hall collapse). Overriding budgetary constraints must be factored in, too. Still more problematic, the already composite planning process in Jerusalem, which is inherently value-laden in nature, has become entangled in the Israeli-Palestinian conflict.

Identified Causes for Illegal Building in the Arab Neighborhoods

Two factors have been identified as the causes of illegal building in the Arab neighborhoods of Jerusalem: poverty and cultural preferences. Poverty is often highlighted as a leading cause of illegal building in the Arab sector. Thus it is asserted that poor people with large families can ill afford to approach the City for a permit when they build or expand their living unit. A closer examination reveals the nuances in the 'poverty' explanation for illegal construction. That is, economic distress is more prevalent in some of the poorer southern Arab neighborhoods than in the more affluent north, where many empty, completed apartments dot the landscape of Beit Hanina, Shoafat, and Isawiya. Interestingly, despite the Arabs' relatively lower average incomes, the post-1967 pace of Arab construction in Jerusalem has not been measurably inhibited. A 1997 study prepared by Israel Kimhi revealed that, since 1967, Arab building in Jerusalem has outpaced Jewish construction. This conclusion was based on an examination of Municipal tax records and corroborated by aerial photographs (Appendix 4). According to Uri Bar Shishat, the Director of the Policy Planning Department of the City Engineer, this remains true in 2002.

As for the cultural factor, it is often noted that Arab society prefers to live village-style, with few multi-story buildings. Traditionally, they spread out over a lot of land with very low-density housing units. However, the role played by cultural factors is not as significant as is often portrayed, and attitudes and norms towards land use are changing. For example, in recent years the Arab housing pattern has been evolving from single or two-family homes to taller buildings containing several apartments. Other Arab cultural factors include the traditional unwillingness of landowners to exchange the plots they inherited and/or to give up a significant part of their holdings for public infrastructure.

It is often asserted that poverty and cultural inclinations are the primary causes for the current calamitous situation. While poverty and culture undeniably play a role in illegal

construction, they are eclipsed, in this Author's opinion, by the political and economic factors described in the following two sections.

Evidence of Widespread Non-compliance Subsidized by the Palestinian Authority

The Palestinian leadership offers various justifications and apologetics for their non-compliance with the urban planning mechanism as it applies to Jerusalem. Dr. Sari Nusseibeh, the Palestinian Authority's Political Commissioner of Jerusalem Affairs, stated that after the 1967 War the Municipality was interested in spreading its authority by annexation and demographic change, with the intent of excluding as much of the Arab population as possible. What Nusseibeh calls "settlements" [new Jewish neighborhoods] were, in his view, created to augment the Jewish demographic majority. Nusseibeh stated, "as a result a competition was created between Palestinians and Israelis over assertion of territory." Nusseibeh continued, "[t]he net result of this has been, as you look at Jerusalem, a *disaster as far as the environment* and the City is concerned. *If you look ahead, this disaster is going to become even more tragic unless people take another look and begin seriously, once again, to plan*" (emphasis added).

In the opinion of this Author, Nusseibeh's "competition" theory explains only a small part of the massive wave of illegal Arab building. The two dominant factors are, as will be demonstrated below, *the direct sponsorship of illegal construction by the Palestinian leadership and simple criminal avarice*. As regards the direct sponsorship, tens (or perhaps even hundreds) of millions of dollars have been raised and expended to advance the political objectives of the Palestinian leadership via subsidizing and encouraging massive illegal construction in the Arab sector of Jerusalem. Evidence of the central role of the Palestinian Authority is clear from dozens of internal documents that this Author was able to access. The following illustrative statements and sources demonstrate this pattern:

- In an interview, Faisal Husseini, then a Member of the PLO Executive Committee in Charge of the Jerusalem Portfolio, gave to the Egyptian magazine *El-Ahram Al-Arabi* in June 1997, he was quoted as stating, "[t]he Palestinian program is to create a Palestinian belt around the Israeli belt [of post-1967 new neighborhoods]." He continued, "[t]he most important Palestinian challenge is building, even without permits."
- CNN has publicized the theme of Jerusalem being the site of a "demographic war" between Palestinians and Israelis. For this program, CNN interviewed Khalid Tufakji, a Palestinian demographer who worked out of the Orient House (then the PLO's political headquarters in Jerusalem). Tufakji stated, "[w]e can build inside Jerusalem, legal, illegal - rebuild a house, whatever we can do. *Maybe we lose ten houses, but in the end we build 40 more* houses in Jerusalem" (emphasis added).
- On September 11, 2000, Mhahfat El Quds Jamil Othman Nasser, the Palestinian Authority's Governor of the Jerusalem District, wrote to Yasser Arafat on the official stationery of the Palestinian Authority's Ministry of Interior. The letter, as shown in Appendix 8G, states that *any Arab who builds in Jerusalem has accomplished a national act of the highest order*. It further states that the firm stand of the [Arab] residents protects the *Arabization of Jerusalem* and protects their land from invasion by [Jewish] settlements. Nasser requests Arafat to follow up by paying the fines assessed against those who build illegally. *Arafat's own handwriting* appears on the side of the typed letter, instructing that the matter should be forwarded to Sami Ramlawi, the Director of the Palestinian Authority's Ministry of Finance, for attention (emphasis added).
- Also revealing was the March 21, 2001, letter from Mhahfat El Quds Jamil Othman Nasser to Sami Ramlawi. It concerns a fine of 75,000 NIS assessed against Assan Machmad Shaban for building without a license. Nasser states that, *according to Arafat's instructions for*

these cases, Ramlawi should instruct the Palestinian Authority's Ministry of Finance to pay the fine (emphasis added).

- At a conference that took place on January 7, 2002, at the Jerusalem Center for Women, Hatem Abed El-Khader Eid, a member of the Palestinian Legislative Council representing the Jerusalem district, ***proudly announced*** that, during the last four years, ***Palestinians have erected 6,000 homes without building permits***, out of which only 198 were demolished. Eid's statement regarding the massive illegal building campaign, and his mention of the figure 6,000 illegal living units, was also picked up in the weekly newspaper *Jerusalem*. Eid declared, ***"we in the Palestinian Authority are willing to build ten homes for every house demolished by Israel"*** (emphasis added). According to a report in the newspaper *Ha'tsofeh*, Iran, Saudi Arabia, and the PA are among the sources of funding for the wave of illegal construction in Jerusalem .

These examples demonstrate something striking that goes beyond the extensive effort Arafat and his senior subordinates have made to subsidize illegal construction in Jerusalem. That is, this ***well-financed campaign involving the Palestinian leadership, up to and including Arafat, has not, to the best of this Author's knowledge, been exposed, let alone analyzed, in even one of the numerous NGO reports*** that focus on illegal construction and/or demolition. This silence can only suggest ***an active disinterest in revealing one of the two major causes of illegal building*** - that is, efforts by the Palestinian leadership to enlarge their demographic foothold in the City via endorsing, massively subsidizing, and prioritizing widespread illegal construction.

Illicit Profit: The Role of Criminal Elements in Illegal Building

A no less important causal element in the illegal building epidemic is the pursuit of illicit profit. This factor can be termed 'economic,' but not in the sense this word is commonly used. It is often asserted that poor Arab families, with many children, have no alternative but to add additional rooms onto their living units in violation of the Planning and Building Law. Certainly such 'economic' motives do exist - often involving poor Jews as well as poor Arabs. Their minor additions to existing legal structures, however, should be distinguished from the wave of new construction by ***criminals who erect entire structures in pursuit of a quick profit***. These law-breakers often build multi-story, luxury apartment buildings suitable for rental or sale to the affluent. Even a cursory tour of the hundreds of upscale apartment houses, some of which are photographed in Appendix 3, will give the reader a sense of the magnitude of the sums involved in illegal construction in the Arab sector of Jerusalem. ***These four-, six-, and eight-story apartment houses were not put up by, or for, Arab families living in poverty***. Indeed, any persons living in such illegal structures, if and when the City demolition crew arrives, are likely pawns in a cynical game motivated by criminal greed.

As with the case of the Palestinian Authority's political subsidies, not one of the NGOs has identified the preeminent motivation of old-fashioned greed in the illegal building epidemic. Why are they silent? The leading weekly newspaper *Kol Ha'ir* ran an impressive investigative article describing how the Palestinian Authority authorized a criminal gang of Arab builders. Some of these criminal elements have formed links with senior officials in the Palestinian Authority's intelligence and security services who also want to get rich quickly. Using high quality forged documents of land ownership, these criminals encroached on land owned by Arabs living abroad, property of the old and the weak, and even land belonging to the Waqf (the Islamic Religious Endowment), by erecting major structures in Beit Hanina and elsewhere. Indeed, the Waqf, usually thought of as a powerful institution enjoying the good grace of the Palestinian Authority, felt compelled to take the awkward step of complaining to the Municipality. Where were the NGOs? One City official complained that the NGOs only get involved at a 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.

The Controversy over Building Permits

One of the primary accusations leveled at the City is its alleged unwillingness to grant building permits to the Arab residents of Jerusalem. It is often claimed that the Arab residents of the City who flout the permit process do so as a last resort, since the City never or seldom issues permits for them to build legally, even when their ownership of the land is not in dispute. A few typical examples illustrate these claims. A report by the Palestinian rights organization, Al-Haq, accuses Israel of "refusing to grant them building permits," and "[pursuing a policy aimed at] altering the ethnic composition of...Jerusalem." Similar accusations appeared in the English language Palestinian weekly newspaper *The Jerusalem Times*, which claimed that 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." This article goes further to assert that the number of permits granted is "no more than a few dozen annually, granted after a wait of one to three years." Not one of these baseless accusations is true.

First, contrary to the claim regarding "a few dozen annually," the average number of permits issued to Jerusalem Arabs annually during the past five years is 183, and the waiting period (for simple applications) is four to six weeks, not "one to three years." Further, an unfortunate result of the Palestinian Authority-enforced boycott of the Jerusalem Municipality is that more 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. 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. For a typical housing unit in the Arab areas of Jerusalem measuring 72-square-meters (the approximate size of an average living unit) on a 250-square-meter plot of land, the following charges are assessed:

- a connection to the water system fee of 5,917 NIS (\$1,220 U.S.);
- a building fee of 1,290 NIS (\$266 U.S.); and
- a sewage connection fee of 10,285 NIS (\$2,120 U.S.).

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

Third, far from "strangling" Arab development, or in the words of Al Haq's fantastic accusation, "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. Al Haq's nonsense 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. Fourth, their foray into international law, characterized by invented standards and irresponsible accusations, is rebutted in Section VI. C 3 and 4 of the 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.

The City has Authorized Plans (Exceeding the Demands of Faisal Hussein and Sari Nusseibeh) that Meet the Housing Needs of the Arabs Residents Until the Year 2020

Contrary to the repeated claims that it is impossible for Arabs to build legally in Jerusalem, the attached map (Appendix 1) and chart of various Arab neighborhoods (Appendix 2), provide

clear evidence that the opposite is true. ***The approved plans in more than 90 percent of the Arab neighborhoods, marked in yellow on the planning map (Appendix 1), authorize the issuance in excess of 33,000 permits for new housing units in the Arab sector.*** Except in isolated neighborhoods where the landowners have been reluctant to come to an agreement via the process of unification and reparceling (exchanging land to rationalize planning), 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.

Neither Nusseibeh nor Hussein can be accused of selling short the housing needs of the Arabs of Jerusalem. Yet, the up-to-date facts indicate that ***the needs that they forecast can be more than met***, without any need to build illegally, within the existing urban plans of the City. ***Nusseibeh's calculation of the needs of the Arab Jerusalemites, "about 20,000 units,"*** deserves careful consideration alongside the similar estimate of his predecessor, Hussein. In the mid-1990s, Hussein put out a 23-page booklet encouraging diaspora Palestinian and other private investors to "preposition themselves at an early stage...to profit." Projecting some 15 years into the future, ***Hussein wrote that by the year 2010 the Arab population would need about 26,200 new residential units***, including those required for returnees (Palestinian refugees) and tourists. Since the current *Intifada* started neither returnees nor tourists are arriving in significant numbers, but as Hussein did not furnish any numerical breakdown, it is impossible recalculate his global figure of 26,200. Nor did Hussein make any allowance for the enormous number of unoccupied apartments in the Arab neighborhoods. Yet even accepting Hussein's full figure, ***the Municipality has already approved plans, intending to meet the projected Arab needs for the next 18 years, that authorize in excess of 33,000 units.*** Tellingly, this significantly exceeds the numbers demanded by either Hussein or Nusseibeh and translates to a ***housing potential that surpasses the anticipated population growth.*** In all, it is clear that the core assertion of the critics - that the City will not issue building permits to Arabs - is today demonstrably false.

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 (Appendix 8A), the Municipality's Arabic Internet website, and individual assistance from Arabic-speaking City employees. Similarly, professional translators have translated 23 of the urban plans for Arab neighborhoods into Arabic. These services make applying for and obtaining a building permit both simple and routine for those who are willing to make the effort.

It is clear that the core assertion of the critics - that the City will not issue building permits to Arabs - has today been shown to be tendentious. Applying for and obtaining a building permit is both simple and routine. However, ***based on the limited number of applications for building permits in recent years, the Arab residents of the City have not taken full advantage of the potential that exists.*** Simultaneously, the number of Arab violations of the Planning and Building Law has skyrocketed. Already in 1988 an internal memorandum presented to then Mayor Kollek warned that "[t]he situation is fast getting out of control." Again in 1991 a department memorandum warned, "[t]he situation is deteriorating from day to day." Additional internal warnings were sounded in 1993 and 1994. In 1996 the extensive Eitan Meir Report carefully reviewed the impact of illegal building on the quality of life. During the period 1996-2001, City inspectors reported nearly 4,000 violations in the Arab neighborhoods. Experts who study aerial photographs believe this number represents only 30 percent of this problem. Other authorities have come up with various estimates of the extent of the problem. For example, Bar Shishat estimates that in recent years 2,000 to 3,000 illegal living units have been erected in the Arab neighborhoods of Jerusalem. Israel Ben-Ari, the City's Deputy Manager of the Licensing and Inspection Department, 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 did not want to estimate the total number of living units contained therein, but he 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. 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 tally were to begin five or ten years ago.

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. To reiterate, the taxes and fees charged are uniform for living units of identical size on the same size plot, regardless of whether it lies in a Jewish or Arab neighborhood. If the application is of a simple nature (not exceeding the local limitations as to area, number of floors, etc.), as most are, the Department of Information can usually give a preliminary ruling on the spot. After completing the necessary forms, the applicant makes a down payment amounting to 20 percent of the total cost of the fees that will be payable if the application is approved. The local committee rules on the application, typically with a turnaround time of a month to six weeks, which is comparable to the waiting time for permit applications in England.

If the application for a building permit embodies a request for a variance (i.e., additional density or floors), the application procedure is lengthier. This is primarily due to the need to publicize the request and to evaluate any objections raised by neighbors. 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 been granted permits.

The Controversy over Administrative Demolitions

No single planning policy, or practice, is as controversial as the City's demolition of illegal structures. Similar to the allegations of 'Judaization,' demolitions by the Municipality have generated a refrain of condemnation by NGOs and even foreign governments. To comprehend this process it is necessary to outline the procedures involved in demolition.

Precise and demanding procedures precede the issuance of an administrative demolition order. The exact same procedure applies in all parts of the City. 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.*** Demolition orders can be set into motion if the illegal 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. Other violations are typically dealt with by opening a criminal file against the builder. This usually results in a fine being assessed by the court.

Attorneys representing persons engaged in illegal building frequently use frivolous delaying tactics in Court to block the City's enforcement process. These attorneys are portrayed as serving the interests of their clients and of the Arab sector generally. In actuality, they are prejudicing the long-term interests of the Arab sector. By frustrating the planning scheme, these attorneys, and their clients, deface the landscape for the indefinite future with structures that would not meet ***any*** modern planning standards.

Local and international NGOs, including Amnesty International, have led the efforts to stigmatize the Municipality for enforcing the planning law. At the outset, it should be observed

that many NGO press releases and studies depict isolated examples of questionable demolitions, rather than presenting a systematic or representative overview of the overall planning process, framing their condemnation of the Municipal policies in the terminology of human rights law, humanitarian law, and international law. The NGOs seem willing to recite 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. This would be unobjectionable if they also informed the public that the 'law' they reference is soft, ambiguous, and/or less than authoritative. They do not.

The Controversy over 'Treaties'

A recent Municipal initiative aimed at giving the Arab residents of Jerusalem a stake in planning is the 'treaty,' an informal agreement between City officials and the Arab residents of interested neighborhoods. The objective is to involve the residents in planning their own neighborhoods. These treaties arose out of a history of widespread illegal construction which, had the provisions of the Planning and Building Law been fully enforced, would have prompted the demolition of thousands of illegal structures. Instead, Yossi Cohen, the Mayor's Advisor for Neighborhoods, *envisioned the 'treaty' as a novel way to plan together for a better future.*

Hod El Tabel (northern Beit Hanina) was an area that had not 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 they would draft. The City Engineer agreed. The residents of Hod El Tabel signed a treaty (in Arabic) with the Municipality. It stated, *inter alia*, that until permits could be issued under the forthcoming plan, the Municipality would refrain from demolishing illegal structures. Concurrently, the residents of Hod El Tabel agreed to stop building illegally. Most of the residents of Hod El Tabel, 83 in all, signed the treaty, despite threats from the Palestinian Authority (Appendix 8C). Within two years an up-to-date City plan that incorporated input by the residents was approved. The City plan featured permission to build more than one thousand new housing units.

The first major violators of the Hod El Tabel treaty were residents of the Palestinian Authority-controlled areas who desired to become recognized as residents of Jerusalem. By proving that they live and conduct their lives in the Jerusalem Municipality, they can apply for a Jerusalem residency permit, which has various economic and political advantages. Criminal elements from outside Beit Hanina joined in the illegal building spree, squatting on land and rapidly erecting new structures. Some of this construction was on land earmarked for public use, such as roads, a new school, and sidewalks. The frenzy of illegal building caused 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. 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 their property against encroachment. As a result, the once scenic and rural Hod El Tabel has become a virtual maze of bare cement fences, scarring the environment (Appendix 3, images 27 and 28), and placing in doubt the hopes for the enforcement of a cohesive City plan.

On a larger scale, the failure to enforce the Hod El Tabel treaty has caused the City 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 fiasco could have been avoided had the Municipality rigorously enforced the terms of the treaty, and immediately demolished the first few newly erected illegal structures. 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 newly signed treaty. Despite this, Arab residents in other neighborhoods have petitioned the

Municipality, in the hope of concluding a 'treaty.' Notwithstanding the risk, there exists a willingness on the part of many Arabs to work with the Municipality for their mutual benefit.

Long-term Consequences of Illegal Building

The consequences of illegal construction are savings to the individual who breaks the law followed by increased costs to the public when it attempts to provide infrastructure for public services. Sometimes illegal construction vitiates the possibility of later providing proper infrastructure, as is the case with structures that are not set back the proper distance from the street. The likely result: that a street may never again be wide enough to accommodate two-way traffic; nor will it have sidewalks that safeguard pedestrians. Also buildings that do not meet code present an ongoing risk, such as when the Versailles banquet hall collapsed killing 23 (in a Jewish industrial/commercial area), or if an earthquake should strike, as has been forecast.

Some Arab leaders recognize that whatever its political utility, illegal construction has deleterious effects on the daily life of the residents, especially in the Arab neighborhoods. To reiterate Nusseibeh's well-founded fears, we are facing a "disaster...as far as the environment and the City is concerned...unless people take another look and begin seriously, once again, to plan." Nusseibeh also reasoned that the gangs that build illegally on land that does not belong to them should be thrown into jail, rather than be allowed to persist in illegal conduct. Azam Abu Saud, the Director General of the Office of Arab Commerce in Jerusalem, spoke to this issue in the newspaper *Al Quds*. Abu Saud reasoned that ignoring the planning law encourages violence and injures the rights of others, as when they build (illegally) without leaving the proper space between buildings and when people build on roadbeds. At the risk of deviating publicly from the Palestinian Authority's position, he recommended pulling down illegal structures. Parenthetically, the Palestinian Authority is faced with illegal building in the Municipality of Gaza. Mayor On A-Shawa explained, "In the recent period there is an increase in the number of illegal structures that damage the urban planning of the city." The local government reacted by initiating a campaign to demolish illegal structures.

Keep in mind that these demolitions occurred under the rule of the same Palestinian Authority that attempts to turn every instance of demolition in the Arab areas of Jerusalem, regardless of its factual and legal justification, into an international incident. According to one report in *The Washington Post*, Palestinian Authority bulldozers "flattened" Fatima Abu Suayed's house, with all her possessions inside, because they claimed that it was illegally constructed on "Palestinian State Property." According to the account, "a bulldozer plowed down more than 20 homes." No mention was made of any legal process or safeguards. Other than one small Gaza-based NGO, none of the critics that regularly attack the Jerusalem Municipality and the State of Israel uttered a word of protest.

The Global Epidemic of Illegal Building and Demolitions

The use of demolitions by authorities struggling to cope with illegal construction is by no means limited to Jerusalem. In recent decades, municipalities and governments in all parts of the world have grappled with the issue of illegal building. It is instructive to consider the following example from Lebanon:

The army used troops and bulldozers to demolish what were described as illegally built houses and shops in a shantytown on the southern outskirts of the capital city. The demolished buildings belonged to Muslim war refugees, who were accused by an official of putting up their structures on land belonging to the government and private citizens. Officials indicated that 35 buildings were demolished in one day, but visits to the area indicated that the

number could be much higher. One official claimed that he had warned those living in the shantytown that demolition was imminent. One woman screamed, "My house has gone." Soldiers who fired their rifles into the air kept excited residents away from the demolition work.

Moreover, demolitions have been carried out in such countries as India, Yugoslavia (by UN peacekeepers at that!), United States, Australia, the Philippines, and Nigeria. Indeed, ***they have occurred on every continent, with the exception of Antarctica.***

Political interest in assessing the conduct of these governments is minimal. Contrary to the furor that demolitions in Jerusalem attract, to the best of this Author's knowledge, not a single human rights group, international body, or foreign government has criticized demolitions in any of these other countries. Thus, rather than being *sui generis*, Jerusalem is an example of the worldwide phenomenon of illegal building. Further, the severe implications of illegal building, as recognized in a variety of other countries, is, in the case of Jerusalem, being obscured by venomous and unsubstantiated, politically-inspired allegations.

Conclusions

Illegal construction is fast becoming the norm throughout Jerusalem. The magnitude of the problem is most pronounced in the Arab neighborhoods where thousands of illegal units, many of them substantial structures, are scattered across the landscape, frequently on ***land that does not even belong to the builder.*** Common wisdom blames it all on poverty, cultural factors, and discrimination and manipulation by the City of Jerusalem and the State of Israel. Overlooked are factors that, in recent years, have become the two cardinal reasons for today's illegal building epidemic. First, illegal construction enjoys the political and economic backing of the Palestinian Authority and various foreign factors including Arab states and, indirectly, the European Union. Second, lucrative illicit profits accrue to those who build illegally.

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

These inventions and malicious assumptions are 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. This makes it 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?

It turns out, upon examination, that ***not one of these accusations is correct***. Taking a fresh look at the matrix of issues surrounding illegal building, of which infrequently carried out demolitions are merely the most visible aspect, this Author believes that a more complex, and quite different, reality emerges. First, not only is there no explicit or implicit policy for 'Judaizing' Jerusalem, but statistics prove that the non-Jewish percentage of the population has steadily increased since 1967. Second, ***despite the proffered justifications of culture and poverty, it is clear that the political calculations of the Palestinian Authority as well as criminal avarice are the preponderant causes for the copious increase in illegal building***. Third, the Municipality uses administrative demolition cautiously and as a tool of last resort against structures, usually uninhabited, which could never be granted a permit, even retroactively. These same considerations regulate the use of demolition in Jewish neighborhoods, where this tactic is also employed, as the Municipality deems necessary. Administrative and judicial safeguards exist to protect against abuse of this measure, making mistakes infrequent. Fourth, the fervent denunciations of the Municipality for supposedly hindering the granting of building permits and charging of exorbitant fees are completely unsubstantiated.

This prompts the question that if there is no substance to the 'Judaization' charge, and together with the evident negative publicity that demolitions generate, why has the Municipality been carrying them out? The consequences of unfettered illegal building are extremely grave for the environment, public safety, and the quality of life. This is true not only in the City's Arab neighborhoods, but for the entire region due to its retarding effect on regional economic development and capital accumulation. Thus, for example, demolitions are carried out in order to safeguard green, red, and brown areas (see Section VII. A), whose purpose is either to preserve space for future development and for the construction of public infrastructure. As Deputy Mayor Uri Lupolianski pointed out, "we must, for professional planning reasons alone, prevent the City from becoming a jungle." Ironically, by turning demolitions in the Arab neighborhoods of Jerusalem into a *cause célèbre* and hindering the implementation of coherent urban plans, the critics are actually prejudicing the affordability of infrastructure improvements in the future and even hastening the erosion of the quality of life for the Arab residents.

If one expands the horizon to consider the worldwide use of demolition (to cope with illegal building), many striking similarities and one stark difference are revealed. The difference is the nearly complete lack of publicity when other governments demolish *vis-a-vis* the incessant denunciation of rather infrequent demolitions by the Jerusalem Municipality. Of course, it may be asserted that Israel is 'different' since demolitions carried out by the Jerusalem Municipality (at least those in the Arab neighborhoods) are viewed as political. Yet, the demographic facts discredit claims that there is a policy of 'Judaization' and, additionally, tangible efforts are made to enable Arab residents to build legally and become involved in neighborhood planning. The most rational explanation, therefore, is that these demolitions in Arab neighborhoods are being conducted under Israeli auspices in response to the serious danger posed by illegal building, as a policy analogous to those pursued by dozens of diverse countries. ***It is easy to oppose demolitions. But the many critics of demolition have failed to come forward with a viable alternative that, as a final backstop, will protect the future livability of Jerusalem.***

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

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

Justus Reid Weiner, Adv.

Introduction

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I. Relevant Jerusalem History

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. The Palestinian Boycott of the Municipal Political Process

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

⁸⁸ Appendix 8F.

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

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

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

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

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

⁹⁴ They call themselves "human rights organizations."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

¹⁰⁶ *Ibid.* p. 182.

¹⁰⁷ *Ibid.* p. 183.

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

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

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

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

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

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

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

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

¹¹² Currently the ultra-Orthodox parties have 12 seats on the 31 member City Council. Tamar Hausman, *Down and Out in Our Eternal Capital*, JERUSALEM POST, May 25, 2000, available at Jerusalem Post Internet Website (visited Dec. 29, 2001)

<<http://www.jpost.com/Editions/2000/02/25/Features/Features.3190.html>>; MICHAEL ROMANN & ALEX WEINGROD, *LIVING TOGETHER SEPARATELY: ARABS AND JEWS IN CONTEMPORARY JERUSALEM* 231 (1991). The ultra-Orthodox further magnified their political clout by registering the highest election-day turnout (over 80 percent) of any sector of the City's population in the 1998 elections. The turnout in of the rest of the Jewish electorate was 40 percent. Only one percent of the eligible Arabs cast vote. See No byline, *Losing the People*, JERUSALEM POST, Nov. 12, 1998, p. 8.

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

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

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

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

C. The Impact of the Development Environment

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

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

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

D. Differential Funding Patterns

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

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

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

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

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

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

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

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

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

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

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

Ibid.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

¹³⁵ See Section II. D of the text above.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. Israeli Planning Law and Illegal Building

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

A. Israeli Planning Law

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

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

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

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

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

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

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

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

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

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

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

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

III. Israeli Planning Law and Illegal Building

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

A. Israeli Planning Law

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

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

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

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

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

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

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

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

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

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

who insist that the Planning and Building Law is aimed at preventing Arab construction¹⁶⁷ and/or at driving the Arabs out of Jerusalem.¹⁶⁸ Had either Mayor Kollek (or Mayor Olmert) run on a platform that endorsed forcing the Arabs out of the City, he (or they) would have deserved to be turned out of office. As Israel Kimhi, the former Municipal City Planner, noted, "paradoxically, the Arab population of Jerusalem and its environs increased more rapidly over the past 30 years¹⁶⁹ under Israeli rule than during any other period in the twentieth century."¹⁷⁰

In 1967 the urban planners were faced with an unusual challenge - how to integrate two different development plans, the Israeli plan which was enacted in 1959 and the Jordanian Plan which had been promulgated by the British prior to 1948. In the Jewish sector there was a long-standing tradition of centralized planning and the bureaucracy was in place to implement the urban plans.¹⁷¹ Meanwhile, in the Arab sector the Jordanian government deliberately hindered Jerusalem's growth and modernization, so as not to rival Amman as a political and economic center.¹⁷² Delaying factors included the absence of essential records in the Jordanian Land Registry Office and difficulty applying urban planning to the newly annexed Arab villages on the periphery of the City.¹⁷³ In the much-changed reality of the unified and expanded City, a new overall master plan was formulated in 1968.¹⁷⁴

A further dilemma grew out of the Arab reluctance to accept the norm by which, in urban areas in Israel (and in other countries as well), a municipality can expropriate up to 40 percent of an individual's private parcel to provide for essential public services such as roads, schools, cultural, and recreational facilities.¹⁷⁵ "This process involves joining together all plots of land in an area, regardless of ownership, and then dividing the aggregate, on a proportional basis vis-à-vis the size of their original holdings, after allocating the required land for public services,"¹⁷⁶ as explained by Uri Bar Shishat, Director of Policy Planning Department of the City Engineer.¹⁷⁷ This process is necessary in order to allow more space for housing units because not all areas in a neighborhood are suitable for construction. Without this process, the full capacity for building permits is not realized. Cognizant of the discomfort such substantial expropriations cause in the Arab sector, Municipal planners encourage the neighbors to reach an agreement on providing land for public infrastructure among themselves.¹⁷⁸

¹⁶⁷ See e.g. IR SHALEM, EAST JERUSALEM; THE CURRENT PLANNING SITUATION: A SURVEY OF MUNICIPAL PLANS AND PLANNING POLICY 57 (n.d.).

¹⁶⁸ See e.g. PALESTINIAN ACADEMIC SOCIETY FOR THE STUDY OF INTERNATIONAL AFFAIRS, THE STRUGGLE FOR JERUSALEM 130 (1996).

¹⁶⁹ This increase may be attributable, in part, to the economic and political instability in the areas governed by the Palestinian Authority. When Arab neighborhoods were reported to be slated for Palestinian Authority control under former Prime Minister Ehud Barak's peace plan, Zuhair Hamdan, a prominent leader of a large family in the Arab neighborhood of Sur Baher, gathered a petition with more than 10,000 signatures of Arabs from Jerusalem who preferred *not* to be transferred to Arafat's governance in the context of the peace negotiations. Etgar Lefkovits, *Fatah Suspected in Mukhtar's Shooting*, JERUSALEM POST, Oct. 15, 2001, p. 2. Hamdan was shot and critically wounded in September 2001, apparently by members of Arafat's Fatah faction. *Ibid.*

¹⁷⁰ ISRAEL KIMHI, ARAB BUILDING IN JERUSALEM 20 (CAMERA Monograph Series, 1997).

¹⁷¹ MERON BENVENISTI, CITY OF STONE: THE HIDDEN HISTORY OF JERUSALEM 151 (1996).

¹⁷² MERON BENVENISTI, CITY OF STONE: THE HIDDEN HISTORY OF JERUSALEM 152 (1996).

¹⁷³ ISRAEL KIMHI, ARAB BUILDING IN JERUSALEM 28 (CAMERA Monograph Series, 1997).

¹⁷⁴ ISRAEL KIMHI, ARAB BUILDING IN JERUSALEM 28-29 (CAMERA Monograph Series, 1997).

¹⁷⁵ Planning and Building Law (1965), 19 Laws of the State of Israel 330, art. 188-198, as amended. This Israeli law was based on the British Mandatory law on expropriations. Order for Land Expropriation (For Public Needs), British Mandatory Government in Palestine, 1943.

¹⁷⁶ Interview with Uri Bar Shishat, Director of Policy Planning Department of City Engineer of Jerusalem Municipality of the Jerusalem Municipality, in Jerusalem (Nov. 25, 2001).

¹⁷⁷ Interview with Uri Bar Shishat, Director of the Policy Planning Department of City Engineer of the Jerusalem Municipality, in Jerusalem (Nov. 25, 2001).

¹⁷⁸ Interview with Uri Bar Shishat, Director of Policy Planning Department of City Engineer of Jerusalem Municipality, in Jerusalem (Nov. 25, 2001).

One frequently cited reason for illegal building is the reluctance of landowners to agree to the process of unification and reparceling.¹⁷⁹ NGOs¹⁸⁰ have frequently complained that the Arab sector does not have an adequate number of housing units. They blame, *inter alia*, the complications of applying urban planning measures to the Arab neighborhoods. According to Hasib Nashashibi, Project Coordinator at the Palestinian Society for the Protection of Human Rights and the Environment, a Palestinian rights organization,¹⁸¹ most of the plots are owned by individuals that inherited their land. This problem arises from the fact that these owners are extremely reluctant to trade away their specific plots.¹⁸² In order to complete the process of unification and reparceling the land has to be re-divided. It is extremely difficult to achieve general agreement among the landowners, and the process is often delayed when objections are raised. The effect of this problem is most evident in the detailed planning schemes for the Arab neighborhoods of Beit Hanina and Shoafat.¹⁸³ Together these schemes have a capacity to issue 13,600 permits for living units. Currently though, it is only possible to extract approximately 7,100 living units from them due to the need, in some areas, for unification and reparceling.¹⁸⁴ Upon completing the unification and reparceling process it will be possible to approve another approximately 6,500 units. Currently, the Municipality is making an enormous effort to settle the conflicting claims of landowners and complete this process.¹⁸⁵ Bar Shishat recently informed this author that an additional 2,400 housing units have been available for licensing in these two areas.¹⁸⁶ His colleague Charles Kohn has further informed this author that an across-the-board increase of approximately 25-30 percent in the building percentages (the percentage of interior floor space relative to the size of the plot) has begun to be applied in most of the Arab neighborhoods.¹⁸⁷ This will enable thousands of additional units to be built legally.

According to Shaul Ben Shaul, Director of City Planning Department, the law does not require the Jerusalem Municipality to carry out the process of unification and reparceling. Nusseibeh acknowledged this point.¹⁸⁸ Ben Shaul further stated that no other municipal authority in Israel has taken upon itself this difficult task. Nevertheless, the Jerusalem Municipality undertook the challenge of overcoming this bottleneck building permit applications.

An added element that stymies land development derives from Arab attitudes toward real property. In Jewish neighborhoods land is thought of as an asset that can be sold to someone who will develop it. By contrast, Arab culture is more connected to the land, and landowners are very reluctant to part with their land, even if the City needs it for the neighborhood's infrastructure.¹⁸⁹

¹⁷⁹ Interview with Adv. Daniel Seidemann, Director of the Pro-Jerusalem Society (In the Name of Sir Ronald Storrs), in Jerusalem (Dec. 3, 2001). The Pro-Jerusalem Society describes itself as working to create a status quo between the Jewish and Arab sectors in Jerusalem. It is not clear what this means. Normally, when referring to a "status quo," the effort is aimed at preserving it, not creating it.

¹⁸⁰ See, e.g., IR SHALEM, EAST JERUSALEM THE CURRENT PLANNING SITUATION 9-16 (1997).

¹⁸¹ Telephone interview with Hasib Nashashibi, Project Coordinator for LAW (A Palestinian Human Rights Organization), in Jerusalem (Dec 12, 2001).

¹⁸² See ABRAHAM RABINOVICH, JERUSALEM ON EARTH 122 (1988).

¹⁸³ See plans numbered 3456a and 3458a and 3457a.

¹⁸⁴ Telephone interview with Shaul Ben Shaul, Director of City Planning Department of Jerusalem Municipality, in Jerusalem, (Dec. 27, 2001). When questioned regarding the delays resulting from the process of unification and reparceling, which are a consequence of intra-Palestinian bickering, Nusseibeh nodded in acknowledgement that the delays were not the fault of the Municipality. Interview with Dr. Sari Nusseibeh, President of Al Quds University and Palestinian Authority Political Commissioner for Jerusalem Affairs, in Jerusalem (Jan. 30, 2002).

¹⁸⁵ Telephone interview with Shaul Ben Shaul, Director of City Planning Department of Jerusalem Municipality, in Jerusalem, (Dec. 27, 2001).

¹⁸⁶ Interviews with Uri Bar Shishat, Director of the Policy Planning Department of City Engineer of the Jerusalem Municipality, in Jerusalem (May, 23, 2001; June 3, 2002). These additional units are too new to have been reflected on Appendices 1 and 2.

¹⁸⁷ Interview with Charles Kohn, Principal Planner in Policy Planning Department of Jerusalem Municipality, in Jerusalem (June 3, 2002). Different zones exist in which varying density construction is permitted, ranging from approximately 30 to 120 percent. The lower density zones are typically those where the planners seek to preserve the historic character of a neighborhood. *Ibid.*

¹⁸⁸ Interview with Dr. Sari Nusseibeh, President of Al Quds University and Palestinian Authority Political Commissioner for Jerusalem Affairs, in Jerusalem (Jan. 30, 2002).

¹⁸⁹ See ABRAHAM RABINOVICH, JERUSALEM ON EARTH 122-23 (1988).

To further complicate matters, land ownership was highly fragmented and even chaotic in the Arab villages that were annexed to Jerusalem. It was difficult to make sense of competing ownership claims. For example, many grandsons of a deceased landowner (some of whom may be abroad or otherwise unreachable) might have rival claims against some (or all) of the others. In such circumstances the City had no choice but to initiate the process of unification and reparceling.¹⁹⁰ This process can be quite difficult and protracted, given the reluctance of many Arab landowners to exchange their particular parcels of land for others that belong to their neighbors.¹⁹¹ This aversion exists even where the result would, from a planning perspective, be for the perceived benefit of all.

Promulgating urban plans hinged on these and other factors, such as the need to prepare detailed plans for the Arab sector, a task which the City was initially unequipped to do in the post-1967 era. Simultaneously the pace of Arab construction accelerated, often by builders without permits.¹⁹² The City, in recognition of their predicament, modified its procedures for dealing with illegal construction, to avoid making them law-breakers.¹⁹³ Relying on obscure sections in the Planning and Building Law, the City granted building permits piecemeal while the plans were still being formulated, in those areas where the proposed building would not harm the overall planning.¹⁹⁴ The City has even, at various times, ignored unlicensed, random Arab building, despite its highly problematic impact on constructing an infrastructure and providing Municipal services.¹⁹⁵ The planners knew, as a Catch 22, that the more time that passed before each urban plan was approved, the greater the risk that haphazard, illegal structures would be erected in the meantime, thereby mortgaging the usefulness of a plan even before it was finalized.

To understand how urban plans are created in Jerusalem, it is necessary to look at the overall tiered structure that is formulated in the Planning and Building Law, as amended. There are four levels of plans. The overall plan is known as the 'national outline scheme.' Its function is to lay down the planning for the whole of the area of the State.¹⁹⁶ The next level of planning is known as the 'district outline scheme.' Its object is to determine details necessary for the implementation of the national outline scheme in each district and any matters of general importance to the district.¹⁹⁷ The third level of planning is known as the 'local outline scheme.' Its purpose is to monitor the development of land within the local planning area, while safeguarding the assignment of agricultural purposes to suitable lands. This scheme is also intended "to ensure appropriate conditions from the viewpoint of health, sanitation, cleanliness, safety, security, transport, and convenience, and to abate nuisances, including the setting aside zones for residential, industrial, and commercial purposes."¹⁹⁸ The fourth level of planning - and the one of interest for this Study - is known as the 'detailed scheme.' The detailed scheme specifies which land can be used for residential construction and what is set aside for other uses. It also details the maximum height, setbacks, and building percentages in residential construction.¹⁹⁹ When

¹⁹⁰ 'Reparceling' is also known as 'repartition.' ISRAEL KIMHI, ARAB BUILDING IN JERUSALEM 28-29 (CAMERA Monograph Series, 1997).

¹⁹¹ See ABRAHAM RABINOVICH, JERUSALEM ON EARTH 122-23 (1988).

¹⁹² ISRAEL KIMHI, ARAB BUILDING IN JERUSALEM 29 (CAMERA Monograph Series, 1997). Between 1971 and 1994 permits for 1.1 million square-meters of residential construction were issued to Arab residents by the municipality. During the same period, the ultra-Orthodox Jewish population, roughly the same in number, received permits for only 954,000 square-meters of construction. ISRAEL KIMHI, ARAB BUILDING IN JERUSALEM 32 (CAMERA Monograph Series, 1997).

¹⁹³ ISRAEL KIMHI, ARAB BUILDING IN JERUSALEM 29 (CAMERA Monograph Series, 1997).

¹⁹⁴ ISRAEL KIMHI, ARAB BUILDING IN JERUSALEM 29-30 (CAMERA Monograph Series, 1997).

¹⁹⁵ ISRAEL KIMHI, ARAB BUILDING IN JERUSALEM 31 (CAMERA Monograph Series, 1997).

¹⁹⁶ Planning and Building Law (1965), 19 Laws of the State of Israel 330, 342-43 art. 49, as amended.

¹⁹⁷ Planning and Building Law (1965), 19 Laws of the State of Israel 330, 344, art. 57, as amended.

¹⁹⁸ Planning and Building Law (1965), 19 Laws of the State of Israel 330 345-47, art. 61 (1), (2), as amended.

¹⁹⁹ Interview with Uri Bar Shishat, Director of Policy Planning Department of City Engineer of Jerusalem Municipality, in Jerusalem (Dec. 17, 2001).

the local outline scheme does not have appropriate provisions, a detailed scheme may specify provisions as to the following matters:

- 1) the division of land into plots or building sites, the shape of such building sites and the length of the frontage thereof;
- 2) the assignment of land for roads, open spaces, gardens, schools, places for religious, welfare, health, cultural, assembly, recreational and sports purposes, public parking areas, public air raid shelters and refuges, or other public purposes; ...
- 5) the protection of places, structures, and other things of national, religious, historical, archeological, scientific, or aesthetic importance;
- 6) the demolition or rehabilitation of dilapidated buildings which constitute a danger to life or are unfit for habitation for health reasons;
- 7) the rehabilitation of buildings in overpopulated areas or in areas where any additional building may, in the opinion of the Local Commission, lead to excessive population density or building density, and the attachment of special conditions to building permits for such areas; and
- 8) the allocation of land to the owner of any land, or a person having a right in any land, whose rights have been adversely affected by the implementation of the scheme.²⁰⁰

Planning is done in accordance with an area's zoning designation (residential, agricultural, commercial, historic, etc.), its current infrastructure, and projected requirements in light of expected population growth. Planning also allocates land for roads and highways, open spaces, health care facilities, educational institutions, water supply, drainage, sewage, recreation, culture, and its integration into the surrounding region. Municipal planners pride themselves on taking into consideration the interests of all sectors of the population in drawing up urban plans. They advertise their draft plans in the Arabic and Hebrew press, thereby enabling members of the public to raise objections in a timely fashion.²⁰¹ They initiate negotiations, which are often protracted, in an attempt to respect the preferences of the residents (Arab or Jewish) of the relevant neighborhood.²⁰²

Before a permit to construct a building can be issued by the Municipality, Israeli law requires approval of a statutory plan by the Jerusalem District Authority.²⁰³ A statutory plan includes the third and fourth levels of planning mentioned above. An 'urban plan' refers specifically to the third tier of planning (local outline scheme). The colloquial term 'urban planning' refers generally to the collective impact of the various levels of planning within a particular area.²⁰⁴

The above mentioned four tiers of planning were enacted by the Knesset. The planners in Israel, and in Jerusalem in particular, have adopted the thesis of Dutch Professor Andreas Faludi,²⁰⁵ relating to the importance of preserving open space. This planning

²⁰⁰ Planning and Building Law (1965), 19 Laws of the State of Israel 330 347-48, art. 69 (1), (2), (5), (6), (7), (8), as amended.

²⁰¹ Planning and Building Law (1965), 19 Laws of the State of Israel 330, art. 100-08 as amended.

²⁰² Interview with Uri Bar Shishat, Director of Policy Planning Department of City Engineer of Jerusalem Municipality, in Jerusalem (Nov. 25, 2001).

²⁰³ Interview with Uri Bar Shishat, Director of Policy Planning Department of City Engineer of Jerusalem Municipality, in Jerusalem (Oct. 28, 2002).

²⁰⁴ Interview with Uri Bar Shishat, Director of Policy Planning Department of City Engineer of Jerusalem Municipality, in Jerusalem (Oct. 28, 2002).

²⁰⁵ See A READER IN PLANNING THEORY (Andreas Faludi, ed., 1973); Interview with Uri Bar Shishat, Director of the Policy Planning Department of City Engineer of the Jerusalem Municipality, in Jerusalem (Nov. 25, 2001).

doctrine is acutely sensitive to the scarcity of land,²⁰⁶ and seeks to contain urban sprawl.²⁰⁷ The impact of Faludi's doctrine can be seen in the most recent national outline scheme, which states that "89 percent of the country's land shall be defined as...set aside for preservation."²⁰⁸ Significantly, Faludi's views are shared by leading town planners in other countries as well.²⁰⁹ Higher density development in the country's urban areas, including Jerusalem, is the inevitable consequence, and planning is the vehicle by which it can be achieved.²¹⁰ Planning, however, becomes meaningless if the standards are not enforced.

B. The Character of Illegal Building in Jerusalem's Jewish Neighborhoods

At the outset it must be stated that there is a widespread disrespect for the building laws, among both the Jewish and Arab populations. Those who build illegally are frequently up-front as to their intention to violate the law. Israelis often view people who request a building permit, or who abide by building limitations (e.g., as to the number of square-meters they may build) as fools who are incapable of looking out for their own interests. It has become, in this author's opinion, virtually a societal norm to cheat on these matters.

Illegal construction is widespread in the Jewish neighborhoods of Jerusalem.²¹¹ However, it typically involves making minor improvements or additions to existing, legal structures by the owner of the apartment. Examples of what might be called 'routine' illegal building include constructing a pergola, turning a parking space into a storeroom, affixing an air conditioner to the outside of a building, enclosing a balcony to make an additional bedroom, digging underground to create an extra room or building a room under the eaves of the roof. If done without a permit, all of these permanent modifications violate the law and legally speaking, constitute the basis for commencing enforcement measures, up to and including demolitions.²¹² That said, they differ in character from the distinctive types of illegal building in the Arab neighborhoods.

C. Identified Causes of Illegal Building in Jerusalem's Arab Neighborhoods

Illegal building in the Arab neighborhoods of Jerusalem differs in quality from that discussed in subsection B above. It often takes the form of complete buildings, frequently constructed on the land that is not owned by the builder,²¹³ such as land that is classified as

²⁰⁶ Principles of Planning Doctrine Since 1992, National Outline Plan, para. 2.8, p. 474.

²⁰⁷ Principles of Planning Doctrine Since 1992, National Outline Plan, para. 2.8, p. 474.

²⁰⁸ Shamai Assif, Arie Shachar, et. al., *Combined National Outline Plan for Building*, PLANNING AND PRESERVATION 35, Feb. 2002, p. 8.

²⁰⁹ See e.g., Final Report of the Urban Task Force Chaired by Lord Rodgers of Riverside, TOWARDS AN URBAN RENAISSANCE 7 (1999). For example, a leading English authority addressed the dilemma of how to build 4 million residential units in England over the next 25 years without creating urban sprawl. He stated:

Building more than 40 percent of new housing on greenfield sites [green areas] is both unsustainable and unacceptable. It will lead to further erosion of the countryside. It will also increase traffic congestion and air pollution, accelerate the depletion of natural resources, damage biodiversity, and increase social deprivation within our towns and cities.

Final Report of the Urban Task Force Chaired by Lord Rodgers of Riverside, TOWARDS AN URBAN RENAISSANCE 7 (1999).

²¹⁰ Arie Shachar, *Reshaping the Map of Israel: A New National Planning Doctrine*, THE ANNALS OF THE AMERICAN ACADEMY, Jan. 1998, pp. 209, 213.

²¹¹ Some Jewish ethnic minorities have also claimed that the Planning and Building Law (1965) is enforced in a discriminatory fashion against them. See Avigail Gutman, *Where Black, They're White*, JERUSALEM POST, July 20, 1990; Planning Policy, the Jerusalem Municipality Department for Planning Policy, Inter-Ministerial Committee on Illegal Building, Background, Summary, p. 4 (2000).

²¹² Among the recently demolished structures in Jewish neighborhoods were a 35-square-meter add-on to a top floor apartment in Har Homa and a 53-square-meter addition to a restaurant in Malcha. Maya Jaffe, *Four Houses Destroyed in Negev*, JERUSALEM POST, July 3, 2002 at 3. The author observed the demolition of a foundation built on land designated for a road (Appendix 3, image 65) and of illegally built stairs and cement platform (Appendix 3, image 60), both in Jewish neighborhoods. In addition, in Pisgat Ze'ev the Municipality demolished an illegal extension to a synagogue. Appendix 3, image 63.

²¹³ By contrast, considerably more than 50 percent of the new housing built by the Jewish sector from 1967 to 1985 consisted of government-sponsored and subsidized large-scale public housing projects. MICHAEL ROMANN & ALEX WEINGROD, LIVING TOGETHER SEPARATELY: ARABS AND JEWS IN CONTEMPORARY JERUSALEM 59 (1991).

'brown,' or 'red' areas on the planning schemes.²¹⁴ 'Brown areas' are those designated for public services of all kinds. This includes social services, community centers, schools, public parks, religious buildings, etc.²¹⁵ Streets, roadbeds, highways, and parking places are designated as 'red areas' on planners' maps.²¹⁶ In the Arab sector the imbroglio of illegal building even extends to illegal structures erected on the roadbed of the Eastern Ring Road.²¹⁷

'Green' areas are those designated on planning schemes as open space and distinct from areas which are intended for residential use. They are designated for trees, footpaths, plants, crops, etc. They can also be completely empty.²¹⁸ Either way, land is preserved for use by future generations, should they see fit to re-categorize it in a new or amended plan.²¹⁹

Not infrequently the illegal structures in Arab areas are designed without the input of a licensed architect or engineer. Such buildings likely fail to meet the standard safety codes, thereby presenting a danger to the inhabitants, visitors, and neighbors. Buildings that do not meet code present an ongoing risk. The tragic consequences that may ensue from apparently sub-standard construction techniques vary, but include the collapse of the Versailles Banquet Hall, in a commercial/industrial zone of Jerusalem, in which 23 wedding guests were killed and 356 were injured. This disaster offers a suggestion of what is at stake.²²⁰ Death and injury on an even larger scale could result should the predicted earthquake strike,²²¹ or in the event of shellfire or bombing. In addition, such illegal structures typically lack the required parking spaces. They may not be set back from the road or from buildings on the neighboring plots.²²² Nor are they connected to sewage lines (where they exist.)²²³ None of the customary taxes and fees, that are ordinarily charged by the Municipality when it grants a building permit, have been paid.²²⁴ Thus, by cutting many corners, the builder can still turn a profit, even if he/she rents or sells the unit for a small percentage of what the landlord or owner of a licensed structure would charge.²²⁵

²¹⁴ This is *not* to say that the Arab residents of Jerusalem are any more predisposed to illegal acts than the Jews, but rather that in the circumstances, the *nature* of illegal construction typically differs in their respective neighborhoods. This fact, however one may seek to explain or excuse it, was repeated time and time again by persons interviewed for this Study, regardless of their ethnicity and political viewpoint.

²¹⁵ Interview with Uri Bar Shishat, Director of Policy Planning Department of City Engineer of Jerusalem Municipality, in Jerusalem (Nov. 25, 2001).

²¹⁶ Interview with Shalom Goldstein, Advisor to Mayor of Jerusalem Municipality for East Jerusalem Affairs, in Jerusalem (Dec. 6, 2001).

²¹⁷ Thus far, such illegal structures have been demolished. Concerns exist that builders might encroach on the byway for the light rail system that the Municipality has begun to build. Can the City afford to look the other way if its mass-transit system is blocked by illegal construction?

²¹⁸ Previously, permits to build on 'open view' land (i.e., green belt, protected valleys) were seldom granted. The City Engineer's Department has begun a process aimed at liberalizing the rules on this matter that will, *inter alia*, make it easier to get building permits in certain Arab neighborhoods. The parameters will enable the Municipality to grant building permits on open view land. Interviews with Uri Bar Shishat, Director of Policy Planning Department of City Engineer of Jerusalem Municipality, in Jerusalem (Apr. 21, 2002; June 3, 2002).

As regards a request to build on open view land areas, Bar Shishat proposes that a number of factors be considered as regards the proposed structure: a) it must be located close to an area where legal housing exists; b) it must not interfere with the view of the Old City; c) the area proposed for construction must have enough land suitable for building on; d) public services should be available (or potential) for the proposed construction site; e) attention will be given to the number of living units in the proposed plan; f) consideration will be given to whether it comports with the open space system in Jerusalem; g) attention will be given to its location in relative to the urban and national infrastructure; h) consideration will be given to the local topography of the site as regards its depth; i) whether access is available within the plan will be examined; and j) a request for constructing a new building will be regarded differently from requests to add to already existing structures. Jerusalem Municipality, The Department of Policy Planning, Policy Document, Residential Building in the Eastern Part of the City First Stage (Mar. 4, 2002).

²¹⁹ See MERON BENVENISTI, *CITY OF STONE: THE HIDDEN HISTORY OF JERUSALEM* 165 (1996).

²²⁰ Dan Izenberg, *Pal-Kal Inventor Eli Ron Denies Responsibility at Versailles Hall Trail*, JERUSALEM POST, Oct. 10, 2002 at 4.

²²¹ Seismologists have warned that Israel may be overdue for a major earthquake. Shmuel Marco of the Israeli Geographical Institute stated that every city in Israel has been struck by 3 to 5 major earthquakes in the last 2000 years. He further noted that Israel is located along a major earthquake fault line called the Dead Sea Rift. No byline, ARTIFAX, available at the Internet Website of the Archaeology News Digest, Autumn 1999 (visited Oct. 12, 2002) <<http://www.msn.fullfeed.com/~scribe/digest19994.htm>>.

²²² See ABRAHAM RABINOVICH, *JERUSALEM ON EARTH* 122 (1988).

²²³ Telephone interview with Israel Ben-Ari, Deputy Manager of Licensing and Inspection Department of Jerusalem Municipality, in Jerusalem (Dec. 6, 2001).

²²⁴ Interview with Adrian Goldstein, Deputy Manager of Licensing Department of Jerusalem Municipality, in Jerusalem (Dec. 6, 2001).

²²⁵ Interview with Shalom Goldstein, Advisor to Mayor of Jerusalem Municipality for East Jerusalem Affairs, in Jerusalem (Jan. 10, 2002).

The two following subsections address the commonly recognized causes for illegal building: poverty and cultural factors.

1. Poverty

Poverty is often identified as the (or at least a) leading cause of illegal building in the Arab sector. This understanding is not *per se* false, although the role of poverty as a cause for illegal construction is often exaggerated. In actuality, economic distress is more of a factor in some of the poorer southern Arab neighborhoods of Jerusalem than in the more affluent north. In fact, in driving around the Arab neighborhoods of northern Jerusalem, principally Beit Hanina, Shoafat, and Isawiya, this author was impressed by the hundreds of nearly completed, yet uninhabited, upscale apartments that dot the landscape.²²⁶ These apartments were never intended to house the homeless or indigent. Many of these vacant apartments have remained uninhabited for years, a curious phenomenon if, as the NGOs frequently complain, there is a chronic shortage of housing in the Arab sector.²²⁷ Thus, a better understanding of the forces in play is that many of these structures, particularly the upscale ones, were built to sell or rent.

Mixed motives frequently underlie the expansive illegal construction in Arab neighborhoods. Thus, a builder might simultaneously hope to improve his standing in society by furthering the Palestinian struggle for control of Jerusalem while, in parallel, increasing his own holdings. In addition, he could receive subsidies from (or through) the Palestinian Authority while simultaneously blocking Jewish expansion, and encroaching on Israeli-built roads or structures. Some or all of these motives, as well as the expectation of compensated via the Palestinian Authority in the event their structure(s) are demolished, serve as an engine for illegal building in the Arab sector of Jerusalem.

A 1997 study prepared by Israel Kimhi, the former Municipal City Planner of Jerusalem, revealed that since 1967 Arab building in Jerusalem has outpaced Jewish construction.²²⁸ This conclusion was based on an examination of Municipal tax records and corroborated by aerial photographs.²²⁹ According to Uri Bar Shishat, the Director of Policy Planning Department of the City Engineer, this remains true in 2002.²³⁰ Since the Oslo peace process began in 1993, despite the economic problems of the City's Arab residents, the pace of Arab construction in Jerusalem has not been markedly reduced. This can be readily observed by comparing the aerial photographs of various neighborhoods from 1992 with those of 2000 in Appendix 4. Thus, despite the fact that many Arab Jerusalemites are struggling financially, their plight has not kept other Arabs from building at a rapid pace. In the opinion of this author, economic hardship is not one of the two major reasons many Arabs of means build illegally.

²²⁶ See e.g. Appendix 3 images 6, 7, 10, 14, 15, 45, 47 and 58.

²²⁷ ISRAEL KIMHI, ARAB BUILDING IN JERUSALEM 17 (CAMERA Monograph Series, 1997).

²²⁸ ISRAEL KIMHI, ARAB BUILDING IN JERUSALEM (CAMERA Monograph Series, 1997) p. 7.

²²⁹ Aerial photographs demonstrate the dramatic expansion of Arab housing since 1967. See Appendix 4. Moreover, during the period 1974-1995 permits have been issued to Arabs at a rate similar to that for a demographically similar Jewish sector - the Ultra-Orthodox. ISRAEL KIMHI, ARAB BUILDING IN JERUSALEM (CAMERA Monograph Series, 1997) p. 7. The ultra-Orthodox Jews, like the Arabs, tend to have large families and a below-average family income. Interview with Uri Bar Shishat, Director of Policy Planning Department of City Engineer of Jerusalem Municipality, in Jerusalem (Nov. 25, 2001).

²³⁰ Interview with Uri Bar Shishat, Director of Policy Planning Department of City Engineer of Jerusalem Municipality, in Jerusalem (Nov. 25, 2001). Ir Shalem reaches the opposite conclusion by citing statistics from the Statistical Yearbook of Jerusalem. Ir Shalem report, East Jerusalem - The Current Planning Situation: A Survey of Municipal Plans and Planning Policy, n.d. Although superficially convincing, the editor of the Yearbook believes that there is no accurate way to measure the living units (or interior space thereof) in areas where no *amona* statistics exist, i.e., the refugee camps of Shoafat and (the relevant part of) Kalandia. Telephone interview with Maya Choshen, editor of STATISTICAL YEARBOOK OF JERUSALEM: 2000, in Jerusalem (June 24, 2002). The population of the Shoafat Refugee Camp has variously been estimated at 30,000 (see. e.g., Al Haq, *Al-Haq Condemns Israel's Demolition of 14 Homes in Shu'afat Refugee Camp*, July 9, 2001, available at Internet Website of Alternative Information Center (visited May 23, 2002) <<http://www.alternativenews.org>>) and 10,000 (interview with Shalom Goldstein, Advisor to Mayor of Jerusalem Municipality for East Jerusalem Affairs, in Jerusalem (Apr. 15, 2002)). It would therefore appear that if the population is estimated, but not the interior space in their living units, the result for the Arab sector as a whole are likely to be skewed in a manner that suggests greater crowding than actually exists.

2. Cultural Factors

Cultural factors are frequently cited as objective difficulties that impede legal building in Jerusalem's Arab sector. These cultural factors include:

- the market for land is not fully governed by the law of supply and demand; i.e., much Arab-owned land is not for sale (at any realistic price);²³¹
- Arab culture encourages handing land down to one's son(s), rather than developing its economic potential by building on it;²³²
- Arab culture generally prefers holding on to the particular plot that has been in the family for generations, even if it is not accessible or suitable for building, rather than exchanging it for nearby land via unification and reparceling;²³³
- Arab culture frequently resists compliance with unification and reparceling because it means turning over 40 percent of the family plot for the infrastructure needs of the entire neighborhood (i.e., schools, hospitals, roads, clinics, sewage, drainage, water treatment, etc.);²³⁴
- many absentee land owners are difficult if not impossible to locate,²³⁵ making it more difficult to legally acquire significant parcels of land for large scale development, which, in turn, encourages criminal elements to seize land and build on it illegally;
- Arab society has traditionally preferred village-style housing (low-density with few multi-story buildings), however, in recent years the attitudes of Arabs residing in Jerusalem have begun to evolve as more and more families move to taller buildings containing a number of apartments;²³⁶ and
- Arab culture (seen in various Arab countries as well) prefers to live with, or near to, the extended family, which causes them to spread out on land to enable members of an extended family to live proximate to each other.²³⁷

Without dismissing the cumulative effect of these cultural factors, it is worth noting that Arab norms of land use are changing. For example, in recent years building in Jerusalem has evolved from low-density, village-style construction (single or two-family homes) to taller buildings containing several or even dozens of apartments.²³⁸ In the opinion

²³¹ MERON BENVENISTI, *CITY OF STONE: THE HIDDEN HISTORY OF JERUSALEM* 166 (1996).

²³² In Arab areas there is less of an attitude of entrepreneurship vis-à-vis land assets - they are less interested in developing what they own, often preferring to live in a one-story villa surrounded by large expanses of open land on all sides. Often wealthy Arab landowners do not exploit their empty land, except when they need to build a residence for a family member. This causes enormous problems for the planning authorities, as the land market (almost) does not work according to the law of supply and demand. Likewise institutions, such as the Waqf, will ordinarily not sell the land they hold. Interview with Z. Uri Ullmann, Director of Division for Strategic Planning and Research of Jerusalem Municipality, in Jerusalem (Oct. 31, 2001).

²³³ Getting the various owners to agree on unification and reparceling is difficult even in Jerusalem's Jewish neighborhoods. Owners who are dissatisfied with the land they are offered often lodge objections, which delays the entire process. Interview with Z. Uri Ullmann, Director of Division for Strategic Planning and Research of Jerusalem Municipality, in Jerusalem (Oct. 31, 2001); See ABRAHAM RABINOVICH, *JERUSALEM ON EARTH* 123 (1988).

²³⁴ MICHAEL ROMANN & ALEX WEINGROD, *LIVING TOGETHER SEPARATELY: ARABS AND JEWS IN CONTEMPORARY JERUSALEM* 47 (1991).

²³⁵ If the Municipality does not know to whom land belongs, it complicates efforts to proceed with the process of unification and reparceling. Interview with Z. Uri Ullmann, Director of Division for Strategic Planning and Research of Jerusalem Municipality, in Jerusalem (Nov. 25, 2001).

²³⁶ Interview with Yossi Cohen, Mayor's Advisor for Neighborhoods of Jerusalem Municipality, in Jerusalem (Nov. 26, 2001).

²³⁷ Interview with Nissim Salomon, Deputy Director General and Head of City Administration of Jerusalem Municipality, in Jerusalem (Dec 31, 2001).

²³⁸ ISRAEL KIMHI, *ARAB BUILDING IN JERUSALEM* 16 (CAMERA Monograph Series, 1997).

of this author, while some of the above-mentioned cultural factors remain significant, their weight, relative to other causes of illegal building in the Arab sector of Jerusalem, is tertiary. By contrast, the two dominant, but less known, causes for illegal building in Arab neighborhoods will be discussed in Section V. C and D of this Study below. They are the effort of the Palestinian Authority to create facts on the ground to gain political leverage, and simple criminal avarice.

D. Discrimination in Enforcement

When an Arab resident of the City builds a home illegally in a 'green area' (on land that is designated as agricultural or open land), it might be argued something along the line, "The land belongs to him. Their culture has traditionally favored dispersed, low-density housing. Why not just issue him a permit retroactively?" The problem with this approach is that it ignores two important considerations. First, the preservation of green areas serves the interests of future generations of Jerusalemites by preserving open land to meet their needs.²³⁹ Second, repeated on a large scale, building individual structures illegally on green areas dramatically increases Municipal expenditures bringing electricity, water, roads, sidewalks, parking, etc. to the dispersed entrances of these living units. Yet, if the City does not connect such a living unit to public services, the resident who built or purchased it, can claim that he is being discriminated against. The delivery of public services is more affordable if the newly constructed living units comply with the density built into today's urban plans.²⁴⁰

It is frequently alleged that Municipality's enforcement of the Planning and Building Law is discriminatory because, although there are thousands of violations in the Jewish areas, demolition is used more frequently in the Arab neighborhoods. These allegations are based on a disingenuous manipulation of statistical data. Such assertions ignore the critical difference, which typifies the types of violations in the two sectors. In the Jewish sector the violations are generally minor, such as enclosing a balcony without a permit.²⁴¹ In the Arab sector, many of the violations are major, like constructing a multi-story building on public property. Such severe violations cannot be retroactively rectified by payment of a fine and are likely to end up as a demolition cases. Fifty percent of the building violations in the Arab neighborhoods come to the City's attention when neighbors, who have been adversely affected by the illegal building, lodge complaints.²⁴² These law-abiding residents deserve to have their rights protected by the Municipality.

The Municipality convincingly asserts that it has no interest in turning this into a political issue. When, for example, extra rooms are added onto Arab-owned houses in

²³⁹ An interesting topic for further research and analysis is the relevance of the environmental ethics to unregulated, illegal construction in the Arab areas of Jerusalem. Garrett Hardin's famous essay, "The Tragedy of the Commons," reasons:

Picture a pasture open to all. It is to be expected that each herdsman will try to keep as many cattle as possible on the commons. Such an arrangement may work reasonably satisfactorily for centuries because tribal wars, poaching, and disease keep the numbers of both man and beast well below the carrying capacity of the land. Finally, however, comes the day of reckoning, that is, the day when the long-desired goal of social stability becomes a reality. At this point, the inherent logic of the commons remorselessly generates a tragedy. ... The rational herdsman concludes that the only sensible course for him is to pursue is to add another animal to his herd. And another.... But this is the conclusion reached by each and every rational herdsman sharing a commons. Therein is the tragedy. Each man is locked into a system that compels him to increase his herd without limit - in a world that is limited. Ruin is the destination toward which all men rush, each pursuing his own best interest in a society that believes in the freedom of the commons. Freedom in a commons brings ruin to all.

GARRETT HARDIN & SCIPIO GARLING, *THE IMMIGRATION DILEMMA: AVOIDING THE TRAGEDY OF THE COMMONS* (1995). The norm, massive illegal building in the Arab areas, presents a similar environmental catastrophe in the making, as the finite resource of land is being exhausted.

²⁴⁰ See Appendix 5; Interview of Uri Lupolianski, Senior Deputy Mayor and Acting Mayor of Jerusalem Municipality, in Jerusalem (Jan. 31, 2002).

²⁴¹ One noteworthy exception was the recent indictment of nine people on charges of manslaughter and negligence arising out of the deadly collapse of the Versailles banquet hall. Etgar Lefkowitz, *Victims' Families Unhappy with Versailles Indictments*, JERUSALEM POST, Aug. 14, 2002, p. 2.

²⁴² Interview of Uri Lupolianski, Senior Deputy Mayor and Acting Mayor of Jerusalem Municipality, in Jerusalem (Jan. 31, 2002). *Ibid.*

Silwan, to accommodate for family growth, the City tends to look the other way.²⁴³ Furthermore, according to Senior Deputy Mayor Uri Lupolianski, the City is keenly aware of the way in which demolitions of structures (in the Arab sector) is viewed internationally. In addition, the City incurs expenses that average 50,000 to 60,000 NIS (approximately \$10,000 to \$12,000 U.S.) in demolishing a structure in the Arab neighborhoods of Jerusalem. Unusually difficult demolitions, requiring hundreds of soldiers or policemen to provide security, can cost the City as much as 500,000 NIS.²⁴⁴ These sums are absorbed by the City, and not charged to the illegal builder.²⁴⁵ For these reasons every effort is made to avoid the necessity of demolition, but, in the words of Lupolianski, "we must, for professional planning reasons alone, prevent the City from becoming a jungle."²⁴⁶

In order to prevent the carrying out of the administrative demolition order, which by statute is not permitted if someone is residing in the structure for more than thirty days, sometimes a woman and her children who have never lived there will be quickly moved in. They provide emotional impact for the media during the demolition.²⁴⁷ This constitutes a transparent effort by the NGOs to piggyback on the supposed suffering of children. This author is referring to the final paragraph of the "Sample Letter" of protest that the Israeli Committee on Home Demolitions urged its followers to send to the Israeli Defense Minister and the Israeli Ambassador to the United Nations.²⁴⁸ It reads:

...the terrible suffering which your policy of house demolitions creates - how many Palestinian infants and children will be forced to live in tents this winter? How many will be ill, might die for lack of proper shelter?²⁴⁹

The specter of the City forcing children out of their demolished home and into a tent is cheap political propaganda. According to the City official responsible for carrying demolitions, if the residents of a structure that is demolished by court order choose to move to a tent they are likely doing so for political reasons, i.e., as a form of street theatre.²⁵⁰ It merits repetition to remind the reader that administrative demolitions are, by City policy, carried out before anyone moves into the structure.²⁵¹ Even if someone does manage to move in before the demolition can be carried out, the City cannot proceed to an administrative demolition if they have occupied the residence for more than 30 days.²⁵²

Lupolianski insists that the Municipality's general approach to its Arab residents is not to interfere with their existing lifestyle preferences. As a consequence, many of the

²⁴³ Interview of Uri Lupolianski, Senior Deputy Mayor and Acting Mayor of Jerusalem Municipality, in Jerusalem (Jan. 31, 2002).

²⁴⁴ Interview with Micha Bin-Nun, Director of Licensing and Inspection Department of Jerusalem Municipality, in Jerusalem (Dec. 31, 2001). The estimate of 500,000 NIS was given for the Kawasme case, which was appealed four times all the way to the Supreme Court of Israel. Each time the heavy equipment and scores of security personnel were sent out to demolish the illegal structure. *Ibid.*

²⁴⁵ Interview with Israel Ben-Ari, Deputy Manager of Licensing and Inspection Department of Jerusalem Municipality, in Jerusalem (June 9, 2002).

²⁴⁶ Interview of Uri Lupolianski, Senior Deputy Mayor and Acting Mayor of Jerusalem Municipality, in Jerusalem (Jan. 31, 2002). According to Lupolianski, when looking at aerial photographs it is clear that there are outside players that stimulate building violations in the Arab neighborhoods. *Ibid.*

²⁴⁷ Interview of Uri Lupolianski, Senior Deputy Mayor and Acting Mayor of Jerusalem Municipality, in Jerusalem (Jan. 31, 2002).

²⁴⁸ Their choice of addressees was quite peculiar. The letter writing campaign should have been directed to the Mayor of Jerusalem and the Minister of Interior, and perhaps the Prime Minister.

²⁴⁹ Jeff Halper, *Israeli Committee Against Home Demolitions Calls for International Letter Writing Campaign*, Salam Review Internet Website (visited May 23, 2002) <http://www.salam.org/activism/home_demolitions.html>.

²⁵⁰ Interview with Israel Ben-Ari, Deputy Manager of Licensing and Inspection Department of Jerusalem Municipality, in Jerusalem (June 9, 2002).

²⁵¹ If, in the case of a judicial demolition at the conclusion of a legal action brought by the City, a person or persons are evicted from a structure that the Judge orders demolished, the City's Welfare Department may assist any dislocated individuals in finding an interim housing solution. This assistance could take the form of a hotel room, paid for by the Municipality, for as long as a month. Interview with Israel Ben-Ari, Deputy Manager of Licensing and Inspection Department of Jerusalem Municipality, in Jerusalem (June 9, 2002).

²⁵² Interview with Israel Ben-Ari, Deputy Manager of Licensing and Inspection Department of Jerusalem Municipality, in Jerusalem (June 9, 2002).

aspects of the planning law that are strictly enforced against the Jewish population in Jerusalem are ignored as regards the Arab population. For example, while Jews are routinely charged for improvements to their streets (sewage lines, drainage, sidewalks, road paving), Arab Jerusalemites are not billed for these expenditures.²⁵³ Lupolianski points out that virtually every minor violation committed in the Jewish neighborhoods renders the builder liable to enforcement action, including for relatively minor offences such as enclosing a balcony. By contrast the City, ignores much more substantive building violations committed, on a daily basis in the Arab neighborhoods. As a consequence, Arab residents who make minor structural changes in their apartments without first obtaining a license are usually not cited by a Municipal inspector unless their neighbors complain to the City.²⁵⁴

Another example of discrimination in favor of the Arabs is the free professional services that are extended to them. Thus, a Jewish builder must hire at his own expense, an architect and other professionals to prepare the documents submitted for a building permit. According to Lupolianski, however, applicants from Arab neighborhoods, receive free professional advice from City employees.²⁵⁵ Moreover, the City has invested 7 million NIS to prepare plans for the Arab neighborhoods, thereby facilitating the issuance of building permits and infrastructure projects. This investment attempts to overcome the undeveloped, even chaotic land ownership patterns that Israel inherited from the Jordanians in 1967.²⁵⁶

Notwithstanding the frequent allegation that the Municipality of Jerusalem enforces the Planning and Building Law in a discriminatory manner against Arab residents. The reality is that, in a number of respects, the City actually discriminates in their favor.

E. Arab Complaints to the City Regarding Illegal Arab Building

The official Palestinian antipathy towards demolition, in all circumstances, is not shared by many of the Arab residents of Jerusalem, particularly those who suffer directly from illegal construction. Their complaints, listed below, are representative of many aggrieved Arab residents that have put aside concern for their personal safety by complaining to the City about illegal building in Arab neighborhoods. Deputy Mayor Lupolianski claims that, were it not for the residents' complaints, many building offences would never have come to the attention of the Municipality. The following examples illustrate the nature of the problem:

- In one case, Nagi Musah Farage and Muhamad Musah Farage complained that Khaled El Natshe was building on land belonging to their father's estate, in the neighborhood of El Ashkeriah in Beit Hanina. When confronted by the Farage brothers, El Natshe ignored the substance of the complaint and threatened to murder them. Only then did the brothers turn to the Municipality for assistance in stopping the illegal construction on their land by El Natshe.²⁵⁷
- Abdul Aziz Bukhari, a Sheikh of the Naqshabandian Religious Method and Head of the Uzbeke Community in Jerusalem, wrote to Mayor Olmert to complain about

²⁵³ Interview of Uri Lupolianski, Senior Deputy Mayor and Acting Mayor of Jerusalem Municipality, in Jerusalem (Jan. 31, 2002). According to the Planning and Building Law (1965), the Municipality had a right to collect fees from the residents of a neighborhood if it improves their road, sidewalk, sewage, drainage, etc. In Jewish neighborhoods these sums are collected from the residents, who, incidentally, are not polled as to whether they even want the improvements. In Arab areas these sums are not charged, and as a result, it becomes more costly for the City to improve roads, sidewalks, etc. in those neighborhoods. *Ibid*; Stuart Winer, *Irate Over City Rates*, IN JERUSALEM, Oct. 11, 2002, p. 1.

²⁵⁴ Interview of Uri Lupolianski, Senior Deputy Mayor and Acting Mayor of Jerusalem Municipality, in Jerusalem (Jan. 31, 2002).

²⁵⁵ Interview of Uri Lupolianski, Senior Deputy Mayor and Acting Mayor of Jerusalem Municipality, in Jerusalem (Jan. 31, 2002).

²⁵⁶ Interview of Uri Lupolianski, Senior Deputy Mayor and Acting Mayor of Jerusalem Municipality, in Jerusalem (Jan. 31, 2002).

²⁵⁷ Letter from Nagi Musah Farage and Muhamad Musah Farage, to Micha Bin-Nun, Director of the Jerusalem Municipality Department of Licensing and Inspection (May 9, 2001.)

illegal building on the property of the Uzbek community in the Old City. Bukhari's letter claims that Aiman Al-Jabari began to build a house on the roof of the Uzbek Cultural Center. According to Bukhari's letter, there was a two-month pause in the illegal construction work after Bukhari requested the Municipality to protect his property rights. However, thereafter construction was resumed and Sheikh Bukhari again appealed to Olmert to appoint a Municipal official to restore the property rights of the Uzbek community. Bukhari's appeal mentions that the Ambassador of the Republic of Uzbekistan supports Bukhari's letter.²⁵⁸

- Muhamad Issah Abu Ois, a resident of Isawiya, wrote a complaint letter to the Minister of Interior and to the Mayor of Jerusalem. This letter asserts that the complainant's brother, Mahmud Abu Ois, who is described as "not a legal resident of Jerusalem," illegally added an extra floor to the existing house that Muhamad Issah Abu Ois inherited from his father and grandfather. The letter also claims that Mahmud Abu Ois constructed an additional building on the complainant's land without applying for a construction permit. The letter further states that the Municipality demolished the additional (illegal) building, but Mahmud Abu Ois subsequently rebuilt it without requesting a building permit. Muhamad Issah Abu Ois requests: A) that the recipients of Muhamad Issah Abu Ois' complaint stop his brother, Mahmud Abu Ois' ongoing illegal construction and demolish what has already been erected on property that belongs to the complainant, his father, and grandfather; B) that the Minister of Interior and the Mayor preserve Muhamad Issah Abu Ois' property whole, as it was inherited from his father and grandfather; and C) that the recipients not allow Mahmud Abu Ois to build on the same plot of land, or on other plots of land that were bought by third parties from Muhamad Issah Abu Ois' brothers.²⁵⁹
- In one case the Maronite Church complained to the Municipality regarding an illegal structure in the Old City. Unaware of the events that led to the ensuing demolition, U.S. Secretary of State Colin Powell issued a condemnation.²⁶⁰

Some Jerusalem Arabs, angered by illegal construction, but apprehensive at offending Palestinian militants by appealing to the Israeli authorities, have lodged their objections indirectly. For example:

- A letter concerning illegal building in the Arab sector of Beit Hanina was written to the Director of the Building Inspection Department of the Municipality of Jerusalem. The author wrote on behalf of others who are afraid to protest out of fear that they could be targeted with violence. The letter states that it is possible to obtain a permit in the area in which the illegal construction was carried out.²⁶¹ The same private citizen lodged a second complaint in another matter, this one regarding an illegal building erected in the vicinity of a building he had planned in Beit Hanina. In

²⁵⁸ Letter from Sheikh Abdul Aziz Bukhari, Head of the Uzbek Community in Jerusalem, to Ehud Olmert, Mayor of Jerusalem Municipality (June 19, 2001.)

²⁵⁹ Muhamad Issah Abu Ois, a resident of Isawiya, to the Interior Minister and Mayor of Jerusalem Municipality, Aug. 9, 2001.

²⁶⁰ Powell did not address the point that, had it been left standing, this illegal structure impinged on the historical beauty of Jerusalem's skyline. Thereafter the Secretary of State renewed his appeal to Sharon to halt the demolition of Palestinian homes. Barry Schweid, *Mideast Peace Formula May be Shelved*, ASSOCIATED PRESS, July 13, 2001. The political importance of this issue is readily demonstrated. Prime Minister Sharon wrote a letter defending house demolitions to Powell. Sharon explained that demolitions in the Jerusalem area "fall under the category of law enforcement by the municipal authorities." Sharon noted that "the homes of Jewish and Arab residents alike have been demolished in the past." Powell, apparently for political reasons, said that he understood why Palestinians would respond violently to Israeli provocations, such as house demolitions. Janine Zacharia, *Sharon Defends Home Demolitions*, JERUSALEM POST, July 18, 2001, p. 2. U.S. State Department Spokesman Richard Boucher called for Israel to halt its policy of demolition. Press Release, *A Law Unto Itself: The Israeli Government Orders Further Destruction*, THE PALESTINE MONITOR, July 12, 2001, available at Palestine Monitor Internet Website <http://www.palestinemonitor.org/updates/a_law_onto_itself.htm>.

²⁶¹ Letter from Zeev Bern to Director of the Planning Inspection Department of the Jerusalem Municipality, Jan. 20, 1998.

this case, the author states that not only did the illegal builder exceed the limitations in width and height, he also built on land owned by the Municipality. The writer also complained that the illegal structure would interfere with the construction of roads in accordance with Detailed Plan 3457a.²⁶²

- This author has been shown a letter addressed to the United States Consul in Jerusalem,²⁶³ from the law office of Advocate Yitzhak Mina. Mina's letter lodges a complaint on behalf of his client, a company by the name of "Azhar." It states that a person by the name of Ibrahim Izhak Abu Chder has illegally erected a three-story building on land in Beit Hanina, which is owned by the Azhar Company. The complaint asks the Municipality to demolish this illegal structure.²⁶⁴

Other aggrieved Arab residents of Jerusalem instruct their lawyers to pursue a different approach to protecting their land. Thus, on February 4, 2002, a warning to the public concerning land in Beit Hanina appeared in the newspaper *Al Quds*. The warning, signed by Advocate Hani Tannous on behalf of his client Muhamad Musah Farage, states that forged powers of attorney exist as regards land owned by Farage, which he inherited from his father. Tannous warns against purchasing his client's land without first contacting the true owner.²⁶⁵ On the same day a similar warning appeared in the same newspaper, this one placed by Riad Azami Shaker. Shaker states that he has non-revocable power of attorney for two parcels of land in Beit Hanina and warns that anyone purchasing these properties from someone else faces "legal and clan investigation."²⁶⁶

IV. Claims that Jerusalem is Being 'Judaized'

A. Demographic History and Projections

Jerusalem's rapid growth and demographic evolution can be traced back approximately 150 years. In the words of the late Professor U. O. Schmetz:

In the early part of the 19th century Palestine was a remote and rather unimportant corner of the vast but decaying Ottoman Empire. Population size was at a low ebb; destitution, ignorance, neglect, misgovernment and discrimination of religious minorities prevailed. Calamities such as droughts, consequent famines, and outbreaks of epidemics were frequent; but even in ordinary years endemic diseases were rife and insecurity widespread. ... At the time, Jerusalem was not the main city of Palestine, politically or economically. Despite its historical fame and religious significance, Jerusalem was in fact small, an island town of a backward provincial region, off major trade routes. ... [I]t was accessible only by riding or on foot and goods had to be transported by beasts of burden, since the first carriageable road, connecting Jerusalem with the port of Jaffa, was not

²⁶² Letter from Zeev Bern to Director of the Planning Inspection Department of the Jerusalem Municipality, Jan. 20, 1998. (Interview with Shalom Goldstein, Advisor to Mayor of Jerusalem Municipality for East Jerusalem Affairs, in Jerusalem (Apr. 8, 2002).

²⁶³ Letter from Advocate Yitzhak Mina to the U.S. Consul in Jerusalem, July 29, 2001.

²⁶⁴ Hagai Hoberman, *In the Heat of the Palestinian Real Estate Battle in East Jerusalem*, HA'TSOFEH, Jan. 11, 2002, pp. 9, 10.

²⁶⁵ Adv. Hani Tannous representing Muhamad Musah Farage, a land owner in Beit Hanina, Public Warning, AL QUDS, Feb. 4, 2002; Appendix 8B.

²⁶⁶ Riad Azami Shaker, a land owner in Beit Hanina, Public Warning, AL QUDS, Feb. 4, 2002; Appendix 8B.

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²⁶⁶ Riad Azami Shaker, a land owner in Beit Hanina, Public Warning, AL QUDS, Feb. 4, 2002; Appendix 8B.

constructed before 1869. ... [T]he city has hardly any water from natural springs or traditional wells.²⁶⁷

In 1845 the Prussian Council in Jerusalem estimated the population in the City as 7,120 Jews, 5,000 Muslims, and 3,390 Christians.²⁶⁸ In an 1854 article, Karl Marx explains that the Jewish population of Jerusalem made up the majority in the City, approximately doubling the Muslim population of the City.²⁶⁹ As early as the 1860s reports asserted that the Jews were the majority of Jerusalem's population.²⁷⁰ By the 1870s, the Jewish population passed the 10,000 mark and "probably amounted to about half of the City's total population, according to Professor Schmelz's interpretation of early census data."²⁷¹ From the 1880s onward all sources acknowledged that Jews constituted a majority in the City.²⁷² Data from the British Mandatory period, between the world wars, reflected the Jews comprising approximately 60 percent of the total population in the City, with the remainder divided almost equally between Muslims and Christians, most of whom were Arabs.²⁷³ The last British census taken before the 1948 War found the Jewish population to be approximately 100,000, with the remaining 65,000 almost equally divided between Muslims and Christians.²⁷⁴

As a result of the 1948 War, Jerusalem was bisected by an armistice line running on an irregular north-south course.²⁷⁵ Thousands of Jews and tens of thousands of Arabs abandoned homes in residential areas that, respectively, ended up in the Jordanian and Israeli zones of the City.²⁷⁶ For the ensuing 19 years, no Jews lived on the Jordanian side and Arabs constituted less than one percent of the population on the Israeli side.²⁷⁷

According to the respective Jordanian and Israeli censuses of 1961, in their respective zones, the City's aggregate population was comprised of 72 percent Jews, 22 percent Muslims, and 5 percent Christians.²⁷⁸ The 1967 War, followed by Israel's expansion of the municipal boundaries of the re-united City, resulted in the Jewish percentage of the City's population rising to 73.5 percent.²⁷⁹

Since 1967 various factors have contributed to the rapid growth in the Arab population in Jerusalem. These include a high fertility rate,²⁸⁰ employment opportunities exceeding those in the West Bank,²⁸¹ migration to Jerusalem by waves of Palestinians from the Hebron area,²⁸² and net out-migration of 7,000 or 8,000 secular Jews per year.²⁸³

²⁶⁷ U.O. Schmelz, *Modern Jerusalem's Demographic Evolution*, Jewish Population Studies, No. 20, p. 9 (Jerusalem) 1987.

²⁶⁸ MARTIN GILBERT, JERUSALEM ILLUSTRATED HISTORY ATLAS 41, 45 (1977).

²⁶⁹ Shlomo Avineri, *Karl Marx and Jerusalem*, JERUSALEM POST, Sept 4, 2000, at 8.

²⁷⁰ U.O. Schmelz, *Modern Jerusalem's Demographic Evolution*, 20 JEWISH POPULATION STUDIES 17 (1987).

²⁷¹ U.O. Schmelz, *Modern Jerusalem's Demographic Evolution*, 20 JEWISH POPULATION STUDIES 15 (1987).

²⁷² U.O. Schmelz, *Modern Jerusalem's Demographic Evolution*, 20 JEWISH POPULATION STUDIES 17 (1987).

²⁷³ U.O. Schmelz, *Modern Jerusalem's Demographic Evolution*, 20 JEWISH POPULATION STUDIES 28 (1987).

²⁷⁴ MICHAEL ROMANN & ALEX WEINGROD, LIVING TOGETHER SEPARATELY: ARABS AND JEWS IN CONTEMPORARY JERUSALEM 16 (1991).

²⁷⁵ U.O. Schmelz, *Modern Jerusalem's Demographic Evolution*, 20 JEWISH POPULATION STUDIES 41 (1987).

²⁷⁶ U.O. Schmelz, *Modern Jerusalem's Demographic Evolution*, 20 JEWISH POPULATION STUDIES 42 (1987).

²⁷⁷ MICHAEL ROMANN & ALEX WEINGROD, LIVING TOGETHER SEPARATELY: ARABS AND JEWS IN CONTEMPORARY JERUSALEM 11 (1991).

²⁷⁸ U.O. Schmelz, *Modern Jerusalem's Demographic Evolution*, 20 JEWISH POPULATION STUDIES 62 (1987).

²⁷⁹ Had it not been for the extension of the Municipal boundaries, the Jewish majority in the re-united City would have comprised 81 percent of the total population in 1967. U.O. Schmelz, *Modern Jerusalem's Demographic Evolution*, 20 JEWISH POPULATION STUDIES 64 (1987). Even the Hamas website contains an article, which specifies that the current Jewish population is 73 percent of the City's total. Nabil Al-Sahly, *The Demographic Conflict Between the Arabs and the Jews in Jerusalem Since the Basel Conference in 1897* (visited Nov. 7, 2001) <<http://www.palestine-info.co.uk/question/demographic.htm>>.

²⁸⁰ ISRAEL KIMHI, ARAB BUILDING IN JERUSALEM 18 (CAMERA Monograph Series, 1997).

²⁸¹ MERON BENVENISTI, CITY OF STONE: THE HIDDEN HISTORY OF JERUSALEM 167 (1996). Ironically many of these opportunities were in providing construction workers and tradesmen that worked for the entrepreneurs building the new Jewish neighborhoods in Jerusalem. *Ibid*.

²⁸² See MICHAEL ROMANN & ALEX WEINGROD, LIVING TOGETHER SEPARATELY: ARABS AND JEWS IN CONTEMPORARY JERUSALEM 231 (1991); see MERON BENVENISTI, CITY OF STONE: THE HIDDEN HISTORY OF JERUSALEM 186-87, 189 (1996).

²⁸³ Interview with Sergio DellaPergola, Professor of Demography at Hebrew University, in Jerusalem (Nov. 26, 2001). Most of the Jews who leave Jerusalem move to the City's suburbs or the greater Tel Aviv area. *Ibid*.

Whereas in 1967 the population of the united City was 26 percent non-Jewish,²⁸⁴ by the year 2000 it had risen to nearly 32 percent.²⁸⁵ The leading forecast to the year 2020 suggests that the Arab population will continue to grow, not only in absolute numbers but also as a percentage of the total.²⁸⁶ The Municipality is aware of these projections as it commissioned the author, demography Professor Sergio DellaPergola, to research this question for its Strategic Master Plan for the year 2020.²⁸⁷

Much has been made of the various sources that purport to allude to a 'desired Jewish/Arab ratio' for the population of Jerusalem. For example, the Ir Shalem NGO states definitively, "[t]he planning of East Jerusalem is influenced by government policy dictating that a proportion of 78% Jews and 22% Arabs should be maintained in East Jerusalem."²⁸⁸ No source or citation is provided to support this claim. Note that in the modern era the Jewish population in eastern Jerusalem has never exceeded 50 percent.²⁸⁹ To reach the percentages posited by Ir Shalem would require unprecedented shifts in population(s) - either the out-migration of approximately 100,000 Arabs or the immigration of some 200,000 Jews. And even if that number of Jews could be enticed to move to Jerusalem, how could they be accommodated without proper living units or infrastructure?

Putting aside the Alice in Wonderland assertion of Ir Shalem, the best indication that there may have been such a policy to preserve the Arab/Jewish ratio appears in a book by former Deputy Mayor, Meron Benvenisti. He referred to a decision by the City Council to annex land to Jerusalem so as to preserve the ratio of population that is optimal - 72 percent Jewish to 28 percent Arab.²⁹⁰ Benvenisti also states that the then-City Engineer and Chief Planner had confirmed that there was a government directive to preserve the ratio and that this would be done by manipulating the housing potential.²⁹¹

Interestingly, there is also evidence that a governmental Ministry and a quasi-governmental agency have designated a population ratio that they would like to preserve between two sectors of the Jewish population: the ultra-Orthodox and the others (secular, reform, traditional, and modern Orthodox). This evidence appears in the announcement of a program to maintain the internal Jewish demographic balance between secular and ultra-Orthodox Jews by the Absorption Ministry and the Jewish Agency. By way of background, the ultra-Orthodox community, like the Arab population of Jerusalem, is growing both in absolute numbers and as a percentage of the City's population.²⁹² If there were plans to maintain a given ratio, they would appear to have failed. Moreover, the total silence of the NGOs regarding the ultra-Orthodox/others ratio raises questions as to the motive underlying their repeated forays on the unproven 'policy' that purports to speak of a desired Jewish-Arab ratio.

Returning to the assertion that Israel has committed itself to preserving a certain Jewish/non-Jewish ratio, there is some indication, perhaps when Golda Meir was Prime

²⁸⁴ The breakdown is between Jews and non-Jews, however not all in the latter group are Muslims. For example, in the year 2000, the non-Jewish population of Jerusalem was 91 percent Muslim. Interview with Z. Uri Ullmann, Director of Division for Strategic Planning and Research of Jerusalem Municipality, in Jerusalem (Nov. 25, 2001).

²⁸⁵ ISRAEL KIMHI, *ARAB BUILDING IN JERUSALEM* 18 (CAMERA Monograph Series, 1997); see Appendix 6A.

²⁸⁶ Interview with Sergio DellaPergola, Professor of Demography at Hebrew University, in Jerusalem (Nov. 26, 2001); see Appendix 6A.

²⁸⁷ Interview with Sergio DellaPergola, Professor of Demography at Hebrew University, in Jerusalem (Nov. 26, 2001); see Appendix 6A.

²⁸⁸ IR SHALEM, *EAST JERUSALEM: THE CURRENT PLANNING SITUATION: A SURVEY OF MUNICIPAL PLANS AND PLANNING POLICY* 9 (n.d.).

²⁸⁹ Interview with Sergio DellaPergola, Professor of Demography at Hebrew University, in Jerusalem (Nov. 26, 2001).

²⁹⁰ MERON BENVENISTI, *CITY OF STONE: THE HIDDEN HISTORY OF JERUSALEM* 50 (1996). Actually the ratio in 1967 was 74.2 percent, not 72 percent. *Ibid.* p. 174.

²⁹¹ MERON BENVENISTI, *CITY OF STONE: THE HIDDEN HISTORY OF JERUSALEM* 165 (1996).

²⁹² Ori Nir says the Ultra-Orthodox population will increase from 20 percent to 40 percent in 12 years. Washington Report on Middle East Affairs Internet Website, *MEI Examines Jerusalem Problem*, WASHINGTON REPORT ON MIDDLE EAST AFFAIRS, April 1998 pp. 76, (visited July 21, 2002) www.washington-report.org/backissues/0498/9804071.html.

Minister, that a national government set this as an objective.²⁹³ Caution is justified, however, as while various current and former Municipal employees have mentioned such a 'policy,' none have come up with solid evidence in the form of an official document. Interviewed on this point, DellaPergola describes the 'ratio' was merely a "declarative message" which "was never put into practice."²⁹⁴ DellaPergola also states that he doesn't pay attention to the claims of 'Judaization,' but rather focuses on the facts. Barring the effective implementation of tangible measures to implement such a program, there is not much point in speculating whether such a policy exists, or ever existed.

Benvenisti²⁹⁵ wrote in the mid-1970s that "Arab complaints of the 'Judaization of Jerusalem.... Were taken up and accepted in wide circles all over the world. However, demographic data did not justify such complaints." Benvenisti observed that, "the massive Israeli efforts [new post-1967 neighborhoods] only ensured that the growth in the Jewish population in the City did not lag behind the Arab community." His insight, which has withstood the test of time, was that, "[a]s in so many other areas, the complaints rested not so much on real facts as on the declarations of politicians."²⁹⁶

In sum, the demographic evidence does not support the accusations and allegations that Israel is 'Judaizing' the City. Indeed, the undisputed demographic trend during the post-1967 period has favored the City's non-Jewish population.²⁹⁷ Hence, in spite of all the complaints that the City mistreats its Arab residents, thousands of new illegal Arab migrants arrive yearly from the West Bank.²⁹⁸ It might even be said that Jerusalem, under unified Israeli control since the 1967 War, and despite the abdication of any significant political role by the Arabs, has undergone a marked shift in the Jewish/Arab ratio. To the surprise, or delight, of those who have publicly campaigned against the presumed shift in favor of the City's Jewish majority, the actual divergence has been in favor of the growing Arab minority. Might it be that the pace of this transformation has not satisfied those who campaign regularly against the supposed 'Judaizing' of Jerusalem?

B. The 'Judaizing' Canard

It is hardly necessary to go back to the reign of King David in Jerusalem, three thousand years ago, to dismiss the frequent allegations that Israel is trying to 'Judaize' Jerusalem. Indeed, as demographers have demonstrated, during the entire 100-year period that preceded the emergence of the modern State of Israel, Jews constituted the largest component of the population.²⁹⁹ Despite the unambiguous statistics, however, Arab and Islamic entities perpetuate the 'Judaizing' canard. Ignorant of Jerusalem's demographic history, indifferent as to what is at stake from an urban planning standpoint, these entities join in the boilerplate protests against 'the Judaizing of Jerusalem.' Such reflexive identification may pacify the Islamist undercurrent that, in many Middle Eastern and Asian countries, threatens the establishment.³⁰⁰ Appealing to the masses is a core component of

²⁹³ A pro-Palestinian NGO, the Alternative Information Center, published a memorandum claiming, "Israeli demographic policies of this period [1967-1991] were designed to create a Jewish majority in the areas occupied in 1967." The same memorandum states, but without a supporting footnote, that "a decision [was] made by the Israeli government in the early 1970s, according to which the percentage of Palestinians in the City should not exceed the quota of 28 percent." Lea Tsemel & Ingrid Gassner, *The Trap is Closing on Palestinian Jerusalemites*, Memorandum 1/96 of the Alternative Information Center, pp. 7, 10.

²⁹⁴ Interview with Sergio DellaPergola, Professor of Demography at Hebrew University, in Jerusalem (Nov. 26, 2001).

²⁹⁵ In this author's opinion, based on his work experience and prolific scholarship, Meron Benvenisti knows as much about Jerusalem as any living person.

²⁹⁶ MERON BENVENISTI, *JERUSALEM: THE TORN CITY* 255 (1976).

²⁹⁷ Appendices 6A and 7A.

²⁹⁸ Nissim Salomon, Deputy Director General and Head of City Administration of Jerusalem Municipality, in Jerusalem (June 3, 2002).

²⁹⁹ See Section IV. A of the text above.

³⁰⁰ See e.g. Kramer, Martin, *Fundamentalist Islam at Large: the Drive for Power*, *MIDDLE EAST QUARTERLY*, June 1996, (visited July 28, 2002) <<http://www.ict.org.il/articles/articleid=82>>.

the predictable ritual that has, for decades, debased international discourse. Jews were, and remain, a convenient scapegoat.

The 'plot to Judaize Jerusalem' renders various opponents of Israel apoplectic. Some of their major assertions, spanning a period of 25 years, are here quoted in chronological sequence. As far back as 1978 UNESCO lent its voice to what in the interim years has become a veritable chorus of condemnation of Israel for "continuing to Judaize" Jerusalem.³⁰¹ In particular, the campaign to prevent the 'Judaization of Jerusalem' became a mantra at international gatherings in the Islamic world and beyond. For example, in 1979, Algeria and South Yemen issued a joint communiqué, which urged the Arab and Islamic countries to work for an end to the "[J]udaization of [J]erusalem."³⁰²

In 1980, a Chinese editorial, commenting on the Knesset's passing the unification of Jerusalem law, attacked "the process of [J]udaization of [J]erusalem."³⁰³ During the *Intifada* which began in 1987, the Unified National Leadership of the Uprising issued a leaflet which warned against "the systematic attempts to Judaize Jerusalem."³⁰⁴ This trend continued into the 1990s, as in 1992, the Egyptian Foreign Minister called upon the Arabs to "launch a full-fledged diplomatic offensive against Israeli... [J]udaization of [Jerusalem]."³⁰⁵ Further, in 1995, Jordan welcomed the communiqué of the Jerusalem Committee of the Organization of the Islamic Conference, which called upon the United States and Russia to exercise pressure to stop the "[J]udaization of [J]erusalem."³⁰⁶ Subsequently another NGO, the Muslim World League, decried "the intentions of the Israeli government to usurp Al Quds [Jerusalem] and complete its Judaization by replacing its Arab population with Jewish settlers."³⁰⁷ Thereafter in 1995, the Kuwaiti parliament criticized Israeli efforts at "the [J]udaization" of the holy city."³⁰⁸

In addition to accusations in the political realm, in 1995 and 1996 the Palestinian Academic Society for the Study of International Affairs (PASSIA), a Jerusalem based think-tank, entered the fray with two lengthy papers. They embodied sophisticated attacks on Israel's policies vis-à-vis Jerusalem.³⁰⁹ The first, entitled *Jerusalem: Palestinian Dynamics of Resistance and Urban Change, 1967-94*,³¹⁰ is summarized on the PASSIA Internet website as, "examin[ing] Palestinian efforts to survive as a distinct society and their strategies of resistance to Israeli attempts to 'Judaize' the city."³¹¹ Elsewhere this author

³⁰¹ News Services and Staff Reports, *UNESCO Acts Against Israel*, WASHINGTON POST, Nov. 29, 1978. According to the report, this educational, scientific, and cultural body voted 67-24 with 24 abstentions to deny aid to Israel because of "deplorable" archaeological digs that, it was claimed, were Judaizing the City. The U.S. delegate voted against the Arab-sponsored resolution and denounced its language as "offensive." News Services and Staff Reports, *UNESCO Acts Against Israel*, WASHINGTON POST, Nov. 29, 1978. See also HARRIS SCHOENBERG, *MANDATE FOR TERROR* 16-17 (1989).

³⁰² See No byline, Dateline: Algiers, Algeria, North Yemen Support Arab Confrontation States, Palestinian People, XINHUA GENERAL OVERSEAS NEWS SERVICE, June 18, 1987.

³⁰³ See No byline, Dateline: Beijing, Commentary: Israeli Expansionists' Provocative Challenge to World Opinion, XINHUA GENERAL OVERSEAS NEWS SERVICE, Aug. 1, 1980.

³⁰⁴ ANNE LATENDRESSE, *JERUSALEM: PALESTINIAN DYNAMICS OF RESISTANCE AND URBAN CHANGE, 1967-94*, p. 13 (1995).

³⁰⁵ See No byline, Dateline: Tunis, Egypt Urges Diplomatic Offensive Against Israeli Occupation of Arab Land, XINHUA GENERAL OVERSEAS NEWS SERVICE, Mar. 5, 1992.

³⁰⁶ See No byline, Dateline: Amman, Jordan Welcomes Communiqué of Jerusalem Committee, XINHUA GENERAL OVERSEAS NEWS SERVICE, Jan. 18, 1995.

³⁰⁷ No byline, *MWL Slams Israeli Land Grab*, MONEYCLIPS, May 4, 1995.

³⁰⁸ See No byline, Dateline: Kuwait City, Kuwait Parliament Condemns Israeli Confiscation of Arab Lands, XINHUA GENERAL OVERSEAS NEWS SERVICE, May 20, 1995.

³⁰⁹ A third report published by PASSIA, was written by Sami Musallam, the Director of Yasser Arafat's Jericho Office. SAMI F. MUSALLAM, *A PROGRAMME FOR ACTION FOR PEACE 9* (1996). Although less strident than Hodgkins' paper (ALLISON HODGKINS, *THE JUDAIZATION OF JERUSALEM - ISRAELI POLICIES SINCE 1967* (1996)), Musallam's Report contains such hyperbole as, "Other methods have been used successfully by Israel in order to decide the fate of Jerusalem....Under the pretext of developing Arab villages or neighborhoods, the Israelis developed a 'master plan' for the city. This was used to strangle the Arab presence in the city." *Ibid.* This argument was effectively answered by Israel Kimhi, the former City Planner of Jerusalem. Kimhi wrote, "[t]he legitimate difficulties encountered by the municipality in attempting to implement a coherent plan benefiting all residents were interpreted as a politically motivated policy intended to prevent Arab construction." ISRAEL KIMHI, *ARAB BUILDING IN JERUSALEM* 31 (CAMERA Monograph Series, 1997).

³¹⁰ ANNE LATENDRESSE, *JERUSALEM: PALESTINIAN DYNAMICS OF RESISTANCE AND URBAN CHANGE, 1967-94* (1995).

³¹¹ PASSIA, Publications on Jerusalem no. 82, available at PASSIA Internet Website (visited Nov. 8, 2001)

refers to a "policy of Israelisation," and to the usefulness of various institutions in "protect[ing] the Palestinian residents of East Jerusalem from the municipal integrationist policy adopted by Mayor Teddy Kollek."³¹²

The orientation of the second study published by PASSIA is readily apparent from its title: *The Judaization of Jerusalem - Israeli Policies Since 1967*.³¹³ Its abstract on PASSIA's website mentions, "the destruction of Jerusalem's geographic identity through the means of land control, land confiscation, the blocking of Palestinian development and settlement construction."³¹⁴ The essence of Hodgkins' (author of the second PASSIA study) broadside is peppered with claims like, "Israel's current stranglehold over the holy city has been the result of a carefully planned and scrupulously enacted Israeli policy to secure exclusive control in Jerusalem."³¹⁵

In a revealing passage Hodgkins faults Mayor Olmert for "stepping up efforts to pacify Palestinian Jerusalemites by providing improved services."³¹⁶ Imagine the censure that would have awaited the Mayor had he neglected or curtailed the Municipal services given to Arab residents. Even the Eastern Ring Road,³¹⁷ which the author grudgingly acknowledges "would have been an infrastructure asset in peace time,"³¹⁸ is vilified as part of Israel's conspiracy to, in a matter of years, "fill all the remaining green areas in Palestinian East Jerusalem with Israeli settlements and by-pass roads."³¹⁹ The obvious, indeed paramount utility of this road to Arabs, particularly those traveling from the Bethlehem area (south of Jerusalem) to the Ramallah area (to the north), is nowhere mentioned.³²⁰

In the latter part of the 1990s the frequency of 'Judaizing' accusations reached a new intensity. Thus, in September 1996, the Chairman of the Iraqi parliament's Foreign Affairs Committee "called on the Arab world to use force against Israel to stop the 'Judaization of Jerusalem.'"³²¹ A few days later the Palestinian intellectual Edward Said published an opinion piece in the English newspaper the *Observer*, which accused Israel of attempting "to 'Judaize' what was formerly Palestinian about East Jerusalem."³²² In 1997, the Lebanese Prime Minister, speaking before the Organization of the Islamic Conference, "called for a united Arab and Islamic stance to prevent the Judaization of Jerusalem."³²³ Ten months later Arafat's accusations regarding Israel's 'Judaization' of Jerusalem were

<http://www.passia.org/jerusalem/publications/pub_jerusalem_no_82.htm>.

³¹² ANNE LATENDRESSE, JERUSALEM: PALESTINIAN DYNAMICS OF RESISTANCE AND URBAN CHANGE, 1967-94, pp. 6, 14 (1995).

³¹³ ALLISON HODGKINS, THE JUDAIZATION OF JERUSALEM - ISRAELI POLICIES SINCE 1967 (1996).

³¹⁴ PASSIA, Publications on Jerusalem no. 96, available at PASSIA Internet Website (visited Nov. 8, 2001)

<http://www.passia.org/jerusalem/publications/pub_jerusalem_no_96.htm>.

³¹⁵ ALLISON HODGKINS, THE JUDAIZATION OF JERUSALEM - ISRAELI POLICIES SINCE 1967, p. 1 (1996).

³¹⁶ ALLISON HODGKINS, THE JUDAIZATION OF JERUSALEM - ISRAELI POLICIES SINCE 1967, p. 4 (1996). During his first campaign for the post of mayor in 1993, Olmert promised to upgrade the quality of life for the City's Arab residents. No byline, *Kollek Ousted as Jerusalem's Mayor*, FACTS ON FILE WORLD NEWS DIGEST, Nov. 11, 1993, p. 854E2.

³¹⁷ The Eastern Ring Road is discussed in Section VI. D of the text below.

³¹⁸ The irony of this criticism is immediately apparent. It was written in 1996 when the incremental Oslo peace process was at its apogee. Either the author was opposed to the Oslo process, or she sought to postpone indefinitely a vital improvement in the transportation network that was certain to benefit Palestinians at least as much as Israelis. Most major cities in the industrial world have one or even two ring roads. Their ubiquity is simple to explain: the ring highways enable travel that is faster, safer and more efficient. There can be no doubt that Jerusalem would benefit if the large, heavily-laden trucks did not have to traverse its center on the narrow road that winds past the Cinemateque, the Sultan's Pool and the New Gate. Palestinian organizations have highlighted the negative side - principally that Israel is building it and that some Arab-owned land will be taken (with compensation offered) in the process. Although the Municipality has repeatedly stated that compensation would be paid to the landowners, they will likely refuse to take what could be construed as a "peace offering." Matthew Brubacher, *The Jerusalem Ring Road: The Good, the Bad and the Explosive*, NEWS FROM WITHIN, Vol. XVII, May 4, 2001, p. 11.

³¹⁹ ALLISON HODGKINS, THE JUDAIZATION OF JERUSALEM - ISRAELI POLICIES SINCE 1967, p. 8 (1996).

³²⁰ Currently it is impossible to travel from the southern half to the northern half of the West Bank without weaving through slow, downtown urban streets, which Israel closes to Arabs who have Palestinian Authority identity cards when security concerns take precedence. See MERON BENVENISTI, INTIMATE ENEMIES: JEWS AND ARABS IN A SHARED LAND 52-53 (1995).

³²¹ No byline, Dateline: Baghdad, *Iraq Urges Arabs to Use Force Against Israel*, AGENCE FRANCE PRESSE, Sept. 26, 1996.

³²² Edward Said, *Fury of the Dispossessed*, OBSERVER (London), Sept. 29, 1996, p. 23.

³²³ No byline, Source: Radio Lebanon, *Lebanese PM Urges Halt to Normalization With Israel*, BBC SUMMARY OF WORLD BROADCASTS, Part 3 Asia-Pacific, Pakistan, Organization of the Islamic Conference Summit in Islamabad, speeches, FE/D2876/53, Mar. 25, 1997.

covered in the *Los Angeles Times*.³²⁴ In April 1998, the Lebanese Foreign Minister told the media that he had briefed Pope John Paul on "the ongoing Judaization of Jerusalem."³²⁵ In June 1998, the Arab League heard pleas from Yasser Arafat to take concrete measures to prevent the "Judaization of Jerusalem."³²⁶ The following day Arafat met with the Turkish Prime Minister and, according to the Voice of Palestine radio report, Arafat reviewed "the Judaization of Jerusalem."³²⁷ Arafat, in his July 29, 1998, speech to the Organization of the Islamic Conference's Jerusalem Committee, stated, "We shall...save holy Jerusalem from the Judaizing monster."³²⁸ Arafat's July 30, 1998, meeting with the Foreign Minister of Iran served as yet another forum to attack "the expansionist policies of the Zionist regime aimed at the Judaization of *Bayt al-Maqdis* [the Temple Mount] by imposing extensive changes in the demographic situation of the City."³²⁹ Simultaneously, the Organization of the Islamic Conference, which represents 55 countries, urged the United Nations Security Council to "dissuade" Israel from what it called a plan to 'Judaize' Jerusalem.³³⁰ In the meantime, the Hamas Internet website features an article entitled, "The Judaization of Jerusalem Includes the Construction of *Al-Haykal* [Third Temple]."³³¹ On November 7, 1998, the Secretary General of the Islamic Jihad terrorist organization told an interviewer, who inquired about their role in a bomb blast in Jerusalem, that the "operation" was part of the "continuing *jihad* against the Israeli occupation and Zionist aggression...and Judaization of the land...."³³² While the posture of Hamas and Islamic Jihad is not surprising, even Jordan, a country at peace with Israel, has joined in the canard. Thus, on September 10, 2001, the Secretary General of Jordan's Royal Committee for Jerusalem Affairs condemned the "Judaization of Jerusalem."³³³

C. The Implausibility of the 'Judaization' Claim

The frequent assertion that Israel uses the planning law and, in particular, the refusal to grant construction permits and the demolition of illegal structures to discourage Arabs from living in the City makes no sense. Even if, for the sake of argument, one assumes such a demographic policy existed after 1967, the Municipality could have turned to much simpler and less politically costly measures to achieve that end. For example, the Municipality could have left, as is, the rudimentary water system (the majority of households lacked running water) it inherited from Jordan, characterized by antiquated cisterns and public faucets. These conditions were hardly adequate for modern living, let alone mixing cement to build tens of thousands of new living units.³³⁴ Indeed, water was (and is) in short supply in the entire region, including in Israel. Neither the Municipality nor the State was under any legal obligation to connect the Arab residents to the Israeli national water grid. The Municipality could have simply left the status quo - with the result of severely discouraging construction and economic activity in general in the Arab sector.

³²⁴ Robin Wright, *Arafat Rejects Proposal for Limited Withdrawal*, LA TIMES, Jan. 24, 1998, p. A10.

³²⁵ No byline, Source: Radio Lebanon, *Foreign Minister Comments on Talks in Europe*, BBC SUMMARY OF WORLD BROADCASTS, Part 4, The Middle East, Jordan, ME/D3202/MED, Apr. 16, 1998. No mention was made as to whether the Pope was persuaded by this charade.

³²⁶ Hans Dahne, *Arabs Helpless to Prevent Expansion of Jerusalem*, DEUTSCH PRESSE-AGENTUR, June 25, 1998; see MERON BENVENISTI, CONFLICTS AND CONTRADICTIONS 97 (1986).

³²⁷ No byline, Source: Voice of Palestine, *Arafat Holds Talks with Turkish Prime Minister in Ankara*, BBC SUMMARY OF WORLD BROADCASTS, Aug. 1, 1998.

³²⁸ Press Release of Likoud Nederland, *Arafat Again Urges 'Jihad' Against Israel*, Aug. 16, 1998.

³²⁹ No byline, *Foreign Minister, Arafat Discuss Israeli Policies*, BBC SUMMARY OF WORLD BROADCASTS, July 31, 1998.

³³⁰ International News Section, *OIC Warns UN of "Disaster" Unless it Toughens up Against Israel*, DEUTSCHE PRESSE-AGENTUR, July 30, 1998.

³³¹ The "Al-Haykal" is the Third Temple, which Jewish sources indicate will be built following the coming of the Messiah. Ja'far Hadi Hassan, *Judaization of Jerusalem Includes the Construction of Al-Haykal*, Hamas Internet website, visited Sept. 5, 2001, <<http://www.palestine-info.com/jerusalem/judaization.htm>>.

³³² Source: MBC TV, London, Nov. 7, 1998, *Israeli and Palestinian Affairs: Aftermath of Jerusalem Bomb*, BBC SUMMARY OF WORLD BROADCASTS, ME/D3380/MED, Nov. 10, 1998.

³³³ See No byline, Dateline: Amman, *Jordan Condemns Israeli Isolation of Jerusalem*, XINHUA GENERAL OVERSEAS NEWS SERVICE, Sept. 10, 2001.

³³⁴ In fact, new Arab construction is outpacing Jewish construction. See Section IV. A of the text above.

Instead, acting on its own volition, the Municipality moved to integrate the water system by connecting, directly or indirectly, virtually every legal structure to piped-in water.³³⁵

A further example that discredits the supposed 'Judaization' plan was former Mayor Kollek's policy of attempting to integrate the City's Arab residents into municipal life. The Arab residents of Jerusalem were issued residency status which entitled them to participate in Municipal elections and benefit from various services including health insurance, social assistance, education services, national insurance, etc.³³⁶ Arab Jerusalemites are issued blue identity cards like those held by Israeli citizens, which entitle them to travel freely in and out of Jerusalem and all over Israel, even when there is a security alert and Palestinians residing in the West Bank and Gaza are refused entry.³³⁷ Had Israel not provided 'permanent residency' status to the City's Arabs who had declined Israeli citizenship, this would have preempted one of the major magnets that attracted, and continues to attract, Arabs to reside in Jerusalem.

Thus, despite the hue and cry, Jerusalem is not being 'Judaized' - not by construction and not by population.

V. Planning and its Discontents

A. Justifications for Non-compliance with Urban Planning Law

The Palestinian leadership offers various justifications and apologetics for their non-compliance with the urban planning mechanism as it applies to the Arab neighborhoods.³³⁸ According to Issaha Kassilieh, a former Assistant to Faisal Hussein, the reason Arabs build illegally is "natural expansion."³³⁹ He insists:

The post-1967 Jewish settlements [new Jewish neighborhoods] around Jerusalem are at the expense of the Palestinian population. We feel suffocated by the expansion of the settlements around Jerusalem, the confiscation of land, creating green areas. Little space was kept for the Palestinian population to expand. Many times it was impossible to get a permit to build a house and usually it takes three to four years.³⁴⁰ We have cases of people who waited for the past 10 years. And it is costly. [That is why] so many built without permits. The discriminatory policy of the Municipality contributed to the kind of chaotic situation we have in

³³⁵ See interview with Shalom Goldstein, Advisor to Mayor of Jerusalem Municipality for East Jerusalem Affairs, in Jerusalem (Apr. 8, 2002).

³³⁶ ANNE LATENDRESSE, JERUSALEM: PALESTINIAN DYNAMICS OF RESISTANCE AND URBAN CHANGE, 1967-94, pp. 4, 5-6 (1995).

³³⁷ MERON BENVENISTI, INTIMATE ENEMIES: JEWS AND ARABS IN A SHARED LAND 53-54 (1995).

³³⁸ Kassilieh is currently conducting research for a project called "Planning Jerusalem in Peace." Kassilieh hopes that the findings will assist the Palestinians to reorganize east Jerusalem "when it is freed after many years of Israeli control and restrictions." Kassilieh believes that re-zoning and re-planning should bring Jerusalem into harmony with other parts of Palestine. His plans for east Jerusalem relate to it as a part of the West Bank. Kassilieh's intent is for this project to be implemented in the areas in which the Palestinians population can expand. Interview with Issaha Kassilieh, Senior Official of the Orient House and former Assistant to the late Faisal Hussein, in Jerusalem (Jan. 30, 2002). According to Nusseibeh this project should be done with the participation of the Municipality. Interview with Dr Sari Nusseibeh, President of Al Quds University and Palestinian Authority Political Commissioner for Jerusalem Affairs, in Jerusalem (Jan. 30, 2002). However, Kassilieh has political objections to cooperating with the Municipality, although he stated that, "on technical matters it may be possible to work together." Interview with Issaha Kassilieh, Senior Official of the Orient House and former Assistant to the late Faisal Hussein, in Jerusalem (Jan. 30, 2002).

³³⁹ Interview with Issaha Kassilieh, Senior Official of the Orient House and former Assistant to the late Faisal Hussein, in Jerusalem (Jan. 30, 2002). Piecemeal additions to legal structures in Arab neighborhoods, while technically requiring a building permit, are highly unlikely to provoke a demolition. Interview of Uri Lupolianski, Senior Deputy Mayor and Acting Mayor of Jerusalem Municipality, in Jerusalem (Jan. 31, 2002).

³⁴⁰ This clearly erroneous claim should be compared with the data contained below in Section VI. B of the text below.

Instead, acting on its own volition, the Municipality moved to integrate the water system by connecting, directly or indirectly, virtually every legal structure to piped-in water.³³⁵

A further example that discredits the supposed 'Judaization' plan was former Mayor Kollek's policy of attempting to integrate the City's Arab residents into municipal life. The Arab residents of Jerusalem were issued residency status which entitled them to participate in Municipal elections and benefit from various services including health insurance, social assistance, education services, national insurance, etc.³³⁶ Arab Jerusalemites are issued blue identity cards like those held by Israeli citizens, which entitle them to travel freely in and out of Jerusalem and all over Israel, even when there is a security alert and Palestinians residing in the West Bank and Gaza are refused entry.³³⁷ Had Israel not provided 'permanent residency' status to the City's Arabs who had declined Israeli citizenship, this would have preempted one of the major magnets that attracted, and continues to attract, Arabs to reside in Jerusalem.

Thus, despite the hue and cry, Jerusalem is not being 'Judaized' - not by construction and not by population.

V. Planning and its Discontents

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The post-1967 Jewish settlements [new Jewish neighborhoods] around Jerusalem are at the expense of the Palestinian population. We feel suffocated by the expansion of the settlements around Jerusalem, the confiscation of land, creating green areas. Little space was kept for the Palestinian population to expand. Many times it was impossible to get a permit to build a house and usually it takes three to four years.³⁴⁰ We have cases of people who waited for the past 10 years. And it is costly. [That is why] so many built without permits. The discriminatory policy of the Municipality contributed to the kind of chaotic situation we have in

³³⁵ See interview with Shalom Goldstein, Advisor to Mayor of Jerusalem Municipality for East Jerusalem Affairs, in Jerusalem (Apr. 8, 2002).

³³⁶ ANNE LATENDRESSE, *JERUSALEM: PALESTINIAN DYNAMICS OF RESISTANCE AND URBAN CHANGE, 1967-94*, pp. 4, 5-6 (1995).

³³⁷ MERON BENVENISTI, *INTIMATE ENEMIES: JEWS AND ARABS IN A SHARED LAND* 53-54 (1995).

³³⁸ Kassilieh is currently conducting research for a project called "Planning Jerusalem in Peace." Kassilieh hopes that the findings will assist the Palestinians to reorganize east Jerusalem "when it is freed after many years of Israeli control and restrictions." Kassilieh believes that re-zoning and re-planning should bring Jerusalem into harmony with other parts of Palestine. His plans for east Jerusalem relate to it as a part of the West Bank. Kassilieh's intent is for this project to be implemented in the areas in which the Palestinians population can expand. Interview with Issaha Kassilieh, Senior Official of the Orient House and former Assistant to the late Faisal Hussein, in Jerusalem (Jan. 30, 2002). According to Nusseibeh this project should be done with the participation of the Municipality. Interview with Dr Sari Nusseibeh, President of Al Quds University and Palestinian Authority Political Commissioner for Jerusalem Affairs, in Jerusalem (Jan. 30, 2002). However, Kassilieh has political objections to cooperating with the Municipality, although he stated that, "on technical matters it may be possible to work together." Interview with Issaha Kassilieh, Senior Official of the Orient House and former Assistant to the late Faisal Hussein, in Jerusalem (Jan. 30, 2002).

³³⁹ Interview with Issaha Kassilieh, Senior Official of the Orient House and former Assistant to the late Faisal Hussein, in Jerusalem (Jan. 30, 2002). Piecemeal additions to legal structures in Arab neighborhoods, while technically requiring a building permit, are highly unlikely to provoke a demolition. Interview of Uri Lupolianski, Senior Deputy Mayor and Acting Mayor of Jerusalem Municipality, in Jerusalem (Jan. 31, 2002).

³⁴⁰ This clearly erroneous claim should be compared with the data contained below in Section VI. B of the text below.

Jerusalem. The City wouldn't give permits.³⁴¹ Instead it created obstacles and delays.³⁴²

Nusseibeh claims that, after the 1967 War, the Municipality was interested in expanding its authority by annexation and by demographic change, with the intent of excluding as much of the Arab population as possible. What Nusseibeh calls "settlements" [new Jewish neighborhoods] were, in his view, created to augment the Jewish demographic majority. He stated, "as a result a competition was created between Palestinians and Israelis over assertion of territory." Nusseibeh continued:

The Palestinians are building as a way to assert their presence in the City and in order to satisfy their needs. So you have this process of building illegally in different places. The net result of this has been, as you look at Jerusalem, a disaster as far as the environment and the City is concerned. If you look ahead this disaster is going to become even more tragic unless people take another look and begin seriously once again to plan.³⁴³

In the opinion of this author, Kassilieh's "natural expansion" justification and Nusseibeh's "competition" theory together explain only a fraction of the massive³⁴⁴ wave of illegal Arab building. The dominant factors are, as will be demonstrated below, the direct sponsorship of illegal construction by the Palestinian leadership, and simple criminal avarice.

Kassilieh was coy in his assertion, "I don't think that the [Palestinian] Authority has any involvement when it comes to illegal building." In the opinion of this author, Kassilieh's assertion is not credible. It flies in the face of hard evidence that Kassilieh's former boss, Hussein, was the initiator and/or conduit for much illegal building.³⁴⁵ Although never stated, Kassilieh implied that Hussein believed that building illegally was justified.³⁴⁶ Kassilieh described the late Faisal Hussein as having pursued "a steadfast approach" at a time when Israel was [allegedly] implementing "a policy of pushing Palestinians outside of Jerusalem." Hussein was of the opinion that "any price should be paid to confront Israel." Echoing Hussein's approach, Kassilieh stated, "many times you go all the way to maintain your existence, you do everything to maintain your identity." This explains the documents in the hands of, and others viewed by this author, that prove Hussein's central role in illegal building.³⁴⁷ It is particularly interesting, therefore, to note the stated position of Hussein's successor on this critical issue.

Questioned regarding the Palestinian Authority's role in illegal building, Nusseibeh was asked, "[w]hy does the Palestinian Authority offer to pay fines or legal fees of people who build illegally?" He responded that he is not aware that the fines are paid by the Palestinian Authority.³⁴⁸ In his interview Nusseibeh stated forthrightly:

³⁴¹ This clearly erroneous claim should be compared with the data contained below in Appendix VI. B and G of this Study.

³⁴² Interview with Issaha Kassilieh, Senior Official of the Orient House and former Assistant to the late Faisal Hussein, in Jerusalem (Jan. 30, 2002).

³⁴³ Interview with Dr. Sari Nusseibeh, President of Al Quds University and Palestinian Authority Political Commissioner for Jerusalem Affairs, in Jerusalem (Jan. 30, 2002).

³⁴⁴ See Section V. C and D of the text above.

³⁴⁵ Appendix 8C, D, and E.

³⁴⁶ Interview with Issaha Kassilieh, Senior Official of the Orient House and former Assistant to the late Faisal Hussein, in Jerusalem (Jan. 30, 2002).

³⁴⁷ See, e.g., Appendix 8D.

³⁴⁸ Interview with Dr. Sari Nusseibeh, President of Al Quds University and Palestinian Authority Political Commissioner for Jerusalem Affairs, in Jerusalem (Jan. 30, 2002).

Nobody in their right mind is in favor of illegal building. What is needed is to look at the needs of the Palestinians and to address those needs so we will not have to deal with situations either of building things illegally or destroying them. In this the Municipality should consider in its plans the re-zoning in order to allow for first of all the immediate needs of [Arab] Jerusalemites which comes to about 20,000 units. Reparcelation [and] re-zoning, perhaps, in some of the areas. It is necessary to take preemptive measures in order to solve this growing problem³⁴⁹ (emphasis added).

B. The City Has Authorized Plans to Meet the Housing Needs of the Arab Population Until the Year 2020 that Exceed the Demands of Both Faisal Hussein and Sari Nusseibeh

Neither Nusseibeh nor Hussein can be accused of selling short the housing needs of the Arabs of Jerusalem. Yet the up-to-date facts indicate that the needs that they forecast can be more than met, without any need to build illegally, within the existing urban plans of the City. Nusseibeh's calculation of the needs of the Arab Jerusalemites, "about 20,000 units," deserves careful consideration alongside the similar estimate of his predecessor, Hussein.

In the mid-1990s, Hussein put out a 23-page booklet encouraging diaspora Palestinian and other private investors to "preposition themselves at an early stage...to profit."³⁵⁰ The brochure outlines a wide range of investment opportunities, including residences, office buildings, and hotels. Projecting some 15 years into the future, Hussein wrote that by the year 2010 the Arab population would need about 26,200 new residential units, including those required for returnees (Palestinian refugees) and tourists.³⁵¹ Since the current *Intifada* started neither returnees nor tourists are arriving in significant numbers, but as Hussein did not furnish any numerical breakdown, it is impossible to recalculate his global figure of 26,200.³⁵² Nor did Hussein make any allowance for the unoccupied apartments in the Arab neighborhoods.³⁵³ Yet even accepting Hussein's full figure, the Municipality has already approved plans that, intending to meet the projected Arab needs for the next 18 years, authorize in excess of 33,000 units. Tellingly, this *significantly exceeds* the demands of both Hussein and Nusseibeh.³⁵⁴

C. Extensive Palestinian Authority Subsidies for Widespread Illegal Building

Despite Nusseibeh's forthright condemnation of illegal building, overwhelming evidence, including internal documents, proves that the Palestinian Authority is intimately involved in subsidizing illegal construction. The following illustrative statements and sources demonstrate this:

³⁴⁹ Interview with Dr. Sari Nusseibeh, President of Al Quds University and Palestinian Authority Political Commissioner for Jerusalem Affairs, in Jerusalem (Jan. 30, 2002).

³⁵⁰ FAISAL HUSSEINI, *EAST JERUSALEM: GLORY OF THE PAST, PROMISE OF THE FUTURE*, n.d., p. 1.

³⁵¹ FAISAL HUSSEINI, *EAST JERUSALEM: GLORY OF THE PAST, PROMISE OF THE FUTURE*, n.d., p. 15.

³⁵² In any event, Hussein's figure was without any data or sources to support it. FAISAL HUSSEINI, *EAST JERUSALEM: GLORY OF THE PAST, PROMISE OF THE FUTURE*, n.d., p. 15.

³⁵³ FAISAL HUSSEINI, *EAST JERUSALEM: GLORY OF THE PAST, PROMISE OF THE FUTURE*, n.d.

³⁵⁴ See Appendix 7B. Moreover, this figure of 33,600 does not include the following:

- the housing units that will be built in the Shoafat refugee camp;
- the housing units that will be built in the part of the part of the Kalandia refugee camp that is within the city limits;
- pinpoint plans that have been proposed and that will likely result in some additional legal living units being built; and
- the additional 2,400 authorized units recently authorized for the Beit Hanina/Shofat area.

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

- In November 1995, at a congress held in Amman, Zaharia El-Ahia, the Palestinian Authority's Minister of Housing, and a member of the European Union's Supreme Committee for Palestinian Housing, stated that the Palestinian Authority had used the sums it had received from Saudi Arabia, including \$30 million U.S., to build 10,000 apartments in Jerusalem and to make additions to existing buildings. Funds were dispersed to persons without, as well as with, building permits.³⁵⁵
- In April 1996, Hussein made three recommendations regarding Jerusalem to the 21st meeting of the Palestinian National Congress (PNC) held in Gaza. The PNC approved Hussein's objectives to raise funds from Arab and Islamic sources and private individuals to be used in Jerusalem; to protect the Old City from becoming totally Jewish³⁵⁶ by mobilizing the full potential to develop and build; and to support building projects, whether public or private, including the soliciting of financial support from pro-Palestinian Authority countries.³⁵⁷
- In May 1996, Sheikh Hassan Tahboob, the Palestinian Authority's Minister of the Waqf (Islamic Religious Endowment) and Religious Affairs, signed an agreement with the World Bank for Islamic Development by which the latter contributed \$1,144,000 for carrying out additions and renovations to 850 buildings in the Old City. These additions and renovations were performed without obtaining building permits.
- In October 1996, Hussein appealed to rulers and foreign ministers of states that do not have diplomatic relations with Israel, including Abu Dabi, Qatar and Saudi Arabia, to raise money to construct 10,000 living units in Jerusalem. He received pledges for tens of millions of U.S. dollars.³⁵⁸
- In an interview Hussein gave to the Egyptian magazine *El-Aharam Al-Arabi* in June 1997, he stated, "[t]he Palestinian program is to create a Palestinian belt around the Israeli belt [of post-1967 new Jerusalem neighborhoods]." He continued, "[t]he most important Palestinian challenge is building, even without permits."³⁵⁹
- CNN has publicized the theme of Jerusalem being the site of a "demographic war" between Palestinians and Israelis.³⁶⁰ For this program CNN interviewed Khalid Tufakji, a Palestinian demographer who worked out of the Orient House (then the PLO's political headquarters in Jerusalem).³⁶¹ Tufakji stated, "[w]e can build inside Jerusalem, legal, illegal - rebuild a house, whatever we can do. Maybe we lose ten houses, but in the end we build 40 more houses in East Jerusalem."³⁶²

³⁵⁵ Interview with Shalom Goldstein, Advisor to Mayor of Jerusalem Municipality for East Jerusalem Affairs, in Jerusalem (Apr. 8, 2002).

³⁵⁶ Given the fact that the Jewish population living within the walls of the Old City constitutes only about 10 percent of the total, Hussein's fears appear to lack any basis in fact. Tovah Lazaroff, *Report: Muslim Strength up in Old City*, JERUSALEM POST, July 15, 2002, p. 2.

³⁵⁷ Letter from Ehud Olmert, Mayor of Jerusalem Municipality, to Shimon Peres, Foreign Minister June 12, 2001.

³⁵⁸ Interview with Shalom Goldstein, Advisor to Mayor of Jerusalem Municipality for East Jerusalem Affairs, in Jerusalem (Dec. 6, 2001). Recently Saudi Arabia pledged to build 600 houses for Palestinians in various "Palestinian cities" as a token of support for the *Intifada*. Staff writer, *Saudi Arabia to Build 600 Houses for Palestinians*, ARAB NEWS, Sept. 30, 2002, available at Internet Website (visited Sept. 30, 2002) <http://palestinechronicle.com/article.php?story=20020930170256186>; News in Brief, *Saudis Build Housing Units for the Palestinians*, JERUSALEM TIMES, Oct. 4, 2002, p. 2.

³⁵⁹ Interview of Faisal Hussein, Member of the PLO Executive Committee in Charge of the Jerusalem Portfolio, in *El-Aharam Al-Arabi* (Egyptian magazine), June 24, 2001.

³⁶⁰ Martin Savidge & Walter Rodgers, *Jerusalem Faces Demographic War*, CNN Worldview 18:00 pm ET, Sept. 9, 1998, transcript no. 98091902V18.

³⁶¹ Liked Nederland, Press Release: *20 Palestinian Institutions Continue to Operate Illegally in Jerusalem*, Communicated by the Office of the Prime Minister of Israel, Sept. 9, 1998, p. 5.

³⁶² Martin Savidge & Walter Rodgers, interview of Khalid Tufakji, Palestinian Demographer, in *Jerusalem Faces Demographic War*, CNN WORLDVIEW 18:00 PM EST, Sept. 9, 1998, transcript no. 98091902V18.

- During the period from April 4 to June 29, 2000, the Orient House processed 38 requests for housing assistance by Arab residents of Jerusalem. Some of the requests involved structures under threat of demolition. These were forwarded to Advocate Jawad Boulos who frequently represented such clients in court. Others involved a request for financial assistance in renovating or expanding apartments that were under the threat of demolition. Still others asked the Palestinian Authority for financial assistance because they were building on the edge of a Jewish neighborhood, thereby blocking any expansion. In all, these 38 documents indicate that the Palestinian Authority routinely came to the assistance of Arab residents of Jerusalem, who had built illegally.³⁶³
- In an article, which appeared in the Palestinian Authority's newspaper *El Hiya El Jdida*, Jamil Othman Nasser, the Palestinian Authority's Governor of the Jerusalem District, calls for the establishment of a "development council." The intended purpose for this body is to aid Palestinians without being governed by any Israeli law or action that places limitations on building activity. Further, the Governor himself favored giving financial assistance to Jerusalem Arabs who do not have building permits or whose houses were demolished.³⁶⁴
- Ziad Abu Ziad, the Palestinian Authority's Minister of Jerusalem Affairs, wrote a letter dated April 28, 2000, to Yasser Arafat containing a request for the Palestinian Authority to fund neighborhood infrastructure in Ras Hamis. This Arab area contains massive illegal building that adjoins the Jewish neighborhood of Pisgat Zeev. Minister Abu Ziad supports his request by noting that of the more than 80 illegal units thus far built only eight have been demolished by the Municipality. He further points out that the City will not pay for the infrastructure in this area because it encroaches on the Jewish settlement [neighborhood] of Pisgat Zeev. Abu Ziad justifies his solicitation by noting that the residents of Ras Hamis are continuing to build [illegally] in the direction of the Israeli neighborhood of Pisgat Zeev, to keep it from expanding.³⁶⁵
- On September 11, 2000, Jamil Othman Nasser, the Palestinian Authority's Governor of the Jerusalem District, wrote to Yasser Arafat on the official stationery of the Palestinian Authority's Ministry of Interior. The letter states "any Arab who builds in Jerusalem has accomplished a national act of the highest order." It further states that the firm stand of the [Arab] residents protects the Arabization of Jerusalem and protects their land from invasion by [Jewish] settlements. Nasser requests Arafat to follow up on paying the fines assessed against those who build illegally. Arafat's own handwritten notation appears on the side of the typed letter, instructing that the request should be forwarded to Sami Ramlawi, the Director of the Palestinian Authority's Ministry of Finance, for attention.³⁶⁶
- On March 21, 2001, a letter from Jamil Othman Nasser to Sami Ramlawi addressed the fine of 75,000 NIS assessed against Assan Machmad Shaban, an Arab Jerusalemite, for building without a license. Nasser states that, according to Arafat's instructions

³⁶³ Confidential intelligence sources furnished access to these documents.

³⁶⁴ Issah El-Shrabati, *Point to the Caution of the Donning Country's in Carrying out Projects in Conquered Jerusalem*, EL HIYA EL JDIDA (Arabic newspaper), July 16, 2000. The Governor acknowledges that Palestinian criminal gangs and Mafia, affiliated with the Palestinian Authority, are operating in Jerusalem. The article states that these criminals are taking over real estate belonging to Arabs that live abroad. *Ibid.*

³⁶⁵ Letter from Ziad Abu Ziad, Palestinian Authority Minister for Jerusalem, to Yasser Arafat (Apr. 28, 2000) (on file with Office of the Chairman, file no. 279/2)(Arabic).

³⁶⁶ Letter from Mhahfat El Quds Jamil Othman Nasser, Palestinian Authority Governor of Jerusalem District to Yasser Arafat (Sept. 11, 2000) (on file with Office of the Chairman, file no. 1382/200)(Arabic).

for these cases, Ramlawi should instruct the Palestinian Authority's Ministry of Finance to pay the fine.³⁶⁷

- On May 12, 2001, at a meeting of Arab construction engineers held at Orient House, Hussein instructed them to go ahead with projects in disregard of the legal requirements for permits and licenses.³⁶⁸
- According to a recent article in the Israeli daily newspaper *Ha'tsofeh*, a senior Israeli security official told their reporter about the ongoing struggle of the Palestinians to strengthen their hold on Jerusalem real estate. He pointed to the example of the National Palace Hotel being put up for auction when its Arab owners couldn't pay their debts to the Discount Bank. The hotel's owners, fearful that Jews might purchase it, requested Arafat's intervention. Arafat then delegated this matter to the Palestinian Authority's official in Charge of the Jerusalem File, Ziad Abu Ziad. Abu Ziad successfully solicited Palestinian financial institutions to raise the purchase price. The article further states that the Palestinians are acting to solidify their claim to sovereignty in Jerusalem by building and establishing public institutions. To this end, Iran allocated \$300 million U.S. to fund Palestinian projects in Jerusalem.³⁶⁹ According to the report, Saudi Arabia is also among the sources of funding for the wave of illegal construction.³⁷⁰
- At a conference that took place on January 7, 2002, at the Jerusalem Center for Women, Hatem Abed El-Khader Eid, a member of the Palestinian Legislative Council representing the Jerusalem district, proudly announced that, during the last four years, Palestinians have erected 6,000 homes without building permits, out of which only 198 were demolished.³⁷¹ Eid's statement regarding the massive illegal building campaign, and his mention of the figure 6,000 illegal structures, was also picked up in the weekly newspaper *Jerusalem*. Eid declared, "we in the Palestinian Authority are willing to build ten homes for every house demolished by Israel."³⁷²

Intelligence sources furnished some of the above examples of large-scale, illegal construction funded by the Palestinian Authority. Others, however, are readily available to anyone following the media or who cultivates contacts in the Municipality. Many different clues documenting the Palestinian Authority's role in illegal building are available to anyone who inquires. For example, Zuhair Hamdan, the well-known head of a family in Sur Baher, stated that the Palestinian Authority encourages illegal building by paying the fines on behalf of the illegal builders.³⁷³ This corroborates what appeared in Palestinian Authority correspondence shown to this author by intelligence sources. Additionally, it is well known that Palestinian Authority officials have purchased illegally built homes for personal use.³⁷⁴

³⁶⁷ Letter from Mhahfat El Quds Jamil Othman Nasser, Palestinian Authority Governor of Jerusalem District to Sami Ramlawi, Director of the Palestinian Authority Ministry of Finance (Mar. 21, 2001) (Arabic).

³⁶⁸ A confidential intelligence source furnished access to this document. Israel subsequently closed Orient House, citing illegal activities that endangered Israeli security and violated the Palestinian Authority's interim peace process obligations. According to the Oslo II interim peace agreement, the Palestinian Authority is barred from exercising any authority and conducting any activity in Jerusalem. Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, Sept. 28, 1995, Isr.-Palestinian Liberation Organization, 36 I.L.M. 557, art. XVII(1a).

³⁶⁹ Hagai Hoberman, *In the Heat of the Palestinian Real Estate Battle in East Jerusalem*, HA'TSOFEH, Jan. 11, 2002, pp. 9, 10.

³⁷⁰ Hagai Hoberman, *In the Heat of the Palestinian Real Estate Battle in East Jerusalem*, HA'TSOFEH, Jan. 11, 2002, pp. 9, 10.

³⁷¹ Hagai Hoberman, *In the Heat of the Palestinian Real Estate Battle in East Jerusalem*, HA'TSOFEH, Jan. 11, 2002, pp. 9, 10.

³⁷² Khaled Abu Tuwama, *A Representative of the Jerusalem District in the Palestinian Legislative Council: "We Built 6,000 Houses Without Permits,"* JERUSALEM (weekly Hebrew newspaper), May 25, 2001, p. 22. Mr. Eid knows of what he speaks. His brother Yazid, with the assistance of criminal elements, squatted on land on Tel A Ful. The plot in question is owned by Arabs living abroad. There he built a substantial structure without a permit. The Municipality posted a demolition order on this building. Yazid Eid's illegal structure was erected right in the shadow of the uncompleted Jerusalem palace of the late King Hussein of Jordan. Interview with Shalom Goldstein, Advisor to Mayor of Jerusalem Municipality for East Jerusalem Affairs, in Jerusalem (Dec. 6, 2001). See also Nadav Shragai, *PA Vows They Won't Stop Building in Jerusalem*, HA'ARETZ (English newspaper), Jan. 17, 2002.

³⁷³ Telephone interview with Zuhair Hamdan, head of a family in Sur Baher, in Jerusalem (Dec. 6, 2001).

³⁷⁴ Telephone interview with Amnon Regular, Reporter for KOL HA'IR (weekly Hebrew newspaper), in Jerusalem (Nov. 22, 2001).

For example, Jibril Rajoub, the head of one of Arafat's security services acquired a house in Beit Hanina, the parking area of which is located on a roadbed.³⁷⁵

The above examples demonstrate something striking that goes beyond the extensive effort Arafat and his senior subordinates have made to subsidize illegal construction in Jerusalem. That is, Arafat's well-financed campaign, has not, to the best of this author's knowledge, been exposed, let alone analyzed, in even one of the numerous NGO reports that purport to explain the causes of the illegal construction. This silence can only suggest an active disinterest in revealing one of the two major causes of illegal building - the Palestinian leadership's investing tens (or hundreds) of millions of U.S. dollars to expand their demographic foothold in the City via endorsing, massively subsidizing, and prioritizing widespread illegal construction.

Despite the handful of media reports that have begun to address the Palestinian Authority's core role in the illegal building epidemic, the NGOs have ignored this phenomenon in their reports. According to an investigative article in the newspaper *Ha'aretz*, illegal Arab construction in Jerusalem, financially backed by the Palestinian Authority, has expanded to a magnitude hitherto unknown. Particularly in the northern part of the City, uninhabited buildings are being built at an alarming rate.³⁷⁶ In September 1998, Israel Television broadcast a story on the surge of illegal construction in the Old City. It reported that the Palestinian Authority had spent millions of U.S. dollars expanding thousands of existing housing units and building thousands of new units.³⁷⁷

Nearly two years ago the Ministry of Interior was cited as having counted 20,000 illegal structures in the Arab sector including Jerusalem. The trend involved multi-story structures being constructed with the encouragement of the Palestinian Authority. One Israeli minister has attempted to alert the public to the challenge posed by the Palestinian Authority's backing for illegal construction. According to Deputy Prime Minister and Minister of Housing, Natan Sharansky, Saudi Arabia is secretly financing the Palestinian Authority's campaign to build homes, for political reasons, in strategic areas in Jerusalem and other parts of Israel. Sharansky claims that, in all, "at least 40,000"³⁷⁸ living units have been built by wealthy Arab contractors paid by Saudi Arabia. He also observed that many of the structures are empty, although when the City demolishes one of them, "Arafat sends women and children to lay in the streets and cry hysterically that they have been thrown out of their homes."³⁷⁹

It remains to be seen if, and when, Nusseibeh's personal opposition to illegal construction will influence the official Palestinian stance of subsidizing and encouraging illegal building and opposing demolitions in every instance. On the one hand, this author has been reliably informed that Nusseibeh is part of a group of Arab individuals who are in contact with the Municipality as regards City Plan 6833.³⁸⁰ This group is completing the necessary steps and will likely receive permits to build houses on land in which they have an interest. Thus, as regards building his own house, Nusseibeh is complying with the planning rules. Yet, Nusseibeh continues to appear in person alongside the protesters when the Municipality demolishes illegally built structures.³⁸¹ It is difficult to reconcile his

³⁷⁵ Interview with Shalom Goldstein, Advisor to Mayor of Jerusalem Municipality for East Jerusalem Affairs, in Jerusalem (June 5, 2002).

³⁷⁶ No byline, *Expansion of Illegal Construction*, HA'ARETZ (Hebrew newspaper), June 5, 2000.

³⁷⁷ *Surge of Arab Housing Construction in Jerusalem*, Channel One Israel Television, Sept. 10, 1998.

³⁷⁸ Sharansky's press official explained that his figure includes illegal Arab building in all of Israel, not just Jerusalem. Interview with Iris Goldman, Press Advisor to Israel Knesset Minister Natan Sharansky, in Jerusalem, Jan. 11, 2002.

³⁷⁹ Press Release - 01/29/2002, *Saudi Arabia Financing Illegal Construction of Empty Arab Homes in Jerusalem to Take Over the City*, Zionist Organization of America, Jan. 29, 2002.

³⁸⁰ Confidential interview with senior Municipal official, in Jerusalem, Feb. 22, 2002.

³⁸¹ Cf. Margot Duckevitch and news agencies, *9 Buildings in Isawiya Demolished*, JERUSALEM POST, Jan. 15, 2002, p. 3; Joel Greenberg, *Israel Demolishes 9 Arab Homes in Jerusalem*, JERUSALEM POST, Jan. 15, 2002, p. A10. However, unlike his predecessor, Nusseibeh does not attempt to

contradictory behavior, except to surmise that Nusseibeh fulfills his political duty to the Palestinian Authority by appearing at the demolitions.

D. Illicit Profit: The Role of Criminal Elements in Illegal Building

Alongside the political reasons for illegal building, avarice is also a paramount factor. Simply put, building illegally is very profitable and many view the lax enforcement efforts of the city as presenting a great business opportunity.³⁸² For example, in the Arab neighborhood of Shoafat, an Arab builder exploited the lack of enforcement by erecting ten large, multi-story structures, without any permits. By acting outside of the law, he saved the taxes and fees routinely paid by persons who obtain a building permit.³⁸³

Likewise, savings are realized when construction code regulations, designed to serve and protect a structure's occupants and neighbors, are ignored. In the Shoafat case economies were achieved by erecting the ten buildings on land belonging to others, including Arabs living abroad that are unaware that their land has effectively been stolen. This builder likely calculated that in the worst case scenario the ten buildings would be demolished. However, in the meantime, the entire matter is tied up in court, and the builder collects rent, turning a profit even if the tenants, aware of the illegality, pay only one-fifth of the monthly rent for a comparable, but legal, apartment.³⁸⁴ Two other examples follow:

- A private planner submitted a complaint regarding an illegal building in Beit Hanina to the Director of the Building Inspection Department. The author explained that he was writing on behalf of others who were afraid that if they protested, violent retaliation would follow. The letter states that a particular five-story building was in clear violation of the neighborhood limits as to height and size, thereby causing environmental damage to the entire area. The author advises that if the Municipality fails to take vigorous action it will be viewed as a laughingstock.³⁸⁵
- A complaint was lodged with the Mayor's Advisor on East Jerusalem Affairs by a group of residents from Hod El Tabel, in Beit Hanina. The group had signed and paid for an amendment to the neighborhood plan, known as the 'treaty' with the Municipality. With these funds, the Neighborhood Committee's engineer was entrusted with updating the local plan to include streets, schools, kindergartens, leisure areas, and all the other public needs. The residents' letter complained that persons from outside the neighborhood, who were not signatories to the treaty, had recently commenced building illegally in Hod El Tabel. Ahmad Burkan was named therein as being one of the illegal builders. The complainants accused him of building an illegal two-story structure on a roadbed. They also stated that Burkan's construction was going on day and night, generating noise that disturbed them. Burkan ignored protests by the group, so they turned to the Municipality to request it to stop the illegal construction and to punish the offenders. The group further complained that the illegal structures were being constructed very close to their homes, often blocking out sunlight. They also claimed that this resulted in their children falling ill.³⁸⁶

provoke violence at these demonstrations. Interview with Shalom Goldstein, Advisor to Mayor of Jerusalem Municipality for East Jerusalem Affairs, in Jerusalem (Apr. 15, 2002).

³⁸² Telephone interview with Amnon Regular, Reporter for KOL HA'IR (weekly Hebrew newspaper), in Jerusalem (Nov. 22, 2001).

³⁸³ Telephone interview with Israel Ben-Ari, Deputy Manager of Licensing and Inspection Department of Jerusalem Municipality, in Jerusalem (Dec. 6, 2001).

³⁸⁴ See Amnon Regular, *Building On Luck*, KOL HA'IR (weekly Hebrew newspaper), July 13, 2001, p. 27.

³⁸⁵ Letter from Zeev Bern to Director of the Planning Inspection Department of the Jerusalem Municipality, Jan. 18, 1998.

³⁸⁶ Letter from Group of Residents in the Beit Hanina area, to Shalom Goldstein, Advisor to Mayor of Jerusalem Municipality for East Jerusalem Affairs of Jerusalem Municipality, June 24, 2001.

Criminal greed, which motivates some illegal construction, should be understood in the context of the encouragement and financing of illegal building by the Palestinian Authority and certain Arab governments, as detailed in the previous subsection.³⁸⁷ The illicit entrepreneurs frequently take over land that does not belong to them and begin building. Palestinian Authority security officials are paid bribes in return for dissuading the true owners of the land from complaining to the Municipal authorities.³⁸⁸ The Palestinian Authority security officials often promise the aggrieved landowners that they will get the illegal construction off their land, but never actually do so.³⁸⁹ Recent reports indicate that land theft, typically from absentee Christian owners living abroad, has become widespread in Jerusalem, the Bethlehem area, and in other West Bank cities.³⁹⁰ Political backing enables illegal builders to enjoy what could be described as the best of both worlds. On the one hand they are perceived in the street as active participants in the national/Islamic struggle, secure in the expectation that the Palestinian Authority will cover their legal expenses and fines if they are caught. No less important, their parochial financial interests are served because, in the current circumstances, illegal building is generally profitable building. In sum, breaking the law yields abundant benefits.³⁹¹

Thus, this major cause for illegal building in the Arab sector of Jerusalem is 'economic,' but not in the sense this word is commonly used. It is often asserted that poor Arab families with many children, have no alternative but to add additional rooms onto their living units in violation of the Planning and Building Law. Certainly such 'economic' motives do exist - often involving poor Jews as well as poor Arabs. The minor additions they attach to existing legal structures, however, must be distinguished from the wave of new construction,³⁹² often of entire structures, in pursuit of a quick profit.³⁹³ These law-breakers build multi-story, upscale apartment buildings suitable for rental or sale to the affluent. Even a cursory tour of the hundreds of high density, upscale apartment houses, some of which are photographed in Appendix 3, will give the reader a sense of the magnitude of the sums involved in illegal construction in the Arab sector of Jerusalem. These four-, six-, and eight-story apartment houses were not put up by, or for, Arab families living in poverty. Indeed, people living in these illegal structures (if and) when the City demolition crew arrives are likely pawns in a cynical game motivated by criminal greed.

Some of these criminal elements have formed links with senior officials in the Palestinian Authority's intelligence and security services who also want to get rich quickly. Using high quality forged documents of land ownership, these criminals have erected major structures in Beit Hanina and elsewhere on land owned by the old and the weak, land owned by persons living abroad, and even land belonging to the Waqf. The Waqf, usually thought of as a powerful institution enjoying the good grace of the Palestinian Authority, felt compelled to take the awkward step of complaining to the Municipality.³⁹⁴

³⁸⁷ Interview with Shalom Goldstein, Advisor to Mayor of Jerusalem Municipality for East Jerusalem Affairs, in Jerusalem (Dec. 6, 2001).

³⁸⁸ Interview with Ehud Olmert, Mayor of Jerusalem Municipality, in Jerusalem (Dec. 31, 2001).

³⁸⁹ Interview with Shalom Goldstein, Advisor to Mayor of Jerusalem Municipality for East Jerusalem Affairs, in Jerusalem (Dec. 6, 2001).

³⁹⁰ The thefts in the adjoining Bethlehem area began with the arrival of the Palestinian Authority seven years ago. They are reported to have been perpetrated by forging land title deeds and with the assistance of senior Palestinian Authority officials, including high-ranking officers of its security forces. Khaled Abu Toameh, *PA Officials Accused of Swiping Land, Property*, JERUSALEM POST, Nov. 12, 2002, p. 5. In Jerusalem similar tactics are being used. Several gangs, some linked to the Palestinian Authority, use forged title deeds to lay their hands on vast areas in fashionable Arab neighborhoods such as Beit Hanina and Shofat. According to an Arab lawyer from Jerusalem, "Many of the land robbers claim that they hold military ranks in the PA.... They grab the land which doesn't belong to them, build new homes, and market them without any fear." Khaled Abu Toameh, *Jerusalem Arabs Victimized by Real Estate Scam*, JERUSALEM POST, Nov. 17, 2002, p. 4.

³⁹¹ Interview with Shalom Goldstein, Advisor to Mayor of Jerusalem Municipality for East Jerusalem Affairs, in Jerusalem (Nov. 15, 2001).

³⁹² See Interview with Hassan Abu Assleh, Engineer in City Planning Department of Jerusalem Municipality, in Jerusalem (Dec. 31, 2001). Abu Assleh, an engineer employed by the City planning department for 30 years, also blamed intra-family pressure for some of the illegal building, which he believed needs to be stopped.

³⁹³ Bill Hutman and Itim, *East Jerusalem Homes Built Without Permits Demolished*, JERUSALEM POST, Aug. 21, 1996, p. 12.

³⁹⁴ Avi Fogel, *Major Land Theft*, JERUSALEM (weekly Hebrew newspaper), July 27, 2001, pp. 8-9.

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?³⁹⁵ 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.³⁹⁶ 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,³⁹⁷ 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,³⁹⁸ adding urgency to the preparation of local outline schemes for Jerusalem's Arab neighborhoods.³⁹⁹ 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.⁴⁰⁰ The Arab public's negative attitude toward the planning process likely has its roots, in part, in this period.

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

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

³⁹⁷ 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.

³⁹⁸ Appendix 6B.

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

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

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

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³⁹⁸ Appendix 6B.

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

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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.⁴⁰¹ 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."⁴⁰² This stopgap measure, known as *Taba* 2189,⁴⁰³ 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.⁴⁰⁴ 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.⁴⁰⁵

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.⁴⁰⁶ Contrary to the repeated claims that it is impossible for Arabs to build legally in Jerusalem, the attached map⁴⁰⁷ provides clear evidence that the opposite is true. The approved plans in more than 90 percent⁴⁰⁸ 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,⁴⁰⁹ depending, in some cases, on the resolution of unification and reparceling, and the availability of infrastructure.⁴¹⁰ This translates to a potential that exceeds the anticipated population growth.⁴¹¹ 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.

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

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

⁴⁰³ *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).

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

⁴⁰⁵ 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.

⁴⁰⁶ 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).

⁴⁰⁷ See Appendix 1.

⁴⁰⁸ 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).

⁴⁰⁹ Appendices 1 and 2.

⁴¹⁰ 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,"⁴¹² "violating international laws and conventions,"⁴¹³ and ultimately "[pursing a policy aimed at] altering the ethnic composition of ...Jerusalem."⁴¹⁴ Israel is also charged with "strangulation of Palestinian development"⁴¹⁵ and "creating a nation of homeless and dispossessed."⁴¹⁶ Similar accusations appeared in the English language Palestinian weekly *The Jerusalem Times*,⁴¹⁷ 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."⁴¹⁸ 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 183,⁴¹⁹ and the waiting period (for simple applications) is four to six weeks, not "one to three years."⁴²⁰ 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.⁴²¹ 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.⁴²² For a typical housing unit in the Arab areas of Jerusalem measuring 72-square-meters (the approximate size of an average living unit⁴²³) 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.);⁴²⁴

⁴¹³ 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).

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

⁴¹⁵ Rizq Shuqair, Jerusalem: Its Legal Status and the Possibility of a Durable Settlement, published by Al-Haq (1996).

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

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

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

⁴¹⁹ See Appendix 6B.

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

⁴²¹ See Appendix 6G.

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

⁴²³ 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).

⁴²⁴ 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.);⁴²⁵ and
- sewage connection fee of 10,285 NIS (\$2,120 U.S.).⁴²⁶

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.⁴²⁷

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.⁴²⁸ 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.⁴²⁹ 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,⁴³⁰ the Municipality’s Arabic Internet website,⁴³¹ and individual assistance from Arabic-speaking City employees.⁴³² Similarly, twenty-three of the City’s neighborhood plans were translated into Arabic, by professional translators, hired by the City.⁴³³ Additionally, with the help of the neighborhood committees,⁴³⁴ 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).

⁴²⁵ 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).

⁴²⁶ 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).

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

⁴²⁸ 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).

⁴²⁹ See Section IV. A of the text above.

⁴³⁰ The brochure appears as Appendix 6A of this Study.

⁴³¹ Jerusalem Municipality Internet Website http://www.jerusalem.muni.il/jer_main/fl_main.asp?lng=3.

⁴³² 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).

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

⁴³⁴ 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,⁴³⁵ notwithstanding the risk of being accused of collaborating with Israel.⁴³⁶

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,⁴³⁷ the Arab residents of the City have not taken full advantage of the potential that exists.⁴³⁸ 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."⁴³⁹ In 1991 a department memorandum warned, "[t]he situation is deteriorating from day to day."⁴⁴⁰ Additional internal warnings were sounded in 1993 and 1994.⁴⁴¹ 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.⁴⁴²

During the period 1996-2001, City inspectors reported nearly 4,000 violations in the Arab neighborhoods.⁴⁴³ Experts who study aerial photographs believe this number represents only 30 percent of this phenomenon.⁴⁴⁴ 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.⁴⁴⁵ Israel Ben-Ari,⁴⁴⁶ 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.⁴⁴⁷ 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.

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

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

⁴³⁷ Appendix 6G.

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

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

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

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

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

⁴⁴³ 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.

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

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

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

⁴⁴⁷ 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,⁴⁴⁸ Deputy Manager of the Licensing Department, Arab and Jewish applicants are treated equally. As mentioned above,⁴⁴⁹ 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',⁴⁵⁰ 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.⁴⁵¹

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.⁴⁵² 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.⁴⁵³ 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.⁴⁵⁴

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.⁴⁵⁵ 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.⁴⁵⁶ The waiting period for building permit applications in England is comparable in length.⁴⁵⁷

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

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

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

⁴⁵⁰ The kit is received from a clerk in the lobby on the 4th 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).

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

⁴⁵² 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)

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

⁴⁵⁴ *Ibid.*

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

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

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

opportunity to object.⁴⁵⁸ 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.⁴⁵⁹

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.⁴⁶⁰ Next came Sari Nusseibeh, who described the demolitions as "politically motivated."⁴⁶¹ 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.⁴⁶² Next, the article mentions that the Israeli Committee Against House Demolitions had filed petitions in court on behalf of seven buildings slated for demolition.⁴⁶³ 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."⁴⁶⁴

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

⁴⁵⁸ 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).

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

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

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

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

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

⁴⁶⁴ 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,⁴⁶⁵ 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).⁴⁶⁶ 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.⁴⁶⁷

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."⁴⁶⁸

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.⁴⁶⁹ 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.⁴⁷⁰ Comparisons to other countries that use

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

⁴⁶⁶ 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>>.

⁴⁶⁷ 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.

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

⁴⁶⁹ 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>>.

⁴⁷⁰ 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> ; 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*, B'tselem 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.⁴⁷¹

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.⁴⁷² 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."⁴⁷³ 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,⁴⁷⁴ or any of the other prolific NGOs, ever criticized the Belfast municipality for the notoriously segregated, explosively violent, residential patterns in that city?⁴⁷⁵ Why not investigate the housing and demographic patterns in other divided cities torn by political conflict? How about Nicosia (Cyprus)?⁴⁷⁶ Or Pristina (in the disputed Yugoslavian province of Kosovo)?⁴⁷⁷ Or Sarajevo (Bosnia and Herzegovina)?⁴⁷⁸ Or Colombo (Sri Lanka)?⁴⁷⁹ Or Beirut,

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

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

⁴⁷³ 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>.

⁴⁷⁴ 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>>.

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

⁴⁷⁶ 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.

⁴⁷⁷ 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.*

⁴⁷⁸ 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 Nescic,

during the Lebanese civil war?⁴⁸⁰ Or Berlin, during the Cold War?⁴⁸¹ Or the example, mentioned above, of houses destroyed by Palestinian Authority bulldozers in Gaza?⁴⁸² 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',⁴⁸³ 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.⁴⁸⁴ 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.⁴⁸⁵

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.⁴⁸⁶ 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 Nasic, First Counsellor in the Yugoslavian Embassy in Tel Aviv, in Tel Aviv (Nov. 15, 2002).

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

⁴⁸⁰ 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>>.

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

⁴⁸² See Section VII. B. 3 of the text below.

⁴⁸³ 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>. 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>.

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

⁴⁸⁵ 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>.

⁴⁸⁶ 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.⁴⁸⁷

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.⁴⁸⁸ Seidemann's alarmist forecasts of "tens if not hundreds" of "homes"⁴⁸⁹ 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.⁴⁹⁰

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.⁴⁹¹ 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."⁴⁹² 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 (erroneously⁴⁹³) has the total potential for only an additional 5,000 housing units.⁴⁹⁴ This is but one example of the beguiling effect of NGOs piggybacking on each other's investigations,⁴⁹⁵ 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

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

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

⁴⁸⁹ 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).

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

⁴⁹¹ 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).

⁴⁹² 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>.

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

⁴⁹⁴ 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>.

⁴⁹⁵ 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.”⁴⁹⁶ Is Ir Shalem ghostwriting for B’Tselem or vice versa? Either way, in actuality, the overall planning is more than adequate,⁴⁹⁷ 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.⁴⁹⁸ 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,⁴⁹⁹ 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,”⁵⁰⁰ and equated Israel’s legal system with the Nazi Nuremberg laws,⁵⁰¹ 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.”⁵⁰²

NGOs criticize the Municipality for the “overcrowded” conditions in the Arab neighborhoods of Jerusalem.⁵⁰³ Yet, according to two of the three measurements⁵⁰⁴ 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.⁵⁰⁵ Similarly, in persons per dunam the ultra-Orthodox density is three times that of the non-Jewish sector.⁵⁰⁶ 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

⁴⁹⁶ 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>>.

⁴⁹⁷ See Sections III and V of the text above.

⁴⁹⁸ 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>.

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

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

⁵⁰¹ 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>.

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

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

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

⁵⁰⁵ Appendix 6C. The dunam is the traditional Middle Eastern unit used for measuring land area. Approximately four dunams equal one acre.

⁵⁰⁶ Appendix 6D.

does not seek redress within it.”⁵⁰⁷ 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.⁵⁰⁸ 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.⁵⁰⁹ 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.⁵¹⁰ When last checked in August 2002,⁵¹¹ 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.⁵¹² Thereafter the Registrar appointed a certified public accountant who is currently conducting an in-depth investigation of Ir Shalem.⁵¹³

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.⁵¹⁴ 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.⁵¹⁵

⁵⁰⁷ MERON BENVENISTI, *CONFLICTS AND CONTRADICTIONS* 111 (1986).

⁵⁰⁸ 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).

⁵⁰⁹ Note to the File from Peter Zangl, Chair of the Ad-hoc Committee for People to People/Permanent Status Issues Projects in Support of the Middle East Peace Process, et. al., REFLEX/F2/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).

⁵¹⁰ 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.).

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

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

⁵¹³ 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.

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

⁵¹⁵ 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,"⁵¹⁶ 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,⁵¹⁷ 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?⁵¹⁸

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."⁵¹⁹ 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.

⁵¹⁶ 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>.

⁵¹⁷ 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).

⁵¹⁸ 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).

⁵¹⁹ 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>. (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."⁵²⁰ 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.⁵²¹ As a consequence, the residents do not need even "15 minutes to gather their possessions,"⁵²² 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.⁵²³ 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.⁵²⁴ If people inhabit the structure for more than 30 days, the City's general policy is not to demolish it.⁵²⁵ 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.⁵²⁶ 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.⁵²⁷ 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.⁵²⁸ Once again Amnesty International sensationalizes this topic by failing to place its allegations in context.

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

⁵²⁰ 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>. 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.

⁵²¹ 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.

⁵²² 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/CC62E1E028FA1D1C8025690006931FA?Open&Highlight=2,coons>>.

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

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

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

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

⁵²⁷ 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.

⁵²⁸ 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.⁵²⁹

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.⁵³⁰ Likewise various countries around the world, including democracies, frequently use demolition for a variety of reasons including eminent domain.⁵³¹

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*"⁵³² (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.⁵³³ 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,⁵³⁴ it is peculiar indeed for Amnesty International to imply that their ambiguous "adequate standard of living" clause

⁵²⁹ 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.>>.

⁵³⁰ See Appendix 3, images 59, 60, 63, 64, and 65.

⁵³¹ See Section VII. B 1 and 2 of the text below.

⁵³² 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.>>.

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

⁵³⁴ 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?⁵³⁵ 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."⁵³⁶ 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.⁵³⁷

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.⁵³⁸ Thus there is considerable doubt whether the much-referenced UN Universal Declaration of Human Rights, for example, applies in time of war/occupation.⁵³⁹ 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'⁵⁴⁰ from 'hard law.' Soft law consists of agreements on principles, even solemn declarations, but constituting mere recommendations to states.⁵⁴¹ 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'⁵⁴² - the legally binding bilateral and multi-lateral agreements entered into and ratified by sovereign entities.⁵⁴³ Various NGOs

⁵³⁵ 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.

⁵³⁶ 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).

⁵³⁷ 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.

⁵³⁸ 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 of Assembly and Expression?*, 12 BOSTON COLLEGE INTERNATIONAL AND COMPARATIVE LAW REVIEW 1 (1989).

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

⁵⁴⁰ 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).

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

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

⁵⁴³ 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."⁵⁴⁴ The first half of this criticism relies on the Fourth Geneva Convention, which by its own terminology ("the territory of a High Contracting Party")⁵⁴⁵ 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 1967.⁵⁴⁶ Jerusalem is regarded by Israel as its capital, rather than as occupied territory.⁵⁴⁷ 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.⁵⁴⁸ 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.⁵⁴⁹

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).

⁵⁴⁴ 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>.

⁵⁴⁵ See the continuation of this subsection.

⁵⁴⁶ 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 HAPRAKLT 5 (1971) (Hebrew).

⁵⁴⁷ 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).

⁵⁴⁸ 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).

⁵⁴⁹ 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.⁵⁵⁰ Indeed, on various occasions since 1967, Israeli governments have voluntarily undertaken to comply with the "humanitarian" provisions of the Fourth Geneva Convention.⁵⁵¹ 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,⁵⁵² 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.⁵⁵³

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."⁵⁵⁴ 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.⁵⁵⁵

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.⁵⁵⁶ 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

⁵⁵⁰ 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.

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

⁵⁵² 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).

⁵⁵³ 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).

⁵⁵⁴ 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).

⁵⁵⁵ *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).

⁵⁵⁶ 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.”⁵⁵⁷ 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).⁵⁵⁸

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].”⁵⁵⁹ 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.”⁵⁶⁰ Goering slammed planning enforcement as “cold-hearted and abhorrent.”⁵⁶¹ 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.⁵⁶² Coon previously worked for two years as an employee of the Palestinian rights organization Al Haq.⁵⁶³ 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.⁵⁶⁴ Despite the political dimension of the topic in question and

⁵⁵⁷ 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).

⁵⁵⁸ 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.

⁵⁵⁹ 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>>

⁵⁶⁰ 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.

⁵⁶¹ 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.

⁵⁶² 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>>.

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

⁵⁶⁴ 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."⁵⁶⁵ 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.⁵⁶⁶ In this manner the City attempts to bring the individual, who has not complied with the law, inside the system.⁵⁶⁷ 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>. 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>.

⁵⁶⁵ 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.*

⁵⁶⁶ 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).

⁵⁶⁷ 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).⁵⁶⁸ 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.⁵⁶⁹ 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.⁵⁷⁰

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*."⁵⁷¹ 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.⁵⁷²

6. The Role of the Courts

Many attorneys representing illegal builders in Arab neighborhoods file frivolous⁵⁷³ delaying actions in court.⁵⁷⁴ 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.⁵⁷⁵ 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.⁵⁷⁶ The tactics have included:

- questioning the validity of the signatures on the administrative demolition order;⁵⁷⁷

⁵⁶⁸ 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).

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

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

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

⁵⁷² 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).

⁵⁷³ 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.

⁵⁷⁴ 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.*

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

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

⁵⁷⁷ 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;⁵⁷⁸
- falsely claiming that the structure has been completed and occupied for over 30 days;⁵⁷⁹
- 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;⁵⁸⁰
- falsely claiming that the property in question is not within the Municipality's jurisdiction;⁵⁸¹ and
- appealing to a higher court, without offering any new arguments, except that the law allows an appeal.⁵⁸²

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.⁵⁸³

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.⁵⁸⁴ 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."⁵⁸⁵

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...."⁵⁸⁶

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

⁵⁷⁸ See Pinchasi v. State 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.

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

⁵⁸⁰ 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.

⁵⁸¹ 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.

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

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

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

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

⁵⁸⁶ 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*.

⁵⁸⁷ 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.⁵⁸⁸ 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.⁵⁸⁹

Yossi Cohen, the Mayor's Advisor for Neighborhoods,⁵⁹⁰ 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.⁵⁹¹ 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.⁵⁹² The City Engineer agreed.⁵⁹³ 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.⁵⁹⁴ The treaty stated, *inter alia*, that until permits could be issued under the forthcoming plan, the Municipality would refrain from demolishing illegal structures.⁵⁹⁵ Concurrently, the signatories from Hod El Tabel⁵⁹⁶ 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.⁵⁹⁷ In addition, it provided for the construction of two schools and eight kindergartens.⁵⁹⁸

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.⁵⁹⁹ Some

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

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

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

⁵⁹¹ 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).

⁵⁹² City Plan Number 6671.

⁵⁹³ 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).

⁵⁹⁴ Appendix 8C.

⁵⁹⁵ 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).

⁵⁹⁶ 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).

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

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

⁵⁹⁹ 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.⁶⁰⁰ To further complicate matters, the Palestinian Authority subsidized illegal building in the neighborhood in order to disrupt the implementation of the city plan.⁶⁰¹

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.⁶⁰² 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.⁶⁰³ 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.⁶⁰⁴

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.⁶⁰⁵ 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.⁶⁰⁶ 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.⁶⁰⁷ 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.⁶⁰⁸ 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.⁶⁰⁹ 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."⁶¹⁰ He added, "I would wish to have an input in the overall planning and development of the City." Nusseibeh's constructive approach reflects

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

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

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

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

⁶⁰⁴ See Appendix 3, images 27 and 28.

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

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

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

⁶⁰⁸ 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).

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

⁶¹⁰ 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,⁶¹¹ which was demolished on August 14, 2000;⁶¹²
- concrete fences in Wadi Kadum belonging to Rabach Kosami, which were demolished on March 12, 2001;⁶¹³
- a concrete slab in Wadi Kadum belonging to Abdallah Munir Slaima, which was demolished on March 8, 2000,⁶¹⁴
- Abdallah Munir Slaima rebuilt the slab demolished on March 8, 2000, forcing the City to demolish it a second time on October 23, 2001;⁶¹⁵
- an illegal addition to a two story structure in Wadi Kadum, owned by Muhammed al-Tawil, that was demolished on August 14, 2000;⁶¹⁶
- a one-story structure in Wadi Kadum owned by Muhammad Id Slaima, which was demolished on October 23, 2001;⁶¹⁷
- concrete fences in Wadi Kadum, of unknown ownership, that were demolished on October 11, 1999;⁶¹⁸

⁶¹¹ Wadi Kadum is part of the Ras Al Amud neighborhood.

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

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

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

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

⁶¹⁶ 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.

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

⁶¹⁸ 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, 2001.⁶¹⁹

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.⁶²⁰

Gladwell's tipping point theory is built on the prior scholarship of others.⁶²¹ 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.⁶²² 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.⁶²³ 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."⁶²⁴ 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.⁶²⁵ Zimbardo realized that disorder invites even

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

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

⁶²¹ 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.

⁶²² 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).

⁶²³ 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).

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

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

⁶²⁶ 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.⁶²⁶

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,⁶²⁷ 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.⁶²⁸ Chief Bratton reasoned that the main reason for the historic and rapid decline in crime and disorder in the subways⁶²⁹ and streets⁶³⁰ 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,⁶³¹ such as fare-beating on the subways,⁶³² panhandling,⁶³³ graffiti,⁶³⁴ squeegeeing,⁶³⁵ breaking windows, and prostitution. The idea was to make the streets less inviting to criminals. The means employed was called "quality of life enforcement."⁶³⁶

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

⁶²⁶ 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.

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

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

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

⁶³⁰ 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).

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

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

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

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

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

⁶³⁶ 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).

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

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

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

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

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

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

⁶³⁶ 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).

are carried out in order to safeguard green, red, and brown areas, whose function is either to allow for future development or for the construction of public services. As Senior Deputy Mayor Uri Lupolianski pointed out, "we must, for professional planning reasons alone, prevent the City from becoming a jungle."⁶³⁷ It is for these essential reasons that the Municipality is compelled to issue demolition orders. It must also be noted that, due to these very same reasons, numerous other countries have conducted demolitions. It seems, however, that only Jerusalem has become the focus of media and NGO attention. Ironically, by turning demolitions in the Arab neighborhoods of Jerusalem into a *cause célèbre* and hindering the implementation of coherent urban plans, the critics are actually prejudicing the affordability of infrastructure improvements in the future, and even hastening the erosion of the quality of life for the Arab residents.

A. The Effects of Illegal Building Upon Brown, Red, and Green Areas

Much illegal building in the Arab neighborhoods takes place on land not owned by the builder,⁶³⁸ on land classified as 'brown,'⁶³⁹ or 'red,'⁶⁴⁰ on the planning maps, or on land that is designated as agricultural or open land, known as 'green areas.' The economic consequences of illegal construction are, firstly, savings to the individual who breaks the law. The downside that follows is increased costs to the Municipality when it provides the infrastructure and inconvenience to the neighbors and general public that have to live with the consequences. For example, sometimes illegal construction vitiates the possibility of later providing proper infrastructure, as is the case with structures that violate the setback rules regarding their distance from the street. The likely result is that a street may never again be wide enough to accommodate two-way traffic or to have sidewalks that safeguard pedestrians. Another downside of illegal construction is that it breaks up substantial parcels of land that might some day be used to build a school or other public facility that requires a parcel of substantial size. One more variation on illegal building involves putting up metal shacks and other 'temporary' structures, often in clusters, usually on green land or government owned land.⁶⁴¹ Such 'houses' are often later renovated in stages, as they are improved and expanded both horizontally and vertically.⁶⁴²

B. The Hindrance to Capital Development

Unplanned building hinders the chances of achieving sustainable development. The Peruvian economist Hernando De Soto's acclaimed book *The Other Path: The Invisible Revolution in the Third World* decries the fact that illegal squatting prevents the residents of the squatter settlements in Peru's cities, and elsewhere, from leveraging their houses and land. That is, because they do not own their illegally built structures, they cannot borrow money against them to produce more wealth. This disables the engine of capital development that has made Western countries affluent.⁶⁴³ Likewise, by sinking their limited resources into illegal structures, many of which are built on stolen land, increasing numbers of Arab residents forfeit the chance to develop additional assets because it is generally impossible to borrow money against the uncertain worth of illegal units.

⁶³⁷ Interview with Uri Lupolianski, Senior Deputy Mayor and Acting Mayor of Jerusalem Municipality, in Jerusalem (Jan. 31, 2002).

⁶³⁸ It may be owned by other private individuals (such as refugees living abroad), by the State, by religious entities or by charities. Interview with Uri Bar Shishat, Director of the Policy Planning Department of City Engineer of the Jerusalem Municipality, in Jerusalem (Nov. 25, 2001).

⁶³⁹ 'Brown areas' are those designated for public services of all kinds. This includes social services, community centers, schools, public parks, religious buildings, etc. Interview with Uri Bar Shishat, Director of the Policy Planning Department of City Engineer of the Jerusalem Municipality, in Jerusalem (Nov. 25, 2001).

⁶⁴⁰ Streets, roadbeds, highways, and parking places are designated as 'red areas' on planners' maps.

⁶⁴¹ See e.g. Appendix 3, Images 5, 22, and 34.

⁶⁴² Planning Policy, the Jerusalem Municipality Department for Planning Policy, Inter-Ministerial Committee on Illegal Building, Background, Conclusions and Recommendations, pp. 2-4 (2000).

⁶⁴³ See generally HERNANDO DE SOTO, *THE OTHER PATH: THE INVISIBLE REVOLUTION IN THE THIRD WORLD* (2002).

C. Retarded Regional Development

What municipality would tolerate land theft, particularly if it retards regional development? What city would sanction individuals building illegally on land designated for roadbeds, schoolyards, a ring road, or a playground?⁶⁴⁴ What should Jerusalem do if illegal construction crops up on the roadbed of the forthcoming light rail mass transit system?⁶⁴⁵ In Jerusalem what responsible administration would permit violation of the long-standing principle maintaining a green belt around the walls of the Old City?⁶⁴⁶ What planning authority would look the other way when illegal structures are put up on an archaeological site of significance to three of the world's major religions? These examples illustrate just part of what is at stake in Jerusalem.

VIII. The Global Epidemic of Illegal Building and Demolitions

A. The Global Threat Posed by Illegal Building

Urban areas in developing countries are collapsing as a consequence of population explosion. This results in anarchy, as public services are unable to maintain pace with the demands put on them.⁶⁴⁷ The result is that the cities of the developing world become wastelands, which Claude Levi-Strauss described:

Filth, promiscuity, disorder, physical contact; rooms, shacks, excrement, mud; body moistures, animal droppings, urine, purulence, secretions, suppuration - everything that urban life is organized to defend us against, everything that we loathe, everything we protect ourselves against at great cost - all these by-products of cohabitation never here compose a limit of its spread.⁶⁴⁸

Many cities in developing countries are experiencing rapid and uncontrolled growth with millions of their inhabitants living in slums.⁶⁴⁹ It is now common for 30 to 60 percent of an entire city's population to live in houses and neighborhoods that have been developed illegally.⁶⁵⁰ It is very rare for infrastructure and services essential for health and well-being - piped water, sewers, storm drainage, all-weather roads, public transit, electricity, health care - to be furnished by the government to those who build illegally.⁶⁵¹ Illegal settlements are tolerated when the authorities lack the political and organizational will to dismantle them. Others are simply bulldozed.⁶⁵² Housing in squatter settlements is illegal in two senses. First, land is occupied illegally and the site is developed without regard for zoning and subdivision regulations (i.e., the permitted use of the land, permitted density, water supply, drainage, and access roads).⁶⁵³ Second, many individuals and businesses make money out of the development of illegal settlements or the needs of their inhabitants.⁶⁵⁴ For

⁶⁴⁴ According to one City official, demolition will not, by itself, solve the illegal building epidemic. This major criminal enterprise enables its participants to get rich quickly via illicit conduct including forged documents, intimidation, land theft, construction code violations and the like. Demolition, however, can protect essential urban assets like the ring roads and schools. Interview with Shalom Goldstein, Advisor to Mayor of Jerusalem Municipality for East Jerusalem Affairs, in Jerusalem (Mar. 3, 2002).

⁶⁴⁵ Anat Gezrge, *From Jerusalem to Paris in Three Stages*, HA'ARETZ (Hebrew newspaper), Sept. 23, 2001, p. 13.

⁶⁴⁶ Yadin Roman, *Jerusalem's Wall*, available at Internet Website (visited May 27, 2002) <www.eret.com>

⁶⁴⁷ RICHARD G. HEERDEGEN, *LAND USE AND PLANNING: READINGS IN REGIONAL DEVELOPMENT* 68 (1967).

⁶⁴⁸ Claude Levi-Strauss, *Crowds*, 15 *NEW LEFT REVIEW* 3-6 (1962)

⁶⁴⁹ JORGE E. HARDOY & DAVID SATTERHWAITE, *SQUATTER CITIZEN* 7 (1989).

⁶⁵⁰ JORGE E. HARDOY & DAVID SATTERHWAITE, *SQUATTER CITIZEN* 12 (1989).

⁶⁵¹ JORGE E. HARDOY & DAVID SATTERHWAITE, *SQUATTER CITIZEN* 15 (1989).

⁶⁵² JORGE E. HARDOY & DAVID SATTERHWAITE, *SQUATTER CITIZEN* 15 (1989).

⁶⁵³ JORGE E. HARDOY & DAVID SATTERHWAITE, *SQUATTER CITIZEN* 26 (1989).

⁶⁵⁴ JORGE E. HARDOY & DAVID SATTERHWAITE, *SQUATTER CITIZEN* 98 (1989).

C. Retarded Regional Development

What municipality would tolerate land theft, particularly if it retards regional development? What city would sanction individuals building illegally on land designated for roadbeds, schoolyards, a ring road, or a playground?⁶⁴⁴ What should Jerusalem do if illegal construction crops up on the roadbed of the forthcoming light rail mass transit system?⁶⁴⁵ In Jerusalem what responsible administration would permit violation of the long-standing principle maintaining a green belt around the walls of the Old City?⁶⁴⁶ What planning authority would look the other way when illegal structures are put up on an archaeological site of significance to three of the world's major religions? These examples illustrate just part of what is at stake in Jerusalem.

VIII. The Global Epidemic of Illegal Building and Demolitions

A. The Global Threat Posed by Illegal Building

Urban areas in developing countries are collapsing as a consequence of population explosion. This results in anarchy, as public services are unable to maintain pace with the demands put on them.⁶⁴⁷ The result is that the cities of the developing world become wastelands, which Claude Levi-Strauss described:

Filth, promiscuity, disorder, physical contact; rooms, shacks, excrement, mud; body moistures, animal droppings, urine, purulence, secretions, suppuration - everything that urban life is organized to defend us against, everything that we loathe, everything we protect ourselves against at great cost - all these by-products of cohabitation never here compose a limit of its spread.⁶⁴⁸

Many cities in developing countries are experiencing rapid and uncontrolled growth with millions of their inhabitants living in slums.⁶⁴⁹ It is now common for 30 to 60 percent of an entire city's population to live in houses and neighborhoods that have been developed illegally.⁶⁵⁰ It is very rare for infrastructure and services essential for health and well-being - piped water, sewers, storm drainage, all-weather roads, public transit, electricity, health care - to be furnished by the government to those who build illegally.⁶⁵¹ Illegal settlements are tolerated when the authorities lack the political and organizational will to dismantle them. Others are simply bulldozed.⁶⁵² Housing in squatter settlements is illegal in two senses. First, land is occupied illegally and the site is developed without regard for zoning and subdivision regulations (i.e., the permitted use of the land, permitted density, water supply, drainage, and access roads).⁶⁵³ Second, many individuals and businesses make money out of the development of illegal settlements or the needs of their inhabitants.⁶⁵⁴ For

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⁶⁴⁶ Yadin Roman, *Jerusalem's Wall*, available at Internet Website (visited May 27, 2002) <www.eret.com>

⁶⁴⁷ RICHARD G. HEERDEGEN, *LAND USE AND PLANNING: READINGS IN REGIONAL DEVELOPMENT* 68 (1967).

⁶⁴⁸ Claude Levi-Strauss, *Crowds*, 15 *NEW LEFT REVIEW* 3-6 (1962)

⁶⁴⁹ JORGE E. HARDOY & DAVID SATTERHWAITE, *SQUATTER CITIZEN* 7 (1989).

⁶⁵⁰ JORGE E. HARDOY & DAVID SATTERHWAITE, *SQUATTER CITIZEN* 12 (1989).

⁶⁵¹ JORGE E. HARDOY & DAVID SATTERHWAITE, *SQUATTER CITIZEN* 15 (1989).

⁶⁵² JORGE E. HARDOY & DAVID SATTERHWAITE, *SQUATTER CITIZEN* 15 (1989).

⁶⁵³ JORGE E. HARDOY & DAVID SATTERHWAITE, *SQUATTER CITIZEN* 26 (1989).

⁶⁵⁴ JORGE E. HARDOY & DAVID SATTERHWAITE, *SQUATTER CITIZEN* 98 (1989).

example, landowners, land developers, and businesses make money from buying and selling land illegally.⁶⁵⁵ In some illegal settlements, extensive and highly profitable landlordism has developed.⁶⁵⁶

A tolerant but passive reaction by the government has serious disadvantages. These include:

- absence of public services normally associated with housing like water and sanitation;
- the inhabitants are not usually eligible for loans to buy, build or improve their illegal structure or to expand their business situated in it, since the illegal structure is not accepted as collateral;⁶⁵⁷ and
- illegal structures are scattered all over and this makes it very expensive to extend water, sewers, roads and public transit.⁶⁵⁸

B. Examples of Demolitions World-wide

It is often helpful to put local events in a broader, global perspective. Despite the impression one gets from the media and the NGOs, demolition of illegal structures was not invented or popularized by the Jerusalem Municipality. In fact, it is in wide use, often on a much larger scale, in dozens of countries around the world.

1. Examples from Western and Developing Countries

The use of demolitions by governments struggling to cope with illegal construction is by no means limited to the Arab areas of Jerusalem. If one expands the horizon to consider the worldwide use of demolition (to cope with illegal building), many striking similarities and one stark difference are revealed. In recent decades, municipalities and governments in all parts of the world have struggled with illegal building not unlike that in Jerusalem. Many use demolition and some, out of frustration with the endemic nature of the problem, promulgate ordinances to 'regularize' existing unlawful development. The difference is the nearly complete lack of publicity when other governments demolish *vis-a-vis* the incessant denunciation of rather infrequent demolitions by the Jerusalem Municipality.

It is instructive to consider the following instances of illegal building across many countries:

- The city had to pay a company thousands of U.S. dollars to tear down and haul away an illegally built second-story addition to a residence. The decision to demolish the illegal addition came at the end of a legal battle lasting more than two years, during which the homeowner ignored three court orders to stop building. In one of the court hearings the judge ordered the homeowner to take the addition down within 30 days or serve 60 days in jail. He elected to go to jail.⁶⁵⁹ [United States]
- The army used troops and bulldozers to demolish what were described as illegally built houses and shops in a shantytown on the southern outskirts of

⁶⁵⁵ JORGE E. HARDOY & DAVID SATTERHWAITE, *SQUATTER CITIZEN* 98 (1989).

⁶⁵⁶ JORGE E. HARDOY & DAVID SATTERHWAITE, *SQUATTER CITIZEN* 86 (1989).

⁶⁵⁷ HERNANDO DE SOTO, *THE OTHER PATH: THE INVISIBLE REVOLUTION IN THE THIRD WORLD* (2002).

⁶⁵⁸ JORGE E. HARDOY & DAVID SATTERHWAITE, *SQUATTER CITIZEN* 100 (1989).

⁶⁵⁹ Will Rogers, *Illegal Home Addition Will Be Torn Down*, ST. PETERSBURG TIMES, Nov. 22, 1991, p. 1.

the capital city. Soldiers fired their rifles into the air to keep excited residents away from the demolition work. The demolished buildings belonged to Muslim war refugees, who were accused by an official of putting up their structures on land belonging to the government and private citizens. Officials indicated that 35 buildings were demolished in one day, but some indications indicated that the actual number could be much higher. An official claimed that he had warned those living in the shantytown that demolition was imminent. One woman screamed, "My house has gone."⁶⁶⁰ [Lebanon]

- Dozens of people fought wrecking crews trying to demolish illegal buildings in a poor suburb of the capital city, setting fire to several cars, a witness reported.⁶⁶¹ [Iran]
- The government's planning department announced a policy to clear all illegal squatters from hillsides and rooftops, claiming that they had given as much notice as possible of their plans. Demonstrators blocked rush-hour traffic for an hour in protest of the Government's decision to demolish their illegal homes. A woman protester said, "The Government has done nothing to help us. Where will we live when they demolish our home." Twenty-two protesters, men and women, were dragged, kicking and screaming to police vans. As the vans drove away the protestors could be heard banging on the doors, bellowing, "the police beat us, the police beat us." Families living in the flats claim that they have no place to go. One also claimed that he was a *bona fide* purchaser of his residence and that he regularly paid his property tax and utilities bills.⁶⁶² [China]
- City officials gave additional time to two department stores to demolish floors they had added illegally on top of their buildings. The stores were originally given permits to build four floors but subsequently added seven more floors despite official warnings. The Municipality brought lawsuits against them, but it took about a decade before the Supreme Court delivered its verdicts against the illegal additions. The stores were subsequently able to exploit illegal loopholes to avoid complying with the Supreme Court's decision for an additional five and eight years respectively.⁶⁶³ [Thailand]
- The local government's policy to demolish an additional 285 illegally built homes was criticized as "discriminative" because buildings belonging to people with powerful connections were spared. Already 123 illegal homes have been torn down.⁶⁶⁴ [Indonesia]
- Using bulldozers and other heavy equipment, the urban development authority demolished a basement-plus-three floor commercial complex. It was the largest unauthorized structure pulled down. The owner of the complex produced forged documents of title to support his fraudulent claim to the underlying property. The true owner of this very valuable real estate was the Urban Development Authority.⁶⁶⁵ [India]

⁶⁶⁰ William E. Farrell, *Lebanese Army Bulldozes 'Illegal' Homes*, NY TIMES, Oct. 9, 1982, p. 6.

⁶⁶¹ No byline, *Iran Riot*, THE INDEPENDENT (London), Sept. 22, 1992, p. 10.

⁶⁶² Patricia Young, Joseph Lo & Mariana Wan, *Peak-hour Delayed by Protesting Squatters*, SOUTH CHINA MORNING POST, Dec. 15, 1994, p. 3.

⁶⁶³ Poona Antaseeda, *Department Store Closures: Illegal Buildings Remain Open*, BANGKOK POST, July 3, 1999.

⁶⁶⁴ No byline, *Bias Cited in Destruction of Villas*, JAKARTA POST, Apr. 22, 1998.

⁶⁶⁵ No byline, *India: BDA Demolishes Huge Illegal Building*, THE HINDU, Oct. 21, 2001.

- The government promulgated an ordinance for legitimizing illegal constructions where a fee is paid. Notices previously issued to pull down illegal buildings were suspended. The new ordinance is not applicable, however, where the land belongs to the government, local authority, or a statutory body or if the government allocates the land for a specific purpose. It is also not applicable to land planned for building roads, watercourses, water bodies, natural drainage or hazardous industrial development. An official announced that new rules of responsibility and accountability for illegal construction would be drafted and that every effort would be made to ensure that there would be no illegal construction in the future. The proposed rules would insure that the builder, promoter, and the architect would not be given water, drainage, and electricity connections until they conform to legal norms and procure the building use certificate. The official further stated that if, despite precautions, new illegal constructions crop up they will be destroyed.⁶⁶⁶ [India]
- Building inspectors escorted by police are touring the area in a crackdown on illegal building. They have been told to enforce court orders halting work on homes that could now face demolition in which many people have invested their life savings. Several developers have ignored court orders and kept on building to present the judges with a *fait accompli*.⁶⁶⁷ [Spain]
- The Construction Police started to destroy illegal construction in the capital city. In recent years a "kiosk epidemic" has spread across the capital, resulting in cutting down trees and destroying beautiful public gardens.⁶⁶⁸ [Albania]
- The United Nations mission in Kosovo took on the illegal construction barons, seizing a building for demolition after a local official who tried to tighten building regulations was killed. One baron had continued building a five-story block on public land, despite having received a demolition order. At least 2,500 unauthorized buildings have shot up in Pristina in the 15 months since the end of the bombing in Yugoslavia. According to a UN official, local organized crime rings are behind the building boom. [UN forces in the autonomous province of Kosovo, Yugoslavia]
- "The building code, passed by parliament, permits a maximum of nine floors per building. Like all other zoning regulations, this was virtually ignored by landowners. Additional floors were built atop converted houses whose ground floors were used as retail and shopping outlets, and courtyards were filled in by new constructions. Since high-rise apartments were erected directly at the street limit, the possibilities of street enlargements [widening] became virtually nil. More stifling, even sidewalks were eaten up and the city became one of the few treeless modern cities. Its smothered pedestrians are denied access to shaded and secure sidewalks, let alone the lush beauty of foliage. Instead of pacifying the forces ravaging the beleaguered habitat, many of the gifted architects and builders, instead of arousing the public, became willful participants, often accessories to the very processes that were despoiling the city. ... Hence, the ruthless plundering of the country's scenic natural habitat and the dehumanization of its living space became starkly visible. With the

⁶⁶⁶ No byline, *Final Nod to Regularize Illegal Buildings*, Nov. 23, available at Ahmedabad Internet Website (visited Nov. 13, 2001) <www.ahmedabad.com/news/2k/nov/23building.htm>.

⁶⁶⁷ Tim Brown, *Britons Face Big Losses in Costa Villas Dispute*, DAILY TELEGRAPH, Sept. 27, 1989, p. 2.

⁶⁶⁸ No byline, *Destruction of Illegal Construction Behind the Palace of Culture*, ALBANIAN TELEGRAPHIC AGENCY, Jan 7, 2000,

absence of governmental authority, the despoliation of the environment became more rampant. What had not been ravaged by war was eaten up by greedy developers and impetuous consumers. Hardly anything was spared. In such a free-for-all context, any concern for the aesthetic, human or cultural dimensions of living space is bound to be dismissed as superfluous or guileless.”⁶⁶⁹ [Lebanon]

- The President ordered the demolition of all illegal structures in the Federal Capital Territory - to wit those erected on sewage lines, green area, and security zones. The illegal structures were blamed for “severely distort[ing] the master plan” and constituting “serious safety and security hazards.”⁶⁷⁰ As a consequence of the demolition, thousands were made homeless.⁶⁷¹ [Nigeria]
- The builder of a high rise known as the Glass Towers in the capital city is brought before the Supreme Court. They are charged with numerous violations, in particular that the structures were extended onto the roadbed, preventing its future widening and misappropriated a road running on one side of the structures. The Supreme Court ordered the builder to tear down the encroachment at his expense, and to bring the remainder of the structure in compliance with the city plan. A investigative journalist described the intimidation of a courageous public official who opposed rampant illegal building, the planning officials who are a “nest of corruption and inefficiency,” the “lawyer Mafia” that has arisen to represent the “despoilers,” and the abuse of the legal system to delay or frustrate the demolition orders.⁶⁷² [Pakistan]
- The City Council announced that a court decision to demolish an illegal addition to the back of someone’s garage should serve as a warning of the need to get proper building permits.⁶⁷³ [Australia]
- An Administrative Report was issued to the city’s Committee on Planning and Environment which contained a recommendation that a building at a certain location is “a nuisance and dangerous” and called for it to be demolished within 14 days in accordance with the city Charter.⁶⁷⁴ [Canada]
- The Supreme Court ruled that the municipal authorities have the right to demolish the huts of slum-dwellers that are located on public property. It was estimated that up to 50 million people could be affected nationwide.⁶⁷⁵ [India]
- The government directed law enforcement agencies to demolish the squatter colonies set up by immigrants from a neighboring country. The objective was

⁶⁶⁹ SAWIR KHALAF, *BEIRUT RECLAIMED* 65, 67, 113 -14, 116 (1993).

⁶⁷⁰ Rotimi Ajayi, *Obasanjo Orders Demolition of All Illegal Structures*, VANGUARD (Lagos, Nigeria), July 16, 2001.

⁶⁷¹ No byline, *Nigeria Protests Against Demolition*, THE NEWS (Lagos, Nigeria), Oct. 19, 2000.

⁶⁷² Ardesheer Cowasjee, *Glass Lions*, THE DAWN (Karachi, Pakistan), May 9, 1999, available at Dawn Internet Website (visited Dec. 2, 2001) <<http://www.dawn.com/weekly/cowas/990509.htm>>.

⁶⁷³ MEDIA RELEASE, Wollongong City Council, *Council Acts on Illegal Building Work*, Aug. 15, 2001, available at Internet Website (visited Nov. 24, 2001) <http://www.wollongong.nsw.gov.au/news/media/20010815_building.html>.

⁶⁷⁴ Carlene Robbins, *Administrative Report, from Vancouver City Building Inspector, to Standing Committee on Planning and Environment*, Oct. 18, 1999, available at Internet Website (visited Dec. 7, 2001) <<http://www.city.vancouver.bc.ca/ctyclerk/ccclerk/991216/pe1.html>>. In another Canadian jurisdiction City officials recommended that the City Council order an owner to demolish her house after repeated problems with squatters, drugs and prostitution. If approved, the owner would be required to demolish the house within 14 days or the city would do it and bill the owner. News, *City Hall: Officials Want Owner to Demolish House*, VANCOUVER SUN, Dec. 16, 1999, p. B1.

⁶⁷⁵ Jeremy Seabrook, *Third World Review: No Room for the Homeless/India’s Bombay Slums*, GUARDIAN, Dec. 14, 1985, p. 5.

to "eradicate the squatter colonies" comprising the houses of 1,201 families.⁶⁷⁶ [Malaysia]

- Nearly all of the 8,000 residents of a town were forcibly relocated, and all but 50 of their 1,500 homes demolished, by the Government's effort to attract tourists and open new sites to archaeologists.⁶⁷⁷ [Egypt]
- The National Housing Authority announced that it would "do its part by evicting about 16,000 of an estimated 432,450 squatter families in the capital city. The shacks had to go because they were an eyesore and a hazard."⁶⁷⁸ [Philippines]

It may surprise the reader that not one of these twenty examples took place in Jerusalem. They occurred in countries with widely varied political systems that are situated on every continent on earth, with the exception of Antarctica.⁶⁷⁹ And as for the stark difference mentioned just before the twenty bullets: to the best of this author's knowledge not a single human rights group, international body, or foreign government has criticized demolitions in any of these locales. Of particular interest are examples 2 and 12, both of which took place in Lebanon. The example of Lebanon is particularly noteworthy, given the 1997 speech by that country's Prime Minister calling for a united effort to prevent the 'Judaization' of Jerusalem.⁶⁸⁰ Moreover, in item number 11, the demolition was actually carried out by UN peacekeeping forces in Pristina, the capital of the Kosovo autonomous area of Yugoslavia. Note that the United Nations has been the forum for ferocious attacks on Israeli policies to combat illegal construction in Jerusalem.⁶⁸¹

2. U.S. Laws on Demolitions

Governmental demolition of buildings is common in other countries such as the United States. For example, in slum clearance,⁶⁸² growth management,⁶⁸³ zoning,⁶⁸⁴ urban renewal, or in cases of housing code enforcement,⁶⁸⁵ public agencies may even demolish privately owned buildings without paying compensation to the owners or, in the alternative, order the owner to demolish his/her structure.⁶⁸⁶ The courts have upheld the Constitutionality of the statutes permitting building demolition.⁶⁸⁷ These statutes are so common that model demolition ordinances have been drafted by national code-drafting agencies such as the Building Officials Conference of America,⁶⁸⁸ the American Public Health

⁶⁷⁶ M. Jegathesan, *Malaysia to Demolish Indonesian Squatter Homes, Step up Patrols*, AGENCE FRANCE PRESSE, Jan. 31, 2002, p. 13.

⁶⁷⁷ Douglas Jehl, *Qurna Journal: After 4,000 Years, It's Time for Urban Renewal*, NY TIMES, Mar. 4, 1997, p. A4.

⁶⁷⁸ Paul Watson, *Manila Squatters Cleaned Out of Philippines Polishes Image for Economic Summit*, TORONTO STAR, Nov. 20, 1996, p. A17.

⁶⁷⁹ The specific locales are identified in brackets at the end of each paragraph.

⁶⁸⁰ No byline, Source: Radio Lebanon, *Lebanese PM Urges Halt to Normalization With Israel*, BBC SUMMARY OF WORLD BROADCASTS, Part 3 Asia-Pacific, Pakistan, Organization of the Islamic Conference Summit in Islamabad, speeches, FE/D2876/S3, Mar. 25, 1997.

⁶⁸¹ See Ministry of Foreign Affairs, Israel's Response to the Report Submitted Pursuant to United Nations General Assembly Resolution ES-10/2 (Document A/ES/-10/6; S/1997/494), para. 18 (1998).

⁶⁸² Daniel R. Mandelker, *Housing Codes, Building Demolition, and Just Compensation: A Rationale for the Exercise of Public Powers over Slum Housing*, 67 MICHIGAN LAW REVIEW 635, 639-46 (1969). Among the categories of structures which are, by state statute, subject to demolition are those which have fire hazards, those which are unsafe (dangerous to health or life), and those which are dilapidated, unfit or obsolete. *Ibid.*

⁶⁸³ E.g., *Pinecrest Lakes v. Shidel*, Fla. App. LEXIS 13464, 795 So.2d 191 (2001). In this recent case the appeals court ordered the demolition of 40 newly constructed upscale apartments, worth in excess of \$3 million (U.S.), that were deemed to be in violation of the county's comprehensive land use plan due to their proximity to single-family homes. *Ibid.*, p. 207.

⁶⁸⁴ E.g., *Welton v. East Oak Street Building Corp.*, 70 F.2d 377 (7th Cir. 1934).

⁶⁸⁵ Daniel R. Mandelker, *Housing Codes, Building Demolition, and Just Compensation: A Rationale for the Exercise of Public Powers over Slum Housing*, 67 MICHIGAN LAW REVIEW 635-36, 638 (1969).

⁶⁸⁶ E.g., *Pinecrest Lakes v. Shidel*, Fla. App. LEXIS 13464, 795 So.2d 191 (2001); Daniel R. Mandelker, *Housing Codes, Building Demolition, and Just Compensation: A Rationale for the Exercise of Public Powers over Slum Housing*, 67 MICHIGAN LAW REVIEW 635-36 (1969).

⁶⁸⁷ E.g., *Polsgrove v. Moss*, 154 Ky. 408, 157 S.W. 1133 (1913); *Swett v. Sprague*, 55 Me. 190 (1867); *Maxedon v. Rendigs*, 9 Ohio App. 60 (1917); *City of Saginaw v. Budd*, 3 Mich. App. 681, 143 N.W.2d 608 (1966), rev'd on other grounds, 381 Mich. 173, 160 N.W.2d 906 (1968).

⁶⁸⁸ Building Officials Conference of America, Basic Building Code Sec. 125.1 (4th ed., 1965).

Association-U.S. Public Health Service.⁶⁸⁹ The International Conference of Building Officials had also promulgated a provision of its Uniform Building Code that permits demolition, in this instance when any of 17 conditions are found.⁶⁹⁰ There is even a Uniform Code for the Abatement of Dangerous Buildings, which specifically addresses the circumstances in which buildings can be destroyed.⁶⁹¹

The general rule in the United States is that while the government may regulate the use of privately owned real property to a certain extent, if the regulation goes too far it will be recognized as a taking.⁶⁹² In the United States land use regulations or decisions to use the eminent domain (condemnation) power must be supported by a valid public purpose.⁶⁹³ This power is typically used to obtain land for various public facilities - roads, schools, parks, monuments and public amenities, among others.⁶⁹⁴ Pursuant to the 5th Amendment to the U.S. Constitution, condemnees receive compensation based on the value of the asset in the market, not including money for relocation costs, business losses, or psychological disruption.⁶⁹⁵ Courts seldom nullify such a taking provided the landowner is compensated.⁶⁹⁶

The various levels of government have come to dominate land use control, particularly in urban and suburban areas.⁶⁹⁷ Measures that severely limit an owner's use of his/her land, but fall short of a taking, are numerous indeed. In the words of Professor Justin Sweet, author of the preeminent casebook on engineering and construction law:

The scope of land use regulation by federal, state and local governments is enormous. The federal government actually owns one-third of the land in the mainland United States, mostly in the western half of the country. In addition, Congress has adopted legislation on water pollution, flood controls, interstate land sales, real estate settlements, race and gender discrimination, mining, grazing, and timbering on federal lands, national parks, wildlife zones, Native American lands and a host of other problems. State and local governments have passed an even longer list of land use measures, including zoning statutes, building codes,

⁶⁸⁹ American Public Health Association-[U.S.] Public Health Service, Recommended Housing Maintenance and Occupancy Ordinance, sec. 16.02.01 (Review ed., 1967).

⁶⁹⁰ International Conference of Building Officials, Uniform Building Code, Vol. IV, DANGEROUS BUILDINGS (1967).

⁶⁹¹ International Conference of Building Officials, CODE FOR THE ABATEMENT OF DANGEROUS BUILDINGS (1997).

⁶⁹² JUSTIN SWEET, LEGAL ASPECTS OF ARCHITECTURE, ENGINEERING AND THE CONSTRUCTION PROCESS 937 (6th ed., 2000). Implementation of this rule has proven to be very difficult indeed. Frank I. Michelman, *Property, Utility and Fairness: Comments on the Ethical Foundations of "Just Compensation" Law*, 80 HARVARD LAW REVIEW 1165 (1967).

⁶⁹³ Hawaii Housing Authority v. Midkiff, 467 U.S. 229 (1984); JUSTIN SWEET, LEGAL ASPECTS OF ARCHITECTURE, ENGINEERING AND THE CONSTRUCTION PROCESS 899 (6th ed., 2000). The blight of vacant buildings in a slum can be condemned under eminent domain. Note, *Hanging Out the No Vacancy Sign: Eliminating the Blight of Vacant Buildings from Urban Areas*, 74 N.Y.U. LAW REVIEW 1139 (1999).

⁶⁹⁴ JUSTIN SWEET, LEGAL ASPECTS OF ARCHITECTURE, ENGINEERING AND THE CONSTRUCTION PROCESS 909 (6th ed., 2000).

⁶⁹⁵ JUSTIN SWEET, LEGAL ASPECTS OF ARCHITECTURE, ENGINEERING AND THE CONSTRUCTION PROCESS 909, 937 (6th ed., 2000).

⁶⁹⁶ See Berman v. Parker, 348 U.S. 26, 32-33 (1954); see *Amen v. City of Dearborn*, 718 F. 2d 789 (6th Cir. 1983).

⁶⁹⁷ See RICHARD H. CHUSED, CASES MATERIALS AND PROBLEMS IN PROPERTY (2d ed.) 94-111 (1999). In the United States land use control is regulated by state enabling acts. These acts express goals in general terms and authorize the local authorities to make specific rules (ordinances) and to administer them. The enabling acts allow two agencies to be created to deal with these matters: a planning commission to draft a master plan and detailed ordinances and a board of adjustment to deal with appeals from the decisions by the local administrator or officials. The Model Land Development Code, approved by the American Law Institute, a group of scholars, lawyers and judges, is one example of such a legal structure. RICHARD H. CHUSED, CASES MATERIALS AND PROBLEMS IN PROPERTY (2d ed.) 96 (1999). The first efforts to impose order in this area arose out of the Standard State Zoning Enabling Act of 1926 (Standard State Zoning Enabling Act (U.S. Dept. of Commerce Review, ed., 1926) and the Standard City Planning Enabling Act of 1928 (Standard City Planning Enabling Act (U.S. Dept. of Commerce 1928). In recent decades a leading source has been the Model Code prepared by the American Law Institute. American Law Institute, Model Land Development Code (1975). Planning, however, is not universally appreciated. See, e.g., Richard E. Klosterman, *Arguments for and Against Planning*, READINGS IN PLANNING THEORY (Scott Campbell and Susan S. Fairstein 1996), pp. 150-69; A. DAHL & C. E. LINDBLOOM, POLITICS, ECONOMICS AND WELFARE (1953); Ruth Glass, *The Evaluation of Planning: Some Sociological Considerations*, in A READER IN PLANNING THEORY (Andreas Faludi, ed., 1973), pp. 45-68.

environmental regulations, consumer protection statutes, anti-discrimination laws, and historic preservation programs.⁶⁹⁸

In Europe and North America, planning originated in the early part of the 20th century as a response to widespread dissatisfaction with the results of the existing market and political processes as reflected in the physical squalor and political corruption of the emerging industrial cities.⁶⁹⁹ Local authorities typically furnish fire and police protection, educational facilities, parks, public transportation, a network of roads, water, and sewage facilities.⁷⁰⁰ They may also consider aesthetics, social justice, employment opportunities, healthcare needs, entertainment preferences, economic growth, phased housing growth, conservation of energy resources, protection of the natural environment,⁷⁰¹ and preservation of historical sites.⁷⁰² They are also responsible for the overall quality of life.⁷⁰³

Those who complain that many Arabs cannot afford housing in Jerusalem ought to be reminded of the economic facts of life. Whether one likes them - or not - is irrelevant. They are considered axiomatic everywhere but in the Arab sector of Jerusalem. That is, urban residents who cannot afford the high cost of housing, including many large families, find it necessary to move to the periphery where housing is more affordable. Thus in recent years tens of thousands of Jews have been 'driven' from Jerusalem to its suburbs including Mevesaret Zion and Ma'aleh Adumim. Even the ultra-Orthodox, despite their deep religious attachment to the City, have left Jerusalem in droves for communities like Beitar and Ramat Bet Shemesh, because they cannot afford to house their large families in Jerusalem. Indeed, the pattern repeats itself in urban areas worldwide. In New York they move from Manhattan to Queens, northern New Jersey or Staten Island. Whatever their attachment to Manhattan, however large their family, nobody would excuse or tolerate their building illegally in Central Park.

3. Demolitions by the Palestinian Authority

Another thought-provoking instance of demolition occurred in Gaza, under the rule of the same Palestinian Authority that attempts to turn every instance of demolition in the Arab areas of Jerusalem, regardless of its factual and legal justification, into an international incident. According to one report in *The Washington Post*, Palestinian Authority bulldozers "flattened" Fatima Abu Suayed's house, with all her possessions inside, because it was allegedly constructed illegally on "Palestinian State Property." According to the account, "a bulldozer plowed down more than 20 homes."⁷⁰⁴ No mention was made of any legal process or safeguards. Mayor On A-Shawa explained, "In the recent period there is an increase in the number of illegal structures that damage the urban planning of the city."⁷⁰⁵ Other than one small organization based in Gaza,⁷⁰⁶ none of the NGOs that regularly attack the Jerusalem Municipality and the State of Israel uttered a word of protest.

⁶⁹⁸ JUSTIN SWEET, *LEGAL ASPECTS OF ARCHITECTURE, ENGINEERING AND THE CONSTRUCTION PROCESS* 899 (6th ed., 2000).

⁶⁹⁹ Richard E. Klosterman, *Arguments for and Against Planning*, READINGS IN PLANNING THEORY (Scott Campbell and Susan S. Fainstein eds. 1996), pp. 150, 159.

⁷⁰⁰ See RICHARD H. CHUSED, *CASES MATERIALS AND PROBLEMS IN PROPERTY* (2d ed.) 98 (1999). Sewage and water crises have led to moratoria on construction in some areas in the United States. See, e.g., *Charles v. Diamond*, 41 N.Y.2d 318, 392 N.Y.S.2d 594, 360 N.E.2d 1295 (1977). See RICHARD H. CHUSED, *CASES MATERIALS AND PROBLEMS IN PROPERTY* (2d ed.) 98 (1999).

⁷⁰¹ See, generally, GORGE ENRIQUE HARDOY, DIANA MITLIN & DAVID SATTERTHWAITE, *ENVIRONMENTAL PROBLEMS IN AN URBANIZING WORLD: FINDING SOLUTIONS IN AFRICA, ASIA AND LATIN AMERICA* (2001).

⁷⁰² RICHARD H. CHUSED, *CASES MATERIALS AND PROBLEMS IN PROPERTY* (2d ed.) 94 (1999).

⁷⁰³ RICHARD H. CHUSED, *CASES MATERIALS AND PROBLEMS IN PROPERTY* (2d ed.) 94 (1999).

⁷⁰⁴ Barton Gellman, *Palestinians Vent Their Ire Over Arafat: Gaza's Jubilation on Achieving Self-Rule Turns to Frustration, Anger*, WASHINGTON POST, Feb. 27, 1995, p. A1.

⁷⁰⁵ AL QUDS, June 9, 2001.

⁷⁰⁶ The Palestinian Center for Human Rights is, to the best of this author's knowledge, the only one of these numerous rights groups that protested the Palestinian Authority's demolition of several homes in Gaza City. Palestine Center for Human Rights Internet Website, *In Breach of a Ruling by the Palestinian High Court of Justice, the Gaza Municipality has Demolished Several Homes in Gaza City* (visited May 30, 2002) <<http://www.pchrgaza.org/files/PressR/English/1997/munic-h.htm>>.

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

Conclusions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

⁷¹⁴ See Appendix 7A.

⁷¹⁵ See appendix 6A.

⁷¹⁶ Appendix 6F.

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

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

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

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

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

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

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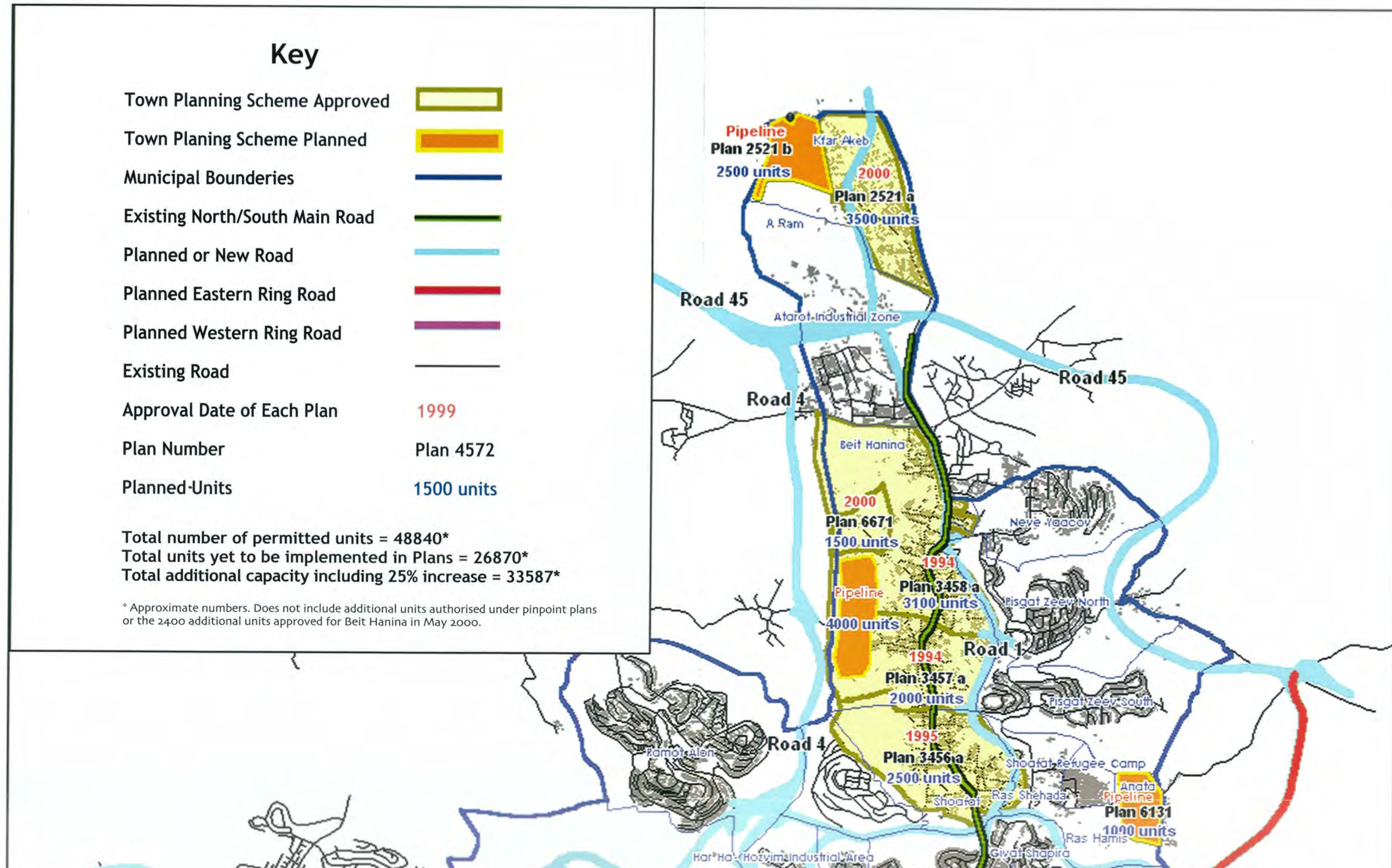
⁷²⁰ Telephone interview with Israel Ben-Ari, Deputy Manager of Licensing and Inspection Department of Jerusalem Municipality, in Jerusalem (June 30, 2002).

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

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

Appendix 1: Potential for Construction of Living Units for Arabs in Jerusalem

Authorized and Planned by the Jerusalem Municipality up to the Year 2020





Jerusalem Center for Public Affairs
המרכז הירושלמי לענייני ציבור ומדינה

Appendix 4:

Aerial Photographs of Arab
Neighborhoods

Appendix 5:

Aerial Photograph of Planned
Jewish Neighborhood:
Har Nof

Appendix 4: Aerial Photographs of Arab Neighborhoods

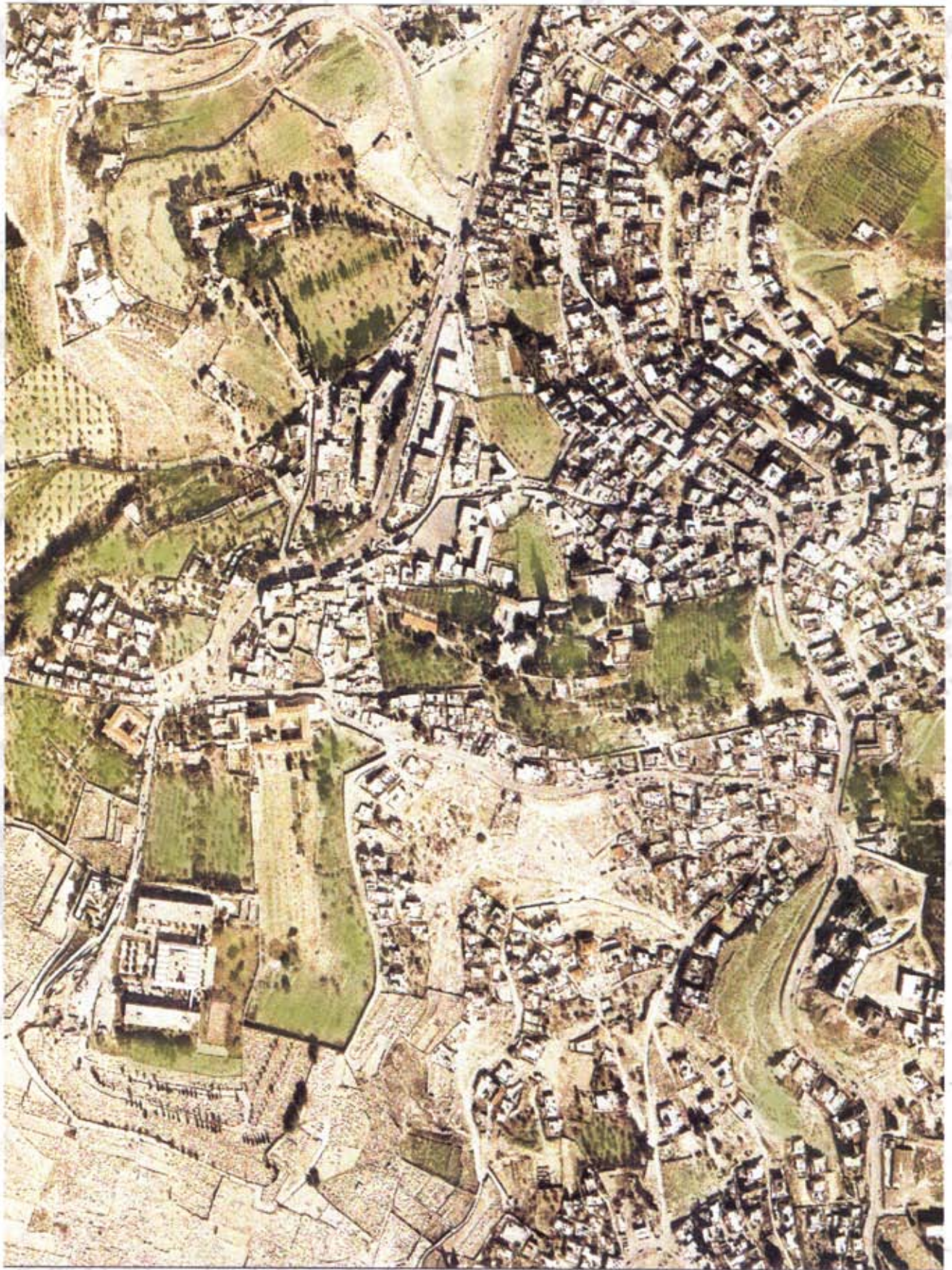
A-Tur



1967



1992

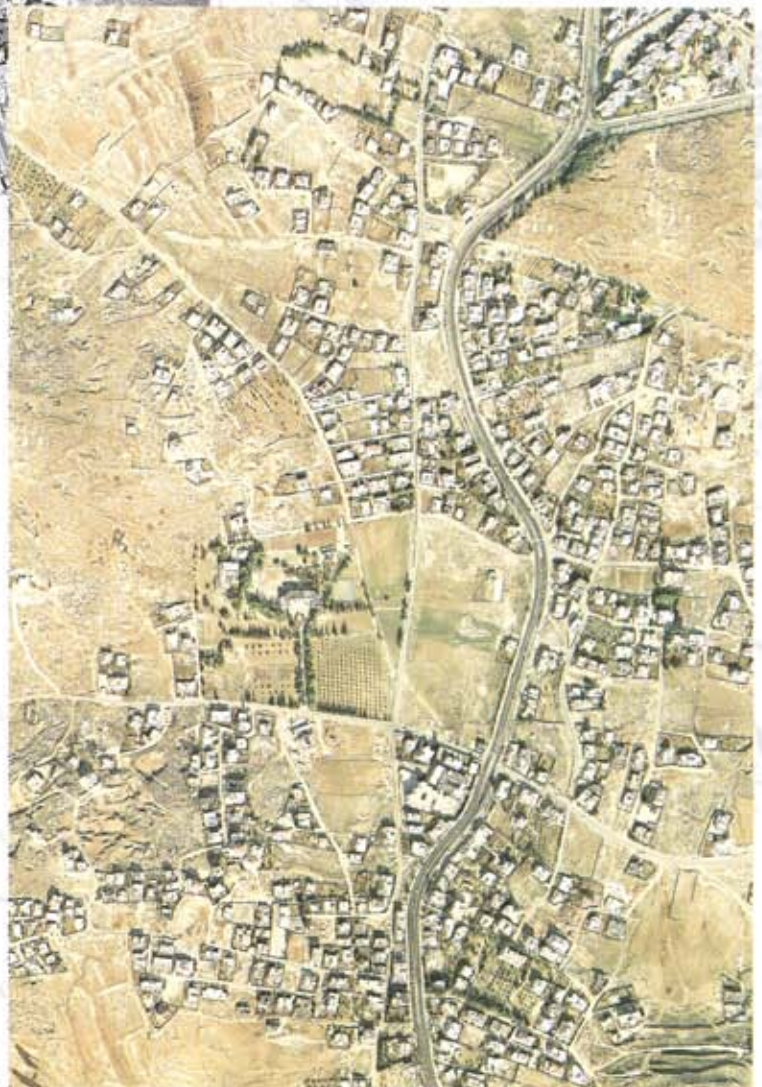


2000

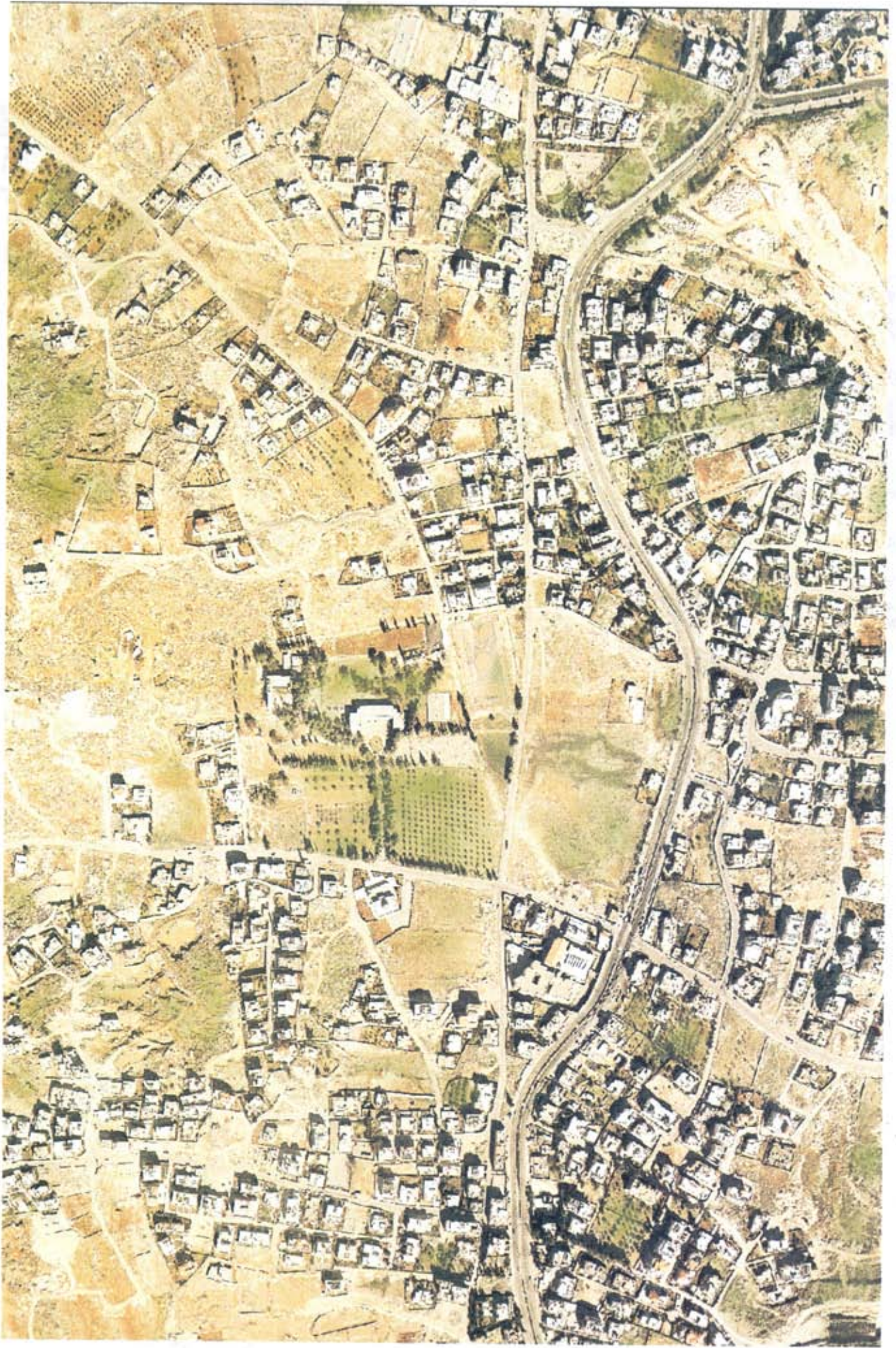
Beit Hanina



1967



1992

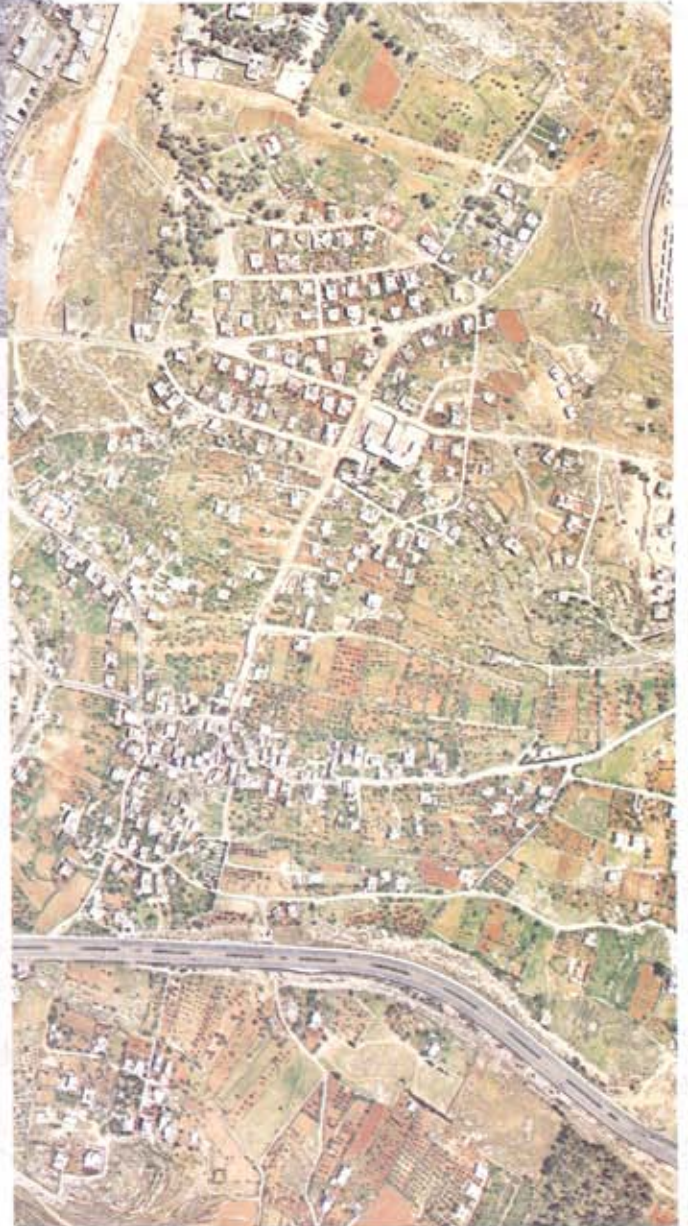


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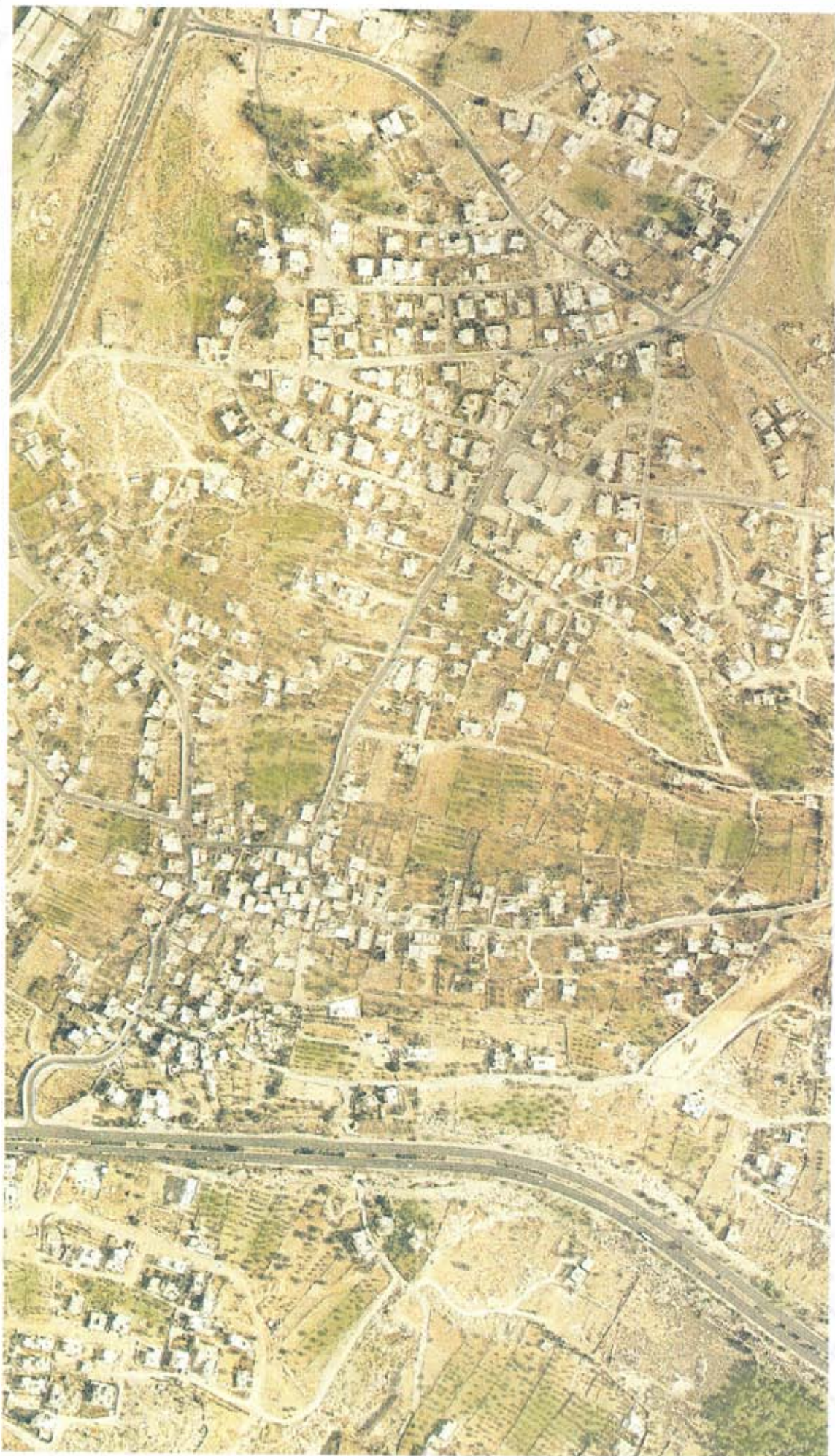
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1967



1992

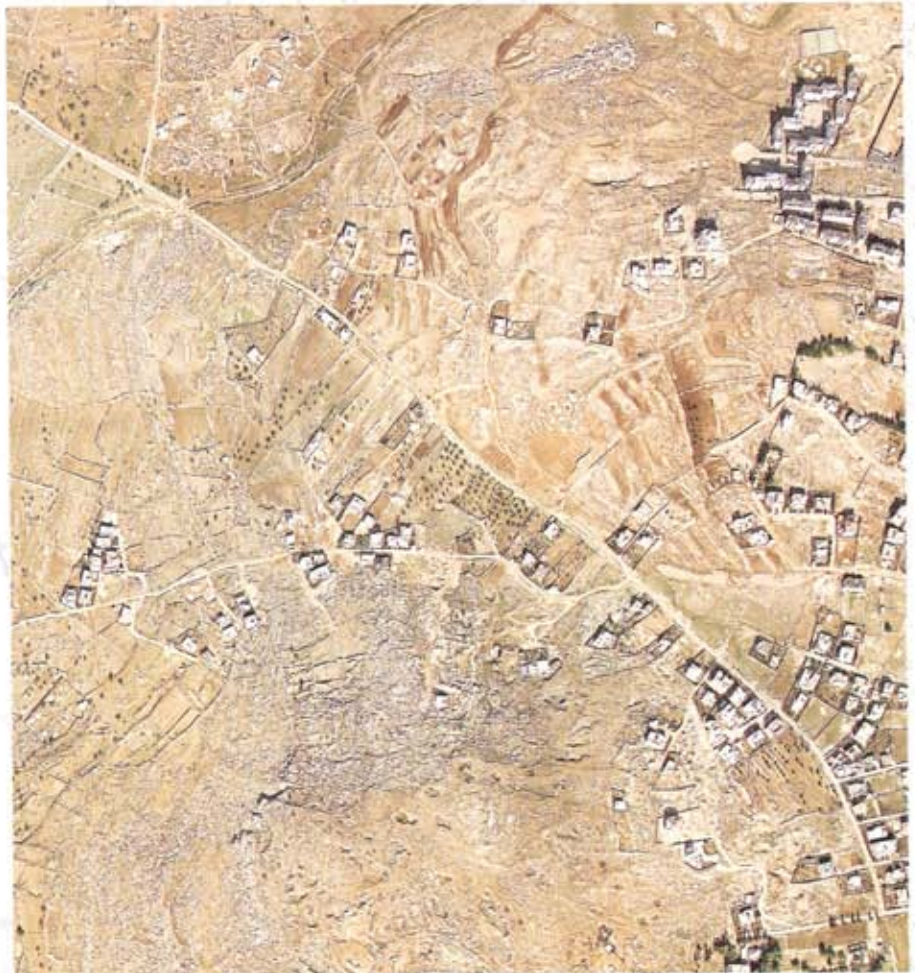


2000

Hod El Tabel



1967



1992



2000

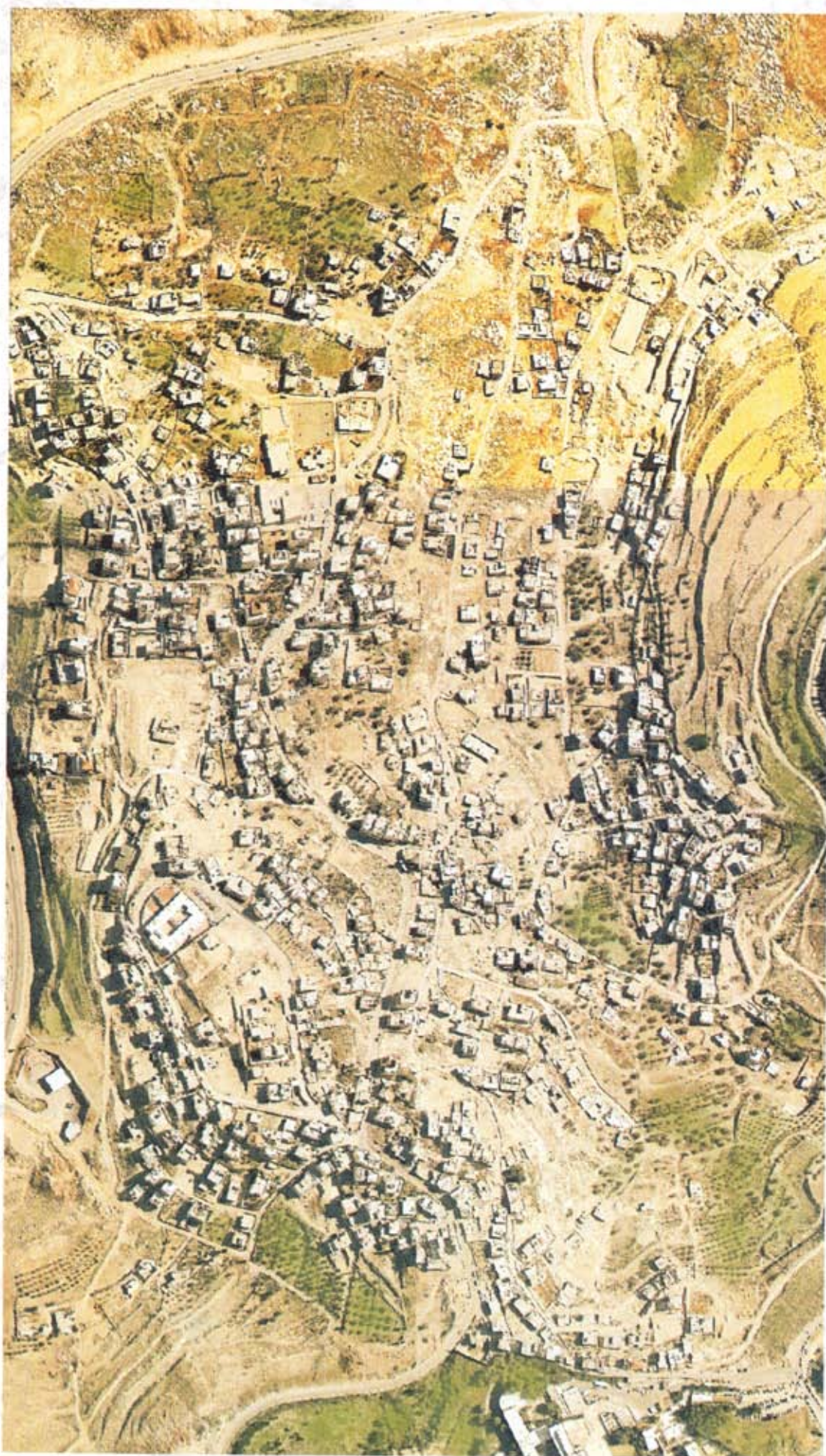
Isawiya



1967



1992

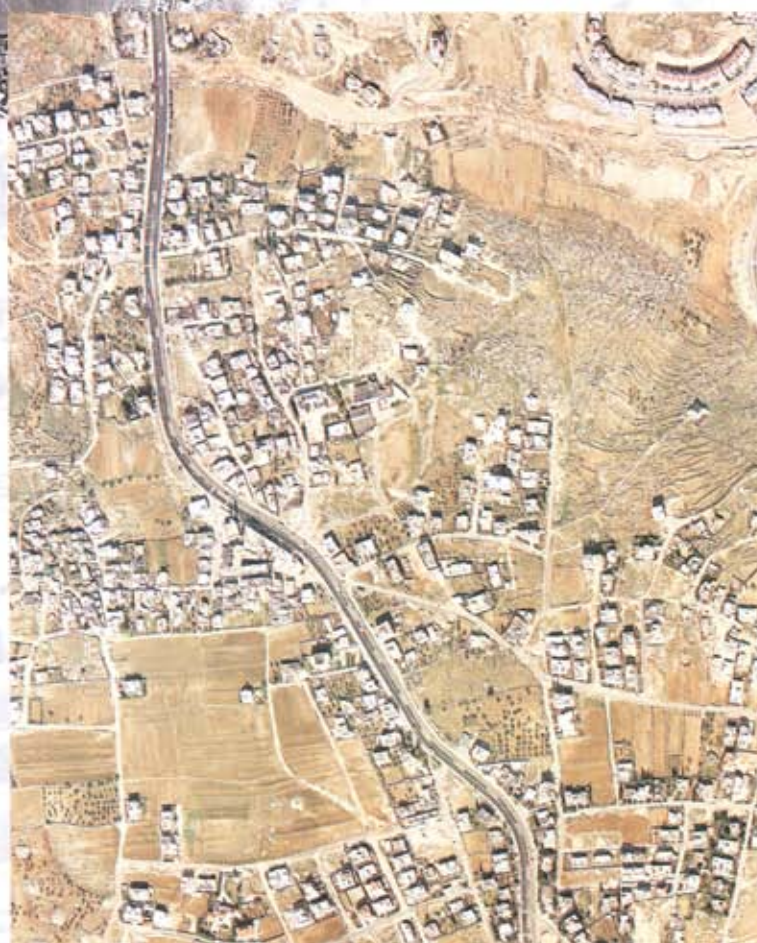


2000

Shoafat



1967



1992



2000

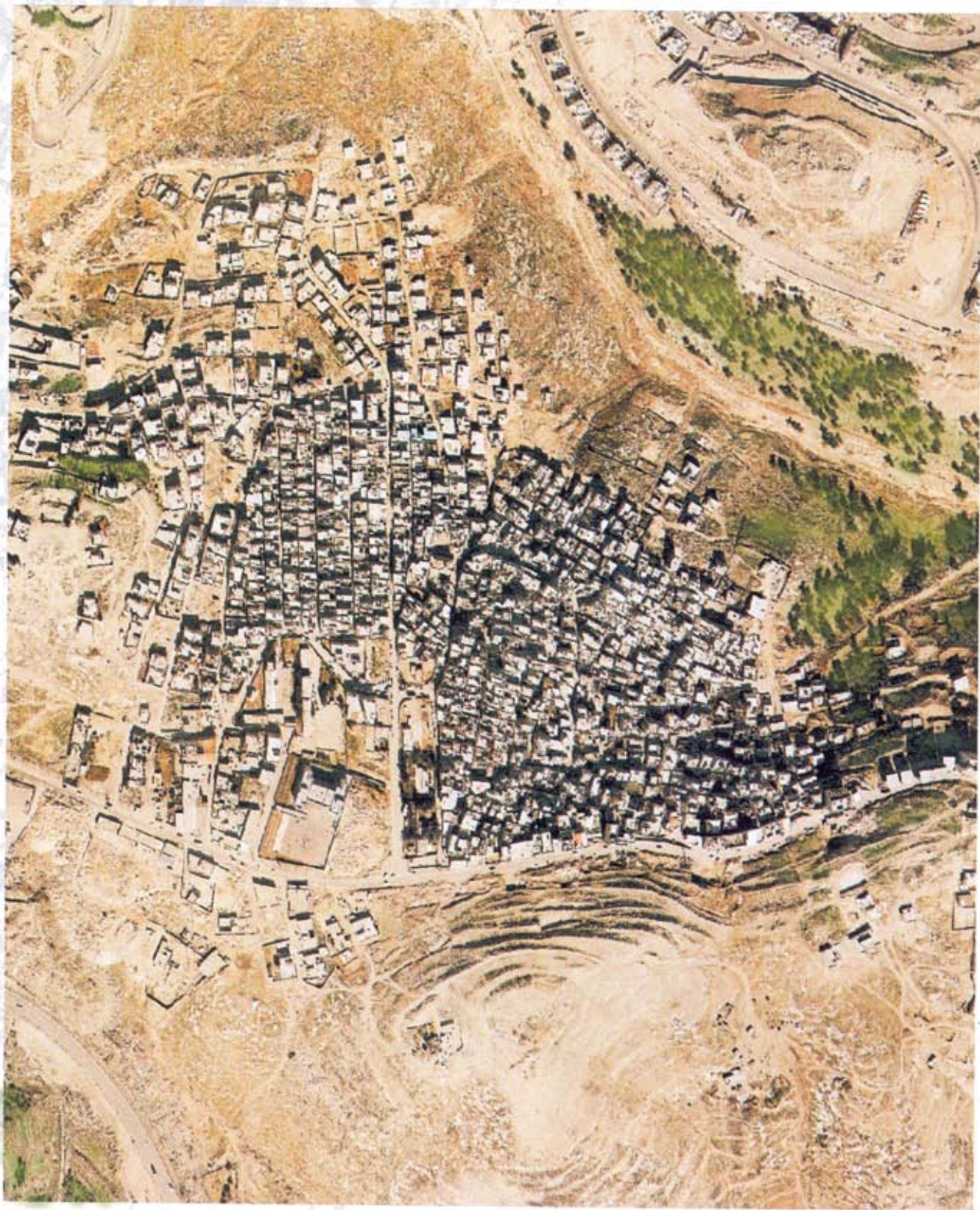


Shoafat Refugee Camp

1967



1992

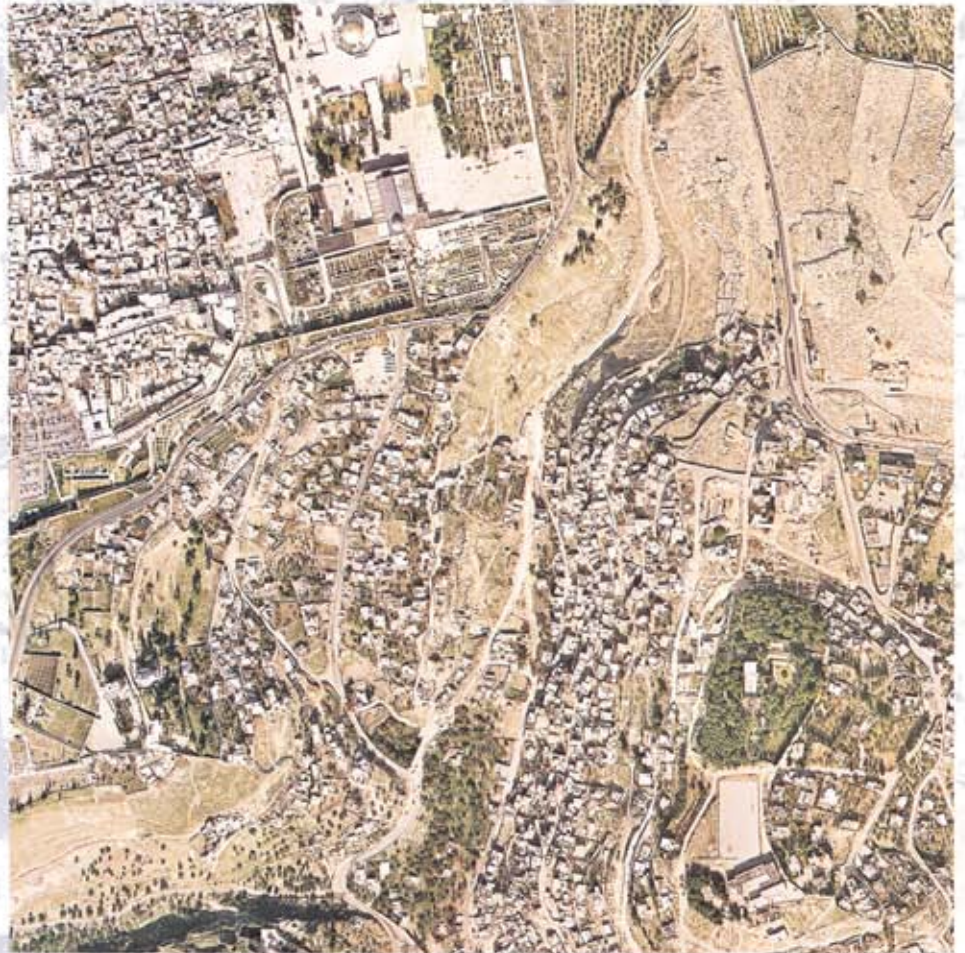


2000



Silwan

1967



1992



2000

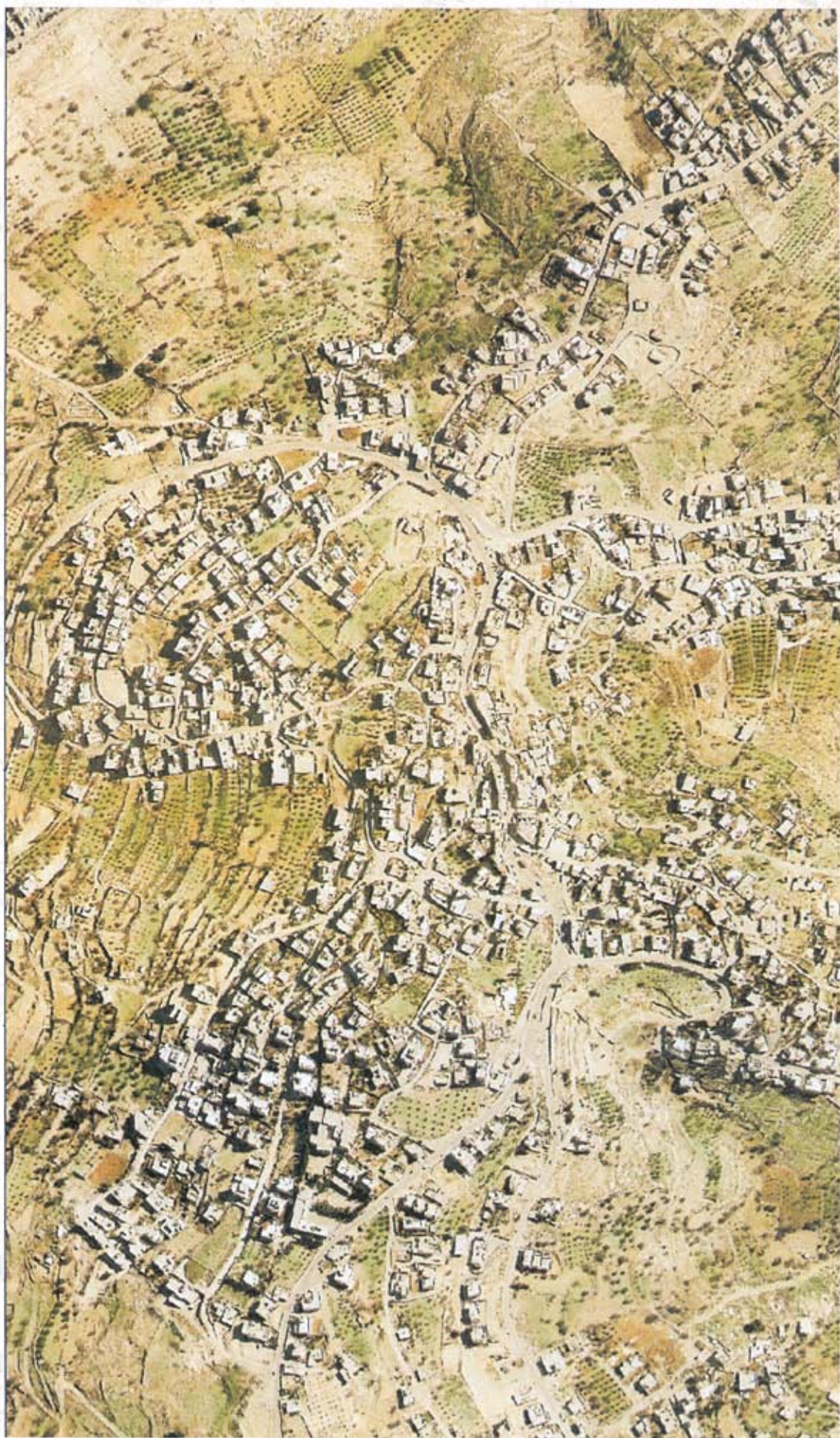
Sur Baher



1967



1992



2000



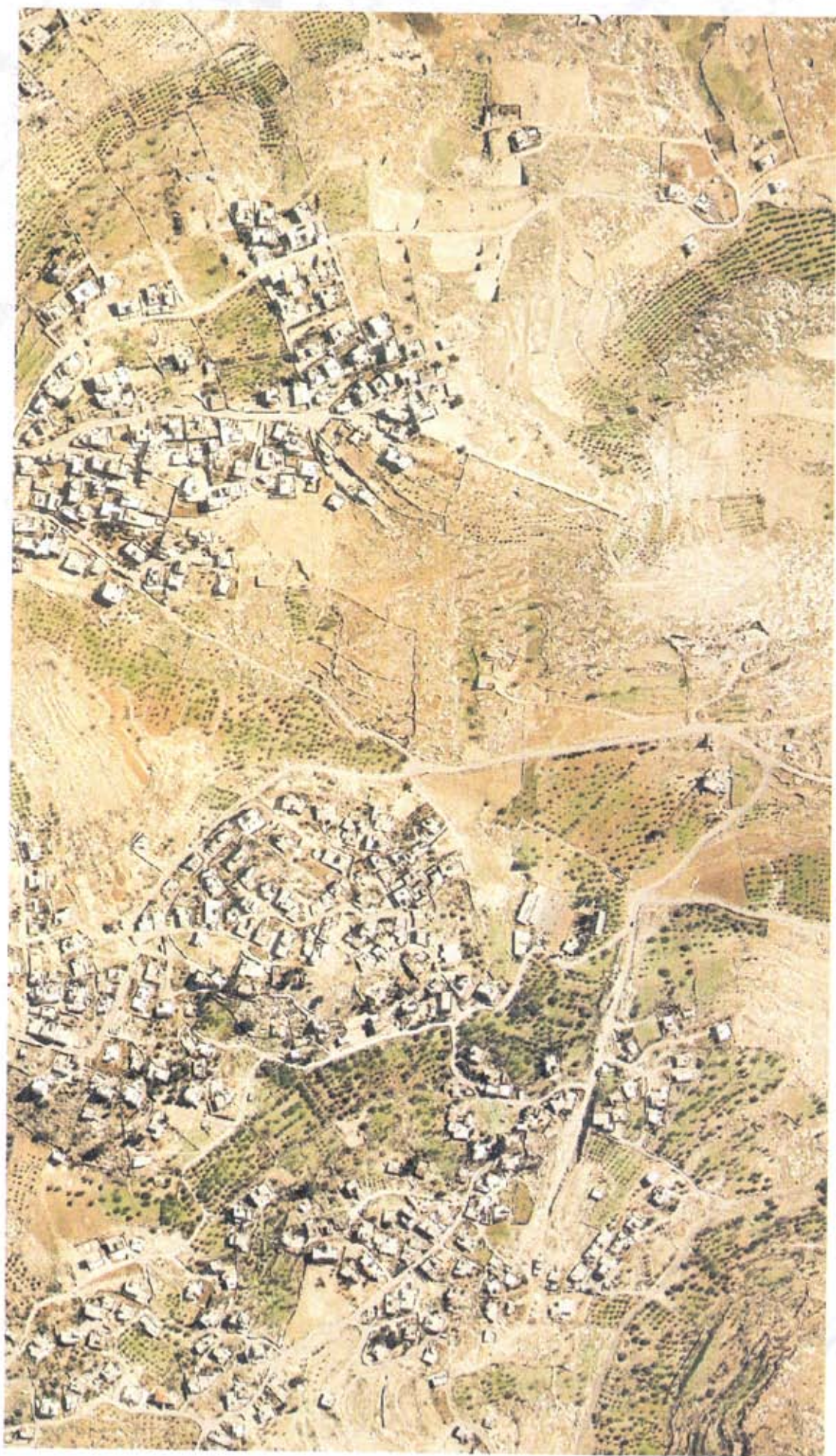
1967



1992



Um-Tuba



2000

Wadi Joz



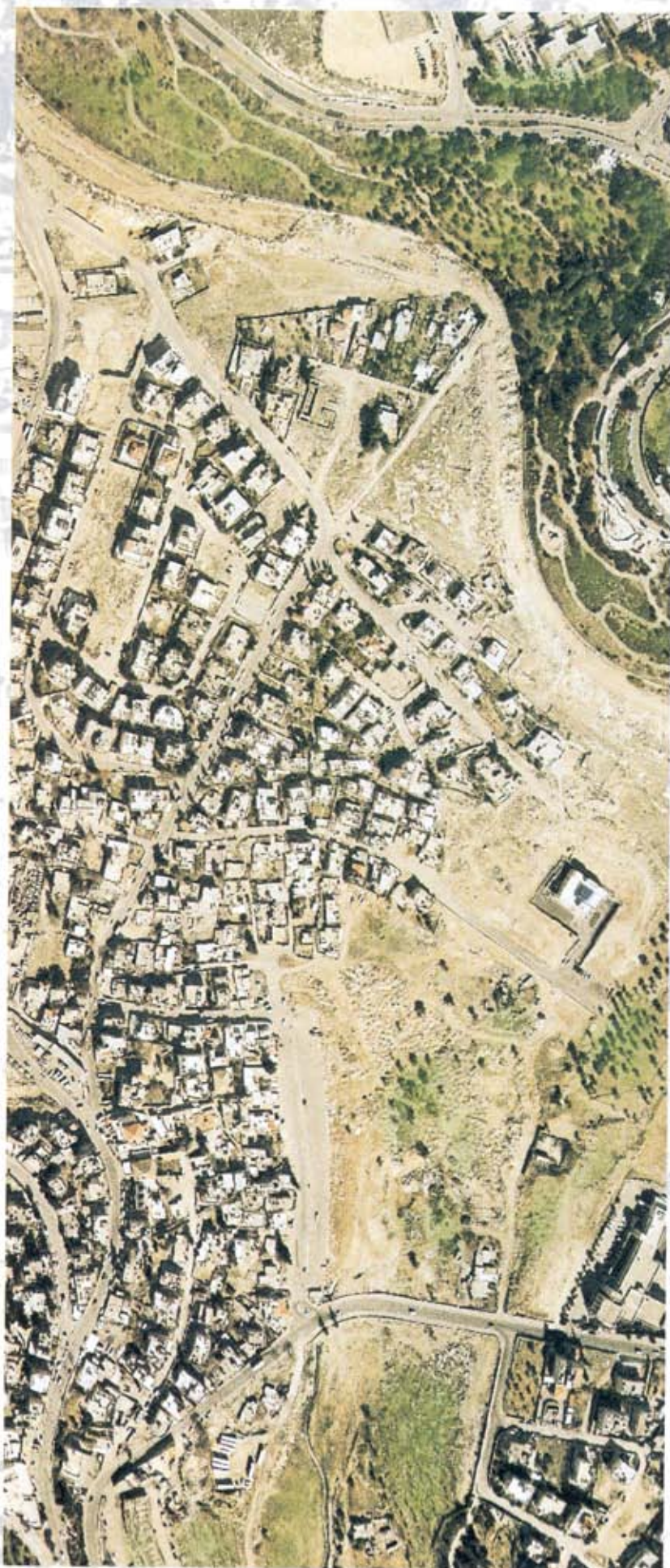
1967



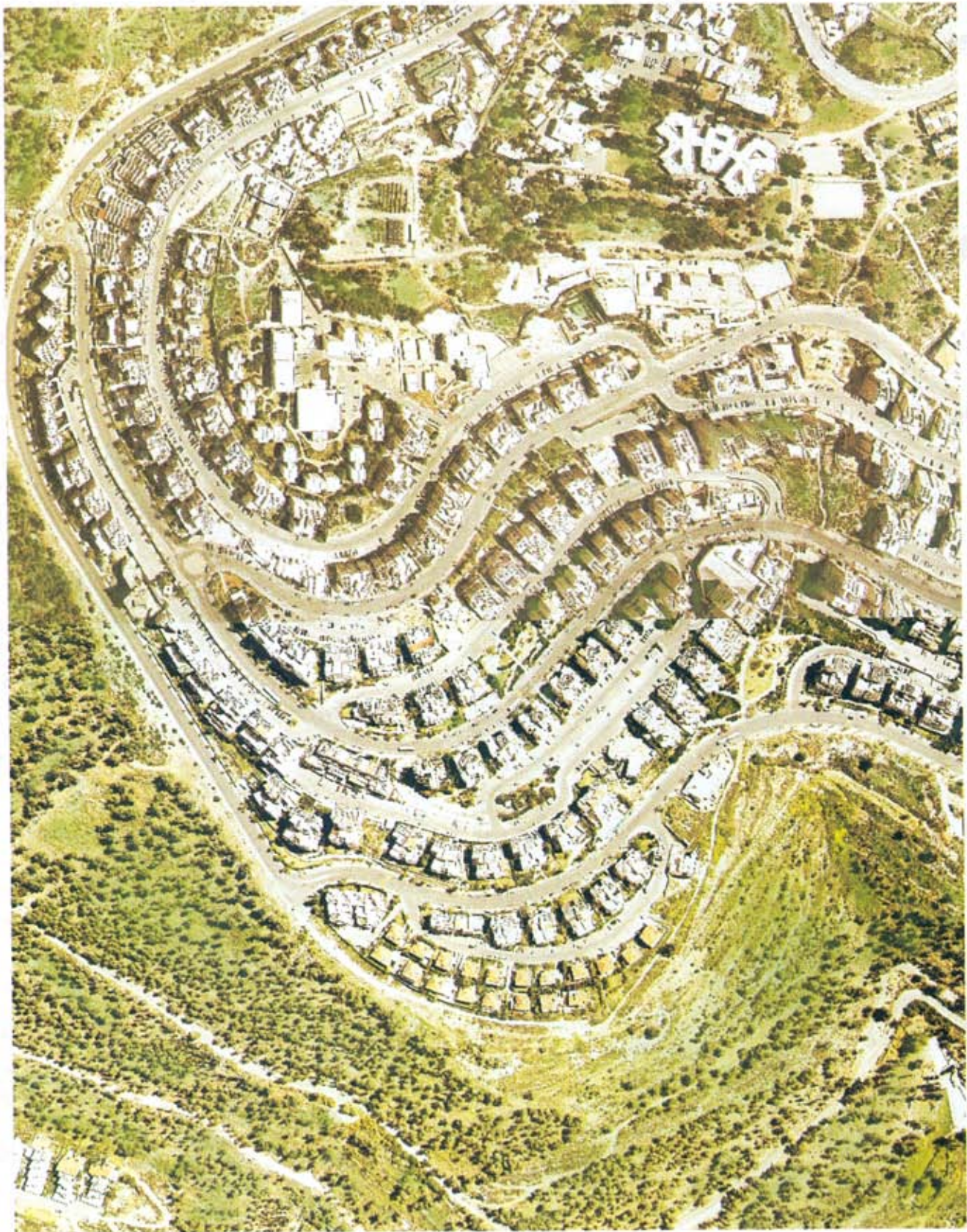
1992



2000



Appendix 5: High Density Planned Jewish Neighborhood



2000



Har Nof



Jerusalem Center for Public Affairs
המרכז הירושלמי לענייני ציבור ומדינה

Appendix 6:

Graphs

Appendix 7:

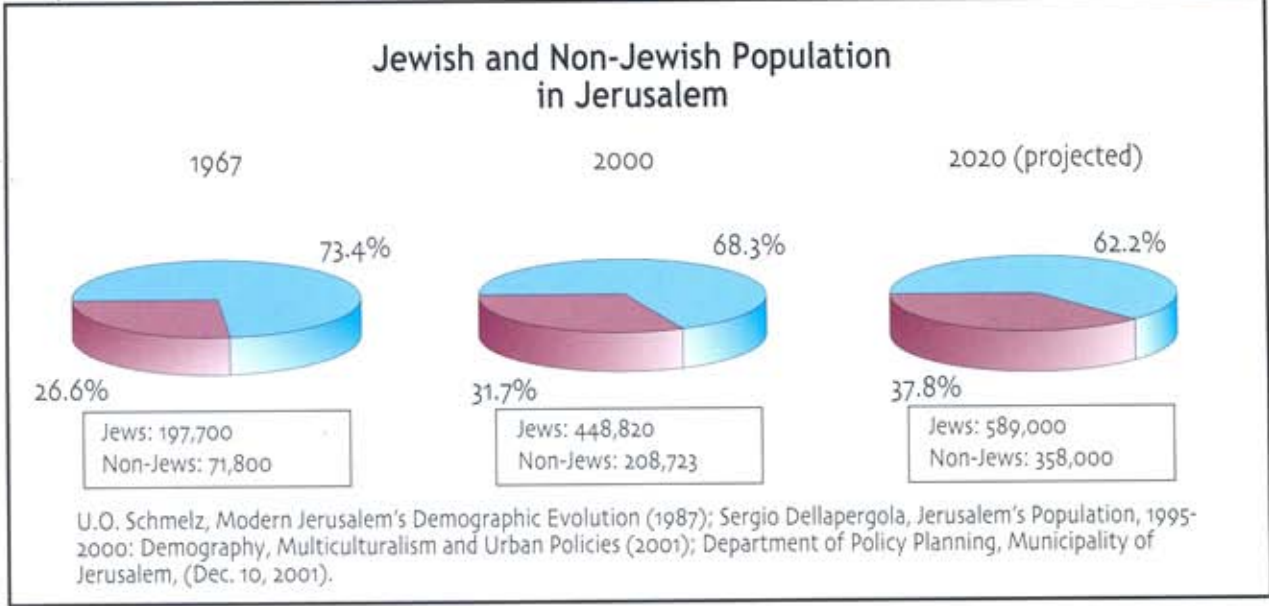
Tables

Appendix 8:

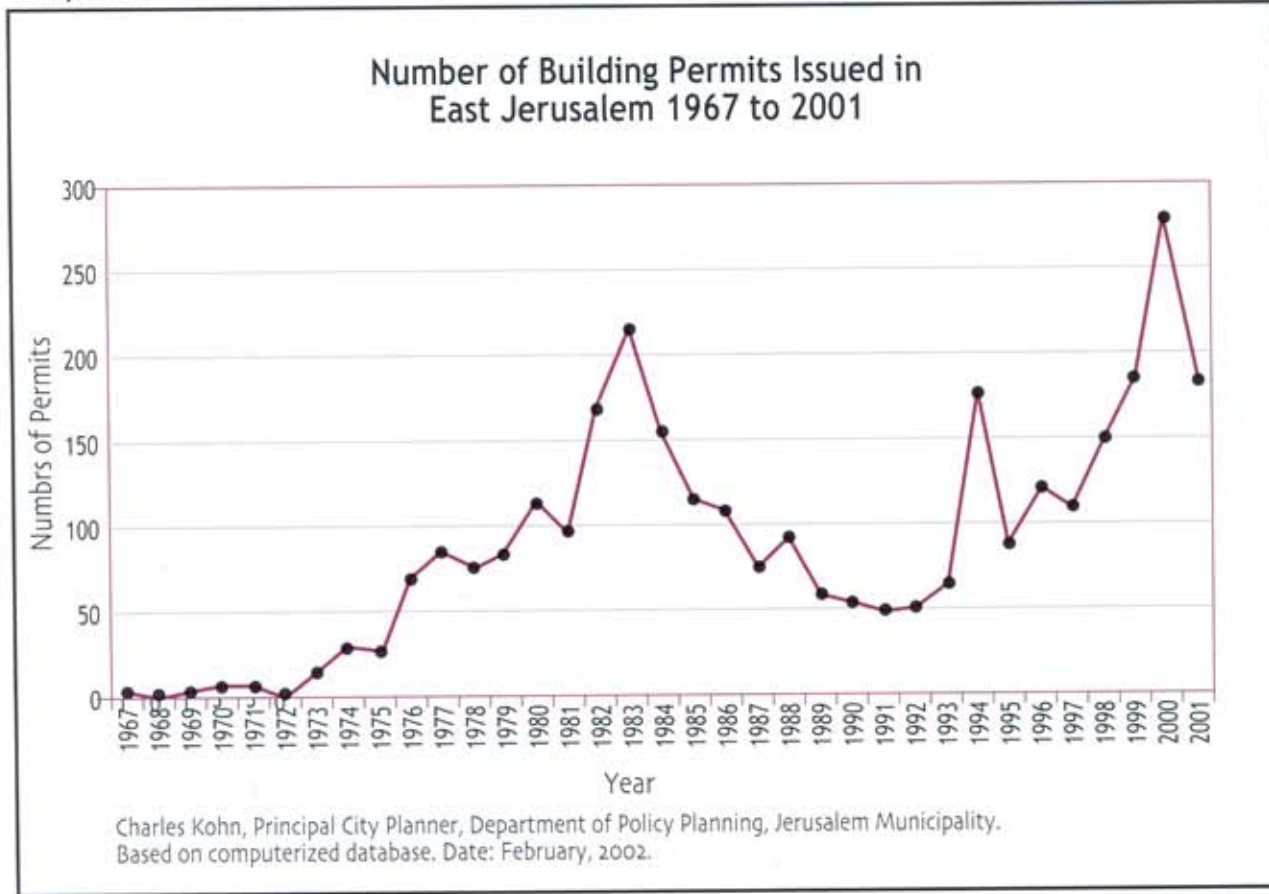
Documents

Appendix 6: Graphs

Graph 6A

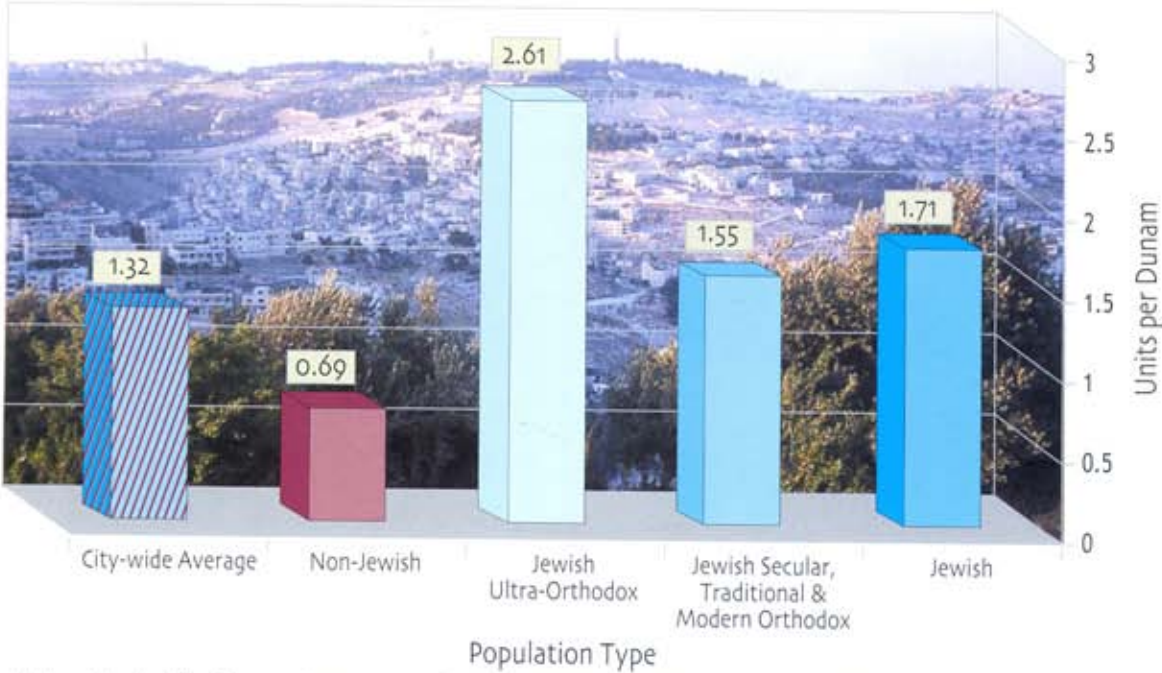


Graph 6B



Graph 6C

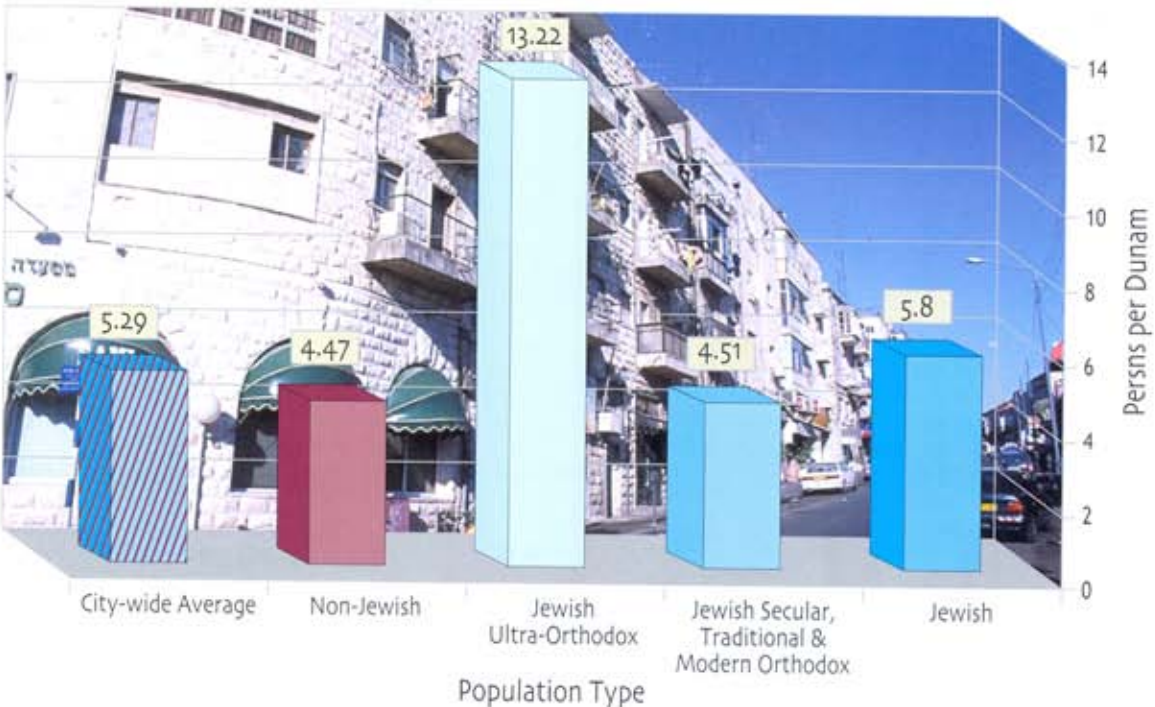
Density of Housing Units per Dunam - Jerusalem 2000



Charles Kohn, Principal City Planner, Department of Policy Planning, Jerusalem Municipality. Based on computerized database. Date: February, 2002.

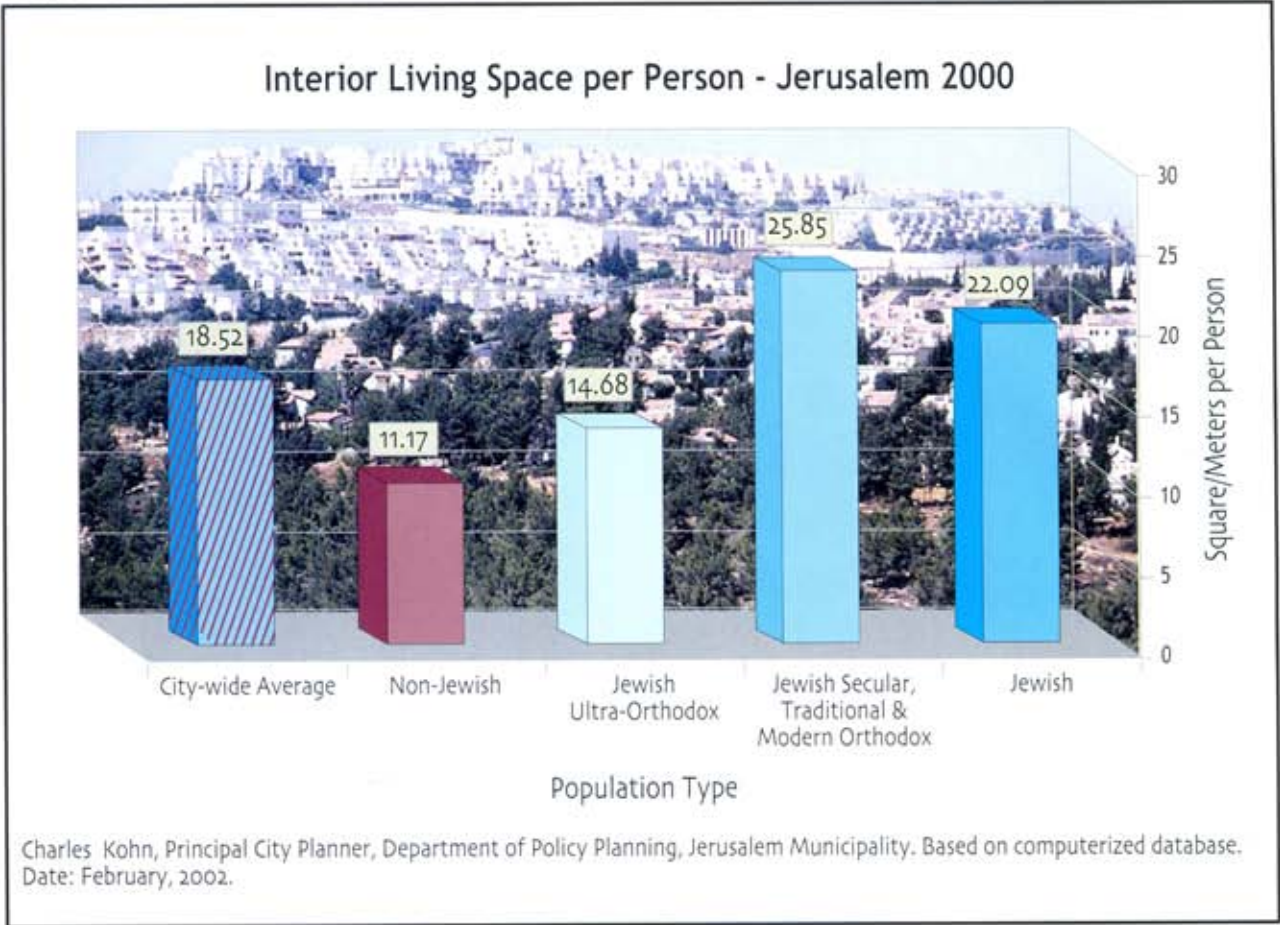
Graph 6D

Population Density per Dunam - Jerusalem 2000

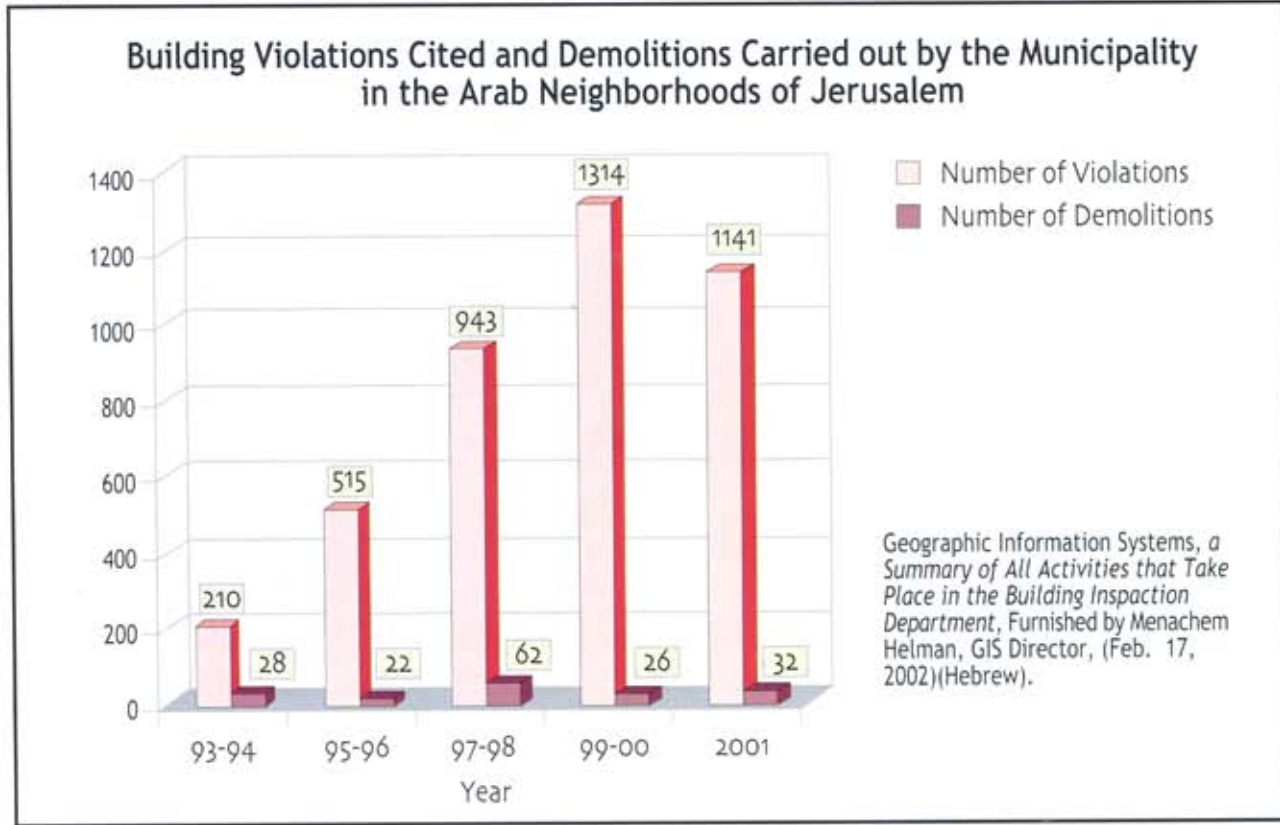


Charles Kohn, Principal City Planner, Department of Policy Planning, Jerusalem Municipality. Based on computerized database. Date: February, 2002.

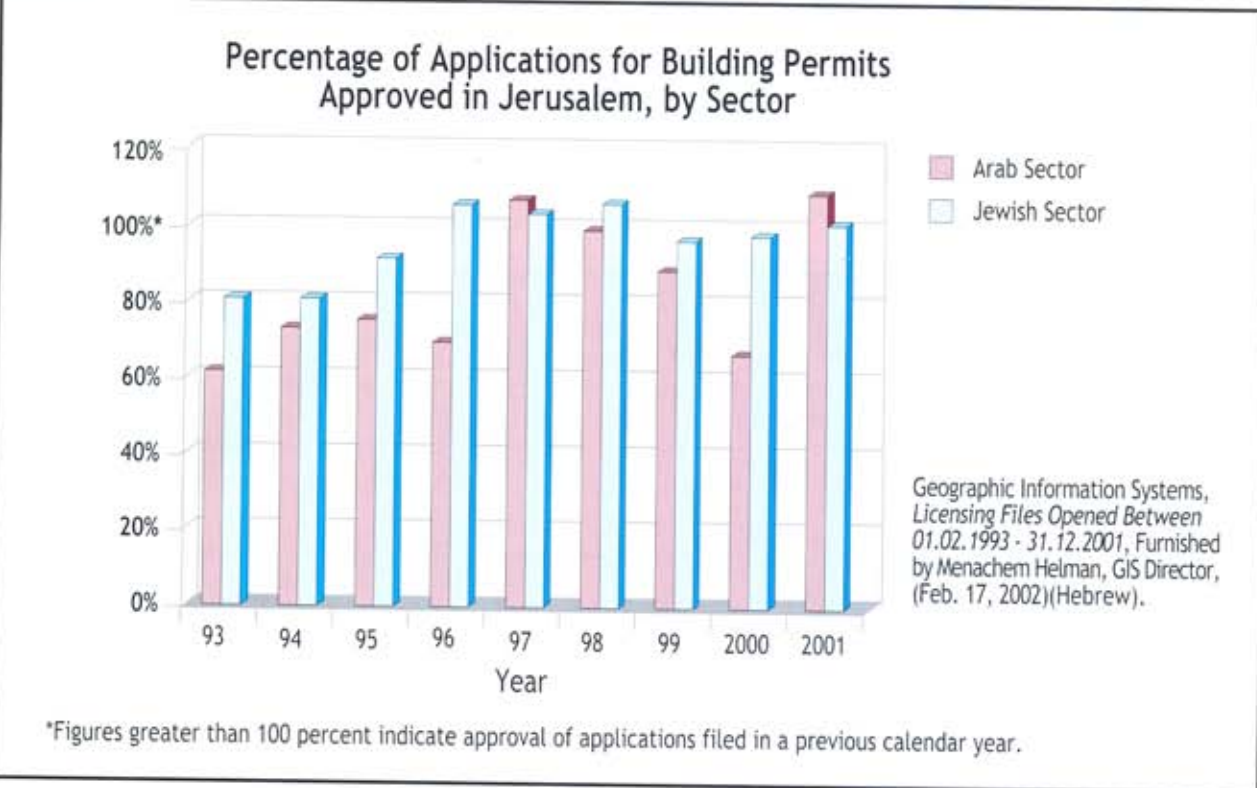
Graph 6E



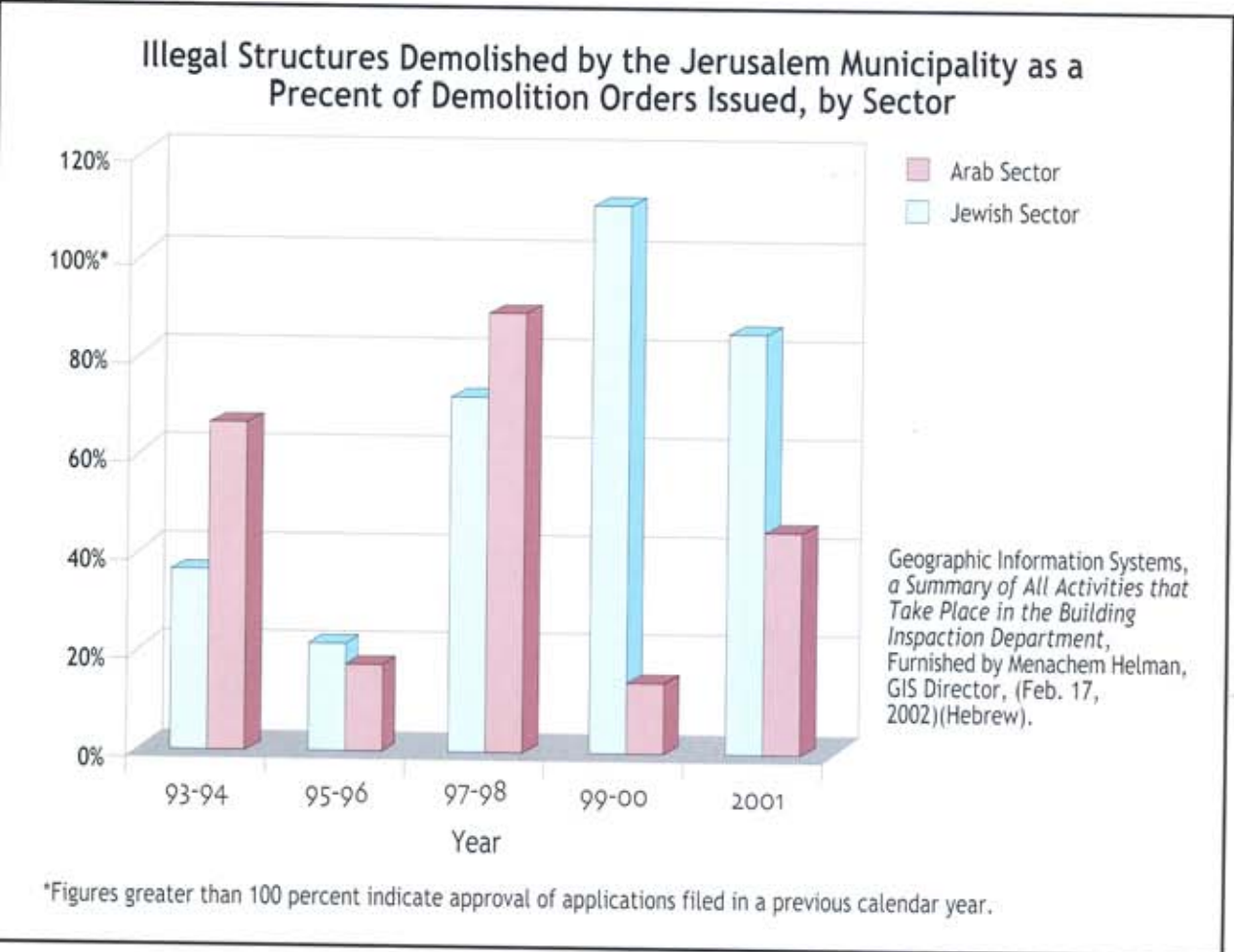
Graph 6F



Graph 6G



Graph 6H



Appendix 7: Tables

Population of Jerusalem by Sector: 1967 to 2000

Table 7A

Year	Total Jewish Population	Total Non-Jewish Population	Percentage Jewish Population	Percentage Non-Jewish Population
1967	197700	71800	73.4%	26.6%
1968	203200	74200	73.3%	26.7%
1969	208900	74200	73.8%	26.2%
1970	215500	76200	73.9%	26.1%
1971	222400	78900	73.8%	26.2%
1972	235700	78100	75.1%	24.9%
1973	244900	88100	73.5%	26.5%
1974	252800	93200	73.1%	26.9%
1975	259400	96100	73.0%	27.0%
1976	266000	100300	72.6%	27.4%
1977	272300	103700	72.4%	27.6%
1978	279400	107200	72.3%	27.7%
1979	287400	110800	72.2%	27.8%
1980	292300	114800	71.8%	28.2%
1981	297600	117400	71.7%	28.3%
1982	304200	120200	71.7%	28.3%
1983	306300	122400	71.4%	28.6%
1984	321100	126700	71.7%	28.3%
1985	327700	130000	71.6%	28.4%
1986	336100	132800	71.7%	28.3%
1987	346100	136500	71.7%	28.3%
1988	353900	139600	71.7%	28.3%
1989	361500	142600	71.7%	28.3%
1990	378200	146300	72.1%	27.9%
1991	392800	151400	72.2%	27.8%
1992	401000	155500	72.1%	27.9%
1993	406400	160800	71.7%	28.3%
1994	411900	166900	71.2%	28.8%
1995	420900	181800	69.8%	30.2%
1996	426200	187400	69.5%	30.5%
1997	429100	193000	69.0%	31.0%
1998	433600	200100	68.4%	31.6%
1999	437400	208300	67.7%	32.3%
2000	448820	208723	68.3%	31.7%

Charles Kohn, Principal City Planner, Department of Policy Planning, Jerusalem Municipality (2001)(Hebrew); Central Bureau of Statistics, Statistical Abstract of Israel, Population Division, for relevant years (Hebrew); Jerusalem Institute for Israel Studies, Statistical Yearbook of Jerusalem No. 18 – 2000 (M. Choshen & N. Shahar Eds. 2001)(Hebrew).

Estimated Housing Supply and Demand To Year 2020 Jerusalem Non-Jewish Housing Sector

Table 7B

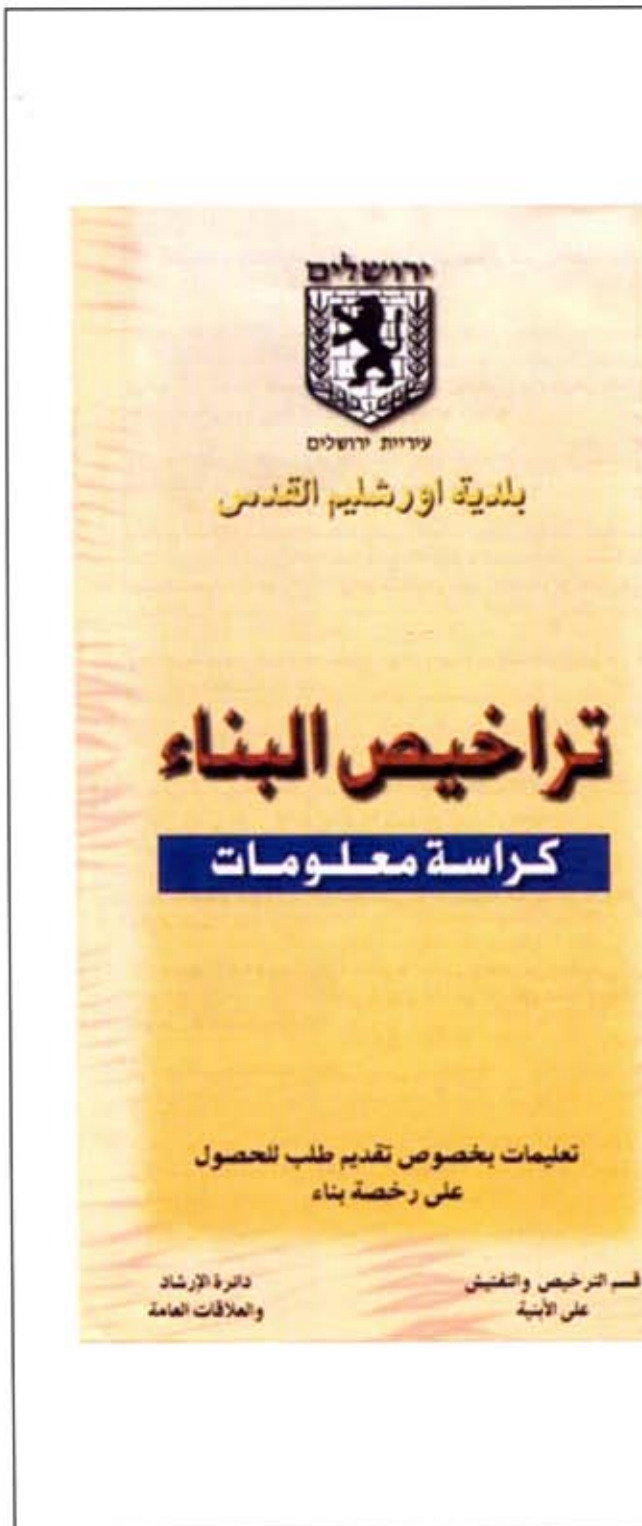
Description	Number of Living Units/Population
Total number of existing units in Jerusalem (Non-Jewish housing sector) including those not covered by Plans	30000 units
Total number of units permitted by existing City Planning schemes in the Non-Jewish housing sector	48840 units
Total number of existing units built within current City planning schemes (Non-Jewish housing sector)	25791 units
Surplus housing capacity yet to be implemented (units) permitted within City planning schemes	26877 units
Recent across the board 25 percent increase in building rights to permit for natural expansion and growth	6514 units
Total planned additional capacity Non-Jewish housing sector*	33384 units
Non-Jewish population Jerusalem year 2000	208700
Projection of Non-Jewish population of Jerusalem to 2020	357850
Additional population growth, projected increase	148880
Estimated planned units required to satisfy demand according to projected increase in Non-Jewish population	24813 units
Excess of supply over demand to Year 2020 (units)	+8571 units
Excess of supply over demand to Year 2020 (population)	+46546

*Pinpoint planning schemes presented to the Municipality, for developing individual plots or single family dwellings, are not included as part of the above calculations. Nor does this figure include the additional 2400 units approved for Beit Hanina in May 2002. The average family size characteristic of the non-Jewish housing sector is equivalent to 6.9 people per household. For purposes of calculating supply and demand 6 people per household is used.

Estimates by Department of Policy Planning of the Jerusalem Municipality, February 2002 (Hebrew). All figures are approximations.

Appendix 8: Documents

Document 8A



Brochure in Arabic advising residents how to obtain a building permit, published by the Municipality. The same information is available on the City's Internet website.

Document 8B



Newspaper warnings published by Arab landowners from Jerusalem advising prospective buyers not to purchase their land from unauthorized sellers.

Scientific - Cultural
Land Research Center
Jerusalem



علمية - فكرية
مركز أبحاث الأراضي
القدس

بسم الله الرحمن الرحيم

صادر 99/2.9
التاريخ: 1999/3/4

حضرة الاخ فيصل الحسيني حفظه الله

الموضوع/ العمل على منع توقيع الميثاق المرفق

تحية القدس وبعد،
وصلتنا اليوم نسخة من "الميثاق" الذي تحاول بلدية القدس تسويقه على جزء من اهالي
بيت حنونا من خلال ما يسمى بالمركز الجماهيري ولجنة الحي المفروضة من البلدية بهدف
خدمة وتسهيل سياسة الحد من البناء العربي مغلف بخطوات تبدو الساذجة ولغنية، في حين انها
تعمل على اجهاض أي تخطيط موضوعي واي بناء عربي في الموقع.
وعليه فاثني ارفق لك نسخة عن الميثاق - وملاحظتنا علوه - أملين دراستها.
هذا وقد بدأ بعض المهندسين العرب المرتبطين ببلدية القدس باقناع الاهالي بالتوقيع، وقد يكون
البعض قد وقع في هذا الشرط.
لذا نطرح عقد مؤتمر صحفي موسع، أي ان تشركه معك به ممثلي القوى الوطنية في القدس
لاعلان ان هذا الميثاق مرفوض وطنيا ومطالبة الاهالي بعدم اللزوم او الالتزام به قطعا.
وآمل - إن وافقتم على الاقتراح - أن يكون التحرك سريعا لتسبب الوقت ما امكن.

ونعتم للقدس


جمال توبى
مدير المركز

4 شارع ابو حيدة بن ابراهيم ح.ب 20479 - هاتف - 6264089 - 02 فاكس 6288448 - 02 (E-mail LRC@palnet.com) القدس
4 Abu Obidah Street P.O.Box 20479 Tel: 6264089 Fax : 6288448 (E-mail LRC@palnet.com) Jerusalem

Orient House
Office of Faisal Hussein

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ
١٥٤٥
١

الشفـرق
ب فيصل الحسيني

40 ص / 2000
17 كانون الثاني 2000

سيادة الرئيس ياسر عرفات حفظه الله ..
رئيس دولة فلسطين

الموضوع: مساعدة مالية للسيد منير جبران

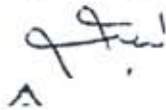
تحية مقدسية وبعد.

يرجى من سيادتكم التكرم بالموافقة على تغطية تكاليف إكمال بناء للسيد منير جبران في القدس / ضاحية السلام، حيث وجهت له بلدية القدس إنذاراً بالهدم لبناءه دون ترخيص. وقد تم إلغاء هذا القرار وتحويله إلى مخالفة بناء والبالغة (40000) أربعين ألف شيكل، ونشراً لعدم قدرته على استكمال البناء لحمايته من الهدم فإننا نتوجه لسيادتكم لمساعدته في استكمال بناء المنزل.

والأمر لسيادتكم
ومعاً وسوياً لبناء الدولة الفلسطينية وعاصمتها القدس الشريف بقيادتكم الحكيمة.

وتفضلوا بقبول فائق الاحترام والتقدير

فيصل الحسيني



Letter from Faisal Hussein to Yasser Arafat asking for financial assistance for Monair Jabran, a resident of Jerusalem who built illegally and was assessed a fine by the court. Hussein asks Arafat for 40,000 New Israeli Shekels to enable Jabran to pay the fine and complete his house.

Orient House
OFFICE OF FAISAL HUSSEINI

بیت الشرق

بیت الشرق
مكتب فيصل الحسيني

708 ص/99
15 آب 1999

سيادة الأخ الرئيس ياسر عرفات حفظه الله،

الموضوع: قرض لبناء سكن في القدس.

تحية طيبة وبعد،

لقد توجه إلينا المواطن موسى عمران الجولاني بطلب الحصول على قرض ليتمكن من بناء منزل لعائلته في منطقة الثوري، ونظراً لصعوبة حصوله على قرض من مجلس الإسكان الفلسطيني لعدم توفر رخصة بناء، أو أي بنك محلي عربي لعدم وجود الضمانات الكافية وصعوبة توفرها في المدينة المقدسة، فإننا نرجو من سيادتكم التكرم بالمواصلة على منح قرض بقيمة خمسين ألف دولار مع تحديد الطريقة التي ترونها مناسبة لتسديده.

والأمر لميادتكم.

ومعاً وسوياً لبناء الدولة الفلسطينية المستقلة وعاصمتها القدس الشريف بقيادتكم الحكيمة.

ولكم منا فائق الاحترام والتقدير

فيصل الحسيني



مبنى بيت الشرق - القدس ص.ب. ٢٠٤٧٩ هاتف ٠١١٢٧٢٠٤٢ / ٠١١٢٧٢٢٢٠ / ٠١١٢٧٢٢٠٠ فاكس ٠١١٢٧٢٠٢٠
Orient House Bldg. P.O.Box: 20479 Tel. 6272042 / 6273330 / 6273701 Fax. 6274020

Letter from Feisal Hussein to Yassar Arafat requesting a \$50,000 U.S. mortgage for Mussa Al-Julani who wanted to build a house in A-Tur. Hussein explains that Al-Julani could not get a bank or other mortgage because he lacked a building permit.

بيان الى جماهيرنا بالقدس

نداء

نداء

يا جماهير شعبنا بالقدس الفلسطيني البطل

قاطعوا انتخابات بلدية الاحتلال الصهيوني

وكل من يخالف يعاقب

القيادة الوطنية الموحدة

Poster entitled "A Message to Our Community and Our Public" distributed by the Joint National Headquarters (of Palestinian nationalist organizations) in connection with the candidacy of Mussa Alayan for City Council. The poster states, *inter alia*, "to our people in Palestinian Jerusalem, boycott the election for the City Council of the Zionist occupation. Anyone who disobeys the boycott will be punished."



Fatah (from Silwan), poster condemning the participation of Arabs in the 1998 Jerusalem Municipal elections. The poster calls for Arabs to boycott the polls.

بعد تزايد محاولات الاستيلاء عليها بالتزوير والتهديد



اللجنة السياسية العليا تشكل لجنة للدفاع عن اراضي وعقارات المقدسين

وتجري هذه الاعمال المشيئة عبر تزوير اوراق الملكية الخاصة بأشخاص اما ان يكونوا قد رحلوا عن هذه الدنيا، او اشخاص رحلوا عن هذه الارض رغماً عنهم، او يعتبروا غائبين وفق القوانين الاسرائيلية الجائرة المعمول بها في بيت المقدس.

وقال البيان كما يجري التلاعب ايضا بالارض المساع او العقار المساع حيث يستخدم المزورون والمارقون اسلوب البلطجة مستفيدين مما قد يبدو لهم غياباً للسلطة وفقداناً لبيبة القوانين والاعراف المتبعة في مجتمعنا الفلسطيني المؤمن بالحق وبالعدل، وأضاف البيان قائلاً ان هؤلاء المارقين انما يبتغون دق الاسافين وخلق المزيد من الاشكالات واشغال الفتن بين أبناء الشعب الواحد مياعدين بينهم وبين الالتفات الى الهم الحقيقي والمعالجة الاكيدة المفروضة على هذا الشعب زوراً وبيئاً.

وطالبت اللجنة السياسية العليا والقوى الوطنية وكل المواطنين القيورين في هذا الوطن، بوقف هذا التلاعب وتخريصه اجتماعياً وأخلاقياً من اجل وضع حد لشكل اضافي من اشكال المعاناة اليومية التي يتعرض لها المقدسيون.

وقال البيان ان ابناء هذا الشعب الذين تمكنوا في الماضي البعيد وحتى القريب من منع الفتن ودرء المخاطر المحدقة بوجوده على ارضه لقادرون على التصدي لهذه الظاهرة الخطيرة وافشال مآرب مرتكبي هذه الجرائم ومن يقف وراءهم.

وختم البيان قائلاً ان تلاحم جميع المتضررين من هذه الجرائم بل تلاحم كل القيورين على المصلحة العامة، وتشكيل لجان الدفاع عن الاراضي، لتضم كل العقلاء والواعين اضافة الى القانونيين القادرين على معالجة القضايا من جميع جوانبها لكفيل بدرء هذا الخطر ووضع حد لهذه الظاهرة.

الاتجاهات الاجتماعية والسياسية والمؤسسات الوطنية.

واصدت اللجنة بياناً جاء فيه، كثرت في الآونة الاخيرة شكاوى المواطنين المقدسين الأمنيين الذين يكتشفون فجأة ان ممتلكاتهم من اراض او عقارات قد جرى التلاعب بها ما يؤدي الى تسريبها وضياعها.

القدس - بعد ان شهدت ظاهرة الاعتداء على اراضي الغير تصاعدا كبيرا في المدينة المقدسة، قررت اللجنة السياسية العليا في القدس تشكيل لجان للدفاع عن الاراضي التي يقوم، آخرون، بمحاولة الاستيلاء عليها، مؤلفة من ممثلين عن العائلات من ابناء الاحياء المختلفة في المدينة وجميع

بيان صادر عن اللجنة السياسية العليا في القدس

يا أبناء بيت المقدس

كثرت في الأونة الأخيرة شكاوي المواطنين المقدسين الأمنيين الذين يكتشفون فجأة ان ممتلكاتهم من اراض او عقارات قد جرى التلاعب بها ما يؤدي الى تسريبها وضياعها. وتجري هذه الاعمال المشينة عبر تزوير اوراق الملكية الخاصة بأشخاص اما ان يكونوا قد رحلوا عن هذه الدنيا، او اشخاص رحلوا عن هذه الارض رغماً عنهم، او يعتبروا غائبين وفق القوانين الاسرائيلية الجائرة المعمول بها في بيت المقدس. كما يجري التلاعب ايضا بالارض المشاع او العقار المشاع حيث يستخدم المزورون والمارقون اسلوب البلطجة مستفيدين مما قد يبدو لهم غيابة للسلطة وقداناً لهيبة القوانين والاعراف المتبعة في مجتمعتنا الفلسطينية الأمن المؤمن بالحق وبالعادل، ويحاول نشر من المارقين استغلال طيبة قلب ابناء هذا الوطن المعطاء، واحياناً يستغلون الجهل بالقوانين من اجل فرض امر واقع على جرائمهم والتمادي في غيهم حيث لا تفقد هذه الجرائم الى الدعم العلني احياناً والخفي احياناً اخرى من ذوي النفوذ والقائمين على تنفيذ القوانين السارية.

يا أبناء شعبنا الأبني

فاضافة الى الكسب الرخيص والاسلوب الخسيس الذي يتبعه هؤلاء المارقون، فهم يبتغون دق الاسافين وخلق المزيد من الاشكالات واشغال الفتن بين ابناء الشعب الواحد مباعدين بينهم وبين الالتفات الى الهم الحقيقي والمعاناة الاكيدة المفروضة على هذا الشعب زوراً وبهتاناً. ان اللجنة السياسية العليا في القدس، ومن خلفها القوى الوطنية وكل المواطنين الغيورين في هذا الوطن، تطالب بوقف هذا التلاعب وتحريمه اجتماعياً واخلاقياً من اجل وضع حد لشكل اضافي من اشكال المعاناة اليومية التي يتعرض لها المقدسيون. ان ابناء هذا الشعب الذين تمكنوا في الماضي البعيد وحتى القريب من منع الفتن ودرء المخاطر المحدقة بوجوده على ارضه لقادرون على التصدي لهذه الظاهرة الخطيرة وافشال مأرب مرتكبي هذه الجرائم ومن يقف وراءهم. ان تلاحم جميع المتضررين من هذه الجرائم يل تلاحم كل الغيورين على المصلحة العامة، وتشكيل لجان الدفاع عن الاراضي، لتضم كل العقلاء والواعين اضافة الى القانونيين القادرين على معالجة القضايا من جميع جوانبها لكفيل بدرء هذا الخطر ووضع حد لهذه الظاهرة. لتتشكل لجان الدفاع عن الاراضي في كل موقع لمنع تسريب الاراضي والعقارات

فما حلك جلدك مثل ظفرك والله من وراء القصد

اللجنة السياسية العليا في القدس - ٢٠٠٢/١١/١٣

١١/٢٠٠٢ (د)

المعشين فقط !!

لدينا كلاب حراسة من فصائل عالمية مختلفة (جراء
وكبار) مدربة من الانواع التالية:

Rottwieler

German shepherd

Doberman

Pitt-Bul

Great Dane

وانواع مختلفة ايضاً من كلاب اللهو والبيوت مع شهادة
صحية.

للاتصال:

هاتف ٠٥٥/٢١٦٠٤٨ - ٠٥٠/٣٠٢٦٧٨

Advertisement for the sale of various intimidating breeds of dogs in the leading Jerusalem Arabic language newspaper. Commercial advertisement for the sale of various intimidating dogs, Al Quds, Nov. 14, 2002, p. 1. Dog ownership is very rare in Arab culture, which regards canines as unclean. It is likely, therefore, that the sale of these ferocious breeds of dogs is connected the article (see Appendix 8H) and the public announcement (see Appendix 8I) that appeared alongside this advertisement on page 1 of the newspaper.